Legal Hybridity and Pluralism in Maltese Marriage Law: Assessing Their Added Value and Contemporary Relevance

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This article by **Adriana Zammit** was previously submitted as an assignment for CVL1000 and is being published with the author's permission. The article examines how Malta's legal system is influenced by many different factors, including religion. Even though the law today recognises both civil and Catholic marriages, other religious traditions like Islam still have a strong influence on how some people in Malta experience marriage, even if those ceremonies are not legally recognised. The article concludes that legal hybridity and pluralism help us better understand how marriage laws in Malta have developed and how they continue to reflect both official rules and real-life practices.

TAGS: Comparative Legal Systems, Legal Pluralism, Legal Hybridity, Canon Law, Marriage

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1. Introduction

Malta's legal system can be defined as one influenced by norms, customs, religion and historical background. When delving into the complexities of Malta's predecessors, it becomes apparent how they shaped the laws we have today. Moreover, as a legal system shaped by various influences, Maltese law serves as a great example of both legal hybridity and legal pluralism. Legal hybridity refers to a legal system whose principles are absorbed from various legal traditions, whereas legal plurality refers to the co-existence of at least two different legal systems in the same state.[1] This will further be discussed in relation to Maltese marriage laws.

2. The Historical Background of Maltese Marriage Laws

Prior to 1975, the Catholic Church exercised exclusive control over marriage in Malta, since there was no legislation regulating civil marriages.[2] However, issues arose because only religious marriages were considered valid in Malta. Specifically, the problem was that the Catholic Church refused to recognise mixed marriages (marriages between a Catholic and a person from a different religion). Regardless of the fact that the Privy Council recognised mixed marriages as valid, the Catholic Church would not accept them, unless the ceremony was held in a Catholic Church.[3]

The enactment of the Marriage Act in 1975, under Dom Mintoff's government, ceased the arguments between the State and the Church. At this point, only civil marriages which followed the *lex loci celebrationis* were recognised in Malta.[4] However, this created great tensions between the Catholic Church and the State, especially since the majority of Maltese citizens were still predominantly religious and wanted to celebrate their marriage through Catholic procedures. Therefore, in 1995 the Maltese government and the Holy See reached an agreement which gave recognition to marriages celebrated under the Catholic Church.[5] Additionally, an agreement was reached that the state would recognise the Ecclesiastical Authorities and Tribunals judgements

[1] Ibtisam Sadegh, 'Religious Courts, Tribunals and Councils in Predominantly Secular States: Their Role in Malta, and England, and Wales' (L.L.D. thesis, University of Malta 2013)

[2] J M Ganado, 'British Public Law and the Civil Law in Malta' (1950) 3(1) *Current Legal Problems* 195 <https://doi.org/10.1093/clp/3.1.195> accessed 10 April 2025

[3] Biagio Andò, Kevin Aquilina, J Scerri-Diacono and David E Zammit, 'Malta' in Vernon V Palmer (ed), *Mixed Jurisdictions Worldwide: The Third Legal Family* (2nd edn, Cambridge University Press 2012) 528–576 <https://doi.org/10.1017/CBO9781139028424.014> accessed 10 April 2025.

[4] J M Ganado, 'Malta: A Microcosm of International Influences' in Esin Örücü, Elspeth Attwooll and Sean Coyle (eds), *Studies in Legal Systems: Mixed and Mixing* (Kluwer Law International 1996) 225.

[5] Marriage Act, Chapter 255 of the Laws of Malta, Article 21

regarding marriages.[6] Since Catholic marriages are recognised by law, it can be said that there is a case of weak legal pluralism. Weak pluralism refers to a situation where the state officially recognises the existence and authority of non-state legal systems within the framework of the state's legal system. In this form, pluralism exists because the state allows it.[7]

3. The Roman Catholic Church's influence on Maltese Marriage Law

Civil marriages, although separate from Catholic marriages, are still based on Colonial principles. The requirements and procedures for one to obtain a civil marriage in Malta are still similar to those of a Catholic marriage. For instance, according to the Marriage Act, before two spouses are joined by marriage there has to be the publication of the banns of matrimony.[8] Similarly, the provisions regulating civil annulments also reflect the Catholic principles for annulment. These similarities illustrate legal hybridity, as civil procedures retain elements of Canon law.[9] However, Canon law ceased to have influence over civil marriages in Malta with the introduction of divorce in 2011, civil union in 2014 and same-sex marriages in 2017.

4. Islamic Marriages in Malta

Strong legal pluralism refers to cases where non-state legal systems function independently of the state, even if the state does not recognise them as law.[10] The state's non-recognition of Islamic marriages has led to a strong demonstration of legal pluralism: Sharia law and Civil law. Even though Islamic laws are not recognised in Malta, Muslims still perform wedding celebrations in the mosque. Marriages in mosques help Muslims feel like they are truly married, even though these marriages are not legally recognised. Moreover, mixed couples (a Muslim man and a Catholic woman) who choose to perform a wedding in the mosque still feel the need to add Catholic traditions during the ceremony, such as wedding rings. These Colonial customs seem to be a key to gaining social legitimacy for marriage in Malta. Thus, Islam in Malta has adapted to Maltese culture and social norms.[11] In light of this, it can be noted how religious laws are respected

[6] Ganado (n 4)
[7] John Griffiths, 'What is Legal Pluralism?' (1986) 18(24) *The Journal of Legal Pluralism and Unofficial Law* 1-55 <https://doi.org/10.1080/07329113.1986.10756387> accessed 11 April 2025; Ibtisam Sadegh (n 1)
[8] Marriage Act (n 5), Article 7
[9] Ibtisam Sadegh and David E Zammit, 'Legitimizing a Muslim Marriage in Malta: Navigating Legal and Normative Structures' (2018) 7(3) Oxford Journal of Law and Religion <https://doi.org/10.1093/ojlr/rwy037> accessed 11 April 2025
[10] John Griffiths (n 7), Ibtisam Sadegh (n 1)
[11] Ibtisam Sadegh and David E Zammit (n 9)

as if it were the law, Muslims in Malta will continue to follow their religious laws regardless of whether it is recognised by the state or not. This demonstrates the presence of strong legal pluralism within the Maltese legal system.[12]

5. Conclusion

Applying legal hybridity and legal pluralism as analytical frameworks allows us to understand Maltese law not just as a collection of statutes, but as a living system shaped by religious belief, colonial history, and cultural practice. Maltese Marriage law is a clear example of both frameworks at play. Legal hybridity helps explain why Maltese Civil law still contains traces of Canon law, even after major secular reforms. Legal pluralism, on the other hand, highlights how alternative legal traditions, such as Islamic law, continue to influence behaviour, even without formal legal status.

[12] Ibtisam Sadegh (n 1)



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