

民法 第

The Spain Civil Code

Title IIIMatrimonial Property RegimesChapter IGeneral Provisions

Art. 1316 In the absence of a matrimonial contract, or where the contract is ineffective, the regime shall be that of the partnership or community of gains.

Art.1317 A modification of the matrimonial property regime made during the marriage shall, in no case, prejudice rights vested in third parties.

Chapter IIOf Matrimonial Contracts

Art. 1325 The parties may, by matrimonial contract, stipulate, modify, or substitute their matrimonial property regime or any other dispositions by virtue of the same.

Art. 1329 A minor who, in accordance with law, can marry shall have the right to enter a matrimonial contract, before or after contraction marriage, but he shall need the concurrence and consent of his parents or tutor, unless he limits himself to contracting either the separation of property or the participation regime.

Art. 1330 One who has been judicially incapacitated shall only be entitled to enter matrimonial contracts with the consent of his legal representative and, when appropriate, the authorization of the family council.

Art. 1331 In order for an amendment to a matrimonial contract to be valid it must be executed with the assistance and concurrence of the persons that intervened in them as parties, if they are still alive and the amendment affects rights granted by such persons.

Art. 1334 All stipulations made in matrimonial contracts presupposing the contracting of a future marriage shall be without effect in case the marriage is not contracted within a one year period.

Art. 1335 The invalidity of matrimonial contracts shall be governed by the general rules on contracts. The consequences of annulment shall not prejudice third parties acting in good faith.

Chapter IV

Of the Partnership or Community of Gains

Section One. General Provisions

Art. 1344 In the partnership or community of gains, gains or benefits obtained by any of the spouse become the joint property of husband and wife. Each of the spouses is entitled to one half of that property at the dissolution of the partnership.

Art. 1345 The partnership[or community of gains shall begin at the moment marriage is contracted or, thereafter, at the time it is stipulated by matrimonial contract.

Section Two. Of Separate and Community Property

Art. 1346 Separate property of each of the spouses consists of :

- 1) Things and rights belonging to each of them at the beginning of the partnership.
- 2) Those acquired thereafter by each of them under gratuitous title.
- 3) Those acquired on account or in substitution of separate property.
- 4) Those acquired by the right of return belonging to one of the spouses only.
- 5) Strictly personal things and patrimonial rights and rights that are not transferable inter vivos.
- 6) Awards for damages caused to the person of one of the spouses or to his separate property.

7) Clothing and objects of personal use that are of no extraordinary value.

8) Instruments necessary for the exercise of a profession or trade, except when they are a part of, or belong to, an establishment or industry that is community property.

The assets mentioned in numbers 4 and 8 shall not lose the status of separate property by virtue of the fact that they were acquired with community funds; but, in such a case, the partnership shall be a creditor of the owner spouse for the sum disbursed.

Art. 1347 Community property consists of:

1) Things obtained through the work or industry of any of the spouses.

2) Fruits, rents, or interest produced by both separate and community property.

3) Things acquired by onerous title at the expense of the community property, whether the acquisition is made for the community or for one of the spouses only.

4) Things acquired by a right of return, of a community nature, even where the acquisition is made with separate funds, in which case the partnership shall become a debtor of the spouse for the sum disbursed.

5) Enterprises and establishments founded during the existence of the partnership by any of the spouses at the expense of the community property. If both separate and community capital is used in the formation of the enterprise or establishment, the provisions of Article 1354 shall govern.

Chapter V

Of the Participation Regime

Art. 1411 In the participation regime each of the spouses has the right to share in the gains of the other spouse while the regime is in effect.

Art.1412 Each spouse has the right to manage, enjoy the benefits of, and freely dispose of the assets he had at the moment of contracting marriage as well as those acquired thereafter by any title.

Chapter VI

Of the Separation of Property Regime

Art. 1436 A separation of property demand, and a final judgment decreeing a separation of property, shall, respectively, be annotated and recorded in the appropriate property registry, when they concern immovable property. The final judgment shall also be recorded in the Civil Registry.

Art. 1437 In the separation of property regime each spouse shall own the assets that belonged to him at the time of commencement of the regime and those acquired thereafter by him by any title. Each spouse shall also have the administration, enjoyment, and free disposition of such assets.

