

Recap

- Interpreting legislation – leg. Is drafted in generic words -> identify elements of each specific article ex: Spoliation Art. 535 of Cap 16 & 85 of Cap. 9
- Interpretation can be flexible vs rigid
- Wrong application of law (appealable) vs wrong Interpretation of law (not appealable)
- Interpretation Act – generic

- Writing – format depends on what one is writing
- Judicial acts – application, sworn application, sworn reply



Legal Research and Interpretation Methodology

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

Lecturer: Dr Elian Scicluna

Date: 22/02/2024



7. Writing – Legal Writing – Legal Correspondence

1. Letters to clients informing of status of case
2. Letter of opinions – mostly done yearly for auditing of account purposes
3. Letters to counterparties – At initial stage pre-proceedings, during proceedings (on a without prejudice basis), post proceedings for collection of fees and expenses, if suit is won with costs

Totals of the fees and expenses of the Malta Bar Association (MBA) for the period 1st January 2021 to 31st December 2021. These results are confidential.

Wizzard 5 -
Mazzetta 5 - 04-Jan-2021

DATA	DETTALJI	AMMONTI	KONVENIJI
		€	€
20-Mar-19	Riserv. Giuridici	174.40	0.00
	Riserv. R. S. S.	4.60	0.00
16-Mar-19	Riservata Giuridici	0.00	112.33
	Riserv. R. S. S.	0.00	0.00
20-Feb-20	Affidaviti - €21.24	46.58	0.00
11-Sep-20	Regolazioni	1.50	0.00
	Affidaviti - Produzione Legale	6.52	0.00
21-Jul-21	DVE Regole Lettere	0.00	0.00
	DVE Ammonti	400.00	400.00
	DVE Ammonti Regal	150.00	150.00
		606.48	672.33
	VIMFORN	16.25	0.00
	TOTAL	€ 943.48	€ 712.33

Deposited Register
Expenses (Costs)
Successor (Tax)

M.B. 2021-2022 (MBA) will be available from December. Registerable fees will be available.

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

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



23rd March 2022

To:
Address:

Dear Colleague,

Re: Estate of the late A
Without Prejudice

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

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

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

I look forward to your reply.

Kind regards,

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

WITHOUT PREJUDICE

Dear Dr. Vella,

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

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

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

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

Thank you for your kind consideration.

Best regards,



7. Writing – Legal Writing – Case Briefs

- Case summary
- Include only most relevant facts of the case that highlight the main issue, identify the applicable law, application of the law to the issue, include court's reasoning and decision
- Check for assenting or dissenting opinions especially when dealing with ECHR judgments
- The summary of the facts is only a small fraction of case briefs

Video with example: https://www.youtube.com/watch?v=wzWq_XJE-w&t=1s



7. Writing – Legal Writing – Case Briefs



INSTITUTION NAZZI TAL-KORTI TAL-BENEFIĠI UMANI
COURT EUROPEENNE DES DROITS DE L'HOMME

Introducción hecha en el COURT'S CASE LAW 2011

May 2021

Țurkey v. Romania (dec.) - 49933/10
Decision (13-4-2021) [Section IV]

Article 5

Article 5-1

Deprivation of liberty

32-day general lockdown ordered by the authorities to combat the COVID-19 pandemic;
Article 5 Inapplicable in substance

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

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

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

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

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



-4-

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

The emergency measure had remained in place for 362 days. It was a general measure imposed on the whole population through legislation enacted by the various authorities in Romania. As a result of the implementation of the measure the applicant had been obliged to stay at home, being allowed to leave only for one of the reasons expressly provided for in the legislation, and with the relevant supporting form.

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

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

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

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

CONCLUSION (Inadmissible) - 49933/10 (Article 5(1) ECHR)

D. Council of Europe/European Court of Human Rights
The Secretary to the Registry does not lead the Court.

Click here for the Court's case law on this issue.



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

- <https://legaldictionary.net/legal-brief/> definition:-
 - *A short and concise statement*
 - *A document that presents a legal argument to a court explaining why that party should prevail over the other*
- Maltese version known as note of submission/ note of observation
- Art. 165 and 166 of Cap. 12:

165. It shall be lawful for the court, on the case being closed, at the request of either of the parties, to grant leave for filing, within a time to be fixed by the court, a written pleading containing a summary of his submissions provided the opposite party shall not show that such leave would cause a delay to his prejudice

166. Where leave as provided in the last preceding article is granted to either of the parties, the opposite party shall be entitled to file in reply another written pleading within a time equal to that which shall have been fixed by the court as aforesaid, to be reckoned from the day of the service of the written pleading for the filing of which the court shall have granted leave.



7. Writing – Legal Writing – Legal Briefs

- Legal brief may be done orally unless there are complicated legal issues/ facts
- May even take 3-4 days if matter is complex
- Brief needs to persuade
- If writing on behalf of plaintiff, quote application, reply, counterclaims and replies and any decrees or interim judgments given
- If writing on behalf of defendant, no need to quote application, reply and decrees unless you need to make reference to them
- Must be concise approx. 3-5 pages of observations/ submissions
- Go through court file, refer to fol. numbers for easier reference
- Target legal issues
- Do not include facts/evidence which does is not relevant
- Research case law
- Refer to the elements of the law
- Conclude by requesting the remedy sought
- Mostly done in Maltese
- Similar process is used for appeals and replies



X1 OFFICIAL SITE VISIT
X19 COURT SITTINGS

BORD LI JIRREGOLA L-KERA



RENT REGULATION BOARD

Taxxa ufficjali tad-drittijiet u spejgri ta' Rikors Nu. 7/13 fl-angliż " Carmel Demanuele vs Carmela Busuttil " deciza fil-Bord li jirregola l-Kera. fl-11 ta' Jannar 2017 fl-atti relattivi u sussegwenti

Midha min Ay i Pt

Risposta li-

Mahbana **11 May 2017**

DATA	DETTALJ	ATTOR	KONVENUT
		€	€
13-Mar-13	Rikors	48.91	0.00
	Koppj @ € 4.00	9.32	0.00
31-May-13	Risposta	0.00	-23.29
	Koppj @ € 4.00	0.00	4.06
11-Jul-14	Nota	0.00	2.33
	Affidavitu - Dett avukat @ € 23.29	0.00	23.29
03-Feb-15	Irganjgħni	0.00	-15.56
	Dett avukat u pl.	0.00	9.32
04-Mar-15	Nota	0.00	0.00
	Affidavitu - Dett avukat @ € 23.29	0.00	46.59
22-Jun-15	Irganjgħni	14.40	0.00
	Dett avukat u pl	9.32	0.00
22-Oct-15	Irganjgħni	14.40	0.00
	Dett avukat u pl	9.32	0.00
12-Aug-16	Nota ta' l-omertazzjonijiet	2.33	0.00
	Dett avukat u pl	196.36	0.00
03-Oct-16	Nota ta' l-omertazzjonijiet	0.00	2.33
	Dett avukat u pl	0.00	196.36
14-Jan-17	Dett registrazzjoni sarfenzu	0.00	0.00
	Dett avukat	11.65	11.65
	Dett prokuratur legali	3.88	3.88
		0.00	0.00
		€ 309.88	€ 336.19
	RIMBORS		
	TOTAL	€ 309.88	€ 336.19

Itens

Melissa Galea
Diputata Registratur

N.B. Din il-taxxa trid tkun iffirmata minn Diputata Registratur b'isem ilha ufficjali.

7. Writing – Legal Writing – Legal Briefs



7. Writing – Legal Writing – Legal Briefs

...Anni il-missierijiet tagħna, "Widness Foundation" ta' pjaner...
...għaliq ta' pjaner ta' pjaner...
...għaliq ta' pjaner ta' pjaner...

Dear Sir, I am writing to you in relation to the...
...għaliq ta' pjaner ta' pjaner...

The...
...għaliq ta' pjaner ta' pjaner...

If you wish to...
...għaliq ta' pjaner ta' pjaner...

Yours faithfully,
...għaliq ta' pjaner ta' pjaner...

Reference was made to the...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...

Reference was made to the...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...

It is noted that...
...għaliq ta' pjaner ta' pjaner...



7. Writing – Legal Writing – Legal Briefs



7. Writing – Legal Writing – Legal Briefs

Health Care Professions Appeals Committee

In Appeal Brief To:
Mr X
 Applicant/Respondent to the
 Professional Council (2017)
 (Malta 2017)

Submitted to the Profession (as well as being submitted later to Mr X)

The Professional Council (hereinafter referred to as "the Council", respectively, unless that in the S.O. of 2017 it was amended, via an amended S.O. of 2017) of the said profession submitted to Mr X (hereinafter referred to as "the Applicant") to the Health Care Professions Appeals Committee (hereinafter referred to as "the Appeals Committee") to see what the decision given by the Appeals Committee during the hearing held on the 19th of March 2017, the Council would like to submit the following appeals in brief to the Applicant's submission.

A. Summary of Facts

The Applicant is a qualified medical field as applicant with the Council for registration and appointment as a general practitioner in Malta. This licence was issued following approved training within the profession and as an acknowledgment of one's ability to work as a practitioner within the community.

Upon reviewing the application, the Council refused to issue the licence as that would limit the Applicant's qualifications, offers from the Maltese jurisdiction and will the minimum training requirements established under the EU directives only respect to European countries and practice.¹

The Council also suggested that the Applicant is an "incomplete" post-graduate training programme, as opposed to the one offered in the Maltese jurisdiction. Maltese courses offered by the University of Malta.

The Council has already advised the Applicant that following the successful completion of said course and relevant examinations, the Council would promptly consider the Applicant's application.

1. See Council's letter of the 27th January 2017.

At this stage, the Council advised that the Discipline of Pharmacy course in Malta is a 4-year long and it includes practice of the profession as a response that students do an apprenticeship in a local pharmacy and ethical training offered in the exercise of the pharmaceutical profession. The Applicant is Bachelor's course in Malta, which is an apprenticeship in the jurisdiction in the local context, is 4 years long. The Maltese course and subsequent PhD studies in Pharmacy are given satisfaction in both theoretical and practical learning, but do not include knowledge and skills in the area of Pharmacy practice in the Order of Pharmacy offered by the University of Malta.

However, the Applicant's academic qualifications, while suitable, do not include training within the Maltese Community. Furthermore, most of the Applicant's practical experience has been gained in the Pharmaceutical Industry, that is the manufacture of medicinal, and not being in a pharmacy within the community.

It must be further noted that despite an extensive experience of the course content for the various academic qualifications achieved by the Applicant (as well as the Maltese jurisdiction), certain aspects included training in pharmaceutical ethics.

B. Legal provisions regarding the Council's decision

The provisions regarding a practitioner's licence are set out in Article 15 and 17 of the Health Care Professions Act (Chapter 404 of the Laws of Malta).

According to Article 17(1)(a), in the case of an applicant coming from a third country, that is a non-EU Member State, "the Professional Council may, in regard of such qualifications, require the applicant to verify and pass a professional and legally prescribed test (or tests) that require that the applicant undertake further training in pharmacy, such as a postgraduate programme approved by the Council in the said Council".

Furthermore, Article 17(1)(b) of the Health Care Professions Act (Chapter 404 of the Laws of Malta) states that the Council may require the Applicant to verify and pass a professional and legally prescribed test (or tests) that require that the applicant undertake further training in pharmacy, such as a postgraduate programme approved by the Council in the said Council.

According to Article 44.2 of the European Directive of the Council qualifications in a pharmaceutical field, upon entering legal field the law of jurisdiction. The provisions to be followed is then included in Annex 1, 6.1 of the Directive and possible progression in "law ethics and social responsibility professional order".

1. See Council's letter to the Council of 2017, as well as the Council's decision on the 27th January 2017.

According to Article 44.2 of the Directive "having the pharmaceutical post-graduate programme that the general professional experience... appropriate knowledge in the field and the appropriate experience... considered was the ground of practice".

However, the Council is duty bound to determine that the applicant is not well prepared in the technical aspects of the exercise of the profession, for that the said practical and ethical performance of the profession.

C. Application of the law to the Applicant's case

In its consideration of the Applicant's application, the Council used as reference at per Article 17(1)(a) of Chapter 404 of the Laws of Malta.

Given that the Applicant is not an EU citizen and has Bachelor's education course in a 4-year long and not 5 years as required by Article 44.2 of the Directive, the Council would not be satisfied 15-month training programme to be submitted.

Such programme would include training within a Maltese pharmacy, which would help the Applicant to familiarise himself with the training of a pharmacy in Malta and the approved system. However, such as the Pharmacy of Two Classes Maltese (PTTC) is founded part of the training of the pharmaceutical profession in the Maltese community.

However, the additional training had occurred in getting the relevant exams, could provide no assurance to the Council that the Applicant has acquired adequate knowledge of the legal and ethical requirements of exercising the pharmaceutical profession in Malta. Consequently, the Council is not satisfied that the Applicant is able to practice in pharmacy, such as a postgraduate programme approved by the Council in the said Council.

D. Concluding remarks

The Council respectfully submits that in the case in consideration by the Applicant on the 19th January 2017, the Applicant has already passed and therefore it is to be agreed that it is not such as a condition to the Law that the Council not agree the Council is issuing the highest standard of technical and ethical education within the pharmaceutical profession.

Dr X
 General Counsel for the Professional Council

Mr Y
 Applicant

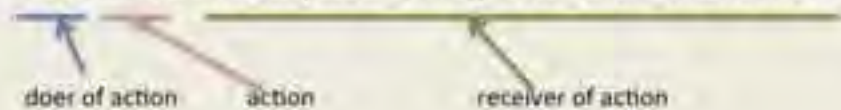


7. Writing – Legal Writing Tips

- Use active voice unless you want to emphasise – active voice: the subject of sentence performs the action.
- Application will be targeted toward judge and opposing legal counsel unless it is a judicial letter
- Make objective not personal arguments
- Be direct and straight to the point
- Request in application must be clear
- Try to stick to short sentence
- Use citations
- If drafting note of submission/ observation/ appeal provide the solution/ answer to the problem
- If judicial letter use simpler language since it is directed to the opposing party who might not know legal terms
- In notes of observations/ submissions/ appeal applications if plaintiff, quote application and reply. If replying as defendant, no need to quote application and reply
- Make reference to case law if any and authors
- Watch for deadlines and particular articles of the law
- Video – 10 Legal Writing Tips with examples: <https://www.youtube.com/watch?v=FsJuGSL9vvg&t=99s>

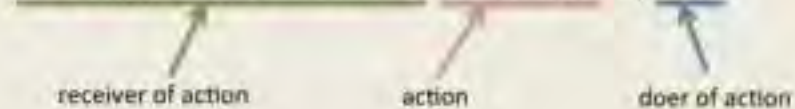
Active Voice

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



Passive Voice

An essay about Alzheimer's was written by Alex.



7. Writing – Legal Writing Tips

Ross Guberman “Point Made – How to Write Like the Nation’s Top Advocates” tips:-

1. Provide the context of the case – explain who are the parties, what question is the case trying to answer, when and where the event happened and why should you win
2. Structure the argument section
3. Given the court a reason to want to find for you – include judicial fears: i. The fear of applying the wrong law, ii. the fear of creating new duties, rules or defenses and iii. The fear of reaching an unfair result or causing harm e.g. Include the possibility of anti-constitutionality of a judgment if awarded in a particular way
4. Pre-empt your opponent’s arguments
5. Use headings to attract attention
6. Acknowledge bad facts but put them in context and counter them by other arguments
7. Show why your client is right and if your client is in the wrong humanize the situation
8. Use analogies
9. Answer questions which the court might raise when writing the judgment
10. Link your case or party with caselaw you made reference to i.e. Applicability
11. Show that opponent’s caselaw is less applicable or inapplicable to caselaw cited by yourself
12. Search opponent’s caselaw
13. Use figures of speech
14. Use rhetorical questions to impugn opponent’s arguments
15. Use tables and charts to add interest
16. End the argument with a provocative quotation or thought
17. Wrap up by recasting your main points



Referencing

- Referencing allows you to acknowledge the contribution of other writers and researchers in your work.
 - Used to avoid plagiarism if used correctly
 - Various referencing styles – e.g. OSCOLA (law), Harvard (economics), APA (psychology), MLA (language and literature)
 - OSCOLA - Oxford University Standard for Citation of Legal Authorities - <https://www.law.ox.ac.uk/OSCOLA>
 - OSCOLA referencing system is used for legal referencing in Malta incl. legislation, case law, books, journals, websites and other sources.
 - Complete guide accessible on https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf
- Updates and FAQs available on <https://www.law.ox.ac.uk/oscola-faqs>

- Video:

[University Law Teacher Explains OSCOLA Referencing and Bibliographies - YouTube](#)

- Generators
- [OSCOLA Referencing Generator | Reference Tool \(lawteacher.net\)](#)
- [Free OSCOLA Referencing Generator by Cite This For Me](#)



Referencing

- OSCOLA distinguishes between primary and secondary sources
- Primary sources are legal sources, such as cases and legislative documents. Secondary sources include books, journal articles, and websites.
- In 2022 the GHSL (Ghaqda Studenti tal-Ligi) adapted the OSCOLA guideline to the Maltese Context



Referencing - Legislation

- Example OSCOLA References for EU Legislation

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/0

- Example OSCOLA References for Common Law Legislation:-
- *Housing Act 2004 (Commencement No. 6)(England) Order 2006, SI 2006/3191, art 2(a)*
- *Reletting of Urban Property (Regulation) Ordinance, 1931*
- *Reletting of Urban Property (Regulation) Ordinance, 1931, s 4A (can also use A for article)*
- “s” in “s 4A” is short for section. If it was more than one section, therefore sections, abbreviation would be “ss”
- Other abbreviations: subsection/sub-sections – sub-s/sub-ss, schedule/s –sch/schs, regulation/ regulations – reg/regs, article/articles – art/arts



Referencing – Caselaw

PARTY NAMES, YEAR, VOLUME NUMBER, REPORT SERIES, FIRST PAGE OF REPORT, INITIALS OF THE COURT

Corr v IBC Vehicles Ltd [2008] UKHL 13, [2008] 1 AC 884

- The example above shows that this is a case involving Corr and IBC Vehicles Ltd. It was the thirteenth judgement issued by the House of Lords (UKHL) in 2008. It also indicates that a report of the judgement can be found in volume 1 of the series of the Law Reports called the Appeal Cases, beginning at page 884.

Joseph Borg vs Mary Borg [2022] (P.A)

- Order may change e.g. Initials of court are given after the year



Referencing – Maltese Caselaw

² Ara Camilleri v Agius P A.20/10/1882.
³ Ara Vol.LXXXVIII.280.
⁴ Ara Vol.XLII.1133.
⁵ Ara Vol.X.556;Vol.LXXXIII.1176;Vol.LXXXVIII.28; Vol.LXXXIII.149.
⁶ Ara Vol.XXXII.1642; Vol.LXXXIII.179.

No standard in Maltese judgments

¹ 108/2018JVC decided 23/01/2020 appealed Judgement by the Constitutional Court is adjourned for the 6th of October, 2020.
² 283336/02: 26/2/2009 (published in French)

³ Fol. 63.
⁴ Fol. 65 – 67

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

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

¹ Q.A.(Sup.), 14.12.2018.

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

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

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

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



Referencing - Books

- AUTHOR, TITLE, ADDITIONAL INFORMATION, EDITION, PUBLISHER YEAR

Gareth Jones, Goff and Jones: The Law of Restitution (1st supp, 7th edn, Sweet & Maxwell 2009)

Chapters in Books with multiple editors - AUTHOR, TITLE, IN EDITOR (ED), BOOK, ADDITIONAL INFORMATION, PUBLISHER, YEAR

Justine Pila, 'The Value of Authorship in the Digital Environment' in William H Dutton and Paul W Jeffreys (eds), World Wide Research: Reshaping the Sciences and Humanities in the Century of Information (MIT Press 2010)



Referencing – Journal Articles

- Start with the article author (first name/initial then surname,), then the article title in single quotes.
- After the title, give the publication information in the following order:
 1. year of publication, in square brackets if it identifies the volume, in round brackets if there is a separate volume number;
 2. the volume number if there is one (include an issue number only if the page numbers begin again for each issue within a volume, in which case put the issue number in brackets immediately after the volume number);
 3. the name of the journal in roman, in full or abbreviated form, with no full stops; and
 4. the first page of the article.
- Articles from journals without independently numbered volumes should follow the format: AUTHOR, TITLE, YEAR, JOURNAL NAME OR ABBREVIATION, FIRST PAGE OF ARTICLE.

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440.

- Articles from journals which do have independently numbered volumes should follow the format: AUTHOR, TITLE, YEAR, VOLUME, JOURNAL NAME OR ABBREVIATION, FIRST PAGE OF ARTICLE.

Alison L Young, 'In Defence of Due Deference' (2009) 72 MLR 554.

- Put a comma after the first page of the article if there is a pinpoint (particular reference to specific paragraph or page)

JAG Griffith, 'The Common Law and the Political Constitution' (2001) 117 LQR 42, 64.



Referencing - Websites

Follow the general principles for citing secondary source:-

1. Give the author's name exactly as it appears in the publication.
2. If no individual author is identified, but an organisation or institution claims editorial responsibility for the work, then cite it as the author.
3. If appropriate to cite an anonymous source (eg blog) start citation with the title.
4. All titles should be within single quotation marks and in roman. Capitalize the first letter in all major words in a title.

- The most important features of a citation to a website are the web address in <angled brackets> and the date on which you accessed it.

Sarah Cole, 'Virtual Friend Fires Employee' (Naked Law, 1 May 2009) <<http://www.nakedlaw.com/2009/05/index.html>> accessed 19 November 2009

- If you source a publication online which is also available in hard copy, cite the hard copy version. There is no need to cite an electronic source for such a publication

- For online journals - AUTHOR, TITLE, YEAR, VOLUME/ISSUE, JOURNAL NAME OR ABBREVIATION, <WEB ADDRESS>,DATE ACCESSED.

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT <<http://ejlt.org/article/view/17>> accessed 27 July 2010



Referencing – General Principles

Quotations

1. Quotations that are three lines or shorter should be incorporated in the text. Use 'single quotation marks', but if you need to submit your work to Turnitin, use "double quotation marks".
2. Quotations longer than three lines should be an indented paragraph. Do not include quotation marks.

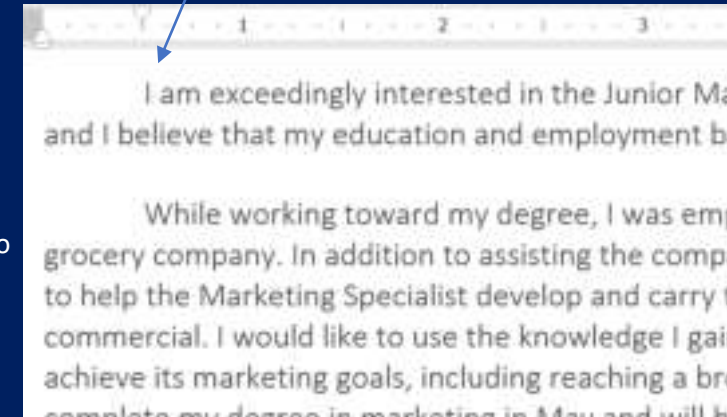
Footnotes

1. Put the footnote marker at the end of a sentence, unless for the sake of clarity it is necessary to put it directly after the word or phrase to which it relates
2. The superscript number (footnote number) should be after the full stop or comma

Authors' names

1. Give the author's name exactly as it appears in the publication, but omit postnominals such as QC
2. If there are more than three authors, give the name of the first author followed by 'and others'
3. If no individual author is identified, but an organisation or institution claims editorial responsibility for the work, then cite it as the author
4. If no person, organisation or institution claims responsibility for the work, begin the citation with the title
5. In footnotes, the author's first name or initial(s) precede their surname
6. In bibliographies, the surname comes first, then the initial(s), followed by a comma

Indented para.



Referencing – General Principles

Titles

1. *Italicise* titles of books and similar publications, including all publications with ISBNs
2. All other titles should be within ‘single quotation’ marks and not in *italics*
3. Capitalize the first letter in all major words in a title
4. Minor words, such as ‘for’, ‘and’, ‘or’ and ‘the’, do not take a capital unless they begin the title or subtitle



Referencing – General Principles

Dates

1. When a full date is required, the format should be '1 January 2016'
2. There is no need for 'st' or 'th' after the day
3. If something spans more than one year in the same century, the format is '1972-84'

Subsequent Citations

1. If a citation is the same as the one immediately before it, you can put 'ibid' in the footnote
2. If the citation is the same as another, you can use a shortened form, followed by a reference to the footnote e.g. Stevens (n 1) 110.



OSCOLA Quick Reference Guide

Primary Sources

Do not use full stops in abbreviations. Separate citations with a semi-colon.

Cases

Give the party names, followed by the neutral citation, followed by the Law Reports citation (eg AC, Ch, QB). If there is no neutral citation, give the Law Reports citation, followed by the court in brackets. If the case is not reported in the Law Reports, cite the All ER or the WLR, or falling that a specialist report.

Gov v ZTC Vehicle Ltd [2008] UKHL 13, [2008] 1 AC 884
R (Bibiya) v Bristol Board [2004] EWCA Civ 1051, [2005] QB 410
Page v Smith [1990] AC 152 (HL)

When pinpointing, give paragraph numbers in square brackets at the end of the citation. If the judgment has no paragraph numbers, provide the page number pinpoint after the court.

Gallagher v Gray [2001] EWCA Civ 117, [2001] 1 WLR 2112 [42], [45]
Bain v Ziller [2006] EWHC 407 (QB), [2006] 1 All ER 336 (1), (57)
R v Lamb County Court, ex p Moss [1990] QB 523 (QB) 530–31

Citing a particular judge

Arson v The Civil Authority [2004] EWCA Civ 892, [2005] Ew. L.R. 4 (77) (Laws LJ)

Statutes and statutory instruments

Act of Supremacy 1534
 Human Rights Act 1998, s 15(1)(b)
 Periodics for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166

EU legislation and cases

Consolidated Version of the Treaty of European Union (2008) OJ C31/23
 Council Regulation (EC) 139/2004 on the control of concentrations between undertakings (EC Merger Regulation) [2004] OJ L31, art 5
 Case C-75/02 *Commission v Greece* [2005] ECR I-0779, paras 47–48

European Court of Human Rights

Ongun v UK [2009] 51 EHRR 10
Ormos v UK [2010] 40 EHRR 1996, VIJ 3154
Abalg v Hungary App no 4798/04 (ECtHR, 20 July 2004)
Simpson v UK [1993] 14 EH 100

Secondary Sources

Books

Give the author's name in the same form as in the publication, except in bibliographies, where you should give only the surname, followed by the initials. Give relevant information about edition, translator and so forth before the publisher, and give page numbers at the end of the citation, after the brackets.

Thomas Hobbes, *Leviathan* (first published 1651; Penguin 1985) 268
 Gareth Jones, Goff and Jones: *The Law of Tortiation* (14th edn, 7th edn, Sweet & Maxwell 2000)
 K Zweigert and Kötz, *An Introduction to Comparative Law* (Tübingen, 3rd edn, CUP 1998)

Contributions to edited books

Franco Riotti, 'The Evolution of the Species in Andrew Burtova and Alan Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (OUP 2006)

Encyclopedias

Hobbes's Law (5th edn, 2010) vol 57, para 57

Journal articles

Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440

When pinpointing, put a comma between the first page of the article and the page pinpoint.

IAG Geffink, 'The Common Law and the Political Constitution' [2008] 117 LJQR 42, 44

Online journals

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) ELLJ > <https://ellj.org/articles/view/17> > accessed 27 July 2010

Command papers and Law Commission reports

Department for International Development, *Eliminating World Poverty: Building our Common Future* (White Paper, Cm 7686, 2009) ch 5
 Law Commission, *Repealing Bribery* (Law Com No 313, 2000) paras 3.12–3.17

Websites and blogs

Stash Cole, 'Virtual Friend Fires Employee' (Naked Law, 1 May 2009) > www.nakedlaw.com/2009/05/index.html > accessed 19 November 2009

Newspaper articles

Jane Croft, 'Supreme Court Warns on Quality' (Financial Times (London), 1 July 2010) >



Bibliography

Bibliography should be at the end of the work. It lists all sources used in the work. Each source only needs to be listed once, even if you have referred to it multiple times in your work. Do not include background reading in your bibliography. The bibliography should appear after the text and after appendices. The bibliography should list the sources in alphabetical order.

Video: OSCOLA: Creating a Bibliography https://www.youtube.com/watch?v=SZJuw0_wCNk

Bibliographies take the same form as all other citations in OSCOLA, with 3 exceptions:

1. The author's surname should precede his/her initial(s), with no comma separating them, but a comma after the final initial;
2. Only initials should be used, and not forenames;
3. The titles of unattributed works should be preceded by a double em-dash. Works should be arranged in alphabetical order of author surname, with unattributed works being listed at the beginning of the bibliography in alphabetical order of first major word of the title.

Jones G, *Goff and Jones: The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009)

Knapton S, 'Bad Owners to Blame for Aggressive Animals not their Breed' *The Daily Telegraph* (London, 3 Dec 2013)

<<https://www.telegraph.co.uk/lifestyle/pets/10491808/Bad-dog-owners-to-blame-for-aggressive-animals-not-their-breed.htm>> accessed 16 Nov 2020)

If your piece of work is long, you can divide the bibliography into three sections: Cases, Legislation, and Bibliography

Unlike in footnotes, the author's surname should be listed first, followed by the author's initials. Unlike in the footnotes, you do not list the author's first names, just initials. The secondary material should also be listed alphabetically. If citing more than one work by the same author, list the author's works in chronological order (oldest first), and in alphabetical order of the first major word of the title within a single year.

For cases:-

1. Do not italicise case names.
2. List cases alphabetically in order of the first significant word. If the parties involved are only identified by initials the case should be listed under the initial.

For Legislation - This should include every statute listed in your piece of work (unless your lecturer has told you differently). Legislation should be listed in alphabetical order. Statutory Instruments should be listed separately after Statutes.

- A longer legal work, such as a book or a thesis, generally has a list of abbreviations and tables of all the cases, legislation and other primary legal sources cited in the work in the preliminary pages. The list of abbreviations should come before the tables, and the order of the tables should generally be: table of cases; table of legislation; other tables.





Plagiarism

- The University Assessment Regulations, 2009 (University of Malta) define plagiarism as “the unacknowledged use, as one's own, of work of another person, whether or not such work has been published, and as may be further elaborated in Faculty or University guidelines”.
- Plagiarism can be major or minor
- Major plagiarism is meant to cover what is generally understood to be prototypical plagiarism (significant unacknowledged borrowing), whereas minor plagiarism covers offences that could be construed as plagiarism but may be the result of academic incompetence, thus bringing into question the intent to deceive.
- Minor plagiarism also includes instances of unacknowledged borrowing whose contribution to a piece of writing is considered to be of little significance, with the proviso that repeated instances may escalate into a major offence.



Major Plagiarism cases and examples

1. Significant unacknowledged copying of text, diagrams, tables, images or other material from any published or unpublished material, lecture slides or handouts, whether such material is in manuscript, print or electronic form.
2. Acquisition of work, designs, or concepts (including buying or commissioning work from third parties/professional agencies) prepared by one or more others and presenting the work in whole or in part as the student's own work.
3. Significant amounts of patchwriting (i.e. changing only some of the words, or the order of the words, or redrawing diagrams, etc.) with or without citation. Patchwriting should not be confused with paraphrasing, which is the appropriate (and acknowledged) rewriting of ideas present in a source text in the student's own words and should be actively encouraged as a feature reflecting maturity in academic writing.



Major Plagiarism cases and examples

- Examples:
 - Copying text or a diagram from another source, failing to enclose the copied text within quotation marks, or taking somebody else's ideas, and failing to correctly acknowledge the source of the text, diagram, or ideas.
 - Purchasing a paper or report from a 'paper mill'; paying others to prepare an assignment but then submitting the work under your own name.
 - Copying text but replacing some words or changing word order, whether or not the source is correctly acknowledged; re-drawing diagrams and failing to acknowledge the source.



Minor Plagiarism

Minor offences of plagiarism include:

1. Individual in-line citations lacking corresponding entries in the references section, or failure to compile a references section.
2. Demarcated text without in-line citation or instances of incomplete or inconsistent in-line citation.
3. Incorrectly written entries in a reference list, when this results in the reader's inability to create a correspondence between the entries in the reference list and in-line citations.
4. Inconsistent citation style, when this results in the reader's inability to identify sources.
5. Unacknowledged borrowing that does not contribute significantly to the text in question

Minor plagiarism usually involves cases where the student has used his/her own words by correctly paraphrasing or delimiting words that are others' (e.g., by enclosing them inside quotation marks), but where some references and citations are incomplete or inconsistent. As incomplete, inconsistent, or incorrect referencing means that an examiner may be unable to refer to the sources where the claims you make are substantiated, this constitutes minor plagiarism (at best), and academic fraud, in which claims are simply invented by the student and the reference to the source is deliberately obfuscated (at worst).



University Dean's article withdrawn over plagiarism claim

Andrew Azzopardi denies 'any wilful misdoing'

News | University

3 December 2023 | Read (also Deleted) (2/04)

3 min read



Andrew Azzopardi (left) and Savinor Formosa are colleagues but have clashed over the issue of Malta's prison system.

An article co-authored by the university's Dean of the Faculty for Social Wellbeing Andrew Azzopardi has been removed from a journal on the basis of plagiarism.

Savinor Formosa, associate professor in the Department of Criminology, within the same faculty, who claims his papers have been plagiarised, said in a private Facebook group post that it was a "sad day for Maltese scholarship".

Formosa said he had asked Azzopardi to resign from his post as Dean.

While acknowledging that the work failed to meet academic standards, Azzopardi rejected any allegations that this was the result of any wilful misdoing and hoped that his colleague's criticism was not an attempt to silence his activism.

Azzopardi and Formosa have previously clashed on [the prisons issue](#), with the dean repeatedly calling for serious reform in the wake of a number of suicides.

Formosa described as "utterly condemnable" the fact that the authors of the article, Risk and Protective Factors in Violent Youth Crime, include Azzopardi, who is not only an academic but also the Dean of the Faculty of Social Wellbeing.

Research Support Officer Andrew Camilleri was the first author of the report and Azzopardi was the second.

"That a student plagiarises work is worrying, but that an academic and an RSO severely plagiarise colleagues' hard-sought publications is unforgivable at this alma mater," Formosa charged.

The article was published in the faculty's *Studies in Social Wellbeing* journal in September, when the editorial board was notified of the complaint and was retracted on Wednesday.

In another post, the editorial board, in agreement with the authors, said it has removed the article from the first issue of the academic publication.

Editor in chief, Prof. Maureen Cole, declined to comment further and confirm why the article was removed, though it is understood that it did not meet the journal's required standards.

She also refrained from answering whether the editorial board's role was to check for plagiarism, with software tools available to do so and to confirm whether it was rare that academic papers were retracted from journals.

'Not of the standard befitting academia'

Sources said a part of the article in question had plagiarised papers, written jointly and uniquely, by Formosa and Prof. Janet Formosa Pace from the Department of Youth within the same faculty.





ACADEMICS AT UM



Saviour Formosa shared a post.

39m · 🌐

Truly a sad day for Maltese Scholarship. That a student plagiarises work is worrying, that an academic and an RSO severely plagiarise colleagues' hard-sought publications is unheard of in this Alma Mater.

That the authors include the Dean of Social Wellbeing is utterly condemnable.

The Journal "Studies in Social Wellbeing" retracted the offending paper.

<https://www.facebook.com/104180821136148/posts/486636542890572/>

I have asked Prof Andrew Azzopardi as Dean of Faculty for Social Wellbeing - University of Malta to resign.

We have much to strive for.



Studies in Social Wellbeing

30 November at 18:58 · 🌐

The Editorial Board, in agreement with the authors, has removed the article "Risk and Protective Factors in Violent Youth Crime" from the first issue of Studies in Social Wellbeing.

Saviour Formosa called for Andrew Azzopardi's resignation in a Facebook group for University academics.

Other sources, however, said it was more a case of "sloppy editing" and "poor paraphrasing" rather than plagiarism.

When contacted, Azzopardi acknowledged the "mistake", saying the work presented to the journal was "not of the standard befitting academia".

"Consequently, the main author and I have worked hand-in-hand with the editorial board of the journal and went above and beyond what was requested from us as authors and decided to retract the article in question of our own accord."

While agreeing that the paper could have benefitted from further review, he rejected any allegations that this was the product of any wilful misdoing, as the editorial board itself noted. "If this is an attempt at silencing me I want to assure everyone that I will keep responding with vigour to the current social issues, whether it's about prisons, activism or other social issues I believe need to be represented in our society."

University Rector 'establishing facts'

The University of Malta's rector Alfred Vella said he was alerted to the matter on Wednesday and was "in the process of establishing the facts before coming to any decision".

According to the University's own guidelines for students, plagiarism is defined as "the unacknowledged use, in one's own, of work of another person, whether or not such work has been published".

However, it also accounts for "major" and "minor" instances of plagiarism: the former covers significant unacknowledged borrowing whereas the latter denotes instances of unacknowledged borrowing that is considered to be of little significance.

Minor instances are treated as "academic incompetence", which generally occur in the first year of undergraduate studies.

Independent journalism costs money. Support Times of Malta for the price of a coffee.

Fiona Galea Debono

First Magazine writer



Tips to avoid plagiarism

- Keep track of sources immediately as you find them
- Cite and reference sources as you go along
- Use proper citations
- Quote (“”) or paraphrase (express meaning using different words). Quote sparingly. Quotes are appropriate:-
 - You’re using an exact definition, introduced by the original author
 - It is impossible for you to rephrase the original text without losing its meaning
 - You’re analyzing the use of language in the original text
 - You want to maintain the authority and style of the author’s words
- Credit the original author
- If need be inform the reader where the original claims, and evidence supporting them, are made
- Use a plagiarism tracker



Collusion

- Collusion occurs when two or more students collaborate to produce work, where such collaboration is not permitted. Examples:
 1. In supervised examinations, it is expected that students work individually, and no sharing of ideas or material is allowed; only reference to permitted resources is allowed
 2. In home assignments, unless otherwise specified, it is expected that students work individually, and no sharing of ideas or material is allowed; however, reference to publicly available information is permissible (with appropriate citation)
 3. If a home assignment is an individual assignment, students are permitted to communicate orally such that the problem assigned is understood - however, students are not permitted to share material
 4. If a home assignment is specifically group-work, it is expected that students take individual responsibility for the individually submitted contribution, but collective responsibility for the aspects of the submitted work that required a joint effort.

Examples: borrowing of assignment, sharing of work and incorporating them in your work, sharing solutions to problems,



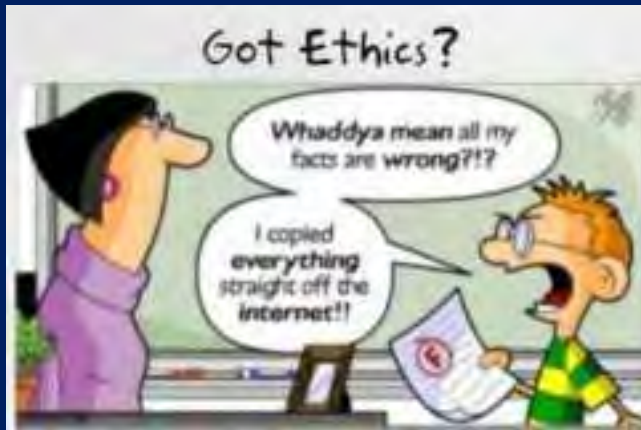
Ethics – Research Ethics & Professional Ethics

- Research Ethics - There are cases where unethical means are used to produce a report/ paper since it is easy and quick e.g. Of unethical means – copying someone's idea and claiming it as yours
- There are no strict rules to be observed in research
- A set of principles developed over time

Video on research ethics: What is research ethics?
<https://www.youtube.com/watch?v=VcbPqhwJzcg>



Research Ethics



- Ethical principles stress the need to:-
 1. Do good (a.k.a beneficence) - Researchers should have the welfare of the research participant as a goal
 2. Do no harm others - an obligation not to inflict harm on others

In practice, these 2 principles mean that as a researcher, you need to:

- (a) obtain informed consent from potential research participants (explain what is the research about, why are they taking part in the research, opt for volunteers if possible)
- (b) minimise the risk of harm to participants (incl. psychological distress, financial status and invasion of privacy). Minimise risk by obtaining written consent forms, protect anonymity by removing names, surnames and other details
- (c) protect their anonymity and confidentiality (do not include unnecessary data, seek permission for divulging sensitive data)
- (d) avoid using deceptive practices (e.g. Identity or purpose of researcher are not given;
- (e) give participants the right to withdraw from your research.
- (f) Obtain consent from research institutes/ authors
- (g) Avoid plagiarism

Research Ethics

Ethical issue	Definition
Voluntary participation	Your participants are free to opt in or out of the study at any point in time.
Informed consent	Participants know the purpose, benefits, risks, and funding behind the study before they agree or decline to join.
Anonymity	You don't know the identities of the participants. Personally identifiable data is not collected.
Confidentiality	You know who the participants are but you keep that information hidden from everyone else. You anonymize personally identifiable data so that it can't be linked to other data by anyone else.
Potential for harm	Physical, social, psychological and all other types of harm are kept to an absolute minimum.
Results communication	You ensure your work is free of plagiarism or research misconduct, and you accurately represent your results.



Code of Ethics - Notaries

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



Notary is deemed to be an independent professional

SUBSIDIARY LEGISLATION 05.09

NOTARIES' CODE OF ETHICS REGULATIONS

10th May 2019

[LEGAL NOTICE 13/2019]

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

(2) The Code of Ethics applicable to Notaries for the purposes of the Notaries' Profession and Notarial Activities Act shall be taken set out in the Schedule.

SCHEDULE

Code of Ethics for the Notarial Profession

Arrangement of the Code

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

Title 1. Of Conduct and Diligence

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

- 1.9 Every notary is obliged to have an insurance policy according to law and to provide the Notarial Council with a copy of any report or official documentation regarding his insurance policy if required to do so by the Notarial Council without delay.
- 1.9.1 The Notary is obliged to keep his office in an adequate and convenient manner and that it can continue to provide an uninterrupted service to the public without prejudice to Article 11(3) Notarial Profession and Notarial Archives Act.
- 1.9.2 Reviewing of acts shall be done in an adequate manner by the receiving officer and every notary is bound to help the receiving officer in a manner that does not unnecessarily hinder the receiving officer's work.

Title 2: Of Independence and Impartiality

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

Title 3. Of Professional Relationships.

§ 3. Relationship with colleagues.

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

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

1.3 Relationship with Public Authorities

1.3.1 In his relationship with public authorities and institutions, the notary must perform his duties in a professional manner in a way which attracts a high regard to the notarial profession.

1.3.2 A notary shall not seek, in any manner, the employment or collaboration of civil servants against payment or compensation of any kind.

1.3.3 In case of dispute, a notary shall not take individual action against public authorities and institutions without previously consulting with the Notarial Council.

1.4 Relationship with clients

1.4.1 In the performance of his duties towards his clients, the notary shall act diligently and professionally. He shall display reasonable prudence towards his clients and maintain efficiency throughout the whole notary-client relationship, in particular keeping the clients informed and updated throughout the whole notary-client relationship.

1.4.2 The advice a notary should give to his client must be disinterested, frank and honest. A notary must inform and advise all parties, equipped with the applicable legal provisions and while ascertaining that the will of the parties is reflected in the notarial deed. He must ensure the legitimacy of the notarial deed, and must provide the parties with impartial and correct legal advice to assist them in taking the right decisions.

1.4.3 A notary should give all the necessary information required by the client and assist the client in taking a fully informed decision.

1.4.4 A notary should remain neutral to his client whenever it is so requested.

1.4.5 A notary shall always act impartially and shall perform his functions in the common interest of all parties concerned. He shall refrain from offering his services, especially in situations where his impartiality is suspect, or cases where a conflict of interest exists or could arise. There shall be deemed to be a conflict of interest in all situations where a notary is inclined to favour one of the parties to the detriment of the other parties and his liability to both parties may be adversely affected.

1.4.6 A notary shall not pay or receive any benefit from either of the parties or from any third parties (such as estate agents and notaries), in connection with the practice of his professional duties, such payments give rise to a conflict of interest and render the notary unimpaired in the performance of his duties.

1.4.7 Being a public officer and not merely an independent professional, a notary may not choose to act on behalf of a client except in cases where he has a valid cause, such as loss of confidence between the notary and the client, conflict of interest or a situation which renders his professional independence

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

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

Title 4: Of Unfair Competition

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

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

Title 5: Of Professional Secrecy and Confidentiality

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

- 1.7 No confidential information can be used by a Member with a view of obtaining a direct or indirect benefit for himself or herself or for another person even if this does not result in direct prejudice to the interests of his or her client.
 - 1.8 Any person employed by a Member or subcontracted by a Member in a position being a normal position, who becomes aware of any confidential information in accordance with article 3(1) of the Professional Society Act and Data Protection Act, is also bound by the duty of professional secrecy and confidentiality as herein defined and the Member has to ensure that all his employees/subcontractors/professionals are aware of this.
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Code of Ethics – Lawyers

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

The purpose of this Code is to ensure that advocates do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such manner as could seriously affect the trust conferred on them.

Regulates:-

1. The conduct of advocates
2. Relationship with clients – obtaining of instructions, taking of instructions, duties owed to clients during a brief
3. Professional Fees
4. Conflict of Interest
5. Confidentiality – lawyers are bound by the Professional Secrecy Act
6. Obligations to others – Relations with third parties, relations with other advocates
7. Particular areas of practice – litigation and advocacy, advocates in employment,
8. Lawfirms and associations – definitions and applications



COMMISSION FOR THE ADMINISTRATION OF JUSTICE

CODE OF ETHICS AND CONDUCT FOR ADVOCATES

This code defines the requirements of professional conduct for advocates. The purpose of this Code is to ensure that advocates do not act dishonestly or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such manner as could seriously affect the trust conferred on them.

PART ONE

GENERAL PRINCIPLES

CHAPTER I

CONDUCT OF ADVOCATES

Rule 1

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

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

Rule 2

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

Rule 3

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

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

Rule 4

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

**PART TWO
RELATIONSHIP WITH THE CLIENT**

**CHAPTER I
OBTAINING INSTRUCTIONS**

Rule 1

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

Rule 2

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

Rule 2

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

Rule 4

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

Rule 5

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

Rule 6

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

Rule 7

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

CHAPTER II
TAKING INSTRUCTIONS

Rule 1

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

Rule 2

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

Rule 3

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

Rule 4

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

Rule 5

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

Rule 6

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

instructions as soon as possible.

Rule 7

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

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

In this regard an advocate is bound to observe the rules in Chapter 3 of this Part.

Rule 8

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

Rule 9

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

Rule 10

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

Advocates may, if it seems proper, authorize the second advocate to act.

CHAPTER III DUTIES OWED TO CLIENT DURING A BRIEF

Rule 1

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

Rule 2

An advocate must keep his or her client's business and affairs confidential. In this regard an advocate is bound to observe the rules in Chapter 5 of this Part.

Rule 3

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

Rule 4

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

Rule 5

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

Rule 6

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

CHAPTER IV
PROFESSIONAL FEES

Rule 1

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

Rule 2

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

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

Rule 3

An advocate shall not, either directly or indirectly, enter into any agreement or arrangement *quoad* fees.

Rule 4

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

- a) a purchasing advocate;
- b) a retired partner or predecessor of the advocate or the dependent or personal representative of a deceased partner or predecessor.

Rule 5

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

Rule 6

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

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

Rule 7

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

Rule 8

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

**CHAPTER V
CONFLICT OF INTERESTS**

Rule 1

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

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

Rule 2

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

Rule 3

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

Rule 4

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

Rule 5

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

**CHAPTER VI
CONFIDENTIALITY**

Rule 1

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

Rule 2

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

Rule 3

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

Rule 4

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

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

Rule 5

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

Rule 6

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

PART THREE
OBLIGATIONS TO OTHERS

CHAPTER I
RELATIONS WITH THIRD PARTIES

Rule 1

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

Rule 2

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

Rule 1

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

CHAPTER II

RELATIONS WITH OTHER ADVOCATES

Rule 1

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

Rule 2

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

Rule 3

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

PART FOUR

PARTICULAR AREAS OF PRACTICE

CHAPTER I

LITIGATION AND ADVOCACY

Rule 1

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

Rule 2

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

Rule 3

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

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

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

Rule 4

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

Rule 5

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

Rule 6

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

Rule 7

An advocate should always be suitable attired in Court.

Rule 6

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

Rule 8

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

Rule 10

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

Rule 11

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

Rule 12

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

CHAPTER II
ADVOCATE IN EMPLOYMENT

Rule 1

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

Rule 2

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

Rule 3

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

PART FIVE
LAW FIRMS AND ASSOCIATIONS

CHAPTER I
DEFINITIONS AND APPLICATIONS

Rule 1

In this Code of Ethics and Conduct

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

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

"partnership" means a civil partnership made up of lawyers, whether or not jointly recommended.

Rule 2

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

Notarial Council and Commission for the Administration of Justice

- Notarial Council – has regulatory powers over notaries
- Commissioner for the Administration of Justice – has regulatory powers over lawyers and legal procurators
- Notaries, lawyers and legal procurators may be suspend, disqualified or issued with a fine
- Ban/suspension/disqualification may also be publicized



Former notary gets suspended sentence for misappropriation

Clients' contracts were not registered

Crime National Court

3 November 2020 | Edwina Brincat | 0

2 min read



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

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

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

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

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

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

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

The notary had renounced his warrant in 2015.

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

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

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

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

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

