# THE FOREIGN LAWS OF MARRIAGE AND DIVORCE

PART I

THE COUNTRIES OF THE EUROPEAN CONTINENT



COMPILED BY

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# P R E F A C E

This compilation is primarily intended for the use of lawyers in countries in which, like in Palestine, the personal status of foreigners is exclusively governed by their national law, and in which foreign nationals form a considerable part of the total population. This book has no academic ambitions and does not purport to be an expert's statement of the foreign laws, nor even a comparative study of their divergencies and congruities. I have contented myself with giving side by side the marriage laws of the European Continent and quoting everywhere the authorities from which they are derived and where they can be traced. My purpose was nothing more than to facilitate to the solicitor to advise his client of the remedies he has under his national law, and to render the access to the sources of the foreign laws somewhat easier.

The books at present available to the English reader on the subject of international marriage law are not numerous, if at all there exist modern and comprehensive publications of this kind. The excellent treatise of Sir Alexander Wood Renton on the Comparative Laws of Marriage and Divorce (Burge's Colonial and Foreign Laws, 3rd Volume) was published in 1910, and the manifold and important changes the War has brought about both with regard to the creation of new states and with regard to the alteration of existing laws need hardly be mentioned to show that great parts of Renton's book have no longer practical value.

On the other hand, the publications of the International Law Association, the Society for Comparative Legislation and International Law, and other (especially American) Institutes of International Law, cannot offer a complete view of the subject and are not easily accessible in places lacking modern law libraries. I have found some valuable books on the international marriage laws in the German language to which the reader will find himself often referred. The book of Bergmann (Internationales Ehe- und Kindschaftsrecht, 3 Vols., Berlin, 1926–1929), however, is confined to the forms of celebration and dissolution of marriage and its effect on the national status, but does not deal with the law of married women and marriage property. The book of Leske-Loewenfeld (Rechtsverfolgung im Internationalen Verkehr, 4th Vol., 2nd Ed., Berlin, 1933), again, has a fragmentary character and contains in its present shape only the laws of a few countries. Moreover, all these books are too voluminous and expensive to become that simple and modest, but serviceable and useful tool this compilation is designed to be.

I have endeavoured to reproduce as accurately as possible the specific terminology of foreign law, and I must ask the reader for his kind

indulgence if terms tradiitonal to English law have sometimes been disregarded [1]).

A second part will contain the marriage laws of the Non-European countries, and a separate volume will be devoted to the religious laws and rites of marriage and divorce.

I would not have been able to complete this work, had I not enjoyed the help of numerous friends and colleagues in Palestine and abroad who supplied me with informations and literature. In this respect, I am particularly beholden to Mlle. Thilde Turk, of Paris, and Dr. Ernest Essner, of London, who both have a great share in the merits of this book. I am further much indebted to Dr. B. Shereshewsky for having read the proofs.

*H. C.*

Jerusalem, 25th March, 1937.

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1) "*Marriage Contracts*" indicate in this compilation only property settlements between husband and wife made either before or during marriage, and neither contracts to marry nor the act of marriage.
Some doubts having recently arisen and having been judicially discussed in Palestine regarding the meaning and proper use of the terms "*alimony*" and "*maintenance*", respectively, it may be added that in this compilation the term "*maintenance*" is used (as is well established practice of the English Courts) to indicate the support due from one spouse to the other or from the spouses to their children regardless of whether proceedings have been taken for the dissolution of the marriage, whereas the term "*alimony*" always indicates only the support due from the husband to the wife, or *vice versa*, either *pendente lite* or upon a decree of dissolution or nullity of marriage.

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Zeitschrift fuer vergleichende Rechtswissenschaft.
ZITELMANN, Internationales Privatrecht.

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| A.B.G.B. | Allgemeines Buergerliches Gesetzbuch (Austrian Civil Code). |
| Amtl. Slg. | Amtliche Sammlung (Austrian Law Reports). |
| Arm. S.S.R. | The Armenian Socialist Soviet Republic |
| A.S.S.R. | The Azerbaijan Socialist Soviet Republic. |
| B.G.B. | Buergerliches Gesetzbuch (German Civil Code). |
| B.G.Bl. | Bundesgesetzblatt (Austrian Gazette). |
| B.P.R. | Baltisches Privatrecht (Baltic Civil Code). |
| B.W. | Burgerlijk Wetboek (Dutch Civil Code). |
| C.c. | Codice Civile (Italian) and Codigo Civil (Spanish Codes). |
| C.C. | Polish Civil Code. |
| C.N. | Code Napoleon (French Civil Code). |
| Chambéry | Judgment of the Court of Appeal of Chambéry, France. |
| Civ. c. | Arrêt de la Chambre Civile de la Cour de Cassation qui casse. |
| Civ. r. | Arrêt de la Chambre Civile de la Cour de Cassation qui rejette. |
| D.G.Bl. | Danziger Gesetzblatt (Danzig Gazette). |
| D.P. | Dalloz, Receuil Periodique et Critique (French Law Reports). |
| E.B.G.B. | Einfuehrungsgesetz zum Buergerlichen Gesetzbuch. |
| E.L. | Ektekapsloven (Norwegian Marriage Law). |
| F.L. | Ektefelleloven (Norwegian Marriage Property Law). |
| G.A. | Gesetzesartikel (Hungarian Statute). |
| G.E. | Grundsaetzliche Entscheidung (Hungarian Judgment). |
| G.H. | Gerichtshalle. |
| G.Slg. | Sammlung der Gesetze und Verordnungen (Czechoslovak Laws). |
| G.S.S.R. | The Georgian Socialist Soviet Republic. |
| J.B. | Judikatenbuch (Austrian Law Reports). |
| J.G.S. | Justizgesetzsammlung (Austrian Law). |
| K. | Entscheidung der koeniglichen Kurie (Hungarian Judgments). |
| Paris | Judgment of the Court of Appeal of Paris. |
| Req. | Arrêt de la Chambre des Requêtes de la Cour de Cassation. |
| R.G.Bl. | Reichsgesetzblatt (German Gazette). |
| R.G.J.W. | Judgment of the Reichsgericht reported in Juristische Wochenschrift. |
| R.G.Z. | Entscheidungen des Reichsgerichts in Zivilsachen. |
| R.S.F.S.R. | The Russian Socialist Federal Soviet Republic. |
| R.T. | Riigi Teataja (Esthonian Gazette). |
| R.Z. | Oesterreichische Richterzeitung. |
| S. (or Slg.) | Sammlung von zivilrechtlichen Entscheidungen des K.K. Obersten Gerichtshofes (Austrian Law Reports). |
| Slg. n.F. | The same reports, Neue Folge. |
| Slg. O.G. | Sammlung von Entscheidungen des Obersten Gerichtshofes (Czechoslovakian Law Reports). |
| Spruchrep. | Spruchrepertorium des Obersten Gerichtshofes (Czechoslovakia). |
| St. G.Bl. | Staatsgesetzblatt (Austrian Gazette). |
| S.Z. | Svod Zakonov (Russian Civil Law), Vol. X. Part 1 ed. 1914. |
| Trib. civ. | Judgment of a French Civil Court. |
| T.S.F.S.R. | The Transcaucasian Federal Socialist Soviet Republic. |
| U.S.S.R. | Union of Socialist Soviet Republics. |
| Uk.S.S.R. | The Ukrainian Socialist Soviet Republic. |
| W.R.S.S.R. | The White Russian Socialist Soviet Republic. |
| Z.Bl. | Oesterreichisches Zentralblatt fuer die juristische Praxis. |
| Z.P.O. | Zivilprozessordnung (Code of Civil Procedure). |

# ALBANIA

*The Sources of Law.*

1. Albania was declared a Republic in 1925. Its territory is a part of the former Turkey-in-Europe. Most of the former Turkish laws remained in force.

On the 2nd April, 1928, a civil code was promulgated which contains, *inter alia,* the new Albanian nationality law. The marriage and divorce law is that of the religious communities; there is no codification of this branch of the law up to the present time. Provisions governing the Albanian Private International Law have not been enacted (Bergmann II 7).

*Effects of the Marriage on the National Status.*

2. A married woman cannot have a nationality other than that of her husband, even if they live separated from each other. A foreign wife acquires by marriage with an Albanian the latter's nationality; she remains Albanian citizen even after dissolution of the marriage, unless she acquires another nationality (Art. 14, Civil Code).

An Albanian woman loses by marriage with a foreigner the Albanian nationality, unless she has by formal declaration reserved to herself her former national status, or unless she does not acquire, under the national law of her husband, the latter's nationality by marrying him. After dissolution of the marriage she may re-opt for her Albanian nationality if she returns to Albania and takes up her domicil there (Art. 15, Civil Code). The same rules apply in cases of acquisition of a new nationality during marriage: the wife follows the nationality of her husband, unless she reserves to herself her Albanian nationality (Art. 16, Civil Code).

# AUSTRIA

*Sources of Law.*

1. The statute governing the law of marriage and divorce in Austria is the Austrian Civil Code *(Allgemeines Bürgerliches Gesetzbuch)* of June 1, 1811. The second part of this Code (§§44–136) deals with the law of husband and wife. When Austria became a Republic in 1918, this position of the law of marriage remained unchanged [1]). In those parts of the Burgenland which were annexed to Austria by the Treaty of St. Germain of September 10, 1919, Hungarian law and procedure prevail (cf. the chapter on Hungarian law).

*Promise of Marriage.*

2. A promise to marry gives the promisee no right of action neither for the conclusion of marriage nor for the payment of any penalty or liquidated damages which may have been stipulated between the parties for the case of default on the part of the promisor (§ 45). Such party to a betrothal, however, who did not give any cause to a breach of promise to marry, is entitled to the recovery of the amount of the damage actually suffered (not *lucrum cessans)* by him (§ 46). Any donations made or promised to a party in contemplation of the future marriage may be rescinded, if the marriage is not contracted due to a fault on the part of the donee (§ 1247). It should be noted that promises to make donations of this kind must, in order to be valid, be made in form of a notarial deed [2]).

*Capacity to Marry.*

3. Marriage is created by the declaration of two persons of different sexes of their common intention to live in unseparable unity, to beget and to bring up children and to help one another (§ 44). It has, in interpretation of this legal definition of marriage, been established by the courts that a marriage can only be contracted between two persons and only between such persons who are of different sexes, but that a valid marriage may be con-

1) *Bundesverfassungsüberleitungsgesetz of October* 1, 1920, § 1.

2) Law of July 25, 1871, § 1 (d).

tracted with the intention *ab initio* to have different domicils, or by persons who are physically unable to beget. Such declaration of the intention to marry must be made freely, earnestly, certainly and clearly (§ 869) and cannot, therefore, be validly made by persons whose mental capacities are temporarily or permanently disturbed (cf. § 48) or who have been induced by fraud or duress (§ 55). Minors under the age of 14 years are also incapable of marrying (§§ 21, 48); a minor between 14 and 21 may contract a valid marriage subject to the consent of his father [3]) or guardian (§§ 49, 50, 183) or, in case such consent is refused, upon leave of the court (§§ 52, 53). The consent of the court is necessary in all cases of illegitimate minors (§ 50). Special provision is made for foreign minors having no parents in Austria; for such minors a guardian is appointed by the court who may grant or withold his consent to the marriage (§ 51) [4]). A marriage subject to such consent which has been contracted without the necessary consent having been granted, is voidable by either party, provided that no party may seek to avoid the marriage who has concealed the fact of his inability to marry without consent, or who has falsely pretenced that the consent has been given (§ 95). Neither may the marriage be avoided by the other party (who is not in default) if he or she had previously knowledge of the voidability of the marriage and did not avoid it forthwith (§ 96 I).

3) Law of 1. 2. 1919, § 1. This law (StGBl 96) amended the provision of § 21 ABGB according to which persons are divided in children (up to 7 years), nonaged (up to 14), and minors (up to 24). Now minority lapses with the completion of the 21st year for all intents and purposes (Satter 135 Note).

4) It may be added that the question whether the foreigner is a minor or not is determined according to the national law of the foreigner (§ 34). It has been held that a foreign minor woman who according to her national law becomes major by virtue of her marriage, is, when married to an Austrian, regarded as of full age, and no consent to the marriage is required (Jgm. 4. 5. 1909 Slg. N.F. 4600).

A marriage concluded by a party who is not the party with whom the other wishes and believes to contract the marriage *(error personae)* is voidable (§ 57) only by the party in error (§ 95) and only forthwith after knowledge of the error has been acquired (§ 96). No other instances of the intention of the parties not being *ad idem* at the conclusion of the marriage are recognised by Austrian law, (§ 59), except that of the husband finding the wife pregnant from another man after the marriage had been contracted (§ 58). In the judicature of the modern courts, a tendency appears to extend the *error personae* to an *error qualitatis in personam redundans,* meaning to say that an interdicted lunatic is not in law the same person as he was before interdiction [5]).

*Prohibited Marriages.*

5. The impediments of marriage are the following : —

(a) Permanent inability of cohabitation, provided that such inability existed at the time of contracting marriage (§ 60). The inability may be only relative, i. e. as against the other party to the marriage [6]), but may not be temporary nor have come into existence after conclusion of marriage. The inability need not be physical but may be psychical, as by reason of hysterics [7]) or contrary sexual avidity [8]), provided that it is permanent and incurable, or that the life of a party is endangered if cohabitation would be effected [9]).

The marriage so contracted is voidable (§ 94). The voidability is not affected by expiration of time [10]).

(b) Criminal offenders convicted of severe felonies and sentenced to imprisonment could not contract mar-

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[5]) Cf. Jgm. 21/1/1925, amtl. Smlg. VII Nr. 21.
[6]) Jgmts cited by Weiss pg. 140, para. 2.
[7]) Jgm. 4/5/1901 Slg. n. F. 1412.
[8]) Jgm. 10/12/1913 Junker-Fuchs 119.
[9]) Jgm. 2/6/1908 Slg. N.F. 4253.
[10]) Jgm. 28/2/1928 ZBL 1928 No. 192.

riage during the time of punishment (§ 61) until 1867, when this impediment was abolished [11]).

(c) An existing marriage of one of the parties with a third person (§ 62). Bigamous marriages are void (§ 94). Persons who were married previous to the conclusion of another marriage must prove that the first marriage is no longer in existence (§ 62 II). It may be noted that Catholics cannot allege that a marriage contracted by them or one of them has been dissolved otherwise than by the death of one of the parties thereto (§ 111).

(d) A second marriage cannot be validly contracted by a Catholic, if the previous marriage has been dissolved otherwise than by death of the other party [12]). This instance occurs where a person becomes Catholic after the dissolution of his first marriage. In such case the second marriage is void. This impediment does not relate to previous marriages of foreigners dissolved abroad in accordance with their national law [13]).

(e) Marriages cannot validly be contracted by certain priests and ecclesiastics (§ 63).

(f) Difference of religion between the parties to a marriage renders the marriage void (§§ 64, 94). This impediment relates only to marriages between Christians and non-Christians. Members of different Christian communities may contract valid marriages, as may members of different non-Christian communities (e. g. a Jew and an Undenominational). The courts, have, however, power to grant dispensation from this impediment in special cases [14]).

(g) Consanguinity and affinity between the parties (§ 65). The prohibited degrees are: blood relations in the

11) Law of 5/11/1867 StGBl 131.

12) Hofdekrete of 26/8/1814 JGS 771 and of 4/2/1837 JGS 168. Cf. Weiss 147.

13) Jgm. 27/10/1914 SNF 7081.

14) Jgms. 21/2/1927 S. VI No. 73 and 5/1/1926 S. VIII No. 3.

ascending and descending line, half-blood and whole-blood brothers and sisters, first cousins, uncles and nieces, nephews and aunts, no difference being made between legitimate or illegitimate affinity. In the same way, marriages are prohibited with the corresponding relatives of one's husband or wife (§ 66). Jews, however, are allowed to marry the descendants of brothers and sisters (§ 125). Dispensation may be granted from this impediment except as regards the marriages between descendants and ascendants, brothers and sisters, and step-parents and step-children [15]).

(h) A marriage between persons who committed together an adultery is prohibited (§ 67). The fact that adultery had been committed by them must have been found by a court of justice either in Austria or abroad [16]). This impediment may be dispensed with.

(i) A marriage is prohibited between persons who promised each other to marry and one of them, for the purpose of rendering such marriage possible, sought to kill the person with whom he was married at the time of such promise. Neither adultery nor actual murder or attempt to murder is required (§ 68). This impediment may be dispensed with.

(k) A marriage is prohibited between a person whose first marriage was dissolved and the person due to whose malicious, tortious or immoral acts that first marriage of the other was dissolved (§ 119). Such acts may consist of merely inciting a husband to sue for divorce from his wife, if such incitement is made with the intention to marry her thereafter, or if intentionally enticing him or her to do acts which may be used by the other as grounds for divorce [17]). This impediment may be dispensed with.

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15) Hofdekret 19/7/1823, Ehrenzweig, System des öst. allg. Privatrechts, 6 Aufl. 1924, II 2 pg. 256.

16) Weiss 151; Jgm. 3/12/1901 SNF 1655.

17) Weiss 152.

(l) A marriage may not be contracted by or with a woman whose previous marriage was dissolved either by the death of her husband or by decree of the court except after three months have passed in case it is settled that she is not pregnant, after six months have passed in case it is doubtful whether she is pregnant or not, and after confinement in case she is pregnant (§ 120). A marriage contracted contrary to this provision is not void, but the wife is not entitled to any rights as against her former husband by virtue of marriage contracts and settlements and last wills, and the man cannot avoid the marriage on the ground that he found her pregnant from another man (§ 58, *supra*, para. 4). Moreover, both parties may be liable to a fine (§ 121).

(m) Failures and omissions in the procedure relating to the publication of banns which must precede the marriage (see *infra*, para. 6) render the marriage voidable [18]) and the parties liable to fines.

Some words must be added with regard to the dispensation of certain of the above mentioned impediments. Jurisdiction to dispense with the impediments have the District Governors *(Landeshauptmänner)*. An appeal lies from their decision to the *Bundeskanzleramt* (§ 83, Weiss 155). The dispensation must be applied for by the parties before solemnization of the marriage (§ 84 I). In case the existence of an impediment at the time of contracting marriage comes to the knowledge of the parties only later on, application for dispensation may be made to the respective religious minister of the parties who shall have to solemnize the marriage again ; in that case the marriage is deemed valid as from the date of the first solemnization (§§ 84 II, 88). Marriages contracted upon a dispensation having been granted by the competent authority, are recognised

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18) Cf. Jgm. 12/11/1923. ZBL 1924 No. 36.

as valid marriages for all intents and purposes until and unless a decree of dissolution is issued by a competent court [19]).

*Solemnization of Marriage.*

6. Marriages in Austria are celebrated in accordance with the rites of the recognized religious communities [20]). Members of non-recognized religious communities (e. g. members of the Anglican Church and Mohamedans) marry according to the civil forms of marriage as laid down in the ABGB.

In case religious ministers refuse on ground of religious law to celebrate a marriage, the marriage may be celebrated in civil form before the *Bezirkshauptmannschaft,* after a certificate of refusal has been given by the competent religious minister. In towns with own Municipalities the marriage is celebrated before the Mayor *(Bürgermeister).* At the celebration, two witnesses and a secretary must be present, otherwise the marriage is void [21]).

In cases of mixed marriages between members of different religious communities, the parties are at liberty to marry either before the competent religious minister of one of them or in civil form before the competent *Bezirkshauptmann* or *Bürgermeister* (Satter 164).

From any decision in this respect either of the religious (cf. § 79) or of the civil authorities, an appeal lies to the District Governor (*Landesregierung*) and from there to the *Bundeskanzleramt* [22])

The religious as well as the civil ceremony must be preceded by the publication of banns *(Aufgebot).* In case

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19) Weiss 159; Jgm. 13/3/1929 ZBL 1929 No. 160.

20) As religious communities are recognized the Catholic (Roman, Greek and Armenic), the Evangelic, the Greek (Eastern Orthodox), the Jewish and the Old Catholic (Law of 13/10/1781 and Law of 18/10/1877, Satter 159).

21) Law of 25/5/1868, RGBl No. 47, Art. II, §§ 1—3.

22) § 4 of the law cited above.

of religious marriages, the publication is made by the religious minister on three subsequent Sundays in the churches of the domicils of both parties (respectively on three subsequent Saturdays in the synagogues of the domicils of both parties (§ 126)), specifying the names of the betrothed, the places of birth, their occupation and their domicil (§ 70). In case the parties reside at the place where the marriage is to be celebrated for less than six weeks, the publication must be made also at the place of their former residence, or they must remain at the first mentioned place for at least six weeks before the marriage is celebrated (§ 72).

The publication is valid for six months only; after expiration of which it must be repeated before the marriage may be celebrated (§ 73). In case of civil marriages, the publication is made by public notice to the authorities of the domicil of each party at least three weeks before the ceremony [23]).

In urgent cases, dispensation may be granted from the requirement of the two first publications or of the publication as a whole. In such cases the parties must declare on oath that no impediment to their marriage is known to them (§ 86). Application for dispensation must be made by both parties to the *Bezirkshauptmänner* (resp. *Bürgermeister*) of their respective domicils. An appeal from their decision lies to the *Landesbehörden* [24]).

The ceremony itself consists of a solemn declaration of consent to be given by both parties before the competent religious minister of one of them and in the presence of two witnesses (§ 75). Note that at civil marriages two witnesses and a secretary must attend the ceremony (cf. *supra*) [25]).

23) § 5 of the law cited above.

24) Law of 4/7/1872 RGBl No. 111.

25) In the case of Jews this solemn declaration must be made before the competent Rabbi (§ 127) and may not be made before any other religious minister (Law of 21/3/1890 RGBl No. 57, § 17).

The competency of the religious minister is determined not according to his religious law, but according to the domicil of the parties, i.e. the religious minister of that town in which the parties are or one of them is domiciled, is competent to celebrate the marriage, even if that contradicts his religious law [26]). He is, however, entitled to delegate in writing the celebration of the marriage to a religious minister in whose district none of the parties is domiciled (§ 81).

The solemn declaration of consent need not be made personally but may be made by an especially authorized agent (§ 76), provided that the *Landesbehörde* grants its consent to such authorization. The authorization may be revocable; in case of revocation before marriage, the marriage celebrated thereafter is void, but the revoking party liable to damages (§ 76 II). A marriage celebrated by an agent not duly authorized is void (§ 94), as is a marriage the parties to which did not solemnly declare their consent (§ 94). The consent may not be declared conditionally; but a *reservatio mentalis,* e. g. in cases of fictitious marriages, does not affect the validity of the marriage (Satter 162).

The religious ministers have to register every marriage celebrated before them in a manner provided for by the law (§ 80).

Before celebrating the marriage, the religious minister is bound to ascertain that there are no impediments to the marriage and that the publication of banns has duly been effected, failing which he is liable to a fine (§§ 78 and 130).

A marriage between persons who are commonly presumed to be already married with each other, may be celebrated by the religious minister upon concealment of their names and without any publication of banns being required (§ 87).

26) e. g. in cases of marriages between members of different Christian communities. (Law of 31/12/1868 RGBl. 1869 No. 1, Art. III).

*Rights and Duties of Husband and Wife.*

7. Both parties are equally bound to be faithful to each other and fairly to comply with their marital duties (§ 90). The right of the wife to live in common with her husband, and *vice versa,* is enforced by the courts [27]); the wife has been held to be liable to fine and imprisonment unless she would agree to return to her husband [28]) and the husband has by execution proceedings been compelled to take his wife back to his house [29]). The courts will not use their discretion in cases of reasonable refusal on the part of either party to live in common with the other. Such reasonable refusal may be proved by evidence of actual physical danger for either party to live together with the other [30]), or by evidence of such circumstances as would entitle the party to institute divorce proceedings (§ 109).

The consent of both parties is required for the adoption of any child or for either of the parties being adopted by a third person (§ 180 as amended by § 18 of 1. *Teil-Novelle).*

*Maintenance.*

The man is the head of the family. In this capacity it is particularly his right to manage the household affairs; but it is also his duty to procure to the wife, as far as possible, her proper livelihood and to represent her in all matters (§ 91). The right of the wife to be maintained by the husband is enforceable by the courts, the competency of which depends upon the amounts claimed [31]). In case proceedings have been started by the wife for divorce or separation, the court concerned therewith may deal also with her claims for alimony (*Jurisdiktionsnorm* § 7a). For the purpose of measuring the amount of alimony due, regard is to be had to the fortune of the husband and to the personal relations between the

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27) Jgms. 7/4/1891 Slg. 13706; 4/4/1900 SNF 1078.
28) Jgm. 23/1/1894 Slg. 14992.
29) Jgm. 20/4/1911, SNF. 5445.
30) Jgm. 25/10/1892, Slg. 14432.
31) Plenissimar Jgm. 16/4/1918 JB 253.

parties [32]). The death of the husband extinguishes the wife's right to alimony [33]) except as for the first six weeks after his death (§ 1243).

In modern times the courts are inclined to extend the duty of maintenance as laid down in § 91 to hold the wife liable to procure to her unable husband his proper livelihood, as far as is possible to her [34]).

The wife is entitled to bear the husband's name. It is her duty to follow her husband to his domicil and to assist him in managing the household affairs (§ 92). Expenses made by her for the household are to be refunded to her by the husband (arg. § 1042). To become guardian of a minor or of an interdicted person she must obtain the consent of the husband, as also to commence business as "commercial woman" (art. 7, Commercial Code). The wife is presumed to have her husband appointed manager of her property and to have him authorized accordingly (§ 1238); this presumption may at all times be rebutted by her. The rebuttal may be express or implied [35]). Contracts made by the wife in the course of her usual household affairs are binding upon the husband to the exclusion of the wife [36]) even if the wife is wealthy and the husband is not [37]).

*Nationality.* The wife acquires the nationality of her Austrian husband. A wife marrying a foreigner acquires the latter's nationality and loses Austrian if she acquires the husband's nationality according to his national law [38]). In the same way, the husband's domicil is the domicil of the wife for all intents and purposes (*Jurisdiktionsnorm* § 70).

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32) Jgm. 5/12/1901 SNF 1662.

33) Jgm. 2/1/1924, amtl. Slg. VI No. 1.

34) Cf. § 44, § 3 *supra*; Jgm. 19/2/24/, amtl. Slg. VI No. 63.

35) as by requesting monthly accounts and the like: Jgm. 19/6/1906 SNF 3454.

36) Jgm. 20/12/1906 SNF 3611.

37) Jgm. 26/11/1930 ZBl, 1931 No. 36.

38) Law of 30/7/1925 BGBl 275, §§ 6, 9.

*Property Relations between Husband and Wife.*

8. The marriage does not involve a community of goods between husband and wife (§ 1233), nor has it, in general, any direct effect on the property relations of the spouses [39]). If no special arrangement (*"Ehepakt"*) is entered into between the parties, they both retain their respective rights to the property held by each of them previous to the marriage and acquire separate rights to such property which is acquired by each of them after marriage. In doubtful cases it is presumed that the acquisitions are derived from the husband (§ 1237). It is further presumed that the wife has appointed the husband her agent to manage her property and affairs, but these presumptions may be rebutted (§ 1238). The husband is for this pupose in the same position as any other agent, but he need not account to the wife for any profit derived from her property, unless otherwise agreed upon, and is liable to return to the wife only the *corpus* (§ 1239), the profits derived therefrom being considered in law as consideration for his services in managing it. The wife, on her part, is neither liable to account for the profits she derived from the property even when under the management of her husband (§ 1240). Such power of management may be withdrawn from the husband either by the wife (§ 1240 II) or, in urgent circumstances, by the court by way of interdiction (§§ 1241, and 26 *Entmündigungsordnung* of 28/6/1916). The husband, on the other hand, may hinder the wife from disorderly managing her affairs either by way of interdiction (§ 2 *Entmündigungsordnung* of 28/6/1916) or by way of declaring her a prodigal (§ 273).

*Marriage Contracts.*

Contracts made between the parties to a marriage with regard to property settlements (*"Ehepakte"*) must be executed before a Notary Public (§ 1 Law of 1/7/1871), otherwise they are invalid. In the same way, contracts between spouses with regard to their mutual inheritance

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39) Cf. Renton pg. 607 *et subs.*

must be made in notarial form (§ 1 of the law cited), but the spouses may make a joint testament for which the notarial form is not required (§ 1248). The *"Ehepakte"* may not be amended nor cancelled but before a Notary Public [40]).

Special provision is made by the law with regard to marriage property (*Heiratsgut, dos*). This property is given to the husband by the wife or her relatives in order to lighten the burden of expenditure of the spouses (§ 1218). If the wife has no property of her own, her parents or grand-parents are bound to give her a *dos* (§§ 1219—1224), unless the court is satisfied that also her parents or grand-parents cannot give it to her (§ 1221). But the husband may claim the *dos* only if it has been formally promised to him before marriage (§ 1225); the form required is that before a Notary Public [41]).

The *dos* is divided into two parts: one consisting of cash property, assigned debts and such movables as are wholly consumed *(res consumptibiles);* the other consisting of movables which may be used without detriment to their substance *(res inconsumptibiles)* and immovables. The right of ownership to the former part is vested in the husband (§ 1227), whilst the wife retains the rights of ownership to the latter, the husband only being usufructuary (§ 1228). It is otherwise if it can be proved that the husband has covenanted to return only a fixed sum of money in consideration of the *dos*. Upon the death of the husband, the *dos* reverts to the wife or her heirs (§ 1229), unless otherwise stipulated. Upon delivery of the *dos,* security therefor may be asked for from the husband (§ 1245). The wife has the right to ask for security for her *dos* from the creditors of her bankrupt husband (§§ 1260, and 55, 56 *Konkursordnung*) and is

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40) Jgm. 10/11/1908 SNF 4376.

41) Jgms. 17/1/1883, Spruchrep. 109. Slg. 9268 and 9/11/1915 JB 239.

entitled to alimony pending the bankruptcy proceedings (§ 1260). From the *dos* must be distinguished the wife's *trousseau (Aussteuer)* which always fully remains the property of the wife (Satter 169).

Further provisions are contained in the code for jointure *(contrados, Widerlage)* which the husband or his parents are bound to give and which upon the husband's death reverts to the wife (§§ 1230/1231); for gifts made immediately on marriage *(Morgengabe)* which, if agreed upon, shall be deemed to have been duly given after three months from the date of marriage (§ 1232); for the payments to be made to the widow out of the husband's estate (*Witwengehalt*; §§ 1242—1244); and for the right of usufruct by one spouse to the estate of the other which may be agreed upon by the parties *(Advitalitätsrecht*: §§ 1255—1258).

If community of goods has been agreed upon between the parties, such community is presumed to extend only over the present property of husband and wife (§ 1177). If the future property is expressly included, such stipulation still covers only property to be acquired in future for consideration but not property which may be obtained by inheritance (§ 1177 II). The *dos* (*Heiratsgut*) is not included in the community of goods[42]). In general, community of goods between spouses is understood to refer to the event of death, i. e. that each of them is upon the death of the other entitled to half of the common property (§ 1234). The same rule applies in the event of bankruptcy of one of the spouses (§ 1262). If, however, the spouses expressly agreed upon a community of goods as *inter vivos*, the shares of each of them in the common property may be attached for the debts of the other, and in the event of bankruptcy no division is made in favour of the non-bankrupt spouse[43]).

42) Jgm. 4/11/1886, Slg. 11233.

43) Jgms. 30/7/1928, amtl. Slg. X No. 169 and 19/3/1930 amtl. Slg. XII No. 101.

The validity or invalidity of gifts and donations between spouses is regulated according to the general laws relating to donations (§ 1246). Jewels and other precious effects given by the husband to his wife are presumed to have been given by way of gift (§ 1247). If the donation is made without actual delivery, a notarial act is required (§ 1, law of 25/7/1871).

*Nullity of Marriage.*

9. The nullity of a marriage must be decreed by the court in a special action brought for this purpose (§ 393 ZPO). If in defence to divorce proceedings the nullity of the marriage is alleged, the divorce proceedings must be stayed and an action for an order declaring the marriage null instituted [44]). The civil court is not bound by the finding of a criminal court that the offence of bigamy has been committed, but must hear evidence with regard to the validity of the first marriage also [45]).

Proceedings with the view to declaring a marriage null and void by reason of impediments of public nature must be started either by the competent authority (§ 94 I) or by one of the spouses (§ 94 II) [46]). The proceedings must be continued even if the application is revoked [47]). In case of impediments of private nature, only one of the spouses may apply for declaring the marriage void (§ 94 II). The application may be revoked (arg. § 98). The right of application for a declaration of nullity is forfeited if the spouse continued the marital life after having obtained knowledge of the impediment (§ 96 I). The spouse who knew of the impediment at the time of marriage has no right to apply (§ 95). The court is bound to appoint some person as advocate of the validity of the marriage in issue, even if the spouses both allege its nullity (§ 97). The validity of the marriage is presumed

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[44]) Jgm. 19/7/1923 amtl. Slg. V No. 160.
[45]) Jgm. 10/7/1931 ZBL 1931/306; Satter 172.
[46]) Jgm. 7/12/1915, Junker-Fuchs 149.
[47]) Jgm. 22/11/1928 ZBL 1929/149.

until its nullity is decreed by the court (§ 99). If there was an impediment to marriage at the time of its celebration which may now be abolished, the court shall try to effect its abolishment and hold the marriage valid (§ 98).

Upon declaration of nullity, the marriage is deemed to have never existed (Satter 174), and contracts of marriage (*Ehepakte*) are not enforceable. Payments made by virtue of contracts of marriage may be reclaimed, and in general the properties of both spouses are reverted to the *status quo* before marriage (§ 1265). If the nullity of the marriage has been declared by the court to be due to the default of one of the spouses, the other is entitled to claim damages (§ 102). Upon declaration of the nullity of marriage, the wife loses the right to bear the husband's name and his national status [47]).

The competent courts in nullity proceedings are in the first instance the *Bezirksgerichte* of the husband's domicil (§ 114 *Jurisdiktionsnorm*). In the first instance representation by an advocate is not obligatory (§27 II ZPO). The parties are not bound to appear personally, but may be summoned by the court and even compulsorily brought before it [48]). Judgment may be given only on the merits of the case; judgments in default are voidable by application to the court of appeal [49]). Regular judgments may be appealed against within the prescribed time in the usual manner (Satter 193).

10. *Dissolution of Marriage.* The ABGB distinguishes between divorce *a mensa et toro (Scheidung von Tisch und Bett)* and divorce *a vinculo matrimonii (gänzliche Trennung)*.

*(a) Judicial Separation.* The separation of the spouses without dissolution of the marriage (= divorce *a mensa et toro)* may be allowed

47) § 11 III of the Law of 3.12.1863 RGBL. 105.

48) § 87, *Gerichtsorganisationsgesetz* of 27/11/1896, RGBl 217; Satter 192.

49) § 529 ZPO; Satter 173, 192, 193.

by the court upon the joint application of husband and wife (§ 103), provided they produce before the court a certificate of the competent religious minister to the effect that they have been warned by him three times and in spite of it insist on being separated from each other (§ 104). In case the parties do not wish to apply to the religious minister, they may apply to the court which must warn them at least once before starting judicial proceedings [50]). The warning of the court must take place at least 8 days before the first hearing. In case the plaintiff does not appear before the court at the warning, his application for judicial separation is deemed to have been annulled [51]). The parties must personally appear before the court and declare that they have mutually agreed about all particulars regarding the management and settlement of their properties and the education and custody of their children (§ 105). The court may not investigate whether or not such declaration of the spouses is true (§ 105).

In case one of the spouses does not agree to a judicial separation, the court may grant a decree of separation upon application of the other spouse on any of the following grounds (§ 109) : —

(a) adultery committed by the defendant ;
(b) other grave offences committed by the defendant ;
(c) malicious abandonment of the conjugal roof by defendant ;
(d) such immoral conduct of the defendant as endangers plaintiff's property or renders bad the reputation of the family ;
(e) attempts by the defendant to kill plaintiff or to inflict grave injury on him or her ;
(f) grave assaults and mal-treatments and repeated insults;
(g) inveterate and contagious corporal defects.

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[50]) § 1 of the law of 31/12/1868 RGBl 3/1869.
[51]) Jgm. 17/3/1896, Slg. 15748.

The court may not grant judicial separation on one of the grounds aforesaid except if either the religious minister has three times warned the spouses and issued a certificate to this effect (§ 104, *supra*) or the court has warned them at least once (§ 1 of law of 23/5/1921 BGBl 344). For the warning of the court, the same rule applies as above.

Judgment in default may be given for judicial separation [52]). The court has jurisdiction to decide disputes between the parties with regard to their property settlements, alimony, and maintenance (§ 7a III, *Jurisdiktionsnorm*, amending § 117) and no separate action need now be instituted therefor.

Provisional order may be made by the court for a proper separate place of residence for the plaintiff pending final decision (§ 107 II).

Upon a decree of judicial separation being granted, the wife has no longer *eo ipso* the domicil of her husband, and the husband is no longer presumed to be the agent of the wife (Satter 179). The wife retains the national status of the husband, but is not affected by any alteration in the national status of the husband which takes place after the judicial separation [53]).

In case of a decree of judicial separation being granted upon the mutual consent of the spouses, special agreement has to be made between them with regard to their marriage contracts (§ 1263). In case of such a decree being granted on ground of § 109, *supra*, the successful plaintiff (if he or she is guiltless) may rescind the marriage contracts or treat them as valid and (as the case may be) claim alimony (§ 1264). In any case, the court shall try to bring about a compromise between the parties (§ 108).

The wife has no absolute right to claim alimony from

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52) Jgm. 4/2/1922 ZBl 1922/15.

53) §§ 6 I and 10 II of law of 30/7/1925 BGBl 285.

the husband except if the decree of separation has been granted on ground of the faults of the husband only [54]). In this case, he is absolutely bound to pay her the amounts required for her proper livelihood, and any stipulations to the contrary which might be contained in the marriage contract are void (Satter 180).

If both spouses are in default, the court may, in its discretion, assess to the wife an adequate amount of alimony [55]).

Jurisdiction in actions for judicial separation on ground of mutual consent of the parties have the *Bezirksgerichte* of the husband's domicil (§ 114, *Jurisdiktionsnorm*). In case of application for judicial separation by one of the spouses only, the *Landes-* or *Kreisgericht* of the husband's domicil has jurisdiction [56]).

In case of mutual consent of the spouses, the court declares its consent to the separation; in case of disagreement, the court grants an order of separation (Satter 197). In any case, the decision of the court may be appealed against (§ 528 ZPO).

The parties are after judicial separation at liberty to resume conjugal life. Notice of their reunion must be given to the court. A separation of the reconciled spouses can be judicially effected only by the same procedure as the first separation (§ 110). After having resumed conjugal life, the wife becomes again subject to the alterations in the national status of the husband[57]).

*(b) Divorce.*

*1. Catholics.*

Dissolution of marriage *(gänzliche Trennung des Ehebandes)* may not be granted in respect of marriages between Catholics. Such marriages can only be dissolved by the death of one of the spouses (§ 111 I). The marriage cannot be dissolved by decree of the court even if only

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54) Jgm. 10/11/1914 SNF 7110.

55) Hofdekret 4/5/1841 JGS. No. 531.

56) § 8, Hofdekret of 23/8/1819.

57) §§ 6 II and 9 III of law of 30/7/1925 BGBI 285.

one of the spouses was a Catholic once during the continuance of marriage (§111 II) or at the time of its celebration. Marriages of non-Catholic-Christians and persons not belonging to any religious community and not being Jews [58]) may be dissolved by decree of the court and upon any of the following grounds (§ 115):

*2. Non-Catholic Christians.*

(a) adultery or condemnation to at least five years imprisonment;

(b) malicious abandonment of the conjugal home; and, if his or her residence is unknown, failure to appear before the court within one year of publication of summons;

(c) attempts to kill the other spouse or to inflict grave injury on him;

(d) repeated grave insults and maltreatments;

(e) invincible aversion, if alleged by both spouses.

In the case of invincible aversion, the court shall first grant a decree of separation *a mensa et toro,* and only if the court is satisfied that a reunion of the spouses is not attainable, it shall proceed to grant the divorce.

Application for a decree of dissolution of marriage may not be made by a spouse who has partly or wholly caused the ground of divorce to come in existence or who has forgiven it or agreed to it (Satter 185). [59]).

The grounds of divorce as enumerated in § 115 (*supra*) may be widely interpreted and extended by analogy or in view of special circumstances not provided for by the law [60]).

Mental disease, however, is no ground of divorce (Satter 186).

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58) § 2 of law of 9/4/1870 RGBI 51.

59) An agreement between the spouses for mutual "sexual freedom" has, however, been held to be void and not to affect the right to make application for divorce (Jgm. 22/9/1925 ZBL 44/41 and Jgm. 18/6/1930 RZ 24/59.)

60) Jgm. 13/10/1926 ZBL 45/46.

*3. Jews.* The Jewish marriages may be dissolved by decree of the court on ground of either mutual consent between the spouses, if thew produce a certificate from the competent Rabbi that he endeavoured to reconcile the parties but did not succeed (§§ 133,134), or adultery committed by the wife, if the husband applies for a divorce (§ 135). Other grounds of divorce are not recognized with regard to Jews. The dissolution of the marriage between Jews is effected by the delivery to the wife of a separation deed (*"Get" — Scheidebrief).* This delivery must be made before the court. The court thereupon issues a declaratory order that the delivery of the separation deed has been duly effected and that the marriage has thereby been dissolved (Satter 196). The contents of the separation deed are not examined by the court. In case the wife refuses acceptance of the separation deed, the court can compel her by way of execution (§ 354 *Exekutionsordnung)* or can appoint a curator to accept the separation deed in her stead [61]). In case of application by the husband on ground of adultery of the wife, the court can give a judgment to the effect that the husband is entitled to send away the wife by delivery of a separation deed (§ 135). The marriage is dissolved only by actual delivery of the separation deed to the wife or a curator for her.

The *Bezirksgericht* of the husband's domicil has jurisdiction in divorce matters. Personal appearance of the parties is (*semble*) not required [62]). Judgment in default is admissible (Satter 197).

The delivery of the Jewish separation deed must be made by the husband personally to the wife or her curator [63]) : only in case the husband has changed his religion, an agent must be appointed for the delivery of the separation deed, and the agent must be a Jew [64]).

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61) Jgm. 28/12/1920 amtl. Slg. II 140.
62) Jgm. 27/8/1879 Slg. 7562.
63) Hofdekret of 11/6/1813 JGS 1053.
64) Hofdekret of 19/5/1827, JGS 2277.

*General Provisions on Divorce.*

Generally, the law and procedure as described above is not altered by the fact of change of religion of one of the spouses (§ 136). Relevant is the religion of the spouses at the time of celebration of marriage. Only in case of both spouses assuming another religion, their divorce is regulated according to the provisions relating to their new religion (arg. §§ 115, 116). The case of a marriage celebrated between members of different religious communities is not provided for by the law, although the impediment of marriage (cf. *supra* para 5 f) may be dispensed with. *Semble,* in these cases applies § 115 [65]) and the marriage may be dissolved like marriages between Non-Catholic Christians (Satter 186 Note).

After dissolution of marriage, the rights and liabilities which arose of the marital relations cease to have effect. The wife retains, however, the name of the husband (Satter 187). Each of the spouses may contract a new marriage (§ 119) subject to the impediments arising out of divorce (*supra,* para. 5).

Where divorce is granted on ground of the fault of one of the spouses, the other is entitled to all rights stipulated in the marriage contracts as if the marriage were dissolved by death (§ 1266 II), but has no right of inheritance upon the actual death of the spouse who was in fault (§ 1266 III). Where divorce is granted on ground of mutual aversion or mutual consent, marriage contracts cease to have any effect and validity whatsoever (§ 1266 I) and the spouses have no rights or liabilities towards each other.

The wife has, after divorce, no right to alimony [66]), but she may claim damages, if the husband's fault was the cause of divorce (§ 1266). With regard to the children, the court has to decide in whose custody they shall come after dissolution of their parents' marriage. The court

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65) Arg. § 2 of law of 9/4/1870, RGBI 51.

66) Jgm. 3/1/1928 Slg. X/64.

shall have regard to the special circumstances of the case and the personal qualities of the respective spouses. The court may declare its consent to any agreement reached at between the spouses with regard to the custody and education of the children. In any case, the spouse in whose custody the child has not been given, has the right to see the child at times and intervals which may be fixed by the court. The costs of the child's education are to be borne by the father. Orders of the court in respect of the custody and education of children may, if it is thought expedient in the interest of the children, be changed by the court at any time after the divorce of the parents (§ 142 as amended by § 6 of I. *Teilnovelle*). The same rules apply in case of judicial separation of the parents.

*Private International Law.*

11. Austrians residing abroad must celebrate their marriage according to the law of their domicil [67]), if they intend to retain their domicil and if the marriage is not intended to bring about legal consequences in Austria (Satter 205). In the latter case, the validity of the marriage depends upon Austrian Law. The principle of *locus regit actum* is laid down in § 37 ABGB.

Austrian consular officers abroad are not authorized to celebrate marriages (Satter 198). Marriages celebrated by Austrians abroad in conformity with the local law are therefore valid for all intents and purposes, even if publication of banns has not been made [68]).

Foreign judgments for nullity or dissolution of marriage or judicial separation relating to Austrian citizens are not recognized in Austria [69]).

Austrians residing abroad must make application for a decree of judicial separation or nullity or dissolution of

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[67]) Jgm. 19/2/1913 SNF 6315.

[68]) Jgm. 8/4/1930 GH 1930/183.

[69]) § 81 III *Exekutionsordnung*; Jgm. 7/7/1930 GH 75/9 and Jgms. cited by Walker 649, Note 9.

marriage to the *Landesgericht* in Vienna (§ 100, *Jurisdiktionsnorm).* But this court has only jurisdiction as against an Austrian husband or wife, or a husband who was Austrian at the time of celebration of marriage and has thereafter changed his nationality (Sperl, 128, 132). In case of the wife having lost or never having possessed Austrian nationality, the Austrian court has no jurisdiction, even if the suing husband retained Austrian nationality [70]). If no Austrian court has jurisdiction, the marriage is practically indissoluble [71]).

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70) Art. IV 19 of I *Gerichtsentlastungsnovelle* of 1/6/1914, RGBI 118.
71) Satter 214; Bergmann II 40.

# BELGIUM

*The Sources of the Law.*

1. In Belgium, the *Code Napoléon,* known in France as *Code Civil,* is in force. Thus, French law is prevailing in Belgium, and reference is to be made to the chapter on the Law of France, below.

Amendments have, *inter alia,* been made in the law of marriage and divorce as it stood in France by subsequent Belgian legislation on the following subjects: —

(a) Requirement of consent of parents. — Civil Code Art. 148, by the Laws of the 30th April 1896 and 16/12/1922.

(b) Publication of banns: Civil Code Art. 63, by the Law of 26/12/1891.

(c) Opposition to marriage: Civil Code Arts. 66, 69, by the Law of 7/1/1908.

(d) Solemnization of marriage: Civil Code Arts. 74 and 165, by the Law of 26/12/1891 and 7/1/1908.

(e) Marriages abroad: Civil Code Arts. 170, 171, by the Law of 12/7/1931.

(f) Rules of procedure in divorce cases: Civil Code Arts. 240, 250 *et subs.,* by the Law of 11/2/1905.

(g) Capacity of married women: Civil Code Art. 1449, by the Law of 20/3/1927.

(h) Community of goods: Civil Code Art. 1444, by the Law of 12/7/1931.

As to the procedure in marriage and divorce cases, the French Code of Civil Procedure is prevailing also in Belgium with unimportant, merely technical alterations. The powers of the Belgian consular officers abroad are regulated in the Law of the 31/12/1851 *"sur les consulats et la jurisdiction consulaire".* Hereafter a short account is given of the points only in which Belgian law is divergent from French law.

*Capacity to Marry.*

2. Minors under 21 years of age cannot contract marriage unless their parents formally consent; in case of disagreement between the parents, the consent of the father is sufficient. In case one of them is dead or absent, the

consent of the other is sufficient. In case both of them have died, the grand-parents have to consent. In any case, even majors who wish to marry have to obtain by *"un acte respectueux et formel"* the advise of their parents as to whether they should marry or not; if one month passes from the date of such *"acte respectueux"* without the parents having expressed such advise, the marriage may be proceeded with. If either the man or the woman who wish to marry did not yet attain the age of 25, the parents may lodge opposition against the marriage within 15 days from the date of the *"acte respectueux"*.

Provisions are made regulating the service upon the parents of the *"acte respectueux"* through special channels [1]).

*Solemnization of Marriage.*

3. Before celebration of marriage, banns must be published by affixing a notification of the intended marriage on the door of the municipality throughout ten days. The marriage must be celebrated within one year after publication of banns [2]).

Marriages are celebrated in the municipality *(la maison commune)* of the domicil of one of the spouses, in the presence of two witnesses [3]).

*Married Women's Property.*

4. By the Law of 20/3/1927, amending Art. 1449 of the Civil Code, the wife has, if no community of goods exists between the spouses, the right of administration of her property without consent of her husband, but of immovable property only subject to his consent. Upon separation from bed and board, the wife obtains the right of full exercise of her property rights without being subjected to the authorisation of her husband [4]).

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1) Arts. 1—6 of the Law of the 30.12.1896 amending the Arts. 148—155 of the Civil Code.

2) Law of 26.12.1891 amending Arts. 63—65 of the Civil Code.

3) Art. 8 of the Law of 26.12.1891 and Art. 1 of the Law of 7.1.1908 amending Arts. 74—75 and Arts 165 *et subs.* of the Civil Code.

4) The same position of the law has been attained in France by the Law of 6.2.1893 amending Art. 311 of the Civil Code.

*Nationality.*

A foreign woman acquires Belgian nationality by the marriage with a Belgian [5]). She may renounce such nationality within half a year from the marriage by formal declaration before the *"Officier de l'état civil"* of the husband's domicil or before a consular officer abroad [6]). She becomes a Belgian also if the husband is granted a certificate of naturalisation after the celebration of marriage [7]).

A Belgian woman marrying a foreigner loses her Belgian nationality if by the national law of the husband she acquires his national status [8]), but she may by formal declaration within half a year from the marriage opt for and retain her Belgian nationality [9]). Upon the dissolution of marriage, she may by formal declaration recover her Belgian nationality if she has a Belgian domicil and if the declaration is made within one year from the dissolution of marriage [10]).

*Dissolution of Marriage.*

5. In Belgium, divorce on ground of mutual consent (as provided for in Arts. 275—294 of the Civil Code) is still recognised, whilst in France it has been abolished by subsequent legislation.

Divorce on ground of mutual consent is admissible only if the husband is over the age of 25 and the wife over the age of 21 (Art. 275). Mutual consent to divorce is accepted only after at least two years of married life (Art. 276) and not after expiry of 20 years of married life, nor if the wife is more than 45 years old (Art. 277). The mutual consent of the spouses must be followed by the express consent to their divorce of the parents or other ascendants of the spouses who are alive (Art. 278). Before

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5) Art. 4 of the Law of 15.5.1922 *"sur l'acquisition et la perte de la nationalité"*.

6) Art. 19 of the Law of 4.8.1926.

7) Art. 4 of the Law of 15.5.1922, *supra*.

8) Art. 18 of the Law of 15.5.1922.

9) Art. 17 of the Law of 4.8.1926.

10) Art. 18, *loc. cit.*

instituting the proceedings, the spouses must have come to an agreement regarding the distribution and administration of their property, the custody of their children and the like (Arts. 279, 280). They must personally and jointly appear before the court and declare their intention in the presence of two notaries (Art. 281). The judge is bound to warn them to abstain from their intention, but if they insist on being divorced, proceeds with the application which must be repeated by the parties at intervals of three months during the year (Arts. 282—286). The application is then submitted to the *Procureur Général* (Attorney General) who must certify that all requirements of the law have been complied with (Arts. 288—289). Thereupon judgment of the court is given and the *officier de l'état civil* instructed to pronounce the dissolution of the marriage (Art. 290). An appeal lies from the judgment of the court, but both parties must jointly appeal (Art. 291). In case the parties did not personally appear before the *officier de l'état civil* for the pronouncement of the divorce, the judgment is deemed to have not been delivered (Art. 294).

*Private International Law.*

6. Marriages are valid in Belgian law if they are valid according to the *lex loci celebrationis*. They are, however, void if contracted by Belgians in contravention of the provisions of the Civil Code with regard to the personal capacity to contract marriage. Belgians having married abroad must upon return to Belgium register the marriage [11]).

The consular officers abroad are authorized to celebrate marriages between Belgians as well as between a Belgian and a foreigner [12]), but they must celebrate them according to Belgian law in all respects [13]).

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11) Arts. 13—15 of the Law of 12.7.1931 amending Arts. 170—171 of the Civil Code.

12) Art. 7 of the Law of 12.7.1931.

13) Art. 14 of the law cited.

No jurisdiction is vested in consular officers in respect of suits for divorce or judicial separation.

Judgments and decrees of foreign courts are recognized in Belgium, provided: —

(a) they are not contrary to the Belgian laws or to the *ordre public;*

(b) they are valid and final according to the *lex fori;*

(c) they are duly certified and authenticated as such;

(d) the rights of the defendant are safeguarded therein;

(e) the jurisdiction of the foreign court is not solely based on the nationality of the plaintiff;

(f) the Belgian court of first instance orders the recognition [14]).

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14) Art. 10 of the Code of Civil Procedure of 25.3.1867. Practically, however, only judgments of French Courts are being recognized in Belgium (Bergmann II.13).

# BULGARIA

*Sources of Law.*

1. Bulgaria has no codified civil law. The laws with regard to personal status, including marriage and divorce, are contained in the Act of 13.12.1907. Under this Act, marriage and divorce are regulated by the religious laws of the different religious communities. Special provisions have been enacted in respect of the members of the Bulgarian Orthodox Church *(Exarchat-Order,* 1883).
Under the Codes of Civil Procedure of the 15.12.1891 and 20.2.1907, matters of marriage and divorce are within the exclusive jurisdiction of the religious courts, insofar as matters of personal status are concerned; property actions between husband and wife, however, are within the jurisdiction of the civil courts except where both parties are Mohamedans, in which case the Qadi decides all issues between spouses on ground of precedents or legal opinions *(Fetwa)* of the Mufti [1]).

*Nationality Law.*

2. The only law *(semble)* not within the dominion of religious law concerning us is the law of nationality. Under an Act of the 5. 1. 1904 as amended on 17. 7. 1924, a foreign wife acquires by marriage with a Bulgarian citizen Bulgarian nationality (Sect. 15) and a Bulgarian wife marrying a foreigner loses her Bulgarian nationality except if under the national law of the husband she does not acquire by marriage the latter's nationality (Sect. 16). After the death of her husband or dissolution of the marriage, she may apply to the King for readmission as a Bulgarian national (*ibid.*).

*Private International Law.*

3. As to Private International Law, the Act of the 13.12.1907 contains the following provisions:
Marriage, Birth and Death Certificates executed abroad are valid and conclusive evidence of the act or event they purport to prove, if they have been made acording to the *lex loci.* But Bulgarian citizens must forward such certificates for registration within three months either to some Bulgarian minister or consular officer abroad or

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1) Cf. Bergmann II.44 Note 2.

to the competent registry officers in Bulgaria (Art. 136). Marriages may be contracted by Bulgarians abroad before Bulgarian ministers or consular officers (Art. 137).

Foreign judgments are recognized in Bulgaria only if judgments of the corresponding Bulgarian courts would be recognized in the relating foreign country (Code of Civil Procedure Arts. 1209, 1217).
Before aplication for enforcement of a foreign judgment or decree may be made, the decision of the Minister of Justice must have been obtained to the effect that Bulgarian judgments would in the same way be recognized in the foreign country [2]).

2) *Ibid.* cf. Bergmann II.40.

# CZECHO-SLOVAKIA

*The Sources of the Law.*

1. With regard to the law in force in Czecho-Slovavkia, the country is divided into two parts: one consisting of Bohemia, Moravia, Silesia and the district of Hultschin, where Austrian law prevails; the other consisting of Slovakia and Carpatho-Russia where Hungarian law prevails. At the time of the foundation of the Czecho-Slovakian Republic (October, 1918), the respective laws then in force in the respective countries which were united to the new state remained in force, subject to alterations which may have been made by the Czecho-Slovakian Republic.

The marriage laws thus in force in Czecho-Slovakia were soon reformed and unified by an Act of 22. 5. 1919 (GSlg. No. 320) [1]), regulating the form of celebration of marriages, dissolution of marriages and marriage impediments. This law is hereafter cited as "Marriage Law".

Some less important laws were enacted with regard to the procedure in matters of marriage and divorce [2]).

The law with regard to the effect of the marriage on the property of husband and wife, their personal capacities and their duties to each other and the general principles of private international law has not been altered and stands in the aforesaid provinces as it stood in 1918 in Austria and Hungary, respectively.

A Civil Code Bill has been drafted in Czecho-Slovakia, but not yet enacted. It contains reformatory regulations of the private international law with regard to marriage and divorce [3]).

2. The provisions of Art. 21 ABGB (See Austria, para. 3,

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1) By this Law, the following Articles of the ABGB ceased to have effect in Czecho-Slovakia: 63, 64, 66, 67, 94, 111, 115, 116, 119, 125, 133, 134, 135, 136 and § 25 of the Hungarian GA XXXI 1894.

2) 1.4.1921 GSlg. No. 123; 15.10.1925 GSlg. No. 545.

3) A German translation of parts of the bill is to be found in Makarow, Quellen des Internationalen Privatrechts, 1929, pg. 217.

*Capacity to Marry.*

*supra)* have also in Czecho-Slovakia been amended. By the law of 21.7.1919 [4]), persons acquire majority with the completion of the 21st, but may be declared major by decree of the court after the completion of the 18th year. Majors may contract marriages without a consent being required [5]).

In the provinces where Hungarian law prevails, the age of majority has been fixed to 21 years by the Law of 23. 7. 1919 [4]). This provision does not affect the rule that women acquire majority by marriage [6]).

*Impediments to Marriage.*

3. The following divergencies between Czecho-Slovak law and the laws of Austria and Hungary, respectively, must be noted : —

(a) a marriage cannot validly be contracted by a person who was previously married except after the issue of a final decree of dissolution *(Rechtskraft des Trennungsurteils)* of the previous marriage (§ 22, Marriage Law) or upon producing the death certificate of the other spouse (Svoboda 287). The Hungarian law has in this respect especially been amended by a law of 30. 6. 1921 [7]) to the same effect;

(b) all impediments of marriage based on, or connected with, the religious faith of one of the parties [8]) have been abolished (§ 25, Marriage Law);

(c) the civil law is not concerned with impediments of marriages of priests and ecclesiastics (§ 25, *loc. cit.*) [9]);

(d) as regards the prohibited degrees of consanguinity and affinity, the special provisions relating to the Jews [10]) are repealed (§ 25, Marriage Law);

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4) GSlg. No. 447.

5) The marriages of minors below the age of 14 are void, above the age of 14 voidable by Austrian law.

6) § 2 Hung. G.A.XXIII, 1874.

7) GSlg. No. 256.

8) Cf. Austria § 5 c, d, f.

9) Cf. Austria § 5 e.

10) § 125 ABGB.

(e) marriages are prohibited only with the descendants, ascendants, brothers and sisters of one's husband or III, *loc. cit.*, repealing § 66, ABGB). The prohibited wife and not within other degrees of affinity (§ 25 degrees of consanguinity remained unchanged;

(f) persons who committed adultery with each other are allowed to marry each other after dissolution of the first marriage (§ 25, Marriage Law, repealing § 67, ABGB).

The impediments of marriage (except that of existing marriage of one of the parties) may be dispensed with by the political officer of second instance *(Gespan)* (§ 26, Marriage Law) from whose decision an appeal lies to the Ministry of the Interior (§ 29, *loc. cit.*).

*Solemnization of Marriage.*

4. Marriages may be celebrated either in civil or in religious form [11]) (§ 1, Marriage Law). The marriage ceremony must be preceded by the publication of banns. Publication of banns in the civil form is made by the municipality of the parties, or, as the case may be, by the municipalities of each of the parties (i. e. the municipality of the domicil), by way of affixing a public notice throughout ten days (§ 3, *loc. cit.*). Publication of banns in the religious form is made by the religious minister of the parties (or the religious ministers of each of them) giving oral notice thereof on three subsequent Sundays at the place of divine worship (§ 12, *loc. cit.*). The required periods of publication of banns may upon request be shortened and the requirement of such publication in urgent cases be dispensed with (§ 7, *loc. cit.*). Marriages unpreceded by publication of banns are, in lack of official dispensation, void (§ 1).

The civil marriage is celebrated before a municipal officer in the presence of two witnesses and a sworn in-

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11) This provision repeals both Austrian and Hungarian law. In the former no civil form of marriage is recognized, in the latter only civil and no religious form.

terpreter (§ 8). The act of marriage is concluded by the two parties declaring that they are willing to marry each other. Such declaration may be given by an agent, if he is especially authorized, subject to the consent of the political office of second instance *(Gespan)*. If the authorization is revoked before the marriage is celebrated, the marriage contracted by the agent is void, but the revoking party liable to damages (§ 9) [12]). The marriage must after celebration be registered (§ 10).

Persons who have married in civil form are at liberty to solemnize their marriage once more in the religious form (§ 12).

Religious marriages are celebrated by the competent ministers according to their respective rites, but always in the presence of two witnesses and a sworn interpreter (§ 12 III). They also must be registered.

*Nullity of Marriage.*

5. The court must decree the nullity of marriage in cases of abduction without consent, bigamy, consanguinity, attempts of murder and lack of declaration of consent to marry. In these cases *ex officio* prosecution is instituted (§ 28, Marriage Law, amending § 94 ABGB). In all other cases nullity of marriage may be decreed only by motion of that of the parties [13]) whose rights have been infringed by celebration of the marriage (§ 28 II).

*Dissolution of Marriage.*

6. With regard to divorce *a mensa et toro* (judicial separation), the law of the ABGB [14]) prevails in the Austrian provinces of Czecho-Slovakia. With regard, however, to the divorce *a vinculo matrimonii* (*"gänzliche Trennung"*) the law of 1919 has unified the law for the whole Czecho-Slovak country.

An action for divorce of any marriage (celebrated either

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12) This provision repeals the Hungarian law according to which marriages contracted by agents are void (§§ 39, 41 Hung. Marriage Law).

13) Cf. Austria para. 10 citing §§ 95, 96 ABGB which are still in force in Czecho-Slovakia.

14) Cf. Austria para 11 a.

in civil or in religious form) may be instituted (§ 13, Marriage Law) : —

(a) if the defendant has committed adultery ;

(b) if the defendant has been sentenced to three years imprisonment or found guilty of an offence which shows his immoral character;

(c) if he has maliciously deserted the plaintiff and not returned within six months after service upon him of summons of the court (if his residence is unknown, such summons must be published);

(d) if the defendant attempted to kill the plaintiff or to inflict grave physical injury on him ;

(e) if he or she has repeatedly mal-treated or gravely insulted or hurt the plaintiff;

(f) if he or she leads a dissipated life ;

(g) by reason of permanent mental disease (or mental disease of not less than three years periodically outbreaking), grave mental degeneration, grave hysterics, dipsomania, epilepsy of not less than two years;

(h) by reason of such decay of the relations between the spouses that the plaintiff cannot be expected to uphold the conjugal life, provided that such decay is not due (or in the greater part due) to the acts or behaviour of the plaintiff;

(i) by reason of invincible aversion, if alleged by both spouses.

In the last mentioned case, judgment will first be given for judicial separation and this even several times, before the divorce is granted (§ 13 i).

The right of action is limited by the following provisions:

In the cases (a) and (b), *supra,* action must be brought within one year from the date on which the plaintiff obtained knowledge of the defendant's act, but not later than five years from the date on which the act was com-

mitted. No action may be brought after the ground of action has been brought to the knowledge of the other party and excused by him (§ 14)[15].

One year after a decree had been obtained by the court for judicial separation, an action may be instituted for divorce by either party, provided marital life has not been resumed during that year (§ 15). As ground for the divorce, invincible aversion between the parties must be proved, unless there be another ground or other grounds out of those enumerated in § 13 *(supra)*.

It has, however, been held that in cases of judicial separation on ground of mutual consent [16], a separation deed between the parties to the effect that they are to obtain divorce after expiration of one year, is null and void as contrary to public policy [17].

The invincible aversion which must be proved before divorce can be granted, may be on the part of one spouse as against the other only and need not be mutual [18], but both parties must consent to the divorce [19].

The court has to warn the parties as to all consequences of the divorce. Divorce is granted, if the court is satisfied as to all conditions precedent, by way of decree (§ 16a). If one of the parties does not appear before the court, he is presumed to consent to the divorce, and a decree will be given accordingly (§ 16b).

In case judicial separation has been decreed for any of the grounds enumerated in § 13 *(supra)*, the decree of judicial separation may, upon application of either party,

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15) The continuance of conjugal life is not yet proof of excuse (Jgm Brünn 3.10.1929 Slg OG No. 9228). If the excuse was not *expressis verbis*, it can be implied only in such acts or omissions as show clearly the intention of the spouse to regard the ground of action as not in existence (Jgm. Brünn, 8.7.1920; Svoboda 302).

16) § 103 ABGB, cf. Austria para. 11a.

17) Jgm. Brünn 26.4.1921 Slg. OG. 1033. Note that in Austria a deed like that has been held valid — Jgm. Wien 6.2.1923 Slg V/25.

18) Jgm. Brünn 6.8.1924 Slg. OG. 4087 and 9.9.1924 Slg. OG. 4125.

19) Jgm. Brünn 19.2.1924 Slg. OG. 3505.

forthwith be changed into a decree of divorce, if the court is satisfied that the grounds on which the action for judicial separation had been based were sufficient to support an action for divorce (§ 17).

The competent courts for granting divorce after judicial separation had been decreed are the courts of first instance at the defendant's domicil, but a court seized by jurisdiction in the matter of a judicial separation retains such jurisdiction in the matter of divorce as between the same parties (§ 20).

Upon divorce being decreed, any stipulations between the parties, or any order of the court as to the distribution and management of their properties and the custody and maintenance of the children reached at when the parties were judicially separated, remain in force, unless either a new agreement is entered into between the parties, or a judgment of the court is obtained with regard to the disputes between them (§ 19). Such judgment may be applied for by either party if there is sufficient reason for setting aside the property regulations made at the time of the judicial separation [20]). Such sufficient reason has been held to be e.g. a change in the financial position of the husband, or in his national status [21]).

In matrimonial causes (other than the change of judicial separation into divorce) the competent courts are the courts of the last marital domicil (§ 72 *Jurisdiktionsnorm*). The same rules apply as in Austria [22]).

In case of the death of one of the parties pending an action for divorce or judicial separation, the action will

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20) Jgm. 14.2.1922 Slg OG 1491; 4.3.1924 Slg OG 3577; 24.11.1925, Slg OG 5484; 25.6.1924 Slg OG 402; 15.4.1926 Slg OG 5940.

21) Jgm. 24.3.1924 Slg OG 4006.

22) Note that in cases of actions for maintenance by the wife against the husband the competency of the courts depends on the amount claimed and is subject to the ordinary rules of procedure — § 56 *Jurisdiktionsnorm;* cf. Austria para. 7.

be struck out [23]), but a judgment may be applied for with regard to rights of inheritance of the plaintiff [24]). In actions for divorce or judicial separation, the parties may be represented by advocates [25]), but the court may call either of the parties to give "informatory" evidence [26]). Other than in Austrian law, the Czecho-Slovak courts are not bound to try to reconcile the parties before decreeing a divorce [27]) nor is an attorney appointed by the court to plead validity of the marriage in actions for decrees of nullity (Art. V *Jurisdiktionsnorms-Novelle* of 1.4.1921).

*Private International Law.*

7. Marriages celebrated by Czechoslovokians abroad are valid if celebrated in the form prescribed by Czechoslovak law, even if they are invalid according to the *lex loci* [28]). On the other hand, every marriage is valid in Czechoslovakia if celebrated according to the law of the place of celebration even if the Czechoslovak law has not been complied with as regards the form of celebration [29]).

An action for divorce or judicial separation cannot be brought in Czechoslovakia against a foreigner residing abroad, except if the plaintiff is domiciled in Czechoslovakia (§ 20, Marriage Law). Foreigners residing abroad may, however, submit to Czechoslovak jurisdiction [30]). Neither can an action be brought by or against Czechoslovak citizens who have their domicil abroad for the change of a decree for judicial separation into a decree for divorce (§ 20, *loc. cit.*). Actions for judicial separation or divorce by or against Czechoslovak citizens residing abroad may be instituted in the Czechoslovak

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23) Jgm. 23.3.1920 Slg OG 457.
24) Jgm. 10.2.1928 Slg OG 7771.
25) Jgm. Brünn 22.2.1930 Slg OG 9685.
26) Jgm. Brünn 22.2.1930 Slg OG 9676.
27) Jgm. 10.12.1926, Zeitschrift für Ostrecht 1928 pg. 120.
28) § 37 ABGB as interpreted by Jgms. Brünn 27.5.1924 Slg. OG. 3903, 17.3.1925 Slg OG 5859.
29) Jgm. Brünn 19.10.1931 Slg. OG. 11104 and other authorities cited by Weiss, pg. 48.
30) Jgm. Brünn 27.9.1921 Slg. OG. 1205.

court of their last domicil (or that of either of them); in case no such domicil is known, the *Landesgericht* in Prague is competent, in dubious cases they may make application to the Supreme Court to decide which court has jurisdiction in the matter [31]). In the case of persons coming from Slovakia or Carpathorussia and having no Czechoslovak domicil, the court of first instance in Bratislava is competent to hear actions for judicial separation and divorce [32]), and not the *Landesgericht* in Prague. As "Czechoslovak citizens" are, for these purposes, deemed also such persons who were Czechoslovak citizens at the time of their marriage and afterwards changed their nationality (Svoboda §11, §12).

The judgments for divorce and judicial separation of foreign courts are recognized in the former Austrian parts of Czechoslovakia, unless they are based on grounds which are irrelevant in Czechoslovak law, e.g. on the mere delivery of a separation deed by the husband to the wife under Jewish law [33]). In case they are based on grounds recognized as grounds of divorce in Czechoslovakia, they are held valid even with regard to dissolution of marriages between Czechoslovak citizens [34]). But such foreign judgments will not be executed by Czechoslovak courts (§ 81 III, *Exekutionsordnung*), nor will Czechoslovak courts grant execution to alimony orders contained in foreign judgments [35]).

In Slovakia and Carpathorussia, foreign judgments are not recognized and exclusive jurisdiction is exercised by the courts of those provinces over their citizens [36]).

According to the proposed new Czechoslovak Civil Code, the foreign courts shall not exercise jurisdiction in matters of marriage and divorce over Czechoslovak citizens [37]).

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31) §§ 28 and 100 *Jurisdikionsnorm*, the latter amended by the *Gerichtsentlastungsnovelle* of the 8.7.1930.
32) Art. VII 2 of *Novelle* to *Jurisdiktionsnorm* of 1.4.1921.
33) Jgm. Brünn 26.5.1925 Slg. OG. 5076.
34) Jgm. 16.1.1930, Slg. OG. 9518; cf. Svoboda §17.
35) Jgm. Brünn 17.11.1927 Slg. OG. 7524.
36) Hung. ZPO. 639 and 640. 37) Draft § 32 cited by Makarov 21

# DANZIG

*The Sources of the Law.*

1. The Free Territory of Danzig was separated from Germany on ground of the Treaty of Versailles on the 10th January, 1920; it has been given a constitution which, in Article 116, provides that the German and Prussian laws in force in Danzig at that time shall remain in force until and unless amended by Danzig legislation.

2. The laws subsequently enacted in Danzig are twofold: part of them give force in Danzig to laws subsequently enacted in Germany [1]) and part of them are of purely formal nature regulating the special procedure required in certain cases in the City of Danzig.

*Nationality Law.*

3. In the frame of this account, mention need be made only of an Act regulating the acquisition and loss of Danzig nationality, of the 30.5.1922 [2]), under which the following provisions apply: A foreigner acquires Danzig nationality by marriage with a Danzig citizen (§ 4). A Danzig woman loses her nationality by marriage with a foreigner, except if under the husband's national law she does not acquire his nationality (§ 14). An acquisition of Danzig nationality subsequent to marriage extends also to the wife (§§ 5, 6, 7), but such extension may also expressly be applied for (§ 11). The loss of Danzig nationality by reason of acquisition of a foreign nationality extends automatically to the wife (§§ 16, 17). A wife cannot resign her Danzig nationality except with the consent of her husband, if he is a foreigner, and except by joint application of both spouses, if he is a Danzig citizen (§ 19).

*Courts.*

4. The competent court in Danzig for matrimonial causes is the *Landgericht* from which an appeal lies to the *Obergericht*. The procedure is the same as in Germany. Dispensation from publication of banns may be granted by the *Senat,* from other dispensable impediments (see:

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1) e.g. Law of 1.12.1922, Danz. G. Bl. S. 539, Rules of 18.1.1927 DgGBl. S. 26.

2) Danz. GBL. S. 129.

Germany, *infra*) by the *Amtsgericht* or the President of the *Landgericht* (Richter 112, 114).

*Foreign Relations.*

5. In foreign countries, Danzig is represented by the Polish Consulates, but neither the Polish Consular Officers nor the Danzig Attachés to some of the Polish Consulates are authorized to celebrate marriages of Danzig citizens [3]). The rules of German Private International Law are applicable.

Judgments of divorce etc. of foreign courts are, as a general rule, recognized in Danzig [4]).

The Hague Conventions of 1902 and 1905 have been adhered to by Danzig in 1929 [5]).

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3) Richter 110 Note 6, 114.

4) Richter 115, 116.

5) 9.12.1929 Danz. GBL. S. 133.

# DENMARK

*The Sources of the Law.*

1. The law of marriage and divorce is contained in a Law of the 30.6.1922 as amended by a Law of the 18.3.1925. On the 18.3.1925, another Law was enacted which governs the property relations between husband and wife.

*Promise to Marry.*

2. The promise to marry gives no right of action ; but if the marriage is not contracted due to the default of one party, the other may recover damages (§ 1, Law of 30.6. 1922). Special damages are recoverable by the woman if sexual intercourse has taken place on ground of a promise to marry (§ 2).

*Prohibited Marriages.*

3. A male cannot contract marriage if he is under the age of twenty-one, nor can a female under the age of eighteen, unless the King grants a special permit (§ 6). Persons under the age 18 may not contract marriage without the consent of their parents or legal guardians (§ 7); interdicted persons also require the consent of their guardians to their marriage (§ 8).

The following are impediments to marriage : —

(a) mental disease or lunacy (§ 10);

(b) venereal disease or epilepsy, unless known to the other party (§ 11);

(c) kinship between descendants and ascendants, brothers und sisters (§ 12);

(d) relationship of one party with the other's descendants or ascendants, or previous cohabitation of one party with the other's descendants or ascendants (§ 13) ;

(e) an existing previous marriage of either party (§ 14).

In the cases (a) and (d), the King may dispense with the impediments provided for by the law.

Marriages may not be contracted by anybody whose previous marriage was dissolved by judicial decree before expiration of the period within which appeal may be lodged against such decree (§ 15), nor by the wife before expiration of ten months from the date of dissolution of her previous marriage, unless ten months have expired

before dissolution since the last cohabitation with her former husband (§ 16).

*Solemnization of Marriages.*

4. The celebration of the marriage must be preceded by publication of banns at the domicil of the proposed wife (§ 20). If the wife has no domicil in Denmark, banns may be published at the husband's domicil or at the place where either of them are residing (*ibid.*). The publication is effected either by the municipal authorities or by the respective religious community (*ibid.*).

Marriages may be celebrated either in civil or in religious form (§ 28). Civil marriages are celebrated before the mayors or local councillors, religious marriages before the competent priest (§§ 30, 32). At the celebration, at least two witnesses shall be present (§ 36). Both parties must be personally present and declare that they are willing to become husband and wife (*ibid.*). If no such declaration is delivered or if any of the parties is not present, the marriage is void; the lack of publication of banns and the absence of witnesses, however, does not affect the validity of the marriage (§ 38). The marriages are, forthwith upon celebration, registered in the Church Register or the Marriage Register, as the case may be (§ 37). Failure of registration does not affect the validity of the marriage (Munch-Petersen 728).

*Effects of Marriage.*

5. By the Law of 18.3.1925, the mutual rights and duties of husband and wife have been equalized. The spouses are under liability to maintain each other according to their respective ability (§§ 2—5). Maintenance is recoverable by either spouse who is in need by judicial action, but arrears of maintenance may not be claimed if they were due more than one year before the action was instituted (§§ 8, 9). The spouses are bound to give each other all those informations which are necessary for ascertaining whether and in what amount they can be made liable for maintenance (§ 10).

If one spouse is absent or incapable of doing any act due

to illness, the other spouse becomes *ex lege* his (or her) agent to do such acts which do not suffer delay (§ 13).

The property *régime* provided for by the law is the community of goods, but in a very modernized manner. Each spouse enjoys during marriage the full right of administration of the property which he (or she) brought in, but so as not to prejudice the property brought in by the other spouse (§ 17). When the marriage is dissolved, each of the spouses is entitled to one half of the joint properties of both of them (§ 16); apart from such joint property, each of the sopuses may have separate property, if it was declared as such by marriage contract or if it was intended as such by the gratuitous donor, but the profits of such separate property become part of the joint property (§ 21). Immovable property which serves as residence or main source of income to the spouses may not be alienated except with the consent of both spouses (§ 18). If one of the spouses administers his (or her) property to the prejudice of the other, the latter may claim damages when the marriage is dissolved (§§ 23, 24) or apply for separation of goods (§ 38). The court may order the properties of the spouses to be separated forthwith, and thereupon each of the spouses retains his (or her) separate property as per the judgment of the court (§§ 39, 40 *et subs.*).

Only the separate property of the spouses is liable for their respective ante-nuptial and post-nuptial debts (§ 25). For debts incurred for the purposes of the common household, both spouses are, as against third parties, jointly liable (§§ 11, 12).

Marriage contracts may be entered into before and during marriage (§ 28). Stipulations to the effect that property to be acquired in future by one spouse shall belong to the other are void (§ 30). Stipulations whereby property of one spouse is transferred to the other without consideration, must be consented to by the Minister of Justice

(§ 36). Marriage contracts must be in writing and delivered to the court (*"Tynglysning"*) (§ 37). They are registered in a Marriage Property Register kept at Copenhagen (§ 50).

The foreign woman acquires by marriage with a Danish citizen the latter's nationality (Law of 18.4.1925). A Danish woman loses by marriage with a foreigner her nationality only if she acquires under the national law of the husband the latter's nationality and if she gives up her Danish domicil (§ 5, *ibid*).

*Nullity of Marriage.*

6. A decree of nullity may be applied for by the Government or by either of the spouses if the marriage was bigamous or contracted between descendants and ascendants (§ 42, Law of 30.6.1922).

Marriages are further voidable in the following cases:

(a) if either party suffered at the time of the celebration from mental disease and his (or her) guardian did not consent to the marriage (§ 43);

(b) if the applicant spouse was at the time of the marriage temporarily insane or otherwise incapable to act reasonably (§ 44 I);

(c) if the applicant spouse did not inted to marry the other party or to marry at all (§ 44 II);

(d) if the defendant spouse suffers from such venereal or other disease that the applicant cannot be expected to take up conjugal life with him (or her) (§ 44 III);

(e) if the applicant has been induced to marry by false pretences or malicious fraud, provided he (or she) would, if he (or she) had known the truth, not have contracted the marriage (§ 44 IV);

(f) if the applicant was forced to contract the marriage (§ 44 V).

The right of action in the case (b) is limited to six months from the termination of the insanity, in cases (c), (d) and (e) to six months from the date the applicant got

knowledge of his *causa,* and in case (f) to six months after the compulsion had ceased. In any case. nullity may not be decreed if three years have expired from the date of the marriage (*ibid.*).

The effects of nullity are the same as those of divorce (§ 45), the only exception being that the spouse who has *bona fide* contracted the marriage has, in case of nullity, the right to claim damages from the party who acted *mala fide* (§ 47). There is no liability for maintenance on the part of either party after nullity has been decreed (§ 48).

*Dissolution of Marriage.*

7. The Law of the 30.6.1922 provides for divorce *a mensa et toro* (separation) and divorce *a vinculo matrimonii.* Separation may be applied for by both spouses jointly if they have on ground of permanent and invincible aversion found that they cannot continue conjugal life. In this case, separation is ordered by the administrative authority (§ 52).

Separation may be decreed by judgment of the court in the following cases: if the defendant failed to pay maintenance to the plaintiff or their children, or immorally conducts himself (or herself), or otherwise causes such disturbance of the marital relations that the continuation of the common life is made insupportable (§ 53).

Divorce *a vinculo matrimonii* may be ordered by the administrative authorities on ground of the King's consent if both parties apply therefor after having lived separated from each other for one year and six months If their separation had lasted two years and six months, divorce may be applied for by either spouse (§ 54). If the separation was not one decreed by the court nor ordered by the administrative authority but only a separation of fact, divorce may be applied for only after four years (§ 55).

Divorce by judicial decree may be granted on any of the following grounds:

(a) Malicious desertion during two years (§ 56);
(b) If the defendant is missing and no news have been received from him (or her) for a period of three years (§ 57);
(c) If the defendant has contracted an additional (bigamous) marriage (§ 58);
(d) Adultery and similar immoral offences (§ 59);
(e) Contagious venereal diseases (§ 60);
(f) Attempts of murder or grave assaults on the plaintiff (§ 61);
(g) Condemnation by a Danish court to two years' imprisonment or more; if the conviction took place before a foreign court, it may be the cause of divorce only if the court thinks fit (§ 62);
(h) Mental disease during three yeras which renders the continuation of conjugal life unsupportable (§ 63).

The right of action is, except in cases (a), (b) and (h), limited to six months from the date the plaintiff got knowledge of his (or her) cause of action. On ground of all these causes of divorce, judicial separation may be applied for instead of divorce (§ 64).

If both parties so request, the divorce can be decreed by consent of the court instead of judgment (§ 65). A claim for damages may be joined with the action for divorce if the defendant has violated his or her marital duties and given rise to the divorce (§ 67). The court or the administrative authority determines the mutual liability of the parties for alimony and maintenance (§ 68). In general, the party in default will not be entitled to maintenance, and any maintenance ceases to be due if the payee contracts a new marriage (§ 69).

The court or the administrative authority decides also who of the parties shall have the custody of the children and be liable for their maintenance (§§ 70, 71). Agreements between the parties may, but need not, be confirmed by the court (§ 72).

The court exercising jurisdiction is that at the defendant's domicil; if the defendant has no domicil in Denmark, the court at the last matrimonial, or the plaintiff's domicil has jurisdiction (§ 448, Civil Procedure Code of 1.10.1932). If neither party is domiciled in Denmark, but they are both Danish citizens, or if the parties are not of the same nationality but their last common nationality was Danish, or if one of the parties was of Danish nationality when the marriage was solemnized, then the Danish court which is nominated by the Minister of Justice exercises jurisdiction (*ibid.*).

Generally, the court shall summon both parties and try to reconcile them, before entering into the merits of the case (§ 76, Law of 30.6.1922); but if either party is not resident in Denmark, such summons are not required (*ibid.*).

*Private International Law.*

8. Danish consuls abroad may celebrate marriages if at least one of the spouses is a Danish citizen (Law of 19.2.1892). The Danish Private International Law is governed by the *lex domicilii* (Munch-Petersen 744); marriages are, therefore, recognised as valid if they are valid under the law of the land where they were celebrated (*ibid.*). Marriage contracts executed abroad according to foreign law are valid in Denmark if they are not contrary to Danish law, but they must be registered in Denmark in order to be valid as against third parties (§ 53, Law of 18.3.1925).

Foreign judgments will be recognized in Denmark, if both parties to the action had their domicil abroad and if the court had, under the *lex fori*, jurisdiction (Munch-Petersen 747).

# ESTHONIA

*The Sources of the Law.*

1. The Republic of Esthonia was created in March, 1917. One of the first enactments made by the Esthonian government was that the laws in force in Esthonia on the 24th October, 1917, shall remain in force unless amended or repealed by subsequent legislation [1]). The law thus in force in the baltic parts of Esthonia was the Baltic Civil Code (BPR) of 1864 and in the districts of Petschur (Pskov) and Transnarova the former Russian law; these laws are still in force with regard to the effect of marriage on the property of husband and wife, whilst in other respects on our subject they have been repealed by the following subsequent Esthonian legislation:

Marriage Act of 27.10.1922, regulating celebration and dissolution of marriage (MA);

Procedure in Matters of Marriage and Divorce Act of 20.2.1923;

Personal Status Act of 12.11.1925, introducing the obligatory civil form of marriage (PS).

*Capacity to Marry.*

2. Males acquire capacity to marry with the completion of the 18th year, females with the completion of the 16th year (MA § 2). But minors under the age of 20 years cannot validly contract a marriage without the consent of the parents (MA § 8); in case the parents refuse to declare their consent, the consent of the court may be applied for. Lunatics cannot contract marriage (§ 4) nor can drunkards in the state of drunkenness (BPR § 2914), nor epileptics, nor lepers (§ 4). Persons who contract a marriage having an error as to material facts, e. g. the identity of the other party, or the other party's past life, may avoid the marriage (MA § 14); so may persons compelled to contract the marriage by duress or force (BPR § 2953).

*Prohibited Marriages.*

3. The impediments to marriage are: —

(a) consanguinity: between ascendants and descendants, full and half blood brothers and sisters, uncle and

1) Koch 581 citing Esthonia Gazette — Riigi Teataja — 1918 No. 1.

niece, aunt and nephew, marriages are prohibited, whether the relationship is legitimate or illegitimate (MA § 3);

(b) marriages are prohibited between a person and his adopted child (MA § 6);

(c) affinity: marriages are prohibited with the said relations of one's husband or wife, and between stepfather and stepdaughter, or stepson and stepmother (§ 3);

(d) persons previously married cannot contract a new marriage unless the first marriage had been dissolved by death of one spouse or by decree of the court (§ 5). A woman previously married cannot marry anew but after expiration of ten months from the date of dissolution of the first marriage (§ 7), unless she produces a medical certificate issued not earlier than four months after such dissolution, to the effect that she is not pregnant (§ 7 note).

The impediments to marriage cannot be dispensed with (Koch 590).

*Solemnization of Marriage.*

4. The civil form of celebration of marriage is obligatory (PS Act of 12.11.1925). Religious marriage ceremonies may be celebrated only after civil celebration had been effected (Rules RT 1930 No. 4), but they are irrelevant in law.

Marriages are celebrated before the registry officer of the domicil or place of residence of one of the parties (PS § 3). There are registry officers who are municipal clerks, and there are registry officers who are or were religious ministers. The latter are controlled by, and subject to, the Ministry of the Interior (PS § 9). Both act as government officers (PS § 10). Foreigners may celebrate marriages only before registry officers who are municipal clerks (PS § 47).

The prospective spouses have to announce their intention to contract a marriage to the registry officer who causes

banns to be published by affixing a notification at the municipality(ies) of the domicil(s) of the spouses during two weeks (PS §§ 31, 33, 35, 38, 39). Should oppositions against the marriage be filed, the parties must be given opportunity to reply (PS § 40). The registry officer decides whether the marriage may be celebrated *(loc. cit.)*. An appeal lies from his decision to the justice of peace of his place (§§ 41, 42) by way of administrative action ; the judgment of the justice of peace may be finally appealed against before the *Staatsgericht* (*Administrativprozessordnung* of 1919 § 6). The marriage must be celebrated within six months from the date of publication of banns (§§ 37, 43, PS).

Marriages are celebrated in the registry office in the presence of the registry officer and two witnesses of full age who shall testify that there are no impediments to the marriage (Koch 591). The parties have to declare their resolution to marry (*ibid.*). A marriage certificate is thereupon written by the registry officer and registered in the marriage register (PS §§ 44, 45). No fees are payable for the celebration of marriage (PS § 20).

*Effects of Marriage.*

5. A foreign wife acquires automatically Esthonian nationality by marriage with an Esthonian citizen (Nationality Act of 27.10.1922 § 2), but an Esthonian woman marrying a foreigner may by formal declaration retain her Esthonian nationality (*ibid.* § 19). The acquisition of Esthonian nationality by the husband after marriage extends automatically to the wife, but such acquisition by the wife is limited to herself (*ibid.* § 11).

As to the provisions of the Baltic Civil Code on personal rights and capacities of husband and wife and on the effect of marriage on their property, see the chapter on Latvian law (*infra*). On these subjects no special legislation has been passed in Esthonia.

*Nullity of Marriage.*

6. Distinction is made in the Esthonian Marriage Act of 1922 (*supra*), between nullity on grounds of public nature and nullity on grounds of private nature. The latter is decreed by the court upon motion of one of the parties only and is therefore called "voidability" (*Anfechtbarkeit*), whilst the former is decreed upon motion of either the public prosecutor or one of the parties. No prescription runs for the former, but the right of action for the latter is limited to six months from the date on which knowledge was obtained of the ground of action (MA §§ 13—16).

(a) Nullity of marriage on public grounds (MA § 12):

1. In case of impotence of either of the spouses, unless the wife has become pregnant in the wedlock;
2. In case of consanguinity or affinity between the spouses;
3. In case of epilepsy, incurable mental disease or leprosy of one of the spouses;
4. In case of another marriage existing between one of the spouses and a third person.

(b) Nullity of marriage on private grounds (MA § 14):

1. In case of duress or fraud;
2. In case of drunkenness and the like;
3. In case of the other spouse suffering from syphilis from the time of marriage;
4. In case of material errors.

The marriage is neither void nor voidable by reason of omissions of formal requirements on the part of the registry officer (MA § 20). The marriage is not voidable by reason of impediments other than that enumerated above (e. g. marriage between adoptive father and adopted daughter, or with a widow before expiration of ten months from the death or her first husband, etc. — Koch 609).

The effect of a decree of nullity of marriage is the restitution of the *status quo ante;* the wife, therefore, gets back her maiden name (MA § 18). As to the custody

of children, the court gives its orders, unless the parties have come to a reasonable agreement (MA § 19).

The procedure in actions for nullity is the same as in actions for divorce (*infra*).

*Dissolution of Marriage.*

7. Judicial separation (divorce *a mensa et toro*) is unknown in Esthonian law (Koch 610).

Divorce *a vinculo matrimonii* may be decreed by the courts on any of the following grounds : —

(a) Adultery, provided that the action is brought within six months from the date on which knowledge of the defendant's adultery was obtained. The adultery may even have been committed before marriage but after betrothal (MA § 21).

(b) Malicious desertion by defendant of the plaintiff; action may be brought after one year's absence of the defendant, if a notice has been served upon him requiring him to return (MA § 22).

(c) Actual separation of both spouses by reason of mutual aversion ; such separation must have lasted for two years ; both spouses may make application for divorce; but the defendant must admit aversion (MA § 23).

(d) Actual separation of both spouses by any reason not depending on themselves (e. g. imprisonment) ; such separation must have lasted for three years and must have been involuntary from the beginning (AM § 24).

(e) Intentional prevention from begetting or inability thereto (MA § 25).

(f) Mental and certain other diseases of one of the spouses (MA § 26).

(g) Drunkenness, prodigality, immoral conduct, sexual dissoluteness of one of the spouses (MA § 27), assaults, attempts of murder, insults, etc.

(h) Conviction of one of the spouses of certain grave criminal offences (MA § 29).

(i) Failure of the husband to maintain his wife gives her a ground of action for divorce (MA § 27).

(j) Mutual consent of both spouses and joint application for divorce (MA § 30).

Actions for decrees of nullity or divorce are brought in first instance to the court of the justice of peace (*Friedensrichterplenum*) of the place where the marriage was celebrated or where the defendant is domiciled. If the defendant is domiciled abroad, the plaintiff may bring the action at the court of his domicil [2]).

Applications for divorce and nullity must be signed by the plaintiff personally and his or her signature must be legalised. Advocates may be appointed to continue the suit [2]).

The decree of the court need not determine who of the parties is guilty. If neither party is guilty, the costs are borne by both in equal shares, otherwise they fall upon the guilty party [2]).

In actions for divorce on ground of mutual consent (item j, *supra*) the first hearing is fixed only three months after the action was lodged. The parties must personally appear at the hearing, unless a reasonable written excuse is filed and a formal declaration, to be given not earlier than two months after the action was lodged, to the effect that the respective party is still consenting to and applying for the divorce [2]).

The husband is liable to maintain his divorced wife, if he was declared guilty of the divorce (BPR 124). This liability ceases if and when the wife marries anew (*ibid.*). The amount of alimony and maintenance to be paid to her is fixed by the court (*ibid.*).

The court also determines particulars with regard to the custody and maintenance of children (MA § 33). In general, the father has to pay maintenance, even if the children are not in his custody, except where he is poor and the mother rich (BPR 200).

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2) Act of Procedure in Matrimonial Causes of 20.2.1923 amending § 1356 ZPO.

*Private International Law.*

8. Esthonian citizens marrying abroad marry in accordance with Esthonian law (MA § 1). Marriages may be celebrated before Esthonian consular officers abroad (PS § 4). A marriage celebrated abroad between an Esthonian and a foreigner is valid if celebrated according to the *lex loci,* provided there is no impediment to marriage under Esthonian law (MA § 10).

Foreign judgments of divorce between Esthonian citizens are valid and recognized in Esthonia if based upon any of the grounds provided for by Esthonian law as grounds of divorce (MA § 34). In Esthonia, the courts have jurisdiction to grant divorce to foreigners without regard to their national law (MA § 35) if one of the spouses is domiciled in Esthonia.

# FINLAND

*The Sources of the Law.*

1. The marriage law in force in Finland is laid down in an Act of the 13.6.1929.
On the 5.12.1929, a codification of Finnish Private International Law with regard to family relations was enacted (Int. G.)

*Capacity to Marry.*

2. A man cannot contract marriage before his 18th, nor can a woman before her 17th year (§ 2). Impediments to marriage are (§§ 3, 4, 10, 11, 12) : —

(1) Interdiction, unless the guardian of the interdicted person consents to the marriage ;

(2) mental disease or lunacy;

(3) sexual disease (lues, ulcus molle or gonorrhea) ;

(4)consanguinity (ascendants and descendants, full and half blood brothers and sisters, descendants of brothers and sisters) and affinity (ascendant or descendant of one's husband or wife) ;

(5) existing marriage of one of the spouses ;

(6) publication of banns for a marriage of one of the spouses with a third person (six months must have passed since such publication, before new publication for the second marriage can be applied for) ;

(7) a man cannot contract marriage before expiration of six months from the dissolution of the previous marriage, nor can a woman before the expiration of ten months, unless she is proved not to be pregnant;

8) prisoners may not contract marriage without consent of the Minister of Justice.

Some of these impediments (except consanguinity between descendants and ascendants, affinity, and existing marriage) may be dispensed with by the President of the Republic.

3. Both civil and religious forms of marriage are recognized (§ 1) [1]).

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1) Besides the different Christian Churches, the Jewish Communities of Helsingfors, Abo and Wiborg are authorized to celebrate marriages (Sainio 663 note 9).

*Solemnization of Marriage.*

Banns must be published either in church, if the marriage is celebrated in religious form, or in the court, if it is celebrated in civil form in rural districts, or in the municipality, if it is so celebrated in urban districts (§ 13). Banns may not be published unless it has been proved that there are no impediments to the marriage (§ 15); to this effect the prospective spouses must produce a certificate of marriage-capacity which is issued by the registry offices of the police. Foreigners must produce the same certificate from their national authorities. In addition, the applicants must state in writing that there are no impediments to their marriage (§ 16).

Publication of banns for religious marriages are made on three subsequent Sundays in the church, for civil marriages by affixing a notice during 15 days (§ 17). Publications of banns may in exceptional cases be dispensed with (§ 20).

The marriage ceremony consists of a declaration of both parties that they intend to become husband and wife and of the declaration of a registry officer or religious minister that they are married. The ceremony shall be passed in the presence of relatives or other witnesses. At religious ceremonies, the special religious rites must be observed (§ 25).

Publication of banns must be repeated if the marriage is not celebrated within six months (§ 23).

4. *Effects of Marriage.*

Husband and wife are mutually bound to maintain each other. The amount of maintenance depends on the need of the one and the financial capacity of the other; it can be provided for in the marriage contract. In case of default on the part of one spouse to maintain the other, the court can be called upon to fix the amount due for maintenance. Money paid by one spouse to the other in excess of the amount of maintenance due from him, may be reclaimed by him within one year; but money paid by the husband to the wife for her personal needs becomes

her property and cannot be reclaimed. In case of separation, the party in default is liable for the maintenance of the other. Both spouses are responsible as against the municipality of their domicil that neither of them falls a public charge (§§ 30—33).

The wife acquires the nationality of her husband and his name and status (*ibid.*).

The provisions of Finnish Law with regard to the property rights of husband and wife are based upon the principle of absolute equality of rights and duties of husband and wife.

*Nullity of Marriage.*

5. The marriage is null and void, without a decree of the court being required, if it has not been celebrated as aforesaid (i. e. by the officer or religious minister declaring the parties to be married) (§ 25).

In case of a marriage between relatives within the prohibited degrees, the public prosecutor shall apply for a decree of nullity (§ 83).

The husband or the wife may apply for a decree of nullity : —

(a) in case of unconsciousness at the celebration ;
(b) in case of material errors on the part of the applicant;
(c) in case of duress (§ 68).

A person may apply for a decree of nullity of the marriage which has been contracted in the belief that the applicant was dead and the previous marriage with him or her dissolved (§ 68).

The competency of the court and the procedure is the same as in applications for a decree of divorce.

*Dissolution of Marriage.*

6. A decree of divorce is given by the courts on any of the following grounds : —

(a) adultery, sodomy or prostitution (§ 70) ;
(b) sexual disease acquired after marriage (§ 71) ;
(c) grave assaults or attempts of murder (§ 72) ;
(d) imprisonment for at least 3 years (§ 73) ;

(e) drunkenness (§ 74);
(f) mental disease acquired after marriage and lasting for 3 years (§ 75);
(g) desertion by one spouse of the other without reasonable ground, if one year has passed and he or she did not return (§ 76 II);
(h) if one spouse is missing and was not heard of for three years (§ 77);
(i) separation during two years on ground of aversion (§ 76 I).

The right of action is limited to six months from the date on which knowledge of the ground of action was obtained (§ 83).

The court may assess damages to a party not being in default and order the other to pay alimony in lieu of, or in addition to, such damages (§§ 78, 79).

Judicial separation as separate subject-matter of an action is not recognized in Finland (Sainio 674 Note 38). But the court may order separation of the spouses pending a suit for divorce (§ 81).

The competent courts for actions in matrimonial causes are those of first instance of the defendant's domicil; if he has no domicil in Finland, the courts of the plaintiff's domicil are competent (Sainio 676).

A Finnish citizen may always sue in Finland for divorce or nullity, so may a woman who was a Finnish citizen before marriage (§ 8 Int. G).

A judgment in default may not be given in matrimonial causes (§ 11.II Law of 13.6.1929, Introduction to the Marriage Act).

After divorce, the wife resumes her maiden name, unless otherwise agreed upon with the husband (§ 84).

7. Finnish citizens may marry abroad according to the law of the place of marriage (§ 7 Int. G.).

*Private International Law.*

Finnish consular officers abroad may be authorized by

the President of the Republic to celebrate marriages of Finnish citizens (§ 3 Int. G.).

The capacity of a Finnish citizen to marry depends on Finnish law (§ 1 Int. G.).

Whether the formal requirements of the celebration of a marriage abroad between Finnish citizens have been complied with, is to be decided according to the *lex loci* (§ 50 Int. G.).

The property relations between the spouses are regulated according to the law of the state to which the husband belonged at the time of celebration of the marriage (Sainio 681).

The nullity of the marriage depends on the law of the state to which the spouses, or either of them, belonged at the time of celebration of the marriage (§ 9 Int. G.). If either party acquired another nationality after the marriage, there must be sufficient grounds for nullity also according to his or her new national law *(ibid.)*.

Foreign judgments of divorce of Finnish citizens are recognized in Finland only if confirmed by the High Court in Turku. They will not be confirmed if under the laws of the country in which the judgment was given the court giving it had no jurisdiction to dissolve marriages of foreigners, nor if the ground on which the divorce was based is not a ground of divorce recognized by Finnish law (§§ 12, 13 Int. G.).

The Finnish courts have jurisdiction to grant divorce to foreigners, if they or either of them are domiciled in Finland; but if, under their national law, Finnish judgments of divorce are not recognized, the Finnish courts will exercise their jurisdiction only if the applicants prove that no court in their country is locally competent to decree the divorce (Sainio 676).

# FRANCE

*The Sources of the Law.*

1. The French Marriage Law is codified in the *Code Napoléon,* known as *Code Civil,* enacted in 1804, as amended by subsequent legislation. The *Code Civil* is in force also in Belgium, Luxemburg, and the greater parts of Poland.

*Capacity of Marriage.*

2. A male cannot contract marriage before the completion of his 18th year, nor can a female before completion of her 15th year (Art. 144), but special dispensation from the required age may be granted by the President of the Republic (Art. 145).

Minors under the age of 21 (Art. 388) may not contract marriage without the consent of their parents; disagreement between the parents is deemed consent to the marriage (Art. 148); if one of the parents is dead, the consent of the surviving is sufficient (Art. 149), as it is also if one of the parents is absent and his or her address unknown and an affidavit given by one of the parents to such effect (*ibid.*). If both parents are dead, the grand-parents take their place; the consent of the grand-parents is also sufficient if both parents are missing and an affidavit has to this effect been given (Art. 150). A marriage contracted without the required consent having been given, renders the parties and the registrar liable to a fine (Arts. 156, 192).

Persons who are incapable of manifesting their consent are incapable of marriage (Art. 146). Under this provision fall lunatics[1]), but not during their lucid intervals[2]) and not if the consent has been given by the guardian and the marriage allowed by the public officer (*ibid.*).

*Impediments to Marriage.*

3. Marriages are prohibited: —

(a) between descendants and ascendants, whether legitimate or illegitimate, and with descendants and ascendants of one's husband or wife (Art. 161);

(b) between brothers and sisters, whether legitimate or

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1) Civ. r. 9.11.1887 D. P. 88. 1. 141.

2) Req. 12.11.1844 D. P. 45. 1. 98.

illegitimate, and with the brothers and sisters of one's husband and wife if the former marriage has been dissolved by divorce (Art. 162);

(c) between uncle and niece, aunt and nephew (Art. 163);

(d) with a person whose previous marriage is still existing (Art. 147).

The President of the Republic may, for grave reasons, grant dispensation from some of these impediments; he may allow a marriage between brothers-in-law and sisters-in-law, uncles and nieces, and aunts and nephews (Art. 164).

A wife may not marry before expiration of 300 days from the date of dissolution of her prior marriage. If she is pregnant from her first husband who died, this impediment ceases. The president of the court having local jurisdiction may grant dispensation from this impediment or shorten the required period if there is reason to assume that the deceased had not cohabited with his wife during the 300 days before his death (Art. 228)[3]).

*Solemnization of Marriage.*

4. Before celebration of the marriage, banns must be published by affixture of a notice showing the forenames, names, occupations, domicils, and addresses of the future spouses and the place where the marriage is to be celebrated (Art. 63). The affixture must remain on the noticeboard of the Municipality (*Maison commune*) for ten days, and the marriage cannot be celebrated before the eleventh (Art. 64). The celebration must take place within one year from the end of the time of publication (Art. 65). The *Procureur de la République* may grant dispensation from the publication of banns or shorten the time therefor required (Art. 169). If the future spouses have different domicils, banns must be published at the domicils of each of them (Art. 166); if they have changed their domicil within the six months preceding the

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[3]) As amended by the Acts of 9.8.1919, 9.12.1922 and 4.2.1928.

publication, banns must be published also at their former domicils (Art. 167); and in case of minors marrying with the consent of their parents, banns must be published also at the domicils of the parents (Art. 168).

During the time of publication, oppositions may be lodged against the marriage by certain interested persons, e. g. the parents of either spouse, the person with whom one of the future spouses is still married, etc. (Arts. 127–175). The opposition is submitted to the marriage officer (*Officier de l'état civil*) and copies thereof served on the parties (Art. 66). The future spouses may make application to the court of first instance for the dismissal *(mainlevée)* of the opposition, and the court shall give its decision within ten days (Art. 177); if an appeal is lodged, the appellate judgment shall be delivered within ten days from the appeal (Art. 178). If the opposition is dismissed, the opponent may be ordered to pay damages to the future spouses (Art. 179). The marriage officer who celebrates a marriage against which opposition has been made, without the "*mainlevée*" of the court having been produced to him, is liable to a fine (Art. 68), as he is if he celebrates the marriage without due publication of the banns (Art. 192).

The celebration of the marriage takes place in the municipality of the domicil or residence of one of the spouses (Arts. 74, 165). The residence must have lasted at least one month (Art. 74). The marriage is celebrated publicly (Art. 165), in the presence of two witnesses (Art. 75). In exceptional cases, marriages may, by leave of the *Procureur de la République,* be celebrated at a place other than the *mairie* (*ibid.*). The ceremony consists of the lecture by the marriage officer of certain parts of the *Code Civil,* of the declaration of each party that they wish to become husband and wife, and of the announcement by the marriage officer that they are married (Art. 75). A marriage certificate (*acte de mariage*) is drawn up and entered on the register (Art.76). The *acte de mariage* is

conclusive evidence of the marriage (Art. 196) and of its due celebration. On the other hand, the status of marriage cannot be claimed by persons not in possession of an *acte de mariage* (Arts. 194, 195).

*Personal Rights and Capacities of Husband and Wife.*

5. The spouses become, by the very fact of marriage, liable to maintain and bring up their children (Art. 203). They are severally liable, but not jointly and severally [4]). The children cannot bring an action against their father or mother for such maintenance (Art. 204).

The spouses owe each other fidelity, support, and assistance (Art. 212). The husband owes protection to the wife, the wife obedience to her husband (Art. 213). The wife is bound to live with the husband and to follow him wherever he chooses to reside; the husband is bound to receive her and to furnish her with all necessaries according to his ability and his situation (Art. 214).

The wife is not allowed to appear before the courts as plaintiff or defendant without authorisation from her husband, even if she is a trader or lives in separation of goods (Art. 215). The authorisation need not be express but may be implied, as if the husband institutes an action against her [5]). The authorisation is needed even if the wife intends to sue her husband; if the husband refuses to authorise her, the court may, upon application, grant the required authorisation (*Code de Procédure Civile* Art. 875, Civil Code Art. 218) [6]).

There are some exceptions of the rule: a married woman receiving free salary as an employee or worker may sue therefor without authorisation from her husband (Art. 6, *loi du* 13.7.1907); nor is such authorisation required if the wife sues for removal of attachments on family property (*"biens de famille"*) of certain description (Art.

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4) Civ. c. 21.5.1890. D. P. 90.1.337.

5) Req. 8.3.1875; Civ. r. 18.3.1878.

6) Nancy 14.4.1811; Trib. civ. Seine 8.2.1892; *ibid.* 12.4.1893.

16, *loi du* 12.7.1909); nor if the wife is prosecuted in criminal matters (Art. 216).

The wife, even if she does not live in community of goods, or if she lives in separation of goods, is not competent to give, alienate, mortgage, or acquire property, either by gift or purchase, without her husband's concurrence in the transaction or his written consent (Art. 217). Thus, donations *inter vivos* made by a wife without authorisation from the husband are null and void (Art. 905). A wife cannot even without authorisation from the husband validly receive property by succession or inheritance (Art. 776). If he refuses to consent, the wife may make application to the court of first instance of their common domicil which, upon hearing the husband, may grant or withhold such consent (Art. 219).

In case the wife is a merchant, she may enter into obligations relating to her trade and business, but such obligations bind her husband too, unless the spouses live in separation of goods, and unless the husband is not at all connected and concerned with such business (Art. 220). In certain cases where the husband cannot give the required authorisation or consent (e. g. by reason of absence, imprisonment or minority) the court may grant it without hearing the husband (Arts. 221, 222, 224).

Any general authorisation or power of attorney given to the wife, even if contained in the marriage contract, is null and void (Art. 223) [7]). Such general authorisation is valid only so far as it affects the administration of the wife's property. Subsequent ratification is not sufficient in cases where authorisation or consent is required (Renton 310), but may be substituted by the husband's not pleading invalidity of the act done (Art. 225). The nullity of an act for want of authorisation may be pleaded only by the married woman, the husband, or their heirs (Art. 225). Third parties, even if acting

7) Civ. c. 24.2.1841.

*bona fide* and on ground of false pretences on the part of the woman with regard to her status, are not protected (Art. 1125) [8]; but in case of fraudulent false pretences, the woman herself is also not protected, and only the husband and his heirs may sue for nullity [9]). The right of action for having such acts declared null expires after ten years (Art. 1304).

Acts not falling under the above classifications may be done by married women without consent or concurrence of the husband. In particular, the wife may make a testament (Art. 226); she may exercise all her rights with regard to her children (Arts. 148, 337, 346); she may revoke donations made by the husband to her, or *vice versa* (Art. 1096); she may apply for registration of her legal hypothec (Art. 2194) which she has on the property of her husband (Art. 2121), etc.

*Domicil.* The wife acquires the domicil of her husband, to the exclusion of any domicil of her own (Art. 108). She may acquire a separate domicil only after judicial separation from her husband, but even then all notices to the wife in matters of her status must be sent also to the husband (*ibid., Addendum* of 6.2.1893).

*Nationality.* A foreign woman does not by marriage with a French citizen *ipso facto* acquire French nationality. The marriage officer shall, unless dispensation is granted by the *Procureur de la République,* attach to the documents required for marriage a certificate proving the national law of the woman, as to whether by marriage with a foreigner she acquires the latter's nationality or not. If she does not, under her national law, necessarily acquire his nationality, then she must give a declaration in writing that she is desirous to become, after marriage, a French citizen (Art. 8, *Décret sur la Nationalité du* 10.8.1927). A French woman marrying a foreigner retains

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8) Civ. c. 6.4.1898 ; Paris 14.11.1887.

9) Req. 28.3.1888 ; Paris 27.4.1891.

her French nationality, unless she opts for the nationality of her husband, or unless the first marital domicil is abroad *and* she acquires the foreign nationality under the national law of the husband (*ibid.*).

The spouses cannot derogate from any rights resulting from the power of the husband over the wife and children or which belong to the husband as head of the family or which are otherwise provided for by law (Art. 1388).

*Marriage Contracts.*

As a general rule, the law does not provide for property regulations and arangements between husband and wife, but they can regulate and arrange their respective and mutual property rights as they think fit, provided that such regulations and arrangements be not contrary to "*bonnes moeurs*" (Art. 1387). Such regulations are contained in the marriage contract (*contrat de mariage*).

The marriage contract may not contain provisions changing the legal order of succession and inheritance (Art. 1389) or derogating from any rights resulting from the marital power of the husband over wife and children (Art. 1388), nor may the spouses stipulate that their property relations shall be governed by the law or custom which prevailed in France prior to the *Code Civil* (Art. 1390).

Contracts of marriage must be executed in notarial form (Art. 1394). Both spouses must personally appear before the notary and sign the contract, otherwise (even if one spouse is represented by an attorney) the contract is void[10]). The contract must be executed before celebration of the marriage and may not be amended thereafter (Art. 1395); amendments made before the celebration must be made in the same form as the contract itself (Art. 1396). Minors may validly enter into a contract of marriage if they are capable of marrying (Art. 1398).

The *Code Civil* recognizes two main systems of matrimonial property law: the "*régime de la communauté*"

10) Req. 6.4.1858, D. P. 58.1.224 and others.

*Community of Goods.*

(community of goods) and the *"régime dotal"* (system of dower). In absence of a contract of marriage, the spouses are presumed to intend their property relations to be governed by the *régime de la communauté,* which is thus the common law (*"droit commun"*) of France (Art. 1393). If the spouses intend the *régime dotal* to apply, they must make express stipulations to such effect in the required form, for no such intention or agreement will ever be implied (Art. 1392).

The community of goods between the spouses extends to the movables possessed by them on the day of marriage (celebration) and acquired by them thereafter, to all incomes derived by them from rights or properties belonging to them since the day of marriage (celebration) or acquired by them thereafter, and to the immovables acquired during marriage (Art. 1401). Goods are presumed to belong to the spouses in common, unless it is proved that they were owned or possessed by one of them prior to the marriage (Art. 1402). If movables are given to one of the spouses by way of gift, they become common property of both spouses, unless expressly otherwise provided for by the donor (Art. 1401 I); if immovables are given to one of the spouses by way of gift, they become separate property of the donee, unless expressly otherwise provided for by the donor (Art. 1405).

The goods held in community by the spouses are charged with all movable debts contracted by them before marriage or which were due in connection with the successions which had devolved on them during marriage, with all debts and interest thereon contracted by the husband during the community or the wife with the husband's consent, with arrears of interest on certain personal debts of the spouses, with expenses connected with the usufruct by the spouses of immovables belonging to one of them, and with the maintenance of the spouses, the education and maintenance of the children, and with every other charge of marriage (Art. 1404). Distinction

is made between movable and immovable debts; the community is charged with the former only (Art. 1411 *et subs.*) [11]). The husband who paid the debts of his wife contracted by her before marriage, cannot claim the refund to him of such payments, neither from the wife nor from her heirs, although he was not bound to pay such debts (Art. 1410). Debts with which the goods held in community are charged may be claimed from either spouse separately or from both spouses jointly (Art. 1419); but debts contracted by the wife on behalf of her husband may only be claimed from the husband (Art. 1420), to the exclusion of the personal property of the wife.

The husband administers the common property alone. He may sell, transfer and mortgage it without concurrence of the wife (Art. 1421). He may not dispose of immovables belonging to the community without consideration, unless such disposal is in favour of their children (Art. 1422). No testamentary disposition may validly be made by either spouse exceeding his or her part of the joint property (Art. 1423). The joint property may be charged with fines due from the husband other than payments to be made by him to the wife; but the wife must pay any fines incurred by her out of her separate property only (Art. 1424). Acts done by the wife without the consent of her husband, even if consented to by a judge, do not bind the property in community, unlesss she is contracting as trader (*marchande publique*) in the course and for the purpose of her trade (Art. 1426). Thus, even a wife petitioning for dissolution of marriage cannot charge the joint property with the costs of the action [12]). The wife cannot, unless authorised by the court, enter into any obligation binding the joint property, even if her husband is absent and she wants to contract for necessities of the children or for releasing her husband from prison (Art. 1427).

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11) cf. Renton pg. 483 *et subs.* and 506 *et subs.*
12) Civ. c. 30 avr. 1862 D. P. 62. 1. 210.

The personal property of the wife is administered by the husband too; he may act on her behalf and bring any action in her name; but he may not dispose of the wife's immovables without her consent, and he must answer for any depreciation of the personal chattels of the wife caused by his default or carelessness (Art. 1428).

If both spouses jointly contracted a debt, regarding the affairs of both conjoints or of the husband, the wife is not deemed to be a guarantor as against the creditors and must be indemnified from the obligation entered into by her (Art. 1431)[13]). On the other hand, the husband who guarantees for debts of the wife has a right of recourse as against her (Art. 1432).

If a spouse takes out of the common property any sum for paying personal debts or for other expenses connected with his or her personal chattels, and generally in all cases where one of the spouses has derived any profit from the common property, he (or she) must recompense the other (Art. 1437). Thus, if the conjoints give a dower to their daughter, each is presumed to have contributed one half, and if such dower is taken from the personal property of one of them, the other must indemnify him (or her) for one half (Art. 1438). If one of the spouses gives the dower without concurrence of the other, the common property of the conjoints may be charged therewith (Art. 1439).

The community is dissolved: (1) by the death of one of the spouses; (2) by dissolution of marriage; (3) by judicial separation; (4) by separation of goods (Art. 1441). Separation of goods may be asked for by the wife only in case her dower (*dot*) is in danger and the disorderly manner in which the husband looks after his affairs gives reason to fear that his assets will not suffice to fulfil his obligations towards the wife. A voluntary separation of goods after marriage is null and void (Art. 1443). In case the

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13) As interpreted in Paris 16.12.1881 D. P. 83. 1. 339.

wife obtains judgment for separation of goods, her rights and credits as against the husband must be realized and paid out to her forthwith (Art. 1444). After separation of goods, the spouses must jointly contribute to the costs of the household; if there did nothing remain to the husband, the wife must bear such costs alone (Art. 1448). The costs of the household have been interpreted to include expenses for medical treatment of either of the spouses [14]) and the wife has been held liable to reimburse to the husband the expenses incurred by him after separation of goods for the purpose of ameliorating immovables of the dower as well as his expenses for household purposes [15]).

The wife, after judicial separation (*séparation de corps*) or separation of goods, is entitled to free administration of her property. She may dispose of her movables, but, unless authorized by the court, she may not dispose of immovables without consent of the husband (Art. 1449). If she disposes of immovables by authorization of the court, the husband cannot be made liable under that contract or any part thereof (Art. 1450).

After dissolution of the community by reason of the death of one of the spouses, the surviving spouse must make an inventory of the estate, in default whereof the property passes to the minor children, if any, of the conjoints (Art. 1442) [16]).

The rights *mortis causa* of the wife to the estate of the husband cannot be exercised by her after *séparation de corps* or separation of goods, but only after the husband's death (Art. 1452).

By notarial act, a dissolved community of goods can at any time be re-established. In that case, the newly constituted community is deemed to have commenced at the day of marriage. But the conditions of, and rights of the

14) Req. 3.7.1907 D. P. 1907. 1. 384.
15) Req. 25.5.1891 D. P. 92. 1. 20.
16) And see Arts. 1456 *et subs.*

spouses in, such community must be the same as before (Art. 1451).

After dissolution of the community, the wife or her heirs are at liberty to accept or to waive it ; any stipulation to the contrary is void (Art. 1453). The acceptance or renunciation of the community are subject to various rules of procedure (Arts. 1454—1466).

In case of acceptance, the assets of the community are divided into two halfs (Art. 1467), each spouse contributing everything drawn out by him (or her) during the community or its value (Art. 1469), and not taking into account the personal effects of each of the spouses which did not enter into the community (Arts. 1470 *et subs.*).

The debts of the community are likewise divided, and each spouse is charged with one half thereof (Art. 1482). Debts contracted by the husband, however, cannot be a charge on the wife, except if and so far as she has derived profit from such contract (Art. 1483) or if these are debts incurred for the sealing, inventory, sale of movables, liquidation, public auction, and division (Arts. 1482, 1484).

The spouses may contract that the debts of the community be paid by them in shares other than one half each ; but the spouse who paid more than he (or she) is thus bound by the law, has a right of recourse against the other (Art. 1490).

The heirs of the respective spouses enjoy the same rights and are under the same liabilities with regard to the acceptance or renunciation of the community and to the distribution of assets and debts, as the spouses themselves, in case they or one of them died (Arts. 1466, 1468, 1491, 1495).

In case of renunciation of the community, the wife loses her right to it and retains only her personal effects (linen and clothes for her use; Art. 1492) and the immovables belonging to her, either if they exist *in natura* or else the immovables acquired in lieu of them, and the price

of her immovables if they were sold, and all indeminities which may be due to her from the community (Art. 1493). She is not bound to contribute to the debts of the community, unless such debts were contracted by her or in conjunction with her or with regard to her share therein (Art. 1494); in those cases she has a right of recourse, as for one half, against the husband.

*Other systems of Community of Goods.*

The *régime de la communauté* as hereinbefore described may be varied by express stipulations between the parties in different respects, e. g. contracts may be made for community of goods excluding goods acquired after marriage (Arts. 1498, 1499), or excluding movables in whole or in part (Arts. 1500—1504), or including immovables which are otherwise not included as if they were movables (Arts. 1505—1509), or providing for separation of the respective debts of each spouse (Arts. 1510—1513), or providing for the refund to the wife after renunciation of the community of all what she has brought in (Art. 1514), or providing that in case of death the surviving spouse shall have certain priority rights (Arts. 1515—1519), or that the shares of the spouses in the community shall not be equal (Arts. 1520—1525), or that the community between them shall be general and unlimited (Art. 1526).

The parties may stipulate that they shall neither submit to the system of community of goods nor to that of the *régime dotal,* or that they shall live in separation of goods (Art. 1529). By virtue of a stipulation that no community of goods shall prevail, the wife does not obtain any right to administer her property alone, nor even to enjoy the usufruct of her property ; the *fructus* belongs to the husband for the charges of marriage (Art. 1530). The husband is the administrator of the wife's movable and immovable property until dissolution of marriage or a judicially decreed separation of goods (Art. 1531); he is charged with the costs of administration (Art. 1533),

and the immovables of the wife may not be alienated without his consent (Art. 1535).

*Separation of Goods.*

In case of a stipulation for separation of goods, the wife is entitled to free administration and enjoyment of her property (Art. 1536). Both spouses have to contribute to the costs of marriage (Art. 1537) according to the contracted proportions. The wife cannot, however, alienate her immovable property without the husband's consent or the authorisation of the court (Art. 1538); a general power given to her by the husband is void. But the wife may, notwithstanding the separation of goods, authorize her husband to administer her property and enjoy the usufruct (Art. 1539) [17]; in this case the husband is not bound to render any accounts to the wife of his administration.

*Régime Dotal.*

The parties may contract that the *régime dotal* shall apply. This system is based upon the *"dot"*, which is defined as the goods which the wife brings to the husband *"pour supporter les charges du mariage"* (Art. 1540). The parties are given great liberty by the Code to settle their relations under that *régime* and the Code merely gives a frame and limits the rights of the husband as over such *dot* (Arts. 1542 *et subs.*, 1459 *et subs.*). The *dot* must be returned by the husband after dissolution of the marriage (Arts. 1564 *et subs.*). The wife cannot dispose of the *dot* but for the benefit of her or their children if her husband consents (Arts. 1555, 1556), or, if she is above the age of 45 and has no children, for the benefit of charitable institutions, if authorised both by her husband and by the court (*Addendum* to Art. 1556 of 19.3.1919), but the parties may contract that it shall be lawful and permitted to alienate the *dot* without further formalities (Art. 1557). If the *dot* is in danger, the wife may sue for separation of goods (Arts. 1563, 1443). The wife administers alone only those of the goods

17) As interpreted in Req. 31.10.1888 D. P. 89. 1. 315.

which do not constitute, or belong to, the *dot* (*"biens paraphernaux"*), (Arts. 1574 *et subs.*), but she may delegate such administration to the husband [18]).

*Law of July 13, 1907.*

By an Act of July 13, 1907, a married woman has, under any system of contract of marriage and notwithstanding any clause in the contract to the contrary, absolute control over, and all rights of free disposition of, the earnings from her personal work and the savings therefrom, without any interference on the part of her husband (Art. 1). In order that this law may apply, she must by notarial deed declare that she has a profession distinct from that of her husband. In case of abuse of her rights under this Act, she can on motion of the husband or of the *Procureur Général* be restrained by the court from exercising her rights thereunder; the court may in urgent cases allow the husband to interfere in any transaction between the wife and third persons (Art. 2). Property of such kind may be seized not only for the debts of the wife, but also for the debts of the husband so far as such debts were incurred in connection with the common household if under the contract of marriage the property would, but for this Act, have been in the hands of the husband; the creditors have to prove that the debt was incurred in the interest of the common household (Art. 3). The husband is not responsible for the debts of the wife contracted otherwise than in the interest of the household (*ibid.*). In case of disputes, the wife may prove that the property in question was derived from her earnings (Art. 4). The earnings of the wife thus administered by her enter into the partition of the common fund, if there is community of goods between the spouses; otherwise they belong exclusively to the wife (Art. 5). With regard to her rights under the Act, the wife may sue and be sued without authorisation of her husband (Art. 6). One spouse may apply for and obtain attachment on the pro-

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18) For a fuller statement on the *régime dotal* cf. Renton 555 *et subs.*

perty or salary of the other for the costs of the household (Art. 7); the procedure is especially simplified for this purpose (Arts. 8 to 10). The Act applies to married women even if they have married before its promulgation (Art. 11).

*Nullity of Marriage.*

6. A marriage contracted without the free consent of the spouses or one of them may be declared null only upon application of the spouse who did not freely consent; if there had been an error as to the person, only upon application of the mistaken spouse the nullity may be decreed (Art. 180). In these cases, the nullity may not be decreed if the spouses have lived as husband and wife during six months from the date on which the respective spouse acquired his (or her) full freedom or recognized his (or her) error (Art. 181). In case of marriages the validity of which depends upon the consent of a third person (*vide supra*), which was contracted without such consent, nullity will be decreed only upon motion of that person whose consent was required or by that spouse in respect of whom the consent was required (Art. 182). If, however, those whose consent was required expressly or impliedly have approved of the marriage, or if one year has elapsed after they got knowledge of the marriage without objection having been raised on their part, or if the spouse who could otherwise impeach the marriage for want of their consent left one year to elapse from the date of his attaining majority without raising any objection, the right of application for a decree of nullity is barred (Art. 183).

Marriages contracted by persons below the age prescribed by law, or where there is a subsisting marriage, or where the parties are within the prohibited degrees of consanguinity or affinity, may be impeached by either spouse, or by any person interested, or by the *Ministère Public* (Art. 184, Renton 227). The marriage cannot, however, be impeached if either the minor

spouse or spouses has or have attained majority six months ago, or if the minor wife has become pregnant within six months from the date of marriage (Art. 185). "Any person interested" excludes those relatives (father, mother, ascendants, etc.) who have consented to the marriage (Art. 186) as well as collateral relations and children of a former marriage, unless they have a present and actual interest in the nullity suit (Art. 187). A second marriage contracted to the prejudice of a spouse may be impeached by him (or her) even in the lifetime of the person who was previously married with him (or her) (Art. 188). The competent *Ministère Public* mentioned above and below is the *Procureur de la République* whose duty it is to apply for a decree of nullity in the above specified cases (Art. 190).

Any marriage not celebrated in public and before the competent civil officer may be impeached by either of the spouses, by their parents and other ascendants, by all persons who have an actual and present interest in the nullity of marriage, and by the *Ministère Public* (Art. 191, Renton 228).

A marriage which was decreed null has nevertheless civil effects, i. e. it creates rights and liabilities as well with regard to the spouses as with regard to the children, if it has been contracted in good faith (Art. 201). If only one of the spouses contracted in good faith whereas the other was *mala fide,* the said civil effects of the marriage arise only in favour of the former and of the children issued from the marriage (Art. 202). Thus, a null and void marriage may, even after the decree of the court, create all legal rights and duties in respect of succession and inheritance [19]).

A marriage celebrated according to Jewish law and under Jewish rites has been held to be null and void, but if

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19) Civil r. 5.1.1910 D.P. 1911. 1.338 and Req. 14.3.1933 D.P. 1933. 1.28.

contracted *bona fide* the rights and liabilities of the spouses towards each other and towards their children are not affected by the decree of nullity [20]).

*Dissolution of Marriage.*

7. Marriage is dissolved by the death of either spouse or by judicial decree (Art. 227).

The grounds of divorce are :
Adultery of the husband (Art. 230) or of the wife (Art. 229); Violence, bad treatment, or grave injuries on the part of either spouse (Art. 231) ; Conviction of either spouse of a defamatory offence (Art. 232). (Mutual consent of the spouses to apply for divorce on ground of invincible aversion has been abolished as ground of divorce by the law of 27.7.1884).

In case of adultery of either the husband or the wife, the court has no discretion but must nesessarily grant the divorce, unless the evidence produced is not satisfactory [21]). The grant of a decree of divorce on ground of one of the two other causes. (Art. 231, 232, *supra*) is in the discretion of the court, and the court will not exercise its discretion unless the acts complained of have been committed willingly and by a person responsible for his (or her) acts nor if the complainant has done anything to provoke such acts or has condoned them [22]).

The words "violence' bad treatment, and grave injuries" are very widely interpreted by the courts. They were held to include the education of a child contrary to the wishes of the other spouse [23]); the desertion of the matrimonial home [24]); the residence abroad without sending news [25]); the usurpation by the husband of the management of the household to the exclusion of the wife [26]); the refusal

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20) Civ. r. 5.1.1910 *loc. cit.*
21) Req. 5.8.1901 D.P. 1901.1.470.
22) Req. 5.8.1890 D.P. 91.1.365 ; Req. 14.1.1908 D.P. 1908. 1.127.
23) Civ. r. 24.1.1912 D.P. 1912.1.171.
24) Req. 19.1.1916 D.P. 1916.1.249.
25) Chambéry 22.6.1909 D.P. 1909.5.68.
26) Req. 11.1.1921 D.P. 1921.1.71.

of marital rights during several months [27]); further injurious sexual relations, the existence or concealment of a venereal disease, unreasoning jealousy, insult to religious feelings, and refusal of assistance, succour, and, on the part of the wife, obedience [28]).

The procedure in applying for and obtaining decrees of divorce is governed by a law of the 18.4.1886 amending the *Code Civil*. The party intending to apply for such a decree must appear in person before the president of the competent court end submit his (or her) application (Art. 234). The president of such court, after submission of the application, fixes a day for a *requête* on which both parties must appear before him (Art. 235). He may allow the petitioner to take up a residence other than the marital home even before divorce or separation is decreed (Art. 236). If on the day fixed for the *requête* one of the parties cannot appear before the court, a place may be fixed where an attempt is to be made to reconcile the parties, or where the defendant can be heard; in case of failure of conciliation or of default on the part of the defendant, petitioner may proceed with the action.

The court may make provisional orders for the residence of the children, the delivery of the personal effects, and for alimony. Such orders are executory and subject to appeal.

After such first *requête,* the wife is authorized to take all steps for safeguarding her interests and institute and defend the action until final decision is given (Art. 238).

The action is instituted in the regular way; it may be changed in the course of the proceedings to an action for judicial separation; the court may hear the action with closed doors, and the report of divorce cases by the press is forbidden (Art. 239). Not only the parties but also any other person interested or public officers may apply for, and the court may give even on its own motion,

27) Req. 6.4.1908 D.P. 1908.1.240.
28) Renton 831, 832 and the authorities quoted there.

provisional orders for custody and maintenance of the children (Art. 240). The wife loses her right to alimony if she does not reside at the marital home or such other place as was fixed for her residence by the court (Art. 241). Pending action, the spouses may, with the authorisation of the court, lay attachment on the goods of the community in order to secure their respective rights; the wife may lay such attachment on her property of which the husband enjoys the rights of administration and usufruct (Art. 242). But the husband cannot, after first appearance before the court, alienate immovables of the community or charge the community with obligations and debts (Art. 243).

Divorce proceedings are stayed in the cases of conciliation between the parties or the death of either party (Art. 244). If the action proceeds, *enquêtes* may be made and the parents and domestics of the parties be heard as witnesses (Art. 245). Before giving judgment, the parties are given six months time to reconcile; if six months have passed, the petitioner may cite the defendant before the court in order that judgment be delivered (Art. 246). Judgment may be given in default, after the citation has been published in newspapers (Art. 247). The judgment, whether in presence or in default, is subject to appeal (Art. 248). An appeal, once lodged, cannot be revoked or waived (Art. 249). Provisions are made for the publication of the decree of divorce (Arts. 250, 251). It must be transcribed on the register of civil status; the marriage is dissolved as from the date of such transcription, and failing transcription the divorce is void (Art. 252). The spouses intending to remarry after divorce decreed must celebrate a new marriage (Art. 295)[29]).

The party against whom divorce was decreed loses all rights accruing to him or her from the other party by the marriage contract or since marriage (Art. 299)[30]). Each

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29) As amended by law of 4.1.1930.
30) As amended by law of 27.7.1884.

spouse resumes after divorce his or her name (law of 6.2.1893). The spouse at whose instance the divorce was decreed preserves all rights accruing to him or her from the other spouse even if they are based on reciprocity which has in fact not taken place (Art. 300). The court may, in cases where there are no funds sufficient as a subsistance, accord to the innocent spouse an alimentary pension not exceeding one third of the other party's income (Art. 301).

The children are to be given in custody to the innocent spouse, unless the court, upon motion of the family or the *Ministère Public,* directs otherwise (Art. 302). Regardless of who has the custody over the children, both parents have the right to control their education and the duty to contribute to their maintenance (Art. 303). The rights of the children born out of the marriage which they enjoy under law or under the matrimonial conventions of their parents are not affected by the divorce (Art. 304).

In all cases where the law allows to apply for divorce, the spouses are at liberty to sue for judicial separation (*séparation de corps*) (Art. 306). The procedure for obtaining a decree of judicial separation is the same as the procedure in divorce cases; mutual consent is no sufficient ground for an action for judicial separation (Art. 307)[31]). If a *séparation de corps* has lasted, on ground of a valid judgment, for a period of three years, the decree of judicial separation will be converted into a decree of divorce upon application of either spouse; an order for alimony granted together with the decree for judicial separation remains always valid (Art. 310)[32]). The court, in decreeing separation, may order the wife to abstain from using the name of the husband, or allow her to abstain from using it (and *vice versa* in case the

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31) As amended by law of 18.4.1886.

32) As amended by law of 6.6.1908.

husband added to his name the name of his wife); the *séparation de corps* implies in all cases separation of goods; it gives, besides, the wife all rights and full civil capacity so that she does no longer need any authorisation from her husband; and in case of reconciliation between the parties the wife remains also in future in the position of a wife under separation of goods (Art. 1449, *supra*) unless expressly otherwise stipulated (Art. 311)[33].

A decree of divorce or of judicial separation has the character of *res judicata* (*chose jugée*), and if a decree of separation has been given, an action for divorce cannot be instituted for the same cause (Renton 837).

*Private International Law.*

8. French law concerning personal status and capacity bind Frenchmen even if they reside in foreign countries (Art. 3). A marriage contracted abroad between French und French or between French and foreigner is valid if celebrated according to the formal requirements of the place of celebration, provided banns have before been published and the French is capable of marrying under French law (Art. 170)[34]. Marriages contracted abroad by a French before a French consulate or diplomatic agent are likewise valid, if celebrated in accordance with French law (law of 29.11.1901). Within three months from the return to France of a French who has married abroad, the marriage must be registered in the official marriage register of his domicil (law of 20.11.1919). If the marriage is not so registered, it is null and void, unless the failure of registration was not intended *in fraudem legis* and to escape the duties imposed by French law[35]. An instance of such fraudulent purpose is given in a judgment of the Court of Appeal in Paris dated 14.5.1908 which is thus reported by Pellerin (112): "A person aged 25 years who after he has served an *acte*

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33) As amended by law of 6.2.1893.

34) As amended by law of 21.6.1907.

35) Req. 11.2.1920 D.P. 1920.2.150, and see Pellerin 107.

*respectueux* (a deed by which a person who is of full age asked for the consent of his parents to his marriage, required under the ancient Art. 151 of the Civil Code which was repealed by the law of 2.2.1933) upon his mother and after having made the usual publication in France, has received notice of an opposition to his marriage by his mother and while on friendly terms with her goes to England and marries there after a residence of one week only, and then returns to France and conceals his marriage from his mother and fails to have the same transcribed upon the French Civil Register, must be considered as having married with a view to evade the provisions of the French law, and accordingly the said marriage is declared to be null and void, although good according to the law of England." [36]).

As to the matrimonial *régime,* in case of French citizens marrying abroad Art. 1393 (*supra*) seems to apply, and unless there is a special marriage contract to the contrary, community of goods is presumed. In case of foreigners, however, even if marrying in France and/or being domiciled there, "it is usual to enquire as to their intention at the time of the marriage with regard to deciding as to the matrimonial regime under which they ought to be governed", in the absence of a marriage settlement (Pellerin 114).

Dissolution of marriages between foreigners is decreed by the French courts in accordance with the national law concerned [37]). Thus, if the national law of the parties refers for dissolution of marriages to religious law, the French courts have no jurisdiction [38]). But the French court will grant against a foreigner resident within its

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36) Simonin v. Mallac, 2 Sw. and Tr. 67, considered by Graveson im Journal of Comparative Legislation and International Law, Third Series, Vol. XIX, pg. 28.

37) Civ. r. 30.10.1905 D.P. 1906. 1.305.

38) Paris 26.12.1912 D.P.1914. 2.47.

jurisdiction interlocutory orders e. g. for alimony *ad litem* upon application of a petitioner for divorce (Pellerin 71). If the national law of the parties refers to French law as the law of domicil, the latter is applicable, but no divorce will be granted by the French courts if a divorce is not allowed at all under the national law (Pellerin 71, 72).

Foreign judgments of divorce will, generally, be recognized in France (Renton 938). The required transcription of such judgments into the register of civil status, without which transcription the divorce is of no effect (Art. 252, *supra*), will be made by the registrars even without special order of a French court (Bergmann II 161), unless the judgment is bad on the face of it.

# GERMANY

*The Sources of the Law.*

1. German Marriage Law is contained in the Fourth Book of the German Civil Code of the 18.8.1896 (BGB). The Private International Law is codified in the Introductory Law to the Civil Code of the 18.8.1896.

*Promise to Marry.*

2. The promise of marriage gives no right of action. Any promise to pay a penalty if the marriage will not be contracted is void (1297 BGB). The promisor who refuses to contract the marriage without sufficient reason, is bound to pay the damages and expenses incurred by the promisee in contemplation of marriage (1298 BGB); but if the promisee by his (or her) default causes the promisor to abstain from the marriage, the promisee is liable to damages as aforesaid (1299 BGB). Damages may also be claimed by a stainless woman who has by promise of marriage been induced to be cohabited with (1300 BGB). Save if the promise of marriage is not carried out by reason of the death of one of the parties, both parties may, if the marriage is not contracted, claim the return of gifts made to each other in contemplation of marriage (1301 BGB). Any claims based on a promise of marriage prescribe after two years (1302 BGB).

*Prohibited Marriages.*

*(a) Capacity to Marry.*

3. A male may not contract marriage unless he has attained the age of 21 or has been declared major when at least 18 years of age; a female may not contract marriage unless above the age of 16 (1303 BGB).

Interdicted persons may not marry without the consent of their legal guardians (1304 BGB). Minors (under the age of 21) require to their marriage the consent of the father (if they are legitimate) or of the mother (if they are illegitimate) (1305 BGB).

*(b) Impediments.*

Marriages are prohibited in the following cases: —

(a) if either party is married, before the previous marriage is dissolved (1309 BGB);

(b) marriages between ascendants and descendants, brothers and sisters of full and half-blood, with the ascendants or descendants of one's husband or wife,

and with a person who had sexual intercourse with one's ascendants or descendants (1310 BGB);

(c) between adoptive parents and adopted children (1311 BGB);

(d) between a person divorced on ground of adultery and the person with whom the adultery had been committed (1312 BGB), unless the President of the Court who has, in the first instance, decreed the divorce, grants dispensation from this impediment [1]);

(e) with a wife before expiration of ten months from the date of dissolution of her previous marriage, unless she has borne in the meantime (1313 BGB); this impediment may be dispensed with by the Registry Officer (*Standesbeamte*) before whom the marriage is to be celebrated [2]);

(f) a person who has a minor legitimate child may not contract marriage unless he produces a certificate from the court (*Vormundschaftsgericht*) that it has no objection to the marriage (1314, 1669 BGB);

(g) under the law for the protection of German blood and German honour, of the 15.9.1935 (R.G.Bl.I.S. 1146), marriages between Jews [3]) and citizens of German or akin blood are prohibited (§ 1). Marriages are also prohibited between Jews and Jewish mongrels having only one Jewish grand-parent (§ 2). Citizens of German or akin blood or Jewish mong-

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1) Regulations in Family-and Succession-Matters of the 31.5.1934, R. G. Bl. I S. 472 § 2.

2) § 3 of the said Regulations.

3) By the Regulations of the 14.11.1935 (R. G. Bl. I 1933), the term "Jew" is defined, for the purposes of this law, as follows: Jew is who descends from not less than three grand-parents of full-blood Jewish race. As a Jew is further deemed the Jewish mongrel who descends from two grand-parents of full-blood Jewish race, if he is a member of the Jewish community, or if he is married with a Jew, or if he has been born of a marriage with a Jew such as those prohibited by the law for the protection of German blood and German honour, or if he is the illegitimate child of a Jew and was born after the 31st July, 1936 (§ 5). "Jewish Mongrel" is defined as follows: a person descending from one or two grand-parents of full-blood Jewish race if he was a member of the Jewish community (*ibid.*).

rels having only one Jewish grand-parent may not contract marriage with Jewish mongrels having two Jewish grand-parents without the consent of the Minister of the Interior and the Assistant of the *Führer* or the officer appointed by him (§ 3). Marriages shall not be contracted between Jewish mongrels who have only one Jewish grand-parent (§ 4). Marriages shall not be contracted if an offspring is to be expected from it which endangers the purification (*Reinerhaltung*) of German blood (§ 6).

(h) Under the law for the protection of the health of the German people (Marriage Health Law) of the 18.10.1935 [4]), marriages may not be contracted in the following cases: —

(1) if either party suffers from any contagious disease so as to be apprehensive of considerable danger to the health of the other party or of the offspring;

(2) if either party is interdicted or stands under provisional guardianship;

(3) if either party suffers from a mental derangement which renders his (or her) marriage undesirable for the national community;

(4) if either party suffers from an inheritable disease (§ 1).

The parties must produce a certificate of fitness for marriage (*Ehetauglichkeitszeugnis*) from the Health Office before the celebration may be effected (§ 2).

*Solemnization of Marriage.*

4. The marriage shall be preceded by publication of banns; the publication must be repeated if the marriage has not been celebrated within 6 months; in urgent cases the publication may be dispensed with (1316 BGB).

Banns are published at the domicils of both parties, and if either party has changed the domicil within the six months preceding the publication, also at the previous

4) R. G. Bl. I S. 1246.

domicil, during a period of two weeks, by being affixed at the registry office or published in a newspaper [5]). The marriage is celebrated before the registry officer (*Standesbeamter*) of the place at which either of the parties is domiciled or resident (1320 BGB); if the parties reside abroad, the competent registry officer is that of the *Standesamt* I at Berlin [6]). Both parties must be at the same time personally present and must declare that they are willing to become husband and wife. The declaration must be delivered to the registry officer who must be ready to accept it, and it may not be made dependent on any condition or time limit (1317 BGB). The marriage is registered in a marriage register; two witnesses should be present at the ceremony (1318 BGB); but the two latter requirements do not affect the validity of the marriage [7]). The civil marriage is obligatory, but does not release anybody from his obligations under religious law (1588 BGB). This provision has no legal effect; it is, however, an offence punishable in criminal law to celebrate a marriage in religious form before the civil celebration has taken place [8]).

5. *Effects of Marriage.* *a) Personal Relations between Husband and Wife.* The spouses are under mutual obligation to live together in conjugal community; this obligation does not create a right of action if conjugal life cannot fairly be expected [9]) or pending divorce proceeding (1353 BGB). The husband decides all matters relating to the conjugal life; in particular, he fixes the conjugal domicil (1354 BGB). The wife acquires by marriage the domicil and the national status of her husband [10]).

The wife is not bound to follow and obey the husband if his decision constitutes an abuse of his right (1354 II

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5) Law on Personal Status, *Personenstandsgesetz*, §§ 44 *et seq.*
6) § 7 of the Regulations of 31.5.1934, *supra.*
7) Wieruszowsky 17.
8) Cf. Enneccerus-Wolff pg. 13 *et seq.*
9) e. g. in the case of a spouse suffering from a contagious disease, conjugal life need not be resumed — Wieruszowsky 22 Note 77.
10) §§ 6 and 17 of the Nationality Law of the 22.7.1913. R.G.Bl.583.

BGB). The wife obtains the husband's name (1355 BGB). She has to manage the household and do such work in the household and in the husband's business as is customary in the class of people to which the spouses belong (1356 BGB). The wife is the agent of the husband in connection with the management of the household, and acts done by her in the course and for the purpose of the management of the household are binding on the husband (1357 BGB). The husband may, however, if there is a reasonable ground, limit or cancel the wife's agency; such limitation or cancellation is valid as against third parties only if either known to them or officially registered (1357 II, 1435 BGB).

Married women are in no way restricted from doing any legal act or carrying on a trade or profession or from instituting judicial action (§ 52 ZPO). But if a married woman enters into a contract the performance by her of which would prejudice the marital relations between the spouses, the husband may, with the consent of the court (*Vormundschaftsgericht*), rescind the contract, unless he or the court previously consented to it (1358 BGB).

The husband is liable to maintain the wife according to his position, his means and his ability to earn (1360 BGB). The wife is not bound to pay maintenance to the husband except if he is not in the state to maintain himself and she has sufficient means and income of her own (*ibid.*). Maintenance is given in form of lodging, clothing, food, and pocket-money [11]); only if the spouses lawfully live separated from each other, the wife may claim maintenance in form of regular cash allowances (1361 BGB).

In favour of the husband's creditors, it is presumed that property in the possession of the spouses or either of them belong to the husband; personal effects of the wife, however, are as against the husband and as against

11) RGZ 97, 286.

creditors presumed to be the property of the wife (1362 BGB).

*(b) Property Relations between Husband and Wife.*

The following are the principal features of the *régime* governing the property relations of the husband and wife under German law in the absence of a contract of marriage, viz.: —

The property of the wife (*"eingebrachtes Gut"*) becomes by marriage subject to the administration and usufruct of the husband (1363 BGB). "Property" comprises also such property which was acquired by the wife after marriage (*ibid.*). The reserved property (*"Vorbehaltsgut"*) of the wife, however, is exempt from the husband's administration and usufruct; such reserved property consists of the personal effects of the wife such as clothes, trinkets and tools, and the earnings of the wife by her work or business, and such gifts or donations made to her either *mortis causa* or without consideration as intended by the donor or testator to become her reserved property (1365—1369 BGB). Acquisitions made by the wife on ground of, or in consideration for, or in relation to, her reserved property become also reserved property (1370 BGB). The power of the wife to deal with her reserved property is not limited [12]).

The husband may take into his possession the property of the wife under his administration (1373 BGB). Upon request of the wife, he must render account of his administration (1374 BGB). He is not entitled to dispose of the property administered by him without the consent of the wife nor to bind her by contracts (1375 BGB); he is only entitled to dispose of money and other *res consumptibiles* belonging to the wife and to fulfil obligations incurred by the wife with regard to the property under his administration (1376 BGB); but all such dispositions and acts he may do and make only for the purpose of faithful administration of the wife's property (1377 BGB).

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[12]) Wieruszowsky 24.

In case the consent of the wife is required for effecting a transaction and the wife refuses the consent without reasonable ground, the husband may apply to the court (*Vormundschaftsgericht*) for the consent (1379 BGB). Actions concerning the wife's property administered by the husband may be instituted by him alone (1380 BGB). The husband has to bear the costs of the management of the wife's property (1384 BGB), taxes and charges incumbent on the wife's property administered by him (1385 BGB), all such interests and liablilities as are payable out of the wife's property administered by him (1386 BGB), court fees in actions brought for or against the wife other than actions relating to her separate property (1387 BGB), and the costs of the common household (1389 BGB). The husband, however, is liable as aforesaid only as against his wife; creditors may claim from both spouses jointly (1388 BGB). Income derived from the wife's property administered by the husband, must, upon the wife's demand, be applied primarily for the maintenance of the spouses and their children (1389 II BGB).

Expenses made by the husband in the course of the administration of the wife's property are to be reimbursed to him by the wife, unless the husband has, as against the wife, to bear them (1390 BGB).

In case there is reason to fear that the wife will be prejudiced by the husband's' administration, she may demand that security be given to her (1391, 1392 BGB). In such case she may also bring other claims against the husband in connection with the property administered by him, whereas otherwise no such claim can be brought by her except after termination of the administration by the husband (1394 BGB).

The wife may not, without the husband's consent, dispose of her property administered by him (1395 BGB); if she does so dispose by contract, the contract is valid subject to his ratification (1936 BGB); if she does so dispose by

unilateral act, subsequent ratification does not render it valid (1398 BGB).

The wife may incur obligations binding herself personally; if her husband consents thereto, they are binding also on the property administered by him (1399 BGB).

The wife may take or defend judicial actions without consent of her husband; but judgments obtained by her or against her are not enforceable on the property administered by the husband; actions connected with the wife's property under the husband's administration may not be brought by the wife without consent of the husband (1400 BGB).

In all cases where the consent of the husband is required, it may be dispensed with if by reason of illness or absence he is unable to give it and if the intended transaction does not suffer delay (1401 BGB). If the husband refuses the required consent without reasonable ground, the court (*Vormundschaftsgericht*) may, upon application by the wife, give it (1402 BGB).

If the husband has consented to the carrying on by the wife of a trade or profession, his consent to single transactions in the course of such trade or profession is not required. The same rule applies if the trade or profession is carried on by the wife with the knowledge of the husband (1405 BGB). The wife may likewise without consent or authorisation from the husband accept or refuse inheritances and legacies, refuse offers of contracts and donations, enter into contracts and make transactions with her husband, continue judicial proceedings pending at the time of marriage, and take judicial action against her husband (1406, 1407 BGB).

The creditors of the husband have no claim against the wife's property (1410 BGB); but the creditors of the wife can enforce their claims on her property although it is administered by the husband (1411 BGB). The wife's property administered by the husband is not liable for obligations unlawfully incurred by her without his con-

sent (1412 BGB); such obligations as well as the costs of judicial proceedings against the husband insofar as the husband has not to bear them (1416 BGB), and liabilities on ground of torts committed by her or incurred by her in connection with her separate property, must be made good out of her separate (reserved) property (1415 BGB). If a liability which is chargeable on the wife's reserved property is paid out of the property administered by the husband, the wife has to reimburse it (1417 BGB).

The termination of the administration by the husband of the property of the wife may be applied for by the latter if she is prejudiced by his administration, or if he fails to maintain his wife and children, or if he is interdicted or permanently absents himself (1418 BGB). *Ipso facto* is the administration and usufruct of the husband terminated if he is declared bankrupt (1419 BGB), or by judicial declaration of his death (1420 BGB). Upon termination of his administration, the husband has to deliver to the wife her property and to render an account of his administration (1421 BGB). The husband may administer the wife's property so long as he has no knowledge of the termination of the administration (1424 BGB). If his administration comes to an end by the death of the wife, he shall do all things connected with the administration which do not suffer delay, until otherwise arrangements could be made by the wife's heirs (*ibid.*). If the administration by the husband of the wife's property is terminated before dissolution of marriage, the properties of the spouses become separated from each other, and the rules for the *régime* of separation of goods become applicable (1426 BGB). The husband has to bear the costs of the common household, but the wife has to participate therein in an adequate share (1427 BGB). The wife may retain her contribution to the household costs as security for the maintenance due from the husband to her and their children (1428 BGB), if there is danger that such maintenance will not be paid or if the

husband has been interdicted. The wife may not, unless expressly otherwise stipulated, claim the reimbursement of contributions made by her to the costs of the conjugal life (1429 BGB). The separation of goods is not valid as against third parties unless officially registered (1431, 1435 BGB).

The parties may regulate their property relations by marriage contract either before or after marriage (1432 BGB). The marriage contract must be executed in court or before a notary public (1434 BGB); as against third parties it is valid only if officially registered or if its contents are known to such third parties (1435 BGB). The parties may not choose as *régime* governing their property relations a foreign [13]) or ancient *régime* not in force in Germany (1433 BGB), but only one of the three recognized contractual *régimes,* viz. community of goods (1437—1518 BGB), community of acquisitions (1519—1548 BGB) and community of movables (1548—1557 BGB). The registration of the *régime* governing the property relations between the parties is effected in Marriage Property Registers (*Güterrechtsregister*) kept at the court (*Amtsgericht*) of the husband's domicil (1558 BGB). The registration is effected only upon application being made; generally both spouses must apply for registration (1560, 1561 BGB).

*Nullity of Marriage.*

6. The marriage is null in the following cases: —
   (a) if it has not been celebrated in the prescribed form (1324 BGB);
   (b) if either spouse was insane or under incapacity at the time of marriage (1325 BGB);
   (c) if the marriage has only been celebrated for the purpose of enabling the wife to bear the husband's name, and not for the purpose of consumating conjugal life [14]) (1325a BGB);

[13]) The marriage contract may, however, contain a reference to the law of the country where the spouses are domiciled (1433 II BGB).
[14]) Addendum made by the law of 23.11.1933. Art. 1.

(d) if one spouse lived at the time of marriage in a valid marriage with a third person (1326 BGB);
(e) if contracted between relatives within the prohibited degrees (1327 BGB);
(f) if contracted with an adulterer contrary to the law (1328 BGB);
(g) if contracted between Jews and German citizens of aryan blood (Law of 15.9.1935, § 1);
(h) if contracted between Jews and Jewish mongrels with only one Jewish grand-parent (§ 2, *ibid.*);
(i) if contracted contrary to the provisions of the Law for the Protection of the Health of the German People (Marriage Health Law) of the 18.10.1935 (*supra*), if the certificate of fitness for marriage (*Ehetauglichkeitszeugnis*) was obtained by false pretences or if the marriage was contracted abroad (§ 3).

In all above cases, the nullity must be decreed by the court (1329 BGB). If, however, the marriage has neither been celebrated in the prescribed form nor registered in the register of marriages, and the spouses have not lived together for more than three years, the marriage is deemed *matrimonium non existens* and is null without decree of the court (1324, 1329 BGB).

An action for decree of nullity may be brought by either spouse or by the government advocate (632, ZPO); in the cases marked c, g, h and i, *supra*, the action may be brought by the government advocate only.

Apart from nullity, the validity of the marriage may be challenged in any of the following cases: —

(a) if it was contracted without the required consent having been given (1331 BGB);
(b) if the plaintiff had not, at the time of marriage, the intention to marry (1332 BGB);
(c) if the plaintiff had at the time of marriage such error as to the personality or the qualities of the defendant that he would have had reasonable grounds for abstaining from the marriage (1333 BGB);

(d) if the plaintiff was induced to the marriage by fraud of the defendant or with the latter's knowledge, unless the fraud related only to the state of the defendant's property (1334 BGB);

(e) if the plaintiff was compelled to the marriage by duress (1335 BGB).

The validity of the marriage in the above cases is challenged by instituting an action to that effect (1341 I BGB). The action may not be instituted after six months from the date the plaintiff got knowledge of the cause of action (1339 I BGB), nor is a party who would otherwise have a right of action entitled to institute it if he or she has ratified the marriage, expressly or impliedly, after having got knowledge of the cause of action (1337 BGB). If the action was instituted and the case proved, the marriage is decreed null *ab initio* (1343 BGB).

Rights of third parties cannot be affected by the decree of nullity, unless the nullity was known to the third party (1344 BGB).

In case nullity is decreed on ground of the default of one party, the other party has certain rights with regard to maintenance and alimony analogous to those a party to a divorce has against the party declared guilty of the divorce (1345, 1346 BGB).

*Dissolution of Marriage.*

7. The marriage is dissolved by the death of either spouse or by judicial decree (1564 BGB). Divorce may be decreed by the courts on any of the following grounds: —

(a) adultery, committed by the defendant without consent of the plaintiff (1565 BGB);

(b) the intention of defendant to murder the plaintiff (1566 BGB);

(c) the desertion of the plaintiff by the defendant during one year with malicious intention or in contravention of an order of the court to resume conjugal life (1567 BGB);

(d) grave failure to comply with the matrimonial duties,

or immoral and dishonest conduct, resulting in such disturbances of the mutual relations between the spouses that the plaintiff cannot reasonably be expected to continue conjugal life (1568 BGB). Under this provision have been held to fall grave assaults and even slight ones, if they have been committed repeatedly [15]); insults [16]); default in paying maintenance and caring for the children [17]); unnatural sexual demands or passions, and extramatrimonial sexual relations [18]); drunkenness and criminality [19]);

(e) mental disease of the defendant if it has lasted for three years and if there is no prospect of recovery (1569 BGB).

The right of action in cases a, b, c and d, is lost by condonation (1570 BGB). It must be exercised within 6 months from the date on which the plaintiff got knowledge of his or her cause of action, unless the spouses live separated from each other (1571 BGB).

The judgment of the court must mention that the divorce was decreed on ground of the defendant's fault. If the defendant has filed a counterclaim, and the court finds it successful, both parties must be declared in fault. The same rule applies if the defendant had a right of action for divorce against the plaintiff which he (or she) cannot exercise by reason of prescription or condonation (1574 BGB).

The divorced wife retains even after divorce the husband's name, unless she prefers to resume her former name. If divorce was decreed on the fault of the wife alone, the husband may forbid her to retain his name (1577 BGB). But a prohibition of this kind is recognized and enforced against the wife only if it has been made by the husband

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15) RG JW 1907, 711.
16) RG JW 1910, 655.
17) RGZ 130, 178.
18) RG JW 1905, 395.
19) Cf. for further instances: Kommentar der Reichsgerichtsräte at § 1568; Wieruszowsky 30, 31.

submitting to the officer who had celebrated the marriage, or, if the marriage had been celebrated abroad, to the registry officer of his domicil, or, if he has no German domicil, to the *Standesamt* I at Berlin, a notarial deed to this effect[20]).

If the husband has been declared guilty of the divorce, then he must pay alimony to the wife unless she has sufficient income of her own; if the wife has been declared in fault, then she has to maintain her husband provided he is unable to maintain himself (1578 BGB). In case the guilty husband is unable to pay to the divorced wife the adequate alimony, the minimum of alimony which he can pay will be fixed on equitable principles with regard to the other obligations he has to fulfil (1578 BGB). Alimony is paid in cash instalments or, if the payee requests with good reason, in a lump sum (1580 BGB). In general, the amount of alimony depends on the needs of the payee (1610 BGB). Arrears of alimony may be claimed, as may be damages for non-payment (1613 BGB). In case of the death of the payee, the obligation to pay ceases, but the payor has to bear the funeral expenses of the payee (1515 BGB). Alimony is not payable to the wife if she marries again (1581 BGB). In case of the death of the payor, alimony remains still payable by his (or her) heirs who may, however, reduce the amount thereof to one half of the amount paid by the deceased (1582 BGB). The party who has obtained a decree of divorce on ground of the other party suffering from mental disease, is bound to maintain the insane as if he or she had been declared guilty of the divorce (1583 BGB). Donations made before or during marriage to the party who has been declared guilty may be reclaimed by the other party (1584 BGB).

Children are given into the custody of the party who has not been declared guilty of the divorce; if both parties have been declared guilty, sons above the age of 6 years

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20) Regulations of 31.5.1934 R. G. Bl. I 427, § 8.

are given into the custody of the father, sons below the age of 6 years and daughters into that of the mother (1635 BGB). The right of the father to represent the children in the courts is not affected by the divorce *(ibid.)*. The father is under liability to maintain the children (1601 BGB), but the mother has to contribute to their maintenance out of her own income (1585 BGB). If the children are in the custody of the mother, such contribution may be retained and disposed of by her *(ibid.)*.

If a spouse has a right of action for divorce, he or she may sue for judicial separation (1575 BGB). The court must, however, on application by the respondent, decree the divorce *(ibid.)*. The effects of judicial separation are the same as those of divorce, with the exception that the parties may not contract new marriages (1586 BGB).

Jurisdiction in matrimonial causes has the *Landgericht* at the husband's domicil (606 ZPO). If he has no domicil in Germany, the court at his place of residence has jurisdiction; if he is resident abroad, but of German nationality, jurisdiction is vested in the court of his last German domicil; if he has never been domiciled in Germany, then the *Landgericht* of Berlin exercises jurisdiction (3, 15, 16, 606 ZPO). If the husband is not of German nationality, no court other than that of his German domicil has jurisdiction, provided it has jurisdiction also under his national law [21]). An exception to this rule will be made if the wife is of German nationality and the husband has lost his German nationality whether he has acquired another or not, or if both spouses have lost German nationality and did not acquire any other nationality (606 II ZPO); in this case the parties may institute the action at the court of their German domicil or of their last German domicil, as the case may be *(ibid.)*. If the wife is of German nationality and the husband cannot under the provisions of German law apply to any German court, the wife may bring an action for a decree

21) Raape 393, Wieruszowski 38.

of nullity of the marriage at the court of her last German domicil (606 III ZPO).

The parties may appoint counsels to represent them in the court; the counsels must produce special powers of attorney for the matrimonial suit (613 ZPO).

The action for divorce should be preceded by a hearing for the purpose of reconciliation before the *Amtsgericht* (606–610 ZPO).

The government advocate may intervene in actions for divorce or nullity (607, 632, 634 ZPO).

An action for divorce may be brought jointly with an action for restitution of conjugal life (615 ZPO).

Judgment in default is not admissible in matrimonial causes (618 V ZPO), nor may judgment be given solely on ground of the defendant's admission (617 I ZPO).

Interim orders may be given by the court for separation of the spouses, alimony and maintenance, custody of the children, and the like (627 ZPO).

The case may provisionally be struck out by the court if there is some prospect of reconciliation between the parties (620, 621, ZPO). The action must be renewed within two years (*ibid.*).

*Private International Law.*

8. Marriage is governed by the *lex patriae* of each of the spouses (13 I EBGB); the form of a marriage contracted in Germany depends, however, on German law (13 II EBGB).

The mutual rights and duties of husband and wife who are of German nationality are governed by German law even if they are domiciled abroad; the same rule applies if the husband has lost, but the wife retains German nationality (14 EBGB). The property relations between the spouses are governed by German law if the husband was, at the time of celebration of the marriage, German citizen; otherwise they are governed by the law of the country to which the husband at the time of the celebration of the marriage belonged (15 EBGB.) Foreign *régimes* which might thus have force

in Germany are deemed to be included in the marriage contract; but they are valid only insofar as third parties are not thereby prejudiced (16 EBGB).

Divorce is governed by the national law of the husband at the time the action was instituted (17 EBGB). A fact which occurred at the time when the husband belonged to another state may be pleaded as ground for divorce only if recognized as such also by the laws of that state (*ibid.*).

German law is applicable if the wife is, at the time the action is brought, of German nationality, even if the husband is not, provided divorce is not admissible under the national law of the husband [22]).

The German courts may not decree divorce or judicial separation on ground of foreign law unless such divorce or judicial separation could be decreed under German as well as under the foreign law (17 IV EBGB).

Foreign judgments are not recognized in Germany in any of the following cases (328 ZPO): —

(a) if the foreign court had, according to German law, no jurisdiction;

(b) if the defendant is a German citizen and was not properly summoned;

(c) if the judgment is contrary to the provisions of the EBGB as to private international law (cf. *supra*);

(d) if the recognition of the judgment would be contrary to German legislation or public policy;

(e) if German judgments are not recognized in the foreign country.

Marriages may be contracted abroad before German consular officers [23]), if one of the parties is of German nationality.

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22) Law of 24.1.1935, R. G. Bl. I 48.
23) Law of 4.5.1870, R. G. Bl. 590, § 10.

# GREECE

*The Sources of Law.*

1. The law in force in Greece is the Roman-Byzantine common law, subject to subsequent legislation. The Ionian Islands have a Civil Code (of the 1.5.1841) of their own. The law of marriage is governed in Greece by the religious laws of the different religious communities, of which the Greek Orthodox Church is the most important. The law of divorce has, however, been codified in an Act of the 24.6.1920, and the procedure in divorce suits is governed by the Code of Civil Procedure of the 28.8.1924. A so-called "Civil Law" of the 29.10.1856 contains, *inter alia,* some provisions on private international law.

*Nationality.*

2. A foreign wife acquires by marriage with a Greek citizen Greek nationality, and a Greek wife loses her nationality by marrying a foreigner (Art.14, Civil Law of 29.10.1856).

*Dissolution of Marriage.*

3. Divorce cannot now be decreed in Greece except on ground of the Divorce Act of the 24.6.1920 and by means of an irrevocable judgment of the civil courts (§ 1).

The grounds of divorce are :

(a) adultery and bigamy, except where the plaintiff had consented to the adultery or bigamy ; the court may dismiss the action if the defendant is the husband and there were "sufficient reasons" for his adultery (§ 2);
(b) attempts of, or intention to, murder (§ 3);
(c) malicious desertion since not less than two years (§ 4);
(d) invincible aversion between the spouses by default of the defendant (§ 5);
(e) mental disease or leprosy (§ 6);
(f) that the defendant conceals himself or herself (§ 7);
(g) inability of sexual intercourse during 3 years (§ 8).

Except in the three last-mentioned cases, the right of action is extinguished by condonation (§ 9). In the cases of adultery or bigamy, attempts of murder, and invincible aversion, the action is barred one year after the cause of action had arisen (§ 10).

An action for divorce may be based on several causes (§ 11). The court must declare the defendant or, as the case may be, the plaintiff to be the party in default when divorce is decreed (§ 12).

Upon divorce being decreed, the wife recovers her maiden name (§ 13). The wife recovers also her dower, but gifts received before marriage remain with the husband. Any agreements to the contrary are void (§ 14). The husband, if in default, is liable to maintain the wife and children and, if the court so directs, to pay damages (§§ 15—18).

The law of divorce of Mohamedans is not affected by the provisions of the Divorce Act of the 24.6.1920, but is still governed by Mohamedan Religious Law (§ 20, and Art. 4 of Law 147 of 1914).

The courts exercising jurisdiction in divorce matters are the district courts (§ 683, Code of Civil Procedure). They have power to make interim orders for the maintenance of the wife and children, provisional separation of the spouses, and similar matters (*ibid.*, 684). Greek Orthodox Christians must first apply for divorce to the Bishop who shall try to reconcile them. If he does not succeed, the matter is forwarded by him to the civil court for further action (Art. 72, Law of 31.12.1923).

*Private International Law.*

4. The law of marriage and divorce binding Greek nationals abroad is the Greek law (§ 4, Civil Law af 29.10.1856). Legal acts done by Greek nationals abroad are valid in Greece if they correspond either to the Greek law or to the law of the country where they were done (§7, *loc. cit.*).

Whether foreign judgments in matters of marriage and divorce will be recognized in Greece is doubtful. Under § 860, Code of Civil Procedure, it seems that where the judgment debtor is a foreigner, the judgment will be recognized and enforced ; but where the judgment debtor is a Greek, it will be enforced only if the court is satisfied that the evidence submitted was sufficient to support the judgment (cf. Bergmann II 203 and Suppl. III 63).

Foreigners residing in Greece are subject to the jurisdiction of the Greek courts in matters of divorce (§ 686, Civil Procedure Code).

# HUNGARY

*The Sources of Law.*

1. The marriage law of Hungary is mainly based upon a law enacted in 1894 (XXXI. *Gesetz-Artikel,* 1894) which has been amended in the meantime only with regard to rules of procedure (GA I, 1911; GA VIII 1925 and GA XXXXIV, 1930) and with regard to International Conventions which were ratified by Hungary (GA XXI and XXII, 1911) [1]).

*Promise of Marriage.*

2. The law of 1894 deals in its first chapter with the promise of marriage. The promise of marriage is not actionable (§ 1), and any stipulation between the parties that the party refusing to contract the marriage shall be liable in any manner whatsoever, is null and void (§ 2). A party committing a breach of the promise without reasonable ground is liable to return to the other any donations he or she has been given in contemplation of the marriage and to refund to him or her any expenses incurred for the purpose of the marriage; the same liability rests on the party who has given the other party reasonable ground to refuse marriage (§ 3). Any right or claim under the foregoing provision can be assigned or bequeathed only if the entitled party himself has already instituted judicial action therefor (§ 4). No action can be instituted after one year from the breach of the promise of marriage (§ 5).

*Capacity to Marry.*

3. Persons under the age of 12 years, lunatics and interdicted persons cannot contract marriage (§§ 6, 15, 127). Males under the age of 18 and females under the age of 16 cannot contract marriage unless dispensation is granted by the Minister of Justice (§ 7). Minors under the age of 20 cannot contract marriage except with the consent of their parents and guardians (§ 8). The consent of the father is sufficient for a legitimate child, the consent of the mother for an illegitimate one; in case of absence

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1) A draft civil code comprising the whole civil law has been published, but not yet enacted. It mainly reproduces the law hitherto in force.

of the parents or their refusal to consent, the *Vormundschaftsbehörde* may grant the consent (§ 9) after hearing the minor and bearing in mind the minor's interests only (§ 10). Even if the guardian consents, the minor may not marry without consent of his or her parents (§ 16). A person against whom judicial action has been started with a view to interdicting him for reason of lunacy or deaf-and-dumbness, may not marry if either a provisional guardian has been appointed, or sequestration has been ordered, or judgment of interdiction has been given even if such judgment is not yet final (§ 14).

*Prohibited Marriages.*

4. Marriages are prohibited :—
(a) between descendants and ascendants ;
(b) between brothers and sisters ;
(c) with the descendants of one's brothers or sisters ;
(d) with descendants and ascendants of one's husband or wife (§ 11).

Marriages are further prohibited between first cousins, but dispensation from this impediment may be granted by the Minister of Justice (§ 17). One may not marry his adopted child nor the descendants of such adopted child (§ 18). A guardian may not marry his ward nor the descendants of his ward, so long as the guardianship lasts (§ 19).

A married person cannot contract marriage before dissolution or annulment of his or her previous marriage (§ 12). If the previous marriage is null and void, he or she may not contract a new marriage before nullity is judicially decreed (§ 21). Persons who conspired to kill the husband or the wife of one of them in order to marry each other, cannot contract marriage (§ 13), nor can one marry the person who has been convicted of murder or attempted murder of one's husband or wife, except upon dispensation granted by the *Reichsverweser* upon advise of the Minister of Justice (§ 23). Marriage is also prohibited between adulterers, except if the *Reichsverweser*

upon advise of the Minister of Justice grants dispensation (§ 20).

A woman may not marry before expiration of 10 months from the day of dissolution of her previous marriage, unless she has in the meantime given birth to a child. The Minister of Justice may grant dispensation (§ 24).

*Solemnization of Marriage.*

5. The celebration of marriage must be preceded by publication of banns (§ 28). If no banns have been published, marriage may not be celebrated (§ 27), except if dispensation is granted by the *Verwaltungsbehörde,* or if the civil officer is satisfied that one of the parties suffers from a mortal sickness and that there are no impediments prohibiting the marriage (§ 36). In case of default, the civil officer is liable to penalties (§§ 121 *et subs.*), but the validity of the marriage is not affected (Almási 250). Banns must be published during a period of not less than three days (§ 55 GA XXXIII, 1894), at the domicil or the place of birth of the parties (§ 47, *loc. cit.*); if there is no such domicil or place of birth, publication takes place in the City of Budapest (§ 48, *ibid.*).

The marriage must be celebrated in civil form (§ 30). Civil officers competent to celebrate marriages are: registry officers, municipality clerks, certain judges, mayors, and consular officers (§ 29); the marriage is presumed to have been celebrated before a civil officer, if the person celebrating it was, in the opinion of the public and of the spouses, believed to be a civil officer duly appointed (§ 30). The marriage is celebrated publicly in the office rooms therefor designed, but the civil officer may for urgent causes celebrate marriages in chambers or at places other than the said office rooms (§ 37).

Marriage is contracted by the declaration before the civil officer of both spouses personally that they marry each other. Such declaration must be made in the presence of two witnesses. The declaration shall be absolute and not subject to any condition (§ 39). The witnesses must

be over 16 years of age (§ 40). The declaration must be given by the parties of their free will ; duress, mistake, or false representation may render the declaration void (§ 38, and cf. *infra*).

*Personal Rights and Capacities of Husband and Wife.*

6. By contracting marriage the wife attains majority (if under the age of 20), even if the marriage is void or voidable (GA No. 23 of 1874, § 2). She obtains the name of her husband (arg. § 94), his nationality (GA No. 50 of 1897, § 6) and his domicil (GA No. 22 of 1866, § 7).

The matrimonial domicil is fixed by the husband with the advise of the wife. The wife is bound to follow the husband and live with him, and is entitled to share the matrimonial domicil. But she cannot enforce such right other than by a divorce suit (K 6464/1926). The duty of the wife to follow the husband is restricted within reasonable limits ; she need not follow him to another continent (K 657/1906). Besides, the husband has no authority and power whatsoever over or towards the wife (Almási 256).

The wife is deemed agent of the husband for the purpose of managing the household (K 1937/1917). The burden of proof that she acted in her own name and is liable herself lies on the husband (*ibid.*). The husband determines the amount of the costs of the household, and the court will not interfere with the husband's discretion upon application of the wife (*ibid.*). Generally speaking, the husband is in the first place charged with the household expenses (K 505/1903).

The husband is further bound to maintain the wife and the family. The wife may sue for maintenance *in natura* (i. e. cloth, food, etc.) according to the financial position of the husband and according to her needs, but regardless of the property and income of the wife (K 4831/1913, K 6/1903).

After separation or pending action for divorce the wife may sue for alimony (in cash), provided the separation

has not been brought about due to her default (K 4638/1922), but due to the default of the husband or third persons (K 1996/1920). In case of separation on ground of mutual consent, the husband is liable for alimony (K 7443/1928). No alimony is payable after separation if the incomes of the wife are sufficient for her maintenance (K 4949/1920); but she cannot be compelled to earn her livelihood if she has not already done work and earned money before separation (K 5256/1927).

Spouses may enter into a contract regulating alimony payments in case of separation; such contract must be executed in notarial form (GA No. 2 of 1886, § 22).

Although it has formerly been the law that the husband can never claim maintenance from the wife, the courts recently adopt the view that an exception is to be made in favour of the husband who has no means as against his wealthy wife (Almási 259; K 8040/1926).

*Effect of Marriage on Property of Husband and Wife.*

7. Unless the spouses enter into a marriage settlement, the marriage does not affect the property relation between them; each of them retains his or her respective property and all rights and liabilities incident thereto without concurrence of the other (K 2213/1921).

Excepted from this general rule are only those movables (as furniture and the like) which are subject to the joint use of both spouses (K 9124/1927).

The wife may entrust the husband with the administration of her property. He is, in such cases, not bound to render accounts as to the incomes from such property. The wife may, *implicite* or expressly, revoke the authorisation of her husband to administer her property (Almási 261). Donations made by one spouse to the other become separate property of the donee (418 G.E.). But the spouses may during marriage acquire joint property (419 G.E.).

By contracting marriage, each spouse becomes entitled to one half of the amount by which the value of the separate

property of the other spouse is increased as from the day of marriage until the day of dissolution of marriage or judicial separation (*Gemeinerrungenschaft* ; Almási 262). This right is based on the irrebuttable presumption of law that the increase of the value of the property of one spouse is due to the cooperation of the other (K 5373/1926). Such surplus value is found by deducting the value of the property at the time of marriage from that at the time of dissolution of marriage, after deduction of all debts and charges incumbent thereon ; unless the contrary is proved, it is presumed that the property was acquired during marriage (K 3307/1920). The nobility and similar higher classes of the population (scientists, superior officers, artists etc.) are excluded from claiming this right, regardless of their financial position (K 7081/1926), unless they have reserved this right to themselves by contract (K 2450/1926).

The wife has, moreover, a special claim against the husband for reward for her conjugal fidelity (Almási 264), unless the marriage is dissolved on ground of her default (K 658/1911). The amount of this claim was fixed by the Bankruptcy Law of 1840 (GA 22) and is, in the corresponding exchange rates of today, still enforced by the courts accordingly. The reward thus payable to the wife amounts to 420 *Gold-Kronen* for the high nobility, 210 *Gold-Kronen* for the gentry, notabilities or freemen, and 42 *Gold-Kronen* for country people. In case of a second marriage only half the amounts are due ; in case of a third marriage, only one fourth. The reward is payable upon dissolution of the marriage and is not subject to prescription (Almási 265). The wife may waive this claim in favour of the husband (*ibid.*).

Instead of the reward described above which is payable under the law, the husband may promise the wife a reward in a larger amount, and *vice versa,* payable upon dissolution of marriage (*ibid.*). A stipulation to the effect

that the contractual reward shall be payable only upon dissolution of marriage by the death of either party, is valid (K 3377/1906). But if for any reason the contractual reward does not become payable, the wife may still claim the reward provided for by law (K 5952/1894).

A dower may be given to the husband by the wife or her relatives; if the dower has been promised to the husband, he may sue for it (K 1509/1925), but no action lies for a dower if no promise has been made. The dower is given to the husband as contribution to the marital expenses. He is entitled to the usufruct thereof, but is bound to return the dower upon dissolution of marriage (K 527/1905). In exceptional cases if the incomes from the dower and from the husband's property were not sufficient to meet the expenses of the household, the dower may be touched (K 3019/1925). During marriage no action lies for the return of the dower (K 128/1913) nor for accounts of its administration (K 2055/1909), unless otherwise expressly agreed upon between the parties (K 2180/1910 and 2033/1910).

Marriage settlements between the parties as well as contracts of sale, exchange, loan, hire, acknowledgment and assignment of debts, and donations without actual delivery, entered into between spouses, must be executed in notarial form (§ 23, GA No. 7 of 1886). Notarial form is required also for general powers of attorney given by one spouse to the other (*ibid.*). An undertaking by the husband, however, to pay the wife a certain sum of alimony or maintenance is enforced by the courts even if not executed in notarial form (K 1118/1920). If sought to be effectual as against third parties, the requirement of notarial form of contracts between husband and wife is never dispensed with (§ 21, GA No. 7 of 1886). Fraudulent transfers of property from the husband unto the wife, and *vice versa,* are voidable at the instance of a third party (K 2002/1926). Movable property is always presumed to belong to the husband and is not subject to

attachment by the wife's creditors (§ 48, GA No. 60 of 1881).

*Nullity of Marriage.*

8. Hungarian law distinguishes between void and voidable marriages. Void marriages are:—

(a) marriages not celebrated in civil form (§ 41);

(b) marriages of minors under the age of 12 years (§ 44);

(c) marriages between relatives within the prohibited degrees of consanguinity or affinity (§ 45);

(d) bigamous marriages (*ibid.*).

Voidable marriages are:—

(a) marriages contracted by minors under the age of 18 or 16, respectively (§ 51);

(b) marriages between minors under the age of 20 without the required consent (§ 52);

(c) marriages contracted under duress (§ 53);

(d) marriages contracted by mistake (§ 54);

(1) one party not knowing that he contracts a marriage;

(2) one party not knowing with whom he contracts marriage;

(3) one party not knowing that the other was incapable of fulfilling his conjugal duties;

(4) one party not knowing that the other was convicted of a felonious crime;

(5) the wife having been pregnant from somebody else at the time of marriage without the husbands knowledge;

(6) the former spouse of one of the parties to the marriage who has been declared and believed dead having reappeared without knowledge of the parties;

(e) marriages contracted under misrepresentation as to relevant facts (§ 55) if it can be assumed that if the real facts would have been disclosed the marriage would not have been contracted.

Even void marriages are deemed to be valid unless and until declared void by judicial decree (§ 46). Upon decree of nullity, the marriage is deemed as if never contracted (*ibid.*). Nullity may be sued for by either spouse, by the government advocate, or by a third party who proves that his rights depend upon the nullity of the marriage (§ 47). Voidable marriages may be annulled by motion of the interested spouse and, in case of marriages of minors under the age of 18, of the Minister of Justice (§ 56). Voidable marriages become good and valid for all purposes if, having been contracted by minors, marital life is continued by them after having attained majority (*ibid.*). The right of action is limited to one year from the day of obtaining knowledge of the voidability of the marriage (§ 57). In case action can not be taken for reason of duress or incapacity, the period of limitation does not run (§ 60).

No action for a decree of nullity lies after dissolution of marriage, neither in the case of void, nor in that of voidable marriages (§§ 49, 61). If no action to declare a voidable marriage null has been instituted within the prescribed period, or if the voidable marriage has subsequently been consented to or ratified, or the impediment dispensed with, the marriage is regarded as valid from the beginning and the voidability is deemed to have never existed (§ 62). The marriage cannot, however, be consented to or ratified or the impediment dispensed with, after action for a decree of nullity has been lodged (§ 66). Before the nullity is decreed, a voidable marriage is deemed to be valid ; upon the decree of nullity being issued, the marriage is deemed to have never been contracted (§ 67).

Action for a decree of nullity must be taken by the husband or the wife personally and may not be taken through an attorney (§ 69). As to the procedure, the rules applying to actions for divorce (cf. *infra*) are applicable (§ 72).

*Dissolution of Marriage.*

8. Marriage is dissolved: a) by the death of either spouse; (b) by judicial decree (§ 73).

The following are the grounds of divorce recognized in Hungarian law:

(a) adultery or unnatural sexual crime (§ 76);

(b) bigamy (*ibid.*);

(c) wilful and unjustifiable desertion for at least 6 months and refusing to reestablish the conjugal home (§ 74);

(d) attempt of murder or afflicting grave bodily harm (§ 78);

(e) conviction of a felony and sentence of death or at least 5 years imprisonment with hard labour (§ 79);

(f) serious wilful default in the discharge of the duties of marriage (§ 80), e. g. grave insult (K 1542/1898), malicious prosecution (K. 8242/1900), prodigality (K. 8546/1895), failure to maintain wife and children (K. 8630/1895), abstinence from sexual intercourse on the part of the husband (K. 5273/1927) or on the part of the wife (K. 9930/1906) etc.;

(g) inducing a child belonging to the family of the spouses to commit an immoral or criminal act (§ 80 b);

(h) unchaste conduct (§ 80 c);

(i) condemnation posterior to marriage for less than 5 years seclusion or hard labour (§ 80 d);

In the cases f, g, h, and i, divorce will be pronounced only if the court is satisfied that the conjugal relations between the parties are so that the continuance of marital life is impossible and cannot be expected from the plaintiff (*ibid.*). The action for divorce must be instituted by the spouse aggrieved who must prove one of the statutory causes. The court will not *ex officio* or by its own motion find any cause of divorce (Almási 268).

The right of action for divorce is barred by the consent of the spouse aggrieved to the act constituting the ground of divorce (§ 81), by the aggrieved spouse excusing such act expressly or *implicite* (§ 82), e. g. by resuming sexual

intercourse (K. 2709/1897), as it is also after expiration of 6 months from the day on which the aggrieved spouse obtained knowledge of the cause of action, except in cases of desertion (§ 83). This period does not run so long as the party aggrieved is prevented from filing an action by *vis major* or incapacity (*ibid.*). No action for divorce can be entertained after the expiry of 10 years from the time of committal of the act constituting the ground of divorce (*ibid.*), but such act may be given in evidence even after 10 years in an action for divorce based upon another cause (§ 84).

The petitioner must appear before the court, otherwise the action is struck out (Révay 236). If the respondent does not appear, the court cannot give a judgment in default, but must enter into the merits of the case (Révay 238). A counterclaim by the respondent to declare the petitioner guilty of the divorce is admissible; the court is bound to declare at least one of the parties guilty, but it may find both parties guilty, even if no counterclaim has been filed, in case the respondent has established that he or she would have had a cause of action against the petitioner (§ 85).

The proceedings start with an attempt of reconciliation to be made by the court if one party so desires (Révay 235). For this purpose the court may order separation from bed and board *pendente lite* (§§ 89, 99). The parties need not appear in person but may be represented by advocates especially authorized by notarial (or consular) power of attorney (GA No. 44 of 1930, § 54).

Divorce and nullity actions are heard in chambers, without admission of the public (§ 57, *loc. cit.*). The competent court for divorce and nullity actions is the court of the last matrimonial domicil (§ 639 ZPO). If the last matrimonial domicil was outside Hungary, the courts of Budapest are presumed to be competent (*ibid.*). The decrees of divorce and nullity are subject to appeal (Révay 238).

The marriage is deemed to be dissolved as from the day of delivery of the final judgment of divorce (§ 88).
The spouse declared guilty must return to the other any gifts he has been given during marriage or in contemplation of marriage either *in natura* or the value in cash (§ 89).
If the husband is declared guilty, and if the income of the wife is not sufficient for her adequate maintenance, he must maintain her according to his financial position and social rank, and, if the wife so requires, he must furnish security for fulfilling this obligation (§ 90). Under certain circumstances, the amount of such alimony may be enlarged from time to time by order of the court (§ 91), but it may never be reduced (K. 10065/1905). The parties are at liberty to agree between themselves upon the amount of alimony to be paid, and the wife may even waive all her alimony claims (§ 92). After the death of the husband, the alimony is payable by the heirs, but the latter may apply to the court for reducing the amount of alimony to the amount of the net income of the estate (*ibid.*). The liability for alimony ceases as soon as the wife contracts a new marriage (§ 93).
If the wife was declared guilty, she may not continue to bear the husband's name (§ 94). The court decides as to the custody and maintenance of the children (§ 95).
The court may order separation from bed and board either *pendente lite* (cf. *supra*) or upon special application of either spouse, if an action would lie for divorce (§ 104). The action for divorce may before delivery of judgment be changed into an action for judicial separation (*ibid.*). With regard to the property relations between the spouses, the decree of separation has the same effects as the decree of divorce (§ 105). Spouses judicially separated may resume conjugal life at any time they desire; if they notify the court accordingly, the decree of judicial separation ceases to have effect as from the date of such notification (§ 106). After expiration of

two years from the delivery of the decree of judicial separation, either spouse may apply to the court for the change of such decree into a decree of divorce (§ 107).

*Private International Law.*

9. The validity of a marriage contracted abroad depends, as regards age and capacity of either spouse, upon his or her national law, and in all other respects upon the national laws of both spouses, unless they refer back to another law, or Hungarian law directs otherwise (§ 108).

If a Hungarian citizen is marrying a foreign wife either in Hungary or abroad, Hungarian law applies except with regard to the impediments of marriage, even if he or she contracts the marriage abroad (§ 110). As regards the form of celebration, the validity of the marriage depends upon the laws in force on the place and at the time of celebration (§ 113), provided that in the case of a Hungarian citizen, banns have been published also in Hungary (§ 27).

In matrimonial causes, foreign judgments are of no effect in respect of a Hungarian citizen ; the jurisdiction of the Hungarian courts is exclusive (§ 114).

Hungarian courts will not assume jurisdiction in matrimonial causes over foreigners unless their judgments are recognized by the national laws of the foreigners (§ 116). But they will, *semble*, never apply foreign law in divorce actions (arg. § 115).

The property relations between the spouses and their personal rights and duties by virtue of the marriage depend upon the national law of the husband at the time of marriage (Almási 275, K 2013/1927). Contracts of marriage entered into by Hungarians abroad are valid. if valid either by Hungarian law or by the *lex loci contractus* (*ibid.*).

As between Hungary and Germany, Italy, Luxemburg, Netherlands, Portugal, Rumania and Sweden, the Hague Conventions as to the form of marriages (GA 21 of 1911) and dissolution of marriages (GA No. 22 of 1911) of June 12, 1902, apply even if contrary to the above described provisions of Hungarian law (§ 120).

# ITALY

*The Sources of Law.*

1. The Italian law of marriage and divorce is codified in the *Codice civile* of the 25.6.1865, but has been amended on ground of Art. 34 of the Lateranian Concordate of the 11.2.1929 by a Law of the 27.5.1929.

*Promise of Marriage.*

2. The promise of marriage does not create any legal duty, neither to contract marriage nor to do what has been stipulated for the case of breach of the promise (Art. 53, C. c.).

*Prohibited Marriages.*

3. Males may not contract marriages if they are below the age of 16, females may not contract marriages if they are below the age of 14 (Art. 1, Law of 27.5.1929). Sons below the age of 25 and daughters below the age of 21 shall not contract marriages without consent of the father; if the consent is refused, the marriage may be celebrated inspite of it, if the religious minister or the registry officer celebrating it thinks fit (Art. 3, *loc. cit.*, repealing Arts. 63–67, C. c.).

Marriages are prohibited : –

(a) with an already married person (Art. 56, C. c.);

(b) between ascendants and descendants, whether legitimate or illegitimate, brothers and sisters, uncle and niece, nephew and aunt, and the respective relations of one's husband or wife (Arts. 58, 59, C. c.);

(c) between the adoptive parent and the adopted child or the latter's descendants, between persons who were adopted by the same parent, between adopted and natural children of the same parent, and between the adopted child and the husband or wife of the adoptive parent, and *vice versa* (Art. 60, C. c.);

(d) with persons interdicted for insanity (Art. 61, C. c.);

(e) with the convicted murderer (or convicted of attempt of murder) of one's husband or wife (Art. 62, C. c.).

Most of these impediments may be dispensed with by the King (Art. 2, Law of 27.5.1929, amending Art. 68, C. c.).

*Solemnization of Marriage.*

4. Under the Law of the 27.5.1929, both civil and religious marriages are recognized. The validity of the religious marriage depends, however, on the registration in the civil marriage register (Art. 5, *loc. cit.*).

The celebration of the marriage shall be preceded by publication of banns at the places of domicil of both parties on two subsequent Sundays (Arts. 70—72, C. c.). Application for publication of banns must be made by both parties either personally or by especially authorized attorneys (Art. 73, C. c.) and, if the marriage is to be celebrated in religious form, also by the celebrating religious minister (Art. 6, Law of 27.5.1929).

The application is made to the civil registry officer who has, within three days after banns have been published, to inform the religious minister in writing that there are no impediments to a marriage being celebrated with validity under the civil law, or, as the case may be, that objections have been made to the celebration of the marriage (Art. 7, Law of 27.5.1929).

The King or the authority appointed by him (the government advocate[1])) may grant dispensation from publication of banns if sufficient reason is shown (Art. 78, C. c.). If the marriage is not celebrated within 180 days, banns must once more be published (Art. 77, C. c.).

Objection against celebration of the marriage must *ex officio* be made by the government advocate if he knows of impediments to the marriage (Art. 87, C. c.). Objection may be made by the ascendants of the proposed spouses and other interested persons (Arts. 82—86, C. c.). The marriage may not be celebrated until the objection has been disposed of by the court (Art. 90, C. c.). Opponents other than ascendants of the parties or the government advocate may be liable in damages if the objection is dismissed (Art. 91, C. c.).

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1) Royal Order of 30.12.1929, Rabel 1931 pg. 807.

The marriage is celebrated in religious form according to the rites of the respective church or community, but the religious minister must draw the attention of the spouses to the civil effects of the marriage and read over to them the relating provisions of the Civil Code (Art. 8, Law of 27.5.1929).

A marriage certificate is given by the religious minister and a copy thereof served on the registry officer who shall, if all formal requirements have been complied with, register the same in the civil marriage register (Arts. 9, 10, *loc. cit.*). If a marriage celebrated in religious form has not been registered in the marriage register, any interested person may subsequently apply for registration, and such registration shall be effected unless the requirements of the law have not been complied with at the time of marriage (Art. 14, *loc. cit.*).

Marriages may be registered although there was an impediment to the marriage and although banns have not been published, provided that : —

(a) none of the spouses was already married at the time of the celebration,

(b) the spouses have not celebrated their marriage elsewhere,

(c) none of the spouses was interdicted for insanity (Art. 12, *loc. cit.*).

The celebration of the marriage in civil form is made in public in the town-hall of the domicil of either spouse (Art. 93, C. c.). The parties and two witnesses must appear, and each of the parties has to declare that he or she will marry the other, whereupon the registry officer declares them bound by marriage (Art. 94, C. c.). A certificate of marriage is forthwith issued and registered (*ibid.*).

The registry officer may refuse the celebration or registration of a marriage on any ground recognized by law (Art. 98, C. c., Art. 15, Law of 27.5.1929). Against

such refusal, the parties may make complaint to the court which shall decide the matter after hearing the government advocate. An appeal lies against the decision of the court to the court of appeal (Art. 98 II, III, C. c.).

The provisions of the Law of the 27.5.1929 are intended and applicable only to Roman-Catholic marriages. With regard to Non-Catholic religious marriages, a law has been enacted on 24.6.1929 allowing marriages to be celebrated in religious form by Non-Catholic religious ministers, provided the religious ministers have been authorized to celebrate marriages by the Ministry of Public Worship and Education, and provided all requirements of the law for civil marriages are complied with [2]).

*Rights and duties of Husband and Wife.*

5. The spouses are bound to live together in conjugal community, to be faithful to, and to support, each other (Art. 130, C. c.). The husband is the head of the family; the wife bears his name and follows him wherever he thinks fit to take up his domicil (Art. 131, C. c.). Thus, the wife has the domicil of her husband until and unless she is judicially separated from him; in case of the husband's death, she retains his domicil until she takes up a new one (Art. 18, C. c.).

A foreign woman obtains by marriage with an Italian citizen Italian nationality; she retains this status even as widow unless she has a foreign domicil and acquires thereby foreign nationality. If a foreigner is naturalized as Italian citizen, his wife acquires Italian nationality if she has the same domicil as her husband. An Italian woman loses by marriage with a foreigner Italian nationality if she acquires the nationality of her husband. After dissolution of the marriage, she may re-opt for Italian nationality if she has, or takes up, her domicil in Italy. The same rule applies if an Italian husband acquires during marriage another nationality (Law of 13.6.1912 as amended on 10.9.1922).

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2) Cf. Bergmann Suppl. II 113 *et subs.*

The husband is under liability to maintain the wife, to protect her, and to let her live with him, and to grant her everything required for her adequate livelihood (Art. 132 I, C.c.).

If the husband has no means, the wife is under liability to maintain him (Art. 132 II, C. c.).

The liability of the husband to maintain his wife comes to an end if the wife has deserted her husband without good reason and refuses to return to him (Art. 133, C. c.).

Under Arts. 134 and 135 of the *Codice civile,* the wife was restricted from disposing of her property and appearing before the courts without consent of her husband; these restrictions have now been abolished (Law of 17.7.1919).

*Property Relations between Husband and Wife.*

6. The effects of marriage on the properties of husband and wife are regulated by agreement between the spouses and by the law (Art. 1378, C. c.). So far as they are regulated by the law, the parties may not by any agreement derogate from the rights and duties respectively conferred on them (Art. 1379, C. c.). For example, agreements to change the provisions of the law for succession and inheritance are void (Art. 1380, C. c.). The parties may not submit to local custom or to foreign law (Art. 1381, C. c.).

The husband is entitled to administer the dower of the wife (Art. 1399, C. c.). The dower is such property as was brought into marriage by or on behalf of the wife as contribution to the marital expenses (Art. 1388, C. c.). The wife may declare her present and/or future property as dower (Art. 1389, C. c.). After marriage the dower may not be enlarged (Art. 1391, C. c.). After the death of the wife, the dower becomes the property of her heirs, subject to such rights of the surviving husband as may be stipulated in a marriage contract (Art. 1398, C. c.). The dower may not be alienated nor may the rights of the wife thereto be assigned, except if upon joint application of both

spouses the court consents to such alienation or assignment (Art. 1405, C. c.). But the parties may in the marriage contract stipulate that the dower may be mortgaged (Art. 1404, C. c.). Any disposition of the dower without consent of the court or without being provided for in the marriage contract is void (Art. 1407, C. c.).

The husband need not give security for his administration (Art. 1400, C. c.), but he is responsible like every usufructuary for any devaluation caused by his negligence (Art. 1408, C. c.).

If the dower consists of movables the value of which has been agreed upon in a marriage contract, the husband becomes owner of the movables and has to return only their value (Art. 1401, C. c.). If the dower consists of immovables, or movables not mentioned in a marriage contract, then the husband has to return it *in specie*, immediately after dissolution of the marriage (Art. 1409, C. c.). The payment of the money worth of the dower in the first mentioned case cannot, however, be claimed from the husband but one year after the marriage was dissolved (Art. 1410, C. c.). The husband need not account for the profits lawfully made by him out of the dower (Art. 1413, C. c.), nor is he responsible for loss and damage not caused by his default (Art. 1411, C. c.).

If the payment of a dower has been stipulated and the marriage has lasted for more than ten years, the wife or her heirs may, after dissolution of the marriage, claim from the husband the refund of the dower, even if they cannot prove that the dower has actually been paid (Art. 1414, C. c.).

If the marriage was dissolved by the death of the wife, her heirs may claim interest on the dower from the day of her death (Art. 1415, C. c.). If the marriage was dissolved by the death of the husband, the wife has the option either to claim the refund of the dower at once or to be paid interest thereon and maintenance for one year (*ibid.*).

The wife may bring an action for separation of her property if the administration of the husband is such that she has reasonable ground to fear that he will not be able to refund it to her (Art. 1418, C. c.). In case of judicial separation from bed and board, the court may likewise order the separation of the wife's property (*ibid.*). After separation of her property, the wife has to contribute to the costs of the household and of the education of the children (Art. 1423, C. c.). The wife is not in any way restricted to administer her property after separation (Art. 1424, C. c.), but she may not dispose of the dower without consent of the court (*ibid.*).

Property of the wife other than the dower are administered by herself (Art. 1427, C. c.), unless she appoints her husband administrator on such terms and conditions as she thinks fit (Art. 1428, C. c.).

Marriage contracts may be entered into between the parties to regulate the particulars of their mutual relations, but in order to be valid, they must be executed before marriage in notarial form (Art. 1382, C. c.). After marriage, such marriage contracts may neither be made nor amended (Art. 1385, C. c.).

Community of goods may not be contracted between the spouses; they may, however, contract that all acquisitions made by either of them during marriage shall become common property (Art. 1433, C. c.). In this case, the husband administers the common property, but he may not dispose of it without consideration (Art. 1438, C. c.).

*Nullity of Marriage.*

7. A decree of nullity may be applied for in the following cases :—

(a) if the marriage was celebrated although impediments provided for by the law subsisted at the time of celebration (Art. 104, C. c.);

(b) if the marriage was celebrated by a non-competent officer or in absence of witnesses (*ibid.*);

(c) if the applicant spouse did not freely consent to the marriage or believed to marry somebody else (Art. 105, C. c.);

(d) if the respondent spouse is apparently and permanently impotent (Art. 107, C. c.).

A decree of nullity may further be granted upon application of the former husband or wife of one of the spouses (Art. 113, C. c.), or upon application of the ascendants whose consent to the marriage was required, but was not given (Art. 108, C. c.). In the latter case, the right of action is barred six months after the marriage (Art. 109, C. c.).

In cases (a) and (b) mentioned above the action may be brought by either spouse, their ascendants, the government advocate, or any other interested person (Art. 104, C. c.).

An action for nullity may not be brought by the government advocate after the death of either spouse (Art. 114, C. c.).

The court may order separation of the spouses *pendente lite* (Art. 115, C. c.). Null marriages contracted *bona fide* have all legal effects of a valid marriage; if only one of the spouses was in good faith, such legal effects are only brought about in respect of this spouse and his or her children (Art. 116, C. c.).

*Dissolution of Marriage.*

8. Marriages can be dissolved only by the death of one of the spouses (Art. 148, C. c.). But in the cases provided for by the law either spouse may bring an action for judicial separation from the other (Art. 149, C. c.). The following are grounds for such separation, viz.:—

(a) adultery, malicious desertion, excesses, assaults, and insults; but the wife has no right of action by reason of the husband's adultery except if he has committed the adultery either in their own house or in an obvious manner elsewhere or in any other way which rendered it a grave insult to the wife (Art. 150, C. c.);

(b) conviction of the respondent spouse of a grave offence (Art. 152, C. c.);

(c) the wife may sue for separation if the husband without strong reason refuses to take up a permanent domicil (Art. 152, C. c.).

The right of action for judicial separation is barred by condonation ; if the action was already filed, it will in case of subsequent condonation be struck out (Art. 153, C. c.).

The court orders in the custody of whom the children shall be given and who shall be liable for their maintenance (Art. 154, C. c.). In case the court orders the children to be given into the custody of a third person, the parents are still entitled to control their education (Art. 155, C. c.).

The spouse in default loses his or her rights to the dower and all rights conferred on him or her by the marriage contract. If both spouses are in default, they both lose their respective rights, with the exception that the needy spouse may claim maintenance from the other (Art. 156, C. c.). No separation of the spouses may take place without judicial decree, merely by mutual consent (Art. 158, C. c.); but after judicial separation, the spouses may resume conjugal life without interference of the court (Art. 157, C. c.).

*Private International Law.*

9. The personal status and legal capacity of all persons as well as their family relations are governed by their national law (Art. 6, C. c.).

The forms of legal acts are regulated by the law of the place at which they are made (Art. 9, C. c.).

Notwithstanding the above provisions, no foreign law or judgment which is contrary to public policy and *bonnes moeurs* can derogate from the Italian laws (Art. 12, C. c.).

Foreign judgments are executed in Italy if the recognition has been ordered by an Italian court (Art. 10, C. c.).

The Italian court satisfies itself not only of the formal validity — but also of the merits of the judgment, and grants the recognition only if it corresponds with Italian law (Art. 941, Code of Civil Procedure, as amended by the Law of the 20.7.1919). Thus, foreign judgments of divorce *a vinculo matrimonii* are not recognised in Italy as contrary to Italian law and public policy [3]); an exception is made only in respect of judgments issued in states connected with Italy by the Hague Conventions [4]). Marriages contracted abroad are valid if contracted in accordance with the *lex loci celebrationis*, provided that each Italian spouse complied with the requirements of Italian law as to capacity and impediments to the marriage (Art. 100, C. c.). The marriage contracted by an Italian abroad must be registered in Italy within 3 months from his or her return (Art. 101, C. c.). The capacity of a foreigner to contract a marriage depends on his national law (Art. 102, C. c.).

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3) Judgment of the Court of Appeal of Milan of the 30.6.1927, Rabel 1929 pg. 337.

4) Bergmann Suppl. II 110 and Suppl. V 46.

# LATVIA

*The Sources for Law.*

1. The marriage law of the Republic of Latvia is governed by an Act of February 1, 1921, regulating capacity to, and form of, marriages, their dissolution and nullity, and containing some rules of procedure in matrimonial causes[1]). As to the effect of marriage on the property of husband and wife, the law differs in the two provinces of the territory. In Livonia and Courland, the Baltic Civil Code (BPR) of 1864 applies, whereas in Latgale the pre-war Russian law (*Svod Zakonov* Vol. X Part 1, ed. 1914) prevails. The relevant provisions of the pre-war Russian law will be found in the account of the marriage laws of Lithuania.

*Promise of Marriage.*

2. A promise of marriage is valid only in case of free mutual consent (2953 BPR). It may be annulled if made under duress (2981 BPR), in a state of drunkenness (2914 BPR) or on ground of a misrepresentation (2977 BPR). An *error personae* renders the promise of marriage void (2966 BPR). An agreement for liquidated damages or a penalty to become payable in case of breach of the promise is void and unenforceable (Berent 533). The promise of marriage will not be enforced by the courts, but the seduced bride may apply to the courts to be decreed divorced wife of her *fiancé* (158 BPR). The same right has every unmarried woman (other than a widow) who was seduced to sexual intercourse (160 BPR). In case of a breach of the promise of marriage, the party in default is liable to return the gifts received by him or her in contemplation of marriage (3717, 3718 BPR).

*Capacity to Marry.*

3. Males under the age of 18 and females under the age of 16 cannot contract marriage (§ 2). Marriages to be contracted by minors under the age of 21 must be consented to by the parents or guardians or, in case of default or absence, by the court (§ 3). Lunatics may not contract marriage (§ 4), nor may persons suffering from contagious sexual diseases (*ibid.*).

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1) The provisions of this Act are hereafter cited by the numbers of the articles only.

*Prohibited Marriages.*

4. Marriages are prohibited between descendants and ascendants, brothers and sisters (half-blood and whole-blood), step-parents and step-children, parents-in-law and children-in-law (§§ 5, 6).

Married persons may not contract a marriage before dissolution of the previous marriage (§ 7).

A wife may not contract marriage before expiration of 300 days from the day of dissolution of her previous marriage, unless she has in the meantime given birth to a child, or the new marriage is to be contracted again with her previous husband, or she is found by a Government physician not to be pregnant, or the court who pronounced divorce of the previous marriage consents to the celebration of the new marriage (§ 8, as amended by the Law of 19.6.1924).

The impediments aforesaid cannot be dispensed with (Berent 540).

*Solemnization of Marriage.*

5. Both civil and religious forms of marriage are recognized (§ 24). Every marriage must be preceded by publication of banns either in civil or in religious form (§ 11 and § 23, as amended by the Law of 7.3.1928). Banns are published at the respective domicils of both parties for a period of two weeks (§ 15). Before banns may be published, the parties must satisfy the civil or religious officer, as the case may be, that there are no impediments to their marriage and that the formal requirements of the law have been complied with (§§ 12, 14). During the period of publication of banns objection may be made against the marriage by any person whose rights are likely to be thereby affected or, in cases of proposed void marriages, by the *Prokureur* (Attorney General) (§ 17). If the parties insist, after objections being raised, upon the celebration of the marriage, the court decides as to whether the objections are good or not (§§ 18, 21).

A certificate is issued to the parties that banns have duly been published. Within two months from the date of such certificate, the marriage may be celebrated (§ 23).

The civil or religious officer may not celebrate the marriage if any impediments are known to him (§ 25). If no banns have been published, the validity of the marriage is not affected, but the officer in charge is liable to a fine (Regulations of the Minister of Justice No. 28804 of 16.11.1921). Publication of banns may be dispensed with if the husband is going to war or if the life of either spouse is in danger (§ 26).

The marriage is celebrated in the presence of both spouses and two witnesses (§ 27).

Civil marriages are celebrated in the registry office in public (§ 28). The registrar asks the spouses whether they intend to become husband and wife, and if they answer in the affirmative, he declares the marriage to be concluded (§ 29).

Religious marriages are celebrated in the form prescribed by the respective religious rites (*ibid.*). Every religious marriage must be registered with the registry office within two weeks (§ 30), otherwise the religious officer is liable to punishment.

6. The wife obtains by marriage the name and the rank of the husband (5 BPR).

*Personal Rights and Duties of Husband and Wife.*

The spouses are bound to live together and to support each other (7 BPR). Stipulations to the contrary are void, even if contained in the marriage contract (37 BPR).

The husband is entitled to choose the matrimonial domicil and to demand the wife to follow him (8 and 3070, BPR). But the wife need not follow him if he absconds to escape his liabilities or if he maliciously deserts her (3085 BPR). The wife may have a domicil separate from that of her husband (or in addition to the matrimonial domicil), if either the husband or the court consents thereto (Berent 547).

The wife acquires by marriage the nationality of the husband; after dissolution of marriage, a formerly Latvian wife may reopt for Latvian nationality if she

takes up her domicil in Latvia (§ 7, Law of 23.8.1919 as amended on 7.10.1921).

The wife may claim maintenance from the husband, regardless of whether she has sufficient income or not (9 BPR). If the husband is poor and the wife rich, the wife is under a duty to maintain the husband (8 BPR). Maintenance may be claimed by the wife only so long as she lives at the matrimonial domicil; if she has left it, the court will assess her alimony or maintenance only if the separation of the spouses was due to the default of the husband or to circumstances not under the control of the wife [2]).

The husband is the presumed attorney of the wife and may sue for her and in her name without special authorization (8 BPR), unless the court for strong reasons deprives the husband from such power (52 BPR). But the wife is, nevertheless, at liberty to sue and be sued in her name without concurrence of the husband (Berent 549).

The husband is further the presumed guardian of the wife (11 BPR) and as such administrator of her property (12 BPR), but the wife may, nevertheless, deal with it without concurrence of her husband (Berent, *ibid.*), whose consent is required only for the disposal of her immovable property (29 BPR).

The wife is deemed agent of the husband for the purpose of managing the household, and the husband is liable for the debts incurred by the wife in connection therewith (56 BPR).

*Property of Husband and Wife.*

7. The law with regard to the effect of marriage on the properties of husband and wife differs in Latvia with the various provinces and social classes. Berent [3]) enumerates not less than seven different systems of property

2) Judgment of Latvian Senate, Department of Appeal in Civil Matters, of the 28.2.1923, Zeitschrift fuer auslaendisches und internationales Privatrecht 1928 p. 970.

3) On page 552.

relations between husband and wife which all are legally recognized for one of the provinces or one of the social classes of the population.

A short account of the main system, the law of the Cities of Livonia is the following [4]):

By the marriage, a complete community of goods between husband and wife is created. Excluded from such community are immovables situated outside the municipal boundaries (of the city) and such other property as expressly excluded by marriage contract. The husband has the right of administration and usufruct of the common property, but he may not dispose of immovables without consent of the wife. If he mismanages the property, the wife may apply to the court for interdiction, and thereupon the wife may be appointed his guardian and administratrix of the common property. Debts of the wife are to be paid by the husband out of the common property, except if the wife is a trader and the debts have been entered into in the course of her business. The community of goods is dissolved either by the husband leaving the territory where the law of Livonian Cities is applicable, or by a contract between the parties.

In any part of Latvia, the parties may settle their property relations by a marriage contract. In order not to be void, the marriage contract may not be contrary to *bonnes moeurs* nor alter the provisions of the law as to the mutual rights and duties of husband and wife (37 BPR), but with regard to their property rights the spouses have full power and liberty to contract (38 BPR).

Marriage contracts may be entered into before and after the celebration of marriage (33 BPR) and may at any time thereafter be amended (40 BPR). The marriage contract must be in writing; in the Cities of Livonia notarial form is required (36 BPR). Marriage contracts are of no effect as against third parties unless published

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4) Based on Berent, 552—555.

in the court (36 BPR) and do not in any case affect rights of third parties acquired previous to such publication (38 BPR). Marriage contracts are terminated: if the marriage is not celebrated; if the marriage is dissolved (unless in the contract otherwise stipulated); or by a new contract between the parties (40 BPR).

8. Nullity of marriage may be decreed:—

*Nullity of Marriage.*

(a) if it has not been celebrated, neither by a civil nor by a religious officer (§ 32);

(b) if the husband is under the age of 18 or the wife under the age of 16, unless the wife has become pregnant or the required age has been attained before delivery of the decree (§ 33);

(c) if at the time of celebration one of the spouses was a lunatic (§ 34);

(d) if the parties are within the prohibited degrees of consanguinity or affinity (§ 35);

(e) if at the time of celebration one of the spouses was married with a third person, unless the previous marriage was dissolved by death or judicial decree before delivery of the decree of nullity (§ 36).

Actions for decrees of nullity may be brought by any interested person and by the *Prokureur* (§ 37). No prescription runs in actions for nullity (§ 38).

A spouse who was induced to marriage by duress (criminal threats) may avoid the marriage within 6 months from the day on which the undue influence ceased (§ 39).

Marriages declared void are deemed void *ab initio* (§ 40).

The relations between the parties are restored to the *status quo ante* (§ 54; 117 BPR). Property acquired during marriage is divided between the parties in equal shares (118 BPR). Children born out of the marriage are deemed legitimate (147 BPR). If the wife was not aware of the voidability of the marriage, she may claim alimony from the husband until she contracts a new marriage (§ 58; 119 BPR).

*Dissolution of Marriage.*

9. Divorce *a vinculo matrimonii* may be decreed for any of the following grounds: —

(a) adultery (§ 42), unless action is brought after expiration of 1 year;

(b) grave assult or injury (§ 43), unless action is brought after expiration of 1 year;

(c) malicious desertion for a period of not less than 1 year (§ 44);

(d) mental or other chronical and contagious disease (§ 45);

(e) immoral conduct (§ 46);

(f) sterility or sexual impotency (§ 47);

(g) impossibility of sexual intercourse with the other party (§ 48);

(h) such decay of the relations between the parties that they cannot be expected to continue conjugal life (§ 49);

(i) separation of the parties during three years (§ 50);

(k) mutual consent between the parties (§ 51).

In the case of divorce on ground of mutual consent, both parties must personally appear before the court, and the court, before giving judgment, must make an attempt of reconciliation (Berent 563).

In case of an action for divorce on one of the grounds enumerated above under items a—g, the plaintiff must prove the guilt of the defendant. The consent or excuse on the part of the plaintiff is a good defence to any such action (§§ 42—48, *supra*).

Action may be instituted for judicial separation (divorce *a mensa et toro*) on any of the grounds for divorce (§ 52). Judicial separation is granted for a period not exceeding three years (*ibid.*). After expiration of such period, either party may apply for a decree of divorce (§ 53). A decree of judicial separation does not affect the property relations between the parties, nor the liability of the husband to maintain the wife (128 BPR).

After divorce, the wife may retain the husband's name unless the court, upon application of the husband, prohibits her from bearing his name (§ 61).

The wife may claim alimony from the husband if she has no means and if the divorce was granted without her default; if the husband is poor and the wife rich and the divorce was granted on default of the wife, the husband was claim alimony from the wife; but any claim for alimony is barred if a new marriage is contracted by the innocent party (§ 60).

If the spouses have lived in community of goods, their property is divided into equal shares (126 BPR). If they have lived in separation of goods, the wife is entitled to her dower, even if divorce was decreed on her default (59—66 BPR). But the husband is not bound to account for the fruits (121 BPR). Contracts of marriage are terminated (123 BPR), and the mutual rights of inheritance cease with the decree of divorce (122 BPR). But the divorce does not affect rights of third parties acquired under or on ground of the existing marriage (125 BPR). As to the maintenance and custody of children, the court will give directions if the parties have not come to an agreement (§ 55).

Matrimonial causes are tried in first instance by the *Bezirksgericht* (§ 63) of the defendant's domicil (ZPO 1914 § 203). If the defendant's domicil is abroad or unknown, the action may be brought at the domicil of the plaintiff (Law of 27.4.1921, Addendum to § 63).

The courts exercise jurisdiction over all persons domiciled in Latvia, irrespective of their national status [5]).

With an action for divorce or judicial separation, a claim for alimony or maintenance cannot be joined, nor can alimony or maintenance be claimed in a counterclaim

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5) Judgment of Latvian Senate, Department of Civil Appeals, of the 25.10.1928, cf. Berent 567 Note 179.

in an action for divorce or judicial separation (§ 67). Alimony and maintenance are separate causes of action.

The decree of divorce is valid against third parties even if they have no notice thereof (§ 78).

An appeal lies to the Court of Appeal and from there to the Department of Civil Apeals *(Zivil-Kassations-Department)* of the Senate (§ 79).

*Private International Law.*

10. Marriages may be celebrated abroad under Latvian law by Latvian consular officers especially authorized, if both parties to the marriage are Latvian citizens (Law No. 17 of 1925, § 101).

Marriages celebrated abroad are valid in Latvian law if valid according either to the *lex loci contractus seu celebrationis* or to the law of the country in which the marriage contract was intended to be executed and the matrimonial domicil intended to be established (Art. XXXVI, Introduction to BPR).

The rights and duties of husband and wife as against each other and their property relations are governed exclusively by the law of their domicil. If each of them has a separate domicil, the law of the domicil of the husband applies. The national status of the spouses is irrelevant [6]).

Foreign judgments of divorce or nullity are recognized in Latvia if: —

(a) the cause of action is recognized as such in Latvian law, and

(b) the defendant is domiciled in the country where the judgment was given [7]).

Latvian courts do not claim jurisdiction in matrimonial causes over Latvians domiciled abroad; they have to

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[6]) Judgment of 25.10.1928, *supra.*

[7]) Berent 571, Bergmann II 288.

apply to the courts of their domicil, and if under the law of their domicil the courts abroad have no jurisdiction over Latvian citizens, they must first acquire a domicil in Latvia before action may be brought by them in the Latvian courts [8]).

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8) Berent 576, 577.

# LIECHTENSTEIN

*The Sources of the Law.*

1. In Liechtenstein, the Austrian Civil Code (*Allgemeines Buergerliches Gesetzbuch*) is in force. A new Civil Code of Liechtenstein is being prepared, the first part of which, dealing with the law of persons and societies, has been enacted on the 20.1.1926 [1]).

2. The following are the provisions of the Law of the 20.1.1926 which are relevant to marriage and private international law, viz.:

*Minority.*

A minor woman becomes major by marriage with a Liechtenstein citizen, even if she is a foreigner and would not become major under her national law (§ 23 III).

*Dissolution of Marriage.*

If one spouse is missing for five years or more, the other spouse may apply to the court for dissolution of marriage (§ 6, Introductory Regulations).

*Private International Law.*

Liechtenstein law is applicable in all cases in which the application of foreign law would be contrary to public policy and *bonnes moeurs* (§ 8).

The capacity of a person depends on his or her national law (§ 23 I).

If a person is at the same time the citizen of Liechtenstein and of another state, his personal status is governed by the law of Liechtenstein (§ 30 I).

The status of persons without nationality or with the nationality of two or more foreign states is governed by the *lex domicilii* (§§ 30 II, 31).

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1) Makarov, pg. 95 *et subs.*, Bergmann Suppl. I 76.

# LITHUANIA

*Sources of Law.*

1. In the greater parts of Lithuania, namely the former Russian Provinces of Kovno and Vilna, pre-war Russian law still applies [1]). In a small part of the country, namely the former Russian Province of Suvalki, Polish law (i. e. the law of the *Code Napoléon*) prevails, whilst in a still smaller part, the district of Palanga, baltic law [2]) is applicable. In the district of Memel, German law applies as it stood on January 9, 1920 [3]).

The following are the outlines of the pre-war Russian marriage law as amended and applied in Lithuania.

*Religious Marriages.*

2. Marriage and divorce are, in general, governed by the laws of the different recognized religious communities. The religious form of celebration of marriage is, thus, obligatory, and divorce, nullity, or judicial separation can be granted only if provided for by, and in accordance with, the religious law of the parties [4]).

Marriages and divorces of Jews must be registered by rabbis or their substitutes who are appointed by the Ministry of the Interior (§ 3, Law of 26.2.1926). This register is kept under the control of the Ministry (§ 25, *ibid.*).

Mixed marriages may be celebrated by the competent religious officer of one of the spouses [5]). The formerly recognised precedence of the Russian Orthodox Church in case of mixed marriages has by the Lithuanian Constitution been abolished (§§ 14 and 84—86). Divorces of mixed marriages must, *semble,* be decreed by the competent religious court of the defendant (arg. § 74 SZ).

*Prohibited Marriages.*

3. The civil laws (*Svod Zakonov*) contain provisions as to the capacity to marry and prohibited marriages which, like the provisions as to the effects of marriage on the personal and property relations between husband and wife, apply to all religions.

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1) § 107 of the Constitution of the 15.5.1928.
2) Cf. the accounts on the laws of Esthonia and Latvia.
3) Memel Law of 15.2.1920, cf. Plümicke, pg. 515 *et subs.*
4) Makarov, Das in Teilen Polens und der Randstaaten geltende Eherecht des vorrevolutionären Russlands, pg. 469.
5) Makarov *op. cit.* p. 472.

Males under the age of 18 and females under the age of 16 may not marry (SZ. §§ 3, 63, 91).

To a marriage of minors the parents, or at least the father, must consent (SZ § 6). Government officials and soldiers may not marry without consent of their superiors (§§ 9, 62, *ibid.*).

Free consent of both spouses to marry each other is an indispensable element of each marriage (§§ 12, 37, 62, *ibid.*) But an error, even as to the person of the other spouse does not, *semble,* affect the validity of the marriage [6]).

Marriages are prohibited : —

(a) between Orthodox or Catholic and Non-Christians (§§ 37, 85, SZ);

(b) with a person already married (§§ 20, 37, 62, SZ);

(c) within the degrees of consanguinity or affinity, as prohibited by the respective religious laws.

*Personal and Property Relations between Husband and Wife.*

4. The wife acquires by marriage the name of the husband (§§100, 101, SZ) and his national status (Art. 1, Law of 9.1.1919 as amended on 9.6.1922).

The spouses are under a duty to live together (§ 103 SZ), and the wife shall follow the husband to the domicil which he may choose (*ibid.*). But either spouse may apply to the court for an order declaring him or her released from the duty of upholding conjugal life, if he or she has been ill-treated or insulted by the other, or if the other (the defendant) suffers from mental or chronical contagious disease, or does not comply with his conjugal duties, or leads an immoral life (Addendum to § 103 SZ of 12.3.1914).

The husband is under liability to maintain the wife (§ 106 SZ) but only so far as the wife is in need (*ibid.*). The liability of the husband ceases if the spouses separate from each other by default of the wife (*ibid.*).

By an Addendum to § 106 SZ of the 20.4.1922, the wife

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[6]) Makarov *op. cit.* p. 466.

is under liability to contribute out of her property to the costs of the household and even to bear them in full if the husband is poor and unable of working. The wife may not validly make bills of exchange without authorisation of her husband, unless she is a trader in her own name (Art. 2, Law of Bills of Exchange). Such authorisation may be given generally and *implicite*.

Besides that, marriage does not affect neither the capacity of the wife nor the property rights of the spouses. The spouses retain after marriage their separate properties (§ 109 SZ), and the dower and all property thereby acquired during marriage remain separate property of the wife (110 SZ).

As to marriage contracts, the law contains no provisions; they are subject to the general laws of contracts [7]).

Whereas only the religious courts have jurisdiction in matters of nullity and dissolution of marriage (*supra*), the civil courts exercise jurisdiction in matters incidental to the property relations between husband and wife and parents and children [8]).

*Private International Law*

5. Lithuanian citizens abroad are subject to Lithuanian law as to their *status personalis* [9]). They can, therefore, contract a valid marriage only in religious form, regardless of whether or not the *lex loci* recognises religious marriages [10]).

The same rule applies to dissolutions of marriages. The Lithuanian civil courts are never concerned with divorce or nullity actions, and the religious courts will only exercise jurisdiction if the parties are subject to it and if the marriage has been celebrated according to the respective religious law. If the defendant is not resident

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7) Makarov *op. cit.* p. 476.
8) Makarov *op. cit.* p. 483.
9) Rutenberg 505.
10) By a judgment of the High Tribunal dated 13.11.1930, a marriage celebrated in accordance with the *lex loci*, though not in religious form, was declared valid, but this judgment has been given, it is said, on political grounds and is admittedly inconsistent with the law as it stands at present: Rutenberg 507, Note 45a.

within the jurisdiction of the religious court, the courts generally decline to exercise it [11]).

Consequently, foreign decrees of divorce or nullity will not be recognised by the (exclusively competent) religious courts of Lithuania, unless they have been granted in accordance with the respective religious laws by a competent religious court abroad [12]).

11) Rutenberg 508.
12) Rutenberg 509, Bergmann Suppl. II 121.

# LUXEMBURG

In Luxemburg, French civil law as codified in the *Code Napoléon*, is in force.

Reference is, therefore, made to the chapter dealing with French law, *supra*.

As regards the divorce on ground of mutual consent under Arts. 275—294 of the *Code Napoléon*, see the chapter on Belgian law, *supra*.

# MONACO

*The Sources of the Law.*

The Civil Code of the 21st December, 1880, almost verbally corresponds with the *Code Napoléon*. Reference is, therefore, made to the chapter dealing with French law, *supra,* but the following divergencies should be observed, viz.: [1]).

*Prohibited Marriages.*

Marriages are prohibited also between grand-uncle and grand-niece, grand-nephew and grand-aunt.

Persons interdicted for reason of insanity may not contract marriages, nor may persons against whom a petition for interdiction has been filed in court until final decision is given in their favour.

Adoptive parents may not marry their adopted children.

*Dissolution of Marriage.*

On ground of laws enacted in 1903 and 1907, respectively, divorce *a vinculo matrimonii* is now admissible in Monaco and will be decreed by the courts in any of the following cases, viz. :—

(a) adultery committed by the wife;
(b) concubinage of the husband with another woman;
(c) maltreatments and insults;
(d) conviction of grave offences;
(e) mental and venereal diseases.

Judicial separation may be decreed by the courts also on ground of mutual consent between the spouses.

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[1]) Cf. Bergmann II 337 and III 955.

# NETHERLANDS

*The Sources of the Law.*

1. The Dutch civil law is codified in the Civil Code (*Burgerlijk Wetboek*, BW) of the 10.4.1838.

*Prohibited Marriages.*

2. Males below the age of 18 and females below the age of 16 may not contract marriage (§ 86, BW). This impediment may be dispensed with by the King (*ibid.*).

Marriages are prohibited :—

(a) between descendants and ascendants, brothers and sisters, whether legitimate or illegitimate, and with the respective relatives of one's husband or wife (§ 87, BW) ;

(b) between uncle or grand-uncle and niece or grand-niece, and between aunt or grand-aunt and nephew or grand-nephew (§ 88, BW) ;

(c) between adulterers (§ 89, BW).

A marriage may not be entered into between persons who were previously married with each other and whose first marriage had been dissolved, before expiration of one year from the date of dissolution of the first marriage, and they may not contract more than one new marriage with each other (§ 90, BW).

A woman may not contract a new marriage before expiration of 300 days from the dissolution of her previous marriage (§ 91, BW). Minors [1]) require for marriage the consent of their parents (§ 92, BW) or guardians (§ 93, BW). Persons who have not attained the age of 30 should also request the consent of their parents to the marriage (§ 99, BW). In case the parents or guardians refuse to consent, the children may apply to the court for interference (§§ 100 *et subs.*, BW).

*Solemnization of Marriage.*

3. The celebration of the marriage shall be preceded by publication of banns which must be applied for at the registry office of the domicil of one of the spouses (§§ 105, 106 BW). The banns are published by affixing a notice on the door of the municipality during ten

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1) Below the age of 21 (§ 385, BW).

days (§ 107, BW) at the domicils of both spouses (§ 108, BW).

If the marriage is not celebrated within one year from the publication of banns, they must once more be published (§ 112, BW). If either spouse after publication of banns refuses to conclude the marriage, the other may sue him or her for damages; but the breach of a mere promise of marriage gives no right of action for damages (§ 113, BW).

If any objection is lodged against the celebration of the marriage, the registry officer may not proceed with the marriage except by virtue of a judgment of the court, or of a notarial deed from which it appears that the objection has been cancelled (§ 125, BW). There are, however, only certain persons who are allowed by law to make such objections (§§ 114–119), BW).

The government advocate may for strong reasons dispense with the publication of banns (§ 130 II, BW).

The marriage is celebrated in public in the municipality at the domicil of one of the spouses in the presence of the registry officer and not less than two witnesses [2]) who must be domiciled in the Netherlands (§ 131, BW). For strong reason, the marriage may be celebrated in a private house, provided that six witnesses are present (§ 132, BW).

The spouses must appear personally before the registrar (§ 133, BW); but the King may exceptionally permit the celebration of a marriage through an attorney especially authorized by notarial deed (§ 134, BW). The spouses have to declare to the registrar in the presence of the witnesses that they accept each other as husband and wife and that they are willing faithfully to comply with all obligations imposed on them by marriage (§ 135, BW). The registrar, thereupon, declares them to be husband and wife and forthwith delivers to them a marriage certificate (§ 44, BW).

[2]) Who may now be also females: Law of 23.7.1927.

Religious celebration may be effected only if the spouses have proved to the satisfaction of their religious minister that the marriage has already been celebrated before the registrar (§ 136, BW).

*Rights and Duties of Husband and Wife.*

4. The spouses owe each other faith, help and assistance (§ 158, BW). By marriage, the spouses become bound as against each other to maintain their children and to bring them up (§ 159, BW).

The husband is the head of the family. As such he has to protect the wife and to represent her. Unless an agreement is made to the contrary, he administers the wife's property including her personal chattels. He is liable for all negligence and default in such administration, and may not alienate, mortgage, or dispose of the wife's property without her consent (§ 160, BW).

The wife owes obedience to the husband and is bound to follow him wherever he thinks fit to take up his domicil (§ 161, BW).

The husband is under liability to receive the wife in his house and to maintain her and give her all her needs according to his position and fortune (§ 162, BW).

The wife may not, even if the spouses do not live in community of goods, but under contractual *régime,* alienate, mortgage, or dispose of her property without cooperation or consent in writing of the husband (§ 163, BW). If the wife has been authorized by the husband to enter into certain obligations, she is not thereby authorized to receive money and give discharge therefor (*ibid.*). For obligations entered into, and payments made, in the course and for the purpose of the marital household, the wife is presumed to be duly authorized by the husband (§ 164, BW)[3]).

The wife cannot appear in court without authorization of her husband, regardless of the *régime* under which the spouses live (§ 165, BW)[4]). The consent of the hus-

3) As amended by the Law of the 13.7.1907.
4) As amended by the Law of the 2.7.1934.

band is not required if the wife is accused under criminal law, or if she sues the husband for divorce, judicial separation, or separation of goods (§ 166, BW). If the husband refuses to grant her the required authorization, she may apply to the district court (*arrondissements-regtbank*) of her domicil for such authorization (§ 167, BW).

A married woman carrying on a trade or profession with the express or implied consent of her husband, may enter into obligations in the course and for the purpose of such trade or profession without his consent. If the spouses live in community of goods, obligations entered into by the wife in the course of her business are binding also on the husband. In case the husband wishes to withdraw his consent to the carrying on by the wife of a trade or profession, he must make known such withdrawal to the public (§ 168, BW)[5]).

If the husband cannot, for reason of absence or any other ground, authorize the wife to do all or any of the acts she is prevented from doing by law, the *Kantonregter* of her domicil may authorize her to do all acts necessary to be done (§ 169, BW)[6]).

A general authorization given to the wife, even if contained in the marriage contract, has no validity other than in respect of the administration of the wife's own property (§ 170, BW).

The invalidity of acts done by the wife without the required authorization may be pleaded by the wife, the husband and their heirs only (§ 171, BW). But the wife is estopped from pleading the invalidity of any act done or deed executed by her, if she has, after dissolution of marriage, in whole or in part performed her obligation thereunder (§ 172, BW).

No consent or authorization is required for last wills and testaments of the wife (§ 173, BW).

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5) As amended by the Law of the 2.7.1934.
6) As amended by the Law of the 18.4.1874.

A foreign woman acquires by marriage with a Dutch the latter's nationality and retains it after dissolution of marriage, unless she declares within one year from such dissolution that she waives her Dutch nationality. Such declaration is to be made in the Netherlands before the mayor of her domicil, and abroad before a Dutch consular officer. A Dutch woman loses her nationality by marriage with a foreigner and may reopt for it by a declaration to such effect to the authorities aforesaid within one year from the dissolution of her marriage [7]).

*Property Relations between Husband and Wife.*

5. The statutory *régime* provided for by Dutch law is the community of goods (§ 174, BW). Unless a marriage contract has been entered into between the spouses providing for another *régime* to govern their property relations, general community of goods is created between the spouses by the celebration of the marriage (*ibid.*), and such general community cannot by subsequent agreement between the spouses be terminated or changed (*ibid.*).

The community comprises all movable and immovable properties of the spouses, present and future, even such property acquired by donation or inheritance as should, according to the wishes of the donor or of the deceased, have become separate property of one of them (§ 175, BW). The community is charged with all liabilities incurred by each of the spouses either before or during marriage (§ 176, BW). The profits and incomes of each or both of the spouses are added to, and the losses of each or both of them borne by, the community (§ 177, BW).

The husband administers the common property alone. He is not restricted in dealing with it, with the exception that he may not dispose of the common property without consideration, unless he disposes thereof for the purpose of procuring a livelihood for a child born out of the

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7) Law of the 12.12.1892 as amended on 10.2.1910, 15.7.1910, and 31.12.1920.

marriage (§ 179, BW). If the husband is absent or otherwise prevented from acting, the wife may be authorized to act as temporary administratrix of the common property (§ 180, BW).

The wife may bring an action for separation of goods if the husband loses the common property or part thereof in playing at cards or administers it in a way that prejudices the family's rights to maintenance and endangers the wife's property (§ 241, BW). No such action for separation of goods lies on the ground of mutual consent between the parties (*ibid.*).

The community of goods comes to an end by dissolution of the marriage, either by death of one of the spouses or by judicial decree, by separation from bed and board, and by separation of goods (§ 181, BW). Upon termination of the community, an inventory is to be made, and the property is to be divided between the husband and the wife, or their respective heirs, in equal shares (§§ 182, 183, BW). If any of the spouses wishes to obtain certain precious effects, souvenirs, works of art and literature, and the like, out of the common property, the value of such effects or things as estimated by an expert will be deducted from his or her share (§ 184, BW). After termination of the community, creditors of the spouses shall sue the husband, but the husband has a right of recourse in respect of one half against the wife or her heirs (§ 185, BW).

The wife may waive her rights to the common property; agreements depriving her from this right of waiver are void. If she exercises her right of waiver, she may not claim anything from the community but her clothes and personal effects, but, on the other hand, she is not liable for any debts of the community. For debts incurred by herself she remains liable as against the creditors; but against the husband she has a right of recourse in respect of the whole of such debts (§ 187, BW)[8]).

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[8]) As amended by the Law of the 2.7.1934.

The wife must give notice to the court of her domicil of her intention to waive her rights to the common property within one month from the date of the termination of the community (§ 188, BW). She may not exercise the right of waiver if she has taken into prossession goods belonging to the community (§ 191, BW).

Upon separation of goods being ordered by the court, the wife becomes administratrix of her own property and is not any longer restricted in dealing with it (§ 249, BW). She must contribute to the costs of the household and the education of the children, and if the husband has no means, she must bear those costs alone (§ 248, BW).

*Nullity of Marriage.*

6. An action for a decree of nullity lies in the following cases :—

(a) if the marriage is bigamous (§ 141, BW);

(b) if the plaintiff did not freely consent to the marriage or believed to marry a person other than the defendant (§ 142, BW);

(c) if the marriage has been contracted by a person interdicted for insanity (§ 143, BW);

(d) if the spouses are within the prohibited degrees of consanguinity or affinity, or if one of them has not attained the age required for marriage, or if the spouses have together committed adultery (§§ 144, 145, BW);

(e) if the marriage was contracted without the required consent (§ 146, BW);

(f) if the marriage has not been celebrated before the competent registrar or in the presence of the required number of witnesses (§ 147, BW).

Except in case (b) where the action may be brought by the prejudiced spouse only, the government advocate may sue for the nullity of the marriage, the spouses themselves, their ascendants, and, in cases (a), (d) and (f), any person interested.

Nullity may not be decreed for want of due celebration of the marriage if the marriage has been consummated and if a certificate of marriage has been drawn up (§ 147 III, BW).

A marriage contracted *bona fide* has, even after nullity having been decreed, all effects of a valid marriage on the relations between husband and wife and between them and their children (§ 150, BW). If only one spouse was *bona fide,* such effects are subsisting only in favour of this spouse and his or her children ; and this spouse is entitled to claim damages from the other who acted *mala fide* (§ 151, BW).

The decree of nullity does not affect the rights of third parties who have *bona fide* contracted with the spouses (§ 152, BW).

*Dissolution of Marriage.*

7. Marriage is dissolved : —

(a) by death ;

(b) by ten years absence of one spouse and the subsequent marriage of the other ;

(c) by judicial decree after separation from bed and board ;

(d) by divorce (§ 254, BW).

*(a) Divorce.*

Divorce on ground of mutual consent is not admissible (§ 263, BW). The only grounds for divorce are the following : —

(a) adultery;

(b) malicious desertion;

(c) conviction of a criminal offence and condemnation to 4 years imprisonment or more ;

d) grave assaults endangering the life of the plaintiff spouse (§ 264, BW).

If one of the spouses has been convicted of adultery by a criminal court, a copy of the judgment of the criminal court and a declaration that it has become final must be produced to the civil court which will forthwith thereupon decree the divorce (§ 265, BW).

If the action is based on malicious desertion, it must be proved that the defendant has left the matrimonial domicil without lawful reason and that he or she refuses to return (§ 266 II, BW). The action may not be brought before five years have expired from the date of desertion (§ 266 III, BW). If the defendant returns to the matrimonial domicil before the divorce is decreed, the action is struck out; but if he or she deserts it a second time without lawful excuse, the action may be renewed six months after such desertion and will not be struck out even if the defendant returns (§ 273, BW). If either spouse dies *pendente lite,* the action for divorce is struck out (§ 275, BW).

The right of action is barred by condonation (§ 271 I, BW). If a reconciliation is reached at after the action was instituted, the action is struck out; reconciliation is presumed if the parties resume conjugal life (§ 245 II, BW).

The marriage is dissolved by divorce being decreed and such decree being registered in the marriage register of the place where the marriage was celebrated. If the marriage was celebrated abroad, the registration is to be effected in the marriage register of s'Gravenhage. The registration must take place within six months from the day on which the decree became final; if the decree is not so registered within six months, it becomes invalid, and divorce must be applied for once more on the same grounds (§ 276, BW [9]).

The action for divorce must be instituted at the district court (*arrondissements-regtbank*) of the husband's domicil, or, if he has no domicil in Holland, then at the court of the wife's domicil (§ 262, BW)[10]).

Appeal may be lodged against the decree of the court within three months; in undefended actions, the decree will at once become final if the defendant signs a decla-

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9) As amended on 24.3.1915.
10) As amended on 28.4.1921.

ration that he or she will not oppose it; otherwise it becomes final fourteen days after receipt by the defendant of a copy of the decree [11]).

*Pendente lite,* the court may order separation of the spouses and may direct the wife where to take up her residence (§ 267, BW). The wife is entitled to alimony and maintenance *pendente lite* in an amount to be fixed by the court, unless she has, without leave of the court, left the residence given to her (§ 268, BW). The court may also make any orders thought fit for the custody and maintenance of the children (§ 269, BW).

The spouse on whose claim the divorce was decreed retains all rights to which he or she became entitled by marriage, and the other spouse, against whom the decree was given, loses all rights to which he or she became entitled by marriage (§§ 277, 278, BW).

The spouse on whose claim the divorce was decreed may also, if he or she has no sufficient income of his or her own, apply to the court for maintenance to be paid to him or her out of the defendant's property (§ 280, BW). The liability for maintenance comes to an end with the death of either spouse (§ 282, BW).

*(b) Judicial Separation.*

Judicial separation may be applied for on the grounds of divorce (*supra*) and, in addition, on ground of intemperance and assaults and insults committed by one spouse against the other (§ 288, BW).

The procedure is the same as in actions for divorce (§ 289, BW). An action for judicial separation is a bar to the action for divorce (§ 290, BW).

If the spouses are married for at least two years, the court may decree judicial separation upon their joint application, even if they do not specify any grounds thereof (§ 291, BW). Before instituting the action for judicial separation, the parties are bound to enter into an agreement in notarial form whereby their personal and property relations and the custody and maintenance of

11) Cf. Latey pg. 89.

their children shall be regulated (§ 292, BW). Upon reconciliation between the parties, the judicial separation ceases to have effect, and all effects of marriage are restituted; but acts done after separation and before reconciliation remain valid as against third parties, and any agreement between the spouses to the contrary is void (§ 303, BW).

Before decreeing separation, the court shall summon both parties who must appear personally, and try to reconciliate them. The case is suspended for six months, when the decree may be granted if the parties still insist thereon (§§ 293, 295, BW).

Separation does not dissolve the marriage, but only releases the spouses from the obligation to live together (§ 297, BW) and brings about also a separation of their properties (§ 298, BW). The rights of the husband over the property of the wife and all his other rights connected therewith are, of course, extinguished (§ 299, BW).

Five years after judicial separation was decreed, the parties may apply for a decree of divorce (§ 255, BW). By the grant of such decree and its registration in the marriage register, the marriage is dissolved (§ 260, BW).

*Private International Law.*

8. The laws as to the status, the rights, and the capacity of the persons bind Dutch citizens even if they reside abroad (§ 6, Law of 15.5.1829).

The form of every legal act is governed by the law of the place where it is done (§ 10, *loc. cit.*).

Marriages contracted abroad between Dutch subjects or between Dutch subjects and foreigners, are valid if contracted according to the *lex loci celebrationis,* provided Dutch subjects have not married in contravention of the Dutch laws relating to the impediments of marriage (§ 138 I, BW). Within one year after return to Holland, the marriage of Dutch citizens shall be registered in the marriage register of their domicil (§ 139, BW).

Foreign judgments in matrimonial causes are recognized only if they need not be executed and enforced in Holland, as e. g. declaratory judgments [12]).

Holland has ratified the Hague Conventions of 1902.

12) Rabel 1932 p. 868, Bergmann II 341 ; Latey pg. 88 states that judgments are recognized if based on grounds admitted by Dutch law.

# NORWAY

*The Sources of Law.*

1. Norwegian marriage law is codified in an Act of the 15th May, 1918 (*Ekteskapsloven,* hereinafter referred to as EL) which was amended by an Act of the 19th June, 1931.

Marriage property law has been reformed by an Act of the 20th May, 1927 (*Ektefelleloven,* hereinafter referred to as FL).

*Prohibited Marriages.*

2. Males below the age of 20 and females below the age of 18 may not contract marriages without leave of the King or his representative (§ 1, EL).

Persons below the age of 21 require for marriage the consent of their parents (§ 2, EL); minors and interdicted persons require for the marriage the consent of their guardians (§ 3, EL). If the consent is refused without reasonable ground, the *fylkesmann* (district governor) may grant leave to marriage (§ 4, EL).

Marriages may not be contracted: —

(a) by lunatics (§ 5, EL);

(b) by persons suffering from contagious venereal diseases (§ 6, EL);

(c) between descendants and ascendants, brothers and sisters (§ 7, EL);

(d) with the descendants or ascendants of one's late husband or wife (§ 8, EL);

(e) by a person whose previous marriage is not dissolved (9, EL).

A woman may not contract marriage before expiration of ten months from the date of dissolution of her previous marriage, unless she is not or was not pregnant, or unless she has given birth to a child, or unless she has not lived together with her previous husband for more than ten months (§ 10, EL).

A marriage may not be contracted by a person who has in a previous marriage lived in community of goods with another person, unless the property settlements have been completed between him or her and the other per-

son or the latter's heirs (§ 11, EL). This impediment may be dispensed with by the Ministry of Justice (Lundh, 690).

*Solemnization of Marriage.*

3. The celebration of the marriage is preceded by publication of banns (§ 12, EL), to be effected at the place of domicil or residence of either party (*ibid.*). The marriage registrar (*vigselmanden*) must be satisfied that there is no impediment to the marriage (§ 13, EL), and if the necessary evidence is submitted to him, he causes the banns to be published in the Official Gazette (*Norsk Kundgjrelsestidende*); if either party resides abroad, banns should be published in the country of his or her residence in the manner to be ordered by the King; the marriage may not be celebrated before two weeks have expired from the date of publication of banns (§§ 14, 15, EL). Objections against the marriage are to be lodged to the registrar who published the banns (§ 16, EL). If the registrar refuses to publish banns, complaint may be made to the *fylkesmann* (district governor) who may, upon receiving the necessary informations, order the publication (§ 17, EL). Publication of banns may on strong reason be dispensed with in whole or in part (§ 18, EL). If three months have passed, publication of banns must be repeated before the marriage may be celebrated (§ 25, EL).

The marriage is celebrated either in religious or in civil form (§ 20, EL). Religious marriages may be celebrated by the Established Church of Norway or by other religious communities recognised by the King[1]), but the religious minister may refuse to celebrate the marriage if one of the parties is not a member of his community (§§ 21, 22, EL).

Marriages are celebrated in civil form before a notary public or another official appointed for this purpose (§ 24, EL).

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1) E. g. Jews and Unitarians, Law of 27.6.1891, §§ 1 and 24.

Two witnesses shall be present at the ceremony, and both parties must personally appear and declare before the officer that they intend to marry each other, whereupon the officer shall declare that they have become husband and wife (§ 27, EL).

A marriage celebrated in Norway by a non-competent officer is void, as is a marriage celebrated in the absence of either of the parties; but the validity of the marriage is not affected by any other formalities not having been complied with (§ 28, EL). The marriage must be registered and certificates of marriage be issued (§ 29, EL).

*Effects of Marriage.*

4. The wife has the right and the duty to bear the husband's name (§ 4, Law of 9.2.1923).

A foreign woman acquires by marriage with a Norwegian citizen the latter's nationality; a Norwegian woman loses by marriage with a foreigner her nationality only if she leaves Norway and acquires, under the national law or her husband, the latter's nationality (§§ 3 and 8, Law of 8.8.1924). The wife acquires also the husband's domicil (§ 12, Law of 19.5.1900).

Both spouses are under liability to maintain each other, and they both have to contribute, according to their means and possibilities, to the costs of the household and the education of the children (§ 1, FL). The contributions made by one spouse to the needs of the other (e. g. the husband supplying clothes for the wife) are deemed to have been acquired by the donee (§ 2, FL) [2]). If one spouse fails to maintain the other, the district governor may, upon application, order him or her to pay a liquidated sum of money in lieu of maintenance (§ 3, FL). The order of the district governor may not have retrospective power for more than three years (§ 5, FL). Agreements between the spouses with regard to their mutual maintenance may be disregarded by the district

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2) Cf. Lundh, 694.

governor only if they are unreasonable or if the circumstances have changed (§ 6, FL).

Each of the spouses is presumed to be the agent of the other and may enter into contracts binding also the other spouse (§ 7, FL). If one of the spouses abuses this right to the prejudice of the other, the district governor may restrain him or her from exercising it ; an appeal against the governor's decision lies to the Ministry of Justice ; the decision may be revoked if the circumstances have changed ; and against third parties it has no effect unless officially gazetted (§ 8, FL).

A special presumption of agency is created in the case of illness or absence of one spouse ; in such case the other spouse may do everything on his or her behalf, but for alienation of immovables the leave of the district governor is required (§§ 9, 10, FL).

*Property Relations.*

5. Unless otherwise provided for in a marriage contract, the property *régime* in force in Norwegian law is the community of goods (§ 11, FL). Each of the spouses administers his or her share in the common property and has the right to dispose thereof, subject to the exceptions hereinafter mentioned ; but none of the spouses may administer his or her share in a way that prejudices the rights or the property of the other (§§ 12, 13, FL). Immovables may not be alienated, disposed of, mortgaged, or leased by one spouse without the consent in writing of the other (§ 14, FL). Movables may be so disposed of, except if they are part of the common household or tools belonging to the other spouse or intended for the personal use of the children (§ 15, FL). Transactions made in contravention of these provisions may be anulled by the court if rights of third parties are not thereby affected (§ 16, FL). If consent of the other spouse to any such transaction is needed and without reasonable ground refused, leave may be applied for to the district governor (§ 17, FL).

Upon dissolution of marriage, the common property is

divided between the spouses in equal shares (§ 12, FL). But if one spouse has negligently or wilfully caused losses to the common property by bad administration, then he or she is liable in damages to the other spouse, and his or her share is diminished by the amount of damages due (§ 18, FL).

Separation of goods may be applied for to the court by either spouse if the other is liable in damages for bad administration, or if the other became bankrupt, or if the other at the time of celebration of marriage had or thereafter got a child entitled to inherit him or her, other than out of this marriage (§ 39, FL). In the last mentioned case, the defendant may apply for the separation to be effected in such way that each of the spouses obtains a share in the common property that fairly corresponds to the property brought in by him or her (Lundh, 697).

Each spouse is liable for debts incurred by him or her to the extent of the share of the common property under his or her administration and his or her separate property (§ 30, FL). Debts incurred by the husband purporting to be binding also on the wife (§ 7, *supra*) are not enforceable against the wife after separation of goods was decreed (§§ 31, 32, FL).

"Separate property" is such property of either spouse as has before marriage been agreed upon between the parties not to become part of the common property (§ 22, FL). Any such agreement, as well as any other regular marriage contract, must be in writing and bear the signatures of the parties and of two witnesses (§ 45, FL). It is not valid as against third parties unless registered in the marriage property register (§§ 46, 51, EL).

A spouse assisting the other in carrying on a trade or profession may claim wages in a reasonable amount (§ 38, FL).

6. Marriages are null and void if within the prohibited degrees of consanguinity or affinity or if bigamous (§ 31,

*Nullity of Marriage.*

EL). A decree of nullity may be sued for by the prosecutor or by either spouse or, in the case of a bigamous marriage, by the former spouse (*ibid.*).

If one of the parties to a marriage so decreed as null had been acting *bona fide,* he or she may claim damages from the party who acted *mala fide* (§ 33, EL).

Marriages are voidable in the following cases : —

(a) if contracted by lunatics (§ 34, EL) ;

(b) if contracted unconsciously (§ 35 I, EL) ;

(c) if the applicant spouse intended to marry another person or did not intend to marry at all (§ 35 II, EL);

(d) if the respondent spouse was found suffering from a mental or venereal disease not known at the time of marriage (§ 35 III, EL);

(e) if the respondent spouse had, without the applicant's knowledge, an illegitimate child born before, or within 9 months after, the marriage (§ 35 IV, EL);

(f) if the applicant spouse had been induced to contract the marriage by false representations, duress, or threatenings (§ 35 V, VI, EL).

The right of action is limited to six months from the date at which the cause of action originated (or, in the case of duress, ceased to exist) or at which the applicant got knowledge of the cause of action (§ 35, EL).

If the marriage is decreed void, the status of the parties is the same as after dissolution of marriage (§ 36, EL). The parties, however, are not bound to maintain each other (§ 39, EL), with the exception that the respondent who had knowledge of the voidability of the marriage at the time of celebration may be made liable for maintenance in lieu of damages (§ 38, EL).

*Dissolution of Marriage.*

7. Spouses who jointly plead that they cannot continue conjugal life, may apply to the district governor for separation from bed and board (§ 41, EL). Before such separation is allowed, both spouses shall personally attend before a special committee who shall try to reconcile them (*ibid.*).

Upon the application of one spouse only, the King may grant leave for separation from bed and board, in any of the following cases : —

(a) if the respondent repeatedly or permanently failed to maintain the applicant or the children ;
(b) if the respondent violated his duties towards his or her children ;
(c) if the respondent is regularly or permanently intoxicated ;
(d) if the respondent conducts himself (or herself) immorally ;
(e) if the respondent has repeatedly been convicted of criminal offences ;
(f) if the parties are in such animosity that the applicant cannot be excepted to continue conjugal life (§42, EL).

If the parties have lived lawfully separated from each other for one year, the marriage may be dissolved, upon the joint application of both parties, by the King or his representative ; if the separation has lasted for two years, the marriage may be dissolved upon the application of one of the parties (§ 43, EL).

If the parties have been actually, but not lawfully, separated from each other for three years, the marriage may be dissolved by the King or his representative upon application of one of the parties (§ 44, EL).

The marriage may be dissolved by judicial decree in any of the following cases : —

(a) if the respondent deserted the conjugal home and refused during two years to return (§ 45, EL) ;
(b) if the respondent is missing since three years (§ 46, EL) ;
(c) if the respondent has contracted a bigamous marriage (§ 47, EL) ;
(d) if the respondent has committed adultery or other immoral offences (§ 48, EL) ;
(e) if the respondent suffers from a contagious venereal disease (§ 49, EL) ;

(f) if the respondent committed grave assaults on the applicant or their children or exposed the children or the applicant to criminal or immoral situations (§ 50, EL, and §§ 229 and 380 of the Criminal Code);

(g) if the respondent was sentenced to imprisonment of 3 years or more (§ 51, EL);

(h) if the respondent has, without the applicant's knowledge, committed certain immoral offences and was convicted thereof (§ 52, EL);

(i) if the respondent suffers since three years from incurable mental disease (§ 53, EL).

Upon dissolution of marriage, the community of goods between the parties comes to an end; when the property is divided, the party on whose application divorce was decreed has a right of preference to the household effects and other necessaries and chattels (§ 54, EL). If the divorce was decreed on a ground which implied grave wrong and grievance to the applicant, the latter is entitled to damages, the amount of which is to be assessed by the court (§ 55, EL). After divorce, the parties are still liable to maintain each other in case of need; if the divorce was, however, decreed on ground of the default of one party only, the other may apply for and obtain an order of the court depriving the party in default from all rights to maintenance (§ 56, EL). The liability of one party to grant maintenance to the other may be expressed in the decree of divorce and the amount and manner of payment of such maintenance be laid down; any maintenance ceases, however, to be payable in case the payee contracts a new marriage (§ 57, EL). The parties may come to an agreement regarding maintenance and all other effects of divorce; such agreement is, unless fair and reasonable, subject to correction by the court (§ 59, EL).

Actions in matrimonial causes are brought at the court of the marital domicil; if the spouses have separate domicils, the courts of both their domicils have jurisdic-

tion, at the option of the plaintiff; if neither of them has a Norwegian domicil, the court at the last marital domicil has jurisdiction; if there is no such domicil in Norway, the action may be brought in the court of Oslo (§ 66, EL). The parties must personally appear before the court (§ 69, EL); if the defendant fails to appear, an attorney may be appointed for him or her by the court (§ 70, EL).

*Private International Law.*

8. The King may authorise Norwegian consular officers abroad to celebrate marriages of Norwegian subjects (Law of 7.7.1922). A similar authorisation may be granted by the King to Norwegian missionaries abroad (Law of 26.6.1925).

Marriages contracted abroad in accordance with the *lex loci* are (*semble*) valid [3]).

Norwegian private international law is based on the *lex domicilii* [4]); Norwegian courts hold themselves, therefore, competent in matrimonial causes of foreigners domiciled in Norway, and recognise foreign judgments, if formally valid, in respect of Norwegian subjects domiciled abroad. The jurisdiction of the court of Oslo in the case of litigants not domiciled in Norway (§ 66, EL, *supra*) is not exclusive, but provided for with regard to such countries in which Norwegian subjects have no remedies because of their nationality [5]).

3) Arg. Succession Law of 31.7.1854, § 56.
4) Lundh 715, Bergmann II 374.
5) Bergmann, *loc. cit.*

# POLAND

1. The Republic of Poland consists of five parts, viz. :—

*Sources of Law.*

(1) the former Kingdom of Poland (Kongresspolen);

(2) Eastern Poland and the district of Vilna, formerly belonging to Russia;

(3) The provinces of Posen, Silesia and Western Prussia, formerly belonging to Germany;

(4) Eastern and Western Galicia, formerly belonging to Austria;

(5) The district of the Tatra, formerly belonging to Hungary.

In all these territories the laws remained in force as they stood in 1919, subject to subsequent Polish legislation, so that in fact five different systems of law govern marriage and divorce in the respective parts of the country. Subsequent legislation for the whole of the Republic has been enacted in respect of private international and inter-territorial law (Laws of the 2.8.1926) and of civil procedure (Code of the 29.11.1930) and different less important subjects.

The following account mainly deals with the law of Kongresspolen. As regards the laws of the other parts of the country, reference is made to the accounts on Lithuania (*supra*), Germany (*supra*), Austria (*supra*), and Hungary (*supra*), respectively.

In Kongresspolen, the *Code Napoléon* has been enacted by a Law January 27, 1808. By subsequent legislation, however, the provisions of the *Code Napoléon* with regard to personal status, marriage, divorce, and marriage contracts (Arts. 1—515 and 1387—1581) ceased to have effect in Poland and were replaced by the Civil Code for the Kingdom of Poland of the 1.6.1825. By a Law of the 16.3.1836, again, the provisions of the Polish Civil Code regarding marriage and divorce were repealed, and only the provisions as to the effect of marriage on personal and property relations between the parties remained in force. The Law of the 16.3.1836 is still in force in Poland and has been amended by a Law of the 11.6.1891, abolishing

the priority rights of the Roman-Catholic Church, and by a Law of the 1.7.1921 providing for certain modern rights of the wife.

The articles of the Law of 16.3.1836 will be cited by numbers only, that of the Polish Civil Code by the numbers followed C. C. and that of the *Code Napoléon* by the numbers followed C. N.).

*Promise of Marriage.*

2. Marriage may be promised verbally, in writing, or in notarial form (239). The promise is void, if a valid marriage cannot, at the time the promise is made, be entered into between the parties (240). The promise is not enforceable. If, however, the promisor breaks it, the promisee may sue him for damages suffered in connection with the preparation of the marriage (241). Damages cannot be claimed if there were sufficient reasons for breaking the promise, such as grave insults, immoral conduct, or misrepresentation (Ostrowicz 392). An agreement between the parties for liquidated damages or penalties in cases of breach of the promise is valid and enforceable (*ibid.*).

*Capacity to Marry.*

3. Males under the age of 18 and females under the age of 16 may not contract marriage (6, 99, 125, 129, 180). A marriage contracted in contravention of this rule is not void, but renders all parties who took part therein liable to criminal prosecution (7, 125, 129, 180). Special provisions are made for the marriage capacity of members of the Greco-Russian and Roman-Catholic Churches.

Persons under the age of 21 (345 C. C.) may not marry without consent of their fathers or, in case of absence or default, mothers or guardians (15, 16).

A valid marriage cannot be contracted under an error or duress (9). Lunatics cannot contract marriage, except during a *lucidum intervallum* (14).

*Impediments to Marriage.*

4. Marriages are prohibited: —

(1) between Christians and Non-Christians (24);

(2) with a person already married (25);

(3) between ascendants and descendants, brothers and sisters of whole or half blood, and with the ascendants, descendants, brothers, or sisters of one's husband or wife, provided the respective religious laws do not prohibit marriages within degrees of consanguinity or affinity more than the above (182, and cf. 30, 31, 32, 101, 124, 136);

(4) between a guardian and his minor ward (18);

(5) between persons who committed together adultery and promised each other to marry if the defrauded spouse would die (28);

(6) with a woman before expiration of 10 months from the date of dissolution of her previous marriage (68) [1]).

*Solemnization of Marriage.*

5. The religious form of marriage is obligatory (2, 108, 124, 140, 185). Before celebration of marriage banns must be published three times on subsequent Sundays (or Saturdays, as the case may be) in the church or synagogue (41 *et subs.*, 186). The religious officer must, before celebrating marriage, be satisfied that there are no impediments to the marriage (52, 104). The marriage is celebrated before the religious minister of the domicil of both spouses or of either of them (48 *et subs.*, 140, 185). Which religious minister is competent to celebrate marriages depends upon the respective religious law [2]). Witnesses must, *semble,* be present at the celebration of marriage even if not required by religious law ; but their number is not determined by law (87). The parties must be personally present (108, 142).

The competent ministers of the various Christian communities are civil registrars of marriages of members of

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1) Additional impediments are provided for by the respective religious laws, in particular the canonical law, and are embodied in the Law of the 16.3.1836 (cf. *inter alia* 170—172, 100, 101, 124, 137, 134, 135, 181 etc.). From such impediments dispensation may be granted by the competent religious authorities.

2) In case of Jews, only the rabbi is competent to celebrate marriages (Art. 46 of Regulations of 14.10.1927 as to the Organisation of the Jewish Community).

their respective communities; the Church Registers serve in the same time Civil Marriage Registers (71 *et subs.*, C. C.).

The ministers of the Non-Christian communities, however, are not civil registrars, but must forthwith after celebration of the marriage appear together with the spouses and the witnesses before the civil registrar who delivers a marriage certificate and registers the marriage (187, and 92 C. C.). The civil registrar has to satisfy himself that all provisions of the law have been complied with, and if not so satisfied he must report to the public prosecutor (188). The certificate of marriage delivered by the civil registrar is conclusive evidence of the marriage (231, 121 C. C.).

Mixed marriages are celebrated before the competent religious minister of the wife (192, 198); the celebration may be repeated before that of the husband (193).

Male children out of a mixed marriage follow the religion of the father, females that of the mother (195).

Dissenters and persons without religion may now (after the Constitution of 1921) marry before the civil registrar only (171) [3].

*Effects of Marriage on the Personal Relations between Husband and Wife.*

6. The spouses owe each other faith, support, aid, and good behaviour (208, 209) [4]. The husband is under duty to receive the wife into his house and to maintain her according to his income and property (210, and 181 C.C.). If he fails to maintain her, the wife may sue in court for maintenance and, if the husband administers her separate property, for the restitution to her of such property and all rights incidental thereto (192, 193, 203 C. C.) [5]. If husband and wife have both separate properties and the husband does not administer the property of the wife, the household costs are to be borne by both spouses; if the husband has no property and no income, the wife

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3) Cf. Ostrowicz 403.
4) As amended by Law of 1.7.1921, Art. 22.
5) Art. 11 of Law of 1.7.1921, amending 203 C. C.

has to bear the household costs out of her property alone; in all other cases the costs of the household fall upon the husband (201 C. C.) [6]).

The wife receives by marriage the husband's name (212 C. C.). Generally, the wife's domicil is that of the husband; but in case the husband's domicil is not known or the wife is entitled to live separated from him, the wife may have a domicil of her own (Art. 1, Law of 1.7.1921). The wife may sue and be sued, contract, and dispose of her property without authorisation of the husband (5, 6 Law of 1.7.1921). Dispositions of property which is administered by and in the hands of the husband are voidable unless consented to by the husband; in case the husband refuses to consent, the consent of the court may be given in its stead (7, 27 Law of 1.7.1921). The consent does not require any form, but may be implied [7]). Gifts made during marriage by the husband to the wife, or *vice versa,* are revocable (1096 C. N.).

The wife acquires by marriage with a Polish citizen Polish nationality (Art. 7, Law of 20.1.1920). If by marriage with a foreigner a Polish woman has lost Polish nationality, she may reopt for her former national status after dissolution of the marriage and after having taken up her domicil in Poland (Art. 10, *loc. cit.*).

*Property Relations between Husband and Wife.*

7. In case no marriage contract is entered into between the parties before the celebration of the marriage, the property of the wife becomes by marriage subject to the administration and usufruct of the husband. The property thus administered by the husband comprises only such property of the wife which she held at the time of marriage, but not property acquired after marriage (193, C. C.) [8]). The earnings of the wife remain her exclusive property (Art. 12, Law of 1.7.1921).

As administrator, the husband may not dispose of the

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6) Cf. Ostrowicz 404.
7) Ostrowicz 405 Note 105a.
8) As amended by Art. 9 of Law of 1.7.1921.

wife's property without her consent (195 C. C.) nor give it on hire or lease for more than 3 years (198 C. C.) nor institute actions for recovery of possession *etc.* in respect of her property without her consent (196 C. C.).

*Res comsumptibiles* may be consumed by the husband, but their value must be refunded by him to the wife or her heirs (587 C. N.).

The wife may ask for an inventory to be made of her property at the time of marriage (194 C. C.). Her property is not liable for the debts of the husband, although administered by him ; but if no inventory has been made, the admission of the husband that the property belongs to the wife will not suffice to secure it from being attached by his creditors (*ibid.*). If the wife chooses not to ask for such inventory to be made at the time of marriage, the husband is never bound to make it or to render an account of his administration (192 C. C.).

The husband may not assign his right of usufruct or administration of the wife's property to any third person (*ibid.*).

In case the property is in danger, the wife may sue for cancellation of the right of administration of the husband ; she has the same right of action if the husband fails to maintain her or their children (199 C. C.). If she obtains judgment in her favour, she gets the same rights over the property as if it were acquired by her after marriage (Art. 10, Law of 1.7.1921). The wife may waive the rights which she obtained by such judgment, and, by notarial deed, restitute the *status quo ante* (202 C. C.).

As security for her claims against the husband, the wife is entitled to a first mortgage on his property both during and after dissolution of marriage, which becomes effectual by registration (Arts. 14 *et subs.*, Mortgage Law of 1825).

Marriage contracts are valid only if executed in notarial form and embodied in the certificate of marriage (207, 208 C. C.). They must be entered into before marriage

and cannot be amended thereafter (209 C. C.), except if legal proceedings for divorce or judicial separation are pending between the spouses (221 Marriage Law of 1836, and 210 C. C.).

Minors capable of marrying may enter into a marriage contract subject to the consent of their parents (211 C. C.). By marriage contract, the parties may stipulate separation of goods (214—217 C. C.), dotal system (218—225 C. C.), or community of goods (226—230 C. C.), and they may make provisions as to the rights of the surviving spouse in respect of their common or separate properties (231—235 C. C.).

*Nullity of Marriage.*

8. Apart from grounds of nullity of marriage which may be recognized by the various religious laws, marriages are null and void : —

(a) between Christians and Non-Christians (24);

(b) with an already married person (25);

(c) within the degrees of consanguinity and affinity prohibited by the respective religious laws (30 *et subs.*);

(d) if the parties have not freely consented to the marriage (9) ;

(e) if the marriage has not been celebrated in religious form, unless celebrated abroad (2, 108, 124, 140, 185)[9]).

In cases (a), (b), and in the cases of marriages between descendants and ascendants or brothers and sisters, action for a decree of nullity must be instituted by the public prosecutor (190); in the other cases it may be instituted by either party or by interested third persons, so far as the respective religious law recognizes such right of action (86, 92, 130).

The competent courts are, as for decrees of divorce, for Christian spouses the respective religious courts, for Non-Christian spouses the civil courts (4, 77, 122 *et subs.*, 196 *et subs.*, 189). The court decides as to the custody of the children (217, 218) and as to alimony *pendente lite* to be

9) Cf. Ostrowicz 413.

given to the wife (219) [10]). The spouses shall separate from each other as soon as nullity is decreed, and in cases where the public prosecutor must start nullity proceedings, separation shall take place immediately (215).

*Dissolution of Marriage.*

9. The grounds on which a marriage may be dissolved are those recognized by the respective religious laws (1, 60 *et subs.*, 111 *et subs.*, 147 *et subs.*, 179, 189).

Divorce *a mensa et thoro* (judicial separation) is known in the Polish Marriage Law only in respect of Roman-Catholics who cannot obtain divorce *a vinculo matrimonii* under their religious law (62 *et subs.*).

The courts competent to grant divorces are for Christians their respective religious courts, for Non-Christians the civil courts who apply the religious law of the parties (189). In case of mixed marriages, the civil courts apply the religious law of the plaintiff (Ostrowicz 423).

Actions for divorce must be instituted in the court of the last matrimonial domicil; if the parties have separate domicils, the court of the defendant's domicil, and if the defendant is domiciled abroad, the court of the plaintiff's domicil, has jurisdiction (Art. 43, Code of Civil Procedure of 29.11.1930).

Property claims may be joined with an action for divorce (Art. 13, *loc. cit.*).

In the court of the first instance, the parties may appear personally, but they are not obliged to appear; in the appellate courts they must be represented by advocates (Ostrowicz 436). The action may be struck out if the plaintiff fails to appear at the first hearing. If the defendant does not appear, the action proceeds and no judgment in default is given (*ibid.*).

As to custody of children, alimony and maintenance, the court gives a decision when granting divorce (217—219), but the parties may in respect of any such questions come to an agreement which must be executed, after action

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10) As amended by Law of 1.7.1921.

has been brought and before judgment has been given, in notarial form (221).

*Private International Law.*

10. The following is a translation of the relevant provisions of the Law of the 2. 8. 1926 : —

Art. 12 : The legal capacity to contract marriage depends for each party on his (or her) national law.

Foreigners who could contract marriage according to their national law, may not, nevertheless, contract marriage in Poland, if one of the following impediments which cannot in Polish law be dispensed with, prohibits such marriage, viz. : —

(a) consanguinity or affinity;
(b) attempt to murder the former husband or wife ;
(c) a previous marriage ;
(d) difference of religion, holy orders and monastic vows.

Art. 13 : The form of marriage is subject to the law in force at the place of celebration. The compliance with the formal requirements of the national law of both spouses renders a marriage contracted abroad valid.

Art. 14 : As to the personal and property relations between husband and wife, their national law prevails. If the spouses will after marriage have different nationalities, the relations between each other will depend on the law of the state whose nationals they have been previously.

The respective national law of the spouses decides whether they may during marriage enter into a contract of marriage or terminate or amend any such contract.

The mere change of nationality does not affect the property relations between the parties as of law and not of contract; such relations

are still governed by the national law of the husband at the time of celebration of marriage.

Art. 15 : Marriage contracts and donations between husband and wife or *fiancé* and *fiancée* are governed by the law of the state whose national the husband or the *fiancé* was at the date of the contract.

Art. 16 : Articles 14 and 15 do not apply if the state in whose territory immovables belonging to the spouses are situated, claims application of its own laws to such immovables.

Art. 17 : The authorities and the laws of the country whose citizens the parties are at the time action is brought, are competent in matters of divorce and judicial separation. In case the parties are at that time of different nationalities, the authorities and laws of the state whose citizens both parties have last jointly been are competent.

In case the parties have changed their nationality, anything done (or omitted) before such change may not constitute a ground for divorce or judicial separation, unless it is recognized as such also by the laws which were applicable before such change.

For Polish citizens, or spouses whose last common nationality was Polish, either Polish authorities or the authorities of the country where they are domiciled, have jurisdiction; if, however, the foreign authorities did not apply Polish law, their decisions will within the territory of the Republic of Poland neither be recognized nor executed.

Polish courts will grant divorce or judicial separation to foreigners resident in Poland, unless the state to which they belong has reserved to itself exclusive jurisdiction; the national

law of the parties will be applied.

Even if the foreign state has reserved to itself exclusive jurisdiction, the Polish authorities may allow foreigners resident in Poland to live provisionally separated from each other and may settle the liabilities for maintenance according to Polish law.

Polish citizens may marry before Polish consular officers abroad, even in civil form (Law of 11. 11. 1924).

Poland has ratified the Hague Conventions of June 12, 1902, and July 17, 1905, with effect from August, 25, 1929.

# PORTUGAL

*Sources of Law.*

1. The civil law of Portugal is codified in the *Codigo Civil* of July 1, 1867. New acts have been promulgated on the subject of marriage and divorce repealing the relating provisions of the Civil Code, the most important of which are : —

The Law on Civil Marriages of December 25, 1910 (the articles of this law are hereinafter indicated by numbers only) ;

The Law on Marriage Registers of February 18, 1911 ;

The Order introducing Divorce of November 3, 1910.

*Prohibited Marriages.*

2. Marriages are prohibited :—

(a) between descendants and ascendants, and with the descendants or ascendants of one's husband and wife (Art. 4 I) ;

(b) between half or full blood brothers and sisters, legitimate or illegitimate (Art. 4 II) ;

(c) by males below the age of 18 and females below the age of 16 (Art. 4 III) ;

(d) by lunatics and persons whose previous marriage was dissolved on ground of an incurable disease or abnormal sexual avidity (Art. 4 IV);

(e) between the murderer or accessory to the murder of a person and the latter's husband or wife, if also the husband or wife was convicted of the same murder or of being accessory thereto (Art. 4 V) ;

(f) by any person bound by an undissolved marriage (Art. 4 VI).

Minors under 21 years of age may not marry without the consent of their parents (Arts. 5, 6, 7).

Marriages between uncles and nieces, nephews and aunts may be contracted only with the leave of the Minister of Justice (Art. 8 and Art. 183, Law of 18. 2. 1911).

Marriages between a guardian and his or her ward, or between the descendants or ascendants of the guardian and the ward, may be contracted only after expiration of one year from the discharge of the guardian (Art. 9).

After divorce, the man may contract a new marriage

only after expiration of six months, and the wife after expiration of one year, from the date of divorce (Art. 10, and Art. 55 of the Order of 3. 11. 1910).

*Solemnization of Marriages.*

3. "All Portuguese contract marriage before the competent registrar on the terms and forms prescribed by civil law; only the marriage so contracted is valid" (Art. 3).

The competent registrar is the registrar at the domicil of either of the parties, or at the place where either party has resided at least one month before banns were published (Art. 187, Law of 18. 2. 1911). Banns must be published by the registrar during ten days including two Sundays (Arts. 190, 191, *loc. cit.*), and before publication the registrar must be satisfied that the parties may lawfully marry each other (Arts. 188, 189, *loc. cit.*). If the parties have separate domicils, banns are to be published at the domicils of each of them (Arts. 192, 193, *loc. cit.*). If impediments to the marriage are known, objection must be made to the registrar (Arts. 190, 196, *loc. cit.*); the objection may be made verbally (*ibid.*). If objection is made, the marriage may not be celebrated except on an order of the competent court (*ibid.*).

The marriage ceremony is held in public in the office of the registrar (Art. 214, *loc. cit.*). For strong reason, the registrar may celebrate the marriage at the private residence of the parties, but in such case the doors must be open and not less than seven witnesses present (Art. 215, *loc. cit.*). In all other cases, the presence of four witnesses is required (Art. 216 IV, *loc. cit.*). The parties may appoint special attorneys to attend in their stead the marriage ceremony (Art. 216 I, *loc. cit.*, and Art. 25). The ceremony itself consists of the examination by the registrar of all documents submitted by the parties in proof of their identity *etc.*, and of the reading by him before the parties of certain provisions of the law with regard to the effects of the marriage; whereupon he asks them whether they wish to become married, and they reply that this is their free will. The

registrar then declares the parties bound by marriage in the name of law and of the Portuguese Republic (Art. 220, Law of 18. 2. 1911). The marriage is forthwith registered (Arts. 222, 223, *loc cit.*).

*Effects of Marriage.*

4. The spouses are under liability to be faithful to each other, to live together and to assist and maintain each other (Art. 38). The mutual relations between the spouses are based on freedom and equality; the husband, in particular, is bound to protect the person and properties of the wife and the children, and the wife is bound to manage the household and by her moral influence to establish the union of the family (Art. 39).

The wife follows the husband to his domicil; if the husband, however, intends to take up his domicil abroad, the wife may apply to the court to release her from the duty to follow him (Art. 40).

A foreign woman acquires Portuguese nationality by marriage with a Portuguese citizen (Art. 18 VI, *Codigo Civil,* as amended by the Law of 16. 12. 1930). A Portuguese woman loses her nationality by marriage with a foreigner; but the acquisition by the husband of a foreign nationality deprives the wife of her Portuguese nationality only if she delivers a declaration to the effect that she does not wish to retain it (*ibid.*).

The husband has no right of action to compel the wife to live together with him; but the wife may sue the husband and compel him to receive her in is home (Art. 41).

The wife may appear and sue in the courts without authorization from the husband (Art. 42).

The wife bears the husband's name and participates in all honours vested in the husband and not absolutely attached to an office which he holds (Art. 43).

*Nullity of Marriage.*

5. Marriages may be decreed null if contracted in contravention of any of the prohibitions contained in Art. 4 of the Law of 25.12.1910, *supra* (Art. 11). Application

for a decree of nullity may be made by the government advocate or any interested person (Art. 12).

Marriages contracted by minors without consent from their parents or by interdicted persons without consent from their guardians are voidable at the instance of the spouse after acquisition of full capacity or at the instance of the parent or guardian without whose consent the marriage was contracted (Arts. 13—15).

A party induced to marry by means of fraud or duress may also apply for a decree of nullity (Arts. 18, 19). In case of fraud or misrepresentation, only an *error personae* is recognised as relevant. As instances of such error, the law mentions: ignorance of the personal status, ignorance of conviction of a felony, ignorance of some incurable physical defect, such as impotency, or of an incurable contagious disease (Art. 20). No action lies after expiration of one year from the date the party got knowledge of the error or from the date the duress ceased to subsist (Arts. 22, 23).

The government advocate shall always intervene in nullity actions and assist the case of the wife and the children, regardless of whether and how they are represented before the court (Art. 28).

A null marriage contracted *bona fide* has all effects of a valid marriage; if only one party was in good faith, those effects are produced only in his or her favour (Art. 30).

*Dissolution of Marriage.*

6. Marriage is dissolved by the death of either spouse or by divorce *a vinculo matrimonii* (Art. 1, Order of 3. 11. 1910). Divorce has the same effects on the persons and properties of the spouses as the dissolution of marriage by death (Art. 2, *loc. cit.*).

Divorce may be decreed on ground of mutual consent of, and joint application by, the parties, or in the course of judicial proceedings on the suit of one party (Art. 3, *loc cit.*). In the latter case, the following facts are sufficient to constitute grounds for divorce, viz.:—

(a) adultery ;
(b) convictions of certain criminal offences ;
(c) assaults and grave insults ;
(d) desertion of the conjugal roof for three years ;
(e) missing for four years ;
(f) incurable mental disease if proved by declaratory judgment dated three years ago ;
(g) actual separation of the parties for ten years ;
(h) inveterate gaming vice ;
(i) incurable contagious diseases or abnormal sexual avidity (Art. 4, *loc. cit.*).

The action may be brought at the court of the plaintiff's domicil ; if the plaintiff has no domicil in Portugal, the court of Lisbon exercises jurisdiction (Art. 5, *loc. cit.*).
The decree of divorce is published in the Official Gazette (*Diario de Governo*) and in two local newspapers (Art. 19, *loc. cit.*).
The wife is after divorce not entitled to bear the husband's name (*ibid.*), but she may apply for alimony and maintenance *pendente lite* and permanently (Art 20, *loc. cit.*).
If the action for divorce is dismissed, the plaintiff may renew the action on the same grounds not earlier than after two years (Art. 34, *loc. cit.*).
Divorce on ground of mutual consent is granted only if the parties were married for at least two years and are above the age of 25 (Art. 35, *loc. cit.*). The parties must make joint application for divorce to the court and submit certificates of births and of marriage, marriage contracts, and all agreements and settlements made by them in contemplation of the divorce (Art. 36, *loc. cit.*). Both parties must personally appear in court (Art 38, *loc. cit.*) ; the court shall try to reconcile them, and if they insist on being divorced, decree provisional divorce in the presence of two witnesses and issue a certificate to this effect (Art. 37, *loc. cit.*). The certificate is confirmed by a formal judgment ordering the parties

to live separated from each other for the period of one year (Art 39, *loc. cit.*). After expiration of one year, both parties must again personally appear in court and declare that they are still willing to be divorced; if the court does not succeed to reconcile them, final decree of divorce is granted (Art. 40, *loc. cit.*). If the court refuses to grant the decree, such refusal may be appealed against (Art. 42, *loc. cit.*). The final decree of divorce is gazetted in the *Diario de Governo* and published in two local newspapers (Art. 40 III, *loc. cit.*).

Interim orders of alimony and maintenance may be made pending the final decree; upon issue of the final decree, they may be made absolute (Art. 40 IV, *loc. cit.*). If the parties are reconciled before the final decree is issued, they may never again apply for divorce on ground of mutual consent (Art. 41, *loc. cit.*).

Judicial separation may be applied for on any of the grounds enumerated above as grounds for divorce (Arts. 43, 44, *loc. cit.*). After expiration of five years from the date of the decree of judicial separation, divorce may be applied for by either party; the divorce is granted, after summons having been served on the defendant, within 48 hours, whether the defendant appeared or not, unless documentary evidence is submitted disproving the plaintiff's allegations (Art. 46, *loc. cit.*).

*Private International Law.*

7. Portuguese citizens remain subject to Portuguese law in respect of their personal status and capacity even if they are residing abroad, as far as the effects of their acts in Portugal are concerned; the form of such acts is, however, governed by the *lex loci* (Art. 24, *Codigo civil*). Foreigners are, in respect of their personal status and capacity, subject to their national law (Art. 27, *loc. cit.*). Portuguese citizens may marry abroad either before Portuguese consular officers or in accordance with foreign law, provided it is not contrary to the principles of Portuguese public law (Art. 58, Law of 25. 12. 1910). Such marriage must be registered in Portugal within three

months from the date of the marriage or within 30 days from the date of the parties' return to Portugal (Art. 242, Law of 18. 2. 1911).

Marriages contracted abroad under the *lex loci* may be proved in Portugal by the evidence which would be recognized for this purpose under the foreign law (Art. 61, Law of 25. 12. 1910).

Foreign judgments are recognized by the Portuguese courts if the foreign court was competent and if the parties were duly summoned (Arts. 1087—1091, Code of Civil Procedure). Foreign judgments of divorce must be registered in order to have effect in Portugal, and will be so registered if recognized by judgment of the Portuguese court (Arts. 243, 244, Law of 18. 2. 1911).

# RUMANIA

1. Modern Rumania comprises four parts :—

*Sources of Law.*

(a) The pre-war Rumania, consisting of the provinces of Walachia, Moldavia, and Dobruja. In these provinces, the Rumanian Civil Code of November 26, 1864, as amended by an Act of March 15, 1906, is prevailing. This code is in its greater parts a literal reproduction of the *Code Napoléon,* so that reference can usefully be made to the chapter on France, *supra.*

(b) The provinces of Transsylvania, Banat, Crisana, Satmar, and Maramures (also known as "Siebenbuergen") which formerly belonged to Hungary. In these provinces, celebration and dissolution of marriage are governed by the Hungarian law (GA XXXI of 1894, *supra),* whilst the Austrian Civil Code *(Allgemeines Bürgerliches Gesetzbuch)* applies to all other branches of civil law, including the effects of marriage on the property of the spouses [1]).

(c) The province of Bukovina, formerly belonging to Austria, where Austrian law as amended by an Act of 1921 is prevailing. By the said Act of 1921, the impediments to marriage of difference of religion and the indissolubility of Catholic marriages have been abolished. By an Act of March 30, 1924, the provisions of the ABGB with regard to Jewish marriages ceased to have effect in Bukovina, and Jewish marriages may now be dissolved only under the general civil law [2]).

(d) The province of Bessarabia, formerly belonging to Russia, where pre-war Russian law prevails (cf. under Lithuania, *supra*). On November 19, 1919, an Act (No. 4749) has been passed abolishing the jurisdiction of the religious courts in divorce matters and introducing the Rumanian Civil Code with regard to divorce, nullity, and judicial separation.

New Rumanian legislation, having effect in all parts of

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1) But excluding the law of guardianship which is governed by Hungarian law ; cf. Bergmann II 537.

2) Bergmann II 559.

the country, has been made in respect of nationality (Law of 23. 3. 1924) and in respect of birth and marriage registers (Law of 21. 2. 1928).

The following is a short account of the marriage law as laid down in the Rumanian Civil Code of 1864 and amendments thereto.

*Prohibited Marriages.*

2. Males may not contract marriage before they have attained the age of 18, nor may females before they have attained the age of 15 (Art. 127), but the King may dispense with this impediment (Art. 128).

There is no marriage without mutual consent (Art. 129).

Minors under the age of 21 may not marry without consent of their parents (Arts. 131—133) [3].

Marriages are prohibited: —

(a) before dissolution of a previous subsisting marriage of either party (Art. 130);

(b) between descendants and ascendants, brothers and sisters, uncle and niece, nephew and aunt, and between cousins, whether they are legitimate or illegitimate, and with the same relatives of one's husband or wife (Arts. 143, 144);

(c) between the adoptive parent and the adopted child or his descendants; between the adopted child and the wife, ascendants, brothers or sisters of the adoptive parent (Arts. 146—148);

(d) between a guardian and his ward (Art. 149).

The King may grant dispensation and allow a marriage between cousins or with the brother or sister of one's husband or wife (Art. 150).

*Solemnization of Marriage.*

3. Before marriage, the parties must personally or by especially authorized attorney apply to the registrar at the domicil of one of them for publication of banns (Art. 70, Law of 21. 2. 1928) [4]. Banns are published at the

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3) The provisions of the *Code Napoléon* with regard to the *actes respectueux* have been repealed in Rumania.

4) Note that the provisions of this law have effect in all provinces of Rumania.

place where the parties have resided during the three months preceding the publication (Art. 72, *loc. cit.*).

Objection to the marriage may be made by ascendants, brothers or sisters of either party, by the authorities in charge of young persons, by the husband or wife of either party, and by the government advocate (Art. 74, *loc. cit.*). The objection is to be made to the court of the place where banns have been published, but the opponent has to take up his domicil at that place so long as the case is pending before the court (Art. 75, *loc. cit.*). The court summons the parties and decides on the objection in chambers; appeal may be lodged against the decision within three days, and the court of appeal has to give a final decision within five days (Arts. 76—78, *loc. cit.*).

Banns are to be published during ten days (Art. 73, *loc. cit.*), after expiration of which the registrar may, if no objection was made or confirmed, proceed with the celebration of the marriage (Art. 80, *loc. cit.*). If the marriage is not celebrated within one year, the publication of banns must be repeated (*ibid.*).

The government advocate may dispense with the publication of banns; such dispensation is valid for 15 days only (Art. 81, *loc. cit.*).

The marriage is celebrated in public in the presence of both parties and two major witnesses (Art. 90, *loc. cit.*). The registrar has to satisfy himself that all requirements of the law have been observed, and then he shall ask both parties whether they are willing to marry each other, and, if they reply in the affirmative, he shall declare in the name of law that they are bound by marriage (Art. 91, *loc. cit.*). A certificate of marriage is forthwith drawn up and the marriage duly registered (Arts. 92, 93, *loc. cit.*).

Religious marriage ceremonies may be celebrated only upon production of a duly authenticated certificate of civil marriage (Art. 94, *loc. cit.*).

*Effects of Marriage.*

4. The effects of marriage on the personal and property relations between husband and wife under the Rumanian Code are the same as those under the *Code Napoléon* (cf. France, *supra*).

By the Law of the 23rd February, 1924, a foreign woman acquires Rumanian nationality by marriage with a Rumanian (Art. 4) and retains such nationality even after dissolution of the marriage, unless she declares her contrary intention by delivery to the Ministry of Justice or to a Rumanian consul abroad of an officially legalized solemn declaration (*ibid.*). A Rumanian woman loses her nationality by marriage with a foreigner, unless she has reserved to herself by a marriage contract or by an officially legalized declaration the Rumanian nationality, or unless she does not acquire by marriage the nationality of her husband (Art. 38). After dissolution of the marriage, she may submit an officially legalized declaration to the effect that she desires to become again a Rumanian citizen, to the Ministry of Justice or to a Rumanian consul abroad, whereupon her former national status is restored to her (Art. 39).

If after marriage the husband becomes naturalised in a foreign country, such naturalisation extends to the wife, and both spouses lose Rumanian nationality (Art. 36). The wife, however, may apply to the Council of Ministers for permission to remain permanently in Rumania, and if such permission is granted and the wife has abandoned the foreign nationality she becomes again Rumanian (*ibid.*).

*Nullity of Marriage.*

5. Under the Rumanian Civil Code, nullity of marriage may be decreed by the courts in the following cases : —

(a) if the marriage was contracted without free consent or under an *error personae* on the part of the plaintiff (Art. 162) ;

(b) if the marriage was contracted without the required consent of the ascendant or guardian who must be the plaintiff ;

(c) if the marriage is bigamous or contracted by incapable persons or within the prohibited degrees of consanguinity or affinity, upon application of either spouse or the government advocate or any interested person (Art. 166);

(d) if the marriage had not been celebrated in public or by the competent registrar, upon application of either spouse, their ascendants, the government advocate, or any person interested (Art. 173).

If the interest of the third person applying for a decree of nullity is an interest in property, such interest must be a present, and may not be a future one (Art. 169).

Failure of publication of banns is no ground for nullity, but the registrar and the parties are liable to pay a fine (Art. 174).

A marriage, although decreed null, has all effects of a valid marriage in respect of the spouses and of the children, if it was contracted *bona fide* (Art. 183). If only one of the spouses acted *bona fide,* such effects are brought about in his (or her) favour only (Art. 184).

*Dissolution of Marriage.*

6 .Marriages are dissolved either by death or by judicial decree (Art 209). A decree of divorce may be granted on the following grounds: —

(a) adultery (Art. 211);

(b) excesses, maltreatments, grave insults (Abt. 212);

(c) condemnation to penal servitude or imprisonment (Art. 213);

(d) attempt of murder or knowledge of such attempt by others (Art. 215);

(e) mutual firm consent between the parties that the conjugal community is intolerable to them, provided the formalities required by law (*infra*) are complied with (Art. 214) [5]).

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5) In the province of Bukovina, the following grounds of divorce are recognized: adultery, condemnation for 5 years imprisonment or more; malicious desertion, if the defendant's whereabouts are unknown and if he or she has not appeared within one year from the date of publication of official summons; dangerous assaults;

The divorce on ground of mutual consent may be applied for only if the husband is above the age of 25 and the wife above the age of 21 (Art. 254) and if two years have passed from the date of celebration of marriage (Art. 255). It may not be applied for if more than 20 years have passed from the celebration of marriage, or if the wife is above the age of 45 (Art. 256). The divorce must be assented to by any ascendants of the parties who are alive (Art. 257). The parties must personally appear in court, and if they refuse to reconcile, they must file their settlements in respect of their property and children, and thereupon separation is ordered for one year. Application for divorce must be repeated by both parties in the fourth, seventh and tenth months. Within two weeks after expiration of one year, the parties must severally appear in court together with two witnesses above the age of 40 and apply once more for the divorce. The court decrees the divorce upon hearing the government advocate and being satisfied that all formalities have been complied with. The decree is appealable (Arts. 258–275). The decree shall within two months be registered in the marriage register (Art. 276).

The divorce on any of the other grounds enumerated above may be decreed upon application of either spouse to the civil courts of the parties' domicil (Art. 216). No action for divorce lies if the parties were reconciled or if the plaintiff has condoned the cause of action; if reconciliation or condonation takes place after the action was brought, the action will be struck out (Art. 251). The burden of proof whether reconciliation or condonation has taken place, is on the defendant (Art. 253).

The decree of divorce must be registered within two months (Arts. 246–248).

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repeated maltreatments; and invincible aversion, on ground of which judicial separation has been first ordered (Law of 1921, cf. Bergmann II 558).

The parties to a marriage dissolved by a decree of divorce, may not contract with each other a new marriage (Art. 277).

*Private International Law.*

7. Rumanian citizens may contract marriage abroad either before Rumanian consular officers according to Rumanian law or before the local registrar according to foreign law (Art. 82, Law of 21. 2. 1928). The celebration of a marriage before a Rumanian consular officer abroad must be preceded by publication of banns in accordance with Rumanian law; in case of objections, the court of Bucharest has jurisdiction (Art. 83. *loc. cit.*). In case of marriages before foreign registrars, no publication of banns other than that required by foreign law is prescribed, but the marriage is not valid if it is one of the marriages prohibited under Rumanian law (Art. 84, *loc. cit.*).

The provisions of the Rumanian Civil Code with regard to private international law have been given force in all parts of the country [6]).

Rumanian citizens, even when residing abroad, are subject to Rumanian law regarding their personal status and their capacity (Art. 2). The form of legal acts is governed by the law of the country where they are made (Art. 3). Every deed or document made abroad is admitted as valid proof of its contents if it is made in accordance with the formal requirements of the *lex loci* (Art. 34).

Foreign judgments are recognized in Rumania if they are consistent with all requirements of law and procedure of the *lex fori*; if such judgments are to be enforced by execution proceedings in Rumania, a formal judgment of a Rumanian court is required [7]).

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[6]) Bergmann II 537.
[7]) Bergmann II 538.

# SPAIN

*The Sources of the Law*

1. The Spanish Law of Marriage and Divorce has been subject to many alterations in the course of the last 60 years. Before 1870, only the religious forms of marriage were recognized; by an Act of the 18. 6. 1870, religious marriages became invalid and the civil form of marriage obligatory. In 1875, civil marriages were abolished except for persons not belonging to the Catholic Church. The *Codigo Civil* of the 24. 7. 1889 recognizes both civil and religious marriages, but requires Catholics to undergo the religious ceremony in addition to the civil registration of the marriage (Art. 42).

The law now in force in Spain is that codified in the Law on the Celebration of Marriage of the 28. 6. 1932 and in the Law of the 2. 3. 1932 on Divorce.

The Law of the 28. 6. 1932 abolishes the religious form of marriage and declares the civil marriage obligatory. The provisions of the *Codigo Civil* as to the civil marriage are, subject to some amendments, still in force.

*Promise to Marry.*

2. The promise to marry does not give any right of action except for damages in cases where the promise was made by notarial deed or banns have already been published (43, 44, C. c.) [1]).

*Prohibited Marirages.*

3. Marriages are prohibited in any of the following cases:

(a) if the husband is under the age of 14 or the wife under the age of 12 (83 I);

(b) if one of the spouses is not at the time of marriage in full possession of his or her mental powers (83 II);

(c) if one of the spouses is permanently, irreparably and apparently sexually impotent (83 III);

(d) if one of the spouses is married (83 V);

(e) between ascendants and descendants, either legitimate or illegitimate, and with the ascendants or descendants of one's husband or wife (84 I);

(f) between kins in the collateral lines up to the third

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1) The Articles of the Civil Code are hereafter quoted by numbers only.

degree and with the corresponding kins of one's husband and wife (84 II, III, IV, as amended);

(g) between adoptive parents and adopted children, and between descendants of adoptive parents and the adopted children (84 V, VI);

(h) between persons who have been convicted of adultery (84 VII);

(i) between the murderer of a person and the latter's surviving spouse (84 VIII).

A widow shall not marry before expiration of 301 days from the date of her husband's death (45 II), and a guardian shall not marry his ward before having been discharged from the guardianship (*ibid.*), and a minor [2]) shall not marry without the consent of his or her parents or legal guardian (45 I); this consent must now be declared by formal deed (Art. I 2, Law of 28.6.1932). Marriages contracted contrary to the three last mentioned provisions are not invalid (50).

*Celebration of Marriage.*

4. At the celebration of the marriage, the spouses must be personally present; they may be represented by an especially authorized attorney, unless the party so represented resides in the district of the celebrating judge (87). The marriage is celebrated by a municipal judge (86, 88). Before celebration, the judge has to order publication of banns during 15 days (89 *et subs.*); the judge may, if sufficient reason is shown, dispense with the publication (92, as amended). If one year has expired without the marriage having been celebrated, new publication is required (96). Objections must be made by everybody who has reason to believe that there are legal impediments to the marriage (98); the objections are filed with the government advocate who brings the matter before the court (*ibid.*). If no objection was made or if the court has dismissed the objections made, the marriage is celebrated by both spouses (or their respective

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2) Below 23 years of age — Art. 320 C. c.

especially authorized attorneys) and two major witnesses appearing before the judge and by the spouses declaring that they are willing to marry each other (99, 100, as amended). A certificate of marriage is forthwith drawn up and signed by the judge, the spouses, the witnesses, and the clerk of the court (*ibid.*).

The certificate of marriage is conclusive evidence of its lawful celebration (53). Marriages contracted under laws which were previously in force are proved in accordance with the provisions of those laws (*ibid.*).

5. *Mutual Rights and Duties of Husband and Wife.*

The spouses are bound to live together, to be faithful to and to help each other (56). The husband must protect the wife, and the wife must obey the husband (57). The wife shall follow the husband wherever he takes up his residence; if he takes up his residence abroad, the court may release her from the obligation to follow him (58).

The husband, provided that he has attained the age of 23, is the administrator of the property of the conjugal society (59); he is the agent of the wife who cannot without his consent appear in court (except to defend herself in criminal matters or in actions against her husband) nor dispose of property without consideration (60, 61); but she may freely make testamentary dispositions and exercise all rights in respect of her personal property (63).

A foreign woman does not acquire by marriage with a Spanish citizen *ipso facto* Spanish nationality; she may either retain her former nationality or apply for naturalisation as a Spanish citizen in the prescribed manner [3]).

*Marriage Contracts.*

Before the marriage is celebrated, the parties may enter into a contract of marriage to settle their property relations; if no such contract was made, the *régime* governing their property relations is the *"Sociedad de Ganan-*

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3) Art. 23 of the Constitution of the Republic of Spain, *Gaceta de Madrid* Nr. 344 of 10.12.1931, cf. Bergmann Suppl. IV. pg. 125.

*ciales*", community of acquisitions (1315). The contract may not contain stipulations contrary to *bonnes moeurs* or to law or abrogating the respective rights and obligations under law of each of the spouses (1316). Stipulations like that are null and void (1317). Minors may execute contracts of marriage only with the consent of their parents or legal guardians (1318). After marriage, the contract may neither be made nor amended (1319,1320).

*Property Régime where no Contract of Marriage Exists.*

A short account follows of the community of acquisitions, the *régime* which is under the *Codigo civil* obligatory if no valid contract of marriage exists. The main feature of this *régime* is that at the dissolution of marriage each of the spouses acquires one half of the profits and gains obtained by either of them during marriage (1392). These profits are calculated as from the date of the celebration of marriage (1393). They comprise: (a) property acquired with the common fund either in the name of the community or of one of the spouses; (b) property acquired by the industry, the work, or the efforts of both spouses or of either of them; (c) profits accrued from common property or separate property of one of the spouses (1401).

As separate property of the spouses is recognized: (a) property brought in at the marriage or acquired gratuitously during marriage; (b) property acquired by exchange with other separate property; (c) property acquired with money out of the separate property (1396).

The community is charged with the debts of the spouses (with those of the wife insofar as they were lawfully incurred), interest and other payments due on separate or common property, small repairs of the separate property, any repairs of the common property, the maintenance of the family and the education of children, and donations made to children common to both spouses by either of them (1408, 1409). Debts contracted before marriage do not affect the community (1410), but losses suffered during marriage by either spouse at lawful games shall

be debited, and winnings credited, to the community (1411).

The husband, except if he is a minor, administers the common property (1412); he may alienate and charge it without the wife's consent, but not to prejudice her or her heirs (1413). He cannot dispose by will of more than his share in it, i. e. one half (1414). The wife cannot bind the common property without the husband's consent except if she is legal administratrix of the property by reason of her husband's incapacity or absence (1441, 1442) and except for the purposes of the common household (1362, 1416).

The community is dissolved by dissolution of marriage. If nullity of marriage is decreed on ground of the *mala fide* default of either spouse, the spouse in default forfeits his or her share in the acquisitions (1417). In some cases, dissolution of the community of acquisitions may be applied for to, and pronounced by, the court, although the marriage itself is not being dissolved; in such cases separation of goods is ordered (1433). The Code contains detailed provisions as to the manner of liquidation of the community of acquisitions (1418—1431).

*Nullity of Marriage.*

6. The civil courts may decree nullity of marriages which were contracted in contravention of the prohibitions provided for by the law (Arts. 83 and 84 C. c., *supra*) upon application by either spouse, by the attorney general, or any other interested person (101, 102). The action must be dismissed if it was instituted on ground of error, coercion, or fear of either spouse and if the cause of action occured more than six months ago (*ibid.*). The civil courts have also exclusive jurisdiction in matters of nullity of marriages contracted previously under religious law; they shall apply the respective religious laws, but decisions and judgments of religious courts have no legal effect (Art. 4, Law of 28. 6. 1932).

*Divorce.*

7. The following is a translation of the Law of Divorce of the 2. 3. 1932 [4]):

## CHAPTER I.

### *The Causes of Divorce.*

*Causes of Divorce.*

Art. 1: Divorce which is decreed by the final judgment of the civil tribunals dissolves the marriage whatever the form or date of its celebration may have been.

Art. 2: Divorce may take place either when both spouses apply therefor by common accord or when one of them applies for some cause stated in this law and [5]) subject to the provisions thereof.

Art. 3: The following are causes for divorce:

(I) adultery, if it has neither been consented to nor facilitated by the spouse who pleads it.

(II) Bigamy, but without prejudice to an action for nullity which may be brought by either of the spouses.

(III) The attempt of the husband to prostitute his wife, or the attempt of the husband or of the wife to corrupt their children or prostitute their daughters, or their connivance at the corruption or prostitution of their daughters.

(IV) Desertion of the family [6]) without justification.

(V) Wrongful desertion by a spouse for the duration of one year.

(VI) The absence of a spouse when two years have expired since the date of the judicial declaration thereof reckoned according to Art. 186 of the Civil Code. (Under which

4) Taken from Latey, Jurisdiction and Recognition in Divorce and Nullity Decrees, pg. 97 *et subs.*

5) It should run: and, in any case, subject to the provisions thereof (cf. Bergmann Suppl. V. pg. 95).

6) It should have been added: desertion of the family *"in distress"* (Bergmann, *loc. cit.*).

the declaration only becomes operative after six months have expired from its publication in the official newspapers.)

(VII) Attempt of a spouse on the life of the other, on that of a child of both of them or of one of them ; physical bad treatment [7]) or serious insults.

(VIII) Violation of any of the duties imposed by the marriage, or the immoral or dishonouring conduct of one of the spouses which produces such disturbance of the marital relations that for the other spouse they make the continuation of the common life insupportable.

(IX) Contagious and serious malady of a venereal character contracted in sexual relations apart from the marriage and after its celebration or such malady contracted previously which has been wrongfully concealed from the other spouse at the time of celebrating it.

(X) A serious illness which by reasonable presumption may be expected in its development to produce definitive incapacity to perform any of [8]) the matrimonial duties, and contagious disease, in both instances contracted before the marriage and concealed [9]) at the time of its celebration.

(XI) The condemnation of a spouse to a punishment which deprives of liberty for a period of more than ten years.

(XII) Actual separation in different homes with free consent lasting three years.

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7) More exactly : *premeditated* physical assaults.
8) The words "any of" should be deleted.
9) It should run : *wrongfully* concealed.

(XIII) Mental alienation of one of the spouses when it prevents their spiritual life in common to the extent of being gravely prejudicial to the family [10]) and excluding all reasonable presumption that it may be definitely cured. Divorce for this cause may not be decreed if the maintenance (*existencia*) of the person affected is not secured.

## CHAPTER II

### *Proceedings in Divorce Actions.*

*Proceedings in Divorce Actions.*

Art. 4: Spouses who have attained their majority may apply for divorce by mutual consent. This right cannot be exercised unless two years have expired from the celebration of the marriage.

Art. 5: Divorce for a lawful cause can only be sought by an innocent spouse of whatever age.

Art. 6: An action for divorce abates by the death of either of the spouses. Their heir may continue the claim or counterclaim brought by the original party so as to produce the effects of Art. 29.

Art. 7: A spouse who is subject to civil interdict may himself apply for divorce, pleading a just cause imputable to the other spouse.

Art. 8: The action cannot be brought when six months have expired since the spouse became aware of the fact on which it is based, or when five years have expired since the fact took place, with the exception of cases of adultery for which the period of prescription is fixed at ten years, and attempts of one spouse on the life of the other or a child whom they have in common or a child of one

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10) Bergmann (*loc. cit.*) translates: Mental alienation of one of the spouses if his (or her) state of mind constitutes a grave danger for the family and all reasonable presumption is excluded that it may be definitely cured.

of them, which shall not be prescribed. When it is based on one of causes 4, 5, 6, 8, 12, or 13, the action may be brought so long as the state of facts exists which causes the action. When the action is based on the 11th cause it is necessary that three years at least should have expired since the condemnation.

The periods of prescription referred to in the previous paragraph do not run while the spouses are living separated. If the spouse to whom the action for divorce is available is judicially required by the other to re-establish the life in common or brings [11]) the claim, the periods shall again run from the date on which the requisition was effectuated.

Art. 9: In the appropriate case the judgment shall declare the guilt of the spouse who has given cause for the divorce or of both, as the case may be [12]).

Art. 10: Reconciliation puts an end to actions of divorce. The spouses should bring it to the knowledge of the judge who is hearing the action. When the application for divorce is based on mutual disagreement of the spouses, reconciliation shall prevent such application from being repeated without just [13]) cause until the expiration of two years.

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11) It must run : or *to bring* the action, the periods shall run from...
12) Better : The judgment shall declare guilty either *one* spouse or both of them, as the case may be.
13) It must run : without *another* legal cause.

## CHAPTER III.

### *The Effects of Divorce.*

#### First Section.

#### *The Effects of Divorce as regards the Persons of the Spouses.*

*Effects of Divorce.*

Art. 11: By the definitive decree of divorce the spouses are at liberty to contract a new marriage, but the guilty party may only contract it after the expiration of the period of one year after the decree is absolute (definitive). Nevertheless, the wife shall remain subject to the prohibition of Art. 45 (2) of the Civil Code and the period of 300 days must be reckoned from the judicial order which separates the spouses. This prohibition shall not apply when the divorce has been decreed for any of the causes numbered 5, 6, 11, or 12, or for mutual incompatability.

Art. 12: A spouse who has been declared guilty of the third cause of Art. 3 cannot validly contract a fresh marriage.

Art. 13: Divorced spouses who have not contracted other marriages may remarry each other at any time.

#### Second Section.

#### *The Effects of Divorce as regards the Children.*

Art. 14: The dissolution of marriage does not exempt the parents from their obligations towards the children. The judge shall fix the manner in which the father or mother who has not their custody must contribute to the fulfilment of such obligations. The provisions of Art. 33 apply to this case.

Art. 15: The children keep all the rights and advantages which are secured to them by law, by their parents or by other persons; but they can only

enforce them in the same cases as those in which they could enforce them if there had been no divorce.

Art. 16: When the marriage has been dissolved for any of the causes 1, 2, 9, 10, 11, or 12, or for mutual incompatability, the spouses may agree which of them is to have the custody of the children whom they have in common and who are under age. This agreement shall require the approval of the judge.

Art. 17: In default of agreement the children shall remain in the custody of the innocent spouse. If both are guilty or neither of them are so, the judgment, taking into account the nature of the causes of the divorce and the interests of the children, shall decide in the custody of which of them they are to remain or shall order them to provide a guardian according to the provisions of the Civil Code. If the judgment has not otherwise provided, the mother shall in any case have the custody of the children who are under five years.

Art. 18: A system which is established under the two preceding Articles may be altered for grave causes and in the interest of health, of up-bringing, and of the good administration of the property of the children.

Art. 19: A spouse who has been deprived of the rights which are inherent in *patria potestas* shall recover them on the death of the other spouse, unless the former has been declared guilty of the divorce based on the 3rd or 4th causes or of an attempt on the life of the children of the marriage. In these cases such spouse may recover it by judicial decision.

Art. 20: The spouse in whose custody the minor children remain, shall have *patria potestas* over them and

in consequence the right of representation and the usufruct and administration of their property. The spouse who has not their custody retains the right of communicating with them and watching over their bringing-up in the way determined by the judge who shall take the measures necessary for insuring the exercise of these rights.

Art. 21: The fact of the second or later marriage of the divorced spouse in whose custody are the persons and property of his children of a previous dissolved marriage shall not *per se* alone be the cause of altering the established position with respect to the said offspring. Nevertheless, the judge may determine the contrary by virtue of an application by one of the parties, and when in consequence of the remarriage of a spouse there arise causes which reasonably justify this decision. In every case, in which the second or subsequent marriage has been contracted under any kind of community of assets whether absolute or relative, the father or mother who has married again shall lose the administration and usufruct of the property of the children submitted to their custody (*guarda*). On this happening, a manager of the children's property shall be officially appointed.

Art. 22: The term of 300 days enacted by Art. 108 of the Civil Code, shall begin to be reckoned from the date of judicial order separating the spouses.

Third Section.

*The Property of the Spouses (Matrimonio).*

Art. 23: The conjugal partnership is dissolved by the definitive judgment of divorce by virtue whereof each of the spouses may demand the liquidation and separation of their property.

Art. 24: Both the husband and the wife acquire the free disposition and administration of their own property and that which is adjudged to them through the liquidation of the conjugal partnership.

Art. 25: The claim for divorce and the definitive judgment whereby it is decreed must be noted and inscribed respectively in the appropriate Register of Property as regards immovable property and the real rights which belong to the conjugal partnership. In proper cases the claim shall be noted and the judgment shall be inscribed in the appropriate Mercantile Register.

Art. 26: When divorced spouses contract a fresh marriage together, the property shall again be governed by the same rules [14]) as before the separation, without prejudice to what may have been legally done meanwhile. Before contracting the second marriage, the contracting parties shall be bound to state by public instrument the properties which they contribute afresh, and these shall respectively form the individual capital of each spouse. Under this Article all the contributed properties shall always be deemed new contribution, although in part or in whole they are the same as existed before the liquidation which was made on account of the divorce.

Art. 27: The divorce does not authorize the spouses to exercise the rights which were agreed for the case of the death of one of them; nor shall it prejudice them in exercising such rights when such event actually arrives, saving the provisions in the following Article.

Art. 28: The guilty spouse loses all that has been given or promised by the innocent party or by another person for the sake of the innocent party, and

14) i. e.: *régime.*

the innocent party keeps what he may have received from the guilty party; and may likewise immediately claim what the latter has promised although such benefactions have been agreed subject to a condition of reciprocity.

Art. 29: The spouse who has been declared guilty of the divorce does not succeed *ab intestato* to the ex-consort and is not entitled to the usufructuary portion enacted by Book III Title (iii) Chapter 2 § 7 of the Civil Code nor to the advantages of Arts. 1374 and 1420 of the same Code [15]). If the spouses are separated by a claim for divorce at the time of the death of the *de cujus*, the result of the action shall be awaited, if the heirs avail themselves of the right granted to them by Art. 6.

## Fourth Section.

### *Maintenance.*

Art. 30: When without sufficient property to meet his (or her) subsistence, the innocent spouse may demand a maintenance allowance (*pension alimenticia*) from the guilty spouse, independent of that which belongs to the children in his (or her) care. If the divorce be decreed for a cause which does not involve guilt on the part of either of the spouses, both may reciprocally demand maintenance in a proper case.

Art. 31: The right to maintenance shall cease by the death or remarriage of the recipient and by the recipient living in concubinage. The obligation of the one that has to provide it, is transmitted

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15) The portion on which the surviving spouse has a right of usufruct is two thirds of the estate (Arts. 808 *et subs.*, C. c.). Arts. 1374 and 1420 provide for the rights of the surviving spouse to the personal effects of the deceased spouse.

to his heirs without affecting *legitim* when they are obligatory heirs [16]).

Art. 32: The maintenance shall be reduced or increased in proportion to the increase or diminution of the needs of the recipient and the economic position of the spouse who has to supply it.

Art. 33: The recipient may require a special mortgage to be constituted on the immovable property of the spouse obliged to give maintenance sufficient to guarantee the fulfilment of the obligation. If the person bound has no property of his or her own on which to constitute the mortgage, or if that is unsufficient, the judge shall determine according to the circumstances the guarantees which have to be given.

Art. 34: A divorced spouse who becomes obliged to supply maintenance to the other spouse or to the descendants, by virtue of an agreement judically approved or by judicial decision, and who wrongfully ceases to pay it for three consecutive months, shall be liable to imprisonment of three months to a year or to a fine of from 500 to 10.000 pesetas. In all cases reincidence shall be punished by imprisonment.

Art. 35: In so far as provision is not made by this law, the provisions of Title (VI) Book I of the Civil Code shall apply [17]).

## CHAPTER IV.

### *The Separation of Persons and Property.*

*Judicial Separation.*

Art. 36: Separation of persons and property may be sought without the breach of the bond: (I) by mutual consent; (II) for the same causes as

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16) Obligatory heirs are the descendants to the extent of two thirds of the estate (which is, under this Article, not affected by the liability for maintenance); if there are no descendants surviving, the ascendants are obligatory heirs to the extent of one half of the estate (Arts. 930 *et subs.*, C. c.).

17) That Title deals with the Maintenance of Parents and Children.

divorce; (III) when the matrimonial relations have undergone a profound disturbance through the effect of difference in habits or mentality or religion as between the spouses, or other cause of analogous nature which does not involve guilt in either of them. In this case, either of the spouses may apply for separation.

Art. 37: Proceedings in the action for separation are subject to the rules which are enacted for the divorce action by Chapter II of this Law. The innocent spouse may choose between the two actions.

Art. 38: Separation merely produces the suspension of the life in common of the married persons. The provisions of Chapter III of this Law shall apply to the property of the spouses, and the custody of the children, and to maintenance.

Art. 39: After two years have expired, reckoned from the date of the judgment of separation, judgment for divorce shall be pronounced on the petition of the two spouses, or on the petition of either of them when three years have expired.

Art. 40: For those who are subject to incapacity under Art. 213 of the Civil Code, their guardian may apply for separation with the authorisation of the family council [18]). This separation may not be a reason for the judgment of divorce mentioned in Art. 39 except after the expiration of three years and on petition of the spouse who is in the enjoyment of full capacity.

*Rules of Procedure.*

The last (fifth) Chapter of the Law of the 2.3. 1932 (Arts. 41—69) deals with procedure. The following main provisions may be noted: Divorce suits are brought to the judge of the first instance at the matrimonial domicil. If

18) The family council consists of the male ascendants and descendants (if major), brethren, and husbands of the sisters, of the interdicted person, or such other relatives as were appointed by the will of his (or her) father (Art. 294 C. c.).

both spouses have different domicils, the action is to be brought either at the last matrimonial domicil or at the domicil of the defendant. If the defendant has no domicil, the action may be brought at the place where the defendant is temporarily staying (Art. 41). Pending judgment, the court exercises the husband's power of auhorising the wife to alienate and dispose of property (Art. 43).

The spouses shall live separated from each other as soon as the action has been instituted; the judge shall fix a residence for the wife and give the children under the age of 5 into the custody of the mother and those over the age of 5 into the custody of the father, unless validly and reasonably otherwise agreed upon between the parties; the judge shall further order alimony to be paid *pendente lite* to the wife; the husband shall bear the court fees of the wife unless the wife has sufficient property of her own (Art. 44). The parties must personally appear before the judge, accompanied by the *Prokurador* who represents them and by the *Abogado* who advises them (Art. 49). The court must base the judgment on regular evidence as to the alleged facts, not merely on the admission of the defendant (Art. 51). Upon the evidence having been taken, the judge makes a report in writing on the case and forwards it to the District Court (Arts. 54, 55). The parties are then summoned to be present at the delivery of the judgment (*ibid.*). An appeal lies to the Supreme Court on any of the following grounds: (1) want of jurisdiction; (2) violation of some principal rule of procedure; (3) apparent injustice (Art. 57). In actions for judicial separation, the judge of first instance issues the decree without referring to the District Court (Art. 56).

Judgments given by religious courts previous to the promulgation of the Law of the 2.3.1932 remain in force; but judgments given by them after that date must be approved by the civil courts and formally delivered ac-

cording to the Law of 2.3.1932. The civil courts have power to accept the evidence taken by the religious courts as valid and sufficient, if they are satisfied that the necessary measures for the protection of the parties have been observed [19]).

*Private International Law.*

8. The laws relating to family rights and family duties, the personal status, and the capacity, bind the Spanish citizens even if they are abroad (Art. 9, C. c.).

Spanish citizens may contract a valid marriage abroad before the Spanish ministers or consular officers (Art. 100 III, C. c.).

Whilst marriages celebrated in Spain can be proved only by the official marriage certificates (Art. 53 C. c., *supra*), marriages celebrated abroad may be proved by any other legal manner of evidence (Art. 55 C. c.). As to marriage certificates and other documents executed abroad the rule is that they are valid in Spain if they have been made according to the *lex loci* (Art. 11 C. c.).

The Spanish courts have held that in countries where Spanish consulates exist the rule of "*locus regit actum*" does not apply and that marriages of Spanish citizens celebrated in such countries are invalid unless celebrated before the Spanish consul under Spanish law [20]).

Foreign judgments of divorce or separation are not recognized in Spain [21]).

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19) Introductory Regulations to the Law of the 2.3.1932, §§ 4 *et seq.*).
20) Bergmann II 657.
21) Bergmann (*loc. cit.*).

# SWEDEN

*Sources of the Law.*

1. Swedish marriage law was codified by an Act of the 11.6.1920 (*Giftermalsbalken*) which replaces the part on marriage law of the Swedish Civil Code of 23.1.1736 and amendments. (The Roman numbers indicate the chapters, the Arabic the sections of the Marriage Law (GB) of 11. 6.1920).

*Capacity to Marry and .. Prohibited Marriages.*

2. The following may not contract marriage (GB Chapter II) : —

(a) males under the age of 21, females under the age of 18 ;

(b) minors under the age of 21 and interdicted persons, unless the marriage is consented to by the parents or the guardians ;

(c) lunatics ;

(d) epileptics ;

(e) persons suffering from infectious sexual diseases ;

(f) descendants with ascendants, brothers with sisters (whole and half blood), uncles or aunts with nieces or nephews, and anybody with the descendants or ascendants of one's husband or wife ;

(g) married persons so long as the previous marriage is not dissolved ;

(h) a previously married woman before expiration of 10 months from the date of dissolution of the previous marriage unless it is proved that she is not pregnant ;

(i) adoptive parents with their adopted children.

Dispensation may be granted by the King from the impediments enumerated under (a), (d), and (e), and from the impediments of marriages between uncles or aunts and nieces or nephews [1]).

*Solemnization of Marriage.*

3. Marriage is preceded by : —

(a) the betrothal, being an agreement reached at by the prospective husband and wife to marry each other, testified by witnesses, or exchange of rings, or in some other manner (I 1). In case of breach of such

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1) Björling 628.

agreement, the party in default may be liable for damages (I 3–4). If the agreement comes to an end by the death of the prospective husband and the fiancée has become pregnant from him either before or after betrothal, she may sue against the estate within 6 months from his death, and will be awarded adequate maintenance not exceeding half of the estate (I 6). The children of the prospective spouses born after betrothal are not illegitimate, they receive the name of the father and inherit him [2]).

(b) The publication of banns to be effected on three subsequent Sundays in the church of the wife's domicil or residence (III). In urgent cases the publication of banns may be dispensed with (III 6). Non-publication does not affect the validity of the marriage, but renders the celebrating officer punishable (IV 9).

(c) The celebration of marriage in either civil or religious form (IV). The religious form of marriage is open to members of the respective recognized religious communities only, whereas the civil form is available for everybody. In any case, the following rules must be observed (IV 8, 9) :—

Both spouses must be personally present; they must both declare their consent to become married to each other ; and they must thereupon be declared married by the celebrating officer.

The officer celebrating civil marriages is a town councillor, or mayor, or government advocate. It is, *semble,* not required that either spouse is domiciled or resident within the local jurisdiction of the celebrating officer (IV 3, 5).

At the celebration of marriage, witnesses should be present (IV 4). The marriage is to be recorded in the Church or Civil Register, as the case may be, and a certificate of marriage issued to the spouses.

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2) Law of 14.6.1817, § 1, and Law of 8.6.1928, III 2.

*Effects of Marriage on Personal and Property Relations between Husband and Wife.*

4. Husband and wife owe each other faithfulness and support (V 1). Each spouse is under liability to care, in case of need, for the maintenance of the other (V 2). The wife may sue for payment to her of the sums necessary to manage the household (V 3), and money paid to her for her needs need not be accounted for by her (V 4). The amount of maintenance to be paid is fixed by agreement between the spouses or, in case of disagreement, by the court (V 5, 6). Maintenance is payable also if the spouses live separated from each other, but not by the guiltless party to the party in default (V 7).

Acts done by one of the spouses in the course of managing the household or for the purpose of the children's education, and the like, are binding upon both spouses (V 12, 13). In case of absence, illness *etc.* of one of the spouses, the other is deemed his (or her) duly authorized agent for acting on his (or her) behalf in urgent matters (V 14).

The wife receives the name of the husband, but is entitled to retain also her old name; she likewise obtains by marriage his ranks and national status [3]).

The matrimonial *régime* prevailing in Sweden is the separation of goods, based upon full equality of rights of husband and wife [4]). Even during marriage, each of the spouses may freely dispose of his or her property without concurrence of the other, unless such disposal is intended to prejudice the rights of the other spouse (VI 4, 5). Upon dissolution of marriage, each spouse is entitled to one half of the property jointly acquired during marriage (*giftorätt*), and during marriage each spouse is entitled to usufruct of the other's property (VI 6, 7). But neither spouse has a right of administration over the property of the other, and stipulations conferring upon the hus-

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3) Nationality Law of 23.5.1924, § 6.

4) Björling 634 *et subs.*

band or the wife such right of administration are void, even if contained in a marriage contract (VIII 7).

Some special classes of property (e. g. personal effects) may by marriage contract be excluded from the usufruct of the other spouse (VII, 1). Gifts may be made by one spouse to the other only in the form of a marriage contract (VIII 2, 3).

Marriage contracts may be entered into before or during marriage (VIII 9). They must be in writing, executed in the presence of two witnesses, and registered with the court (VIII 12).

As against creditors of one of the spouses, it is presumed that all property belongs to the debtor. If it is alleged that the property has been transferred to the other spouse, the presumption lies that it has been given by way of gift which is invalid unless embodied in a duly registered marriage contract (VI 9) [5]).

If these presumptions are rebutted by sufficient evidence the rule is that neither spouse is liable for the debts of the other (VII 1).

Each spouse may claim from the other a *quantum meruit* for work done or assistance rendered to the other in his or her trade or business other than for managing the household (VIII 6).

*Nullity of Marriage.*

5. A marriage is null, even without any judicial decree to this effect, if it was not celebrated in either of the recognized forms or if it was contracted between persons of the same sex (IV 9).

A marriage is voidable by judicial action (by either spouse or the public prosecutor) in any of the following cases : —

(a) if within the prohibited degrees of consanguinity or affinity, or if bigamous (X 1) ;

(b) if one of the spouses did, or could, not consent either to the marriage at all or to be married to the other party (X 2, 3);

[5]) Björling 636.

(c) if one of the spouses consented to the marriage only on ground of misrepresentation as to certain relevant qualities of the other (X 3).

Children born out of a marriage which is *ipso iure* null, are not legitimate, but deemed to be children born after betrothal [6]).

The effects of a judicial decree of nullity are the same as those of a decree of divorce (X 4) with the following exceptions : —

(a) if the wife is defendant, she may be prohibited from retaining her husband's name (X 8);

(b) the parties are no longer bound to maintain each other (X 7);

(c) the property of the parties acquired after marriage shall be treated as their respective separate properties (X 5).

The court may award damages to the guiltless party, e. g. in cases of flagrant misrepresentation (X 6).

*Dissolution of Marriage.*

6. The courts may decree either divorce *a mensa et thoro* (judicial separation) or divorce *a vinculo matrimonii.* Judicial separation is granted on any of the following grounds : —

(a) joint application of both spouses based on their declaration that the aversion against each other is permanent and invincible (XI 1);

(b) application of either spouse based upon noncompliance with the matrimonial duties on the part of the other, immoral conduct of the other, or invincible aversion. In this case, decree of separation will only be granted if the plaintiff is without fault (XI 2).

Divorce is granted on any of the following grounds : —

(a) decree of judicial separation, if the parties have not resumed conjugal life within one year from the date thereof (XI 3);

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6) Björling 639.

(b) actual separation throughout three years, even without judicial decree (XI 4);
(c) malicious desertion on the part of the defendant for a period of 2 years (XI 5);
(d) absence of the defendant throughout 3 years without having been heard of (XI 6);
(e) a new marriage contracted by defendant contrary to law (XI 7);
(f) adultery or criminal incest on the part of defendant (XI 8);
(g) infectious sexual disease of defendant (XI 9).
(h) attempt of defendant to kill plaintiff or gravely assault him (XI 10);
(i) conviction of defendant of felonious offences (XI 11);
(k) permanent drunkenness or intoxication of defendant if conjugal life is thereby rendered incontinuable (XI 12);
(l) incurable mental disease of defendant since three years (XI 13).

In the cases (e) to (i), *supra,* the action is limited to a period of 3 years from the accruing of the cause of action and to a period of 6 months from the date the plaintiff received knowledge thereof (XI 7—11).

The guiltless party may apply for, and be granted, alimony or maintenance, as the case may be, *pendente lite* and after divorce (XI 26). No alimony or maintenance is payable after the death of the entitled spouse or his or her remarriage (*ibid.*). The guiltless spouse may also be awarded damages (XI 24).

Upon judicial separation, the wife retains her husband's name, whereas after divorce she has the option to resume her maiden name (XI 31). The national status acquired by the wife by marriage is not affected by divorce [8]).

Upon divorce as well as judicial separation, the properties of the parties are separated from each other, and no right of *giftorätt* (*supra*) can be acquired by any party in res-

[7]) Björling 642.

pect of property acquired after the decree of separation or divorce (XI 14, 15, 23). At the distribution of jointly owned property, e. g. household implements, the guiltless party has some rights of preference (XI 22, 23).
The court directs who shall be entitled to the custody of the children and liable for their maintenance; in case the parents have come to an agreement in this respect, the court will embody the terms of such agreement in its order, unless there are sufficient reasons to the contrary[8]).

The competent courts in matrimonial actions are those of the defendant's domicil (XV 1). Subsidiary jurisdiction have the courts of the last matrimonial domicil, of the domicil of the plaintiff, the *forum delicti commissi,* and finally, if no other court is competent, the court of the town hall at Stockholm (XV 4). The parties need not personally appear unless the court orders them to do so (XV 9). They must in any case be properly summoned (XV 7). The court may grant interim and provisional orders as to alimony, maintenance, separation, custody of children, *etc.* (XV 11, 24 et *subs.*).

*Private International Law.*

7. Swedish citizens may contract a valid marriage abroad either according to the *lex loci* or, according to Swedish law, before a Swedish consular officer[9]).

Marriages contracted abroad by foreigners are recognized in Sweden if celebrated either according to the *lex loci* or before a competent consular officer[10]).

The property relations between the spouses are governed by the national law of the husband at the time of celebration of marriage[11]). The personal relations between the spouses are governed by their national law regardless of domicil[12]).
Marriage contracts entered into abroad by Swedish

8) Law of 11.6.1920 as to Children.
9) Law of 8.7.1904 and Law of 12.11.1915.
10) Law of 8.7.1904.
11) Law of 1.6.1912.
12) *ibid.*

nationals are subject to the formal requirements of Swedish law [12]). In general, marriage contracts are valid if made according to the *lex loci contractus* [12]).

Swedish courts exercise jurisdiction in divorce and nullity actions of foreigners if at least the defendant is domiciled in Sweden, but only unless the national courts of the parties reserve to themselves exclusive jurisdiction and do not recognize Swedish decrees for divorce of their nationals [13]).

Foreign decrees of nullity or divorce are recognized in Sweden, if they have been given to or against nationals of the country in which they were issued, or if they have been granted to or against Swedish or other nationals not belonging to that state, provided in the latter case that "with a corresponding application of the enactments relative to the competency of the Swedish Authorities to hear suits for the divorce of foreigners, the Authorities of the foreign state (where the decree was given) are found to have been competent to hear the case, and that cause for such a divorce or separation as has been granted by the decree, existed according to the law of the State of which the parties were subjects" [14]).

Sweden has ratified the Hague Conventions on marriage of 12.6.1902 and 17.7.1905 and on divorce of 12.6.1902.

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[13]) Law of 8.7.1904 ; Latey pg. 106.

[14]) III 5 Law of 8.7.1904 as translated bv Latey pg. 107.

# SWITZERLAND

*The Sources of Law.*

1. The Swiss law of marriage and divorce is contained in the Second Part of the Swiss Civil Code of the 10.12.1907 [1]).

The Articles of this Code are hereafter quoted by numbers only.

*Promise of Marriage.*

2. On ground of a promise of marriage, an action lies neither for celebration of marriage nor for a penalty or liquidated damages (91).

If a promise of marriage is broken without reasonable ground, the party in default may be liable : –

(a) to pay the expenses incurred in preparations to the marriage (92);

(b) to pay damages, if the other party has suffered grave injury by the breach of the promise (93);

(c) to return gifts received in contemplation of marriage (94).

No action on ground of a promise of marriage may be brought after expiration of one year after the breach (95).

*Capacity to Marry and Prohibited Marriages.*

3. Males under the age of 20 and females under the age of 18 may not contract marriage. The cantonal government may in special cases permit males beyond 18 and females beyond 17 to contract marriage (96), subject, however, to the consent of the parents (98).

Lunatics and other persons incapable of forming reasonable judgments are not capable of marrying (97, 16). Interdicted persons may not contract marriage without the consent of their guardians (99).

Marriages are prohibited : –

(a) between descendants and ascendants, brothers and sisters, of whole and half blood, uncle and niece, nephew and aunt, whether legitimate or illegitimate, and with the descendants and ascendants of one's husband and wife, between step-parents and step-children, and between adoptive parents and adopted children (100);

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1) The Swiss Civil Code has been adopted in Turkey.

(b) with anybody previously married unless he or she proves that the previous marriage was annulled or dissolved (101);

(c) with a woman previously married, before expiration of 300 days from the date of dissolution of the previous marriage, unless the woman has in the meantime given birth to a child, or the court grants dispensation upon being satisfied that the woman is not pregnant (103);

(d) with anybody whose previous marriage was dissolved by divorce on ground of his or her default, unless the period fixed by the court within which he or she may not remarry, has expired (104, 150).

*Solemnization of Marriage.*

4. The marriage is preceded by publication of banns (*"Verkündung"*). The publication must be applied for by the parties personally or by production of a written application signed by the parties before a public notary (105). Application is made to the civil registrar of the husband's domicil, but the publication is effected at the domicils of both parties (106). If the husband has no domicil in Switzerland but is a Swiss citizen, the application may be made to the civil registrar of his place of origin (*Heimatsort*) (*ibid.*).

The publication is refused if there is any impediment to the marriage or if any document required to be produced has not been filed (107).

Within ten days from the day of publication, objection may be made against the proposed marriage (112). Objections other than on ground of impediments to the marriage recognized by law may not be considered (108). The civil registrar serves notice of the objection on both parties; if the parties do not admit its lawfulness, the opposer is accordingly notified (110). The opposer may apply to the court for an injunction against the celebration of marriage (111).

If no objection has been filed, a certificate of publication

of banns (*"Verkuendschein"*) is issued which entitles the parties to celebrate the marriage within a period of 6 months before any civil registrar in Switzerland (113). The said certificate, however, is not conclusive proof of the absence of impediments, and if the registrar is satisfied that publication of banns should have been refused, he must refuse to celebrate the marriage (114).

On ground of grave sickness of one of the parties, publication of banns may be dispensed with or shortened (115).

Celebration of marriage must be in civil form, and a religious marriage may not be celebrated until the civil ceremony has been completed (118). The marriage is celebrated in public, in the presence of two witnesses above the age of 20 (116). The registrar puts the question to the parties whether they are willing to become husband and wife, and after they have both answered in the affirmative, the registrar declares that a marriage has lawfully been contracted between them by their mutual consent (117). A certificate of marriage is delivered to the parties forthwith after celebration (118).

*Effects of Marriage.*

5. The spouses are bound to live together and owe each other faith and support, and they shall care each for the other's welfare and both jointly for the welfare of their children (159).

*A. Personal Relations between Husband and Wife.*

The husband has, as head of the family, the right to choose the matrimonial domicil, and the duty to maintain wife and children (160). If he neglects such duty, the court may, without paying regard to the property relations between the spouses, order debtors of the spouses to make payment to the wife instead of to the husband (171).

The husband is the agent for the spouses, but, notwithstanding any marriage contract, personally liable for all his acts (162).

The wife receives the family name and the national

status of the husband and manages the household (161). For the purposes of the management of the household, she is the agent of the spouses either jointly with or separately from the husband, and any act done by her in the course of managing the household binds the husband (163). Her authority may, upon application by the husband, be withdrawn by the court if it is proved that she abuses such authority or that she is unable to manage the household, but the withdrawal is invalid as against third parties unless published in the prescribed manner (164) and may at any time, upon application by the wife, be revoked, if the court is satisfied that there were not, or that in the meantime ceased to be, sufficient reasons for such withdrawal (165). In addition to her authority as agent for the purpose of managing the household, the husband may give her authority, either express or implied, to act on his or their joint behalf in connection with all or any other matters (166).

The wife may sue and be sued in her name (168). She may carry on any profession or trade, subject to the consent, either express or implied, of the husband; if such consent is refused, the wife may apply to the court who may grant the consent if satisfied that it is in the interest of the spouses or the family that she follows a profession or trade (167).

Contracts entered into between husband and wife are valid (177). If such contracts, however, relate to joint property of the spouses or the dowry of the wife, the consent of the *Vormundschaftsbehoerde* is required, as it is also for undertakings by the wife towards third parties in favour of the husband (*ibid.*).

The court may order separation of the spouses if one of them endangers by his or her acts or behaviour the health, reputation, or economical position of the other, and fix the amount of maintenance to be paid by the party in default so long as the separation lasts (169, 170). As soon as the ground on which the order of separation

was given has come to an end, the court shall, upon application of one of the spouses, revoke such order (172).

*B. Property Relations.*

Unless otherwise agreed upon in a marriage contract, the property relations between the spouses are governed by a system of combination of goods [2]) (*Güterverbindung*) (178). The property belonging to both parties at the time of marriage as well as that acquired by them after marriage becomes combined property of the spouses (194), except only the separate property (*Sondergut*) of the wife which consists of the effects for her exclusive personal use, the capital with which she follows a separate trade or profession, and the earnings derived from her work or trade (191). The combined property of the spouses consists of the properties of the husband and of the wife, respectively. "Property of the wife" means all she possessed at the time of marriage and all she acquired after marriage without consideration, i. e. by inheritance, gifts, *etc.* (*eingebrachtes Gut*) ; property possessed by the husband at the time of marriage as well as such property which is not "property of the wife", is subject to the ownership rights of the husband (195). The fruits and profits of the "property of the wife" other than of her separate property (*Sondergut, supra*) become property of the husband (*ibid.*).

Both spouses can ask for an inventory with or without valuation to be made of the property of the wife (197, 198) and they may, within 6 months from the date of marriage, agree in the form of a marriage contract that the husband shall become the owner of the wife's property and indebted to her in the amount of valuation (199).

The combined property of the spouses is administered by

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2) The term "*Güterverbindung*" is, in the French edition of the Code, translated into "*Union des biens*". Combination of property, as a translation of this term into English, is suggested by Renton, pg. 611.

the husband on his own costs (200). He is entitled to the usufruct of the wife's property and liable to replace missing, and compensate for depreciated, property (752); but if such property consists of money, securities, or other *res fungibiles,* the husband is liable for its value only, and the property becomes his own (201). The husband may not dispose of property of the wife which has not become his own, but with the wife's consent; as against third parties, the wife's consent may be presumed, if they cannot and do not know that it has not been given, or if the property concerned is not *prima facie* discermible as being property of the wife (202). The wife may not dispose of combined property of the spouses except in the course, and for the purpose, of managing the household (200, 203). She may not refuse an inheritance except with the consent of the husband or, if he does not consent, with that of the *Vormundschaftsbehörde* (204).

The wife may at any time require the husband to render an account of his administration of the property contributed by her and to give security therefor (205).

The husband is liable for debts incurred by him either before or after marriage, as well as for debts incurred by the wife in the course of the management of the household (206); the wife is liable for debts incurred by her before marriage, for such debts incurred by her after marriage as were either consented to by the husband (or the *Vormundschaftsbehörde*) or made in the course of her trade or business, for debts on ground of torts committed by her, and for debts arising out of inheritances devolved on her; all such debts are to be paid out of the property contributed by her, without regard to the rights of the husband over such property (207). If the husband is insolvent, she is liable also for debts incurred by him or her in connection with the management of the household (*ibid.*, 220, 243). The wife is liable to the extent of her separate property (*Sondergut*) only for debts

incurred by her as debts of her separate property or without consent of the husband or in excess of her authority to manage the common household (208). If debts of the wife payable out of her property have been paid out of the property of the husband, or *vice versa,* redress may be claimed when the combination of goods is dissolved (209); for payments made out of the separate property (*Sondergut*) of the wife for debts or the husband redress may be claimed forthwith (*ibid.*).

The wife may prove in bankruptcy of the husband for the property contributed by her if it is no more in existence. Any property due from her to the husband is deducted by way of set-off. Property contributed by her which is still in existence may be taken by her as owner (210). If the property taken by her and securities given to her do not meet half of the wife's claim, the claim for compensation for the remainder of the half is a preferred debt (211).

The combination of goods is dissolved by dissolution of marriage. In case of dissolution by death of the wife, the property contributed by her comes to her heirs, subject to the right of the hubsand to either the usufruct of half, or the ownership of a fourth, of such property (212, 462). If part of the property contributed by the wife is missing, the husband is liable for compensation to her heirs, but may deduct everything due to him from the wife by way of set-off (212). In case of death of the husband, the property contributed by the wife is restituted to her; if anything is missing, she may claim compensation from the heirs (213). The property of the husband comes to his heirs, subject to the right of the wife to either the usufruct of half or the ownership of a fourth thereof (462).

If after distribution of the properties contributed by the husband and wife, respectively, there remain assets, one third of such assets belong to the wife or her heirs and two thirds to the husband or his heirs. If after such

distribution there remain debts, such debts are borne by the husband or his heirs, unless it is proved by him or them that the debts are the debts of the wife (214).

*Marriage Contracts.*

Parties willing to adopt another system of property regulations than that of combination of goods, or to stipulate particular provisions as to their property relations, may either before or after celebration of marriage enter into a contract of marriage (179). The systems of property *régimes*, other than that of combination of goods, which may be adopted in such marriage contracts are the community of goods (215—240) and the separation of goods (241—247). Contracts of marriage entered into after celebration of marriage cannot prejudice previously acquired rights of third parties nor affect any existent liability of the property of the spouses (179).

Minors and interdicted persons cannot enter into a contract of marriage without consent of their parents or guardians (180).

Contracts of marriage must be made in writing and officially legalized. If made after celebration of marriage, the consent of the *Vormundschaftsbehörde* is required (181).

As against third persons (other than the heirs of either spouse), marriage contracts are void unless registered in the Register of Marriage Property (*Güterrechtsregister*) at the domicil of the husband and duly published (248, 250). Registration is effected upon application of one of the parties (249). The Register is kept by the Commercial Registry (*Handelsregisteramt*) and open to inspection (251).

*Separation of Goods.*

Regardless of whether a marriage contract has been entered into or not, the court may order separation of goods between the spouses in any of the following cases :—

(a) if the husband fails to maintain wife and children ;

(b) if the husband does not furnish security for the property of the wife ;

(c) if the husband or the common property of the spouses is involved in debts ;
(d) if the wife is involved in debts ;
(e) if the wife refuses without sufficient reason to consent to the disposition by the husband of the common or combined property of the spouses ;
(f) if the wife has asked for security for her property.

In the cases marked (a), (b), (c), application must be made by the wife, in the other cases by the husband (183, 184).

Separation of goods may be ordered by the court also upon application of a creditor who could not successfully levy execution against one of the spouses (185). Separation of goods is caused by operation of law if the creditors are prejudiced in the bankruptcy of one of the spouses (182). After discharge of the bankrupt, application may be made to the court for the restitution of the *status quo ante* (187).

In case of separation of goods thus intervening during marriage, the properties of both spouses become fully separated from each other, and any right of the husband to administration or usufruct ceases (189). The provisions as to dissolution of combination of goods (*cf. supra*) are applicable.

*Nullity of Marriage.*

6. An action for a decree of nullity must be instituted by the competent authority, and may be instituted by any interested person, in cases of bigamous marriages, of marriages by lunatics or other persons incapable of marrying, and of marriages within the prohibited degrees of consanguinity or affinity (120, 121). After dissolution of marriage, a decree of nullity need no longer be applied for by the competent authority, but may still be applied for by any interested person (122).

Apart from the null marriages above mentioned, a marriage is voidable by either of the spouses in any of the following cases : —

(a) if the applicant was not in full possession of his or her mental powers at the time of celebration of marriage (123);
(b) if the applicant did not, at the time of celebration, intent to marry (124 (1));
(c) if the applicant did not, at the time of celebration, intend to marry the other party (124 (1));
(d) if the applicant was induced to marry by misrepresentations as to qualities of the other party in the absence of which marriage could not be expected to be contracted by him or her (124 (2));
(e) if the applicant was induced to marry by misrepresentations as to the integrity of the other party, or if a sickness which would endanger the plaintiff's or the children's health has been concealed from him or her (125);
(f) if the applicant was compelled to marry by duress (126).

No action to annul the marriage lies after six months from the date the plaintiff got knowledge of the voidability or from the date the duress came to an end; in any case the right of action is prescribed after five years from the date of celebration (124).

The relationship between adoptive parents and adopted children and the non-compliance with the provisions of the law as to the period within which a woman may not contract marriage after dissolution of her previous marriage and as to the form of celebration of marriage, are no grounds for nullity (129, 130, 131).

Void and voidable marriage are deemed valid marriages for all intents and purposes until the court has pronounced the decree of nullity (132).

The effects of nullity with regard to the children and the properties of the parties are the same as those of dissolution of marriage (133, 134). The wife, if she has contracted the marriage in good faith, retains the personal

status acquired by marriage, but not the name of the husband (134).

*Dissolution of Marriage.*

7. The grounds for divorce are the following: —

(a) adultery, unless consented to or excused by the plaintiff (137);

(b) attempted murder, grave assaults, or insults, unless excused (138);

(c) immoral conduct and perpetration of a felonious crime (139);

(d) malicious desertion for at least two years (140);

(e) incurable mental disease since at least three years (141);

(f) invincible aversion rendering the continuation of conjugal life impossible (142).

In the cases (a) and (b), *supra*, no action lies after six months from the date the plaintiff obtained knowledge of the cause of action (137, 138).

On each of the above grounds, action may be instituted by each spouse either for divorce *a vinculo* or for judicial separation (143). Judicial separation is granted for a fixed or undetermined period; if the fixed period has expired or, if no period was fixed, if 3 years have expired, each party may apply for divorce (147), and divorce must then be decreed (148).

In an action for judicial separation, the court may not decree divorce; but in an action for divorce, the court may decree judicial separation, if it is likely that the parties will resume conjugal life (146).

Upon a decree of judicial separation, the court regulates the property relations between the parties, having regard to the period of separation and the special circumstances of the case. The court shall, upon application of either party, order that their respective properties shall be separated from each other (155).

Upon a decree of divorce, the properties of husband and wife become separated from each other by operation of

law; a husband has no right of inheritance to his divorced wife, and *vice versa*, and marriage contracts are, upon dissolution of marriage, automatically terminated and cannot be enforced any more (154).

The court decides as to the custody and maintenance of the children (156, 157), and may order any party (whether plaintiff or defendant) to pay alimony or maintenance to the other if the latter is in great need (152). Any such alimony or maintenance is payable only unless and until the payee contracts a new marriage, and may be suspended by order of the court if the payee is no longer in need (153). If by the divorce the property rights of the guiltless party are prejudiced, an adequate compensation may be awarded to him; if the circumstances which have caused the divorce are such as likely to offend or violate the reputation or honour of the guiltless party, the court may award him damages (151).

The guilty party may not contract a new marriage within a period to be fixed by the court (one to three years) (150).

The divorced wife retains the personal status (e. g. citizenship) acquired by marriage, but not the name of the husband (149).

The courts competent in divorce and nullity suits are those at the domicil of the plaintiff (144). The court may give such provisional and interim orders *pendente lite* as thought fit (145). Stipulations between the parties as to the effects of divorce on their personal or property relations are not valid unless confirmed by the court (158).

*Private International Law.*

8. Swiss Private International Law is regulated by a Federal Act of the 25.6.1891. The following is a translation of Article 7 thereof, as amended by Art. 59 of the Introductory Provisions to the Civil Code of the 10.12.1907 :—

> The personal capacity of the married woman depends during marriage on the law of the domicil.

Persons without nationality and without domicil are subject to Swiss law.

The form of marriage to be celebrated in Switzerland is regulated by Swiss law.

A Swiss citizen domiciled abroad may contract a marriage in Switzerland. He shall apply for publication of banns to the civil registrar of his birthplace (*Heimatsort*).

A foreigner domiciled in Switzerland intending to contract marriage, shall apply for publication of banns to the civil registrar of his domicil after having been granted consent to marry by the competent Cantonal Government. Such consent may not be refused if the national authorities of the foreigner declare that they recognize the marriage and all its results, but it may be given also without such declaration. The marriage of a foreigner not domiciled in Switzerland may be celebrated upon the consent of the Government of the Canton where the celebration is to take place, if it is proved that the marriage will be recognized by the national law of the foreigner.

A marriage contracted abroad according to foreign law is recognized in Switzerland unless the evident purpose of celebrating the marriage abroad was to evade the provisions of Swiss law as to nullity. A marriage contracted abroad which is invalid according to the *lex loci contractus* may not be declared invalid in Switzerland, unless invalid under Swiss law.

A Swiss citizen domiciled abroad may sue for divorce at the court of his birthplace (*Heimatsort*). Divorce is decreed exclusively under Swiss law.

A divorce decreed by a competent foreign court between Swiss citizens domiciled abroad is recognized in Switzerland even if under Swiss law there would not have been a ground of divorce.

A foreigner domiciled in Switzerland may sue for

divorce at the court of his domicil if he proves that under his national law or procedure the ground of divorce relied upon and the jurisdiction of the Swiss court are recognized.

A ground of divorce which accrued at a time the spouses were subject to another law, may not be relied upon unless it is recognized as ground of divorce also under the previous law. The divorce of foreigners in Switzerland is decreed, subject to the above provisions, according to Swiss law.

Actions and judgments regarding the foreigners in Switzerland or the Swiss abroad may be either for divorce or for judicial separation, as allowed by the applicable law. The same law is applicable for judicial separation (or such other suspension of conjugal life as may be provided for by foreign law) as for divorce.

By § 31 of the Federal Act of the 25.6.1891, the law of the first matrimonial domicil applies to the property relations between Swiss spouses domiciled abroad, and property relations created in Switzerland by Swiss spouses remain in force also if they go abroad, unless the law of their foreign domicil provides otherwise. If they later return to Switzerland, their property relations are governed by the law to which they were subject abroad, but they may make application for leave to settle their property relations anew according to Swiss law (cf. § 20, *ibid.*).

By § 39 of the Ordinance regulating the Marriage Property Registers, of the 27.9.1910, a marriage contract entered into abroad between Swiss spouses in accordance with foreign law is valid as against third persons, if so valid according to the foreign law.

# TURKEY-IN-EUROPE

*The Sources of Law.*

1. The Turkish Civil Code of April 4, 1926, is an almost literal reproduction of the Swiss Civil Code (cf. Switzerland, *supra*).
The following are the points in which the Turkish Code differs from Swiss law, viz. : —

*Majority.*

2. Minority ends with the 18th, not with the 21th year (Art. 11, Turkish Code)[1]). Males under the age of 18 and females under the age of 17 are incapable of marrying (Art. 88 Turkish Code); the judge may in special cases allow a marriage if the parties are at least above the age of 15 (*ibid.*).

*Property Régime.*

3. The statutory property *régime* in Turkey is separation of goods, and not, as in Switzerland, combination of goods. By marriage contract, another *régime* may be agreed upon between the spouses. Under the statutory *régime,* each of the parties has the right of administration and usufruct of his or her property, and the wife is under liability to contribute an adequate amount to the costs of the household (Arts. 170 *et subs.,* Turkish Code).

*Nationality.*

4. The Turkish nationality law is laid down in an Act of May 28, 1928, as amended on April 9, 1929.
A foreign woman who marries a Turkish citizen acquires Turkish nationality. A Turkish woman who marries a foreigner remains Turkish (Art. 13). If the Turkish woman who marries a foreigner does not wish to remain Turkish, but wants to acquire the nationality of her husband, she may apply for her name to be struck out of the personal status registers and for permission to acquire foreign nationality, for which application a fee of 25 pounds is levied (Art. 5, Regulations of 15.5.1928).

*Private International Law.*

5. The provisions of the Introductory Law to the Swiss Civil Code with regard to private international law have not been adopted by Turkey[2]).

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1) Art. 14 Swiss Code.
2) Cf. Makarov, Internationales Privatrecht, pg. 223.

Marriages contracted abroad in accordance with the *lex loci* are (*semble*) recognized as valid in Turkey [3]).

In matrimonial causes of Turkish citizens, exclusive jurisdiction is vested in the Turkish courts; if both parties are domiciled abroad, the Court of Constantinople exercises jurisdiction (Art. 13, Code of Civil Procedure of April 22, 1924).

3) Turkish citizens have, however, been advised to celebrate marriages contracted before a foreign marriage registrar once more before a Turkish consular officer in order to be sure that the marriages will be held valid by Turkish courts (Bergmann Suppl. I 121, reporting an information given by the Turkish Consulate General at Hamburg, Germany).

# UNION OF SOCIALIST SOVIET REPUBLICS

*The Sources of Law.*

1. Soviet Russia (USSR) is a federal state of several autonomous Soviet Republics which have each their own legislation. The leading state is the Russian Socialist Federal Soviet Republic (RSFSR, capital: Moscov), the marriage legislation of which has, with slight divergencies, been adopted by the other states. Such divergent laws enacted in the following states, namely: —

(1) The Ukrainian Socialist Soviet Republic (UkSSR, capital: Kharkov);

(2) The White Russian Socialist Soviet Republic (WRSSR, capital: Minsk);

(3) The Transcaucasian Socialist Federal Soviet Republic (TSFSR, capital: Tiflis), comprising: The Azerbaijan Socialist Soviet Republic (ASSR, capital: Baku); The Georgian Socialist Soviet Republic (GSSR, capital: Tiflis); The Armenian Socialist Soviet Republic (ArmSSR, capital: Erivan), are stated in the footnotes.

The laws of the Turkmen, Usbek and Tadshikistan Socialist Soviet Republics have not been accessible to me.

*Registration of Marriages.*

2. Only the civil (Soviet-) marriage if registered in the Department of Registration of Personal Deeds formerly produced rights and liabilities in law (Art. 25, Code of the RSFSR on the law of personal status, marriage, family and guardianship, of 22.10.1918). The fact of such registration of the marriage constituted the status of marriage between husband and wife (Art. 62, *ibid.*) [1]).

By a new Code of the 19.11.1926 (*Sobranie Uzakonenij*, RSFSR, 1926, No. 82, Art. 612) repealing that of 1918,

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1) In UkSSR, the marriage is still contracted by registration only (Art. 105, UkSSR Family Law of 31.5.1926). The registration is, therefore, constitutive and obligatory. An unregistered marriage is null. Nullity may be decreed by the courts on the following grounds: mental disease (Art. 110), existence of an adverse registered marriage (Art. 111), consanguinity as between descendants and ascendants and brothers and sisters (115).
In ASSR, only registered marriages are recognized (Art. 10, Marriage Law of 4.7.1928). Before registration, the parties must undergo special medical examinations (Arts. 7, 8, *ibid.*).

the registration of marriages has only declaratory character and is made only in the interest, and for the protection, of the rights of husband and wife (Art. 1). No registration may be effected of a marriage of a person under the age of 18 (Art. 5), but women may in exceptional cases be allowed to marry if aged only 17 [2]).

The registration may be made only if both spouses apply for and consent to it (Art. 4).

Both parties must, before registration, identify themselves by documentary evidence as to their personality and must give a written declaration to the effect that no impediments to registration of their marriage are known to them, that they are aware each of the other's state of health and that they have so and so much children out of so and so much former marriages, whether or not such former marriages have been registered (Arts. 4, 132).

Impediments to registration are: an existing marriage of one of the parties (Freund 336); the interdiction by the court of the one of the parties for a mental disease (Art. 6); consanguinity as between descendants and ascendants and brothers and sisters (*ibid.*) [3]).

Affinity is not known to Soviet Law (Freund, *ibid.*).

These impediments are a bar to registration only, but do not affect the validity of the marriage (*ibid.*).

Before registration, the registrar explains the provisions of the law to the parties and warns them not to make false statements (Art. 133). Thereupon the necessary documents are submitted and the marriage is forthwith registered (Art. 114). Witnesses may be present, but need not (Art. 134).

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2) The age for women is reduced to 16 in UkSSR, WRSSR, GSSR, ASSR.

3) In WRSSR, registrations of marriages between adoptive father and adopted child and between guardian and ward are also prohibited (Freund 356). The impediments are not only a bar to registration, but give a right of action for a decree of nullity of marriage (Arts. 13 *et subs.*, WRSSR Family Law of 27.1.1927).

*De facto Marriages.*

3. Persons who stand in conjugal relations with each other are deemed to be married, although their marriage is not registered (Freund 333). Relations sufficient to raise the presumption of marriage are, *inter alia,* conjugal life with a common household, joint education of children, mutual support and maintenance, *etc.* (Art. 12). In order to produce legal results, the marriage must be either admitted by both parties or declared to be a valid marriage by the court (Art. 11). As the existence or non-existence of a *de facto*-marriage depends only on the particulars described above and not on the parties' capacity to marry, a *de facto* marriage can never be void and has been held valid even although one of the spouses has at the same time been married with someone else by a registered marriage (Judgment of the RSFSR Supreme Court of 23.6.1927).

*De facto* marriages may be subsequently registered as entered into at the date the conjugal life was commenced by the parties (Art. 3). The term of commencement of the *de facto* marriage is stated by the parties and not investigated into by the registrar, but the registration is conclusive evidence that the marriage was entered into at the indicated date (Art. 2) [4]).

If the parties cannot satisfy the registrar that a *de facto* marriage exists between them, they may apply to the court for a declaratory judgment in lieu of registration (Art. 11).

*Effects of Marriage.*

4. The wife does not by marriage *ipso facto* obtain the name of her husband; the spouses are at liberty to retain both their former names or to choose the name of the wife as family name (Art. 7) [5]).

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4) In UkSSR, the registration of a marriage may be enforced upon application of one of the spouses in order that the marriage may become valid (Arts. 133—139, UkSSR Family Law of 31.5.1926). The registration, however, is not retrospective (Art. 41, *ibid.*).

5) In WRSSR, the spouses may declare their intention before the registrar either to retain their former names or to adopt as family name either the name of the husband or that of the wife or that

A foreigner marrying a Soviet citizen, and *vice versa*, retains his national status; the wife does not adopt the national status of the husband (Art. 8, Nationality Law of 22.4.1931). In case the wife loses by marriage her nationality under her national law, the acquisition of Soviet citizenship is somewhat facilitated to her (Art. 16, *ibid.*).

Both spouses have the same rights as to custody and education of children (Art. 38); disputes in this respect are decided by the court (Arts. 39, 40).

The rights and capacities of married women are not in any way restricted. Stipulations between the spouses restricting any rights of the husband or the wife either as against each other or as against third persons, are null and void (Art. 13).

Property possessed before marriage by either spouse remains after marriage his or her separate property; but property acquired during marriage is joint property of husband and wife (Art. 10) [6]). The share of each spouse in such property is, in case of disputes, determined by the court (*ibid.*). It is presumed that each spouse is entitled to one half, the work of the wife in managing the household being held equivalent to that of the husband in earning money (Regulations issued by the Commissioner for Justice on 12.12.1927). This presumption can be rebutted, e. g. if the wife is a prodigal (Judgment of Supreme Court No. 33419 of 12.10.1926). Debts of either spouse are presumed to be a charge on the joint property (Judgment of Supreme Court No. 35549 of 7.1.1928).

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of both of them together (Art. 18, Law of 27.1.1927). In UkSSR, the further possibility is given that each spouse adopts the name of the other, or that one adopts the name of the other and the other takes both names together (Freund 354).

[6]) In UkSSR, the property jointly acquired after marriage is distinguished from property which was acquired after marriage by one of the spouses alone, e. g. by inheritance. Jointly acquired property becomes joint property of the spouses, while separately acquired property does not (Art. 125, Law of 31.5.1926). The earnings of the husband are deemed jointly acquired.

In WRSSR, the position is the same as in UkSSR (Art. 21, Law 27. 1. 1927).

Special provisions as to the property rights of husband and wife in rural districts are contained in the Agricultural Code (Arts. 66, 67).

For special reasons, maintenance may be claimed during marriage from the husband or the wife, as the case may be. Such special reasons are e. g. inability to work, diseases, *etc.* (Freund 351) [7].

*Dissolution of Marriage.*

5. Marriages may be dissolved : [8]

(a) by the death of one of the spouses (Art. 17);

(b) by registration of dissolution of marriage (Art. 19);

(c) by permanent separation of the spouses (*de facto* dissolution);

(d) by judgment of the court (Art. 20).

Dissolutions of unregistered marriages cannot be registered (Freund 349); but also dissolutions of registered marriages are valid even if effected only *de facto* and not made known to the registrar (Art. 19).

Judicial action may be taken for a declaratory order that the marriage is dissolved, and such declaratory order may issue even in respect of an unregistered marriage (Art. 20).

The registration of dissolution of a marriage may be applied for either by both spouses jointly or by either of them separately (Art. 138) at the domicil of the applicant or applicants. The applicant must prove the existence of the marriage by production of either a certificate of registration or a judgment of the court

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7) The position is the same in UkSSR and WRSSR, the case of a nursing mother being particularly mentioned (Freund 357). In ASSR, the liability for maintenance depends upon the need of the one side and the financial ability of the other side (Art. 26, Law of 4.7.1928).

8) In UkSSR, WRSSR, GSSR, and ASSR, dissolution of marriage other than by the death of either spouse, must be registered. Registration may be substituted only by a judgment of the court declaring a marriage to be dissolved (Art. 120, UkSSR Law of 31.5.1926; Art. 28, GSSR Law of 21.1.1930); in WRSSR, the courts have no jurisdiction in matters of dissolution of marriage (Art. 29, Law of 27.1.1927).

declaring the existence of a *de facto* marriage, or an affidavit (*ibid.*).

Unless otherwise agreed upon, the parties resume after dissolution of marriage the names they bore before marriage (Art. 31).

In case one spouse applies for registration of dissolution of marriage without concurrence of the other, such registration is effected forthwith, and the other party is accordingly informed of the effected registration by a notification in writing (Art. 140) [9]). Such notification is sent to the address given by the applicant. The fact that the notification did not reach the respondent or that he or she had no knowledge of the dissolution of marriage, does not affect its validity (Freund 350).

Upon dissolution of marriage, any liability for maintenance or alimony expires after one year. Such liability exists only if one party is needy *and* not capable of working and the other in the state of maintaining her or him (Art. 15). After one year from dissolution of marriage, neither spouse can file against the other any claim whatsoever in respect of maintenance or alimony (Judgment of the Supreme Court No. 31/35, 1931) [10]).

*Private International Law.*

6. Marriages between foreigners and Soviet citizens as well as between foreigners which are contracted in Soviet Russia are registered according to Soviet Russian law, unless celebrated before recognized foreign consulates (Art. 36) [11]).

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9) In UkSSR, registration may not be effected until the respondent spouse has been served with official or private summons (Freund 354).

10) In UkSSR, the liability for maintenance in case of inability of working is not limited by time, but in case of unemployment it is limited to one year. It ceases if the needy spouse contracts a new marriage (Freund 355).

In WRSSR, the liability for maintenance of the unemployed spouse is limited to 9 months, of the spouse who is incapable to work is limited to 1 year. It ceases also by the death of the debtor (Art. 33, Law of 27.1.1927).

The same is the position in ASSR, where the liability in case of incapacity lasts, however, for 3 years (Art. 23, Law of 21.1.1930).

11) In UkSSR, compliance with Soviet law also by foreigners is

Marriages contracted abroad either between foreigners or between foreigners and Soviet citizens are valid if contracted according to the *lex loci* or according to Soviet law (Art. 137), and then are, in Soviet Russia, deemed as if duly registered (*ibid.*) [12].

Marriages may be registered abroad before Soviet consular officers in accordance with Soviet law (Art. 1, USSR Law of 23.11.1923).

Decrees or judgments issued to foreigners by foreign courts as evidence of dissolution or nullity of marriage are deemed equivalent to extracts of the register of dissolution or nullity of marriages (Art. 141).

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indispensable (Art. 107, Law of 31.5.1926). The same is the position in WRSSR (Art. 15, Law of 4.8.1922).

12) In UkSSR, marriages contracted abroad must be registered with the Soviet consulates (Art. 105, Law of 31.5.1926).

# YUGOSLAVIA

1. Yugoslavia consists of six parts, viz.:—

*Sources of Law.*

(a) the former kingdom of Serbia, in which the Serbian Civil Code of April 6, 1844, prevails (the marriage law under this code is based on the laws and rites of the Greek-Catholic Church);

(b) the provinces of Banat, Batschka, and Baranya (also known under the name of Woiwodina) where Hungarian law is in force;

(c) Slavonia and Dalmatia where Austrian law is in force;

(d) the former kingdom of Croatia where the Austrian Civil Code (ABGB) has been given force by a Royal Order of 29.11.1852, subject to the following exception: — the marriages of Roman Catholics are governed by Roman Catholic Canonical Law as laid down in a Royal Order of 8.10.1856, and those of Greek Catholics are governed by Greek Catholic Canonical Law;

(e) Bosnia and Herzegovina where religious law prevails and jurisdiction in matters of marriage and divorce is exclusively vested in the religious courts of the recognized communities. The recognized communities are (Law of 17.2.1910, § 8): the Islamitic, the Servian, the Roman-Catholic, the Greek-Catholic, the Evangelic (Augsburg and Helvetic), and the Jewish (Sephardic and Ashkenazic);

(f) Montenegro which has a code of her own, known as Statute of Daniel I. of 28.4.1855. The provisions relating to the law of marriage and divorce contained in that Statute are hereafter reported.

The nationality law has been unified for the whole country by an Act of September 21, 1928.

2. The following is a short account of the provisions of the Serbian Civil Code of April 6, 1844, relating to marriage and divorce.

*Serbian Law.*

(a) *Promise of Marriage.*

The promise of marriage usually precedes the marriage; if in pursuance of such promise gifts have been made,

the promisee may not enter into agreements with a view to marrying another person (Arts. 61, 62). If the marriage is not consummated, the party not in default may reclaim any donations made and compensation for any damage suffered (Art. 65). Nobody can on ground of a promise of marriage be compelled to marry (Art. 66); if, therefore, neither of the parties is in default, no liability for damages arises (Art. 67).

(b) *Prohibited Marriages.* Apart from the prohibitions provided for in Greek-Catholic Canonical Law, marriages are probibited: if they are bigamous; by males under 17 and females under 15 (unless dispensation is granted by the High Priest); without consent of father or mother or guardian, if any party is below the age of 18; by persons incapable and disqualified in physical respect; by lunatics; in cases of duress or fraud; during the period of punishment of a convicted person; between Christians and Non-Christians; between relatives in such degrees of consanguinity and affinity as prohibited by the Church; and by persons who committed adultery or assaults on their former husbands or wives (Art. 61).

In the case of a bigamous marriage the second wife must be dismissed; she has, if she was *bona fide,* a right to damages, and the husband is liable under civil and criminal law (Art. 71).

Marriages contracted in contravention of the above mentioned prohibitions are null and void (Arts. 74—76, 79—81), except marriages by non-aged persons which are valid if ratified by the religious authority with the consent of the High Priest (Arts. 72, 73). A party who has by fraud been married to a person other than that he or she wanted to marry, may, at his or her option, make the marriage void and claim damages or ratify the marriage by silence (Art. 77).

(c) *Solemnization of Marriage.* The celebration of marriage is preceded by publication of banns (Art. 83). Banns may be published only at the

domicils of the parties (Art. 84). The High Priest may dispense with such publication (arg. Art. 90).
The celebration takes place in the church in the presence of two or three witnesses in accordance with the rites of the Pravoslavic Church (Art. 91). The marriage is forthwith registered (Art. 92).

(d) *Effects of Marriage.* The personal mutual rights and duties of husband and wife may not be altered by agreements (Art. 107). The spouses are bound to live together and to be faithful to each other (Art. 108) and the husband is liable to protect and maintain his wife (Art. 109). The wife follows the husband to his domicil, manages the household, and cares for the education and welfare of the children (Art. 110). If the spouses live in a family (*zadruga*), the eldest of the family has the right of administration and usufruct of house and property and the duty to maintain the members of the family (Art. 111).

(e) *Nullity and Dissolution of Marriage.* Marriages may be declared null for all grounds provided for by the Greek-Catholic Canonical Law and, in particular, if they were contracted in contravention of any of the prohibitions hereinbefore enumerated (Art. 93).

Divorce may be decreed by the religious courts in any of the following cases :—
(1) adultery;
(2) assaults by the defendant on the plaintiff with dangerous weapons;
(3) condemnation of the defendant for an offence committed on the plaintiff to eight years' or more imprisonment, if divorce is applied for during the period of punishment;
(4) if the defendant has abandoned Christian faith ;
(5) desertion or malicious absence (Art. 94).
On ground of desertion, divorce may be applied for after three years in case of malice, and after six years in other cases (Arts. 95, 96). If a deserted wife remarries without permission of the authorities and her first husband

returns, he may take her back or apply for divorce (Art. 97).

Before divorce is decreed, reconciliation between the parties must three times be tried both by the religious minister of their domicil and the High Priest of the respective district (Art. 98). If no reconciliation is reached at, the matter is brought before the religious court (*Duhovni Sud*) (Art. 99) in case of members of the Greek Catholic Church; in case of members of other religious communities, jurisdiction is vested in the civil courts which shall apply the respective religious law [1]).

The court may grant interim orders for alimony and maintenance and custody of children (Art. 100). If divorce is decreed, the party not in default may contract a new marriage; if both parties are in default, none of them may contract a new marriage (Art. 101). The parties shall, upon divorce being decreed, live separated from each other, but may thereafter resume conjugal life (Art. 102). If the wife is entitled to contract a new marriage, she may do so only after expiration of 9 months (Art. 105).

*Law of Montenegro.*

3. The following are the relating provisions of the Statute of Daniel I. of April 23, 1855,[2]) viz.:

Art. 68 : If a Montenigrin wishes to marry hereafter, the priest of his domicil shall during 3 days make investigations whether both parties are in agreement or not; if both agree, the marriage may be celebrated, but not otherwise; if the priest celebrates the marriage against the will of either party, he shall be excluded from our Holy Church; for both parties may withdraw at any time, so long as they are only betrothed; but if the marriage was celebrated, it cannot be dissolved but by the death or by one of the causes mentioned in Art. 67 [3]).

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1) Bergmann II 275, Rabel 1932, 875.
2) Translated from Bergmann II 283.
3) I. e. the grounds of divorce and nullity recognized by the Greek Catholic Church.

Art. 69 : A man who marries a woman in the lifetime of her husband or who abducts a girl without the consent of her parents or, if they are not alive, of her relatives, as prescribed by the rites and customs of our Eastern Orthodox Holy Church, shall be prosecuted as a man without religion and as an abductor of girls and shall be expelled from the country, and his fortune shall be estimated and distributed in the manner provided for in the case of a murderer.

Art. 70 : But if a girl follows an unmarried man of her own free will without knowledge of her parents, nothing can be done to them, for love itself has bound them.

Art. 72 : If it occurs that a Montenigrin is cheated by his unfaithful wife and he detects her at the adultery, then he is at liberty to kill either of them; and if the wife escapes, she shall have no place in our country.

Art. 73 : If a wife attempts to kill her husband, or if she kills him, then she shall, if she has been convicted, be condemned like every other murderer.

Art. 75 : If hate and quarrel are between the spouses, and if the husband does not want to live together with the wife, they may be separated, but not divorced; the husband shall then give maintenance to the wife, and none of them may marry again.

Art. 76 : If such a wife which was separated from her husband conducts herself immorally or obstinately, the husband may withdraw from her the maintenance and any further support, and the wife may care herself for her living.

Art. 77 : If a wife steals anything from the husband, she is punished for the first and for the second time with imprisonment; the third time she shall be chastised, and the husband may contract a new marriage, and she may not.

Art. 92 : Although there does not exist in this country a nationality other than the Servian nor a church other

than the Eastern Orthodox, nevertheless everybody belonging to another nationallity and to another church may live herein without hindrance and may enjoy the freedom and the justice of our country like every Montenegrin.

*Nationality Law.*

4. Under the Law of September 21, 1928, the following provisions apply in all parts of Yugoslavia : —

A foreign woman acquires by marriage with a Yugoslavian the latter's nationality, unless she exercises a right given to her by her national law to retain her original nationality (§ 10).

A Yugoslavian woman loses by marriage with a foreigner her nationality unless she does not, under the national law of the husband, acquire his nationality, or unless she has by marriage contract or by solemn declaration reserved to herself Yugoslavian nationality (§ 29). After dissolution of the marriage she may reopt for Yugoslavian nationality if she takes up her domicil in Yugoslavia (§ 40).

*Private International Law.*

5. The Serbian Civil Code governs the personal status of Serbians even if they reside abroad (Art. 5).

But contracts made abroad are valid if made according to the *lex loci* (Art. 6).

Foreign judgments are recognized if the foreign court is the court of the domicil of both parties. Decrees of divorce, however, are not recognized except if based on a ground admitted as ground for divorce under Yugoslavian law [4]).

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4) Bergmann II 265.

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