

NV No. 616 /2018

The Ministry for Foreign Affairs and Trade Promotion presents its compliments to the Embassy of the Republic of the Philippines and has the honour to refer to the latter's Note Verbale DPN-36-2018 of 13 February 2018 requesting information on the Maltese Civil Code that contains a number of provisions which regulate marriage and divorce in Malta.

The Maltese Civil Code provides that entering into a marriage contract creates a new 'community' and provides for the regulation this community. Under Maltese Law, Chapter 16 of the Laws of Malta contains the provisions that regulate marriage in Malta.

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580>

Annulments are regulated by the Marriage Act Chapter 225 of the Laws of Malta, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8749&l=1> giving specific attention to Article 19, which outlines an extensive list of situations that may give rise to an annulment of marriage.

The Civil Code Amendment Act, 2011 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23431&l=1> introduced divorce law to the Maltese legislation and today spouses are able to seek out divorce proceedings.

The Ministry for Foreign Affairs and Trade Promotion avails itself of this opportunity to renew to the Embassy of the Republic of the Philippines the assurances of its highest consideration. *J*

22<sup>nd</sup> February 2018



Embassy of the Republic of the Philippines  
Rome

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JONATHAN A. HIPE  
Signing Officer

1. The first part of the document is a list of the names of the members of the committee.

2. The second part is a list of the names of the members of the committee.

3. The third part is a list of the names of the members of the committee.

## CHAPTER 255

### MARRIAGE ACT

*To regulate marriages and to provide for matters connected therewith or ancillary thereto.*

12th August, 1975;

1st October, 1975

*ACT XXXVII of 1975, as amended by Acts XXXIV of 1981, III of 1983, I and XVII of 1995, IX of 2000, XXXI of 2002, IX of 2004, I of 2005, III of 2008, XI of 2009 and XVI of 2014, XI of 2017 and XXIII of 2017.*

#### Preliminary

1. The title of this Act is Marriage Act.

2. (1) In this Act, unless the context otherwise requires -

"act of marriage" means the act of marriage drawn up and completed in accordance with article 293 of the Civil Code;

"Agreement" means the Agreement between the Holy See and Malta on the Recognition of Civil Effects to Canonical Marriages and to the Decisions of the Ecclesiastical Authorities and Tribunals about the Same Marriages, as well as the Protocol of Application thereto, both signed in Malta on the 3rd February 1993, as well as the Third Additional Protocol thereto signed in Malta on the 27th January 2014, which Agreement and protocols are reproduced in the Schedule to this Act;

"Canon law" means the Code of Canon Law promulgated by the competent organs of the Catholic Church and any other rule of law so however called of the said Church relative to marriage;

"catholic marriage" means a marriage celebrated in accordance with the norms and formalities of Canon Law or with a dispensation therefrom granted by the competent organ in accordance with Canon Law;

"Marriage Registry", in respect of marriages taking place in the Island of Malta or on board a Maltese registered ship while this is not in the internal waters of any country other than Malta, means the division in the Public Registry Office in the said island charged by the Minister with responsibility for matters relating to marriages, and, in respect of marriages taking place in Gozo, means the division in the Public Registry Office in Gozo charged by the Minister as aforesaid;

"Minister" means the Minister responsible for the Public Registry;

"parish priest" for the purposes of this Act includes also any ecclesiastic who according to Canon Law, is equivalent to a parish priest or substitutes a parish priest;

"Registrar" means the public officer designated by the Minister to perform the functions of Marriage Registrar in respect of a

Title.

Interpretation.

*Amended by:*

*I, 1995.2;*

*IX, 2000.8;*

*I, 2005.25;*

*III, 2008.17;*

*XV, 2009.52;*


*XXI, 2014.2;*

*XXIII, 2017.95;*

Cap. 16.

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Marriage Registry, and includes, for any purpose of this Act, any person authorised by the Registrar for that purpose, and for the purposes of article 15 shall also include any Mayor of a Local Council or any person who has been certified as a celebrant of civil marriages by the Public Registry; and, in respect of marriages taking place on board a Maltese registered ship while this is not in the internal waters of any country other than Malta includes a master of a passenger vessel authorised for that purpose by the Registrar;

"Tribunal" for the purposes of articles 23, 24, 29 and 30 means the competent court or courts which in accordance with Canon Law applicable at the time can pronounce on the validity of a catholic marriage.

(2) Except where it is otherwise expressly provided, all the provisions of this Act shall apply to all marriages whether contracted in a civil or in a religious form.

#### Restrictions on marriage

Age for marriage.  
Substituted by:  
L.1995.3.  
Amended by:  
XXIII.2017.96.

3. (1) A marriage contracted between persons either of whom is under the age of sixteen shall be void.

(2) Without prejudice to the provisions of sub-article (1), a person who is subject to parental authority or to tutorship may not validly contract marriage without the consent of the person exercising such authority, or of the tutor, as the case may be.

(3) Notwithstanding the provisions of sub-article (2) the court of voluntary jurisdiction within whose jurisdiction the minor habitually resides, may upon good cause being shown, authorise the celebration of a marriage referred to in that sub-article, where the consent of the person exercising paternal authority or of the tutor, as the case may be, is not forthcoming; and for the purposes of proceedings in connection with this sub-article, article 781(a) of the Code of Organization and Civil Procedure shall not apply.

Cap.12.

Infirmity of mind.

4. A marriage contracted between persons either of whom is incapable of contracting by reason of infirmity of mind, whether interdicted or not, shall be void.

Marriages within prohibited degrees.  
Amended by:  
L.1995.4.  
XXIII.2017.97.

5. (1) A marriage contracted between -

- (a) an ascendant and a descendant in the direct line;
- (b) siblings, whether of the full or half blood;
- (c) persons related by affinity in the direct line; or
- (d) the adopter and the adopted person or a descendant, or the spouse, of the adopted person.

shall, whether the relationship aforesaid derives from legitimate or illegitimate descent, be void.

(2) For the purposes of sub-article (1), the relationship of an adopted person shall be deemed to subsist both with reference to his natural and to his adoptive family.

(3) The court of voluntary jurisdiction within whose jurisdiction either of the spouses resides may upon good cause

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being shown dispense from the provisions of sub-article (1)(c) and (d).

6. A marriage contracted between persons either of whom is bound by a previous marriage or by a registered cohabitation or a unilaterally declared cohabitation under the Cohabitation Act shall be void.

Persons bound by previous marriage.  
Amended by:  
XI, 2017, 56.  
Cap. 571

#### Formalities to precede marriage

7. (1) The celebration of marriage must be preceded by the publication of banns of matrimony.

Banns of matrimony.  
Amended by:  
III, 1985, 2;  
I, 1995, 5;  
XXIII, 2017, 98.

(2) Banns of matrimony shall state the name, surname, place of birth and residence of each of the persons to be married, the place where they intend to contract marriage and, unless the Registrar in the case of natural filiation or other circumstances deems proper to act otherwise, the name and surname of the parents of each of the persons to be married.

(3) The publication of the banns consists in the posting up of the banns in a place at the Marriage Registry accessible to the public and reserved for that purpose and in keeping the banns so posted up for a period of not less than eight consecutive days excluding Saturdays, Sundays and other public holidays. The banns shall also be posted up at the place where official acts are usually posted up in the town, village or parish in Malta in which each of the persons to be married resides.

(4) Banns of matrimony shall be published by or by order of the Registrar on a request in writing signed by both persons to be married or, where the marriage is to take place by proxy, by the proxy and the other person.

(5) A request for the publication of banns shall not be entertained unless it is delivered to the Registrar earlier than six weeks before the date of the intended marriage, or than such shorter period as the Registrar may in his discretion accept in special circumstances, and unless and until, in addition to all other relevant information, there are delivered to the Registrar-

- (a) the certificate of birth of each of the persons to be married;
- (b) a declaration on oath made and signed by each of the persons to be married stating that to the best of his or her knowledge and belief there is no legal impediment to the marriage or other lawful cause why it should not take place:

Provided that if it is shown to the satisfaction of the Registrar that it is impracticable to obtain a certificate of birth required to be delivered by this sub-article, the Registrar may accept instead such other document or evidence as he may deem adequate for the purpose of this article.

(6) The Registrar may administer oaths for the purposes of this Act.

(7) Where banns have been published in accordance with the

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provisions of this Act and it appears to the Registrar that there is no legal impediment or other lawful cause why the marriage should not take place, the Registrar shall, at the request of either of the parties to be married, issue a certificate that the banns have been so published and indicate therein, in addition to other relevant information, the date of the completion of such publication.

(8) Subject to the provisions of article 10, no person shall officiate at a marriage unless a certificate issued in accordance with sub-article (7) in respect of the persons to be married has been produced to him; and that certificate or a certificate issued in terms of article 10 shall be final and conclusive proof of its contents.

Refusal by Registrar to publish banns or issue certificates.

8. (1) If the Registrar is of the opinion that he cannot proceed to the publication of the banns or that he cannot issue a certificate of such publication he shall notify the persons requesting the publication of his inability to do so, giving the reasons therefor.

(2) In any such case, either of the persons to be married may apply to the competent court of voluntary jurisdiction for an order directing the Registrar to publish the banns or to issue a certificate of their publication, as the case may require, and the court may, after hearing the applicant and the Registrar, give such directions as it may deem appropriate in the circumstances, and the Registrar shall act in accordance with any such directions.

Marriage to be contracted within certain period from banns.  
Amended by:  
III. 1983.3.

9. (1) A marriage contracted before the sixth day after the completion of the period during which the banns are to remain posted up in accordance with the provisions of this Act, and a marriage contracted after the expiration of three months from the day on which the banns are first posted up as aforesaid, shall be void.

(2) Where the period of three months referred to in sub-article (1) has expired, the banns shall be published again and the procedure for their publication shall be started afresh.

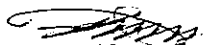
Exceptions.

10. Notwithstanding the provisions of articles 8 and 9 -

- (a) the period during which the banns are to remain posted up in accordance with article 7 or the period which must elapse, in accordance with article 9, before the marriage can take place, or both such periods, may be shortened by the Registrar if he is satisfied that the shortening of those periods is justified by the circumstances of the case; but in any such case the shortening of the periods must result from the banns:
- (b) where either of the persons to be married is in imminent danger of death, the publication of the banns may be dispensed with altogether by the Registrar and the marriage may be contracted on his authority without any banns being published, if each of the persons to be married makes and signs the declaration on oath required by article 7(5); and in any such case the Registrar shall certify under his hand that the marriage, with dispensation from the publication of

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banns, is authorised by him and shall specify in the certificate the manner in which he ascertained the imminent danger of death.

#### Formalities of marriage

11. (1) A marriage may be contracted either in a civil form between two consenting individuals, that is to say in the form established by this Act for civil marriage, or in a religious form, that is to say in a religious form in accordance with the provisions of this Act.

Forms of marriage.  
Amended by:  
XXXVII, 1981.2;  
XXIII, 2017.99.

(2) A marriage, whether contracted in a civil or in a religious form, shall be valid only if all the provisions of this Act applicable thereto or to marriage generally are satisfied or observed.

(3) In the case of the non-observance of any formality or other similar requirement relating to the celebration of the marriage or preparatory thereto, a marriage may not be annulled and shall be held to have always been valid, if the demand for annulment is not made within two years after the celebration of the marriage.

12. (1) Registration is not essential to the validity of marriage.

Registration of marriage.  
Substituted by:  
I, 1995.6.

(2) Registration shall not operate as to validate a marriage which, independently of such registration, is null.

(3) A marriage shall not have effect for any purpose of law unless and until the appropriate act of marriage is completed and delivered for registration in accordance with the provisions of articles 293 and 294 of the Civil Code.

Cap.16.

13. (1) All marriages shall be contracted in the presence of at least two witnesses in addition to the officer, clergyman or other person officiating at the marriage ceremony.

Witnesses.

(2) Any person over the age of eighteen years, even if related to any of the persons to be married, may be a witness for the purposes of this article or of article 14.

14. (1) Marriage may be contracted by proxy with the written authority of the Registrar if one of the persons to be married is not, and the other person is, present in Malta, and there are, in the opinion of the Registrar, grave reasons for permitting the marriage to take place by proxy.

Marriage by proxy.  
Amended by:  
XXXVII, 1981.3.

(2) The proxy must be operative and must contain a clear indication of the persons between whom the marriage is to take place; it shall be dated and shall be signed by the person making it in the presence of two witnesses and countersigned by the said witnesses and by a person authorised to authenticate signatures by the law of the country where the proxy is signed.

(3) A proxy shall cease to be operative ninety days after it is signed.

(4) In the case of a marriage contracted by proxy signed earlier than ninety days before marriage or which is revoked before the marriage without the knowledge of the other party, the marriage

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may not be annulled and shall be held to have always been valid, if there has been cohabitation for at least one month after the celebration of the marriage.

Form of civil  
marriage.  
Amended by:  
XXIII.2017.100.

15. (1) A civil marriage shall be contracted in the presence of the Registrar, or of an officer of the Marriage Registry authorised by the Registrar to officiate at marriages, and of the witnesses required by this Act.

(2) During the ceremony, the Registrar or other officiating officer in front of whom the marriage takes place shall ask each of the persons to be married, first to one of them and then to the other, whether that person will take the other as such person's spouse, and upon the declaration of each of such persons that they so will, made without any condition or qualification, the Registrar or other officiating officer shall declare them to be spouses.

(3) The act of marriage shall be completed and delivered for registration immediately after the marriage.

(4) Without prejudice to the provisions of sub-article (2) the persons to be married may indicate to the Registrar or other officiating officer in front of whom the marriage takes place the form of words which will be used during the ceremony, including any readings, songs or music:

Provided that the persons to be married must make such request by not later than seven days prior to the date set for the marriage.

Place where civil  
marriage may be  
contracted.  
Amended by:  
III. 2008.18;  
XI. 2009.49.

16. (1) A civil marriage shall be contracted in the Marriage Registry or on board a Maltese registered ship while this is not in the internal waters of any country other than Malta or in such other place open to the public as the persons to be married may designate and which the Registrar accepts as appropriate.

(2) If one of the persons to be married cannot, by reason of infirmity of body or other lawful cause, attend any of the places referred to in sub-article (1), the marriage may be contracted in such other place as the Registrar may deem appropriate in the circumstances.

Form of religious  
marriage.  
Amended by:  
I.1995.7.

17. (1) Saving the provisions of article 21, a religious marriage shall be contracted according to the rites or usages of a church or religion which is recognised for the purposes of this Act and which either of the persons to be married belongs to or professes; but the consent of the persons to be married must, in order that the marriage may be valid, conform in substance to the consent required by article 15(2).

(2) A church or religion shall be recognised for the purposes of this Act if it is generally accepted as a church or religion or if it is recognised for the purposes of this article by the Minister; and if any question arises as to the application of this sub-article, the decision of the Minister aforesaid shall be final and conclusive.

(3) The act of marriage shall be completed and delivered for

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registration immediately after the marriage.

#### Validity and annulment of marriages

18. A marriage, whether celebrated in Malta or abroad, shall be valid for all purposes of law in Malta if - Conflict of laws.

- (a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the marriage is celebrated are observed; and
- (b) as regards the capacity of the parties, each of the persons to be married is, by the law of the country of his or her respective domicile, capable of contracting marriage.

19. (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:


Nullity of marriage.  
Substituted by:  
XXXII: 1981.4.

- (a) if the consent of either of the parties is extorted by violence, whether physical or moral, or fear;
- (b) if the consent of either of the parties is excluded by error on the identity of the other party;
- (c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;
- (d) if the consent of either of the parties is vitiated by a serious defect of discretion or judgment on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;
- (e) if either of the parties is impotent, whether such impotence is absolute or relative, but only if such impotence is antecedent to the marriage;
- (f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;
- (g) if either of the parties subjects his or her consent to a condition referring to the future;
- (h) if either of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent.

(2) Subject to the provisions of this Act, an action for the annulment of a marriage may only be commenced by one of the parties to that marriage, and this provision shall apply even where such party is, under any provision of law, incapable of suing or being sued, and in any such case the action may be commenced by such party notwithstanding such incapacity, saving any assistance

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or other condition the court may deem appropriate to order. Where an action has been commenced by a party to a marriage, the action may be continued by any of the heirs.

Annulment of marriage on the grounds of non-consummation.  
Added by:  
I.1995.8.

19A. (1) A valid marriage may be annulled at the request of one of the spouses on the grounds that the other party has refused to consummate the same.

(2) The provisions of article 19(2) shall apply to an action for the annulment of a marriage referred to in sub-article (1) as it applies to an action for the annulment of a marriage therein referred to.

(3) An action for the annulment of a marriage under this article may not be instituted before the lapse of three months from the date of the celebration of the marriage.

Putative marriage.  
Substituted by:  
XXXII.1981.5.

20. (1) If a marriage is declared to be void the effects of a valid marriage shall be deemed to have existed, in favour of the spouses until the judgment of nullity has become a *res judicata* when both spouses had contracted the marriage in good faith.

(2) The effects of a valid marriage shall be deemed to have always existed with reference to the children born or conceived during a marriage declared to be void as well as with reference to children born before such marriage and acknowledged before the judgment declaring the nullity.

(3) If only one of the spouses was in good faith such effects shall apply in his or her favour and in favour of the children.

(4) If both spouses were in bad faith the effects of a valid marriage shall apply only in favour of the children born or conceived during the marriage declared to be void.

(5) Notwithstanding any other provision, the spouse who was responsible for the nullity of the marriage, is bound to pay maintenance to the other spouse in good faith for a period of five years, which duty shall cease if the party in good faith marries during such period.

#### Catholic Marriages

Recognition of Catholic marriage.  
Added by:  
I.1995.10.

21. (1) A marriage celebrated in Malta after the coming into force of this article, in accordance with the norms and formalities established by Canon Law shall as from the moment of its celebration, be recognised and have the same civil effects as a marriage celebrated in accordance with the norms and formalities of this Act.

(2) The provisions of sub-article (1) shall apply only where:

(a) the bans required by this Act have been either published or dispensed with in accordance with articles 7 to 10 and the Registrar has issued a certificate attesting such publication or dispensation;

(b) the parish priest who in accordance with Canon Law has jurisdiction in the place where the marriage was celebrated transmits to the Director of the Public

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Registry an act of marriage in the form as may be prescribed duly signed by such authority as is provided for in the Agreement; and

- (c) no impediment to the marriage as is referred to in articles 3, 4, 5 and 6, subsists. So however that the competent organs of the Catholic Church may for the purpose of catholic marriages under this Act grant authorisations or dispense from the restrictions in article 3(2) and article 5(1)(c) and (d).

(3) The certificate referred to in sub-article (2)(a) hereof shall constitute definite and conclusive proof of its contents.

22. (1) Notwithstanding anything contained in this Act or in the Civil Code relative to the procedure whereby, and the term in which, an act of marriage is to be registered, the Parish Priest referred to in article 21(2)(b), shall transmit to the Public Registry the act of marriage therein referred to for registration within five working days of the celebration of the marriage.

Transcription of  
act of marriage.  
Added by:  
I, 1995, I.O.  
Cap. 16.

(2) Failure to transmit the act of marriage for registration as is provided for in sub-article (1) shall not be an obstacle to such transmission after the lapse of such term. Either spouse may at all times demand that such transmission be effected by the Parish Priest who shall remain at all times obliged to effect such transmission.

(3) When the act of marriage has been transmitted to the Public Registry, the Director of the Public Registry shall ascertain that the provisions of article 21 apply to the marriage, and upon having so ascertained he shall register the act which shall be deemed for all effects at law to be an act of marriage referred to in article 12. Upon registration of the act of marriage the Director of the Public Registry shall, as soon as may be, give notice of such registration to the Parish Priest transmitting the act of marriage.

(4) A marriage which is recognised in accordance with article 21 shall upon transmission and registration of the act of marriage be recognised as from the moment of its celebration. Such recognition shall not, however, prejudice any property rights lawfully acquired by third parties in good faith before the transmission of the act of marriage as aforesaid in this article, where such act of marriage is transmitted after the expiry of the term referred to in sub-article (1) hereof.

23. A decision which has become executive, given by a tribunal, and declaring the nullity of a catholic marriage shall, where one of the parties is domiciled in, or a citizen of, Malta, and subject to the provisions of article 24 be recognised and upon its registration in accordance with the said article 24 shall have effect as if it were a decision by a court and which has become *res judicata*.

Recognition of  
decisions given by  
tribunals.  
Added by:  
I, 1995, I.O.  
Amended by:  
XXI, 2014, 3.

24. (1) Registration of a decision as is referred to in article 23 shall be effected by the Court of Appeal.

Registration of  
decisions given by  
tribunal.  
Added by:  
I, 1995, I.O.

(2) A request for such registration shall be made by application

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filed in the registry of the said court, and which shall be served on the Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse.

(3) The respondents shall have a right to file a reply within twelve working days of the service upon them of the application.

(4) Together with the application, the applicant shall file:

- (a) an authentic copy of the decision;
- (b) a declaration of executivity according to Canon Law issued by the Tribunal that has given the decision.


(5) The Court of Appeal registers that decision by giving a decree declaring the decision enforceable in Malta: such decree shall not be given unless the Court of Appeal is satisfied that:

- (i) the Tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was a catholic marriage; and
- (ii) during and in the proceedings before the Tribunal there was assured to the parties the right of action and defence in a manner substantially not dissimilar to the principles of the Constitution of Malta; and
- (iii) there does not exist a contrary judgement binding the parties pronounced by a court, and which has become *res judicata*, based on the same grounds of nullity; and
- (iv) in the case of a marriage celebrated in Malta after the 11th August, 1975, there has been delivered or transmitted to the Public Registry the act of marriage laid down by this Act; and
- (v) in the case of a decision delivered on or after the 16th July, 1975, but before the coming into force of this article, the request for recognition is presented by both spouses; or where it is presented only by one of the spouses it is satisfied that the other spouse does not oppose the registration of the decision.

(6) Notwithstanding the provisions of sub-article (5)(v) where a request for the registration of a decision as is referred to in article 23(1) issued by a tribunal on or after the 16th July, 1975 but before the coming into force of this article, is made by one only of the spouses, and the other spouse opposes such registration, the Court of Appeal shall give the spouse opposing such registration a term not exceeding two months within which the spouse opposing such registration may present a plea, in accordance with Canon Law applicable, before the competent Tribunal to have the decision revoked; and the Court of Appeal shall only register that decision where the party opposing the registration has not entered the plea in the term established, or has entered the plea but the same was rejected or the decision declaring the marriage null was confirmed by the Tribunal.

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25. A decree given by the Roman Pontiff "*super matrimonio rato et non consummato*", when one of the spouses is domiciled in or is a citizen of Malta, shall, subject to the provisions of article 26, be recognised and upon its registration in accordance with the said article 26, shall have effect as if it were a decision given by a court and which has become *res judicata* annulling a marriage on the grounds of non-consummation, in accordance with article 19A.

Recognition of decrees *super matrimonio rato et non consummato*.  
Added by:  
L.1995.10.

26. (1) Registration of a decree as is referred to in article 25 shall be effected by the Court of Appeal.

Registration of decree.  
Added by:  
L.1995.10.

(2) A request for such registration shall be made by application accompanied by an authentic copy of the pontifical decree filed in the registry of the said court, and which shall be served on the Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse.

(3) The respondents shall have a right to file a reply within twelve working days of service upon them of the application.

(4) (a) Registration shall be effected by an order of the Court of Appeal declaring the decree of the Roman Pontiff enforceable in Malta.

(b) The Court of Appeal shall register the decree if it is satisfied that it refers to a catholic marriage which was celebrated after the coming into force of this article and either of the spouses is domiciled in or is a citizen of Malta.

(5) Notwithstanding the provisions of sub-article (4) hereof, the Court of Appeal shall give a decree which refers to a catholic marriage celebrated before the coming into force of this article where the application therefor is filed by both spouses, or where it is filed by one only of the spouses, the other spouse does not oppose the registration.

27. The provisions of article 19(2) shall apply to applications made in terms of articles 24 and 26.

Applicability of sub-article (2) of article 19.  
Added by:  
L.1995.10.

28. In the course of an application under articles 24 and 26 the Court of Appeal shall not go into the merits of the case leading to the decision or the decree the registration of which is demanded in the application but shall limit itself to ascertain if the requirements of this Act for the registration requested exist.

Court of Appeal not to re-examine issue.  
Added by:  
L.1995.10.

29. (1) Where the evidence of any person is required before a Tribunal, any of the parties may request the appropriate section of the Civil Court to order that the evidence of such person be heard by one of the judicial assistants according to the residence of the witness, and upon such order being given the court shall fix a date for the hearing of the witness before the judicial assistant in the manner provided in articles 606 and 607 of the Code of Organization and Civil Procedure.

Evidence required before tribunal.  
Added by:  
L.1995.10.  
Amended by:  
XXXI. 2002.262.

(2) The parties to the case before the tribunal shall be notified of the date fixed for the hearing of the witness before the judicial

Cap.12.

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Office of Legal Affairs

22 FEB 2019

  
JONATHAN A. HIPE  
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assistant and may be present and be assisted by an advocate or legal procurator.

(3) Any deposition taken in the manner provided in the preceding sub-articles shall also be signed by the supplementary judge or magistrate and deposited in the registry of the court. The Registrar shall give official copies of any evidence so registered to any of the parties or the Chancellor of the Tribunal.

(4) Article 610(4) and (5) of the said Code shall apply to evidence taken under this article.

Cap.12.

(5) All the provisions of the Code of Organization and Civil Procedure and of any other law relating to the admissibility of evidence and to the competence and compellability of witnesses, as well as to privileged communications, shall apply to evidence taken under this article as they apply to evidence of witnesses before the Civil Court, First Hall.

Independence of actions.  
Added by:  
I.1995.10.  
Amended by:  
XXII.1995.362.  
Substituted by:  
XXI.2014.4.

30. The fact that a case for the declaration of nullity of a catholic marriage is pending before a court or before the Tribunal at the time when another case is filed or is pending before a court or before the Tribunal for the declaration of nullity of the same marriage shall not hinder the court or the Tribunal from continuing to hear or from determining the case filed or pending before it.

Failure to oppose within term.  
Added by:  
I.1995.10.

31. (1) Where a person who is served with an application as is referred to in articles 24 and 26 does not oppose the request for registration within the term prescribed for filing a reply, he shall be deemed to have admitted the application.

(2) When all the parties to an application have admitted the same, the court shall not put the application for hearing but shall give the relative decree *in camera*.

Applicability of other articles to catholic marriages.  
Added by:  
I.1995.10.

32. Articles 11 to 17 shall not apply to catholic marriages celebrated after the coming into force of this article\*.

Religious protection.  
Added by:  
XXIII.2017.101.

32A. Nothing contained in this Act shall be construed as obliging an official of a religious body in accordance with article 37 of this Act to solemnise a particular form of marriage which is not recognised by the religious body of which that official is a member..

#### Miscellaneous

Recognition of foreign decisions or other equivalent official acts affecting status of married persons.  
Amended by:  
I.1995.9;  
XXIII.2017.102.

33. Without prejudice to the implementation of any regulation applicable between the Member States of the European Union, a decision of a foreign court or a decision or other official act of equivalent effect of a foreign competent authority on the status of a married person or affecting such status shall be recognised for all purposes of law in Malta if the decision is given or if the other official act is issued by a court or a competent authority of the country in which either of the parties to the proceedings is domiciled or of which either of such parties is a citizen.

\*See Legal Notice 47 of 1995.

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## 34. The Minister may make regulations -

- (a) respecting the fees and other charges to be levied and paid in respect of anything done or services rendered under this Act or in respect of any other matter provided for under this Act or related thereto or connected therewith;
- (b) respecting the forms to be used for the purposes of this Act; and
- (c) generally for carrying out any of the provisions of this Act and for any other matter incidental or supplementary to any of the foregoing matters.

Regulations.  
Amended by:  
1.1995.9.

35. Without prejudice to articles 21 to 31, Canon Law shall, in so far as it had effect as part of the law of Malta on marriage, cease to have such effect, and all jurisdiction in relation to marriage shall vest in the courts of Malta in accordance with the relevant provisions of the Code of Organization and Civil Procedure.

Law and jurisdiction in relation to marriage.  
Amended by:  
1.1995.9.11  
Cap. 12.

36. (1) Save as hereinafter provided, the provisions of articles 18, 19, 19A, 20 and 35 shall apply to all marriages whether contracted before or after the commencement of this Act, including a marriage in respect of which proceedings were instituted prior to such commencement.

Application of the Act.  
Amended by:  
1.1995.9.12.

## (2) Nothing in this Act shall -

- (a) affect the validity of a marriage which was valid at the time it was contracted; or
- (b) affect the continued operation of a judgment having effect in Malta which is *res judicata* on or before July 15, 1975.

(3) Where any signature is required of any person who cannot or is unable to write, the requirements of this Act shall be satisfied if in place of his signature there is set a mark of such person attested as provided in article 634(1) of the Code of Organization and Civil Procedure or by the Registrar.

Cap. 12.

37. (1) The Government may enter into agreements with other churches, religions or denominations regarding the recognition of marriages celebrated in accordance with the rules and norms of that church, religion or denomination, and declarations of nullity or annulment of such marriages by the organs of such church, religion or denomination having authority in accordance with its rules.

Agreements with other Churches, etc.  
Added by:  
1.1995.13.

(2) Such agreements shall conform substantially to the provisions of the Agreement between the Holy See and Malta referred to in this Act.

(3) When an agreement as is referred to in the preceding sub-article has been entered into by the Government, the Minister responsible for justice may make an order extending the provisions of this Act, with such modifications as may be required, to marriages celebrated in accordance with the rules and norms of such church, religion or denomination, and its declaration of nullity or annulment.

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Marriages of  
convenience.  
Added by:  
IX, 2004, 20.

38. (1) Any person who contracts a marriage with the sole purpose of obtaining -

- (a) Maltese citizenship; or
- (b) freedom of movement in Malta; or
- (c) a work or residence permit in Malta; or
- (d) the right to enter Malta; or
- (e) the right to obtain medical care in Malta.

shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years.

(2) Any right or benefit obtained by a person convicted of an offence under sub-article (1) on the basis of the marriage referred to in that sub-article (1) may be rescinded or annulled by the public authority from which it was obtained.

(3) Any person who contracts a marriage with another person knowing that the sole purpose of such other person in contracting the marriage is one or more of the purposes referred to in sub-article (1) shall be guilty of an offence and shall on conviction be liable for the same punishment laid down in sub-article (1).

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Added by:  
 L. 1995.15.  
 Amended by:  
 XXI. 2014.5.

## SCHEDULE

(ARTICLE 2)

AGREEMENT BETWEEN THE HOLY SEE AND MALTA ON THE  
 RECOGNITION OF CIVIL EFFECTS TO CANONICAL MARRIAGES AND TO  
 DECISIONS OF ECCLESIASTICAL AUTHORITIES AND TRIBUNALS ABOUT  
 THE SAME MARRIAGES\*

(as amended by the Terzo Protocollo Addizionale)

(The Agreement is in the Italian and English languages).

La Santa Sede e la Repubblica di Malta,

- tenendo conto, da parte della Santa Sede, della dottrina cattolica sul matrimonio, come è anche espressa nel Codice di Diritto Canonico, nonché dell'insegnamento del Concilio Ecumenico Vaticano II sulle relazioni tra la Chiesa e lo Stato e, da parte della Repubblica di Malta, dei principi sanciti nella Costituzione di Malta;
- volendo assicurare, nel rispetto dei diritti fondamentali dell'uomo e dei valori della famiglia basata sul matrimonio, una libera scelta in materia matrimoniale;

hanno riconosciuto l'opportunità di addivenire ad un accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni.

A tale fine la Santa Sede, rappresentata da Mons. Pier Luigi Celata, Arcivescovo titolare di Doclea, Nunzio Apostolico a Malta, e la Repubblica di Malta, rappresentata dal Prof. Guido de Marco, Vice Primo Ministro e Ministro per gli Affari Esteri, hanno stabilito, di comune intesa, quanto segue.

## Articolo 1

1. Sono riconosciuti gli effetti civili ai matrimoni celebrati a Malta secondo le norme canoniche della Chiesa Cattolica, dal momento della loro celebrazione, a condizione che:

a) risulti da un attestato del "Marriage Registrar" che sono state eseguite le pubblicazioni richieste dalla legge civile, o che vi è stata dispensa dalle stesse, costituendo tale attestato una prova definitiva ed insindacabile della regolarità delle pubblicazioni o della dispensa dalle stesse;

b) il Parroco del luogo dove è stato celebrato il matrimonio trasmetta al Registro Pubblico un esemplare originale dell'atto di matrimonio redatto nella forma stabilita di comune intesa fra le Alte Parti, e sottoscritto dall'Ordinario del luogo o dal Parroco o dal loro Delegato, che ha assistito alla celebrazione del matrimonio.

2. La Santa Sede prende atto che la Repubblica di Malta riconosce gli effetti civili dei matrimoni canonici quando non sussista fra i contraenti un impedimento che, secondo la legge civile, produca la nullità del matrimonio e che la stessa legge civile consideri inderogabile o non dispensabile.

\*Article 14 of Act I of 1995:

14. For the purposes of the Ratification of Treaties Act, the Government is hereby authorised to ratify the Agreement between the Holy See and Malta on the recognition of Civil effects to canonical marriages and to the decisions of the ecclesiastical authorities and Tribunals about the same marriages.

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## Articolo 2

1. L'atto di matrimonio deve essere trasmesso al Registro Pubblico per la debita trascrizione entro cinque giorni utili dalla celebrazione del matrimonio.

2. Qual ora la trasmissione dell'atto di matrimonio non venga effettuata entro il termine stabilito, rimane l'obbligo del Parroco di effettuarla al più presto possibile. Le parti, o anche una di esse, hanno sempre il diritto di chiedere tale trasmissione. La trasmissione tardiva non osta alla trascrizione.

3. Ove consti che le condizioni stabilite nell'articolo 1 siano state soddisfatte, il Direttore del Registro Pubblico trascrive l'atto di matrimonio e, al più presto possibile, ne dà notizia in iscritto al Parroco.

## Articolo 3

La Repubblica di Malta riconosce per tutti gli effetti civili, nei termini del presente Accordo, le sentenze di nullità e i decreti di ratifica di nullità di matrimonio emessi dai tribunali ecclesiastici e diventati esecutivi.

## Articolo 4

La Chiesa illuminerà i futuri sposi in merito alla specifica natura del matrimonio canonico e, di conseguenza, alla giurisdizione ecclesiastica in materia di vincolo matrimoniale.

I futuri sposi prenderanno formalmente atto di ciò, per accettazione, in iscritto.

## Articolo 5

Le sentenze di nullità e i decreti di ratifica di nullità di matrimonio emessi dai tribunali ecclesiastici sono riconosciuti come efficaci per gli effetti civili, a condizione che:

a) dalle parti, o da una di esse, sia presentata domanda alla Corte d'Appello insieme con una copia autentica della sentenza o decreto, e con una dichiarazione di esecutività secondo il diritto canonico rilasciata dal tribunale che ha emanato la decisione esecutiva;

b) consti alla Corte d'Appello che:

(i) il tribunale ecclesiastico era competente a conoscere della causa di nullità del matrimonio in quanto questo era stato celebrato secondo la forma canonica della Chiesa Cattolica o con dispensa da essa;

(ii) nel procedimento giudiziario canonico è stato assicurato alle parti il diritto di agire e di resistere in giudizio, in modo sostanzialmente non difforme dai principi della Costituzione di Malta;

(iii) nel caso di un matrimonio celebrato a Malta dopo l'11 agosto 1975 è stato consegnato, o trasmesso, al Registro Pubblico l'atto di matrimonio prescritto dalla legge civile;

(iv) non esiste una sentenza contraria emanata dai tribunali civili e passata in giudicato, basata sugli stessi capi di nullità.

## Articolo 6


Le disposizioni di cui agli articoli 3 e 5 si applicano anche:

a) ai matrimoni canonici celebrati prima dell'entrata in vigore del presente Accordo;

b) alle sentenze di nullità e ai decreti di ratifica di nullità di matrimonio emanati

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Office of Legal Affairs

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JONATHAN A. HIPE  
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dai tribunali ecclesiastici tra il 16 luglio 1975 e l'entrata in vigore del presente Accordo:

(i) quando la domanda per il riconoscimento degli effetti civili sia presentata da ambedue le parti o, almeno, da una di esse non contraddicente l'altra parte:

(ii) nel caso che vi sia una parte contraddicente, quando, dopo che alla stessa parte sia stato concesso dalla Corte d'Appello un termine, non superiore a due mesi, per presentare istanza al tribunale ecclesiastico contro la sentenza di nullità o il decreto di ratifica di nullità di matrimonio, sia trascorso inutilmente tale termine o, se sia stata interposta l'istanza, il competente tribunale ecclesiastico abbia respinto l'istanza o confermato la precedente sentenza di nullità o decreto di ratifica di nullità di matrimonio.

#### Articolo 7

1. I decreti del Romano Pontefice "super matrimonio rato et non consummato" sono riconosciuti per gli effetti civili dalla Repubblica di Malta, dietro richiesta, accompagnata da copia autentica del decreto pontificio, presentata alla Corte d'Appello dalle parti o da una di esse.

2. La Corte d'Appello ordina il riconoscimento dei decreti di cui al numero 1 del presente articolo se consta ad essa che gli stessi decreti sono relativi a matrimoni celebrati secondo le norme canoniche della Chiesa Cattolica:

a) dopo l'entrata in vigore del presente Accordo;

b) anche prima dell'entrata in vigore di questo Accordo, a condizione che la copia del decreto sia presentata da ambedue le parti o almeno da una di esse non contraddicente l'altra parte.

#### Articolo 8

Nell'espletamento delle proprie funzioni in ordine al riconoscimento dei decreti di cui all'articolo 7, come pure delle sentenze di nullità e dei decreti di ratifica di nullità di matrimonio di cui all'articolo 3, la Corte d'Appello non procede al riesame del merito.

#### Articolo 9

Gli effetti civili derivanti dal riconoscimento di cui agli articoli 3 e 7 sono regolati dalla legge civile.

#### Articolo 10

Se in avvenire sorgessero difficoltà di interpretazione o di applicazione del presente Accordo, la Santa Sede e la Repubblica di Malta affideranno la ricerca di un'amichevole soluzione ad una commissione paritetica che sarà composta, per parte della Santa Sede, dal Nunzio Apostolico a Malta e dal Presidente della Conferenza Episcopale Maltese o da loro delegati, e, per parte della Repubblica di Malta, dal Ministro della Giustizia e dall'Avvocato Generale o da loro delegati.

#### Articolo 11

Il presente Accordo entrerà in vigore al momento in cui le Parti si scambieranno ufficiale comunicazione della avvenuta piena applicazione di tutte le disposizioni dello stesso Accordo mediante gli strumenti giuridici propri dei rispettivi ordinamenti.

Fatto alla Valletta, Malta, il tre febbraio millenovecentonovantatre, in doppio


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REPUBBLICA MALTESE  
Ministero della Giustizia  
Avvocato Generale

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Avvocato Generale

originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Santa Sede

Per la Repubblica di Malta

(+Peir Luigi Celata)

(Guido de Marco)

PROTOCOLLO ADDIZIONALE  
(as amended by the Terzo Protocollo Addizionale)

Al momento della firma dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei Tribunali ecclesiastici circa gli stessi matrimoni, la Santa Sede e la Repubblica di Malta, desiderando precisare ulteriormente alcune disposizioni dello stesso Accordo per assicurarne un'accurata applicazione ed evitare ogni difficoltà d'interpretazione, dichiarano di comune intesa:

I. In relazione all'articolo 1,1.b)

a) Le Alte Parti stabiliranno, di comune intesa, il modulo dell'atto di matrimonio prima dell'entrata in vigore dell'Accordo, mediante scambio di Note tra la Nunziatura Apostolica ed il ministero degli Affari Esteri.

Esse seguiranno la stessa procedura qualora, in futuro, concordassero di apportare modifiche a tale modulo.

b) Escluso il caso di pericolo di morte in cui si trovi almeno una delle parti, il "Marriage Registrar", insieme all' attestato di cui all'articolo 1,1.a), rilascia alle parti un modulo dell'atto di matrimonio, debitamente riempito con tutti i dati relativi agli sposi. Il modulo così preparato dev'essere consegnato alle parti al più presto dopo la scadenza del periodo delle pubblicazioni e, in ogni caso, non più tardi di quattro giorni prima della data fissata per la celebrazione del matrimonio. Spetta alle parti di trasmettere immediatamente tale modulo al Parroco del luogo della celebrazione. Qualora rilevi qualche discrepanza tra i dati relativi agli sposi come risultano dal modulo di cui sopra e dai documenti canonici, il Parroco deve fare, al più presto possibile, le opportune verifiche al fine di concordare col "Marriage Registrar" la corretta stesura dello stesso modulo.

II. In relazione all'articolo 1,2

Ai fini dell'applicazione dell'articolo 1,2 si intendono come impedimenti considerati inderogabili o non dispensabili dalla legge civile:

a) il difetto di età, che è di sedici anni compiuti per ambedue le parti;

b) l'infermità di mente di almeno una delle parti che renda incapace di contrarre matrimonio;

c) la consanguineità in linea retta e, fino al secondo grado, in linea collaterale;

d) la sussistenza di un precedente matrimonio, valido agli effetti civili, di almeno una delle parti.

III. In relazione all'articolo 5,b.i)

Si considera che il tribunale ecclesiastico era competente a conoscere della causa di nullità del matrimonio anche quando questo è stato impugnato per difetto di

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22 FEB 2019

  
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qualche elemento richiesto per la validità della forma canonica o della dispensa da essa.

IV. In relazione agli articoli 6,b.i) e 7,2.b)

Il termine perentorio per la presentazione della nota di contraddizione alla Corte di Appello è di dodici giorni utili dalla data della notifica fatta dalla stessa Corte alla parte interessata.

V. Col termine "parroco" si intende anche ogni ecclesiastico equiparato al parroco, o che lo sostituisce, a norma del diritto canonico.

Il presente Protocollo Addizionale fa parte integrante dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, contestualmente firmato tra la Santa Sede e la Repubblica di Malta.

Fatto alla Valletta, Malta il tre febbraio millenovecentonovantatre, in doppio originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Santa Sede

Per la Repubblica di Malta

(+ Pier Luigi Celata)

(Guido de Marco)

#### Secondo Protocollo Addizionale

*(Cancellato dal Terzo Protocollo Addizionale - reproduced hereunder)*

#### TERZO PROTOCOLLO ADDIZIONALE

La Repubblica di Malta e la Santa Sede considerano conveniente modificare le disposizioni dell'Accordo tra la Santa Sede e la Repubblica di Malta sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, e modificare il relativo Protocollo Addizionale, entrambi firmati a Malta il 3 febbraio 1993, come pure abrogare il relativo Secondo Protocollo Addizionale, firmato a Malta il 6 gennaio 1995.

La Repubblica di Malta e la Santa Sede hanno stabilito, di comune intesa, quanto segue:

#### Articolo I

#### Definizioni


Nel presente Protocollo:

"Accordo" significa l'Accordo tra la Repubblica di Malta e la Santa Sede sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, firmato a Malta il 3 febbraio 1993;

"Protocollo Addizionale" significa il Protocollo Addizionale dell'Accordo, anch'esso firmato a Malta il 3 febbraio 1993;

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"Secondo Protocollo Addizionale" significa il Secondo Protocollo Addizionale dell'Accordo, firmato a Malta il 6 gennaio 1995.

Articolo 2

Modificazione dell'Accordo

1. L'Articolo 4 paragrafo 1 dell'Accordo e' cancellato.
2. L'Articolo 4 paragrafo 2 e' rinumerato come Articolo 4.

Articolo 3

Modificazione del Protocollo Addizionale

1. Il paragrafo III del Protocollo Addizionale e' cancellato.
2. I paragrafi successivi sono rinumerati di conseguenza.

Articolo 4

Cancellazione del Secondo Protocollo Addizionale

Il Secondo Protocollo Addizionale e' cancellato.

Il presente Terzo Protocollo Addizionale fa parte integrante dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, firmato a Malta tra la Santa Sede e la Repubblica di Malta il 3 febbraio 1993.

Fatto alla Valletta, Malta, il ventisette di gennaio 2014, in doppio originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Repubblica di Malta

Per la Santa Sede

.....  
Il Ministro per gli Affari Esterni

.....  
Il Nunzio Apostolico

AGREEMENT BETWEEN THE HOLY SEE AND MALTA ON THE  
RECOGNITION OF CIVIL EFFECTS TO CANONICAL MARRIAGES AND TO  
DECISIONS OF ECCLESIASTICAL AUTHORITIES AND TRIBUNALS ABOUT  
THE SAME MARRIAGES\*  
(as amended by the Terzo Protocollo Addizionale)

The Holy See and the Republic of Malta.

- considering, on the part of the Holy See, Catholic doctrine on marriage, as also expressed in the Code of Canon Law, as well as the teaching of the Second Vatican Ecumenical Council on relations between the Church and the State, and, on the part of the Republic of Malta, the principles enforced by the Constitution of Malta;

- wanting to ensure, in line with fundamental human rights and the values of the family based on marriage, a free choice in matters of marriage;

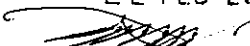
have recognized that it is opportune to reach an agreement on the recognition of civil

\*Article 14 of Act I of 1995:

14. For the purposes of the Ratification of Treaties Act, the Government is hereby authorised to ratify the Agreement between the Holy See and Malta on the recognition of Civil effects to canonical marriages and to the decisions of the ecclesiastical authorities and Tribunals about the same marriages.

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22 FEB 2019

  
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effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages.

Wherefore, the Holy See, as represented by Msgr. Pier Luigi Celata, titular Archbishop of Doclea, Apostolic Nuncio to Malta, and the Republic of Malta, as represented by Prof. Guido de Marco, Deputy Prime Minister and Minister of Foreign Affairs, have, by common accord, established as follows.

#### Article 1

1. Civil effects are recognized for marriages celebrated in Malta according to the canonical norms of the Catholic Church, from the moment of their celebration, provided that:

a) it results from a certificate issued by the Marriage Registrar that the banns required by civil law have been published, or that a dispensation from the same has been granted; such certificate shall constitute definitive and conclusive proof of the regularity of the banns or of the dispensation therefrom;

b) the Parish Priest of the place where the marriage was celebrated transmits to the Public Registry an original of the act of marriage compiled in the form established by common accord between the Parties, and signed by the local Ordinary or the Parish Priest or their Delegate, who has officiated at the celebration of the marriage.

2. The Holy See takes note that the Republic of Malta recognizes the civil effects of canonical marriages where there does not exist between the spouses an impediment that, according to civil law, produces the nullity of the marriage and that the said civil law considers as mandatory or not dispensable.

#### Article 2

1. The act of marriage shall be transmitted to the Public Registry for due transcription within five working days of the celebration of the marriage.

2. Should the transmission of the act of marriage not be effected within the established time limit, it shall be the duty of the Parish Priest to effect the same as soon as possible. The spouses, or either of them, always retain the right to demand such transmission. Late transmission shall not be an obstacle to transcription.

3. When it is ascertained that the conditions laid down in article 1 have been complied with, the Director of the Public Registry transcribes the act of marriage and, as soon as possible, gives written notice of this to the Parish Priest.

#### Article 3

The Republic of Malta recognizes for all civil effects, in terms of this Agreement, the judgements of nullity and the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals and which have become executive.

#### Article 4

The Church shall enlighten prospective spouses about the specific nature of canonical marriage and, consequently, about ecclesiastical jurisdiction concerning the marriage bond.

The prospective spouses shall, by way of acceptance, formally take note of this in writing.

#### Article 5

The judgements of nullity and the decrees of ratification of nullity of marriage

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**JONATHAN A. HIPE**  
Signing Officer

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2019 FEB 22 10:00 AM

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given by the ecclesiastical tribunals are recognized as producing civil effects, provided that:

a) a request is presented, by the parties or either of them, to the Court of Appeal together with an authentic copy of the judgement or decree, as well as a declaration of its executivity according to canon law issued by the tribunal that has given the executive decision;

b) the Court of Appeal ascertains that:

(i) the ecclesiastical tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was celebrated according to the canonical form of the Catholic Church or with a dispensation therefrom;

(ii) during the canonical judicial proceedings there was assured to the parties the right of action and defense, in a manner substantially not dissimilar to the principles of the Constitution of Malta;

(iii) in the case of a marriage celebrated in Malta after the 11 August 1975, there has been delivered or transmitted to the Public Registry the act of marriage laid down by the civil law;

(iv) there does not exist a contrary judgement pronounced by the civil tribunals and which has become *res judicata*, based on the same grounds of nullity.

#### Article 6

The provisions of articles 3 and 5 apply also:

a) to canonical marriages celebrated before the coming into force of this Agreement;

b) to the judgements of nullity and to the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals between the 16 July 1975 and the coming into force of the present Agreement:

(i) if the request for the recognition of the civil effects is presented by both parties or, at least, by one of them with the other party not dissenting; or

(ii) in case there is a dissenting party, if, after the Court of Appeal has granted to this same party a time limit, not exceeding two months, to present a plea to the ecclesiastical tribunal against the judgement of nullity or the decree of ratification of nullity of marriage, such time limit has elapsed to no avail or, if the plea had been entered, the competent ecclesiastical tribunal has rejected the plea or has confirmed the previous judgement of nullity or decree of ratification of nullity of marriage.

#### Article 7

1. The decrees of the Roman Pontiff "super matrimonio rato et non consummato" are recognized as regards civil effects by the Republic of Malta, upon request, accompanied by an authentic copy of the pontifical decree, presented to the Court of Appeal by the parties or by either of them.

2. The Court of Appeal shall order the recognition of the decrees referred to in paragraph 1 of this article if it results to it that such decrees refer to marriages celebrated according to the canonical norms of the Catholic Church:

a) after the coming into force of this Agreement;

b) and also prior to the coming into force of this Agreement, on condition that the copy of the decree is presented by both parties, or at least by one of them with the other party not dissenting.

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## Article 8

In the exercise of its specific functions as regards the recognition of the decrees mentioned in article 7, as well as of the judgements of nullity or of the decrees of ratification of nullity of marriage mentioned in article 3, the Court of Appeal does not re-examine the merits of the case.

## Article 9

The civil effects flowing from the recognition mentioned in articles 3 and 7 are regulated by civil law.

## Article 10

If in future there shall arise difficulties of interpretation or of application of the present Agreement, the Holy See and the Republic of Malta shall entrust the search for an amicable solution to a Joint Commission that shall be composed of the Apostolic Nuncio to Malta and of the President of the Maltese Episcopal Conference or of their delegates for the Holy See, and of the Minister for Justice and the Attorney General or of their delegates for the Republic of Malta.

## Article 11

The present Agreement shall come into force when the Parties exchange an official communication that the full implementation of all its provisions through the appropriate legal instruments according to their respective legal systems has taken place.

Done at Valletta, Malta, on the third day of February, one thousand nine hundred and ninety-three, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Holy See

For the Republic of Malta

(+ Pier Luigi Celata)

(Guido de Marco)

PROTOCOL OF APPLICATION

*(as amended by the Terzo Protocollo Addizionale)*

At the time of signature of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages, the Holy See and the Republic of Malta, desiring to further specify certain provisions of the same Agreement to ensure their precise application and to avoid all difficulties of interpretation, by common accord declare:

I. With reference to article 1.1.b)

a) The Parties shall establish, by common accord, the form of the act of marriage before the coming into force of the Agreement, through exchange of Notes between the Apostolic Nunciature and the Ministry of Foreign Affairs.

They shall follow the same procedure should they, in future, agree to modify the said form.

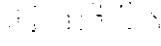
b) Except in case of danger of death in which at least one of the parties finds itself, the Marriage Registrar shall, together with the certificate mentioned in article 1.1. a), issue to the parties a form of the act of marriage, duly filled in with all the information referring to the spouses. The form so prepared shall be consigned to the parties as early as possible after the completion of the period of publication of the

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GUIDO DE MARCO  
Minister for Justice

banns and, in any case, not later than four days prior to the date fixed for the celebration of the marriage. It is incumbent on the parties to immediately transmit such form to the Parish Priest of the place of celebration. Should the Parish Priest notice any discrepancy between the information referring to the spouses as it results from the form mentioned above and from the canonical documents, the Parish Priest must, as soon as possible, make the opportune verifications so as to reach agreement with the Marriage Registrar about the correct compilation of the said form.

II. With reference to article 1.2

For the purpose of putting into effect article 1.2 the following are understood to be impediments considered mandatory or not dispensable by the civil law:

- a) the lack of age, which is sixteen years completed for both parties;
- b) the infirmity of mind of at least one of the parties which renders it incapable of contracting marriage;
- c) consanguinity in the direct line and up to the second degree in the collateral line;
- d) the subsistence of a previous marriage, valid in civil law, of at least one of the parties.

III. With reference to article 5.b.i)

The ecclesiastical tribunal is considered to have been competent to judge the case of nullity of the marriage even when it was challenged on the ground of the lack of some element required for the validity of the canonical form or of the dispensation therefrom.

IV. With reference to articles 6.b.i) and 7.2.b)

The peremptory time limit for the presentation of the note of pleas to the Court of Appeal is of twelve working days from the date of notification made by the same Court to the interested party.

V. The terms "parish priest" refers also to any ecclesiastic equivalent to the parish priest, or who substitutes him, according to canon law.

The present Protocol of Application forms an integral part of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of ecclesiastical Authorities and tribunals about the same marriages contextually signed between the Holy See and the Republic of Malta.

Done at Valletta, Malta on the third day of February, one thousand nine hundred ninety-three, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Holy See

For the Republic of Malta

(+ Pier Luigi Celata)

(Guido de Marco)

**Second Additional Protocol**

*(Deleted by the Third Additional Protocol - reproduced hereunder)*

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## THIRD ADDITIONAL PROTOCOL

The Republic of Malta and the Holy See consider it advisable to amend the provisions of the Agreement between the Holy See and Malta on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages, and to amend the Protocol of Application thereto, both signed in Malta on the 3rd February 1993, as well as to rescind the Second Additional Protocol thereto, signed in Malta on the 6th January 1995.

Wherefore, the Republic of Malta and the Holy See have, by common accord, established as follows:

## Article 1

## Definitions

In the present Protocol:

"Agreement" means the Agreement between the Holy See and the Republic of Malta on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical authorities and tribunals about the same marriages, signed in Malta on the 3rd February 1993;

"Protocol of Application" means the Protocol of Application to the Agreement, also signed in Malta on the 3rd February 1993;

"Second Additional Protocol" means the Second Additional Protocol to the Agreement, signed in Malta on the 6th January 1995.

## Article 2

## Amendment of the Agreement

1. Article 4 paragraph 1 of the Agreement is deleted.
2. Article 4 paragraph 2 shall be re-numbered as Article 4.

## Article 3

## Amendment of the Protocol of Application

1. Paragraph III of the Protocol of Application is deleted.
2. The following paragraphs shall be re-numbered accordingly.

## Article 4

## Deletion of Second Additional Protocol

The Second Additional Protocol is deleted.

The present Third Additional Protocol forms an integral part of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages, signed in Malta between the Holy See and the Republic of Malta on the 3rd February 1993.

Done at Valletta, Malta, on the twenty seventh of January 2014, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Republic of Malta

For the Holy See


.....  
Minister of Foreign Affairs

.....  
Apostolic Nuncio

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## CHAPTER 16

## CIVIL CODE

*To amend and consolidate the Laws relating to Persons and the Laws respecting rights relative of Things and the different modes of acquiring and transmitting such rights.*

11th February, 1870

22nd January, 1874

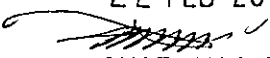
*This Code consolidates the following:*

*ORDINANCE VII of 1868 (as amended by Ordinances: I of 1870, IV of 1907, XIV of 1913, II and V of 1920; Acts: III of 1930, XLII of 1933; Ordinances: XL of 1935, XIX of 1937, III of 1938, XXXIX of 1939 and XXV of 1940); ORDINANCE I of 1873 (as amended by Ordinances: I of 1908, XIII of 1932; Act XXI of 1933; Ordinances: XX of 1934, XVIII of 1938 and XXII of 1939); Article I of ORDINANCE VI of 1895 and Articles 2, 4, 5, 6, 7 (1) and 9 of ORDINANCE XIII of 1895.*

*This Code was subsequently amended by Ordinances: II and VII of 1944; Acts: XXVIII of 1948, XI of 1952; Ordinances: IV and XXXIX of 1961, XXI and XXV of 1962; Legal Notice 4 of 1963; Act XXVIII of 1963; Legal Notice 46 of 1965; Acts: XXXI of 1965, II and XXXI of 1966, XVI of 1967, VI of 1968, VI and XXXVIII of 1972, XI and XXV of 1973; Legal Notice 54 of 1973; Acts: XLVI of 1973, I and LIV of 1974, XXXVII of 1975; Legal Notice 93 of 1975; Act LVIII of 1975; Legal Notice 148 of 1975; Act LV of 1975; Legal Notice 46 of 1976; Acts: XXII, XXVII and XXXIX of 1976; Legal Notice 43 of 1977; Acts: VII and XI of 1977, XXII and XXX of 1979, XXX, XLIX and L of 1981, VII and IX of 1982, VI and XIII of 1983, XX of 1984, VII of 1985, XII and XXXI of 1986; Legal Notice 161 of 1989; Acts: VIII of 1990, XVII of 1991, IX of 1992, V and XXI of 1993, III and XXVIII of 1994, and IV, XXIV and XXX of 1995; Legal Notice 212 of 1997; Acts IX and XXII of 2000, XX and XXXI of 2002, III, VI, IX, XIII and XVIII of 2004; Legal Notice 355 of 2004; Acts XI, XIII, XX and XXII of 2005, V of 2006, VIII, XIII and XVIII of 2007; Legal Notice 407 of 2007; Acts III, IV and XV of 2008, III, X, XII and XV of 2009, E, VIII, XX and XXIII of 2010, XIV and XXIV of 2011, and II, XV, XIX and XXIV of 2012; Legal Notices 218, 311, 426 and 465 of 2012; Acts IV and VII of 2013, and IX and XXV of 2014; Legal Notice 92 of 2015; Acts XI, XII, XVI, XX and XXX of 2015, IV, XIII, XIV, XXIV, XXV, LI of 2016, VIII of 2017, XV of 2017, XVII of 2017, XXIII of 2017 and VIII of 2018.*

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## ARRANGEMENT OF CODE

Short Title		Articles
	<b>BOOK FIRST</b>	<b>1</b>
	<b>OF PERSONS</b>	
Preliminary		1A
Title I.	Of the Rights and Duties Arising from Marriage	2-66N
<i>Sub-title I.</i>	Of the Mutual Rights and Duties of Spouses	2-6A
<i>Sub-title II.</i>	Of the Mutual Rights and Duties of Ascendants, Descendants and Brothers	7-34
<i>Sub-title III.</i>	Of Personal Separation	35-66
<i>Sub-title IV.</i>	Of Divorce	66A-66N
Title II.	Of Filiation	67-112
<i>Sub-title I.</i>	Of the Filiation of Children conceived or born in Wedlock	67-77
<i>Sub-title II.</i>	Of the Proof of Filiation of Children Conceived or Born in Wedlock	78-85
<i>Sub-title III.</i>	Of the Filiation of Children Conceived and Born out of Wedlock and of the Presumption that a Person was Conceived or Born in Wedlock	86-112
§I	Of the Filiation of Children Conceived and Born out of Wedlock	86-100A
§II	Of the Presumption that a Person was Conceived or Born in Wedlock	101-112
Title III.	Of Adoption	113-130A
Title IV.	Of Parental Authority	131-156
<i>Sub-title I.</i>	Of the Effects of Parental Authority in regard to Minors	132-149
<i>Sub-title II.</i>	How Parental Authority Ceases	150-156
Title V.	Of Minority and of Tutorship	157-187
<i>Sub-title I.</i>	Of Minority	157
<i>Sub-title II.</i>	Of Tutorship	158-187
§I	Of the Appointment and Removal of Tutors	159-171
§II	Of the Tutor's Administration	172-187
Title VI.	Of Majority, Guardianship, Interdiction and Incapacitation	188-192
<i>Sub-title I.</i>	Of Majority	188
<i>Sub-title I A.</i>	Of Guardianship	188A-188D
<i>Sub-title II.</i>	Of Interdiction and Incapacitation	189-192
Title VII.	Of Absentees	193-233
<i>Sub-title I.</i>	Of the Curatorship of Absentees	194-204
<i>Sub-title II.</i>	Of the Provisional Possession of the Property of an Absentee	205-222
<i>Sub-title III.</i>	Of the Absolute Possession of the Property of an Absentee	223-228
<i>Sub-title IV.</i>	Of the Effects of Absence in regard to eventual Rights of the Absentee	229-232
<i>Sub-title V.</i>	Of the Curatorship of Minor Children of Absentee	233
Title VIII.	Of Acts of Civil Status	234-306
<i>Sub-title I.</i>	General Provisions	234-271
<i>Sub-title II.</i>	Of Acts of Birth	272-292A
<i>Sub-title III.</i>	Of Acts of Marriage	293-295
<i>Sub-title IV.</i>	Of Acts of Death	296-306

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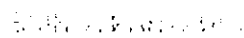
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Articles

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## BOOK SECOND

## OF THINGS

## PART I

## OF RIGHTS OVER THINGS

Title I.	Of Things and their Different Kinds	307-319
<i>Sub-title I.</i>	Of Immovable Property	308-311
<i>Sub-title II.</i>	Of Movable Property	312-319
Title II.	Of Ownership	320-327
Title III.	Of the Rights of Usufruct, Use and Habitation	328-399
<i>Sub-title I.</i>	Of Usufruct	328-388
§I	Of the Rights of the Usufructuary	332-348
§II	Of the Obligations of the Usufructuary	349-377
§III	Of the Manner in which Usufruct Terminates	378-388
<i>Sub-title II.</i>	Of Use and Habitation	389-399
Title IV.	Of Praedial Easements	400-488
	General Provisions	400-401
<i>Sub-title I.</i>	Easements Created by Law	402-453
§I	Easements arising from the Situation of Property	403-406
§II	Of Walls and Ditches which separate Neighbouring Tenements	407-433
§III	Of Distances required in certain cases	434-444
§IV	Of Eavesdrop	445
§V	Of Right of Way and of Watercourse	446-453
<i>Sub-title II.</i>	Of Easements created by the Act of Man	454-488
§I	Of the Different Kinds of Easements which can be created by Act of Man and of the manner in which such Easements are Created	454-469
§II	Of the manner in which Easements are Exercised	470-478
§III	Of the manner in which Easements are Extinguished	479-488
Title V.	Of Community of Property	489-523
<i>Sub-title I.</i>	Of the Nature of the Community of Property and of the Rights of the Co-owners during the Community	489-495A
<i>Sub-title II.</i>	Partition of Common Property	496-514
<i>Sub-title III.</i>	Of Sale by Licitation	515-523
Title VI.	Of Possession	524-559
<i>Sub-title I.</i>	Of the Nature of Possession	524-533
<i>Sub-title II.</i>	Of the Rights of the Possessor in case of Molestation	534-539
<i>Sub-title III.</i>	Of the Rights and Obligations as between the Possessor and the Owner	540-559
§I	Of the Fruits of the Thing possessed, of the Expenses incurred in connection therewith and of the Right of Retention	540-550
§II	Of the Obligations of the Possessor with regard to the Restoration of the Thing	551-557
§III	Of the Particular Effects of the Possession of Movables	558-559

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Articles


## PART II

OF THE MODES OF ACQUIRING AND  
TRANSMITTING PROPERTY AND OTHER RIGHTS  
OVER OR RELATING TO THINGS

	General Provisions	560
Title I.	Of Occupancy	561-565
Title II.	Of Accession	566-584
<i>Sub-title I.</i>	Of the Right of Accession to what is produced by the Thing	567
<i>Sub-title II.</i>	Of the Right of Accession in regard to Immovable Things	568-571
<i>Sub-title III.</i>	Of the Right of Accession in regard to Movable Things	572-584
Title III.	Of Successions	585-958
	General Provisions	585-587
<i>Sub-title I.</i>	Of Testate Successions	588-787
§I	Of Wills	588-595
§II	Of the Capacity of Disposing or Receiving by Will	596-613
§III	Of the Property which may be disposed of by Will	614-653
	Of the Reserved Portion and Disherison	615-630
	Of the Rights of the Surviving Spouse	631-639
	Of the Abatement of Testamentary Dispositions exceeding the disposable Portion	647-653
§IV	Of the Form of Wills	654-682
	Of Ordinary Wills	654-672
	Of Privileged Wills	673-682
§V	Of the Institution of Heirs. of Legacies. and of the Right of Accretion	683-748
	Of the Institution of Heirs. and of Legacies	683-685
	Of Persons and Things forming the subject of a Disposition	686-709
	Of Conditional or Limited Dispositions	710-720
	Of the Effects of Legacies and of the Payment thereof	721-736
	Of the Right of Accretion	737-742
	Of the Revocation and Lapse of Testamentary Dispositions	743-748
§VI	Of Substitution and of Entails	751-761
§VII	Of Testamentary Executors	762-778
§VIII	Of the Opening and Publication of Wills	779-780
§IX	Of the Revocation of Wills	781-787
<i>Sub-title II.</i>	Of Intestate Successions	788-816
	General Provisions	788-795
	Of the Capacity to Succeed	796-799
	Of Representation	801-807
§I	Of Succession by Descendants and the Surviving Spouse	808-811
§II	Of Succession by Ascendants and Collaterals	812-815
§III	Of the Rights of the Government	816
<i>Sub-title III.</i>	Provisions common to Testate Successions and to Intestate Successions	831-958K
§I	Of the Opening of Successions. of Continuance of Possession in the person of the Heir. and of Prescription of certain Actions	831-845
§II	Of the Acceptance and Renunciation of an Inheritance	846-905
	Of the Acceptance of an Inheritance	846-859
	Of the Renunciation of an Inheritance	860-876
	Articles	
	Of the Benefit of Inventory	877-902

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	Of Vacant Inheritance	903-905
<i>§III</i>	Of Partition	906-912
<i>§IV</i>	Of Collation	913-938
<i>§V</i>	Of the Payment of Debts	939-945
<i>§VI</i>	Of the Effects of Partition and of Warranty of Shares	946-952
<i>§VII</i>	Of Partitions made by the Father, the Mother, or other Ascendants among their Descendants	953-958
<i>§VIII</i>	Of Cross-Border Successions	958A-958K
Title III A.	Of Trusts and their effects	958L-958U
Title IV.	Of Obligations in General	959-1235
<i>Sub-title I.</i>	Of Contracts	960-1011
<i>§I</i>	Of the Conditions Essential to the Validity of Contracts	966-991
	Of the Capacity of Contracting Parties	967-973
	Of Consent	974-981
	Of the Subject-matter of Contracts	982-986
	Of the Consideration of Contracts	987-991
<i>§II</i>	Of the Effects of Contracts	992-1001
<i>§III</i>	Of the Interpretation of Contracts	1002-1011
<i>Sub-title II.</i>	Of Quasi-contracts, Torts and Quasi-torts	1012-1051A
<i>§I</i>	Of Quasi-contracts	1012-1028B
<i>§II</i>	Of Torts and Quasi-torts	1029-1051A
<i>Sub-title III.</i>	Of the Various Kinds of Obligations	1052-1124B
<i>§I</i>	Of Conditional Obligations	1052-1069
	Of Conditions in general and of their Various Kinds	1052-1062
	Of the Suspensive Condition	1063-1065
	Of the Resolutive Condition	1066-1069
<i>§II</i>	Of Obligations with a Limited Time	1070-1079
<i>§III</i>	Of Alternative and Potestative Obligations	1080-1088
<i>§IV</i>	Of Joint and Several Obligations	1089-1109
	Of Joint and Several Creditors	1090-1093
	Of Joint and Several Debtors	1094-1109
<i>§V</i>	Of Divisible and Indivisible Obligations	1110-1117
	Of Divisible Obligations	1113-1114
	Of Indivisible Obligations	1115-1117
<i>§VI</i>	Of Obligations with a Penalty Clause	1118-1124
<i>§VII</i>	Of Fiduciary Obligations	1124A-1124B
<i>Sub-title IV.</i>	Of the Effects of Obligations	1125-1144
<i>Sub-title V.</i>	Of the Modes of Extinction of Obligations	1145-1231
<i>§I</i>	Of Payment	1146-1178
	Of Payment in general	1146-1163
	Of Payment with Subrogation	1164-1167
	Of Appropriation of Payments	1168-1172
	Of Tender of Payment and of Deposit	1173-1178
<i>§II</i>	Of Novation	1179-1189
<i>§III</i>	Of the Remission of Debts	1190-1195
<i>§IV</i>	Of Set-off	1196-1204
<i>§V</i>	Of Merger	1205-1206
<i>§VI</i>	Of the Loss of the Thing due	1207-1208
<i>§VII</i>	Of Rescission	1209-1231
<i>Sub-title VI.</i>	Of the Proof of Obligations and their Extinguishment	1232-1235
Title V.	Of Marriage Contracts	1236-1345
<i>Sub-title I.</i>	Of the Institutes of Dowry and Dower *	1248

Articles

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<i>Sub-title III.</i>	Of the Community of Acquests *	1316-1333
<i>Sub-title IV.</i>	Of Paraphernal Property *	1334-1337
<i>Sub-title V.</i>	Of Community of Residue under Separate Administration *	1338-1345
Title VI.	Of Sale	1346-1484A
<i>Sub-title I.</i>	Of the Contract of Sale	1346-1364
<i>Sub-title II.</i>	Of the Persons who may Buy or Sell	1365-1369
<i>Sub-title III.</i>	Of the Things which may be Sold	1370-1377
<i>Sub-title IV.</i>	Of the Obligations of the Seller	1378-1432
§I	Of Delivery	1379-1407
§II	Of Warranty	1408-1432
	Of Warranty of the Quiet Possession of the Thing sold	1409-1423
	Of Warranty in respect of Latent Defects of the Thing sold	1424-1432
<i>Sub-title V.</i>	Of the Obligations of the Buyer	1433-1439
<i>Sub-title VI.</i>	Of the Dissolution and Rescission of Sales	1440-1468
	Of Redemption	1441-1468
<i>Sub-title VII.</i>	Of the Assignment of Debts and other Rights	1469-1484A
Title VII.	Of Exchange	1485-1493
Title VIII.	Of Emphyteusis	1494-1524
Title IX.	Of Contracts of Letting and Hiring	1525-1643
	General Provision	1525
<i>Sub-title I.</i>	Of the Letting of Things	1526-1622A
§I	Of the Rights and Obligations of the Lessor	1539-1553
§II	Of the Rights and Obligations of the Lessee	1554-1565
§III	Of the Dissolution of the Lease	1566-1576D
§IV	Of Special Rules as to Leases of Rural Tenements yielding Fruits	1577-1589
§V	Of the Right of Preference in the Lease of Things	1590-1612
§VI	Of Sub-letting	1613-1622A
<i>Sub-title II.</i>	Of the Letting of Work and Industry	1623-1643
§I	Of Carriers by Land or Water	1628-1632
§II	Of Contract of Works or <i>locatio operis</i>	1633-1643
Title X.	Of Contracts of Partnership	1644-1688
	General Provisions	1644-1647
<i>Sub-title I.</i>	Of the Different Kinds of Partnership	1648-1652
<i>Sub-title II.</i>	Of the Obligations of Partners as between themselves	1653-1675
<i>Sub-title III.</i>	Of the Obligations of Partners towards Third Parties	1676-1678
<i>Sub-title IV.</i>	Of the Dissolution of Partnership	1679-1688
Title XI.	Of the Constitution of Annuities	1689-1712
<i>Sub-title I.</i>	Of Perpetual Annuities	1694-1701
<i>Sub-title II.</i>	Of Life Annuities	1702-1712
Title XI A.	Of Life Insurance Contracts	1712A-1712M
<i>Sub-title I.</i>	Contractual Issues	1712A-1712I
<i>Sub-title II.</i>	Issues relating to Married Persons	1712J-1712K
<i>Sub-title III.</i>	Issues relating to Parental Authority	1712L
<i>Sub-title IV.</i>	Pledge of Insurance Policies	1712M
Title XII.	Of Gaming and Betting	1713-1717A
Title XIII.	Of Compromise	1718-1736
Title XIV.	Of Donation	1737-1823
	General Provisions	1737-1742
<i>Sub-title I.</i>	Of the Capacity to dispose or receive by Donation	1743-1752

\*Substituted by Act XXI of 1993.

#### Articles

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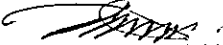
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<i>Sub-title II.</i>	Of the Form and Effects of Donations	1753-1784
<i>Sub-title III.</i>	Of the Exceptions to the Rule of Irrevocability of Donations	1785-1792
<i>Sub-title IV.</i>	Of Donations in Contemplation of Marriage	1793-1803
<i>Sub-title V.</i>	Of Donations between Future Spouses or between Husband and Wife, either by the Marriage Contract or during the Marriage	1804-1812
<i>Sub-title VI.</i>	Of the Reduction of Donations	1813-1823
Title XV.	Of Loan for Use or <i>Commodatum</i>	1824-1838
Title XVI.	Of Precarious Loan or <i>Precarium</i>	1839-1841
Title XVII.	Of Loan for Consumption or <i>Mutuum</i>	1842-1855A
Title XVIII.	Of Mandate	1856-1890
<i>Sub-title I.</i>	Of the Nature and Form of Mandate	1856-1872
<i>Sub-title II.</i>	Of the Obligations of the Mandatary	1873-1879
<i>Sub-title III.</i>	Of the Obligations of the Mandator	1880-1885
<i>Sub-title IV.</i>	Of the ways in which Mandate is Terminated	1886-1890
Title XIX.	Of Deposit	1891-1924
<i>Sub-title I.</i>	Of Deposit properly so called	1892-1921
<i>§I</i>	Of Voluntary Deposit	1896-1919
	Of the Obligations of the Depository	1899-1917
	Of the Obligations of the Depositor	1918-1919
<i>§II</i>	Of Necessary Deposit	1920-1921
<i>Sub-title II.</i>	Of Conventional Sequestration	1922-1924
Title XX.	Of Suretyship	1925-1963
<i>Sub-title I.</i>	Of the Nature and Extent of Suretyship	1925-1932
<i>Sub-title II.</i>	Of the Effects of Suretyship	1934-1950
<i>§I</i>	Of the Effects of Suretyship as between Creditor and Surety	1934-1941
<i>§II</i>	Of the Effects of Suretyship as between Debtor and Surety	1942-1948
<i>§III</i>	Of the Effects of Suretyship as between Co-sureties	1949-1950
<i>Sub-title III.</i>	Of Legal and Judicial Suretyship	1951-1955
<i>Sub-title IV.</i>	Of the Extinguishment of Suretyship	1956-1963
Title XXI.	Of Contracts of Pledge	1964-1986
Title XXII.	Of Antichresis	1987-1993
Title XXIII.	Of Privileges and of Hypothecs	1994-2095
<i>Sub-title I.</i>	Of Privileges	1999-2010
<i>§I</i>	Of General Privileges	2003-2008
<i>§II</i>	Of Special Privileges	2009-2010
	Of Privileges over particular Movables	2009
	Of Privileges over Immovables	2010
<i>Sub-title II.</i>	Of Hypothecs	2011-2028
<i>§I</i>	Of Legal Hypothec	2017-2022
<i>§II</i>	Of Judicial Hypothec	2023
<i>§III</i>	Of Conventional Hypothec	2024-2028
<i>Sub-title III.</i>	How Privileges and Hypothecs are Preserved	2029-2052
<i>Sub-title IV.</i>	Of the Renewal of Registrations	2053-2058
<i>Sub-title V.</i>	Of the Reduction and Cancellation of Registrations	2059-2068
<i>Sub-title VI.</i>	Of the Effect of Privileges and of Hypothecs against Third Parties in Possession	2069-2083
<i>Sub-title VII.</i>	Of the Extinguishment of Privileges and Hypothecs	2084-2087
<i>Sub-title VIII.</i>	Of the Order of Priority of Privileges and Hypothecs	2088-2095
Title XXIII A.	Of Trusts and Obligations	2095A-2095E
<i>Sub-title I.</i>	Of Matrimonial Regimes	2095A-2095C
<i>Sub-title II.</i>	Of Annuities	2095D

Articles

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<i>Sub-title III.</i>	Of Security Trusts	2095E
Title XXIII B.	Of Security by Title Transfer	2095F-2095J
Title XXIV.	Of the Benefit of Separation of Estates	2096-2106
Title XXV.	Of Prescription	2107-2160
	General Provisions	2107-2117A
<i>Sub-title I.</i>	Of the Causes which Prevent Prescription	2118-2121
<i>Sub-title II.</i>	Of the Causes which Suspend Prescription	2122-2126
<i>Sub-title III.</i>	Of the Causes which Interrupt Prescription	2127-2136
<i>Sub-title IV.</i>	Of the Time Required for Prescription	2137-2160
§I	Of Prescription of Ten, Thirty and Forty Years	2140-2146
§II	Of Certain Particular Prescriptions	2147-2160

## FIRST SCHEDULE

Part I	Fees
Part II	Forms
Part III	Particulars regarding corrections of Acts of Civil Status

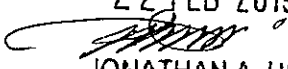
## SECOND SCHEDULE

Title I	OF LEGAL ORGANISATIONS	1-2
Sub-Title I	Preliminary and Definitions	1
Sub-Title II	Of Foreign and International Organisations	2
Title II	OF LEGAL PERSONALITY	3-25
Sub-Title I	Of Legal Persons	3-6
Sub-Title II	Of Administrators	7-10
Sub-Title III	Of the Registrar	11
Sub-Title IV	Of Registration of Organisations	12
Sub-Title V	Of Unregistered Organisations	13-15
Sub-Title VI	Of Responsibility of Persons involved in Organisations	16-18
Sub-Title VII	Of Liability of Organisations	19
Sub-Title VIII	Miscellaneous	20-25
Title III	OF FOUNDATIONS AND ASSOCIATIONS	26-56
Sub-Title I	Preliminary and Definitions	26-28
Sub-Title II	Of Foundations	29-47
Sub-Title III	Of Associations	48-56
Title IV	OF WINDING UP OF ORGANISATIONS	57-67

## THIRD SCHEDULE

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Title.

I. The title of this Code is the Civil Code.

BOOK FIRST  
OF PERSONS

---

PRELIMINARY

- 1A. (1) Persons may either be natural persons or legal persons.
- (2) When used in any law the term "person" shall include both natural persons as well as legal persons, unless the context otherwise requires.
- (3) Natural persons are regulated by Title I to Title VIII of Book First of this Code.
- (4) Legal persons are regulated by the Second Schedule to this Code.
- (5) Legal persons enjoy all rights and powers pertaining to natural persons except those excluded by their very nature, by their constitutive act or by an express provision of law.

Persons.  
Added by:  
XIII, 2007, 2.

---

Title I

OF THE RIGHTS AND DUTIES ARISING FROM MARRIAGE

---

*Sub-title 1*

OF THE MUTUAL RIGHTS AND DUTIES OF SPOUSES

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.
- 3A. (1) The matrimonial home shall be established where the spouses may by their common accord determine in accordance with the need of both spouses and the overriding interest of the family itself.
- (2) Where the matrimonial home is wholly or in part owned

Reciprocal duties  
of spouses.  
Substituted by:  
XXI, 1993, 3.

Duty to contribute  
towards needs of  
the family.  
Amended by:  
XLVI, 1973, 2.  
Substituted by:  
XXI, 1993, 3.

Matrimonial home.  
Added by:  
XXI, 1993, 3.  
Amended by:  
IX, 2004, 14.

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or otherwise held under any title by one of the spouses, such spouse may only alienate by title *inter vivos* his or her right over the matrimonial home:

- (a) with the consent of the other spouse; or
- (b) where such consent is unreasonably withheld, with the authority of the competent court; or
- (c) in a judicial sale by auction at the instance of any creditor of such spouse.

(3) The party who has not given his or her consent to a transfer, may bring an action for the annulment of a transfer which has not been effected in accordance with sub-article (2) of this article, within one year from the registration of the transfer.

Duty of spouse  
towards children.  
Added by:  
XXI, 1993, 3.  
Amended by:  
XIV, 2011, 2.

**3B.** (1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who:

- (a) are students who are participating in full-time education, training or learning and are under the age of twenty-three; or
- (b) have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental.

Cap. 413.

(3) The obligations provided in sub-article (1) also bind a person acting *in loco parentis* with regard to another person's child, by reason of the marriage of such person to a parent of that child, where the other parent of that child, shall have, at any time before or during the marriage, died or was declared as an absentee according to Title VII of Book First of this Code, or is unknown:

Provided that the provisions of this sub-article shall be without prejudice to the obligations of the natural parents of the child and shall in any case be without prejudice to the provisions of article 149.

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4. (1) The spouses shall on marriage adopt the surname of the husband after which the wife may add her maiden surname or the surname of her predeceased spouse:

Surname to be used by spouse and children of the family.

*Substituted by:*

XXV.1993.3.

*Amended by:*

XVIII.2004.3.

VIII.2007.13.

XV.2012.2.

L.N. 426 of 2012.

IX.2014.11.

XI.2015.18.

VII.2015.2.

XXIII.2017.29.

Provided that for the purposes of this article "maiden surname" shall include the surname of the spouse at the time of marriage even if that surname was not the surname of that spouse at birth and the spouse may also elect to retain the said surname.

(2) The wife may, instead, choose to retain her maiden surname or the surname of her predeceased spouse after which she may add her husband's surname:

However in the case where a woman was married before the 4th of February, 2005, she shall be able to re-adopt the surname of her predeceased spouse provided that she submits Form S contained in Part II of the First Schedule to this Code to the Public Registry Office, which form shall contain a declaration that she chooses to re-adopt the surname of her predeceased spouse. Such declaration may not be made after the lapse of one year from date of entry into force of this disposition and when it is delivered to the Public Registry Office, the Director shall keep an index with the predeceased spouse's surname as well as the surname of her last husband. This declaration made by means of Form S shall be irrevocable and an annotation shall be made in all the acts of the civil status of such woman.

(3) The children of the marriage shall take the surname of their father, after which there may be added, in terms of article 292A, the maiden surname of the mother or the surname of her predeceased husband:

However in the case of children of the marriage born before the 7th of August 2007, they may add their mother's maiden surname or the surname of her predeceased husband after their father's surname, provided that they submit Form T contained in Part II of the First Schedule to this Code, to the Public Registry Office, which form shall contain a declaration that in their social life they wish to add and make use of their mother's maiden surname or the surname of her predeceased husband after assuming their father's surname since birth. Such declaration shall be accepted by the Director of the Public Registry from the date of the coming into force of this proviso and when this form is delivered to the Public Registry Office, the Director shall make an annotation of this declaration on every act of the civil status of the person making such declaration. This declaration made by means of Form T shall be irrevocable.

(4) Where the wife intends to retain her maiden surname after marriage she shall, before marriage, so declare her intention when applying for the publication of the banns in accordance with the Marriage Act and shall subscribe the appropriate declaration in the Act of Marriage. Such declaration shall be irrevocable.

Cap. 255.

(5) \*Sub-article (1) of this article shall apply to a wife who has

\*This sub-article has been added by virtue of the powers conferred on the Law Revision Commission by the Statute Law Revision Act, 1980. This sub-article substantially reproduces sub-article (3) of article 89 of Act XXI of 1995.

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married prior to the 1st December, 1993, unless and until she delivers or causes to be delivered to the Public Registry Office, the Form Q contained in Part II of the First Schedule to this Code showing that she is opting to reassume her maiden surname. Such note may not be made after the lapse of six months after the 1st December 1993, and when delivered to the Public Registry Office, the Director shall register the same in a book kept for the purpose, for which he shall keep an index under the wife's maiden surname and that of her husband.

Cap. 255.

(6) Where a wife intends to retain the surname of her predeceased husband after remarriage, she shall, before remarriage, so declare her intention when applying for the publication of the banns in accordance with the Marriage Act and in lieu of the declaration in the Act of Marriage referred to in sub-article (4) she shall subscribe to a declaration, in Form R contained in Part II of the First Schedule to this Code and containing the particulars therein indicated, such form shall be delivered to the Public Registry together with the Act of Marriage and shall be signed by the spouses and countersigned by all the other signatories in the Act of Marriage.

(7) The descendants including the adopted children of persons who have submitted Form T referred to in sub-article (3) to the Public Registry Office may, by not later than one year following the closing date to submit Form T also submit to the Public Registry Office, Form U contained in Part II of the First Schedule to this Code, declaring that they wish to use the same surname as their ascendant's was duly annotated in his respective acts of the civil status by virtue of sub-article (3). Upon receipt of such form the Director of the Public Registry shall make an annotation of this declaration on every act of the civil status of the person making such declaration. This declaration made by means of Form U shall be irrevocable.

(8) Where the children are under the age of eighteen the declarations made by means of Form T and U shall be made by the parents or, if both parents are deceased, by their tutor or curator:

However, irrespective of whether the parents of the child are still married or not, or whether they are divorced or separated, one of the parents, or the child himself, if he is not a minor, shall have the right to make a declaration by means of Form T. This shall be notified to the other parent, at his last known address as indicated on his identity card, who shall have five working days from notification to oppose this request if he is of the opinion that this would not be in the best interests of the child. If the other parent does not oppose, the Director shall proceed with the registration in the relative act.

(9) The wife of a person who has submitted a declaration made by means of Form T and U, shall assume the husband's surname as duly annotated, if upon marriage she had chosen to assume her husband's surname.

Cap. 258.

(10) A person in respect of whom a change in surname has been annotated according to this article, shall report the fact to the authorised officer under the Identity Card and other Identity

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Documents Act, who shall issue a new identification document that indicates the surname in accordance to the annotation written in the relative act of birth. The expenses for the issue of the new legally valid identification document shall be borne by the person who changed the surname.

(11) Partners in a civil union contracted according to the Civil Unions Act may, when applying for the publication of banns relating to the civil union elect to: Cap. 530.

- (a) adopt for both of them the surname of one of the partners to the civil union or the surnames of both of the partners in the order they chose for both; or
- (b) retain their own surname;

Provided that if no choice is expressed in accordance with this sub-article the partners to a civil union shall retain their own surnames.

(12) When applying for the registration of a marriage contracted abroad between partners of the same sex, the partners to the marriage may elect to:

- (a) adopt for both of them the surname of one of the partners to the marriage or the surnames of both in the order they choose for both; or
- (b) retain their own surname;

Provided that if no choice is expressed in accordance with this sub-article the partners to the marriage shall retain their own surnames.

(13) Spouses married after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017\*, may, when applying for the publication of the banns, elect to: Act XXIII of 2017.

- (a) adopt for both of them the surname of either one of the parties to the marriage; or
- (b) adopt for both of them the surnames of both parties in the order of their choice:

Provided that the combination of the spouses' surnames shall not result in a surname which is longer than the combination of four surnames:

Provided further that when the surname of any one or both of the spouses already has a combination of two or more surnames, the order of the surname of that spouse shall be retained, and the spouses shall not change such order and, or drop any part of their own surname: or

- (c) retain their own surname:

Provided that if no choice is expressed in accordance

\*The provisions of Act XXIII of 2017 came into force on the 1st of September, 2017. See Legal Notice 212 of 2017.

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with this sub-article, the spouses shall retain their own surnames.

(14) Without prejudice to the provisions of sub-article (13), where the spouses choose to change their surnames in accordance with sub-article (13)(a) or (b), such choice shall also become the Family Name, which shall be included in the Act of Marriage.

(15) Without prejudice to the provisions of sub-article (13), where the spouses choose to retain their surnames in accordance with sub-article (13)(c), or where no choice is expressed, the parties shall determine their Family Name in accordance with the provisions of sub-article (13)(a) or (b), which shall be included in the Act of Marriage.

(16) The Family Name chosen by the parties shall be the surname which shall be adopted by any future children of the parties.

Act XXIII of 2017. (17) Sub-articles (13) to (16), both inclusive, shall apply only to marriages contracted after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017.\*

Maintenance. 5. (1) In regard to maintenance, the spouse shall have a prior right over the parents or other ascendants.

(2) Where both children and spouse claim maintenance, they shall be in a position of equality.

(3) It shall not be lawful for either of the spouses to claim maintenance from the children or other descendants or from the ascendants if such maintenance can be obtained from the other spouse.

Cessation of duty to supply maintenance. Amended by: XLVI, 1973, 4. Substituted by: XVI, 1993, 4. 6. The duty of one spouse to maintain the other shall cease if the latter, having left the matrimonial home, without reasonable cause refuses to return thereto.

Disagreement between the spouses. Added by: XVI, 1993, 4. Amended by: IX, 2004, 14. 6A. (1) In case of any disagreement either spouse may apply to the competent court for its assistance and the presiding judge, after hearing the spouses and if deemed opportune any of the children above the age of fourteen years residing with the spouses, shall seek to bring about an amicable settlement of such disagreement.

(2) Where such amicable settlement is not attained and the disagreement relates to the establishment or change of the matrimonial home or to other matters of fundamental importance, the presiding judge, if so requested expressly by the spouses jointly, shall determine the matter himself by providing the solution which he deems most suitable in the interest of the family and family life.

\*The provisions of Act XXIII of 2017 came into force on the 1st of September, 2017. See Legal Notice 212 of 2017.

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(3) No appeal shall in this case lie from the pronouncement of the presiding judge.

*Sub-title II*

OF THE MUTUAL RIGHTS AND DUTIES OF ASCENDANTS,  
DESCENDANTS AND BROTHERS

*Amended by:*  
XXI.1993.5.

7. (1) Parents are bound to look after, maintain, instruct and educate their children in the manner laid down in article 3B of this Code.

Duties of parents towards children.  
*Amended by:*  
XXI.1993.6.

(2) In default of the parents, or where the parents do not possess sufficient means, the liability for the maintenance and education of the children devolves on the other ascendants.

8. The children are bound to maintain their parents or other ascendants, who are indigent.

Duties of children towards parents.

9. A spouse shall not withhold his or her moral support to the other in any obligation such other spouse may have towards his or her descendants or ascendants.

Duties of spouses towards each other in the provision of maintenance.  
*Substituted by:*  
XXI.1993.7.

10. *Repealed by:* XXI.1993.7.

When son-in-law is not liable towards father-in-law or mother-in-law.

11. *Repealed by:* XXI.1993.7.

Effect of death of spouse from whom affinity derived and of children of marriage creating affinity.

12. Where, according to the foregoing provisions of this sub-title, there are more persons liable for maintenance, such persons shall be so liable in the following order:

Order of liability.  
*Amended by:*  
XXI.1993.8.

- (a) the children or descendants of the person claiming maintenance, in the same order in which they would according to law be vested with his or her succession;
- (b) the parents;
- (c) the other ascendants in the same order in which they would according to law be vested with the succession of the claimant.

13. (1) The obligation of such persons as according to the order set forth in the last preceding article are placed in the same degree of liability, shall be a joint and several obligation.

Obligation *in solidum.*

(2) The persons, however, who according to such order, are placed in a remoter degree shall have only a subsidiary liability, if those in a nearer degree are unable to discharge their obligation.

Obligation *in subsidium.*

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Power of court in urgent cases.

(3) Nevertheless, it shall be lawful for the court, in urgent cases, to condemn any of the persons liable for maintenance, in whatever degree, to supply maintenance, reserving to such person the right to claim reimbursement from such other persons as, according to the said order, were bound to supply such maintenance.

Where several persons claim maintenance.  
Amended by:  
XXI.1993.9.

14. (1) Where several persons claim maintenance from a person who is unable to supply maintenance to all of them, the order set forth in article 12 shall be observed in determining the right of priority of such claimants.

(2) Nevertheless, it shall be lawful for the court to depart from the rule laid down in sub-article (1) of this article in cases of great urgency, regard being had to the health, age or other circumstances of the claimants.

Brothers and sisters.

15. (1) The liability for maintenance shall extend to brothers and sisters, of the full or half-blood, only in default of other persons liable for maintenance.

(2) In any such case the liability of brothers and sisters shall be joint and several.

(3) The persons mentioned in article 12 shall, in all cases, have a prior claim over brothers and sisters, except in cases of great urgency, regard being had to health, age, or other circumstances.

Liability for maintenance by reason of consanguinity or affinity.  
Amended by:  
XXI.1993.10.

16. (1) The liability for maintenance, by reason of consanguinity, shall only exist as between the persons, and in the cases mentioned in the foregoing articles of this Sub-title.

(2) Such liability shall cease even in regard to such persons, if the claimant shall have become indigent through his fault:

Provided that this shall not apply where the claimant are the parents, or other ascendant.

When claim for reimbursement of maintenance can be made.  
Amended by:  
XXI.1993.11.

17. (1) Where a brother or sister has received maintenance, and, within ten years of the last supply thereof, becomes able to repay the amount so received, he or she shall be bound to repay such amount to the person supplying the maintenance, provided the demand for reimbursement be made within the said time.

(2) In no other case, in the absence of an agreement to the contrary, can a claim be made for reimbursement of the amount of maintenance supplied under the provisions of this Code.

When liability for maintenance devolves upon heirs.

18. *Repealed by: XXI.1993.12.*

Definition of maintenance.  
Amended by:  
XXI.1993.13.

19. (1) Maintenance shall include food, clothing, health and habitation.

(2) In regard to children and other descendants, it shall also include the expenses necessary for health and education.

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20. (1) Maintenance shall be due in proportion to the want of the person claiming it and the means of the person liable thereto.

Amount of maintenance.  
Amended by:  
XIII, 2004, 37.

(2) In examining whether the claimant can otherwise provide for his own maintenance, regard shall also be had to his ability to exercise some profession, art, or trade.

(3) In estimating the means of the person bound to supply maintenance, regard shall only be had to his earnings from the exercise of any profession, art, or trade, to his salary or pension payable by the Government or any other person, and to the fruits of any movable or immovable property and any income accruing under a trust.

(4) A person who cannot implement his obligation to supply maintenance otherwise than by taking the claimant into his house, shall not be deemed to possess sufficient means to supply maintenance, except where the claimant is an ascendant or a descendant.

(5) In estimating the means of the person claiming maintenance regard shall also be had to the value of any movable or immovable property possessed by him as well as to any beneficial interest under a trust.

21. (1) Where the person supplying maintenance becomes unable to continue to supply such maintenance, in whole or in part, he may demand that he be released from his obligation, or that the amount of maintenance be reduced, as the case may be.

When person supplying maintenance becomes unable to continue to do so.

(2) The same shall apply where the indigence of the person receiving maintenance shall cease, wholly or in part.

22. (1) Where maintenance has been furnished, no action will lie for the repayment of such part thereof as may have been furnished after the cessation of the cause for which maintenance was due.

Repayment of maintenance.

(2) Nor can the person to whom maintenance was due claim from the person liable, upon the latter becoming able to supply such maintenance, the amount thereof in respect of the time during which the person liable for maintenance did not furnish it for want of means.

23. (1) The person bound to supply maintenance may not, without just cause, be compelled to pay a maintenance allowance if he offers to take and maintain into his own house the person entitled to maintenance.

Maintenance in kind.

(2) Where maintenance is to be furnished out of the house of the person liable thereto, he may, on good cause being shown, supply such maintenance in kind instead of paying an allowance in money.

24. It shall not be lawful for any person to claim maintenance from any of the persons liable thereto by reason of consanguinity, if the claimant can, as donor, obtain maintenance from the donee, under the provisions of article 1773 of this Code.

Donee primarily liable for maintenance.  
Amended by:  
XXI, 1993, 14.

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Maintenance  
*pendente lite*.

25. (1) Upon a claim for maintenance, it shall be lawful for the court, *pendente lite*, to order the defendant to pay to the plaintiff an interim allowance in such amount as is necessary for bare subsistence, provided the defendant be evidently one of the persons who, if possessed of sufficient means, would according to law be liable to supply maintenance to the plaintiff.

(2) Where in any such case the claim for maintenance is disallowed, the defendant shall be entitled to claim, from the plaintiff himself, or from the person bound to supply maintenance, to such plaintiff, the reimbursement of any amount he may have paid, together with interest thereon.

Son not entitled to  
assignment from  
parents, in  
contemplation of  
marriage, etc.

26. *Repealed by: XXI.1993.15.*

When obligation to  
supply  
maintenance  
ceases.  
*Amended by:*  
XXI.1993.16.

27. (1) The obligation of any person to supply maintenance to another shall cease if the person in whose favour such obligation is established, shall contract marriage, notwithstanding the opposition of the person liable as aforesaid, provided such opposition be made on good grounds, and the demand from the release from such obligation be made by the person objecting within the time of six months following the celebration of the marriage.

(2) Such opposition shall only be operative if it is made by means of a judicial act to be served on each of the parties intending to contract the marriage, and filed in the registry of the civil court, in the island in which the person objecting, or either of the said parties, resides.

Good grounds of  
opposition to  
marriage.  
*Amended by:*  
XLVI.1973.6.

28. For the purposes of the last preceding article, the want of the necessary means of subsistence, having regard to the position of the party to whom the opposition refers, or the bad character of the other party, shall be deemed to be a good ground of opposition to the proposed marriage.

Where marriage is  
contracted without  
previous  
publication of  
banns.  
*Amended by:*  
XXI.1993.17.

29. Where the marriage has been celebrated with a total or partial dispensation from the previous publication of banns, and it is not shown that the person subject to the obligation mentioned in article 27, was aware of the proposed marriage at least fifteen days prior to its celebration, it shall be lawful for such person, even in default of the opposition referred to in that article, to demand, within the time of six months following the marriage, his release from the said obligation on any of the grounds on which such opposition would have been effectual.

Where marriage is  
celebrated without  
the rites and  
formalities  
preceding it.

30. *Repealed by: XXI.1993.18.*

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31. *Repealed by: XXI.1993.18.*

Where liability for maintenance ceases in regard to husband or wife or children of person related by consanguinity.  
*Amended by: XLVI.1973.7.*

32. Besides the ground referred to in article 27, parents or other ascendants may refuse maintenance to children or other descendants on any of the grounds on which an ascendant may disinherit a descendant.

Grounds on which parents may refuse maintenance to children.  
*Amended by: XLVI.1973.8.*  
*Substituted by: XXI.1993.19.*

33. It shall be lawful for any person to refuse maintenance to a brother or sister, on the ground of any grievous injury committed to his detriment or to the detriment of his or her spouse or of any other relative up to the degree of uncle or aunt, and nephew or niece, inclusively.

Where maintenance may be refused on grounds of grievous injury.  
*Amended by: XXI.1993.20;*  
*XXIII.2017.30.*

34. Nevertheless, in none of the cases referred to in the last two preceding articles can maintenance be refused where the injury, or other ground of refusal therein mentioned, has taken place very long before the claim for maintenance is made.

Exception.

### *Sub-title III*

#### OF PERSONAL SEPARATION

*Substituted by: XXI.1993.21.*

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.

Obligation of cohabitation to cease on separation.  
*Amended by: XXI.1993.22.*

(2) Separation pronounced by any other court shall not produce any civil effects.

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, as provided in article 59.

How separation may be obtained.  
*Amended by: XXI.1993.23.*

37. (1) All suits for personal separation shall be brought before the appropriate section of the Civil Court as may be established by regulations made by the Minister responsible for justice:

Personal separation.  
*Amended by: XXI.1993.24.*  
*Substituted by: XXXI.2002.310.*  
*Amended by: XX.2005.22;*  
*L.N. 218 of 2012.*

Provided that prior to the commencement of proceedings, a demand may be made for determining the amount of an allowance for maintenance during the pendency of the proceedings and for the issue of a decree ordering the payment of such allowance or a demand for the court to determine by decree who of the spouses, if any, shall during the pendency of the proceedings continue to

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reside in the matrimonial home.

(2) The application containing the demand referred to in the proviso to sub-article (1) shall be duly appointed for hearing by the court and shall be served on the respondent together with the notice of such hearing:

Cap. 9.

Provided that where domestic violence is involved, the said application shall be appointed within four days and the court may, of its own motion before or after hearing the parties, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall *mutatis mutandis* apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code:

Cap. 481.

Provided further that for the purposes of this article and of article 39, "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence Act.

(3) The court shall summarily hear the applicant and the respondent and shall then, by decree, decide on the demand:

Provided that the court may decide on the demand where the applicant or the respondent or both the applicant and the respondent fail to appear on the day of the hearing.

Cap. 12.

(4) The decree referred to in sub-article (3) shall be an executive title deemed to be included amongst the decrees mentioned in article 253(a) of the Code of Organization and Civil Procedure and shall be enforceable in the same manner and under the same conditions in which such acts are executed.

(5) The decree referred to in sub-article (3) shall cease to be enforceable if the action for separation is not instituted within two months of the date of the decree or within such longer period as the court may in the same or in a subsequent decree allow.

Cap. 12.

(6) The provisions of article 381 of the Code of Organization and Civil Procedure in pursuance of which a court of contentious jurisdiction may make the order therein specified shall apply, *mutatis mutandis*, as if the court in that sub-article were a reference to the appropriate section of the Civil Court before which the demand referred to in the proviso to sub-article (1) is made.

(7) The decree and the order mentioned in this article may be only reviewed, altered or revoked upon an application made by the party seeking such review, alteration or revocation.

(8) Subject to the provisions of article 39 of the Constitution, regulations made under this article may provide for the hearing of causes *in camera*.

Adultery.  
Substituted by:  
XVI.1993.25.

38. Either of the spouses may demand separation on the ground of adultery on the part of the other spouse.

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39. Where a law suit for personal separation has been filed by either spouse and evidence of acts of domestic violence has been produced, the court may, either on an application of one of the parties or on its own motion in order to protect the safety of the parties involved or in the best interests of the child or children or of any other minor dependants of any of the spouses, issue a protection order under article 412C of the Criminal Code and, or a treatment order under article 412D of the same Code and the provisions of those articles shall *mutatis mutandis* apply to an order issued under this article as if it were an order issued under the corresponding article of the said Code.

Protection and Treatment Orders in lawsuit for personal separation.  
Added by:  
XX, 2005, 23.

Cap. 9.

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:

Excesses, cruelty, etc.  
Substituted by:  
XXX, 1981, 2.

Provided that separation on the ground that the marriage has irretrievably broken down may not be demanded before the expiration of the period of four years from the date of the marriage, and provided further, that the court may pronounce separation on such ground notwithstanding that, whether previously to or after the coming into force of this article\*, none of the spouses had made a demand on such ground.

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.

Desertion.  
Substituted by:  
XXI, 1993, 26.

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

Reconciliation.  
Amended by:  
XXI, 1993, 27.

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

43. The death of either of the spouses shall, except in the case in which the judgment of separation may produce the effects referred to in articles 48 to 52 inclusively, extinguish the action of separation, even though such death takes place after the demand.

Death of either of the spouses.

44. The existence of grounds on which both spouses may demand separation shall not operate so as to bar either of them from bringing a suit for separation against the other.

Grounds on which both spouses may demand separation not to bar action by either of them.

45. Nevertheless, where it appears that the defendant also had grounds on which he or she might have demanded separation, the court may take such grounds into consideration for the purposes of the provisions contained in article 52.

Discretion of court where defendant also might have demanded separation.

\*This article as substituted by Act XXX of 1981 came into force on 31st July, 1981.

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Matrimonial home  
*pendente lite.*  
*Amended by:*  
*XLVI.1973.9.*  
*Substituted by:*  
*XXI.1993.28.*

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.

Maintenance  
*pendente lite.*  
*Added by:*  
*XXI.1993.28.*

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.

Care of children.  
*Substituted by:*  
*XLVI.1973.10;*  
*XXI.1993.28.*

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.

Consequences for  
spouse giving  
cause to  
separation.  
*Amended by:*  
*XXI.1993.29.*

48. (1) The spouse who shall have given cause to the separation on any of the grounds referred to in articles 38 and 41, shall forfeit -

- (a) the rights established in articles 631, 633, 825, 826 and 827 of this Code;
- (b) the things which he or she may have acquired from the other spouse by a donation in contemplation of marriage, or during marriage, or under any other gratuitous title;
- (c) any right which he or she may have to one moiety of the acquests which may have been made by the industry chiefly of the other spouse after a date to be established by the court as corresponding to the date when the spouse is to be considered as having given sufficient cause to the separation. For the purposes of this paragraph in order to determine whether an acquest has been made by the industry chiefly of one party, regard shall be had to the contributions in any form of both spouses in accordance with article 3 of this Code;
- (d) the right to compel, under any circumstances, the other spouse to supply maintenance to him or her in virtue of the obligation arising from marriage.

(2) The things mentioned in paragraph (b) of sub-article (1) of this article shall revert to the other spouse, and the acquests mentioned in paragraph (c) of the said sub-article shall remain entirely in favour of such spouse, saving any right which the children or other third parties may have acquired thereon prior to the registration of the judgment of separation in the Public Registry.

Where wife gives  
cause to  
separation.  
*Amended by:*  
*XLVI.1973.11.*

49. *Repealed by: XXI.1993.30.*

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- 50. *Repealed by: XXI.1993.30.*

Where husband gives cause to separation.  
Amended by: LVIII.1975.2.
  
- 51. Where separation is granted on any of the grounds mentioned in article 40, it may produce any of the effects mentioned in article 48, if the court, having regard to the circumstances of the case, deems it proper to apply the provisions of that article, in whole or in part.
 

Power of court in certain cases.  
Amended by: XXI.1993.31.
  
- 52. It shall also be in the discretion of the court to determine, according to circumstances, whether the provisions of article 48 shall be applied, wholly or in part, in regard to both spouses or to one of them, or whether they shall not be applied at all in regard to either of them, if both spouses shall have been guilty of acts constituting good grounds for separation.
 

Discretion of court in certain cases.  
Amended by: XXI.1993.31.
  
- 53. The spouse who has obtained separation shall retain every right or benefit which he or she may have acquired from the other spouse, even though such right or benefit may have been granted to him or her on condition of reciprocity, and such reciprocity does not take place.
 

Preservation of rights or benefits by spouse obtaining separation.
  
- 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.
 

Obligation for maintenance.  
Substituted by: XXI.1993.32.  
Amended by: XIV.2011.3.
  
- (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;
 

Cap. 413.
  - (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:
 

Cap. 318.

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Cap. 318. Provided that for the purposes of this paragraph the disability pension payable in terms of article 27 of the Social Security Act shall be taken into consideration;

(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.

Cap. 12. (3) The provisions of article 381(2) of the Code of Organisation and Civil Procedure shall apply *mutatis mutandis* provided that the said article shall be construed to mean that, even where no demand is made by a party to whom maintenance is due, either for that party or for the children, for the application of the provisions of that article, the court may apply the said article out of its own motion.

(4) In granting maintenance, the court may also provide for the manner in which the same may increase from time to time.

(5) Notwithstanding any other provision of this Code, on separation being pronounced, the court may if it deems it appropriate in the circumstances, order the spouse liable to supply maintenance to pay to the other spouse, in lieu of the whole or part of such maintenance, a lump sum, which the court deems sufficient in order to make the spouse to whom maintenance is due financially independent or less dependent of the other spouse, as the case may be.

(6) For the purposes of sub-article (5), the court shall, among the circumstances, consider the possibility of the person to whom maintenance is due, of receiving training or retraining in a profession, art, trade or other activity or to commence or continue an activity which generates an income, and order the lump sum for that purpose.

(7) The court may direct, according to circumstances, that the payment of a lump sum referred to in the previous sub-articles of this article, be made by equal or unequal instalments spread over a reasonable period of time.

(8) The court may also direct that in lieu of all or part of the lump sum referred to in sub-article (5), the spouse liable thereto shall assign to the other spouse property in ownership or in usufruct, use or habitation.

(9) Where there is a supervening change in the means of the spouse liable to supply maintenance or the needs of the other spouse, the court may, on the demand of either spouse, order that such maintenance be varied or stopped as the case may be. Where however, a lump sum or an assignment of property has been paid or made in total satisfaction of the obligation of a spouse to supply maintenance to the other spouse, all liability of the former to supply maintenance to the latter shall cease. Where instead, the lump sum or assignment of property has been paid or made only in

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partial satisfaction of the said obligation, the court shall, when ordering such lump sum payment or assignment of property, determine at the same time the portion of the maintenance satisfied thereby and any supervening change shall in that case be only in respect of the part not so satisfied and in the same proportion thereto.

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 in sub-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.

(3) The order of cessation shall have effect between the spouses from the date of the judgement on appeal or, if no appeal is entered, from the date when the time allowed for the appeal lapses, and it shall remain valid even if the cause for separation is discontinued.

(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.

(6) Unless the court, in its discretion, upon the demand of one of the parties, shall have ordered the cessation of the community of acquests or of the community of residue under separate administration existing between the parties at the time of commencement of the cause for separation, on separation being pronounced, the court shall direct that the community of acquests or the community of residue under separate administration shall cease as from the day on which the judgement becomes *res judicata*.

(7) The court may however where in its opinion circumstances so warrant direct that an asset or assets comprised in the community be not partitioned before the lapse of such period after the cessation of the community as it may in its direction determine.

(8) Any direction given by the court in virtue of sub-article (7), may on good cause being shown, be changed or revoked by the court.

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

Cessation of community of acquests and community of residue under separate administration.  
Substituted by: XXI.1993.32.  
Amended by: XII.2011.4.

Matrimonial home.  
Added by: XXI.1993.32.  
Amended by: XII.2011.5.

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- 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 the minor children if the court were to grant a demand made according to this article;
- (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.

(2) The court may, upon a demand of either party, vary a decision taken by it under sub-article (1)(a), where there is a substantial change in circumstances.

(3) The provisions of article 3A(2) shall not apply in the case of spouses who are legally separated, unless the contrary is not agreed to between the spouses or is ordered by the court having jurisdiction to pronounce the personal separation; and such agreement or order shall only be effective in regard to third parties as from the date when the deed or order is registered in the Public Registry.

Custody of the children after separation.  
Substituted by:  
XXI.1993.32.  
Amended by:  
XIV.2011.6.

56. (1) On separation being pronounced the court shall also direct to which of the spouses custody of the children shall be entrusted, 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*, of third parties, or in alternative forms of care.

(3) It shall be lawful for the court to give any such directions in the judgment of separation, although in the action relating thereto no demand has been made respecting the custody of the children.

(4) The court may, at any time, revoke or vary such directions respecting the children, where the interests of the children so require.

(5) The court may moreover where circumstances so require, determine that one or both of the parents shall be deprived wholly,

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or in part of the rights of parental authority.

56A. The court may, for grave reasons, at any time during the cause for separation or when the parties are separated, upon the demand of one of the parties, 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.

Exclusion of custody.  
Added by:  
XIV, 2011, 7.

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.

Right of spouses to watch over maintenance of children.  
Amended by:  
XVI, 1993, 33;  
XVII, 2011, 8.

(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.

(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.

58. (1) The court may, where it shall deem it expedient so to do in the interest of the spouses and the children, order the suspension of the action of separation for such time as it may deem proper, and give such interim directions as circumstances may require.

Power of court to suspend action of separation.

(2) The decree ordering the suspension of the action, or giving such interim directions, shall be subject to appeal.

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.

Separation by mutual consent.  
Amended by:  
XVI, 1993, 34.  
Substituted by:  
LIII, 2007, 3.

(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.

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.

Directions as to the custody of the children.  
Amended by:  
LXXX, 3.

(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.

Renunciation of inheritance.

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Agreement  
between spouses  
respecting the  
custody of the  
children.  
*Amended by:*  
XLVI.1973.13.

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.

Surname of spouse  
after separation.  
*Substituted by:*  
XXI.1993.35.  
*Amended by:*  
XL.2012.3;  
XXIII.2017.31.

62. (1) Notwithstanding the provisions of sub-article (4) of article 4 of this Code, the wife may, on separation, choose to revert to her maiden surname or to the surname of her predeceased husband. 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.

(2) The court may also, at the request of the husband which may be made at any time before judgment, prohibit the wife from continuing to use the husband's surname after separation, where such use may cause grave prejudice to the husband.

(3) Upon separation, spouses who have contracted marriage after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017\* may choose to revert to their surname at birth or to the surname of the predeceased spouse.

(4) 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.

(5) The Court may also, at the request of any one of the spouses which may be made at any time before judgment, prohibit the other spouse from continuing to use the surname of the other spouse after separation, where such use may cause grave prejudice to the spouse making the request.

Effects of  
separation in  
regard to third  
parties.  
*Added by:*  
XXI.1993.35.  
*Amended by:*  
XXIII.2017.32.

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.

Parties may put an  
end to separation.

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.

\*The provisions of Act XXIII of 2017 came into force on the 1st of September, 2017. See Legal Notice 212 of 2017.

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64. (1) Voluntary cohabitation shall operate as a reunion, and shall restore the obligations of cohabitation and of maintenance arising from marriage.

Voluntary cohabitation to operate as a reunion.  
Amended by:  
XVI, 1993, 36.

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

Other effects of separation may cease by public deed.

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.

Deed may take place after return to cohabitation.

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.

When effects of separation cease in regard to third parties.

Sub-title IV

Added by:  
XII, 2011, 9.

OF DIVORCE

66A. (1) Each of the spouses shall have the right to demand divorce or dissolution of the marriage as provided in this Sub-Title. It shall not be required that, prior to the demand of divorce, the spouses shall be separated from each other by means of a contract or of a judgement.

Divorce.  
Added by:  
XII, 2011, 9.

(2) The divorce or dissolution of the marriage shall be granted by virtue of a judgement of the competent civil court, upon the demand of one or the other of the spouses, or by a decree of the same court where the spouses shall have agreed that their marriage should be dissolved.

(3) All demands for divorce shall be brought before the appropriate section of the civil court as established by regulations made by the Minister responsible for justice, and the provisions of article 37 shall apply *mutatis mutandis*. The decrees and judgements of divorce shall be pronounced in open court.

(4) The court shall, in the decree or judgement of divorce, order the Registrar of Courts to notify the divorce of the parties to the Director of Public Registry within the period allowed for this purpose by the same court, so that the same shall be registered in the Public Registry.

66B.\* Without prejudice to the following provisions of this article, divorce shall not be granted except upon a demand made jointly by the two spouses or by one of them against the other spouse, and unless the Court is satisfied that:

Conditions required for divorce.  
Added by:  
XII, 2011, 9.

(a) on the date of commencement of the divorce proceedings, the spouses shall have lived apart for a period of, or periods that amount to, at least four years out of the immediately preceding five years, or at least

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four years have lapsed from the date of legal separation; and

- (b) there is no reasonable prospect of reconciliation between the spouses; and
- (c) the spouses and all of their children are receiving adequate maintenance, where this is due, according to their particular circumstances, as provided in article 57:

Provided that the spouses may, at any time, renounce their right to maintenance:

Provided further that for purposes of this paragraph, maintenance ordered by the court by a judgement of separation or agreed to between the spouses in a contract of separation, shall be deemed to be adequate maintenance:

Provided further that a divorce pronounced between spouses who were separated by a contract or by a judgement shall not bring about any change in what was ordered or agreed to between them, except for the effects of divorce resulting from the law.

Pronouncement of divorce.  
Added by:  
XIV:2011,9.

**66C.** After the court considers the requirements of article 66B to have been satisfied, the court shall hear and decide on the demands made by the parties as provided in this Sub-Title and it shall proceed to pronounce the divorce of the parties.

Divorce granted upon the application of one of the spouses.  
Added by:  
XIV:2011,9.

**66D.** (1) Without prejudice to the other provisions of this Sub-Title, where an application for divorce is made by one of the spouses, it shall not be necessary for the spouse making the demand to impute to the other party any fault leading to the making of such demand.

(2) Where the spouses are already separated by means of a contract or a court judgement, the spouse making the demand for divorce may only demand the dissolution of the marriage. The other party may contest the demand either by proving that the time period provided in article 66B(a) has not yet lapsed or by proving that the spouse demanding the divorce has not paid maintenance that was due as ordered by the court or agreed to in the separation contract and that, if the demand for divorce were to be accepted, it would be more difficult for the said other party to obtain the payment of maintenance. The court shall not grant the demand for divorce where any of the said defences are shown to be valid.

\*Article 12 of Act XIV of 2011:

"12. A bill for an Act of Parliament amending, deleting or substituting the provisions of paragraphs (a), (b) and (c) of article 66B as provided in clause 9 of this Act shall not be presented to the President for his assent unless, not less than three nor more than six months after its passage through the House, it has been submitted to the electors qualified to vote for the election of members of the House of Representatives and the majority of electors voting have approved the bill:

Provided that it shall not be required to submit the bill to the electors qualified to vote for the election of members of the House of Representatives after its passage through the House as provided in this article, if not less than three months and not more than six months after the publication of the Bill in the Government Gazette after the approval of its First Reading in the House of Representatives, the bill was submitted to the electors qualified to vote for the election of members of the House of Representatives and the majority of electors voting have approved the bill."

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(3) Where the spouses are not separated by means of a contract or a court judgement, the spouse making the demand for divorce may, together with the same demand, make all those demands that are permissible in a cause for separation in accordance with Sub-Title III of this Title. The court shall hear and determine these demands as provided in the said provisions *mutatis mutandis*. The other party may, in addition to the defences mentioned in previous sub-article, put forward all those defences which that party would have been entitled to make in a cause for separation.

(4) Where the spouses are not separated by means of a contract or a court judgement, the Court shall have *mutatis mutandis* all the powers granted to it under Sub-Title III of this Title with regard to orders which it is entitled to give *pendente lite*.

(5) Notwithstanding the other provisions of this article and only where the community of acquests or the community of residue under separate administration shall have ceased, the parties shall have a right, in any case, if they both agree, to divorce without liquidating the assets which they hold in common.

**66E.** Without prejudice to the other provisions of this Sub-Title, where the court, on the demand of one of the parties, finds the other party responsible for causing the breakdown of the marriage for the reasons provided in articles 38, 40 and 41, the court may apply *mutatis mutandis* the provisions of article 48 against that party.

Consequences of  
fault of spouse.  
Added by:  
XII, 2011, 9.

**66F.** (1) Each party in a cause for separation may, at any time during the cause, but not after the cause has been adjourned for judgement, demand, by means of an application, that the demand for separation made in that cause be instead considered as a demand for the pronouncement of divorce. When such a claim is made, the court shall hear the parties in order to verify that the conditions stipulated in article 66B for the filing of a demand for divorce are satisfied. The court shall decide upon the said claim in a judgement given in open court which shall not be subject to appeal except together with the final judgement.

Conversion of  
separation  
proceedings into  
divorce  
proceedings.  
Added by:  
XII, 2011, 9.

(2) Any witnesses declared and documents presented with the cause for separation shall apply *mutatis mutandis* when the said cause is converted into divorce proceedings. This without prejudice to the possibility that either party may produce further documents and witnesses during the divorce proceedings which are related to the demand for divorce.

(3) Where neither party elects to proceed as provided in sub-article (1) and where a demand for separation has already been made in accordance with Sub-Title III of this Title and at least one of the parties, after the making of that demand, makes a demand for divorce, the demands for separation and for divorce shall, in any case, be heard and decided together by the same court in such a manner that the connection of causes shall be applied by the court without the necessity of any demand by the parties.

(4) Either party, upon making a demand for divorce, shall declare on oath whether either that party or the other party have already made a demand for separation under Sub-Title III of this

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## Title.

Duties of  
applicant's  
advocate.  
Added by:  
NLE 2011, 9.

**66G.** (1) The advocate assisting the applicant shall, before commencing proceedings according to article 66B, where the spouses are not separated by means of a contract or a court judgement:

- (a) discuss the possibility of reconciliation with the applicant and give the applicant the names and addresses of persons qualified to offer assistance in the process of reconciliation between spouses: and
- (b) ensure that the applicant is aware of the option of personal separation as an alternative to divorce.

(2) The application for the commencement of divorce proceedings shall:

- (a) where the spouses are not separated by means of a contract or a court judgement, be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1): or
- (b) where the spouses are separated by means of a court judgement, be accompanied by a legal copy of the judgement of separation or, where the spouses are separated by means of a contract, be accompanied by a legal copy of the contract of consensual separation which shows that the applicant and the other party have been legally separated for at least four years:

Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the copy of the judgement of separation or of the contract of consensual separation, as the case may be, the advocate shall present these documents not later than, or during, the first sitting in the cause:

Provided further that, for purposes of this article, "the applicant" means a person who makes an application, who is preparing an application or who intends making an application to the court in order to obtain a divorce.

Duties of  
respondent's  
advocate.  
Added by:  
NLE 2011, 9.

**66H.** (1) The advocate assisting the respondent shall, without delay after receiving instructions from the respondent about the case, where the spouses are not separated by means of a contract or a court judgement, discuss the possibility of reconciliation with the respondent and give the respondent the names and addresses of persons qualified to offer assistance in the process of reconciliation between spouses.

(2) Where the spouses are not separated by means of a contract or a court judgement, the respondent's reply to the application for divorce shall be accompanied by a note in which the advocate confirms that he has observed the requirements of sub-article (1):

Provided that where the advocate assisting a client in a cause for divorce shall not have presented the said note, the advocate shall present that note not later than, or during, the first sitting in the cause.

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66L. (1) Where a demand for divorce is made to the competent civil court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, and where the spouses are not separated by means of a contract or a court judgement, before granting leave to the spouses to proceed for divorce, the court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties, and this for the purpose of attempting reconciliation between the spouses, and where that reconciliation is not achieved, and where the spouses have not already agreed on the terms of the divorce, for the purpose of enabling the parties to conclude the divorce on the basis of an agreement. The said agreement shall be made on some or all or of the following terms:

Powers of the  
court.  
Added by:  
XII:2011.9.

- (a) the care and the custody of the children;
- (b) the access of the two parties to the children;
- (c) the maintenance of the spouses or of one of them and of each child;
- (d) residence in the matrimonial home;
- (e) the division of the community of acquests or the community of residue under separate administration.

(2) Where a demand for divorce is made to the competent civil court by either of the spouses, or by both spouses after having agreed that their marriage is to be dissolved, also where the spouses are separated by means of a contract or a court judgement, the court may, where it considers it necessary to do so, either on its own initiative or upon the request of the mediator or of one of the spouses:

- (a) appoint a children's advocate to represent the interests of the minor children of the parties, or of any of them; and
- (b) hear the minor children of the parties, or any of them, where it considers it to be in their best interest to do so:

Provided that in any divorce proceedings before the competent civil court as referred to in this article, the court may order the parties to present information about the payment of children's maintenance.

(3) The court may, in the judgement accepting the demand for divorce, and upon a demand of that party to whom, during the hearing of the cause, maintenance was due for the party or for the children, from the other party, order that the payment of maintenance from the other party be safeguarded by means of an appropriate and reasonable guarantee, in accordance with the circumstances of the parties. That guarantee shall not be of an amount exceeding the amount of maintenance for five years. The court shall grant the said order only where, from the evidence in the cause, it results that during the hearing or prior to the commencement of the cause, the party from whom the guarantee is demanded was in default in its obligation to pay maintenance, or

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where there are serious objective circumstances which demonstrate the necessity of the said guarantee. A demand as provided for in this sub-article may also be made at any time after the said judgement, when maintenance is due.

Powers of the  
Minister.  
Added by:  
XIV.2011.9.

66J. (1) The Minister may make regulations establishing a register of persons qualified to assist the parties involved in the process of reconciliation.

(2) The Minister may make regulations to establish the procedure related to the mediation between the parties as provided in this Sub-Title.

Inadmissible  
evidence.  
Added by:  
XIV.2011.9.

66K. Any verbal or written communication made between the spouses or made by a third party in the course of an attempt at reconciliation or for the purpose of an agreement being reached between the spouses on some or all the terms mentioned in article 66I(1), or any reference thereto, shall not be admissible as evidence during divorce proceedings.

Effects of  
dissolution of  
marriage.  
Added by:  
XIV.2011.9.

66L. (1) When the competent civil court pronounces a divorce between the spouses, they shall have the right to remarry.

(2) The pronouncement of divorce shall have no effect upon the rights and obligations of the parties as parents in respect of their children or upon any agreement reached between the parties in respect of the custody of their children, without prejudice to the provisions of article 56A.

(3) The pronouncement of divorce shall have no effect upon the rights of third parties arising out of any agreement or obligation already concluded, or still to be concluded, by the divorced parties.

(4) The pronouncement of divorce as provided in sub-article (1) has the following effects:

- (a) the obligation of cohabitation of the parties shall, for all civil effects, cease;
- (b) article 62 shall apply *mutatis mutandis*; and
- (c) the rights of the spouses to the succession of each other shall cease with effect from the day when the decree or judgement of divorce becomes *res judicata*.

(5) The provisions of articles 54(7), 55A and 56A shall apply *mutatis mutandis* where the court considers it necessary to apply them after having considered the reasons brought before it.

(6) Without prejudice to the provisions of article 66D(5), sub-articles (4) to (10) of article 1332 and articles 1334, 1335, 1336, 1337 and 1340 shall apply *mutatis mutandis* to the partition of property between the spouses.

The effects of  
remarriage.  
Added by:  
XIV.2011.9.

66M. When the party receiving maintenance, whether by virtue of an order of the court or by virtue of a contract of separation, remarries or enters into a personal relationship which brings about an obligation of maintenance by a third party in favour of that party, the same party shall forfeit the right to receive maintenance payable in respect of that party by the other party in the divorce,

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22 FEB 2019

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with effect from the date of the remarriage or of the commencement of the aforesaid other relationship. This article shall also apply in the case where the parties had agreed in a contract of separation that the agreement regarding maintenance of the parties, or of either of them, shall continue to have effect and cannot be altered in the event of remarriage or of another relationship as aforesaid of the party receiving maintenance:

Provided that an order for maintenance that has been made or authorised by the court to be paid by means of a lump sum in favour of the party who remarries or who enters into another relationship as provided in this article shall retain its effect notwithstanding that the party in whose favour it is made remarries or enters into another relationship as aforesaid.

66N. (1) Notwithstanding the provisions of any other law, the courts of civil jurisdiction shall have jurisdiction to hear and determine a demand for divorce only if at least one of the following requirements is satisfied:

Jurisdiction of the court regarding divorce.  
Added by:  
XIV:2011.9.

- (a) at least one of the spouses was domiciled in Malta on the date of the filing of the demand for divorce before the competent civil court;
- (b) at least one of the spouses was ordinarily resident in Malta for a period of one year immediately preceding the filing of the demand for divorce.

(2) Notwithstanding the provisions of sub-article (1), where a cause for personal separation in accordance with Sub-Title III of this Title is pending before a court of civil jurisdiction in Malta, including a cause being heard at appeal stage, and the court has jurisdiction to hear and determine that cause, the courts of civil jurisdiction in Malta shall also have jurisdiction to hear and determine a demand for divorce between the same parties.\*

\*Article 11 of Act XIV of 2011:

"11. (1) There shall be a Committee to be known as "the Committee for the Adaptation of Laws due to the introduction of Divorce".

(2) The Committee shall consist of a representative of the Minister responsible for Justice, who shall be the Chairperson, and of two other members one of whom shall be a representative of the Minister responsible for Social Policy and the other shall be a representative of the Minister responsible for Finance.

(3) The Committee shall have the function of advising the Prime Minister on any amendments that have to be made to any law or regulation which, directly or indirectly, refers to personal separation between the spouses for the purpose of adapting the same to the introduction of divorce.

(4) The Committee shall until the 29<sup>th</sup> February 2012 make a report of its recommendations to the Prime Minister.

(5) Without prejudice to the powers of the Parliament of Malta, the Prime Minister may, by means of an order made until the 30<sup>th</sup> June 2012 make any amendments to any law or regulation as indicated in sub-article (3) as may appear to him to be necessary or expedient and those amendments may be given retroactive effect as from the 1<sup>st</sup> October 2011, saving any acquired rights.

(6) Any order made in accordance with the provisions of sub-article (5) shall as soon as may be after it is made, be laid on the Table of the House and shall have effect upon the lapse of the period of twenty-eight days after it is so laid, unless the House within that period resolves that the order be annulled or amended, whereupon that order shall have no effect or shall have effect as amended, as the case may be.

(7) In reckoning for the purposes of sub-article (6) any period of twenty-eight days therein referred to, no account shall be taken of any time during which the House is not in session or during which it is adjourned for more than seven days."

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