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ADVOCATEN**

# DÉJÀ VU

Last July, when I visited the States, I read the reports on the first gay marriages in summer hot New York. The New York Times published, almost euforical, many pages of testimonials on gay couples who (finally) got married. A kind of public coming out with a non deniable effect. While my kids and I were trying to cope with the heat by cooling off in the lakes in the Hudson valley, I saw our neighbour, who was a physician in NYC, sitting on the beach going through the Times, calling out names of brides and grooms he recognized as directors of a medical centre or of some other established firm. It reminded me of the situation in The Netherlands 10 years ago, when the first gay couples married here.

But where people marry, they also divorce. Reason why our firm has almost 10 years of experience in divorcing gay couples. Are there differences between gay marriages and marriages between people of different gender? Yes, there are, as far as the juridical status is concerned regarding children born during marriage. Yes, there are, as far as the international status of the marriage is concerned, simply because not all countries acknowledge gay marriages. But no, there are not, as far as the dissolution of the community property is concerned. At least according to Dutch law. However, people do not always seem to realise that.

Last month, during one of our evening opening hours, a nicely dressed gentlemen walked in and explained to me that he had married his Dutch boyfriend 9 months ago. However, it turned out that his husband could not manage to remain faithful to him, reason why he wanted a divorce. Without hard feelings, since he understood his husband, seeing he himself was, in fact, much older. Since he loved him still, he wanted to divorce while granting some of his wealth to the non faithful husband. He asked me for advice on how this could be arranged. After going through the facts, however, I could tell him that it was not necessary to "grant" some wealth since his husband already owned half of it.

It turned out that my client was Spanish, married to a Dutch man in The Netherlands and that they lived here as well. And that there was no marriage contract. According to Dutch international private law, Dutch law is then to be applied on the marital property, resulting in total community of property for both spouses.

The Dutch law differs from the Spanish law at this point.

He informed me that this had never been the intention, his nor his husband's. In fact he was quite wealthy; his husband did not even now how wealthy. I then could help him by pointing out a special facility offered by the Minister of Finance, stating that when spouses come to regret the fact that they did not make a marriage contract, they can repair the omission within the first three years of marriage.

In this case his husband, indeed, was not aware of the marital property regime and its consequences. Furthermore he fully cooperated in repairing things to the desired order. I guided both spouses to one of the notaries we work with and the omission was repaired. Naturally, I also provided guidance and advice as far as the actual divorce was concerned.

One of my déjà vu moments I gladly share with you.

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lawyer and partner at Krans & Van Hilten Advocaten

