


The Marital Property Regimes in Brazil

Camila Morais Martins 

Faculty of Law, Pontifical Catholic University of Sao Paulo, Sao Paulo, Brazil

Email: camilamoraismartins.adv@gmail.com

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Abstract

The paper offers a comprehensive examination of marital property regimes in Brazil, emphasizing their impact on asset management and inheritance within family unions. It details the legal frameworks that govern marriage and stable unions, focusing on four primary property regimes: Universal Community of Property, Partial Community of Property, Separation of Assets, and Final Participation in Acquired Assets. Through a comparative analysis, the paper elucidates the practical implications of these regimes for property ownership and succession, highlighting their significance within Brazil's socio-legal context.

Keywords

Property Regimes, Marriage, Stable Union, Family Planning, Community Property, Moiety

1. Introduction

The formalization of a family union is often an emotional and transformative moment, marked by enthusiasm, dreams, and festive preparations. Amidst these personal changes, it is common for couples to neglect making important decisions at this phase—such as selecting the legal property regime that will govern their assets after the union.

In private international law, the matrimonial property regime may be determined either by statutory provisions or by agreement between the spouses, such as prenuptial contracts. The law of the couple's first domicile (*lex fori*) typically governs the family and property regime rules. This paper aims to examine the property regimes currently in force in Brazil and their practical implications for couples' lives.

The Brazilian legal system follows the Roman tradition of *Civil Law*, according to which the application of norms is based on the interpretation of the *written law* set forth. Family Law in Brazil is primarily regulated by three normative instru-

ments: the Federal Constitution (Brazil, 1988), the Law of Introduction to the Norms of Brazilian Law (LINDB) (Brazil, 1942), and the Civil Code (Brazil, 2002), which replaced the former 1916 Civil Code (Brazil, 1916).

In the Brazilian legal system, Family Law is a subdivision of Private Law and is governed by the Civil Code, specifically Part IV (Articles 1,511 to 1,783-A). Although located within the private sphere, Family Law is functionally treated as a matter of public policy (*ius cogens*), since its rules are mandatory and cannot be waived or modified by private agreements. This includes (i) the regulation and recognition of family unions by the Brazilian State and (ii) the property regime and its patrimonial and succession effects as provided in *Book V of the Civil Code* (Brazil, 2002).

This paper exclusively addresses the statutory framework currently in force, leaving jurisprudential analysis for future publications stemming from ongoing research. The topic will be further developed as part of studies conducted within the Master's Program in Comparative Civil Law at the Pontifical Catholic University of São Paulo (PUC-SP) during the 2025 academic year (Pontifícia Universidade Católica de São Paulo, n.d.).

2. Marriage and Stable Union

Family planning in Brazil is a voluntary decision made by couples, as enshrined in Article 226, §7 of the Federal Constitution (Brazil, 1988) and Article 1,565 of the Civil Code (Brazil, 2002). The rights and duties of spouses or partners are considered equal (Article 1,511, Civil Code), and it is expressly prohibited for any public or private entity to interfere in the marital union established by the family (Article 1,513, Civil Code), subject to the regulations outlined below.

In Brazil, there are two forms of affectionate relationships recognized by law: marriage and stable union. The legal provisions governing civil capacity, suspensive conditions, impediments, and annulment apply equally to both forms. Likewise, the rules governing property regimes are applied by analogy to stable unions, in accordance with Article 1,723 of the Civil Code (Brazil, 2002).

Under the Civil Code (Brazil, 2002), individuals aged 18 or older are permitted to establish a family. Minors aged 16 may also marry, provided they obtain parental or judicial consent (Article 1,517, Civil Code). Brazilian law guarantees individuals the freedom and autonomy to choose their partner and the marital property regime applicable to their union, subject to certain exceptions discussed later in this paper.

Although the Civil Code originally defined family unions as existing solely between “a man and a woman”, societal changes have led the courts to recognize *uniões homoafetivas* (same-sex family unions) in Brazil. This term was coined by the esteemed professor and judge Maria Berenice Dias in her book *União homossexual: O preconceito & a justiça* (Dias, 2008).

Currently, both same-sex marriages and stable unions are legally recognized by the Brazilian judiciary, following a landmark decision issued by the Federal Supreme Court (*Supremo Tribunal Federal*—STF) in 2011 (Barroso, 2011).

Polygamy is not permitted in Brazil, and the Civil Code (Brazil, 2002) establishes several legal impediments to the formation of a family union. These include: (i) the prohibition of unions between ascendants and descendants, whether by blood or adoption; (ii) the prohibition of marriage between in-laws in a direct line; and (iii) the invalidity of marriages between adopters and adoptees, as well as between siblings and other collateral relatives up to the third degree (Articles 1,521 and 1,548, Civil Code).

The Civil Code (Brazil, 2002) also sets forth additional circumstances that prohibit marriage or the formation of a stable union. These include: (i) a widow or widower with children from the deceased spouse must complete the inventory and partition of the couple's assets before remarrying; (ii) a widow or widower whose marriage has been declared null or annulled is prohibited from remarrying within ten months of the dissolution of the marital union; (iii) a divorced person may not remarry before the legal procedures for the division of assets from the previous union are concluded; and (iv) guardians, curators, and their relatives are prohibited from marrying the person under guardianship or curatorship until the situation is resolved and accounts are reconciled (Article 1,523, Civil Code).

Both suspensive causes and legal impediments may be raised by any interested party up to the moment the union is formalized, pursuant to Article 7, §1 of the Law of Introduction to the Norms of Brazilian Law (Brazil, 1942), combined with Articles 1,522 and 1,524 of the Civil Code (Brazil, 2002). If a couple decides to marry despite the presence of suspensive causes, the law imposes the regime of mandatory separation of assets as the applicable property regime (Article 1,641, I, Civil Code).

Below is a comparative table presenting the two main legal institutions of Family Law in Brazil—marriage and stable union—through which families are formally constituted. These institutions form the legal foundation of Brazilian society, as recognized in Article 226 of the Federal Constitution (Brazil, 1988).

Marriage	Stable Union
<p>LEGAL BASIS: Articles 1,511 to 1,582, Civil Code</p> <p>CONCEPT: Marriage is defined as a legal bond established between two individuals, in accordance with the formal procedures required for its celebration, including a sequence of steps and ceremonies for public registration. It presupposes the intention to form a family and is grounded in mutual affection, with full legal equality in the rights and obligations of both spouses (of both spouses (Article 1,511, Civil Code; Brazil, 2002). In the absence of a prenuptial agreement, the default property regime applicable to spouses is the partial community of property.</p> <p>Furthermore, if a Brazilian citizen marries abroad at a Brazilian consulate, the marriage must be registered in Brazil within 180 days of the couple's return, at the first civil registry office in the capital of the state where they establish residence (Article 1,544, Civil Code; Brazil, 2002).</p>	<p>LEGAL BASIS: Articles 1,723 to 1,727, Civil Code</p> <p>CONCEPT: A stable union is characterized by the relationship between two individuals who engage in public, continuous, and lasting cohabitation with the intention of forming a family (Article 1,723, Civil Code; Brazil, 2002).</p> <p>A stable union does not require any formal procedures or public registration. However, it may be converted into a marriage upon judicial petition and subsequent registration with the civil registry office (Article 1,726, Civil Code; Brazil, 2002). In the absence of a written agreement between the partners, their patrimonial relations are governed by the regime of partial community of property, where applicable (Art. 1,725). It is worth noting that the Civil Code of 1916 did not recognize the family as a social unit arising from a stable union, and treated marriage as indissoluble.</p>

Continued

DUTIES DURING THE UNION: The legal duties of both spouses include: (i) mutual fidelity; (ii) cohabitation in the marital domicile; (iii) mutual assistance; (iv) support, custody, and education of children; and (v) mutual respect and consideration, as set forth in Article 1,566 of the Civil Code (Brazil, 2002).

COMPULSORY HEIR: Article 1,845 of the Civil Code designates ascendants, descendants, and the spouse as compulsory heirs. This legal classification was not established under the 1916 Civil Code, which did not recognize the spouse as a necessary heir.

DUTIES DURING THE UNION: Partners in a Stable Union are obligated to fulfill duties of loyalty, respect, and mutual assistance, as well as responsibilities related to the custody, support, and education of children, pursuant to Article 1,724 of the Civil Code (Brazil, 2002).

NOT A COMPULSORY HEIR: Under Article 1,845 of the Civil Code; Brazil, 2002, only the spouse, descendants, and ascendants are considered compulsory heirs. As a result, a partner in a stable union may be excluded from inheritance through a will. Nonetheless, their right to a share of the community property—where applicable—remains preserved.

NULLIFICATION: Marriage or stable union may be annulled on the grounds of vitiated consent, such as a fundamental mistake concerning the identity of the other partner. Such action must be initiated within 180 days from the formalization of the union, in accordance with Articles 1,557 and 1,560 of the Civil Code (Brazil, 2002).

FAMILY DUTIES/ALIMONY: Both spouses or partners are subject to family-related obligations and legal responsibilities, including the presumption of paternity for children born during the union, and the reciprocal duty and right to support their descendants—encompassing both financial and emotional care. In Brazil, the failure to comply with alimony obligations may result in imprisonment, pursuant to Article 244 of the Criminal Code (Brazil, 1940). Additionally, each spouse or partner is responsible for family expenses in proportion to their individual assets and income, as set forth in Articles 1,565 and 1,568 of the Civil Code (Brazil, 2002).

FAMILY NAME: Each partner has the legal option to adopt the surname of the other, pursuant to Article 1,565, §1 of the Civil Code (Brazil, 2002).

DISSOLUTION: Currently, both divorce and the dissolution of a stable union require judicial intervention only when minors or legally incapacitated individuals are involved, or when there is a dispute between the partners. Otherwise, the dissolution may be formalized extrajudicially by public deed, pursuant to Law n. 11,441/2007 (Brazil, 2007) and Article 733 of the Code of Civil Procedure (Brazil, 2015). The legal proceedings may address issues such as alimony, child custody, division of property, and regulation of the family residence, although these matters are ancillary to the dissolution itself.

DISSOLUTION ABROAD: A foreign court's decision regarding consensual divorce may be submitted directly to the civil registry office for annotation by the interested party, without requiring homologation by the Superior Court of Justice (STJ) or legal representation. This procedure is authorized by Provision No. 53 of the National Council of Justice, issued on May 16, 2016 (National Council of Justice, 2016), and is consistent with the changes introduced by the Code of Civil Procedure (Brazil, 2015).

SUCCESSION: The rights of partners in stable unions were traditionally governed by Article 1,790 of the Civil Code (Brazil, 2002), whereas succession among spouses was regulated by Article 1,829, Civil Code. However, the Brazilian Federal Supreme Court (STF), in RE 878.694/MG (Supremo Tribunal Federal, 2017), ruled that it is unconstitutional to apply different rules to spouses and partners for succession purposes, affirming that both types of family unions must be treated equally. As a result, Article 1,829, Civil Code now applies uniformly to both marital and stable unions.

From this point forward, the terms *marriage* and *stable union* will be used interchangeably as *family union*. Likewise, *spouse* and *partner* will be collectively referred to as *partners* or *couple*, and *divorce* will be used to describe the termination of the family union, regardless of whether it involves a marriage or a stable union.

3. Marital Property Regimes

Property regimes refer to the civil rules governing the assets acquired by couples during their family union. According to Article 7, §4 of the Law of Introduction

to the Norms of Brazilian Law—LINDB (Brazil, 1942), “The property regime, whether legal or conventional, shall comply with the law of the country where the spouses are domiciled and, if different, the law of the first marital domicile”.

The property regime is also conceptualized as the patrimonial statute of the spouses or partners (Gomes, 1968). It governs their internal property relations within the family union while simultaneously safeguarding the rights of third parties who may contract with any of its members.

Couples are free to choose the property regime that will regulate their union. If no written choice is made among the four legally available options, the default regime applied is the Partial Community of Property, pursuant to Article 1,640 of the Civil Code (Brazil, 2002)—a rule in effect since the enactment of Law n. 6,515/1977. Any alternative regime must be expressly chosen through a prenuptial agreement executed before a notary public. For the agreement to be enforceable against third parties, it must be registered with the Real Estate Public Registrar corresponding to the couple’s first domicile after marriage, in accordance with Article 1,657 of the Civil Code (Brazil, 2002).

Brazilian Family Law recognizes four property regimes: Partial Community of Property, Universal Community of Property, Final Participation in Acquired Assets, and Separation of Property—each of which will be examined in the sections that follow.

To clarify a central concept in Brazilian Family Law, this paper adopts the term *moiety* as the translation for *meação*. This concept applies to all Brazilian property regimes, except the Separation of Property regime. The *moiety* represents 50%—the ideal half—of the common assets acquired by the couple during the family union, excluding individual particular assets such as those obtained before the union, by inheritance, or through donations. It is a patrimonial entitlement that applies throughout the duration of the union and becomes especially relevant in cases of dissolution or succession.

Notably, each partner holds a proprietary right to their *moiety*, which may be asserted in Court even during the existence of the union, particularly in cases involving judicial debt enforcement.

Consequently, in matters of succession, the *moiety* is not subject to inheritance tax, as it constitutes a proprietary right of the surviving partner rather than part of the estate. Inheritance itself is distributed to compulsory and testamentary heirs and is taxed at the state level, with rates capped at 8%, pursuant to Federal Senate Resolution n. 2/1992 (Brazil, 1992). Additionally, there is no federal income tax on inheritances or donations: assets and income received through such means are exempt under Article 6 of Law n. 7,713/1988 (Brazil, 1988a).

3.1. Partial Community of Property (Civil Code, Arts. 1,658-1,666, Brazil, 2002)

Under this regime, assets acquired after the formation of the family union are jointly owned, whereas those acquired prior to the union—or received through gratuitous titles such as donations or inheritances—remain the exclusive property

of each partner.

According to Article 1,658 of the Civil Code (Brazil, 2002), all assets and debts acquired during the union for the benefit of the family are considered common assets or *moiety*, regardless of whose name appears on the title. Assets obtained through pre-union activities, inheritance, or donation (collectively known as individual property or private assets) are not subject to division. However, the fruits generated by such individual property—such as income or capital gains—are shared between the partners and integrated into the *moiety*.

The Civil Code (Brazil, 2002, Art. 1,660) establishes a detailed list of private assets that are excluded from the *moiety*. These include: (i) assets owned by each partner prior to the family union; (ii) assets received at any time through donation or inheritance; (iii) assets acquired with proceeds from the sale of individual property—emphasizing the importance of a well-drafted prenuptial agreement that clearly defines each partner’s financial and patrimonial status; (iv) personal-use items, books, and professional tools; and (v) income derived from personal labor, pensions, and similar sources.

IN DISSOLUTION: Under the Partial Community of Property regime, each partner is entitled to their respective *moiety*. Notably, all debts and liabilities incurred during the union are presumed to be joint obligations and are equally borne by both partners, regardless of whose name appears on the obligation.

IN SUCCESSION: The *moiety* of the surviving partner is recognized as a personal proprietary right and, therefore, is not included in the inheritance. The *moiety* of the deceased partner is part of the estate and must be allocated exclusively to the descendants, pursuant to Article 1,829 of the Civil Code (Brazil, 2002). However, the surviving partner may inherit alongside the descendants with respect to the deceased’s private assets.

It is worth noting that Brazil adopts the Partial Community of Property regime as the default arrangement in the absence of a legally expressed choice by the couple, similar to the regimes established in France—Articles 1,401 to 1,408 of the French Civil Code (France, 1804)—and in China—Article 17 of the Marriage Law of the People’s Republic of China (China, 1980).

Given that most Brazilians neither inherit substantial assets nor receive significant donations—and that most of their wealth is accumulated during a family union—the Partial Community of Property regime serves as the most suitable supplementary legal framework in Brazil.

In conclusion, the Partial Community of Property regime promotes fairness in the distribution of assets acquired by the couple during the family union, while safeguarding each partner’s individual property—namely, assets obtained before the union, by inheritance, or through donation.

3.2. Universal Community of Property (Civil Code, Arts. 1,667-1,671, Brazil, 2002)

The Universal Community of Property regime is historically significant in Brazil,

as it served as the default property system in the absence of a prenuptial agreement until the enactment of Law n. 6,515/1977 (Brazil, 1977). Since then, couples who wish to adopt this regime must expressly elect it by executing a prenuptial agreement or a stable union contract.

Under this regime, a unified patrimonial mass is formed between the partners during the family union, encompassing both existing and future assets and debts—regardless of whose name appears on the legal title. The concept of *moiety* applies in full, meaning that all assets acquired during the union are jointly owned. This includes assets received through gratuitous titles (e.g., donations or inheritances), personal belongings, books, professional tools, and both movable and immovable property located in Brazil or abroad, even if formally registered in the name of only one partner.

Certain legal exceptions to common property under this regime are considered private assets or incommunicable property, and include:

(i) assets received through donation or inheritance that are subject to an explicit incommunicability clause, as well as any assets that replace them. This clause must be expressly stated in the deed of donation or in the will, ensuring the exclusivity of ownership and exclusion from the *moiety* of the non-beneficiary partner (Art. 1,668, I, Civil Code, Brazil, 2002);

(ii) debts contracted before the beginning of the family union, which remain the sole responsibility of the individual who incurred them. However, debts incurred specifically for the purpose of celebrating the union are shared by both partners (Art. 1,668, III);

(iii) donations made from one partner to the other that are intended to remain personal property must also contain an express incommunicability clause in the deed (Art. 1,668, IV);

(iv) the following items are not subject to division as part of the *moiety*: personal-use objects, books, professional tools, earnings from personal labor, pensions, half-pay, retirement benefits, and similar entitlements (Arts. 1,668, V and 1,659, V-VII).

It is important to highlight that Article 1,669 of the Civil Code (Brazil, 2002) establishes that incommunicability does not extend to the fruits generated by incommunicable assets, provided such fruits are received or become due during the family union. Consequently, although certain assets remain excluded from the *moiety*, the income and yields they produce are subject to division between the partners.

According to Brazilian law, couples subject to the Universal Community of Property regime to the Mandatory Separation of Property—are legally prohibited from forming a business partnership with each other, pursuant to Article 977 of the Civil Code (Brazil, 2002). Moreover, the *moiety* of a partner who acts as a shareholder, director, or executive in a financial or commercial entity is not liable for the company's debts, unless such obligations demonstrably benefited the family.

IN DISSOLUTION: The unified patrimony is equally divided, with each partner entitled to their respective *moiety*, regardless of whether the assets were acquired before or during the family union—except where exclusions apply under Article 1,668 of the Civil Code (Brazil, 2002).

IN SUCCESSION: Upon dissolution of the family union, the couple’s unified patrimony is divided equally, with each partner retaining their respective *moiety*. As a result, the surviving partner’s share does not form part of the estate and is not subject to inheritance tax. Under the Universal Community of Property regime, the surviving partner is not considered an heir but holds joint ownership of the marital estate. The deceased partner’s *moiety* is included in the inheritance and is exclusively distributed to the descendants. In the absence of living descendants or ascendants, the entire estate is transferred to the surviving partner, pursuant to Article 1,829 of the Civil Code (Brazil, 2002).

In conclusion, the Universal Community of Property regime facilitates straightforward management and accounting of the couple’s unified patrimony, as each partner holds an equal undivided share (*moiety*) of all assets. In cases of succession, the surviving partner may find themselves in co-ownership with the deceased partner’s heirs, making it essential for both families to maintain a relationship grounded in trust and cooperation. Such circumstances demand full transparency, continuous dialogue, and clear alignment between partners concerning patrimonial management—particularly regarding encumbrances, liabilities, loans, and guarantees assumed during the family union.

3.3. Separation of Property Regime (Civil Code, Arts. 1,687-1,688, Brazil, 2002)

In the Separation of Property regime, each partner retains exclusive ownership and control over their assets, which remain fully segregated and incommunicable throughout the duration of the relationship—regardless of whether acquired before or during the family union. As a result, no division of assets occurs upon dissolution, since no jointly owned property exists within this regime.

Couples who adopt this regime through a prenuptial agreement or a stable union contract do not generate a common patrimony (*moiety*) nor acquire shared interests in each other’s assets during the union. The Separation of Property Regime entirely excludes the sharing of assets or participation in the partner’s estate¹.

Each partner maintains exclusive ownership over both pre-union assets and those acquired during the relationship. They are individually responsible for managing their own assets and any related debts, without any obligation to share with the other partner. This rule applies equally to personal property obtained before or during the family union, which remains registered under the name of the acquiring party, with no communication of either assets or liabilities.

¹However, an exception arises from Precedent No. 377 of the Federal Supreme Court (STF), which provides that “*in the legal separation of property regime, assets acquired during the marriage are subject to division*” (Supremo Tribunal Federal, 1964).

The couple may choose to acquire assets jointly, in which case such assets will be held under voluntary co-ownership. It is advisable to expressly indicate each partner's percentage of ownership in the property title. Within the Separation of Property regime, spousal consent is not required for the sale of real estate (i.e., there is no need for the other partner's authorization), unlike in other marital property regimes where such consent is mandatory under Article 1,647 of the Civil Code (Brazil, 2002).

Although no legal formalities are required to establish a stable union—commonly referred to as a *de facto union* (Art. 1,723, Civil Code, Brazil, 2002)—it is advisable that, under the Separation of Property Regime, the union be formalized by means of a public deed executed before a notary public to ensure its enforceability against third parties.

IN DISSOLUTION: The Separation of Property regime does not involve the division of assets, since no jointly owned property exists. Upon dissolution, the legal focus shifts to family-related matters such as child custody, visitation rights, and alimony, among other personal and parental responsibilities.

IN SUCCESSION: Although there is no sharing of assets during the spouses' lifetime under this regime, Article 1,845 of the Civil Code (Brazil, 2002) designates the spouse as a compulsory. They may inherit—either jointly with descendants or ascendants, or as the sole heir—depending on the applicable succession structure. In the absence of other heirs, the entire estate is transferred to the surviving partner, pursuant to Article 1,829, II, II and III of the Civil Code (Brazil, 2002).

The Separation of Property regime in Brazil is analogous to the predominant marital property system in the United States, where 41 states follow the *Common Law* property regime. In contrast, 9 states—including Idaho, Louisiana, Nevada, New Mexico, Arizona, California, Texas, Washington, and Wisconsin—adhere to the *community property system*, in which all assets acquired during the marriage are presumed to be jointly owned (Featherston Jr., 2016).

By ensuring complete property autonomy, the Separation of Property regime grants each spouse or partner full independence in managing their individual assets, thereby minimizing conflicts and disagreements related to investment decisions.

This regime is particularly recommended for couples who already possess individual assets prior to the union, or for those involved in high-risk professional or business activities that entail direct patrimonial liability. It is also suitable for individuals who expect to significantly increase their assets in the short term. In such cases, the other partner's estate remains protected from exposure to third-party claims. Notably, even under the Separation of Property regime, partners may be entitled to inheritance rights, competing with the descendants of the deceased in succession proceedings.

Mandatory Separate Property Regime (Civil Code, Art. 1,641, II, amended by Law No. 12,344/2010, Brazil, 2010)

The Civil Code establishes a specific property regime for individuals who marry

after the age of 70, known as the Mandatory Separate Property regime. Under this system, all assets acquired before or during the union remain the exclusive property of each spouse, with no sharing or formation of common assets. Initially, the age threshold was 60, as provided in Article 1,641, II of the Civil Code upon its enactment in 2002. This threshold was later raised to 70 by Law n. 12,344/2010 to align with the definition of elderly individuals set forth in the Elderly Statute (Law n. 10,741/2003). Under the 1916 Civil Code, the restriction applied to women over 50 and men over 60, as established in Article 258, sole paragraph, item II (Brazil, 1916). The current rule has been widely criticized for assuming the vulnerability, reduced autonomy, and diminished legal capacity of elderly individuals, despite their full ability to enter into any other civil contracts under the law.

This legal provision has been widely criticized for presuming the vulnerability, reduced autonomy, and diminished civil capacity of *elderly individuals*—defined as those over 60 years of age under the *Elderly Statute* (Law n. 10,741, Brazil, 2003). Although such individuals are fully capable of entering into all other contracts governed by the Civil Code, they are nonetheless prevented from choosing their own marital property regime.

In 2024, the Superior Court of Justice (STJ) unanimously approved Topic n. 1,236, which established binding precedent (*repercussão geral*) on the matter. The Court held that: “*In marriages and stable unions involving a person over 70 years of age, the Mandatory Separation of Property regime provided for in Article 1,641, II of the Civil Code may be waived by an express declaration of the parties in a public deed*” (STJ, 2024).

IN DISSOLUTION: No transfer of assets occurs under the Mandatory Separation of Property regime, unless the parties have previously executed a public deed before a notary public expressly opting for an alternative property regime. However, if it is proven that both partners contributed to the acquisition of specific assets, those assets may be subject to division based on the principles of civil partnership and unjust enrichment.

IN SUCCESSION: A partner/spouse subject to the Mandatory Separate Property regime does not hold inheritance rights in the presence of descendants. However, if no descendants exist, the surviving partner may inherit alongside the ascendants. In the absence of both descendants and ascendants, the surviving partner inherits the entirety of the deceased’s estate, pursuant to Article 1,829, II and III of the Civil Code (Brazil, 2002).

3.4. Final Participation in Acquired Assets (Civil Code, Arts. 1,672-1,686, Brazil, 2002)

The Final Participation in Acquired Assets regime grants each partner exclusive ownership and management of the assets acquired both before and during the family union. However, in the event of dissolution, the net assets acquired during the union are subject to equal division. This regime functions as a hybrid: it mirrors the Separation of Property Regime during the existence of the union and

adopts the logic of Partial Community of Property at the time of partition, whether due to dissolution or succession.

Notably, the Civil Code provides that, under the final participation in acquired assets regime, the sale of real estate requires the consent and signature of both partners. This requirement does not apply under the separation of property regime, unless a prenuptial agreement or stable union contract expressly authorizes the free disposal of individually owned real estate, pursuant to Articles 1,656 and 1,641, I of the Civil Code (Brazil, 2002).

In the Final Participation in Acquired Assets regime, each partner maintains a separate estate, and ownership is attributed to the partner in whose name the asset is registered. Upon dissolution of the family union, each partner becomes entitled to half of the net assets acquired during the union (*moiety*). Individual property is excluded from division and includes: (i) assets acquired prior to the union, (ii) assets substituted using proceeds from their sale, and (iii) assets received gratuitously.

The esteemed professor Venosa (2005) comments:

“It is very likely that this regime will not suit the taste of our society. It is evident that it is a complex structure, regulated by no less than 15 articles, with numerous particularities. It is clearly not intended for most of the Brazilian population, with low income and little education. Moreover, although it is not for the jurist to reason about fraud, this regime is subject to vicissitudes and will open a vast field for the spouse of bad faith.” (Venosa, 2005: p. 360)

Although Brazilian Civil Registries and Notary Offices do not publicly disclose information on the property regimes chosen by couples, legal practice and civil doctrine indicate that the Final Participation in Acquired Assets regime is the least commonly adopted marital property system.

Based on my observations, and in line with Professor Venosa’s teaching, the final participation in acquired assets regime appears to be more commonly chosen by couples with higher levels of formal education and access to legal and accounting guidance, as they may be better prepared to grasp its complexity and potential advantages.

From a practical perspective, this marital property regime may represent an appealing choice for couples who wish to retain their individual property while ensuring a balanced division of the assets accumulated throughout the family union—the so-called moiety. Under this model, each partner remains responsible for their own assets and liabilities, while both are equally entitled to the jointly acquired patrimony.

IN DISSOLUTION: Upon the dissolution of the marital union, both partners are entitled to an equal division of the assets acquired during the relationship, except for those classified as individual property, including any assets substituted with their respective proceeds (Arts. 1,672 to 1,686 of the Civil Code, Brazil, 2002).

The division includes not only assets existing at the time of dissolution but also those acquired throughout the union and any proceeds resulting from their disposal during that period. Accordingly, a comprehensive accounting and financial reconciliation must be conducted.

IN SUCCESSION: The succession rules under the Final Participation in Acquired Assets regime mirror those of the Partial Community of Property. Specifically: (i) the surviving partner retains their moiety; and (ii) the decedent's moiety—treated as inheritance—is distributed exclusively to the descendants. The decedent's private assets are divided in equal shares per capita between the surviving partner and the descendants, pursuant to Article 1,829 of the Civil Code (Brazil, 2002).

The Final Participation in Acquired Assets regime closely mirrors the German *Zugewinnngemeinschaft* system (community of accrued gains), as established in Section 1,363 of the German Civil Code (*Bürgerliches Gesetzbuch*—BGB). In Germany, it is the default property regime, much like the Partial Community of Property regime in Brazil.

In contrast, it is important to highlight that England operates under the Common Law legal system; however, there is no formal marital property regime in place². Instead, civil partnerships and marriages are governed by general private property rules, particularly under the *Law of Property Act 1925* (United Kingdom, 1925). Property rights between spouses or partners arise only upon the dissolution of the union, either by divorce or succession, pursuant to the Matrimonial Causes Act 1973 (United Kingdom, 1973).

3.5. Comparative Table of Marital Property Regimes in Brazil

The table below summarizes the key characteristics of the four marital property regimes currently in force in Brazil:

REGIME	DESCRIPTION	ADVANTAGES	DISADVANTAGES	CONSIDERATIONS
Partial Community of Property	Assets acquired during the union are jointly owned (moiety rule). Assets acquired before the union, gifts, and inheritances are considered private property.	Equitable sharing of common assets acquired during the family union. Preservation of inherited assets and protection of individual wealth. Ensures financial protection for both partners. Co-owners of common assets (moiety) and heirs to private property.	Debts are shared within the moiety. Income and gains from private assets are included in the moiety. Legal acts involving real estate, gifts, or guarantees require a partner's consent. Dissolution may entail effortful asset division.	Balances shared growth with preservation of individual assets.

²“Continental European family lawyers often are rather surprised to learn that England and Wales does not have what they perceive as an integral part of family law; namely, a matrimonial property regime” Scherpe, J. M. (2022: p. 1604).

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Universal Community of Property	Full asset sharing, except when incommunicability is expressly stated.	Single estate structure eases dissolution process. Reinforces asset union and mutual commitment. Spouse/partner is not an heir but receives moiety share tax-free.	Loss of full discretion over asset management and decision-making. Can disadvantage a partner with fewer pre-union assets. Partners cannot be co-shareholders in the same company. Requires spousal/partner consent for real estate, donations, and guarantees.	Recommended for couples who want to fully unite all their assets and for those who completely trust each other.
Separation of Property	Each partner maintains exclusive ownership of their property.	Autonomous management of personal property. Protects each partner's assets from the other's debts. No partner consent required for property deals.	Unpaid domestic contributions may go unrecognized. May undermine economic solidarity due to lack of asset sharing upon dissolution. Spouses are compulsory heirs and cannot be excluded by will.	Suitable for couples with property disparity or seeking full autonomy.
Final Participation in Acquired Assets	Assets remain segregated during the union. Upon dissolution, assets and proceeds acquired during the union are equally divided (moiety).	Financial autonomy throughout the union. No consent or liability for partner's business misconduct. Spouses/partners are co-owners (moiety) and heirs to private property.	Requires detailed accounting of asset movements during the union. Challenging asset assessment in dissolution or succession. May cause disputes over asset composition upon dissolution; requires meticulous documentation.	Ideal for couples seeking autonomy during the union and equal sharing upon dissolution.

In our professional view, the selection of a marital property regime should be the subject of open and transparent dialogue between the partners and, ideally, be supported by legal and financial planning. This decision should reflect the couple's individual circumstances, financial objectives, personal values, and the intended approach to managing assets and income throughout the relationship.

3.6. Marital Property Regime Change

One of the key innovations of the 2002 Brazilian Civil Code, compared to the 1916 Code, is the possibility for couples to modify their marital property regime during the course of the marriage—or, by analogy, of a stable union—through a jointly filed, substantiated judicial petition. This change is permitted under Article 1,639, §2 of the Civil Code (Brazil, 2002), as long as the rights of third parties are preserved.

It is essential that the initial petition submitted to the Court be thoroughly substantiated, clearly outlining the reasons that led the couple to request the modification of their marital property regime. The petition must demonstrate the free

and informed consent of both parties regarding the proposed changes and be accompanied—ideally—by a set of certificates attesting to the absence of pending financial or legal liabilities, commonly known in Brazil as *certidões de nada consta* (certificates of “no record”). Although the submission of these certificates is not legally mandatory, legal practice in Brazil strongly recommends their inclusion to safeguard third-party interests.

In cases involving a transition from a regime based on asset sharing—such as Partial Community of Property, Universal Community of Property, or Final Participation in Acquired Assets—to a separation-based regime, such as Separation of Property, it is advisable to carry out a judicial or extrajudicial division of the assets accumulated up to the date of the regime change. This precaution aims to avoid the unintended creation of mixed marital property regimes and mitigate future patrimonial disputes.

The choice of a marital property regime can generate substantial strain on interpersonal relationships and, in the event of dissolution, may give rise to intense conflicts and legal disputes—especially in Brazil, where family matters tend to be emotionally charged and frequently litigated.

Consequently, the possibility of modifying the marital property regime acts as a stabilizing mechanism within family unions, allowing partners to periodically reassess their financial arrangements and determine whether a new regime better serves their mutual interests and individual growth.

For over a decade, Brazilian jurisprudence—particularly that of the Superior Court of Justice (STJ)—has consistently affirmed that judicial decisions authorizing changes to the marital property regime produce *ex nunc* effects, i.e., they are effective only from the date of the court ruling. This interpretation aims to preserve perfected and concluded legal acts, while also protecting the interests of potential creditors who engaged with the couple under the original property regime.

The rationale behind prevailing judicial practice is the protection of *bona fide* third parties. However, when the modification involves a transition from a Separation of Property regime to a Partial or Universal Community of Property regime, the recognition of *ex tunc* (retroactive) effects has been deemed legally admissible. This is because retroactive applicability may benefit potential creditors by subjecting previously individual assets to joint liability. This interpretation was endorsed by the Superior Court of Justice (STJ, 2023) in *REsp* n. 1.671.422/PR.

It is common for Courts to encounter cases involving couples who began their family life at a young age, without the maturity required to make an informed decision regarding their marital property regime. It is also frequent for one or both partners to later engage in professional or business activities that were not anticipated at the time of marriage, giving rise to patrimonial disputes. Another recurring scenario involves couples who married abroad and were unaware of the legal framework governing property relations at the outset of their union.

Alongside the judicial request to modify the marital property regime, the parties may also request the drafting of a postnuptial agreement or a stable union deed

formalizing the new rules governing the couple's patrimonial relations after the court's approval.

In conclusion, insufficient clarity and understanding of the patrimonial effects and practical implications of marital property regimes often give rise to conflicts within family relationships. For this reason, it is strongly recommended that couples seek specialized legal guidance when considering modifications to the legal rules governing their affective and financial arrangements. The ability to change the property regime serves as a valuable legal instrument to preserve stability and autonomy within family unions, in accordance with the constitutional framework established by Article 226 CF, 1988 (Brazil, 1988).

4. Choosing the Most Suitable Marital Property Regime

Below is a set of guiding questions and considerations for couples in the process of selecting a marital property regime. Each regime carries distinct legal and financial implications that may affect the couple's patrimonial dynamics in different ways. The table presented below is intended to assist with this decision-making process and has been developed based on my legal practice and interpretation of the applicable Brazilian legal framework. It may also serve as a reference tool for legal, tax, and financial advisors assisting clients in structuring or reviewing marital property arrangements.

Guiding Questions for Property Regime Selection:

OBJECTIVES OF THE COUPLE

- **Asset Sharing:** Do we wish to equally share all assets acquired during the course of our family union?
- **Future Planning:** How will the chosen marital property regime affect our long-term goals, such as home ownership, immigration, business incorporation, child-rearing, retirement, and estate planning?
- **Investment Opportunities:** What impact will the selected regime have on entrepreneurial activities and investment strategies?
- **Asset Management:** Will the management of assets be conducted independently or jointly?
- **Foreign Nationality:** Does either spouse or partner hold a foreign nationality or dual citizenship? What are the legal implications of marriage or union recognition in both Brazil and the other jurisdiction? (Consult a qualified attorney in each jurisdiction.)

PRIVATE ASSETS

- **Asset Separation:** Do we intend to keep inherited assets or property acquired prior to the union excluded from joint ownership?
- **Net Worth Comparison:** Is there a significant difference in net worth between the partners that may justify a more individualized patrimonial structure?
- **Documentation Review:** Have we reviewed and aligned key documents such as Family Protocols, Credit Instruments, Commercial Agreements, Shareholder Agreements, Trust Deeds, Foundation Structures, or Corporate Bylaws?
- **Income from Private Activities:** Should earnings (e.g., rents, dividends, capital gains, stock options) derived from individual property be shared or retained separately?
- **Financial Responsibility:** Is one partner primarily responsible for the couple's income and financial obligations?

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DEBT AND
LIABILITY
PROTECTION

- **Risk Assessment:** Does either partner's professional activity involve financial or legal risks that could impact the couple's shared property (*moiety*) or expose the other partner to creditor claims?
- **Disclosure Requirement:** Is there full and transparent disclosure of pre-existing assets, liabilities, and financial obligations prior to formalizing the union? This is essential for avoiding future disputes and ensuring informed consent.
- **Creditor Shielding:** Should one partner's assets be legally protected from potential claims arising from the other partner's personal or business-related debts?
- **Review of Legal and Financial Instruments:** Have all relevant documents—such as shareholder agreements, corporate bylaws, tax and pension plan structures, professional contracts, and bank guarantees—been examined to identify clauses that may require spousal consent or create liability?
- **Guarantor Roles and Personal Obligations:** Has either partner assumed personal guarantees or sureties that may affect joint property or succession outcomes?
- **Prior Debt Allocation:** Are liabilities incurred before the union properly documented to ensure they remain individually enforceable?

FAMILY AND
SUCCESSION
PLANNING

- **Family Composition:** Are there children or other dependents from previous relationships whose rights or inheritance expectations should be considered?
- **Legal Dependents:** Are there living ascendants, minor dependents, elderly family members, or individuals with disabilities whose care must be planned?
- **Support Obligations:** Are any family members currently receiving alimony, child support, or other legally mandated maintenance?
- **Succession Strategy:** How should the succession of assets be structured in the event of death—especially regarding second marriages, blended families, or unequal asset contributions?
- **Estate Planning Instruments:** Have wills, life insurance policies, pension plans, or trust instruments been formalized to ensure clarity and prevent disputes?
- **Domicile and Jurisdiction:** Is there an intention to reside or acquire assets abroad? What are the legal and tax implications of cross-border succession?

LEGAL
GUIDANCE

- **Seek Legal Counsel:** Couples are strongly advised to consult a qualified legal professional to ensure the chosen marital property regime aligns with their patrimonial profile, professional activity, and long-term family goals.
- **Open Dialogue:** Transparent and honest communication between partners is essential for relationship stability and to avoid future conflicts related to asset ownership and succession expectations.
- **Understanding Legal Implications:** Both parties must clearly understand the patrimonial, tax, and succession consequences of the selected regime, including potential impacts in case of divorce, death, or cross-border circumstances.
- **Formalization Requirements:** Are we aware of the legal formalities for the regime to be valid and enforceable, such as public deed execution and registration at the appropriate registry office?
- **Flexibility Through Judicial Modification:** Do we understand that future modification is possible through a well-founded judicial request, provided that third-party rights are preserved?

FINANCIAL
ASPECTS

- **Asset Separation:** Do we intend to keep inherited assets or property acquired prior to the union excluded from joint ownership?
- **Net Worth Disparity:** Is there a significant difference in net worth between the partners that may justify a more individualized patrimonial structure?
- **Documentation Review:** Have we reviewed and aligned key documents such as Family Protocols, Credit Instruments, Commercial Agreements, Shareholder Agreements, Trust Deeds, Foundation Structures, or Corporate Bylaws?
- **Asset Substitution:** If a private asset is sold and replaced, should the new asset preserve its individual classification?
- **Income from Private Assets:** Should earnings (e.g., rents, dividends, capital gains) derived from individual property be shared or retained separately?
- **Financial Responsibility:** Is one partner primarily responsible for the couple's income and financial obligations?
- **Financial Education Access:** Equal access to financial and legal information is essential to ensure informed decision-making by both partners—particularly in contexts where women may have historically experienced barriers to patrimonial autonomy.

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EMOTIONAL
ASPECTS

- **Expectation Clarification:** Each partner should clearly express their expectations, values, and concerns regarding the management, division, and destination of present and future assets.
- **Mutual Trust and Legal Awareness:** Building a relationship of mutual trust requires a shared and informed understanding of the legal implications of the chosen marital property regime. Seeking legal guidance is strongly recommended to ensure clarity and balance.
- **Regime Agreement:** Reaching express and consensual agreement on the selected property regime is essential to reduce emotional stress and avoid future disputes.
- **Income and Asset Impact:** Have we considered how each partner's income level and ownership of assets may influence the relationship dynamic, decision-making autonomy, housing expenses and expectations regarding standard of living?
- **Gendered Impact of Regime Selection:** Have we adequately considered that women who reduce or forgo professional opportunities to assume caregiving responsibilities may face disproportionate patrimonial vulnerability under property regimes that do not guarantee shared ownership of assets acquired during the union (Brazil, 1988, Article 226, §5)?

Each marital property regime carries specific advantages, disadvantages, and legal particularities that must be assessed based on the couple's concrete reality, financial structure, and long-term goals. The Brazilian legal system permits the revision and modification of the initially chosen regime throughout the course of the union, subject to judicial approval and the protection of third-party rights.

5. Final Considerations

Grounded in Brazilian law and informed by Hans Kelsen's Pure Theory of Law (Kelsen, 1994), this paper presents a structured and reflective analysis of property regimes governing family unions in Brazil. The analysis remains focused on legal norms in force, deliberately excluding jurisprudential developments.

This paper underscores the importance of choosing an appropriate marital property regime for family unions in Brazil, noting that inadequate planning may result in litigation and financial loss. As a *Civil Law* jurisdiction, Brazil offers well-defined statutory guidelines on property regimes, chiefly codified in the 2002 Civil Code.

Couples in Brazil are free to choose the property regime that will govern their family union—whether formalized through marriage or a stable union. In the absence of a prenuptial agreement or a registered stable union contract, the default regime is the Partial Community of Property. Other legally recognized regimes include the Universal Community of Property, the Separation of Property, and the Final Participation in Acquired Assets, each defined by specific rules regarding asset management and succession. The choice of the marital property regime directly influences the division of assets in the event of dissolution or death.

An examination of these regimes reveals that while the Partial Community of Property facilitates the sharing of assets acquired during the family union, Separation of Property establishes an independent patrimonial status between partners, resulting in no jointly owned assets. The Final Participation in Acquired Assets regime incorporates elements from both previous regimes, allowing each

partner to retain ownership of their assets while ensuring participation in jointly acquired assets upon the dissolution of the family union. The recent introduction of the option to change the property regime during the family union through a Court order is also noteworthy, as it provides couples with greater flexibility to reassess their property arrangements.

In summary, the selection of the marital property regime is a critical decision for couples entering into a family union. A clear understanding of the legal and patrimonial implications of each regime is essential to avoid future disputes and to safeguard the rights of both partners—reflecting the legal and social complexities of contemporary family relationships.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Barroso, L. R. (2011). Diferentes, mas iguais: O reconhecimento jurídico das relações homoafetivas no Brasil. *Revista Brasileira de Direito Constitucional*, 17, 105-138.
- Brazil (1916). *Código Civil, Lei n° 3.071, de 1° de janeiro de 1916*.
https://www.planalto.gov.br/ccivil_03/leis/13071.htm
- Brazil (1940). Penal Code (Decree-Law No. 2,848, of December 7, 1940).
https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm
- Brazil (1942). *Decreto-Lei n° 4.657, de 4 de setembro de 1942 (LINDB), as Amended by Law No. 12.376/2010*. https://www.planalto.gov.br/ccivil_03/decreto-lei/del4657.htm
- Brazil (1977). *Lei n° 6.515, de 26 de dezembro de 1977*.
https://www.planalto.gov.br/ccivil_03/leis/16515.htm
- Brazil (1988). *Constitution of the Federative Republic of Brazil*.
https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
- Brazil (1988a). *Lei n° 7.713, de 22 de dezembro de 1988*.
https://www.planalto.gov.br/ccivil_03/leis/17713.htm
- Brazil (1992). *Resolução do Senado Federal n° 2, de 1992*.
<https://legis.senado.leg.br/norma/590017>
- Brazil (2002). *Lei n° 10.406, de 10 de janeiro de 2002 (Código Civil)*.
https://www.planalto.gov.br/ccivil_03/leis/2002/l10406.htm
- Brazil (2003). *Lei n° 10.741, de 1° de outubro de 2003 (Estatuto do Idoso)*.
https://www.planalto.gov.br/ccivil_03/leis/2003/l10741.htm
- Brazil (2007). *Lei n° 11.441, de 4 de janeiro de 2007*.
https://www.planalto.gov.br/ccivil_03/ato2007-2010/2007/lei/l11441.htm
- Brazil (2010). Law No. 12,344 of December 9, 2010. Establishes Provisions Regarding the Civil Code. Brasília: Presidency of the Republic.
https://www.planalto.gov.br/ccivil_03/ato2007-2010/2010/Lei/L12344.htm
- Brazil (2015). *Lei n° 13.105, de 16 de março de 2015 (Código de Processo Civil)*.
https://www.planalto.gov.br/ccivil_03/ato2015-2018/2015/lei/l13105.htm
- China (1980). *Marriage Law of the People's Republic of China*.
http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384064.htm
- Dias, M. B. (2008). *União homossexual: O preconceito & a justiça* (3rd ed.). Livraria do

Advogado.

- Featherston Jr., T. (2016). *Separate Property or Community Property: An Introduction to Marital Property Law in the Community Property States*. Baylor University.
<https://law.baylor.edu/sites/g/files/ecbvkj1546/files/2023-11/His%2C%20Her%20or%20Their%20Property%20--%20New%20York%202016.pdf>
- France (1804). *Code civil français (French Civil Code)*. <https://www.legifrance.gouv.fr>
- Gomes, O. (1968). *Direito de família* (3rd ed.). Forense.
- Kelsen, H. (1994). *Teoria pura do direito* (J. B. Machado Trans., 4th ed.). Martins Fontes.
- National Council of Justice (2016). *Provimento n. 53, de 16 de maio de 2016*.
<https://atos.cnj.jus.br/atos/detalhar/2088>
- Pontifícia Universidade Católica de São Paulo (n.d.). *Mestrado e Doutorado em Direito*.
<https://www.pucsp.br/pos-graduacao/mestrado-doutorado/direito>
- Scherpe, J. M. (2022). England and Wales: A Jurisdiction without a Matrimonial Property Regime. *Actualidad Jurídica Iberoamericana*, 16, 1602–1621.
<https://www.revista-aji.com/wp-content/uploads/2022/06/68.-Jens-M.-Scherpe-pp.-1602-1621.pdf>
- Superior Tribunal de Justiça (STJ) (2023). *Recurso Especial n° 1.671.422/PR*.
<https://scon.stj.jus.br/SCON/>
- Superior Tribunal de Justiça (STJ) (2024). *Tema Repetitivo n° 1.236*.
https://processo.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp?novaConsulta=true&tipo_pesquisa=T&cod_tema_inicial=1236&cod_tema_final=1236
- Supremo Tribunal Federal (1964). *Súmula n° 377*.
<https://portal.stf.jus.br/jurisprudencia/sumariosumulas.asp?base=30&sumula=4022>
- Supremo Tribunal Federal (2017). *RE 878.694/MG*.
<https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=14300644>
- United Kingdom (1925). *Law of Property Act 1925*.
<https://www.legislation.gov.uk/ukpga/Geo5/15-16/20>
- United Kingdom (1973). *Matrimonial Causes Act 1973*.
<https://www.legislation.gov.uk/ukpga/1973/18>
- Venosa, S. D. S. (2005). *Direito Civil: Direito de família* (5th ed.). Atlas.