

Diploma in Law

Lecture 5: Precautionary Acts & Precautionary Warrants

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**Diploma in Law
(Malta)**

The Warrant of Seizure



The Warrant of Seizure

- The warrant of seizure (mandat ta' qbid in Maltese) is a precautionary act ordered by the court that can act as both a precautionary and executive warrant
- Precautionary warrants of seizure may only be granted in respect of movables, while executive warrants of seizure may be granted in respect of both movables and immovables
- However, a warrant of seizure over immovable property cannot form the basis of a judicial sale unless an executive title in that regard exists
- Precautionary warrants of this nature may be revoked by means of a counter-warrant, in terms of Article 836



Effects of Warrants of Seizure

- The main effect of a warrant of seizure is to bring the asset under court authority with a view to be sold by court auction
- After the sale by court auction, the proceeds are deposited in court, and then a competition procedure commences for the distribution of such proceeds
- The fact that an aggrieved party filed for a warrant of seizure does not give such party an automatic priority in the ranking for the proceeds of the court auction. One must always give cognisance to creditors who rank above the party that brought the action, as well as creditors ranked before as per the law.



Precautionary Warrants of Seizure of Movable Property

- The nature of such a warrant is to physically take the items in possession of the debtor and place them under court authority
- The general rule in this regard is that a warrant of seizure over movable property cannot form the basis of a judicial sale unless there is an executive title or previous judicial acknowledgement
- However, in the case of perishable goods or other deteriorating assets, the court may, on the application of the claimant pending litigation, order the sale of the asset *pendente lite* if it appears to the court that the debtor is insolvent or would be unable to continue trading and maintaining the asset



- The warrant of seizure of movable property shall contain an order to the Registrar to seize from the debtor items from the place indicated
- Furthermore, when a demand is made for the removal of the seized items, the court shall appoint an official consignee
- It is also important to note that the law clearly stipulates that the provisions of Articles 275 to 293 also apply to such precautionary warrants
- The important rules in this regard are Articles 284 to 289, which refer to the seizure of various objects such as money or precious metal, and the special rules that apply thereto.



- Judicial sales by auction of a property seized cannot take place without a previous judicial acknowledgement, or a rendering as an executive title of the debt or claim
- Saving the provisions relating to proceedings for debts due to the Government, and the opposition to such proceedings, a warrant of seizure cannot be issued by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in its inferior jurisdiction



However, a warrant of seizure may be filed before the said courts if the following criteria are satisfied:

- (1) If the warrant is accompanied by a demand that the credit or claim are judicially acknowledged; and
- (2) The debt or claim exceeds €1,164.69, or the demand for such warrant is for an article which is property belonging to the person suing out the warrant



- In the case of warrants issued by the said Court of Magistrates for claims which do not exceed €1,164.69, an application must be filed simultaneously
- This is contrary to the normal general practice of first issuing a precautionary warrant, and later filing the application.
- One must also note that the provisions of Articles 842, 843 and 844 apply to precautionary warrants of seizure, and hereunder is a brief description of them:



Article 842 – The court may give any order to prevent any loss, damage or deterioration of the things described, upon the application of any party, so long as due notice is given to the other party;

Article 843 – The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant, and if the applicant fails, without just cause, to bring the action, the effects of the warrant shall cease and such applicant will be liable for all damages and interest;

Article 844 – If the party against whom the warrant was executed allows the applicant, by means of a note filed in the registry, a time longer than twenty days, the warrant shall remain in force for the extended period of time



Executive Warrant of Seizure of Movable Property

- The aim of an executive warrant of seizure is for a court executing officer to physically take from the possession of the debtor items which the said officer decides to seize and place under Court authority.
- **Vella v. Borg Berquist (Court of Appeal, 2007)** – The court here said that the aim of a warrant of seizure of movable property is that objects held by the debtor are seized so that the person who has demanded the issue of the said warrant may protect and safeguard his creditor rights.



- The court executing officer may, after calling in two witnesses, exercise all such powers as are reasonably required of him to execute the said executive warrant
- This includes the breaking open of any outer or inner door, as well as any box or thing in which there might be effects liable to seizure.



Contents of the Warrant of Seizure

- Besides the particulars as outlined in Article 274 of the law, the warrant for the seizure of movable property shall contain court orders about:
- The appointment of the day, place and time for the judicial sale by auction, as well as the subsequent appointment of the day, place and time for the removal of the item/s in question by the court executing officer; or the seizure of any article which the debtor may possess, or such article/s which may be mentioned in the warrant, from the place indicated by the creditor;
- This appointment of the day for the judicial auction must be done in conjunction with the creditor's advocate or legal procurator.
- The removal of the said articles by the creditor must take place at least seven days prior to the judicial sale by auction



- The difference between the two aforementioned scenarios is that the first situation first sets the date for the appointment of the auction, following which there is the seizure of the said movables, while the latter presents the opposite scenario, with the warrant being executed first.



- (2) The execution of the warrant, if so required, after legal hours or on a Sunday or public holiday, with the court executing officer being granted authorisation to force open the place if execution of the warrant fails after two attempts;
- (3) The transport of the property seized and to be removed to the storage places indicated by the consignee, and about the transfer of their possession from the debtor to the said consignee;
- (4) The appointment of a consignee and the taxing and receipt of payment due to the consignee by the creditor for the person during which the articles seized and to be removed would be under the consignee's care, which payment is made subject to the right of regress against the debtor when such right exists;
- (5) The appointment of experts to make a valuation of the property seized, if this is required by law, either in circumstances which the court may deem appropriate or in the case of a demand by any interested party or the debtor;
- (6) The appointment of an auctioneer, who shall receive a fee in terms of the Auctioneers Act, if so required by law;
- (7) An order for the judicial sale by auction of the articles as are seized and to be removed on the appointed day, without further service of any notice to the debtor



Car Care Products Ltd v. Bugeja et (First Hall Civil Court, 2010)

The court said that the law does not permit that items under a warrant of seizure remain in the possession of the debtor. The warrant of seizure must include in it the order of the court to seize, with immediate effect, the articles in question, as well as orders regarding the transport of such articles and the place where the consignee is to store such articles. The law clearly stipulates that possession of such articles is transferred from the hands of the debtor to those of the consignee.



Execution of the Warrant

- According to Article 283, the court executing officer shall attach to the warrant a detailed description of the property seized.
- Furthermore, the creditor, debtor or any interested party may demand that the court executing officer takes photographs or film shots of the detained articles, at the expense of the party making the demand.
- If the court executing officer finds no movable property, or only finds property that is not liable to seizure, he shall make a certificate to that effect, stating the nature of the movable property, if any, not liable to seizure, and attach such certificate to the said warrant.



- When the warrant of seizure is being executed, it is only the full amount claimed by the creditor that may be paid by the debtor to the court executing officer
- Seizure may be effected on any movable property, including shares in commercial partnerships, licences issued by any competent authority, and insurance policies



The Role of the Consignee

- The property is removed from the possession of the debtor and is transferred forthwith to be retained in the hands of the consignee, in the presence of the court executing officer.
- The consignee must receive and hold the movable property in a storage place authorised by the Registrar of Courts until when the property is sold or the consignee is ordered to do otherwise.
- However, the consignee may hold the said property in another place other than the one indicated, provided he has the permission of the Registrar.



Grima noe v. Porsella Flores et noe (First Hall Civil Court, 2008)

The court said that the role of the consignee is that “li ghandu jiehu taht idejh il-hwejjeg maqbuda”. However, the law does not stipulate when the appointment of the said consignee is to take place, so it is possible for this to happen both when the warrant is being executed, as well as after the execution of the said warrant.



- The consignee cannot be any of the following people: the execution creditor, the spouse of the debtor or creditor, the ascendant, descendant, sibling, aunt/uncle or in-laws of the creditor, people directly or indirectly employed with the creditor, and the person claiming ownership of the property seized.
- At the time of the execution of the warrant of seizure, the consignee shall attend, together with the court executing officer, to execute the warrant; and the court executing officer may seize and remove property without informing the creditor.
- The consignee is responsible for the proper preservation of the property entrusted to him, and may only use seized property, or allow seized property to be used, with the consent of the court.
- The standard of care that should be exercised by the consignee is that of a bonus paterfamilias.
- If the consignee fails to produce the property when he is asked to do so, the said consignee shall be responsible for damages and interest and the court may even issue his personal arrest for not more than three months so as to compel him to produce the property.
- If the property is not produced accordingly, this is tantamount to the consignee acting as if he were in contempt of court.



General Provisions about the Warrant of Seizure in Moveables

- The creditors of any person, whose property has been seized, may not, for any cause whatsoever, make any opposition to the execution of the warrant or to the sale of the property, provided that such creditors can enforce their claim on the proceeds of the sale of the property seized
- When a consignee has been appointed and the articles subject to a warrant have been removed, no other warrant may be executed on such articles



- Certain property cannot be seized, including clothes for daily wear, personal documents and the registers and minute-books of notaries
- The procedure for the sale of movable property shall follow the same procedure, mutatis mutandis, as that for the sale of immovable property



Executive Warrant of Seizure of Immoveable Property

- A warrant of seizure of immovable property cannot function as a precautionary act but only as an executive act.
- Article 305(1) states that the demand for the seizure of immovable property is made by an application.
- Such application shall contain a detailed description of the property of which the sale by auction is demanded, including the mode in which the property has been acquired, and any burthen attached to the same land and a plan clearly indicating the site.
- This also applies to ships or vessels exceeding ten metres in length



No Name Ltd v. Fountain (First Hall Civil Court, 2011)

The court here said that the issuing of a warrant of seizure of immovable property is incorporated in an application for the sale of such immovable property to the court. Such application must specify the details of the property that is being requested to the court to be sold.



In the event of a decree that is issued in respect of ships or vessels exceeding ten metres in length, the procedure to be followed shall be that laid down for the judicial sale by auction of immovable property (subbasta)

In the court decree ordering the issue of a warrant of seizure of immovable property, which shall be served on the debtor, the court shall:

- (1) Order the Registrar to appoint experts as required to fix a short and peremptory time within which such appraisements have to be filed, and give any such order that may be necessary;
- (2) Appoint a day, time and place for the judicial sale;
- (3) Order the Registrar to inform the Director of the Public Registry and the Registrar of Lands, or any other competent authority as appointed, about the issuing of the decree on the first working day thereafter;
- (4) Order the Registrar of the Public Registry to register the decree in a book kept for purpose, and accessible to the public, at the Public Registry;
- (5) Appoint a public auctioneer, who will be duly remunerated



Appointment of the Property to be Sold

- The debtor may, within twenty days from the time notice of the court decree being served on the debtor, file a separate appraisal, by means of a sworn appraisal, and demand that a new appraisal need not be effected
- This must be served on the creditor within twenty days, who then has a further twenty days to lodge an opposition to it
- When the creditor lodges opposition to the said appraisal, the court shall, after hearing the parties, decide whether it shall appoint a new expert.
- An appraisal of the property to be sold shall always be made before the sale takes place, provided that if such an appraisal has taken place less than twelve months before the judgement is being executed and has been accepted by the court, then the court shall take cognisance of such appraisal only



- The debtor may, within twenty days from the time notice of the court decree being served on the debtor, file a separate appraisalment, by means of a sworn appraisalment, and demand that a new appraisalment need not be effected.
- This must be served on the creditor within twenty days, who then has a further twenty days to lodge an opposition to it.
- When the creditor lodges opposition to the said appraisalment, the court shall, after hearing the parties, decide whether it shall appoint a new expert.
- An appraisalment of the property to be sold shall always be made before the sale takes place, provided that if such an appraisalment has taken place less than twelve months before the judgement is being executed and has been accepted by the court, then the court shall take cognisance of such appraisalment only



Scicluna v. Bank of Valletta plc (First Hall Civil Court, 2007)

The court here said that prior to the sale of any immovables by means of judicial auction, or the sale of any rights appertaining to immovables, an estimate of the said immovables must always be performed.



- In the case of an appraisalment, an expert is appointed by the court ex officio, unless the parties have agreed to the appointment of an expert between themselves, or the appraisalment referred to above has been accepted
- The role of the expert is to draft a valuation of the property together with a detailed description thereof, including encumbrances and burthens
- The appraisalment of the expert appointed by the court cannot be contested but the court may, by way of application, order the correction of any mistake made in the description or appraisalment



- Nonetheless, it must be noted that in the appraisal of gold or silver articles, the expert shall state separately the intrinsic value thereof and the cost of manufacture, as well as the total
- In the valuation concerned, the experts shall include a description of the property, stating the burdens, leases and other rights, whether real or personal, if any, to which the property is subject, as well as the last transfer of such property according to the information obtained from the creditor or debtor
- The debtor may however be compelled to give under oath any information regarding the property, at the written or verbal request of the expert or creditor
- The report containing the valuation or appraisal shall be filed by the expert within the time allowed in the decree of the court, and be sworn by him in the presence of the Registrar



Conversion from a Precautionary Warrant to an Executive Warrant

- One must always keep in mind that under Article 838B(2), a precautionary warrant can become an executive warrant if the due procedure is followed
- The law states that notwithstanding the provisions of Article 838B(1)2, precautionary warrants become executive warrants after the cause becomes *res judicata*, or when in accordance with Article 166B, such judicial letter constitutes an executive title.
- In the case of a warrant of seizure, the creditor shall file a note within fifteen days from the cause becoming a *res judicata* in the acts of the same warrant, and demand an extension or reduction of the effects of the warrant to an amount equivalent to the legal costs, interest and the difference in the principal amount due in terms of the judgement
- Such note must be served upon the debtor and any interested third parties





Diploma in Law (Malta)

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The Warrant of Arrest of a Sea Vessel



The Warrant of Arrest of a Sea Vessel

- As with many other warrants, this warrant may operate as either a precautionary or an executive act
- In order to achieve the arrest of a sea vessel, in the past, two separate warrants had to be filed – a warrant of seizure and a warrant of impediment of departure



The Precautionary Warrant of Arrest of a Sea Vessel

Requisites for the Issue of the Precautionary Warrant

A precautionary warrant of arrest of a sea vessel, that exceeds the length of ten metres, may solely be issued to secure a debt or claims, whether *in personam* or *in rem*, which could be frustrated by the departure of the said ship. No other warrant may be issued against a sea vessel unless it is a warrant of arrest, whether such vessel is at sea or at some other place

The warrant may be demanded and obtained before the Court of Magistrates (Malta) or Court of Magistrates (Gozo) in its inferior jurisdiction in security of a debt or claim of not less than €7,000



Article 843 (concerning the warrant of description) applies to this warrant:

Article 843 – The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant, and if the applicant fails, without just cause, to bring the action, the effects of the warrant shall cease and such applicant will be liable for all damages and interest



Article 858 states that the warrant of arrest shall be sued out by means of an application on a form prescribed by the Minister for Justice, on which form there is a court decree by virtue of which the necessary orders are given and issued

The court executive officer shall have the power to adopt all measures that may be necessary for the execution of the said warrant of arrest

Article 860 states that the applicant for the issue of a warrant of arrest shall, under pain of nullity state:

- (a) Any particulars that may enable the identification of the ship or vessel;
- (b) The name of the authority in whose hands or under whose power or control the arrested ship or vessel may be;
- (c) The place where the ship or vessel is to be found



Effects of the Issuing of the Warrant and Execution of the Warrant

If the aforementioned required conditions are satisfied, the warrant will:

- (1) Seize the vessel from the debtor;
- (2) Attach the vessel to the authority at such time the warrant is issued;
- (3) Order the authority to prohibit the release of the vessel;
- (4) Order the authority to prohibit the debtor from selling or otherwise divesting himself of the vessel or any rights on such, whether in whole or in part



- The warrant is executed for all effects of the law when notice is served on the executive officer of the authority who has the sea vessel in its hands, or under its power or control
- A copy of the warrant of arrest shall also be served on the person whose ship or vessel is arrested, the master or other person in charge of such ship or vessel, or the agent of the ship or vessel
- The authority which has in its hands or under its control the sea vessel against which the warrant of arrest has been issued shall take all measures to display the court order for the general attention of third parties



- A vessel is deemed to be in the power or control of the Authority for Transport in Malta as soon as it enters Maltese territorial waters.
- All expenses vis-à-vis the preservation of the arrested ship or vessel shall be borne by the party issuing the warrant, although such party has the right to recover such expenses together with his claim.
- However, where it is found that the warrant was obtained upon a demand maliciously made, the penalty in this regard shall not be less than €11,600.



The Issuing of a Security

- Article 862 states that the court may, on good cause being shown and upon the demand by application by the person whose ship or vessel is being detained, the master, the agent of the ship or any person in charge thereof, order the party suing out the warrant to give sufficient security of not less than €11,600



Cassar Pullicino noe v. Il-Bastiment M.V. Beluga Sydney (First Hall Civil Court, December 2011)

The court said that regarding the question of security being given, one must note that the provisions of Article 862 concern vessels that are above ten metres in length. The court also said that there must also be a good reason for it to demand that such security is given, for as the court implied, this is quite a burden. Indeed, the fact that the warrant would have been issued is, by itself, not enough of a good reason for the purposes of the law.



Other General Provisions

- No warrant shall be issued against:
 - (1) Any ship or vessel wholly chartered in the service of the Government of Malta;
 - (2) Any ship or vessel employed in any postal service either by the Government of Malta or by any other government;
 - (3) Any ship of war



- Following the arrest of a ship or vessel in any port or harbour in Malta, and upon the application of the Authority for Transport in Malta, the court may order that the ship or vessel be shifted from that port or harbour to any other anchorage within the Maltese territorial waters
- Following the arrest of a ship or vessel in any port or harbour in Malta, and upon the application of the Authority for Transport in Malta, the court may rescind the warrant of arrest and order the ship or vessel to leave Malta and its territorial waters without delay
- The court may also order the sale of an arrested ship or vessel pendente lite if it appears, upon the application of a creditor, that the debtor is insolvent or unlikely to continue trading and maintaining the asset
- If a ship or vessel is removed from the jurisdiction of the court in breach of the warrant of arrest, the owner, bareboat charterer or person in possession of the ship or vessel shall at the time of the breach shall be jointly and severally liable to a penalty of €116,470 to the party issuing the warrant



The Executive Warrant of Arrest of a Sea Vessel

- Although the warrant of arrest of a sea vessel is normally precautionary, it can also function as an executive act
- This type of warrant is issued by a creditor who already has an executive title
- The executive warrant of arrest of sea vessels is effected by application in terms of Articles 858 and 860
- The court shall, when a demand is made for the issue of an executive warrant of arrest, establish whether it shall order the sale of the said article or fix a time limit within which the debtor is to pay the amount due
- When the court orders such sale, it shall proceed according to the procedures as established for the judicial sale by auction
- When the court fixes a time limit within which the debtor is to pay, it shall order the executive warrant to be in force until payment is effected
- When a time limit passes without any effect the court shall, on a demand by the interested party, order the sale to take place in accordance with the procedure of judicial sale by auction



The Garnishee Order (Mandat ta' Sekwestru)



Introduction

- The garnishee order can serve as both a precautionary warrant as well as an executive warrant
- It is an order by which the creditor, in order to obtain payment of a debt that is owing to him, attaches in the hands of a third party (the garnishee) monies or movable property due or belonging to his debtor, by which such third party must subsequently lodge such movables or monies in court
- The garnishee would therefore hold such articles in the name of the debtor or actually owe them to the said debtor



This means that the debtor would not be able to take the funds held by the third party on his behalf or the funds owed to him by such third party

The parties to the case in such a warrant are:

- (a) The creditor, who brings the application for the garnishee order (sekwestrant);
- (b) The debtor, who is the party garnisheed (sekwestrat); and
- (c) The third party into whose hands the monies or movables are attached, i.e. the garnishee (sekwestratarju)



The Executive Garnishee Order

- Article 375 states that where a creditor under a judgement or any other executive title, in order to obtain payment or a debt owing to him, desires to attach in the hands of a third party monies or movable property due or belonging to the debtor, he may do so by means of a garnishee order.



The garnishee order is drawn up by means of an application on the prescribed form, and the order shall, under pain of nullity:

- (1) State the name and surname of the debtor, and his identity card number or company registration number in the case of a registered company;
- (2) State the amount of the thing due;
- (3) State the title under which the creditor sues out execution;
- (4) Enjoin the garnishee not to pay or deliver up to the debtor or any other person such money or things as may be in his hands but which belong to the debtor, under penalty of payment of damages and interest;
- (5) Enjoin the garnishee to lodge, at the debtor's expense within nineteen days from the date of service of the warrant, through the Registrar, any money or things belonging to the debtor, as attached by the order

The lack of any of these particulars in the garnishee order shall render the said order to be ipso jure nul



Cilia v. Cilia (Court of Magistrates, April 2012)

The court said that the first formality that must be satisfied so that a garnishee order is legally valid is that the person who is asking for the issuing of the said garnishee order against another person has an executive title against such person. This is important because it forms the basis of the justification of the issuing of the said order and of the consequences that it creates. Indeed, if it results that the executing creditor asks for the issuing of a garnishee order when there is an executive title that is not valid at law, this would be more of a valid reason than the law itself for the said garnishee order to be revoked.



Execution of the Garnishee Order

- A garnishee order is executed by the delivery of a copy thereof, by the court executing officer, to the garnishee; although today this too can be done by electronic means
- A copy of the garnishee order must also be served on the debtor or his lawful representative
- A garnishee who is in possession of money or movables of the debtor and fails to effect the deposit within the prescribed time as outlined by the court decree shall be responsible for ensuing damages and interest in favour of the creditor
- The court may also, upon the application of the creditor, issue orders as may be required, including the personal arrest of the garnishee for a period not exceeding three months, so as to lodge the property in question
- In the case of attachment of money, the garnishee may, before lodging such money in court, retain the costs in respect of such lodgement,
- On the other hand, in the case of attachment of other movable property, the garnishee shall have a privileged claim over the property so lodged in respect of such costs



In all cases, the execution creditor and the debtor shall be notified of any such lodgement into court

The law also lists the property that is not subject to attachment, which include:

- (a) Any salary or wages (including bonus, allowances, overtime and other emoluments);
- (b) Any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government;
- (c) Any charitable grant or donation made by the Government;
- (d) Any sum due for maintenance;
- (e) Bank guarantees and letters of credit



- Article 382(1) - In the case of any salary or wage mentioned in article 381(1)(a), when the same exceed one thousand two hundred and thirty-three euro (€1233.00) per month or such amount as may from time to time be established by order made by the Minister responsible for justice, the issue of a garnishee order shall be applicable on that part in excess of the amount afore-stated:
- Provided that if the debtor, upon an application shows to the satisfaction of the court that he needs such excess or part thereof for his maintenance or for the maintenance of his family, the court shall revoke the garnishee order with respect to the excess or such part thereof, whereupon the said order shall be deemed to be and to have been without effect to the extent to which it had been revoked



Vella et v. Galea et (Court of Magistrates, 2007)

Regarding 'privileged' income such as the children's allowance, the court said that once these monies are deposited into a bank account, they lose their very nature of a children's allowance. As a consequence, these monies end up by becoming 'mixed' with other monies as found within the same bank account. The main consequence of this is that such a children's allowance hence cannot be regulated by the provisions of Article 381(1)(a) COCP, i.e. be deemed as a 'salary' or 'wages' that a garnishee order cannot be issued upon.

A garnishee order may not be extended and shall remain in force up to such time that it is revoked by a decree of the court



The Precautionary Garnishee Order

- It is important to point out from the offset that the effects of a precautionary garnishee order are the same as those of an executive garnishee order
- It must also be kept in mind that the provisions of Articles 842-844 (the warrant of description), and 846 and 848 (the precautionary warrant of seizure) are also applicable to this warrant
- The provisions governing the executive garnishee order are also applicable to the precautionary garnishee order



Other Provisions Applicable to the Precautionary Garnishee Order

Article 842 – The court may give any order to prevent any loss, damage or deterioration of the things described, upon the application of any party, so long as due notice is given to the other party;

Article 843 – The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant, and if the applicant fails, without just cause, to bring the action, the effects of the warrant shall cease and such applicant will be liable for all damages and interest;

Article 844 – If the party against whom the warrant was executed allows the applicant, by means of a note filed in the registry, a time longer than twenty days, the warrant shall remain in force for the extended period of time;

Article 846 – The warrant of seizure of movable property shall contain an order to the Registrar to seize from the debtor such articles or article from the place indicated, and when a demand is made in this regard, the court shall appoint an official consignee;

Article 848 – Saving the provisions of claims of the Government, no warrant of seizure can be issued by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in its inferior jurisdiction unless the warrant is sued out by a demand that the credit or claim are judicially acknowledged, and the debt or claim exceeds €1,164.69, or the demand for such warrant is for an article which is property belonging to the person suing out the warrant



The Precautionary Garnishee Order – Differences from the Executive Order and the Law Applicable

- The difference between the two lies in the fact that a precautionary garnishee order is intended to preserve the assets in question, while with the executive garnishee order, the scope is that funds will be deposited for eventual withdrawal according to the ranking of creditors.
- In the case of a precautionary garnishee order, the order may be brought without the necessity of a previous judgement
- Nonetheless, the demand is to be made by means of an application prepared by the applicant according to the prescribed form
- Such precautionary order must be confirmed on oath by the applicant, with this being under pain of nullity



Samham v. Petroni (Court of Magistrates, 2011)

When a precautionary garnishee order is issued by the court, even though it is not necessary for a previous judgement to be pronounced in order to bring the said precautionary garnishee order, the probability is that there indeed would have been a case instituted by the creditor against his debtor.

However, the court noted that one must always be aware of the fact that a plea can always be instituted as per Article 166A COCP, and therefore the debtor must perform the necessary checks so as to determine if a case was instituted against him or a judicial letter, as per Article 166A, was filed against him



- Article 851 deals with judicial sequestration, and the law states that the court may always make an order for such judicial sequestration, be it ex officio or on the demand of the parties
- Such a sequestration order remains in force until rescinded by the court
- A sequestration order entails that the court may direct that the thing in litigation is to be deposited with or delivered to a third party, who shall subsequently bind himself to restore such thing on the termination of the cause or within the time fixed by the court, to the party that the court indicates
- Such sequestration may also be ordered vis-à-vis immovable property, where the possession or ownership thereof is in dispute, or where it is necessary for the security or preservation of the rights of a party interested
- The sequestrator shall be chosen either by consent of the parties or by the court ex officio, and shall be subject to the same liabilities as the depositary
- He is also entitled to remuneration, at the discretion of the court





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