

Usufruct



**ASSIGN
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Elements of Maltese Law Usufruct – the relevant Articles are 328 to 399 of the Civil Code Chapter 16 Literally, the term Usufruct has its roots in use and the enjoyment of the fruits (ethimology). Of course we are not looking at cultivation, but at interest, rent and dividends and ground rents, in other words, the return on the investment of money or property. Socially to this date, Usufruct is very closely connected to succession, inheritance and living maintenance in families. A few examples of how Usufruct applies.

This has remained important even with the existing social security system.

Examples: it is connected with inheritance so imagine husband and wife have two children and saved a 100000euros in some form of interest earning (savings accounts, government bonds). Assume one of the spouses dies and therefore since this money was earned after marriage it is presumed that it is owned in two equal portions. By virtue of a will the husband and wife left as their heirs the two children subject to the Usufruct in favour of the survivor of them.

Assume that husband H pass away, the resultant scenario is that the wife will have as sole owner her one half share of 50000 euro meaning that she is free to spend them and dispose of them as she considers appropriate, the other 50000euros belonging therefore to the husband are inherited by the two children but subject to the Usufruct of the surviving wife. In this situation the money is blocked in the name of the children and the interest for her life time is received by the wife. The right to receive the interest is the Usufruct that is an example of the operation of the Usufruct.

Instead of this example we could have a business concern and therefore the entire profits those belonging to the wife as her share and those subject to the Usufruct go to the wife (the children may not withdraw the money it may be blocked). The profits are received by the surviving wife, those for her own share and those from the share of the husband. However the husband share is owned by the children less use and enjoyment which is the Usufruct. We could mention also shares in a company or property which is rented out.

The resulting situation is that the Usufructuary has the enjoyment and use without the ownership while the owner has the ownership without use and enjoyment. In Usufruct the owner is called the bare owner because the enjoyment is taken away. The definition which says that Usufruct is the right to enjoy things in ownership, owned by another subject to an important obligation and this important obligation is that the Usufructuary is to preserve the substance and form of the Usufruct. In our case earlier, the children and the wife with their joint consent can sell and transfer the whole Usufruct.

Can for example the 50000euros assigned to the children be given to the wife for the benefit of the children? The answer is yes but there must be consent from the children. How Usufruct is created? There are circumstances where it is created by law or by an agreement (when we say will of men). This may happen by deal-contract or by testament. If it involves immovable property it has to be registered in the immovable property register. Rights of the Usufructuary - In general terms the Usufruct is entitled to use and enjoyment meaning that all interest, dividends, rents, returns on property or investments are subject to this right of enjoyment.

Naturally, if an inheritance includes fields or gardens, the produce thereof is also part of the enjoyment of the Usufruct. Therefore any income or interest accrues to the Usufructuary. The Usufructuary is also entitled to make use of object which are subject to gradual deterioration and is obliged to return the object of the Usufruct in the condition as at termination of Usufruct provided that there has been fair wear and tear (the deterioration caused by proper use) but not any malicious/negligent damage on the part of the Usufructuary.

If there has been damage one has to compensate from his pocket. Can the Usufructuary sell his or her right? Can the Usufructuary donate his/her right? Yes but of course the Usufructuary can transfer only what it has. If the Usufruct is for 10 years and I sell it, on my death the Usufruct will terminate so the buyer has taken a gamble. One cannot create a Usufruct for more than 30 years. The lease of a property – Can a usufructuary lease a property subject to usufruct? Yes, provided it is for a period not exceeding 8 years in the case of rural property or 4 years in the case of urban property.

Today it is difficult to distinguish between these two because this has changed from when the civil code was written. A lease of rural property carries the meaning of a lease of an immovable which is in the country side. Urban is more easy to understand because it refers to the concentration of dwelling or property together forming the town. There is another important condition that the lease by the Usufructuary must have been done on fair conditions. This is because if the Usufruct for any reason terminated and the bare owner takes back the property, the owner is bound by the lease created by the Usufructuary.

For ex the Usufructuary give a lease for 4 years and the Usufructuary dies after a year and there is consolidation with the rights of the owner and the property goes back in full to the bare owner. To continue our example we have said the husband died and there is the Usufruct enjoyed by the widow/survivor. On subsequent death of the widow her one half share is inherited by the two children and her Usufruct terminates and there is consolidation of the entire one half share belonging to the husband which was previously in Usufruct of the widow and ownership of the children. At any point the interest of the owner may come in.

The fair condition are market condition at arm's length (parties discussing in an open market). The owner may not prejudice or interfere with the rights of the Usufructuary. The Usufructuary is entitled to spend money and make improvement in the property but is not entitled to any compensation for the investment he have had made in the property, The Usufructuary may spend at his own risk. This rules hold even if the property has considerably increased in value. Nevertheless, if the Usufructuary is in any way liable in damages towards the owner such improvements is taken into account in assessing the damages to be paid by the Usufructuary.