

Principles of Civil Law

Module 11

The Law of Persons [1]: Relationships & their Dissolution

Lecturer: Dr. Désirée Attard
Date: 12/10/2026



Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES

Today's lecture:

- The relationships recognised by the State
- Marriage & matrimonial regimes
- Civil Unions
- Cohabitations
- Legal requirements
- Rights and Duties
- Dissolution



But first – the Civil Code

The Civil Code (Cap. 16 of the Laws of Malta) is our main body of civil law. It regulates all matters on both **persons** and **things**.

Book I: regulates natural persons & their relationships from birth to death.

Book II: regulates 'legal persons', i.e. things and their acquisition, sale, leasing, transferring, etc.

NB: The Civil Code is supplemented by other Acts (chapters), e.g. the Marriage Act, and subsidiary legislation.

All are available on **legislation.mt**.



Relationships - Marriage

The Marriage Act (Cap. 255) regulates **civil** marriages contracted in Malta.

Roman Catholic marriage is recognised in the Act, but regulated by Canon Law

Cap. 255 dictates the **form and capacity required** for civil marriages to be legally binding and valid at law.

Relationships - Marriage

Formalities to precede marriage:

- Marriages are to be public and published (bigamy is a criminal offence)

The publication of Banns

- Posted in public at the Marriage Registry & the respective spouse's town
- Remain up at least 8 days
- Contain spouses' details & wedding details
- Must be applied for at least 6 weeks in advance



Relationships - Marriage

Formalities of marriage:

Failure to observe formalities at law **may** invalidate the marriage.

E.g. failure to register a marriage alone is not enough to invalidate it, but the marriage will have no effect at law until it is so registered and an **act of marriage** is drawn up.

Marriage must be contracted before 2 witnesses & an officer / clergyman / officiant.

Witnesses must be 18+.



Relationships - Marriage

Formalities of marriage:

During a civil wedding, the officiant asks the parties to take each other as spouses, and upon their unconditional and unqualified acceptance, they will be declared to be spouses.

The act of marriage is completed and delivered for registration.

Civil weddings can take place in the Marriage Registry, on a Maltese registered ship or in any public space deemed appropriate.



Relationships - Marriage

Formalities of marriage:

Religious weddings can follow their specific rites, but the consent must be given unconditionally in the same way as the civil proceedings.

An act of marriage must also be equally drawn up and delivered.

Relationships - Marriage

Capacity:

Marriages are **null and void** if:

- Any spouse is under 18
- Any spouse is unable of contracting
- Spouses are ascendant & descendant in the direct line (e.g. parent & child)
- Spouses are siblings
- Spouses are related by affinity in the direct line (e.g. stepchildren)
- Spouses are adopter and adoptee
- Any spouse is impotent prior to the marriage

Relationships - Marriage

Marriages are **null and void** if:

- Any spouse is **already bound to another person** through marriage, civil union, or cohabitation.

This is proved by the **Free Status Certificate** issued by the Public Registry.

Relationships - Marriage

Marriages are also **null and void** if consent is not freely given. This means that consent:

- Extorted by violence / fear
 - Excluded by error of identity
 - Extorted by fraud about a quality of the other party
 - Vitiating by a serious defect of discretion of judgment on matrimonial life / serious psychological anomaly
 - Vitiating by the positive exclusion of marriage
 - That is conditional
 - Did not have, at the time, sufficient powers of intellect / volition
- Is invalid at law.

This is important for proceedings to dissolve / annul the marriage.

Relationships - Marriage

Recognition of marriages:

Malta recognises marriages contracted abroad as long as:

- the formalities for their validity in the third country have been followed; and
- the parties are capable of contracting marriage in line with the law of the country of their domicile.

An important exception: Malta does not recognise as valid marriages contracted with persons under 18.

Relationships - Marriage

Mutual rights and duties of spouses – Civil Code

2.(1) The Law promotes the unity and stability of the family.

*(2) The spouses shall have equal rights and shall assume equal responsibilities during marriage. **They owe each other fidelity and moral and material support.***

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



Relationships - Marriage

Mutual rights and duties of spouses – Civil Code

The matrimonial home is that home established by the spouses according to their family's needs.

Irrespective of ownership, upon marriage it acquires special burdens due to its new nature - once it is so established it cannot be transferred without the consent of both spouses / authority of the competent court / by judicial sale.

Relationships - Marriage

Mutual rights and duties of spouses – Civil Code

Vis-à-vis children: both spouses are obliged to look after, maintain, instruct and educate children.

Generally speaking, both parents are vested with joint care and custody, and both parents are obliged to support the child financially depending on the child's needs and the parents' means.

Financial maintenance is to be provided up until 23 if the child is in full-time education / training / learning, or in perpetuity in case of disability.



Matrimonial Regimes

This is the way in which spouses regulate their property relations in terms of ownership, management, and division of assets / liabilities.

May be chosen before **or** during marriage:

1. Community of acquests
2. Separation of assets
3. Community of residue under separate administration (CORSAs)

Matrimonial Regimes

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.

Matrimonial Regimes

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.

Matrimonial Regimes

1237. (2) The spouses may, in an ante-nuptial or post-nuptial contract agree that their property acquired during their marriage shall remain separate or that it shall be governed by the system of community of residue under separate administration under Sub-title V of this Title, and without prejudice to sub-article (3) hereof, no partnership or community of property in general, may be established between the spouses except that referred to in this article or in article 1236.

Matrimonial Regimes – Community of Acquests

Default regime – applies automatically if no other regime is actively chosen.

All assets / liabilities accrued during marriage become **joint property of both spouses**.

Exceptions: anything acquired before marriage, donations, inheritance.

Acts of ordinary administration can be performed without the consent of the other spouse (e.g. Paying household expenses, collecting income).

Acts of extraordinary administration (e.g. Purchasing property) requires joint consent in writing.



Matrimonial Regimes – Community of Acquests

What is included in the COA:

- All that is acquired through work
- Fruits of property owned by spouses or children if it is subject to usufruct of the parents
- Property acquired during the marriage (barring donated / inherited property)
- winnings

Matrimonial Regimes – Community of Acquests

Paraphernal property

- Property owned prior to the marriage
- Property received through inheritance or donation
- This remains the exclusive property of that spouse
- In supporting the family, paraphernal property is used only as a last resort

Matrimonial Regimes – Community of Acquests

Administration

- General rule: parties act jointly in the interest of the family
- But either spouse can perform acts of ordinary administration
- Acts of greater impact on the family – extraordinary administration – require the consent of both spouses. If these are made without such consent, then the act may be annulable

Matrimonial Regimes – Community of Acquests

COA & Trade

- Normal acts of management of trade, business, or profession exercised by a spouse remain vested in that spouse alone, even if deemed to be extraordinary.



Matrimonial Regimes – Community of Acquests

Administration

- A spouse can be excluded from administration if they are deemed by the court to be incompetent, or have been found to have mismanaged the community.
- But a spouse may then be reinstated upon request.

Matrimonial Regimes – Separation of Assets

- Has to be formalised by a public deed before a notary
- Each spouse retains ownership and control over present and future property
- Do not require consent to act on their assets / liabilities
- Upon separation / divorce, each spouse shall keep their own property
- Creditors may not turn on the other spouse for the satisfaction of any debt incurred by a spouse

Matrimonial Regimes - CORSA

- A hybrid system of both community and separation of assets
- Public deed is required
- Spouses administer their own properties separately without the need for consent
- Jointly acquired property is administered jointly
- Upon termination of the marriage, any residue is divided equally

Matrimonial Regimes - CORSA

CORSA in practice:

During marriage, Edna and Joe work and own several properties, which they own and manage under their own name. They decide to end their relationship. At this point, they find that they own:

Joe: €300,000 in shares and stocks

Edna: €650,000 in immovable property

Upon separation, that value (residue) is combined and then divided equally (i.e. $€950,000 / 2 = €475,000$ each)



Relationships – Civil Union

The Civil Unions Act – Cap. 530

A civil union is a partnership between two persons which, once registered, has the **exact same effects and consequences at law of civil marriage**.

Civil unions cannot be entered into if the parties are already bound by marriage or another union of equivalent legal status.

Civil unions contracted before the Marriage Act of 2017 may be converted into marriage. Civil unions contracted abroad are also recognised.

Relationships - Cohabitation

- A recent addition to Maltese law (2017)
- Reflects societal shifts
- Attempts to safeguard those who do not wish to marry but have spent their whole lives together and have patrimonial assets together

Relationships - Cohabitation

The Cohabitation Act – Cap. 614

A cohabitant is a person who:

- Continually and habitually lives with another person
- In the cohabitation home
- As a couple
- Enters into a public deed of cohabitation
- Is not already legally bound to another

Relationships - Cohabitation

The Cohabitation Act – Cap. 614

A cohabitation is established by means of a public deed enrolled in the Public Registry. A Free Status Certificate is required.

Capacity of parties = same as marriage & civil union.

When cohabitants marry / enter into a civil union, the cohabitation is *ipso facto* terminated.

Relationships - Cohabitation

The Cohabitation Act – Cap. 614

Cohabitants have equal, reciprocal, rights and duties towards each other.

Cohabitants also have obligations towards their children as if they were born in wedlock.

Relationships - Cohabitation

The Cohabitation Act – Cap. 614

Cohabitants may choose to establish the community of assets between them (inverse of marriage - it is not presumed).

This – and other conditions in the deed of cohabitation – may be amended or corrected throughout the relationship by means of a deed of correction / amendment **as long as** the Court is satisfied that no harm will be done to any dependent children / vulnerable cohabitants.

Relationships - Cohabitation

The Cohabitation Act – Cap. 614

Cohabitants have rights as exhaustively listed in the Act.

- Right of habitation in the cohabitation home for up to 12 months following death
- Status of tenant if the home is leased
- Same rights granted to spouses in terms of labour rights (e.g. Leave)
- Social security rights as per marriage (e.g. widow's pension)



Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES

Dissolution of Relationships

A general note:

We are currently in a transition period: amendments to the laws concerning proceedings in family law have been passed by Parliament **and are partially enforceable as of 01/10/2026.**

Lectures in this module will focus on proceedings as they were until very recently, as well as the new changes.

However jurisprudence will of course not reflect the law as it stands.

Dissolution of Relationships

A general note:

Family matters were dealt with by the **Civil Court (Family Section)**. On October 1st, this has changed to the **Family Court**.

Competences of this Court are wide and concern all matters related to families (e.g. Separation, annulment, care and custody, maintenance, etc.).

Dissolution - Marriage

Separation

Separation means that the **obligation of cohabitation** ceases for all intents and purposes, **but** spouses are still married at law – i.e. Cannot re-marry, enter into a civil union, etc.

Dissolution - Marriage

Separation

Can be pronounced by a judgment or authorised by a decree, which is communicated to the Director of the Public Registry to annotate the Act of Marriage.

Can be obtained either on the demand of one spouse against the other, or by mutual consent of the spouses.

The grounds of: adultery, excesses, cruelty, threats, grievous injury, or desertion (2yrs +) are valid grounds to demand separation – against spouse or children.

The most common ground is the inability of the spouses to continue to live together, as the marriage has irretrievably broken down.

The action for separation is extinguished by the reconciliation of the spouses, or the death of either one of them.

Dissolution - Marriage

Separation

Only affects third parties from the day on which the judgment / deed are registered in the Public Registry.

After registration, the parties are still free to reunite – thus ending the effects of their legal separation.

The action for separation is extinguished by the reconciliation of the spouses, or the death of either one of them.

However if the heirs have vested rights in that separation, they may pursue its continuation for the liquidation of the community of acquests, as the case may be.



Dissolution - Marriage

Separation

The spouse found to have given cause to the separation shall forfeit:

- rights of succession
- right of habitation following the other spouse's demise
- the things acquired from the other spouse
- any share of the other spouse's assets
- the right to maintenance

The Court has the absolute discretion to apply the above to any one or both of the spouses.

Dissolution - Marriage

Separation

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

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

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

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

Dissolution - Marriage

Divorce

- Gives the right to remarry (unlike separation).
- May be requested by any one of the spouses or jointly.
- **Does not** require prior separation.
- Granted by judgment or decree - which is then notified to the Director of Public Registry for registration.
- Divorce in Malta is **no fault - no ground needs to be attributed to the other.**
- If the parties are already separated, divorce does not amend or modify the conditions of the separation, and only the demand of dissolution may be made.
- Divorce does not affect the rights and obligations of the parties as parents.

Dissolution - Marriage

Divorce

- Joint application: at least 6 months of de facto separation
- Adversarial application: at least a year of de facto separation
- Legally separated: no period required
- There must be no reasonable prospect of reconciliation
- Spouses and/or children are all receiving maintenance as is due

Dissolution - Marriage

Divorce

Separation proceedings may be converted into divorce proceedings before the case has been adjourned for judgment.

In this case, the Court will convert the plea of separation to that of divorce, and continue to consider any other plea.

Dissolution - Marriage

Separation v Divorce

- Divorce is always **no fault**
- Divorce enables one to re-marry
- Both terminate the obligation of cohabitation
- Both terminate the right of succession towards each other
- Both have no effect on the parents' obligations towards their minor children

Dissolution - Marriage

Re-Marriage:

Joe is legally divorced from Edna and receives maintenance from her, as he is unable to work.

He is now in a long-term relationship with Ginny.

Edna can file a court application requesting the termination of her obligation to maintain Joe, with effect from the commencement of Joe's relationship with Ginny.

Dissolution - Marriage

Civil Annulment

Nullity may be sought if:

- consent is vitiated (violence, fear, error of identity, fraud, defect of discretion, psychological anomaly)
- impotency prior to marriage
- consent is conditional
- either of the parties did not, at the time of contracting marriage, have the necessary powers of intellect or volition to consent

Dissolution – Civil Union

- Can be dissolved by mutual consent – agreement permitted by Court
- Or adversarial – dissolution decided entirely by Court
- Identical rights, obligations, and procedures as to marriage

Dissolution – Cohabitation

Cohabitation may be dissolved either by one cohabitant against the other, or by mutual consent.

If the decision is joint, they may do so by means of a deed registered in the Public Registry.

If it is adversarial, the Court pronounces itself on how the matter is to be resolved (judgment).

Fault is not required.

When cohabitants marry / enter into a civil union, the cohabitation is ipso facto terminated.

Dissolution

What will a deed / judgment of separation / divorce / dissolution contain?

- All matters relating to any minor children (care, custody, access, maintenance)
- Liquidation of any community of acquests and its division
- Decision on the matrimonial home
- Decision on surnames following termination (keeping or reverting to surnames at birth)
- Any other matter related to the relationship



Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES