Community Property in Czechoslovakia and the Soviet Union as Compared With Other Community Property States

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1. Introduction

Marital property of the spouses usually takes one of two basic forms in the contemporary legal system, namely the form of separation of property or that of community property. The great majority of European countries apply the system of separation of property while leaving it to the spouses to make their own arrangements by marriage contracts. The leading community property states are France and Spain but again, the spouses are free to provide otherwise.

Individual states in the United States use either system. Those American states which originally derive their law from English law apply the principle of separation of property.¹ Community property was introduced to America by French and Spanish law and it still survives in states which originally formed part of the French or Spanish dominions.² Pursuant to this approach, a community of property of husband and wife is created upon celebration of marriage, and upon dissolution thereof the property is divided equally between the spouses.

The objective of the community property approach is a better protection of the wife's property, but under the present conditions the principle of separation of property may not be less advantageous to the wife.³ With the full emancipation of married women, the system of separation of property may be preferable since it enables them to retain full control of their property.

It should be noted that none of the countries applying either separate or community property actually apply it in their pure form but rather combine features of both systems or offer spouses two or more alternatives so that there are virtually as many systems as there are countries.

Present Czechoslovak law subscribes to the law of community property of the type applied in the Soviet Union which it adopted due to Soviet influence.

2. Czechoslovak and Russian Marital Property Law
   Prior to the Adoption of the Community Property System

Both Czechoslovakia and Russia subscribed to the system of separation of property prior to the introduction of the Soviet community property system.
2.1. The Czechoslovak Law

The marital property law applicable in Czechoslovakia prior to 1 January 1950 (the date of introduction of the community property system) has a long standing tradition. It grew from ancient origins through centuries of use and eventually took the form of a legislative provision in the former Czech Kingdom which became part of the Austrian Empire, while it continued in a rather common law form in Slovakia.4

2.1.1. The Czech Law

The Czech law was consolidated in the Civil Code of 1811,5 in articles 1233-1241. Articles 1233 and 1237 expressed the fundamental principle of separation of property. The celebration of marriage on its own did not bring about the creation of community property but such community could have been set up by a marriage contract. Failing such a contract, the principle of separation of property applied.4

i) The Principle of Separation of Property

The political and economic individualism which was prevalent in the late 18th and the early 19th century found its expression in the principle of separation of property. By property was understood not only the corpus but also its management and the right of its alienation, so that each spouse was entitled to freely manage and dispose of his (or her) property without any interference of the other spouse. This freedom could have been affected by a marriage contract, but if the marriage contract failed to provide for a particular eventuality, each spouse was free to make his own dispositions concerning the property unless it was shown that the point was indeed covered by a contractual provision. The burden of proof fell on the claimant.

It followed that there was no presumption as to title to marital property. In case of doubt, each spouse had to prove title to his property which he had brought into the marriage. On the other hand, as to property acquired during marriage, in case of doubt the presumption applied that it was acquired by the husband. Each spouse was free to enter into contracts concerning his property and was bound by them without obligating the other spouse in any way. In order to bind both spouses, they would have to obligate themselves jointly or in common in accordance with provisions of the Civil Code governing the matter.7

Property acquired during marriage was also acquired separately by either spouse and belonged exclusively to him. Property acquired jointly or in common was held in co-ownership. Co-ownership of spouses created, however, some uncertainty as to title to chattels since most such objects, especially those acquired for use in the household, were acquired by common understanding of the