

Diploma in Law

Lecture 12: The Civil Court (Family Section) (Part 2) The Court of Voluntary Jurisdiction

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Date: Wednesday 22nd April 2026



**Diploma in Law
(Malta)**

Today's lecture:

- Other proceedings before the Family Section
- Envisaged changes to the CC Family Section - Bill 165 of 2026
- Establishment of the Civil Court (Voluntary Jurisdiction Section)
- Competence (Part 1)



Procedure in the Family Section

Subsidiary Legislation 12.20



The Civil Court (Family Section)

The Procedure of the Family Section is regulated by:

1. the COCP; **but also** by
2. **Subsidiary Legislation 12.20 - The Civil Court (Family Section), The First Hall of the Civil Court and The Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations.**

The **lex specialis** principle is applied, i.e. the Subsidiary legislation specifically regulates procedure related to the Family Section so it supersedes the COCP.

Where it is silent, the COCP applies.



Mediation

Mediation is the first step in the following proceedings before the Family Section:-

- Personal separation
- Divorce
- Civil Union
- Cohabitation
- Disputes between parties, married or not, on issues related to their children
- Maintenance between spouses
- Variations of judgments or deeds of separation or divorce
- Variations of judgments or deeds on issues related to the parties' children.

Before authorising any proceeding, the Court shall summon the parties to appear before a mediator (chosen by the parties or appointed by it).



Other matters before the Family Section



Disputes concerning children

- Whether born in / out of wedlock, children must be cared for according to the law. In case of disputes between the parties, they must refer the matter to the Court to decide. These cases can concern:
 - Care and custody - *who is entitled to take the ordinary and extraordinary decisions related to the child and with whom the child is to reside*
 - Maintenance - *the amount to be paid to the primary parent as maintenance for the child's needs*
 - Access - *visitation rights*

Disputes concerning children

- A letter requesting the appointment of a mediator to hear the parties is filed.
- The mediator is appointed and summons the parties (& child if appropriate) to hear them.
- A children's advocate may be appointed upon request.
- If an agreement is reached, said agreement is forwarded to the judge for their authorisation.
- If authorised, the agreement is signed before a notary and published.
- Where domestic violence is proved, the Court may issue a protection / treatment order.

Disputes concerning children

- If no agreement is reached, mediation is closed and authorisation to continue proceedings is sought within 2 months from said closing.
- Written proceedings stage.
- The Court may if it deems it in the best interest of the child, appoint a child advocate.
- Pre-trial stage: a fixed term for the parties to produce all documentary evidence and for experts to present their reports (e.g. psychologists, social workers).
- Pre-trial stage is not to extend beyond 1 year from the closing of the written proceedings.
- Provisional orders may be requested **at any stage**.
- Trial.



Actions concerning filiation

Where a spouse repudiates a child born in wedlock

May do so if they prove:

- there was a physical impossibility of cohabiting with the parent who gave birth in the 300-180day period before birth;
- they were de fact / legally separated during such time;
- that at the time they were impotent;
- that the spouse who gave birth had committed adultery;
- the spouse who gave birth had concealed the pregnancy and/or birth;
- by means of genetic evidence, that parenthood can be excluded

Actions concerning filiation

Where a spouse repudiates a child born in wedlock

This action is time-barred by:

- 6 months from birth if the plaintiff is in Malta
- 6 months from his return in Malta
- 6 months from the discovery of the fraud/concealment



Actions concerning filiation

Where a spouse repudiates a child born in wedlock

An application to that effect is presented before the Court against:

- the child if they are of age;
- a curator to represent the minor child;
- with the other spouse as a party (joinder) to the suit.

The Court may require the spouses & child to consent to genetic testing, and will consider any other relevant evidence.

The application may be dismissed if its result is prejudicial to the child.

The Court shall rule by means of a decree. If the child is not the natural parent, their surname shall be changed to that of the parent who gave birth.

Actions concerning filiation

Where the clarification of natural parentage is sought

An application to that effect can be presented by:

- the spouse who did not give birth
- the spouse who gave birth
- the child
- the alleged natural parent

against either one or all of the above.

The Court will require any one or all of the parties to consent to a genetic test to this effect.

The application may be dismissed if its result is prejudicial to the child.

The Court shall rule by means of a decree. If the child is not the natural parent, their surname shall be changed to that of the parent who gave birth.



Actions concerning filiation

Where a natural parent seeks a declaration of parenthood

Any person claiming to be the natural parent of a child born in wedlock may present a sworn application against the spouses and the child.

The plaintiff must prove that the spouse had committed adultery with them and may produce any genetic evidence to substantiate their claim.

This demand may also be filed by the parent who gave birth against the alleged natural parent, the other spouse, and the child.

The action must be brought forward within 6 months from birth.

Once filiation is so declared, the child's surname will be changed accordingly unless the child argues that this is prejudicial to them.



Actions concerning filiation

Where the child seeks clarification of their filiation

There is no prescription on actions instituted by children themselves.

Where a parent seeks to acknowledge a child born out of wedlock

A judicial letter is to be served on the parent who gave birth and the child (if of age), stating their interest to be registered as the acknowledged parent.

The other parent and child have 2 months from notification to file a note indicating their agreement to such registration.

In this case both letter and note/s are served on the Director of the Public Registry to register the acknowledgement in the child's Act of Birth.

Actions concerning filiation

Where a parent seeks to acknowledge a child born out of wedlock

Where the other parent / child do not agree to such acknowledgment, the plaintiff shall file an application requesting the court to declare them as parent.

A parent so acknowledged acquires parental authority, but said parental authority may be restricted by the Court in the best interest of the child.

They also acquire the obligation to maintain and educate the child according to law.

A child so acknowledged assumes the surname of any or both of the parents as they choose. They also acquire the same rights and duties as any child born in wedlock.



Annulment

Annulment may be sought:

- Where the formalities at law were not observed
- Where the parties were not capable to contract marriage
- Where consent is vitiated (violence, fear, error of identity, fraud, defect of discretion, psychological anomaly) or was conditional
- Where impotency prior to marriage is proved
- Where either of the parties did not, at the time of contracting marriage, have the necessary powers of intellect or volition to consent
- Where the other spouse refuses to consummate the marriage



Annulment

The action must be adversarial, i.e. one spouse against the other, by means of a sworn application.

If a marriage is so declared as null, but both parties had contracted marriage in good faith, the marriage shall be deemed to have been valid until the judgment becomes res judicata.

Children born during such marriage shall not be affected by such annulment.



Variations of judgments or agreements

Generally speaking, the Court will not consider applications for variations before the lapse of at least one year from when the judgment is given or the agreement is published.

In this case mediation is the first step.

Where mediation fails, either party will request authorisation to go to trial within 2 months from the mediation.

The sworn application will contain the detailed variations requested and the reasons for such request. If the Court accepts such request, the judgment will detail how the previous judgment/agreement is to be varied and will order said amendment to be noted in the Public Registry.

The remainder of the previous judgment/agreement shall remain in full effect.



Enforcement of foreign maintenance orders

Where a maintenance order is given by a country recognised by Malta, the claimant may sue the debtor for any failed payments, and seek the enforcement of the order in Malta by means of a sworn application.

Applicants must submit with their application:

- a certified copy of the maintenance order
- a certificate signed by the registrar of the court certifying its enforceability
- a certificate of arrears
- information, if any, as to the whereabouts of the debtor



Envisaged changes

Bill 165 of 2026



Potential changes to the CC Family Section

On the 13/2/2026, Bill 165 of 2026 was published *“to amend various laws to provide for the establishment of the Family Court and to provide for consequential amendments”*.

To date, the Bill is before Committee, so **it is not yet law**.

The Bill proposes:

- to create an ad hoc Family Court as a Superior Court (i.e. not a Section of the Civil Court)
- to expand its competence to also hear criminal cases related to family matters (e.g. maintenance)
- to make the non-exercise of access, or abuse of access, a criminal offence
- to allow requests for expenses by the spouse who leaves the matrimonial home pending proceedings
- to allow that spouse to enter into lease agreements without the other spouse's consent



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The Civil Court (Voluntary Jurisdiction Section)



The Civil Court

- **First Hall / First Hall Constitutional Jurisdiction**

All cases of civil / commercial nature go before the First Hall, barring those within the CoM's jurisdiction. It is also the first stop for cases seeking redress for human rights violations.

- **Voluntary Jurisdiction (previously known as Second Hall)**

This section addresses pleas regarding tutorship, interdiction, incapacitation, adoptions, opening of successions and the appointment of executors.

- **Family Section**

All cases concerning family matters go to the Family section, including *inter alia*: divorce / separation, care and custody, child abduction

- **Commercial Section**

Cases relating to the Companies Act are assigned to the Commercial Section.

- **Asset Recovery Section**

Determines cases relating to the recovery of proceeds of crime by the State or the confiscation of assets not based on convictions.

Nature of the COVJ

Voluntary: this Court only has jurisdiction if the applicant voluntarily submits themselves to this Court (*vs other courts where, if a person is called in, they must submit themselves*)

Non-contentious: proceedings before this Court are not made against another person (*so not A v. B*), but are simply requests for authorisations.

Therefore the COVJ gives **decrees, not judgments**. Decrees are generally speaking valid for six months and may be extended (by what we call a request for a *proroga*).



Competence of the COVJ

S.L. 12.19



Competence of the COVJ

The COVJ shall be competent to hear applications on matters regulated by:

- Title III - *Adoption*
- Title V - *Minority and tutorship*
- Title VI - *Majority, Guardianship, Interdiction, Incapacitation*
- Title VII - *Absentees*

Of Book First of the Civil Code

- Part II

Of Book Second of the COCP:

- *Disentail*
- *Disencumberment of Immovables*
- *Tutors, Curators, and Administrators*
- *Guardianship*
- *Interdiction & Incapacitation*
- *Secret Wills*
- *Declaration and opening of a succession*
- *Inventory*

Title III - Adoption

- Adoption may only take place by means of a decree of the Court following a recommendation of the Adoption Board (if the adoptee is a minor).
- Adoption may be requested by spouses, civil union partners, or cohabitants **jointly**.
- Open adoptions are permissible.
- Applicants must be at least 28 years old and at least 21-50 years older than the adoptee.
- Applicants can also be the natural parents (18yrs +).
- Applicants can also be the foster carers who have fostered the adoptee for at least the past 5 years, or 3 years in extraordinary circumstances.
- Adopted children acquire all rights and obligations of natural children.
- Adopted persons (16yrs +) may request the Central Authority for information on their natural family.
- Advertising anything related to adoption is strictly prohibited.

Title V - Minority and Tutorship

- Minors are defined as anyone under the age of 18.
- Minors who are orphans / whose parents have forfeited parental authority are subject to be placed under tutorship.
- Tutors are appointed by the court on demand of any person.
- Any disposition in the parents' will on such tutorship will be taken into consideration.
- Preference is given to relatives who are competent to take care of the minor - in order of closeness by consanguinity.
- More than one tutor may be appointed, in which case the court shall list respective duties, and they shall be jointly and severally liable.



Title V - Minority and Tutorship

Persons who cannot serve as tutors:

- Minors
- Persons who cannot administer their own property freely / are known as incompetent to do so
- Persons who are / are about to be involved in a lawsuit with the minor
- Undischarged bankrupts
- Persons sentenced to imprisonment for more than 1 year / found guilty of family related offences / fraud
- Persons with a notoriously bad character / untrustworthy / negligent
- Trustees of property for the benefit of the minor
- Judges / magistrates unless they are related by consanguinity

Title V - Minority and Tutorship

Duties of the Tutor:

- to care for the minor, to represent them in all civil matters, to administer their property as *bonus paterfamilias*
- to ensure the minor's education and maintenance
- to invest any moneys profitably
- to keep a proper account of their expenditure and administration

A tutor cannot, without the court's authorisation:

- collect / transfer any capital belonging to the minor
- take money on loan
- accept / renounce any inheritance, donation, or legacy
- alienate immovable property



Title VI - Majority, Guardianship, Interdiction, Incapacitation

Majority: entitles the person to perform all acts of civil life, unless otherwise restricted by law.

Guardianship:

- Applies to majors who have a mental disorder / other condition rendering them incapable of taking care of their own affairs
- Must be sought before interdiction or incapacitation
- A guardian is:
 - responsible for the personal & proprietary wellbeing of the person
 - acts instead of the person in matters for which they have been appointed (specific or wide)
 - do any other thing as authorised by the Guardianship Order
 - obliged to support the person, consult and seek their preferences, encourage them to live within the community and care for themselves
 - obliged to protect the person from neglect, abuse, or exploitation

Title VI - Majority, Guardianship, Interdiction, Incapacitation

Guardianship:

In all cases:

- the will of the person must be respected and given effect as much as possible
- the welfare of the person is to be promoted and fostered
- the means used must be proportionate to the aims intended by the guardianship
- the person's freedom of choice and actions shall be restricted only when absolutely necessary and in a proportionate manner



Title VI - Majority, Guardianship, Interdiction, Incapacitation

Interdiction & Incapacitation

The law is unclear on the difference between the two, and indeed address them simultaneously.

We can however deduct that interdiction is a more serious consequence, as when this is not sufficiently justified, the Court may choose to opt for incapacitation of the person.

One can also assume that the difference between the two lies in the person's overall degree of incapacity. The two concepts apply to **majors who have a mental disorder or condition rendering them incapable of managing their own affairs, or who are insane or 'prodigal'**.

Minors under tutorship may also be placed under guardianship / be interdicted / incapacitated if it is deemed necessary.

Title VI - Majority, Guardianship, Interdiction, Incapacitation

We understand the two terms as follows:

Interdiction: A person completely loses their legal capacity to make any act of civil life without a curator as appointed by court.

Incapacitation: A person loses their legal capacity to make specific acts of civil life, but may still be allowed to perform acts without a curator as appointed by court.



Title VII - Absentees

Absentees are defined as persons who have ceased to appear in Malta and have not been heard of.

Their presumptive heirs / any other interested party may request to be appointed as curator to manage / preserve the property of the absentee.

No person can be forced to accept a curatorship of an absentee.

The competence of curators is identical to that of tutors for minors.

More than one curator may be appointed.

A curator represents the absentee in civil acts and manages their property as a *bonus paterfamilias*.

They are also bound to investigate the existence of the absentee in a place where they may be found and inform the court of such developments.



Title VII - Absentees

After 3 continuous years from when the absentee was last heard of, the court may open any secret will or any public will made by the absentee. This is done by request of any interested party.

The spouse of an absentee may demand maintenance from the absentee's family or estate.

Heirs of the absentee may demand to be vested with the provisional possession of the absentee's property. they shall then administer the property and enjoy the fruits thereof, but they may not alienate the immovables without the court's authorisation.

If the absentee **returns**, the effects of any authorisation given by the court cease and the absentee is restored in their full rights and possessions.

Title VII - Absentees

After 6 continuous years from when provisional possession was so granted and 10 years from the absence, the court may, upon request by the absentee's heirs, grant absolute possession and absolute exercise of rights over the absentee's property.

If the absentee **returns**, or their existence is established, they shall recover the property in its present state, or if it was sold, they shall be entitled to the price of that property so sold.



Book II COCP - Disentail

Reminder: Entailed Estate is estate that is restricted in terms of its succession. To disentail is to legally remove this obligation from the property, allowing the heirs to do whatever they wish with that property.

The COVI can decide on applications requesting the disentail of entail that is:

- 'dividual' - i.e. separate;
- the fruits of the property subject to the entail do not exceed €93.17 per annum; and
- the consent of all persons next entitled to succeed to the entail has been obtained.



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