

Informal Cohabitation. The rights of an informal cohabitant in the property belonging to the other cohabitant.

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The Cohabitation Act (Chapter 614 of the Laws of Malta) provides a legal framework for parties who live together in a committed relationship but are not married or in a civil union. To be legally recognised, the parties must sign a public deed of cohabitation before a notary and register it in the Public Registry. Once registered, the relationship is formally acknowledged by law and gives rise to specific rights and obligations.

Registered cohabitants are granted protections similar to those of married couples in certain areas, including habitation rights in the shared home, defined by the Act as the “Common home”. The Act also regulates how cohabitation may be dissolved, either by mutual agreement or through a Family Court application, and provides limited protections—such as temporary habitation rights—if a party dies.

Conversely, this is not the case for parties who do not carry out the formalities, namely the execution and registration of a public deed as required under the Cohabitation Act. In the absence of such formal registration, the relationship does not give rise to the specific rights and obligations afforded to registered cohabitants under Maltese law, save for the right stipulated for *de facto* cohabitants, set out in article 27 of the Cohabitation Act. Under Maltese law, a party who has been living habitually as a couple with another party for at least two years and whose relationship is not formally regulated (i.e., not registered under the Cohabitation Act, marriage, or civil union), may, within twelve months of the relationship ending or the other party’s death, apply to the Court for certain rights. These however are limited to the following:

- a. **Right of habitation** in the common home for a period determined by the Court to allow the person time to find alternative accommodation. This applies both when the other party is alive or deceased, even if the deceased owned the home fully or jointly;
- b. **Compensation for patrimonial loss** if the other person has been enriched at their expense, as per Articles 1028A and 1028B of the Civil Code.

The Court may also decide who of the Parties is to reside in the common home *pendente litem*. The rights to habitation cease if the applicant enters a new marriage, civil union, or cohabitation. The term “common home” includes any residence occupied by the couple, whether owned, leased, or otherwise possessed, jointly or separately. Finally, any Court judgment granting these rights is registered with the Public Registry to formalise its effect.

However, aside from article 27 as explained above, in the case of informal cohabitation, the parties’ legal position is generally determined by ordinary provisions of the Civil Code.

In situations where cohabitants have not registered their relationship under the Cohabitation Act, a party's right of habitation can alternatively be secured through a commodatum agreement. Under Maltese law, commodatum or *loan for use* is defined in articles 1824 *et seq* of the Civil Code (Chapter 16 of the Laws of Malta), as “*a contract whereby one of the parties delivers a thing to the other, to be used by him, gratuitously, for a specified time or purpose, subject to the obligation of the borrower to restore the thing itself*”. Only things not extra commercium and which are not consumed by use may be lent.¹ Obligations under a commodatum pass to the heirs of the lender and borrower, unless the loan was made to the borrower personally.²

The borrower is required to take care of and preserve the thing as a *bonus paterfamilias* and cannot apply it to any other use than that intended, under penalty of damages.³ If the thing perishes by a fortuitous event without the borrower's fault, they are not liable.⁴ However, if the borrower uses it improperly or for longer than agreed, they are answerable for the loss even if it occurs by fortuitous event, unless they can show the thing would have perished anyway.⁵ Similarly, if the borrower could have saved the borrowed thing from perishing by using their own property instead, or chose to save their own thing over the borrowed thing, they are liable for the loss.⁶

A valuation of the thing at the time of the loan determines its value for potential liability but does not otherwise affect obligations.⁷ The borrower is not liable for deterioration caused by normal use⁸ and cannot claim reimbursement for expenses incurred to use the thing⁹. When multiple borrowers share the same thing, they are jointly and severally liable.¹⁰ The lender cannot demand the thing back before the agreed time or before it has served its intended purpose, unless the lender has an urgent need, in which case the court may compel restitution while obliging the lender to reimburse expenses incurred.¹¹ If the borrower had to make extraordinary necessary expenses to preserve the thing, the lender must reimburse them.¹² Finally, if the thing lent has defects that may cause injury, the lender is answerable for damages if they knew of the defects and failed to warn the borrower.¹³

The Court of Appeal's decision in 'Paraggi Holdings Limited v. Darmanin'¹⁴ provides a clear and practical exposition of Maltese law in this regard. Paraggi Holdings Limited sought to evict

¹ Art. 1825.

² Art. 1826.

³ Art. 1827.

⁴ Art. 1828.

⁵ Art. 1829.

⁶ Art. 1830.

⁷ Art. 1831.

⁸ Art. 1832.

⁹ Art. 1833.

¹⁰ Art. 1834.

¹¹ Art. 1835.

¹² Art. 1836.

¹³ Art. 1837.

¹⁴ App. Civ. 821/04, 20 July 2020.

Rosalie Darmanin and Nicholas Agius Darmanin from an apartment in Sliema. The respondents had lived in the property for several years, originally with one of the previous owner’s partners during a personal relationship.

Through this judgement, the Court of Appeal confirmed that commodatum arises where a thing is delivered gratuitously for a specific purpose, even in the absence of a fixed term, and even between informal cohabitants. In this case, Darmanin and her children were granted the apartment for residential use. The Court of Appeal confirmed that this created a legally enforceable right to occupy the property, despite the lack of written documentation or an explicit time frame having been agreed between the Parties.

The judgment also highlights the distinction between commodatum and precarium: while precarium allows the lender to demand return at any time, a valid commodatum endures for as long as the agreed use continues. Importantly, the Court emphasized that subsequent events—such as the original lender’s partner moving into the property—did not undermine the commodatum, as the legal relationship was established at the moment of delivery for the agreed use.

This case reinforces not only the principle that the intention of the parties and the actual delivery are pivotal in creating the right of commodatum, but also that formalities are not always essential for its validity. This case serves as a leading example of how Maltese courts balance the protection of gratuitous use rights with the property interests of lenders, particularly in contexts involving familial or relational arrangements.

In the context of informal cohabitation, commodatum plays a crucial role for the dependent party in the relationship and any children born of such relationship. Unlike marriage or cohabitation regulated by public deed, *de facto* cohabitation provides no automatic legal rights over the “matrimonial” or “common” home, leaving the economically or socially dependent party – and the children, if any - vulnerable to displacement. By recognizing the right to use a property for a specified purpose—often residential—commodatum ensures that the dependent partner can continue to occupy the home even if the relationship ends. This protection extends indirectly to children, safeguarding their stability and continuity of residence. In this way, commodatum transforms informal, relational arrangements into legally enforceable rights, mitigating the risk of sudden homelessness or disruption to family life.