Table of contents

Preface **5**

1 Valuation and compensation of household labour in property relations between spouses and cohabitants **11**
A Belgian perspective
Charlotte Declerck and Ingrid Boone

I Introduction 11
II Scope of research 11
1 Household labour 11
2 Property relations between spouses and cohabitants 12
III Valuation of household labour under the community of property regime 12
1 First hypothesis: a spouse performs typical household labour and is responsible for the care of the children and any resident third parties 12
2 Second hypothesis: a spouse carries out improvements to goods that belong to the other spouse 13
3 Third hypothesis: a spouse cooperates in the business activities of the other spouse 14
IV Valuation of household labour under the pure separation of property regime 14
1 Household labour as defence against claim for repayment 15
a Obligation to contribute to household expenses (during marriage or cohabitation) 15
b Restitutive gift 17
c Theory on natural obligations 17
2 Unjust enrichment as principle for compensation for household labour 17
a First hypothesis: a spouse cooperates in the business activities of the other spouse 17
b Second hypothesis: a spouse carries out improvements on goods that belong to the other spouse 20
c Third hypothesis: a spouse performs typical household labour and is responsible for the care of the children and any resident third parties 21
3 New legislation? 21
V Valuation and compensation of household labour from a Belgian tort law perspective 22

2 Valorisierung von Haushaltstätigkeit im Güterrecht 27
Eine deutsche Perspektive
Katharina Lugani
I Einführung 27
II Güterstand der Zugewinngemeinschaft, §§ 1363 ff. BGB, und deutsch-französischer Güterstand der Wahlzugewinngemeinschaft, § 1519 BGB i.V.m. Übereinkommen vom 4.2.2010 29
1 Grundzüge 29
2 Motivation des historischen Gesetzgebers: Zugewinn als gemeinsamer Erfolg der Lebens- und Wirtschaftsgemeinschaft beider Ehegatten 30
3 Folgen der Schematisierung 31
a Zugewinnausgleich ohne zu valorisierende Haushaltstätigkeit 31
b Zu valorisierende Haushaltstätigkeit ohne Zugewinnausgleich 31
4 Besonderheiten bei der Beendigung des Güterstands durch Tod eines Ehegatten 34
a Vorgehen bei Beendigung des Güterstands durch Tod eines Ehegatten 34
b Keine Differenzierung nach Tod des potentiell Zugewinnausgleichspflichtigen oder des Zugewinnausgleichsberechtigten 35
5 Wahrnehmung in der Bevölkerung 35
III Wahlgüterstand der Gütergemeinschaft, §§ 1415 ff. BGB 36
IV Gütertrennung 36
1 Allgemeines 36
2 Besonderheiten bei der Beendigung des Güterstands durch Tod eines Ehegatten 37
V Eigentümerstellung nach allgemeinen sachenrechtlichen Regeln 37
VI Nebengüterrecht 38
1 Ansprüche aus Dienst- und Werkvertrag 38
2 Ansprüche nach Ehegatteninnengesellschaft 39
3 Zweckverfehlungskondiktion 39
4 Wegfall der Geschäftsgrundlage 40
VII Besonderheiten bei faktischen Lebensgefährten 40
VIII Fazit 41

3 Valorisation of household labour through relationship and property law 43
Challenging perspectives from England, Wales & Scotland
Anne Barlow
I Introduction 43
II The Common Law Approach and the UK Social Context 44
III England and Wales – The development of the non-discrimination approach 47
1 Married and Civil Partnership Context – England and Wales 47
2 Pre-nuptial Agreements and Non-Financial Contributions 53

IV	Scotland	55
V	Cohabitation and the law in the UK	57
VI	Conclusion	59
4	**La valorisation du travail domestique en droit patrimonial de la famille**	**61**
	Une perspective Française	
	Véronique Bouchard-Barabé	
I	Introduction	61
II	La revendication d'une rémunération du travail domestique	62
III	L'aménagement d'une rémunération du travail domestique	69
1	L'aménagement contraint	69
2	L'aménagement choisi	71
5	**Valorisation of household labour in family property law**	**75**
	A Dutch perspective	
	Wilbert Kolkman and Leon Verstappen	
I	Context, objective and research questions	75
1	Dimension of the problem I: Reasons for the choice of strict separation and numbers of such cases	77
2	Dimension of the problem II: Property relations of informally cohabiting partners	77
II	Problems and unfair effects	78
1	Size of the problem groups	79
2	Causes of the problems and unfair effects	80
III	General conclusion. Justification of legal intervention	80
IV	Comparative research	81
1	Comparative research: married couples	81
2	Comparative research: informally cohabiting partners	82
V	Instruments considering partners in formal relationships	82
VI	Instruments considering partners in informal relationships	83
VII	Conclusion	84
6	**Valuation of care and housework in property law**	**85**
	A Norwegian perspective	
	Tone Sverdrup	
I	Introduction	85
II	Norway: Household labour is an indirect contribution that leads to co-ownership both in marriage and cohabitation	86
III	Comparing legal reasonings	87
1	The Law Commission	88
2	The American Law Institute	88
IV	Conclusion: The key difference	89

7 Valuing household work in family property regimes of separation of assets 93
Spanish models and experiences
Josep Ferrer-Riba
I Household work in the regulation of the family economy and family dissolution 93
II Household work and separation of property regimes 96
1 Separation of property regimes in the Spanish legal landscape 96
2 Non-compensatory systems 97
3 Compensatory systems 99
a Deferred remuneration systems 99
b Restitution for excess contribution or unjust enrichment systems 102
c Participation of the housekeeping spouse in the income earner's gains 108
III Household work and financial remedies at family dissolution 110
1 Financial remedies in the Spanish legal systems: configuration, functions and incidence of household work on their determination 110
2 Complementarity between property and financial remedies to compensate for household work 113
IV Conclusion 114

8 Valorisation of household labour in family property law 117
A comparative overview
Charlotte Declerck and Leon Verstappen
I Introduction 117
II Just matrimonial property systems 118
III Default compensation mechanisms 119
IV Deviation from the default compensation mechanisms 121
V Non-default compensation mechanisms; intervention by the judge 122
VI Conclusion 124