

Legal Research and Interpretation Methodology

Lecture Title: Writing, Referencing, Bibliography,
Research Ethics, Plagiarism and Collusion

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Diploma in Law (Malta)



CAMILLERI PREZIOSI

ADVOCATES

MAMO TCV

ADVOCATES

Recap

- Collection of Data – Questionnaires – most popular for empirical data, can reach more people, sensitive topics, questions must be clear
- Enhance participation – sponsorship, covering letter, format & ease of completion, reward/payment
- Survey is the process vs questionnaire (instrument)
- Close ended vs open ended questions
- Data analysis & interpretation – editing raw data, coding of themes, classification, use of tabulations
- Interpretation - *Properly collected data + properly analyzed data + wrong interpretation = Failed research (inaccurate & misleading conclusions)*



Recap

- Interpreting legislation - Law is stated in general terms since it is intended to apply to various situations. Match facts with legal rules
- Art 535 Cap. 16 vs Art 85 Cap 9 – Spoliation – ragon fattasi
- Interpretation – may be rigid vs flexible depending of the legal topic e.g. Substantive law – depends on the case at hand, Interpretation of contracts – rigid, Nullity of will due to insanity – rigid, Possession of property cases – wide and flexible
- Tips: Read the law (both Maltese and English version), Read the whole article, articles about the definitions, judgments, 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



Recap

- Writing – structure is subjective and depends on the report being written e.g. thesis, article etc
- Case brief – summary of a judgment – importance is on essence and not on facts - Include only most relevant facts of the case that highlight the main issue, identify the applicable law, application of the law to the issue, include court's reasoning and decision. Check for assenting or dissenting opinions



7. Writing – Legal Writing – Legal Briefs

- <https://legaldictionary.net/legal-brief/> definition:-
 - *A short and concise statement*
 - *A document that presents a legal argument to a court explaining why that party should prevail over the other*
- Maltese version known as note of submission/ note of observation
- Art. 165 and 166 of Cap. 12:

165. It shall be lawful for the court, on the case being closed, at the request of either of the parties, to grant leave for filing, within a time to be fixed by the court, a written pleading containing a summary of his submissions provided the opposite party shall not show that such leave would cause a delay to his prejudice

166. Where leave as provided in the last preceding article is granted to either of the parties, the opposite party shall be entitled to file in reply another written pleading within a time equal to that which shall have been fixed by the court as aforesaid, to be reckoned from the day of the service of the written pleading for the filing of which the court shall have granted leave.



7. Writing – Legal Writing – Legal Briefs

- Legal brief may be done orally unless there are complicated legal issues/ facts
- May even take 2-3 days if matter is complex
- Brief needs to persuade not argue
- If writing on behalf of plaintiff, quote application, reply, counterclaims and replies and any decrees or interim judgments given
- If writing on behalf of defendant, no need to quote application, reply and decrees unless you need to make reference to them
- Must be concise approx. 3-5 pages of observations/ submissions
- Go through court file, refer to fol. numbers for easier reference
- Target legal issues
- Do not include facts/evidence which does is not relevant
- Research case law
- Refer to the elements of the law
- Conclude by requesting the remedy sought
- Mostly done in Maltese
- Similar process is used for appeals and replies

(4) For filing any application requesting a new taxing of fees or the approval of an itemization of expenses made under this article there shall be paid a fee of €50".

13. Fees for the approval by the Court of sales in accordance with Sub-Title V of Title VII of Part I of Book Second (Of Court Approved Sales of Ships, Vessels and Aircraft) - there shall be paid a registry fee, calculated on the sale value of the asset being sold:

On the first Euro 1,000,000	1%
From Euro 1,000,001 to Euro 5,000,000	0.5%
From Euro 5,000,001 to Euro 10,000,000	0.1%
Above Euro 10,000,000	0.01%

TARIFF E

Fees payable to Advocates, Legal Procurators and Official Curators

Amended by:
VII.1836, 4, 5, 6, 7;
IV.1868, 13;
G.N. 136 of 1919;
G.N. 137 of 1919;
G.N. 475 of 1929;
G.N. 393 of 1934;
G.N. 653 of 1942.
Substituted by:
L.N. 7 of 1968.
Amended by:
L.N. 9 of 1968;
L.N. 78 of 1971.
Substituted by:
L.N. 102 of 1980.
Amended by:
XIII.1983, 4.
L.N. 4 of 1986;
L.N. 1 of 1987.
Substituted by:
L.N. 121 of 1996.
Amended by:
L.N. 134 of 1996;
XXIII.2002, 194;
L.N. 277 of 2005;
L.N. 290 of 2005;
XXVII.2005, 75.
Substituted by:
L.N. 407 of 2007.
Amended by:
XXIII.2008, 15;
L.N. 371 of 2011;
L.N. 224 of 2014.

	€
1. (a) For each note of acceptance of banns and for each protest against the sufficiency of a bail for costs, even if such protest is not filed separately	11.65
(b) For each note required to be filed under the provisions of the <u>Commercial Code</u>	11.65
(c) For every note of submission filed in any court,	from 46.59 to 232.94
2. (a) For each application for summoning of witnesses	
(b) For each first application for sale of immovables (including research in the Public Registry, the ordering of certificates of hypothec, and perusal of relative deeds)	from 23.29 to 69.88
(c) For any other application	from 11.65 to 58.23
(d) For any application filed after office hours or on a Sunday or public holiday, there shall be taxed an additional fee of	58.23
3. For each application filed in the Court of Voluntary Jurisdiction:	
(i) if it concerns the admission of minors to an industrial school or to an approved school	6.99



7. Writing – Legal Writing – Legal Briefs

Fil-Prim'Awla tal-Qorti Ċivili

Rikors Ġuramentat: XX/XX/JVC
Differita: XX/XX/XXXX

AB *et*

vs

SS Limited *et*

Nota ta' Osservazzjonijiet tal-atturi

Jesponu bir-rispett,

Illi in linea mal-fakulta mogħtija fl-udjenza tat-XX ta' XX 2021, l-esponenti ser jghaddu sabiex jagħmlu s-sottomissjonijiet tagħhom bil-miktub.

Rikors Ġuramentat

Illi permezz tar-rikors ġuramentat l-esponenti premettew is-segwenti:-

1. Illi l-esponenti huma l-proprjetarji u jggestixxu barriera tal-franka liema barriera hija registrata blala "Soft Stone Quarry Number XX" u dan ġewwa XX.
2. Illi b'kuntratt fl-Atti tan-Nutar Sarah Bugeja tal-25 ta' Awissu 2017, kopja ta' liema tinsab annessa u mmarkata "Dok. A", is-soċjeta konvenuta, rappreżentata mill-intimati X u X ahwa X li tagħha huma diretturi, akkwistat il-barriera, għa għalqa fil-limiti tal-Imqabba, fil-kuntrada Ta' X u hekk ukoll innejha, liema barriera hija registrata mal-Awtorità tal-Ippjanar u mal-Malta Resources Authority bin-numru X (qabel numru X), tal-kejl superficjali ta' *circa* 3,494.8m², konfinanti mill-punent ma' Sqaq Ta' X li jagħti għal fuq Triq X, mil-lvant ma' raba' tal-Knisja Parokkjali u Arcipretali X jew l-aventi kawza tagħhom u mit-tramuntana ma' raba' ta' X jew l-aventi kawza tiegħu, liema art hi murija fuq pjanta annessa mal-istess kuntratt. Inkluż fil-bejgħ kien hemm kamra rustika mal-faccata li tagħti fuq l-imsemmi sqaq.
3. Illi jsewvi għalhekk, il-barriera tal-istanti hija separata mill-barriera tas-soċjeta konvenuta mill-imsemmi sqaq. Hu car anke mill-istess pjanta annessa mal-kuntratt li l-isqaq huwa pubbliku u certament li ma kienx inkluż fl-akkwist tas-soċjeta konvenuta.
4. Illi xi jiem wara li s-soċjeta konvenuta akkwistat din il-barriera, il-konvenut X kellew lill-attur X u talbu permess sabiex iqatta' l-blat li jifforma parti mill-proprjeta tal-atturi liema hajt jifred il-barriera proprjeta tal-istanti mill-imsemmi Sqaq Ta' X. Dan sabiex ikun jista' jidhol bil-vetturi tiegħu ġewwa l-barriera tiegħu u munflok ma jirtura mill-faccata tiegħu. Madd mill-atturi ma ta permess sabiex jintmess il-hajt tagħhom;

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5. Illi ciononostante, b' mod arbitrarju u mingħajr ebda kunsens tal-istanti, il-konvenuti jew min minnhom, għal nofs Settembru 2017, qatgħu il-blat formanti r-rcint tal-barriera tal-istanti billi dejquh minn tliet piedi għal madwar pied u dan kif jidher mir-ritratt anness u mmarkat "Dok. B";
6. Illi dan kollu sar mingħajr permessi tal-Awtoritajiet kompetenti;
7. Illi fuq kollox tali agir jikkostitwixxi spoll vjolenti u klandestini fil-konfront tal-esponenti li issa r-rcint tal-barriera tagħhom spicca tnekel;
8. Illi għad li debitament interpellati b'ittra bonarja tas-16 ta' Ottubru 2017 li kopja tagħha tinsab annessa u mmarkata "Dok. C", sabiex jigi rimedjat l-ispoll, il-konvenuti baqgħu inadempjenti;
9. Illi għalhekk, l-esponenti kellhom jirrikorri għal din l-azzjoni;

Illi r-raguni ta' din it-talba li li l-konvenuti, jew min minnhom, wettqu spoll ricienti, vjolenti u klandestini fil-konfront ta' l-esponenti u għalhekk huma jew min minnhom għandhom jigu kkuandannati sabiex iregħgu lura x-xoghlijiet li għamlu u jirintegraw lill-esponenti fit-tgawdja ta' hwejjigħom;

Għaldaqstant, ir-rikorri jitolbu bir-rispett illi din l-Onorabbli Qorti, preva d-dikjarazzjonijiet necessarji u mogħtija l-provvedimenti opportuni, joghħobha:

1. Tiddkjarja illi għar-ragunijiet premissi, il-konvenuti jew min minnhom ikkommettew spoll klandestini u vjolenti għad-detriment tal-atturi;
2. Tordna lill-konvenuti jew min minnhom sabiex fi zmien qasir u perentorju li jigi lillhom prefiss, jagħmlu dawk ix-xoghlijiet rimedjali kollha opportuni sabiex jirristitwaw lill-esponenti fit-tgawdja ta' hwejjigħom ossia r-rcint tal-barriera proprjeta tagħhom "Soft Stone Quarry Number 26" ġewwa Ta' X, fil-limiti tal-Imqabba u senjatament dik il-parti tar-rcint li tagħti għal fuq l-isqaq Ta' X dejjem fil-limiti tal-Imqabba, u dan *occorrendo* taht is-supervjżjoni ta' periti nominandi.

Risposta Ġuramentata

Illi l-intimati fir-risposta ġuramentat ssottomettew is-segwenti eċċezzjonijiet:-

1. Preliminarjament l-eċċepjenti X, X u X sive X mhumiex legittimi kontraditturi u għandhom jigu liberati mill-osservanza tal-gudizzju;
2. Fil-mertu, l-atturi għandhom jipprovaw l-elementi tal-azzjoni mressqa minnhom, inkluż l-element tal-pussess u li l-azzjoni tagħhom giet intavolata fiz-zmien dekadenzjali impost mil-ligi;
3. Inoltre, kull wiehed mill-atturi għandu jikkonferma id-diminuzzjoni tal-pussess, danju jew tfixkil fit-tgawdja ta' xi drittijiet possessorji allegati minnhom;

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4. F'kull kaz, u mingħajr pregudizzju, it-talbiet attriċi huma infondati fil-fatt u fid-dritt u għandhom jigu miċhuda bl-ispejjez kontra tagħhom.
5. F'kull kaz ukoll, u mingħajr pregudizzju għas-sueċċepit, l-eċċepjenti kollha ma kkommettew ebda diminuzzjoni tal-pussess, danju jew tfixkil fit-tgawdja ta' xi drittijiet possessorji ta' xi wiehed jew aktar mill-atturi.
6. Mingħajr pregudizzju, it-tieni talba attriċi hija insostenibbli u impossibbli peress li ma jista' qatt isir npristinatar ta' blat.
7. Salv eċċezzjonijiet ulterjuri.

Osservazzjonijiet

Illi l-esponenti sejin jitrattaw l-eċċezzjonijiet tal-intimati hekk kif ġej:-

L-ewwel eċċezzjoni – Il-Legittimi kontraditturi

Illi l-intimati X, X u X sive X isostnu li mhumiex il-legittimi kontraditturi. Ma nghatat l-ebda eċċezzjoni simili fir-rigward tas-soċjeta' intimata X & Sons Limited. Mill-provi prodotti jirriżulta s-segwenti:-

- i.* Fir-rigward ta' X, għaxart'ijiem qabel ma tqatta l-hajt cempel lill-attur X fejn jispjegalu l-problema li kelli biex jidhol fil-barriera tiegħu. Sahansitra liagħu fuq il-post fejn X wara li wera lil X dik il-parti fejn kien hemm in-nuqqas ta' spazju qallu li l-unika soluzzjoni kienet illi jitqatta l-hajt tal-atturi. Nonostante li l-atturi qatt ma taw permess lill-konvenuti għat-tqattiegħ, fit-ijem wara, fl-10 ta' Settembru 2017, wiehed mill-atturi sab il-hajt imqatta. F'telefonata bejn X u X (wara li tqatta l-hajt), X stess annetta li kien hu li qatta' l-hajt. Dan flimkien max-xhieda in-kontro-ezami u in-ri-ezami ta' X fis-seduta tad-29 ta' Ottubru 2019, fejn jgħid "Naqbel illi ta' X qatt ma qaluli li stajt imqatta mil-hajt... Lanqas ma qaluli li ma stajt inqatta..." jagħti x'jidhem li huwa kien involut fit-tqaxxir tal-blat.
- ii.* Fir-rigward ta' X, fl-affidavit tiegħu stess jammetti li huwa kien nehha fit mill-blat biex it-trakkijiet ikunu jistgħu jgħorgu kif suppost.
- iii.* In kwantu għal X huwa għandu jinzamm responsabbli ukoll huwa direttur tas-soċjeta' intimata (flimkien ma' X). Kif ingħad f'diversi sentenzi, il-kumpanja m'għandhiex idejn, saqajn u molhu għall-azzjonijiet tagħha tiddependi fuq l-agir u d-deċisjonijiet tad-diretturi tagħha, f'dan il-kaz Frankie u X. L-esponenti jagħmlu referenza għas-sentenza fl-ismijiet "Joseph Grima vs Pierre Buontempo *et*" deciza mill-Prim'Awla tal-Qorti Ċivili fis-7 ta' Lulju 2009 u sussegwentement ikkonfermata mill-Qorti tal-Appell. F'din is-sentenza ngħad:-

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7. Writing – Legal Writing – Legal Briefs

... skond il-gurisprudenza taghna, "id-direttur f' socjeta' hu meqjus bhala mandatarju tas-socjeta' fir-relazzjonijiet interni ma' dik l-istess socjeta' fil-waqf li hu kkunsidrat bhala r-rapprezentant ta' dik is-socjeta' fir-relazzjonijiet taghna ma' terzi persuni. B' dana kollu ma hemmx dubju li f' certu determinati sirwazzjonijiet id-direttur ikun personalment responsabbli ghal-hsara bl-agir delittwuz minnu stess kommess."

Dwar din ir-responsabbilta' tad-diretturi jinghad fil-Palmer's Company Law:

"Any director who is party to a fraud or to the commission of any other tort is personally liable to the injured party. This is on the principle that whoever commits a wrong is liable for himself, and, nonetheless so, that he was acting as an agent or servant on behalf, and for the benefit of another, for the contract of agency, or service cannot impose any obligation on the agent or servant to commit, or assist in the committing of, fraud or any other wrong. The Company may also be liable but that does not exonerate the director."

Illi l-Qorti ta' l-Appell Kummercjali fid-decizjoni taghha tal-31 ta' Janjar 1977 fil-kawza fl-ismijiet John Bugeja vs Giuseppe Maria Vella Gatt proprio et nomine, kienet citat dina s-silta fejn il-konvenut kien gie ritenut personalment in kolpa ghall-atti frawdoleni fil-konfront ta' l-attur.

Il-Qorti tal-Appell, fis-sentenza taghha tal-5 t'April 2013 ziedet tghid li:

Fir-rigward tar-responsabbilta' personali tad-direttur Pierre Buontempo, huwa car li meta jkun hemm agir bi frode jkun hemm lok ghal-lifting the corporate veil. Fil-ktieb Boyle & Birds' Company Law (7th Edit. 2009 pagna 62), l-awturi jgħidu li:

"It is well established that the courts will not allow the corporate forms to be used for the purposes of fraud, or as a device to evade a contractual or other legal obligation."

... Kif qalet il-Prim'Awla tal-Qorti Civili fil-kawza Briffa v. Abela, deciza fit-28 ta' Marzu 2003, id-direttur ta' kumpanija jkun personalment responsabbli ghal-hsara bl-agir delittwuz minnu stess kommess, u "dan hu hekk il-każ anke fejn id-direttur ma jikkommettix l-agir delittwuz personalment imma jippermetti lil haddiehor fil-kumpanija jikkommettuh" – ara wkoll Galea v. Hili, deciza mill-Qorti tal-Kummerċ fl-1 ta' Ottubru 1996. Ir-responsabbilta' ta' Pierre Buontempo mhix bazata biss fuq il-fatt li hu l-controlling shareholder, izda wkoll fuq il-principju li "la frode non merita mai la protezione della legge" – Kollez Vol. XXVII.1.725.

Riferenza ssir ukoll ghas-sentenza fl-ismijiet "Joe Vella vs Lino Stafrace" deciza fis-16 ta' Mejju 2014 mill-Prim'Awla tal-Qorti Civili fejn inghad:-

Jurizulta illi waqt li kienu qed isiru xoghlijiet ta' skavar fil-fond Numru 24 ta' Stafrace, hargu hsarat fil-fond Numru 25 ta' Rita Vella...

Jurizulta li l-izvilupp kien qiegħed isir minn RC Construction Limited. Micallef isostni li m'huwix il-legittimu kontradditur ghalix Stafrace kienu taw l-appalt lil RC Construction Limited. Il-qorti hi tal-fehma li Micallef ma jistax jahrab mir-responsabbilta'. Mill-atti jurizulta li hu azjonist maggoritarju u l-uniku direttur tal-kumpanija (ara fol. 183-184). Mill-provi hu evidenti li kienet decizjoni tiegħu li ma tinzammx id-distanza legali u li jsir it-taffir li sar. Hu evidenti li n-negozju talkumpanija RC Construction Limited kien bazat fuq l-esperjenza ta' Micallef, li hu stess xehed li kien ilu jahdem fl-industrija tal-bini minn eta' zghira. Il-qorti tagħmel riferenza għall-każ Ingliż Rainham Chemical Works Ltd (in liq) v Belvedere Fish Guano Co. Ltd (1921) li kien jitratta manifattura ta' splussiv li għamel hsara fil-propjeta' tal-gienn wara spluzjoni. Zewg diretturi gew dikjarati li m'huwix responsabbli peress li ma kinux personalment ordnaw l-att li kkaguna l-hsara. Lord Bukmaster osserva:

"If a company is formed for the express purpose of doing a wrongful act or if, when formed, those in control expressly direct that a wrongful act be done, the individuals as well as the company are responsible for the consequences, but there is no evidence in the present case to establish liability under either of these heads."

Ragunament li fil-fehma tal-qorti japplika wkoll fix-xena lokali meqjus li l-Artikolu 1031 jipprovdi: "Izda, kull wieħed iwiegeħ għall-hsara li tigrigi bi htija tiegħu".

F'dan il-kuntest ukoll, f'każ ieħor Ingliż "Koninklijke Philips Electronics NV v Prico Digital Disc GmbH" the defendant director was in charge of the day-to-day running of the defendant company. It was admitted that the company imported into the UK and kept and disposed of recordable CDs of a kind that the court previously had held infringed the claimant's patent. The director had been responsible for the decision to import the infringing CDs into the UK and for the cultivation of A as a customer for those products. The director also made a decision to indemnify A against liability for royalties when the claimant sued A for infringement. The court concluded that the director's close involvement with the day-to-day actions of the company, and his independent authority in respect of those actions, were sufficient to render him liable as a joint tortfeasor with the company" (Company Law, Brenda Hannigan, Tiolet Edizzjoni, Oxford (2012) pagna 70).

Dan apparti li bhala direttur tal-kumpanija li kello l-kontroll effettiv tagħha, Micallef kello duty of care li jzgura li ma ssir hsara lil-gienn. Il-kuntrattur kello d-dmarr li jzgura li l-attivita' li kienet qegħda ssir fis-sit ma turnzultax fi hsara fil-propjeta' tassidien.

Din is-sentenza giet kwotata mill-Prim'Awla tal-Qorti Civili fis-sentenza fl-ismijiet "David Buhagiar vs CFS Construction Limited" deciza fis-7 ta' Janjar 2020 fejn inghad:-

Illi fil-fehma ta' din il-Qorti, m'hemm l-ebda raguni l-għala soċjeta' kummerċjali m'għandhiex tkun passibbli għal responsabbilta' delittwuz, għadjarba għandha personalita' ġuridika separata u distinta minn dik tal-membri u d-dirigenti tagħha u għadjarba għandha l-kapaċita' li tikkuntratta ma' terzi, takkwista u taljena l-assi tagħha, u tikkuntratta d-debiti. M'hemmx dubju lanqas li d-diretturi tagħha huma responsabbli personalment għal atti ta' natura kriminali. Fil-każ ta' atti delittwuzi, li ma jkunux ukoll jammontaw għal vjolazzjoni tad-dritt penali, kif muri iktar 'il fuq, hemm għadd ta' istanzi fejn il-ġi nni fisha taddossa r-responsabbilta' personali fuq id-diretturi. Il-gurisprudenza, kemm dik Ingliża kif ukoll Malta, estendiet ir-responsabbilta' personali għal każijiet oħrajn li m'huwix espressament ikkontemplati mil-ġi. B' mod partikolari, il-Qrati attribwew responsabbilta' personali fuq id-diretturi ta' kumpanija anke meta jkunu agixxew f'isem il-kumpanija. Kien hemm istanzi, succitati, meta l-Qrati, kemm tagħna kif ukoll Ingliżi, sabu lid-diretturi responsabbli personalment u solidalment mal-kumpanija. Din il-Qorti taqbel ma' dawn id-decizjonijiet u għalhekk fil-waqf li bhala regola ġenerali taqbel mal-opinjoni succitata tal-professur Muscat fejn esprima l-fehma li fejn kumpanija tinstab hatja ta' tort, id-dirigenti tagħha ma jinzammux ukoll responsabbli, dan ma jgħoddx għall-każ fejn l-istess dirigenti jkunu eżegwew l-att illegali huma afusom jew ikunu saru taht id-direzzjoni tagħhom. F'każijiet bħal dawn, kemm huma kif ukoll il-kumpanija tkun responsabbli, għalix l-atti delittwuzi jigu kommessi materjalment minn persuna fizika u din ma tista' qatt tabrab mir-responsabbilta' ta' eghmilha. Rilevanti wkoll f'dan il-kuntest huwa l-Art. 1050 tal-Kodiċi Civili. Li jistipula li jekk il-bieċa tal-hsara li kull wieħed ikun ikkaguna ma tkunx tista' tigi stabbilita, min ikun b'ta l-hsara jista' jtitlob il-hsara kollha mingħajr kull min idur, salvi li l-pporzjon tal-htija jigi stabbilit bejn dawk li jkunu hadu sehem. Fil-kuntest ta' direttur li jagħxi f'isem kumpanija, u meta t-tnejn ikunu responsabbli, diffiċli wieħed jispjartixxi t-tort bejniethom.

Illi m'hemmx dubju li l-agir tal-atturi jikkwalifika għal att delittwuz, ekwivalenti għar-reat ta' *ragion fattasi* fil-kamp kriminali. Għaldaqstant fil-fehma tal-esponenti l-intimati kollha għandhom jinzammu responsabbli.

Il-tieni, it-tielet, ir-raba', il-hames u s-sitt eccezzjoni – Il-pussess u d-diminzjonijiet tiegħu, it-tmien tal-azzjoni u r-ripristinjar tal-blat

Illi r-rimnanti eccezzjonijiet jistgħu jingabru fit-tlett instestaturi msemmija huwa fuq.

i. *Il-pussess u id-diminzjonijiet tiegħu*



7. Writing – Legal Writing – Legal Briefs

Illi r-risposta dwar il-pussess tal-blat/hajt tinsab fil-kontro-ezami tad-29 t'Ottubru 2019 ta' X stess. Huwa xehed li l-blat li tqaxxar jiffirma parti mill-barriera tal-esponenti. Izda jekk dan mhuwex bizzejjed ta' min jistaqsi s-segweni mistoqsija: *Jekk l-intimati jikkontendu li l-hajt ma jiffirmax parti mill-barriera tal-esponenti u qatt ma kellhom il-pussess tiegħu, għaliex l-intimati (aktar minn wiehed) marru jittolbu l-permess tal-esponenti biex iqatgħu il-blat?!*

Illi ai fini ta' pussess l-esponenti prezentaw kopja tal-kuntratt t'akkwist li juri li huma s-sidien b'mod individwal tal-barriera. Inoltré fix-xhieda tagħhom xehdu li huma għadhom jagħmlu użu mill-barriera għat-torba u sussegwentement għall-gebel. Inoltré l-intimati stess xehdu li kienu jaraw lill-esponenti fil-barriera li l-hajt merrtu ta' dawn il-proċeduri jiffirma parti minnha:-

- i. Fil-kontro-ezami tad-29 ta' Ottubru 2019, X stess jgħid li lil Pawlu (wiehed mill-atturi) kien jarah hemm;
- ii. Fl-affidavit tiegħu X jgħid li meta mar icaqlaq xi gebel fil-proppjeta' li kienu ser jixtru biex ikun jista' jdawwar u johrog zli barra, wiehed mill-ahwa Farrugia kien prezenti u mar ikellmu;
- iii. Fl-affidavit tiegħu X jgħid li wara li s-soċjeta' intimata xtrat il-barriera, kien diehel bil-van fi Sqaq ta' X u meta waqaf quddiem il-gate tal-barriera ta' X & sond Ltd, kien hemm l-esponenti X.

Illi gja la darba gie stabbilit li l-esponenti huma s-sidien u jipposjedu l-barriera, huma ovvjw li r-recint li jzomm il-barriera jiffirma parti minnha.

Illi b' analogija jekk minflok barriera l-każ kien jikkoncerna djar residenzjali go triq dejqa li minhabba d-djuqija tagħha ma jimexxielux jikwartja bil-vettura fil-proppjeta tiegħu, u dan imur iqatta' u jhaffer il-hajt tal-faccata tad-dar ta' quddiemu, il-hajt tad-dar huwa dejjem privat u jiffirma parti mir-residenza u mhux parti mit-triq dejqa!

Illi in kwantu għad-diminuzzjoni, anke mir-ritratti esebiti jidher car li l-hxuna tal-hajt tnaqqset b'mod konsiderevoli minn 0.92 metri għal 0.31 metru. Ta' min jirriveva li l-att spoljattiv holoq periklu għal dawk li jagħmlu użu mill-isqaq stante li wara l-blat li qatgħu l-intimati, l-art tinsab madwar sitt sulari l-isfel hekk kif jinsab ukoll ikkonfermat minn X fl-affidavit tiegħu.

Illi l-esponenti qatt ma taw il-kunsens tagħhom sabiex jitqatta l-blat. Dan irendi l-att spoljattiv bhala wiehed vjolenti u klandestinu. Dan huwa wkoll sostanzjal mill-fatt li t-tqattiegħ sar matul il-lejl kif ukoll ma kien hemm l-ebda permess mahrug mill-Awtorita' tal-Ippjanar għal dan il-għan.

ii. *Iz-zmien tal-azzjoni*

Illi mir-rapport esebiti bhala Dok. "B" mal-affidavit tal-esponenti Carmel sive Charles Farrugia, jirrizulta li t-tqattiegħ sar bejn il-lejl tad-9 u l-10 ta' Settembru 2017. Il-kawza odjerna giet prezentata fid-9 ta' Novembru 2017 u għalhekk entro t-terminu ta' xahrejn mill-att spoljattiv.

iii. *Ir-ripristinjar tal-blat*

7

Illi permezz tas-sitt eċċezzjoni l-intimati jiddikkjaraw l-ovju, cjoe li l-blat qatt ma jista' jigi rripristinat. Fit-talbiet tagħhom l-esponenti qatt ma talbu li din il-Qorti tordna r-ripristinjar tal-blat izda li l-intimati jew min minhom jagħmlu dawk ix-xoghlijiet rimejjali kollha opportuni sabiex jirripristinaw lill-esponenti fit-tgawdja ta' dik il-parti tar-recint li tagħti għal fuq l-isqaq. Dan jista' jsir hekk kif indikat fir-rapport tal-perit David Pace cjoe billi għid li dan għandu jigi sostitwit b'qoxra tal-konkos jew fejn tippermetti il-hxuna, b'qoxra tal-bricks mimlija bil-konkos.

Daqstant għandiom x'jissottomettu l-esponenti għas-savju gudizzju ta' din l-Onorabbli Qorti.

Avv. Marycien Vassallo
199, Triq id-Dejqa, Valletta

P.L. Jean-Pierre Busuttil

Espozenti: X
Notifika: Avv. X – Il-Qorti, Valletta

8



7. Writing – Legal Writing – Legal Briefs

Health Care Professions Appeals Committee

Re. Appeal filed by

Mr. X

Against a decision given by the
Pharmacy Council dated 20th
January 2020

Submissions by the Pharmacy Council following submissions filed by Dr. X

The Pharmacy Council (hereinafter referred to as "the Council") respectfully submits that on the Xth of X 2021 it was notified, via an email sent at 11.24 p.m., of the final submissions submitted by Mr. X (hereinafter referred to as "the Appellant") to the Health Care Professions Appeals Committee (hereinafter referred to as "the Appeals Committee"). In line with the direction given by the Appeals Committee during the sitting held on the 18th of March 2021, the Council would like to submit the following arguments as reply to the Appellant's submissions:-

A. Summary of Facts

The Appellant, a third country national, filed an application with the Council for registration and acquisition of a licence to practise as a pharmacist in Malta. Said licence awarded following specialised training within the community and as an acknowledgement of one's ability to work as a pharmacist within the community.

Upon assessing the application, the Council refused to issue the licence at that stage since the Appellant's "qualification differs from the Maltese qualification and with the minimum training requirements established under the EU directive with regards to duration, content and practice".¹

The Council also suggested that the Appellant is to "undertake suitable training that is represented by, or equivalent to, that offered in the 15 month (3 semesters) MPharm course offered by the University of Malta".

The Council has already informed the Appellant that following the successful completion of said course and relative examinations, the Council would positively consider the Appellant's application.

¹ Vide Council's letter of the 20th January 2020

At this stage, the Council submits that the Bachelor of Pharmacy course in Malta is 5 years long and it includes practice in the community as it requires that students do an apprenticeship in a local pharmacy and ethical training related to the exercise of the pharmaceutical profession. The Appellant's Bachelor's course in India, which is to be considered as the equivalent to the local course, is 4 years long. The Masters course and subsequent PhD studies in Torvergata are specialisations in biochemistry and molecular biology that do not confer knowledge and skills in the area of Pharmacy equivalent to the Degree in Pharmacy offered by the University of Malta.

Moreover, the Appellant's academic qualifications, while laudable, do not include training within the Maltese Community. Furthermore, most of the Appellant's practical experience has been one related to the Pharmaceutical Industry, that is the manufacture of medicine, and not acting as a pharmacist within the community.

It must be further noted that despite an extensive exposition of the course content for the various academic qualifications achieved by the Appellant at no stage it is indicated that said content included training in pharmaceutical ethics.

B. Legal provisions regulating the Council's decision

The conditions to practise as a pharmacist in Malta are laid out in Articles 13 and 17 of the Health Care Professions Act (Chapter 464 of the Laws of Malta).

According to Article 17(1)(c), in the case of an applicant coming from a third country, that is a non-EU Member state, "The Pharmacy Council may in respect of such qualification, require the applicant to sit for and pass a professional and linguistic proficiency test and may also require that the applicant undergoes further training in pharmacy in a pharmaceutical establishment recognised for the purpose by the said Council."

Furthermore, Malta is bound by Council Directive 2005/36/EC (hereinafter referred to as "the Directive") and any decision by the Pharmacy Council in terms of Article 16 (1)(a) Chapter 464 has a bearing on other EU Member States². Through the Directive the principle of automatic recognition amongst member states has been introduced and hence, any recognition of qualifications by the Maltese Authorities, including the Council, would mean that said recognition is valid for all EU member states.

According to Article 44.2 of the Directive "Evidence of the formal qualifications as a pharmacist shall attest to training of at least five year's duration". The programme to be followed is then described in Annex V point 5.6.1 of the Directive and includes preparation in "Legislation and, where appropriate, professional ethics".

² recommendations to the President of Malta for the granting of licences to pharmacists to exercise their profession being one of the main functions of the Council

According to Article 44.3 (e) of the Directive "training for pharmacists shall provide an assurance that the person concerned acquired ... adequate knowledge of the legal and other requirements associated with the pursuit of pharmacy".

Therefore, the Council is duty bound to ascertain that the Appellant is not only competent in the technical aspects of the exercise of the profession, but also the daily, practical and ethical performance of the profession.

C. Application of the law to the Appellant's case

In its consideration of the Appellant's application, the Council used its discretion as per Article 17(1)(c) of Chapter 464 of the Laws of Malta.

Since the Appellant is not an EU national and his Bachelor in pharmacy course is 4 years long and not 5 years, as required by Article 44.2 of the Directive, the Council insists that the additional 15-month training programme is to be undertaken.

Said programme would include training within a Maltese pharmacy, which would help the Appellant to familiarise himself with the running of a pharmacy in Malta and the specialised systems therein, such as the Pharmacy of Your Choice Scheme (POYC), an essential part of the exercise of the pharmaceutical profession in the Maltese community.

Moreover, the additional training and success in passing the relative exam, would provide an assurance to the Council that the Appellant has acquired adequate knowledge of the legal and ethical implications of exercising the pharmaceutical profession in Malta. Consequently, the Council would ensure that the Appellant is duly qualified to exercise the profession within the European Union. This further training is necessary since it appears that an education about the ethical aspects of the profession was not provided at any stage in the Appellant's academic formation.

D. Concluding remarks

The Council respectfully submits that its decision as communicated to the Appellant on the 20th January 2020 was legally and factually justified and therefore is to be upheld since it is not only in conformity to the Law but to the duties set upon the Council in ensuring the highest standard of technical and ethical formation within the pharmaceutical profession.

Dr.X
Legal Counsel for the Pharmacy Council

Mr. X
Registrar

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, post proceedings for collection of fees and expenses, if suit is won with costs

15th June 2021

Mr X and Mrs X
X
X
Valletta

Dear Sir and Madam,

Re: "X et vs X"
Sworn Application X/XJVC, First Hall Civil Court – Ceded on X June 2021

I write on behalf of X of X, X Street, X and refer to the abovementioned proceedings.

Since judicial proceedings were ceded, my client's judicial expenses are to be borne by yourselves as plaintiffs. As per the attached official taxed bill of costs issued by the Court Registrar, my client expenses amount to €712.33 which together with €108 VAT, in total €820.33.


By means of this letter you are hereby called upon to pay the sum of €820.33 within five days from today. In default my client will be left with no other option but to seek alternative action. Payment can be made at out office by cheque payable to or through internet banking on the following details:-

XXXX

Regards,

Marycien Vassallo

c.c. Client
Dr X - X



Taxxa ufficjali tad-drittijiet u spejjeż ta' Rikors Guramentat Numru: XX/19 JVC fl-ismijiet "X et vs X" ceduta fil-Qorti Civil-Prim'Awla fil-1 ta' Gunju 2021 fl-atti relattivi u sussegwenti.

Rilaxxata fil-
Mahduma fil- 04-Jun-2021

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
29-Mar-19	Rikors Guramentat	174.40	0.00
	Kopji - € 4.66	4.66	0.00
16-Mar-19	Risposta Guramentata	0.00	112.33
	Kopji - € 4.66	0.00	0.00
20-Feb-20	Affidavits - €23.29	46.59	0.00
11-Sep-20	Ingunzjoni	7.90	0.00
	Avukat u Prokuratur Legali	9.32	0.00
01-Jun-21	Dritt registru ceduta	0.00	0.00
	Dritt avukat	450.00	450.00
	Dritt prokuratur legali	150.00	150.00
		€668.46	€712.33
	RIMBORS	(€ 25.00)	
	TOTAL	€ 643.46	€ 712.33

Ilum

Deputat Registratur
Eugenio Cutajar
Sezzjoni Taxxi

N.B. Din it-taxxa trid tkun iffirmata minn Deputat Registratur biex tkun ufficjali.

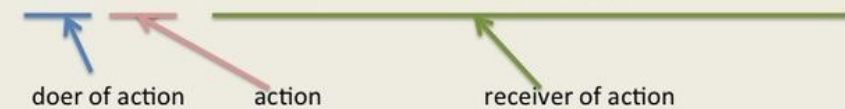


7. Writing – Legal Writing Tips

- Use active voice unless you want to emphasise – active voice: the subject of sentence performs the action.
- Application will be targeted toward judge and opposing legal counsel unless it is a judicial letter
- Make objective not personal arguments
- Be direct and straight to the point
- Request in application must be clear
- Try to stick to short sentence
- Use citations
- If drafting note of submission/ observation/ appeal provide the solution/ answer to the problem
- If judicial letter use simpler language since it is directed to the opposing party who might not know legal terms
- In notes of observations/ submissions/ appeal applications if plaintiff, quote application and reply. If replying as defendant, no need to quote application and reply
- Make reference to case law if any and authors
- Watch for deadlines and particular articles of the law
- Video – 10 Legal Writing Tips with examples: <https://www.youtube.com/watch?v=FsjuGSL9vyg&t=99s>

Active Voice

Alex wrote an essay about his grandfather's Alzheimer's.



Passive Voice

An essay about Alzheimer's was written by Alex.



7. Writing – Legal Writing Tips

Ross Guberman “Point Made – How to Write Like the Nation’s Top Advocates” tips:-

1. Provide the context of the case – explain who are the parties, what question is the case trying to answer, when and where the event happened and why should you win
2. Structure the argument section
3. Given the court a reason to want to find for you – include judicial fears: i. The fear of applying the wrong law, ii. the fear of creating new duties, rules or defenses and iii. The fear of reaching an unfair result or causing harm e.g. Include the possibility of anti-constitutionality of a judgment if awarded in a particular way
4. Pre-empt your opponent’s arguments
5. Use headings to attract attention
6. Acknowledge bad facts but put them in context and counter them by other arguments
7. Show why your client is right and if your client is in the wrong humanize the situation
8. Use analogies
9. Answer questions which the court might raise when writing the judgment
10. Link your case or party with caselaw you made reference to i.e. Applicability
11. Show that opponent’s caselaw is less applicable or inapplicable to caselaw cited by yourself
12. Search opponent’s caselaw
13. Use figures of speech
14. Use rhetorical questions to impugn opponent’s arguments
15. Use tables and charts to add interest
16. End the argument with a provocative quotation or thought
17. Wrap up by recasting your main points



Referencing

- Referencing allows you to acknowledge the contribution of other writers and researchers in your work.
- Used to avoid plagiarism if used correctly
- Various referencing styles – e.g. OSCOLA (law), Harvard (economics), APA (psychology), MLA (language and literature)
- OSCOLA - Oxford University Standard for Citation of Legal Authorities - <https://www.law.ox.ac.uk/OSCOLA>
- OSCOLA referencing system is used for legal referencing in Malta incl. legislation, case law, books, journals, websites and other sources.
- Complete guide accessible on https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf

Updates and FAQs available on <https://www.law.ox.ac.uk/oscola-faqs>

- Video:

[University Law Teacher Explains OSCOLA Referencing and Bibliographies - YouTube](#)

- Generators
- [OSCOLA Referencing Generator | Reference Tool \(lawteacher.net\)](#)
- [Free OSCOLA Referencing Generator by Cite This For Me](#)



Referencing

- OSCOLA distinguishes between primary and secondary sources
- Primary sources are legal sources, such as cases and legislative documents. Secondary sources cover everything else, including books, journal articles, and websites.



Referencing - Legislation

- Example OSCOLA References for EU Legislation

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/0

- Example OSCOLA References for Common Law Legislation:-
- *Housing Act 2004 (Commencement No. 6)(England) Order 2006, SI 2006/3191, art 2(a)*
- *Reletting of Urban Property (Regulation) Ordinance, 1931*
- *Reletting of Urban Property (Regulation) Ordinance, 1931, s 4A*
- “s” in “s 4A” is short for section. If it was more than one section, therefore sections, abbreviation would be “ss”
- Other abbreviations: subsection/sub-sections – sub-s/sub-ss, schedule/s –sch/schs, regulation/ regulations – reg/regs, article/articles – art/arts

Referencing – Caselaw

PARTY NAMES, YEAR, VOLUME NUMBER, REPORT SERIES, FIRST PAGE OF REPORT, INITIALS OF THE COURT

Corr v IBC Vehicles Ltd [2008] UKHL 13, [2008] 1 AC 884

- The example above shows that this is a case involving Corr and IBC Vehicles Ltd. It was the thirteenth judgement issued by the House of Lords (UKHL) in 2008. It also indicates that a report of the judgement can be found in volume 1 of the series of the Law Reports called the Appeal Cases, beginning at page 884.

Joseph Borg vs Mary Borg [2022] (P.A)

- Order may change e.g. Initials of court are given after the year



Referencing – Maltese Caselaw

Konformament, gie ritenut ghar-rigward tal-element tal-pussess li:

‘All’attore in reintegrazione e’ sufficiente per la sua azione un possesso qualunque o detenzione ..’²

Il-pussess li tirrikjedi l-ligi fl-ispoljat ghall-fini tal-azzjoni tar-reintegrazzjoni huwa kwalunkwe pussess ‘materiale’ u ‘di fatto’³:

Spoll vjolent u abbusiv:

‘jikkonsisti fi kwalunkwe att arbitrarju li mar proprio jmur kontra l-persuna spoljata’⁴

u

‘neanche e permesso in queste cause di spoglio di investigare la natura del possesso presso lo spogliato, se esso lo sia animo dominii o no perche’ la legge non richiede che un possesso materiale di fatto.’⁵

Ghalhekk pussess kwalunkwe, anki purament materjali u *di fatto*, anki qasir hafna u sahsitra momentanju huwa sufficjenti, basta jkun univoku u ma jkunx bazat fuq mera tolleranza.⁶

² Ara Camilleri v Agius P A.20/10/1882.

³ Ara Vol.XXXVII.I.280.

⁴ Ara Vol.XLI.II.1133.

⁵ Ara Vol.X-556;Vol.LXXXIII.II.76;Vol.XXXVII.I.28; Vol.XXXII.II.49.

⁶ Ara Vol.XXXII.II.642; Vol.LXXXIII.II.79.

- No standard in Maltese judgments

Referencing - Books

- AUTHOR, TITLE, ADDITIONAL INFORMATION, EDITION, PUBLISHER
YEAR

Gareth Jones, Goff and Jones: The Law of Restitution (1st supp, 7th edn, Sweet & Maxwell 2009)

Chapters in Books with multiple editors - AUTHOR, TITLE, IN EDITOR
(ED), BOOK, ADDITIONAL INFORMATION, PUBLISHER, YEAR

Justine Pila, 'The Value of Authorship in the Digital Environment' in William H Dutton and Paul W Jeffreys (eds), World Wide Research: Reshaping the Sciences and Humanities in the Century of Information (MIT Press 2010)



Referencing – Journal Articles

- Start with the article author (first name/initial then surname, multiple authors to be treated as per books), then the article title in single quotes.
- After the title, give the publication information in the following order:
 1. year of publication, in square brackets if it identifies the volume, in round brackets if there is a separate volume number;
 2. the volume number if there is one (include an issue number only if the page numbers begin again for each issue within a volume, in which case put the issue number in brackets immediately after the volume number);
 3. the name of the journal in roman, in full or abbreviated form, with no full stops; and
 4. the first page of the article.

- Articles from journals without independently numbered volumes should follow the format: AUTHOR, TITLE, YEAR, JOURNAL NAME OR ABBREVIATION, FIRST PAGE OF ARTICLE.

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440.

- Articles from journals which do have independently numbered volumes should follow the format: AUTHOR, TITLE, YEAR, VOLUME, JOURNAL NAME OR ABBREVIATION, FIRST PAGE OF ARTICLE.

Alison L Young, 'In Defence of Due Deference' (2009) 72 MLR 554.

- Put a comma after the first page of the article if there is a pinpoint (particular reference to specific paragraph or page)

JAG Griffith, 'The Common Law and the Political Constitution' (2001) 117 LQR 42, 64.



Referencing - Websites

Try and follow the general principles for citing secondary source:-

1. Give the author's name exactly as it appears in the publication.
2. If no individual author is identified, but an organisation or institution claims editorial responsibility for the work, then cite it as the author.
3. If appropriate to cite an anonymous source (eg blog) start citation with the title.
4. All titles should be within single quotation marks and in roman. Capitalize the first letter in all major words in a title.

- The most important features of a citation to a website are the web address in <angled brackets> and the date on which you accessed it.

Sarah Cole, 'Virtual Friend Fires Employee' (Naked Law, 1 May 2009) <<http://www.nakedlaw.com/2009/05/index.html>> accessed 19 November 2009

- If you source a publication online which is also available in hard copy, cite the hard copy version. There is no need to cite an electronic source for such a publication

- For online journals - AUTHOR, TITLE, YEAR, VOLUME/ISSUE, JOURNAL NAME OR ABBREVIATION, <WEB ADDRESS>, DATE ACCESSED.

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT <<http://ejlt.org/article/view/17>> accessed 27 July 2010



Referencing – General Principles

Quotations

1. Quotations that are three lines or shorter should be incorporated in the text. Use 'single quotation marks', but if you need to submit your work to Turnitin, use "double quotation marks".
2. Quotations longer than three lines should be an indented paragraph. Do not include quotation marks.

Footnotes

1. Put the footnote marker at the end of a sentence, unless for the sake of clarity it is necessary to put it directly after the word or phrase to which it relates
2. The superscript number should be after the full stop or comma, if relevant
3. Where more than one citation is given in a single footnote reference, separate them with semi-colons

Authors' names

1. Give the author's name exactly as it appears in the publication, but omit postnominals such as QC
2. If there are more than three authors, give the name of the first author followed by 'and others'
3. If no individual author is identified, but an organisation or institution claims editorial responsibility for the work, then cite it as the author
4. If no person, organisation or institution claims responsibility for the work, begin the citation with the title
5. In footnotes, the author's first name or initial(s) precede their surname
6. In bibliographies, the surname comes first, then the initial(s), followed by a comma



Referencing – General Principles

Titles

1. Italicise titles of books and similar publications, including all publications with ISBNs
2. All other titles should be within single quotation marks and not in italics
3. Capitalize the first letter in all major words in a title
4. Minor words, such as 'for', 'and', 'or' and 'the', do not take a capital unless they begin the title or subtitle

Pinpoints

1. Pinpoints to parts, chapters, pages and paragraphs come at the end of the citation
2. For cases, pinpoint paragraphs using square brackets, e.g. [23]. If pinpointing to more than one paragraph, separate the paragraph numbers in square brackets with a comma, e.g. [42], [45]. If citing spans of paragraphs, insert a dash between the first and last paragraph being cited, e.g. [1]-[37].
3. For everything other than cases, use 'pt' for part, 'ch' for chapter, and 'para' for paragraph
4. Page numbers stand alone, without 'p' or 'pp'
5. If citing a chapter or part and page number, insert a comma before the page number
6. Where possible, give a specific range of pages but if you must refer to an initial page and several unspecified following pages, give the initial page number followed immediately by 'ff' (eg '167ff') – In legal writing we use "*et seq.*" or "*et sequitur*"



Referencing – General Principles

Dates

1. When a full date is required, the format should be '1 January 2016'
2. There is no need for 'st' or 'th' after the day
3. If something spans more than one year in the same century, the format is '1972-84'

Subsequent Citations

1. If a citation is the same as the one immediately before it, you can put 'ibid' (followed by any differing pinpoints) in the footnote
2. If the citation is the same as another, you can use a shortened form, followed by a reference to the footnote and any differing pinpoints, e.g. Stevens (n 1) 110.



OSCOLA Quick Reference Guide

Primary Sources

Do not use full stops in abbreviations. Separate citations with a semi-colon.

Cases

Give the party names, followed by the neutral citation, followed by the *Law Reports* citation (eg AC, Ch, QB). If there is no neutral citation, give the *Law Reports* citation followed by the court in brackets. If the case is not reported in the *Law Reports*, cite the All ER or the WLR, or failing that a specialist report.

Corr v IBC Vehicles Ltd [2008] UKHL 13, [2008] 1 AC 884
R (Roberts) v Parole Board [2004] EWCA Civ 1031, [2005] QB 410
Page v Smith [1996] AC 155 (HL)

When pinpointing, give paragraph numbers in square brackets at the end of the citation. If the judgment has no paragraph numbers, provide the page number pinpoint after the court.

Callery v Gray [2001] EWCA Civ 1117, [2001] 1 WLR 2112 [42], [45]
Bunt v Tilley [2006] EWHC 407 (QB), [2006] 3 All ER 336 [1]–[37]
R v Leeds County Court, ex p Morris [1990] QB 523 (QB) 530–31

If citing a particular judge:

Arscott v The Coal Authority [2004] EWCA Civ 892, [2005] Env LR 6 [27] (Laws LJ)

Statutes and statutory instruments

Act of Supremacy 1558
 Human Rights Act 1998, s 15(1)(b)
 Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166

EU legislation and cases

Consolidated Version of the Treaty on European Union [2008] OJ C115/13
 Council Regulation (EC) 139/2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L24/1, art 5
 Case C–176/03 *Commission v Council* [2005] ECR I–7879, paras 47–48

European Court of Human Rights

Omojudi v UK (2009) 51 EHRR 10
Osman v UK ECHR 1998–VIII 3124
Balogh v Hungary App no 47940/99 (ECHR, 20 July 2004)
Simpson v UK (1989) 64 DR 188

Secondary Sources**Books**

Give the author's name in the same form as in the publication, except in bibliographies, where you should give only the surname followed by the initial(s). Give relevant information about editions, translators and so forth before the publisher, and give page numbers at the end of the citation, after the brackets.

Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985) 268
 Gareth Jones, *Goff and Jones: The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009)
 K Zweigert and H Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, OUP 1998)

Contributions to edited books

Francis Rose, 'The Evolution of the Species' in Andrew Burrows and Alan Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006)

Encyclopedias

Halsbury's Laws (5th edn, 2010) vol 57, para 53

Journal articles

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440

When pinpointing, put a comma between the first page of the article and the page pinpoint.

JAG Griffith, 'The Common Law and the Political Constitution' (2001) 117 LQR 42, 64

Online journals

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT < <http://ejlt.org/article/view/17> > accessed 27 July 2010

Command papers and Law Commission reports

Department for International Development, *Eliminating World Poverty: Building our Common Future* (White Paper, Cm 7656, 2009) ch 5
 Law Commission, *Reforming Bribery* (Law Com No 313, 2008) paras 3.12–3.17

Websites and blogs

Sarah Cole, 'Virtual Friend Fires Employee' (*Naked Law*, 1 May 2009) < www.nakedlaw.com/2009/05/index.html > accessed 19 November 2009

Newspaper articles

Jane Croft, 'Supreme Court Warns on Quality' *Financial Times* (London, 1 July 2010) 3



Bibliography

Bibliography should be at the end of the work. It lists all sources used in the work. Each source only needs to be listed once, even if you have referred to it multiple times in your work. Do not include background reading in your bibliography. The bibliography should appear after the text and after appendices. The bibliography should list the sources in alphabetical order.

Video: OSCOLA: https://www.youtube.com/watch?v=SZjuwO_wCNk

Bibliographies take the same form as all other citations in OSCOLA, with 3 exceptions:

1. The author's surname should precede his/her initial(s), with no comma separating them, but a comma after the final initial;
2. Only initials should be used, and not forenames;
3. The titles of unattributed works should be preceded by a double em-dash. Works should be arranged in alphabetical order of author surname, with unattributed works being listed at the beginning of the bibliography in alphabetical order of first major word of the title.

Jones G. Goff and Jones: The Law of Restitution (1st supp, 7th edn, Sweet & Maxwell 2009)

Knapton S, 'Bad Owners to Blame for Aggressive Animals not their Breed' *The Daily Telegraph* (London, 3 Dec 2013)

<<https://www.telegraph.co.uk/lifestyle/pets/10491808/Bad-dog-owners-to-blame-for-aggressive-animals-not-their-breed.html>> accessed 16 Nov 2020)

If your piece of work is long, you can divide the bibliography into three sections: Cases, Legislation, and Bibliography

Unlike in footnotes, the author's surname should be listed first, followed by the author's initials. Unlike in the footnotes, you do not list the author's first names, just initials. The secondary material should also be listed alphabetically. If citing more than one work by the same author, list the author's works in chronological order (oldest first), and in alphabetical order of the first major word of the title within a single year.

For cases:-

1. Do not italicise case names.
2. List cases alphabetically in order of the first significant word. If the parties involved are only identified by initials the case should be listed under the initial.

For Legislation - This should include every statute listed in your piece of work (unless your lecturer has told you differently). Legislation should be listed in alphabetical order. Statutory Instruments should be listed separately after Statutes.

- A longer legal work, such as a book or a thesis, generally has a list of abbreviations and tables of all the cases, legislation and other primary legal sources cited in the work in the preliminary pages. The list of abbreviations should come before the tables, and the order of the tables should generally be: table of cases; table of legislation; other tables.



Research Ethics

- There are cases where unethical means are used to produce a report/ paper since it is easy and quick e.g. Of unethical means – copying someone's idea and claiming it as yours
- There are no strict rules to be observed in research
- A set of principles developed over time

Video on research ethics: What is research ethics?

<https://www.youtube.com/watch?v=VcbPqhwJzcg>



Research Ethics



• Ethical principles stress the need to:-

1. Do good (a.k.a beneficence) - Researchers should have the welfare of the research participant as a goal
2. Do no harm others - an obligation not to inflict harm on others

In practice, these 2 principle mean that as a researcher, you need to:

- (a) obtain informed consent from potential research participants (explain what is the research about, why are they taking part in the research, opt for volunteers if possible)
- (b) minimise the risk of harm to participants (incl. psychological distress, financial status and invasion of privacy). Minimise risk by obtaining written consent forms, protect anonymity by removing names, surnames and other details
- (c) protect their anonymity and confidentiality (do not include unnecessary data, seek permission for divulging sensitive data)
- (d) avoid using deceptive practices (e.g. Identity or purpose of researcher are not given;
- (e) give participants the right to withdraw from your research.
- (f) Obtain consent from research institutes/ authors
- (g) Avoid plagiarism

Research Ethics

Ethical issue	Definition
Voluntary participation	Your participants are free to opt in or out of the study at any point in time.
Informed consent	Participants know the purpose, benefits, risks, and funding behind the study before they agree or decline to join.
Anonymity	You don't know the identities of the participants. Personally identifiable data is not collected.
Confidentiality	You know who the participants are but you keep that information hidden from everyone else. You anonymize personally identifiable data so that it can't be linked to other data by anyone else.
Potential for harm	Physical, social, psychological and all other types of harm are kept to an absolute minimum.
Results communication	You ensure your work is free of plagiarism or research misconduct, and you accurately represent your results.



Legal Research Ethics

- Legal writing is a core aspect of lawyering
- Legal writing is constrained by the conventions, standards, expectations, responsibilities and genres of the community of practice
- Ethical legal writers need to consider how their writing may be influenced by their own views; how their writing might affect others; and how it must comply with the norms and conventions of the discourse community and the fundamental professional ethical obligations of the legal profession.
- Understand and acknowledge your bias and conflicts
- Be competent and diligent in carrying out legal research to benefit clients. Poor legal research = lack of diligence e.g. Failing to know the warnings to be given in a judicial letter filed under Art. 166A of Cap. 12
- Be honest– do not deceive the court or counterparty and do not make intentional misleading statement

What are your ethical responsibilities to the other?

- What is your purpose?
- Who is your audience?
- Reflect on the reader's needs, understanding and the consequences of potential interpretations.

What are your ethical responsibilities to the community of practice?

- What are the conventions, standards, responsibilities and genres of the community?
- What is your professional identity and voice within this community?
- Reflect on the legal community's expectations of voice, tone, structure, genre and presentation.

What are your professional responsibilities?

- What are the standards as expressed in the relevant professional rules?
- Reflect on the professional expectations of competence, diligence, honesty and civility as expressed in the ASCR.

Code of Ethics

- Code of Ethics for Notaries – S.L. 55.09 regulates:-
 1. Conduct and Diligence
 2. Independence and Impartiality
 3. Professional Relationships
 4. Unlawful Competition
 5. Professional Secrecy and Confidentiality



Code of Ethics

- COMMISSION FOR THE ADMINISTRATION OF JUSTICE - CODE OF ETHICS AND CONDUCT FOR ADVOCATES accessible on <https://www.avukati.org/download/code-of-ethics/>

The purpose of this Code is to ensure that advocates do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such manner as could seriously affect the trust conferred on them.

Regulates:-

1. The conduct of advocates
2. Relationship with clients – obtaining of instructions, taking of instructions, duties owed to clients during a brief
3. Professional Fees
4. Conflict of Interest
5. Confidentiality – lawyers are bound by the Professional Secrecy Act
6. Obligations to others – Relations with third parties, relations with other advocates
7. Particular areas of practice – litigation and advocacy, advocates in employment,
8. Lawfirms and associations – definitions and applications



Notarial Council and Commission for the Administration of Justice

- Notarial Council – has regulatory powers over notaries
- Commissioner for the Administration of Justice – has regulatory powers over lawyers and legal procurators
- Notaries, lawyers and legal procurators may be suspended, disqualified or issued with a fine
- Ban may also be publicized



Plagiarism

- The University Assessment Regulations, 2009 (University of Malta) define plagiarism as “the unacknowledged use, as one’s own, of work of another person, whether or not such work has been published, and as may be further elaborated in Faculty or University guidelines”.
- Plagiarism can be major or minor
- Major plagiarism is meant to cover what is generally understood to be prototypical plagiarism (significant unacknowledged borrowing), whereas that of minor plagiarism covers offences that could be construed as plagiarism but may be the result of academic incompetence, thus bringing into question the intent to deceive.
- Minor plagiarism also includes instances of unacknowledged borrowing whose contribution to a piece of writing is considered to be of little significance, with the proviso that repeated instances may escalate into a major offence.



Major Plagiarism cases and examples

1. Significant unacknowledged copying of text, diagrams, tables, images or other material from any published or unpublished material, lecture slides or handouts, whether such material is in manuscript, print or electronic form.
2. Acquisition of work, designs, or concepts (including buying or commissioning work from third parties/professional agencies) prepared by one or more others and presenting the work in whole or in part as the student's own work.
3. Significant amounts of patchwriting (i.e. changing only some of the words, or the order of the words, or redrawing diagrams, etc.) with or without citation. Patchwriting should not be confused with paraphrasing, which is the appropriate (and acknowledged) rewriting of ideas present in a source text in the student's own words and should be actively encouraged as a feature reflecting maturity in academic writing.



Major Plagiarism cases and examples

- Examples:
 - Copying text or a diagram from another source, failing to enclose the copied text within quotation marks, or taking somebody else's ideas, and failing to correctly acknowledge the source of the text, diagram, or ideas.
 - Purchasing a paper or report from a 'paper mill'; paying others to prepare an assignment but then submitting the work under your own name.
 - Copying text but replacing some words or changing word order, whether or not the source is correctly acknowledged; re-drawing diagrams and failing to acknowledge the source.



Minor Plagiarism

Minor offences of plagiarism include:

1. Individual in-line citations lacking corresponding entries in the references section, or failure to compile a references section.
2. Demarcated text without in-line citation or instances of incomplete or inconsistent in-line citation.
3. Incorrectly written entries in a reference list, when this results in the reader's inability to create a correspondence between the entries in the reference list and in-line citations.
4. Inconsistent citation style, when this results in the reader's inability to identify sources.
5. Unacknowledged borrowing that does not contribute significantly to the text in question

Minor plagiarism usually involves cases where the student has used his/her own words by correctly paraphrasing or delimiting words that are others' (e.g., by enclosing them inside quotation marks), but where some references and citations are incomplete or inconsistent. As incomplete, inconsistent, or incorrect referencing means that an examiner may be unable to refer to the sources where the claims you make are substantiated, this constitutes minor plagiarism (at best), and academic fraud, in which claims are simply invented by the student and the reference to the source is deliberately obfuscated (at worst).



University Dean's article withdrawn over plagiarism claim

Andrew Azzopardi denies 'any wilful misdoing'

National University

3 December 2021 | Fiona Galea Debono | 104

3 min read



Andrew Azzopardi (left) and Saviour Formosa are colleagues but have clashed over the issue of Malta's prison system.

An article co-authored by the university's Dean of the Faculty for Social Wellbeing Andrew Azzopardi has been removed from a journal on the basis of plagiarism.

Saviour Formosa, associate professor in the Department of Criminology, within the same faculty, who claims his papers have been plagiarised, said in a private Facebook group post that it was a "sad day for Maltese scholarship".

Privacy

Formosa said he had asked Azzopardi to resign from his post as Dean.

While acknowledging that the work failed to meet academic standards, Azzopardi rejected any allegations that this was the result of any wilful misdoing and hoped that his colleague's criticism was not an attempt to silence his activism.

Azzopardi and Formosa have previously clashed on [the prisons issue](#), with the dean repeatedly calling for serious reform in the wake of a number of suicides.

Formosa described as "utterly condemnable" the fact that the authors of the article, Risk and Protective Factors in Violent Youth Crime, include Azzopardi, who is not only an academic but also the Dean of the Faculty of Social Wellbeing.

Research Support Officer Andrew Camilleri was the first author of the report and Azzopardi was the second.

"That a student plagiarises work is worrying, but that an academic and an RSO severely plagiarise colleagues' hard-sought publications is unheard of at this alma mater," Formosa charged.

The article was published in the faculty's Studies in Social Wellbeing journal in September, when the editorial board was notified of the complaint and was retracted on Wednesday.

In another post, the editorial board, in agreement with the authors, said it has removed the article from the first issue of the academic publication.

Editor in chief, Prof. Maureen Cole, declined to comment further and confirm why the article was removed, though it is understood that it did not meet the journal's required standards.

She also refrained from answering whether the editorial board's role was to check for plagiarism, with software tools available to do so and to confirm whether it was rare that academic papers were retracted from journals.

'Not of the standard befitting academia'

Sources said a part of the article in question had plagiarized papers, written jointly and uniquely, by Formosa and Prof. Janet Formosa Pace from the Department of Youth within the same faculty.

Privacy



ACADEMICS AT UM



Saviour Formosa shared a post. ...

39m · 🌐

Truly a sad day for Maltese Scholarship. That a student plagiarises work is worrying, that an academic and an RSO severely plagiarise colleagues' hard-sought publications is unheard of in this Alma Mater.

That the authors include the Dean of Social Wellbeing is utterly condemnable.

The Journal "Studies in Social Wellbeing" retracted the offending paper.

<https://www.facebook.com/104180821136148/posts/486636542890572/>

I have asked Prof [Andrew Azzopardi](#) as Dean of Faculty for Social Wellbeing - University of Malta to resign.

We have much to strive for.



Studies in Social Wellbeing

30 November at 18:58 · 🌐

The Editorial Board, in agreement with the authors, has removed the article "Risk and Protective Factors in Violent Youth Crime" from the first issue of Studies in Social Wellbeing.

Saviour Formosa called for Andrew Azzopardi's resignation in a Facebook group for University academics.

Other sources, however, said it was more a case of "sloppy editing" and "poor paraphrasing" rather than plagiarism.

Privacy

3/9

When contacted, Azzopardi acknowledged the "mistake", saying the work presented to the journal was "not of the standard befitting academia".

"Consequently, the main author and I have worked hand-in-hand with the editorial board of the journal and went above and beyond what was requested from us as authors and decided to retract the article in question of our own accord."

While agreeing that the paper could have benefitted from further review, he rejected any allegations that this was the product of any wilful misdoing, as the editorial board itself noted. "If this is an attempt at silencing me I want to assure everyone that I will keep responding with vigour to the current social issues, whether it's about prisons, activism or other social issues I believe need to be represented in our society."

University Rector 'establishing facts'

The University of Malta's rector Alfred Vella said he was alerted to the matter on Wednesday and was "in the process of establishing the facts before coming to any decision".

According to the University's own guidelines for students, plagiarism is defined as "the unacknowledged use, as one's own, of work of another person, whether or not such work has been published".

However, it also accounts for "major" and "minor" instances of plagiarism: the former covers significant unacknowledged borrowing whereas the latter denotes instances of unacknowledged borrowing that is considered to be of little significance.

Minor instances are treated as "academic incompetence", which generally occur in the first year of undergraduate studies.

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Fiona Galea Debono

Pink Magazine editor

Privacy

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Tips to avoid plagiarism

- Keep track of sources immediately as you find them
- Cite and reference sources as you go along
- Use proper citations
- Quote (“”) or paraphrase (express meaning using different words). Quote sparingly. Quotes are appropriate:-
 - You’re using an exact definition, introduced by the original author
 - It is impossible for you to rephrase the original text without losing its meaning
 - You’re analyzing the use of language in the original text
 - You want to maintain the authority and style of the author’s words
- Credit the original author
- If need be inform the reader where the original claims, and evidence supporting them, are made
- Use a plagiarism tracker



Collusion

- Collusion occurs when two or more students collaborate to produce work, where such collaboration is not permitted. Examples:
 1. In supervised examinations, it is expected that students work individually, and no sharing of ideas or material is allowed; only reference to permitted resources is allowed
 2. In home assignments, unless otherwise specified, it is expected that students work individually, and no sharing of ideas or material is allowed; however, reference to publicly available information is permissible (with appropriate citation)
 3. If a home assignment is an individual assignment, students are permitted to communicate orally such that the problem assigned is understood - however, students are not permitted to share material
 4. If a home assignment is specifically group-work, it is expected that students take individual responsibility for the individually submitted contribution, but collective responsibility for the aspects of the submitted work that required a joint effort.

Examples: borrowing of assignment, sharing of work and incorporating them in your work, sharing solutions to problems,





Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

MAMO TCV
ADVOCATES