

Principles of Civil Law

Module 11

The Law of Persons [2]: Relationships & their Dissolution

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Diploma in Law (Malta)



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Today's lecture:

- Proceedings to terminate relationships
- The Mediator & Mediation
- The Children's Advocate
- The Support Person
- Domestic Violence and its implications in the dissolution of relationships



Applicable legislation:

The Civil Code (Cap. 16 of the Laws of Malta)

The Family Court Proceedings Regulations (Subsidiary Legislation 12.35)

The Gender-based Violence and Domestic Violence Act (Cap.581 of the Laws of Malta)

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

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.).

The Family Court

- A Superior Court presided by a judge
- Has sole and exclusive competence on:
 - Titles I, II, and IV of Book I of the Civil Code
 - Rights and duties arising from Marriage*
 - Filiation*
 - Parental Authority*
 - Maintenance Orders (Reciprocal Enforcement) Act
 - Marriage Act
 - Child Abduction and Child Custody Act
 - The Civil Unions Act
 - The Cohabitation Act

The Children's Advocate

- Warranted lawyers with experience in family law may be appointed to act as Children's Advocates
- Principal function: to act as guardian ad litem for minors by:
 - Providing legal assistance, representations, and advice
 - Acting in the best interest of the minor
 - Presenting the views of the minor to Court
 - Explaining proceedings to the minor
 - Provide any relevant information to the minor
 - Assist during mediation proceedings and sittings before the Court

The Children's Advocate

- Appointed by the Court upon request of any party / mediator and after considering the particular circumstances and best interests of the child
- Advocate shall hold sessions with the minor alone or assisted
- Advocate may recommend the appointing of a support person
- All duties depend on minor's capacity to understand



Support persons

Experts in the fields of family and juvenile matters may be appointed to provide support to parties involved in proceedings before the Family Court.

They may also be court-appointed experts or therapists, and can be appointed on the basis of their specialisation according to the case's needs (*not yet in force*).



Support persons

Duties include:

- Assessing therapeutic needs and reporting to Court
- Advising Court on any need of intervention, therapy, or special measures during or after proceedings
- Maintaining contact with parties as necessary
- Advising / requesting the Court for the issuance of Protection Orders

Domestic Violence in civil proceedings

Domestic Violence:

All acts / omissions, including verbal, physical, sexual, psychological or economic violence causing physical and or moral harm or suffering, including threats of such acts / omissions, coercion, arbitrary deprivation of liberty occurring within a family or intimate relationship, whether or not the perpetrator resides / has resided in the same residence with the victim, and shall also include children who witness that violence

Domestic Violence in civil proceedings

- A **criminal offence** but with direct repercussions on civil proceedings
- DV immediately exempts parties from the obligation of mediation (due to retraumatisation)
- Letter requesting mediation is accompanied by evidence of DV
- Court gives opportunity to the counterparty to reply to the claim and appoints the case for hearing within 4 days
- *NEW*: false accusations may give rise to criminal proceedings
- *NEW*: procedure also applies to allegations of parental alienation

Domestic Violence in civil proceedings

- Where during mediation the mediator becomes aware or suspects DV, they shall immediately inform the Judge, who may then hear the parties and decide to terminate mediation, authorising proceedings to commence

Mediation

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

- 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.

Mediation

Mediators are experts qualified in family matters. The Minister draws up two lists of mediators:

- One from which parties may jointly select a mediator to guide them;
- One from which the Court appoints a mediator, on a roster basis.

Separation / Divorce

- First step: spouse requests authorisation from the Family Court to proceed with proceedings for personal separation / divorce by filing a letter / application in the Registry
- The letter is addressed to the Registrar, indicating details of the parties and the request to proceed
- Signed by the spouse personally, or by their lawyer or legal procurator

Separation / Divorce

- *New legal provision:*
- With the letter, the spouse shall file a sworn note listing all assets & liabilities within the COA / CORSA; paraphernal property; common property & debts; paraphernal credits / debts; the matrimonial home
- Spouse must also file an official statement by their employer; FS3; statement of income for the preceding 3 years or profit and loss for the same period; or any document indicating that person's income
- Where such documents are not available, the party shall make a sworn declaration to that effect

Separation / Divorce

- *New legal provision:*
- The spouse must also present their proposal of how assets, debts, and credits and the matrimonial home are to be liquidated and divided
- The spouse must also present a proposal on the care and custody, residence, access rights, maintenance, and expenses related to any children

Separation / Divorce

- The letter is then served onto the other spouse, together with a date for the first mediation session.
- The other spouse has 20 days to reply to the proposals / submit counter-proposals

Separation / Divorce

Mediation:

- The mediator schedules a minimum of 6 sessions within a maximum period of 8 months, which may be extended to 4 months for a valid reason (*new*)
- At this stage, a Children's Advocate / Support Person may also be appointed, and they may attend the mediation

Separation / Divorce

Mediation:

- The mediator's first role is to attempt reconciliation
- If this fails, the mediator then guides the parties to draft an amicable agreement
- Where either spouse is not assisted, the mediator must ensure they are well aware of the legal importance of the eventual agreement / decision, and if the spouse remains unassisted the Court is informed

Separation / Divorce

Mediation:

- The mediator may hear the parties separately or jointly in the presence of their advisors, as well as any minor children, together with the Children's Advocate
- **Confidentiality** is the general rule of mediation: nothing said during these sittings may be used in Court against each other – **without prejudice**
- Parties may request the appointment of a judicial assistant to hear evidence on oath to assist the mediator

Separation / Divorce

Mediation:

- At any point during mediation, any party may request the court to make provisional orders on maintenance, care and custody, residence, therapeutic needs, educational and, or extracurricular activities, and any other substantial point of disagreement
- Court has a maximum of 20 days to decree, or appoint the issue for hearing, and then such decree must be issued within 15 days from the date of hearing (*new*)

Separation / Divorce

Mediation:

- Provisional decrees on maintenance must consider the needs of the child together with the income, means, and aptitude of each spouse, and the decree shall provide for expenses relating to health, education, and extracurriculars, and the manner in which each parent shall contribute (*new*)
- Maintenance may be deducted directly from the spouse's salary or by means of a standing order with the bank (*new*)

Separation / Divorce

Mediation:

- Provisional decrees on care and custody, residence, and access to children pendente lite shall take into account the rights and responsibilities of the parents and the interest of the child (*new*)
- The Court shall also consider the willingness and ability shown by each parent in the upbringing of the child (*new*)
- Access is deemed an obligation on the parent who requests it and on the parent who must provide it

Separation / Divorce

Mediation:

Breach of decrees during mediation:

- Parties may request the Court to provide for any breach by the other party
- Court shall have the power to suspend or vary any rights previously awarded



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Separation / Divorce

Mediation is closed:

- When reconciliation is successful (note to Court)
- When an agreement is reached
- When an agreement is not reached

Separation / Divorce

When mediation succeeds:

- Draft contract / divorce agreement, together with any comments or notes from the mediator, lawyers, or Children's Advocate are forwarded to the Judge

Separation / Divorce

When mediation fails:

- Court authorises either spouse to proceed with a case for personal separation / divorce within 2 months from the Court's decree

Consensual separation

- Mediation
- The contract of separation is drawn up and agreed upon
- The mediator sends the contract to the Judge for their authorisation, together with notes on the case, if necessary
- The judge gives their authorisation by means of a decree, but may request that the parties / children are heard
- The parties appear before a notary and the contract is published
- The contract is registered in the Public Registry and the necessary annotations to the marriage certificate and their acts of civil status are made.

Consensual separation – alternative procedure

- The parties independently agree on a separation contract and file it together in court by means of a note signed by their notary & lawyers
- The Court refers the matter to a mediator
- The mediator hears the parties / children and gives the court its advice, requesting authorisation
- The Court shall then issue its decree on the matter

Adversarial Separation proceedings

The trial

- Written proceedings stage: the sworn application, reply, and any counter-claim as applicable are filed
- Pre-trial: the Court can appoint a children's advocate / support person where it deems it necessary (if not already appointed during mediation)
- Pre-trial: the Court fixes time-limits within which the parties shall produce all documentary evidence and witnesses that cannot be produced by affidavit (*new: max 6 months*)

Adversarial Separation proceedings

The trial

- Pre-trial: the Court may appoint any experts it deems necessary to assist it
- Pre-trial: the Court may on demand give any provisional orders it deems fit
- *NEW*: prioritization of non-patrimonial matters where the dissolution of the COA is complex
- Trial: The advocates for the spouses and children make their submissions to the Court
- Judgment is then given and the separation is notified to the Director Public Registry

Divorce

Elements required:

- Joint application: at least 6 months of de facto separation out of the last 12
- Adversarial application: at least a year of de facto separation out of the last 2 years
- Legally separated: no period required in either case
- There must be no reasonable prospect of reconciliation
- Spouses and/or children are all receiving maintenance as is due



Divorce

Consensual divorce (without previous separation)

- Mediation proceedings as described, initiated by application instead of a letter
- Judge authorises agreement
- Parties appear before notary for publication
- Agreement is registered and necessary annotations to acts of civil status are made

Divorce

Consensual divorce (with previous separation)

- Application filed detailing information of the marriage and separation
- Declaration on oath on the facts described
- Request for dissolution of marriage
- Judge gives its judgment in camera but may call upon the parties to hear them confirm the facts

Divorce

Adversarial divorce (without previous separation)

- Identical to adversarial separation proceedings, including mediation
- Pendente lite decrees may be issued at any stage, including requests to dissolve the community of acquests
- Fault is not required, but if proved, may impact the judgment

Divorce

Adversarial divorce (with previous separation)

- Identical to adversarial separation proceedings, but the only request that may be made is to dissolve the marriage
- Other spouse can only contest this demand by proving that the applicant has not paid maintenance due, or that if divorce is granted, it would be harder for that party to obtain the payment of maintenance

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 – 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



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