

Recap

- Research design – Models
- 1. Hypothesis
- 2. Research planning – problem identification, fact analysis, reformulation of the hypothesis/ research question
- 3. Identification of literature
- 4. Research design – sets the parameters of the research
- 5. Collection of data – probability sampling vs non-prob sampling



Legal Research and Interpretation Methodology

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



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5. Collection of Data – Sampling Errors

How can you avoid
sampling errors?



5. Collection of Data – Tools and techniques

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



5. Collection of Data

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



5. Collection of Data

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



5. Collection of Data

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



5. Collection of Data – Considerations part

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

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

Il-Qorti in ghandhiez dubju li fil-kaz tal-lum xejn ma ser igib fix-xejn l-aforsima : *justice seen to be done* (op. cit.)

Fil-kaz tal-lum, it-thassib dwar parzjalita' tal-gudikant huwa nsufficjenti propju ghallex dak it-thassib - jew b'ira' - sejjahlu li trid - huwa nfondat.

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

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

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

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

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

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

Decide

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

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

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

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

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Tichad it-talbiet tar-rikorrenti.

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

Onor. Joseph Zammit McKeon
Imhalled

Amanda Cassar
Deputat Registratur



5. Collection of Data –

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

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



5. Collection of Data

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

Rik. Kost. 33/2017

tagħha għal smiegħ xieraq. Tfisser dan l-uniku aggravju tagħha b'dan il-mod:

"Ili l-aggravju tal-esponenti huwa ċar u manifest u jikkonsisti f'li l-ewwel qorti kienet zbaljata meta qieset li mhemmx lezjoni tal-jedd ta' smiegħ xieraq a bazi tal-art. 39 tal-Kostituzzjoni ta' Malta u l-art. 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem (kif inkorporata fil-liġi tagħna a tenur tal-Kap. 319 tal-Liġijiet ta' Malta) in wista tan-nuqqas ta' imparzjalità oggettiva tal-gudikant l-Onorevoli Mhalef Jacqueline Padovani Grima fil-kawza fl-ismijiet "Onorevoli Kap tal-Oppozizzjoni Dr Simon Busuttill et v. Josef Bugeja ooe et (rik. gur. Nru. 109/2017.JPG).

"Ili qabel ma tibda b'irrat ta' l-aggravju, l-esponenti taqbel mal-principji li kkwotat l-ewwel qorti u cjoè li anke jekk skoni l-art. 733 u 734 tal-Kap. 12 ma jkunx hemm lok għal rikuzza ta' mhalef, anzi jista' jkun hemm divjiet ta' astensjoni, lista' tinholq sitwazzjoni fejn ikun hemm konflikt mad-drittijiet fundamentali tal-persuna, bil-konsegwenza li l-harsien ta' dawn id-drittijiet li huma wkoll tutelati bil-liġi għandhom jpprevalu fuq id-disposizzjonijiet tal-liġi ordinarja. Inoltre il-parametri ta' dawk il-liġijiet li jirregolaw ir-rikuza għandhom jtgħiesu li twessghu bil-provvedimenti tal-Kostituzzjoni u tal-Konvenzjoni li jggarantixxu smiegħ xieraq.

"Ili din l-onorabbli qorti, suprema f'dan il-pajjiz, kelliha l-opportunità li tispjega r-reqwiziti ta' rikuzza a bazi tal-imparzjalità tal-imhalef sedenti f'kawza. Fil-kawza fl-ismijiet Lawrence Grech et v. L-Avukat Generali et decizja fis-7 ta' Marzu 2017, din l-onorabbli qorti imfieniet li f'kazijiet ta' din ix-xorta, dak li huwa determinanti għall-kaz huwa jekk "dak il-biza' jew dik il-percezzjoni huwiex imsejjes fuq konsiderazzjonijiet oggettivi hekk li persuna raġonevoli u mingħajr pregudizzji tagħha tasal biex hi wkoll ikollha dubji dwar l-imparzjalità tal-gudikant". Fit-terminu "konsiderazzjonijiet oggettivi" f'isret li jaqgħu wkoll apparenzi li jstgħu joħolqu dubji. Jekk dawn l-apparenzi huma tali li f'persuna raġonevoli u mingħajr wisq tgħbid jaqgħu x'taħseb li hemm dawk ir-rabriet, id-dubju dwar l-imparzjalità tal-imhalef jista' jkkwalifika b'hala dubju oggettivament gustifikat u għalhekk ikun jimmerita li l-gudikant ma jkomplix jisma' l-kaz. F'din is-sentenza din l-onorabbli qorti marret oltre u saħansitra qalet li huwa biżżejjed li tiddghajef il-fduċja fl-imparzjalità tal-gudikat sabiex ikun hemm ksar tad-drittijiet kostituzzjonali u konvenzjonali ta' parti.

"Ili fl-osservazzjonijiet dwar dan il-mertu, l-ewwel onorabbli qorti cċitat estensivament giurisprudenza relatata ma' din il-tema izda l-ebda kaz citat ma jinkwadra fil-fatti tal-kaz odjem. Din il-limitazzjoni hija wkoll preżenti fil-kitbiet dwar tal-art. 39 tal-Kostituzzjoni ta' Malta u l-art. 6 tal-Konvenzjoni dwar Drittijiet Fundamentali tal-Bniedem. L-esponenti tagħmel rferenza għal letteratura citata mill-Ewwel Qorti u cjoè l-kitba ta' Leslie W. Abramson *The Judge's Relative is Affiliated with Counsel of*

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

"Ili dawn iż-żewġ awtur jitrattaw propju l-kwistjoni li għandha quddiemha din l-onorabbli qorti lium u cjoè meta membru familjari tal-imhalef sedenti f'kawża huwa parti minn ditta ta' avukati li qed tirrappreżenta li xi hadd mill-partijiet, għandu jkun hemm rikūza tal-imhalef sedenti jekk il-membri familjari mhux qed jirrappreżenta dretament lil-parti?;

"Ili z-żewġ awturi jammettu li din il-kwistjoni mhijex waħda sempliċi u l-posizzjoni fl-Istati Uniti għadha mhijex konsolidata. Minkejja dan hemm qbil li għandhom jittiehdu in konsiderazzjoni certu fatturi sabiex jigi stabbilit jekk għandux ikun hemm ir-rikuza. Fost il-fatturi li għandhom jittiehdu in konsiderazzjoni hemm in-natura tal-kawża, il-kariga li jittedjeni l-membri familjari tal-imhalef sedenti fid-ditta u l-kobor tad-ditta. Stante li dawn huma fatturi oggettivi, dawn għandhom jigu applikati għall-kaz ta' lium u dan għalhekk minkejja li l-fatturi gew imsemmija f'ambitu ta' rikūza fl-Istati Uniti għandhom jigu kkunsidrati għal fini ta' dan l-appell stante li l-kwistjoni ta' rikūza mhijex kwistjoni sui generis tas-sistema legali Maltija. Gjaladarba l-biża' tal-esponenti hija dwar l-imparzjalità oggettiva u mhux suggettiva, jekk l-istess fatti jimbtu f'pagiż jew stat ieħor l-imparzjalità ser tkun xorta waħda evidenti;

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

"Din is-sentenza titratta kaz identiku għal dak odjem u cjoè rikūza ta' mhalef f'sitwazzjoni fejn hu l-imhalef sedenti, għad li ma kienx patrocinanti fil-kawża, kien partner fid-ditta li kienet qed tirrappreżenta waħda mill-partijiet. Dwar din il-kwistjoni il-qorti federali ordnat ir-rikuza tal-imhalef sedenti a bażi ta' żewġ konsiderazzjonijiet:-

i. minkejja li hu l-imhalef ma kienx qiegħed jippatrocinja li xi waħda mill-partijiet, xorta kien ser jippartecipa fl-qligħ tad-drittijiet generali mill-kawża speċjalment fid-ditta li huwa kien jaħdem magħha (bħall-kaz odjem – ara x-xieħda tal-Avukat Ann Fenech tal-4 ta' Lulju 2017); u

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

"Ili f'din is-sentenza jingħad:-

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

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

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

"Ili l-esponenti hija konxja li fl-gursidizzjoni tagħna nferenza għal kazijiet tal-Istati Uniti mhijex daqshekk komuni iżda hawnhekk gie applikat il-test li jigi applikat mill-qorti tagħna f'kaz ta' imparzjalità oggettiva u cjoè il-fatti kif jidheru f'għajnejn persuna ragonevoli. Gjaladarba l-fatti huma identiki u gie applikat l-istess test l-esponenti tistaqsi x'inhi r-raguni li l-ewwel qorti r-reżazzjoni tal-imhalef sedenti fil-kawża civili mad-ditta *Fenech & Fenech* giet kunsidrata bħala "remota" u li saħansitra tammonta bħala "infondata" meta għall-Qorti tal-Appell tal-Istati Uniti il-kaz odjem ikkwatiffika għal rikūza.

"Ili dan qiegħed jingħad b'nferenza għall-unika disinjoni li hemm bejn il-kaz odjem u dak kwotal tal-Istati Uniti li hija li l-imparzjalità oggettiva trid tistharreg minn persuna ragonevoli fis-socjetà Maltija – socjetà li minnha nfisha hija bbażata fuq l-importanza tal-familja u li twassal għal dak li l-antropologu Jeremy Boissevain (wara studju li gie fl-ismiemu wara f'amsin sena) jiddeskriviha li twassal għall-fenomenu msejjaħ amoral familism. L-awtur Dr Adrian Grima fil-kitba tegħu jgħid:-

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

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

"Ili meta wieħed jikkunsidra l-fatti odjemi fid-dawl ta' dan l-istudju – studju li wara kollox jiddeskrivi propju s-socjetà Maltija – l-esponenti ssibha ferm diffiċli kif l-ewwel qorti setgħet tiggustifika n-nuqqas ta' rikūza stante li hemm dawh ir-rabtiet u d-dubji biżżeġġ li jdgħajfu l-fiduċja fl-imparzjalità tal-gudikant l-Onorevoli Imhalef Jacqueline Padovani Grima;

"Ili jsegwi (fl-umli fehma tal-esponenti) li l-biża' tal-esponenti hija għustifikata u hemm lok għal rimedju kostituzzjonali,"

9. L-Avukat Ġenerali wiegħeb hokk għall-appell tal-*General Workers*

Union,

"L-appellat jibda biex jissottometti li huwa prinċipju stabbilit kemm fl-gurisprudenza nostrana u dik tal-Qorti Ewropea li l-prinċipju ta' imparzjalità huwa msejjes fuq żewġ binarji: il-test oggettiv u l-test oggettiv. L-appell odjem jitratta biss allegat ksur tal-test oggettiv..

"L-appellat jirrelewa illi għal dak li jingwarda l-test oggettiv li fuqu huwa bbażat l-appell in nsposta, dak li jrid jintwera huwa li jkun hemm biża' li gudikant ma jkunx imparzjali; madankollu l-biża' esternata mhijex waħda deciziva sakemm tali biża' ma tkunx oggettivament għustifikata.

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

"Ili kif ben osservat l-ewwel qorti fis-sens illi "Din il-qorti tistgħi illi ma tressqet l-ebda prova – mequsa bil-kejl oggettiv – li l-imhalef sedenti bil-kondotta tagħha tat xi njejl li qiegħda tun xi pregudizzju reali u affwaj kontra r-rikorrenti jew li tagħti lok li jgħid dubju legittimu ta' tali pregudizzju". Fil-fehma tal-appellat, il-fatt waħdu li l-imhalef hija parentata ma' avukati fl-istess ditta ta' avukati li qiegħdin jehdu f'isieb il-kawża civili, mingħajr fatturi oħra pregudizzjevoli konkomitanti, ma jgħidgħax tali dubju sal-grad rikjest mill-artikoli kostituzzjonali u konvenzjonali fuq citati. Għall-kontra, mill-provi prodotti u senjatament mix-xieħda mogħtija minn Dr Ann Fenech waqt is-seduta tal-4 ta' Lulju 2017 iddikjarat b'mod ċar li hija ma għandha l-ebda parentela ta' ta' demm u lanqas ta' żwieg mal-imhalef Padovani Grima. In kontro-eżami

5. Collection of Data

- Constitutional Court's Considerations:-

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kelma) ma' partner jew ma' impegata fid-ditta ta' avukati li qed jppatrocinaw lil xi intimati fil-kawza in kwistjoni hija bi-wisq remota sabiex iggb magħha dubju legittimu dwar l-imparzjalità tal-qorti, u dan kemm għali-fini tal-lest soggettiv kif ukoll għal dak oggettiv. Fil-fehma tagħha, daqstant konsiderata, din il-qorti tgħid illi fil-kaz tal-lum ma hemmx fatti jew cirkostanzi daqstant gravi jew impellenti li jagħtu lok għal dubji serji li l-gudikant mhijex sejra tkun imparzjali".

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

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

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

qorti meta qaliet hekk:

"... jista' jkun hemm cirkostanzi fejn, minkejja li raġuni għall-astensjoni jew ir-rikuza ta' gudikant ma tkunx taqa' taft xi waħda mid-dispożizzjonijiet tal-Kap. 12, jista' jkun hemm raġunijiet tajbin biżżeġed f'kurtest aktar wiesgħa sabiex gudikant ma jibqax jisma' kawza sabiex ikun hemm serhan tal-moħħ li fit-trasparenza qiegħed jithares il-jedd ta' smiġħ xieraq ta' xi parti fil-kawza."

12. Mill-perspettiva kostituzzjonali japplikaw konsiderazzjonijiet

oħra barra dawk li jissemmew fil-Kodiċi ta' Organizzazzjoni u Procedura Ċivili.

13. Il-perm tal-kwistjoni li din il-qorti għalhekk giet miġburha tiddetermina

fl-appell imressaq mill-union huwa jekk hemmx raġunijiet li oggettivament jiggustifikaw il-biza' ta' parzjalità fl-imħallief Padovani Grima fil-proceduri civili fl-ismijiet Onorevoli Kap tal-Oppozizzjoni Dr. Simon Busuttil et. v. Josef Bugeja noe et (rikorsuramentat numru 109/2017).

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

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

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

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

14 Fejn jeżistu dubji bħal dan, ikun fl-interess mhux biss tal-parti li oggettivament tara raġunijiet ta' parzjalità kontra li l-gudikant ma jkomplix jisma' l-kaz; ikun ukoll fl-interess tal-parti l-oħra li l-gudikant, biex jegħleb kull dubju dwar l-imparzjalità tiegħu, ixagħleb inqas b'effeċċess ta' kawtela" favur l-parti l-oħra.

15 Il-kwistjoni issa hi jekk fil-kaz ta' lura hemmx raġunijiet oggettivi li f'osservatur raġonevoli u imparzjali jistgħu jgħolqu dehra ta' rabtiet bejn gudikant u parti f'kawża hekk li fiddgħaġef il-fiducja fl-imparzjalità ta' dak il-gudikant."

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

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

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

m'hijex semplicement dwar dritt privat iżda hija kawża politika

dwar immobbli mizmuma b'titolu ta' cers mifdi minghand il-gvern u ghalhekk tattira aktar attenzjoni pubblika.

17. Ghalkemm huwa minnu li m'hemm l-ebda konnessjoni familjari bejn l-Imhalef Padovani Grima u l-Avukat Edward DeBono u l-Prokuratrici Legali Katrina Zammit Cuomo – l-avukat u l-prokuratrici legali li qeghdin jppatrocina lill-affari fil-kawza, l-istess ma jistax jinghad fir-ogward ta' l-Avukat Kenneth Grima (li jigi fu l-istess imhalef), fir-rigward ta' Rowena Grima (li tigi oht l-istess imhalef) u, ghalkemm fi grad anqas, fir-rigward tal-Avukat Ann Fenech (li hija l-mara tal-kugin tal-mara tal-avukat Kenneth Grima). Il-konvenuti fil-proceduri odjerni ma ressqo l-ebda provi biex jirribattu l-presunzjoni li tezisti relazzjoni mill-qrib u familjari bejn l-imhalef Padovani Grima u l-familjari taghha li jahdmu mad-ditta *Fenech & Fenech Advocates*.

18. Dwar il-kariga li jokkupaw l-membri familjari tal-imhalef Padovani Grima fid-ditta tal-avukati *Fenech & Fenech Advocates*, din il-qorti tosserva li l-Avukat Kenneth Grima huwa *senior partner* tad-ditta u bhala *senior partner* jippartecipa fil-qligh tad-drittijiet generati mill-kawza spettanti lid-ditta li huwa jahdem maghha.⁸ L-istess jista' jinghad fir-rigward ta' l-avukat Ann Fenech li hija l-*managing partner* tal-istess ditta ta' avukati. Il-Prokuratrici Legali Rowena Grima hija impjegata tal-istess ditta u konsegwentement ma

⁸ Ara l-ib. 28, 29, 30, 156 tal-process.

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

19. Fid-dawl tas-suespost, u partikolarment peress li i-kawża in kwistjoni hija kawża politika li għalhekk taffira aktar interess mill-pubbliku in generali u peress ukoll li fi-aħhar mill-aħhar l-Avukat Kenneth Grima – hu l-imhalef Padovani Grima – għandu interess fi-andament tal-kawża in kwistjoni għaliex jippartecipa fil-qliġ tad-drittijiet generati mill-istess kawża, din il-qorti hija tal-fehma illi m'huwiex għal kollox imġebbed il-biża' tal-*General Workers Union* dwar il-parzjalità jew imparzjalità tal-gudkant. Ma taqbiex għalhekk li r-rabta ta' soċju jew partner f'ditta legali hija "raguni indiretta u remota wisq biex tqanqal dubju legittimu dwar l-imparzjalità minn *osservatur ragonevoli* ..."¹⁰

20. Fic-cirkostanzi għalhekk, ma hjeex irragonevoli l-percezzjoni li hemm rabta tal-familjarità bejn l-imhalef Padovani Grima u d-ditta tal-avukali *Fenech & Fenech Advocates* li tista' toqot hazin id-dehra ta' imparzjalità oggettiva tal-istess imhalef. Id-dubju ma huwiex wiehed li ma jitqiesx oggettivament gustfikat ukoll jekk dak id-dubju ma joiqotx l-imparzjalità soggettiva tal-imhalef.

21. Għal dawn ir-ragunijiet il-qorti tikqa' l-appell u tħassar is-sentenza appellata: ttiprovdi dwar il-talbiet billi tgħid illi jkun hemm ksur tal-

¹⁰Ara fir 185 tal-process.

jedd tal-*General Workers Union* għat-smigh xieraq jekk ma tintfaqax il-talba ta' nkuza tal-imħallief li qiegħda tisma' l-kawża fl-ismijiet *Onorevoli Kap tal-Oppozizzjoni Dr. Simon Busuttil et v. Josef Bugeja noe et* (inkors guramentat numru 109/2017), u għalhekk tordna li l-kawża ma titkomplex quddiem l-istess imħallief.

22. Fic-cirkostanzi jkun xieraq illi kull parti tħallas l-ispejjez tagħha iżda l-ispejjez tar-registru jħallashom il-konvenut Avukat Generali.

Joseph Azzopardi
Prim Imħallief

Giannino Caruana Demajo
Imħallief

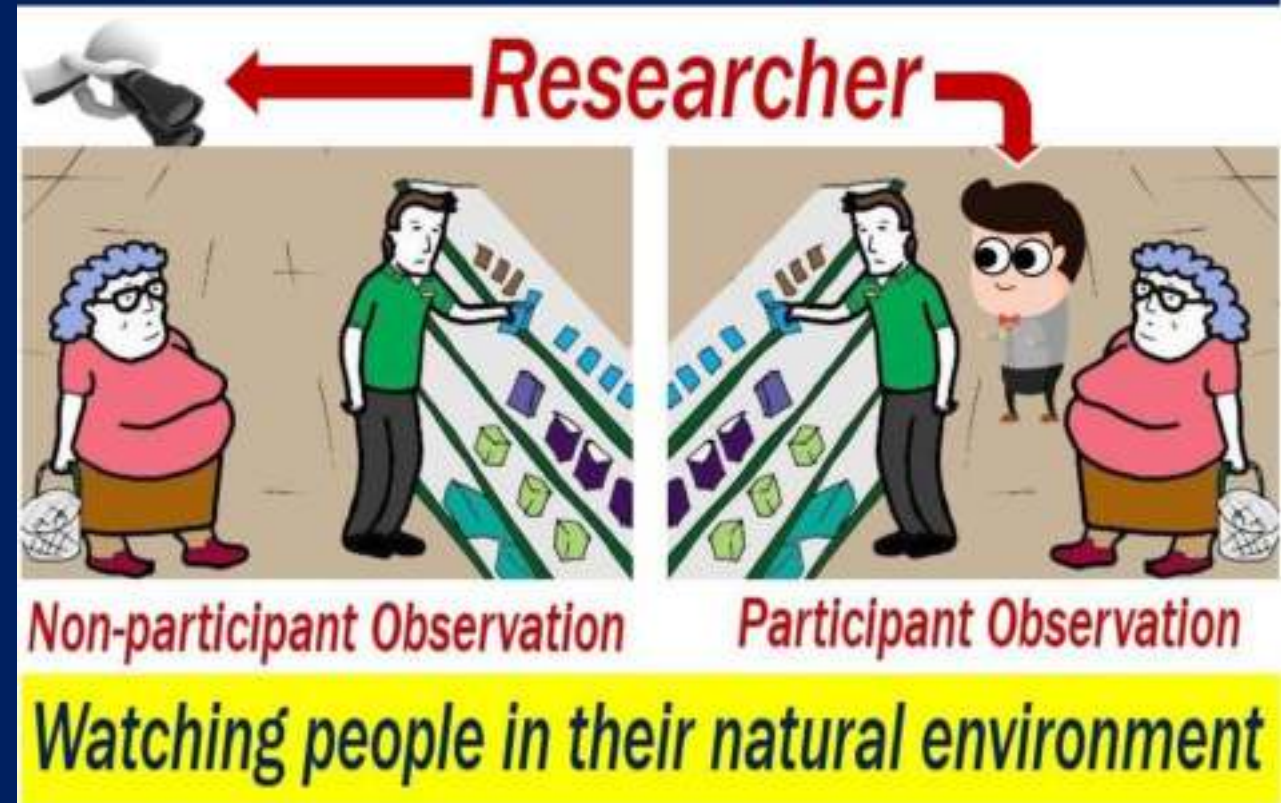
Noel Cuschieri
Imħallief

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

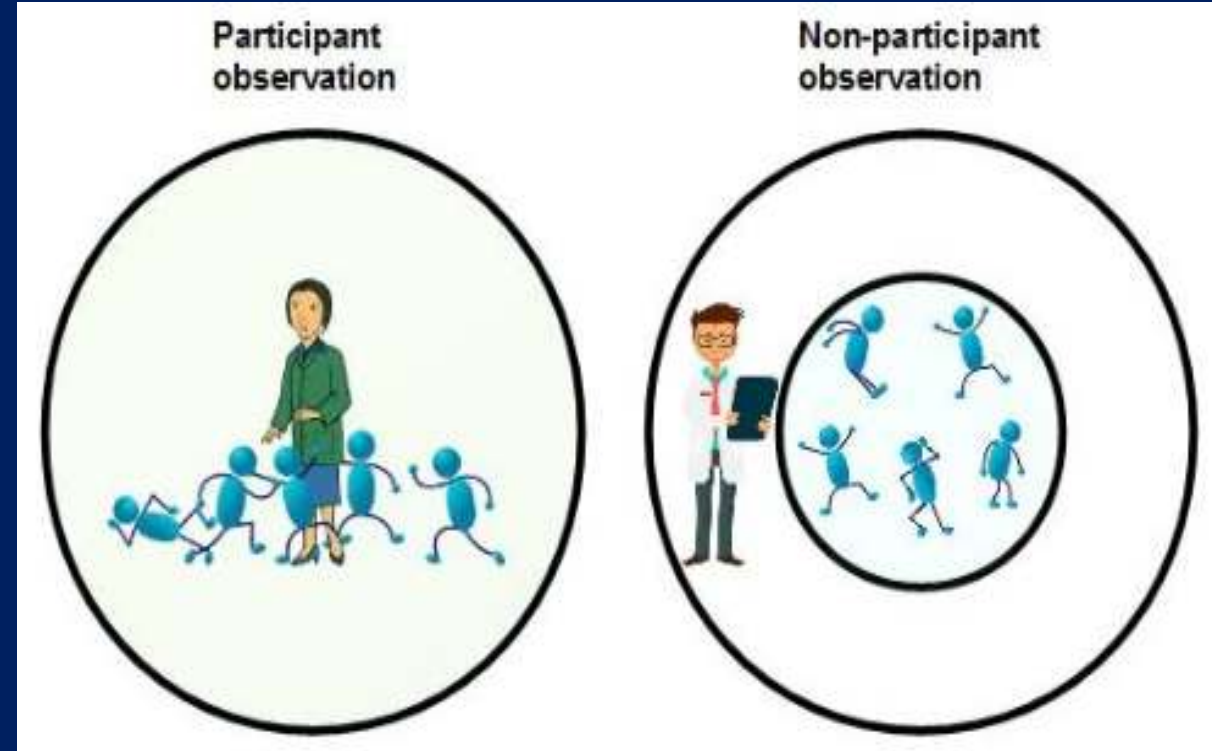
- Law does not exist in a vacuum hence an interdisciplinary approach is required i.e. Don't just look at the legal aspect. E.g. Jeremy Bentham's study of Maltese society as explained in the GWU appeal
- Social Science most used method for collection of data is through participant and non-participant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

Observational Research



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

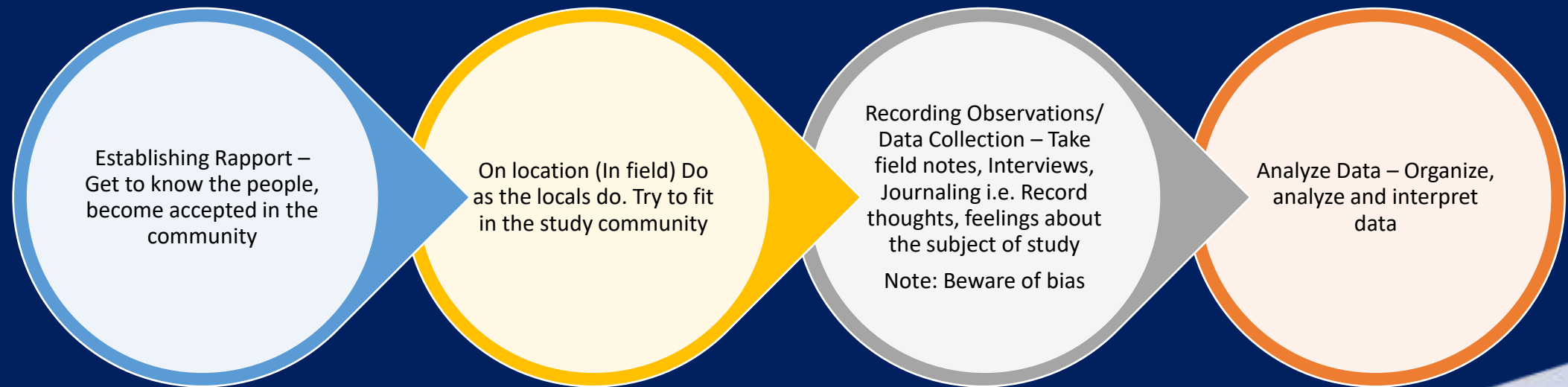
- A.k.a direct observation
- Aim is to gain a closer familiarity/ understanding with a given group of individuals/ organization and their practices e.g. group being affected by a particular law etc or the implementation of a particular law
- E.g Law dissertation by R.J. Lanfranco “The role of the armed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



- Key: involvement and engagement of the researcher in the environment/ situation of the universe
- Involvement may be active or passive
- Used for qualitative research i.e. Substance
- Confidentiality must be provided to the group
- Participant observation will include experiencing people's lives. Reseracher will be on the front line of where the action is
- Researcher may be actively participating i.e. will immerse himself in the group. Might be difficult to keep objectivity
- Universe might notice the researcher and may alter their behaviour



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



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

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

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



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

Types of participant observation

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



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

Passive Participant Observation

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

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



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

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

Prosecution & defence
agreed to a suspended
sentence.

Q: Is suspended sentence
too harsh? Harsher?

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

illum
20 January at 13:19 · 🌐

Il-Prosekuzzjoni u d-Difiza qablu li l-akkuzat ghandu jinghata sentenza sospiza, bil-Qorti mistennija tiddecedi l-gimgha d-diehla.

ILLUM.COM.MT
'Seraq yoghurt, tonn taz-zejt u wraps, biex ikun jista' jiekol'
Zaghzugh li ma ghandux fejn jghix jitressaq quddiem il-Qorti akkuzat b'serq ta' ikel u anke ta' ...

👍❤️ 437 546 comments 13 shares

👍 Like 💬 Comment ➦ Share

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

Active Participant Observation

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



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

Covert vs Overt Participant Observation

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



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

Covert and Active Participant Observation

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

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

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



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

Covert and Passive Participant Observation

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



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

Open and Active Participant Observation

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



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

Overt(Open) and Passive Participant Observation

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







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

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

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



5. Collection of Data – Interviews

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



5. Collection of Data – Interview Modes



5. Collection of Data – Interviews

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

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



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

A Successful Interviewer is:

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

The Interview as an Interpersonal Encounter

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

5. Collection of Data – Developing Interview Tips

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

Types of questions or other interview talk:

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



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

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



5. Collection of Data – Questionnaires

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

Questionnaire

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

Sex
 Male Female

Age
 13-14 15-16 17-19

Religion
 Christianity Islam
 Rastafarian Other

1. What type of family are you from?
 Nuclear Sibling household
 Single parent Extended

2. Do you use drugs?
 Yes No

3. Do you know of least one teenager in your community that uses drugs?
 Yes No

4. If your answer is yes to question 2 (two), how often do you use drugs?
 Every day Every 2-3 days Once a week
 Every fortnight Once a month every 2 months

5. Are drugs easily available to teenagers in your community?
 Yes No

6. What types of drugs are used by teenagers in your community?
 Alcohol Marijuana Cocaine Heroin Others
 If others please specify: _____

5. Collection of Data – Questionnaires

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



5. Collection of Data – Questionnaires vs Interviews

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



5. Collection of Data – Case Study

- A case study is an in-depth study of any unit from the beginning to end
- Any person, family, institution, group, cast, community, law, aspects of a legal system, nation may be the unit for the purpose of study
- Intended when the research is narrow i.e. focus
- All facts and information relating to such unit from the origin to last are collected
- Sources used for data collection may be internal or external. Internal data gather from such unit or within the unit is internal and any information taken from outer sources are external one



SURVEY

Select one

Excellent

Good

Average

Poor

Very poor

5. Collection of Data – Surveys

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

5. Collection of Data – Survey

(Open ended questions are used in examination in chief.

Closed ended questions/ diretti in cross examination)

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

Pedina.com

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

6. Analysis & Interpretation of Data – Data Analysis

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



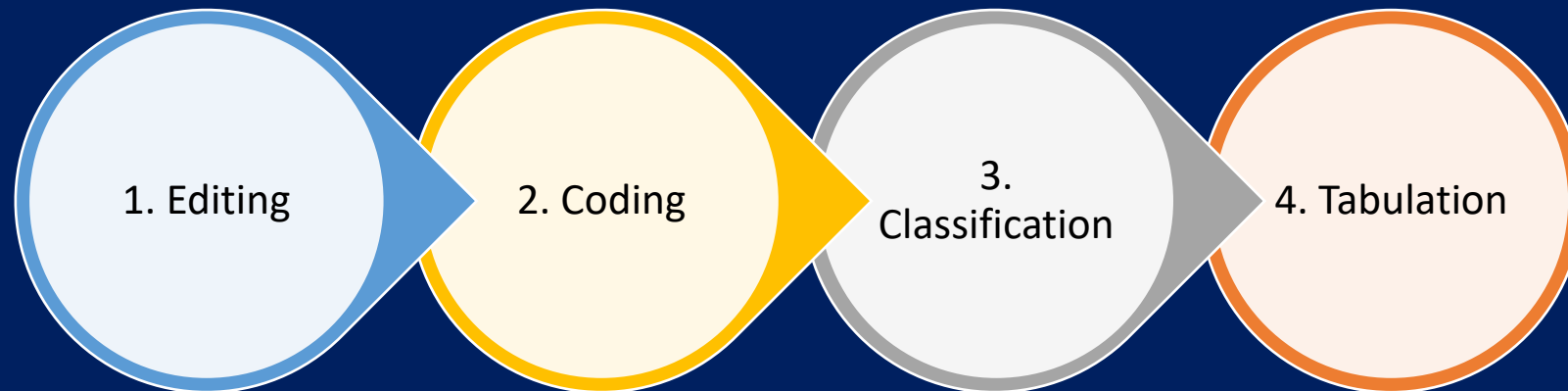
6. Analysis & Interpretation of Data – Data Analysis vs Processing vs Interpretation

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



6. Analysis & Interpretation of Data – Data Processing

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



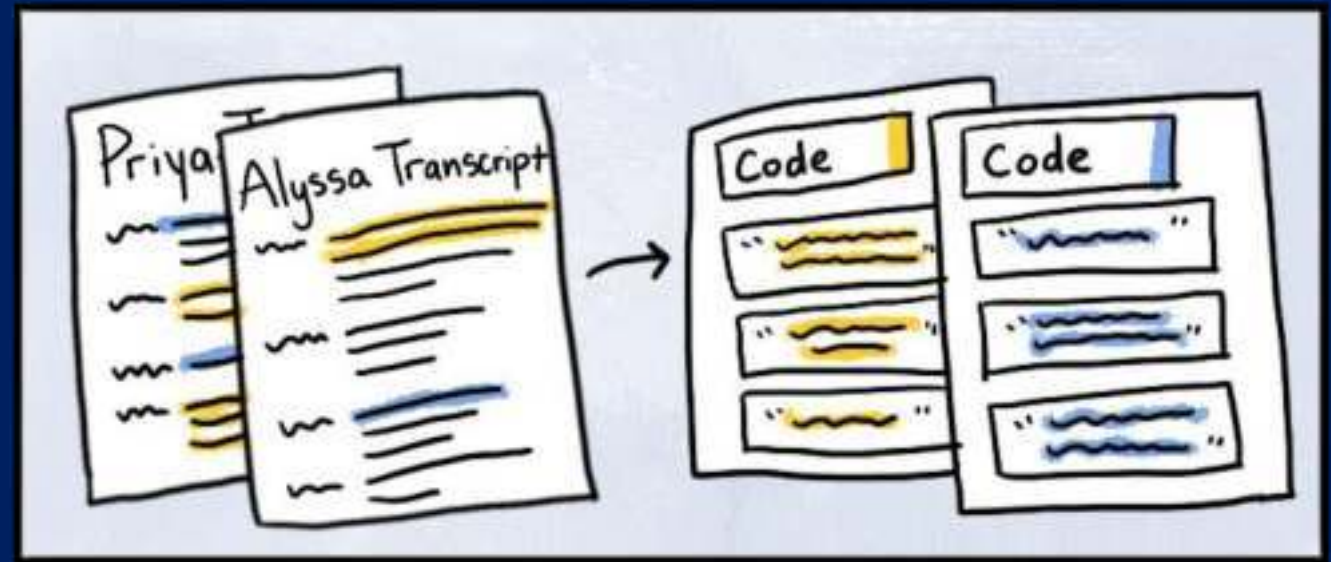
6. Analysis & Interpretation of Data – Data Processing

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



6. Analysis & Interpretation of Data – Coding and Classification

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



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

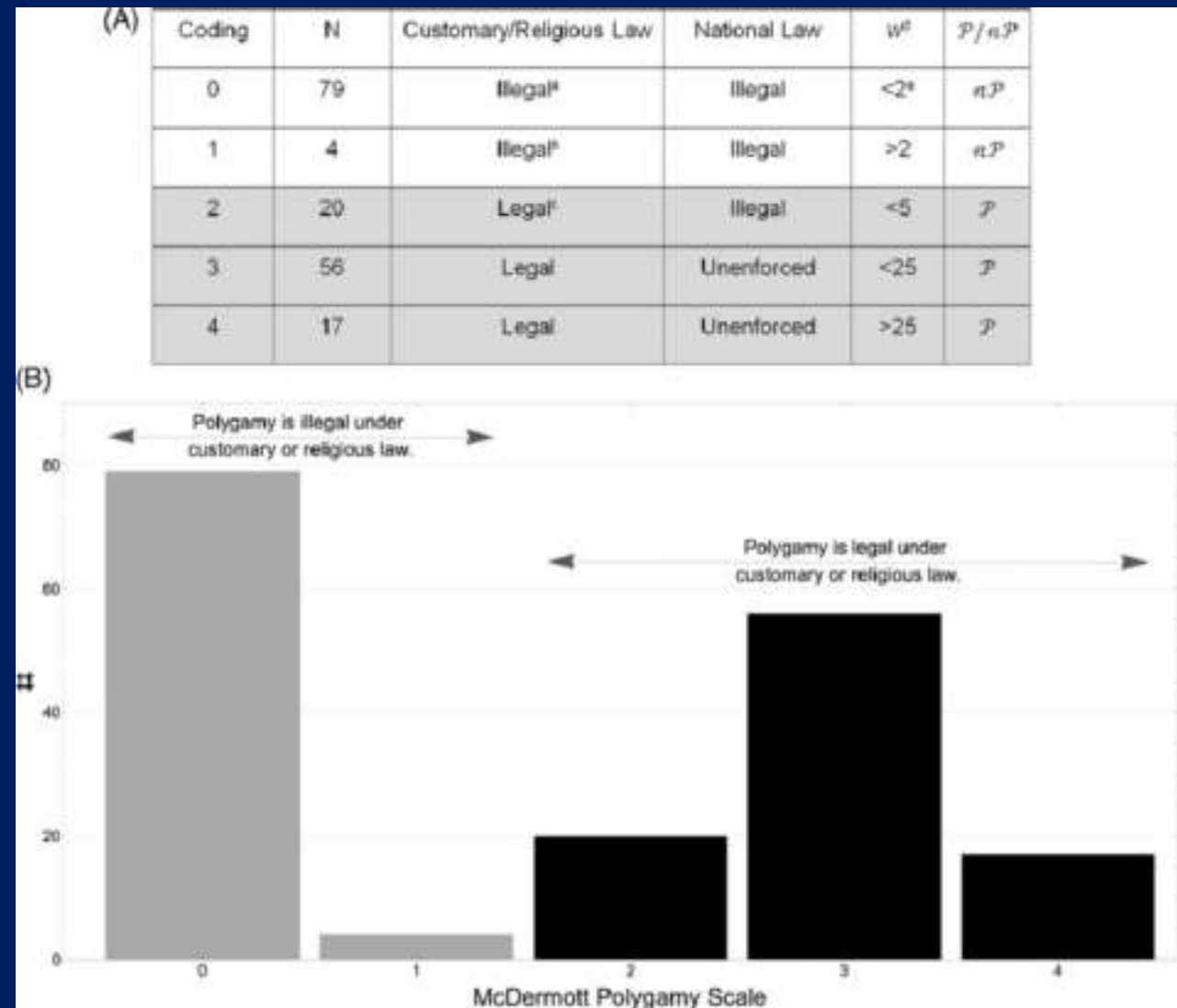
siblings ——— regret
socially awkward ———

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

marriage ——— maturity
finances ———

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

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



6. Analysis & Interpretation of Data – Interpretation

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



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

Kumpens

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

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

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

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

Mill-provi prodotti jirriżultaw is-segwenti valuri:-

Deskrizzjoni tal-art	Kejl	Sena tal-intima/bejgħ	Valur tal-art skont il-kejl	Valur kull metru kwadru	Agġustament skont l-indiċi tal-inflazzjoni għall-valur tal-1992
Art mertu ta' dawn il-proċeduri msemmija fid-dikjarazzjoni causa mortis ¹	50,776m ² (F'dan il-kejl ġie kompriz il-kejl esproprijat)	2008	€200,000	€3.94/m.k.	€2.52/m.k. ²
Raba' viċin l-art mertu ta' dawn il-proċeduri ³	271m ²	1991	Lm100 ekwivalenti għal €232.94	€0.86/m.k.	€0.87/m.k. ⁴
Stima tal-Periti Tekniċi tal-art mertu ta' dawn il-proċeduri ⁵	6,007m ²	2019	€2,102,450	€350/m.k.	€190.63/m.k. ⁶
Stima ulterjuri tal-Periti Tekniċi tal-art	6,007m ²	2005	€1,722,370	€286.73/m.k.	€199.23/m.k. ⁷

¹ Dek. 98C1 – 814 u 6

² (475.89 – 745.05) ÷ €3.94 = €2.32

³ Dek. A – 8137 u 38

⁴ (475.89 – 468.21) ÷ €0.86 = €0.87

⁵ F'd 44 u 46 u 49

⁶ (475.89 – 875.73) ÷ €350 = €190.63

⁷ (475.89 – 684.88) ÷ €286.73 = €199.23

meritu ta' dawn il-proceduri ¹¹					
Stima ulterjuri tal-Periti Teknici tal-art meritu ta' dawn il-proceduri ¹²	6,007m ²	1992	€1,196,792	€199.23/m.k.	€199.23/m.k.
Stima tal-Perit ex parte Arielle Agius tal-art meritu ta' dawn il-proceduri ¹³	6,007m ² ¹⁴	1992	€126,447.35 ¹⁵	€21.05/mk aggustat għal €39.48/mk ¹⁷ skont l-ahhar indici tal-inflazzjoni (2021)	€21.05/m.k.
Operazzjoni Paragunabbli – Att 39 – Art il-Manikata ¹⁶	31m ²	1991	Lm280 ekwivalenti għal €652.22	€21.03/mk	€21.37/m.k. ¹⁸
Operazzjoni Paragunabbli – Att 34 – Art il-Manikata ¹⁹	21m ²	1991	Lm190 ekwivalenti għal €442.58	€21.07/mk	€21.42/m.k. ²¹
Operazzjoni Paragunabbli – Att 76 – Art il-Manikata ²⁰	21m ²	1991	Lm190 ekwivalenti għal €442.58	€21.07/mk	€21.42/mk

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

¹¹ Fol 129 sa 130

¹² Fol 130

¹³ Fol 70 sa 112

¹⁴ Keyl aggrugat minn 1,245m²

¹⁵ $(€26,207.25 + 1,245) \times 6,007 = €126,447.35$

¹⁷ $(892.31 + 475.89) \times €21.03 = €29.48$

¹⁸ Fol 104 sa 106

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

²⁰ Fol 107 sa 109

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

²² Fol 110 sa 112

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

In linea ta' princiġju, għalkemm qorti mhix marbuta li taccetta l-konkluzjonijiet ta' periti tekniku kontra l-konvinzjoni tagħha (dictum expertorum numquam transit in rem iudicata), fl-istess waqt dak ma jfissirx però ' illi qorti dan tista' tagħmlu b' mod legger jew kapricċjuż. Il-konvinzjoni kuntrarja tagħha kelliha tkun ben informata u bazata fuq raġunijiet li gravament ipogġu fid-dubju dik l-opinjoni teknika liha soġġmessa b'raġunijiet li ma għandhomx ikunu privi mill-konsiderazzjoni ta' l-aspett tekniku tal-materja taht ezami ("Orma vs Mamo et noe" - Qorti tal-Appell - 29 ta' Mejju 1998).

Agħfieri qorti ma tistax tinjora r-relazzjoni peritali sakemm ma tkunx konvinta li l-konkluzjoni ta' tali relazzjoni ma kienetx giusta u korretta. Din il-konvinzjoni però kelliha tkun waħda motivata minn gudizzju ben informat, anke fejn meħtieġ mill-lit tekniku. Jara - "Cauchi vs Mercieca" - Qorti tal-Appell - 6 ta' Ottubru 1999 ; "Saliba vs Farrugia" - Qorti tal-Appell - 28 ta' Jannar 2000 ; "Tabone vs Tabone et" - Qorti tal-Appell - 5 ta' Ottubru 2001 ; "Attard vs Tedesco et" - Qorti tal-Appell - 1 ta' Gunja 2007 u "Poll & Spa Supplies Ltd vs Mamo et" (Qorti tal-Appell Inferjuri - 12 ta' Dicembru 2008).

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

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

..... Huwa ritenut illi l-Qorti m'għandhix tiskarta l-konkluzjonijiet tal-esperti teknici maħtura minnha, speċjalment fuq materja purament teknika, b' mod legger jew kapricċjuż. Hekk kif din il-Qorti kelliha opportunita tistqarr, fis-sentenza tagħha tad-29 ta' Jannar 2016, fil-kawża fl-ismijiet B&B Property Development Company Limited v. Kummissarju tal-Artijiet:

Din il-Qorti trid tirribadixxi il-punt illi l-materja ta' natura teknika trid, sa certu punt, tagħti affidament lil-opinjoni ta' persuni mħarrġa fil-materja, u dan sakemm ma jirressqux argumenti u veduti li serjament ipogġu fid-dubju dak li jgħidu n-nies teknici fil-materja.

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

14. Illi għandu jingħad mal-ewwel li, għalikemm din il-Qorti ma tiskartax faċilment il-giudizio dell'arte kif espressa mill-periti tekniċi, dan ma jfissirx li hija jew il-Bord huma marbuta li jadottaw l-konkluzjonijiet peritali fl-isli. Fil-fatt l-Artikolu 59 tal-Kap. 573 li jtratta r-rapport tal-membri, fl-sub-intiz (4) tiegħu jipprova b' mod xieraq li r-rapporti taz-zewġ Periti tal-ista u kull att ieħor rilevanti jew sottomissjonijiet magħmula. Inoltre, huwa prinċipju assoċjat li l-konsiderazzjonijiet u l-opinjonijiet tal-esperti tal-Qorti jikkastitwixxu, skont il-liġi, prova ta' fatt u għandhom jitqiesu bħala tali mill-Qorti. Madankollu, il-Qorti mhix marbuta li taċċetta l-konkluzjonijiet tar-rapport tal-periti kontra l-konvinzjoni tagħha jartikolu 681 tal-Kap. 12 tal-Liġijiet ta' Malta) u għalhekk il-Qorti għandha dritt li tiskartab bħal kull prova oħra. Ladarba l-liġi applikabbli fl-każ in ezami (Kap. 573) tagħti il-Bord tal-Arbitraġġ l-istess setgħat illi għandha l-Prim' Awla tal-Qorti Civili u tqis li l-provvedimenti tal-kodiċi ta' Organizzazzjoni u Proċedura Civili jgħaddu għall-Bord bl-istess mod, il-prinċipji hawn imfissra, japplikaw ukoll għall-każ in ezami.

15. Kwindi, il-fatt li l-Bord hutar esperti tekniċi sabies jassutuh, ma jfissirx illi huwa ma kellux iħares b'lehti kritika lejn l-opinjoni tekniċa sottomessa illi jew li ma kellux jiskarta dik l-opinjoni jekk din ma tkunx waħda sodisfacentement u adegwatement tinvesti l-mertu, jew jekk il-konkluzjoni ma kenitx tirrizzu kif suppost il-materja ta' natura tekniċa. Min-naħa l-oħra, sabies Qorti twarrab perizja tekniċa, hija trid tagħmel dan wara li tkun konvinta li l-konkluzjoni ta' tali relazzjoni ma kenitx giusta u korretta. Din il-konvinzjoni għandha fl-fatt tkun waħda motivata minn gudiżzju ben informat, inkluż mid-fat tekniċu. (Ara fast oħrajn, is-sentenzi ta' din il-Qorti fl-każi fl-isimijiet John Saliba et noc v. Joseph Farrugia deċiża fl-28 ta' Jannar, 2000, u Emanuel Attard v. George Tedesco et. deċiża fl-1 ta' Ġunju, 2007.)

l-Artikolu 79(3) tal-Kap. 573 relattiv għall-istima peritali fast affarijiet oħra jipprova liqwi għall-fatturi li jiddeterminaw il-valutazzjoni, kemm meta jitgħabdu periti mill-Awtorità, kif ukoll meta jitgħabdu mill-Bord tal-Arbitraġġ, fasthom:-

- (a) id-data tal-valutazzjoni;
- (b) id-data li saret riferenza għaliha meta giet valutata l-proprjetà;
- (c) l-istat li jigi kkalkulat li l-proprjetà kienet fl-id-data li saret riferenza għaliha meta giet valutata l-proprjetà;
- (d) l-uzu li kien qed isir mill-proprjetà fl-id-data li saret riferenza għaliha meta giet valutata l-proprjetà, inkluż l-informazzjoni dwar jekk il-proprjetà kenitx fl-istess żmien suġġetta għal drittijiet ta' terzi bħalma huma enfitewsi, uzu, użufritt jew kera;
- (e) l-operazzjonijiet paragonabbli, jekk ikun hemm, li l-proprjetà tkun giet valutata b'riferenza għalihom;

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

20. L-aktar rilevanti f'dan il-kaz huwa l-aħħar element, in kwantu galadarba fil-mument tal-espropju, l-art in kwistjoni kelliha restrizzjoni fuqha riżultanti mill-iskemar, peress li setgħet tintuta biss għall-formazzjoni ta' triq, altru milli jirriżulta li dan huwa fattur determinanti fil-valutazzjoni tal-istess art.

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

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

Għalkemm il-periti semmew in-natura ta' żvilupp li seħh fuq l-art in kwistjoni, din il-Qorti tinsab konvinta li fis-suq liberu, fost il-kriterji li jideterminaw il-prezz, wieħed certament isb dak tal-potenzjal tal-żvilupp li jista' jir fuq l-art. Dana jingħad peress li minkejja li l-żvilupp li seta' jir fuq l-istess art huwa limitat b'dak li jipprova l-figura tal-ippjanar, dan il-kriterju tal-użu jew żvilupp limitat jiffigura proprju f'dak li jipprova l-Artikolu 18(2) tal-Kap. 88, hekk kif citat qabel, kriterju li l-periti Periti certament adottaw. Dan, fil-fehma ta' din il-Qorti, jinsab rifless ukoll fu-rati stipulati mill-periti teknici Periti tal-Bord għall-art in kwistjoni, fejn il-periti Periti għamlu distinzjoni wkoll bejn l-użu tal-art li setgħet tiġi żviluppata fi triq li giet stmata bir-rata ta' €400 għal kull metru kwadru, fl-waqt li dik l-art li setgħet tiġi żviluppata f'Centru Civiku u spazju miftuh giet stmata bir-rata ta' €300 għal kull metru kwadru. Din id-distinzjoni bejn ir-rati certament tirrifletti l-limitazzjoni tal-żvilupp li seta' jir fuq l-art in kwistjoni. Kif gustament rilevat mill-appellati, dan mhux kaz fejn il-kriterji tal-ippjanar inbidlu konsegwenza tal-espropju li seħh, Uda l-policies tal-ippjanar ezistenti għas-sit in kwistjoni gew applikati għat-tip ta' żvilupp limitat li seta' jir fuq l-istess art." (enfasi ta' din il-Qorti)"

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

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

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

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

Danni materjali u morali

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

²³ Riżors 5/2016

²⁴ (475.89 - 684.88) x €30 = €20.85

²⁵ Riżors 29/2000-2

²⁶ Riżors 17/2011

²⁷ (892.31 - 475.89) x €21.05 = €39.48