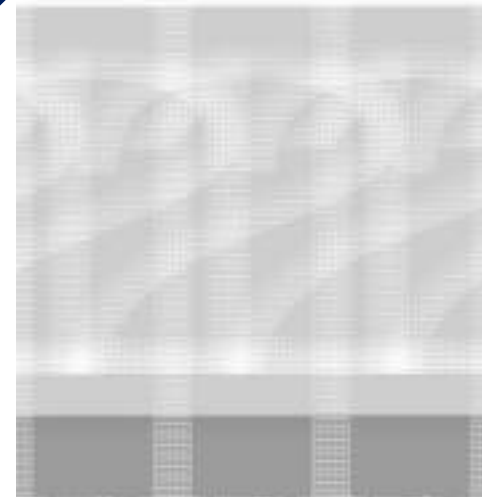


Principles of Civil Law

Lecture Title: Ownership, Usufruct and Easements

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Diploma in Law (Malta)



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- **How Does the Civil Code Classify Things / Property?**

Under the Civil Code, things falls into one of two categories:

- **Movable Property**
- **Immovable Property**



- **What Qualifies as Immovable Property?**
- **By their nature, the following are considered immovable:**
- (a) Land and buildings
- (b) Natural springs
- (c) Water conduits used for the supply of water within a tenement
- (d) Trees, rooted in the ground
- (e) Crops and fruits still attached to the soil or trees
- (f) Movable items that have been permanently fixed to a tenement

Important

Items listed under (c), (d), (e), and (f) become **movable property** once they are detached from the land, tree, or tenement — even if they haven't yet been physically removed.

Note:



- **Immovable Property by Reference to the Rights Attached to It**

The following are considered immovables because they relate to immovable property:

- (a) *Dominium directum* (ownership right of the landlord) and *dominium utile* (right of the emphyteuta) in cases of **emphyteusis**
- (b) The right of usufruct, use, or habitation over immovable property
- (c) **Praedial easements** (rights benefiting a property, such as rights of way)
- (d) **Legal actions** involving:
 - The recovery or claim of an immovable or any of the above rights
 - A declaration that an immovable is not subject to such rights
 - The claim of an inheritance (or part of it), including reserved portions or other statutory shares of hereditary property

What Qualifies as Movable Property?

Movable property includes:

- **Things (living or non-living)** that can either move on their own or be moved from one place to another **without changing their nature**
 - This includes items that are part of a collection or stock-in-trade

Additional Examples of Movables:

- **Ships, boats, and floating structures** (e.g., barges)
- **Building materials:**
 - From a demolished structure
 - Or gathered for new construction — until they are built into the new structure
- **Company shares or interests** — even if the company owns immovable property

Ownership

How Does the Civil Code Define Ownership?

- **Ownership is the legal right to fully enjoy and dispose of property in any way the owner chooses — as long as that use is not prohibited by law.**

Key Principle:

- **No one can be forced to give up their property or allow others to use it — unless it is for a public purpose, and fair compensation is provided.**

What would be considered as public purpose? Any examples?



What would be considered as public purpose? Any examples?

Examples include:

- Building public roads or infrastructure
- Creating public parks or hospitals
- Urban development or regeneration projects
- Utility services (e.g., electricity, water supply networks)

- **What Does Ownership Include?**
- Ownership of land **automatically includes:**
- The **space above** the land
- The **surface** and anything **on** it
- The **subsoil** and anything **beneath** it

The owner can:

- Construct or plant on their land
- Excavate beneath it
- Extract any materials or products from it



But Here's a Question...

- Can I install an AC unit on my wall if it extends into the airspace above a yard owned by someone else?
- This could be problematic — because although you own your wall, the airspace above the neighbor's yard is not yours. You may be infringing on their property rights, especially if the unit obstructs, encroaches, or causes any inconvenience

Citazzjoni Numru 742/2008 Alan Vella u martu Doris Vella Grixti -vs- Stephen u Ramona konjuġi Borg deċiża 12 ta' Ottubru 2009

Illi kif jidher ċar miċ-ċitazzjoni din hija kawża ta' spoll. L-atturi qed isostnu illi l-konvenuti kkommettew dan l-ispoll meta installaw fil-bitha (shaft) tal-atturi stess air conditioner fuq l-arja tagħhom, u dan anke qed iwaqqa' l-ilma ġol-bitha.

L-attur Alan Vella ppreżenta affidavit a fol. 22 tal-proċess, fejn qal li huwa u martu huma proprjetarji ta' maisonette ground floor, numru 5 Triq Vittorio Cassar, Marsascalea u li fost ambjenti oħra fih bitha nterna. Fuq din il-proprjeta' hemm żewġ appartamenti oħra mibnija, u dawn għandhom it-twieqi jagħtu għal fuq din il-bitha. Dak ta' fuq ezatt huwa dak proprjeta' tal-konvenuti u dawn, fis-6 ta' Ġunju 2008 dendlu sistema tal-arja kondizzjonata tagħti għal fuq il-bitha nterna. Dan mingħajr il-permess tal-atturi. Skond l-attur, dan invada l-arja tal-bitha tiegħu. B'riżultat ta' dan ukoll iqattar l-ilma li jispicċa kollu fil-bitha tiegħu. Dan apparti mill-ħsejjes li jikkawża. Żied jgħid li fil-kuntratt tal-akkwist tal-konvenuti, huma kienu obbligati jagħmlu l-air conditioner fuq il-bejt il-ġdid f'każ li l-bejt eżisenti jiġi żviluppat

Il-konvenut da parti tieghu rribatta li l-bitha hija proprjeta' tal-kumpanija li bieghet il-flat u li kellu l-permess tagħha biex jinstalla l-air conditioning unit. Għalhekk kellhom kull dritt jagħmlu dan.

Il-Qorti ma taqbilx mas-sottomissjoni tal-konvenuti li l-arja ma tistax tkun soggetta għal spill – lanqas jista' l-ispoljant jallega li ma kkomettix spill għax ... għamel užu mill-arja u l-arja bħala 'res communi's mhux suxxettiva ta' godiment ta' pussess esklussiv ... l-ispazju soprastanti s-superfici u dak kollu li jinsab fuq is-superfici skond il-principju li l- proprjeta' tas-suol testendi ruħha għall-ispazju sovrastanti u għal kulma jinsab fuq is-superfici u taħtha. ("Carlo Galea vs Alfred Anastasi pro et noe" – Prim' Awla 28 ta' Gunju 1957).

Il-Qorti filwaqt li tiċhad l-eċċezzjonijiet tal-konvenuti, tilqa' t-talbiet tal-atturi u tordna lill- konvenuti inehhu l-apparat in kwistjoni fi żmien xahar, u fin-nuqqas tawtorizza lill-atturi jagħmlu dan a spejjeż tal-konvenuti taht is-supervizjoni tal-AIC Valerio Schembri jekk ikun hemm bżonn.

Case Type:

- **Spoliation (spill)** – unlawful disturbance of possession.

Facts:

- **Plaintiffs (Alan & Doris Vella)** own a **ground floor maisonette** at Triq Vittorio Cassar, Marsascala, which includes an **internal yard (bitħa)**.
- **Defendants (Stephen & Ramona Borg)** own the apartment directly above.
- On **6 June 2008**, the defendants **installed an air conditioning unit** that extends into the **airspace of the plaintiffs' internal yard**, without the plaintiffs' consent.
- The AC unit also **dripped water into the yard** and caused **noise disturbance**.
- Plaintiffs claimed this was an **unlawful intrusion (spoliation)** into their **possessory rights**.
- They also referred to the defendants' **property purchase contract**, which stated that such units should be installed on the new roof if the existing one was developed.

Defence:

- The defendants argued that the **yard was owned by the development company**, not the plaintiffs, and that they had **permission from the company** to install the unit.
- They also claimed that **airspace** is not subject to exclusive possession or spoliation claims.

Court's Findings:

- The Court **rejected the defendants' argument** that **airspace is not protected** from spoliation.
- It reaffirmed the legal principle that **ownership of land includes the space above and below it**.
- Citing precedent ("*Carlo Galea vs Alfred Anastasi*", 1957), the Court noted that **airspace is part of the property and can be exclusively possessed**.
- Therefore, the installation **without consent** was indeed **spoliation**.

Judgment:

- The Court **upheld the plaintiffs' claims**.
- Ordered the **removal of the AC unit within one month**.
- If not complied with, the plaintiffs were **authorised to remove it themselves at the defendants' expense**, under the supervision of architect **Valerio Schembri** if needed.

- **Additional Legal Principles Related to Ownership**

Ownership and Presumption of Construction

- ◆ **Legal Presumption:**

Any construction, plantation, or work on, over, or under land is assumed to be carried out by the owner and to belong to the owner, unless proven otherwise.

- ◆ **Exception:**

This presumption does not override third-party rights that may have been legally acquired (e.g., servitudes, contractual rights).

Right to Mark Property Boundaries

- ◆ **Boundary Setting:**

Every landowner has the right to request that **adjoining boundaries be visibly and permanently marked.**

- ◆ **Shared Responsibility:**

The **cost is shared** between neighbours.

Example: Installing permanent boundary stones or posts between two properties

Right to Enclose Property

- ◆ **Fencing Rights:**

An owner may **enclose their land or tenement** — for privacy, security, or other purposes.

- ◆ **Important Limitation:**

This right is **subject to existing easements** (e.g., rights of passage or access held by others).

State Ownership:

All public or vacant land is deemed to be the property of the Government of Malta.

- ◆ This includes:
 - Public squares
 - Unclaimed rural land
 - Coastlines, riverbeds, and other public domains

Usufruct

What is Usufruct?

- **Usufruct** is a real right that allows a person (the usufructuary) to use and enjoy property owned by someone else, as long as the property's substance and form are preserved.

Special Case: Consumable Items

If the usufruct includes items that **cannot be used without being consumed** — like:

- Money
- Grain
- Liquids

The usufructuary may use them, **but must:**

Either repay their **value** based on a **valuation made at the start** of the usufruct,

or

(If no valuation was made) return items of **equal quantity and quality**, or pay their **market value** at the end of the usufruct

How is Usufruct Created?

- Usufruct can be established in **two ways**:
 - ◆ **By Law** (e.g. in cases of legal rights of spouses or heirs)
 - ◆ **By the Will of a Person** (contract or will)

Key Requirements (for Immovable Property):

If the usufruct relates to **immovable property** and is created voluntarily:

- It must be created by a **public deed**
- It becomes enforceable against **third parties only after registration in the Public Registry**
- Registration can be requested by **any interested party** or the **notary** involved

Other Important Rules:

- Can be **conditional** or set for a **fixed period**
- May benefit **one or more persons**
- If granted to **multiple persons successively**, it only applies to those who are **alive at the time it begins**

Rights of the Usufructuary

A **usufructuary** has the right to enjoy all types of “**fruits**” (benefits or income) produced by the property under usufruct.

- **Types of Fruits:**

- ♦ **Natural Fruits** - Products that come **naturally from the land**, without human intervention

Includes:

- Crops growing naturally
- Animal offspring
- Materials from quarries or mines

- ♦ **Industrial Fruits** - Products obtained through **human effort or cultivation**

- e.g. farmed crops, orchards, vineyards

- ♦ **Civil Fruits** - **Income** generated from the use of the property

- e.g. rental income
- emphyteutical ground-rents
- interest from capital
- annuities

Transfer and Use of Usufruct Rights

- ◆ A usufructuary can transfer their right of enjoyment to someone else — this can be done free of charge or for payment (e.g. by renting it out or assigning it).

Sale of Pending Fruits:

- ◆ The usufructuary can sell crops or fruits that are still growing (i.e. not yet harvested).
- ◆ If the usufruct ends before the harvest:
 - The sale remains valid
 - The owner is entitled to receive the sale price of any fruits that had not yet been gathered

Other Rights of the Usufructuary:

- ◆ The usufructuary can enjoy any **easements** (e.g. rights of way or access) attached to the property
- ◆ They may exercise **any rights the owner would normally enjoy, except for selling or destroying the property**

What Can — and Can't — a Usufructuary Do at Law?

✓ What the Usufructuary *Can* Do:

- May bring any **real legal action** that would normally be available to the owner (e.g. to protect possession or ownership)
- May receive a **legal share of any treasure** (*hidden or buried valuables*) found on the property **only if they are the one who discovered it**, and only to the extent **allowed by law**

✗ What the Usufructuary *Cannot* Do:

- **Cannot claim compensation** for **improvements** made to the property at the end of the usufruct — even if those improvements **increase the property's value**
- **Cannot alter** the property's substance or structure beyond ordinary use
- **Must return the property as is** once the usufruct ends

Obligations of the Usufructuary

1. Care and Return of Property

- The usufructuary receives the property in its **current condition** at the start of the usufruct.
- At the end, they must **return it in the condition it is in**, unless **damage occurred due to their negligence**.

2. Inventory Requirement (Before Taking Possession)

The usufructuary **must prepare an inventory** listing:

- All **movable property** and its value
- The **condition of any immovable property**

 This requirement may be **waived in the deed** that creates the usufruct.

3. Providing Security

Before exercising their rights, the usufructuary may be required to:

- **Provide security (a guarantee)** that they will:
 - Act as a responsible person (*bonus paterfamilias*)
 - Return movables and refund the value of consumables
 - Repair any damage caused by negligence

 **Exemptions** from this requirement can be included in the usufruct deed.

4. Time Limit for Demanding Security

The owner may request the security either:

- Before usufruct starts, or
- **Within one year** from when it begins

After one year, the owner **must prove** that the usufructuary's situation has changed and puts the property at risk.

◆ **Note:** Even if there's a delay in giving security, the usufructuary is still **entitled to the fruits** (income/produce) from the date the usufruct began.

5. Repairs

- The usufructuary is responsible for **ordinary repairs** (e.g. maintenance, small fixes).
- The **owner** pays for **extraordinary repairs**, unless: the **usufructuary's failure** to carry out ordinary repairs caused the damage.

Examples of Extraordinary Repairs:

- Replacing beams
- Full roof renewal
- Rebuilding walls or staircases
- Major structural work

6. Charges and Expenses

The usufructuary must pay:

- Any ground rent (ċens)
- Annual charges on the property (e.g. property tax or leasehold dues)

7. Third-Party Interference

If a third party damages or interferes with the property, the usufructuary must:

- Inform the owner immediately
- Otherwise, they may be liable for damages

8. Usufruct Over Animals

- If the usufruct involves **individual animals (not a herd)** and they die **without the usufructuary's fault**, they must only:
 - Return the **skins** or pay their value
- If a **whole herd** perishes without fault, the same rule applies.

Obligations of the Owner:

The owner may not act in any way that harms or limits the usufructuary's rights during the term of the usufruct

How does usufruct terminate?

Usufruct ends in the following cases:

- **Death of the Usufructuary**

- Where the usufruct is constituted in favour of two or more persons conjointly, in terms of articles 738 and 739, it shall only terminate at the death of the person last surviving, and the portion of any predeceased person shall by accretion vest in the persons surviving.

- **End of the Time Period**

- If the usufruct was created for a **fixed term**, it ends when that term expires.

- **Merger of Rights**

- If the **same person becomes both owner and usufructuary**, the usufruct is **automatically extinguished**.

- **Non-Use for 30 Years**

- If the usufruct is **not used for 30 years**, it **expires by law** (prescription).

- **Total Loss of the Property**

- If the property is **completely destroyed** (e.g. due to fire, collapse, or natural disaster), the usufruct **comes to an end**.

Termination Due to Abuse or Neglect

Usufruct may also be terminated by **court order** if the usufructuary:

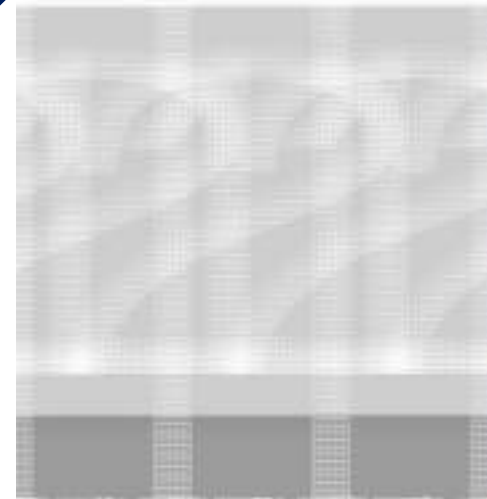
- Damages the property, or
- Neglects ordinary maintenance, allowing it to fall into ruin

 This requires legal proceedings and is not automatic.

Effect of Sale on a Usufruct

The sale of the property that is subject to a usufruct **does not affect** the usufructuary's rights.

The usufructuary continues to enjoy the usufruct, **unless they have voluntarily given it up** (waived their right)



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Use and Habitation

Rights of Use and Habitation

- The rights of use and habitation are acquired and lost in the same way as usufruct.
- These rights can only be created by the owner through a public deed.
- To be effective against third parties, the deed must be registered in the Public Registry.
- Registration happens upon request by any interested party or the notary who executed the deed.
- The formal registration process follows the procedures set out in Article 330(2).

Definition of Use

- **Use** is the real right to use something owned by another person,
- Or to take its fruits, but **only to meet the needs of the user and their family.**

Definition of Habitation

- **Habitation** is the real right to live with one's family in a house owned by someone else.

Obligations of the Grantee (Holder) of Use or Habitation

- They must **prepare an inventory** of the property
- **provide security**, similar to the rules for usufruct
- **use or live in the property responsibly and carefully**, acting as a **bonus paterfamilias** (a prudent and diligent person)

Easements

Easements, are a key concept in property law they play a critical role in balancing land use and protecting the interests of neighbouring property owners. Understanding them helps us see how property rights can extend beyond one's own boundaries.

An **easement** is a legal right that allows the owner of one piece of land to use another person's land in a specific way, or to prevent the other person from using it in a certain way. This right exists **for the benefit of one property** over another.

To be more specific:

- The land that *benefits* from the easement is called the **dominant tenement**.
- The land that is *burdened* by the easement—the one over which the right is exercised—is called the **servient tenement**.

Now, how are easements created? They can arise in **two ways**:

- **By law** – such as through necessity
- **By the act of man**

Any Examples?



Examples of Easements

- Right of passage of a farmer
- A window of a property over a yard owned by the adjacent property
- Owning a party wall

(A) EASEMENTS CREATED BY LAW

1. Easements arising from the natural situation of the property (Lower and Higher Tenements)

- Certain easements arise naturally from the physical layout of land
- Common example: higher and lower tenements — properties at different elevations
- These easements exist without written agreement, based on natural conditions.

Natural Flow of Water & Materials

- The **lower tenement** must receive **naturally flowing** water or materials from the **higher tenement**.
- This includes rainwater, soil runoff, or debris **not caused by human action**.
- This is a **legal obligation** based on the land's natural position.

Legal Obligations of Each Owner

- **Lower Tenement Owner:**
 - Cannot obstruct the natural flow from the higher land.
 - Any barrier or interference is **not permitted by law**.
- **Higher Tenement Owner:**
 - Cannot artificially increase the flow or burden on the lower land.
 - No right to **divert or add** to what flows naturally.

Example

- Property A (higher elevation) and Property B (lower elevation).
- Rainwater naturally flows from A to B.
- B must allow this natural drainage.
- A cannot install pipes to channel extra water onto B

Key principles:

- These easements exist by virtue of land position, not by agreement
- The law ensures balance and fairness between neighbouring landowners
- Both parties have duties and limitations to respect natural land use.

2. Party Walls

What is a Party Wall?

A **party wall** is a wall that separates:

- Two **buildings**, or
- A **building** from another **type of tenement**, such as a yard, garden, or field.

These walls serve a **mutual function** for both properties.

Structural Requirements for Party Walls

When a party wall separates **two buildings**, or a building from another structure:

- It must be **at least 38 centimetres thick** to ensure proper strength and safety

Party Walls Between Open Areas

Party walls between **courtyards, gardens, or fields** can be constructed using **loose stones**, but specific **height requirements** apply depending on the type of land they divide:

Between Two Courtyards, or Gardens with Mainly Citrus Trees (like oranges or lemons):

- The wall must be at least 3.5 metres high.

Between Two Gardens with trees other than citrus:

- Minimum height is 2.4 metres.

Between Two Fields:

- Wall must be at least 1.5 metres high.

Why These Rules Matter

These measurements ensure that party walls provide the right level of:

- Privacy,
- Security, and
- Separation depending on the use and nature of the adjacent land.

Ownership Presumptions – Party Walls

- When there's no visible mark or legal proof to indicate otherwise, the ownership of a dividing wall is based on legal presumptions.

Walls Between Two Buildings

- If a wall separates **two buildings**, it is **presumed to be a shared (common) wall**:
 - This presumption applies **up to the top of the wall**.
 - If the buildings are **different in height**:
 - The wall is presumed common **up to 1.8 metres above the lower roofline**.

Wall Above 1.8 Metres

The portion of the wall **above 1.8 metres** (from the lower building's height):

- Is presumed to **belong to the owner of the higher building.**
- That owner may have **exclusive rights** over that part of the wall.

Wall Between Building and Open Space

- If there is a **building on one side** and a **courtyard, garden, or field** on the other:
 - The wall is presumed to **belong entirely to the building owner**.
 - No shared ownership is assumed in this case.

Importance of Presumptions

These presumptions help:

- **Clarify responsibilities** for maintenance and repairs
- Avoid disputes when no title deeds or physical marks exist.
- Provide a legal basis for resolving **boundary and ownership issues**.

Repairs to a Common Wall

- Costs for repairing or rebuilding a shared wall are to be divided among co-owners, based on each owner's share of rights.
- A co-owner may avoid paying for repairs or reconstruction **by giving up their ownership rights** — as long as the wall does not support their building
- Any person may compel his neighbour to contribute to the construction or repair of walls separating courtyards, gardens, or fields, regard being had to the nature and height of the tenement of the neighbour.

Right of Support:

A co-owner building a new structure may:

- Lean it against the common wall
- Insert beams into the wall, **up to half its thickness**

Raising the Wall Height

- Any co-owner may raise the height of the common wall.
- Responsibilities include:
 - **Covering all costs** for the added height.
 - **Maintaining** the extended portion.
 - Ensuring **structural stability** by supporting the additional weight.

Becoming a Co-Owner of an Existing Wall

An adjacent property owner may become co-owner of a neighboring wall by:

- Paying **50% of the wall's total value** (or the value of the portion to be shared)
- Paying **50% of the value of the land** under that portion of the wall
- **Carrying out any necessary works** to prevent damage to the neighbouring property

Court of Appeal, 577/2007/1 in the names Neil Bianco vs A. Bonello Limited (decided 30th November 2012)

Ghalhekk din il-Qorti tara li l-interpretazzjoni korretta tal- artikoli rilevanti hija dik illi d-dritt ta' min jappoggja jgib mieghu l-obbligu tal-hlas. Min jappoggja jaf li ghandu jhallas tal-appogg kif tghid il-ligi. Jekk min jappoggja jittrasferixxi l-fond qabel ma jhallas tal-appogg, jaf li l- obbligu tal-hlas ghadu hemm ... Dan igib il-konsegwenza illi s-sid tal-hajt komuni ghandu d-dritt ghall-hlas primarjament minghand min ezercita l-appogg u in difett ta' hlas, ghandu d-dritt li jirreklama l-pagament minghand l-aventi kawza tal-istess

Court of Appeal – Case 577/2007/1

Neil Bianco vs A. Bonello Limited - Decision Date: 30 November 2012

Key Legal Interpretation

- The **right to support** (appogg) against a wall also carries an **obligation to pay**.
- Anyone who supports their structure on a wall is **aware they must pay** as per the law.
- If the property is **transferred before payment**, the payment obligation **remains in force**.

Payment Responsibility

- The **wall owner** has a **primary right** to demand payment from the one who made use of the support.
- If that person does not pay, the owner can **claim payment from the new property owner** (aventi kawża).

Raising the Height of a Common Wall

Structural Requirements

If the existing wall **cannot support the additional height**:

- It must be **fully rebuilt** at the **expense of the person requesting the increase**
- Any **extra thickness** must be added on their own side

Responsibility for Damages

The person raising or rebuilding the wall must:

- **Compensate the neighbour** for any damages caused during construction

Co-Ownership of Added Height

A neighbour who **did not contribute** to the added height may still:

- **Acquire co-ownership** by paying:
 - 50% of construction costs
 - 50% of the land value used for additional thickness (if applicable)

Prohibited Works in relation to a Common Wall

A neighbour **may not** carry out the following actions **without consent or proper precautions**:

- **Unlawful Alterations**

- **Create cavities** within the common wall without the other neighbour's approval
- **Attach or lean new structures** against the wall without consent
 - If consent is refused, expert assessment is required to ensure no harm is caused

- **Harmful Substances**

- **Store manure, corrosive, or damp materials** in contact with the wall

- **Unsafe Loading**

- **Pile earth or other materials** against the wall without taking precautions to avoid pressure or damage

Party-Wall Rules

No Openings Without Consent:

Neighbours cannot create windows or openings in the shared party-wall without each other's permission

Preventing Damage:

Each neighbour must maintain their property to prevent damage to the party-wall caused by cisterns, sinks, or any water or waste flow.

Excavation Restrictions:

It is prohibited to dig wells, cisterns, sinks, or any excavations closer than 76 centimetres from the party-wall to protect its stability.

3. Distances Required (Building on Boundary lines)

Construction on Boundary:

Anyone may build a wall or structure on their property's boundary line. However, the neighbour has the right to claim co-ownership of that wall.

Building Near the Boundary:

If a wall is built less than 1.5 meters from the boundary, the neighbour can also demand co-ownership and may build against the wall by paying half the wall's value plus the value of the land occupied—unless the landowner prefers to extend their building to the boundary instead.

Alternative for Neighbour:

If the neighbour doesn't claim co-ownership, they must leave a minimum distance of 3 meters between their building and the existing wall or structure

The above does not apply in the case of buildings destined for public use, or of walls bordering on public squares or streets

Excavation Restrictions:

It is prohibited to dig wells, cisterns, sinks, or any excavations closer than 76 centimetres from the party-wall to protect its stability.

Responsibility for Damage:

Even if the required distance from the boundary is respected, anyone digging on their property must repair any damage caused to a neighbour's building—provided that the building was properly constructed following accepted standards and practices at the time.

Exceptions to Liability:

No liability occurs if:

- The excavation is done at a distance set by the court based on the specific situation, or
- The person digging follows court-ordered measures designed to prevent damage to the neighbour's property.

4. Construction of Roofs

Every owner shall construct the roofs of his building in such a manner that the rainwater shall not fall on the neighbouring tenement.

Every property owner is therefore responsible for constructing their building's roof in a way that prevents rainwater from falling onto neighbouring properties. This ensures that no inconvenience or damage is caused to adjacent tenements.

5. Right of Way and of Watercourse

Right of Way Access:

- If an owner's property has no direct access to a public road, they can require neighbouring owners to provide a passage.

Compensation:

- The owner needing access must pay compensation proportional to any damage caused by this passage.

Minimizing Impact:

- The right of way should be located where it causes the least harm or inconvenience to the neighbour's property.

Termination of Right of Way:

- If a new road opens or the property gains access through an adjoining property, the neighbour can request the right of way to end, returning any compensation paid or stopping ongoing payments.

Right of Watercourse

- **Access to Water:**
If a person cannot receive water directly from public sources except by passing through neighbouring properties, they may require those owners to grant a watercourse right.
- **Minimizing Harm:**
This right must be granted in a way that causes the least possible damage to the neighbouring properties.
- **Compensation:**
The person receiving water must pay compensation proportional to any damage caused.
- **Use of Existing Channels:**
If existing water channels are available, the person cannot demand new ones. Compensation will consider the value of these channels and repair costs.
- **Maintenance Contribution:**
The user of the water channels must contribute to their ongoing maintenance and repair.

(B) EASEMENTS CREATED BY ACT OF MAN

- Property owners are legally allowed to establish easements, as long as they do not conflict with public policy.
- Easements can be classified into different types based on their characteristics:
 - **Continuous Easements:** These are enjoyed continuously without any active intervention by a person. Examples include watercourses, eavesdropping rights, and views (prospects).
 - **Discontinuous Easements:** These require active human intervention to be enjoyed, such as the right of way or the right to draw water.
 - **Apparent Easements:** These are visible and identifiable through physical signs, like a door, window, or an artificial watercourse.
 - **Non-apparent Easements:** These have no visible signs, such as restrictions on building on certain land or limits on building height.

Easements created by the act of man can be categorized as **affirmative** or **negative**.

- **Affirmative Easements** grant the right to use the servient property in some way.
- **Negative Easements** restrict the owner of the servient property from certain uses or actions on their land.

How are easements created?

- by virtue of a title i.e. a public deed
- by prescription, if the tenement over which such easements are exercised may be acquired by prescription i.e. possession for a period of not less than thirty years is necessary (Continuous non-apparent easements, and discontinuous easements, whether apparent or non-apparent, can only be created by a title; they cannot be created by prescription or by the disposition of the owner of two tenements) .
- by the disposition of the owner of two tenements (An easement is created by "the disposition of the owner of two tenements" if it is proved that the two tenements, now divided, belonged to the same owner, and it was such owner who placed or left things in the state which gives rise to the easement).

Proving acquisitive prescription is not easy:

Citazzjoni Numru: 217/1997/1 Martin u Carmela konjuġi Xuereb vs Peter Paul u Marija konjuġi Camilleri (Deċiża 20 ta' Jannar 2009)

In this case the defendants were claiming that they have a right of passage over the property of the plaintiffs and this because they claimed they have been doing so for thirty years:

Hu biss fejn il-fond m'ghandux mezz ta' hrug iehor fuq triq pubblika, li servitu' ta' moghdija tista' tigi akkwistata permezz tal-preskrizzjoni. Il-konvenuti ma bbazawx l-eccezzjoni tal-preskrizzjoni akkwizittiva ta' tletin sena fuq it-tezi li l-proprijeta' taghhom m'ghandhix mezz ta' hrug iehor ghal Triq San Gwann. F'kull kaz fir-realta' d-dar ta' l-atturi ghandha hrug iehor fuq triq pubblika, in kwantu ghandha l-bieb principali fi Triq San Gwann. L-aperturi li ghandhom fil-gemb tal-proprijeta' jaghtu wkoll fuq dik il-parti tal-passagg li m'hemmx kontestazzjoni li ghandhom dritt li jghaddu minnu. Inoltre, id-dar ta' iben il-konvenuti (meta sar l-access fl-20 ta' April 2007 kien ghadu gebel u saqaf) u l-garaxx tal-konvenuti, li hemm fil-parti ta' wara tal-passagg (ara pjanta li hejja l-perit tekniku Joseph Mizzi a fol. 148) ma jirrizultax li ilhom mibnija iktar minn tletin (30) sena.

Summary:

- The defendants claimed a right of passage over the plaintiffs' property based on continuous use for 30 years (prescription).
- However, easement by prescription applies only if the property has no other access to a public road. In this case, the plaintiffs' property has a main entrance to a public road (Triq San Gwann), meaning there is no need for a prescriptive right of passage.
- The disputed openings in the property also lead to the part of the passage the defendants claim to use.
- Additionally, structures behind the passage, including the defendants' garage and son's house, were not built over 30 years ago, so continuous use for prescription was not established.

Rikors Numru 537/2017TA in the names Joan Antida Serracina Inglott et vs Carmela Mifsud Et, decided 6th May 2019

This was a case which plaintiffs instituted to remove respondent's water tanks from their roof. The respondents argued that they had their water tanks so installed for thirty years and therefore could not be ordered to be removed.

- *Fid-dawl ta' din il-prova migjuba mill-Atturi, din il-Qorti tikkonsidra li x-xhieda ta' Patricia Camilleri flimkien ma' provi oħrajn, il-Konvenuti ma rnexxilhomx jippruvaw b'mod sodisfaċenti għandhomx jedd ta' servitù fuq il-proprietà tal-Atturi għaż-żmien kollu stabbilit fl-artikolu 462 tal-Kodiċi Civili inkwantu jirrigwarda d-dekors ta' tletin (30) sena sabiex setgħu jiksbu s-servitù inkwistjoni ai termini tal-artiklu 462 tal-Kodiċi Civili.*
- *35. Anke li kieku għall-grazzja tal-argument kellu jingħad il-provi ma humiex daqstant ċari u allura jesisti dubbju fattwali fid-dawl tax-xhieda prodotta dwar l-esistenza jew l-estensjoni ta' servitù, fil-kamp ta' servitujiet din il-Qorti hija gwidata mill-ażioma "servitus sic interpretanda est ut quam fieri potest incommodo fundus serviens oneretur." It-tagħlim ġurisprudenzjali huwa fis-sens "Illi bil-liġi, sid il-fond dominanti ma jista' jagħmel xejn li jtaqqal il-piż tal-fond servjenti. Fid-dubbju għandu jiġi deċiż favur il-fond servjenti." (ara Deċiżjoni tal-Appell Civili Superjuri tal-4 ta' Mejju 1953 fl-ismijiet Carmelo Vassallo -vs- Nicola Galea). Mela multo magis, kemm huwa aktar applikabbli dan it-tagħlim meta l-kwistjoni tkun mhux dwar l-estensjoni tas-servitù iżda l-esistenza tiegħu.*

Summary:

- Plaintiffs sought the removal of water tanks installed on their roof by the respondents.
- Respondents claimed they had installed the tanks for 30 years and thus had a prescriptive right to keep them.
- The court found that the respondents failed to provide sufficient evidence to prove continuous use or a legal easement for the full 30 years as required by Article 462 of the Civil Code.
- Even if evidence was unclear, the law favours limiting the burden on the servient property owner.
- In case of doubt, decisions should favour the property owner opposing the easement, emphasizing that easements should not overly burden the servient property

General rules as to how easements should be exercised:

- When an easement is created, it includes all necessary rights for its enjoyment with minimal damage to the servient property, for example, the right to draw water also includes the right of way to access and maintain the water channel.
- **Owner of servient tenement cannot do anything injurious to easement**
 - The servient property owner must not do anything to hinder or make the easement more difficult to use. They cannot change the property or transfer the easement to a different part of the land.
- **Owner of dominant tenement may not render the easement more burdensome** - The easement holder must use their rights strictly as defined and cannot make changes that increase the burden on the servient property.

- **How Easements Are Extinguished**

- **Condition of Property:**

An easement ends when the property it depends on is in such a state that the easement can no longer be exercised.

- However, if the property is restored and the easement can be used again, the easement may revive—unless enough time has passed to presume it's extinguished.

- **Unification of Ownership:**

When both the dominant and servient properties come under the same owner, the easement is extinguished.

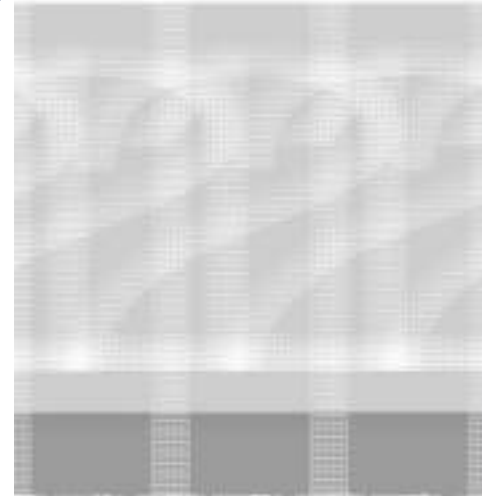
- If the properties are later separated and a visible sign of the easement exists, the easement continues unless explicitly excluded in the sale contract.

- **Non-Use:**

Easements are extinguished by non-use over a certain period:

- 40 years for government, church, or pious institution property.
- 30 years for all other properties.
- Exceptions apply if non-use was due to conditions beyond the dominant owner's control.





Diploma in Law (Malta)



CAMILLERI PREZIOSI