

Diploma in Law

Lecture 9: Judicial Procedure

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**Diploma in Law
(Malta)**

Introduction: Judicial Interest

- An action cannot be exercised unless sufficient juridical interest is proved.
- This doctrine defined as la 'misura dell'azione' or 'point d'interet, point d'action' guarantees the fundamental protection of all parties to a civil action, by necessitating that proof of sufficient interest be brought for the exercise of the right of action to be considered valid and lawful.
- Thus, the interest is the measure that determines whether a court will take cognizance of a case.
- The scope of this element of the presupposti processuali is to circumvent the institution of vexatious or frivolous lawsuits.



Definition

- Our Courts have always adopted Mortara's definition as held in *Bol'awb vs Fenech*.
- The definition was summed up in *Chircop vs Chircop* where Judge Phillip Sciberras noted that the basis of juridical interest is that whosoever files a case must show that one of his rights have been violated and must prove that he may retrieve an advantage out of the civil action.
- Although the doctrine in Continental jurisdictions such as that of Italy materializes in the form of a general provision of the law, Maltese law does not expressly treat the requisites of judicial interest. In fact, in *Mangion vs Cilia Pisani*, Judge Mallia noted that such an element may be deduced from a joint interpretation of Articles 236 and 960 of the COCP. The former concerns the rights of appeal and speaks of "any person interested", while the latter speaks of the interest required for the admissibility of an intervenor.
- It is thus clear that when we talk of juridical interest we do not only refer to the interest of the plaintiff but also to the interest of the defendant and other possible parties to the civil case.



The Plaintiff's Interest

- Muscat vs Buttigieg is one of the various judgments that has listed what are deemed to be the fundamental characteristics for a judicial interest to exist and subsist.
- The juridical interest must be:
 - (i) judicial or legal
 - (ii) personal and direct and
 - (iii) actual.
- These are manifested most evidently with regard to the plaintiff



(1) Juridical or Legal

- For an interest to be juridical, the plaintiff must not only allege that he has been deprived of a utility or good but that such utility or good was the object of a right conferred upon him by law.
- A purely ethical or moral interest is not sufficient to sustain an action.
- Moreover Maltese courts are willing to accept claims that do not contain a claim for damages or that is pecuniary in nature.
- This as long as the right claimed arises from a provision or an accepted principle of Maltese law and is not hypothetical.
- This was confirmed in *Gauci vs Lanfranco* (2003).



- In cases where a declaratory action is instituted, the plaintiff will have to show or challenge that from the declaration of the court he would be able to continue and pursue the application by additional legal remedies. It is hence admissible if it can be established that plaintiff will derive additional benefit by other judicial remedies.



(2) Personal and Direct

- By personal one means that the plaintiff must show that the right claim belongs to him, hence that there exists a connection between himself as institutor of the claim and his subjective right imposed.
- Personal also means that the right must belong to a specific person and not to a group of persons.
- However, although *Eminyan vs Mousu*' (1997) highlighted the strictly personal facet of juridical interest, the contemporary doctrine of juridical interest points towards a doctrine that is not strictly bound to issues of personal liability. This doctrine now also exists in certain specific cases, in matters involving diffused interest i.e. the possibility of instituting an action revolving around (generally) intangible interests that belong to a large category of persons.
- *Dingli vs Borg Olivier* remarked that the *actio populari* isn't admissible except if expressly treated at law. There are at least six such instances.



- Article 116 of the Maltese Constitution: the right of action for the declaration of invalidity of any law is available to all persons without the need to show personal interest.
- Articles 4(1) and 5 of the Portes des Bombes Area (Preservation) Act: give citizens of the area the right to sue for the declaration of nullity in respect of any grant made by the gov't or for the demolition of any building erected in the area.
- Article 10(3) of the Environment Protection Act: allows any person, in respect of draft regulations, to make submissions to the Minister or Authority stating why and how such regulations should be revoked or amended.
- Article 15(1)(a) of the Development Planning Act: any person aggrieved (other than an interested 3rd party) may appeal to the Appeals Board vis-à-vis a matter of development control and its enforcement. In *Attard Montalto vs L-Awtorita tal-Ippjanar* (1996), the CoA elaborated on the meaning of legal interest in this context and gave an interesting definition that the threshold of interest required is that one has to show that he was adversely affected. Furthermore, in *Trapani Galea vs L-Awtorita tal-Ippjanar* (1997), the CoA elaborated on the matter by noting that the citizens having an interest are threefold: neighbours, local councils and residents associations.
- Article 116(1) of the Companies Act: a class of shareholder's may file an action.
- Maltese Heritage: any person may bring an action to secure heritage.



- The 'personal' characteristic has also been diminished by the Court correctly deciding that certain representative actions are allowed. Up until the 1960's Trade Unions could not act on behalf of its members. However the Court in *Buhagiar vs Ministru ta' l-Edukazzjoni* confirmed that it is obvious that a Trade Union's members have a juridical interest and that such a union can validly institute proceedings on behalf of its members.
- However the law does prohibit certain representative actions such as the mandatary being precluded from representing a mandator when the latter is not absent from the island, as per Article 1866 of the Civil Code.



- By direct one means that the plaintiff must intend to secure a right, which the law recognises and protects.
- The interest must subsist in relation to the matter and must be brought against the person who is alleged to have violated the right of the plaintiff. There is no judicial interest where the plaintiff brings an action against a person who is not to blame for the violation of his right.



(3) Actual

- As has already been mentioned above, for the interest to be actual it cannot be hypothetical i.e. a tangible situation must be contemplated. Moreover, the party instituting the sworn application must also be able to show a direct and tangible benefit from the proceedings being instituted.
- As regards the moment in which the interest must be shown to exist by the plaintiff, case law such as *Sammut vs Attard* (1993) has established that it must exist at the moment when the action is instituted and must subsist throughout the course of the action.
- Besides the interest having to subsist, there is no judicial interest where the plaintiff brings an action against a person who is not to blame for the violation of his right.



The Defendant's Interest

- Thus the defendant's interest is just as important as the plaintiff's. It must necessarily be shown that the defendant is the legittimu kontradittur. Hence, there must be a link between the plaintiff's claim and the defendant.
- If the defendant feels that the demand is unfounded, he can always defend himself.
- Also, the defendant must have the necessary interest to bring forward pleas.
- Similarly, when making counter-claims the defendant acts as plaintiff and therefore he must possess the interest proper to the plaintiff.



Juridical Interest of Other Parties Involved in a Civil Action

- The interest is not only required in respect of plaintiff and defendant but even joinders and interveners must have a juridical interest.
- A joinder must show his juridical interest either on his own motion or on the demand of the other parties. While an intervenor, not a full party, may have an interest to make his position clear in the case as the judgment could possible influence his status.



The Doctrine of Jus Superveniens

- Although *Sammut vs Attard* noted that juridical interest must exist at the time of the civil action and must subsist throughout the lifespan of the action, the doctrine of jus superveniens stands for the exact opposite.
- It deals with the instance when such interest isn't present at the time of the institution of the action but rather it arises in the course of proceedings.
- This is possible by virtue of the judiciary's stance in attempting to avoid as much as possible the reinstatement of proceedings. This quickens the judicial process and also reduces costs as noted in *Cutajar vs Spiteri* (2009).
- Although it has been developed by case law, the law is not oblivious to this doctrine. In fact, Article 166A of the COCP notes that if a debt falls due during the course of the action, the action will still be allowed by court. The doctrine is not expressly referred to, though it can be inferred from the motive of the provision.



The Importance of Cassar vs Land Valuation Officer (1984)

- Here the court delved into the doctrine by discussing the analysis of the doctrine emanating from previous judgments.
- The court in Falzon vs Camilleri (1943) noted that our courts have always applied the theory of jus superveniens if the situation arises that a party's interest emerges in the course of proceedings. Judges Schembri, Harding and Agius had a very liberal outlook on the matter and seemed to be of the opinion that our courts always sought to turn to the doctrine if the need arose. When in fact, they didn't end up applying the doctrine in the case.
- Judge Tonio Mallia referred to the Court's restrictive application of the doctrine in Giordmaina vs Pace (2002). He concluded that the Court's reluctance in applying the doctrine loosely was that court's were firm in their believe that what is null ab initio cannot be made valid by a fact occurring subsequently.
- Application by our courts was however always restrictive as the courts reasoned that what is null ab initio cannot be made valid by a subsequently occurring fact.
- As of late judgments such as Laferla vs Falzon (1988) decided that the doctrine had to be used more widely, in fact the court held that it should be applied in every case possible where the basis of the action arises in the proceedings.
- Again the court's promotion of an efficient judicial process shines through the Bonanno vs Bonanno judgment wherein the court was right to state that a plea of nullity should never be accepted when there is a possible remedy or when the doctrine of jus superveniens can be resorted to.



Application of the Case

- According to case law the doctrine is applicable when the obligation that is the basis of the action is suspended by a term or condition and this condition verifies itself or the term expires in the course of proceedings. In *Zahra vs Chircop* (196) an action for eviction was about to be stalled since the property in question was subject to a requisition order. The immovable was derequisitioned during the continuance of the case and the proceedings could continue.
- It has been applied when authorisation would be required for proceedings to be instituted and such authorisation was granted during the proceedings.
- It may be resorted to in order to remedy certain procedural defect such as the absence of a signature in a bill of exchange: *Giordmaina vs Pace*. Here the person bound by the bill was willing to sign it, thereby indicating an agreement to fulfill payment obligations.
- The doctrine has also been applied in respect of making a claim for the reserved portion before renouncing the inheritance under testate succession. As of 2004, one cannot do this except in very specific circumstances, hence this situation is unlikely to be encountered again.
- By having its foundations rooted in the dictum *jus superveniens firmat actionum et exceptionem*, the doctrine is therefore clearly a means through which an action, which would otherwise be defective due to a lack of juridical interest, is carried into effect.



Conclusion: Judicial Interest

- The above has shown that if judicial interest is lacking, a party to a case, be it the plaintiff, defendant or other party, has no locus standi and the action cannot be carried into effect. Yet the doctrine of jus superveniens brackets the above statement in that such interest may arise in the proceedings and the timing and manner in which it arises may lead to the proceedings being valid. The Courts liberal approach to the latter doctrine is now clearer, yet this hasn't lessened the substantial checklist of characteristics and qualities that must exist and be proven for any party to correctly claim that a juridical interest exists.





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Introduction: The Desertion and Discontinuance of Civil Cases

- First and foremost, it must be noted that there exists a fundamental distinction between desertion and discontinuance – while the former is involuntary, the latter could be voluntary



Desertion of Civil Cases (Id-Dezerzjoni tal-Kawza)

- Desertion is a means by law in order to punish the inaction of the plaintiff or appellant, and hence seeks to prohibit the elongation of proceedings through unnecessary delays
- The abandonment of pleadings, in desertion, does not require a writing manifesting the intentions of the party to withdraw proceedings



- Debattista et v. Debattista et (First Hall Civil Court, 2011) – The court said that the provisions relating to desertion are intended so as to ensure that the process of the case takes its due time and that there is no delay in the proceedings. The court went on to say that if a plaintiff does not follow the methods as outlined by procedure, then this would be tantamount to playing with fire and, as a consequence, he would enter into unnecessary expenses.



Elapsing of the Peremptory Period

- The first cause is if the written pleadings are not closed within the peremptory period
- In the first instance, the peremptory time period is that of six months, while in the second instance, such peremptory time period is that of one year
- The court may however extend such time periods for a further one month
- The time shall commence to run, in the first instance, from the day on which the sworn application is filed, while in the second instance, from the day of the application of appeal for the reversal or variation of the said judgement
- If, even where the aforementioned peremptory times have lapsed, it is found that the written pleadings are still to closed, the court shall once only give orders so that such pleadings may be closed as soon as possible
- Desertion of a cause shall be declared by means of a decree in open court if, after such orders, the written pleadings are not closed



- The effects of desertion in this regard are twofold:
- (a) A desertion of any cause in the first instance shall operate as an abandonment of the proceedings, but not bar the right of action;
- (b) A desertion of any cause in the second instance shall operate as an abandonment of the appeal, and the judgement appealed from becomes *res judicata*



Adjournment or Suspension of the Hearing

- The second cause of desertion is when the cause is adjourned sine die or otherwise suspended, i.e. the said adjournment would take place on an unspecified date
- Desertion of the case shall however not take place if the said case is reappointed for hearing within six months of its suspension, or if an application for its reappointment has been filed within the said time
- However, if the cause has been suspended until judgement is pronounced in another cause, the said time shall commence to run from the date when such judgement is delivered
- Reappointment, in this regard, can be made either by the court on its own motion or following the application of any of the parties



Discontinuance of Civil Cases (Ic-Cessjoni/Ir-Rinunzja tal-Atti)

- Discontinuance involves the withdrawal of acts; with the law stating that any of the parties may, by means of a note signed by him or the advocate, at any stage of the trial before definitive judgement is given, withdraw the acts filed by him
- Obviously, however, the defendant cannot really be said to be in a position to withdraw the acts and hence bring about the discontinuance of the case
- While the law states that a note needs to be signed by the plaintiff or advocate.
- In practice, the plaintiff is also required to confirm the withdrawal on oath in relation to cases before the First Hall Civil Court



- Debono v. Midi plc (First Hall Civil Court, 2011) – The court said that as a principle, Article 906(1) gives the right to either of the parties to discontinue the proceedings at any time until the final sentence is pronounced. However, the law also stipulates that the party discontinuing the proceedings to pay for the expenses of the case, with it not being possible to initiate another case on the same subject-matter before the expenses are paid out to the other party.



- Discontinuance shall also take place if the notice of the trial is not served on the defendant due to the inaction of the plaintiff, and such failure persists for more than one month from the date of appointment
- In such case, the court will adjourn the case sine die, and if the said case is not reappointed for hearing within the period of six months, then it will be duly deserted
- The danger of this as well is that if the defendant is not served with the notice of the first hearing and remains un-notified for more than one month, then the court will nonetheless adjourn the case sine die



- Azzopardi et v. Gauci et (Court of Magistrates, 2011) – The court said that Article 907 starts to apply only after the first case has been discontinued. As emerging from the wording of the law, it does not appear that a person who starts a second case (on the same subject-matter) while the first one is still underway should be under the obligation to pay the other party for expenses incurred as per the first case. Indeed, in such circumstances, it does not seem as if the defendant can invoke the defence under Article 907, but only the defence of *lis alibi pendes*.



Effects of Discontinuance

- This has the same effects as desertion, i.e. an abandonment of the proceedings or an abandonment of the appeal (at second instance), meaning that the first judgement would subsequently become res judicata
- Any person who has withdrawn the acts and wishes to reinstitute the same case shall only be allowed to do so if he has paid the costs of the other party - anything exhibited from the first case may be inserted into the record of the new action
- Nonetheless, where the withdrawn is not unconditional, it shall be lawful for the other party to not accept it and to insist that the action be proceeded with and determined accordingly





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