Diploma in Law

Lecture 2: Judicial Acts and Certain Special Proceedings

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Diploma in Law (Malta)

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What are Judicial Acts?

- A judicial act is the generic term used to describe all documents which are filed through the courts, including:

1. Judicial letters and judicial protests
2. Applications and sworn applications
3. Replies and sworn replies
4. Notes
5. Warrants
6. Schedules of deposit

Contents Common to all Written Pleadings and other Acts of Procedure

1. The Court before which it is being filed
2. Name and surname of party pleading and of the party against whom the pleading is directed (and their capacity)
3. Description of the pleading
4. The number of the sworn application to which it refers (if any)
5. ID Card number or company number of the person pleading
6. Address of the party pleading and of his lawyer/legal procurator
7. Address of the party against whom the pleading is directed
8. Any other particulars as may serve to identify the parties as may be established by law or regulation

Rules common to all Written Pleadings

- Pleadings shall be printed, type-written or written in ink
- They shall be drawn up in clear, easily legible characters, without blank spaces, interlinear words, abbreviations or erasures and except with the authority of the registrar before the filing of the act, without corrections, alterations or additions.
- Any quantity, sum or measure shall, at least where it first occurs in the pleading, be expressed in words.
- Copies of the pleadings, as would be required for the service thereof, shall be signed by the same persons as the original.

Judicial Letters (“ittra ufficjali”) and Judicial Protests (“protest gudizzjarju”)

- A judicial letter is a letter which is used to call upon someone (intimate) to do something. Ex. Calling upon a debtor to pay for services rendered.
- A judicial protest is used to place another in dolo, mora et culpa (placing him in bad faith), as a warning to do or to stop doing something. Ex. Someone is defaulting in carrying out maintenance obligations, you call upon him to carry them out and hold them responsible if they do not.

When to file a judicial letter and when a judicial protest?

- This depends on the circumstances of the case.
- Whenever the law mentions an ‘intimation or declaration by means of a judicial act’, without specifying the type of judicial act, this can be done by means of a judicial letter

Notification Procedure

- Delivering a written copy wherever the person can be found (by a court representative); or
- Leaving a copy at place of residence or business or work or postal address with a member of his/her family or household (provided that over 14 years of age) or person in his service or mandatory or person authorised to receive his/her mail
- If the opposing party is a legal person (a company/partnership), delivery can be made at the registered office, principal office, place of business, postal address with legal representative, director, company secretary, authorised person, employee
- If the opposing party does not reside in Malta, notification is effected through the State Advocate

Notification Procedure

- First attempt – Registered post
- Second attempt – Court Marshall
- Third attempt – Court Marshall (after hours)
- Posting of a copy (at his residence, the police station of his locality and the local council) and, publication in government gazette and daily newspaper. Deemed to be a valid notification after 3rd day

Date of Effect of Judicial Letters and Judicial Protests

- Judicial letters and judicial protests serve to interrupt prescription. Thus, it is important to determine when they are deemed to take effect for prescription purposes.
- General rule is that they take effect on the day they are notified to the opposing party.
- Exception: If prescription is nearing its end and the judicial letter or protest are filed primarily to interrupt prescription, it will take effect on the day on which it is filed provided that, it is notified to the opposing party within 8 days. If not, the sender has to publish the substance of the act in the Government Gazette within 1 month from filing.

Replying to a Judicial Letter and Judicial Protest

- There is no obligation at law to reply (except to 166A judicial letters)
- If one decides to reply, there is no timeframe within which to do so
- A judicial letter can be replied to with another judicial letter (sometimes referred to as ‘ittra risponsiva’)
- A judicial protest can be replied to with a counter-protest (‘kontroprotest’)

Judicial Letter 166A

- Used for the recovery of a debt that is certain, liquid and due which does not exceed €25,000
- If the debt is not liquid, the creditor may file a 166A if he limits the debt to €25,000, renouncing to any part that on liquidation, exceeds that amount
- The debtor must be in Malta (and not a minor or incapacitated)

Contents of Judicial Letter 166A

- The judicial letter 166A should, on pain of nullity, contain:
  1. The cause of the claim
  2. The reasons why the claim should be upheld
  3. Statement of facts supporting the claim
  4. intimation to debtor that if he does not reply with a note within thirty days from service, the judicial letter shall become an executive title
- The contents must be confirmed on oath before the registrar or legal procurator

Notification of a Judicial Letter 166A

- The judicial letter 166A is to be served on the debtor within 6 months, otherwise a fresh letter needs to be filed.
- Notification in the case of a judicial letter 166A cannot be done through the procedure of publication and affixation.

Replying to a Judicial Letter 166A

- Once the debtor has been notified, he has 30 days within which to present a note in the act of the judicial letter 166A rebutting the claim. This note may be signed and presented in court by the debtor himself without the signature of a lawyer or legal procurator.
- If no reply is filed within 30 days, the judicial letter 166A is rendered an executive title and thus, the creditor can proceed with enforcement.
- Thus, the judicial letter 166A necessitates a reply

Contesting the Executive Title

- The debtor may file an application within 20 days from service upon him of any executive warrant or other judicial act enforcing the executive title, on the grounds that:

1. The debtor was unaware of the judicial letter because he was not duly notified
2. The judicial letter did not contain any of the requirements that are required ad valitatem

Applications (“rikors”) and Sworn Applications (“rikors ġuramentat”)

- An application is used to request something from court
- It can be used to institute a court case (where a sworn application is not required such as before the Court of Magistrates, Small Claims Tribunal and Rent Regulation Board) or, it can also be filed in the course of a court case (including one which was instituted by a sworn application) to request something from the court such as an adjournment of a sitting or an extension of a deadline imposed by the court.

Sworn Applications

- A sworn application is an application, the contents of which are confirmed on oath by the party filing it (the applicant/the plaintiff).
- The procedure by sworn application is considered to institute a court case, in which case the court will give an order the party against whom it is filed to appear before it on the day and at the time appointed in order to show why the claim contained in the sworn application should not be allowed
- In the appointment of such day and time, the court shall take into consideration the timeframe for the defendant to present his reply. In urgent cases, the court may appoint a day for trial before the deadline for the filing of the reply.

When to file an Application and when a Sworn Application?

- The law dictates when a sworn application is required and when an application is sufficient – this largely depends on the type of action.
- “In the superior courts and in the Court of Magistrates (Gozo) (Superior Jurisdiction), proceedings are ordinarily instituted by application, whether sworn or not, as provided by law”.
- For example, before the First Hall of the Civil Court, a sworn application is required but before the Civil Court (Commercial Section) and before appellate courts, an application is required

When to file an Application and when a Sworn Application?

- “In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) (Inferior), proceedings are instituted by application”
- In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, proceedings shall be by application which shall be according to the prescribed form and take the form of a mere notice signed by the Registrar, containing the name and the surname of the plaintiff and of the defendant, the demand of the plaintiff, and the day and hour when the defendant is to appear, besides other particulars as may from time to time be prescribed
- Before the Small Claims Tribunal, there is a specific form to be filled in

The Contents of a Sworn Application

- In addition to those contents which are required for all written pleadings and other acts of procedure, the sworn application must in particular contain:
- 1. A statement outlining the subject of the cause in separate, numbered paragraphs and a declaration of which facts the plaintiff knows of personally
- 2. The cause of the claim (the basis)
- 3. The claim/s which shall be numbered (the requests)
- 4. Notice under the court heading:
- “Whosoever is in receipt of this sworn application in his regard shall file a sworn reply within twenty (20) days from the date of service thereof, which is the date of receipt. Should no written sworn reply be filed in terms of the law within the prescribed time, the Court shall proceed to adjudicate the matter according to law.
- It is for this reason in the interest of whosoever receives this sworn application to consult an advocate without delay that he may make his submissions during the hearing of the case”

Requisites of Sworn Application

- In addition to the requisites/rules common to all written pleadings and other acts of procedure, the sworn application must:

1. Must be confirmed on oath by the plaintiff before the registrar or legal procurator
2. Must be accompanied by any documentation in support of the claim
3. Must contain a list of witnesses which the applicant intends to produce, stating what facts and proof he intends to establish through their testimony
4. Must be served on the defendant

The Defendant's Reply

- An application or sworn application is replied to by means of a reply ("risposta") or sworn reply ("risposta ġuramentata"), as applicable
- Different timeframes apply to different applications and sworn applications, such as:
- Civil Courts – 20 days
- Small Claims Tribunal – 18 days • Appeal application – 30 days
- Constitutional Appeal – 8 days • Court of Magistrates – No timeframe

Sworn Reply

- The defendant has 20 days from the date of service of the sworn application to file a sworn reply, unless he intends amitting the claim
- If he intends admitting the claim – file a note
- Exception: If the court appoints the first hearing of the case for a date before the lapse of the 20 days period, the defendant must file the reply by no later than the time of the first hearing

Contents of Sworn Reply

- In addition to those contents which are required for all written pleadings and other acts of procedure, the sworn application must in particular contain:

1. Preliminary pleas (such as, jurisdiction, competence, prescription)

2. Pleas on the merits

3. Declaration of facts, in numbered paragraphs, stating all facts concerning the claim, denying, admitting or explaining the circumstances of fact set out in the sworn application, while stating which facts are within his knowledge

Requisites of a Sworn Reply

- In addition to the requisites/rules common to all written pleadings and other acts of procedure, the sworn reply must:

1. Must be confirmed on oath before the registrar or legal procurator
2. Must be accompanies by any documentation in support of his pleas
3. Must contain a list of witnesses which the defendant intends to produce, stating what he intends to establish through their testimony

Why is the List of Witnesses so Important Diploma in Law (Malta) in both Sworn Applications and Sworn Replies?

- The court shall not allow any witness to be produced unless his name is given together with the sworn application

Exception:

- If the necessity of producing a witness arising after the filing of the sworn application; or
- The opposing party gives his consent; or
- The court deems it in the interest of justice to hear that particular witness

Contumacy

- If the defendant fails to file a sworn reply within 20 days, the defendant is deemed contumacious and the court shall proceed to give a default judgment
- Contumacy under Maltese law is still considered to be a contestation of the plaintiff's claims by the defendant which means that the plaintiff must still prove his claims

Consequences of Contumacy

If the defendant is declared contumacious, he will not be able to:

- Produce evidence in his favour
- File pleas
- Cross-examine witnesses of the plaintiff or contest evidence brought by the plaintiff

However, the defendant will still have a right to:

- Be present at hearings
- Receive copies of documents produced
- File a note of submissions (which the plaintiff can reply to)
- File an appeal
- Ask for a re-trial

Contesting Contumacy

- The defendant can contest the order of contumacy by showing to the satisfaction of the court that he had a reasonable excuse for not filing a sworn reply
- Ex: He was not validly notified or he could not reply in time due to severe illness

Contumacy in Proceedings before Inferior Courts

- The concept of contumacy only exists (by law) in relation to the failure to file a sworn reply to a sworn application within 20 days
- Technically, a defendant cannot be declared contumacious in proceedings before Inferior Courts/Tribunals/Boards (such as Small Claims Tribunal, Court of Magistrates or Rent Regulation Board)
- However, there are judgments which have nonetheless pronounced the defendant as contumacious in proceedings before Inferior Courts/Tribunals/Boards

John Baldacchino u Doris Baldacchino vs Bajada New Energy Limited (Qorti tal-Appeall, Inferjuri) 8 ta' Marzu 2019

- "Ghall-qorti hu evidenti li sabiex konvenut jopponi talba quddiem it-Tribunal ghal Talbiet Zghar, ghandu obbligu li jipprezenta twegiba fit-terminu kontemplat f'regolament 4 tal-L.S. 380.01. Il-fatt li f'Kap. 380 m'hemmx disposizzjoni simili ghal dik tal-kontumacja li hemm fil-Kap. 12, ma jsahhahx l-argument tal-konvenuta."

Counter-claim (“Kontro-Talba”)

- When the defendant also has a claim against the plaintiff, he may, together with his reply (not limited to sworn replies), file a counter- claim
- However, a counter claim can only be filed if the defendant’s claim against the plaintiff is connected with the plaintiff’s claim against the defendant, to the extent that:

1. The claim of the defendant arisises from the same fact or from the same contract or the same title giving rise to the claim of the plaintiff; or
2. The object of the defendant’s claim is to set-off the debt claimed by the plaintiff or to bar in any other manner the action of the plaintiff, or to preclude its effects

Mode of Procedure

- The claim filed by the plaintiff and the counter-claim filed by the defendant are dealt with in the same proceedings and are decided in the same judgment.
- The counter-claim is set-up as a defence to the plaintiff's claim and must observe the same rules as if the defendant were filing a fresh application or sworn application as the case may be.
- In fact, the law states that when proceedings are by sworn application, the setting up of a counter-claim in a sworn reply shall be equivalent to the filing of a sworn application with respect to that claim.

Mode of Procedure

- If the plaintiff decides to discontinue his claim, the defendant can still insist on proceeding with his counter-claim.
- If the defendant does not file a counter-claim but files another (separate) action that is connected to the plaintiff's claim (such that would have enabled him to file a counter-claim), the court may order that the two actions be heard simultaneously.

Replying to the Counter-Claim

- The reply and counter-claim are served on the plaintiff who has to reply, following the same rules as if he were replying to a fresh application or sworn application as the case may be.
- Hence, if it is a sworn reply and counter-claim, the plaintiff has to reply to the counter-claim with a sworn reply within 20 days, and the same rules of contumacy apply.

Special Summary Proceedings ("Giljottina")

- In actions falling within the jurisdiction of the Superior Courts or Court of Magistrates (Gozo, Superior), the plainitff may request in his sworn application, that the court gives judgment without proceeding to trial, where the demand is solely:

1. For the recovery of a debt which is certain, liquid and due, not consisting in the performance of an act; or

2. For the eviction of any person from any urban or rural tenament, with or without a claim for ground rent, rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement; or

3. For the eviction of an operator, lessee or other occupants, including any members of their staff from seagoing vessels or aircrafts

Contents of Special Summary Proceedings Application

- In addition to those contents which apply to written pleadings, acts of procedure, the sworn application in special summary proceedings must contain:
- 1. A statement clearly outlining the subject of the cause, in separate, numbered paragraphs and, a declaration of which facts the applicant knows of personally;
- 2. The cause of the claim (the basis)
- 3. The claim or claims, which shall be numbered (what is being requested from the court)
- 4. A declaration that in the plaintiff's belief, there is no defence to the action
- 5. No notice is required however in practice, the notice is still written but crossed out

Requisites of a Sworn Application in Special Summary Proceedings

- 1. Has to be confirmed on oath before the registrar or legal procurator
- 2. May be accompanied by any documentation necessary in support of the claim
- 3. May be accompanied by an affidavit of any other person containing facts relative to the claim and confirming that these facts are within his knowledge
- 4. The sworn application shall be in writing according to the prescribed form and shall contain an order to the defendant to appear before the court on an appointed day and at a stated time

Service on Defendant

- A copy of the declaration and any affidavit and of the note of the documents produced with the sworn application shall be served on the defendant, together with the sworn application without delay
- Services shall be effected by means of an executive officer of the court
- The defendant shall be ordered to appear not earlier than 15 days and not later than 30 days from the date of service

Trial in Special Summary Proceedings

- If the defendant fails to appear as ordered or if he appears and does not impugn the proceedings taken by the plaintiff on the ground of irregularity or inapplicability or, having unsuccessfully raised such plea, does not by his own sworn evidence, or otherwise, satisfy the court that he has a prima facie defence, in law or in fact, to the action on the merits, or otherwise disclose such facts or issues of law as may be deemed sufficient to entitle him to defend the action or to set up a counter-claim, the court shall forthwith give judgment, allowing the plaintiff's claim.

Trial in Special Summary Proceedings

- If the defendant would like to impugn the proceedings on the ground of irregularity or inapplicability, he is to do so by means of a note filed in the court registry or during the hearing.
- If he sucessfully impugns the proceedings on the ground of irregularity or inapplicability, or satisfied the court that he has a prima facie defence, or discloses such facts or issues of law as may be deemed sufficient to entitle him to defend the action or to set-up a counter claim, he shall be given leave to defend the action and file a statement of defence within 20 days from the date of the order giving leave to defend the action
- If the defendant is given a right to defend the action, he shall file a sworn reply and the provisions on sworn replies shall apply

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Jactitation Suits

- Special type of court case – gives a remedy to those persons whose rights have been molested by a contrary claim from someone else.
- It allows the person against whom a claim has been vaunted, to force the vaunter (person asserting the claim) to institute proceedings to substantiate his claim. If he doesn't, he is condemned to perpetual silence ("skiet perpetwu") which would not allow him to proceed with the claim in the future.

Jactitation Suits

- “Where any claim is vaunted in any judicial act, or otherwise in writing, the party wishing to be liberated from such jactitation may, within a year of such jactitation, demand, by sworn application, that a time be fixed (not more than 3 months) within which the jactitator shall bring the claim for trial, and that in default thereof, the jactitator be precluded from ever proceeding on the claim.”

Jactitation must be Spontaneous

- Maria Dolores Vella vs. Rosario Micallef - “jekk l-azzjoni issir ghallkonservazzjoni jew ghad-difiza tad-drittijiet minn persuna ... Anke merament interpellata b’att gudizzjarju ma jikkostitwixxix jattanza u ma jaghtix lok ghar-rimedjueccezzjonali ta’ jattanza.”

An action must be capable of being taken by the vaunter

- A jactitation suit will not be successful if the jactitation (the claim vaunted) is in respect of an uncertain right, contingent upon any event or condition, or of a right with regard to which no action can, for the time being, be taken.

Proceedings in a Jactitation Suit

- If the jactitator declares to the court by means of a note that he has no claim against the plaintiff or his property, the court shall give a decision on costs and, the declaration of the jactitator shall have the same effect as an injunction of perpetual silence. It shall no longer be lawful for the jactitator to proceed on a claim to which the demand (i.e. The sworn application) refers.

Proceedings in a Jactitation Suit

- Where the fact of the jactitation is proved (i.e. all the elements for a jactitation suit are proven) and no declaration is made by the jactitator that he has no claim against the plaintiff or his property, the court shall set a time-frame (not more than 3 months) within which the jactitator is to present his claim and will reserve giving judgment on the issue of perpetual silence for after the lapse of the said time-frame.

Proceedings in a Jactitation Suit

- If the jactitator fails to bring his claim within the time fixed by the court - the court will condemn the jactitator to perpetual silence (limitedly with respect to the jactitation referred to in the sworn application)
- If the jactitator shows that he brought his claim within the time fixed by the court -the court will abstain from deciding on the issue of perpetual silence and shall leave the question of the costs to be determined in the court case instituted by the jactitator.

Person must be present in Malta

- A jactitation suit may not be instituted against any absent person nor may any such suit be instituted or prosectued against any minor or person who is under any disability to sue or to be sued.
- Exception: Any person who within 3 months prior to the jactitation suit, shall have either personally or through a mandatory, filed a judicial act vaunting his claim.

Albert Falzon Santucci vs Carola Stivala noe (First Hall, Civil Court) 20th October 2005

- “il-proviso gie introdott fil-liġi wara s-sentenza moghtija fit-2 ta' Marzu, 1992, mill-Onorabbli Qorti tal-Appell fil-kawza "Il-Prim Ministru vs Peralta noe", li kienet qalet li ma tistax tinfetah kawza ta' jattanza kontra persuna assenti minn Malta; il-fatt li dik il-persuna kellha mandatarju jew rappresentant hawn Malta, ma jaghmilx lil dik il-persuna"presenti" f’Malta”.
- “bis-sahha tal-proviso, il-posizzjoni tbiddlet. Jekk persuna assenti tressaq pretensjoni tramite mandatarju, min ikun intimat f'dik il-pretensjoni vantata, jista' jgib ‘l quddiem kawza ta' jattanza, basta li l-millantazzjoni tkun saret matul it-tlett xhur lijigu minnufih qabel ma tkun saret l-azzjoni ta' jattanza.”

Appeals

- The general rule (as found in the COCP) is that an appeal is entered by means of an application to be filed in the registry of the Court of Appeal within 30 days from the date of judgment.
- However, different subsidiary legislations may contain different timeframes for appeals, depending on the judgment being appealed and the Court/Tribunal/Board which delivered the first judgment. Examples:
  - Appeals in certain Constitutional matters (such as human rights cases) - 20 days according to S.L 12.09
  - Appeals from decisions by the Small Claims Tribunal - 18 days according to S.L 380.01

The Appeal Application

- The contents of the appeal application also depend on the applicable law.
- In terms of the COCP, the mode of procedure before an appellate court is by application which shall contain a request that the judgment appealed from or any part thereof, be reversed or varied.
- The law divides the contents of the appeal application depending on whether it is:
  1. An application for the reversal of a judgment
  2. An application for the variation of a judgment
  3. An application for the reversal, annulment or variation of a decre

Contents of Appeal Applications for the Reversal of a Judgment

1. Reference to the claim
2. Reference to the judgment appealed from
3. Detailed reasons on which the appeal is entered (“aggravji”)
4. A request that the said claim be allowed or dismissed

Contents of Appeal Applications for the Variation of a Judgment

- 1. Reference to the claim
- 2. Reference to the judgment appealed from
- 3. Distinctly state the heads of the judgment complained of
- 4. Detailed reasons for which the appeal is entered (“aggravji”)
- 5. The manner in which the judgment should be varied under each head

Contents of Appeal Applications for the Reversal, Annulment or Variation of a Decree

1. Reference to the contents of the decree being appealed from
2. Detailed reasons for requesting this reversal, annulment or variation

What if one of the Required Contents is Missing?

- If any one of the contents described is not adhered to, this does not make the application void but the court shall give an order directing the appellant to file, within 2 days, a note containing such particulars as are required by law and which have not been duly stated in the application

Who Can file an Appeal?

- An appeal may be entered by any party against all the other parties or against any one of them. The appellant shall indicate in the application, the parties against whom the appeal is directed.
- However, an appeal may be entered into not only by the contending parties (i.e. the named parties in the judgment) but also by any interested person.

Grounds for Appeal

- In order to determine whether there is a right to appeal a decision/judgment, the grounds for which an appeal may be submitted, the timeframe to appeal and, the contents of the appeal application, one would need to look up the law applicable to the decision/judgment being appealed.
- Examples: In the case of arbitral awards, one would have to refer to the Arbitration Act whereas in the case of decisions of the Industrial Tribunal, one would have to refer to the Employment and Industrial Relations Act.

Limitations of Filing an Appeal

- Judgments delivered by the Court of Appeal are not appealable
- Decisions by the Court of Voluntary jurisdiction are also not subject to appeal
- No appeal shall lie from a judgment given upon admission of the claim, or accepted by the renunciation of the right of appeal, or by acquiesence in the findings of the judgment.

Limitations to filing an Appeal

- No appeal shall lie from a judgment of the CoM where the amount of the claim does not exceed €465.87 and the matter does not involve a point of law determined in the judgment or the determination of a claim for the eviction of any person from immovable property.
- There may be other limitations on the grounds on which one can appeal in certain judgments. For instance, arbitral awards and decisions of the Industrial Tribunal can only be appealed on a points of law.

Where more than one Judgment was given in an Action

- There may be instances where more than one judgment is given in the course of a court case. This happens when certain preliminary pleas are raised by the defendant which require the court to decide on this preliminary plea separately. For example: plea of prescription or plea of jurisdiction.
- The general rule is that when several issues in an action have been determined by separate judgments, appeal from such partial judgments may only be entered after the final judgment

Filing an Appeal before the Final Judgment

- An appeal from a partial judgment may be entered before the final judgment only by leave of the court
- The request for the court's permission to appeal before final judgment can be made either orally immediately after the delivery of the judgment or by application within 6 days from the judgment
- The court's decision shall be read out in open court and if leave is given, the time to file the appeal application begins to run from that day in which the leave is read out in open court.

Replying to an Appeal Application

- The application shall be served on all parties
- The party/parties against whom the appeal is filed shall have 30 days to file their reply with reasons why the appeal should be dismissed.
- Default to file a reply does not bring about the same consequences as a default to file a sworn reply. There is no concept of contumacy

Replying to Appeal Applications

- The default of filing a reply to an appeal shall not preclude him from bringing an application before the court for the purpose of being awarded the right to submit written submissions and to produce evidence thereof, provided he gives, in the opinion of the court, a good reason for such default within the time required by law.
- The default of filing a reply to the appeal does not debar him to file such reply to appear at the hearing of the cause and bring his evidence, if he gives, in the opinion of the court, good reason for failure to file such

No New Documents at Appeal Stage except in Exceptional Circumstances

- If 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
- If the court is satisfied of the necessity or expediency of having this document; or
- If the opposite party gives his consent; or
- 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
- If the document to be produced is a book or other paper in the original, copies whereof or extracts wherefrom, were produced in due time; or
- Before any referee, if bearing on the subject-matter of his reference;

Can Witnesses be Produced?

No witness who was not produced before the first court may be produced at appeal stage unless:

- The opposite party gives his consent thereto; or
- 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;
- The evidence of such witness was tendered and disallowed before the court below and the appellate court considers it admissable and relevant; or
- The appellate court is satisfied of the necessity or expediency of taking the evidence of such witness;

If the defendant was contumacious before the first court, he is precluded from producing witnesses before the appellate court, unless he satisfies the court that he had a good reason for his default.

Cross-Appeals (“appell inċidentali”)

- Any party may avail himself of an appeal entered from a judgment, including a partial judgment and from a head or from heads of any judgment, or from an interlocutory decree and may enter a cross appeal not only in respect of the judgment, partial judgment, head or heads of a judgment, or interlocutory decree appealed from, but also in respect of any judgment or heads thereof or interlocutory decrees given in the same cause even if not appealed from by the appellant. Such cross appeal may be made even against or by any party not being one against whom an appeal is directed.

Procedure for Cross-Appeal

- A cross-appeal cannot be filed if the party already submitted an appeal from such judgment or any head thereof.
- The party who intends to avail himself of such a cross-appeal shall make a declaration to that effect in the appeal reply stating therein his demands and the grounds for his cross-appeal.
- The cross-appeal shall remain in effect even if the appeal is withdrawn as it is considered to be a distinct and independent action.
- The cross-appeal will be served on the appellant and the appellant will be given 30 days to file a reply rebutting the allegations included in the cross- appeal.

New Trial (Re-Trial) (“ritrattazzjoni”)

- It is possible, in limited circumstances, for a party to ask for a new trial of a cause decided by a judgment given in second instance (i.e. appellate court) or, by the Civil Court, First Hall in its Constitutional Jurisdiction
- A new trial may also be demanded in respect of a cause decided by a judgment of a court of first instance and constituting res judicata (i.e. cannot be appealed because the time to file an appeal has lapsed), as long as the facts constituting the grounds for a new trial came to the knowledge of the party after the expiration of the appeal period

Grounds for Re-Trial

- 1. Where the judgment was obtained by fraud on the part of any of the parties to the prejudice of the other party
- 2. Where the sworn application was not served on the party cast, provided that he did not enter an appearance
- 3. Where any of the parties was under legal disability to sue or be sued, provided this was not already raised and determined
- 4. Where the judgment was delivered by a court which did not have jurisdiction, provided no plea was raised and determined on this
- 5. Where the judgment contains a wrong application of the law
- 6. Where the judgment was given on any matter not included in the demand (ultra petita)
- 7. Where the judgment was given in excess of the demand (extra petita)

Grounds for Re-Trial

- 8. Where the judgment is conflicting with a previous judgment given in a suit on the same subject matter, between the same parties, constituting res judicata, provided no plea was raised and determined on this point
- 9. Where the judgment contains contrary dispositions
- 10. Where the judgment was based on evidence which was declared to be false in another judgment but the party cast was not aware of this
- 11. Where after the judgment, some conclusive document is obtained (which the party producing it did not have knowledge of or which he could not have produced before the judgment)
- 12. Where the judgment was the effect of an error resulting from the proceedings or documents of the cause

- The demand for a new trial shall be made to the court which gave the judgment being complained of and the same judges or magistrates may sit.
- The demand for a new trial before the court of first instance shall be made by means of a sworn application
- The demand for a new trial before a court of second instance shall be made by means of an application

Contents of Application for New Trial

1. The heads of the judgment which are complained of
2. The grounds for the new trial, making reference to the relative provisions of the article
3. The facts giving rise to every such ground
4. Where one of the grounds is the wrong application of the law, identify the law which should have been applied

Time Frame for Demanding a New Trial

- The time for demanding a new trial is 3 months, which shall commence to run:
- In case of a judgment obtained by fraud (point 1) or a conclusive document being obtained (point 11) – on the day the fraud was discovered or the document obtained
- In case of the sworn application not having been served on the party cast (point 2) – on the day the party became aware of the judgment
- In the case of a judgment having been based on evidence which was declared false in a previous or subsequent judgment (point 10) – from the day of the subsequent judgment or if in a previous judgment, from the day on which the party became aware of such declaration
- In all other cases (all other grounds), from the date of the judgment complained of
- Provided that a new trial cannot be demanded after the lapse of 5 years from the date on which the first judgment was given

Procedure

- A new, separate judgment shall be given on the demand of a new trial
- The demand for a new trial may not be made more than once, except on grounds which may arise subsequently to the first demand.
- It shall not be lawful to grant another new trial in respect of a judgment given upon a new trial.

Stay of Execution of Judgment?

- As a general rule. the demand for a new trial shall not stay the execution of the judgment sought to be set aside.
- The Court before which a new trial is demanded may, by application made by the party seeking the re-trial, order a stay of execution if:
  - Together with his demand (application), the party gives security for the execution of the judgment
  - It is shown to the satisfaction of the court that the execution of the judgment is likely to cause greater prejudice to such party than the stay of execution would cause to the opposite party

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI
ADVOCATES