

Award in Civil Procedure

Lecture Title: Executive Titles &
the Executive Warrants

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Diploma in Law (Malta)



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Introduction: the basic concepts

- What is an Executive Title?

- Title = a legal document proving a material fact (for instance, that a debt is certain, liquid and due)
- Executive = having a final nature (*res judicata*)

- Execution

A creditor being able to proceed with execution on the basis of the title obtained in his / her favour

- Enforcement

Execution of executive titles by means of the enforcement tools provided by law



Which are the Executive Titles?

- Judgements and decrees of the courts of justice of Malta;
- Contracts (public deeds) in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;
- Taxed bills of judicial fees and disbursements, issued in favour of the Registrar, any advocate, legal procurator, notary public, perit, judicial referee or witness, unless impugned according to law;
- Awards of arbitrators registered with the Malta Arbitration Centre;
- Bills of Exchange (*kambjali*) and promissory notes issued in terms of the Commercial Code;
- Mediation agreements made enforceable by the parties thereto in accordance with the provisions of the Mediation Act;
- Decisions of the Consumer Claims Tribunal;
- Decisions and awards of the Arbiter for Financial Services in accordance with the provisions of the Arbiter for Financial Services Act;
- Decisions of the Adjudicating Panel for Private Residential Leases.



The Executive Titles: Judgements & Decrees

- Delivered by judge / magistrate before whom cause has been tried
- Where court consists of more than one judge / magistrate, delivered by one judge / magistrate, even in the absence of the others if judgement signed by at least two of them
- Decision of the majority in a court consisting of more than one member and delivered as a judgement of the whole court
- Judgement shall premise the reasons on which decision is based and refer to proceedings, claims and pleas
- Conclusive or binding declarations to be included in operative part of judgement
- Same rules apply to interlocutory decrees
- Judgement on claim for specific performance shall state the time within which act is to be performed and manner of execution in case of non-performance
- Judgements shall award costs against party cast; but court can order that costs shall not be taxed between the parties and can also make other considerations on costs. In case of decrees, the court may reserve issue of costs for decision in the definitive judgement

The Executive Titles: Appeals

- Entered by means of an application within 30 days from judgement, in whole or in part
- This period may be abridged in urgent cases
- No appeal shall lie from:
 - Judgements of court of appeal
 - Judgements given upon admission or if accepted by renunciation of right to appeal or by acquiescence in the findings
 - Judgements of inferior courts where the amount of the claim does not exceed EUR465.87 and matter does not involve a point of law or a claim for eviction



The Executive Titles: Appeals

- Appeal from decrees (depends on their nature):
 - After definitive judgement and together with an appeal from judgement
 - Before definitive judgement, within 6 days from when read out in open court - but may request court to reconsider first by application within 6 days
 - Any other decree, may be appealed by special leave from Court requested within 10 days from when decree is read out in open court
 - Provisions on appeals apply to appeals from decrees
 - Court may depart from decision in a decree upon good cause being shown
- Appeal from separate / partial judgements:
 - Several issues may be determined by separate judgements
 - Appeal from such judgements only after final judgement
 - But court may grant leave to appeal before upon oral request on delivery or by application within 6 days (term for appeal to run from when leave is read out in open court)
 - Any judgement given on a plea of jurisdiction is subject to appeal and court may stay hearing of the case until appeal is determined unless delay is prejudicial to any of the parties

The Executive Titles: Appeals

- No appeal shall lie *ab omisso decisione* from court of first instance – but can request court within 15 days to determine such claim, or can sue for a decision on the claim the determination of which was omitted
- Interested parties may also appeal
- Judgement not to operate against 3rd parties
- Reversal or variation of judgement only operates in favour of party appealing (but also persons whose interest is dependant on that of appellant, joint plaintiffs or defendants in case of indivisible thing, or party condemned *in solidum* with appellant)

The Executive Titles: Appeals

- Any party may avail himself of an appeal and enter a cross appeal
- A cross appeal remains operative even if principal appeal is abandoned
- In case of *res judicata* judgements where court declares a legal instrument to run counter to the Constitution or a fundamental human right, judgement shall be communicated to the Speaker of the House of Representatives to be tabled; Prime Minister may within 6 months make regulations deleting that legal instrument
- Depositing of security for costs within 3 months from when appellant receives notice of payment by Registrar



Case Law

An insight into what constitutes and what is the nature of a judgement, linked to appealability thereof or otherwise:

- Judgement of the Court of Appeal, dated 27th September 2019, in the names Marina Milling & Grain Handling Co Limited vs Euro Imports Limited: *“Fuq kollox, il-provvediment li bih qorti tohrog Ordni ta’ Stralc ma jtemmx il-process quddiem dik il-qorti, liema cirkostanza hija meqjusa bhala element ewlieni biex wiehed jaghraf bejn sentenza u provvediment. Minbarra l-ghazla tradizzjonali bejn degriet interlokutorji u dawk kamerali, il-provvedimenti li ghandhom min-natura ta’ degriet jintgharfu minn dawk li jikkostitwixxu sentenza principalment minn jekk jaghlqux jew le l-kwestjoni li dwarha dak il-provvediment ikun inghata. Huwa maqbul b’awtorita’ li jekk decizjoni taghlaq il-kwestjoni din tkun sentenza; jekk, min-naha l-ohra, din tipprovdi biss dwar episodju jew aspekk procedurali matul il-kwestjoni, allura titqies bhala degriet. Kif inghad b’awtorita’ wkoll, dak li jikkostitwixxi sentenza huwa d-definitivita’ taghha”*

The Executive Titles: Public Deeds

- Public deeds = contracts published by a notary public
- Not all deeds constitute executive titles
- Contracts for the Constitution of a debt which is certain, liquidated and due
- Not consisting in the performance of an act
- Requires an intimation by judicial act to be rendered enforceable



The Executive Titles: Taxed bills

- Relates to judicial fees and disbursements i.e. fees and disbursement incurred in the course of judicial proceedings
- Excludes extra-judicial fees and disbursements
- Taxed bill issued by Court Registrar on conclusion of proceedings
- Can be contested
- Requires an intimation by judicial act to be rendered enforceable



The Executive Titles: Taxed bills



Taxxa uffiċjali tad-drittijiet u spejeż ta' Rikors Guramentat Numru: [redacted] LM fi-ismijiet ta' [redacted] vs [redacted] * deciza fil-Qorti Civili- Prim'Awla fil- [redacted] fi-atti relattivi u sussegwenti.

Mitluba minn Av / Pl: [redacted]

Rilaxxata fil- [redacted]

Mahduma fil- **03 November 2020**

DATA	DETTALJI	ATTUR	KONVENUT
		€	€
16-Mar-15	Rikors Guramentat	866.00	0.00
	Kopji - € 4.66	4.66	0.00
10-Apr-15	Zieda	57.60	0.00
27-Mar-15	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
20-May-15	Risposta Guramentata	0.00	477.20
	Kopji - € 4.66	0.00	4.66
07-Mar-16	Nota	0.00	0.00
	Affidavits - €23.29	23.29	0.00
07-Apr-16	Ingunzjoni	16.50	0.00
	Avukat u Prokuratur Legali	9.32	0.00
05-May-16	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
08-Jun-16	Ingunzjoni	17.20	0.00
	Avukat u Prokuratur Legali	9.32	0.00
28-Jul-16	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
28-Jul-16	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
01-Nov-16	Ingunzjoni	8.60	0.00
	Avukat u Prokuratur Legali	9.32	0.00
27-Nov-17	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
13-Mar-18	Nota	2.33	0.00
12-Apr-18	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
03-Mar-20	Rikors	0.00	0.00
	Avukat u Prokuratur Legali	46.59	0.00
07-May-20	Nota ta' sottomissionijiet	0.00	0.00

	Dritt avukat	139.76	0.00
	Dritt prokuratur legali	46.59	0.00
29-May-20	Nota ta' sottomissionijiet	0.00	0.00
	Dritt avukat	0.00	139.76
	Dritt prokuratur legali	0.00	46.59
23-Sep-20	Dritt registru sentenza	8,505.50	0.00
	Dritt avukat	9,362.40	9,362.40
	Dritt prokuratur legali	3,120.80	3,120.80
		0.00	0.00
		€22,515.30	€13,151.41
	RIMBORS		
	TOTAL	€22,515.30	€13,151.41

Illum

Deputat Registratur

Clerk

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

The Executive Titles: Arbitration Awards

- Arbitration – an alternative dispute resolution method
- Similar to court proceedings but intended to be less formal and less costly
- Regulated by the Arbitration Act
- Arbitration proceedings lead to an award
- Award must be registered with the Malta Arbitration Centre
- Enforceable after 24 hours from delivery of award



The Executive Titles: Bills of Exchange & Promissory Notes

- Regulated by the Commercial Code
- BoE & Promissory Notes are similar to cheques
- Their existence does not depend on the underlying obligation
- Requires an intimation by judicial act to be rendered enforceable
- Execution may be suspended / contested:
 - By application in the competent court according to value
 - Within 20 days from service of the judicial letter, which must notify debtor of this right to contest
 - On limited grounds – (i) signature on BoE or note is not that of the said person, or (ii) grave and valid reasons to oppose execution
 - Court decree cannot be appealed
 - If court orders suspension, creditor must file an *actio cambiaria*

Case Law

An insight into the executive and inappealable nature of a bill of exchange:

- Judgement of the Court of Appeal, dated 22nd February 2023, in the names Marcus Lauri vs Grace Borg: *“Il-Qorti taqbel mal-appellata [li skont para. (e) tal-artikolu 253 tal-Kap 12 m’hemm l-ebda dritt ta’ appell mid-digriet moghti mill-ewwel Qorti] u tghid li d-disposizzjonijiet tal-imsemmi subartikolu huma cari u ma jhallu lok ghall-ebda interpretazzjoni ohra. Tikkunsidra li l-legislatur espressament u b’mod inekwivoku iddikjara li d-digriet tal-Qorti mhux wiehed appellabbli, u zzid tghid, ikun x’ikun dak id-digriet.”*

The Executive Titles: Mediation Agreements

- Mediation – an alternative dispute resolution method
- Distinct from court proceedings and arbitration
- Regulated by the Mediation Act (and Civil Code in some instances)
- Mediation leads to an agreement
- Participants may choose to make their settlement agreement enforceable
- Requires an intimation by judicial act to be rendered enforceable

The Executive Titles: the other executive titles

- Decisions of the Consumer Claims Tribunal – deals with claims related to claims by consumers
- Decisions and awards of the Arbiter for Financial Services – deals with claims related to financial services
- Decisions of the Adjudicating Panel for Private Residential Leases – deals with disputes relating to leases of residential premises for private purposes
- Proceedings in these Tribunals are similar to court as far as procedure is concerned but less formal and more technical
- Require an intimation by judicial act to be rendered enforceable



Rules relating to Execution & Enforcement

- Executive titles are not enforceable immediately.
- The following executive titles may be enforced after the lapse of 24 hours from delivery:
 - Judgement on any collateral issue or any interlocutory decree, unless otherwise stated in judgement or decree;
 - Judgement rescinding warrant of impediment of departure of any ship or rescinding any warrant of seizure or any garnishee order relating to ships or merchandise;
 - Judgement ordering the supply of maintenance;
 - Any award of an arbitrator.

Rules relating to Execution & Enforcement

- The following may be enforced after 2 days:
 - Other definitive judgements (not containing any suspensive condition), which condemn debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil any specific act or obligation whatsoever - 2 days after delivery;
 - Any other executive title - 2 days from service of an intimation for payment by means of a judicial act.
- On grounds of urgency, court may order enforcement of any judgement even before these statutory times.
- Executive titles have expiry dates! (calculated since day on which they could have been enforced):
 - 15 years for judgements & decrees, taxed bills and arbitration awards (in respect of Superior Courts);
 - 10 years for judgements & decrees, taxed bills and arbitration awards (in respect of Inferior Courts / Small Claims Tribunal);
 - 5 years for public deeds and bills of exchange & promissory notes and proceedings under article 166A.
- Yet not all is lost – can demand enforcement by means of an application confirming on oath the nature of the debt / claim and that it is still due. This procedure also applies when enforcing against the heirs of a debtor.

Rules relating to Execution & Enforcement

- Enforcement may be carried out on movable and immovable property
- Joint enforcement is possible by different creditors if executive title is within the jurisdiction of the same court
- Part payment or release does not operate as waiver of execution
- Enforcement by creditor of creditor by means of sworn application
- Judgements enforceable by court which delivered them; other executive titles enforceable by court competent to take cognizance of subject-matter
- In case of appeals, judgement enforceable by court of first instance
- Provisional enforcement of a judgement not constituting a *res judicata* possible if demanded and parties heard, but only if greater prejudice is likely to be caused party demanding it than to opposing party and subject to damages, or where specified by law

Enforcement of Executive Titles

- Executive titles may be enforced by any of the executive acts stipulated by law
- Execution by means of any of the executive acts may be issued only in virtue of an executive title
- The Executive Acts are the tools by means of which executive titles are enforced and executed





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The Executive Acts

- Which are the executive acts?
 - Warrant of seizure of movable property
 - Warrant of seizure of immovable property
 - Warrant of seizure of a commercial going concern
 - Judicial sale by auction of movable or of immovable property or of rights annexed to immovable property
 - Executive garnishee order
 - Warrant of ejection or eviction from immovable property
 - Warrant *in factum*
 - Warrant of arrest of sea vessels
 - Warrant of arrest of aircraft
 - Warrant *in procinctu*
 - Warrant of ejection or expulsion from seagoing vessels or aircraft

The Executive Acts – general provisions

- Warrants are issued by the competent court on demand of the party seeking execution
- Demand made by application on the basis of an executive title
- Applicant must indicate -
 - the sum or article due in virtue of the title
 - the remedies or provisions being demanded
- If not a court judgement, applicant must file copy of the title and of the judicial intimation where this is required
- Applicant must also state the amount of judicial costs sought to be recovered, attaching taxed bill of costs.

The Executive Acts – general provisions

- Executing officer may exercise all powers reasonably required to execute the warrant
- Opposition to execution of warrant shall only be considered after execution is effected
- Warrant to be executed without delay and executing officer shall certify whether warrant was executed, specifying details of execution or reasons for non-execution
- Nullity of a warrant or of its execution may give rise to an action for damages

The Executive Acts – how may be impugned

- By application to the court issuing the warrant
- For revocation, total or partial, for any reason valid at law
- Opponent to file a reply within 10 days (term may be reduced by court in urgent cases)
- If no opposition, court proceeds to uphold to the demand
- If opposed, court hears the parties and shall decide within 1 month from filing of the application
- Such decree may be appealed within 6 days from when it is read out in open court
- Appeal to be appointed for hearing within 1 month from when decree is read out in open court, and decide within 3 months from when appeal is appointed for hearing



The Warrant of Seizure of Movable Property

- Most elements are similar to the precautionary warrant of seizure
- Executive nature – therefore consequences are different
- An executive warrant of seizure (*mandat ta' qbid ezekuttiv*) of movable property leads to a judicial sale by auction (*subasta*) of the objects seized
- The warrant shall contain court orders about the appointment of the judicial sale
- The provisions on precautionary warrant of seizure apply to the executive warrant of seizure

The Warrant of Seizure of Immovable Property

- Demand for seizure of immovable property:
 - By application
 - Detailed description of property (including mode in which it was acquired, any burthen attached to the land and a plan clearly indicating the site)
 - These provisions also apply to ships or other vessels exceeding 10m in length
- Court decree issuing warrant shall:
 - Order appointment of experts as required for appraisalment
 - Appoint day, time and place for judicial sale
 - Order that competent authorities to be informed
 - Order registration of the decree by Public Registry
 - Appoint a public auctioneer



The Warrant of Seizure of Immovable Property

- Appraisalment by debtor
 - Debtor has right to file a separate sworn appraisalment within 20 days from service of decree, demanding not to effect new appraisalment
 - Creditor may oppose the debtor's appraisalment within 20 days from service
 - Court decides whether to appoint new expert, after hearing both parties
 - Appraisalments made within 12 months prior to the judgement being executed, and which was accepted by the court in the judgement, shall be taken cognizance of
- Appraisalment by Court expert
 - Parties may agree on expert
 - Expert shall draft a valuation and describe the property in detail (stating burdens, leases and other rights, real or personal, to which the property is subject, as well as last transfer of the property)
 - Description of property shall include indication of area and height; a plan or sketch showing number of rooms and size; a report on whether it is built in line with permits and sanitary rules; copy of deed of acquisition; and declaration as to whether place is occupied by 3rd parties and under which title.
 - Valuation filed on oath
 - Debtor may be requested to provide information relating to the property under oath
 - Appraisalment cannot be contested, but corrections are allowed
 - Fees payable to expert can be appealed. It is paid by creditor subject to right of recourse against debtor.

The Warrant of Seizure of a Commercial Going Concern

- The general provisions relating to the precautionary form of this warrant, also apply to it in its executive form
- Similarly to executive warrant of seizure, the going concerns seized are sold by public auction
- Demand for seizure of a going concern is made by application served on debtor
- In a decree upholding demand, the court –
 - Orders the appointment of experts (to evaluate and to file a report on whether going concern should be sold or put under administration depending on its debts)
 - Appoint a time for filing of appraisements (unless already submitted with a precautionary warrant of seizure) and report on oath

The Warrant of Seizure of a Commercial Going Concern

- Court appoints a hearing within 1 week of confirmation of appraisements and reports on oath
- Court decides whether to order judicial sale by auction or to appoint an administrator to manage the going concern until amount due is paid.
- If judicial sale is ordered –
 - court appoints a date, place and time
 - An administrator is appointed until going concern is sold (unless already appointed under a precautionary warrant of seizure)
 - Rules on experts, appraisal and valuations stipulated for a warrant of seizure of immovable property, also apply to this type of warrant
- If administrator is appointed –
 - Administrator to manage the going concern until payment of amount due is effected
 - Give such orders it deems fit considering the debt, nature and value of the going concern
 - Administrator takes control, with right to sell and carry on day to day business
 - For decisions of an extra-ordinary nature, he requires court authorisation, including to sell the going concern if he deems it is about to lose its market value
 - Commercial banks cannot be appointed administrators



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