

Diploma in Law

Lecture 10: Special Proceedings

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**Diploma in Law
(Malta)**

Today's lecture:

TITLE VIII - Of Certain Special Proceedings

- Competition of Creditors
- Summary Proceedings
- Judicial Review of Administrative Actions
- Government Causes
- Jacitation
- Counter-Claims
- Uncertain / Unknown Heirs
- Disentail



Competition of Creditors on Competing Claims

Art. 416 et seq COCP



Competition of Creditors on Competing Claims

The procedural rules determining the order of priority of creditors when settling multiple debts or claims from a sum of money deposited in Court.

This mechanism ensures payment is distributed according to each creditor's entitlement through executive titles, privileges, hypothecs etc.

Case Study:

- By means of a precautionary garnishee order, a sum of money was seized from Petroplus Ltd and deposited in Court, during procedures in the name of *Dr John Bugeja nomine vs Petroplus Ltd*.
- But 3 other creditors brought their claims forward before the Court through separate judgments & arbitration awards.
- The Court Registrar issues a notice, published in the newspapers & Govt Gazette, informing the public that the money is held and that there are multiple claims for a preferred / priority access.
- Interested parties have 1 month to submit their claims to the sum.

Competition of Creditors on Competing Claims

Scenario (cont.):

- The claim is filed by means of an application containing the demand to be ranked.
- The parties are then notified of the date for the trial.
- The 3 competing creditors presented their relative titles for the consideration of the Court.
- The Court then issued a decree on the ranking of creditors.
- In this case, it held that only general judicial hypothecs could attach to the funds, as special hypothecs could not be constituted over movable property.
- A creditor claimed maritime privilege - this was rejected as the funds were not proceeds from a vessel sale but resulted from a precautionary garnishee order.
- The general hypothecs were then ranked in order of date when they were registered.
- The plaintiff with the earliest general hypothec was paid first and in full, and no funds were left for the rest.

Competition of Creditors on Competing Claims

Difficulty of the procedure:

- scattered laws: COCP, Companies Act, etc. with several exceptions throughout.
- There is no one law on the causes and ranking of preference.
- Through jurisprudence we know that:-
 - Claims for salaries and contributions are given preference as a privileged claim
 - Claims from insolvent companies are to be distributed pro rata (*pari passu* principle), however it is subject to various exceptions, e.g. secured privileges.
 - Claims for the liquidator's expenses are usually ranked higher



Special Summary proceedings - *Giljottina*

A request to the Court to give its judgment without proceeding to trial

- Actions before the Superior Courts
- May be requested in the sworn application
- ONLY if demand is for:

Recovery of a debt which is certain, liquid, due

Eviction of a person with / without claim for rent / damages

Eviction of an operator / lessee / occupant from vessels / aircrafts

Special Summary Proceedings - *Giljottina*

Art. 167 et seq COCP



Special Summary proceedings - *Giljottina*

Scope: To provide for expedient procedures before the superior courts when the demand is **solely**:

- for the recovery of a debt that is **certain, liquidated, and due** and **not** consisting in the performance of an act; or
- for the eviction of any person from an urban / rural tenement, with or without claim for rent or any other consideration due up to the date of the surrender of the tenement; or
- for the eviction of an operator, lessee, or other occupants, including staff, from seagoing vessels or aircrafts.

In these scenarios **only**, the plaintiff may request the Court to issue its judgment without proceeding to trial.

Special Summary proceedings - *Giljottina*

Procedure is **paramount** to the success of special summary proceedings.

The **sworn application** must contain:

- The original notice for sworn applications, crossed out, and with a warning added to appear before the court on an appointed day and time
- Statement outlining subject of the cause in separate numbered paragraphs
- Declaration that plaintiff knows these facts personally
- Basis of claim/s
- Declaration that the plaintiff believes there is no defence to be made
- Accompanying documentation
- Affidavit of person confirming facts of the claim
- Claim/s, numbered, including the request to proceed to judgment without trial



Fil-Prim'Awla tal-Qorti Ċivili

Min jirċievi dan ir-rikors maħluf kontra tiegħu għandu jippreżenta r-risposta maħlufa tiegħu fi żmien għoxrin (20) jum mid-data tan-notifika, cioè minn meta jirċeviha. Jekk ma tiġix ippreżentata r-risposta maħlufa bil-miktub kif trid il-liġi saż-żmien imsemmi, il-Qorti tgħaddi biex tagħti d-deċiżjoni skont il-liġi.

Għalhekk huwa fl-interess ta' min jirċievi dan ir-rikors maħluf li jkelllem avukat bla dewmien sabiex il-Qorti tisma' x'għandu xi jgħid fil-kawża.

Twissija

B'ordni ai termini tal-artikolu 167(2) tal-Kap. 12 tal-Liġijiet ta' Malta, għandek tidher quddiem il-Qorti hawn fuq indikata fil-jum u fil-ħin li jiġu mogħtija lilek.

MS (K.I. XX) u

I aħwa S (K.I. XX)

vs

AM (K.I. XX) u

NRD (K.I. XX)

Rikors Ġuramentat ta' M u I aħwa S;

Special Summary proceedings - *Giljottina*

Service on the defendant:

The defendant must be notified of the sworn application together with all accompanying documents **without delay**, and they shall be ordered to appear by no later than 30 days from date of service.

The defendant can contest the proceedings on the basis of their irregularity, or inapplicability to the case, by means of their own sworn evidence.

The Court must be convinced that the defendant has a *prima facie* defence in law or in fact to the action on its merits, or that the defendant has shown it facts or issues of law entitling them to defend the action or set-up an action.

The defendant can do this by means of a note in the acts of the sworn application - either in the Registry or on the day of the hearing.



Special Summary proceedings - *Giljottina*

If the defendant fails to appear / does not contest the proceedings:

- Court proceeds to give judgment

If they appear and successfully contest the proceedings:

- Defendant given 20 days to defend the action by means of sworn reply in the form of a statement of defence.
- In this case, the action will proceed as per usual, through trial.



Judicial Review of Administrative Actions

Art. 469A COCP



Judicial Review of Administrative Actions

An essential legal tool allowing ordinary individuals / organisations to request the Courts to examine and assess the validity of actions taken by public authorities, where they believe such actions are unconstitutional or *ultra vires*.

What is an administrative act?

Any order, licence, permit, warrant, decision, or rejection of a demand by a claimant by a public authority.

What is a public authority?

The Government, including its Ministries, departments, local authorities, bodies corporate established by law, including Boards empowered by law to issue warrants of any trade or profession.



Judicial Review of Administrative Actions

The Courts may declare an act null, invalid, or without effect where:

- the act is unconstitutional;
- the public authority was not authorised to perform the act;
- the public authority failed to observe the principles of natural justice;
- the public authority failed to observe mandatory procedural requirements;
- the act is an abuse of the public authority's power as it is done for improper purposes, or on the basis of irrelevant considerations;
- the act is in any other way contrary to the law.



Judicial Review of Administrative Actions

An action under this article is time-barred by **6 months from the date when the plaintiff becomes aware or could have become aware** of the administrative act, whichever is the earlier.

An action under this article can only be filed if there is no other mode of obtaining redress / appealing the administrative act.

The plaintiff may, in their application, include a request for the payment of damages based on the responsibility of the public authority arising from the contested act. In this case, bad faith must be proved.



Judicial Review of Administrative Actions

Case Study: Gheiti & Sansone Cruises Ltd v Transport Malta (FHCC 2021)

Facts:

- The Authority had suspended the plaintiff's license to operate a water taxi due to non-compliance with maritime regulations.
- Plaintiff claimed the suspension had failed to observe the principles of justice & the procedural requirements.
- TM argued that the legal action could not be sustained, as the plaintiff had not pursued all available remedies - they had failed to appeal the suspension.

Considerations:

- The Court considered whether the failure to make use of the appeal process prohibited the 469A action.
- It held that the appeal process was an effective redress and the plaintiff was aware of this option.
- Therefore, the Court agreed with the Authority and rejected the plaintiff's request for judicial review.



Government Causes

Art. 460 COCP



Government Causes

Context: the doctrines of state immunity & sovereign immunity

State immunity: a state cannot be sued in the courts of another state without its consent. Based on the principle that states are independent entities with the right to govern themselves without interference.

Sovereign immunity: same as state immunity but applies to the government and its agencies, within its own jurisdiction. Grants protection to the government from being sued in its own courts.

There are as always exceptions to these doctrines.



Government Causes

460. (1) Subject to the provisions of sub-article (2), no judicial act commencing any proceedings may be filed, and no proceedings may be taken or instituted, and no warrant may be demanded, against the Government, or against any authority established by the Constitution, other than the Electoral Commission, or against any person holding a public office in his official capacity, except after the expiration of ten days from the service against the Government or such authority or person as aforesaid, of a judicial letter or of a protest in which the right claimed or the demand sought is clearly stated.

(2) The provisions of sub-article (1) shall not apply -

(a) to actions for redress under article 46 of the Constitution; or

(b) to warrants of prohibitory injunction; or

(c) to actions for the correction of acts of civil status; or

(d) to actions to be heard with urgency;

(e) to referrals of disputes to arbitration, and where in accordance with the provisions of any law a particular procedure including a time-limit or other term is to be observed, the provisions of sub-article (1) shall not apply and the procedure aforesaid, including any time-limit or other term, shall apply and be observed in lieu thereof.

(3) Causes against the Government in respect of which there is in force a warrant of prohibitory injunction shall be heard by the court with urgency in preference to other causes

Government Causes

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The general rule is that actions against the government can only be filed:

- if a judicial letter / protest clearly stating the right / demand sought is served to the relevant entity
- and only following a 10-day wait from that service.

Government Causes

(2) The provisions of sub-article (1) shall not apply -

(a) to actions for redress under article 46 of the Constitution; - violations of fundamental rights

(b) to warrants of prohibitory injunction; - due to the urgent nature of the prohibitory injunction

(c) to actions for the correction of acts of civil status; - e.g. the need to correct errors in birth or marriage certificates

(d) to actions to be heard with urgency;

(e) to referrals of disputes to arbitration, and where in accordance with the provisions of any law a particular procedure including a time-limit or other term is to be observed, the provisions of sub-article (1) shall not apply and the procedure aforesaid, including any time-limit or other term, shall apply and be observed in lieu thereof.

Government Causes

(3) Causes against the Government in respect of which there is in force a warrant of prohibitory injunction shall be heard by the court with urgency in preference to other causes.

This provision ensures that government-related warrants of prohibitory injunctions are dealt with promptly, as this warrant is effectively barring government from acting.



Government Causes

Cases where the state needs to recover any fine / seize any goods subject to forfeiture

The State Advocate is empowered to file an application before the FHCC to recover said fine / goods. In the latter case the application is filed against the person who is in possession of the goods, or if no such person is identified, a curator is appointed to represent the unknown owner.

Any person interested has the right to appear at the trial and contest the government's demand.



Government Causes

Cases where the state needs to recover any debt it is owed

This procedure applies for any entity which is authorised to collect money for any services, supplies, penalties, rent, ground rent, burdens on property, compensation for occupation, licences, fees, or taxes, which remain unpaid.

In this case, the head of department / legal representative of the body corporate will file an application, together with their sworn declaration, within which they state the nature of the debt and the name of the debtor.

This is served on the debtor who has twenty days to contest the claim by means of an application. If this is not done, the original declaration will have the same effect as a final judgment and will be **an executive title**.

The debtor's application is served on the head of dept / legal rep who can also reply within 20 days.

A hearing is then appointed.



Government Causes

Cases where the state needs to recover any debt it is owed

Where an executive title is so obtained, what follows is the execution through an executive warrant.

This title can only be rescinded if the debtor, upon being served with the executive warrant, files an application claiming that they were unaware of the original application.

The court will examine the veracity of the debtor's claim and that therefore they had no way of contesting the original application.

This is the only way such executive title can be opposed.





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CAMILLERI PREZIOSI
ADVOCATES

Jacitation - *Jattanza*

Art. 403 COCP



Jacitation - *Jattanza*

Defined as a **false boasting or claim; assertions made to the prejudice of a third party's right**. Known as **slander of title**, and gives rise to the action of jacitation.

The action calls out such baseless claims by requesting the Court to order the vaunter to either bring the claim to trial within three months, or else be forever precluded from proceeding with such a claim.

Essentially, the plaintiff in a jacitation suit is calling on the defendant to sue them.



Jacitation - *Jattanza*

*403. Where any claim is **vaunted in any judicial act, or otherwise in writing**, the party wishing to be liberated from such jacitation may, **within a year of such jacitation**, demand, **by sworn application**, that a time be fixed within which the jactitator shall bring the claim for trial, and that in default thereof, the jactitator be precluded from ever proceeding on that claim.*

404. (1) The time mentioned in the last preceding article shall not exceed three months.

Example:

A files a judicial letter against B claiming they are the owner of a field in Rabat.

B not only replies to the judicial letter, but, within 1 year of that letter, they file a sworn application against A calling upon them to either bring their claim to trial (i.e. to prove ownership) within 3 months, or else give up that claim permanently.

Aim of jacitation suits is to promote legal clarity and restrain individuals from making frivolous assertions.

Jacitation - *Jattanza*

The elements of a jacitation suit:

1. The jacitator made a public pretension against the right holder spontaneously and not as a reaction to any other pretension.
2. That pretension must run counter to the right held, and must be therefore a determined thing.
3. The jacitator must be a present person and must be capable of being sued (exception: an absentee can be sued within 3 months).
4. The pretension must have been made in writing / by means of a judicial act.
5. The right holder wishing to be liberated from that pretension requests the court to give the jacitator a fixed period to bring about an action to prove that pretension.

Jacitation - *Jattanza*

The claim cannot concern:

- an uncertain right, contingent upon any event or condition; or
- a right with regard to which no action can, for the time being, be taken.

Once filed, the jacitator has to:

- either justify and substantiate their claim, stating that they wish to proceed to trial; or
- appear in court and declare that they have no claim against the plaintiff. The jacitator in this case will be placed under perpetual silence.

If the claim is upheld, the jacitator/defendant must institute proceedings before the competent court within the set timeframe.



Jacitation - *Jattanza*

Case Study: AX Business Park Ltd vs Scerri Camilla et (FHCC, 2025)

Facts:

The plaintiff company and defendants both claimed to own a private alley.

The company had filed a planning application including this alley, declaring itself as the owner.

The defendants objected as they claimed to own it, and filed a judicial protest asking the court to stop the company from vaunting pretensions on the alley.

The plaintiff company then instituted a jacitation suit asking the court to force the defendants to file a case on their pretensions on this alley.

The Court held that the defendants had made their pretension as a reaction to the plaintiff's own pretension on the alley, and therefore, the jacitation suit was not upheld.



Counter Claims / Reconvention Proceedings

Art. 396 et seq COCP



Counter claims / Reconvention proceedings

If the defendant also has a claim against the plaintiff, he may file a counter claim together with the reply

Not every claim can give rise to a counter claim. Defendant's claim has to be **connected to original claim**, i.e.:

- it arises from same fact / contract / title giving rise to the plaintiff's claim; or
- it aims to set off the debt claimed by the plaintiff, or bar in any other manner the plaintiff's action, or preclude its effects

***Cauchi v Galea et (FHCC 2010):** the counter-claim has to be connected to the main action. This does not necessarily mean that it **relies** on the plaintiff's claim, but that there is a **discernible link** between the two claims.*

Counter claims / Reconvention proceedings

Where the counter-claim arises from same fact / contract / title giving rise to the plaintiff's claim - *a very strict criterion which must be proved to the court's satisfaction.*

Examples:

Same Fact - A sues B for damages caused to their car due to an accident between the parties. B countersues A for personal injuries and damages sustained due to the same accident.

Same Contract - A landlord sues their tenant for not paying the rent as per the lease agreement. The tenant countersues the landlord for failing to provide the proper amenities as per the same agreement.

Same Title - A is a farmer claiming to have a title over a rural tenement, and sues B for taking illegal possession. B countersues, claiming that A's title has expired.

Counter claims / Reconvention proceedings

Where the counter-claim aims to set off the debt claimed by the plaintiff, or bar in any other manner the plaintiff's action, or preclude its effects - *widens the grounds of reconvention beyond fact, contract, or title.*

Examples:

Legal set-off: where the amount is certain, liquid, and due, in which case that amount is deducted from the amount in the original claim (A sues B for €10,000, B countersues for €7,000, A is paid €3,000)

Judicial set-off: where both parties have opposing claims for sums due, but one claim is easier to ascertain than the other. The party with the dubious claim asks the court to set it off against the other's.

Barring / precluding the plaintiff's action: a very broad provision which is accepted by the courts on a case by case basis due to its breadth.



Counter claims / Reconvention proceedings

Procedural effect of the counter-claim:

The actions are dealt with together and 1 judgment is given addressing both.

How to file a counter-claim:

The defendant must file their counter-claim with their reply, and adopt the same formalities adopted by the original claim. i.e. if the original claim is made by means of a sworn application, then the counter-claim must also be sworn.

When a counter-claim is so filed, the written proceedings stage is as follows:

- Claim (application)
- Reply & counter-claim
- Reply to counter-claim

Counter claims / Reconvention proceedings

The defendant can only bring about a counter-claim in the same capacity in which they have been sued (e.g. in their natural or legal capacity). Likewise they can only countersue the plaintiff in their same capacity.

If the original claim is discontinued, the counter-claim may still be insisted upon.

Jurisdiction and competence of the court in counter-claims

The jurisdiction is extended, but the competence **is not**. Therefore the court must still have the competence to hear that counter-claim.

E.g. Tenant A sues Landlord B in the Rent Regulation Board for failing to effect repairs in the property. Landlord B countersues claiming the lease is expired. Issues concerning the validity of a lease agreement fall within the civil court's jurisdiction, not the Board's, so the counter-claim fails.

Uncertain / Unknown Heirs

Art. 436 et seq COCP



Uncertain / Unknown Heirs

What happens when a person dies and no heir is known?

The State Advocate takes possession of the inheritance to safeguard the interests of whoever may be entitled to it, and becomes its lawful representative.

The State Advocate does this by filing an application before the FHCC to issue a warrant of description of the estate and then seize it. Anyone claiming an interest in the estate may by application be allowed to be present during the description process.

If the State Advocate deems any property to be perishable / deteriorating, or where the estate is of a very small value, he may request a sale by auction.



Uncertain / Unknown Heirs

Once the State Advocate is vested with possession of the estate he must publish a notice in the Govt. Gazette and in a daily newspaper, calling on anyone who may have a claim on the estate to bring their claim forward within one year.

Before the expiration of that year, no person may be put in possession of the estate, unless that person provides a surety to restore the estate to anyone with a better claim who appears within that year.

Exceptions:

- heirs instituted;
- legitimate children of the deceased;
- parent / sibling where no children exist;

Do not need to provide a surety but will be put under an obligation to surrender any portion as may be due to others with a valid claim.

Uncertain / Unknown Heirs

Where the estate is very small, and the State Advocate does not oppose it, the court may deliver the estate to any creditor claiming it in full or partial payment of a debt owed to him.

Where proof of the debt is difficult, the court may allow its confirmation on oath by the creditor.

Following the expiration of the 1 year, the State Advocate may request authorisation from the court to move with the sale of the entire estate by auction.

The proceeds (less any expenses incurred) will be deposited in court for the benefit of any heirs.



Disentail

Art. 448 et seq COCP



Disentail

Entailed Estate: A historical form of restricted inheritance of property, usually restricted to a specific line of descendants (e.g. male heirs only). The aim was to keep a specific property within the family for generations to come.

To disentail is to legally remove this obligation from the property, allowing the heirs to do whatever they wish with that property.

Disentail happens by means of an application, stating the nature of the entail and why the disentail is being demanded.

Curators are appointed and a notice is issued for any interested party to be able to oppose the request.



Disentail

The curators and then any interested parties have the right to reply to the application, following which the court shall appoint the case for hearing.

The judgment ordering the disentailment shall have the effect of freeing the property from any entail.

At any point before the property is transferred, any interested party may request the court to declare the disentail cancelled if the reason for the disentail no longer exists.





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