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MATRIMONIAL ISSUES IN GREEK LAW

MEMORANDUM

Issues arising from Marriage and Divorce in Greek law and consequences for matrimonial Property

INTRODUCTION

Unlike South African family law with its roots in Roman Dutch law, Greek family law derived most of its concepts from Byzantine Roman law. The aspect of family law discussed below relates to marriage and matrimonial property.

Greek marriages may be either religious or civil. Both these forms require a licence. The principle of void and/or voidable marriages is the same as that in SA law.

The formalities for a marriage are:

1. Difference in sex of the parties.
2. Legal majority which is 18. If a minor wishes to marry he or she as the case may be, has to approach the courts for what is known as an exemption. This is different to SA where one needs the consent of both parents or that of the guardian.

Matrimonial property issues too are different in Greece. By way of example the concept of dowry although abolished by law in 1983 still exists in practice. A quasi-exclusion of community of property is the preferred regime i.e. each spouse is responsible to his or her creditors and for his/her debts. The parties may however acquire common property. Confusingly however, as far as movables are concerned, the law in Greece establishes 3 rebuttable presumptions:

1. For the benefit of a creditor movables in possession of either one or both spouses are presumed to belong to the spouse who is the debtor.
2. In disputes between spouses, movables possessed by each spouse or by both of them are presumed to belong to them equally.
3. In disputes between spouses and creditors, movables intended for the use of each are presumed to belong to the spouse who uses them.

Where the parties have 'separate estates' the principle of negotiorum gestio applies in the event of management of the estate of the other spouse.

Thankfully however, as in the South African Matrimonial Property Act (as amended) parties are entitled to vary their matrimonial property regime during a marriage, however the change is done by notarial contract registered in the public registry instead of being preceded by an application to Court.

In the “separation of property” in the event of dissolution of marriage, a spouse may claim a distribution of profits from gains derived from the property of the other spouse (similar to the concept of the universal partnership in SA).

Divorce in Greece is granted under the following circumstances:

- (a) Irretrievable breakdown
- (b) Absence

As in SA, fault is no longer a component of irretrievable breakdown but the separation of the spouses for four (4) consecutive years is irrefutable in the event of an action for divorce. Under very exceptional circumstances divorce may be refused as constituting an abuse of right.

The procedure for divorce is similar to SA in that an action may be brought opposed or unopposed. The unopposed action is termed a divorce’ by consensus’. Such an action may only be instituted at least one (1) year after the existence of the marriage and the consent of the spouses is necessary twice before the court, the second consent taking place at least 6 months after the first. The reason for this is to allow the parties an opportunity to explore a reconciliation. This procedure in principle is similar to the SA law rule nisi in civil proceedings, and similarly, an agreement of settlement must be concluded between the parties dealing with issues such as custody of minors and rights of access. In the event of a religious divorce, the divorce is completed by the spiritual dissolution pronounced by the bishop of the Orthodox Church, In every other case an order of court must be obtained.

The consequences of divorce are similar to those in SA law. Custody is granted to both parents unless there is disagreement in which event the court will make an order.

Similar to SA law, fault plays no part in the issue of maintenance, which will only be granted if one of the spouses is destitute while the other has sufficient means. Maintenance will be granted to a destitute party under the following circumstances;

- (a) age does not permit them to acquire employment in order to support himself/herself.
- (b) he/she cannot work because he/she has to take care of minor children.
- (c) He/she cannot find employment as he/she needs professional training (in this case maintenance will only be granted for a period not exceeding 3 years)
- (d) maintenance will be granted for reasons of equity.

Maintenance comes to an end upon the remarriage of the recipient, cohabitation or death, In the event of the latter eventuality, maintenance rights accruing at the time of the beneficiaries death may be inherited.

As is evident from the contents of this article, there are many influences of continental law in the family law of Greece. This influence, coupled with the influence of Byzantine law gives Greek family law a balance approach yet in many situations as expected, it is at complete variance with SA law .

A frequently asked question amongst legal professionals relates to the confirmation of Divorce and Maintenance Orders granted in SA and the validation thereof in Greece.

The approach to be taken is to obtain an apostille from the Dept of Justice, have the Order translated by a registered translator and then together sent to Greece for presentation to a Greek court for confirmation.

Provided that the correct procedure has been followed, the Order will be confirmed by the Court, which must then be presented to the relevant municipal registry for an amendment to their records. The procedure will vary depending on the type of Order required for validation in Greece.