

Requirements for substantial and formal validity of the matrimonial property contracts

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The system of contracts which can be made by the spouses

I. Contracts made by the spouses with third persons [According to Art. 30. of Family Act, Art. 31(5) of the old Civil Code/ Arts. 45. - 52. of the Civil Code are applicable]

II. Contracts made by the spouses with each other

1. Matrimonial property contracts in broader sense:

- a) contracts between the spouses for a single performance [Art. 27(2), (3) of the Family Act; /Art 4:41. of the Civil Code]
- b) contracts distributing the matrimonial community of property [Art. 27(2), (3) of the Family Act; /Art. 4:57 (2) of the Civil Code]
- c) contracts regulating the use of the shared residential premises [Art. 31/A. of the Family Act /Art. 4:76 – 85. of the Civil Code]

2. Proper matrimonial property contracts : [Art. 27(2), (3) of the Family Act; /Art. 4:34., 4:63 – 75. of the Civil Code]
the spouses regulate their property relations different from the statutory property regime

Interpretation of an agreement on condition record.

Case: Hungarian Curia (Supreme Court) Pfv.II.21.105/2019.

Matter of fact:

First contract: property proportions of the apartment in proportion of the assistance of acquisition :7/10 – 3/10
the employer's loan taken from one party is maintained in equal portions even after termination of the community of life

Building site in proportion of 1/2-1/2 is a common property

Second contract: after terminating the building the property proportions are: 3/10 -7/10

Point No. 5) acquisition costs of the building : 25 million HUF; contribution rate: 15% - 85% (separate property, apartment sale price, common/separate loan)

Point No. 6) „it is taken out of the matrimonial community of property”, but in other matters of their property relations Art. 27 (1) of the Family Act is applicable

action: termination of community of property regime according to property proportions $\frac{1}{2}$ - $\frac{1}{2}$

counter-claim: termination of common property according to the property proportions laid down in the contract: 3/10 – 7/10

First degree judgement: termination of joint property according to the property proportions $\frac{1}{2}$ - $\frac{1}{2}$

In absence of an essential substantial element (a contribution to the acquisition and a deduction of the various property proportions) the contract was not concluded;

A contribution of a separate property is not proved

Second degree judgement of the Hungarian Curia: termination of joint property according to property portions: 3/10 – 7/10

Relation between the contractual and statutory property regime: in case of a valid contract the rules of the statutory property regime are only applicable depending on the content of the contract;

Only if the contract does not contain any question which is disputed in the case

Conclusion of a contract: According to Art. 31(5) of the Family Act Art. 205(1), (2) of the old Civil Code is applicable; [Civil Code 6:63(1),(2)]

expression of mutual and consonant will of the parties

agreement on the essential substantial elements

Essential substantial element: there is no obligatory substantial element. According to the interpretation of contracts distributing the matrimonial community of property in judicial praxis, it is sufficient to fix the result of the agreement : proportion of property 3/10 – 7/10

Interpretation of a contract:

No. 5) : different acquisition of property of the spouses according to the rules of the Family Act (ratio of separate properties, contribution of separate property)

No. 6): „it is taken out from the scope of the Family Act”. Different acquisition of property of the spouses - not according to the rules of the Family Act,

No. 5) and No. 6) mutually exclude each other.

Which is applicable: No. 5) : the parties did not have any separate property which could have been used for the building;

the parties had known this at the time of concluding the contract

They did not count with a different contribution at the time of making the contract

sham – invalid agreement

No. 6) : real intention independent from the real proportion of contribution 3/10 – 7/10 property proportion

Contracts distributing the matrimonial common property: [EBH 2001.530.](#); [BH 1998.17.](#)

- the spouses are forced to make considerations when eliminating the property regime,

- not only property but also personal aspects are prevailing,

- other aspects might be more important than proportional value

These principles relate to the matrimonial property contracts as well

Conditional contracts:

According to Art. 31 (5) of the Family Act, Art. 228(1) of the old Civil Code is applicable/ (Art. 6:116. of Civil Code)

Consumption of separate property: it was not a condition

Obtaining the using licence for the building: it was a condition and it was completed

Invalidity of the contract:

Contracts distributing the matrimonial common property; invalidity can not be judged based on the fact that at the time of the distribution of the property none of the spouses can obtain an unfair property advantage [EBH 2001.530](#).

mistake, misrepresentation: According to Art. 31 (5) of the Family Act, Art. 210. of the Civil code is applicable / (Art. 6:90. of Civil Code)

Because of the interpretation of a second degree judgement / judgement of the Hungarian Curia: it has no relevance

The conditions were missing:

- the party at the time of making the contract
- was mistaken concerning an important circumstance;
- his mistake was caused by the other party

Thank you for your attention!



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