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 1 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, V, 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, LII of 2016, VIII of 2017, XV of 2017, XVII of 2017, XXIII of 2017, VIII of 2018, XIII of 2018. , XXVII of 2018 XXXI of 2018, XXXII of 2018 , XXIV of 2018, XXXVI of 2018 and XLIII of 2018 XVII and XXV and XXVIII of 2019 and XXVII, XXIX, XLVII, XXXIX, LXI and LXV of 2020, XXIV, XXV of 2021 and XXXVII of 2021 and Legal Notice 339 of 2019 and 38 and 40 of 2021 and 212 of 2023 and Act VI and XVII and XXXV of 2023 and XVII, XXVIII, XX, XXV and XXX of 2024.

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THIRD SCHEDULE

1. The title of this Code is the Civil Code. Title.

BOOK FIRST
OF PERSONS

PRELIMINARY

1A. (1) Persons may either be natural persons or legal persons. Persons. *Added by: XIII.2007.2.*

(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.

1B. The provisions of this Code and of any subsidiary legislation made thereunder shall also apply, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea as ratified by the Law of the Sea (Ratification) Act, to an exclusive economic zone area or an environment protection area as defined in the Exclusive Economic Zone Act. Any artificial island, installation, structure, equipment or device therein shall, solely for the purposes of this Code and any subsidiary legislation made thereunder, be treated as if they were situated in Malta itself. Extension of applicability to exclusive economic zone area or environment protection area. *Added by: XXXV.2023.7.* Cap. 362. Cap. 625.

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. Reciprocal duties of spouses. *Substituted by: XXI.1993.3.*

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

Duty to contribute towards needs of the family. *Amended by: XLVI.1973.2. Substituted by: XXI.1993.3.*

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.

Matrimonial home. *Added by: XXI.1993.3. Amended by: IX.2004.14.*

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 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

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(*b*) have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental.

(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.

Surname to be used by spouse and children of the family. *Substituted by: XXI.1993.3. Amended by: XVIII.2004.3; XIII.2007.13; XV.2012.2; L.N. 426 of 2012; IX.2014.11; XI.2015.18; XII.2015.2; XXIII.2017.29. Substituted by: LXV.2020.3.*

4. (1) The spouses shall, upon marriage, elect:

(*a*) to adopt for both of them the surname of either one of the parties to the marriage; or

(*b*) to adopt for both of them the surnames of both parties in the order of their choice; or

(*c*) to adopt, for any one of the spouses, the surname of the other spouse, after which that spouse may add his or her surname; or

(*d*) to retain, for any one of the spouses, his or her surname, after which that spouse may add the surname of the other spouse; or

(*e*) retain their own surname.

(2) (*a*)Where one of the spouses elects any of the choices in accordance with sub-article (1)(c) or in accordance with sub-article (1)(d), this choice shall be given only to one of the spouses.

(*b*) The combination of the spouses' surnames shall not result in a surname which is longer than the combination of four surnames.

(*c*) 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.

(*d*) For the purposes of sub-articles (1) and (8) of this article and article 4A, "surname" shall include the surname of the spouse at birth or the surname at the time of marriage:

Provided that where one of the spouses upon marriage elects to revert to the surname at birth, the other spouse may not elect to adopt or add the surname at the time of marriage of that spouse.

(3)Without prejudice to the provisions of sub-article (1), where the spouses choose to change their surnames in accordance with sub-article (1)(a) or (1)(b), such choice shall also become the family name, which shall be included in the Act of Marriage.

(4)Without prejudice to the provisions of sub-article (1), where one of the spouses elects any of the choices in accordance with sub-article (1)(c) or sub-article (1)(d), or where the spouses choose to retain their own surname in accordance with sub-article (1)(e), the parties shall determine their family name in accordance with the provisions of sub-article (1)(a) or (1)(b), which shall be included in the Act of Marriage.

(5)Without prejudice to the provisions of article 102, the family name chosen by the parties shall be the surname which shall be adopted by any future children of the spouses.

(6) The provisions of sub-article (1) and (2) shall also apply to spouses who married in Malta before the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020, and if the spouses wish to change their surname in accordance with any of the paragraphs in sub-article (1), they may, within five (5) years of the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020, make a request to the Director of the Public Registry to change their surname in accordance with sub-article (1) by means of Form Y contained in Part II of the First Schedule to this Code:

Act No. LXII of 2020.

Act No. LXII of 2020.

Provided that if the choice made is in accordance with paragraphs (a) or (b) of sub-article (1), Form Y shall be submitted to the Director of the Public Registry by means of a joint declaration by the spouses, and if a family name had already been elected, this shall also become the family name and shall also amend the surname of the children born prior to the submission of Form Y:

Provided further that if the choice made is in accordance with paragraph (c), (d) or (e) of sub-article (1), if a family name had already been elected, the spouses may by means of a joint declaration also request the Director of the Public Registry to change the family name as originally declared and to also amend the surname of the children born prior to the submission of Form Y:

Provided further that upon receipt of such form, the Director of the Public Registry shall make an annotation of this declaration on those acts of civil status where the spouse making such declaration appears. Such declaration shall not affect the surname as indicated in the Act of Birth of the spouse.

(7) The declaration made by means of Form Y contained in Part II of the First Schedule to this Code shall be irrevocable and shall not have effect on the surname of the other spouse, unless a joint declaration is made in terms of sub-article (6).

(8) Children born in Malta before the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020, and in respect of whom a family name had not already been chosen in the Act of Marriage, may assume the surname of any of the parents, or the surname of both parents, in the order of their choice, provided that they submit Form TT contained in Part II of the First Schedule to this Code to the Director of the Public Registry. This declaration made by means of Form TT shall be irrevocable:

Act No. LXII of 2020.

Provided that where the children are under the age of eighteen, the declaration made by means of Form TT shall be made by both parents, or by one of the parents if the other is deceased, or, if both parents are deceased, by their tutor or curator:

Provided further that such submission may not be made after the lapse of five (5) years after the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020:

Act No. LXII of 2020.

Provided further that upon receipt of such form, the Director of the Public Registry shall make an annotation of this declaration on those acts of civil status where such children appear.

(9) The spouse and descendants of the person in respect of whom the Form TT had been submitted to the Director of the Public Registry, may, by not later than three (3) years following the date of submission of Form TT, also submit to the Director of the Public Registry Form UU contained in Part II of the First Schedule to this Code, wherein they declare that they wish to use the same surname of their spouse or ascendant, as the case may be, as duly annotated in the respective acts of the civil status by virtue of sub-article (8). Upon receipt of such form, the Director of the Public Registry shall make an annotation of this declaration on every act of civil status of the person in respect of whom Form UU has been submitted. This declaration made by means of Form UU shall be irrevocable:

Provided that where the descendant is under the age of eighteen (18), the declarations made by means of Form UU shall be made by both parents, or by one of the parents if the other is deceased, or, if both parents are deceased, by his or her tutor or curator:

Provided further that where Form UU is submitted by the spouse, such declaration shall not affect the surname of the other spouse as indicated in the Act of Birth.

(10) The spouse of a descendant who has submitted a declaration made by means of Form UU may assume the descendant's newly adopted surname as duly annotated, if upon marriage such spouse declares that the surname of the descendant who has submitted Form UU will be assumed.

(11) The provisions of sub-articles (8) and (9) shall also apply to any person in respect of whom Form T or Form U had been submitted to the Director of the Public Registry.

(12) 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 Documents Act, and to the Passport Officer under the Passports Ordinance who shall respectively issue a new identification document and passport that indicate the surname in accordance to the annotation written in the relative act of civil status. The expenses for the issue of the new legally valid identification document and passport shall be borne by the person who changed the surname:

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Provided that where the person in respect of whom a change has been annotated according to this article is under the age of eighteen (18), such report shall be made by both parents, or by one of the parents if the other is deceased, or, if both parents are deceased, by their tutor or curator.

Transitory provisions in respect of article 4. Act No. XXIII of 2017. Act No. LXII of 2020. *Added by: LXV.2020.4.*

4A. (1)The children born to spouses who had applied for the publication of banns from the date of coming into force of the Marriage Act and other Laws (Amendment) Act, 2017, and before the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020, shall adopt the family name as declared in the Act of Marriage.

Act XXIII of 2017. Act No. LXII of 2020.

(2) The children born to spouses who had applied for the publication of banns before the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017, and who are born after the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020, shall assume the surname of any of the parents, or the surname of both parents in the order of their choice:

Provided that if a choice has been made by the parents by means of a joint declaration in terms of article 4(6), the children shall adopt that surname.

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: XXI.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: XXI.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.

(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.

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

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.

(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.

Duties of children towards parents.

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

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

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.

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

10. *Repealed by: XXI.1993.7.*

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

11. *Repealed by: XXI.1993.7.*

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

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:

(*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.

Obligation *in solidum.*

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 subsidium.*

(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.

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.

Siblings. *Amended by: LXV.2020.5.*

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

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

(3) The persons mentioned in article 12 shall, in all cases, have a prior claim over siblings, 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; LXV.2020.6.*

17. (1) Where a sibling has received maintenance, and, within ten years of the last supply thereof, becomes able to repay the amount so received, that sibling 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.

Amount of maintenance. *Amended by: XIII.2004.37.*

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

(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.

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

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.

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

Repayment of maintenance.

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.

(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.

Maintenance in kind.

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.

(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.

Donee primarily liable for maintenance.
Amended by: XXI.1993.14.

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.

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.*

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

31. *Repealed by: XXI.1993.18.*

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; LXV.2020.7.*

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

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

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:

Personal separation. *Amended by: XXI.1993.24. Substituted by: XXXI.2002.210. Amended by: XX.2005.22; L.N. 218 of 2012; XIII.2018.25.*

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 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:

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:

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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 Gender Based Violence and Domestic Violence Act.

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(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.

(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.

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(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.

(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.

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(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*.

(9) The provisions of this article shall also apply in cases relating to maintenance, access, and, or care and custody of children, even when the parents are not married.

Adultery.
Substituted by: XXI.1993.25.

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

Protection and Treatment Orders in lawsuit for personal separation. *Added by: XX.2005.23. Amended by: XIII.2018.25.*

39. Where a law suit for personal separation has been filed by either spouse, or a law suit for access, and, or, care and custody of children has been filed, even when the parents are not married, 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.

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Excesses, cruelty, etc. *Substituted by: XXX.1981.2. Amended by: XXV.2021.3.*

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:

Provided that the court may pronounce separation on the ground that the marriage has irretrievably broken down 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.

Desertion. *Substituted by: XXI.1993.26.*

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.

Reconciliation. *Amended by: XXI.1993.27.*

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

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

Death of either of the spouses.

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.

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

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.

Discretion of court where defendant also might have demanded separation.

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.

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. Amended by: XIII.2018.25.*

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:

Provided that in cases where there is evidence of domestic violence, the Court may limit or deny access to the children if such access would put the children or the other parent at risk.

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.*

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; VI.2023.2.*

(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.

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;

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(*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.

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(3) The provisions of article 381(2) of the Code of Organization 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:

Provided that for the purposes of this sub-article, the court may also order the Director General of Social Security to transfer a portion of social security contributions of the spouse liable to supply maintenance to the spouse to whom maintenance is due, which portion of contributions so being transferred, when adding also the contributions which the party who is receiving said transfer had paid in the said party's own name during marriage, shall not exceed in total thereof one-half of the total contributions paid by the two (2) parties together during their marriage.

(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 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.

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

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.

Matrimonial home. *Added by:* XXI.1993.32. *Amended by:* XIV.2011.5.

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

(*a*) that any one of the parties shall be entitled to reside in the matrimonial home, to the exclusion of the other party, for the period and under those conditions as it considers appropriate; or

(*b*) that the matrimonial home is to be sold, where it is satisfied that the parties and their children shall have adequate alternative accommodation, and that the proceeds of the sale shall be assigned to the parties as it considers appropriate; or

(*c*) where the matrimonial home belongs to both parties, to assign the matrimonial home to any one of the parties, which party shall compensate the other party for the financial loss suffered:

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

(*a*) the best interest of the minor children, including the impact that there may be on 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 or in part of the rights of parental authority.

Exclusion of custody. *Added by:* *XIV.2011.7.* *Substituted by:* *XIII.2018.25.*

56A. The Court may, for grave reasons, at any time during the cause for separation, and or, divorce, or when the parties are separated and, or divorced, upon the demand of one of the parties, or of its own motion declare that the other party is not fit to have the custody of the minor children of the parties, and where the Court issues such a declaration, the party so declared, upon the death of the other party, shall not be entitled to assume the custody of the minor children without the authorisation of the Court:

Provided that evidence of domestic violence shall constitute a grave reason for the purposes of this article.

Right of spouses to watch over maintenance of children. *Amended by:* *XXI.1993.33;* *XIV.2011.8.* *XIII.2018.25.*

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

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

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

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

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

Power of court to suspend action of separation.

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.

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

Separation by mutual consent.
Amended by: XXI.1993.34.
Substituted by: VIII.2007.3.

59. (1) Personal separation may, subject to the authority of the court by means of a decree in accordance with article 35, be effected by mutual consent of the spouses, by means of a public deed.

(2) The court shall, before giving its authority, admonish the parties as to the consequences of the separation, shall endeavour to reconcile them, and may revoke, modify or add those conditions it may deem fit.

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

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

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

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

Renunciation of inheritance.

(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.

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: XV.2012.3; XXIII.2017.31;
Substituted by: LXV.2020.8.

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

(2) In the case of a consensual separation, a declaration of such choice shall be made in the public deed of separation, and in the case of a judicial separation, by a note filed in the records of the case before final judgment.

(3) The court may, at the request of one of the spouses, which may be made at any time before judgment, prohibit the other spouse from continuing to use the former's surname after separation, where such use may cause grave prejudice to the spouse requesting the prohibition.

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.

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: XXI.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: XIV.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: XIV.2011.9. Amended by: LXV.2020.9.*

(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, 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, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to notify the 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: XIV.2011.9. Amended by: XXV.2021.4.*

(*a*) upon a demand made jointly by the two spouses, 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 6 months out of the preceding year:

Provided that when the demand is made by one of the spouses against the other spouse, 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 one year out of the preceding two years; or

(*b*) on the date of commencement of the divorce proceedings, the spouses are separated by means of a contract or court judgment; and

(*c*) there is no reasonable prospect of reconciliation between the spouses; and

(*d*) 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.

*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.". - Repealed by Act XXV of 2021.

Divorce granted upon the application of one of the spouses. *Added by:* *XIV.2011*.9. *Amended by:* *XXV.2021*.5.

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 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.

(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.

Consequences of fault of spouse. *Added by:* *XIV.2011*.9.

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.

Conversion of separation proceedings into divorce proceedings. *Added by:* *XIV.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.

(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 Title.

Duties of applicant's advocate. *Added by:* XIV.2011.9. *Amended by:* XXV.2021.6.

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:

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: XIV.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.

Powers of the court. *Added by: XIV.2011.9.*

66I. (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:

(*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 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, 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.

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

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:

(*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.*

Title II

OF FILIATION

Sub-title I

OF THE FILIATION OF CHILDREN CONCEIVED OR BORN IN WEDLOCK

Child born in wedlock. Amended by: XXIII.2017.33.

67. A child conceived in wedlock is held to be the child of the spouses.

Presumption of conception during wedlock.

68. A child born not before one hundred and eighty days from the celebration of the marriage, nor after three hundred days from the dissolution or annulment of the marriage, shall be deemed to have been conceived in wedlock.

When spouse may not repudiate child. *Substituted by:* XXIII.2017.34.

69. The spouse who has not given birth cannot repudiate a child born before the lapse of one hundred and eighty days after the marriage in any of the following cases:

(*a*) if, before the marriage, such spouse was aware of the pregnancy;

(*b*) if such spouse has made the declaration required for the drawing up of the act of birth, acknowledging oneself to be the parent of the child;

(*c*) if the child be declared not viable.

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*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, 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 29th 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 30th 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 1st 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.".

When spouse may repudiate child. *Substituted by: XXI.1993.37. Amended by: VIII.2007.4; XXIII.2010.2; XV.2012.4; Substituted by: XXIII.2017.35.*

70. (1) Any spouse, except for the spouse who gave birth to the child, may bring an action to repudiate a child born in wedlock:

(*a*) if such spouse proves that during the time from the three hundredth day to the one-hundred-and-eightieth day before the birth of the child, such spouse was in the physical impossibility of cohabiting with the spouse who gave birth on account of being away from the said spouse, or some other accident; or

(*b*) if such spouse proves that during the said time such spouse was *de facto* or legally separated from the spouse who gave birth:

Provided that such spouse may not repudiate the child if there has been, during that time, a reunion, even if temporary between the spouses; or

(*c*) if such spouse proves that during the said time such spouse was afflicted by impotency, even if such impotency was only an impotency to generate; or

(*d*) if such spouse proves that during the said time the spouse who gave birth had committed adultery or that, that spouse had concealed the pregnancy and the birth of the child; or

(*e*) if such spouse produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude such parenthood.

(2) The declaration of the spouse who gave birth to the effect that the other spouse is not the natural parent of the child shall be given consideration in an action regarding the exclusion of the other spouse as parent.

(3) When the action referred to in the sub-article (1) is brought, the Civil Court (Family Section) may require any of the spouses, the child, and the alleged natural parent, as appropriate, to consent to a genetic test of parentage, and to acquiesce to the taking of a genetic sample appropriate for the test, which sample must be taken according to the current provisions of the law:

Provided that where the said consent is not given by the parties, the Civil Court (Family Section) must substitute that consent that has not been given and order acquiescence in the taking of a sample.

(4) In the absence of genetic and scientific evidence, the Civil Court (Family Section) may consider any other evidence presented which it deems to be relevant, including the drawing of inferences from the fact that a person did not provide a genetic sample, despite being ordered to do so.

(5) The Civil Court (Family Section) shall dismiss the application if and as long as the clarification of the natural parentage would result in a considerable adverse effect on the best interests of the

minor child, which would be unreasonable for the child, even taking into account the concerns of the person entitled to bring the action.

(6) A person who has consented to a genetic test of parentage and has given a genetic sample may require the person entitled to bring the action who has had a parentage test made, to permit inspection of the genetic test of parentage report or to provide a copy. The Civil Court (Family Section) shall decide disputes arising from the claim under sub-article (1).

(7) The action mentioned in this article shall be decided by virtue of a decree, which decree may be appealed according to the procedure contemplated in article 229(2) of the Code of Organization and Civil Procedure. Cap. 12.

(8) Without prejudice to the provisions of the second proviso of article 73, if in its judgment the Civil Court (Family Section) declares that the spouse is not the natural parent of the child, it shall have effect to change the child's surname and that of his descendants to reflect the surname of the other spouse only, unless the Court, having regard to all the relevant circumstances, provides otherwise in its judgment.

Natural parentage. *Added by: XV.2012.5. Substituted by: XXIII.2017.36.*

70A. (1) Whenever the clarification of natural parentage of a child is required:

(*a*) the spouse may require the spouse who gave birth and the child;

(*b*) the spouse who gave birth may require the spouse and the child;

(*c*) the child may require both parents; and

(*d*) the alleged natural parent may require both spouses and the child,

to consent to a genetic test of parentage and to acquiesce to the taking of a genetic sample appropriate for the test, which sample must then be taken according to the then current provisions of the law.

(2) On the application, mentioned in sub-article (1), of a person entitled to clarify, the Civil Court (Family Section) may require any of the spouses, the child, and the alleged natural parent, as appropriate, to consent to a genetic test of parentage, and to acquiesce to the taking of a genetic sample appropriate for the test, which sample must be taken according to the current provisions of the law:

Provided that where the said consent is not given by the parties, the Civil Court (Family Section) must substitute that consent that has not been given and order acquiescence in the taking of a sample.

(3) In the absence of genetic and scientific evidence, the Civil Court (Family Section) may consider any other evidence presented which it deems to be relevant, including the drawing of inferences

from the fact that a person did not provide a genetic sample, despite being ordered to do so.

(4) The Civil Court (Family Section) shall dismiss the application if and as long as the clarification of the natural parentage would result in a considerable adverse effect on the best interests of the minor child, which would be unreasonable for the child, even taking into account the concerns of the person entitled to bring the action.

(5) A person who has consented to a genetic test of parentage and has given a genetic sample may require the person entitled to bring the action who has had a parentage test made, to permit inspection of the genetic test of parentage report or to provide a copy. The Civil Court (Family Section) shall decide disputes arising from the claim under sub-article (1).

(6) The action mentioned in sub-article (1) shall be decided by virtue of a decree, which decree may be appealed according to the procedure contemplated in article 229(2) of the Code of Organization and Civil Procedure. Cap. 12.

Impotency.

71. *Repealed by*: *XXI.1993.37.*

Adultery.

72. *Repealed by: XXI.1993.37.*

Time within which to bring action for disavowal of child. *Amended by: XXI.1993.38; III.2008.3. Substituted by: XXIII.2017.37.*

73. Where it is competent for the spouses to bring an action to disown a child, they must bring such action:

(*a*) within 6 months from the day of birth, if the spouse was then in Malta;

(*b*) within 6 months of his return to Malta, if the spouse was absent at the time of the birth;

(*c*) within 6 months of the discovery of the fraud, if the birth was concealed:

Provided that, without prejudice to the provisions of article 70(4), the Family Court may, upon an application of any one of the spouses and, if possible, after having heard all the parties interested, and after having considered the rights of the applicant and of the child, at any time authorise the applicant to institute an action to disown a child born in wedlock to the other spouse:

Provided further that where an action to disown a child is instituted by one of the spouses after the lapse of the periods stipulated in paragraphs (a), (b) or (c) in accordance with the first proviso to this article, any judgment whereby the child is disowned shall not have the effect of changing the surname of the child or of any other person who took his surname from the child unless the court, upon the demand of any of the parties made either in the sworn application whereby the action is commenced or in a separate application made during the action, provides otherwise.

Where any of the spouses dies before bringing action for disavowal.
Amended by: XXI.1993.39 III.2008.4; XXIII.2017.38; LXV.2020.10.

74. Where any one of the spouses dies without having brought the action for disavowal, but before the expiration of the time provided in article 73(*a*), (*b*) or (*c*), the heirs may bring such action within six months to be reckoned from the day on which the property of the deceased shall have passed into the hands of the child, or from the day on which the heirs shall have been by the child disturbed in the possession of such property.

Against whom action is directed.
Amended by: XXIII.2017.39.

75. (1) The action for disavowal shall be directed -

(*a*) against the child if he is of age; or

(*b*) if the child is a minor or under any disability to be sued, against a curator appointed by the court before which the action is brought:

Provided that the court may depute the tutor already appointed to the child.

(2) In all cases, the other spouse shall be made a party to the suit.

Child born after the three-hundredth day of dissolution of marriage.
Amended by: XVIII.2004.4.

76. The filiation of a child born three hundred days after the dissolution or annulment of the marriage may be impeached by any person interested.

Husband's physical impossibility of cohabitation.
Amended by: XXI.1993.40; XVIII.2004.4.| Substituted by: XXIII.2010.3.

77. Without prejudice to the provisions of article 81, the filiation of a child born in wedlock may also be impeached by any person interested:

(*a*) if he proves that, during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the husband was in the physical impossibility of cohabiting with his wife on account of his being away from her or some other accident; or

(*b*) if he proves that, during the said time, the wife had committed adultery, and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude the husband as the natural father of the child.

Application for declaration of parenthood.
Added by: XXIII.2010.4. Substituted by: XXIII.2017.40.

77A. Without prejudice to the provisions of article 81, any person claiming to be the natural parent of a child born in wedlock, or that person's heirs if the person was deceased before the child is born, may proceed by sworn application before the competent court against the spouses and child, or their respective heirs if anyone of them is deceased, in order to be declared as the natural parent of the child, and only if that person produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the spouse who gave birth had committed adultery with that person and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude one of the spouses as the natural parent of the child.

77B. A judicial demand for a declaration of parenthood as mentioned in the previous article may also be exercised by the parent who gave birth by sworn application before the competent court against the other spouse, the natural parent and the child born in wedlock, provided that the applicant produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child that parent had committed adultery with the person who the said parent is demanding to be declared as the natural parent and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to indicate that person as the natural parent of the child.

Demand may also be exercised by spouse who gave birth.
Added by: XXIII.2010.4.
Substituted by: XXIII.2017.41.

77C. In the cases referred to in articles 77, 77A and 77B the person claiming to be the natural parent of the child born in wedlock, or the spouse who gave birth as the case may be, may proceed with the action for the declaration of parenthood if their sworn application is filed within six months from the birth of the child:

Sworn application filed within six months from the birth of the child.
Added by: XXIII.2010.4.
Substituted by: XXIII.2017.42.

Provided that the Civil Court (Family Section) may, after the sworn application of the person claiming to be the natural parent of the child born in wedlock or the spouse who gave birth and, if possible after having heard all the parties interested, and after having considered the rights of the plaintiff and the child, at any time authorise the person claiming to be the natural parent of the child born in wedlock, or the spouse who gave birth to institute an action for the declaration of parenthood as mentioned in articles 77A and 77B:

Provided further that, when the filiation of a person has been declared by the court, any person who in consequence of such declaration is to assume a surname other than the surname used by such person before such declaration, or his legitimate representative, may request the competent court by application against the Director of the Public Registry to be allowed to continue to use such other surname, and the court if it is satisfied that third parties will not be prejudiced thereby and, where the application has been done on behalf of the minor, that such use shall be in the best interest of the minor, shall accede to such request and order the Director to make an annotation of its decision on the relevant act of birth of the person whose filiation has been so declared.

77D. In actions which are referred to in articles 77, 77A, 77B and 77C, the court may invite the parties to submit to examinations as referred to in article 70A.

Examinations as referred to in article 70A.
Added by: XXIII.2010.4.
Amended by: XV.2012.6.

Sub-title II

OF THE PROOF OF FILIATION OF CHILDREN CONCEIVED OR BORN IN WEDLOCK

Substituted by: XVIII.2004.5.

Registration of birth.
Amended by: XVIII.2004.6.

78. (1) The filiation of children conceived or born in wedlock is proved by the act of birth registered in the Public Registry.

(2) It may also be proved by the parochial registers.

Possession of status of child conceived or born in wedlock.
Amended by: XVIII.2004.7.

79. In default of evidence as provided in the last preceding article, the continued possession of the status of a child conceived or born in wedlock shall be sufficient.

Possession of status to be proved by series of facts.
Amended by: XXIII.2017.43.

80. (1) Such possession shall be established by a series of facts which, collectively, go to show the connection of filiation and relationship between an individual and the family to which he claims to belong.

(2) Such facts are chiefly the following:

(*a*) in the case of spouses who have contracted marriage before the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017* that the individual has always borne the surname of the father of whom he claims to be the child;

(*b*) in the case of children born to spouses who have contracted marriage after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017, that the individual has always borne the Family Name of the spouses of whom he claims to be the child;

(*c*) that the parents have treated the child as their own, and have, as such, provided for the child's maintenance, education, and establishment in life;

(*d*) that he has been constantly acknowledged as such in society;

(*e*) that he has been acknowledged as such by the family.

No person can claim a status contrary to that attributed to him by the act of birth.
Amended by: XVIII.2004.7.

81. (1) No person may claim a status contrary to that which is attributed to him by the act of birth as a child conceived or born in wedlock and the possession of a status in conformity therewith.

(2) Likewise, it shall not be lawful to contest the status of a child conceived or born in wedlock in respect of a person who possesses a status in conformity with his act of birth.

Where act of birth and possession of status are wanting.

82. In default of the act of birth and the possession of status, or if the child shall have been registered under a false name, or as being born of parents uncertain, or in case of supposition or substitution of a child, although in these last two cases, there exists an act of birth in conformity with the status possessed by the child, the proof of filiation may be made by any other evidence admissible according to law.

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

83. Proof to the contrary may be made by evidence tending to show that the claimant is not the child of the person that he alleges has given birth to him, or, where this is proved, that he is not the child of the other spouse.

Evidence to the contrary. *Amended by: XXIII.2017.44.*

84. No prescription shall run for an action for a child to establish his proper filiation.

Action not barred by prescription. *Amended by: XVIII.2004.7. Substituted by: XV.2012.7.*

85. (1) Nevertheless, where the child failed to bring such action, it may not be brought by his heirs or descendants, unless he died in the period of nonage, or within five years after attaining his majority.

When action may be brought by heirs of child.

(2) Where the child has brought the action and dies during its pendency, his heirs or descendants may continue the proceedings.

Sub-title III

OF THE FILIATION OF CHILDREN CONCEIVED AND BORN OUT OF WEDLOCK AND OF THE PRESUMPTION THAT A PERSON WAS CONCEIVED OR BORN IN WEDLOCK

Substituted by: *XVIII.2004.8.*

§ I. OF THE FILIATION OF CHILDREN CONCEIVED AND BORN OUT OF WEDLOCK

86. (1) A child conceived or born out of wedlock may be acknowledged by the parents, either jointly or separately:

Acknowledgement of children conceived or born out of wedlock. *Amended by: XVIII.2004.9; Substituted by: LXV.2020.11. Amended by: XXVIII.2024.2.*

Provided that the acknowledgement of a child born out of wedlock by a person claiming to be the parent who did not give birth, made separately from the parent who gave birth, shall not have effect and shall not be registered unless the latter, or the latter's heirs in the case of death, and the child himself if he is of age, shall have been served with a judicial letter by any person interested stating that such person intends to apply for the registration of such acknowledgement, and the parent who gave birth or the heirs, as the case may be, and the child, shall not have within a period of two months from such service, by a note filed in the acts of the said judicial letter, agreed to such registration, in which case the said judicial letter and agreement note showing agreement shall be served upon the Director of the Public Registry who shall register the said acknowledgement in the relative acts of civil status:

Provided further that where the parent who gave birth, or the child, where he is of age, does not as aforesaid agree to such registration, any person interested may proceed by application before the competent court against the person or persons who shall not have so agreed, for the court to declare that the person making the acknowledgement is the parent who did not give birth, and to order the registration of such acknowledgement in the relative acts of civil

status.

(2) Where both parents, or the heirs of the parent who gave birth, where that parent who gave birth is dead, agree to change the surname indicated in the act of birth at the point of registration, a reference to such agreement shall be made in the judicial letter and relative note as mentioned in sub-article (1), provided that such surname is permissible in terms of article 92(1).

Judicial demand.
Added by: XV.2012.8.
Amended by: LXV.2020.12.

86A. (1) The parent who gave birth to a child conceived or born out of wedlock who is not acknowledged by the parent who did not give birth, and that same child, may at all times make a judicial demand in order that there may be established the parent who did not give birth and for the court to order the registration of the parent who did not give birth in the relative acts of civil status.

(2) The judicial demand referred to in sub-article (1) may also be sought by the heirs or the descendants of the child if the same circumstances as those which are referred to in article 85 will exist.

How made.
Amended by: XVIII.2004.10; LXV.2020.13.

87. (1) The acknowledgment of a child conceived and born out of wedlock may be made in the act of birth, or by any other public deed either before or after the birth.

(2) Any declaration of parenthood made otherwise by either of the parents, or by both, or by a minor, can only be admitted as evidence of filiation in an affiliation suit.

Effects.

88. An acknowledgment shall only operate in regard to the parent making it, and it shall not confer on the child so acknowledged any right against the other parent.

A child conceived and born out of wedlock of a spouse, born before or during a marriage.
Amended by: XLVI.1973.15.
Substituted by: XVIII.2004.11.

89. A child conceived and born out of wedlock born to a spouse before or during marriage, and acknowledged during a marriage may not be brought into the matrimonial home, except with the consent of the other spouse, unless such other spouse has already given his or her consent to the acknowledgement.

Parental authority over a child conceived and born out of wedlock.
Substituted by: XLVI.1973.16.
Amended by: XXI.1993.2, 41; XVIII.2004.12. XIII.2018.25.

90. (1) The parent who has acknowledged a child conceived and born out of wedlock shall have in regard to him all the rights of parental authority other than the legal usufruct.

(2) If the interests of the child so require, the court may order that only one of the parents shall exercise the rights of parental authority;

(3) The Court may also restrict the exercise of the aforementioned rights and, in serious cases, exclude both parents from the exercise of these rights.

(4) The Court may also restrict the exercise of the aforementioned rights where one or both of the parents are convicted with one or more of the offences listed in Title VII of Part II of Book First of the Criminal Code.

Cap. 9.

91. In default of parental authority, the appointment of a tutor to a child conceived and born out of wedlock shall be made by such court as may be prescribed by or under any law in force from time to time.

Appointment of tutor by court. *Amended by: XLVI.1973.18; XXI.1993.2; III.2004.116; XVIII.2004.13.*

92. (1) If a child conceived and born out of wedlock has been acknowledged by the parent who did not give birth, that child shall assume the surname of any of the parents, or the surname of both parents, in the order they choose.

Surname of a child conceived and born out of wedlock. *Substituted by: XXXI.1965.2. Amended by: L.N. 148 of 1975; XXX.1979.2; XXX.1981.4; XII.1986.2; VIII.1990.3; XXI.1993.42; IX.2004.14; XVIII.2004.14; XXII.2005.81; III.2008.5; XII.2015.3; Substituted by: LXV.2020.14.*

(2)A child who has not been acknowledged by the parent who did not give birth shall assume the surname of the parent who gave birth.

(3)If the child conceived and born out of wedlock has been acknowledged jointly by both parents on the Act of Birth, the surname by which that child shall be known shall be declared in terms of article 292A.

(4) In any of the cases provided for in sub-articles (1) and (3):

(*a*) the combination of the parents' surnames shall not result in a surname which is longer than the combination of four surnames; and

(*b*) when the surname of any one or both of the parents already has a combination of two or more surnames, the order of the surname of that parent shall be retained, and the child shall not change such order and, or drop any part of that surname.

(5)All children conceived and born out of wedlock and acknowledged by the same parents shall be given the same surname, in accordance with the surname given to the first child so acknowledged.

(6)This article shall also apply to any child conceived and born out of wedlock in Malta prior to the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020:

Act No. LXII of 2020.

Provided that both parents, or one of the parents where the other parent is deceased, or the tutor or curator where both parents are deceased, shall deliver, or cause to be delivered to the Director of the Public Registry, Form WW contained in Part II of the First Schedule to this Code, showing that the child is to assume a new surname in terms of this article:

Provided further that such note may not be made after the lapse of five (5) years after the coming into force of the Civil Code and Various Other Laws (Amendment) Act, 2020:

Act No. LXII of 2020.

Provided further that where the child is of age, Form WW shall be delivered to the Director of the Public Registry by that child:

Provided further that upon receipt of such Form, the

Director of the Public Registry shall make an annotation of this declaration on those acts of civil status where that child appears.

(7) The provisions of sub-article (6) shall also apply to any child conceived and born out of wedlock in respect of whom Form W had been submitted to the Director of the Public Registry.

(8) The declaration made by means of Form WW shall be irrevocable and shall only have effect on the surname of the child conceived and born out of wedlock.

(9) The spouse and descendants of the person in respect of whom Form WW had been submitted to the Director of the Public Registry, may, by not later than three (3) years following the date of submission of Form WW, also submit to the Director of the Public Registry Form XX contained in Part II of the First Schedule to this Code, declaring that they wish to use the same surname as their spouse's or ascendant's surname as duly annotated in the respective acts of civil status by virtue of sub-article (6). 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 in respect of whom Form XX has been submitted:

Provided that where the child is under the age of eighteen (18) the declarations made by means of Form XX shall be made by the parents, or by one of the parents if the other is deceased, or, if both parents are deceased, by their tutor or curator:

Provided further that where Form XX is submitted by the spouse, such declaration shall not affect the surname as indicated in that spouse's Act of Birth.

(10) The provisions of sub-article (9) shall also apply to any descendant in respect of whom Form X had been submitted, and to the spouse of the descendant who has submitted Form XX.

(11) For the purposes of this article, a declaration of parenthood by a judgment of the competent court shall have the same effect as an acknowledgment.

(12) Notwithstanding the provisions of this article or of any other article in this Code, where the parenthood of a person has been acknowledged, the filiation of a person has been declared by the Court, or the presumption referred to in articles 101 to 112 has been made to apply, any person who in consequence of such acknowledgement, declaration, or the application of the presumption, is to assume a surname other than the surname used before such acknowledgement, filiation, or application of the presumption, or his legitimate representative may by means of an application against the Director of the Public Registry request the competent court to be allowed to continue to use such other surname, and the court, if satisfied that third parties will not be prejudiced thereby, and, where the application has been done on behalf of the minor, that such use

shall be in the best interest of the minor, shall accede to such request and order the Director to make an annotation of its decision on the relevant Act of Birth of the person so acknowledged, or whose filiation has been so declared, or in relation to whom the said presumption is to apply.

(13) For the purposes of this article, "surname" shall include the surname of the parent at birth or the surname of the parent at the time of the child's birth.

Duty of parents and children conceived and born out of wedlock. *Amended by: XXXI.1965.3; XXI.1993.43. Substituted by: XVIII.2004.15.*

93. Without prejudice to the provisions of article 89, parents of children conceived and born out of wedlock shall have in respect to such children and their descendants the same duty to maintain and educate them as they have with regard to children born or conceived in wedlock, and such children shall have in respect of their ascendants and other relatives the same rights and duties as children born or conceived in wedlock.

Where paternity is declared by judgment of the court. *Substituted by: XXXI.1965.4.*

94. *Repealed by: XVIII.2004.15.*

Obligation of mother. *Amended by: XXXI.1965.5.*

95. *Repealed by: XVIII.2004.15.*

Rights of parent to refuse maintenance where child refuses to follow directions of parent. *Amended by: XXXI.1965.6; XXI.1993.44.*

96. The parent, whether he or she has acknowledged the child or not, may deny maintenance if such child refuses, without just cause, to follow the directions of the parent in regard to his conduct and education.

Rights of parent to refuse maintenance where child refuses to live in house appointed by the parent. *Amended by: XXXI.1965.7; XXI.1993.45; XVIII.2004.16.*

97. It shall also be lawful for the parent, whether he or she has acknowledged the child or not, to deny maintenance to the child, if such child refuses to live in the house which the parent for just cause and with the approval of the court has appointed for his habitation, as also in any other case in which according to law it is competent to a parent to refuse maintenance to a child conceived or born in wedlock.

Duties of illegitimate child in respect of maintenance.

98. *Repealed by: XVIII.2004.17.*

Acknowledgement may be impeached by child. *Amended by: XVIII.2004.18.*

99. An acknowledgment of a child conceived or born in wedlock may be impeached by the child as well as by any other party interested.

Any party interested may contest demand for declarator of paternity.

100. A judicial demand for a declarator of paternity or maternity may also be contested by any party interested.

Genetic proof. *Added by:* XXI.1993.46. *Substituted by:* XV.2012.9.

100A. In causes to which this Sub-Title makes reference, the court may, without prejudice to any evidence that may be produced by the parties according to law, requires the parties to submit to examinations as referred to in article 70A, and in the same manner and in the same circumstances.

Parenthood in civil unions. *Added by:* IX.2014.12. Cap. 530.

100B. (1) Children adopted jointly by partners to a civil union contracted between persons of the same sex under the Civil Unions Act, or recognised by the said Act shall, notwithstanding the other provisions of this Code or of any other law, be recognised for all intents and purposes of law as having parents of the same sex and all rights and obligations of parents towards their children and of children towards their parents under this Code or under any other law shall apply to such children and parents.

(2) Whenever a law or administrative measure requires a person to declare the name or other particulars of the mother or the father, a person adopted jointly by partners in a civil union as referred to in sub-article (1) shall be entitled to declare the names or other particulars of the two partners in the said civil union instead of the said particulars of the mother or the father.

Substituted by: XVIII.2004.19.

§ II. OF THE PRESUMPTION THAT A PERSON WAS CONCEIVED OR BORN IN WEDLOCK

Where presumption arises. *Amended by:* IX.2004.14. *Substituted by:* XVIII.2004.20.

101. Where parents of children conceived and born out of wedlock subsequently marry, or where the court of voluntary jurisdiction so decrees, such children shall be deemed *iuris et de iure* to have always been conceived or born in wedlock.

Conditions for presumption. *Amended by:* XVIII.2004.21; LXV.2020.15.

102. The presumption arising out of subsequent marriage in accordance with the preceding article shall not take place unless the children have been acknowledged by both parents by means of a declaration in the act of marriage, or otherwise as provided in sub-article (1) of article 87, or unless their paternity and maternity have been declared by a judgment of the court:

Provided that the family name chosen by the parents upon their marriage may also be adopted by the children who shall be deemed *iuris et de iure* to have always been conceived or born in wedlock by virtue of that marriage.

Effects of presumption as a consequence of subsequent marriage. *Amended by:* XVIII.2004.22.

103. Children deemed to have been conceived or born in wedlock by subsequent marriage of their parents shall be vested with the rights of children conceived or born in wedlock as from the day of the celebration of the marriage, if they shall have been acknowledged on that day or previously, or if their filiation shall have been declared before the marriage by a judgment of the court.

Where acknowledgement or declarator takes place after marriage. *Amended by:* XVIII.2004.23.

104. Where the acknowledgment or judicial declarator takes place after the marriage, the children shall only acquire the rights of children conceived or born in wedlock as from the day of such acknowledgment or declarator.

105. The marriage of the parents shall bring about the presumption that even their predeceased children were conceived or born in wedlock, and such presumption shall also operate in favour of the descendants of the latter, whether conceived or born in wedlock, or so presumed to be by subsequent marriage, provided such predeceased children shall have been acknowledged as provided in article 102, or their paternity or maternity shall have been declared by a judgement of the Court.

Descendants of children presumed to be conceived or born in wedlock in consequence of subsequent marriage. *Substituted by: XVIII.2004.24.*

106. The presumption in virtue of a decree of the court shall take effect by virtue of the decree itself, and no other act shall be required. For the purposes of this article "the court" means such court or courts as may be prescribed by or under any law in force from time to time.

The presumption in virtue of decree of court. *Amended by: III.2004.118; XVIII.2004.25.*

107. The presumption referred to in the last preceding article may not be granted unless -

(*a*) it is demanded by the parent wishing to have such presumption apply to the child; and

(*b*) where such parent is married, it is proved that his or her spouse has given his or her consent thereto; and

(*c*) the consent of the child, if of age, or his welfare, if a minor, is proved.

Conditions for presumption in virtue of decree of the competent court. *Amended by: IX.2004.14; XVIII.2004.26.*

108. The Court shall have power, according to circumstances, to refuse to apply the presumption in virtue of a decree of the said court in accordance with article 102, where the applicant can make such presumption applicable in favour of his child by subsequent marriage, or has children who were conceived or born in wedlock, or so presumed by subsequent marriage, or descendants of such children.

Power of court to refuse presumption. *Substituted by: XVIII.2004.27.*

109. The presumption shall, upon the demand of the registrar of the said court, be registered in the Public Registry, as provided under articles 290 and 291 within fifteen (15) days from the date of notification of the decree to the Director of the Public Registry, unless it has already been registered upon the demand of any other person.

Registrar of court to cause registration of presumption. *Amended by: XVIII.2004.28; LXV.2020.16.*

110. Subject to the provisions of article 92, a child in whose favour there is a presumption in virtue of a decree of the competent court shall assume:

(*a*) the family name adopted by the spouses in terms of article 4, where the presumption has taken place upon the demand of either one of the parents, or both parents together; or

(*b*) the surname of any of the parents, or the surname of both parents, in the order they choose, where the presumption has taken place upon the demand of either one of the parents, or both parents together, and their marriage was contracted prior the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017; or

Surname to be assumed by child presumed to have been conceived or born in wedlock in virtue of decree of court. *Amended by: XXI.1993.47; XVIII.2004.29; XXIII.2017.45; Substituted by: LXV.2020.17.*

Act XXIII of 2017.

(*c*) the surname chosen by both parents in virtue of Form Y contained in Part II of the First Schedule to this Code, as appropriate.

Effects of presumption in virtue of decree of court as between parent and child. *Amended by: XVIII.2004.30.*

111. (1) Subject to any other provision of this Code in regard to succession, the parent and the child in whose favour operates a presumption in virtue of article 102 shall, as from the date of the decree, be in respect to each other in the same condition as a parent and a child conceived or born in wedlock.

(2) Such child shall not acquire any other right deriving from consanguinity.

Child may demand presumption after death of parent. *Substituted by: XVIII.2004.31.*

112. Where one of the parents has, in a will or other public deed, declared his or her wish to have the presumption that a child was conceived or born in wedlock, applicable to a child born to him or her out of wedlock, such child may, after the death of such parent, make a demand to have such presumption applicable in his regard, saving the power of the court as provided in article 108, in case the deceased shall have left children, conceived or born in wedlock, or so presumed to be in virtue of a subsequent marriage.

Substituted by: XXI.1962.2.

Title III

OF ADOPTION

Interpretation. *Amended by: XLVI.1973.21. III.2004.119; XVIII.2004.32; IV.2008.29. XXVIII.2024.3.*

113. (1) For the purposes of this Title and of any regulations made thereunder a person shall be deemed to make or participate in arrangements for the adoption of a person if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of a person by any other person.

(2) In this Code and in any other law, unless the context otherwise requires -

(*a*) any reference to a person or persons related to another person in any line or degree shall, in respect of an adopter or an adopted person or in tracing the relationship through an adopter or an adopted person, be construed as a reference to the person or persons who would be so related to him if the adopted person were the child of the adopter born to him or her in lawful wedlock and were not the child of any other person, and without prejudice to the generality of this provision, any reference to the name, names or surname of the parent or parents of an adopted person shall be construed as a reference to the name, names or surname of the adoptive parent or parents;

Cap. 495.

(*b*) "adoption" means an adoption effected under this Code and in accordance with the provisions of the Adoption Administration Act and, subject to such conditions and other provisions, and with effect from such date, if any, as may be contained in an order made by the Minister under this sub-article, includes an

intercountry adoption; and grammatical variations thereof or cognate expressions shall be construed accordingly;

(*c*) "Adoption Board" shall have the same meaning assigned to it by article 2 of the Adoption Administration Act; Cap. 495.

(*d*) "children conceived and born out of wedlock" means children so conceived and so born or such children in whose favour the presumption referred to in articles 101 to 112 of this Code does not apply, and who have not in either case been adopted;

(*e*) "family mediator" means a mediator as specified in the Civil Court (Family Section), the Civil Court (General Jurisdiction) and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations; S.L. 12.20

(*f*) "foster carer" shall have the same meaning as assigned to it in article 2 of the Minor Protection (Alternative Care) Act; Cap. 602.

(*g*) "intercountry adoption" shall have the meaning assigned to it by article 2 of the Adoption Administration Act; Cap. 495.

(*h*) "social worker" shall have the meaning assigned to it by article 2 of the Social Work Profession Act; Cap. 468.

(*i*) "Adoption Service within the Directorate for Alternative Care (Children and Youth)" shall have the same meaning as assigned to it in article 2 of the Adoption Administration Act. Cap. 495.

(3) For the purposes of this Title, unless the context otherwise requires:

(*a*) "accredited agency" shall have the same meaning assigned to it by article 2 of the Adoption Administration Act; Cap. 495.

(*b*) "Board of Appeal" shall have the same meaning assigned to it by article 2 of the Adoption Administration Act; Cap. 495.

(*c*) "central authority" shall have the same meaning assigned to it by article 2 of the Adoption Administration Act; Cap. 495.

(*d*) "child" means a person under eighteen years of age;

(*e*) "country of origin" in respect of intercountry adoption shall mean the country from which a child is adopted;

(*f*) "Hague Convention" means the Convention on Protection of Children and Co-Operation In Respect of Intercountry Adoption;

(*g*) "open adoption" shall have the same meaning assigned to it by article 2 of the Adoption Administration Act. Cap. 495.

Power to make adoption decrees. *Amended by: IX.2004.14; IV.2008.30; XX.2010.2. XV.2017.52; XXVII.2020.35.*

114. (1) Adoption may only take place with the authority of the competent court (hereinafter in this Title referred to as "the court") granted by decree (hereinafter referred to as "an adoption decree") following a recommendation made by the Adoption Board, made on the application of a person of either sex.

(2) An adoption decree may be made on the application of two spouses, civil union partners or cohabitants whose cohabitation is regulated by means of a contract in accordance with the Cohabitation Act, or of cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, authorizing them jointly to adopt a person and may not be made on the application of only one of such spouse, civil union partner or cohabitant:

Cap. 571.

Act No. XXVII of 2020.

Provided that, where the person to be adopted is the natural offspring of either of the spouses, a civil union partner or a cohabitant in a cohabitation registered under the Cohabitation Act or enrolled by means of a public deed under the Cohabitation Act, 2020, in that eventuality, subject to the provisions of article 115(3)(c), the adoption decree may be made notwithstanding that the application is filed only by the natural parent of the person to be adopted and the Court shall not be bound to request or review the recommendation of the Adoption Board.

Cap. 571.

Act No. XXVII of 2020

(3) Save in the case of two spouses living together civil union partners , cohabitants whose cohabitation is registered under the Cohabitation Act and cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, an adoption decree shall not be made authorizing more than one applicant to adopt a person.

(4) An adoption decree may be made in respect of a person who has already been the subject of an adoption decree under this Title; and in relation to an application for an adoption decree in respect of such a person, the adopter or adopters under the previous or last previous adoption decree shall be deemed to be the parent or parents of that person for all the purposes of this Title.

(5) In the case of a person who has attained the age of eighteen years and who is to be adopted in accordance with article 115(2)(*a*), no recommendation shall be required from the Adoption Board and no social worker and, or children's advocate shall be appointed.

Agreement of open adoption. *Added by: XXVIII.2024.4.*

114A. (1) When an application for an open adoption is made, the Court shall refer the case to the Adoption Service within the Directorate of Alternative Care (Children and Youth) who shall invite all parties, including the Children's Advocate, the person or entity entrusted with the care and custody of the minor, where this is not vested in the parents, the parents and the prospective adoptive parents to draw up an agreement of open adoption.

(2) The agreement of open adoption shall be presented to the Court for approval by not later than thirty (30) working days from the date when the case is referred to the Adoption Service within the

Directorate of Alternative Care (Children and Youth).

(3) When no agreement is reached as referred to in sub-article (2), the Adoption Service within the Directorate of Alternative Care (Children and Youth) shall notify the Court by means of a note.

(4) In the cases referred to in sub-article (3), the Court shall refer the case to a family mediator, who shall invite all parties for a meeting within ten (10) working days:

Provided that all parties, including the person or entity entrusted with the care and custody of the minor, where this is not vested in the parents, the parents and the prospective adoptive parents shall participate during such mediation to draw up an agreement of open adoption:

Provided further that the mediator may hear the minor, where the minor has sufficient understanding, with the presumption that the minor has sufficient understanding unless proof is brought to the contrary:

Provided further that where parties disagree on the agreement of open adoption, the Court shall set a date to hear all parties and shall decide upon the agreement of open adoption in its final decree.

(5) The open adoption agreement shall be presented to the Court for approval by not later than thirty (30) working days from the date when the case is referred to a family mediator by the Court.

(6) The Court may order that any changes are made to the open adoption agreement, if it is in the best interest of the minor.

Restrictions on making of adoption decrees. *Substituted by: VII.1977.2. Amended by: XVIII.2004.33; IV.2008.31 XV.2017.53; XXIII.2017.46; XXIV. 2018.12; XXVII.2020.36; XXVIII.2024.5.*

115. (1) An adoption decree shall not be made unless the applicant or, in the case of a joint application, one of the applicants -

(*a*) has attained the age of twenty-eight years and is at least twenty one years older but not more than fifty (50) years older than the person to be adopted:

Provided that if the applicant or applicants request the court for authorisation to adopt siblings, the restriction mentioned in this paragraph shall be deemed to be satisfied if there is the required age difference at least with regards to one of the children, and if the adoption will be in the best interests of all the siblings involved; or

(*b*) is the natural parent of the person to be adopted and has attained majority; or

(*c*) in favour of a foster carer who has fostered the person to be adopted for at least the preceding five (5) years, or three (3) years in extraordinary circumstances in accordance with article 54 of the Minor Protection (Alternative Care) Act.

Cap. 602.

(2) An adoption decree shall not be made -

(*a*) in respect of a person who has attained the age of eighteen years except:

(i) in favour of a sole applicant who is the natural parent of the person to be adopted; or

(ii) in favour of the parent and the spouse, the civil union partner or the cohabitant whose cohabitation is registered under the Cohabitation Act, or the cohabitant whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, if the person to be adopted has lived with the said applicants for at least five (5) consecutive years and consents to the adoption;

Cap. 571.

Act No. XXVII of 2020.

(iii) in favour of a foster carer who has fostered the person to be adopted for at least the preceding five (5) years, or three (3) years in extraordinary circumstances in accordance with article 54 of the Minor Protection (Alternative Care) Act, if the person to be adopted consents to the adoption;

Cap. 602.

(*b*) in favour of a person who is in holy orders or bound by solemn religious vows; or

(*c*) in favour of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.

(3) Subject to the provisions of article 117, an adoption decree shall also not be made -

(*a*) in any case, other than the case of a person conceived and born out of wedlock, except with the consent of every person who is a parent of the person to be adopted and is alive, even if the parent has not yet attained eighteen years of age;

(*b*) in the case of a person conceived and born out of wedlock, except with the consent of the person who gave birth to the child if such person is alive, even if she has not attained eighteen years of age as well as the natural father, if he has acknowledged the person to be adopted as his child;

(*c*) on the application of one of two spouses under the provisions of sub-article (2) of article 114, except with the consent of the other spouse;

(*d*) when the person to be adopted has attained the age of eleven years, except with his consent and after having been assisted by a children's advocate.

(4) Subject to the provisions of article 117, before an adoption decree is made the court shall -

(*a*) hear any person or any other entity who has been entrusted with the care and custody of the child to be adopted;

(*b*) *Repealed by Act XXVIII.2024.5.*

(*c*) where the person to be adopted is under tutorship or is living with a person who is not his parent but who has his care and custody in fact, hear the tutor or the person who has such care and custody in fact, as the case may be;

(*d*) hear the child's advocate and, or social worker appointed by the court to protect the best interests of the child and to secure his representation.

Care and possession of persons to be adopted before adoption. *Substituted by: VII.1977.3. Amended by: IV.2008.32; XX.2010.3; XXVIII.2024.6.*

116. (1) Except where the applicant or one of the applicants is a parent of the person to be adopted, an adoption decree shall not be made unless the person to be adopted has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree, not counting any time before the date which appears to the court to be the date on which the person to be adopted attained the age of eight (8) weeks:

Provided that, prior to the making of the adoption decree, the applicant or applicants may request the court to grant temporary care and custody of the child to be adopted:

Provided further that in the case of intercountry adoptions as defined in article 2 of the Adoption Administration Act, an adoption made in accordance with the adoption procedures under this Code and any regulations made thereunder and the Adoption Administration Act, and certified by the competent authority of the country of adoption as having been made lawfully in that country may be recognised in Malta by means of an adoption decree notwithstanding that the person to be adopted has not been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree.

Cap. 495.

(2) During the three month period specified in sub-article (1), the accredited agency responsible for the adoption placement shall take any measures it deems expedient to ensure that the placement with the applicant or applicants is in the best interests of the child and if the placement is not deemed to be in the best interests of the child, the accredited agency shall ask the Adoption Board to seek authorisation from the court for the removal of the child from the placement.

(3) Where an application for adoption is pending in any court, any parent of the person to be adopted who has signified his consent to the making of an adoption decree in pursuance of the application and any tutor shall not be entitled, except with the leave of the court, to remove the person to be adopted from the care and possession of the applicant; and in considering whether to grant or

refuse such leave the court shall have regard to the welfare of the person to be adopted.

Power to dispense with consent. *Amended by: XXXVIII.1972.2; L. 1981.2; IV.2008.33.*

117. (1) The court may dispense with any consent or with any hearing required by article 115 if it is satisfied -

(*a*) in the case of a dispensation with any such consent, that:

(i) the person who is required to give his consent is incapable of giving such consent; or

(ii) the parent cannot be found or has abandoned, neglected or persistently ill-treated, or has persistently either neglected or refused to contribute to the maintenance of the person to be adopted or had demanded or attempted to obtain any payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or

(iii) either of the parents are unreasonably withholding their consent; or

(iv) either of the parents may be deprived of parental authority over the child to be adopted in accordance with article 154(1); or

(v) the child to be adopted is not in the care and custody of either of the parents and the Adoption Board declares that there is no reasonable hope that the child may be reunited with his mother and, or father; or

(vi) the parent or parents have unjustifiably, not had contact with the child to be adopted for at least eighteen months; or

(vii) it is in the best interests of the child to be adopted for such consent to be dispensed with; or

(*b*) in the case of a dispensation with any such hearing, that the person who is required to be heard cannot be found or is incapable of expressing his views; or

(*c*) that in view of special and exceptional reasons and taking into account the interests of all persons concerned, it is proper for it to dispense with any such hearing and consent.

(2) The court may dispense with the consent of the spouse of an applicant for an adoption decree if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent, or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(3) The consent of any person in accordance with the provisions of paragraph *(a)* of sub-article (3) of article 115 to the making of an adoption decree in pursuance of an application may be given (subject to conditions with respect to the religious

persuasion in which the person to be adopted is to be brought up) without knowing the identity of the applicant for the decree.

(4) The Court may dispense with any consent or hearing required for adoption following a request by a children's advocate on behalf of a child who has attained eleven years of age and who would like to be adopted.

Evidence of consent. *Amended by: XXVIII.1963.2; XXXVIII.1972.3; VII.1977.4; XXVIII.2024.7.*

118. (1) Where any parent or the person to be adopted does not attend in the proceedings on an application for an adoption decree for the purpose of giving his consent to the making of the decree, then, subject to the provisions of sub-articles (2) and (3) of this article, a document signifying his consent to the making of such a decree and his understanding of the nature and effect of such a decree shall, if the person in whose favour the decree is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein in the prescribed manner, be sufficient evidence of that consent and of his understanding the nature and effect of the decree, whether the document is executed before or after the commencement of the proceedings; and where any such document is attested as mentioned in paragraph *(b)* of sub-article (2) of this article, it shall be sufficient evidence as aforesaid without further proof of the signature of the person by whom it is executed.

(2) A document signifying the consent of the both parents of a person to be adopted shall not be sufficient evidence under this article unless -

(*a*) the person to be adopted is at least eight (8) weeks old on the date of the execution of the document; and

(*b*) the document is attested on that date by a Commissioner for Oaths or an advocate or a notary or, if executed outside Malta, by a person of any such class as may be prescribed.

(3) A document signifying the consent of the person to be adopted shall not be sufficient evidence under this article unless the person in whose favour the decree is to be made is named in the document.

(4) For the purposes of this article, a document purporting to be attested as mentioned in paragraph *(b)* of sub-article (2) of this article shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

Placing a minor in alternative care before being given up for adoption. *Added by: XXVIII.2024.8.*

Cap. 602.

118A. In all cases where the parents of a minor show their intention that the minor is given up for adoption, with the aim that such minor is eventually adopted, the Director (Child Protection) shall be notified and a social contract in accordance with article 12 of the Minor Protection (Alternative Care) Act shall be drawn up, which care plan may include a temporary placement in alternative care for the minor with the aim of allowing the parents to understand all the legal effects that result from the adoption of the minor:

Provided that where applicable, the Director (Child Protection) shall investigate whether any members of the extended family are willing to provide adequate care to the minor.

Function of court as to adoption decrees.
Amended by: IV.2008.34; XXVIII.2024.9.

119. (1) The court before making an adoption decree shall be satisfied -

(*a*) that every person whose consent is necessary for the making of the adoption decree and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption decree for which application is made; and in particular in the case of any parent that he understands that the effect of the adoption decree will be permanently to deprive him or her of his or her rights in respect of the person to be adopted;

(*b*) that the decree if made will be for the welfare of the person to be adopted;

(*c*) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction;

(*d*) that due consideration has been given to the recommendations of the Adoption Board.

(2) In determining whether an adoption decree if made will be for the welfare of the person to be adopted, the court shall have regard (among other things) to the health of the applicant, as evidenced, in such cases as may be prescribed, by the certificate of a registered medical practitioner, and shall give due consideration to the wishes of the person to be adopted, having regard to his age and understanding and to the religious persuasion of such person and of his parents.

(3) The court in an adoption decree may impose such terms and conditions as the court may think fit, and in particular may require the adopter to make for the person to be adopted such provision (if any) as in the opinion of the court is just and expedient.

(4) If it is in the minor's best interest, the Court shall, when making the adoption decree, authorise an agreement of open adoption which has been drawn up by the parties together with the Adoption Service within the Directorate of Alternative Care (Children and Youth) or before a mediator, where the parents and, or the natural family of the minor shall maintain contact with the minor:

Provided that the Court shall ensure that the agreement of open adoption was drawn up with the consent of all parties:

Provided further that the Court shall take into consideration the views of the minor if he possesses sufficient understanding:

Provided further that an open adoption may include, but

shall not be limited to physical access, contact through electronic means or any other form of correspondence:

Provided further that every open adoption agreement shall be drawn up with due consideration to the minor's best interest:

Provided further that open adoption shall give the right of access between siblings, even when one of the siblings has been adopted:

Provided further that the minor shall give his consent when he has attained the age of eleven (11) years:

Provided further that any amendments to the agreement of open adoption shall not have any effect before they are authorised by the Court.

Curator. *Amended by: VII.1977.5; IV.2008.35; XXVIII.2024.10.*

120. (1) Upon an application for an adoption decree of a person to be adopted, the court shall appoint such person as may be prescribed to act as special curator of the person to be adopted with the duty of safeguarding the interests of the person to be adopted before the court.

(2) Following an application for an adoption decree of a minor, the Court shall appoint a Children's Advocate to ensure that the minor is adequately represented and his best interests are safeguarded.

Children's Advocate. *Added by: XXVIII.2024.11.*

120A. Without prejudice to the functions of the Children's Advocate under any other law, the Children's Advocate shall:

(*a*) hear the wishes and views of the minor;

(*b*) submit the wishes and views of the minor to the Court as relayed to him by the minor himself, or by other professionals working with the minor;

(*c*) give advice and explanation to the minor on the ongoing proceedings and the effects that such proceedings may have;

(*d*) in cases of open adoption, hear the wishes and views of the minor regarding the agreement of open adoption and submit such wishes and views, either orally or in writing during proceedings in accordance with article 114A.

Rights and duties. A*mended by: XLVI.1973.20; XXI.1993.48; IV.2008.36.*

121. Upon an adoption decree being made -

(*a*) the person in respect of whom the adoption decree is made shall be considered with regard to the rights and obligations of relatives in relation to each other, as the child of the adopter or adopters born to him, her or them in lawful wedlock and as the child of no other person or persons, relationship being traced through the adopter or adopters;

(*b*) the relatives of the person in respect of whom the adoption decree is made shall lose all rights and be freed from all obligations with respect to such person;

(*c*) the tutor, if the person in respect of whom the adoption decree is made is placed under tutorship, shall terminate his administration and, within three months from the date of the adoption decree, render an account thereof to the adopter;

(*d*) the parents shall, in the case of an open adoption, retain the right to maintain contact with the person in respect of whom the adoption decree is made;

(*e*) the court shall inform the competent authorities that the adoption decree has terminated the care order if an adoption decree has been made in favour of a child who is under a care order issued by virtue of the Children and Young Persons (Care Orders) Act.

Cap. 285.

Service of adoption decree. *Added by: XXVIII.2024.12.*

121A. Upon an adoption decree being made, a copy shall be served upon the Central Authority:

Provided that in case of local adoptions, a copy of the adoption decree shall also be served upon the Directorate of Alternative Care (Children and Youth).

Judgments, decrees or orders for payment of maintenance. *Amended by: VII.1977.6; XVIII.2004.34; IV.2008.37.*

122. (1) Where an adoption decree is made, any judgement, decree or order for the payment of maintenance in force with respect to that person, and any agreement whereby the parent of that person has undertaken to make payments specifically for his benefit, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the judgment, decree, order or agreement at the date of the adoption decree.

(2) After an adoption decree has been made in respect of a person who is conceived and born out of wedlock, no judgment, decree or order for the payment of maintenance shall be made.

Property rights.

123. (1) Where, at any time after the making of an adoption decree, the adopter or the adopted person or any other person dies intestate in respect of any property, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) In any disposition of property made, whether by instrument *inter vivos* or by will, after the date of an adoption decree -

(*a*) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(*b*) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including,

a reference to the adopted person; and

(*c*) any reference (whether express or implied) to a person or persons related to the adopted person in any line or degree shall, unless the contrary intention appears, be construed as a reference to the person or persons who would be related to him in that line or degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) For the purposes of the devolution of any property in accordance with this article and for the purposes of the construction of any disposition to which sub-article (2) applies, an adopted person shall be deemed to be related to any other person being the adopted child of the adopter as brother or sister.

(4) Where an adoption decree is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of this article in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption decree, and in relation to any disposition of property made, or taking effect on the date of a person dying, after that date.

Adopted person to assume adopter's surname. *Substituted by: XXX.1981.5. Amended by: IV.2008.38; XXIII.2017.47; LXV.2020.18; XXVIII.2024.13.*

124. Upon an adoption decree being made, the person in respect of whom the adoption decree is made shall assume the surname of the adopter:

Provided that where the adoption decree is made in favour of two spouses, the person in respect of whom the adoption decree is made shall assume the surname of any of the adoptive parents, or the surname of both adoptive parents in the order of their choice:

Act XXIII of 2017.

Provided further that when the adoption decree is made in favour of two spouses who contracted marriage after the coming into force of the Marriage Act and other Laws (Amendment) Act, 2017*, then the person in respect of whom the adoption decree is made shall assume the Family Name of the spouses:

Provided further that where the person to be adopted is a child below the age of three years, the adopter may, with the approval of the court, give such child a new name:

Provided further that where the person to be adopted has sufficient understanding, he may choose to retain his biological family name and assume the surname of the adopter or adoptive parents, as the case may be, in accordance with the provisions of this Code.

Registration of adoptions. *Amended by: XXXI.1965.8,9; III.1994.2; XIII.2007.13; LXV.2020.19; XXVIII.2024.14.*

125. (1) Every adoption decree shall contain a direction to the Director of the Public Registry to make in the Adopted Persons Register (established by article 269 of this Code) an entry in accordance with Form H set out in Part II of the First Schedule to this Code and (subject to the provisions of the next following sub-article) shall specify the particulars to be entered under the

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

headings in columns 2 to 7 of that form.

(2) For the purposes of compliance with the requirements of the last foregoing sub-article -

(*a*) where the precise date of the birth of the person to be adopted is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the decree as the date of his birth;

(*b*) where the country and place of birth of the person to be adopted are not proved to the satisfaction of the court, then, if it appears probable that that person was born in Malta, he shall be treated as having been born in Malta, and in any other case the particulars of the country of birth may be omitted from the decree and from the entry in the in the Adopted Persons Register;

(*c*) the term "sex" shall also include the term "gender" and the court shall only include the term "sex" in the decree,

and the surname to be specified in the decree as the surname of the person to be adopted shall be the surname adopted in accordance with the provisions of article 124.

(3) Where upon any application for an adoption decree there is proved to the satisfaction of the court the identity of the person to be adopted with a person to whom an entry in the register book of acts of birth (established by article 238 of this Code) relates, any adoption decree made in pursuance of the application shall contain a direction to the Director of the Public Registry to cause the entry in the register book of acts of birth to be marked with the word "Adopted".

(4) Where an adoption decree is made in respect of a person who has previously been the subject of an adoption decree under this Title, the decree shall contain a direction to the Director of the Public Registry to cause the entry in the Adopted Persons Register to be marked with the word "Re-adopted".

(5) Upon an adoption decree being made, the Registrar of Courts shall cause the decree to be communicated to the Director of the Public Registry within fifteen days of the making of such decree and the Director of the Public Registry shall, within fifteen days of the receipt of such communication, cause compliance to be made with the directions contained in the decree both in regard to marking any entry in the register book of acts of birth with the word "Adopted" and in regard to making the appropriate entry or entries in the Adopted Persons Register, and shall on every such decree write the date of receipt thereof and sign his name thereto.

(6) The provisions of sub-article (2) of article 238, sub-article (1) of article 245, articles 248, 249, 252, 260, 261 and, subject to the provisions of article 269, article 251 shall *mutatis mutandis* apply to the Adopted Persons Register and entries therein, extracts therefrom and certificates and other documents relating thereto or connected therewith.

Presumption that a person was conceived or born in wedlock: revocation of adoption decrees and cancellations in register. *Amended by: XXIV.1995.362; IX.2004.14; XVIII.2004.35; XXIII.2017.48.*

126. (1) Where any person adopted by any one of the parents alone has subsequently become a person presumed to have been conceived or born in wedlock on the marriage of his parents, the competent court may, on the application of any of the parties concerned, revoke that decree.

(2) Where an adoption decree is revoked under this article, the Registrar of Courts shall cause the revocation to be communicated to the Director of the Public Registry who shall cause to be cancelled -

(*a*) the entry in the Adopted Persons Register relating to the adopted person; and

(*b*) the marking with the word "Adopted" of any entry relating to him in the register book of acts of birth,

and a certified copy of any such entry as is referred to in paragraph *(b)* shall be deemed to be an accurate copy only if both the marking and the cancellation are omitted therefrom.

Amendment of decree and rectification of registers. *Amended by: XXIV.1995.362.*

127. (1) The court by which an adoption decree has been made may, on the application of the adopter or of the adopted person, amend the decree by the correction of any error in the particulars contained therein and may, if satisfied on the application of any person concerned that a direction for the making of an entry in the register book of acts of birth or the Adopted Persons Register included in the decree in pursuance of sub-article (3) or sub-article (4) of article 125 was wrongly so included, revoke that direction; and where an adoption decree is so amended or a direction revoked, the Registrar of Courts shall cause the amendment to be communicated to the Director of the Public Registry within fifteen days of the making of such decree; and any necessary correction of or addition to the Adopted Persons Register or cancellation of the marking of an entry in the register book of acts of birth or the Adopted Persons Register shall be made accordingly.

(2) Where an adoption decree has been amended any certified copy of the relevant entry in the Adopted Persons Register which may be issued pursuant to article 269(5) shall be a copy of the entry as amended, without the reproduction of any note or marking relating to the amendment or of any matter cancelled pursuant thereto; and a certified copy of an entry in any register, being an entry the marking of which has been cancelled, shall be deemed to be an accurate copy only if both the marking and the cancellation are omitted therefrom.

Right to information. *Added by: IV.2008.39. Amended by XXVIII.2024.15.*

127A. (1) An adopter or an adopted person who has attained eighteen years of age may apply to the court for a copy of the relevant adoption decree.

(1A) An adopter or an adopted person who has attained the age of sixteen (16) years shall have the right to file a formal request to the Central Authority to request details of the adopted person's natural family and, or of the adoption placement:

Provided that such information should only be given in the

presence of a professional working in the social field, who possesses the necessary skills.

(2) An adopted person who has attained eighteen years of age shall have the right to apply to the court for authorisation to obtain a copy of his original birth certificate from the Public Registry.

(3) Prior to giving an order related to sub-articles (1) and (2), the court shall hear the applicant and any other person it deems fit in the circumstances.

Prohibition of certain payments.
Amended by: XXVIII.1963.3; XIII.1983.5; VIII.1990.3; IX.2004.14; L.N. 407 of 2007; IV.2008.40.

128. (1) No person shall make or give or agree or offer to make or give, or receive or agree to receive or attempt to obtain any payment or other reward for or in consideration of -

(*a*) the adoption by that person of any person;

(*b*) the grant by that person of any consent required in connection with the adoption of a person;

(*c*) the transfer by that person of the care and possession of the person to be adopted with a view to his adoption;

(*d*) the making by that person of any arrangements for the adoption of a person.

(2) Any person who contravenes the provisions of sub-article (1) of this article shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than six months but not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty seven cents (2,329.37) or to both, and the court may order a minor in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or tutor or until other arrangements can be made for him. The person convicted of an offence in terms of this article shall also be liable to reimburse any amount which was paid to him.

(3) This article, insofar as it relates to the making of any arrangements for the adoption of a person, does not apply to -

(*a*) payments made for the maintenance of that person; and

(*b*) advocates', notaries', legal procurators' or medical practitioners' remuneration for professional services.

(4) Any conviction under the provisions of sub-article (2) of this article shall be notified by the registrar of the court making the conviction to the competent court, and the latter court shall thereupon take such measures as it considers expedient in the best interests of the person adopted or to be adopted including, if it deems fit, the revocation of the adoption decree.

Prohibition of publication. *Added by: IV.2008.41. Amended by: XXIII.2017.49.*

128A. (1) No person shall, without the approval in writing of an accredited agency, publish or cause to be published in any newspaper, periodical or any other printed matter or by means of broadcasting, television, public exhibition or by any other means or medium, any advertisement, news item or other matter indicated, whether or not in relation to a particular child, born or unborn, that:

(*a*) a child may be adopted;

(*b*) a person intends to adopt a child; or

(*c*) a person intends or is willing to make arrangements with a view to the adoption of a child.

(2) Unless authorised by the court, no person shall publish or cause to be published in any newspaper, periodical, any other printed matter or by means of broadcasting or television, public exhibition or by any other means or medium, anything related to an application for the adoption of a child or to adoption proceedings including:

(*a*) the name of the applicant or applicants;

(*b*) the name of the person who is or will be adopted;

(*c*) the name of any one of the parents, the curator or the tutor of the child who is or will be adopted; or

(*d*) any matter likely to enable any of the persons mentioned in paragraphs (*a*), (*b*) and (*c*) to be identified.

(3) Any person who contravenes the provisions of this article shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to both.

False statements. *Added by: IV.2008.41.*

128B. (1) Notwithstanding the provisions of any other law, any person who knowingly makes a false statement, whether orally or in writing, for the purposes of or in connection with an adoption, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than five hundred and eighty-two euro and thirty-four cents (582.34) but not more than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69), or to both.

(2) A person who knowingly gives false information in the application for the entry of a person's details in the Reunion and Information Register shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five hundred and eighty-two euro and thirty-four cents (582.34).

Impersonation or false representation. *Added by: IV.2008.41.*

128C. Notwithstanding the provisions of any other law, a person who impersonates or falsely represents himself to be an adopted child, parent, adopter, relative, person whose consent to the adoption of a child is required at law, or other person having an

interest in an adopted child, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than five hundred and eighty-two euro and thirty-four cents (582.34) but not more than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69), or to both.

Forged documents. *Added by: IV.2008.41.*

128D. If in any adoption proceedings a person files a document purporting to indicate the consent to the adoption or the revocation thereof, where the signature is forged or obtained by fraud or duress, such person shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than six months but not exceeding one year or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), or to both.

Use of force. *Added by: IV.2008.41.*

128E. A person who uses or threatens to use any force or restraint or injures or threatens to injure, or causes or threatens to cause anything to the detriment of a parent of a child with the intention of:

(*a*) inducing a parent to offer or refrain from offering the child for adoption;

(*b*) influencing a parent on whether or not to consent to the adoption,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months but not exceeding six months or to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), or to both.

Removal of child. *Added by: IV.2008.41.*

128F. A parent who consents to the adoption of his child and proceeds to remove the child from the care and custody of the prospective adopter or adopters without the authority of the court, shall be guilty of an offence, and shall on conviction be liable to imprisonment for a term of not less than two months but not exceeding four months or to a fine (*multa*) of not less than five hundred and eighty-two euro and thirty-four cents (582.34) but not more than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69), or to both.

Regulations. *Amended by: L.N. 4 of 1963; XXXI.1966.2; IV.2008.42.*

129. The Minister may make regulations-

(*a*) for prescribing anything which by this Title is authorized or required to be prescribed;

(*b*) for the protection, supervision and control of minors who are placed in the care and possession of such persons as may be prescribed;

(*c*) for regulating the making of or participating in arrangements for the adoption of a person or for the placing of a minor in the care or possession of another person;

(*d*) for any incidental and supplementary matter for which

the Minister thinks it expedient for the purposes of the regulations to provide, including in particular the entering and inspection of premises to which the regulations relate by persons authorized in that behalf by the Minister with a view to securing compliance with the regulations;

(*e*) for establishing the penalties to which any offender of any of the regulations may be liable.

Intercountry adoptions. *Added by: XLVI.1973.22. Amended by: IV.2008.43*

130. (1) Subject to sub-article (2), where an intercountry adoption is to be treated as an adoption in accordance with the provisions of article 113 the order (however called) of the authority outside Malta whereby such adoption is effected shall have effect as if it were an adoption decree made by the court in Malta; and the provisions of this Code and of any other law shall apply accordingly with such adaptations and variations as may be appropriate in the circumstances.

(2) Sub-article (1) of this article shall apply subject to any review, revocation or annulment by a competent court or other authority of the order whereby the intercountry adoption was effected and to any determination or order in relation thereto.

(3) Without prejudice to the foregoing provisions of this article, in respect of an intercountry adoption the court shall have -

(*a*) the power to determine whether such intercountry adoption is to be treated as an adoption in accordance with article 113;

(*b*) the power to direct the appropriate entry or marking relating to the intercountry adoption to be made in the registers and acts referred to in this Title and the making of any rectification or cancellation thereof;

(*c*) the power to determine whether, and the extent to which, a review, revocation or annulment of such an adoption is to have effect in Malta;

(*d*) the power to order that an intercountry adoption shall cease to have effect as an adoption or to be valid, in Malta on the grounds that the adoption is contrary to public policy or that the authority which purported to authorize the adoption was not competent; and

(*e*) generally all such powers as it has in respect of an adoption under this Code,

and may exercise such powers on an application for that purpose or in the exercise of its powers under this article.

Provisions of international treaty to prevail. *Added by: III.2004.120. Amended by: IV.2008.44.*

130A. Notwithstanding the foregoing provisions of this Title, where an intercountry adoption is regulated by the provisions of an international treaty to which Malta is a party, the Minister may make regulations as he may deem appropriate for the implementation of the provisions of such a treaty, and the powers of the Court in respect of such an intercountry adoption shall be exercised in accordance with and within the limits allowed by the terms of the treaty and to ensure that the provisions of such treaty

are complied with.

Title IV

OF PARENTAL AUTHORITY

Amended by: *XXI.1993*.2.

Child subject to parental authority. *Substituted by: XLVI.1973.23; XXI.1993.49. Amended by: III.2004.121.*

131. (1) A child shall be subject to the authority of his parents for all effects as by law established.

(2) Saving those cases established by law, this authority is exercised by the common accord of both parents. After the death of one parent, it is exercised by the surviving parent.

(3) In case of disagreement between the parents on matters of particular importance, either parent may apply to such court as may be prescribed by or under any law in force from time to time indicating those directions which he or she considers appropriate in the circumstances.

(4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the unity of the family. If the disagreement between the parents persists, the court shall authorise the parent whom it considers more suitable to protect the interest of the child in the particular case, to decide upon the issue, saving the provisions of article 149.

(5) In the case of an imminent danger of serious prejudice to the child either parent may take such measures which are urgent and cannot be postponed.

(6) With regard to third parties in good faith, each of the spouses shall be deemed to act with the consent of the other where he or she performs an act relative to parental authority relative to the person of the child.

Sub-title I

OF THE EFFECTS OF PARENTAL AUTHORITY IN REGARD TO MINORS

Amended by: *XXI.1993*.2.

Child to obey and not to abandon parental house. *Amended by: L.N. 148 of 1975; XXI.1993.50.*

132. (1) A child shall obey his parents in all that is permitted by law.

(2) Saving any other provision of law respecting enlistment in any disciplined force, it shall not be lawful for a child, without the consent of the parents, to leave the parental house, or such house as his parents may have appointed for him.

(3) Where the child leaves the house without such consent, the parents shall have the right to recall him, and, if necessary, demand the assistance of the Police.

Power of court to authorize child to leave parental house. *Amended by: III.2004.122; IX.2004.14.*

133. (1) Nevertheless, it shall be lawful for the competent court as may be prescribed by or under any law in force from time to time, for just cause, and without disclosing the same, to authorize the child to leave the parental house.

(2) Where delay might be detrimental, it shall be lawful for any magistrate to give the requisite order, making a report thereof, not later than the following working day, to the said court, which may confirm, revoke, or vary such order.

Power of the court to authorize child to be placed in alternative care. *Substituted by: XXI.1993.51. Amended by: III.2004.123.*

134. (1) It shall be lawful for the parents, if they are unable to control the child, to remove him from the family, assigning to him, according to the means of the parents, such maintenance as is strictly necessary.

(2) In any such case, the parents may also, where necessary and upon obtaining the authority of such court as may be prescribed by or under any law in force from time to time, place the child, for such time as is stated in the decree, in some alternative form of care, which the court will according to circumstances consider suitable, to be, at the expense of the parents, cared for and treated in such manner as the court may deem conducive to the discipline and education of the child.

(3) The demand for such authority may be made even verbally; and the court shall make the necessary order thereon without any formal proceedings, and without giving its reasons therefor.

Parents to be representatives of the children. *Substituted by: XXI.1993.51.*

135. The parents jointly represent their children, whether born or to be born, in all civil matters.

Parents' power of administration. *Amended by: XXX.1981.6. Substituted by: XXI.1993.51.*

136. (1) The parents jointly administer the property of their children, whether born or to be born, except such as has devolved on such children on condition that it shall be administered solely by one of the parents or by third parties.

(2) Acts of ordinary administration may however be performed by either of the parents without the intervention of the other.

(3) Acts of extraordinary administration which must be performed by the parents jointly include -

(*a*) the alienation of movables by nature, including motor vehicles for the object of profitably investing the proceeds thereof;

(*b*) the collection of capitals that may become due;

(*c*) the granting of personal rights of enjoyment over immovable property;

(*d*) the acceptance of an inheritance, legacy or donation in the name of the child;

(*e*) the partition of movables by nature;

(*f*) acts which require the authorisation of the court in terms of sub-article (4) of this article.

(4) The parents may not alienate immovables or movables by

operation of law belonging to the child nor may they contract loans or other debt, on his behalf hypothecate or pledge his property, enter into a suretyship, enter into any compromise, or submit a dispute to arbitration except in case of necessity, or manifest utility and with the authority of the court and in any such case the court may, at the request of the parents, authorise one only of the parents to represent the child on the relative deed.

(5) In case of disagreement between the parents the provisions of article 131 shall apply.

Acceptance of inheritance. *Amended by: XLVI.1973.24; XXX.1981.7; XXI.1993.52.*

137. (1) Any inheritance devolving on the children, shall be accepted by the parents with the benefit of inventory, unless such inventory is dispensed with by the court.

(2) If one of the parents is unable or unwilling to accept such inheritance, the inheritance may be accepted by the other parent with the authority of the court. If both parents are unable or unwilling to accept such inheritance the court may, upon the demand of the child or of any of his relatives, authorise the acceptance thereof either by the child himself, if he has attained the age of fourteen years, or otherwise by a special curator to be appointed by the court.

(3) Where the surviving spouse has filed the return in respect of property comprised in a chargeable transmission in accordance with the provisions of the Duty on Documents and Transfers Act, Cap. 364. such spouse shall be deemed, for the purposes of this article, to have accepted the inheritance devolving upon the minor with the benefit of inventory with respect to such property as shall have been declared in the said return, which inventory shall be deemed to have been duly drawn up and published according to the said return, without the necessity of any further formality or authorization required by any law.

Nullity of acts may only be set up by father, etc. *Amended by: XXI.1993.53.*

138. Where any act is performed in contravention of the provisions of the foregoing articles, the nullity thereof may only be set up by either parent or by the child or his heirs or other persons claiming under him.

Conflicting interests. *Substituted by: XXI.1993.54.*

139. In case of conflicting interests between the children, or between the children and either parent, the competent court shall, according to circumstances, appoint one or more special curators:

Provided that it shall be lawful for either parent to decline to represent any of the children against another or against the other parent.

Parents to render account of administration. *Substituted by: XXI.1993.54.*

140. (1) The parents are bound to render to the child, on the latter attaining majority, an account of the property and the fruits of those things of which they have not the usufruct; and of the property only and of the administration thereof in regard to things of which they have the legal usufruct.

(2) If parental authority ceases before the child attains majority the parents shall render the account on the date of such cessation.

(3) Without prejudice to any liability of the parent, either

parent may render such account on behalf also of the other parent.

Property of which the parents have usufruct. *Amended by: XXI.1993.55.*

141. (1) The parents shall have the usufruct of such property as devolves on the child by succession, donation, or any other gratuitous title, including property derived from entail.

(2) They shall retain such usufruct until the child attains majority, unless the latter dies before that time.

Property not subject to legal usufruct. *Amended by: XXI.1993.56; XIII.2007.3.*

142. The following property shall not be subject to the legal usufruct:

(*a*) property bequeathed or given to the child on condition that the parents or either of them shall not have the usufruct thereof:

Provided that any such condition shall be inoperative in regard to property reserved to the child by way of reserved portion:

Provided further that where the property is bequeathed or given to the child on condition that only one of the parents shall not have the usufruct thereof, such property shall be subject to the usufruct of the other parent, sohowever that in any such case, the fruits of such property shall not be comprised in any community of acquests subsisting between the parent enjoying the usufruct and the parent excluded therefrom;

(*b*) property given to the child to undertake a career, an art or a profession;

(*c*) property devolved on the child by inheritance, legacy or donation where such inheritance, legacy or donation has been accepted in the interest of the child against the wishes of the parents:

Provided that where such property has been accepted on behalf of the child by one parent against the wishes of the other parent, such property shall be subject to the usufruct of only that parent who made the acceptance; sohowever that in any such case, the fruits of such property shall not be comprised in any community of acquests subsisting between the parent accepting such inheritance, legacy or donation as aforesaid, and the parent who has not so accepted;

(*d*) property which the child may have acquired by his own work or his own separate industry.

Obligations to which usufruct of parents is subject. *Amended by: XXI.1993.57.*

143. The usufruct vested in the parents shall be subject to the following obligations:

(*a*) all obligations to which usufructuaries are subject, excepting that of giving security;

(*b*) the payment of any annuity or of any interest on capital fallen due before the commencement of the usufruct;

(*c*) the payment of the funeral expenses, and of those of the last illness of the person from whom the property has devolved on the child where, otherwise, such expenses would have been borne by the child;

(*d*) the expenses for the maintenance and education of the child.

Cessation of usufruct. *Amended by: XXI.1962.3; XXI.1993.2,58.*

144. (1) The usufruct of the parents shall cease on the death of the child or on the marriage or remarriage of the parents or the adoptive parents, as the case may be.

(2) It shall also cease for any other reason for which parental authority ceases.

(3) Where the usufruct ceases in respect only of one of the parents, the fruit of the property subject to such usufruct shall not be comprised in any community of acquests subsisting between the parent in respect of whom the usufruct has not ceased, and the parent in respect of whom it has so ceased.

Where parents continue to enjoy property on cessation of usufruct. *Substituted by: XXI.1993.59.*

145. Where the usufruct ceases, and the parents, or either of them, continue or continues to enjoy the property of the child living with the parents or either of them without authority but without opposition on the part of the child, or with authority but without the express condition of rendering an account of the fruits, such parents or parent or the heirs of such parents or parent as the case may be shall only be bound to deliver the fruits existing at the time of the demand, and shall not be bound to account for such fruits as may have been consumed up to that time.

Death, etc. of one of the parents. *Substituted by: XLVI.1973.25; XXI.1993.59.*

146. (1) In the event of the death of one of the parents, parental authority shall vest solely in the surviving parent in respect of his or her children and their property, including property devolving on the children from the property of the deceased parent and from any other cause after the death of the predeceased parent.

(2) The provisions of sub-article (1) of this article shall also apply where one of the parents has forfeited or been deprived of parental authority, or cannot, because of absence or other impediment, exercise the rights of parental authority.

(3) If either of the parents is deprived of the right of usufruct only, such right shall vest in the other parent alone.

(4) Where one parent is deprived of the usufruct, the fruits of such usufruct shall not be comprised in any community of acquests subsisting between that parent and the parent who has not been so deprived.

Where parent remarries and continues to administer property. *Substituted by: XLVI.1973.26; XXI.1993.59.*

147. (1) If a parent, on remarriage, continues to administer the property of the children, whether or not such parent still exercises the right of parental authority, the spouse of the parent shall be held liable *in solidum* with such parent for the administration both preceding and subsequent to the marriage.

(2) The provisions of this article shall apply to an adoptive parent on marriage or remarriage.

148. *Repealed by: XXI.1993.59.*

Applicability of provisions where mother is vested with paternal authority. *Substituted by: XLVI.1973.27.*

149. Notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child.

Power of court to give directions notwithstanding other provisions. *Substituted by: XLVI.1973.28.*

Sub-title II

HOW PARENTAL AUTHORITY CEASES

Amended by: *XXI.1993.2*

150. Parental authority ceases *ipso jure* in each of the cases following:

When parental authority ceases *ipso jure.* *Amended by: XXI.1962.4; XLVI.1973.30; XXI.1993.2,60.*

(*a*) on the death of both parents or of the child;

(*b*) when the child attains the age of eighteen years;

(*c*) on the marriage of the child;

(*d*) if the child, with the consent of the parents, has left the parental home and set up a separate domestic establishment;

(*e*) if the parents fail to make, in favour of the child, the registrations referred to in articles 2038 and 2039; sohowever that where only one parent has failed to make such registration, parental authority shall not cease in relation to the parent who has not so failed;

(*f*) if the surviving parent remarries or, in the case of an adoptive parent, if after the adoption he marries or remarries, without having first made an inventory of the property of the child and obtained from the court the requisite leave to continue in the exercise of the rights of parental authority.

151. In any of the cases referred to in paragraphs (*e*) and (*f*) of the last preceding article, it shall be lawful for the court, if it deems it expedient in the interest of the child, to reinstate the parent in the parental authority wholly or in part upon his performing that by reason of the omission of which he had forfeited such authority.

When court may reinstate parent in parental authority. *Amended by: XXI.1993.2,61.*

Court may dispense with inventory. *Amended by*: XXI.1993.62.

152. The court may, on good cause, dispense with the inventory required under paragraph *(f)* of article 150, and direct, instead, that a mere description of the property be made, which shall be verified on oath by the parent.

Power of court where parent, before or after remarriage, demands to continue in the exercise of parental authority. *Amended by:* XXI.1962.5; XXI.1993.2,63.

153. Moreover, the court may, upon a demand made by the parent, either before or after his remarriage or, in the case of an adoptive parent, his marriage or remarriage for authority to continue in the exercise of the rights of parental authority, grant to the parent only such rights as refer to the person of the child, and appoint a curator for the administration of the property or entrust such administration to the parent and appoint a tutor in regard to the person of the child.

When parent may be deprived of parental authority. A*mended by:* XXI.1993.2,64; XIII.2018.25.

154. (1) Saving any other punishment to which he may be liable according to law, a parent may be deprived, by the said court, wholly or in part, of the rights of parental authority, in any of the cases following:

(*a*) if the parent, exceeding the bounds of reasonable chastisement, ill-treats the child, or neglects his education;

(*b*) if the conduct of the parent is such as to endanger the education of the child;

(*c*) if the parent is interdicted, or under a disability as to certain acts, as provided in articles 520 to 527 inclusive of the Code of Organization and Civil Procedure, and articles 189 and 190 of this Code;

Cap. 12.

(*d*) if the parent mismanages the property of the child;

(*e*) if the parent fails to perform any of the obligations set out in article 3B in favour of the child.

(2) If the interests of the child so require, the Court may order that only one of the parents shall exercise the rights of parental authority and the Court may also restrict the exercise of these rights and, in serious cases, exclude both parents from the exercise of these rights.

(3) The Court may also restrict the exercise of the aforementioned rights where one or both of the parents are charged with one or more of the offences listed in Title VII of Part II of Book First of the Criminal Code.

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(4) Nevertheless, the court may, even in the cases mentioned in sub-article (1) of this article, reinstate the parent in the exercise of the rights of which he has been deprived, when the cause of such deprivation ceases to exist.

Usufruct of property of child to cease on forfeiture of parental authority. *Amended by:* XXI.1993.2.

155. The usufruct of the property of the child shall cease upon the forfeiture of any of the rights of parental authority, and shall only be re-acquired upon the full restoration of parental authority.

156. (1) Where a minor, who has attained the age of sixteen years, has been authorized under article 9 of the Commercial Code, to trade, or, not being a trader, to perform certain acts of trade, such minor shall, in regard to all matters relating to his trade, or in regard to such acts, be considered as being of age.

Where minor carries on trade. *Amended by: XLVI.1973.32; XXI.1993.2.* Cap. 13.

(2) Nothing in this Code shall affect all other provisions of the Commercial Code, relating to minors and to children subject to parental authority.

Title V

OF MINORITY AND OF TUTORSHIP

Sub-title I

OF MINORITY

157. A minor is a person of either sex who has not yet attained the age of eighteen years.

Minority.

Sub-title II

OF TUTORSHIP

158. Any minor, whose parents have died or have forfeited parental authority and who has not married, is subject to be placed under tutorship until he becomes of age or until he marries.

Where minor is subject to tutorship. *Substituted by: XLVI.1973.33. Amended by: XXI.1993.2.*

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§ I. OF THE APPOINTMENT AND REMOVAL OF TUTORS

Appointment of tutor. *Substituted by: XLVI.1973.34.*

159. (1) A tutor is appointed by the court on the demand of any person.

(2) In appointing a tutor the court shall take into account any disposition contained in the will of either of the parents of the child relating to the appointment of a tutor.

Persons competent to act as tutors. A*mended by: XXI.1962.6; XLVI.1973.36.*

160. Where among the relatives of the minor there are competent persons, the court shall appoint one of such persons, preference being given, subject always to the best interests of the child, to the nearest relative by consanguinity.

Where more than one tutor are appointed. *Substituted by: XLVI.1973.37.*

161. (1) It shall be lawful for the court to appoint more than one tutor.

(2) Where more than one tutor have been appointed the court may at any time, either of its own motion or upon the demand of any of the tutors, specify their respective duties; and, until such time as particular duties shall have been assigned to each of them, each of the tutors shall have all the powers and duties of a tutor, and they shall all be jointly and severally liable for the acts of each of them.

(3) Where any of the tutors dies or otherwise ceases to be tutor, the tutorship shall be exercised by the other tutor or tutors unless the court, of its own motion or upon the demand of any person shall have appointed another tutor in his stead.

Conflict of interest between minors and tutors.

162. In case of conflicting interests between minors subject to the same tutors, or between them and the tutors, the provisions of article 139 shall apply.

Persons not competent to hold the office of tutor. *Amended by: XLVI.1973.39; XI.1977.2; XLIX.1981.4; XIII.2004.38.*

163. The following persons cannot be appointed tutors:

(*a*) persons who have not attained majority;

(*b*) persons who are not vested with the free administration of their property or who are notoriously incompetent to administer property;

(*c*) persons who are or are about to be, or whose spouse or relatives by consanguinity or affinity up to the degree of uncle and nephew, are, or are about to be involved in a lawsuit with the minor, in which the status of such minor, or a considerable part of his property is at stake;

(*d*) undischarged bankrupts;

(*e*) persons who have been sentenced to the punishment of imprisonment for a term exceeding one year, or to any punishment for an offence affecting the good order of families, or for fraud;

(*f*) persons who are of a notoriously bad character, or manifestly untrustworthy or negligent;

(*g*) persons who are trustees of property for the benefit of the minor.

Judges and magistrates not eligible as tutors. *Amended by: L.N.148 of 1975.*

164. (1) The judges and the magistrates are not eligible for the office of tutor, except in the case of their own relative by consanguinity in any degree in the direct line, or up to the degree of cousin in the collateral line.

(2) Tutorship already assumed in regard to persons other than the aforesaid relatives shall cease on the appointment of the tutor to the office of judge or magistrate.

Persons who may be excused from the office of tutor. *Amended by: XXV.1962; L.N. 46 of 1965; XLVI.1973.40; L.N. 148 of 1975.*

165. The following persons are entitled to be exempted from accepting or continuing in the office of tutor:

(*a*) members of the House of Representatives;

(*b*) heads of public departments, and any other public officer having the direction of any particular branch of the public service;

(*c*) persons belonging to the armed forces of Malta, if on active service;

(*d*) persons who have attained the age of sixty years, or are suffering from a habitual infirmity, which incapacitates them from discharging the office of tutor without serious inconvenience;

(*e*) any person who is a father or a mother of five living children;

(*f*) persons who are already discharging a tutorial office;

(*g*) any person not being a relative of the minor, or being a distant relative, if there is in Malta a relative, or, as the case may be, a nearer relative competent to discharge the office of tutor, and not excused therefrom:

Provided that where the incapacity or the ground of exemption of the relative or nearer relative ceases, the stranger or the distant relative, as the case may be, may claim to be relieved of the office.

Power of court to dispense tutors.

166. It shall also be lawful for the court for any of the causes mentioned in the last preceding article or for any other just cause, to exempt, permanently or temporarily, any tutor from continuing in his office.

Tutorial inventory. *Amended by: XLVI.1973.41.*

167. (1) The court shall, before appointing a person to the office of tutor, direct such person to make an inventory of the property of the minor or, according to circumstances, a description of such property, verified on oath by such person, and to bind himself with hypothecation of his own property limited to a fixed sum, well and truly to administer the property of the minor, and to render on the termination of the office a true and faithful account of his administration.

(2) The court may order that the tutorial inventory or description aforesaid be made by a person other than that who is to be appointed to the office of tutor.

Power of court in regard to tutor. *Amended by: XLVI.1973.43; XI.1977.2.*

168. (1) It shall be lawful for the court, when it deems it expedient, in the decree of appointment, to impose on the tutor the obligation of presenting in the registry of the court, yearly or at such other intervals as the court shall direct, an account of his administration.

(2) The court may also direct the person who offers to assume the office of a tutor, to give security, and, in any such case, the obligation of the surety as well as that of the tutor must precede the appointment of the tutor.

Suspension or removal of tutor.

169. (1) The court may suspend or remove any tutor or curator from his office on any of the grounds mentioned in paragraphs (*b*), (*c*), (*d*), (*e*) and (*f*) of article 163, or for failure to render an account in due time, or for unfaithfulness in the account rendered, or for any other just cause, saving the provisions of article 35 of the Code of Organization and Civil Procedure.

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(2) In all cases the court shall chiefly consider the interest of the minor.

Curator *ad ventrem*. *Amended by: XXIII.2017.50.*

170. (1) If, at the time of the death of any one of the spouses without issue, the surviving spouse declares that she is pregnant, the court may, upon the demand of any person interested, appoint a curator *ad ventrem* with a view to preventing any supposition of birth, or substitution of child, and administering the property up to the day of the birth, under such directions as the court may deem it proper to give.

(2) It shall be lawful for the court to appoint a female as curatrix, and entrust another person with the administration of the property.

Remuneration to tutor.

171. The court may at any time grant to the tutor, or to the curator mentioned in the last preceding article, a moderate remuneration.

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§ II. OF THE TUTOR'S ADMINISTRATION

Duties of tutor.

172. The tutor shall have the care of the person of the minor; he shall represent him in all civil matters, and administer his property as *a bonus paterfamilias*.

Power of court with respect to education of minor. *Amended by: XLVI.1973.44.*

173. The court shall, as appropriate, prescribe the place in which the minor is to be brought up, the education which it is proper to give him, and the expense to be incurred for his maintenance and education.

Powers of tutor in case of bad conduct of minor.

174. (1) Where the tutor has serious reasons for being dissatisfied with the conduct of the minor, the provision of article 134 shall apply.

(2) The necessary expenses shall be at the charge of the minor.

Duties of minor towards tutor. *Amended by: IX.2004.14.*

175. (1) The minor shall obey the tutor in all that is permitted by the law.

(2) Where the tutor abuses his authority, or neglects his duties, the minor himself or any other person on his behalf, may make a complaint to the competent court; and the court shall caution the tutor or give any other expedient direction.

Acts not admitting of delay.

176. The court may, even though the requirements laid down in article 167 have not yet been complied with, authorize the person entrusted with the making up of the inventory, or any other person, to perform such acts as do not admit of delay.

Disposal of movable property. *Amended by: XLVI.1973.45.*

177. (1) The tutor shall, within the time of three months from his appointment, sell all such movable property of the minor as the court shall not have authorized him to keep.

(2) Unless otherwise authorized by the court the sale shall be made by public auction.

(3) It shall be in the discretion of the court, according to circumstances, to enlarge the time referred to in sub-article (1) of this article.

Precious articles, etc.

178. (1) The court may order any precious articles which the tutor shall have been authorized to keep, to be deposited in the place appointed for the judicial deposit of similar articles or in some other place of safe custody.

(2) The same shall apply in regard to any moneys or securities to bearer comprised in the estate of the minor.

(3) The court may, at any time, give other directions in regard to such articles, moneys, or securities.

Commercial establishments. *Amended by: XLVI.1973.46.*

179. (1) Any commercial or industrial establishment comprised in the estate of the minor shall be sold and liquidated by the tutor in the manner prescribed by the court.

(2) Nevertheless, the court may sanction the continuation of the business if such continuation is likely to be of greater advantage to the minor.

Limitation of powers of tutor. *Amended by: I.1908.1; XLVI.1973.47.*

180. (1) It shall not be lawful for the tutor, without the authority of the court, to collect or transfer any capital belonging to the minor, take money on loan except in case of urgency, accept or renounce any inheritance, accept any donation or legacy subject to any burden, refer any matter to arbitration or effect any compromise, or alienate, hypothecate, or make any emphyteutical grant of immovable property, or let out property for a time exceeding eight years, in the case of rural property, or four years, in the case of urban property, or the ordinary time according to usage, in the case of movables.

(2) Upon a demand for authority to accept an inheritance, the court may, according to circumstances, allow the tutor to produce in lieu of the inventory prescribed in article 848, a note describing the property comprised in the inheritance which shall be verified on oath by the tutor.

(3) Where a lease has been granted for a longer time than that stated in sub-article (1) of this article, it shall be reduced to the time therein respectively stated, to be reckoned from the date of the contract.

(4) The court may, in the decree appointing a tutor or by a subsequent decree, grant such tutor a general authority in respect of all, or any of the said acts.

Profitable investment of moneys. *Amended by: XLVI.1973.48; XIII.1983.5; L.N. 407 of 2007*

181. (1) The tutor shall, after deducting the expenses necessary for the minor, profitably invest the income or other moneys which he collects, when the amount thereof exceeds the sum of one hundred and sixteen euro and forty-seven cents (116.47).

(2) If the tutor fails to make such investment, he shall be liable in interest, unless he proves that notwithstanding all due diligence he has not succeeded in securing a profitable and safe investment.

(3) The tutor shall be liable for any loss occasioned by his failure to take, in making the investment, such precautions as a *bonus paterfamilias* would have taken.

Administration.

182. (1) The tutor shall keep at least a book of receipts and expenditure.

(2) He shall, with his accounts, produce vouchers for any expense of a considerable amount.

(3) The said book, if verified on oath by the tutor, shall be sufficient to prove small expenses.

(4) The tutor shall only be credited with such expenses as are considered useful or, having regard to the position and the means of the minor, customary.

Rendering of accounts

183. (1) Where the administration terminates for any other cause than that referred to in article 158, the tutor shall render his account to his successor in the office of tutor.

(2) If the minor dies during the tutorship, the account shall be rendered to his heirs.

to person who was under tutorship.

184. If the tutorship terminates for any of the causes mentioned in article 158 the account shall be rendered to the person who was under such tutorship.

Interest.

185. (1) Any balance which may be due by the tutor shall bear interest *ipso jure* as from the day of the termination of the tutorship.

(2) The interest of any sum which may be due by the minor to the tutor shall only commence to run from the day on which a demand for payment shall have been made by the tutor, after the termination of his office, by means of a judicial act.

Limitation of actions.

186. Subject to the provision of article 2157, all actions competent to the minor against the tutor, or competent to the tutor against the minor, relating to the tutorship, shall be barred by the lapse of five years to be reckoned from the day on which the minor

attains his majority, or dies.

Nullity of acts performed by tutor.

187. (1) The nullity of any act performed in contravention of the provisions contained in this Title, touching the interests of the minor, may only be set up by the minor or his heirs or other persons claiming under him.

(2) No act of the tutor may be impeached solely on the ground that the appointment of the tutor was made against the provisions of article 163.

Title VI

OF MAJORITY, GUARDIANSHIP, INTERDICTION AND INCAPACITATION

Sub-title I

OF MAJORITY

Age of majority.

188. (1) Majority is fixed at the completion of the eighteenth year of age.

(2) A major is capable of performing all the acts of civil life, subject to the restrictions contained in other special provisions of law.

Sub-title I A

Added by: XXIV.2012.3.

OF GUARDIANSHIP

Persons subject to guardianship. *Added by:* XXIV.2012.3. *Amended by:* XXIV.2016.31.

188A. (1) Notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation, a major who has a mental disorder or other condition, which renders him incapable of taking care of his own affairs may be subject to guardianship; and notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation, to the extent possible, the parents of a person of age, with disability, with a mental disorder and with another condition, which makes such person incapable of taking care of his or her affairs, shall first seek to place the person with disability under guardianship before seeking the interdiction or incapacitation of that person.

(2) The same shall apply in regard to a minor referred to in article 156.

(3) The demand for the appointment of a guardian or of joint guardians may be made by any person who voluntarily wishes to be made subject to guardianship or by any person mentioned in article 189(3) of this Code or in article 521 of the Code of Organization and Civil Procedure. Cap. 12.

(4) If in any civil proceedings the Court considers that a party may need to be subject to guardianship, the Court shall refer the matter to the Guardianship Board established under Title IIIA of Part II of Book Second of the Code of Organization and Civil Procedure for its determination.

Cap. 12.

(5) For the purposes of this Sub-title unless the context otherwise requires, the terms "mental disorder" and "other condition" shall have the same meaning as assigned to them in article 189(4):

"disability" shall have the same meaning as assigned to it in the Equal Opportunities (Persons with Disability) Act;

Cap. 413

"mental disorder" shall have the same meaning as assigned to it in the Mental Health Act:

Cap. 525.

Provided that any reference in such definitions to "disability of mind" or to "arrested or incomplete development of mind" shall not be construed as a reference to a mental disorder for the purposes of this Sub-title.

Functions of guardian. *Added by: XXIV.2012.3.*

188B. A guardian shall:

(*a*) be responsible to safeguard the personal and proprietary well being of the person to whose guardianship he is appointed;

(*b*) act instead of the person to whose guardianship he has been appointed in matters of a personal or of a proprietary nature during such time when the said person is considered as not being capable of doing any one or more acts of civil life as specified in the Guardianship Order;

(*c*) to do any other thing for or on behalf of the person to whose guardianship he is appointed as he may be ordered or authorised to do by the Guardianship Board established under Title IIIA of Part II of Book Second of the Code of Organization and Civil Procedure or by the Court of Voluntary Jurisdiction or as may be prescribed by regulations made under this Sub-title.

Cap. 12.

Obligations in respect of acts of guardianship. *Added by: XXIV.2012.3.*

188C. (1) The provisions of this Sub-title shall be construed and interpreted and every function, power, authority, discretion, duty or right conferred by this Sub-title or by any regulations made thereunder shall be exercised in such manner that:

(*a*) the will of the person subject to guardianship is respected and given effect to the maximum extent possible;

(*b*) the welfare of the person subject to guardianship is promoted and fostered;

(*c*) the means used for the purpose of guardianship shall be proportionate to the aims which they are intended to achieve; and

(*d*) the freedom of choice and action of the person subject to guardianship shall only be restricted when necessary and only to an extent that is proportionate to

the aim pursued.

(2) In the exercise of his obligations the guardian shall act in the best interests of the person subject to guardianship and shall:

(*a*) take appropriate measures to provide the support that the person subject to guardianship may require in exercising his legal capacity himself insofar as this is possible;

(*b*) consult with the person subject to guardianship and take into account and respect the rights, will and preferences of the person insofar as this is possible;

(*c*) encourage the person subject to guardianship to participate as far as possible in the life of the community;

(*d*) encourage and assist the person subject to guardianship to become capable of caring for himself and for his property and of making responsible judgements in respect of matters relating to his person and property;

(*e*) protect the person subject to guardianship from neglect, abuse or exploitation; and

(*f*) provide to the person subject to guardianship, as far as possible, any assistive means as may be required for the proper fulfilment of the obligations provided in this sub-article.

(3) Subject to the limits imposed in the Guardianship Order or by any other decision which the Guardianship Board may give from time to time, a guardian may on behalf of a person subject to guardianship sign and do all such things as are necessary to give effect to any functions or obligations vested in the guardian.

Power to make regulations. *Added by: XXIV.2012.3.*

188D. The Minister, in conjunction with the Minister responsible for Social Policy and the Minister responsible for Health may make regulations for the better implementation of the provisions of this Sub-title.

Sub-title II

OF INTERDICTION AND INCAPACITATION

Persons subject to interdiction. *Amended by: II.2012.13.*

189. (1) A major who is a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or who is insane or prodigal, may be interdicted or incapacitated from doing certain acts, as provided in articles 520 to 527 inclusive, of the Code of Organization and Civil Procedure.

Cap. 12.

(2) The same shall apply in regard to the minor referred to in article 156.

(3) The demand for interdiction or incapacitation may be made

not only by the persons mentioned in article 521 of the Code of Organization and Civil Procedure, but also by any person related by affinity who, under the provisions of this Code, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal.

(4) For the purposes of this Title, and for the purposes of the provisions of articles 597, 752, 1034, 1035, 1036 and 1241:

(*a*) "other condition", where used in the context of a condition that renders a person incapable of managing his own affairs, means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others; and

Cap. 525.

(*b*) "mental disorder" shall have the meaning assigned to it in the Mental Health Act:

Provided that any reference in such definitions to "disability of mind" or "arrested or incomplete development of mind" shall not be construed to mean a mental disorder for the purposes of this Title and such provisions.

Deaf-mutes or blind. Cap. 12.

190. (*Deleted by Act II.2012.14*).

Interdiction of minor. *Substituted by: XXIV.2012.4.*

191. (1) A minor under tutorship may be placed under the guardianship or interdicted or incapacitated in the last year of his minority, and in any such case the Guardianship Board or the Court, as the case may be, may appoint as guardian or curator either the tutor or any other person.

(2) The said guardian or curator shall only commence to administer the property as from the day of the termination of the tutorship.

Nullity of acts performed by person interdicted.

192. The nullity of the acts performed by the person interdicted or incapacitated after the interdiction or incapacitation may only be set up by the curator, or by the person interdicted or incapacitated or his heirs or other persons claiming under him.

Title VII

OF ABSENTEES

Definition of "absentee".

193. A person who has ceased to appear in Malta and has not been heard of shall, for the purposes of the provisions contained in this Title, be deemed to be an absentee.

Sub-title I

OF THE CURATORSHIP OF ABSENTEES

Application for appointment of curator. *Amended by: IX.2004.14.*

194. The presumptive heirs of an absentee, or any other person interested, may apply to the competent court in the island in which the absentee last resided, for the appointment of a curator to manage the property of such absentee, and for any other requisite directions for the preservation of his property.

Edict. *Amended by: XXXI.1965.8; XIII.2007.13.*

195. Upon any such application, the court shall direct that an edict, drawn up according to Form A in Part II of the First Schedule to this Code, be twice, with an interval of at least one month, published in the Government Gazette, and posted up at the entrance of the building in which the court sits, and in any other place which the court may deem proper, calling upon any person having information respecting the absentee to communicate such information to the court, through the registrar.

Information respecting absentee.

196. (1) Any information respecting the absentee may be given either in writing, in any form, or orally.

(2) Where the information is given orally, the registrar shall make a note thereof at the foot or in the margin of the application, or, if this is not practicable, on a separate sheet of paper to be kept with the application.

(3) Any communication which is anonymous, or made by a person unknown and without an indication of the place in which such person may be found, will not be considered.

Inventory.

197. If, on the expiration of the time fixed in the second publication of the edict, no information shall have reached the court respecting the existence of the absentee, or the place where he may be found, the court shall appoint a person to make up, within such time as the court shall fix, an inventory of the property of the absentee, or, according to circumstances, a description of such property to be verified on oath by such person:

Provided that if the court shall have had information warranting further enquiries, it shall be lawful for the court, before making any such appointment, to direct such further enquiries to be made.

Acts which do not admit of delay.

198. The court may, at any time, after the application referred to in article 194, authorize any competent person to perform, on behalf of the absentee, such acts as do not admit of delay.

Obligation of curator.

199. (1) Upon the completion of the inventory or description, the court shall, before allowing the application, direct the curator designate to bind himself with hypothecation of his own property limited to a fixed sum, well and truly to administer the property of the absentee, and to render, on the termination of the curatorship, a true and faithful account of his administration.

(2) Where the court deems it expedient that the curator designate should give security, the obligation of the surety shall also precede the appointment of the curator.

Persons not competent to act as curators. *Amended by: XLVI.1973.49.*

200. (1) The persons who according to the provisions of article 163 are not competent for the office of tutor, shall not be competent for the office of curator.

(2) No person is bound to accept the curatorship of an absentee.

Court may appoint more than one curator. *Amended by: XLVI.1973.50.*

201. (1) It shall be in the discretion of the court to appoint two or more curators.

(2) In any such case the provisions of sub-articles (2) and (3) of article 161 shall apply.

Rendering of accounts.

202. (1) The curator shall render an account of his administration to the absentee, if he returns, or if he appoints an attorney, or to such persons as are vested with the possession of his property.

(2) The provisions, however, of sub-article (1) of article 168 shall also apply to the said curator.

Curator to represent absentee.

203. (1) The curator shall represent the absentee in civil acts and shall manage his property as a *bonus paterfamilias*.

(2) He is bound to prosecute the enquiries about the existence of the absentee or the place in which he may be found, and to communicate to the court any information which he may receive.

(3) Unless otherwise provided in the decree appointing the curator or in any other decree, the provisions of articles 169 and 177 to 182 inclusive shall also apply to such curator.

Where the absentee has left an attorney.

204. (1) Where the absentee has left an attorney for the management of his property, the court shall, during the time the power of attorney is in force, give directions only with regard to such acts as the attorney may not perform under the power of attorney or in virtue of the law.

(2) When the power of attorney expires, the foregoing provisions of this sub-title shall apply.

Sub-title II

OF THE PROVISIONAL POSSESSION OF THE PROPERTY OF AN ABSENTEE

Opening of wills. *Amended by: LIV.1974.2; IX.2004.14; XXIV.2011.99.*

205. After the lapse of three continuous years from the day the absentee was last heard of, or of six years, if the absentee has left an attorney to manage his property, the competent court in the island where the absentee last resided, may, upon the application of any person interested, order the opening of any secret will, or declare, notwithstanding the provisions of article 68 of the Notarial Profession and Notarial Archives Act, accessible any public will, which the absentee may have made.

Cap. 55.

Edict.

206. (1) Upon any such application, the court shall hear the

attorney or curator, if any, and, if it is of opinion that the order sought for should be given, shall direct that an edict similar to that referred to in article 195 be published in the Government Gazette, and posted up at the entrance of the building where the court sits, and in any other place which it may deem proper.

(2) The provisions of article 196 relating to any information which may be given in regard to the absentee, shall apply also in the case referred to in this article.

Where six months have elapsed without any information respecting absentee.

207. After the lapse of six months from the publication of the edict, the court, in default of any information respecting the absentee, shall, by a decree, order the opening of any secret will, or, as the case may be, declare accessible any public will which the absentee may have made.

Demand for provisional possession by heirs-at-law in default of institution of heir, *Amended by: LIV.1974.4; IX.2004.14.*

208. The testamentary heirs of the absentee or their heirs, or where the will does not contain any institution of heir, such persons as would have been the heirs-at-law of the absentee, if he had died on the day he was last heard of, or their heirs, may make a demand to the competent court in the island in which the absentee last resided, that they be vested with the provisional possession of the property.

or in default of secret or public will.

209. (1) Where there is no secret or public will, the demand referred to in the last preceding article, may be made immediately upon the expiration of the times respectively established in article 205.

(2) Upon such demand the court shall hear the attorney or curator, if any, and, if expedient, shall issue an edict similar to that referred to in article 206, causing it to be posted up as provided in that article; and it shall give the requisite decree on that demand after the lapse of six months from the publication of the edict.

Publication of edict.

210. The edict prescribed in articles 206 and 209 shall be published and posted up twice, with an interval of at least one month, unless, before any of the demands mentioned in those articles, a curator shall have been appointed; and in any such case the time of six months which is to elapse before the court's decree shall run from the second publication of the edict.

Rights of legatees, etc. *Amended by: XXII.2005.81.*

211. When the demand by the heirs to be vested with the provisional possession of the property, has become competent, even though no such demand shall have been made by them, the legatees, donees, and all other persons having rights on the property of the absentee depending on his death, may, by sworn application against the testamentary heirs or the heirs-at-law, as the case may be, and the attorney or curator, if any, demand to be allowed to exercise such rights provisionally.

Security.

212. The heirs, and the persons mentioned in the last preceding article, shall be placed in the provisional possession of the property, or allowed to exercise their eventual rights, only on condition of giving security in an amount to be fixed by the court, in terms of article 352.

Other caution in default of security.

213. Where any of the presumptive heirs or other persons

having rights on the property of the absentee is unable to give the said security, it shall be in the discretion of the court to order such other caution as it may deem proper in the interest of the absentee, having regard to the condition of the applicants, to their relationship with the absentee, and to other circumstances.

Spouse may demand maintenance.

214. The spouse of the absentee, in addition to what is due to him or her in virtue of the marriage contract, or by succession or by any other title according to law, may, in case of need, demand an allowance for maintenance, to be fixed according to the condition of the family and the amount of the estate of the absentee.

Effects of provisional possession.

215. The persons vested with the provisional possession of the property of the absentee, and their successors, shall have the administration of such property, the right to sue or defend in matters touching the rights of the absentee, and the enjoyment of the fruits of the property, subject to the restrictions hereinafter prescribed.

Inventory of property.
Amended by: IX.2004.14.

216. (1) The persons vested with the provisional possession of the property of the absentee shall take the necessary steps, before the competent court, to make up, within three months from the day on which they have been vested with such possession, an inventory of the movable property and a description of the immovable property of the absentee, unless dispensed therefrom by the court on the ground that such inventory or description had already been made under the provisions of article 197, or for any other good cause.

(2) The court may, if necessary, direct the said inventory or description to be made before granting the demand for provisional possession.

Powers of persons vested with provisional possession.

217. (1) The persons vested with the provisional possession of the property of the absentee may not, without the authority of the court, alienate or hypothecate the immovable property or perform any act other than of ordinary administration.

(2) The court shall, where necessary, order the sale of all or part of the movable property; and in any such case the proceeds shall be invested at interest, or in any other manner which the court shall deem proper.

Enjoyment of fruits.
Amended by: LIV.1974.5.

218. (1) Where the persons vested with the provisional possession of the property, or allowed to exercise their rights provisionally under article 211, are ascendants, descendants, or the spouse of the absentee, they shall retain all the fruits for their own benefit.

(2) Where the said persons are relations of the absentee in any other degree, or strangers, they shall be bound to reserve one-third part of the fruits:

Provided that after the lapse of ten continuous years from the day the absentee was last heard of or of six years from the entry of provisional possession, the whole of the fruits shall belong to the said persons.

Prior or equal right to provisional possession.

219. (1) If, during the period of provisional possession, any person shall prove that, at the time of the grant of such possession, he had a prior or equal right to that of the possessor, it shall be lawful for such person to exclude the possessor from such possession, or to cause himself to be associated therein.

(2) The said person, however, shall only be entitled to such fruits as will accrue from the day of the judicial demand.

Return of absentee. *Amended by: XI.1977.2.*

220. (1) If the absentee reappears, or if his existence is established, the effects of the provisional possession, or of the authority to exercise the right mentioned in article 211, shall cease, and the court shall give the necessary directions for the preservation and administration of his property.

(2) The possessors of the property, and such persons as may have obtained any payment by reason of the exercise of any right depending upon the death of the absentee, shall be bound to restore the same together with the fruits, as provided in sub-article (2) of article 218.

Death of absentee. *Amended by: XI.1977.2.*

221. If, during the period of provisional possession, the time of the death of the absentee is established, his succession shall become open in favour of such persons as at that time were his testamentary heirs or heirs-at-law, or of their successors; and the persons who have had the enjoyment of the property, shall be bound to restore it, together with the fruits, as provided in sub-article (2) of article 218.

Action by persons having rights against absentee.

222. After the grant of provisional possession, any person having any claim against the absentee shall bring forward such claim against the persons vested with the possession of the property.

Sub-title III

OF THE ABSOLUTE POSSESSION OF THE PROPERTY OF AN ABSENTEE

Absolute possession. *Substituted by: LIV.1974.6. Amended by: IX.2004.14; XXII.2005.81. Substituted by: XV.2012.10.*

223. If the absence has continued for a period of six years since provisional possession has been granted, or if an application made by the testamentary heirs or the heirs-at-law of the absentee before the court of voluntary jurisdiction of the island in which the absentee last resided against curators appointed by the said court such absence has been declared by a decree to have subsisted for a period of ten continuous years from the day the absentee was last heard of, the court of voluntary jurisdiction shall, upon the demand of the parties interested, award a decree, granting absolute possession of the property and the absolute exercise of the rights depending upon the death of the absentee, discharging the securities and directing any other caution which may have been imposed if any, to cease:

Provided that if the absent person is a minor, the period of

absence established under this article shall run from the day such person would have attained majority.

Cases where absolute possession takes place. *Amended by: LIV.1974.7*

224. The provisions of the last preceding article, or, as the case may be, the declaration of the opening of the succession may also take place, even though no curator shall have been appointed, nor provisional possession granted as provided in the preceding two sub-titles, in each of the following cases:

(*a*) if one hundred years since the birth of the absentee, and at least one year since the last news of him, shall have elapsed;

(*b*) if eighty years since the birth of the absentee, and at least six years since the last news of him, shall have elapsed.

Rights of persons placed in absolute possession of property.

225. It shall be lawful for the persons placed in absolute possession of the property or allowed the absolute exercise of the rights depending upon the death of the absentee, to proceed to final partitions of the property, and to dispose freely thereof.

Return of absentee.

226. If the absentee returns, or his existence is established, he shall recover his property in the state in which it may be, and shall be entitled to the price of such property as has been disposed of, if such price is still due, or to the property in which such price may have been invested.

Rights of children of absentee. *Amended by: XVIII.2004.36.*

227. The children or descendants of the absentee may, likewise, within the time prescribed in article 845, to be reckoned from the grant of absolute possession or from the day on which the declaration of the opening of the succession may have been obtained, enforce their rights on the property of the absentee according to the rules laid down in the last preceding article, without being bound to prove his death.

Other rights.

228. If after the grant of absolute possession, the time of the death of the absentee is established, such persons as, at that time, were his heirs or legatees, or were vested with any right in consequence of the death, or their successors, may bring the actions competent to them, saving the rights which the possessors may have acquired by prescription, and the effects of good faith in regard to the fruits already collected.

Sub-title IV

OF THE EFFECTS OF ABSENCE IN REGARD TO EVENTUAL RIGHTS OF THE ABSENTEE

Claiming of rights on behalf of person not known to be living.

229. No person may claim any right on behalf of any other person who is not known to be living, unless he proves that such other person was alive at the time when such right originated.

Where a succession becomes open.

230. (1) Upon the opening of a succession to which a person who is not known to be living is entitled, wholly or in part, such

succession shall devolve upon those with whom such person would have a right to compete, or upon those who would have taken it in his default, saving the right of representation.

(2) Those upon whom, in default of such person, the succession devolves, shall proceed to make up an inventory, or, if the court deems it more expedient, a description of the property.

Action to obtain inheritance.

231. The provisions of the last two preceding articles shall apply, without prejudice to the right to maintain an action to obtain an inheritance, or to the other rights competent to the absentee, or his representatives, or other persons claiming under him. Such rights shall only be extinguished by the lapse of the time required for prescription.

Fruits collected in good faith.

232. So long as the absentee does not appear, or no actions competent to him are brought in his behalf, those upon whom the succession has devolved shall not be bound to return such fruits as may have been collected by them in good faith.

Sub-title V

OF THE CURATORSHIP OF MINOR CHILDREN OF ABSENTEE

Curatorship of minor children of absentee. *Substituted by: XLVI.1973.51. Amended by: XXI.1993.2.*

233. (1) Where any of the children of the absentee are minors, and are not subject to parental authority, it shall be lawful for the court, upon the demand of any person, to appoint to such children one or more curators.

(2) The provisions relating to the tutorship of a minor whose parents are dead shall, in so far as applicable, apply to the curatorship of a minor ordered under this article.

Title VIII

OF ACTS OF CIVIL STATUS

Sub-title I

GENERAL PROVISIONS

Acts to be drawn up on the birth, marriage or death of any person.

234. (1) Upon the birth, marriage or death of any person, an act in the respective form annexed hereto, containing such particulars as are required under this Title, shall be drawn up in clear and legible characters, and without any abbreviation.

(2) Where any of the said particulars cannot be known, a statement to that effect shall be entered in the proper place in the act.

Exceptions. *Substituted by: VI.1968.2.*

235. The provisions of the last preceding article shall not apply in the case of the death of any person belonging to, and actually serving in, any of the armed forces of a foreign country, unless such person was a citizen of Malta or was married to any person who is a citizen of Malta.

By whom acts are drawn up. *Amended by: L.N. 46 of 1965; LVIII.1974.68; LXV.2020.20.*

236. Acts of birth or death shall be drawn up by the officers appointed by the Minister responsible for the Public Registry in that behalf.

Acts of marriage. *Substituted by: XXXVII.1975.23.*

237. Acts of marriage shall be drawn up and signed as provided in article 293.

Registers. *Amended by: VII.1982.2; XXXI.1986.4; III.1994.3; XXV.2014.2; XXVII.2020.37.*

238. (1) In the Public Registry Office in Malta and in Gozo, there shall be kept five register books: one for the registration of acts of birth, one for the registration of acts of marriage, another for the registration of civil unions , another for the registration of acts of death, and the fifth for the registration of the deeds of cohabitation.

(2) Each volume of such registers shall be numbered from the first to the last page. The last page of each volume shall contain a statement as to the total number of its pages; such statement shall be signed by the Director of the Public Registry.

Registrations in the office of Malta or Gozo. *Amended by: XXXVII.1975.23; XXII.1976.4; XII.1986.3; III.1994.4; XV.2012.11; XLIII.2018.3.*

239. (1) In the Public Registry Office in Malta, there shall be registered all acts of birth, marriage and death which shall have taken place in the island of Malta, as well as the acts mentioned in articles 244 and 285; and in the Public Registry Office in Gozo, there shall be registered all acts of birth, marriage and death which shall have taken place in the islands of Gozo and Comino.

(2) A copy of an act, registered as provided in sub-article (1) and transmitted to the Director by any electronic means, or any true copy thereof, shall be deemed a true and authentic copy for all purposes of law provided this copy is signed by the Director receiving it.

(3) For the purposes of this article the Director's signature may also be an electronic signature according to the meaning as is assigned to it as defined in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market,

Progressive number, *Amended by: XVIII.1938.2.*

240. (1) On every act delivered to him for registration, the Director of the Public Registry shall write a progressive number and the date of delivery, and shall sign his name thereto.

(2) An act shall be deemed to have been received by the

Director, when he shall have signed his name thereto.

in respect of each description of acts.

241. Each description of acts shall have a distinct numbering, beginning from the first and ending with the last act received during each year.

Drawing up of acts in clear characters. *Amended by: XXIV.2011.99; XIX.2012.16.*

242. (1) The Director shall not receive any act which is not written in clear and legible characters, or which contains abbreviations, or which may appear to him to be otherwise defective or irregular.

(2) In any such case, the act shall be presented by the Director to the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts, who, after hearing, if necessary, the person by whom the act shall have been made, shall determine the manner in which, according to law, the act is to be drawn up.

(3) The Director may not refuse to receive any act which is countersigned by the said retired Judge or retired Magistrate or retired advocate.

Applicability of s.242 to certificates of baptism or marriage. *Amended by: XXII.1939.2; XXXVII.1975.23; XXII.1976.4.*

243. (1) The provisions of the last preceding article shall apply to any certificate of baptism, delivered to the Director under the provisions of articles 273 and 285.

(2) No certificate of baptism shall be received unless it is written in the Maltese, English or Latin language.

Births, marriages, unions of equivalent status, and deaths in foreign countries. *Amended by: XXXI.1965.10. Substituted by: VI.1968.3. Amended by: IX.2014.16.* Cap. 530.

244. (1) Any act of birth, marriage, union of equivalent status as defined in the Civil Unions Act or death of a citizen of Malta drawn up or registered in a foreign country by a competent authority in that country, other than an act drawn up or registered under sub-article (l) or sub-article (2) of article 270, may, at the request of any person interested and upon the Director of the Public Registry being satisfied on the authenticity of such act, be registered in these Islands in the same manner as if it were an act drawn up by any of the persons mentioned in this Title.

(2) The person making the request shall, for the purposes of registration, deliver to the Director the act in respect of which such request is made.

How registrations are made. *Amended by: XXI.1933.1; XX.1934.2*

245. (1) The acts shall be recorded in the respective register books, consecutively in the order in which they are received, and without any blanks.

(2) The registrations shall, as far as practicable, be made in accordance with the forms annexed to this Code relating to the drawing up of the acts, even where the documents which in the cases provided for in this Title may be delivered in lieu of such acts are drawn up in a different manner.

(3) The registration shall also include the date of the receipt of the act and the transcription of the signature of the Director.

Declaration on last page of register book.
Amended by: XX.1934.3; XXXI.1965.11.

246. (1) The Director shall, on the last page of each register book, make a declaration to the effect that the registrations therein contained are true copies of the original acts to which they refer.

(2) Such declaration shall be made on each register book within one month from the receipt of the last act entered in such register book.

(3) The Director shall write down the date and sign his name immediately after such declaration and after any note which he shall enter in the register book under the provisions of this Title.

When registration is to be entered.
Amended by: XX.1934.4; VI.1968.4; XII.2015.4.

247. The Director shall register every act within thirty working days from its receipt:

Provided that this article shall not apply in the cases mentioned under article 285A.

Correction of errors.
Amended by: XX.1934.5

248. Where before signing the declaration referred to in article 246, or any note, it shall be necessary to correct any error, the Director shall make the correction in the manner and form following - in the case of a registration, by means of a postil at the foot thereof to be signed by him, and, in the case of a note, by means of a postil at the foot thereof before it is signed; and necessary cancellation shall be made so that the words cancelled remain clearly legible; it shall not be lawful to make any erasure.

Preservation of acts.

249. Every act or document received shall, even after it is registered, be preserved.

Index.

250. (1) In the Public Registry Office in Malta and in Gozo there shall be made, within the first three months of each year, an alphabetical index of the registrations entered during the preceding year.

(2) The Director of the Public Registry Office in Gozo shall, within one month from the last day of the time mentioned in sub-article (1) of this article, transmit to the Director of the Public Registry Office in Malta a copy of the index of each year.

Acts and registers to be open to inspection.
Amended by: XX.1934.6; XXII.1939.2; XXXI.1965.12; XXXVIII.1972.4; XXI.1993.65; III.1994.5; XIII.2005.9; VIII.2007.5; XIII.2007.13; XVIII.2007.4; XV.2012.12; L.N. 311 of 2012; XXV.2014.3; XXIII.2017.51; XLIII.2018.4.

251. (1) The register books, acts and documents referred to in the foregoing articles, shall be open to inspection by every person, and extracts therefrom, signed, manually or electronically signed as defined in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, by the Director of the Public Registry of Malta or the Director of the Public Registry of Gozo, shall be given upon the demand of any person.

(2) In this Title the word "extract" means a certificate containing an abridged copy of one or more registered acts in accordance with Forms I, J, K, KK, L, O and P set out in Part II of the First Schedule to this Code. All corrections and annotations entered in the margin of the registers shall be incorporated in the extract with the exception of annotations of adoptions which shall be transcribed at the back of the extract.

(2A) (*a*) Extracts of acts of birth and of entries in the Adopted

Persons Register shall be issued in the Forms I or J shown in Part II of the First Schedule to this Code.

(*b*) For the purpose of the extracts issued in terms of paragraph (*a*) hereof entries in the Adopted Persons Register shall be given consecutive numbers which follow the last number of the acts of birth registered in the year of birth of the adopted person, or one of such numbers reserved for the purpose by the Director and relative to the year of birth of the adopted person, which numbers shall not be allotted to acts of birth. The said year shall also be indicated.

(*c*) The fact that certain numbers have, according to paragraph (*b*) of this sub-article, been reserved for registration of adopted persons, shall be kept secret and confidential. A list of such numbers shall only be given to the department of Government dealing with nationality, the Passport Office, the Electoral Commission and the Marriage Registrar who shall be bound by the same secrecy and confidentiality.

(3) The Directors mentioned in sub-article (1) shall also, if required, give a certificate containing a true copy in full of one or more registered acts, as well as a certificate attesting the non-existence of any registration if upon a search for any such registration or act, such registration or act is not found:

Provided that the words "illegitimate father" wherever they occur in an act of civil status registered before the 1st March, 2005 shall not be reproduced in any copy or extract of such act issued by the Directors mentioned in sub-article (1), except as may be otherwise explicitly ordered or authorised by a Court:

Provided further that in an extract of any act of birth -

(*a*) the term "single", as relating to the status of the mother, shall not be stated;

(*b*) when a child is born more than three hundred days from the legal separation, divorce or annulment of the marriage of the mother no reference shall be made to such legal separation, divorce or annulment of marriage;

(*c*) where the child is born in wedlock, an indication of the marriage contracted between the spouses shall be stated in the act of birth next to the name and surname of the parents by using the words "spouse of the said";

(*d*) when a child is born less than three hundred days from the legal separation, divorce or annulment of the marriage of the mother any reference to that fact shall not be entered.

(4)* The Director of the Public Registry shall give to any person applying for the same, a certificate, the contents of which shall be

*this sub-article is not yet in force.

prescribed, reflecting all the acts of civil status entered in the Public Registry against any individual registered therein.

Probatory force of registers.
Amended by: XV.2012.13. XLIII.2018.5.

252. (1) The registers and any extracts thereof as well as the certificates signed by the Director, manually or electronically signed as defined in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, shall, until the contrary is proved, be evidence of their contents.

(2) No further proof of their authenticity shall be required beyond that which they bear on the face of them.

Correction or cancellation of registrations.
Amended by: L.N. 148 of 1975; XXX.1979.3; VII.1982.3; VIII.1990.3; III.1994.6; IX.2004.14; XXII.2005.81; XXIV.2011.99; XV.2012.14; XIX.2012.16; L.N. 426 of 2012; XXIII.2017.52.

253. (1) It shall be lawful for any person to bring an action for the correction or cancellation of any registration, or for the registration of any act which the Director, with the approval of the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts, shall have refused to receive.

(2) It shall be lawful for any person to bring an action for the registration of the name or names, which name or names the person shall have used or shall have been used for him by his family, and which shall be declared by the court as being the name or names by which the person has been consistently called, or an entry in the Adoption Persons Register as the name or names given to the child and the name or names by which the child is to be called:

Provided that the judicial demand mentioned in this sub-article shall not be allowed when the name or names that the person shall have used or shall have been used for him by his family, are only a shortened version or an abbreviation of the name or names appearing on the relative act of birth.

(2A) Where, in the circumstances mentioned in the provisions of sub-article (2), the name or names that the person shall have used or shall have been used for him by his family are not necessarily a different name or names but a translated version in another European language of the same name or names that are registered in the act of birth, and the use of that translated name or names result from another act of civil status of such person or from a Maltese legally valid identification document or passport that has been issued to him before the 31 December 2011, the Director of Public Registry, upon a written request which has to be sustained by a sworn declaration made by the person concerned, may after he is satisfied with the correctness and veracity of such request and sworn declaration, proceed by inserting an annotation that reflects such change of name or names in the acts of civil status that concerns such person.

(3) The action mentioned in sub-article (2) shall include a request that the change effected in the act of birth through the registration mentioned in this sub-article be reflected in every act of civil status relative to the same person and, where any, to the children and further descendants of such person; which acts shall be indicated in the request by the relative number and year thereof.

(4) Any action shall be brought by way of sworn application

before the competent court against the Director.

(5) In any such action, the declaration referred to in sub-articles (4) and (5) of article 158 of the Code of Organization and Civil Procedure may also be confirmed on oath by any officer referred to in sub-article (1) or in sub-article (4) of article 306.

Cap. 12.

Notice to interested parties.
Amended by: XXXI.1965.8; XIII.2007.13.

254. (1) Fifteen days at least before the hearing of the action referred to in the last preceding article, a notice as in Form B in Part II of the First Schedule to this Code shall, by order of the court, be published in the Government Gazette, calling upon any party interested to declare, within fifteen days from the publication of such notice, by means of a note, whether he desires to contest the action.

(2) Notice of the day appointed for the trial of the action shall be given to any person who shall have filed such note within the said time.

Provisions of ss.253 and 254 to apply, without prejudice to ss. 960 to 962 of Code of Organization and Civil Procedure. Cap. 12.

255. The provisions of the last two preceding articles shall not affect the provisions contained in articles 960, 961 and 962 of the Code of Organization and Civil Procedure.

Corrections, etc., ordered by court.
Amended by: XXXI.1965.13; XXXI.2002.211.

256. (1) Any correction, cancellation or registration ordered by the court shall be made by the Director within the time of ten days from the day on which the judgement shall have become *res judicata* and shall be made on the strength of a true copy of the judgement to be supplied to him by the Registrar.

(2) A reference of such judgment shall be made by means of a note in the margin of the register.

Corrections ordered by Court of Revision.
Added by: II.1944.2.
Amended by: XXXI.1965.14; L.N. 148 of 1975; XI.1977.2; XXIV.1995.362; XIII.2007.13; XXIV.2011.99; XIX.2012.16; XXIII.2017.53.
Substituted by: LXV.2020.21.

257. (1) Notwithstanding the provisions of articles 253 to 256, both included:

(*a*) the correction of a registration consisting in the rectification of the erroneous indication of any one or more of the particulars specified, in respect of each act, in Part III of the First Schedule to this Code, may also be effected upon an order made in writing by the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts; and

(*b*) where the registration of an Act of Birth of a person may give rise to the creation of a double identity or to lack of clarity regarding the identity of the said person due to the fact that the said person would not still be registered by the said name and, or surname in the official acts and, or documents of another country, the retired Judge, the retired Magistrate or the retired advocate of the Court of Revision of Notarial Acts shall have the power upon the application of that person to order that the necessary annotations be made on the Act of Birth of that person as well as any other act of civil status wherein the name and, or surname of the said person appears for the purpose of making the

said changes in the name and, or surname known.

(2) The demand for any such correction shall be made by an application filed in the Court of Revision of Notarial Acts, accompanied by a full copy of the registration in respect of which the correction is required.

(3) A copy of any such application shall be served on the Director of the Public Registry within three (3) working days of its being filed.

(4) The applicant shall be required to produce such evidence as the said retired Judge or retired Magistrate or retired advocate may deem necessary and, before making any order, he shall give to the Director of the Public Registry an opportunity of being heard.

(5)As soon as may be after the date of any order made as aforesaid by the said retired Judge or retired Magistrate or retired advocate and, in any case, not later than ten (10) days from such date, the registrar of the said court shall, at the expense of the applicant, serve a copy thereof on the Director of the Public Registry and shall cause a notice of the effect thereof to be published in the Gazette.

(6)The Director of the Public Registry or any person interested may, within six (6) days of the publication of the said notice in the Gazette, enter an appeal from such order by means of an application to the Court of Appeal.

(7)Notice of any appeal so entered by any person other than the Director of the Public Registry shall be given to the latter by the Registrar of Courts not later than two (2) days from the date of filing of the application of appeal.

(8) (*a*)Any correction or annotation ordered as aforesaid by such retired Judge or retired Magistrate or retired advocate shall be made by the Director within ten (10) days of the publication of the order in the Gazette or, where an appeal against such order has been entered, within six (6) days of the day on which the matter is finally disposed of by the Court of Appeal.

(*b*) Where the correction or annotation on the Act of Birth is in re spect of a person who is not yet a citizen of Malta, such registration with the correction or annotation as ordered by the Court of Revision of Notarial Acts shall be made by the Director only after the applicant is confirmed to be registered as a citizen of Malta.

(9) A reference to the order made by such retired Judge or retired Magistrate or retired advocate or to the judgment of the Court of Appeal shall be entered in the margin of the register against the entry affected.

257A. (*Deleted by Act XI.2015.18*).

Action for an annotation in the indication of sex particulars appearing in an act of birth.
Added by: XVIII.2004.37.
Amended by: XXII.2005.81.

257B. (*Deleted by Act XI.2015.18*).

Where court shall allow request.
Added by: XVIII.2004.37.

257C. (*Deleted by Act XI.2015.18*).

Changes in act of birth and effects thereof.
Added by: XVIII.2004.37.
Amended by: VII.2013.2.

257D. (*Deleted by Act XI.2015.18*).

Consequential correction of identity card.
Added by: XVIII.2004.37.
Amended by: L.N. 426 of 2012.
Cap. 258.

258. Where it is found after the Director shall have signed the declaration referred to in article 246, that an error has been made, and such error had been incurred in transcribing an act in the register, the correction of such error shall be made by the Director by means of a note at the foot of the entry. Such correction shall be dated and signed by the Director.

Correction of errors after declaration referred to in article 246.
Amended by: XX.1934.7.
Substituted by: VII.1982.4.

259. Public holidays shall not suspend the running of any of the times established in this Title.

Holidays.

260. (1) The registers as well as the acts and documents annexed thereto shall be inspected twice in every year by the Court of Revision of Notarial Acts.

Inspection of registers by Court of Revision of Notarial Acts.

(2) The first inspection shall take place during the months of March and April, and the second during the months of September and October.

261. The court shall in the course of such inspection, ascertain whether the provisions of this Title have been complied with by the Director or one of the Assistant Directors or of the officers mentioned in sub-article (1) of article 306, as the case may be, and it shall be lawful for the court, in respect of any contravention, to inflict upon the Director or an Assistant Director or an officer mentioned in sub-article (1) of article 306, as the case may require, a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65):

Duties of court.
Substituted by: VI.1968.5.
Amended by: XIII.1983.5; XXXI.1986.4; III.1994.7; L.N. 407 of 2007.

Provided that, where the contravention consists in the omission of anything which is required to be done under this Title and it is not possible for the court to ascertain who was responsible for such omission, the contravention shall be deemed to have been committed by the Director and the punishment shall be inflicted

accordingly.

Persons refusing to give information concerning particulars,

262. Any person required by the competent officer to give information concerning the particulars required for the drawing up of any of the acts referred to in this Title, who refuses to answer any question put to him by such officer relating to such particulars, or falsely states that he does not know such particulars, shall, on conviction by the competent court, be liable to imprisonment for a term not exceeding three months.

or making false declaration,

263. Any person who, either of his own accord or when questioned by the competent officer, knowingly makes any false declaration concerning any particulars required for the drawing up of any of the said acts, shall, on conviction by the competent court, be liable to the punishment established in the last preceding article.

or disobeying any order.
Amended by: XI.1977.2; XIII.1983.5; L.N. 407 of 2007.

264. Whosoever shall, except in the cases provided in the foregoing articles, offend against any of the provisions of this Title or disobey any order given to him under the provisions of this Title shall, on conviction by the competent court, be liable to detention for a term not exceeding one month or to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65).

Where offender after expiating punishment persists in refusing to answer.

265. If, after undergoing punishment, the offender shall persist in refusing to answer any question put to him under the provisions of article 262, or to comply with the provisions of the law, or to obey the order mentioned in the last preceding article, every such refusal shall, each time it is repeated, be deemed to be a new offence.

Saving as regards other punishments for more serious offences.
Cap. 9.

266. (1) Nothing in the foregoing articles contained shall affect the application of any heavier punishment as provided in the Criminal Code.

(2) Any person guilty of forgery of any of the acts or registers mentioned in this Title, or of any certificate or other document which, under the provisions of this Title, may be delivered, in lieu of the act, in connection with the registration of any birth, marriage, or death, shall be liable to the punishment established in the Criminal Code for forgery of public writings.

(3) Action shall be taken by the Police *ex officio* in respect of any offence against the provisions of this Title.

Where several persons are bound, performance by one discharges the others.

267. Where several persons are bound to give notice, or to make a declaration, or to perform any other act, and the obligation is such as to be capable of being performed by any one of such persons alone, the performance by any one of such persons shall operate so as to discharge all the others.

Fees.
Amended by: XXXI.1965.15. Substituted by: XXX.1979.4. Amended by: IX.2000.2; XIII.2007.13.

268. The fees established in Part I of the First Schedule to this Code may from time to time be amended, substituted or added to by regulations made by the Minister responsible for the Public Registry and shall be levied by the officer designated by the said Minister for that purpose.

Adopted Persons Register.
Added by: XXI.1962.8.
Amended by: XXVIII.1963.4; XXV.1973.2; III.1994.8; XV.2012.15.

269. (1) There shall be maintained at the Public Registry Office in Malta and in Gozo a register, to be called the Adopted Persons Register, in which shall be made such entries as may be directed to be made therein by adoption decrees, but no other entries.

(2) In the Adopted Persons Register maintained at the Public Registry Office in Malta there shall be entered the adoption decrees relating to any person whose act of birth is registered in that Office or is not registered in any Public Registry Office in these Islands, and in the Adopted Persons Register maintained at the Public Registry Office in Gozo, there shall be entered the adoption decrees relating to any person whose act of birth is registered in that Office.

(3) Where an entry in the Adopted Persons Register contains a record of the date of the birth or the country or the town or village of the birth of the adopted person, a certified copy of that entry shall, until the contrary is proved, be received as evidence of that date or country or town or village in all respects as if the copy were a certified copy of an act of birth.

(4) The Director of the Public Registry shall cause an index of the Adopted Persons Register to be made and kept in the Public Registry Office in Malta and in Gozo; and every person shall be entitled to search that index and to have a certified copy of any entry signed by the Director in the Adopted Persons Register in all respects upon and subject to the same conditions as to payment of fees and otherwise as *mutatis mutandis* are applicable under this Title, in respect of searches in the register books kept in the Public Registry and in respect of the supply from that Office of certified copies or translations of entries in the register books of the acts of birth, marriage and death.

(5) The Director of the Public Registry shall, in addition to the Adopted Persons Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between an entry in the register book of acts of birth which has been marked "Adopted" pursuant to article 125 or article 290, and any corresponding entry in the Adopted Persons Register; but the registers and books kept under this sub-article, the adoption decrees and any amendment thereof communicated to the Director of the Public Registry, and any index thereof shall not be open to public inspection or search, and nor shall the Director of the Public Registry furnish any information contained in or any copy or extract from any such registers, books or decrees to any person, except under an order of a court or in exceptional cases, to any public officer duly authorised for that purpose by the Minister.

Functions of a diplomatic or consular representative in relation to acts of civil status.
Added by: VI.1968.6.
Amended by: VII.1982.5; XXIV.2011.99; XIX.2012.16.

270. (1) A diplomatic or consular representative, when so requested by any person interested, shall, in respect of a child who is born or of a person who dies in a foreign country and is a citizen of Malta -

(*a*) draw up the act of birth of such child or the act of death of such person and record such act in an apposite register;

(*b*) receive for registration the act of birth of such child or the act of death of such person issued by the competent authority of the place where the birth or death has taken place and record such act in the apposite register referred to in the last preceding paragraph.

(2) Where a citizen of Malta marries in a foreign country, a diplomatic or consular representative shall receive for registration, at the request of either of the parties contracting such marriage or any parents of either of them, any act which according to the law of the country where the marriage has taken place is evidence of the marriage and shall record such act in an apposite register.

(3) The provisions of this Title shall, as far as practicable, apply to and for the purpose of the acts drawn up and the registers kept under the provisions of the foregoing sub-articles by diplomatic and consular representatives, who shall have in respect of such acts and registers the same powers, rights and obligations as are in this Title conferred or imposed upon the Director of Public Registry.

(4) The registers referred to in sub-articles (1) and (2) of this article shall be kept for yearly periods and shall contain an alphabetical index of the registrations entered therein. A certified duplicate copy of such registers with the diplomatic or consular representative's signature immediately after the last entry transcribed therein shall be transmitted to the Director of Public Registry, for preservation in the Public Registry in Malta, not later than the 31st day of March of the year immediately following the year to which the registers refer, and the provisions of articles 251, 252, 253, 254, 255, 256 and 257 shall apply in regard to the registrations contained in such duplicate registers as if they were registrations in the register books mentioned in article 238.

(5) The Director of the Public Registry, within thirty days of any correction, cancellation or annotation which he makes in a duplicate register pursuant to the judgment of a court or to the order of the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts, shall inform of such correction, cancellation or annotation the diplomatic or consular representative in the country where the original register is kept who shall forthwith cause the same correction, cancellation or annotation, as the case may be, to be made in such register and shall initial it.

(6) Any person who before a diplomatic or consular representative commits the offence referred to in article 263 may in Malta be prosecuted, tried and punished for such offence in the same manner and to the same extent as if the offence had been committed in Malta.

(7) Any person who suppositiously represents to a diplomatic or consular representative an infant to have been born of a woman who had not been delivered of a child so as to cause such representative to draw up an act of birth under sub-article (1) of this article shall be prosecuted, tried and punished in Malta in the same manner and to the same extent as if he had committed in Malta the corresponding offence mentioned in article 210 of the Criminal Code. Cap. 9.

(8) The provisions of sub-articles (6) and (7) of this article shall not apply if the person who has committed the offence has been tried for the same facts constituting it in another country.

(9) Any reference in this article to a diplomatic or consular representative shall be deemed to be a reference to the diplomatic or consular representative of the Government of Malta in the foreign country where a birth, marriage or death has taken place.

Power to make regulations. *Added by: XXV.1973.3. Substituted by: III.1994.9. Amended by: IX.2000.2; XXV.2014.4.*

271. (1) The Minister responsible for the Public Registry may make regulations:

(*a*) providing for the making of duplicates of original acts of civil status or other documents relative to civil status, entered in the Public Registry in virtue of this Code or of any other law, as well as duplicates of the relative registers of such acts or documents, as well as duplicates of the relative index of such acts, documents or registers where the original act, document, register or index has been lost, destroyed or damaged, whether such loss, destruction or damage has occurred by wear and tear or otherwise;

(*b*) prescribing the mode in which such duplicates shall be prepared and authenticated;

(*c*) prescribing that any acts, documents, registers or indices referred to in paragraph (*a*) be reproduced by microfilming, and the mode in which such reproductions are to be made, stored and made accessible to the public;

(*d*) prescribing the manner in which reproductions made by microfilming and copies thereof may be authenticated;

(*e*) providing for the computerisation, including storage of information taken from any act or document entered in the Public Registry and for the production of documents containing statements of such information and the authentication of such documents;

(*f*) prescribing the form of the application for the issue of certificates containing a full copy or an extract of any act, document, register or index;

(*g*) adding new forms or amending or modifying any of the forms in Part II of the First Schedule to this Code; and

(*h*) providing for any matter incidental or supplementary

to any of the foregoing provisions.

(2) Any duplicate copy made in accordance with regulations made under sub-article (1) shall for all intents and purposes, replace the relative original act, document, register or index.

Sub-title II

OF ACTS OF BIRTH

Persons bound to give notice of birth of child.
Amended by: VIII.2007.6.; XV.2012.16; XXIII.2017.54.

272. In the case of every child born, it shall be the duty of parents, and in default of both, of the physician, surgeon, midwife, or any other person in attendance at the birth, or in whose house the birth has taken place, to give, within fifteen days of such birth, notice thereof to the officer charged with the duty of drawing up the act of birth.

How notice is given.
Amended by: XXII.1939.3.

273. (1) Notice of the birth may be given by transmitting to the said officer a certificate of baptism, signed by the parish priest or other clergyman who shall have baptised the child.

(2) Any such certificate shall, if it contains the particulars required for the drawing up of the act of birth, be accepted in lieu of the declaration mentioned in the following articles, and, the said officer, if satisfied as to the correctness of the particulars therein contained, may, on such certificate, draw up the act of birth.

(3) In any case, however, the certificate of baptism shall be delivered to the Director together with the act of birth.

Verbal or written notice.
Amended by: XLIII.2018.6.

274. Notice of the birth of a child may also be given by means of a letter signed by the person giving the notice by electronic means, or verbally; in the latter case, the person giving the notice shall attend personally before the officer charged with the duty of drawing up the act of birth.

Where notice is given personally by any one of the parents.
Amended by: VIII.2007.7; XXIII.2017.55.

275. Where, under the provisions of the last preceding article, the notice of the birth is given personally by any one of the parents of the child, the said officer shall, upon the declaration made by the father or the mother respecting the particulars required for drawing up the act of birth, draw up such act without any delay.

or by any other person.
Substituted by: VIII.2007.8.
Amended by: XXIII.2017.56; XLIII.2018.7.

276. Where notice of the birth is given by any person other than by any one of the parents of the child, or where such notice is given by the parents or any other person by means of a letter, the said officer shall, within the three next following days, require any one of the parents of the child, or both, to attend at his office to make the declaration respecting the said particulars:

Provided that in the case where such notice is given by electronic means by the parents of the child, the officer shall not require the parents to attend his office to make the declaration respecting the said particulars:

Provided further that, notwithstanding anything found in this article, the officer may, in any case as he deems fit, require the parents to attend his office.

Duties of officer, in default of any one of the parents.
Amended by: *VIII.2007.9;* *XXIII.2017.57.*

277. (1) In default of any one of the parents of the child, or if no notice has been given, the said officer shall require any person whom he believes to have knowledge of the particulars required for the drawing up of the act, to attend in order to make the declaration concerning such particulars.

(2) The same shall apply where the said officer is not satisfied as to the correctness of the particulars given to him by any one of the parents or any other person, or contained in the certificate mentioned in article 273.

Particulars of act of birth.
Amended by: *XXI.1933.2;* *XXXI.1965.8;* *XXX.1995.2;* *VIII.2007.10;* *XIII.2007.13;* *XVIII.2007.4;* *L.N. 426 of 2012;* *XI.2015.18;* *XX.2015.7;* *XXIII.2017.58;* *LXV.2020.22;* *XXV.2024.15.*

278. (1) Every act of birth shall be drawn up in accordance with Form C in Part II of the First Schedule to this Code and, saving any other provisions, it shall contain the following particulars:

(*a*) the date of the act itself;

(*b*) the hour, day, month, year, and place of birth;

(*c*) the sex of the child:

Provided that where the gender identity of the minor is not yet determined, the sex may be recorded as undeclared until it is so determined.

Provided also that, for the purposes of this article, the term "sex" shall also include the term "gender", so however that it shall only include the female gender and the male gender;

(*d*) the name given to the child, and, where more names are given, a special indication of the name or names by which the child is to be called and the surname of the child;

(*e*) the name, surname, a legally valid identification document, age, place of birth and residence of the parents of the child, and the person making the declaration:

Provided that:

(i) where the child is born in wedlock, an indication of the marriage contracted between the spouses shall be stated in the Act of Birth;

(ii) when a child is born more than three hundred days from the legal separation, divorce or annulment of the marriage of the person who gave birth no reference shall be made to such legal separation, divorce or annulment of marriage of the person who gave birth;

(iii) when a child is born less than three hundred days from the legal separation, divorce or annulment of the marriage of the person who gave birth a reference shall be made to such fact in the act of

birth instead of the indication made by virtue of paragraph (i) of this proviso;

(iv) where the provisions of article 280(2)(*a*) apply a reference to such fact shall be made in the act of birth;

(*f*) the name and surname of the parents of each of the parents of the child, and of the parents of the person making the declaration, stating whether the are alive or dead.

(2) Without prejudice to the proviso of sub-article (1)(c), in the event that any conflict arises in relation to the registration of the sex of the child, the parents shall, within thirty (30) days from the day when the notice of birth is given, file an application before the Civil Court (Voluntary Jurisdiction Section), requesting the Court to order, after considering the best interests of the child, the sex of the child that shall be registered on the Act of Birth:

Provided that if such application is not so filed within the time specified in this sub-article, the officer charged with the duty of drawing up the Act of Birth shall register the sex as undeclared.

Registration of names.
Added by: XV.2012.18.
Amended by: L.N. 311 of 2012; L.N. 465 of 2012; XXIII.2017.59; LXV.2020.23.

278A. (1) The Director of Public Registry may refrain from registering the name or names given to the child in the relative act of birth, if the name or names, given to the child:

(*a*) is shorter than three letters;

(*b*) includes numbers or symbols;

(*c*) is a common surname in Malta;

(*d*) is derived from an obscene or offensive word or it consists of a word or words associated with sexual activity; or

(*e*) exposes the child to ridicule or contempt.

(2) It shall be lawful for any person to request the Director of the Public Registry, by means of a signed declaration submitted in Form V contained in Part II of the First Schedule to this Code, to make an annotation in his act of birth or in the Adopted Persons Register in order to:

(*a*) correct any minor spelling variations to his name;

(*b*) use a "to be called name" resulting from any act of civil status of such person or from a Maltese identification document or passport:

Provided that such act of civil status or Maltese identification document or passport of such person was issued prior to 1st December 2012;

(*c*) correct his name to reflect the Maltese diacritic letters of the Maltese alphabet.

(3) The declaration made in Form V contained in Part II of the First Schedule to this Code shall be irrevocable and shall be accepted by the Director of the Public Registry upon the payment of a fee as prescribed by the Minister responsible for the Public

Registry.

(4) If the Director of the Public Registry allows the request, the annotation referred to above, shall be effective as from the day when he shall enter such modification in the act of birth and the "extract" mentioned in article 251 shall indicate the particulars resulting from such annotations.

(5) A person, in respect of whom changes in particulars relating to his change in names have been annotated in accordance with the preceding provisions, shall report the fact to the authorised officer under the Identity Card and other Identity Documents Act and to the Passport Officer under the Passports Ordinance who shall issue a new identity card and a new passport that indicate the particulars in accordance with the annotation written in the relative act. The expenses for the issue of the new identity card and the new passport shall be borne by the person who changed his particulars.

Cap. 258.

279. (1) In the case of a child conceived and born out of wedlock, the name of the father shall not be stated in the act, except at the request of the person acknowledging himself before the officer drawing up the act to be the father of such child and the mother's single status shall not be declared or in any other manner indicated.

Children conceived and born out of wedlock.
Amended by: XX.1934.8; XVIII.2004.38; VIII.2007.11; XVIII.2007.4.

(2) Where the child is not acknowledged jointly by both the father and the mother, the provisions of article 86 shall apply.

(3) Where no such request is made, there shall be stated in the proper place in the act that the father of the child is unknown.

280. (1) Where the person who gave birth to the child is married, the name of the other spouse shall be entered in the act as that of the parent, notwithstanding any declaration to the contrary, saving any correction which may subsequently be made upon a judgment in regard to the filiation of the child.

When the person who gave birth to the child is married.
Amended by: XXIV.2011.99; XV.2012.19; XIX.2012.16; XXIII.2017.60.

(2) The provisions of this article shall not apply -

(*a*) if the other spouse was, during the whole period of the three hundred days next preceding the day of the birth of the child, absent from Malta, and such absence is attested in writing and on oath before the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts by at least two trustworthy persons;

(*b*) if one of the spouses had, during the whole of the said period, lived legally separated from the other spouse; or

(*c*) if before the notice of the birth is given the spouses together declare in writing and on oath before the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts that during the whole period of the three hundred days next preceding the day of the birth of the child they did not have a sexual relationship together.

Particulars respecting the person who gave birth to a child conceived and born out of wedlock.
Amended by:
VII.1985.2;
XII.1986.4;
XVIII.2004.39;
XIII.2007.13;
XXIV.2011.99;
XIX.2012.16.
Substituted by:
XXIII.2017.61.

281. (1) In the case of a child conceived and born out of wedlock, where notice of the birth of such child or the declaration of the particulars concerning the birth of such child has not been given or made by the person who gave birth to such child, or by either of such person's parents, or siblings, the said officer shall, at least two days before entering in the act the particulars relating to the person who gave birth to the child, give notice to the person who shall have been indicated to him as the person who gave birth to the child, or to either of such person's parents; and if, within the said two days, it shall be denied that such person is the person who gave birth to the child, the officer shall make a report thereof to the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts, who, after examining on oath such person and any other person whom he believes to be able to give correct information, shall, if satisfied that such person is the person who gave birth to the child, order that such person's name, together with such other particulars as are required under the provisions of the foregoing articles, be entered in the act of birth, and that the depositions taken be delivered, in original, to the Director together with the act.

(2) In the case of a child conceived and born out of wedlock notice of whose birth has not been given, and the person who gave birth to the child and such person's parents are dead or cannot be found, notice of the birth may at any time be given to the said officer by any person bound to give such notice as heretofore, or by any person having an interest or by the child or its lawful representative and the said officer shall make a report thereon to the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts who shall cause a notice in the Form BB in Part II of the First Schedule to be published in the Gazette, calling upon any party interested to declare, within fifteen days from the publication of that notice, by means of a note, that he desires to contest such registration, and on the expiration of such period and after examining on oath any person whom he believes to be able to give correct information, whether such person shall have filed a note or otherwise, and following the examination of any documentary evidence that may be produced, shall, if satisfied that the person who gave birth to the child has been established, order that the name and surname of the person who gave birth to the child, together with such other particulars as are required under the provisions of the foregoing articles, be entered in the act of birth, and that the depositions taken be delivered, in original, to the Director together with the act.

(3) In any case referred to in sub-articles (1) and (2) the act of birth shall be countersigned by the said retired Judge or retired Magistrate or retired advocate.

Signing of act.
Amended by:
XXI.1933.4;
XLIII.2018.8.

282. (1) On the entry of the particulars concerning the birth of a child, the act shall be read to the person making the declaration of such particulars; it shall thereupon be signed by such person and then by the officer drawing up the act:

Provided that in the case that the said particulars are given by electronic means, this sub-article shall not apply.

(2) Where the person making the declaration states that he is unable to write, an entry of such fact shall be made by the side of the declarant's name.

Still-born children.

283. (1) In the case of a still-born child, the fact of stillbirth shall be stated in the act.

(2) Where the child, having been born alive, dies at any time before the drawing up of the act, the act of death shall be drawn up immediately after the act of birth.

(3) In case of abortion, an act of birth shall only be drawn up where the foetus shall have completely assumed the human form.

Officer may require to see the child.

284. It shall be lawful for the officer drawing up an act of birth to demand to see the child, before drawing up such act.

Children born at sea.
Amended by: XXII.1939.4; IX.1971.3; XI.1973.377; XI.1977.2; XVII.1991.81; XV.2009.49; XLIII.2018.9.

285. (1) In the case of any birth at sea, on board a vessel registered in Malta, the master shall, within twenty-four hours enter in his log-book the fact of such birth with the particulars required under articles 278, 279, 280 and 283.

(2) Upon the arrival of such vessel in Malta, the Authority for Transport in Malta shall transmit a copy of such entry to the officer charged with the drawing up of the acts of birth in Malta, who shall forthwith draw up the act of birth of such child.

(3) Where the arrival of such vessel in Malta does not take place within three months after the birth of the child, the master shall, not later than three months after the said birth, transmit a copy of the relative entry to the Authority for Transport in Malta who shall deal with it as if the said vessel had arrived in Malta.

Children born at sea on board a vessel that is not registered in any place.
Added by: XII.2015.5.

285A. (1) The Director of the Public Registry may, for humanitarian reasons only, register the birth of children that were born at sea on board a vessel that is not registered in any place and provided that it results that the Maltese islands were the first harbour where such vessel disembarked immediately after the birth of such child.

(2) The Director shall proceed with such registration if he is satisfied, by means of scientific verifications, assurances of geographical co-ordinations and any other verifications or assurances that the Director deems appropriate, that the child was born at sea on board a vessel that is not registered under any jurisdiction. In such cases, the place of birth of the child shall be listed as born at sea.

(3) The registration made under this article shall in no way affect or prejudice the provisions of the Maltese Citizenship Act. Cap. 188.

Duty of the parent who did not give birth, or, in default, of the parent who gave birth.
Amended by: VI.1968.8; XXIV.2011.99; XIX.2012.16; XXIII.2017.62.

286. (1) Nothing contained in article 285 shall affect the obligation of the parent who did not give birth, or, in default, of the parent who gave birth to the child, to make, within five days from their arrival in Malta, the declaration of the particulars concerning the birth of the child to the officer who, having regard to the place of residence of the parent who did not give birth, or, in default, of the parent who gave birth to the child, is charged with the duty of drawing up the act of birth; and such officer shall, upon such declaration, proceed to draw up the act of birth, unless such act shall have already been drawn up and registered under the provisions of article 285.

(2) If the particulars contained in the said declaration or any of them differ in any respect from the corresponding particulars entered in the registered act, or if any of the particulars contained in the said declaration is omitted from the registered act, a correction in the register may be made under the authority of the retired Judge or retired Magistrate or retired advocate of the Court of Revision of Notarial Acts, who shall countersign such correction.

Foundlings.
Amended by: XXI.1933.5; XXXI.1965.8; XIII.2007.13.

287. (1) Where any new-born child is found, the officer charged with the duty of drawing up the acts of birth in the place where such child is found, shall, with the assistance of one or more Government District Medical Officers, draw up an act to be styled "*repertus*", according to Form D in Part II of the First Schedule to this Code.

(2) In such act the said officer shall enter the following particulars- the apparent age and the sex of the child, the name given by him to the child, the place where the child was found, the person or institution in whose charge the child was placed, whether the child bore any apparent mark, the kind of clothing and any other object found on the person of the child.

(3) Such act shall also be delivered to the Director for registration as in the case of an act of birth.

Acts of birth to be delivered for registration.

288. The officer drawing up an act of birth or a *repertus,* shall, within two days from the day on which such act or *repertus* was drawn up deliver the same to the Director for registration.

Where, after registration, paternity of a child conceived or born outside wedlock is established.
Amended by: XXXI.1965.18; XVIII.2004.40; XV.2012.20.

289. (1) Where, after an act of birth of a child conceived and born outside wedlock has been registered without indication of the name of the father, the paternity of such child is determined by a judgment of the court, the name of the father may, at the request of any person interested, be entered by means of a note in the margin of the register.

(2) The same shall apply where, after the registration of a *repertus* it becomes known who the parents of the foundling are, either by means of a declaration made by themselves or by a judgment of the court.

Adoption or presumption that a person was conceived or born in wedlock. *Amended by: XXI.1962.9; XVIII.2004.41.*

290. (1) The presumption applicable to a person conceived and born out of wedlock in virtue of article 102 shall also be entered in the register by means of a note in the margin, and, where sub-article (3) of article 125 falls to be applied, the adoption of any person shall be entered in the register by means of the marking referred to in that sub-article.

(2) In the case of such presumption, it shall be stated in the note whether the presumption took place by subsequent marriage or by a decree of the competent court.

(3) The registration of the presumption of any person whose act of birth is not registered in the Public Registry shall be made in a book kept for the purpose, and, in any such registration, there shall be stated all such particulars as are required for the drawing up of an act of birth or such of them as may be known.

Documents to be produced. *Amended by: XXI.1962.10; XVIII.2004.42.*

291. (1) The party making the request for any entry as provided in the last two preceding articles shall deliver to the Director an authentic copy of the public deed, judgment or decree, relating to the judicial declaration of paternity or maternity, or presumption in virtue of articles 101 to 112.

(2) In the case of a presumption arising out of subsequent marriage, which has been duly registered, a reference to such registration shall be made in the note: where the marriage has not been registered, the entry shall not be made unless the party making the request for the entry shall deliver to the Director a document attesting the celebration of the marriage.

Presumption in virtue of subsequent marriage. *Substituted by: XVIII.2004.43.*

292. Where a presumption arising out of subsequent marriage applies to a child conceived and born out of wedlock, and such marriage took place prior to the registration of the birth of such child, the act of birth of such child may be drawn up directly as in the case of a child conceived or born in wedlock.

Surname of child. *Added by: XVIII.2004.44. Amended by: VIII.2007.12. Substituted by: LXV.2020.24.*

292A. (1)The person giving notice of the birth shall also deliver a declaration by the parents of the child indicating the surname to be used by the child in terms of the choice made by virtue of sub-articles (3) or (4) of article 4, or of article 4A, or of article 92, and such surname shall be registered in the column under the heading "Name or names by which the child is to be called and Surname" in the Act of Birth immediately after such name or names.

(2) Where no such declaration is made in the case of a child conceived and born out of wedlock or where the parents are in disagreement, any of the parents may request the directions of the competent court in terms of article 131.

Sub-title III

OF ACTS OF MARRIAGE

Particulars of act of marriage.
Amended by: XXXI.1965.8; XXXVII.1975.23; XXII.1976.3; XXX.1995.3; XIII.2007.13; L.N. 426 of 2012; XXIII.2017.63; LXV.2020.25.

293. Where any marriage takes place, the parties contracting such marriage shall draw up or cause to be drawn up an act, in accordance with Form E in Part II of the First Schedule to this Code, entering therein -

(*a*) the date of the act;

(*b*) the name, surname, date and place of birth, a legally valid identification document and place of residence of the parties;

(*c*) the name, surname, date and place of birth and place of residence of the witnesses present at the solemnization of the marriage;

(*d*) he name and surname at birth and after marriage of the parents of the parties;

(*e*) the day, month and year when, and the church, chapel, or other place where the marriage took place;

(*f*) a declaration as to the solemnization of the marriage signed by both of the parties, or if the marriage takes place by proxy by the proxy and by the other party, in the presence of and countersigned by an officer of the Marriage Registry or other person authorized for the purpose by the Marriage Registrar; and

(*g*) the surname after marriage of both spouses, in accordance with article 4(1).

Delivery of act of marriage.
Substituted by: XXXVII.1975.23.

294. The act of marriage shall, as soon as it is completed and signed, be delivered for registration to the person by whom the declaration referred to in paragraph (*f*) of article 293 is countersigned, and such person shall at the earliest opportunity take all such steps as may be required for its registration by the Director.

Entry of decisions, declarations and prohibitions affecting marriage.
Substituted by: XXXVII.1975.23; III.1994.10. Amended by: XIV.2011.10; L.N. 218 of 2012; XXIII.2017.64; LXV.2020.26.

295. (1) Any judgment or other decision given by a competent court whereby a registered marriage is annulled or the status resulting therefrom is affected shall, at the request of any person, be entered in the register by means of a note in the margin:

Provided that where a judgement or a decree of divorce are given by the competent civil court, these shall be registered in accordance with article 66A(4).

(2) The person making the request shall deliver to the Director an authentic copy of the relevant judgement or other decision.

(3) The Director shall also enter, by means of a note in the margin of an act in respect of a registered marriage, any reversion to their surname at birth or to the surname of their previous marriage or any prohibition of use of the surname of the other spouse referred to:

(*a*) in a note of personal separation between the spouses enrolled in accordance with article 62A, and a

reference to the date and place of marriage shall be made in any such note of enrolment; or

(*b*) in a judgment or decree of divorce registered in accordance with article 66A(4).

Act of civil union. *Added by: IX.2014.13.* Cap. 530.

295A. (1) The provisions of this Sub-title shall *mutatis mutandis* apply to civil unions contracted under the Civil Unions Act.

(2) An act of civil union shall be in the form stipulated in Form EE in Part II of the First Schedule to this Code.

Sub-title IV

OF ACTS OF DEATH

Notice of death by physician, *Amended by: XXXI.1965.8; XIII.2007.13; XV.2012.21; XLIII.2018.10.*

296. (1) On the death of any person, the physician or surgeon in attendance during the last illness who of his own personal knowledge or from information obtained from any other person is aware of such death shall, without delay, give notice thereof in writing, manually or electronically signed as defined in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, according to Form F in Part II of the First Schedule to this Code, to the officer charged with the duty of drawing up the act of death, specifying the house or other place in which such person died, the cause of death, and the hour at which the death occurred.

(2) Such physician or surgeon may deliver the notice to any adult member of the family of the deceased, to be transmitted to the officer above-mentioned or such notice may be delivered by electronic means.

(3) The provisions of this article shall not apply, if the deceased is one of the persons, on the occasion of whose death the drawing up of an act of death is not, under the provisions of article 235, required for the purposes of this law.

by members of family. *Amended by: XLIII.2018.11.*

297. In the case of death of any person who has not been attended by a physician or surgeon, it shall be the duty of the members of the family and of the domestic servants of the deceased as well as of the person occupying the house or other place in which the death occurred, or having the management of such house or place, to give notice of such death:

Provided that such notice may be given either by its delivery, by any person, to the officer referred to in article 296(1) or by it being delivered by electronic means.

Certificate of person presumed dead.
Added by: LIV.1974.8.
Amended by: XIII.2007.13.

298. (1) If after the disappearance of a person a magisterial enquiry is held and the enquiring magistrate is of the opinion that, taking all the circumstances of the disappearance into consideration the conclusion is that the person is probably dead, then a copy of the *procès-verbal* shall be transmitted by the enquiring magistrate to the officer charged with the drawing up of the act of death and such officer shall, within two days from the receipt of the copy of the *procès-verbal*, draw up according to Form G in Part II of the First Schedule to this Code a provisional act of death of the person whose disappearance has been established by the *procès-verbal*. The same officer shall, within two days from the drawing up of the said provisional act of death, deliver the same to the Director for registration.

(2) The provisional act of death shall become final after the lapse of one year from the date of registration.

(3) For the purposes of this article the enquiring magistrate shall indicate in the *procès-verbal* all the particulars mentioned in paragraphs (*a*), (*b*), (*c*) and (*d*) of article 301 and the probable time, date and place of the disappearance of the person concerned.

Certificate of absent person presumed dead.
Added by: LIV.1974.8.
Amended by: LVIII.1974.68; XIII.2007.13; XXV.2019.26.

299. (1) If the absence of a person has continued for a period of six years since provisional possession has been granted or if the absence has been declared by judgment as provided under article 223 and such person is not one in respect of whose death the provisions of article 234 are not applicable in terms of article 235, then the heirs, whether testamentary or heirs-at-law of the absentee, or their heirs, or any interested person or the State Advocate, may make a demand to the court of voluntary jurisdiction in the island in which the absentee last resided to order the officer charged with the duty of drawing up the act of death, to draw up and deliver to the Director for registration within four days from that order, a certificate of death of the absent person according to Form G in Part II of the First Schedule to this Code.

(2) The absent person shall be presumed to have died on the day on which he was last heard of, and that date and all the particulars referred to in article 301, where known, shall be entered in the act of death.

Return of absentee after final certificate of death.
Added by: LIV.1974.8.

300. Whenever a final certificate of death is drawn up and registered in accordance with article 298 or 299 and the person whose death has been so registered subsequently returns or his existence is established, the provisions of article 226 shall apply.

Particulars of act of death.
Amended by: XXI.1936.6; XXII.1939.5; XXXI.1965.8; XXX.1995.4; XIII.2007.13; L.N. 426 of 2012; XX.2015.8; XXVII.2020.38.

301. The officer mentioned in article 296, howsoever he may have received information of the death of any person, shall, after ascertaining such death, draw up, within two days from the receipt of such information, an act according to Form G in Part II of the First Schedule to this Code containing the following particulars:

(*a*) the date of the act;

(*b*) the name, surname, a legally valid identification document, age, place of birth, and place of residence of the deceased;

(*c*) the name and surname of each of the parents of the deceased stating whether they are alive or dead;

(*d*) the name, surname of the man or woman, if the dead person was married, in a civil union, in a cohabitation registered under the Cohabitation Act or enrolled by means of a public deed under the Cohabitation Act, 2020 or a widow or widower;

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(*e*) the hour, day, month, and year when, and the place where the death occurred, and the place where the deceased was, or will be, buried;

(*f*) the cause of death.

Powers of officer to collect information.

302. The said officer shall, for the purpose of collecting or ascertaining the particulars specified in the last preceding article, have the same powers as under article 277 are vested in the officer charged with the duty of drawing up acts of birth.

Duties of officers of hospitals, etc.

303. (1) The superior officer of every hospital, asylum or other public charitable institution, shall take steps to collect, from the time of admission, the particulars specified in paragraphs (*b*), (*c*) and (*d*) of article 301, in regard to every person admitted into the institution under his charge.

(2) The same shall apply to the superior officer of any prison, in regard to any prisoner.

(3) The police shall give to the said officers such assistance as may be required to enable them to comply with the provisions of this article.

(4) The provision of this article shall not apply to military or naval hospitals or prisons.

Deaths at sea.
Amended by: XXII.1939.6; IX.1971.3; XI.1973.377; XVII.1991.81; XV.2009.49; XLIII.2018.12

304. (1) Where any person dies at sea, on board a vessel registered in Malta, the master shall, within twenty-four hours, enter in his log-book the fact of such death with the particulars specified in article 301.

(2) Upon the arrival of such vessel in Malta, the Authority for Transport in Malta shall transmit a copy of such entry to the officer in charge with the drawing up of the acts of death in Malta, who shall forthwith draw up the act of death of such person:

Provided that such notice may also be delivered by electronic means.

(3) Where the arrival of such vessel in Malta does not take place within three months after the said death, the master shall, not later than three months after the said death, transmit a copy of the relative entry to the Authority for Transport in Malta who shall deal with it as if the said vessel had arrived in Malta.

Acts of death to be delivered for registration.

305. The officer drawing up an act of death, shall, within two days from the drawing up of the act, deliver the same to the Director for registration.

Exercise of functions assigned to the Director. *Added by: VI.1968.11. Amended by: XXXI.1986.4. Substituted by: III.1994.11. Amended by: LXV.2020.27.*

306. (1) Any officer who holds the degree of doctor of laws or equivalent qualification and either a warrant to practise as an advocate or a warrant to practise as a notary public and who performs duties in the Public Registry may exercise all or any of the functions which are under any provision of this Code or of any other law assigned to the Director of the Public Registry, and that law shall be construed accordingly.

(2) In the exercise of any such function, the said officer shall have the same powers and the same obligations as are conferred or imposed upon the Director, without prejudice to the provisions of sub-article (4) of this article.

(3) The words 'signed by the Director' or words to similar effect, with reference to certificates of civil status, shall be taken to include any seal, emblem or signature made or processed by photographic means, by print or in any other form at the discretion of the Director as further authenticated by the signature of the issuing officer authorised for the purpose by the Director.

(4) The officers referred to in this article shall, in the exercise of their functions under this Code or any other law, be subject to the authority, direction and control of an Assistant Director so delegated by the Director of the Public Registry and referred to in this article as the Deputy Director:

Provided that the exercise of the Deputy Director's powers under this article shall be without prejudice to the overall authority of the Director.

(5) The Director of the Public Registry shall be the only competent person to represent in any capacity the Public Registry in any legal proceedings under this Code or any other law.

BOOK SECOND

OF THINGS

PART I

OF RIGHTS OVER THINGS

Title I

OF THINGS AND THEIR DIFFERENT KINDS

307. All things which can be the subject of private or public ownership are either movable or immovable property.

Movable or immovable property.

Sub-title I

OF IMMOVABLE PROPERTY

308. The things following are immovable by their nature:

Immovable property.

(*a*) lands and buildings;

(*b*) springs of water;

(*c*) conduits which serve for the conveyance of water in a tenement;

(*d*) trees attached to the ground;

(*e*) fruits of the earth or of trees, so long as they are not separated from the ground or plucked from the trees;

(*f*) any movable thing annexed to a tenement permanently to remain incorporated therewith.

Unless a different intention appears from the circumstances, such thing shall be deemed to be so annexed to a tenement if it is fastened thereto by any metal or cement, or if it is otherwise so affixed that it cannot be removed without being broken or damaged or without breaking or damaging the tenement.

309. The things mentioned in paragraphs (*c*), (*d*), (*e*) and (*f*) of the last preceding article become movable as soon as they are separated from the ground, tree, or tenement, although they have not yet been removed elsewhere:

When certain things become movable.

Provided that the fruits of the earth or of trees, even before they are detached, shall be considered as movables for the purposes of article 288 of the Code of Organization and Civil Procedure, as also when they are the subject of a sale or other disposal, as things distinct from the earth or tree, and to be separated therefrom.

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310. The following are immovables by reason of the object to which they refer:

Things immovable by reason of the object to which they refer. *Amended by: XIII.2007.3.*

(*a*) the *dominium directum* or the right of the dominus on the tenement let out on emphyteusis, and the

dominium utile or the right of the emphyteuta on such tenement;

(*b*) the right of usufruct, or use of immovables and the right of habitation;

(*c*) praedial easements;

(*d*) actions for recovering or claiming any immovable thing or any of the rights mentioned in paragraphs (*a*), (*b*) and (*c*) of this article; or for a declaration that an immovable is not subject to any of such rights; or for claiming any inheritance or part thereof, or the reserved portion or any other portion of hereditary property given by law.

Definition of "immovable thing". Amended by: *XXV.2016*.2.

311. (1) The words "immovable thing" or "immovable things", and the word "immovable" or "immovables" without any other addition or indication restricting their meaning, shall include both immovables by their nature, as well as immovables by reason of the object to which they refer.

(2) The "coastal perimeter" is that part of the land which lies fifteen metres from the shoreline inwards, whether it is foreshore, landmass or cliff or is a combination of them and, where the foreshore extends beyond fifteen metres, to the limit of the foreshore.

The "foreshore" is that part of the coastal perimeter, including where it exceeds fifteen metres, which is normally covered by water due to the action of the waves and the use of which is restricted by this fact. The foreshore extends up to the reach of the largest wave and, even if it lies beyond the reach of the waves, to the limits of any beach:

Provided that the foreshore shall not extend over or onward of a schemed public road.

For the purposes of this sub-article:

(*a*) a "beach" is that part of the land contiguous to the shoreline, irrespective of how far inland it extends, which is of its nature or characteristics destined for public use in accordance with its nature and in accordance with any law from time to time regulating development planning;

(*b*) a "landmass" or a "cliff" is that part of the coastal perimeter which is elevated from the sea, is not accessible from the sea and, or is not subject to being covered by any wave; and

(*c*) the "shoreline" is the land contour which is constantly in direct contact with the sea; provided that when the shoreline changes due to erosion or collapse, the baseline for calculation of the coastal perimeter shall be adjusted accordingly from time to time without prejudice to the application of any law regulating development planning.

(3) Any private titles and rights to the foreshore shall be registered in the relevant registry in accordance with applicable law prior to the lapse of ten years from the designated date.

(4) Quays, wharfs and other constructions in harbours, ports, landing places and yachting centres for the berthing of ships, yachts and other vessels used in navigation, or of aircraft, or for the attachment thereto of pontoons, floating quays, or for dockyards, roads and access paths, or other similar structures in such areas, shall be regulated by the provisions of special laws governing such things and the terms "quays", "harbours", "ports", "yachting centres" and other related terms shall have the meanings assigned to them by such special laws.

(5) Although contiguous to the sea, such quays and other constructions and the areas within harbours and ports -

(*a*) shall be considered to be public property, saving private titles and rights thereon; and

(*b*) shall not be considered to be part of the coastal perimeter for the purpose of this Code until such time as any part of such areas, belonging to the Government, are declared and registered as land in the public domain, saving private titles and rights thereon, as provided for in the Fourth Schedule.

(6) In this article:

(*a*) the term "designated date" shall be that date established by order in the Gazette by the Minister responsible for Lands;

(*b*) the term "public domain" shall have the meaning given to it in the Fourth Schedule;

(*c*) the term "public property" shall have the meaning given to it in article 327; and

(*d*) "relevant registry" means the Public Registry or the Land Registry or any successor registry.

Sub-title II

OF MOVABLE PROPERTY

Movable property.

312. All things, animate or inanimate, which, without any alteration of their substance, can move themselves or be moved from one place to another are movable by nature, even though such things form a collection or a stock-in-trade.

Materials deriving from demolition of buildings.

313. Materials derived from a building which has been demolished, or gathered for erecting a new building, are movables until they are used in a construction.

Ships, etc.

314. Ships or other water-craft, baths or other floating structures are also movables.

Shares or interests in commercial companies, etc.

315. The following things are movables by regulation of law:

(*a*) shares or interests in commercial or industrial companies, even if immovable property is owned by such companies; in which latter case such shares or interests shall be deemed to be movables with respect to each shareholder and only as long as the company lasts;

(*b*) life or perpetual annuities, including capitals for annuities *ad formam bullae* and debts due for interest on capitals invested in the fund formerly existing under the name of *Massa Frumentaria*, provided such perpetual annuities, capitals and debts are not subject to entail;

(*c*) generally, all obligations, actions, even if hypothecary, and rights not considered immovable under the provisions of the last preceding sub-title.

Definition of "movable property or things", "movable effects" or "movable substance".

316. The words "movable property or things", "movable effects" or "movable substance" used in any provision of law or in any disposition of man, without any other addition or indication restricting their meaning, shall include both the things which are movable by nature and the things which are generally considered movable by regulation of law.

Definition of "movables".

317. (1) The word "movables" used in any provision of law, without any other addition or indication restricting its meaning, shall likewise include both the things which are movable by nature, and the things considered movable by regulation of law.

(2) If used in any disposition of man, it shall not, of itself, include money or documents of title to money, jewels, articles of precious metal or things forming the object of a trade; nor shall it include property considered as movable by regulation of law.

Definition of "furniture".

318. (1) The word "furniture" comprises all furnishing movables, including the pictures and statues forming part of the furniture of an apartment.

(2) It shall not include, however, collection of books, pictures, or statues.

Definition of "a house with all that it contains".

319. The expression "a house with all that it contains" shall include all movable things, excepting money or documents of title to money, jewels, articles of precious metal intended for the ornamentation of the person or to be worn, things that are accidentally in the house or that belong to third parties and debts due or other rights the titles to which are in the house.

Title II

OF OWNERSHIP

320. Ownership is the right of enjoying and disposing of things in the most absolute manner, provided no use thereof is made which is prohibited by law.

Ownership.

321. No person can be compelled to give up his property or to permit any other person to make use of it, except for a public purpose, and upon payment of a fair compensation.

No person may be compelled to give up his property. *Amended by: III.1930.2.*

322. (1) Save as otherwise provided by law, the owner of a thing has the right to recover it from any possessor.

Owner of thing has right to reclaim it from any possessor.

(2) A possessor who, after being notified of the judicial demand for the recovery of the thing ceases of his own act, to possess such thing, is bound, at his own expense, to regain possession of the thing for the plaintiff, or, if unable to do so, to make good its value, unless the plaintiff elects to proceed against the actual possessor.

323. Whosoever has the ownership of the land, has also that of the space above it, and of everything on or over or under the surface; he may make upon his land any construction or plantation, and, under it, any work or excavation, and draw therefrom any products which they may yield, saving, however, the provisions relating to Praedial Easements under Title IV of Part I of Book Second of this Code and any other provision of law in regard to fortifications or other works of defence.

Ownership of land carries with it ownership of what is above and under it.

324. Any construction, plantation, or work, whether on or over or under the land, shall, unless the contrary is proved, be deemed to have been made by the owner at his own expense, and to belong to him, without prejudice, however, to the rights which third parties may have acquired.

Constructions, etc., over or under the land belong to owner.

325. Every owner may compel his neighbour to fix, at joint expense, by visible and permanent marks, the boundaries of their adjoining tenements.

Owner may compel neighbour to fix boundaries of adjoining tenements.

326. Every owner may enclose his tenement, saving any right of easement to which other parties may be entitled.

Owner may enclose his tenement.

Title IIA

Added by: *XXV.2016*.4.

OF PROPERTY BELONGING TO THE GOVERNMENT

327. (1) The Government is the owner of:

Public and vacant property. *Added by: XXV.2016.4.*

(*a*) all things which it acquires pursuant to the provisions of this Code or any other special law, herein referred to as "public property"; and

(*b*) all things forming part of the public domain, which it holds as a result of its sovereignty, herein referred to as "public domain".

(2) Vacant property belongs to the Government.

(3) Property belonging to the Government may be subject to private rights in the manner and to the extent stated in this Code and other special laws.

Vacant property belongs to Government of Malta. *Amended by: L.N. 148 of 1975.*

327. (*Deleted by Act XXV.2016.3.*).

Title III

OF THE RIGHTS OF USUFRUCT, USE AND HABITATION

Sub-title I

OF USUFRUCT

Definition of "usufruct".

328. Usufruct is the real right to enjoy things of which another has the ownership, subject to the obligation of preserving their substance with regard both to matter and to form.

Where usufruct includes things which cannot be used without being consumed.

329. If the usufruct includes things which cannot be used without being consumed, such as money, grain, or liquids, the usufructuary has the right to make use of them subject to the obligation of paying the value thereof according to the valuation made at the commencement of the usufruct; in the absence of such valuation, he has the option either to return things in like quantity and of like quality, or to pay their value at the current price at the end of the usufruct.

Usufruct is constituted by law or by man.

330. (1) Usufruct may be constituted either by law or by the will of man; in the latter case, if the usufruct refers to immovable property, it may not be constituted except by a public deed, and, if constituted by a deed *inter vivos*, it shall not be operative with regard to third parties except from the time when the deed is registered in the Public Registry upon the demand of any of the interested parties or of the notary before whom the deed was executed.

(2) The note for the registration of the deed shall contain the designation of the parties as specified therein, the date and nature of the deed, and an indication of the thing to which the deed refers in accordance with the provisions of the Public Registry Act, and it shall be signed by the notary before whom the deed was executed.

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Usufruct may be constituted conditionally, for a specified time or in favour of two or more particular persons.

331. (1) Usufruct may be constituted even conditionally or for a specified period.

(2) It may be constituted in favour of one or more particular persons.

(3) Where the usufruct is granted to several persons to be enjoyed by them successively, it shall be operative only in favour of those persons who are alive at the time when the usufruct

devolves upon the first usufructuary.

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§ I. OF THE RIGHTS OF THE USUFRUCTUARY

Fruits belong to usufructuary.

332. The usufructuary has the right to take all kinds of fruits, whether natural, industrial, or civil, which the thing subject to his usufruct is capable of producing.

Natural, industrial and civil fruits.

333. (1) Natural fruits are those which are the spontaneous produce of the soil. The produce and increase of animals and the produce of stone-quarries or of mines are also natural fruits.

(2) Industrial fruits of a tenement are those which are obtained by cultivation.

(3) Civil fruits are the rents of property let, emphyteutical ground-rents, interest on capitals, and annuities.

Natural and industrial fruits hanging from branches or standing upon roots.

334. (1) Natural or industrial fruits hanging from branches or standing upon roots at the time when the usufruct begins, shall belong to the usufructuary, without prejudice to any portion which may be due to the tenant under a metayer lease.

(2) Such fruits as are hanging from branches or standing upon roots at the time when the usufruct terminates, shall belong to the owner, without prejudice to any portion which may be due to the tenant under a metayer lease, and to any compensation which may be due to the usufructuary or his heirs for their cultivation.

Civil fruits deemed to be earned day by day.

335. Civil fruits shall be deemed to be earned day by day, and shall belong to the usufructuary in proportion to the duration of his usufruct.

Fine.

336. The alienation fines in emphyteutical grants shall belong to the usufructuary.

Usufruct of a life annuity.

337. The usufructuary of a life annuity is entitled to receive the payments which fall due from day to day during his usufruct; but he is bound to restore any surplus which he may have received in advance.

Where usufruct includes things subject to gradual deterioration by use.

338. If the usufruct includes things which, without being consumed at once, are subject to gradual deterioration by use, the usufructuary has the right to make use of them for the purpose for which they are intended, and he is only bound to restore them, at the end of the usufruct, in the condition in which they may be, provided they have not been damaged through his malice or negligence.

Fruit trees.

339. Fruit trees that die, and those that are uprooted or broken by accident, belong to the usufructuary, subject to his obligation of replacing them by others.

Usufructuary may assign enjoyment of his right.

340. A usufructuary may assign the enjoyment of his right whether gratuitously or for valuable consideration.

Lease of property to remain operative.

341. A lease of the property shall continue to be operative even after the termination of the usufruct, provided such lease shall have

been made on fair conditions and for a period not exceeding eight years, in the case of rural property, or four years, in the case of urban property, or an ordinary period according to usage, in the case of movable property, or any period shorter than any of the said periods respectively in the case of property the letting of which for a period exceeding such shorter period is prohibited.

Usufructuary may sell fruits that are pending.

342. The usufructuary may also sell the fruits that are pending; and in such case, if the usufruct terminates before the fruits are gathered, the sale shall continue to be operative, and the owner is entitled to receive the price of such fruits as have not yet been gathered:

Provided that the owner shall have no action against the buyer who may have paid the price of such fruits to the usufructuary before the termination of the usufruct.

Usufructuary enjoys rights of easement.

343. The usufructuary is entitled to enjoy, in the same manner as the owner himself, any right of easement attached to the tenement subject to his usufruct, and generally all the rights which the owner might enjoy.

Usufructuary enjoys such stone-quarries as are open.

344. The usufructuary is also entitled to the enjoyment of any stone-quarry which is already opened and being worked at the time the right to the usufruct vests in him; he may not, however, open new quarries.

Usufructuary has no right to treasure- trove.

345. The usufructuary shall have no right to any treasure-trove which may be found during the usufruct, saving the portion thereof to which he may be entitled, according to law, for having discovered it.

Owner may not prejudice rights of usufructuary.

346. The owner may not by his own act or in any other manner whatsoever prejudice the rights of the usufructuary.

Usufructuary cannot claim compensation for improvements.

347. (1) The usufructuary cannot, at the termination of the usufruct, claim any compensation for the improvements of any kind which he may have executed, even though the value of the thing may have been considerably increased thereby.

(2) Any such improvements, however, may be taken into consideration in the assessment of any damages for which the usufructuary may be liable.

(3) Where no set-off arises under sub-article (2) the usufructuary may take away those improvements which may be removed with profit to himself, and without damage to the tenement, unless the owner prefers to retain them, on payment to the usufructuary of a sum corresponding to the profit which the latter might obtain by removing them from the tenement.

Usufructuary entitled to real actions competent to owner.

348. It shall be competent to the usufructuary to bring any real action competent by law to the owner.

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§ II. OF THE OBLIGATIONS OF THE USUFRUCTUARY

Usufructuary to take things in the condition in which they are at the time the usufruct vests in him.

349. (1) The usufructuary takes the things subject to the usufruct in the condition in which they are at the time the usufruct vests in him.

(2) At the termination of the usufruct, he shall restore them in the condition in which they are at that time, saving his liability for any deterioration which may have occurred through his negligence.

Making up of inventory.

350. The usufructuary may not commence to exercise his rights over the things subject to the usufruct before he has made up an inventory of such things, containing a description of the movables together with the value thereof, and of the state of the immovables, unless such inventory is dispensed with in the act creating the usufruct.

How inventory is made up.

351. (1) The inventory shall be made up in the presence of the owner, or after his having been called upon to attend even by means of a judicial letter.

(2) It must be made by a public deed unless in the act creating the usufruct power has been given for it to be made by means of a private writing, and the owner consents that it be so made.

(3) Unless otherwise provided in the act creating the usufruct, the expenses of the inventory shall be borne by the usufructuary.

Security to be given by usufructuary.

352. (1) It shall likewise be unlawful for the usufructuary, unless he has been exempted by the act creating the usufruct, to commence to exercise his rights over the things subject to the usufruct before he has given security that he will enjoy the things so subject as a *bonus paterfamilias*, that he will restore the movables, refund the values of the things mentioned in article 329, and make good any damage that might happen through his negligence whether to the movables or to the immovables.

(2) The sum of the security, for the purposes of the hypothecary registration, shall be regulated by the amount of the capitals that are to be delivered to the usufructuary or that may be restored to him during the usufruct, by the value of the movables, and by the cost of such repairs in the immovables as may probably be required during a period of five years and as are, according to law, at the charge of the usufructuary.

(3) It shall be lawful for the court, according to circumstances, to fix a lesser sum; and in such case, should the sum of the security be spent or become insufficient before the termination of the usufruct, the usufructuary shall be bound to give a further security, and, in default, the provisions of article 355 shall apply.

Persons who are not bound to give security.

353. The following persons, however, are not bound to give security:

(*a*) those whose usufruct derives from the law;

(*b*) the vendor or the donor who has retained the usufruct for himself;

(*c*) the usufructuary of things which are, or are to be, administered by others.

Time within which owner may demand security.

354. The owner may demand the security, where required, either before or within one year after the usufructuary shall have commenced to exercise his rights over the things subject to the usufruct; after the expiration of the said year, it shall not be lawful for the owner to demand the security unless he proves that the condition or the conduct of the usufructuary has so changed that the fulfilment of his obligations is thereby endangered.

Where usufructuary fails to give security.

355. If the usufructuary fails to give security, where required, within the time fixed by the court, the court shall, upon the demand of the owner, appoint a competent person to administer the things subject to the usufruct, in the interest of both the owner and the usufructuary.

Administrator to sell movables, etc.

356. The administrator shall sell the movables, investing at interest the proceeds thereof; he shall likewise invest any other sum of money included in the estate or which may be derived from the return of capitals during the usufruct.

Administrator may deviate from rule laid down in art. 356.

357. (1) The administrator may, with the consent of the owner and the usufructuary, deviate from the rule laid down in the last preceding article.

(2) The court may also, on good cause being shown, upon the demand of the owner or the usufructuary, dispense with the sale of the movables, or order that the moneys be invested otherwise than as laid down in the last preceding article, provided this can be done without prejudice to the interests of the defendant.

Power of court where usufructuary fails to find security.

358. If the usufructuary declares on oath that he has been unable to find security, the court may order that an urban tenement and the necessary furniture for the habitation and the personal use of himself and his family be delivered to him, without security, subject to the obligation of restoring them at the termination of the usufruct.

Duty of administrator to render account.

359. (1) The administrator shall yearly render an account of his administration to the usufructuary, and pay the balance to him.

(2) At the termination of the administration, the administrator shall render an account both to the owner and to the usufructuary.

Removal of administrator.

360. The administrator may at any time be removed for just cause, upon the demand either of the owner or of the usufructuary.

Usufructuary may take over administration.

361. The usufructuary may at any time give security and take over the administration of the property.

Fruits due to usufructuary.

362. Delay in giving security shall in no case deprive the usufructuary of the fruits to which he may be entitled: such fruits are due to him from the time of the vesting of the right to the usufruct.

Repairs of property subject to usufruct.

363. The usufructuary is only liable for ordinary repairs. Extraordinary repairs shall be at the charge of the owner, unless they have been occasioned by the non-execution of the ordinary repairs, including those that have been required at the commencement of the usufruct, in which case the usufructuary shall be liable therefor.

Extraordinary repairs.

364. The repairs to walls and vaults, the replacing of beams, and the entire renewal of the roof, staircase, or pavement of any part of a building, are extraordinary repairs.

Reimbursement of expenses incurred by usufructuary for repairs which are at charge of owner.

365. (1) No action shall lie in favour of the usufructuary to compel the owner to carry out the repairs which are at his charge; but, if the owner refuses to carry out such repairs, it shall be lawful for the usufructuary to demand that he be authorized by the court to effect such repairs, and to recover from the owner, at the termination of the usufruct, the amount of the expenses incurred, without interest, provided the utility of the repairs subsists at the time of the termination of the usufruct:

Provided the usufructuary shall be entitled to recover only the value of such repairs as determined by means of a valuation, regard being had to the time of the demand, if he fails to give to the owner an account of the expenses incurred by him together with the respective vouchers within six months from the day on which the repairs shall have been completed.

(2) The account shall be considered as accepted by the owner, if he shall not, within two months, declare his intention to contest it.

Where owner consents to carry out extraordinary repairs.
Amended by: XXII.2005.81.

366. (1) If the owner consents to carry out the extraordinary repairs, he shall be entitled to recover from the usufructuary, during the continuance of the usufruct, the interest on the amount of the expenses which he shall prove to have incurred.

(2) The said interest shall run from the day on which the account of such expenses shall have been approved by the usufructuary, or by the court upon a sworn application issued against the usufructuary.

Where part of building falls down through age, etc.

367. (1) The provisions of the last two preceding articles shall likewise apply in the case where a building or a part of a building constituting an accessory necessary for the enjoyment of the tenement subject to the usufruct, or an accessory part of the building constituting the principal subject of the usufruct, falls down through age or by a fortuitous event.

(2) For determining whether the part which has fallen off the building which constitutes the principal subject of the usufruct, is an accessory part, regard shall be had not only to the destination of such part, but also to the expense required for reconstructing such part as against the expense which would be required for the reconstruction of the whole building.

Usufructuary cannot prevent owner from carrying out repairs.

368. The usufructuary cannot prevent the owner from carrying out, in the manner least inconvenient to the usufructuary, the repairs and works referred to in the last three preceding articles.

Expenses to be borne by usufructuary,

369. (1) The expense for the whitewashing of a building, or the cleansing of cisterns or sinks, when ordered by the Police in the cases provided for by law, shall be at the charge of the usufructuary.

by owner.

(2) The expense for the construction of cisterns or sinks, or for

communicating sinks with the main sewer or with some other outlet, as well as the expense for the demolition of buildings which are in a ruinous state, shall be borne by the owner; and if the usufructuary is compelled to carry out such works, he shall have a remedy against the owner.

Usufructuary to pay ground-rent, etc.

370. The usufructuary is bound to pay the ground-rent and all other annual charges upon the tenement.

Usufructuary of particular tenements not to pay charges on such tenements.

371. The usufructuary of one or more particular tenements is not bound to pay the debts for which any of such tenements may be hypothecated, nor is he bound to pay any annuity with which such tenements stand charged; and if he is compelled to pay, he may claim relief against the owner.

Usufructuary of estate to pay maintenance allowances, etc.

372. (1) The usufructuary of an entire estate, or of a portion of an estate, is bound to pay, in proportion to his enjoyment, and without any right of recovery, any maintenance allowances, any perpetual or life annuity, and any interest on debts to which the estate may be liable.

(2) Where any capital has to be paid, if the usufructuary is willing to advance the amount, such amount shall be returned to him by the owner, without any interest, at the end of the usufruct.

(3) If the usufructuary is not willing to make such advance, the owner may effect the payment either with his own money, in which case the usufructuary shall pay to him interest thereon during the continuance of the usufruct, or by causing a portion of the property subject to the usufruct to be sold, to the extent of the sum due.

Costs of lawsuits concerning usufruct, etc.

373. (1) The costs of lawsuits relating to the usufruct exclusively shall be borne by the usufructuary.

(2) The costs of lawsuits relating to the ownership exclusively are at the charge of the owner.

(3) The costs of lawsuits concerning both the usufruct and the ownership shall be borne by the owner; but the usufructuary shall pay to the owner the interest thereon during the usufruct.

Encroachment on property held in usufruct.

374. The usufructuary is bound, under pain of damages, to notify the owner, without delay, of any encroachment or other act committed by a third party to the prejudice of the rights of the owner.

Where subject of usufruct is not a herd.

375. Where the subject of the usufruct is one or more animals, not forming a herd, and such animals perish without the fault of the usufructuary, he shall only be bound to account to the owner for the skins or their value.

Where subject of usufruct is a herd.

376. (1) The same rule shall apply where the subject of the usufruct is a herd, and the whole herd perishes without the fault of the usufructuary.

(2) Where, however, the herd does not perish entirely, the usufructuary shall be bound to replace the heads which have perished, but not beyond the number of the animals born since the commencement of the usufruct and existing in his possession and

of those born after the herd commenced to be deficient in its original number.

Insurance of ship subject to usufruct.

377. (1) Where the subject of the usufruct is a ship and the usufructuary has failed to insure her, he shall be liable for the loss of the ship and for average.

(2) If the ship was insured, the usufructuary is discharged, to the extent of the insurance, by assigning to the owner his rights of action against the insurers, the premium remaining payable by the usufructuary.

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§ III. OF THE MANNER IN WHICH USUFRUCT TERMINATES

Termination of usufruct.

378. Usufruct terminates -

(*a*) by the death of the usufructuary;

(*b*) by the expiration of the time for which it was constituted;

(*c*) by the merger or reunion in one and the same person of the two capacities of usufructuary and owner;

(*d*) by non-user of the right during thirty years;

(*e*) by the total loss of the subject of the usufruct.

Termination of usufruct by wrongful use thereof.

379. (1) Usufruct may also terminate by reason of the wrongful use which the usufructuary makes of his right, either by causing injury to the tenements, or by suffering them to run into ruin for want of ordinary repairs.

(2) In any such case the court may, according to the gravity of the circumstances, instead of ordering the absolute termination of the usufruct, either appoint an administrator, or order that the property be returned to the owner, subject to the condition, however, of paying annually to the usufructuary, or to those claiming under him, a fixed sum during the continuance of the usufruct.

(3) The usufructuary, as well as any of his creditors, may prevent the termination of the usufruct, the appointment of an administrator, or the return of the property as aforesaid, by offering to carry out the necessary repairs, and by giving security for the performance of this obligation within a time to be fixed by the court, provided the offer be made and the security given before judgment is delivered on the demand of the owner, or within fifteen days from the day on which the judgment has become a *res judicata*.

Duration of usufruct granted to body-corporate, *Amended by: XIII.2007.4.*

380. (1) The duration of a usufruct constituted in favour of a body-corporate, cannot exceed thirty years; and if the usufruct is granted without any limitation of time, or for a time exceeding thirty years, its duration shall be limited to thirty years.

(2) When a right of usufruct is settled under trusts in favour of

a trustee, including a corporate trustee, or is endowed to a private foundation for the benefit of beneficiaries who are natural persons, for the purposes of this article, the usufruct shall be considered as being constituted in favour of the beneficiaries who are named and who have a right to enjoy the property and, unless expressly stated otherwise, shall operate for the lifetime of such beneficiaries.

or until a third party reaches a given age,

381. Where the usufruct is granted until a third party shall attain a given age, it shall last for all that time, even if the third party dies before attaining that age.

or in favour of two or more persons conjointly.

382. Where the usufruct is constituted in favour of two or more persons conjointly, in terms of articles 738 and 739, it shall only terminate at the death of the person last surviving, and the portion of any predeceased person shall by accretion vest in the persons surviving.

Sale of thing subject to usufruct.

383. The sale of the thing subject to the usufruct shall not operate so as to alter in any way the right of the usufructuary; and he shall continue in the enjoyment of his usufruct, unless he shall have waived his right thereto.

Creditors of usufructuary can have waiver of usufruct declared null.

384. The creditors of the usufructuary may sue for a declaration of nullity of any waiver of the usufruct which the usufructuary may have made to their prejudice.

Where a part only of subject of usufruct perishes.

385. Where only a part of the thing subject to the usufruct perishes, the usufruct shall continue to be operative as to the remainder.

Rights of usufructuary in respect of soil or materials of a building that falls down.

386. (1) Where the only subject of the usufruct is a building, and such building falls down through age or is destroyed by a fortuitous event, the usufructuary shall not be entitled to enjoy either the soil or the materials.

(2) Where, however, the usufruct was constituted over a tenement of which such building was only a part, the usufructuary shall be entitled to enjoy the soil, and he may use the materials either in the reconstruction of the fallen building or in the repair of other parts of the tenement subject to the usufruct.

(3) In each of the aforesaid cases, if the building is not destroyed, or does not fall down except in part, the usufructuary shall retain the right to enjoy the soil and the materials.

Where subject of usufruct is a ship beyond repair.

387. Where the subject of the usufruct is a ship, and the ship is in such condition as to be beyond repair, the usufruct terminates.

Usufruct of annuity or debt not to terminate on repayment of capital.

388. The usufruct of an annuity or of a debt does not terminate on the repayment of the capital; the usufructuary may re-invest such capital or, as the case may be, demand that it be re-invested to his profit.

Sub-title II

OF USE AND HABITATION

389. The rights of use and habitation are acquired and lost in the same manner as the right of usufruct. How use and habitation are acquired and lost.

390. The rights of use and habitation may not be created by the owner otherwise than by a public deed, and they shall not be operative as against third parties before the deed is registered in the Public Registry, upon the demand of any of the interested parties, or of the notary before whom the deed was executed. The note for the registration of the deed shall be drawn up as provided in sub-article (2) of article 330. Rights of use and habitation to be created by public deed.

391. Where the extent of the right of use or of habitation is not fixed in the deed creating such right, the rules laid down in the following articles shall apply. Where extent of right of use or habitation is not fixed in deed.

392. (1) Use is the real right of a person of making use of a thing belonging to another, or of taking the fruits thereof, but only to the extent of his own needs and those of his family. Definition of "use".

(2) The right of use of a house is the same as the right of habitation.

(3) The right of use of things which are consumed by use is considered as usufruct.

393. Habitation is the real right of a person to live with his family and according to his condition in a house belonging to another. Definition of "habitation".

394. For the purposes of the last two preceding articles, the word "family" shall also include the children born since the commencement of the right of use or habitation, even though the grantee was not married at the time of the commencement of such right, as well as acknowledged illegitimate children, adopted children and servants. Definition of "family".

395. (1) The grantee of a right of use or habitation shall make up an inventory and give security as provided in the case of usufruct. Inventory and security.

(2) The court may, according to circumstances, exempt the grantee from giving security.

396. The grantee of a right of use or habitation shall in the enjoyment thereof act as a *bonus paterfamilias*. Grantee to act as *bonus paterfamilias.*

397. (1) Where a person having the right of use of a tenement, takes all its fruits, or, having the right of habitation, occupies the whole house, he is bound to pay the ground-rent and all other annual charges on the tenement, to defray the expenses of cultivation, and to make the ordinary repairs in the same manner as a usufructuary. Liabilities of grantee.

(2) Where, however, he takes only a part of the fruits, or occupies only a part of the house, he contributes thereto in proportion to what he enjoys.

Where fruits do not exceed quantity required by person having right of use.

398. (1) Where the ordinary quantity of the fruits of the tenement does not exceed the quantity which is necessary for the person having the use of it, such person may demand that the tenement be delivered to him.

(2) Where, however, only a portion of the fruits is necessary for such person, he shall only be entitled to demand that portion of the fruits in kind; and in such case, the administration of the tenement shall remain vested in the owner, and the obligation of giving security and of making the inventory will not arise.

Rights of use and habitation may not be assigned, etc.

399. The rights of use and habitation may not be assigned or leased, and are not subject to the debts of the grantee.

Title IV

OF PRAEDIAL EASEMENTS

GENERAL PROVISIONS

Definition of "easement".

400. (1) An easement is a right established for the advantage of a tenement over another tenement belonging to another person, for the purpose of making use of such other tenement or of restraining the owner from the free use thereof.

(2) The tenement subjected to the easement is called the servient tenement; and the tenement in favour of which the easement is created is called the dominant tenement.

How easements are created.

401. Easements are created either by law or by act of man.

Sub-title I

EASEMENTS CREATED BY LAW

Easements created for purposes of public or private utility.

402. (1) Easements created by law for purposes of public utility are established by special laws or regulations.

(2) Easements are also created by law for private utility; and such are those established in the following provisions of this sub-title.

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§ I. EASEMENTS ARISING FROM THE SITUATION OF PROPERTY

Duties of owners of tenements.

403. (1) Tenements at a lower level are subject in regard to tenements at a higher level to receive such waters and materials as flow or fall naturally therefrom without the agency of man.

(2) It shall not be lawful for the owner of the lower tenement to do anything which may prevent such flow or fall.

(3) Nor shall it be lawful for the owner of the higher tenement to do anything whereby the easement of the lower tenement is rendered more burdensome.

Springs of water.

404. Whosoever has a spring within his tenement may make use of it as he pleases, saving any right which the owner of a lower tenement may have acquired by title or by prescription.

Water running through public road.

405. (1) The owner of the higher tenement may cause the water which runs through the public road to be led into his own tenement, in preference to the owner of the lower tenement.

(2) In the case of owners of tenements placed on the same level, each of such owners may cause the water which runs on that half of the road, which is contiguous to his tenement, to be led into such tenement.

Where water is required for the use of man, etc.

406. The provisions of the last preceding article shall not apply in the case where one of the owners requires the water for the use of man, or for watering animals or for watering trees which are ordinarily watered; in any such case the right of preference over others who require the water for other uses belongs -

(*a*) to the person who requires the water for the use of man;

(*b*) to the person who requires it for watering animals;

(*c*) to the person who requires it for watering trees.

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§ II. OF WALLS AND DITCHES WHICH SEPARATE NEIGHBOURING TENEMENTS

Party wall. *Amended by: LV.1975.4.*

407. A wall which serves to separate two buildings or a building from a tenement of a different nature must have a thickness of not less than thirty-eight centimetres.

How to be built.

408. A party-wall between two courtyards, gardens or fields, may be built of loose stones, but must be -

Height.

(*a*) three and one-half metres high, if it is between two courtyards, or between two gardens in which there are

chiefly orange or lemon trees;

(*b*) two metres and forty centimetres high, if it is between two gardens in which there are chiefly trees other than those mentioned above; and

(*c*) one and one-half metres high, if it is between two fields.

Presumption of ownership of party-wall.

409. (1) In the absence of a mark or other proof to the contrary, a wall which serves to separate two buildings is presumed to be common up to the top, and, where such buildings have not the same height, up to one metre and eighty centimetres from the point at which the difference in height begins.

(2) The part of the wall above one metre and eighty centimetres from the height of the lower building, is presumed to belong to the owner of the higher building.

(3) Where there is a building on one side, and a courtyard, garden or field on the other side, the wall is presumed to belong entirely to the owner of the building.

Party-wall between courtyards, gardens or fields.

410. (1) A dividing wall between courtyards, gardens, or fields, shall also be presumed to be common, in the absence of a mark or other proof to the contrary.

(2) Where the wall separates courtyards, gardens or fields, placed the one at a higher level than the other, the part of the wall which, having regard to the lower tenement, exceeds the height respectively prescribed in article 408 is presumed to belong to the owner of the higher tenement.

Repairs to common wall.

411. (1) The repairs to a common wall or its reconstruction shall be at the charge of all those who have a right thereto in proportion to the right of each.

(2) Nevertheless, every co-owner of a wall may relieve himself of the obligation of contributing to the expense of the repairs to the said wall or of its reconstruction by waiving his right of co-ownership, provided the common wall does not support a building belonging to him.

(3) Such waiver, where competent, shall not relieve the party making it of his liability for such repairs or reconstruction as may have been occasioned by him.

Where common wall supports building which owner wishes to demolish.

412. Where a common wall supports a building which the owner wishes to demolish, he may not release himself from his liability for the repairs or reconstruction of the wall by waiving his right of co-ownership, unless he carries out for the first time such repairs and works as are necessary so as to avoid causing to the neighbour any damage by the demolition of the building.

Right of support.

413. (1) Every co-owner erecting a building may have it lean against the common wall and insert therein beams up to half the thickness of such wall.

(2) He may also indent his own wall into the common wall.

Raising of common wall.

414. Every co-owner may raise the height of a common wall, but he shall be liable for the expenses necessary -

(*a*) for raising the height of the wall;

(*b*) for keeping in good repair the part raised above the height of the common wall;

(*c*) for carrying out such works as may be necessary for the support of the additional weight resulting from the raising of the wall, so that the stability of the wall will not be impaired.

Where common wall is not in condition to stand additional height.

415. Where the common wall is not in a condition to sustain the additional height, the person desiring to raise its height must have it entirely reconstructed at his expense, and the additional thickness must be taken on his own side.

Party raising common wall, liable for damage to neighbour.

416. In each of the cases mentioned in the last two preceding articles, the party raising the height of the wall is moreover bound to make good to his neighbour any damage which the latter may suffer in consequence of the raising of the wall or the reconstruction.

Neighbour may acquire co-ownership of additional height of common wall.

417. The neighbour who has not contributed to the raising of the height of a common wall may acquire co-ownership of the additional height by paying one-half of the cost thereof and the value of half the land used for the additional thickness, if any.

Owner may make common a wall contiguous to his tenement.

418. (1) Every owner may also make common, in whole or in part, a wall contiguous to his tenement by reimbursing to the owner of the wall one-half of its total value, or one-half of the value of that portion which he desires to make common, and one-half of the value of the land on which the wall is built, and by carrying out such works as may be necessary to avoid causing damage to his neighbour.

(2) The provisions of this article shall not apply in the case of buildings destined for public use.

Works to or on common wall, or deposit of manure, etc., against common wall.

419. It shall not be lawful for one of the neighbours -

(*a*) to make, without the consent of the other neighbour any cavity in the body of a common wall;

(*b*) to cause any new work to be affixed to or to lean against a common wall, without the consent of the other neighbour, or, in case of his refusal, without having first determined by means of experts the necessary measures to be taken in order that the new work shall not injuriously affect the rights of the other neighbour;

(*c*) to deposit manure or other corrosive or damp substance in such a manner as to be in contact with the common wall;

(*d*) to heap earth or other matter against a common wall without taking the necessary precautions in order to prevent such heaps from causing, by pressure or otherwise, damage to the other neighbour.

Repairs to walls separating courtyards, etc.

420. Any person may compel his neighbour to contribute to the construction or repair of walls separating courtyards, gardens, or fields, up to the height specified in article 408, regard being had to the nature and level of the tenement of the defendant.

Construction or repair of party-wall between two tenements having different level.

421. Where a wall separates two tenements, one of which is at a higher level than the other, the owner of the higher tenement shall bear the whole expense of the construction and repair of the wall up to the level of his own tenement: the portion of the wall from that level up to the height specified in article 408 shall be constructed and repaired at joint expense.

Where neighbour is unwilling to contribute to expense of construction or repair to wall.

422. Saving the provisions of article 418, where, in the cases referred to in the last two preceding articles, a neighbour is unwilling to contribute to the expense of construction or repair of the wall, he may release himself therefrom by giving up his half of the land on which the party-wall is to be built, and waiving his right of co-ownership of such wall.

Where several storeys or parts of building belong to different owners.

423. Where the several storeys or other parts of a building belong to different owners, the contribution of each of the owners to the expense of the repairs or reconstruction which may be required shall be in proportion to the benefit which the respective part of the building derives from such repairs or reconstruction.

Old easements in regard to new common wall.

424. Where a common wall or a house is reconstructed, any active or passive easement shall be maintained also with regard to the new wall or house, provided such easement is not rendered more burdensome, and such reconstruction is made before prescription has been acquired.

Openings in party-walls.

425. It shall not be lawful for one of the neighbours without the consent of the other to make in the party-wall any window or other opening.

Owners of storeys may make balconies, etc., in external wall.

426. When the storeys of a house belong to different owners, each of such owners may, in his own storey, make, in the external wall, a balcony, window, door or other opening, provided the stability of such wall is not affected thereby.

Raising of party-wall if building has stairs leading to roof.

427. (1) The person in whose building there are stairs leading to the roof, is bound to raise at his own expense the party-wall to the extent of one metre and eighty centimetres above the level of the roof.

(2) The portion of the wall above the level of the roof must be of the same thickness as the party-wall below such level.

(3) Where both neighbours have stairs leading to their respective roofs, each of them may compel the other to contribute half the expense necessary for raising the height of the party-wall as aforesaid.

Neighbours to avoid causing damage to party-wall.

428. Each of the neighbours is bound to carry out in his own tenement such works as may be necessary to prevent any damage which may be caused to the party-wall by the cisterns or sinks existing in his tenement or by any flow of water or filth.

Ditch between two tenements is presumed to be common to both owners.

429. In the absence of any title or mark to the contrary, any ditch between two tenements, if it is proved to be private property, is presumed to be the common property of the owners of those tenements.

Indications that ditch is not common.

430. Where the earth excavated for the formation of the ditch, or the refuse accumulated therein for a period of three years, is only on one side of the ditch, this shall be an indication that the ditch is not common, and the ditch is presumed to be the exclusive property of the party on the side of whose tenement the earth or the accumulated refuse is found.

Where ditch serves for the drainage of the lands of one owner only.

431. Where the ditch serves for the drainage of the lands of one owner only, this shall be an indication that the ditch is not common.

Repair of common ditch.

432. A common ditch shall be kept in repair at joint expense:

Provided that it shall be lawful for any co-owner to relieve himself of such obligation by waiving his right of co-ownership.

Trees existing on boundary-line between two tenements.

433. The trees which are on the boundary-line between two tenements shall, in the absence of proof to the contrary, be deemed to be common; and each of the neighbours may demand that such trees be uprooted or cut if he proves that the damage they may cause to his tenement is greater than the benefit he himself may derive therefrom.

§ III. OF DISTANCES REQUIRED IN CERTAIN CASES

Construction of walls, etc. on boundary-line of tenements.

434. Every person may construct any wall or building on the boundary-line of his tenement, saving the right of the neighbour to acquire co-ownership of the wall as provided in article 418.

Space to be left when not building on boundary-line.

435. (1) Even where the construction is not made on the boundary-line, the neighbour may, if a distance of at least one and one-half metres has not been left, demand co-ownership of the wall, and may build up to, and against such wall, on paying, besides the value of half the wall, the value of the ground which he would thus occupy, unless the owner of the ground prefers to extend his building, at the same time, up to the boundary-line.

(2) If the neighbour does not wish to avail himself of such power, he must construct his wall or building in such a manner that there shall be a distance of three metres from the wall or building of the other party.

(3) The same rule shall be observed in any other case where the construction of the other party is at a distance of less than three metres from the boundary.

(4) The mere raising of the height of a house or wall already existing is deemed to be a new construction.

Exception.

436. The provisions of the last two preceding articles shall not apply in the case of buildings destined for public use, or of walls bordering on public squares or streets.

Planting of trees, etc.
Amended by: II.1920.2,3.

437. (1) It shall not be lawful for any person to plant in his own tenement tall-stemmed trees at a distance of less than two metres and forty centimetres, or other trees at a distance of less than one metre and twenty centimetres from the boundary between his tenement and that of his neighbour.

(2) Vines, shrubs, hedges, and all other dwarfed trees not exceeding the height of two metres and ten centimetres, may be planted at a distance of not less than forty-five centimetres from the said boundary.

(3) The neighbour may, unless the period required for prescription has elapsed, demand that trees planted at a lesser distance, or which, notwithstanding the observance of the aforesaid distance, are causing him damage, be uprooted at the expense of the owner.

(4) The court, however, may grant to the owner of such trees the option either to uproot them, or to cause ditches or other works to be made at his expense sufficient to prevent all damage to the tenement of his neighbour.

(5) The provisions of this article shall not apply in cases where the adjoining tenements are separated by a wall, provided the aforesaid trees, shrubs or plants are so kept as not to exceed the height of the wall.

Branches of trees overhanging adjoining tenement.

438. (1) A person over whose tenement the branches of the neighbour's trees extend, may compel him to cut such branches, and may gather the fruits hanging from them.

(2) Moreover, if the roots extend into his tenement, he may cut them off himself.

Digging of wells, etc.

439. It shall not be lawful for any person to dig in his own tenement, any well, cistern or sink, or to make any other excavation for any purpose whatsoever at a distance of less than seventy-six centimetres from the party-wall.

Damage consequent on excavations.

440. (1) Notwithstanding the observance of the distance prescribed in the last preceding article, whosoever makes any excavation, shall be bound to make good any damage caused by such excavation to his neighbour's building, provided such building has been constructed according to the usages and the rules of art prevailing at the time of its construction.

(2) Nevertheless, no liability for damages is incurred, if the excavation is made at the distance which the court, upon the demand of the party wishing to make the excavation, shall have fixed, according to circumstances, or if such party has executed such works as, according to circumstances, shall have been ordered by the court so as to avoid causing any damage to the neighbour.

Distance of sink-pipes or water-pipes.

441. (1) Any sink-pipe or any pipe for water dripping from the roofs, or for water raised by means of a pump or other mechanical device, shall be at a distance of at least one metre from the boundary, to be measured from the nearest point of the external part of such pipe.

(2) The observance of such distance is not required if the pipes used are such as do not allow any dampness to penetrate into the wall, or if other means are used fit to prevent the passage of any such dampness.

(3) Nevertheless, if, notwithstanding the observance of the distance prescribed under sub-article (1) of this article, or the use of such pipes or means as are mentioned in sub-article (2) of this article, damage is caused to the neighbour, the owner of the pipes shall be bound to make, at his own expense, any other work that may be necessary for preventing the continuance of the damage, and, if necessary, even to remove the pipes to a greater distance.

Where cistern extends under tenement of neighbour.

442. (1) Where a cistern extends under the tenement of the neighbour, such neighbour may bore a hole and make use of the water, subject to his obligation to refund to the owner of the tenement in which the excavation of the cistern was commenced one-half of the expense incurred.

(2) Each of the two neighbours may demand that the part of the cistern which exists under his tenement be separated from that existing under the other tenement by means of a wall to be constructed and, when necessary, repaired at joint expense.

(3) Where, however, the part of the cistern existing under the tenement of one of the neighbours is considerably larger than the part existing under the tenement of the other, the court may, according to circumstances, in ordering the separation, direct the former to refund to the latter a proportionate part of the sum which he may have paid for the excavation of the cistern.

Distance of windows, etc., from party-wall.

443. (1) It shall not be lawful for the owner of any building to open windows at a distance of less than seventy-six centimetres from the party-wall.

(2) In the case of balconies or other similar projections, the distance prescribed under sub-article (1) of this article shall be measured from the external line of that side of the balcony or other projection, which is nearer to the party-wall, to the internal line of such wall.

Distance of ovens from party-wall.

444. (1) It shall not be lawful for any person to construct any oven except at a distance of at least thirty centimetres from the party-wall, and with a passage for air between the wall and the oven.

(2) Kitchen-stoves shall be at a distance of at least fifteen centimetres from the party-wall.

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§ IV.OF EAVESDROP

Construction of roofs.

445. Every owner shall construct the roofs of his building in such a manner that the rainwater shall not fall on the neighbouring tenement.

§ V.OF RIGHT OF WAY AND OF WATERCOURSE

Access to and passage over tenements.

446. Every owner is bound to grant access to and a way over his tenement, provided such access or way be necessary, for the purpose of repairing a wall or other work belonging to his neighbour or held in common.

Tenement having no outlet to public road.

447. (1) Any owner whose tenement has no outlet to the public road, may compel the owners of the neighbouring tenements to allow him the necessary way, subject to the payment of an indemnity proportionate to the damage which such way may cause.

(2) Such right of way shall be exercised over that part where it will be least injurious to the person over whose tenement it is allowed.

Tenement becoming enclosed on all sides.

448. Where the tenement has become enclosed on all sides in consequence of a sale, exchange, or partition, the vendors, the parties to the exchange, or the co-partitioners are bound to grant a foot-way, horse-way or cart-way, as the case may be, without any indemnity.

Discontinuance of right of way.

449. Where the right of way granted as aforesaid shall, in consequence of the opening of a new road, or of the incorporation of the tenement with another tenement contiguous to the public road, cease to be necessary, the owner of the servient tenement may demand the discontinuance of such right of way on restitution of the indemnity received or the cessation of the annual payment agreed upon.

Right of watercourse.

450. (1) Any person who cannot receive water into his own tenement from fountains or other deposits of public water, except through rural tenements belonging to other persons, may compel the owners of such tenements to grant him, in such manner as shall least injuriously affect them, the right of watercourse, subject to the payment of an indemnity proportionate to the damage.

(2) It shall not be lawful for such person to compel the said owners to allow him to make new channels, if they grant to him watercourse by means of the existing channels; in which case the indemnity shall be determined having regard to the value of such channels, and the expense necessary for their first repair, and the person who makes use of them shall remain bound to contribute to the expense of their upkeep as provided in article 452.

Action for indemnity subject to prescription.

451. The action for the payment of the indemnity under articles 447 and 450 is subject to prescription: and the right of way or of watercourse may continue to be exercised, although the action for the payment of the indemnity can no longer be maintained.

Contribution towards necessary repairs of channels.

452. Any person who is entitled to make use of the channels made for the passage of water is bound to contribute to the expenses for their necessary repairs, saving his right to relief, where competent, against the persons through whose fault the channels have been damaged.

Where enjoyment of way or of watercourse can be had in or over two or more tenements.

453. (1) Where the enjoyment of the way or the watercourse can be had in or over two or more tenements belonging to different owners, the easement shall be imposed on that tenement to the owner of which it is least injurious.

(2) Where the easement will not affect one tenement more injuriously than another, the easement shall be imposed on that tenement where it shall be more convenient to the person demanding it, and it shall not be lawful for such person to choose another tenement without the consent of its owner.

Sub-title II

OF EASEMENTS CREATED BY THE ACT OF MAN

§ I. OF THE DIFFERENT KINDS OF EASEMENTS WHICH CAN BE CREATED BY THE ACT OF MAN, AND OF THE MANNER IN WHICH SUCH EASEMENTS ARE CREATED

Creation of easements.

454. It shall be lawful for owners to establish, in accordance with article 400, any easement which is in no way contrary to public policy.

Continuous or discontinuous, apparent or non-apparent easements.

455. (1) Easements are continuous or discontinuous, apparent or non-apparent.

(2) Continuous easements are those the enjoyment of which is or may be continuous without the necessity of any actual interference by man: such as the easement of watercourse, eavesdrop, prospect and others of a like nature.

(3) Discontinuous easements are those the enjoyment of which can only be had by the actual interference of man: such as the easement of right of way, of drawing water, and others of a like nature.

(4) Apparent easements are those the existence of which appears from visible signs: such as a door, a window, or an artificial watercourse.

(5) Non-apparent easements are those which have no visible signs of their existence: such as the prohibition to build on a certain land or to build above a specified height.

Affirmative or negative easements.

456. (1) Easements are, moreover, affirmative or negative.

(2) Affirmative easements are those which consist in the right of making use of the servient tenement.

(3) Negative easements are those which consist in the right of restraining the owner of the servient tenement from the free use thereof.

Creation of continuous and apparent easements.

457. Continuous and apparent easements may be created -

(*a*) by virtue of a title;

(*b*) by prescription, if the tenement over which such easements are exercised may be acquired by prescription;

(*c*) by the disposition of the owner of two tenements.

Title to result from public deed. Registration thereof.

458. The title creating an easement is null unless it results from a public deed; and where the easement is created by a deed *inter vivos*, the easement shall not be operative as regards third parties before the deed is registered in the Public Registry as provided in article 330, on the demand of any of the parties interested, or of the notary receiving the deed.

Creation of easements over tenements subject to usufruct.

459. (1) The owner of a tenement may, without the consent of the usufructuary, establish any easement over the tenement, provided the right of usufruct is not in any way prejudiced thereby.

(2) With the consent of the usufructuary, the owner may establish even an easement diminishing the right of usufruct.

Easement granted by co-owner.

460. (1) An easement granted by one of the co-owners of an undivided tenement, shall not be deemed to be established until the other co-owners shall have also, jointly or separately, granted it.

(2) Any grant made under any title whatsoever by one of the co-owners remains in abeyance until a like grant is made by all the others.

(3) Nevertheless, any grant made by a co-owner, independently of the other co-owners, shall operate so as to restrain not only the grantor but also his successors, even if singular, or any person claiming under him, from obstructing the exercise of the right so granted.

Where co-owner granting easement becomes sole owner of tenement.

461. An easement granted by one of the co-owners over an undivided tenement, shall be deemed to be fully established as soon as the grantor becomes the sole owner of the tenement.

Where easement is acquired by prescription.

462. (1) In order to acquire an easement by prescription, possession for a period of not less than thirty years is necessary.

(2) If the servient tenement is subject to entail, or belongs to a church or any other pious institution, the prescriptive period is forty years.

(3) In the cases referred to in this article, the person pleading prescription is not bound to produce a title, and no plea on the ground of bad faith can be set up against him.

Prescription with regard to affirmative or negative easements.

463. (1) In the case of affirmative easements, possession to found prescription commences from the day on which the owner of the dominant tenement has commenced to exercise the right of easement.

(2) In the case of negative easements, possession commences from the day on which the owner of the dominant tenement, shall have, by means of a judicial letter, protest, or other judicial act,

restrained the owner of the servient tenement from the free use thereof.

Where easement is in respect of water flowing from neighbouring tenement.

464. Where the easement is in respect of a flow of water issuing from a tenement belonging to others, or from a spring existing in such tenement, and consists in the right of preventing the diversion of the water, any visible and permanent works which the owner of the dominant tenement may have made in the servient tenement in order to collect the water, or to facilitate its flow in his own tenement, shall be equivalent to the restraint mentioned in the last preceding article.

Where emphyteuta, etc., suffers exercise of easement.

465. Any easement which the emphyteuta, usufructuary or tenant suffers to be exercised over the tenement, without any pre-existing title, shall not prejudice the *dominus* or the owner of such tenement, notwithstanding any length of time during which the easement may have been exercised.

Owner of tenement subject to easement of receiving rain-water falling on neighbouring building, may cause such easement to cease.

466. The owner of a tenement subject, in virtue of an easement constituted without title, to receive the rain-water falling on the roofs of a neighbouring building, may, at any time, on payment of an indemnity, compel the owner of such building to cause such easement to cease.

Owner of building subject to easement of allowing rain-water falling on such building to flow to neighbouring tenement, may cause such easement to cease.

467. The owner of a building in which there is no cistern, who, in virtue of an easement constituted without title, is obliged to allow the rain-water falling on the roofs of that building to flow to a neighbouring tenement, may, at any time, on payment of an indemnity, cause such easement to cease if he has constructed in such building a cistern for the collection of such rain-water.

When easement is said to be created by “the disposition of the owner of two tenements”.

468. An easement is created by "the disposition of the owner of two tenements" if it is proved that the two tenements, now divided, belonged to the same owner, and it was such owner who placed or left things in the state which gives rise to the easement.

Easements that cannot be acquired by prescription.

469. (1) Continuous non-apparent easements, and discontinuous easements, whether apparent or non-apparent, can only be created by a title; they cannot be created by prescription or by the disposition of the owner of two tenements.

(2) Nevertheless, the easement of right of way for the use of a tenement may be acquired by the prescription of thirty years, if such tenement has no other outlet to the public road; and any other easement which, on the 11th February, 1870, was already acquired under previous laws, may not be impeached.

§ II. OF THE MANNER IN WHICH EASEMENTS ARE EXERCISED

Principal easement to include secondary easements.

470. The creation of an easement shall be deemed to include the granting of all that is necessary for the enjoyment of such easement with the least possible damage to the servient tenement. Thus the

right of drawing water carries with it the right of way, and the right to cause water to be led over another person's tenement includes the right of way along the sides of the channel in order to watch over the flow of the water, and to clean the channel and make the necessary repairs.

Right to carry out works necessary for enjoyment and preservation of easement.

471. Any person to whom an easement is competent may carry out at his expense and in such manner as to cause as little inconvenience as possible to the owner of the servient tenement, the works that are necessary for the exercise and preservation of the easement.

When owner of servient tenement is bound to carry out repairs.

472. Where the owner of the servient tenement is bound, in the terms of the title, to bear the expense necessary for the exercise or preservation of the easement, such obligation shall remain attached to that tenement, even though it passes into other hands:

Provided that the possessor of such tenement may release himself from such obligation by abandoning, in favour of the owner of the dominant tenement, that part of the servient tenement over which the easement is exercised.

Where dominant tenement is divided.

473. If a severance of the dominant tenement takes place, the easement which attached to the tenement will continue to attach to the several portions, without, however, increasing the burden on the servient tenement. Thus, where the easement is that of right of way, the owners of all the portions of the tenement so divided shall make use of the same path.

Owner of servient tenement cannot do anything injurious to easement.

474. (1) The owner of the servient tenement cannot do anything which tends to diminish the exercise of the easement or to make such exercise more inconvenient. He may not alter the condition of the tenement, nor may he assign for the exercise of the easement any part of the tenement other than that over which it was originally established.

(2) Nevertheless, if the exercise of the easement in or over the part originally assigned has become more burdensome to the owner of the servient tenement, or if such owner is thereby prevented from carrying out works, repairs, or improvements in his tenement, he may offer to the owner of the dominant tenement a part equally convenient for the exercise of the easement, and the latter may not refuse it.

(3) The part of the tenement assigned for the exercise of the easement may likewise be changed upon the demand of the owner of the dominant tenement, if he proves that such change will be of considerable advantage to him, and will cause no damage whatsoever to the servient tenement.

Owner of dominant tenement may not render easement more burdensome.

475. Any person having a right of easement shall exercise such right in the terms of his title, and it shall not be lawful for such person to make either in the servient or in the dominant tenement, any alteration which may increase the burden on the servient tenement.

Doubt as to extent of easement.

476. In case of doubt as to the extent of an easement, its exercise shall be restricted to what is necessary, having regard to

the destination of the dominant tenement at the time the easement was created and to the convenient use of such tenement, with the least damage to the servient tenement.

Duty of person granting water from a spring or channel.

477. In the absence of an agreement, the owner or other person making a grant of water from a spring or a channel is bound, towards those who, under such grant, are entitled to make use of such water, to carry out the works required to lead the water from its source to the place from which the water is to be taken.

Owner of tenement subject to easement in respect of flow of water may freely use such water.

478. The easement in respect of a flow of water, does not deprive the owner of the servient tenement of his right of freely using such water to his advantage.

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§ III. OF THE MANNER IN WHICH EASEMENTS ARE EXTINGUISHED

Easements are extinguished when they can no longer be exercised,

479. (1) An easement is extinguished when the things subject thereto are in such a condition that it can no longer be exercised.

(2) Nevertheless, the easement will revive if the things are restored in such a manner that it can be again exercised, unless a period of time sufficient to raise a presumption of the extinguishment of the easement under article 481 shall have elapsed.

by merger or unity of possession,

480. (1) An easement is extinguished where the dominant and the servient tenements become united in the ownership of one person.

(2) Where, however, a visible sign of an easement exists, and the owner disposes of one of the said tenements without there being in the contract any declaration as to the easement, such easement shall continue to be operative, actively or passively, in favour of, or over, the tenement so alienated.

by non-user. *Amended by: L.N. 148 of 1975.*

481. (1) An easement is extinguished by non-user for the period of forty years, in the case of property belonging to the Government of Malta or to a church or other pious institution, and of thirty years, in the case of any other property.

(2) The provisions of this article shall not apply where the non-user was due to the conditions referred to in article 479 provided the owner of the dominant tenement could not, according to law, cause such conditions to cease.

Running of periods of non-user.

482. The periods of non-user referred to in the last preceding article, shall begin to run, according to the different kinds of easements, either from the date of the last exercise thereof, if the easement is discontinuous, or from the date of the first act done in contravention thereof, if the easement is continuous.

Prescription in favour of third party in possession.

483. In regard to a third party in possession of the servient tenement, the easement shall be extinguished by the lapse of the time required for the prescription of the ownership of the tenement itself according to the provisions relating to prescription under

Title XXV of Part II of Book Second of this Code.

Prescription as to manner of use of easement.

484. The manner of enjoying an easement may be prescribed as the easement itself.

Interruption of prescription by a co-owner.

485. Where the dominant tenement belongs to two or more persons in common, the use of the easement made by any one of the co-owners shall operate so as to bar prescription with regard to all the co-owners.

Suspension or interruption of prescription with regard to a co-owner.

486. (1) Where among the co-owners there is one against whom prescription could not run, such fact shall operate so as to preserve the right of all the others.

(2) Any act which interrupts prescription with regard to one of the co-owners shall benefit also the others.

Cessation of easement on partition.

487. Where two buildings which belonged to one owner, are about to be divided, it shall be competent to each of the co-partitioners to demand, before proceeding to the partition, the cessation of any easement between the two tenements, provided this can be done without any serious prejudice.

Easements acquired in favour of dotal or emphyteutical tenements.

488. (1) Any easement acquired by the husband in favour of a dotal tenement, or by an emphyteuta in favour of the emphyteutical tenement, shall not be extinguished on the dissolution of the marriage or on the termination of the emphyteusis.

(2) Easements, however, imposed over the said tenements by the said persons shall be extinguished.

Title V
OF COMMUNITY OF PROPERTY

Sub-title I

OF THE NATURE OF THE COMMUNITY OF PROPERTY, AND OF THE RIGHTS OF THE CO-OWNERS DURING THE COMMUNITY

Definition of community of property.

489. (1) Community of property exists where the ownership of one and the same thing, or of one and the same right, is vested *pro indiviso* in two or more persons.

(2) In the absence of any special agreement or provisions, the community of property shall be governed by the following rules.

Share of co-owners.

490. (1) The shares of the co-owners shall, unless the contrary is proved, be presumed to be equal.

(2) Every co-owner shall participate in the advantages and burdens of the community in proportion to his share.

Right of co-owner to make use of common property.

491. Each of the co-owners is entitled to make use of the common property, provided -

(*a*) that the use be made according to the destination of the

property as established by usage;

(*b*) that it be not made against the interest of the community, or in such a manner as to prevent the other co-owners from making use of the common property according to their rights.

Contribution towards expenses.

492. Each of the co-owners may compel the others to share with him the expense necessary for the preservation of the common property, saving the right of any of such other co-owners to release himself from his liability therefor by abandoning his right of co-ownership.

No alterations to be made without consent of co-owners.

493. It shall not be lawful for any co-owner to effect any alteration in the common property without the consent of the other co-owners, even though he claims that such alteration is beneficial to all.

Power of court to appoint administrator of common property.

494. (1) Where the co-owners fail to agree, the court shall give the necessary directions as to the management and better enjoyment of the common property, and may appoint an administrator, even from among the co-owners themselves.

(2) The court shall give effect to the opinion of the majority, regard being had to the total number of the co-owners, unless the dissentient co-owners show they will be prejudiced thereby.

Each co-owner has full ownership of his share.
Amended by: XVIII.2004.45; XIV.2016.2.

495. (1) Each co-owner has the full ownership of his share and of the profits or fruits thereof.

(2) He may freely alienate, assign, or hypothecate such share, and may also, subject to the provisions of article 912, substitute for himself another person in the enjoyment thereof, unless personal rights are concerned:

Provided that the effect of any alienation or hypothecation shall be restricted to that portion which may come to the co-owner on a partition.

(3) Where the heirs in an inheritance continue to hold in common, property deriving from the succession for more than three years and no action has been instituted before a court or other tribunal for the partition of the property within three years from the opening of the succession and the portions of the heirs in the said inheritance are the same in respect of all the assets of the inheritance, each co-owner shall be deemed to be co-owner of each and every item of property so held in common:

Provided that this sub-article shall not apply:

(*a*) when property held in common is subject to any right of habitation, use or of usufruct, for such time during which such right is in force; or

(*b*) when the property held in common consists of property which of its very kind has of necessity to be kept indivisible; or

(*c*) when persons who are holding the property deriving from the succession in common agree otherwise:

Provided further that the period of three years referred to in this sub-article shall commence to run together with, and shall be deemed as one with, the period of three years referred to in article 495A(1).

Where co-owners fail to agree in respect of a sale of a thing held in common.
Added by: XVIII.2004.46.
Amended by: XIV.2016.3.

495A. (1) Except in cases of condominium or necessary community of property, where co-ownership has lasted for more than three years and none of the owners has instituted an action before a court or other tribunal for the partition of the property held in common, and the co-owners fail to agree with regard to the sale of any particular property, the court shall if it is satisfied that none of the dissident co-owners are seriously prejudiced thereby, authorise the sale in accordance with the wish of the majority of co-owners regard being had to the value of the shares held by each co-owner.

(2) The request to the court shall be made by application which shall be accompanied by a declaration of the owners who agree to the sale as well as a prospectus showing the number and value of the shares held by each of them as well as the terms and conditions under which the sale is to take place. The application shall also indicate the date on which the co-ownership arose and the circumstances thereof.

(3) The application shall be served on the co-owners who do not agree with the sale as well as on curators to be appointed by the court to represent such of the co-owners who are unknown or who cannot be traced. The registrar shall cause a copy of the application to be published in the Gazette and in one daily newspaper.

(4) A declaration that any co-owner is not known or cannot be traced shall be confirmed on oath by one of the applicants.

(5) The other co-owners as well as the curators may within twenty days from service upon them of the application, or in the case of a co-owner who has not been served with the application within twenty days from the last publication referred to in sub-article (3), oppose the sale stating the serious prejudice that they or the co-owners represented by them may suffer because of the sale.

(6) In assessing whether there will be serious prejudice to any of the co-owners, the court shall take into consideration all relevant factors including the value of the property and the price of the sale, and may for this purpose order that the property be appraised in accordance with the provisions of article 306 of the Code of Organization and Civil Procedure.

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(7) The court shall determine the application, and where it determines that the sale is to take place, it shall determine the price or other consideration for the sale and it shall further -

(*a*) determine the time, date and place, when and where the transfer is to take place;

(*b*) where the sale is to be effected by a public deed, appoint a notary to publish the deed;

(*c*) appoint a curator, even among the co-owners themselves, to represent any of the co-owners who fail

to appear on the notarial deed or other instrument of transfer.

(8) The court may, on an application by any party interested, change the date, time or place where the transfer is to take place.

(9) If more than one co-owner opposes the transfer or where the court rejects the application in terms of sub-article (7), the court may, notwithstanding the other provisions of this article, order the sale by licitation of the property in accordance with the provisions of articles 521 and 522.

Transitory provision in respect of articles 495 and 495A and obligation to register under the Land Registration Act.
Added by: XV.2012.22.
Substituted by: XIV.2016.4.

495B. (1) The period of three years stipulated in articles 495(3) and 495A(1) shall apply in respect of all co-owned property to which the said sub-articles apply which on or after the 1st April 2016 shall have been held in common by the co-owners thereof for a period of at least three years.

(2) The periods of ten years previously provided for in articles 495(3) and 495A(1) (prior to their amendment) and of five years previously provided for in article 495B (prior to its substitution) respectively and as in force prior to the 1st April 2016 shall no longer apply as from the 1st April 2016.

(3) Immovable property transferred on the basis of a court decision given under article 494(1) and not being situated within a land registration area for the purposes of the Land Registration Act shall, notwithstanding the provisions of any other law, be deemed to constitute a land registration area for the purposes of the said Act and it shall be registered in the Land Registry by the Notary who publishes the deed of transfer at the expense of the transferee.

Cap. 296.

Sub-title II

PARTITION OF COMMON PROPERTY

Each co-owner may demand partition of common property.

496. (1) No person can be compelled to remain in the community of property with others, and each of the co-owners may, at any time, notwithstanding any agreement to the contrary, demand a partition, provided such partition has not been prohibited or suspended by a will under the provisions of article 906.

(2) Nevertheless, an agreement to the effect that property shall continue to be held in common for a fixed period not exceeding five years is valid; and any agreement for a longer period, is null in so far as it exceeds five years.

(3) Any such agreement may be renewed.

Power of court to order dissolution of community notwithstanding prohibition of testator, etc.

497. (1) Notwithstanding the prohibition or agreement referred to in the last preceding article, it shall be lawful for the court, if serious and urgent reasons so require, to order the dissolution of the community of property, and any waiver of the right to demand a partition in similar cases is null.

(2) Where any of the co-owners has, through his fault, given cause to the existence of the reasons referred to in sub-article (1),

the court may, according to circumstances, in ordering the dissolution, condemn such co-owner in all damages.

Partition may be demanded even if co-owner enjoyed separately a portion of the property.

498. Partition may be demanded even though one of the co-owners may have enjoyed separately a portion of the common property, unless there has been a partition or a possession sufficient to give rise to prescription.

Partition of immovable property to be made by public deed.

499. (1) A partition of immovable property is null unless it is made by a public deed.

(2) As to the effect of any such partition in regard to third parties, and as to the registration of the deed of partition, the provisions of article 330 shall apply.

Manner and form of partition.

500. (1) Subject to the provisions of the last preceding article, where all the co-owners are present and capable of alienating property, the partition may be made in any manner and form they may deem convenient.

(2) In the absence of an agreement to the contrary, the following rules shall be observed, both in the partition of the bulk of the property as well as in any sub-division which may be necessary.

Valuation of property and making up of shares.
Cap. 12.

501. (1) The property shall be appraised by experts chosen by the parties, or appointed by the court as provided in the Code of Organization and Civil Procedure.

(2) The experts shall state in their report, whether the property can be conveniently divided without being injuriously affected, and, in case the property can be so divided, the experts shall in the same report determine each of the portions which may be made up and the value thereof, regard being had, as far as it is practicable without considerable damage, to the provisions contained in the next following three articles.

Right of co-owner to have his share in kind.

502. Each of the co-owners may claim his share of the property in kind.

Right of co-owner possessing immovables adjacent to those in community.

503. A co-owner possessing property immovable by its nature adjacent to any of the immovables in community about to be divided, may demand that such immovables be assigned to him upon a valuation, provided there be other immovables in community out of which an approximately equal portion may be assigned to each of the other co-partitioners.

Dismemberment of tenements and creation of easements to be avoided.

504. In forming and making up the shares, the dismemberment of tenements or the creation of easements shall be avoided; and it shall be sought to include in each share the same quantity of movables, immovables, rights or claims of the same nature and value.

Payment of a sum of money in case of inequality of shares.

505. Any inequality of the shares in kind, where it cannot be conveniently avoided, shall be set off by the payment of a sum of money equal to the difference between the larger and the smaller share.

Rent-charge in lieu of sum of money. *Amended by: XIII.1983.5; L.N. 407 of 2007.*

506. (1) It shall be lawful for the court, according to circumstances, to order, in lieu of the payment of the sum of money mentioned in the last preceding article, the imposition of a rent-charge on the larger share in favour of the smaller share, secured by the hypothecation of one or more of the immovables included in such larger share.

(2) For the purposes of sub-article (1), the experts shall, unless exempted by the co-partitioners themselves, establish in their report the amount of such rent-charge as may be required for owelty of partition.

(3) The provisions of this article shall not apply unless the inequality exceeds the sum of one hundred and sixteen euro and forty-seven cents (116.47) and is greater than the value of one-fourth part of the larger share.

Other cases where rent-charge may be imposed.

507. The provisions of the last preceding article shall also apply where the immovables held in community cannot be divided in such a manner as to include a portion thereof in each share, and, in consequence, one of the shares will consist entirely of money or other movables; in any such case it shall be lawful for the court, according to circumstances, to order that the share which contains no immovables be made up of a rent-charge on the immovables included in the other shares.

Limitation of amount of rent-charge.

508. Nevertheless, the rent-charge imposed on any immovable shall in no case be greater than the fifth part of the estimated annual rental value of such immovable on lease.

Formation of shares.

509. Where the experts, chosen or appointed to make the valuation of the property, are not competent to make up the shares, such shares shall be made up by one of the co-partitioners or by any other person, if the choice is agreed upon by all, and if the party so chosen accepts to act. Otherwise the shares shall be made up by a person to be appointed by the court.

Drawing of lots.

510. (1) The shares shall be drawn by lot.

(2) Where, however, the shares of the co-partitioners are not equal, the court shall determine whether the shares are to be drawn by lot, or whether the partition is to be carried out by assignment in whole or in part.

When partition is to be made with the assistance of the judge or magistrate.

511. (1) Where any of the co-owners is subject to tutorship or curatorship, or is an absentee represented by a curator appointed by the court, the partition is null unless it is made with the assistance of the judge or magistrate of the court of voluntary jurisdiction.

(2) The judge or magistrate shall countersign the draft deed.

(3) A partition made with the assistance of such judge or magistrate cannot be impeached, even by the persons mentioned in sub-article (1) of this article, on the ground of non-compliance with the rules laid down in the foregoing articles.

Delivery of documents relating to the subjects of the partition.

512. (1) Each of the co-partitioners shall, on completion of the partition, be put in possession of the documents relating to the things allotted to him, if such documents exist among the things

held in community.

(2) The documents relating to a thing which has been divided shall be kept by the party having the greatest portion thereof, subject to his obligation to show such documents, whenever requested, to such of the co-partitioners as may be interested therein.

(3) The documents relating generally to all the property formerly held in community shall be delivered to the party chosen by all the co-partitioners, or, failing their agreement, by the court, as a depositary thereof, subject to his obligation to show such documents, whenever requested, to any of the co-partitioners.

Effects of partition.

513. As to the effects of a partition, the provisions contained in articles 947 to 952 inclusive of this Code relating to co-heirs, shall be applicable generally to co-partitioners.

Supplement in money and supplementary partition. *Substituted by: LVIII.1975.3.*

514. (1) Where in a partition, or in any other act whereby the community of property, whether movable or immovable, is terminated, even though such act be designated as a sale, an exchange or a compromise, or by any other name, the fair value of the property allotted or assigned to one of the co-partitioners is, having regard to the time of such partition or other act, less than three-fourths of the fair value of the share to which such co-partitioner was entitled, such co-partitioner shall be entitled to demand from the other co-partitioner a supplement in money.

(2) No action for a supplement under sub-article (1) of this article may be maintained where difficulties arisen between the co-partitioners have been settled by a compromise, even if no suit had been commenced in relation thereto; nor may such action be maintained in the case of a sale of the right of co-ownership made without fraud to one of the co-owners at his risk and peril by the other co-owners or any of them.

(3) The action for demanding a supplement in money under sub-article (1) of this article shall be barred by the lapse of two years from the date of the partition or other act terminating the community, and the provisions of sub-article (2) of article 1407 shall apply in respect of the running of such period of limitation.

(4) The mere omission from a partition of a thing held in community shall only give rise to a supplementary partition.

Sub-title III

OF SALE BY LICITATION

Sale by licitation

515. (1) Where common property cannot be divided conveniently and without being injuriously affected, and compensation cannot be made with other common property of a

different nature but of equal value, it shall be sold by licitation for the purpose of distributing the proceeds thereof.

(2) The same rule shall apply if, in a partition of things in community, there are some which no one of the co-partitioners is able or willing to take.

may be demanded by any of the co-owners.

516. Any of the co-owners, whatever his share of the property, may demand the sale by licitation, where competent.

Strangers may be invited to bid.

517. It shall be lawful for each of the co-owners to demand that strangers be invited by means of an advertisement to bid at the sale by licitation, such advertisement being published in one or more newspapers, at least six days before that fixed for the sale.

No formalities required where licitation takes place with the consent of all co-owners,

518. (1) A sale by licitation which takes place with the consent of all the co-owners, is not subject to any formality, and may be made by means of any person and in whatsoever manner the co-owners may agree upon; but in any such case there is no sale until the highest bid has been accepted and, if the licitation is in respect of immovable property, until a contract is made by means of a public deed.

(2) The same rule shall apply where, although the sale by licitation has been ordered by a judgment, the parties agree to carry it out in a manner other than that established for judicial sales by auction.

even, in certain cases where one of the co-owners is subject to tutorship. *Amended by: XIII.1983.5; L.N. 407 of 2007.*

519. The provisions of the last preceding article shall apply even where any of the co-owners is subject to tutorship or curatorship, or is an absentee represented by a curator appointed by the court, provided the sale does not relate to immovable property, or, if the sale relates to movable property, the value thereof does not exceed sixty-nine euro and eighty-eight cents (69.88).

Licitation of immovable property, etc., where any of the co-owners is subject to tutorship, etc. *Amended by: XIII.1983.5; L.N. 407 of 2007.*

520. Where the sale by licitation relates to immovable property, or to movable property of a value exceeding the sum of sixty-nine euro and eighty-eight cents (69.88), and any of the co-owners is subject to tutorship or curatorship or is an absentee represented by a curator appointed by the court, such sale shall be ineffectual if it is not made under the authority of the court of voluntary or contentious jurisdiction, as the case may be.

Licitation under authority of court, to be carried out as a judicial sale.

521. (1) Where under the provisions of the last preceding article the sale by licitation takes place under the authority of the court, it shall be carried out according to the rules laid down for judicial sales by auction, in so far as such rules are applicable, unless the court deems it more beneficial for the parties interested that it should be carried out otherwise.

(2) In all cases, strangers shall be invited to bid.

(3) The adjudication made by the registrar shall be equivalent to the deed of sale, even if the sale relates to immovable property.

Applicability of certain provisions relating to sale of immovables.

522. In case of sale of immovables by licitation, the provisions relating generally to the sale of immovables shall apply with regard to the registration of the contract or of the act of adjudication, in

the interest of third parties.

Licitation of common property subject to entail. *Sec.1 of Ordinance VI of 1895, incorporated. Amended by: IX.2004.14.*

523.* The provisions of articles 515, 516 and 517 shall also apply to common property which is subject to any entail, in whole or in part:

Provided that the sale by.licitation shall not be operative unless it is made under the authority of the competent court, and in any such case the provisions of the last two preceding articles shall apply.

Title VI

OF POSSESSION

Sub-title I

OF THE NATURE OF POSSESSION

Definition of possession.

524. (1) Possession is the detention of a corporeal thing or the enjoyment of a right, the ownership of which may be acquired, and which a person holds or exercises as his own.

(2) A person may possess by means of another who holds the thing or exercises the right in the name of such person.

(3) A person who has the detention or custody of a thing but in the name of another person, is called a holder.

A person is presumed to possess on his own behalf.

525. (1) A person is in all cases presumed to possess in his own behalf, and by virtue of a right of ownership, unless it is proved that he has commenced his possession in the name of another person.

(2) Where a person has commenced his possession in the name of another person, he shall be presumed always to possess upon the same title unless the contrary be proved.

Facultative acts, etc., cannot found possession.

526. Acts which are merely facultative or of mere sufferance cannot found the acquisition of possession.

Violent or clandestine acts.

527. (1) In like manner, acts of violence or clandestine acts cannot found the acquisition of possession.

(2) Nevertheless, possession may commence when the violence or clandestinity ceases.

When intermediate possession may be presumed.

528. Any person actually in possession who proves that he formerly possessed shall, in the absence of proof to the contrary, be presumed to have continued to possess during the intervening period.

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* *See* art. 2 of the Investment of Certain Moneys Ordinance (Cap. 26.)

529. Actual possession shall not operate so as to raise a presumption of former possession unless the possessor has a title; in which case, in the absence of proof to the contrary, he shall be presumed to have possessed since the date of the title.

Actual possession without title does not raise presumption of former possession.

530. (1) Possession continues as of right in the person of a successor by universal title.

Possession by universal or singular successor.

(2) A successor by a singular title, whether gratuitous or onerous, may conjoin his own possession with that of his predecessor in order to claim and enjoy the effects thereof.

531. (1) A person who, on probable grounds, believes that the thing he possesses is his own, is a possessor in good faith.

Possessor in good faith.

(2) A person who knows or who ought from circumstances to presume that the thing possessed by him belongs to others, is a possessor in bad faith.

Possessor in bad faith.

532. Good faith is presumed, and the party alleging bad faith is bound to prove it.

Good faith to be presumed.

533. Save as otherwise provided in this Code, the provisions of the following articles of this title shall be observed with regard to the rights and obligations arising from possession.

Rules to be observed with regard to rights and obligations arising from possession.

Sub-title II

OF THE RIGHTS OF THE POSSESSOR IN CASE OF MOLESTATION

534. Where any person, being in possession, of whatever kind, of an immovable thing, or of a *universitas* of movables, is molested in such possession, he may, within one year from the molestation, demand that his possession be retained, provided he shall not have usurped such possession from the defendant by violence or clandestinely nor obtained it from him precariously.

Action to secure possessor in his rights in case of molestation.

535. (1) Where any person is by violence or clandestinely despoiled of the possession, of whatever kind, or of the detention of a movable or an immovable thing, he may, within two months from the spoliation, bring an action against the author thereof demanding that he be reinstated in his possession or retention, as provided in article 791 of the Code of Organization and Civil Procedure.

Action for restoration of possession in case of spoliation.

Cap. 12.

(2) Such reinstatement shall be ordered by the court even though the defendant be the owner of the thing of which the plaintiff has been despoiled.

536. The reinstatement in the case provided for in the last preceding article shall not operate so as to bar the exercise of any other possessory action competent to any possessor.

Restoration of possession does not bar other possessory actions.

537. In questions of possession in matters concerning easements, the rights and obligations of the dominant and the servient owners and of any other party interested shall be determined by the mode of enjoyment during the preceding year,

Issues as to possession in matters concerning easements.

or, where the easement is exercised at intervals of more than one year, by the last user thereof.

Action to restrain continuation of new work where damage is feared.

538. (1) Where a person has reason to apprehend that in consequence of a new work undertaken by any other person either in such other person's own tenement or in the tenement of others, damage may be caused to an immovable thing possessed by him, he may bring an action demanding that such other person be restrained from continuing such new work, provided this shall not have as yet been completed and one year shall not have elapsed from the commencement thereof.

(2) The court, after summarily taking cognizance of the facts of the claim, may, according to circumstances, either restrain or allow the continuation of such new work, ordering such security as it may deem proper.

(3) Where the continuation of the work has been restrained, such security shall be in respect of the payment of any damages which may be caused by the suspension of the work, in case the opposition to the continuation thereof shall prove to be groundless.

(4) Where the continuation of the work has been allowed, such security shall be for the total or partial demolition of the work, and for the payment of the damages which the plaintiff may suffer, in case he obtains, notwithstanding that the work was allowed to be continued, a final and absolute judgment in his favour.

Action competent to person apprehending damage from any building, tree, etc.

539. Where any person has reasonable cause to apprehend any serious and impending damage to a tenement or other thing possessed by him, from any building, tree or other thing, he may bring an action demanding, according to circumstances, either that the necessary steps be taken to obviate the danger, or that the neighbour be ordered to give security for any damage the plaintiff may suffer therefrom.

Sub-title III

OF THE RIGHTS AND OBLIGATIONS AS BETWEEN THE POSSESSOR AND THE OWNER

§ I. OF THE FRUITS OF THE THING POSSESSED, OF THE EXPENSES INCURRED IN CONNECTION THEREWITH AND OF THE RIGHT OF RETENTION

Right of possessor in good faith with regard to fruits of thing possessed.

540. A possessor in good faith acquires the fruits of the thing possessed, even though such thing be an inheritance; and he is not bound to restore except such fruits as he shall have collected, or, by the exercise of the diligence of a *bonus paterfamilias*, could have collected, after a judicial demand:

Provided that he shall not be bound to restore the price of unplucked or uncut fruits, received by him before the judicial demand, even though, at the time of such demand, the fruits may be as yet unplucked from the trees or uncut from the ground.

Possessor in bad faith.

541. A possessor in bad faith is bound to restore all the fruits which he has collected, or, by the exercise of the diligence of a *bonus paterfamilias*, could have collected from the day of his unlawful occupation.

Right of possessor in good faith as to expenses.

542. (1) A possessor in good faith may demand from the owner the reimbursement of the necessary expenses whether their effect continues or not.

(2) As regards useful expenses, the owner is bound either to refund to the possessor the cost of the work or, at his option, to pay to him a sum corresponding to the enhanced value of the thing.

(3) The court may, according to circumstances, direct that the refund of the expenses made on an immovable, be effected by the owner by means of a rent-charge secured by the hypothecation of the immovable, or in any other manner as to fully satisfy the debt and which is at the same time less onerous to the debtor.

Possessor in bad faith.

543. (1) In relation to a possessor in bad faith, the owner has, in respect of necessary expenses, and of useful expenses for meliorations which cannot be removed, the same obligations as an owner has in relation to a possessor in good faith, provided possession of the thing shall not have been obtained by theft or some other offence which does not fall under the class of contraventions.

(2) As regards useful expenses for meliorations which can be removed, the owner may elect either to retain such meliorations or to compel the possessor to remove them.

(3) If the owner demands the removal of such meliorations, the possessor shall remove them at his expense without any right to indemnity, and he shall be bound to make good to the owner any damage which the latter may have suffered.

(4) If the owner elects to retain the meliorations, he shall, at his option, either refund to the possessor the cost thereof or pay to him a sum corresponding to the enhanced value of the thing.

Rights of possessor as to decorative expenses.

544. With regard to decorative expenses the possessor, whether in good or bad faith, shall only be entitled to take back the adornments in kind, provided this be advantageous to the possessor

and not injurious to the thing, unless the owner desires to retain such adornments, and pay to the possessor a sum corresponding to the profit that the latter might make by taking them away.

Definition of necessary, useful and decorative expenses.

545. (1) Necessary expenses are those without which the thing would have perished or deteriorated.

(2) Useful expenses are those which ameliorate the thing by making it more convenient, or capable of yielding more fruit, but the omission of which is not prejudicial to the thing.

(3) Decorative expenses are those which serve only to adorn the thing, without rendering it more convenient or capable of yielding more fruit, and which if omitted would not cause the thing to deteriorate.

(4) Decorative expenses may, however, in certain cases, be considered as useful expenses, regard being had to the condition of the owner, or to the existence of particular circumstances which may afford the owner an immediate opportunity of deriving profit from such expenses.

Possession of thing obtained by theft or other offence.

546. Any person who shall have obtained possession of the thing by theft or any other offence, not being a mere contravention, shall not be entitled to any indemnity for any kind of expenses, or to remove any meliorations made on the thing; and he may be compelled by the owner to remove at his expense, and without any right to indemnity, such objects as may be removed, and also to make good any damage which the owner may have suffered.

Set-off of fruits against expenses.

547. The set-off of the fruits against the expenses mentioned in the foregoing articles shall take place even with regard to the possessor in good faith:

Provided such possessor shall, besides the fruits which he is bound to restore according to the provisions of article 540, be bound to bring into account only the fruits which he shall have collected during the five years preceding the judicial demand of the owner.

Where possessor in good or bad faith is not bound to restore fruits of meliorations.

548. The possessor, whether in good or bad faith, shall not be bound to restore, or to bring into account for the purposes of the set-off mentioned in the last preceding article, the fruits of any meliorations which, under the provisions of the foregoing articles, he has the right to remove, or for which he is to be indemnified by the owner, unless the owner agrees to pay to him interest on the cost of such meliorations.

Expenses for the production or preservation of fruits.

549. (1) The expenses for the production or preservation of the fruits of a thing are not comprised in those referred to in the foregoing articles of this sub-title.

(2) Such expenses shall always be deducted from the said fruits.

Right of retention competent to possessor.

550. Where under the provisions of the foregoing articles, a possessor, whether in good or bad faith, is entitled to recover the expenses made on a thing belonging to others, either by taking back the subject of such expenses, or by the reimbursement of the said

expenses, he shall, saving the provisions of article 2079, be entitled to retain the thing until he shall have obtained what is due to him, provided his demand for the recovery of such expenses is made, even orally, during the hearing of the action, before judgment is delivered on the demand of the owner for the restoration of the thing.

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§ II. OF THE OBLIGATIONS OF THE POSSESSOR WITH REGARD TO THE RESTORATION OF THE THING

Possessor in good faith to make good damage.

551. A possessor in good faith is bound to make good such damage as, by his own act or otherwise, even before the judicial demand of the owner, may have been caused to the thing, but only to the extent of the benefit which he has derived from such damage.

If the thing possessed be an inheritance.

552. Where the thing possessed is an inheritance or a portion of an inheritance, the possessor, even if in good faith, who has alienated any hereditary thing, is, moreover, bound to restore, but always to the extent of the benefit which he has derived from such alienation, the value of such thing.

Where possessor is deemed to have derived a benefit.

553. For the purposes of the provisions of the last two preceding articles, the possessor is deemed to have derived a benefit from the said damage or alienation in each of the following cases only:

(*a*) if the subject of the benefit so derived is found, at the time of the judicial demand, to exist separately from the things belonging to the possessor;

(*b*) if, where the subject of such benefit has been intermixed with things belonging to the possessor, his estate is found, at the time of such demand, to have been enhanced thereby;

(*c*) if, where the subject of such benefit has been consumed by the possessor, such possessor has in consequence saved his own things, and such saving still exists:

Provided that it shall be lawful for the possessor in any of the foregoing cases to retain the subject of such benefit on paying to the plaintiff the value of the things at the time he shall have disposed thereof or their value at the time of the demand, whichever is the greater.

Possessor in good faith not bound to restore value of things given, etc.

554. A possessor in good faith is not, even in the case of possession of an inheritance, bound to restore the value of things given, lost or destroyed without profit.

Applicability of ss.552, 553 and 554 to possessor of other *universitas rerum.*

555. The provisions of the last three preceding articles shall apply to the possessor of any other *universitas rerum*.

Possessor in bad faith to restore things wrongfully occupied by him.

556. (1) A possessor in bad faith shall in all cases be bound to restore all the things which he has wrongfully occupied.

(2) Where such possessor has, whether voluntarily or through his own fault, ceased to possess any of such things, he shall be bound to restore to the plaintiff any profit which he may have derived therefrom or, at the option of the plaintiff, to pay to him the value of the thing at the time of the cesser of possession or the value thereof at the time of the demand, whichever is the greater, notwithstanding that, in such case, he shall not have derived any profit therefrom.

Possessor in bad faith answerable for damage caused to thing.

557. A possessor in bad faith shall also be liable for all damage which may have been occasioned by his own act as well as for that occasioned by a fortuitous event unless, whatever the manner in which he may have obtained possession of the thing, he shows that the thing would have equally perished or deteriorated if it had been in the possession of the owner.

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§ III. OF THE PARTICULAR EFFECTS OF THE POSSESSION OF MOVABLES

Possession of movables by third parties in good faith.

558. (1) In the case of movables by nature, or securities to bearer, possession shall produce in favour of third parties in good faith the same effects as the title, saving, in regard to vessels, the provisions of any other law.

(2) The provisions of this article shall not apply in the case of a *universitas* of movables.

Owner of thing lost or stolen may recover it.

559. (1) It shall, nevertheless, be lawful for any person who has lost a thing, or has been robbed thereof, to recover it on indemnifying the possessor.

(2) Such person may even recover the thing without any obligation to indemnify the possessor if the latter has not obtained the thing in good faith, under an onerous title, from a party who was presumably the owner thereof or a person charged by the owner to dispose of it.

PART II

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

GENERAL PROVISIONS

Acquisition and transmission of property by succession, etc.

560. (1) Ownership and other rights over things, or relating to things, may be acquired and transmitted by succession, or by virtue of an agreement or by means of prescription.

(2) Ownership may also be acquired and transmitted by occupancy or by accession.

Title I

OF OCCUPANCY

Definition of occupancy.

561. (1) Occupancy consists in taking possession of a corporeal thing which is not, but can be, the property of any one, with the intention of becoming the owner of it.

(2) The occupant shall acquire the ownership thereof, unless the law provides otherwise.

Rights of owners of swarms of bees.

562. (1) The owner of a swarm of bees has the right to pursue them over the tenement of any other person, subject to his obligation of making good any damage caused to such tenement.

(2) Where the owner has not pursued the bees within ten days to be reckoned from the day on which he became aware of the tenement on which they had settled, or has discontinued the pursuit for ten days, the possessor of such tenement shall be entitled to take and retain them.

(3) The provisions of this article shall also apply to the owner of domesticated animals; but such animals shall become the property of the person who has taken and retained them, unless they are claimed within thirty days to be reckoned from the day on which the owner has had knowledge of the place in which such animals were to be found.

Treasure trove. Cap. 445.

563. (1) Saving the provisions of the Cultural Heritage Act, where a treasure trove is discovered in a tenement of another person, such treasure trove if discovered by mere chance, shall belong as to one-half to the finder, and as to the other half to the owner of the tenement wherein it is found, and if discovered as a result of searches made for the purpose, it shall belong entirely to the owner of the tenement.

(2) The expression "treasure trove" means and includes any movable thing, even though not precious, which is concealed or buried, and of which no one can prove himself to be the owner.

Lost property. *Amended by: L.N 148 of 1975; XXII.1979.2.*

564. (1) Any person who finds a movable thing, not being a treasure trove, is bound to restore it to its previous possessor, if known: otherwise he is bound to deliver it without delay to the Police.

(2) The Commissioner of Police shall publish by means of a

notice in the Gazette a list of the movable things referred to in sub-article (1) of this article, and shall re-publish such list, with the exception of the things claimed by their owner, after three months of the said notice.

(3) At the expiration of three months from the date of the publication of the second notice, if the owner has not appeared to claim the thing, such thing or, where circumstances have rendered its sale expedient, the price thereof, shall belong to the finder.

(4) The owner or the finder, as the case may be, shall, on withdrawing the thing or its price, pay any expenses which may have been incurred.

(5) Moreover, the owner who withdraws the thing, shall pay to the finder a reward to be regulated according to circumstances, and not exceeding one-tenth part of the value of the thing found.

(6) If, within the lapse of six months of the first notice published in the Gazette under sub-article (2) of this article, neither the finder nor the owner claims the thing or the price thereof, such thing or price, as the case may be, shall belong to the Government.

Things thrown or falling into the sea. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

565. (1) The provisions of the last preceding article shall not apply to such things as are cast or have fallen into the sea, or are thrown by the sea upon the shore, or to plants and herbs which grow on the seashore, or in the bottom of the sea, except in so far as the rights over such things are not regulated by special laws.

(2) It shall not be lawful, without the permission of the President of Malta, to fish for coral or other similar things that are formed or grown in the bottom of the sea.

Title II

OF ACCESSION

Definition of accession.

566. Accession is the right whereby the person who has the property of a thing acquires the property of all that the thing produces, or that becomes united to, or incorporated with it, whether naturally or artificially.

Sub-title I

OF THE RIGHT OF ACCESSION TO WHAT IS PRODUCED BY THE THING

Ownership of natural, industrial or civil fruits.

567. Natural, industrial, or civil fruits belong, by right of accession, to the owner of the thing that produces them subject to the obligation of refunding the expenses incurred by third parties for the production or preservation of such fruits.

Sub-title II

OF THE RIGHT OF ACCESSION IN REGARD TO IMMOVABLE THINGS

Constructions, plantations, or works made with materials belonging to others.

568. Where the owner of a land has made thereon constructions, plantations, or works with materials belonging to others, he shall be bound to pay the value of such materials, and, in case of bad faith, to pay also damages and interest; but the owner of the materials shall not have the right of taking them back unless he can do so without destroying the work so constructed, or causing the plantation to perish.

Constructions, etc., made by third party in possession with his own materials,

569. (1) Where any such constructions, plantations, or works have been made by a third party in possession, with his own materials, the provisions relating to Possession under Title VI of Part I of Book Second of this Code shall apply, regard being had as to whether such possessor was in good or bad faith.

(2) If such third party was not a possessor within the meaning of article 524 the provisions contained in article 543 shall in all cases be applied.

with materials belonging to others.

570. Where such constructions, plantations, or works have been made by a third party with materials belonging to others, the owner of such materials shall not be entitled to recover them back, but he may demand to be indemnified by the third party who has made use of such materials, and even by the owner of the tenement to the extent of any amount which may be still due by such owner.

Occupation in good faith of a portion of a contiguous tenement.

571. Where in the construction of any building a portion of a contiguous tenement has been occupied in good faith, and the construction has been made with the knowledge of the neighbour and without any opposition on his part, the ground so occupied and the building constructed thereon may be declared to be the property of the person who made the construction, subject to his obligation to pay to the owner of the ground the value of the surface occupied, and to make good any damage which may have been caused.

Sub-title III

OF THE RIGHT OF ACCESSION IN REGARD TO MOVABLE THINGS

Right of accession in regard to movable things.

572. (1) The right of accession in regard to movable things belonging to several owners shall be governed by the principles of natural equity.

(2) The provisions contained in the following articles shall guide the court in the disposal of cases not specifically provided for, regard being had to the particular circumstances of each case.

Where two things belonging to different owners have been united so as to form a whole.

573. (1) Where two things belonging to different owners have been united in such a manner as to form a whole, but can nevertheless be separated without considerable damage to either of them, each of the owners shall retain the ownership of his own thing, and shall be entitled to demand separation.

(2) Where, however, the two things cannot be separated without considerable damage to one of them, the whole shall belong to the owner of the thing which forms the principal part thereof, subject to his obligation to pay to the other owner the value of the thing united to his own.

Which part is to be considered as principal.

574. The part to be considered as principal shall be that to which the other has been united merely for the use, adornment, or completion of the former.

Where accessory is much more precious than principal.

575. Nevertheless, if the thing united is much more precious than the principal thing, and has been made use of without the concurrence of the owner, such owner may elect either to appropriate the whole and pay to the owner of the principal thing the value thereof, or to demand the separation of the thing united, even though such separation may cause injury to the other.

When thing is considered as principal by reason of its value or bulk.

576. Where of two things united to form a whole neither can be considered as the accessory of the other, the one which has the greater value, or, if the values are approximately equal, the greater bulk shall be deemed to be the principal.

Where artificer employs materials not belonging to him,

577. Where an artificer or any other person has made use of materials not belonging to him, for the purpose of producing a thing of a new species, the owner of such materials shall, independently of whether the materials can be restored to their primitive condition or not, be entitled to the ownership of the thing so produced, subject to his obligation of paying to the artificer or other person the price of the workmanship.

or materials belonging partly to him and partly to others.

578. Where any person has, for the purpose of producing a thing of a new species, made use of materials partly belonging to him, and partly belonging to others, in such a manner that, although neither the materials of the one nor those of the other have been entirely transformed, such materials cannot, nevertheless, be separated without injury, the thing shall belong in community to both owners in such shares as correspond to the value of their respective contribution, that is, in regard to the one, to the value of the materials which belonged to him, and, in regard to the other, to the value of the materials which belonged to him and the price of the workmanship.

Where workmanship is much more valuable than materials.

579. Where, however, the workmanship is so valuable that it considerably surpasses the value of the materials employed, the workmanship shall be considered as the principal subject, and the artificer shall be entitled to retain the thing so formed on paying to the owner the price of the materials.

Commixture of several materials.

580. (1) Where a thing has been formed by a mixture of different materials belonging to different owners, and such materials can be separated without injury, the owner who has not given his assent to the commixture, may demand separation.

(2) If the materials cannot be separated or if such separation cannot take place without injury, the thing created by the commixture becomes common property in proportion to the value of the materials belonging to each party.

Where materials belonging to one owner can be considered as the principal subject.

581. Where, however, the materials belonging to one of the owners can be considered as the principal subject, or are far superior in value to the other materials, and the different materials cannot be separated, or would, if separated, suffer injury, it shall be lawful for the owner of such materials as are reputed to be the principal subject, or are superior in value, to claim the ownership of the thing created by the commixture, subject to his obligation of paying to the other owner the value of his materials.

Owners of materials may demand sale by auction of new subject of property.

582. Where the new subject of property remains in community between the owners of the several materials with which the subject was created, each co-owner may demand the judicial sale thereof by auction for the common benefit and at joint expense.

Rights of owner of materials employed without his concurrence.

583. In all cases in which the owner of the materials employed without his concurrence is entitled to claim the ownership of the thing, he may demand, at his option, either that materials of the same quality and quantity be returned to him, or the value thereof.

Liability for damages.

584. Any person who has made use of materials belonging to others without their consent may also be condemned to pay damages, saving any criminal proceedings to which he may be liable.

Title III

OF SUCCESSIONS

GENERAL PROVISIONS

Definition of inheritance.

585. An inheritance is the estate of a person deceased, and it devolves either by the disposition of man or, in the absence of any such disposition, by operation of law.

How inheritance is disposed of.
Amended by: XVIII.2004.47; XI.2005.2.

586. Saving the provisions relating to donations made in contemplation of marriage and those relating to life insurance, it shall not be lawful to dispose of an inheritance, either wholly or in part, or of any sum of money or other particular subject belonging to an inheritance otherwise than by a will.

Testamentary instruments made before 11th February 1870.

587. The provisions of this Code shall not supersede any other law previously in force with regard to any testamentary instrument made before the 11th February, 1870, even though on such date the disponer may have been still alive:

Provided that if any such instrument is not valid according to such other law it may, unless it is revoked by the disponer, be maintained under the provisions of this Code, provided it satisfies the requirements thereof.

Sub-title I

OF TESTATE SUCCESSIONS

§I. OF WILLS

Definition of will.

588. A will is an instrument, revocable of its nature, by which a person, according to the rules laid down by law, disposes, for the time when he shall have ceased to live, of the whole or of a part of his property.

Dispositions by universal or singular title.

589. (1) A will may contain dispositions by universal as well as by singular title.

(2) It may also contain dispositions by singular title without any disposition by universal title.

Definition thereof.

590. (1) A disposition by universal title is that by which the testator bequeaths to one or more persons the whole of his property or a portion thereof.

(2) Any other disposition is a disposition by singular title.

Heir.

591. (1) The word "heir" applies to the person in whose favour the testator has disposed by universal title.

Legatee.

(2) The word "legatee" applies to the person in whose favour the testator has disposed by singular title.

Will *unica charta*. *Amended by: XVIII.2004.48; L.N. 407 of 2007; XXIII.2017.65.*

592. (1) A will made by the spouses in one and the same instrument, or, as is commonly known, *unica charta*, is valid.

(2) Where such will is revoked by one of the testators with regard to his or her estate, it shall continue to be valid with regard to the estate of the other.

(3) A will *unica charta* shall be drawn up in a manner that the provisions with regard to the estate of one of the testators are drawn up in a part separate from those containing the provisions of the other spouse.

(4) The non-observance of the provisions of sub-article (3) shall not cause the nullity of any provision of the will if it is otherwise intelligible; but the notary drawing up the will shall be liable to a fine of two hundred and thirty-two euro and ninety-four cents (232.94) to be imposed by the Court of Revision of Notarial Acts.

Where a spouse revokes a will *unica charta*. *Substituted by: XVIII.2004.49. Amended by: L.N. 407 of 2007; XXIII.2017.66.*

593. (1) Where, by a will *unica carta*, the testators shall have bequeathed to each other the ownership of all their property or the greater part thereof with the express and specific condition that if one of the testators revokes such bequest he shall forfeit any right in his favour from such joint will, the survivor, who shall revoke the will with regard to such bequest, shall forfeit all rights which such person may have had in virtue of such will on the estate of the predeceased spouse.

(2) The forfeiture mentioned in sub-article (1) can also be ordained in the case where, by his or her act, the said bequest cannot be effectual with regard to his or her estate.

(3) The notary drawing up a will *unica charta* is bound on pain of a fine of two hundred and thirty-two euro and ninety-four cents

(232.94) to be imposed by the Court of Revision of Notarial Acts to explain to the testators in a will *unica charta* the meaning and effect of this article and of article 594, and enter in the will a declaration to that effect.

Effects of revocation. *Substituted by: XVIII.2004.49.*

594. In the cases referred to in article 593(1) and (2) the ownership of the property bequeathed to the spouse incurring the forfeiture, shall, unless otherwise ordained by the other spouse, vest in the heirs instituted by such other spouse, or if no heirs are so instituted his heirs-at-law. The spouse who has forfeited the property as aforesaid shall, however, retain the usufruct over such property.

Will *unica charta* admissible only between the spouses. *Amended by: XXX.1981.8; XXIII.2017.68.*

595. It shall not be lawful for any two or more persons, other than the spouses, to make a will in one and the same instrument, whether for the benefit of any third party or for mutual benefit:

Provided that a secret will in one and the same instrument shall not be made by spouses after the 15th August, 1981.

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§ II. OF THE CAPACITY OF DISPOSING OR RECEIVING BY WILL

Capacity of disposing or receiving by will. *Amended by: LVIII.1975.4; XVIII.2004.50.*

596. (1) Any person not subject to incapacity under the provisions of this Code, may dispose of, or receive property by will.

(2) All children and descendants without any distinction are capable of receiving by will from the estate of their parents and other ascendants to the extent established by law.

Testamentary incapacity. *Amended by: XVIII.2004.51; II.2012.15.*

597. The following persons are incapable of making wills:

(*a*) those who have not completed the sixteenth year of their age;

(*b*) those, who, even if not interdicted, are not capable of understanding and volition, or who, because of some defect or injury, are incapable even through interpreters of expressing their will:

Provided that a will can only be made through an interpreter if it is a public will and the notary receiving the will is satisfied after giving an oath to the interpreter that such interpreter can interpret the wishes of the testator correctly;

(*c*) those who are interdicted on the ground of insanity or of mental disorder;

(*d*) those who, not being interdicted, are persons with a mental disorder or other condition, which renders them incapable of managing their own affairs at the time of the will;

(*e*) those who are interdicted on the ground of prodigality unless they have been authorized to dispose of their property by the court which had ordered their interdiction:

Provided that a person interdicted on the ground of prodigality may, even without the authority of the court, revoke any will made by him prior to his interdiction.

Persons under eighteen can only make remuneratory dispositions.

598. (1) Those who have not completed the eighteenth year of their age cannot make by will other than remuneratory dispositions.

(2) Nevertheless, where any such disposition, regard being had to the means of the testator and to the services in reward of which it is made, is found to exceed a reasonable amount, it may be reduced by the court to such amount.

Wills made by persons subject to incapacity are null even though incapacity ceases before testator's death.

599. Any will made by a person subject to incapacity is null, even though the incapacity of the testator may have ceased before his death.

Those not yet conceived cannot receive by will.

600. (1) Those who, at the time of the testator's death or of the fulfilment of a suspensive condition on which the disposition depended, were not yet conceived are incapable of receiving by will.

(2) The provisions of this article shall not apply to the immediate children of a determinate person who is alive at the time of the death of the testator, nor to persons who may be called to the enjoyment of a foundation.

Those not born viable cannot receive by will.

601. (1) Those who are not born viable are incapable of receiving by will.

(2) In case of doubt, those who are born alive shall be presumed to be viable.

All children may receive by will. *Substituted by: XVIII.2004.52.*

602. All the children of the testator whether born in wedlock, out of wedlock or adopted or whether or not the presumption referred to in articles 102 to 112 applies to them may receive by will from the testator.

Portion which surviving spouse may receive by will where deceased leaves children or descendants.

603. *Repealed by: XVIII.2004.52.*

Portion which may be received by husband or wife in case of second or subsequent marriage. *Amended by: XXI.1962.11.*

604. *Repealed by: XVIII.2004.52.*

Persons unworthy of receiving by will. *Amended by XLIX.1981.4; XVIII.2004.53.*

605. (1) Where any person has -

(*a*) wilfully killed or attempted to kill testator or his or her spouse; or

(*b*) charged the testator, or the spouse, before a competent authority, with a crime punishable with imprisonment, of which he knew the testator, or the spouse, to be innocent; or

(*c*) compelled, or fraudulently induced the testator to make his will, or to make or alter any testamentary disposition; or

(*d*) prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will,

he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.

(2) The provisions of this article shall also apply to any person who has been an accomplice in any of the said acts.

Rehabilitation.

606. Any person who has incurred any of the disqualifications stated in the last preceding article may receive by will if the testator has rehabilitated him by a subsequent will or by any other public deed.

Unworthy heir or legatee to restore fruits.

607. Any heir or legatee, excluded as unworthy from receiving the inheritance or legacy, is bound to restore any fruits or revenues which he may have received since the opening of the succession.

Descendants of person unworthy are entitled to the reserved portion. *Amended by: XVIII.2004.54.*

608. The descendants of a person excluded as unworthy shall, in all cases, be entitled to the reserved portion, which would have been due to the person so excluded:

Provided that such person shall not have, over the portion of the estate vested in his children, the right of usufruct and administration which the law grants to parents.

Incapacity of tutors or curators to receive by will.

609. (1) A tutor or curator cannot benefit under a will made during the tutorship or curatorship by the person under his charge.

(2) The same rule shall apply where the will is made after the termination of the tutorship or curatorship, but before the rendering of the final account, even if the testator dies after the approval of such account.

(3) The disability laid down in this article shall not apply to the tutor or curator who is an ascendant, descendant, brother, uncle, nephew, cousin or spouse of the person making the will.

Incapacity of notary receiving a public will to benefit under the same.
Amended by: V.1993.2.
Substituted by: XXIV.2011.99.
Cap. 331.
Cap. 55.

610. Saving the provisions of the Trusts and Trustees Act and of article 12 of the Notarial Profession and Notarial Archives Act, the notary by whom a public will has been received, or the person by whom a secret will has been written out, cannot benefit in any way by any such will.

Incapacity of members of monastic orders, etc.
Amended by: V.1993.2.

611. (1) The members of monastic orders or of religious corporations of regulars cannot, after taking the vows in the religious order or corporation, dispose by will.

(2) Nor can such persons receive under a will except small life pensions, saving any other prohibition laid down by the rules of the order or corporation to which they belong.

(3)* Where such persons are lawfully released from their vows, they shall again acquire the capacity to receive under a will, as well as to dispose of such property as they may have subsequently acquired, and any disposition made in favour of a person who at the time of the testator's death was a member of a monastic order or of a religious corporation of regulars shall remain suspended until such person is either released from his vows as aforesaid or dies while still a member of such order or corporation, and shall be ineffectual if the person, in whose favour it is made, dies while still such a member.

Disposition in favour of incapable persons is null even if made through intermediaries.
Amended by: XVIII.2004.55.

612. (1) Any testamentary disposition in favour of a person who is incapable in terms of articles 609 and 610 is void, even if such disposition is made in the name of intermediaries.

(2) Where the incapacity is partial any such disposition shall be void only in part.

Persons deemed to be intermediaries.
Amended by: XXIII.2017.69.

613. Any one of the parents, the descendants, and the spouse of the person under any such incapacity, as the case may be, shall be deemed to be intermediaries.

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§ III. OF THE PROPERTY WHICH MAY BE DISPOSED OF BY WILL

Property which may be disposed of by will.
Substituted by: XVIII.2004.56.

614. (1) Where the testator has no descendants or spouse, he may dispose by universal or singular title of the whole of his estate in favour of any person capable of receiving under a will.

(2) Where the testator has descendants or a spouse, the disposable portion of his estate shall be that which remains after deducting such share as is due to the said descendants or spouse under any of the provisions of articles 615 to 653.

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*For the application of this provision *see* article 4 of Act V of 1993.

OF THE RESERVED PORTION AND DISHERISON

Substituted by: *XVIII.2004*.57.

Reserved portion. *Substituted by: XVIII.2004.58. Amended by: XV.2012.23.*

615. (1) The reserved portion is the right on the estate of the deceased reserved by law in favour of the descendants and the surviving spouse of the deceased.

(2) The said right is a credit of the value of the reserved portion against the estate of the deceased. Interest at the rate established in article 1139 shall accrue to such credit from the date of the opening of succession if the reserved portion is claimed within two years from such date, or from the date of service of a judicial act if the claim is made after the expiration of the said period of two years:

Provided that the Court may, if the circumstances of the case so require, decide not to award any interest or establish a rate of interest which is lower than that stipulated in article 1139.

Reserved portion due to children. *Substituted by: XVIII.2004.58.*

616. (1) The reserved portion due to all children whether conceived or born in wedlock or conceived and born out of wedlock or adopted shall be one-third of the value of the estate if such children are not more than four in number or one-half of such value if they are five or more.

(2) The reserved portion is divided in equal shares among the children who participate in it.

(3) Where there is only one child, he shall receive the whole of the aforesaid third part.

"Children" to include descendants.

617. For the purposes of the last preceding article the word "children" shall include the descendants of the children in whatsoever degree they may stand. Nevertheless, such descendants shall only be reckoned for the child from whom they descend.

Rules for determining the number of children for regulating the reserved portion. *Amended by: XVIII.2004.59.*

618. (1) Children or other descendants who are incapable of receiving property by will, or who have been disinherited by the testator, or have renounced their share, shall also be taken into account in determining the number of children for the purpose of regulating the reserved portion.

(2) Saving the provisions of articles 608 and 626 the portions of the children or other descendants who are incapable, or who have been disinherited, or have renounced their share, shall devolve in favour of the other children or descendants taking the reserved portion.

(3) A child or other descendant who has been instituted heir, who had he not been so instituted would have been entitled to share the reserved portion, shall also be entitled to share therein notwithstanding that he was so instituted.

Legitim due to ascendants. *Amended by: XLVI.1973.52.*

619. *Repealed by: XVIII.2004.60.*

Reserved portion to be free from burdens or conditions. *Amended by: XVIII.2004.61.*

620. (1) It shall not be lawful for the testator to encumber the reserved portion with any burden or condition.

(2) The reserved portion is calculated on the whole estate, after deducting the debts due by the estate, and the funeral expenses.

(3) There shall be included in the estate all the property disposed of by the testator under a gratuitous title, even in contemplation of marriage, in favour of any person whomsoever, with the exception of such expenses as may have been incurred for the education of any of the children or other descendants.

(4) The person to whom the reserved portion is due shall impute to it all such things as he may have received from the testator and as are subject to collation under any of the provisions of articles 913 to 938.

(5) The person claiming the reserved portion shall take into account his share any property bequeathed to him by will and cannot renounce any testamentary disposition in his favour and claim the reserved portion, except when such testamentary disposition is made in usufruct or consists in the right of use or habitation, or consists of a life annuity or an annuity for a limited time.

Where subject of testamentary disposition is a usufruct or life annuity. *Amended by: XVIII.2004.62.*

621. (1) Where the subject of the testamentary disposition is a right of usufruct or a life annuity, and it appears to the persons entitled to the reserved portion that the value of such usufruct or life-rent surpasses the disposable portion of the estate of the testator, they shall only have the option either to abide by the testamentary disposition or to take the share due to them by way of reserved portion free from every charge, on abandoning in favour of the disponees of the usufruct or life-annuity the full ownership of the disposable portion.

(2) Where any of the persons entitled to reserved portion elects in his own interest to abide by the testamentary disposition, it shall, nevertheless, be lawful for any other of such persons to elect to take the reserved portion on abandoning, as aforesaid, the disposable portion.

Disherison. *Amended by: XVIII.2004.63.*

622. Besides the grounds on which a person may become unworthy to inherit, the persons entitled by law to a reserved portion may be deprived thereof by a specific declaration of the testator on any of the grounds specified in this Code, to be stated in the will.

Grounds on which a descendant may be disinherited. *Amended by: XXI.1993.66; XVIII.2004.64.*

623. Saving the provisions of article 630, the grounds on which a descendant may be disinherited are the following only:

(*a*) if the descendant has without reason refused maintenance to the testator;

(*b*) if, where the testator has become insane, the descendant has abandoned him without in any manner providing for his care;

(*c*) if, where the descendant could release the testator from prison, he has without reasonable ground failed

to do so;

(*d*) if the descendant has struck the testator, or has otherwise been guilty of cruelty towards him;

(*e*) if the descendant has been guilty of grievous injury against the testator;

(*f*) if the descendant is a prostitute without the connivance of the testator;

(*g*) in any case in which the testator, by reason of the marriage of the descendant, shall have been, under the provisions of articles 27 to 29, declared free from the obligation of supplying maintenance to such descendant.

Grounds on which an ascendant may be disinherited.

624. *Repealed by: XVIII.2004.65.*

Grounds of disherison to be proved by party alleging disherison.

625. (1) The ground of disherison must be proved by the party alleging such disherison.

(2) Where more grounds are stated, the proof of one is sufficient.

Rights of children of persons disinherited. *Amended by: XVIII.2004.66.*

626. (1) If the person disinherited has children or other descendants, the reserved portion of which such person has been deprived shall be due to them.

(2) In any such case the person disinherited shall not have over the reserved portion the usufruct or administration to which he may be entitled by law.

Where person disinherited predeceases testator.

627. Where the person disinherited predeceases the testator, the disherison shall not prejudice the rights of his descendants.

Maintenance of person disinherited. *Amended by: XVIII.2004.67.*

628. Where the person disinherited has no other means of subsistence, those who in consequence of his disherison shall benefit by his reserved portion, shall be bound to give him maintenance to the extent of the fruits of the reserved portion, saving any other right to maintenance competent according to law.

Right to reserved portion when cause of disherison is not stated or proved. *Amended by: XVIII.2004.68.*

629. Where the ground of disherison is not stated, or is not proved, the person disinherited shall only be entitled to the reserved portion.

Disherison on the ground of prodigality. *Substituted by: XVIII.2004.69.*

630. Where the person entitled to the reserved portion is interdicted on the ground of prodigality, or is so burdened with debts that the reserved portion, or at least the greater part of it, would be absorbed by such debts, it shall be lawful for the testator by an express declaration to disinherit such person, and to bequeath the reserved portion to the children or descendants of such person.

Amended by: XVIII.2004.70.

OF THE RIGHTS OF THE SURVIVING SPOUSE

Right of surviving spouse, if there is issue. *Amended by: XLVI.1973.53; XXI.1993.67. Substituted by: XVIII.2004.71.*

631. Where a deceased spouse is survived by children or other descendants, the surviving spouse shall be entitled to one-fourth of the value of the estate in full ownership.

Right of surviving spouse, if there is no issue. *Substituted by: XVIII.2004.71.*

632. If there are no children or descendants as stated in article 631, the surviving spouse shall be entitled to one-third of the value of the estate in full ownership.

Right of habitation. *Added by: XXI.1993.68. Amended by: XVIII.2004.72; XXVII.2020.39.*

633. (1) The surviving spouse shall be entitled to the right of habitation over the tenement occupied as the principal residence by the said surviving spouse at the time of the decease of the predeceased spouse, where the same tenement is held in full ownership or emphyteusis by the deceased spouse either alone or jointly with the surviving spouse.

(2) The extent of the tenement subject to the right of habitation shall not be limited on the grounds that, after the death of the predeceased spouse the surviving spouse requires a lesser part of the tenement.

(3) For the purposes of articles 631 and 632, the tenement subject to the right of habitation under this article shall be excluded from the estate of the deceased over which the surviving spouse has a reserved portion.

(4) The provisions of article 395 shall not apply to the right of habitation granted under this article.

(5) The right conferred in sub-article (1) shall subsist even where such right has the effect of reducing, during the lifetime of the surviving spouse, the reserved portion due to any other person.

(6) Where a creditor of the deceased spouse enforces his right over the tenement subject to the right under this article, or where the heirs who have accepted the inheritance with the benefit of inventory sell such tenement in satisfaction of any debt due by the inheritance, and in either case there exists other assets of the inheritance with which such debts may be satisfied, the surviving spouse shall have a right to demand, within one year of the sale, damages from the heirs of the deceased spouse, or from the heirs of the deceased spouse who have accepted with the benefit of inventory who shall not have taken any possible action to pay such debts out of the other assets.

(7) The spouses may, in a pre-nuptial or post-nuptial agreement, in accordance with this Code, whichever patrimonial regime is to regulate their property, exclude or reduce the right competent to the surviving spouse in virtue of this article.

(8) The right of habitation conferred in this article shall cease on the remarriage of the surviving spouse, or if the surviving spouse enters into a public deed of cohabitation.

634. Where the matrimonial home belongs in part to the surviving spouse, in any partition between the heirs of the deceased and the surviving spouse, the surviving spouse, or the said heirs, may demand that the property subject to the right of habitation be assigned to the surviving spouse upon a valuation which is to take account of such right of habitation over the property.

Partition between heirs and surviving spouse. *Substituted by: XLVI.1973.54. Amended by: XXI.1993.69. Substituted by: XVIII.2004.73.*

635. The surviving spouse shall also have the right of use over any of the furniture in the matrimonial home belonging to the deceased spouse.

Use of contents of matrimonial home. *Amended by: XLVI.1973.55. Substituted by: XVIII.2004.73.*

636. The provisions of article 318 shall apply in relation to the right of use referred to in article 635.

Definition of furniture. *Amended by: XLVI.1973.56; XXI.1993.70. Substituted by: XVIII.2004.73.*

637. The provisions of article 633(3), (6), (7) and (8) shall *mutatis mutandis* apply to the right of use granted by article 635.

Limitations of right of use. *Substituted by: XVIII.2004.73.*

638. The provisions of articles 631, 632, 633 and 635 shall not apply in any of the following cases:

Cases where surviving spouse cannot claim rights. *Substituted by: XVIII.2004.73.*

(*a*) if, at the time of the death of one of the spouses, the spouses were separated by a judgement of the competent civil court, and the surviving spouse had, in terms of articles 48, 51 and 52, forfeited the rights referred to in those articles;

(*b*) where the predeceased spouse has, by his will, on any of the grounds mentioned in article 623(*a*), (*b*), (*c*), (*d*) and (*e*), or on the grounds of adultery, expressly deprived the surviving spouse of the rights referred to in articles 631 to 633 and 635 and such ground, or where more grounds are stated, any of such grounds, is proved;

(*c*) if, in regard to the surviving spouse, there exists any of grounds on which such spouse would under article 605 be, as unworthy, incapable of receiving by will.

639. The rights referred to in article 633 and article 635 shall also apply in cases where:

Application of articles 633 and 635 in cases of personal separation or divorce. *Substituted by: XVIII.2004.73; L.N. 218 of 2012.*

(*a*) the spouses were personally separated and the surviving spouse was either in terms of article 55A or in terms of a public deed of consensual separation entitled to reside in the matrimonial home; or

(*b*) the person who died was divorced and his former spouse was, at the time of his death, entitled to reside in the matrimonial home by virtue of the applicability of the provisions of article 66(5) and article 55A.

640. *Repealed by: XVIII.2004.73.*

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OF THE ABATEMENT OF TESTAMENTARY DISPOSITIONS EXCEEDING THE DISPOSABLE PORTION

Testamentary dispositions exceeding disposable portion, liable to abatement.

647. Testamentary dispositions exceeding the disposable portion, shall be liable to abatement and limited to that portion, at the time of the opening of the succession, provided the demand is made within the time established in article 845.

How abatement is determined. *Amended by: XVIII.2004.74.*

648. For the purpose of determining the abatement, the following rules shall be observed:

(*a*) all the property of the testator, existing at the time of his death, shall be formed in one bulk, after deducting therefrom the debts due by the estate;

(*b*) any property which has been disposed of by way of donation shall be then fictitiously added, such property being reckoned at its value at the time of the donation;

(*c*) the disposable portion shall then be computed according to the estate thus formed, regard being had to the rights of the surviving spouse in accordance with articles 615 to 639.

Subject of donation perished before death of donor not to be included in the bulk.

649. *Repealed by: XVIII.2004.75.*

When value of donations exceeds or is equal to disposable portion.

650. Where the value of the donations exceeds, or is equal to, the disposable portion, all testamentary dispositions shall be ineffectual.

Proportionate abatement.

651. Where the testamentary dispositions exceed either the disposable portion, or the residue thereof after deducting the value of the donations, they shall abate proportionately without any distinction between heirs and legatees.

Declaration by testator that a disposition shall have effect in preference to others.

652. Nevertheless, in all cases where the testator has expressly declared his intention to be that a disposition shall have effect in preference to the others, such preference shall take place, and any such disposition shall not abate except in so far as the value of the property included in the other dispositions shall not be sufficient to make up the share reserved by law.

Separation of subject of legacy.

653. (1) Where the legacy subject to abatement is a thing from which the part exceeding the disposable portion can conveniently and without being injuriously affected be separated, the abatement shall be effected by means of such separation.

(2) Where, however, such separation cannot conveniently and without injury be effected, it shall be lawful for the legatee to pay in cash the amount due by him to the party claiming the abatement.

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§ IV.OF THE FORM OF WILLS

OF ORDINARY WILLS

Will is either public or secret.

654. A will may be either public or secret.

Form of public will.

655. (1) Saving any other provision of this Code, a public will is received and published by a notary in the presence of two witnesses in the same manner as any other notarial instrument, in accordance with the provisions of the Notarial Profession and Notarial Archives Act, even in regard to the signature of the testator, according as to whether the testator knows how to, and can write, or not.

Cap. 55.

(2) The signature of the witnesses is in no case dispensed with whatever may be the value of the thing disposed of by the will.

Form of secret will.
Amended by: XVIII.2004.76.

656. (1) A secret will may be printed, type-written or written in ink either by the testator himself or by a third person.

(2) Where the testator knows how to, and can write, the will shall, in all cases, be signed by him at the end thereof.

(3) Where the testator does not know how to, or cannot write, the provision of article 663 shall apply.

Paper containing secret will to be closed and sealed.

657. (1) The paper on which a secret will is written, or the paper used as its envelope shall be closed and sealed.

(2) The testator shall on delivering such paper declare that it contains his will.

Delivery of secret wills.

658. (1) A secret will shall be delivered by the testator to a notary, or, in the presence of the judge or magistrate sitting in the court of voluntary jurisdiction, to the registrar of such court.

(2) The will shall be deemed to have been made on the day on which it is so delivered.

Duties of notary receiving a secret will.

659. (1) The notary who receives a secret will shall draw up the act of delivery, recording therein the declaration prescribed in sub-article (2) of article 657, on the paper itself on which the will is written, or on the paper used as its envelope.

(2) The act of delivery shall be signed by the testator, the witnesses, and the notary.

(3) Where the testator declares that he does not know how to, or cannot write, the notary shall enter such declaration at the foot of the act, and such entry shall be equivalent to the signature.

Notary to present secret will to court of voluntary jurisdiction. Cap. 12.

660. A notary who has received a secret will, shall, within four working days, to be reckoned from the day of the delivery, present such will to the court of voluntary jurisdiction for preservation by the registrar, as provided in the Code of Organization and Civil Procedure.

Penalty to be inflicted on notary contravening the provisions of s.660. *Amended by: L.N. 46 of 1965; LVIII.1974.68; XI.1977.2; XIII.1983.5; XVIII.2004.77; L.N. 407 of 2007; L.N. 212 of 2023.* Cap.9.

661. (1) Any notary who acts in contravention of the provision of the last preceding article shall, upon civil proceedings instituted at the suit of the State Advocate, be condemned to interdiction from his office for a period not exceeding two years, or to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94), nor exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37).

(2) The provisions of this article shall not supersede the provisions of the Criminal Code, where the facts constitute an offence under that Code.

Note of particulars prescribed by Code of Org. and Civ. Proc. to be equivalent to act of delivery. *Amended by: XVIII.2004.78.* Cap. 12.

662. Where a secret will is presented directly to the court, the note of particulars required under article 529 of the Code of Organization and Civil Procedure shall be equivalent to the act of delivery.

Secret will by illiterate person.

663. It shall not be lawful for any person who does not know how to, or cannot write, to make any disposition by a secret will without the assistance of a judge or magistrate.

Duties of judge or magistrate assisting an illiterate person.

664. The judge or magistrate requested to give his assistance under the last preceding article, shall read out and explain to the testator the contents of the paper which the testator declares to be his will, and shall enter, at the foot thereof, a declaration to the effect that he has complied with such requirements, and that he is satisfied that the contents of the paper are in accordance with the intention of the testator. Such declaration shall be dated and signed by the judge or magistrate.

Formalities to be observed by judge or magistrate assisting an illiterate person.

665. (1) The said judge or magistrate shall, after the will is duly closed and sealed, enter on the paper itself on which the will is written, or on that used as its envelope, a declaration to the effect that such paper or envelope contains the will of the person making it, and shall affix his signature to such declaration.

(2) Such declaration shall not operate so as to dispense with the act of delivery referred to in article 659 or the note of particulars referred to in article 662.

Any judge or magistrate even temporarily present in Malta or Gozo may assist illiterate person. *Amended by: IX.2004.14.*

666. It shall be lawful for a testator who does not know how to, or cannot read and write, to apply for the assistance of any judge or magistrate being, even temporarily, in the island or place in which his assistance is required, including the judge or magistrate sitting in the competent court in which the will is to be deposited.

Contents of will to be kept secret.

667. The judge or magistrate giving his assistance, as provided in the last four proceeding articles, shall be bound not to disclose the contents of the will.

Secret will by a deaf-mute.

668. (1) A person who is deaf-and-dumb, or dumb only, whether congenitally or otherwise, may, if he knows how to write, make a secret will, provided the will is entirely written out and signed by him, and provided he himself, in the presence of the court or of the notary to which or to whom he presents such will, and of the witnesses of the delivery, writes down on the paper which he presents, that such paper contains his will.

(2) The notary in the act of delivery, or, as the case may be, the registrar, in the note of particulars referred to in article 662, shall state that the testator wrote the declaration mentioned in sub-article (1) of this article, in the presence of the notary and the witnesses, or in the presence of the court.

Secret will be person totally deaf.

669. (1) Where a person who is totally deaf, but can read, desires to make a public will, he shall read such will himself in the presence of the notary and the witnesses, and the notary shall, before the will is signed by himself and the witnesses, enter, at the foot of the will, a declaration to the effect that the will has been so read by the testator.

(2) Where, however, such deaf person cannot read, he himself shall declare his will in the presence of the notary and the witnesses, and the notary shall, before the will is signed by himself and the witnesses, enter, at the foot of the will, a declaration to the effect that the will is in accordance with the will as declared by the testator.

Persons incompetent as witnesses in public wills.

670. In public wills, the heirs, legatees, or their relations by consanguinity or affinity within the degree of uncle or nephew, inclusively, shall not be competent witnesses.

Testator may withdraw secret will.

671. The testator may at any time withdraw his secret will from the notary to whom he shall have delivered it, if the will is still with such notary, or from the registry in which it shall have been deposited.

Nullity of will.

672. Non-compliance with the requirements of articles 655, 656, 657, 658, 659, 663, 668, 669 and 670 shall, saving the provisions of articles 673 to 682 inclusive relating to privileged wills render the will null and void.

OF PRIVILEGED WILLS

Wills in places where communications are interrupted.

673. (1) In places with which communications have been interrupted by order of the public authority, a will may be received in writing, in the presence of two witnesses, by a judge, magistrate, or notary, or by the parish priest, or other ecclesiastic in holy orders.

(2) Such will shall in all cases be, on pain of nullity, signed by the person receiving it.

(3) Such will shall, moreover, on pain of nullity, be signed, where practicable, by the testator and the witnesses. If under the

circumstances the signing of the will by the testator and the witnesses is not practicable, there shall, on pain of nullity, be entered in the will a declaration stating the reason for which such signatures have not been affixed.

(4) In any such will, any person of either sex, provided he or she has attained the age of eighteen years, may act as a witness.

When such will becomes void.

674. Any such will shall become void on the lapse of two months from the day on which communications with the place in which the testator is, shall have been re-established, or from the day on which the testator shall have removed to any place with which communications are not interrupted, provided the testator is still alive after the lapse of the said time.

Person receiving such will to deposit it in court of voluntary jurisdiction.

675. (1) A will made in accordance with the provisions of the foregoing articles shall, within a month from the day on which communications shall have been re-established, be deposited by the person receiving it in the registry of the court of voluntary jurisdiction of the island in which it has been received unless such will shall have been, before the expiration of such time, withdrawn by the testator.

(2) Any person acting in contravention of the provisions of this article shall, on proceedings taken in accordance with the provisions of article 661, be liable to the punishments therein mentioned, in so far as such punishments may be applicable.

Wills made at sea. *Amended by: XVIII.2004.79.*

676. (1) A will made at sea, on board any ship registered in Malta, may be received, in writing, by the master, or the person acting in his stead.

(2) A will made by the master may be received by the person who in his absence, would have the command of the ship.

(3) In all cases, the will shall be received in duplicate, and in the presence of two witnesses who have attained the age of eighteen years.

(4) Non-compliance with any of the foregoing requirements shall render the will null and void.

By whom such wills are to be signed.

677. (1) The will referred to in the last preceding article shall be signed by the testator, by the person receiving it, and by the witnesses.

(2) Where the testator or the witnesses do not know how to, or cannot write, there shall be entered in the will a declaration stating the reason for which such signature was not affixed.

(3) Non-compliance with the provisions of this article shall render the will null and void.

Entry relating to the receipt of any such will to be made in log-book and muster-roll. *Amended by: XIII.1983.5; L.N. 407 of 2007.*

678. The master, or the person keeping the log-book and the ship's papers, shall, under penalty of a fine (*multa*) not exceeding twenty-three euro and twenty-nine cents (23.29), recoverable by civil proceedings as provided in article 661, make and sign an entry relating to the receipt of such will, both in the log-book and in the muster-roll.

679. (1) Where, after the receipt of any such will, the ship returns to the port of Malta, the master, or the person in possession of the will, shall, within the time of eight working days, present such will to the court of voluntary jurisdiction, unless such will shall have been, before the expiration of such time, withdrawn by the testator.

Duty of master, etc., on return to Malta to present will to the court of voluntary jurisdiction. *Amended by: XXXI.1965.21; IX.1971.3; LVIII.1974.68; L.N. 148 of 1975; XVII.1991.81; IX.2004.14; XV.2009.49.*

(2) If the ship touches at any port outside Malta, the master, or the person in possession of the will, shall deposit one of the duplicates with the diplomatic or consular representative of the Government of Malta in that port or with a person serving in a diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent that Government's interests in that port or with a person authorized in that behalf by the President of Malta, or in the absence of such persons, with some trustworthy person being a citizen of Malta or other Commonwealth citizen, and shall, with all possible dispatch, transmit the other duplicate to the Authority for Transport in Malta who shall, within the time of eight days, present it to the said court.

Where vessel touches at port outside Malta.

(3) Any person acting in contravention of any of the provisions of this article shall, on proceedings taken in accordance with the provisions of article 661, be liable to interdiction from his office or profession for a time not exceeding two years, or to any of the other punishments prescribed in that article.

680. A will made at sea in the manner prescribed in article 676 and the articles following, shall have effect only if the testator dies at sea or within two months after he shall have landed in a place where he could have made another will in the ordinary form.

Will made at sea to have effect only if testator dies at sea, etc.

681. (1) Any testamentary disposition made in favour of the person receiving any of the wills referred to in article 673 and the articles following, or in favour of the witnesses, or, in the case of a will made at sea, in favour of any member of the crew, shall be void.

Nullity of dispositions made in favour of person receiving will, etc. *Amended by: XXIII.2017.70.*

(2) Any disposition in favour of any one of the parents, the child or other descendant, or the spouse of any of the persons referred to in sub-article (1) of this article shall likewise be void.

682. (*Deleted by Act XVI.2015.4.*).

Effect of wills made outside Malta.

§ V.OF THE INSTITUTION OF HEIRS, OF LEGACIES, AND OF THE RIGHT OF ACCRETION

OF THE INSTITUTION OF HEIRS, AND OF LEGACIES

Institution of heir.

683. Any testamentary disposition, whether made under the designation of institution of heir, or under the designation of legacy, or under any other designation whatsoever, shall have effect, provided it be so expressed that the intention of the testator may be ascertained, and it be not contrary to the provisions of this Code.

Where only a portion of inheritance is disposed of.

684. (1) If the testator has disposed only of a portion of the inheritance, the residue thereof shall vest in his heirs-at-law, according to the order established in the case of intestate succession.

(2) The same rule shall apply if the testator has only made singular legacies.

Where reason constituting sole inducement of disposition is false.

685. (1) Any testamentary disposition founded on a reason which constituted the sole inducement of the testator, and which is false, shall have no effect.

(2) If the testator has stated a reason, and the indications of the will are not such as to show that such reason was the sole inducement, the testamentary disposition, even if such reason is proved to be false, shall have effect, unless it is proved that the testator was solely induced by the reason stated in the will.

OF PERSONS AND THINGS FORMING THE SUBJECT OF A DISPOSITION

Wills *per relationem ad schedulam* are void.

686. Any testamentary disposition made, by what is commonly known as implied nuncupation, or *per relationem ad schedulam* is void.

Disposition in favour of person uncertain.

687. Any testamentary disposition in favour of a person so uncertain that he cannot be identified even upon the happening of a contingency referred to in the will, is also void.

Disposition in favour of person or body corporate to be designated by heir or third party.

688. (1) Any testamentary disposition made in favour of an uncertain person to be designated by the heir or by a third party is likewise void.

(2) Nevertheless, it shall be lawful to make a testamentary disposition by singular title in favour of a person to be selected by the heir or by a third party among several persons specified by the testator, or belonging to families, or bodies corporate, specified by him.

(3) It shall likewise be lawful to make a disposition by singular title in favour of a body corporate to be selected by the heir or by a third party, among several bodies corporate specified by the

testator.

Disposition in favour of next of kin.

689. A testamentary disposition made in favour of the nearest relation of a person shall, in default of any other designation, be deemed to have been made in favour of the persons in whom the intestate succession of the said person would legally vest.

Disposition in favour of the poor.

690. A disposition made in general terms in favour of the poor, shall be deemed to be made in favour of the poor of the island in which the testator resided at the time of his death.

Disposition in favour of testator's soul.

691. Any disposition made in general terms in favour of the soul of the testator or of any other person shall, if the pious use has not been specified, have no effect.

Inadmissibility of evidence to show that the words of the will are contrary to the intention of the testator.

692. (1) No evidence is admissible which is intended to show that the institution or legacy, made in favour of any person, or body corporate, or for any use specified in the will, is merely fictitious, and that such institution or legacy is in reality made in favour of a person or body corporate, or for a use, not disclosed in the will, notwithstanding any expression contained in the will calculated to constitute an indication or a presumption of any such intention.

(2) The provisions of this article shall not apply in any case in which the institution or legacy is impeached on the ground that such institution or legacy was made through intermediaries in favour of persons under a disability.

Fiduciary dispositions.

693. Any testamentary disposition whereby even a sum of money or any other determinate thing is bequeathed to a person designated in the will for the purpose of making such use thereof as the testator shall have declared to have confided to such person, shall be null, even though such person shall offer to prove that such disposition is in favour of persons capable of receiving property by will, or for lawful purposes.

Erroneous designation of heir, legatee or thing disposed of.

694. (1) If the person of the heir or of the legatee is erroneously designated, the testamentary disposition shall have effect, if the identity of the person whom the testator intended to designate is otherwise certain.

(2) The same rule shall apply where the thing forming the subject of the legacy shall have been erroneously indicated or described, if it is otherwise certain what thing the testator wished to dispose of.

Disposition left entirely to the discretion of the heir.

695. Any testamentary disposition giving to the heir or to a third party absolute discretion in fixing the quantity of the legacy is null, except where it is a legacy made by the testator by way of remuneration for services rendered to him during his last illness.

Legacy of thing belonging to others.

696. (1) Where the thing forming the subject of a legacy belongs to a person other than the testator, such legacy shall be null, unless it is stated in the will that the testator knew that the thing was not his property, but the property of others, in which case the heir may elect either to acquire the thing bequeathed in order to make delivery thereof to the legatee, or to pay to such legatee the fair value thereof.

(2) Where, however, the thing so bequeathed, although belonging to others at the time of the will, is the property of the testator at the time of his death, the legacy shall be valid.

Legacy of thing belonging to heir or legatee.

697. The provisions of the last preceding article shall also apply if the thing forming the subject of the legacy belongs to the heir, or to the legatee required under the will to give it to a third party.

Where a part only of the thing bequeathed belongs to the testator.

698. Where a part of the thing bequeathed, or a right over such thing, belongs to the testator, the legacy of such thing shall be valid only to the extent of such part or right, unless it is stated in the will that the testator knew that the thing did not wholly belong to him.

Legacy of an indeterminate thing.

699. Where the thing forming the subject of a legacy is an indeterminate movable thing included in a genus or species, such legacy is valid, even though no thing pertaining to such genus or species existed in the estate of the testator at the time of the will or is found to exist at the time of the death of the testator.

Where thing bequeathed is not found to exist in estate of testator.

700. (1) Where the testator shall have bequeathed as belonging to him any determinate thing, or any thing included in a given genus or species, the legacy shall have no effect, if the thing is not found to exist in the estate of the testator at the time of his death.

(2) If the thing is found to exist in the estate of the testator at the time of his death, but not in the quantity specified in the will, the legacy shall have effect to the extent of the quantity so existing.

Legacy of thing or quantity to be taken from a specified place.

701. Where the subject of the legacy is a thing or a quantity to be taken from a specified place, such legacy shall only have effect if such thing is found therein; and, if only a part thereof is found in the place specified by the testator, it shall only have effect to the extent of such part.

Legacy of a thing belonging to legatee.

702. (1) Where the subject of the legacy is a thing which, at the time of the will, was already the property of the legatee, such legacy shall be null.

(2) If the legatee shall have acquired the thing forming the subject of the legacy at any time after the will, either from the testator himself under an onerous title, or from any other person under any title whatsoever, he shall, in the event of the existence of the circumstances referred to in article 696 be entitled to claim the value of such thing, notwithstanding the provisions of article 743.

(3) Where the legatee shall have acquired the thing from the testator under a gratuitous title, the legacy shall be considered to be adeemed.

Legacy of a debt due to testator.

703. Where the subject of the legacy is a sum owing to the testator, or consists in discharging a debtor from a debt due to the testator, the legacy shall only have effect with regard to such portion of the debt as shall still be owing at the time of the death of the testator.

Legacy of a thing or sum as due by testator to legatee.

704. (1) Where the testator bequeaths by way of legacy any determinate thing or sum, as due by him to the legatee, the legacy is valid, even though such thing or sum is not due.

(2) If such thing or sum is due by the testator, the legatee acquires a new action for the recovery of the thing or sum due to him, and, where otherwise the thing or sum would not have been exigible except after the lapse of a certain time, or if the payment thereof was dependent upon the fulfilment of a condition, the legatee shall not be bound to wait until the expiration of such time, or the fulfilment of such condition.

(3) The legacy, however, shall be ineffectual if the testator shall pay the debt at any time after the will.

Legacy of debt to creditor.

705. (1) Where the testator, without mentioning the debt due by him, makes a legacy in favour of his creditor, such legacy shall not be deemed to have been made in satisfaction of the debt due to the legatee.

Legacy to servant.

(2) A legacy made in favour of a servant, shall not be deemed to have been made in satisfaction of his wages.

Legatum liberationis to include only debts due at the time of the will.

706. Where the legacy consists in discharging the debtor from the debts due by him to the testator, such legacy shall be deemed to include only such debts as were due to the testator at the time of the will, and not such other debts as may have been subsequently contracted.

Legacy of maintenance.

707. A legacy of maintenance shall include food, clothing, habitation, and other necessaries during the life of the legatee; and it may also, according to circumstances, include the education of the legatee according to his condition.

Legacy of immovable increased by subsequent acquisitions.

708. Where the testator who has bequeathed the ownership of an immovable property, has subsequently increased such property by further acquisitions, such acquisitions, even though contiguous, shall not be deemed to form part of the legacy, unless a fresh bequest is made.

Pre-legacy to heir.

709. The testator may leave a pre-legacy to his heir and, in any such case, the heir, with regard to such pre-legacy, shall be considered as a legatee.

OF CONDITIONAL OR LIMITED DISPOSITIONS

Dispositions may be pure or conditional.

710. Any disposition, by universal or singular title, may be either pure or conditional.

Impossible conditions, etc.

711. (1) Where the condition is impossible, or contrary to law or morals, it shall vitiate the disposition to which it is attached.

(2) Where the condition is unintelligible it shall be considered as if it had not been attached.

Condition in restraint of marriage.

712. (1) A condition prohibiting a first or a subsequent marriage shall be considered as if it had not been attached.

(2) Nevertheless, where a legacy consisting in a right of usufruct, use, or habitation, or in a pension or other periodical payment, is contingent on the legatee remaining, and limited to the

period during which he or she remains a bachelor or spinster, or a widower or widow, the legatee shall be entitled to enjoy the legacy only as long as he or she shall remain a bachelor or spinster, or a widower or widow.

(3) A condition in restraint of remarriage, attached to a testamentary disposition by one of the spouses in favour of the other, shall be valid.

Condition restraining heir from availing himself of benefit of inventory.

713. Any condition restraining the heir from availing himself of the benefit of inventory shall be considered as if it had not been attached.

Limitation of commencement or cessation of institution of heir.

714. If, in any testamentary disposition by universal title, the testator shall fix a day on or from which the institution of the heir shall commence or cease, such limitation shall be considered as if it had not been attached.

Disposition on condition of mutual benefit, is null.

715. Any testamentary disposition, whether by universal or singular title, made by the testator on condition that he shall in return benefit by the will of the heir or legatee, is null.

Disposition depending upon an uncertain event.

716. Any testamentary disposition made subject to a condition depending upon an uncertain event, and being such that, in the intention of the testator, the validity thereof is dependent upon the happening or non-happening of such event, shall be ineffectual if the person, in whose favour it is made, dies before the fulfilment of the condition.

Condition suspending the execution of the disposition.

717. A condition which, in the intention of the testator, is merely meant to suspend the execution of the testamentary disposition, shall not operate so as to bar the heir or legatee from acquiring, even before the fulfilment of the condition, a vested right transmissible to the heirs of such heir or legatee.

Where heir or legatee is bound to give security for fulfilment of condition.

718. If the testator has left the inheritance or legacy subject to the obligation that the heir or legatee shall forbear from doing or from giving a specified thing, the heir or legatee shall be bound to give sufficient security, for the fulfilment of such obligation, by means of sureties or by means of a hypothecation or pledge in favour of the persons in whom, in case of non-fulfilment, the inheritance or legacy would vest.

Person charged with delivery of conditional legacy must give security.

719. Likewise, where a legacy is bequeathed conditionally, or as not exigible before a certain time, the person charged with the payment of the legacy, may be compelled to furnish security as aforesaid in favour of the legatee.

Appointment of administrator in certain cases.

720. (1) If the heir has been instituted subject to a condition of the nature of those mentioned in article 716, there shall be appointed an administrator of the inheritance until such condition is fulfilled or it is certain that it cannot be fulfilled.

(2) An administrator shall also be appointed when the heir or the legatee fails to give the security required under the last two preceding articles, as well as in the case in which the instituted heir is the immediate issue, as yet unconceived, of a person living at the time of the death of the testator as provided in article 600.

(3) Such administrator shall have the same powers and duties as the curator of a vacant inheritance, subject to any other direction which, according to circumstances, the court shall deem fit to give.

OF THE EFFECTS OF LEGACIES AND OF THE PAYMENT THEREOF

Right to receive pure and simple legacy, transmissible to heirs of legatee.

721. (1) Any pure and simple legacy shall vest the legatee, as from the day of the death of the testator, with the right to receive the thing bequeathed, transmissible to the heirs of such legatee, or to any person claiming under him.

(2) Where the legacy is made conditionally, such right shall not vest in the legatee before the fulfilment of the condition.

Rule as to selection of thing, where legacy is in respect of an indeterminate thing.

722. (1) Where the subject of the legacy is an indeterminate thing, included in a given genus or species, the right of selection shall belong to the heir, who cannot be compelled to deliver a thing of the best quality, but cannot offer a thing of the worst quality.

(2) The same rule shall apply where the right of selection is left to a third party.

(3) Where such third party refuses or is, in consequence of death or other impediment, unable to make the selection, such selection shall be made by the court, according to the rule laid down in sub-article (1).

Where a right of selection is left to the legatee.

723. Where the right of selection is left to the legatee, he may select the best of the things of the given genus or species existing in the inheritance: but if there be none, he cannot select one of the best quality.

Right of selection in alternative legacies.

724. In the case of alternative legacies, the right of selection shall be deemed to be given to the heir.

When right of selection passes to heir of heir or legatee.

725. (1) Where the heir or legatee to whom the right of selection belongs, has not been able to make such selection, the right thereof shall vest in his heir.

(2) The selection, once made, shall be irrevocable.

(3) Even where in the estate of the testator there shall be only one of the things included in the genus or species, the heir or legatee having the right of selection, shall not, in the absence of an express disposition to the contrary, be entitled to select other than the thing existing in the estate.

Legatee to demand of heir delivery of thing bequeathed.
Amended by: *XVIII.2004.80.*

726. (1) The legatee must demand of the heir possession of the thing bequeathed.

(2) In the case of immovable property the legatee may demand the grant of such possession be made by means of a public deed.

(3) Unless the testator shall have otherwise provided the expenses relative to the deed shall be borne by the legatee.

Fruits of or interest on legacy.

727. It shall not be lawful for the legatee to claim the fruits of, or interest on the legacy, except from the day on which he shall have, even by a judicial letter, called upon the heir to deliver or pay the legacy, or from the day on which the delivery or payment shall have been promised to him.

When fruits or interest accrue in favour of legatee, immediately on death of testator.

728. The interest on, or the fruits of, the thing bequeathed, shall, even in the absence of a judicial intimation, as prescribed in the last preceding article, accrue in favour of the legatee immediately upon the death of the testator in any of the following cases:

(*a*) where the testator shall have expressly so directed;

(*b*) where the subject of the legacy is a tenement, or a capital sum, or any other thing producing fruits.

Legacy of life annuity or pension.

729. Where the subject of a legacy is a life annuity or a pension, such annuity or pension shall commence to run from the day of the death of the testator.

When subject of legacy is a determinate quantity to be delivered or paid at fixed periods.

730. (1) Where the subject of the legacy is a determinate quantity to be delivered or paid at fixed periods, as every year, every month or at other periods, the first period shall commence to run from the death of the testator, and the legatee shall acquire the right to the whole quantity due for each of the periods, even though he may have been alive at the commencement only of the said period.

(2) Nevertheless, the legacy unless it is by way of maintenance cannot be claimed until after the expiration of the period.

(3) If the legacy is by way of maintenance, it can be claimed at the commencement of the period.

Thing bequeathed to be delivered with accessories.

731. (1) The thing forming the subject of the legacy shall be presumed to have been bequeathed, and shall be delivered, with its necessary accessories and in the condition in which it shall be on the day of the death of the testator.

(2) The contrary shall be presumed with regard to embellishments or to new constructions made in the tenement bequeathed, or to a tenement of which the testator shall have enlarged the boundary, including therein new acquisitions.

Where thing bequeathed is charged with a right of usufruct, etc.

732. (1) Where before the will is made or subsequently, a right of usufruct, an annuity, or any other perpetual or temporary burden, shall have been imposed on the thing bequeathed, the legatee shall receive the thing as so encumbered.

(2) Where the thing bequeathed is charged with a hypothec in respect of any other debts, the person who is to pay the legacy shall, unless the testator has otherwise directed, be bound to disencumber it.

Expense for delivery of legacy.

733. The expense necessary for the delivery or payment of the legacy shall be charged to the estate, provided this shall not prejudice the rights of the persons in whose favour the law reserves a portion of the hereditary property.

By whom legacy is to be paid.

734. (1) Where no one of several heirs has been particularly charged by the testator with the payment of the legacy, all the heirs shall be liable for the payment thereof, each in proportion to his share in the succession.

(2) They shall also be liable for the whole, to the extent of the value of any immovable property of the estate which they hold.

Where one of the heirs is particularly charged with the payment of the legacy.

735. (1) Where any one of the heirs has been particularly charged with the payment of the legacy, he alone shall be liable for such payment.

(2) Where the subject of the legacy is a thing belonging to one of the co-heirs, the other co-heirs shall, unless a contrary intention of the testator is shown, compensate such co-heir for its value, either in cash or in hereditary property, each in proportion to his share of the inheritance, provided such legacy is not void, in whole or in part, under articles 696, 697 and 698.

Testator may declare pension or usufruct not subject to attachment.

736. (1) It shall be lawful for the testator, in bequeathing a pension or a usufruct, to declare such pension or usufruct as not liable to attachment under a garnishee order, and even inalienable, wholly or in part.

(2) Any such declaration, if made in general terms, shall be operative even where the garnishee order is applied for, or the alienation is sought to be made or is demanded, in respect of debts incurred by the legatee after he has commenced to enjoy the legacy.

OF THE RIGHT OF ACCRETION

Right of accretion.

737. Saving the provisions of article 745 and article 866, where two or more persons have been instituted heirs or named as legatees conjointly, and any one of such persons predeceases the testator, or is incapable of receiving, or refuses the inheritance or the legacy, or has no right thereto owing to the non-fulfilment of the condition under which he was so instituted or named, the share of such person, with the obligations and burdens attaching to it, shall accrue to that of the other co-heirs or co-legatees.

Institution or legacy deemed to be made conjointly if it depends upon one and the same disposition, etc.

738. (1) An institution or a legacy is deemed to be made conjointly, if it depends upon one and the same disposition, and the testator shall not have specified the share of each co-heir or co-legatee in the inheritance or in the thing bequeathed.

(2) The shares are deemed to have been specified, only if the testator has expressly fixed the share of each. The words "in equal parts" or "in equal portions" alone shall not operate so as to bar the right of accretion.

Legacy is also deemed to be made conjointly if thing bequeathed is not divisible.

739. A legacy is likewise deemed to be made conjointly if a thing which cannot be divided without injury has been bequeathed by one and the same will to two or more persons, even separately.

Co-heir or co-legatee may not refuse accrued share unless he renounces original share.

740. Where the right of accretion takes place, it shall not be lawful for the co-heir or the co-legatee to refuse the accrued share, unless he shall renounce his own original share.

Vesting of vacant portion of inheritance or legacy, when accretion does not take place.

741. Where the right of accretion does not take place, the vacant portion of the inheritance, with such obligations and burdens as attach to it, shall vest in the heirs-at-law of the testator, and the vacant portion of the legacy, with such obligations and burdens as attach to it, shall, where any of the heirs or any legatee was particularly charged with the payment of the legacy, vest in such heir or legatee, or, where the inheritance was so charged, in all the heirs, in proportion to the share of each in the inheritance.

Where usufruct is bequeathed to two or more persons conjointly.

742. (1) Where a right of usufruct is bequeathed to two or more persons conjointly, as provided in articles 738 and 739, the provisions of article 382 shall apply, even after the acceptance of the legacy.

(2) Where the usufruct is not bequeathed to such persons conjointly, the vacant portion shall merge in the ownership.

OF THE REVOCATION AND LAPSE OF TESTAMENTARY DISPOSITIONS

Alienation by testator of thing bequeathed operates as a revocation of legacy.

743. (1) Any alienation of the thing bequeathed whether in whole or in part, made by the testator, even though made by way of sale with the reservation of the power of redemption, or by way of exchange, shall operate as a revocation of the legacy in regard to the subject of the alienation, notwithstanding that such alienation be void, or simulated, or that the thing itself come again to belong to the testator.

(2) The same rule shall apply if the testator has converted the thing bequeathed into another in such a manner that it has lost its previous form and designation.

Where thing bequeathed perishes.

744. (1) The legacy shall lapse if the thing bequeathed has entirely perished during the lifetime of the testator.

(2) The same rule shall apply if the thing has perished after the death of the testator, without the agency or fault of the heir, even though such heir may have been put in default for delay in the delivery thereof, provided the thing would have equally perished in the possession of the legatee.

(3) Where several things have been alternatively bequeathed, the legacy shall subsist, even though there shall remain one only of such things.

Effect of testamentary disposition in case of predecease of person benefited.

745. (1) A testamentary disposition shall lapse, if the person in whose favour it is made shall not survive the testator.

(2) Nevertheless, the descendants of the heir or legatee shall succeed in his place to the inheritance or legacy whenever, in case

of intestacy, they would have benefited by the rule of representation, unless the testator has otherwise directed, or unless the subject of the legacy is a right of usufruct, use, or habitation, or any other right which is of its own nature personal.

Where heir or a legatee renounces disposition.

746. A testamentary disposition shall lapse with regard to the heir or legatee who renounces it, or who is incapable of taking.

Testator can make provision for the existence or birth of children, etc. *Substituted by: XVIII.2004.81.*

747. It shall be lawful for a testator to make provision in his will for the existence or subsequent birth of children or descendants, and such provision may, without prejudice to any right to a share of the reserved portion, distinguish between such children or descendants in the same manner as he could lawfully distinguish between children or descendants of whose existence he is aware or who are already born.

Where children or descendants are passed over. *Substituted by: XVIII.2004.81.*

748. Where provision is not made in accordance with article 747 and the testator makes disposition by universal or singular title and passes over any children or descendants, whether or not the testator was aware of their existence, and whether or not such children or descendants were born at the time of the making of dispositions, such dispositions shall nonetheless be valid saving the right of the children or descendants so passed over to their share of the reserved portion to which they may be entitled under this Code.

Right of children born after the making of the will. *Amended by: XXI.1962.13.*

749. *Repealed by*: *XVIII.2004.81.*

Preterition of children of testator of whose existence he was aware does not void disposition.

750. *Repealed by*: *XVIII.2004.81.*

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§ VI. OF SUBSTITUTION AND OF ENTAILS

Substitutio vulgaris.

751. (1) It shall be lawful for the testator to substitute another person for the heir-institute or for the legatee, in the event of such heir or legatee not being able or willing to accept the inheritance or the legacy.

(2) Any such disposition is termed *substitutio vulgaris*.

Substitution in the case of minors, of persons with a mental disorder or other condition, which renders them incapable of managing their own affairs, or insane persons. *Amended by: XXI.1962.14; XVIII.2004.82. Substituted by: II.2012.16. Amended by: XXIII.2017.71.*

752. (1) It shall be lawful for any one of the spouses, the other ascendants, the uncle or aunt, brother or sister, to substitute a third party in the place of a minor in the event of the latter dying without issue, before attaining the age of eighteen years, but only with regard to the property in which such minor shall have been instituted heir or appointed legatee.

(2) It shall also be lawful for any of the said persons to substitute a third party in the place of any person with a mental disorder or other condition, which renders him incapable of managing his own affairs or insane person, in regard to such property only as they shall have devised to him, in the event of his dying with the mental disorder or other condition, whilst still incapable of managing his own affairs, or in a state of insanity,

without issue.

(3) Any substitution referred to in this article, if made by any one of the parents or any other ascendant by whom a share of the reserved portion is due to the heir-institute or legatee, may only include such portion of the property as the minor, on attaining majority, or the insane person, or person with a mental disorder or other condition, if of sound mind at the time of his death, could dispose of.

Substitution of several persons in the place of one, or *vice versa*.

753. It shall be lawful to substitute under the provisions of the preceding articles, several persons in the place of one, or one in the place of several.

Where in the substitution clause only one of the two contingencies is stated.

754. Where in the substitution clause only one of the two contingencies is stated, that is, either that the institute should be unable, or that he should be unwilling to receive the inheritance or legacy, the other contingency shall, unless the disponer shall have stated the contrary, be deemed to be included.

Performance of obligations by substitutes.

755. (1) The substitute shall be bound to perform all such obligations as may have been imposed on the party for whom he shall have been substituted, unless it shall appear that the testator wished to impose such obligations solely on the party called in the first place.

(2) Nevertheless, such obligations as particularly affect the person of the heir or legatee shall not, in the absence of an express declaration to the contrary, be deemed to be operative in regard to the substitution.

Proportion of shares in case of reciprocal substitution of heirs or legatees taking unequally among themselves.

756. (1) Where two or more co-heirs or legatees in unequal shares shall have been reciprocally substituted, the proportion of shares fixed by the first disposition shall be deemed to be operative in regard to the substitution.

(2) Where the substitution includes another person in addition to the persons called in the first place, the evacuated portion shall vest in all the substitutes in equal shares.

Prohibition of entails.

757. (1) Entails are prohibited:

Provided that entails created before the date of the commencement of Ordinance No. IV of 1864, hereby repealed, shall continue to be regulated by the provisions of the law in force before that date including the provisions contained in Chapter II of Book IV of the Municipal Code of Malta, commonly called "Code De Rohan", saving the provisions of Title I of Part II of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

(2) Any provision by which the heir or legatee is required to preserve and return the inheritance or legacy to a third person shall be considered as if it had not been written.

Provision restraining heir or legatee from alienating or from disposing by will, to be ineffectual. *Amended by:* XVIII.2004.83.

758. (1) Any provision restraining the heir or legatee from alienating or from disposing by will, shall, subject to the provisions of article 736, be considered as if it had not been written.

(2) Nevertheless, it shall be lawful to bequeath the usufruct to one person, and the *nuda proprietas* to another, subject, however, to the provisions of article 331.

(3) It shall also be lawful for a spouse to make in favour of the surviving spouse a bequest by universal or by singular title, substituting for him or her another beneficiary in the residue still existing at the time of the demise of the surviving spouse. In such case the surviving spouse shall only be restrained from disposing of any thing contained in the disposition, by will or by title of donation.

(4) For the purpose of this article "residue" means and includes only:

(*a*) immovable property, whether immovable by its nature or by reason of the object to which it refers; and

(*b*) all certain and determinate movable property which can be identified, excluding liquid cash and things identified only by their species.

(5) An action contesting any disposal made by the surviving spouse in contravention of sub-article (3) may be instituted during the lifetime of the surviving spouse, and shall be barred by the lapse of five years from the opening of succession of the surviving spouse.

(6) A disposal made by the surviving spouse in contravention of sub-article (3) shall in the case of immovables be null. In the case of movable property nullity shall ensue only if the beneficiary was in bad faith. In any other case action shall only lie for damages against the surviving spouse or his or her estate.

Where usufruct is left to one person and ownership to another.

759. Where the usufruct of a thing is left to one person, and the ownership of the same thing to another person, under the condition that the latter be still alive at the time of the cesser of the usufruct, it shall be lawful to substitute a third person in the place of the person in whose favour the ownership is devised in the event of such condition not being fulfilled.

Disposition under condition that cannot be fulfilled before death of heir or legatee.

760. It is not forbidden to institute heirs, or bequeath legacies under a condition which cannot be fulfilled except at the time of the death of the heirs or legatees, and to substitute others in their place in the event of the non-fulfilment of the condition.

When annuities or other burdens in favour of more persons successively are permitted. *Amended by:* XIII.2007.5.

761. (1) Any perpetual or limited burden by reason of which the whole usufruct of the inheritance or of the legacy, or a portion of such usufruct, or any other annuity, is to be given to two or more persons successively, shall be considered as if it had not been written.

(2) Nevertheless, it is not forbidden to impose the payment of an annuity, whether in perpetuity or for a limited time, for the purpose of creating a sacred patrimony, or of being employed for the relief of the poor, or in reward for virtue or merit, or for any

other purpose of public utility, even though the disposition be in favour of persons belonging to a certain class or to certain families.

(3) Sub-article (1) shall not apply to dispositions in favour of persons called to benefit under a trust or a foundation.

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§ VII. OF TESTAMENTARY EXECUTORS

Appointment of executors by testator.

762. It shall be lawful for a testator to appoint one or more testamentary executors.

Who may be executor.

763. No person who is under a disability to contract obligations, may be a testamentary executor.

Minor.
Amended by: XLVI.1973.58.

764. A minor may not hold the office of testamentary executor even though with the authority of the parent to whose authority he is subject, or of his tutor or curator.

Executor cannot intermeddle with estate before confirmation.

765. It shall not be lawful for any testamentary executor to intermeddle with the administration of the estate before he is confirmed by the court of voluntary jurisdiction of the island in which the testator resided at the time of his death.

Recognizance to be entered into by executor.

766. (1) The court shall not confirm the testamentary executor before he shall have entered into a recognizance in the records of the court, with hypothecation of his property to be registered in the Public Registry, faithfully to carry into effect the will of the testator, and to render an account of his administration every year or once only, as the court shall, according to circumstances, direct.

(2) The court may, on the demand of the executor, limit the amount for which his property is to be hypothecated.

Inventory.

767. It shall be in the power of the court, before confirming the executor to require him to make up an inventory of the property which he is charged to administer, or, a statement of such property to be verified by his oath, unless he shall have been exempted from making such inventory or statement by the persons to whom the property devolves, wholly or in part.

Executor cannot be exempted from rendering account.

768. Any disposition calculated to exempt the testamentary executor from the obligation of rendering an account shall be inoperative.

Powers of executor pending procedure in confirmation.

769. The executor may, pending the procedure in confirmation, perform such acts as cannot without prejudice be delayed, and take such measures as are necessary for the preservation of the estate.

Fee payable to executor.

770. It shall be in the power of the said court, at any time, to grant to the testamentary executor a moderate fee, regard being had to the value of the estate to be administered by him, unless the testator himself shall have made provision as to such fee, or the executor shall have waived his right thereto.

Power of executor to sell property.

771. (1) The testamentary executor, for the purpose of paying the debts of the estate or of discharging the legacies, may, in the absence or insufficiency of funds in the estate, collect sums owing

to the estate, or, in default, sell property.

(2) Such sale shall be made by public auction, unless the heirs agree, or the court, on the application of the executor, allows, that the sale be made otherwise.

Heir may prevent sale.

772. The heir may prevent the sale by offering the means with which to pay the debts and discharge the legacies.

Office of executor not to descend to heirs.

773. The office of the testamentary executor shall not descend to his heirs.

More executors to act conjointly.

774. Where the testator has appointed two or more testamentary executors, they can only act conjointly, unless the testator shall have authorized them to act even separately, in which case each shall be responsible for his own act only.

Expenses incurred by executor to be borne by estate.

775. The expenses incurred by the testamentary executor in the discharge of his duties shall be borne by the inheritance.

Executor may renounce office.

776. (1) The testamentary executor may, at any time, renounce his office, even though he shall have already commenced to act as executor.

(2) He may also on good cause shown be removed from office.

Power of court when two or more executors are appointed.

777. (1) Where the testator has appointed two or more executors, and one or more has or have declined to accept the office, or renounced it, or has or have been suspended or removed therefrom, the said court may confirm the executor or executors remaining, and authorize him or them to carry into effect the will as if the testator had appointed him or them only, provided he or they be considered fit by the court.

(2) The same rule shall apply in case of the death, absence, or illness of one or more of the executors.

Death, etc. of only executor - nominate or of all executors - nominate.

778. In case of the death, absence, renunciation, or illness of the only executor, or of all the executors-nominate, the execution of the will shall vest in the heirs, unless the court of voluntary jurisdiction, with the consent of such heirs, or, the court of contentious jurisdiction, for just cause on the demand of any interested party, shall have conferred the office upon another person.

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§ VIII. OF THE OPENING AND PUBLICATION OF WILLS

Opening of secret will.

Cap. 12.

779. Any person claiming to have any interest in a secret will may, upon the death of the testator being ascertained, demand the opening of such will in the manner laid down in the Code of Organization and Civil Procedure.

Applicability of s.779 to cases of long absence of testator, etc.

780. The provisions of the last preceding article shall also apply in any case where the competent court shall have adjudged and declared that the testator is, in consequence of his long

absence, to be presumed to have died, as well as in any case where the testator shall have taken the vows in a monastic order or in a religious corporation of regulars.

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§ IX.OF THE REVOCATION OF WILLS

Power of revoking will cannot be waived.

781. (1) No person may waive the power of revoking or altering any testamentary disposition made by him.

(2) Any clause or condition purporting to waive such power, shall be considered as if it had not been written.

Will may be revoked by subsequent will or notarial instrument.

782. (1) Saving the provisions of article 743 and the articles following, a will may be revoked, wholly or in part, by a subsequent will.

(2) It may also be revoked by any other act received by a notary with the formalities required for the execution of notarial acts, whereby the testator personally or through an attorney specially authorized, declares that he revokes his will, wholly or in part.

Implied revocation of secret will.

783. The mere withdrawal of a secret will from the notary, or, in any of the cases referred to in articles 673 and 676 from the person to whom the will shall have been delivered, or from the registry of the court, or from the office of the consul wherein it shall have been deposited, shall operate as an implied revocation of the will.

Will if null cannot revoke previous will.

784. A will which is void cannot have the effect of a notarial act so as to revoke a previous will.

Revival of revoked disposition.

785. Any testamentary disposition which has been revoked, can only revive by a fresh will.

Implied revocation by subsequent contrary dispositions.

786. Where a subsequent will has not expressly revoked a previous will or previous wills, it shall annul such only of the dispositions contained in the previous will or wills as shall be shown to be contrary to, or inconsistent with, the new dispositions.

Revocation to subsist, although subsequent will lapses.

787. The revocation made by a subsequent will shall be fully operative even if such subsequent will lapses, by reason of the predecease or disability of the heir-institute or legatee, or of the renunciation of the inheritance or legacy.

Sub-title II

OF INTESTATE SUCCESSIONS

GENERAL PROVISIONS

When intestate succession takes place.

788. Where there is no valid will, or where the testator has not disposed of the whole of his estate, or where the heirs-institute are unwilling or unable to accept the inheritance, or where the right of accretion among the co-heirs does not arise, intestate succession

takes place, wholly or in part, by the operation of law.

Persons succeeding *ab intestato.* *Amended by: L.N. 148 of 1975; XVIII.2004.84.*

789. Intestate succession is granted in favour of the descendants, the ascendants, the collateral relatives and the spouse of the deceased, and the Government of Malta, in the order and according to the rules hereafter laid down.

Rules regarding succession among relations.

790. In regulating succession among relations, the law takes into consideration the proximity of the relationship, and does not consider either the prerogative of the line or the origin of the property, except in the cases and in the manner expressly provided for by law.

How proximity or relationship is determined.

791. (1) The proximity of relationship is established by the number of generations.

(2) Each generation forms a degree.

(3) The series of degrees forms the line.

Direct line.

792. (1) The series of degrees between persons descending the one from the other is called the direct line.

Collateral line.

(2) The series of degrees between persons descending not the one from the other, but from a common ancestor, is called the collateral line.

Direct line may be descending or ascending.

793. (1) The direct line may be descending or ascending.

(2) The descending direct line connects the ancestor with those who descend from him.

(3) The ascending direct line connects a person with those from whom he descends.

Computation of degrees in the direct line.

794. In the direct line, as many degrees are counted as there are generations, not including the common ancestor.

Computation of degrees in collateral line.

795. In the collateral line, the degrees are counted by the generations, commencing from one of the relations up to, and exclusive of, the common ancestor, and then from the latter down to the other relation.

OF THE CAPACITY TO SUCCEED

Persons incapable or unworthy of succeeding *ab intestato.*

796. Persons who are incapable or unworthy of receiving under a will, for the causes stated in this Code, are also incapable or unworthy of succeeding *ab intestato.*

Other persons so incapable.

797. Persons who, by fraud or violence, shall have prevented the deceased from making a will, shall also be, as unworthy, incapable of succeeding *ab intestato.*

Applicability of arts. 606 and 607.

798. The provisions contained in articles 606 and 607 shall apply to any person who, for the causes stated in the last two preceding articles, shall have become unworthy of succeeding *ab intestato.*

Children or descendants of persons excluded as unworthy.

799. (1) The children or descendants of a person excluded as unworthy shall not be excluded by reason of the unworthiness of their parent or ascendant, whether they succeed in their own right or whether, in order to succeed, they have to stand, under the rule of representation, in the place of the parent or ascendant so excluded.

(2) Nevertheless, the father may in no case claim, over such inheritance, either the usufruct or the administration which the law grants to parents over the property of their children.

Members of monastic orders.

800. *Repealed by*: XVIII.2004.85.

OF REPRESENTATION

Rule of representation,

801. Representation operates so as to put the representative in the place, degree, and rights of the person represented.

in the descending direct line.

802. Representation in the descending direct line takes place *in infinitum* and in all cases, whether the children of the deceased take with the descendants of a predeceased child, or whether, all the children of the deceased having predeceased him, the descendants stand amongst themselves in equal or unequal degrees.

Representation does not take place between ascendants.

803. Representation does not take place between ascendants: the nearest relation excludes the others.

Representation in collateral line.

804. (1) In the collateral line, representation is allowed in favour of children and descendants of brothers or sisters of the deceased, whether such children or descendants take with their uncles or aunts, or whether, all the brothers and sisters of the deceased having predeceased him, the succession devolves to their descendants in unequal degrees.

(2) If the children or descendants of brothers or sisters stand in equal degree, they shall all take *per capita*, without representation.

Partition *per stirpes* and *per capita.*

805. (1) In all cases in which representation is allowed, the partition shall be made *per stirpes.*

(2) Where in one and the same stock there are several branches, the sub-partition shall be made *per stirpes* in each branch; and the partition among the members of the same branch shall be made *per capita*.

No representation of persons who are alive.

806. Representation cannot take place in regard to persons who are alive, but only in regard to persons who are dead, or incapable of succeeding, or who, by reason of a long period of absence, are, in virtue of a judgment of the competent court, presumed to have died.

807. It shall be lawful to represent the person whose inheritance has been renounced.

Representation of person whose estate has been renounced.

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§ I. OF SUCCESSION BY DESCENDANTS AND SURVIVING SPOUSE

808. (1) Where the deceased has left children or their descendants and a spouse, the succession devolves as to one moiety upon the children and other descendants and as to the other moiety upon the spouse.

Where deceased is survived by descendants and spouse. *Substituted by: XVIII.2004.86.*

(2) The provisions of sub-article (1) shall be without prejudice to the right of the surviving spouse under articles 633, 634 and 635.

809. Where the deceased has left children or other descendants but no spouse, the succession devolves upon the children and other descendants.

Where deceased is survived by descendants but not by spouse. *Amended by: XXI.1962.15. Substituted by: XVIII.2004.86.*

810. Where the deceased has left no children or other descendants but is survived by a spouse the succession devolves on the spouse.

Where the deceased is not survived by descendants but is survived by spouse. *Substituted by: XVIII.2004.86.*

811. (1) Saving the provisions of article 815, children or other descendants succeed to their parents or other ascendants without distinction of sex, and whether they are born or conceived in marriage or otherwise and whether they are of the same or of different marriages.

Succession by children and descendants. *Substituted by: XVIII.2004.86. Amended by: XXIII.2017.72.*

(2) They succeed *per capita* when they are all in the first degree; they succeed *per stirpes* when all, or some of them, take by representation.

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§ II. OF SUCCESSION BY ASCENDANTS AND COLLATERALS

812. Where the deceased has left no children or other descendants, nor a spouse, the succession shall devolve:

When deceased leaves no descendants nor a spouse. *Substituted by: XVIII.2004.86.*

(*a*) if there be an ascendant or ascendants and no direct collaterals: to the nearest ascendant or ascendants;

(*b*) if there be an ascendant or ascendants and direct collaterals: one moiety to the nearest ascendant or ascendants and the other moiety to the direct collaterals;

(*c*) if there be no ascendant or ascendants but there be direct collaterals: to the direct collaterals; and

(*d*) if there be neither ascendant or ascendants nor direct collaterals: to the nearest collateral in whatever line

such collateral may be.

Direct collaterals. *Substituted by: XVIII.2004.86.*

813. (1) For the purpose of article 812 direct collaterals mean brothers and sisters, whether of the half or full blood or adopted and the descendants of predeceased brothers or sisters, of the half or full blood or adopted.

(2) The brothers and sisters shall succeed *per capita* and their descendants *per stirpes* in terms of articles 804 and 805.

Succession by other collaterals. *Substituted by: XVIII.2004.86.*

814. Succession between collaterals shall not extend beyond twelfth degree.

Where persons conceived and born out of wedlock succeed with certain other persons. *Substituted by: XVIII.2004.86.*

815. (*Deleted by Act XV.2012.24*).

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§ III. OF THE RIGHTS OF THE GOVERNMENT

Rights of succession competent to the Government of Malta. *Substituted by: XVIII.2004.86.*

816. Where the deceased is not survived by any of the persons entitled to succeed under the rules laid down in the foregoing articles, the inheritance shall devolve upon the Government of Malta.

Right of succession of illegitimate child, legitimated by decree of court, etc.,

817. *Repealed by*: *XVIII.2004.86.*

if not legitimated by decree of court, etc. *Amended by: L.N. 148 of 1975.*

818. *Repealed by*: *XVIII.2004.86.*

Rule as to right of succession of illegitimate children, legitimated or acknowledged. *Amended by: XLVI.1973.59.*

819. *Repealed by*: *XVIII.2004.86.*

Collation by illegitimate children.

820. *Repealed by*: *XVIII.2004.86.*

Legitimate children of predeceased illegitimate child.

821. *Repealed by*: *XVIII.2004.86.*

Illegitimate children have no right over property of relations of their parents.

822. *Repealed by*: *XVIII.2004.86.*

823. *Repealed by*: XVIII.2004.86.

Succession to property of illegitimate child dying without issue or spouse.

824. *Repealed by*: XVIII.2004.86.

Succession to property of illegitimate child dying without issue, but survived by spouse.

825. *Repealed by*: XVIII.2004.86.

Rights competent to surviving spouse by person leaving children.
Substituted by: XXI.1993.73.

826. *Repealed by*: XVIII.2004.86.

Rights competent to surviving spouse of person dying without issue but survived by ascendants or illegitimate children, etc.
Substituted by: XLVI.1973.60.
Amended by: XXI.1993.74.

827. *Repealed by*: XVIII.2004.86.

Rights competent to surviving spouse of person dying without issue, and not survived by ascendants, or illegitimate children, etc.
Substituted by: XLVI.1973.61.

828. *Repealed by*: XVIII.2004.86.

Surviving spouse to bring into account property received from deceased.

829. *Repealed by*: XVIII.2004.86.

Where spouses are separated.
Amended by: XXI.1993.75.

830. *Repealed by*: XVIII.2004.86.

Rights of succession competent to Government of Malta.
Amended by: L.N. 148 of 1975.

Sub-title III

PROVISIONS COMMON TO TESTATE SUCCESSIONS AND TO INTESTATE SUCCESSIONS

§ I.OF THE OPENING OF SUCCESSIONS, OF CONTINUANCE OF POSSESSION IN THE PERSON OF THE HEIR, AND OF PRESCRIPTION OF CERTAIN ACTIONS

Succession opens at death.

831. A succession opens at the time of death, or on the day on which the judgment declaring that the person whose succession is concerned is, by reason of his long absence, to be presumed to have died has become *res judicata*.

Where people die in a common calamity. *Substituted by: XVIII.2004.87.*

832. Where several persons die in a common calamity and it is impossible to determine who survived the other, they shall, where any one of them is called to the succession of the other, be presumed to have died at the same time.

Rule as to presumption of survivorship as regards person of same sex,

833. *Repealed by*: *XVIII.2004.87.*

as regards persons of different sex.

834. *Repealed by*: *XVIII.2004.87.*

Succession also opens on taking of religious vows.

835. *Repealed by*: *XVIII.2004.87.*

Seisin of heirs.

836. The possession of the property of the deceased is, by operation of law, transferred, by way of continuation, to the heir, whether testamentary or an heir-at-law, subject to his obligation of discharging all the liabilities of the inheritance.

Where a part only of the inheritance is disposed of.

837. Where the deceased disposes of a portion only of the inheritance, and the remaining portion devolves upon the heirs-at law, possession vests, by operation of law, in the testamentary heir and in the heir-at-law, in proportion to their respective shares.

Where person claiming rights over property of inheritance, has taken possession thereof.

838. Where any person claiming rights over the property of the inheritance has taken possession thereof, the heirs in whom possession vests by law shall be deemed to have been dispossessed *de facto,* and may exercise all the actions competent to a legitimate possessor.

Share due to person conceived and born out of wedlock may be paid in kind. *Substituted by: XVIII.2004.88.*

839. Where under testate or intestate succession a person conceived and born out of wedlock succeeds with adoptive children of the deceased or other children of the deceased who are not so conceived and born or descendants of such children, or with the surviving wife of the deceased, the other heirs of the deceased shall be entitled to pay the share due to the person conceived and born out of wedlock, either in cash or in movable or immovable property of the estate, if latter does not object; and in case of opposition by the latter, the Civil Court – Voluntary Jurisdiction shall, following an application to that effect by any of the other heirs of the

deceased, decide whether to allow such payment or assignment, after taking into account personal considerations and those relating to property.

840. *Repealed by*: *XVIII.2004.88.*

When demand for delivery of possession is to be made to the court. *Amended by: L.N. 148 of 1975.*

841. *Repealed by*: *XVIII.2004.88.*

Security to be given by illegitimate child or by spouse before declaration of delivery of possession.

842. *Repealed by*: *XVIII.2004.88.*

When surety may be dispensed with.

843. *Repealed by*: *XVIII.2004.88.*

No surety required where value of inheritance does not exceed fifty liri. *Amended by: XI.1977.2; XIII.1983.5.*

844. *Repealed by*: *XVIII.2004.88.*

Issue of banns.

845. (1) The action for demanding an inheritance, or a legacy, or the reserved portion, whether in testate or in intestate successions, shall lapse on the expiration of ten years from the day of the opening of the succession.

Limitation of action for demanding inheritance, etc. *Amended by: XVIII.2004.89.*

(2) Nevertheless, with regard to minors, or persons interdicted, the said action shall not lapse except on the expiration of one year from the day on which they shall have attained majority, or the interdiction shall have ceased, as the case may be.

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§ II. OF THE ACCEPTANCE AND RENUNCIATION OF AN INHERITANCE

OF THE ACCEPTANCE OF AN INHERITANCE

846. No person is bound to accept an inheritance devolved upon him.

No person bound to accept inheritance.

847. An inheritance may be accepted unconditionally, or under benefit of inventory.

Inheritance may be accepted unconditionally or under benefit of inventory.

848. Where an inheritance devolves upon a person subject to tutorship or curatorship, or upon a minor, it cannot be accepted by the tutor or curator, or by the parent exercising parental authority except under benefit of inventory.

Persons subject to tutorship, etc. *Amended by: XLVI.1973.63; XXI.1993.2.*

Retrospective effect of acceptance of inheritance.

849. The acceptance of an inheritance shall retroact as from the day of the opening of the succession, saving any right which may have been acquired by third parties in virtue of agreements made in good faith with the apparent heir.

Acceptance may be express or implied.

850. (1) Acceptance may be either express or implied.

(2) It is express, if the status of heir is assumed either in a public deed or in a private writing.

(3) It is implied, if the heir performs any act which necessarily implies his intention to accept the inheritance, and which he would not be entitled to perform except in his capacity as heir.

Effects of judicial declaration as to status of heir.

851. A person who, by a judgment of the competent court, has been declared to be the heir, or has been condemned expressly in such capacity, shall be deemed to be the heir with regard to all the legatees and creditors of the inheritance.

Acts not implying acceptance.
Amended by: XVIII.2004.90.

852. (1) Arrangements made for the funeral, acts of mere preservation, or of provisional administration, shall not, unless the status of heir has also been assumed, imply acceptance of the inheritance.

(2) The provisions of sub-article (1) shall also apply in the case of judicial proceedings in respect of possessory actions, in which case the person entitled to succeed shall be considered as *de jure* curator of the inheritance in terms of article 886(2).

(3) Sub-article (2) shall only apply if the person entitled to succeed states in the action that he is acting in his capacity of *de jure* curator.

Acts implying acceptance.

853. (1) Any donation, sale, or assignment of his rights of succession by one of the co-heirs, whether in favour of a stranger or of all or any of his co-heirs, shall imply his acceptance of the inheritance.

(2) The same applies -

(*a*) with regard to a renunciation made, even if gratuitously, by one of the heirs in favour of one or more of his co-heirs;

(*b*) with regard to a renunciation made, even in favour of all his co-heirs indiscriminately, when such renunciation is made under an onerous title.

When renunciation of one co-heir in favour of other co-heirs does not imply acceptance of inheritance.

854. Where the renunciation is made gratuitously by one of the co-heirs in favour of all those co-heirs, whether testamentary or heirs-at-law, upon whom, on failure of the party renouncing, his portion of the inheritance would have devolved, it shall not imply acceptance of the inheritance.

Where heirs do not agree as to accepting or renouncing an inheritance.

855. If the heirs do not agree as to accepting or renouncing the inheritance, the party accepting shall alone acquire all the rights, and become subject to all the liabilities of the inheritance.

856. Where a person to whom a succession has opened dies without having renounced or accepted it, the right to accept such succession shall vest in his heirs; and in such case the provisions of the last preceding article shall also apply to such heirs.

Right of acceptance transmissible to heirs.

857. The heirs who have accepted the inheritance of the person from whom the right referred to in the last preceding article is derived, may nevertheless renounce the inheritance devolved upon, but not yet accepted by such person:

Rights of such heirs.

Provided that the renunciation of the inheritance of the said person shall also operate as a renunciation of the inheritance devolved upon him.

858. (1) A person who has accepted an inheritance cannot impeach the acceptance, unless such acceptance was the result of violence, or of fraud practised upon him.

When acceptance may be impeached. *Amended by: XVIII.2004.91.*

(2) Nevertheless, if a will is discovered which, at the time of acceptance, was unknown to the person accepting, such person shall not be bound to discharge the legacies bequeathed in such will beyond the value of the inheritance, saving the reserved portion to which such person may be entitled.

859. The right of accepting a vacant inheritance is prescribed by the lapse of thirty years.

Period of limitation as to right of accepting vacant inheritance.

OF THE RENUNCIATION OF AN INHERITANCE

860. (1) Renunciation of an inheritance cannot be presumed.

Renunciation is not presumed. *Amended by: XV.2012.25.*

(2) It may only be made by a declaration filed in the registry of the court of voluntary jurisdiction of the island in which the deceased resided at the time of his death or by a declaration made by an act of notary public.

(3) The declaration of renunciation referred to in this article shall not be operative with regard to third parties except from the time when it is registered in the Public Registry according to the provisions of article 330(2).

861. The heir who renounces a testate succession forfeits all rights to the intestate succession:

Heir renouncing testate succession forfeits right to intestate succession. *Amended by: XVIII.2004.92.*

Provided that it shall be lawful for such heir to make, in the act of renunciation, a reservation in respect of the reserved portion of the property to which he may be entitled under any of the provisions of articles 614 to 653.

862. (1) The heir who renounces is considered as if he had never been an heir.

Heir renouncing inheritance may claim legacy.

(2) Nevertheless, his renunciation shall not operate so as to deprive him of the right to demand any legacy bequeathed to him.

Devolution of share of person renouncing, in intestate succession.

863. (1) In intestate successions, the share of the person renouncing accrues to his co-heirs.

(2) If the person renouncing is the sole heir, the succession devolves upon the person next in degree.

No person may take as representative of person renouncing.

864. (1) No person may take as the representative of an heir who has renounced.

(2) If the person renouncing is the sole heir in his degree, or if all the co-heirs renounce, the children shall take in their own right and shall succeed *per capita.*

Devolution of share of person renouncing, in testate succession.

865. In testate successions, the share of the person renouncing shall devolve upon the co-heirs or the heirs-at-law as provided in articles 737 and 741.

Creditors of renouncing heir may accept in his stead.
Amended by: XLVI.1973.64.

866. (1) The creditors of a person who renounces an inheritance to the prejudice of their rights, may apply to the court for authorization to accept such inheritance in the place of their debtor.

(2) In the case referred to in sub-article (1) of this article the renunciation is annulled not in favour of the renouncing heir, but in favour of the creditors, and only to the extent of the rights of such creditors.

(3) It shall be lawful for any of the co-heirs of the person renouncing to oppose the action of the creditors by paying the sums due to them, and the co-heir effecting payment shall *ipso jure* be subrogated to the rights of the creditors whose claims he has satisfied.

Renouncing heir may still accept vacant inheritance.

867. (1) An heir who has renounced an inheritance may yet accept such inheritance provided -

(*a*) the right of acceptance shall not, in his regard, have lapsed by prescription; and

(*b*) the inheritance shall not have been already accepted by other heirs.

(2) Nevertheless, such acceptance shall not operate so as to prejudice any right which may have been acquired by third parties over the property of the inheritance either by prescription, or by virtue of acts validly made with the curator of the vacant inheritance.

Heir may be compelled to declare whether he accepts or refuses.

868. The court shall, on the demand of any person interested, fix the time of one month, which may, on good grounds, be extended to another month, within which the heir whether testamentary or heir-at-law shall be bound to declare whether he accepts or renounces the inheritance; and in default of such declaration within the said time, original or enlarged, the inheritance shall be deemed to have been renounced.

Heir having actual possession cannot renounce inheritance after lapse of three months.

869. Notwithstanding the provisions of the foregoing articles, the persons entitled to succeed, having the actual possession of the property of the inheritance, shall, on the lapse of three months from the opening of the succession, or from the day on which they had knowledge of the devolution thereof, forfeit the right to renounce such inheritance, unless they have complied with the provisions relating to the benefit of inventory; and, they shall be deemed to be pure and unconditional heirs, even though they claim to be seized of such property under a different title.

Heir misappropriating property of inheritance forfeits rights of renouncing inheritance.

870. Any heir who misappropriates or conceals any property belonging to the inheritance, shall forfeit the right to renounce such inheritance, and shall, notwithstanding any renunciation remain pure and unconditional heir.

Renunciation of inheritance of a person living, is null.

871. Saving other provisions of this Code with regard to renunciations in contemplation of marriage, it shall not be lawful to renounce the inheritance of a living person, or to alienate any eventual rights thereto, except on taking the vows in a monastic order or a religious corporation of regulars.

Renunciation of inheritance by person entering into a monastic order, to be absolute,

872. A renunciation made on taking the vows in a monastic order or a religious corporation of regulars must be made in a manner that the person renouncing and the order or corporation, may in no case succeed to the property so renounced.

except with regard to the power of reserving a life annuity.

873. It shall, nevertheless, be lawful for the person renouncing as aforesaid to reserve a life annuity on the property so renounced, and, in any such case, the order or corporation may, upon the death of the person renouncing, demand the payment of any amount of the annuity which shall not have been paid to him provided he shall have expressly declared the default of payment and the debt is not barred by prescription.

Renunciation by minor on entering into a religious order.

874. The renunciation mentioned in article 872 may be made even by a minor, provided he has the age required by law for taking religious vows.

Effect of renunciation.

875. The renunciation mentioned in article 872 shall be operative in regard to the persons in whose favour it has been made even though such persons shall not have been present, and shall not, up to the time of the opening of the succession to the property renounced, have accepted such renunciation.

Annulment of vows brings about the annulment of the renunciation.

876. (1) The annulment of the religious vows shall also bring about the annulment of the renunciation.

(2) Nevertheless, any alienation of the property renounced which may have been made before the annulment of the vows, shall remain effectual, saving the right of the person renouncing to claim an indemnity from such other persons as may be liable, according to law.

OF THE BENEFIT OF INVENTORY

Nullity of testamentary disposition restraining heir from entering upon inventory.

877. It shall be lawful for the heir, notwithstanding any prohibition of the testator, to avail himself of the benefit of inventory.

Declaration of intention to assume status of heir under benefit of inventory.

878. (1) The declaration of an heir that he does not intend to assume the status of heir except under the benefit of inventory shall be made in the registry of the court of voluntary jurisdiction of the island in which the deceased resided at the time of his death, or in which the person whose succession is concerned has taken the vows in a monastic order or religious corporation of regulars.

(2) Where the opening of the succession has taken place in virtue of a judgment declaring that, on account of a long period of absence, the person whose succession is concerned is to be presumed to have died, the said declaration shall be made by the heir in the registry of the court of the island in which such judgment shall have been given.

Declaration to be preceded or followed by inventory. Cap. 12.

879. The declaration aforesaid shall be ineffectual if it is not preceded or followed by an inventory of the property of the inheritance in accordance with the provisions contained in the Code of Organization and Civil Procedure.

Disagreement among heirs as to entering upon inventory.

880. (1) If among several heirs one is willing to accept the inheritance under the benefit of inventory, and one or more without such benefit, the inventory must be made.

(2) In any such case, it shall be sufficient that the declaration referred to in article 878 be made by one only.

(3) The benefit is only competent to the heir making the declaration.

Heir having actual possession of property of inheritance to make up inventory within three months.

881. The heir having the actual possession of the property of the inheritance, is bound to make up the inventory within three months from the day of the opening of the succession, or from the day on which he knew that the inheritance devolved upon him.

Heir failing to commence or complete inventory within prescribed time to be deemed to have accepted inheritance without benefit of inventory.

882. Where the heir has not, within the first three months, commenced the inventory or has not completed it within the said time, or within such further time as may have been allowed to him, he shall be deemed to have accepted the inheritance without the benefit of inventory.

Time for deliberating after inventory is completed.

883. When the inventory is completed, the heir who has not yet made the declaration of accepting the inheritance, shall be allowed the time of forty days, to be reckoned from the day of the completion of the inventory, to deliberate whether he would accept or renounce the inheritance; and if, within the said time, the heir has not made in the registry of the said court a declaration renouncing the inheritance, or accepting it under the benefit of

inventory, he shall be deemed to have accepted it under the benefit of inventory.

Running of time with regard to heir not having actual possession of property of inheritance.

884. (1) Where any claim is brought against an heir who has not the actual possession of the property of the inheritance and has not intermeddled with it, the times fixed in articles 881, 882 and 883 for making up the inventory and for deliberating shall only commence to run from a day to be fixed by the court.

(2) Where no claims are brought against such heir, he shall continue to have the right to make up the inventory until such time as the right of accepting the inheritance shall not have lapsed by prescription.

Minors and persons interdicted.

885. Minors and persons interdicted shall not be deemed to have forfeited the benefit of inventory except on the expiration of one year from the day on which they shall have attained majority, or the interdiction shall have ceased, as the case may be, unless, within such time, they shall have complied with the provisions of the foregoing articles.

Pending inventory, heir is considered as curator of inheritance.

886. (1) During the continuance of the time allowed for making up the inventory and for deliberating, the person entitled to succeed is not bound to assume the status of heir.

(2) Nevertheless, such person shall be considered as curator *de jure* of the inheritance, and, as such, he may be sued as representing the inheritance to answer claims brought against it.

(3) If such person fails to appear, the court shall appoint a curator to represent the inheritance in the proceedings.

Heir may obtain leave to sell hereditary property which cannot be preserved.

887. Where in the estate there are things which cannot be preserved, or the preservation of which entails a considerable expense, the heir may, during the continuance of the said times, obtain from the court of voluntary jurisdiction, or, in case of opposition, from the competent court, leave for such things to be sold in such manner as the court shall deem expedient:

Provided that the heir shall not by reason of any such procedure be deemed to have accepted the inheritance.

Expenses incurred before renunciation.

888. Where the heir renounces the inheritance before the expiration of the times, original or enlarged, referred to in the foregoing articles, any lawful expense incurred by him up to the time of the renunciation, shall be at the charge of the inheritance.

Fraudulent omission of property in inventory.

889. An heir guilty of having fraudulently omitted to include in the inventory property belonging to the inheritance, shall forfeit the benefit of inventory.

Effect of inventory.

890. The effect of the inventory is -

(*a*) that the heir shall not be liable for the debts of the inheritance beyond the value of the property to which he succeeds;

(*b*) that he may free himself from the payment of the debts by giving up all the property of the inheritance to the creditors, the legatees, and even to the co-heir who

does not similarly elect to give up the property;

(*c*) that his own property is not intermixed with the property of the inheritance, and that he shall retain his right to enforce the payment of his own claims against the inheritance.

Duties of heir who enters upon inventory.

891. (1) The heir who enters upon inventory shall be bound to administer the property of the inheritance, and to render an account of his administration to the creditors and the legatees.

(2) He cannot be compelled to satisfy claims out of his own property, except when he has been put in default to produce his account, and has not yet fulfilled this obligation.

(3) After the liquidation of the account, he cannot be compelled to pay out of his own property except to the extent of the balance which results to be due by him.

Extent of liability of heir who enters upon inventory.

892. The heir who enters upon inventory shall not in his administration, be answerable except for gross negligence.

Time within which to render account.

893. The creditors and the legatees may demand that a time be assigned to the heir for rendering his account.

When heir entitled to reserved portion neglects to make up inventory.
Amended by: XVIII.2004.93; XIII.2007.3.

894. Where the heir to whom the reserved portion would be due, neglects to make up the inventory, he shall forfeit the right to cause the donations or legacies made in favour of any person, other than a co-heir, to be reduced.

Security to be given by heir who enters upon inventory.

895. (1) The heir who enters upon inventory, shall, upon the demand of any creditor or other person interested give sufficient security for the value of the movable property included in the inventory, for the fruits of the immovable property, and for any balance of the proceeds of the sale of the immovable property which may remain after satisfying the claims of the creditors of the inheritance.

(2) Where the heir fails to give such security, the court shall give such directions as it may deem proper in order to safeguard the rights of the interested parties.

Payment to certain creditors before legatees.

896. It shall not be lawful for the heir who enters upon inventory to pay out any legacy before satisfying the creditors who, prior to the publication of the inventory, shall have, by a judicial letter or other act, given him due notice of their claims, and those whose claims are registered in the Public Registry.

Payment to other creditors and legatees.

897. (1) When the creditors mentioned in the last preceding article have been satisfied, the heir who enters upon inventory shall pay such other creditors as may appear, and the legatees, in the order of their application for payment.

(2) Nevertheless, even in such case, the said heir cannot pay a legacy if, before effecting payment thereof, notice of a debt due by the estate is given to him.

Payment of registered debts to be made in order of priority.

898. The heir who enters upon inventory shall, in paying the debts registered in the Public Registry, and those of which he had received notice at the time of payment, and in retaining any amount in respect of any debt due to himself by the estate, observe the order of the privileges or hypothecs securing such debts.

Remedy available to creditor prejudiced by payment made by heir.

899. Any creditor to whose prejudice the heir shall have paid other creditors or legatees can exercise his remedy both against the heir as well as against the creditors or legatees who have been paid.

Right of creditors appearing after the whole of the estate has been paid out.

900. (1) Any creditor appearing after the whole of the estate has been paid out in the discharge of other debts, or of legacies, may only exercise his remedy against the legatees.

(2) Such action is prescribed by the lapse of three years to be reckoned from the date of the last payment.

Exercise of hypothecary action.

901. The provisions of the last preceding article shall not operate so as to bar the exercise by any unpaid creditor of any action competent to him against the possessor of any immovable property hypothecated in security of the debt due to such creditor.

Expenses of inventory and accounts.

902. The expenses of the inventory and of the account shall be at the charge of the inheritance.

OF VACANT INHERITANCE

When inheritance is deemed to be vacant.

Cap. 12.

903. An inheritance, until it is accepted, shall be deemed to be vacant: and, on the demand of any person interested, the court shall, saving the provisions of article 886, appoint a curator, as provided in the Code of Organization and Civil Procedure.

Duties of curator.

904. (1) The curator of a vacant inheritance shall, first of all, make up an inventory thereof.

(2) The curator shall exercise and prosecute all actions pertaining to the inheritance: he shall answer all claims brought against it, and shall administer the property thereof, subject to the obligation of depositing any money which may be found in the inheritance, or the proceeds of the sale of any movable or immovable property, and of rendering an account to the person entitled to demand it.

Provisions of s.904 not to apply to curators on the *rota*.
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905. The provisions of the last preceding article shall not apply to any curator appointed solely for the purposes of article 929 of the Code of Organization and Civil Procedure.

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§ III. OF PARTITION

Partition of inheritance may be demanded at any time.

906. (1) It shall at all times be lawful to demand the partition of an inheritance, notwithstanding any prohibition of the testator.

Cases in which it may be restrained or suspended.

(2) Nevertheless, where all the heirs-institute are minors, or where any one of such heirs is a minor, it shall be competent to the testator to restrain the partition of the inheritance amongst the heirs until the expiration of one year from the day on which the youngest of them shall have attained his majority.

(3) It shall also be lawful, by a will, to suspend the partition for a time not exceeding five years, even though no one of the heirs is a minor. Any disposition suspending the partition for a longer time, shall not be operative in regard to the time exceeding five years.

Rules governing partition.

907. The provisions contained in Sub-titles II and III of Title V of Part 1 of Book Second of this Code and in articles 908 to 912 shall be observed in the partition of an inheritance.

Appointment of person to make up shares, etc.

908. When the parties do not agree upon the choice, the court shall appoint a person to draw up a general statement of the property, to make up the respective shares of the inheritance, and to fix what each co-partitioner is to receive.

Presumption of the pre-existence of property in case of a second or subsequent marriage.

909. Any property which, at the time of the opening of the succession of a person leaving children or other descendants from two or more marriages, is found in the estate of such person, shall be presumed, in the interest of the children or descendants of the previous marriage, to have existed therein before the celebration of the subsequent marriage, unless the contrary is made to appear either by means of an inventory made prior to such subsequent marriage in the manner laid down by the Code of Organization and Civil Procedure, or by any other means.

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Collation due by co-heirs.
Amended by: XVIII.2004.94.

910. Each of the co-heirs shall, according to the provisions of articles 913 to 938 collate any donation which may have been made to him, and any sum which may be due by him.

Formation of equal shares.

911. After such collation or withdrawals are effected, the estate shall be divided into as many equal shares as there are heirs or stocks taking part in the partition.

Assignee of portion of inheritance may be excluded from partition by co-heirs.

912. (1) Where any of the co-heirs has, under an onerous title, assigned his rights over the inheritance to any person, not being a co-heir, the other co-heirs or any of them may, even if the assignee is a relation of the deceased, exclude him from the partition by reimbursing to him the price of the assignment, the expenses incurred on the occasion of such assignment, and the interest on the price as from the day on which such price shall have been paid to the assignor.

(2) The right competent to the co-heirs as aforesaid shall lapse at the expiration of one month from the day on which notice of the assignment shall have been given to the co-heirs, unless within that time they shall have declared their intention to exercise such right.

(3) Where any of the co-heirs shall have exercised such right, the other co-heirs may avail themselves thereof, provided they shall declare their intention to do so within fifteen days from the notice

given to them.

(4) Any such notice or declaration shall be given or made by means of a judicial act.

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§ IV.OF COLLATION

Children or descendants are bound to collate in favour of other children or descendants. *Amended by: XVIII.2004.95.*

913. (1) Children and descendants only, on succeeding to the inheritance of an ascendant, whether under a will or *ab intestato,* shall impute, in the interests only of the other children or descendants, being co-heirs, the value of everything they may have received from the deceased by donation, directly or indirectly, unless the donor shall have otherwise directed.

(2) The provisions of this article shall apply even though the children or descendants enter upon inventory.

Exemption from collation.

914. Exemption from collation may be granted either by the same deed containing the donation, or by a subsequent deed having the formalities requisite for the validity of donations or wills.

Where donation exceeds disposable portion, the excess is subject to collation.

915. It shall not be lawful for the child or descendant, notwithstanding an express exemption from the obligation of collation, to retain the donation except to the extent of the disposable portion, and any excess shall be subject to collation.

Heir renouncing succession may retain donation. *Amended by: XVIII.2004.96.*

916. An heir who renounces a succession, may, nevertheless, retain the donation, or claim the legacy bequeathed to him, to the extent of the disposable portion, saving, where such heir demands the reserved portion due to him by law, the provisions of article 620(4).

Where donee is not the heir presumptive at the time of the donation. *Amended by: XVIII.2004.97.*

917. A donee who was not the heir presumptive at the time of the donation, but who, at the time of the opening of the succession, is entitled to succeed, shall be bound to collate the value of the things given to him, unless the donor shall have exempted him from such obligation.

Donations to descendant of heir are exempt from collation.

918. (1) Any donations made to the descendant of a person entitled to succeed at the time of the opening of the succession shall in all cases be deemed to be made without the obligation of collation.

(2) The ascendant, on succeeding to the donor, shall not be bound to collate such donations.

Descendant succeeding in his own right not bound to collate donations made to ascendant. *Amended by: XVIII.2004.97.*

919. (1) The descendant succeeding in his own right to the donor, shall not be bound to collate the value of the things given to his ascendant, even though he may have accepted the inheritance of such ascendant.

(2) Where, however, the descendant succeeds by right of representation, he shall be bound to collate the value of the things given to his ascendant, even though he may have renounced the inheritance of such ascendant.

Donations made to spouse of heir.

920. (1) Any donation made to the spouse of a person entitled to succeed shall be deemed to be made with exemption from collation.

(2) Where the donation is made conjointly to both spouses, and only one of them is entitled to succeed, the latter shall collate his portion of the donation.

Collation due to inheritance of donor.

921. Collation is only due to the inheritance of the donor.

What is subject to collation. *Amended by: XIII.2007.6.*

922. Collation is due for what has been disbursed by the deceased for providing a dowry to any of his female descendants, or for making any donation on the occasion of marriage, or for providing any descendant with a sacred patrimony, or for procuring for him an ecclesiastical benefice, or for setting him up in any employment or business, or for paying his debts or a benefit under a foundation or a trust.

Things left by will not subject to collation.

923. All that which is left by will shall not, in the absence of a disposition to the contrary, be subject to collation, saving the provisions of article 938.

Maintenance expenses, etc., not subject to collation.

924. The expenses of maintenance, education, and instruction, the ordinary expenses on the occasion of weddings, and customary presents, are not subject to collation.

Profits derived from agreements with deceased.

925. Any profits which may have been derived from agreements entered into with the deceased shall likewise not be subject to collation, provided such agreements did not, at the time they were entered into, confer any indirect advantage.

Special partnerships entered into between deceased and heir.

926. Nor shall any collation be due in respect of any special partnership entered into, without any fraud, between the deceased and one of his heirs.

Immovable property which perishes accidentally not liable to collation.

927. *Repealed by*: *XVIII.2004.98.*

Fruits, etc., of things liable to collation.

928. The fruits of, and the interest on things subject to collation, shall only be due from the day of the opening of the succession.

Pensions or annuities paid or due, not subject to collation.

929. Any pension or annuity which the donor shall have bound himself to pay to the donee during the lifetime of the donor himself whether such pension or annuity has already been paid or is still due, and any grant of any annuity, or of interest on any capital, or of the fruits of any other thing to be received by the donee during the lifetime of the donor, shall not be subject to collation.

Legatees or creditors cannot demand collation.

930. (1) Collation is only due by a descendant, being a co-heir, to his co-heir as provided in article 913.

(2) Saving the provision of article 938, collation is not due to any legatee or creditor of the estate, unless the donor shall have otherwise directed.

How collation is made. *Substituted by: XVIII.2004.99.*

931. (1) Subject to the provisions of the following sub-articles collation is made by imputing to the share of the donee the value of the thing at the time of the opening of succession.

(2) Where the donated thing consists of movables consumable by use or articles of clothing or articles intended for the domestic use of the donee, no collation shall be due.

(3) Where the thing has been alienated by onerous title by the donee, the value to be collated shall be the consideration received by the donee for the thing alienated or the value of the thing at the time of alienation whichever value is higher.

(4) Where the thing has perished by a fortuitous event, without any fault of the donee and without the donee obtaining any compensation for the loss of the thing, no collation shall be made.

Cost of improvements.

932. (1) In all cases the donee shall be allowed the expenses with which he has improved the immovable, to the extent of the increase in value produced thereby, regard being had to the time of the collation.

(2) He shall also be allowed the necessary expenses incurred by him for the preservation of the immovable, even though such immovable may not have been improved thereby.

(3) The donee shall, on the other hand, be bound to account for any deterioration caused through his fault, which may have diminished the value of the property.

Where donee alienates immovable property.

933. *Repealed by*: *XVIII.2004.100.*

Where donation exceeds disposable portion.

934. If the donor has exempted the donee from the obligation of collation, and the donation exceeds the disposable portion, the collation of the overplus shall be made in accordance with the rules laid down in article 653.

Right of retention.

935. *Repealed by*: *XVIII.2004.100.*

Collation of movables.

936. *Repealed by*: *XVIII.2004.100.*

Collation of money.

937. *Repealed by*: *XVIII.2004.100.*

Where heir, etc., entitled to reserved portion demands abatement of gifts made to others. *Amended by: XVIII.2004.101.*

938. (1) Notwithstanding the provisions of articles 923 and 930, where the donee or legatee entitled to the reserved portion, sues for the abatement of any disposition made in favour of a donee, a co-heir, or a legatee even if a stranger, on the ground that such disposition exceeds the disposable portion, he shall impute to the reserved portion any donation or legacy made to him, unless he shall have been expressly exempted therefrom.

(2) Any such exemption shall not operate to the prejudice of a prior donee.

(3) Any other thing which, according to the rules laid down in the foregoing articles, is not subject to collation, shall likewise be exempted from being brought into account.

§ V.OF THE PAYMENT OF DEBTS

How co-heirs contribute to payment of debts.

939. (1) The co-heirs shall contribute among themselves to the payment of the debts of the inheritance in such proportion and manner as shall have been established by the testator.

(2) Where the deceased has not made a will or has not given any directions as to the apportionment of the debts, the co-heirs shall contribute to the payment of such debts in proportion to their respective share in the inheritance.

Each heir is bound ratably with respect to creditors.

940. (1) In all cases, with respect to the creditors, each of the heirs shall be personally liable for the debts of the inheritance, in proportion to his share.

(2) Nevertheless, where any one of the co-heirs possesses property charged with a hypothec in security of the debt, he shall, with regard to such property, be liable *ex hypotheca* for the whole, saving his right of relief against the other co-heirs.

Extent of right of relief exercisable against co-heirs by heir who pays the whole debt.

941. (1) A co-heir who, owing to a hypothec, has paid more than his share of a common debt, cannot seek relief against the other co-heirs beyond the share due personally by each of them, even though in paying the debt he shall have caused himself to be subrogated to the rights of the creditor.

(2) A co-heir, however, who, by entering upon inventory, has retained the right of demanding the payment of a debt due to him personally, may, like any other creditor, demand the payment of such debt, deducting therefrom the share payable by him as co-heir.

Insolvency of co-heir.

942. Where any of the co-heirs is insolvent, his share of the hypothecary debt shall be apportioned *pro rata* among all the other co-heirs.

Separation of estates.

943. The creditors of the inheritance, and the legatees may demand the separation of the estate of the deceased from that of the heir as provided in articles 2096 to 2106.

Legatee not liable for hereditary debts.

944. The legatee is not bound to pay the debts of the inheritance; saving in favour of the creditors the hypothecary action on the property bequeathed, where competent, and saving also the exercise of the said benefit of the separation of estates.

Legatee discharging debt is subrogated to the rights of creditor.

945. The legatee who has paid a debt for which the immovable bequeathed to him was hypothecated, shall be subrogated to the rights of the creditor against the heirs.

§ VI. OF THE EFFECTS OF PARTITION AND OF WARRANTY OF SHARES

After partition, co-heir is deemed to be sole and direct successor to property comprised in his share.

946. Each co-heir is deemed to have succeeded alone and directly to all the property comprised in his share, or come to him by licitation, and never to have had the ownership of the other hereditary property.

Co-heirs are mutually warrantors in respect of molestations and evictions.

947. (1) The co-heirs are respectively warrantors towards each other against molestations and evictions but only if such molestations and evictions result from a cause existing previously to the partition.

(2) Such warranty ceases, if the co-heir suffers eviction through his own fault.

Warranty may be excluded.

948. The co-partitioners may stipulate that they shall not be liable to any warranty; and in such case the provisions of articles 1411 and 1412 shall apply.

Effects of warranty.

949. (1) Each of the co-heirs is personally bound, in proportion to his share of the inheritance, to indemnify his co-heir for the loss caused by the eviction.

(2) Where any of the co-heirs is insolvent, the portion for which he is liable shall be apportioned in the proportion stated in sub-article (1) of this article, between the warrantee and all the solvent co-heirs.

Warranty in regard to debts.

950. (1) The heirs are respectively warrantors towards each other in regard to the solvency of the debtors of the inheritance.

(2) Such warranty shall only be operative during the time required for the necessary proceedings for the recovery of the debt.

Warranty in regard to solvency of debtor of annuity limited to five years.

951. The warranty in regard to the solvency of the debtor of an annuity shall not last beyond the five years following the partition.

No warranty against insolvency which occurs after partition.

952. There shall be no warranty against the insolvency of the debtor where such insolvency has occurred after the partition.

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§ VII. OF PARTITIONS MADE BY THE FATHER, THE MOTHER, OR OTHER ASCENDANTS AMONG THEIR DESCENDANTS.

Parents may divide their property among their children.
Amended by: XXIII.2017.73.

953. It shall be lawful for the any one of the parents or any other ascendant to divide and distribute his or her property among his or her children and descendants, including in such partition even the non-disposable portion.

Partition may be made by will or by an instrument *inter vivos*.

954. (1) Any such partition may be made by an instrument *inter vivos* or by a will, with the formalities, and under the conditions and rules prescribed for donations and wills.

(2) Where such partition is made by an instrument *inter vivos*, it may only include present property.

Property not included in partition to be divided according to law.

955. Where the partition shall not have included all the property left by the ascendant at the time of his death, such property as was not included shall be divided according to law.

Partition is null if not made among all the children.

956. (1) Any partition which is not made among all the children existing at the time of the opening of the succession and the descendants of predeceased children entitled to succeed shall be null *in toto*.

(2) In any such case, both the children or descendants who were not comprised in the partition, as well as those among whom such partition was made, may demand a fresh partition.

When partition may be impeached. *Amended by: LVIII.1975.5; XVIII.2004.102.*

957. A partition made by an ascendant may be impeached if it is made to appear from such partition or from any other dispositions made by the ascendant that the reserved portion of any one of the persons among whom the partition of the property was made has been prejudiced.

Nullity of partition does not invalidate dispositions.

958. The nullity of the partition shall not operate so as to invalidate the dispositions in execution of which the partition has been made, even though a stranger may have benefited by the act of partition.

Added by: *XVI.2015.6.*

§ VIII. OF CROSS-BORDER SUCCESSIONS

Interpretation. *Added by: XVI.2015.6.*

958A. For the purposes of this Sub-title:

"cross-border succession" includes a succession wherein one or more of the following may occur:

(*a*) the deceased held property or assets in more than one country; or

(*b*) the deceased was at the time of his death habitually resident in a country other than the country of which he was a national; or

(*c*) the deceased made a disposition of property upon death in a country other than the country of which he was a national; or

(d) the beneficiaries of the succession are habitually resident or are nationals in more than one country;

"European Certificate of Succession" means the certificate referred to in Chapter VI of the Succession Regulation;

"Succession Regulation" means Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments

in matters of succession and on the creation of a European Certificate of Succession, including any future amendment to the said Regulation.

Applicability. *Added by: XVI.2015.6.*

958B. The provisions of the Succession Regulation shall apply to cross-border successions from 17 August 2015 onwards.

Competent court. *Added by: XVI.2015.6.*

958C. (1) The Civil Court (First Hall) shall be the competent court to deal with applications for a declaration of enforceability pursuant to Articles 45, 60 and 61 of the Succession Regulation.

(2) In its decision on an application for a declaration of enforceability, the court shall order the Registrar of Courts to cause a copy of its decision to be served on the applicant pursuant to Article 49(1) of the Succession Regulation. The court shall indicate the manner in which such service is to take place.

(3) The applicant shall serve the decision on an application for a declaration of enforceability on the party or parties against whom enforcement is sought pursuant to Article 49(2) of the Succession Regulation.

(4) The competent court in Malta to deal with appeals against decisions on such applications in accordance with Article 50 of the Succession Regulation shall be the Court of Appeal as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure. Cap. 12.

(5) An appeal against a decision of the Civil Court (First Hall) on an application for a declaration of enforceability in accordance with Article 50 of the Succession Regulation shall be made by means of an application and shall be lodged within twenty days which shall commence to run as follows:

(*a*) in the case of an appeal by the applicant, from the date when the decision is brought to his notice in accordance with sub-article (2); and

(*b*) in the case of an appeal by the other party, from the date when the decision is served upon such party in accordance with sub-article (3).

(6) The provisions of Title IV of Book Third of the Code of Organization and Civil Procedure shall apply to decisions given by the Court of Appeal on an appeal from a decision on a declaration for enforceability. Cap. 12.

Competent authorities for the issue of a European Certificate of Succession. *Added by: XVI.2015.6.* Cap. 55.

958D. Without prejudice to the provisions of article 958E(3) and (4), the competent authorities in Malta to issue a European Certificate of Succession pursuant to Article 64 of the Succession Regulation shall be the Civil Court (Voluntary Jurisdiction Section) and notaries having a warrant to exercise their profession in accordance with the Notarial Profession and Notarial Archives Act.

Competence. *Added by: XVI.2015.6.*

958E. (1) The Civil Court (Voluntary Jurisdiction Section) shall be competent to issue a European Certificate of Succession in all cases.

(2) A notary may only issue a European Certificate of Succession where all the beneficiaries of the succession are in

agreement on the contents of the certificate and have expressed their consent in writing to the notary to proceed with the issue of the certificate.

(3) A notary shall not issue a European Certificate of Succession:

(*a*) where an application for the issue of such a certificate concerning the succession of the same person has been made to the Civil Court (Voluntary Jurisdiction Section) prior to the issue of a certificate;

(*b*) where the agreement of all the beneficiaries of the succession in accordance with sub-article (2) has not been attained; or

(*c*) where the notary is aware that there is a dispute concerning the inheritance or estate or parts of the estate of the deceased.

(4) In the cases referred to in sub-article (3), the notary or an advocate may, on the request of any person referred to in Article 63(1) of the Succession Regulation, make an application to the Civil Court (Voluntary Jurisdiction Section) on behalf of such person for the issue of a European Certificate of Succession.

(5) For the purposes of this article, "beneficiaries of the succession" means the known heirs and legatees of the succession, and if any, the testamentary executors.

Registration of application. *Added by: XVI.2015.6.*

958F. Upon receipt of an application for a European Certificate of Succession in the form prescribed in Article 65 of the Succession Regulation, the issuing authority shall register the application with the Director of the Public Registry by means of a note of enrolment within seven days from date of receipt of the application.

Interested parties. *Added by: XVI.2015.6.*

958G. If it shall appear from the contents of the application, or from the examination, or from the information obtained, that any third party is interested in the matter, the issuing authority shall order the application to be served on such interested party.

Examination of application. *Added by: XVI.2015.6.* Cap. 12.

958H. (1) In examining the application, the Civil Court (Voluntary Jurisdiction Section) shall have all the powers mentioned in Part II of Book Second of the Code of Organization and Civil Procedure.

(2) If the application involves a foreign law, it shall be lawful for the court to appoint one or more persons who is suitably qualified on account of his knowledge or experience to produce a reasoned opinion in writing, to give expert evidence as to the law of any other foreign state.

Preservation and registration of application and Certificate. *Added by: XVI.2015.6.*

958I. (1) Every application for a European Certificate of Succession and every European Certificate of Succession issued shall be preserved and registered by the issuing authority. The notary shall also be bound to preserve with the Certificate the consent in writing mentioned in article 958E(2).

(2) If the application has been filed before the Civil Court (Voluntary Jurisdiction Section), the application and the certificate

shall be kept at the Registry of the Court.

(3) The registration shall be made in the name of the deceased person whose succession is being determined by means of the European Certificate of Succession.

(4) Regular indexes shall also be kept for all applications and issued certificates.

Certified copies of the European Certificate of Succession. *Added by: XVI.2015.6.*

958J. (1) The issuing authority shall issue one or more certified copies of the European Certificate of Succession to the applicant and to any person showing a legitimate interest in the succession of the deceased. In all cases, the issuing authority shall keep a list of the persons to whom the certified copies have been issued. Such list shall be made accessible to any person showing a legitimate interest.

(2) The issuing authority shall, within fifteen days from date of issue of the Certificate, file a note of enrolment with the Director of the Public Registry who shall register the European Certificate of Succession accordingly.

(3) The note of enrolment shall only contain the date and nature of the act, the name of the deceased, the designation of the issuing authority and the date of issue of the Certificate.

(4) Any rectification, modification or withdrawal of the Certificate carried out by the issuing authority shall also be registered with the Director of the Public Registry by means of note of enrolment within fifteen days from the date of rectification, modification or withdrawal of the Certificate.

Challenging of decision of issuing authority. *Added by: XVI.2015.6.*

Cap. 12.

958K. (1) For the purposes of Article 72 of the Succession Regulation, decisions of the issuing authority pursuant to Article 67, Article 71 and point (a) of Article 73(1) of the Succession Regulation may be challenged by means of a sworn application in the manner contemplated in the Code of Organization and Civil Procedure. The sworn application must be brought before the Civil Court (First Hall) which shall be the competent judicial authority for this purpose.

(2) The applicant shall cause a copy of the sworn application to be served on any person having an interest therein, who shall have twenty days within which to file a reply.

(3) An appeal against a judgment of Civil Court (First Hall) pursuant to sub-article (1) shall be made by means of an application to the Court of Appeal and shall be lodged within twenty days from the date of judgment.

(4) The mode of procedure for appeal as contemplated in the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply.

Cap. 12.

Title IIIA

OF TRUSTS AND THEIR EFFECTS

Trusts and applicable rules. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958L. (1) Property under trusts shall be regulated by the special law on trusts and to the extent applicable, the rules of this Code relating to trusts.

Transactions relating to property in trusts.

(2) (*a*) Transactions relating to property including -

(i) the settlement of property under trusts, even when effected by unilateral declaration or resulting from a judgement or order of a court;

(ii) the distribution, application, or advancement of property by a trustee to a beneficiary;

(iii) the reversion of property to a settlor or his estate when a trust fails or is terminated;

(iv) the assignment, vesting or transfer of property under trusts from a trustee to another trustee under the same trusts,

shall be subject to the special laws relating to trusts and their effects when such transactions arise by operation of law or are carried out in the form and manner required by applicable law.

(*b*) When such transactions are intended to transfer the ownership or other rights to or in property from one person to another, such transactions shall comply with all applicable requirements for the transfer of ownership of such property, including the provisions of article 996 when applicable, and when so carried out shall -

(i) be effective modes of transfer of ownership or other rights to or in such property;

(ii) result in the creation or termination of legally enforceable interests in or to such property in favour of such persons as provided by the special laws relating to trusts; and

(iii) be operative against third parties.

(*c*) The sole consideration for the validity of such transactions may be the imposition or assumption, the performance, or the termination, as the case may be, of legally enforceable obligations on or by a trustee in relation to such property.

Disposition by trustees of property. *Amended by: XIII.2007.3.*

(3) A trustee may validly dispose of and transfer trust property to third parties notwithstanding any right of reserved portion arising out of the application of articles 615 to 653 and the other provisions of this Code relating to reduction of trust property.

(4) In any case where, after the death of the settlor, the trustee is formally notified of a claim for the reserved portion in circumstances where trust property is to be sold, the trustee shall hold on trust for the benefit of any claimant of such right a sum in money based on the net transfer value of the property at the time of transfer until the claim for the reserved portion is determined or otherwise lapses.

Statutory trust in favour of the person entitled to the reserved portion making claim.
Amended by: *XIII.2007.3.*

(5) If trust property subject to a claim for the reserved portion or, where it has been sold, the proceeds thereof, have already been distributed to any beneficiary, the person entitled to the reserved portion claim may be made against such beneficiary as though he were an heir, legatee or donee as the case may be, and if there remains any property under such trusts, proportionately between the trust property and the beneficiary.

(6) The trustee's obligation to retain the value as stated in sub-article (4) shall operate for a peremptory period of five years from the date of death of the *decujus*. This shall not prejudice the right of any claimant with respect to other property forming part of the inheritance but not settled in trust.

Trustee to hold for the person entitled to the reserved portion for five years.
Amended by: *XIII.2007.3.*

958M. (1) Trusts for the benefit of a person who is not capable of receiving property, whether by testamentary disposition or donation, under the provisions of this Code, absolutely or more than as permitted by this Code, are subject to reduction in full or for the excess in accordance with this article:

Limitation on rights of enjoyment of benefit.
Added by: *XIII.2004.39.*
Amended by: *XIII.2007.7.*
Re-numbered by: *XVI.2015.5.*

Provided that in case of members of monastic orders or religious corporations of regulars the provisions of article 611 shall apply to trusts in favour of such persons *mutatis mutandis*.

(2) Subject to the provisions of article 6B of the Trusts and Trustees Act, except in cases where the trustee exercises a power of variation or otherwise acts so as to be in conformity with the provisions of this Code, trust settlements shall be reduced to the portion permitted by law if at the time of the opening of succession of the settlor they are found to exceed the disposable portion of his estate:

Reduction of settlements.
Cap. 331.

Provided that when trust property is reduced, the excess property shall be held by the trustee absolutely for the heirs of the settlor or for the benefit of the person entitled thereto as the case may be.

(3) When the beneficiary entitled to property which is in excess of what is permissible at law is a spouse of the settlor, such excess property shall be held under separate trust for use and enjoyment of fruits for the lifetime of such spouse and subject to the terms of the trust, thereafter for the heirs of the settlor absolutely.

(4) The rules laid down in article 621 and in articles 647 to 653, relating to the reduction of testamentary dispositions, shall be observed with regard to the reduction of trust settlements, subject to the provisions of this Title.

(5) The reduction of a settlement can only be demanded by those for whose benefit the law has reserved a portion of the

property of the deceased, and by their heirs or other persons claiming under them and -

(*a*) saving article 1240, such persons cannot waive such right during the lifetime of the settlor, whether by an express declaration or by consenting to such settlements;

(*b*) donees, legatees or creditors of the deceased cannot demand the reduction of settlements or benefit by it;

(*c*) trusts forming part of a commercial transaction cannot be reduced in any manner until the completion of the commercial transaction, after which the residual property shall be subject to the rules stated in this article.

Benefit of discussion of other property.

(6) No reduction of settlements can take place until the value of all the property disposed of under any will has been exhausted and when such reduction takes place, it shall be made commencing with the last settlement and so on successively, from the last to the previous settlements.

(7) The right arising upon a reduction of trust property is to receive value and there shall be no right to restitution of property in kind.

(8) To the extent not already distributed prior to notice of a claim, the trustee shall restore the fruits of such part of the settlement which exceeds the disposable portion from the day of the opening of succession of the settlor if the action for reduction has been brought within the year, otherwise from the day of the demand. In the case referred to in article 958A(4), the claimant shall be entitled to interest on the value retained for his benefit at the rate paid by banks on savings accounts from the date of the notification of his claim on the trustee or from the date of receipt of proceeds by the trustee whichever is the later.

Effects of claim for the reserved portion.
Amended by: XIII.2007.3, 7.
Cap. 331.

(9) Saving the provisions of the Trusts and Trustees Act, unless the terms of the trust expressly exclude such effects:

(*a*) a person claiming the reserved portion from a trustee, the heirs or any other person, in relation to property settled in trust, shall lose any benefit under the trust; and

(*b*) the provisions of article 620(4) shall apply in relation to any gains received under the terms of the trust.

(10) Where the benefit to the beneficiary consists in the use and enjoyment of property and the enjoyment of fruits therefrom or a life annuity and it appears that the value of the trust fund exceeds the disposable portion of the estate of the settlor, the persons entitled to the reserved portion may claim either -

(*a*) the reserved portion and lose all benefits under the trust and any will, if any; or

(*b*) receive from the trustee after the death of the said beneficiary and notwithstanding any terms of the trust, an amount equal to the said reserved portion and

interest at 5% per annum, without compounding, up to the value of the trust property remaining on such event and in such case shall not be entitled to any benefits under the will or the trust. Any further remainder of trust property shall thereafter be applied according to the terms of the trust; or

(*c*) opt not to claim and enjoy all benefits under any trust and any will.

(11) When, in the case contemplated in the preceding sub-article, the beneficiary is subject to a mental or physical disability which renders him incapable of sustaining himself, if it appears to the trustee that the trust property is not susceptible of division, sale or reduction to fulfil the claims of a person entitled to the reserved portion in terms of sub-article (10)(*a*) without materially prejudicing the interests of the said beneficiary, the trustee may apply to the Court and the Court may order that the property not be sold, divided or reduced until the death of the said beneficiary. Furthermore, and in such case -

(*a*) the beneficiary shall not be entitled to demand the reduction of the trust settled in his favour and claim the reserved portion from the trustee or from the heirs or any other person except that if the property settled in trust is not equal to or more than the reserved portion, such person may request against any person other than the trustee that the sum due to him by way of reserved portion be placed under the trust settled in his favour; and

(*b*) any other person entitled to the reserved portion shall be entitled to apply sub-article (10)(*b*) at the time of death of the beneficiary unless he had opted as stated in sub-article (10)(*c*) within five years of the death of the settlor; and

(*c*) the trustee shall be deemed to have the power and legal interest to pursue any claim for the reserved portion due to the beneficiary against any other person and to receive any sum due into the trust established for the purposes of this sub-article.

(12) The persons entitled to the reserved portion may choose any of the above options by notice in writing to the trustee and to the other heirs or executors of the estate.

Prescription.

(13) The action for reduction, whether against trustees or against third parties, shall be barred by the prescription on the lapse of five years to be reckoned from the day of the opening of the succession. The aforesaid time shall also run against minors and persons interdicted and shall not be capable of suspension or interruption by judicial act or otherwise.

(14) The settlement and holding of property under trusts shall not be considered to be in breach of the mandatory provisions of law relating to the reserved portion of any person if the trust is to hold property:

(*a*) temporarily and unconditionally for a person entitled thereto under fixed trusts; or

(*b*) until a calculation is made to establish the reserved portion and thereafter to hold the same under fixed trust for or to distribute the said reserved portion to the person entitled thereto; or

(*c*) for a person who suffers from a mental or physical disability in terms of sub-article (11).

Persons unworthy of receiving under trusts. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958N. (1) The provisions of article 605 shall apply to trusts in the same manner as it applies to wills, and on the events contemplated therein, trusts in favour of such a person shall be subject to termination on the demand of the trustee or any interested person.

(2) Notwithstanding that a trust may have been settled without the reservation of the right of revocation or variation, a settlor may demand the variation of the terms of trust on the grounds specified in article 1787 and the provisions of articles 1788 and 1790 of this Code and those of article 15 of the Trusts and Trustees Act shall apply.

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Application of rules to donations and settlements. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958O. When there exist both donations and settlements, for purposes of determining the order of transactions and other matters for the purpose of reduction of -

(*a*) donations in terms of Sub-title VI of Title XIV of Part II of Book Second, and

(*b*) of settlements in terms of this Title,

donations and settlements shall be treated as forming part of the same type of transactions and they shall be subject to reduction commencing with the latest in date unless the settlor/donor has expressly stated an order he wishes to be applied for such purpose.

Trust property subject to collation. *Added by: XIII.2004.39. Amended by: XIII.2007.3. Re-numbered by: XVI.2015.5.*

958P. For the purposes of the calculation of the value of an estate for any purposes of this Code, including for the benefit of a claimant of a reserved portion and of an heir for the purposes of collation amongst co-heirs, any settlement of property under trust shall also be included in the estate:

Provided that the settlor of property in trust may exempt such settlement from collation in terms of article 914:

Provided further that if the property settled in trust for the benefit of an heir is collated in the interest of the other co-heirs, such property as has been collated shall thereafter be held by the trustee under separate trust absolutely for the benefit of such heir.

Trustees and testamentary executors. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958Q. (1) A trustee appointed in terms of a testamentary trust shall not be considered to be a testamentary executor and the provisions of articles 762 to 778 shall not apply to testamentary trustees.

(2) When a person is appointed as trustee and also as an executor, such executorship shall be regulated in terms of this Code until such time as the executorship is fulfilled upon the delivery or

registration of any relevant assets to or in the name of the trustee.

Property in Malta, Maltese or foreign trust, foreign domiciliary. *Added by: XIII.2004.39. Amended by: XIII.2007.3. Re-numbered by: XVI.2015.5.*

958R. (1) Where movable or immovable property situated in Malta has been settled in trust, under the laws of Malta or otherwise, by a person who is not domiciled in Malta at the time of settlement -

(*a*) such person shall be deemed to have had capacity to do so if at the time of such transfer or disposition he was of full age and sound mind under the law of his domicile and the law of Malta; and

(*b*) no provision in this Code relating to inheritance or succession to such property including, but without prejudice to the generality of the foregoing, rights to a reserved portion or similar rights applicable under this Code shall apply to such trust property, at such time or subsequently; and

(*c*) the beneficiaries shall be deemed to have capacity to benefit.

(2) Once property has been settled in trust it shall not be affected by a change of domicile of the settlor, even if the settlor subsequently becomes domiciled in Malta.

(3) For the purposes of this article "reserved portion" means the legal rule restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or having similar effect.

Non-applicability of right of redemption. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958S. The right of redemption as provided for in article 912 shall not apply when the transfer of the undivided share of an inheritance shall consist of a settlement of such right under trusts, the beneficiaries of which are the settlor himself, his heirs or the other heirs of the estate or a distribution or reversion thereof to such persons.

Limitation of applicability of articles 1000 and 1001. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958T. The provisions of articles 1000 and 1001 shall not be interpreted as creating any limitation on the power of any person to settle a trust or a person to accept to act as trustee under a trust for the benefit of a beneficiary, on the binding nature and effect of any trust or on the enforceablility of such rights as arise under a trust by a beneficiary.

Non-applicability of article 1483. *Added by: XIII.2004.39. Re-numbered by: XVI.2015.5.*

958U. The right of a debtor of a litigious right in terms of article 1483 shall not arise when the settlement involves the assignment of a litigious right under trusts for the benefit of the creditor or creditors who have assigned the debt.

Title IV

OF OBLIGATIONS IN GENERAL

Sources of obligations.

959. Obligations which are not created by the mere operation of law, arise from contracts, quasi-contracts, torts, or quasi-torts.

Sub-title I

OF CONTRACTS

Definition of contract.

960. A contract is an agreement or an accord between two or more persons by which an obligation is created, regulated, or dissolved.

Contract may be bilateral or unilateral,

961. (1) A contract is synallagmatic or bilateral when the contracting parties bind themselves mutually the one towards the other.

(2) It is unilateral when one or more persons bind themselves towards one or more other persons without there being any obligation on the part of the latter.

onerous or gratuitous,

962. (1) When each of the parties undertakes an obligation, the contract is termed onerous.

(2) When one of the parties gratuitously procures an advantage to the other, the contract is termed gratuitous.

commutative,

963. A contract is commutative, when each party binds himself to give or to do a thing which is considered as the equivalent of that which is given to or done for him.

aleatory.

964. When the advantage or loss, whether to both parties or one of them, depends on an uncertain event, the contract is aleatory.

Rules governing contracts.

965. Contracts, whether they have a special denomination or not, shall be governed by the general rules contained in this Title saving such special rules as apply to certain contracts.

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§ I. OF THE CONDITIONS ESSENTIAL TO THE VALIDITY OF CONTRACTS

Requisites of contracts.

966. The following are the conditions essential to the validity of a contract:

(*a*) capacity of the parties to contract;

(*b*) the consent of the party who binds himself;

(*c*) a certain thing which constitutes the subject-matter of the contract;

(*d*) a lawful consideration.

OF THE CAPACITY OF CONTRACTING PARTIES

Capacity of parties. *Amended by: XLVI.1973.65.*

967. (1) All persons not being under a legal disability are capable of contracting.

(2) The disability of persons sentenced to any punishment

whatsoever is abolished.

(3) The following persons are incapable of contracting, in the cases specified by law:

(*a*) minors;

(*b*) persons interdicted or incapacitated; and

(*c*) generally, all those to whom the law forbids certain contracts.

Persons not having the use of reason.

968. Any contract entered into by a person who has not the use of reason, or is under the age of seven years is null.

Persons who have not attained the age of fourteen years. *Amended by: XXXVII.1975.23.*

969. (1) Any obligation entered into by a child under the age of fourteen years is also null.

(2) Nevertheless, where the child has attained the age of nine years, the agreement shall be valid in so far as it relates to the obligations entered into by any other person in his favour.

Persons who have attained the age of fourteen years but have not attained the age of eighteen years, if subject to parental authority, etc., *Amended by: XXI.1993.2.*

970. The provisions of the last preceding article shall also apply with regard to any person who has attained the age of fourteen years, but has not attained the age of eighteen years, if such person is subject to parental authority, or is provided with a curator, saving always any other provision of law relating to marriage.

if not subject to parental authority. *Amended by: XXI.1993.2.* Cap. 13.

971. (1) Subject to any other provision contained in the Commercial Code, any minor who has attained the age of fourteen years, and is not subject to parental authority, nor provided with a curator, may not alienate or hypothecate his immovable property without the authority of the competent court.

(2) Such minor may, however, enter into other obligations, saving, in regard to such obligations, any rescissory action which, on the ground of lesion, may be competent to him under the provisions of articles 1214 to 1219.

Minor over sixteen (16) years may open and operate an account with a credit institution or a financial institution. *Added by: XXI.1993.76. Substituted by: XXX.2024.2.*

971A. (1) Notwithstanding any provision of this Code, a minor who has attained the age of sixteen (16) years may deposit money in an account opened by the said minor in his own name with any credit institution or place funds in an account opened by the minor in his own name with any financial institution, and any money and, or funds so deposited or placed in any such accounts may only be withdrawn by the said minor notwithstanding that such money and, or funds may be subject to the administration, usufruct or authority of any other person. For all purposes of law, the said minor shall, with regard to the opening and operation of any such accounts, be considered a major:

Provided that any such funds placed in an account opened by the minor in his own name with any financial institution shall be safeguarded by the financial institution in accordance with article 10B of the Financial Institutions Act and the provisions of the Financial Institutions Act (Safeguarding of Funds) Regulations.

Cap. 376. S.L. 376.04.

(2) For the purposes of this article:

Cap. 371.

"credit institution" shall have the same meaning as assigned to it in article 2(1) of the Banking Act;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"Electronic Money Directive" means Directive 2009/11/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as amended from time to time;

S.L. 376.04.

Cap. 376.

"financial institution" means a payment institution as defined in regulation 2(2) of the Financial Institutions Act (Safeguarding of Funds) Regulations or an electronic money institution as defined in the said regulations, which is licensed in accordance with the Financial Institutions Act, or which otherwise holds an equivalent authorisation in another Member State of the European Union or EEA State in accordance with the Payment Services Directive or the Electronic Money Directive, as the case may be;

Cap. 376.

"funds" shall have the same meaning as that assigned to it in article 2(1) of the Financial Institutions Act;

"Payment Services Directive" means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC, as amended from time to time.

Persons interdicted.

Cap. 12.

972. The disability of persons interdicted is either general in regard to all agreements, or special in regard to certain agreements only, as provided in Title IV of Part II of Book Second of the Code of Organization and Civil Procedure.

Nullity may not be set up by person capable of contracting.

973. Persons capable of contracting may not set up the nullity of the contract on the ground of the disability of those with whom they have contracted.

OF CONSENT

Consent.

974. Where consent has been given by error, or extorted by violence or procured by fraud, it shall not be valid.

Error of law.

975. An error of law shall not void the contract unless it was the sole or principal inducement thereof.

Error of fact.

976. (1) An error of fact shall not void the contract unless it affects the substance itself of the thing which is the subject-matter of the agreement.

(2) The agreement shall not be void if the error relates solely to the person with whom the agreement has been made, unless the consideration of the person has been the principal inducement thereof.

Violence.

977. (1) The use of violence against the obligor is a cause of nullity, even if such violence is practised by a person other than the obligee.

(2) Nevertheless, an obligation entered into in favour of a person not being an accessory to the use of violence, in consideration of services rendered for freeing the obligor from violence practised by a third party, may not be avoided on the ground of such violence; saving the reduction of the sum or thing promised, where such sum or thing is excessive.

When consent is considered extorted by violence.

978. (1) Consent shall be deemed to be extorted by violence when the violence is such as to produce an impression on a reasonable person and to create in such person the fear of having his person or property unjustly exposed to serious injury.

(2) In such cases, the age, the sex and the condition of the person shall be taken into account.

Where violence is practised on spouse, etc., of contracting party.

979. (1) Violence is a ground of nullity of a contract even where the threat is directed against the person or the property of the spouse, or of a descendant or an ascendant of the contracting party.

(2) Where the threat is directed against the person or property of other persons, it shall be in the discretion of the court, according to the circumstances of the case, to void the contract or to affirm its validity.

Reverential fear.
Amended by: XXIII.2017.74.

980. Mere reverential fear towards any one of the parents or other ascendants or towards one's spouse, shall not be sufficient to invalidate a contract, if no violence has been used.

Fraud.

981. (1) Fraud shall be a cause of nullity of the agreement when the artifices practised by one of the parties were such that without them the other party would not have contracted.

(2) Fraud is not presumed but must be proved.

OF THE SUBJECT-MATTER OF CONTRACTS

Subject-matter of contracts.

982. (1) Every contract has for its subject-matter a thing which one of the contracting parties binds himself to give, or to do, or not to do.

(2) Only the things that are not *extra commercium* can be the subject of an agreement.

(3) The mere use or the mere possession of a thing can like the thing itself, be the subject of a contract.

Subject of obligation must be a determinate thing.

983. (1) The subject of an obligation must be a thing determinate, at least as to its species.

(2) The portion or quantity of the thing may be uncertain, provided it is capable of being ascertained.

Future things may be the subject of contracts.

984. (1) Future things can form the subject of a contract.

(2) Nevertheless, it shall not be lawful to renounce a succession not yet devolved, or to make any stipulation with regard to any such succession, whether with the person whose succession is concerned, or with any other person, even though with the consent of the former; saving any other provision of the law in regard to any renunciation or stipulation made in contemplation of marriage, or upon the taking of religious vows.

Impossible or illegal things.

985. Things which are impossible, or prohibited by law, or contrary to morality, or to public policy, may not be the subject-matter of a contract.

Champerty.
Amended by: XXXIX.1961.2; VI.1983.2.

986. (1) Stipulations *quotae litis* are void.

Excess of rate of interest.

(2) Saving the provisions of article 1852 and of any other provision of this Code or of any other law, any obligation to pay a rate of interest exceeding eight per cent *per annum* is also void in regard to the excess.

OF THE CONSIDERATION OF CONTRACTS

Want or illegality of consideration.

987. An obligation without a consideration, or founded on a false or an unlawful consideration, shall have no effect.

Consideration may be proved although it is not stated.

988. The agreement shall, nevertheless, be valid, if it is made to appear that such agreement was founded on a sufficient consideration, even though such consideration was not stated.

Where stated consideration is false.

989. Where the consideration stated is false, the agreement may, nevertheless, be upheld, if another consideration is proved.

Unlawful consideration.

990. The consideration is unlawful if it is prohibited by law or contrary to morality or to public policy.

991. (1) Where the consideration for which a thing has been promised is unlawful only in regard to the obligee, any thing which may have been given for the performance of the contract, may be recovered. Where consideration is unlawful in regard to obligee or to both the obligor and the obligee.

(2) If the consideration is unlawful in regard to both contracting parties neither of them, unless he is a minor, may recover the thing which he may have given to the other party, saving the provision of article 1716.

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§ II. OF THE EFFECTS OF CONTRACTS

992. (1) Contracts legally entered into shall have the force of law for the contracting parties. Effects of contracts.

(2) They may only be revoked by mutual consent of the parties, or on grounds allowed by law.

993. Contracts must be carried out in good faith, and shall be binding not only in regard to the matter therein expressed, but also in regard to any consequence which, by equity, custom, or law, is incidental to the obligation, according to its nature. Contracts to be carried out in good faith.

994. Where the subject-matter of a contract is the alienation of the ownership, or of any other right over a certain and determinate thing, such ownership or other right is transferred and acquired in virtue of the consent of the parties, and the thing remains at the risk of the alienee, even though the delivery thereof has not taken place. Effects of contract where thing alienated is certain and determinate.

995. (1) Where the subject-matter of the contract is an uncertain or indeterminate thing, the creditor does not become the owner of such thing until it has become certain, or the debtor has specified it, and has given notice to the creditor that he has specified it. Where thing alienated is uncertain or indeterminate.

(2) Until the thing has become certain or has been specified, it remains at the risk of the debtor.

996. (1) Nevertheless, with regard to third parties any contract conveying the ownership of immovable property, or any right over such property, shall, in no case, commence to be operative until it has been registered in the Office of the Public Registry, as provided in article 330. Effects of contracts in regard to third parties.

(2) Where the alienation is made by judicial auction the note for the registration shall be signed by the registrar of the court under the authority of which the adjudication of the thing shall have taken place.

997. Where the thing which a person has by successive agreements undertaken to give or deliver to two or more persons is movable by nature, or a document of title payable to bearer, the person to whom the thing is delivered, and who obtains it in good faith, shall have a prior right over the other or others and shall be entitled to retain it, even though his title is subsequent in date. Where a movable thing is promised, by successive agreements, to two or more persons.

Contracting party is presumed to stipulate for himself, his heirs, etc.

998. Every person shall be deemed to have promised or stipulated for himself, for his heirs and for the persons claiming through or under him, unless the contrary is expressly established by law, or agreed upon between the parties, or appears from the nature of the agreement.

Person contracting in his own name cannot bind any one but himself,

999. (1) A person cannot by a contract entered into in his own name bind or stipulate for any one but himself.

but can bind himself to performance by third party.

(2) Nevertheless, a person can bind himself in favour of another person, to the performance of an obligation by a third party; but in any such case if the third party refuses to perform the obligation, the person who bound himself or promised the ratification shall only be liable to the payment of an indemnity.

When person may stipulate for the benefit of a third party.

1000. It shall also be lawful for a person to stipulate for the benefit of a third party, when such stipulation constitutes the mode or condition of a stipulation made by him for his own benefit, or of a donation or grant made by him to others; and the person who has made any such stipulation may not revoke it, if the third party has signified his intention to avail himself thereof.

Contracts to be operative only as between contracting parties.

1001. Contracts shall only be operative as between the contracting parties, and shall not be of prejudice or advantage to third parties except in the cases established by law.

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§ III. OF THE INTERPRETATION OF CONTRACTS

No interpretation where meaning of words is clear.

1002. Where, by giving to the words of an agreement the meaning attached to them by usage at the time of the agreement, the terms of such agreement are clear, there shall be no room for interpretation.

Where literal meaning differs from intention of parties.

1003. Where the literal meaning differs from the common intention of the parties as clearly evidenced by the whole of the agreement, preference shall be given to the intention of the parties.

When clause is susceptible of two meanings.

1004. When a clause is susceptible of two meanings, it must be construed in the meaning in which it can have some effect rather than in that in which it can produce none.

Words susceptible of two meanings.

1005. Words susceptible of two meanings shall be taken in the meaning which is more consistent with the subject-matter of the contract.

Ambiguity.

1006. Whatever is ambiguous shall be interpreted according to the usage of the place where the contract is made.

Customary clauses.

1007. Customary clauses shall be deemed to be included in a contract, even though they are not expressed.

Clauses to be interpreted with reference to one another.

1008. All the clauses of a contract shall be interpreted with reference to one another, giving to each clause the meaning resulting from the whole instrument.

Doubtful cases.

1009. In case of doubt, the agreement shall be interpreted against

the obligee and in favour of the obligor.

General terms.

1010. However general may be the terms in which a contract is worded, it shall only extend to the things which the parties appear to have intended to deal with.

When a case is specified for the purpose of explaining an agreement.

1011. Where in a contract a case has been specified for the purpose of explaining an agreement, it shall not be presumed that the parties, by so doing, intended to exclude other cases not specified, if such other cases may reasonably be construed as being within the scope of the agreement.

Sub-title II

OF QUASI-CONTRACTS, TORTS AND QUASI-TORTS

§ I. OF QUASI-CONTRACTS

Definition.

1012. A quasi-contract is a lawful and voluntary act which creates an obligation towards a third party, or a reciprocal obligation between the parties.

Duties of *negotiorum gestor.*

1013. Where a person, being of age and capable of contracting, voluntarily undertakes the management of the affairs of another person, he shall be bound to continue the management which he has begun and to carry it out until the person on whose behalf he has acted is in a position to take charge of such management himself, and to do everything which is incidental to or dependent upon those affairs, and he shall be liable to all the obligations which would arise from a mandate.

Death of interested party before completion of business.

1014. Where the person on whose behalf the voluntary agent has acted dies before the business is completed, such agent shall be bound to continue the management of the business until such time as the heir is in a position to provide for it himself.

Standard of diligence.

1015. The voluntary agent shall be bound to use in the management of the business all the diligence of a *bonus paterfamilias.*

Cases where higher standard of diligence is required.

1016. The provisions of the last preceding article shall be applied with greater strictness in the following cases:

(*a*) where the agent has intermeddled with the business, notwithstanding the prohibition of the party interested;

(*b*) where, by reason of his intermeddling, the business was not undertaken by a more competent person;

(*c*) where the agent himself did not possess the requisite skill.

Power of court to mitigate damages.

1017. It shall, in all cases, be lawful for the court to mitigate the damages arising from the imprudence or negligence of the agent, having regard to the circumstances which may have induced him to undertake the business.

Duties of party interested.

1018. If the business was well managed, the party interested shall, even though the management may have accidentally failed to

benefit him, be bound to perform the obligations contracted on his behalf by the agent, to indemnify the said agent in regard to any obligation he may have contracted in his own name, and to reimburse to him any necessary or useful expenses, with interest from the day on which they shall have been incurred.

Where agent believed that he was managing his own affairs.

1019. Nevertheless, where the agent was under the impression that he was managing his own affairs, he shall not be entitled to any indemnity beyond the benefit which the party interested may have actually derived.

Agent not entitled to indemnity if he acts against prohibition of interested party.

1020. Where a person has intermeddled with the affairs of another person against the express prohibition of such other person, he shall not be entitled to any indemnity.

Restoration of thing received without being due.

1021. A person who receives, whether knowingly or by mistake, a thing which is not due to him under any civil or natural obligation, shall be bound to restore it to the person from whom he has unduly received it.

Where debt is paid by mistake.

1022. (1) Where any person pays a debt under a mistaken belief that such debt is due by him, he may recover from the creditor the debt so paid.

(2) Such right of recovery, however, ceases if, in consequence of the payment, the creditor has, in good faith, deprived himself of the proof of, or the security attached to the debt, saving the right of the payer against the true debtor.

Restoration of capital and interest if payee was in bad faith.

1023. (1) Any person who has unduly received the payment of a sum of money, shall, if he was in bad faith, be bound to restore both the capital and the interest thereon as from the day of the payment.

(2) Where, however, he was in good faith, he shall only be bound to restore the capital.

Restoration of thing unduly received.

1024. Any person who has unduly received any thing, other than money, which is still in his possession, shall be bound to restore it in kind to the party from whom he received it.

Where thing unduly received is no longer in the possession of the party receiving it.

1025. (1) If the thing is not in his possession, or has deteriorated, he shall, if he received it in bad faith, be liable to the same obligations as, under articles 556 and 557 are imposed on a possessor in bad faith.

(2) If he received the thing in good faith, he shall be bound to restore the value thereof or, as the case may be, to make good the deterioration, but only up to the amount of any benefit which, as a result of the alienation or deterioration of the thing, he may have derived; and where he has not yet received the subject of the benefit derived from such alienation or deterioration, he shall only be bound to assign his right of action for the recovery thereof.

(3) He is not bound to restore the value of the thing if he has lost, given or destroyed it.

1026. (1) The provisions of articles 540 to 545 and 547 shall apply to any person who has unduly received a thing, according as to whether he has received it in good or in bad faith. Applicability of ss.540 to 545 and 547.

(2) The provisions of articles 548, 549 and 550 shall apply to any such person in all cases.

1027. The action for the recovery of that which may have been unduly given, unless prescribed under any of the provisions contained in the title relating to prescription, shall be prescribed by the lapse of two years from the day on which the person to whom the action is competent shall have discovered the mistake. Limitation of action for recovery of what has been unduly given.

1028. Any person who has given a thing by mistake cannot recover it from a third party to whom it was, under any title whatsoever, transferred by the party who had received it. Payer by mistake cannot recover from third party.

1028A. (1) Whosoever, without a just cause, enriches himself to the detriment of others shall, to the limits of such enrichment, reimburse and compensate any patrimonial loss which such other person may have suffered. Enrichment to the detriment of others. *Actio de in rem verso.* *Added by: XIII.2007.13.*

(2) If the enrichment constituted a determinate object, the recipient is bound to return the object in kind, if such object is still in existence at the time of the claim.

1028B. The *actio de in rem verso* may not be exercised where the person who suffers the loss may take another action to make up for such loss. Where the *actio de in rem verso* may not be exercised. *Added by: XIII.2007.13.*

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§ II. OF TORTS AND QUASI-TORTS

1029. Any damage which is produced by a fortuitous event, or in consequence of an irresistible force, shall, in the absence of an express provision of the law to the contrary, be borne by the party on whose person or property such damage occurs. Fortuitous damage.

1030. Any person who makes use, within the proper limits, of a right competent to him, shall not be liable for any damage which may result therefrom. Proper use of one's right.

1031. Every person, however, shall be liable for the damage which occurs through his fault. Liability for damage caused through one's fault.

1032. (1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus paterfamilias*. When a person is deemed to be in fault.

(2) No person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree.

1033. Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting Culpable negligence.

therefrom.

Exemption in the case of rescue or assistance. *Added by: XXIX.2020.5.*

1033A. Notwithstanding the provisions of articles 1031, 1032 and 1033, any person who causes damages in the performance of a rescue or in the course of assisting another person whose life or personal safety is in clear danger, shall not be liable for any damage caused in the course of the rescue or of giving assistance to the person who he rescued or assisted or tried to rescue or assist, to that person's property or to third parties or third party property:

Provided that, the person performing the rescue or granting the assistance above mentioned shall be liable for acts performed with malice or gross negligence.

Liability of person having charge of minor or person with a mental disorder or other condition, which renders him incapable of managing his own affairs. *Substituted by: II.2012.17.*

1034. Any person having the charge of a minor, or of a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, shall be liable for any damage caused by such minor or such person, if he fails to exercise the care of a *bonus paterfamilias* in order to prevent the act.

Damage caused by children under nine years, etc. *Amended by: II.2012.18.*

1035. Persons with a mental disorder or other condition, which renders them incapable of managing their own affairs, children under nine years of age, and, unless it is proved that they have acted with a mischievous discretion, children who have not attained the age of fourteen years, shall not be bound to make good the damage caused by them; saving, where competent, any action of the party injured against such persons as may be liable for such damage, under the provisions of the last preceding article.

Power of court to order damage to be made good out of property of minor, etc. *Amended by: II.2012.19.*

1036. Nevertheless, where the party injured cannot recover damages from such other persons, because they are not liable or because they have no means, and the said party has not, by his own negligence, want of attention, or imprudence, given occasion to the damage, the court may, having regard to the circumstances of the case, and particularly to the means of the party causing the damage and of the injured party, order the damage to be made good, wholly or in part, out of the property of the minor or of the person with a mental disorder or other condition referred to in the last preceding article.

Employment of incompetent person.

1037. Where a person for any work or service whatsoever employs another person who is incompetent, or whom he has not reasonable grounds to consider competent, he shall be liable for any damage which such other person may, through incompetence in the performance of such work or service, cause to others.

Persons undertaking work without necessary skill.

1038. Any person who without the necessary skill undertakes any work or service shall be liable for any damage which, through his unskilfulness, he may cause to others.

Liability of hotel-keepers. *Substituted by: II.1966.21. Amended by: XIII.1983.5; L.N. 407 of 2007.*

1039. (1) A hotel-keeper shall be liable up to an amount not exceeding one hundred and seventy-four euro and seventy cents (174.70) for any damage to or destruction or loss of property brought to the hotel by any guest.

(2) The liability of a hotel-keeper shall be unlimited -

(*a*) if the property has been deposited with him; or

(*b*) if he has refused to receive the deposit of property which he is bound under the provision of the next following sub-article to receive for safe custody; or

(*c*) in any case in which the damage to, or destruction or loss of, property has been caused, voluntarily or through negligence or lack of skill, even in a slight degree, by him or by a person in his employment or by any person for whose actions he is responsible.

(3) A hotel-keeper shall be bound to receive for safe custody securities, money and valuable articles except dangerous articles and such articles as having regard to the size or standard of the hotel are cumbersome or have an excessive value.

(4) A hotel-keeper shall have the right to require that any articles delivered to him for safe custody shall be in a fastened or sealed container.

(5) The provisions of sub-articles (1) and (2) of this article shall not apply if the guest, after discovering the damage, destruction or loss, does not inform the hotel-keeper without undue delay, or if the damage to, destruction or loss of, property is due -

(*a*) to a fortuitous event or to irresistible force; or

(*b*) to a reason inherent in the nature of the property damaged, destroyed or lost; or

(*c*) to an act or omission of the guest by whom it was brought into the hotel, or of any person, other than the hotel-keeper, to whom such guest may have entrusted the said property or of any person in the employment of such guest or accompanying him or visiting him.

(6) Any tacit or express agreement between a hotel-keeper and a guest entered into before any damage to, destruction or loss of, property has occurred and purporting to exclude, reduce or make less onerous the hotel-keeper's liability as established in this article shall be null and void:

Provided that, in the cases referred to in paragraphs (*a*) and (*c*) of sub-article (2) of this article where the damage to, or destruction or loss of, property has not been caused by a person mentioned in the said paragraph (*c*) voluntarily or through gross negligence, any agreement signed at any time by the guest whereby the hotel-keeper's liability is reduced to an amount being not less than one hundred and seventy-four euro and seventy cents (174.70) shall be valid.

(7) In this article and in article 2009 of this Code "guest" means a person who stays at the hotel and has sleeping accommodation put at his disposal therein, but is not an employee in the hotel.

(8) In this article, any reference to a "hotel-keeper", except in so far as the liabilities thereby established are imposed on the

hotel-keeper, shall be construed as including reference to the person in charge of the hotel or of the reception of guests in the hotel, and any reference to "loss" shall be deemed to include by theft.

Liability of owner of animal.

1040. The owner of an animal, or any person using an animal during such time as such person is using it, shall be liable for any damage caused by it, whether the animal was under his charge or had strayed or escaped.

Liability of owner of building.

1041. The owner of a building shall be liable for any damage which may be caused by its fall, if such fall is due to want of repairs, or to a defect in its construction, provided the owner was aware of such defect or had reasonable grounds to believe that it existed.

Rule as to liability of occupier of building in case of damage caused by the fall of a thing.

1042. Where any damage is caused to any person by the fall of a thing suspended or placed in a dangerous position, or by a thing or matter thrown or poured from any building, the occupier of such building, provided he himself has not committed the act, and has not in any way contributed thereto, shall not be liable except in so far as the provisions contained in this Title relating to the liability of a person for damage caused by another, are applicable to him.

Intoxication.

1043. An action for damages shall lie even where the party causing the damage was at the time in a state of intoxication.

Aiders or abettors.

1044. Where damage has been unjustly caused, any person who has wilfully contributed thereto with advice, threats, or commands, shall also be liable.

Measure of damages. *Amended by: III.1938.2; XXI.1962.17. XIII.2018.25; XXXII.2018.15.*

1045. (1) The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in the actual loss which the act shall have directly caused to the injured party, in the expenses which the latter may have been compelled to incur in consequence of the damage, in the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused:

Provided that in the case of damages arising from a criminal offence, other than an involuntary offence, and only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First of the Criminal Code and of wilful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First of the said Code, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, the damage to be made good shall also include any moral harm and, or psychological harm caused to the claimant.

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(2) The sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party.

Damages to heirs of deceased party. *Substituted by: III.1938.3.*

1046. Where in consequence of the act giving rise to damages death ensues, the court may, in addition to any actual loss and expenses incurred, award to the heirs of the deceased person damages, as in the case of permanent total incapacity, in accordance with the provisions of the last preceding article.

Where damage consists in depriving person of use of his own money. *Amended by: XXXXIX.1939.2; VI.1983.3.*

1047. (1) The damage which consists in depriving a person of the use of his own money, shall be made good by the payment of interest at the rate of eight per cent a year.

(2) If, however, the party causing the damage has acted maliciously, the court may, according to circumstances, grant also to the injured party compensation for any other damage sustained by him, including every loss of earnings, if it is shown that the party causing the damage, by depriving the party injured of the use of his own money, had particularly the intention of causing him such other damage, or if such damage is the immediate and direct consequence of the injured party having been so deprived of the use of his own money.

(3) The sum to be awarded in respect of such loss of earnings shall be assessed by the court having regard to the circumstances of the case.

Right of relief against party causing damage.

1048. Where a person is liable for the damage caused by another person, and discharges his liability, he may not seek relief against the party causing the damage, except where the latter is also answerable for such damage.

Joint and several liability where damage is caused maliciously.

1049. (1) Where two or more persons have maliciously caused any damage, their liability to make good the damage shall be a joint and several liability.

(2) Where some of them have acted with malice, and others without malice, the former shall be jointly and severally liable, and each of the latter shall only be liable for such part of the damage as he may have caused.

Where part of damage caused by each of several persons cannot be ascertained.

1050. (1) Where the part of the damage which each has caused cannot be ascertained, the injured party may claim that the whole damage be made good by any one of the persons concerned, even though all or some of them have acted without malice, saving the right of the defendant to seek relief from the other or the others.

(2) In such case, it shall be lawful for the defendant to demand that all the persons causing the damage be joined in the proceedings in the manner and for the purposes referred to in article 962 of the Code of Organization and Civil Procedure, and the court may apportion among them the sum fixed by way of damages, in equal or unequal shares, according to circumstances; saving always the right of the injured party to claim the whole sum from any one of the persons concerned who in regard to him shall be all condemned jointly and severally.

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Contribution to damage by party injured. *Amended by: III.1938.4; XXXIX.1939.3.*

1051. If the party injured has by his imprudence, negligence or want of attention contributed or given occasion to the damage, the court, in assessing the amount of damages payable to him, shall determine, in its discretion, the proportion in which he has so contributed or given occasion to the damage which he has suffered, and the amount of damages payable to him by such other persons as may have maliciously or involuntarily contributed to such damage, shall be reduced accordingly.

Civil remedies in cases of corruption. *Added by: XX.2002.2. Amended by: IV.2013.10.*

1051A. (1) For the purposes of this article "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, by the undue advantage or the prospect thereof.

(2) Any person who claims to have suffered damage as a result of corruption shall have a right of action to obtain compensation for the damage caused to him by the act of corruption against the persons who have committed or authorised the act of corruption or who have failed to take reasonable steps to prevent the act of corruption.

(3) The persons who have committed or authorised the act of corruption and the persons who have failed to take reasonable steps to prevent the act of corruption shall be jointly and severally liable for the damages referred to in sub-article (2).

(4) Where the act of corruption has been committed by an officer or employee of the Government or of a body corporate established by law, the Government or as the case may be the body corporate established by law shall itself be liable to make payment for the damage caused by the act of corruption where:

(*a*) the person claiming to have suffered the damage has, on becoming aware of the improper behaviour of the officer or employee, given such notice to the Government or the body corporate, as the case may be, to take such preventive measures as are reasonable in the circumstances to prevent the commission of the act of corruption;

(*b*) the person claiming to have suffered the damages has not himself in relation to the same matter induced any officer or employee to commit the act of corruption, or in any manner been party to it;

(*c*) the person suffering the damage has taken all action against the person liable for the damages in accordance with sub-article (3) to recover the damages; and

(*d*) the Government or the body corporate, as the case may be, has been made a party to the suit against the persons liable for the damages in accordance with sub-article (3) in order to defend its interests under this sub-article:

Provided that the Government or the body corporate, as the

case may be, shall only be liable for such part of the damages as are not recovered from the persons liable therefor in accordance with sub-article (3).

(5) No right for compensation for damages shall lie where the party claiming to have suffered the damages has himself wilfully been a party to the act of corruption:

Provided that nothing in this sub-article shall be construed as precluding any person from recovering any payment made or thing given, or the value thereof, where the payment has been made or the thing has been given for an unlawful consideration.

(6) An action to recover damages under this article shall be brought before the lapse of three years from the date that the person claiming damages becomes aware or should have reasonably become aware that damage has occurred or that an act of corruption has taken place and of the identity of the person responsible therefor or before the lapse of ten years from the date of the act of corruption, whichever is the earlier, and no action may be brought after the lapse of such time.

(7) Where any contract has been entered into by any person (including the Government or any body corporate established by law) and the contract or any clause thereon has been concluded by an employee, officer or agent of such person following an act of corruption in favour of such officer, employee or agent, the person bound by such contract and whose officer, employee or agent has been so corrupted, shall without prejudice to any right of action to recover damages in accordance with this article have a right to take action not later than a year after becoming aware of such corruption or from the time when he should reasonably have become aware, to annul the contract or any clause thereof which has been entered because of such corruption:

Provided that no action may be brought after the lapse of ten years from the date of the act of corruption.

(8) Prescription may not be set up against the Government or against a Local Council or against a body corporate established by law in an action to recover damages under this article based on an act of corruption committed by the defendant through abuse of his office whilst holding the office of Minister, Parliamentary Secretary, Member of the House of Representatives, Mayor or Local Councillor.

Sub-title III

OF THE VARIOUS KINDS OF OBLIGATIONS

§ I. OF CONDITIONAL OBLIGATIONS

OF CONDITIONS IN GENERAL AND OF THEIR VARIOUS KINDS

Definition of conditional obligation.

1052. An obligation is conditional when it is made to depend upon an uncertain future event, either by suspending it until the event happens, or by dissolving it if the event happens or does not happen.

Casual and potestative conditions.

1053. (1) A condition is casual when it makes the obligation depend upon a fortuitous event beyond the control of the debtor and of the creditor.

(2) A potestative condition is that which makes the obligation depend upon an event which the one or the other of the contracting parties has the power to bring about or to prevent.

(3) A mixed condition is that which makes the obligation depend upon the will of one of the contracting parties, and, at the same time, upon the will of a third party or upon a fortuitous event.

Condition contrary to morality, etc.

1054. Any condition contrary to morals, or to public policy, or prohibited by law, or which imposes the performance of an impossible thing, is void, and annuls the agreement dependent thereon.

Effect of condition to forbear to do an impossible thing, etc.

1055. (1) The condition to forbear to do an impossible thing does not void the obligation contracted on that condition.

(2) The condition, however, to forbear to do a thing contrary to morals or to public policy or prohibited by law may void the obligation.

Obligation is null if contracted under condition depending solely upon obligor.

1056. (1) Where an obligation is contracted on a condition which makes the obligation depend solely upon the will of the obligor, the obligation is null.

(2) Nevertheless, where the obligation depends upon an event the happening of which is within the power of the obligor, he is bound if the event happens.

Condition to be fulfilled according to the intention of the parties.

1057. Every condition must be fulfilled in the manner in which the parties have in all likelihood desired and intended that it should be fulfilled.

Where obligation is contracted on condition that an event shall happen within a certain time.

1058. (1) Where an obligation is contracted on condition that an event shall happen within an appointed time, such condition shall be deemed to have failed if the time expires without the event having happened.

(2) Where no time is fixed, the condition shall not be deemed to have failed until it is certain that the event will not happen:

Provided that, where the condition consists in an act which can be performed by the obligee, it shall be lawful for the court,

according to circumstances, to fix a time for the fulfilment of the condition, and if, on the expiration of such time, the condition has not been fulfilled, the obligation ceases.

Where obligation is contracted on condition that an event shall not happen within a certain time.

1059. (1) Where an obligation is contracted on condition that an event shall not happen within an appointed time, the condition shall be deemed to be fulfilled both if the time expires and the event has not happened, as well as if, before the expiration of the time, it is certain that the event will not happen.

(2) Where no time is fixed, the condition is not fulfilled until it is certain that the event will not happen:

Provided that, where the condition consists in an act within the power of the obligor, it shall be lawful for the court to fix a time, and if the time expires and the event constituting the condition does not occur, the condition shall be deemed to be fulfilled, and the obligor shall be bound to perform the obligation.

When a condition is deemed to be fulfilled.

1060. (1) The condition shall be deemed to be fulfilled if the debtor who is bound under such condition is the person who has impeded the fulfilment thereof.

(2) The provision of this article shall not apply in any case in which the impediment is due to the exercise of a lawful right not contemplated in the agreement.

Retroactive effect of condition.

1061. (1) A condition, on being fulfilled, shall have a retroactive effect.

(2) If the creditor dies before the fulfilment of the condition, his rights vest in his heirs.

Creditor may secure his rights before condition is fulfilled.

1062. The creditor may, before the fulfilment of the condition, take all the necessary steps for the preservation of his rights.

OF THE SUSPENSIVE CONDITION

Definition of suspensive condition.

1063. (1) A suspensive condition is that which makes the existence of the obligation depend upon a future and uncertain event.

(2) An obligation under a suspensive condition does not exist before the event happens.

Where thing perishes or deteriorates before fulfilment of condition.

1064. Where an obligation is contracted under a suspensive condition, and the thing forming the subject-matter of the agreement perishes or deteriorates before the condition is fulfilled, the following rules shall be observed:

(*a*) if the thing perishes entirely, without any fault of the debtor, the agreement shall be ineffectual;

(*b*) if the thing perishes entirely, through the fault of the debtor, such debtor shall be liable to the creditor for

damages;

(*c*) if the thing perishes in part only, or deteriorates, without any fault of the debtor, the loss shall be borne by the creditor, who shall be bound to receive the thing in the state in which it is without any abatement of the price thereof;

(*d*) if the thing perishes in part, or deteriorates, through the fault of the debtor, the creditor may elect either to demand the dissolution of the agreement, or to claim the thing in the state in which it is, with damages.

Where obligation is contingent on event which has already taken place.

1065. An obligation contingent on an event which has already happened, but is not yet known to the parties, shall be effectual as from the day on which it was contracted, but the debtor may not be compelled to perform it until the unknown event is ascertained.

OF THE RESOLUTIVE CONDITION

Definition of resolutive condition.

1066. (1) A resolutive condition is that which, on being accomplished, operates the dissolution of the obligation, and replaces things in the same state as though the obligation had never been contracted.

(2) Such condition does not suspend the performance of the obligation, but, if the event provided for by the condition happens, the creditor shall be bound to restore that which he may have received.

Effect of express resolutive condition.

1067. Where the resolutive condition is expressly stated in the agreement, such agreement shall, upon the accomplishment of the condition, be dissolved *ipso jure*, and it shall not be lawful for the court to grant any time to the defendant.

Resolutive condition is implied in bilateral contracts.

1068. A resolutive condition is in all cases implied in bilateral agreements in the event of one of the contracting parties failing to fulfil his engagement:

Provided that in any such case, the agreement shall not be dissolved *ipso jure*, and it shall be lawful for the court, according to circumstances, to grant a reasonable time to the defendant, saving any other provision of law relating to contracts of sale.

Rights of creditor in an undischarged obligation.

1069. (1) Where the resolutive condition, whether express or implied, relates to any case in which one of the parties fails to fulfil his engagement, the party who is the creditor in the undischarged obligation may, at his option, upon the accomplishment of the condition, either demand the dissolution of the contract, or compel the other party to perform the obligation, if this is possible.

(2) In either case the defendant may be condemned in damages.

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§ II. OF OBLIGATIONS WITH A LIMITED TIME

Time for performance of obligation.

1070. (1) Time is the period fixed for the performance of an obligation.

(2) A time may be established either by fixing a certain specified day, or by reference to an event which will certainly happen, although on an uncertain day.

Time does not suspend obligation.

1071. Time shall not suspend the obligation, but shall only delay the execution thereof.

Thing may not be claimed before expiration of time.

1072. What is only due at a certain time, cannot be claimed before the expiration of such time, but what has been paid in advance, cannot be recovered even though the debtor at the time of payment may not have been aware of the stipulation as to time.

Time to be presumed stipulated in favour of debtor.

1073. Time shall always be deemed to be stipulated in favour of the debtor, unless it appears from the stipulation or from the circumstances that it was also agreed upon in favour of the creditor.

Computation of time.

1074. In computing a time the day shall be reckoned at twenty-four hours: the month and the year according to the calendar.

Dies a quo not to be computed.

1075. The day on which an obligation with a limited time is contracted, or from which the time is to commence to run, shall not be computed in the time itself.

Public holidays. *Amended by: XXII.1976.4.*

1076. (1) Public holidays shall not suspend the running of the time:

Provided that where the last day of the time is a public holiday the time shall not be deemed to have elapsed before the next following day, not being a public holiday, shall have expired.

(2) For the purposes of this article, public holidays are those days in which no ordinary court sitting may be held as provided in article 109 of the Code of Organization and Civil Procedure.

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Where no time is fixed for performance of obligation.

1077. Where no time has been fixed for the performance of an obligation, it shall be carried into effect forthwith, unless the nature of the obligation, or the manner in which it is to be carried into effect, or the place agreed upon for its execution, implies the necessity of a time to be, if necessary, fixed by the court.

Where time for performance of obligation is left to the will of the debtor.

1078. Where the time for the performance of the obligation has been left to the will of the debtor, or where it has been agreed that the debtor shall discharge the obligation when it will be possible for him to do so, or when he will have the means for so doing, the following rules shall be observed:

(*a*) if the subject-matter of the obligation is the payment of a sum of money, such obligation shall be performed within two years, if the sum is due without interest, or, within six years if the sum is due with interest;

(*b*) if the subject-matter of the obligation is other than the payment of a sum of money, the time within which the obligation is to be performed shall be fixed by the court according to circumstances.

When debtor cannot claim benefit of time.

1079. A debtor can no longer claim the benefit of time if he has become insolvent, or if his condition has so changed as to endanger the payment of the debt, or if by his own act he has diminished the security which under the agreement he had given to the creditor, or if he has failed to give the security agreed upon.

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§ III. OF ALTERNATIVE AND POTESTATIVE OBLIGATIONS

How alternative obligation is discharged.

1080. (1) The debtor in an alternative obligation is released therefrom by the delivery of one of the two things included in the obligation.

(2) The debtor may not compel the creditor to receive a part of one thing and a part of the other.

Option granted to debtor.

1081. The option shall belong to the debtor, unless it has been expressly granted to the creditor.

Where party entitled to option fails to exercise it.

1082. (1) Where the party entitled to the option fails to exercise such option within the time expressly agreed upon for the purpose, the right of option shall vest in the other party.

(2) Where no such time has been agreed upon, it shall be competent to the court to fix a time, and if the party having the option shall fail to exercise it within such time, the right of option shall vest in the other party.

Where one of two things promised could not form the subject of an obligation,

1083. Where one of the two things promised could not form the subject-matter of the obligation, such obligation shall be deemed to be pure and simple with regard to the other thing.

or perishes.

1084. (1) An alternative obligation shall become pure and simple with regard to the thing which remains, if one of the two things promised perishes, or can no longer be delivered, even if this happens through the fault of the debtor. The value of the thing which perished cannot be offered in its stead.

(2) If both things perish and the debtor is in fault with regard to one of them, he shall be bound to pay the value of the thing which perished last.

When right of option is competent to creditor.

1085. Where, in any of the cases referred to in the last preceding article, the right of option, under the agreement, was granted to the creditor, the following rules shall be observed:

(*a*) if only one of the things perishes, but without the fault of the debtor, the creditor is bound to receive the thing which remains: if the debtor is in fault, the creditor may claim either the thing which remains or the value of the thing which perished;

(*b*) if both things perish, and the debtor is in fault with regard to both or even to one of them, the creditor may demand the value of either of such things, at his choice.

1086. Where both things perish, without the fault of the debtor, and before he is in default for delay in the delivery, the obligation is extinguished in accordance with the provisions of article 1207. Where both things perish without the fault of the debtor.

1087. The same rules shall apply where the alternative obligation includes more than two things. Where alternative obligation includes more than two things.

1088. (1) Where in an obligation having for its subject-matter a determinate thing, it is competent to the debtor to release himself by offering another thing, such obligation is said to be potestative. Definition of potestative obligation.

(2) In any such case the creditor may only demand the thing specified in the agreement.

(3) If such thing perishes, the obligation is extinguished, saving any other provision of the law in cases where the debtor is in default for delay in the delivery of the thing, or the thing perishes through his fault.

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§ IV.OF JOINT AND SEVERAL OBLIGATIONS

1089. Joint and several liability is not presumed. If not declared by law, it must be expressly stipulated. Obligation not to be presumed to be *in solidum*.

OF JOINT AND SEVERAL CREDITORS

1090. An obligation is joint and several in favour of two or more creditors when it expressly vests each of such creditors with the right of demanding the payment of the whole sum due, and the payment made to any one of them discharges the debtor, even though the benefit accruing from the obligation may be divided between the several creditors. Obligation *in solidum* in favour of several creditors.

1091. It shall be at the option of the debtor to pay any one of the joint and several creditors unless previous notice shall have been given to him by one of such creditors, by means of a judicial demand or other judicial act. Option of debtor to pay any one of the joint and several creditors.

1092. (1) Every act which interrupts prescription with regard to one of the joint and several creditors shall also benefit the other creditors. Interruption and suspension of prescription.

(2) The suspension of prescription in favour of one of the joint and several creditors shall not benefit the other creditors.

1093. If one of the joint and several creditors remits the debt, the release shall only be operative with regard to the share of such creditor. Effect of remission by one of the joint and several creditors.

OF JOINT AND SEVERAL DEBTORS

Joint and several debtors.

1094. Debtors are jointly and severally liable when they are all bound to the same thing in such a way that each of them may be compelled to discharge the whole debt, and the payment made by one of them operates so as to release the others as against the creditor.

Obligation may be joint and several even though debtors are differently bound.

1095. An obligation may be joint and several even though one of the debtors is bound differently from the others for the payment of the same thing, as when the obligation of one is conditional and that of the other is pure and simple, or when one is allowed a time for payment which is not granted to the other, or when the debtors are bound to pay in different places.

Creditor may sue any of the joint and several debtors.

1096. The creditor may enforce his claim against any of the joint and several debtors, at his option, and it shall not be lawful for the debtor to set up the benefit of division.

Judicial demand against one of the debtors *in solidum* does not bar a similar demand against any of the others.

1097. A judicial demand made against one of the joint and several debtors shall not operate so as to bar the creditor from bringing a similar action against any of the others, even though, in making the first demand, the creditor shall not have expressly reserved such right

Demand for payment of interest.

1098. A demand for the payment of interest, where competent, made against one of the joint and several debtors, shall cause interest to run against all the debtors.

Pleas which may be set up by joint and several debtors.

1099. (1) Where proceedings have been taken by the creditor against a co-debtor jointly and severally liable, it shall be lawful for such co-debtor to set up all such pleas as are personal to himself, as well as those which are common to all the other co-debtors.

(2) Nevertheless, such co-debtor may not set up any pleas which are purely personal to any one only of the other co-debtors.

Interruption of prescription.

1100. An acknowledgment of the debt by one of the joint and several debtors, and every other act capable of interrupting prescription with regard to any one of such debtors, shall interrupt prescription also with regard to the other debtors and their heirs.

Acknowledgement of debt by one of the heirs of the joint and several debtors.

1101. (1) An acknowledgment of the debt by one of the heirs of one of the joint and several debtors, and every other act executed against such heir, shall not, even though such acknowledgment or act may interrupt prescription with regard to such heir, interrupt prescription with regard to the other co-heirs, even though the debt be a hypothecary debt, unless the obligation be indivisible.

(2) The interruption of prescription against one of the heirs of one of the joint and several debtors, shall not be operative against the other co-debtors except with regard to the part of the debt for which such heir is liable.

(3) Nevertheless, where prescription has been interrupted against all the heirs of the deceased co-debtor, such interruption shall be operative against all the surviving co-debtors for the whole debt.

Where thing perishes through the fault of one or more of the debtors *in solidum*.

1102. (1) Where the thing due perishes through the fault of one or more of the joint and several debtors, or during the time in which he or they is or are in default for delay in delivering the thing, the other co-debtors shall not be released from the obligation of paying the value thereof, but they shall not be liable for damages.

(2) The creditor can only claim damages from the debtor or debtors through whose fault the thing perished or who was or were in default.

Where one of the debtors becomes the heir of the creditor, etc.

1103. Where one of the debtors becomes the heir of the creditor, or when the creditor becomes the heir of one of the debtors, the joint and several debt shall, as a result of such merger, be extinguished with regard to the portion of such debtor.

Where creditor consents to the division of the debt in favour of one of the debtors.

1104. Where the creditor consents to the division of the debt in favour of one of the debtors, he shall not thereby be barred from exercising his joint and several action against the other debtors in respect of the whole debt.

Where creditor receives part-payments.

1105. (1) The receipt of a portion of the debt in one or more payments, from one or more of the joint and several debtors, shall not imply any renunciation of the joint and several obligation, either in regard to the debtor or debtors who shall have paid such portion of the debt, or in regard to the others, even though the creditor, in receiving such portion, shall not have expressly reserved his joint and several action or his rights in general.

(2) The same rule shall apply with regard to any judicial demand made by the creditor against one or more of the co-debtors for a portion of the debt.

(3) Such renunciation shall not be presumed, even if the sum received or claimed is equal to the share of the debt to which the debtor who has paid, or against whom the demand for payment is made, would be liable as between himself and the other co-debtors.

Debtors among themselves bound ratably.

1106. The obligation contracted jointly and severally in favour of the creditor, is *ipso jure* divided among the debtors who, amongst themselves, are bound each for his share only.

Co-debtor discharging debt may only claim from the other co-debtors their respective shares.

1107. (1) Where one of the co-debtors has wholly discharged a joint and several debt, he may only claim from the other co-debtors the share of each of them, together with interest as from the day of payment, notwithstanding any assignment of rights.

(2) Where one of such other co-debtors is insolvent, the loss occasioned by such insolvency shall be apportioned amongst all the solvent co-debtors, including the one who has made the payment, in proportion to each one's share of the debt.

Where creditor discharges one of the co-debtors from his joint and several liability.

1108. Where the creditor has renounced his joint and several right of action with respect to one of the debtors, and one or more of the other debtors becomes or become insolvent, the shares of those who are insolvent shall be apportioned amongst all the debtors, including those previously discharged by the creditor from their joint and several liability, in proportion to each one's share of

the debt.

Where subject-matter of joint and several liability concerns one of the co-debtors only.

1109. Where the matter in regard to which the joint and several liability has been contracted, concerns only one of the co-debtors, such co-debtor shall be liable for the whole debt towards the other co-debtors, and the latter, in relation to such co-debtor, shall be considered merely as sureties.

§ V.OF DIVISIBLE AND INDIVISIBLE OBLIGATIONS

Divisible obligation.

1110. An obligation is divisible or indivisible according as to whether the thing or fact forming the subject-matter thereof, is or is not susceptible of division, physically or intellectually.

Indivisible obligation.

1111. An obligation is indivisible if, although the thing or fact forming the subject-matter thereof is of its nature divisible, the manner in which such thing or fact has been considered in the obligation does not admit of a performance in part.

Joint and several obligation does not imply indivisibility.

1112. An obligation shall not be deemed to be indivisible solely on the ground that it is a joint and several obligation.

OF DIVISIBLE OBLIGATIONS

How divisible obligation is performed as between creditor and debtor.

1113. (1) An obligation, although susceptible of division, must be performed, as between the creditor and the debtor, as if it were indivisible.

(2) The divisibility shall only be applicable in regard to their heirs, who can claim or are liable to pay the debt only to the extent of the shares competent to them, or for which they are liable as representing the creditor or the debtor.

When rule of divisibility does not apply to heirs of debtor.

1114. (1) The rule as to the divisibility of the obligation in regard to the heirs of the debtor shall not apply in the following cases:

(*a*) when a determinate thing is due;

(*b*) when, under the instrument of title, one of the heirs alone is charged with the performance of the obligation;

(*c*) when from the nature or the subject-matter of the obligation or from the purpose of the agreement it appears that the intention of the parties was that the debt should not be discharged in separate parts.

(2) In the cases referred to in paragraphs (*a*) and (*b*) of sub-article (1) of this article, the heir who is in possession of the thing, or who is alone charged with the debt, and, in the case referred to in paragraph (*c*) of that sub-article, each of the heirs, may be sued for the whole, saving his right of relief against the other co-heirs.

OF INDIVISIBLE OBLIGATIONS

Liability of obligors under an indivisible obligation.

1115. (1) Where two or more persons have jointly contracted an indivisible debt, each of such persons is liable for the whole of the debt, although the obligation has not been contracted jointly and severally.

(2) The same rule shall apply with regard to the heirs of a person who has contracted a similar obligation.

Rights of heirs of creditor in an indivisible obligation.

1116. (1) Each of the heirs of the creditor may demand the entire fulfilment of an indivisible obligation.

(2) He cannot alone remit the whole of the debt, or receive, instead of the thing, the value thereof.

(3) Where one of the heirs has alone remitted the debt, or received the value of the thing, it shall not be lawful for any of the other co-heirs to demand the indivisible thing without taking into account the portion of the heir who has remitted the debt or received the value.

Right of co-heir of debtor to demand that the other co-heirs be made parties to the suit.

1117. The heir of the debtor, on being sued in respect of the whole debt, may demand an adjournment to join his co-heirs as defendants in the suit, provided the debt be not of such nature that it can only be discharged by the heir so sued, in which case judgment may be given against such heir alone, saving his right of relief against the other co-heirs.

§ VI. OF OBLIGATIONS WITH A PENALTY CLAUSE

Definition of penalty clause.

1118. A penalty clause is a clause whereby a person, for the purpose of securing the fulfilment of an agreement, binds himself to something in case of non-fulfilment.

Effects of nullity of principal obligation and of penalty clause.

1119. (1) The nullity of the principal obligation produces the nullity of the penalty clause.

(2) The nullity of the penalty clause does not produce the nullity of the principal obligation.

Penalty to represent compensation for damages.

1120. (1) The penalty represents the compensation for the damage which the creditor sustains by the non-performance of the principal obligation.

(2) The creditor may sue for the performance of the principal obligation instead of demanding the penalty incurred by the debtor.

(3) He cannot demand both the principal thing and the penalty, unless the penalty shall have been stipulated in consideration of mere delay.

When penalty becomes due.

1121. (1) Where the obligation consists in forbearing to do something, the penalty becomes due as soon as the contravention takes place.

(2) Where the obligation could not be performed except at a certain time, the penalty shall be incurred as soon as such time expires, unless another time has been fixed by agreement.

(3) In any other case, the penalty shall be incurred when the debtor is put in default as provided in article 1130.

Abatement or mitigation of penalty.

1122. (1) It shall not be lawful for the court to abate or mitigate the penalty except in the following cases:

(*a*) if the debtor has performed the obligation in part, and the creditor has expressly accepted the part so performed;

(*b*) if the debtor has performed the obligation in part, and the part so performed, having regard to the particular circumstances of the creditor, is manifestly useful to the latter. In any such case, however, an abatement cannot be made if the debtor, in undertaking to pay the penalty, has expressly waived his right to any abatement or if the penalty has been stipulated in consideration of mere delay.

(2) Where an abatement is to be made under this article, the penalty shall be reduced in proportion to the unperformed part of the obligation.

Penalty clause in indivisible obligation.

1123. Where the subject-matter of the principal obligation contracted with a penalty clause is an indivisible thing, the penalty is incurred even where only one of the heirs of the debtor infringes the obligation; and in such case, the penalty may be claimed either -

(*a*) against the defaulter, for the whole amount, or

(*b*) against each co-heir for his respective share, or, where a hypothecary action is competent, even for the whole amount, saving the right of relief against the defaulter.

Penalty clause in divisible obligation.

1124. (1) Where the principal obligation contracted with a penalty clause is divisible, and one of the heirs of the debtor infringes the obligation, the penalty shall be incurred only by such heir, and only for the share of the principal obligation for which he is liable, and no action shall lie against those who have performed the obligation.

(2) The rule laid down in sub-article (1) of this article shall not apply to cases where the penalty has been stipulated in order that payment should not be made in part, and one of the co-heirs has prevented the performance of the obligation in its entirety. In any such case, such co-heir is liable for the entire penalty, and the others are liable for their respective shares only, saving their right of relief against the defaulter.

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§ VII. OF FIDUCIARY OBLIGATIONS

Fiduciary obligations. *Added by: XIII.2004.40; Amended by: XXXVI.2018.38.*

1124A. (1)Fiduciary obligations arise in virtue of law, contract, quasi-contract,unilateral declarations including wills, trusts, assumption of office or behaviour whenever a person (the "fiduciary") -

(*a*) owes a duty to protect the interests of another person and it shall be presumed that such an obligation where a fiduciary acts in or occupies a position of trust is in favour of another person; or

(*b*) has registered in his name, holds, exercises control or powers of disposition over property for the benefit of other persons, including when he is vested with ownership of such property for such purpose; or

(*c*) receives information from another person subject to a duty of confidentiality and such person is aware or ought, in the circumstances, reasonably to have been aware, that the use of such information is intended to be restricted.

(2) A person who is delegated any function by a fiduciary and is aware, or should, from the circumstances, be aware, of the fiduciary obligations shall also be treated to be subject to fiduciary obligations.

(3) Fiduciary obligations arise from behaviour when a person -

(*a*) without being entitled, appropriates or makes use of property or information belonging to another, whether for his benefit or otherwise; or

(*b*) being a third party, acts, being aware, or where he reasonably ought to be aware from the circumstances, of the breach of fiduciary obligations by a fiduciary, and receives or otherwise acquires property or makes other gains from or through the acts of the fiduciary.

(4) Without prejudice to the duty of a fiduciary to carry out his obligations with utmost good faith and to act honestly in all cases, a fiduciary is bound, subject to express provision of law or express terms of any instrument in writing excluding or modifying such duty, as the case may be -

(*a*) to exercise the diligence of a *bonus pater familias* in the performance of his fiduciary obligations;

(*b*) to avoid any conflict of interest or any conflict of trust or fiduciary obligations;

(*c*) not to receive undisclosed or unauthorised profit from his position or functions nor permit any other person to do so, nor enter into any transaction related to the property, directly or indirectly, unless authorised to do so by the instrument creating the fiduciary obligation or permitted by a person or authority empowered to approve such dealings under the instrument or applicable law or as otherwise authorised by the Court:

Provided that any references to "the Court" shall be construed as references to the Civil Court (Voluntary

Jurisdiction Section) unless otherwise indicated or unless the context refers to any court seized of any matter in which case it is the court where the matter arises;

(*d*) to act impartially when the fiduciary duties are owed to more than one person;

(*e*) to keep any property as may be acquired or held as a fiduciary segregated from his personal property and that of other persons towards whom he may have similar obligations and to affect a change in the registration of any relevant property, as may be required for such purpose;

(*f*) to maintain suitable records in writing of the interest of the person to whom such fiduciary obligations are owed;

(*g*) to render account in relation to the property subject to such fiduciary obligations;

(*h*) to return on demand any property held under fiduciary obligations to the person lawfully entitled thereto or as instructed by him as otherwise required by the written instrument regulating the fiduciary obligation or by applicable law, and for such purpose, execute such agreements, including any public deed, or other instruments and, or effect a change in the registration of any relevant property, as may be required;

(*i*) to return any property held under the fiduciary obligations upon the termination of the fiduciary obligations to the person lawfully entitled thereto, as required by the written instrument regulating the fiduciary obligation or by applicable law, and for such purpose, execute such agreements, including any public deed, or other instruments and, or effect a change in the registration of any relevant property, as may be required;

(*j*) to keep confidential the affairs of the person to whom fiduciary duties are owed, subject to the fiduciary's duty to provide information to the beneficiary of the specific fiduciary obligation or to other persons in accordance with and subject to any restrictions contained in the written instrument, if any, giving rise to the fiduciary obligation with reference to this sub-article, unless the fiduciary is given consent from the person to whom fiduciary obligations are owed to disclose such information:

Provided that a fiduciary has the right to declare on any written instrument or when carrying out any act, that he is acting as a fiduciary in such context and such declaration shall not be considered to be a breach of this sub-article; and

(*k*) to carry out the designated purpose, where property has been entrusted to him.

(5) In addition to any other remedy available under law, a person subject to a fiduciary obligation who acts in breach of such obligation shall be bound to return any property together with all other benefits derived by him, whether directly or indirectly, to the person to whom the duty is owed.

(6) The obligation to return property derived from a breach of a fiduciary duty shall apply also to all property into which the original property has been converted or for which it has been substituted.

(7) Subject to the provisions of sub-article (8), where the competent court, in any proceedings, finds that a person owns, has registered in his name, holds, exercises control or has powers of disposition over property and is bound by fiduciary obligations arising in any manner in relation to such property, the court may make any order or declaration in favour of or for the benefit of such persons and under such terms and conditions as it considers appropriate in the circumstances to protect the beneficiary of such obligations under the provisions of this Title and any special law including:

(*a*) to order the transfer, restitution or delivery of any property, or the change in the registration thereof, to another fiduciary or order that it be held jointly with another fiduciary;

(*b*) to terminate the powers of disposition of property;

(*c*) to order the fiduciary to give adequate security;

(*d*) to establish a trust in relation to property subject to fiduciary obligation and to establish the terms of such trust;

(*e*) to rescind any transfer or other transaction or declaring the same null and void; or

(*f*) imposing damages on the fiduciary.

(8) The court shall also have such powers, whether the proceedings are instituted under article 1124E or under any other provision of law, by any beneficiary, a successor in title of such beneficiary, a creditor of such beneficiary when such creditor may exercise the rights of the beneficiary under applicable law, or by any other person whom the court considers to be entitled under the relevant fiduciary obligation, as the case may be, and on the basis of the demands in the relevant proceedings. Where a third party acquires any property under an onerous title or acquires rights over any property owned, held or registered in the name of a fiduciary, he shall not be prejudiced by any remedy granted by the court to any person as aforesaid:

Provided that the third party who acquires any property pursuant to this sub-article was not aware of that he was dealing with a fiduciary.

(9) Fiduciary duties may, in particular cases, be implicitly

waived or varied in certain circumstances, such as:

(*a*) the method of engagement of the fiduciary, in particular where the fiduciary is engaged for two or more purposes, functions or offices or where the fiduciary is engaged for a purpose, function or office at the same time as when the fiduciary is granted an entitlement;

(*b*) the scope, purposes and contexts of the fiduciary obligations imposed;

(*c*) the handing over of property, by delivery, registration in name of another person, assignment or transfer, to or for the benefit of a beneficiary's creditor for purpose of security or other purpose which is distinct from that of the beneficiary; or

(*d*) the manner of the acceptance or assumption or undertaking of the fiduciary obligations.

(10) Where there is an express waiver of fiduciary obligations as stated in sub-article (4) or an implicity waiver as stated in sub-article (9), the fiduciary may, in case of doubt, apply for directions from the competent court on how to act in the circumstances. The court shall give due regard to the intentions of the person establishing or imposing the fiduciary obligations and to the interests of both the fiduciary and the beneficiary.

Dealings with third parties aware of fiduciary obligations. *Added by: XIII.2004.40. Amended by: XXXVI.2018.38.*

1124B. (1) Where a third party is aware that a fiduciary is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations, third parties may, in good faith, act in relation to the fiduciary as though he were the absolute owner thereof.

(2) A third party who acquires property under an onerous title as provided for in sub-article (1) shall not be affected by the fiduciary obligations to which the said property is subject, unless otherwise agreed upon.

(2A) Where a third party acquires property under gratuitous title as provided for in sub-article (1) from a fiduciary who acts in breach of the fiduciary obligation or where the third party has acquired property under gratuitous title to the detriment of a beneficiary, the third party shall be subject to the same fiduciary obligations which the fiduciary was subject to, which shall take effect when the third party becomes aware or where he reasonable ought to have become aware from the circumstances of the breach of the fiduciary obligations:

Provided that the fiduciary obligations which the third party is subject to shall be limited to the extent of the breach or unauthorised gain, unless the Court provides otherwise pursuant to any of the remedies in article 1124A:

Provided further that the performance of the fiduciary obligations in accordance with the terms and conditions that the fiduciary is subject to shall not be considered to be gratuitous for the

purpose of this article.

(3) A person dealing with a fiduciary in relation to property subject to fiduciary obligations need not -

(*a*) enquire into the terms and conditions of his authority, except in the case of a gratuitous transaction; or

(*b*) obtain the consent of the person to whom the fiduciary duties are owed or any other person,

and shall, subject to being in good faith, be entitled to rely on declarations made by the fiduciary with regard to his authority.

(3A) Any third party dealing with a fiduciary in a transaction shall be entitled to enquire about the purposes of the fiduciary obligation, including the obligation of not exceeding the value raised by the transaction, or otherwise relating to the propriety subject to the transaction or the applicability of the funds in question.

(4) The fiduciary may furnish to any person dealing with him a certificate containing the following information without being in breach of any confidentiality obligations:

(*a*) that the authority exists, the date the relevant instrument was executed and that the authority has not been revoked;

(*b*) a declaration that he is authorised to carry out the transactions being entered into; and

(*c*) the identity and address of the fiduciary.

(5) Any fiduciary who issues any certificate containing any statement which he knows or ought to know is false shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*).

(6) Where a fiduciary is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property informs a third party with whom he is dealing that he is acting as a fiduciary, the third party is otherwise aware or should reasonably be aware, the fiduciary shall not be personally liable for the obligations entered into with such third party, other than those entered into in the exercise of his obligations. Where the third party is unaware of the fiduciary obligations, the fiduciary shall, subject to any terms which may have been stipulated or which otherwise apply under the applicable law, be personally liable to such third party in respect of any obligation entered into.

(7) The fiduciary shall have a right of recourse against the beneficiary where contemplated in the provisions of this Code or in any special law, by way of indemnity against such liability unless he has acted in breach of his duties, in which case he shall not be entitled to be indemnified.

(8) A fiduciary shall be presumed to have all the powers at law

which are required for him to perform his fiduciary obligations towards beneficiaries or purposes.

Property subject to fiduciary obligations and ownership. *Added by: XXXVI.2018.40.*

1124C. (1) Where a person is vested with ownership, has registered in his name, holds, exercises control or powers of disposition over property subject to fiduciary obligations, such property shall constitute a distinct and separate patrimony, consisting of all relative rights and obligations with respect thereto, and such property shall not be subject to the claims or rights of action of the fiduciary's personal creditors, nor of his spouse or heirs at law, except as stated in the provisions of this Code or of special laws.

(2) Fiduciary ownership of property is ownership as contemplated by Title II of Book Second of this Code in so far as third parties are concerned, but which is modified by the provisions of this Title and any special laws and other provisions of this Code which may be applicable, in so far as it is subject to obligations towards and for the benefit of another person, referred to as a beneficiary, or for the achievement of a purpose, or both. Such modifications imply restrictions and limitations on the right of ownership consistent with the provisions of this Title, the special laws on trusts and other provisions of this Code.

(3) Where property subject to fiduciary obligation is in the possession of a fiduciary and owned by the beneficiary, the provisions of this Code or of any other special law governing their relationship shall apply in accordance with the terms and conditions established by the fiduciary and the beneficiary:

Provided that such terms and conditions may be modified in terms of the provisions of this Title for the protection of the beneficiary and, or the achievement of the obligation.

Retirement of a fiduciary and appointment of his successor. *Added by: XXXVI.2018.40.*

1124D. Where a fiduciary is vested with ownership of a property, has it registered in his name, holds, exercises control or powers of disposition over such property and for any reason, ceases to act as fiduciary and is thereafter replaced by another fiduciary, the latter shall continue to perform the same fiduciary obligations, as may be applicable at the relevant time:

Provided that:

(*a*) the transfer of rights and obligations with respect to the property subject to fiduciary obligations shall take place in favour of beneficiaries and third parties upon the execution of a written instrument between the fiduciary ceding his fiduciary obligation and the fiduciary replacing him. The written instrument shall specify the property subject to fiduciary obligations, and shall empower the new fiduciary to transfer all rights and obligations, including possession and, or, delivery of the property in favour of the beneficiary

and any third party, as the case may be, except as stated in paragraphs (d) and (e);

(*b*) for any rights over immovable property to be validly vested in the new fiduciary, the execution of a public deed shall be required;

(*c*) the sole consideration for the said transaction shall be that referred to in article 958L, which shall apply *mutatis mutandis* in case of fiduciary obligations other than those arising from trusts, and notwithstanding any other law it shall not be required to state in the relative instrument, including any public deed, the value of the property being transferred or delivered;

(*d*) the provisions of this article shall also apply *mutatis mutandis* to the transfer of a cell from one organisation to another or the constitution of a cell as a new organisation under articles 20A or 20B of the Second Schedule, as the case may be;

(*e*) all rights and obligations, including any contracts which may be in force, shall continue to operate in accordance with their terms with reference to the property subject to fiduciary obligations and shall accrue and be binding on the new fiduciary upon the transfer and, or delivery to him of the property in accordance with applicable law and any written instrument regulating the fiduciary obligations and the property subject to fiduciary obligation and this without the need of any notice to or consent of any other person except as provided in this sub-article or applicable law;

(*f*) the fiduciary who ceases to act as a fiduciary shall no longer be entitled to all the rights and powers and, subject to paragraph (g), shall be released from all the fiduciary obligations related to the property subject to fiduciary obligations, including any obligations under any contracts, once he has carried out the transfer and delivery of the property to the successor fiduciary after obtaining all such consents as are required to terminate his engagement as fiduciary under any written instrument and observing all formalities under applicable law;

(*g*) the fiduciary who ceases to act as a fiduciary shall not be released of his obligations towards the beneficiary with respect to any property subject to fiduciary obligations he may not have transferred, delivered or accounted for or which may come into his possession thereafter or for any breaches of fiduciary obligations when he was acting as fiduciary;

(*h*) the fiduciary who ceases to act as a fiduciary shall not be released from any obligations towards third parties which:

(i) he has expressly entered into in his own personal capacity

and interest and not in a fiduciary capacity; or

(ii) he is personally liable for under the provisions of this Title towards a third party who was not aware he was acting as a fiduciary, unless the third party expressly releases him from liability;

(*i*) the appointment of another fiduciary, as aforesaid, shall not be subject to the provisions on assignment of rights nor constitute a novation under the provisions of this Code but shall be regulated by this article and the provisions of the Trusts and Trustees Act, when applicable;

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(*j*) any undertaking, guarantee, hypothec, pledge or other forms of security granted by the fiduciary or over or in relation to the property shall not be affected in any manner by the substitution of a fiduciary and shall continue to attach to the property in accordance with its terms and the applicable law and when property subject to a hypothec or privilege is the subject of a transaction where another fiduciary replaces a fiduciary, the fiduciary replacing the previous fiduciary and the provisions of articles 2070 to 2083 shall not apply:

Provided that this paragraph shall not apply where the retiring fiduciary is already a third party in possession in which case articles 2070 to 2083 shall apply;

(*k*) the fiduciary ceasing his functions or the replacing fiduciary shall:

(i) notify interested third parties of such substitution, at what time and to what extent, while abiding with any confidentiality obligations regarding beneficiaries and their interests;

(ii) where rights over immovable property are subject to fiduciary obligations, execute a public deed with the fiduciary who has ceased to perform his fiduciary obligations to record that the fiduciary obligations relating to such property have been transferred to another fiduciary. Nevertheless, if for any reason the fiduciary ceasing his functions is not able to appear on such public deed and the property is in the possession of the replacing fiduciary, the latter may state such facts as are known to him, confirm that such property is in his possession and shall declare by means of a written declaration or notification, his acquisition of title over the property and the undertaking of the fiduciary obligations. The transfer of ownership of such property shall take place upon the execution of such public deed and the same rules shall apply *mutatis*

mutandis to other registered movable property by the execution of a private writing and any applicable registrations or notifications as may be required by law;

(iii) in so far as any security forms part of the property subject to fiduciary obligations and it is duly registered in the Public Registry, the new fiduciary shall, upon making a unilateral declaration relating to the relevant security, in accordance with the applicable law, register the substitution resulting from the written instrument between himself and the former fiduciary in the said register;

(*l*) in cases where the substitution is ordered or approved by a competent court or regulatory authority, then no further consent or agreements which may otherwise be required under this article, applicable law or the written instrument regulating the fiduciary obligations, shall be necessary;

(*m*) the fiduciary who has ceased to perform his functions shall be entitled to be indemnified for liabilities, expenses or losses he may incur with reference to the property subject to fiduciary obligations even after he has ceased to perform his functions except for any breaches thereof;

(*n*) where a fiduciary dies in the course of performing his fiduciary obligation:

(i) his universal heir who has reached majority and is capable at law, or if more than one, each one of such heirs severally, shall be deemed to be executors *ex lege* of the property and shall immediately transfer or deliver the property to a successor fiduciary or the beneficiary;

(ii) should the heir fail to perform the duties in sub-paragraph (i) within thirty (30) days, extendable by the Court, he shall be considered to be the temporary successor fiduciary and shall have the same obligations towards the beneficiaries as the deceased fiduciary until he performs his obligations as aforesaid;

(iii) should the heir be unable to perform his duties in sub-paragraph (i) for any reason not attributable to himself, he shall apply to the competent court providing the relevant information and seeking an order as stated below;

(iv) when the deceased fiduciary has appointed a testamentary executor, the above duties, and all relative powers to so act, shall bind only the executor,

unless the executor is also a universal heir in which case sub-paragraph (i) shall apply, such testamentary executor shall be deemed to have all the necessary powers for the purposes solely of recovering, transferring or returning the property to another fiduciary or to the beneficiary;

(v) notwithstanding the above, a beneficiary, the heirs, the executor, as the case may be, may apply to the Court to confirm their powers or may appoint an ad hoc testamentary executor at any time, to act for the estate of the deceased fiduciary for the purposes of recovering, transferring or returning the property to another fiduciary or the beneficiary and the competent court may confirm to which property such powers refer or may accede to such request notwithstanding any contestation of the will or his appointment;

(vi) the successor fiduciary is the person:

A. designated in any instrument governing the fiduciary obligations; or

B. designated in accordance with any applicable law; or

C. appointed by the Court for such purposes, even if only temporarily for this purpose, on the demand by application of any interested party;

(*o*) where the fiduciary is a legal person which is declared bankrupt, dissolved or wound up, such obligations shall bind the last directors jointly and severally or, if a liquidator has been appointed, the liquidator, as the case may be, and the provisions of paragraph (j) shall apply *mutatis mutandis*;

(*p*) where there is more than one fiduciary who holds, exercises control or powers of disposition over property for a beneficiary, such property shall, by operation of law, consolidate in the ownership of the remaining fiduciary or fiduciaries on the death, resignation or removal of a co-fiduciary. The remaining fiduciary or fiduciaries shall execute a unilateral declaration by public deed or other writing in accordance with applicable law, which shall be registered in the relevant register, so as to declare the consolidation in his or their name of the title or control of such property and the consolidation shall thereon take place without the need of any other formality.

Fiduciary action. *Added by: XXXVI.2018.40. Amended by: XXV.2019.27.*

1124E. (1) It shall be competent to any beneficiary, in order to enforce fiduciary obligations owed to him, to exercise a right of action on the basis of the provisions of this Title.

(2) The demand may be made together with any other action available under the provisions of this Code or any other law and where such specific right of action is not exercised, the remedies contemplated herein may also be demanded by an additional application to the Court, at any time of the proceedings until the award of a final judgement by the competent court or the Court of Appeal.

(3) In the case of a fiduciary obligation undertaken solely for the achievement of a purpose and in the absence of any beneficiary, the above right of action may be exercised by any person or body granted the power to protect, supervise or enforce the purpose in the instrument creating the obligation or, in the case of an obligation undertaken by a public benefit organisation, also by the State Advocate.

Prescription. *Added by: XXXVI.2018.40.*

1124F. (1) Notwithstanding any provision of this Code or any other law, an action brought against a fiduciary, or a person considered to be a fiduciary under the provisions of article 1124A -

(*a*) in respect of any fraud or dishonesty to which such person was a party or of which he had knowledge; or

(*b*) for the recovery from the fiduciary, or any person considered to be a fiduciary as aforesaid, of any property subject to fiduciary obligations or previously received by the fiduciary and converted to his use, or for benefits or gains received as a result of breach of duty,

shall not be barred by prescription, notwithstanding the lapse of time.

The action shall not be barred by prescription irrespective of whether it is brought against the fiduciary by a beneficiary who has suffered prejudice as a result of the behaviour of the fiduciary in relation to the same property or property substituting the same.

(2) Notwithstanding the provisions of article 2140 and without prejudice to article 2155, a fiduciary or any person considered to be subject to fiduciary obligations under this Title, shall not acquire any property held under fiduciary obligations by means of prescription.

(3) Where the fiduciary or beneficiary acts in bad faith under the provisions of this Code, such act shall be sufficient for an action not to be barred by prescription.

(4) With the exception of the matters falling within the scope of the preceding sub-article for which there is no prescription, no action may be brought against a fiduciary by a beneficiary for breach of other fiduciary obligations referred to in sub-article (4) of

article 1124A, after the lapse of five years. Such period shall commence -

(*a*) from the date of the delivery of a written account, or part thereof, of the fiduciary activity to the beneficiary; or

(*b*) from the date on which the beneficiary first had knowledge of the occurrence of the breach of fiduciary duty,

whichever is the earlier date:

Provided that, if the account or part thereof is itself fraudulent or dishonest then, with reference to the account or the relevant part, the period shall only commence on the date referred to in paragraph (b).

Fiduciary obligations towards a purpose. *Added by: XXXVI.2018.40.*

1124G. (1)When a fiduciary obligation is imposed or undertaken solely to achieve a designated purpose or purposes, including in the case of a charitable trust or a purpose foundation, without there being a beneficiary, such obligation shall be valid and enforceable, and:

(*a*) where there is more than one person who is so bound, their obligations shall be joint and several; and

(*b*) in case of a foundation, the administrators of the foundation shall be jointly and severally obliged to perform the fiduciary obligations with the foundation itself.

(2) The provisions of this Title shall be applied *mutatis mutandis* and the obligations of the fiduciary shall be attributed towards achieving the designated purpose in accordance with the terms of the fiduciary obligation, any applicable law and the provisions of this Title.

(3) When a fiduciary obligation is imposed or undertaken by any religious organisation, Canon law and other legislation governing religious organisations shall apply and in case of inconsistency shall prevail over the provisions of this Title.

Obligations of the beneficiary towards the fiduciary. *Added by: XXXVI.2018.40.*

1124H. (1)The beneficiary shall be bound towards the fiduciary:

(*a*) to perform all such obligations as are agreed by him in writing or as may be established in the relative instrument under which the fiduciary obligations arise or as may arise under the applicable law;

(*b*) to pay the remuneration to, and all expenses incurred by, the fiduciary as may be established in the relative instrument under which the fiduciary obligations arise or are governed;

(*c*) subject to the provisions of any special law or this Code which exclude remuneration, where not expressly agreed in the relevant instrument:

(i) to pay such fees as are reasonable as is

established in agreement with all beneficiaries who are of age or as may be established by the Court; and

(ii) the fiduciary may reimburse himself or pay out of the property subject to fiduciary obligations all expenses properly incurred by him in connection with his duties, in which case the fiduciary shall notify the beneficiary, or the persons required to be notified in the relevant instrument or applicable law, of such reimbursement in the manner and at the time established by applicable law.

(2) The beneficiary must at all times act in good faith towards the fiduciary irrespective of the manner by which or by whom the fiduciary has been appointed.

(3) Subject to the terms of the instrument governing the fiduciary obligations, the beneficiary shall, to the extent of the property unless the beneficiary has agreed otherwise, indemnify the fiduciary for any liabilities the fiduciary may incur in the carrying out of his fiduciary duties except to the extent that the fiduciary is guilty of negligence, wilful misconduct or fraud.

(4) Nothing in this article shall limit the rights or remedies of the fiduciary under this Code or any other law arising from bad faith or other harmful acts on the part of a beneficiary.

Directions from the Court.
Added by: XXXVI.2018.40.

1124I. (1) A fiduciary may, at any time, apply to the Court for directions regarding the performance of his obligations.

(2) Upon such application the Court may issue any orders or directions as it thinks fit.

Applicability of the provisions of this Title.
Added by: XXXVI.2018.40.

1124J. In the application of the provisions of this Title the following principles shall apply:

(*a*) when a fiduciary relationship is governed by particular rules, whether because of the source and type of the obligations or because of any special law, such particular rules shall apply to the context and these provisions shall apply as necessary to support the interpretation of the said rules;

(*b*) it shall be presumed that these provisions operate consistently with particular rules applicable to any particular fiduciary relationship or obligation but, in case of inconsistency, the particular rules shall prevail over the provisions of this Title;

(*c*) the provisions of this Title shall apply to all fiduciary obligations, which exist at the time of the coming into force of these provisions, or any amendments thereof, even if arising before such date, as well as any fiduciary obligations arising thereafter:

Provided that such provisions shall not apply retrospectively where their effect is to deny or restrict any vested right or create any liability where such did

not occur under law prior to such provisions coming into force;

(*d*) where a fiduciary obligation is vitiated by a breach or attempted breach of law by the parties or any one of them and is thereby rendered unenforceable due to the falsity or illegality of the cause, the compliance by the beneficiary or the fiduciary, or both, with such law or a change in law resulting in the cause no longer being false or unlawful, shall render the fiduciary obligation enforceable with effect therefrom. In such cases, the Court may give such interim orders it considers appropriate to ensure compliance with the law or to prevent the further abuse by the parties or any one of them.

Sub-title IV

OF THE EFFECTS OF OBLIGATIONS

Liability in case of non-fulfilment of obligation.

1125. Where any person fails to discharge an obligation which he has contracted, he shall be liable in damages.

Obligation to give a thing includes obligation to preserve and deliver.

1126. (1) The obligation to give a thing carries with it the obligation to deliver the thing, and to preserve it until the delivery.

(2) If the debtor is in default for delay in making the delivery, the thing shall be at his risk and peril, even though before such default it was at the risk and peril of the creditor.

Non-performance of an obligation to do.

1127. In case of non-performance of an obligation to do, the creditor may be authorized to cause the performance thereof himself at the expense of the debtor.

Infringement of obligation to forbear to do.

1128. Where the obligation is to forbear to do, the debtor who infringes the obligation is liable in damages for the mere fact of such infringement.

Rights of creditor where obligation to forbear to do is infringed.

1129. Saving his action for damages, the creditor may demand that anything done in breach of the obligation be undone, and may be authorized to undo it himself at the expense of the debtor.

When debtor is in default.

1130. (1) Where the obligation is to give or to do, and a time is fixed in the agreement, the debtor is in default by the mere lapse of such time, saving, as regards the payment of interest under article 1141, the provisions of that article.

(2) If no time is fixed in the agreement, or if the time expires after the death of the debtor, the debtor or his heir is not put in default except by an intimation by a judicial act.

1131. The debtor is also liable for damages if the thing which he undertook to give or to do could only be given or done within a certain time, and he has suffered such time to expire.

Liability for damages when time for performance of an obligation to give or to do expires.

1132. (1) Saving any other provision of this Code relating to deposits, the degree of diligence to be exercised in the performance of an obligation, whether the object thereof is the benefit of only one of the parties, or of both, is, in all cases, that of a *bonus paterfamilias* as provided in article 1032.

Degree of diligence required in the performance of an obligation.

(2) This rule, however, is applied with a lesser or a higher degree of strictness in certain cases specified in this Code.

1133. The debtor, even though there has been no bad faith on his part, shall be liable for damages, where competent, both for the non-performance of the obligation as well as for the delay in the performance thereof, unless he proves that the non-performance or delay was due to an extraneous cause not imputable to him.

Liability for damages in case of non-performance.

1134. The debtor shall not be liable for damages if he was prevented from giving or doing the thing he undertook to give or to do, or if he did the thing he was forbidden to do, in consequence of an irresistible force or a fortuitous event.

No liability where non-performance was due to irresistible force.

1135. Subject to the exceptions and modifications hereinafter specified, the damages due to the creditor are, generally, in respect of the loss which he has sustained, and the profit of which he has been deprived.

Damages payable to creditor.

1136. The debtor shall only be liable for such damages as were or could have been foreseen at the time of the agreement, unless the non-performance of the obligation was due to fraud on his part.

Debtor liable only for damages which were or could have been foreseen.

1137. Even where the non-performance of the obligation is due to fraud on the part of the debtor, the compensation in respect of the loss sustained by the creditor, and of the profit of which he was deprived, shall only include such damages as are the immediate and direct consequence of the non-performance.

Damages remote and contingent not recoverable.

1138. Where the agreement provides that the party who fails to carry it out shall pay a certain sum by way of damages, it shall not be lawful to award to the other party a greater or lesser sum.

Where agreement fixes sum payable as damages.

1139. Saving any other provision of law relating to suretyship or partnership, where the subject-matter of the obligation is limited to the payment of a determinate sum, the damages arising from the delay in the performance thereof shall only consist in the interests on the sum due at the rate of eight per cent *per annum*.

Damages payable where obligation consists in the payment of a sum of money.
Amended by: VI.1983.4.

1140. The interest referred to in the last preceding article is due, without the creditor being bound to prove any loss.

Interest is due without necessity of proof of loss.

1141. (1) Where the obligation is of a commercial nature, or the law provides that interest is to run *ipso jure*, interest shall be due as from the day on which the obligation should have been performed.

From what day interest is due.

(2) In any other case, interest shall be due as from the day of an intimation by a judicial act, even though a time shall have been

fixed in the agreement for the performance of the obligation.

Compound interest.

1142. The interest fallen due may bear other interest either, in virtue of the foregoing provisions, from the day of a judicial demand to that effect, or in virtue of an agreement entered into after the interest has fallen due, provided, in either case, interest be due for a period not less than one year.

Actio debitor debitoris mei.

1143. It shall be competent to any creditor in order to obtain what is due to him to exercise any right or action pertaining to his debtor, with the exception of such rights or actions as are exclusively personal.

Actio Pauliana.

1144. (1) It shall also be competent to any creditor in his own name to impeach any act made by the debtor in fraud of his claims, subject to the right of the defendant to plead the benefit of discussion under the provisions of articles 795 to 801 of the Code of Organization and Civil Procedure.

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(2) Where such acts are under an onerous title, the creditor must prove that there was fraud on the part of both contracting parties.

(3) Where such acts are under a gratuitous title, it shall be sufficient for the creditor to prove fraud on the part of the debtor

(4) The action competent to the creditors under this article cannot be exercised against minors, except to the extent of any benefit which they may have derived, saving any other right of action competent to the creditors against any tutor who may have taken part in the fraud.

Sub-title V

OF THE MODES OF EXTINCTION OF OBLIGATIONS

How obligations are extinguished.

1145. Saving the effects of the resolutive condition, and those of prescription, obligations are extinguished by -

(*a*) payment;

(*b*) novation;

(*c*) remission of the debt;

(*d*) set-off;

(*e*) merger;

(*f*) the loss of the thing;

(*g*) rescission.

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§ I. OF PAYMENT
OF PAYMENT IN GENERAL

Definition of payment.

1146. Payment means the performance of an obligation, whether the subject-matter of the obligation is to give or to do.

Payment implies debt.

1147. (1) Every payment implies a debt, and what is paid without being due may be recovered.

(2) Nevertheless no action for recovery shall lie if the payment was made in discharge of a natural obligation.

By whom payment may be made.

1148. (1) An obligation may be extinguished by payment made by any person concerned in it, such as a co-obligor or a surety.

(2) An obligation may also be extinguished by payment made by a third party not concerned in the obligation, provided such third party acts in the name and for the discharge of the debtor, or, if he acts in his own name, provided he shall not be subrogated to the rights of the creditor.

Creditor cannot refuse payment by third party.

1149. (1) A creditor cannot refuse payment tendered by a third party, if the debtor is benefited thereby.

(2) The same rule shall be applicable even in the case of an obligation to do, provided, in such case, the creditor is not interested in having the obligation performed by the debtor himself, and the performance is offered by the third party at the request of the debtor.

Where payment transfers the property of the thing.

1150. (1) Where the payment has for its object the transfer to the creditor of the property of the thing paid, such payment shall not be valid unless it is made by the person who is the owner of the thing.

(2) Nevertheless, the payment of a sum of money, or of some other thing which is consumed by use, cannot be recovered from the creditor who has consumed such sum or thing in good faith, although the payment has been made by a person who was not the owner of the money or thing.

Annulment of payment made by person incapable of alienating.

1151. Any payment made by a person incapable of alienating may, in the interest of such person, be annulled.

To whom payment must be made.

1152. (1) Payment must be made to the creditor, or to a person authorized by him, or by the court or by law, to receive it.

(2) A payment made to a person not so authorized becomes valid if the creditor ratifies it or benefits thereby.

Payment made in good faith to person in possession of debt.

1153. Payment made in good faith to a person who is in possession of the debt is valid, even though the possessor has subsequently suffered eviction in respect of the debt.

When payment made to creditor incapable of receiving it, is valid.

1154. Payment made to the creditor is not valid if he is under any disability to receive payment, unless the debtor proves that the thing paid was applied to the benefit of such creditor.

Payment by debtor in contravention of garnishee order, etc.

1155. Payment made by a debtor to his creditor in contravention of a garnishee order, or any other order of the court shall not be valid with regard to the persons in whose favour the order was issued or given; and such persons may, so far as their rights are concerned, compel the debtor to pay again, saving his remedy against the creditor.

Creditor cannot be compelled to receive a different thing, or a part-payment.

1156. A creditor cannot be compelled to receive a thing different from that which is due to him, although the value of the thing tendered is equal, or even greater; or to receive payment of part of the debt, although the debt is divisible.

Delivery of a certain and determinate thing.

1157. The debtor of a certain and determinate thing is discharged by delivering it in the condition in which it is at the time of delivery, provided he was not in default for delay before any deterioration supervened, and such deterioration was not caused through the fault of the debtor or of other persons for whom he is responsible.

Delivery of thing determinate only as to its species.

1158. Where the debt relates to a thing which is only determinate as to its species, the debtor, in order to be discharged, is not bound to deliver a thing of the best quality, but he cannot deliver a thing of the worst quality.

Where payment is to be made.

1159. (1) Payment must be made at the place specified in the contract.

(2) If no place is specified, and the thing due is certain and determinate, payment must be made at the place where the thing forming the subject-matter of the payment was at the time of the contract.

(3) Where the thing to be given in payment is a sum of money or any other thing which can, without expense, be carried or sent, and both the creditor and the debtor reside in the same island, payment must be made at the house of the creditor.

(4) In any other case payment must be made at the place of abode of the debtor.

Presumption of payment in the case of rent, interest or other periodical payments.

1160. In the case of rent, interest, or other periodical payments, if it appears from receipts that the debtor has paid the sums falling due at three consecutive periods, without any reservation as to sums fallen due previously, the latter sums shall be presumed to have been paid.

Presumption of payment in other cases.

1161. The debt shall likewise be presumed to have been paid if -

(*a*) a general account has been taken between the parties of what is due by the one to the other, at least three times after the debt fell due, without any mention of such debts or any other reservation including it; and

(*b*) the demand in regard to such debt is made after the death of the debtor, or after a period of not less than three years from the day of the acquittance relating to the last general account.

Inapplicability of presumption.

1162. In each of the cases mentioned in the last two preceding articles, the presumption of payment shall not arise if there are

circumstances from which it appears improbable that the debt was paid, or from which it appears that there was some good reason for not making a mention of the debt on the occasion of the payments or accounts made or taken after the debt became due.

Expenses relating to payment.

1163. (1) The expenses relating to the payment shall be at the charge of the debtor.

(2) The payer may require that the acquittance be, at his expense, recorded in a public deed.

OF PAYMENT WITH SUBROGATION

Where payer is subrogated to rights of creditor.

1164. A person who pays the debt of another person shall not be subrogated to the rights of the creditor except in virtue of an agreement, or by operation of law.

Subrogation by agreement.

1165. (1) The payer shall be subrogated to the rights of the creditor, by agreement -

(*a*) when the creditor subrogates the payer to all his rights against the debtor, provided such subrogation is expressly stated, and made simultaneously with the payment;

(*b*) when the debtor borrows a sum for the purpose of discharging his debt, and of subrogating the lender to the rights of the creditor:

Provided that such subrogation shall not be valid unless -

(i) the loan and the discharge are made by a public deed,

(ii) it is stated in the deed of loan that the sum has been borrowed in order to discharge the debt, and

(iii) it is stated in the discharge that the payment has been made with the money furnished for the purpose by the new creditor.

(2) The subrogation referred to in paragraph (*b*) of sub-article (1) of this article shall take place independently of the consent of the creditor.

Subrogation by operation of law.

1166. Subrogation takes place by operation of law in favour of -

(*a*) any person who, being himself a creditor, satisfies another creditor having prior rights, by reason of privilege or hypothec;

(*b*) any person who, having acquired any immovable property, employs the price in paying the creditors having hypothecary rights thereon;

(*c*) any person who, being bound with others or for others for the payment of the debt, had an interest in discharging it;

(*d*) any heir with the benefit of inventory who, with his own money, has satisfied debts of the inheritance.

Subrogation takes place both against sureties and debtors.

1167. Subrogation, whether by agreement or by operation of law, takes place against both the sureties and the debtors; but shall not operate to the prejudice of the creditor when he has only been paid in part; and, in any such case, the creditor may claim the balance due to him in preference to the person from whom he shall have received the part payment.

OF APPROPRIATION OF PAYMENTS

Debtor may apply payment to the discharge of a particular debt.

1168. (1) It shall be competent to any debtor owing several debts to declare, in making a payment, that such payment is to be applied to the discharge of a particular debt.

(2) Nevertheless, the debtor may not, without the consent of the creditor, appropriate the payment to a debt which has not fallen due in preference to a debt which has fallen due, in any case in which the time for the discharge of the former debt is presumed to have been agreed upon also in favour of the creditor.

(3) Nor may he appropriate the payment to the rent or interest accruing due in respect of subsequent years in preference to the rent or interest accrued due in respect of preceding years.

Debt bearing interest.

1169. (1) The debtor of a capital sum bearing interest cannot, without the consent of the creditor, appropriate the payment to the principal in preference to the interest.

(2) Any part-payment made generally on account of principal and interest shall be first applied to the discharge of the interest.

Where debtor accepts receipt containing appropriation made by creditor.

1170. Where a debtor, owing several debts, accepts a receipt in which the creditor has expressly applied the payment to a particular debt, he may not demand that the payment be applied to any other debt, unless there has been fraud or surprise on the part of the creditor.

Rules as to appropriation of payments.

1171. Subject to the provisions of the foregoing articles, where no appropriation is made in the act of payment, the following rules shall be observed:

(*a*) the payment shall be applied to an undisputed debt in preference to a disputed debt;

(*b*) in case of several undisputed debts, the payment shall be applied to the debt already fallen due at the time of payment in preference to the debts not yet fallen due, unless amongst the latter debts there is a debt for which the debtor is liable to personal arrest, in which

case the payment shall be appropriated to such debt, provided the time for payment was not agreed upon also in favour of the creditor;

(*c*) with regard to debts fallen due, the payment shall be appropriated to a debt for which the debtor is liable to personal arrest, or, in the absence of any such debt, to a debt bearing interest, in preference to other debts;

(*d*) the payment shall be appropriated to a debt secured by suretyship in preference to another debt not so secured; and to a privileged or hypothecary debt in preference to a debt not secured by privilege or hypothec;

(*e*) the payment shall be applied to the debt which the payer owed as the principal or the sole obligor in preference to a debt owing by him as surety for others or as a joint and several debtor;

(*f*) in any case not expressly provided for in the preceding rules, the appropriation shall be made to the debt which, at the time of payment, the debtor had the greatest interest in discharging;

(*g*) where the debtor has no interest in discharging a particular debt in preference to another, the appropriation shall be made to the oldest debt: and in the case of several debts contracted on the same day, and falling due at different times, the debt first fallen due shall be deemed to be the oldest;

(*h*) if all things are equal, the payment is applied in discharge of each debt proportionately.

Rules as to appropriation where creditor obtains payment by causing sale of thing charged with debt.

1172. Where the creditor obtains payment by causing the sale of a thing charged with privilege or hypothec in security of his claim, and receiving the proceeds thereof, the following rules shall be observed:

(*a*) the appropriation shall be made to the debt secured by privilege or hypothec in preference to any other debt, even if the debtor may have a greater interest in discharging such other debt;

(*b*) if the thing was charged with a privileged and with a hypothecary debt, the appropriation shall be made to the privileged debt; and if it was charged with several hypothecary debts, the payment shall be applied to the debt secured by the oldest hypothec;

(*c*) if all things are equal, the payment is applied in discharge of each debt proportionately.

OF TENDER OF PAYMENT AND OF DEPOSIT

When debtor can deposit sum or thing due.

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1173. (1) Where the creditor refuses to receive payment, the debtor, or the person who can legally make payment, may, at the expense of the creditor, deposit the sum or thing due in the manner laid down in the Code of Organization and Civil Procedure.

(2) A deposit validly made shall be equivalent to payment, and the thing deposited shall remain at the risk of the creditor.

Deposit to be preceded by refusal of valid tender.

1174. (1) The deposit shall not produce the effects stated in the last preceding article unless it has been preceded by the refusal of a valid tender.

(2) The tender may be made even verbally.

(3) The payment so tendered shall be deemed to be refused if it is not accepted within the time of four days from the day of the tender.

(4) The time shall be of eight days, if one of the parties resides in Malta and the other in Gozo or Comino.

Conditions of a valid tender.

1175. A tender shall only be valid if -

(*a*) it is made to the creditor capable of receiving payment or to a person authorized to receive for him;

(*b*) it is made by a person capable of paying;

(*c*) it includes the whole sum due for capital and accrued interest, and liquidated costs, and a further sum for the unliquidated cost with a reservation to make up any deficiency;

(*d*) the time, when stipulated in favour of the creditor, has elapsed;

(*e*) the condition under which the debt was contracted, is fulfilled;

(*f*) it is made at the place where under the agreement, or, in the absence of an agreement, according to law, payment is to be made.

When deposit may be withdrawn.

1176. (1) A deposit, so long as it is not accepted by the creditor, may be withdrawn by the debtor, unless it shall have been attached by a garnishee order sued out by the creditor or any other person.

(2) Where the debtor withdraws the deposit, his co-debtors or sureties are not discharged.

Where debtor has obtained a judgement declaring deposit to be valid.

1177. Where the debtor has obtained a judgment declaring the deposit to be valid, he can no longer, not even with the consent of the creditor, withdraw the deposit to the prejudice of his co-debtors or sureties.

Where creditor consents to withdrawal of deposit declared valid.

1178. The creditor who has allowed the debtor to withdraw the deposit after it had been declared valid, can no longer, for the payment of the debt due to him, enforce any privilege or hypothec with which such debt was secured; and such creditor shall no longer enjoy a right of hypothec except from the day on which the act whereby he agreed to the withdrawal of the deposit, being an

act made with the formalities necessary for creating a hypothec and for being registered in the Public Registry, shall have been so registered.

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§ II. OF NOVATION

When novation takes place.

1179. Novation takes place -

(*a*) when the debtor contracts towards his creditor a new debt, and this is substituted for the old one which is extinguished;

(*b*) when a new debtor is substituted for the old one, who is discharged by the creditor;

(*c*) when, in virtue of a new obligation, a new creditor is substituted for the old one in regard to whom the debtor is discharged.

By whom novation can be made.

1180. (1) Novation can only be effected between persons capable of contracting.

(2) It is not to be presumed; the intention to effect it must clearly appear.

(3) Novation by the substitution of a new debtor, may be effected without the concurrence of the former debtor.

No novation, unless former obligation is extinguished.

1181. (1) Novation shall not take place if the former obligation is not extinguished, although it is modified.

(2) The mere indication made by a debtor of a person who is to pay in his stead shall not operate as novation.

(3) Nor shall the mere indication made by a creditor of a person who is to receive in his behalf operate as novation.

Acceptance of securities in consideration of a former debt does not produce novation.

1182. (1) The acceptance of notes or other negotiable securities in consideration of a former debt shall not operate as novation unless it appears clearly from other circumstances that it was intended to extinguish such former debt.

(2) Nor shall novation take place in respect of a debt which was originally of a commercial nature, merely on the ground that such debt is subsequently recorded in a notarial instrument, and secured by a hypothec.

When delegation does not operate as novation.

1183. The delegation by which a debtor gives to the creditor another debtor, who binds himself towards the creditor, shall not operate as novation, unless the creditor has expressly declared his intention to release the debtor making the delegation.

Insolvency of person delegated.

1184. The creditor who has released the debtor making the delegation shall have no relief against such debtor if the person delegated becomes insolvent, unless the creditor has expressly reserved his rights to that effect, or the person delegated was, at the

time of the delegation, already insolvent or bankrupt or about to become bankrupt.

Privileges, etc. securing former debt not to extend to substituted debt.

1185. Any privilege or hypothec securing the former debt shall not extend to the substituted debt unless the creditor has made an express reservation to that effect.

Property of new debtor not affected by original privileges, etc.

1186. Where novation takes place by the substitution of a new debtor, the original privileges and hypothecs securing the debt shall not affect the property of the new debtor.

Novation between creditor and one of the joint and several debtors.

1187. Where novation takes place between the creditor and one of the joint and several debtors, the privileges and hypothecs of the former debt may only be reserved as a charge on the property of the party contracting the new debt.

Effects thereof.

1188. (1) The novation between the creditor and one of the joint and several debtors shall release the other co-debtors, saving the right of relief competent to the debtor contracting the new obligation against the co-debtors in respect of their share of the former debt discharged by him.

(2) A novation which takes place in respect of the principal debtor shall discharge the sureties.

(3) Nevertheless, where the creditor demands the concurrence of the co-debtors in the case referred to in sub-article (1) of this article, or the concurrence of the sureties in the case referred to in sub-article (2) of this article, and such co-debtors or sureties refuse to accept the new agreement, the former debt shall continue to subsist.

Pleas which may be set up by the delegated debtor against his new creditor.

1189. (1) A delegated debtor who has accepted the delegation cannot set up against his new creditor such pleas as he could have set up against his original creditor, saving his right of relief against the latter.

(2) The provisions contained in sub-article (1) of this article shall not apply where the person making the delegation intended by such delegation to make a gift to the person in whose favour the delegation was made.

(3) Nor shall the said provisions apply with regard to pleas depending on the condition of a person, such as the condition of a minor, provided such condition existed at the time when the person delegated accepted the delegation.

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§ III. OF THE REMISSION OF DEBTS

Remission in case of joint and several debts.

1190. (1) A remission or conventional discharge in favour of one of the joint and several debtors shall discharge all the other co-debtors, unless the creditor shall have made an express reservation of his rights against them.

(2) Where such reservation is made, the creditor, in claiming the debt, shall be bound to deduct the share of the release.

Effects of remission in regard to the surety.

1191. (1) A remission or conventional discharge in favour of the principal debtor shall discharge the surety.

(2) The release of the surety shall not discharge the principal debtor.

(3) The release of one of the sureties shall not discharge the other co-sureties except to the extent of the share in respect of which they were entitled to seek relief against the co-surety so released.

Creditor to deduct from debt anything received from surety as consideration for release.

1192. Anything which the creditor has received from the surety to release him from his undertaking shall be imputed to the sum due, in discharge of the principal debtor and the other sureties.

When surrender of instrument creating debt implies release.

1193. (1) The voluntary surrender of the original instrument creating the debt, made by the creditor to the debtor, shall raise a presumption of release, unless it is proved that the surrender was made for some purpose other than that of discharging the debtor.

(2) The surrender of the aforesaid instrument made to one of the joint and several debtors, produces the same effect in favour of the other co-debtors.

Absence of reservation of a debt in an acquittance relating to another debt.

1194. The mere absence of the reservation of a debt in an acquittance relating to another debt shall not operate so as to raise a presumption of the remission of the former debt.

Surrender of pledge.

1195. The surrender of the pledge shall not be sufficient to raise a presumption of the remission of the debt.

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§ IV.OF SET-OFF

When set-off takes place.

1196. (1) Where two persons are mutual debtors, a set-off takes place between them.

(2) Set-off operates *ipso jure*, and even without the knowledge of the debtors. The moment two debts exist simultaneously, they are mutually extinguished to the extent of their corresponding amounts.

Between which debts set-off takes place.

1197. (1) Set-off shall only take place between two debts both of which have for their subject-matter a sum of money or a determinate quantity of fungibles of the same kind, and which are both for a liquidated amount and exigible.

(2) A debt shall be deemed to be for a liquidated amount if it is certain even with respect to the quantity thereof.

Time for payment not to bar set-off.

1198. Time for payment gratuitously granted shall not operate so as to bar a set-off.

When set-off does not take place.

1199. Set-off takes place whatever may be the consideration of either of the debts, except in the following cases:

(*a*) when a demand is made for the restoration of a thing of which the owner was unjustly deprived;

(*b*) when a demand is made for the return of a deposit, or of a loan for use or *commodatum*;

(*c*) in the case of a debt in respect of maintenance not subject to attachment.

Surety can plead set-off.

1200. (1) It shall be competent to a surety to plead the set-off of what the creditor owes to the principal debtor.

(2) It shall not be lawful, however, for the principal debtor to plead the set-off of what the creditor owes to the surety.

(3) A joint and several debtor may not plead the set-off of what is due by the creditor to a co-debtor except in respect of the share of such co-debtor.

Where debtor accepts assignment of debt.

1201. (1) Where a creditor has assigned his rights to a third party, and the debtor has unreservedly and unconditionally accepted such assignment, such debtor may no longer set up against the assignee any set-off which, before his acceptance of the assignment, he could have set up against the assignor.

(2) Where, however, the assignment was not accepted by the debtor, but notice thereof was served upon him, the assignment shall not be a bar to the set-off except with regard to such debts as are subsequent to the notice.

Where same person owes several debts which may be set off.

1202. Where one and the same person has several debts which may be set off, the provisions of articles 1168, 1169 and 1171 relating to the appropriation of payments shall apply to the set-off.

Set-off does not affect rights of third party.
Amended by: VIII.2007.14.

1203. (1) Set-off shall not take place to the prejudice of the rights acquired by a third party.

(2) A person who, being a debtor, becomes a creditor after the debt has been attached in his hands by a garnishee order sued out by a third party, cannot set up a set-off to the prejudice of the party suing out the order:

Provided that nothing in this article shall prohibit a set-off of a credit arising in the course of the granting of facilities referred to in article 381(1)(*f*), (*g*) and (*h*) of the Code of Organization and Civil Procedure.

Cap. 12.

Payment of a debt which was extinguished by a set-off.

1204. A person who has paid a debt owing by him which, according to law, was extinguished by a set-off, may not in suing for the payment of the claim owing to him in respect of which he failed to plead the set-off, enforce, to the prejudice of third parties, any privilege, hypothec or other security attached to his claim, unless he had good grounds for not being aware of the claim which would have set off his debt.

§ V.OF MERGER

When merger takes place.

1205. Where the condition of creditor and that of debtor become united in the same person, a merger takes place by operation of law and both the claim and the debt are extinguished.

Merger benefits surety.

1206. (1) The merger which takes place in the person of the principal debtor, shall benefit the sureties.

(2) The merger which takes place in the person of the surety, shall not produce the extinguishment of the principal obligation.

(3) The merger which takes place in the person of one of the joint and several debtors, shall not benefit the other co-debtors except to the extent of the share for which such co-debtor was liable.

§ VI. OF THE LOSS OF THE THING DUE

When loss of thing extinguishes obligation.

1207. (1) Where a certain and determinate thing forming the subject-matter of an obligation perishes, or is placed *extra commercium*, or is lost so that it is absolutely not known whether it exists, the obligation is extinguished, provided the thing perishes or is placed *extra commercium* or is lost without the fault of the debtor, and before he is in default for delay.

(2) Even where the debtor is in default for delay but has not assumed the risk of fortuitous events, the obligation is extinguished if the thing would have equally perished in the possession of the creditor if it had been delivered to him.

(3) The debtor must prove the fortuitous event which he alleges.

(4) Whatever may have been the manner in which a thing stolen perished or was lost, its loss shall not exempt the person stealing it from the obligation of restoring its value.

Debtor to assign rights of action to creditor.

1208. Where the thing perishes or is placed *extra commercium* or is lost without the fault of the debtor, the debtor is bound to assign to the creditor any right or action for damages, to which he may be entitled in respect of such thing.

§ VII. OF RESCISSION

Effects of rescission.

1209. (1) The rescission of a contract shall, unless the law provides otherwise, operate so as to restore the parties to the condition in which they were before the contract.

(2) Each party shall be bound to restore to the other any thing received or obtained in consequence or by virtue of the contract.

(3) With regard to the fruits collected or the interest received up to the date of the demand for rescission, the court may, having regard to the circumstances of the case, direct a set-off of such fruits or interest.

(4) Where the contract is rescinded on the ground of fraud or violence, the party guilty of such fraud or violence shall also be bound to restore to the other party the fruits which might have been collected, and which, through his fault or negligence, have not been so collected.

Rescission to operate against third parties.

1210. (1) Rescission shall operate also against third parties in possession.

(2) It annuls any right or burden which may have been granted or imposed over or on the thing which, in consequence of the rescission, is to be restored.

When rescission is demanded in respect of a part only of the instrument.

1211. (1) Where an instrument contains several parts independent of each other, it shall be lawful to demand the rescission of one of such parts only.

(2) Where the several parts of the instrument are in any way connected with each other, and the plaintiff has sued for the rescission of one part only, it shall be lawful for the defendant to demand, against the plaintiff or, if there are other parties interested in the parts not included in the action, against such other parties, the rescission of the whole instrument, or of all such parts as are connected with each other.

Grounds of rescission. *Amended by: LVIII.1975.6.*

1212. Any agreement which is defective by reason of the absence of any of the conditions essential to the validity of contracts, or which is expressly declared by law to be null, shall be subject to rescission.

Rescission on the ground of lesion. *Amended by: LVIII.1975.7.*

1213. Rescission on the ground of lesion cannot be demanded by a person who has attained majority.

Minors.

1214. (1) With regard to minors, lesion shall be a good ground for rescission, in any kind of agreement not expressly excepted by law, and whatever the extent of the lesion, unless it is of very small consequence.

(2) Nevertheless, it shall not be competent even to a minor to sue for rescission on the ground of lesion where such lesion is the effect of a fortuitous and unforeseen event.

Other cases of lesion in the case of minors.

1215. Rescission on the ground of lesion shall also be allowed in favour of a minor if, although no actual loss to his prejudice is made to appear, it is shown that the agreement renders him liable to litigation or to considerable expense, or causes to him the loss of any advantage to which he was entitled.

Where both contracting parties are minors.

1216. It shall be competent to a minor to exercise the rescissory action on the ground of lesion even though the other party to the agreement be also a minor.

Where minor declares that he is of age.

1217. (1) The mere declaration made by a minor that he is of age shall not operate to deprive him of the right to sue for rescission.

(2) Nevertheless, it shall not be lawful for a minor to impeach his obligation on the ground of his disability to contract, if he is guilty of misrepresentation calculated to lead others to believe that he is capable of contracting, and has, by such means, deceived the other party.

Cases where minors cannot demand rescission, except where such right would be competent to majors.
Cap. 13.

1218. Where the agreement is one with regard to which a minor is, under the provisions of the Commercial Code, considered to be of age, or is entered into by the minor by reason of his trade, or where the obligation arises out of tort or quasi-tort, in such cases the minor cannot demand the rescission of the contract except in those cases in which it is competent also to a person of age to demand it, saving in the case of tort or quasi-tort, the provisions of articles 1035 and 1036.

Where minors are considered as being of age.

1219. Where the formalities prescribed with regard to any act of a minor or person interdicted, or to any act which concerns a minor or person interdicted, have been observed, or where the acts performed by the tutor or curator do not exceed the limits of his administration, the minor or person interdicted shall, with regard to such acts, be considered as being of age or not interdicted, saving, where competent, his right of relief against the tutor or curator.

Disability to contract in cases of tort or quasi-tort.
Substituted by: XLVI.1973.67.

1220. Disability to contract shall not be a good ground for the rescission of the obligation of a person interdicted if the obligation arises out of tort or quasi-tort.

Extent of reimbursement by minors and persons interdicted.
Amended by: XLVI.1973.68.

1221. (1) Where minors or persons interdicted are entitled to sue for the rescission of their obligations on the ground of their disability, it shall not be competent to claim the reimbursement of what was paid to them in pursuance of such obligations during the time of minority or interdiction, except to the extent of the amount accrued to their benefit.

(2) The provisions of this article shall also be applicable in the case referred to in article 1216.

Limitation of rescissory action on the ground of violence, error, etc.
Amended by: XLVI.1973.69.

1222. (1) Save where the law in any particular case prescribes a shorter period, the right to bring an action for the rescission of a contract on the ground of violence, error, fraud, or the disability of a person interdicted, or minor, shall be barred on the expiration of two years.

(2) The same rule shall apply with regard to any obligation which is without consideration, or is founded on a false consideration.

Day from which period of limitation begins to run.

1223. (1) The said period of limitation shall only begin to run, in the case of violence, from the day on which the violence has ceased, and, in the case of error, fraud or false consideration, from

the day on which the defect was discovered.

(2) In the case of an obligation without consideration the period shall run from the day of the contract.

Limitation of rescissory action in other cases.

1224. In any other case not provided for in the last two preceding articles, the right of action for the rescission of an obligation shall be barred on the expiration of the period of five years from the day on which such right may be exercised, irrespectively of the state or condition of the person to whom such right is competent, saving any other provision of this Code.

Right of action passes to heirs.

1225. The right of action for rescission shall pass to the heirs:

Provided that they cannot exercise such right except within the time which was still available to their predecessors, saving any other provision of law relating to the interruption or suspension of prescription.

Plea of nullity.

1226. (1) The plea of nullity may at any time be set up by the party sued for the performance of the contract in all cases in which such party could have brought an action for rescission.

(2) Such plea is not subject to the prescription established in articles 1222 and 1224.

Affirmation or ratification of obligation.

1227. The affirmation or ratification of an obligation against which an action or plea of rescission on the ground of nullity or on any other ground was competent shall produce its effects between the contracting parties without prejudice to the rights of third parties.

When affirmation or ratification implies waiver of rescissory action.

1228. The affirmation or ratification shall not imply a waiver of the action for rescission unless it is shown that the party affirming or ratifying was aware of the defect giving rise to such action.

Affirmation or ratification may take place tacitly.

1229. Saving the provisions of the last preceding article, the affirmation or ratification may take place tacitly by the voluntary performance of the obligation against which an action of rescission is competent according to law, or by any other act disclosing an intention to give effect to the obligation.

Affirmation or ratification of act which the law expressly annuls for want of formalities.

1230. Saving any other special provision of the law, the affirmation or ratification of any act which the law expressly annuls for want of the requisite formalities, shall not validate such act, unless the affirmation or ratification is made by means of an instrument having all the formalities required for the validity of the act so affirmed or ratified.

Affirmation or ratification of donation or testamentary disposition.

1231. The provisions of the last preceding article shall not apply to cases of affirmation or ratification of a donation or testamentary disposition made after the death of the donor or testator by his heirs or by other persons claiming under him. In any such case the affirmation or ratification, although made tacitly by the heirs or such other persons, shall imply a waiver on their part of the action or plea of rescission.

Sub-title VI

OF THE PROOF OF OBLIGATIONS AND THEIR EXTINGUISHMENT

Proof of obligations and their extinguishment. *Amended by: XIV.1913.1.* Cap. 12.

1232. (1) Where the law does not require that an obligation or its extinguishment should result from a public deed or a private writing, such obligation or its extinguishment may be evidenced by means of witnesses or any other means allowed under the provisions of the Code of Organization and Civil Procedure.

(2) A public deed is an instrument drawn up or received, with the requisite formalities, by a notary or other public officer lawfully authorized to attribute public faith thereto.

Transactions which must be expressed in public deed or private writing. *Amended by: XIV.1913.2.*

1233. (1) Saving the cases where the law expressly requires that the instrument be a public deed, the transactions hereunder mentioned shall on pain of nullity be expressed in a public deed or a private writing:

(*a*) any agreement implying a promise to transfer or acquire, under whatsoever title, the ownership of immovable property, or any other right over such property;

(*b*) any promise of a loan for consumption or mutuum;

(*c*) any suretyship;

(*d*) any compromise;

(*e*) any lease for a period exceeding two years, in the case of urban tenements, or four years, in the case of rural tenements;

(*f*) any civil partnership; and

(*g*) for the purposes of the Promises of Marriage Law, any promise, contract, or agreement therein referred to. Cap. 5.

(2) Where, in the case of a private writing, the writing is not signed by each of the parties thereto, it must be attested in the manner prescribed in article 634 of the Code of Organization and Civil Procedure. Cap. 12.

Presumption of law.

1234. Any person having in his favour a presumption established by law, shall be exempted from any proof as to the fact forming the subject-matter of the presumption.

Admissibility or otherwise of evidence to rebut presumption.

1235. (1) Evidence to rebut a presumption established by law shall be inadmissible only when on the ground of such presumption the law annuls certain acts, or disallows any action or plea, without any reservation of the right of producing evidence to the contrary.

(2) In any other case, evidence to rebut the presumption, shall be admissible even though the law does not make an express reservation as to the production of evidence to the contrary.

Title V

OF MARRIAGE CONTRACTS

Marriage contracts. *Substituted by: XXI.1993.77.*

1236. Except with regard to the acquisitions referred to in Sub-title III of this Title, no partnership or community of property between the spouses is established by law.

Parties may enter into other agreements not contrary to morals, etc. *Substituted by: XXI.1993.77.*

1237. (1) It shall, however, be lawful for the future spouses to enter into any other agreement, which is not contrary to morals, or inconsistent with the rules contained in this and the following articles of this Code.

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

Cap. 168.

(3) The spouses may, without the intervention of any court, whether alone or with others, and whatever system regulates their property, form a limited liability company under the Commercial Partnerships Ordinance*; voting rights attached to shares registered in the name of a spouse shall be exercised by the spouse in whose name the shares are registered. The ownership of the shares in any such company shall remain governed in accordance with the system governing the property of the spouses.

Certain agreements may not be made. *Amended by: XLVI.1973.70. Substituted by: XXI.1993.77.*

1238. (1) It shall not be lawful for the future spouses to enter into any agreement whereby either of them is established as head of the family, or into any agreement in derogation of any of the rights deriving from parental authority, or of the provisions of law relating to minority, or of any prohibitory rule of law.

(2) Nevertheless, any stipulation that all the children, or any of them, shall be brought up in the religion of either of the spouses shall be valid.

Agreements may not be made in derogation of legal order of succession.

1239. It shall not be lawful for the future spouses to enter into any agreement or to make any waiver tending to vary the legal order of succession either with respect to themselves in regard to the succession of their children or descendants, or with respect to the children between themselves, saving such testamentary dispositions and such donations as are allowed under the provisions of this Code.

Validity of certain promises made in marriage contracts. *Amended by: XLVI.1973.71; XXI.1993.78.*

1240. (1) A promise made in a marriage contract by the parent of one of the future spouses to such future spouse -

(*a*) not to leave to such future spouse out of his or her estate a portion smaller than that which such future spouse would take on an intestacy; or

(*b*) not to diminish such portion by any donation in favour

*Repealed by Act XXV of 1995 (Cap. 386).

of his or her other children or of any other person; or

(*c*) not to give or leave, by donation or will, to any of his or her other children more than that which he or she would give or leave to such future spouse,

shall be valid.

(2) It shall also be lawful for either of the future spouses to renounce the succession of any of his or her own parents or other ascendants in return for what is given to him or her by such parent or other ascendant by way of donation in contemplation of marriage.

(3) Any such waiver, however, shall not be valid unless it is expressly stated.

Marriage agreements by minor. *Amended by: XLVI.1973.72. Substituted by: XXI.1993.79. Amended by: II.2012.20.*

1241. Marriage agreements entered into by a minor with the consent of the parents or parent exercising parental authority, or where both parents are absent, dead, interdicted, or have a mental disorder or other condition, which renders them incapable of managing their own affairs, with the authority of the court, are valid.

Person under disability to contract.

1242. The authority of the court shall, in all cases, be necessary for the validity of a marriage agreement entered into by a person who is under disability to contract.

Variation of marriage contract before marriage.

1243. Any variation or counter-declaration made in respect of the marriage contract by the future spouses before the celebration of marriage shall not be effectual unless it is made with the consent of all the parties to that contract.

Post-nuptial agreements. *Amended by: XXX.1981.9; XXI.1993.80.*

1244. (1) After the celebration of the marriage, the spouses may, with the authority of the court, vary their marriage agreements, without prejudice to the rights of the children or of third parties.

(2) Where no ante-nuptial agreement was made, the spouses may also, with the authority of the court, enter into a marriage contract.

(3) Any agreement prohibited by law in respect of a pre-nuptial agreement is also prohibited in any post-nuptial agreement.

(4) After the celebration of the marriage the spouses may, without the necessity of any authority of the court, substitute a special hypothec for any general hypothec established in the marriage contract.

Marriage contracts to be expressed in public deed,

1245. Any marriage contract, as well as any variation or counter-declaration made in respect thereof, shall, on pain of nullity, be expressed in a public deed.

and registered in Public Registry.

1246. No marriage contract, variation or counter-declaration shall be operative in regard to third parties, unless it is registered in the Public Registry Office.

Notary to draw up note of reference. Cap. 55.

1247. In case of any variation or counter-declaration, the notary shall, under the penalties established in the Notarial Profession and

Notarial Archives Act, draw up a note of reference as in the case of a deed of cancellation or rescission.

Provisions of this Sub-title substituted by: XXI.1993.81.

Sub-title I *

OF THE INSTITUTES OF DOWRY AND DOWER

Abolition of institutes.

1248. The institutes of dowry and dower are hereby abolished.

Repealed by: XXI.1993.81.

§ I. OF SETTLEMENT OF DOWRY

Articles 1249 to 1258, both inclusive, were repealed by Act XXI of 1993.

Repealed by: XXI.1993.81.

§ II. OF THE RIGHTS OF THE HUSBAND OVER THE DOWRY

Articles 1259 to 1267, both inclusive, were repealed by Act XXI of 1993.

Repealed by: XXI.1993.81.

§ III. OF THE INALIENABILITY OF THE DOWRY

Articles 1268 to 1299, both inclusive, were repealed by Act XXI of 1993.

Repealed by: XXI.1993.81.

§ IV.OF RESTITUTION OF DOWRY

Articles 1300 to 1312, both inclusive, were repealed by Act XXI of 1993.

Provisions of this Sub-title substituted by: XXI.1993.81.

Sub-title II

OF DOWER (*Dotarium*)

Articles 1313 to 1315, both inclusive, were repealed by Act XXI of 1993.

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*For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

Sub-title III[*]

OF THE COMMUNITY OF ACQUESTS

Provisions of this Sub-title substituted by: *XXI.1993*.82.

Marriage produces community of acquests.

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

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

Community of acquests may be established after marriage.

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

Provisions may not be derogated from.

1318. It shall not be lawful for the spouses to derogate from the provisions of this Code in so far as they relate to the community of acquests.

When community begins and terminates.

1319. The right of each of the spouses to the community of acquests shall, saving any other provision of the law, commence from the day of the celebration of the marriage and terminate on the dissolution thereof.

Assets of community of acquests. *Amended by:* *XXIII.2017.75*.

1320. The community of acquests shall comprise -

(*a*) all that is acquired by each of the spouses by the exercise of his or her work or industry;

(*b*) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether any one of the spouses possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;

(*c*) saving any other provision of this Code to the contrary, the fruits of such property of the children as is subject to the legal usufruct of any one of their parents;

(*d*) any property acquired with moneys or other things derived from the acquests, even though such property is so acquired in the name of only one of the spouses;

(*e*) any property acquired with moneys or other things which either of the spouses possesses since before the marriage, or which, after the celebration of the marriage, have come to him or her under any donation,

*For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

succession, or other title, even though such property may have been so acquired in the name of such spouse, saving the right of such spouse to deduct the sum disbursed for the acquisition of such property;

(*f*) fortuitous winnings made by either or both spouses, and such part of a treasure trove found by either of the spouses, as is by law assigned to the finder, whether such spouse has found the treasure trove in his or her own tenement, or in the tenement of the other spouse, or of a third party:

Provided that such part of the treasure trove as is granted to the owner of the tenement shall belong entirely to the party in whose tenement the treasure trove is found.

Presumption with regard to acquests.

1321. (1) All the property which the spouses or one of them possess or possesses shall, in the absence of proof to the contrary, be deemed to be part of the acquests.

(2) Any property, however, which may have come to either of the spouses under any title anterior to the marriage shall not be included in the acquests, notwithstanding that such spouse may have been vested with the possession of the property only after the marriage.

Administration of the community of acquests.
Amended by: IV.1995.2; XIII.2004.41; XV.2008.3; XII.2009.21.

1322. (1) The ordinary administration of the acquests and the right to sue or to be sued in respect of such ordinary administration, shall vest in either spouse.

(2) The right to exercise acts of extraordinary administration, and the right to sue or be sued in respect of such acts or to enter into any compromise in respect of any act whatsoever, shall vest in the two spouses jointly.

(3) Acts of extraordinary administration are the following:

(*a*) acts whereby real rights over immovable property are acquired, constituted or alienated;

(*b*) acts constituting or affecting hypothecation of property;

(*c*) acts whereby immovable property is partitioned;

(*d*) acts granting rights of use and, or, enjoyment over immovable property;

(*e*) donations other than those referred to in article 1753(2)(*a*);

(*f*) borrowing or lending of money, other than the deposit of money in an account with a bank;

(*g*) the acquisition of movable property or of any right of use or enjoyment over movable or immovable property the consideration for which is not paid on, or prior to, delivery:

Provided that this shall not apply to any debt incurred for the needs of the family in terms of article 1327(*c*), or

to the hiring of movables or immovables when the consideration therefor is moderate in relation to the condition of the family and the duration of the lease is for a short period;

(*h*) the contracting of any suretyship;

(*i*) the giving of a pledge;

(*j*) the entering with unlimited liability in a commercial partnership, or the subscribing to or acquisition of any shares in a limited liability company which are not fully paid up;

(*k*) the transfer of a business concern as well as the transfer of any share in a commercial partnership other than a public company;

(*l*) any act that may give rise to a special privilege in terms of paragraph (*b*) of article 2010;

(*m*) any act of rescission of any act referred to in paragraphs (*a*) and (*c*), and any act of declaration made *inter vivos* whereby any real right over immovables is acknowledged or renounced; and

(*n*) the settlement in trust of property forming part of the community of acquests and the variation or revocation of the terms of any trust in which any such property has been settled.

(4) Any money deposited in a bank and any instrument, as defined in the Second Schedule of the Investment Services Act, to the credit of a married person may only be withdrawn by such married person and it shall not be enquired whether such money or instrument belongs to the community of acquests or not. Cap. 370.

(5) The provisions of sub-article (4) shall continue to apply even after the termination of the community of acquests for any reason whatsoever and are without prejudice to the right of each of the spouses to his or her full share of the community upon its partition.

(6) Either spouse may, by means of a public deed or a private writing duly attested in terms of article 634 of the Code of Organization and Civil Procedure, appoint the other spouse or any other person, as his or her mandatory with regard to acts of extraordinary administration and compromise. Cap. 12.

(7) The notary publishing a public deed as is referred to in sub-article (6), and the advocate or notary public attesting a private writing as referred to in the same sub-article, shall in each case warn the spouse so appointing a mandatory of the importance and consequence of such appointment and shall in the public deed or the private writing, as the case may be, declare that he has so warned the spouse.

1323. (1) If one of the spouses refuses his or her consent to an act of extraordinary administration, the other spouse may apply to the competent court for authorisation when the act of extraordinary administration is necessary in the interests of the family: Refusal or absence of consent. *Amended by: IX.2004.14.*

Provided that the parties may, in such cases, choose to adopt the procedures contemplated in article 6A to arrive at an agreement or to have an arbitration between them.

(2) If one of the spouses is away from Malta or if there exists any other impediment in respect of one of the spouses and in either case there exists no authorisation by public deed or by private instrument duly attested in terms of article 634 of the Code of Organization and Civil Procedure, the other spouse may perform such necessary acts of extraordinary administration of the acquests which in terms of law require the consent of both spouses, and which the court of voluntary jurisdiction may specifically authorise; sohowever that the court may not in such cases authorise the performance of all necessary acts of extraordinary administration generally.

Cap. 12.

(3) The registration required by article 996 or 2033 as the case may be, in respect of any act alienating the ownership or any real right over immovable property, and any hypothecation whether general or special shall contain also the name of the other spouse as if such other spouse were a party to the deed of alienation or hypothecation, and where such registration is made in the name of one spouse only it shall in respect of third parties be operative only in relation to the spouse in whose name it is registered.

Administration of trade, business, etc.

1324. Normal acts of management of a trade, business or profession being exercised by one of the spouses, shall vest only in the spouse actually exercising such trade, business or profession even where those acts, had they not been made in relation to that trade, business or profession, would have constituted extraordinary administration.

Exclusion of a spouse from the administration of the community. *Amended by: IX.2004.14.*

1325. (1) The competent court may at the request of a spouse order the exclusion of the other spouse either generally or limitedly for particular purposes or acts, from the administration of the community of acquests, where the latter spouse -

(*a*) is not competent to administer; or

(*b*) has mismanaged the community;

and in any such case the administration of the community of acquests shall to the extent to which such spouse has been excluded, vest exclusively in the spouse not so excluded.

(2) The spouse who has been so excluded from administering the acquests may, if the grounds upon which he or she has been excluded no longer subsist, request the court to reinstate such spouse in the administration.

(3) Any order made in terms of this article shall be notified within twenty-four hours by the registrar to the Director of the Public Registry who shall keep the same in a special register and keep a special index thereof. Such orders shall contain all particulars of both spouses as are required for notes of enrolment under the Public Registry Act and shall become operative with regard to third parties upon such registration.

Cap. 56.

(4) Without prejudice to any order made in terms of sub-article

(1) of this article, in the case of the interdiction or incapacitation of one of the spouses and until such interdiction or incapacitation ceases, such spouse shall be excluded from the administration of the acquests and in any such case the administration of the acquests shall vest solely in the spouse not so excluded.

Acts performed without the necessary consent.

1326. (1) Acts which require the consent of both spouses but which are performed by one spouse without the consent of the other spouse may be annulled at the request of the latter spouse where such acts relate to the alienation or constitution of a real or personal right over immovable property; and where such acts relate to movable property they may only be annulled where the rights over them have been conferred by gratuitous title.

(2) An action for annulment may only be instituted by the spouse whose consent was required and within the peremptory term of three years from -

(*a*) the date when such spouse became aware of the act, or

(*b*) the date of registration, where such act is registerable, or

(*c*) the date of termination of the community of acquests,

whichever is the earliest.

(3) Notwithstanding the provisions of sub-article (2), the right given by sub-article (1) to a spouse to request the annulment of an act shall lapse at the expiration of three months from the day on which notice of the act shall have been given to such spouse by means of a judicial act, unless within such time of three months such spouse shall have instituted an action for such annulment.

(4) The spouse who has not instituted the action for annulment within the stipulated time and who has not expressly or tacitly ratified the act, shall nevertheless have an action to compel the other spouse to reintegrate the community of acquests or, where this is not possible, to make good the loss suffered.

(5) Saving the preceding provisions of this article, where in any act which requires the consent of the other spouse and which relates to movables, a spouse has acted unilaterally, there shall be no right competent to the other spouse to demand the annulment of the act; where however, the other spouse has not ratified such act, whether expressly or tacitly, such spouse shall have an action to compel the spouse who has acted unilaterally to reintegrate the community of acquests, or where this is not possible, to make good the loss suffered.

(6) The provisions of this article shall be without prejudice to any right competent to a spouse under this Code or any other law.

Debts chargeable to the community.

1327. Saving the provisions of article 1329, the assets forming part of the community of acquests shall be charged only with the following debts:

(*a*) the burdens and obligations which encumber the assets under the act of their acquisition;

(*b*) the expenses and obligations incurred in the administration of the acquests, except such expenses as are incurred by acts which require the consent of both spouses but which are performed by one spouse only without the consent of the other spouse;

(*c*) the expenses and obligations, even if incurred separately, for the needs of the family including those for the education and upbringing of the children;

(*d*) every obligation which is contracted by the spouses jointly;

(*e*) debts relating to the ordinary repairs of the property of either of the spouses, the fruits of which are included in the acquests; and

(*f*) any debt or indemnity due as a civil remedy by either spouse where such indemnity is not due as a civil remedy in respect of any offence wilfully committed.

Creditors of a particular spouse.

1328. Creditors of a particular spouse shall, unless they enjoy a lawful cause of preference, rank after the creditors of the community of acquests.

Obligations separately contracted by either spouse.

1329. (1) Subject to the following provisions of this article, the creditors of a spouse for debts which are not chargeable to the community of acquests whether such debt has arisen before or after the marriage, may, when such creditors cannot satisfy their claim against the paraphernal property of such spouse, enforce their claim *in subsidium* against the assets forming part of the community of acquests but only to the extent of the value of the share which such spouse has in the community of acquests.

(2) Saving the right of the debtor's spouse to seek the judicial separation of property, the debtor's spouse shall not have a right to oppose an act enforcing the credit against any property of the debtor or of the community of acquests except where the property upon which execution is being attempted is the paraphernal property of such debtor's spouse.

Where paraphernal property is subject to the debts of the community.

1330. When the assets of the community of acquests are insufficient to satisfy the debts which burthen it, the creditors of such community may enforce their claim *in subsidium* against the paraphernal property of the spouses:

Provided that where -

(*a*) the debt is due as a civil remedy in respect of a wilful offence committed by either spouse; or

(*b*) the debt is one arising out of the exercise of a trade, business or profession as is referred to in article 1324;

the creditors may not enforce their claim against the paraphernal property of the spouse who has not given rise to the claim, but may in such cases enforce their claim to the extent of any part remaining unsatisfied by the assets of the community of acquests, against the paraphernal property of the spouse giving right to such claim.

Reimbursement and restitution.

1331. (1) Each of the spouses is bound to reimburse the community of acquests with any sum of money or the value of any thing which he or she may have appropriated from the acquests to satisfy debts which do not fall under the provisions of article 1327, unless he can show that the act was one which was advantageous to the community or was performed to satisfy the needs of the family.

(2) Each one of the spouses has a right to be reimbursed with any sum of money or the value of any thing which has been taken from his or her paraphernal property where such money or thing was spent or consumed in connection with a debt or an investment of the community of acquests.

(3) The spouse who is a creditor of the community of acquests may demand to be assigned property of the community up to the value of his or her credit. The reimbursement from the property of the community of acquests shall be made first by assigning money, then other movables and finally immovables.

(4) These reimbursements are to be made at the termination of the community of acquests:

Provided that the court may allow that any such reimbursements take place at an earlier date when the interests of the family so require or permit.

Judicial separation of property.
Amended by: XV.2012.26.

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

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

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

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

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

(*e*) upon the legal separation of the spouses.

(2) The judicial separation of property may only be demanded by either spouse or by his or her lawful representatives; sohowever that such separation may not be demanded by the spouse or the representatives of the spouse who has given rise to the causes for judicial separation referred to in paragraphs (*b*) or (*c*) of sub-article (1) of this article.

(3) Where the judicial separation has been demanded by the spouse excluded from the administration of the community of acquests in terms of paragraph (*d*) of sub-article (1) of this article, the court shall, where the judicial separation causes financial damage to the other spouse, order the spouse demanding judicial

separation to pay compensation to the other party for the loss that such party may have suffered because of the separation.

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

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

(5) The creditors of either spouse or of the community of acquests may impeach the separation pronounced by the court, even though it may have been given effect to, if such separation has been obtained in fraud of their rights.

(6) The court may where in its opinion circumstances so warrant direct that the property comprised in the community of acquests be not partitioned before the lapse of such period after the cessation of the community of acquests as it may determine.

(7) Any direction given by the court in virtue of sub-article (6) of this article, may, on good cause being shown, be changed or revoked by the court.

(8) The demand for the judicial separation of property shall not stay any action enforcing any debt of the community of acquests.

(9) Where a demand for the judicial separation of property has been filed, a creditor of a particular spouse may proceed or continue proceedings enforcing his claim against property of the community of acquests and in any such case the spouse of the debtor may demand that half the proceeds of the sale of any object belonging to the community of acquests shall remain deposited in court on account of the share in the community of acquests of the spouse of the debtor; sohowever that if such deposits exceed the share of such spouse in the community of acquests any sum so deposited in excess shall remain to the credit of the debtor spouse and be attachable by his creditors.

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

Partition of the community.

1333. The partition of the community of acquests shall be made by assigning one-half of the assets and liabilities comprised in the community to each of the spouses.

Provisions of this Sub-title substituted by: *XXI.1993*.82.

Sub-title IV[*]

OF PARAPHERNAL PROPERTY

Definition of paraphernal property.

1334. (1) Where the community of acquests or the community of residue under separate administration operates between the spouses, all property which is not included in paragraphs (*a*) to (*f*) of article 1320 or is not dotal is paraphernal. Where the property of the spouses is held under the system of separate property all property which is not dotal is paraphernal.

(2) The management of paraphernal property shall appertain exclusively to the spouse to whom such property belongs.

(3) For the support of the family, the spouses shall first use income deriving from common property before income belonging to one of them exclusively, and they shall first use capital which is their common property or belongs to the community of acquests before the capital belonging exclusively to one of the spouses.

Where a spouse appoints other spouse as agent.

1335. Where one of the spouses appoints the other spouse as his or her agent to manage his or her paraphernal property, the latter spouse shall be liable to the first spouse in the same manner as any other agent, sohowever that such spouse shall only be obliged to render an account for the fruits if this is expressly stated in the mandate.

Where a spouse enjoys property without authority or with authority but without condition of accounting for fruit.

1336. (1) Where a spouse has enjoyed the paraphernal property of the other spouse, without authority, but without opposition, that spouse or the heirs of that spouse, upon the dissolution of the marriage or upon the first demand of the spouse to whom the property belongs, shall only be bound to deliver the existing fruits, and shall not be accountable for fruits which shall have been consumed up to that time.

(2) The same rule shall apply where such spouse has enjoyed such property with authority but without the express condition of accounting for the fruits.

Where spouse enjoys property in spite of opposition.

1337. Where a spouse has enjoyed the property of the other spouse in spite of opposition, he shall be answerable for all fruit existing and consumed.

Sub-title V[*]
OF COMMUNITY OF RESIDUE UNDER SEPARATE ADMINISTRATION

Provisions of this Sub-title substituted by: *XXI.1993*.82.

Community of residue under separate administration.

1338. (1) Where the future spouses in a marriage contract stipulate that the property acquired by them during marriage shall be governed by the system of community of residue under separate administration the following provisions of this Sub-title shall apply.

(2) The assets which shall be governed by the system of community of residue under separate administration shall be all the

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* For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

*For the application of the provisions of this Sub-title *see* article 89 of Act XXI of 1993.

assets falling under paragraphs (*a*) to (*f*) of article 1320.

How acquisitions are registered.

1339. (1) Under the system of community of residue under separate administration the acquisitions made by each of the spouses during the marriage shall be held and administered by the spouse by whom such acquisitions are made, and subject to any limitations contained in this Sub-title shall, in relation to third parties, be dealt with by such spouse as if such spouse were the exclusive owner thereof.

(2) Where under the system of community of residue under separate administration property is acquired by the spouses jointly, it shall be administered jointly. The share of each spouse in such property may only be alienated *inter vivos*, with the consent of the other spouse, or where such consent is unreasonably withheld, with the authority of the court of voluntary jurisdiction, or in a judicial sale by auction at the instance of any creditor of such spouse.

Termination of community of residue under separate administration.

1340. (1) The community of residue under separate administration shall, unless terminated earlier by mutual consent by public deed with the authority of the court, terminate upon the dissolution of the marriage; under the same circumstances, *mutatis mutandis*, as apply for the community of acquests under paragraphs (*b*) and (*c*) of sub-article (1) of article 1332; and upon the legal separation of the spouses.

(2) Sub-articles (2), (4), (5), (9) and (10) of article 1332 shall apply *mutatis mutandis* where the dissolution of community of residue under separate administration is declared by judgment of the court.

Calculation of residue.

1341. (1) At the termination of the community of residue under separate administration, howsoever happening, the residue to be accounted for by each spouse shall include any expense made by that spouse solely in his or her interest out of assets governed by the community and held by that spouse, and shall be subject to the deduction of any amount paid out with paraphernal property of that spouse for debts of that spouse relating to assets held by that spouse and governed by the system of community of residue with separate administration, as well as liabilities still outstanding by that spouse incurred in respect of such assets.

(2) From the residue as determined in sub-article (1) there shall be deducted any paraphernal debts of the spouse which are in excess of that spouse's paraphernal assets.

(3) The result as determined in sub-article (2) shall if it is not a debit constitute the final residue of that spouse. If the result is in debit there shall be considered to be no final residue for that spouse.

(4) Where the final residue of one spouse is greater than the final residue of the other spouse or where only one spouse has a final residue, there shall be assigned to the spouse with the lesser final residue or with no final residue, as the case may be, as much of the final residue of the spouse with the greater final residue or with the only final residue as is necessary so that each spouse may

have an equal share of assets forming the final residue of both spouses.

Where debt is not paraphernal.

1342. (1) For the purpose of article 1341(2) any debt which is not one mentioned hereunder is a paraphernal debt:

(*a*) the burthens and obligations which encumber the assets under the act of their acquisition;

(*b*) the expenses and obligations incurred in the administration of the acquests;

(*c*) the expenses and obligations even if incurred separately for the needs of the family including those for the education and upbringing of the children;

(*d*) debts relating to the ordinary repairs of paraphernal property of the spouse the fruits of which are included in the assets governed by the community of residue under separate administration;

(*e*) any debt or indemnity due as a civil remedy by a spouse where such indemnity is not due as a civil remedy in respect of any offence wilfully committed.

Rights of third parties.

1343. (1) Third parties may only exercise their rights against the spouse who has contracted with, or incurred the debt towards, them.

(2) At the termination of the community of the residue under separate administration and after the assignment of any final residue, the creditors of one spouse may however in relation to any debt due to them arising before the termination of the community of residue under separate administration, claim *in subsidium* against the other spouse up to the amount if any of the assets of the final residue of the debtor spouse assigned to the other.

Gratuitous alienations.

1344. (1) Where the system of community of residue under separate administration operates between the spouses, a spouse may not transfer *inter vivos* any of his assets under gratuitous title except with the consent of the other spouse.

(2) Sub-article (1) of this article shall not apply to donations of moderate value regard being had to the condition of the parties and all other circumstances.

(3) An action for annulment of an act of alienation under gratuitous title may only be instituted by the spouse whose consent was required and within the peremptory term of three years from -

(*a*) the date when such spouse became aware of the act, or

(*b*) the date of registration, when such act is registerable, or

(*c*) the date of termination of the community of residue under separate administration,

whichever is the earliest.

Acts performed with intention to defraud.

1345. (1) Where a spouse performs an act with the intention to defraud the other spouse of the potential rights competent on the termination of the community of residue under separate administration such other spouse may exercise the action contemplated in article 1144 as if he or she were a creditor.

Such right shall be personal to the latter spouse or his or her heirs and is not exercisable by the creditors of the spouse.

(2) An action under this article shall be prescribed by the lapse of five years from -

(*a*) the date when such spouse became aware of the act, or

(*b*) the date of registration, where such act is registerable, or

(*c*) the date of termination of the community of residue under separate administration,

whichever is the earliest.

Title VI

OF SALE

Sub-title 1

OF THE CONTRACT OF SALE

Definition of contract of sale.

1346. A sale is a contract whereby one of the contracting parties binds himself to transfer to the other a thing for a price which the latter binds himself to pay to the former.

Completion of sale.

1347. A sale is complete between the parties, and, as regards the seller, the property of the thing is transferred to the buyer, as soon as the thing and the price have been agreed upon, although the thing has not yet been delivered nor the price paid; and from that moment the thing itself remains at the risk and for the benefit of the buyer.

Sale of things by weight, etc.

1348. (1) Nevertheless, where movables are not sold in bulk but by weight, number or measure, the sale is not complete in that the property does not pass to the buyer and the things sold remain at the seller's risk, until they are weighed, counted or measured.

(2) The buyer, however, may demand that the things be weighed, counted or measured and delivered to him, or, in case of non-performance of the obligation, payment of damages.

(3) The seller may also compel the buyer to perform his obligation or, in default, to pay damages.

(4) The provisions of this article shall also apply where the thing sold is an immovable and cannot exactly be determined

before it is measured.

Sale of things in bulk.

1349. Where, on the contrary, the things are sold in bulk, the sale is complete even though the things are not yet weighed, counted or measured.

Definition of sale in bulk or by weight, etc.

1350. (1) A sale is said to be made in bulk, when the things are sold for one and the same price, irrespectively of the weight, number or measure of such things.

(2) A sale is said to be made by weight, number or measure, when the price is agreed upon according to the weight, number or measure, whether the sale is in respect of the whole quantity of the things existing in a specified place or in respect only of a part thereof.

(3) A sale is also said to be made by weight, number or measure if the sale is in respect of a specified number of things or of so many kilogrammes or measures of a specified thing, even though one single price has been fixed in respect of such number of things or such quantities of a specified thing.

When things are to be tasted or tried.

1351. (1) In regard to things which, according to usage or by virtue of an express agreement, are to be tasted or tried before the purchase, the buyer shall not be bound until he has approved of them.

(2) This, however, shall not apply where the thing, which, according to usage only and not by virtue of an express agreement, is to be tasted or tried before the purchase, has not to satisfy the taste or the individual opinion of the purchaser, but the taste or trial is only necessary in order to ascertain whether the thing is of good and merchantable quality; and in any such case, if the thing is a specific thing and the price has been agreed upon, both parties are bound, but the contract shall be deemed to have been made under a suspensive condition, and the buyer shall be bound to accept the thing and pay the price thereof if it is proved that the thing is of a good and merchantable quality, although he does not approve of the thing.

Ships and aircraft. *Added by: LII.2016.39.*

1351A. (1) Notwithstanding any of the provisions of this sub-title, any agreement relating to the sale or purchase of ships or aircraft, including aircraft engines, shall be governed by:

(a) the terms and conditions agreed between the parties as well as by the international usages of trade applicable in the context, and in case of conflict with the provisions of this Code, such terms and conditions shall prevail; and

(b) the special laws relating to merchant shipping and civil aviation, as the case may be.

(2) For the purposes of this article and sub-article (3) of article 1357, the term "ship" shall have the same meaning as ascribed to it in the Merchant Shipping Act and the term "aircraft" shall have the same meaning as ascribed to it in the Aircraft

Cap. 234.

Cap. 503.

Registration Act.

Ships and aircraft. *Added by: LII.2016.39.*

1351A. (1) Notwithstanding any of the provisions of this sub-title, any agreement relating to the sale or purchase of ships or aircraft, including aircraft engines, shall be governed by:

(*a*) the terms and conditions agreed between the parties as well as by the international usages of trade applicable in the context, and in case of conflict with the provisions of this Code, such terms and conditions shall prevail; and

(*b*) the special laws relating to merchant shipping and civil aviation, as the case may be.

(2) For the purposes of this article and sub-article (3) of article 1357, the term "ship" shall have the same meaning as ascribed to it in the Merchant Shipping Act and the term "aircraft" shall have the same meaning as ascribed to it in the Aircraft Registration Act.".

Cap. 234. Cap. 503.

Price.

1352. (1) The price must be in money.

(2) Nevertheless, the contract shall not cease to be a contract of sale if, in addition to the sum of money agreed upon, the buyer binds himself to give some thing in kind by way of a supplement to the price.

How price is fixed.

1353. (1) The price must be fixed and stated by the parties.

(2) It may, however, be left to the decision of one or more persons specified by the parties; and in such case if such person or any of such persons is unwilling or unable to fix such price, the sale is void.

Where price is to be fixed by experts.

1354. The price may also be left to the decision of one or more experts not specified by the parties; and, in such case, if the parties fail to agree as to the expert or experts to be appointed, the appointment shall be made by the court.

Where price is left to the decision of two or more persons.

1355. In all cases where the price is left to the decision of two or more persons, the price shall, if the persons are more than two, be determined by the opinion of the majority; but if the persons are only two and do not agree, or if they are more than two and fail to agree between them in such a way that no majority of votes can be obtained, an average shall be taken of the sums fixed by each of them.

Sale at current price.

1356. A sale can be made at the price current at a given time; and such price shall be deemed to be the average current price at the place and time where and when the contract is to be performed.

Promise to sell. *Amended by: XXVII.1976.2; XXII.2005.81; LII.2016.40.*

1357. (1) A promise to sell a thing for a fixed price, or for a price to be fixed by one or more persons as stated in the foregoing articles, shall not be equivalent to a sale; but, if accepted, it shall create an obligation on the part of the promisor to carry out the sale, or, if the sale can no longer be carried out, to make good the damages to the promisee.

(2) The effect of such promise shall cease on the lapse of the time agreed between the parties for the purpose or, failing any such

agreement, on the lapse of three months from the day on which the sale could be carried out, unless the promisee calls upon the promisor, by means of a judicial intimation filed before the expiration of the period applicable as aforesaid, to carry out the same, and unless, in the event that the promisor fails to do so, the demand by sworn application for the carrying out of the promise is filed within thirty days from the expiration of the period aforesaid.

(3) A promise of sale or purchase, by whatever name called, of ships and aircraft, including an aircraft engine, shall be regulated by the provisions of any agreement between the vendor and the purchaser in accordance with its terms as well as by the international usages of trade applicable in the context. Sub-article (2) shall not apply in such cases and:

(*a*) the effect of such promise shall cease on the lapse of time or on the events agreed between the parties for the purpose; and

(*b*) any notices which may be required to be given by the parties may be given by notice in writing in any manner, including by electronic means.

Promise to sell at a fair price.

1358. The provisions of the last preceding article shall also apply to a promise to sell at a fair price.

Promise to sell, with earnest.

1359. Where in any promise to sell, earnest has been given, each of the parties shall be at liberty to recede from the contract: the party giving the earnest forfeiting such earnest, and the party receiving the earnest returning double the amount thereof, saving any other usage in regard to the particular contract in respect of which earnest has been given.

Provisions relating to promise to sell, applicable to promise to buy.

1360. The provisions relating to a promise to sell, shall apply to a promise to buy.

Expenses of sale.

1361. (1) All expenses of or incidental to the contract of sale, including the expense necessary for freeing any immovable from the fetters of any entail or from any hypothec, easement or other burden to which the immovable may be subject, in accordance with the provisions contained in Title II of Part II of Book Second of the Code of Organization and Civil Procedure, shall be at the charge of the buyer.

Cap. 12.

(2) Brokerage as well as any fee due to the experts or other persons mentioned in article 1353 shall be borne by the seller and buyer one-half each.

Brokerage.

1362. In the absence of an agreement, brokerage shall be regulated at the rate of one *per centum* in the case of sale of movables, and two *per centum* in the case of sale of immovables.

Where sale or purchase is null.

1363. (1) The sale of immovable property shall be null if not made by a public deed.

(2) It shall also be null if the purchase is made *pro persona nominanda.*

Interpretation of doubtful provisions.

1364. Any provisions of a contract of sale which are doubtful or ambiguous shall be interpreted against the seller or the buyer according to the rules of interpretation relating to contracts in general.

Sub-title II

OF THE PERSONS WHO MAY BUY OR SELL

Persons who may buy or sell.

1365. All persons may buy or sell, except those who are by law prohibited from so doing.

Contracts of sale between spouses. *Amended by: XXIII.2017.76.*

1366. A contract of sale between spouses is null, except in the following cases:

(*a*) when the spouse assigns property to the other spouse in payment of a sum owed to that spouse in respect of a dowry;

(*b*) when the object of the sale or assignment which one of the spouses makes to the other is the payment of a debt due to the buyer or assignee, or the investment of money belonging to such buyer or assignee:

Provided that where in the cases aforesaid any indirect advantage results to either of the spouses, it shall be lawful for the heirs of the other spouse, or for any other person interested, to demand that the contract be rescinded *pro tanto*.

Sale by auction of property of either spouse at the suit of creditors.

1367. The provisions of the last preceding article in so far as they prohibit either of the spouses from buying property from the other, shall not apply to cases where property is sold by auction on the demand of the creditors of the spouse to whom such property belongs.

Other persons restrained from buying certain property.

1368. The sale, however, made, either directly or through intermediaries, to tutors or curators in regard to property belonging to the persons under their tutorship or curatorship, or to agents in regard to property which they are authorized to sell is null, even though such sale was made by judicial auction.

Sale or assignment of lawsuits, etc., to judges or magistrates.

1369. Any sale or assignment of lawsuits or of litigious rights or actions made, either directly or through intermediaries, to any judge or magistrate is also null.

Sub-title III

OF THE THINGS WHICH MAY BE SOLD

Things which may be sold.

1370. All things which are not *extra commercium* may be sold, unless the alienation thereof is prohibited by any special law.

Future things.

1371. (1) The sale of future things is conditional; and if the

thing sold shall not exist at all, the sale shall have no effect.

(2) Where, however, the subject-matter of the sale is an expectancy of a future thing, the sale is absolute and unconditional, and the buyer is bound to pay the price even though the thing shall not exist at all.

(3) In case of doubt, the sale is presumed to be conditional.

Sale of things belonging to another person. *Amended by: XLIX.1981.6.*

1372. Saving the provisions of article 559 and the provisions relating to Il-Monti in regard to pledges, the sale of a thing belonging to another person is void:

Provided that such sale may give rise to an action for damages if the buyer was not aware that the thing belonged to another person:

Provided also that the nullity of such sale may in no case be set up by the seller.

Sale of rights to succession of a living person.

1373. The sale or assignment of any right to the succession of a living person is also void, although such person shall have given his consent thereto.

Sale of rights concerning grants, etc., made for maintenance.

Cap. 12.

1374. The sale or assignment of rights concerning any sum of money or bequest granted or made expressly for maintenance or any pension granted by the Government is also null, saving, in regard to any garnishee order affecting such sum, bequest or pension, other provisions of the Code of Organization and Civil Procedure.

Things perished at the time of contract.

1375. (1) If at the time the contract of sale is made, the thing has totally perished, the contract is void.

(2) If the thing has perished only in part, the buyer may elect either to repudiate the contract or to demand the remaining part at a price to be fixed proportionately by means of a valuation.

Respective rights where buyer or seller knew that thing had perished.

1376. (1) If the seller knew that the thing had perished, but this was not known to the buyer, the latter may maintain an action for damages.

(2) If, on the contrary, the seller did not know that the thing had perished but this was known to the buyer, the latter shall not be bound to pay the price but shall be liable for damages. If the price has been paid, the buyer shall not be entitled to claim the refund thereof.

Applicability of s.1376 where thing sold is *extra commercium*, etc.

1377. The provisions of the last preceding article shall also apply where the sale is void on the ground that the thing was *extra commercium* or was already the property of the buyer.

Sub-title IV

OF THE OBLIGATIONS OF THE SELLER

Obligations of seller.

1378. The seller has two principal obligations, namely, to deliver, and to warrant the thing sold.

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§ I. OF DELIVERY

Delivery of immovable property.

1379. The delivery of immovable property takes place *ipso jure* on the publication of the contract of sale, saving, as regards the delivery of possession of property sold by judicial auction, the provisions of the Code of Organization and Civil Procedure.

Cap. 12.

Delivery of movable property.

1380. The delivery of movable property takes place either by handing the property to the buyer, or by handing to him the key of the place in which the property is lying, or by handing to him the documents of title the delivery of which operates, according to law, the transfer of the property to which such documents refer, or by causing the buyer to be acknowledged by the persons in whose possession the property exists.

Delivery of movable property by mere consent.

1381. The delivery of movable property takes place also by the mere consent of the parties -

(*a*) when the thing sold is already in the possession of the buyer; or

(*b*) when the seller who has reserved to himself the enjoyment of the thing sold acknowledges that he holds the thing on behalf of the buyer; or

(*c*) when the transfer of the thing sold cannot be effected at the time of the sale:

Provided that in the cases mentioned in paragraphs (*b*) and (*c*), such delivery shall not operate to the prejudice of third parties.

Delivery of incorporeal things.

1382. The delivery of incorporeal things takes place either by the use which the buyer makes of such things with the consent of the seller, or by handing over the documents of title in the case of any right the title to which is transferable by endorsement or delivery.

Expenses of delivery.

1383. (1) The expenses of delivery are at the charge of the seller.

(2) Such expenses shall include those of weighing, counting or measuring the thing, where the sale is made by weight, number or measure.

(3) The expenses of weighing, counting or measuring are at the charge of the buyer where the sale is made in bulk and the weighing, counting or measuring is required by the buyer in order to ascertain whether the thing sold is according to the quantity stated or promised to him.

(4) The expenses of carriage are at the charge of the buyer.

Place of delivery.

1384. Delivery must be made at the place where the thing was at the time of the sale.

Failure of seller to deliver.

1385. If the seller fails to make delivery at the time agreed upon, the buyer may elect either to demand the dissolution of the contract or to demand that he be placed in possession of the thing sold, provided the delay has been caused solely by the seller.

Liability of seller for damages.

1386. In all cases, the seller is liable for damages if the buyer has sustained any loss from the non-delivery of the thing at the time agreed upon.

Goods arriving on a ship.

1387. Where a person has bound himself to deliver goods to arrive on a ship which he has reserved to name within a specified time and such person fails to name the ship within the said time, such person shall, besides being answerable for damages, be liable to deliver, within a time to be fixed by the court, according to circumstances, other goods of the same quality and quantity as those forming the subject of the contract.

Failure to deliver goods arriving on a named ship within time agreed upon.

1388. The same rule shall apply where a person has bound himself to deliver goods to arrive on a ship named in the contract and fails to make delivery within the time agreed upon, unless he proves that he used due diligence for the goods to arrive within the time agreed upon and that the default of arrival of such goods within such time was due to a *vis major*.

Failure to deliver things which have to be weighed, counted or measured.

1389. Where the seller has bound himself to deliver, within a specified time, things which have to be weighed, counted or measured, he shall not be deemed to perform the obligation if he refuses to deliver the things to the buyer who presents himself to take delivery thereof in sufficient time for the things to be weighed, counted or measured before the expiration of the time so specified:

Provided that where the seller is ready to make delivery of the things in sufficient time so that the weighing, counting or measuring thereof may be conveniently commenced before the expiration of the specified time, it shall not be lawful for the buyer, even though he shall have previously in vain presented himself to take delivery of the things, to demand the dissolution of the sale, saving his right to maintain an action for damages as provided in articles 1385 and 1386.

Things not according to stipulated quality or sample.

1390. If the thing which the seller offers to deliver is not of the quality promised, or is not according to the sample on which the sale was made, the buyer may elect either to reject the thing and demand damages, or to accept the thing with a diminution of the price upon a valuation by experts.

Payment and delivery are concurrent conditions.

1391. The seller is not bound to deliver the thing, if the buyer does not pay the price thereof, unless the seller has allowed the buyer time for payment.

Seller not bound to deliver if buyer has become insolvent, etc.

1392. (1) Nor shall the seller be bound to make delivery of the thing, even though he has allowed the buyer time for the payment of the price, if, since the sale, the buyer has by his own act diminished the security which by the contract he had given to the

seller.

(2) Nor shall he be bound to make delivery if, since the sale, the buyer has become a bankrupt, or insolvent, or his condition has been so altered that the seller is in danger of losing the price.

(3) The same rule shall apply where, although the buyer was in a state of bankruptcy or insolvency at the time of the sale, such state did not reveal itself except after the sale and it was not known to the seller at the time of the sale.

(4) In the aforesaid cases, however, the seller is bound to deliver the thing if the buyer gives him security for the payment of the price at the time agreed upon.

State in which thing is to be delivered.

1393. The thing must be delivered in the same state in which it was at the time of the sale.

Fruits due or collected.

1394. (1) From the day of the sale, all fruits shall belong to the buyer.

(2) In the case of a sale made under a suspensive condition, all fruits which fall due or are collected before the fulfilment of the condition shall belong to the seller.

Fructus pendentes.

1395. The fruits which are uncut or unplucked at the time of the sale, or, where the sale is made under a suspensive condition, at the time of the fulfilment of the condition, shall belong to the buyer although they had been sown by the seller.

Rent.

1396. (1) The rent of rural tenements which had not fallen due at the time of the sale or at the time of the fulfilment of the condition shall also belong to the buyer.

(2) In the case, however, of urban tenements or of movables, the rent or the portion of the rent in respect of the period during which the sale was made or the condition was fulfilled, shall be divided between the seller and the buyer in proportion to the time elapsed before the sale was made or the condition was fulfilled and the time that elapsed afterwards.

Freight of voyage.

1397. In the case of sale of a ship while on her voyage, the freight of that voyage shall belong to the buyer.

Thing to be delivered with accessories,

1398. The obligation of delivering the thing shall include that of delivering its accessories and everything that is intended for its perpetual use.

in the quantity agreed upon.

1399. The seller is bound to deliver the full quantity of the thing as stipulated in the contract, subject to the modifications contained in the following articles.

Sale *ad mensuram.*

1400. (1) Where the sale of immovable property has been made with an indication of the quantity at so much per measure, the seller shall be bound to deliver to the buyer the quantity stated in the contract if the latter requires it.

(2) If this cannot be done, or if the buyer does not require it, the seller is obliged to accept a proportionate reduction of the price.

If quantity is found to be larger.

1401. If, on the contrary, in the case mentioned in the last preceding article, the quantity is found to be greater than that stated in the contract, the buyer shall be bound to pay a supplement:

Provided that where the overplus exceeds the twentieth part of the quantity stated in the contract, the buyer shall be at liberty to repudiate the sale.

Sale otherwise than *ad mensuram.*

1402. In all other cases, whether the sale is in respect of a specified and limited *corpus*, or whether it is in respect of distinct and separate tenements, or whether, in the sale, the measure is first stated, or the *corpus* is first mentioned followed by an indication of the measure, the indication of the measure will not entitle the seller to any increase of price in respect of any excess in such measure, nor the buyer to any diminution of price in respect of any deficiency in such measure, unless the difference between the actual measure and that stated in the contract is more than one-twentieth whether in excess of or below the value of all the things sold:

Provided that no claim may be enforced for an increase or a diminution of the price, notwithstanding that the difference is more than one-twentieth, whether in excess of or below the aforesaid value, if the thing was sold by judicial auction or if it was expressly stipulated that there should be no warranty as to quantity or if the thing was sold *tale quale*, saving, where the sale was not made by judicial auction, any remedy allowed in law in case of lesion.

Where increase of price is due.

1403. Where in accordance with the provisions of the last preceding article an increase of the price is to be paid on account of an excess in the measure, the buyer may elect either to repudiate the contract or, if he retains the tenement, to pay the overplus, together with interest.

Duties of seller, where buyer elects to repudiate contract.

1404. In all cases in which the buyer is entitled to repudiate the contract, the seller is bound to return to him, in addition to the price if received by him, the expenses of the contract and any other lawful expense incurred in connection with the sale.

Sale of two tenements by the same contract.

1405. Where two tenements have been sold by one and the same contract, and for one and the same price, the measure of each tenement being specified in the contract, and it is found that one of the tenements is smaller and the other larger than the measure specified, set-off takes place to the extent of the difference; and an action for an increase or diminution of price is only maintainable in accordance with the rules set forth in the foregoing articles.

How increase or diminution of price is to be reckoned.

1406. In all cases where an increase or a diminution of price is due, the price shall be increased or diminished only to the extent by which the excess or deficiency of the quantity is greater than that allowed by law.

Limitation of action.

1407. (1) The action of the seller for an increase of the price, and the action of the buyer for a diminution of the price or for repudiation of the contract shall be barred by the lapse of two years from the day of the contract.

(2) The said period of limitation shall run against absentees,

persons interdicted, married women and minors, if they claim under a seller or a buyer against whom the running of the said period of limitation is not suspended.

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§ II. OF WARRANTY

Warranty.

1408. The warranty which the seller owes to the buyer is in respect of the quiet possession of the thing sold and of any latent defect therein.

OF WARRANTY OF THE QUIET POSSESSION OF THE THING SOLD

Implied warranty.

1409. Although no stipulation of warranty has been made in the contract of sale, the seller is in law bound to warrant the buyer against any eviction which deprives him, in whole or in part, of the thing sold, and against any easement or burden on the same, claimed by others, and not stated in the contract.

Special agreement.

1410. It shall be lawful for the parties, by special agreement, to add to, or diminish the effects of such implied warranty, or to stipulate that the seller shall not be liable to any warranty.

Liability of seller, where warranty has been negatived.

1411. Although it is agreed that the seller should not be subject to any warranty, nevertheless he shall be liable to that warranty which arises from his own act; and any agreement to the contrary is void.

In case of eviction, seller to return price.

1412. Even in case of a stipulation of no warranty, the seller, in case of eviction shall, in the absence of an express agreement to the contrary, be bound to return the price.

Rights of buyer on eviction, when warranty is promised or implied.

1413. Where there is a promise of warranty or where no stipulation has been made in regard thereto, the buyer shall upon eviction be entitled to claim from the seller -

(*a*) the return of the price;

(*b*) the return of the fruits, if the buyer has been obliged to return them to the owner who has recovered the thing;

(*c*) all judicial costs, including those for giving notice of the suit to the person from whom he derives his title;

(*d*) damages, including the lawful expenses of the contract and any other lawful expense incurred in connection with the sale.

Decrease in value of thing at time of eviction.

1414. (1) Where, at the time of eviction, the thing sold has decreased in value or has considerably deteriorated, either through the negligence of the buyer or by irresistible force, the seller is still bound to return the full price.

(2) Where, however, the buyer has derived a benefit from the

deterioration occasioned by him, the seller shall be entitled to deduct from the price a sum corresponding to such benefit.

Increase in value.

1415. If, at the time of eviction, the thing sold has increased in value, even irrespective of the act of the buyer, the seller shall be obliged to pay to the buyer the amount exceeding the price of the sale.

Repayment of expenses.

1416. (1) The seller is bound to repay to the buyer or to cause to be repaid to him by the person who has recovered the tenement all expenses incurred by him in connection with any repairs or useful improvements made on the tenement.

(2) Where the seller has sold the tenement of another person in bad faith, he shall be bound to pay to the buyer all expenses, even decorative expenses, which the latter may have made on the tenement.

Eviction from part of thing.

1417. (1) Where the eviction is only of part of the thing, and such part is of such importance in relation to the whole that without it the buyer would not have bought the thing, he may within a year from the day on which the judgment as to the eviction has become final and absolute, demand the dissolution of the sale.

(2) The said time shall run as provided in sub-article (2) of article 1407.

Valuation of part.

1418. Where, in the case referred to in the last preceding article, the buyer does not elect to dissolve the sale, the value to be refunded to him by the seller in respect of the part affected by the eviction shall be determined not in proportion to the entire price of the sale but in accordance with a valuation in which regard will be had to the time of the eviction, irrespective of any increase or decrease in the value of the thing sold.

Warranty in regard to easements not declared.

1419. (1) Where the tenement sold is subject to non-apparent easements whereof no declaration was made and such easements are of such importance that it may be presumed that the buyer would not have bought the tenement if he had been given notice of them, he may demand either the dissolution of the sale or compensation.

(2) The provisions of this article shall not apply in the case of a judicial sale by auction.

Rights of buyer, where tenement is sold as free from easements or burdens.

1420. Where, however, a tenement has been sold as free and exempt from any easement or other burden, or where the warranty has been otherwise expressly promised, in such cases the buyer may demand either the dissolution of the sale or compensation, if the seller shall not cause any easement or other burden not declared in the contract to cease, even though such easement or other burden be apparent, and it be proved that it was known to the buyer at the time of the sale, unless it is clearly shown that it was not the intention of the parties to include such easement or burden in the promise of warranty.

Where buyer has prevented eviction by paying a sum of money.

1421. Where the buyer has prevented eviction of the tenement by paying a sum of money, the seller may free himself of all the consequences of the warranty by refunding to him the sum paid together with interest, and all expenses.

Where buyer fails to make seller a party to the proceedings in eviction.

1422. The warranty against eviction ceases if the buyer has suffered a final and absolute judgment to be given against him without making the seller a party to the suit, if the latter proves that he could have set up a good defence, not set up by the buyer, whereby the action would have been dismissed.

Limitation of action for breach of warranty.

1423. (1) In all cases where a shorter period is not fixed, the action for breach of warranty against eviction shall be barred by the lapse of two years to be reckoned from the day on which the judgment against the buyer has become final and absolute.

(2) The said period of limitation shall run as provided in sub-article (2) of article 1407.

OF WARRANTY IN RESPECT OF LATENT DEFECTS OF THE THING SOLD

Warranty in respect of latent defects.

1424. The seller is bound to warrant the thing sold against any latent defects which render it unfit for the use for which it is intended, or which diminish its value to such an extent that the buyer would not have bought it or would have tendered a smaller price, if he had been aware of them.

Seller not liable for apparent defects.

1425. The seller is not answerable for any apparent defects which the buyer might have discovered for himself.

Seller answerable for latent defects.

1426. Nevertheless, he is answerable for latent defects, even though they were not known to him, unless he has stipulated that he shall not in any such case be bound to any warranty.

Actio redhibitoria and *actio aestimatoria*.

1427. In the cases referred to in articles 1424 and 1426, the buyer may elect either, by instituting the *actio redhibitoria*, to restore the thing and have the price repaid to him, or, by instituting the *actio aestimatoria*, to retain the thing and have a part of the price repaid to him which shall be determined by the court.

Where defect is in one of two or more things sold together.

1428. (1) Where two or more things are sold together, so that one would not have been sold or bought without the other, and one of such things has a defect which gives rise to the *actio redhibitoria* or *aestimatoria*, the buyer may not institute the *actio redhibitoria* but in respect of all the things sold, although a price was specified in respect of each.

(2) Where, however, the things sold together are independent of one another, the said action may not be instituted but in respect of the defective thing, although all the things had been sold for a single price; and in such case the seller is bound to repay the price of such thing according to a valuation to be made on the basis of the total price agreed upon.

Where defects were known or not to the seller.

1429. (1) If the defects of the thing sold were known to the seller, he is not only bound to repay the price received by him but he is also liable in damages towards the buyer.

(2) If the defects were not known to the seller, he is only bound to repay the price and to refund to the buyer the expenses incurred in connection with the sale.

Where defective thing perishes.

1430. (1) If the defective thing perishes in consequence of its defects, the loss is borne by the seller, who shall be bound to repay the price to the buyer and to indemnify him as provided in the last preceding article.

(2) If the thing perishes by a fortuitous event, the loss is borne by the buyer.

Limitation of action.
Amended by: *XXVIII.1994.45.*

1431. (1) The *actio redhibitoria* and the *actio aestimatoria* shall, in regard to immovables, be barred by the lapse of one year as from the day of the contract, and, in regard to movables, by the lapse of six months as from the day of the delivery of the thing sold.

(2) Where, however, it was not possible for the buyer to discover the latent defect of the thing, the said periods of limitation shall run only from the day on which it was possible for him to discover such defect.

(3) The said periods of limitation shall run as provided in sub-article (2) of article 1407.

Actions not maintainable in case of judicial sales.

1432. The a*ctio redhibitoria* and the *actio aestimatoria* cannot be maintained in case of judicial sales by auction.

Sub-title V

OF THE OBLIGATIONS OF THE BUYER

When and where price is to be paid.

1433. If the time and place for the payment of the price are not stated in the contract, the buyer must pay at the time and place of the delivery of the thing.

When buyer is bound to pay interest.

1434. The buyer, even though there be no agreement to that effect, is bound to pay interest on the price up to the day of payment at the rate of five per cent *per annum*, indiscriminately in the following cases:

(*a*) if the thing sold and delivered yields fruits or other profits;

(*b*) if, even though the thing yields no fruits or other profits, he has been called upon by means of a judicial intimation to pay the price;

(*c*) if the delivery of the thing, being movable, has not taken place through the fault of the buyer, and the seller has called upon him, by means of a judicial

intimation, to take delivery of the thing:

Provided that in the cases mentioned in paragraphs (*b*) and (*c*), interest shall run only from the day of the service of the said judicial intimation.

When buyer is not bound to pay interest.

1435. (1) The buyer is not bound to pay interest during the time allowed to him in the contract for the payment of the price.

(2) Nevertheless, any time allowed by the seller after the contract of sale shall not operate as a waiver of the interest on the price, unless such time be allowed under a will.

Where thing is capable of yielding fruits.

1436. If the thing is capable of yielding fruits or other profits, the buyer shall still be bound to pay interest on the price, even though owing to a fortuitous event or for any other cause the thing shall have yielded no fruits or other profits during the time when the price was still owing.

When purchaser may suspend payment of price.

1437. (1) If the buyer is disturbed in the possession of the thing or has reasonable cause to fear that he will be so disturbed, by any action hypothecary or for the recovery of the thing *rei vindicatio*, he may suspend the payment of the price until the seller shall have caused the molestation to cease or shall have removed the cause for which such molestation is feared, unless the seller elects to give security, or unless it was agreed that the buyer was to pay notwithstanding any molestation.

(2) Nevertheless, even in the case mentioned in this article, in the event of any of the circumstances referred to in article 1434, the buyer, if he suspends payment of the price, shall owe interest thereon, unless he elects to pay the price into court.

When seller may demand dissolution of sale on ground of non-payment of price.

1438. (1) The seller of an immovable cannot demand the dissolution of the sale on the ground that the price has not been paid to him.

(2) In the case, however, of goods or other movables, the dissolution of the sale, even though no express resolutive condition is attached to the contract, shall take place *ipso jure* in favour of the seller, if the buyer previously to the expiration of the time fixed for the delivery of the thing, has not presented himself to take delivery thereof or if on presenting himself to take delivery of the thing he has not concurrently tendered the price, unless a term of credit has been agreed upon for the payment thereof.

Rights of unpaid seller over the goods.

1439. If the sale of a movable was made without any stipulation as to credit, the seller may, in default of payment, take back the thing sold, if it is still in the actual possession of the buyer, or restrain the buyer from reselling the thing, provided the demand for the recovery of the thing be made within fifteen days of the delivery and the thing be in the same condition in which it was at the time of the delivery.

Sub-title VI

OF THE DISSOLUTION AND RESCISSION OF SALES

1440. Independently of the causes of rescission or dissolution already mentioned in this Title, and of those which apply to all agreements, a contract of sale may be, in whole or in part, dissolved by the exercise of the right of redemption and may be rescinded on the ground of lesion.

Dissolution of contract of sale by redemption. Rescission of contract on the ground of lesion. *Amended by: IV.1961.2.*

OF REDEMPTION

Amended by: IV.1961.3.

1441. The right of redemption is created by agreement.

Right of redemption. *Substituted by: IV.1961.4.*

1442. The action for the recovery of an immovable, in pursuance of a right of redemption, may be instituted not only against the buyer, but also against any other possessor of the immovable; and upon the re-sale, the immovable passes to the party exercising the right of redemption, free from any hypothec, easement or other burden with which the buyer or other possessor may have charged it; saving, in regard to any contract of lease, the provisions contained in articles 1530 and 1531.

Action for redemption. *Amended by: IV.1961.2,5.*

1443. The party exercising the right of redemption is bound to return to the party against whom such right is exercised the price of the sale giving rise to the exercise of such right, and any other lawful expense incurred by the buyer in connection with such sale, as well as all necessary and useful expenses made on the thing either by the buyer or by any other possessor, even though for any cause whatsoever for which neither the party against whom the said right is exercised nor any other former possessor is responsible, the effect of such expenses no longer exists.

Duties of party exercising right of redemption. *Amended by: IV.1961.2.*

1444. The party against whom the said right is exercised is entitled to interest from the day of the respective disbursements which according to the last preceding article are to be refunded to him, subject, however, to the deduction of the value of the fruits which, as from the day of the sale giving rise to the exercise of the right of redemption he or any other former possessor has collected or by the use of the diligence of a *bonus paterfamilias* could have collected:

Provided that he may retain the fruits aforesaid and waive his right to interest.

Right to interest of party against whom redemption is exercised. *Amended by: IV.1961.2.*

1445. The right to interest of the party against whom redemption is exercised shall cease as from the day on which he is notified of the deposit of the sums which are to be refunded to him, provided the payment out of such deposit be not, without just cause, restrained by the party exercising the right of redemption, in which case, the right to interest will not cease except from the day on which the restraint ceases.

When right to interest ceases. *Amended by: IV.1961.2.*

Restoration of fruits. *Amended by: IV.1961.2.*

1446. From the same day on which his right to interest ceases, the party against whom the right of redemption is exercised is bound to restore to the party exercising such right all fruits which up to the day of the release of the thing he has collected or, by the use of the diligence of a *bonus paterfamilias*, could have collected.

Fructus pendentes. Amended by: IV.1961.2.

1447. Fruits which are pending on the day of the release of the thing shall belong to the party exercising the right of redemption, subject, however, to his obligation to reimburse the expense incurred for their production and preservation.

How right of redemption is exercised. *Amended by; IV.1961.2.*

1448. (1) The right of redemption is exercised by presenting a schedule of redemption, in the registry of the competent court, regard being had to the place of residence of the possessor of the thing.

(2) The party exercising the right of redemption, however, shall be deemed to have validly exercised such right by presenting the schedule in the registry of the competent court according to the place of residence of the buyer, unless he shall have previously been, by means of a judicial intimation, informed of the transfer of the thing from the buyer to another person; and in such case all subsequent acts relating to the right of redemption so exercised shall be presented in the same court.

Deposit to be made by party exercising the right of redemption. *Amended by: IV.1961.2,6.*

1449. The party exercising the right of redemption shall, together with the said schedule, or within ten days from the presentation thereof, deposit a sum which will include -

(*a*) the price of the sale giving rise to the exercise of such right;

(*b*) the fees of the notary before whom the deed of such sale was received;

(*c*) the fees paid for the registration of the said deed in the Public Registry where such registration has taken place;

(*d*) any other lawful expense which from the deed of that sale appears, or which the party aforesaid otherwise knows to have been incurred by or charged to the buyer.

Time for deposit. *Amended by: IV.1961.2.*

1450. (1) Where a right of redemption has been exercised, it may not be impeached on the ground that the deposit was made after the time fixed for the exercise of such right, provided the deposit is made within the ten days mentioned in the last preceding article.

(2) Where, however, the deposit is not made within the ten days as aforesaid the schedule of redemption shall cease to be effectual, even though the deposit shall have been made before the lapse of the time fixed for the exercise of the said right, saving the power of the party presenting the schedule to exercise again the right of redemption by presenting a fresh schedule within such time, and saving also any other provisions contained in articles 1451 to 1468.

Default of deposit in whole or in part. *Amended by: IV.1961.2.*

1451. (1) Nor may the exercise of the right of redemption be impeached for default of the deposit in whole or in part, if the party exercising such right, instead of the deposit or of the deficiency in the amount of the deposit, has offered to set off an equal sum, liquidated and exigible, owing to him by the party against whom the said right is exercised, or if, where the default of the deposit is only in part, it clearly appears from the circumstances that the deficiency was due to inadvertence or error.

(2) The fact, however, that the deficiency was due to inadvertence or error, shall not benefit the party exercising the said right, unless he shall supplement the deposit within ten days from the day on which the party against whom the said right is exercised shall have, by means of a judicial act, called upon him to do so.

Party exercising right of redemption may recede therefrom. *Amended by: IV.1961.2.*

1452. The party exercising the right of redemption may recede therefrom until the party against whom such right is exercised shall have signified, by means of a judicial act, his acceptance thereof.

Re-sale to party exercising right of redemption. *Amended by: IV.1961.2.*

1453. (1) The party against whom the said right is exercised is not bound to make the re-sale of the thing in favour of the party exercising such right until the latter shall have fulfilled all his obligations in accordance with the provisions of articles 1443, 1444 and 1445.

(2) The expenses of the re-sale shall be at the charge of the party exercising the said right.

Rights of parties. *Amended by: IV.1961.2.*

1454. (1) The party against whom the right of redemption is exercised may at any time after the presentation of the schedule of redemption, demand the liquidation of the expenses, necessary or useful, to which he is entitled, and compel the party exercising such right to pay the said expenses on the day which, on the demand of the former, the court shall have fixed for the re-sale.

(2) The party exercising the right of redemption may also at any time after the presentation of the schedule, demand that the expenses aforesaid be liquidated and that the defendant be condemned to make the re-sale at such time and in such manner as the court shall direct.

Where thing is damaged in consequence of a fortuitous event. *Amended by: IV.1961.2.*

1455. Where the thing is damaged in consequence of a fortuitous event, the party exercising the right of redemption shall not be entitled to any abatement of the sums due by him under the provisions of the foregoing articles.

Where thing is damaged by the defendant or any former possessor. *Amended by: IV.1961.2,7.*

1456. Where the thing has been damaged by the party against whom the right of redemption is exercised or by any other former possessor, the party exercising such right shall only be entitled to claim damages up to the amount of the profit which the tort-feasor may have derived therefrom, unless it is shown that the latter caused the damage for the purpose of avoiding the redemption, or of prejudicing the party exercising such right, saving the provisions of article 1461.

Times are peremptory. *Amended by: IV.1961.8.*

1457. Any time established by law in regard to the right of redemption, is peremptory.

Right of redemption.

1458. (1) It shall be lawful for the seller in the contract of sale, to reserve to himself the right of redemption, or the power of taking back the thing sold, by returning the price, and paying the expenses and interest as provided in articles 1443, 1444 and 1445.

(2) Any agreement whereby the seller is to return a higher sum is null in regard to the excess.

Right of redemption may not be reserved for a period exceeding five years.

1459. (1) The right of redemption cannot be reserved for a period exceeding five years to be reckoned from the day of the sale.

(2) Where the right of redemption has been reserved without any limitation of time, or for a period exceeding five years, the agreement is null in regard to any time exceeding five years.

(3) The period fixed by the contract or reduced as aforesaid, is peremptory; and it runs also against minors and persons interdicted or absent.

Right of redemption exercisable against third party in possession.

1460. (1) The seller of an immovable who has reserved to himself the right of redemption may exercise such right against a third party in possession even though no mention of such right shall have been made in the contract whereby such third party shall have acquired the immovable.

(2) In regard to movables, the right of redemption cannot be exercised if the movables have passed into the hands of a third party.

Rights of buyer under covenant of redemption.

1461. (1) The buyer under a covenant of redemption may exercise all the rights of his seller; he may prescribe against the true owner as well as against persons claiming to have rights or hypothecs on the thing sold; and may also set up the benefit of discussion against the creditors of his seller.

(2) He may not, however, alter the form of the thing sold.

Where buyer of an undivided portion of a tenement acquires the whole tenement.

1462. If the buyer of an undivided portion of a tenement under a covenant of redemption becomes the owner of the whole tenement as a result of proceedings of licitation instituted against him, he may compel the seller desiring to enforce such covenant to redeem the whole tenement.

Where sellers are two or more, redemption how exercisable.

1463. If several persons have jointly and by a single contract sold a tenement held in community, each may exercise the right of redemption in respect only of the portion which he owned.

Right of heirs of seller.

1464. Where the person who alone has sold a tenement has left several heirs, each of them may exercise the right of redemption in respect of that portion only which he takes as heir.

Rights of buyer against co-sellers or co-heirs.

1465. (1) The buyer, however, in the cases mentioned in the last two preceding articles, may, by means of a judicial act, call upon all the other sellers of the common property, or all the other co-heirs, to declare whether they too desire to exercise the right of

redemption in regard to their respective portions.

(2) The co-sellers or co-heirs so called upon shall make the aforesaid declaration within the time remaining for the exercise of the right of redemption, provided that if such time is less than ten days, or has entirely elapsed, such declaration shall be made within ten days to be reckoned from the service of the said judicial act.

In default of declaration by co-sellers or co-heirs buyer becomes irrevocably owner of whole tenement.

1466. If within the aforesaid time any of the co-sellers or co-heirs fails to declare that he desires to exercise the right of redemption in respect of his portion, the buyer shall become irrevocably the owner of the whole tenement, unless such of the co-sellers or co-heirs as may have exercised the right of redemption in respect of their portion shall, upon being called upon by the buyer by means of a judicial act, and within ten days from the service thereof, redeem the whole tenement in accordance with the provisions of article 1448.

When each seller may exercise the right of redemption separately.

1467. If the sale of a tenement belonging to several persons has not been made jointly and in respect of the whole tenement, but each of such persons has separately sold his portion, each seller may exercise the right of redemption separately in respect of the portion which belonged to him, and it shall not be competent to the buyer to compel the person who so exercises his right of redemption to redeem the whole tenement.

Right of redemption against heirs of buyer.

1468. (1) If the buyer has left several heirs, the right of redemption may only be exercised against each of them in respect of his share, irrespective of whether the tenement sold is still undivided, or whether a partition thereof has already been made among the heirs.

(2) Nevertheless, if the estate has been divided, and the thing sold has been entirely allotted to the share of one of the heirs, the right of redemption can be exercised against such heir in respect of the whole tenement.

Sub-title VII

OF THE ASSIGNMENT OF DEBTS AND OTHER RIGHTS

Assignment of debts, etc.

1469. The assignment or sale of a debt, or of a right or of a cause of action is complete, and the ownership is *ipso jure* acquired by the assignee as soon as the debt, the right or the cause of action, and the price have been agreed upon, and, except in the case of a right transferable by the delivery of the respective document of title, the deed of assignment is made.

Assignment to be made in writing.

1470. (1) The assignment is not valid unless made in writing.

(2) The assignment of hereditary rights, or of debts, rights or causes of action arising from public deeds is void unless made by a public deed.

Notice to debtor.

1471. The assignee may not, in regard to third parties, exercise

the rights assigned to him except after due notice of the assignment has been given to the debtor, by means of a judicial act, by the assignee himself or by the assignor.

Where no notice has been given.

1472. In default of such notice, or until such notice is given -

(*a*) the debtor may not set up the assignment against his creditor, and if he pays the debt to him he is thereby discharged;

(*b*) if the creditor, after having assigned the debt to one person, makes a second assignment thereof to another person who is in good faith, such other person, if he has given notice of the assignment made in his favour, shall be preferred to the former assignee;

(*c*) if the creditors of the assignor shall sue out a garnishee order attaching the sum due in the hands of the debtor, they shall be preferred to the assignee, even though they have become creditors only after the assignment;

(*d*) the debtor is entitled to set off any sum which may become due to him by the assignor; but the assignee may not set off the debt assigned to him against any sum owing by him to the debtor.

Acknowledgement of assignment by debtor.

1473. The notice is not necessary if the debtor has acknowledged the assignment.

Assignment of bills of exchange, etc.

1474. Neither the notice, nor the acknowledgment referred to in the last preceding article shall be necessary in regard to bills of exchange or other documents of title transferable by endorsement or delivery.

Rights included in the assignment.

1475. The assignment of a debt includes every security, privilege or hypothec attached to the debt and every other thing accessory to it; but it shall not include the fruits accrued due or any rescissory action, unless express mention thereof has been made in the assignment.

Warranty.

1476. (1) The assignor of a debt or any other right is bound to warrant its existence at the time of the assignment, although no express stipulation of warranty has been made in the assignment.

(2) If the debt does not exist, the assignor is bound to return the price received, unless the warranty as to the existence of the debt has been negatived either by a declaration of the assignor that he was making the assignment without any warranty, or by other words to that effect.

Solvency of debtor not included in warranty unless stipulated.

1477. (1) The assignor is not answerable for the solvency, whether present or future, of the debtor, unless he has expressly bound himself thereto, either by declaring the debt good and collectable or by other words to that effect.

(2) If the assignor has promised such warranty, he shall be bound only to the extent of the price of the assignment.

Duration of warranty of debtors' solvency.

1478. (1) Where the assignor has warranted the solvency of the debtor without any limitation as to the duration of such warranty, such warranty shall be limited to one year as from the day of the assignment if the debt has already fallen due, or from the day on which the debt falls due if at the time of the assignment it has not yet fallen due.

(2) Where the subject-matter of the assignment is a right to an annuity, the warranty shall not extend beyond ten years from the day of the assignment.

Cessation of warranty.

1479. The obligation as to warranty ceases, if the debt becomes irrecoverable through the negligence of the assignee.

Assignee to proceed against debtor before proceeding against assignor.

1480. (1) The assignee is bound to proceed against the debtor before he can proceed against the assignor, unless it is agreed that the assignor shall pay for the debtor should the latter fail to pay on mere demand.

(2) If there is such an agreement the assignee is not bound to do any act to safeguard the debt; and the assignor is liable to the extent of the debt assigned.

Warranty in case of sale of inheritance.

1481. (1) A person who sells an inheritance without distinctly specifying the things of which it consists, is only bound to warrant his capacity as heir.

(2) If the inheritance does not exist because the succession is not yet open, or if it exists but the seller has no right to it, he is bound to restore to the buyer the price and shall be liable towards him in damages.

(3) A person who has only sold his claim to a succession so that the buyer may bring forward such claim at his own risk, is not bound to any warranty nor to return the price.

Where seller is debtor to or creditor of inheritance.

1482. If the seller is himself a debtor towards the inheritance or has received any property of the inheritance, he is bound to pay his debt to, or, as the case may be, indemnify the buyer: on the other hand, the buyer is bound to restore to the seller any sum which the latter may have paid in satisfaction of any debt or burden of the inheritance and to pay to the seller any claim which the latter may have against the inheritance, unless, in either case, it be otherwise stipulated.

Assignment of a litigious right.

1483. (1) Where a litigious right has been assigned, the debtor in the obligation may obtain his release from the assignee by reimbursing to him the actual price of the assignment together with the expenses and interest to be reckoned from the day of the payment of the said price by the assignee.

(2) A right is deemed to be litigious, if there is a contested suit as to the existence thereof or if the debt due is not liquidated and is difficult to liquidate.

Inapplicability of s.1483.

1484. The provisions of the last preceding article shall not apply-

(*a*) if the assignment has been made by a co-heir or a co-

owner, to another co-heir or co-owner of the right so assigned;

(*b*) if the assignment has been made to a creditor in satisfaction of his claim;

(*c*) if the assignment has been made to the possessor of the tenement subject to the litigious right;

(*d*) if the assignment has been made under a purely gratuitous title.

Factoring. *Added by: V.2006.26.*

1484A.(1) In the case of an assignment of one or more debts where:

(*a*) the assignor is a trader;

(*b*) the debts being assigned arise out of or in connection with the trade or business being carried out by the trader; and

(*c*) the assignee is a person licensed to carry out the business of banking or the business of factoring under the applicable laws of Malta, or the equivalent laws in a jurisdiction recognised by the competent authority appointed in terms of the Banking Act, Cap. 371.

such assignment of debts shall be governed by the provisions of this Sub-Title, as varied by this article.

(2) Classes of existing debts may be assigned provided that the debtor be identified in the contract of assignment.

(3) Future debts, or classes thereof, may also be assigned provided that the debtor and the latest date by which the future debts shall come into existence be identified in the contract of assignment. In such cases an assignment is effective at the time of the conclusion of the contract without a new assignment being required when such debt comes into existence.

(4) In the case of the assignment of debts referred to in this article, the assignee may not, in regard to third parties, exercise the rights assigned to him except after due notice of the assignment has been given to the debtor by the assignee himself or by the assignor and, in the case of an assignment of future debts, or of classes thereof, no further notice shall be required when the future debt comes into existence.

(5) Notice of an assignment may be evidenced in writing by any means, including by a notice sent to the debtor together with the document evidencing the debt and need not be signed by the assignor or the assignee.

(6) The assignment need not state a fixed price nor need the price be in money. The price may also be determined by reference to any formula or method agreed between the parties.

(7) The assignor shall be answerable for the solvency, whether present or future, of the debtor, to the extent of the price of the assignment, unless the assignee renounces to such warranty in whole or in part.

(8) In the event of insolvency or bankruptcy of the assignor, the assignment of future debts which have not yet come into existence on the date a winding-up or bankruptcy order is made by a Court, may be rescinded by the liquidator or the curator of the assignor. The right of rescission of the assignment of future debts shall be conditional on the refund of any consideration paid by the assignee to the assignor for such future debts.

(9) Articles 1483(1), 1506(1), 2013(3) shall not apply to assignment of existing or future debts, or classes thereof, governed by this article.

(10) All the above provisions shall apply *mutatis mutandis* to the pledging of debts referred to in this article and the provisions of Title XXI of Part II of Book Second of this Code shall be construed accordingly.

(11) Articles 1980 to 1984 of this Code shall not apply and an assignee shall have a right of use over, and the right to sub-pledge, debts which have been assigned to him.

Title VII

OF EXCHANGE

Definition of contract of exchange.

1485. (1) Exchange is a contract whereby the parties mutually bind themselves to give to one another a thing, not being money.

(2) Exchange takes place by bare consent, in the same manner as sale.

Supplement in money.

1486. (1) The contract shall not cease to be a contract of exchange, even though the value of the things which the parties bind themselves to give to one another has been stated or one of the parties has bound himself to give together with the thing, a supplement in money.

(2) Nevertheless, if the sum of money which one of the parties binds himself to pay exceeds the value of the thing which such party binds himself to give, the contract shall be deemed to be a contract of purchase and sale in regard to all the things which the parties have bound themselves to give to one another.

Rights of party to whom a supplement in money is due.

1487. The party to whom a supplement in money is due, may exercise over the thing which he has given all rights and privileges competent to a seller in respect of the price, even though the contract is, under the provisions of the last preceding article, a contract of exchange.

Exchange of movable for immovable.

1488. A movable may be exchanged for an immovable.

When exchange is to be made by public deed.

1489. In any case, however, where an immovable is given in exchange for a movable or an immovable, the contract is void if not made by a public deed.

When party to exchange may refuse to deliver thing.

1490. A party to an exchange who, after having received the thing given to him in exchange, proves that he who has given the thing to him is not the owner thereof, cannot be compelled to deliver the thing which he has promised to give, but only to return the thing which he has received.

Rights of party to exchange in case of eviction.

1491. (1) A party to an exchange who has suffered the eviction of the thing which he has received in exchange, may at his option, either demand damages, or recover the thing given by him.

(2) Where such party elects to recover the thing, he may, if the thing is an immovable, maintain an action for the recovery of the thing even against a third party in possession thereof; and he shall take it back free from any burden or hypothec with which the other party to the exchange or the third party in possession may have charged it:

Provided that in regard to any lease made in good faith and on fair conditions, the provisions of article 1530 shall apply.

Expenses of contract of exchange.

1492. (1) All expenses of, or incidental to the contract of exchange shall be borne by the two contracting parties, in equal shares.

(2) Nevertheless, the expense necessary for freeing an immovable from the fetters of any entail or from any hypothec, easement or other burden in accordance with the provisions contained in Title II of Part II of Book Second of the Code of Organization and Civil Procedure, shall be borne by the party to the exchange who receives such immovable.

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Rules of sale to apply to exchange.

1493. Any other rule relating to the contract of sale shall also apply to a contract of exchange.

Title VIII

OF EMPHYTEUSIS

Definition of contract of emphyteusis. *Amended by: IV.1961.9.*

1494. (1) Emphyteusis is a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground-rent which the latter binds himself to pay to the former, either in money or in kind, as an acknowledgment of the tenure.

(2) The provisions of this Title shall apply to any emphyteusis whatsoever, even where the amount of the ground-rent shall have been fixed with reference to the value of the fruits of the tenement.

By whom emphyteutical grants may be made.

1495. Emphyteutical grants may not be made by persons who are under a disability to alienate property, unless expressly authorized to that effect by the competent authority, according to law.

Emphyteutical grant of tenements subject to entail.

1496. Notwithstanding any prohibition in the deed creating the entail, possessors of tenements subject to entail may, in accordance with the provisions contained in Sub-title V of Title VIII of Part I of Book Second and in Title I of Part II of Book Second of the Code

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of Organization and Civil Procedure, obtain from the competent court authority to grant such tenements on emphyteusis, in perpetuity or for a time, provided the court is satisfied that such grant is to the advantage of the persons entitled to succeed.

When grant is null.

1497. Emphyteusis is null -

(*a*) if not made by a public deed; or

(*b*) if the grant is otherwise than in perpetuity or for a stated time to be reckoned from any certain day; or

(*c*) if the amount of the ground-rent is not expressly stated in the contract.

When certain grants are to be deemed emphyteutical.

1498. (1) Where a tenement is granted for a time exceeding sixteen years or in such manner that the grant may by the grantee be made to last for more than sixteen years, and, in either case, under conditions which are in accordance with the provisions of the following article of this Title rather than with those relating to contracts of letting and hiring, the grant shall be deemed to be an emphyteutical grant, although the parties shall have termed it a contract of letting and hiring; and any such grant is null if made otherwise than by a public deed.

(2) On the contrary, where a tenement is granted under a title of emphyteusis, the grant shall be deemed to be an emphyteutical grant, notwithstanding the shortness of the period for which it is made and the nature of the stipulations attached thereto.

Parties may make stipulations not contrary to law. *Substituted by: XXVII.1976.3. Amended by: XXX.1981.10.*

1499. (1) The rules contained in the foregoing articles and in articles 1501,1502, 1512, 1513 and 1519, shall be observed in all cases and any agreement contrary thereto shall be without effect.

(2) Save as provided in sub-article (1), it shall be lawful for the contracting parties to make in a contract of emphyteusis any stipulation which they may deem proper, provided there be nothing contrary to law.

(3) Without prejudice to the provisions of sub-article (1), in the absence of any special agreement, the rules contained in the following articles shall be observed.

Ground-rent unalterable.

1500. (1) The ground-rent during the continuance of the emphyteutical grant is unalterable.

(2) The emphyteuta cannot claim any reduction of the ground-rent by reason of any change of circumstances.

(3) Nor can he claim any remission or abatement of the ground-rent for one or more years if as a result of a fortuitous event, whether ordinary or extraordinary, foreseen or unforeseen, the whole or part of the produce is lost.

Emphyteuta may redeem the ground-rent.
Added by: XXX.1981.11.
Amended by: XX.1984.2; XXIV.1995.362; IX.2004.14; XXIII.2017.78.

1501. (1) Where a grant in emphyteusis is made in perpetuity, the emphyteuta, even though the ground-rent may be revised at stated intervals of time, shall have the option to redeem the ground-rent as provided in the following sub-articles of this article, unless the contract itself, being a contract entered into before the 15th August, 1981, provides for a different manner in which the redemption may be effected.

(2) Such redemption of the ground-rent shall be made by the payment of a sum equivalent to the amount of the ground-rent capitalised at the rate of five per cent:

Provided that where the contract provides that the ground-rent may be revised at a specified time or on the happening of a specified condition, the redemption may be opted for by the emphyteuta within the first year of the date of any such revision, or the happening of such condition, and the sum payable for the redemption of the ground-rent shall, in such case, be equivalent to the amount of ground-rent so revised capitalised at the average rate of interests payable by a commercial bank on deposits of a fixed nature at the time of the redemption.

(3) Where there are more than one *dominus*, the emphyteuta may redeem from one or more of them separately.

(4) Where the tenement is held in sub-emphyteusis in perpetuity, the sub-emphyteuta shall be entitled to redeem the original ground-rent and the increase in ground-rent by the payment of the sum due for the redemption established in accordance with the provisions of this article.

(5) Any clause in any agreement whereby the emphyteuta is deprived of the right of redeeming the ground-rent conferred by this article, shall be considered as if it has not been included in such agreement.

(6) The redemption of the ground-rent may be effected by an agreement between the *dominus* and the emphyteuta made in a public deed or by means of the schedule referred to in sub-article (7) of this article.

(7) Where the redemption is not made by public deed, the emphyteuta may effect such redemption by filing at his expense in the registry of the competent court, a schedule of redemption and at the same time depositing in the said registry the sum due for the redemption established in accordance with the provisions of sub-article (2); and with respect to such schedule, the following provisions of this sub-article shall, notwithstanding anything to the contrary in any other law contained, have effect:

(*a*) where the person first granting the emphyteusis or the person to whom the rights of the dominus are assigned is dead, the schedule of redemption may be served on, and the deposit may be made in favour of, one or more heirs of the dominus or his assignee, and such heir or heirs shall, for all purposes of law, be deemed to represent all those persons having a legal interest in the schedule of redemption and in the money so

deposited;

(*b*) the omission from the schedule of the name of any person having an interest in any part of the moneys deposited in accordance with the provisions of this article, shall not affect the right of any person so omitted to any share in the amount deposited;

(*c*) the schedule shall contain:

(i) the name and surname of the person of the emphyteuta, his place of birth, his place of residence, his profession, trade or other status, his parent's name, and their surname at birth and after marriage, or in the case of a body of persons the corporate name of such body of persons and the particulars relative to its incorporation;

(ii) the name and surname of the person named in the schedule, his place of birth, his place of residence, his profession, trade or other status, his parent's name, and their surname at birth and after marriage, or other particulars sufficient to identify such person, or in the case of a body of persons the corporate name of such body of persons and the particulars relative to its incorporation; and

(iii) the designation in accordance with article 7 of the Public Registry Act of the immovable in relation to which the ground-rent redeemed was payable; Cap. 56.

(*d*) the emphyteuta shall attach to the schedule a plan showing the extent and location of the immovable subject to the ground-rent redeemed;

(*e*) service of the schedule shall be effected only on the person named in such schedule and if within three months from the day on which the schedule is filed, service is not effected on the person aforesaid, either by reason of absence or for any other reason, the emphyteuta shall at his expense request the Registrar of Courts to have the contents of the schedule published in the Gazette, and upon such publication the person on whom the schedule was due to be served shall, for all purposes of law, be deemed to be served with the schedule;

(*f*) the emphyteuta shall cause two copies of the schedule to be served on the Director of Public Registry, who shall keep a register of such schedules, and article 30 of the Public Registry Act shall, *mutatis mutandis,* apply to such schedules.

(8) The deposits mentioned may be withdrawn by the persons entitled thereto on proof of their title being made to the Registrar of Courts.

Divisibility of ground-rent. *Substituted by: XXVII.1976.4.*

1502. (1) The ground-rent cannot be divided without the consent of the *dominus*; but where the tenement is transferred or otherwise belongs to two or more persons separately, the *dominus* may not refuse his consent for the division of the ground-rent if such division is made substantially in proportion to the separate parts held by the persons requiring the consent.

(2) The consent given by the *dominus* for the transfer of one or more separate parts of the tenement to different persons, or the receipt by him of one or more portions of the ground-rent, from one or more of such persons, shall have the same effect as an express consent given by the *dominus* for the division of the groundrent.

Reimbursement of ground-rent to co-possessor.

1503. (1) A co-possessor who has paid the entire ground-rent, obtains reimbursement from the other co-possessors *pro rata* having regard to the portion of the tenement held by each, notwithstanding any assignment of rights.

(2) He contributes, in the same proportion, with the other co-possessors in respect of the shares of such of the co-possessors as are insolvent.

Rights of emphyteuta over tenement.

1504. (1) The emphyteuta may alter the surface of the tenement, provided he does not thereby cause any deterioration thereof.

(2) He is entitled to any profit which the tenement may yield and has the right to recover the tenement from any holder, even if such holder is the *dominus*.

(3) He is also entitled to the treasure trove found in the tenement, saving such portion thereof as according to law is due to the person who has found it.

Restoration of tenement in good state.

1505. The emphyteuta shall keep, and in due time restore the tenement in a good state.

Improvements.

1506. (1) All improvements made by the emphyteuta appertain to him during the continuance of the emphyteusis.

(2) He may alter the form of such improvements; but he may not destroy them without the express consent of the *dominus.*

Obligations of emphyteuta.

1507. The emphyteuta is bound to carry out any obligation imposed by law on the owners of buildings or lands:

Provided that if for the carrying out of any such obligation a considerable expense is required, and the emphyteusis is for a time, the court may, upon the demand of the emphyteuta, compel the *dominus* to contribute a portion of such expense, regard being had to the covenants of the emphyteusis, to the remaining period of the grant, to the sum of the ground-rent and to other circumstances of the case.

Emphyteuta may dispose of tenement.

1508. (1) The emphyteuta may, without giving notice to the *dominus* or requiring his consent, dispose of the emphyteutical tenement and of the improvements, either by an act *inter vivos* or by any testamentary disposition.

(2) Any alienation, however, made otherwise than by a public deed, is null.

Emphyteuta not freed from his obligations unless alienee is acknowledged by *dominus.*

1509. (1) Where the emphyteuta makes any such disposal without the consent of the *dominus*, he shall not be released from his obligations towards the *dominus* himself unless the latter acknowledges the alienee.

Obligations of alienee even if not acknowledged. *Amended by: VII.1944.2; LVIII.1975.9.*

(2) The alienee, however, although not acknowledged by the *dominus*, is personally bound towards him for the payment of the whole amount of ground-rents which fall due during his tenure, and for the repair of all damages which take place during such tenure; but he is not liable for the ground-rent which fell due, or for the damages which took place previously to such tenure; saving always, even in respect of such ground-rent and damages, the rights of the *dominus* on the emphyteutical tenement, on the fruits and on the value of all things which serve for the furnishing or stocking or for the cultivation of the tenement, to whomsoever such things may appertain:

Provided that such rights shall not be available to the proprietor in respect of the said things if the same belong to or are held by or on behalf of any department of the Government of Malta in any case in which such department is not itself liable for the payment of the debt.

When *dominus* is bound to acknowledge alienee. *Amended by: IV.1961.10.*

1510. The *dominus* may not refuse to acknowledge, in lieu of the emphyteuta, the alienee under any title, of the emphyteusis, if the alienee is a competent person to carry out the obligations arising from the emphyteutical grant.

When alienee is bound to acknowledge *dominus*.

1511. An alienee, under any title, of an emphyteusis, in possession of the tenement, whom the *dominus* has acknowledged or has offered to acknowledge, may not refuse to acknowledge expressly the *dominus* or to bind himself personally towards him for the carrying out of the obligations arising from the emphyteutical grant.

Acknowledgement. *Substituted by: XXVII.1976.5.*

1512. (1) Any of the acknowledgements mentioned in the last two preceding articles may be either express or implied; and the payment or receipt of ground-rent or of a fine by or from the alienee shall operate as an implied acknowledgement, unless an express reservation is made by a judicial act.

(2) Both the *dominus* and the alienee may require the acknowledgement to be made by a public deed or a private instrument; and in any such case the expenses shall be borne by the party requiring the written form.

No right to fine unless agreed upon, etc. *Substituted by: XXVII.1976.6.*

1513. The *dominus* shall not be entitled to exact any sum by way of fine, by whatever name called, upon any sale or other alienation made after the 1st July, 1976, of the *dominium utile* or of the improvements unless -

(*a*) the emphyteutical grant contains an express agreement providing for such payment, and

(*b*) the emphyteutical grant is one which is made for a period exceeding twenty years;

and where any sum due in accordance with the foregoing provisions of this article exceeds the amount of the ground-rent for one year due to that *dominus* in respect of the tenement or part of the tenement sold or alienated, such *dominus* shall not be entitled to any such excess.

Promise in relation to emphyteusis. *Added by: XXVII.1976.7.*

1514. The provisions of articles 1357, 1359 and 1360 shall apply to a promise made in respect of emphyteusis after the lst of July, 1976, as they apply to a promise to sell or to buy.

Where tenement perishes wholly or in part.

1515. (1) An emphyteusis is dissolved *ipso jure* if the tenement perishes in whole by a fortuitous event.

(2) If the tenement perishes in part, and the remaining part is not capable of yielding a rent equivalent to the ground-rent, the emphyteuta may not claim a reduction of the ground-rent, but he may demand the dissolution of the emphyteusis, restoring to the *dominus* the tenement with the improvements even if the remaining part of the tenement consists chiefly of such improvements.

Burden of proof.

1516. It is incumbent on the emphyteuta to prove that the tenement has perished, wholly or in part, by a fortuitous event, and without any fault on his part or on the part of his family, or of his servants, guests or tenants or of the sub-emphyteutae not acknowledged by the *dominus*.

Dissolution of emphyteusis in case of arrears. *Substituted by: XXVII.1976.8.*

1517. It shall be lawful for the *dominus* to demand the dissolution of the emphyteusis and the reversion in his favour of the tenement together with the improvements if the emphyteuta owes by way of ground-rent a sum equal in amount to three yearly payments.

Where tenement has deteriorated.

1518. (1) It shall also be lawful for the *dominus* to demand the dissolution of the emphyteusis and the reversion in his favour of the tenement together with the improvements, in addition to the repair of any damage, if the tenement has considerably deteriorated, and the emphyteuta fails to show that such deterioration has taken place without any fault on his part or on the part of the persons mentioned in article 1516.

(2) The same shall apply where the deterioration has taken place in the improvements executed on the tenement.

Time for payment of arrears, etc. *Amended by: XXVII.1976.9.*

1519. (1) In the cases mentioned in the last two preceding articles, it shall be competent to the *dominus* to demand the dissolution of the emphyteusis and the payment of the arrears of the ground-rent, concurrently.

(2) Nevertheless, the court may, in each of the cases aforesaid, grant to the defendant a reasonable time, according to circumstances, for the payment of the arrears or for the execution of the repairs, and such time may, for a just cause, be extended once to a further reasonable time.

(3) The provisions of the foregoing sub-articles shall apply also in any case in which the dissolution of the contract has been

expressly agreed upon for any reason, and shall so apply even if the agreement excludes the grant of any time.

(4) Nothing in this article shall be construed as requiring the payment of any ground-rent or other sum that is not due, whether because the demand therefor is barred by prescription or for any other reason.

Time for payment of arrears, etc., may be demanded by creditor of emphyteuta.

1520. (1) Any creditor of the emphyteuta, or any other person interested may intervene in the suit and make the demand for the time aforesaid; and he may also within such time, even though granted with his intervention on the demand of the emphyteuta, prevent the dissolution of the emphyteusis by paying the arrears or by executing the repairs required.

(2) In such case, the creditor or other person interested shall, for the reimbursement of the arrears paid or of the expense incurred in the execution of the repairs, be vested with the rights of the *dominus* as against any other creditor of the emphyteuta, excepting, however, the *dominus* himself.

Cessation of temporary emphyteusis.

1521. (1) A temporary emphyteusis ceases on the expiration of the time expressly agreed upon, and the reversion, in favour of the *dominus*, of the tenement together with the improvements takes place, *ipso jure*.

(2) Any action for the renewal of the emphyteusis for any cause whatsoever, except by virtue of an express covenant in the emphyteutical grant or in any other public deed, is abolished, in regard to any kind of property whatsoever.

Effects of reversion.

1522. In all cases of reversion, any hypothec, burden or easement, even though such easement may have been created without the act of the emphyteuta, shall be dissolved both in regard to the tenement and to the improvements; and the tenement together with the improvements shall revert unencumbered to the *dominus*, saving, in regard to any lease thereof, the provisions of articles 1530 and 1531.

When emphyteuta may claim compensation for improvement.

1523. (1) Upon reversion, the emphyteuta shall not be entitled to any compensation in respect of the improvements, whatever their nature or value, unless reversion takes place for any of the causes mentioned in articles 1517 and 1518.

(2) In the cases mentioned in the said two articles, the *dominus* is bound to pay to the emphyteuta the price of the improvements, regard being had to their value at the time of the reversion, up to the amount by which the value of the tenement is found to have increased in consequence of such improvements at the time of the reversion, as well as to the remaining period of the emphyteusis.

Contracts of emphyteusis made before 1st July, 1976.
Substituted by: XXVII.1976.11.

1524. The provisions of this Title shall apply to all contracts of emphyteusis whether made before or after the lst July, 1976, other than those emphyteuses which had terminated before the said date or which, before that date, were determined or dissolved by agreement, or by a judgment which had become *res judicata*, or by operation of law; in respect of such latter emphyteuses the law

applicable at the time of their termination, determination or dissolution shall, in so far as necessary, continue to apply.

Title IX

OF CONTRACTS OF LETTING AND HIRING*

GENERAL PROVISION

Contract of letting and hiring may be made verbally or in writing. *Substituted by: X.2009.2. Amended by: XXVIII.2019.37.*

1525. (1) A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.

The Rent Regulation Board (hereinafter referred to as the "Rent Board") established under the Releting of Urban Property (Regulation) Ordinance shall decide all matters affecting the leases of urban tenements including residential as well as commercial tenements including causes relating to the occupation of urban tenements where such leases have expired, and any damages resulting during such period of occupation. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act:

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Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.

The Rent Board shall also have the competence to decide demands related to maintenance, repairs, defects and faults of the tenement including latent ones, damages or improvements, amounts due for water and electricity and any amount left by way of security deposit by the tenant, where such demands are included in other demands or pleas made before the Board, over which the Adjudicating Panel has no jurisdiction.

Rent Board may collect information and data.

The Rent Board has the authority to request information and documentation from government entities, departments and authorities as well as from any other entity to meet its functions as established in this Code.

(2) Unless otherwise specifically stated in this Title, the provisions of this Title shall not apply to agricultural leases which shall continue to be regulated by the provisions of the Agricultural Leases Reletting Act.

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*The transitory provisions relating to the amendments made to this Title by Act X of 2009 are reproduced at the end of this Chapter.

(3) For the purposes of this Title:

"commercial tenement" means an urban tenement which is not a residence and which is leased to house an activity primarily intended to generate profit and includes, but is not limited to, an office, a clinic, a tenement leased out for the sale of merchandise by wholesale or retail, a market stall, a warehouse, a storage used for commercial purposes as well as any tenement licensed to sell things, wines, spirits or foodstuff or drinks, theatre, or tenement mainly used for any art, trade or profession:

Provided that a tenement leased to a society or leased to a musical, philanthropic, social, sporting or political entity, that is used as a club, shall not be considered as a commercial tenement even if part of it is used for the purpose of generating profit;

"club" means any club which is registered as such with the Commissioner of Policein accordance with the appropriate provisions of the law;

"private residential lease" means any long or short private residential lease, including the letting of shared residential space, which is entered into after 1st January, 2020, and any leases for a residential purpose entered into before the 1st January, 2020, which would still be in its original or renewed period on the 1st January, 2021.

Sub-title I

OF THE LETTING OF THINGS

Definition of contract of letting and hiring of things.
Amended by: LII.2016.41. XXXVII.2021.47.

1526. (1) The letting of things is a contract whereby one of the contracting parties binds himself to grant to the other the enjoyment of a thing for a specified time and for a specified rent which the latter binds himself to pay to the former.

(2) Any kind of corporeal property, whether movable or immovable, may be the subject of a contract of letting and hiring.

(3) The letting of ships and aircraft, including aircraft engines, shall be regulated by the provisions of any agreement between the lessor and the lessee in accordance with its terms as well as by the international usages of trade applicable in the context.

Notwithstanding any of the provisions of this sub-title, any agreement relating to the letting of ships or aircraft or aircraft engines, shall be governed by:

(*a*) the terms and conditions agreed between the parties, and in case of conflict with the provisions of this Code, such terms and conditions shall prevail; and

(*b*) the special laws relating to merchant shipping and civil aviation, as the case may be.

(4) The requirement in article 1569 for a notice by judicial act

for the cessation of a lease shall not apply and the termination of the lease shall be regulated by the agreement between the parties and any notice of termination which may be required to be given by any parties may be given by notice in writing in any manner, including by electronic means.

(5) The lease of a ship or an aircraft, including aircraft engines, or rights thereunder, shall be immediately dissolved or terminated by the lessor (or mortgagee who shall be deemed to have such power unless expressly waived) at any time in the event of a default and upon notice in writing to the lessee, notwithstanding the opposition by the lessee, and this without the need of any authorisation or confirmation by any court that an event of default has taken place.

In such circumstances the lessor may, after notice to the lessee, take possession of the ship or aircraft, including an aircraft engine, in accordance with the agreement between the parties and may, by application, ask the Court for an order authorising or directing these acts, and the Court shall render full support to the lessor or the mortgagee as expeditiously as possible.

(6) In the event that the lessor terminates the lease agreement for reasons which are not:

(*a*) contemplated in the agreement, or

(*b*) generally valid reasons at law,

the lessee may seek damages for breach of the agreement.

(7) For the purposes of this article:

(*a*) the term "aircraft" shall have the same meaning as ascribed to it in the Aircraft Registration Act;

(*b*) the term "default" means:

(i) the fulfilment of a condition under which the dissolution of the lease was expressly covenanted or a failure by a party to perform his obligations; or

(ii) a change in the financial condition of the lessee as stated in article 1079; or

(iii) a default which substantially deprives the mortgagee of what it is entitled to expect under the agreement between the mortgagor and the mortgagee;

(*c*) the term "lease" of ships and aircraft shall refer to the chartering thereof under terms where possession or control is given to the lessee, including bareboat charters or the equivalent;

(*d*) the term "mortgagee" shall include a mortgagee acting in its capacity as security trustee, bond trustee or by

whatever name called;

(*e*) the term "ship" shall have the same meaning as ascribed to it in the Merchant Shipping Act; and

(*f*) the term "writing" shall include any manner through which words may be represented and read and includes notices through electronic means.

Letting by co-possessor when voidable. *Substituted by: X.2009.3.*

1527. (1) The lease of an urban property, a residence or a commercial tenement that is co-possessed by more than one person shall always be made by all the co-possessors subject to the provisions of article 1530.

(2) Should one of the co-possessors also occupy the co-possessed property, if the parties agree that a contract of lease be made, such an agreement shall be made by a contract in writing between all co-possessors on the one hand and the occupier of the tenement on the other; and thereafter such person shall be considered to be a lessee, according to the terms and conditions of a contract of lease, without losing his rights as a co-possessor:

Provided that this sub-article shall be without prejudice to the provisions of Title V of the Second Book, Part I of this Code.

(3) Should a co-possessor of an urban tenement, a residence or a commercial tenement lease out such property without authorization by a judgment of the Rent Board, or in the case of a movable without authorization of the competent court, or without the consent of the other co-possessors, such lease may at the request of any one of the other co-possessors be declared null, unless such request is made within two months from the date when such other co-possessor would have obtained knowledge of such a lease.

When board or court may grant authorization. *Amended by: XXII.2005.81. Substituted by: X.2009.4.*

1528. (1) The Rent Board may, at the request made by means of an application by one of the co-possessors of the urban tenement, residence or commercial tenement, authorise the lease of the urban tenement, residence or commercial tenement, where it is shown that the tenement is suitable to be leased and that the proposed lease is advantageous, and that it is not shown that any of the other co-possessors has a just cause to oppose such lease:

Provided that in the lease of movables all the provisions of this sub-article shall apply, however the matter shall fall within the competence of the courts of civil jurisdiction.

(2) The provisions of sub-article (1) shall also apply when any one of the co-possessors is absent, and the Rent Board, in the case of the lease of an urban tenement, a residence or a commercial tenement (or the court in the case of the letting or hiring of movables and other things, as the case may be), would not have received any notice whether the absentee is still living, or as to his whereabouts.

Right of preference of co-possessor. *Substituted by: X.2009.5.*

1529. The co-possessor who has, in general terms, given his consent for the lease of the thing, or who, in spite of his opposition the Rent Board or the court, as the case may be, has given, in general terms, his authorization for the lease of the thing, may,

nevertheless, exercise the right of preference referred to in articles 1591, 1592 and 1593 unless he has in any manner waived such right.

Letting made by person possessing thing under entail or in usufruct, etc. *Amended by: X.2009.6.*

1530. (1) The letting made by a person possessing the thing under entail or in usufruct or under any other temporary or dissoluble title, shall be valid even in regard to his successors, if it is made on fair conditions and for a term not exceeding eight years, in the case of rural tenements, or four years, in the case of urban tenements, or an ordinary period according to usage in the case of movable property, or for any period, shorter than the said periods respectively, in the case of property the letting of which for a period exceeding such shorter period is prohibited.

(2) The letting made for any longer period by a person possessing the thing as aforesaid shall, on the demand of his successors in the possession of the thing, be reduced to the reasonable period above-mentioned, to be reckoned from the date of the contract.

When lease for a longer period is authorised by a competent authority. *Substituted by: X.2009.7.*

1531. The provisions of the last preceding section in so far as they restrict the duration of the lease shall not apply where a longer period of lease has been covenanted with the authorization of the competent authority according to law.

Requisites in writing of a contract of lease. *Added by: X.2009.7. Amended by: XXVIII.2019.38.*

1531A.(1) With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January, 2010, the contract of lease shall be made in writing and shall stipulate:

(*a*) the property to be leased;

(*b*) the agreed use of the property let;

(*c*) the period for which that property will be let;

(*d*) whether such lease may be extended and in what manner;

(*e*) and also the amount of rent to be paid and the manner in which such payment is to be made.

(2) In the absence of one or more of these essential requirements, the contract shall be null.

(3) The lease of an urban property, a residence and a commercial tenement made after the 1st January, 2010 shall be regulated exclusively by the contract of lease and by the articles of this Code:

Provided that private residential leases shall be regulated by the Private Residential Leases Act

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Conditions for letting of private residential lease. Added by: *XXVIII.2019.39.* Cap.604.

1531AA. With regard to the letting of any private residential lease entered into after the 1st January, 2020, the contract of lease shall be made in writing and shall stipulate the conditions specified under the Private Residential Leases Act, namely:

(*a*) the tenement to be leased;

(*b*) the agreed use of the tenement let;

(*c*) the period for which that tenement shall be let;

(*d*) whether such lease may be extended and in what manner;

(*e*) the amount of rent that shall be paid and the manner in which such payment is to be made;

(*f*) any amount deposited by the lessee by way of security, for the performance of his obligations; and

(*g*) an inventory attesting the condition of the tenement as well as the state of any furniture and domestic appliances supplied by the lessor.

Contract of letting prior to 1st June, 1995.
Added by: X.2009.7.
Amended by: V.2010.6; XXIV.2021.3

1531B. The contracts of lease made before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 sohowever that from 1st January, 2010 articles 1531C, 1531D, 1531E, 1531H, 1531I, 1531J and 1531K of this Code shall apply.

Rent of a residence.
Added by: X.2009.7.
Amended by: V.2010.7.
Cap. 69.
Cap. 158.

1531C.(1) Without prejudice to the rights of the lessor in accordance to article 4A of the Reletting of Urban Property (Regulation) Ordinance and article 12B of the Housing (Decontrol) Ordinance, the rent of a residence which has been in force before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 sohowever that unless otherwise agreed upon in writing after the 1st January, 2010, the rate of the rent as from the first payment of rent due after the 1st January, 2010, shall, when this was less than one hundred and eighty-five euro (€185) per year, increase to such amount:

Provided that where the rate of the lease was more than one hundred eighty-five euro (€185) per year, this shall remain at such higher rate as established.

(2) In any case the rate of the rent as stated in sub-article (1) shall increase every three years by a proportion equal to the increase in the index of inflation according to article 13 of the Housing (Decontrol) Ordinance; the first increase shall be made on the date of the first payment of rent due after the 1st January, 2013:

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Provided that where the lease on the 1st January, 2010 will be more than one hundred eighty-five euro (€185) per year, and by a contract in writing prior to 1st June, 1995 the parties would have agreed upon a method of increase in rent, after 1st January, 2010 the increases in rent shall continue to be regulated in terms of that agreement until such agreement remains in force.

Rent of a commercial tenement.
Added by: X.2009.7.
Amended by: V.2010.8.

1531D.(1) The rent of a commercial tenement, unless otherwise agreed upon after 1st January, 2010 or agreed upon in writing prior to the 1st June, 1995 with regards to a lease which would still be in its original period on the 1st January, 2010, shall as from the date of the first payment of rent due after the 1st January, 2010, be increased be increased by a fixed rate of fifteen per cent over the actual rent and shall continue to increase as from the date of the first payment of rent due after the 1st January of each year by

fifteen per cent over the last rent between the 1st January, 2010 and the 31st December, 2013.

(2) The rent as from the first payment of rent due after the 1st January, 2014, is to be established by agreement between the parties. In the event that such agreement is not reached, the Property Market Value Index shall be considered as a guide to the rent as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from the first payment of rent due after the 1st January, 2014, increase by five per cent per year until the coming into force of the said regulations.

(3) In the case of a commercial tenement, if there was an agreement between the parties for periodic rent increases, then such agreement shall continue to apply without the increases contemplated in this article:

Provided that except in such cases where the increase in rent has been effected following an agreement, where the increase as proposed herebefore for commercial tenements is applied, the tenant may by means of a judicial letter served on the lessor or on one of the lessors, terminate the lease by giving him advance notice of three months and this shall also apply if the lease is for a definite period.

External ordinary maintenance of lease. *Added by: X.2009.7. Amended by: V.2010.9.*

1531E. The external ordinary maintenance of a tenement leased prior to 1st January, 2010, save unless otherwise agreed upon in writing between the parties, shall be at the expense of the tenant and not of the lessor.

Definition of a tenant of a residential tenement. *Added by: X.2009.7. Amended by: XXIII.2017.79.*

1531F. *Repealed by Act XXIV.2021.5.*

Person who does not qualify to be a tenant. *Added by: X.2009.7.*

1531G. *Repealed by Act XXIV.2021.6.*

Tenement leased as a garage or used as a summer residence. *Added by: X.2009.7.*

1531H.(1) In the case of garages leased before the 1st June, 1995 that do not form part of a residence leased to a tenant as an ordinary residence and which are not considered as a commercial tenement, in the absence of an agreement to the contrary there shall not be any right of renewal of the lease after 1st June, 2010.

(2) In the case of a tenement leased before the 1st June, 1995 and used as a summer residence which is not the ordinary residence of the tenant, in the absence of an agreement to the contrary there shall not be any right of renewal to the lease after 1st June, 2010:

Provided that for the purposes of this Title no tenant shall be deemed to hold more than one ordinary residence.

Definition of a tenant of a commercial tenement. *Added by: X.2009.7. Amended by: XXIII.2017.80.*

1531I. In the case of commercial premises leased prior to 1st June, 1995, the tenant shall be considered to be the person who occupies the tenement under a valid title of lease on the 1st June, 2008, as well as the spouse of such tenant, provided they are living together and are not legally separated, and also in the event of the death of the tenant, his heirs who are related by consanguinity or by affinity up to the grade of cousins inclusively:

Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008.

Tenements leased by any type of club. *Added by: X.2009.7. Amended by: XXVII.2018.5.*

1531J. (1) In the case of a tenement leased to an entity and used as a club before the 1st June, 1995 including but not limited to a musical, philanthropic, social, sport or political entity, when its lease is for a specific period and on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and the lease has not yet been automatically extended by law, then in that case the period of lease established in the contract shall apply. In all other instances where the contract of lease was made prior to the 1st June, 1995 the law and all definitions as in force on the 1st June, 1995 shall continue to apply:

Provided that notwithstanding the provisions of the law as in force before the 1st June, 1995, the Minister responsible for accommodation may from time to time make regulations to regulate the conditions of lease of clubs so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.

(2) The provisions of this sub-article and of the following sub-articles shall, notwithstanding any other law, apply in respect of the occupation of premises under title of lease by a club where all the following conditions are satisfied:

(i) where the club consists of a band club which on the 1st March, 2018 has been in existence for at least thirty (30) years;

(ii) where the said band club has on the 1st March, 2018 occupied the same premises as its principal quarters under a title of lease or emphyteusis or under a combination of both for a period of at least thirty (30) years;

(iii) where the band club is still in occupation of the premises and the premises are the only premises of the

band club, except for stores and similar premises or premises which are small and are not used as a club, on the 1st March, 2018; and

(iv) where the eviction of the band club has been ordered by a final judgement of the Rent Board or of a Court for a reason other than the failure to pay rent due.

(3) Where all the conditions listed in sub-article (2) are satisfied, the club shall be entitled to continue occupying the premises under a title of lease under the following conditions:

(i) for a rent which shall amount to ten (10) times the amount of rent payable for the occupation of the said premises prior to the final judgement of the Rent Board or of the Court ordering eviction;

(ii) the rent referred to in sub-paragraph (i) shall not be further increased in terms of regulation 2 of the Conditions Regulating the Leases of Clubs Regulations but the amount due to the owner in terms of regulation 3 of the said regulations shall still be due in addition to the rent;

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(iii) the rent due in terms of sub-paragraph (i) shall not be less than five thousand euro (€5,000) *per annum* or amount to more than one (1) per cent of the value of the premises on the 1st January 2018.

(4) The owner of premises to which sub-articles (2) and (3) apply shall be entitled to apply to the Rent Board to contest the fulfilment of any condition provided for in sub-article (2) or to demand a variation in the conditions of the lease in order to make good for any situation of manifest disproportionality which may result from the application of sub-articles (2) and (3), due account being taken of the social and cultural functions performed by the band club:

Provided that in considering whether there exists a situation of manifest disproportionality the Board shall not base its considerations on the potential of the premises for development for commercial use but it shall consider the premises in its actual state.

(5) In any proceedings which may lead to the eviction from premises owing to structural alterations made without the consent of the lessor, when the premises from which the eviction is demanded consist of the principal quarters of a band club, the Rent Board or the Court shall not order the eviction from such premises where the structural alterations consist of works related to the philharmonic or social activities or to the activities performed by the band club, and where the works consist of improvements to the premises or of structural alterations to the premises and the band club provides a guarantee which in the opinion of the Rent Board or of the Court is sufficient to allow the lessor to restore the premises and to make the reparations or alterations necessary in the premises at the termination of the lease and to make good for any loss suffered during the execution of the necessary works:

Provided that the amount of the guarantee referred to in this

sub-article shall be established on the basis of the prices current at the time of the judgement.

Tenement used as a residence as well as a commercial premises. *Added by: X.2009.7. Substituted by: XXIV.2021.7.*

1531K. In the case of a property leased before the 1st June 1995 which is used both as a dwelling-house and as a commercial premises and for which only one (1) rent is payable, this shall be considered as a dwelling-house and it shall be regulated by the conditions which concern dwelling-houses:

Provided that with regard to the rate of the rent, the rent shall be that established for a commercial premises as stipulated in this Code or article 4A of the Reletting of Urban Property (Regulation) Ordinance, whichever rent is higher..

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Lease which entered into force on or after the 1st June, 1995. *Added by: X.2009.7.*

1531L. With regard to leases which came into force on or after the 1st June, 1995 such leases, both of a residential and of a commercial tenement, and of urban property, shall continue to be regulated by the same terms and conditions agreed upon between the parties and by law as in force at the time.

Lease of other tenement made prior to 1st June, 1995. *Added by: X.2009.7. Amended by: V.2010.10.*

1531M. With regard to leases made before the 1st June, 1995 of tenements which are not residences or commercial tenements, subject to the provisions of article 1531J relating to clubs, and subject to the provisions of article 1531H with regard to garages and summer residences, the law and all definitions as were in force before the 1st June, 1995 shall continue to apply:

Provided that the Minister responsible for accommodation may from time to time make regulations to regulate such leases so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.

Presumptive duration of lease. *Amended by: I.1870.1; X.2009.8; XXVIII.2019.40.*

1532. (1) In the absence of an express agreement or of circumstances tending to show the intention of the contracting parties as to the duration of the lease, the following rules shall be observed:

(*a*) the letting of an urban tenement or of a movable shall be deemed to be made for the period in respect of which the rent has been calculated, that is, for one year, if the rent has been agreed upon at so much a year; for one month, if the rent has been agreed upon at so much a month; for one day, if the rent has been agreed upon at so much a day:

Provided that if it is not made to appear that the rent has been agreed upon by the year, the month or the day, it shall be deemed to have been agreed upon according to usage;

(*b*) the letting of a rural tenement shall be deemed to be made: if the tenement is capable of producing fruits, for the period which is necessary for the gathering of the produce of four years; if the tenement is not capable of producing fruits, for the period in respect of which the rent is calculated, as is provided in the case

of urban tenements;

(*c*) if any particular usage is proved in regard to the duration of the letting of certain things, such things shall be deemed to be let out for the period fixed by such usage.

(2) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial property made after 1st January, 2010:

Provided that any private residential leases entered into after the 1st January, 2020, shall be presumed to have been entered into for a period of one (1) year, unless the parties agree to a short private residential lease or the letting of shared residential space in accordance with the Private Residential Leases Act.

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Rent.
Amended by: X.2009.9.

1533. (1) The rent may be either in money or in kind, or even in a portion of the fruits produced by the thing.

(2) Where it is not shown that the rent has been agreed upon as payable in kind or in a portion of the fruits, it shall be deemed to have been agreed upon as payable in money.

(3) The provisions of sub-article (2) do not apply with regard to the lease of urban, residential and commercial property made after the 1st January, 2010.

How rent is fixed when not agreed upon.
Amended by: X.2009.10; XXVIII.2019.41.

1534. (1) Where the contract has already commenced to be carried into effect, the rent, in the absence of an express agreement, or of any law fixing the amount thereof, shall be fixed at the current price, if any, or, in the absence of a current price, by means of a valuation by experts:

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Provided that in case of occupation without title under the Private Residential Leases Act, the rent shall be fixed in accordance with the provisions contained in the said Act.

(2) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial property made after the 1st January, 2010:

Provided that in the case of occupation without title which are in existence after 1st January, 2020, the rent shall be determined in accordance with the Private Residential Leases Act.

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Payment of rent in advance.

1535. (1) Every payment in advance in respect of rent of rural tenements is null, if any prejudice is caused thereby to the hypothecary creditors of the lessor or to the persons succeeding to the property under an entail, or to whom, in consequence of any dissolution of his right, the property passes.

(2) Every payment in advance in respect of rent of an urban tenement for more than six months is also null, if any prejudice as aforesaid is caused thereby.

1536. (1) If, at the expiration of the lease, the lessee continues and is suffered to continue in the enjoyment of the thing let to him, the lease shall be deemed to be renewed on the same conditions and with the same rights and duties, for a period to be regulated in accordance with the provisions of article 1532, except as regards rural tenements with respect to which the lease shall be deemed to be renewed for the period which is necessary for the gathering of the produce of one year:

Tacit renewal of lease. *Amended by: X.2009.11; XXVIII.2019.42.*

Provided that where the rent is payable in termly payments, the lease, except as regards rural tenements, shall be deemed to be renewed for a time corresponding to the period of one term only:

Provided further that in case of private residential leases under the Private Residential Leases Act, the lease shall be deemed to be renewed in accordance with the said Act.

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(2) The provisions of sub-article (1) do not apply with regard to lease of urban, residential and commercial property entered into after the 1st January 2010:

Provided that private residential leases under the Private Residential Leases Act shall be regulated in accordance with the said Act.

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1537. When the lessor has given notice to the lessee to surrender the thing at the expiration of the lease, the lessee may not set up the tacit renewal as provided in the last preceding article, even though he has continued in the enjoyment of the thing.

When tacit renewal does not take place.

1538. A suretyship in respect of a contract of lease shall not, in any of the cases mentioned in the last two preceding articles, extend to the obligations resulting from the renewal of the lease, or the continued occupation of the thing unless the surety has expressly bound himself for the whole time until the lessee surrenders the thing.

Extent of security.

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§ I. OF THE RIGHTS AND OBLIGATIONS OF THE LESSOR

1539. The lessor is bound, by the nature of the contract, and without the necessity of any special agreement -

Obligations of lessor.

(*a*) to deliver to the lessee the thing let;

(*b*) to maintain the thing in a fit condition for the use for which it has been let;

(*c*) to secure the lessee in the quiet enjoyment of the thing during the continuance of the lease.

1540. (1) The lessor is bound to deliver the thing in a good state of repair in every respect.

Delivery of thing in good state of repair. *Amended by: X.2009.12; V.2010.11.*

(2) During the continuance of the lease, the lessor is bound to make all repairs which may become necessary, excluding, in the case of buildings, the repairs mentioned in article 1556, if he has

not expressly bound himself to this effect.

(3) For the purposes of this Title with regard to an urban, residential and commercial tenement, "structural repairs" shall be deemed to be those relating to the structure of the building itself, including the ceilings.

(4) When the lessor in the case of a residence leased prior to the 1st June, 1995 carries out structural repairs which have become necessary not due to his own fault, then the rent shall be increased by six per cent of the costs incurred:

Provided that where the structural repairs have not become necessary due to a fault of the lessee, then the said lessee has the right to terminate the lease even though the period of the lease has not yet lapsed:

Provided that in the cases where the lessor is willing to carry out these repairs, the lessee may choose to carry out such repairs at his expense, and in such an event the rent shall remain unchanged; however the lessee shall in such case have no right for any full or partial compensation for such structural repairs at the termination of the lease.

When lessee may be authorised to carry out repairs. *Amended by: XXII.2005.81. Substituted by: X.2009.13. Amended by: XXVIII.2019.43.*

1541. (1) If the lessor, on being required so to do by means of a judicial act, fails to carry out the repairs to which he is bound, it shall be competent to the lessee to request, by application, authorization to carry out such repairs at the expense of the lessor, under such conditions as the Adjudicating Panel for Private Residential Leases, the Rent Board, or the Court or the Rural Leases Control Board, as the case may be, may deem proper in the circumstances.

(2) The lessee shall have the right to keep the rent due or the rent which is still due to be paid, so that he will be paid back for such expenses, subject to his rights for any greater amount, if the amount of those expenses is more than such rent; in this case the lessor has no right to increase the rent as mentioned in article 1540(4).

Liability of lessor for delay.

1542. The lessor is bound to make good to the lessee the damage which the latter has sustained in consequence of the delay on the part of the lessor in carrying out, on the intimation mentioned in the last preceding article, the repairs to which he is bound.

Urgent repairs. *Substituted by: X.2009.14.*

1543. It shall be lawful for the lessee, without the necessity of any proceedings, to carry out at the expense of the lessor the urgent repairs; and, the omission or delay of which might cause to him serious prejudice: and, in any such case, he may, for the purpose of reimbursement, retain the rent as provided in article 1541:

Provided that the lessee shall be bound to inform as soon as possible the lessor about these circumstances and to deliver to him a report by an expert as to the urgency of such repairs and their estimated value and the prejudice which might result from such delay:

Provided also that the lessor shall be entitled to assume the

continuation of the repairs commenced under the provisions of this article.

When contract may be dissolved for want of repairs. *Amended by: X.2009.15.*

1544. If the repairs which the lessor is bound to carry out are such that the omission thereof will prevent or considerably lessen the enjoyment of the thing let, and the lessor fails to carry them out within a time fixed by the Rent Board (or the court or the Rural Leases Control Board as the case may be), the lessee may also demand the dissolution of the contract, together with damages.

Liability of lessor in respect of defects or faults of thing let.

1545. (1) The lessor is bound to warrant the thing let against the faults or defects which prevent or diminish the use thereof; and, where the existence of such faults or defects is proved, the lessee may demand at his option either the dissolution of the contract or an abatement of the rent.

(2) The same rule shall apply even though such faults or defects shall have arisen after the stipulation of the contract.

(3) The lessor, however, shall not be bound in respect of apparent faults or defects which the lessee could have discovered for himself at the time of the contract.

Liability of lessor for damages in case of latent defects.

1546. If, in consequence of latent faults or defects existing in the thing let at the time of the contract, the lessee suffers any damage, the lessor, if he knew of such faults or defects, or had a reasonable suspicion thereof, shall be liable in damages unless he shall have made known to the lessee the existence, or his suspicion of the existence, of such faults or defects.

Lessor cannot change form of thing let.

1547. The lessor cannot, during the continuance of the lease, change the form of the thing let, without the consent of the lessee.

Lessee to suffer the execution of urgent repairs.

1548. (1) If, during the continuance of the lease, the tenement let requires urgent repairs which cannot be delayed until the expiration of the lease, the lessee is bound to suffer the execution of such repairs, whatever the inconvenience caused to him thereby, even though, during such execution, he may be deprived of a part of the tenement.

(2) Nevertheless, if the execution of such repairs takes more than forty days, the rent shall be abated in proportion to the time and to the part of the tenement of which the lessee is deprived.

Right of access to the tenement by the lessor. *Added by: X.2009.16.*

1548A. During the running of the lease of an urban, residential or commercial tenement, the lessor has right of access to the tenement in such times and in such manner agreed upon with the tenant in order that the lessor may fulfil his duties or to verify whether the tenant is performing his obligations, as well as to show the tenement to prospective buyers:

Provided that in the absence of an agreement between the parties, the Rent Regulation Board may, if need be, after hearing the parties summarily, fix days, times and conditions, after an application filed by the lessor for that purpose. The Board may give a decree during the sitting or in the chambers without hearing the parties. The decree shall be given within five working days from the date when the tenant is served with a notice. The Rent Board

may order the inspection to be done under the supervision and in the presence of a court marshal. In this function, the Rent Regulation Board shall also take into account the tenant's right to privacy and shall verify that no abuse is made of the lessor's right as provided in this sub-article. In such case, no appeal may be made from the said decree.

Lessee may in certain cases demand dissolution of lease.

1549. (1) In the case of an urban tenement destined for habitation, if the repairs mentioned in the last preceding article are such as to render uninhabitable for any period of time that part of the tenement which is necessary for the habitation of the lessee and his family, it shall be competent to the lessee according to circumstances to demand the dissolution of the contract.

(2) The same rule shall apply in the case of movable property if the repairs are such as to prevent the use of the thing for any period of time.

Lessor not bound to warranty against molestations by third parties,

1550. The lessor is not bound to warrant the lessee against the molestations which third parties may, by mere acts, cause to him in the enjoyment of the thing let, where such third parties do not claim any right thereon, saving the right of the lessee to proceed against them in his own name.

unless a right on the thing is claimed.

1551. (1) Where, on the contrary, the lessee is disturbed in the enjoyment of the thing in consequence of an action touching a right on the thing let, he may maintain an action for damages against the lessor, if he is entirely deprived of the thing, or for a proportionate abatement of the rent, if he is deprived of only a part of the thing, or if a diminution of the enjoyment of the thing or an inconvenience is caused to him.

(2) It shall, however, be competent to the lessee, even in the latter case, to sue for the dissolution of the contract and for damages, if the part of the thing which is left to him does not serve the purpose for which he had taken the whole thing on lease.

When damages may not be claimed.

1552. The provisions of the last preceding article in respect of the liability for damages shall not apply -

(*a*) if the lessee fails to give notice to the lessor, without delay, of the molestation, and the lessor is prejudiced by such omission;

(*b*) if the cause of the action referred to in the last preceding article, has only arisen after the stipulation of the contract, and is not due to an act of the lessor;

(*c*) if, at the time of the contract, the lessee knew of the right of the third party.

When lessee is bound to call upon lessor to defend him.

1553. If the third parties who have caused molestation by mere acts claim any right on the thing let, or if an action is brought against the lessee himself to compel him to surrender the thing, in whole or in part, or to suffer the exercise of any easement, he is bound to call upon the lessor to defend him, and he shall, if he so demands, have the proceedings against him discontinued, upon declaring the name of the lessor under whom he holds the thing.

§ II. OF THE RIGHTS AND OBLIGATIONS OF THE LESSEE

Obligations of lessee. *Amended by: X.2009.17.*

1554. The lessee is bound -

(*a*) to make use of the thing let to him as a *bonus paterfamilias*, and for the purpose stated in the contract, or, in the absence of any agreement to that effect, for such purpose as may be presumed according to circumstances;

(*b*) to pay the rent agreed upon, or fixed in accordance with the provisions established by law.

Unlawful use of the thing let. *Substituted by: X.2009.18.*

1555. If the lessee uses the thing leased for any purpose other than that agreed upon by the parties, or as presumed in the previous article, or in a manner which may prejudice the lessor, the lessor may, according to circumstances, demand the dissolution of the contract.

Non-use of tenement. *Added by: X.2009.18. Amended by: V.2010.12; XX.2024.3.*

1555A.(1) In the case of a residential tenement, failure to use the tenement for a period exceeding twelve months shall be deemed to be bad use of the thing leased in terms of article 1555:

Provided that when a person has failed to use the leased tenement due to being temporarily absent from the tenement due to work, study or health care, then such failure shall not be deemed to be bad use.

(2) When the lessee of a lease which started before the 1st June, 1995 is recovering in hospital or in an old people's home, and where such institution certifies or where it conclusively results that the same tenant is permanently dependent on the institution, for the purposes of the continuation of a lease according to the Reletting of Urban Property (Regulation) Ordinance and the Housing (Decontrol) Ordinance, the said permanent dependence shall have the same effects as the death of the lessee.

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(3) In the case of commercial premises, failure to use the said tenement for a commercial purpose in accordance with the provisions of a contract of lease shall be deemed to be bad use of the thing leased in accordance with the provisions of article 1555.

(4) The provisions of article 1555 shall also apply in the case of rural tenements, if the lessee abandons the cultivation thereof, or does not cultivate the said tenement as a bonus paterfamilias, and the lessor may thereby suffer prejudice in respect of which no security was given to him.

(5) In any of the aforesaid cases, apart from those cases where the lessee forfeits the lease due to his recovery in an institution, the lessee shall also be liable to pay damages.

Repairs at the charge of lessee of urban tenement, *Substituted by: X.2009.19.*

1556. The lessee of an urban tenement is responsible for all repairs other than structural repairs:

Provided that if such repairs are not carried out

appropriately and according to good workmanship the lessor shall have the right to request the Rent Board to authorise him to carry out such repairs at the expense of the lessee:

Provided further that in those instances where new repair obligations have been imposed on the lessee which were not incumbent upon him before the 1st June, 2008 the failure by the lessee to undertake such repairs before the 1st January, 2009 shall not in any way expose the lessee to damages or any other form of punitive measures such as an action for the termination of the lease.

Except when caused by *force majeure*. *Substituted by: X.2009.20.*

1557. The lessee shall in no case be responsible for the repair of damages caused by *force majeure* and without any fault of his own.

Cleansing of cisterns. *Substituted by: X.2009.21.*

1558. The cleansing of cisterns and sinks, of cesspits and of chimneys shall be at the charge of the lessee.

State in which thing is to be restored.

1559. Where the lessor and lessee have made a description of the condition of the thing let, the lessee is bound to restore the thing in the same condition in which he received it, according to the description, except as regards that which may have perished or deteriorated through age or irresistible force.

When thing is presumed to have been received in good condition. *Amended by: X.2009.22.*

1560. Where no description of the condition of the thing let has been made, it shall, in the absence of any proof to the contrary, be presumed that the lessee received the thing in good condition.

Liability of lessee for damage, etc.

1561. The lessee is liable for any deterioration or damage which occurs during his enjoyment, unless he proves that such deterioration or damage has occurred without any fault on his part.

Liability of lessee in case of fire.

1562. The lessee shall be liable for any damage caused by fire, unless he proves that it occurred without any fault on his part, or on the part of any of the persons mentioned in the next following article, or through a fortuitous event, or an irresistible force, or through a faulty construction, or that the fire was communicated from a neighbouring tenement.

Liability of lessee for acts of servants, etc.

1563. The lessee is liable for any deterioration or damage caused by any act or default of the members of his family, or of his servants, guests, or sub-lessees.

Improvements.

1564. (1) The lessee may not, during the continuance of the lease, make any alteration in the thing let without the consent of the lessor, and he is not entitled to claim the value, whatever it may be, of any improvement made without such consent.

(2) The lessee may, however, remove such improvements, restoring the thing to the condition in which it was before they were made, provided as regards improvements existing at the termination of the lease, he shows that he can obtain some profit by taking them away, and provided the lessor does not elect to keep them and pay to the lessee a sum equal to the profit which, by taking them away, the latter would obtain.

1565. The lessee is bound, under pain of paying damages, to give notice to the lessor without delay of any encroachment or damage affecting the thing let.

Lessee to give notice to lessor of encroachment, etc.

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§ III. OF THE DISSOLUTION OF THE LEASE

1566. Without prejudice to the provisions of articles 1531A to 1531M, a contract of letting and hiring ceases *ipso jure* on the expiration of the term expressly agreed upon, and it shall not be necessary for either of the contracting parties to give notice to the other:

Contract ceases on expiration of term, *Amended by: X.2009.23; XXVIII.2019.43.*

Provided that private residential leases under the Private Residential Leases Act, shall be regulated in accordance with the said Act.

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1567. With regard to rural tenements or movables, the contract shall also cease *ipso jure* on the expiration of the term, even though such term is presumed as provided in article 1532.

even if, in case of rural tenements or movables, the term is presumed.

1568. With regard, however, to urban tenements, when the duration of the lease is presumed as provided in article 1532, the contract shall not cease on the expiration of the term unless either of the parties gives notice to the other at least one month before, if the presumed duration of the lease is for one year, or fifteen days before, if such duration is for less than one year.

If duration of lease of urban tenements is presumed, notice to quit is required.

1569. (1) A contract of letting and hiring shall also be dissolved *ipso jure* upon the fulfilment of a condition under which the dissolution of the contract was expressly covenanted, saving any action for damages which may be competent to the covenantee according to law.

Cessation of lease upon happening of resolutive condition,

(2) If the dissolution of the contract is covenanted in the event of either of the parties failing to perform that which he has promised, the dissolution shall take effect only from the day on which the covenantee shall have, by means of a judicial act, given notice to the covenantor of his intention to avail himself of the covenant.

(3) In the cases referred to in this article, no time for clearing the delay can be granted to the party in default.

1570. A contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance:

or on the ground of non-performance, *Substituted by: X.2009.24.*

Provided that in the case of urban, residential and commercial tenements where the lessee fails to pay punctually the rent due, the contract may be terminated only after that the lessor would have called upon the lessee by means of a judicial letter, and

the lessee notwithstanding such notification, fails to pay the said rent within fifteen days from notification.

or if the thing is destroyed.

1571. (1) If, during the continuance of the lease, the thing let is totally destroyed by a fortuitous event, the lease is *ipso jure* dissolved; if it is destroyed only in part, the lessee may, according to circumstances, demand either an abatement of the rent or the dissolution of the contract.

(2) The lessee may also, according to circumstances, demand an abatement of the rent or the dissolution of the contract, if owing to a fortuitous event, the thing let has become unserviceable.

(3) No compensation may be claimed in any of the cases mentioned in this article.

Lease not dissolved by death of lessor or lessee, *Substituted by: X.2009.25.*

1572. Without prejudice to the provisions of articles 1531A to 1531M a contract of letting and hiring of a thing is not dissolved by the death of the lessor or of the lessee.

or on the ground that lessor desires the house for his own habitation, *Amended by: XX.2024.4.*

1573. It shall not be lawful for the lessor to dissolve the contract on the ground that he desires the house let for his own habitation, unless the right to do so has been expressly stipulated, in which case the lessor shall be bound to give notice to the lessee one month before, if the remaining period of the lease is not less than one year, or fifteen days before, if the remaining period of the lease is less than one year:

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Provided that in the case of private residential leases in accordance with the Private Residential Leases Act, the lessor shall be bound to give notice to the lessee at least three (3) months before by registered letter.

or in case of alienation of thing let.

1574. If the lessor sells the thing let, or alienates it in any other manner, the alienee cannot dissolve the lease, unless the lessor has reserved to himself such power in the contract of lease.

Notice by alienee to lessee. *Amended by: XX.2024.5.*

1575. (1) The alienee of the thing let desiring to avail himself of the power reserved in the contract respecting the dissolution of the lease in case of sale or other alienation, is bound, unless otherwise agreed upon in the contract, to give notice to the lessee, one year before, in the case of rural tenements, and one month or fifteen days before in accordance with the provisions of article 1573 in the case of urban tenements:

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Provided that in the case of private residential leases under the Private Residential Leases Act, the lessor shall be bound to give notice to the lessee at least three (3) months before by registered letter.

(2) In the case of movables, the notice to the lessee must be given eight days before, or at least so many days before as correspond to half of the remaining period of the lease.

Buyer cannot eject lessee while his title is subject to dissolution. *Amended by: IV.1961.2.*

1576. The buyer of a tenement subject to the right of redemption cannot avail himself of the power to eject the lessee, until he shall become irrevocably the owner of such tenement.

1576A. Repealed by *XVII.2017.84.*

Tenements belonging to the Government, etc.
Added by: *IV.1995.3.*
Repealed by: *XVII.2017.84.*

1576B. Repealed by *XVII.2017.84.*

Where no right to compensation exists.
Added by: *IV.1995.3.*
Repealed by: *XVII.2017.84.*

1576C. Repealed by *XVII.2017.84.*

Where a right to compensation exists.
Added by: *IV.1995.3.*
Amended by: *X.2009.26.*
Repealed by: *XVII.2017.84.*

1576D. Repealed by *XVII.2017.84.*

No court declaration is required.
Added by: *IV.1995.3.*
Amended by: *X.2009.27.*
Repealed by: *XVII.2017.84.*

§ IV.OF SPECIAL RULES AS TO LEASES OF RURAL TENEMENTS YIELDING FRUITS

Amended by: I.1870.2.

1577. If the lease is made for two or more years and, during the lease, there shall be lost, by any fortuitous event, the whole crop of one year or at least so much of it that the value of the remaining fruits, after deducting the value of the seeds and the expense of gathering such fruits, shall not be equivalent to one-half of the rent agreed upon, the lessee is entitled to demand, in the former case, the remission of the whole rent, and, in the latter case, an abatement of the rent, corresponding to the difference between the value of the remaining fruits and the amount of the said rent.

Remission or abatement of rent, in case of loss of crop.

1578. In order to obtain the remission or abatement aforesaid, the lessee must, during the time of the ripening of the fruits and before the gathering thereof, demand, by sworn application, that the loss be ascertained; in default of such demand he is debarred from bringing in his claim.

Lessee to demand that loss be ascertained.
Amended by: *XXII.2005.81.*

1579. No remission or abatement of rent shall be allowed if on striking a balance between any excess and deficiency in respect of the previous years, there remains a profit sufficient to reduce the loss sustained in the year mentioned in the demand to less than one-half of the rent.

Where no remission or abatement is allowed.

1580. If after striking such balance, the aforesaid loss is found to be greater than one-half of the rent, and the lease is to continue for another year or more, it shall be lawful for the court provisionally to exempt the lessee from the payment of the rent in proportion to the loss sustained.

Adjustment of loss where lease is to continue.

Adjustment to be definitely made at the expiration of lease.

1581. In such case, however, the issue of the remission or abatement of rent shall not be definitely settled except at the expiration of the lease, when another balance shall be struck of any excess and deficiency in respect of the crops gathered during the whole term of the lease, and no remission or abatement shall be granted if on striking such balance there shall remain a profit sufficient to reduce the loss sustained in the year mentioned in the demand to less than one-half of the rent.

If there is no loss at the time of computation, remission or abatement cannot be sought afterwards.

1582. If on striking the balance as provided in article 1579 no remission or abatement of rent is found to be due, it shall not be lawful for the lessee to renew the demand at the expiration of the lease notwithstanding any deficiency in the following years; saving his right to demand the remission or an abatement of the rent in respect of each of such following years if there are sufficient grounds for such demand.

Remission or abatement when granted cannot be recalled.

1583. If, during the continuance of the lease, the lessor has granted to the lessee the remission of the rent of one year, or an abatement thereof, in consideration of the loss sustained in such year, he may not demand the payment of the amount remitted, even though on striking a balance as provided in article 1581 it shall appear that the lessee during the years following such remission or abatement has made a profit corresponding to or even exceeding such loss, unless the lessor in granting the remission or abatement shall have reserved to himself such right.

Remission or abatement where lease does not exceed one year.

1584. Where the time of the lease does not exceed one year, the lessee shall be equally entitled to a remission or an abatement of the rent, in the event of the happening, during such year, of the circumstances mentioned in article 1577.

Rent paid may not be recovered.

1585. In no case may the lessee on account of any loss sustained recover the rent paid by him, unless in paying such rent he shall have reserved to himself such right, or unless he shall have paid the rent in advance.

No remission or abatement in respect of loss of fruits separated from the soil,

1586. The lessee has no right to the remission or an abatement of the rent, if the loss of the fruits occurs after they have been separated from the soil, unless the rent shall have been made to consist in a share of the fruits in kind, in which case the lessor must bear a proportionate part of the loss, provided the lessee was not in default for delay in delivering to the lessor the latter's share of the fruits.

nor if cause of loss existed at time of contract.

1587. Nor may the lessee demand the remission or an abatement of the rent, if the cause of the loss existed and was known at the time the lease was contracted.

Lessee may undertake to bear loss caused by fortuitous event.

1588. (1) The lessee may, by an express covenant, undertake to bear any loss caused by fortuitous events.

(2) Any such covenant shall be deemed to apply only to ordinary fortuitous events, such as hail, or the excessive abundance or scarcity of rain.

(3) It shall not be deemed to extend to extraordinary fortuitous events, unless the lessee shall have undertaken to bear all fortuitous events, whether foreseen or unforeseen.

1589. The lease of a rural tenement is dissolved by the death of the lessee if it is entered into on condition that the produce shall be divided between lessor and lessee.

Lease, if under Metayer System, dissolved by death of lessee.

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§ V.OF THE RIGHT OF PREFERENCE IN THE LEASE OF THINGS

1590. The right of preference or of tenancy in respect of the lease of things shall not be available, even with regard to property of the Government of Malta, except in the cases laid down in any of the articles following.

Right of preference or of tenancy, *Amended by: L.N. 148 of 1975.*

1591. Where two or more persons possess a thing in common, each of them has a right of preference over strangers in respect of the lease of such thing, on the same conditions offered by others.

of co-possessor,

1592. The said right cannot be exercised except by the co-possessor himself, and it cannot be exercised by him after the thing has been validly let to any other person.

to be exercised by co-possessor himself.

1593. In the event of concurrent claims by two or more persons having such right, it shall be lawful for any of them to demand that the thing be let, upon an auction, to the highest bidder, and that strangers be not admitted to bid.

Concurrent exercise of such right by two or more co-possessors.

1594. If there are no claims on the part of persons having a right of preference on the ground mentioned in article 1591, a right of preference, in regard to tenements, is granted -

Right of preference of sitting tenant. *Amended by: XLII.1933.2; XVI.1967.20; VI.1972.2.*

(*a*) to the lessee in the last preceding lease of an urban tenement, in respect of the new lease of the same tenement;

(*b*) to the possessor or occupier of the upper part of a building, in respect of the new lease of the lower part of the same building, whether such lower part belongs to the lessor of the upper part or to any other person, and whether it has or has not access from the street:

Provided that the right of preference granted under this paragraph shall not apply in the case of any building constructed or used as a common tenement house or of any building consisting of flats which, though having in common other parts of the building, are constructed, leased, or occupied for use separately.

1595. (1) In the cases mentioned in the last preceding article, the right of preference can be exercised in the manner and within the times hereinafter stated, even after the new lease has been agreed upon with others.

Right of preference is merely personal.

(2) Such right, however, is merely personal, and it may not be transferred to other persons, nor shall it transmit to the heirs or other successors of the person entitled thereto.

1596. A person vested with the right of preference for any of the causes mentioned in article 1594 must, in order validly to exercise

How right of preference is exercised.

such right, within fifteen days from the day on which he shall have been notified by the lessor of the conditions offered by or agreed upon with others, accept such conditions, and give, if simultaneously with the aforesaid notification he is so required, sufficient security for the performance of the said conditions where such security is included in such conditions.

Notification of conditions.

1597. (1) The notification of the conditions offered or agreed upon, shall be made by the lessor by means of a judicial act calling upon the person to be served therewith to declare, within the time mentioned in the last preceding article, whether he intends to accept such conditions, and warning him that, in default of acceptance within the aforesaid time, his right of preference shall lapse.

(2) Where the new lease is in writing, the lessor may, in the aforesaid judicial act, state the conditions of such lease by a mere reference to the writing, but in such case he must, if the writing is a private writing, annex a copy thereof, or if the writing is a notarial deed or a draft thereof, state in the said act the name, surname and place of residence of the notary having such deed or draft.

Where party to be notified with conditions is absent.

1598. (1) If the party to be notified is absent from Malta, the notification in his behalf may be made to any attorney of such party, or to any other person charged by him with the custody of the premises or of the keys thereof, or holding or occupying the premises, under any title whatsoever, with his consent.

(2) In default of such attorney or person charged as aforesaid or holder or occupier, the notification may be made by means of an advertisement in the Government Gazette.

(3) In the cases referred to in this article, the time for accepting the conditions is of one month.

Acceptance.

1599. Notice of the acceptance of the conditions, together with the production of security, where required, shall also be given to the lessor by means of a judicial act.

Nullity of notification of conditions or of acceptance.

1600. If in the cases mentioned in the last three preceding articles the notification of the conditions or the acceptance thereof is made otherwise than as prescribed in those articles, such notification or acceptance shall be null.

Hypothecary security.

1601. If the lessee possesses immovable property, he may offer, as security, the hypothecation of such property in lieu of any other security required by the lessor under the provisions of article 1596.

Where lessor rejects security as insufficient.
Amended by: XXII.2005.81.

1602. If on production of the security within the time stated in article 1596 the lessor, within fifteen days from the notification of such production by means of a judicial act, rejects such security as insufficient, the lessee may, within four days from the notification of such act, demand, by sworn application, that the security produced by him be declared sufficient and that his right of preference be declared operative.

Court may allow fresh security. *Amended by: XXII.2005.81. Substituted by: X.2009.28.*

1603. If, on such sworn application, the lessee fails to establish the sufficiency of the security, the Rent Board may, before giving judgment, allow him a time not exceeding eight days within which to produce a fresh security, and if such fresh security, whether alone or together with the previous one, is not deemed by the Rent Board as being sufficient, the Rent Board shall proceed to give judgement on the aforesaid application, declaring the right of preference as having lapsed.

Times are peremptory.

1604. The times established in the last two preceding articles are peremptory.

Annulment of conditions of new lease on the ground of misrepresentation, etc.

1605. (1) Notwithstanding the acceptance of the conditions of the new lease, it shall be lawful for the party who had accepted such conditions to demand, during the lease, the annulment of all such conditions together with damages, if he proves any misrepresentation or fraud to his prejudice in regard to any of such conditions; and in such case the new lease shall remain operative on the same conditions of the previous lease, at a rent to be fixed on a valuation by experts having regard to the circumstances prevailing at the time when the conditions so impeached were accepted.

(2) The action for damages on the ground of misrepresentation or fraud as aforesaid, may even be exercised within a year from the dissolution of the new lease, but not after the expiration of such year.

When right of preference is not competent. *Amended by: XXXIX.1939.5.*

1606. No right of preference shall be competent in any of the cases mentioned in article 1594, if the lease is granted for a time not less than one year to a person related to the lessor by consanguinity or affinity up to the degree of cousin inclusively; but in case of misrepresentation or fraud, the party vested with the right of preference may maintain an action for damages exercisable within one year only, to be reckoned, in the case mentioned in paragraph (*a*) of the said article, from the day on which the said party shall have quitted the tenement in consequence of the said lease, and, in the case mentioned in paragraph (*b*) of the same article, from the date of the said lease.

When right of preference of sitting tenant is not competent. *Amended by: XXXIX.1939.6; XI.1977.2; X.2009.29.*

1607. The right of preference granted under paragraph (*a*) of article 1594 to the lessee in the last preceding lease, in respect of the new lease of the same tenement, shall not be competent -

(*a*) if the lessee does not reside in Malta;

(*b*) if, at the time of the new lease, the lessee and his family are, and have been since two years or more, absent from Malta;

(*c*) if, in the case of an urban tenement, neither the lessee nor any member of his family dwells in the premises, or has dwelt therein during the last two years preceding the new lease, and the premises are mainly intended for habitation;

(*d*) if, previously to the new lease, the lessee has surrendered or has been compelled to surrender the tenement;

(*e*) if the lessee, during the preceding lease, was not punctual in the payment of the rent for two or more terms;

For the purposes of this paragraph, the lessee shall not be deemed to have failed to be punctual, if the payment of the rent is not delayed for more than fifteen days from the day on which the lessor shall have, even verbally, demanded such payment;

(*f*) if the lessee has failed to perform or has contravened any of the other obligations arising from the contract of the last preceding lease; or has performed such obligation only when compelled to do so by the Rent Board;

(*g*) if the preceding lease was dissolved for any cause other than that of the expiration of the time for which it was to run;

(*h*) if the lessee, without the express consent of the lessor, has wholly sub-let the tenement or assigned the lease thereof, and the tenement, at the time of the new lease, is occupied by the sub-lessee or assignee, even though the lessee has not been restrained from sub-letting the tenement or assigning the lease thereof:

Provided that where the sub-lease or assignment of the lease is in respect of a part of the tenement, the right of preference shall cease in respect of that part only; but the lessee shall also forfeit his right of preference in respect of the part not sub-let or the lease whereof is not assigned, if the lessor does not wish to let the several parts of the tenement separately and the lessee does not accept the new lease of the whole tenement on the same conditions offered by or agreed upon with others in respect of the whole tenement.

Right of preference may not be set up if lessee refuses to accept conditions of new lease.
Amended by: X.2009.30.

1608. The lessee may not set up his right of preference against the demand for the surrender of the tenement, where such demand is admissible, if he refuses to accept the new lease on the conditions proposed to him and by the Rent Board deemed reasonable, even though it is proved that the plaintiff intends to let out the tenement to others on less onerous conditions.

If lessor declares not to let out the tenement before lapse of one year, etc.
Amended by: X.2009.31.

1609. Nor may he set up his right of preference against the aforesaid demand, where such demand is admissible, if the plaintiff declares on oath that he does not intend to let out the tenement before the lapse of one year to be reckoned from the day of the demand, or that he does not intend to let out the tenement within the said time on conditions less onerous than those which the defendant shall have refused to accept, whatever such conditions may be, and irrespective of any opinion of the Rent Board in regard to such conditions:

Provided that if the declarant shall, in violation of the terms of any such declaration, let out the tenement, within the time aforesaid, to persons other than those mentioned in article 1606, the

party who has surrendered the tenement in consequence of such declaration, may maintain against the declarant an action for damages, exercisable within one year from the day on which the tenement shall have been so let out.

When right of preference competent to occupier of upper part of building ceases.

1610. The right of preference granted under paragraph (*b*) of article 1594 to the possessor or occupier of the upper part of a building in respect of the new lease of the lower part of the same building shall not be competent -

(*a*) if the possessor or occupier of the upper part does not make use thereof for his own habitation or that of his family;

(*b*) if the new lease of the lower part is claimed by the lessee himself who enjoyed the last preceding lease, in virtue of the right of preference granted under paragraph (*a*) of article 1594.

Where several occupiers of upper parts of building claim right of preference.

1611. Where two or more possessors or occupiers of several upper parts of a building claim the new lease of the lower part, preference shall be given to the possessor or occupier of the part of the building immediately overlying the part to be let out.

Where overlying extent is greater.

1612. If the lower part immediately underlies the parts of the same building, possessed or occupied by the competitors claiming the new lease, preference shall be given to the possessor or occupier whose part overlies the lower part to a greater extent; and if such upper parts overlie the lower part to the same extent, the lessor may grant the lease to any one of the competing claimants whom he prefers.

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§ VI. OF SUB-LETTING

Sub-letting. *Substituted by: X.2009.32. Amended by: VIII.2018.2.*

1613. (1) In the absence of other special provisions, the contract of subletting is regulated by the same provisions which regulate the contract of letting and hiring:

Provided that in the case of the sub-letting of commercial tenements before the 1st June, 1995, these shall be terminated on the 31st May, 2018 subject to the provisions of this article unless done by agreement with the lessor, in which case such sub-lettings shall be regulated by such agreement:

Provided further that the lease shall be established according to that laid down in article 1513D.

(2) In the absence of an agreement between the lessee and the person who is the sub-lessee before the 31st May, 2018 who has an interest in remaining in the tenement in case of a sub-lease that expires on the 31st May, 2018, where the sub-leased tenement consists of commercial premises which in the year preceding the 31st May, 2018 is managed by the sub-lessee, the person who before the 31st May, 2018 was the sub-lessee shall have the right to

continue managing his business from the tenement, under those conditions as may be determined by the Rent Regulation Board, for such period as may be established by the Board which shall not be longer than the period of the lease or be more than ten years, whichever is the shorter.

(3) A request for the sub-lessee to continue managing his business from the leased tenement shall be made by means of an application filed before the Rent Regulation Board by not later than the 31st May, 2018 and that application shall contain the reasons for which it is made. The Board shall not accede to the request unless the applicant satisfies the Board that he will suffer serious prejudice if he does not continue to manage his business from the tenement.

(4) The application made by the sub-lessee in accordance with sub-article (3) shall be notified to the owner and the lessee who shall have the right to oppose the request.

(5) The hearing of the application referred to in sub-articles (3) and (4) shall be regulated by the rules of procedure applicable to applications filed before the Rent Regulation Board, without prejudice to the Board's right, at any stage of the proceedings, to establish or change the amount of compensation which the person who was the sub-lessee before the 31st May, 2018 is obliged to pay to the owner or to the lessee or both while the proceedings are pending. There will be no right of appeal from the decree establishing the said compensation.

(6) If the Board accedes to the request for the applicant to continue managing his business from the premises, as previously laid down in this article, the Board shall establish the rent for the period after the 31st May, 2018 at an amount which is in accordance with the value that the tenement could fetch if this were to be leased on the market by its owner for the use that was being made thereof during the year immediately preceding the 31st May, 2018. The Board shall also have the power to order the payment of rent below the said market value if it is proven to the satisfaction of the Board that the payment of the said market value would impose harsh consequences on the person managing his business from the tenement, in a way that would prejudice that person's living or that of persons working in the tenement.

If the Board decides that the payment of rent shall be below the said market value, the Board shall also order in its decision that the rent should be increased every year until it reaches the said market value by not later than the first expiry of rent due in the year 2027.

(7) When the Board establishes a new rent in accordance with this article, it shall have the power to establish that such rent shall be divided among the persons having a right over the tenement and particularly between the owner of the tenement and the person having another title of tenancy over the premises and the manner in

which such lease is to be divided.

(8) When the rent that must be paid by the person who was the sub-lessee before the 31st May, 2018 is established in a final manner, that rent must be paid as from the 1st June, 2018 in a way that any compensation paid according to sub-article (5) shall be deducted from the amount of arrears due.

Lessee may not sub-let unless agreed upon in the contract. *Substituted by: X.2009.33. Amended by: XXIII.2017.81.*

1614. (1) The lessee is not entitled to sub-let a thing or to assign its lease, unless such right was agreed upon in the contract.

(2) For the purposes of this Sub-title, a management agreement or any other form of agreement, by means of which a lessee transfers to third parties the possession of the tenement or of the business operated from the commercial tenement shall be considered as sub-letting.

(3) Where the lessee is a limited liability company or any other form of company, the cumulattive *inter vivos* transfer of fifty per cent of the shareholding, even if carried out by means of more than one transfer and, or the transfer of the actual controlling power of the administration of such company or of the control of the business conducted from the tenement shall be considered as a sub-lease:

Provided that such a transfer shall not be considered as a sublease if the transfer was made to any one of the spouses who are not legally separated and, or to the children of the shareholder.

Housing of third parties. *Substituted by: X.2009.34.*

1615. (1) The lessee may house third parties in parts of the residential property against payment unless this is expressly forbidden in the contract and subject to the provisions of article 1555.

(2) The lessee shall also be entitled to accept other persons to dwell with him against payment of part of the rent, or against any other consideration, unless such right has not been expressly forbidden by the contract.

Lessee under Metayer lease cannot sub-let without lessor's consent.

1616. A lessee who cultivates land under a covenant of sharing the produce with the lessor, cannot sub-let or assign the lease, unless such power has been expressly granted to him by the lessor.

Lessee of part of building cannot sub-let.

1617. Nor may the occupier of a part of an urban tenement, not separated from other parts of the same tenement, or having access by the same entrance as other parts of the same tenement, sub-let or assign the lease, without the consent of the lessor.

Right of lessor to be recover possession of tenement if used for immoral purposes. *Amended by: XXXIX.1939.8; X.2009.35.*

1618. Notwithstanding that the power to sub-let or to assign the lease has not been excluded and also where it has been agreed upon, the lessor shall have the right to recover possession of the premises, if such premises are sub-let or the lease thereof is assigned to any person using, causing or suffering the same to be used for purposes of prostitution or for other immoral purposes.

Right of original lessor on things of sub-lessee. *Amended by: VII.1944.3; XLVI.1973.85.*

1619. The lessor may enforce his rights for rent, compensation for non-repairs, or in connection with any other covenant of the lease, on the fruits and on the value of all things which serve for the furnishing or stocking, or for the cultivation of the tenement, even though such fruits or other things belong to the sub-lessee, and the latter has discharged his liabilities towards his sub-lessor:

Provided that such rights shall not be available to the lessor in respect of the said things if the same belong to or are held by or on behalf of any department of the Government of Malta in any case in which such department is not itself directly liable for the payment of the debt.

Rights of sub-lessee.

1620. The sub-lessee may not claim against the lessor any of the rights competent to the lessee.

Applicability of ss.1619 and 1620.

1621. The provisions of the last two preceding articles shall also apply in cases where the lessee has not been restrained from sub-letting or from assigning the lease, or has been expressly allowed to do so, unless the lessor has expressly released the lessee from his obligations or has expressly acknowledged the sub-lessee instead of the lessee.

Right of preference applicable to sub-lease.

1622. (1) The right of preference referred to in article 1591, shall also apply in the case of the sub-letting of a thing held in common by several lessees.

(2) The right of preference granted under paragraph (*a*) of article 1594 is also competent to the sub-lessee in respect of the new sub-lease of the premises; but the right of preference granted under paragraph (*b*) of the said article is competent to the sub-lessee only in cases where the lower part of the building is sub-let by the person who had sub-let the upper part to the said sub-lessee.

(3) The provisions of articles 1596 to 1610, inclusively, shall apply in all the cases referred to in this article.

Power to make regulations. *Added by: X.2009.36. Amended by: XXIV.2021.8.*

1622A. The Minister responsible for accommodation following consultation with the Minister responsible for finance may make regulations for all or any of the following purposes:

(*a*) to draw up a model contract of lease that may be used by the parties concerned;

(*b*) to enable the proper implementation of the provisions of this Title and to implement such necessary measures to give it full effect and to allow for its proper administration, including Board procedures;

(*c*) to create a registry for the deposit or registration and, or de-registration of contracts of letting for any purpose which the Minister may establish, including for the purpose of the validity itself of the same contracts, and to do all that is necessary for this purpose;

(*d*) to create a structure establishing and administering the Market Property Value Index;

(*e*) to establish criteria for a means test for the purposes stipulated in article 4A of the Reletting of Urban Property (Regulation) Ordinance and article 12B of the Housing (Decontrol) Ordinance; Cap. 69. Cap. 158.

(*f*) to establish regulations and criteria for the purpose of articles 1531J and 1531M;

(*g*) to extend the application of the provisions of this Code regarding the lease or part of it with regards to cases where a person has been accommodated in a residence under the Housing Act, or where a public authority has taken possession of a residence in terms of the Land Acquisition (Public Purposes) Ordinance, or under any other law which is or has been in force from time to time; Cap. 125. Cap. 88.

(*h*) to provide transitory arrangements in the case of removal of requisition orders issued according to the Housing Act; Cap. 125.

(*i*) to provide for the removal or modification of any transitory provisions contained in the Condominium Act; Cap. 398.

(*j*) to provide with respect to any thing about which he may make regulations in terms of the provisions of this Title.

Sub-title II

OF THE LETTING OF WORK AND INDUSTRY

1623. A contract of letting of work and industry is a contract whereby one of the contracting parties binds himself to do some thing for the other, for a reward which the latter binds himself to pay to the former. Definition of contract of letting of work and industry.

1624. Where the reward is not fixed in the agreement, or by law or custom, it shall be fixed by the court, upon a valuation by experts or, even without such valuation, according to circumstances. Reward.

1625. (1) Any agreement for work or services prohibited by law or contrary to morality, is void. Work prohibited by law, etc.

(2) The performance or execution of such work or services gives no action for remuneration.

1626. The following are contracts of letting of work and industry: Cases of contract of letting of work and industry.

(*a*) that of a domestic servant, workman or other employee who binds himself to work in the service of another;*

(*b*) that of carriers who undertake the carriage by land or water, of persons or things;

(*c*) that of persons undertaking contracts of works.

Applicability of ss.1569 and 1570 to contracts of letting and hiring of work and industry.

1627. The provisions of articles 1569 and 1570 shall also apply in the case of contracts of letting and hiring of work and industry, saving the special provisions respecting such contracts.

Prohibition of discrimination. *Added by: XX.2002.3.*

1627A. No person may take any discriminatory action or sanction against any of his officers, employees or agents on the grounds that such officers or employees, having reasonable grounds to suspect corruption reported in good faith their suspicion to responsible persons or authorities, and any person who may have been the victim of such discriminatory action or sanction shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused to him by such discriminatory action or sanction.

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§ I. OF CARRIERS BY LAND OR WATER

Liability of carriers,

1628. Carriers by land or water are, in respect of the custody and preservation of the things entrusted to them, subject to the same liabilities as depositaries.

for things delivered to them,

1629. They are responsible not only for the things which they have received in their vehicle or boat or other vessel, but also for the things delivered to them in any place to be put in the vehicle, or boat or other vessel, or to be carried in any other manner.

for loss.

1630. They are liable for the loss of or injury to the things entrusted to them, unless they prove that such loss or injury was caused by a fortuitous event or irresistible force and without any fault on their part.

Carriage by water.

1631. The carriage by water referred to in this Code, is the carriage, by boat or other sea vessel, within the limits of Malta, that is: from one island to the other, or from one part of an island to another part of the same island.

Saving. Cap. 10.

1632. Nothing in this Code shall affect the provisions of the Code of Police Laws.

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§ II. OF CONTRACT OF WORKS OR *LOCATIO OPERIS*

Agreement with person undertaking to execute work.

1633. In a contract to execute a certain work it can be agreed that the person undertaking the work shall bestow only his labour or skill, or that he shall also supply the materials.

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*Until 1952, this contract was regulated by the provisions contained in §I "Of the Hiring of Domestic Servants, Workmen and other Employees", of this sub-title. These provisions were repealed by Act XI of 1952.

1634. If, where the artificer supplies the materials, the thing in any manner perishes before it is delivered, the loss is borne by him, unless the employer has been in default for delay in the receipt of the thing.

|If thing perishes before delivery where artificer supplies materials.

1635. If, where the artificer bestows only his labour or skill, the thing perishes, he is only liable for his fault.

Where artificer bestows labour or skill only.

1636. In the case mentioned in the last preceding article, if the thing perishes, even though without fault on the part of the artificer, before the work has been delivered, and without there being any default for delay on the part of the employer in examining it, the artificer shall no longer be entitled to claim the reward, unless the thing has perished owing to a defect in the materials.

No reward where thing perishes before delivery.

1637. (1) In the case of a work consisting of several pieces or which is done by measure, the work shall remain at the risk of the artificer until the employer has examined the whole work, unless it has been agreed that the examination of each piece shall take place as soon as each piece is completed.

Where work consists of several pieces.

(2) All the pieces of the work paid for are presumed to have been examined, if the employer pays the artificer in proportion to the work performed.

(3) Such presumption, however, shall not arise, if the payments, although stipulated, or effected on the completion of one or more pieces of the work, are made on account of the whole work and without any appropriation to any particular piece of such work.

1638. (1) If a building or other considerable stone work erected under a building contract shall, in the course of fifteen years from the day on which the construction of the same was completed, perish, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect in the ground, the architect and the contractor shall be responsible therefor.

Duration of liability of contractor and architect.

(2) The relative action for damages must be brought within two years from the day on which any of the said cases shall have occurred.

1639. A contractor who has undertaken the construction of a building or other considerable work, according to a plan determined and agreed upon between him and the employer, cannot claim any increase in the price, on the ground of an increase in the rate of wages or the cost of the materials, or on the ground of deviations from or additions to the plan, which are not onerous to the contractor.

Contractor cannot claim increase of price.

1640. (1) It shall be lawful for the employer to dissolve the contract, even though the work has been commenced.

Employer may dissolve contract. *Substituted by: IV.1995.4.*

(2) If the employer has no valid reason for the dissolution, he is to compensate the contractor for all his expenses and work and to pay him a sum to be fixed by the court, according to circumstances, but not exceeding the profits which the contractor could have made by the contract.

(3) If the employer has valid reason for the dissolution, he is to pay the contractor only such sum which shall not exceed the expenses and work of the contractor, after taking into consideration the usefulness of such expenses and work to the employer as well as any damages which he may have suffered.

(4) Any advance made to the contractor before the dissolution of the contract shall be applied to the sums due in terms of sub-article (2) or (3) of this article and the contractor shall return any resulting excess to the employer.

(5) The contract shall be immediately dissolved when the employer informs the contractor, by any means whatsoever, of his decision to dissolve the contract, and this without the need of any authorisation or confirmation by any court.

Contract is dissolved by death of artificer, etc.

1641. (1) A contract of works or *locatio operis* is dissolved by the death of the artificer, the architect or the contractor.

(2) The employer, however, is bound to pay to the heirs of the artificer, architect or contractor, in proportion to the price agreed upon, the value of the work done and of the materials prepared, but only if such work and materials may be useful to him.

Liability of contractor.

1642. The contractor is responsible for the acts of the persons employed by him.

Rights of masons, etc.

1643. Masons, carpenters and other artificers employed in the construction of a building or other work undertaken in pursuance of a contract of works, have no action against the person for whose benefit the work has been performed, except to the extent of such amount as may be due by such person to the contractor at the time their action is instituted.

Title X

OF CONTRACTS OF PARTNERSHIP

GENERAL PROVISIONS

Definition of contract of partnership.

1644. Partnership is a contract whereby two or more persons agree to place a thing in common, with a view to sharing the benefit which may derive therefrom.

Object of partnership must be lawful.

1645. (1) Every partnership must have a lawful object, and must be contracted for the common interest of the parties.

(2) Every partner must contribute either money or other property, or his skill.

Partner cannot contribute what he expects to acquire by succession or donation.

1646. (1) Every agreement by which one of the partners is to contribute the ownership or enjoyment of property which may in future come to him by succession or donation, is void.

(2) A contract containing such a provision may be wholly annulled, upon the demand of any of the other partners.

1647. The provisions of this Title do not apply to commercial partnerships except as provided by the Commercial Partnerships Ordinance*.

Provisions not applicable to commercial partnerships. *Amended by: XLVI.1973.86.* Cap. 168.

Sub-title I

OF THE DIFFERENT KINDS OF PARTNERSHIP

1648. A general partnership of all the property of the partners, although it refers to present property only, is void.

General partnership of all property prohibited.

1649. (1) A general partnership of profits is permitted: any such partnership shall only include all that which the parties shall acquire by their skill, under any title whatsoever, during the continuance of the partnership, and the use of the movable or immovable property intended for the exercise of the trade or profession of the partner possessing such property.

General partnership of profits permitted.

(2) The partnership referred to in this article, unless made by a public deed, is null.

1650. A particular partnership is a partnership having for its object certain specified things, or the use thereof, or the fruits which may be derived therefrom, or a specified undertaking, or the exercise of some trade or profession.

Particular partnership.

1651. (1) A contract of partnership whereby any one of the partners binds himself to contribute the ownership of immovable property is void so far as regards the obligation of contributing the ownership of such property, unless it is made by a public deed.

Where immovable property is contributed, public deed is necessary.

(2) The provisions of sub-article (2) of article 1646 shall also apply to any such contract.

1652. Where a partner has validly bound himself to transfer to the partnership the ownership of the property which he is to contribute, the provisions of articles 994, 995 and 996, shall apply with respect to the transfer of such property.

Applicability of ss. 994 to 996.

Sub-title II

OF THE OBLIGATIONS OF PARTNERS AS BETWEEN THEMSELVES

1653. A partnership commences from the moment the contract is made, unless another time is fixed.

Commencement of partnership.

1654. (1) Any stipulation whereby a partnership is to last for ever or during the whole life of any one of the partners, is void.

Stipulation whereby partnership is to last for ever, is null.

(2) A contract of partnership containing any such stipulation shall be deemed to have been entered into for an undefined time.

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*Repealed by Act XXV of 1995. *See* the Companies Act (Chapter 386).

Where object of partnership is an undertaking of a limited duration.

1655. If the partnership has for its object an undertaking having a limited duration, it shall be deemed to have been contracted for the whole time for which such undertaking is to last.

Liability of partners in respect of contributions.

1656. (1) Every partner owes the partnership all that which he has promised to contribute thereto.

(2) Where this contribution consists of a specific thing of which the partnership has suffered eviction, the partner making such contribution is accountable therefor in the same manner as a seller is to the buyer in case of eviction.

Liability of partner for interest on sums due or availed of by him.

1657. (1) The partner who has agreed to contribute a sum of money to the partnership and has failed to do so, becomes *ipso jure* a debtor in the interest on such sum as from the day on which such sum was payable by him.

(2) The same rule shall apply in regard to sums which a partner has taken from the funds of the partnership for his own private advantage, the interest on such sums to run from the day on which he shall have so taken them.

(3) Nothing in this article shall affect the right of the partnership to bring an action, where competent, for further damages against such partner even though he has not been put in default.

Presumption of private use of money of partnership.

1658. A partner who has taken money from the partnership funds is presumed, unless he is the manager of the partnership, to have taken it for his own private advantage, saving any proof to the contrary.

Liability of partners contributing skill.

1659. The partners who have agreed to contribute their skill to the partnership are bound to render an account of all the profits made by the exercise of such skill as forms the object of the partnership.

Appropriation of payment made to managing partner who is also a separate creditor of the party paying.

1660. Where a party who is charged with the management is himself a separate creditor, in a sum fallen due, of a person who also owes to the partnership a sum likewise, fallen due, any payment received by such partner from the debtor shall be appropriated to the debt due to the partnership and to the debt due to himself, in proportion to the two debts, even though in giving receipt he had appropriated the payment entirely to his own private debt.

Where debt due to partner enjoys preference over that due to partnership.

1661. (1) The provisions of the last preceding article shall not apply where the debt due to the partner is such that, according to the rules laid down in paragraphs (*c*), (*d*), (*e*) and (*f*) of article 1171 it enjoys preference over that due to the partnership and the payment has been expressly appropriated to the debt due to the partner.

(2) In all cases, however, if the partner declares in the receipt that the payment will be appropriated entirely to the debt due to the partnership, it shall not be lawful for him to demand that payment be appropriated, wholly or in part, to the debt due to him.

Where partner receives share of common debt from debtor who becomes insolvent.

1662. Where one of the partners has received a share of a common debt, he shall, if the debtor becomes insolvent, be bound to contribute to the common stock the share received by him even though in receiving payment, he had expressly given release for his share of the debt.

Liability of partner for damage caused to partnership.

1663. Each partner is liable towards the partnership for any damage caused to the same through his fault, and he may not set off against such damage the profits derived by the partnership from the exercise of his skill in other affairs.

Where the enjoyment only of things has been brought into partnership.

1664. (1) Where the things of which the enjoyment only has been brought into the partnership are certain and specified objects which are not consumed by use, they remain at the risk of the partner who is the owner thereof.

(2) If such things are consumed by use, or are such as cannot be preserved without deteriorating, or were intended to be sold, or were brought into the partnership upon a valuation, they remain at the risk of the partnership.

(3) Where the thing has been appraised, the partner may only recover the amount of the valuation.

Rights of partner against partnership.

1665. A partner may maintain an action against the partnership, not only for the recovery of sums which he has disbursed on account of the partnership, together with interest, but also in respect of any obligations which he has contracted in good faith in the affairs of the partnership as well as in respect of risks inseparable from his management.

Shares of partners in profits or losses.

1666. (1) Where the contract of partnership does not fix the share of each partner in the profits or losses, such share shall be in proportion to each partner's contribution to the assets of the partnership.

(2) With regard to a partner who has only contributed his skill, his share in the profits or losses shall be regulated in the same manner as the share of the partner who has contributed to the partnership the least sum or portion.

Where partners have agreed to refer the determination of such shares to the decision of one of the partners, etc.

1667. (1) Where the partners have agreed to refer the determination of such shares to the decision of one of them or of a third party, such decision may not be impeached unless it is manifestly contrary to equity.

(2) It may not be impeached, even in such case, if more than three months have elapsed from the day on which the partner who deems himself aggrieved by such decision has had notice thereof or if he himself has commenced to give execution to such decision.

(3) If the party to whose decision the partners have agreed to refer is unwilling or unable to fix the shares or fails to fix such shares within the time agreed upon by the parties or, in the absence of an agreement, within the time of one month, the partnership is null.

Nullity of certain agreements.

1668. (1) Any agreement whereby one of the partners is to have the whole of the profits is null.

(2) Any agreement whereby the capitals or things brought into the partnership by one or more of the partners are to be exempt from any contribution to losses is likewise null.

Rights, powers and obligations of managing partner similar to those of a mandatary.

1669. Unless it has been otherwise agreed or unless it is otherwise provided in this Code, the rights, powers and obligations of any partner charged with the management of the partnership are governed by the provisions relating to the rights, powers and obligations of a mandatary.

Powers of managing partner.

1670. (1) The partner having the management of the partnership under a special covenant in the contract of partnership may, notwithstanding the opposition of the other partners, perform all such acts as appertain to the management with which he is charged, provided he acts without fraud.

(2) Such power may not be revoked without sufficient cause during the continuance of the partnership; but if such power has been given by any instrument subsequent to the contract of partnership it is revocable in the same manner as an ordinary mandate.

Where several partners are charged with management.

1671. Where several partners are charged with the management of the partnership, without their respective duties being specified, or without it being stated that one of them cannot act without the other, each of them may perform separately all acts appertaining to such management.

Joint management.

1672. Where it has been stipulated that one of the managing partners cannot do anything without the other, one of them alone cannot act without the other without a new agreement, even though the latter be in the actual impossibility of taking part in the acts of management, unless the matter is urgent and such that if the act is omitted a serious and irreparable loss to the partnership might ensue.

Rules as to management, in the absence of agreement.

1673. In the absence of special stipulations as to the mode of management, the following rules shall be observed:

(*a*) the partners are presumed to have mutually given to each other the power to manage, the one for the other; and whatever is performed by each of them is valid even as regards the shares of the other partners, although their consent shall not have been obtained;

(*b*) if the partners are not more than two, each of them may oppose the transaction before it is concluded, saving the right of the other partner to demand the dissolution of the partnership, together with damages, where the opposition is vexatious, or contrary to the object of the partnership, or otherwise seriously prejudicial to the interests of the partnership;

(*c*) if the partners are more than two, in case of opposition, the opinion of the majority will prevail, regard being had to the number of all the partners, or, where the decision takes place at a meeting fixed by agreement, or at a meeting at which all the partners

shall have been requested to attend, to the number of the partners present at the meeting:

Provided that where the decision of the majority is vexatious, or contrary to the object of the partnership, or calculated to give execution to acts not naturally included in the object of the partnership, or otherwise seriously prejudicial to the interests of the partnership, it shall be lawful for the dissenting partner to demand the dissolution of the partnership, together with damages;

(*d*) each partner may make use of the things belonging to the partnership, provided he uses them for the purpose for which by custom they are intended, and does not use them against the interests of the partnership, or in such a manner as to prevent his partners from using them according to their rights;

(*e*) each partner has the right to compel the other partners to bear with him the expenses which are necessary for the preservation of the property of the partnership;

(*f*) one of the partners cannot make any alterations in the immovable property of the partnership, even though he claims that such alterations are advantageous to the partnership, unless the other partners consent thereto.

Non-managing partner may not alienate property.

1674. A partner who is not a manager cannot alienate or encumber the partnership property, even though such property be movable.

Admission of other partners.

1675. Each partner may, without the consent of his other partners, associate with himself a third party in his share in the partnership; but he cannot, without their consent, introduce such third party into the partnership, even if he has the management thereof.

Sub-title III

OF THE OBLIGATIONS OF PARTNERS TOWARDS THIRD PARTIES

Partners not liable jointly and severally for partnership debts.

1676. The partners are not jointly and severally liable for the partnership debts; and one of the partners cannot bind the others, unless they have given him power to that effect.

Liability of partners having unequal shares in partnership.

1677. The partners are liable to the creditors with whom they have contracted, each one for an equal sum and share, even if the share of one of them in the partnership is smaller, unless the contract has expressly limited the liability of the latter in proportion to his share.

Where obligation is contracted on account of the partnership.

1678. (1) A stipulation to the effect that an obligation is contracted on account of the partnership, binds only the contracting partner and not the others, unless the latter have given him authority to do so or unless the matter has benefited the

partnership.

(2) A partner contracting in his own name does not bind his other partners, even though the matter has benefited the partnership, saving any action competent to the persons contracting with him, under the provisions of article 1143.

Sub-title IV

OF THE DISSOLUTION OF PARTNERSHIP

How partnership terminates.

1679. A partnership terminates -

(*a*) by the expiration of the time for which it was entered into;

(*b*) by the extinction of the partnership property, or by the completion of the undertaking for which it was entered into;

(*c*) by the death of any partner;

(*d*) by the inhibition, whether general or special, of any one of the partners from entering into contracts, or by his insolvency or bankruptcy;

(*e*) by the declaration of any one of the partners that he does not wish to continue the partnership.

Loss of thing promised.

1680. (1) Where one of the partners has promised to bring into the partnership the ownership of a thing and such thing perishes before the partnership has acquired the ownership thereof, the partnership is dissolved with respect to all the partners.

(2) The partnership, however, is not dissolved, if the loss of the thing happens after the partnership has acquired the ownership thereof.

Loss of thing the enjoyment whereof has been promised.

1681. Where one of the partners has promised to bring into the partnership the enjoyment of a thing, the loss of the thing produces the dissolution of the partnership, even though the loss happens after the partnership has commenced to enjoy the thing.

Agreement to continue partnership in case of death of any one of the partners.

1682. (1) It may be stipulated that in case of the death of one of the partners, the partnership shall continue with his heir, or only between the surviving partners.

(2) In the latter case, the heir of the deceased is only entitled to a partition of the partnership property having regard to the state of the partnership at the time of the partner's death, and he shall not be entitled to participate in any subsequent right, except in so far as such right is the necessary consequence of transactions made before the death of the partner from whom he inherits.

Dissolution by renunciation.

1683. The dissolution of a partnership at the will of one of the partners may only take place if the partnership is entered into for an undefined time, and it is effected by a renunciation, notice whereof

is given to all the other partners, provided such renunciation is made in good faith and not at an inopportune moment.

When renunciation is not in good faith, etc.

1684. (1) A renunciation is not in good faith, when the partner renounces for the purpose of appropriating to himself alone the profits which the partners expected to earn jointly.

(2) It is made at an inopportune moment, when things are no longer in their entirety, and the interest of the partnership requires that its dissolution be postponed.

Agreement precluding dissolution of partnership entered into for an undefined time, is void.

1685. Any agreement whereby any one of the partners is deprived of the power to demand the dissolution of a partnership entered into for an undefined time, is void.

Validity of agreement to prevent dissolution.

1686. Nevertheless, an agreement is valid whereby the partners reserve to themselves the power to oppose the dissolution demanded by any of them, by releasing him from all his engagements towards the partnership or towards third parties, and paying to him a fixed sum, or the amount of his shares, if the partnership is divided into shares.

Dissolution of partnership entered into for a limited time.

1687. The dissolution of a partnership entered into for a fixed time cannot be demanded before the expiration of such time, unless there be a just cause, such as when one of the partners fails to fulfil his engagements, or a habitual infirmity unfits him for the business of the partnership, or other similar causes the justness and importance of which are left to the discretion of the court.

Rules for partition.

1688. The rules respecting partitions of common property are also applicable to partitions between partners, and to the effects thereof.

Title XI

OF THE CONSTITUTION OF ANNUITIES

Constitution of annuity.

1689. An annuity, or a yearly payment in money or in goods, may be stipulated by the assignment of a movable or an immovable thing or by the payment of a sum of money of which the payer binds himself not to claim the return.

Instrument creating annuity.

1690. A contract creating an annuity is null if it is not made in writing, or, where an immovable thing is assigned, if it is not made by a public deed.

Effects of assignment of an immovable.

1691. The assignment of an immovable thing as provided in article 1689 conveys to the assignee the ownership of the thing assigned notwithstanding any stipulation to the contrary, even that whereby the ownership is reserved, saving always the provisions of article 996.

Kinds of annuities.

1692. An annuity may be perpetual or for life.

Laws relating to rents *ad formam bullae*.

1693. The laws relating to the so called rents *ad formam bullae* are repealed, except in regard to those constituted previously to the 14th August, 1862.

Sub-title 1

OF PERPETUAL ANNUITIES

Definition of land annuity and simple annuity.

1694. (1) A perpetual annuity constituted as the consideration of an alienation or as a burden on an assignment of an immovable, whether under an onerous or a gratuitous title, is called a land annuity.

(2) An annuity constituted by the payment of a sum of money or other movable thing, is called a simple annuity.

Rate of annuity.

1695. An annuity constituted by the payment of a sum of money cannot exceed four per cent *per annum* on the sum paid.

Redemption of perpetual annuity. *Amended by: I.1870.3; XIII.2007.8.*

1696. (1) A perpetual annuity is of its essence redeemable at any time, at the will of the debtor, notwithstanding any agreement to the contrary, saving the proviso to article 1701.

(2) It shall, however, be lawful for the creditor to stipulate that the annuity shall not be redeemed during his life, or before the lapse of a definite time which cannot exceed twenty years, in the case of land annuities, or ten years, in the case of simple annuities, to be reckoned from the date of the constitution of the annuity.

(3) If a longer period of time is agreed upon, it shall be reduced to the one or the other of the said times, as the case may be.

(4) When the creditor is a foundation or a trustee, it shall however be lawful for the parties to the contract to establish the terms for redemption of any annuity governed by Title XI of Book Second of this Code, including the fixing of the rate of redemption, the period before which it may not be redeemed, at whose option it may be redeemed and similar matters and may even prohibit such redemption by express terms.

Redemption of simple annuity created in consideration of a sum of money, etc.

1697. (1) The redemption of a simple annuity constituted in consideration of the payment of a sum of money is effected by the reimbursement of an equal sum.

(2) If the annuity was constituted in consideration of other movable things the value of which was stated in the contract, the redemption is effected by the reimbursement of a sum equal to such value.

Redemption of land annuity, etc. *Amended by: I.1870.4, 5; XIII.2007.9.*

1698. (1) The redemption is effected by the reimbursement of the sum resulting on capitalizing the annuity at the rate of three per cent, in case of a land annuity, or, at the rate of four per cent, in each of the following cases:

(*a*) in the case of a simple annuity constituted in

consideration of movable things the value of which has not been stated in the contract;

(*b*) if the annuity has been created by a will, donation or other instrument which does not clearly show what was given for the constitution of the annuity.

(2) Nevertheless, if the annuity has been constituted for the purpose of creating an ecclesiastical benefice or a sacred patrimony, or of being employed for pious uses, or for the relief of the poor, or in reward for virtue or merit, or for any other purpose of public utility, the redemption is, in every case, effected by the reimbursement of the sum resulting on capitalizing the annuity at the rate of two per cent.

Furthermore, but subject to any contrary agreement pursuant to the provisions of article 1696(4), the same rule shall apply if the annuity has been constituted for the benefit of a social purpose foundation or of a charitable trust.

When debtor may be compelled to redeem annuity.

1699. Saving the cases expressly stated in the contract, the debtor of a perpetual annuity may be compelled to redeem it -

(*a*) if he fails to give to the creditor the security promised in the contract;

(*b*) if, in the event of failure of the security given, he does not give fresh security equally sufficient;

(*c*) if he fails for three years to pay the annuity, or if, notwithstanding that he made part-payments in each year, he remains a debtor in a sum equal in amount to three yearly payments;

(*d*) if he has become bankrupt or insolvent, or his condition has been so altered that the continuance of the payment of the annuity is endangered.

Court may grant time.

1700. (1) In the cases mentioned in paragraphs (*a*), (*b*) and (*c*) of the last preceding article, the court may grant to the debtor a reasonable time within which to give the security promised, or to substitute other security for that which has failed, or to pay the annuity fallen due, and thus release himself from the obligation of redeeming the annuity.

(2) Such time cannot exceed the period of two months which may, for just cause, be extended to a further period of two months only.

(3) The provisions of article 1520 shall also, in the cases provided for in this article, apply to any other creditor of the debtor, and to any other party interested.

Applicability of ss.1696 to 1700. *Amended by: I.1870.6.*

1701. (1) The provisions of articles 1696 to 1700 shall also apply to any other yearly payment in perpetuity constituted under any title, even if by a will or donation, saving the provisions relating to emphyteusis.

(2) They shall also apply to annuities or other yearly payments constituted before the 11th February, 1870:

Provided that the redemption of an annuity or other yearly payment lawfully constituted, whether before or after the 11th February, 1870, for the purpose of creating an ecclesiastical benefice or a sacred patrimony, or of being employed for pious uses, cannot be effected without the consent of the competent ecclesiastical authority.

Sub-title II

OF LIFE ANNUITIES

Constitution of life annuity.

1702. A life annuity may be constituted either for the life of the person who furnishes the money or other thing, or for the life of the debtor or of a third party having no right to the annuity.

Annuity may be constituted for life of one or more persons,

1703. It may be constituted for the life of one or more persons.

or in favour of a third party.

1704. It may also be constituted in favour of a third party, although the price of it has been paid by another person.

Annuity for life of person dead at the time of contract, is inoperative.

1705. A contract for an annuity for the life of a person who was dead at the time of the contract, is inoperative.

Rate of interest.

1706. A life annuity may be constituted at any rate of interest the parties choose to fix.

When grantee may demand dissolution of contract.

1707. The person in whose favour a life annuity has been constituted for a price, may demand the dissolution of the contract if the grantor does not furnish to him the security stipulated for its execution.

Rights of grantee.

1708. The mere default of payment of the annual sums fallen due does not entitle the grantee of the life annuity to demand the repayment of the capital, or to recover the thing alienated: he is only entitled to demand payment of the arrears, and a security for future payments.

Grantor may not demand dissolution of contract.

1709. The grantor cannot release himself from the payment of the annuity by offering to reimburse the capital and by waiving all claims to the repayment of the annual sums paid by him: he is bound to pay the annuity during the whole life of the person or persons for whose life the annuity has been constituted, whatever may be the duration of the life of such person or persons, and however burdensome the payment of the annuity may have become.

How annuity is payable.

1710. (1) A life annuity is due to the payee in proportion to the number of days the person for whose life the annuity was constituted, has lived.

(2) Nevertheless, if it has been stipulated that the annuity is to be paid in advance, the whole instalment already paid in advance or which should have been so paid is acquired from the day on which the payment became due.

When not subject to attachment.

1711. (1) It cannot be stipulated that a life annuity shall not be subject to attachment in pursuance of a garnishee order, unless it is created under a gratuitous title, whether by an act *inter vivos* or by a will.

(2) Where the annuity is so created under a gratuitous title, it may be stipulated that it cannot be alienated or sold.

Payee to prove existence of person for whose life annuity is constituted.

1712. The payee of a life annuity cannot claim the annual sums, unless he proves the existence of the person for whose life it has been constituted.

Added by: *XI.2005*.3.

Title XI A

OF LIFE INSURANCE CONTRACTS*

Sub-title 1 - Contractual issues

Object of a life insurance contract. *Added by: XI.2005.3.*

1712A.(1) A contract of life insurance may be stipulated over the life of the policyholder or that of a third party in relation to which the policyholder has an insurable interest, which is lawful, at the commencement of the contract.

Insurable interest.

(2) For the purposes of this article:

(*a*) a person has an insurable interest in his own life and in the life of his spouse;

(*b*) a parent of a person who has not attained the age of eighteen years, and a guardian of such person has an insurable interest in the life of that person;

(*c*) a person who is likely to suffer financial loss as a result of the death of some other person has an insurable interest in the life of that other person;

(*d*) a body corporate has an insurable interest in the life of an officer, shareholder or employee of the body corporate and a partnership has an insurable interest in the life of a partner or employee of the partnership;

(*e*) an employer has an insurable interest in the life of his employee and an employee has an insurable interest in the life of his employer;

(*f*) a person has an insurable interest in the life of a person on whom he depends, either wholly or partly, for maintenance and support;

(*g*) for the purposes of this title, the term "life insurance" shall include any contract of insurance in terms of which any benefit is payable on death.

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*The provisions of this Title shall have effect in relation to contracts of insurance entered into after the coming into force of this Title (15th August, 2005) and to relevant subsequent legal transactions done under or in relation to contracts of insurance existing on such date. Nothing in the said Title shall affect the validity of any contract of insurance entered into prior to such date or anything done thereunder or in relation thereto until such date.

(3) Subject to the interest being lawful, the agreement by an insurer to enter into a contract of life insurance over the life of a person other than the policyholder shall be sufficient evidence of the fact that the assured has an insurable interest in the life of the life assured.

(4) Except in the case referred to in sub-article (2)(*c*), where a person has an insurable interest in the life of another person it shall not be necessary for the policyholder to prove that he has suffered any loss or that the loss suffered bears any relationship to the sum insured.

Consent of third party whose life is insured.
Added by: XI.2005.3.
Amended by: L.N. 407 of 2007.

1712B.(1) Where the contract of insurance refers to the life of a third party, the consent in writing of such third party, or in case of persons who lack legal capacity of their lawful representative, to the entering into of the contract and to the sum assured, shall be required on pain of nullity of the contract.

(2) In the absence of consent as above provided the nullity of the contract may only be raised by the policyholder or the person whose life is assured and in such event all premia paid to the insurer shall be returned to the person who paid them.

(3) Consent given by a third party whose life is insured shall be irrevocable unless expressly stated otherwise in writing in the policy.

(4) Where consent is revocable as established in sub-article (3) and it is withdrawn by notice in writing to the policyholder and the insurer, and barring other arrangements between the parties to the contract, the contract of insurance shall terminate.

Consent of persons without legal capacity.

(5) In case of persons who lack legal capacity, where the lawful representative is himself the proposed policyholder, the prior consent of the Civil Court in its voluntary jurisdiction shall be required:

Provided that where the lawful representatives are the parents of a child or any one of them, the consent of any one of the parents shall be sufficient:

Provided further that where the life assured is that of a minor it shall not be lawful for the life cover under the policy to exceed forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) or such other amount as the Minister may prescribe from time to time by means of a notice in the Gazette.

Consent presumed in group policies under schemes.

(6) Such consent shall be presumed where the third party forms part of a defined class of persons whose lives are insured in accordance with terms and conditions of an insurance arrangement covered by a group policy to which such third party has agreed or subscribed, including any arrangement forming part of a person's conditions of employment.

Third party to consent to pledges and assignment of policy.

(7) Notwithstanding the provisions of this Code relating to assignment and pledge of rights -

(i) the assignment or pledge of a contract of life insurance, and

(ii) any designation or substitution in the beneficiary designated in such contract, or the assignment of such benefit,

shall not be valid without the consent in writing of the third party whose life is insured, saving the provisions of any special laws in terms of which such consent may not be necessary for such transactions.

Contract of insurance in favour of third party beneficiaries. *Added by: XI.2005.3.*

1712C.(1) The policyholder may elect that the proceeds or any benefit arising from a contract of life insurance, whether payable on a definite maturity date or on the death of the life insured, including any surrender value, be payable to one or more named beneficiaries:

Provided that in case of a spouse or children of the policyholder the designation of such persons by reference to the class of persons shall be sufficient and in such case, unless otherwise stated in the policy, they shall enjoy rights to the proceeds in equal shares and shall benefit from such designation even if they do not accept the inheritance:

Provided further that it shall also be lawful to designate a class of beneficiaries in case of insurance contracts in favour of persons who participate in a group policy as is referred to in article 1712B(6).

Designation of beneficiaries.

(2) (*a*) The designation of a beneficiary or a class of beneficiaries shall be made either in the original contract of life insurance or policy or in any subsequent amendment of the policy and such designation may refer to the full proceeds or part thereof, and may be subject to conditions, suspensive or resolutive.

(*b*) When the purpose of the designation expressly to be for the provision of maintenance of the beneficiary or as a pension, the said designation may be subject to restriction on alienation or any other legal transaction, subject to diminution or termination in the event that the beneficiary becomes bankrupt or insolvent or any of his property becoming liable to seizure for the benefit of his creditors and shall not be liable to attachment under a garnishee order issued against the insurer:

Provided that the said immunity from garnishee shall only apply to sums reasonably required for maintenance of the beneficiary or for a pension being not more than twice the highest State pension in Malta.

Revocability of designation.

(3) Subject to the provisions of article 1712D(4), the policyholder may revoke or vary the terms of any designation of a beneficiary.

Revocation by will or by heirs of policyholder not permitted.

(4) The revocation or modification by a policyholder of a designation of a beneficiary may not be made by means of a will. The heirs of the policyholder may not revoke the designation of a beneficiary after the death of the policyholder.

Legal effects of designation. *Added by: XI.2005.3.*

1712D.(1) Subject to the right of revocation by the policyholder as provided in article 1712C(3) and the provisions of sub-article (7) of this article relating to group policies, when made payable to one or more designated beneficiaries, the proceeds and any benefit arising from a contract of insurance, including any surrender value, are due to the beneficiary and form part of his estate, whether or not such beneficiary is aware of such designation.

(2) The beneficiary shall not enjoy any rights other than as stated in sub-article (1) in relation to the policy and the insurer shall not disclose any information about the policy without the prior written consent of the policyholder, until such time as the policyholder dies in which case the insurer, upon becoming aware of such fact, shall inform the beneficiary of his entitlement:

Provided that the insurer shall inform a beneficiary who has accepted the designation, of the reasons which may produce the lapse of the policy, and this within a reasonable time prior to such lapse taking effect.

Irrevocability of designation.

(3) After acceptance by a beneficiary -

(*a*) the revocation of the designation of a beneficiary, or

(*b*) the modification of the sum for which the policy has been taken out, or

(*c*) the pledge or assignment of the policy, may only be made with the prior written consent of the beneficiary:

Provided that the above shall not apply to a group policy which shall be governed by the terms of any applicable scheme, and:

Provided further that a pledge or assignment made without such consent shall be valid but shall be subject to the prior rights of the designated beneficiary.

Acceptance and notice of designation.

(4) Acceptance by a beneficiary of a designation in terms of this provision shall be dated, signed by the beneficiary and countersigned by a witness and shall be notified to the insurer. For the purposes of this article -

(*a*) "written" shall not include electronic means, and

(*b*) a written demand claiming the proceeds under the policy to the insurer by the designated beneficiary shall be treated as acceptance in writing.

Any such acceptance shall be noted by an endorsement to the policy.

Notice of a designation of a beneficiary may be given even after the death of the policy holder or the life insured provided that any such notice is given within seven working days of such death after which period the designation shall lapse and shall not have any legal effects.

(5) Subject to the express terms of the designation, all references to the beneficiary in these articles shall be construed as including the heirs, legatees, pledgees or assignees, as the case may be, of the designated beneficiary.

(6) All transactions referred to in these articles shall have legal effects only when the insurer receives notice thereof or otherwise acknowledges a written notice and in cases where more than one such act is notified, any such acts shall take effect subject to any previously notified or acknowledged acts.

Special rules for group policies.

(7) The following rules shall apply in the case of group policies referred to in article 1712B(6):

(*a*) the entitlement of such beneficiary shall be in accordance with the terms of such scheme and it shall be lawful to provide for any conditions including the termination of benefit on the termination of employment;

(*b*) subject to the terms of the scheme not providing otherwise, the participant in a scheme shall not be entitled to assign or pledge his rights nor shall he be entitled to the surrender value of the policy on termination of benefit and the arrangement shall provide rules on the transferability of the benefits as required by applicable law.

Reserved portion. *Added by: XI.2005.3.*

1712E.(1) The sums payable under a contract of life insurance to a designated beneficiary shall not be subject to the rules of reduction for breach of the reserved portion of the estate. Neither shall such rules apply to the sums paid by the policyholder by way of premium or additional contributions to the policy where such sums are moderate, regard being had to the estate of the policyholder. Where the sum is not moderate, the right to reduction for breach of the reserved portion of the estate shall only be exercisable against the beneficiary of the proceeds of the policy and no rights shall lie against the insurer.

Collation between co-heirs.

(2) Unless the policyholder exempts the proceeds of an insurance policy payable to a designated beneficiary who is a co-heir from collation in terms of this Code, the sums payable shall be regulated by the applicable provisions of this Code.

Consolidation of interests in policy in favour of co-insured. *Added by: XI.2005.3.*

1712F.(*a*) Where a policy of life insurance is entered into by two or more policyholders, it shall be lawful to agree that on the death of one policyholder, the contract of insurance will continue in relation to the surviving policyholder and in such case all the rights and obligations under such contract of insurance at the time of death of the deceased policyholder shall accrue to the surviving policyholder and shall not form part of the estate of the deceased policyholder.

(*b*) Where a joint policy is stated to terminate on the death of the first life, it shall be lawful to grant the surviving policyholder an option to choose to receive the proceeds of the policy or to continue the policy until the said policyholder's death.

Waiver of interest and loss of benefit by beneficiary. *Added by: XI.2005.3.*

1712G.(1) Upon the waiver by a beneficiary of a benefit under a contract of insurance, such beneficiary's interest shall vest in the policyholder if there are no other designated beneficiaries. In the event that there are other designated beneficiaries such interest shall vest in the other beneficiaries *pro rata* to their interest. This provision shall not apply to a group policy which shall be governed by the express terms of the scheme under which it is issued.

(2) The contract of life insurance shall cease to have effect with regard to the policyholder or a designated beneficiary who has been sentenced by a court for the grievious bodily harm or wilful homicide of the policyholder or the life insured as the case may be. Furthermore, if the designated beneficiary has made an attempt on the life of the policyholder or the life insured, and in the cases referred to in article 1787, subject always to the provisions of article 1791, the policyholder shall be entitled to revoke the designation without the consent of the beneficiary or his successors in title, even if the beneficiary has accepted in terms of article 1712D.

Non-applicability of the laws of succession. *Added by: XI.2005.3.*

1712H. Where a designation of a beneficiary has been made in accordance with the preceding articles, the provisions of Title III of Part II of Book Second of this Code relating to successions shall not apply to the policy or any rights or proceeds thereunder except as expressly stated in article 1712E.

Applicable law. *Added by: XI.2005.3.*

1712I.(1) Subject to sub-article (3), the validity and effects of a contract of life insurance, the obligations of the insurer, the rights of the policyholder, the person whose life is assured, any beneficiaries and those of third parties, shall be governed by the proper law expressly chosen by the parties.

(2) In the absence of an express choice, the law applicable in accordance with generally applicable principles of private international law and, in case of doubt, the contract, shall be governed by the law of the country where the insurer carries on its business, and if it carries on its business in two or more countries, by the law of the country in which its head office is situated.

Mandatory rules.

(3) Notwithstanding the choice of a foreign proper law and the express terms of the policy in such case:

(i) when the person whose life is assured is habitually resident in Malta on the date of the policy, article 1712B shall apply; and

(ii) where the policy holder is domiciled in Malta the provisions of article 1712E shall apply.

Sub-title 2 - Issues relating to Married Persons

Contracts of life insurance taken out before marriage. *Added by: XI.2005.3.*

1712J.(1) A contract of life insurance taken out by a person who subsequently contracts marriage shall not form part of the community of acquests subject, however, to the right of the other party to the marriage to be credited with a sum equal to half of the premia paid by such person during the marriage when such premia have been paid from community property:

Provided that that person may decide that such policy shall

become part of the community of acquests in which case the subsequent articles shall prevail.

(2) Payments of premia during marriage shall be deemed to have been made from community property unless there is evidence to the contrary.

(3) In such cases the policyholder shall be entitled to carry out all acts in relation to such policy and to receive any proceeds thereof, whether on maturity or earlier surrender, without the consent of the other spouse, and the life policy and all proceeds thereof shall be paraphernal property.

Contracts of life insurance taken out by married persons. *Added by: XI.2005.3.*

1712K.(1) Married persons may enter into contracts of life insurance in their own name or jointly.

Contract taken out jointly.

(2) When taken out jointly, the life policy may only be surrendered, pledged, assigned or modified, including by the designation of a beneficiary thereunder, jointly by both spouses unless the policy is expressly undertaken -

(*a*) under a condition that either spouse may act without the consent of the other in all or some matters; or

(*b*) under the condition stated in article 1712F, and then only after the demise of a spouse,

in which cases either spouse can act in all matters.

Contract taken out by one spouse.

(3) When any contract of life insurance is entered into in the sole name of a person who is married and whose matrimonial property is subject to the regime of community of acquests and notwithstanding any other provisions of law:

(*a*) the life policy may be surrendered, pledged, assigned or modified, including by the designation of a beneficiary thereunder, by such person alone and in such case, when effected -

(i) for purposes unrelated to the patrimonial interests of the spouses, or

(ii) without the written consent of the other spouse, there shall arise a credit in favour of the other spouse equivalent to half the value of all premia paid by the policyholder; and

(*b*) the proceeds of the policy shall be deemed to be paraphernal property of that spouse subject to a credit in favour of the other spouse of a sum equal to half the value of all the premia paid by the policyholder.

Cap. 586. Cap. 377.

(4) Notwithstanding the provisions of the Data Protection Act, the Professional Secrecy Act or any express clause in the contract, when a contract of life insurance is entered into by a married person jointly, both spouses shall be entitled to full information relating to all matters regarding the said contract. When entered into by one spouse, only such person and others expressly authorised in writing, shall be entitled to information about the

policy.

(5) The credit referred to in sub-article (3)(*a*) and (*b*) shall enjoy a special privilege over the proceeds of the policy in the hands of the insurer in the event that the share of the community property accruing to the policyholder at time of the dissolution of the community is not sufficient to pay the value of the credit to the other spouse.

Sub-title 3 - Issues relating to parental authority

Contracts taken out for the benefit of a child's estate. *Added by: XI.2005.3.*

1712L.(1) It shall be lawful for parents of a child to enter into a contract of life insurance, for the child as policyholder, in the administration of the child's property.

(2) Any such contract may be entered into by either parent and the name of the child as policyholder shall be recorded in the policy.

(3) Payments of any proceeds under the policy, at maturity, during the term by way of withdrawals or on earlier surrender, may only be made to the parents jointly or to a bank account designated as property of the child. The provisions of article 136 shall apply to any relevant acts in relation to the life insurance policy.

(4) It shall not be lawful for the parents to designate a third party as a beneficiary of a contract of life insurance entered into for a child as policyholder.

(5) On reaching maturity the child shall be entitled to exercise all rights in relation to the policy without the need to any formality other than giving notice to the insurer and providing him with evidence of his identity and age.

Sub-Title 4 - Pledge of Insurance Policies

Pledge of life insurance policy. *Added by: XI.2005.3.*

1712M.(1)Rights under an insurance policy may be pledged by the policyholder in favour of any person as security for any obligation. The pledge of a policy shall be constituted by means of an instrument in writing entered into between the pledgor and the pledgee.

(2) The said pledge shall be binding on the insurer and third parties and the privilege as provided in Title XXIII shall arise only after notice of the pledge shall have been given in writing by the pledgor or the pledgee to the insurer or the insurer shall have acknowledged the pledge in writing.

(3) During the existence of a pledge, any assignment of the policy shall be subject to the pledge in favour of the pledgee. The rights of a pledgee are however subject to the rights of a designated beneficiary who has accepted the designation prior to the pledge. When a pledge is granted, the insurer shall be bound to inform the pledgee of any prior rights notwithstanding any duty of confidentiality.

(4) Subject to any prior rights, the pledgee of an insurance policy shall enjoy all the rights of the policyholder to receive

notices under the policy, to receive any proceeds of the policy, when due, on maturity or earlier surrender and the right to exercise all options of the pledgor under the policy, except the designation of a beneficiary, but shall not be liable for the performance of any obligations of the policyholder towards the insurer unless otherwise expressly agreed in writing.

(5) Without prejudice to the right of the pledgee to apply for the judicial sale of the policy and notwithstanding the provisions of this Code, in the event of a default under the agreement between the pledgor and the pledgee and upon giving notice by judicial act to the pledgor and the insurer, the pledgee shall be entitled to:

(i) dispose of the policy to a third party; or

(ii) appropriate and acquire the policy himself, in settlement of the debt due to him or of part thereof, or at the best achievable price being not less than the fair value.

(6) For the purpose of the preceding sub-article, the value of the policy may be established by agreement between the pledgor and the pledgee after notice of default has been given by the pledgor to the pledgee and no prior agreement shall be valid:

Provided that, in case of disagreement, the fair value for the sale or appropriation of the policy shall be determined -

(*a*) by a certified public accountant appointed by the Court or an arbitrator, if so agreed by the parties, on the application of the pledgee; or

(*b*) in such other manner as may be expressly agreed between the parties:

Provided that if the fair value cannot be obtained the pledgee can apply to the Court or the arbitrator for approval for a sale or appropriation at a price which is less than the fair value as aforesaid, subject to such conditions as the Court or arbitrator may determine.

(7) In cases where there is a surrender value of the policy, the pledgee may also give notice to the pledgor and insurer requesting the surrender of the policy and the payment of the surrender value to the pledgee. The surrender value shall be that established by the insurer in accordance with the terms of the policy and notified to the parties.

(8) For the purposes of sub-articles (7) and (8), the value of the policy shall be that obtaining on the date of the proposed sale, appropriation or surrender.

(9) Any proceeds of the policy which exceed the debt due to the pledgee shall be returned to the pledgor.

(10) It shall be lawful for a policyholder to enter into more than one pledge agreement in relation to the same policy and the rules stated in this article shall apply to a second and further policy in the same way as they apply to the first policy but a subsequent pledge shall rank subject to previous pledges and other prior rights. In

such case, a subsequent pledge shall be conditional on the existence of the prior pledge and no rights shall be exercisable by the subsequent pledgee until such time as the prior pledgee's rights have been satisfied and, or terminated.

Title XII

OF GAMING AND BETTING

No action lies for the recovery of gaming debts.

1713. (1) The law grants no action for a gaming debt, or for the payment of a bet.

(2) Nor does it grant any action -

(*a*) for the recovery of any sum lent by any person who knew that such sum was intended for gaming;

(*b*) for the recovery of any sum lent by any person interested in the game, for the payment of money lost at such game.

Exceptions.

1714. (1) Games which tend to help training in the use of arms, foot-races, horse-races, boat-races, ball-games and other games of the same kind which develop the dexterity and exercise of the body, are excepted from the provisions of the last preceding article.

(2) Nevertheless, the court may reduce the sum claimed when it appears to it to be excessive.

Agreement to defeat foregoing provisions is void.

1715. Any agreement made for the purpose of defeating the provisions of the last two preceding articles, is void.

Recovery of money lost at gaming.

1716. The loser at a game, not included in those mentioned in article 1714 may recover from the winner the sum or thing which he has already paid to him, provided he shall, by means of a judicial act, within two months to be reckoned from the day of payment, call upon the winner to return the sum or thing so paid.

Recovery of money paid for lottery.

1717. Any person who has made any payment in Malta in connection with a lottery set up in Malta or in other countries, may recover the sum paid by him from the person to whom the payment was made, although the latter was only an agent of some other person; unless the lottery was authorised or permitted by the competent authority in Malta.

1717A. No debt or other obligation arising under any contract of differences, interest cap agreement, swap, foreign currency exchange or other similar agreement the purpose or intended purpose of which is to secure a profit or avoid a loss (by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for such purpose in the contract) nor any contract of insurance shall be void or unenforceable by reason of the provisions of this Title or of any other law related to gaming or betting.

Certain contracts not to be deemed as gaming and betting.
Added by: XXII.2000.101.
Amended by: XI.2005.4.

Title XIII

OF COMPROMISE

1718. A compromise is a contract whereby the parties, by means of a thing given, promised or retained, put an end to a lawsuit which has commenced or prevent a lawsuit which is about to commence.

Definition of contract of compromise.

1719. (1) Where the subject-matter of the lawsuit to which the parties wish to put an end or which they wish to prevent is immovable property, the compromise is null, if not made by a public deed.

When compromise is to be made by public deed.

(2) The same rule shall apply where, in order to compromise, an immovable thing is given or promised.

1720. No person may make a compromise unless he is a person capable of alienating the things included in the compromise.

Persons who can make compromise.

1721. A compromise between the spouses without the authority of the competent court, is null, except in the cases where, according to the provisions of article 1366, a contract of sale may be validly made between them.

Compromise between spouses.

1722. Any compromise regarding property subject to entail, or regarding future maintenance, whether bequeathed by a will or acquired by donation or other contract, or ordered by the court, or due by law, is also null, if made without the authority of the competent court.

Compromise affecting property subject to entail, etc.

1723. (1) Where for the validity of a compromise the authority of the court is requisite, such authority shall, if the lawsuit, or the hearing of the lawsuit has not yet commenced, be granted, if expedient, by the court of voluntary jurisdiction.

Authority of court.

(2) If the hearing of the lawsuit has commenced, the authority may be granted either by the said court, or by the court before which the lawsuit is pending.

1724. (1) A penalty clause stipulated in a contract of compromise against the party who fails to fulfil the compromise, shall be in lieu of compensation for any damage caused by delay, without prejudice to the obligation to fulfil the compromise, saving the provisions of article 1119 in case the contract is annulled.

Effect of penalty clause.

(2) If the contract of compromise is impeached on the ground of nullity, the payment of the penalty is suspended, pending the suit.

(3) The provisions of this article shall apply to arbitration agreements which contain a penalty clause.

Effects of compromise.

1725. A compromise shall not extend beyond the subject-matter thereof: a renunciation in a contract of compromise of all rights, actions, and claims, applies only to what relates to the controversy which has given rise to such compromise.

Compromise settles only differences which the parties had in view.

1726. A compromise shall only settle the controversies which the parties had in view, whether such parties have expressed their intention in special or general terms, or whether such intention appears as a necessary consequence of what has been expressed.

Where person making a compromise as to a right, acquires thereafter a similar right.

1727. If a person who has made a compromise as to a right belonging to him acquires thereafter a similar right from another person, he is not bound by the compromise previously made, with respect to the right newly acquired.

Compromise made by one of several interested parties.

1728. A compromise made by one of several interested parties does not bind the others, nor may it be set up by them.

Compromise equivalent to *res judicata*.

1729. (1) A compromise shall have as between the parties the effect of a *res judicata.*

(2) It cannot be set aside on the ground of an error of law.

When compromise may be set aside.

1730. (1) Nevertheless, a compromise may be set aside, where there has been an error as to the person with whom the contract was made, or as to the matter of the controversy which the parties intended to compromise.

(2) It may be set aside in all cases where there has been fraud or violence.

Error of fact.

1731. A compromise may also be set aside when through an error of fact it has been made in execution of a title which was null, unless the parties have expressly taken such nullity into account.

False documents.

1732. A compromise based on documents which are subsequently found to be false, is wholly void.

Compromise respecting suit terminated by judgement.

1733. (1) A compromise of a suit determined by a judgment which has become a *res judicata*, of which the parties or one of them had no knowledge, is also void.

(2) If the judgment of which the parties had no knowledge is one from which there could still be an appeal, the compromise shall be valid.

Discovery of documents subsequent to compromise.

1734. (1) Where the parties have made a general compromise regarding all outstanding matters between them, the documents which were unknown to them or which have been subsequently discovered, shall not be a good ground for rescission, unless they had been concealed through the act of one of the parties.

(2) The compromise, however, shall be void if it only referred

to a single thing and it is shown by the documents subsequently discovered that one of the parties had no right on such thing.

Errors of calculation.

1735. Each of the parties has a right to demand the correction of any error of calculation incurred in a compromise.

Compromise concerning an inheritance.

1736. A compromise concerning an inheritance depending upon a will which is not known, is void.

Title XIV

OF DONATION

GENERAL PROVISIONS

Definition of donation.

1737. (1) The law allows only donations *inter vivos*.

(2) A donation *inter vivos* is a contract whereby the donor irrevocably and gratuitously transfers a thing to the donee who accepts it.

(3) A donation in which the donor reserves to himself the power to revoke or alter the donation itself, is void, except in the cases expressly provided in this Code.

Gifts made out of gratitude.

1738. A gift made out of gratitude, or in consideration of the merits of the donee, or as a special remuneration for services for which the donee had no right of action, as well as that to which some burden on the donee is attached, is likewise a donation, saving the provisions of the next following article.

Remuneratory donations.

1739. If the donation is made in remuneration for services for which the donee had a right of action, the special rules relating to donations shall not apply, except when the value of the thing given exceeds, by at least one-half, the value of such services, and in regard only to such excess.

Onerous donations.

1740. Nor shall the special rules relating to donations apply to an onerous donation, except when the value of the thing given exceeds, by at least one-half, the value of the burden imposed on the donee, and in regard only to such excess.

Rules on donations not applicable to trust settlements. *Added by: XIII.2004.42.*

1740A. The rules relating to donations shall not apply to the settlement or distribution of property under trusts except to the extent expressly stated by the provisions of this Code.

Transfers to trusts, within groups, and as security. *Added by: XIII.2007.10. Substituted by: VIII.2010.61.*

1740B. Any transfer which is -

(*a*) a settlement of property under trusts to a trustee or a distribution or a reversion of property from a trustee pursuant to any trust; or

(*b*) an endowment of property to a foundation or a distribution or a reversion of property from a foundation pursuant to its terms;

(*c*) a gratuitous assignment, transfer or contribution of

capital, cash or any other assets by an undertaking to another undertaking where both undertakings are either controlled or beneficially owned, directly or indirectly, to the extent of more than fifty per cent by the same persons:

Provided that such assignment, transfer or contribution shall on the pain of nullity be expressed in writing; or

(*d*) a grant of security by title transfer for the performance of an obligation, and any transfer of such property back to the transferor upon the performance of the obligation,

shall not be governed by the provisions of this Title and in particular shall not be subject to the formalities required by article 1753:

Provided that where the transaction consists in or includes a transfer of immovable property in Malta, the transfer of such immovable property only shall remain subject to the formalities required by article 1753(1).

Donation may only include present property.

1741. (1) A donation may only include the present property of the donor.

(2) If it includes future property, it shall be null with regard to such property.

(3) The provisions of this article shall not apply to the donations mentioned in Sub-titles IV and V of this Title.

Ecclesiastical benefices, etc., to be governed by canon law. *Added by: V.1920.2.*

1742. Saving any other special law in Malta, any ecclesiastical benefice, or perpetual ecclesiastical chaplaincy, or perpetual sacred patrimony or patrimonial subsidy, shall, as regards both the exercise, enjoyment, extinguishment or loss of the right of advowson, whether active or passive, as well as the terms and conditions required in order that they may constitute a title for ordination or be availed of for such purpose, be governed by the canon law for the time being in force in Malta:

Provided that nothing in this article shall affect any right competent to and exercised by the Government with regard to any benefice, chaplaincy, sacred patrimony or patrimonial subsidy.

Sub-title I

OF THE CAPACITY TO DISPOSE OR RECEIVE BY DONATION

Persons capable of disposing or receiving by donation. *Amended by: LVIII.1975.10; XVIII.2004.103.*

1743. All persons can dispose of or receive property by donation, except those who are in this Title declared to be incapable.

Persons incapable of making a donation. *Amended by: XLVI.1973.87.*

1744. The following persons are incapable of making a donation:

(*a*) those who, according to the provisions of paragraphs (*a*), (*b*), (*c*) and (*d*) of article 597, are incapable of making a will;

(*b*) any person interdicted on the ground of prodigality, unless authorized to make a donation by the court which had ordered his interdiction;

(*c*) a minor, except by a marriage contract as provided in article 1807.

Nullity of donation, although disability of donor ceases before execution.

1745. A donation made by a person who is incapable of making a donation is null, even though the incapacity of the donor has ceased previous to the time in which the donation is to be carried into execution.

Persons incapable of receiving by donation.

1746. (1) Those who, at the time of the donation, or at the time of the happening of the suspensive condition attached to a donation, were not yet conceived, are incapable of receiving by donation.

(2) The provisions of this article shall not apply with regard to the immediate children of a stated person who is alive at the time of the donation, nor with regard to persons called to the enjoyment of any foundation.

Born not viable.

1747. (1) Those who are not born viable, are also incapable of receiving by donation.

(2) In case of doubt, those who are born alive shall be presumed to be viable.

Persons who cannot receive by donation more than can be left to them under a will. *Amended by: XXI.1962.18.*

1748. *Repealed by*: *XVIII.2004.104.*

Applicability of s.609.

1749. The provisions of article 609 respecting the incapacity of a tutor or curator, shall apply to donations.

Disguised donations. *Amended by: XVIII.2004.105.*

1750. A donation made in favour of a person who is incapable of receiving by donation, as provided in article 1749 is null, even though it is disguised under the form of an onerous contract, or made in the name of intermediaries.

Intermediaries. *Substituted by: XVIII.2004.106. Amended by: XXIII.2017.82.*

1751. Any one of the parents, the children, the descendants and the spouse of the person who is incapable of receiving by donation shall, unless the contrary is proved, be considered to be intermediaries.

Donation made to notary receiving deed, etc.

1752. A donation made to the notary by whom the deed of donation was received, or to his spouse, or to any person related to him by consanguinity or affinity to the third degree inclusively, may be annulled on the demand of the donor or of his heirs, so long as such donation has not been carried into execution.

Sub-title II

OF THE FORM AND EFFECTS OF DONATIONS

Donations to be made by public deed.

1753. (1) A donation is null, if not made by a public deed.

(2) The provisions of sub-article (1) of this article, however, shall not apply to -

(*a*) manual gifts of money or of other movable corporeal things, or of documents to bearer, when the sum or value thereof is moderate, regard being had to the condition of the persons and to other circumstances;

(*b*) any gratuitous renunciation of rights or assignment of debts or negotiable securities, or to any remission of debts or any stipulation made in favour of third parties in any of the cases referred to in articles 999, 1000 and 1704:

Provided that, as regards the form of any such renunciation, assignment, remission or stipulation, the provisions of the said articles or of any other law shall be observed, notwithstanding that such provisions relate to onerous agreements.

When donation is binding on donor.

1754. (1) A donation shall not bind the donor and shall not be operative except as from the day on which it is expressly or tacitly accepted by the donee.

(2) The acceptance of a donation of immovable things is null, unless it is made in the deed of donation or by any other public deed.

Time for acceptance of donation.

1755. The donee may validly accept the donation at any time during the life of the donor so long as the latter has not revoked it.

When acceptance may be made after donor's death.

1756. (1) An acceptance made after the death of the donor shall be ineffectual, except in the following cases:

(*a*) when the donor has reserved to himself, during his lifetime, the use or usufruct of the thing given;

(*b*) when the donation is to be carried into execution after the death of the donor;

(*c*) when the donor dies within three months from the day of the donation.

(2) In each of the aforesaid cases, the donee may, until the expiration of a time to be fixed by the court upon the demand of any interested party, validly accept the donation which has not been revoked by the donor; such time may not exceed one month, but may for just cause be extended by the court to another month.

Acceptance by heirs or creditors of donee.

1757. An acceptance made by the heirs or the creditors of the donee has no effect.

1758. (1) A donation made to a minor may be accepted in his behalf by any one of his parents, as well as by his ascendants even though his parents are living. Donation to minor. *Amended by: XLVI.1973.90; XXI.1993.2; XXIII.2017.83.*

(2) If the donation is made by one of the parents or by an ascendant of the minor, it may be accepted in his behalf by the other parent or any other ascendant.

(3) Where, however, the minor is subject to parental authority, no person, other than the parent exercising parental authority, may accept the donation on behalf of the minor except with the authority of the court.

(4) If the donation is made by both parents of the minor, the court may authorise the minor himself to accept it or appoint a person to accept it in his behalf.

1759. The provisions of the last preceding article shall also apply with regard to the parents of an illegitimate child acknowledged in the deed of acceptance itself or by any other instrument, or legitimated by a decree of the court. Donation to an illegitimate child. *Amended by: XXIII.2017.84.*

1760. A donation made to a person who, by reason of age or for other cause, is subject to tutorship or curatorship, may not be accepted except by the tutor or curator, with the authority of the court. Donation to person under tutorship or curatorship.

1761. In the cases referred to in the last three preceding articles, the donation may not be annulled for want of the authority therein mentioned, except upon the demand of the donee; and such demand may not be made after the expiration of two years from the day on which the donee attains his majority or ceases to be subject to tutorship or curatorship. Annulment of donation for want of authority.

1762. (1) Where in the cases referred to in articles 1758, 1759 and 1760 the parent, the legitimate ascendant, or the tutor or curator neglects or without just cause refuses to accept the donation, the court shall, upon the demand of any person, appoint a special curator for the purpose. When special curator may be appointed.

(2) The same shall apply where the person making the demand declares on oath that he does not know whether the minor has any parent or legitimate ascendant alive or that he does not know where any such parent or ascendant is to be found, and the court is of opinion that the donation is advantageous to the minor.

1763. A minor who is not subject to parental authority nor provided with a curator, may validly accept a donation if he has completed the age of fourteen years; saving the action of rescission which may be competent to him under article 971. When minor himself may accept donation. *Amended by: XXI.1993.2.*

1764. (1) The person who has lawfully accepted a donation on behalf of another person is bound to cause such donation to be registered, where required, in the Public Registry according to and for the purposes of the provisions of article 996. Duty of person who accepts on behalf of another. *Amended by: XLVI.1973.91.*

(2) Such registration, however, may also be made upon the demand of the notary by whom the deed of donation or acceptance was received, or upon the demand of the donee, whoever he may

be, and even without any authority.

Restitutio in integrum. Amended by: XLVI.1973.92.

1765. (1) A minor or any other person, being a donee, shall not be reinstated in case of non-acceptance or non-registration of the donation; saving any right of relief to which the donee may be entitled according to law against the person who was bound to accept the donation in his behalf or to cause it to be registered.

(2) Such reinstatement shall not be granted even though the person so bound is insolvent.

Donation in contemplation of marriage may not be impeached for non-acceptance.

1766. A donation made in contemplation of a certain and determinate marriage, and prior to such marriage, whether by the future spouses to each other or by any other person in favour of the future spouses and of the children to be born of their marriage, may not be impeached on the ground of non-acceptance.

Donations between spouses, during marriage. *Amended by: XXIII.2017.85.*

1767. The provisions of the last preceding article shall also apply with regard to donations between spouses, during marriage.

Donation on condition of restoration of gift in the event of donor having children.

1768. Notwithstanding the provisions of article 1056, a donation made on condition that the donee shall restore the thing given, in the event of the donor having children by a marriage contracted either before or after the donation, is valid.

Debts of donor.

1769. The donee is not bound to pay the debts of the donor unless required to do so by the terms of the donation; saving in favour of the creditors the action referred to in article 1144, and the hypothecary action, where competent.

Donation subject to condition of payment of debts.

1770. (1) A donation made subject to the condition of the payment of debts or burdens existing at the time of the donation, or of future debts or burdens the causes whereof, however, are specified in the deed of donation or in a note annexed thereto, is valid.

(2) A donation, however, made subject to the condition of the payment of other future debts or burdens, is null.

Limitation of donee's liability.

1771. In any of the cases referred to in sub-article (1) of the last preceding article, if the amount of the debts or burdens has not been also stated in the deed or note aforesaid, the donee is not liable beyond the value of the thing given, unless he has expressly bound himself to pay such debts or burdens whatever their amount may prove to be.

Presumptive condition.

1772. A donation, however, of all present property or of a part of all present property, unless a contrary intention appears from the deed of donation, is presumed to have been made with the reservation of deducting therefrom, before the release or delivery of the property, the amount of the debts of the donor, existing at the time of the donation, either wholly or in proportion to the part given according as to whether the donation includes all the property or only a part thereof:

Provided that such deduction cannot be claimed after the

delivery or the release of the property has taken place; saving the right of the creditors to any of the actions mentioned in article 1769.

Maintenance of donor.

1773. (1) The donee is bound to supply maintenance to the donor who has become indigent, to the extent of the fruits of the thing given, provided the donee is in possession of the thing given or the value thereof and is not himself in a state of indigence.

(2) If the thing given is in the possession of the donee but yields no fruits, the obligation aforesaid shall be limited to the extent of the interest on the value of the thing itself as fixed by a valuation.

(3) If the donees are two or more, the prior donee is bound as aforesaid, only where the amount which the subsequent donee is bound to supply is not sufficient for the maintenance of the donor.

(4) The provisions of this article shall apply even if there are persons related to the donor by consanguinity or affinity who are bound and in a position to supply maintenance to him.

Reservation of power of disposing.

1774. If the donor has reserved to himself the power to dispose of a thing included in the donation or of a specified sum out of the property given, and dies without having disposed of the same, such thing or sum shall belong to the donee, unless a contrary declaration has been expressly made in the deed of donation, or unless the donee has prevented the donor from disposing of such thing or sum.

Vesting of thing excluded from donation.

1775. If the donor has excluded a thing from the donation, in order to dispose of it, and does not dispose of such thing either *inter vivos* or by will, it shall vest in the heirs of the donor, unless the donor himself has expressly declared in the deed of donation that such thing shall vest in the donee if he dies without having disposed of it.

Prohibition of entails in donations.

1776. Entails are forbidden in donations as in wills; and the provisions of articles 331, 736 and 757 to 761 shall apply to donations.

Reservation of usufruct.

1777. It shall be lawful for the donor to reserve to himself the usufruct of the thing given.

Donation of movable things with reservation of usufruct.

1778. Where a donation of movable things has been made with the reservation of usufruct, the donee shall, upon the cessation of the usufruct, have against the donor or his heirs the same rights as are granted to the owner under the provisions of Title III of Part I of Book Second of this Code for the restoration of such things.

Stipulation of reversion.
Amended by: XXXIX.1939.10.

1779. (1) The donor may stipulate that the things given shall revert to himself or his heirs, in case of the decease of the donee without issue at any time.

(2) He may also stipulate the reversion of the things given in case of the predecease of the donee alone or in case of the predecease of the donee and his descendants:

Provided that such stipulation can only be made in favour of the donor alone.

Effects of reversion.

1780. When the reversion takes place, any alienation of the property given is dissolved, and such property reverts to the donor free from any burden or hypothec, with the exception of the hypothec registered in security of the dowry and the dower of the wife of the donee, if his other property is insufficient for that purpose, and the donation was made to him in the same marriage contract by which the dowry was constituted or the dower promised.

Where donation with stipulation of reversion is made in favour of two or more persons.

1781. If a donation containing a stipulation of reversion is made in favour of two or more persons, the condition shall, in case of the predecease of one of such persons or of his descendants, according to the cases mentioned in article 1779, be deemed to have happened with regard to the portion of the party deceased, and the provisions of the last preceding article shall apply with regard to such portion.

Warranty by donor.

1782. The donor is not bound to warrant the donee against eviction in respect of the things given except in any of the following cases:

(*a*) if the donation has been made in contemplation of marriage or for the constitution of a sacred patrimony;

(*b*) if the donor has expressly promised warranty;

(*c*) if eviction takes place in consequence of debts for which the donor himself is personally liable;

(*d*) if the donor has given a thing belonging to another person, in bad faith and with the object of inducing the donee to give, or to do or not to do any thing;

(*e*) if, by the donation, burdens that may be estimated in money have been imposed on the donee, or if the donation has been made in remuneration for services that may be estimated in money for which the donee had a right of action: in which case the donor is bound to give warranty up to the value of such burdens or services.

Extent of warranty.

1783. (1) In the cases referred to in paragraphs (*a*), (*b*), (*c*) and (*d*) of the last preceding article, the donee cannot claim from the donor more than the value which the thing given had at the time of the donation; unless, in the case referred to in paragraph (*d*), the donee has suffered damage to an amount greater than the value of the thing given, in which case the effects of the warranty shall extend to such amount.

(2) In the case referred to in paragraph (*e*) of the last preceding article, the donee can claim from the donor a sum corresponding to the value of the burdens discharged or of the services rendered, whatever such value may be.

1784. The donor is not bound to free the thing given from any easement or other burden to which it is subject, saving the right of the donee who has accepted the donation without being aware of the existence of such easement or burden to renounce the thing given within one year from the day on which he became aware of the existence of such easement or burden.

Easements or burdens.

Sub-title III

OF THE EXCEPTIONS TO THE RULE OF IRREVOCABILITY OF DONATIONS

1785. A donation can only be revoked in virtue of a resolutive condition, express or implied, according to the provisions of articles 1066, 1067, 1068 and 1069, or for ingratitude or, in case of endowments to organisations established in accordance with the Second Schedule, in virtue of the provisions regulating the revocation of foundations and of endowments made to an organisation.

Causes of revocation of donation. *Substituted by: XIII.2007.11.*

1786. In case of revocation in virtue of a resolutive condition, the property reverts to the donor free from all burdens or hypothecs imposed by the donee; and the donor shall have against third parties in possession of the immovables given all the rights which he would have against the donee himself.

Revocation in virtue of resolutive condition.

1787. A donation cannot be revoked for ingratitude except in any of the following cases:

Revocation for ingratitude.

(*a*) if the donee has attempted to take the life of the donor or has been guilty towards him of cruelty or grievous injury;

(*b*) if the donee has wilfully, and with intent to cause injury to the donor, considerably damaged his property, or prejudiced his interests;

(*c*) if, the donor being in urgent need of maintenance or other personal assistance, the donee has refused him such support as without great inconvenience to himself he could have given him.

1788. The revocation of a donation for ingratitude shall never take place *ipso jure*.

Revocation for ingratitude never takes place *ipso jure*.

1789. A renunciation of the right to revoke a donation for ingratitude is null if made prior to the happening of the event which gives rise to the exercise of such right.

Renunciation of right to revoke a donation for ingratitude is null.

1790. (1) The demand for revocation on the ground of ingratitude can only be made within one year from the day of the offence with which the donee has been charged by the donor, or from the day on which the donor could have become aware of such offence.

Time within which action for revocation may be brought.

(2) Revocation on such ground cannot be demanded by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless, in the latter case, the action had been commenced by the donor himself, or unless he died within a year from the day of the offence.

Revocation does not affect alienations, etc.

1791. (1) Revocation on the ground of ingratitude shall not affect any alienation made by the donee, nor any hypothec or other burden with which he may have charged the property given, previously to the judicial demand for revocation.

(2) The donee, however, is bound to restore to the donor the value of the things alienated, having regard to the time of the aforesaid demand, together with the fruits from the day of such demand, and to indemnify the donor for any hypothec or other burden with which he may have charged the property not alienated.

Donations in contemplation of marriage not subject to revocation for ingratitude.

1792. (1) Donations in contemplation of marriage are not subject to revocation on the ground of ingratitude.

(2) The provisions of this article shall not apply to donations made by one of the future spouses to the other.

Sub-title IV

OF DONATIONS IN CONTEMPLATION OF MARRIAGE

Donations of present property subject to general rules.

1793. Donations of present property only, although made in contemplation of marriage, are, in the absence of any provision to the contrary, subject to the rules laid down in this Title relating to donations in general.

Donations of property to be left on donor's death.

1794. Any person not being under a legal disability may, in contemplation of a certain and determinate marriage, but before such marriage, dispose of the whole or of a part of the property which he may leave at the time of his death, in favour of the future spouses or one of them as well as in favour of the children to be born of their marriage.

Extent of irrevocability of such donations.

1795. (1) The donation referred to in the last preceding article is irrevocable in this sense only, that the donor can no longer dispose, under a gratuitous title, of the things included in the donation, except as regards small sums by way of remuneration or otherwise, unless he has reserved to himself a more ample power of disposing.

(2) The donor, however, shall be at liberty, up to the time of his death, to dispose under an onerous title of the things included in the donation; and any renunciation of such power is null.

Donations of present and future property.

1796. A donation in contemplation of a certain and determinate marriage, in favour of the future spouses or of one of them, or of their children, may be made of both present and future property, either wholly or in part, provided a description of the property and

of the debts and burdens of the donor existing at the time of the donation, is annexed to the deed of donation; in which case the donee shall be at liberty, at the time of the death of the donor, to retain for himself the property existing at the time of the donation, subject to the obligation of discharging only the debts and burdens existing at such time, renouncing his right to the remainder of the property of the donor.

Where description is not annexed to deed of donation.

1797. (1) If the description mentioned in the last preceding article has not been annexed to the deed of donation of present and future property, the donee shall be bound to accept or renounce the donation in its entirety.

(2) In case of acceptance, he can only claim the property existing at the time of the donor's death, and shall be bound to discharge all the hereditary debts and burdens up to the value of such property.

Presumption that property is sufficient to discharge debts.

1798. The property vesting in the donee by a donation made in terms of article 1794 or in the case mentioned in the last preceding article, shall be presumed to be sufficient for the discharge of the hereditary debts or burdens, if the donee, before taking possession of such property, has not made up an inventory in the manner provided in the Code of Organization and Civil Procedure, saving always any proof to the contrary.

Cap. 12.

When donee cannot demand execution of donation.

1799. (1) As regards the donations referred to in articles 1794 and 1796, the donee cannot, during the life of the donor, demand that the donation be carried into execution with regard to any part of the property included therein.

(2) By any such donation, the ownership of the property shall not vest in the donee except at the death of the donor.

(3) Nevertheless, where the donation was made in terms of article 1796 and, at the death of the donor, the donee wishes to avail himself of the power, granted to him in that article, to retain for himself the property existing at the time of the donation subject to the obligation of discharging only the debts and burdens existing at that time, the donee shall be entitled to demand the dissolution of any alienation, even if made under an onerous title, which the donor may have made of immovables included in that property, and of any hypothec or other burden with which the donor himself may have charged such immovables, provided the donation was registered in accordance with the provisions of article 996.

Where donor survives donee.

1800. (1) The donations referred to in articles 1794 and 1796 shall lapse, if the donor survives the donee and his descendants from the marriage in contemplation of which the donation was made.

(2) Where the children and descendants are excluded from the donation, such donation shall lapse if the donor survives the donee.

Presumption in favour of children.

1801. (1) The aforesaid donations, although made in favour of the future spouses or one of them, shall always, in the event of the survival of the donor, be presumed to have been made in favour of the children and descendants to be born of the marriage in

contemplation of which such donations were made, unless such children and descendants were excluded by the deed of donation.

(2) The provisions of this article shall also apply in favour of children born before the donation, and legitimated by the marriage in contemplation of which the donation was made.

Marriage presents.

1802. Presents which relations or friends of one of the future spouses give to the other in contemplation of marriage shall be deemed to have been given to the former, notwithstanding that in making such presents words were used implying a donation in favour of the latter, unless, independently of such words, it is proved that the intention of the donor was that of giving such things to the future spouse to whom he has delivered them.

Donation lapses if marriage does not take place, etc.

1803. (1) Any donation or promise made in contemplation of marriage shall lapse if the marriage does not take place.

(2) Any donation made by way of a sacred patrimony shall lapse, if the donee fails to take holy orders within five years from the day on which he shall have attained the age at which he could be admitted to such orders.

Sub-title V

OF DONATIONS BETWEEN FUTURE SPOUSES OR BETWEEN HUSBAND AND WIFE, EITHER BY THE MARRIAGE CONTRACT OR DURING THE MARRIAGE

Donations between future spouses.
Amended by: XLVI.1973.93.

1804. The future spouses may, in their marriage contract, make to each other reciprocally or the one to the other, donations under the conditions hereinafter mentioned.

Where donor has children.

1805. *Repealed by*: *XVIII.2004.107.*

Presumption of condition of survival.

1806. Any donation of present property, or of present and future property, or of such property as the donor may leave at the time of his death, shall, in all cases, even if it is reciprocal, be presumed to have been made subject to the condition of the survival of the donee, unless an express stipulation to the contrary is made; and in every other respect such donation shall be subject to the foregoing rules relating to donations made in favour of the future spouses by other persons.

Minors.
Amended by: XLVI.1973.94.

1807. A minor cannot in a marriage contract make to his future spouse any donation, whether reciprocal or not, without the consent of the parent to whose authority he is subject or, if both parents are dead or the parent aforesaid cannot give his consent, without the authority of the court; but, with such consent or authority, a minor may give all that one of the future spouses, being of age, may, according to law, give to the other.

Presents by future spouses.
Amended by: XXXI.2002.212.

1808. (1) Presents given by one of the future spouses to the other, on the occasion of marriage, shall, notwithstanding that in delivering such presents words were used implying a donation,

remain the property of the former, and shall be deemed to have been given to the latter for mere use, during marriage, unless a donation of such things is proved by the marriage contract.

(2) Even such right of use of the said presents shall cease in the event of separation on grounds imputable to the party who had received such presents.

Where marriage does not take place.

1809. (1) Any donation made by the future spouses in contemplation of marriage, or by the marriage contract, whether reciprocally or by one to the other, shall lapse if the marriage does not take place.

(2) The provisions of this article, however, shall not apply, and the donee may retain the things given, if the marriage does not take place by reason of the refusal of the donor without just cause to contract such marriage; saving the right of the donee to claim damages under the provisions of the Promises of Marriage Law. Cap. 5.

Donations between spouses. *Amended by: XVIII.2004.108; XXIII.2017.86.*

1810. (1) Any donation made by one of the spouses to the other spouse during the marriage, without the authority of the court, is null, even if such donation is reciprocal or remuneratory.

(2) If there be such authority, however, one of the spouses may make to the other spouse, a donation of present property, or of present and future property, or of such property as the donor may leave at the time of his death; and to any such donation the provisions of article 1806 shall apply.

to relations of either.

1811. Any donation made without the authority of the court by one of the spouses to a person related to the other spouse by consanguinity or affinity, is likewise null.

Gifts of small value. *Amended by: XVIII.2004.109.*

1812. The authority of the court mentioned in the last two preceding articles shall not be required with regard to presents or manual gifts of small value, regard being had to the circumstances of the donor.

Sub-title VI

OF THE REDUCTION OF DONATIONS

Reduction of donations exceeding disposable portion.

1813. Donations of any kind, even if made in contemplation of marriage to future spouses and to the children to be born of their marriage, shall, if at the time of the opening of the succession of the donor they are found to exceed the portion of property whereof the donor, according to the rule laid down in article 614, could dispose, be reduced to that portion.

Applicability of rules relating to reduction of testamentary dispositions

1814. The rules laid down in article 621 and in article 647 and the articles following, relating to the reduction of testamentary dispositions, shall also be observed with regard to the reduction of donations.

By whom reduction may be demanded.

1815. The reduction of donations can only be demanded by those for whose benefit the law has reserved a portion of the property of the deceased, and by their heirs or other persons claiming under them.

Right of demanding reduction may not be waived during donor's life.

1816. Saving the provisions of article 1240 the persons to whom the law grants the right to demand the reduction of donations, cannot waive such right during the lifetime of the donor, whether by an express declaration or by consenting to such donations.

Donees, etc., may not claim reduction.

1817. Donees, legatees, or creditors of the deceased cannot demand the reduction of donations or benefit by it.

No reduction of donations shall take place before property disposed of under will is exhausted.

1818. No reduction of donations can take place until the value of all the property disposed of under the will has been exhausted; and when such reduction takes place, it shall be made commencing with the last donation and so on successively, from the last to the previous donations.

Restitution of things to be made in kind.

1819. Any restitution of things under the provisions of the last preceding article, shall be made in kind, saving the provisions of article 653.

Restoration of fruits.

1820. The donee shall restore the fruits of such part of the donation as exceeds the disposable portion, from the day of the opening of the succession of the donor, if the action for reduction has been brought within the year; otherwise, from the day of the demand.

Immovable to be returned unencumbered.

1821. The immovable property which is to be returned in consequence of the reduction shall be free from any debt or hypothec with which it may have been charged by the donee.

Action for reduction, etc., may be brought against third parties.

1822. (1) The action for reduction or for recovery may be brought by the person to whom it is competent, against third parties in possession of the immovable property forming part of the donations and alienated by the donees, in the same manner and in the same order as if against the donees themselves, but not until the plaintiff has first discussed the donees.

(2) Such action shall be exercised according to the order of the dates of the alienations, commencing with the last.

Limitation of action for reduction, etc.

1823. (1) The action for reduction or recovery, whether against the donees or against third parties, shall be barred by prescription on the lapse of five years to be reckoned from the day of the opening of the succession.

(2) The aforesaid time shall also run against minors and persons interdicted.

Title XV

OF LOAN FOR USE OR *COMMODATUM*

Definition of *commodatum.*

1824. *Commodatum* or loan for use, is a contract whereby one of the parties delivers a thing to the other, to be used by him,

gratuitously, for a specified time or purpose, subject to the obligation of the borrower to restore the thing itself.

Things which may be lent for use.

1825. All things which are not *extra commercium* and which are not consumed by use may form the subject of this contract.

Obligations transmissible to heirs.

1826. The obligations undertaken in virtue of a loan for use shall pass to the heirs of the lender and of the borrower:

Provided that if the loan is made out of regard to the borrower, and only to him personally, his heirs cannot continue to enjoy the thing lent.

Duties of borrower.

1827. (1) The borrower is bound to take care of and preserve the thing borrowed as a *bonus paterfamilias.*

(2) He cannot, under pain of paying damages, apply the thing to any other use than that for which it is intended by its nature or by agreement.

Borrower not liable for indemnity if thing perishes.

1828. If the thing perishes by a fortuitous event, without the fault of the borrower, the borrower is not liable for any indemnity.

Liability of borrower for wrong use or delay.

1829. If the borrower uses the thing for another purpose or for a longer time than he ought, he shall be answerable for the loss which may occur even by a fortuitous event, unless he proves that the thing would have equally perished if he had not used it for another purpose, or had restored it at the time fixed in the contract.

Where borrower could save the thing borrowed from perishing.

1830. If the thing lent perishes by a fortuitous event from which the borrower could have preserved it by making use of his own thing instead of the thing borrowed, or if, being able to save only one of the two things, he has preferred to save his own, he is answerable for the loss of the other.

Effect of valuation of thing lent at time of loan.

1831. A valuation of the thing, made at the time of the loan, shall have no other effect except that of determining its value at that time, in case the borrower should be answerable for any loss which may occur; and the borrower shall not, merely because the thing was appraised at the time of delivery, be answerable for any loss resulting from a fortuitous event, unless it is otherwise shown that an agreement to the contrary was made.

Deterioration without fault of borrower.

1832. If the thing has deteriorated merely by the use for which it was lent, and without fault of the borrower, the borrower is not answerable for such deterioration.

Borrower may not recover expense for use of thing.

1833. If in order to be able to make use of the thing lent, the borrower has incurred any expense, he cannot claim the reimbursement thereof.

Liability of several borrowers of same thing.

1834. If several persons have borrowed the same thing together, they are jointly and severally liable to the lender.

Restoration of thing to lender before expiration of time.

1835. (1) The lender cannot take back the thing until after the expiration of the time agreed upon, or, in the absence of an agreement, until it has served the purpose for which it was borrowed.

(2) Nevertheless, if during the time agreed upon, or before the borrower has ceased to need the thing, the lender happens to be in

pressing and unforeseen need of making use of the thing, the court may, according to circumstances, compel the borrower to restore it to him subject to the obligation of the lender to reimburse to the borrower any expenses which the latter may have incurred to make use of the thing.

Where extraordinary expenses have been incurred by borrower.

1836. If, during the continuance of the loan, the borrower had to incur, for the preservation of the thing, any extraordinary and necessary expenses of so urgent a nature that he was unable to give previous notice thereof to the lender, the latter shall be bound to reimburse such expenses to him.

Liability of lender in case of defects in thing lent.

1837. When the thing lent has defects that may cause injury to the person making use of it, the lender is answerable for damages, if he knew of such defects and did not warn the borrower.

Question as to whether contract is *commodatum* or *locatio et conductio.*

1838. (1) If any question shall arise as to whether the loan of a thing is by way of a loan for use, or by way of letting and hiring, the person claiming a reward must prove his right thereto by express or tacit agreement.

(2) A tacit agreement may be inferred from the condition of the parties, the quality of the thing, the prolonged use thereof and other circumstances.

Title XVI

OF PRECARIOUS LOAN OR *PRECARIUM*

Definition of *precarium.*

1839. Precarious loan or *precarium* is the same contract of loan for use defined in article 1824 with the only difference that the lender has the power to take back the thing when he pleases.

Restitution on demand.

1840. The borrower of a thing by way of *precarium* cannot delay the restitution thereof, when demanded, on the ground of any prejudice which he might sustain thereby:

Provided that if it appears that the restitution is demanded with intent to cause injury to the borrower, the court shall have power to grant him time for such restitution.

Applicability of rules relating to *commodatum.*

1841. Saving the provisions of the last two preceding articles, the rules laid down with regard to the contract of loan for use, shall apply to the contract of precarious loan.

Title XVII

LOAN FOR CONSUMPTION OR *MUTUUM*

Definition of *mutuum.*

1842. *Mutuum* or loan for consumption is a contract whereby one of the parties delivers to the other a certain quantity of things which are consumed by use subject to the obligation of the borrower to

return to the lender as much of the same kind and quality.

Effect of loan on borrower.

1843. In virtue of such a loan, the borrower becomes the owner of the thing lent, and the loss of such thing falls upon him, in whatever manner it may have occurred.

Liability resulting from loan of money.

1844. (1) The liability resulting from a loan of money is, in all cases, for the same numerical sum stated in the contract.

(2) Notwithstanding any agreement to the contrary, if any change occurs in the monetary system before the expiration of the time for payment, the debtor is only bound to return the numerical sum which was lent to him, in coins according to their legal value at the time of payment.

Restitution in determinate species of coin.

1845. It may be stipulated that the restitution shall be made in a determinate species of coin; and in any such case restitution shall be made in the manner agreed upon, provided that if at the time of payment no such coins can be found or they are put out of circulation, the borrower shall be bound to return the sum to the lender in current coin, and to pay damages, if any.

Loan of ingots or goods.

1846. Where the loan is of ingots or goods, the debtor is, in all cases, bound to return the same quantity and quality, whatever may be the rise or fall in their price.

Applicability of s.1837.

1847. The provisions of article 1837 shall also apply to *mutuum*.

Where borrower cannot return things in the same quantity and quality.

1848. (1) If it is not possible for the borrower, without serious prejudice, to return the things borrowed in the same quantity and quality at the time agreed upon, he is obliged to pay the value thereof, regard being had to the time and place at which they were to be returned.

(2) If the time and place have not been fixed, the payment shall be made according to the current price at the time and place at which the loan was made.

Interest not due unless agreed upon.

1849. No interest is due in respect of *mutuum* unless agreed upon, saving the provisions of articles 1139 and 1140 where the borrower does not return the things borrowed at the time agreed upon, or at the time which, in the absence of an agreement, is fixed by the court.

Stipulation for interest.

1850. (1) It shall be lawful to stipulate for interest on a loan, whether of money or of goods or other movable things.

(2) It shall also be lawful to convert into a new capital at interest, the amount of interest due, provided such interest be not due for a time less than one year.

(3) Any other agreement for payment of interest on interest, is null.

Payment of interest not agreed upon.

1851. (1) The borrower who has paid interest which was not agreed upon, can neither claim it back nor deduct it from the capital, except in so far as such interest exceeds the rate fixed in the next following article.

(2) Nevertheless, the interest paid on any amount of interest

due for a time less than one year, may be claimed back or deducted from the capital, even though the interest so paid does not exceed the said rate.

Rate of interest. *Amended by: XXXIX.1961.2; LIV.1974.9; VI.1983.5; IX.1992.2; III.2009.3.*

1852. (1) The rate of interest cannot exceed eight per cent *per annum*.

(2) Any higher interest agreed upon shall be reduced to the said rate.

(3) If a higher interest than that fixed by law has been paid, the excess shall be deducted from the capital.

Contracts made in evasion of last preceding article.

1853. Any contract, whatever its designation, made in evasion of the provisions of the last preceding article, is subject to rescission; and in any such case, if the things given cannot be returned, the creditor can only demand the payment of their value at the time when he delivered them to the debtor.

Where rate of interest is not agreed upon.

1854. If the borrower has bound himself to pay interest without fixing the rate, interest shall be at the rate of five per cent *per annum*.

Acquittance for capital without reservation as to interest.

1855. An acquittance for the capital, given without any reservation as to the interest, creates a presumption of the payment of the interest, and operates as a discharge thereof, saving any proof to the contrary.

Regulations. *Added by: XXII.2000.101. Substituted by: III.2009.4.* Cap. 234.

1855A. The Minister in conjunction with the Minister responsible for finance may make regulations prescribing the conditions under which debts and obligations as designated by the same regulations may be exempted from any of the provisions of Title IV and Title XVII of Part II of Book Second subject to such conditions as he may in such regulations establish, and further regulating the charging of interests, the compounding of interests in all respects and the maximum amount of interest that may become payable.

Title XVIII

OF MANDATE

Sub-title I

OF THE NATURE AND FORM OF MANDATE

Definition of contract of mandate.

1856. (1) Mandate or procuration is a contract whereby a person gives to another the power to do something for him.

(2) The contract is not perfected until the mandatary has

accepted the mandate.

Object of mandate. *Amended by: VIII.2010.61.*

1857. (1) Every mandate must have for its object something lawful which the mandator might have done himself.

(2) Subject to any other special provision of the law, a mandate can be granted by a public deed, by a private writing, by letter, or verbally, or even tacitly.

(3) An irrevocable mandate granted by way of security as specified in article 1887(1) shall be granted in writing on pain of nullity.

Acceptance by mandatary.

1858. The acceptance on the part of the mandatary may also be tacit, and may be inferred from acts.

Consequences in case of default of mandatary to acquaint mandator of refusal.

1859. Any person carrying on trade or exercising a profession who, without just cause, fails to give notice to the mandator, without delay, of his refusal to accept a mandate relating to commercial or to professional business, as the case may be, is answerable to the mandator for damages occasioned by the delay.

Name of mandatary in blank.

1860. If a mandate is granted by a private writing, the name of the mandatary may be left in blank; in which case, so long as the name is not written, the bearer of the writing or of the instrument or procuration shall be deemed to be the mandatary.

When mandate is gratuitous.

1861. Mandate is gratuitous, unless there is a stipulation to the contrary.

Mandate is special or general.

1862. Mandate is either special, if it is for one matter or for certain matters, only; or general, if it is for all the affairs of the mandator.

Mandate in general terms.

1863. (1) A mandate made out in general terms applies only to acts of administration.

(2) The power to make alienations of property, except such alienations as fall within the limits of the administration, or to hypothecate property or to perform other acts of ownership, must be expressed.

Powers of mandatary.

1864. A mandatary cannot do anything beyond the limits of the mandate.

Mandate given by a person in anticipation of his incapacity. *Added by: XIII.2016.2.*

1864A. (1) A mandate given by a person of full age in anticipation of his incapacity to a mandatary, for the latter to take care of the mandator or to administer his property shall be drawn, under pain of nullity by a notary public in the presence of two witnesses in accordance with the requirements of article 655(1) of this Code, after having obtained a medical declaration that circumstances so require in the best interests of that person. This mandate shall be registered in the same manner as any one of the acts mentioned in article 50 of the Notarial Profession and Notarial Archives Act. Cap. 55.

(2) In the case of a person of full age, performance of the mandate shall be conditional upon the occurrence of the incapacity and after obtaining the necessary approval from the court of voluntary jurisdiction upon application by the mandatary

designated in the act. The court of voluntary jurisdiction may impose those conditions that it may deem necessary.

(3) (*a*) For the purpose of termination of the mandate, that termination has to be drawn by a notary public in the same manner as the mandate was constituted and the termination shall be accompanied by a sworn medical certificate which confirms that the incapacity has ceased and that termination has to be approved by the court of voluntary jurisdiction. That termination shall be registered in the same manner as any one act mentioned in article 50 of the Notarial Profession and Notarial Archives Act.

Cap. 55.

(*b*) Such termination shall be communicated or notified, as the case may be, to the mandatary who shall be bound to cease from representing the mandator with immediate effect. The registrar of the court of voluntary jurisdiction shall send a copy of the termination approved by the court of voluntary jurisdiction to the Chief Notary to Government who shall enter the particulars of such termination in a register held by him for the purpose and which shall be accessible to the public during office hours.

(*c*) If the mandatary continues to represent the mandator after the termination has been communicated or notified to him, the mandatary shall be held personally responsible for damages and shall be considered as acting in contravention of this article.

(4) The provisions of sub-title II of Title XVIII of Part II of Book Second of the Code shall, *mutatis mutandis*, apply to a mandatary appointed in terms of this article.

Acts which the mandatary may perform.

1865. (1) For the carrying out of the mandate, the mandatary may institute legal proceedings; make and prosecute appeals; make proof by reference to the oath of his adversary; take the oath *in litem* or the suppletory oath; enforce judgments both on movable and immovable property; make demand for the issue of precautionary acts including those for the issue of which an application or declaration on oath is required; make demand for the personal arrest of the debtor of the mandator, where such demand is competent; and do any other thing which the mandator might do personally, notwithstanding that such powers have not been expressly given in the mandate.

(2) The mandatary may also, in virtue of the said powers, be a defendant on behalf of the mandator, in any law-suit concerning the matter included in the mandate.

When mandatary may not sue or be sued.
Amended by: VIII.2010.61.

1866. A mandatary, however, may not sue or be sued, on behalf of the mandator, although the latter shall have given him authority to do so, when the mandator himself is not absent from the Island in which the action is to be tried, saving the provisions of article 786 of the Code of Organization and Civil Procedure: provided that a mandatary under an irrevocable mandate granted by way of

Cap. 12.

security may sue on behalf of the mandator irrespective of this provision in order to protect or enforce the interests secured by the mandate.

Other powers of mandatary.

1867. (1) The express power to compromise does not include the power to submit to arbitration or *vice versa*.

(2) The power to receive includes the power to give acquittance.

(3) The power to sell includes the power to receive the price.

General powers.

1868. Where a person has been employed to do something in the ordinary course of his profession or calling, without any express limitation of power, such person shall be presumed to have been given power to do all that which he thinks to be necessary for the carrying out of the mandate, and which, according to the nature of the profession or calling aforesaid, may be done by him.

Minors may be mandataries. *Substituted by: XLVI.1973.96*

1869. Minors may be appointed mandataries; but in any such case the mandator cannot maintain an action against the mandatary except in accordance with the general rules relating to the obligations of minors.

Power of mandator. *Amended by: VIII.2010.61.*

1870. (1) The mandator can, for the execution of a contract, act directly against the person with whom the mandatary in his capacity as such has contracted.

(2) The powers of the mandator in relation to the subject matter of the irrevocable mandate by way of security may be suspended by express agreement for the duration of the mandate.

(3) Such mandates may be registered in a public register. In this article "public register" means:

(*a*) where the subject matter of the mandate is a ship or rights related or connected therewith, the Register of Maltese Ships and by means of an annotation;

(*b*) where the subject matter of the mandate is an aircraft or an aircraft engine or rights related or connected therewith, the National Aircraft Register and by means of an annotation; and

(*c*) in all other cases, the Public Registry by means of a note,

and in such case it shall have effect in relation to third parties and any exercise of any such powers by the mandatary as are suspended shall not have any effect except when done with the written consent of the mandatary.

Where mandatary acts in his own name.

1871. (1) When the mandatary has acted in his own name, the mandator cannot maintain an action against those with whom the mandatary has contracted, nor the latter against the mandator.

(2) In any such case, however, the mandatary is directly bound towards the person with whom he has contracted as if the matter were his own.

Property held subject to fiduciary obligations. *Added by: XIII.2004.43.*

1871A. (1) Any person holding property for another holds property subject to fiduciary obligations to the person engaging him for such purpose and shall be regulated by the provisions of this title and by the provisions of this Code relating to fiduciary obligations.

(2) Where such person acquires property in his own name but on behalf of a mandator, the mandator shall at all times be entitled to demand the immediate and unconditional transfer thereof from the mandatory. The mandatory shall on such demand or, in any case, on the expiration of the time during which the mandate was to continue, immediately render account of his mandate in terms of article 1875 and transfer the property to the mandator by such means as may be appropriate, saving any special terms of the mandate relating to fees and expenses and rights of any third party in good faith.

(3) Notwithstanding article 1886, a mandate in favour of a person acting in terms of this article shall not lapse -

(*a*) on the death of the mandator and shall continue to bind the mandatory to preserve the property and all rights related thereto until such time as the property held by him is validly transferred to the heirs or legatees of the mandator; and

(*b*) on the bankruptcy of the mandator or the mandatory and shall continue to bind the mandatory to preserve the property and all rights related thereto until such time as the property held by him is validly transferred as directed by the competent court for the benefit of the mandator or of the creditors of the mandator, as the case may be.

(4) A term of the mandate purporting to bind a mandatory as referred to above to transfer the property held by him to a third party after the death of the mandator shall not be valid unless such bequest be made by means of a will in accordance with the formalities required by law.

(5) In the event of the death of the mandatory, the heirs at law or the executor, if any, of the will of the mandatory shall be bound by the same obligations to preserve the property held for the mandator and to immediately transfer it to him or as he may instruct, saving such rights to the payment of outstanding dues and expenses according to law.

(6) Notwithstanding the provisions of article 1871(1), in cases where a mandatory, as referred to above, brings, by any means, to the attention of any third party the fact that he is acting in such capacity, the mandatory shall not be personally liable for the obligations entered into other than with and to the extent of the property held by him.

Saving. Cap. 13.

1872. The provisions of this Code shall not affect the provisions of the Commercial Code, or of any other special law or other usages of trade.

Sub-title II

OF THE OBLIGATIONS OF THE MANDATARY

Duties of mandatary.

1873. (1) A mandatary is bound to carry out the mandate so long as he is vested therewith, and in case of non-performance he is answerable for damages and interest.

(2) He is also bound to conclude any matter, which he may have commenced before the death of the mandator, if delay might be prejudicial.

Liability of mandatary.

1874. (1) A mandatary is answerable not only for fraud, but also for negligence in carrying out the mandate.

(2) Nevertheless, such liability in respect of negligence is enforced less rigorously against a person whose mandate is gratuitous than against one receiving a remuneration.

Duty of mandatary to render account.

1875. The mandatary, unless expressly exempted by the mandator, is bound to render to the latter an account of his management and of everything he has received by virtue of the mandate, even if what he has received was not due to the mandator.

Mandatary cannot delegate his authority.

1876. (1) The mandatary cannot substitute another person for himself, if he has not been empowered to do so by the mandator.

(2) If such power has been conferred upon him but without naming the person to be substituted, the mandatary is answerable for the person he has substituted if he has selected a person notoriously incompetent or insolvent or whom he otherwise knew to be such.

(3) In all cases, the mandator may act directly against the person whom the mandatary has substituted.

Where several mandataries are appointed by the same instrument.

1877. (1) Where there are several attorneys or mandataries appointed by the same instrument, there is no joint and several liability between them, unless it be expressly so agreed.

(2) Each of such mandataries may validly carry out the mandate independently of the consent of the other mandataries or notwithstanding their opposition, unless the mandator has expressly ordered that one shall not act without the other, or has otherwise expressly specified their duties.

(3) The limitation of powers of each of the aforesaid mandataries may not be set up against third parties, unless such limitation appears from the instrument of procuration, or unless it is shown that such third parties have otherwise had sufficient knowledge of such limitation.

Liability of mandatary for interest on sums applied to his own use, etc.

1878. A mandatary owes interest on the sums which, without the authority of the mandator, he has applied to his own use, from the day on which he has made such use, and on any other sum in which he shall remain debtor, from the day on which he is put in default, saving, in both the aforesaid cases, the usages of trade.

Mandatary is not personally liable towards party contracting with him as such.

1879. A mandatary who has given to the party with whom he has contracted in such capacity sufficient information as to his powers, is not liable for any warranty in respect of what he has done beyond such powers, unless he has personally bound himself thereto.

Sub-title III

OF THE OBLIGATIONS OF THE MANDATOR

Liability of mandator

1880. (1) A mandator is bound to carry out the obligations contracted by the mandatary in accordance with the powers which he has given him.

(2) He is not liable for what the mandatary has done beyond such powers, unless he has expressly or tacitly ratified it.

towards mandatary

1881. (1) The mandator must repay to the mandatary the advances and expenses made or incurred by him in carrying out the mandate; and he must pay him the remuneration if promised to him, or if it is presumed to have been tacitly agreed upon, regard being had to the profession of the mandatary and to other circumstances.

(2) If no negligence be imputable to the mandatary, the mandator cannot refuse to make such reimbursement and payment, even though the matter has not been successful; nor can he have the amount of such expenses and advances *bona fide* incurred or made, reduced, on the ground that they might have been less.

for losses

1882. The mandator must also indemnify the mandatary for the losses he has sustained by reason of the mandate, where no negligence is imputable to him.

for interest on advances and expenses.

1883. Interest is due by the mandator to the mandatary on the advances and expenses mentioned in article 1881 from the day of the payment of such sums.

Where the mandators are two or more, they are jointly and severally liable towards mandatary.

1884. Where the mandatary has been appointed by several persons for a common business, each of them is jointly and severally liable towards him for all the consequences resulting from the mandate.

Right of retention competent to mandatary.

1885. The mandatary shall have the right of retention, so long as he is not paid what is due to him in consequence of the mandate.

Sub-title IV

OF THE WAYS IN WHICH MANDATE IS TERMINATED.

Termination of mandate.
Amended by: VIII.2010.61; IV.2016.24.

1886. (1) Mandate is terminated -

(*a*) by the revocation of the procuration;

(*b*) by the death, the interdiction or the incapacitation, whether general or special, from entering into contracts, the declaration of bankruptcy, or the *cessio bonorum* either of the mandator or of the mandatary;

(*c*) by the termination of the powers of the mandator;

(*d*) by the expiration of the time during which the mandate was to continue;

(*e*) by the renunciation on the part of the mandatary:

Provided that:

(i) in the case of the termination of a mandate whereby the mandatory, being a physical person, has been empowered to transfer immovable property on behalf of the mandator or where the mandate is one of a general nature given between physical persons, such termination may be notified by the mandator or by any other person having an interest in the mandate to the Chief Notary to Government who will enter the particulars of such termination in a register held by him for the purpose and which shall be accessible to the public during office hours; and

(ii) the Minister shall have the power to issue regulations to establish an electronic register where the registration of mandates and their termination may be made and to establish such formalities, fees and applicable procedures for registration in the said electronic register and to regulate access to the said register.

(2) An irrevocable mandate by way of security shall not terminate upon the events stated in sub-article (1) and shall continue to be binding on, or continue for the benefit of, the heirs or liquidator (or similar officer) of the mandator, or of the mandatary, or the creditor if a different person, in accordance with its terms. Neither shall such an irrevocable mandate terminate on such events when they occur in relation to a mandatary who is a different person than the creditor in whose favour the mandate has been granted.

(3) The creditor whose interests are secured through the mandate, or his heirs, or liquidator (or similar officer), may appoint a substitute to act as mandatary, including himself, or may apply to the Court of voluntary jurisdiction to make such appointment.

Revocation of mandate. *Amended by: VIII.2010.61.*

1887. (1) The mandator may revoke the mandate whenever he chooses, unless the mandate is expressly stated to be granted by way of security in favour of the mandatary or of any other person, and that it is irrevocable, in which case it may only be revoked with the consent of the person whose interest is secured thereby. The mandatary under such an irrevocable mandate granted by way of security, shall be bound to act in a fair and reasonable manner when exercising the powers granted thereunder, provided that a mandate by way of security which is irrevocable may only be granted when the object to which it relates is property which is movable, by nature or by operation of law, and it shall not be permissible for such a mandate to be issued with reference to immovable property or rights therein.

(2) Where powers are exercised under an irrevocable mandate granted as stated above and form part of or are granted pursuant to or in the context of a written agreement governing a broader relationship, the mandatary shall furthermore be bound to exercise such powers in accordance with the terms and subject to the conditions of such agreement.

(3) Except as provided in the preceding sub-article, the appointment of a new mandatary for the same business is equivalent to a revocation of the mandate given to the previous one, even though the new mandatary does not accept the mandate.

(4) A general mandate does not produce the revocation of a special mandate previously given, unless the business contemplated in the special mandate is expressly included in the general mandate.

Termination of mandate does not affect third parties not knowing of such termination.

1888. (1) The existence of any of the causes for which a mandate is terminated cannot be set up against third parties who, having no knowledge of such cause, have contracted with the mandatary; saving the right of the mandator to seek relief against the mandatary, where competent.

(2) Nor may the existence of any such cause be set up against the mandatary, if at the time of acting he also had no knowledge thereof.

Renunciation of mandate.

1889. (1) A mandatary may renounce the mandate by giving notice of his renunciation to the mandator.

(2) Nevertheless, if the renunciation is prejudicial to the mandator, he must be compensated by the mandatary, unless it is impossible for the latter to continue to carry out the mandate without suffering himself considerable prejudice.

Duty of heirs of deceased mandatary.

1890. In case of the death of the mandatary, his heirs must, if they know that he was a mandatary, give notice thereof to the mandator, and attend, in the meantime, to what is required in the interest of the latter, as circumstances may demand.

OF DEPOSIT

1891. Deposit, in general, is a contract whereby a person receives a thing belonging to another person subject to the obligation of preserving it and of returning it in kind. Definition of deposit.

Sub-title I

OF DEPOSIT PROPERLY SO CALLED

1892. (1) Deposit properly so called is a gratuitous contract, saving any stipulation to the contrary. Nature of deposit properly so called.

(2) Only movable things can be the subject of such deposit.

1893. (1) A deposit is only perfected by the delivery of the thing to the depositary. How deposit is perfected.

(2) The delivery is effected by the consent alone, if the thing is already in the hands of the depositary by any other title and it is agreed that it is to remain in his hands as a deposit.

1894. A deposit of money or of other things which are consumed by use, is regulated by the laws relating to loan for consumption or *mutuum*, whenever power has been granted to the depositary to make use of the thing deposited on the sole condition of returning as much of the same kind and quality. When depositary may make use of thing deposited.

1895. Deposit is voluntary or necessary. Voluntary or necessary deposit.

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§ I. OF VOLUNTARY DEPOSIT

1896. A voluntary deposit takes place by the mutual consent of the person who makes the deposit and of the person who receives the thing on deposit. Nature of voluntary deposit.

1897. (1) A voluntary deposit can only take place between persons who are capable of contracting. Between whom voluntary deposit can take place.

(2) Nevertheless, if a person capable of contracting accepts a deposit made by a person who is incapable, the former is bound by all the obligations of a true depositary.

1898. If the deposit has been made by a person who is capable of contracting to another who is not, the person who has made the deposit cannot but claim the recovery of the thing deposited so long as it exists in the hands of the depositary, or bring an action for restitution to the extent of the benefit accruing in favour of the latter. Voluntary deposit made by a person capable to one who is not.

OF THE OBLIGATIONS OF THE DEPOSITARY

Diligence to be used by depositary.

1899. A depositary must, for the custody of the thing deposited, use the same diligence which he uses for the custody of his own things.

Cases where a higher degree of diligence is required.

1900. (1) The provisions of the last preceding article shall be applied more rigorously -

(*a*) if the depositary has himself offered to receive the deposit;

(*b*) if he has stipulated for a reward for the custody of the deposit;

(*c*) if the deposit has been made solely in the interest of the depositary;

(*d*) if it has been expressly agreed that the depositary shall be answerable for every kind of negligence.

(2) In each of the cases referred to in paragraphs (*a*), (*b*) and (*c*) of sub-article (1) of this article, the provisions of sub-article (1) of article 1132 shall apply; and in the case referred to in paragraph (*d*) of the same sub-article, the depositary shall be liable even for the slightest negligence.

Depositary not answerable for casual misfortunes or loss.

1901. A depositary is in no case answerable for accidents resulting from irresistible force, unless he has been put in default for delay in restoring the thing deposited; nor shall he be answerable, in the latter case, if the thing would have equally perished in the possession of the depositor.

He cannot make use of thing deposited.

1902. The depositary cannot make use of the thing deposited without the express or implied consent of the depositor.

He shall not attempt to discover what are the things deposited.

1903. He shall not attempt to discover what are the things which have been deposited with him, if they have been entrusted to him in a closed box or under a sealed cover.

Restoration of thing deposited,

1904. (1) The depositary must restore the identical thing which he has received, in the condition in which it may be at the time of its restitution.

(2) Any deterioration which occurs through no fault of the depositary, shall be borne by the depositor.

or of thing received in its place.

1905. A depositary from whom the thing deposited has been taken away by irresistible force, and who has received a sum of money or some other thing in its place, must restore what he has received.

Duties of heir of depositary.

1906. The heir of the depositary who has sold in good faith a thing which he did not know to be a deposit, is only bound to return the price which he has received, or to assign his right of action against the buyer if the price has not been paid to him.

Where thing deposited has produced fruits.

1907. If the thing deposited has produced fruits which have been collected by the depositary, he is obliged to restore them.

1908. The depositary must restore the thing deposited only to the person who has entrusted it to him, or to the person in whose name the deposit has been made, or to the person who has been appointed to receive back the thing.

To whom restoration is to be made.

1909. (1) The depositary cannot require the depositor to prove that he is the owner of the thing deposited.

Depositary may not require depositor to prove ownership of thing.

(2) Nevertheless, if the depositary discovers that the thing has been lost or stolen, he must inform the person from whom it was stolen, or who lost it, of the deposit which has been made with him, allowing him a sufficient time to claim such deposit. If the person so informed fails to claim the deposit within the said time, the depositary is released by delivering the deposit to the person from whom he has received it.

1910. In case of death of the depositor, the thing deposited can only be restored to his heir.

When depositor dies, thing is to be restored to heir.

1911. If there are several heirs, or if otherwise the thing deposited belongs to several persons the depositary may not restore the thing except with the concurrence of all of them, unless the share of each is determined.

Where there are several heirs.

1912. If the status of the person who has made the deposit has changed, as for instance, if a person of age who made the deposit has been interdicted, in all such and similar cases, the depositary who knows of such change of status, cannot restore the deposit except to the person who has the administration of the rights and property of the depositor.

Where status of depositor has changed.
Amended by: XLVI.1973.97.

1913. If the deposit has been made by a tutor or curator, or by a spouse or an administrator, in any of such capacities, it cannot be restored except to the person whom such tutor, curator, spouse or administrator represented, if their administration has terminated and the depositary knows of such termination.

Where deposit is made by tutor, etc.
Amended by: XXIII.2017.87.

1914. (1) The restitution of the deposit must be made at the place where the thing deposited exists. If another place has been specified in the contract, the depositary is bound to take the thing to such place.

Where restitution of deposit is to be made.

(2) The expenses of removal shall be borne by the depositor.

1915. The deposit must be restored to the depositor as soon as he demands it, even though the contract has fixed a time for the restitution, unless there is opposition to its restitution, by a garnishee order or a judicial demand.

Time for restitution.

1916. (1) The depositary may compel the depositor to withdraw the deposit.

Rights of depositary.

(2) He cannot, however, without just cause, compel him to withdraw the deposit before the time agreed upon.

1917. All the obligations of the depositary cease, if he discovers and proves that he himself is the owner of the thing deposited.

Obligations of depositary to cease, if he is the owner of the deposit.

OF THE OBLIGATIONS OF THE DEPOSITOR

Reimbursement of expenses incurred by depositary.

1918. The depositor is bound to reimburse to the depositary the expenses which the latter has incurred for the preservation of the thing deposited and to make good to him all the losses which the deposit may have occasioned him.

Depositary may retain deposit until reimbursement of expenses.

1919. The depositary may retain the deposit until full payment of what is due to him by reason of such deposit.

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§ II. OF NECESSARY DEPOSIT

Nature of necessary deposit.

1920. A necessary deposit is that which a person is compelled to make owing to some calamity, as, for instance, in case of a fire, destruction, pillage, shipwreck or other unforeseen emergency.

Applicability of provisions relating to voluntary deposit.

1921. All other provisions relating to voluntary deposit shall also apply to necessary deposit.

Sub-title II

OF CONVENTIONAL SEQUESTRATION

Nature of conventional sequestration.

1922. (1) Conventional sequestration is the deposit of a thing in dispute made in the hands of a third party who binds himself to restore it, after the controversy is terminated, to the person to whom the thing shall be declared to belong.

(2) The subject of a conventional sequestration may be movable as well as immovable property.

Release of sequestrator.

1923. The sequestrator cannot be released before the controversy is terminated, except with the consent of the persons who have entrusted the thing to him, or for a just cause.

Applicability of provisions relating to voluntary deposit.

1924. The provisions relating to voluntary deposit shall apply to conventional sequestration.

Title XX

OF SURETYSHIP

Sub-title I

OF THE NATURE AND EXTENT OF SURETYSHIP

Definition of contract of suretyship.

1925. Suretyship is a contract whereby a person binds himself towards the creditor to satisfy the obligation of another person, if the latter fails to satisfy it himself.

Suretyship to be only in respect of a valid obligation. *Amended by: XLVI.1973.98.*

1926. (1) Suretyship can only exist in respect of a valid obligation.

(2) Nevertheless, suretyship may be contracted for an obligation which can be annulled on some plea personal to the debtor, as for instance, that of disability arising from minority or interdiction.

Suretyship cannot exceed debt.

1927. (1) Suretyship cannot exceed what is due by the debtor, nor be contracted under more onerous conditions.

(2) It may be contracted for a part only of the debt, and under less onerous conditions.

(3) The suretyship which exceeds the debt or is contracted under more onerous conditions shall only be valid to the extent of the principal obligation.

Any person may become surety without knowledge of debtor.

1928. (1) Any person may become surety without the request and even without the knowledge of the party for whom he binds himself.

(2) A person may also become surety, not only for the principal debtor, but also for his surety.

Suretyship cannot be presumed.

1929. Suretyship cannot be presumed, it must be expressed; and it cannot be extended beyond the limits within which it has been contracted.

Suretyship in general terms.

1930. (1) A suretyship contracted for a principal obligation, in general terms, extends to all accessories of the debt.

(2) It also extends to the expenses necessarily incurred for obtaining payment provided the creditor, before commencing the proceedings giving rise to such expenses, gives notice thereof to the surety, by means of a judicial act.

(3) The expenses of such act are included in the expenses to which the suretyship extends.

Qualifications of surety.

1931. A debtor who is obliged to produce a surety must offer a person who is capable of entering into contracts, who has sufficient property to answer for the subject-matter of the obligation, and whose domicile is in Malta.

Where surety becomes insolvent.

1932. (1) When a surety accepted by the creditor, whether voluntarily or by order of the court, afterwards becomes insolvent, the debtor must produce another.

(2) An exception to this rule is made only where the surety has been given in virtue of a covenant by which the creditor has required that particular person as surety.

Wife may not be surety of husband. *Substituted by: XLVI.1973.99.*

1933. *Repealed by article 83 of Act XX1 of 1993.*

Sub-title II

OF THE EFFECTS OF SURETYSHIP

§ I. OF THE EFFECTS OF SURETYSHIP AS BETWEEN CREDITOR AND SURETY

When surety is bound to pay.

1934. The surety is only bound to pay in the event of the default of the principal debtor whose property must first be discussed.

When benefit of discussion does not apply.

1935. The benefit of discussion shall not apply -

(*a*) if the surety has renounced such benefit;

(*b*) if the surety has bound himself, jointly and severally, with the debtor;

(*c*) if the debtor can set up a personal plea, such as those mentioned in article 1926;

(*d*) if the debtor has become insolvent.

Liability of creditor, when benefit of discussion is admitted. Cap. 12.

1936. When the benefit of discussion has been admitted, the creditor is, to the extent of the property stated in the list produced in accordance with the provisions contained in Sub-title VIII of Title II of Book Third of the Code of Organization and Civil Procedure, liable towards the surety for the insolvency of the principal debtor which has supervened in consequence of the creditor himself having delayed the institution or proceedings or the prosecution with due diligence of the proceedings commenced.

When several persons have become sureties for the same debtor.

1937. (1) When several persons have become sureties for the same debtor and the same debt, each one shall be liable for the whole debt.

(2) Nevertheless, each one of them may, unless he has renounced the benefit of division, or unless he has bound himself jointly and severally with the debtor, demand that the creditor should divide his action and reduce it to the share due by each surety.

Insolvency of co-sureties.

1938. If, at the time when one of the sureties has obtained such division, some of them are insolvent he is liable proportionately for the shares of those who are insolvent; but no claim can be made against him in respect of the share of any other surety who becomes insolvent subsequently to the division.

1939. If the creditor has himself voluntarily divided his action, he may not repudiate such division, even though there were insolvent sureties previously to the time when he consented to such division.

Division of action by creditor.

1940. A surety for the surety is not liable towards the creditor, except where the principal debtor and all the sureties are insolvent, or have been released consequent on some plea personal to the debtor and to the sureties.

Liability of surety's surety.

1941. In commercial matters, the surety is always, in the absence of an agreement to the contrary, presumed to be bound jointly and severally with the debtor.

Surety in commercial matters.

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§ II. OF THE EFFECTS OF SURETYSHIP AS BETWEEN DEBTOR AND SURETY

1942. (1) A surety who has paid has a right to relief against the principal debtor, whether the suretyship has been contracted with the consent of the debtor or without his knowledge.

Right of relief of surety against principal debtor.

(2) This right of relief shall extend both to the capital and to the interest and expenses:

Provided that with regard to expenses, the surety has no right to relief except for those incurred after he has, by means of a judicial act, given notice to the principal debtor of the molestations which he has sustained.

1943. (1) He may also claim relief for interest on any sum that he has paid for the debtor, although the debt did not yield interest, as well as for damages, if any.

Interest and damages due to surety.

(2) The interest, however, which was not due to the creditor, does not run in favour of the surety, except from the day on which the latter shall have, by means of a judicial act, given notice to the debtor of the payment made.

1944. If the suretyship has been contracted against the will of the debtor, the surety shall not be entitled to relief against the debtor except to the extent of the advantage accruing to him.

Where suretyship is given against will of debtor.

1945. A surety who has paid the debt succeeds *ipso jure* to all the rights which the creditor had against the debtor; saving always the provisions of article 1167 where a part only of the debt has been paid.

Effect of payment by surety.

1946. When there are several principal debtors jointly and severally bound for the same debt, the person who stands surety for all of them, has against each one of them a right of relief for the whole of the amount he has paid.

Right of relief of surety where there are several debtors jointly and severally liable.

1947. (1) A surety has no right to relief against the principal debtor, if the latter, not having been notified by the surety of the payment made by him, pays as well.

When surety forfeits his right of relief against debtor.

(2) A surety who has paid without having notified the principal

debtor, has no right to relief against the latter, if, at the time of the payment, the debtor was in possession of such means as would have enabled him to have the debt declared extinct.

(3) In each of the aforesaid cases the right of the surety to an action for recovery against the creditor remains unimpaired.

When surety may proceed against debtor to be indemnified.

1948. A surety, even before paying, may proceed against the debtor to be indemnified by him -

(*a*) if he has been sued for payment;

(*b*) if the debtor has become bankrupt or insolvent, or his condition has altered and there is a reasonable apprehension of insolvency;

(*c*) if the debtor has undertaken to release him from the suretyship within a specified time, and such time has elapsed;

(*d*) if the debt has become due by the expiration of the time agreed upon for payment;

(*e*) if the debtor is in default for delay in payment;

(*f*) at the expiration of two years, where no time has been fixed for payment, and the obligation is not, of its nature, such that it cannot be extinguished before a longer time.

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§ III. OF THE EFFECTS OF SURETYSHIP AS BETWEEN CO-SURETIES

Rights of co-sureties as between themselves.

1949. (1) Where several persons have become sureties for the same debtor and for the same debt, the surety who has paid the debt, has a right to relief against the other co-sureties for their respective shares.

(2) The surety is entitled to such relief only if he has paid in any of the cases mentioned in the last preceding article.

Insolvent co-sureties.

1950. A surety who has discharged the debt may only claim from each of his co-sureties the amount for which each co-surety is liable and is himself liable, together with the other co-sureties, for contribution in respect of the shares of the insolvent sureties, even though, on paying, he may have obtained from the creditor an express assignment of the latter's rights.

Sub-title III

OF LEGAL AND JUDICIAL SURETYSHIP

1951. Where a person is required by law or by an order of the court to produce a surety, the surety offered must have the qualifications mentioned in article 1931.

Qualifications of surety.

1952. A person who cannot find a surety may in lieu thereof give a pledge or other security sufficient for the discharge of the debt.

Pledge may be given if a surety cannot be found.

1953. A legal or judicial surety cannot demand the discussion of the principal debtor.

Legal or judicial surety cannot claim the *beneficium escussionis* as against the principal debtor.

1954. A person who has only bound himself as surety for a legal or judicial surety may claim the discussion of the latter.

Surety for legal or judicial surety may claim discussion of the latter.

1955. The provisions of this sub-title shall not be in derogation of the provisions contained in the Code of Organization and Civil Procedure.

Saving clause. Cap. 12.

Sub-title IV

OF THE EXTINGUISHMENT OF SURETYSHIP

1956. The obligation which arises from suretyship is extinguished for the same causes as all other obligations.

Extinguishment of obligation from suretyship.

1957. The merger which takes place in the person of the principal debtor and his surety, when the one becomes the heir of the other, shall not operate so as to extinguish the right of action of the creditor against the person who has become surety for the surety.

Where merger takes place in the person of the debtor and his surety.

1958. A surety may set up against the creditor all the pleas which appertain to the principal debtor, and which are inherent in the debt; but he may not set up pleas which are purely personal to the debtor.

Pleas which surety may set up against the creditor.

1959. A surety, even if jointly and severally bound, is released, if the subrogation to the rights, hypothecs, and privileges of the creditor cannot take place in his favour owing to the fault of the creditor.

Release of surety where subrogation cannot take place.

1960. If the creditor releases one of his sureties without the consent of the others, such release operates in favour of the other sureties to the extent of the share of the surety so released.

Where creditor releases one of his sureties without the consent of the others.

Acceptance by creditor of immovable or other property in payment of debt.

1961. Where the creditor voluntarily accepts immovable or other property in discharge of the principal debt, the surety is released, even though the creditor is afterwards evicted from such property.

Extension of time does not release surety.

1962. The mere extension of time granted by the creditor to the principal debtor does not release the surety, who may, in such case, proceed against the debtor to compel him to effect payment.

Duration of obligation of surety.

1963. The surety who has limited his obligation to the same term which was granted to the principal debtor shall continue to be bound even beyond that term, for all the time which may be necessary to compel the debtor to effect payment, provided the creditor, within two months from the expiration of such term, commences proceedings and prosecutes them with due diligence.

Title XXI

OF CONTRACTS OF PLEDGE

Definition. *Substituted by: LVIII.1975.11.*

1964. (1) Pledge is a contract created as a security for an obligation. The pledge may be given either by the debtor himself or by a third party for the debtor.

(2) The things that may be given as a pledge are movable things and debts and other rights relating to movable things.

Pledge of movable things. *Substituted by: LVIII.1975.12.*

1965. (1) The pledge of movable things is constituted by the delivery to the creditor of the thing pledged or of the document conferring the exclusive right to the disposal of the thing.

(2) The thing pledged or the document aforesaid may also be delivered to a third party selected by the parties to the contract or placed in the custody of both parties in such a way that the party giving the pledge may not dispose of it without the co-operation of the creditor.

Effects of pledge. *Amended by: IV.1907.1. Substituted by: LVIII.1975.13.*

1966. (1) A pledge confers upon the creditor the right to obtain payment out of the thing pledged with privilege over other creditors as provided in Title XXIII.

(2) The said privilege exists over the thing pledged only if such thing or the document relating to it has been delivered or placed in custody as provided in article 1965 and only so long as such thing or document remains in the possession of the creditor or of the third party selected by the parties or in the custody of both parties as aforesaid.

(3) Where the thing pledged is a debt or other right in respect of which there is no such document as is referred to in article 1965, the said privilege shall not arise unless the pledge results from a public deed or a private writing, and either notice of the pledge has been given by a judicial act served on the debtor of the debt or other right or such debtor has in writing acknowledged the pledge.

(4) Where such debt or other right results from a document, the

person giving the pledge shall, except where the document is a public deed, be bound to deliver the document to the creditor.

Retention of pledge for other debts.

1967. If the same debtor contracts another debt with the same creditor subsequently to the delivery of the thing pledged, the creditor, in the absence of an agreement to the contrary, shall have, in respect of the second debt, the same rights on the thing pledged as are competent to him in respect of the prior debt, even though it has not been expressly agreed that the pledge should be made liable for the payment of the second debt.

Where the thing pledged is a debt. *Substituted by: LVIII.1975.14.*

1968. (1) Where the thing pledged is a debt, the pledgee shall be responsible for the collection of such debt on maturity, and shall place the moneys or other things received either as agreed or, failing such agreement, as the court may determine.

(2) If the debt secured by the pledge is due, the pledgee may retain, from any moneys received as aforesaid, an amount sufficient to satisfy his rights and shall deliver the remainder to the pledgor; and if the thing received is not money, he may proceed with the sale of the thing as provided in article 1970.

(3) The creditor of a debt secured by the pledge of another debt may, at any time after his debt becomes due, demand that the debt pledged in his favour be assigned to him in payment up to the amount of his debt.

(4) The debtor of a debt given in pledge may oppose to the creditor of the debt secured thereby all the pleas which he could have set up against his own creditor; but if such debtor has himself accepted without reservation the giving of the debt in pledge, he may not oppose to the creditor of the debt so secured any compensation that may have taken place before the giving of the pledge.

Pledge of thing not belonging to pledgor. *Amended by: XLIX.1981.6.*

1969. (1) The thing given as a pledge by a person to whom it does not belong is validly pledged, and the owner cannot recover it, except on payment of the debt in respect of which it was pledged.

(2) This provision except as regards Il-Monti shall not apply in the following cases:

(*a*) when it is shown that the pledgee was in bad faith;

(*b*) when the thing pledged is proved to have been stolen, and the pledgor could not, presumably, have been the owner thereof.

Sale of pledge by auction. *Amended by: IV.1907.2,3; XXXIX.1976.8.*

1970. (1) The creditor, unless such creditor be Il-Monti, cannot dispose of the thing pledged in case of non-payment: but he may cause the thing to be sold by auction under the authority of the court.

Power of the court in case of pledges having a stock exchange or market value.

(2) The demand of the creditor for such sale may be made even by means of an application and it shall be lawful for the court upon such application to order the sale of the thing pledged, if the debtor or his lawful representative, duly served with a copy of such application with a time of three days within which to file an answer, fails to file such answer or makes no opposition to the

demand.

(3) It shall be lawful for the court, on good cause being shown, to abridge at its discretion the times fixed in articles 256 and 312 and in the latter part of sub-article (3) of article 314 of the Code of Organization and Civil Procedure.

Cap. 12.

(4) If the thing pledged has a stock exchange or market price, it shall be lawful for the court, on the application of the creditor, to be served upon the debtor or his lawful representative, to order that the sale of the thing pledged, even though such sale be in execution of a judgment, be carried out, instead of by auction, by means of a public broker or a bank or other banking institution to be appointed by the court.

(5) The application referred to in the last preceding sub-article of this article may not, except where the sale of the pledge is in execution of a judgment, be made by the creditor until after the lapse of three days from the service of an intimation, calling upon the debtor or his lawful representative to pay the debt within the said time and warning him that in default of payment, proceedings will be taken for the sale of the pledge.

(6) In no case shall the opposition of the debtor to the sale of the pledge as provided in sub-article (4) of this article operate so as to prevent or delay such sale, saving the right of the debtor to maintain an action for damages, where competent.

(7) In the case referred to in sub-article (4) of this article the court may, if the creditor is a bank or other banking institution, authorize such creditor to sell the pledge at the current price, saving the right of the debtor to maintain an action for damages, where competent.

(8) The public broker, or the bank or other banking institution referred to in this article shall, within twenty-four hours from the receipt of the proceeds of the sale of the pledge, pay such proceeds into the court by which the sale was ordered, after deducting therefrom any expenses and commission which may be due.

When debtor may demand sale of pledge.

1971. The debtor also may, after the debt has fallen due, or even before if the time for payment was not stipulated in favour of the creditor, demand in the manner prescribed in the last preceding article the sale of the pledge in order to pay the debt in respect of which the pledge was given.

When the thing pledged cannot be preserved without deterioration.

1972. The sale of the pledge may be demanded at any time both by the debtor and by the creditor if it is shown that the thing pledged can no longer be preserved without deterioration.

Certain covenants are void.

1973. Any covenant allowing the creditor to appropriate the thing pledged, or to dispose of it without complying with the formalities prescribed in article 1970 or depriving the creditor or the debtor of the right to demand the sale of the pledge as provided in articles 1970, 1971 and 1972 is void.

Debtor to remain the owner of the thing pledged.

1974. The debtor remains the owner of the thing pledged until he is divested of the ownership thereof.

Liability of creditor.

1975. (1) The creditor is liable for the loss or deterioration of the thing pledged resulting from his negligence.

(2) The debtor is bound on his part to refund to the creditor any expenses which the latter may have incurred for the preservation of the pledge.

Fruits.

1976. The fruits of the pledge shall be deemed to form a part thereof, and shall be subject to all the rights of the creditor as the pledge itself.

How interest or other profits of pledge are to be appropriated.

1977. (1) If the thing pledged bears interest or yields other profits, the creditor shall appropriate such interest or profits to the interest which may be due to him.

(2) If the debt in security of which the pledge was given does not bear interest, the appropriation shall be made to the principal of the debt.

(3) Any covenant contrary to the provision of this article is null.

Abuse of pledge by creditor.

1978. In case of abuse of the pledge on the part of the creditor, the debtor may demand that the thing pledged be deposited with a third party, in order to safeguard the rights of the creditor and of the debtor.

Restitution of pledge to debtor.

1979. The debtor cannot claim the restitution of the thing pledged until he has wholly paid the principal, interest and expenses of the debt for which the pledge is liable.

Creditor may make use of pledge.

1980. The creditor may, with the consent of the debtor, make use of the pledge, saving the provisions of article 1977 in case the creditor should derive an advantage therefrom.

Use of pledge without debtor's consent to be deemed abuse.

1981. The use of the thing pledged made by the creditor without the consent of the debtor shall be deemed to be an abuse thereof, and the creditor shall be liable to the consequences mentioned in article 1978, and shall, moreover, be bound to make the appropriation referred to in article 1977, if he has derived any advantage from such use.

Sub-pledging of thing pledged with debtor's consent.

1982. The creditor who with the consent of the debtor sub-pledges the thing which he holds by way of pledge shall continue to be liable for any loss of or injury to the thing pledged, which is caused by negligence, as well as for the restitution of the pledge at the time when such restitution is due.

Sub-pledging of thing pledged without debtor's consent.

1983. The creditor who without the consent of the debtor sub-pledges the thing which he holds by way of pledge, shall be liable also for any loss or injury caused by a fortuitous event, where the thing pledged would not have been lost or injured if it had remained in the possession of the creditor.

Use of pledge by sub-pledgee.

1984. If the person to whom the thing has been given by the creditor by way of sub-pledge, makes use thereof, the provisions of articles 1980 and 1981 shall apply in favour of the debtor who had given such thing to the creditor by way of pledge.

Indivisibility of pledge.

1985. (1) A pledge is indivisible, notwithstanding the divisibility of the debt between the heirs of the debtor or the heirs

of the creditor.

(2) The heir of the debtor who has discharged his share of the debt cannot demand the restitution of his share of the pledge until the whole debt has been discharged.

(3) On the other hand, the heir of the creditor who has received his share of the debt, cannot return the pledge to the prejudice of the unpaid co-heirs.

Saving clause as to advances on goods in commercial transactions.

1986. The provisions of this Title shall not affect other laws and usages in force touching the rights of creditors in respect of advances made on goods, in commercial transactions.

Title XXII

OF ANTICHRESIS

Definition of contract of antichresis. *Amended by: XXX.1981.13; XX.1984.3; V.1993.3.*

1987. (1) Antichresis is a contract whereby a creditor acquires the right to collect the fruits of an immovable belonging to his debtor, subject to his obligation of deducting annually such fruits from the interest if any be due to him, and then from the principal of the debt.

(2) Antichresis can only be created by virtue of a writing.

(3) Any antichresis created by virtue of a public deed before the 28th February, 1961, for a period exceeding thirty years, is deemed to be a sale, provided the said public deed is enrolled in the Public Registry as a transfer by title of sale.

(4) The enrolment referred to in sub-article (3) of this article may be made at any time by the creditor or by any person deriving title from the creditor.

Liabilities of creditor.

1988. (1) The creditor is bound, unless it has been otherwise agreed, to pay the ground-rent and other burdens to which the immovable which he holds in antichresis is subject.

(2) He must also provide for the maintenance and the necessary repairs of the immovable.

(3) All the expenses for the above purposes shall be deducted from the fruits.

Resumption of enjoyment of immovable.

1989. (1) The debtor cannot, before he has wholly satisfied his debt, resume the enjoyment of the immovable which he has given by way of antichresis.

(2) Nevertheless, the creditor who wishes to release himself from the obligations mentioned in the last preceding article, can always compel the debtor to resume the enjoyment of the immovable, unless he has renounced such right.

Ownership of immovable not to vest in creditor.

1990. (1) The creditor does not become the owner of the immovable by the mere default of payment at the time agreed upon;

and any agreement to the contrary is void.

(2) In default of payment, he may sue for the sale of the immovable by judicial auction according to the provisions of the Code of Organization and Civil Procedure. Cap. 12.

Setting off of fruits against interest. *Amended by: XXXIX.1961.2*

1991. The contracting parties may stipulate that the fruits be set off against the interest, in whole or in part, even though the interest agreed upon may thus be exceeded, provided the interest shall not thereby exceed the rate of eight per cent *per annum*.

Applicability of provisions relating to pledge. *Substituted by: LVIII.1975.15.*

1992. (1) Antichresis may be given by a third party for the debtor.

(2) The provisions of articles 1979 and 1985 shall also apply to antichresis.

Rights of third parties on immovable subjected to antichresis.

1993. (1) Nothing in this Title shall affect the rights which third parties may have on the immovable subject to antichresis.

(2) If the creditor who holds the immovable by way of antichresis, enjoys, independently of such antichresis, any right of privilege or hypothec lawfully created on such immovable, he may exercise such right of privilege or hypothec in the order competent to him and as any other creditor.

Title XXIII

OF PRIVILEGES AND OF HYPOTHECS

Debtor's property to be subject to his liabilities.

1994. Whosoever has bound himself personally, is obliged to fulfil his obligations with all his property, present and future.

Debtor's property to constitute common guarantee of his creditors. *Amended by: VIII.2010.61.*

1995. (1) The property of a debtor is the common guarantee of his creditors, all of whom have an equal right over such property, unless there exist between them lawful causes of preference or there shall have been a transfer of any property by way of security or a transfer under a security trust for such purpose in accordance with this Code.

(2) Property is lawfully transferred by way of security, if made in accordance with article 2095E or articles 2095F to 2095I and such transfer shall not be subject to re-characterisation as any other contract.

(3) Creditors of the transferor may impeach any transfer by way of security as aforesaid if the transfer is made in fraud of their rights. For the purposes of article 1144 such transfers shall be considered to be onerous and in case of a security trust, the creditor must prove fraud on the part of both the transferor and the transferee but it shall be sufficient if he proves fraud either on the part of the security trustee or on the part of the beneficiary whose interest is being secured thereby.

Causes of preference.

1996. The lawful causes of preference are privileges, hypothecs and the benefit of the separation of estates.

Right of creditor to modify own rights. *Added by: V.2006.26. Substituted by: XV.2009.52.*

1996A. (1) It shall be lawful for a creditor to subordinate, postpone, waive or otherwise modify his existing or future rights of payment, enforcement, ranking and other similar existing or future rights in favour of another person.

Such subordinatation, postponement, waiver, modification or similar action may be made by agreement with or by unilateral declaration to any person, including another creditor, whether determined or yet to be determined at the time of the entry of such agreement or the making of such declaration.

The words "creditor" and "person" as used in this article shall include a class of creditors or a class of persons, as the case may be, whether the members of either such class are determinate or yet to be determined.

(2) Notwithstanding that the right may arise from a public deed, be registered in a public register or be subject to any other formality, an agreement or declaration as contemplated by this article shall be valid and enforceable between the relevant parties if made in writing without the need of any other formality or registration:

Provided that such agreement or declaration may be registered by any party to such agreement and by any maker of such declaration -

(*a*) at the ship registry by means of an annotation,

(*b*) at the aircraft registry by means of an annotation,

(*c*) in all other cases, at the Public Registry by means of a note,

and in such case it shall have effect in relation to third parties.

(3) Such subordination, postponement, waiver, modification or other similar action in respect of any existing or future rights may be governed by a trust instrument in terms of which rights of any persons, including creditors or debtors, present or future, are regulated.

(4) Any agreement or declaration as referred to in sub-article (1) hereof shall be valid and enforceable in accordance with its terms, and shall not be affected by the insolvency of any person bound by or entitled under such agreement or unilateral declaration or of the relevant debtor.

Right of retention. *Amended by: LVIII.1975.16; VIII.2010.61.*

1997. (1) The provisions of this Title shall not affect the right of retention in cases in which such right is competent according to law.

(2) The said provisions shall not apply to ships or aircraft, or to debts to which ships or aircraft may be subject except so far as they are consistent with the provisions of the Merchant Shipping Act or of the Aircraft Registration Act, as the case may be.

Cap. 234.
Cap. 503.

(3) Nor shall the said provisions apply to debts in respect of

advances made on goods in commercial transactions, except so far as such provisions are consistent with other existing laws and usages.

Saving as to previous laws.

1998. The provisions of this Title excepting those contained in Sub-title V shall not affect the provisions of previous laws as regards privileges and hypothecs created before the 11th February, 1870.

Sub-title I

OF PRIVILEGES

Definition of privilege.

1999. Privilege is a right of preference which the nature of a debt confers upon a creditor over the other creditors, including hypothecary creditors.

General or special privileges.

2000. Privileges may exist over movables as well as over immovables. They are either general or special.

Effects.

2001. (1) A general privilege extends over all property in general.

(2) A special privilege affects certain particular movables or immovables.

Privileges not inherent in property. *Substituted by: VIII.2007.15.*

2002. (1) Special privileges over movables, except those specified under sub-article (2), and general privileges as referred to in article 2003, cease to exist if the property passes into the hands of a third party.

(2) Special privileges over immovables and those movables which the Minister shall, from time to time, establish shall continue to attach to such immovables or movables whatever transfers to other persons take place.

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§ I. OF GENERAL PRIVILEGES

Claims secured by general privilege.

2003. The privileged debts over all property in general, are:

(*a*) judicial costs;

(*b*) funeral expenses;

(*c*) death-bed expenses;

(*d*) wages of servants;

(*e*) supplies of provisions.

Judicial costs.

2004. (1) The judicial costs which are privileged are the costs incurred in making up the inventory, or otherwise incurred for the common benefit of the creditors, including the costs necessary for carrying out the sale of the property and for distributing the

proceeds thereof.

(2) The costs incurred by a creditor in respect of the debt due to him and which are not advantageous to the other creditors, are considered as accessory to the debt itself.

Funeral expenses. *Substituted by: XVII.2019.41.*

2005. The funeral expenses which are privileged are the expenses which, according to custom and within the limits of decency, are incurred in connection with the removal, burial or cremation of the dead body, and with the religious services.

Death-bed expenses.

2006. (1) The death-bed expenses which are privileged are the charges of the physician, surgeon, obstetrician, midwife or apothecary, and the expenses incurred for nursing the sick person.

(2) In the case of a chronic illness, the privilege applies only to the expenses incurred in the last two months preceding the death.

Wages of servants.

2007. The wages of servants which are privileged are only those due in respect of the two months preceding the opening of the competition for the ranking of creditors, or the death of the debtor.

Supplies and provisions. *Substituted by: VIII.2007.16. Amended by: L.N. 407 of 2007.*

2008. The supplies and provisions which are privileged include all objects that are necessary for the support of the debtor and his family, and which shall, for all intents and purposes of law, not exceed the sum of three thousand and four hundred and ninety-four euro and six cents (3,494.06) or such other amount as the Minister may from time to time prescribe:

Provided that in the case of a widow or a widower or of their dependants, the sum shall be five thousand and eight hundred and twenty-three euro and forty-three cents (5,823.43) or such other amount as the Minister may from time to time prescribe.

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§ II. OF SPECIAL PRIVILEGES

OF PRIVILEGES OVER PARTICULAR MOVABLES

Privileged claims over particular movables. *Amended by: VII.1944.4; II.1966.4; XLVI.1973.100.*

2009. The privileged debts over particular movables are:

Pledgee.

(*a*) the debt due to the pledgee, over the thing which he holds as a pledge;

Hotel-keeper.

(*b*) the debt due to a hotel-keeper for accommodation provided or supplies furnished to a guest, over the effects of such guest, so long as such effects exist in the hotel or house of the hotel-keeper;

Carriage expenses.

(*c*) the debt due for the carriage of goods, over the goods carried;

Price of thing.

(*d*) the debt due in respect of the price of a thing, whether

the sale has been effected with a stipulation as to credit or without such stipulation; and the debt due for labour, supplies or expenses, bestowed, furnished or incurred in the production or for the preservation or improvement of a thing, over the thing itself, saving, with regard to the seller, the provisions of article 1439.

Advocates and legal procurators.

This privilege applies also to the debt due to the advocate and legal procurator for their fees in respect of the action for the recovery of a thing, over the thing itself, if recovered; as well as to the debt due to the person disbursing the expenses incurred in such action;

Dominus and lessor.

(*e*) the debt due to the *dominus* for ground-rent, and the debt due to the lessor for the rent of an immovable, over the fruits, and over the value of all things which serve for the furnishing or stocking, or for the cultivation of the tenement, to whomsoever such fruits or other things may belong:

Provided that such privilege shall not be available to the proprietor or the lessor if the said products or things belong to or are held by or on behalf of any department of the Government of Malta in any case in which such department is not itself directly liable for the payment of the debt.

This privilege applies also to indemnities due to the *dominus* or to the lessor for the repairs which the emphyteuta or the lessee has failed to carry out, and for the non-performance of any other covenant of the contract.

It shall be lawful for the *dominus* and the lessor to seize, or attach by a garnishee order the movables with which the tenement was furnished or stocked or which served for its cultivation if such movables have been removed elsewhere without their consent, and they preserve their privilege over such movables provided they make the demand for the issue of the warrant within fifteen days from the day on which the said movables have been so removed.

OF PRIVILEGES OVER IMMOVABLES

Privileged creditors over immovables.

2010. The privileged creditors over immovables are:

Dominus.

(*a*) the *dominus*, over the *dominium utile* of the emphyteutical tenement, for the debt due to him by the emphyteuta in respect of ground-rent and for the performance of the other obligations arising from the emphyteutical contract;

Architects, etc.

(*b*) architects, contractors, masons and other workmen, over the immovable constructed, reconstructed or repaired, for debts due to them in respect of the expenses and the price of their work.

Person supplying money or materials.

The same privilege is competent to the person who has, by means of a public deed, supplied money or materials for the construction, reconstruction or repair of the immovable, or for the payment of the workmen employed on such work, provided it is shown by the said deed that the supply was made for that purpose, and it is proved that the work was carried out or the payments to the workmen made, with the materials or out of the money supplied.

Third party in possession.

The same privilege is also competent to a third party in possession, over the immovable of which he has been dispossessed, for the repairs and improvements made in or on such immovable.

The said privilege, in case of repairs necessary for the preservation of the immovable extends to the whole amount of the debt; in any other case, it is limited to the sum corresponding to the increase in the value of the immovable resulting from the works or expenses;

Vendor or other alienor.

(*c*) the vendor or any other alienor, whether under an onerous or a gratuitous title, over the immovable sold or alienated by means of a public deed, for the whole or the residue of the price, or for the performance of the covenants stipulated in the deed of sale or alienation.

Lender of money for the payment of price.

The same privilege is competent to the person who has, by means of a public deed, supplied in whole or in part the money for the payment of the price agreed upon, provided it is shown by the deed of loan that the money was supplied for that purpose, and it is proved that the money taken on loan has been paid to the vendor or other alienor.

If there are several successive alienations, the first alienor is preferred to the second, the second to the third, and so on;

Co-heirs.

(*d*) co-heirs and other co-partitioners, over the immovables which were the subject of the partition, in case of eviction of the immovables divided between them, and for any compensation or owelty of partition;

Advocate and legal procurator.

(*e*) the advocate and the legal procurator, for the fees due to them for their services in the action for the recovery of the immovable, and the person disbursing the expenses of the said action, over the immovable, if recovered.

Sub-title II

OF HYPOTHECS

Definition of hypothec.

2011. (1) Hypothec is a right created over the property of a debtor or of a third party, for the benefit of the creditor, as security for the fulfilment of an obligation.

(2) Hypothec is of its nature indivisible, and it exists in its entirety over all the things so charged, over each of such things and over every portion thereof.

Kinds of hypothec. *Substituted by: LVIII.1975.17. Amended by: VIII.2007.17.*

2012.* (1) A hypothec is general or special: it is general when it affects all the property present and future of the debtor; it is special when it affects only one or more:

(*a*) particular immovables of the following kind:

(i) things which are immovable by their nature, and products of such immovables so long as they are not separated thereform;

(ii) the right of usufruct over the said immovables, during the continuance of such right;

(iii) the *dominium directum* over the said immovables given on emphyteusis, and the *dominium utile* over such immovables; and

(*b*) particular movables as the Minister may, from time to time, establish.

(2) A hypothec is legal, judicial or conventional: it is legal if it arises by operation of law; it is judicial if it originates from a judgment; it is conventional if it is established by contract.

Effects of hypothec when property passes to a third party. *Substituted by: LVIII.1975.18. Amended by: VIII.2007.18.*

2013.† (1) A special hypothec continues to attach to any immovables charged therewith as defined in article 2012(1)(*a*) and movables charged therewith under sub-article (1)(*b*) of the said article into whosoever's possession such immovable or movable may pass.

(2) A general hypothec attaches to the property affected thereby only so long as such property does not pass into the hands of a third party.

(3) For the effects of a hypothec, a debt or an action which has been assigned shall not be deemed to have passed into the hands of a third party so long as the assignee has not collected the debt or obtained the thing forming the subject of the action, except in cases of debts or actions arising from bills of exchange or other

*This article, as substituted by Act LVIII of 1975, applies to all hypothecs arising or contracted before 1st January, 1976.

† This article, as substituted by Act LVIII of 1975, applies to all hypothecs arising or contracted before 1st January, 1976. However, until the expiration of ten years after the said date, and subject to all other provisions of this Code, a general hypothec registered before the 1st January, 1976 shall continue to attach to immovables charged therewith, even if such immovables are acquired after the 1st January, 1976, as if the provision of this Code were still operative as in force prior to the substitution effected by Act LVIII of 1975.

documents of title transferable by endorsement or delivery.

Hypothec may be created for indeterminate obligation.

2014. A hypothec can be created even in regard to an indeterminate obligation, provided the object thereof be determinate.

Hypothec is subject to rescission as principal obligation.

2015. If the right of the debtor over the thing affected by the hypothec is subject to a suspensive condition or is subject to dissolution or annulment, the hypothec is likewise conditional or subject to dissolution or rescission, saving the provisions of article 1791.

Special hypothec in addition to general hypothec. *Substituted by: LVIII.1975.19. Amended by: VII.1985.3; VIII.2007.19.*

2016.* (1) The creditor of a debt secured by a general hypothec and whose rights are not otherwise already adequately secured, shall have, and may cause to be registered, as a further security of the same debt, a special hypothec over such of the immovable and movable property of the debtor which are of a kind referred to in article 2012 and which are of a value sufficient to secure the debt as provided in article 2063.

(2) The right conferred by sub-article (1) of this article shall be exercisable by means of a note presented to the Director of the Public Registry for registration and signed by any person who, according to article 2045, could have signed the note in respect of the general hypothec and in the case of debtors resulting from a public deed by means of a note signed by any notary public; but the exercise of such right shall be without prejudice to the rights of the debtor to demand the reduction or cancellation of the registration in accordance with the provisions of Sub-title V of this Title.

(3) Where the immovable property of the debtor over which is to be registered the special hypothec referred to in sub-article (1) of this article is situated in an area declared to be a land registration area in accordance with the Land Registration Act, or is otherwise registered in accordance with the provisions of that Act, the right conferred by sub-article (1) shall be exercisable by the registration in accordance with that Act, of a charge or a cautionary charge as the case may be.

Cap. 296.

§ I. OF LEGAL HYPOTHEC

When legal hypothec is granted.

2017. A legal hypothec is granted only in the cases hereinafter specified.

Legal hypothec in favour of wife, for dowry.

2018. (1) The wife has, as from the day of the celebration of her marriage, a general legal hypothec over the property of the husband, for the dowry settled by means of a public deed previously to the marriage.

(2) In regard to dotal money or property coming to her under

* This article, as substituted by Act LVIII of 1975, applies to all hypothecs arising or contracted before 1st January, 1976. However, until the expiration of ten years after the said date, and subject to all other provisions of this Code, a general hypothec registered before the 1st January, 1976 shall continue to attach to immovables charged therewith, even if such immovables are acquired after the 1st January, 1976, as if the provision of this Code were still operative as in force prior to the substitution effected by Act LVIII of 1975.

any succession or donation, the said hypothec arises only from the day on which the succession is opened or the donation takes effect.

Legal hypothec in favour of minors, *Substituted by: XLVI.1973.102. Amended by: XXI.1993.84.*

2019. (1) A minor has a general legal hypothec over the property of the parent to whose authority he is subject in respect of the liability contracted by such parent in the administration of the property of the minor.

(2) Such hypothec arises from the day on which the administration of such property vests in the parent.

(3) Where a parent contracts another marriage, the said hypothec extends over the property of the step-parent as from the day of the marriage, if the parent continues in the administration without the authority required by law.

of children or other descendants,

2020. (1) Children and other descendants have also a general legal hypothec over the property of their surviving ascendant, in respect of the rights saved to them under articles 637, 638 and 825 in case the said ascendant contracts another marriage.

(2) Such hypothec arises from the day of the death of the other ascendant.

of persons subject to tutorship, etc. *Amended by: XLVI.1973.103.*

2021. Persons subject to tutorship or curatorship have a general legal hypothec over the property of the tutors or curators, for the liability of the latter in respect of their administration, as from the day on which such tutors or curators have accepted the office of tutor or curator.

Creditor having privilege, has special hypothec.

2022. The creditor who has a privilege over an immovable, has a special legal hypothec over the immovable subject to the privilege.

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§ II. OF JUDICIAL HYPOTHEC

Judicial hypothec. *Amended by: XXII.2005.82.*

2023. Judicial hypothec originates from -

(*a*) judgments given by any of the courts of Malta in favour of the parties obtaining such judgments;

(*b*) awards of arbitrators, an executive title and decisions given by courts outside Malta, in favour of the parties obtaining such awards or decisions, provided the execution thereof has been ordered by a judgment of the competent court in Malta.

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§ III. OF CONVENTIONAL HYPOTHEC

Who can contract conventional hypothec.

2024. (1) A conventional hypothec can only be contracted by persons who are capable of alienating the property which they charge with such hypothec.

(2) The property of persons who are not capable of alienating cannot be hypothecated by contract except for the causes and in the form established by law.

Conventional hypothec cannot be created except by public deed.

2025. A conventional hypothec cannot be created except by a public deed.

Contracts made outside Malta. *Amended by: XXXI.1965.22; LVIII.1974.68; XXII.2005.81.*

2026. Contracts made outside Malta, by any public or authentic instrument, according to the laws of the place, or before the diplomatic or consular representative of the Government of Malta in that place or a person serving in the diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent that Government's interests in that place or a person authorized in that behalf by the President of Malta, can create a hypothec over property existing in Malta, if the competent civil court, on the demand of the creditor, by sworn application, shall have ordered the registration thereof.

Sum for which hypothec is contracted to be specified in the deed.

2027. A conventional hypothec is not valid if the sum for which it is agreed upon is not specified and stated in the deed. If the debt resulting from an obligation is conditional as to its existence, or indeterminate as to its value, the creditor cannot demand the registration of the hypothec except for an amount expressly stated by him, saving the right of the debtor to cause such amount to be reduced, where competent.

Conventional hypothec are general or special. *Amended by: VIII.2007.20.*

2028. (1) A conventional hypothec may be general or special.

(2) Only the immovables and movables mentioned in article 2012 can be charged with a special hypothec.

(3) A special hypothec shall extend to all improvements subsequently made in or on the property hypothecated.

Sub-title III

HOW PRIVILEGES AND HYPOTHECS ARE PRESERVED*

Special privileges to be registered. *Substituted by: VIII.2007.21.*

2029. Special privileges over immovables and over those movables as specified in articles 2002(2) and 2012(1)(*b*) are ineffectual unless they are registered in the Public Registry within the time of two months.

Day from which the time for registration runs.

2030. The time referred to in the last preceding article shall run-

(*a*) as regards the debts mentioned in paragraphs (*a*), (*c*) and (*d*) of article 2010 from the date of the contract;

(*b*) as regards the debt mentioned in paragraph (*b*) of the said article from the day on which the works are completed, or, as the case may be, from the day of the adjudication of the immovable;

(*c*) as regards the debts mentioned in paragraph (*e*) of the

*As to old privileges and hypothecs, *see* the Old Privileges and Hypothecs (Registration and Renewal) Ordinance (Chapter 27).

same article from the date of the judgment or of the act by which the suit is terminated.

Privileges, if registered, are unaffected by alienations, etc., made within the time for registration.

2031. (1) The aforesaid privileges, if registered within the time mentioned in the last preceding article, shall not be affected by any alienation of the property charged with the privilege, or by any hypothec or burden created thereon, during the course of the aforesaid time.

(2) The legal hypothec attached to privileged debts shall remain unimpaired, even though such privileges are not registered within the aforesaid time, provided such hypothec is preserved as required in article 2033.

General privileges and special privileges over movables not subject to registration. *Substituted by: VIII.2007.22.*

2032. Except for those special privileges specified in articles 2002(2) and 2012(1)(*b*), general privileges and special privileges over movables are not subject to registration.

Hypothec to be registered.

2033. (1) A hypothec, whether legal, judicial, or conventional, is not effectual unless it is registered in the Public Registry, and it does not rank except from the date of its registration.

(2) Nevertheless, the hypothec for the dowry settled before marriage shall rank from the day of the celebration of the marriage provided it is registered within one month from such day: and in such case the said hypothec shall not be affected by any alienation, or hypothec, or burden, made or registered during the course of the aforesaid time.

Duties of notary in respect of registration of legal hypothec of wife against husband in certain cases. *Amended by: XXXIX.1939.12; XLVI.1973.104; XI.1977.2; XIII.1983.5; L.N. 407 of 2007.*

2034. (1) The notary who receives a deed involving the settlement of a dowry shall cause the registration of the relative hypothec over the property of the husband to be made within the next following month, notwithstanding any covenant to the contrary, unless such registration shall have been made within the time on the demand of other persons.

(2) The notary who contravenes the provisions of sub-article (1) of this article shall be liable in damages towards the party interested, and shall be subject to a fine (*ammenda*) not exceeding eleven euro and sixty-five cents (11.65) to be awarded by the Court of Revision of Notarial Acts, either of its own motion or on the demand of any person.

Responsibility of registrar of court of voluntary jurisdiction with regard to persons under tutorship or curatorship. Cap. 12.

2035. The registrar of the court of voluntary jurisdiction shall be liable in damages towards any person under tutorship or curatorship if he fails to cause the obligations assumed by any tutor or curator to be registered as provided in the Code of Organization and Civil Procedure.

Who may demand registration.

2036. Registration may be demanded by the creditor, or by any other person interested.

Relatives may demand registration in certain cases. *Amended by: XLVI.1973.105.*

2037. The registration of legal hypothecs granted to minors, or to persons insane or interdicted, may also be demanded by any of their relatives.

Ascendant to effect registration of hypothec granted to unemancipated children. *Amended by: XLVI.1973.106; XXX.1981.14; XXI.1993.2.*

2038. (1) The registration of the legal hypothec granted to minors under the provisions of article 2019 shall be effected by the parent mentioned in that article within four months from the day on which the hypothec arises, unless such registration shall have already been made at the request of any other relative of such children.

(2) If the parent contravenes the provisions of sub-article (1) of this article, he shall forfeit his rights of parental authority, as well as the right of further managing the property of the persons previously subject to his authority or of enjoying the usufruct to which he may have been entitled by law.

(3) The court of voluntary jurisdiction may, according to circumstances, reinstate the parent in the rights so forfeited.

Time within which ascendant, etc., is to effect registration of hypothec in favour of children. *Amended by: XXI.1993.2.*

2039. (1) Where the children or other descendants mentioned in article 2020 are minors, the registration of the hypothec granted to them under that article shall be effected by the ascendant therein referred to, or, as the case may be, by the tutor or curator, within fifteen days from the celebration of the marriage of the said ascendant, unless it shall have already been made at the request of any other relative.

(2) If the ascendant bound to cause such registration to be made fails to do so within the said time, the court may, according to circumstances, appoint an administrator of the property the ownership of which, in virtue of the provisions of articles 637, 638 and 825, shall have vested in the said children or descendants, and the provisions of the last preceding article shall apply with regard to the rights of parental authority which may be competent to such ascendant.

When registration against debtor in a state of bankruptcy or against an inheritance is inoperative.

2040. (1) The registration is ineffectual if it is made at a time when the debtor is in a state of bankruptcy, or if it is proved that the creditor, at the time of the registration, knew of the existence of circumstances on which the debtor could found a declaration of bankruptcy.

(2) The provisions of sub-article (1) of this article shall also apply as between the creditors of an inheritance, if the registration is made after the opening of the succession, and the inheritance remains vacant or is accepted with the benefit of inventory.

Exceptions.

2041. (1) The provisions of the last preceding article shall not apply where it was not possible, owing to the insufficiency of time, to make the registration; and such insufficiency of time shall be presumed if fifteen days shall not have elapsed from the day on which the registration could have been made to the day on which the debtor was in a state of bankruptcy, or on which the creditor became aware of the existence of circumstances on which the

debtor could found a declaration of bankruptcy, or on which the debtor died.

(2) Nor shall such provisions apply with regard to the registration of privileges or hypothecs acquired previously to the day last mentioned, if the time allowed for the preservation thereof shall not have yet elapsed.

Particulars of note of registration. *Amended by: XXXIX.1939.13; XXV.1940.2; IX.2004.13; XVIII.2004.110; VIII.2007.23; VIII.2010.61; L.N. 426 of 2012; XXIII.2017.88. LXI.2020.3.*

2042. For the purposes of registration, there shall be presented to the Director of the Public Registry a note containing the following particulars:

(*a*) with regard to the creditor:

(i) his name, current surname, and surname at birth, where the surname at birth differs from the current surname;

(ii) his legally valid identification document number written in figures only, and where the person is not eligible to hold a legally valid identification document, the number as appearing in another document of identification;

(iii) his place and date of birth;

(iv) his place of residence;

(v) whether he is single; married; in a civil union; in a cohabitation; separated; divorced; annulled; or widowed; and

(vi) the name, current surname, and surname at birth of his parents:

Provided that the Director of the Public Registry may, in his discretion, accept notes solely in those instances where it is manifestly impossible to identify any of the details:

Provided further that the Director of the Public Registry shall have the right to request the presentation of other particulars which, in the opinion of the Director, serve to identify the creditor, or any detail, with the assistance or application of those listed, which the Minister may, from time to time, indicate by means of regulations.

(*b*) with regard to the debtor:

(i) his name, current surname, and surname at birth, where the surname at birth differs from the current surname;

(ii) his legally valid identification document number written in figures only, and where the person is not eligible to hold a legally valid identification document, the number as appearing in another document of identification;

(iii) his place and date of birth;

(iv) his place of residence;

(v) whether he is single; married; in a civil union; in a cohabitation; separated; divorced; annulled; or widowed; and

(vi) the name, current surname, and surname at birth of his parents:

Provided that the Director of the Public Registry may, in his discretion, accept notes solely in those instances where it is manifestly impossible to identify any of the details:

Provided further that the Director of the Public Registry shall have the right to request the presentation of other particulars which, in the opinion of the Director, serve to identify the debtor, or any detail, with the assistance or application of those listed, which the Minister may, from time to time, indicate by means of regulations;

(*c*) the cause of the debt or other claim, and the date and nature of the act creating such debt or claim;

(*d*) the amount of the capital due, or the amount stated in the cases referred to in article 2027;

(*e*) an indication as to whether interest on the debt has been agreed upon or not;

(*f*) (*deleted by Act VIII.2010.61.*);

(*g*) an indication as to whether the registration is demanded for privilege or hypothec, and, in case of hypothec, whether it is general or special;

(*h*) in case of privilege or special hypothec, an indication of the immovable and movable charged with such privilege or hypothec.

When cause of privilege or hypothec is to be stated in the note.

2043. Where a legal hypothec or a privilege exists independently of a public deed, the cause giving rise to such privilege or hypothec and the time of its origin shall be stated in the note.

When it is not necessary to state the amount of the debt.

2044. In the case of legal hypothecs, the obligation to state the amount of the debt shall not apply with regard to claims the value whereof in a liquidated sum is not stated in a public deed.

By whom note is to be signed.

2045. (1) If the debt results from a public deed, the note must be signed by the registrar of the court, or by the notary who has received, or is the keeper of the deed, or is authorized to give out a copy thereof.

(2) If the debt results from a judgment, the note must be signed by the registrar of the court by which the judgment was delivered.

(3) In any other case, the note must be signed by the person requiring the registration, or by an advocate, a notary, or a legal procurator.

When judicial hypothec may be registered.

2046. (1) A judicial hypothec may be registered even though the judgment be subject to appeal, saving any reduction or

cancellation which may become necessary.

(2) Nevertheless, if the judgment or award does not order the debtor to pay a liquidated sum, the registration cannot be made unless the amount to be registered is determined in the same or any other judgment or award, or, with the concurrence of the debtor, in a public deed.

Registration affecting property of a deceased person.

2047. A registration affecting the property of a deceased person may be made under his name, without mentioning the heir.

When immovable property is in the hands of third parties. *Amended by: VIII.2007.24.*

2048. If at the time of the registration, the immovables and movables are in the hands of third parties, the indication of the debtor alone shall be sufficient.

Difference between amount due and that stated in the registration.

2049. Where there is any difference between the amount due and that stated in the registration, the registration shall be operative for the lesser amount.

Expenses of registration to be borne by debtor.

2050. The expenses of registration shall, in the absence of an agreement to the contrary, be borne by the debtor.

Assignment may be entered in registry.

2051. (1) The assignee of any debt or other claim secured by a registered privilege or hypothec may demand that the assignment, whether it be in respect of the whole sum or a part thereof, be entered in the registry for the amount so assigned, provided the assignment shall have been made by a public deed.

(2) The aforesaid demand may also be made by any other party interested.

Requirements of note for entering assignment in the Public Registry. *Amended by: XII.1986.5.*

2052. (1) For the purpose of entering an assignment in the registry as aforesaid, a note shall be presented to the Director of the Public Registry containing, the progressive number and the year of the registration, the date of the assignment, and an indication of the assignee in the manner prescribed for the indication of the creditor.

(2) The note must be signed by the notary who has received, or is the keeper of the deed of assignment, or is authorized to give out a copy thereof.

Sub-title IV

OF THE RENEWAL OF REGISTRATIONS

Renewal of registration of privileges and hypothecs.

2053. (1) The registration of a privilege or hypothec in the Public Registry shall cease to have effect after thirty years from the date thereof unless such registration is renewed before the expiration of the said time.

(2) The registration of a legal hypothec in favour of the wife or of any person subject to tutorship or curatorship shall be exempt from renewal until one year after the dissolution of the marriage or

the cessation of the administration.

Renewal after lapse of time to have the effect of an original hypothec.

2054. A renewal, if made after the expiration of the prescribed time shall, even in the case of a privilege, have the effect of an original hypothec which shall rank only from the date of the renewal.

Persons entitled to demand renewal.

2055. (1) The renewal of a registration may be demanded by any person who, according to law, is entitled to demand the registration.

(2) The renewal shall be made in the same Public Registry in which the registration was made.

Renewal of registration not to interrupt prescription.

2056. The renewal of a registration caused to be made by the creditor shall not interrupt the running of prescription in favour of the debtor or of the third party in possession.

How renewal is made.

2057. In order to obtain the renewal of a registration it shall be necessary to present to the Director of the Public Registry a note similar to that of the previous registration with a declaration that it is intended to renew the original registration.

Expenses of renewal.

2058. In the absence of an agreement to the contrary the expenses of the renewal shall be at the charge of the debtor.

Sub-title V

OF THE REDUCTION AND CANCELLATION OF REGISTRATIONS

Reduction of registration.

2059. (1) The reduction of a registration is a partial cancellation thereof.

(2) A registration may be reduced -

(*a*) if a part of the debt is extinguished;

(*b*) if the right of the creditor, previously affecting the whole of an immovable, or several immovables, is restricted to a part of such immovable conveniently separable therefrom, or to one or some only of such immovables.

How registration may be reduced or cancelled.

2060. (1) A registration may be reduced or totally cancelled either with the consent of the creditor given in a public deed, or in virtue of a judgment of the competent court.

(2) If the creditor is not capable of alienating, his consent for the reduction or cancellation of a registration is not valid unless it is given in the form prescribed by law.

When reduction of registration may be made without the creditor's consent.

2061. If the total or partial extinguishment of a registered debt results from a judgment which has become *res judicata* or from any other public deed, the cancellation of the registration, or the reduction thereof as to the amount of the debt, may be effected without the consent of the creditor.

When reduction may be ordered by court.

2062. (1) Besides in the case mentioned in article 2027, the reduction of a registration may be ordered by a judgment in the case of a general legal hypothec, or of a judicial hypothec, if it is shown that the registration can be restricted as to the property affected thereby without injuring the interests of the creditor.

(2) The same rule shall apply in the case of a general conventional hypothec created to secure a right contingent upon an uncertain event, even though such hypothec may have been covenanted before the 11th February, 1870; and any renunciation of the right to demand the reduction is void, unless it is made by a public deed on a day subsequent to that of the instrument by which the hypothec was created.

Value of immovable property to which the registration is to be restricted.

2063. (1) The reduction, however, shall not be ordered in any of the cases referred to in the last preceding article, if the value of the immovable property to which the debtor demands that the registration should be restricted, does not exceed, by at least one-half, the amount of the registered debt together with the interest accrued due, and that which will become due up to five years from the day of the reduction.

(2) It shall be lawful for the court to determine the value of the aforesaid immovable property according to the rules laid down in Sub-title III of Title II of Book Third of the Code of Organization and Civil Procedure. Cap. 12.

Cancellation of registration may be ordered by judgement.

2064. The cancellation of a registration may also be ordered by a judgment if it is not shown that the registration was made for a lawful cause, or if it is shown that the right of the creditor is extinguished.

Requirements of the note for reduction or cancellation of registration. *Amended by: XII.1986.6.*

2065. For the purpose of effecting the reduction or cancellation of a registration, there shall be presented to the Director of the Public Registry a note containing the following particulars:

(*a*) the progressive number and the year of the registration;

(*b*) an indication as to whether a reduction or the cancellation of the registration is demanded;

(*c*) an indication of the judgement, or deed, if any, under which the reduction or cancellation is demanded.

Additional requirement in case of reduction.

2066. Where the reduction of a registration is demanded, the sum or property in respect of which the registration is to continue to be operative shall be stated in the note.

By whom note for reduction or cancellation is to be signed.

2067. Where the reduction or cancellation is demanded in pursuance of a public deed, the note shall be signed by the notary who has received or is the keeper of such deed, or is authorized to give out copies thereof; where the reduction or cancellation is

demanded in pursuance of a judgment, the note shall be signed by the registrar of the court by which the judgment was delivered.

Expenses for reduction or cancellation.

2068. (1) The expenses for the reduction or cancellation of a registration shall be borne by the debtor.

(2) Nevertheless, if the cancellation is due to the absence of a lawful cause for making the registration, the expenses shall be borne by the person who caused such registration to be made.

(3) In the case referred to in article 2027 it shall be in the discretion of the court to direct, according to circumstances, whether such expenses are to be borne by the creditor or by the debtor.

Sub-title VI

OF THE EFFECT OF PRIVILEGES AND OF HYPOTHECS AGAINST THIRD PARTIES IN POSSESSION

Rights of creditors against third parties in possession. *Amended by: XV.2008.5.*

2069. Creditors who have a privilege or hypothec which has been registered retain over the immovables or movables subject to the privilege or hypothec their right to be ranked and paid according to the order of the debts due to them or the registration thereof, into whosesoever hands such immovables or movables may pass.

Liability of third party in possession.

2070. If the third party in possession has not complied with the formalities prescribed for disencumbering his property, he remains, in virtue of the registration legally made, liable as possessor for all the hypothecary debts, and shall be entitled to any time or extension of time granted to the original debtor.

Other liabilities of third party in possession. *Amended by: XV.2008.6.*

2071. The third party in possession is bound, in the aforesaid case, to surrender, without any reservation, the immovable or movable charged with the hypothec, unless he elects to pay all the hypothecary debts, as each of them falls due, whatever their amount may be.

Creditors may demand sale of immovable or movable charged with hypothec. *Amended by: XV.2008.7.*

2072. (1) If the third party in possession fails to surrender the immovable or movable or to pay the debt fallen due, it shall be lawful for the hypothecary creditor to demand judicially the sale of the immovable or movable charged with the hypothec after having by means of a protest called upon the debtor to discharge the debt, and upon the third party in possession either to discharge the debt or to surrender the immovable or movable.

(2) The said demand may not be made before the expiration of thirty days from the service of the protest on the debtor and the third party in possession.

When third party in possession may set up benefit of discussion. *Amended by: XV.2008.8.*

2073. A third party in possession who is not personally liable for the debt may, by setting up the benefit of discussion, oppose the sale of the immovable or movable of which he is in possession, if there is in the possession of the debtor or of his sureties or of other

persons personally, though not jointly and severally, liable for the debt, other property subject to the same debt.

When benefit of discussion may not be set up. *Amended by: XV.2008.9.*

2074. The benefit of discussion may not be set up against a creditor having a privilege or special hypothec over the immovable or movable.

Option of third party in possession in certain cases. *Amended by: XV.2008.10.*

2075. Where the actual value of the improvements made in or on the tenement or movable by the third party in possession, exceeds the actual value of the immovable or movable without such improvements, the third party in possession may elect either to pay the actual value of the immovable or movable without the improvements or to surrender the immovable or movable.

When third party in possession may surrender property. *Amended by: XV.2008.11.*

2076. The surrender of an immovable or of a movable for the satisfaction of the obligation to which it is subject, may be made by any third party in possession who is not personally liable for the debt, wholly or in part, and who is capable of alienating or has been duly authorized for such purpose.

When third party in possession may take back immovable or movable. *Amended by: XV.2008.12.*

2077. The surrender of the immovable or of the movable until the sale thereof has taken place, shall not prevent the third party in possession from taking back the immovable or the movable on paying the whole debt and the costs, even though the surrender may have taken place in execution of a judgment.

How surrender of immovable or movable is made. *Amended by: XV.2008.13.*

2078. The surrender of the immovable or of the movable shall be made by means of an act filed before the competent court.

Liability for deteriorations.

2079. (1) Any deteriorations caused in consequence of gross negligence on the part of the third party in possession injuriously affecting the interest of the hypothecary creditors, give rise to an action for indemnity against him.

(2) He cannot claim reimbursement in respect of the expenses and improvements made by him, except as provided under paragraph (*b*) of article 2010.

(3) He has no right of retention on account of improvements.

Fruits that are due by third party in possession.

2080. The fruits of the immovable are not due by the third party in possession except from the day on which he has been called upon to surrender the immovable or to pay the debt; and if since that day one year shall have elapsed before the judicial demand is made, the fruits shall be due from the date of such demand.

Rights of easement, etc., of third party in possession.

2081. (1) The easements and real rights which a third party in possession had upon the immovable before he came into possession thereof, shall revive after the surrender made by him or after the adjudication which has taken place against him.

(2) If, however, such rights were rights of privilege or hypothec, they are not ranked unless they have been registered.

Rights of creditors of third party in possession. *Amended by: XV.2008.14.*

2082. The third party's own creditors shall exercise their rights of hypothec over the immovable or the movable surrendered or sold, according to the order of their respective registrations, after the creditors whose claims shall have been registered against the former owners previously to the alienation made by the latter, or within the times mentioned in articles 2031 and 2033.

Rights of third party in possession against debtor and other third parties in possession.

2083. (1) The third party in possession who has paid the debt or has surrendered the immovable or has been dispossessed thereof, has a right to relief for eviction against the principal debtor.

(2) He can also maintain an action against other third parties in possession of other immovables liable for the same debt, provided such other third parties have acquired their immovables at a later date than that on which he acquired his immovable.

Sub-title VII

OF THE EXTINGUISHMENT OF PRIVILEGES AND HYPOTHECS

How privileges and hypothecs are extinguished.

2084. Privileges and hypothecs are extinguished -

(*a*) by the extinguishment of the principal obligation;

(*b*) by the creditor's renunciation of the privilege or hypothec;

(*c*) by the fulfilment of the formalities prescribed in Title II of Part II of Book Second of the Code of Organization and Civil Procedure; Cap. 12.

(*d*) by prescription.

When prescription in acquired by debtor.

2085. Prescription takes place in favour of the debtor, in respect of property of which he is in possession, by the lapse of the time established for the prescription of the debt to which the privilege or hypothec refers.

When prescription is acquired by third party in possession.

2086. As to property which is in the possession of a third party, prescription takes place in favour of such third party by the lapse of ten years from the day on which he acquired such property, even though the creditor may not have known that such property had passed into the hands of a third party.

Registration not to interrupt prescription.

2087. The registration caused to be made by the creditor shall not interrupt the running of prescription in favour of the debtor or of the third party in possession.

Sub-title VIII

OF THE ORDER OF PRIORITY OF PRIVILEGES AND HYPOTHECS

2088. Among privileged debts priority is regulated according to the particular nature of each privilege.

General rule of priority among creditors having privileges of a different nature.

2089. Debts having a general privilege for any of the causes mentioned in paragraphs (*a*), (*b*) and (*c*) of article 2003 are paid in preference to those having any other privilege, excepting only the debt due to the pledgee as provided in paragraph (*a*) of article 2009.

Priority given to certain general privileges.

2090. Debts having a general privilege for any of the causes mentioned in paragraphs (*d*) and (*e*) of article 2003 are paid in preference to those having any other privilege, excepting the debts mentioned in paragraphs (*a*), (*b*) and (*c*) of the said article, the debt due to the pledgee as aforesaid, and the debt due to the hotel-keeper as provided in paragraph (*b*) of article 2009.

Priority given to certain other general privileges. *Amended by: XI.1977.2.*

2091. (1) Saving the provisions of the last two preceding articles, in all cases of competition of privileged debts, differing in degree, the order in which the privileges are set forth in articles 2003, 2009 and 2010 shall determine their respective priority.

Rule of priority in cases other than those mentioned in ss.2089 and 2090.

(2) Nevertheless, the privilege of the seller, mentioned in paragraph (*d*) of article 2009, shall not operate to the prejudice of the privilege of the *dominus* or of the lessor, mentioned in paragraph (*e*) of the said article; the right of the seller mentioned in article 1439 shall not operate to the prejudice of the debts mentioned in paragraphs (*a*), (*b*) and (*c*) of article 2009; and the debt mentioned in paragraph (*b*) of article 2010, if it is in respect of necessary repairs for the preservation of the tenement, shall have preference over the debt due to the *dominus*.

2092. Hypothecary debts are paid according to the order of registration, saving the provisions of sub-article (2) of article 2033.

Hypothecary debts to be paid according to the order of registration.

2093. Hypothecs registered on the same day confer on the creditors an equal rank, without any distinction between registrations made at different hours of the same day.

Hour of registration not to create priority among hypothecs registered on the same day.

2094. Privileged or hypothecary debts in the same rank, are paid ratably.

Privileged debts in the same rank to be paid ratably.

2095. (1) In the same rank in which a debt is placed, there shall be placed also the interest accruing on that debt, the expenses of registration, and the expenses, if any, incurred for the judicial acknowledgment of the debt unless the latter are otherwise privileged:

Expenses accessory to debt to rank with debt. *Amended by: VIII.2010.61.*

Provided that in the case of a hypothec, the above rule shall apply with reference to interest only if the fact that interest has been agreed upon is indicated in the note of registration of the hypothec in accordance with article 2042(*e*).

(2) When the note of registration of a hypothec indicates that interest has been agreed to accrue on a debt, no additional note of registration shall be required when any change, variation, or

amendment takes place in relation to the of rates of interest payable, the modalities for the calculation of interest including any indices, margin, or market mechanism.

(3) Furthermore, no additional note of registration shall be required, for any change, variation or amendment of:

(*a*) the repayment schedule; or

(*b*) the currency in which payment of the debt is to be made.

(4) The above shall apply irrespective of whether the change, variation or amendment takes place in virtue of a public deed or a private writing, pursuant to a term of the original agreement or as a result of a market event.

(5) The obligations changed, varied, or amended as aforesaid shall continue to rank in the same rank in which the principal obligation is placed.

Title XXIIIA

OF TRUSTS AND OBLIGATIONS

Sub-title I

OF MATRIMONIAL REGIMES

Trusts and married persons.
Added by: XIII.2004.44.

2095A. (1) Property being the subject of matrimonial contracts may be settled in trust only by means of a written instrument. Trusts between spouses are not created by operation of law.

(2) Property forming part of the community of acquests or governed by the system of community of residue under separate administration may only be settled in trust with the consent of both spouses. Paraphernal property of either spouse may be settled in trust by each spouse acting singly.

(3) A trust settled by both spouses jointly may only be varied or, if revocable, may only be revoked by both spouses acting jointly and after the death of one of the spouses such trust shall be irrevocable notwithstanding any of its terms, except with the authorisation of the Court in its voluntary jurisdiction.

(4) A beneficial interest held by a spouse under a trust shall not form part of the community of acquests irrespective of when it was settled in his favour or when he became a beneficiary, except in the case of a beneficial interest under a trust into which community property has been jointly settled by the spouses and only in relation to such property.

(5) Any distribution of income made under a trust in favour of a spouse shall, unless otherwise expressly provided in the trust instrument, form part of the community of acquests or of the

community of residue under separate administration of such spouse, as may be applicable, in terms of article 1320 and article 1338(2) respectively.

(6) When the matrimonial home is the subject of trusts for the benefit of the spouses or any one of them, nothing in the trust instrument or in the law shall imply that a spouse enjoys lesser rights to the home and its enjoyment than under article 3A, and the terms of the trust may not be revoked or varied, nor may the trustee dispose of the said property, without the consent in writing of both spouses or, in the absence of consent, without the authorisation of the Court.

(7) Any debt, indemnity or other liability due by either spouse as a trustee shall not be charged to the assets of the community of acquests in terms of article 1327 except as provided in article 1329 and, for the purposes of article 1341, any such debt shall be deemed to be a paraphernal debt.

Spouse as beneficiary under trust settled by other spouse. *Added by:* XIII.2004.44. *Amended by:* XIII.2007.3.

2095B. (1) A person may settle property under trusts to his spouse acting as trustee for the benefit of beneficiaries including any such spouse as beneficiary.

(2) When a spouse is a beneficiary, a trustee may not enter into a contract of sale with the settlor spouse except in the cases specified in article 1366(*b*).

(3) A person cannot be a beneficiary under a trust settled by his or her spouse for more than the property that is allowed to be bequeathed or donated to such spouse in terms of this Code. Notwithstanding the terms of the trust and the rules at law otherwise applicable in relation to any excess, the excess shall be held by the trustee for the use and enjoyment of such spouse for his lifetime and thereafter shall be held on trust for the settlor or his heirs.

(4) If a beneficiary spouse is entitled at law to any property in ownership, the property held in trust up to the reserved portion, having regard to any other dispositions in such person's favour, shall in virtue of this provision be held on separate trust for the benefit of such spouse alone irrespective of the terms of the trust. Any further property settled in trust for the benefit of the spouse shall, irrespective of the terms of the trust, be held under trust only for the use and enjoyment of the beneficiary for his lifetime and thereafter for the benefit of the settlor or his heirs. The above shall be without prejudice to the right of any person entitled to the reserved portion to demand the reduction of the trust when the settlement impinges on right of the reserved portion as provided by this Code.

Trust property which is not matrimonial property. *Added by:* XIII.2004.44.

2095C. The provisions of law relating to spouses or matrimonial property shall not apply in any manner to the actions of a spouse when acting as trustee.

Sub-title II

OF ANNUITIES

Non-applicability of provisions on annuities. *Added by: XIII.2004.44. Amended by: XIII.2007.12.*

2095D. Title XI of Book Second "Of the Constitution of Annuities" and the provisions of sub-titles I and II thereof shall not apply in relation to annuities constituted in a deed of trust or testamentary trusts and the obligations of trustees and the rights of the beneficiaries shall be regulated exclusively by the terms of the trust and the special laws relating to trusts unless the trust instrument (or any written agreement entered into by the trustee) expressly states that a particular annuity shall be governed by the provisions of the said Title.

Sub-title III

OF SECURITY TRUSTS

Security trusts. *Added by: XIII.2004.44. Amended by: VIII.2010.61.*

2095E. (1) Security may be created in favour of a trustee, called a security trustee, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors by either constituting security in favour of the trustee in the manner provided for by applicable law of Malta relating to particular types of security, or, by the settlement of property in favour of the trustee under written terms governing the trusts intended to operate for the purposes of providing security.

For the purposes of article 2042 and other provisions under special laws which may be applicable to security, the trustee shall be treated as a creditor and shall be entitled to be registered as holder of the security, indicating his position as trustee.

(2) The security trustee shall enjoy all such rights and be subject to such obligations as may be stated in the instrument in writing regulating -

(*a*) the appointment of the security trustee, and

(*b*) the security granted to the security trustee for the benefit of the creditor or creditors.

(3) Security, for the purposes of this article, means any arrangement whereby the rights of a creditor are legally protected including any undertaking, guarantee, mandate, pledge, title, transfer, grant, privilege or hypothec or the placing of property in possession or control of the trustee with rights of retention and sale as may be agreed.

(4) When a hypothec is created in favour of a security trustee which is a bank or other entity which is authorised in terms of the Banking Act or in terms of equivalent legislation overseas, such hypothec may, notwithstanding any other provision of law, be granted to secure future debts by the same debtor to the security trustee or the beneficiaries of the security trusts, present or future,

Cap. 371.

as may be defined in the trust instrument. Such a hypothec shall be valid on condition that the deed constituting the hypothec expressly states that it secures future debts of the same debtor and limits the effects of the hypothec to a stated maximum sum. Such information shall form part of the relative note of registration for the purposes of article 2042 in lieu of the requirements of article 2042(*c*), (*d*) and (*e*).

(5) The Minister may make regulations to regulate the operation of security granted in favour of a security trustee to secure future debts.

(6) When security is granted to a security trustee, such trustee shall have the power and legal interest to file any legal proceedings for the enforcement thereof even where under the terms of the deed of trust and the security -

(*a*) the trustee is not the creditor of the principal debt or obligation; or

(*b*) all creditors enjoy the right to sue, jointly and severally, for the enforcement of the debt:

Provided that payment by the debtor either to the security trustee or to the beneficiaries, if also creditors, shall discharge the obligations of the debtor to the extent of the payment made.

(7) Subject to the preceding sub-article, nothing in the Code of Organization and Civil Procedure shall hinder the action of a security trustee for the benefit of the beneficiaries under a trust on the basis of any simultaneous judicial or other action by any beneficiary under the trust. Cap. 12.

(8) A security trustee shall not be subject to any of the obligations of the creditors for whose benefit he may hold security except to the extent to which he has expressly agreed in writing.

(9) A security trustee may resign, retire or be substituted in accordance with the terms of the trust and in such case the original security trustee shall assign any security held by him to the substitute security trustee in the form required by law for the particular security held.

(10) Beneficiaries of a security trust who may be vested with the debt, may assign the debt to third parties and the provisions of article 1475 shall apply to the security for such debt even when held by a security trustee and in such case the assignees of such debt shall enjoy the rights of beneficiaries under the security trust upon notice to or acknowledgement by the trustee without the need of a separate assignment of the beneficiary rights under the trust deed.

(11) The appointment of a security trustee to hold security, his removal or his substitution by another trustee and any related transactions shall not operate as a novation nor shall they affect the security validly constituted in any manner.

(12) A security trustee may also act as an agent or mandatory for the beneficiaries of the security trust and may carry out functions under such contract in accordance with its terms.

(13) In the exercise of any right relating to the enforcement of any security, the security trustee shall be bound by the legal provisions relating to the particular type of security and in any case where the security arrangements are not subject to rules as to its enforcement, the security trustee shall act in a fair and reasonable manner in relation to the debtor.

(14) The provisions of article 1967 shall apply *mutatis mutandis* where a pledge is granted by the debtor or a third party for the debtor, to a security trustee, for the benefit of any creditor or creditors, present or future, or in favour of a class or classes of creditors.

Added by: VIII.2010.61.

Title XXIIIB

OF SECURITY BY TITLE TRANSFER

Agreement establishing security. *Added by: VIII.2010.61.*

2095F. (1) Security by title transfer is a contract whereby the debtor, or a third party for the debtor, transfers or assigns movable things, whether by nature of by operation of law, so as to secure a present or future obligation, to:

(*a*) a creditor or creditors, present or future; or

(*b*) to a third party, who shall thereby be considered to be a trustee for the benefit of a creditor or creditors, present and, or future and subordinately for the debtor in accordance with article 2095E.

In this title:

(i) the term "creditor" shall include both the creditor and a third party security trustee for the creditor; and

(ii) the terms "debtor" and "transferor" may refer to the same person or to different persons depending on the circumstances and the term "debtor" shall include the transferor unless the context requires otherwise.

(2) Subject to the observance of such formalities as may be required in case of particular types of movable property, ownership of the property is acquired by the creditor as soon as the debtor and, or the transferor and the creditor enter into an agreement in writing designating:

(*a*) the property being transferred;

(*b*) the secured obligations, which may be existing or future obligations; and

(*c*) the rights of the transferee in case of default as stipulated in the agreement.

(3) For the purposes of the preceding sub-article -

(*a*) when the property being transferred consists of debts

and other monetary obligations the inclusion in the agreement of a list of debts arising from a written or legally equivalent instrument shall be sufficient;

(*b*) when the transfer of property refers to a large amount of debts or to a class or classes of debts, present or future, the provisions of articles 9 to 14 of the Securitisation Act shall apply *mutatis mutandis* with such amendments as are required paying regard to the fact that in lieu of a transfer for the purposes of a securitisation, the parties may agree to a transfer of the same assets for the purpose of security. Cap. 484.

(4) Such agreement may also designate:

(*a*) the rights of the transferee in the event of a breach of the secured obligations; and

(*b*) the rights of the transferor in case of payment or other extinction of the secured obligations; and

(*c*) the manner in which the property is to be valued when rights of sale or set-off are exercised by the creditor,

and such agreement shall take effect in accordance with its terms. In the absence of terms of agreement on the matters stated in this sub-article, the provisions of this title shall apply.

(5) Where the property being transferred by way of security is of a kind which may be transferred by mere delivery, an agreement in writing as provided for in sub-article (2) shall be required for the transfer of such property. Without prejudice to the rights of third parties acting in good faith, the creditor may agree that the debtor use the property so transferred.

(6) A transfer by way of security of debts and other rights shall be operate between the parties from the moment when the agreement referred to in sub-article (2) is made.

(7) A transfer by way of security shall operate as a transfer with regard to third parties:

(*a*) in the case of debts and rights against an obligor, when notice is given in accordance with the article 1471 or the obligor of the assigned right has acknowledged the assignment; or

(*b*) in the case where the rights consist of property, where there is no obligor and where the title to which is registered in a public registry, the effects of the transfer shall arise when the transfer is registered in the relevant register.

For the purposes of article 1471, notice in writing may be given by any means, including by electronic means, and it shall not be required that notice be made by judicial act.

(8) Apart from the case contemplated in article 1472(*b*), when a further assignment of a debt or other right is made by way of security and is notified to the debtor or registered in accordance with sub-article (7), the effects of the subsequent assignment shall

arise only on the termination of the effects of the prior assignment and the rights of the subsequent assignee are conditional thereon. Except where the subsequent assignment is made with the written consent of the prior assignee and subject to the terms of such consent, the prior assignee shall have no obligations towards any subsequent assignee.

(9) The consideration for a transfer by way of security shall be the grant and acceptance of security, and the provisions of Title VI of Part II of Book Second as to "price" shall not apply to such transfers.

(10) For all effects and purposes, the creditor to whom the property has been transferred shall be considered to be the absolute owner of the property so transferred and such property shall not form part of the patrimony of the debtor.

(11) A transfer made in accordance with the provisions of this title:

(*a*) shall not be subject to re-characterisation as any other contract and shall take effect in accordance with its terms; and

(*b*) shall be enforceable in accordance with the terms of an agreement made in accordance with sub-article (2) and the provisions of this title notwithstanding the bankruptcy or insolvency of the debtor of the debt or the grantor of security by title transfer or the commencement or continuation of any insolvency or winding up proceedings or re-organisation measures.

(12) The fruits of the property transferred by way of security shall be deemed to form a part of the property and shall be subject to all the rights of the creditor as stated in this Title.

Enforcement of rights.
Added by: VIII.2010.61.

2095G. (1) The terms of the agreement relating to the transfer of property by way of security shall regulate all matters between the debtor, the transferor and the creditor, including the rights of the creditor to enforce the security in case of default.

(2) Subject to the terms of the agreement between the parties, in the event of a default, the creditor shall, upon giving notice in writing to the debtor and the transferor of property by way of security, if different, be entitled to realise the property transferred in one of the following ways:

(*a*) by sale; or

(*b*) by setting off or netting their value, and applying their value in discharge of the secured obligations.

(3) Set-off or netting shall only be possible if it has been expressly agreed to in the agreement between the parties.

(4) Where a creditor exercises his rights as aforesaid, he must exercise such rights in a commercially reasonable manner, shall be bound by fiduciary obligations in that regard and shall be bound to account to the debtor as to the value used for such enforcement.

(5) Without prejudice to the title vested in the creditor, the creditor shall be entitled, in any case, to demand the sale by judicial auction of the property transferred by way of security and the provisions of Sub-title II of Title VII of Part I of Book Second of Code of Organization and Civil Procedure on Judicial Sales by Auction shall apply with such variation as is required due to the context. Cap. 12.

(6) Where the property transferred by way of security is in the possession of the debtor, the Court shall afford such support to the creditor as may be necessary to take possession of the property for the purposes of any mode of enforcement as aforesaid.

(7) Any enforcement pursuant to the preceding sub-articles shall be without prejudice to the rights of any third party who may have acquired any personal or real rights over the property from the debtor prior to the transfer by way of security, or, if after, with the prior written consent and participation of the creditor; provided that when the security arrangement is not binding with regard to third parties or otherwise publicly known through -

(*a*) registration of the transfer in a public registry; or

(*b*) notice to or acknowledgement by the debtor of a debt in accordance with article 1471 (as modified by sub-article (7) of article 2095F), or

(*c*) transfer of possession of the property to the creditor or a security trustee,

any person acquiring rights over the said property in good faith for value shall also be protected.

(8) It shall be lawful for the parties to enter into a close out netting agreement in accordance with the Set-Off and Netting on Insolvency Act to be applied when a default takes place. Cap. 459.

Liability of the creditor transferee. *Added by: VIII.2010.61.*

2095H. (1) When the creditor has taken possession of the property so transferred, subject to the terms of the transfer agreement, he shall not be permitted to make use of the property unless expressly permitted to do so by the agreement between the parties and shall be liable to the transferor for the loss or deterioration of the property arising from his negligence.

(2) Where the property transferred by way of security is fungible in nature:

(*a*) the parties may agree that the creditor to whom the property has been transferred may enter into transactions involving its sale and may also use it as security for the performance of his obligations;

(*b*) the obligation to return the property shall be to return equivalent property but may be extended to return equivalent value.

(3) The provisions on fiduciary obligations in this Code shall apply to the creditor who shall be considered as having acquired title and possession as a fiduciary for the sole purposes of -

(*a*) retaining the title and, if so agreed, possession of

property as security for the performance of the secured obligations,

(*b*) of applying such property or its value in settlement of the secured obligations in case of default; and

(*c*) of returning the property, or its equivalent in case of fungible property, on performance of the secured obligations or of returning any excess in value to the transferor in case of enforcement,

and notwithstanding the obligation to avoid conflicts of interest he shall be entitled to act in his own interests for the above purposes.

(4) Notwithstanding the fact that the creditor is the absolute owner of property transferred by way of security, any exercise of ownership rights other than as may be provided for in the agreement between the parties or as herein provided shall be a breach of fiduciary duties for which the creditor shall be liable toward the debtor in accordance with this Code.

(5) When enforcement is through set-off by the creditor, upon notice of enforcement given in accordance with article 2095G(2), the creditor shall become the absolute owner of the property and shall be released of all fiduciary duties arising from the transfer agreement and these provisions. The value of the obligation of the creditor to return the property transferred by way of security which is set-off against the rights of the creditor to payment of the obligation due to him shall be established by agreement with the transferor or established in the manner agreed between the parties and in the absence of such agreement, at the market value if there is one, or where there is no market value, at a price established by an independent person competent to value such property.

(6) Upon a notice of enforcement through sale of the property in accordance with article 2095F(2), the creditor shall have the power to sell the property -

(*a*) in the manner agreed with the transferor or, in the absence of agreement, in the manner the creditor considers most appropriate and commercially reasonable;

(*b*) for a price established by agreement with the transferor or established in the manner agreed between the parties and in the absence of such agreement, at the market value if there is one, or where there is no market value, at a price established by an independent person competent to value such property; and

(*c*) when the property is to be sold through a judicial sale by auction, at a price and in accordance with applicable provisions of law,

and the creditor shall be the sole person entitled to receive the proceeds of sale.

7) Upon the events in the preceding sub-articles taking place, the creditor shall allocate to and set-off against the obligation secured -

(*a*) in the case referred to in sub-article (5), the value of the obligation to return the property set-off against the secured obligations;

(*b*) in the case referred to in sub-article (6), the proceeds of sale received by the creditor shall be set-off against the secured obligations,

and any excess shall be immediately paid over to the transferor.

(8) If it is necessary to properly realise the commercially reasonable value, the creditor shall be entitled to sell or set-off as aforesaid all the property transferred by way of security even if it exceeds the value of the secured obligations. Otherwise, the creditor shall only sell or set-off as much as is required to cover the secured obligations, interest and charges and return the excess property to the transferor.

(9) Except where special laws permit otherwise, it shall not be lawful for the debtor to agree on the value of property transferred by way of security for the purposes of enforcement before the receipt by him of a notice of sale or set-off provided for in article 2095G(2); provided it shall be lawful to agree on a value to be established by reference to a market or on valuation mechanisms to be followed in case of disagreement between the parties.

(10) The Court may, *a posteriori*, on the demand of the debtor verify the commercial reasonableness of the realisation of the property or the valuation used in terms of the preceding provisions. Upon such review the Court may, if it finds that the realisation was not carried out in accordance with the agreement between the parties or, absent terms of agreement, in a commercially reasonable manner or at a fair value, condemn the creditor to pay damages to the transferor and, or the debtor for the losses suffered by his actions.

Return of property to debtor. *Added by: VIII.2010.61.*

2095I. (1) When the debtor has performed the secured obligations the creditor is bound absolutely to return the property to the transferor by carrying out such formal and others acts as may be required.

(2) Except as otherwise agreed, it shall not be lawful for the transferor to demand the partial return of the property transferred by way of security on the partial fulfilment of the secured obligations and the creditor is only obliged to return the property so transferred to the transferor, when the debtor has fully performed the secured obligations.

(3) The terms of any undertaking relating to the return of property transferred in accordance with this Title shall be enforceable in accordance with its terms and the provisions of article 1357 shall not apply.

Reservations. *Added by: VIII.2010.61.*

2095J. (1) Nothing in this Title shall limit or affect the application of the laws of Malta which may implement the Financial Collateral Arrangements Directive (2002/47/EC), as the same may from time to time be amended, in so far as it applies to particular property which may be the subject of a title transfer

financial collateral arrangement.

(2) A transfer of an obligation by way of security shall not affect the operation or effect of the legal or contractual terms of the underlying debt or other right being the property transferred by way of security.

(3) A debtor of a debt or other right may, in accordance with article 1996A, validly waive his rights of set-off or other defence *vis-a-vis* his immediate creditor when such debt or other obligation is the subject of a transfer by way of security and such debtor shall not, thereafter, be entitled to raise any defence against any claim made by a transferee of the assigned debt and this notwithstanding the absence of any notice or acknowledgement in terms of article 1471.

(4) The provisions of article 1483 shall not apply in the case of an assignment by way of security.

Title XXIV

OF THE BENEFIT OF SEPARATION OF ESTATES

Definition.

2096. The benefit of separation of estates is the right which the creditors of a deceased person and his legatees have, to demand that the property, both movable and immovable, of the inheritance be separated from the particular property of the heir, and applied to the payment of their respective debts or legacies with preference over all the heir's own creditors.

Effects of benefit.

2097. The effect of the aforesaid benefit in favour of those entitled to it is only that of protecting them against any prejudice which they might sustain in regard to the property of the inheritance in consequence of the claims of the particular creditors of the heir; and such benefit maintains in favour of all and each of them, in competition, such rights only as are competent to them respectively, according to the nature and the conditions of their debts or other rights over the property of the inheritance.

Time within which it may be exercised.

2098. The right to exercise the said benefit ceases unless it is exercised within one year from the day of the opening of the succession.

Alienation of hereditary property before benefit is exercised,

2099. Any alienation of hereditary property, whether movable or immovable, made by the heir, even during the course of the said time, before such benefit is exercised, shall remain unimpaired; but in any such case the benefit may be exercised over the price which may be still due.

or after benefit is exercised.

2100. (1) Any alienation of movables made by the heir shall remain unimpaired, even if made after the benefit has been exercised, saving the provisions of the law relating to the alienation of litigious things.

(2) Immovables, however, alienated after the benefit aforesaid has been exercised, continue to be subject to the rights of the

creditors of the deceased and to those of his legatees.

How benefit is exercised.

2101. (1) The said benefit is exercised by means of a judicial demand.

(2) As regards immovables, however, the registration of the benefit takes the place of such demand.

Contents of note for registration.

2102. (1) For the purpose of effecting the registration of the benefit of the separation of estates, there shall be presented to the Director of the Public Registry a note containing -

(*a*) the particulars set forth in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*) and (*f*) of article 2042;

(*b*) a demand for the registration of the benefit of the separation of the estate of the deceased debtor from that of his heirs.

(2) The provisions of articles 2043 to 2047 and 2049 to 2052 shall apply to the registration of this benefit.

Effects of registration.

2103. The registration of the aforesaid benefit effected within three months of the day of the opening of the succession shall be operative as from such day in regard to immovables alienated within the said time.

When benefit cannot be exercised.

2104. (1) The benefit of the separation of estates cannot be exercised if there has been novation by acknowledging the heir as the debtor.

(2) The benefit shall not operate except in favour of the persons exercising it.

(3) It may be exercised in regard to all the property indiscriminately or for the separation of one or more things specified in the demand.

Creditors of heir cannot demand benefit.

2105. The creditors of the heir cannot demand the separation of estates against the creditors of the inheritance.

Saving as to successions opened before 11th February, 1870.

2106. The benefit of the separation of estates in regard to successions opened before the 11th February, 1870 shall continue to be regulated by the laws in force at the time of the opening of such successions.

Title XXV

OF PRESCRIPTION

GENERAL PROVISIONS

Definition of prescription.

2107. (1) Prescription is a mode of acquiring a right by a continuous, uninterrupted, peaceable, open, and unequivocal possession for a time specified by law.

(2) Prescription is also a mode of releasing oneself from an action, when the creditor has failed to exercise his right for a time specified by law.

Renunciation

2108. (1) Prescription cannot be renounced beforehand, nor shall it be lawful to establish a time for prescription longer than that specified by law.

(2) Prescription already acquired may be renounced.

may be expressed or tacit.

2109. (1) Renunciation of prescription is express or tacit.

(2) Tacit renunciation is inferred from a fact which implies the abandonment of the right acquired.

Persons who cannot renounce prescription already acquired.

2110. A person who is under disability to alienate cannot renounce a prescriptive right already acquired.

Plea of prescription to be set up by party.

2111. The court cannot of its own motion give effect to prescription, where the plea of prescription has not been set up by the party concerned.

When it may be set up.

2112. Prescription may be set up at any stage of the proceedings, even on appeal.

By whom it may be set up.

2113. Creditors and other persons having an interest in giving effect to prescription may set up the plea of prescription, even though the debtor or the possessor shall have renounced it.

Things not subject to prescription.

2114. Prescription does not take place in regard to things which are *extra commercium*.

Things to which prescription applies.
Amended by: L.N. 148 of 1975.

2115. (1) Prescription applies to rights and actions vested in any person, institution, or body corporate, indiscriminately, as well as to property subject to entail.

(2) Nevertheless, prescription may not be set up against any right or action of the Government of Malta, except in the cases mentioned in articles 2149, 2153, 2154, 2155 and 2156.

Applicability of the provisions of this Title.

2116. The provisions of this Title shall apply, unless otherwise provided in other parts of this Code or in other laws.

Prescriptions commenced before the 11th February, 1870.

2117. (1) Prescriptions commenced before the 11th February, 1870 shall be governed by the law then in force.

(2) Nevertheless, prescriptions commenced before the aforesaid day, and for the completion of which, according to the law then in force, a period of time longer than that fixed by this Code had yet to run, shall be completed by the lapse of the period fixed by this Code to be reckoned from the said day.

(3) No period of time elapsed previously to the said day shall be computed for the prescription of things or actions which, according to the law then in force, were not subject to prescription, and which have become so subject in virtue of this Code.

2117A. With regard to prescription, the referral of any matter to arbitration in accordance with the provisions of the Arbitration Act shall have the same effect as a judicial action before a competent court.

Prescription and arbitration proceedings. *Added by: II.1996.78* Cap. 387.

Sub-title I

OF THE CAUSES WHICH PREVENT PRESCRIPTION

2118. Persons who hold a thing in the name of others or the heirs of such persons, cannot prescribe in their own favour: such are tenants, depositaries, usufructuaries, and, generally, persons who hold the thing not as their own.

Persons holding on behalf of others cannot prescribe in their own favour,

2119. The persons mentioned in the last preceding article may, nevertheless, prescribe, if their title is changed by a cause flowing from a third party, or by the opposition which they may have made to the right of the owner.

but may do so upon change of title.

2120. Any person to whom a tenant, depositary, or other mere holder has transferred the thing under a title capable of transferring ownership, may prescribe.

Persons acquiring from tenant, etc., may prescribe.

2121. (1) No one can prescribe against his own title, in the sense that no one can change, in regard to himself, the cause for which he holds the thing.

Prescription against own title.

(2) Nevertheless, a person may prescribe against his own title, in the sense that he may by prescription obtain his discharge from an obligation.

Sub-title II

OF THE CAUSES WHICH SUSPEND PRESCRIPTION

2122. Prescription runs against -

Prescription runs against any person generally.

(*a*) an absentee;

(*b*) a vacant inheritance even though a curator has not been appointed thereto;

(*c*) the heir during the time for making up the inventory or for deliberating; and

(*d*) generally, any other person not included in the exceptions laid down in the following articles.

2123. Prescription does not run -

Exceptions. *Amended by: XLVI.1973.107; XXI.1993.2.*

(*a*) as between spouses;

(*b*) as between the parent and the child subject to parental authority;

(*c*) as between the person under tutorship or curatorship and his tutor or curator until the tutorship or curatorship ceases, and the accounts are definitely rendered and approved;

(*d*) as between the heir and the inheritance entered upon inventory.

Minors, persons interdicted, etc. *Amended by: XXIII.2017.89; XXXII.2018.16.*

2124. (1) Save as otherwise provided by law, prescription does not run against minors and persons interdicted.

(2) Nor does it run, during the continuance of marriage, against any one of the spouses, in any case in which the action competent to such spouse, if exercised, would vest the defendant with a right of relief against the other spouse.

(3) Where damages arise from a criminal offence committed against a minor, prescription shall run from the day on which the victim attains the age of majority.

Other cases of suspension of prescription. *Amended by: VI.2004.4; XXX.2015.9; XVII.2023.24.*

2125. Prescription is likewise suspended -

(*a*) in regard to conditional rights, until the condition is fulfilled;

(*b*) in regard to actions for breach of warranty, until eviction takes place;

(*c*) in regard to any other action the exercise of which is suspended by a time, until such time expires;

(*d*) in regard to an action for damages, during the time before the commencement of the cause when negotiations are taking place between all or any of the parties or their insurers having opposing interests in the claim;

(*e*) where a consumer who has a dispute with a trader, has recourse to an ADR procedure in accordance with the Consumer Affairs Act, the outcome of which procedure is not binding on either party, until such time when the ADR procedure is brought to a conclusion:

Cap. 378.

Provided that the provisions of article 2 of the Consumer Affairs Act shall apply in relation to this paragraph;

Cap. 378.

(*f*) when a qualified entity as defined in the Representative Actions (Consumers) Act, has brought a representative action according to the same Act, until the proceedings are decided definitively.

Act No.XVII of 2023.

Prescription continues after cessation of cause of suspension.

2126. Prescription commenced and suspended shall continue to run as soon as the cause of suspension shall cease.

Sub-title III

OF THE CAUSES WHICH INTERRUPT PRESCRIPTION

Interruption of prescription by eviction of possessor,

2127. Prescription is interrupted when the possessor is deprived, for more than one year, of the enjoyment of the thing, whether by the owner or by a third party.

by judicial act.

2128. Prescription is also interrupted by any judicial act filed in the name of the owner or of the creditor, served on the party against whom it is sought to prevent the running of prescription, showing clearly that the owner or creditor intends to preserve his right.

Interruption operative even if act is irregular, etc.

2129. The interruption shall be operative even though the demand, protest, or other judicial act is null owing to a defect in its form, or is filed before a court which is not the competent court.

Time within which act is to be served.

2130. (1) No interruption takes place if the act is not served before the expiration of one month to be reckoned from the last day of the period of prescription.

(2) Nevertheless, if the party to be served is absent from Malta, service shall be deemed to be effected by the publication of a notice in the Government Gazette, within a month to be reckoned from the last day of the aforesaid period, on the demand of the party filing the act, as provided in the Code of Organization and Civil Procedure.

Cap. 12.

(3) The said notice shall contain a summary of the act of interruption, and shall be signed by the registrar of the court before which the act has been filed.

Interruption by judicial demand.

2131. Prescription is interrupted by a judicial demand, even though such demand has not been notified to the defendant on account of his absence or for any other lawful cause, provided the plaintiff has continued the proceedings against a curator appointed by the court according to the provisions of the Code of Organization and Civil Procedure, and has obtained a judgment on such demand.

Cap. 12.

Interruption to be inoperative if action is withdrawn, etc.

2132. (1) The interruption of prescription made by means of a judicial demand shall be deemed inoperative if the plaintiff withdraws the action or if the action is deserted, or dismissed.

(2) With regard to the withdrawal or the dismissal of an action, the provisions of this article shall not apply in cases where the plaintiff can, according to law, re-institute the action, provided such action is so re-instituted before the same or another court within one month from the day of its previous withdrawal or dismissal, and service thereof is effected in the manner and within the times established in the two preceding articles, as the case may be.

Interruption by acknowledge-ment,

2133. Prescription is interrupted if the debtor or possessor acknowledges the right of the party against whom such prescription had commenced.

by payment on account.

2134. Prescription is also interrupted by a payment on account of the debt, made by the debtor himself or by a person acting in his behalf.

Effects of interruption in regard to surety.

2135. The acknowledgment of the debt made by the principal debtor, or any other act which interrupts prescription as against such debtor, shall also be effectual as an interruption against the

surety, saving, where the surety has bound himself jointly and severally with the principal debtor, the provisions of articles 1100 and 1101.

Period already elapsed not to be reckoned.

2136. (1) Where prescription is interrupted, the portion of the prescriptive period already elapsed shall not be reckoned for the purpose of prescribing.

(2) Prescription, however, may commence anew.

Sub-title IV

OF THE TIME REQUIRED FOR PRESCRIPTION

Commencement of prescription.

2137. Subject to any other provisions of the law, the prescription of an action commences to run from the day on which such action can be exercised, irrespective of the state or condition of the person to whom the action is competent.

Reckoning of prescriptive period.

2138. (1) Prescription is reckoned by whole days, and not by hours.

(2) The days are running days: the months are reckoned according to the calendar.

When prescription is completed. *Amended by: XI.1977.2.*

2139. (1) Prescription is completed immediately upon the expiration of the last day of the prescriptive period.

(2) Nevertheless, if the last day is a Saturday or a public holiday, prescription shall be completed upon the expiration of the next following day, not being a Saturday or a public holiday.

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§ I. OF PRESCRIPTION OF TEN, THIRTY AND FORTY YEARS

Prescription of ten years.

2140. (1) Any person who in good faith and under a title capable of transferring ownership possesses an immovable thing for a period of ten years acquires ownership thereof.

(2) If the title derives from an act which, according to law, must be registered in the Public Registry, the prescriptive period does not commence to run except from the day of the registration of such act.

Good faith.

2141. Good faith must not only exist at the time of acquisition, but must continue during the whole prescriptive period.

Bad faith of predecessor does not prejudice successor.

2142. (1) The bad faith of a previous possessor does not prejudice his successor, whether universal or singular.

(2) Nevertheless, in any such case the successor may not, for the purposes of prescription, conjoin his possession with that of his predecessor.

Limitation of real, personal or mixed actions.

2143. All actions, whether real, personal, or mixed, are barred by the lapse of thirty years, and no opposition to the benefit of limitation may be made on the ground of the absence of title or good faith.

Prescription of forty years.

2144. (1) The prescriptive period referred to in articles 2140 and 2143 shall not apply in the case of immovables subject to entail, or of immovables or actions belonging or competent to churches or other pious institutions.

(2) In the cases referred to in the said articles, prescription as regards property or actions mentioned in sub-article (1) of this article is only completed by the lapse of forty years, provided that no opposition to the benefit of limitation may be made on the ground of the absence of title or good faith.

Rights which cannot be exercised but seldom.

2145. (1) The provisions of the last preceding article shall also apply in the case of a right, even if ecclesiastical, which cannot be exercised but seldom.

(2) In any such case, however, the party pleading prescription must, besides the lapse of forty years, prove also that, within such period, there were at least three occasions on which such right could have been exercised, and that on each occasion he exercised such right, or, as the case may be, that the party to whom such right was competent failed on each occasion to exercise it.

Obligation of debtor in the case of an annuity.

2146. (1) After twenty-five years from the date of the last writing, the debtor of an annuity or other yearly payment which is to continue for more than thirty years may be compelled to give to the creditor or to the person claiming under him, a new writing containing an acknowledgment of the debt, or a declaration of the payments made.

(2) The creditor may require such writing to be, at his expense, made by means of a public deed.

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§ II. Of Certain Particular Prescriptions

Actions barred by the lapse of one year.

2147. The following actions are barred by the lapse of one year:

(*a*) actions of masters and teachers of sciences or arts, for lessons given by the day or by the month;

(*b*) actions of keepers of inns, taverns or lodging-houses for lodging and board furnished by them;

(*c*) actions of domestic servants or other persons paid by the month, of artificers or day-labourers for the payment of their wages, salaries or the supplies due to them;

(*d*) actions of carriers by land or water referred to in articles 1628 to 1631 for the payment of their hire or wages.

Actions barred by the lapse of eighteen months. *Amended by: I.2017.2.*

2148. The following actions are barred by the lapse of eighteen months:

(*a*) actions of tailors, shoemakers, carpenters, masons, whitewashers, locksmiths, goldsmiths, watch-makers, and other persons exercising any trade or mechanical art, for the price of their work or labour or the materials supplied by them;

(*b*) actions of creditors for the price of merchandise, goods or other movable things, sold by retail;

(*c*) actions of persons who keep educational or instructional establishments of any kind, for the payment of the fees due to them;

(*d*) actions of persons for the payment of their salary;

(*e*) actions of brokers for brokerage fees;

(*f*) actions of any person for the hire of movable things.

Actions barred by the lapse of two years. *Amended by: L.N. 148 of 1975; VIII.2007.25.*

2149. The following actions are barred by the lapse of two years:

(*a*) actions of builders of ships or other vessels, and of contractors in respect of constructions or other works made of wood, stone or other material, for the works carried out by them or for the materials supplied by them;

(*b*) actions of physicians, surgeons, obstetricians and apothecaries for their visits or operations or for medicines supplied by them;

(*c*) actions of advocates, legal procurators, notaries, architects and civil engineers, and other persons exercising any other profession or liberal art, for their fees and disbursements;

(*d*) actions of procurators *ad litem* or other attorneys or mandataries, for their remuneration, the expenses incurred by them, indemnities due to them for losses sustained, and for the reimbursement of advances made by them.

Commencement of prescription in regard to actions of advocates, etc.

2150. (1) In regard to the said actions of advocates, legal procurators or procurators *ad litem*, the prescriptive period shall commence to run from the day of the final decision or of the compromise of the lawsuit or from the day of the cessation of their mandate.

(2) For the purposes of this article, any act which, although not forming part of the proceedings of the suit, is, nevertheless, connected therewith, shall be deemed to be part of such proceedings.

(3) In regard to fees for advice and to fees or expenses for judicial letters, protests, warrants, applications or other acts or services not connected with a suit pending or commenced within two years from the day on which the advice, act or service has been given or has taken place, the prescriptive period shall commence to run from that day.

Continuation of supplies, etc.

2151. (1) In the cases referred to in the last four preceding articles, prescription takes place, even though there may have been a continuation of supplies, deliveries on credit, labour, services or other work.

(2) Nevertheless, in such case, where the claim in respect of such supplies, deliveries, labour, services, or other work is evidenced by an approved account or other written declaration of the debtor, the action shall not be barred except by the lapse of five years to be reckoned from the date of such account or declaration.

Limitation of actions against advocates and legal procurators in connection with papers delivered to them.

2152. (1) Advocates and legal procurators are released from any obligation to account for papers relating to lawsuits or advice on the expiration of one year from the day when such lawsuits have been decided or otherwise disposed of, or such advice given.

(2) They are likewise released from any obligation to account for any papers which may have been delivered to them for the purpose of commencing a lawsuit, on the expiration of two years from such delivery, if within such time the lawsuit has not been commenced.

(3) They may, however, be called upon to declare on oath whether they are in possession of such papers, or whether they know where such papers are to be found.

Actions for damages not arising from criminal offence.

2153. Actions for damages not arising from a criminal offence are barred by the lapse of two years.

Actions for damages arising from criminal offence.
Amended by: I.1870.8.
Cap. 9.

2154. (1) With regard to the prescription of civil actions for damages arising from criminal offences, the rules laid down in the Criminal Code relating to the prescription of criminal actions shall be observed.

(2) Nevertheless, any person who has stolen a thing, or who has become the possessor thereof by means of an offence of fraud, or who has received or bought such thing, knowing it to have been stolen or fraudulently acquired, cannot prescribe for it, notwithstanding any lapse of time.

Action for recovery of thing lost or stolen.

2155. (1) The action for the recovery from a third party of a movable thing which has been lost or stolen, where such action is competent under article 559, is barred by the lapse of two years, if the third party received the thing in good faith.

(2) If he received it in bad faith the provisions of sub-article (2) of the last preceding article shall apply.

Actions barred by the lapse of five years.
Amended by: XXVII.1976.12; VIII.2007.26; I.2017.3.

2156. The following actions are barred by the lapse of five years:

(*a*) actions for payment of yearly ground-rent, perpetual or life annuities, interest on annuities ad formam bullae created before the 14th August, 1862 and for the payment of fines due upon a sale or other alienation of emphyteutical tenements;

(*b*) actions for payment of maintenance allowances;

(*c*) actions for payment of rent of urban or rural property;

(*d*) actions for payment of interest on sums taken on loan or for any other cause, and, generally, of any other thing payable yearly or at other shorter periodical terms;

(*e*) actions for the return of money given on loan, if the loan does not result from a public deed;

(*f*) actions for the payment of any other debt arising from commercial transactions or other causes, unless such debt is, under this or any other law, barred by the lapse of a shorter period or unless it results from a public deed;

(*g*) except as provided for in any special law, actions of the Government of Malta for the payment of judicial fees, customs or other dues:

Provided that actions referred to in paragraphs (*a*) and (*c*), where such payments are due to the Government of Malta, shall be barred by prescription by the lapse of ten years.

Action for rendering of accounts against tutor, curator, etc.

2157. An action for the rendering of accounts against any tutor, curator, mandatary, or other administrator, is barred by the lapse of five years from the day of the cessation of the management, or by the lapse of one year from the death of the tutor, curator, mandatary, or other administrator.

Plea of prescription may be set up against party paying for debtor.

2158. The prescriptions established in articles 2147 to 2157 may be set up even against the party who has paid for the debtor, unless the payment was made on the demand or with the concurrence of the debtor himself, or unless the payor was, as surety, or as a joint and several debtor, or for any other cause, bound to pay.

Minors and persons interdicted.

2159. Such prescriptions run against minors and persons interdicted, saving their right to relief against the tutor or curator.

Debtor or his heirs or those claiming under him may be put on oath.
Amended by: I.2017.4; VIII.2017.8.

2160. (1) The prescriptions established in articles 2147, 2148, 2149, 2156 and 2157 shall not be effectual if the parties pleading them, do not of their own accord declare on oath, during the cause, that they are not debtors, or that they do not remember whether the thing has been paid.

(2) If the oath is deferred to the heirs of the person whom the plaintiff alleges to have been the debtor, or to parties claiming under such person, the said prescriptions shall not be effectual if such heirs or parties do not declare that they do not know that the thing is due.

(3) In proceedings for the collection of debts referred to in the proviso to article 2156, where a party to the proceedings declares on oath that he or she is not a debtor, such party shall be required to give reasons why he or she considers himself or herself not to be a debtor.

FIRST SCHEDULE
PART I
FEES

Amended by: XIII.1932.3. Substituted by: XXVIII.1948.2. Amended by: XXI.1962.19; XXXI.1965.23; VI.1972.3; XXX.1979.5; L.N. 161 of 1989. Substituted by: L.N. 212 of 1997. Amended by: L.N. 355 of 2004; VIII.2007.27. Substituted by: L.N. 407 of 2007. Amended by: XIII.2007.13; XXIV.2011.99; XV.2012.27; XIX.2012.16; L.N. 311 of 2012; XXV.2014.5; L.N. 92 of 2015; XII.2015.6; XVII.2019.41. LXV.2020.28; L.N. 40 of 2021.

Fees to be levied under section 268

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1. For the registration of an act of birth	2.60
2. For the registration of an act of marriage or a civil union	2.60

Note: For the payment of the fees respectively established at paragraphs, 1 and 2, the parents of the child, in the case of a birth, and the spouses, in the case of a marriage, are liable *in solidum*.

3. For every certificate attesting that no entry exists in Civil Status Records in respect of a particular individual including the fee for the search	5.15
4. (*a*) For every extract from a registered act of birth, marriage, civil union, death or entry in the Adopted Persons Register in accordance with Forms I, K, KK, M, O in Part II of the First Schedule to this Code	2.60
(*b*) For every extract from a registered act of birth, marriage, death or entry in the Adopted Persons Register in accordance with Forms J, L, P in Part II of the First Schedule to this Code	2.60
(*c*) For every certificate containing a copy in full of a registration of birth, marriage, civil union or death with such notes as may be appended thereto	10.25
(*d*) For every extract from a registered act of birth, marriage, civil union, death or entry in the Adopted Persons Register ordered form the Public Registry electronic website	2.50
(*e*) For every certificate containing a copy in full of a registration of birth, marriage, civil union or death with such notes as may be appended thereto ordered from the Public Registry electronic website	9.95
5. For an entry in the Adopted Persons Register	2.60
6.* For every certificate reproducing all acts of civil status against any individual	13.20
7. For every submission of Form TT, UU, V, WW, XX, and Y as indicated in Part II of the First Schedule to this Code.....	5
8. For every submission of Form V which has been submitted in terms of article 278A(2)(c) of this Code, as indicated in Part II of the First Schedule to this Code.....	free

* Not yet in force.

PART II

FORMS

Amended by:
L.N. 148 of 1975;
XXX.1995.5;
IX.2004.14.

FORM A

(Article 195)

EDICT FOR INFORMATION RESPECTING AN ABSENT PERSON

REGISTRY OF THE CIVIL COURT
(VOLUNTARY JURISDICTION SECTION)

..... 20

Whereas..... has, by an application filed on the ..... applied for the appointment of a curator to ....., (*or*, *as the case may be*, for the opening of the secret will of ....., *or* for a declaration that the public will of ..... be accessible, *or* that the applicant himself be put into provisional possession of the property of .....) who is alleged to have since the ..... ceased to appear in Malta, without any news of him having been received.

Whosoever has any news of the existence of the said ..... , is required to communicate it to the undersigned Registrar of the Civil Court (Voluntary Jurisdiction Section), for the information of the said Court, within one month from the day of the publication of this present edict in the Government Gazette.

By order of the Court,

Registrar.

FORM B
(Article 254)

Amended by:
L.N. 148 of 1975;
XXII.2005.83.

NOTICE

REGISTRY OF THE CIVIL COURT, FIRST HALL

..... 20

Whereas ..... has filed a sworn application demanding correction of the registration (*or* the cancellation of the registration *or* the registration) of his birth, *or* of his marriage, *or* of the death of .....

Whosoever may have an interest therein, and wishes to oppose that demand, is hereby called upon to do so, by means of a note to be filed in the above-mentioned Registry within fifteen days from the day of the publication of this present notice in the Government Gazette.

Those who, within the aforesaid time, shall have filed such note, shall be notified, by the service of a copy of the said sworn application, of the day which will be appointed for the hearing of the cause.

By order of the Court,

Registrar.

FORM BB
(Article 281)

Added by:
VII.1985.4.
Amended by:
XII.1986.7;
XXIV.2011.99;
XIX.2012.16.

Registry of the Court of Revision of

Notarial Acts

..... 20 .....

Whereas AB has given notice of his birth/the birth of CD, a child whose mother and maternal grandparents are dead/cannot be found, claiming that he/the said CD was born on .....at..... and that his mother is ..... a daughter of ..... born at ..... on .....

Whoever may have an interest to oppose such registration, is hereby called upon to do so, by means of a note filed in the above-mentioned Registry within fifteen days from the date of publication of this notice.

Anybody who within the aforesaid time shall have filed such note, shall be notified of the day appointed for hearing by the Court which shall hear on oath every person in possession of information on the matter.

By order of the Court,

Registrar

Amended by:
XXI.1993.7.
Substituted by:
XXIII.2017.90;
L.N. 339 of 2019.
LXV.2020.29.

FORM C
(Article 278)

ATT TAT-TWELID REĠISTRU PUBBLIKU PUBLIC REGISTRY
ACT OF BIRTH

DATA TAL-ATT _____
DATE OF THE ACT

Taghrif dwar it-tarbija *Particulars of the child*	**Twelid** *Birth* **Lok** *Place*	**Il-hin, il-jum, ix-xahar u s-sena** *Hour, day, month and year*	**Sess** *Sex*	**Ismijiet moghtija** *Names given*	**Isem jew ismijiet li bih/bihom it-tarbija ghandha tiġi msejha u l-kunjom** *Name or names by which the child is to be called and surname*	**Annotazzjonijiet** *Annotations*
Taghrif dwar *Particularsof*	**Isem u kunjom** *Name and surname*	**Dokument tal-identità** *Identification document*	**Età** *Age* **Snin** *Years*	**Lok** *Place of* **tat-twelid** *birth* / **ta' residenza** *residence*	**Isem u kunjom il-ġenituri inkluż il-kunjom fit- twelid u jekk humiex hajjin jew mejtin** *Name and surname of the parents including their surname at birth and whether alive or dead*	
Il-ġenitur (1) *The parent* **Il-ġenitur (2)** *The parent*					**Il-ġenitur (1a)** *The parent* **Il-ġenitur (1b)** *The parent* **Il-ġenitur (2a)** *The parent* **Il-ġenitur (2b)** *The parent*	
Data u lok taż-żwieġ/unjoni ċivili *Date and place of marriage/civil union*						
Min jaghmel id-dikjarazzjoni *The person/s making the declaration*						

Data ta' meta daħal l-Att
Date of receipt of the Act _____

Numru wara l-iehor kif daħal l-Att
Progressive number of the entry _____

Firma ta' min jaghmel id-dikjarazzjoni
Signature of the person/smaking the declaration _____

Firma tad-Direttur jew tal-uffiċjal iehor li jaghmel floku

Signature of the Director or other officer authorised to act in his stead _____

Uffiċjal inkarigat

Officer in charge _____

Amended by:
XXXI.1933.7.
Substituted by:
XXIII.2017.90;
L.N. 339 of 2019.
LXV.2020.29.

FORM D
(Article 287)

REĠISTRU PUBBLIKU *PUBLIC REGISTRY*

ATT TA' REPERT TA' TARBIJA
ACT RESPECTING THE FINDING OF A CHILD

DATA TAL-ATT
DATE OF THE ACT ____

Tagħrif dwar it-tarbija *Particulars of the child*	**Is-sejba** *Finding*				**L-isem li ta lit-tarbija l-uffiċjal inkarigat** *Name given to the child by the undersigned officer*	**Stat li fih instabet it-tarbija** *State of the child*			
	Fejn *Place*	**Il-hin, il-jum, ix-xahar u s-sena** *Time, day, month and year*	**L-Età li tidher** *Apparent age*	**Sess** *Sex*		**Jekk liebsa u kif** *If clothed and how*	**Jekk għandhiex xi marki li jidhru** *If bearing any apparent marks*	**Ħaġa oħra li nstabet fuq il-persuna tat-tarbija** *Other objects found on the person of the child*	**Annotazzjonijiet** *Annotations*

Tagħrif dwar *Particulars of*	**Isem u kunjom** *Name and surname*	**Dokument tal-identità** *Identification document*	**Età** *Age*	**Lok tat-twelid** *Place of birth*	**Lok tar-residenza** *Place of residence*	**Isem u kunjom il-ġenituri nkluż il-kunjom fit-twelid** *Name and surname of the parents including their surname at birth*	
Il-persuna li sabet it-tarbija *the person who found the child*						**Il-ġenitur (1)** *The parent*	
						Il-ġenitur (2) *The parent*	
Il-persuna lilha ġiet mogħtija t-tarbija *the person to whom the child has been delivered*						**Il-ġenitur (1)** *The parent*	
						Il-ġenitur (2) *The parent*	

FIRMA *SIGNATURE* **tal-persuna li sabet it-tarbija,** *of the person who found the child,* _____

FIRMA *SIGNATURE* **ta' dik li lilha ġiet mogħtija** *of the person to whom the child has been delivered,* _____

Uffiċjal responsabbli _____ *Officer in charge* _____

Substituted by:
L.N. 339 of 2019;
LXV.2020.29.

FORM E
(Article 293)

REĠISTRU PUBBLIKU *PUBLIC REGISTRY*

ATT TAŻ-ŻWIEĠ
ACT OF MARRIAGE

DIKJARAZZJONI TAL-MIŻŻEWĠIN:
DECLARATION OF THE SPOUSES:

DATA TAL-ATT:
DATE OF THE ACT: ___

MR No:_____(1)

Aħna hawn taħt iffirmati niddikjaraw li fil-preżenza ta' **u tax-xhieda hawn taħt imsemmija żżewwiġna fi** **fi**
*Wethe undersigned hereby declare that we have in the presence of*_____(2) *and of the undersigned witnesses contracted marriage at*_____(3) *on*_____(4)
(**Data**/*Date*)

Aħna hawn taħt iffirmati niddikjaraw: li għażilna_____**bħala l-isem tal-familja tagħna, li għandu jkun il-kunjom tat-tfal futuri tagħna/l-isem tal-familja huwa**_____**u li għandu jkun il-kunjom tat-tfal futuri tagħna (Ħassar fejn ma japplikax).**
*We the undersigned hereby declare that: we chose*_____*as our family name which shall be the surname of any future children/the family name is*_____*which shall be the surname of any future children (Delete where not applicable).*

TAGĦRIF DWAR IL-KONJUĠI(1) *PARTICULARS OF SPOUSE(1)*		**TAGĦRIF DWAR IL-KONJUĠI(2)** *PARTICULARS OF SPOUSE (2)*
(5)	**Isem u kunjom** *Name and surname*	(9)
(6)	**Data u lok tat-twelid u dokument ta' identifikazzjoni** *Date and placeof birth and identification document*	(10)
(7)	**Lok ta'residenza** *Place of residence*	(11)
Il-ġenitur (1a) **Il-ġenitur (1b) (8)** **The parent** **The parent**	**Isem u kunjom il-ġenituri, inkluż kunjomhom fit-twelid** *Name and surname of the parents, including surname at birth*	**Il-ġenitur (2a)** **Il-ġenitur (2b) (12)** **The parent** **The parent**
	Kunjom wara ż-żwieġ skont l-Artikolu 4(1) tal-Kodiċi Ċivili (Kap.16) *Surname after marriage according to article 4(1) of the Civil Code (Cap. 16)*	

ADDENDA
(32)

TAGĦRIF DWAR IX-XHIEDA *PARTICULARS OF THE WITNESSES*			**TAGĦRIF DWAR IX-XHIEDA** *PARTICULARS OF THE WITNESSES*	
(13)	(16)	**Isem u kunjom** *Name and surname*	(19)	(22)
(14)	(17)	**Data u lok tat-twelid** *Date and place of birth*	(20)	(23)
(15)	(18)	**Lok ta' residenza** *Place of residence*	(21)	(24)

_____(25)
(**FIRMA TAL-PARTI FIŻ-ŻWIEĠ**/*SIGNATURE OF SPOUSE*)

_____(26)
(**FIRMA TAL-PARTI FIŻ-ŻWIEĠ**/*SIGNATURE OF SPOUSE*

_____(27)
(**Firem tax-Xhieda**/*Witnesses' Signatures*)

Id-dikjarazzjonijiet ta' hawn fuq ġew iffirmati quddiemi.
The above declarations were signed in my presence.

Firma tar-Reġistratur _____
*Signature of Registrar*_____(28)

Data tad-dħul tal-Att: (29) *Date of receipt of the Act:*	**Numru wara l-iehor tar-Reġistru Nru:** (30) *Progressive number of Registration No:*
Firma tad-Direttur jew ta' uffiċjal iehor li jaħmel floku: (31) *Signature of the Director or other officer authorized to act in his stead:*	

Added by:
IX. 2014.14.
Substituted by:
L.N. 339 of 2019;
LXV.2020.29.

FORM EE
(Article 295A)

ATT TA' UNJONI ĊIVILI *ACT OF CIVIL UNION*

DIKJARAZZJONI TAL- PARTIJIET:
DECLARATION OF THE PARTIES:

DATA TAL-ATT:
DATE OF THE ACT: ___

CU No:_____(1)

Aħna hawn taħt iffirmati niddikjaraw li fil-preżenza ta' _____ **u tax-xhieda hawn taħt imsemmija kkuntrattajna Unjoni Ċivili fi** _____
*We the undersigned hereby declare that we have in the presence of*_____(2) *and of the undermentioned witnesses contracted a Civil Union at*_____(3) *on*_____(4)

(**Data**/*Date*)

Aħna hawn taħt iffirmati niddikjaraw: li għażilna _____**bħala l-isem tal-familja tagħna, li għandu jkun il-kunjom tat-tfal futuri tagħna l-isem tal-familja huwa** _____**u li għandu jkun il-kunjom tat-tfal futuri tagħna (Ħassar fejn ma japplikax).**
We the undersigned hereby declare that we choose _____ *as our family name which shall be the surname of any future children/the family name is*_____*which shall be the surname of any future children (Delete where not applicable).*

TAGĦRIF DWAR IS-SIEMEB(1) *PARTICULARS OF PARTNER(1)*		**TAGĦRIF DWAR IS-SIEMEB**(2) *PARTICULARS OF PARTNER(2)*	**ADDENDA** (32)
(5)	**Isem u kunjom** *Name and surname*	(9)	
(6)	**Data u lok tat-twelid u dokument ta' identifikazzjoni** *Date and place of birth and identification document*	(10)	
(7)	**Lok ta'residenza** *Place of residence*	(11)	
Il-ġenitur (1a) **Il-ġenitur (1b)** *The parent* *The parent*	**Isem u kunjom il-ġenituri, inkluż il-kunjom fit-twelid** *Name and surname of the parents, including their surname at birth*	**Il-ġenitur (2a)** **Il-ġenitur (2b)** (12) *The parent* *The parent*	
	Kunjom wara l-Unjoni Ċivili skont l-artikolu 4(1) tal-Kodiċi Ċivili (Kap. 16) *Surname after Civil Union according to article 4(1) of the Civil Code (Cap. 16)*		

TAGĦRIF DWAR IX-XHIEDA *PARTICULARS OF THE WITNESSES*			**TAGĦRIF DWAR IX-XHIEDA** *PARTICULARS OF THE WITNESSES*	
(13)	(16)	**Isem u kunjom** *Name and surname*	(19)	(22)
(14)	(17)	**Data u lok tat-twelid** *Date and place of birth*	(20)	(23)
(15)	(18)	**Lok ta' residenza** *Place of residence*	(21)	(24)

_____(25)
(**FIRMA TAL-PARTI FL-UNJONI ĊIVILI**/*SIGNATURE OF PARTY TO THE CIVIL UNION*)

_____(26)
(**FIRMA TAL-PARTI FL-UNJONI ĊIVILI**/*SIGNATURE OF PARTY TO THE CIVIL UNION*)

_____(27)
(**Firem tax-Xhieda**/*Witnesses' Signatures*)

Id-dikjarazzjonijiet ta' ħawn fuq ġew iffirmati quddiemi.
The above declarations were signed in my presence.

Firma tar-Reġistratur
*Signature of Registrar*_____(28)

Data tad-dħul tal-Att *Date of receipt of the Act*	(29)	**Numru wara l-iehor tar-Reġistru Nru.** *Progressive number of Registration No.*	(30)
Firma tad-Direttur jew ta' uffiċjal iehor li jaghmel floku *Signature of the Director or other officer authorized to act in his stead*			(31)

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

Substituted by:
L.N. 339 of 2019.

FORM F
(Article 296)

CERTIFICATE OF DEATH

_____ 20_____

To_____, officer entrusted with the drawing up of acts of death.

I do hereby certify (*stating whether from personal knowledge or from information obtained from other persons, and, in the latter case, from whom*) that_____, whom I attended as physician, during his last illness, died of _____, on the_____, in his house at No_____in _____ _____ : and that the death took place at_____o'clock_____m.

_____

(*Signature*)
Physician

Substituted by:
L.N. 339 of 2019;
Amended by:
XXVII.2020.40.
Substituted by:
L.N. 38 of 2021.

FORM G
(Article 301)

ATT TAL-MEWT
ACT OF DEATH

REĠISTRU PUBBLIKU

PUBLIC REGISTRY

DATA TAL-ATT:
DATE OF THE ACT:

Isem u kunjom tal-mejjet Name and surname of the deceased	Isem u kunjom tal-parti l-oħra fiż-żwieġ / f'unjoni ċivili / f'koabitazzjoni jew armel / armla jew persuna waħedha Name and surname of spouse / partner in a civil union / in a cohabitation or widow / widower or single	Dokument tal-identità' Identification document	Età' Age	Lok Place		Isem u kunjom il-ġenituri inklużi il-kunjom fit-twelid, jekk humiex ħajjin jew mejtin Name and surname of the parents including their surname at birth, whether alive or dead	Kaġun, lok, data u ħin tal-mewt u lok tad-dfin Cause, place, date and time of death and place of burial	ANNOTAZZJONIJIET ANNOTATIONS
				tat-twelid of birth	ta' residenza of residence			
						Il-ġenitur (1) The parent **Il-ġenitur (2)** The parent		

Data ta' meta daħal l-Att
Date of receipt of the Act

Numru wara l-ieħor kif daħal l-Att
Progressive number of the entry

Firma tad-Direttur jew tal-uffiċjal li jagħmel floku
Signature of the Director or other officer authorised to act in his stead

Uffiċjal inkarigat
Officer in charge

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU – MALTA / GĦAWDEX / PUBLIC REGISTRY OFFICE – MALTA / GOZO

Added by:
Ord XXI.1962.19.
Substituted by:
XXIII.2017.90;
L.N. 339 of 2019;
LXV.2020.29.

FORM H
(Article 125)

REĠISTRU PUBBLIKU *PUBLIC REGISTRY*

REĠISTRAZZJONIJIET TA' PERSUNI ADOTTATI
ENTRIES OF ADOPTED PERSONS

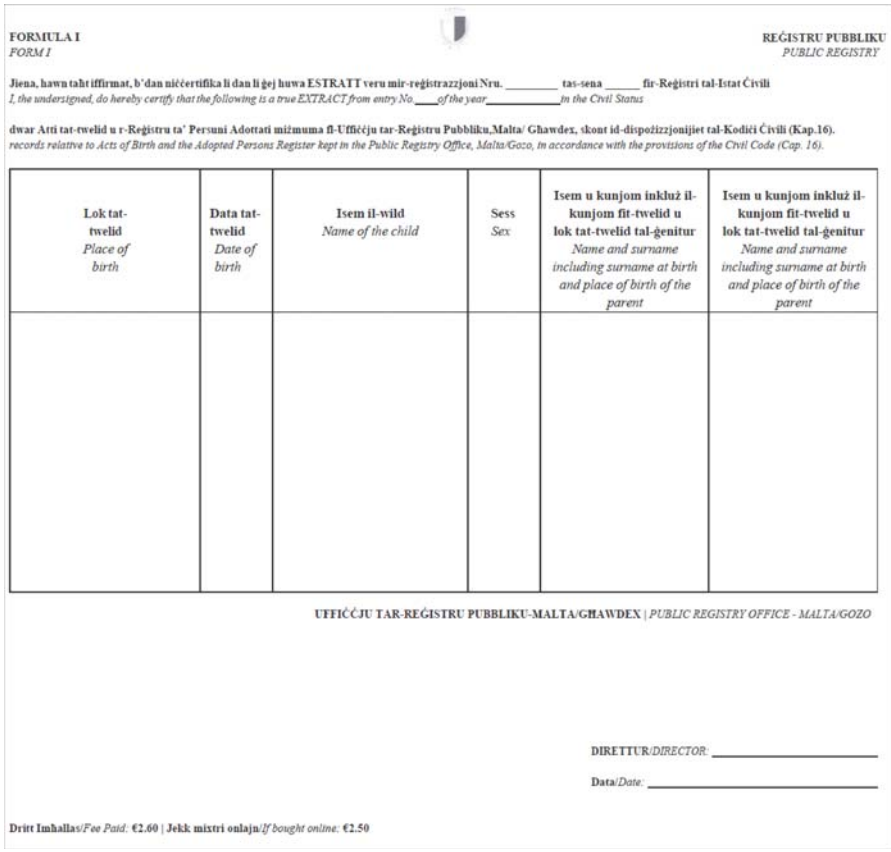
1	2	3	4	5	6	7	8	9
Nru. ta' Reġistrazzjoni *No. of Entry*	**Data, pajjiż u lok tat-twelid tal-persuna adottata** *Date, country and place of birth of person adopted*	**Isem u kunjom tal- persuna adottata** *Name and surname of person adopted*	**Sess tal-persuna adottata** *Sex of person adopted*	**Isem u kunjom, inkluż il- kunjom fit-twelid, Età, dokument ta' identita', post tat-twelid u post tar-residenza tal-adottant jew adottanti** *Name and surname, including their surname at birth, age, identification document, place of birth and place of residence of adopter or adopters*	**Isem u kunjom tal- ġenituri tal-adottant jew adottanti nkluż il-kunjom fit-twelid** *Name and surname of the parents of the adopter or adopters including their surname at birth*	**Data tad-digriet tal-adozzjoni** *Date of adoption decree*	**Data tar-reġistrazzjoni** *Date of entry*	**Firma tad-Direttur tar-Reġistru Pubbliku** *Signature of Director of Public Registry*
				Adottant (1) *Adopter* **Adottant (2)** *Adopter*	**Il-ġenitur (1a)** *The parent* **Il-ġenitur (1b)** *The parent* **Il-ġenitur (2a)** *The parent* **Il-ġenitur (2b)** *The parent*			

Added:
XXXI.1965.23.
Substituted by:
XXI.1993.85.
Substituted by:
XXIII.2017.90;
L.N. 339 of 2019;
LXV.2020.29.

FORM I

(Article 251)

Extract of Act of Birth registered before 1st March 2005



FORMULA I
FORM I

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika li dan li ġej huwa ESTRATT veru mir-reġistrazzjoni Nru. _____ tas-sena _____ fir-Reġistri tal-Istat Ċivili
I, the undersigned, do hereby certify that the following is a true EXTRACT from entry No. ____ of the year _____ in the Civil Status

dwar Atti tat-twelid u r-Reġistru ta' Persuni Adottati miżmuma fl-Uffiċċju tar-Reġistru Pubbliku,Malta/ Ghawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap.16).
records relative to Acts of Birth and the Adopted Persons Register kept in the Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Lok tat-twelid *Place of birth*	**Data tat-twelid** *Date of birth*	**Isem il-wild** *Name of the child*	**Sess** *Sex*	**Isem u kunjom inkluż il-kunjom fit-twelid u lok tat-twelid tal-ġenitur** *Name and surname including surname at birth and place of birth of the parent*	**Isem u kunjom inkluż il-kunjom fit-twelid u lok tat-twelid tal-ġenitur** *Name and surname including surname at birth and place of birth of the parent*

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU-MALTA/GHAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

DIRETTUR/*DIRECTOR*: _____

Data/*Date*: _____

Dritt Imħallas/*Fee Paid*: **€2.00** | **Jekk mixtri onlajn**/*If bought online*: **€2.50**

Added:
L.N. 339 of 2019.
Substituted by:
LXV.2020.29.

FORM I
(Article 251)
Extract of Act of Birth registered as from
1st March 2005

FORMULA I
FORM I

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika li dan li ġej huwa ESTRATT veru mir-reġistrazzjoni Nru. _____ tas-sena _____ fir-Reġistri tal-Istat Ċivili
I, the undersigned, do hereby certify that the following is a true EXTRACT from entry No. ___ of the year _____ in the Civil Status

dwar Atti tat-twelid u r-Reġistru ta' Persuni Adottati miżmuma fl-Uffiċċju tar-Reġistru Pubbliku,Malta/ Għawdex,skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap.16).
records relative to Acts of Birth and the Adopted Persons Register kept in the Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Lok tat-twelid *Place of birth*	**Data tat-twelid** *Date of birth*	**Isem u kunjom il-wild** *Name and surname of the child*	**Sess** *Sex*	**Isem u kunjom inkluż il-kunjom fit-twelid u lok tat-twelid tal-ġenitur** *Name and surname including surname at birth and place of birth of the parent*	**Isem u kunjom inkluż il-kunjom fit-twelid u lok tat-twelid tal-ġenitur** *Name and surname including surname at birth and place of birth of the parent*

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

DIRETTUR/*DIRECTOR*: _____

Data/*Date*: _____

Dritt Imħallas/*Fee Paid*: **€ 2.60** | **Jekk mixtri onlajn**/*If bought online*: **€ 2.50**

FORM J
(Article 251)

Added by: XXXI.1965.23. Substituted by: XXI.1993.85; L.N. 339 of 2019; LXV.2020.29.

FORMULA J
FORM J

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika illi dan li ġej huwa ESTRATT veru mir-Reġistrazzjoni Nru. _____
I, the undersigned, do hereby certify that the following is a true EXTRACT from Entry No. _____

tas-sena _____ **fir-Reġistri tal-Istat Ċivili dwar Atti tat-Twelid u r-Reġistru ta' Persuni Adottati miżmuma**
*of the year*_____*in the Civil Status Records relative to the Acts of Birth and the Adopted Persons Register kept in*

fl-Uffiċċju tar-Reġistru Pubbliku, Malta/Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).
the Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Lok tat-twelid: *Place of birth:*	
Data tat-twelid: *Date of birth:*	
Isem u kunjom: *Name and surname:*	
Sess: *Sex:*	

DIRETTUR */DIRECTOR:* _____

Data/*Date:* _____

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

Dritt Imħallas/*Fee Paid:* **€2.60** | **Jekk mixtri onlajn**/*If bought online:* **€2.50**

Substituted by:
XXIII.2017.90;
L.N. 339 of 2019;

FORM K
(Article 251)
Extract of Act of Marriage - Application for
Publication of Banns prior to 1st September 2017

FORMULA K
FORM K

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jien, hawn taht iffirmat, b'dan niċċertifika li dan ta' hawn taht huwa ESTRATT veru mill-Att taż-Żwieġ Nru. reġistrat fl-uffiċċju
I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Marriage No.

_____

registered in the

_____

tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).
Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Tagħrif dwar *Particulars Respecting*	**Isem u Kunjom** *Name and Surname*	**Età jew data tat-twelid** *Age or date of birth*	**Post tat-twelid** *Place of birth*	**Ġenituri tal-miżżewġin** *Parents of the husband and wife*
Ir-raġel *The husband*				
Il-mara *The wife*				
Post u data taż-żwieġ *Place and date of marriage*				

Il-mara għażlet li żżomm kunjom xbubitha maż-żwieġ. (hassar fejn ma japplikax)
The wife chose to retain her surname on marriage. (delete where not applicable)

DIRETTUR / *DIRECTOR:* _____

Data / *Date:* _____

Dritt Imħallas / *Fee Paid* **€2.60** | **Jekk mixtri onlajn** / *If bought online* **€2.50** **UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA / GĦAWDEX** | *PUBLIC REGISTRY OFFICE - MALTA / GOZO*

Added by:
L.N. 339 of 2019.
Substituted by:
LXV.2020.29

FORM K
[Article 251]

FORMULA K
FORM K

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jien, hawn taħt iffirmat, b'dan niċċertifika illi dan ta' hawn taħt huwa ESTRATT veru mill-Att taż-Żwieġ Nru. _____ reġistrat fl-uffiċċju
I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Marriage No.___registered in the

Tar-Reġistru Pubbliku,Malta/ Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili(Kap.16).
Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Partikolaritajiet dwar *Particulars of the*	**Isem u kunjom** *Name and surname*	**Età jew data tat-twelid** *Age or date of birth*	**Lok tat-twelid** *Place of birth*	**Ġenituri tal-miżżewġin** *Parents of Spouses*	**Kunjom wara ż-żwieġ skont l-artikolu 4(1) tal-Kodiċi Ċivili (Kap. 16)** *Surname after marriage according to article 4(1) of the Civil Code (Cap. 16)*
Konjuġi *Spouse*					
Konjuġi *Spouse*					
Lok u data taż-żwieġ *Place and date of marriage*					
	Aħna hawn taħt iffirmati niddikjaraw: li għażilna_____bħala l-isem tal-familja tagħna, li għandu jkun il-kunjom tat-tfal futuri tagħna/l-isem tal-familja huwa_____u li għandu jkun il-kunjom tat-tfal futuri tagħna (Ħassar fejn ma japplikax). *We the undersigned hereby declare that: we chose_____as our family name which shall be the surname of any future children/the family name is _____which shall be the surname of any future children (Delete where not applicable).*				

DIRETTUR/*DIRECTOR*: _____

Data/*Date*: _____

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

Added by: XXV.2014.5. *Substituted by:* L.N. 339 of 2019; LXV.2020.29

FORM KK

[Article 251]

Extract of Act of Marriage - Application for Publication of Banns as from 1st September 2017

FORMULA KK
FORM KK

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taht iffirmat, b'dan niċċertifika li dan ta' hawn taht huwa ESTRATT veru mill-Att tal-Unjoni Ċivili Nru. _____ irreġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta/Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).

I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Civil Union No._____registered in the Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Tagħrif dwar *Particulars*	**Isem u kunjom** *Name and surname*	**Età jew data tat-twelid** *Age or date of birth*	**Lok tat-twelid** *Place of birth*	**Ġenitur/i 4(1)** *Parent/s*	**Kunjom wara l-Unjoni Ċivili skont l-artikolu tal-Kodiċi Ċivili (Kap. 16)** *Surname after marriage according to article 4(1) of the Civil Code (Cap. 16)*
Sieħeb/Sieħba *Partner (1)*					
Sieħeb/Sieħba (2) *Partner (2)*					

Lok u data tal-Unjoni Ċivili
Place and date of Civil Union

Aħna hawn taht iffirmati niddikjaraw: li għażilna_____bħala l-isem tal-familja tagħna, li għandu jkun il-kunjom tat-tfal futuri tagħna/l-isem tal-familja huwa_u li għandu jkun il-kunjom tat-tfal futuri tagħna (Ħassar fejn ma japplikax).

We the undersigned hereby declare that: we chose_____as our family name which shall be the surname of any future children/the family name is_which shall be the surname of any future children (Delete where not applicable).

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

DIRETTUR/*DIRECTOR*: _____

Data/*Date*: _____

Added by: XXXI.1965.23. Amended by: XXI.1993.85. Substituted by: XXIII.2017.90; L.N. 339 of 2019.

FORM L

(Article 251)

Extract of Act of Marriage - Application for Publication of Banns prior to 1st September 2017

FORMULA L
FORM L

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika li dan ta' hawn taħt huwa ESTRATT veru mill-Att taż-Żwieġ Nru. ____

I, the undersigned, do hereby certify that the following is a true EXTRACT from Act of Marriage No. ____

reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).

registered in the Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom ir-raġel: *Name and surname of husband:*	
Isem u kunjom xbubit il-mara: *Name and maiden surname of wife:*	
Lok taż-żwieġ: *Place of marriage:*	
Data taż-żwieġ: *Date of marriage:*	
Il-mara għażlet li żżomm kunjom xbubitha maż-żwieġ / Il-mara għażlet li tieħu l-kunjom tar-raġel maż-żwieġ/Il-mara għażlet li tieħu l-kunjom tar-raġel li miet qabilha (Ħassar fejn ma japplikax) *The wife chose to retain her surname on marriage/The wife chose to adopt her husband's surname on marriage/The wife chose to retain the surname of her predeceased spouse. (Delete where not applicable)*	

DIRETTUR / *DIRECTOR:* _____

Data / *Date:* _____

Dritt Imħallas / *Fee Paid:* **€2.60 | Jekk mixtri onlajn** /
If bought online: **€2.50 UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA / GĦAWDEX** | *PUBLIC REGISTRY OFFICE - MALTA / GOZO*

Added by:
L.N. 339 of 2019.
Substituted by:
LXV.2020.29.

FORM L
(Article 251)

FORMULA L
FORM L

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena hawn taħt iffirmat, b'dan niċċertifika li dan ta' hawn taħt huwa ESTRATT veru mill-Att taż-Żwieġ Nru. _____
I, the undersigned, do hereby certify that the following is a true EXTRACT from Act of Marriage No. ____

reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta/Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).
registered in the Public Registry Office, Malta/Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom il-konjuġi: *Name and surname of the spouse:*	
Kunjom wara ż-żwieġ skont l-artikolu 4(1) tal-Kodiċi Ċivili (Kap. 16) *Surname after marriage according to article 4(1) of the Civil Code (Cap. 16)*	
Isem u kunjom il-konjuġi: *Name and surname of the spouse:*	
Kunjom wara ż-żwieġ skont l-artikolu 4(1) tal-Kodiċi Ċivili (Kap. 16) *Surname after marriage according to article 4(1) of the Civil Code (Cap. 16)*	
Lok taż-żwieġ: *Place of marriage:*	
Data taż-żwieġ: *Date of marriage:*	
Isem tal-familja *Family Name*	

DIRETTUR */DIRECTOR:* _____

Data/*Date:* _____

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX | *PUBLIC REGISTRY OFFICE - MALTA/GOZO*

Added by:
XXXI.1965.23.

FORM M
(Article 251)

Deleted by article 85 of Act XXI of 1993.

Added by:
XXXI.1965.23.

FORM N
(Article 251)

Deleted by article 85 of Act XXI of 1993.

Added by:
XXXI. 1965.23.
Substituted by:
L.N. 339 of 2019.

FORM 0

(Article 251)

Extract of Act of Death registered prior to 30th September 1999

FORMULA O
FORM O

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika illi dan ta' hawn taħt huwa ESTRATT veru mill-Att tal-Mewt Nru. _____ reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).

I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Death No._____registered in the Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom tal-mejjet *Name and surname of the deceased*	**Jekk hux miżżewweġ/miżżewġa jew le, armel jew armla** *Whether married or unmarried, widower or widow*	**Okkupazzjoni u Età(snin)** *Occupation and age (years)*	**Post tat-twelid** *Place of birth*	**Isem u kunjom il-ġenituri** *Name and surname of parents*	**Post u data tal-mewt** *Place and date of death*

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX |
PUBLIC REGISTRY OFFICE - MALTA/GOZO

DIRETTUR / *DIRECTOR:* _____

Data / *Date:* _____

Dritt Imħallas / *Fee Paid:* **€2.60 | Jekk mixtri onlajn** / *If bought online:* **€2.50**

Added by:
L.N. 339 of 2019.

FORM 0
(Article 251)
Extract of Act of Death registered from 30th September 1999

FORMULA O
FORM O

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika illi dan ta' hawn taħt huwa ESTRATT veru mill-Att tal-Mewt Nru. _____ reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).

I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Death No. _____ registered in the Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom tal-mejjet *Name and surname of the deceased*	**Jekk hux miżżewweġ/miżżewġa jew le, armel jew armla** *Whether married or unmarried, widower or widow*	**Id-dokument tal-identità u Età (snin)** *Identification document and age (years)*	**Post tat-twelid** *Place of birth*	**Isem u kunjom il-ġenituri** *Name and surname of parents*	**Post u data tal-mewt** *Place and date of death*

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX |
PUBLIC REGISTRY OFFICE - MALTA/GOZO

DIRETTUR / *DIRECTOR:* _____

Data / *Date:* _____

Dritt Imħallas / *Fee Paid:* **€2.60 | Jekk mixtri onlajn** / *If bought online:* **€2.50**

Added by:
L.N. 339 of 2019.
Amended by:
XXVII.2020.41.

FORM 0
(Article 251)
Extract of Act of Death Registered from
17th December 2019

FORMULA O
FORM O

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika lil dan ta' hawn taħt huwa ESTRATT veru mill-Att tal-Mewt Nru. _____ reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).

I, the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Death No _____ registered in the Public Registry Office, Malta, in accordance with the provisions of the Civil Code (Cap.16).

Isem u kunjom tal-mejjet *Name and surname of the deceased*	**Isem u kunjom tal-parti l-oħra fiż-żwieġ/f'unjoni ċivili/f'koabitazzjoni, jew armel/armla jew għażeb/xebba** *Name and surname of spouse/partner in a civil union/cohabitant or widow/widower or single*	**Dokument tal-identità u età** *Identification document and age*	**Lok tat-twelid** *Place of birth*	**Isem u kunjom il-ġenituri inkluż il-kunjom fit-twelid** *Name and surname of the parents including their surname at birth*	**Lok u data tal-mewt** *Place and date of death*

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU – MALTA PUBLIC REGISTRY OFFICE – MALTA

DIRETTUR/*DIRECTOR:*

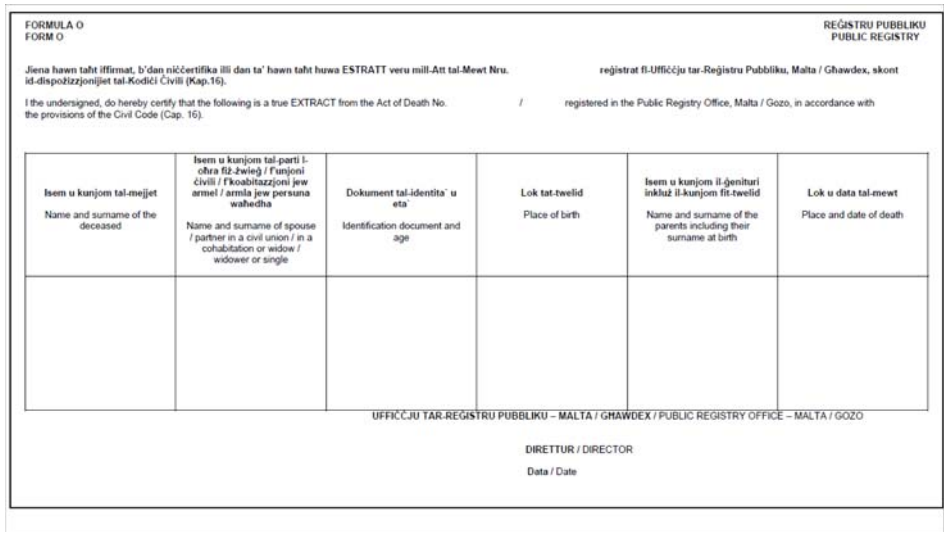
Data/Date:

Added by:
L.N. 38 of 2021.

FORM O

[Article 251]

Extract of Act of Death registered from the 8th February 2021



FORMULA O
FORM O

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena hawn taħt iffirmat, b'dan niċċertifika illi dan ta' hawn taħt huwa ESTRATT veru mill-Att tal-Mewt Nru. reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap.16).

I the undersigned, do hereby certify that the following is a true EXTRACT from the Act of Death No. / registered in the Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom tal-mejjet Name and surname of the deceased	**Isem u kunjom tal-parti l-oħra fiż-żwieġ / f'unjoni ċivili / f'koabitazzjoni jew armel / armla jew persuna waħedha** Name and surname of spouse / partner in a civil union / in a cohabitation or widow / widower or single	**Dokument tal-identita` u eta`** Identification document and age	**Lok tat-twelid** Place of birth	**Isem u kunjom il-ġenituri inkluż il-kunjom fit-twelid** Name and surname of the parents including their surname at birth	**Lok u data tal-mewt** Place and date of death

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU – MALTA / GĦAWDEX / PUBLIC REGISTRY OFFICE – MALTA / GOZO

DIRETTUR / DIRECTOR

Data / Date

Added by:
XXXI.1965.23.
Substituted by:
L.N. 339 of 2019.

FORM P
(Article 251)

FORMULA P
FORM P

REĠISTRU PUBBLIKU
PUBLIC REGISTRY

Jiena, hawn taħt iffirmat, b'dan niċċertifika li dan ta' hawn taħt huwa ESTRATT veru mill-Att tal-Mewt Nru. _____
I, the undersigned, do hereby certify that the following is a true EXTRACT from Act of Death No. _____

reġistrat fl-Uffiċċju tar-Reġistru Pubbliku, Malta / Għawdex, skont id-dispożizzjonijiet tal-Kodiċi Ċivili (Kap. 16).
registered in the Public Registry Office, Malta / Gozo, in accordance with the provisions of the Civil Code (Cap. 16).

Isem u kunjom tal-mejjet: *Name and surname of the deceased:*	
Lok u data tal-mewt: *Place and date of death:*	
Età: *Age:*	

DIRETTUR / *DIRECTOR:* _____

Data / *Date:* _____

UFFIĊĊJU TAR-REĠISTRU PUBBLIKU - MALTA/GĦAWDEX |
PUBLIC REGISTRY OFFICE - MALTA/GOZO

Dritt Imħallas / *Fee Paid:* **€ 2.60** | **Jekk mixtri onlajn** / *If bought online:* **€2.50**

FORM Q
(Article 4(5))
Declaration on Use of Name

Repealed by LXV.2020.29.

FORM R
(Article 4(6))
Declaration on the Retention of Use of Former Husband's Name

Repealed by LXV.2020.29.

FORM S
(Article 4(2))
Declaration of a Woman who Was Married Before the 4th of February 2005 who Chooses to Re-adopt the Surname of her Predeceased Spouse

Repealed by LXV.2020.29.

FORM T
(Article 4(3))
Declaration of a Child of the Marriage
Born Before the 7th August 2007 on the Use of a Surname

Repealed by LXV.2020.29.

Added by:
LXV.2020.29.

FORM TT
[Article 4(8)]

DIKJARAZZJONI DWAR TIBDIL TA' ISEM TA' WILD FIŻ-ŻWIEġ MWIELED QABEL L-ATT TAL-2019 LI JEMENDA L-KODIĊI ĊIVILI U LIGIJIET OĦRAJN U LI FIR-RIGWARD TIEGĦU MA KIENX ĠIE MAGĦŻUL ISEM TAL-FAMILJA

DECLARATION OF A CHILD OF THE MARRIAGE ON THE CHANGE OF A SURNAME BORN BEFORE THE CIVIL CODE AND OTHER LAWS (AMENDMENT) ACT OF 2019 AND IN RESPECT OF WHOM A FAMILY NAME HAD NOT BEEN CHOSEN

*Jien hawn taħt iffirmat, niddikjara fil-preżenza tax-xhud hawn sottoskritt, li bi ħsiebni niħu l-kunjom:
*I the undersigned, declare in the presence of the undersigned witness, that I intend to adopt the surname:

_____
(Kunjom shih)
(surname in full)

Partikolaritajiet dwar il-wild *Particulars regarding the child*	Isem u Kunjom *Name and Surname*	Età *Age* Snin/*Years*	Post tat-Twelid *Place of Birth*	Isem u Kunjom il-genituri tal-partijiet fiż-żwieġ u jekk ħajjin jew mejtin *Name and Surname of Parents of spouses in marriage and whether alive or deceased*	Data taż-Żwieġ *Date of Marriage*

Firma tad-Dikjarant
Declarer's signature

_____

Firma tax-Xhud
Witness' Signature

_____

Ippreżentata fi
Submitted on

_____

Minn
From

_____

Partikolaritajiet dwar l-att tat-twelid
Particulars regarding the act of birth

**Nru tal-Att tat-Twelid ***No of Act of Birth*	Data/*Date* Jum/*Day*	Xahar/*Month*	Sena/*Year*

Din il-formula hija irrevokabbli.
This form is irrevocable.

***Partikolaritajiet dwar atti ta' stat ċivili oħra fejn jidher id-dikjarant ****Particulars regarding other acts of civil status where the declarer appears*				
Natura tal-Att tal-Istat Ċivili**** *Nature of the Act of Civil Status*****	Data/*Date* Jum/*Day*	Xahar/*Month*	Sena/*Year*	Isem u Kunjom il-genituri u jekk ħajjin jew mejtin *Name and Surname of parents and whether alive or deceased*

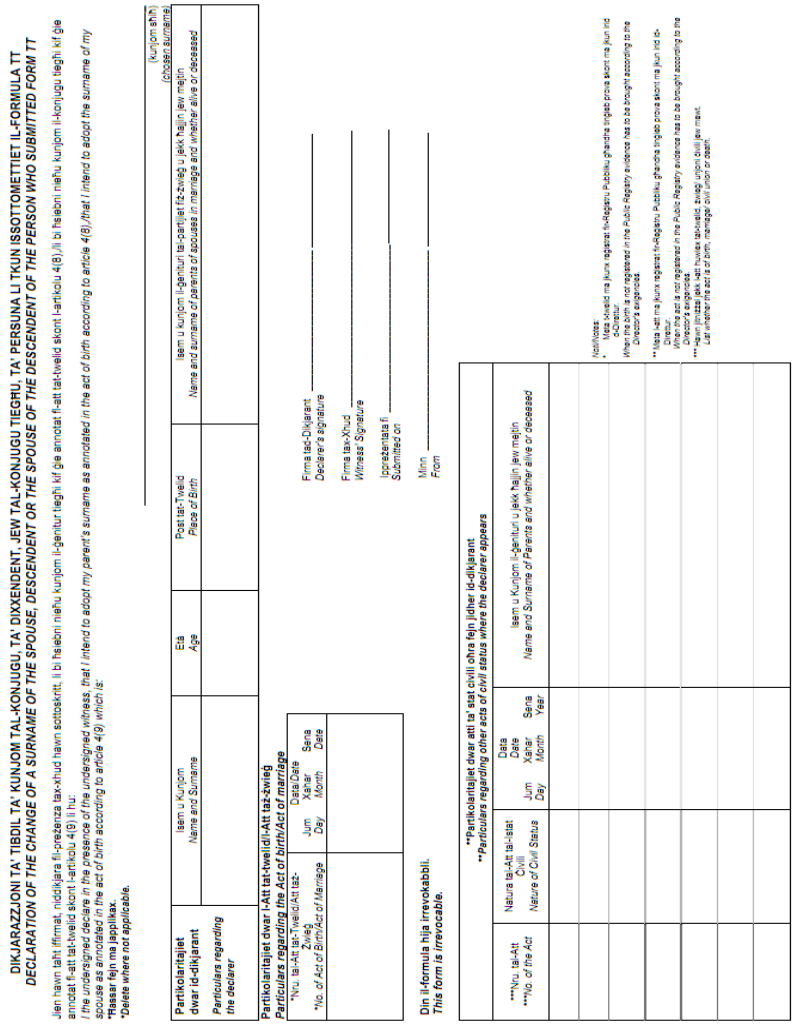
Noti/Notes:
* Passaport fejn kun mitluġ
Date where captured.
** Jekk twieled barra mir-Repubblika ta' Malta għandha tingieb prova skont ma jkun ind id-Direttur
When the birth is not registered in the Public Registry evidence has to be brought according to the Director's exigencies.
*** Meta l-att ma jkunx reġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun ind id-Direttur
When the act is not registered in the Public Registry evidence has to be brought according to the Director's exigencies.
**** Ħawn jinkiteb jekk hatt huwiex taħwieġ, żwieġ/ unjoni ċivili jew mewt.
List whether the act is of birth, marriage/ civil union or death.

FORM U
(Article 4(7))
Declaration of the Use of a Surname of Natural Child
or Adopted Person of the Person who submitted Form T

Repealed by LXV.2020.29.

Added by:
LXV.2020.29.

FORM UU
[Article 4(9)]



DIKJARAZZJONI TA' TIBDIL TA' KUNJOM TAL-KONJUGU, TA' DIXXENDENT, JEW TAL-KONJUGU TIEGHU, TA' PERSUNA LI TKUN ISSOTTOMETTIET IL-FORMULA TT
DECLARATION OF THE CHANGE OF A SURNAME OF THE SPOUSE, DESCENDENT OR THE SPOUSE OF THE DESCENDENT OF THE PERSON WHO SUBMITTED FORM TT

Jien hawn taht iffirmat, niddikjara fil-preżenza tax-xhud hawn sottoskritt, li bi ħsiebni niehu kunjom il-ġenitur tiegħi kif ġie annotat fl-att tat-twelid skont l-artikolu 4(8),jili bi ħsiebni niehu kunjom il-konjugu tiegħi kif ġie annotat fl-att tat-twelid skont l-artikolu 4(9) li hu:
I the undersigned declare in the presence of the undersigned witness, that I intend to adopt my parent's surname as annotated in the act of birth according to article 4(8),/that I intend to adopt the surname of my spouse as annotated in the act of birth according to article 4(9) which is:
*Ħassar fejn ma japplikax.
*Delete where not applicable.

(kunjom ġdid)
(chosen surname)

Partikolaritajiet dwar id-dikjarant *Particulars regarding the declarer*	Isem u Kunjom *Name and Surname*	Età *Age*	Post tat-Twelid *Place of Birth*	Isem u kunjom il-ġenituri tas-persuna fiż-żwieġ u jekk ħajjin jew mejtin *Name and surname of parents of spouse in marriage and whether alive or deceased*

Partikolaritajiet dwar l-Att tat-twelid/l-Att taż-żwieġ
Particulars regarding the Act of birth/Act of marriage

*Nru. tal-Att tat-Twelid/Att taż-Żwieġ *No. of Act of Birth/Act of Marriage*	Data/*Date* Jum *Day*	Xahar *Month*	Sena *Date*

Firma tad-Dikjarant
Declarer's signature _____

Firma tax-Xhud
Witness' Signature _____

Ippreżentata fi
Submitted on _____

Minn
From _____

Din il-formula hija irrevokabbli.
This form is irrevocable.

Partikolaritajiet dwar atti ta' stat ċivili oħra fejn jidher id-dikjarant
Particulars regarding other acts of civil status where the declarer appears

***Nru. tal-Att ****No. of the Act*	**Natura tal-Att tal-Istat Ċivili ***Nature of Civil Status*	Data Jum *Day*	Data Xahar *Month*	Data Sena *Year*	Isem u Kunjom it-ġenituri u jekk ħajjin jew mejtin *Name and Surname of Parents and whether alive or deceased*

Noti/*Notes*:
* Mela ikkelidi ma jkunx reġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun ipprovdut
When the act is not registered in the Public Registry evidence has to be brought according to the Director's regulations
** Meta l-att ma jkunx reġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun ipprovdut mir-Regolamenti tad-Direttur
Where the act is not registered in the Public Registry evidence has to be brought according to the Director's regulations
*** Jekk l-istat tiegħek ikun inbidel bis-saħħa ta' dikjarazzjoni oħra li tkun saret.
If your status has changed by virtue of another declaration that was made.

Added by:
L.N. 311 of 2012.
Amended by:
XXIII.2017.91.

FORM V
(Article 278A)

Declaration by a Person Requesting Minor Alteration on the Name in the Act of Birth or Form of Entry in Adopted Persons Register

Particulars in the Act of Birth:

Act Number	Name/s of the Child	Name/s by which the Child is to be called	Date of Birth	Place of Birth
			Day Month Year	

Request for particulars to be amended to:

Name

Declarator's Signature .....Submitted on .....

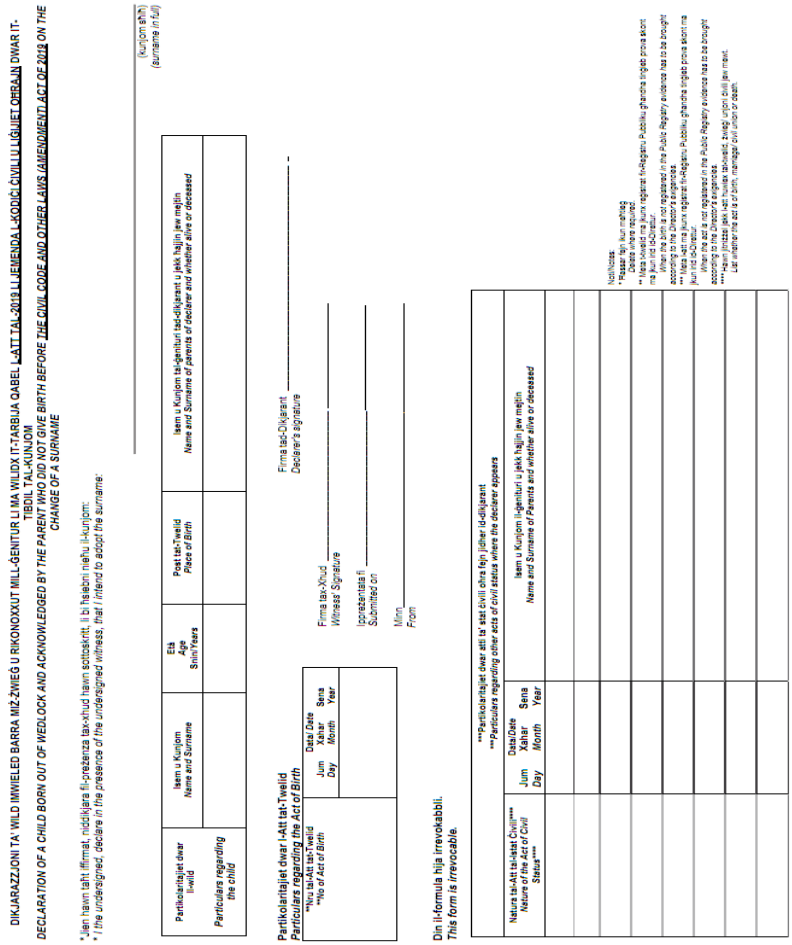
Added by:
XII.2015.7.

FORM W
(Article 92(1))

Repealed by LXV.2020.29.

Added by:
LXV.2020.29.

FORM WW
[Article 92(6)]



DIKJARAZZJONI TA' WILD IMWIELED BARRA MIŻ-ŻWIEG U RIKONOXXUT MILL-ĠENITUR LI MA WILDX IT-TARBIJA QABEL L-ATT TAL-2019 LI JEMENDA L-KODIĊI ĊIVILI U LIĠIJIET OĦRAJN DWAR IT-TIBDIL TAL-KUNJOM

DECLARATION OF A CHILD BORN OUT OF WEDLOCK AND ACKNOWLEDGED BY THE PARENT WHO DID NOT GIVE BIRTH BEFORE THE CIVIL CODE AND OTHER LAWS (AMENDMENT) ACT OF 2019 ON THE CHANGE OF A SURNAME

*Jien hawn taħt iffirmat, niddikjara fil-preżenza tax-xhud hawn sottoskritt, li bi ħsiebni nieħu l-kunjom:
** I the undersigned, declare in the presence of the undersigned witness, that I intend to adopt the surname:*

_____
(kunjom sħiħ)
(surname in full)

Partikolaritajiet dwar it-tfittxija *Particulars regarding the child*	Isem u Kunjom *Name and Surname*	Età *Age* *Snin/Years*	Post tat-Twelid *Place of Birth*	Isem u Kunjom tal-ġenituri tad-dikjarant u jekk ħajjin jew mejtin *Name and Surname of parents of declarer and whether alive or deceased*

Firma tad-Dikjarant
Declarer's signature
_____

Firma tax-Xhud
Witness' Signature
_____

Ippreżentata fi
Submitted on
_____

Min
From
_____

Partikolaritajiet dwar l-Att tat-Twelid
Particulars regarding the Act of Birth

**Nru tal-Att tat-Twelid ***No. of Act of Birth*	Data/Date Jum/*Day*	Xahar/*Month*	Sena/*Year*

Din il-formula hija irrevokabbli.
This form is irrevocable.

Natura tal-Att tal-istat Ċivili**** *Nature of the Act of Civil status****	Data/Date Jum/*Day*	Xahar/*Month*	Sena/*Year*	***Partikolaritajiet dwar atti ta' stat ċivili oħra fejn jidher id-dikjarant ****Particulars regarding other acts of civil status where the declarer appears* Isem u Kunjom il-ġenituri u jekk ħajjin jew mejtin *Name and Surname of Parents and whether alive or deceased*

Notifikazzjonijiet
Relevant Notifications
Data/*Dates required*
** Iċċita x-xhieda ma jkunx ġie rreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun hemm bżonn.
*** Where witness is not registered in the Public Registry evidence has to be brought according to the Director's judgement.*
*** Meta xhud ma jkunx ġie rreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun hemm bżonn.
**** Where witness is not registered in the Public Registry evidence has to be brought according to the Director's judgement.*
****Isem jinkiteb jekk kien hemmhekk tabilħaqq, bħalma jkun dikjarat fl-att.
*****Name to be written if there, as declared in the act.*

_____
Data u firma tal-uffiċjal tal-istat ċivili
Date and signature of civil status officer

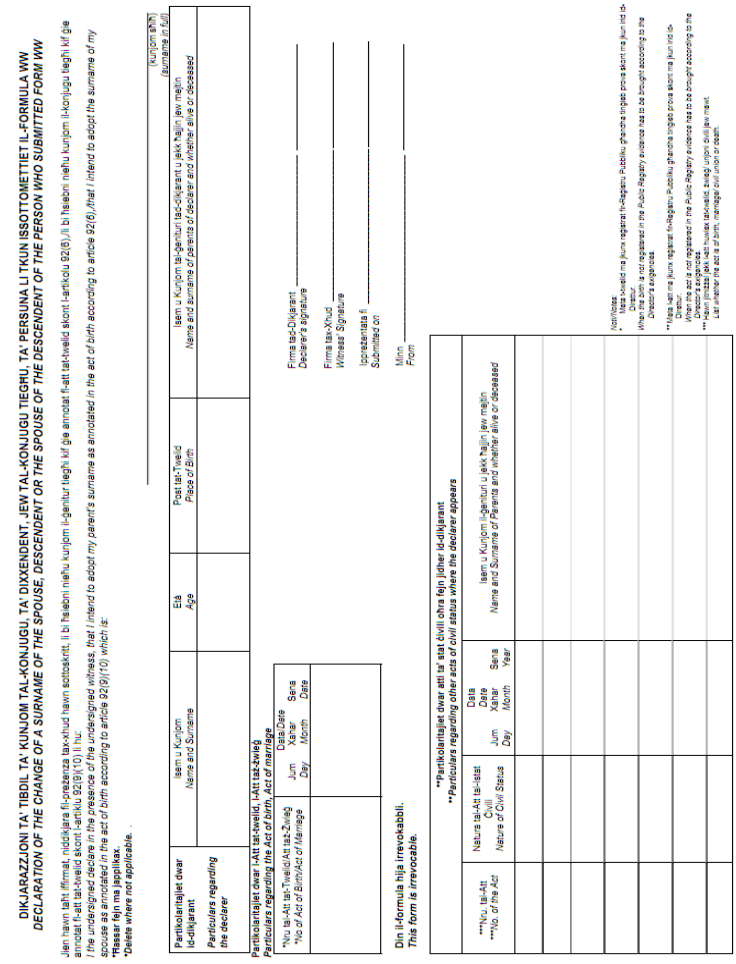
Added by:
XII.2015.7.

FORM X
(Article 92(1))

Repealed by LXV.2020.29.

Added by:
LXV.2020.29.

FORM XX
[Article 92((9), (10)



DIKJARAZZJONI TA' TIBDIL TA' KUNJOM TAL-KONJUGU TIEGĦU TA' DIXXENDENT, JEW TAL-KONJUGU TIEGĦU TA' PERSUNA LI TKUN ISSOTTOMETTIET IL-FORMULA WW
DECLARATION OF THE CHANGE OF A SURNAME OF THE SPOUSE, DESCENDENT OR THE DESCENDENT OF THE PERSON WHO SUBMITTED FORM WW

Jien hawn taħt iffirmat, niddikjara fl-preżenza tax-xhud hawn sottoskritt, li bi ħsiebni nieħu kunjom il-ġenituri tiegħi kif ġie annotat fl-att tat-twelid skont l-artikolu 92(9),(10) li hu
I the undersigned declare in the presence of the undersigned witness, that I intend to adopt my parent's surname as annotated in the act of birth according to article 92(9),(10) which is:
*Ħassar fejn ma japplikax.
Delete where not applicable.

(Kunjom ġdid)
(surname in full)

Partikolaritajiet dwar id-dikjarant *Particulars regarding the declarer*	Isem u Kunjom *Name and Surname*	Età *Age*	Post tat-Twelid *Place of Birth*	Isem u Kunjom tal-ġenituri tad-dikjarant u jekk ħajjin jew mejtin *Name and surname of parents of declarer and whether alive or deceased*

Partikolaritajiet dwar l-Att tat-twelid, l-Att tat-żwieġ
Particulars regarding the Act of birth, Act of marriage

*Nru tal-Att tat-Twelid/Att taż-Żwieġ *No of Act of Birth/Act of Marriage	Data/*Date* Jum *Day*	Xahar *Month*	Sena *Date*

Firma tad-Dikjarant
Declarer's signature _____

Firma tax-Xhud
Witness' Signature _____

Ippreżentata fi
Submitted on _____

Minn
From _____

Din il-formula hija irrevokabbli.
This form is irrevocable.

**Partikolaritajiet dwar atti ta' stat ċivili oħra fejn jidher id-dikjarant
***Particulars regarding other acts of civil status where the declarer appears*

***Nru tal-Att ***No. of the Act	Natura tal-Att tal-Istat Ċivili *Nature of Civil Status*	Data *Date* Jum *Day*	Xahar *Month*	Sena *Year*	Isem u Kunjom il-ġenituri u jekk ħajjin jew mejtin *Name and Surname of Parents and whether alive or deceased*

Nota/*Note*
*Jekk l-att twieled ma jkunx irreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun ordnat id-Direttur
When the birth is not registered in the Public Registry evidence has to be brought according to the Director's directive.*

**Meta l-att twieled ma jkunx irreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun ordnat id-Direttur
When the act is not registered in the Public Registry evidence has to be brought according to the Director's directive

***Dikjarazzjoni dwar l-att tat-twelid, l-att taż-żwieġ jew il-mewt
Let whether the act of birth, marriage civil union or death

Added by:
LXV.2020.29.

FORM Y
[Article 4(6)]

DIKJARAZZJONIJIET TA' BDIL TA' KUNJOM TA' KONJUGUI MIŻŻEWWEG/MIŻŻEWGIN QABEL L-ATT TAL-2019 LI JEMENDA L-KODIĊI ĊIVILI U LIGUIET OHRAJN
DECLARATION A CHANGE OF SURNAME OF A SPOUSE/SPOUSES MARRIED BEFORE THE CIVIL CODE AND OTHER LAWS (AMENDMENT) ACT OF 2019

*Jiena/Aħna hawn taħt iffirmati, niddikjaraniddikjaraw fil-preżenza tax-xhud hawn sottoskritt, li bi ħsiebi/ħsiebna nieħu/nieħdu l-kunjom:
*I/We the undersigned, declare in the presence of the undersigned witness, that I/we intend to adopt the surname:
**Ħassar fejn ma japplikax.
**Delete where not applicable.*

(Kunjom shih)
(surname in full)

**Aħna hawn taħt iffirmati niddikjaraw fil-preżenza tax-xhud hawn sottoskritt, li bi ħsiebna nibdlu l-isem tal-Familja kif kien iddikkjarat fl-Att taż-Żwieġ tagħna għal:
** We the undersigned, declare in the presence of the undersigned witness, that we intend to change the Family Name as declared in our Act of Marriage to:*

(Isem tal-Familja)
(Family Name)

Partikolaritajiet dwar id-dikjarant *Particulars regarding the declarer*	Isem u Kunjom *Name and Surname*	Età *Age* *Snin/Years*	Post tat-Twelid *Place of Birth*	Isem u Kunjom il-ġenituri tal-partijiet fiż-żwieġ u jekk ħajjin jew mejtin *Name and Surname of parents of spouses in marriage and whether alive or deceased*
Partikolaritajiet dwar id-dikjaranti *Particulars regarding the declarers*	Isem u Kunjom *Name and Surname*	Età *Age* *Snin/Years*	Post tat-Twelid *Place of Birth*	Isem u Kunjom il-ġenituri tal-partijiet fiż-żwieġ u jekk ħajjin jew mejtin *Name and Surname of Parents of spouses in marriage and whether alive or deceased*

Firma tad-Dikjarant/Dikjaranti
Declarer/Declarers' signature

Firma tax-Xhud
Witness' Signature

Ippreżentata fi
Submitted on
Minn
From

Partikolaritajiet dwar l-att taż-żwieġ
Particulars regarding the act of marriage

***Nru. tal-Att taż-Żwieġ ***No. of Act of Marriage	Data/Date		
	Jum *Day*	Xahar *Month*	Sena *Year*

****Partikolaritajiet dwar atti ta' stat ċivili oħra fejn jidher id-dikjarant**
*****Particulars regarding other acts of civil status where the declarer appears***

Natura u Numru tal-Att tal-Istat Ċivili***** *Nature and Number of the Act of Civil Status****	Data/Date			Isem u Kunjom il-ġenituri u jekk ħajjin jew mejtin *Name and Surname of parents and whether alive or deceased*
	Jum *Day*	Xahar *Month*	Sena *Year*	

Din il-formula hija irrevokabbli.
This form is irrevocable.

Noti/Notes:
* Ħassar fejn ma japplikax
Delete where not applicable
** Applikabbli biss għal persuni li żżewġu wara l-1 ta' Settembru, 2017
Applicable only to spouses who contracted marriage on after 1st September 2017
*** Meta l-fatt irid jiġi rreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun irid id-Direttur.
Where the fact is required to be registered in the Public Registry evidence has to be brought according to the Director of Agencies.
**** Meta l-att irid jiġi rreġistrat fir-Reġistru Pubbliku għandha tingieb prova skont ma jkun irid id-Direttur.
Where the act is required to be registered in the Public Registry evidence has to be brought according to the Director of Agencies.
***** Ħawn jitħassar jekk l-att huwiex tal-miżjud, żwieġ unjoni diviżjaw mewt.
Let whether the act a of birth, marriage civil union or death.

PART III

(Article 257)

Particulars regarding corrections of Acts of Civil Status

ACT OF BIRTH

Added by: XXXI.1965.23. Amended by: XXX.1995.7; XXV.2014.5; LXV.2020.30.

(a) Date of the Act;

(b) Place and date of birth of the child;

(c) Sex of the child;

(d) Names given to the child;

(e) Name or names by which the child is to be called and surname;

(f) Name and Surname, identification document,Age and place of birth and residence -

(i) of the parents of the child; and

(ii) of the person making the declaration;

(g) Name and surname of the grandparents of the child and of the parents of the person making the declaration;

(h) Whether the grandparents of the child or the parents of the person making the declaration are living or dead;

(i) All the particulars of the witnesses, if any.

ACT OF MARRIAGE

(a) Date of the Act;

(b) Name and surname (wherever they may occur), date and place of birth and identification document, and place of residence of any of the spouses;

(c) Name, surname, and surname at birth of the parents of the spouses;

(d) All the particulars of the witnesses;

(e) The church, chapel, or other place where the marriage took place.

(f) The surname after marriage of the spouses.

ACT OF DEATH

(a) Date of the Act;

(b) Name and surname of the deceased;

(c) Whether the deceased was married or unmarried, in a civil union or not, in a cohabitation registered under the Cohabitation Act or enrolled by means of a public deed under the Cohabitation Act, widower or widow;

(d) Age, Identification document,place of birth and residence of

the deceased;

(e) Name and surname of parents including their surname at birth of the deceased, and whether they are living or dead;

(f) The place and cause of death, and place of burial or cremation;

(g) All the particulars of the witnesses, if any.

ACT OF CIVIL UNION

(a) Date of the Act;

(b) Name and surname (wherever they may occur), date and place of birth , Identification document and residence of parties in the civil union;

(c) Name, surname, and surname at birth of the parents of the parties in the civil union;

(d) All the particulars of the witnesses;

(e) The place where the civil union took place.

(f) The surname after civil union of the partners.

Added by: XIII.2007.13. Amended by: L.N. 196 of 2010; L.N. 426 of 2012; XXV.2019.28; XLVII.2020.3; XXXIX.2020.14; LXV.2020.30; L.N. 212 of 2023.

SECOND SCHEDULE

Title I

OF LEGAL ORGANISATIONS

Sub-Title I

Preliminary and Definitions

Preliminary and definitions. *Amended by: L.N. 196 of 2010; XXXVI.2018.41.*

1. (1) For the purposes of this Schedule, an organisation means a universality of persons who associate or a universality of things which are appropriated to achieve a lawful purpose having a form recognised by law, and which is capable of being a legal person in terms of law.

(2) Organisations may be established in different legal forms.

(3) The lawful purpose of an organisation referred to in sub-article (1) shall not be contrary to morals and public policy, which purpose or purposes shall be one of the categories referred to in sub-article (4).

(4) Every organisation shall be categorised according to its purpose and the purpose of any organisation may be:

(*a*) to exclusively promote a social or public purpose on a non-profit making basis, excluding any private benefit, or if it has beneficiaries, be for the benefit of public interest beneficiaries. For the purposes of this paragraph "public interest beneficiaries" shall mean

any of the following:

(i) organisations, which are themselves established exclusively for social or public purposes on a non-profit making basis;

(ii) religious organisations;

(iii) public organisations; or

(iv) beneficiaries referred to in article 32(8):

Provided that this excludes any private benefit other than those listed under the First Schedule to the Voluntary Organisation Act or under this Schedule, in which case it is referred to as a "public benefit organisation"; or Cap. 492

(*b*) to promote any lawful purpose in terms of the Voluntary Organisations Act other than those referred to in in sub-paragraph (a)(i), in which case it is referred to as a "private benefit organisation"; or Cap. 492.

(*c*) to promote any lawful purpose, in which case it is referred to as a "private interest organisation".

(5) When a private benefit organisation is established with beneficiaries, the organisation shall be for the benefit of a person or class of persons who can be ascertained, through the designation of named persons, whether they are members, shareholders or other interests or rights, or are otherwise ascertainable.

(6)Legal personality is the status granted by law to an organisation which is established for a lawful purpose stated in writing in a constitutive instrument or statute, which has a patrimony of assets and liabilities, separate and distinct from that of any other person and the legal powers to achieve such purpose through the administration of its own governing body.

(7)Legal personality exists when an organisation is recognised or is established as a legal person by a special law or it is registered in terms of the provisions of this Schedule or any other special law which grants legal personality.

(8)In confirmation of the freedom of association guaranteed by the Constitution and the laws of Malta, an association of persons shall not be required to qualify as a legal person as a pre-condition for such association of persons to carry on any lawful activities pursuant to any purpose for which it has been established.

(9)Any person has a right to establish legal organisations as long as that person complies with the prescribed rules as to form and content.

(10)Organisations may be public or private.

(11)Public organisations and their administrators are governed by the law applicable to the State and the public service, and any other special laws applicable to the particular organisations. When the State makes use of forms of legal organisations governed by Title III of this Schedule or by the provisions of any special law,

the provisions applicable to the particular legal form shall also apply.

(12)Private organisations are governed by the provisions of Title III of this Schedule, as may be applicable, and the special laws which may be applicable to their legal form and their purpose.

(13)In this Schedule -

(*a*) "constitutive instrument" means the public deed, private writing, resolution or any other written instrument or document, or the relevant part thereof, which establishes an organisation of any form and includes a will which provides for the setting up of an organisation;

(*b*) any reference to "the Court" shall be deemed to be a reference to the Civil Court (Voluntary Jurisdiction Section) unless it is otherwise expressly stated;

(*c*) "deed of foundation" means the public deed or part thereof, which establishes a foundation and regulates its governance in terms of article 29. When a provision in this Schedule establishes a requirement relating to the deed of foundation, this shall be satisfied if such requirement is found in the constitutive instrument or in the statute, or a combination of both, as the case may be;

(*d*) "interested party" means a person who is given rights capable of economic valuation, present or future, actual or contingent, in the constitutive instrument or statute of an organisation or who is given powers or functions therein and shall not include other persons unless the context otherwise requires, and this, without prejudice to the right of any person to pursue any civil right or remedy he may have;

(*e*) "international organisation" means an organisation of which only States or other international organisations are members;

(*f*) the term "non-profit making" shall have the meaning as assigned to it in article 2 of the Voluntary Organisations Act;

Cap. 492

(*g*) "political purpose" means the promotion of the interests of a political party or a political candidate, whether at local, national or international level and "political party" shall have the meaning assigned to it by the Financing of Political Parties Act and for the purpose of this Schedule shall include any other organisation, of whatever legal form, financially controlled by or affiliated with a political party or its purpose, as stated in its statute or constitutive instrument or public deed or an organisation which acts in such manner which is not autonomous from a political party and the terms "political candidate" and "political organisation" shall be construed accordingly;

Cap. 544

(*h*) "promoter" means a person who promotes the establishment of an organisation or holds himself out to third parties as such and, after the establishment of an organisation, in the case of a foundation means the founder and in the case of an association means the first associating members;

(*i*) "public deed" shall include any documents annexed to such public deed in accordance with the Notarial Profession and Notarial Archives Act; Cap. 55

(*j*) the terms "public purpose", "public benefit" and similar phrases mean a social purpose and any other purpose or benefit which promotes or serves the general public or general interest or a sector of the general public and does not promote or serve any private benefit except as permitted by the Voluntary Organisations Act and this Schedule; Cap. 492

(*k*) the term "public organisation" shall mean any organisation which is controlled, directly or indirectly, by the Government and an organisation is "controlled by the Government" where the Government enjoys the power to appoint or remove a majority of the administrators of the organisation;

(*l*) "relevant date" means the 1st April 2008;

(*m*) "relevant persons" means:

(i) the administrators;

(ii) the protector or members of a supervisory council, if any; and

(iii) any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means, including any person, other than those already referred to in paragraphs (a) and (b) of this definition, whose consent is to be obtained or whose direction is binding, in terms of the statute of the association or any other instrument in writing, for material actions to be taken by the administrators thereof;

(*n*) "religious organisation" means an organisation established by a religious authority or another religious organisation of any denomination to fulfil a religious purpose including a pious foundation or ecclesiastical entity as defined in this Schedule;

(o) "social purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes:

(i) the advancement of education, including physical education and sports;

(ii) the advancement of religion;

(iii) the advancement of health;

(iv) social and community advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade;

(v) the advancement of culture, arts and national heritage;

(vi) the advancement of environmental protection and improvement, including the protection of animals;

(vii) the promotion of human rights, conflict resolution, democracy and reconciliation;

(viii) the promotion or protection of the interests of other public benefit organisations, including federations of such organisations;

(ix) the carrying out of activities intended to raise funds to support other organisations which are exclusively public benefit organisations or to support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit;

(x) any other purpose as may be prescribed by the Minister by means of regulations made by virtue of this Schedule,

and for the purpose of this Schedule, includes a political purpose;

(*p*) "special law" means an Act of Parliament or any regulations made thereunder or a part of this Code or a part of this Schedule which regulates specifically a particular legal form or forms of organisations, including civil partnerships, foundations and associations;

(*q*) "statute" means the public deed, private writing, resolution or any other written instrument or document, or the relevant part thereof, which governs the purposes, objects, structure, internal management and administration of an organisation on a continuing basis after the organisation has been established, whether it forms part of the constitutive instrument, as an appendix or otherwise, or is an independent instrument;

(*r*) "writing" when used in relation to a notice to be sent shall mean printed, typewritten, or otherwise visibly represented, copied or reproduced, including by fax or electronic mail or other electronic means and in the case of a private writing a combination of several signed copies of the same instrument shall suffice;

(*s*) the words "Registrar for Legal Persons", wherever they appear in this Schedule shall for all intents and purposes of law be deemed to mean "The Registrar of Companies" as defined in articles 400 and 401 of the Companies Act;

(*t*) "Minister" means, unless not otherwise specified, the Minister responsible for the registration of limited liability companies and commercial partnerships.

Sub-Title II

Of Foreign and International Organisations

Foreign and international organisations. *Amended by: XXXVI.2018.42.*

2. (1) Foreign organisations having legal personality under the laws by which they are established or if they are registered overseas, under the laws of the place of registration, shall be recognised as legal persons for all purposes of law for all purposes of law, with the characteristics of the legal form they may take under the applicable law.

(2)International organisations which are granted legal personality in any multilateral or bilateral treaty or agreement to which States or international organisations, as subjects of international law are parties, shall be recognised as legal persons for all purposes of law, which personality shall be governed by the relevant treaty or agreement or by any law of any State which is selected for the purpose by the parties thereto. The Minister shall, from time to time, publish a list of such organisations in the Gazette.

(3)In the case of a foreign or international organisation which has legal personality, the law, treaty or agreement applicable in terms of sub-articles (1) and (2) shall apply to all matters regarding such legal persons, including their form, their existence, the setting-up and effects of their statute, constitutive instrument or public deed and their administration, the liability of persons who control or manage or are otherwise involved in such organisations and their dissolution, and to the extent that an international organisation is subject to a special law following the ratification by the State of the treaty establishing such organisation, such organisation shall also be governed by such law and in case of inconsistency with its Statute or agreement, the latter shall prevail.

(4)Subject to the provisions of article 19(8), a foreign or international organisation which does not have legal personality under the applicable law shall be recognised as a legal organisation and all matters regarding such foreign or international organisation including its form, its existence, the construction and effects of its constitutive instrument or statute, the liability or otherwise of its promoters, members or its administrators, its administration and its dissolution shall be governed by the proper law applicable to its constitutive instrument or statute, either express or according to applicable law.

(5)Notwithstanding the law applicable in accordance with the preceding provisions, when there exists the power to carry out a trading or a commercial activity, the limitations established under article 32A shall apply to activities in Malta in case of foundations established outside Malta.

(6)Unless exempted by express provision of law, any foreign or international organisation, whether vested with legal personality or not, which carries on an activity in Malta on a regular basis is required to register by notice in the prescribed form with the

Registrar for Legal Persons, appointed under article 11 of this Schedule, prior to commencing its activities.

For the purposes of this sub-article:

(*a*) "regular activity" means an activity having a duration of more than three months or which is carried out through a permanent establishment in Malta; and

(*b*) "permanent establishment" includes a place of business, office or branch through which an activity is carried out on a stable and continuous basis:

Provided that the obligation to register shall not apply to foreign religious organisations.

(7)Where a foreign or international organisation, whether having legal personality or not, does not carry out regular activities in Malta, but needs to prove its recognition under this article for the purpose of applicability of the laws of Malta other than this Schedule, the organisation may register under this sub-article by means of a notice in the prescribed form.

(8)Whenever the purposes or activities of a foreign or international organisation are the subject of laws regulating credit institutions, insurance undertakings, investment services or funds or the provision of trustee, fiduciary, or corporate services or other licensable or regulated activities, such organisation may only be registered with the prior written consent of the Malta Financial Services Authority, when so required by the applicable law and where it is otherwise the competent authority under such law, unless the foreign or international organisation is expressly exempted from obtaining authorisation under Maltese law.

(9)The Minister may from time to time issue regulations to modify and redefine what constitutes "regular activity" and to regulate registrations under this article.

TITLE II

OF LEGAL PERSONALITY

Sub-Title I

Of Legal Persons

Recognition of legal persons. *Amended by: XXXVI.2018.43.*

3. (1) Legal persons are organisations endowed with legal personality. Legal personality is acquired through the formal recognition of the State. Recognition by the State requires a specific act of recognition and no other administrative act of the State in relation to an organisation or activity shall constitute recognition. Except where legal personality is recognised or established by a law or an international treaty or agreement or is granted in virtue of registration pursuant to any special law, legal personality shall only be acquired by an organisation on its registration with the Registrar for Legal Persons in accordance with article 12.

(2)When organisations are created by voluntary act, they shall be established in accordance with such legal forms as the law provides for.

(3)An organisation shall only be recognised as a legal person if it complies with such formalities as are applicable to the legal form selected for its establishment and registration.

(4)Organisations created by voluntary act, whether registered or not, are primarily governed by the laws applicable to their particular legal form or to their purpose or category and, where the provisions of special laws or provisions of other parts of this Code do not provide on any matter provided for in this Title, also by the provisions of this Schedule.

(5)Organisations which do not enjoy legal personality shall only have such rights and powers as are granted to them by or in pursuance of the express provisions of law.

General rules applicable to legal persons.
Amended by: XXXVI.2018.44.

4. (1) Every legal person has a patrimony which shall be appropriated to a purpose or purposes in accordance with article 1.

(2)Every legal person must be identifiable by a unique name which is assigned to it on the date on which it is constituted, and under which it exercises rights and performs its obligations. Such name may be changed following the procedure established by law. Any name must conform to law and include, where required, a denomination that clearly indicates the legal form assumed by the legal person.

(3)Every legal person shall have an address in Malta where communications can be received and information requested about its activities.

(4)Legal persons act through their organs, such as a board of administrators, directors or trustees and, to the extent that they have members the general meeting of members on matters designated to such organ.

(5)Legal and judicial representation of a legal person shall be vested:

(*a*) in all cases, in any one or more of the administrators, jointly and severally, in the manner stated in the statute or the applicable law;

(*b*) without limiting the powers of representation of the administrators as stated in paragraph (a), in other persons as are named in the statute of the organisation or other holders of office therein designated; and

(*c*) the administrators;

shall be deemed to enjoy the power to delegate such powers of representation by means of a written resolution or written power of attorney in favour of any third parties. The administrators of a legal person bind it to the extent of the powers vested in them by law, the statute and any bye-laws or as otherwise stated in the law applicable to their particular legal form:

Provided that any limitation in the powers of the administrators shall not be relied upon as against third parties in good faith irrespective of whether such limitation, published or not, arises from the statute or from any internal decision, unless it is proved

that such third party was aware that the act was in breach of the limitation.

Provided further that in the absence of any statement on the legal representation of any organisation in the statute, the sole administrator, or if there are more than one, any two administrators, shall have the legal representation of the organisation in accordance with this sub-article.

(6)Every legal person shall have at least one administrator who may act on its behalf or have such minimum number of administrators as may be required by the law applicable to its legal form, purpose or category.

(7)Any person acting in the name of a legal person which does not exist shall be bound personally to perform the obligations undertaken, and except as otherwise stated in any special law, a legal person may ratify any act done in its name before it was registered. Upon ratification the legal person is bound by the obligations entered into by the person who acted in its name and shall be entitled to all rights. The ratification shall not constitute a novation unless the other party to the transaction expressly releases the person acting in the name of the legal person from the obligations assumed by it:

Provided that a person acting for a legal person before it is constituted shall not be bound personally if the contract stipulates otherwise or includes a statement to the effect that the agreement is conditional upon the legal person coming into existence or that the legal person might not be constituted or may not assume the obligations undertaken in the contract.

Provided further that notwithstanding the provisions of this sub-article, where a third party deals in good faith with persons acting in the name or on behalf of a legal person before its establishment, any contract would come into effect from the date on which the organisation shall come into existence, and the organisation shall be entitled to be indemnified by the persons who had acted in its name or on its behalf with respect to its liability under this sub-article towards the said third party.

(8)Legal persons may not exercise tutorship or curatorship to a person. They may, however, to the extent that they are authorised by law to act as such, hold office as trustee or curator of property. They may also act as a liquidator or executor of a will, an official consignee, a judicial sequestrator, a trustee or an administrator of another legal person.

(9)Legal persons may be the beneficiaries of dispositions under wills as well as donations subject to the following provisions:

(*a*) testamentary dispositions in favour of unregistered organisations shall not come into effect, and to the extent performed shall be revocable on demand by application to the Court of any person interested in the will unless an application for the registration of such organisation is made in terms of the applicable law within one year from the day of the opening of

succession;

(*b*) donations made to an organisation shall be deemed to be made on the assumption that it is registered or will be registered and shall not come into effect, and to the extent performed shall be revocable on demand by application to the Court of the donor, unless an application for the registration of such organisation is made in terms of the applicable law within one year from the donation;

(*c*) the administrators who have been informed of their engagement and accept the same shall effect such registration within the period above stated; and

(*d*) the Court shall have the power to extend such time limit on application of any administrator or other interested party or to order the administrator or any other relevant person to register the organisation and do all such acts as may be necessary to ensure that the intent of the testator or donor, as the case may be, is achieved at its discretion.

(10)The provisions of sub-article (9) shall not apply to testamentary dispositions and donations in favour of pious foundations, marriage legacies and ecclesiastical entities.

(11)Legal personality may not be set up against a person in good faith in order to perpetrate fraud.

Duration of legal persons.
Amended by: XXXVI.2018.45.

5. (1) A legal person exists in perpetuity unless otherwise provided by law or its statute, constitutive instrument or public deed.

(2)Legal persons constituted directly by or in terms of a special law exist from the date of the coming into force of the law or from the date prescribed therein. In other cases, legal persons exist from the date of registration or from such other date provided for in the laws that are applicable to their particular legal form.

(3)Legal persons cease to exist with effect from the date when they are struck off from the relevant register in accordance with the laws applicable to their particular legal form or as stated in any special law.

(4)Without prejudice to the rules applicable to legal persons of a particular legal form, on the application to the Court of any interested person or the Registrar, the Court may, failing the taking of such relevant actions by the legal person or its officers according to the applicable law, order the striking off from the register of the legal person in the following cases:

(*a*) when the persons vested with such authority so determine in accordance with the statute, constitutive instrument or public deed; or

(*b*) upon the happening of the events expressly stated to have such effect -

(i) in the constitutive instrument or statute; or

(ii) in the laws that are applicable to its particular

legal form; or

(*c*) when the purpose for which it has been established has been achieved, exhausted or has become impossible; or

(*d*) when there is no administrator in office or the number of administrators falls below the minimum required by law for a particular legal form for a period exceeding six months; or

(*e*) when the number of members falls below that required by this Schedule in the case of an association or when there are no beneficiaries in the case of a beneficiary foundation.

Legal persons existing prior to relevant date. *Amended by: L.N. 196 of 2010. XXXVI.2018.46.*

6. (1) Notwithstanding that they are not registered in a register which results in legal personality, organisations which were recognised as being legal persons prior to the coming into force of this Act, hereinafter referred to as the "relevant date", in terms of any final judgement delivered by any Court relating to that particular organisation, shall continue to be recognised as legal persons indefinitely unless -

(*a*) such continuing status is subject to registration in terms of this Schedule or any special law, or is required in a notice issued by the Minister and published in the Gazette and registration is not effected within the time provided for in such notice, in which case they shall cease to be recognised as legal persons with effect from the lapse of such date, or

(*b*) they otherwise cease to exist according to law.

(2)All foundations, hereinafter referred to as an "existing foundation", created by public deed and existing on the relevant date shall be deemed to have had legal personality from the date of their establishment but shall be bound to register as legal persons in terms of this Schedule within four calendar years of the relevant date.

(3)Notwithstanding that an existing foundation fails to register as required by sub-article (2), such existing foundation shall continue to enjoy legal personality in accordance with sub-article (1).

(4)Religious organisations and marriage legacies which are constituted as foundations shall not be bound to register and shall continue to be recognised as legal persons until they are wound up.

(5)An existing foundation which has been established by a public deed and notwithstanding whether it was registered pursuant to this Schedule or not shall:

(*a*) have full legal capacity and all the powers of a registered legal person as stated in this Schedule and the restrictions in article 14 shall not apply to it;

(*b*) continue to be the exclusive owner of all its property even if acquired after the lapse of the period referred to in sub-article (2) and shall be liable for its own

obligations;

(*c*) until it is registered in accordance with this Schedule, the liability of its administrators shall be governed by the provisions of article 17 and other provisions applicable to unregistered organisations for all acts carried out from the lapse of the period stated in sub-article (2) until the date of registration but the administrators shall not be in any way liable for obligations entered into by the existing foundation prior to such date unless they have personally assumed such obligations in writing; and

(*d*) when it is registered, the provisions of article 16 shall thereafter apply to all acts of the administrators after the date of registration.

(6)An existing foundation which has not been established by a public deed and which fails to register shall:

(*a*) have the capacity only to achieve its stated purposes and all ancillary matters;

(*b*) be subject to the restriction in article 14(5);

(*c*) be deemed to be the exclusive owner of all its property which shall constitute a distinct patrimony; and

(*d*) have its administrators be jointly and severally liable and with the organisation for the obligations entered into by the foundation, subject to the provisions of the second proviso to article 17(3).

(7)All associations, established in writing before the relevant date, hereinafter referred to as "existing associations", the form of which is recognised as a legal person in accordance with applicable law or, in terms of any final judgement delivered by the Court relating to that particular organisation prior to the relevant date shall continue to be recognised as legal persons although they are not registered; however, existing associations which do not register as legal persons, as well as their administrators, shall be governed by the provisions of this Schedule applicable to unregistered organisations with effect from the lapse of four calendar years from the relevant date.

(8)When an organisation -

(*a*) is established as an association but has the characteristics of a foundation; or

(*b*) is established as a foundation but has the characteristics of an association; or

(*c*) qualifies for registration both as a foundation and as an association,

it shall be referred to herein as a "hybrid organisation" and shall be regulated by the following provisions of this article.

(9)A hybrid organisation shall be established by means of a statute, which may be amended from time to time, to clearly identify the form of a foundation or an association.

(10)Until the hybrid organisation complies with sub-article (9), the administrators shall be subject to the provisions of this Schedule on both foundations and associations in their administration.

(11)Where an action to modify the statute of a hybrid organisation is not taken by the founders or such other persons or bodies authorised by the statute or, in the case of associations, the members, or it is impossible or impracticable to do so, the administrators of a hybrid organisation may, at any time, apply to the Court to sanction such modifications as are appropriate to clarify the legal form of such organisation either as a foundation or an association and the Court shall issue such orders as it deems appropriate, including amendments to the statute and the name of the organisation, after considering all evidence submitted to it and after hearing interested parties who may wish to make submissions.

(12)In reaching a decision in terms of the preceding sub-article, the Court shall *inter alia* pay regard to the initial intentions of the promoters, the purposes of the organisation and its current operations, the rights of beneficiaries or members, the future fulfilment of its purposes and management of the organisation.

(13)The Court shall also have the power to:

(*a*) order, upon application of the administrators, the re-organisation of the organisation by the creation of other organisations whereby one or more promoters, founders, members or beneficiaries, as the case may be:

(i) cease to be treated as founders or otherwise of a foundation and, or form an association with the sole purpose of supporting the said foundation or enjoying the benefits of membership; or

(ii) cease to be treated as members of an association and, or form a foundation to achieve the stated purposes without any benefits of membership;

(*b*)direct otherwise than as provided in paragraph (a) so as to ensure the effective achievement of the initial purposes of the organisation.

(14)In making an order referred to in the preceding sub-article, the Court shall ensure that neither the purposes of the organisation nor any vested rights of any person shall be affected, nor shall any obligations other than those freely undertaken by any person arise from such modification or reorganisation.

(15)It shall not be lawful to register a hybrid organisation under this Schedule and the Registrar shall require compliance with sub-article (9) prior to accepting the registration thereof.

Sub-Title II

Of Administrators

Appointment of administrators. *Amended by: XXXVI.2018.47; XXV.2019.28.*

7. (1) Every organisation shall be managed by one or more administrators who shall be responsible for maintaining possession and control of the property of the organisation, safeguarding such property and ensuring compliance with the constitutive instrument and statute of the organisation, the provisions of this Schedule and any special law applicable to its particular legal form, purpose or category.

(2)For the purposes of this Schedule, "administrator" means an officer or a person who is appointed to control and administer an organisation including a governor, a director, a trustee or a committee member and any person who carries out such functions even if under another name.

(3)The statute shall designate the first administrators, how they are appointed and removed from office or if not designated, how administrators are appointed and removed.

(4)Subject to the terms under which they are engaged, administrators are bound by fiduciary obligations as stated in article 1124A of the Code.

(5)If a legal person does not have at least one administrator in office or the minimum number of administrators required at law, the State Advocate or any other interested party shall be entitled to request the Court to appoint an administrator or administrators for such purposes, for such time and under such conditions as the Court considers appropriate. When such an application is made, the period referred to in article 5(4)(d) shall be suspended until the Court determines the application and should an application be made after the lapse of the said period, an appointment by the Court shall be effective provided it is made at any time prior to the striking off of the legal person from the relevant register.

Disqualification for appointment. Cap. 9. *Amended by: XXXVI.2018.48; L.N. 212 of 2023.*

8. (1) Persons convicted of any of the crimes mentioned in Titles V, VI and IX of Part II of Book First of the Criminal Code in the previous ten years or persons who have been interdicted by order of any court in Malta in terms of the Criminal Code, or overseas under laws of equivalent effect, shall not be eligible for appointment or election to:

(*a*) the office of treasurer, deputy treasurer or assistant treasurer or a similar office of an organisation; or

(*b*) any other office in such organisation the holder of which is responsible for the collection, disbursement, custody or control of the assets of the organisation or for its accounts; or

(*c*) an auditor of such organisation.

(2) Persons convicted of any offence involving money laundering or the funding of terrorism shall not be eligible for appointment or election to the office of administrator or, if already appointed or elected, shall not be eligible to retain such office.

(3) The Court may, either generally or with reference to a

particular organisation -

(*a*) disqualify any person from holding an office within an organisation; or

(*b*) disqualify any person from performing identified functions within an organisation,

and this, on any of the grounds mentioned in this article, following the application of any interested party, the State Advocate or, in the case of voluntary organisations, the Commissioner for Voluntary Organisations.

The Court may rehabilitate such person in accordance with regulations, which may be made by the Minister from time to time regulating the disqualification of administrators, their rehabilitation and the registration of such disqualification and rehabilitation orders in the Registry for Legal Persons or the Public Registry, as the case may be.

(4)Persons who are subject to a disqualification order issued by the Court in terms of sub-article (3) shall not perform such functions, either generally or with reference to a particular organisation, and this, for such times as are stated in the order.

Removal of administrators.

9. (1) Administrators may be removed in cases of misconduct, failure to declare conflicts of interest, breach of duty or failure to comply with the statute or any provisions of this Title:

Provided that, notwithstanding any provision of the statute of an organisation, any action intended to remove an administrator on such grounds shall be preceded by a notice in writing to such person stating the alleged reasons for such removal and providing such person with a reasonable opportunity to defend himself and rebut the allegations.

(2)Removal of an administrator shall take place in accordance with the statute of the organisation. After exhausting all applicable remedies within the organisation, any person who demonstrates an interest may apply to the Court with a request for removal of an administrator and the Court shall issue such orders as it deems necessary after hearing the applicant and the administrator and considering any other relevant evidence.

(3)The Court may, when it orders the removal of an administrator, name a temporary or definitive administrator or administrators in substitution when it appears to the Court that the method of appointment as stated in the statute will not result in an effective and immediate appointment of a substitute administrator or administrators.

(4)Any provision in a statute to the effect that an administrator may not be removed for the reasons mentioned in sub-article (1) shall be null and void.

(5)The Court may impose disqualification in terms of article 8 of this Schedule in any case where it orders the removal of an administrator.

(6)The powers of the Court referred to in this article may be

exercised by any Court appraised of proceedings involving an administrator.

Records, accounts and reports. *Amended by: XXXVI.2018.49; XXXIX.2020.15.*

10. (1) Administrators shall keep records of -

(*a*) all assets and liabilities; and

(*b*) all income and expenditure,

of the organisation for annual financial periods.

(2)Administrators shall prepare such accounts and reports at such times and with such form and content as may be prescribed or as may be applicable to their particular legal form. Such accounts and reports shall be reviewed and shall be published and, or filed as may be prescribed or as may be required by applicable law.

(3)Until such time as:

(*a*) the form and content of accounts and reports; and

(*b*) the rules on review, publication and, or filing are prescribed in terms of sub-article (2), for legal organisations, the form of which is not regulated by a special law, in which case the special law shall apply, the following rules shall apply, unless the legal organisation opts that accounts are drawn up, prepared, reviewed and published for each financial period in accordance with generally accepted accounting principles and practice, as defined in the Accountancy Profession Act, or subject to the advice of a certified public accountant and auditor, by some other principles and practices, as may be chosen from time to time by the administrators:

(i) in the case of organisations established exclusively for public benefit, the provisions applicable to enrolled voluntary organisations shall apply, irrespective of whether such organisations are enrolled or not:

Provided that this paragraph shall not apply to organisations established for a political purpose, which shall be regulated *mutatis mutandis* by the Financing of Political Parties Act: Cap. 544.

Provided further that, when the organisation is not a political party as defined under article 2 of the Financing of Political Parties Act but is only controlled by or affiliated to a political party, or its purpose as stated in its statute or constitutive deed, is such as renders it non-autonomous; Cap. 544.

(ii) in the case of private interest foundations:

A.in the case of foundations which are permitted to carry out commercial activities under article 31B, in lieu of the requirements prescribed under articles 13 to 18 of the Commercial Code, the provisions of Chapter IX and X of Part V of Title I of the Companies Act shall apply *mutatis mutandis* and any references made to the Registrar of Companies shall be made to the Registrar for Legal Persons: Cap. 13. Cap. 386.

Cap. 386.

Provided that the Minister shall have the power to issue regulations on matters stated in articles 188 and 189 of the Companies Act and also to exclude the application of specific articles or sub-articles of the said Act and to determine the manner in which they are to apply in such context;

B. in the cases mentioned in article 31C, any guidelines as may be issued from time to time by the competent authorities, relating to trusts and trustees;

C.in the case of associations where all the members are limited liability companies, the provisions of paragraph A shall also apply; and

D. in all other cases of associations where the members are not all limited liability companies, sub-article (1) and (2) and any relevant regulations shall apply and, in the absence of specific regulations, the accounting rules and conventions relating to civil partnerships shall apply.

(4)Such accounts, reports and records shall be held for a period of ten years after the relevant annual period to which they refer, or for such other period imposed in relation to an organisation under any special law applicable to its legal form.

Sub-Title III

Of the Registrar

Duties of the Registrar.
Amended by: XXXVI.2018.50; XLVII.2020.5,6.

11. (1) The Minister may make regulations laying down the functions and powers of the Registrar.

(2)The Registrar shall be bound to notify decisions he may take refusing applications to register organisations in writing, providing the reasons for his decision. Any person or organisation which is aggrieved by any decision of the Registrar may appeal to the Court from the decision within thirty days of receipt thereof or where there is no response to an application to the Registrar to register an organisation, after forty-five days from the date of application to register.

(3)The Registrar for Legal Persons shall administer the Registry for Legal Persons and, in the absence of any provisions to the contrary, the Public Registry Act shall apply *mutatis mutandis* to registrations made in terms of this Schedule. In case of inconsistency, the provisions of this Schedule shall prevail. Save as otherwise provided, all registrations in terms of this Schedule shall be made with the Registrar for Legal Persons unless registration in the Public Registry is specifically required.

Sub-Title IV

Of Registration of Organisations

Registration.
Amended by: XXXVI.2018.51.

12. (1) Organisations may be registered in such manner as may from time to time be provided in this Schedule or in the law that is applicable to their particular legal form.

(2)In the absence of provisions on registration in relation to any form of organisation which may be granted legal personality by any law, organisations shall be registered with the Registrar for Legal Persons in accordance with the provisions of this Title or of any regulations.

(3)Where an organisation may acquire legal personality through registration in a public registry under any other law applicable to its form, it shall not be lawful to register such an organisation in terms of this Sub-Title.

(4)Except for public organisations and other organisations which are already registered in a public registry and have legal personality as a result thereof, the enrolment of an organisation with or the issue of a certificate or licence by the State which, in terms of any applicable law, grants legal personality to the organisation shall be interpreted as requiring, as an additional condition thereof, the registration of such organisation in terms of this Schedule.

(5)It shall be a condition for registration of any organisation the administrator or administrators of which are not ordinarily resident in Malta, to appoint and retain at all times, a person who is ordinarily resident in Malta to act as local representative and such representative shall have, by operation of the law and without the need of any act on the part of the administrators:

(*a*) the legal representation of such organisation in Malta and this for all purposes of any law in Malta; and

(*b*) the legal representation of such organisation limitedly to the signing of forms and other notifications to the Registrar and other competent authorities in Malta and the enrolment of instruments and other documents executed by the administrators with a Notary Public in Malta when necessary to comply with the legal obligations of the organisation in Malta:

Provided that if the administrators appoint another person or persons to carry out the acts stated in paragraphs (a) and (b), the local representative shall only act in consultation with such persons when such person or persons are not in Malta or if they fail to carry out any such function when required to do so within the times stated in this Schedule.

For the purpose of this sub-article, residence shall be established by documentary evidence.

(6)A certificate of registration given in respect of an organisation is conclusive evidence that the requirements of this Schedule in respect of registration and of matters precedent and incidental to it have been complied with and that the organisation is duly registered in terms of this Schedule.

(7)The provisions of this Schedule regulating the registration and filing of documents and notes of registration in the Register of Legal Persons shall apply to the registration and filing of acts by all registered legal organisations governed by this Schedule and the provisions of any other law regulating the filing and registration of

documents in a public registry shall not apply except where expressly stated.

Sub-Title V

Of Unregistered Organisations

Unregistered organisations. *Amended by: XXXVI.2018.52.*

13. (1) An unregistered organisation is an organisation having a form recognised by law, which is constituted by an instrument in writing and which, being registerable in terms of this Schedule or any other special law, is not so registered.

(2)The instrument in writing establishing an unregistered organisation shall contain, on pain of nullity, an express statement of a specific purpose or purposes for which the organisation has been established.

(3)Without prejudice to the right of association of any person and the right of any person to establish an organisation, an association of persons or the appropriation of property to a purpose which is not in written form is not recognised for the purposes of this Schedule.

(4)The following organisations shall not be treated as unregistered organisations for the purposes of this Schedule although they are not registered with the Registrar for Legal Persons:

(*a*) any organisation which is already registered pursuant to a special law regulating its form resulting in legal personality;

(*b*) public organisations, except those public organisations which have been established in a legal form which requires registration, if they are not registered;

(*c*) foreign and international organisations not obliged to register in Malta; and

(*d*) pious foundations, marriage legacies and ecclesiastical entities, each of which shall be regulated and governed by the law applicable to their particular form or purpose or category and, except as herein provided, shall not be subject to the provisions of this Schedule,

each of which shall be regulated by any special law applicable to their particular form.

Powers of an unregistered organisation. *Amended by: XXXVI.2018.53.*

14. (1) Saving as otherwise stated in this Schedule, unregistered organisations are not legal persons but, pursuant to this Sub-Title, they enjoy recognition, as a matter of fact, and legal powers to achieve the stated purposes for which they are constituted.

(2)An unregistered organisation may enter into transactions in relation to movable or immovable and other registerable property, may open bank accounts and may engage persons and contractors to provide services it may require for the achievement of the express purposes of the organisation and all ancillary matters.

(3)An unregistered organisation may enter into contracts in its own name.

(4)An unregistered organisation may be sued in its own name

and is represented in legal proceedings by any administrator. An unregistered organisation may sue in its own name and is represented by the person who, in terms of the statute, enjoys such power or in the absence of such appointment, by the sole administrator or, if there is more than one, by any two administrators.

(5)An unregistered organisation may establish other organisations provided the other organisations are registered.

Management and property rights in unregistered organisations.
Amended by: XXXVI.2018.54.

15. (1) The internal management and administration of an unregistered organisation is regulated by its statute. Legal representation of the organisation shall be vested in the person who, in terms of the statute, enjoys such power or, in the absence of such appointment, by the sole administrator or, if there is more than one, by any two administrators.

(2)The contributions of the promoters and assets acquired by such contributions constitute the patrimony of the unregistered organisation. Any obligations undertaken by the unregistered organisation may be enforced against such patrimony without prejudice to the liability of other persons for such obligations.

(3)Any property acquired by any means by an unregistered organisation shall be considered to be held by or for the following interests as the case may be where it is established:

(*a*) as a private benefit organisation, unless otherwise stated in its statute or in any written instrument signed by the promoters and authenticated by a Notary Public, such property shall be considered to be held for the promoter in ownership or the promoters in co-ownership according to the proportion of their contribution to the unregistered organisation;

(*b*) partly for a private benefit and partly for a social or other public purpose, unless otherwise stated in its statute or in any written instrument signed by the promoters and authenticated by a Notary Public, such property shall be considered to be held in ownership for the private benefit subject to the performance, by the promoters or administrators, as fiduciaries, of the social or other public purpose, until the said purpose is achieved, exhausted or becomes impossible or is otherwise addressed by the appropriation or endowment of a sufficient part of the property to a registered public benefit organisation with a similar purpose;

(*c*) solely for a social or other public purpose, or in the case of religious organisations and marriage legacies and public organisations in the form of foundations, religious or public purposes respectively, such property shall be held by the promoters or administrators as fiduciaries only for the purpose stated in the statute or any special law which may be applicable to it.

(4)On dissolution of an unregistered organisation which is:

(*a*) established as a public benefit organisation, the property of the organisation must be applied in accordance with article 32;

(*b*) established as a private benefit organisation, the property shall be distributed in accordance with the express terms of the statute, failing of which, to the promoters or their heirs:

Provided that any person with a co-ownership right in property of an unregistered organisation may only demand the division of such patrimony and any promoter or administrator may only dissolve the organisation and, or withdraw his contribution from an unregistered organisation when all obligations towards third parties have been performed and, or its purposes have been achieved, exhausted or become impossible.

Sub-Title VI

Of Responsibility of Persons involved in Organisations

Responsibility of persons involved in registered organisations.
Amended by: XXXVI.2018.55.

16. (1) The promoters or members of a registered organisation, or in case of a registered foundation, the founders, the donors or the beneficiaries shall not be liable for the obligations of such an organisation, except to the extent that they expressly agree to be so liable. The liability of such persons towards third parties for the obligations of the organisation shall be determined in accordance with any rules which may be applicable to the legal form of the organisation in terms of any special law or, in the absence of any special law, the provisions of this Schedule.

(2)The promoters and members of a registered organisation or in the case of a registered foundation, the founders, the donors or the beneficiaries, are liable towards the legal person for anything they have bound themselves to contribute to it in writing, unless otherwise provided by law.

(3)In case of unlawful acts, a Court may, on the application of any interested party, declare the founders, promoters, administrators, beneficiaries or members who have consented to or otherwise have knowingly taken part in the unlawful act to the detriment of the legal person, as personally liable for any damage suffered by the legal person.

(4)The administrator of a registered organisation shall not be personally liable for the obligations of the organisation except in the following cases:

(*a*) to third parties for the obligations of the organisation if -

(i) he is guilty of fraud or bad faith in entering into any obligations;

(ii) he has entered into obligations in favour of third parties at a time when he knew or ought to have known that there was no reasonable prospect that the organisation would avoid being wound up due to insolvency;

(*b*) to the organisation for the performance of the obligations that he has entered into on its behalf, without being entitled to the benefits, and for any benefit which accrues to him personally, if he has failed to declare a personal interest or a conflict of interest;

(*c*) to the organisation to account for any loss if he has acted in breach of duty as stated in the statute or this Schedule in bad faith or has been negligent in the carrying on of his duties;

(*d*) to the beneficiaries of an organisation or the Attorney General on their behalf, if he has acted as stated in paragraph (*c*) or in a situation where there is a conflict of interest;

(*e*) to the Registrar for the payment of any fees which may be due by the organisation upon failure by the organisation to pay the same within three months of the date on which they are due:

Provided that nothing in this sub-article shall render an administrator liable more than once for the same act.

(5)In those cases where an organisation has more than one administrator, the responsibility of the administrators shall be joint and several unless some particular duty has been exclusively entrusted to one particular administrator, in which case only he shall be liable.

(6)An administrator shall not be liable for the acts of another administrator if he shows that he was not aware of the breach at the time of its occurrence and on becoming aware of it he signified his dissent in writing without delay and took all reasonable measures to hinder the continuation of the breach or knowing of the intended breach he took all reasonable measures to avoid its occurrence.

(7)Any provision in the statute of the organisation or any agreement exonerating an administrator from liability for wilful misconduct, gross negligence or breach of duty shall be null and void.

Responsibility of persons involved in unregistered organisations.
Amended by: XXXVI.2018.56.

17. (1) Any member, donor, or beneficiary involved in any unregistered public benefit organisation, shall not be liable for the obligations of such organisation except as follows:

(*a*) he shall be liable to the extent that he expressly agrees to be so liable in the statute or any other document signed by him;

(*b*) he shall be liable for the obligations of the organisation if these were entered into by him in the name of the organisation in favour of third parties at a time when he knew or ought to have known that there was no reasonable prospect that the organisation would avoid being wound up due to insolvency; and

(*c*) he shall be liable if he is guilty of fraud or bad faith in entering into any obligations on behalf of the

organisation.

(2) The promoters and administrators of an unregistered organisation shall be jointly and severally liable -

(*a*) to keep the property of the unregistered organisation identified as such and distinct from their own personal property and other property they may be administering;

(*b*) for the preservation of any property received;

(*c*) for the use of assets to the fulfilment of the purposes expressly stated in the statute of the unregistered organisation; and

(*d*) to ensure, to the extent possible, considering their functions, observance of the law applicable to the unregistered organisation and its activities.

(3)Without prejudice to the availability of assets of an unregistered organisation for the fulfilment of its obligations, members and supporters of an unregistered organisation shall only be liable for the obligations expressly undertaken by them in the statute or any subscription document.

(4)The liability of members and administrators of an unregistered organisation having a particular legal form, towards third parties, for the obligations of the unregistered organisation shall be determined in accordance with any rules which may be applicable to the legal form of the organisation under any special law or, in the absence of any special law, the provisions of this article.

(5)Any provision in the statute of an unregistered organisation or any agreement with the unregistered organisation exonerating an administrator from liability for wilful misconduct, gross negligence or breach of duty shall be null and void.

(6)Where the liability of members and administrators of an unregistered organisation having a particular legal form is regulated specifically by a provision of this Schedule or any special law, such provisions shall prevail over the provisions of this article.

Acting in the name of an inexistent organisation.

18. Any person who claims or purports to act in the name of a legal person which does not exist or an unregistered organisation for which no written instrument exists shall be personally liable to fulfil all the obligations undertaken and shall be liable for any damages caused through such actions. Such person shall be personally bound to return to the grantor any property received for the purported purposes of the organisation.

Sub-Title VII

Of Liability of Organisations

Liability of an organisation. *Amended by: XXXVI.2018.57.*

19. (1) Legal persons are distinct from their promoters, founders, administrators and members, if any. The acts of legal persons bind no one but themselves except as provided by law.

(2)An organisation shall be liable for the fulfilment of its

obligations with all its present and future assets and shall not be liable for the obligations of any other person except to the extent that it expressly agrees to be so liable.

(3)An endowment of property shall be subject to reduction or revocation to the extent it is in conflict with any rules of mandatory application or in terms of article 1144 of the Code if it is detrimental to the rights of a creditor:

Provided that an administrator who has acted in good faith shall not be liable to account for any assets paid out, distributed or expended in accordance with the statute of the organisation without knowledge of the claim by the third party.

(4)The rules in sub-articles (2) and (3) shall *mutatis mutandis* apply to an unregistered organisation, without prejudice to the personal liability of its administrators or other persons as stated in this Schedule.

(5)A registered organisation may, unless prohibited by its statute, establish other organisations, of any legal form, to achieve all or any of the purposes for which it has been established, whether the latter constitute legal persons or not.

(6)When a registered organisation establishes other organisations which are registered as legal persons and maintains control over them, the organisations shall constitute a group of organisations for the purposes of this Schedule. An organisation shall be deemed to control another organisation if the administrators of the first have the power to appoint or remove the administrators of the second, or if this power has been vested in another person, persons or organ of the second organisation, if the administrators of the first have the power to amend or revoke the vesting of such power.

(7)An organisation forming part of a group of organisations, whether as founder or as a member of the group, shall not be liable for the obligations of other members of the group except to the extent it expressly undertakes in writing or as otherwise provided in any provision of this Code.

(8)Notwithstanding the provisions of article 2, the liability of all foreign and international public benefit organisations which -

(*a*) operate in Malta, including if they raise funds in Malta; or

(*b*) provide services available to the public within Malta,

as well as that of their administrators, shall also be subject to the provisions of this Schedule in so far as their activity in Malta is concerned, subject however to any provisions of any special law applicable to them.

Sub-Title VIII

Miscellaneous

Segregated cells within registered organisations. *Amended by: XXXVI.2018.58; XXXIX.2020.16.*

20. (1) It shall be lawful for a registered organisation to establish segregated cells within the organisation to achieve particular purposes with particular assets. Where the special law applicable to a particular legal form of registered organisation already provides for segregated cells, or equivalent features, such provisions shall apply to the exclusion of the provisions of this article.

(2)A segregated cell within a registered organisation exists when established formally:

(*a*) by the statute of the organisation on creation of the organisation; or

(*b*) subsequently by a resolution of the administrators pursuant to a power vested in them by the statute and in either case shall be established:

(i) by reference to shares, interests or other rights of the members or beneficiaries or by reference to purposes, or by reference to both such rights and purposes; or

(ii) for purely administrative purposes which support the main purposes and operations of the organisation; and

(iii) with other purposes which shall be consistent with the main purposes of the organisation.

(3) Segregated cells may be established, except for those established for purely administrative reasons:

(*a*) in the case of a public benefit organisation, only to the extent as they are established exclusively for public benefit on a non-profit making basis, or other legitimate purpose excluding private interest and may include public interest beneficiaries; and

(*b*) in the case of a private interest foundation, for private purposes including any commercial, administrative, security or transactional purposes, including purposes ancillary thereto, in particular those referred to in article 31B of this Schedule.

Cap. 492

(4) When the segregated cell is established by the statute of the organisation, the administrators shall be presumed to have the power to supplement such statute with additional guidelines on the purposes and activities of the cell in a manner which supports the purposes and objects of the organisation.

(5) Segregated cells shall, after establishment, be regulated either in the statute of the organisation and, or in a cell statute. A cell statute shall be consistent with the statute of the organisation. The statute of the organisation shall apply on any issue which is not addressed in the cell statute and shall prevail over the cell statute in case of inconsistency.

(6) A cell statute shall:

(*a*) state the following matters:

(i) the name of the cell;

(ii) the purposes or objects of the cell;

(iii) the manner in which the administrators shall manage its affairs, directly or through an administrative committee, which shall in any case not have legal representation of the cell;

(*b*) be in the form of a resolution or guideline of the administrators;

(*c*) in case of a cell for beneficiaries, either state the names of the beneficiaries or the class of beneficiaries or, in the absence of such indication, a declaration that the cell is constituted for the benefit of beneficiaries. In the latter case the beneficiaries shall be indicated in a written instrument, which need not form part of the cell statute, called a "cell beneficiary statement" and which shall be signed by the administrators in the presence of a notary public, and all provisions in the Schedule relating to beneficiary statements shall apply *mutatis mutandis* to cell beneficiary statements; and

(*d*) comply with the requirements of this article.

(7)A segregated cell shall have its own distinct name or designation and it shall refer to the organisation of which it forms part in all its dealings, but shall not be a legal person nor shall it be eligible for registration as a legal person. A cell may not change its name or designation under any circumstances.

(8)A segregated cell is established subsequently to the creation of an organisation when the following conditions are observed:

(*a*) the organisation is authorised by its statute to establish segregated cells;

(*b*) the administrators of the organisation resolve in writing to establish such cell; and

(*c*) a notice relating to the establishment of a segregated cell is delivered to the Registrar for registration.

(9When a segregated cell is established -

(*a*) the assets and liabilities of the cell shall constitute a distinct patrimony which shall be distinct from all other assets and liabilities of the organisation or other cells which may be established;

(*b*) the assets of such cell shall be available for the fulfilment of any obligations undertaken by the organisation in relation to that cell but not for any other liabilities entered into by the organisation for itself or in respect of other cells;

(*c*) the general assets of an organisation shall not be available for the fulfilment of the obligations undertaken in relation to the cell; and

(*d*) there shall be implied (except in so far as the same is

expressly excluded in writing) in every transaction entered into by an organisation with segregated cells the following terms that -

(i) no party shall seek, whether in any proceedings or by any other means whatsoever, to make or attempt to use any assets attributable to any cell to satisfy a liability not attributable to that cell; and

(ii) if any party succeeds by any means whatsoever in using any assets attributable to any cell to satisfy a liability not attributable to that cell, that party shall be liable to pay to the organisation a sum equal to the value of the benefit thereby obtained by him; and

(iii) any asset or sum recovered by the organisation under the implied term set out in this paragraph or by any other means whatsoever in the events referred to herein shall, after the deduction or payment of any costs of recovery, be applied by the organisation so as to compensate the cell affected.

(10)When a segregated cell is established the assets of the cell must be segregated from all other assets of the organisation and are held and administered separately and distinct accounts must be maintained in accordance with applicable law in relation to each cell. The existence or termination of each cell must be disclosed in the reports and accounts of the organisation.

(11)The legal effects stated in sub-article (10) shall arise only if -

(*a*) all activities relating to a cell shall be undertaken in a manner that it is expressly disclosed to third parties that the activities are those in respect of the particular cell:

Provided that such requirement shall be satisfied if third parties are otherwise aware or ought, from the circumstances, to be aware of the fact that the activities undertaken are those in respect of the particular cell;

(*b*) no statement or representation is made by the administrators of the organisation to the effect that the organisation is liable for the obligations undertaken in respect of the cell;

(*c*) the cell is established in accordance with this article and all relative procedures and formalities are observed at all times.

(12)When the conditions in sub-article (7) are satisfied, no court shall order the issue of any warrant, precautionary or executive, against the assets of a cell in respect of a claim for which the organisation or another cell is liable. In the event of enforcement on any assets attributable to a cell in respect of a liability not attributable to that cell, and in so far as such assets or

compensation in respect thereof cannot otherwise be restored to the cell affected, the organisation shall -

(*a*) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost by the cell affected; and

(*b*) transfer or pay to the cell affected, from the assets to which the liability was attributable to the extent available, assets or sums sufficient to restore to the cell affected the value of the assets lost.

(13) The rules, including without limitation the rules applicable to dissolution and winding up, applicable to the legal form of an organisation within which a cell is established shall apply *mutatis mutandis* to the cell as though the cell were itself a registered organisation of the same legal form with such modifications as are necessary to accommodate the fact that the cell is not a legal person.

(14)The winding up of a cell, whether voluntarily or due to its inability to perform its obligations shall not affect the continuing operation of the organisation which established it or other cells in any manner whatsoever and the appointment of a liquidator for a cell shall not affect the powers of the administrators in relation to the organisation or any other cells. Where a cell is being wound up and a liquidator is appointed, the powers of the administrators of the organisation shall cease and shall vest in the liquidator, solely in respect of that cell.

(15)Any winding up proceedings in relation to an organisation within which cells are established shall respect the legal status of each cell as a patrimony separate from the assets and liabilities of the organisation and other cells of the organisation and from the assets and liabilities of the organisation not attributable to any cell.

(16)A cell shall be administered by the administrators of the organisation who may, if authorised by the statute, establish an administrative committee with reference to one or more cells, and the administrators may delegate any of their powers to such administrative committee or committees as the case may be. Such delegation shall:

(*a*) not in any way restrict the powers of the administrators of the organisation in relation to the cell; and

(*b*) not include the legal and judicial representation in relation to the assets and liabilities of the cell.

(17)The provisions of fiscal law which apply to legal persons shall *mutatis mutandis* apply to a cell as though the cell were itself a registered organisation of the same legal form of the organisation within which the cell is established.

(18)The Minister may make regulations to regulate segregated cells, in general or for particular legal forms of organisations, and to regulate any matters related,

including:

(*a*) any formalities which shall be necessary for a cell to be created by the appropriation of assets already belonging to the organisation to the cell;

(*b*) the dissolution of cells;

(*c*) the transfer of assets of a cell to another organisation, with or without segregated cells;

(*d*) the legal effects of such transfers; and

(*e*) all matters related and incidental thereto.

(19)The Minister may also make regulations to regulate the establishment of segregated cells having legal personality.

Transfer of cells. *Added by: XXXVI.2018.59.*

20A. (1) It shall be lawful for the cell of one organisation, hereinafter referred to as the "transferring organisation", to be transferred to another organisation, hereinafter referred to as the "recipient organisation" where:

(*a*) the administrators of the transferring organisation so resolve in writing pursuant to a power vested in them by the statute;

(*b*) the creditors of the cell in the transferring organisation do not object to this transfer following public notice of at least thirty (30) days of the intent to transfer;

(*c*) the recipient organisation has the same legal form and is of the same purpose or category as that of the transferring organisation;

(*d*) the administrators of the recipient organisation resolve in writing to accept such cell pursuant to a power vested in them by the statute;

(*e*) a notice relating to the transfer of the cell is delivered to the Registrar by the administrators of the recipient organisation and the Registrar shall:

(i) record the notice of transfer of the cell in the records of the transferring organisation; and

(ii) issue a new certificate relating to the transfer of such cell and record such transfer in the records of the recipient organisation; and

(*f*) it is required, under a special law, to obtain the approval or consent of any regulatory or governmental authority for such action, that such consent or approval is obtained.

(2)The assets and liabilities of a cell shall constitute a distinct patrimony which shall be distinct from all other assets and liabilities of the recipient organisation or other cells of such organisation, if any.

(3)The transfer of a cell shall not entitle the creditors of the recipient organisation to have recourse to the assets of the transferred cell or of the transferring organisation.

(4)All rights and obligations of the organisation and any third parties shall cease to be those of the transferring organisation with

respect to the cell and shall continue unaffected as rights and obligations of the recipient organisation with respect to the cell by operation of law with effect from the date of notification to the Registrar in terms of sub-article (1)(e), notwithstanding the absence of any agreements or consents that would otherwise be necessary for the transfer to be effective in law for those purposes.

(5)Upon the completion of the transfer, the administrators of the recipient organisation shall notify in writing all interested parties of which they are aware regarding the transfer of such cell from the transferring organisation to the recipient organisation providing details of its name and purpose and other material information.

(6)When a cell is transferred it shall retain its name or designation notwithstanding the transfer of the cell in accordance with this article but the administrators of the recipient organisation may enter into a unilateral declaration by public deed and register this event in the applicable public register.

(7)The transfer of a cell as contemplated in this article shall constitute a change in fiduciary and shall be governed by the provisions of article 1124C(4) of the Code regulating the succession of fiduciary obligations.

Constitution of a cell into a new organisation. *Added by: XXXVI.2018.59.*

20B. (1) It shall be lawful for a cell of an organisation to be constituted as a new organisation, with all the assets and liabilities of the cell becoming the patrimony of the new organisation or a part thereof.

(2)The name of the new organisation shall reflect the name or designation of the cell as closely as possible to comply with the applicable law in this regard.

(3)Such action may be taken under such conditions as may be applicable by the administrators of the existing organisation by means of a resolution of the board of administrators only if the statute of the organisation provides for such power.

(4)The cell shall be constituted as a new organisation upon the observance by the administrators of the requirements applicable to the creation of a new organisation of the same legal form as the organisation in which the cell is currently established, including its registration with the Registrar, and if the cell is created with reference to members, the members shall sign the statute of the new organisation, and:

(*a*) the administrators in office shall be the administrators of the new organisation unless new administrators are appointed in the constitutive documents when a cell is being constituted as a new organisation;

(*b*) the purposes and beneficiaries, if any, of the new organisation shall be those of the cell;

(*c*) all rights and obligations of the organisation and any third parties shall cease to be those of the organisation with respect to the cell and shall continue unaffected as rights and obligations of the new organisation by operation of law with effect from the date of

notification to the Registrar under sub-article (6) and the registration of the organisation in terms of sub-article (7) notwithstanding the absence of any agreements or consents that would otherwise be necessary for the transfer to be effective in law for those purposes; and

(*d*) the constitution of a cell as a new organisation as contemplated in this article shall constitute a change in fiduciary and shall be governed by the provisions of article 1124D of the Code regulating the succession of fiduciary obligations.

(5)The creditors of the cell being constituted as a new organisation shall be given the opportunity to object to such constitution following public notice of at least thirty (30) days of the intent to such constitution and this only if the new legal form which the cell is to take creates limitations on the liabilities of the organisation or its administrators or members which reduce the rights of the creditors when compared to those prevailing with reference to the cell.

(6)The administrators shall be bound to notify the Registrar by means of the prescribed form when a cell no longer forms part of an organisation under this article and shall surrender any certificate issued by the Registrar relating to the cell.

(7)The Registrar shall register in the Register the notification of the removal of a cell from an organisation by the administrators and shall then, subject to sub-article (8), immediately proceed to register the new organisation in the Register. The same shall apply when the cell is being registered in another register pursuant to a special law.

(8)When the new organisation takes a legal form which is governed by a special law which provides for registration which differs from this article, the Registrar shall furthermore issue his confirmation that he has been notified of the constitution of the cell as a new organisation and only upon such confirmation shall the new organisation be registered in the relevant register.

(9)Upon registration, the administrators of the new organisation shall notify in writing all interested parties of which they are aware regarding the constitution of the cell as a new organisation.

Objections by creditors. *Added by: XXXVI.2018.59.*

20C. In accordance with the previous articles, any creditor of a cell may within fifteen (15) working days of receipt or publication of any notice issued under the previous articles, by sworn application in the Court, object to -

(*a*) the transfer of a cell from the transferring organisation to the recipient organisation; or

(*b*) the constitution of a cell into a new organisation,

and, upon good cause being shown that such transfer should not take effect, the Court shall either accede to the creditor's demand, authorise the aforementioned transfer or constitution on sufficient security being given or give such other orders as it deems

appropriate.

Power to make regulations. *Added by: XXXVI.2018.59.*

20D. The Minister may make regulations to regulate the transfer of cells from one organisation to another or the constitution of a cell as a new organisation, to establish forms and notifications, to establish rules for the protection of third parties and generally for the better implementation of the preceding provisions.

Publication of notices. *Added by: XXXVI.2018.59.*

20E. For the purposes of the notifications contemplated by article 20A and 20B it shall be sufficient if the administrators publish the relative notices as follows:

(*a*) if the organisation has creditors in Malta, in two daily newspapers published in Malta, one in Maltese and one in English; or

(*b*) in the case of an organisation which does not have its principal creditors in Malta, in two general distribution newspapers, one published in Malta in the English language and one published in the country where the principal creditors of the organisation carry out business in the language of the place of business.

Conversion of legal persons of one legal form into another legal form and to trusts. *Amended by: XXXVI.2018.60.*

21. (1) It shall be lawful to convert a legal person in one form to a legal person having a different form by following the procedures which may be laid down in any regulations made by the Minister in terms of this article.

(2)When a legal person in one form is converted into another form it shall not be necessary to dissolve and wind up the legal person and such legal person shall continue to exist as the same legal person with all rights and subject to all obligations existing prior to the conversion.

(3)It shall also be lawful to convert a registered organisation into a trust for the benefit of the persons beneficially interested in the organisation by following the procedures which may be laid down in any regulations made by the Minister in terms of this article.

(4)When a legal person is converted into a trust, the trustee shall succeed to all rights and obligations of the legal person and it shall not be required to dissolve and wind up the legal person as required by the applicable law. The legal person shall be struck off from the register in which it is registered subject to the conditions as may be laid down by regulations.

(5)The conversion of a legal person into another form or into a trust shall not operate to prejudice any creditor or third party in any manner whatsoever.

(6)It shall also be lawful to convert a legal organisation registered in the Register of Legal Persons into a cell of another multi-cell organisation and this following the procedures which may be laid down in regulations made by the Minister in terms of this article.

Amalgamation and division of legal persons. *Amended by: XXXVI.2018.61*

22. (1) It shall be lawful to amalgamate two or more organisations into one and to divide an organisation into two or more organisations. For this purpose, unless otherwise provided by regulations by the Minister in relation to a particular legal form, the provisions of Title II of Part VIII of the Companies Act shall *mutatis mutandis* apply and the functions of the general meeting, in case of foundations, shall be carried out by the administrators and any persons whose consent is required for material decisions to be taken by the administrators.

Cap. 386.

(2)For the purposes of the application, *mutatis mutandis*, of the provisions of article 345 of the Companies Act to the amalgamation of two or more associations at least one of which is registered, any extraordinary resolution that may be required in terms of the Companies Act, shall be an extraordinary resolution taken and passed by the general meeting of an association in accordance with provisions regulating the taking and passing of extraordinary resolutions as found in the statute or constitutive instrument of the said association, and the provisions of article 135(1) and (3) of the Companies Act shall not apply:

Provided that if the statute or constitutive instrument of the association does not contain any provisions regulating the manner in which extraordinary resolutions are to be taken and passed, the provisions of article 135(3) of the Companies Act shall regulate the taking and, or passing of such an extraordinary resolution, *mutatis mutandis*.

Cap. 386.

(3) Article 348 of the Companies Act shall not apply to the amalgamation of two or more associations.

(4)In the absence of specific rules or regulations by the Minister on a particular legal form, the provisions of fiscal law which apply to amalgamations and divisions of companies shall *mutatis mutandis* apply to amalgamations and divisions of any other legal form of a registered organisation.

Cap. 386.

(5)Articles 339 and 370 of the Companies Act regarding the issue and cancellation of certificates in the context of amalgamations and divisions shall apply *mutatis mutandis*.

Continuation in Malta of a foreign organisation. *Added by: XXXVI.2018.62.*

22A. (1) An organisation formed and incorporated or registered under the laws of a state within the European Union or the European Economic Area other than Malta which is similar in nature to an organisation -

(*a*) governed by this Schedule; or

(*b*) governed by any special law which does not, itself or by virtue of regulations, provide for continuation,

may, if it is authorised to do so by its constitutive instrument or statute, or by the applicable law in its state of registration, request the Registrar to be registered as being continued in Malta.

This article shall also apply in the case of such an organisation incorporated or registered under the law of any other country or

jurisdiction which is approved by notice as may be issued and reviewed, from time to time, by the Minister.

(2)When registered in Malta, the foreign organisation shall be registered in the same legal form which it has under the law of the foreign country or jurisdiction. In the event that a similar form does not exist under the laws of Malta, the applicant shall select a form as similar as possible to the one being continued in Malta and shall designate the form selected.

(3)Where the continuation in Malta of foreign organisations taking a particular form is regulated by a special law, the provisions of this article shall not apply.

(4)The continuation in Malta of a foreign organisation shall require:

(*a*) the adoption of Maltese law to govern the statute from the time of registration under this Schedule; and

(*b*) the compliance with:

(i) all matters required for the relevant legal form of organisation to be established and registered under this Schedule;

(ii) all matters required under any other applicable law relating to its activities or its administrators;

(iii) any other procedures or formalities which may be stated in the statute of the organisation:

Provided that if the statute does not address the subject or vest powers relating to continuation in any person or body, it shall be presumed that compliance shall be with a resolution of the board of administrators or equivalent or if the organisation is an association of persons, a resolution of the members having the support required under the statute or, if silent, with applicable law for decisions on matters considered to be extraordinary or special; and

(iv) any requirements which may be prescribed from time to time.

(5)The Registrar may request such undertakings, activities, documentation and other information from the applicant to satisfy himself of compliance with the provisions of this article and the laws of the relevant foreign country and may impose such conditions as appears appropriate to him for the publicity of such procedure in Malta and any other relevant state, for the avoidance of fraud or abuse and for the protection of beneficiaries, members or creditors of the organisation.

(6)An organisation registered under this Schedule may continue in any state within the European Union or the European Economic Area when it is authorised to do so by its constitutive instrument or statute. In such case, and after the relevant procedures are followed, the Registrar shall proceed to terminate the registration of such organisation under this Schedule on such basis.

S.L. 16.07.

(7)The registration fees set out in the Civil Code (Second Schedule) (Fees) Regulations relating to the registration of an organisation shall apply *mutatis mutandis* to foreign organisations requesting to be registered as being continued in Malta.

Registration of public organisations. *Substituted by: XXXVI.2018.63.*

23.(1) Except where an organisation is established as a foundation or an association, public organisations may not be registered under the provisions of this Schedule. The Minister may, by regulation, permit or require such registration. The registration of public organisations or classes of public organisations shall thereafter be made in terms of this Schedule and in accordance with such conditions as the Minister may prescribe.

(2) The Minister may by regulation expressly prescribe which provisions of this Schedule shall apply to public organisations, generally or where they take a particular legal form, specifically to such form, and to their administrators, and may also determine or modify the mode of application of any of the said provisions in such regulation.

Power of the Minister to make regulations. *Amended by: XXXVI.2018.64.*

24. (1) In addition to other powers to make regulations as already provided herein, the Minister shall have the power to make regulations to -

(*a*) establish the contents of statutes of organisations;

(*b*) lay down rules to further regulate organisations which are not registered;

(*c*) establish the forms and fees for the registration of any organisation, the certificates of registration and to establish the powers of the Registrar in relation to registration and all related matters;

(*d*) establish forms and content of annual accounts and reports and methods of review;

(*e*) regulate foreign or international organisations carrying out activities in Malta and the forms and content for registration and the terms and conditions of registration including the principles applicable to the determination of the proper law applicable to the constitutive instrument and, or the statute of such organisation and the implementation of provisions of any private international law treaty or any European Union law on such matters;

(*f*) lay down any rules in connection with foundations when used in commercial transactions including as collective investment vehicles, as securitisation vehicles and as shipping organisations and for the regulation of all matters ancillary thereto including legal rules applicable to units, umbrella structures and related matters;

(*g*) regulate administrators of organisations generally;

(*h*) regulate the winding up of organisations;

(*i*) regulate the redomiciliation or continuation of organisations;

(*j*) lay down any penalties for any breaches of the provisions of this Schedule;

(*k*) implement any international convention or any EU Regulation or Directive, to the extent necessary, to which Malta has adhered to in the context of organisations;

(*l*) establish the forms and procedures to be used for appeals;

(*m*) regulate the conversion of an organisation having one legal form into that having another legal form;

(*n*) lay down rules on the powers of the Court in relation to the interpretation or variation of a statute and the administration of an organisation;

(*o*) lay down rules for the better carrying out of any of the provisions of this Schedule;

(*p*) regulate the procedure for registration of public organisations, including the forms and content for registration, the terms and conditions for registration, and to establish the powers of the Registrar in relation to the registration of such organisations and all related matters;

(*q*) establish any requirements for notifications to be made to the Registrar by any legal organisation for the purposes of this Schedule;

(*r*) further regulate the segregated cells of organisations, whether such cells are incorporated as legal persons or otherwise;

(*s*) regulate the accessibility or otherwise of the register of members of associations;

(*t*) regulate the procedure for the continuation of organisations, whether under the laws of Malta or the laws of another country, including the forms needed for such continuation, the terms and conditions for continuation, and to establish the powers of the Registrar in relation to the continuation of organisations;

(*u*) provide for any matter incidental to or connected with any of the above; and

(*v*) lay down rules for the better carrying out of any of the provisions of this Schedule.

(2)The Minister may, with the concurrence of the relevant minister empowered to make regulations under any other special law, make regulations in accordance with the provisions of this Schedule to regulate:

(*a*) the applicability to forms of legal organisations or particular types thereof, or in relation to particular sectors of activity carried out by such legal organisations, established under such special law;

(*b*) the mode of their applicability to such forms of legal organisations; and

(*c*) all related and ancillary matters, including the powers of the relevant registrar, any requirements for notification to such registrar or for registration in the relevant registry, applicable fees, forms, or otherwise.

(3)The Minister may, by means of regulations, amend any annexes to this Second Schedule to the Civil Code.

Interpretation. *Amended by: XXXVI.2018.65.*

25. Unless the context otherwise requires -

(*a*) the provisions of this Schedule and any regulations made thereunder shall only apply in the absence of rules on the same subject as may be contained in any special laws applicable to particular forms of legal persons and in case of conflict between these provisions and the provisions of any special law, the provisions of the special law shall prevail;

(*b*) nothing in this Schedule shall imply the right to register as a legal person in the Register if the organisation is already registered in another public register the effect of which is the grant of legal personality to such organisation, nor the option to register as a legal person with a particular legal form in a register other than that stated in the special law applicable to that form; and

(*c*) the Registrar shall not have jurisdiction in relation to legal persons which are the subject of special laws applicable to their particular legal form unless expressly granted such jurisdiction in such special law or regulations made hereunder. The rights and remedies applicable to such legal persons shall be regulated exclusively by the provisions of such special law and nothing in this Title shall grant additional remedies in such cases.

Title III

OF FOUNDATIONS AND ASSOCIATIONS

Sub-Title I

Preliminary and Definitions

Definition of foundation. *Amended by: XXXVI.2018.66.*

26.(1) A foundation is an organisation consisting of a universality of things constituted in writing, including by means of a will, by a founder or founders whereby assets are destined either -

(*a*) for the fulfilment of a specified purpose; and, or

(*b*) for the benefit of a named person or class of persons,

and which are entrusted to the administration of a

designated person or persons.

The patrimony, namely assets and liabilities, of the foundation is distinct from that of its founder, administrators or any beneficiaries. The fiduciary obligations in 1124A of this Code shall be binding upon the foundation and all persons administering it towards any beneficiaries for the fulfilment of the stated purposes of the foundation:

Provided that the fiduciary obligations shall be subject to such restrictions or modifications as may be stated in the statute or the terms of engagement of the administrators, as the case may be.

(2)For the purposes of this Title, the term "foundation" shall include all organisations, institutes or similarly titled patrimonies which are set up through the bequest, endowment or appropriation of assets, by public deed or otherwise and howsoever named, for a stated purpose or for the benefit of a named person or class of persons, to be achieved through a designated administrator or administrators, but shall not include trusts as defined in the Trusts and Trustees Act. Cap. 331.

(3)The assets of a foundation may originate from any lawful business or activity and may consist of present or future assets of any nature.

(4)When a testamentary bequest is made having the elements contemplated in sub-article (1), a testamentary executor or the heirs of a deceased person shall be deemed to enjoy the power to convert such bequest into a foundation having the same aims and purposes as stated in the will, and register the same. The testamentary executor or heirs shall have the power, which shall be exercised with the utmost good faith, to draft the terms and conditions of the statute of the foundation, designate the administrators and regulate all matters which may appear to them to be relevant to comply with the requirements of registration and the wishes of the testator.

(5)Foundations in the form of marriage legacies shall continue to be regulated by the laws in force on the 31st December, 2006 unless they opt to register as foundations in terms of this Schedule in which case they shall be regulated by the provisions of this Schedule from such date.

(6)Foundations may be established in one or two legal forms being either for the benefit of beneficiaries (called "beneficiary foundations") or for the fulfilment of a specified purpose without beneficiaries (called "purpose foundations"). Whatever legal form they take, foundations may have any of the purposes stated in article 1.

(7)In this Schedule:

(*a*) any reference to "pious foundation" includes:

(i) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as juridical persons by the competent ecclesiastical or other religious authorities;

(ii) non-autonomous pious foundations, that is, temporal goods given in any way to a public juridical person established by the competent ecclesiastical or other religious authorities and carrying with them a long-term obligation, such period to be determined by applicable religious or national law, and where a long-term obligation consists of binding the juridical person, from the annual income, to celebrate Masses or other religious ceremonies, to perform other determined ecclesiastical functions, or in some other way to fulfil the pious or religious purposes as defined by the applicable religious laws or rules; and

(iii) "pious or religious purposes" are understood to be those which concern acts of piety, of the apostolate, or of charity, whether spiritual or temporal and include similar organisations of any religious denomination;

(*b*) any reference to "ecclesiastical entity" shall be a reference to an association of persons or a universality of things which are established by the competent ecclesiastical or other religious authority so that they might, in the name of such authority and in accordance with the provisions of the relevant law, fulfil the specific task entrusted to them in view of the public good, including the imparting of religious teaching, the promoting of public worship and the undertaking of projects which are appropriate to their character and governed by their statutes, under the higher direction of the said authority. Such entities include dioceses, parishes and all institutes of consecrated life and societies of apostolic life, and include similar organisations of any religious denomination.

(8)With effect from the relevant date, it shall not be lawful to establish a foundation other than by public deed or by will for marriage legacies or ecclesiastical entities.

(9)The appropriation of assets to a purpose or for the benefit of beneficiaries written in the form indicating an intent to establish a foundation but which is not made by a public deed of foundation or by will, shall be regulated by the provisions relating to unregistered organisations. In such cases, the persons who may be acting as administrators or fiduciaries shall be deemed to have the power to constitute such appropriation of assets into a foundation in accordance with this Schedule and to register the same.

(10)Until such time as it is registered, it shall not be lawful for such an organisation to use the word "foundation" in its name and the Registrar may, upon being notified thereof or upon becoming otherwise aware of such circumstances, by notice in writing demand the removal of such word from the name.

(11)It shall be presumed that a mandate regulated by Title XVIII of this Code or a deposit regulated by Title XIX of this Code, has been established, where a written instrument is executed vesting a person with the ownership or possession of property for the fulfilment of a specified purpose or for the benefit of beneficiaries, unless there is clear evidence of an intent to create a foundation as stated in sub-article (9) and to appoint the recipient as an administrator, or a trust and to make the recipient a trustee.

Definition of association. *Amended by: XXXVI.2018.67.*

27. (1) An association is an agreement between three or more persons to establish an organisation with defined aims or purposes to be achieved through the dedication of efforts and resources by such persons and others who may join voluntarily, the patrimony, namely assets and liabilities, if any, of the association being distinct from that of the members, its administratorsor any beneficiaries:

Provided that an association which is not established as a public benefit organisation may be established between two persons.

(2)Associations are not bound to register as legal persons but are entitled to do so.

Hybrid organisations. *Substituted by: XXXVI.2018.68.*

28. Religious organisations constituted as foundations or associations and established for purposes as defined in applicable religious laws shall not be subject to or in any manner regulated by this Schedule and shall be regulated by the relative religious laws. In the event that they are registered as foundations or associations under this Schedule they shall also be regulated by the provisions of this Schedule from such date and in case of inconsistency the provisions of this Schedule shall prevail.

Sub-Title II

Of Foundations

Form and content of the statute. *Amended by: XXXVI.2018.69; XXXIX.2020.17.*

29. (1) A foundation may only be constituted by virtue of a public deed *inter vivos* or by a will.

(2)The deed of foundation shall contain, on pain of nullity, an endowment of money or property worth at least one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) except in the case of a public benefit foundation in which case the endowment shall be of at least two hundred and thirty-two euro and ninety four cents (€232.94).

(3)When the property endowed is not cash or any other asset, the value of which appears on the face of it, the administrators shall declare, in a statement which shall be attached to the application form for registration, that in their considered opinion the property endowed upon or vested in the foundation has a value of at least the amount required by this article:

Provided that a foundation which has been duly registered shall not lose its eligibility to remain registered if, subsequent to registration, the value of its assets is reduced to less than the amount required by this article.

(4)The deed of foundation shall state the following:

(*a*) the name of the foundation, which shall include the word "foundation";

(*b*) the registered address, in Malta;

(*c*) the purposes or objects; and in those cases where the foundation falls within the following specific categories:

(i) the foundation is a public benefit foundation as defined in article 1(4); or

(ii) the foundation is a private interest foundation as defined in article 31B,

an indication of the category of the foundation in the statute;

(*d*) the constitutive assets with which it is formed;

(*e*) (i) the composition of the board of administration and the name, surname, identification, passport or registration number, as applicable, nationality and residential address of the administrators, if any, or when there are no administrators at the time of establishment or registration, the person who has the power to appoint the administrators;

(ii) the manner in which administrators are appointed and removed from office and the duration of their appointment, if any:

Provided that if the duration of the appointment of the administrators is not stated in the deed of foundation, administrators shall be deemed to have been appointed indefinitely until they retire or are removed.

(*f*) the term for which it is established, if any and if not stated it shall be presumed to be established for an indefinite term except in a beneficiary foundation in which case the provisions of articles 29(7) and 33 shall apply;

(*g*) in the case of a foundation, the administrators of which are non-residents of Malta, the name and address of a person ordinarily resident in Malta who has been appointed to act as the local representative of the foundation in Malta; and

(*h* in the case of a beneficiary foundation, either the names of beneficiaries, or, in the absence of such indication, a declaration that the foundation is constituted for the benefit of beneficiaries. Such beneficiaries may be indicated in a written instrument, which need not form part of the public deed, called the "beneficiary statement", signed by the founder and addressed to the administrators, and the same shall be signed in the presence of a Notary Public. The use of a beneficiary statement shall not be permitted in the case of a beneficiary foundation, or a cell of such a foundation, when it is established exclusively for the benefit of public

interest beneficiaries.

(*i*) where there exist more than one board or committee in virtue of the deed of foundation, the deed of foundation shall specify which board or committee shall be the board of administration;

(*j*) when the category of any foundation is for the public benefit, this shall be stated expressly through the use of the words "public benefit", "social purpose" or "public purpose" in the constitutive instrument and in the statute of the foundation.

(5) The statute shall be signed by the founders and any person subscribing to the statute after a foundation is established by means of a public deed or in such other manner provided for in the statute shall be deemed to have consented to all the provisions of the statute and all rules which may have been validly promulgated by the foundation until such date.

Where a foundation is being established as a public benefit foundation involving more than three persons as promoters, the signature of three persons shall be sufficient to indicate the consent of all founders at the time of establishment. A document containing a list of all founders shall be sufficient evidence of their consent. The Notary Public shall not be bound to ascertain that the three persons have been authorised by the founders to appear on the deed but shall rely on the document submitted to him by the three persons containing a list of all founders as evidence of their consent. Notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all founders, their name, surname and identity card, passport number or registration number, as applicable, shall suffice:

Provided that the Notary Public who receives any deed to which this sub-article refers shall record in the deed a declaration by the three persons that they are authorised by the founders to state their names, surnames and identity card, passport number or registration number, as applicable, in the document above referred to and the said Notary Public shall warn the said three persons of the importance of the truthfulness of such declaration. The document shall be attached to the public deed establishing the foundation:

Provided further that any person named as a founder in a document as referred to above who claims that he did not authorise the three persons to include his name and surname and identity card, passport number or registration number, as applicable, in the document shall, within sixty (60) days of his becoming aware of his inclusion in the document, be entitled to register a declaration to that effect in the Register of the foundation and in the absence of

any written evidence to the contrary which may be produced in case of dispute on such matter, he shall not be considered ever to have been a founder.

(6)When administrators are designated in the statute, unless they consent on the said statute itself, the written consent of the administrators must be delivered to the Registrar prior to registration of any foundation. When the administrators are not designated in the statute, their written consent must be submitted to the Registrar on the notification of their appointment.

(7)(*a*) It shall not be lawful to state a term for a foundation in excess of one hundred and twenty-five (125) years except in the following cases in which a foundation may have an unlimited duration:

(i) public benefit foundations; or

(ii) foundations governed by article 31B(4), (5) and (6).

(*b*) When no term is specified in the deed of a foundation, a foundation shall be considered to be valid for one hundred and twenty five (125) years from its establishment except in the cases referred to in paragraph (a).

(*c*) Saving as otherwise provided, in the event that a longer term is stated in a deed of a beneficiary foundation, it shall terminate on the hundred and twenty fifth anniversary from when it came into existence. The limitation on duration also applies in the case where a foundation results from the conversion of another registered organisation or of a trust in accordance with this Schedule and any regulations or from the transfer of a patrimony by a foundation to another foundation or trust. In such a case periods of existence shall be considered cumulative.

(8)Article 1753(1) of this Code shall not apply to endowments in favour of registered foundations.

(9)Foundations established in accordance with this Schedule are not prohibited by articles 331, 757 to 761 and 1776 of this Code.

(10)Article 586 of this Code shall not affect any term of a foundation because it relates to the inheritance of the founder or because the provisions relating to property belonging to the foundation are to take effect after the death of the founder.

(11) (*a*) The provisions of this Schedule shall apply to dispositions in wills in favour of foundations, whether such foundations are created *inter vivos* or by testamentary disposition, and this notwithstanding the provisions of articles 688, 693 and 695 and other similar provisions of the Civil Code.

(*b*) The administrators of a foundation may not renounce to a benefit to the foundation under a will pursuant to a

disposition in its favour except with the prior consent of the beneficiaries or in the case of a purpose foundation, the Court:

Provided that nothing in this sub-article shall oblige any administrator to accept a benefit under a will or an endowment if such administrator has reason to suspect that the same consists of assets derived from any criminal offence or involves money laundering or the funding of terrorism:

Provided further that if the administrator is not willing to accept to act as an administrator or to continue in such office, the provisions of article 35 shall apply.

(12)The provisions of this Title shall apply to all foundations existing on the coming into force of this provision but existing foundations will not be obliged to comply with the requirements in sub-article (2) and shall comply with the requirements of sub-article (3) only upon registration. Nothing in this Schedule shall render invalid anything done prior to the coming into force of this law which was valid when done.

(13)The Registrar shall register an existing foundation without its name being changed even if this is not in conformity with the requirements of sub-article (4)(a) or any other article imposing rules on the names of organisations.

(14)The Minister may make regulations permitting foundations to use alternative words instead of the word "foundation" in their name.

(15)The provisions of this article shall apply *mutatis mutandis* in the case of foundations governed by any directive or regulation of the European Parliament and the Council regulating the establishment and operation of foundations as may be in force at any time.

Mandatory rules to prevail. *Added by: XXXVI.2018.70.*

29A. (1) Subject to the provisions of sub-article (2), in the case of a foundation governed by Maltese law, where the laws of Malta contain provisions with regard to the following matters -

(*a*) the protection of minors or incapable parties;

(*b*) the personal and proprietary effects of marriage;

(*c*) succession rights, whether testate or intestate, especially the indefeasible shares of spouses, ascendants and descendants,

hereinafter referred to as "rules of mandatory application" or "mandatory rules" which cannot be derogated from by a voluntary act, such laws shall prevail over the terms of the foundation and related endowments unless otherwise expressly provided in this Schedule or in applicable law.

(2)To the extent that there exist rules of mandatory application, the courts shall apply such mandatory rules subject to the provisions of article 29B.

(3)When a foundation is governed by Maltese law and has no connection to Malta by reason of the domicile of the founder at the time of the endowment of the property to the foundation or the *situs* of the property, when immovable, any rules of mandatory application shall not apply in any manner. In such cases no regard shall be had to:

(*a*) the domicile, habitual residence, registration, authorisation or place of business in Malta of any protector or any person rendering administration, accounting or other services to the foundation; or

(*b*) the fact that the proper law of the foundation is Maltese law and the place of registration is Malta; or

(*c*) the *situs* of property in Malta, when movable; or

(*d*) the fact that the place of execution of the deed of foundation, any documents relating to the foundation or relating to the foundation property or other transaction documents is Malta.

(4)In the case of a foreign foundation, the rules of mandatory application shall only apply to any relevant endowment to the foundation when the founder is domiciled in Malta at the time of creation of the foundation or the making of the endowment, subject always to the rules stated in article 29B.

(5)In the case of a foreign foundation, when the founder of such a foundation is not domiciled in Malta at the time of the creation of the foundation or the making of the endowment, the provisions of this Schedule shall apply only in so far as they regulate the continuation or otherwise in Malta of the foundation or the endowment.

(6)To the extent that there exist rules of mandatory application in the law applicable in the circumstances in terms of Maltese private international law, the courts of Malta may apply such mandatory rules subject to the provisions of article 29B.

(7)When a court is requested to recognise a foreign judgement which enforces any rules of mandatory application as referred to in sub-article (6), the court may accede to such request subject to the provisions of article 29B.

Management of inconsistent provisions. *Added by: XXXVI.2018.70.*

29B. In order to ensure that the provisions of applicable law which cannot be derogated from by voluntary act are applied in a manner which preserves the endowment to the foundation and its terms as far as possible, the following rules shall apply:

(*a*) the application of the mandatory rules shall not produce the failure or invalidity of the endowment or

the foundation, and where possible, the endowment and the foundation shall continue under the same terms in relation to property which is unaffected by such mandatory laws. Subject to any order of the court, the affected property shall be held by the foundation for the founder absolutely, or if he is dead, for his heirs;

(*b*) the administrators shall be empowered to:

(i) vary the terms of the foundation in so far as relates to the nature or the extent of benefit or the endowment; or

(ii) do such acts as are necessary and legally permissible:

Provided that the beneficiaries or the purpose of the foundation derive the benefits in accordance with the intentions expressed by the founder in the deed of foundation in a manner compatible with the mandatory rules and any property which becomes free from the terms of the foundation for any reason shall be held by the foundation for the founder absolutely, or if he is dead, for his heirs;

(*c*) for the purposes of resolving conflicts between the endowment and the foundation and any mandatory rules and to enable the continuance of the foundation as specified in paragraphs (*a*) and (*b*), the terms of the foundation or the endowment, where silent, shall be deemed to include:

(i) the power, without any obligation to do so, of the administrator to reduce the foundation assets and return all or part of them to the founder or the estate of the founder so as to achieve compliance with such provisions of law;

(ii) the power of the administrator to enter into arbitration and mediation agreements and to reach a compromise to disputes and claims by third parties; and

(iii) the power to seek directions from the Court on such matters:

Provided further that such powers shall be exercisable notwithstanding any contrary provisions of the deed of foundation or the endowment and, provided the administrator acts honestly, in good faith and reasonably, such acts shall not constitute a breach of any fiduciary duties and any applicable law;

(*d*) the property of the founder which is not endowed to the foundation shall first be utilised, to the extent possible, to meet the claims of any person seeking to invalidate or reduce an endowment;

(*e*) notwithstanding any other applicable law, the

foundation may meet a valid claim being made against the foundation property, whether voluntarily or as a result of a court direction, order or judgement, by a payment of value in money and shall not be obliged to return property endowed to the foundation in kind;

(*f*) any person who succeeds in reducing the property of the foundation or obtains a court order to invalidate an endowment in whole or in part or who enjoys the benefits of an arrangement with the foundation as provided in paragraph (c)(i), shall forfeit the benefits under the foundation, unless the terms of the foundation expressly state otherwise or the administrators consider it unreasonable in the circumstances and obtain the consent of the Court to maintain in force rights in favour of such person subject to such conditions as the Court may consider appropriate;

(*g*) in any event and notwithstanding any provision of law, a foundation shall not be subject to an obligation to pay or return more than the foundation property held by it, after deducting any fees and costs, and shall not be subject to any obligation for any distributions made by it, in good faith prior to having written notice of any claim.

Property in Malta, Maltese or foreign foundations, foreign domiciliary. *Added by: XXXVI.2018.70.*

29C. Article 958R of this Code shall apply to foundations and endowments thereto *mutatis mutandis*.

Obligation to register. *Substituted by: XXXVI.2018.71.*

30. (1) It shall be the obligation of the administrators of any foundation established after the relevant date, other than pious foundations, marriage legacies and ecclesiastical entities constituted as foundations, to register such foundation in terms of this Schedule within the periods stated in this Title:

Provided that when no administrators are designated, the foundation shall be registered by any of the persons mentioned in article 31(2), (3) and (4) or by the person designated in the statute as having the power to appoint the administrators.

(2)After a foundation has been established by public deed in accordance with this Sub-Title of this Schedule or at any time after the opening of succession in case of a foundation established by will, the provisions of article 14 shall apply to any acts carried out by the administrators on behalf of a foundation prior to its registration and in such cases the administrators shall not be personally liable in accordance with article 17(2) if:

(*a*) the actions carried out implement what is expressly required of them in the public deed or will; and

(*b*) the foundation is registered within the period stated in article 31.

Registration of foundations.
Amended by: *XXXVI.2018.72;* *XXXIX.2020.18.*

31.(1) For the purpose of registration of a foundation the prescribed application form shall be submitted to the Registrar together with:

(a) in the case of a private interest foundation as defined in article 31B:

(i) an authentic copy of the constitutive instrument and the statute without the beneficiary statement, if any;

(ii) save as otherwise provided in this Schedule, the prescribed Note of Initial Registration; and

(iii) the written consent of the administrators, if any; and

(b) in all other cases, an authentic copy of the constitutive instrument and the statute and the written consent of the administrators, if any;

(2)Where the foundation is created by a public deed an authentic copy thereof is to be delivered by -

(i) the founder; or

(ii) after having accepted to act as such, the administrators; or

(iii) the Notary publishing the deed.

(3)Where the foundation is created by a will, an extract of the relevant part, duly authenticated, is to be delivered by a testamentary executor or by the heirs:

Provided that a testamentary executor may deliver the same even before being confirmed by the Court to act as such.

(4)Where the foundation is created by a secret will the said extract is to be delivered by the Notary publishing the secret will or by the heirs.

(5)The heirs mentioned in sub-articles (3) and (4) who do not intend to declare or who have not yet declared their intention to accept the inheritance or who have accepted the inheritance with the benefit of inventory shall nonetheless be liable for the delivery of the said extracts but such delivery shall not of itself be evidence of the acceptance or the unconditional acceptance of the inheritance.

(6)The said delivery is to be effected within three months which period is to run -

(*a*) if the foundation is created by a public deed, from the date of such deed;

(*b*) if it is created by a public will, from the date of death of the founder; and

(*c*) if it is created by a secret will, from the date of the publication of the will.

(7) The said delivery may be made by any one of the persons mentioned in sub-articles (2), (3) and (4), or by the person

designated in the statute as having the power to appoint the administrators either personally or by an authorized agent.

(8) On receipt of the documents mentioned in sub-article (1), the Registrar shall -

(*a*) register the foundation, on being satisfied that all the provisions of this Sub-Title have been complied with; or

(*b*) refuse to register the foundation, informing the applicant in writing of the reasons for such refusal:

Provided that, the fact that the Registrar registers a foundation in the absence of compliance with any requirement under any special law, shall not exempt such foundation or its administrators from their obligation to comply with such law or to be subject to any penalties or proceedings which may arise from the breach of such special law.

(9) The Registrar shall have the right to require any information from any person, if such information is deemed by him to be necessary for registration of a foundation but, in the case of a private interest foundation as defined in article 31B, shall not be entitled to request a copy of the beneficiary statement from the administrators or the Notary Public:

Provided that nothing in this sub-article shall limit any powers of the Malta Financial Services Authority under applicable law.

(10) If the delivery prescribed in sub-article (1) is not made within the period established in sub-article (6), the persons mentioned in sub-articles (2), (3) and (4) and the person designated in the statute as having the power to appoint the administrators shall be liable to a penalty, payable to the Registrar, of two hundred and thirty-two euro and ninety-four cents (€232.94) each:

Provided that no person shall be liable for failure to observe this obligation if he is unaware of the death of the founder or any other relevant fact:

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Provided further that in case of a public benefit foundation which is enrolled in accordance with the Voluntary Organisations Act , the penalty above referred to shall be reduced to twenty-three euro (€23).

Cap. 12.

(11)The provisions of article 636(2) and (3) of the Code of Organization and Civil Procedure shall apply to the extracts contemplated in this article.

Amendments to statutes and notices of changes. *Added by: XXXVI.2018.73. Amended by: XXXIX.2020.19.*

31A. Any amendments to the statute of a foundation or changes in a foundation after a foundation has been registered, shall be registered in the Register as follows:

(*a*) notwithstanding what is stated in the statute, if there is a form which is prescribed, by the filing of such form and such amendments or changes shall not require a public deed or enrolment in the records of a Notary Public;

(*b*) notwithstanding the provisions of any other law, any

other amendments or changes not the subject of notification through the filing of a prescribed form shall be made by resolution, private writing or notarial deed in accordance with the statute and unless made by a notarial deed, shall be enrolled in the records of a Notary Public and shall be registered in the Register by the Notary Public publishing or enrolling the deed, as the case may be, within fourteen days from the date of publication of the deed or its enrolment in his records, as the case may be;

(*c*) the duty of the administrators with regards to amendments to the statute, shall be as prescribed from time to time; and

(*d*) in the case of a private interest foundation as defined in article 31B, if such amendment affects any matter referred to in the Note of Initial Registration referred to in article 31, which is not already otherwise addressed in a prescribed form filed in terms of paragraph (a), an Amended Note of Initial Registration shall also be submitted to the Registrar.

Private interest foundations and trading activities. *Added by:* XXXVI.2018.73. *Amended by:* XXXIX.2020.20.

31B. (1) Private interest foundations may carry out the trading activities referred to in:

(*a*) this sub-article and sub-articles (2) and (3); and

(*b*) sub-articles (4), (5) and (6) without limitation:

Provided that private foundations may also establish another legal organisation to carry out acts of trade or trading activities to achieve and promote their principal purposes and objectives. They may establish another legal organisation to carry out any acts of trade which are not related to their principal purposes and objectives only when this power is expressly granted in their statute.

For the purpose of this article, a private interest foundation means a foundation, which neither qualifies as a public benefit foundation nor is it established for a public or social purpose and which is not a voluntary or non profit organisation but which can be established for a legitimate purpose and any reference to a foundation in terms of this article shall be construed as a reference to a private interest foundation.

Cap. 492.

(2)Notwithstanding the provisions of sub-article (1), a private interest foundation:

(*a*) may have additional objectives and powers contained in its statute to enable it to carry out any such activities referred to in this article to achieve its purposes or to protect its assets and, or to otherwise comply with legal requirements; and

(*b*) shall, in any case, be deemed to have all the powers to

do anything which is necessary or ancillary to achieve the said purposes.

(3)In addition to the activities referred to in sub-articles (1) and (2), a private interest foundation may:

(*a*) hold assets as an investment portfolio and to do all such acts ordinarily carried out in such context;

(*b*) carry out any specific actions with shares it may hold as may be designated in the statute of the foundation for the achievement of any designated purpose, transaction or for the protection of any designated interests;

(*c*) own, establish, grant and license a franchise, a trade mark or other intellectual property which gives rise to income;

(*d*) own income which may be made payable to voluntary organisations which own, administer or otherwise operate an innovative technology arrangement as defined in the Malta Digital Innovation Authority Act; and

Cap. 591.

(*e*) own commercial property or a ship or aircraft.

(4)For the purposes of sub-article (3):

(*a*) a foundation shall act as the passive owner of such assets, the administration of which is delegated to a third party, including another legal organisation with its own board of directors or a third party under a fiduciary agreement or temporary title; and

(*b*) the carrying out of acts of trade of any kind by the delegate with assets belonging to the foundation shall not imply that the foundation is itself carrying out such activities.

For the purpose of this sub-article "passive" shall mean that the foundation is not involved in the day to day operations of the relevant activity but shall not imply limitations on the foundation or its administrators from exercising or protecting the rights of the foundation in relation to any of its purposes or assets.

(5)Subject to any authorisations, registrations or notifications as may be necessary under applicable laws, a foundation may operate:

(*a*) as a collective investment vehicle, and issue units to investors therein, for the holding of a common pool of assets, the management of which is delegated to a third party;

(*b*) as a pension or employee benefit arrangement;

(*c*) as a securitisation vehicle or for the purpose of supporting or implementing a securitisation transaction, including to hold any assets in connection

therewith, borrow monies against the issue of bonds, establish security or collateral and do all relative and ancillary acts;

(*d*) as a retirement scheme or fund;

(*e*) for the holding, administration, development, or sale of undivided property originating from an inheritance deriving from one or more deceased person or persons common to the beneficiaries for the sole purpose of the division or liquidation of the common estate;

(*f*) to issue tokens and carry out any trading activity resulting from such foundations owning, administering or otherwise operating an innovative technology arrangement, as defined in the Malta Digital Innovation Authority Act; or Cap. 591.

(*g*) for any other purpose as may be prescribed in a notice issued by the Minister under this Schedule.

(6)A foundation may be used in the context of the following transactions and any transactions connected or ancillary thereto:

(*a*) securities offerings, whether to the public or for private placement, portfolio management and custody of investment instruments;

(*b*) the grant of real or personal security interests, including hypothecs, mortgages, privileges, pledges and guarantees;

(*c*) collective loan agreements and other multi-creditor banking facilities;

(*d*) insurance policies and the payment of proceeds thereunder;

(*e*) timeshare and multi-property structure; and

(f) such other commercial transactions as may be prescribed in a notice issued by the Minister under this Schedule.

(7)When a foundation is established with segregated cells, the foundation may itself render services against remuneration in favour of any of its cells which are established for the benefit of beneficiaries or for purposes or both.

(8)Whenever the activities of a foundation intended to be carried out under sub-articles (4), (5) and (6) are subject to laws regulating credit or financial institutions, insurance undertakings, investment services or funds, trusts and trustees, corporate or other licensable fiduciary institutions, such foundation shall only be permitted to register with the prior written consent of the Malta Financial Services Authority, where applicable in terms of law and when it is the competent authority under such law, or may be permitted by such authority to register but not to carry out activities, until it is authorised by means of a notice issued by such authority.

(9)Where such activities are exempt from registration in terms of sub-article (8), the Registrar for Legal Persons may request

confirmation of such exempt status from the Malta Financial Services Authority prior to registering the foundation in terms of the provisions of this Schedule.

(10)Nothing in this article shall prohibit foundations regulated by European Union law from carrying out acts of trade or trading activities if they are permitted to do so under such law.

Accessibility of registered documents and confidentiality of private foundations. *Added by: XXXVI.2018.73.*

31C. (1) The following registration documents are accessible to the public, except as stated in sub-article (2):

(*a*) the application form;

(*b*) any forms notified to the Registrar under the Civil Code (Second Schedule) (Notifications and Forms) Regulations, S.L. 16.08 including the Note of Initial Registration, as the same may be amended from time to time, except the following forms:

(i) Form DD relating to assets added to an organisation by additional endowments, as the same may be amended or re-numbered from time to time;

(ii) such other forms stated in a notice issued by the Minister;

(*c*) the written consent of any administrator to act as administrator; and

(*d*) the Certificate of Registration,

as well as any changes made thereto.

(2) Unless the founder has expressly waived confidentiality under sub-article (3), in the case of a private foundation, all documents, statements or declarations submitted to the Registrar, including those accompanying notified forms referred to above, shall not be accessible to third parties without the prior written consent of the administrators or the supervisory council of the foundation, if any, duly authenticated by a Notary Public, or with the permission of the Court and only when the Court is satisfied that the person requesting such information has a legitimate interest therein:

Provided that:

(*a*) nothing in this article shall render confidential any transactions which are subject to registration in the Public Registry according to law;

(*b*) unless the founder has expressly waived confidentiality under sub-article (3), the applicant shall be obliged to submit a Note of Initial Registration signed by the administrators, the founder or by the person designated in the statute as having the power to appoint the administrators as a condition to

registration and this shall be accessible to the public; and

(*c*) articles 47, 48, 49 and 50 of the Trusts and Trustees Act shall apply to the administrators of a private foundation. Cap. 331.

(3)The founder may, by means of a statement in the statute or by a notarially authenticated notice in writing, filed with the Registrar, declare that all registration documents in relation to a private foundation are accessible to third parties, and the Registrar shall act accordingly. Such declaration shall be filed in the Register by the Registrar and shall be accessible to third parties.

(4)The Registrar shall implement procedures and take all measures to ensure the privacy of all documents relating to a private foundation which are not accessible to the public.

(5)A person dealing with administrators of a private foundation in relation to foundation property need not:

(*a*) enquire into the terms of the foundation or of any endowment; or

(*b*) obtain the consent of the beneficiaries or any other person, and shall, where he acts in good faith, be entitled to rely on declarations made by the administrators with regard to any matters therein stated.

(6)The administrators may furnish to any person with whom they are dealing in the interest of the foundation, a certificate containing the following information without being in breach of any confidentiality obligations:

(*a*) that the foundation exists, is registered and that the Note of Initial Registration is complete and factually correct;

(*b*) the identity and address of the current administrators in office;

(*c*) that the administrators, or any of them, are duly authorised and empowered to carry out the relevant transaction and have obtained all necessary internal consents, if any;

(*d*) the revocability or irrevocability of the endowments of the foundation and, if revocable, that the endowments have not been revoked, or if any have been revoked, which ones have been revoked since the last accounts made available; and

(*e*) the latest accounts of the foundation.

(7)When there is more than one administrator, a certificate may be signed and authenticated by any administrator.

(8)Without prejudice to any liability under applicable law or to other fine or penalty which may be applicable under any other law,

any administrator who issues any certificate containing any statement which he knows or ought to know is false shall be guilty of an offence and shall on conviction be liable to the punishment of imprisonment for a term not less than thirteen months and not exceed four years or to a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) or to both.

Purpose foundations. *Amended by: XXXVI.2018.74; L.N. 212 of 2023.*

32. (1) A foundation may be established for the achievement of a lawful purpose, including a social or public benefit purpose, without beneficiaries. The Registrar shall not register such a foundation unless the purpose is indicated in clear terms.

(2) The founder may, at any time amend or add to the deed of a purpose foundation, including its purpose, by means of an amendment to the statute done in accordance with the provisions of the statute, if any, and, or any applicable law. The statute may expressly permit any other body or person to amend the statute in the manner and subject to the conditions as may be stated. After the death of the founder, unless the statute provides for the manner in which amendments may be made, the Court may authorise such amendment or addition to the deed of a purpose foundation, including its purpose, on the application of:

(*a*) any administrator;

(*b*) the supervisory council;

(*c*) any interested party, or

(*d*) in the case of a public benefit foundation, the State Advocate:

Provided that a public benefit foundation may not have its purpose changed or extended to other purposes which are not also social or public purposes.

(3)The deed of foundation may indicate the way in which the moneys or property of the foundation may be used for the attainment of the purpose for which the foundation is established and when no such indication is made the administrators may exercise their discretion.

A purpose foundation may use money or property of the foundation to acquire shares or interests in other organisations when the principal purposes and objectives of the other organisations are related or ancillary to the purpose foundation or established to implement the purposes of the said foundation:

Provided that, if an endowment of shares or interests in an organisation is made to a purpose foundation to help the foundation and its principal purposes and objectives, such purposes and objectives of the organisation need not be related or ancillary to the purposes of the foundation.

(4)The deed of a foundation may indicate how the assets of the foundation are to be applied if its purpose is achieved, exhausted or becomes impossible and when no such indication is made, the administrators or the supervisory council may make specific

proposals to the Court for authorisation to use or dispose of the assets, unless the purpose is amended in terms of sub-article (2), or, if the founder is no longer alive, the administrators unanimously determine that the foundation is to be terminated and the proceeds distributed in accordance with this article.

(5)In the case of a purpose foundation established for a public benefit, the indication of alternative purposes must refer to other public benefit organisations.

(6)Any disposal of assets pursuant to the statute of the foundation shall be made on the following basis:

(*a*) in the case of a purpose foundation established for a public benefit to another public benefit organisation having the same or a similar purpose:

Provided that when an organisation is controlled by the Government, a religious organisation or a political party then the disposal of assets may be made in favour of the Government, another religious organisation of the same denomination or the relevant political party, as the case may be; and

(*b*) in the case of a purpose foundation established for any other purpose in accordance with the deed of foundation.

(7)Any disposal of assets by the Court under sub-article (4), shall be made on the following basis:

(*a*) if the purpose foundation is not established for a public benefit purpose, in the absence of express direction in the statute, the assets shall be paid out to the founder or his heirs;

(*b*) if the foundation is a public benefit foundation, in the absence of express direction in the statute in accordance with sub-article (6)(a), the assets shall be disposed of in favour of:

(i) the founder, if it is also a public benefit organisation, irrespective of its purpose; or

(ii) if sub-paragraph (i) does not apply, another public benefit organisation with the same or similar purposes but the recipient shall make reasonable efforts to achieve the original purposes of the endowments made to the original organisation:

Provided that when the purposes are the advancement of religion or the carrying out of a religious vocation or there are indications in the original endowment that this was intended for a religious organisation, to any pious foundation or ecclesiastical entity, and in such case of the appropriate denomination; or

(iii) if the Government of Malta is the founder, to the Government of Malta if the purposes are for the

general public benefit or utility;

(*c*)if the foundation has a combination of purposes, being partly private benefit and partly social or public purposes, the assets shall be paid out as follows:

(i) unless the social or public purposes have already been achieved or are specifically determined such that their extent can be calculated, the assets shall be paid out, in accordance with paragraph (b) in such manner that reasonably proportionately reflects the benefit intended for the social or public purposes as may be approved on application to the Court; and

(ii) the balance shall be paid out as stated in paragraph (a); and

(iii) where the assets are not immediately payable due to the fact that payment is subject to a condition, a contingency or a discretion, they shall be retained until the condition or contingency occurs or the discretion can be exercised;

(*d*) where the foundation is a pious foundation, marriage legacy or ecclesiastical entity which is constituted as a foundation and which qualifies as a long-term obligation, in the event that there may be any remaining assets from the sum dedicated to the performance of the long-term obligation after it has been performed, this shall be paid out as may be determined in accordance with Canon law and other legislation governing religious organisations.

(8)When the dominant purpose of a foundation is to support a class of persons which constitute a sector within the community as a whole, because they suffer from a particular social, physical or mental disability it shall be permissible to indicate one or more individuals who suffer from such condition as named beneficiaries. Notwithstanding such indication, the foundation shall be considered to be a public benefit purpose foundation on condition that after the death of such beneficiaries, the residual property of the foundation is, by the express terms of the statute, to be held either for the exclusive benefit of the designated class of beneficiaries or for another foundation established for a similar social purpose which qualifies as a public benefit.

(9) Notwithstanding the provisions of this article and other provisions of this Schedule, a "purpose foundation" which is not established as a public benefit foundation shall be subject to the provisions of Column A with the modifications in Column B which prevail over its legal form in deference to its non-public benefit purposes:

Column A	Column B

29(2)	The foundation must have an initial endowment of money or property of at least one thousand and one hundred and sixty four euro and sixty nine cents (€1,164.69);
29(7)	The foundation may not be established for more than one hundred and twenty-five years (125) except where expressly permitted by this Schedule;
32(4)	This sub-article shall not apply to the foundation and if the foundation terminates because the purposes have not been amended in accordance with the statute, the assets of the foundation shall, subject to the terms of the foundation, devolve on the founder or his heirs at law;
34(6), (7)	Any endowments to the foundation may be expressed to be revocable;
35(2)	The foundation may have only one (1) administrator and the administrator or administrators shall be subject to or otherwise require authorisation by the Malta Financial Services Authority under article 43 of the Trusts and Trustees Act in accordance with its terms;
40(9)	The foundation may be constituted in a revocable manner;
60(1)	This article shall not apply and article 60(2) shall apply in lieu thereof.

(10)Without prejudice to the provisions of this article, a provision in the statute granting the power to the administrators to apply the proceeds to another public benefit purpose when the stated purpose has been achieved, exhausted or is no longer possible shall be valid.

Public benefit foundations and trading activities. *Amended by: XXXI.2018.60. Substituted by: XXXVI.2018.75. Amended by: XXV.2019.28; XXXIX.2020.21.* Cap. 492.

32A. (1) Without prejudice to the ability of any public benefit foundation to carry out acts of trade in the ordinary course of carrying out its principal purposes and objectives, in terms of article 38(2) of the Voluntary Organisations Act, where applicable, a foundation shall not be established to carry out acts of trade or trading activities on a regular or continuing basis nor shall it do so in practice, except as permitted under this article and when the proceeds of such trading activities are attributable to a social or public purposes.

(2)Notwithstanding the provisions of sub-article (1) a foundation may own, acquire or be endowed with shares or other interests in another legal organisation and may generally:

(*a*) carry out any specific actions with shares it may hold as may be designated in the statute of the foundation for the achievement of its main purposes and objectives;

(*b*) subject to such authorisations as may be necessary under applicable laws, issue tokens and carry out any trading activity resulting from such foundations owning, administering or otherwise operating an innovative technology arrangement as defined in the Malta Digital Innovation Authority Act; and

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(*c*) seek the achievement of designated social purposes which may include health and education:

Provided that this shall not apply to management agreements, licences or otherwise to third parties for profit:

Provided further that:

(i) when the foundation owns a shareholding in an organisation established to trade, the trading organisation shall not be restricted in its activities by the purposes of the foundation in any manner, unless otherwise stated in the statute of such trading organisation;

(ii) when the foundation qualifies as a voluntary organisation and owns shares or other interests in another legal organisation established pursuant to the provisions of article 38 of the Voluntary Organisations Act, the provisions of sub-article (4) of the said article 38 shall apply but the relevant limitations shall not apply to persons who are not involved in the foundation and are not related parties thereto; and

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(iii) the purposes of the holding, acquisition or endowment of shares or other interests shall not be to enable the foundation to speculate with such assets.

For the purposes of sub-paragraph (ii), "related parties" shall mean persons related by consanguinity or affinity in the direct line in any degree or in the collateral line up to the third degree inclusively, and shall also include any person involved in the same business under any legal structure or otherwise.

(3) With reference to a public benefit foundation:

(*a*) its statute may contain additional objectives and powers to enable it to carry out any such activities, to achieve its purposes, to protect its assets and otherwise to comply with legal requirements; and

(*b*) it shall, in any case, be deemed to have all the powers to do anything which is necessary or ancillary to achieve the said purposes.

(4)It shall be lawful for -

(*a*) the administrators or a person designated in the statute;

(*b*) any public benefit beneficiary, in the case of public benefit foundations; or

(*c*) the State Advocate, in the case of a public benefit foundation and, or the Commissioner for Voluntary Organisations in the case of foundations which are voluntary organisations enrolled in accordance with the Voluntary Organisations Act, Cap. 492.

to seek directions from the Court as to whether the actual or proposed activity of the foundation constitutes regular or continuing trading activity beyond what is permitted under sub-article (1) and the Court may, in such cases, issue directives to the foundation on the manner in which it shall carry out activities consistently with this article, including a direction to amend its purposes and objectives, but any such order shall not affect or invalidate acts already lawfully carried out or interrupt lawful acts in progress.

(5)The Court shall also consider the following principles and circumstances:

(*a*) in case of a public benefit foundation, the avoidance of speculation which may affect the assets of the foundation and the achievement of its purposes;

(*b*) the creation of liabilities which may impinge on the achievement of the purposes of the foundation;

(*c*) the protection of third parties dealing with the foundation; and

(*d*) the competence of the administrators to carry out such activities and the extent of the delegation of such functions to third parties.

(6)When a public benefit foundation is established with segregated cells, the foundation may itself render services against remuneration in favour of any of its cells which are established for the benefit of its beneficiaries or its purposes or both.

(7)Nothing in this article shall prohibit public benefit foundations regulated by European Union law from carrying out acts of trade or trading activities if they are permitted to do so under such law:

Provided such acts or activities are carried out solely to achieve and promote the principal purposes and objectives of the foundation.

33. (1) A foundation may be established for the private benefit of one or more persons or of a class of persons and such beneficiaries shall enjoy such benefits, and shall have legally enforceable rights against the foundation, as may be stated in the terms of the foundation and the provisions of this Schedule. Beneficiary foundations. *Amended by: L.N. 426 of 2012; XXXVI.2018.76; XXV.2019.28; XXXIX.2020.22.*

(2)The interest of the beneficiary under a foundation shall be deemed to be movable property even if it includes immovable property.

(3)The benefit under a foundation is personal to the beneficiary and subject to any applicable laws and only as stated in the terms of the foundation, creditors, spouses, heirs or legatees of the beneficiary may have rights only to the extent of the beneficiary's entitlements under the foundation and have no other rights in relation to the assets of the foundation. Unless otherwise provided for in the deed of foundation expressly, by the type of benefit granted to the beneficiary or otherwise, upon the death of the beneficiary the beneficiary's entitlement under a foundation shall not devolve to his heirs but shall terminate.

(4)Beneficiary foundations must name:

(*a*) the class of persons entitled to benefit as clearly and as fully as possible; or

(*b*) the person or persons entitled to benefit as clearly and as fully as possible, by specifying first names, surnames, number of a legally valid identification document, father's name, mother's name and maiden surname and other relevant personal or family factors to eliminate any doubt as to who the intended beneficiary is,

and if there are no beneficiaries identifiable or ascertainable as aforesaid, the foundation shall be deemed to be for the private benefit of the founders or their successors in title.

Such identification need not be made in the constitutive instrument or statute but may be made in a separate beneficiary statement in accordance with article 29(4)(*i*) of this Schedule.

(5)Persons who are not yet conceived at the time of the creation of a foundation may be named as beneficiaries or form part of a class of beneficiaries but their rights arise only once they are born viable.

(6)The founder of a foundation may also be a beneficiary.

(7)Subject to the terms of the deed of foundation which may exclude or restrict such power, if the founder is still alive and capable of acting he may freely amend the deed of foundation including substituting, adding or removing beneficiaries:

Provided that no decision of a founder shall affect the validity of anything lawfully done by the administrators prior to such decision, before they receive notice of such amendment, nor shall it affect or interrupt lawful acts in progress or lawful commitments made and not yet fulfilled by the administrators.

(8)A beneficiary may be appointed -

(*a*) subject to a condition; or

(*b*) for a specified time; or

(*c*) up to a specified value of benefit,

as a founder shall deem appropriate:

Provided that, if the founder is deceased, a beneficiary may apply to the Court requesting it to eliminate any condition or requirement which is considered to be unreasonable paying regard to all the circumstances:

Provided further that persons unworthy of receiving under a will cannot receive as beneficiaries under a foundation.

(9)The terms of the foundation may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit at the discretion of the administrators.

(10)The terms of a foundation may make the interest of a beneficiary -

(*a*) liable to termination; or

(*b*) subject to restriction on alienation or dealing; or

(*c*) subject to diminution or termination in the event of the beneficiary becoming bankrupt, or insolvent, or any of his property becoming liable to seizure for the benefit of his creditors; or

(*d*) not liable to attachment under a garnishee order issued against the administrator or to termination without the prior consent of the Court, when the interest is expressed to be for the maintenance of the beneficiary or as a pension.

(11)Where the benefit consists in an annuity or pension or the use and enjoyment of property and the enjoyment of fruits therefrom, the terms of the foundation may make the interests of the beneficiary -

(*a*) subject to restriction on alienation or dealing;

(*b*) not liable to attachment under a garnishee order served on the administrators as garnishees; or

(*c*) not liable to termination without the prior consent of the Court.

(12)When the administrator is granted the power to add a beneficiary at his discretion, such power shall be valid on condition that sufficient indication be given in the deed of foundation or in the beneficiary statement as to the class of which the beneficiary forms part. In the absence of such indication the power shall be null and void.

(13)A person who may be appointed a beneficiary in terms of a power or discretion granted to the administrator shall not enjoy any rights in relation to the foundation or vis-à-vis the administrator and shall not be considered a beneficiary in any manner until appointed as a beneficiary by the administrator.

(14)It shall be lawful for an administrator to be granted the power to decide at his absolute discretion, which beneficiaries are to benefit, the quantity of any benefit, at what time and in what manner beneficiaries are to benefit and such other powers relating to the appointment, application or advancement of property of the foundation.

(15)A beneficiary in whose favour a discretion to distribute or appoint property may be exercised shall have no rights to specific property of the foundation until such time as such discretion is exercised by the appointment, application or advancement of such property in his favour.

(16)A beneficiary may disclaim his whole interest in writing and such a disclaimer shall be irrevocable.

(17)Subject to the terms of the deed of foundation, a beneficiary may disclaim part of his interest, whether or not he has received some benefit from his interest; in any such case, but subject to the terms of the foundation, a disclaimer may, by the instrument by which the interest is disclaimed, be made revocable, and shall then be capable of revocation in the manner and under the circumstances therein mentioned or referred to.

(18)Subject to the terms of the foundation, a beneficiary may, by instrument in writing, sell, charge, transfer or otherwise deal with his interest in any manner.

(19)Subject to the terms of the foundation, the following rules shall apply where a foundation, or an interest under a foundation, is in favour of a class of persons:

(*a*) a class closes when it is no longer possible for any other person to become a member of a class;

(*b*) a woman who is over the age of fifty-five years shall be deemed to be no longer capable of bearing a child;

(*c*) where any class interest relates to income and for any period there is no member of the class in existence, the income shall be accumulated and, subject to article 29(7), shall be retained until there is a member of the class in existence or the class closes.

(20) When permitted by the statute of a beneficiary foundation, beneficial interests may be established in the statute or a beneficiary statement in unitised form, of whatever nomenclature, where each unit reflects a share in the assets of the foundation with such rights to income, capital or other entitlements or powers as may be stated in the statute or beneficiary statement and if nothing is stated, proportionately to the total number of units:

Provided that the units may be subject to rules on recordation in a register of units, transfers, pledges and other such matters as the administrators may establish from time to time or as are provided in the statute. In such cases, the beneficial interest is presumed, unless otherwise stated in the statute or beneficial statement, to be subject to inheritance in favour of the beneficiary's heirs under his will or at law in case of intestacy and shall not terminate as provided for in sub-article (3).

(21)In the event that a private interest foundation as defined in article 31B is dissolved for any reason at law, the assets of the foundation shall, subject to the performance of all obligations towards beneficiaries and any other terms of the foundation, be

presumed to be held for the founder or his successors in title.

(22)Notwithstanding the provisions of this article, and other provisions of this Schedule, where a "beneficiary foundation" is established exclusively for public interest, beneficiaries shall be regulated by the provisions in Column A:

Provided that such provisions listed in Column A shall be subject to the modifications in Column B:

Column A	Column B
29(2)	The foundation may have an initial endowment of money or property of only two hundred and thirty two euro and ninety four cents (€232.94);
29(4)(h)	The beneficiaries or class of beneficiaries must be indicated in the statute and the use of a beneficiary statement shall not be permitted;
29(7)	The foundation may be established for an unlimited term and the one hundred and twenty-five year (125) limit shall not apply;
32(2)	Any amendments or addition to the purpose of the foundation may not introduce any purpose or beneficiary which amounts to a private benefit;
32(4), (5), (6), (7)	These sub-articles on the using, disposal or distribution of assets on termination of a public benefit foundation shall apply to the foundation *mutatis mutandis*;
33(7), (9)	The founder or the administrators may add beneficiaries if given such power but, at all times, the new beneficiaries shall only be public interest organisations; The founder or the administrators may be given the power to amend the deed of foundation consistently with the rules applicable to public benefit foundations;
33(21)	Any transfer of the beneficial interest may only be made in favour of other public interest organisations;
34(6), (7)	Endowments to the foundation are irrevocable and the constitutive instrument or statute of the foundation or the instrument of additional or new endowment may not state that such endowments are revocable;

35(2)	The foundation must have at least three (3) administrators or at least one juridical person acting as administrator in accordance with article 35(1);
38(1)(g)	The State Advocate or the Commissioner in terms of the Voluntary Organisations Act may request information from the administrators;
38(4)	The administrators are not bound to inform certain beneficiaries until such time as they intend making a distribution to them;
40(2)	The beneficiaries may not terminate the foundation;
40(9)	This sub-article shall apply to the foundation;
45	The provisions of this article shall not apply; however the founder may impose confidentiality to protect the identity of the named persons referred to in article 32(8);
60(2)	This sub-article shall not apply and on dissolution and winding up of the foundation the distribution of the assets shall be governed by article 60(1).

Augmentation of fund.
Amended by: XXXVI.2018.77.

34. (1) Subject to the provisions of the statute, any person may add to the assets of a foundation by endowments at any time. Endowments shall be considered to have been made under the same terms and conditions, for the same beneficiaries or for the same purposes, as the case may be, in terms of the statute of the foundation. Unless the provisions of sub-article (2) apply, the grantor of such endowments, if not the founder, shall have no status or powers in relation to the foundation and the endowment shall be referred to as an additional endowment.

(2)When permitted by the provisions of the statute or with the express concurrence of the founder, the supervisory council or protector, the administrators or, in default of such persons, the Court, a person, hereinafter referred to as "the grantor" may make an endowment in such a manner that he shall be considered to have the status and powers of a founder in the foundation in relation to such endowment or in relation to the whole foundation, or where such endowment is granted to a cell if so contemplated and consented to as aforesaid, such endowment shall be considered a new endowment.

(3)When such augmentation by third parties is made by means of a will, the testamentary disposition shall be deemed to require the creation of a new foundation and the administrators of the nominated foundation shall proceed accordingly, even without the concurrence of the persons mentioned in sub-article (2).

(4)Where the statute of a foundation provides for the establishment of segregated cells, a new endowment, whether transferred *inter vivos* or *causa mortis*, may be constituted as a new

segregated cell by the administrators in which case the grantor's status and powers may be limited to such segregated cell. When a grantor becomes a new founder as aforesaid the rules in article 39 shall apply when there is more than one founder.

(5)The administrators shall be bound to file with the Registrar, within three months from any grant, an inventory or descriptive note of the assets added to a foundation but in the case of cash endowments, only a certified copy of the relative bank deposit statement shall be filed with the Registrar.

(6)In the event that endowments are received by such foundation in a regular manner in terms of a scheme which is registered with the Registrar, it shall not be required that the administrators file a descriptive note on each occasion that a new or additional endowment is made but they shall file a schedule of endowments on an annual basis. Neither shall it be required that the administrators enter into a public deed on each occasion that an endowment is made, unless the endowment involves immovable property. In each case, the administrators shall file the prescribed form and required attachments to notify such endowments to the Registrar.

(7)Endowments may be granted under a condition, for a fixed time or in accordance with express rules stated in the statute. A new endowment may be made for purposes which are different from those of the foundation. In the absence of any indication, endowments shall be considered to be unconditional and made for the same purposes of the foundation.

(8)Additional and new endowments to public benefit foundations shall be irrevocable notwithstanding any term to the contrary in the constitutive instrument or statute of the foundation or the instrument providing for the additional or new endowment.

(9)Unless expressly stated otherwise, additional and new endowments to beneficiary foundations shall be presumed to be irrevocable. The fact that an endowment is stated to be revocable, unless otherwise stated in the constitutive instrument or statute of the foundation or the instrument of additional or new endowment, shall not imply any limitation on the use or appointment of the capital or income by the administrators. In the case of revocation, the grantor shall only be entitled to the balance of capital which may remain unutilised.

(10)Where, in the case of a beneficiary foundation, an additional or new endowment is made by two or more grantors jointly and expressed to be revocable such endowment may only be revoked with the express consent of all the grantors.

(11)In the case of a beneficiary foundation, the revocation of an endowment shall not affect or invalidate acts already carried out or interrupt acts in progress, nor affect commitments made and not yet fulfilled. The revocation of an endowment shall be suspended until such time as the administrators certify to the Registrar that all commitments have been fulfilled and shall be deemed to refer only to such amount as shall not have been utilised in fulfilment of such commitments.

(12)The revocation of an additional or new endowment shall not imply the termination of a foundation but shall, unless otherwise stated in the statute, imply the cessation of the status of founder and all related rights in relation to the grantor.

(13)If a foundation is the beneficiary of a new or additional endowment granted for specific purposes different from its own purposes, unless permitted in accordance with sub-article (5), the administrators shall seek new instructions from the grantor and if that is not possible, such endowment shall not be accepted and shall be deemed to require the creation of a new foundation and the administrators of the recipient foundation shall proceed accordingly.

(14)When a foundation receives an endowment without sufficiently specific terms and from the circumstances it is evident that the foundation owes fiduciary duties in relation to such property towards a beneficiary or a class of beneficiaries or a purpose, the administrators shall execute a unilateral declaration by instrument in writing containing all the fiduciary terms under which the foundation is holding the same, comprising the information enabling the identification of all the beneficiaries or purposes. The administrators may ask the Court to confirm the contents of their declarations.

(15) In the event that there are no administrators at the time of establishment or registration of a foundation, the founder or the person having the power to appoint administrators shall be deemed to have the power to accept any endowment but shall not have the power to bind the foundation on any other matter nor shall the foundation be entitled to commence operations prior to the appointment of the required number of administrators.

(16)The term "endowment" for the purposes of this Title shall mean any grant of money or other property under a gratuitous title, including rights to money or other property, existing or which may arise in the future.

Administrators of foundations. *Amended by: XXXVI.2018.78.*

35. (1) The persons named to be administrators of a foundation may be juridical persons provided they have at least three directors.

(2)When a foundation is a public benefit foundation it shall have at least three administrators or at least one juridical person acting as administrator.

(3)If the person nominated as an administrator in the constitutive instrument or statute is unwilling or unable to accept such responsibility, then he shall, within fifteen days, notify his intentions in writing to the Registrar, the founder or his heirs and the persons named as succeeding, if any. The taking of possession of any assets of a foundation shall imply acceptance to act as an administrator thereof and in such a case the administrator is bound to confirm his acceptance in writing to so act on demand of any interested person or the Registrar. Failure to do so within thirty days from a written request shall be a breach of duty by the administrator.

(4)Any person named or appointed to succeed in administration

shall enter into the same obligations as if he were the person named in the first place and shall notify the Registrar in writing upon taking up office. It shall be lawful for an administrator upon taking up office, but not later than thirty days after, to notify in writing the Registrar and any interested parties of any reservations he may have regarding anything relating to the foundation or the actions of the previous administrators and he shall not be liable for any matters so reserved until such time as the reservations are operative.

(5)When administrators, both those originally named or those succeeding, have made any acts of administration, they are bound to submit an account of their administration on relinquishing the administration in addition to such accounts as are required to be submitted in accordance with applicable law. Such account shall be submitted to the succeeding administrators or in their absence to the Registrar.

(6)Unless the deed of foundation provides otherwise, administrators may be remunerated from the income or capital of the foundation. Such remuneration shall be in such amounts and in such manner as may be stated in the deed of foundation or in any agreement between the founder and the administrator or in accordance with applicable law. Remuneration may also be established by the Court on application of the administrator or any interested party.

(7)Subject to the provisions of sub-article (8), an administrator may resign from office by notice in writing to his co-administrators and in case of there being no other administrator, to the founder or to the beneficiaries or, if impracticable, to at least one beneficiary, or if there are none to whom notice can be given, to the administrator's duly appointed successor and the resignation shall take effect on delivery of the aforesaid notice.

(8)A resignation -

(*a*) given in order to facilitate a breach of duty, or

(*b*) which would result in there being no administrator for the foundation,

shall have no effect; provided that an administrator may resign office notwithstanding the provisions of paragraph (*b*), if, before the resignation takes effect, application is made to the Court for the appointment of a new administrator and a new administrator is so appointed.

(9)An administrator shall cease to be an administrator immediately upon -

(a) the lapse of the term for which the administrator was appointed;

(*b*) the removal of the administrator by any person or body having the power to do so in terms of the public deed of the foundation or by the Court on grounds stated in the deed of foundation or in this Schedule; or

(*c*) steps are taken for the winding up of the administrator

when a legal person;

(*d*) when the administrator is a legal person, the retirement, resignation or removal of all administrators, including directors in a company acting as administrator, from their office in the said legal person or steps are taken for its winding up; or

(*e*) where an administrator is appointed without any indication of his duration of office and:

(i) is the sole administrator, he shall require that the statute caters for a substitute administrator or the manner in which a new administrator may be appointed upon his retirement, resignation or removal. Where the administrator is in default of the obligation in this paragraph, a new administrator may be appointed to substitute such administrator at any time with the consent of the founder, of any person designated in the statute or of the Court in the absence of such persons; and

(ii) there is more than one administrator, it is implied that the other administrators shall have the power to remove the administrator at any time when they consider that he is unable to carry out his functions due to health or in accordance with the provisions of article 9:

Provided that in case of disagreement on any of the matters referred to in this paragraph, the administrator who was appointed without any indication of his duration in office may apply to the Court and demand that the Court issues such orders regarding his substitution, retirement, resignation or removal, as it considers appropriate after hearing the relevant persons.

(10)An administrator ceasing to be an administrator shall, in addition to the duty to account under sub-article (5), be bound to immediately deliver all property of the foundation which may be in his possession to the remaining or successor administrators and to take all such formal or other actions as may be necessary in the interest of the foundation.

Rights of the founder.
Amended by: XXXVI.2018.79.

36. (1) The founder, and such other persons who may be designated in the deed of foundation, may exercise supervision over the administration of a foundation, obtain a copy of the accounts held by the administrators, a copy of the inventory or descriptive notes of property, and may intervene in the matter of appointment of administrators or in the disposal of the assets, when these issues are being dealt with by the Court. The founder may also be vested with powers to appoint, add or remove any administrators, protectors or beneficiaries and powers to appoint an investment adviser or investment manager and where a power mentioned in this sub-article has been reserved or exercised by the founder, an administrator who acts in accordance with any directions issued

pursuant to the founder's power as aforesaid shall not be considered to be acting in breach of his fiduciary duties.

(2)A founder may be an administrator or a protector of a foundation.

(3)The founder may also be the beneficiary of a beneficiary foundation during his lifetime:

Provided that when the founder is a beneficiary, such founder may not at the same time act as the sole administrator of such a foundation.

(4)It shall be lawful for a founder to give non-binding written guidance to the administrators on how to exercise the powers or discretions vested in them in the deed of foundation or the beneficiary statement and to substitute, modify or withdraw such guidance from time to time as the founder sees fit. A beneficiary may also be permitted to give such guidance by means of specific clauses in the deed of foundation or the beneficiary statement, and this, with effect from the date of death of the founder.

Supervisory structure or protectors. *Amended by: XXXVI.2018.80.*

37. (1) The terms of the foundation may provide for the establishment of a supervisory council consisting of at least one member or for the office of a protector or protectors with similar functions.

(2) The founder may be the sole or one of the members of the supervisory council or may also be a protector. However, a founder may not carry out the functions of a protector for as long as he holds the office of an administrator.

(3) The members of the supervisory council or the protectors:

(*a*) may be designated in the statute of the foundation; or

(*b*) where no such designation is made, may be subsequently appointed by the administrators and in the manner prescribed in the statute; and

(*c*) may be removed and replaced by the administrators and in the manner prescribed in the statute.

(4)The supervisory council or protectors shall not be considered to be administrators.

(5)Subject to the terms of the foundation, the supervisory council or protectors shall have the power to exercise supervision over the acts of the administrators and may be vested with the power of appointment, removal, substitution or addition of administrators and such other powers as may be stated in the statute including the power to give guidance to the administrators in the exercise of their powers, discretions or duties.

(6)The exercise of any power, action or discretion on the part of the administrators may be subject to the express consent of the supervisory council or the protectors.

(7)Unless the statute of a foundation expressly states otherwise

and until such time as the supervisory council or protectors are appointed, in the event that a deed of foundation contemplates a supervisory council or protectors whose consent or direction is needed for the administrators to carry out any act, the administrators shall be presumed to have the power to carry out any act without such consent or direction:

Provided that, the decision to act without consent is taken unanimously by the administrators.

(8)The presumption in sub-article (7) shall not apply if the statute requires the administrators or any of them to appoint the members of the supervisory council or the protectors.

Rights of the beneficiaries.
Amended by: XXXVI.2018.81; XXXIX.2020.23; L.N. 212 of 2023.

38. (1) An administrator shall, so far as is reasonable and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the state and amount of the foundation property, including the accounts of the foundation, and subject to sub-article (2), the conduct of the administration to -

(*a*) the founder;

(*b*) the Court;

(*c*) the supervisory council or protectors;

(*d*) any other person who is vested with such right in the deed of foundation;

(*e*) subject to the terms of the foundation, any beneficiary of the foundation who is of full age and capacity, or if a minor, to his lawful guardian or representative;

(*f*) subject to the terms of the foundation, any other public benefit organisation or charitable trust referred to by name for the benefit of which the foundation was established; and

(*g*) in case of a foundation established for a purpose, the State Advocate or the relevant authority under applicable law.

(2)Subject to the terms of the foundation and to any order of the Court given for special reasons, an administrator or any other person shall not be required to disclose to any person any document or information relating to a private interest foundation which -

(*a*) discloses the administrator's deliberations as to the manner in which a power or discretion was exercised, or a duty conferred or imposed by law or by the terms of the foundation was performed;

(*b*) discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason will be or might have been based;

(*c*) relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

(3)Unless the terms of the foundation expressly determine the time when and the method how beneficiaries are to be informed of their entitlement under the foundation, the administrator shall be obliged to inform any beneficiary of his entitlement, in writing, within a reasonable time of his accepting to act.

(4)When the terms of the foundation grant a discretion in terms of article 33(9) of this Schedule, the terms of the foundation may suspend, until such time as a discretion is exercised in their favour, the duty of the administrator to inform such beneficiaries that they may benefit under the foundation or that they form part of a class of beneficiaries which may so benefit. The terms of the foundation may also indicate the time when and the method of how such beneficiaries are to be informed.

(5)If the deed of foundation expressly provides for the notification of information to beneficiaries or to those persons that form part of a class from among which beneficiaries may be appointed, without reference to any point in time, ascertained or ascertainable, such term shall be construed as implying a duty of the administrator to inform such beneficiaries within a reasonable time after the death of the founder.

(6)Should the administrator consider providing information as required by the preceding sub-articles to be prejudicial to the beneficiaries of the foundation or any of them, the administrator may apply to the Court and the Court may release the administrator from the obligation to inform under such conditions as it may consider appropriate.

(7)The duty to inform as above provided shall not arise if the administrator is in possession of information which reasonably demonstrates that those entitled to such information have already been informed or are already aware of such information.

(8)In the case of a purpose foundation, the duty to inform either unnamed beneficiaries forming part of a class or persons forming part of a class of persons who may be appointed as beneficiaries in terms of a power of the administrator, shall not arise notwithstanding the terms of the foundation unless, in case of the unnamed beneficiaries the administrator establishes that there exist less than ten beneficiaries appertaining to such class of beneficiaries. Furthermore, in the absence of any indication to the contrary, the unnamed beneficiaries or persons who may be added as beneficiaries in terms of a power shall be assumed to be persons who carry on relevant social or other activities principally in Malta.

(9)The administrator shall carry out the duty to inform to the best of his abilities and at the expense of the foundation and in the event it appears to the administrator that such exercise will be too costly or burdensome, the administrator may apply to the Court for directions and the Court shall be empowered to release the administrator from such duty under such conditions as it considers appropriate.

(10)The suspension of the duty of an administrator to inform beneficiaries as provided in this article shall not reduce the rights of beneficiaries or the duties and liability of the administrator

towards such beneficiaries in terms of this Schedule or other applicable law.

(11)Persons who may be added as beneficiaries in terms of a power referred to in article 33(12) of this Schedule shall have no right of information until such time as they are appointed beneficiaries by the administrator pursuant to such power.

Multi-founder foundations.

39. (1) When there is more than one founder, initial or subsequent, rights shall be exercised in accordance with the statute. When the statute is silent, in case of two founders, decisions will be taken unanimously and when there are more than two founders, in accordance with the decision of the majority.

(2)In multi-founder foundations the rules on general meetings according to the provisions of article 52 of this Schedule shall *mutatis mutandis* apply.

Termination of a foundation. *Substituted by: XXXVI.2018.82.*

40. (1) Subject to the provisions of sub-article (2), unless expressly provided otherwise in the statute or in this Title, a foundation shall not be subject to termination prior to the term for which it is established.

(2) Unless the founder has expressly excluded such a right, a beneficiary foundation may be terminated on the demand of all the beneficiaries of the foundation provided they are all in existence, have been ascertained and no one of them is an interdicted or a minor. If the founder is still alive his consent shall be required for termination by the beneficiaries. The founder may subject termination to the consent of a person or the supervisory council or the protectors, other than the administrators, stated in the statute.

(3) Notwithstanding anything stated in the statute or in sub-article (2), after the death of the founder, the Court shall have the power to dissolve and wind up any beneficiary foundation when requested to do so by all the beneficiaries of the foundation if it is satisfied that the continuance of the foundation is no longer necessary to achieve the intentions of the founder or is otherwise unreasonable.

(4) The statute of a foundation may provide that it may be terminated at any time but termination shall not affect or invalidate acts already lawfully carried out or interrupt lawful acts in progress. Nor shall termination affect lawful commitments made and not yet fulfilled. Termination shall be suspended until such time as the administrators certify to the Registrar that all lawful commitments have been fulfilled.

(5) The express reservation by the founder of the right to terminate a foundation shall not be exercisable by the heirs or spouse of such founder unless expressly provided otherwise in the deed of foundation. Without prejudice to any other remedies available at law, creditors of the founder may not exercise the right to terminate a foundation.

(6) When a foundation is terminated, the procedures in article 59 shall apply.

(7) Except in cases contemplated in article 47(2), where a foundation is converted into a trust, termination of registration shall imply termination of the foundation but not of the fiduciary obligations therein contained and upon notice of the conversion, the Registrar shall proceed to strike off the foundation.

(8) The administrators shall have a duty to maintain in good standing the registration of a foundation until it is terminated as provided for in this article.

(9) Public benefit foundations may only be constituted in an irrevocable manner and, without prejudice to the power to terminate such a foundation in accordance with article 32 for the reasons and subject to the conditions therein stated, any clause in the statute reserving the right for the founder or any other person or body to revoke such foundation shall not apply.

Jurisdiction of the Court. *Substituted by: XXXVI.2018.83.*

41. The Court shall have jurisdiction in relation to all non-contentious matters which are internal to the foundation, its administrators and beneficiaries:

Provided that if a non-contentious matter being examined by the Court becomes contentious, the Court shall declare the proceedings before it to be contentious and shall continue to deal with the matter as a contentious issue, providing the parties the opportunity to promote the claim and respond to it according to law.

Variation of the terms of the deed of foundation by the Court and approval of particular transactions. *Amended by: XXXVI.2018.84; XXV.2019.28.*

42. (1) Subject to the provisions of sub-article (3) the Court may, if it thinks fit, by order approve on behalf of -

(*a*) any person incapacitated at law having directly or indirectly, an interest, whether vested or contingent, under the foundation; or

(*b*) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the foundation as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons; or

(*c*) any person unborn; or

(*d*) any person in respect of any interest of his that may arise to him by reason of any discretionary power given to any one on the failure or determination of any existing interest that has not failed or determined;

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the foundation or enlarging the powers of the administrators of managing or administering any of the foundation's property.

(2) The Court shall not approve an arrangement on behalf of

any person coming within sub-article (1)(*a*), (*b*) or (*c*), unless it is satisfied that the carrying out of such arrangement appears to be for the benefit of that person.

(3) Where in the management or administration of a foundation, any sale, lease, pledge, charge, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the administrator by the terms of the foundation or by law, the Court may confer on the administrator, either generally or in any particular circumstance, a power for that purpose on such terms and subject to such provisions and conditions, if any, as it thinks fit, and may direct in what manner and from what property any money authorised to be expended, and the costs of any transaction, are to be borne.

(4) In sub-articles (1) and (2) of this article all references to "foundation" shall be references to a beneficiary foundation.

(5)An application to the Court made under the previous sub-articles may be made by the administrator, by any beneficiary or by any interested party, as the case may be.

(6)In the event that the statute of a purpose foundation does not contain any provisions relating to amendments to such statute, if the Court is satisfied that circumstances exist justifying a request made for such amendments to be made to the statute, the Court may order -

(*a*) any variation or addition to the statute;

(*b*) any variation to the purposes for which property may be applied;

(*c*) any variation of any provision of the statute as may be required for the effective achievement of the purposes of the foundation or its administration; and

(*d*) any variation to achieve the re-organisation of the structure of the foundation including its division into two or more foundations or legal organisations of a similar nature, or its conversion into a trust or trusts,

and to the extent that the provisions of article 32(8) apply, the Court shall have the powers referred to in this article with reference to any identifiable beneficiaries to whom the provisions of sub-article (1) apply.

(7)The Court shall not approve a request under the previous sub-article unless it is of the opinion that such amendment is, as far as reasonably practicable, consistent with the principal purpose and objectives of the foundation.

(8)Any variation approved by the Court shall be implemented by an amendment to the statute and the administrators shall abide by the formalities as may be prescribed in the statute and in applicable law.

(9)Any application to the Court made under sub-article (6) may be made by the administrator, any person vested with such power in the statute or by the State Advocate, as the case may be.

Other powers of the Court.
Amended by: *XXXVI.2018.85;* XXV.2019.*28.*

43. (1) An administrator may apply to the Court for directives concerning the manner in which he may or should act in connection with any matter concerning the foundation and the Court may make such order, if any, as it thinks fit.

(2)The Court may also, if it thinks fit -

(*a*) make an order concerning:

(i) the execution or the administration of any foundation; or

(ii) the administrator of any foundation, including an order relating to the exercise of any power, discretion or duty of the administrator, the appointment or removal of an administrator, the remuneration of an administrator, the submission of accounts, the conduct of the administrator and any payments into the Court; or

(iii) any beneficiary or any person having any connection with the foundation;

(*b*) make any declaration as to the validity or enforcement of a foundation;

(*c*) rescind or vary any order or declaration made under this Title, or make any new or further order or declaration.

(3)An application to the Court for an order or declaration under sub-article (2) may be made by the administrator or by any beneficiary or by the State Advocate or by any other person having a lawful interest:

Provided that in cases where the duty to inform a beneficiary of his interest in a foundation has been suspended in terms of article 38 and until such suspension is in force, and in the absence of any other person appointed to supervise the administration of a foundation, the founder of a foundation may also make an application to the Court in terms of this sub-article. Whilst dealing with such application the Court may determine whether the suspension of rights to information as aforesaid be maintained in force in full or in part for all or some of the beneficiaries.

(4)Where the Court makes an order for the appointment of an administrator or administrators it may impose such conditions as it thinks fit.

(5)Subject to any order of the Court, an administrator appointed by the Court under this article shall have the same powers, discretion and duties as if he had originally been appointed an administrator by the deed of foundation.

(6)Where any Court makes an order on the demand of a beneficiary who has been prejudiced as a result of bad faith on the part of the administrator in the operation of a foundation, the Court

shall have the power to restore the position to what it would have been had the action complained of not been taken or otherwise to protect his interests.

(7)When a person domiciled in Malta is obliged to pay maintenance in terms of this Code and is a beneficiary under a beneficiary foundation, the Court shall have such powers as are necessary to review the exercise of discretion by the administrator to give due consideration to the rights of persons entitled to claim maintenance.

Appeals, enforcement and hearings. *Amended by: XXXVI.2018.86.*

44. (1) There shall be no appeal from any decree, order, declaration or direction of the Court given under the provisions of this Schedule except where the matter has been declared to be contentious and the Court has, after the relevant proceedings have been completed, rendered a judgement on any matter.

(2)Such decrees, orders, declarations, directions or judgements shall remain in force until they are substituted or varied by the Court in either its voluntary or contentious jurisdiction.

(3)During the hearing of an application before the Court the administrator or applicant shall at the earliest opportunity disclose to the Court all material facts known to him which may be relevant to the application including the existence of any *res judicata* or pending judicial action given or commenced in Malta or before a foreign court.

(4)All applications to the Court shall be notified to the administrator and the applicant shall furthermore notify all persons who he considers having an interest in the subject matter of the application. The Court shall have the power to order notification to all other persons who it considers may have an interest as it deems fit.

(5)The Court shall hear the administrator and any interested parties as it considers appropriate.

(6)Without prejudice to any other power given to the Court by virtue of the foregoing provisions of this article or of any other law, where an administrator neglects or refuses to perform any duty or to comply with any order of the Court, the Court may, on such terms and conditions it may deem appropriate, order that the required action be executed, made or done by such person as the Court may appoint for the purpose, at the cost of the administrator in default, or otherwise as the Court may direct; and anything so executed, made or done shall operate and have effect for all purposes as if it had been executed, made or done by the administrator.

Confidentiality. *Amended by: XXXVI.2018.87.*

45. (1) All proceedings under these articles in relation to a beneficiary foundation shall be held *in camera* and only the parties to the proceedings, the administrators, the beneficiaries, if they prove they have an interest in the proceedings to the satisfaction of the Court, and their respective advocates and legal procurators shall be allowed in Court during the hearings.

(2)Any decree or judgement of the Court shall preserve the

confidentiality of the proceedings and shall only reveal such facts as may be necessary to make the same intelligible and enforceable by the parties and the administrators.

(3)All applications, responses, affidavits, opinions, statements and other documents or evidence shall be kept by the Registrar of the Court in a confidential manner and no access shall be given thereto except with the written consent of the Court.

(4)When information, or a document or information therein, is considered to be confidential by a party to any proceedings in relation to other parties to the proceedings it shall be lawful for the Court to hear only such party prior to ordering the disclosure or otherwise of such information and if the Court is satisfied that the other party or parties to the proceedings have no interest in the information considered to be confidential or that it has no bearing on the matter being addressed by the proceedings, the Court shall order that such information shall not be disclosed in the proceedings.

(5)The provisions of this article shall apply only to beneficiary foundations.

Rules of Court. Cap. 12.

46. The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court concerning applications made under or in terms of this Sub-Title.

Conversion of foundations into trusts and vice versa. *Amended by: XXXVI.2018.88.*

47. (1) It shall be lawful to convert a foundation into a trust and a trust into a foundation:

(*a*) with the consent in writing of:

(i) all trustees or administrators, as the case may be; and

(ii) all beneficiaries with fixed interests under the trusts or having similar rights under the foundation; and

(iii) any other person appointed in the trust instrument or deed of foundation, as the case may be, whose consent may be required for the taking of material decisions in relation to the relevant assets; and

(*b*) by executing a deed of foundation or instrument of trust in the appropriate form and with content so as to faithfully reflect the intentions of the settlor of the trusts or the founder of the foundation and the rights of beneficiaries as the case may be.

(2)When a foundation is converted into a trust, the trustees of the trust shall be bound to cancel the registration of the foundation within thirty days of the receipt of all consents required in the preceding sub-article and this by the filing with the Registrar of a notice as may be prescribed.

(3)When a trust is converted into a foundation, the administrators of the foundation shall be bound to execute a public deed and register the foundation within thirty days of the receipt of all

consents required by this article and this by the filing with the Registrar of the documents required by this Schedule.

(4)The provisions of this article shall apply *mutatis mutandis* to:

(*a*) the conversion of a cell of a foundation into a trust, whether relating only to the assets of such cell or by incorporating the cell assets as a segregated patrimony under an existing trust; and

(*b*) the conversion of a trust, or a segregated part thereof, into a cell of a multi-cell foundation.

Sub-Title III

Of Associations

Associations established as private benefit organisations. *Amended by: XXXVI.2018.89*

48. (1) When established for the promotion of a private benefit, an association of persons shall be regulated by special laws mentioned in this sub-article as the case may be, based on the purposes and legal form chosen by its promoters, whether it is registered or not with the Registrar: -

(*a*) the provisions of Title X of Part II of Book Second of this Code relating to civil partnerships;

(*b*) the special laws relating to commercial partnerships;

(*c*) the special laws relating to particular professions;

(*d*) the special laws relating to unions and employer associations;

(*e*) the special laws relating to co-operatives;

(*f*) the provisions of special law, where promoting ancillary or incidental private benefit, other than those listed above;

(*g*) where there is no other special law which is applicable, the provisions of this Sub-Title III "Of Associations" other than those governing public benefit organisations; or

(*h*) where for any reason the provisions of a special law cease to apply to an association which continues to exist, the provisions of this Schedule shall apply.

(2)The special laws referred to in sub-article (1) shall be supplemented by the provisions of this Schedule, with the exception of provisions which apply solely to public benefit organisations in the form of associations:

Provided that, where the provisions of this Schedule are not consistent with the special laws, the special laws shall prevail.

(3)Where an association is governed in accordance with the provisions of sub-article (1)(g) and irrespective of whether the association is registered or not:

(*a*) the provisions of the statute shall, in case of inconsistency, prevail over the provisions of this Sub-Title III "Of Associations" and the applicable

provisions of this Schedule except where such provisions are mandatory;

(*b*) subject to the benefit of discussion of the assets of an association, which must first be discussed, any member shall be liable to third parties with whom the association has contracted in proportion to his share in the profits and losses or in proportion to his benefit or other interests in such association, whichever is the higher, unless:

(i) his liability has been varied in a contract entered into with the third party, which contract shall not bind other members of the association without their consent; or

(ii) such liability has been excluded or limited by any provision of law;

(*c*) when the share of the profits or losses, or the benefit or other interests, is not determined on the basis of a designated proportion, the liability of a member shall be based on the proportion which his monetary contribution bears to the total contributions of the members.

The matters referred to in paragraphs (b) and (c) shall be determined on the basis of express provisions in the statute and absent any such provisions, the liability to third parties shall be equally borne by the members and any private agreement among members shall not affect the rights of third parties.

(4)If any member, for any reason, directly or indirectly, pays or is subject to a liability greater than his proportional share as stated in sub-article (3)(b) or (c), such member shall have a right of relief against the other members proportional to their share, subject to any agreement among the members or the provisions of the statute on such matters.

(5)The Minister may make regulations in relation to associations governed by the provisions of this Schedule for their better governance and shall have the power:

(*a*) to extend the application of specific provisions of special laws regulating other types of associations to such associations; and

(*b*) to introduce rules which apply when such associations are registered with the Registrar, which rules may establish different principles to those stated in sub-article (3) for such registered associations; and

(*c*) to introduce any special rules, including limited liability for the members for particular cases and establish the conditions under which such limited liability may be enjoyed.

Associations established as public benefit organisations.
Amended by: XXXVI.2018.90; XXV.2019.28.

48A. (1) When an association is established as a public benefit organisation, it shall be governed by the provisions of this Sub-Title III "Of Associations" and the applicable provisions of this Schedule, with the exception of provisions of article 48.

(2)The provisions of the statute of such association shall, in case of inconsistency, prevail over the provisions of this Sub-Title III "Of Associations" and the applicable provisions of this Schedule except where they are mandatory.

(3)The rules on liability of the members of such an association towards third parties shall be governed by:

(*a*) article 16 if the association is registered with the Registrar; and

(*b*) article 17 if the association is not so registered.

(4)Where applicable the associations referred to in sub-article (1) shall also be regulated by the provisions of the Voluntary Organisations Act.

Cap. 492.

(5)In the event that the statute of an association established as a public benefit organisation does not contain any provisions relating to amendments to such statute, if the Court is satisfied that circumstances exist justifying a request made for such amendments to be made to the statute, the Court may order:

(*a*) any variation or addition to the statute;

(*b*) any variation to the purposes for which property may be applied;

(*c*) any variation of any provision of the statute as may be required for the effective achievement of the purposes of the foundation or its administration; and

(*d*) any variation to achieve the re-organisation of the structure of the foundation including its division into two or more associations or legal organisations of a similar nature.

(6)The Court shall not approve a request under the sub-article (5) unless it is of the opinion that such amendment is, as far as reasonably practicable, consistent with the spirit of the promoter's intention.

(7)Any variation approved by the Court shall be implemented by an amendment to the statute and the administrators shall abide by the formalities as may be prescribed in the statute, if any, and in applicable law.

(8)Any application to the Court made under sub-article (5) above may be made by the administrator, any person vested with such power in the statute or by the State Advocate, as the case may be.

(9)The provisions of article 32(8) shall also apply to associations *mutatis mutandis*.

Form and contents of the statute. *Amended by: XXXVI.2018.91.*

49. (1) An agreement establishing an association shall be in writing, on pain of nullity.

(2)The statute shall state the following for the association to be eligible for registration:

(*a*) the name;

(*b*) the registered address, in Malta;

(*c*) (i) the purposes or objects of the association; and

(ii) the category of the association when the association is a public benefit association as defined in article 1(4);

(*d*) the method or process by which membership of the association is granted to applicants;

(*e*) the mode of procedure during general meetings;

(*f*) the composition of the board of administration and the name, surname, identification, passport or registration number as applicable, nationality and ordinary residence of the administrators;

(*g*) the manner in which administrators are appointed or elected to and removed from office;

(*h*) where there exist more than one board or committee in virtue of the statute, the statute shall specify which board or committee shall be the board of administration;

(*i*) in case of an association, the administrators of which are non-residents of Malta, the name and address of a person ordinarily resident in Malta who has been appointed to act as the local representative of the association in Malta;

(*j*) the term for which it is established, if any;

(*k*) when the category of the association is public benefit, this shall be stated expressly in the constitutive instrument and statute of the organisation.

(3)If no term is specified in the statute of the association, such association shall be considered to be indefinite in duration.

(4)(a) The statute shall be signed by the associating persons and any person subscribing to the statute after an association is established shall be deemed to have consented to all the provisions of the statute and all rules which may have been validly promulgated by the association until such date. In the event that more than three persons wish to establish an association, a statement may be made of this fact in the statute and the signature of three persons on behalf of all associating members stated in a schedule to the statute shall be sufficient to indicate the consent of all stated persons.

(*b*) Where an association is being established as a public benefit association involving more than three persons as promoters, the signature of three persons shall be sufficient to indicate the consent of all other associating members at the time of establishment.

(*c*) A document containing a list of all other associating members shall be sufficient evidence of their consent and notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all associating members, their name, surname and identity card, passport number or registration number, as applicable, shall suffice. A declaration by the three persons that they are authorised to act on behalf of all other associating members shall be recorded under their signature

(*d*) When such association is constituted by public deed, the Notary Public shall not be bound to ascertain that the three persons have been authorised by the associating members to appear on the deed but shall rely on the document submitted to him by the three persons containing a list of all associating members as evidence of their consent. Notwithstanding the provisions of any other law, in respect of the persons listed in the document containing the list of all associating members, their name, surname and identity card, passport number or registration number, as applicable, shall suffice.

(*e*) The Notary Public who receives any deed to which this sub-article refers shall record in the deed a declaration by the three persons that they are authorised by the associating members to state their names, surnames and identity card, passport number or registration number, as applicable, in the document above referred to and the said Notary Public shall warn the said three persons of the importance of the truthfulness of such declaration.

(*f*) The document shall be attached to the statute by the declarants or, if established by public deed, to the public deed establishing the association.

(*g*) Any person named as an associating member in a document as referred to above who claims that he did not authorise the three persons to include his name and surname and identity card, passport number or registration number, as applicable, in the document shall, within sixty (60) days of his becoming aware of his inclusion in the document, be entitled to register a declaration to that effect in the Register of the association and in the lack of any written evidence to the contrary which may be produced in case of dispute on such matter he shall not be considered ever to have been an associating member.

(5)The written consent of the administrators named in the statute to act as administrators of the association must be delivered to the Registrar prior to registration of any association.

Purposes.
Amended by: XXXVI.2018.92.

50. (1) The statute of an association must clearly specify a purpose.

(2)The assets of an association may originate from any lawful business or activity and may consist of present or future assets of any nature.

(3)Failure to specify a purpose shall result in the nullity of the agreement and the Registrar shall not accept to register such an association until such time as the purpose is clear and unambiguous.

(4)The members of an association may add to the purpose for the achievement of which the association was originally created, by extending it to cover such other purposes of a similar nature as are clearly set down in a second written instrument consented to by such number of members as is necessary to amend the statute.

(5)A public benefit association may not have its purpose changed or extended to other purposes which are not also public benefit purposes and a non-profit-making association cannot change its statute to an organisation promoting a private interest.

(6)A restriction on the number of members which is proportionate to the physical and other resources of an association from time to time or the existence of a membership committee with the power to accept or refuse new members in an association, shall not, on its own, imply that such association is one for private benefit.

Registration of associations. *Amended by: XXXVI.2018.93.*

51. (1) Subject to the provisions of article 12(3), all associations shall be eligible to register under the provisions of this Title.

(2) For the purpose of registration of an association an authentic copy of the constitutive instrument is to be delivered to and filed with the Registrar by the administrators.

(3)Where the association is created by a public deed an authentic copy thereof may be delivered by the administrators provided for in the said deed (when they have accepted to act as such) or the Notary publishing the said deed and the delivery by any one of them shall suffice.

(4)The document referred to in article 49(4) relating to the other associating members, when such is the case, at the time of establishment shall also be delivered to the Registrar for registration.

(5)The name, surname and identity card or passport or registration number, as applicable, of every person who joins an association as a member after this has been established and, or registered, shall be entered in a register of members which shall be regularly updated. A record of the persons who leave the association shall also be maintained in the said register of members.

(6)Such register of members shall not be registered with the Registrar but this shall be without prejudice to the right of any person, subject to Court authorisation, and to the right of the Commissioner for Voluntary Organisations in the case of a voluntary organisation, and to the right of the Malta Financial

Services Authority in the case of entities which are regulated or which appear to be carrying out regulated activities for which it is the competent authority under applicable law, to require information about members subject to the provisions of applicable law.

(7)Notwithstanding the preceding sub-article, in the case of a public benefit organisation in the form of an association:

(*a*) if it is registered with the Registrar, the register of members may be registered by the Registrar at any time upon the written request of the administrators and shall be available to the public in all cases;

(*b*) the register of members shall always be accessible to any member.

(8)On receipt of the documents mentioned in sub-articles (2) or (3) together with the prescribed forms and any required attachments, the Registrar shall register the association on being satisfied that all the provisions of this Sub-Title have been complied with.

General meetings.

52. (1) A general meeting for all members shall be convened at least once every year. At this meeting the annual report and the accounts of the association as approved by the administrators, as well as the report of the auditors or reviewers, shall be presented and discussed.

(2)Other meetings may be convened by the administrators whenever they consider it necessary or when they have a request in writing signed by at least ten per cent of the members. If the administrators fail to convene a meeting when so requisitioned, the Court can order the meeting to be held and shall state the time and place of the meeting which shall be binding on the administrators.

(3)In the absence of specific provisions in the statute, at meetings of the members, decisions shall be taken by the majority of those present at the meeting except that:

(*a*) when decisions are taken on the amendment of the statute such decisions must be supported by at least fifty-one per cent of all the registered members on the basis of one vote per member;

(*b*) when decisions are taken to terminate the association or to donate to another organisation all of its assets, such decision must be supported by at least seventy-five per cent of all the members; and

(*c*) when decisions are taken on the approval of accounts or matters involving the role or responsibilities of the administrators, the administrators shall not be entitled to vote.

(4)Members may appoint proxies to attend a general meeting on their behalf and such proxy shall have the right to vote in addition to his own if he is a member.

(5)When any members use their right to request a meeting in terms of this article, it shall not be lawful for the administrators or the association to dismiss, retire or otherwise limit or reduce the rights of those members until after the holding of the requested meeting.

Administrators. *Amended by: XXXVI.2018.94.*

53. (1) Unless otherwise stated or implied by the statute it shall be presumed that the administrators must be members of the organisation except in the case where the administrators are engaged under a contract of employment.

(2)The provisions of article 35 shall *mutatis mutandis* apply to administrators of associations except as herein provided.

(3)An association established for the promotion of a private benefit may be administered by only one administrator and such administrator may also be a registered legal organisation on condition that such legal organisation has at least one administrator in office.

(4)In the case of a private benefit association, the administrators of the association may be appointed in any manner whether by notice in writing from any member or class thereof, by elections among the members, by designation to an office by the administrators or otherwise as the statute may establish and for any term or function, subject to the provisions of sub-article (5) for indefinite appointments.

(5)In the case of a public benefit association the same rules shall apply but notwithstanding the provisions of the statute:

(*a*) the majority of the administrators shall be appointed by means of elections among the members in general meeting except where every member or every class of members is each given the right to appoint and remove an administrator or where the provisions of sub-article (6) apply; and

(*b*) it shall be required that a majority of the administrators shall be subject to confirmation by the general meeting of the members at least once every five (5) years:

Provided that when the provisions of sub-article (6) apply, such administrators as are appointed indefinitely shall not be subject to such confirmation.

(6) When an administrator is appointed indefinitely, such appointment shall imply a power of the general meeting to remove such administrator at any time when it considers that he is unable to carry out his functions due to health or under article 9:

Provided that in case of disagreement on any of the matters referred to in this sub-article, the administrator who is appointed indefinitely may request the Court to issue such orders as it considers appropriate after hearing the relevant persons.

Members.
Amended by: XXXVI.2018.95.

54. (1) Members of associations are those persons who:

(*a*) subscribe to the purposes of the association;

(*b*) meet the personal status or qualifications for membership as set out in the statute;

(*c*) provide the necessary membership details;

(*d*) pay such membership fee as may be applicable or otherwise fulfil such conditions on participation as may be required by the statute or rules of the organisation; and

(*e*) are otherwise admitted by the membership committee or a committee authorised by the general meeting of members to admit new members, if any.

(2)Every person who is a member of an association shall be free to leave the association and such member cannot be subjected to any liability, other than for unpaid fees, on leaving an association:

Provided that in an unregistered association, when a member leaves the association, this does not affect his liability under the applicable law for the period while he was a member but he shall not be liable in relation to any activities of the association after such time.

(3)If the number of paid up members of an association falls below three, and in case of an association which may be established between two person in accordance with article 27, falls below two, the administrators are bound to proceed with a written call for payment of dues to the members informing them that non-payment will lead to termination under this provision and on the lapse of the said period, with the winding up of the association under this Schedule.

(4)Any expulsion procedure in a statute, except for failure to pay membership fees or to comply with other purely formal conditions of membership, should cater for:

(*a*) the non-participation of persons with an interest in a dispute, in the decision to expel;

(*b*) the right of the member whose expulsion is sought to make submissions to the persons who are empowered to decide.

(5)If the statute of an association does not provide for the procedures mentioned in sub-article (4), the administrators shall be bound to implement a procedure which respects the rules stated in the previous sub-article:

Provided that when an organisation's administrators are involved in the dispute and cannot find independent members to adjudge a motion of dismissal, reference shall be made to the Court on such issue.

(6)The membership of a person in a public benefit organisation established as an association is not transferable nor shall be subject to inheritance. Members may not have patrimonial rights to the assets of such an association except as permitted under the Voluntary Organisations Act and are not entitled to any compensation on

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retirement or expulsion or on winding up of the association.

Endowments. *Substituted by: XXXVI.2018.96.*

55.(1) The provisions of article 34 shall apply *mutatis mutandis* to endowments, additional and new, to public benefit organisations established as associations:

Provided that endowments shall be subject to the written acceptance of the administrators or as otherwise required by the statute and such endowment, when accepted, shall imply that the grantor has become a member of the organisation, unless otherwise expressly agreed or provided for in the statute in relation to endowments, with the same rights and obligations and otherwise in accordance with the statute and the provisions of this Schedule.

(2)Membership fees are not endowments and shall not be treated as such nor shall they be refundable except as expressly stated in the statute.

(3)When an association has a private benefit, new or additional endowments shall generally be considered to be contributions to the capital of the association and the following rules shall apply:

(*a*) an endowment shall be subject to the consent of the administrators or as otherwise required by the statute;

(*b*) an endowment when accepted, shall constitute a contribution in favour of the association and in favour of the grantor who shall thereupon become a member, and if he is already a member of the association, such contribution shall be considered to be an additional endowment to his initial endowment;

(*c*) unless otherwise agreed or stated in the statute or if the subject is not addressed in any agreement or the statute, it shall be presumed that the contributions shall be the basis of proportionality of all rights and obligations within the organisation;

(*d*) the statute may regulate and establish rules, which may be based on principles other than proportionality, on the following matters:

(i) the rights of members in relation to their contributions with regard to voting, sharing in profits and losses and participation in capital on dissolution;

(ii) participation in management of the organisation and rights to be appointed or elected as and appoint or elect administrators;

(iii) subject to the rights of third parties being protected, the manner in which the contributions of the members may be withdrawn or otherwise paid back to them.

Termination. *Amended by: XXXVI.2018.97.*

56. (1) An association shall exist until it is terminated in accordance with the provisions of its statute or in terms of this Title unless the members, upon being given thirty days' written notice of

termination by the administrators, amend the statute to establish other purposes to which the property of the association may be dedicated.

(2)The termination of an association shall not affect or invalidate lawful acts already carried out nor interrupt lawful acts in progress. Nor shall termination affect lawful commitments made and not yet fulfilled. Termination shall be suspended until such time as the administrators certify to the Registrar that all lawful commitments have been fulfilled.

(3)In the case of public benefit organisations established as associations, subject to the provisions of the statute, any assets on termination shall be donated or distributed by the administrators on behalf of the association to -

(*a*) first to the founder, if the founder is another public benefit organisation;

(*b*) if paragraph (a) does not apply, to another public benefit organisation with the same or similar purposes and features, or in default to any other organisation with a social or public purpose:

Provided that when the purposes are the advancement of religion or the carrying out of a religious vocation or there are indications in the original endowment that this was intended for a religious organisation, to any pious foundation or ecclesiastical entity, and in such case of the appropriate denomination;

(*c*) to the Government of Malta if the purposes are general public benefit or utility when the Government has granted the association a substantial part of its assets, as the administrators or the members in general meeting may determine in accordance with the provisions of article 52(3)(b).

(4)In the case of associations established for a combination of purposes, being partly private benefit and partly social or public benefit, the assets shall be paid out to the members in such manner that the assets reflecting the private benefit owned by the members shall be paid to the members and the remaining assets shall be disposed of in accordance with the provisions of sub-article (3), as may be approved by the members in accordance with article 52(3)(b), and in case of disagreement as may be directed by the Court.

(5)Termination of registration shall not imply the termination of the association which shall occur only upon the express determination to that effect by the members in accordance with the statute of the association or, in the other cases of termination, as is provided for in this Schedule.

Title IV

OF WINDING UP OF ORGANISATIONS

Termination of registration.

57. (1) An organisation may request the termination of its registration by means of a written request signed by all its administrators or as otherwise required by its statute, and rendering a statement of accounts, declaring the assets and liabilities of the organisation and stating how they are to be dealt with on termination of registration.

(2)The termination of registration shall not imply the winding up of an organisation. Organisations may continue as unregistered organisations subject to the application of the relevant rules of this Schedule.

(3)Any interested party or any competent authority may, in accordance with the provisions of this Title, apply to the Court for the termination of registration and, or the cessation of an organisation.

(4)The termination of registration of an organisation on the order of the Court, on the basis of grounds which imply that the organisation may no longer operate, shall include an order by the Court requiring the cessation of such organisation as a legal person and as an organisation. In such a case such organisation may not continue to exist as an unregistered organisation.

Winding up.
Amended by:
XXXVI.2018.98.

58. (1) Without prejudice to any special law regulating the form or purpose of an organisation, an organisation may be wound up voluntarily or by order of the Court.

(2)In this Sub-Title, the term "organisation" includes both those organisations which are registered and those which are not.

Winding up voluntarily.
Amended by:
XXXVI.2018.99.

59. (1) An organisation is wound up voluntarily by following the procedures laid down in the statute of the organisation. Unless otherwise stated, the winding up of an organisation shall require the support of a majority of all members, in case of an association, or a majority of all administrators, in case of a foundation:

Provided that the local representative may also wind up the organisation if he has not received any form of notification from any of the administrators for a period which exceeds twenty-four (24) consecutive months.

(2)A certified copy of a winding up resolution shall be delivered to the Registrar within fourteen days from when it is passed.

(3)An organisation may be wound up voluntarily only if its assets exceed its liabilities or its assets have been exhausted and all its debts have been paid. The administrators shall prepare a scheme of distribution of the remaining assets of the organisation which shall be notified to the Registrar and all interested parties. It shall require approval by members, or in case of foundations, by the founder or the beneficiaries, as the case may be, or in their absence the Registrar, before being implemented.

(4)Once the scheme of distribution is approved, the administrators shall proceed to pay out the remaining assets of the organisation in accordance with such scheme of distribution.

Disposal of assets on winding up. *Amended by: XXXVI.2018.100.*

60. (1) In the absence of a clear statement in the statute of a public benefit organisation, as to how assets are to be disposed of on termination of the organisation, the administrators may apply for directions and shall dispose of the assets as ordered by the Court.

(2)In case of dissolution and winding up of an organisation established for a private benefit and in the absence of an indication in the statute of how assets are to be distributed in case of winding up, the assets shall be paid to the beneficiaries or members, or, to the founders or promoters or their heirs at law after payment of all expenses, as may be determined by the Court after hearing the proposals of the administrators, the founders or promoters if alive, the beneficiaries or members and any other interested parties, keeping in view the intentions of the founder.

Dissolution and winding up when term expires, etc.

61. The administrators of an organisation shall be bound to dissolve and wind up an organisation when the term for which it has been created, if any, has expired or if its purpose has been achieved or becomes impossible. The founder or members may amend the statute at any time, even after such event, to remove the reason for dissolution as stated by this article, in which case any determination of the administrators and any dissolution proceedings shall be terminated and shall have no effect.

Winding up by order of the court. *Amended by: XXXVI.2018.101; XXXIX.2020.24.*

62. (1) An organisation shall be wound up on order of the Court, upon the application from any interested party, for reasons valid at law in terms of its statute or this Schedule.

(2)The Court may order the winding up of an organisation on an application to this effect if it considers it necessary in the public interest or if the provisions of this Schedule or any other laws are not being observed by the organisation and the Court considers the situation to be so grave as to merit such an order, the ordinary remedies for breach of laws not being sufficient in the circumstances.

(3)In the case of a private interest foundation as defined under article 31B, the power to request its winding up in terms of this article shall be exercisable also by the Malta Financial Services Authority.

(4)In the case of a public benefit organisation which makes public collections, the power to request its winding up in terms of this article shall be exercisable by any member of the public.

Appeal.

63. The Court shall outline the reasons for any order given under the preceding article and steps to be taken in relation to all assets of any relevant organisation, including the appointment of a liquidator for such organisation. The administrators and any person interested shall be entitled to appeal to the Court of Appeal within fifteen days of any such order.

Winding up due to insolvency or other serious difficulties. *Amended by: XXXVI.2018.102; XXXIX.2020.25.*

64. (1) If an organisation becomes insolvent or is undergoing serious difficulties which impede the organisation from operating and achieving its aims, the administrators shall cease operations and notify the Registrar who shall immediately co-operate with the administrators to appoint a liquidator to wind up the affairs in the

interest of creditors, the promoters or beneficiaries of the organisation and the organisation itself.

(2)In this Title "insolvency" shall mean the inability to pay its debts when due and for three months after a debt is judicially acknowledged or admitted or if it is proved to the satisfaction of the Court that the organisation is unable to pay its debts, account being taken of its assets and liabilities, including contingent and prospective liabilities.

(3)If the organisation does not have any administrators for more than six months and suitable persons are not appointed by the Court on the application of any interested person, the Registrar shall proceed to demand from the Court an order for the winding up of the organisation and the appointment of a liquidator. In the case of a private interest foundation as defined in article 31B such power to apply to the Court shall also be vested in the Malta Financial Services Authority.

(4)Upon such order, the liquidator shall take over all assets of the organisation and shall notify all creditors, if necessary by means of public notices, and shall seek appropriate solutions to any issue which may arise. The liquidator shall have the power to dispose of all assets and pay all debts, observing the ranking order of creditors as provided by law in making payments to creditors.

(5)The liquidator shall consult the Court which shall give directions from time to time for the resolution of disputes and the distribution of assets. The liquidator and any creditor may apply to the Court at any time for orders in the liquidation. The Court shall have the power to give any orders it deems appropriate.

(6)The same rules shall *mutatis mutandis* apply in cases where organisations have been found to be operating illegally or are abandoned and the Registrar is unable to obtain the co-operation of the administrators or other interested persons for the formal winding up of the organisation.

Cancellation of registration. *Amended by: XXXVI.2018.103.*

65. On receipt of a declaration by the administrators or liquidators or on otherwise being satisfied that all assets have been appropriately exhausted as required by law and that all assets have been distributed in accordance with the approved scheme of distribution, the Registrar shall cancel the registration of the organisation which shall thereby be struck off the Register of Legal Persons and the organisation shall thereafter cease to exist.

Revival of registration. *Amended by: XXXVI.2018.104.*

66. Should it result that the assets or liabilities of an organisation which has been cancelled were not determined or dealt with, distributed, paid out or otherwise liquidated, the Court shall, on the demand of any founder, the last serving administrators or any member, have all necessary powers to revive the organisation, and any cell thereof, only for the purpose of determining and dealing with or paying out or liquidating such assets or liabilities.

Effects of winding up on groups of organisations and cells.

67. The winding up of an organisation shall not affect the continuing validity or effect of another organisation established by it. In such a case the role of the founding organisation, if any, shall be carried out by the successor in title of the organisation or by

such person or persons as may be appointed by the Court. For an organisation to be wound up any segregated cells which may be in existence must be wound up prior to the winding up of the organisation.

Defunct organisations.
Added by: XXXVI.2018.105.

68.(1) Where the Registrar has reasonable cause to believe that a registered organisation is not in operation, he may send a letter by post, to enquire whether the organisation is in operation.

(2)In the event that the Registrar is notified with the letter referred to in sub-article (1), to the effect that the organisation is not in operation, or does not within three (3) months of sending such letter receive such notification from any administrator or any member in the case of an association, he shall publish a notice in the Gazette and in a daily newspaper that, at the expiration of three months from the date of the last publication of the said notice, the organisation, unless the Registrar is satisfied that cause has been shown to the contrary and there are sufficient grounds that the organisation is not defunct, shall be struck off the Register, and the remaining assets of the organisation shall devolve in accordance with the provisions of the Statute or in the absence of such statute, in accordance to the provisions of this Schedule as would occur on dissolution.

(3)If any creditor or any other interested party who feels aggrieved by the fact that the name of the organisation has been struck off the Register by virtue of this article, the Court, on an application made by such creditor or any other interested party before the expiration of five years from the publication of the notice of the striking off provided for in sub-article (2) may, if satisfied that there are sufficient grounds to revoke the Registrar's order to strike off the organisation, order that such name be restored to the Register, and upon an official copy of the order being delivered by the Registrar of the Courts to the Registrar for registration, the organisation shall be deemed to have continued in existence as if its name had not been struck off.

(4)Subject to the provisions of sub-article (3), the Court may give such directions and make such provisions it deems appropriate for placing the organisation and all other interested parties in the same position as they were before the name of the organisation had been struck off. The Registrar shall forthwith proceed to publish a notice in the Gazette and in a daily newspaper circulating wholly or mainly in Malta that the name of the organisation has been restored to the Register.

(5)Notwithstanding that the name of the organisation has been struck off the Register in terms of the preceding provisions of this article, the liability, if any, of every promoter, founder, administrator, member, of the organisation shall continue and may be enforced as if the name of the organisation had not been struck off the Register.

Transitory provision. *Added by: XXXVI.2018.105. Amended by: XXXIX.2020.26.*

69. Amendments to this Schedule introduced by means Act XXXVI of 2018, requiring statements to be made in the constitutive instrument or the statute of an organisation which were not required prior to the coming into force of the aforementioned Act, shall not be binding on those organisations which already existed prior to the coming into force of the Act. Such organisations are required to introduce such statements in their constitutive instrument or statute in conformity with the provisions of the Act XXXVI of 2018within five (5) years of the coming into force of the Act XXXVI of 2018.

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Added by: X.2009.37. Amended by: L.N. 426 of 2012.

THIRD SCHEDULE

Lease of an urban property, residence and commercial tenement

This, ... day of .....

By the present private writing there appear on the one part ..... son of ..... and ..... neè ..... born in ..... and residing at ..... holder of a legally valid identification document number ..... hereinafter referred to as the lessor.

And on the other part ..... son of ..... and ..... neè ..... born in ..... and residing at ..... holder of a legally valid identification document number ..... hereinafter referred to as the lessee.

And hereby the parties agree on the following:

a. the lessor is granting by title of lease to the lessee who under the same title of lease accepts the premises .....

b. the lessee may use the leased premises for .....

c. this lease is being made for a period of ..... commencing from .....

d. the parties agree that on the termination of this lease it may not be renewed / shall be renewed as follows .....

e. the rent payable for this lease shall be ..... that shall be due each ..... in advance / in arrears.

Transitory provisions - Act X of 2009, as amended by Act V.2010.19:

Transitory provisions.

39. (1) Leases which were in force before the 1st June, 1995, and which are still in force on the 1st January, 2010, shall continue to be regulated by the laws which were in force before the 1st June, 1995, other than the provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, as amended by this Act and subject to any regulations made in virtue of the amendments introduced by this Act.

(2)Leases which were granted after the coming into force of the Housing Laws Amendment Act, 1995, and which are still in force on the 1st January, 2010, shall continue to be regulated by the provisions of the said law insofar as they are not affected by the provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, as amended by this Act.

(3)Sohowever that where by this Act further obligations were made incumbent on the lessee which before the 1st June, 2008 were not incumbent on him, failure to fulfil those obligations before the 1st January, 2010 may not in any manner make the lessee liable for any damages or other adverse consequences such as an action for the termination of the lease.

(4)The provisions of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, shall also apply to the letting of urban tenements where terminated contracts of emphyteusis or sub-emphyteusis have been or are about to be converted into leases by virtue of the law:

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Provided that in the case of leases made by virtue of the Housing (Decontrol) Ordinance, the provisions of the said Ordinance defining the person to be considered as the lessee and the provisions providing for the transfer of the lease after the demise of the lessee shall continue to apply notwithstanding the aforesaid provisions of the Civil Code.

(4A) As from the first payment of rent due after the 1st January, 2010 the increase in rent on the ground of inflation of dwelling houses which are subject to a lease created by article 5, 12 or 12A of the Housing (Decontrol) Ordinance shall, notwithstanding the provisions of articles 5(3)(*c*) and 12(2)(*i*) of the said Ordinance be regulated exclusively by article 1531C of the Civil Code.

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Cap. 16

Cap. 69.

(5)The Rent Board appointed by virtue of the Reletting of Urban Property (Regulation) Ordinance shall have exclusive jurisdiction to decide matters connected with the letting of urban property including both commercial tenements and residences. Sohowever that causes relating to lease contracts which on the 1st January, 2010 are still pending before the Courts or other Tribunals shall still be dealt with by the same Courts or Tribunals.

(6)Nothing in this law and in the Civil Code as amended by this Act shall be deemed to lessen the powers pertaining to the Director, Social Accommodation, to the Housing Authority, or to any other person who exercises public authority owing to such person's office, by virtue of the Housing Act or by virtue of the Housing Authority Act. Cap. 125. Cap. 261.

(7)Without prejudice to the provisions of the Civil Code as amended by this Act, the renewal of a lease after the 1st June, 1995 (whether such renewal is conventional, legal, customary or otherwise) shall not be considered as a lease agreed on the 1st June, 1995 or after that date and the renewal of a lease on the 1st January, 2010 or after that date (whether such renewal is conventional, legal, customary or otherwise) shall not be considered as a lease agreed on the 1st January, 2010, or after that date:

Provided that for the avoidance of doubt, in this sub-article and in article 16 of the Housing (Decontrol) Ordinance, as the case may be, the words "the renewal of a lease after the 1st June, 1995" shall be construed as referring only to a lease commenced before the 1st June, 1995, and renewed after the said date, and the words "the renewal of a lease on the 1st January, 2010 or after that date" shall be construed as referring only to a lease commenced before the 1st January, 2010 and renewed after that date. Cap. 158.

(8)Save as the Minister responsible for accommodation may by regulations otherwise provide, nothing in this Act shall affect the applicability of:

(*a*) the Land Acquisition (Public Purposes) Ordinance; Cap. 88.

(*b*) the Housing Act; Cap. 125.

(*c*) the Disposal of Government Land Act; and Cap. 268.

(*d*) article 8 of the Reletting of Urban Property (Regulation) Ordinance. Cap. 69.

as in force immediately before the coming into force of this Act.

(9) Without prejudice to the other provisions of this Act, the provisions of this Act shall apply to leases where Government is the owner or the lessee.

FOURTH SCHEDULE*

Added by: XXV.2016.5.

Title I

PRELIMINARY

DEFINITIONS, PRESERVATION OF PRIVATE RIGHTS

1. In this Schedule: Definitions.

"administrative permit" includes licences, permits, concessions, authorisations or encroachments, grants which are made under tolerance or other precarious title and any other licence which may

* see also transitory provisions reproduced immediately after this Schedule.

be issued by the Government in terms of regulations which may be made from time to time, and different departments or entities within the term "Government" shall be treated as distinct persons;

"the Code" shall mean the provisions of the Civil Code apart from this Schedule;

"designated date" shall be the date of the coming into force of this Schedule;

"Government" shall include all departments and agencies of Government, all local councils, all statutory authorities and corporations and all organisations controlled by the Government;

"land", for the purposes of this Schedule, shall include the seabed and the sub-soil;

"private rights" are those titles or rights which arise under any law or agreement and which, if subject to registration or preservation according to applicable law, are so registered or preserved in the manner and within the time required by applicable law;

"relevant date" means the 1st July, 2016;

"relevant registry" means the Public Registry or the Land Registry or any successor registry;

"special law" means Acts of Parliament or regulations and other Acts constituting law other than the provisions of the Code which deal with particular matters relevant to any provisions of this Schedule.

Existing private rights.

2. (1) Land in the public domain which is subject to private rights, in virtue of laws enacted or agreements validly entered into prior to the relevant date shall continue to be subject to the terms and conditions of such laws or agreements until such land is, if ever, acquired by the Government free from such private rights.

(2)Nothing in this Schedule shall affect private rights over land in the public domain except and only to the extent that:

(*a*) when the land was acquired from the Government or otherwise, it was subject to express reservations; or

(*b*) the land is subject to reasonably implied restrictions on use or enjoyment attributable to its specific public domain nature and to its designation under any plan, policy or schedule issued under any law from time to time regulating development planning:

Provided that for the avoidance of doubt, private rights shall continue to be fully enjoyed and shall only be subject to reasonable limitations which arise from the public domain nature of the particular land, keeping in view its particular characteristics, uses and functions and the public utility it provides; or

(*c*) by virtue of the owner's consent, until withdrawn, the land has been made available for public utility; or

(*d*) the law, as it stood prior to the relevant date, so

provides; or

(*e*) the land was granted by the Government on mere encroachment terms and such concession has lapsed or is withdrawn.

(3)Private rights granted by the Government by means of any written instrument prior to the relevant date shall be governed by the terms of such instrument and applicable law and any limitations on the capacity of the Government to make such grant due to the public domain nature of the subject matter shall not affect the validity of such instrument.

(4)Subject to sub-article (3), nothing in this Schedule shall operate so as to:

(*a*) grant or recognise private rights or entitlements over land in the public domain to any person who, as of the relevant date, does not have valid and enforceable title, possession or other rights to land in the public domain;

(*b*) impinge on the Government's right to pursue any or all legal remedies and, or to exercise any or all of its powers under current law in relation to any person claiming any right to land in the public domain where such claim is not recognised as valid by the Government;

(*c*) affect the operation of articles 2114 and 2115(2) of the Code relating to the non-applicability of the provisions on prescription against things which are *extra commercium* or with regard to rights or actions of the Government.

(5)Privately owned land shall be presumed not to be in the public domain unless it is property of the type referred to in article 4(1) or is the subject of a Public Domain Resolution as defined in article 4(2) of this Schedule.

(6)If the continuing exercise of private rights, as are preserved by this article, materially endangers land in the public domain as aforesaid or where the exercise of such rights is in material conflict with the principles established in this Schedule in so far as the use of such land and its future preservation are concerned, apart from enforcing any agreement or applicable law in that regard, it shall be lawful for the Government to request amendment to any grant, concession or other agreement with the holder of such rights to ensure the respect of the provisions of this Schedule.

Notwithstanding the terms of any agreement, the court shall have the power to issue orders, as appropriate, on the use and future preservation of the property in question for the duration of the agreement.

Title II

OF THINGS BELONGING TO THE GOVERNMENT PUBLIC PROPERTY AND PUBLIC DOMAIN

Presumptions.

3. (1) Things belonging to the Government shall be presumed to be public property.

(2)Things in the public domain shall be presumed to belong to the Government unless they are privately owned.

(3)Things shall be considered to be in the public domain, if:

(*a*) they are of the type referred to in article 4(1) of this Schedule; or

(*b*) after the relevant date, they are the subject of a declaration, made in terms of article 4(2) of this Schedule, and, where possible, are registered in accordance with applicable law.

(4)The things, and their fruits and accessories, belonging to the Government which may be the subject of a declaration that they form part of the public domain are the following:

(*a*) waterways, aqueducts, lakes, natural springs and valleys;

(*b*) harbours, ports or parts thereof;

(*c*) public roads, public squares, all streets, alleys and lanes and access routes, by whatever name called, to other public places, including those leading to the coastal perimeter or areas declared to be in the public domain in accordance with this Schedule;

(*d*) woods, parks and other areas of ecological or environmental importance;

(*e*) sites of cultural, social or historical importance including bastions, fortifications and other similar structures;

(*f*) areas which serve the national security, such as airports;

(*g*) the open countryside, including any cliff which does not constitute part of the coastal perimeter;

(*h*) *res sacrae*, *res sanctae* and *res religiosae*;

(*i*) movable things having cultural, social, archaeological, artistic, ecological, environmental or historical importance, including collections of museums, art galleries, archives and libraries; and

(*j*) generally things belonging to the Government which serve direct and immediate public and collective utility or which should be preserved for future generations because of their public nature, common social, historical or cultural nature, environmental importance or natural or strategic importance.

(5)Any such declaration shall be subject to any private rights which may exist over such property.

(6)The property of the type referred to in paragraphs (*a*), (*d*), (*e*) and (*g*) which is privately owned may also be the subject of a declaration that they form part of the public domain.

Title III

OF PUBLIC DOMAIN

Things in the public domain.

4. (1) The following things, and their fruits and accessories, shall be considered as property in the public domain by virtue of this Schedule and without the need of any further declaration, registration or other formality:

(*a*) the coastal perimeter;

(*b*) internal waters such as bays, coves and other areas which lie between the coastal perimeter and the baselines from which the territorial waters are measured and the relative seabed and subsoil and the overlying water-column and its airspace provided they are not harbours or ports; and

(*c*) the seabed and subsoil underlying the territorial seas beyond the baselines from which the territorial waters are measured and the relative seabed and subsoil and the overlying water-column and its airspace.

(2)(i) The Executive Council as established under the Development Planning Act of 2016 shall prepare a report on an annual basis which will indicate those sites that have been proposed by the Minister responsible for Lands, Members of Parliament or NGOs that it would deem appropriate to be declared as public domain in conformity with article 3 of sub-title 2 of this Act:

Provided that prior to the completion of the report the Executive Council shall carry out a public consultation process.

(ii) The report shall thereafter be presented to the Minister responsible for Lands, who in turn shall lay such report on the Table of the House of Representatives by the 15th September of every year.

(iii) The Minister shall cause the report to be laid on the Table of the House of Representatives as soon as possible but not later than one month from receipt.

(iv) The Speaker of the House shall refer the report to the Standing Committee on the Environment, Climate Change and Development Planning for its consideration and comments.

(v) The report of the Standing Committee shall than be forwarded to the Minister responsible for Lands who shall present to the House of Representatives, for its consideration, a Public Domain Resolution regarding those sites which would have been so recommended by the Standing Committee on the Environment, Climate Change and Development Planning.

(3)Every Public Domain Resolution shall, as a minimum:

(*a*) identify the property, its fruits and accessories;

(*b*) identify any Government powers or third party titles or rights which shall continue to be enjoyed over the

thing, and the manner in which they are to be exercised or enjoyed, notwithstanding the declaration;

(*c*) identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property notwithstanding the declaration; and

(*d*) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and the accessories which are affected by such declaration.

(4)All Public Domain Resolutions shall be registered in the relevant registry by the Minister responsible for Lands within two months from their approval by the House of Representatives.

(5)Saving private rights and any concessions which may validly exist, things in the public domain belonging to the Government shall be *extra commercium* unless they are declassified in accordance with the provisions of Title VI of this Schedule, in which case they shall no longer be treated as *extra commercium* but only to the extent and for the purposes mentioned in the relevant Declassification Resolution:

Provided that things which have been declared to be in the public domain by a Public Domain Resolution which are privately owned shall not be considered as being *extra commercium* and they may continue to be subject to transactions in accordance with the Code or any other applicable law even if not declassified.

(6)Things in the public domain belonging to the Government which have been declassified as provided for in this Schedule may be subject to concessions or private rights in accordance with this Schedule.

(7)The acquisition of any right by any private interest over any thing in the public domain belonging to the Government which is not declassified, other than by concession under article 7 of this Schedule, shall be *ipso jure* null and void.

(8)Things in the public domain shall be subject to public domain obligations, even when declassified, and no acquirer may plead good faith so as to acquire free from such obligations.

(9)Actions and remedies enjoyed by the general public shall only be those provided under public law.

(10)The principal obligation, which burdens an owner of a thing in the public domain, whether owned by the Government or by a voluntary organisation or by a private interest, is to preserve its substance with regard both to matter and to form.

(11)Without prejudice to any private rights thereon, or as otherwise expressly stated in any Declassification Resolution, things in the public domain belonging to the Government are also subject to a burden being the utility derived by the general public and which is enjoyed by every person on mere sufferance. Public utility includes collective rights such as public access, use, public

enjoyment of the fruits and accessories, accommodation to necessities of trade, transit and communication or recreation and any other use and subject to such restrictions as may be prescribed by regulations made from time to time requiring a thing in the public domain to be subject to such burden.

(12)Without prejudice to any private rights thereon, or as otherwise expressly stated in any Declassification Resolution, nothing in the preceding sub-articles shall imply that any person may, in or over land in the public domain:

(*a*) drive or ride any vehicle except over paths which prevent damage to such property;

(*b*) light any fire or do any act which is likely to cause a fire;

(*c*) wilfully damage anything thereon or therein;

(*d*) wilfully injure, remove or destroy any plant, shrub, tree or root or any part thereof;

(*e*) affix or write any advertisement, bill, placard or notice;

(*f*) deposit any rubbish or leave any litter;

(*g*) engage in riotous, disorderly or indecent conduct; or

(*h*) wilfully disturb, annoy or obstruct any person engaged in any lawful activity.

(13)Unless it is contrary to law or the declared or apparent destination of the thing in the public domain prohibits it, or it is otherwise prohibited by the Government in accordance with law, things in the public domain belonging to the Government, or their fruits and accessories, may be used or enjoyed, on sufferance, in any amount necessary for an individual's own personal use or consumption. Where special laws require Government authorisation also for personal use or enjoyment of things in the public domain, such authorisation shall be a condition for public use and enjoyment.

(14)In addition to any rights or powers it may have under any law, licence, contract or otherwise, the Government may entertain any civil or administrative action against any person who damages, or by his actions threatens to damage, things in the public domain.

Registration of private rights on things in the public domain.

5. (1) When things in the public domain as defined in this Schedule are subject to private rights, they shall remain public domain and shall generally be burdened by public domain obligations which arise due to their nature, limited by such private rights in a manner consistent with their nature and subject to any applicable law.

(2)Any person enjoying an existing title to or right over land in the public domain shall register such title or right with reference to the specific land in accordance with, and subject to, the provisions of the Public Registry Act , the Land Registration Act or any other applicable law having such effect, prior to the lapse of ten years from -

Cap. 56.
Cap. 296.

(*a*) the designated date with reference to property referred to in article 4(1); or

(*b*) the date on which any Public Domain Resolution is registered in the relevant registry with reference to a specific land,

and subject to the right of the Government or any other person who may have an interest to contest such title or right in terms of any applicable law.

(3)Any person acquiring titles or rights over things in the public domain following declassification, shall register such title or right in accordance with and subject to the provisions of the Public Registry Act , the Land Registration Act or any other applicable law having such effect within the period prescribed by law.

Cap. 56.
Cap. 296.

Title IV

DISPOSAL OF THINGS IN THE PUBLIC DOMAIN

Disposal of things in the public domain.

6. (1) Apart from complying with the requirements established by this Schedule in relation to declassification, the disposal of things forming part of the public domain shall comply with the provisions of the Disposal of Government Land Act or any regulations made thereunder.

Cap. 268.

(2)The term "disposal" shall have the meaning attributed to it by the said Act and the provisions of the said Act shall apply to public domain *mutatis mutandis*.

Title V

CONCESSIONS AND GRANTS OF PUBLIC DOMAIN

Administrative permits in relation to things in the public domain.

7. (1) The Government may grant rights over any things in the public domain by an administrative permit on condition that such things in the public domain must be used consistently with their nature.

(2)It shall not be necessary to declassify things in the public domain in order for them to be the subject of an administrative permit.

(3)Subject to more detailed terms or conditions which may be prescribed by regulations made by the Prime Minister from time to time regarding administrative permits, when an administrative permit refers to things in the public domain, notwithstanding any provisions of any agreement to the contrary, such grant shall be:

(*a*) personal to the grantee thereof and shall not be assignable nor shall it be capable of division and when the grant is made to a legal organisation or a trust which has shareholders or beneficiaries, as the case may be, such shareholders or beneficiaries shall be subject to the same conditions together with the legal organisation or trust during the duration of such grant;

(*b*) revocable by the granting authority upon written notice;

(*c*) subject to public domain obligations and conditions as outlined in this Schedule; and

(*d*) initially granted for not more than ten years, and when renewed, for not more than ten years at a time:

Provided that when the grant by the Government is made to an enrolled voluntary organisation the purposes of which reflect the same principles of this Schedule relating to the manner of administration of any property in the public domain, the conditions mentioned above may be modified or waived.

(4) Administrative permits granting rights over the public domain shall be registered in the relevant registry if their term exceeds two years. Such registration shall not give to the grantee any ownership or possessory rights and the rights shall remain as stated in the preceding sub-article and any applicable law.

Lawful grants to private interests over things in the public domain.

8. (1) Saving any grant which is made pursuant to a special law which may expressly modify the conditions hereunder specified, when things in the public domain are the subject of a grant by the Government to private interests, the following conditions shall apply:

(*a*) except when the Declassification Resolution expressly authorises the declassification to be for an indefinite term because of its evident irreversibility, the grant shall be for a specified term not exceeding one hundred years and shall be, as far as reasonable:

(i) proportionate to the nature of the interest or benefit to be gained by the general public and to the length of time during which such interest or benefit actually subsists;

(ii) sufficient to fulfil the authorised use;

(iii) inversely proportionate to the extent to which the general public is restricted access and use, so that the greater the restriction on public use, the shorter the period; and

(iv) inversely proportionate to the disruption of the public function the thing used to serve, so that the greater the disruption to public function of the thing, the shorter the period;

and in any case shall not exceed the term for which the thing was declassified;

(*b*) the purpose of the grant and subsequent use of the thing shall be exclusively that for which the thing was declassified;

(*c*) if reasonably possible, suitable alternatives are provided to the general public which has been deprived of the things it formerly used or enjoyed;

(*d*) except when the Declassification Resolution expressly authorises the declassification to be for an indefinite term because of its evident irreversibility, any constructions, improvements or alterations made to

things in the public domain are to be removed on the lapse of the term, unless the Government approves the retention, for its own benefit or as it may consider in the public interest, of such constructions, improvements or alterations at the time of the declassification or any time thereafter;

(*e*) except when the Declassification Resolution expressly authorises modification of any thing in the public domain, any damages, destruction or modification or exploitation other than that expressly permitted, shall be made good at the expense of the grantee;

(*f*) unless expressly permitted by the Declassification Resolution, and in such case subject to the express conditions of the grant, the grant shall:

(i) be personal to the grantee thereof and shall not be assignable and when the grant is made to a legal organisation or a trust which has shareholders or beneficiaries, as the case may be, such shareholders or beneficiaries shall be subject to the same conditions together with the legal organisation or trust during the duration of such grant;

(ii) not be capable of division; and

(iii) not be capable of being the subject of security in favour of a third party:

Provided that when the grant by the Government is made to an enrolled voluntary organisation the purposes of which reflect the same principles of this Schedule relating to the manner of administration of any property in the public domain, the conditions mentioned above may be modified or waived.

(2) The preceding sub-article shall be subject to the following additional rules of interpretation:

(*a*) should a grant be made for more than one hundred years, it shall be valid only for one hundred years;

(*b*) should the grant exceed the term stated in the Declassification Resolution, then the term of the grant shall be reduced *ipso jure* to the term stated in the Declassification Resolution;

(*c*) should the grant be made for a purpose not specified in the Declassification Resolution, then such grant shall be null and void and no rights whatsoever shall accrue to any party by virtue thereof.

(3) Nothing in this Schedule or any Declassification Resolution shall hinder the imposition by the Government of more onerous or restrictive conditions at the time of any grant or disposal of the relevant property in the public domain in order to better protect or preserve the public domain nature of the property.

Reversion to public domain.

9. (1) When a thing in the public domain has been subjected to private rights, on the termination, howsoever this occurs, of such

private rights, such thing shall revert *ipso jure* to the public domain. On reversion, the thing shall be free from all rights and claims, both personal and real.

(2)Such reversion shall also occur following the expiration of the stated term or the impossibility or exhaustion of the purpose and use for which the thing was declassified or granted, as the case may be.

(3)Any thing which has, within the term of the original Declassification Resolution, reverted to public domain in accordance with this article may be re-granted for the remaining period of the original grant without a new declassification provided it is so re-granted within twelve months of the reversion.

(4)When a declassified thing reverts to the public domain after the lapse of the specified term of the grant, the Government shall seek to return the property into the public domain for at least twenty-five years before declassifying it again, unless with the support of a resolution of the House of Representatives.

(5)When immovable property in the public domain is declassified and the declassification is expressly declared to be indefinite in duration due to the irreversibility of the intended use permitted by declassification, reversion to public domain shall not take place and the property shall remain private or public free of any public domain obligations including those referred to in article 4(10) of this Schedule.

Title VI

OF DECLASSIFICATION OF THE PUBLIC DOMAIN

Declassification.

10. (1) All things which are in the public domain, by nature or by operation of the law, can be designated to be available for -

(*a*) the use and administration of such property by the Government as public property; or

(*b*) the grant of titles or rights in favour of private interests;

in accordance with the use to which the thing can lend itself, generally without permitting the permanent alteration of its nature. Such designations shall be for a purpose or purposes which are specifically defined and being in the public interest. The Executive Council as established under the Development Planning Act of 2016 shall receive such requests by the Minister responsible for Lands to prepare a report following a public consultation process. The report shall be referred to the Standing Committee for Environment and Development Planning who in turn following its consideration and comments shall forward its conclusions to the Minister responsible for Lands. The Minister shall present to the House of Representatives for its consideration, a Declassification Resolution. Such things shall be referred to as declassified things.

(2)Following declassification, the declassified things shall still retain their nature as public domain and, to the extent not incompatible herewith, shall still be subject to the rules in this

Schedule. Declassification, however, may impose restrictions on continuing public enjoyment to the extent that public administration or private use is subsequently permitted.

(3)Declassifications cannot take place in relation to classes of things or the totality of such type of thing but can only be made with reference to specific things susceptible to individual designation and description.

(4)Declassification cannot take place except after a minimum period of five years has elapsed, with regard to any public domain property, from the date of enactment of a Public Domain Resolution with regard to that property in particular, as mentioned in article 4(2) of this Schedule.

(5)Declassified things belonging to the Government become capable of being the subject of a contract for the period of declassification and are rendered susceptible to real rights and charges and other encumbrances:

Provided that any real rights, charges and other encumbrances shall terminate *ipso jure* on the expiration of the contract term or on the lapse of the declassification period, whichever is the earlier.

(6)The modification or conversion of things in the public domain following declassification may be permitted by a Declassification Resolution on condition that such modification or conversion shall seek an outcome where the gain achieved by the general public is clear and unambiguous.

Procedure for declassification.

11. (1) Declassification of things in the public domain shall be made by means of the issue of a resolution of the House of Representatives, hereinafter referred to as a "Declassification Resolution".

(2)Every Declassification Resolution shall, as a minimum:

(*a*) identify the property, its fruits and accessories;

(*b*) identify the term, unless indefinite in scope in which case it shall state so, the purpose and the use for which declassification is taking place;

(*c*) declare what the projected existing or future public rights or benefits are to be and what suitable alternatives, if any, will be provided for any loss of use or enjoyment of the thing by the public;

(*d*) identify any known Government powers or third party rights which shall continue to be enjoyed over the thing notwithstanding the declassification, provided that this is without prejudice to the general powers of the Government under any law and to private titles or rights which may be registered within the time period prescribed by law;

(*e*) seek to identify special laws or provisions thereof, if any, which restrict the public access or enjoyment of such property in accordance with this Schedule and which shall continue to apply to such property

notwithstanding the declassification; and

(*f*) where applicable, be accompanied by a plan or general map, based on the official map of the Land Registry, identifying the property and its accessories which are affected by such declassification.

(3)All Declassification Resolutions shall be registered in the relevant registry by the Minister responsible for Lands within two months of the coming into force of the Act.

(4)Any grant made by the Government pursuant to a Declassification Resolution shall be registered in the relevant registry in accordance with applicable law.

(5)Any amendments or revocations made to Declassification Resolutions shall be registered by the Minister responsible for Lands in the relevant registry within two months from when such amendments or revocations are made.

Termination of rights and of effects of declassification.

12. (1) In the following cases:

(*a*) where the thing has reverted to its former public use without objection of the title or rights holder for a continuous period of two years;

(*b*) where it is used for a purpose which does not fall within the parameters for which the declassification was made;

(*c*) where the term for which it was declassified expires;

(*d*) where there is a substantial breach of the terms of any grant, concession or an abuse of right;

the grantee shall be notified by judicial letter and, upon the lapse of thirty days from such notification, the thing shall revert to the public domain, unless such reversion is formally contested in a court, in which case the effects are suspended until the court decides the matter or the parties agree that compliance has been achieved:

Provided that during any such contestation the duty of the grantee to pay any agreed compensation and to perform all public domain obligations shall not be affected in any manner and in the event of breach *pendente lite*, the court shall, even without demand on the part of the Government, order the reversion to the public domain on the basis of such breach without the need to determine the issues under contestation.

(2)Where it is established by a final judgement of a court of civil or criminal jurisdiction that the declassification was the fruit of corruption, the declassification shall be invalid and all rights accruing to any person pursuant thereto shall be null and void.

(3)Any person formerly vested with title to or rights over a thing in the public domain shall, upon the happening of the events in the preceding sub-articles, *ipso jure* become a mere holder and shall have no further rights from the moment of notification and, without prejudice to any other rights competent at law, the Government shall have a right to register the reversion of the thing to the public

domain in the relevant registry.

(4)Where the Government is notified that a third party will be granted or has lawfully been granted an interest dependant on the title or right of the person enjoying the title or right, if so authorised by the Declassification Resolution, the Government may agree to such terms intended for the protection of such third party rights in the event of default by the holder of the title or rights:

Provided that the third party shall not enjoy such protection if he consents to or participates in the breach giving rise to the default or does not otherwise act in good faith when seeking protection under this article.

Rights not to attach to fruits or accessories.

13. (1) When third party rights are granted on declassified immovables, the rights shall attach only to the things fastened to the site and any improvements thereto as well as to its use but not to any fruits or accessories to such immovables unless expressly agreed.

(2)On termination of a grant of declassified things, the person who enjoyed the rights to the use and enjoyment of the things shall, at his expense, take all such action as is necessary to ensure that things which may have been constructed or fastened to the property shall be removed and the thing be restored to its condition prior to the declassification or to as near a condition as possible, such assessment to be made by the Government, unless the Government approves their retention in accordance with article 8(1)(*d*) of this Schedule or consents to their permanent modification or conversion in the Declassification Resolution.

(3)In the event that the thing is not restored to the appropriate condition, the Government shall have the power to clear the property of any constructions, fastening or any other thing whatsoever and shall have the power to administer and dispose of the same. Additionally, the Government shall enjoy a special privilege over such things and to any proceeds coming from the lease, operation or sale of such things. The Government shall be entitled to take from such proceeds any sum equivalent to the costs and expenses incurred in restoring the thing to its original condition but shall have no interest whatsoever in any excess proceeds which shall be kept on trust for the grantee:

Provided that subject to the terms of the grant, following the termination of a grant, the Government may, at its discretion, acquire any immovable thing remaining on the property upon payment of a fair price to the grantee or relevant owner of the immovable, such price to be determined by agreement or by the court in case of disagreement.

Reclamation.

14. (1) When property becomes part of the coastal perimeter by human intervention, including excavation or development or conversion into a marina, promenade, breakwater or otherwise, it shall not thereby become public domain but shall be subject to:

(*a*) any special conditions which may be imposed in any Declassification Resolution or any permit for such

intervention; and

(*b*) any special laws which may be applicable to its development and use.

(2)When any part of the seabed is reclaimed, any Declassification Resolution shall expressly declare that the purpose of the declassification is the reclamation of the area, giving full description thereof, and -

(*a*) the area so reclaimed shall no longer be considered to be public domain; and

(*b*) the coastal perimeter which is lost in the reclamation shall be substituted *ipso jure* by the new coastal perimeter emerging as a result of the reclamation.

Regulations. *Amended by: XVII.2024.11.*

15. (1) The Prime Minister shall have the power to make such regulations as may be necessary so as to better regulate the matters contained in this Schedule in relation to particular types of property falling within the public domain or generally or for the better functioning of the provisions of this Schedule including without prejudice to the foregoing:

(*a*) matters relating to registration of resolutions, titles, rights and other matters referred to in this Schedule in the relevant registry;

(*b*) defining in further detail the things described in article 3(4) of this Schedule;

(*c*) establishing the methodology to determine the baselines for the calculation of the coastal perimeter;

(*d*) the publication in the Gazette, the Government's website or otherwise of information in addition to that in the relevant registry;

(*e*) specifying the uses of things in the public domain, any public domain obligations and any public and private rights thereon, and any reservations and restrictions on such things so as to better achieve the purposes of any Public Domain Resolution or any Declassification Resolution;

(*f*) actions competent under this Schedule;

(*g*) the rights and remedies to protect private interests in any things affected by any process implementing the provisions of this Schedule;

(*h*) penalties and offences in relation to things in the public domain, including offences relating to the unauthorised occupation and use of things in public domain, deprivation of access or use by the public and related rights to damages and reimbursement of any gains:

Provided that any criminal punishments that may be established by regulations made under this article shall not exceed the penalty of imprisonment for a period of two years or a fine (*multa*) of one million euro or both

such fine and imprisonment; and

(*i*) the interplay between the provisions of this Schedule, the provisions of the Code and the provisions of other special laws.

(2)Nothing in this Schedule shall affect the provisions of or anything done or which could be done under the:

Cap. 156. (*a*) the Petroleum (Production) Act;

Cap. 228. (*b*) the Land (Compulsory Eviction) Act;

Cap. 268. (*c*) the Disposal of Government Land Act;

Cap. 549. (*d*) the Environment Protection Act;

Cap. 445. (*e*) the Cultural Heritage Act;

Cap. 499. (*f*) the Authority for Transport in Malta Act;

Cap. 552. (*g*) the Development Planning Act;

Cap. 522. (*h*) the Crimes Against the Environment Act;

Cap. 316. (*i*) the Malta-Libya Continental Shelf Delimitation (Ratification) Act;

Cap. 535. (*j*) the Continental Shelf Act;

Cap. 226. (*k*) the Territorial Waters and Contiguous Zone Act;

(*l*) Repealed by Act *XVII.2024.11*.

Cap. 425. (*m*) the Fisheries Conservation and Management Act;

(*n*) any regulations made, or guidelines or notices issued, under any of the above Acts;

and other special laws which may be designated by the Minister responsible for Lands by notice in the Gazette, and such Minister may, from time to time, in consultation with the Minister designated in such laws, if different, make regulations to establish the operation of any of the provisions of such special laws in the light of the provisions of this Schedule so as to ensure the achievement of the aims of this Schedule and such laws and the compatible application thereof.

Transitory provisions in Act *XXV.2016*.6:

Transitory provisions.

6. (1) Where private titles or rights are claimed in any civil or administrative proceedings, commenced at any time prior to the coming into force of this Act, in relation to land in the public domain, such private titles or rights shall be determined in accordance with the law applicable prior to the coming into force of this Act until they are finally determined by the relevant court or tribunal or by any agreement between the parties.

(2)Where any private titles or rights over land considered to be in the public domain belonging to the Government are not registered or preserved in accordance with the Public Registry Act , the Land Registration Act or any other applicable law having such effect, or

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are not claimed in any proceedings as stated in sub-article (1) commenced not later than ten years from the designated date, such titles or rights shall be presumed to be mere encroachments to the extent they are being tolerated or shall not be considered to exist as a matter of law or to otherwise lapse.

The amendments introduced by this Act shall apply to all the land in the public domain, saving titles or rights which are so registered or preserved.

(3)The "designated date" shall be that established by the Minister responsible for Lands by means of a notice published in the Gazette for such purpose under the Public Registry Act and, or the Land Registration Act and, or any other applicable law.

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(4)The provisions of article 311 of the Code shall apply, in accordance with their terms, with effect from the 1st January, 2016 to anything done on or after such date over the coastal perimeter or land in the public domain, as defined in the Code.