

Recap

- Interpreting legislation – leg. Is drafted in generic words -> identify elements e.g. Spoliation Art. 535 of Cap 16 & 85 of Cap. 9 instances
- Interpretation can be flexible (substantive law) vs rigid (nullity of will)
- Wrong application of law (appealable) vs wrong Interpretation of law (not appealable)
- Interpretation Act – generic. Not very helpful
- Writing – format depends on what one is writing
- Judicial acts – application, sworn application, sworn reply

Legal Research and Interpretation Methodology

**Lecture Title: Legal Writing, Referencing and
Ethics**

Lecturer: Marycien Vassallo

Date: 01/03/2023



Diploma in Law (Malta)



**CAMILLERI PREZIOSI
ADVOCATES**

7. Writing – Legal Writing – Legal Correspondence

1. Letters to clients informing of status of case
2. Letter of opinions – mostly done yearly for auditing of account purposes
3. Letters to counterparties – At initial stage pre-proceedings, during proceedings (on a without prejudice basis), 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/XVC, 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 officiali tad-drittijiet u spejjeż ta' Rikors Guranental Numru: XX/19 JVC 8-ismjel " X et vs X" ceduta fil-Qorti Civil-Prmi/Awla II-1 ta' Għunju 2021 - fi-atti relattivi u sussegwenti.

Rilaxxata fil-
Madtuma fil- 04-Jun-2021

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
29-Mar-19	Rikors Guranental	174.40	0.00
	Kopji - € 4.66	4.66	0.00
16-Mar-19	Risposta Guranentalata	0.00	112.33
	Kopji - € 4.66	0.00	0.00
20-Feb-20	Affidavits - €23.29	46.59	0.00
11-Sep-20	Ingurjzjoni	7.90	0.00
	Avukat u Prokuratur Legali	9.32	0.00
01-Jun-21	Dritt registri 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

flum

Deputat Registratur

Eugenio Cutajar
Sezzjoni Taxxi

N.B. Din il-taxxa trid tkun iffirmata minn Deputat Registratur biex tkun officiali.

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

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



29th March 2022

Dr
Address

Dear Colleague,

Re: Estate of the late X
Without Prejudice

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

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

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

I look forward to your reply.

Kind regards,

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

WITHOUT PREJUDICE

Dear Dr. Vella,

*Reference is made to the Provisional Estimates issued on 3rd May 2017 in respect of **Vat Reg.XXX**:*

- Output Tax Eur 24,274.80*
- Administrative Penalty Eur 4,854.96*
- Interest Eur 8,103.45.*

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

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

Thank you for your kind consideration.

Best regards,



7. Writing – Legal Writing – Case Briefs

- Case summary
- 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 especially when dealing with ECHR judgments
- The summary of the facts is only a small fraction of case briefs

Video with example:

https://www.youtube.com/watch?v=_wzWq_XJE-w&t=1s



7. Writing – Legal Writing – Case Briefs



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 2021

May 2021

Terheș v. Romania (dec.) - 49933/20
Decision 13.4.2021 [Section IV]

Article 5

Article 5-1

Deprivation of liberty

52-day general lockdown imposed by the authorities to tackle the COVID-19 pandemic:
Article 5 inapplicable; inadmissible

Facts – On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by COVID-19.

On 16 March 2020 the Romanian President therefore introduced a state of emergency involving restrictions on freedom of movement. No movement outside the home was permitted, except in a certain number of exhaustively listed circumstances and on production of a document attesting to valid reasons for leaving home. Persons breaching the regulations were liable to a fine.

The state of emergency ended on 14 May 2020 at midnight.

Law – Article 5 § 1: The applicant did not rely on Article 2 of Protocol No. 4 in the proceedings before the Court, seeking instead to demonstrate that the general lockdown had constituted a deprivation of liberty and not simply a restriction of the right to freedom of movement.

The measure complained of had been imposed under a state of emergency, with the aim of isolating and confining the entire population on account of a public-health situation which the competent national authorities had deemed to be serious and urgent. Under Romanian law a state of emergency was a special legal regime which enabled a set of exceptional measures to be taken derogating from the established constitutional order. It was thus declared in the event of imminent or actual danger, for a specified period, and allowed the State to take measures restricting the exercise of certain fundamental freedoms. The Romanian President had declared the state of emergency after consulting the competent bodies, and on account of the "exceptional and unforeseeable context" created by the evolving international situation regarding the epidemic: the SARS-CoV-2 coronavirus was spreading throughout the world and the World Health Organization had officially declared it a pandemic. If the authorities had not taken extraordinary measures as a matter of urgency to stem the spread of the virus in the population, their lack of action would have had very serious repercussions, primarily on the right to life and, secondarily, on the right to health. Hence, the gradual introduction by the Romanian State of emergency measures, including lockdown, had been aimed at mitigating the economic and social impact of the epidemic and safeguarding the right to life.



- 2 -

In the Court's view, the COVID-19 pandemic was liable to have very serious consequences not just for health, but also for society, the economy, the functioning of the State and life in general, and the situation should therefore be characterised as an "exceptional and unforeseeable context".

The impugned measure had remained in place for fifty-two days. It was a general measure imposed on the whole population through legislation enacted by the various authorities in Romania. As a result of the implementation of the measure the applicant had been obliged to stay at home, being allowed to leave only for one of the reasons expressly provided for in the legislation, and with the relevant exemption form.

Thus, the applicant had been free to leave his home for various reasons and could go to different places, at whatever time of day the situation required. He had not been subject to individual surveillance by the authorities and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact. Accordingly, in view of its degree of intensity, the measure in question could not be equated with house arrest.

Furthermore, the applicant had not explained in concrete terms how the measure had affected him. He did not allege that his circumstances were not covered by any of the reasons for leaving home provided for by the legislation and that he had thus been confined indoors for the entire duration of the state of emergency. More generally, he had not provided any specific information describing his personal experience of lockdown.

In view of all these considerations, the level of intensity of the restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. Accordingly, the applicant could not be said to have been deprived of his liberty within the meaning of Article 5 § 1.

Lastly, Romania had announced its intention to derogate under Article 15 of the Convention from the obligations flowing from Article 2 of Protocol No. 4 guaranteeing freedom of movement, a right which the applicant had not asserted before the Court. In any event, given that Article 5 § 1 was not applicable in the present case, it was not necessary to examine the validity of the derogation notified to the Council of Europe by Romania.

Conclusion: inadmissible (incompatible *ratione materiae*).

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

[Click here for the Case-Law Information Notes](#)

7. Writing – Legal Writing – Legal Briefs/ of submissions - sottomissionijiet/ observations - osservazzjonijiet

- <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 3-4 days if matter is complex
- Brief needs to persuade
- 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%

Amended by:
VII 1856 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 1966.
Amended by:
L.N. 9 of 1968;
L.N. 78 of 1971.
Substituted by:
L.N. 107 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. 154 of 1996;
XIV 2002 194;
L.N. 400 of 2005;
L.N. 200 of 2007;
XVII 2007 73.
Substituted by:
L.N. 407 of 2007.
Amended by:
XVIII 2009 15;
L.N. 221 of 2011;
L.N. 224 of 2014.

TARIFF E

Fees payable to Advocates, Legal Procurators and Official Curators

	€
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,	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)	23.29
..... to	69.88
(c) For any other application	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



X1 OFFICIAL SITE VISIT
X19 COURT SITTINGS

BORD LI JIRREGOLA L-KERA



RENT REGULATION BOARD

Taxxa ufficjali tad-drittijiet u spejjez tar-Rikors Nu: 7/13 fl-ismijiet " Carmel Demanuele vs Carmelo Busuttil " deciza fil-Bord li jirregola l-Kera fil-11 ta' Jannar 2017 fl-atti relattivi u sussegwenti

Mituba minn Av / Pl:

Rilaxxata fil-

Mahduma **11 May 2017**

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
13-May-13	Rikors	48.91	0.00
	Kopji @ € 4.66	9.32	0.00
31-May-13	Risposta	0.00	23.29
	Kopji @ € 4.66	0.00	4.66
11-Jul-14	Nota	0.00	2.33
	Affidavits - Dritt avukat @ € 23.29	0.00	23.29
03-Feb-15	Ingunzjoni	0.00	16.50
	Dritt avukat u pl	0.00	9.32
04-Mar-15	Nota	0.00	0.00
	Affidavits - Dritt avukat @ € 23.29	0.00	46.59
22-Jun-15	Ingunzjoni	14.40	0.00
	Dritt avukat u pl	9.32	0.00
22-Oct-15	Ingunzjoni	14.40	0.00
	Dritt avukat u pl	9.32	0.00
12-Aug-16	Nota ta' l-osservazzjonijiet	2.33	0.00
	Dritt avukat u pl	186.35	0.00
03-Oct-16	Nota ta' l-osservazzjonijiet	0.00	2.33
	Dritt avukat u pl	0.00	186.35
11-Jan-17	Dritt registru sentenza	0.00	0.00
	Dritt avukat	11.65	11.65
	Dritt prokuratur legali	3.88	3.88
		0.00	0.00
		€ 309.88	€ 330.19
	RIMBORS		
	TOTAL	€ 309.88	€ 330.19

Ifum

Melissa Galea
Deputat Registratur

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

7. Writing – Legal Writing – Legal Briefs

... skond il-gwispensenza tagħha, "id-diretta f' socjeta' hu meqjus bħala mandatariju tas-socjeta' fir-relazzjonijiet anteni ma' dik l-istess socjeta' filwaqt li hu kkunsidrat bħala r-rappreżentant ta' dik is-socjeta' fir-relazzjonijiet tagħha ma' terzi persuni. B' danja kollu ma hemmx dubju li f' ceteri determinati sinwazzjonijiet id-direttur ikun personalment responsabbli għall-bara bi-agir delittwuz minna stess kometta."

Dwar dan id-responsabbiltà tad-direttur jingħad fil-Palerm'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, notwithstanding 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 Kommerċjali fid-deċiżjona tagħha tal-31 ta' Janwar 1977 fil-kawza fl-omnijiet John Bugaja vs. Giuseppe Maria Vella Gatt propriu et nomine, kienet citat dinja u-silsa fejn id-konvenut kien jse ritestat personalment in kolpa għall-atti ttrawolenti fil-konfrant ta' l-attur.

Il-Qorti tal-Appell, fis-sentenza tagħha tal-5 ta' April 2013 riedet tgħid li:

Fir-riguard tar-responsabbiltà personali tad-diretta Pierre Buontempo, bura car li meta jkun hemm agir bi frode jkun hemm lok għal-lifting the corporate veil. F'd-ineb Boyle & Blais' Company Law (7th Edn. 2009 pagina 67), l-avanti jgħid li:

"It is well established that the courts will not allow the corporate form 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, deċiża fil-28 ta' Marzu 2003, id-direttur ta' kompanija jkun personalment responsabbli għall-bara bi-agir delittwuz minna stess kometta, u "dan hu hekk id-kaz anha fejn id-direttur ma jikkonmetta l-agir delittwuz personalment minna jippermetti li baddieher fil-kompanija jikkonmettich" – ara wkoll Galea v. Hili, deċiża mill-Qorti tal-Kummerċ fl-1 ta' Ottubru 1996. Ir-responsabbiltà ta' Pierre Buontempo mhix batzra bies fuq il-fim li hu l-controlling shareholder, izda wkoll fuq il-prinċipju li "la frode non merita nisi la protezione della legge" – Koller Vol. XXVII.1.725.

Riferenza sur skoll għas-sentenza fl-omnijiet "Joe Vella vs Lino Stalace" deċiża fis-16 ta' Mejju 2014 mill-Prim'Awla tal-Qorti Civili fejn ingħad:

Juristika illi waqt li kienet qed surx xogħlijiet ta' skavar fil-fond Numru 24 ta' Stalace, kienet batzra fuq l-fond Numru 25 ta' Rita Vella.

Juristika li l-avanti kien qiegħed sur minn RC Construction Limited. Micallef noom li ma' kienx id-legatariju kontrattuar għalhekk Stalace kien ta' l-appellat li RC Construction Limited. Il-qorti hi tal-felma li Micallef ma jistax jidher min-responsabbiltà. Mill-omnijiet juristika li hu azzjoni maggotatorju u l-omnijiet deċiżjoni ta' l-kompanija (ara fol. 183-184). M'ipprova hu evidenti li kienet deċiżjoni negħta li ma' tazzimux id-distanza legali u li jse id-daffir li sar. Hu evidenti li n-negozju tal-kompanija RC Construction Limited kien batzra fuq l-esperjenza ta' Micallef, li hu stess aħed li kien id-judiciu fl-industrija tal-bini minna stess xgħira. Il-qorti tagħmel referenza għall-kaz Ingħiz Rasham Chemical Works Ltd (in liq) v. Belvedere Fish Guano Co. Ltd (1921) li kien jgħid ma' ma' f'attura ta' qiegħosiv li għandni bura fil-proprjeta' tal-għerri waqgħ qiegħosiv. Zweg deċiżjoni għad dik jgħid li id-konmett responsabbli persni li ma' kienet personalment orħaw l-att li kkapana l-bara. Lord Buckmaster oserva:

"If a company is formed for the express purpose of doing a wrongful act or of, when formed, doing a course 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-felma tal-qorti jgħidka wkoll fir-veca lokah meqjus li l-Artikolu 1031 jgħid: "Izda, kull wieħed minhebb għall-bara li tigi hi b'ija negħta".

F'dan id-konmett skoll, f'kaz reħor Ingħiz "Konstittutur Philips Electronics NV v Proco Digital Disc GmbH" il-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 these 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, Tietel Edizzjoni, Oxford (2012) pagina 70).

Dan apparu li bħala direttur tal-kompanija li kienet l-kontroll effemv tagħha, Micallef kelle duty of care li jgħid li ma' surx bura lill-għerri. Il-kontrattur kelle id-dar li jgħid li jgħid li jgħid li kienet qiegħda sur bura minna minn bura li bura fil-proprjeta' ttrawolenti.

Din is-sentenza għet kwotata mill-Prim'Awla tal-Qorti Civili fis-sentenza fl-omnijiet "David Buñagiar vs CFS Construction Limited" deċiża fis-7 ta' Janwar 2020 fejn ingħad:

Illi fil-felma ta' dan id-Qorti, m'hemm l-ebda raguni l-għala socjeta' kommerċjali m'għandni tkun passibbli għal responsabbiltà delittwuz, għadurha għandni personalita' ġuridika separata u distinta minn dik tal-membri u id-diretturi tagħha u għadurha għandni l-kapitalu li tikkontratta ma' terzi, id-kwita u tal-jeva l-avanti tagħha, u tikkontratta id-debiti. M'hommx dubju lanqas li id-diretturi tagħha huma responsabbli personalment għal atti ta' natura kriminali. Fil-kaz ta' atti delittwuz, li ma' jkunux skoll jammontaw għal vjelazzjoni tad-dritt persni, kif suri id-kaz "li fuq, hemm għad ta' istanzi fejn id-igi unidha id-dewwa responsabbiltà personali fuq id-diretturi. Il-gwispensenza, kienet dik Ingħiz kif ukoll Malta, estender id-responsabbiltà personali għal kaptur obrax li minnhekk espressionet id-kontrattati min-igi. B' mod partikolari, id-Qorti attribwew responsabbiltà personali fuq id-diretturi ta' kompanija anke meta jkun azzjoni f' isem id-kompanija. Kien hemm istanzi, socjeta, meta l-Qorti, kienet tagħta kif ukoll Ingħiz, sabu id-direttur responsabbli personalment u solidament minn kompanija. Dan id-Qorti tagħel ma' dawn id-deċiżjonijiet u għalhekk id-waqgħ li bħala regola ġenerale tagħel mal-omnijiet socjeta tal-professur Emscott fejn meqjus l-felma li fejn kompanija ttrawolenti hays ta' kar, id-diretturi tagħha ma' jammontaw skoll responsabbli, dan ma' jgħidka għal-kaz fejn id-istess id-direttur jkun id-igi l-att illegali minna minnhekk jse kienet suru takt id-direttur tagħha. F'kazijiet bħal dawn, kienet hemm kif ukoll id-kompanija tkun responsabbli, għalhekk id-direttur jgħid kometta materjalment minn persna f'ika u dan ma' tista' qatt ttrawolenti responsabbiltà ta' eghuħha. Rilevanti wkoll F'dan id-konmett hura l-Art. 1050 tal-Kodici Civili. li jgħidka li jekk id-bieca tal-bura li kull wieħed tkun id-kapana ma' tkun oħra' tipi stabbilita, min kien bura l-bura jgħid id-bura tal-bura kienet mangħajr kull min urid, u b' l-pporzjon tal-jeva jgħid jgħid beja dawh li jkun hadu seħem. Fil-konmett ta' deċiżjoni li jgħid f'isem kompanija, u meta s-tarzi tkun responsabbli, id-direttur wieħed jgħidka id-bura bejatehem.

Illi ma' hemmx dubju li l-agir tal-attur jgħidka għal id-direttur, ekwivalenti għar-reat ta' raggion fattori fil-kompanija. Għaldaqstant fil-felma tal-esponant id-minnanti kollha għandni jgħidka responsabbli.

Id-direttur, id-direttur, id-direttur, id-direttur u id-direttur tagħha, id-direttur tal-avanti u id-direttur tal-bura.

Illi id-minnanti id-direttur jgħidka jgħidka fit-tlett id-direttur minnhekk bura fuq.

Id-direttur u id-direttur tagħha



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 submission filed by Dr. X

The Pharmacy Council (hereinafter referred to as "the Council") respectfully submits that on the 20th 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 decision given by the Appeals Committee during the sitting held on the 15th of March 2021, the Council would like to submit the following responses in 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 was issued 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 attendant training requirements established under the EU directive with regards to duration, content and practice".

The Council also suggested that the Appellant is to "undertake suitable training that is "represented by, or equivalent to, that offered in the 18 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 27th January 2021

1

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 States¹. 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 consist in training of at least five year's duration". The programme to be followed is then described in Annex V point 5.8.1 of the Directive and includes preparation in "Legislation and, where appropriate, professional ethics".

¹ 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

2

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 duty-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 issues 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 set 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
Appellant

3



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>

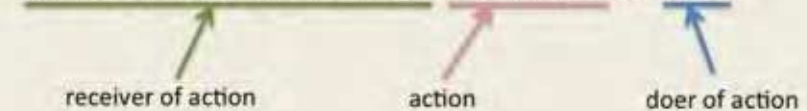
Active Voice

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



Passive Voice

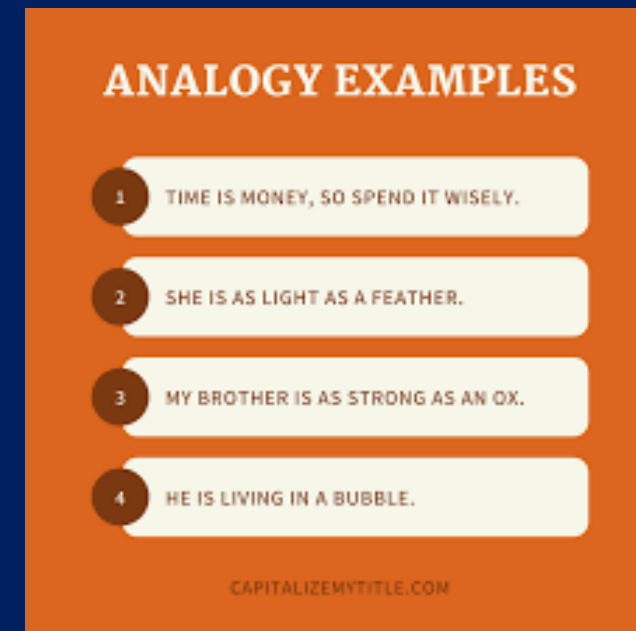
An essay about Alzheimer's was written by Alex.



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 incontext and counte 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 you 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 rethorical 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



7. Writing – Legal Writing Tips – Analogy in judgments – Police vs Ronan Clyde Hamill and Paula Fernandez Romero – COM (Malta) as a Court of Criminal Judicature – Mag. Marseanne Farrugia – 01/11/2021

- *13. It is true that in the charge sheet, underneath this charge, there is typed in italics a number of provisions of the Criminal Code, including inter alia Article 216(1)(b), but nowhere in this charge is it stated that the charge of grievous bodily harm is being made “in terms of” these provisions of the law,⁸ as defendant Hamill erroneously writes in his reproduction of the charge sheet in paragraph number one (1) of his note of submissions, and in paragraph number five (5) of his same note.*
- *Moreover, no provision of the Criminal Code obliges the Prosecution to indicate under which provision of law a charge is being made. By analogy, Article 360(2) of the Criminal Code prescribes that “The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give. Although Article 360 deals with summoning of persons charged who are not under arrest, in the opinion of the Court these requisites of what the summons should contain are equally applicable to the charge sheet, when the persons charged are brought to court under arrest, as in the present case.*

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 include books, journal articles, and websites.
- In 2022 the GHSL (Ghaqda Studenti tal-Ligi) adapted the OSCOLA guideline to the Maltese Context
- <https://www.ghsl.org/wp-content/uploads/2022/09/oscola-guidelines.pdf>



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 (can also use A for article)*
- “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

² Ara Camilleri v Agius P.A.20/10/1882.
³ Ara Vol.XXXVIII.1280.
⁴ Ara Vol.XLII.1133.
⁵ Ara Vol.X.556;Vol.LXXXIII.1176;Vol.LXXVIII.28; Vol.XXXIII.149.
⁶ Ara Vol.XXXII.11642; Vol.LXXXIII.1179.

No standard in Maltese judgments

⁷ 108/2018JVC decided 23/01/2020 appealed Judgement by the Constitutional Court is adjourned for the 5th of October, 2020.
⁸ 283336/02: 26/2/2009 (published in French).

⁵ Fol. 63.
⁶ Fol. 65 – 67.

¹ See by way of example verbal of the 11th of November, 2014 and that of the 14th of April, 2015

² Rik.nru. 333/2019.
³ App.Inf. 12.07.19.

⁴ Q.A.(Sup.), 14.12.2018.

² European Court of Human Rights.
³ App no. 37537/13 (ECtHR, 12 April 2016).

Kummissarju tal-Pulizija' decided by the First Hall Civil Court (Constitutional Jurisdiction) on the 23rd November 2017 (App no. 92/2016 JPG).

⁴ Decided on the 23rd November, 2017 (App no: 92/2016 JPG)

⁵ Just like the Maltese system during that time (This reference can be found at the bottom of page 2 of the judgment in the names **'Christopher Bartolo (KI 390981M) vs Avukat Generali**



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

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.

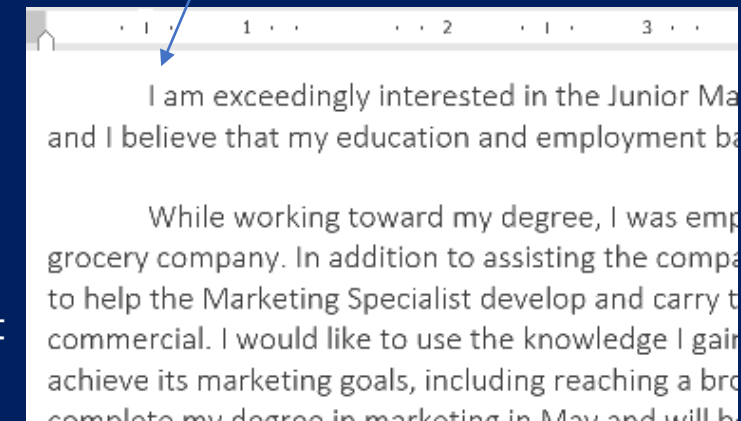
Footnotes

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 (footnote number) should be after the full stop or comma

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

Indented para.



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



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' 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 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:

Arcott 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: Creating a Bibliography 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.



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 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).



TIMES MALTA

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

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



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,



Ethics – Research Ethics & Professional Ethics

- 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.



Code of Ethics - Notaries

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



Notary is deemed to be an independent professional

SUBSIDIARY LEGISLATION 55.09

NOTARIES' CODE OF ETHICS REGULATIONS

18th May, 2018

LEGAL NOTICE 155 of 2018.

1. (1) The title of these regulations is the Notaries' Code of Ethics Regulations. Cmou

(2) The Code of Ethics applicable to Notaries for the purposes of the Notarial Profession and Notarial Archives Act shall be that set out in the Schedule. Cap.55

SCHEDULE

Code of Ethics for the Notarial Profession

Arrangement of the Code

- Title 1: Of Conduct and Diligence
Title 2: Of Independence and Impartiality
Title 3: Of Professional Relationships
Title 4: Of Unlawful Competition
Title 5: Of Professional Secrecy and Confidentiality

Title 1: Of Conduct and Diligence

- 1.1 Every notary shall act with dignity and must observe such fundamental values of truth, honesty, equity, integrity, independence, impartiality and freedom.
- 1.2 Every notary shall refrain from using methods or adopting attitudes that are likely to reduce his or her good reputation and/or that of his or her profession.
- 1.3 Every notary shall make every effort to keep himself or herself informed and knowledgeable in the area of his or her profession, while at the same time and as far as he or she is able, contributes to the development of his or her profession by exchanging his or her knowledge and experience with his or her colleagues or students. Any specialization in a particular field should not be detrimental to his or her professional competence in general.
- 1.4 Every notary has the right and duty to perform his or her functions in accordance with the law and he or she shall not influence the parties' free will and act in accordance to such will.
- 1.5 Every notary shall strive at achieving harmonisation and bringing the parties in agreement when in dispute, while at the same time observing the principle of equity during his or her entire activity. Respect for the primacy of truth must be the sacred duty of every notary.
- 1.6 Every notary shall strive for the correction of errors, inaccuracies or any omissions in his or her work.
- 1.7 No notary shall use for his or her own personal benefit any monies, securities or any other property entrusted to him or her in the practice of his or her profession. Such monies, securities or any other property shall not be used by said notary as a personal loan or an investment to his or her own advantage whether in his or her own name or through an intermediary. He or she shall take reasonable care of the corporeal property entrusted to his or her care.
- 1.8 If a notary participates in matters which are not related to the exercise of his or her profession, he or she shall act with due care in order to protect his or her professional independence and obligations.

- 1.9 Every notary is obliged to have an insurance policy according to law and to provide the Notarial Council with a copy of any report or relative documentation regarding his insurance policy if required to do so by the Notarial Council without delay.
- 1.9.1 The Notary is obliged to keep his office in an adequate and sustainable manner and that it can continue to provide an uninterrupted service to the public without prejudice to Article 11(b) Notarial Profession and Notarial Archives Act.
- 1.9.2 Reviewing of acts shall be done in an adequate manner by the revising officer and every notary is bound to help the revising officer in a manner that does not encumber or hinder the revising officer's work.

Title 2: Of Independence and Impartiality

- 2.1 In the performance of his or her functions, the notary shall act impartially and shall remain in a position of equidistance between all parties making use of the notary's services, regard however being had to the varying degrees of expertise, experience and knowledge of the parties. Such functions must be carried out unequivocally, in accordance with the common interest and wishes of all the parties concerned.
- 2.2 The notary shall ignore any intervention by a third party that might influence in any manner the performance of his or her professional duties to the detriment of the parties making use of the notary's services.
- 2.3 The Notary shall not:
- (a) Employ agents to promote or tout his office and services;
 - (b) Promote his or her office and services with specialised agencies and authorities such as financial institutions, estate agents and the like;
 - (c) Consent that his or her profession, office and services be advertised;
 - (d) Collaborate with other entities whatsoever, in such a manner as to reduce the notary's impartiality or independence;
 - (e) Carry out his services in the offices of third parties in such a manner as to reduce the notary's impartiality or independence;
 - (f) Authorise, instruct, or allow third parties to put pressure on other persons to use his or her services. Furthermore, the notary shall be obliged to immediately ask such third parties to desist from such actions, should the notary find out that third parties have done so even without the notary's acquiescence. In any case, the notary shall be obliged to immediately inform the Notarial Council and, if applicable, the third parties' representative body/bodies, of such actions.

Title 3: Of Professional Relationships

3.1 Relationship with colleagues

3.1 In his relationship with other notaries, a notary is bound to act according to the principles of loyalty, respect, fairness, generosity, solidarity and co-operation, and with the intent of raising the prestige and the public significance of the profession. Any manifestation of vanity and disloyal competitiveness should be avoided.

3.2 The following are rules that shall govern the relationship between notaries:

- (a) A notary shall inform his colleague, in a professional and respectful manner, of any possible errors or omissions which he believes his colleague has committed.
- (b) A notary shall strive for the correction of errors, inaccuracies or any other omissions in his or her work within a reasonable time whenever he is requested to do so by a colleague. This shall also apply in cases where it is legally possible for such corrections to be carried out by another notary, but where it would be easier for such corrections to be made by the notary who has made such omissions in view of the fact that such notary already has a professional relationship with the parties whose signature is required.
- (c) Any dispute or difference of opinion which arises between notaries shall be settled with the assistance of the Notarial Council.
- (d) A notary shall provide copies of notarial deeds and documents to his colleagues whenever requested within a reasonable time-frame, ideally within a period of ten (10) working days from the day of the request. This time limit applies most specifically to notarial deeds which have not been deposited by the notary at the Notarial Archives.
- (e) A notary is bound to exchange his systematic views and information with colleagues. If consulted by a colleague, a notary must give his opinion and recommendations within a reasonable time, depending on the urgency of the situation.
- (f) A notary is bound to replace his colleague, who due to any serious impediment or illness, cannot receive certain acts. In this eventuality, the notary shall be entitled to verify and ascertain for himself the will of the parties and other matters as he deems fit.
- (g) A notary shall not betray the good faith or breach the trust of a colleague, or manifest in any manner disloyal practices towards a colleague.
- (h) A notary shall refrain from expressing critical opinions in relation to his colleagues in the presence of third parties, including other colleagues, clients, state authorities and institutions, as this may compromise the good reputation of the profession in general or of a particular colleague by discrediting the competence, knowledge and service of another notary. A notary may however give objective technical advice on the work of a

not Council members, may contribute to the development and improvement of the notarial profession in general.

3.3 Relationship with Public Authorities

- 3.3.1 In his relationship with public authorities and institutions, the notary must perform his duties in a professional manner in a way which attracts a high regard to the notarial profession.
- 3.3.2 A notary shall not seek, in any manner, the employment or collaboration of civil servants against payment or compensation of any kind.
- 3.3.3 In case of dispute, a notary shall not take individual action against public authorities and institutions without primarily consulting with the Notarial Council.

3.4 Relationship with clients

- 3.4.1 In the performance of his duties towards his clients, the notary shall act diligently and professionally. He shall display reasonable availability towards his clients and maintain efficiency throughout the whole notary-client relationship, in particular keeping the clients informed and updated throughout the whole notary-client relationship.
- 3.4.2 The advice a notary should give to his client must be disinterested, frank and honest. A notary must inform and make all parties acquainted with the applicable legal provisions and while ascertaining that the will of the parties is reflected in the notarial deed, he must ensure the legitimacy of the notarial deed, and must provide the parties with impartial and correct legal advice to assist them in taking the right decisions.
- 3.4.3 A notary should give all the necessary information required by the client and assist the client in taking a fully informed decision.
- 3.4.4 A notary should render account to his client whenever it is so requested.
- 3.4.5 A notary shall always act impartially and shall perform his functions in the common interest of all parties concerned. He shall refrain from offering his services, especially in instances where his impartiality is imperative, in cases where a conflict of interest exists or could arise. There shall be deemed to be a conflict of interest in all situations where a notary is inclined to favour some of the parties to the detriment of the other parties and his fidelity to both parties may be seriously affected.
- 3.4.6 A notary shall not pay or receive any benefit from either of the parties or from any third parties (such as estate agents and architects), in connection with the practise of his professional duties. Such payments give rise to a conflict of interest and renders the notary unimpartial in the performance of his duties.
- 3.4.7 Being a public officer and not merely an independent professional, a notary may not cease to act on behalf of a client except in cases where he has a valid cause, such as loss of confidence between the notary and the client, conflict of interest or a situation which renders his professional independence

questionable, infocement by a client to perform illegal, unfair or fraudulent acts and clients who refuse to pay the notary whenever he renders a service.

- 3.4.8 In cases where a notary assumes particular duties which go beyond the normal practice, the notary has a duty to inform the client regarding the scope of the responsibility which he is assuming.
- 3.5 Relationship with trainee notaries and with employees
- 3.5.1 A notary is bound to provide trainee notaries with legal training and to ensure that they receive adequate notarial practice according to law. In so doing, a notary is bound to acquaint trainee notaries with the fundamental principles of the profession and with the principles of professional ethics.
- 3.5.2 A notary must involve trainee notaries in every aspect of the notarial profession in such a way as to equip such trainee notaries with the abilities required to perform the duties and functions of the notarial profession.
- 3.5.3 The notary must inform the trainee notaries that they are also bound by the rules and principles of this Code of Ethics.
- 3.5.4 A notary is also bound to ensure that his employees are adequately trained and equipped to perform their duties in a professional manner. Moreover, a notary must as a general rule refrain from having his trainee notaries and employees act as mandatories in notarial deeds received by him to safeguard the fundamental principle of impartiality.

Title 4: Of Unlawful Competition

- 4.1 Notaries are obliged to restrain from unfair competition, which includes without limitation:
- 4.2 A notary's co-operation and over association with certain individuals who pressure clients to choose that particular notary in order to receive some sort of financial aid
- 4.3 Gaining clients by reducing the notarial tariff fixed by law irrespective of the service rendered.
- 4.4 Gaining clients by concluding transactions which are motivated by a consideration (*causa*) which is immoral, illegal or goes against public policy.
- 4.5 Any form of persuasive practises used by a notary in order to attract a person to use his or her services in the future, including any request or suggestion to a person that any notarial acts required by him in the future should be made only at his or her notarial office
- 4.6 Concealment of any documents which should be made known to his or her colleagues in order to facilitate or improve their work.
- 4.7 A notary omits certain behaviours which are part of his or her fundamental duties and as a result produces hasty work to the detriment of both his or her clients and his or her colleagues.

- 4.8 A notary is prohibited to advertise his or her professional services individually or engage in or allow advertising that may be false, deceitful or likely to be misleading.
- 4.9 The Notarial Council is permitted to advertise collectively information relating to the notarial profession as a whole for the purpose of providing easier access of information to the general public.
- 4.9.1 It shall be lawful for a notary to put up an electronic website whereby he gives general information about his or her office hours and the location of his or her office. However, the inclusion of information particularly relating to one's level of competence, efficacy of his or her services or claiming that he or she is in possession of specific qualities or skills is strictly prohibited.
- 4.9.2 Participation or cooperation in broadcast television programmes, radio programmes or writing articles in newspaper columns, concerning both his or her profession and any other event open to the public (even if it contributes to his fame via the means of mass communication), shall not be treated primarily as tools for advertising his or her capabilities as a notary or any other specialisation relating to his or her notarial profession. When participating in such events as above referred to, the notary shall strive to uphold the prestige and dignity of the notarial profession.

Title 5: Of Professional Secrecy and Confidentiality

- 5.1 Even though a Notary is a Public Official and gives Public faith to acts *inter vivos* and once these acts are published he or she is duty bound to give copies of these acts when requested or obliged by the act itself, any other act *causa mortis* (not being a declaration *causa mortis*) and any other private writings (including preliminary agreements), advice (including title reports) and conversations shall be subject to strict observance of professional secrecy as defined by the Professional Secrecy Act and as defined by other legislation including the Data Protection Act and notarial practice.
- 5.2 This obligation shall bind the Notary during and after the completion of his work, except giving copies as stated in five point one (5.1) above, and in the other matters mentioned in five point one (5.1) above, even after the death of the persons performing said act.
- 5.3 No Notary shall disclose that a person has retained his or her services (unless this results from the published deed), unless he or she is required to do so by the nature of the case or by Law. All notaries shall avoid indiscreet conversation concerning a client and the services rendered to him and this both with another Notary or third parties.
- 5.4 The receipt of an act does not in any manner authorise a Notary to disclose to third parties the existence of such act, except where a copy of such act (being an *inter vivos* act) is expressly requested or this results from the obligations emanating from the same deed. A Notary should especially be careful when issuing copies of a will and to do this only in terms of the Notarial Profession and Notarial Archives Act.

- 5.5 No confidential information can be used by a Notary with a view of obtaining a direct or indirect benefit for himself or herself or for another person even if this does not result in direct prejudice to the interests of his or her client.
- 5.6 Any person employed by a Notary or subcontracted by a Notary or a student doing Notarial practice, who becomes aware of any confidential information in accordance with article 7(1) of the Professional Secrecy Act and Data Protection Act, is also bound by the duty of professional secrecy and confidentiality as herein defined and the Notary has to see that all his employees/subcontractors/students are aware of this.
-

Code of Ethics – Lawyers

- COMMISSION FOR THE ADMINISTRATION OF JUSTICE - CODE OF ETHICS AND CONDUCT FOR ADVOCATES accessible on <https://www.avukati.org/download/code-of-ethics/>
- Not an act or formal legislation but still a binding code
- Aim:
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



COMMISSION FOR THE ADMINISTRATION OF JUSTICE

CODE OF ETHICS AND CONDUCT FOR ADVOCATES

This code defines the requirements of professional conduct for advocates. 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.

PART ONE

GENERAL PRINCIPLES

CHAPTER I

CONDUCT OF ADVOCATES

Rule 1

An advocate shall in the exercise of his profession safeguard both in his own actions and in the actions of those who act on his or her behalf, the following values:

- a) the advocate's independence or integrity;
- b) a person's freedom to instruct an advocate of his or her choice;
- c) the advocate's duty to act in the best interests of the client;
- d) the good repute of the advocate or of the advocates' profession;
- e) the advocate's proper standard of work;
- f) the advocate's duty to the Court.

Rule 2

An advocate is an officer of the Court, and should conduct himself or herself accordingly.

Rule 3

In all that is entrusted to him, an advocate has the duty to:

- a) properly administer as a *bonus paterfamilias*;
- b) refrain from deriving any personal benefit therefrom;
- c) give due account thereof when so requested.

Rule 4

An advocate shall be in breach of this Code of Ethics and Conduct if he conducts himself abusively or negligently or in a manner repugnant to the decorum, dignity or honour of his profession, or in such manner as could seriously affect the trust conferred on him by his profession.

**PART TWO
RELATIONSHIP WITH THE CLIENT**

**CHAPTER I
OBTAINING INSTRUCTIONS**

Rule 1

It is fundamental to the relationship which exists between advocate and client that an advocate should be able to give objective and frank advice to the client free from any external or adverse pressures or interests which would destroy or weaken the advocate's professional independence or the fiduciary relationship with the client.

Rule 2

Advocates shall not in any manner publicise their practices or permit other persons to do so on their behalf or in their interest. The Chamber of Advocates shall from time to time, either on its own motion or at the request of any member, issue guidelines and interpretations as to what does not constitute publicity for the purposes of this Rule.

Rule 3

Advocates shall not directly or indirectly employ or accept the services of any tout. In this Rule "tout" means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any consideration, to find clients for a advocate.

Rule 4

Advocates shall not enter into any agreement with any other professional not being another advocate, e.g. a legal procurator or notary, or with any person to give or to receive any share of the fees or other remuneration earned by him in respect of professional work.

Rule 5

Advocates shall not use a firm name, letterhead or other professional designation of description which contains misleading information.

Rule 6

Advocates shall not use a firm name, letterhead or other professional designation of description which indicates a partnership or association with persons other than other advocates. However, the fact that the name of a legal procurator is included on a letterhead is not considered as a breach of this rule if the said name of the legal procurator is not part of the name of the firm or list of associated advocates.

Rule 7

Subject to Rule 2, Rule 3 and Rule 4, advocates may accept introductions and referrals from other persons and may make introductions and referrals to other persons.

CHAPTER II
TAKING INSTRUCTIONS

Rule 1

An advocate is generally free to decide whether to accept instructions from any particular client.

Rule 2

An advocate must not act, or where relevant, must cease acting further where the instructions would involve the advocate in a breach of the law or a breach of this Code of Ethics and Conduct unless the client is prepared to change his or her instructions appropriately.

Rule 3

An advocate must not act or continue to act in circumstances where the client cannot be represented with competence or diligence.

Rule 4

An advocate must not accept instructions where he or she suspects that those instructions have been given by a client under duress or undue influence.

Rule 5

An advocate must not accept instructions knowing that a third party has stipulated that the advocate must act.

Rule 6

Where instructions are received not from a client but from a third party (not being a member of the legal profession) purporting to represent that client, an advocate should seek direct confirmation from the client as soon as possible. In case of doubt, the advocate must meet with the client or take the necessary steps to confirm the

instructions as soon as possible.

Rule 7

An advocate must not act, or must decline to act further, where there is a conflict of interests between:

- a) the advocate and the client or prospective client;
- b) two existing or prospective clients;
- c) an existing client, a prospective client or between prospective clients.

In this regard an advocate is bound to observe the rules in Chapter 5 of this Part.

Rule 8

An advocate must decline to act where he or she, his or her partner, employer, employee, spouse, ascendant or descendant in the direct line hold some office or appointment which may lead to a conflict of interests. Nor may an advocate give the impression that he or she is able to make use of any connection for the advantage of the client.

Rule 9

An advocate should not normally accept instructions to act as a advocate for a client if it is clear that he or she or a member of his or her firm will be called as a witness, unless his or her evidence is purely formal.

Rule 10

An advocate must not accept instructions to act in a matter where another advocate is acting for the client in respect of the same matter, unless he is sure that the first advocate has remunerated according to law on termination of the brief. Notwithstanding the above, the second advocate may act in urgent exceptional circumstances where the interests of the client would otherwise be seriously prejudiced, in which case he must inform the first lawyer. In any case, the Chamber of

Advocates may, if it deems proper, authorise the second advocate to act.

CHAPTER III
DUTIES OWED TO CLIENT DURING A BRIEF

Rule 1

An advocate who has accepted instructions on behalf of a client is bound to carry out those instructions with diligence and must exercise all possible care and skill.

Rule 2

An advocate must keep his or her client's business and affairs confidential. In this regard an advocate is bound to observe the rules in Chapter 6 of this Part.

Rule 3

It is an implied term of the brief that an advocate is under a duty to observe this Code of Ethics and Conduct.

Rule 4

An advocate is under a duty to comply from time to time with reasonable requests from the client for information concerning the brief.

Rule 5

An advocate must not terminate his or her retainer with the client without giving reasonable notice in the circumstances.

Rule 6

On termination of the brief an advocate should, subject to any privilege and/or right of retention, deliver to the client all papers and property to which the client is entitled and account for all funds of the client then held by the advocate.

CHAPTER IV
PROFESSIONAL FEES

Rule 1

An advocate may, at the outset of the brief and at reasonable times prior to the termination of the same, require the client to make a payment or payments on account of fees, costs and disbursements to be incurred.

Rule 2

An advocate's fee shall be reasonable and may be established either by the advocate himself or by agreement between the advocate and the client. The factors to be considered in determining the reasonableness of a fee (whether agreed or otherwise) include the following:

- a) the time required, the novelty and difficulty of the issues involved, and the dedication requisite to perform the legal service properly;
- b) the responsibility undertaken, with particular reference to the amount involved;
- c) the time limitations imposed by the client or the circumstances;
- d) the nature and length of the professional relationship with the client;
- e) the experience, reputation and ability of the advocate performing the services;
- f) in litigation matters, the fees recoverable from the other party;
- g) the likelihood that the acceptance of the particular brief will preclude the acceptance of other briefs by the advocate.

Rule 3

An advocate shall not, either directly or indirectly, enter into any agreement or stipulation *quotae litis*.

Rule 4

An advocate shall not share or agree to share his or her professional fees with any person except:

- a) a practising advocate;
- b) a retired partner or predecessor of the advocate or the dependents of personal representatives of a deceased partner or predecessor.

Rule 5

An advocate shall not enter into any professional partnership or other professional arrangement, other than arrangements specifically allowed by law, with any person other than an advocate.

Rule 6

Advocates shall not by themselves or with any other person set up, operate, actively participate in or control any business, which offers any of the following services:

- a) advocacy before any court, tribunal or inquiry;
- b) acting as executor;
- c) drafting any contract, including the memorandum and articles of association of companies;
- d) drafting any will;
- e) giving legal advice;
- f) drafting legal documents other than those comprised in the above paragraphs;
- g) any other activity reserved to advocates by law or usually performed by advocates.

Rule 7

An advocate should normally render a bill of costs to a client within a reasonable time of concluding the matter to which the bill relates.

Rule 8

An advocate's bill of costs should contain sufficient information to identify the matter to which it relates and when the services were rendered.

**CHAPTER V
CONFLICT OF INTERESTS**

Rule 1

An advocate should not accept instructions to act for two or more clients where there is a conflict or likelihood of a conflict between the interests of those clients whether the client is a personal client or a client of the firm or association.

An advocate should not accept a brief without the consent of his client when there is a possible or real conflict of interests with a client represented by a partner in the same firm.

Rule 2

If an advocate has acquired relevant knowledge concerning a former client during the course of acting for that client, the advocate must not accept instructions to act against the client.

Rule 3

An advocate must not continue to act for two or more clients where a conflict of interest exists between those clients.

Rule 4

An advocate must not act where his or her interests conflict with the interests of a client.

Rule 5

An advocate who holds a power of attorney from a client must not use that power to gain a benefit which, if acting as a professional adviser to that client, he or she would not be prepared to allow to an independent third party.

**CHAPTER VI
CONFIDENTIALITY**

Rule 1

Besides being bound by professional secrecy, an advocate is under a duty to keep confidential the affairs of clients and to ensure that his or her staff do the same.

Rule 2

The duty to keep confidential information about a client and his or her affairs applies irrespective of the source of the information.

Rule 3

The duty to keep confidential a client's business continues until the client permits disclosure or waives the confidentiality.

Rule 4

The duty to keep a client's matters confidential, as opposed to what applies to the duty of professional secrecy, can be overridden in certain exceptional circumstances and shall include those cases in which an advocate is required to disclose confidential information in terms of law; and those cases in which such disclosure is essential for an advocate to defend himself in any proceedings taken against him by or on the

complaint of a client or a former client in which event the disclosure shall be limited to what is indispensable for the advocate to defend himself.

Rule 5

An advocate must not disclose a client's address when expressly prohibited from so doing by his client or when he has reasonable grounds to assume that such disclosure would be prejudicial to his client.

Rule 6

An advocate must not make any profit by the use of confidential information obtained in the exercise of his or her profession for his or her own purposes or the purposes of third parties.

**PART THREE
OBLIGATIONS TO OTHERS**

**CHAPTER I
RELATIONS WITH THIRD PARTIES**

Rule 1

Advocates must not act, whether in their professional capacity or otherwise, towards anyone in any way which is fraudulent, deceitful or otherwise contrary to the proper exercise of the profession as advocates. Nor must advocates use their position as advocates to take unfair advantage either for themselves or another person.

Rule 2

If an advocate discovers that another party is represented by an unqualified person, the advocate must decline to communicate with the unqualified person, this without prejudicing the interests of his client.

Rule 3

When writing a letter before action, an advocate must not demand anything other than that recoverable according to law.

**CHAPTER II
RELATIONS WITH OTHER ADVOCATES**

Rule 1

An advocate must act towards other advocates with courtesy, frankness and good faith consistent with his or her principal duty to the client.

Rule 2

An advocate should not interview or otherwise communicate with any party who to the advocate's knowledge has retained an advocate to act in the matter except with that other advocate's consent, provided that if an advocate has sought to communicate with a party through that party's advocate and such advocate does not respond within a reasonable period of time, the advocate may, without that other advocate's consent, write directly to the party.

Rule 3

An advocate is under a duty to report to the Chamber of Advocates any serious breach of conduct on the part of another advocate. The advocate may, if he deems it necessary, obtain his client's consent thereto.

**PART FOUR
PARTICULAR AREAS OF PRACTICE**

**CHAPTER I
LITIGATION AND ADVOCACY**

Rule 1

Advocates who act in litigation, whilst under a duty to do their best for their client, must never deceive or mislead the court.

Rule 2

An advocate must not comment upon the merits of the case with a judge, magistrate or other adjudicator before whom a case is pending or may be heard, except in open Court or in the presence of the other party's advocate or of the said other party and when so requested by the person who has to judge.

Rule 3

It is permissible for an advocate to interview and take statements from anyone but not to:

- a) interview the other party without the consent or presence of his or her lawyer;
- b) interview witnesses when the search for truth may be compromised.

In any case an advocate must not speak to a witness indicated as such by the other party when the Court has prohibited it to the advocate's own client.

Rule 4

When an advocate becomes aware of the fact that his client intends to perjure himself so as to deceive the Court, the advocate should refrain from continuing to render his service if the client remains determined to do so.

Rule 5

An advocate must comply with any proper order of the Court and is bound to honour an undertaking given to any court.

Rule 6

An advocate should not stand bail for a client or his mandatory.

Rule 7

An advocate should always be suitable attired in Court.

Rule 8

An advocate who on the client's instructions gives a statement to the press must not publish any statement which interferes with the fair trial of a case which has not been concluded.

Rule 9

An advocate prosecuting a criminal case must ensure his case presented dispassionately and with scrupulous attention to detail.

Rule 10

An advocate who appears in court for the defence in a criminal case is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client possessed the requisite skill, knowledge and legal training. The advocate has a concurrent duty to ensure that the prosecution discharges the onus placed upon it by law to prove the guilt of the accused.

Rule 11

An advocate who appears in court or in chambers in civil proceedings is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client were allowed to plead for himself or herself and possessed the requisite skill, knowledge and legal training.

Rule 12

Where parties to civil proceedings enter into out-of-court, without prejudice negotiations for the settlement of the dispute before or during the proceedings, the advocates acting for such parties shall not, except by agreement, make use in Court or any tribunal of the contents of such negotiations.

CHAPTER II
ADVOCATE IN EMPLOYMENT

Rule 1

An advocate in employment is bound by the norms of professional conduct in the same manner as an advocate in private practice.

Rule 2

An advocate in the employment of a non-advocate must not, as part of his employment, carry out briefs or render professional services to third parties.

Rule 3

An advocate in employment, whether of a lawyer or of a non-lawyer may practise his profession privately if allowed to do so by his conditions of employment, provided that this is in no way intended to evade the provisions of the previous Rule.

PART FIVE
LAW FIRMS AND ASSOCIATIONS

CHAPTER I
DEFINITIONS AND APPLICATIONS

Rule 1

In this Code of Ethics and Conduct:

"association" means any association between advocates in the exercise of the profession and includes a cost sharing arrangement;

"firm" means a partnership between advocates and includes an advocate who is sole practitioner;

"partnership" means a civil partnership made up of lawyers whether or not properly constituted.

Rule 2

This Code of Ethics and Conduct applies *mutatis mutandis* to a firm of lawyers as explained in Rule 1 of this Chapter.

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/suspension/disqualification may also be publicized (the norm for notaries but not for lawyers)



Former notary gets suspended sentence for misappropriation

Clients' contracts were not registered

Crime National Court

3 November 2020 | Edwina Brincat | 0

2 min read



Five of the clients had handed over money to the notary for the purpose of tax and duty payable on the relative causa mortis deeds and donations.

But years later, they discovered that the contracts had not been registered.

The notary was accused of misappropriation of funds and for failing in his duties as a public officer, committing an offence he was bound to prevent.

When releasing a statement to investigators and also when testifying in court, the former notary had explained how he had first been targeted in a scam which made it difficult for him to keep up with payments.

Trouble broke out with his clients and he had even landed in hot water with a retired judge who reviewed his notarial deeds, Said explained.

A garnishee order issued in favour of the VAT department further aggravated his position, since his overdraft was blocked and other accounts frozen making it impossible for him to register published deeds, paying the amounts due in tax and duty on documents.

However, on the basis of all evidence put forward, the court, presided over by magistrate Monica Vella observed that the scam had occurred in 2012 and the garnishee order had been issued the following year:

The notary had renounced his warrant in 2015.

The evidence showed that the notary had used the money to settle payments due on other contracts.

When clients asked why they had received no official receipt of registration, the notary would blame delays on government departments, rather than admit that the contracts had not been registered.

In all cases the misappropriation had been “amply proved,” said the court.

Years later the victims of the misappropriation had to fork out fresh sums to have their deeds registered, the court observed.

As a public officer and by way of his profession, the accused was bound to exercise a greater degree of diligence than the ordinary person, said the court, imposing a

