

Principles of Civil Law

Lecture Title: Community of Property,
Possession and Succession

Lecturer: Dr. Carina Nagiah

Date: 20th October, 2022



Diploma in Law (Malta)



CAMILLERI PREZIOSI

Community of Property

The community of property exists where the ownership of one and the same thing, or of one and the same right, is vested pro indiviso in two or more persons.

The shares of the co-owners shall, unless the contrary is proved, be presumed to be equal. Every co-owner shall participate in the advantages and burdens of the community in proportion to his share.

Each of the co-owners may compel the others to share with him the expense necessary for the preservation of the common property, saving the right of any of such other co-owners to release himself from his liability therefor by abandoning his right of co-ownership.

It shall not be lawful for any co-owner to effect any alteration in the common property without the consent of the other co-owners, even though he claims that such alteration is beneficial to all.



Each co-owner has the full ownership of his share and of the profits or fruits thereof. He may freely alienate, assign, or hypothecate such share, and may also, subject to the provisions of article 912, substitute for himself another person in the enjoyment thereof, unless personal rights are concerned:

Provided that the effect of any alienation or hypothecation shall be restricted to that portion which may come to the co-owner on a partition.

Where the heirs in an inheritance continue to hold in common, property deriving from the succession for more than three years and no action has been instituted before a court or other tribunal for the partition of the property within three years from the opening of the succession and the portions of the heirs in the said inheritance are the same in respect of all the assets of the inheritance, each co-owner shall be deemed to be co-owner of each and every item of property so held in common



Where co-owners fail to agree in respect of a sale of a thing held in common

495A. (1) Except in cases of condominium or necessary community of property, where co-ownership has lasted for more than three years and none of the owners has instituted an action before a court or other tribunal for the partition of the property held in common, and the co-owners fail to agree with regard to the sale of any particular property, the court shall if it is satisfied that none of the dissident co-owners are seriously prejudiced thereby, authorise the sale in accordance with the wish of the majority of co-owners regard being had to the value of the shares held by each co-owner.

The application shall be served on the co-owners who do not agree with the sale as well as on curators to be appointed by the court to represent such of the co-owners who are unknown or who cannot be traced. The registrar shall cause a copy of the application to be published in the Gazette and in one daily newspaper



Court of Appeal, 327/16SM, Helen armla minn Joseph ŻAMMIT, Miriam Żammit mart Etienne Vella u Agnes mart James Żahra vs Madeleine mart Joseph MUSCAT, decided 5th October 2018

The Court of Appeal dealt with the appeal filed with the respondent, after the First Court ordered the sale of one sixth (1/6) pertaining to the respondent:

“Dan huwa appell imressaq mill-intimata Madeleine Muscat minn sentenza mogħtija mill-Prim’Awla tal-Qorti Ċivili fit-28 ta’ Ġunju, 2017, li biha u għar-ragunijiet hemm imsemmija, qatgħetha li tilqa’ t-talbiet kollha tal-atturi biex isir il-bejgħ tas-sehem ta’ sest (1/6) mhux maqsum li l-istess intimata għandha mill-fond bin-numri għaxra (10) u tnax (12) fi Triq il-Wied, fil-Mosta, skond il-patti u l-kundizzjonijiet maqbula f’att ta’ konvenju tal-10 ta’ Marzu, 2016, u b’żieda li saret għall-imsemmi att ta’ konvenju fid-19 ta’ April, 2016”



The First Court held:

L-iskop ta' dan l-artiklu tal- ligi kien intiz biex jiffacilita t-trasferiment ta' proprjeta` intiera meta jkun hemm proprjetarji ta' minoranza ta' ishma li għal raġuni jew oħra ma jridux jew ma jistgħux jersqu għat- trasferiment tal-intier tal-proprjeta` in komun. Hi fil-fatt forma ta' trasferiment forzat li għalih il- ligi tpogġi parametru ben ċar sabiex ma jsirx abbuż, sfruttament jew fi kliem il-ligi, preġudizzju serju għad-drittijiet tal-minoranza.

The First Court observed that:

Illi l-azzjoni in dizamina hi ta' natura eċċezzjonali u jirriżulta li l-parametri tal-imsemmi artiklu 495A tal-Kap 16 huma kollha sodisfatti

The respondent argued that the sale will cause a prejudice to her. The Court noted:

“24.0. Illi f'dan ir-rigward jirriżulta sintetikament is-segwent: “24.1. Illi skont perit ex parte inkarigat minn rikorrenti l- proprjeta` in dizamina ġiet minnu ivvalutata fl-ammont ta' €250,000.00, (ara foll 13);

“24.2. Illi l-valur pattwit fil-konvenju in dizamina jirriżulta li hu ta' €258,500.00, (ara foll 4);

“24.3. Illi skont il-perit tekniku nominata mill-qorti odjerna biex tivvaluta l-fond in dizamina jirriżulta s-segwent:

24.3.1. Illi stmat l-istess fl-ammont ta' €300,000.00, (ara foll 95)”



The First Court concluded that: *Illi eżami tar-riżultanzi suesposti fir-rigward tal-preġudizzju allegat mill-intimat iwasslu lil din il-qorti biex tikkonkludi b'serenita` li dan il-preġudizzju allegat ma jeżistix.*

The respondent filed an appeal from the judgment of the First Court.

The Court of Appeal overturned the judgement and upheld the argument of the Respondent, that the sale, including her 1/6 share will cause her prejudice, as she enjoyed usufruct over all the property:

33. Illi fil-fehma ta' din il-Qorti, safejn l-Ewwel Qorti qieset li ma jirriżultax tali preġudizzju minħabba li l-attriċi appellata kien fi ħsiebha tirrinunzja għall-jedd ta' użufrutt, l-aggravju tal-appellanti huwa mistħoqq. Mhux hekk biss, imma ladarba lill-Ewwel Qorti ntwerielha ċar li kien hemm fis- seħħ jedd ta' użufrutt fuq il-gid mertu tal-każ, kien xieraq li ma tilqax it-talbiet attriċi safejn dawn saru taħt l-artikolu 495A tal-Kodiċi Civili;

34. Illi fid-dawl ta' dawn il-kunsiderazzjonijiet, il-Qorti qiegħda tilqa' dan l-aggravju tal-appellanti u sejra tgħaddi biex tħassar is-sentenza appellata;

Partition of Common Property

No person can be compelled to remain in the community of property with others, and each of the co-owners may, at any time, notwithstanding any agreement to the contrary, demand a partition, provided such partition has not been prohibited or suspended by a will.

Nevertheless, an agreement to the effect that property shall continue to be held in common for a fixed period not exceeding five years is valid; and any agreement for a longer period, is null in so far as it exceeds five years.

Partition may be demanded even though one of the co-owners may have enjoyed separately a portion of the common property, unless there has been a partition or a possession sufficient to give rise to prescription.

A partition of immovable property is null unless it is made by a public deed



A co-owner possessing property immovable by its nature adjacent to any of the immovables in community about to be divided, may demand that such immovables be assigned to him upon a valuation, provided there be other immovables in community out of which an approximately equal portion may be assigned to each of the other co-partitioners.

Any inequality of the shares in kind, where it cannot be conveniently avoided, shall be set off by the payment of a sum of money equal to the difference between the larger and the smaller share.

The shares shall be drawn by lot. Where, however, the shares of the co-partitioners are not equal, the court shall determine whether the shares are to be drawn by lot, or whether the partition is to be carried out by assignment in whole or in part.



Sale by Licitation

Where common property cannot be divided conveniently and without being injuriously affected, and compensation cannot be made with other common property of a different nature but of equal value, it shall be sold by licitation for the purpose of distributing the proceeds thereof.

Any of the co-owners, whatever his share of the property, may demand the sale by licitation, where competent.

Sale by Licitation can be:

1. Consensual or
2. Under the authority of the Court

Consensual:

Sale by licitation which takes place with the consent of all the co-owners, is not subject to any formality, and may be made by means of any person and in whatsoever manner the co-owners may agree upon; but in any such case there is no sale until the highest bid has been accepted and, if the licitation is in respect of immovable property, until a contract is made by means of a public deed.

The same rule shall apply where, although the sale by licitation has been ordered by a judgment, the parties agree to carry it out in a manner other than that established for judicial sales by auction



Sale by licitation under the authority of the Court:

Where the sale by licitation takes place under the authority of the court, it shall be carried out according to the rules laid down for judicial sales by auction, in so far as such rules are applicable, unless the court deems it more beneficial for the parties interested that it should be carried out otherwise.

In all cases, strangers shall be invited to bid.

The adjudication made by the registrar shall be equivalent to the deed of sale, even if the sale relates to immovable property.



Possession

Possession is the detention of a corporeal thing or the enjoyment of a right, the ownership of which may be acquired, and which a person holds or exercises as his own.

An action to stop Molestation (per Article 534 of the Civil Code)

Where any person, being in possession, of whatever kind, of an immovable thing, or of a universitas of movables, is molested in such possession, he may, within one year from the molestation, demand that his possession be retained, provided he shall not have usurped such possession from the defendant by violence or clandestinely nor obtained it from him precariously.



Appell Civili Numru 1976/1997/1 in the names Teresa Cachia vs Joseph Caruana, decided on the 6th December 2002

In this case the plaintiff instituted a court case, arguing that:

Peress illi l-attrici ghandha ghalqa f'Hal Far Road, Zurrieq li ghandha hajt komuni ma' proprjeta` tal-konvenut, liema hajt kien mibni bis-sejjeigh skond is-sengha u l-arti; u billi l-konvenut recentement, kontra r-rieda tal-attrici beda jwaqqa' dan il-hajt komuni, u minfloku beda jibni hajt tal-kantun li jkerrah l-ambjent u jiddeprezza l-propjeta` tal-attrici (Dok. A) u billi fit-twaqqih tal-hajt komuni l-konvenut qaccat id-dwieli tal-attrici li kienu jserrhu mal-hajt; u billi l-konvenut bena l-hajt gholi hdax-il filata, minghajr il-permessi mehtiega; u billi parti minn dan it-twaqqih sar wara li l-attrici kienet talbet u otteniet mandat tal-inibizzjoni kontra l-konvenut biex izommu milli jwaqqa' l-propjeta` komuni

The plaintiff requested the Court to condemn the respondent:

- i. To demolish the wall which he had erected, in a short period of time and re-build the wall as it was, under the directions of a court appointed architect
- ii. In the event that the respondent fails to do so, she be authorised to carry out such works, at the expense of the respondent.

Amongst the arguments brought forward by the respondent were that the he had sought the consent of the husband of the plaintiff prior to doing such works.

The First Court noted that: *L-Ewwel Qorti, wara li ezaminat u evalwat il-provi, waslet ghall-konkluzjoni illi l-konvenut ma kellu ebda kunsens tas-sid biex jghamel dak li ghamel u anki kieku kellu l-kunsens tar-ragel tal-attribici, dan ma kienx bizzejjed billi l-propjeta` immobiljari hija propjeta` parafernali tal- attribici u ghalhekk, kien jenhtieg il-kunsens tal-attribici.*



The First Court ordered that:

Il-Prim' Awla tal-Qorti Civili, b'sentenza taghha tat-28 ta' Frar 2002 fl-ismijiet premessi laqgħet it-talbiet attrici u kkundannat lill-konvenut li fi zmien qasir u perentorju ta' sittin (60) gurnata mid-data tas-sentenza jagħmel kollox fl-istat pristinu tiegħu qabel l-kommissjoni tal-istess spoll minnu b'dan għalhekk li għandu jerga' jibni l-hajt tas-sejjeġh kif kien qabel u kif jinsab indikat skond il-pjanta esebita bhala Dok. "FGC1" a fol. 40 tal-process u dan wara li jidmolixxi l-hajt tal-kantun li huwa bena minfloku, liema hajt ukoll jinsab indikat fl-istess pjanta fuq indikata u dan kollu taht id-direzzjoni tal-Perit Arkitett Valerio Schembri A. & C.E. li gie nominat fl-istess sentenza sabiex jagħmel supervizjoni tal-istess xogħolijiet a karigu tal-konvenut. Fin-nuqqas li dan isir mill-konvenut fit-terminu fuq perentorjament indikat, l-ewwel Qorti awtorizzat ukoll li l-istess xogħolijiet għall-purgazzjoni tal-istess spoll u eventwali reintegrazzjoni tal-hajt tas-sejjeġh kif kien qabel l-istess atti spoljattivi da parte tal-konvenut, u kif indikat fl-istess pjanta fuq indikata, jigu exegwiti mill-attrici taht is-supervizjoni u direzzjoni tal-istess Perit Tekniku Valerio Schembri A & C.E. u dan kollox a spejje tal-istess konvenut.



The respondent appealed on various grounds, one of which claiming that there was a confusion on which article this court case was based. This is because, as argued by the defendant, while the claims (premissi) were referring to a particular article of the Civil Code, the demands were based on a different article.

The Court of Appeal upheld this reasoning and stated:

Ikkunsidrat li, minn ezami tal-att tac-citazzjoni, filwaqt li jirrizulta kjarament li l-attrici intavolat azzjoni possessorja, id-dicitura adoperata fil-premissi kif ukoll fit-talbiet, ma kenitx tirrendi l-istess azzjoni sufficjentement cara dwar jekk l-azzjoni kenitx wahda ta' spoll (actio spolii) jew inkella dik ta' manutenzjoni minhabba molestja (actio manutentionis).

Ikkunsidrat li meta l-ewwel Qorti ma segwitx l-iter procedurali li hi stess stabbilit u dan billi l-ewwel irriferiet ghall-artiklu 534 tal-Kap. 16 u mbaghad iddecidiet il-kawza fuq l-artiklu sussegwenti tal-istess Kap. (u dan bil-maqlub ta' dak li l-attrici stess tghid li riedet tissalvagwardja), isegwi li l-konvenut appellant gie mqieghed fi stat ta' pregudizzju tali ghal dik li jikkoncerna d-difiza tieghu, li kien jirrendi l-istess sentenza nulla, ghar-raguni li, kif gie ritenut fil-kawza fl-ismijiet:- "Dr. G. Aquilina noe – vs – G. Abela noe et", "(Appell Civili, 5 ta' Ottubru 1998),

The Court of Appeal ordered that the first judgment be declared null and void, and ordered that the acts be transferred once again to the First Court for re-examination of the facts.

An action to restore possession (per Article 535 of the Civil Code)

Where any person is by violence or clandestinely despoiled of the possession, of whatever kind, or of the detention of a movable or an immovable thing, he may, within two months from the spoliation, bring an action against the author thereof demanding that he be reinstated in his possession or retention.

Civil Court First Hall, 193/2011JA, in the names David Cachia u martu Catherine Cachia -vs- Godfrey Casha, decided 14th December 2011

In this case, the plaintiffs proceeded with a sworn application after, the respondent, *għall-ħabta tad-9 ta' Jannar 2011 gie kkommess spoll vjolenti u klandestin mill-konvenut u dana b'dannu u kontra r-rieda tal-atturi, liema spoll jikkonsisti fil-fatt illi l- konvenut ħatt ħajt diviżorju li jiddividi l-bejt tal-proprjeta' tiegħu mill-bejt tal-atturi u kontra l-ligi daħal fi ħwejjeg l- atturi, u bil-vjolenza neżża' 'l-atturi mill-pussess tal-bejt tagħhom bi ksur ta' Artikolu 535 tal-Kodiċi Ċivili, Kap 16 tal-Ligijiet ta' Malta stante li l-konvenut ippossessa ruħu wkoll mill-bejt tal-atturi u saħansitra għadda wires minn fuq il-bejt tal-atturi*

The plaintiffs asked the Court to order that:

- (i) Declare that the actions of the respondent constitute a despoiliation of their property;
- (ii) Condemns respondent to re-instate the plaintiffs in the possession of their property prior to his illegalities;
- (iii) In the event that the respondent does not follow the orders of the Court, they proceed with the remedial works at the expense of the respondent.

The respondent argued that the action of the plaintiffs cannot result as:

1. Works were carried out in his property
2. That all that he did was getting access in order to execute works on the wall which is found in his property.



The Court stated:

Illu f'din il-kawża il-konvenut mhuwiex jiċċad li għamel x- xogħlijiet illi minnhom qed jilmentaw l-atturi iżda kif ġia ingħad isostni li la darba l-ħajt diviżorju huwa fuq in-naħa tiegħu tal-bejt, ma ikkomettiex spoll. Il-Qorti ma taqbel xejn ma' dan l-argument. L-atturi ndubbjament kellhom il- pussess esklussiv tal-parti tagħhom tal-bejt u bil-ftuħ tal- ħajt, dan il-pussess ġie turbat u miksut bl-aktar mod lampanti. Wieħed jieħu idea ċara ta' dak li ġara anke b'ħarsa lejn ir-ritratti li ġew esebiti mill-atturi. Il-Qorti iżżid tghid li diffiċli wieħed jirriskontra każ ta' spoll aktar ċar minn dan.

Għal dawn il-motivi, il-Qorti tiċċad l-eċċezzjonijiet tal- konvenut u tilqa' t- talbiet kollha tal-atturi. Għall-fini tat-tieni talba tipprefiggi terminu ta' xahar, u tinnomina lil A.I.C. Robert Musumeci li għandu f'kull każ jissorvelja x-xogħol.

L-ispejjeż kollha jithallsu mill-konvenut.



MODES OF ACQUIRING AND TRANSMITTING PROPERTY AND OTHER RIGHTS OVER OR RELATING TO THINGS

- Occupancy
- Succession
- Contracts
- Sale
- Emphyteusis
- Letting and Hiring



Occupancy

- Occupancy consists in taking possession of a corporeal thing which is not, but can be, the property of any one, with the intention of becoming the owner of it.

The Civil Code speaks of:

A. The rights of owner of a swarm of bees

The owner of a swarm of bees has the right to pursue them over the tenement of any other person, subject to his obligation of making good any damage caused to such tenement.

Where the owner has not pursued the bees within ten days to be reckoned from the day on which he became aware of the tenement on which they had settled, or has discontinued the pursuit for ten days, the possessor of such tenement shall be entitled to take and retain them.



B. Treasure trove

Where a treasure trove is discovered in a tenement of another person, such treasure trove if discovered by mere chance, shall belong as to one-half to the finder, and as to the other half to the owner of the tenement wherein it is found, and if discovered as a result of searches made for the purpose, it shall belong entirely to the owner of the tenement. The expression "treasure trove" means and includes any movable thing, even though not precious, which is concealed or buried, and of which no one can prove himself to be the owner.

C. Lost Property

Any person who finds a movable thing, not being a treasure trove, is bound to restore it to its previous possessor, if known: otherwise he is bound to deliver it without delay to the Police. The Commissioner of Police shall publish by means of a notice in the Gazette a list of the movable things so found, and shall re-publish such list, with the exception of the things claimed by their owner, after three months of the said notice.

At the expiration of three months from the date of the publication of the second notice, if the owner has not appeared to claim the thing, such thing or, where circumstances have rendered its sale expedient, the price thereof, shall belong to the finder.

If, within the lapse of six months of the first notice published in the Gazette under sub-article (2) of this article, neither the finder nor the owner claims the thing or the price thereof, such thing or price, as the case may be, shall belong to the Government.





Diploma in Law (Malta)



CAMILLERI PREZIOSI

Succession

An inheritance is the estate of a person deceased, and it devolves either by the disposition of man or, in the absence of any such disposition, by operation of law.

Therefore, there are two branches of succession:

1. Testate succession
2. Intestate succession

A person may only dispose his property after his death, by means of a will.



Testate Succession

Testate succession requires the existence of a will.

A will is an instrument, revocable of its nature, by which a person, disposes, for the time when he shall have ceased to live, of the whole or of a part of his property.

A will may contain dispositions by universal as well as by singular title. It may also contain dispositions by singular title without any disposition by universal title.

A disposition by universal title is that by which the testator bequeaths to one or more persons the whole of his property or a portion thereof.

Any other disposition is a disposition by singular title.

The word "heir" applies to the person in whose favour the testator has disposed by universal title.

The word "legatee" applies to the person in whose favour the testator has disposed by singular title.



Will Unica Charta

A will made by the spouses in one and the same instrument, or, as is commonly known, unica charta, is valid.

Where such will is revoked by one of the testators with regard to his or her estate, it shall continue to be valid with regard to the estate of the other.

A will unica charta shall be drawn up in a manner that the provisions with regard to the estate of one of the testators are drawn up in a part separate from those containing the provisions of the other spouse.

The non-observance of the provisions of sub-article (3) shall not cause the nullity of any provision of the will if it is otherwise intelligible; but the notary drawing up the will shall be liable to a fine of two hundred and thirty-two euro and ninety four cents (232.94) to be imposed by the Court of Revision of Notarial Acts.



- Where, by a will unica carta, the testators shall have bequeathed to each other the ownership of all their property or the greater part thereof with the express and specific condition that if one of the testators revokes such bequest he shall forfeit any right in his favour from such joint will, the survivor, who shall revoke the will with regard to such bequest, shall forfeit all rights which such person may have had in virtue of such will on the estate of the predeceased spouse.
- The ownership of the property bequeathed to the spouse incurring the forfeiture, shall, unless otherwise ordained by the other spouse, vest in the heirs instituted by such other spouse, or if no heirs are so instituted his heirs-at-law. The spouse who has forfeited the property as aforesaid shall, however, retain the usufruct over such property.

- It shall not be lawful for any two or more persons, other than the spouses, to make a will in one and the same instrument, whether for the benefit of any third party or for mutual benefit.
- Provided that a secret will in one and the same instrument shall not be made by spouses after the 15th August, 1981.



Hamsa u ghoxrin ta' Gunju elf disa mija tnejn u disghin (25.6.1992) fis-sitta neqsin kwart ta' filgnaxija.

Quddiem Nutar Dottor Gerard Spiteri Maempel u quddiem ix-xhieda hawn taht iffirmati li ghandhom il-kwalitajiet kollha li trid il-ligi qehdin jidhru personalment.



Minni Nutar identifikati bid-dokumenti fuq imsemmija.

U billi l-komparenti miz-zewgin Gauci jridu jiddisponu mill-beni taghhom ghal wara mewthom qeghdin jidhru bil-volonta' taghhom ghal dana t-testment "Unica Charta" li bis-sahha tieghu jirrevokaw u jhassru ghal kollox kull testment iehor li huma qatt setghu ghamlu qabel dana tal-lum u jridu u jordnaw kemm gej il-quddiem.

L-Ewwel Artikolu
It-testaturi jhalju recip-rokament lil xulxin ghal tul il-hajja kollha tas-superstiti fosthom l-uzu u l-uzufrutt in generali tal-beni kollha tagh-hom presenti u futuri ezenti minn kull obbligu legali tal-inventarju u tal-pre-stazzjoni tal-kawzjoni.

It-Tieni Artikolu
It-testaturi jezentaw lil uliedhom kollha mill-obbligu li jikkonfer-ixxu fl-assi ereditarju taghhom kull ma huwa tawhom jew ghad il-quddiem jaghtuom fi kwalunkwe okkazzjoni u bi kwalsiasi titolu.

It-Tielet Artikolu
It-testaturi jhallu b'tito-lu ta' prelegat in piena u assoluta proor-jeta konsegwibbli wara mewthom it-tnejn lill-binthom Rita Gauci l-effetti mobili kollha esistenti fid-dar ta' l-abitazzjoni taghhom fil-gurnata tal-mewt tat-testatur superstiti mill-ghadba 'l gewwa cioe' "a limine intus" eskluzi pero' minn dana l-prelegat huma l-oggetti tad-deheb, hagar prezzjus u flus kontanti.

Ir-Raba Artikolu

Nru. 94

Testment
Unica Charta

Insinwat
7.7.1992

Saivi d-discoszjonijiet precedenti it-testaturi b'eredi taghhom universali, proprjetarji u padruni assoluti fi kwoti ugwali bejniethom jinnominaw u jistitwixxu lill-erba (4) uliedhom li

bis-sostituzzjoni volgari tar-rispettivi uliedhom u bid-dritt tal-akkrexximent bejniethom.

Il-Hames Artikolu
It-testaturi jakkordaw lil xulxin id-dritt u l-fakulta' li s-supersti-ti fosthom ikun jista ghal daka li jirrig-warda sehemu ibiddeh, ivarja u anke jhassar ghal kollox dana it-testment minghajr ma jaqa f' l-ebda penalita' kontemplata mill-Ligi.

Dana it-testment gie magh-mul, mogri u publikat in segwitu ghad-debita cerzjerazzjoni skond il-ligi f'Malta Hal-Ghaxaq, Labour Avenue, fic-Centru Parrokkjali bla numru presenti bhala xhieda Linda Mary mart John Carabott bint Joseph Bonnici togghod Birzebbugia u Carmelo Camilleri, driver, bin Salvatore jcgghod Hal-Qormi u quddiemhom it-testaturi mizzew-gin Gauci jiddisponu li ma jafux iktbu.

(Firmati)



COPIES FOR COPY



- Capacity to Dispose and Receive under a will

Any person not subject to incapacity under the provisions of this Code, may dispose of, or receive property by will.

The following persons are incapable of making wills:

- (a) those who have not completed the sixteenth year of their age;
- (b) those, who, even if not interdicted, are not capable of understanding and volition, or who, because of some defect or injury, are incapable even through interpreters of expressing their will:

Provided that a will can only be made through an interpreter if it is a public will and the notary receiving the will is satisfied after giving an oath to the interpreter that such interpreter can interpret the wishes of the testator correctly;

- (c) those who are interdicted on the ground of insanity or of mental disorder;
- (d) those who, not being interdicted, are persons with a mental disorder or other condition, which renders them incapable of managing their own affairs at the time of the will



e) those who are interdicted on the ground of prodigality unless they have been authorized to dispose of their property by the court which had ordered their interdiction.

Any will made by a person subject to incapacity is null, even though the incapacity of the testator may have ceased before his death.

Those who, at the time of the testator's death or of the fulfilment of a suspensive condition on which the disposition depended, were not yet conceived are incapable of receiving by will.

Those who are not born viable are incapable of receiving by will. In case of doubt, those who are born alive shall be presumed to be viable

All the children of the testator whether born in wedlock, out of wedlock or adopted or whether or not the presumption referred to in articles 102 to 112 applies to them may receive by will from the testator



Persons unworthy of receiving under a will:

- i. Those wilfully killed or attempted to kill testator or his or her spouse; or
- ii. charged the testator, or the spouse, before a competent authority, with a crime punishable with imprisonment, of which he knew the testator, or the spouse, to be innocent; or
- iii. compelled, or fraudulently induced the testator to make his will, or to make or alter any testamentary disposition; or
- iv. prevented the testator from making a new will, or from
- v. revoking the will already made, or suppressed, falsified, or fraudulently concealed the will, he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.

Any person who has incurred any of the above disqualification may receive by will if that testator has rehabilitated him by a subsequent will or by any other public deed.



Any heir or legatee, excluded as unworthy from receiving the inheritance or legacy, is bound to restore any fruits or revenues which he may have received since the opening of the succession.

Descendants of person unworthy are entitled to the reserved portion.

The descendants of a person excluded as unworthy shall, in all cases, be entitled to the reserved portion, which would have been due to the person so excluded:

Provided that such person shall not have, over the portion of the estate vested in his children, the right of usufruct and administration which the law grants to parents.



Further restrictions:

- A tutor or curator cannot benefit under a will made during the tutorship or curatorship by the person under his charge.
- The members of monastic orders or of religious corporations of regulars cannot, after taking the vows in the religious order or corporation, dispose by will.

Nor can such persons receive under a will except small life pensions, saving any other prohibition laid down by the rules of the order or corporation to which they belong.



What can be disposed by a will?

Where the testator has no descendants or spouse, he may dispose by universal or singular title of the whole of his estate in favour of any person capable of receiving under a will.

Where the testator has descendants or a spouse, the disposable portion of his estate shall be that which remains after deducting such share as is due to the said descendants or spouse, through the dispositions of the reserved portion.

What is the Reserved Portion?

The reserved portion is the right on the estate of the deceased reserved by law in favour of the **descendants** and the **surviving spouse** of the deceased.

The said right is a credit of the value of the reserved portion against the estate of the deceased. Interest at the rate of 8% shall accrue to such credit from the date of the opening of succession if the reserved portion is claimed within two years from such date, or from the date of service of a judicial act if the claim is made after the expiration of the said period of two years.



Calculating the Reserved Portion

The reserved portion due to all children whether conceived or born in wedlock or conceived and born out of wedlock or adopted shall be one-third of the value of the estate if such children are not more than four in number or one-half of such value if they are five or more.

The reserved portion is divided in equal shares among the children who participate in it.

(3) Where there is only one child, he shall receive the whole of the aforesaid third part.

Therefore, if there are 4 children, the reserved portion payable to each child shall be:

$\frac{1}{4}$ of $\frac{1}{2}$ = $\frac{1}{8}$ calculated with respect to the whole estate of the deceased



The word "children" shall include the descendants of the children in what soever degree they may stand. Nevertheless, such descendants shall only be reckoned for the child from whom they descend.

Children or other descendants who are incapable of receiving property by will, or who have been disinherited by the testator, or have renounced their share, shall also be taken into account in determining the number of children for the purpose of regulating the reserved portion.

The portions of the children or other descendants who are incapable, or who have been disinherited, or have renounced their share, shall devolve in favour of the other children or descendants taking the reserved portion.

The reserved portion is calculated on the whole estate, after deducting the debts due by the estate, and the funeral expense



Civil Court First Hall, 972/11 TA in the names Sandra Cini vs Anthony Saliba, decided 19th April 2021.

In this case, the plaintiff sued her father to be paid the reserved portion following the demise of her mother, as calculated on the estate of her deceased mother.

The demands were these:

- *Tiddikjara u tiddeciedi fuq il-konsistenza tal-komunjoni ta' l-akkwisti eżistenti bejn Anthony u Mary Saliba u fuq l-assi tal-mejta Mary Saliba.*
- *Tiddikjara ut iddeciedi lill-attributi hijantitolata għas-sehem riservat ossia tal-legittima dovuta lilha fuq l-eredita` tal-mejta ommha Mary Saliba.*
- *Tiddikjara u tiddeciedi illi l-assi ereditarji tal-mejta ommha Mary Saliba għandu jinqasam f'żewġ porzjonijiet b'dan illi l-attributi għandha tiegħu sesto parti indiviza mill-istess eredita` bħala sehemha tas-sehem riservat ossia l-legittima konsistenti fi kreditu tal-valur tas-sehem riservat kontra l-beni tal-mejta Mary Saliba; waqt li l-konvenut għandu jiegħu r-rimanti mill-istess assi salv id-dritt riservat talvolta dovut lil Jacqueline Saliba.*
- *Tillikwida s-sehem riservat dovut lill-attributi bħala kreditu tal-valur tas-sehem riservat kontra l-beni ta' Mary Saliba, oltre l-imghaxxijiet legali mill-1 ta' Settembru, 2011.*
- *Tikkundanna lill-intimat biex iħallas is-sehem riservat dovut lill-attributi bħala l-kreditu tal-valur tas-sehem kontra l-beni ta' Mary Saliba, oltre l-imghaxxijiet legali mill-1 ta' Settembru, 2011.*
- *Bl-ispejjeż, kompriżi dawk ta' l-ittra ufficjali tas-26 ta' Awwissu, 2011 u bl-ingunzjoni ta' l-intimat in subizzjon*



As far as facts of the case are concerned: *L-Attriċi hija waħda miż-żewġ ulied tal-Konvenut Anthony Saliba u martu Mary li giet nieqsa fid-19 ta' Gunju 2005 (ara ċertifikat tal-mewt a' fol 5). B'testament unika charta datat 8 ta' Gunju 2005, martu Mary irregolat il-wirt tagħha billi innominat u istitwiet lir-raġel tagħha, l-Konvenut Anthony Saliba, bħala l-uniku werriet tal-ġid kollu tagħha. Dan filwaqt li ħalliet lill-ulieda, l-Attriċi Sandra u Jacqueline aħwa Saliba, is-sehem riżervat lilhom bil-liġi (ara t-tmien artikolu a' fol 6).*

On the basis of proof brought forward, the Court noted that:

Magħdudin flimkien, il-valur tal-assi immobiljari ta' Mary Saliba dakinhar ta' mewtha jammontaw għal €117,148.635

Magħdudin flimkien, il-valur ta' dawn l-assi mobiljari ta' Mary Saliba dak inhar ta' mewtha jammonta għal €53,893.11.

Isegwi li l-valur tal-beni kollha, kemm mobiljari u immobiljari fi żmien tal-apertura tas-suċċessjoni, jammonta għal €171,041.745 (€117,148.635 + €53,893.11).

26. Għall-fini tas-sub-inciz (2) tal-artikolu 620 tal-Kap. 16, minn dan l-ammont għandhom jitnaqqsu d-djun tal-assi u l-ispejjeż tal-funeral. Mill-atti ma hemm xejn x'jindika li kien hemm xi spejjeż tal-funeral. Min-naħa l-oħra jirriżulta mill-atti li fiż-żmien tal-mewt ta' Mary Saliba kien hemm kont ta' self mal-APS bin-numru 1140213201-8 f'isem il-konvenut u martu d-decuius Mary Saliba b'dejn fl-ammont ta' €2,882.52 (Dok DG8 a' fol 217 faċċata 2). Billi s-sehem assenjat lid-defunta min dan id-dejn huwa n-nofs, l-ammont li jrid jitqies għal-kalkolu tas-sehem rizervat huwa ta' €1,441.26.

27. Għaldaqstant, il-valur tal-beni kollha fi żmien tal-apertura tas-sucċessjoni, jammonta għal **€169,600.485** (€171,041.745 - €1,441.26).

28. A tenur tal-artikolu 620(3) Kap. 16, ma dan is-sehem relictum irid jżdied ukoll dak donatum. Jirriżulta mill-atti li permezz ta' att datat 13 ta' Marzu 1996 (a' fol 9), id-defunta Mary Saliba kienet, flimkien ma żewgħa l-konvenut, assenjat b'titolu ta' donazzjoni a' favur oħt l-attriċi Jacqueline Saliba "elf erba' mija disgħa u disgħin share fil-kumpanija C T Enterprises Limited".

30. Fl-att tad-donazzjoni in kwistjoni, il-valur ta' dan kollu gie "bonarjament attribwit mill-partijiet" fl-ammont ta' LM34,500. L-Attriċi tikkontesta dan l-ammont bħala fittizju, baxx ħafna u ma jirriflettix il-valur tas-suq (ara premessa 9 a' fol 2). Hija tinsisti li meta ċċekjat l-accounts tal-kumpanija tas-sena 1997 indunat li l-assi kellhom valur ta' LM45,878 (ara affidavit a' fol 33 para 8 u premessa 10 a' fol 2).

Minn dan l-ammont iżda għandu jitnaqqas il-ġid kollezzjonabli li l-Attriċi ħadet mingħand ommha ai termini tal-artikolu 620(4) tal-kap. 16. Fl-affidavit tiegħu l-Konvenut jinsisti li l-attriċi kienet għamlet għaxar snin tipperċepixxi l-kera tal-garaxxijiet fl-ammont ta' €1,100 fis-sena. Huwa jgħid ukoll li l-Attriċi kienet ingħatat mingħandu l-flus li huwa daħħal mill-bejgħ ta' dgħajsa tiegħu fl-ammont ta' LM500 ekwivalenti għal €1,165 (ara affidavit a' fol 316 para 4 u 5).



40. Isegwi li l-ammont dovut bħala kreditu tal-valur tas-sehem rizervat li l-attriċi Sandra Cini jistħoggilha tieġu mill-wirt ta' ommha, ai fini tar-raba u l-ħames talba, huwa ta' €32,578.55 (€35,361.05 - €2,200 - €582.5).

Regarding the claim of legal interest, the Court noted:

43. Il-Qorti eżaminat b'reqqa l-atti kollha tal-kawża. Għalkemm fil-lista tad-dokumenti l-Attriċi tindika li qed tesebixxi ittra ufficjali mmarkata bħala SC5 tas-26 ta' Awwissu 2011, fil-fatt din ma gietx esebita. Il-Qorti fliet il-proċess u ma sabet ebda ittra f'dan is-sens.

44. Fid-dawl ta' dan kollu dan ifisser li meta l-azzjoni tinbeda fi żmien sentejn mill-ftuħ tas-suċċessjoni jew jekk jintbagħat att ġudizzjarju f'dak iż-żmien, l-imgħaxijiet jirrisalu sa dak inahr tal-ftuħ tas-suċċessjoni. F'dan il-aż Mary Saliba mieter fid-19 ta' Gunju 2005 mentri l-att ġudizzjarju li bdiet il-kawża sar fis-7 ta' Ottubru 2011.

45. L-imghaxijiet li qed titlob l-Attriċi huma b'effett mill-1 ta' Settembru 2011. B'dana kollu din il-Qorti tinnota li dawn l-imghaxijiet għandhom ikunu dovuti b'effett minn meta jkun gie notifikat l-att ġudizzjarju li f'dan il-każ hija l-kawża odjerna. Jemerġi mill-atti li l-konvenut gie uffiċjalment notifikat meta ppresenta r-risposta tiegħu fit-8 ta' Frar 2012 stante li qabel kull tentattiv ta' notifika kien mingħajr suċċess. Għalhekk il-Qorti qed tiegħu bħala punto temporis għad-dekorrenza tal-imghaxijiet it-8 ta' Frar, 2012. Għalhekk huwa minn din id-data li għandhom jiddekorru l-imghaxijiet u mhux minn dik mitluba mill-Attriċi Fl-aħħar nett il-Qorti tirrileva li għalkemm l-imsemmi artikolu tal-liġi jagħtiha d-diskrezzjoni li tistabilixxi imghaxijiet inqas minn dawk tar-rata legali skont il-liġi tħoss li fiċ-ċirkostanzi l-imghaxijiet għandhom ikunu dawk l-ogħla stabbiliti mil-liġi u cioe ta' 8%.

Therefore the Court ordered that:

- *Thpa' r-raba' talba Attrici u tillikwida s-sehem rizervat dovut lill-attrici bhala kreditu tal-valur tas-sehem rizervat kontra l-beni ta' Mary Saliba fl-ammont ta' €32,578.55, oltre l-imghaxijiet legali mit-8 ta' Frar 2012.*
- *Thpa' l-hames talba attrici u tikkundanna lill-intimat biex ihallas is-sehem rizervat dovut lill-Attrici bhala l-kreditu tal-valur tas-sehem rizervat kontra l-beni ta' Mary Saliba kif likwidat, oltre l-imghaxxijiet legali mit-8 ta' Frar 2012 sal-pagament effettiv.*
- *Tordna li l-ispejjeż kollha tal-kawża, ħlief dawk tar-rapport peritali (α fol 540), jitħallsu mill-Konvenut Anthony Saliba.*



Disherison

Besides the grounds on which a person may become unworthy to inherit, the persons entitled by law to a reserved portion may be deprived thereof by a specific declaration of the testator on any of the grounds specified in this Code, to be stated in the will

The grounds on which a descendant may be disinherited are the following only:

- (a) if the descendant has without reason refused maintenance to the testator;
- (b) if, where the testator has become insane, the descendant has abandoned him without in any manner providing for his care;
- (c) if, where the descendant could release the testator from prison, he has without reasonable ground failed to do so

- (d) if the descendant has struck the testator, or has otherwise been guilty of cruelty towards him;
- (e) if the descendant has been guilty of grievous injury against the testator;
- (f) if the descendant is a prostitute without the connivance of the testator;

The ground of disinheritance must be proved by the party alleging such disinheritance.

If the person disinherited has children or other descendants, the reserved portion of which such person has been deprived shall be due to them.

Where the person disinherited has no other means of subsistence, those who in consequence of his disinheritance shall benefit by his reserved portion, shall be bound to give him maintenance to the extent of the fruits of the reserved portion, saving any other right to maintenance competent according to law.

Where the ground of disinheritance is not stated, or is not proved, the person disinherited shall only be entitled to the reserved portion.

Where the person entitled to the reserved portion is interdicted on the ground of prodigality, or is so burdened with debts that the reserved portion, or at least the greater part of it, would be absorbed by such debts, it shall be lawful for the testator by an express declaration to disinherit such person, and to bequeath the reserved portion to the children or descendants of such person.



Mandat t'Inibizzjoni Nru 981/2021 (AD) in the names Maria Dolores Farrugia et vs Salvina sive Sylvia Grech Et decided

B'rikors preżentat fit-tnejn (2) ta' Lulju 2021, Maria Dolores Farrugia u Cherylie Grech (għal kull interess illi jista' jkollha), sabiex jikkawtelaw id- drittijiet tagħhom konsistenti s-somma ta' mitt elf Ewro (€100,000), talbu lil din il-Qorti tordna il-ħruġ ta' mandat t'inibizzjoni kontra l-intimati sabiex jinżammu milli jbiegħu, jassenjaw, ineħħu, jiddisponu u/jew jittrasferixxu inter vivos kemm b'titolu onoruz jew gratwit xi proprjeta', b'mod partikolari d-dar numru 31, Triq tal-Mensija, San Gwann, Malta, bil-garaxx (numru 6) retropost baċċess minn Triq Sant'Antnin, San Gwann, Malta, u l- appartament fit-tielet sular (second floor) internament numerat tnax (12) formanti parti mill-blokk li jismu "Windsor Flats" fi Triq J Quintinus, San Pawl il-Baħar, konfinanti mill-Grigal mat-triq u mill-irjieħ l-oħra ma' beni ta' persuni mhux magħrufa, kif soġġetti għaċ-ċens annwu u perpetwu ta' żewġ Ewro u wieħed u disghin ċenteżmi (€2.91)

The facts of the case are the following:

The plaintiff is the sibling of the three defendants. In the last will, unica charta, their late parents, disinherited several children, while nominated the three respondents as universal heirs. The plaintiff proceeded with:

1. A court case to liquidate the reserved portion (which is still pending)
2. A warrant of prohibitory injunction to stop the defendants from disposing of property, including the two immovable property which they had bequeathed from their late parents.



The Court observed the following:

*Primarjament, il-Qorti tinnota illi tinsab sodisfatta illi r-rikorrenti Maria Dolores Farrugia hija bint id-defunti Emmanuele Sciberras u Maria Concetta Sciberras nee Zammit, u dan kif jirrizulta miċ-ċertifikat tat-twelid tal-istess Maria Dolores Farrugia anness bhala **Dñj** A mar-rikors odjern;*

- Ai termini ta' din id-dikjarazzjoni, il-proprjeta' immobbli illi kienu jippossjedu d-defunti konjuġi Sciberras kienet tikkonsisti fis-segwenti:
 - a. Dar u garaxx f'San Ġwann, illi ġew stmati illi għandhom valur ta' €850,000;
 - b. Appartament f'San Pawl il-Baħar, illi ġie stmat illi għandu valur ta' €160,000;
 - c. Qabar fiċ-Ċimiterju ta' Santa Marija Addolorata, Paola, illi ġie stmat illi għandu valur ta' €2,500;
- Għaldaqstant jirrizulta illi l-wirt tad-defunti konjuġi Sciberras jikkonsisti, mill-inqas, fi proprjeta' immobbli illi giet mogħtija valur ta' €1,012,500. L- ebda prova ma ngabet f'dan l-istadju rigward proprjeta' mobbli tal-istess konjuġi Sciberras

- Tenut kont tal-osservazzjonijiet hawn magħmula, jiġi senjalat:
- Illi Maria Dolores Farrugia hij abintid-defuntikonjugi Sciberras;
- Illi għaldaqstant, Maria Dolores Farrugia għandha dritt prima facie ili titlob sehem riservat mill-eredita' tal-ġenituri tagħha, ai termini tal-liġi;
- Illi jekk Maria Dolores Farrugia jirriżulta illi għandha tali dritt, dan ser ikun jikkonsisti f'1/14 mill-assi kollha illi kienu jappartjenu lil ommha Maria Concetta Sciberras mal-mewt tagħha;
- Illi l-valur tal-assi immobbli fil-mumentta'mewthakienta' €1,012,500, iżda ma' dan l-ammont jonqos jiżdied il-valur tal-assi mobbli (jekk jissussistu), jitnaqqas dejn u/jew spejjeż ta' funerali (jekk jissussistu), u jiżdied il-valur tal-assi immobbli mogħtija b'donazzjoni (jekk jissussistu);
- Illi, meħud in konsiderazzjoni biss il-valur tal-assi immobbli, fil-każ illi l-kawża fil-mertu tiġi deċiża favur tagħha, Maria Dolores Farrugia għandha dritt għal madwar €72,500 mill-eredita' tal-ġenituri tagħha. Naturalment, din is-somma teskludi numru ta' fatturi, fosthom: il-valur tal-assi mobbli u imgħax ai termini tal-art 615(2) tal-Kap 16;

- *Għal dawn il-motivi, il-Qorti taqta' u tiddeciedi billi:*

i. ~~Thoppevnj~~ a contrario imperio d-digriet tat-tnejn (2) ta' Lulju 2021 in kwantu giet milqugħa t-talba tar-rikorrenti sabiex l-intimati j inżammu milli jbiegħu, jassenjaw, ineħħu, jiddisponu u/jew jittrasferixxu inter vivos kemm b'titolu oneruż jew gratuwitu d-dar bin -numru 31, Triq tal-Mensija, San Ġwann, Malta, bil-garaxx (numru 6) retropost b'aċċess minn Triq Sant'Antnin, San Ġwann, Malta; u

ii. ~~Thpa~~' it-talba tar-rikorrenti għall-ħruġ tal-mandat odjern b't ~~nd k~~ ~~ħat~~, u cioe sa fejn tali talba tikkoncerna ~~bħr~~ l-appartament fit-tielet sular (second floor) internament numerat tmax (12), formanti parti mill-blokk bl-isem "Windsor Flats", fi Triq J.

Quintinus, San Pawl il-Baħar, Malta;



Diploma in Law (Malta)



CAMILLERI PREZIOSI