

MORTMAIN LEGISLATION IN MALTA: THE GENERAL PRINCIPLE

Charles J. Scicluna

1. The Concept of Mortmain and its Origins

The word *mortmain* literally means “dead hand”. The expression may well have originated from the rich symbolism of Germanic law; the effect of a culture where every concept of political and social power as well as of friendship and peace was expressed through the hand. The phrase however took on its most widespread usage with the onset of feudalism. Those who lived in the condition of serfs were considered *manus mortuae*, and this derived from the usage whereby the lord exercised his *ius spoli* on the death of the serf. If the lord did not find anything to take as spoil, the right hand of the dead serf was presented for him to clasp as a symbol of his lordship and also of the fact that the serf could serve him no longer¹. Furthermore, the expression also derives from the macabre analogy with the hand of a dead man which, contracted with *rigor cadavericus*, would not let loose anything which it has grasped².

“Men in mortmain” were the serfs of the glebe and vassals of the lord who could not dispose of their property by will. The “right of mortmain” was the fee that the serf or vassal paid in order to be freed from the former incapacity; and the same expression also referred to the right of the landlord to succeed to the vassal who died without male heirs. “Mortmain entities” were those which did not pay succession duty³.

The term “mortmain” was used also with reference to churches and ecclesiastical institutions. Ecclesiastical persons were prohibited from alienating their property. They were also exempt from the payment of taxes with the effect that the more land went to ecclesiastical entities the less income and advantages could be accrued in favour of the landlords and the nobility. As clerics were not bound to serve the lord in military endeavours the nobility regarded devises in mortmain with contempt. Coke was to summarise the effects of mortmain on the incomes of the nobility:

“the lands were said to come to deceased hands, as to the Lords; for that, by alienation in mortmain, they lost wholly their escheats, and in effect their knights’ services for the defence of the realme, wards’ marriages, relieves, and the like; and therefore was called a dead hand, for that a dead hand yieldeth no service”⁴.

The subtraction of landed property from circulation had the inevitable effect of increasing the burdens on the serfs and vassals tied to the lands which remained in circulation and still bound with the obligations in favour of the

lords. Feeling against mortmain was generally widespread and relatively justified.

2. Proclamation XXIII of 1822 and the Background to it

One of the first things the British authorities on the Maltese islands were eager to do was to set the minds of the inhabitants at rest as to the matter of their Roman Catholic religion. On 15th July 1801 Charles Cameron issued a Proclamation assuring the Maltese of His Britannic Majesty's protection and above all respect and protection to their Churches, Holy Religion, persons and property⁵. General H. Pigott had issued a similar Proclamation on the 19th February 1801 and Thomas Maitland was to reiterate the contents in a Proclamation of the 5th October 1813.

It was an essential aspect of British policy in the early years of their rule not to show any sort of hostility to the Church in Malta since they reckoned that the thing would inflame the natives against them. One of the moves was to ensure and guarantee the *status quo* of the Church in the islands, and the Colonial Department was "most anxious...not to be a party directly or indirectly in despoiling the Church of Malta"⁶.

Honouring the commitment with the Church did not mean that priorities of sovereignty and domination would fall second place⁷. The British were in Malta and they were here to stay. Any factor which would likely hinder their complete hold on the islands had to be dealt with. They could not help not tolerating the Roman Catholic Church but they were keen on not having a "very powerful" Church. In an era where ownership of landed property was still a guarantee of power, it was important for the British authorities on the island to ensure (i) that the *status quo* with regard to Church ownership of landed property be secured and (ii) that further increase in such ownership be drastically contained⁸.

What was the British appraisal of the *status quo* with regard to the extent of Church property? In a memorandum sent to the Colonial Office by Major General Frederick Cavendish Ponsonby on 1st July 1830 the property of the Maltese bishopric was described as consisting of "two large farms, divided into several small portions" in Malta, and of "three fiefs in the neighbourhood of Lentini and in the Intendence of Syracuse" the latter property being heavily taxed by the Sicilian Government⁹. In the 1830 Blue Book ("Report upon the Islands of Malta and Gozo for 1830") the revenue of the (Roman Catholic) Church was stated at "about one-fifth of the property of the Islands"¹⁰. By 1890 the British estimate of the extent of Church property on the islands had officially grown to one-third from one-fifth¹¹.

The foregoing historical background is essential to a correct understanding of the motives behind Proclamation XXIII of 25th June 1822. The proclamation itself was promulgated by command of the Lieutenant Governor Major-General Sir Manely Power. As with many things of this world the proclamation was motivated by "a reason given and another hidden".

The “reason given” was sociological and economical:

“His Honour the Lieutenant Governor being aware that the acquisition of Landed Property in these Islands by Churches and other Pious Institutions has the effect of withdrawing such property from purposes of general utility and enterprise; and having been frequently solicited, by the Inhabitants themselves, to apply a remedy to the inconvenience resulting therefrom to Society at large, He has taken the subject into mature and deliberate consideration”¹² .

The “reason hidden” was political. The relevant proclamation was despatched to London with three others with a covering letter explaining each of them. The concise comment which the Chief Secretary to the Government, Richard Plasket, makes to Robert Wilmot of the Colonial Office (21st July 1822) is eloquent enough:

“Sir,

I have the honour to enclose, for the information of Earl Buthurst, copies of four Proclamations which have been issued since the last Packet sailed.

Two of these Proclamations (*Proclamation XXIII and XXIV*) relate to Church Lands and will speak for themselves – *the one (The Mortmain Law) was intended to put a stop to the increasing influence of the Church in these Islands from their gradual accumulation of Landed Property*. The other to prevent an abuse which had long since crept in, though without any right or authority, of Churchmen being exempted from the Duty levied on the transfer of Landed Property. These two Proclamations were settled when I saw Sir Thomas Maitland at Corfu in May¹³ last.

3. The General Principle of Maltese Mortmain Legislation and its Interpretation

3.1 The Text of the Law

Articles I and III of Proclamation XXIII of 1822 contain the basic principle of Maltese Mortmain Legislation still extant today in Sections 3 and 5 of the Mortmain Act, 1967 (Cap. 201 of the 1984 Revised Edition of the Laws of Malta).

For the sake of completeness and in order to render the comparison more direct we reproduce the relevant articles and sections:

Proclamation XXIII of 1822:

Article I:

“No lands or Tenements in these Possessions, of whatsoever description, shall henceforth be considered as alienable to, nor shall they be, under any title, acquired by Churches or other Pious or Religious Institutions, excepting under the express and positive condition and understanding,

that such Lands or Tenements so acquired shall, within the term of one year from the date of such acquisition, be definitively and absolutely sold or disposed of, by such Churches or Pious Institutions, to some person or persons not subject to the above limitation and understanding”.

Article III:

“In case any Lands and Tenements, as aforesaid, acquired or to be acquired by Churches or other Pious Institutions, shall not be actually disposed of by alienation or transfer within the above limited period of one year as above enacted, at the expiration of such term such Lands and Tenements shall be considered *ipso facto* as having fallen into the possession of the Government, and the Crown Advocate shall proceed, without any other formality, to dispose of them at Public Auction, and deposit the net proceeds at the disposal of Government”.

The Mortmain Act, 1967:

Section 3:

“No immovable property situated in Malta shall be considered as alienable to, or shall, under any title, be acquired by, any Church or Pious or Religious Institution, except under the express condition that such property shall, within the prescribed period, be definitely and absolutely disposed of, by such Church or Institution, to some person or persons not subject to the above limitation”.

Section 5:

“Where any immovable property falling under the provisions of section 3 of this Act has not been absolutely sold or disposed of, as laid down in that section, within the prescribed period or, if such period has been extended, within the extended period, then, at the expiration of the prescribed period or of the extended period, as the case may be, such property shall *ipso facto* be forfeited to the Government”.

3.2.1 “Immovable Property”

The following is an attempt at interpreting the wording of the Mortmain Act, 1967 with due reference to the text of the 1822 Proclamation and the contribution of the Courts to its clarification and application. When not otherwise specified the mention of “Act” and “sections” is to be understood as a reference to the Mortmain Act, Cap. 201 of the Revised Laws of Malta, and its respective sections.,

3.2.1 The “Immovable Property”

One of the hard and fast rules of Mortmain Legislation in Malta is that it always has been applied for “immovable property”¹⁴. The original 1822 proclamation spoke of “Lands or Tenements” – “Beni stabili di qualunque

siasi descrizione”. According to section 2: “immovable property” means any land or building, and includes the *dominium directum*, the *dominium utile*, and the *nuda proprietas* or the right of usufruct of any land or building.

This latter definition is not totally free from difficulties. There cannot be any doubt that for the purposes of Cap. 201 it is the operative definition of what kind of property falls under the control of the Mortmain Act. According to the principle laid down by the Court of Appeal in *Charles Gatt v. Alfred Bellizzi no.* (25th March 1960), the definitions proffered by other laws may not be conclusively used for the purposes of a special law if such use is not expressly sanctioned by the law itself or through an Interpretative Law of general application¹⁵

The Civil Court, First Hall, however, in *Ferris v. Reynaud* (30th April 1930), interpreting the law as it stood before 1967, had held that the expression “lands or tenements” without any addition or indication restricting its meaning included both immovables by their nature, as well as immovables by reason of the object to which they refer¹⁶. This is also the principle laid down by section 311 of the Civil Code. However, the interpretation given to the expression “immovable property” in section 2 is restricted to only one heading of the Civil Code list of immovables by nature – namely, “lands and buildings”: section 308 (a) – ; and to one full heading and another part heading of the list of immovables by reason of the object to which they refer – namely, *dominium directum*; *dominium utile*: section 310(a); and *nuda proprietas* and rights of usufruct: part only of section 310 (b).

The definition of section 2 of Cap. 201 would seem to be exhaustive. If this opinion is accepted, the rights of use and habitation and praedial easements would not fall under the Mortmain Act. A wider interpretation should be excluded since we are dealing with a restrictive law which should be interpreted strictly. The fact that the Mortmain Act, 1967 has specifically opted for an *ad hoc* interpretation of the term, militates against any tendency to construct the phrase “and includes” as merely illustrative. As may be deduced from a study of the history behind the Act, the scope of operation of Mortmain legislation in Malta has always been directed to the geo-physical extension of Church control and its curtailment. Rights of use and habitation do not necessarily infer such a sharp geo-physical and juridical dimension of control, and praedial easements are only relative and qualitative dimensions of property rights¹⁷

The immovable property must be situate “in Malta”. This means that only land or buildings and the specified rights relative to land or buildings situate in “the Island of Malta, the Island of Gozo and the other Islands of the Maltese Archipelago” fall under the scope of the Act (section 2).

3.2.2 “Any Church or other Pious or Religious Institution”

In the original 1822 Proclamation, the expression ‘Churches or other Pious or Religious Institutions’ was wide enough to include a Church of any Christian denomination. Indeed exemptory acts were also passed in favour of Protestant

Churches since they also fell under the Mortmain Law ¹⁸

The official interpretation of the 1933 Act amending the Mortmain Law (and introducing the concept of exemptions for specified purposes and of the general power to exempt) rendered it only applicable to the Roman Catholic Church in virtue of its definition of “competent Ecclesiastical Authorities”. Exemptions for non-catholic Churches or Pious Institutions were still to be acquired by a legislative enactment.

In the 1942 Revised Edition of the Laws of Malta Proclamation XXIII of 1822 and the Mortmain (Exemption) Act, 1933 were consolidated in Cap. 2, the former taking Part I and the latter taking Part II. Whereas Part I was technically applicable to all Christian Churches, Part II referred to the competent authorities of Roman Catholic Church only.

The Mortmain Act, 1967, which consolidated the Mortmain Laws, was not divided in parts. The principles of the Mortmain (Exemption) Act, 1933 were incorporated in section 8 (alongside further extensions) and section 10. But the clause which determined who were the competent Ecclesiastical Authorities was moved to the general interpretative section (§ 2) while still referring to the authorities of the Roman Catholic Church only:

“ “competent Ecclesiastical Authorities” means the Archbishop of Malta or the Bishop of Gozo according as to whether the immovable property is situated within the territorial limits of the diocese of Malta or of Gozo”.

In his LL.D Thesis (1983) the present author, basing himself on the wording and drafting of the law, presented three alternative positions as to the scope and consequent applicability of the Mortmain Act, 1967:

(a) the Act was intended to regulate mortmain with regard to the Roman Catholic Church only; or

(b) the Act applied to all Churches and Pious or Religious Institutions, irrespective of denomination, except for section 8 (Exemption for Specified Purposes) and section 10 (General Power of Exemption), which only apply to the Roman Catholic Church; or

(c) the Act applied to all Churches and Pious or Religious Institutions, irrespective of denomination, with the understanding that non-catholic Churches, Pious and Religious Institutions would have to submit a certificate of approval of the specific purposes issued by the Roman Catholic Ecclesiastical Authorities, under section 8, and would enjoy the benefits of the general power to exempt subject to the concurrence of the same Roman Catholic Ecclesiastical Authorities under section 10 ¹⁹ .

All three alternative positions had some serious shortcoming. Indeed all three positions discriminate against some Church in some way or another. The concrete proposal of the present author in 1983 was that the definition of “competent Ecclesiastical Authorities” in section 2 be changed in order to include the respective authorities in each Church or denomination ²⁰

The impasse seems to have been surpassed by the Mortmain (Amendment)

Act, 1991 which has substituted the definition of “competent ecclesiastical authorities” in section 2 of the Mortmain Act, Cap. 201 with the following:

“ “competent ecclesiastical authorities” means in relation to the Roman Catholic Church, the Archbishop of Malta or the Bishop of Gozo according to whether the immovable property is situate within the territorial limits of the diocese of Malta or of Gozo, and in relation to any other church or other pious or religious institution belonging to a denomination other than the Roman Catholic Church, the highest authority of that denomination in Malta as may be recognised by the Attorney General for the purposes of this Act;” ²¹

After the foregoing amendment the Mortmain Law in Malta is clearly applicable, in all its sections, to churches or other pious or religious institutions belonging to the Roman Catholic Church and to churches or other pious or religious institutions belonging to all other denominations.

The 1991 amendment does not despell all uncertainties on the matter. What does “denomination” mean? The following two answers are equally possible and admissable:

(i) the term may refer to all *Christian* denominations which the legislator fully and clearly puts under the scope of the Mortmain Law and among which the legislator mentions the Roman Catholic Church by name for social and historical reasons. This interpretation is backed by the current use of the term “denomination” in the Christian milieu: there are various religious groupings which claim allegiance to the fundamental tenets of Christianity namely the belief in One God, the Father, the Son and the Holy Spirit and the Divine Nature of Jesus Christ in whom initiates are baptised. In the Christian context these various groupings are called “denominations”.

(ii) the term may refer to all kinds of religious groupings irrespective of origin or belief with the practical result that non-christian religions such as Islam, Buddhism, Hinduism and non-christian sects such as the Jehova Witnesses would fall under the purview of the Mortmain Law. Albeit the use of the term “church” is improper in reference to such non-christian religions or sects, the legislator seems to have usurped this latter term in a very wide untechnical sense. After all, in today’s world there are phenomena on the fringe of the religious which indeed call themselves “churches”.

As to the concrete meaning of “church and pious or religious institution”, case-law has never delved into the matter but institutes of charity like the Conservatorio San Giuseppe, Cospicua ²² and societies for catechesis like the *Societas Doctrinae Christianae (M.U.S.E.U.M.)* ²³ have been considered as falling under the law by our Courts. Furthermore, the Court of Appeal in *Cremona v. Spiteri Maempel* (2nd March 1962) established the principle that for purposes of the Mortmain Law the (Roman Catholic) Church is not one universal entity but that each separate Church and pious or religious institution is considered individually, as a separate subject of the law ²⁴

3.2.3 *De Iure Acquirendi et Retinendi*

It is an established point that the Mortmain Act does not do away with the right of a church to acquire. The *ius acquirendi* of the church still subsists. But it subsists in a modified and limited way. The church may acquire, but it always acquires with the “express” condition that the immovable property acquired will be definitely and absolutely disposed of by such church within the “prescribed period”. Such alienation by the church must be made in favour of a person which does not fall under the Mortmain Law. Therefore it is not the *acquisitio in fieri* (the punctiliar moment of the transaction) that is restricted by the law, but rather the *acquisitio in esse* (the definitive relationship between one owner and the thing). This latter concept of *acquisitio in esse* may be juridically translated into the *ius retinendi*, which in turn would imply the *ius utendi et fructu*. Every *acquisitio in fieri* is done, indeed conditionally. The condition need not be expressed at the particular moment in time. It subsists *ipso iure*. Anything contrary to it will be considered as if it was not written.

Therefore the Mortmain Law concerns more the law with regard to the enjoyment and the extension of the right of ownership than with regard to the question of capacity to contract. The actual wording of the law may give the impression that it is the rights of acquiring and alienating that are in a way directly involved with the restriction of the law. However, the grammatical ‘subject’ of section 3 is “immovable property”. The use of the passive in its regards emphasises the “express condition” as a *sine qua non* to any contract or transfer of property where a church is involved. The right to alienate property to a church is also modified indirectly since it cannot be simple and unconditional but must always be conditional, irrespective of the will of the person alienating the immovable property ²⁵

3.2.4 Periods of Time

In the 1822 Proclamation the immovable property acquired by a church was to be definitively and absolutely disposed of “within the term of one year from the date of such acquisition”. This term was too draconian. It was not until the Mortmain Act, 1967 that a more realistic attitude was taken with regard to the period of time available for disposal of the property.

The general term with regard to most titles is still that of **one year from the date of acquisition** (cf. section 2).

In the case of immovable property which is acquired by any church or pious or religious institution subject to the temporary right of usufruct in favour of one or more persons not being a church etc., the term is one year from the day of the cessation of such usufruct and its consolidation with the *nuda proprietas*.

In the case of immovable property which is acquired by any church etc. subject to the right of use in favour of a third party not in mortmain, or subject to the right of habitation in favour of one or more persons, the term is one

year from the day of the cessation of such right of use or habitation.

These provisions with regard to immovable property burdened with rights of usufruct and habitation were justified on the ground that it is generally very difficult to sell property so burdened. The law does not cater for the yet more difficult situation of property burdened by a contract of lease.

The question of title by legacy has also been given separate consideration. Immovable property, not burdened with the rights of usufruct, use and habitation, which is acquired by any church etc. by title of legacy must be disposed of within one year from the day on which such church etc. is given possession of such property or within two years from the day of the death of the testator, whichever of both terms is the earliest. Albeit this is a provision in the right direction one must state that it still falls short of an equitable solution to the problem of testamentary dispositions. It is not uncommon for the heirs not to inform the church etc. of any legacy left in its favour with the consequence that at the lapse of two years the legacy is *ipso facto* converted into a gift to Government. Such a complaint was already officially communicated to the British Authorities in the *Pro Memoria* which Cardinal Rampolla handed to Sir Lintorn Simmons on 9th April 1890:

“Some new law would be most useful regarding public notaries to oblige them to notify within a given time to the ecclesiastical authority the testamentary dispositions received in their acts which might be in favour of the Church, such as pious legacies, and thus to prevent that such disposals of property which are unknown should remain unexecuted after the death of the testators, when as too often happens, the heirs do not care to fulfill these legacies”²⁶

3.2.5 Forfeiture *Ipsa Facto*

In default of absolute and definitive disposal within the prescribed or the extended period, the immovable property is *ipso facto* forfeited to the Government (section 5).

Forfeiture means “the loss of all interest” in the property concerned. On general principles, a clause importing forfeiture must be construed strictly. Our Courts*have repeatedly held that forfeiture, albeit it was the sanction of the law, was to be reconciled with the *mens* of the law itself which was intended to prevent the expansion of mortmain and not liberalities to the Church:

“Il testatore, Francesco Savarese disponeva a favore di un ente morale, il Conservatorio di San Giuseppe della Cospicua, nel modo che gli viene permesso col Proclama No. XXIII del 25 Giugno 1822, legge intesa ad evitare la sottrazione dei beni stabili al commercio ed agli oggetti di generale utilità, e non già intesa a privare le Chiese, ed altri luoghi più e mani morte dal vantaggio della liberalità e devozione dei cittadini disponenti”²⁷

In *Amato v. Grima* (1861) it was stated that forfeiture of immovable property under the Mortmain Law did not prejudice the rights of the Church to the fruits and income prescribed by the testator for pious purposes (e.g. pious burdens)²⁸. This would imply that for our Courts forfeiture is not necessarily tantamount to “the loss of all interest” by the church in the particular immovable property.

Whereas under English Law a tenant could take advantage of forfeiture²⁹, the Maltese Courts have held that it is not for third parties to take advantage of the forfeiture and any action to be taken on such grounds appertains only to the Attorney General³⁰

Forfeiture *ipso facto* operates in virtue of the law which provides this penalty immediately upon the verification of certain determinate facts. In the case of section 5, the relevant facts to be ascertained are the non-disposal of the particular determinate immovable property and the lapse of the period of time applicable to the case. There is no need for any official declaration to effect forfeiture. The sanction of the law is automatic.

4. A Concluding Remark

The foregoing has been a discussion of the general principle behind Mortmain Legislation in Malta. The history of this institute would be incomplete without a fair treatment of the various inroads into the general principle which have been developing in Maltese legislation during the last century. Another article will deal with the different exceptions to the general principle, contained in the Mortmain Act, Cap. 201.

Rev. Dr. Charles J. Scicluna read law at the University of Malta and graduated LL.D. in 1984. He also read philosophy and theology at the Faculty of Theology and received his Licentiate in Sacred Theology in 1986. That same year he was ordained a priest by H.G. Mgr J. Mercieca, Archbishop of Malta and was sent to Rome to specialise in Canon Law. He graduated Doctor in Canon Law with specialisation in Jurisprudence (J.C.D. (Jurisp.)) from the Gregorian University in May 1991. Besides participating in parish ministry, he is at present Defender of the Bond at the Metropolitan Tribunal.

1. Cf. G. SANTACROCE, “Manomorta Ecclesiastica”, *Digesto Italiano* XV, parte I (1905), 753 – 769 at 753 – 754.
2. Cf. G. LANDI, “Manomorta”, *Enciclopedia di Diritto* XXV (1965), 542 – 545 at 543.
3. Cf. FALCHI, “Manomorta (Storia del diritto)”, *Digesto Italiano* XV, parte I (1903 – 1907), 700.
4. Sir E. COKE, *Commentary on Lyttleton*: quoted by W. BURGE Q.C., *House of Commons Report on Mortmain (1844)* 164, par. 1378.
5. PUBLIC RECORDS OFFICE (Kew, England) (PRO). CO. 158.1: Despatches 1801 (January – October) pp.78v – 79v: Charles Cameron to Lord Hobart. Malta 29th July 1801: Enclosure: Proclamation by Charles Cameroon 15th July 1801:

“Alla Nazione Maltese

“Incaricato da Sua Maestà il Re della Gran Bretagna di reggere tutti gli affari, fuorché li Militari, di queste Isole di Malta e Gozo, col titolo di Commissario Civile della Maestà Sua, abbraccio con sommo contento questa occasione di assicurarvi che SUÀ MAESTÀ vi accorda piena protezione, e godimento di tutti i vostri più cari diritti proteggerà le vostre Chiese, la vostra Santa Religione, le vostre persone, e le vostre proprietà”.

6. CF. PRO.CO.325.39 (40): Report: Vacant See at Malta 1830. Colonial Office, 16th October 1830.

Reference is made to instructions to General Ponsonby in Malta and Sir Frederick Hankey in Rome from Sir G. Murray (8th October 1829).

7. Cf. P. DE BONO, *Sommario della Storia della Legislazione in Malta* (Vàletta 1897) 346: “Il riconoscimento della Chiesa stabilita nell’isola non importava l’immutabilità del suo diritto pubblico ecclesiastico la modificazione del quale doveva essere anzi il naturale portato del nuovo governo e delle nuove relazioni fra i due poteri”.
8. Cf. Great Britain: Parliamentary Papers: House of Commons 1844, Vol. X, p. 587: Select Committee appointed to enquire into the Operation of the Laws of Mortmain etc.: Report and Workings 24th July 1844: Richard Matthews explained why he was in favour of mortmain legislation to the 1844 House of Commons Select Committee on Mortmain in these terms:

“The effect of vesting land in mortmain is, that the owner never dies, and the land becomes inalienable; consequently, if continual accretions are to be made to the quantity of land in mortmain, it may in time amount to any assignable quantity, or might swallow up the whole land of the kingdom; that is unless restrictions were imposed upon such alienations in Mortmain. I apprehend the possession of land at all times will give a proportionate influence to those who own and have the disposition of it and consequently, that if very large quantities of land were to come into the hands of particular classes of persons in mortmain, it might give to those classes a very great and undue preponderance, both politically and in many other relations of life. For these reasons, without going into very minute matters just now, I decidedly approve of the general policy of the laws of mortmain”.

9. Cf. PRO.CO.158.66: Despatches 1830: F.C. Ponsonby to R.W. Hay (“Private”); Malta 1st July 1830.
10. Cf. PRO.CO.158.68: Despatches 1831 Vol. I (January – July): Ponsonby to Viscount Goderich (Blue Book) Enclosure 2: Report upon the Islands of Malta and Gozo for 1830: Ecclesiastical Establishment. Malta 3rd March 1831.
11. Cf. PRO.CO.537.8: Supplementary Correspondence 1876 – 1898 Vol. III: Simmons to Salisbury (Secret) 21st April 1890.

Cf. etiam: DE BONO, *Sommario* (1897) p. 353, note 51b: “Si colcola che la proprietà immobiliare nell’isola appartenga per un terzo alla Chiesa, per un terzo al governo e per un terzo ai privati”.

12. Cf. *Proclamations, Minutes, Official Notices* (Malta 1821 – 1822), 28th June 1822: Vol. II, pp. 48 – 49.
13. PRO.CO.158.31: Correspondence Malta 1822, Vol. I, No. 26: Richard Plasket to Robert Wilmot. 21st July 1822.
(The bold italics in the text are ours).
14. The point was reaffirmed officially by Dr Vincenzo Frendo Azzopardi before the Royal

Commission on 9th December 1911.

Cf. MALTA ROYAL COMMISSION 1912, *Report*, Minutes 9891 – 9897: p. 270.

15. Cf. *Kollezzjoni ta' Decizjonijiet* (KD.) XLIV.i.63.
16. Quoted in Appeal stage: *Ferris v. Reynaud*: KD. XXVIII.i.48 at 50.
17. “*Servitus est qualitas rei imposita, qua quis ius suum deminuit, alterius auxit*”: ULPIANUS, 1.5 §9 D. de novi operis nuntiatio 39, 1.
18. Section 5 of the Anglican Church (Property and Administration) Ordinance (Ord. VI of 1876) (Cap. 19 of the 1984 Revised Edition of the Laws of Malta) states:

“The said Anglican Church is in virtue of this Ordinance authorised to hold and enjoy the immovable property mentioned in the foregoing sections (sections 2, 3, 4) without being bound to sell or transfer the same notwithstanding any provision contained in the Mortmain Law”.
19. Cf. C. J. SCICLUNA, *The Mortmain Act, 1967: Its Genesis and Interpretation* (Dissertation for the Degree of Doctor of Laws (LL.D.): University of Malta 1983) (unpublished) p. 69.
20. *IBID.*, p. 126.
21. Section 2 of Act No. XIV of 1991 (passed by the House of Representatives at Sitting No. 541 of 2nd July 1991; assented to by the President on 12th July 1991): *Government Gazette*, 15,453 (12th July 1991) Supplement A, 352 – 356 at 355.
22. Cf. *Agius v. Dimech* (8th May 1866): KD. III.583.
23. Cf. *Cremona v. Spiteri Maempel* (2nd March 1962): KD. XLVI.i.133.
24. Cf. *IDEM*, at p. 137 per A.J. MAMO C.J.:

“Issa, il-ligi, kif jidher mill-kliem taghha, inkluzi l-istess kliem tal-preambolu, mhux tikkunsidra l-Knisja bhala korp universali wiehed, izda tikkunsidra l-Knejjes u l-istituzzjonijiet ohra piji jew religjuzi bhala suggetti ndividwali kapaçi li jaghmlu akkwist ta' proprjeta`.
25. Cf. Court of Appeal (Sir A. MICALLEF C.J.), *Amato v. Grima* (1st March 1861): KD.II.348; Court of Appeal (Sir A. MICALLEF C.J.), *Agius v. Dimech* (28th May 1866): KD.III.583; Court of Appeal (Sir A. DINGLI C.J.), *Demajo Pisani v. Adami* (6th December 1889): KD.XII.343; Court of Appeal (Sir A. MERCIECA C.J.), *Ferris v. Borg* (13th June 1927): KD.XXCI.i.851.
26. PRO. CO.537.8: Supplementary Correspondence 1876 – 1898, Vol. III Enclosure Malta 89 (Secret) 10th May 1890: *Pro Memoria*: Cardinal Rampolla to Sir J.L. Simmons.
27. *Demajo Pisani v. Adami* (3rd July 1889): KD. XXI.283 per P. MIFSUD J.
28. Cf. KD. II.348 at 370.
29. Cf. *Morelle Ltd. v. Waterworth* (1954) (per Lord Justice DENNING): 3. W.L.R. 257 quoted in: R.E. MEGARRY, “Notes”, *The Law Quarterly Review* XXX (1954) 454 – 456.
30. *Grech v. Vassallo* (15th December 1890): KD. XII.558 at 561 per Sir A. DINGLI C.J.