The Functions of the Court of Voluntary Jurisdiction

Lecture Title: Separations

Lecturer: Avv. Maria Ruth Ciantar

Date: 19th February 2026

Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

The concept of "family" has evolved significantly over time. In the past, the typical family was almost always made up of a married couple, consisting of a man and a woman, with children from their union. However, in today's society, this definition is no longer as rigid. While this traditional family structure is still quite common in Malta, modern families are increasingly diverse, and the classic model of the male breadwinner and stay-at-home wife is becoming less prevalent as time progresses.

Personal Separation

Court Separation

Consensual Separation

Court Separation:

In cases where the relationship between spouses has deteriorated to the point where civil negotiations are no longer feasible, the matter is brought directly before the Court. The judge is responsible for determining the division of the matrimonial home and financial assets, as well as addressing issues related to maintenance, child custody, and access. During these proceedings, the Court has the authority to decide which spouse will remain in the matrimonial home and to resolve all matters concerning maintenance, child care, and access arrangements.

A Court-ordered separation is inherently more expensive than a consensual one, often resulting in a lengthier process and increased emotional distress. Therefore, every effort is to be made by legal professionals to minimize additional costs and avoid unnecessary turmoil, and strive to achieve the most efficient and amicable resolution for the clients.

Article 36 “Personal separation may not take place except on the demand of one spouse against the other and on any of the grounds stated in the following articles, or by mutual consent of the spouses”.

The court shall, in the decree or judgement of personal separation, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to notify the personal separation of the parties to the Director of the Public Registry within the period established for this purpose by the same court, for the Director of the Public Registry to register that personal separation

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:

Article 38: “Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.”

Article 40: “Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or grievous injury on the part of the other against the plaintiff, or against 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.”

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 42: “(1) The action for separation shall be extinguished by the reconciliation of the spouses.

(2) Nevertheless, where a fresh ground for separation arises, the plaintiff may in support of his demand also allege the previous grounds.”

During the pendency of the Separation Proceedings:

Article 46: “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.”

Article 46A. “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”

Article 47. “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.”

Obligation of Maintenance:

Article 54.(1) “The spouse against whom the separation is pronounced shall not, as a result of such separation, be relieved from the obligation of supplying maintenance to the other spouse, where, according to the provisions of Sub-title I of this Title, such maintenance is due.

(2) The amount of maintenance referred to in sub-article (1),and the maintenance due to children in the event of separation, shall be determined having regard to the means of the spouses, their ability to work and their needs, and regard shall also be had to all the other circumstances of the spouses and of the children, including the following:

(a) the needs of the children, after considering all their circumstances.

(b) any disability, as defined in the Equal Opportunities(Persons with Disability) Act, whether such disability is physical or mental;

(c) circumstances of illness which are of such seriousness and gravity as to compromise the ability of the spouses or of the children to maintain themselves;

(d) whether the ability of the party to whom maintenance is due to have earnings of whatever nature was diminished by reason of that party having, during the marriage, taken care of the household, the other party and the upbringing of the children of the marriage;

(e) every income or benefit which the spouses, or any of them, receive according to law, other than social assistance that is not contributory which is paid to them under the Social Security Act

(f) the accommodation requirements of the spouses and of the children

(g) the amount which would have been due to each of the parties as a benefit, including, but not limited to, a benefit under a pension scheme, which by reason of the separation, that party will forfeit the opportunity or possibility of acquiring

Community of Acquests:

Article 55 (1): “The court may, at any time during the cause for separation, upon the demand of any of the spouses, order the cessation of the community of acquests or of the community of residue under separate administration existing between the spouses.

(2) The order for the cessation of the community as provided insub-article (1) shall be given by means of a judgement from which every party shall have a right of appeal, without requiring permission from the court for this purpose”

Article 55(4): “ Prior to ordering the cessation of the community as provided in this article, the court shall consider whether any of the parties shall suffer a disproportionate prejudice by reason of the cessation of the community before the judgement of separation.

(5) The order of cessation under this article shall, at the expense of the party who demanded such cessation, be notified to the Director of Public Registry and it shall have effect as if the cessation of the community of acquests or of the community of residue under separate administration were made by public deed.”

Matrimonial Home:

55A.(1) In pronouncing the judgement of separation, the court shall on the demand of either of the parties, order, according to circumstances:

(a) 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

(b) 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

(c) 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

Provided that in every case, the court shall consider the following:

(a) The best interest of the minor children, including the impact that there may be on minor children

(b) The welfare of the parties and of the children, and

(c) Whether the parties have or, whether their means and abilities permit them to have, another place where to reside.

Custody to children:

Article 56. “(1) On separation being pronounced the court shall also direct to which of the spouses custody of the children shall been trusted, 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 (*i.e other persons acting as parents), 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”

57.(1) Whosoever may be the person to whom the minor children are entrusted, the spouses shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law:

Provided that this right may be suspended if the exercise thereof would put either the children or the other parent at a risk of harm.

(2) It shall be in the discretion of the court, according to circumstances, to fix the time, place, and manner in which the spouses shall have access to the children:

Provided that the right of access may be withdrawn by the Court when the spouse who is granted such right of access fails to exercise such right without reasonable cause.

(3) It shall be lawful for the court entirely to forbid such access to their minor children if it may be detrimental to the welfare of such minors or to the welfare of anyone of the parents

Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Mediation:

What is mediation?

When a couple is in dispute with one another regarding family matters, they can ask for assistance from a mediator to help them reach an amicable settlement without recourse to formal proceedings in Court. Under Maltese law, mediation is a compulsory step the couple has to go through before instituting proceedings for separation before the Civil Court.

Who is the mediator and what is his role?

The mediator is there to help the parties reach an amicable settlement. He is an impartial and independent person appointed by Court. In some cases, the parties choose the mediator themselves against a fee. Mediators are all professionally qualified to act as such. Most of them are also family therapists, social workers or lawyers.

A mediator can never provide evidence in Court as to what was said in mediation proceedings if the parties proceed to a Court case.

Who can apply for mediation?

Mediation can be used in the following cases:

- For separation or divorce (provided that for divorce the spouses would have been living apart for four years or more);
- For maintenance from his/her spouse;
- To regulate matters regarding a child born out of wedlock, for example care and custody, visitation rights and maintenance;
- To change his/her contract of separation or divorce;
- To change his/her contract that regulates his/her child care and custody, visitation rights or maintenance.

To have recourse to mediation, the interested party must file a letter, addressed to the Court Registrar, requesting permission to start the mediation proceedings. The letter must contain both parties' names and addresses and at least the identification card number of the person submitting such letter.

Once a letter is filed, a mediator is appointed from a list established by court. The mediator can also be privately chosen by the parties themselves in agreement. The mediator will send for the parties by post with a specific date for them to come to Court. Sessions are held in a private room with only the mediator and if the parties' wish, the parties' lawyers as well. Mediation does not require a lawyer to be present.

If the parties do manage to reach an agreement, a contract is then drafted and read by the mediator, and if the parties are satisfied with the content of the contract, the mediator will then present the contract formally in the Registry so that it can be seen by the Judge. If the Judge approves the contract, the parties can then go to a notary, who will publish the contract and make it official.

If the parties are unable to agree, the mediation is closed and the parties are authorised to proceed with a Court case. Parties are to institute proceedings before the Civil Court (Family Section) within two months from when the mediation is closed. In case of failure to proceed within the said timeframe, the couple will have to commence proceedings through mediation once again.

Consensual Separation:

In any separation case, it is typically in the best interests of both parties to reach a consensual agreement, as it tends to be less costly in terms of both financial resources and emotional distress. While the marital relationship may have irreparably broken down, the spouses may still be willing to resolve matters in a constructive and respectful manner. In consensual separation cases, the Court adopts a more passive role, intervening only to ensure that neither party is disadvantaged by the agreement. Consequently, the spouses maintain greater autonomy over the development of the agreement and the timeline for its completion.

A consensual separation generally covers the allocation of the matrimonial home, all other financial and immovable assets, maintenance, and care and custody of the children. Although the agreement will be made by mutual consent, it is still of the utmost importance to seek legal advice prior to discussing the clauses in a consensual separation.

Article 59.(1) 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.

(2) 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.

(3) This decree shall have the same effect of the judgment given by the competent court

Article 60.(1) The court, on authorizing the separation, shall in the decree give its directions as to the person in whose custody the children are to be placed.

(2) It shall be lawful for the court at any time to revoke or vary such directions, for the better welfare of the children.

(3) Notwithstanding the provisions of any other law, it shall be lawful for either of the spouses to renounce in a public deed of separation to the succession of the other spouse.

Article 61.(1) “Any agreement between the spouses respecting the custody of the children may at any time, on the demand of either of the spouses, or of any relative of either of the spouses, be annulled by the competent court, where the interests of the children so require.

(2) In any such case, the court shall give the necessary directions as to the person in whose custody the children are to be placed, and as to the mode of their maintenance and education.”

Article 62: “(1) Notwithstanding the provisions of article 4, the spouses may, on separation, choose to revert to their surname at birth or to the surname at the time of their marriage.

(2) 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.

(3) 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”

Article 62A. “Personal separation shall only be operative in regard to third parties from the day on which the judgment or the public deed, as the case may be, shall have been registered in the Public Registry. Any such registration shall include a reference to any declaration or prohibition with regard to the surname of the spouses after the judgment”

Article 63 “The spouses separated whether by a judgment or by mutual consent may at any time reunite, and thus put an end to the effects of separation, wholly or in part, saving any right which third parties may have acquired.”

Article 64 (1): “Voluntary cohabitation shall operate as a reunion, and shall restore the obligations of cohabitation and of maintenance arising from marriage. Other effects of separation may cease by public deed.

(2) Any other effect of the separation, however, shall not cease except in virtue of a public deed”

Article 65. “Any such deed may take place even after the spouses shall have returned to cohabitation, but, in any such case, the deed shall be void if it is not made with the authority of the court.

Article 66. In all cases, the effects of the separation shall not cease in regard to third parties, except from the day on which the deed is registered in the Public Registry.”

Example: Rikors –Separazzjoni wara Rikonciljazzjoni

Fil-Qorti Civili (Sezzjoni Familja)

Nota konguntiva ta' Michael Borg, (K.I. 186665M) u ta' martu Giovanna Borg(K.I. 0022467M) .

Li permezz taghha qeghdin jinfurmaw lil dina l-Onorabbli Qorti li huma zzewgu fil-Knisja ta' San Duminku r-Rabat Malta fit-tnejn u ghoxrin ta' Lulju tas-sena elf disa' mija u disgha u tmenin (22/07/1989)

Illi permezz ta' kuntratt in atti tan-Nutar Dottor Marco Mercieca tat-tnax ta' Mejju tas-sena elf disa' mija u tmienja u disghin (12/05/1998) huma kienu sseparaw personalment minn ma' xulxin (Dok.A).

Illi l-partijiet kienu regghu bdew jghixu ma’ xulxin u hekk sehhet ir-rikonciljazzjoni bejniethom u b’hekk regghu dahlu dawk l-obbligi li z-zwieg igib mieghu.

Illi fil-fatt l-esponenti kienu kienu xtraw proprjeta’ flimkien b’kuntratt in atti tan-Nutar Dottor Joseph Abela tal-ghaxra ta’ Dicembru tas-sena elfejn u tlieta (Dok.B)

Illi sfortunatament iz-zwieg tal-partijiet illum rega’ tkisser irremedjabilment u dan ghal ragunijiet li skont il-ligi jaghtu lok ghal separazzjoni personali.

Illi l-partijiet waslu ghal ftehim bonarju u ghal dan il-ghan qeghdin jpprezentaw abbozz ta’ separazzjoni personali bil-pattijiet u l-kundizzjonijiet kollha elenkati fl-istess abbozz li qieghed jigi mmarkat bhala dokument C.

Illi permezz ta’ dikjarazzjoni hawn annessa u mmarkata bhala dokument D, il-partijiet qeghdin jiddikjaraw li ma jridux li jkunu assistiti minn Avukat stante li hemm qbil in toto dawr il-kundizzjonijiet u t-termini tas-separazzjoni personali taghhom.

Illi bhala medjatur f’din il-kwistjoni l-partijiet jixtiequ li jkollhom lis-sur Godwin Vella.

Ghaldaqstant permezz ta’ l-istess nota l-partijiet jixtiequ li dina l-Onorabbli Qorti wara li jidhru quddiem il-medjatur . tawtorizzahom jidhru fuq att ta’ separazzjoni personali bil-kundizzjonijiet elenkati fl-abbozz fuq imsemmi, liema att ghandu jigi ppubblikat min-Nutar Sottofirmat u dan taħt dawk il-provedimenti ohra li dina l-Qorti jidhrilha li huma xierqa.

Jiena Nutar Pubbliku u Duttur tal-Ligi li ismi hawn taht iffirmat niddikjara li d-dikjrazazzjonijiet fuq indikati gew iffirmati u mahlufa quddiemi mid-dikjaranti wara li jiena fissirtilhom il-konsegwenzi ta’ tali dikjarazzjonijiet.

Not. Dr. Matthew Vassallo

Nutar Pubbliku ta’ Malta

Separation of Estates

Pre-Nuptial Agreements:

Matrimonial Regimes and Pre-Nuptial Agreements (Prenups) are foundational elements in defining the financial dynamics between spouses, both during their marriage and in any event of separation or divorce.

Pre-Nuptial Agreements, commonly known as ‘prenups’, offer couples the opportunity to pre-arrange financial matters in the event of a marriage breakdown. These agreements are also used to regulate certain aspects of the upcoming marriage so that it will not be governed by the default regime, that of Community of Acquests, but it instead they will explicitly agree that their marriage shall be governed by the system of Separate Administration of Property regime, also commonly called the Separation of Estates regime.

Although it is referred to as an ‘agreement’, a prenup is done by public deed and it is to be registered in the Public Registry.

Separation of Estates:

Article 1316: (1) "Marriage celebrated in Malta shall, in the absence of an agreement to the contrary by public deed, produce ipso jure between the spouses the community of acquests.

(2) Marriage celebrated outside Malta by persons who subsequently establish themselves in Malta, shall also produce between such persons the community of acquests with regard to any property acquired after their arrival."

1317. It shall be competent to the spouses, even after the celebration of the marriage, with the authority of the court, to establish the community of acquests which in virtue of the marriage contract or other act had been excluded, or to cause the cessation of the community of acquests established by contract or by operation of law

Under the Separation of Estates régime, each spouse retains complete and independent control over their respective estate, meaning that they manage their own assets and liabilities without any obligation to share or jointly control them with their spouse.

In this arrangement, while the couple forms a single family unit in terms of their personal relationship, they function as separate economic individuals. This structure allows each spouse to maintain individual ownership of any property or assets they possessed prior to the marriage, as well as those they acquire during the marriage.

As a result, there is no automatic merging of assets between the spouses, and each retains full rights and responsibilities over their own financial and material possessions throughout the duration of the marriage and beyond, should the marriage end.

The matrimonial home, must be chosen by the common accord of the spouses, no matter the regime chosen and any such related dispute must be referred to the Court of Voluntary Jurisdiction.

If the matrimonial home belongs solely to the husband, he may not dispose of it without the consent of his wife, since it is the matrimonial home.

By separating assets, each spouse ensures total professional autonomy and will avoid imposing on the other spouse additional risks.

In practical terms, this regime is usually opted for by persons who involved in commercial activities which are risky or else which incur certain debts. It is also opted in situations when there is a substantial difference between the income or wealth of the spouses.

In order for a couple to terminate the community of acquests and start managing their assets separately, they must first engage their legal advisor (notary or advocate) to submit an application in the Court of Voluntary Jurisdiction requesting permission to enter into a deed of Separation of Estates.

Example: Rikors- Separazzjoni tal-Beni

Fil-Qorti Civili (Sezzjoni ta' Ġurisdizzjoni Volontarja)

Rikors ta' Adrian Bartolo (K.I.27177M u martu Natalia Bartolo, (K.I. 019079M) u residenti 13, Triq il-Knisja Naxxar.

Jesponu bir-rispett:

Illi l-esponenti żżewġu gewwa r-Registru Pubbliku l-Belt Valletta, Malta nhar il-wiehed u ghoxrin ta' April tas-sena elfejn u tmintax (21/04/2018) u billi l-esponenti m'ghamlu l-ebda att anti nuzzjali jew ftehim iehor 'ipso jure' giet fis-sehh il-komunjoni tal-akkwisti akkwisti u dan a tenur tal-artikolu 1316(1).

lli l-partijiet jixtiequ li r-regim li jirregola ż-żwieġ tagħhom ma jibqax aktar dak tal-komunjoni tal-akkwisti imma jridu jbiddluh u jagħzlu dak tas-separazzjoni tal-assi.

Illi għal dan il-għan l-esponenti qegħdin jippreżentaw abbozz bil-ftehim u l-kundizzjonijiet kollha elenkati fl-istess abbozz. (Dok.A)

Għaldaqstant l-esponenti jitolbu bir-rispett lil dina l-Onorabbli Qorti biex jiġu awtorizzati jidhru fuq att ta' terminazzjoni u xoljiment tal-komunjoni tal-akkwisti eżistenti bejniethom, u jagħzlu li ż-żwieġ tagħhom ikun regolat bis-sistema tas-Separazzjoni tal-Assi bl-att jigi ppubblikat min-Nutar Dottor Mary Ann Bugeja bil-lingwa Maltija u dan taħt dawk il-provedimenti oħra li dina l-Qorti jidhrilha li huma xierqa.

Judicial Separation of Property

1332.(1) The judicial separation of property may be pronounced –

(a) upon the interdiction or incapacitation of one of the spouses; or

(b) where the disordered state of affairs of one spouse or his or her conduct in relation to the administration of the acquests jeopardises the interest of the community of acquests, or of the family or of the spouse requesting the judicial separation of property; or

(c) where one of the spouses fails substantially in his or her duty to contribute to the needs of the family in accordance with article 3 of this Code; or

(d) where one of the spouses has been excluded from the administration in terms of article 1325, either generally or to a great extent; or

(e) upon the legal separation of the spouses

(4) In the judgment pronouncing the judicial separation of property, the court shall direct that the community of acquests between the spouses shall cease as from the day on which the judgment becomes res judicata:

Provided that the court may however, without prejudice to any right legally acquired by any third party, direct that the judgment shall operate retrospectively to the date of the filing of the judicial act introducing the cause upon which judgment is given.

(10) Any judgment ordering the judicial separation of property shall not be operative against third parties except from the day on which such judgment shall have been registered in the Public Registry.

21 ACADEMY

Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants