

Parte I
Dottrina

CARLO RIMINI, Il divorzio e i suoi effetti a cinquant'anni dalla riforma del diritto di famiglia.....» 707

The divorce law was approved following a heated political and social debates in the second half of the 1960s. The introduction of divorce in Italy predated the reform of family law, which is now celebrating its 50th anniversary, and represents, even more than the 1975 family law reform, a compromise between secular demands and Catholic resistance that characterized Italian society in those years. The purpose of these reflections is to understand whether this compromise has led to a divorce law that is still efficient in contemporary society or whether, on the contrary, a new reform is now essential. While, in relation to the grounds for divorce, the legislative measures that have been introduced over time have had the effect of adapting the institution of divorce to social changes, reform appears to be unavoidable in relation to the divorce's financial effects.

FILIPPO LAZZARA, Principio di sussidiarietà sociale e accordi della crisi coniugale: quali spazi per l'autonomia privata.....» 725

The planned regulation of the economic effects of marital break-up fulfills not only the private interests of the spouses but also to a general interest of the system: post-marital solidarity. By reviewing legislative developments - most recently Legislative Decree no. 149/2022 - it is clear that the legislator's approach values the role of private autonomy in the context of spousal relationship, both in the physiological and pathological phases. Agreements on the management of legal and financial aspects of the crisis can be classified into four types: crisis agreement, separation agreements in view of the divorce, prenuptial and postnuptial agreements. Through an analysis of the role of private autonomy in view of the realization of a general interest (ex art. 118, co. 4, Cost.) this article aims to overcome the hesitations concerning the admissibility of these types of agreements.

DARIO ALFONSI, Note in tema di condizione sospensiva del fallimento del matrimonio e accordi sulla crisi» 743

With an approach that now appears to be consolidating, the Court of Cassation upholds the validity of prenuptial agreements, provided that the failure of the marriage does not constitute the genetic cause of the contract, even though it may operate as a conditioning event. The Supreme Court thus reiterates the distinction between the essential and incidental elements of the juridical act. Yet, although this distinction still retains a certain enduring didactic value, it is of little assistance in elucidating the functioning of legal dynamics, given the definitive abandonment of the abstract causal theory. Thus, such a condition would not withstand the so-called resilience test. It follows that the conditional mechanism must not be relied upon to explain or justify the admissibility of the agreements at issue.

MASSIMO SARACENO, L'opponibilità dell'assegnazione della casa familiare nella circolazione immobiliare.....» 757

The enforceability against third-party purchasers of the judicial order assigning the family home in the context of separation or divorce proceedings constitutes one of the major pitfalls for notarial practice in real estate transactions, both because (i) the debate concerning the alleged

lack of coordination between Article 337-sexies of the Civil Code (insofar as it provides that ‘the order of assignment and the order of revocation are registrable and enforceable against third parties pursuant to Article 2643’) and Article 6(6) of Law No. 898/1970 (which, by contrast, states that ‘the assignment, once registered, is enforceable against the third-party purchaser pursuant to Article 1599 of the Civil Code’) has not been entirely settled, and because, more generally, (ii) the conflict between the spouse to whom the family home has been assigned and the owner of the property cannot always be resolved through the ordinary mechanisms of registration, particularly where the attempt to deprive the assignee spouse of the enjoyment of the property results from a fraudulent use of interconnected contractual instruments.

IVAN LIBERO NOCERA, *Il trust in funzione parasuccessoria con finalità assistenziale*.....» 801

The article examines the use of the trust as a parasuccessory instrument with an assistential function within the Italian legal system. Proceeding from the growing theoretical and practical relevance of the inter vivos trust as a tool of family protection and estate planning—particularly when aimed at the care of vulnerable individuals—it analyses its compatibility with the principles of forced heirship that define the Italian succession framework. Drawing on recent case law of the Corte di Cassazione, the study highlights the procedural and evidentiary challenges faced by forced heirs in seeking to reduce trust dispositions. Particular attention is devoted to the possible analogical extension of the fedecomesso assistenziale and to the legislative framework introduced by Law No. 112 of 2016 (“Dopo di noi”). Ultimately, the inquiry seeks to determine whether the Italian law of succession can evolve toward a model capable of integrating fiduciary instruments within its dogmatic structure, reconciling the principles of autonomy and solidarity in the post-mortem transmission of wealth.

Parte III

L'opinione di

SALVATORE PATTI, *Convivenza, contratto di convivenza, unioni civili*» 839