

# Principles of Civil Law

## Lecture Title: Cohabitation and Matrimonial Regimes

Lecturer: Dr. Carina Nagiah

Date: 10th October, 2022



Diploma in Law (Malta)



CAMILLERI PREZIOSI

# Cohabitation

The notion of cohabitation was firstly regulated in Malta in 2017, in terms of Act XV of 2017. The old law relating to cohabitation was Chapter 571 of the Laws of Malta.

This legislation brought a serious discussion within the Notarial professionals, who refused to publish deeds in virtue of which parties established a cohabitation regime between them.

This law was ultimately repealed and substituted with Chapter 614, Cohabitation Act, which was brought into effect on the 5th June 2020.



The major change lies in the De facto Cohabitation.

The old law catered for *de facto* cohabitation. The repealed law stated:

A de facto cohabitation does not give rise to mutual legal rights and obligations between cohabitants, and for all intents and purposes of the law, does not confer legal recognition to the relationship between the couple, except after two years and limited to the following:

- a) cohabitant shall be considered as a tenant for all intents and purposes of the law with regard to all rents of the ordinary, primary, common home that were legally constituted by any one of the cohabitants, irrespective of the date of constitution of the rent, and also with regard to any commercial rent under the Civil Code until the said contract is terminated
- b) a cohabitant shall be considered as the closest person to the other cohabitant for all intents and purposes of the law;
- c) a cohabitant shall have the right to take decisions relating to the medical care of the other cohabitant:

Provided that this sub-article shall not apply when any one of the cohabitants has declared, in writing, that such decisions should be taken by another person



## Cohabitation law, as of today

### Some definitions:

"cohabitant" means a person who is continually and habitually living with another person in the cohabitation home as a couple, and who enters into a public deed of cohabitation with the other person, provided that he is not already legally bound to another person;

"cohabitation home" means that home within which the cohabitants live together, belonging to either one of the cohabitants or to both of them, in whichever portion, and whether or not they possess it by title of lease or any other title, whether jointly or separately;

- "dependent child" means the children of the cohabitants, or of any one of the cohabitants, or in regard to whom any one of them is acting *in loco parentis*, and who still have the right to receive maintenance from the said cohabitants:



## How is cohabitation established?

Persons who have the intention of cohabiting, or persons who are already cohabiting, and who want to be governed by the provisions of the law, shall regulate their cohabitation by means of a public deed of cohabitation.

The cohabitation shall have effect from the date of the publication of the public deed of cohabitation with regard to the cohabitants, and from when it is enrolled in the Public Registry with regard to third parties.



## Nullity of a public deed establishing cohabitation:

A public deed of cohabitation made between the following persons are null:

- (a) persons, one of whom has not attained the age of eighteen (18) years, unless that person is so authorised in the same way one is authorised to get married.
- (b) ascendants and descendants in the direct line;
- (c) siblings, from the same parents, or from one of the parents;
- (d) the person adopting and the adoptee;
- (e) persons, one of whom is unable to give his consent for the public deed due to civil interdiction or incapacitation, or the lack of the use of reason;
- (f) persons, one of whom, or both, who are married or are in a civil union, either between themselves or with third parties, whether in Malta, or in any other country;
- (g) persons, one of whom, or both, who are bound by a previous public deed of cohabitation in accordance with this Act, together or with third parties;
- (h) persons, or any one of them, who are bound by a registered or unilaterally declared cohabitation in accordance with the Cohabitation Act, together or with third parties;
- (i) persons, or any one of them, who are in a relationship with third parties which is already regulated by a foreign law that provides for the rights and obligations between themselves, irrespective of its title,



## Free status Certificate and other formalities

- The parties shall provide the notary with a free status certificate, or an equivalent document duly issued by the competent foreign authority, as the case may be, and such certificate or document shall be officially issued not more than ninety (90) days prior to the publication date of the public deed of cohabitation, and shall be attached to the said deed:
- Provided that the document equivalent to a free status certificate shall be issued by the competent authority in that country which issued the said document.
- The notary who publishes the public deed of cohabitation shall, within fifteen (15) working days from the date of the deed, enrol the said deed in the Public Registry, in the Register kept for such purpose by the Director of the Public Registry.
- The Director of the Public Registry shall issue a certificate of cohabitation as prescribed in the Schedule, within twenty (20) days from the enrolment date of the public deed of cohabitation in the Public Registry, and a copy of the note of enrolment shall be transmitted to the Director of the Public Registry.



## Choice of Law

In the public deed of cohabitation, the parties may decide to declare the applicable law to their cohabitation from the following:

- (a) the law of the State where the parties or one of them, habitually resides at the time that the public deed of cohabitation is concluded;
- (b) the law of a State of citizenship of either one of the parties at the time the public deed of cohabitation is concluded; or
- (c) the law of the State under whose law the public deed of cohabitation was constituted.

If the Parties fail to make such a declaration, it will be presumed that the applicable law is *Maltese Law*.





## Amending a cohabitation deed:

- The cohabitants may, at any time, amend or correct the public deed of cohabitation by means of a subsequent public deed with the authorisation of the competent Court:
- Provided that in any case, the Court shall ensure that there is nothing in the amendments that runs contrary to the best interest of the dependent children, or that puts any one of the cohabitants in a vulnerable situation, as the case may be.
- In every instance where the Court is requested to give its authorisation for a deed of correction or amendment to the public deed, it shall, if it feels that it is appropriate to ensure that this is not being done abusively by one cohabitant against the other, hear the cohabitants *viva voce*



## Community of Assets between Cohabitants

In the public deed of cohabitation, the parties may establish the community of assets in accordance with this Part.

What constitutes the community of assets?

- the cohabitation home, when the acquisition is made after the public deed of cohabitation, even though the acquisition is made in the name of one cohabitant only, and even when the acquisition was made by moneys or other things which either of the cohabitants possessed prior to the cohabitation, or which, after the cohabitation, were transferred to him under any title of donation, succession, or other title, saving the right of such cohabitant to deduct the sum disbursed for the acquisition of such property:
- Provided that the said cohabitation home shall not be included in the community of assets if it was transferred to either of the cohabitants under any title before the cohabitation, notwithstanding that such cohabitant may have been vested with the possession of the property only after the cohabitation:



Provided also that the said home shall not be included in the community of assets when it was transferred to either of the cohabitants by donation or succession, before or after the deed of cohabitation; and

- movables found in the cohabitation home, acquired after the public deed of cohabitation, even when such acquisition is made in the name of one cohabitant only, unless those movables were given to either of the cohabitants by a donation, personal gift or devolved upon them by succession from third parties:
- Provided that in this article, "movables" shall include the ornamental and decorative movables kept at the cohabitation home, and shall exclude moneys, securities, vehicles, boats, and any movable which is purchased with the purpose of being used exclusively by one cohabitant.
- All other assets, shall be assumed to be owned by the individual part.



## Rights of Cohabitants

### Cohabitants:

- (a) shall have the right of habitation in the cohabitation home;
- (b) shall be considered as a tenant for all intents and purposes of the law with regard to any lease of the cohabitation home constituted by contract by either of the cohabitants, after the drawing up of the public deed of cohabitation;
- (c) shall be regarded as having the same rights granted to a person who is married or in a civil union in terms of rights related to labour and family, including various rights related to leave, whether rights found in primary and subsidiary laws or under codes and working practices, excluding however the right of leave to accompany one's partner to courses sponsored by the government abroad



- (d) shall have the right to take all decisions relating to the medical care of the other cohabitant;
- (e) without prejudice to the provisions of the Civil Code shall have, in the event that one of the cohabitants dies during the cohabitation, the right of habitation for twelve (12) months over the cohabitation home, where the said cohabitation home is held in full ownership or emphyteusis by the deceased cohabitant, either separately or jointly with the surviving cohabitant:
  - a Provided that, this right of habitation shall cease, if the survivor contracts marriage, civil union or enters into cohabitation with another person:
    - Provided also that, the right conferred in this paragraph shall subsist even where such right has the effect of reducing during the said period, the reserved portion due to any other person;
- (f) shall have the right to be entitled to non- contributory social assistance when the cohabitant is a person, who in the opinion of the Director of Social Services is living with the head of the family, as if they were spouses in marriage in accordance with article 30 of the Social Security Act;
- (g) shall have the right to a widow's pension under articles 31 to 43 (both inclusive) of the Social Security Act;



- (h) shall have the right upon the death of the other cohabitant, to apply for a retirement pension if he had been, or was entitled to be maintained by the deceased cohabitant under article 46 of the Social Security Act;
- (i) shall have the right to payment of an age pension when both cohabitants qualify under article 66 of the Social Security Act;
- (j) shall have the right to receive social benefits as a foster carer in accordance with article 76A of the Social Security Act;
- (k) shall have the right to sickness assistance when the cohabitant is living with the head of the family during a period when such sickness assistance is being paid, or could be paid
- (l) shall have the right to unemployment benefit and to special unemployment benefit if the cohabitant is maintaining the other cohabitant in accordance with article 30 of the Social Security Act;



- (m) shall have the right to maternity benefit and maternity leave benefit in accordance with articles 71 and 72 of the Social Security Act;
- (n) shall have the right to the supplementary allowance under article 73 of the Social Security Act;
- (o) shall have the right to children's allowance under articles 76, 80, 81 and 82 of the Social Security Act;
- (p) shall have the right to allowance in respect of children in care under articles 76A, 80, 81 and 82 of the Social Security Act;
- (q) shall have the right to an allowance for disabled children under articles 77, 80, 81 and 82 of the Social Security Act;
- (r) shall have the right to have their dependent children live with the cohabiters in the cohabitation home, as the case may be, unless otherwise provided by an order of the competent Court

## Duties of Cohabitants towards each other

The cohabitants shall have equal rights and shall assume equal responsibilities during their cohabitation, and shall also have the duty to support each other morally and materially

The cohabitants are bound, each in proportion to their means and their ability to work whether inside or outside the cohabitation home, as the interests of the family require, to maintain each other and to contribute towards the needs of the family:

Provided that this duty of the cohabitants shall cease upon the dissolution of cohabitation





## Duties of Cohabitants towards their dependent Children

- Cohabitation imposes on the cohabitants the obligation to look after, maintain, instruct and educate the dependent children taking into account the abilities, natural inclinations and aspirations of the children.
- This obligation also includes the obligation to continue to provide adequate maintenance to the dependent children according to their means, and where it is not reasonably possible for the children, or any of them to maintain themselves adequately, due to the fact that:
  - (a) they are students who are participating in full-time education, training or learning and are under the age of twenty- three (23); or
  - (b) they have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical, mental or psychological



## Cohabitation Home

- The cohabitation home shall be established where the cohabitants may by their common accord determine in accordance with their needs and the overriding interest of the family itself.
- (2) Where the cohabitation home is, wholly or in part, owned or otherwise held under any title separately by one of the cohabitants, such cohabitant may only assign by title *inter vivos* his right over the cohabitation home:
  - (a) with the consent of the other cohabitant; or
  - (b) where such consent is unreasonably withheld, with the authority of the competent Court; or
  - (c) in a judicial sale by auction at the instance of any creditor of the said cohabitant.

A cohabitant has a right of an action for the annulment of the said transfer which has not been effected with his or her consent, within one (1) year from the registration of the transfer.



## Dissolution of Cohabitation

The dissolution of the cohabitation may not take place except:

- A. on the demand of one cohabitant against the other,
- B. or by mutual consent of the cohabitees.

### A. Demand of one cohabitant

All requests for the dissolution of cohabitation shall be filed by means of an application before the Court.

The Court shall, in the decree or judgement of the dissolution of cohabitation, order the Registrar of Courts to notify the dissolution of cohabitation to the Director of Public Registry within the period allowed for this purpose by the Court, so that the said decree or judgement shall be registered in the Public Registry



Where an application for the dissolution of the cohabitation is made by only one of the cohabitants, it shall not be necessary for the cohabitant making the demand to impute to the other party any fault leading to the making of such request.

The cohabitant making the request for the dissolution of cohabitation may, together with the same request, and without prejudice to the provisions of this article and of article 14, make all those requests that are permissible in a cause for separation in accordance with Sub- Title III of Title I of Book First of the Civil Code.

The Court may give orders pendete lite, in the same fashion as in personal separation proceedings.



## B. Dissolution by Mutual Consent

- 1. Dissolution of cohabitation may, subject to the authority of the Court by means of a decree, be effected by mutual consent of the cohabitants by means of a public deed.
- The Court shall, before pronouncing such decree, admonish the parties as to the consequences of the dissolution, and shall endeavour to reconcile them, and may revoke, modify or add those conditions that it may deem fit in the circumstances.
- This decree shall have the same effects of a judgement given by the competent Court, and shall order the Registrar of Courts to notify the dissolution of cohabitation to the Director of Public Registry within the period allowed for this purpose by the Court, so that the said decree shall be registered in the Public Registry.

## Dependent Children

- The Court, on authorising the dissolution of cohabitation, shall in the said decree order in whose custody the children are to be placed.
- It shall be lawful for the Court to revoke or vary such orders at any time, in the best interest of the children.

## Effect on Third Parties

The dissolution of the cohabitation shall only be operative with regard to third parties from the day on which the judgement or the public deed, as the case may be, shall have been enrolled in the Public Registry.



## General Provisions

When two cohabitants contract a marriage or civil union between them, the public deed of cohabitation shall be terminated *ipso facto* from the day on which the same marriage or civil union is contracted.

## Right of Action for De facto Cohabitants

A person who immediately prior to the termination of the relationship as a couple, or the other party is deceased was continually and habitually living with another person as a couple, and who has been living with the same person for a period of not less than two (2) years, and whose relationship is not regulated under any law, may, within twelve (12) months, file an application before the Court, requesting the following rights, as the case may be:

- (a) the right of habitation in the common home, for a period that shall be determined by the Court, limitedly to be given time for the purposes of finding an alternative residence; or
- (b) where the other person is deceased, the right of habitation in the common home, for a period that shall be determined by the Court, when the said common home is held in full ownership or emphyteusis by the deceased person, either separately or jointly with the surviving person, limitedly to be given time for the purposes of finding an alternative residence:

Provided that the right conferred in this paragraph shall subsist even where such right has the effect of reducing, during the said period, the reserved portion due to any other person;



- (c) the right to be compensated for any patrimonial loss which that person may have suffered, where the other person has enriched himself to their detriment
- During the pendency of the action, the plaintiff may demand that the Court shall determine who shall reside in the common home during the pendency of such action, whether the plaintiff has left the common home or not.
- The rights mentioned in paragraphs (a) and (b) shall cease if the plaintiff contracts a marriage, civil union, or enters cohabitation with another person.







**Diploma in Law (Malta)**



CAMILLERI PREZIOSI

# Matrimonial Regimes

Upon *Marriage*, spouses in *Malta* can regulate their marriage in three manners as far as assets and property are concerned:

1. Community of acquests
2. Separation of Assets
3. Community of Residue under Separate Administration (CORSA)



## Community of Acquests

Marriage celebrated in Malta shall in the absence of an agreement to the contrary by public deed, produce *ipso jure* between the spouses the community of acquests.

It shall be competent to the spouses, even after the celebration of the marriage, with the authority of the court, to establish the community of acquests which in virtue of the marriage contract or other act had been excluded, or to cause the cessation of the community of acquests established by contract or by operation of law.

The right of each of the spouses to the community of acquests shall, saving any other provision of the law, commence from the day of the celebration of the marriage and terminate on the dissolution thereof.



The community of acquests shall comprise –

(a) all that is acquired by each of the spouses by the exercise of his or her work or industry;

(b) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether any one of the spouses possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;

(c) the fruits of such property of the children as is subject to the legal usufruct of any one of their parents;

(d) any property acquired with moneys or other things derived from the acquests, even though such property is so acquired in the name of only one of the spouses;

(e) any property acquired with moneys or other things which either of the spouses possesses since before the marriage, or which, after the celebration of the marriage, have come to him or her under any donation, succession, or other title, even though such property may have been so acquired in the name of such spouse, saving the right of such spouse to deduct the sum disbursed for the acquisition of such property



(f) fortuitous winnings made by either or both spouses, and such part of a treasure trove found by either of the spouses, as is by law assigned to the finder, whether such spouse has found the treasure trove in his or her own tenement, or in the tenement of the other spouse, or of a third party

- (1) All the property which the spouses or one of them possess or possesses shall, in the absence of proof to the contrary, be deemed to be part of the acquests.
- (2) Any property, however, which may have come to either of the spouses under any title anterior to the marriage shall not be included in the acquests, notwithstanding that such spouse may have been vested with the possession of the property only after the marriage



## What is paraphernal property?

Where the community of acquests or the community of residue under separate administration operates between the spouses, all property which is not included in paragraphs (a) to (f) or is not dotal is paraphernal. Where the property of the spouses is held under the system of separate property all property which is not dotal is paraphernal.

The management of paraphernal property shall appertain exclusively to the spouse to whom such property belongs.

For the support of the family, the spouses shall first use income deriving from common property before income belonging to one of them exclusively, and they shall first use capital which is their common property or belongs to the community of acquests before the capital belonging exclusively to one of the spouse.



## Administration of the Community of Acquests

The ordinary administration of the acquests and the right to sue or to be sued in respect of such ordinary administration, shall vest in either spouse.

The right to exercise acts of extraordinary administration, and the right to sue or be sued in respect of such acts or to enter into any compromise in respect of any act whatsoever, shall vest in the two spouses jointly.

Acts of extraordinary administration are the following:

- (a) acts whereby real rights over immovable property are acquired, constituted or alienated;
- (b) acts constituting or affecting hypothecation of property;
- (c) acts whereby immovable property is partitioned;
- (d) acts granting rights of use and, or, enjoyment over immovable property;
- (e) donations

- (f) borrowing or lending of money, other than the deposit of money in an account with a bank;
- (g) the acquisition of movable property or of any right of use or enjoyment over movable or immovable property the consideration for which is not paid on, or prior to, delivery
- (h) the contracting of any suretyship;
- (i) the giving of a pledge;
- (j) the entering with unlimited liability in a commercial partnership, or the subscribing to or acquisition of any shares in a limited liability company which are not fully paid up;
- (k) the transfer of a business concern as well as the transfer of any share in a commercial partnership other than a public company;
- (l) any act that may give rise to a special privilege;
- (m) any act of rescission of any act referred, and any act of declaration made *inter vivos* whereby any real right over immovables is acknowledged or renounced; and
- (n) the settlement in trust of property forming part of the community of acquests and the variation or revocation of the terms of any trust in which any such property has been settled.



- Avviz Numru 240/97VG: *Angelo Attard u Margerita Attard vs Anthony Attard u Maria Carmela sive Marlene Attard (Decided 4<sup>th</sup> June 2010)*

In this case, the plaintiff sued the respondent for the payment of €611.46 in representation of legal interest, as resulting from a private writing in virtue of which the plaintiffs lent Eur3,500 to the respondent Anthony Attard.

Amongst the defences raised by the respondent:

*Rat in-Nota ta' l-Eccezzjonijiet ta' Anthony Attard ipprezentata fil-25 ta' Marzu 1997, permezz ta' liema jeccepixxi: (i) in linea preliminari, in-nullità ta' l-avviz, ghax ma giex prezentat minn mart l-attur ukoll u ghax ma gietx citata bhala konvenuta ukoll mart l-eccipjent, u dana stante li skond l-art. 1322(2)(3)(f) tal-Kap.16, is-self ta' flus jew it-tehid ta' flus b'self, huwa att ta' amministrazzjoni straordinarja, u d-dritt li wiehed ifittex jew li jigi imfittex dwar att ta' amministrazzjoni straordinarja hu vestit fiz- zewg konjugi flimkien; u (ii) illi subordinatament u bla pregudizzju ghas-suespost, jekk l-ewwel eccezzjoni tigi michuda, mart l-eccipjent ghandha tigi citata fil-kawza...;*

*Rat ir-Rikors ta' Angelo Attard ipprezentat fit-12 ta' Gunju 1998 fejn wara li ippremetta li bi zball martu Margerita Attard ma gietx indikata bhala attrici u mart il-konvenut Maria Carmela sive Marlene Attard ma gietx indikata bhala konvenuta, talab li din il-Qorti tordna l-korrezzjoni fl-okkju tal-kawza a tenur ta' l-Artikolu 175 tal-Kap.12 tal-Ligijiet ta' Malta u kull fejn jinstab fil-process wara l-kliem "Angelo Attard" jizdiedu l-kliem "u Margerita Attard" filwaqt li wara l-kliem "Anthony Attard" jizdiedu l-kliem "u Maria Carmela sive Marlene Attard";*

*Rat id-Digriet ta' l-4 ta' Gunju 1999 permezz ta' liema t-talba ta' l-attur ghall-korrezzjoni ta' l-okkju tal-kawza giet milqugha*

*Rat in-Nota ta' l-Eccezzjonijiet ulterjuri tal-konvenut ipprezentata fit-8 ta' Marzu 2002 permezz ta' liema jeccepixxi:*

...

*ii) subordinatament ukoll in liena preliminari, in-nullità ta' l-azzjoni odjerna ghax trattandosi ta' imghax fuq self din suppost li giet ezercitata 'ab initio' flimkien ma' mart l-attur u wkoll kontra mart il-konvenut u a tenur ta' l-art. 1322(2) tal-Kap.16 billi il-jedd li wiehed iharrek jew jigi imharrek dwar atti ta' amministrazzjoni straordinarja, imissu lil mizzewgin flimkien u dan ma sarx f'dan il-kaz. Dan ma seta' qatt jigi sanat bil-korrezzjonijiet awtorizzati bid-Digriet ta' l-4 ta' Gunju 1999, ghax b'hekk zdiedu partijiet godda fil-kawza b'mod li giet effettwata s-sustanza tat-talba u tal-eccezzjonijiet tal-konvenut;*



*u (iv) subordinatament u bla pregudizzju għall-eccezzjonijiet precedenti, in-nullità tas- self allegat billi dan ma sarx bl-intervent u partecipazzjoni taz-zewg konjugi kemm min-naha ta' l-attur kif ukoll min- naha tal-konvenut, kif jesigi l-art.1322(2) u (3) (f) tal- Kap.16, stante li tali self kien jikkostitwixxi att ta' amministrazzjoni straordinarja li suppost gie ezercitat miz- zewg konjugi flimkien fuq iz-zewg nahat;*

Therefore the Court had to delve into:

1. The Nullity of the Procedures
2. The Nullity of the Debt per se

Because the wife did not feature in both.

On whether the case was Null the Court held:

*In effetti ghalkemm l-Artikolu 1322(2) tal-Kap.16 tal-Ligijiet ta' Malta jipprovdi li l-jedd li jitwettqu l-atti ta' amministrazzjoni straordinarja, u l-jedd li wiehed iharrek jew jigi mharrek dwar dawk l-atti jew li ssir xi transazzjoni dwar xi atti jkunu li jkunu, imissu liz-zewg mizzewgin flimkien, u taht is-subartikolu (3) ta' l-imsemmi Artikolu tal-Ligi hemm elenkati b'mod tassattiv liema huma l-atti ta' amministrazzjoni straordinarja, l-istess disposizzjonijiet tal-Ligi mkien ma jghidu li in-nuqqas ta' zewg mizzewwgin flimkien f'xi wiehed minn dawn l-atti ta' amministrazzjoni straordinarja jew f'xi kawza dwar att bhal dawn igib li dak l-istess att ma jiswiex. Anzi ghall-kuntrarju fl-Artikolu 1326 tal-Kap.16 tal-Ligijiet ta' Malta il-Ligi tipprovdi li f'tali sitwazzjoni l-att ikun jiswa u jkun annullabbli, u mhux null, biss fuq talba ghaldaqshekk minn dik il-parti mizzewga li ma kenitx involuta fit-twettiq ta' l-att jew f'dik il-kawza*

Therefore the Court is saying that in such cases of acts of extra-ordinary administration, it is the spouse who can ask for the annulment of the act, and not a third party.



On whether the Debt per se was null:

*Jirrizulta b'mod car ukoll li s-self inghata mill-attur lill-konvenut minghajr l- intervent u partecipazzjoni tan-nisa rispettivi tagghom u li l-imsemmija skrittura privata giet iffirmata biss mill-attur Angelo Attard u mill-konvenut Anthony Attard u mhux ukoll min-nisa rispettivi tagghom.*

*B'daqshekk però ma jfissirx li l-konvenut ghandu ragun jeccepixxi n-nullita tas-self u b'hekk jikkontesta t-talba attrici fuq dan il-binarju, u dana in bazi ghas-segwentì osservazzjonijiet:*

A. *Fl-ewwel lok, ghalkemm huwa minnu li a tenur ta' l- Artikolu 1322 (2) u (3)(f) tal-Kap.16 tal-Ligijiet ta' Malta li tissellef jew tislef flus, barra minn depozitu ta' flus f'kont f'bank, huwa att ta' amministrazzjoni straordinarja u l-jedd li jitwettaq tali att imiss liz-zewg mizzewgin flimkien, jigi osservat li l-imsemmi artikolu tal-Ligi kif emendat dahal fis-sehh fl-1995 u cioe, wara li nghata s-self ta' Lm3,500 mill-attur lill-konvenut u wara li tali debitu tal- konvenut fil-konfront ta' l-attur gie rikonoxxut mill-istess konvenut. Isegwi ghalhekk li ghall-ghoti tas-self mill-attur lill-konvenut u ghall-kostituzzjoni tad-debitu tal-konvenut verso l-attur l-intervent u partecipazzjoni tan-nisa rispettivi tal-partijiet kontraenti ma kienux mehtiega ghall-validita rispettiva tagghom.*

*Ghalkemm il-proceduri odjerni gew istitwiti fl-1997 u cioe fi zmien meta l-Artikolu 1322 tal-Kap.16 tal-Ligijiet ta' Malta kif nafu llum kien vigenti w effettiv, il-provvediment tal-Ligi hemm enuncjat, b'mod partikolari ghal dak provdut fil- paragrafu (f) tas-subartikolu (3), ma japplikax ghas-self tas-somma ta' Lm3,500 moghti mill-attur lill-konvenut u dana b'applikazzjoni tal-principju tan-non-retroattiva tal- Ligi, partikolarment tal-Ligi sostantiva.*

## B. Annulable but not necessarily Null

*Izda l-Ligi tipprovdi wkoll li fejn att ta' amministrazzjoni straordinarja — bhalma hu l-ghoti u tehid ta' flus b'titolu ta' self — isir minn wiehed/wahda biss mill-mizzewgin u minghajr l-gharfien, imqar tacitu, tal-parti mizzewga l-ohra, dak l-att xorta wahda jkun jghodd. F'kaz però li tali att kien jikkonsisti fi trasferiment jew f'holqien ta' jedd reali jew personali fuq gid immobbli jew jekk kien jikkonsisti f'holqien b'titolu gratuwtu ta' jeddijiet reali jew personali fuq hwejjeg mobbli, dak l-att jista' jithassar fuq talba tal- mizzewweg li minghajr il-kunsens tieghu/taghha jkun sar dak l-att. Kwindi tali att ma jkunx null imma annullabbli fuq talba tal-parti mizzewwga li minghajr il-kunsens taghha jkun sar tali att.*

*F'kull kaz iehor, ossia f'att ta' amministrazzjoni straordinarja li jkun sar minn wiehed mill-mizzewgin biss minghajr il-kunsens, imqar tacitu tal-parti l-ohra, l-att ukoll jibqa' validu izda l-parti li thalliet barra milli taghti l- kunsens taghha ghandha li l-jedd li iggieghel lill-parti li mxiet wahdeha li tirreintegra l-komunjoni ta' l-akkwisti jew, jekk dan ma jkunx jista' jsir, li taghmel tajjeb ghad-dannu mgarrab mill-parti mizzewga li ma tkunx tat il-kunsens taghha.*

acts which require the consent of both spouses but which are performed by one spouse without the consent of the other spouse may be annulled at the request of the latter spouse where such acts relate to the alienation or constitution of a real or personal right over immovable property; and where such acts relate to movable property they may only be annulled where the rights over them have been conferred by gratuitous title.

An action for annulment may only be instituted by the spouse whose consent was required and within the peremptory term of three years from - (a) the date when such spouse became aware of the act, or (b) the date of registration, where such act is registerable, or (c) the date of termination of the community of acquests, whichever is the earliest

The right given to a spouse to request the annulment of an act shall lapse at the expiration of three months from the day on which notice of the act shall have been given to such spouse by means of a judicial act, unless within such time of three months such spouse shall have instituted an action for such annulment.

The spouse who has not instituted the action for annulment within the stipulated time and who has not expressly or tacitly ratified the act, shall nevertheless have an action to compel the other spouse to reintegrate the community of acquests or, where this is not possible, to make good the loss suffered





Either spouse may, by means of a public deed or a private writing duly attested in terms of article 634 of the Code of Organization and Civil Procedure, appoint the other spouse or any other person, as his or her mandatory with regard to acts of extraordinary administration and compromise.

The notary publishing a public deed, and the advocate or notary public attesting a private writing as referred to in the same sub-article, shall in each case warn the spouse so appointing a mandatory of the importance and consequence of such appointment and shall in the public deed or the private writing, as the case may be, declare that he has so warned the spouse.



If one of the spouses refuses his or her consent to an act of extraordinary administration, the other spouse may apply to the competent court for authorisation when the act of extraordinary administration is necessary in the interests of the family.

The competent court may at the request of a spouse order the exclusion of the other spouse either generally or limitedly for particular purposes or acts, from the administration of the community of acquests, where the latter spouse -(a) is not competent to administer; or(b) has mismanaged the community.

The spouse who has been so excluded from administering the acquests may, if the grounds upon which he or she has been excluded no longer subsist, request the court to reinstate such spouse in the administration.



## Creditors

The creditors of a spouse for debts which are not chargeable to the community of acquests whether such debt has arisen before or after the marriage, may, when such creditors cannot satisfy their claim against the paraphernal property of such spouse, enforce their claim in subsidium against the assets forming part of the community of acquests but only to the extent of the value of the share which such spouse has in the community of acquests.

Saving the right of the debtor's spouse to seek the judicial separation of property, the debtor's spouse shall not have a right to oppose an act enforcing the credit against any property of the debtor or of the community of acquests except where the property upon which execution is being attempted is the paraphernal property of such debtor's spouse.

When the assets of the community of acquests are insufficient to satisfy the debts which burthen it, the creditors of such community may enforce their claim in subsidium against the paraphernal property of the spouses. However:

- A. Where the debt is due as a civil remedy in respect of a wilful offence committed by either spouse; or
- B. The debt is one arising out of the exercise of a trade, business or profession

the creditors may not enforce their claim against the paraphernal property of the spouse who has not given rise to the claim, but may in such cases enforce their claim to the extent of any part remaining unsatisfied by the assets of the community of acquests, against the paraphernal property of the spouse giving right to such claim.



## OF COMMUNITY OF RESIDUE UNDER SEPARATE ADMINISTRATION (CORSA)

Spouses need to stipulate in a deed that the property acquired by them during marriage shall be governed by the system of community of residue under separate administration.

### During Marriage:

Under the system of community of residue under separate administration the acquisitions made by each of the spouses during the marriage shall be held and administered by the spouse by whom such acquisitions are made, and subject to any limitations contained in this Sub-title shall, in relation to third parties, be dealt with by such spouse as if such spouse were the exclusive owner thereof.

### Upon dissolution of Marriage or CORSA:

The community of residue under separate administration shall, unless terminated earlier by mutual consent by public deed with the authority of the court, terminate upon the dissolution of the marriage and upon the legal separation of the spouse



## Calculation of Residue:

At the termination of the community of residue under separate administration, howsoever happening, the residue to be accounted for by each spouse shall include any expense made by that spouse solely in his or her interest out of assets governed by the community and held by that spouse, and shall be subject to the deduction of any amount paid out with paraphernal property of that spouse for debts of that spouse relating to assets held by that spouse and governed by the system of community of residue with separate administration, as well as liabilities still outstanding by that spouse incurred in respect of such assets.

From the residue as determined above there shall be deducted any paraphernal debts of the spouse which are in excess of that spouse's paraphernal assets.

The result shall if it is not a debit constitute the final residue of that spouse. If the result is in debit there shall be considered to be no final residue for that spouse.



Where the final residue of one spouse is greater than the final residue of the other spouse or where only one spouse has a final residue, there shall be assigned to the spouse with the lesser final residue or with no final residue, as the case may be, as much of the final residue of the spouse with the greater final residue or with the only final residue as is necessary so that each spouse may have an equal share of assets forming the final residue of both spouses.

## Rights of Third Parties

Third parties may only exercise their rights against the spouse who has contracted with, or incurred the debt towards them.

At the termination of the community of the residue under separate administration and after the assignment of any final residue, the creditors of one spouse may however in relation to any debt due to them arising before the termination of the community of residue under separate administration, claim in subsidium against the other spouse up to the amount if any of the assets of the final residue of the debtor spouse assigned to the other.

## Limitations to Spouses:

### A. Transfer by gratuitous title

Where the system of community of residue under separate administration operates between the spouses, a spouse may not transfer *inter vivos* any of his assets under gratuitous title except with the consent of the other spouse.

An action for annulment of an act of alienation under gratuitous title may only be instituted by the spouse whose consent was required and within the peremptory term of three years from –

- (a) the date when such spouse became aware of the act, or
- (b) the date of registration, when such act is registerable, or
- (c) the date of termination of the community of residue under separate administration, whichever is the earliest.



## B. Acts performed with the intention to defraud the Other Spouse

Where a spouse performs an act with the intention to defraud the other spouse of the potential rights competent on the termination of the community of residue under separate administration such other spouse may exercise an action as if he or she were a creditor.

Such right shall be personal to the latter spouse or his or her heirs and is not exercisable by the creditors of the spouse.

This action shall be prescribed by the lapse of five years from –

- (a) the date when such spouse became aware of the act, or
- (b) the date of registration, where such act is registerable, or
- (c) the date of termination of the community of residue under separate administration, whichever is the earliest.





**Diploma in Law (Malta)**



CAMILLERI PREZIOSI