

Recap

- Research design – 7 step model
- 1. Hypothesis
- 2. Research planning – prob. Identification, fact analysis, reformulation of the hypothesis/ research question
- 3. Identification of literature
- 4. Research design – sets the parameters of the research
- 5. Collection of data – prob sampling (everyone has a chance to be chosen – simple, systematic, stratified, cluster) vs non-prob sampling (not everyone has a chance to be chosen – convenience, purposive, snowball, quota)



Legal Research and Interpretation Methodology

Lecture Title: Research Plan, Sampling, Data
Collection and Interpretation Methodologies PII

Lecturer: Marycien Vassallo

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Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

5. Collection of Data – Sampling Errors

How can you avoid
sampling errors?



5. Collection of Data – Tools and techniques

- Collection of data is the bridge between the problem/ hypothesis and results of research
- Once sampling methods and size are chosen, you need to collect the data from the universe chosen e.g legal principle from different judgments given in the span of 40 years by the FHCC
- Data may be collected by various instruments/tools depending on the complexity of the issue and the limitations encountered e.g. Agricultural Leases (Reletting) Act, Cap. 199 – amended in 2022 entered into force on 08/02/2023 – introduction of a mechanism to revise the rent of agricultural leases – no case law -> only the law and parliamentary debates

5. Collection of Data

- Sometimes one needs to refer to empirical studies i.e. (investigation of the effects of the law) or think out of the box in cases where data is very limited same tools. Tools that may be used include social sciences techniques
- E.g. Of sSocial sciences techniques
 1. Observation
 2. Interviews
 3. Questionnaires
 4. Case Study
 5. Survey
- More than one tool/technique may be applied for the same study



5. Collection of Data

- Case 33/2017 – Constitutional Court - General Workers' Union vs Attorney General (now State Advocate)
- The Nationalist Party instituted proceedings before FHCC against GWU et alleging breach of contract when GWU leased parts of the Workers Memorial Building in Valletta to ARMS Ltd and Sciacca Grill.
- Case was to be heard by Judge Jacqueline Padovani Grima. GWU requested the recusal of judge (judge to abstain from hearing the case) on the basis on impartiality since the lawyers who drafted the application on behalf of the Nationalist Party were related to the judge. Partner of the firm was the judge's brother, P.L employed with the firm was her sister and relative of another partner in the same firm
- Judge rejected the request following review the EU's principles regarding impartiality.



5. Collection of Data

- GWU filed constitutional proceedings before FHCC (Const. Juris.) alleging breach of HR – Right to a fair trial (Art. 6 ECHR) & (Art. 39 of the Constitution)
- Judge JZM made extensive reference to the principles regulating recusal of judges/mag. Quoting Maltese & foreign case law, authors, reference to the Judicial Ethics Reports, quoted US principles – 97 pages
- Judge JZM rejected claims on the following basis:-



5. Collection of Data – Considerations part

Premess dan kollu, hija l-fehma konsiderata ta' din il-Qorti illi fil-kaz tal-lum ir-relazzjoni tal-gudikant fil-kawza in kwistjoni (fis-sens mill-aktar wiesgha tal-kelma) ma' *partner* jew ma' mpjegata fid-ditta ta' avukati li qed jippatrocinaw lil xi ntimati fil-kawza in kwistjoni hija bil-wisq remota sabiex iggib maghha dubju legittimu dwar l-imparzjalita' ta' l-Qorti, u dan kemm ghall-fini tat-test soggettiv kif ukoll ghal dak oggettiv.

Fil-fehma taghha, daqstant konsiderata, din il-Qorti tgħid illi fil-kaz tal-lum ma hemmx fatti jew cirkostanzi daqstant gravi jew impellenti li jagħtu lok għal dubji serji li l-gudikant mhijjex sejra tkun imparzjali.

Il-Qorti m'għandhiex dubju li fil-kaz tal-lum xejn ma ser igib fix-xejn l-aforisma : *justice seen to be done* (op. cit.)

Fil-kaz tal-lum, it-thassib dwar parzjalita' tal-gudikant huwa nsufficjenti propju għaliex dak it-thassib – jew biza' - sejjahlu li trid – huwa nfondat.

Il-Qorti trid timxi fuq il-provi, u fuq dawn trid issawwar il-konsiderazzjonijiet taghha.

Din il-Qorti tistqarr illi ma tressqet l-ebda prova - meqjusa bil-kejl oggettiv - li l-Imhalled sedenti bil-kondotta taghha tat xi hjiel li qeghda turi xi pregudizzju reali u attwali kontra r-rikorrenti jew li taghti lok li jqum dubju legittimu ta' tali pregudizzju.

95

Il-fatt wahdu li l-Imhalled sedenti għandha konnessjoni familjari ma' xi membri tad-ditta legali li tippatrocina lil xi intimati fil-kawza in kwistjoni, liema persuni bl-aktar mod assolut mhux involuti fil-kawza, la jista' u lanqas għandu johloq dubju dwar imparzjalita' sal-grad rikjest mid-disposizzjonijiet tal-Kostituzzjoni u tal-Konvenzjoni citati mir-rikorrenti.

Il-Qorti għandha mohha mistrieh illi *ex lege* hemm bizzejjed garanziji fil-ligi stess illi jizguraw li l-process gudizzjarju jimxi u jigi deciz bil-massima serenita' għall-partijiet u kif trid il-ligi.

Il-Qorti ma tarax illi hemm jew x'aktarx li jista' jkun hemm ksur tad-drittijiet fundamentali ta' smigh xieraq tar-rikorrenti skont l-Art 39 tal-Kostituzzjoni u l-Art 6 tal-Konvenzjoni abbazi tal-fatt illi xi intimati fil-kawza tal-lum huma patrocinati mid-ditta Fenech & Fenech, liema ditta għandha (i) bhala *senior partner* lill-Av. Kenneth Grima li jigi hu l-Onor Imhalled Padovani Grima ; u (ii) lill-P.L. Rowena Grima li wkoll tigi oht l-Onor Imhalled Padovani Grima.

Lanqas ma tara li hemm jew li jista' jkun hemm ksur ta' d-dritt fundamentali għal smigh xieraq bil-fatt li l-Imhalled Padovani Grima għandha xi relazzjoni familjari distanti – *per dire il meno* – ma' Dr Ann Fenech.

Decide

Għar-ragunijiet kollha premessi, il-Qorti qeghda taqta' u tiddeciedi hekk :-

Tichad l-ewwel (1) eccezzjoni tal-intimat Avukat Generali, spejjez għall-istess intimat.

Tichad l-ewwel (1) eccezzjoni tal-intimata Sciacca Grill Ltd spejjez għall-istess intimata.

Tilqa' l-bqija ta' l-eccezzjonijiet tal-intimat Avukat Generali.

96

Tichad it-talbiet tar-rikorrenti.

Salv kif fuq premess, tordna lir-rikorrenti sabiex thallas il-bqija tal-ispejjez tal-kawza.

Onor. Joseph Zammit McKeon
Imhalled

Amanda Cassar
Deputat Registratur



5. Collection of Data

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On what basis are you going to appeal if the judge has exhausted all data available and used it against your argument?

To what data/information you are going to resort to?



5. Collection of Data

- GWU filed appeal before the Constitutional Court (3 judges)
- Only 1 grievance was raised by the GWU

Rik. Kost. 33/2017

taghha għal smiġh xieraq. Tfiisser dan l-uniku aggravju taghha

b'dan il-mod:

"Illi l-aggravju tal-esponenti huwa ċar u manifest u jikkonsisti filli l-ewwel qorti kienet żbaljata meta qieset li mhemm lezjoni tal-jedd ta' smiġh xieraq a bażi tal-art. 39 tal-Kostituzzjoni ta' Malta u l-art. 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (kif inkorporata fil-liġi taghna a tenur tal-Kap. 319 tal-Liġijiet ta' Malta) *in vista* tan-nuqqas ta' imparzjalità oġġettiva tal-ġudikant l-Onorevoli Mhallel Jacqueline Padovani Grima fil-kawża fl-ismijiet "Onorevoli Kap tal-Oppożizzjoni Dr Simon Busuttil et v. Josef Bugeja noe et (rik. ġur. Nru: 109/2017 JPG).

"Illi qabel ma tibda titratta dan l-aggravju, l-esponenti taqbel mal-prinċipji li kkwotat l-ewwel qorti u cjoè li anke jekk skont l-art. 733 u 734 tal-Kap. 12 ma jkunx hemm lok għal rikuzza ta' mhallel, anzi jista' jkun hemm divjiet ta' astensjoni, tista' tinholoq sitwazzjoni fejn ikun hemm konflitt mad-drittijiet fundamentali tal-persuna, bil-konsegwenza li l-ħarsien ta' dawn id-drittijiet li huma wkoll tutelati bil-liġi għandhom jipprevalu fuq id-dispożizzjonijiet tal-liġi ordinarja. *Inoltre* il-parametri ta' dawk il-liġijiet li jirregolaw ir-rikuza għandhom jittqiesu li twessgħu bil-provvedimenti tal-Kostituzzjoni u tal-Konvenzjoni li jiggarrantixxu smieġh xieraq;

"Illi din l-onorabbli qorti, suprema f'dan il-pajjiż, kellha l-opportunità li tispjega r-reqwiżiti ta' rikuzza a bażi tal-imparzjalità tal-imħallef sedenti f'kawża. Fil-kawża fl-ismijiet Lawrence Grech et v. L-Avukat Generali et deciza fis-7 ta' Marzu 2017, din l-onorabbli qorti irriteriet li f'kazijiet ta' din ix-xorta, dak li huwa determinanti għall-każ huwa jekk "dak il-biża' jew dik il-perċezzjoni huwiex imsejjes fuq konsiderazzjonijiet oġġettivi hekk li persuna raġonevoli u mingħajr preġudizzji taghha tasal biex hi wkoll ikollha dubji dwar l-imparzjalità tal-ġudikant". Fit-terminu 'konsiderazzjonijiet oġġettivi' fissret li jaqgħu wkoll apparenzi li jistgħu joħolqu dubji. Jekk dawn l-apparenzi huma tali li f'persuna raġonevoli u mingħajr wisq tiġbid jagħtu x'taħseb li hemm dawk ir-rabtiet, id-dubju dwar l-imparzjalità tal-imħallef jista' jikkwalifika bħala dubju oġġettivament ġustifikat u għalhekk ikun jimmerita li l-ġudikant ma jkomplix jisma' l-każ. F'din is-sentenza din l-onorabbli qorti marret *oltre* u saħansitra qalet li huwa biżżejjed li tidghajjef il-fiduċja fl-imparzjalità tal-ġudikat sabiex ikun hemm ksur tad-drittijiet kostituzzjonali u konvenzjonali ta' parti;

"Illi fl-osservazzjonijiet dwar dan il-mertu, l-ewwel onorabbli qorti ċċitat estensivament ġurisprudenza relatata ma' din it-tema iżda l-ebda każ ċitat ma jinkwadra fil-fatti tal-każ odjern. Din il-limitazzjoni hija wkoll preżenti fil-kitbiet dwar tal-art. 39 tal-Kostituzzjoni ta' Malta u l-art. 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem. L-esponenti taghmel riferenza għal letteratura ċitata mill-Ewwel Qorti u cjoè l-kitba ta' Leslie W. Abramson *The Judge's Relative is Affiliated with Counsel of*

Record: The Ethical Dilemma, Vol. 32, Issue 4, Hofstra Law Review 2004 u kitba ta' Cynthia Gray *Disqualification issues – When a Judge is related to a lawyer, State Justice Institute, 2001, American Judicature Society;*

"Illi dawn iż-żewġ awturi jitrattaw propju l-kwistjoni li għandha quddiemha din l-onorabbli qorti llum u cjoè meta membru familjari tal-imħallef sedenti f'kawża huwa parti minn ditta ta' avukati li qed tirrappreżenta lil xi hadd mill-partijiet, għandu jkun hemm rikuża tal-Imħallef sedenti jekk il-membri familjari mhuwiex qed jirrappreżenta direttament lill-parti?;

"Illi iż-żewġ awturi jammettu li din il-kwistjoni mhijiex waħda sempliċi u l-posizzjoni fl-Istati Uniti għadha mhijiex konsolidata. Minkejja dan hemm qbil li għandhom jittiehdu in kunsiderazzjoni ċertu fatturi sabiex jiġi stabbilit jekk għandux ikun hemm ir-rikuża. Fost il-fatturi li għandhom jittiehdu in kunsiderazzjoni hemm in-natura tal-kawża, il-kariga li jittedjeni l-membri familjari tal-imħallef sedenti fid-ditta u l-kobor tad-ditta. *Stante* li dawn huma fatturi oġġettivi, dawn għandhom jiġu applikati għall-każ ta' llum u dan għaliex minkejja li l-fatturi ġew imsemmija f'ambitu ta' rikuża fl-Istati Uniti għandhom jiġu kkunsidrati għal fini ta' dan l-appell *stante* li l-kwistjoni ta' rikuża mhijiex kwistjoni *sui generis* tas-sistema legali Maltija. Gjaladarba l-biża' tal-esponenti hija dwar l-imparzjalità oġġettiva u mhux suġġettiva, jekk l-istess fatti jimbtu f'pajjiż jew stat ieħor l-imparzjalità ser tkun xorta waħda evidenti;

"Illi hawnhekk ta' min jagħmel riferenza għas-sentenza fl-ismijiet *SCA Services Inc. V. Morgan* deċiża mid-District Court for the Southern District of Illinois, Northern Division (u kwindi qorti ta' gurisdizzjoni federali Amerikana) f'Gunju 1977 ċitata mill-awtur Ronald Rotunda.

"Din is-sentenza tittratta każ identiku għal dak odjern u cjoè r-rikuża ta' mħallef f'sitwazzjoni fejn hu l-imħallef sedenti, għad li ma kiex patrocinanti fil-kawża, kien *partner* fid-ditta li kienet qed tirrappreżenta waħda mill-partijiet. Dwar din il-kwistjoni il-qorti federali ordnat ir-rikuża tal-imħallef sedenti a bażi ta' żewġ konsiderazzjonijiet:-

"i. minkejja li hu l-imħallef ma kiex qiegħed jippatrocinja lil xi waħda mill-partijiet, xorta kien ser jippartecipa fil-qligħ tad-drittijiet ġenerati mill-kawża spettanti lid-ditta li huwa kien jaħdem magħha (bħall-każ odjern – ara x-xieħda tal-Avukat Ann Fenech tal-4 ta' Lulju 2017); u

"ii. *in vista* tal-fatt li l-imħallef sedenti u l-avukat fid-ditta kienu aħwa wieħed raġonevolment jista' jassumi li aħwa għandhom relazzjoni mill-qrib u familjari u għalhekk huwa probabbli li jappoġġaw l-interessi ta' xulxin. Dan iqajjem dubju raġonevoli dwar l-imparzjalità tal-imħallef li qed jisma' l-kawża;

"Illi f'din is-sentenza jingħad:-

"The third reason suggested for Judge Morgan's disqualification is that the judge's impartiality might

reasonably be questioned under the broad and liberal purposes sought to be achieved by 28 U.S.C. § 455(a). Although the statute enunciates the appearance of partiality as the general standard for judicial recusal and the legislative history suggests that this standard is determined by reference to the reasonable person, no factual or concrete examples of the appearance of impartiality were provided in the Congressional debates. Moreover, because a judge must apply the standard both as its interpreter and its object, the general standard is even more difficult to define. In spite of the philosophical dilemma created by this objective-subjective conundrum, it is clear to this Court that there exists a reasonable basis for the finding of the appearance of partiality under the facts and circumstances of this case.

»"This appearance of partiality begins with the natural assumption that brothers enjoy a close personal and family relationship and, consequently, would be inclined to support each other's interests. When one brother is a lawyer in the firm representing a party before his brother who is the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients will receive favored treatment, even if the brother does not personally appear in the case."

"Illi l-esponenti hija konxja li fil-gurisdizzjoni tagħna riferenza għal każijiet tal-Istati Uniti mhijiex daqshekk komuni iżda hawnhekk ġie applikat it-test li jiġi applikat mill-qorti tagħna f'każ ta' imparzjalità oġġettiva u cjoè il-fatti kif jidhru f'għajnejn persuna raġonevoli. Gjaladarba l-fatti huma identiċi u ġie applikat l-istess test l-esponenti tistaqsi x'inhi r-raġuni li l-ewwel qorti r-relazzjoni tal-imħallef sedenti fil-kawża ċivili mad-ditta *Fenech & Fenech* giet kunsidrata bħala "remota" u li saħansitra tammonta bħala "infondata" meta għall-Qorti tal-Appell tal-Istati Uniti il-każ odjern jikkwalifika għal rikuża;

"Illi dan qiegħed jingħad b'riferenza għall-unika distinzjoni li hemm bejn il-każ odjern u dak kwotat tal-Istati Uniti li hija li l-imparzjalità oġġettiva trid tistharreġ minn persuna raġonevoli fis-soċjetà Maltija – soċjetà li minnha nfisha hija bbażata fuq l-importanza tal-familja u li twassal għal dak li l-antropologu Jeremy Boissevain (wara studju li ġie fi tmiemu wara ħamsin sena) jiddeskriviha li twassal għall-fenomeni msejjaħ *amoral familism*. L-awtur Dr Adrian Grima fil-kitba tiegħu jgħid:-

"... It is, still, the paramount point of reference and people still pride themselves on the strength of the family and loyalty to the family is a fundamental and cherished value. But Boissevain also argues that this leads to what some have called *amoral familism*. Although many would call it a highly moral form of behaviour. Most Maltese hold that any action undertaken to benefit one's family is justifiable, and

that other people behave similarly; this set of values is widespread in Malta and in southern Europe and leads to a disregard of the effects on others of your action to further the interests of your family – on neighbours, strangers, and future generations. 'Family and party loyalty feed another characteristic of Maltese life, the endemic patronage, clientelism, nepotism and the real and imagined network of friends-of-friends that can be mobilized to solve the problems of daily life'."

"Illi meta wieħed jikkunsidra l-fatti odjerni fid-dawl ta' dan l-istudju – studju li wara kollox jiddeskrivi proprju s-soċjetà Maltija – l-esponenti ssibha ferm diffiċli kif l-ewwel qorti setgħet tiġġustifika n-nuqqas ta' rikuża *stante* li hemm dawk ir-rabti u d-dubji bizzejjed li jdgħajfu l-fiduċja fl-imparzjalità tal-gudikant l-Onorevoli Imħallef Jacqueline Padovani Grima;

"Illi jsegwi (fl-umli fehma tal-esponenti) li l-biża' tal-esponenti hija ġustifikata u hemm lok għal rimeđu kostituzzjonali;"

9. L-Avukat Ġenerali wiegebb hekk għall-appell tal-*General Workers*

Union:

"L-appellat jibda biex jissottometti li huwa prinċipju stabbilit kemm fil-gurisprudenza nostrana u dik tal-Qorti Ewropea li l-prinċipju ta' imparzjalità huwa msejjes fuq żewġ binarji: it-test soġġettiv u t-test oġġettiv. L-appell odjern jitratta biss allegat ksur tat-test oġġettiv...

"L-appellat jirriveja illi għal dak li jirrigwarda t-test oġġettiv li fuqu huwa bbażat l-appell in risposta, dak li jrid jintwera huwa li jkun hemm biża' li għadikant ma jkunx imparzjali; madankollu l-biża' esternata mhijiex waħda deċiżiva sakemm tali biża' ma tkunx oġġettivament ġustifikata.

"... Illi għalhekk il-prinċipju ta' imparzjalità oġġettiva ta' għadikant ma jiddependix fuq l-opinjoni ta' parti f'kawża u dan peress li għadikant huwa dejjem preżunt li huwa imparzjali.

"Illi kif ben osservat l-ewwel qorti fis-sens illi "Din il-qorti tistqarr illi ma tressqet l-ebda prova – meqjusa bil-kejl oġġettiv – li l-imħallef sedenti bil-kondotta tagħha tat xi ħjiel li qiegħda turi xi preġudizzju reali u attwali kontra r-rikorrenti jew li tagħti lok li jgħid dubju legittimu ta' tali preġudizzju". Fil-fehma tal-appellat, il-fatt waħdu li l-imħallef hija parentata ma' avukati fl-istess ditta ta' avukati li qiegħdin jiehdu hsieb il-kawża ċivili, mingħajr fatturi oħra preġudizzjevoli konkometanti, ma joħloqx tali dubju sal-grad rikjest mill-artikoli kostituzzjonali u konvenzjonali fuq ċitati. Għall-kuntrarju, mill-provi prodotti u senjatement mix-xieħda moġhtija minn Dr Ann Fenech waqt is-seduta tal-4 ta' Lulju 2017 iddikjarat b'mod ċar li hija ma għandha l-ebda parentela la ta' demm u lanqas ta' żwieġ mal-Imħallef Padovani Grima. In kontro-eżami

5. Collection of Data

- Constitutional Court's Considerations:-

Rik. Kost. 33/2017

kelma) ma' *partner* jew ma' impjegata fid-ditta ta' avukati li qed jippatrocinaw lil xi intimati fil-kawża in kwistjoni hija bil-wisq remota sabiex iġġib magħha dubju legittimu dwar l-imparzjalità tal-qorti, u dan kemm għall-fini tat-test soġġettiv kif ukoll għal dak oġġettiv. Fil-fehma tagħha, daqstant konsiderata, din il-qorti tgħid illi fil-każ tal-lum ma hemmx fatti jew ċirkostanzi daqstant gravi jew impellenti li jagħtu lok għal dubji serji li l-ġudikant mhijiex sejra tkun imparzjali".

10. Fir-risposti tagħhom għall-appell intavolat mill-*General Workers*

Union is-socjetà appellata *Automated Revenue Management Services Limited* u l-Kummissarju tal-Artijiet irrimettew ruħhom għad-deċiżjoni ta' din il-qorti.

11. Din il-qorti ser tibda billi tgħid illi taqbel ma' dak li pprovdiet l-ewwel qorti meta qalet hekk:

"... jista' jkun hemm ċirkostanzi fejn, minkejja li raġuni għall-astensjoni jew ir-rikuża ta' ġudikant ma tkunx taqa' taht xi waħda mid-dispożizzjonijiet tal-Kap. 12, jista' jkun hemm raġunijiet tajbin biżżejjed f'kuntast aktar wiesgħa sabiex ġudikant ma jibqax jisma' kawża sabiex ikun hemm serhan tal-moħħ li fit-trasparenza qiegħed jithares il-jedd ta' smigh xieraq ta' xi parti fil-kawża."

12. Mill-perspettiva kostituzzjonali japplikaw konsiderazzjonijiet oħrajn barra dawk li jissemmew fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

13. Il-perm tal-kwistjoni li din il-qorti għalhekk giet mitluba tiddetermina fl-appell imressaq mill-*union* huwa jekk hemmx raġunijiet li oġġettivament jiġġustifikaw il-biża' ta' parzjalità fl-Imħallef Padovani Grima fil-proċeduri ċivili fl-ismijiet Onorevoli Kap tal-Oppożizzjoni Dr Simon Busuttil et v. Josef Bugeja noe et (rikors ġuramentat numru 109/2017).

14. Kif ipprovdiet din il-qorti fis-sentenza mogħtija fis-7 ta' Marzu 2017

fl-ismijiet Lawrence Grech et v. L-Avukat Ġenerali et.

"12.... Għalkemm dak li tħoss jew taħseb jew tibza' parti f'kawża dwar il-parzjalità jew imparzjalità tal-ġudikant huwa wkoll relevanti għall-għanijiet tal-imparzjalità, ma huwiex il-kriterju determinanti: li hu determinanti hu jekk dak il-biża' jew dik il-preċezzjoni huwiex imsejjes fuq konsiderazzjonijiet ogġettivi hekk li persuna raġonevoli u mingħajr preġudizzji tagħha tasal biex hi wkoll ikollha dubji dwar l-imparzjalità tal-ġudikant.

13.L-apparenzi wkoll jistgħu jkunu konsiderazzjonijiet ogġettivi li joħolqu dubji. Ukoll jekk ma hemmx rabtiet ġerarkiċi bejn ġudikant u parti fil-kawża, jekk l-apparenzi huma hekk li persuna raġonevoli tista' wkoll mingħajr wisq tiġbid taħseb li hemm dawk ir-rabtiet, id-dubju ta' dik il-persuna dwar l-imparzjalità tal-ġudikant jista' jkun dubju ġustifikat.

14.Fejn jeżistu dubji bħal dan, ikun fl-interess mhux biss tal-parti li ogġettivament tara raġunijiet ta' parzjalità kontra li l-ġudikant ma jkomplix jisma' l-każ; ikun ukoll fl-interess tal-parti l-oħra li l-ġudikant, biex jegħleb kull dubju dwar l-imparzjalità tiegħu, ixaqleb imqar b'"eċċess ta' kawtela" favur l-parti l-oħra.

15.Il-kwistjoni issa hi jekk fil-każ tallum hemmx raġunijiet ogġettivi li f'osservatur raġonevoli u imparzjali jistgħu joħolqu dehra ta' rabtiet bejn ġudikant u parti f'kawża hekk li tidgħajjef il-fiduċja fl-imparzjalità ta' dak il-ġudikant."

15. Minbarra l-konsiderazzjonijiet hawn fuq imsemmijin, din il-qorti

hija tal-fehma illi għandhom ukoll jiġu kkunsidrati is-segwenti fatturi: i. in-natura tal-kawża; ii. ir-relazzjoni ta' bejn il-membri familjari tal-imħallef sedenti fid-ditta u l-istess imħallef; iii. il-kariga li jokkupa l-membri familjari tal-imħallef sedenti fid-ditta u jekk l-istess membri familjari huwiex ser jippartecipa fil-qligħ tad-drittijiet generati mill-kawża spettanti lid-ditta li huwa jaħdem magħha.

16. Dwar in-natura tal-kawża in kwistjoni, din il-qorti tosserva li din

m'hijiex sempliċement dwar dritt privat iżda hija kawża politika

dwar immobbli miżmuma b'titolu ta' ċens mifdi mingħand il-gvern u għalhekk tattira aktar attenzjoni pubblika.

17. Għalkemm huwa minnu li m'hemm l-ebda konnessjoni familjari bejn l-Imħallef Padovani Grima u l-Avukat Edward DeBono u l-Prokuratriċi Legali Katrina Zammit Cuomo – l-avukat u l-prokuratriċi legali li qegħdin jippatroċinaw lill-atturi fil-kawża, l-istess ma jistax jingħad fir-rigward ta' l-Avukat Kenneth Grima (li jiġi hu l-istess imħallef), fir-rigward ta' Rowena Grima (li tigi oħt l-istess imħallef) u, għalkemm fi grad anqas, fir-rigward tal-Avukat Ann Fenech (li hija l-mara tal-kuġin tal-mara tal-avukat Kenneth Grima). Il-konvenuti fil-proċeduri odjerni ma ressqu l-ebda provi biex jirribattu l-presunzjoni li teżisti relazzjoni mill-qrib u familjari bejn l-imħallef Padovani Grima u l-familjari tagħha li jaħdmu mad-ditta *Fenech & Fenech Advocates*.

18. Dwar il-kariga li jokkupaw l-membri familjari tal-imħallef Padovani Grima fid-ditta tal-avukati *Fenech & Fenech Advocates*, din il-qorti tosserva li l-Avukat Kenneth Grima huwa *senior partner* tad-ditta u bħala *senior partner* jippartecipa fil-qliġh tad-drittijiet generati mill-kawża spettanti lid-ditta li huwa jaħdem magħha.⁹ L-istess jista' jingħad fir-rigward ta' l-avukat Ann Fenech li hija l-*managing partner* tal-istess ditta ta' avukati. Il-Prokuratriċi Legali Rowena Grima hija impjegata tal-istess ditta u konsegwentement ma

⁹Ara foll. 28, 29, 30, 156 tal-process.

tipparteċipax fil-qliġ tad-drittijiet spettanti lid-ditta generati mill-kawża.

19. Fid-dawl tas-suespost, u partikolarment peress li l-kawża in kwistjoni hija kawża politika li għalhekk tattira aktar interess mill-pubbliku in generali u peress ukoll li fl-añhar mill-añhar l-Avukat Kenneth Grima – ñu l-Imñallef Padovani Grima – għandu interess fl-andament tal-kawża in kwistjoni għaliex jipparteċipa fil-qliġ tad-drittijiet ġenerati mill-istess kawża, din il-qorti hija tal-fehma illi m'huwiex għal kollox imgebbed il-biża' tal-*General Workers Union* dwar il-parzjalità jew imparzjalità tal-gudikant. Ma taqbilx għalhekk li r-rabta ta' soċju jew *partner* f'ditta legali hija "raġuni indiretta u remota wisq biex tqanqal dubju legittimu dwar l-imparzjalità minn osservatur raġonevoli ..."10

20. Fic-cirkostanzi għalhekk, ma hijiex irraġonevoli l-perċezzjoni li hemm rabta tal-familjarità bejn l-Imñallef Padovani Grima u d-ditta tal-avukati *Fenech & Fenech Advocates* li tista' tolqot ñażin id-dehra ta' imparzjalità oġġettiva tal-istess imñallef. Id-dubju ma huwiex wieñed li ma jitqiesx oġġettivament ġustifikat ukoll jekk dak id-dubju ma jolqotx l-imparzjalità soġġettiva tal-imñallef.

21. Għal dawn ir-raġunijiet il-qorti tilqa' l-appell u tħassar is-sentenza appellata: tipprovdi dwar it-talbiet billi tgħid illi jkun hemm ksur tal-

¹⁰Ara fol. 185 tal-process.

jedd tal-*General Workers Union* għal smiġh xieraq jekk ma tintlaqax it-talba ta' rikuża tal-imħallef li qiegħda tisma' l-kawża fl-ismijiet Onorevoli Kap tal-Oppożizzjoni Dr Simon Busuttil et v. Josef Bugeja noe et (rikors ġuramentat numru 109/2017), u għalhekk tordna li l-kawża ma titkompliex quddiem l-istess imħallef.

22. Fiċ-ċirkostanzi jkun xieraq illi kull parti thallas l-ispejjeż tagħha iżda l-ispejjeż tar-reġistru jhallashom il-konvenut Avukat Ġenerali.

Joseph Azzopardi
Prim Imħallef

Giannino Caruana Demajo
Imħallef

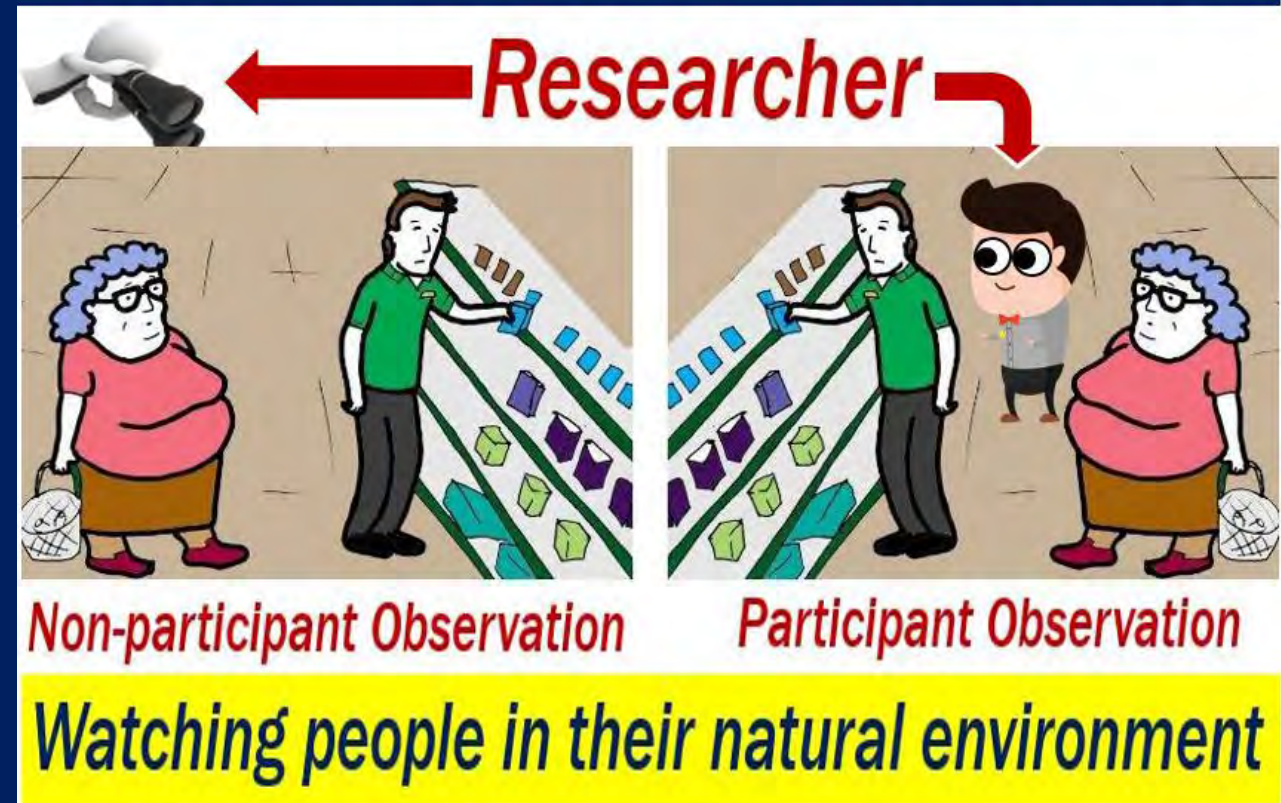
Noel Cuschieri
Imħallef

Deputat Registratur
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5. Social Sciences Collection of Data – Observation Method (OM)

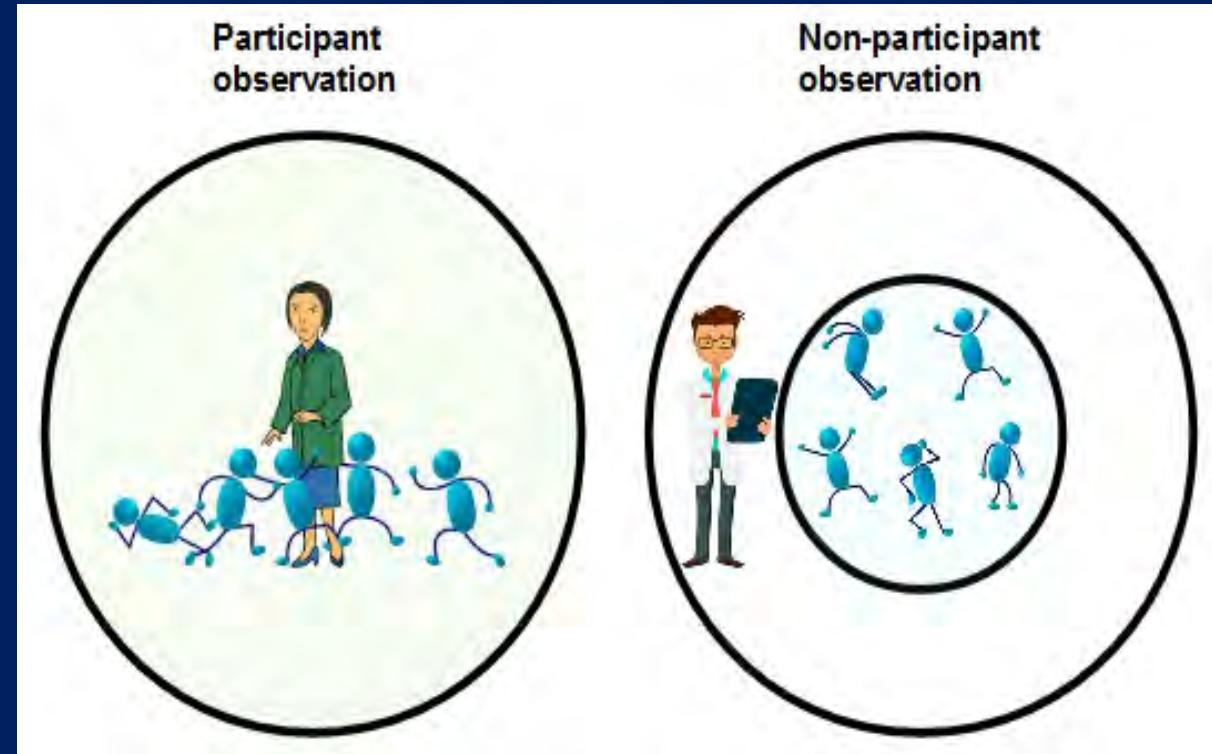
- Law does not exist in a vacuum hence an interdisciplinary approach is required i.e. Don't just look at the legal aspect. E.g. Jeremy Bosseivan study of Maltese society as explained in the GWU appeal
- Social Science most used method for collection of data is through participant and non-participant observation
- This OM deals with the recording of behaviour of the respondents/ society
- Researcher will keep an eye on the entire activity for the accurate data.
- It is a first hand collection of facts and there is scientific precision in this method as facts and related information is collected in a natural situation
- From observation, researcher can very well relate cause and effect relationship
- Observations can be:- (i) participant – the researcher takes part in the actions of the group
(ii) non-participant – observer is detached from actions of the group

Observational Research

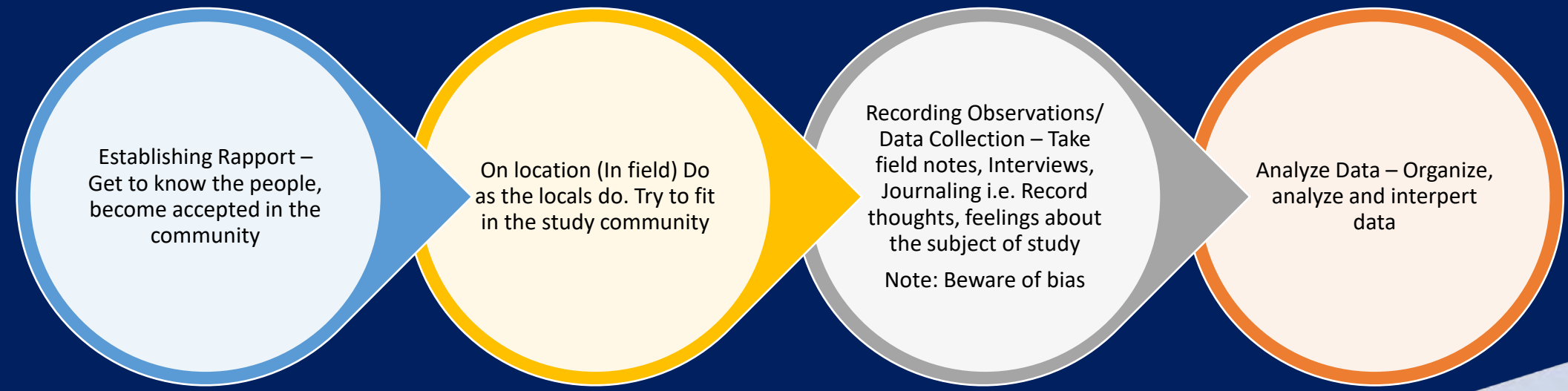


5. Collection of Data – Observation Method (OM) – Participant Observation

- A.k.a direct observation
- Aim is to gain a closer familiarity/ understanding with a given group of individuals/ organization and their practices e.g. group being affected by a particular law etc or the implementation of a particular law
- E.g Law dissertation by R.J. Lanfranco “The role of the armed forces of Malta in Maritime Law enforcement and crime prevention”
- MethodologyL - *Maritime Law Enforcement is a subject of great concern to many countries, which exercise maritime jurisdiction. Two-thirds of our world is covered by waters, which are used on a daily basis for the transportation of materials, the exploration and exploitation of resources as well as for a multitude of other purposes. It is therefore essential that some form of international or domestic control be present to make sure that one of the world's greatest resources is not abused or tampered with. For this purpose most countries of the world have their own law enforcers at sea, who make sure that both internationally recognised and domestic maritime related laws be adhered to. In Malta, this is the primary role of the Maritime Squadron of the Armed Forces of Malta, the major entity at sea, having the jurisdiction of enforcing all laws and regulations pertaining to the sea; starting from the basic control of swimmer zones in bays and extending to the surveillance of Malta's continental shelf area, many miles beyond Maltese shores. This research paper will analyse the duties of the Maritime Squadron in relation to maritime law enforcement and crime prevention, and will discuss both international and domestic maritime related laws applicable. Following this, quantitative statistical data will be presented as to the work carried out in the field of maritime law enforcement, month. by month, by the Squadron since 1995. This data will then be analysed in a qualitative manner, using the concept of participant observation and answers will be given as to why and what, has brought about such figures/results in the quantitative research. The study will end by giving a recommended strategy that could be implemented by the Squadron for improvements in crime prevention and maritime law enforcement.*
- Key: involvement and engagement of the researcher in the environment/ situation of the universe
- Involvement may be active or passive
- Used for qualitative research i.e. Substance
- Confidentiality must be provided to the group
- Participant observation will include experiencing people's lives. Reseracher will be on the front line of where the action is
- Researcher may be actively participating i.e. will immerse himself in the group. Might be difficult to keep objectivity
- Universe might notice the researcher and may alter their behaviour



5. Collection of Data – Observation Method (OM) – Participant Observation Process



5. Collection of Data – Observation Method (OM) – Why Participant Observation?

- Video: Participant Observation – Qualitative Methods – Observation
- Why choose participant observation, personal background of the researcher, skills

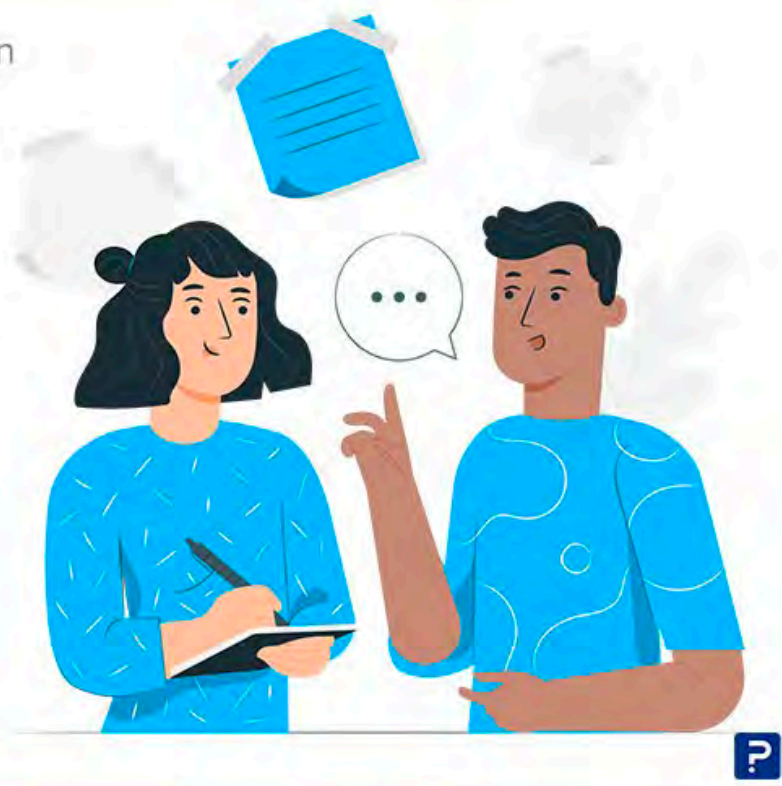
<https://www.youtube.com/watch?v=fDNYzPDlfRA>



5. Collection of Data – Observation Method (OM) – Participant Observation Types

Types of participant observation

1. Passive participant observation
2. Active participant observation
3. Covert and overt participant observation
4. Covert and active participant observation
5. Covert and passive participant observation
6. Open and active participant observation
7. Open and passive participant observation



5. Collection of Data – Observation Method (OM) – Participant Observation

Types

Passive Participant Observation

- Researchers observe and record the behaviors of their subjects in their own environment without conversing or interacting with them in any way
- Many of the studies that use this form of participant observation are studies in which researchers observe people's behavior and communications in public places, such as restaurants, coffee shops, transportation hubs, court rooms and even on the Internet through innovative methods such as *netnography*
- Video: Netnography inventor: Robert Kozinets

<https://www.youtube.com/watch?v=F8axfYomJn4>



5. Collection of Data – Observation Method (OM) – Participant Observation

Types

Application of Nethnography in the legal sphere can be beneficial to legislators (Facebook)

Prosecution & defence agreed to a suspended sentence.

Q: Is suspended sentence too harsh? Harsher?

Legislator will get an overview of how the general public is viewing particular offence -> may prompt amendmentx to the law

illum 20 January at 13:19 · 🌐

Il-Prosekuzzjoni u d-Difiża qablu li l-akkużat għandu jinghata sentenza sospiża, bil-Qorti mistennija tiddeċiedi l-gimgha d-diehla.

ILLUM.COM.MT

'Seraq yoghurt, tonn taż-żejt u wraps, biex ikun jista' jiekol'

Žaġżuġh li ma għandux fejn jgħix jitrejjaq quddiem il-Qorti akkużat b'serq ta' ikel u anke ta' ...

👍❤️ 437 546 comments 13 shares

Like Comment Share



5. Collection of Data – Observation Method (OM) – Participant Observation

Types

Active Participant Observation

- Researchers converse with their subjects and participate in the daily life of the groups they study, including their activities, customs, rituals, routines, etc.
- The degree of commitment of researchers to these groups varies. Some researchers limit their interactions to interviews, while others engage in all aspects of their subjects' lives.
- Examples of this form of participant observation are studies in which researchers lived for long periods of time among different ethnic, cultural, or religious communities.
- Legal sphere e.g. Traineeship with a lawyer/notary/legal procurator – basic briefs e.g. Writing legal letter, attend for meetings



5. Collection of Data – Observation

Method (OM) – Participant Observation

Types

Covert vs Overt Participant Observation

- In covert participant observation, the group does not know that it is being studied and the researcher do not identify himself as .
- Even when the investigation is open i.e. Overt (when the subject being observed is aware of being so observed) investigators often do not inform the people they meet in the course of their investigation of the specific purpose of the investigation, nor do they inform everyone they meet that they are researchers, as this could unnecessarily interrupt conversations and events being observed.



5. Collection of Data – Observation Method (OM) – Participant Observation

Types

Covert and Active Participant Observation

- Covert and active participant observation has several advantages e.g. have access to a group that they would not otherwise have the opportunity to observe, and they can experience the practices of the group as they are experienced by the members of the group.
- Generally, researchers can alter group behavior by their presence, but in this form of participant observation, groups would not consciously change their behavior in response to the researcher's presence because they are not aware of being observed.

Video: Case Study: Gang Leader for a Day: Sudhir Venkatesh – A rogue sociologist take the streets

<https://www.youtube.com/watch?v=yRq1AhFAN-4>



5. Collection of Data – Observation

Method (OM) – Participant Observation

Types

Covert and Passive Participant Observation

- In the case of covert and passive participant observation, researchers are not likely to alter the behaviors of their subjects, since the researchers do not actively engage with their subjects and because the subjects are also not aware that they are being observed.
- However, since observation is passive, researchers do not have the opportunity to experience the lives of their subjects for themselves.



5. Collection of Data – Observation

Method (OM) – Participant Observation

Types

Open and Active Participant Observation

- If observation is open and active, people can participate in and experience their subjects' activities as their subjects would, but they run the risk of both changing the behaviour of their subjects through their interactions with them, and that their subjects change their behaviour by themselves knowing that they are being studied.



5. Collection of Data – Observation

Method (OM) – Participant Observation

Types

Overt(Open) and Passive Participant Observation

- As in the case of covert and passive participant observation, researchers do not run the risk that their presence alters the behavior of the groups they study through their interactions with them.
- However, the guinea pig effect is a problem for this form of observation, unlike the case of covert and passive participant observation, because the participants are aware that they are being studied. Furthermore, researchers cannot experience the world as it is as subjects would.



5. Collection of Data – Observation Method (OM) – Non-Participant Observation

- A non-participant observation is one where the researcher chooses not to play any part in what is being observed.
- It is a more objective method of collecting data
- Sometimes researchers pretend to be customers or passers-by, or even use one-way mirrors
- Passive vs non-participant observation - Nonparticipation refers to a situation in which a researcher observes activities from outside of the field (e.g., viewing activities captured on video). Passive participation is when researchers are present in a particular social context but not actively involved in the activities

- E.g. Non participant collection method – in a court room observing cases
- Almost all sittings are accessible to the public unless there is a sensitive issued and case is heard behind closed doors - “Bil-magħluq”
- List of cases affixed to the notice board
- Cases are called either according to their number/ time/ queue
- Court behaviour of lawyers, parties and judge/ magistrate can be observed



5. Collection of Data – Interviews

- Interviews are commonly accepted technique of data collection where researcher enters into face to face interaction with any person or group for the purpose of seeking certain information relevant to his research
- Components of the interview are the researcher, the interviewer, interviewee and the interview environment.
- The purpose of the interview is to probe the ideas of the interviewees about the phenomenon of interest
- Interview is the process to know the opinion, information or observations of other person through verbal and non-verbal conversation
- Method is preferred if such information cannot be adequately observed by other methods without entering into conversation only
- Information cannot be easily obtained by this method, because the process depends on the interest and attentiveness and personal qualities of the interviewee
- It may also involve the study of body language - gestures, glances, facial expressions, pauses, even a flick of an eye or mere silence can speak more than verbal exchanges. Behaviour can be judged and attitude can be estimated based upon blush in the face, or laugh, visible happiness or anger.
- Qualitative
- Interview vs Survey – A survey is a questionnaire in which people are asked to write their answers to questions. Interviews involve asking people questions and recording their verbal responses and typically have a higher response rate than surveys do.

5. Collection of Data – Interview Modes



5. Collection of Data – Interviews

- Typologies:
 1. Unstructured – in-depth interview, conversations held with a purposes in mind i.e. To gather data about the research study. Lean toward an ordinary conversation rather than having a lot of questions. Objective: Build a bond with the respondents due to which there are high chances that the respondents will be 100% truthful with their answers. Flexible since there are no fixed questions however conversation may derail. Is it ethical?
 2. Semi-Structured - offer a considerable amount of leeway to the researcher to probe the respondents along with maintaining basic interview structure. A.k.a a guided conversation
 3. Structured - extremely rigid. Questions in this interview are pre-decided according to the required detail of information. Structured interviews are excessively used in survey research with the intention of maintaining uniformity throughout all the interview sessions.

Typologies of interviews – Qualitative Methods – Qualitative Interviewing –
<https://www.youtube.com/watch?v=oM1acdBAka0>



5. Collection of Data – Interviewer's skills (Harvard)

A Successful Interviewer is:

1. *Knowledgeable*: is thoroughly familiar with the focus of the interview; pilot interviews of the kind used in survey interviewing can be useful here.
2. *Structuring*: gives purpose for interview; rounds it off; asks whether interviewee has questions.
3. *Clear*: asks simple, easy, short questions; no jargon.
4. *Gentle*: lets people finish; gives them time to think; tolerates pauses.
5. *Sensitive*: listens attentively to what is said and how it is said; is empathetic in dealing with the interviewee.
6. *Open*: responds to what is important to interviewee and is flexible.
7. *Steering*: knows what he/she wants to find out.
8. *Critical*: is prepared to challenge what is said, for example, dealing with inconsistencies in interviewees' replies.
9. *Remembering*: relates what is said to what has previously been said.
10. *Interpreting*: clarifies and extends meanings of interviewees' statements, but without imposing meaning on them.
11. *Balanced*: does not talk too much, which may make the interviewee passive, and does not talk too little, which may result in the interviewee feeling he or she is not talking along the right lines.
12. *Ethically sensitive*: is sensitive to the ethical dimension of interviewing, ensuring the interviewee appreciates what the research is about, its purposes, and that his or her answers will be treated confidentially.

The Interview as an Interpersonal Encounter

- The social skills of empathy, warmth, attentiveness, humor (where appropriate), and consideration are essential for good interviewing.
- Any judgmental attitudes, shock or discomfort will be immediately detected.
- Never answer a question for the respondent.
- One must be completely engaged with the respondent, while at the same time keeping track of the questions one needs to ask.
- Use every active listening technique at your disposal:
 - Repeating back
 - "Wow!"
 - "Tell me more about that!"
 - "That is really interesting."
- Don't be afraid of silence; you can use it to prod the respondent to reflect and amplify an answer
- Don't follow the interview guide—follow the respondent. Follow up new information that he or she brings up without losing sense of where you are in the interview.
- Try not to think about time—relax into the interview.

5. Collection of Data – Developing Interview Tips

- Harvard tips for types of questions/ interview talk:-

Types of questions or other interview talk:

- *Direct questions:* 'Do you find it easy to keep smiling when serving customers?'; 'Are you happy with the way you and your husband decide how money should be spent?' Such questions are perhaps best left until towards the end of the interview, in order not to influence the direction of the interview too much.
- *Indirect questions:* 'What do most people round here think of the ways that management treats its staff?', perhaps followed up by 'Is that the way you feel too?', in order to get at the individual's own view.
- *Structuring questions:* 'I would now like to move on to a different topic'.
- *Follow-up questions:* getting the interviewee to elaborate his/her answer, such as 'Could you say some more about that?'; 'What do you mean by that . . .?'
- *Probing questions:* following up what has been said through direct questioning.
- *Specifying questions:* 'What did you do then?'; 'How did X react to what you said?'
- *Interpreting questions:* 'Do you mean that your leadership role has had to change from one of encouraging others to a more directive one?'; 'Is it fair to say that what you are suggesting is that you don't mind being friendly towards customers most of the time, but when they are unpleasant or demanding you find it more difficult?'



5. Collection of Data – Writing Interview Questions (Harvard)

1. Write down the larger research questions of the study. Outline the broad areas of knowledge that are relevant to answering these questions.
2. Develop questions within each of these major areas, shaping them to fit particular kinds of respondents. The goal here is to tap into their experiences and expertise.
3. Adjust the language of the interview according to the respondent (child, professional, etc.).
4. Take care to word questions so that respondents are motivated to answer as completely and honestly as possible.
5. Ask “how” questions rather than “why” questions to get stories of process rather than acceptable “accounts” of behavior. “How did you come to join this group . . .?”
6. Develop probes that will elicit more detailed and elaborate responses to key questions. The more detail, the better!
7. Begin the interview with a “warm-up” question—something that the respondent can answer easily and at some length (though not too long). It doesn’t have to pertain directly to what you are trying to find out (although it might), but this initial rapport-building will put you more at ease with one another and thus will make the rest of the interview flow more smoothly.
8. Think about the logical flow of the interview. What topics should come first? What follows more or less “naturally”? This may take some adjustment after several interviews.
9. Difficult or potentially embarrassing questions should be asked toward the end of the interview, when rapport has been established. 10. The last question should provide some closure for the interview, and leave the respondent feeling empowered, listened to, or otherwise glad that they talked to you

5. Collection of Data – Questionnaires

- Most popular method of data collection for empirical legal research
- Consists of a set of questions
- Useful when observation and interviews are not possible
- Objective
- Language should be easy to understand and not ambiguous
- Responses are not usually made in the presence of the researcher so guidance cannot be provided if the questions are not clear
- Not useful if respondents are illiterate or they don't understand the terms being used → the questionnaire must be tailor made to the characteristics of the targeted universe
- May be supplied personally, by mail or internet
- Information from distant places can be easily accessed by the researcher economically

Questionnaire

Instructions: Please put a tick in the box next to the answer of your choice or write in the space provided as the case may be.

Sex

Male Female

Age

13-14 15-16 17-19

Religion

Christianity Islam

Rastafarian Other

1. What type of family are you from?

Nuclear Sibling house hold

Single parent Extended

2. Do you use drugs

Yes No

3. Do you know of least one teenager in your community that uses drugs?

Yes No

4. If your answer is yes to question 2 (two), how often do you use drugs?

Every day Every 2-3 days Once a week

Every fortnight Once a month every 2 months

5. Are drugs easily available to teenagers in your community?

Yes No

6. What types of drugs are used by teenagers in your community?

Alcohol Marijuana Cocaine Heroine Others

If others please specify: _____

5. Collection of Data – Questionnaires

- Pitfall –subjects may not interested in answering questionnaires due to lack of motivation, attitude, cumbersome etc
- Tip: Enhance questionnaire response rate. How?
 1. Sponsorship – a reputable and legitimate sponsor is likely to get a higher response rate e.g. students are more likely to respond to a questionnaire administered by their school authorities than those administered by unknown individuals or organisations
 2. Covering letter - questionnaires should be accompanied by persuasive covering letters or notes to respondents explaining the nature, purpose and importance of the research project, and soliciting their cooperation
 3. Questionnaire Format - namely typing, length, font, spacing etc., could also affect the response rate. Understandably, people are more likely to respond to short questionnaires than to long ones, and to neatly typed, legible and well–spaced questions than rough, illegible ones. The researcher should also limit the questions to the necessary minimum
 4. Ease of completion - avoid ambiguity, provide detailed instructions, include stamped addressed envelopes
 5. Rewards – payment



5. Collection of Data – Questionnaires vs Interviews

- In questionnaires there is no personal contact unlike
- A questionnaire does not allow respondent to qualify ambiguous questions whereas interview makes such possible
- Questionnaire provides an opportunity for respondents to give anonymous answers
- In an interview the respondents may be biased
- Questionnaire facilitates the collection of huge amount of data in a short period of time which is not possible in Interview.
- In Interview, people may refuse to furnish information because they were approached at the wrong time, whereas, questionnaire can be completed at the leisure of respondents.

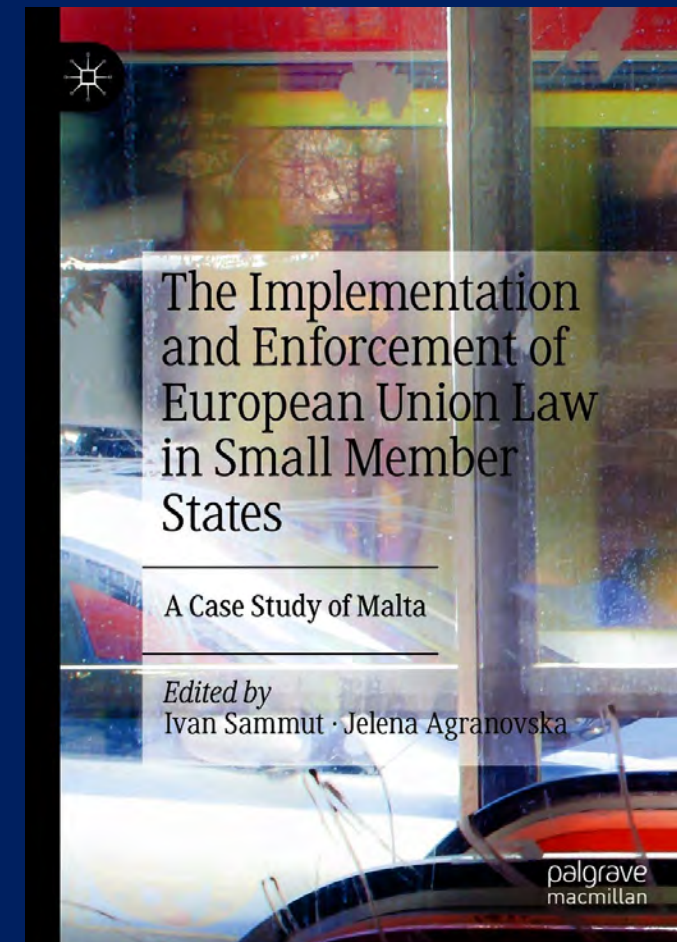


5. Collection of Data – Case Study

- A case study is an in depth study of any unit from the beginning to end
- Any person, family, institution, group, cast, community, law, aspects of a legal system, nation may be the unit for the purpose of study
- Intended when the research is narrow i.e. focus
- All facts and information relating to such unit from the origin to last are collected
- Sources used for data collection may be internal or external. Internal data gather from such unit or within the unit is internal and any information taken from outer sources are external one
- E.g. Of uses in legal research: -> Study on legal history of Malta, Constitutional history of Malta OR judicial contribution of any Judge
- E.g. Book published by Dr Ivan Sammut “The Implementation and Enforcement of European Union Law in Small Member States A Case Study of Malta: A Case Study of Malta”

5. Collection of Data – Case Study

- E.g. Of case study - Book published by Dr Ivan Sammut “The Implementation and Enforcement of European Union Law in Small Member States A Case Study of Malta: A Case Study of Malta”
- Examines how EU law is implemented, transposed and enforced in member states
- Uses Malta as a case study
- Discusses, EU legal order and national law, language and EU legal translation, consumer law, criminal law, intellectual property law, financial services law, IT law, company law and residence rights



SURVEY

Select one

Excellent

Good

Average

Poor

Very poor

5. Collection of Data – Surveys

- Survey is a process of collecting quantity of facts in systematic and organized manner to report any social problem or status of facts in certain area of society. Where the object of study is to search the information through real public experience, their opinion or feelings as to any of social importance
- Survey vs Questionnaire – Survey is the process of collecting data. Questionnaire is the instrument used i.e. a tool

5. Collection of Data – Survey

(Open ended questions are used in examination in chief.

Closed ended questions/ diretti in cross examination)

OPEN QUESTIONS VERSUS CLOSED QUESTIONS	
Questions that should be answered with long responses	Questions that should be answered with short responses
Answers are often descriptive and explanatory	Answers are often short and factual
Questions begin with words like how, why, explain, describe, etc.	Questions begin with words like is, would, do, what, etc.
Essay questions	Multiple choice questions
Take a long time to answer	Can usually be answered quickly

Pedicaa.com

Open	Closed
How do you get to work?	Do you get to work by driving, busing, or walking?
Tell me about your relationship with your boss.	Do you get on well with your boss?
What did you manage to accomplish on the trip?	Was your trip successful?
What happened at the meeting?	Did you have a good meeting?



Examination in Chief

Seduta tat-13 ta' Lulju 2021
Xhieda ta' Matthew Borg

PRIM' AWLA TAL-QORTI CIVILI

IMHALLEF

ONOR. TONI ABELA LL.D.

Illum, it-Tlieta, 13 ta' Lulju, 2021
Kawza Numru : 9
Rik. Nru 1016/2020 TA : -

Roger Borg et
vs
Matthew Borg et

Xehed il-konvenut **Matthew Borg** prodott mill-atturi bil-gurament tieghu jghid.

Domandi tal-Avukat Dr Malcolm Mifsud

Dr Malcolm Mifsud : Mela Sur Borg tista' tispjega lill-Qorti kif tigi mill-attur please?

Xhud : Jiena nigi t-tifel.

Dr Malcolm Mifsud : It-tifel. U kif tigi mill-konvenuta l-ohra Claire Bonnici? Jew x'relazzjoni hemm?

Xhud : L-ex mara tieghi.

Dr Malcolm Mifsud : L-ex mara tieghek. Issa, tista' tispjega lill-Qorti jekk fil-bidu taz-zwieg tieghek ghamilux xi haga mal-bank u jekk iva spjega lill-Qorti x'ghamiltu?

Xhud : Dan ftit xhur qabel ma zzewwigna giet din l-opportunita' biex nixtru proprjeta' barra minn Malta, u dan konna tipo tkellimniha, u ddecidejna fl-ahhar

Dr Malcolm Mifsud : Tkellimtu ma' min?

Xhud : Jien u Claire tkellimna fuqha din l-opportunita' u ddecidejna li

Dr Malcolm Mifsud : Iddecidejna, min?

Xhud : Jien u hi.

Dr Malcolm Mifsud : Min?

Xhud : Jien u Clair.

Dr Malcolm Mifsud : Int u Claire.

Xhud : Iddecidejna, li ha nidhlu ghal dan l-investment. U mbaghad izzewwigna u ghamilna l-kuntratt ta-loan mal-HSBC.

Dr Malcolm Mifsud : U kemm wara miz-zwieg ghamiltu dal-kuntratt?

Xhud : Gimghatejn.

Dr Malcolm Mifsud : Gimghatejn wara. Issa, dal-kuntratt ma' min kien?

Xhud : Mal-HSBC.

Dr Malcolm Mifsud : Mal-HSBC. U tista' tispjega lill-Qorti ghal x'hiex sar da nil-kuntratt? Jigifieri x'kontu qed taghmlu?

Xhud : Hadna loan, minghand I-HSBC.

Dr Malcolm Mifsud : Ta' kemm?

Xhud : Ta' 46,000 Maltin.

Dr Malcolm Mifsud : Ok. Issa, tista' tispjega lill-Qorti l-bulkijiet. Jigifieri l-HSBC kienu il-Bank. Int x'kont fil-kuntratt?

Xhud : Jiena li ha niehu l-loan hux.

Dr Malcolm Mifsud : U Claire x'kienet?

Xhud : Claire irrid nispecifika illi n-nutar kien draftja dan l-agreement qabel ma zzewwigna u hi kienet imnizzla bhala guarantee. Tajjeb? Pero` mbaghad izzewwigna u ffirmajna il-kuntratt wara z-zwieg.

Dr Malcolm Mifsud : U intom iffirmajtu l-kuntratt wara z-zwieg.

Xhud : Wara z-zwieg iffirmajna.

Dr Malcolm Mifsud : Bhala r-ragel u l-mara. Ok. Issa, min-naha ta' Claire Bonnici, tista' tispjega lill-Qorti jekk kien hemmx xi problemi min-naha taghha li ma ridietx taghmel transazzjoni jew xi haga?

Xhud : Le lanqas xejn. Hi kienet entuzjasta daqsi, biex nghamluha dil-venture u fil-fatt imxejna fuqha, ghamilniha u nixtieq inzid ukoll li l-Bank ma kienx tana daqskemm xtaqna. Fil-fatt imbaghad xhur wara konna staqsejna ghat-tieni loan.

Dr Malcolm Mifsud : Ha nigi ghaliha.

Cross Examination n

Qorti: Ok.

Kontro eżami.

Avukat: Mela, inti qed taghmel referenza f'paragrafu erbgha (4) ghat-tfal tieghek. Min huma, jekk joghgbok it-tfal tieghek?

Xhud: Annabelle Shawish, Reuben Mifsud u Demaris Agius.

Qorti: Tlieta (3).

Xhud: Tlieta (3).

Avukat: Naqblu illi inti u wliedek jiehdu hsieb l-affarijiet, il-gid tal-familja flimkien mieghek?

Xhud: Iva.

Avukat: Issa, x'invoviment kellhom it-tfal fejn jirrigwarda dawn il-proprjetajiet, jekk joghgbok?

Xhud: X'voldieri ezatt?

Avukat: Jigifieri per eżempju..

Qorti: Kif jidhlu t-tfal?

Xhud: Skond il-wirt..

Avukat: Titkellem magghom? Tikkonsultaw lil xulxin?

Xhud: Ehe ezatt. Nikkonsultaw lil xulxin. Ezattament. Kollox nghidilhom jiena.

Avukat: Kollox tghidilhom.

Xhud: Kollox jafu u jaraw il-kuntratti. Iva mela. Mela hux.

Avukat: Issa, f' dan il-kaz partikolari..

Qorti: Ghamel referenza ghall-affidavit.

Avukat: Inti t-tifel tieghek, fakkami x' jismu t-tifel tieghek.

Xhud: Reuben.

Avukat: Reuben qatt kellmek dwar xi diskussjonijiet li kellu mal-inkwilina taghkom fuq dan il-hanut?

Xhud: Diskussjonijiet f' liema sens? X'voldieri?

Qorti: Ara hemmx referenza ghaliha, aqralha *line*.

Avukat: Issa ha naghmlu l-kontro ezami: 'sadanittant u minkejja li ahna bqajna' ahna, ahna mhux jien, 'ahna bqajna qatt ma qbilna.' Meta tghid ahna bqajna nahseb jiena qed tirreferi ghalik u ghat-tfal hux hekk? Meta tghid 'ahna bqajna' qed nifhem inti u t-tfal hux hekk?

Xhud: Le skond fejn, liema klawzola..

Qorti: Mela ara fut u ara min.

6. Analysis & Interpretation of Data – Data Analysis

- Data Analysis (DA) – one the most crucial tasks
- Definition: summarizing the collected data and organizing these in such a manner that they will yield answers to the research questions or suggest hypothesis
- Legal Interpretation is the skill of bringing out or explaining the meaning of the law



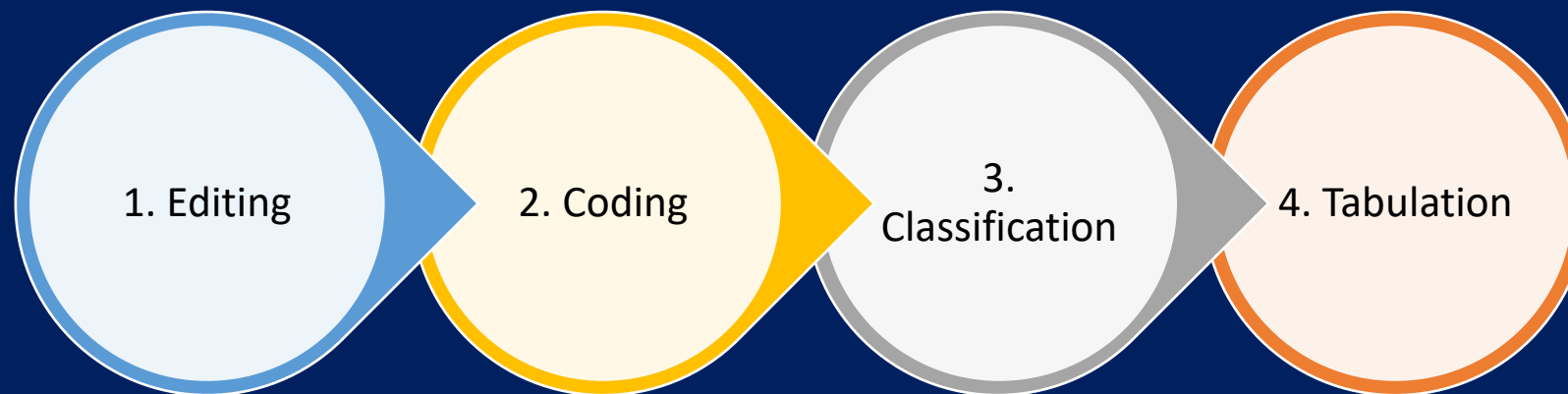
6. Analysis & Interpretation of Data – Data Analysis vs Processing vs Interpretation

- The general understanding is that data processing and analysis are one and the same. Some authors distinguish between the 2 i.e. data processing leads to data analysis.
- Processing of data refers to concentrating and recasting
- Analysis of data refers to seeing the data in the light of hypothesis/research question, the prevailing theories and drawing conclusions



6. Analysis & Interpretation of Data – Data Processing

- Once the data is collected, the following steps are taken to process the data into more measurable and concise manner:



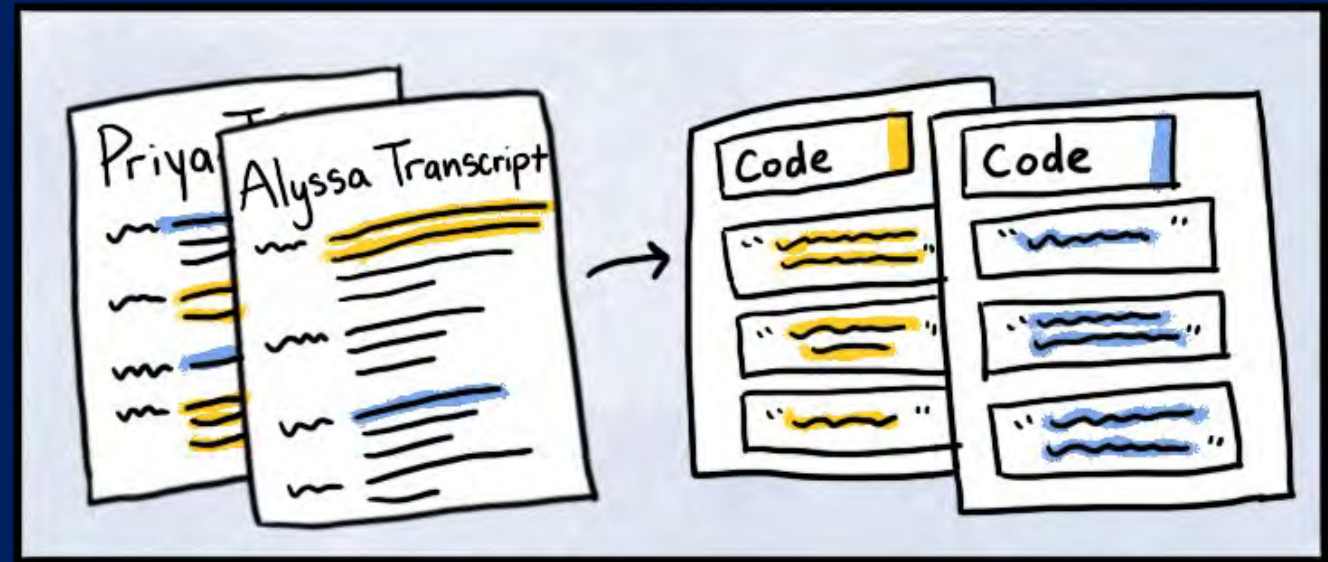
6. Analysis & Interpretation of Data – Data Processing

1. Editing - In the stage of editing all the raw data that is collected is checked for errors, omissions sometimes legibility and consistency as well. This ensures basic standard in the data collected and facilitates further processing
2. Coding - Coding refers to the process of identifying themes or codes of the data you have and assigning numerals or other symbols to answers so that responses can be put into a limited number of categories or classes. Categories/ classes must also be exhaustive (i.e., there must be a class for every data item). Coding differs for qualitative and quantitative research
3. Classification - Once the data is collected it is to be divided into homogeneous groups for further analysis on the basis of common characteristics
4. Tabulation - the process of summarizing raw data and displaying the data in compact form e.g statistical tables for further analysis. Not always needed



6. Analysis & Interpretation of Data – Coding and Classification

- For coding you don't need a specific software. You can code by hand e.g. scribbling on the paper, highlighting similar categories by the same colour or using coloured sticky notes. If the volume of data is large a software e.g. excel sheet will be more time effective
- If coding is done by hand, margins need to be available for writing on the sides → type of coding needs to be set at drafting stage of questionnaires, survey, interview etc so that the format/ layout allows for coding
- Manual coding usually involves a 2 step process i.e. to turn codes into categories of codes:-
 - i. Take notes
 - ii. Take notes of your notes
- Coding has to be clear. To achieve the aim of the research it might be the case that the coding process has to be carried out multiple times to build a connection between the data collected e.g. you might notice a pattern in the 5th interview and may need to go back to the previous interviews
- Coding process need to be explained in your research



Jane looked at Elizabeth with surprise and concern. She knew but little of their meeting in Derbyshire, and therefore felt for the awkwardness which must attend her sister, in seeing him almost for the first time after receiving his explanatory letter. Both sisters were uncomfortable enough. Each felt for the other, and of course for themselves; and their mother talked on, of her dislike of Mr. Darcy, and her resolution to be civil to him only as Mr. Bingley's friend, without being heard by either of them.

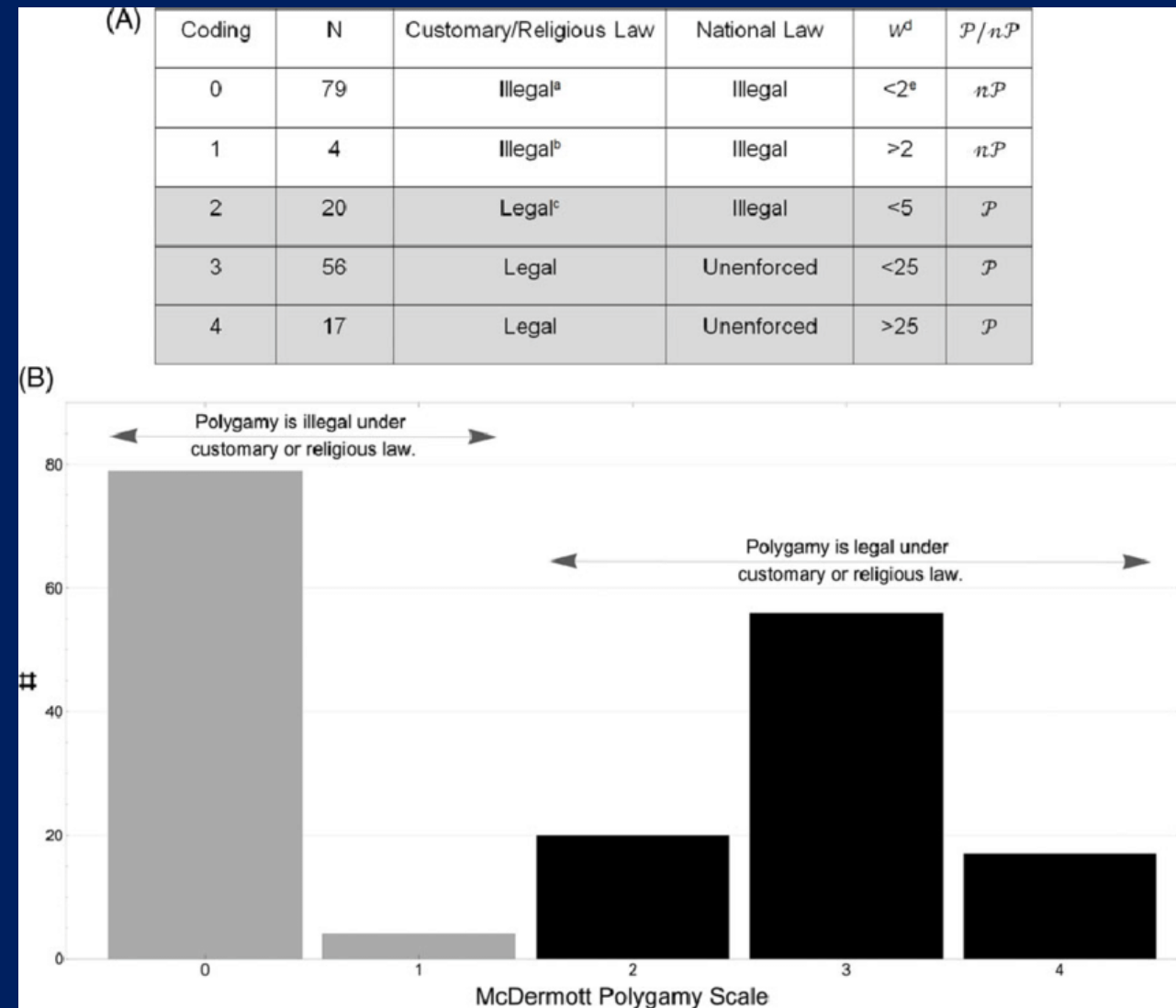
siblings
socially awkward
regret

But Elizabeth had sources of uneasiness which could not be suspected by Jane, to whom she had never yet had courage to show Mrs. Gardiner's letter, or to relate her own change of sentiment towards him. To Jane, he could be only a man whose proposals she had refused, and whose merit she had undervalued; but to her own more extensive information, he was the person to whom the whole family were indebted for the first of benefits, and whom she regarded

marriage
finances
maturity

6. Analysis & Interpretation of Data – Data Processing – Benefits of Tabulation

- Benefits of tabulation:-
 1. It conserves space and reduces explanatory and descriptive statement to a minimum.
 2. It facilitates the process of comparison
 3. It facilitates the summary of items and the detection of errors and omissions
 4. It provides the basis for various statistical computations



6. Analysis & Interpretation of Data – Interpretation

- Once the data has been processed and analyzed, the final step required in the research process is interpretation of the data.
- Through interpretation one understands what the given research findings really mean and what is the underlying generalization which is manifested through the data collected.
- The data is interpreted from the point of the research questions and hypothesis is tested
- *Properly collected data + properly analyzed data + wrong interpretation = Failed research (inaccurate & misleading conclusions)*



E.g. Analysis & Interpretation of Data Process of Judgments - Camilla Scerri et vs Awtorita tal-Artijiet – LAB – 14/12/22 – Cap. 573

Kumpens

Ai termini tas-sub-artikolu (3) tal-artikolu citat, il-kumpens dovut għall-akkwist tal-art għandu jkun skont il-valur tal-art fiż-żmien li nħarġet id-Dikjarazzjoni Presidenzjali, f'dan il-każ fl-1992. F'dawn il-proċeduri ġew esebiti żewġ rapporti – wiehed tal-Periti Tekniċi u ieħor tal-Awtorità intimata fejn jirriżulta diskrepanza qawwija hafna.

Fir-rigward tal-kumpens, fin-nota ta' sottomissjonijiet tagħhom ir-rikorrenti jsostnu li l-Bord għandu jistrieħ fuq ir-relazzjoni ulterjuri tal-Periti Tekniċi ċjoe ta' €1,196,792 li miżjud bl-indiċi tal-għoli tal-ħajja jammonta għal €2,244,538. Minn naħa l-oħra l-Awtorità intimata tgħid li l-Bord għandu jistrieħ fuq il-valutazzjoni tal-Perit Arielle Agius aġġustata għal kejl ta' €126,447.35⁴ bħala valur tal-art fl-1992 u għal €237,474.42 bħala valur miżjud bl-indiċi tal-għoli tal-ħajja. L-intimata tgħid li sabiex il-Perit Arielle Agius waslet għal dan il-valur għamlet referenza għal tlett operazzjonijiet

⁴ L-istima mogħtija kienet fir-rigward tal-kejl ta' 1,245m² meta l-kejl mertu ta' dawn il-proċeduri huwa ta' 6,007m²

paragunabbli ta' artijiet mibjugha mill-Gven fl-istess zmien u li fihom hemm indikat li l-kumpratur qiegħed jobbliġa ruħhu li "josserva d-disposizzjonijiet stipulati fl-Antiquities Protection Act tal-Liġijiet ta' Malta...". Inoltr wieħed mill-kuntratti huwa fir-rigward ta' art li hija ferm viċin l-art mertu ta' dawn il-proċeduri tant li r-rikorrenti oriġinarjament hasbu li kienet tappartjeni lilhom u li kienet inbiegħet bil-prezz ta' Lm0.37c kull metru kwadru. B'hekk fil-fehma tal-intimata l-valur mogħti mill-Periti Tekniċi huwa wieħed eżorbitanti u l-Bord m'għandhux jistrieħ fuqu.

Mill-provi prodotti jirriżultaw is-segwenti valuri:-

Deskrizzjoni tal-art	Kejl	Sena tal-istima/bejgħ	Valur tal-art skont il-kejl	Valur kull metru kwadru	Aġġustament skont l-indiċi tal-inflazzjoni għall-valur tal-1992
Art mertu ta' dawn il-proċeduri msemmija fid-dikjarazzjoni <i>causa mortis</i> ⁵	50,776m ² (f' dan il-kejl gie kompriz il-kejl esproprjat)	2008	€200,000	€3.94/m.k.	€2.52/m.k. ⁶
Raba' viċin l-art mertu ta' dawn il-proċeduri ⁷	271m ²	1991	Lm100 ekwivalenti għal €232.94	€0.86/m.k.	€0.87/m.k. ⁸
Stima tal-Periti Tekniċi tal-art mertu ta' dawn il-proċeduri ⁹	6,007m ²	2019	€2,102,450	€350/m.k.	€190.63/m.k. ¹⁰
Stima ulterjuri tal-Periti Tekniċi tal-art	6,007m ²	2005	€1,722,370	€286.73/m.k.	€199.23/m.k. ¹²

⁵ Dok. SK1 – fol 4 sa 6

⁶ (475.89 ÷ 743.05) x €3.94 = €2.52

⁷ Dok. A – fol 37 u 38

⁸ (475.89 ÷ 468.21) x €0.86 = €0.87

⁹ Fol 44 sa 46 u 49

¹⁰ (475.89 ÷ 873.73) x €350 = €190.63

¹² (475.89 ÷ 684.88) x €286.73 = €199.23

mertu ta' dawn il-proċeduri ¹¹					
Stima ulterjuri tal-Periti Teknici tal-art mertu ta' dawn il-proċeduri ¹³	6,007m ²	1992	€1,196,792	€199.23/m.k.	€199.23/m.k.
Stima tal-Perit <i>ex parte</i> Arielle Agius tal-art mertu ta' dawn il-proċeduri ¹⁴	6,007m ² ¹⁵	1992	€126,447.35 ¹⁶	€21.05/mk aġġustat għal €39.48/MK ¹⁷ skont l-ahhar indici tal- inflazzjoni (2021)	€21.05/m.k.
Operazzjoni Paragunabbli – Att 39 – Art il-Manikata ¹⁸	31m ²	1991	Lm280 ekwivalenti għal €652.22	€21.03/mk	€21.37/m.k. ¹⁹
Operazzjoni Paragunabbli – Att 34 – Art il-Manikata ²⁰	21m ²	1991	Lm190 ekwivalenti għal €442.58	€21.07/mk	€21.42/m.k. ²¹
Operazzjoni Paragunabbli – Att 76 – Art il-Manikata ²²	21m ²	1991	Lm190 ekwivalenti għal €442.58	€21.07/mk	€21.42/mk

Mit-tabella tirriżulta diskrepanza qawwija fil-valuri mogħtija għas-sena 1992 fir-rigward tal-istess art jew art vicin fejn il-valuri jvarjaw bejn €0.87/m.k. u €199.23/m.k.

¹¹ Fol 129 sa 130

¹³ Fol 130

¹⁴ Fol 70 sa 112

¹⁵ Kejl aġġustat minn 1,245m²

¹⁶ $(€26,207.25 ÷ 1,245) \times 6,007 = €126,447.35$

¹⁷ $(892.51 ÷ 475.89) \times €21.05 = €39.48$

¹⁸ Fol 104 sa 106

¹⁹ $(475.89 ÷ 468.21) \times €21.03 = €21.37$

²⁰ Fol 107 sa 109

²¹ $(475.89 ÷ 468.21) \times €21.07 = €21.42$

²² Fol 110 sa 112

Il-Bord jagħmel referenza għas-segwent i enunċjazzjonijiet ġurisprudenzjali li jinsabu riportati fil-kawża **Andrew Agius u martu Nikolina Agius u Zoqdi Developers Limited (C10213) vs Direttur Dipartiment tat-Toroq et** deċiża finalment mill-Qorti tal-Appell fis-17 ta' Marzu 2021 (Rikors numru 889/09/1 JZM) fejn intqal hekk:-

In linea ta' principju, għalkemm qorti mhix marbuta li taċċetta l-konklużjonijiet ta' perit tekniku kontra l-konvinzjoni tagħha (dictum expertorum numquam transit in rem judicata), fl-istess waqt dak ma jfissirx pero` illi qorti dan tista` tagħmlu b`mod leġġer jew kapriċċjuż. Il-konvinzjoni kuntrarja tagħha kellha tkun ben informata u bażata fuq raġunijiet li gravament ipogġu fid-dubju dik l-opinjoni teknika lilha sottomessa b`raġunijiet li ma għandhomx ikunu privi mill-konsiderazzjoni ta` l-aspett tekniku tal-materja taht ezami ("Grima vs Mamo et noe" – Qorti tal-Appell – 29 ta` Meju 1998).

Jiġifieri qorti ma tistax tinjora r-relazzjoni peritali sakemm ma tkunx konvinta li l-konklużjoni ta` tali relazzjoni ma kienetx ġusta u korretta. Din il-konvinzjoni pero` kellha tkun waħda motivata minn ġudizzju ben informat, anke fejn meħtieġ mil-lat tekniku. (ara - "Cauchi vs Mercieca" – Qorti tal-Appell – 6 ta` Ottubru 1999 ; "Saliba vs Farrugia" – Qorti tal-Appell – 28 ta` Jannar 2000 ; "Tabone vs Tabone et" – Qorti tal-Appell – 5 ta` Ottubru 2001 ; "Attard vs Tedesco et" - Qorti tal-Appell – 1 ta` Ġunju 2007 u "Poll & Spa Supplies Ltd vs Mamo et" (Qorti tal-Appell Inferjuri – 12 ta` Diċembru 2008).

Issir referenza wkoll għal dak li ntqal mill-Qorti tal-Appell fis-sentenza fl-ismijiet **Alfred Cremona pro et noe vs Kummissarju tal-Artijiet** (numru 4/16 FDP) deċiża fit-2 ta' Marzu 2018 fejn intqal hekk:-

Jibda billi jingħad illi f`materja ta' perizja teknika din tikkostitwixxi prova importanti u mhux normali li l-Qorti jew il-Bord jiskartaw l-istess prova, speċjalment meta parti fil-kawża tonqos milli tadopera r-rimedji disponibbli lilha sabiex tikkontrasta tali prova

..... Huwa ritenut illi l-Qorti m'għandhiex tiskarta l-konklużjonijiet tal-esperti tekniċi maħtura minnha, speċjalment fuq materja purament teknika, b`mod leġġer jew kapriċċjuż. Hekk kif din il-Qorti kellha opportunita tistqarr, fis-sentenza tagħha tad-29 ta' Jannar 2016, fil-kawża fl-ismijiet B&B Property Development Company Limited v. Kummissarju tal-Artijiet:

Din il-Qorti trid tirribadixxi il-punt illi f`materja ta' natura teknika trid, sa certu punt, tagħti affidament lill-opinjoni ta' persuni mharrġa fil-materja, u dan sakemm ma jitressqux argumenti u veduti li serjament ipogġu fid-dubbju dak li jgħidu n-nies tekniċi fil-materja.

F'sentenza riċenti mogħtija mill-Qorti tal-Appell (Superjuri) fl-ismijiet **Rita Borg et vs Awtorità tal-Artijiet (Rik. Nru. 4/18/1 NB)** deċiża fl-24 ta' Novembru 2022 ingħad:-

14. Illi għandu jingħad mal-ewwel li, għalkemm din il-Qorti ma tiskartax faċilment il-giudizio dell'arte kif espressa mill-periti tekniċi, dan ma jfissirx li hija jew il-Bord huma marbuta li jadottaw l-konklużjonijiet peritali fis-shiħ. Fil-fatt l-Artikolu 59 tal-Kap. 573 li jitratta r-rapport tal-membri, fis-sub-inciż (4) tiegħu jipprovi li c-chairman għandu jiddeċiedi l-kawża huwa stess, wara li jkun ikkunsidra b'mod xieraq ir-rapporti taz-żewġ Periti tal-lista u kull att ieħor relevanti jew sottomissjonijiet magħmula. Inoltre, huwa prinċipju assodat li l-konsiderazzjonijiet u l-opinjonijiet tal-esperti tal-Qorti jikkostitwixxu, skont il-liġi, prova ta' fatt u għandhom jitqiesu bħala tali mill-Qorti. Madankollu, il-Qorti mhix marbuta li taċċetta l-konklużjonijiet tar-rapport tal-periti kontra l-konvinzjoni tagħha (artikolu 681 tal-Kap. 12 tal-Liġijiet ta' Malta) u għalhekk il-Qorti għandha dritt li tiskartah bħal kull prova oħra. Ladarba l-liġi applikabbli fil-każ in eżami (Kap. 573) tagħti lill-Bord tal-Arbitraġġ l-istess setgħat illi għandha l-Prim' Awla tal-Qorti Ċivili u tqis li l-provvedimenti tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jgħoddu għall-Bord bl-istess mod, il-prinċipji hawn imfissra, japplikaw ukoll għall-każ in eżami.

15. Kwindi, il-fatt li l-Bord ħatar esperti tekniċi sabiex jassistuh, ma jfissirx illi huwa ma kellux iħares b'lenti kritika lejn l-opinjoni teknika sottomessa lilu jew li ma kellux jiskarta dik l-opinjoni jekk din ma tkunx waħda sodisfaċentement u adegwatament tinvesti l-mertu, jew jekk il-konklużjoni ma kenitx tirriżolvi kif suppost il-materja ta' natura teknika. Min-naħa l-oħra, sabiex Qorti twarrab perizja teknika, hija trid tagħmel dan wara li tkun konvinta li l-konklużjoni ta' tali relazzjoni ma kenitx ġusta u korretta. Din il-konvinzjoni għandha fil-fatt tkun waħda motivata minn ġudizzju ben informat, inkluż mil-lat tekniku. (Ara fost oħrajn, is-sentenzi ta' din il-Qorti fil-kawzi fl-ismijiet John Saliba et noe v. Joseph Farrugia deċiża fit-28 ta' Jannar, 2000, u Emanuel Attard v. George Tedesco et. deċiża fl-1 ta' Ġunju, 2007.)

...

L-Artikolu 79(3) tal-Kap. 573 relattiv għall-istima peritali fost affarijiet oħra jipprovi linji gwida għall-fatturi li jiddeterminaw il-valutazzjoni, kemm meta jitqabdu periti mill-Awtorità, kif ukoll meta jitqabdu mill-Bord tal-Arbitraġġ, fosthom:-

- (a) id-data tal-valutazzjoni;
- (b) id-data li saret riferenza għaliha meta giet valutata l-proprjetà;
- (ċ) l-istat li jiġi kkalkulat li l-proprjetà kienet fih fid-data li saret riferenza għaliha meta giet valutata l-proprjetà;
- (d) l-użu li kien qed isir mill-proprjetà fid-data li saret riferenza għaliha meta giet valutata l-proprjetà, inkluża l-informazzjoni dwar jekk il-proprjetà kenitx fl-istess żmien sugġetta għal drittijiet ta' terzi bħalma huma enfitewsi, użu, użufrikk jew kera;
- (e) l-operazzjonijiet paragunabbli, jekk ikun hemm, li l-proprjetà tkun giet valutata b'riferenza għalihom;

(f) ir-restrizzjonijiet li jgħorġu mill-iskemar skont il-pjani lokali u, jew raġunijiet pertinenti oħra;...."

20. L-aktar relevanti f'dan il-każ huwa l-aħħar element, in kwantu għaladarba fil-mument tal-esproprju, l-art in kwistjoni kellha restrizzjoni fuqha riżultanti mill-iskemar, peress li setgħet tintuża biss għall-formazzjoni ta' triq, altru milli jirriżulta li dan huwa fattur determinanti fil-valutazzjoni tal-istess art.

...

21. Din il-materja kienet trattata diversi drabi minn din il-Qorti, fosthom fis-sentenza ta' din il-Qorti tad-9 ta' Lulju, 2020, fil-kawża fl-ismijiet J.E.M. Investments Limited v. Kummissarju tal-Artijiet, fejn fost affarijiet oħra ngħad:-

Id-distinzjoni bejn ir-rati ta' art li kellha limitazzjoni ta' żvilupp li setgħet tiġi żviluppata b'mod differenti saret ukoll fis-sentenza ta' din il-Qorti tal-14 ta' Marzu, 2019, fil-kawża fl-ismijiet Joseph De' Conti Manduca et v. Kummissarju tal-Artijiet, li kienet titratta art li għalkemm tinsab is-Swieqi, giet ukoll esproprjata fl-istess żminijiet:-

Għalkemm il-periti semmew in-natura ta' żvilupp li seħħ fuq l-art in kwistjoni, din il-Qorti tinsab konvinta li fis-suq liberu, fost il-kriterji li jiddeterminaw il-prezz, wiehed ċertament isib dak tal-potenzjal tal-iżvilupp li jista' jsir fuq l-art. Dana jingħad peress li minkejja li l-iżvilupp li seta' jsir fuq l-istess art huwa limitat b'dak li jipprovdu l-ligijiet tal-ippjanar, dan il-kriterju tal-użu jew żvilupp limitat jiffigura proprju f'dak li jipprovdi l-Artikolu 18(2) tal-Kap. 88, hekk kif citat qabel, kriterju li l-periti Periti ċertament adottaw. Dan, fil-fehma ta' din il-Qorti, jinsab rifless ukoll fir-rati stipulati mill-periti teknici Periti tal-Bord għall-art in kwistjoni, fejn il-periti Periti għamlu distinzjoni wkoll bejn l-użu tal-art li setgħet tiġi żviluppata fi triq li giet stmata bir-rata ta' €400 għal kull metru kwadru, filwaqt li dik l-art li setgħet tiġi żviluppata f'Centru Ċiviku u spazju miftuħ giet stmata bir-rata ta' €800 għal kull metru kwadru. Din id-distinzjoni bejn ir-rati ċertament tirrifletti l-limitazzjoni tal-iżvilupp li seta' jsir fuq l-art in kwistjoni. Kif gustament rilevat mill-appellati, dan mhux każ fejn il-kriterji tal-ippjanar inbidlu konsegwenza tal-esproprju li seħħ, iżda l-policies tal-ippjanar eżistenti għas-sit in kwistjoni ġew applikati għat-tip ta' żvilupp limitat li seta' jsir fuq l-istess art." (enfasi ta' din il-Qorti)"

L-art mertu ta' dawn il-proceduri illum hija soġġetta għan-North West Local Plan li jagħmel applikabbli għaliha l-policies NWMG1 Interpretation Facilities for Heritage Sites u NWCO 11 Open Space Gaps (Strategic and Local) li ġew promulgati fil-11 ta' Awwissu 2006. Meta l-art giet esproprjata fl-1992 il-policies imsemmija, li jillimitaw l-użu tal-art, ma kienu eżistenti. Dan jirriżulta wkoll mir-rapport ex parte fejn il-Perit Arielle Agius (a fol 75) tgħid li ma nstabet l-ebda policy applikabbli fl-1992. Mir-rapport

tal-Periti Tekniċi jirriżulta li fl-1992 l-art kienet tintuża għal skopijiet agrikoli. Dan jirriżulta wkoll mill-att ta' bejgħ tal-10 ta' Awwissu tal-1991 fl-atti tan-Nutar Francis Micallef (fol 37) fir-rigward ta' art vicin it-Tempju ta' Skorba. Minkejja dan l-użu m'għadhux permissibbli l-art xorta wahda għadha tintuża għal skopijiet agrikoli hekk kif jidher anke mir-ritratti annessi mar-rapport *ex parte* li saret referenza għalihom mill-Perit Arielle Agius.

Fis-sentenza fl-ismijiet **Alfred Cremona pro et noe vs Kummissarju tal-Artijiet**²³ mogħtija mill-Qorti tal-Appell fit-2 ta' Marzu 2018, art fiż-Żebbiegħ fil-vicinanzi tat-Tempju ta' Skorba giet stmata fl-1 ta' Jannar 2005 fil-valur ta' €550 kull metru kwadru għal art fabbrikabbli u €30 kull metru kwadru għal art agrikola. Il-valur ta' €30 imnaqqas bl-indiċi tal-inflazzjoni għas-sena 1992 iwassal għar-rata ta' €20.85²⁴ kull metru kwadru. F'sentenza oħra mogħtija mill-Qorti tal-Appell fl-ismijiet **Agent Kummissarju ta' l-Artijiet vs Edith Tabone et**²⁵ deċiża fid-9 ta' Lulju 2020 art agrikola fiż-Żebbiegħ li kellha permess ta' żvilupp meta giet esproprijata, giet stmata fir-rata ta' €90 kull metru kwadru fis-sena 2000 in vista tal-potenzjal tagħha. Fis-sentenza **Angelo Fenech et vs Kummissarju tal-Artijiet**²⁶ deċiża minn dan il-Bord diversament presedut fit-3 ta' Ottubru 2012 art agrikola sabiex tgħaddi triq fir-*Rural Conservation Area* li hija l-*buffer zone* ta' sit arkejologiku Tas-Silġ f'Marsaxlokk giet stmata f'Lulju 2011 fil-valur ta' €10.81 kull metru kwadru.

Fid-dawl tal-valuri hawn citati, il-Bord iqis li m'għandhux japplika r-rata mogħtija mill-Periti Tekniċi għar-raġuni li r-rata kwotata minnhom ma tirriflettix il-valur veru ta' art agrikola fiż-Żebbiegħ. Il-Bord jinnota inoltre li l-operazzjonijiet paragunabbli li għamlu referenza għalihom il-Periti Tekniċi meta ccitaw is-sentenza fl-ismijiet Abela Joseph et vs Kummissarju tal-Artijiet (Rik. Nru. 30/2010) jirrigwardaw bcejjeċ ta' artijiet fabbrikabbli f'Haż-Żebbuġ bir-rati tas-sena 2005 u intiżi għal formazzjoni ta' toroq, liema kunsiderazzjonijiet mhumiex applikabbli għal kaz in dizamina u għalhekk qajla jista' jingħad li din l-operazzjoni kienet paragunabbli. Il-Bord sejjer minflok japplika r-rata stabbilita mill-Perit ex parte tal-Awtorità Arielle Agius ossia ta' €21.05 għal kull metru kwadru fis-sena 1992 liema rata aġġornata skont l-indiċi tal-inflazzjoni l-aktar riċenti ossia 2021 tigi għal €39.48²⁷. Din ir-rata hija wkoll vicin ir-rati adoperati fis-sentenzi fuq citati mill-Bord. **Għalhekk applikata din ir-rata ta' €39.48 fir-rigward tal-kejl ta' 6,007m.k. il-kumpens dovut jammonta għal €237,156.36.**

Danni materjali u morali

Jifdal issa l-kwistjoni tad-danni. Ai termini tal-Artikolu 58(g) tal-Kap. 573 il-Bord għandu l-awtorità li jillikwida u jagħti danni materjali u morali. Fid-dibattiti tal-kamra tad-

²³ Rikors 5/2016

²⁴ $(475.89 + 684.88) \times €30 = €20.85$

²⁵ Rikors 29/2000/2

²⁶ Rikors 17/2011

²⁷ $(892.51 + 475.89) \times €21.05 = €39.48$