

Award in Civil Procedure

Lecture Title: Judicial Procedure

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Diploma in Law (Malta)



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Panel of Experts / Curators and other

- The law considers that the Minister responsible for justice shall nominate such panels as he deems fit consisting of advocates, legal procurators and other experts to perform the duties of curators, advocates, legal procurators and experts of the court.
- These professionals so nominated shall also provide assistance to persons, who while not entitled to legal aid, shall apply to the court proving that prima facie they have reasonable grounds for taking or defending or being a party to proceedings and were not successful in engaging the services of another advocate or legal procurator.
- Applicant must deposit a sum that is sufficient to cover fees



In case of misconduct, negligence or any reasonable objection to any curator selected from the rota to perform the duties of curator or advocate for legal aid, the court shall have the power to remove him from the case and to appoint another curator from the rota in his stead: Provided that the court shall through the registrar communicate to the Minister responsible for justice, the relevant decree.



When is a Curator required?

- Any person may apply to the Court of Voluntary Jurisdiction for the appointment of a curator:
 - To a minor
 - For a vacant inheritance
 - To an absent person
 - Any other administrator according to law



- Court can also appoint a curator:
 - If there is just cause for interdiction. Curator is appointed to administer the property of the person interdicted. In such cases a curator is appointed for a period not exceeding three years. Can be renewed.
 - During the term of his appointment, the curator shall submit a yearly sworn report to the court declaring the circumstances relating to his curatorship and the general state of the person interdicted or incapacitated

- The court, after taking cognizance of the report, shall hear the curator and any other person it may deem fit to ensure the well-being of the person interdicted or incapacitated and the fulfilment of the rights and duties of the curator

Curator to Represent Deceased

- 807.(1) Where no application is made by any person to continue the suit in substitution for the deceased party, it shall be lawful for the other party, by means of an application, to demand that the suit be continued in the name of the presumptive heir or heirs of the deceased party, if known.
- (2) Such application shall by order of the court, be served on the presumptive heir or heirs who shall have the time of one month within which to declare whether he or they are prepared to continue the suit.

- (3) If no such declaration is made, then the court shall of its own motion proceed to appoint a curator ad litem to represent the interests of the deceased in the suit in accordance with article 809.
- (4) Where no person entitled to represent the deceased is known, such application may contain only the demand for the appointment of curators to continue the suit.
- (5) The curator shall take all the necessary measures to identify and locate the presumptive heir or heirs of the deceased and when the presumptive heir or heirs are identified and located the curator shall request the court to notify him or them about the pendency of the case ordering him or them to declare within a specified time whether he or they are prepared to continue the suit.

- 808. The default of the heir or executor to continue the suit **shall not imply renunciation of the inheritance or executorship**; and it shall be lawful for the heir or executor, by application, upon proving his title to the court, to assume at any time the continuation of the suit, and cause the effect of the appointment of curators to cease in regard to further proceedings. The application shall be served on the curators and the other parties in the suit who may file an answer thereto within such time as the court may establish

- 809. The banns for the appointment of curators shall be served on the presumptive heir or heirs, if known; and if unknown **such banns shall be published twice, in at least two daily newspapers**, at an interval of one week between such publications, at the expense of the applicant without the need of any notification.



- 810.(1) It shall also be lawful for a party who has not as yet declared his acceptance of the inheritance or executorship, **to appear and accept the appointment as curator, and in such capacity continue the suit.**
- (2) It shall be lawful for the court, if it deems it expedient, to appoint, in addition to the said heir or executor, a curator from among the advocates on the rota referred to in article 91



Curator to Represent Minor or Interdicted

- 781. The following persons may not sue or be sued:
- (a) a minor, except in the person of the parent exercising paternal authority, or, in the absence of such parent, of a tutor or a curator;
- (b) an insane person, a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, and any other person who is not vested with the free exercise or administration of the rights to which the action refers, except in the person of the party to whom such administration is lawfully entrusted, or of a curator ad litem.



- 782. The provisions of article 781 shall not apply to –
- (a) any minor, if such child carries on trade with the consent of the parent exercising paternal authority even though the action touches matters not relating to trade, or if the said parent has expressly given his assent for the child to sue or be sued without his assistance;
- (b) any minor in any action against the said parent provided the child is represented by a curator ad litem.

- 783.(1) In the cases referred to in this sub-title, the curator ad litem may be appointed by the same court before which the action has been brought, or is about to be brought, upon the application of any person interested.
- (2) The application for the appointment of a curator to represent a minor who desires to sue, may be made by any person.
- (3) The application for the appointment of a curator shall not be entertained by the court if the person in respect of whom such appointment is applied for is already represented by a tutor or a curator, unless the action is against such tutor or curator.

Curator to Appear in and Defend Proceedings

- 929. Besides the cases where by express provision of this Code the appointment of curators is necessary, the court shall also appoint curators to appear in and defend proceedings in any of the superior courts or in the Court of Magistrates (Gozo) in its superior jurisdiction –
- (a) in the interest of any absent person or minor not legally represented, or person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or person interdicted or any person uncertain who is entitled to succeed to an entail or to any vacant inheritance not legally represented or any person who may in future be entitled to succeed to such entail or inheritance; or
- (b) in the interest of any person not known to be living or presumed to be dead, where, for the purposes of any action, it is necessary judicially to call upon such person; or

- (c) in the interest of any person presumed to be dead, where any other person claims to succeed to the rights of such person; or
- (d) in the interest of any commercial partnership registered or established under the Commercial Partnerships Ordinance* or any other law substituting the same Ordinance or any body of persons or other organization if the person or any of the persons vested with the representation thereof is or are absent from Malta or where there is or are no such person or persons, or enough persons vested with such representation.

- Curator are appointed by the competent court on demand made by application filed together with the act whereby the action is commenced. Curator may also be appointed by application pendente lite or on a verbal made during the hearing when the appointment of a curator becomes necessary following the commencement of the suit. The application shall suspend the running of any time (Article 930)

- The court upon making an order for the appointment of curators shall issue a banns to be posted up at the entrance of the court building. Copy of banns and summary of court pleadings shall be served on the persons most closely related or when no such person is known it shall be served on a person known to be or have been a friends of the person concerned. Where no such relation or friend is known service of banns and copy of pleading to be published in Government Gazette and at least two newspapers (Article 931)

- The banns are to contain an indication of the demand for appointment of curators and intimation that any person willing to accept the appointment is to appear within six days in the registry and declare his acceptance **by means of a note**. The banns shall also indicate that in default of such declaration the court shall proceed to appoint official curators (Article 932)

- Where any person appears and, by a note signed by him, offers to accept the appointment, it shall be lawful for the court, if it deems it for the benefit of the interest to be represented, to confirm as curator the person so appearing. (Article 933)
- If no person appears within those six days or if the court does not confirm the person appearing, the court shall appoint as curators an advocate and a legal procurators from the rota (Article 934)
- The person appearing to the banns, if confirmed as curator, shall not be entitled to the reimbursement of the expenses, except where a favourable judgment is obtained with costs. (Article 935)



- 936.(1) The curators are bound to use their best diligence for the benefit of the interest which they represent. The duties of the curators shall include the following:
- (a) to fully inquire as to the rights of the persons whom they represent and to identify these rights;
- (b) to take all the necessary measures to safeguard the aforesaid rights;
- (c) to contact forthwith the person or persons whom they represent, if the address is known; if unknown, they are to take all possible measures to find out their address including that of publishing, with the authority of the court, a notice in a newspaper of the place where last known;



- (d) to inform the person or persons whom they represent of any judicial act and of the contents thereof;
- (e) to obtain all the necessary information to defend the interests of the person or persons whom they represent;
- (f) to continue looking after the interests of the person or persons whom they represent with regard to pending matters although the period of appointment under articles 89 or 90 may have expired; and
- (g) to keep the court regularly informed of all actions taken in the execution of their duties.
- (2) The curators shall be liable for damages and interest which may be occasioned by their negligence

- 937. The legal procurator appointed to act as curator shall obtain for the advocate such information as to facts as the advocate shall require, file the written pleadings, be present at the hearing, and afford all other necessary assistance to the advocate.



- 938. The curators appointed from the rota shall, respectively, be entitled to the necessary expenses incurred by them and to such fees as according to the tariffs in Schedule A annexed to this Code are generally due to the advocate and the legal procurator in a cause:
- Provided that the court may at the request of the curator order that a provisional sum be paid on account and in advance to the curator by the person requesting the appointment of such curator to cover expenses which the curator indicates that he would be incurring:
- Provided further that where the court removes a curator in case of misconduct or negligence according to the provisions of article 96, the court shall order that no fees as aforesaid be paid to the curator or that only a specified portion thereof be paid, without prejudice to any other right competent to the person he was representing for damages suffered.

- 940. In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, the appointment of curators ad litem shall be made on the verbal demand of the party, observing the procedure laid down in articles 931, 932 and 933



- 941. Where, in the cases referred to in the last preceding article, no person voluntarily appears to assume the curatorship, or the court does not deem it proper to confirm the person appearing, the court shall appoint as curator an advocate or a legal procurator even though not on the rota mentioned in article 91.



- 942. The procedure prescribed in this Title shall also apply where the occasion for appointing curators arises before a court of second instance or on a new trial.



Protections against Self Interest / Abuse

- 609.(1) A tutor or curator cannot benefit under a will made during the tutorship or curatorship by the person under his charge.
- (2) The same rule shall apply where the will is made after the termination of the tutorship or curatorship, but before the rendering of the final account, even if the testator dies after the approval of such account.
- (3) The disability laid down in this article shall not apply to the tutor or curator who is an ascendant, descendant, brother, uncle, nephew, cousin or spouse of the person making the will



- 2021. Persons subject to tutorship or curatorship have a general legal hypothec over the property of the tutors or curators, for the liability of the latter in respect of their administration, as from the day on which such tutors or curators have accepted the office of tutor or curator



Referees

- 644. The proof by means of a referee or referees is ordered on the demand of the parties or one of them, or by the court of its own motion.



- 645.(1) The court **shall not** appoint a referee **solely** for the purpose of examining witnesses on oath and taking down their depositions in writing and establishing the relevant facts.
- (2) In the decree appointing the referee, the court shall –
 - (a) **state the object of the reference;**
 - (b) fix the day and time when the referee is to conduct **an inspection in faciem loci** where necessary;
 - (c) give directions for the guidance of the referee in the execution of his task.
- (3) The court may at any time, at the request of the registrar or on its own motion, order the referee to return the records of the cause that are in his possession, to the registrar there to remain for such time as shall be specified in that order. In case of non-compliance with the court's order, the referee shall without prejudice to any other proceedings which may be instituted against him be guilty of contempt of court.
- (4) **The court may order the referee to attend for the hearing of the trial and to put to the witnesses any questions he may deem necessary or relevant to enable him to complete his report.**
- (5) Where affidavits have been filed in the registry of the court, the referee shall be served with a copy of such affidavits before the hearing.

- 646.(1) Where the parties agree on the submission of a name of a referee, the court shall appoint the referee agreed upon by the parties.
- (2) Where the parties fail to agree, the court shall appoint a referee of its own choice.
- (3) No social worker or psychologist who has already provided services to a party to a suit including as an ex parte expert witness according to the provisions of article 563A may be appointed as a referee.

Right to Appeal Appointment of Referee

- 229.(1) An appeal from the decrees mentioned hereunder shall only lie after the definitive judgment and together with an appeal from such judgment, and such decrees may not be challenged before the definitive judgment is delivered:
- (g) the appointment of a referee under article 646;



- 647.(1) No person may be appointed as a referee in any cause or matter if such person has already two references upon neither of which he has yet filed his final report; and any appointment made in violation of this provision shall be null and void:
- Provided that the provisions of this article shall not apply –
- (a) in any cause or matter which requires special technical knowledge if the number of persons possessing such special technical knowledge is very limited; or
- (b) where the necessity arises of referring to the same referee the consideration of further questions raised in the same cause or matter;
- (c) to the appointment of additional referees in accordance with the provisions of this Code.
- In the case provided under paragraph (a), the court shall in the order of reference state the reasons for appointing the person mentioned in the order.
- (2) The registrar shall keep a record of any order of reference made by the court stating the date of the order and the date on which the referee shall have filed his report.

- 648. A referee may be challenged by any of the parties on good cause being shown to the court
- 653. A referee may be challenged for good cause **at any time until he has filed his report**, provided the party making the challenge declares upon oath that he was not aware of such cause at the time of the appointment, and that he never appeared before the referee, nor performed any act before him, from the time when he became aware of such cause.



QORTI TA' L-APPELL, Seduta tat-30 ta' Mejju, 2003, Appell Civili Numru. 256/1994/1

- Illi anqas it-tieni (2) pregudizzjali sollevata mis-socjetà konvenuta appellanti, jigifieri dik rigwardanti l-perit tekniku, ma hija fondata, u dana ghar-ragunijiet segwenti.
- L-ilment tas-socjetà appellanti dwar l-imsemmi perit tekniku huwa naxxenti mill-fatt illi l-perit huwa parentat fi grad ta' prim' kugin ta' _____, illi huwa mizzewweg lill-attrici, fatt illi ma jidhirx illi huwa kontestat mill-atturi appellati. Din ilparentela tista' biss ikollha l-effett illi qed tippretendi illi ghandu jkollha s-socjetà appellanti jekk - apparti konsiderazjonijiet ohra - kienet tati lok ghar-rikuza ta' listess perit tekniku.
- L-artikolu 648 tal-Kap. 12 jiddisponi hekk: "Jista' jigi rrikuzat perit minn kull wahda mill-partijiet meta tintwera raguni tajba lill-qorti." L-artikolu 653 ta' l-istess Kap. 12, imbaghad, jiddisponi hekk: "Il-perit jista jigi rrikuzat ghal raguni tajba, f'kull zmien, sakemm ma jkunx ta r-rapport tieghu, kemm il-darba lparti li tirrikuzah tahlef li ma kienitx taf b'dik ir-raguni f'z-mien tal-hatra, u li hija qatt ma dehret quddiem il-perit u lanqas ma ghamlet ebda att quddiemu minn mindu giet taf b'dik ir-raguni." (sottolinar ta' dina l-Qorti);
- Jigi notat illi, filwaqt illi s-socjetà appellanti ma ghamlitx ilprova mehtiega skond il-ligi dwar meta saret taf bilparentela in kwistjoni, waqt l-udjenza ta' l-erbatax (14) ta' Jannar, 2003, quddiem dina l-Qorti, gie verbalizzat hekk: "Dr _____ [illi qed jippatrocinja lill-atturi] ghal kull buon fini jirrileva illi l-Perit nfirmah illi wara nnomina tieghu l-avukat tal-konvenut kien jaf b'din ilparentela in kwistjoni u ma kien hemm ebda oggezzjoni fil-proceduri quddiem l-Ewwel Qorti."
- Inoltre, tajjeb illi jigi rilevat illi, ai termini ta' l-artikolu 734 tal-Kap. 12, jista jkun hemm lok ghall-astensjoni jew gharrikuza ta' gudikant jekk il-gudikant ikun "qarib mid-demmm fil-grad ta' kugin, ta' wahda mill-partijiet ..." u mhux jekk ikun qarib biz-zwieg fi grad ta' kugin, bhal ma huwa l-kaz in ezami;



- 734.(1) A judge may be challenged or abstain from sitting in a cause —
- (a) related by consanguinity or affinity in a directline
- (b) related by consanguinity in the degree of brother, uncle or nephew, grand-uncle or grandnephew or cousin, to any of the parties, or if he is related by affinity in the degree of brother, uncle, or nephew,
- (c) if he is the tutor, curator, or presumptive heir of any of the parties; if he is or has been the agent of any of the parties to the suit; if he is the administrator of any establishment or partnership involved in the suit, or if any of the parties is his presumptive heir

- (d)(i) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon;
- (ii) if he had previously taken cognizance of the cause as a judge or as an arbitrator;
- (iii) if he has made any disbursement in respect of the cause;
- (iv) if he has given evidence or if any of the parties proposes to call him as a witness;
- (e) if he, or his spouse, is directly or indirectly interested in the event of the suit;
- (f) if the advocate or legal procurator pleading before a judge is the son or daughter, spouse or ascendant of the said judge;

- (g) if the advocate or legal procurator pleading before a judge is the brother or sister of the said judge;
- (h) if the judge or his spouse has a case pending against any of the parties to the suit or happens to be his creditor or debtor in such manner as may reasonably give rise to suspicion of a direct or indirect interest that may influence the outcome of the case.

- 654. Challenges for any cause existing and known at the time of the appointment of the referee shall be made orally during the hearing; and challenges for any cause supervening after the appointment, or which, although existing previously to the appointment, was unknown, shall be made by an application demanding the appointment of another referee in his stead.

- 655.(1) Upon any such application, the court shall make an order suspending the proceedings before the referee and shall appoint a day for the hearing of the grounds of the objection.
- (2) The decree of the court allowing or disallowing the objection shall not be subject to appeal.
- (3) Where the court allows the objection, it shall in the same decree appoint another referee.

- 656. The decree making the order of reference shall be served by order of the court on the referee.
- 657.(1) Any referee who declines the appointment shall give notice in writing of his refusal to the registrar, within two days from the service of the decree.
- (2) Failing such notice, the referee shall be deemed to have accepted the appointment.
- (3) The registrar, upon recording the refusal, shall forthwith by letter call upon the parties to appear on a date to be fixed by the court in order that another referee may be appointed in case the refusal is accepted by the court.

- 658. If the referee appointed by the court is a person duly authorized by the Government to act as an expert, or to exercise any trade or profession, and such referee shall, without reasonable excuse, refuse to accept the appointment, it shall be lawful for the court which made the appointment to interdict him from acting as referee in any of the superior or inferior courts for a period not exceeding six months

- 659. Any referee who, after having accepted the appointment, shall, without reasonable excuse, fail to attend on the day and at the time fixed for the carrying out of the reference, may be condemned in costs and damages



- 660. The parties or their advocates or legal procurators, as the case may be, may, in the course of the proceedings before the referee, make such submissions as they may consider to be in their interest, and a mention thereof shall be made by the referee in his report

- 661. If for the carrying out of the reference one sitting is not sufficient, the referee may hold other sittings on such days and at such time as he may fix.
- 662. If the referee is for any just cause unable to carry out the reference within the appointed time, he may, before the expiration of that time, apply for an extension provided that the court may for good and sufficient grounds, to be recorded, grant a further extension or extensions.

- 663. If any referee shall, without reasonable excuse, delay the report or refuse to file the report within the prescribed time, original or enlarged, his appointment shall ipso facto lapse and the court shall ex officio appoint another referee in his stead; in which case he shall not be entitled to any fee or reimbursement and shall be liable for costs and damages.



QORTI TA' L-APPELL, Seduta tat-28 ta' Jannar, 2005, Appell Civili Numru. 1534/1998/1

- Fil-fehma ta' dina l-Qorti, dan il-provvediment tal-ligi jaghti lill-Qorti l-poter - u mhux jimponi dmir fuqha - illi meta hija tirrevoka l-hatra ta' perit tahtar perit iehor floku minghajr ilhtiega illi tigi mitluba mill-partijiet, jew minn wiehed jew wahda minnhom, illi taghmel hekk. Sta ghall-Qorti illi, f'kull kaz partikolari, tiddeciedi jekk, fic-cirkostanzi illi jkollha quddiemha, dan il-poter ghandhiex tezercitah jew le;

- 664.(1) The court shall issue writs of subpoena to witnesses to appear before the referee, and if any such witness fails to attend, the court shall, upon a report in writing by the referee, proceed in the manner provided in article 575.
- (2) The provisions of article 569(2) shall apply to such writs.

- 665.(1) The report of the referee shall state the inquiries made and his findings together with the grounds of such findings
- (2) The documents produced by the parties and the depositions of the witnesses shall be annexed to the report.
- (3) The report shall not be supplemented by plans or models, unless the court so directs or the parties give their consent thereto.
- (4) The report shall be signed by the referee or referees as the case may be unless otherwise provided by the court.
- (5) The report shall be clearly and legibly typewritten or written in ink

- 666.(1) Before the day appointed for the publication of the report, or on the same day, but before the cause is called, the referee shall present his report unsealed to the registrar for the taxation of his fees in accordance with the Tariffs in Schedule A annexed to this Code.
- (2) Except where otherwise provided, the referee shall not be required to publish his report until the fee taxed by the registrar has been paid to him or deposited with the registrar, and the registrar shall not disclose to any person any part of the report, until the fee has been paid or deposited as aforesaid, under penalty of paying to the referee the fees due to him.
- (3) Upon the payment or deposit as aforesaid, the registrar shall insert the report in the record of the cause and such report shall thereupon be accessible in the same manner as other parts of the record.



- 667.(1) Any referee or party may appeal from a taxation made under the last preceding article to the court by which the referee was appointed, whatever the amount taxed or claimed, within eight days from the day mentioned in article 672 or, where the attendance of the referee has been dispensed with as provided in that article, from the day on which the referee or the contending parties shall have been notified of the taxation by letter of the registrar.
- (2) Pending the decision of the cause in which the order of reference was made, such appeal may be entered by means of a note.
- (3) After the decision, such appeal shall be by application and shall be heard by the court summarily.
- (4) If the appeal appears prima facie justified, the court shall, after hearing the parties, direct the registrar to make a fresh taxation.

QORTI TA' L-APPELL, Seduta tal-11 ta' Novembru, 2011, Appell Civili Numru. 540/2004/1

- “Din il-Qorti, wara li semgħet lid-difensuri tal-partijiet dwar l-applikabilità o meno ta' l-Artikoli 229 u 667 tal-Kap 12, tosserva fl-ewwel lok li l-Art. 229, inkluz is-subartikolu (3) tiegħu, mhux applikabbli għal kaz in kwantu l-provvediment li qed jigi mpunjat mhux digriet interlokutorju peress li jirregola r-relazzjonijiet ta' persuni li ma humiex parti fil-kawza u cioè l-perit mahtur fil-kawza u r-Registratur. L-Art. 667 tal-Kap 12 jipprovdi procedura ad hoc għal kwalunkwe lment li jista' jkun hemm fil-konfront tad-decizjoni tar-Registratur dwar taxxa billi minn dik iddecizjoni jingħata dritt ta' appell quddiem l-istess Qorti bilmod stabbilit fl-istess Artikolu. Kull decizjoni minn dik il-Qorti hi decizjoni fi stadju ta' appell, u għalhekk minn dik id-decizjoni ma jistax jsir rikors lil din il-Qorti kif effettivament sar.” Kien għalhekk li l-prim'awla tal-Qorti Civili fis-sentenza tagħha tat-3 ta' Frar, 2009 (is-sentenza appellata) iddikjarat illi “din il-Qorti ma tistax tkun Qorti ta' revizjoni fuq dak li gie deciz mill-Qorti ta' l-Appell fis-sentenza tagħha tat-8 ta' Frar, 2005.” Konsegwentement dik il-Qorti caħdet it-talbiet kontenuti fic-citazzjoni promotrici. Similment din il-Qorti hija tal-fehma li l-appell ma huwiex gustifikat u dan billi jidher car li l-proceduri istitwiti mill-Perit Arkitett Valerio Schembri fit-22 ta' Lulju, 2004 qatt ma setgħu jkollhom ezitu favorevoli u dan għas-segħenti ragunijiet:

- a) l-Artikolu 667 tal-Kap. 12 jikkonferma li l-proceduri adottati in kontestazzjoni ta' taxa rilaxxata mir-Registratur fil-kontest ta' servizzi rezi minn esperti mill-Qorti. Infatti jidher mill-Artikolu 666 li r-Registratur tal-Qorti ngħata esklussivament id-dritt li jintaxxa d-drittijiet tal-Periti għall-prestazzjonijiet minnhom rezi. Skont l-artikolu li jsegwi d-decizjoni tar-Registratur tista' tigi kontestata sew mill-espert kemm ukoll mill-partijiet inkawza, billi jsir appell lill-Qorti li minnha l-periti gew mahtura u jekk il-Qorti jidhrilha li prima facie dak l-appell huwa floku, hija tordna lir-registratur sabiex jintaxxa millgdid id-dritt tal-periti. Dawn, kuntrarjament għal dak li jingħad fl-Artikolu 655 li jikkonferma dwar rekuza tal-espert u d-dritt ta' appell mill-akkoljiment jew każda ta' dik irrekuza, l-Artikolu 667 ma jgħid xejn dwar xi dritt ta' appell mid-decizjoni tal-Qorti u dan billi logikament dik iddecizjoni għalhekk hija decizjoni fi stadju ta' appell. Dik iddecizjoni għalhekk hija finali.
- b) Illi din il-Qorti tixtieq ukoll tosserva li, apparti lirritwalita` o meno tal-procedura adottata mill-attur, liema rritwalita` tirrizulta mill-fatt li ma hemmx appell minn decizjoni fl-appell, jidher car mid-dicitura tas-subartikolu (2) tal-Artikolu 667 tal-Kap. 12, kif għalhekk rajna supra, li lewwel talba fic-citazzjoni fejn qed tintalab dikjarazzjoni li l-procedura uzata sabiex tigi kontestata t-taxxa tar-Registratur mhux wahda idoneja billi din saret b'rikors, ma tantx għandha fundament inkwantu l-istess artikolu ma jagħmilx l-uzu ta' "nota" bħala rekwizit essenzjali. L-istess subartikolu (2) infatti jgħid li meta tali appell jigi ntavolat qabel id-decizjoni tal-kawza li fiha tkun giet ordnata l-perizja, (bhal fil-każ in ezami) "dan l-appell jista' jsir b'nota." Dan jindika li tali appell jista' jsir b'mezzi oħra. Irrikorss għalhekk huwa mezz idoneu. Għar-ragunijiet fuq mogħtija din il-Qorti tichad l-appell tal-Perit Arkitett Valerio Schembri billi fl-ewwel lok tikkonferma d-digriet tal-14 ta' Gunju, 2005 u fit-tieni lok tikkonferma s-sentenza appellata, u dan bl-ispejjez ta' din l-istanza kontra l-attur appellant.

- 668.(1) The decree ordering the reference shall state the party by whom the fee of the referee shall provisionally be paid or deposited.
- (2) When the reference is required by the plaintiff to prove some fact upon which he relies for his claim, the fee of the referees shall provisionally be paid or deposited by the plaintiff.
- (3) In all other cases, it shall be in the discretion of the court to determine whether, and if so, in what proportion, each of the parties shall provisionally bear a part of such fee, regard being had to the respective interest of the parties to the action.



- The court may when appointing a referee or before the referee presents his report order the party by whom the fee is to be provisionally paid to deposit a sum which approximately corresponds to the fee which will be due to the referee (Article 669)



- 670. The court may decide the cause without the reference or independently of the evidence produced before the referee –
- (a) where the reference was not carried out within the original or extended time, for some cause attributable to the party in whose interest the order of reference was made; or
- (b) where the fee taxed in favour of the referee as provided in article 666 has not been paid or deposited;
- Or
- (c) where the deposit mentioned in the last preceding article has not been made



- 671.(1) Where one of the parties to an action has been admitted to sue or to defend with the benefit of legal aid, the referee shall be entitled to such part of the fee as may have been paid by the party not appearing with such benefit:
- Provided that the referee shall be entitled to claim the other part of the fee if the party not appearing with the benefit of legal aid is condemned in costs.
- (2) Where both parties appear with the benefit of legal aid, the referee, if he belongs to the class of persons mentioned in article 658, shall publish his report, although he may not have been paid the fee; and in the case of other referees, the fee will be paid by Government.



- 672.(1) On the day appointed for the publication of the report, the referee shall attend before the court for the object of publicly reading it out and confirming it on oath, unless his attendance is dispensed with by the court.
- (2) The oath shall be administered to the referees by the registrar.
- 673. The court shall allow the parties time to consider the report and to make their submissions thereon



- 674.(1) It shall be lawful for the court, on the demand of any of the parties, to proceed to the appointment of additional referees who shall make their report on reaching a majority decision on the subject of the reference.
- (2) Where the findings have been arrived at by a majority of votes, the report shall include a mention of the fact that there has been a dissenting member, what constituted the dissent as well as the grounds thereof.
- (3) Subject to the provisions of this article, the provisions of this Sub-title shall mutatis mutandis apply to additional referees

QORTI TAL-APPELLI CIVILI (SUPERJURI) MALTA, Seduta tas-6 ta' Dicembru, 2002, Appell Civili Numru. 55/1977/1

Kif jemergji mill-artikolu 674(1) tal-Kap. 12, il-Qorti m'hijiex obbligata li takkolji talba ghall-hatra ta' periti addizzjonali. Il-kliem testwali tal-ligi hu li "Il-Qorti tista' tghaddi ghall-hatra ta' periti addizzjonali". M'hemmx mela l-obbligu.

- 229 (2) A decision of the court in the cause listed hereunder shall be given by a decree to be read out in open court on a day duly notified to the parties, and an appeal from such decree may be entered before the definitive judgment subject to the procedure laid down in sub-article (4) and (5):
 - (a) a decree refusing the appointment of additional referees under article 674

Sub article 4 considers a request for reconsideration by application within 6 days



- 675. Where the subject-matter of the reference is a valuation or an assessment, it shall be lawful for the court, in either of the cases referred to in the last preceding article, on the demand of any of the parties, to appoint two additional referees; and upon their report, to fix an average of the amounts found in all the disagreeing reports

- 677.(1) The demand for the appointment of additional referees shall be made by means of a note to be filed within ten days.
- (2) Such time shall commence to run from the date of the publication of the report. If the referees have been dispensed from attending before the court according to the provisions of article 672(1), such time shall commence to run from the date of the receipt by the party or his legal procurator of a notice signed by the registrar, stating that the report has been published

- 678.(1) The additional referees, whatever their number, shall be appointed by the court, unless the parties agree as to the referees to be appointed.
- (2) The additional referees may be challenged for good cause.

- 679. Where authority has been granted to the referees to receive documents or to examine witnesses, no further documents or witnesses on the subject-matter of the reference shall be admissible before the court, except in the cases as provided in article 150(1)(a),(b),(c),(d)and(e) and in article 208(1)(a),(b)and(d).

- 150.(1) The Court of Appeal shall only allow the production of new documents
- (a) if, notwithstanding all due diligence, the document could not be obtained before the filing of the pleading with which it should have been produced, and the filing of such pleading could not, without prejudice, be delayed; or
- (b) if the court is satisfied of the necessity or expediency of having the document before it:
- Provided that, in any such case, the court may, in adjudging the costs of the cause, take into account the tardy production of the document; or
- (c) if the opposite party, by a separate note, or by an annotation in the margin or at the foot of the note by which the document is produced, gives his consent thereto; or
- (d) if it is proved, by oath or otherwise, that the party producing the document, had not been aware of it, or could not, with the means provided by law, have produced it, in due time; or
- (e) if the document to be produced is a book or other paper in the original, copies whereof or extracts where from, relating to the matters at issue, were produced in due time; or

- 208.(1) No witness who was not produced in the court below may be produced on appeal, unless –
- (a) the opposite party gives his consent thereto; or
- (b) it is proved on oath or otherwise, that the party tendering the evidence of such witness had no knowledge thereof, or was unable, by the means provided by law, to produce such witness in the court below; or
- (d) the appellate court is satisfied of the necessity or expediency of taking the evidence of such witness:
- Provided that in any such case, the court may, in adjudging the costs of the case, take into account the tardy production of such witness

- 680.(1) The referees may be examined and cross-examined on their report in the same manner as witnesses.
- (2) The provisions of articles 594 and 595 shall apply to the answers given by the referees.
- 681. The court is not bound to adopt the report of the referees against its own conviction.

L-artikolu 681 tal-Kap 12 jistabilixxi li l-Qorti m'hiex marbuta li taccetta l-konkluzzjonijiet tar-rapporti tal-periti kontra l-konvinzjoni taghha nfisha pero' gie stabilit ukoll li "r-rapport tekniku huwa kontrollabbli mill-gudikant bhal kull prova ohra" N. Ellul vs Mary Caruana P.A. 28.2.2002 u ghandu jigi skartat mill-Qorti meta jkun jidher "sodisfacement illi l-konkluzzjonijiet peritali huma filkompless kollha tac-cirkostanzi, irragjonevoli" G. Bugeja vs E. Muscat et App 23.6. 1967 L1-1-390 jew li jezistu bizzejjed "ragunijiet li gravament ipoggu fid-dubbju lopinjoni teknika lilha sottomessa. P.Grima vs C.Mamo App 29.5.1998.

- 592.(1) Each witness shall be examined separately. It shall, however, be lawful for the court to allow two or more witnesses to be confronted with each other; and in any such case, each of the witnesses may be questioned in the presence of the other witnesses.
- **Examination of referees:**
- (2) Referees shall be examined in the presence of each other, unless the court deems it expedient, in any particular case, to examine each referee separately

- 682. In an appellate court, no reference may be ordered, except in the following cases:
- (a) where there was no reference made in the court below and no express renunciation of such reference was made;
- (b) where the subject-matter of the reference is, wholly or in part, different from that of the reference made in the court below, or in respect of which there was a renunciation;
- (c) where the directions given to the referee by the court below were, in the opinion of the appellate court, defective or insufficient;
- (d) where the appellate court is of opinion that the report is not so complete as to enable it to decide the cause:
- Provided that nothing in this article shall operate so as to bar the appellate court from requiring further elucidations from the referees appointed by the court below.



Inspection in Faciem Locii

- 683. It shall be lawful for the court, on the demand of the parties or of its own motion, to order an inspection of the place, whenever it may deem it expedient for the disposal of the cause.
- 684. The court shall, in the decree ordering an inspection of the place, appoint the day and time for the inspection, and may also order one referee or three referees to attend.

- 688.(1) On the day and at the time appointed, the court shall repair to the place of inspection.
- (2) The contending parties may, and, if their attendance is required shall, be present at such inspection.
- 3) In all cases, the parties may be represented or assisted by their advocates or legal procurators.
- 689. A record of the inspection shall be kept by the registrar in the form of a procès-verbal.
- 690. The court shall, whensoever it may deem it necessary, order the referee or referees to draw up plans and to state the measurements, the distance, and any other thing which the court may consider conducive to the object of the inquiry.
- 691. It shall be lawful for the court either to examine the witnesses at the place of inspection, or to reserve examining them during the hearing in court.
- 692. As regards the payment or deposit of the expenses of the inspection, the provisions respecting proof by referees shall apply.

- 995. Any functionary, referee or other officer of the court, who is insulted in the execution of any warrant, or in the discharge of his duties, shall report the matter to the judge or magistrate, and the contemner shall be liable to be by the judge or magistrate sentenced to a fine (ammenda or multa) or to detention, saving any other punishment, applicable by the competent court, to which the contemner may be liable if the fact constitutes a more serious offence, according to law.





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