

## Webinar “*Family Law: Answers to New Situations*” 20<sup>th</sup> November 2025

### ABSTRACTS

#### SESSION I

##### *Whose Law is it Anyway? The Case of Matrimonial Property*

Sharon Shakargy. Hebrew University of Jerusalem

It is often argued that courts avoid foreign laws because they prefer local law. It would make sense if they did—after all, foreign law can be hard to understand and complicated to employ, and it is also ... foreign.

Aiming to investigate this assumption through a qualitative analysis of all available cases on one question and comparing the findings with the approach towards local matrimonial property cases in Israel, this Article finds something rather different. At least as regards Israeli judges discussing matrimonial property, it appears that sometimes judges do not prefer the *lex fori* but something else. The Article discusses one case that reveals what could be described as a judicial mutiny, where judges chose to apply neither foreign law nor local law *per se*.

In the case of matrimonial property, a particular legal norm seems particularly close to the judges’ hearts. So much so that despite legislative intervention designed to change the judicially-shaped law, the courts continue to apply their own, judicially created law.

### *On Intention as a New Way for the Establishment of Filiation*

**Virginia Zambrano.** University of Salerno

The central idea of the study is to highlight how the law is evolving from a traditional model anchored to biological truth and marriage to a more flexible one that recognises intentional will (the parental project) and socio-affective bonds (social parenthood), all balanced by the omnipresent standard of the “best interests of the child”.

Parenthood is shifting from a model based on nature to one based on culture and intentionality. This movement brings forth elective parenthood as a new structure, no longer rigidly anchored to the couple, but open to multiple parenthood or multiparentality (as provided for in progressive legal systems such as Canada). The challenge for legislators remains that of harmonising the need for legal certainty with the recognition of a social reality that values responsibility and affection over mere genetic ties.

### *Same-Sex Unions and the Safeguarding of the Economically Weaker Party*

**Roberta Marino.** University of Naples “Federico II”

The issue of same-sex unions and the protection of the economically weaker party following the dissolution of the couple’s relationship has given rise to several complex legal questions in Italy. Law No. 76 of 2016, which, in a single article, set out the regulation of civil unions and de facto cohabitation.

Article 1, paragraph 1, of the so-called Cirinnà Law clarifies that the statute establishes the civil union between persons of the same sex as a specific social formation within the meaning of Articles 2 and 3 of the Italian Constitution, and also governs de facto cohabitation.

The central issue concerns the protection of the economically weaker party. While civil unions are governed by a framework that is almost entirely analogous to that of marriage—thanks in part to the express reference made by Article 1, paragraph 25, of Law No. 76/2016 to the Divorce Law (Law No. 898/1970)—de facto cohabitations must instead be distinguished between simple and contractual forms. In the former case, only an obligation of maintenance (*obbligo alimentare*) is provided for, whereas in the latter, it is considered admissible for the parties to stipulate a maintenance obligation within the cohabitation agreement.

As for civil unions between persons of the same sex, in the event of dissolution, the economically weaker partner is entitled to maintenance pursuant to Article 5 of Law No. 898/1970, by virtue of the express reference contained in Article 1, paragraph 25, of Law No. 76/2016.

In this perspective, the analysis of the function and determining criteria of the divorce allowance (*assegno divorzile*) assumes central importance.

As is well known, the issue has been addressed in three landmark judgments of the Joint Sections of the Court of Cassation (*Corte di Cassazione, Sezioni Unite*): Judgment of 29 November 1990, No. 11490; Judgment of 11 July 2018, No. 18287; and Judgment of 5 November 2021, No. 32198. These decisions have emphasized the predominantly compensatory and equalizing—rather than merely assistential—function of the divorce allowance (*assegno divorzile*).

## SESSION II

### *Germany's Family Law Reform: Meaningful Change or Cosmetic Correction?*

**Dorota Miler.** Universities of Gdańsk & Augsburg

The last comprehensive reform of family law in Germany was enacted in 1998 through the Law Reform Act on Parent and Child Law of December 16, 1997. Since then, only incremental changes have been introduced. It is undeniable that German society has undergone significant transformation since 1997, particularly in the prevalence and acceptance of diverse family structures such as unmarried partnerships, patchwork and rainbow families. These societal shifts call for a coherent and forward-looking modernization of the legal framework to reflect the growing number of non-traditional families.

In January 2024, the Federal Ministry of Justice presented key principles for reforming German family law. This was followed in December 2024 by the publication of draft bills addressing parentage law, child law, and maintenance law. The likelihood of these drafts being adopted in the near term is low – primarily due to the Parliamentary elections held earlier this year. Nevertheless, the proposals were grounded in the findings of a working group composed of legal practitioners, judges, and academics, and were informed by discussions held across various forums, including the 72nd German Jurists' Conference in 2018. As a result, the reform initiatives are driven less by political considerations and more by the genuine legal and social needs of German society. They provide a clear

indication of the evolving trajectory of family law and signal changes that are both necessary and inevitable.

The presentation begins by outlining selected recent developments in German family law and proceeds to examine key societal trends that are reshaping modern family structures. It then explores selected legal issues as they are currently regulated and as proposed in the draft legislation, viewed through a European comparative lens. These issues include: the recognition of legal parenthood – specifically, whether a female spouse of a birth mother can be acknowledged as a co-parent at the child's birth; the conditions under which parents of a child born outside of marriage are granted joint custody – particularly, whether such custody is granted by default; the possibility for parents to enter into agreements governing custody and contact arrangements – including whether these agreements are legally enforceable and whether third parties may be granted custody or contact rights; and the eligibility criteria for adoption – namely, whether spouses can adopt individually and whether unmarried partners can adopt jointly.

The presentation concludes by identifying key reform trends in German family law. While none of the proposed changes are as groundbreaking as the 1997 reform that equalized the legal status of children born within and outside of marriage, they nonetheless represent meaningful progress. The reforms aim to simplify the recognition of parenthood, facilitate adoption without unnecessary procedural hurdles, ensure parity in parental rights, and enhance the autonomy of individuals in family-law relationships. Importantly, they also contribute to greater equality among family members, irrespective of sexual orientation.

### ***Gender-based Domestic Violence and its Effects on Family Relationships***

**Giovanna D'Alfonso.** University of Campania “Luigi Vanvitelli”

The Istanbul Convention on preventing and combating violence against women and domestic violence of 11 May 2011, which requires States to take concrete action for prevention, protection and monitoring, has had a significant positive impact, contributing tangibly to legislative, political and cultural changes. In Italy, it was ratified by Law 77/2013 and entered into force on 1 August 2014.

Initially, the contrast to violence against women focused mainly on the repression of criminal conduct and, for a long time, both legislators and judicial authorities failed to show similar attention to the different aspects of family relationships, where gender-based violence has serious repercussions not only on the direct victim but also on the family relationships.

The aim of the speech is to highlight, first and foremost, how the national legislator has gradually adopted a different, comprehensive approach, aimed not only at punishing the author of the crime, but also at taking into account the impact of conduct constituting abuse in the broad sense, even if not criminally punishable, on family crises and child custody.

Furthermore, the fundamental role of the judicial authorities will be emphasised, as they must guarantee effective protection for women and children involved in cases of violence.

### ***Family Law in the Age of Algorithms: Protecting Autonomy and Vulnerability***

**Abigail Quesada.** University of Granada

The digital transformation of society is reshaping the foundations of family law. Algorithms and artificial intelligence increasingly mediate personal relationships, decision-making within families, and even the exercise of parental authority. This presentation explores how these technological developments impact key principles of family law, particularly autonomy, responsibility, and the protection of vulnerable persons, and how civil law systems should respond to safeguard them.

Family life now unfolds in environments marked by algorithmic influence: from social media shaping children's digital identities, to automated welfare systems assessing family vulnerability, or digital tools guiding custody and visitation arrangements. These realities challenge traditional notions of consent, intimacy, and privacy, and require a new understanding of how the law protects individuals within familial relationships. The presentation will address three main dimensions: (1) the digital exercise of parental authority, including issues of sharenting, children's data protection, and parental duties of digital education; (2) the impact of automation on decision-making and family justice, such as predictive tools in family courts and algorithmic risk assessments in child protection; and (3) emerging forms of autonomy, including digital wills, online inheritance, and the continuing personality of individuals in virtual spaces.

Through a civil law perspective, the analysis highlights the need to reinterpret autonomy not as isolation but as relational autonomy, intrinsically linked to the protection of vulnerable members of the family, children, elderly persons, and dependent adults, in digital contexts. It argues for a renewed legal framework capable of ensuring transparency, accountability, and human oversight in the use of algorithms that affect family life. By combining principles of private autonomy with the ethics of care and technological responsibility, the presentation seeks to outline a human-centred model of family law fit for the algorithmic age.