



**Civil Court  
(Family Section)**

**The Hon. Mr Justice Robert G. Mangion,  
LL.D., Dip. Tax (MIT), P.G. Dip. Mediation (Melit.)**

**Today the 31<sup>st</sup> October 2017**

**Sworn Application No 279 / 13RGM**

**Number on list: 18**

**A B C**

**vs**

**D C**

**The Court,**

Having seen the sworn application presented by Plaintiff which reads as follows:

1. Litigants were married on the ninth (9<sup>th</sup>) of October, of the year two thousand and eleven (2011), at 'China House Restaurant', St. Julian's, Malta. No children were born of this marriage.
2. Defendant is responsible of, inter alia, adultery, desertion, excesses, cruelty, threats or grievous injury; furthermore, the spouses cannot reasonably be expected to live together as the marriage has irretrievably broken down for reasons solely attributable to Defendant.
3. Despite Plaintiff's efforts to reach amicable settlement with Defendant with respect to their personal separation, agreement could not be reached for faults imputable to the said Defendant. Defendant has indeed shown utter recklessness towards Plaintiff and towards his marital responsibilities. These proceedings were therefore necessary and inevitable.

4. In terms of decree dated fifteenth (15th) of November of the current year (2013) (decree number 2472/13 in the acts of Letter number 1088/13CB), applicant has been duly authorised by this Honourable Court to initiate these proceedings (Doc. 'B').

5. Applicant is personally aware of these facts.

Saving any declaration and provision deemed necessary in the circumstances, Plaintiff requests this Honourable Court to:

1. Declare Defendant solely responsible for the breakdown of this marriage for those reasons premised in this present sworn application, or whichever of same reasons, for which Plaintiff is requesting this Honourable Court to pronounce the personal separation of litigants;

2. Pronounce the personal separation of spouses Plaintiff B C and Defendant C for the above-indicated reasons, or whichever of said reasons;

3. Establish the date when Defendant is to be considered responsible for the breakdown of this marriage and apply in toto or in parte, against Defendant, the stipulations of articles forty eight (48), fifty one (51), fifty two (52), and fifty three (53), of Chapter sixteen (16) of the Laws of Malta;

4. Establish a maintenance grant to be payable to Plaintiff by Defendant in respect of the former's needs, and order said Defendant to pay unto Plaintiff the said maintenance grant in accordance with that modality established by this Honourable Court in accordance with the circumstances of the case, including a periodic increment against the increase in cost of living;

5. Declare dissolved the community of acquests existing between the litigants and liquidate same, given due consideration to the assets and liabilities of the said community; to liquidate also any right of credit pertinent to Plaintiff with respect to, or against the community of acquests as well as with respect to or against Defendant; subsequently to divide the remaining balance of the community of acquests into two shares, if necessary with the intervention of any appointees necessary to affect such liquidation and conclude upon it's dissolution and division.

6. Assign the aforesaid shares to Plaintiff and Defendant;

7. Order Defendant so that within a limited and peremptory time period, to be established by this Honourable Court, deliver unto Plaintiff all objects dotal and paraphernal of her belonging, including monies and other credits; in default, to condemn Defendant to pay unto Plaintiff the value of said objects, to be established if necessary with the intervention of any appointees;

8. Order that Plaintiff be entrusted with the full administration of all her assets, dotal and paraphernal;

9. Grant Plaintiff the right to exclusively reside in the premises, formerly the matrimonial home, at 40, Flat 6, Spinola Road, St. Julians, this to the specific exclusion of Defendant;

10. Authorise Plaintiff to revert to her previous surname, that is, B;

11. Order that the eventual judgment to be delivered by this Honourable Court be registered in the Public Registry of Malta.

With costs against Defendant, summoned for reference to his oath.

Having seen the sworn reply presented by Defendant which reads as follows:

1. That he categorically denies being responsible in any way for the marriage breakdown between the parties and denies that he rendered himself responsible of inter alia, adultery, abandonment, excesses, cruelty, threats and grievous injury; and if the marriage between the parties has broken down, this is simply due to reasons which are solely imputable to Plaintiff as she committed adultery, threatened and abandoned Defendant amongst other things;

2. That he agrees with the pronouncement of personal separation but only for reasons imputable to the Plaintiff as he is not responsible in any way for the marriage breakdown;

3. That since he is not responsible for the marriage breakdown, as is going to be proven, during the pendency of the case and during submissions, Plaintiff's claim for the application of the dispositions of articles forty eight (as), fifty one (51), fifty two (52) and fifty three (53) of Chapter 16 of the Laws of Malta should be rejected;

4. That Plaintiff's claim for maintenance for herself should also be rejected as she has forfeited her right to maintenance from Defendant when she rendered herself guilty of adultery in his regard, amongst other things;

5. That he agrees that the community of acquests should be dissolved, liquidated and assigned to the parties, taking into consideration the dispositions of the law considering the fact that Plaintiff has rendered herself guilty of adultery in his regard, and consequently, such assignment should not be made in equal portions;

6. That Plaintiff's seventh claim should be rejected as he does not have any of her paraphernal/dotal property in his possession, as following Plaintiff's request for his eviction from the matrimonial home, he did so voluntarily and the parties themselves agreed as to which objects he was to take from the matrimonial home and he left the rest of the objects in the matrimonial home which is in Plaintiff's possession;

7. That he has no objection to the eighth, ninth, tenth and eleventh request by Plaintiff;

8. That since it is the Plaintiff who led to the marriage breakdown, and since the parties did not come to a consensual separation due to Plaintiff's excessive expectations, the costs should be borne entirely by Plaintiff.

Having seen the counter-claim which reads as follows:

1. That Defendant is making use of the right conferred to him by law to put forward this present counter-claim;

2. That the parties got married on the ninth (9th) october of the year two thousand and eleven (2011) at the "China House" restaurant, in St Julians, however no children were born from this wedlock;

3. That the marriage has irretrievably broken down for reasons imputable solely to the reconvened Plaintiff who, amongst other things, rendered herself guilty of adultery in Defendant's regard;

4. That the parties did not arrive at a consensual agreement precisely due to Plaintiff's excessive demands, who amongst other things, kept on expecting payment of maintenance from Defendant notwithstanding the fact that she had committed adultery and consequently forfeited her right to maintenance in his regard;

5. That Defendant knows these facts personally;
6. That therefore this counter-claim had to be made;

That Plaintiff as reconvened must therefore state why this Honourable Court should not, following any necessary declaration:

1. Pronounce the personal separation between the parties, in that it declares that the responsibility for the marriage breakdown is imputable solely to the Plaintiff as reconvened;
2. Establish the date when the reconvened Plaintiff is to be considered as responsible for the separation between the parties and apply in her regard the dispositions of articles forty eight (48), fifty one (51), fifty two (52) and fifty three (53) of chapter 16 of the Laws of Matta;
3. Declare that reconvened Plaintiff has rendered herself guilty of adultery in regard to Defendant and establish a date from when the Plaintiff as reconvened rendered herself responsible for this and consequently declare that the Plaintiff as reconvened has forfeited her right to maintenance from Defendant;
4. Declare that the community of acquests existing between the parties is dissolved and liquidate the same and divided the community of acquests in two portions, taking into consideration the date when the Plaintiff as reconvened has rendered herself guilty of adultery, amongst other things, and consequently from that date onwards, she has lost every right to her share of what Defendant contributed to the community of acquests;
5. Assign the portions of the community of acquests taking into consideration what was requested in the second, third and fourth plea above;
6. Condemn the Plaintiff as reconvened, to deliver to Defendant, within a short and peremptory period, all paraphernal objects, including money and other credits, and in default, condemn the Plaintiff as reconvened to pay the value of the same, if necessary with the work of experts nominated by the court;

With costs against the reconvened Plaintiff who is already being summoned for her subpoena.

Having seen the affidavit of Plaintiff of Lisa Mallia Milanes, of Miriam Sultana and of Coraline Spiteri annexed to a note filed by Plaintiff on the 12<sup>th</sup> March 2014;

Having seen Defendant's evidence and that of Karin Farrugia and Audrey Ghigo for HSBC Bank Malta plc, of Stephen Cachia for Transport Malta and of WPS 304 Lorna Mifsud, tendered at the sitting of 7<sup>th</sup> May 2014 convened by the Judicial Assistant;

Having seen the affidavit of Michael B, Plaintiff's son, filed by Plaintiff at the same sitting;

Having seen Plaintiff's evidence tendered at the sitting of 14<sup>th</sup> July 2014, convened by the Judicial Assistant and her cross examination conducted at the sitting of 24<sup>th</sup> September 2014;

Having seen the cross examination of Michael B and of Lisa Mallia Milanes conducted at the sitting of 10<sup>th</sup> November 2014 convened by the Judicial Assistant;

Having seen the cross-examination of Miriam Sultana, and of Caroline Spiteri conducted at the sitting of 4<sup>th</sup> March 2015 held by the Judicial Assistant;

Having seen the affidavit of Defendant Matthew C, of Heleno sive Lino Spiteri and of Josephine Pelham filed by Defendant at the sitting of 15<sup>th</sup> April 2015, convened by the Judicial Assistant;

Having seen the affidavit of Dave Clifford, of Josephine Pelham and of Defendant submitted at the sitting of 30<sup>th</sup> June 2015 convened by the Judicial Assistant;

Having seen Defendant's cross examination held at the sitting of the 6<sup>th</sup> July 2016, at the sitting of the 28<sup>th</sup> November 2016, and at the sitting of the 7<sup>th</sup> April 2017, convened by the Judicial Assistant;

Having seen Josephine Pelham's cross-examination at the sitting of the 9<sup>th</sup> January 2017 and that of Heleno sive Lino Spiteri held at the sitting of the 20<sup>th</sup> February 2017;

Having seen the minute registered in the records of the case at the sitting dated 4<sup>th</sup> May 2017 when the case was adjourned to the 27<sup>th</sup> June 2017, for final oral submission by respective Counsel;

Having heard oral submissions by legal counsel during the court sitting of the 27<sup>th</sup> June 2017 when the case was adjourned for today for judgement.

## **THE EVIDENCE.**

**Plaintiff B C** in her affidavit confirmed on oath on the 23<sup>rd</sup> March 2014 Fol 53 et seq. declared that she met Defendant C in 1994 at the Scotsman Pub in St. Julians. She happened to be there having a drink with her husband Frederick and Defendant had just arrived in Malta from the UK to start working at MidMed Bank. It was a casual encounter, Defendant was chatting with her now deceased husband and she was pregnant with her son Michael.

She had married Frederick in 1991 and they had two sons, Frederick Jr. now 25 years old and Michael, 19 years old. Her husband Frederick had cancer and passed away in 2000.

The couple and defendant became friends. Her husband used to work in Libya, but when he required treatment for cancer he found a job in a local hotel and as they were short of money plaintiff started doing housework for defendant against a small payment. Her husband and defendant became very close friends.

Her husband Frederick passed away in April 2000. Within a month defendant proposed to her and she flatly refused. They were not on speaking terms for the following three to four months. By the end of April 2000 plaintiff started receiving LM90 per month in social benefits. In September 2000 defendant called her to renew their friendship and to introduce his new girlfriend. She went to the bank to withdraw the last LM10 to have lunch with him and she realized that her account had been credited with over LM1,000 a payment which originated from the UK.

Defendant then asked her to re-commence doing his housework for LM40 a month. She accepted and she occasionally invited him to dinner at her place.

In July 2001 they went to the trade fair together and then for a meal. At the time plaintiff had severe financial difficulties bringing up two boys and she decided to start dating defendant. Later on that same year they went out alone, without the kids and that outing ended in intimacy.

Defendant subsequently moved in with plaintiff in her property in St Julians. She had been renting it since the 1980's and she purchased it in 2002. Defendant had pushed her to buy the property, he also loaned her some money to pay the deposit, which she repaid when she inherited her father who passed away in 2006.

At the beginning their co-habitation was quite normal, defendant would go to work, then to the pub and then home. This was his everyday pattern. At the time she used to receive LM400 a month from the UK Government and defendant gave her LM400 'to look after him'.

At this time her son Fredrick Jr started going astray. Defendant thought it was a waste of time trying to get him in line. He did not take any interest in her son. They were not on good terms and when they had a physical confrontation her son Fred moved out never to return.

Parties continued living together for a number of years and in 2006 defendant proposed marriage again. As her father was completely against this marriage, she kept refusing, but after her father passed away defendant 'pushed for marriage with more force'. She kept refusing for 5 years. In 2011 she was advised that she needed an urgent hysterectomy and in the circumstances she thought that it would be better to marry defendant rather than living on her own, possibly ill and eroding her father's inheritance. She declared: "I cared for defendant, but as a friend, not as a lover and not as a husband. Defendant was the closest thing to my former husband Frederick whom I did love passionately".

Parties married in 2011. Defendant must have realised that she was still bonded to her former husband as she wanted to retain his surname. They had never discussed this, and for Defendant this came as a great surprise. She had an excellent recovery from her operation, she tried to make her marriage work as she cared for defendant, who however brought up all kinds of excuses not to sleep with her; his work, her son Mike and her mother. This completely ruined their relationship.

The lack of intimacy was made worse by his assiduous habitual drinking, so much so, that he became an alcoholic. They stopped going out together, doing things together, all intimacy ceased. He found solace in his drink and joining ex-girlfriends, while she started chatting with friends on the internet, so that, at least, she could communicate with someone. As at this point she thought that there was no scope for them to be together any longer, so she consulted a lawyer.



Defendant had become always angry and aggressive because of his constant and habitual drinking. He had a very bad relationship with her son Michael, on one particular occasion he even threatened him with a kitchen knife and always blamed plaintiff for her children's mistakes.

He did not accept the fact that she wanted a separation, they had a great deal of incidents, lodged several reports with the Police. Once she was using her mobile, he snatched it from her, wanted to step on it, he stepped on her hand as she was trying to protect her mobile, he became furious, slapped her and hit her twice on the head with her mobile. He finally left home after a Court Order, took his numerous personal belongings, as well as a 32 inch TV which belonged to her son Michael. Defendant stopped paying her maintenance.

At this point Plaintiff realised that she was Defendant's obsession. He wanted to have everything her deceased husband had; his life, his kids and his wife but he failed in all three. H

Plaintiff declares that today defendant is convinced that she is having an affair; he is just trying to find a reason why she wants to separate. Defendant has incessantly tried to split her up from her kids, she is the grandmother of a one month old baby, her son's Frederick who lives in France, a baby she has never seen. Finally, she confirmed under oath the documents attached to her affidavit.

**Lisa Mallia Milanese**, in her affidavit sworn on the 10<sup>th</sup> March 2014, Fol 70. confirmed that she is Plaintiff's best friend having known her for 'an odd 19 years'. She saw in defendant an obsession with Plaintiff's deceased husband Frederick and everything the latter had. He wanted to substitute himself with Frederick. Immediately after the marriage, when defendant obtained all he wanted, he was simply not there for his wife. She used to see him go for work in the morning and return late from the pub in the evening completely drunk. He would always pick up an argument with plaintiff or with Michael, even for ridiculous reasons such as defendant refusing to shower before going to bed smelling of drink. He would pick up an argument with everybody including the witness when on a particular occasion she happened to be there sitting on the kitchen top.

Defendant would come home to provoke plaintiff and her son Michael very often ending up in physical confrontation. Defendant could not deal with plaintiff's kids, he wanted to be their father figure but he was completely unable to do so.

Plaintiff always tried to put up with all this in the most respectful of manners, she managed to live through the death of her loved husband, through severe financial difficulties whilst raising two sons.

On being cross-examined at the sitting of the 10<sup>th</sup> November 2014 held by the Judicial Assistant, regarding Plaintiff's relationship with Keith Pelham, she declared Fol 509: "I do not know when the relationship between plaintiff and Keith Pelham started. I know that it was after the breakdown that plaintiff started a relationship with Keith Pelham".

**Miriam Sultana**, in her affidavit, confirmed on the 10<sup>th</sup> March 2014, Fol 71, says that she is a close friend of plaintiff having known her for 25 years. She got to know defendant after plaintiff's husband passed away. She confirmed that defendant was a heavy drinker, particularly beer. She was aware that defendant used to go to the bar every day after work, and in the afternoon on the weekends. Defendant used to drink at home too, where he had a considerable stock of beer. Very often when she met him she could realize that he had been drinking. She was present on various occasions, when defendant used to come home, practically drunk, and for no apparent reason, he would pick up an argument with plaintiff. She got used to his behaviour, so she used to leave plaintiff's house as soon as he arrived.

She was against plaintiff marrying defendant as there was no feeling between them, a feeling which was very evident in plaintiff's relationship with her late husband.

Furthermore, there was absolutely no relationship between defendant and Michael, plaintiff's son.

Witness was cross examined at the sitting of the 4<sup>th</sup> March 2015 held by the Judicial Assistant, Fol 529. She declared that she knew Keith Pelham because he used to live below Plaintiff's apartment, but she could not confirm when the relationship started.

**Caroline Spiteri**, plaintiff's first cousin, in her affidavit confirmed on the 10<sup>th</sup> March 2014, Fol 72, declared that plaintiff had introduced her to defendant in 2006 when they were already living together. She became very close with plaintiff after she was operated upon in 2005. She confirmed that defendant is 'a pub visitor'. He goes there every day immediately after work. When she used to visit plaintiff she would invariably notice that defendant would either be going to the pub or returning from the pub. On his return from the pub he used to be almost drunk and always picked up an

argument with plaintiff. He used to carry on drinking even after he had just returned from the pub. This used to happen every time he returned from the pub, so much so that the witness tried to avoid visiting plaintiff when defendant returns from the pub. She never witnessed a kind gesture from defendant to plaintiff. He always expected her to be there waiting for him on his return.

Witness declared that she had helped plaintiff with the marriage preparations, but defendant showed absolutely no interest. There was only one occasion where he bothered to meet them, when they chose his suit and the rings. This insensitive behaviour hurt witness and plaintiff a great deal. She declared that she told plaintiff that she did not approve of her marriage to defendant, as he was not really in love with her, it only suited him better. After the marriage plaintiff gave him the money to buy a very expensive motorbike.

Witness describes defendant as a strange person, difficult to engage in any conversation with him. The situation did not change after their marriage. He continued with his daily visits to the pub, completely ignoring his wife. She confirmed that plaintiff often told her that their intimate relations were 'few and far apart'. Finally she confirmed that defendant never had a good relationship with Michael, plaintiff's son.

Witness was cross-examined at the sitting of the 4<sup>th</sup> March 2015, held by the Judicial Assistant Fol 530. She declared that in July 2013 they went to a 60's night together, Plaintiff and Keith and her partner and herself. On being asked how long had the relationship with Keith Pelham had been going on prior to that she replied that she was not aware that there was any relationship at the time.

**Michael B**, plaintiff's younger son, in his affidavit confirmed on the 2<sup>nd</sup> May 2014, Fol 250, declared that his father passed away when he was 6 years old. He was 17 years old when his mother married defendant, though they had been living together since he was roughly 8 years of age.

He says that defendant was never a father figure to him and his brother, he was incapable and unwilling to father them. There never was a relationship between them, defendant would have absolutely no interest in anything they did. He recalled the occasion when he had asked his mother for a printer, defendant did buy it, but simply left it on the kitchen table for him to connect. He expected him to make an effort to spend time together being his wife's son, and to help him out with connecting the printer to the computer 'but defendant was about everything but this'.

At the age of 8 he would take him to the pub, where he stayed behind the bar helping out the barman. At the age of 12/13 years he bought him a box of empty CDs, told him to download songs from the internet, burn them on CDs and sell them at school. This was his idea of teaching him how to make some money.

He describes the relationship between defendant and his mother as depressing both before as well as after the marriage, even though after marriage things deteriorated rapidly. They would fight on a daily basis and defendant would always win as he would generally be drunk after the pub. "The pub and drink for Defendant is an everyday must". He never misses one day without going to the pub after work, on the weekends and on public holidays. The older he grew the more he would, perhaps wrongly, get involved in their fights. His brother Frederick Jr. left the house as he could not take defendant any more, and he did not want this man to tear his family apart. He could not accept defendant shutting him up when he intervened on his mother's behalf, which led to his having personal fights with defendant. The fights were mostly verbal, except for one occasion when defendant grabbed the biggest knife in the kitchen drawer. He tried to take it from him by grabbing the knife from the blade and defendant only let go when witness was bleeding profusely. He wanted to go directly to the police but his mother stopped him as she did not want to create trouble for defendant.

When he finished school at the age of 16, defendant pushed him to find a job immediately as he wanted to get him out of the house as much as possible. He had already managed to get rid of his brother. He confirms having seen defendant being physically violent with his mother, apart from the daily verbal abuse resulting from his drinking. He was not present when defendant punched his mother twice in the head, but remembers his mother calling him as she was scared and hurt.

He concluded by confirming that defendant was very unkind to him and that defendant had married his mother for the wrong reasons namely that of settling down with a woman rather than being alone. When at the sitting of the 10<sup>th</sup> November 2014, held by the Judicial Assistant, witness was cross-examined regarding his mother's relationship with Keith Pelham, he declared that he did not know how long the relationship had been, but confirmed that Keith also had a key to the apartment where they lived Fol 507-508.

**Karen Farrugia, for HSBC Bank Malta plc**, gave her evidence at the sitting of the 7<sup>th</sup> May 2014 held by the Judicial Assistant, Fol 86. She

confirmed that Defendant is a bank employee as a security risk specialist his employment commenced in 2001 and is on indefinite contract basis. She presented four documents, Dok KF1, Fol 97, Dok KF2 Fol 98, Dok KF3 Fol 99 and Dok KF4 Fol 100 which confirm that Defendant's income has been as follows:

Year 2011 Euro 55,316.24.

Year 2012 Euro 52,845.98.

Year 2013 Euro 54,236.56.

She confirmed that employees have a number of benefits linked to their employment such as a subsidized health insurance which is negotiated for all employees, as well as subsidised loans.

Benefits are applicable to bank employees and/or their spouse or partners living in the same address.

**Audrey Ghigo, also for HSBC Bank Malta plc**, gave her evidence at the same sitting, Fol 91. She had been asked to carry out searches on accounts held in the name of Defendant . She confirmed that on the 24<sup>th</sup> April 2014 Defendant held a current account bearing number 002 045961 001 and presented the bank statement marked Dok AG1 Fol 137 et seq. The balance as on the 29<sup>th</sup> March 2014 being Euro 1,297.72 Fol 175.

Dok AG2 Fol 176 is a Savings Account bearing account number 002 045961 050, the account was opened on the 9<sup>th</sup> May 1998. The balance in this account on the 8<sup>th</sup> February 2014 was Euro 300 Fol 189.

Dok AG3 Fol 191 is a Savings Account in Stirling, the account was opened on the 25<sup>th</sup> April 2009 and the statements exhibited are from 25<sup>th</sup> January 2013 till the 25<sup>th</sup> January 2014, balance 1 cent, Fol 196.

Dok AG4 Fol 198 is a Portfolio Statement which relates to HSBC Shares having a value of Euro 28,175.51.

Dok AG5 is a Visa Gold Account with card number 4035 7100 0002 7719, Statement starting from 14<sup>th</sup> January 2009 Fol 199, to 14<sup>th</sup> April 2014 Fol 249.

**Stephen Cachia, for Transport Malta**, also gave evidence at the same sitting, Fol 93. He confirmed that a motorcycle Kawasaki registration number DBT 717 was registered in defendant's name Dok SC1 Fol 101 and the motorcycle Suzuki FBR 096 was scrapped on the 8<sup>th</sup> June 2012.

Dok SC2 Fol 102 are the details of motorcycle number DBT 717, it was first registered in Defendant's name on the 5<sup>th</sup> May 2011, and Dok SC3 Fol 103 are the details of motorcycle number FBR 096.

Dok SC4 Fol 106 confirms that a Peugeot 106 Registration number GAM 091 was registered in defendant's name from the 13<sup>th</sup> October 2006 to the 5<sup>th</sup> July 2013, and motorcycle registration number ALS 327 was registered in his name from the 3<sup>rd</sup> July 2007 to the 16<sup>th</sup> May 2012.

**WPS 304 Lorna Mifsud** also gave evidence at the same sitting, Fol 95. She exhibited the police incidents reports marked Dok LM1 to Dok LM9. Dok LM1 Fol 109, is a report dated 31<sup>st</sup> July 2013 filed by plaintiff against defendant reporting that defendant threatened and insulted her after an argument broke out when defendant objected to the sounds emitted from plaintiff's computer.

Dok LM 2 Fol 113, is a report dated 1<sup>st</sup> August 2013, filed by plaintiff against defendant for insulting her with the word 'whore'. The incident escalated as defendant used the microwave oven, left it beeping when food was cooked and her son Michael opened the microwave so that it stopped beeping. At one point defendant was going to throw the microwave from the balcony.

Dok LM3 is a report dated 11<sup>th</sup> August 2013 filed by both parties as well as Michael B, plaintiff's son. Plaintiff claimed to have been insulted and threatened by defendant.

Dok LM4 is a report dated 13<sup>th</sup> August 2013 where plaintiff claimed to have been slapped and punched by defendant.

Dol LM5 is a report dated 14<sup>th</sup> August 2013 filed by plaintiff and her son Michael against defendant who drove his motorcycle in their direction and hit Michael. Defendant was drunk when he was driving the motorcycle.

Dok LM6 is a report dated 30<sup>th</sup> August 2013. Plaintiff's son Michael found a black box which looked like a recorder and plaintiff claimed that defendant was following her movements in the house.

Dok LM7 is a report dated 10<sup>th</sup> February 2014 filed by plaintiff against defendant. A neighbour had informed her that in the common areas there was an envelope addressed to her. It resulted that the envelope contained an 'in memoriam' card of Plaintiff's deceased father John Mary Azzopardi,

whose photo had been scribbled over. Plaintiff reported that she suspected that it was defendant who was behind this.

Dok LM8 is a report dated 27<sup>th</sup> March 2014 filed by Keith Pelham against defendant who allegedly drove his motorcycle too close to the Toyota Yaris owned by Plaintiff. The car was being driven from Pieta' in the direction of Msida.

Dok LM9 is a report dated 27<sup>th</sup> September 2013 filed by plaintiff and Keith Pelham against defendant who had written threatening words on the back of a photo of plaintiff together with complainant Keith Pelham.

**Audrey Ghigo for HSBC Bank Malta plc** also gave evidence at the sitting of the 9<sup>th</sup> June 2014 held by the Judicial Assistant, Fol 385. She submitted the following documents:

Dok AGX1 Fol 252 to Fol 315 a Statement of Account number 002 045961 001 in Defendant's name from 10<sup>th</sup> November 2010 to the 29<sup>th</sup> December 2012 showing a balance of Euro 801.45.

Dok AGX2 Fol 316 to Fol 333 a statement of account number 001 045961 050 in defendant's name, from 9<sup>th</sup> February 2011 to the 9<sup>th</sup> August 2012 showing a balance of Euro 7,176.22.

Dok AGX3 Fol 334 to Fol 344 a statement of account number 002 045961 451 in defendant's name, from 23<sup>rd</sup> April 2011 till 25<sup>th</sup> October 2012, showing a balance of Euro 283,23.

Dok AGX4 Fol 345 to Fol 351 a statement of account number 002 045961 700 in defendant's name, showing a total Portfolio Value of Euro 28,175.51.

Dok AGX5 Fol 352 a statement of account number 002 045961 303 in defendant's name from 10<sup>th</sup> June 2010 to 18<sup>th</sup> March 2011 showing a zero balance.

Dok AGX6 Fol 353 a statement of account number 002 045961 302 in defendant's name from 9<sup>th</sup> October 2010 to 18<sup>th</sup> March 2011 showing a zero balance.

Dok AGX7 Fol 354 to Fol 364 a statement of account number 002 045961 501 a fixed deposit account in US Dollars in defendant's name for a term of three months from 14<sup>th</sup> October 2010 to 14<sup>th</sup> January 2011 and renewed to the 17<sup>th</sup> July 2013 balance on maturity US\$ 860.72.

Dok AGX8 FOL 365 to Fol 375 a statement of account number 002 045961 500 a fixed deposit account in Stirling in Defendant's name from 15<sup>th</sup> October 2010 to 18<sup>th</sup> July 2013 balance GBP£ 567.51.

Dok AGX9 Fol 376 to Fol 380 a statement of account number 002 045961 002 in defendant's name from 23<sup>rd</sup> December 2013 to 26<sup>th</sup> March 2014 showing a zero balance.

**Chris Trapani for Fimbank plc** gave evidence at the same sitting Fol 387. He filed Dok CT1 a statement relative to an Easisave Savings Account in Defendant's name from 1<sup>st</sup> January 2011 to the 28<sup>th</sup> May 2014 showing a balance of Euro 8,115.00.

**Plaintiff B C**, was cross examined at the sitting of the 14<sup>th</sup> July 2014 held by the Judicial Assistant Fol 393. She confirmed that her previous husband Frederick B was a British citizen. She received the amount of LM100 per month as Children's Allowance from Malta's Social Security Department as well as the amount of £STG 400 per month from the United Kingdom. She stopped receiving these allowances when her younger son was 16 years of age. Since she got married again she is receiving an allowance of Euro 56 per month. She inherited the amount of Euro 106,000 from her father. She also receives a social security pension of Euro 131.44 which is credited directly to her bank account.

She confirmed that her late husband and defendant became very good friends as they met every day at the pub. Defendant started living with her in her apartment in August 2001. Her son Frederick Jr moved out of the apartment after having a physical fight with defendant. He went to live at St George's Park in St Julians with his girlfriend Marie Lelande who is French. She confirmed that after they got married defendant refused to go anywhere else except the pub, as he had difficulty in walking as he had trouble with his leg and also had heart problems. She admits that after she stopped sleeping at home she started a relationship with Keith Pelham, who became her partner on the 14<sup>th</sup> August 2013.

At the sitting of the 24<sup>th</sup> September 2014, held by the Judicial Assistant, Plaintiff exhibited various bank Statements.

Dok OQ1 Fol 402 is an HSBC Consolidated Customer Position Sheet, listing five accounts held at the bank in Plaintiff's name.



Dok OQ2 Fol 403 is a bank statement of account number 009 011529 451, a Savings Account in Plaintiff's name, with a balance carried forward on the 24<sup>th</sup> July 2014 of Euro 57.63, Fol 408.

Dok OQ3 Fol 409 is a bank statement of account number 009 011529 051 a Savings Account in plaintiff's name, with a balance carried forward on the 5<sup>th</sup> September 2014 of Euro 16.29, Fol 411.

Dok OQ4 Fol 412 is a bank statement of account number 009 011529 001 a current account in plaintiff's name, with a balance carried forward on the 5<sup>th</sup> September 2014 of Euro 2.33, Fol 423.

Dok OQ5 Fol 438 is a bank statement of account number 009 011529 050, a Savings Account in plaintiff's name, with a balance carried forward on the 24<sup>th</sup> July 2014 of Euro 10,353.19 Fol 503.

Dok OQ6 Fol 424 is a statement of account dated 13<sup>th</sup> November 2013 in plaintiff's name regarding the HSBC Malta Funds SICAV p.l.c. Int. Bond Fund(EUR)-Accumulator Shares, redeemed on the 12<sup>th</sup> November 2013 net amount being Euro 4938.12 Fol 425.

Dok OQ7 Fol 426 is a statement of account dated 8<sup>th</sup> January 2014 in plaintiff's name for the same Accumulator Shares disposed of on the 7<sup>th</sup> January 2014.

Dok OQ8 Fol 427, is a bank statement of a UK Premier Bank Account in plaintiff's name showing a balance of £GBP 92.02

Dok OQ9 Fol 429 is a lease agreement between Irene Mifsud and plaintiff dated 1<sup>st</sup> May 2014.

Dok OQ10 Fol 432 is a bank statement of account number 002 137222 050 held in the joint names of plaintiff, J Azzopardi and J Bartlett a Savings Account showing a balance on 5<sup>th</sup> September 2014 of Euro 5,997.93. Fol 436.

**Defendant D Matthew C**, presented his sworn affidavit at the sitting of the 15<sup>th</sup> April 2015 held by the Judicial Assistant, Fol 536. He confirmed that he met plaintiff between 1994 and 1995. He knew her husband Frederick B as they used to meet frequently after work at a St Julians pub, and they became friends. At a point Frederick introduced him to his wife, plaintiff. They were good friends and often met socially. When Frederick was diagnosed with

cancer he had to stop working, which put his family in a difficult financial situation, so plaintiff started going to his house to do the cleaning and he paid her for that.

In April 2000, Frederick passed away, plaintiff stopped going to his house to do the cleaning and their friendship died down.

In late July early August 2001 their friendship picked up again, she invited him to her house, after a week abroad on a training course, she invited him to stay the night and he slept on the sofa. In October 2001 he rented a farmhouse in Gozo for a week and went there with Plaintiff and her children Frederick Jnr who was 13 years old and Michael who was 8 years old. He suggested that they should move to a larger property as plaintiff's apartment was quite small, however plaintiff declined as she wanted to be close to her parents. At around this time he moved in with plaintiff and her children. He suggested she should buy the apartment, so he paid the deposit and legal costs and she obtained a mortgage and bought the apartment in 2002.

They decided to extend and improve the apartment, they commissioned several works to renovate the apartment which were all paid by Defendant who at a point had to borrow £GPB 1,000 from his father.

Defendant declared that when he moved in with to live with plaintiff and her children, he was very happy. He used to work and she used to take care of the kids. After work he used to go to a pub close by every day but he insists that he never went home drunk. He declared to have had a good relationship with plaintiff's children. He used to take Frederick Jnr to Badger Karting, they used to enjoy Go-Karting together and joined in the end of season meal with the other competitors. He used to drive Frederick to school and to his exams and some years later he did the same thing with Michael.

As a family they went to the UK together to meet his parents and his family. He hired a car and took them to see the places where he grew up, a tour of East Sussex, visiting famous landmarks and made various trips to Brighton where his parents lived. He helped Frederick with his motor cycle lessons and used to go fishing with Michael. He felt he had a good relationship with the boys and that they were happy in his company. He did have some disagreements with the boys when they were teenagers and wanted to assert themselves however he thought this to be very normal. He helped Frederick and carried his belongings when he moved out, and Frederick used to come home to iron his clothes when he was a soldier and nobody made him feel unwelcome.

When parties lived together plaintiff used to receive social assistance from the UK and the Maltese Government, namely a widow's pension and children's allowance from both countries. He used to give her LM200 a month to cover household expenses and he used to pay all utility bills. He contested Plaintiff's allegation that her father never liked him, he used to take him to Mass on Sundays and wait for him until the service was over.

In October 2010, as plaintiff would stop receiving Children's Allowance for Euro 400 per month as Michael turned 16 years old, he increased her monthly allowance by Euro 400 and started paying her Euro 850 monthly.

They married in 2011. Plaintiff started having health problems but he wanted to show her he loved her notwithstanding her health. He declared that, with hindsight, although he would wish to say that she married him because she loved him, he now feels that she only married him to gain financial support.

He said that it was no surprise for him that she wanted to keep her previous husband's surname as they had already discussed it when they went to the Public Registry for the publication of the banns, although later on, when she met his parents she expressed regret at having kept her husband's surname as his parents welcomed her as Mrs C.

Plaintiff recovered well from her operation, her sexual libido increased however opportunities for sexual intimacy were few and far between as the apartment was small with no internal doors. He contests that he refused any opportunity for intimacy as Plaintiff is now claiming. The last time they were intimate was in April 2013 when they visited his parents in the UK and had all the privacy they needed. He admits enjoying going to the pub every evening but insists he is not an alcoholic and does not have assiduous drinking habits.

He used to put money aside so as to be able to go out for meals together, the last time they did was probably December 2012.

He contests Plaintiff's claims that he used to meet former girl friends for drinks during their marriage or in the 10 years before that. There were a few occasions when he met an ex-girlfriend however that was many years before they got married. He contests the allegations that he was always drunk. He did once have an argument with Plaintiff's sister, Josette Bartlett, but that was many years before and since then all was forgotten. He denies

ever placing Plaintiff in a position of inferiority, he always treated her as his equal and a partner in all things.

In the first quarter of 2013, plaintiff started going out in the evenings with her group of friends, neighbours living in their street. Initially they were plaintiff, Keith Pelham, his wife Josephine, their son and another neighbour Angelica. Eventually plaintiff ended up by going out with Keith Pelham alone. In April or May 2013, he noticed that Keith Pelham was frequenting their house quite often. Plaintiff had told him that they discussed his marriage problems.

He declared to be tolerant of her drug habit as he knew they smoked marijuana together. At this time Josephine Pelham told him she was not at all happy that her husband was spending time with plaintiff but defendant still believed they were just friends.

In July 2013 he received a letter from plaintiff's lawyer informing him that she wanted a separation. This came as a shock to him as he never thought there were serious problems in their marriage. He then started realizing that probably there was an affair going on between Keith Pelham and plaintiff. He suggested to go for counselling to deal with any problem they might have but plaintiff refused claiming that he was always picking on her son Michael. It was then that he realised that plaintiff would pretend to go out with her son whereas in fact, Keith Pelham would be waiting for them at the end of the street.

On the 2<sup>nd</sup> August 2013 plaintiff went out on a 60's night at the Cavalieri Hotel with Keith Pelham, her friend Caroline Spiteri and her then partner Ray. Plaintiff returned home in the early hours of the morning. A few hours later, at about 5.00am Keith Pelham called her complaining of chest pains and asked her to accompany him to the hospital, which she did.

On the 11<sup>th</sup> August 2013, plaintiff, her son Michael, Keith and his nephew spent the day at the beach, returned around 5 o'clock in the afternoon only to go out again at 8.00pm and he has no idea when they returned home.

On the 13<sup>th</sup> August 2013 when he got home from work he had an argument with plaintiff. He got out his mobile phone and told her he was calling the Police, she tried to snatch it from him and soon after the Police arrived at the house although neither plaintiff nor himself had called them. Four policeman arrived at the house to be followed by two others. He believes that this was a contrived situation and that Keith Pelham, who lived in the apartment below theirs, had called them.

She told the Police that he had hit her on the head and face with the phone. He denied having touched her in any way. The Police told her to go to the Health Centre and he believes Keith Pelham took her there. In Court she also accused him of stamping on her hand with his heavy motorcycle boots. She stayed out all night following the evening of the 14<sup>th</sup> August 2013. The following day she stayed home all day and on the 16<sup>th</sup> August she told him she was going to a barbecue and stayed out all night, he was later told that she had been with Keith Pelham. On the 17<sup>th</sup> and 18<sup>th</sup> August she stayed out all night, on the 19<sup>th</sup> August she went out and returned home when he had slept. On the 20<sup>th</sup> August she said she was going out for the evening and would return home later, but she never went back home. From then on he realised that she would go home when he was at work to take her clothes and other household items away.

When she left the house on the 20<sup>th</sup> August, Keith Pelham did the same, in the same week they both left their matrimonial homes and their respective spouses.

From then on he got to know from Frederick Jnr. that plaintiff and Keith were living in a house belonging to plaintiff's cousin, Caroline Spiteri at Msida. In October 2013 he left the matrimonial home after plaintiff had filed an application asking the Court to evict him from the matrimonial home. After he vacated the matrimonial home plaintiff did not return. He later got to know that Keith Pelham in spite of his claimed disability had carried out some works as redecorating in the apartment. He also got to know that plaintiff is allowing other people to live in it while she lives with Keith and her son Michael in an apartment in Swieqi which they supposedly rent from Keith Pelham's mother. He believes that neither plaintiff nor Keith are currently in employment.

At the sitting of the 7<sup>th</sup> April 2017, convened by the Judicial Assistant, Fol 636, defendant exhibited, marked as Dok HC the Certificate of Conduct, confirming that he is a person of good conduct, Fol 639.

**Heleno sive Lino Spiteri** in his sworn affidavit, Fol 542, confirmed that he is married to Josephine Pelham's sister namely Bice Spiteri. The two couples had been very close, as he and his wife have a summer residence and the Pelhams spent days and occasionally nights at their summer residence. So close was their friendship that he gave Keith the key to his summer residence as well as that of the garage. In the summer of 2012 the two couples were together on a trip to the UK and witness noticed that something was wrong between them as they were always arguing. Also in

2012 Keith Pelham wanted to make an extension to his property, however, plaintiff who lived in the overlying apartment had opposed as she claimed that a MEPA permit was required. At the time Keith Pelham was very critical of plaintiff. The situation changed in early 2013 and witness noticed that there was something going on between Keith and plaintiff, his neighbour. He had told him to be careful as he would ruin his family. He repeatedly advised him to go to counselling to save his marriage but Keith was simply not interested.

Witness met Keith and plaintiff at Floriana following the 2013 general elections, he treated them to coffee and noticed that he was keeping her from the waist. His wife too had noticed this behaviour. When he confronted Keith on the matter, Keith insisted they were just friends. Keith had another problem with his wife Josephine as he insisted on going to daily walks with plaintiff, while his wife stayed in the house with their son. Josephine was very unhappy about this and witness declared that he had advised Keith that he should put an end to this, and concentrate on solving his marriage problems.

On another occasion Keith was taken ill at night after an evening out and was taken to hospital. When in the morning he visited him there he found plaintiff sitting down close beside him on his bed. She was taken aback when she saw him and moved quickly away from Keith's bed. Witness told Keith that rather than messaging plaintiff at night that he was in hospital, he should have messaged his wife. After Keith had moved out of hospital, they continued with their daily walks much to Josephine's disapproval, who on one occasion followed them, and ever since plaintiff refused to go out for walks with Keith. However, the situation between Keith and his wife Josephine aggravated even further.

Around August 2013 Keith and his wife Josephine had an argument, when she returned home as she forgot the key to the front door, Keith thought that she was following him and he physically assaulted her threw at her a little table they had in the balcony. Witness and his wife took her to the Police station and to the Polyclinic. As from that day Keith never slept at home with his wife Josephine. Witness declared that he tried to mediate between them but to no avail, they only agreed on the car.

**Josephine Pelham**, in her sworn Affidavit, Fol 544, declared that she knows parties as they lived in the apartment immediately above her own. She had been living in this apartment with her husband Keith for the last 14 years. She thought that parties had a very strong relationship as plaintiff would always kiss her husband defendant before going to work. In fact her

husband used to comment about this. In 2012 they had started going out for walks, from Spinola Road to Qui-Si-Sana, apart from her husband and herself, other neighbours including plaintiff had joined in. Eventually, however most people lost interest, she had to stay home with her 8 year old son and her husband Keith and Plaintiff finished up going to walks on their own. She had objected to this with her husband, but he insisted that there was nothing wrong and that he was only socializing with plaintiff. Witness declared that it annoyed her a great deal that her husband Keith and plaintiff were constantly in touch, either on Facebook or sending messages on their mobiles. She had once protested with plaintiff that she did not approve of their being consistently in touch, plaintiff simply replied that they had been doing that for ages. She mentioned the incident when her husband Keith was taken ill at night and instead of calling her, his wife, he phoned plaintiff who immediately went to his bedside in hospital. Her sister went to see Keith in hospital and plaintiff was very close to him on his bed, so much so that she was embarrassed when she saw her.

On another occasion Keith was out all night and the neighbours told her in the morning that he was drunk the night before, he had complained of chest pains and ended up in hospital accompanied by plaintiff. Once again his wife had been left out completely from the picture.

She discovered that her husband Keith was always accompanying plaintiff where ever she required to go. The last night that Keith slept at home was on the eve of the feast of St Mary's. He had told her that he was going to stay out till late. As soon as she realized she did not have the spare key to the house, so she went out to tell him, he thought she was following him and he got mad at her, he threw a little table they had in the balcony, hitting her shoulder in the process. She went to the Police to report the aggression and then to the Floriana Health Centre.

From that day on Keith never slept in the matrimonial home again. So did plaintiff who also from that day on left the apartment where she used to live with defendant.

She confirmed that Keith is unemployed and receives Euro 100 a week in social benefits. He always tells her that he has no money to give her and that he has expenses at the dentist and damages in his car amounting to Euro 700.

Witness declared that she takes care of an apartment in Portomaso belonging to an English couple, and occasionally her husband Keith takes care of the maintenance of the air conditioners. On a particular occasion

Keith was very agitated as he could not find the key to the apartment. She eventually found it, and Keith told her that he had been to the apartment and he asked her to wash the mattress covers as he expected the owners to come over shortly. At the time she could not understand why he had asked her to do so, however, she subsequently found several photos on their home computer of plaintiff and Keith in the Portomaso apartment.

She does not know exactly where Keith and plaintiff are living, although Keith's sister-in-law told her she often sees them together at Qawra.

In her second sworn Affidavit, confirmed on the 11<sup>th</sup> June 2015, Fol 578, **Josephine Pelham** confirmed that she was in the process of separating from her husband Keith Pelham. She declared that she knew that he had a relationship with the neighbour of the overlying apartment, plaintiff, even when he still resided with her, even though her husband had denied it. She noticed that he was spending more time on the computer chatting with plaintiff. A few days after the 15<sup>th</sup> August 2013 the day when her husband left the matrimonial home, she decided to check his computer and she found several photos of her husband Keith together with plaintiff. She asked defendant to do the same thing, and he also found several of their pictures together. She exhibited 6 photos marked 1 to 6 Fol 580 to 582, which were taken during the elections celebrations, and photos marked 7 and 8 Fol 583 were taken at the Portomaso apartment.

She owned this computer as she had bought it herself, however Keith also made use of it, and one day she returned home and the computer had vanished, in fact later on Keith admitted that he took it. She discovered from her son that Keith is living with plaintiff in an apartment in Swieqi.

**Dave Clifford**, in his sworn Affidavit, Fol 577 confirmed that he is the owner of the Scotsmans Pub in St Julians and he has known defendant for the past 8 to 10 years as he is a regular client of the pub. Defendant goes to the pub every day after work at around 4.30pm while on the weekends he goes at lunch time. He never recalls seeing defendant going out drunk from the pub and he usually drives back home on his motor bike which he parks just outside the pub. He never allows people to be drunk in his pub and has a very strict policy how people behave in his pub. He confirmed that defendant is a reserved person but sociable and he chats with the usual people that frequent the pub. He knew defendant and plaintiff for a very long time, even before they got married and they seemed to him to be a normal couple. There were various occasions where they had Christmas lunches and dinners with other members of the family and everything seemed to be fine. Plaintiff seemed very happy in defendant's company and



never complained that he drank too much beer or that he visited the pub too often or for too long.

If defendant drank too much he would have sent him away, but he confirmed that in all these years that defendant has been frequenting the pub this never happened.

Parties had filed a joint note on the 18<sup>th</sup> September 2013 listing the movable items in the matrimonial home and had further agreed that the marked items in the list belong to defendant and which he could take when he vacated the matrimonial home. The list is in two pages and is marked 'Dok A' and was filed in the eviction proceedings, an application filed by Plaintiff on the 20<sup>th</sup> August 2013, Application number 1088/13/1.

### **CONSIDERATIONS.**

Plaintiff is requesting the Court's declaration that defendant was solely responsible for the breakdown of their marriage. Defendant contests plaintiff's allegations, filed a counter claim and is also requesting the Court's declaration that plaintiff was solely responsible for the breakdown of the marriage. Plaintiff attributes defendant's habitual and assiduous drinking to be the reason of the breakdown, whereas defendant contends that that it was plaintiff's adultery which was the real reason for the marriage breakdown.

They got married on the 9<sup>th</sup> October 2011. Plaintiff confirmed that she had a good recovery from the operation but defendant was bringing up all sorts of excuses not to sleep with her and this lack of intimacy was made worse by his assiduous drinking habits. They started drifting apart, no communication, let alone intimacy, at this point they were living independent lives, he found solace in his drink and she started chatting with friends on the internet.

According to Plaintiff, defendant became violent and aggressive as a result of his excessive drinking and on the 20<sup>th</sup> August 2013 Plaintiff filed an application to evict him from her apartment, 40, Flat 6, Spinola Road, St. Julian's. At the sitting of the 24<sup>th</sup> October 2013 the Court was informed that defendant vacated the matrimonial home on the 19<sup>th</sup> October 2013.

Defendant admits going daily to the pub for a drink after work but contests plaintiff's allegation that he is an alcoholic. He contends that the real reason for the breakdown of their marriage is plaintiff's extra-marital relation with

Keith Pelham who lives in the same block of flats. It has in fact resulted from the evidence submitted that in 2012, when the parties were practically living independent lives in the same apartment, plaintiff, together with various friends and neighbours, including Keith and Josephine Pelham, used to go for walks from St. Julian's to Sliema and back. As most people eventually lost interest, and as Josephine Pelham had to take care of her young child, plaintiff and Keith Pelham continued to go on these walks on their own. Their friendship grew into a relationship so much so that they both left their matrimonial homes in August 2013, four months before the present court case was filed, and have been living together ever since.

As regards jurisprudence in respect of the responsibilities for the breakdown of a marriage the Court refers to the following court judgments:-

In the case in the names “ **Catarina Agius vs Benedict Agius**” decided by the First Hall Civil Court on the 13<sup>th</sup> June 1967 it was held that:

“Il-Ligi taghna tqieghed bhala mottiv li jiggustifikaw l-azzjoni, l-episodji saljenti tal-hajja konjugali u mhux incidenti minuri”.

“ **Antonia Mifsud vs Giuseppe Mifsud**” decided by the Court of Appeal on the 21<sup>st</sup> February 1969 :

“ biex jkun hemm mohqrija jehtieg jkun hemm mhux xi att izolat ta' xi daqqa waqt xi tilwima imma l-persistenza f'certa mgieba hazina li turi li l-konjugi ma jisthux jkomplu jghixu flimkien”.

“**Rosina Micallef vs Angelo Micallef**” decided by the First Hall Civil Court on the 27<sup>th</sup> June 1964:

“L-adulterju jista' jigi ppruvat permezz ta' indagni u presunzjonijiet, purche' dawn jkunu gravi,precizi u konkordanti, b'mod li ma jhallux ebda dubbju f'min ghandu jiggudika”.

“**Josephine Edwards vs Advocate Dottor Joseph H Xuereb noe**” decided by the First Hall Civil Court on the 22<sup>nd</sup> February 1961:

“ Ghall-prova tal-adulterju ma hemmx bzonn tat-testimonjanza 'de visu' jew il-flagranza, imma bizzejjed il-konkors ta' cirkostanzi precizi,gravi u univoci, illi jwasslu lill-giudikant ghall-konvinciment tal-fatt”.

In this particular case it has resulted that the parties' co-habitation was no longer possible as they became an estranged couple having arguments on a

daily basis which escalated to physical aggression due to defendant's habitual drinking and plaintiff's adulterous affair with Keith Pelham.

Having examined the evidence produced by both parties the Court concludes that defendant's daily drinking and his persistent negative attitude and behaviour towards his wife for a long period of time almost immediately after they got married was a slow process suffocating the matrimonial life of the parties. The Court finds defendant responsible for excesses, cruelty and grievous injury in terms of article 40 of the Civil Code. The fatal blow came with plaintiff's adulterous affair in 2013. The Court therefore finds plaintiff responsible for the breakdown of the marriage in terms of article 38 of the Civil Code.

The Court is convinced that due to defendant's abusive and irresponsible behaviour, the marriage of the parties was in a disastrous state prior to the adulterous affair of plaintiff. This does not in any way diminish plaintiff's responsibility towards the breakdown of the marriage when she started an adulterous affair whilst still living under the same roof with her husband.

For these reasons the Court is of the view that both parties are responsible for the breakdown of their marriage.

The Court establishes the 1st of May 2013 as the date when both parties are to be considered responsible for the breakdown of their marriage.

#### **ARTICLE 48 et seq of Chapter 16 of the Laws of Malta.**

Both parties request that the sanctions stipulated by articles 48, 51, 52 and 53 of Chapter 16 of the Laws of Malta be applied to the other party.

#### **Article 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 acquets 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 anyform 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.*

#### **Article 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.*

#### **Article 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.*

As regards the wife, having established that she has committed adultery, the application of sanctions stipulated by Article 48 against her are mandatory.

As regards the husband, having established that as a consequence of his abusive treatment towards his wife and alcohol abuse spread on a number of years, the Court decides that all the sanctions stipulated in article 48 are to be applied in toto in his regard as well.

#### **MAINTENANCE.**

Plaintiff requests that defendant is ordered to pay her maintenance. Since the sanctions stipulated by article 48 are being applied against plaintiff, her claim for maintenance is being rejected.

### **COMMUNITY OF ACQUESTS AND PARAPHERNAL PROPERTY**

As regards the partition of the community of acquests it results that the matrimonial home, 40, Flat 6, Spinola Road, St Julian's is plaintiff's paraphernal property which she purchased in 2002 prior to their marriage in 2011. Plaintiff admits that defendant had given her on loan money to pay the deposit and to pay for improvements in the flat, however she insists that she repaid the loan when she inherited her father who died in 2006. They have various bank accounts in their individual names which had been opened prior to their marriage. Plaintiff declared that when defendant left the matrimonial home in October 2013 he took all his personal belongings including a 32 inch TV which belonged to her son Michael. Parties had filed a note in the mediation proceedings on the 18<sup>th</sup> September 2013 and attached a list of the movable items in the matrimonial home and marked the items which they agreed to belong to defendant and which he was authorized to take when he left the matrimonial home, which he did. Although during oral submissions Legal Counsel to defendant submitted that not all the movables listed in a note filed during the mediation proceedings have been retrieved by defendant, these alleged items were not specifically identified and therefore the Court concludes that defendant has taken possession of all the items which pertained to him personally.

As regards the bank accounts, given the relatively short period of the parties' married life, each party is to be assigned the funds held in the respective name of that party.

### **DECIDE.**

For these reasons the Court decides plaintiff's claims, defendant's pleas, defendant's counter-claims and plaintiff's pleas to the counter-claims as follows:-

1. Accedes in part to plaintiff's first claim and in part to defendant's first counter-claim and declares both plaintiff and defendant responsible for the breakdown of their marriage for the reasons explained above.

2. Accedes to plaintiff's second claim and in part to defendant's first counter-claim and pronounces the personal separation of spouses C.

3. Accedes to plaintiff's third claim and to defendant's second counter-claim, establishes the 1st of May 2013 as the date when both parties are to be considered responsible for the breakdown of their marriage; and applies in toto against both parties the sanctions stipulated in article 48 of Chapter 16 of the Laws of Malta.

4. Rejects plaintiff's fourth claim for maintenance.

5. Accedes to defendant's third counter-claim,

6. Decides plaintiff's fifth and sixth claim and defendant's fourth, fifth, sixth and seventh counter-claim by dissolving and terminating the community of acquests existing between the parties and orders the division of the assets pertaining to the community of acquests and any paraphernal property in the manner stipulated above under the title "Community of Acquests and Paraphernal Property".

7. Accedes to plaintiff's eight, ninth, tenth and eleventh claim.

Costs to be shared equally between the parties.

Judge

