


Nru. 141

10. 7. 81


MALTA**KAMRA TAD-DEPUTATI****HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Brincat, M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tat-22 ta' April, 1980.

A BILL introduced by the Honourable Joseph Brincat, M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs and read the First time at the Sitting of the 22nd April, 1980.

ATT biex ikompli jemenda l-Kodiċi Ċivili, Kap. 23.

AN ACT further to amend the Civil Code, Cap. 23.

C. MIFSUD

Skriwan tal-Kamra tad-Deputati

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Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex ikompli jemenda l-Kodiċi Ċivili, Kap. 23.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

Titolu fil-qosor u bidu fis-seħh.

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1981 li jemenda l-Kodiċi Ċivili, u għandu jinqara u jiftiehem hekk waħda mal-Kodiċi Ċivili, hawnhekk iżjed 'il quddiem imsejjah "il-liġi prinċipali".

(2) Dan l-Att għandu jibda jseħh fil-15 ta' Awissu, 1981.

Sostituzzjoni ta' l-artikolu 47 tal-liġi prinċipali.

2. Minflok l-artikolu 47 tal-liġi prinċipali għandu jidhol dan li ġej:

"47. Kull waħda mill-persuni miżżewġin flimkien tista' titlob il-firda minhabba eċċessi, moħqrija, tehdid jew inġurji gravi tal-parti l-oħra kontra l-attur, jew kontra xi wieħed jew iehor mit-tfal tiegħu, jew minhabba li l-hajja flimkien ma tkunx għada possibbli għax iż-żwieġ ikun tkisser irremedjabilment:

Iżda ma tistax tintalab firda minhabba li l-hajja flimkien ma tkunx għada possibbli għax iż-żwieġ ikun tkisser irremedjabilment qabel ma jgħaddu sentejn mid-data taż-żwieġ u iżda wkoll, il-Qorti tista' tiddikjara l-firda għal dik ir-raġuni minkejja li, sew qabel jew wara l-bidu fis-seħh ta' dak l-artikolu, ebda waħda mill-persuni miżżewġin flimkien ma' tkun għamlet it-talba għal dik ir-raġuni."

Emenda ta' l-artikolu 106 tal-liġi prinċipali.

3. Minnufih wara s-subartikolu (3) ta' l-artikolu 106 tal-liġi prinċipali għandu jiżdied dan li ġej:

"(4) Tifel illegittimu, li ma jkunx magħruf mill-missier bħala ibnu, jew ulied dak it-tifel, jistgħu jzommu l-kunjom — li jkun kunjom barra dak ta' l-omm — li dak it-tifel ikun ha u li jiġi dikjarat mil-Qorti li kien dejjem gieb, u l-proviso għall-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu għandu japplika għal dik id-dikjarazzjoni."

4. Minflok l-artikolu 141 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 141 tal-liġi prinċipali..

"141. Ma' l-ghoti ta' digriet ta' adozzjoni, il-persuna li dwarha jingħata d-digriet ta' adozzjoni għandha tiegħu l-kunjom ta' l-adottant:

Izda meta l-persuna li tkun se tiġi adottata ma tkunx għalqet l-erba' snin, l-adottant jista', bl-approvazzjoni tal-Qorti, jagħti lil dak it-tifel isem ġdid."

5. Minnufih wara s-subartikolu (2) ta' l-artikolu 160 tal-liġi prinċipali għandu jiddied dan li ġej:

Emenda ta' l-artikolu 160 tal-liġi prinċipali.

"(3) Meta r-raġel jew il-mara, skond min jibqa' ħaj minnhom, ikun ipprezenta denunzja dwar proprjetà nkluża fi trasferiment tax-xabbli skond id-disposizzjonijiet ta' l-Att ta' l-1973 dwar it-Taxxa tal-Mewt u tad-Donazzjoni, dak li jibqa' ħaj minnhom jitqies, għall-finijiet ta' dan l-artikolu, li jkun aċċetta l-wirt li jmiss lit-tfal ta' taht l-età dwar il-proprjetà iddikjarata fl-istess denunzja, bil-benefiċċju ta' l-inventarju, mingħajr ma jkun hemm htieġa ta' xi formalità jew awtorizzazzjoni oħra stabbilita b'xi liġi."

6. L-artikolu 632 tal-liġi prinċipali għandu jiġi emendat biż-żieda tal-proviso ġdid li ġej fit-tarf tiegħu:

Emenda ta' l-artikolu 632 tal-liġi prinċipali.

"Izda ma jistax isir testment sigriet mir-raġel u martu fl-istess att uniku wara l-15 ta' Awissu, 1981."

7. Minnufih wara s-subartikolu (2) ta' l-artikolu 1288 tal-liġi prinċipali għandu jiddied is-subartikolu ġdid li ġej:

Emenda ta' l-artikolu 1288 tal-liġi prinċipali.

"(3) Wara ż-żwieġ ir-raġel u l-mara jistgħu, mingħajr il-htieġa ta' xi awtorità tal-Qorti, jissostitwixxu b'ipoteka speċjali kull ipoteka generali stabbilita f'xi kitba taż-żwieġ."

8. Minnufih wara l-artikolu 1582 tal-liġi prinċipali għandu jiddied l-artikolu ġdid li ġej:

Zieda ta' artikolu ġdid 1582A mal-liġi prinċipali.

"L-ċen-swalist jista' jifdi ċ-ċens.

1582A. (1) Meta tingħata enfitewsi perpetwu, iċ-ċen-swalist, ukoll jekk iċ-ċens ikun jista' jiġi rivedut kull tant żmien stabbilit, ikollu l-għażla li jifdi ċ-ċens kif provdut fis-subartikoli li ġejjin ta' dan l-artikolu, kemm-il darba il-kuntratt innifsu, li jkun kuntratt magħmul qabel il-ħmistax ta' Awissu, elf disa' mija u wiehed u tmenin, ma jipprovdi b'mod differenti kif tista' ssir il-fidwa.

(2) Dik il-fidwa taċ-ċens issir bil-ħlas ta' somma li tkun daqs l-ammont taċ-ċens kapitalizzat bir-rata ta' hamsa fil-mija:

Izda meta l-kuntratt jipprovdi li ċ-ċens jista' jiġi rivedut fi żmien speċifikat jew mal-ġrajja ta' kondizzjoni speċifika, iċ-ċen-swalist jista' jagħzel li jifdi fi żmien l-ewwel sena mid-data ta' xi revizzjoni bħal dik, jew tal-ġrajja ta' dik il-kondizzjoni, u s-somma li għandha tithallas għall-fidwa taċ-ċens tkun, f'dak il-każ, daqs l-ammont taċ-ċens hekk rivedut kapitalizzat bil-medja tar-rata ta' l-imghax li tithallas minn Bank Kummerċjali fuq depożiti li jkunu ta' xorta fissa fi żmien il-fidwa.

(3) Jekk ikun hemm iktar minn padrun dirett wiehed, iċ-ċenswalist jista' jifdi minghand kull wiehed jew iżjed minnhom separatament.

(4) Meta l-fond ikun miżmum b'sub-enfitewsi perpetwu, is-sub-ċenswalist ikollu l-jedd li jifdi ċ-ċens originali u ż-żieda fiċ-ċens bil-flus tas-somma li għandha tithallas għall-fidwa li tiġi stabbilita skond id-disposizzjonijiet ta' dan l-artikolu.

(5) Kull klawżola f'xi ftehim li biha ċ-ċenswalist ma jkunx jista' jeżerċita l-jedd li jifdi ċ-ċens mogħti b'dan l-artikolu, titqies li ma kenitx inkluża f'dak il-ftehim.

(6) Il-fidwa taċ-ċens tista' ssir bi ftehim bejn il-padrin dirett u ċ-ċenswalist magħmul f'att pubbliku jew permezz taċ-ċedola msemmija fis-subartikolu 7 ta' dan l-artikolu.

(7) Meta l-fidwa ma ssirx b'att pubbliku, iċ-ċenswalist jista' jagħmel dik il-fidwa billi jippreżenta għas-spejjeż tiegħu fir-Registru tal-Prim'Awla tal-Qorti Ċivili, ċedola ta' fidwa u fl-istess fin jiddepożita fl-imsemmi Registru s-somma li għandha tithallas għall-fidwa stabbilita skond id-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu; u dwar ċedola bħal dik id-disposizzjonijiet li ġejjin għandu jkollhom effett, minkejja kull haġa kuntrarja li tinsab f'xi liġi oħra:

(a) meta l-persuna li tagħti l-enfitewsi għall-ewwel darba jew il-persuna li lilha jingħataw il-jeddijiet ta' padrun dirett tkun mejta, iċ-ċedola tal-fidwa tista' tiġi notifikata lil, u d-depożitu jista' jsir favur, wiehed jew iktar mill-werrieta tal-padrin dirett jew tal-persuna li lilha jgħaddi dan il-jedd u dak il-werriet jew dawk il-werrieta għandhom, għall-finijiet kollha tal-liġi, jitqiesu li jirrappreżentaw lil dawk il-persuni kollha li jkollhom interess legali fiċ-ċedola tal-fidwa u fil-flus hekk depożitati;

(b) in-nuqqas miċ-ċedola ta' l-isem ta' xi persuna li jkollha nteress f'xi parti mill-flus depożitati skond id-disposizzjonijiet ta' dan l-artikolu, ma jolqotx il-jedd ta' xi persuna li tkun hekk imħollija barra għal xi sehem mill-ammont depożitat;

(ċ) in-notifika taċ-ċedola ssir biss lill-persuna msemmija f'dik iċ-ċedola u jekk fi żmien tliet xhur mill-jum li fih tiġi depożitata iċ-ċedola, ma ssirx in-notifika lill-imsemmija persuna, jew minhabba li tkun nieqsa jew għal xi raġuni oħra, iċ-ċenswalist għandu għas-spejjeż tiegħu jitlob lir-Registratur tal-Qrati Superjuri biex jipubblika fil-Gazzetta l-kontenut taċ-ċedola, u ma' dik il-pubblikazzjoni il-persuna li lilha kellha tiġi notifikata iċ-ċedola għandha, għall-finijiet kollha tal-liġi titqies li giet notifikata biċ-ċedola;

(d) iċ-ċenswalist għandu jara li kopja taċ-ċedola tiġi notifikata lid-Direttur tar-Registru Pubbliku, li għandu jzomm registru ta' dawk iċ-ċedoli, u l-artikolu 30 ta' l-Att dwar ir-Registru Pubbliku għandu, *mutatis mutandis*, japplika għal dawk iċ-ċedoli.

(8) Id-depożiti msemmija jistgħu jiġu rtirati mill-persuni msemmija fih mal-prova tat-titolu tagħhom li ssir lir-Registatur tal-Qrati Superjuri.”

9. L-artikolu 2091 tal-liġi prinċipali għandu jiġi emendat biż-żieda tas-subartikoli li ġejjin fit-tarf tiegħu:

Emenda ta' l-artikolu 2091 tal-liġi prinċipali.

“(3) Antikresi li saret b'att pubbliku qabel it-28 ta' Frar, 1961, għal żmien ta' iktar minn tletin sena, titqies li hi bejgħ, kemm-il darba jitharsu d-disposizzjonijiet tas-subartikolu (4) ta' dan l-artikolu.

(4) Il-kreditur jista' fi żmien sentejn mill-15 ta' Awissu, 1981, jinsinwa l-att pubbliku msemmi fis-subartikolu (3) ta' dan l-artikolu fir-Registru Pubbliku bħala trasferiment b'titolu ta' bejgħ.”

10. Fis-subartikolu (1) ta' l-artikolu 2143 tal-liġi prinċipali, min-flok il-kliem “fi żmien hmistax-il gurnata” għandhom jidhlu l-kliem “fi żmien erba' xhur”.

Emenda ta' l-artikolu 2143 tal-liġi prinċipali.

Għanijiet u Raġunijiet

L-Abbozz fih emendi għad-disposizzjonijiet tal-Kodiċi Ċivili dwar ir-raġunijiet li fuqhom tista' tintalab separazzjoni bejn miżżewġin, il-kunjom ta' tifel illeġittimu, adozzjoni, l-aċċettazzjoni ta' wirt li jgħaddi għand minuri, testmenti *unica charta*, ipoteki li jsiru f'kitba taż-żwieġ, u antikresi; l-Abbozz ukoll jintroduċi disposizzjonijiet godda li bihom enfitewta jingħata l-għażla li jifdi ċ-ċens li jkun b'enfitewsi perpetwu.

A BILL

entitled

AN ACT further to amend the Civil Code, Cap. 23.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. (1) This Act may be cited as the Civil Code (Amendment) Act, 1981, and shall be read and construed as one with the Civil Code, hereinafter referred to as "the principal law".

(2) This Act shall come into force on the 15th August, 1981.

Substitution of section 47 of the principal law.

2. For section 47 of the principal law there shall be substituted the following:

"47. Either of the spouses may demand separation on the grounds of excesses, cruelty, threats or gross insults on the part of the other against the plaintiff, or of 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 separation on the ground that the marriage has irretrievably broken down may not be demanded before the expiration of the period of two years from the date of the marriage, and provided further, that the Court may pronounce separation on such ground notwithstanding that, whether previously to or after the coming into force of this section, none of the spouses had made a demand on such ground."

Amendment of section 106 of the principal law.

3. Immediately after subsection (3) of section 106 of the principal law there shall be added the following:

"(4) An illegitimate child who has not been acknowledged by the father, or the issue of such child, may retain the surname — being any surname other than that of the mother — which the child has assumed and which shall be declared by the Court that he has always borne, and the proviso to paragraph (b) of subsection (2) of this section shall apply to such declaration."

4. For section 141 of the principal law there shall be substituted the following:

Substitution of section 141 of the principal law.

"141. 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 person to be adopted is a child below the age of four years, the adopter may, with the approval of the Court, give such child a new name."

5. Immediately after subsection (2) of section 160 of the principal law there shall be added the following:

Amendment of section 160 of the principal law.

"(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 Death and Donation Duty Act, 1973, such spouse shall be deemed, for the purposes of this section, 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, without the necessity of any further formality or authorization required by any law."

6. Section 632 of the principal law shall be amended by the addition of the following proviso at the end thereof:

Amendment of section 632 of the principal law.

"Provided that a secret will in one and the same instrument shall not be made by husband and wife after the 15th day of August, 1981."

7. Immediately after subsection (2) of section 1288 of the principal law there shall be added the following new subsection:

Amendment of section 1288 of the principal law.

"(3) 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."

8. Immediately after section 1582 of the principal law there shall be added the following new section:

Addition of new section 1582A to the principal law.

"Emphyteuta may redeem the ground-rent.

1582A. (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 subsections of this section, unless the contract itself, being a contract entered into before the fifteenth day of August, nineteen hundred and eighty one, 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 centum:

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 section.

(5) Any clause in any agreement whereby the emphyteuta is deprived of the right of redeeming the ground-rent conferred by this section, 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 subsection (7) of this section.

(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 First Hall of the Civil 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 subsection (2) of this section; and with respect to such schedule, the following provisions of this subsection 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 section, shall not affect the right of any person so omitted to any share in the amount deposited;

(c) 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 the Superior 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;

(d) the emphyteuta shall cause a copy of the schedule to be served on the Director of Public Registry, who shall keep a register of such schedules, and section 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 the Superior Courts.”.

9. Section 2091 of the principal law shall be amended by the addition of the following subsections at the end thereof:

Amendment of section 2091 of the principal law.

“(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 that the provisions of subsection (4) of this section are complied with.

(4) The creditor may within two years from the 15th August, 1981, enrol the public deed referred to in subsection (3) of this section in the Public Registry as a transfer by title of sale.”.

10. In subsection (1) of section 2143 of the principal law, for the words “within fifteen days” there shall be substituted the words “within four months”.

Amendment of section 2143 of the principal law.

Objects and Reasons

The Bill contains amendments to provisions of the Civil Code relating to the grounds for which separation from bed and board may be sought, the surname of an illegitimate child, adoption, acceptance of an inheritance devolving to a minor, wills *unica charta*, hypothecs created in a marriage contract, and antichresis; the Bill also introduces new provisions whereby the emphyteuta is given the option to redeem the ground-rent in perpetual emphyteusis.