

~~duate courses as well as offer a more varied choice in the course and confer more specialized grades. Mention must be made to the greater importance that must be attached to the doctoral thesis prepared by the student prior to graduation. This should provide an opportunity to encourage law students to carry out more extensive research in a particular legal field. The value of this to the student body and legal professions cannot be estimated.~~

~~No academic faculty may survive without an adequate library service. The need is felt to expand the Law section in the Library and to update the collection of textbooks available therein.~~

~~An analysis of what has been proposed in this paper reveals that the much needed improvements in the present Law course would bring about an improvement of the academic level of Law students, who would also benefit from the experience acquired during their work phase. The final result being a more efficient course attended by better students, who in turn would certainly develop into better lawyers for the well-being of the country.~~

SEMINAR - THE LEGAL, SOCIAL AND MORAL IMPLICATIONS OF DIVORCE

Anna Mallia and Ann Bonnici

The panel invited to discuss the above theme on the 15th January 1983 was chaired by Professor J.M. Ganado, Head of Department of Civil Law of the University of Malta and included Mr. Mario D'Amato, a law student, Fr. Soler S.J., Mrs. Mary Rose Zahra, representative of the Council of Women and a lawyer, Dr. Anthony Farrugia.

The subject was introduced by Professor Ganado, who made it clear that the aim of the seminar was not to ascertain who was in favour or against divorce, but to create a forum for an objective discussion of the possible effects and implications of divorce in Malta, were divorce to be included in our Civil Law.

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Mr. D'Amato, however, stressed that, in fact, divorce already existed in Malta and this as a privilege of certain people only, because it was only those who in one way or another obtained a divorce decree overseas, (provided that the necessary conditions as stipulated by the Marriage Act of 1975, Article 21 were met with) as subsequently recognised by our courts, could in fact benefit from divorce. This, he said, was unfair, as in his opinion, everyone had the right to divorce. Mr. D'Amato proceeded to cite certain cases in order to support his argument: a Maltese woman, being separated from her husband, wished to emigrate. However, she was informed that she could not do so without her husband's permission because she still bore his name. According to Mr. D'Amato, the only way out for this woman would be divorce, more so, since she had a 5-year old daughter and also due to the social stigma, she found it very hard to simply live with another man whom she had grown to love.

By way of conclusion, Mr. D'Amato stressed that divorce is a solution to a number of unfortunate and 'pathetic' cases, where the parties concerned suffer principally because they cannot break previous ties.

According to Dr. Farrugia, divorce is a serious problem, which dissolves the important institutional social contract of marriage. The speaker proceeded by saying that as divorce is a human problem, it is necessary to see how it fits in our daily life; how it can affect our institutions, old and yet sacred; how it can lead us to worldly happiness; how it is to be considered in the light of the Catholic faith.

Divorce has a catastrophic effect on the family and its members. The family is the basic unit of society and any attack made on the family will also affect the state - the society which we co-habit. Dr. Farrugia goes so far as to consider it as harmful and dangerous, "a cancer in those societies which have accepted and adopted it".

According to this same speaker, out of necessity, one has to look into the legal implications which divorce would bring to our legal system, as a result of which most of the Law of Marriage, namely the law relating to Rights and Obligations, Community of Acquests, Succession etc. would have to be repealed or amended. The basic concept of a Catholic marriage which permeates our Civil Code in all the sections relative to indissoluble contracts between husband and wife will be blasted out of its very existence by divorce.

Other legal implications brought about by divorce were mentioned by Dr. Farrugia among which were:

1. Divorce incinerates the principle of 'bona fede' in contracts because the parties will know 'a priori' that in case of divergence of opinions or in case one party wants to free himself from the bond, the contract can be dissolved.
2. Once marriage is dissolved and the obligations of co-habitation, fidelity and assistance are ended, what will become of maintenance? Will the innocent party remain without maintenance? How will the law be affected, regarding maintenance of in-laws? What about half-brothers or sisters?
3. Who will have paternal authority? The fundamental interests of the child should remain the guiding point for the courts as regards the care and custody of the children. All that occurs in cases of separation is based on the fact that the effects of marriage are not terminated. The changes that occur between the parties after the divorce will seriously affect the arrangements that the court would have made in the best interests of the children. The impracticability of allocating the children six months in one home and six months in another, is also a valid argument.
4. How will the Community of Acquests be divided after divorce?
5. Will the dowry remain under the husband's administration?
6. What about a 'unica carta' will? Will this terminate upon the existence of a second marriage?

Dr. Farrugia concluded by saying that "divorce is immoral and what **was** immoral can never **become** politically right".

The third speaker on the panel to address the audience in a science lecture theatre full to capacity was Fr. Soler S.J., who said that he believed that marriage is an indissoluble union as stated in the Vatican Council II and that divorce should be avoided rather than be introduced in society. According to Fr. Soler, Man in his nature has been created to communicate: this trend of thought is not one simply pertaining to Catholics but also Marx and all Socialist thinkers believe in the basic relationship between one man and another - Man therefore achieves his peak when he establishes a full and lasting relation-

ship with another person. Fr. Soler also believes that a society has a law prohibiting divorce; it is also necessary for it to have educational institutions which emphasize the value of fidelity and communication. According to the speaker our legislator cannot justify itself when it creates situations which promote the breakdown of relationships. Divorce he says, is a remedy, **not** a right because a right emanates from Man's nature - if Man in his nature was created to communicate, it is a contradiction to assume that Man has a right to disrupt that communication. Those favouring divorce, he says, want to introduce it on humanitarian grounds, however, sociologists insist that divorce promotes greater problems.

The last speaker was Mrs. Zahra, representative of the Council of Women. She said that the phenomenon of divorce was unsettling to many people, who hold close to heart Christian principles. Mrs.Zahra asked herself however, "What is the difference between seperation and divorce?" In seperation cases, husband and wife may subsequently return to married life, after the crisis has ended. On the other hand, divorce dissolves marriage irreversibly. Unfortunately one may easily acquire a divorce in certain countries. In America it is estimated that out of every 3 marriages, two end in divorce.

Mrs.Zahra was of the opinion that when a couple faces matrimonial problems, the possibility of divorce will put them in a mental state where they will continue to avoid finding a solution instead of making up, in the interests of the children, themselves and society. Thus, she concludes, divorce, instead of being a solution, is the cause of greater failures.

The discussion that followed was exceedingly interesting with many Law students, as well as other persons present in the audience, bringing forward many arguments for and against the introduction of divorce in Malta. The various valid (and not so valid) legal and humanitarian reasons which were used to back up these points of view further helped stimulate the morning's proceedings.