

Principles of Civil Law

Effects of Marriage, Personal Separation and Divorce

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Date: 10th October 2024



Diploma in Law (Malta)



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The Civil Code

The Civil Code Chapter 16 of the Laws of Malta

'To amend and consolidate the Laws relating to Persons and the Laws respecting rights relative of Things and the different modes of acquiring and transmitting such rights'

This Code is divided into two 'Books'

Book I regulates '**Persons**' whilst Book II regulates '**Things**'



Who and what is regulated under the Civil Code?

Every Legal Personality – definition of an entity (individual or organization) as having both rights and obligations under the law.

i. Book I - The Natural persons (family law such as marriage, separation and divorce). Thus the code regulates 'a person' from birth to death.

ii. Book II - The Legal persons such as property and various modes of contracts.



Other Subsidiary Legislation

Other subsidiary legislation needs to be taken into account, such as:

Marriage Act Chapter 255 of the Laws of Malta

To regulate marriages and to provide for matters connected therewith or ancillary thereto

Gender-Based Violence and Domestic Violence Chapter 581 of the Laws of Malta



Marriage Act Chapter 255 of the Laws of Malta

Definitions:

- Canon Law – Catholic Church (Religious Marriage)
- Catholic Marriage- a marriage celebrated in the norms and formalities of the Catholic Church
- Marriage Registry- in respect of marriages in Malta or Gozo or on a Maltese registered ship while this is not in the internal waters of any country other than Malta (Civil Marriage)



Marriage Act

Formalities to precede Marriage:

- Publication of Banns – at the Marriage Registry accessible to the public posted for not less than eight consecutive days. In the town of the couple to get married e.g. parish church
- Publication of banns will not be entertained unless it is delivered earlier than six weeks before the date of the intended marriage.
- A declaration on oath date and signed by each person to be married stating that to the best of their knowledge and belief there is no legal impediment to the marriage or other lawful cause why it shouldn't take place.



Marriage in terms of law

Civil Code Article 293- Particulars of an Act of Marriage. E.g. date of marriage, church or other place etc.

Marriage Act Article 3- **Restrictions of a Marriage.**

1. All those under the age of 16
2. Ascendent and descent in the direct line- void
3. Siblings, whether of the full or half blood-void
4. Persons related by affinity in the direct line-void
5. Adopter and the adopted person or a descendant, or the spouse, of the adopted person-void
6. Bound by a previous marriage-void



Marriage in terms of law

Title I in the Civil Code deals with *'Of the rights and duties arising from marriage'*

Article 2 (1) of the Civil Code *'The Law promotes the unity and stability of the family'*

Article 2 (2) of the Civil Code *'The spouses shall have equal rights and shall assume equal responsibilities during marriage. They owe each other fidelity, moral and material support'*

Article 3 of the Civil Code *'Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute towards the needs of the family'*



Surname in Marriage

Recent amendments (2020) the situation is:

The spouses shall, upon marriage, elect:

- (a) to adopt for both of them the surname of either one of the parties to the marriage; or
- (b) to adopt for both of them the surnames of both parties in the order of their choice; or
- (c) to adopt, for any one of the spouses, the surname of the other spouse, after which that spouse may add his or her surname; or
- (d) to retain, for any one of the spouses, his or her surname, after which that spouse may add the surname of the other spouse; or
- (e) retain their own surname
- (f) The combination of the spouses' surnames shall not result in a surname which is longer than the combination of four surnames.



Surname of Children

- Act No. LXII of 2020 - choice of surname to be given to children.
- Children today may assume the surname of both parents, or of one of them, provided that a joint application be filed to the Public Registry.
- This means that there could be a situation where children are given the surname of the Mother only; provided that there is an agreement beforehand of the two parents.
- Through a form and an agreement between the parties the parents can opt to add the surname of one of the parents.



Surname following Separation

The spouses may, on separation, choose to revert to their surname at birth or to the surname at the time of their marriage.

In the case of a consensual separation, a declaration of such choice shall be made in the public deed of separation, and in the case of a judicial separation, by a note filed in the records of the case before final judgment.

The court may, at the request of one of the spouses, which may be made at any time before judgment, prohibit the other spouse from continuing to use the former's surname after separation, where such use may cause grave prejudice to the spouse requesting the prohibition.



Duties of Spouses towards Children and Maintenance

Article 3B of the Civil Code through marriage imposes on spouses

'..to look after, maintain, instruct and educate the children in the marriage, taking into account the abilities, natural inclinations and aspirations of the children'

1. To provide adequate maintenance according to their means, and shall continue to do so if in full-time education till the age of twenty three.
2. Reciprocal maintenance of any of the spouses shall cease if any one of the spouses leaves the matrimonial home and without reasonable cause refuses to return.



The Matrimonial Home

Definition of such is given in Article 3 of the Civil Code

'The matrimonial home shall be established where the spouses may by their common accord determine in accordance with the need of both spouses and the overriding interest of the family itself'

The matrimonial home can jointly owned or owned by one of the spouses.



The Matrimonial Home

Civil Code Article 3A- whether the matrimonial home is wholly or in part owned or otherwise under any title by any of the spouses, such spouse may only alienate by title *inter vivos* his or her right over the matrimonial home:

- (a) With the consent of the other spouse; 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 creditor of such spouse.



The Matrimonial Home

If alienation takes place, the other spouse may challenge the transfer within one year from the date of when the transfer occurred.

Article 6 of the Civil Code- *The duty of one spouse to maintain the other shall cease if the latter, having left the matrimonial home, without reasonable cause refuses to return thereto.*

Article 46 of the Civil Code-During the pendency (*pendente lite*) of the action of separation, whether she/he left, can demand the court who of the spouses is to reside in the matrimonial home.



Matrimonial Home After Separation

In pronouncing the judgement of separation, the court shall on the demand of either of the parties, order, according to circumstances:

- that any one of the parties shall be entitled to reside in the matrimonial home, to the exclusion of the other party, for the period and under those conditions as it considers appropriate; or
- that the matrimonial home is to be sold, where it is satisfied that the parties and their children shall have adequate alternative accommodation, and that the proceeds of the sale shall be assigned to the parties as it considers appropriate; or
- where the matrimonial home belongs to both parties, to assign the matrimonial home to any one of the parties, which party shall compensate the other party for the financial loss suffered



Causes for personal Separation

Audltery,desertion, excesses and cruelty etc

Artilce 38 'Either of the sposues may demand separation on the grounds of adultery on the part of the other spouse'

But... the court in JOGL vs DL ...that plaintiff brought forward evidence relating to his wife's adultery. Although it is not right that a spouse breaches the obligation of fidelity, it does not however lead to an automatic declaration that the fault for the marital breakdown is of the spouse who committed adultery, and each case has its own circumstances and is to be decided on its own merits.

Article 40 'Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or greivous injury on the part of the other against the plaintiff, or agaisnt any of his or her children, or on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down'



Personal Separation

The Court in PV vs. CV (case dealing with causes for separation under Article 40)

Il-ħtija għas-separazzjoni qed tigi attribwita in kwantu għal żewġ [2/3] terzi lill-attur u terz [1/3] lill-konvenuta

In this case the husband was abusive towards his wife, and the wife after separating *de facto* was in another relationship with another man.

The court ordered the husband to pay maintenance to the wife, but since the wife was in an adulterous relationship such maintenance was calculated on those years prior to her starting her other relationship.



Cont

Scicluna Maria Dolores Sive Doris Vs Scicluna Anthony (2003):

Sabiex tintalab is-separazzjoni personali mhux meħtiegħ li jikkonkorru l-eċċessi, is-sevizzji, it-theddid u l-ingurji gravi, iżda kull waħda minn dawn ir-raġunijiet waħedha hija suffiċjenti” u żżid tgħid li “Il-liġi tqiegħed bħala motivi li jiġġustifikaw l-azzjoni l-episodji saljenti tal-ħajja konjugali u mhux incidenti minuri.....Għal dak li jirrigwarda theddid u vjolenzi l-liġi tikkontenta ruħha bil-persistenza f’ċerta mġieba ħażina u mhux b’xi atti iżolati waqt xi tilwima”.

Jayne Margaret Chetcuti vs Lawrence Chetcuti (2015):

.....mhux kull nuqqas da parti ta’ konjuġi versu l-konjuġi l-ieħor jwassal għal sevizzi, minacci jew ingurja gravi fit-termini tal-Artikolu 40 tal-Kodiċi Ċivili u huma biss daww in-nuqqasijiet li, magħmula ripetutamente u abitwalment, iweggħu u jferu lill-konjuġi sal-grad li l-konvivenza matrimonjali ssir waħda diffiċli u insapportabbli.



Causes for Personal Separation

Article 41 'Either of the spouses may also demand separation if, for two years or more, he or she shall have been deserted by the other without good grounds'

Article 35 (1) 'By personal separation pronounced by a judgment, or authorised by a decree of the competent civil court, the obligation of cohabitation of the spouses shall cease for all civil effects.'

(2) 'Separation pronounced by any other court shall not produce any civil effects'



Grounds for Separation

- By separation, the obligation of cohabitation of the spouses shall cease for all civil effects opposed to Divorce.
- Separation may be granted on any of these grounds:
 - Adultery
 - Grounds of of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against any of his or her children
 - on the ground that the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down
 - if, for two years or more, he or she shall have been deserted by the other, without good grounds



Separation by Mutual Consent

- Personal separation may, subject to the authority of the court by means of a decree in accordance with article 35, be effected by mutual consent of the spouses, by means of a public deed.
- The court shall, before giving its authority, admonish the parties as to the consequences of the separation, shall endeavour to reconcile them, and may revoke, modify or add those conditions it may deem fit.
- This decree shall have the same effect of the judgment given by the competent court.

What does a deed of consensual separation contain?

1. All aspects regarding the Minor Children e.g. access, maintenance
2. Liquidation and split of Community of Acquests
3. All other matters related to the relationship



Personal Separation

In AB vs CD the court: *Taking into account the basic principles through jurisprudence and namely the principle of the most utility and that of the best advantage for a minor, according to Article 56 of the Civil Code, the Court has the faculty to entrust the care and custody of the minor to only one parent and this so that the supreme interest of the minor is always safeguarded. The Court underlines that the interest of the minor is paramount to the rights of the parents.*

Personal Separation can be obtained through a judgment or a notarial act (consensual separation/bonarja)



Actions of Personal Separation are extinguished by:

1. Reconciliation of the spouses or
2. By the death of one spouse during separation.

Nonetheless, if the case of personal separation gives rise to rights to heirs, the personal separation case may be continued.

Example: if the spouse who is separating from the other spouse nominated one of his children as heir, the heir may have an interest in pursuing the case of personal separation for liquidation of community of acquests.



Community of Acquests (one of the three matrimonial regimes)

- Income and whatever the parties acquire during marriage
- Issue of bank accounts
- Vehicles
- Donations and inheritance do not make part of community of acquests
- COA is the default system of management (*kommunjoni tal-akkwisti*)
- Other two regimes are the Separation of Estates and CORSA (community of residue under separate administration)
- Separation of Estates every spouses manages his own, CORSA is a 'pooled' form (whereby the residue, after removing liabilities is divided between the spouses upon the termination of CORSA)
- .
- Liquidated in the court or agreed between parties. If by the Court proof needs to be brought. Eg. Valuation by architects.



Maintenance

The Court in AB vs CB- *With regards to maintenance, the legal principle of child maintenance is based on Article 7(1) of the Civil Code which makes reference to Article 3B.*

Therefore, based on the premise, it follows from the provisions of the law, that all parents, whether married, separated or single-parents, have the same obligations towards their children, and therefore both of them must contribute to the upbringing of the same. The Court considers that maintenance is not linked to any particular job or income but is an absolute obligation. Therefore, each parent must provide to ensure that their children have adequate maintenance which in terms of Article 19 subsections 1 and 2 of the Civil Code must cover food, clothing, health, housing and expenses related to the same health and education. The Court emphasises that the obligation of both parents towards the children remains the same in any situation of life, which obligation is dictated according to the means, calculated according to the provisions of Article 20 of the Civil Code, and the needs of the same minor.



Article 20

(20) (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

(2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade

3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust



Maintenance

- (1) Maintenance shall include food, clothing, health and habitation.
- (2) Shall also include the expenses necessary for health and education.
- (3) No formula for calculation of maintenance. Not paying maintenance is punishable under the Criminal Code.
- (4) Can be requested to the Court *pendente lite*.
- (5) It is also possible to ask the Court to deduct such maintenance due directly from one's salary.
- (6) Due to spouse/ children born in marriage/ children born out of marriage



Maintenance

Possibility of one parent to have maintenance deducted automatically from one's salary: (Rikors Medjazzjoni JC vs DA, dated the 18th December 2020)

Hija il-fehma konsiderata ta' din il-Qorti illi wara li qiset ic-cirkostanzi kollha tal-kaz, inkluz l-introjtu taz-żewg ġenituri, illi r-retta alimentari xierqa għall-minuri ghandha tkun ta' €300 fix-xahar, mifhum illi hawn non si tratta ta' missier illi qieghed fuq paga minima. Di piu', din il-Qorti ma jidhrlix, f'dan l-istadju tal-proceduri, li din ir retta alimentari, ghandha b'ordni ta din il-Qorti tigi direttament maqtugha mill-paga tal-intimat il-ghaliex dan jista ikollu konsegwenzi fuq l-employment history tal-intimat. Kemm-il darba, wara ordni ta' hlas ta' retta alimentari jirrizulta illi l-intimat naqas repetutament li jhallas tali retta, allura kien ikun hemm ragunijiet validi ghal tali ordni.



Care, Custody, Access

It is possible to regulate the care, custody, access and maintenance in cases where the parents are not married. (Ordinary and extraordinary decisions)

(1) Care and custody is usually shared, only in extreme cases that one parent is awarded sole care and custody.

*Case i- Il-Qorti wara li qieset dak li huwa fl-ahjar interess tal-minuri *** li ghad ghandhu biss *** snin, tqis li l-kura u kustodja ta' dan it-tifel ghandha tkun wahda kongunta b'dana li r-residenza ordinarja tal-minuri ghandha tkun ma' ommu r-rikorrenti."*

Case ii- Tilqa' l-hames talba attrici u tordna li l-kura u kustodja tal-minuri tigi vestita esklussivament f'idejn l-attrici.



Care, Custody and Access

- (i) In all cases mentioned children usually live in what is the 'ordinary home/residence' and the other parent has a right of access.
- (ii) Such decisions by the Court are based on the evidence brought before it.
- (iii) Again no formula for access rights, but it is usually twice during weekdays, and alternate sleepovers during weekends.
- (iv) Maintenance and Access are not linked to each other they are rights and duties arising from being a parent.



Orders given *pendente lite*

Who to reside in the matrimonial home?

During the pendency of the action for separation, either spouse, whether plaintiff or defendant, may leave the matrimonial home and may, whether or not he or she has left the matrimonial home demand that the court shall determine who of the spouses if any shall reside in the matrimonial home during the pendency of such action.

Maintenance

During the pendency of the action for separation, either spouse, whether plaintiff or defendant, may demand from the other spouse a maintenance allowance in proportion to his or her needs and the means of the other spouse, and taking into account also all other circumstances of the spouses.



Orders given *pendente lite*

Children

During the pendency of the action the court shall give such directions concerning the custody of the children as it may deem appropriate, and in so doing the paramount consideration shall be the welfare of the children:

Provided that in cases where there is evidence of domestic violence, the Court may limit or deny access to the children if such access would put the children or the other parent at risk.

- Possibility of supervised access visits



Domestic Violence

Domestic Violence is defined as: all acts or omissions including verbal, physical, sexual, psychological or economic violence causing physical and, or moral harm or suffering, including threats of such acts or omissions, coercion, or arbitrary deprivation of liberty, that occur within the family or domestic unit, whether or not the perpetrator shares or has shared the same residence with the victim, and shall include children who are witnesses of violence within the family or domestic unit.

Chapter 581 of the Laws of Malta, Gender Based Violence and Domestic Violence Acts.

What constitutes domestic violence?

- i. Physical Abuse
- ii. Verbal Abuse
- iii. Psychological Abuse
- iv. Financial deprivation
- v. Sexual Abuse Etc



Domestic Violence

Where domestic violence is involved the court may, of its own motion before or after hearing the parties, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the Criminal Code and the provisions of those articles shall *mutatis mutandis* apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code.

There is still a process that one needs to undertake in order for such protection or treatment order to be enforced.



15 mins break



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Mediation

Mediation procedure is not regulated by the Civil Code, but by S.L. 12.20

Any party wishing to proceed to initiate a suit for personal separation or divorce against the other spouse shall first demand authority to proceed from the Civil Court (Family Section),

(i) by filing a letter, in the case of personal separation, or

(ii) by filing an application, in the case of divorce, as the case may be, to that effect in the registry of the Court addressed to the Registrar of Court, stating the name and address both of the person filing the letter as well as that of the other spouse, and requesting the Court to authorise him or her to proceed. Such letter shall be signed and filed by the party personally or by an advocate or legal procurator on behalf of such party.

Before granting such leave the Court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties, and where the Court deems it expedient so to do, either of its own motion, or at the request of the mediator, or of either of the spouses, may appoint a children's advocate to represent the interests of any minor children of the parties.



Mediation

- Obligatory but there is a process
- Aim is to explore the possibility of reconciliation or to try and reach mutual agreement
- Mediation Sittings are held at the Family Court (*online)
- Without prejudice and in confidence
- Parties are assisted by their respective Lawyers
- Opportunity to seek Court Orders *pendente lite* e.g. maintenance or who will reside in the matrimonial home
- What happens if a party does not turn up or is not interested?
- Mediator to communicate with the Court about the outcome



Mediation

- The Mediator shall in the first place attempt to reconcile the parties. During this stage the mediator shall hear the parties.
- Where parties fail to reconcile the mediator shall mediate between them in an effort to reach an agreement to enter a deed of personal separation by mutual consent.
- Where the mediator manages to reconcile the parties he shall make a note to that effect in the records of the case, and transmit the records to the judge who shall thereupon close the proceedings.
- Where the parties have not reconciled, but they have through the office of the mediator or otherwise agreed to enter into a deed of personal separation by mutual consent, the mediator shall transmit to the judge a draft of the deed of personal separation, together with any comments thereon by the advocates or legal procurators of the parties, the children's advocate, if any, and his views, for the grant of the authorisation by the judge. (joint note)



Best Interest of Minor Children

The best and supreme interest of the minor children is paramount in Family Law.

As an example care and custody is not always solely based on who is the 'best' parent, but the court must consider the child's best interest in its widest sense.

In *AB vs CD (2018)* "Il-Qorti għaldaqstant, għandha s-setgħa illi jekk ikun fl-aħjar interess tal-minuri, tafda wieħed biss mill-ġenituri bil-kura u l-kustodja tal-minuri u dana ai termini tal-Artikolu 56 tal-Kodiċi Ċivili."



Article 56 (2) shall be lawful for the court, if it considers such measures to be strictly necessary, having regard to all relevant circumstances, to direct that the children be placed in the custody of persons in loco parentis, of third parties, or in alternative forms of care.

- Article 56A The Court may, for grave reasons, at any time during the cause for separation, and or, divorce, or when the parties are separated and, or divorced, upon the demand of one of the parties, or of its own motion declare that the other party is not fit to have the custody of the minor children of the parties, and where the Court issues such a declaration, the party so declared, upon the death of the other party, shall not be entitled to assume the custody of the minor children without the authorisation of the Court:*
- Provided that evidence of domestic violence shall constitute a grave reason for the purposes of this article.*



Best Interest of the Minor Children Protected

- Through Child Advocate
- Through Care and Custody
- Through Access Rights
- Through Supervised Access
- Through the Ordinary Residence of the Minor
- Travelling with the Minor



Power to Decide the Fate of Children

(1) On separation being pronounced the court shall also direct to which of the spouses custody of the children shall be entrusted, the paramount consideration being the welfare of the children.

(2) It shall be lawful for the court, if it considers such measures to be strictly necessary, having regard to all relevant circumstances, to direct that the children be placed in the custody of persons in *loco parentis*, of third parties, or in alternative forms of care.

(3) It shall be lawful for the court to give any such directions in the judgment of separation, although in the action relating thereto no demand has been made respecting the custody of the children.

(4) The court may, at any time, revoke or vary such directions respecting the children, where the interests of the children so require.

(5) The court may moreover where circumstances so require, determine that one or both of the parents shall be deprived wholly or in part of the rights of parental authority.



Mediation & Child Advocate

- Where the parties reach an amicable settlement, a notary is engaged, reads the agreement and proceeds with filing it.
- Role of Child Advocate is not really defined at Law. But as the name implies she is to advocate for the rights of the children/minors, just like the lawyer to each party.
- Child advocates are appointed by the Minister of Justice.
- Child Advocates are 'nominated' by either the Family Court or the Juvenile Court
- Chapter 602 – Care/Protection Orders –Juvenile Court



Role of the Mediator

- The Mediator shall in the first place attempt to reconcile the parties. During this stage the mediator shall hear the parties.
- Where parties fail to reconcile the mediator shall mediate between them in an effort to reach an agreement to enter a deed of personal separation by mutual consent.
- Where the mediator manages to reconcile the parties he shall make a note to that effect in the records of the case, and transmit the records to the judge who shall thereupon close the proceedings.
- Where the parties have not reconciled, but they have through the office of the mediator or otherwise agreed to enter into a deed of personal separation by mutual consent, the mediator shall transmit to the judge a draft of the deed of personal separation, together with any comments thereon by the advocates or legal procurators of the parties, the children's advocate, if any, and his views, for the grant of the authorisation by the judge.



Separation Ceases

1. Reconciliation of the spouses or
2. By the death of one spouse during separation.

Nonetheless, if the case of personal separation gives rise to rights to heirs, the personal separation case may be continued.

Example: if the spouse who is separating from the other spouse nominated one of his children as heir, the heir may have an interest in pursuing the case of personal separation for liquidation of community of acquests.



Effects of Separation

The spouse who shall have given cause to the separation on any of the grounds referred to above shall forfeit:

- the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;
- any right which he or she may have to one moiety of the acquets which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation.
- the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.



Differences between Separation and Divorce

1. Divorce is No Fault:

Where an application for divorce is made by one of the spouses, it shall not be necessary for the spouse making the demand to impute to the other party any fault leading to the making of such demand

2. The Effects are different: while divorce enable one to re-marry, mere separation does not enable one to re-marry



Divorce

Divorce was introduced in the Civil Code through Act XIV.2011.9 in 2011.

The Law provides that

Each of the spouses shall have the right to demand divorce or dissolution of the marriage

It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court (family section), upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.

(3) All demands for divorce shall be brought before the Civil Court (Family Section). The decrees and judgements of divorce shall be pronounced in open court.



Divorce

Article 66A & 66B

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

66B. Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:



Divorce

(a) upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year: Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or

(b) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and

(c) there is no reasonable prospect of reconciliation between the spouses; and

(d) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:



Divorce

Provided that the spouses may, at any time, renounce their right to maintenance: Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.



Divorce

Court Decision

The Court has seen that the parties were married on the **th **** year *** (vide page **) which marriage bears certificate number***/****. No children were born from this marriage.

The record shows that the marriage broke down and the parties obtained a personal separation by means of a public deed in the acts of Notary *****(vide, page 8 et seq) dated **th *** year **. Therefore, it is established that the parties have been separated in excess of the timeframe required by law.

The record shows that that there are no pending maintenance arrears. Furthermore, the Court finds that there is no reasonable prospect of a reconciliation between the parties



Divorce

For these reasons, the Court pronounces the dissolution of the marriage between the parties by divorce, which marriage bears the certificate number *** of the year *** and orders the Court Registrar to advise the Director of the Public Registry of the dissolution of the marriage between the parties so that this may be noted in the Public Registry.

Costs shall be divided between the parties.



The Requirements for Divorce are:

Divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

(i) Upon a demand made jointly by the two spouses, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least 6 months out of the preceding year

(ii) Provided that when the demand is made by one of the spouses against the other spouse, on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least one year out of the preceding two years; or

(iii) there is no reasonable prospect of reconciliation between the spouses; and

(iv) the spouses and all of their children are receiving adequate maintenance, where this is due



Possibility to convert separation proceedings into divorce

Each party in a cause for separation may, at any time during the cause, but not after the cause has been adjourned for judgement, demand, by means of an application, that the demand for separation made in that cause be instead considered as a demand for the pronouncement of divorce.

In such scenario, the Court shall convert the first plea, from separation to divorce, while continue to take cognisance of the other pleas.



Duties of the Lawyer in cases where the applicant is not already legally separated

The advocate assisting the applicant shall, before commencing divorce proceedings, where the spouses are not separated by means of a contract or a court judgement:

- (a) discuss the possibility of reconciliation with the applicant and give the applicant the names and addresses of persons qualified to offer assistance in the process of reconciliation between spouses; and
- (b) ensure that the applicant is aware of the option of personal separation as an alternative to divorce
- (c) The lawyer is bound to present a Note in the same acts confirming that he has informed his / her client of the above



Where a demand for divorce is made to the Family Court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, and where the spouses are not separated by means of a contract or a court judgement, before granting leave to the spouses to proceed for divorce, the court shall summon the parties to appear before a mediator, and this for the purpose of attempting reconciliation between the spouses, and where that reconciliation is not achieved, and where the spouses have not already agreed on the terms of the divorce, for the purpose of enabling the parties to conclude the divorce on the basis of an agreement.

The said agreement shall be made on some or all or of the following terms:(a) the care and the custody of the children;(b) the access of the two parties to the children;(c) the maintenance of the spouses or of one of them and of each child;(d) residence in the matrimonial home;(e) the division of the community of acquests or the community of residue under separate administration



Effects of Divorce

1. Spouses shall have the right to remarry
2. The pronouncement of divorce shall have no effect upon the rights and obligations of the parties as parents in respect of their children or upon any agreement reached between the parties in respect of the custody of their children
3. The pronouncement of divorce shall have no effect upon the rights of third parties arising out of any agreement or obligation already concluded, or still to be concluded, by the divorced parties
4. The obligation of cohabitation of the parties shall, for all civil effects, cease.
5. The right of the spouse to the succession of each other.



Effects of Divorce

Effects of Re-Marriage

- When the party receiving maintenance, whether by virtue of an order of the court or by virtue of a contract of separation, remarries or enters into a personal relationship which brings about an obligation of maintenance by a third party in favour of that party, the same party shall forfeit the right to receive maintenance payable in respect of that party by the other party in the divorce, with effect from the date of the remarriage or of the commencement of the other relationship.



Recent proposed amendments to the Family Court including new laws

- A new consolidated Code, which will include all the current family laws, together with the new laws.
- All professions assisting/working in the Family Court are to regularly attend professional training.
- Setting up a Board made up of different professions, mainly Lawyers, Social Workers and Psychologists to aid in the preliminary phase prior to mediation or litigation. (cases which will not be heard by the Board are those whereby the parties are in agreement and those cases which are presented by a joint note)
- With regards to maintenance with every 'letter' the assets and liabilities of the parties are to be put down including any paraphernal property or credits.
- Assessment for parental alienation.



Recent proposed amendments to the Family Court cont.

- Fast tracking of the dissolution of the COM
- Access to be either discussed by parties and ideally should be equally shared
- Parenting Plan – evaluating access, maintenance, care and custody, in such cases the parents are to be assessed and recommendations are proposed about the best way forward.
- Maintenance to be calculated on the needs of each child and the amount of time that the child spends with each parent.
- When a child is 16 years of age and is still studying on a full time basis, maintenance due will be given directly to the children and not to the other parent.





Diploma in Law (Malta)



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