Recap

- Social sciences collection of data method – non-participant (observer is detached) vs participant observation (direct observation. researcher may take part in the group – various types e.g. Overt & covert)
- Other methods of collection of info – interviews, questionnaires, case study
- Types of Qs – open (explanatory – examination in chief) vs close ended (yes/no – cross-examination)

Recap

- Analysis & Interpretation of data

1. Edit
2. Code
3. Classification
4. Tabulation

Process used also in judgments e.g. Camilla Scerri et vs Awtorita tal-Artijiet (Lands Authority) – LAB had to award compensation – 9 differing valuations for the same land for the same period

Legal Research and Interpretation Methodology

Lecture Title: Research Process Part III (Interpretations) and Legal Writing



Diploma in Law (Malta)

Lecturer: Dr Elian Scicluna

Date: 19/02/2026

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Law is stated in general terms since it is intended to apply to various situations. The law cannot be amended everytime someone thinks of a new possibility
- Legislators provide the law in generic terms. Courts/tribunals decide whether particular situations are covered by the law i.e. Match facts with legal rules
- Meaning of the law is explained in judgments (sometimes even in parliamentary debates)
- Depending on the provision of the law, interpretation may be literal or flexible

E.g. of generic law Art. 535 of Cap. 16 (Spoliation/ pretended rights):-

*535.(1) Where any person is **by violence or clandestinely** despoiled of the **possession**, of whatever kind, or of the detention of a movable or an immovable thing, he may, **within two months from the spoliation**, bring an action against the author thereof demanding that he be reinstated in his possession or retention, as provided in article 791 of the Code of Organization and Civil Procedure.*

(2) Such reinstatement shall be ordered by the court even though the defendant be the owner of the thing of which the plaintiff has been despoiled

Criminal action counterpart - Ragion Fattasi Art. 85 of Cap. 9:-

*85.(1) Whosoever, **without intent to steal or to cause any wrongful damage**, but only **in the exercise of a pretended right**, shall, **of his own authority**, compel another person to **pay a debt**, or **to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person**, shall, on conviction, be liable to imprisonment for a term from one to three months*

Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (multa):

Provided further that it shall be a defence for the person accused of this offence to prove that such disturbance was done as a temporary measure imposed by actual necessity either in lawful self-defence or in the lawful defence of another person:

Provided further that in cases of arbitrary or forced evictions of an occupant from the property which he occupies as his primary residence, including any unpermitted entry into the property, removal of furniture, appliances or personal belongings from the property, or the suspension or interruption of water and electricity services, in whichever manner, including the installation of devices which enable the owner to suspend the direct supply of water and electricity services to the property, the fine (multa) shall not be less than one thousand five hundred euro (€1,500) and not more than four thousand euro(€4,000).

(2) The provisions of article 377(5) shall apply in the case of any conviction under sub-article (1) and when the conduct of the offender has resulted in a person being despoiled the Court shall apply the provisions of that sub-article in order to ensure that the person despoiled is fully revested in the position before he was despoiled.

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

E.g. of spoliation cases:-

i. Landlord cuts electrical supply to the premises rented to the lessee
ii. Spouse changes locks of the matrimonial home without giving a copy to the other spouse
iii. Passing of conduits/pipes on neighbours' property
iv. Opening of window in party wall overlooking neighbours' property
v. Putting a water tank on neighbour's roof

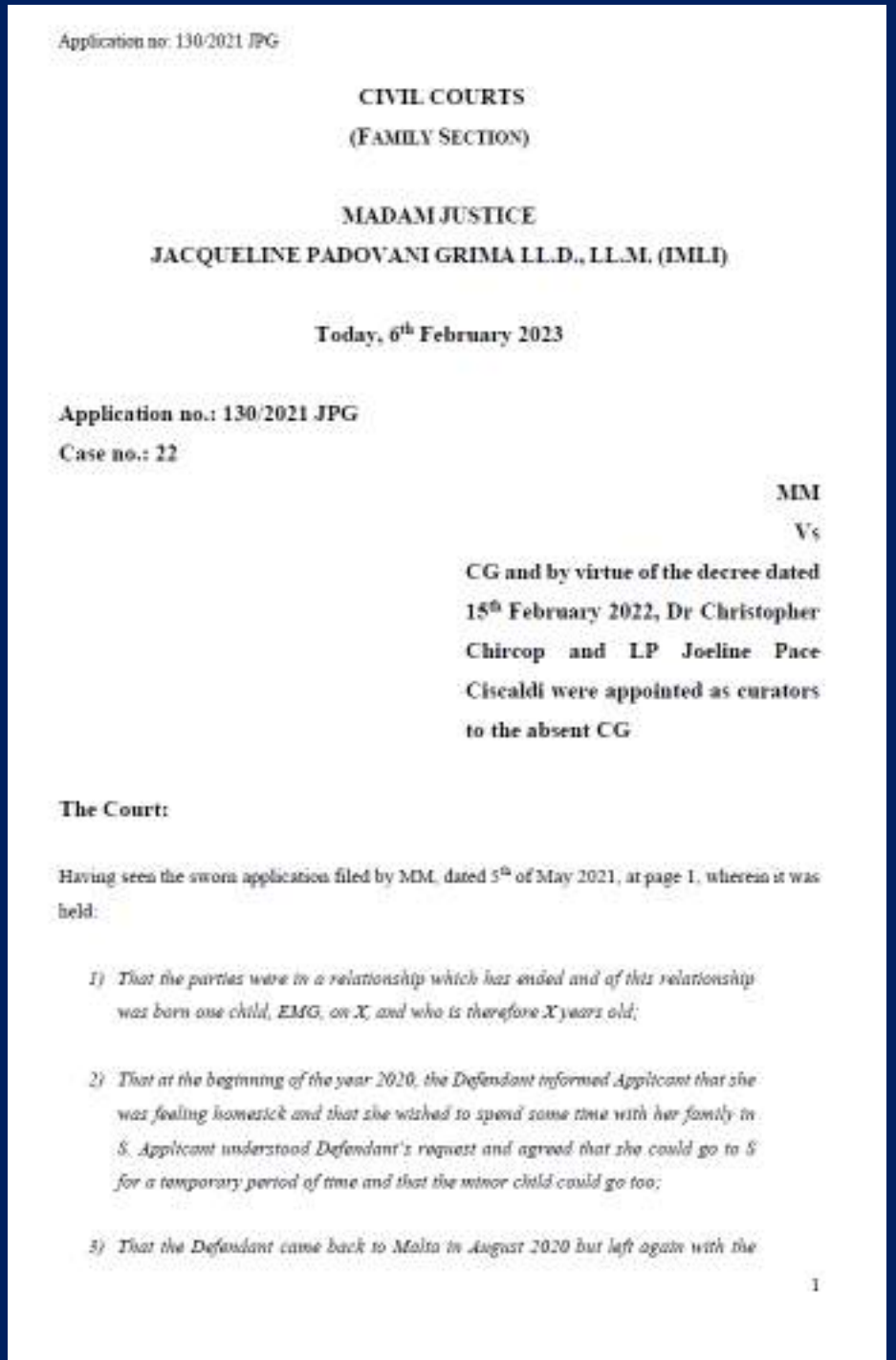
6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Court interpretation of the law may be flexible or rigid
- Criminal law of procedure interpretation in relation to summons is **rigid** since it may affect the accused's right of defence. Errors are in favour of the accused – Il-Pulizija vs Jason Azzopardi et – Court of Magistrates (Malta) – Mag. Joseph Mifsud 25/02/2020:-

  - *Din hija Qorti ta' Gudikatura Kriminali. Quddiemha persuna jew persuni jigu mixlija li wettqu reati kriminali. Il-Qorti hija adita bl-imputazzjonijiet li jingiebu quddiemha u li jkunu maghmula mill-prosekuzzjoni. Hemm limitu kemm il-Qorti tista' tkun flessibbli fir-rigward tal-interpretazzjoni tal-imputazzjonijiet li jingiebu quddiemha.*
  - *Għalkemm verament li l-komparixxi (charge sheet) li fuqha hemm l-imputazzjonijiet hija ritenuta bħala un avviso a comparire, l-imputazzjonijiet (charges) huma dejjem ta' indoli penali. Ir-regoli tal-procedura ma jistgħux jigu interpretati b'mod wiesa' tali li l-parametri tal-azzjoni penali jigu spustati jew mibdula. Altrimenti d-difiza ma tkunx tista' tiddefendi ruħha kif jixraq.*

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Civil procedure – Flexible in certain cases- 1990's nullity is accepted if the defect is prejudicial to the other party. Before, application was rigid e.g. nullity of a sworn application (before First Hall Civil Court) was accorded even in cases where claims were not numbered



Application no: 130/2021 JPG

CIVIL COURTS

(FAMILY SECTION)

MADAM JUSTICE

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Today, 6th February 2023

Application no.: 130/2021 JPG

Case no.: 22

MM

Vs

CG and by virtue of the decree dated 15th February 2022, Dr Christopher Chircop and LP Joeline Pace Cicaldi were appointed as curators to the absent CG

The Court:

Having seen the sworn application filed by MM, dated 5th of May 2021, at page 1, wherein it was held:

1) *That the parties were in a relationship which has ended and of this relationship was born one child, EMG, on X and who is therefore X years old;*

2) *That at the beginning of the year 2020, the Defendant informed Applicant that she was feeling homesick and that she wished to spend some time with her family in S. Applicant understood Defendant's request and agreed that she could go to S for a temporary period of time and that the minor child could go too;*

3) *That the Defendant came back to Malta in August 2020 but left again with the*

1

agreement of Applicant subject to her definitive return after this period. Once she had returned to S, Applicant began to worry and began asking Defendant for a fixed date of return. On her end, Defendant used to ignore the question or tell him that it was still too early to return until, in October of the year 2020, she informed Applicant that "things had changed" and that she intended on remaining in S together with the minor child;

4) *That Applicant immediately made contact with the Maltese Central Authority and started the proceedings necessary for the return of the child to Malta. These proceedings are currently pending;*

5) *That it is in the best interest of the minor child to continue to reside in Malta where he has extensive family and various other connections;*

6) *That although Defendant is in S, she participated in mediation proceedings through her lawyer in Malta but unfortunately no agreement could be reached since she insisted that the child was to remain in S and for this reason this case was filed;*

7) *That Applicant was authorised to file this case by means of a decree of the 29 April 2021 (Dok A)*

For these reasons Applicant humbly requests that this Honourable Court, save any other provision which it deems fit in the circumstances, deem is fit to:

i. *Order that the residence of the minor child of the parties, E be together with the father in Malta with access in favour of the Defendant in accordance with the needs and best interests of the minor child and, together with the order of access to regulate access in case of public holidays and feasts, in Christmas and New Year, and other special occasions;*

ii. *Order that the care and custody of the minor child, E, be granted jointly to the parties, provided that all decisions concerning the travel of the minor child are taken by Applicant;*

iii. *Order the Defendant to pay to the Plaintiff such alimony as is appropriate*

and adequate for the needs of the said minor, E to be fixed by the same Court, according to the means of the Defendant and the needs of the same minor, payable by the Defendant to the same Plaintiff in the week or month as ordered by this Court;

iv. *Order that any passport in the name of the child be held by Applicant.*

With costs including those incurred during g the mediation proceedings.

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen the reply filed by the Curators Dr Christopher Chircop and LP Joeline Pace Ciscaldi dated 8th of April 2022, vide page 46;

Having seen the note filed by Dr Malcolm Mifsud dated 15th of June 2022, exhibiting a copy of the Power of Attorney of Defendant , vide page 79;

Having seen the sworn reply filed by Defendant , dated 30th of June 2022, at page 82 et seqq., wherein it stated:

1. *Whereas preliminarily, the Defendant pleads by way of exception the lack of jurisdiction of this Honourable Court in view that the subject of this action, i.e. the care and custody of the minor EMG was decided by the Stockholm District Court, S, bearing case number Ä5478-21 of 10 May 2021 a copy and translation of which is annexed and marked as (Dok D).*

2. *Whereas it was the Plaintiff himself who in the Court case above mention in paragraph 1 who filed the legal proceedings in S and in doing so manifestly submitted himself to the jurisdiction of the foreign court. In the said case there was a judgment pronounced by the S Court on the custody of the minor son, EMG, as indicated in the annexed document and marked as (Dok D), therefore the case in S was in relation to the same subject as the current Court procedures in Malta;*

3. *Whereas it was the Plaintiff who voluntarily submitted himself to the jurisdiction of the S Courts and this Foreign Court gave its judgment following the claims of*

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Substantive law – depends on the case at hand
- E.g. Interpretation of contracts – rigid. If the meaning is clear there is no room for interpretation
- Nullity of will due to insanity - rigid
- Possession of property cases – wide and flexible

- Procedural law e.g. Admissability of new witnesses/proof –case by case basis

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Warning: When searching for case law pay attention to wrong application of the law vs wrong interpretation of the law
- Wrong application of the law – Objectively the wrong law/act/article was applied to the facts e.g. Apply Art. 85 of Cap. 9 to a civil suit – appealable and basis for re-trial
- Wrong interpretation of the law – court provides a wrong interpretation of the article in relation to the facts/proof of the case. It is not a point of law matter – not appealable.
- Tip: Search several judgments to ascertain correct interpretation of the law + look for appeal judgments & judgments which weren't appealed

6. Analysis & Interpretation of Data – Legal Interpretation – E.g. Wrong application of the Law judgment



Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 103/2022

The Police

(Insp. James Turner)

vs

Sasa Manojlovic

Today, the 28th day of September 2022

The Court,

Having seen the charges brought against appellee Sasa Manojlovic, holder of Serbian passport bearing number 012050798, wherein he was accused before the Court of Magistrates (Malta) of having on the 19th October 2021, at about 0430hrs at the Catamaran Terminal in Marsa or/and in other place in these islands, failed to declare to the Commissioner of Revenue that he was carrying a sum equivalent to 10000 euro, or more in cash, whilst leaving Malta to Pozzallo Sicily, in breach of Regulation 5 of Subsidiary Legislation 233.07 (Cash Control Regulations) of the External Transactions Act (Chapter 233 of the Laws of Malta).

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 21st February 2022, wherein the same Court, after

having seen Chapter 233 of the Laws of Malta and Regulation 3 and 3(5)(c)(ii) of Subsidiary Legislation 233.07 found accused guilty of the charge brought against him and condemned him to a fine (multa) of fifty euro (€50).

Having seen the appeal application filed by the Attorney General, on the 15th March 2022, wherein this Court was requested to vary the said judgment in the following manner:

1. By confirming that judgment with regard to the finding of guilt of the charge brought against Sasa Manojlovic;
2. By revoking the judgment wherein the First Court imposed a penalty of €50 and instead, in accordance with Regulation 3(5)(b) of S.L.233.07, imposing a penalty according to law. Having seen all the records of the case.

Having seen the updated conduct sheet of appellee, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, the appellant Attorney General brings forward one main grievance lamenting that the punishment meted out by the First Court was not in accordance with the law regulating the violation with which accused was charged, the penalty prescribed being much more onerous than that inflicted upon him by the court.

Accused, Sasa Manojlovic, was charged before the Court of Magistrates with having violated cash control regulations embodied in Subsidiary Legislation 233.07, wherein in terms of regulation 3 'any person entering, leaving, or transiting through Malta and carrying a sum of a value of ten thousand euro (€10,000) or more in cash shall be obliged to declare such sum to the Commissioner' for Revenue, which obligation shall be fulfilled upon completion of the applicable form appearing in the Schedule to the Regulations, and upon such form being handed to the Commissioner when

entering, leaving, or transiting through Malta. Now the penalty prescribed for this violation of the law is laid out in sub-regulation 5 of regulation 3 wherein it is stipulated as follows:

> (5) (a) Without prejudice to what is provided in sub-regulation (6), if the sum mentioned in sub-regulations (1) and (3) which is falsely declared or not declared is of a value of more than ten thousand euro (€10,000) and up to precisely thirty thousand euro(€30,000), the Commissioner may enter into an agreement with the person therein mentioned, and impose a penalty of fifty per cent (50%) of the sum carried in excess of ten thousand euro (€10,000) or equivalent, together with another penalty of twenty-five euro (€25), in lieu of proceedings in court. The signing of this agreement, which may take place up to the delivery of a final judgement by the court, shall also mean that the person is renouncing to any claim he may have against the Commissioner or the Attorney General resulting from the case. In the absence of such agreement, the Commissioner shall detain the amount in excess of ten thousand euro (€10,000), or the whole amount when the cash is indivisible and deposit it in the Depository as provided in sub-regulation (7) and the person concerned shall, on conviction, be liable to a fine (multa) equivalent to fifty-five per cent(55%) of the sum carried in excess of ten thousand euro (€10,000) together with another fine (multa) of fifty euro (€50).
>
> (b) Without prejudice to what is provided in sub-regulation (6), if the sum mentioned in sub-regulations (1) and (3) which is falsely declared or not declared is of a value of more than thirty thousand euro (€30,000), the Commissioner shall detain the sum in excess of ten thousand euro (€10,000), or the whole amount when the cash is indivisible and deposit it in the Depository as provided in sub-regulation (7) and the person shall, on conviction, be liable to a fine (multa) equivalent to fifty five per cent (55%) of the sum carried in excess of ten thousand euro (€10,000) together with another fine (multa) of fifty euro (€50).
>
> (c) In the case where the sum carried or unaccompanied is of precisely ten thousand euro (€10,000):
> (i) and an agreement takes place as provided for in paragraph (a), then the penalty shall be twenty-five euro (€25);
> (ii) and there is a conviction, then a fine (multa) of fifty euro (€50) shall be imposed by the Court.
>
> (d) All amounts of cash collected as a result of the agreement with the person as provided for in paragraph (a) shall belong to the Commissioner;

(e) All amounts imposed under these regulations as penalty in an agreement or as fine (multa) in a judgement shall be rounded up to the nearest euro (€1).

That from the acts of the proceedings it results that accused Sasa Manojlovic admitted to the charge brought against him in the initial stages of the hearing of the case, the First Court therefore passing on to deliver judgment and imposing the punishment envisaged in sub-regulation 5(c)(ii) of Regulation 3 of the Cash Control Regulations, being the penalty applicable when the sum of undeclared cash is of precisely €10,000. Now the only piece of evidence found in the court records consists of the statement released by accused to the investigating officers upon his arrest[1]. During his interrogation accused admits that he tried to leave Malta by Catamaran to Sicily with the sum of over €36,000 of undeclared cash. He states that he was unaware of his obligation to declare the sums exceeding €10,000 when travelling by sea. Therefore, from this statement it is evident that the appeal filed by the Attorney General is well-founded. The penalty for the undeclared cash in this case is that stipulated in sub-regulation 5(b) of regulation 3, the sum found in accused's possession exceeding the €30,000 threshold as indicated in this provision of the law, being a fine equivalent to 55% of the excess amount over ten thousand euro, together with an additional fine of €50.

It is clear, therefore, that the judgment of the First Court is based on a wrong application of the law regulating the punishment meted out in relation to the violation of law of which accused was found guilty, and consequently the Court cannot but uphold the appeal filed by the Attorney General. In this case, however, the Court will not proceed to the forfeiture requested in the charge sheet since the excess sum was never exhibited by the Prosecution in the acts of the proceedings. Thus the penalty in this case should be that of 55% of the sum carried by accused in excess of €10,000, consisting therefore of 55% of €26,000, amounting o €14,300 and a further fine of €50 as stipulated in Regulation 3(5)(b) of Subsidiary Legislation 233.07.

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[1] Exhibited in audio visual format as Document ITS, fol.15 of the court records

Consequently for the above-mentioned reasons, the Court upholds the appeal filed by the Attorney General, varies the judgment delivered by the First Court, confirms the same where accused was found guilty of the charge brought against him, however after having seen Regulation 3(5)(b) of Subsidiary Legislation 233.07, varies the punishment inflicted and condemns accused Sasa Manojlovic to pay a fine in total of €14,350.

(Sgn) True Copy

Joyce Agius

Deputy Registrar

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation - Tips

- Read the law (both Maltese and English version)
- Read the whole article
- Read the articles about the definitions, if provided in the law
- Read judgments (for interpretation) and parliamentary debates (for contexts and interpretation)
- Read more than one judgment on the same matter from different periods
- Read journals, dissertations and authors, if any

6. Analysis & Interpretation of Data – Legal Interpretation – Interpretation Act – Cap. 249

Aim: To make provision in respect of the construction and application of Acts of Parliament and other instruments having the force of law and in respect of the language used therein

CHAPTER 249

INTERPRETATION ACT

To make provision in respect of the construction and application of Acts of Parliament and other instruments having the force of law and in respect of the language used therein.

4th February, 1975

ACT VII of 1975, as amended by Acts XLIX of 1981, XXXV of 1990, I of 2001, IX of 2004, XIII of 2007, I and XIII of 2009, XXVI of 2014, IX of 2017 and XXIII of 2017.

Short title.

1. The short title of this Act is the Interpretation Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"Act" means an Act of Parliament and any other Act passed by the Legislature of Malta and includes any code, ordinance, proclamation, order, rule, regulation, bye-law, notice or other instrument having the force of law in Malta other than an instrument to which the Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland entitled the Interpretation Act, 1889, applies;

"pass", and any derivative thereof, used in relation to the word Act, includes the making of any instrument having the force of law.

(2) No provision of this Act limiting its application, or that of any of its provisions, to certain Acts shall be construed as implying that other Acts, or any provision thereof or any expression occurring therein, are to be interpreted, construed or applied in a manner different from that provided in this Act.

Definitions. *Amended by: XLIX. 1981.6; I. 2001. 2; XIII. 2009.2.*

3. (1) In this Act, and in any Act passed after the commencement of this Act, unless the contrary intention appears -

"Act of Parliament" means any law made by Parliament;

"amend" includes repeal, add to and vary;

"Constitution" means the Constitution of Malta;

"contravene" includes fail to comply with;

"document" means any matter expressed or described on any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter;

"enactment" means a written law or any provision thereof;

"function" includes power and duty;

"Gazette" means the Malta Government Gazette or any other official journal substituted therefor and published by order of the Government;

"Government" means the Government of Malta;

"House" means the House of Representatives of Malta;

"law" includes any instrument having the force of law and any unwritten rule of law, and "lawful" and "lawfully" shall be construed accordingly;

"name" used in relation to an individual includes surname;

"Parliament" means the Parliament of Malta;

"repeal" used in relation to a law includes rescind, revoke, cancel and replace;

"words" includes figures and symbols;

"writing" includes printing, lithography, typewriting, photography and any other mode of representing or reproducing words in a visible form.

(2) In this Act, and in every Act passed either before or after the commencement of this Act, "Malta" means the Island of Malta, the Island of Gozo and other islands of the Maltese Archipelago, including the territorial waters thereof.

(3) A reference in an enactment, whether passed before or after the commencement of this Act, to a part, article or schedule shall, unless the contrary intention appears, be read as a reference to a part, article or schedule of that enactment; and references in any such enactment to a sub-article, paragraph or sub-paragraph shall, unless the contrary intention appears, be read as a reference to a sub-article, paragraph or sub-paragraph of the article, sub-articles or paragraph, as the case may be, in which the reference occurs.

(4) (*a*) Any reference in any law to "international law" shall be construed as a reference to international law interpreted where required in accordance with such international instruments, if any, to which Malta may from time to time be a party.

(*b*) Any reference in any law to Malta's international obligations shall be construed as a reference to the obligations of Malta assumed under international law.

(*c*) The terms "crimes against humanity", "crimes against international law" and "political offence" shall have the same meaning assigned to them under customary international law in general and in international instruments to which Malta may be a party in particular.

(*d*) The authentic text of international instruments to which Malta may be a party shall be that which the Minister may cause to be published on an internet site in exercise of the powers conferred by article 11(*a*) of the Statute Law Revision Act, 1980 and the text shall be consolidated with subsequent amendments, provided that a notice be published in the Gazette giving the address of the website wherein the said treaties or other international instruments are published.

(e) For the purpose of publication of the legal instruments of the European Union to which Malta has acceded in accordance with the European Union Act, publication of the legal instruments on the Official Journal, judicial notice of which is authorised according to article 5(2) of the said European Union Act, and the official websites of the European Union shall suffice for the requirements of publication and it will not be necessary for the Minister to publish a notice to this effect with regard to all past, present or future legal instruments of the Union. Cap. 460.

Grammatical variations, gender, number, etc. *Amended by: XXII. 2007.16; XXIII.2017.93.*

4. In this Act and in every other Act whether passed before or after the commencement of this Act, unless the contrary intention appears -

(a) the definition of any word or expression shall extend to all grammatical variations and to cognate expressions of the word or expression so defined;

(b) words importing the masculine gender shall include females and words importing the female gender shall include males;

(c) the words "spouse" and "husband and wife" shall be construed as referring to a spouse of either sex who has contracted marriage in accordance with the Marriage Act; Cap. 255.

(d) words in the singular shall include the plural, and words in the plural shall include the singular;

(e) the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not. Cap. 16.

Commencement.

5. (1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement", when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act of Parliament passed after the commencement of this Act, or an order, warrant, scheme, rule, regulation, bye-law, notice or other instrument made, granted or issued after the commencement of this Act under a power conferred by any Act, whether passed before or after the commencement of this Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Construction of provisions as to exercise of powers and duties. *Amended by: XXIV.1990.2; I. 2009.51.*

6. In any Act, whether passed before or after the commencement of this Act -

(a) where such Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires;

(b) where such Act confers a power or imposes a duty on

the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of that office;

(*c*) where such Act confers a power on the holder of an office, and such power relates to any business of the Government, or is exercisable as part of the functions of a department of Government for which responsibility has been assigned to a Minister under the Constitution, such power shall be exercisable by the holder of that office, and except to the extent that the holder of that office is expressly declared by any law not to be subject to the direction or control of any other person or authority, the Minister responsible for that business or department of the Government shall have power, even where such power is expressed to be exercisable in the discretion (whether absolute or otherwise) of the holder of that office, to give such direction in writing relative to the exercise of that power (including a direction ordering the reversal of a decision) as such Minister may deem fit:

Provided that on employment, promotion or disciplinary matters in relation to individual employees, such direction may only be given by the Prime Minister and in such a case the head of department shall inform the Public Service Commission;

(*d*) where such Act confers a power to make any rules, regulations or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations or bye-laws, and such power shall be exercisable without prejudice to the making of new rules, regulations or bye-laws.

Power to act notwithstanding any vacancy. *Added by: IX. 2017.2.*

6A. Where a law provides for a Board, Committee, Authority or other entity established by law to be composed, wholly or in part, of persons nominated by specified holders of office, authorities, persons or bodies and any person or persons required to nominate any person to sit on the said Board, Committee, Authority or other entity, fails to make such nomination within one week from when it is asked to do so in the absence of a stipulated term in the law in which the said nomination is asked for, the said Board, Committee, Authority or other entity shall be deemed to be validly constituted according to law and to be entitled to exercise all its powers and functions and to fulfil all its duties under any law notwithstanding any vacancy therein arising from any said failure to nominate any person as aforesaid, without prejudice to any quorum requirements in respect of the meetings of any said Board, Committee, Authority or other entity.

Exercise of statutory powers between the passing and commencement of an Act.

7. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant or issue any order, warrant, scheme, rules, regulations, bye-laws, notice or other instrument, or to give notices, to prescribe forms, or to do any other thing for the purpose of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation; and the provisions of this article shall apply to anything done under or in respect of Acts passed before the commencement of this Act as they apply to things done under or in respect of Acts passed after such commencement.

Construction of subsidiary legislation.

8. Where an Act, whether passed before or after the commencement of this Act, confers power to make, grant or issue any order, warrant, scheme, rules, regulations, bye-laws or other instrument, expressions used in any such instrument made after the commencement of this Act shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Subsidiary legislation may be retrospective.

9. Any law made after the commencement of this Act by virtue of a power conferred by any Act passed either before or after the commencement of this Act may, unless the contrary intention appears in the Act conferring that power, be made to operate retrospectively to any date which is not earlier than the commencement of such Act or, where different provisions of such Act come into operation on different dates, the commencement of the provision under which the subsidiary law is made:

Provided that no person shall be made or shall become liable to any punishment in respect of anything done or omitted to be done before the commencement of the subsidiary law.

Subsidiary laws to be valid in case of wrong reference to enabling powers.

10. Where by virtue of any Act, whether passed before or after the commencement of this Act, power is conferred to make subsidiary laws, any subsidiary law that may lawfully be made thereunder shall be valid and shall have effect whether or not it purports to be made in exercise of those powers and even if it purports to be made in exercise of other powers.

Subsidiary legislation to be laid on Table of House.
Amended by: XXVI. 2014.2.

11. (1) Where an Act of Parliament or other Act passed by the Legislature of Malta or an Ordinance confers power to make rules or regulations or other subsidiary legislation of a like nature, any such legislation made by virtue of those powers after the coming into force of this Act shall as soon as may be after it is made be laid on the Table of the House and if, on a motion tabled within the period of twenty-eight days after it is so laid, the House, within a period of sixty days after the said laying, resolves that it be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without

prejudice to the validity of anything previously done thereunder or to the making of new rules, regulations or other subsidiary legislation of a like nature.

(2) In reckoning for the purposes of sub-article (1) any period of twenty-eight days therein referred to, no account shall be taken of any time during which the House of Representatives is not in session or during which it is adjourned for more than seven days.

(3) Notwithstanding the foregoing provisions of this article, where the principal law conferring the power to make subsidiary legislation makes different provision in respect of any of the matters aforesaid, those provisions shall apply to any subsidiary legislation made by virtue of those powers in preference to the provisions of this article in respect of those matters.

Effect of repeal in future Acts and of amendments in any Act.

12. (1) Where any Act passed after the commencement of this Act repeals any other law, then, unless the contrary intention appears, the repeal shall not -

(*a*) revive anything not in force or existing at the time at which the repeal takes effect;

(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered under any law so repealed;

(*c*) affect any right, privilege or liability acquired or accrued or incurred under any law so repealed;

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or any liability thereto;

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

(2) Where an Act, whether passed before or after the commencement of this Act, amends any other Act passed either before or after the commencement of this Act, or any provision of any such other Act, the Act or provision so amended, as well as anything done thereunder or by virtue thereof, shall, unless the contrary intention appears, continue to have full effect, and shall so continue to have effect as amended, and subject to the changes made, by the amending Act.

(3) For the purposes of sub-article (2) "amendment" means and includes any amendment, modification, change, alteration, addition or deletion, in whatsoever form or manner it is made and howsoever expressed, and includes also a provision whereby an Act or a provision thereof is substituted or replaced, or repealed and substituted, or repealed and a different provision made in place thereof.

Offences by association of persons.

13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence:

Provided that, except in respect of offences under or against a provision contained in an Act in which a provision similar to that of this article occurs, the provisions of this article shall apply only to offences committed after the commencement of this Act.

Language of laws.

14. Without prejudice to the provisions of any other enactment, an Act of Parliament passed after the commencement of this Act may be enacted, in whole or in part, in the Maltese or in the English language only if the bill for that Act of Parliament, or part of such bill, is presented to the Clerk of the House and published in one only of the said languages and if the Act when passed contains a provision authorising the enactment thereof, or any one or more of its parts, as the case may require, in that language only.

Amendment or repeal of Act in same session.

15. Any Act of Parliament may be altered, amended or repealed in the same session of Parliament; and the provisions of this article shall apply to anything done in respect of any enactment before the commencement of this Act as they apply to anything done in respect of an Act of Parliament after such commencement.

Electronic publication. *Added by: IX. 2003.47*

16. Where any act or document is required to be published in the Gazette, it shall be sufficient that such act or document is published in electronic format on CD Rom or is made available at a publicly accessible website on the internet and notice of such publication in electronic format on CD Rom or the availability of the document on the website is published in the Gazette:

Provided that where an act or document is so published in electronic format on CD Rom or is so made available on a publicly accessible website on the internet, a hard copy thereof is made available for public inspection during normal office hours at a government department or office and notice of such availability is also published in the Gazette.

7. Writing

- Last phase of research design
- Research remains incomplete until the write up
- The writing is an account of the problem, methodology, collection of data and their implications
- Contents and style depend on who are you targeting and the reason for your write up. The Format is also subjective.

7. Writing – Report's Objective

- Report needs to be presented in the appropriate manner so that the targeted readers may be able to understand and utilize it
- The objectives of a research report are:

1. Conveying of knowledge to the concerned people in the field of research

2. Proper presentation of the findings for further utilization of the recommendations.

3. Give impetus to research in the concerned knowledge area

4. To re-examine the validity of generalizations drawn by the researcher after the report has been submitted.

7. Writing – Types of Reports

- Reports are of different types depending on their area, purpose and the approach
- Most common types:-

1. Business Report
2. Project Report
3. Dissertation
4. Enquiry report of a commission
5. Thesis

- A legal report deals specifically with a legal problem

7. Writing – Guidelines for Report Writing

1. Knowledge of the research material
2. Organize the research material
3. Continuous report reflective thinking
4. Rough drafts
5. Rewrite and polish the rough drafts
6. Preparation of the final bibliography
7. Footnotes and head notes

7. Writing – General Structure

- Structure depends on the type of instrument being written:-

1. Introduction - Clear cut statements as to the nature of the study, Aims, Sources of information, Scope of study, Brief statement of the working hypothesis which guided the study.

2. Explicit definitions of the units of study

3. Brief statements of techniques used in study - Types of observations used and conditions under which observations were made, conditions under which the data was obtained, types of case history data secured, their sources, manner of presentation, and preliminary analysis made, Sampling procedures and conditions of selection and testing for appropriateness, representativeness, Statistical procedures, sources of statistical data conditions under which they were obtained;

4. Major findings

5. Conclusions reached – may include special remarks such as Problems encountered in gathering the data, classifying them, analyzing them, possible discrepancies in the data collected, suggestions to subsequent investigators on same topics in same context.

6. Bibliography

7. Appendix

7. Writing – Organization (Dissertations/ Long Essays)

No hard and fast rule about the pattern however most common organization of research is as follows:-

1. Preliminary Pages

i. Title Page - the cover of the report and the first thing that the targeted reader come in contact with. It indicates the main theme or the title of the study. The title should be appropriate and attractive. The title page may also contain the name of the researcher and date.
ii. Abstract/ Preface – Can be inserted after dedication section - importance of the content.
iii. Dedication
iv. Table of Contents
v. Table of Cases
vi. Table of Statutes
vii. List of tables, figures
viii. Abbreviations
ix. Acknowledgements – Can be included in dedication page

2. Main Text

i. Chapters with appropriate captions – chapter ideally chapter will have headings and sub-headings
ii. First chapter labelled as “Introduction” – should include methodology i.e. the research design and method used in carrying out the research. It should give exact meaning of measurements or terms or variables used, selection of sampling, universe selected, tools of data collection , hypothesis etc.
iii. End Chapter “Conclusion”/ “Conclusion and Recommendations”

3. End Pages

i. Bibliography
ii. Annexes - Interviews/questionnaires conducted

7. Writing – Legal Article

- Simpler and shorter

THE NEED FOR STRONGER AWARENESS OF HOUSING RIGHTS IN MALTA

KURT XERRI*

Abstract

Housing rights have undergone a very significant evolution both under the ECHR as well as under other international statutes such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter. On the contrary, they remain a rather vague concept under the Maltese legal order. The best justification is perhaps offered by Mifsud Bonnici (2003) who suggests that the notion of the right to housing reached Malta at a moment when public opinion was convinced that local administrative structures had already seen effectively to this need. A rapidly changing housing scenario seems, however, to be warranting a stronger rights-based approach capable of ensuring the respect of every individual's right to adequate

1. Introduction

The notion of housing as a right has hardly taken root in Malta. Although the absence of any formal provision within the domestic legal order which seeks to guarantee adequate housing conditions for those living in Malta is conspicuous, housing matters have constantly been treated with importance, at varying degrees, by successive governments. The figure of up to 62% of owner-occupied households without a mortgage and 5% in social housing (see Figure 1 below) do bear testament to the continued effort of the Maltese government in promoting home ownership amongst the generality of citizens and whilst seeing to the need of the most vulnerable. The picture illustrated by the most recent Census (2011) was, in fact, one of steady equilibrium where up to three-fourths of the Maltese owned their household, 8% rented their properties at significantly below-market rents, 6% relied on the liberalised ex post-1995 private rented sector and as mentioned above, 5% lived in government-owned units. This state of affairs led government to take a softer approach on housing by, inter alia, hiking its home ownership- facilitation schemes as well as the construction of social housing units.

This situation was a lull before the storm. In 2016, Malta recorded the second-highest growth rate in the EU (5%) thus establishing itself as the strongest growing EU Member State in the 2006-2016 period (average growth of 3.7% per annum)[1]. The skills-gap present amongst local workers as well as the numerical shortage inevitably attracted a considerable foreign workforce which rose up to 37,000 in 2017 (in 2010 this figure was less than 10,000)[2] which, in turn, had a drastic effect

* Kurt Xerri graduated with an LL.D from the University of Malta in 2013. He followed to obtain a Master of Arts (Law) from the same University prior to undertaking a doctorate programme of study at the Rovira i Virgili (Tarragona, Spain). The Ph.D. was conferred to him in 2017. He has been involved in a number of European research projects including the European FINLaw Project co-ordinated by the European University Institute (Florence) and the EU Pilot Project on Preventing Evictions and Homelessness (HEC, PIANTA & National University of Galway). He is also an advisor to the Maltese Parliamentary Secretary for Social Accommodation.

1 Eurostat, *National Accounts and GDP*. Accessed online on 14 December 2017 on: http://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP

2 L-Illoniżi, "37,000 foreign workers in Malta: a necessary figure to sustain country's economic growth", *The Independent*, 7 November 2017. Accessed online on 14 December 2017 on: http://www.independent.com.mt/articles/2017-

on both rental and property prices[3]. This affordability crisis, to which the government did not have any sudden measures of response, highlighted the insufficiency of administrative structures to respond to housing needs in such a quickly-changing economic environment. Moreover, the emergence of new housing distress is gradually bringing out the concept that rather than a mere political concession, the protection of housing rights should constitute a duty to which the State is formally bound.

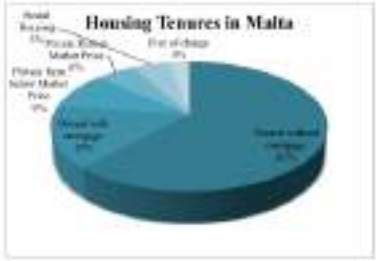


Figure 0.1: Proportion of Housing Tenures in Malta (Source: National Statistics Office)

2. The assessment of Maltese Housing Policy

The aim of this paper is to establish whether there exists the need for a formally protected right to housing in Malta. In order to do this one must first of all understand the implications of such a right in order to eventually assess what new remedies it might present. The justification for which there exists no Right to Housing in Malta was provided by Mifsud Bonnici who proffers the view that despite not being bound by the Constitution, the State had still effectively seen to the needs of the population:

> *Given the history of housing laws in Malta, (the notion of a Constitutional right to housing) has not arrived in a period of denial or of challenge of these rights, but at a moment where public opinion is convinced and not entirely as a result of complacency, that there already exist adequate legal and administrative structures to satisfy this need*[4].

At the beginning of the 2000s this statement was certainly a valid one. Property prices were indeed stable and affordable whilst government was still active in promoting access to home

3 11,070 foreign workers in Malta is necessary. Figure to sustain country's economic growth: A536811.191.

4 "Malta's property prices among the highest in the EU", *The Independent*, 15 April 2015. Accessed online on 14 December 2017 on: http://www.independent.com.mt/articles/2015-04-15/local-news/Malta-s-property-prices-among-the-highest-in-the-EU-6736133834. In the second quarter of 2016, the index of advertised prices for residential property went up by 6.7% compared with the corresponding quarter of 2015 (Central Bank of Malta, *Quarterly Review 2016/2*). H. Grech, "Malta average rental prices increases by 47% between 2013-2016, signs of 'overheating'", *The Independent*, 30 November 2017. Accessed online on 14 December 2017 on: http://www.independent.com.mt/articles/2017-11-30/local-news/Malta-average-rental-prices-increase-by-47-between-2013-2016-signs-of-overheating-6736132093

5 U. Mifsud Bonnici, "Housing Rights in Malta", in *National Perspectives on Human Rights*, edited by S. Leckie, The Hague: Nijhoff, 2003, p. 256.

ownership especially for young couples, whilst maintaining its efforts in the construction of new social housing units. Malta's accession into the European Union did, amid ripple effects down the housing market, particularly through the government's decision to allow Maltese citizens to repatriate undeclared funds held overseas at a nominal penalty rate which were, in turn, reinvested in property[1]. The sudden property price boost created an artificial demand which challenged prospective home buyers by no insignificant measure. Foreign analysts who assessed the conditions of the Maltese housing market were, therefore, far less impressed with Malta's housing policy. Yakfi-Zaid was amongst the earliest to underline how housing policy in Malta was always driven by the political considerations of the two dominant political parties together with the influence of the Catholic Church rather than by any logic of industrialization or economic laws. This, in turn, explains how whilst in the 1960s countries were rethinking their housing policies, Malta

> *… merely revised rent regulations, yet left the majority of privately-rented accommodations wrapped in outdated rent regulations, kept building dwellings and sold them as a discount and left the management of social housing in the hands of central government bureaucrats and professionals*[2].

This less optimistic outlook revealed amongst some of the deeper-lying problems in the Maltese system. First of all the absence of a properly regulated private rented sector which either leaned disproportionately in favour of the tenant (pre-1995[3]) or else left the tenant without the least guarantee regarding minimum contractual duration or stability of rents (post-1995). Secondly, the significant degree of bureaucracy and clientelism present in the allocation procedures of social accommodation.

It is mostly these latter problems that are currently manifesting themselves in the market: the inadequacy of rent regimes for either their disproportionate rigour or their excessive liberality and the record numbers of social housing applicants[4] caused simultaneously by the rapid decline in rental affordability and the absence of new construction of social housing units during the recent years[5]. It is in this light that the various international statutes under which the Maltese State is bound will be analysed in more detail.

3. Housing Rights under the Maltese Legal Order

Malta's principal obligations on the sphere of housing are, in fact, constituted by the number of international instruments that it has ratified over the years. First amongst which, there is the International Covenant on Economic Social and Cultural Rights (ICESCR)[6] that requires the necessary standard of the housing conditions to be 'adequate' (Article 11). Malta has also

1 L. Blanco, "Malta: Housing and Real Estate 1980-2007", *Architectural Design* 78 (2008): 3.

2 C. Yakfi-Zaid, "Housing Policy in Malta: A Welfare State Regime Approach", *The ITMA Research Bulletin*, 2006:1(2), 64.

3 As regulated by Chapters 69, 116 and 158 of the Laws of Malta.

4 In November 2017 the total number of applicants for social accommodation was that of 3,271 (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 3080, Legislature XII, 29 November 2017).

5 Between the 2013 and 2017 only 34 new units were created (the last one was created in 2014). In 2017 Government announced a number of new projects that should house up to 665 households (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 3476, Legislature XII, 2 October 2017).

6 Malta signed the International Covenant on Economic, Social and Cultural Rights on the 22 October 1968 and subsequently ratified it on 13 September 1990. It entered into force on 13 December 1990 (United Nations Economic and Social Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights. Initial reports submitted by States parties under articles 16 and 17 of the Covenant*, Addendum, MALTA, 7 February 2000). Malta, however, has not signed the Optional Protocol that allows the Committee to hear complaints from individuals.

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7. Writing – Article







7. Writing – Legal Writing (Judicial * Litigation related)

- 4 main types of legal writing:

i. Judicial Acts (excl. legal briefs)

ii. Case briefs – summary of case

iii. Legal Briefs – submissions

iv. Legal correspondence – legal letters

7. Writing – Legal Writing – Judicial Acts

- Different forms

1. Application – Rikors – To start proceedings before Court of Magistrates, general applications before of every court e.g. To defer a court case to another date/ to admit a new witness before the FHCC, particular procedures before FHCC - Art. 495A of Cap. 16 – where the co-owners fail to agree in respect of a sale of a thing held in common
2. Judicial Letters
3. Sworn Application – Rikors Guramentat – Art. 156 COCP
4. Sworn reply – Risposta Guramentata – Art. 158 COCP

Application/ Rikors



In the Court of Magistrates (Malta)
Inquiring Magistrate Doctor Monica Vella

In the acts of the inquest – after the traffic accident of the 13th August 2019 in Mosta Road, Lija

Application of XX (I.D XX):

Humbly submits.

That on the 13th August 2019, the applicant, together with two minor children were involved in a traffic accident in Mosta Road, Lija, where whilst they were walking in this same road, they were hit by a car of the make XX.

That as a consequence of the same accident, the applicant suffered and is still suffering from grievous injuries, a result of which he was in imminent danger of death. Furthermore, the applicant had to undergo several medical procedures and also spent several days recovering in hospital;

That furthermore, the applicant's standard of living has been affected considerably such that he is totally dependent on his wife XX so that he can carry on with his daily activities;

That in view of this situation and until the outcome of the magisterial inquest, the applicant would like to institute the appropriate civil procedures against the person who was driving the vehicle on the day of the traffic accident. Nevertheless, this cannot take place without having the details of the same driver;

That the applicant has tried to obtain such details from the Police as can be shown from the letter dated 5th September 2019. The reply received from Inspector Roderick Spiteri was such that such information cannot be released due to data protection and that there is currently a pending inquest, as can be seen from the letter dated 10th October 2019.

That obviously the applicant, in order to institute a civil action and proceed with the inquest's progress, he must be given certain basic information, such as the name of the person who was driving the vehicle on the day of the accident.

That in the meantime, a prescriptive period is running against the applicant, and as more time passes, it is going to be more difficult for the applicant to compile evidence as more time passes.

That therefore, even in light of what Inspector Roderick Spiteri in his letter of the 10th October 2019 about this inquest, the only solution that the applicant had was to resort to the inquiring magistrate and ask for a copy of the data held by the police in this regard, or at least the driver's details;

That it is ironic that should have there been two cars involved instead of a car and a person, the respective insurance companies would have already contacted each other to try and reach an agreement, instead of needing the intervention of the Police or the Inquiring Magistrate.

That certainly, should the applicant's request not be acceded to, the applicant would be very limited with respect to the actions that he can institute, with the clear consequence that justice will never be served in his respect;

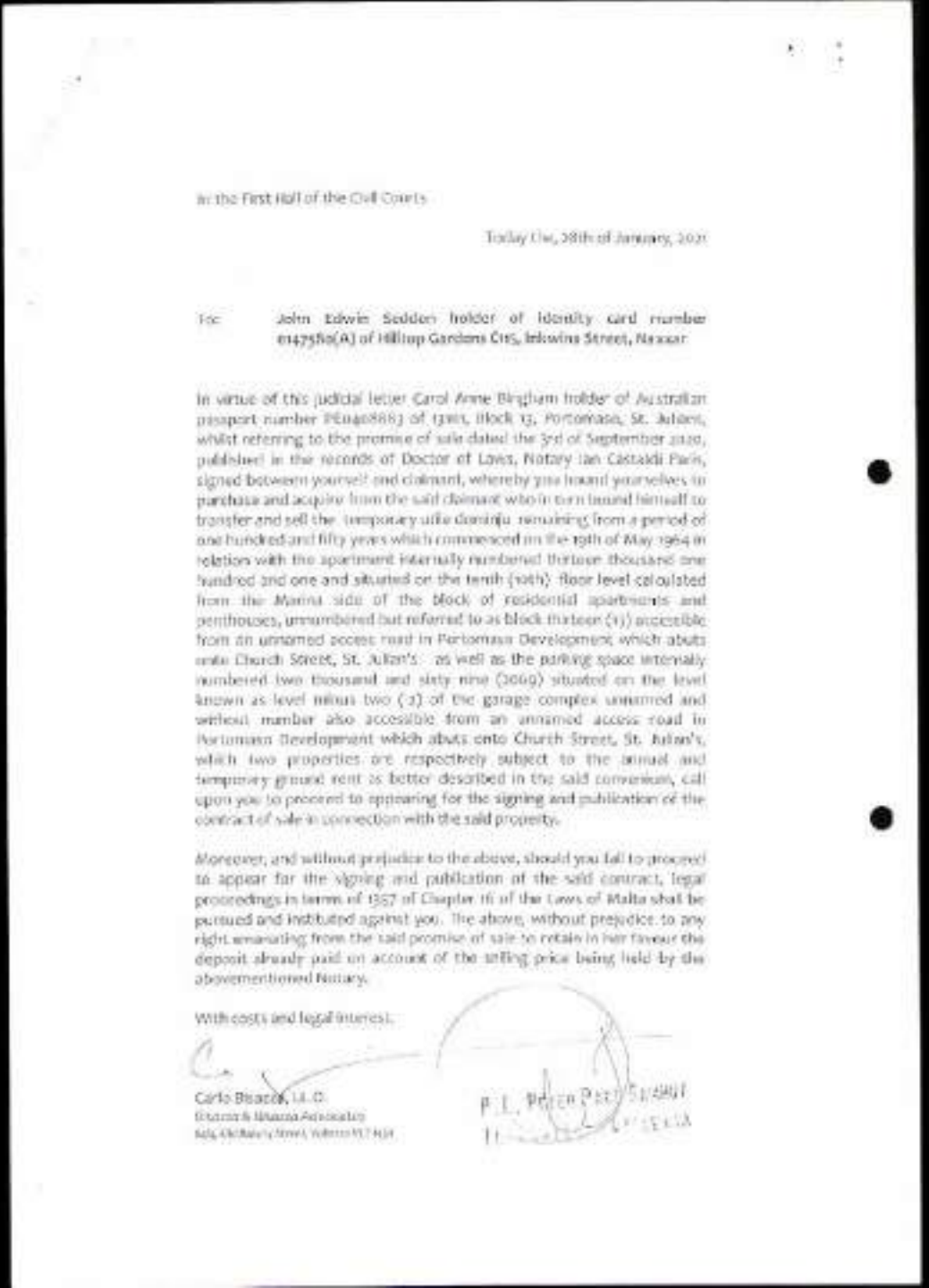
Therefore, in view of the above, the applicant humbly requests that the Inquiring Magistrate authorises the applicant to be given the police report with all relevant details pertaining to the accident in question, or at least the details of the same driver, so that the applicant may proceed with a civil suit, and this subject to such directions this Honourable Court deems appropriate in the circumstances.

Adv. L.P.
Address

Applicant: Address

Judicial Letter/ Ittra Ufficjali

A judicial protest is similar to a judicial letter but it is used for more detailed and complex facts



In the First Hall of the Civil Courts

Today the, 28th of January, 2021

To: John Edwin Sedden holder of identity card number 01475A(A) of Hilltop Gardens Cres, Inkwins Street, Naxxar

In virtue of this judicial letter Carol Anne Bingham holder of Australian passport number PE0408883 of 13RS, Block 13, Portomaso, St. Julians, whilst referring to the promise of sale dated the 3rd of September 2020, published in the records of Doctor of Laws, Notary Ian Castaldi Paris, signed between yourself and claimant, whereby you bound yourselves to purchase and acquire from the said claimant who in turn bound himself to transfer and sell the temporary utile dominju remaining from a period of one hundred and fifty years which commenced on the 19th of May 1964 in relation with the apartment internally numbered thirteen thousand one hundred and one and situated on the tenth (10th) floor level calculated from the Marina side of the block of residential apartments and penthouses, unnumbered but referred to as block thirteen (13) accessible from an unnamed access road in Portomaso Development which abuts onto Church Street, St. Julian's as well as the parking space internally numbered two thousand and sixty nine (2069) situated on the level known as level minus two (-2) of the garage complex unnamed and without number also accessible from an unnamed access road in Portomaso Development which abuts onto Church Street, St. Julian's, which two properties are respectively subject to the annual and temporary ground rent as better described in the said convenium, call upon you to proceed to appearing for the signing and publication of the contract of sale in connection with the said property.

Moreover, and without prejudice to the above, should you fail to proceed to appear for the signing and publication of the said contract, legal proceedings in terms of 1357 of Chapter 16 of the Laws of Malta shall be pursued and instituted against you. The above, without prejudice to any right emanating from the said promise of sale to retain in her favour the deposit already paid on account of the selling price being held by the abovementioned Notary.

With costs and legal interest.

Carlo Bianchi, LL.D.

Sworn Application – Rikors Ġuramentat

Drawing up and contents of sworn application.
Amended by: IX.1856.12; XXXI.1934.22; XXVIII.1935.4; XXVII.1978.6; XXII.1981.3; XXXV.1985.67; XXIV.2002.17; I.2008.12.

156. (1) The sworn application shall be prepared by the plaintiff and shall contain -

(*a*) a statement which gives in a clear and explicit manner the subject of the cause in separate numbered paragraphs, in order to emphasise his claim and also declare which facts he was personally aware of;

(*b*) the cause of the claim;

(*c*) the claim or claims, which shall be numbered; and

(*d*) in every sworn application, the following notice shall be printed in clear and legible letters immediately under the Court heading:

> "Whosoever is in receipt of this sworn application in his regard shall file a sworn reply within twenty (20) days from the date of service thereof, which is the date of receipt. Should no written sworn reply be filed in terms of the law within the prescribed time, the Court shall proceed to adjudicate the matter according to law.
>
> It is for this reason in the interest of whosoever receives this sworn application to consult an advocate without delay that he may make his submissions during the hearing of the case.".

Production of documents.

(2) Such documents as may be necessary in support of the claim shall be produced together with the sworn application.

(3) The sworn application shall be confirmed on oath before the registrar or legal procurator appointed as Commissioner for Oaths under the Commissioners for Oaths Ordinance.

Cap. 79

(4) The plaintiff shall together with the declaration also give the names of the witnesses he intends to produce in evidence stating in respect of each of them the facts and proof he intends to establish by their evidence.

(5) Where several actions are brought together as provided in article 161(3), (4) and (5), it shall at least be one of the plaintiffs who shall confirm on oath before the registrar or the legal procurator appointed as Commissioner for Oaths under the Commissioners for Oaths Ordinance, and the provisions of sub-article (1)(*a*) shall apply.

Cap. 79

(6) The application shall be served on the defendant.

(7) The registrar shall not receive any application which does not satisfy the elements of sub-article (1) and the court shall not allow any witness to be produced unless his name shall have been given together with the application.

If the necessity of producing a witness arises at any time after the filing of the sworn application or if the opposite party gives his consent in the manner prescribed in article 150(1)(*c*), or if the court deems it in the interest of justice to hear a particular witness, the court may allow such witness to be heard.

(8) When the proof intended to be established by each witness is not stated or adequately stated in the declaration, the court shall on the first day appointed for the pretrial hearing order the plaintiff to indicate adequately the proof he intends to establish by each witness within a time to be fixed by the court.

Cumulative writ of summons.
Added by: XIII.1981.4

156A. *Repealed by: XXIV.1995.68.*

Service of sworn application.
Amended by: IX.1886.25; XV.1913.45,46; XXII.1934.23, 24.
Substituted by: XXVII.1979.7; XXIV.1995.69; XXII.2002.33.
Amended by: XXII.2005.18.
Substituted by: XLV.2016.3.

157. It shall be the responsibility of the plaintiff to cause a copy of the sworn application, any affidavit of the plaintiff and of the documents attached with the application to be served on the defendant, and such service shall be effected through the Registrar.

Sworn reply and note of admission, filing, etc.
Amended by: IX.1886.24; XV.1913.47; XXII.1934.25; XXVIII.1935.3.
Substituted by: XXVII.1979.9.
Amended by: XXII.1980.5; XV.1981.7; XXIV.1995.70; XIII.2002.19.

158. (1) The defendant shall file his sworn reply within twenty days from the date of service, unless he intends to admit the claim.

(2) Where the defendant intends to admit the claim wholly and unconditionally, he shall file a note to that effect.

(3) Otherwise, he shall file a sworn reply containing -

(*a*) any such pleas as would be taken to be waived if not raised before the contestation of the suit;

(*b*) a clear and correct statement of the pleas on the merits of the claim or claims without reference to authorities;

(*c*) the defendant, or one of the defendants if there are more than one defendant, shall also confirm on oath in the sworn reply with numbered paragraphs, all the facts concerning the claim, denying, admitting or explaining the circumstances of fact set out in plaintiff's declaration, while stating which facts are within his own knowledge.

(4) The sworn reply shall be confirmed on oath before the registrar or legal procurator appointed as Commissioner for Oaths under the Commissioners for Oaths Ordinance. The defendant shall also indicate the names of the witnesses he intends producing and to state with regard to each one of them what he intends proving by means of their evidence. There shall also be filed together with the sworn reply such documents as may be required to sustain the pleas.

Cap. 70.

(5) The registrar shall not receive any sworn reply which is not accompanied by the listed requirements in sub-article (3), and the court shall not allow any witness to be produced whose name shall not have been given in such declaration. If the necessity of producing a witness arises at any time after the filing of the declaration, or if the opposite party gives its consent in the manner

Sworn Application –
Rikors Ġuramentat

In the First Hall of the Civil Courts

Whosoever receives the sworn application against him to file a sworn reply within twenty (20) days from the date of notification, that is, the date of receipt. If a written sworn reply is not filed as required by law, the Court shall proceed to delivering judgment according to law.

Therefore it is the interest of the respondent of this sworn application to immediately contact a lawyer in order for the Court to be able to examine the respondent's contentions.

Carol Anne Bingham holder of Australian Passport number PE0408883 duly represented by Douglas Salt holder of identity card number 355970(M) is his capacity of special attorney

vs

John Edwin Seddon holder of identity card number 014758o(A)

Application of Carol Anne Bingham

Respectfully submits and in his aforementioned capacity of special attorney as duly authorized Douglas Salt holder of identity card number 355970 confirms under oath;

1. Whereas on the 3rd of September 2020 parties entered into a promise of sale, published in the records of Notary Ian Castaldi Paris, whereby defendant bound himself to purchase and acquire from the plaintiff who in turn bound herself to transfer and sell the the temporary utile dominiu remaining from a period of one hundred and fifty years which commenced on the 19th of May 1964 in relation with the apartment internally numbered thirteen thousand one hundred and one and situated on the tenth (10th) floor level calculated from the Marina side of the block of residential apartments and penthouses, unnumbered but referred to as block thirteen (13) accessible from an unnamed access road in Portomaso Development which abuts onto Church Street, St. Julian's as well as the parking space

Internally numbered two thousand and sixty nine (2069) situated on the level known as level minus two (-2) of the garage complex unnamed and without number also accessible from an unnamed access road which abuts onto Church Street, in Portomaso Development St. Julian's, where the said garage has its common entrance, for the price of seven hundred and sixty Euro (€760,000), which two properties are respectively subject to the eneual and temporary ground rent as better described in the said convenium and subject to the other conditions mentioned in the said promise of sale which is hereby being attached and marked as Doc A;

2. Whereas the defendant failed to appear on publication of the said deed without any valid reason at law and in terms of the said promise of sale despite also being called upon to do so by means of the official letter number 362/2021 dated the 18th of January 2021;

The Respondent is therefore to state why this Honourable Court, subject to any necessary declarations, should not deliver judgment and decide this claim by:

1. Declaring that the Respondent failed to honour his contractual obligations in terms of the convenium dated the 3rd of September 2020 for reasons including his failure to appear on the publication of the final deed;

2. Condemning and ordering the defendant, within a period of time to be established by this Court to appear for the signing and publication of the public deed in question on the basis of the conditions of the above mentioned promise of sale;

3. Appointing a Notary to publish the said deed;

4. Appointing deputy curators to appear on behalf of the defendant in the event the said defendant fails to appear on the deed of publication;

5. Fixing a date, time and place for the publication of the above mentioned deed; as above declared and for the reasons above mentioned.

With all judicial costs including those pertaining to the judicial letter dated the 18th of January 2021 and those of the Garnishee Order filed concurrently

with this sworn application together with legal interest accruable from the date of the lapse of the above mentioned promise of sale, against the Respondent, who is summoned in subpoena.

Dr. Carlo Bisazza

Dr Timothy Bartolo





List of Witnesses

Plaintiff Carol Anne Bingham, Douglas Salt, Nicholas Portelli, Notary Ian Castaldi Paris, Notary Henry Saydon; for them to give their testimony. Representatives of Local Banks; Representatives of foreign Banks; Commissioner for Revenue, Representative of the MEPA/Planning Authority, Representative of the Public Registry.

Defendant for his subpoena and cross examination.

Dr. Carlo Bisazza

Dr. Timothy Bartolo

Documents

1. Dok A – conveniam dated the 3rd of September 2020
2. Dok B – Official Letter 362/2021 dated the 18th January 2021

Dr. Carlo Bisazza

Dr. Timothy Bartolo

Note: Plaintiff: 62/4, Old Bakery Street, Valletta
Defendant: Hilltop Gardens Gaxaq, Imtarfa Street, Naxxar

Sworn Reply – Risposta Ġuramentat

(8) When the proof intended to be established by each witness is not stated or adequately stated in the declaration, the court shall on the first day appointed for the pretrial hearing order the plaintiff to indicate adequately the proof he intends to establish by each witness within a time to be fixed by the court.

Cumulative writ of summons. *Added by: XIII.1981.4*

156A. *Repealed by: XXIV.1995.68.*

Service of sworn application. *Amended by: IX.1886.25; XV.1913.45,46; XXII.1934.23, 24. Substituted by: XXVII.1979.7; XXIV.1995.69; XXII.2002.33. Amended by: XXII.2005.18. Substituted by: XLV.2016.3*

157. It shall be the responsibility of the plaintiff to cause a copy of the sworn application, any affidavit of the plaintiff and of the documents attached with the application to be served on the defendant, and such service shall be effected through the Registrar.

Sworn reply and note of admission, filing, etc. *Amended by: IX.1886.24; XV.1913.47; XXII.1934.25; XXVIII.1935.3. Substituted by: XXVII.1979.9. Amended by: XXII.1980.5; XV.1981.7; XXII.2002.70; XIII.2002.19.*

158. (1) The defendant shall file his sworn reply within twenty days from the date of service, unless he intends to admit the claim.

(2) Where the defendant intends to admit the claim wholly and unconditionally, he shall file a note to that effect.

(3) Otherwise, he shall file a sworn reply containing -

(*a*) any such pleas as would be taken to be waived if not raised before the contestation of the suit;

(*b*) a clear and correct statement of the pleas on the merits of the claim or claims without reference to authorities;

(*c*) the defendant, or one of the defendants if there are more than one defendant, shall also confirm on oath in the sworn reply with numbered paragraphs, all the facts concerning the claim, denying, admitting or explaining the circumstances of fact set out in plaintiff's declaration, while stating which facts are within his own knowledge.

(4) The sworn reply shall be confirmed on oath before the registrar or legal procurator appointed as Commissioner for Oaths under the Commissioners for Oaths Ordinance. The defendant shall also indicate the names of the witnesses he intends producing and to state with regard to each one of them what he intends proving by means of their evidence. There shall also be filed together with the sworn reply such documents as may be required to sustain the pleas.

Cap. 70.

(5) The registrar shall not receive any sworn reply which is not accompanied by the listed requirements in sub-article (3), and the court shall not allow any witness to be produced whose name shall not have been given in such declaration. If the necessity of producing a witness arises at any time after the filing of the declaration, or if the opposite party gives its consent in the manner

prescribed in article 150(1)(*c*), or if the court deems it in the interest of justice to hear a particular witness, the court may allow such a witness to be heard.

(6) When the proof intended to be established by each witness is not stated or adequately stated in the declaration, the court shall on the first day appointed for the pretrial hearing order the defendant to indicate adequately the proof he intends to establish by each witness within a time to be fixed by the court.

(7) Where the defendant is absent or is a minor or a person incapable according to law or a vacant inheritance, and is represented by an attorney or a curator, then, instead of the declaration referred to above, a declaration may be made to the effect that the facts of the case are unknown and that it has not been possible to obtain the necessary information to contest the claim.

(8) Simultaneously with the filing of the note admitting the claim or of the sworn reply, as the case may be, the defendant shall cause an identical copy thereof, certified by himself or his advocate, to be served through the registry on the plaintiff or his advocate.

(9) Non-compliance with the provisions of sub-article (7) may be taken into account by the court in the application of the provisions of article 223(3).

(10) If the defendant makes default in filing the sworn reply mentioned in this article, the court shall give judgment as if the defendant failed to appear to the summons, unless he shows to the satisfaction of the court a reasonable excuse for his default in filing the sworn reply within the prescribed time. The court shall, however, before giving judgement allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself against the claims of the plaintiff. Such submissions shall be served on the plaintiff who shall be given a short time within which to reply.

(11) The sworn reply, after the conclusion of the evidence of the plaintiff and before the defendant produces his evidence, may be amended by means of a separate statement either withdrawing any of the pleas set up or adding new pleas, saving those pleas which may be set up at any stage of the proceedings.

(12) With the filing of the sworn reply or on the expiration of the terms laid down in sub-article (1), the preliminary written procedures shall be deemed to be closed, and articles 151 and 152 shall apply.

(13) Notwithstanding the foregoing provisions of this article, where the court has appointed a day for the trial of the case before the time allowed for the filing of the sworn reply in accordance with this article, the defendant shall file the sworn reply not later than the time at which the case is first heard, and may also file them before the court at such hearing and serve a copy thereof on the plaintiff by delivering a copy to him or his advocate at that same hearing.

The sworn application and the reply not to contain comments or superfluous matter.
Amended by: XI 1562.3; XI 1850.20; IX 1858.24; XXII 2005.20.

159. (1) Except a reference to the law, the sworn application and the sworn reply, which are to be in a summary form, may not contain any comment nor any matter which is not necessary for a statement of the material facts as regards the sworn application, or for a rebuttal of those facts or for an indication of the pleas as regards the sworn reply.

(2) In the case of non-compliance, the court may order any superfluous matter to be struck out, or the written pleading to be removed from the record and replaced by another made in accordance with the provisions of this article.

Affidavits of witnesses.
Amended by: XI 1923.48. Substituted by: XXIV 1995.71. Amended by: XXII 2005.21.

160. Any party intending to produce a witness in any proceedings before any court may, together with the sworn application or the sworn reply, as the case may require, file in the registry of such court an affidavit taken by such witness before a judicial assistant or any other person authorised by law to administer oaths, and a copy of such affidavit shall be served on the other party.

Title III

OF THE ORDINARY MODE OF PROCEDURE IN CONTENTIOUS MATTERS AS APPLIED TO THE RESPECTIVE COURTS

Mode of procedure in the Civil Court, First Hall, and in the Court of Magistrates (Gozo) in its superior jurisdiction.
Amended by: XI 1923.48; XXIII 1964.19; XXIV 1995.4. Substituted by: XXIV 1995.72. Amended by: XXII 2005.22.

161. (1) In the Superior Courts and in the Courts of Magistrates in Malta and in Gozo, proceedings are ordinarily taken by application while those in the superior shall be sworn.

(2) Proceedings may also be taken by application in the cases prescribed by or under a law.

(3) Two or more plaintiffs may bring their actions by one sworn application or by one not sworn application as the case may be, if the actions are connected in respect of the subject matter thereof or if the decision of one of the actions might affect the decision of the other action or actions and the evidence in support of one action is, generally, the same to be produced in the other action or actions. The cause and subject matter of the actions shall be clearly and specifically stated in respect of each plaintiff.

(4) Nevertheless, any of the actions so brought together shall be tried separately at the request of a plaintiff with regard to his action; and the court may also order that any action be tried separately when it is not expedient that the actions of all the plaintiffs be tried together. Any such order may be made at any stage of the proceedings before final judgement.

(5) Where the several actions are brought together as provided in sub-article (3) they shall be taken cumulatively for determining the competence of the court. Such court shall remain competent in respect of any action separated in accordance with sub-article (4).

Sworn Reply –
Risposta Ġuramentat

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IN THE FIRST HALL OF THE CIVIL COURT

SWORN APPLICATION 690/2021 AD
IN THE NAMES

ADVOCATE DOCTOR MARINA VELLA (ID 397979M) IN HER CAPACITY AS SPECIAL ATTORNEY FOR MICHAEL ANDREW WELLS (AMERICAN PASSPORT NUMBER 565797497) AND LINDSAY SUZANNE WELLS (AMERICAN PASSPORT NUMBER 480420833)

-VS-

IAN CLAGUE (ID 120417A)

SWORN REPLY OF IAN CLAGUE (ID 120417A)

Respectfully pleads and under oath declares as follows:

That the claims of the plaintiffs are manifestly unfounded in fact and in law and these ought to be rejected with costs against them, and this for the following reasons:

1. That the property subject of the deed dated 25th September 2020 was at the time of the publication of the deed, built according to law and all the necessary permits, including building and sanitary permits and in compliance with all the plans approved by the competent authorities.

2. That the railings that are referred to in the fourth premise of the sworn application were built on a wall which, at the time, pertained exclusively to the respondent, and now belongs to plaintiffs. The installation of these railings was further sanctioned through planning permit PA 751/2020.

3. That the property subject of the deed dated 25th September 2020 was not at the time of the publication of the deed subject of any pending or threatened legal disputes or claims against it.

4. That Michael Andrew Wells and Lindsay Suzanne Wells could have been aware, before the publication of the deed, that the owners of the neighbouring properties had requested the issue of a planning permit. The respondent never guaranteed that third parties would not obtain planning permits for their own properties.

5. That the request made for the revocation of planning permits PA 1488/15 and PA 751/20 by third parties was never mentioned before or by the date of the publication of the deed, that is the 25th September 2020. This request was a new request, made subsequent to the publication of the said deed, that is on the 28th December 2020. The respondent was only made aware that the request for the revocation of the permits had been made from the documents that were annexed to the sworn application and never before. This even if it seems that Michael Andrew Wells and Lindsay Suzanne Wells, or their architects were aware of this request at least as at the 21st February 2021, and this as appears from the watermark on Document F attached to the Sworn application, this was never brought to the attention of respondent.

6. That consequently the respondent did deliver on the warranties he had provided to the plaintiffs on the deed dated 25th September 2020 and consequently no breach can be found of the guarantees he had provided.

7. That the property was sold in accordance with the quality promised.

8. That the property was delivered to the plaintiffs on the publication of the said deed and the plaintiffs have retained it for just under a year. In view of this they are no longer in a position to reject the thing and demand damages. Consequently there is no valid reason at law why this Court should order the rcclssion of the deed dated 25th September 2020 in the acts of Notary Andre Farrugia.

9. That in effect, this entire case is a mere fabrication intended solely to obfuscate the fact that the Michael Andrew Wells and Lindsay Suzanne Wells are disappointed that planning permits were obtained for development on a neighbouring tenement that could limit their views of the Grand Harbour, that is PA/04226/20. The respondent had no control over the issue of such permits, yet the plaintiffs are, through these proceedings, trying to create a *finnor boni juris*, for reasons known only to them, to try to get out of a transaction that in their eyes went sour for reasons that are in no way attributable to the respondent. These proceedings, as well as the accompanying garnishee order, are only manifestly abusive and at no point, prior to the issue of the neighbour's planning

permit, was the respondent ever even made aware that a dispute had been raised by them, after the publication of the final deed of sale.

10. That no damages have been caused to the plaintiffs and consequently there are no damages to be liquidated or that the respondent should be condemned to pay.

11. That the plaintiff's actions, namely the filing of a garnishee order through which various deposits have been made in the Registry of this Honourable Court have caused substantial damages to the respondent who is in terms of Article 396 of Chapter 12 of the Laws of Malta setting up a counter-claim against the plaintiff.

12. Saving any further pleas that may be set up according to law.

With costs against the plaintiffs

AV. CARE CHETCUTI
198, Old Bakery Street,
Valletta

PJ. KATRINA ZAMMIT CUOMO

Respondent: IAN CLAGUE, Townsquare, Apt 117, Qui Si Sana, Sliema

Notification: AV. MARISA VELLA, Camilleri Preziosi, Valletta Buildings, South Street, Valletta

LIST OF WITNESSES OF IAN CLAGUE (ID 128417A)

1. Ian Clague
2. Brigitte Calascione
3. Perit Thomas Abela and representatives past and present of DeMicoli & Associates
4. Planning Authority
5. Perit David Felice, Perit Charlene Camilleri, other Architects from AP Valletta

6. Registrar of Civil Courts and Tribunals
7. Notary Andre Farrugia
8. Notary Rosalyn Aquilina
9. Magistrate Leonard Caruana
10. Advocate Dr Michael Grech
11. Mr. Joseph Bonello Bianco
12. Representatives, past and present of J Bianco Limited
13. Bernard Ferrante, and representatives past and present of Sotheby's Malta
14. Michael Hill, and representatives past and present of John Taylor Malta
15. Advocate Dr Marisa Vella
16. Michael Andrew Wells and Lindsay Suzanne Wells
17. All the witnesses indicated by plaintiffs for their examination in chief and for their cross examination.

AVV. CARL GRECH
198, Old Bakery Street,
Valletta

P.L. KATRINA ZAMMIT CUOMO

7. Writing – Legal Writing – Legal Correspondence

1. Letters to clients informing of status of case

2. Letter of opinions – mostly done yearly for auditing of account purposes

3. Letters to counterparties – At initial stage pre-proceedings, during proceddings (on a without prejudice basis), post proceedings for collection of fees and expenses, if suit is won with costs



Taxxa uffiċjali tad-drittijiet u spejjeż ta' Rikors Ġuramentat Numru XX/19 JVC fl-ismijiet "X et vs X" deċiża fil-Qorti Ċivili Prim'Awla fl-1 ta' Ġunju 2021 fl-atti relattivi u sussegwenti

Rikorrenti fil-

Mibgħuta fil- 04-Jun-2021

DATA	DETTALJI	ATTOR	KONVENUT
		€	€
29-Mar-19	Rikors Ġuramentat	174.49	0.00
	Kopji - € 4.65	4.65	0.00
15-Mar-19	Risposta Ġuramentata	0.00	112.33
	Kopji - € 4.65	0.00	0.00
20-Feb-20	Affidavits - €29.29	46.59	0.00
11-Sep-20	Ingunzjoni	7.00	0.00
	Avviżi a Prokuratur Legali	6.32	0.00
01-Jun-21	Drittijiet reġistru ċedola	0.00	0.00
	Drittijiet avukati	450.00	450.00
	Drittijiet prokuraturi legali	150.00	150.00
		6908.48	4712.33
	RIMBORS	(€ 25.00)	
	TOTAL	€ 6,643.48	€ 712.33

Ikun

Deputat Reġistratur

Eugenio Cutajar
Sezzjoni Taxxa

N.B. Din it-taxxa trid tkun iffirmata minn Deputat Reġistratur biex tkun uffiċjali.

7. Writing – Legal Writing – Legal Correspondence – “Without prejudice”

- The term ‘without prejudice’ will generally prevent statements made in an attempt to settle an existing dispute, whether made in writing or orally, from being put before the court as evidence of admissions against the interests of the party which made them
- Emails can also be without prejudice
- E.g:- A owes B 10,000 euro
- B sends legal letter to A calling for payment of the 10,000 euro
- B replies with a ‘without prejudice’ legal letter saying that he does not owe money but to settle the matter amicably offers the 3,000euro
- A cannot submit B’s legal letter in a court case since it is without prejudice
- Chamber of Advocates Paper http://avukati.staging.wpx.rightbrain.cloud/wp-content/uploads/2018/02/Guidleines-on-the-use-of-the-term-Without-Prejudice-1.pdf



29th March 2022

Dr
Address

Dear Colleague,

Re: Estate of the late X
Without Prejudice

I am instructed by Mr and Mrs X to reply to your letter of the 7th instant.

I am instructed that my clients' share is of two thirds and not one half as you have advised in your correspondence.

In view of proceedings instituted in the Civil Court by Ms X against your client, my clients are of the view that it is not opportune to proceed as is being suggested in your letter. To the extent that my clients wish to settle all matters relating to their late daughter as soon as possible, it might be appropriate to convene a meeting for all parties concerned. It is my understanding that Ms X (whom I also represent) is not averse to an out of court settlement.

I look forward to your reply.

Kind regards,

7. Writing – Legal Writing – Legal Correspondence – "Without prejudice" email

WITHOUT PREJUDICE

Dear Dr Vella,

Reference is made to the Provisional Estimates issued on 3rd May 2017 in respect of ***Vat Reg.XXX****:*
- Output Tax Eur 24,274.80
- Administrative Penalty Eur 4,854.96
- Interest Eur 8,103.45.

A meeting is hereby being requested to discuss prospects of reaching an agreement between the parties, to reach an out of court settlement on this pending matter.

In the interim period, the appeal case (XX/XX) is to be put on hold until a settlement is reached.

Thank you for your kind consideration.

Best regards,