Marriage celebrated in Malta produces by default, unless an agreement between the spouses stipulates otherwise subject to the permission of the court, the community of acquests. This means that for the community of acquests not to apply automatically there needs to be a public contract stating that a different regime will apply and excluding the community of acquests[1]. If other regimes are opted for e.g. separation of estates, then in this case, there will be no common property, but everything is kept separately and each spouse will manage his or her own property. 

The community of acquests is the common pot between the spouses, in which anything which is acquired by them during the marriage is vested within a common fund. The management and administration of this fund is vested in both spouses. Some acts of administration can be done unilaterally without requiring the consent of the other spouse. These are usually known as Ordinary Acts[2]. Such acts include opening a bank account other than for borrowing and lending money, for expenses incurred by the family, acquisitions of minimal value etc. However, other acts require the consent of the other spouse, and if consent is wavered, then each spouse has the opportunity to attack the act performed without the required consent[3]. Such acts are known as Extraordinary Acts, inter alia, we find transfer of business concerns, contracting of any suretyship or...
giving of a pledge, transfer of the matrimonial home etc. The community of acquests is established on the day of celebration of marriage and terminates upon the dissolution of marriage. The community consists of everything which is acquired by both spouses, fruits accruing from paraphernal property, any property purchased or money acquired with the common fund, fruits of children’s property as is subject to the legal usufruct of the parents and also fortuitous winnings.

Under the Maltese Civil Code, paraphernal property is defined as: Where the community of acquests or the community of residue under separate administration operates between the spouses, all property which is not included in paragraphs (a) to (f) of section 1320 or is not dotal is paraphernal. Where the property of the spouses is held under the system of separate property all property which is not dotal is paraphernal.

So, if the property is not part of the community and it is not dotal, it is paraphernal property. If there is no common property, it is paraphernal property. The person who is responsible for paraphernal property is the person who owns it. If one of the spouses inherits a house and it is not part of community property, then it is considered to be paraphernal. The only exception to this rule is if the particular house has become the matrimonial home. In this case the provisions under the Civil Code regarding the matrimonial home will be referred to.

What if one of the spouses owns paraphernal property, such as a stretch of land, and during the marriage the property is developed? The principle is that the owner of a piece of land will also be the owner of anything developed on it. However this does not mean that the party who is not the owner might be compensated for the enrichment of the property. The Actio De in Rem Verso establishes the principle of unjustified enrichment, in that anyone who is enriched because of the work I have done for him is bound to compensate me, if it is proved at the satisfaction of the court that the owner is enriched at my expense. One must keep in mind that every case has its own unique merits and facts so there is no clear cut rule as to how the court will decide the case.

In the case Clyde Meli Vs Maurice Pace Decesare, the wife owned a piece of land, which was established to be her own paraphernal property. This was developed during marriage with money from the community of acquests.

The court declared that since the building was built with the money of the community, the community has the right to be compensated against the paraphernal assets of the wife. This would be a right of credit.

“Kull min ghandu l-proprietà ta’ l-art, ghandu wkoll dik ta’ l-area ta’ fuqha, u ta’ dak kollu li jinsab fuq jew taht wiċċ l-art”. Naturalment, jekk l-omm
The law stipulates a jures tantum presumption that anything which the spouses possess shall vest within the common fund. However, any property which may come with a title to either spouse, which is antecedent to the marriage, shall not vest in the common fund. The law is making it clear that paraphernal property will not be exempted from the community of acquests.

Any property, whether immovable or movable, inherited by either spouse, before marriage or after the marriage has been celebrated, shall be deemed to be paraphernal property and shall therefore pertain to the spouse upon whom such property has devolved.

In Fiona Spagnol proprio et nomine vs. Andrew Spagnol, it was stated:


Id-dar matrimoni jali nxtrat f`isem ir-raġel. Il-mara ikkontribwiet għax-xiri ta` din id-dar (Lm1600). Il-Lm1600 huma propjeta` parafernali tagħha u għandha dritt tohodhom lura.

Even though it was the husband’s house but the matrimonial home for the wife and children, the husband was ordered to continue to pay the loan on the house, a house which he is not going to live in. Once he paid the loan,
Debts placed against the community of acquests include:

- the burdens and obligations which encumber the assets under the act of their acquisition;
- the expenses and obligations incurred in the administration of the acquests, except such expenses as are incurred by acts which require the consent of both spouses but which are performed by one spouse only without the consent of the other spouse;
- the expenses and obligations, even if incurred separately, for the needs of the family including those for the education and upbringing of the children;
- every obligation which is contracted by the spouses jointly;
- debts relating to the ordinary repairs of the property of either of the spouses, the fruits of which are included in the acquests; and
- any debt or indemnity due as a civil remedy by either spouse where such indemnity is not due as a civil remedy in respect of any offence wilfully committed.[10]

Here we are talking of loans, hypothecs, stamp-duty etc. If it is for the needs of the family, especially for the children, there is a lot of leniency in what the spouses can or cannot do. If I have a right to the fruits of the property, even though it doesn’t belong to me, then I have a duty to keep it in good repair. Here we are talking of ordinary repairs. However, if both spouses are sued, then both must pay the damages but if one spouse deliberately committed an act, for which the other was sued for, then the latter does not need to pay. If one of the spouses has a credit against the community of acquests, that will be paid first; after which, creditors against a specific spouse may come after a credit.

If one of the spouses has outstanding debts which precede the marriage, so that it is a debt against his paraphernal property, creditors may sue the spouses for what is in the community but only from that spouse’s share of the community of acquests.[11]

If both spouses have pending debts, then so does the community of acquests. Therefore if there is not enough money to satisfy the payment of that debt, the creditors may enforce their claim against the paraphernal property of the spouses. Pre-1993, the wife’s paraphernal property was always protected. Since 1993, both spouses have to put up their paraphernal property.[12]

Article 1331 sets out that if money was taken out of the community of acquests but the spouses who did so can prove that whatever debt was incurred was for the needs of the family, then s/he is offered protection by law. If this cannot be proved then the spouse must reimburse the money.
When a spouse has a credit against the community, then s/he may demand to be assigned property of the community against that credit. First the money has to be reimbursed, then movables and finally immovable. The principle behind this article is the spouse who is a creditor can always get his/ her money back. Money may be paid at the end of the community of acquests during separation proceedings. However, if such reimbursements are in the interest of the family then the court may be order that they are made at an earlier stage.

[1] Civil Code A. 1237(2)  
[3] See Civil Code Articles 1325- Exclusion from administration, A. 1326- Annulment of the act,  
[5] Civil Code, A. 55a  
[7] First Hall Civil Court, 24/05/2002  
[8] Civil Code A. 1321  
[9] First Hall Civil Court, 31/10/2002  
[10] Civil Code A. 1327  