The Functions of the Court of Voluntary Jurisdiction

Lecture Title: Minors in Wills and Deeds

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

The capacity of Contracting Parties

The Civil Code in article 967 (1) states that:

"All persons not being under a legal disability are capable of contracting"

However, in sub-article (3),we have certain exceptions:

(3) The following persons are incapable of contracting, in the cases specified by law:

(a) minors;

(b) persons interdicted or incapacitated; and

(c) generally, all those to whom the law forbids certain contracts.

Article 188 (1), states that: “Majority is fixed at the completion of the **eighteenth** year of age.”

(2) A major is capable of performing all the acts of civil life, subject to the restrictions contained in other special provisions of law.

Tutorship

Article 158. Any minor, whose parents have died or have forfeited parental authority and who has not married, is subject to be placed under tutorship until he becomes of age or until he marries.

Article 159.(1) A tutor is appointed by the court on the demand of any person.

(2) In appointing a tutor the court shall take into account any disposition contained in the will of either of the parents of the child relating to the appointment of a tutor.

Article 160. Where among the relatives of the minor there are competent persons, the court shall appoint one of such persons, preference being given, subject always to the best interests of the child, to the nearest relative by consanguinity.

Article 161.(1) It shall be lawful for the court to appoint more than one tutor.

(2) Where more than one tutor have been appointed the court may at any time, either of its own motion or upon the demand of any of the tutors, specify their respective duties; and, until such time as particular duties shall have been assigned to each of them, each of the tutors shall have all the powers and duties of a tutor, and they shall all be jointly and severally liable for the acts of each of them.

Persons not competent to be tutors:

163. The following persons cannot be appointed tutors:

(a) persons who have not attained majority;

(b) persons who are not vested with the free administration of their property or who are notoriously incompetent to administer property;

(c) persons who are or are about to be, or whose spouse or relatives by consanguinity or affinity up to the degree of uncle and nephew, are, or are about to be involved in a lawsuit with the minor, in which the status of such minor, or a considerable part of his property is at stake;

(d) undischarged bankrupts;

(e) persons who have been sentenced to the punishment of imprisonment for a term exceeding one year, or to any punishment for an offence affecting the good order of families, or for fraud;

(f) persons who are of a notoriously bad character, or manifestly untrustworthy or negligent;

(g) persons who are trustees of property for the benefit of the minor.

Article 167.The court shall, before appointing a person to the office of tutor, direct such person to make an inventory of the property of the minor or, according to circumstances, a description of such property, verified on oath by such person, and to bind himself with hypothecation of his own property limited to a fixed sum, well and truly to administer the property of the minor, and to render on the termination of the office a true and faithful account of his administration.

Article 172. The tutor shall have the care of the person of the minor; he shall represent him in all civil matters, and administer his property as a bonus paterfamilias.

The court shall, as appropriate, prescribe the place in which the minor is to be brought up, the education which it is proper to give him, and the expense to be incurred for his maintenance and education.

Article 180.(1) It shall not be lawful for the tutor, without the authority of the court, to collect or transfer any capital belonging to the minor, take money on loan except in case of urgency, accept or renounce any inheritance, accept any donation or legacy subject to any burden, refer any matter to arbitration or effect any compromise, or alienate, hypothecate, or make any emphyteutical grant of immovable property, or let out property for a time exceeding eight years, in the case of rural property, or four years, in the case of urban property, or the ordinary time according to usage, in the case of movables.

Article 180(2) Upon a demand for authority to accept an inheritance, the court may, according to circumstances, allow the tutor to produce in lieu of the inventory prescribed in article 848, a note describing the property comprised in the inheritance which shall be verified on oath by the tutor.

Guardianship, Interdiction and Incapacitation

188A.(1) Notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation, a major who has a mental disorder or other condition, which renders him incapable of taking care of his own affairs may be subject to guardianship; and notwithstanding the provisions of Sub-title II on Interdiction and Incapacity, to the extent possible, the parents of a person of age, with disability, with a mental disorder and with another condition, which makes such person incapable of taking care of this or her affairs, shall first seek to place the person with disability under guardianship before seeking the interdiction or incapacitation of that person.

A guardian shall be responsible to safeguard the personal and proprietary well being of the person to whose guardianship is appointed.

In the exercise of his obligations the guardian shall act in the best interests of the person subject to guardianship and shall take appropriate measures to provide the support that the person subject to guardianship may require in exercising his legal capacity himself am so far as this is possible.

Article 188C (1) states that the guardianship shall be exercised in such a manner that:

a) the will of the person subject to guardianship is respected and given effect to the maximum extent possible;
b) the welfare of the person subject to guardianship is promoted and fostered;
c) the means used for the purpose of guardianship shall be proportionate to the aims which they are intended to achieve; and
d) the freedom of choice and action of the person subject to guardianship shall only be restricted when necessary and only to an extent that is proportionate to the aim pursued.

189.(1) A major who is a person with a mental disorder or other condition, which renders him incapable of managing his own businesses, or who is insane or prodigal, may be interdicted or incapacitated from doing certain acts.

The demand for interdiction or incapacitation may be made by any person related by affinity who, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal

Article 191.(1) A minor under tutorship may be placed under the guardianship or interdicted or incapacitated in the last year of his minority, and in any such case the Guardianship Board or the Court, as the case may be, may appoint as guardian or curator either the tutor or any other person.

(2) The said guardian or curator shall only commence to administer the property as from the day of the termination of the tutorship.

Example of Application

Fil-Qorti Civili (Sezzjoni ta' Gurisdizzjoni Volontarja)

Rikors ta' Frances Cassar (K.I. 36452G):

Tesponi bir-rispett:

Illi l-esponenti tigi omm Rose Cassar, bint missier mhux maghruf, imwielda Camperdown, New South Wales l-Awstralja fid-9 ta' Jannar 1980 bil-karta tal-identita' bin-numru 152694M u residenti 35, Greaziella, Triq l-Inhasa,. Zabbar (Dok.A)

Illi l-imsemmija Rose Cassar tbati minn diffikultajiet mentali u dan skont ma jidher mid-dokumenti mahruga mill-istat Awstraljan. (Dok.B)

Illi l-espoenti tixtieq li bintha tigi inabilitata biex hi tikun tista' tassistiha f'dawk l-atti kollha tal-hajja civili u li mhumiex ta' natura semplici imma ta' natura straordinarja.

L-assi li tipposjedi Rose Cassar huma elenkati fin-nota deskrittiva dokument D.

Ghaldaqstant l-espoenti jitolbu bir-rispett lil dina l-Onorabbli Qorti biex:
Tinabilita lil Rose Cassar milli taghmel dawk l-atti elenkati fl-artikolu 524(1) tal-Kap12 tal-ligijiet ta' Malta u tinnomina lil ommha l-esponenti Frances Cassar bhala kuratrici taghha biex tassistiha; u titlob wkoll li flok l-inventarju tigi accettata n-nota deskrittiva, u dan taht dawk il-provedimenti ohra li dina l-Qorti jidhrilha li huma xierqa.

Fil-Qorti Civili (Sezzjoni ta' Gurisdizzjoni Volontarja)

Rikors ta' Margaret Carmen Sutton u Wakeling Anne Marie detenturi bil-passaporti Brittanici bin-numri 207089642 u 402203758 rispettivament

Jesponu bir-rispett:-

Illi l-esponenti jigu l-unici ulied ta' Beatrice Hodge, bint Samuel Robert Hoyle u Carmela nee' Demanuele, imwielda Floriana fid-9 ta' Sdettembru 1933 u residenti gewwa d-Dar tal-Anzjani Casa Arkati, Mosta ta' 84 sena bil-karta tal-identita' bin-numru 0660933M (Dok.A)

Illi l-istess Beatrice Hodge illum qed tbati minn "Advanced dementia" u mhijiex fi stat li tifhem dak li hemm madwarha u mhijiex orientata ghad-data u lok u dan skont ma jirrizulta mic-certifikat tat'-Professur Psikjatra David Mamo (Dok.B).

Illi in vista ta' dan ic-certifikat mediku l-istess Beatrice Hodge ghandha tigi interdetta mill-atti kollha tal-hajja civili u jinhatru kuraturi biex jiedhu hsiebha u jamministrawlha ġidha.

Illi l-esponenti flimkien huma l-unici ulied tal-istess Beatrice Hodge u dan skont ma jirrizulta mill-arblu generalogiku ppreżentat (Dok.C)

Illi l-assi ta' l-interdicenta huma elenkati fin-nota deskrittiva annessa (Dok.D) li kull ma hemm hija deposite box f'bank lokali.

L-esponenti qeghdin ihallsu dak kollu li jirrigwardja l-ispejjez tal-interdicenta fis-sens kemm is-soggorn kif ukoll spejjez ohra.

Ghaldaqstant, in vista tas-su espost, l-esponenti jitlbu bir-rispett lil dina l-Onorabbli Qorti biex:

tinterdici lil Beatrice Hodge fuq imsemmija mill-atti kollha tal-hajja civili minhabba dak li hemm indikat fic-certifikat mediku rilaxxat mil-Professur David Mamo;
tinnomina lill-esponenti bhala kuraturi tal-istess Beatrice Hodge; u
jitlobu li flok l-inventarju taghmel tajjeb in-nota deskrittiva annessa u jitolbu wkoll biex jigu awtorizzati li jkunu jafu x'hemm f'din id-deposite box u dan taht dawk il-provedimenti li dina l-Qorti jidhrilha li huma xierqa.

Fil-Qorti Civili (Sezzjoni ta' Gurisdizzjoni Volontarja)

Rikors ta' Mary Louise Zammit (K.I. 0264464M) **fil-kwalita taghha ta' kuratrrici ta' bintha interdetta Elaine Zammit.**

Tesponi bir-rispett:

Illi bid-digriet fuq citat l-esponenti kien giet nominata kuratrrici tal-interdetta bintha Elaine Zammit.

Illi fost l-assi li tippossjedi Elaine Zammit hemm dodicesima parti (1/12) indiviza minn terran. Bl-arja libera taghha u sub terran bin-numri ufficjai 66, gja 47 minghajr isem fi Triq San Alfonsu, Sliema. Dan it-terran huwa suggett ghac-cens u sub cens temporanju mhux rivedibbli ta zewg euros u tlieta u tletin centezu (€2.33), liema cens kien ghal mija u hamsin (150) sena dekorribbli mill-ewwel ta' Lulju tas-sena elf tmien mija u tnejn u disghin (01/07/1892) Dan ic-cens jiskadi fi zmien hamsa u ghoxrin (25) sena ohra.u dan skont kif juri aktar car il-konvenju anness (Dok.A).

Illi l-ko-proprjetarji sabu l-bejgh ta' dan it-terran ghal-hamsa u ghoxrin sena li fadal ghall-prezz ta' erbgha u sebghin elf euro (€74,000) u dan skont ma jirrizulta mill-konvenju anness (Dok.A) u l-istima annessa (Dok.B).

Ghaldaqstant l-esponenti jitlob bir-rispett lil dina l-Onorabbli Qorti biex tigi awtorizzata biex f'isem l-interdetta bintha Elaine Zammit tidher fuq att ta' bejgh tal-proprjeta' fuq imsemmija bl-att finali jigi ppubblikat min-Nutar Dottor Bernice Micallef u dan taht dawk il-provedimenti ohra li dina jidhrilha li huma xierqa.

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Even though the law stipulates that people under the age of 18 are minors and thus cannot appear as parties to a contract, the law provides certain scenarios where it can accept the contracting by minors.

Article 968 states: "Any contract entered into by a person who has not the use of reason, or is under the age of seven years is null."

Article 969.(1) "Any obligation entered into by a child under the age of fourteen years is also null.

(2) Nevertheless, where the child has attained the age of nine years, the agreement shall be valid in so far as it relates to the obligations entered into by any other person in his favour."

Art 971.(1) Subject to any other provision contained in the Commercial Code, any minor who has attained the age of fourteen years, and is not subject to parental authority, nor provided with a curator, may not alienate or hypothecate his immovable property without the authority of the competent court.

Art 971A. (1) Notwithstanding any provision of this Code, a minor who has attained the age of sixteen (16) years may deposit money in an account opened by the said minor in his own name with any credit institution or place funds in an account opened by the minor in his own name with any financial institution, and any money and, or funds so deposited or placed in any such accounts may only be withdrawn by the said minor notwithstanding that such money and, or funds may be subject to the administration, usufruct or authority of any other person. For all purposes of law, the said minor shall, with regard to the opening and operation of any such accounts, be considered a major

What happens if the person is not really a minor?

Article 1217.(1) The mere declaration made by a minor that he is of age shall not operate to deprive him of the right to sue for rescission.

(2) Nevertheless, it shall not be lawful for a minor to impeach his obligation on the ground of his disability to contract, if he is guilty of misrepresentation calculated to lead others to believe that he is capable of contracting, and has, by such means, deceived the other party

Parents representing their children on contracts:

Article 2019.(1) states that: “A minor has a general legal hypothec over the property of the parent to whose authority he is subject in respect of the liability contracted by such parent in the administration of the property of the minor.

(2) Such hypothec arises from the day on which the administration of such property vests in the parent.

(3) Where a parent contracts another marriage, the said hypothec extends over the property of the step-parent as from the day of the marriage, if the parent continues in the administration without the authority required by law.”

2038.(1) The registration of the legal hypothec granted to minors under the provisions of article 2019 shall be effected by the parent mentioned in that article within four months from the day on which the hypothec arises, unless such registration shall have already been made at the request of any other relative of such children.

(2) Such hypothec arises from the day on which the administration of such property vests in the parent.

(3) Where a parent contracts another marriage, the said hypothec extends over the property of the step-parent as from the day of the marriage, if the parent continues in the administration without the authority required by law.

Article 2038.(1) The registration of the legal hypothec granted to minors under the provisions of article 2019 shall be effected by the parent mentioned in that article within four months from the day on which the hypothec arises, unless such registration shall have already been made at the request of any other relative of such children.

(2) If the parent contravenes the provisions of sub-article (1) of this article, he shall forfeit his rights of parental authority, as well as the right of further managing the property of the persons previously subject to his authority or of enjoying the usufruct to which he may have been entitled by law.

(3) The court of voluntary jurisdiction may, according to circumstances, reinstate the parent in the rights so forfeited

Example of Application

Fil-Qorti Civili (Sezzjoni ta' Gurisdizzjoni Volontarja)

Rikors ta' Mario Borg (K.I. 20273M)

Jesponi bir-rispett:-

Illi nhar id-19 ta' Mejju 2017 gewwa Tal-Qroqq, Msida mietet Daniela Borg, mart l-esponent, bint il-mejjet Pubblius Pace u Rosina Pace nee Spiteri, imwielda Pieta' u li kellha karta tal-identita' bin-numru 0216381M (Dok.A)

Illi mir-ricerki testamentarji hawn annessi kemm pubblici (Dok.B) kif ukoll sigrieti (Dok.C) jirrizulta li l-istess Daniela Borg mietet b'testment in atti tan-Nutar sottofirmat tat-28 ta' Novembru 2016 (Dok.D).

Illi fl-istess testment l-istess Daniela Borg halliet lil binha minuri Kieran Borg (Dok.E), l-uniku wild li kien hemm fiz-zwieg bejn ir-rikorrenti u l-istess Daniela Borg.

Illi fl-istess testment l-istess Daniela Borg halliet lil binha minuri Kieran Borg (Dok.E), l-uniku wild li kien hemm fiz-zwieg bejn ir-rikorrenti u l-istess Daniela Borg.

Illil l-assi li halliet l-istess Daniela Borg huma elenkati fin-nota deskrittiva annessa (Dok. F).

Illi l-esponenti iskriva ipoteka legali generali kontra tieghu u favur il-minuri barra it-terminu rikjest mil-ligi (Dok.F) u b'hekk iddekada mis-Setgha ta' Genitur fuq l-istess ibnu minuri.

Ghaldaqstant l-esponenti jitlob bir-rispett lil dina l-Onorabbli Qorti biex :

jigi reintegrat fis-setgha ta' Genitur ta' ibnu minuri fuq imsemmi;

jaccetta il-wirt f'isem ibnu minuri fuq imsemmi u dan bil-beneficcju tal-inventarju, liema wirt iddevolvi fuq l-istess minuri bil-mewt ta' omm il-minuri u cioe Daniela Borg;

flok l-inventarju jitlob li taghmel tajjeb in-nota deskrittiva .annessa u mmarkata dokument E; u dan taht dawk il-provedimenti ohra li dina l-Qorti jidhrilha li huma xierqa.

Acceptance of Inheritance by minors

Article 137.(1) Any inheritance devolving on the children, shall be accepted by the parents with the benefit of inventory, unless such inventory is dispensed with by the court.

(2) If one of the parents is unable or unwilling to accept such inheritance, the inheritance may be accepted by the other parent with the authority of the court. If both parents are unable or unwilling to accept such inheritance the court may, upon the demand of the child or of any of his relatives, authorize the acceptance thereof either by the child himself, if he has attached need the age of fourteen years, or otherwise is by a special curator to be appointed by the court.

140.(1) The parents are bound to render to the child, on the latter attaining majority, an account of the property and the fruits of those things of which they have not the usufruct; and of the property only and of the administration thereof in regard to things of which they have the legal usufruct.

Article 141.(1) The parents shall have the usufruct of such property as devolves on the child by succession, donation, or any other gratuitous title, including property derived from entail.

(2) They shall retain such usufruct until the child attains majority, unless the latter dies before that time

Article 144.(1) The usufruct of the parents shall cease on the death of the child or on the marriage or remarriage of the parents or the adoptive parents, that may be the case

Testamentary Executors

Article 762. It shall be lawful for a testator to appoint one or more testamentary executors.

Article 763. No person who is under a disability to contract obligations, may be a testamentary executor. A minor may not hold the office of testamentary executor even though with the authority of the parent to whose authority he/she is subject, or of his tutor or curator

Article 765. It shall not be lawful for any testamentary executor to intermeddle with the administration of the estate before he is confirmed by the court of voluntary jurisdiction of the island in which the testator resided at the time of his death

766.(1) The court shall not confirm the testamentary executor before he shall have entered into a recognition in the records of the court, with hypothecation of his property to be registered in the Public Registry, faithfully to carry into effect the will of the testator, and to render an account of his administration every year or once only, as the court shall, according to circumstances, direct.

(2) The court may, on the demand of the executor, limit the amount for which his property is to be hypothecated.

767. It shall be in the power of the court, before confirming the executor to require him to makeup an inventory of the property which he is charged to administer, or, a statement of such property to be verified by his oath, unless he shall have been exempted from making such inventory or statement by the persons to whom the property devolves, wholly or in part.

Article 770. It shall be in the power of the said court, at any time, to grant to the testamentary executor a moderate fee, regard being to the value of the estate to be administered by him, unless the testator himself shall have made provision as to such fee, or he/she executor shall have waived his right thereto

Article 771.(1) The testamentary executor, for the purpose of paying the debts of the estate or of discharging the legacies, may, in the absence or insufficiency of funds in the estate, collect sums owing to the estate, or, in default, sell property.

(2) Such sale shall be made by public auction, unless the heirs agree, or the court, on the application of the executor, allows, that the sale will be made otherwise

Article 777.(1) Where the testator has appointed two or more executors, and one or more has or have declined to accept it office, or renounced it, or has or have been suspended or removed there from, the said court may confirm the executor or executors remaining, and authorize him or them to carry into effect the will as if the testator had appointed him or them only, provided he or they be considered fit by the court.

Example of Application

Fil-Qorti Civili (Sezzjoni ta' Gurisdizzjoni Volontarja)

Rikors ta' Rikors ta' Alfreda Busuttil (K.I. 593048M)

Tesponi bir-rispett:-

Illi fit-2 ta' Marzu gewwa Hal-Luqa miet Francesco Saverio Mifsud, guvni, iben il-mejtin Salvatore Mifsud u Rosina nee' Spiteri, imwieled Luqa u li kellu karta tal-identita' bin-numru 385025M ta' 92 sena (Dok. A).

Illi skont ir-ricerki testamentarji, kemm dawk pubblici (Dok.B), kif ukoll dawk sigrieti (Dok.C), jirrizulta li l-mejjet Francesco Saverio Mifsud kien ghamel testament in atti tan-Nutar Dottor Joseph Lia tal-15 ta' April 2010 f'liema testament it-testatur kien hassar u rrevoka kull testament li seta' ghamel u fih, f'artikolu numru numru sebgha (7), innominha bhala ezekutrici testamentarja u amministratrici tal-assi kollha li huwa halla (Dok.D)..

Illi l-assi tal-mejjet Francesco Saverio Mifsud huma elenkati fin-nota deskrittiva tal-assi (Dok.E)

Ghaldaqstant l-esponenti jitlob bir-rispett lil dina L-onorabbli Qorti biex tigi kkonfermata bhala ezekutrici testamentarja u amministratrici tal-assi li halla l-mejjet Francesco Saverio Mifsud fuq imsemmi u titlob li flok l-inventarju tigi accettata n-nota deskrittiva hawn annessa (Dok.E) u dan taht dawk il-provedimenti ohra li dina l-Qorti jidhrilha li huma xierqa.

21 ACADEMY

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