

**110.** (1) A child legitimated by a decree of the court shall assume the surname of the parent upon whose demand he shall have been legitimated.

Surname to be assumed by child legitimated by decree of court.  
*Amended by:*  
*XXI.1993.47.*

(2) Where the legitimation has taken place upon the demand of both parents, the child shall assume the surname of the father, to which may be added the surname of the mother.

**111.** (1) Subject to any other provision of this Code in regard to succession, the parent and the legitimated child shall, as from the date of the decree, be in respect to each other in the same condition as a parent and a legitimate child.

Effects of legitimation by decree of court as between parent and child.

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

**112.** Where one of the parents has, in a will or other public deed, declared his or her wish to legitimate the child, such child may, after the death of such parent, make a demand for legitimation, saving the power of the court as provided in article 108, in case the deceased shall have left children, legitimate or legitimated by subsequent marriage.

Child may demand legitimation after death of parent.

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Title III  
OF ADOPTION

*Substituted by:*  
*XXI.1962.2.*

**113.** (1) For the purposes of this Title and of any regulations made thereunder a person shall be deemed to make or participate in arrangements for the adoption of a person or for the placing of a minor in the care or possession of any person if (as the case may be) -

Interpretation.  
*Amended by:*  
*XLVI.1973.21.*

- (a) he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of a person by any other person; or
- (b) he enters into or makes any agreement or arrangement for, or facilitates, the placing of a minor in the care or possession of another person.

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

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

surname of the parent or parents of an adopted person shall be construed as a reference to the name, names or surname of the adoptive parent or parents;

- (b) "adoption" means an adoption effected under this Code and, subject to such conditions and other provisions, and with effect from such date, if any, as may be contained in an order made by the Minister responsible for justice under this sub-article, includes an overseas adoption; and grammatical variations thereof or cognate expressions shall be construed accordingly;
- (c) "illegitimate children" means illegitimate children who have not been adopted;
- (d) "overseas adoption" means an adoption of such class or description, and effected under the law of such country outside Malta, as the Minister responsible for justice may by order specify.

Power to make adoption decrees.

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

(2) An adoption decree may be made on the application of two spouses, who have been married for a period of not less than five years and are living together, authorizing them jointly to adopt a person and may not be made on the application of one only of such spouses:

Provided that where the person to be adopted is the natural offspring of either of the spouses then, subject to the provisions of paragraph (c) of sub-article (3) of article 115, the adoption decree may be made notwithstanding that the application is made only by the natural parent of the person to be adopted and that the spouses have been married for less than five years.

(3) Save in the case of two spouses living together, an adoption decree shall not be made authorizing more than one applicant to adopt a person.

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

Restrictions on making of adoption decrees.  
Substituted by:  
VII.1977.2.

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

- (a) has attained the age of thirty years but has not attained the age of sixty years and is at least twenty-one years older than the person to be adopted; or
- (b) is the mother or father of the person to be adopted and has attained majority.

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- (2) An adoption decree shall not be made -
- (a) in respect of a person who has attained the age of eighteen years except in favour of a sole applicant who is the mother or the father of the person to be adopted; or
  - (b) in respect of a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption decree; or
  - (c) in favour of a person who is in holy orders or bound by solemn religious vows; or
  - (d) in favour of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.
- (3) Subject to the provisions of article 117, an adoption decree shall also not be made -
- (a) in any case, other than the case of an illegitimate person, except with the consent of every person who is a parent of the person to be adopted and is alive;
  - (b) in the case of an illegitimate person, except with the consent of the mother if she is alive;
  - (c) on the application of one of two spouses under the provisions of sub-article (2) of article 114, except with the consent of the other spouse;
  - (d) when the person to be adopted has attained the age of fourteen years, except with his consent.
- (4) Subject to the provisions of article 117, before an adoption decree is made the court shall -
- (a) in the case of an illegitimate person, hear the natural father if he has acknowledged the person to be adopted as his child or if the court is satisfied that he has contributed towards his maintenance or has shown a genuine and continuing interest in him;
  - (b) where the person to be adopted is under tutorship or is living with a person who is not his parent but who has his care and custody in fact, hear the tutor or the person who has such care and custody in fact, as the case may be.

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

Care and possession of persons to be adopted before adoption.  
*Substituted by: VII.1977.3.*

(2) Except where the applicant or one of the applicants is a parent of the person to be adopted, an adoption decree shall not be made in respect of a person who at the hearing of the application is below the upper limit of the compulsory schoolage unless the applicant has, at least three months before the date of the decree, given notice in writing to the prescribed authority of his intention to apply for an adoption decree in respect of that person.

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

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

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

- (a) in the case of a dispensation with any such consent, that the person who is required to give his consent is incapable of giving such consent or, in the case of a parent, that he cannot be found or has abandoned, neglected or persistently ill-treated, or has persistently either neglected or refused to contribute to the maintenance of, the person to be adopted or had demanded or attempted to obtain any payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or
- (b) in the case of a dispensation with any such hearing, that the person who is required to be heard cannot be found or is incapable of expressing his views; or
- (c) that in view of special and exceptional reasons and taking into account the interests of all persons concerned, it is proper for it to dispense with any such hearing and consent.

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

(3) The consent of any person in accordance with the provisions of paragraph (a) of sub-article (3) of article 115 to the making of an adoption decree in pursuance of an application may be given (subject to conditions with respect to the religious persuasion in which the person to be adopted is to be brought up) without knowing the identity of the applicant for the decree.

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

**118.** (1) Where any parent or the person to be adopted does not attend in the proceedings on an application for an adoption decree for the purpose of giving his consent to the making of the decree, then, subject to the provisions of sub-articles (2) and (3) of this

article, a document signifying his consent to the making of such a decree and his understanding of the nature and effect of such a decree shall, if the person in whose favour the decree is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein in the prescribed manner, be sufficient evidence of that consent and of his understanding the nature and effect of the decree, whether the document is executed before or after the commencement of the proceedings; and where any such document is attested as mentioned in paragraph (b) of sub-article (2) of this article, it shall be sufficient evidence as aforesaid without further proof of the signature of the person by whom it is executed.

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

- (a) the person to be adopted is at least six weeks old on the date of the execution of the document; and
- (b) the document is attested on that date by a Commissioner for Oaths or an advocate or a notary or, if executed outside Malta, by a person of any such class as may be prescribed.

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

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

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

- (a) that every person whose consent is necessary for the making of the adoption decree and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption decree for which application is made; and in particular in the case of any parent that he understands that the effect of the adoption decree will be permanently to deprive him or her of his or her rights in respect of the person to be adopted;
- (b) that the decree if made will be for the welfare of the person to be adopted;
- (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

Function of court  
as to adoption  
decrees.

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

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

Curator.  
Amended by:  
VII.1977.5.

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

Rights and duties.  
Amended by:  
XLVI.1973.20;  
XXI.1993.48.

**121.** Upon an adoption decree being made -

- (a) the person in respect of whom the adoption decree is made shall be considered with regard to the rights and obligations of relatives in relation to each other, as the child of the adopter or adopters born to him, her or them in lawful wedlock and as the child of no other person or persons, relationship being traced through the adopter or adopters;
- (b) the relatives of the person in respect of whom the adoption decree is made shall lose all rights and be freed from all obligations with respect to such person;
- (c) the tutor, if the person in respect of whom the adoption decree is made is placed under tutorship, shall terminate his administration and, within three months from the date of the adoption decree, render an account thereof to the adopter.

Judgments, decrees  
or orders for  
payment of  
maintenance.  
Amended by:  
VII.1977.6.

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

(2) After an adoption decree has been made in respect of a person who is illegitimate, no judgment, decree or order for the payment of maintenance shall be made with respect to that person unless the adoption decree was made on the application of the mother of that person alone.

Property rights.

**123.** (1) Where, at any time after the making of an adoption decree, the adopter or the adopted person or any other person dies

intestate in respect of any property, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

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

- (a) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;
- (b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference (whether express or implied) to a person or persons related to the adopted person in any line or degree shall, unless the contrary intention appears, be construed as a reference to the person or persons who would be related to him in that line or degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

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

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

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

Adopted person to assume adopter's surname.  
Substituted by:  
XXX.1981.5.

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.

**125.** (1) Every adoption decree shall contain a direction to the Director of the Public Registry to make in the Adopted Persons Register (established by article 269 of this Code) an entry in accordance with Form H set out in Part II of the Schedule to this Code and (subject to the provisions of the next following sub-article) shall specify the particulars to be entered under the headings in columns 2 to 7 of that form.

Registration of adoptions.  
Amended by:  
XXXI.1965.8,9;  
III.1994.2.

(2) For the purposes of compliance with the requirements of

the last foregoing sub-article -

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

and the surname to be specified in the decree as the surname of the person to be adopted shall be the surname of the applicant.

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

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

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

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

Legitimation:  
revocation of  
adoption decrees  
and cancellations  
in register.  
Amended by:  
XXIV.1995. 362.

**126.** (1) Where any person adopted by his father or mother alone has subsequently become a legitimated person on the marriage of his father and mother, the court of voluntary jurisdiction may, on the application of any of the parties concerned, revoke that decree.

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

- (a) the entry in the Adopted Persons Register relating to the adopted person; and
- (b) the marking with the word "Adopted" of any entry relating to him in the register book of acts of birth,

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

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

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

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

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

- (a) the adoption by that person of any person;
- (b) the grant by that person of any consent required in connection with the adoption of a person;
- (c) the transfer by that person of the care and possession of the person to be adopted with a view to his adoption;
- (d) the making by that person of any arrangements for the adoption of a person.

Prohibition of  
certain payments.  
*Amended by:*  
*XXVIII.1963.3;*  
*XIII.1983.5;*  
*VIII.1990.3.*

(2) Any person who contravenes the provisions of sub-article (1) of this article shall be guilty of an offence and shall, on

conviction by the Court of Magistrates, be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding one hundred liri or to both, and the court may order a minor in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or tutor or until other arrangements can be made for him.

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

- (a) payments made for the maintenance of that person; and
- (b) advocates', notaries', legal procurators' or medical practitioners' remuneration for professional services.

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

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

**129.** The Minister responsible for justice may make regulations-

- (a) for prescribing anything which by this Title is authorized or required to be prescribed;
- (b) for the protection, supervision and control of minors who are placed in the care and possession of such persons as may be prescribed;
- (c) for regulating the making of or participating in arrangements for the adoption of a person or for the placing of a minor in the care or possession of another person;
- (d) for the registration, supervision and control of adoption societies and for the cancellation of such registration;
- (e) for any incidental and supplementary matter for which the Minister responsible for justice thinks it expedient for the purposes of the regulations to provide, including in particular the entering and inspection of premises to which the regulations relate by persons authorized in that behalf by the Minister responsible for justice with a view to securing compliance with the regulations;
- (f) for establishing the penalties to which any offender of any of the regulations may be liable, which penalties shall not exceed imprisonment for a term of six months.

Overseas  
adoptions.  
Added by:  
XLVI.1973.22.

**130.** (1) Subject to sub-article (2) of this article, where an overseas adoption is to be treated as an adoption in accordance with the provisions of article 113 the order (however called) of the authority outside Malta whereby such adoption is effected shall

have effect as if it were an adoption decree made by the court in Malta; and the provisions of this Code and of any other law shall apply accordingly with such adaptations and variations as may be appropriate in the circumstances.

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

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

- (a) the power to determine whether such overseas adoption is to be treated as an adoption in accordance with article 113;
- (b) the power to direct the appropriate entry or marking relating to the overseas adoption to be made in the registers and acts referred to in this Title and the making of any rectification or cancellation thereof;
- (c) the power to determine whether, and the extent to which, a review, revocation or annulment of such an adoption is to have effect in Malta;
- (d) the power to order that an overseas adoption shall cease to have effect as an adoption or to be valid, in Malta on the grounds that the adoption is contrary to public policy or that the authority which purported to authorize the adoption was not competent; and
- (e) generally all such powers as it has in respect of an adoption under this Code,

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

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Title IV  
OF PARENTAL AUTHORITY

*Amended by:  
XXI.1993.2.*

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

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

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

(3) In case of disagreement between the parents on matters of particular importance, either parent may apply to the court of voluntary jurisdiction indicating those directions which he or she considers appropriate in the circumstances.

(4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the