

Diploma in Law

Lecture 17: Recognition & Enforcement of Judgements

Lecturer: Dr Emma Portelli Bonnici

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**Diploma in Law
(Malta)**

Enforceability of Executive Titles

When a person is in possession of an executive title he may enforce his claim by means of an issue of an executive act. It is only executive measures and executive warrants that may be issued on the basis of an executive title.

Article 253 of the COCP lists 5 executive titles:

1. Judgements and Decrees of the Courts of Justice
2. Contracts
3. Taxed Bills of Judicial Fees and Disbursements
4. Awards of Arbitrators
5. Bills of Exchange and Promissory Notes



(cont'd) Enforceability of Executive Titles

1. JUDGEMENTS AND DECREES OF THE COURTS OF JUSTICE

By judgments, the law is referring to a final decision of the Court, which determines the issue between the contending parties and brings an end to the proceedings. Therefore, as a rule, the judgment must constitute a *res judicata*. Decrees refer to any Court pronouncement during the course of the proceedings given in order to facilitate or regulate the proceedings so as to make it possible for the case to continue.



(cont'd) Enforceability of Executive Titles

2 types of decrees:

a. Interlocutory - pronounced in open court and is preordained to the continuance of the proceedings — can be appealed. This cannot constitute *res judicata*, but must be pronounced like a judgement (with reasons)

b. In camera - given in private and cannot be challenged by appeal Judgements on any collateral issue/interlocutory decree (provided time of enforcement not stated on the decree); Judgement rescinding a warrant of impediment of departure of any ship/warrant of seizure/garnishee order relating to ships of merchandise; ordering supply of maintenance; award of the arbitrator → enforceable after Lapse of 24 hours from delivery. Definite judgements with no suspensive conditions, which condemn a debtor to pay/perform any act are enforceable within 2 days of delivery.



(cont'd) Enforceability of Executive Titles

2. CONTRACTS

Contracts received before a notary public in Malta or before any other public officer authorised to receive it, where the contract is in respect of a debt which is certain, liquidated and due and which does not consist in the performance of an act. These are generally referred to as constitution of debts. Therefore, such contracts can be executed without the need of recourse to the courts in order to obtain a judicial acknowledgment of the debt.



(cont'd) Enforceability of Executive Titles

Contract is an executive title if:

- a. Received before a notary public in Malta OR before any public officer so authorised; AND
- b. It is in relation to a debt that is certain, liquid and due and does not consist in the performance of an act.

- These contracts can be executed without the need to obtain judicial acknowledgement of the debt by the Courts.
- There must be an element of public faith by a notary/public officer
- Contracts of Loan - **Cremona vs. Mixter (FHCC)(1979)**

These are executive titles — most of which will usually contain an expression where the debt is certain, liquid and due in favour of Y.



(cont'd) Enforceability of Executive Titles

- Contracts of Overdraft: Not all create an executive title — debt can never be truly certain. For debt to be 'actual', the bank would have to institute court action to seek judicial recognition of the actual amount due.
- Contracts of Emphyteusis: These are executive titles as the ground rent is stated
- Private Writing: Where debt is acknowledged in the private writing, this is NOT an executive title



(cont'd) Enforceability of Executive Titles

3. TAXED BILLS OF JUDICIAL FEES AND DISBURSEMENTS

Taxed bills of judicial fees and disbursements due to lawyers and other persons involved in the lawsuit, unless such taxed bills are impugned according to law.



(cont'd) Enforceability of Executive Titles

4. AWARDS OF ARBITRATORS registered with the Maltese Arbitration Centre

5. BILLS OF EXCHANGE AND PROMISSORY NOTES issued in terms of the Commercial Code.

This novel amendment which was introduced into our law in 2004 further strengthens the bill of exchange and promissory note. In this case, the competent court (which depends on the **value** in the bill of exchange or promissory note) may, upon an **application of the party against who an executive title is issued, suspend the execution** of the bill of exchange or promissory note in **whole or in part**. An application may be made on the following grounds: (1) that the **signature** on the bill or note is **not** that of the person opposing the bill or note, or neither of his **mandatory**; or (2) the person opposing the bill or note brings forward **grave and valid reasons** to oppose the execution. The court shall make its decision via **decree**, which shall **not be subject to appeal**. The court may also decide that the **person opposing the bill or note is to give security**. Such a person opposing the bill has to do so within **twenty days from the service of the judicial letter** sent for the purpose of rendering the bill or not executable.



(cont'd) Enforceability of Executive Titles

Today BoE and promissory notes are enforceable by means of a judicial letter sent for that purpose.

REASON: to reduce litigation regarding relatively small transactions by consumers, while strengthening these instruments.

- Competent court may suspend the execution of the bill or note in whole or in part (depending on the value in the bill/note) — it must be filed within 20 days of service of the judicial letter rendering the bill/note executable

Competent court may upon application of the party against whom the executive title is issued suspend the execution of the title IF:

- i. The signature on the BoE is not of the person opposing the bill/his mandator
- ii. Person opposing the BoE brings forward grave + valid reasons for opposing its execution



(cont'd) Enforceability of Executive Titles

- Court will make a decision with a decree
- May also demand that the person opposing gives security within 20 days from service of judicial letter.

These are all seen in the case of: **Micallef vs. Pater Finance Co. Ltd (CoA)(2006)**



(cont'd) Executive Titles

One finds other executive titles that are not listed under the COCP, and these include a **mortgage** in terms of the **Merchant Shipping Act**; also, **Government Departments**, in terms of a special law, may create an executive title by means of a judicial letter. Furthermore, a **Head of a Government Department** may also write a letter accompanied by a **sworn declaration**, which would be an executive title.

A distinction needs to be drawn between the execution of judgments and all other executive titles mentioned in **Article 253**. Since a judgment delivered by a court is an executive title *par excellence*, its execution is directly and automatically enforceable. In fact the law states that judgments may be enforced after **two days** from the day of delivery. The law also provides exceptions in relation to certain judgments where, due to their urgent nature, may be enforced after the lapse of 24 hours from delivery, as, for example, in the case of the supply of maintenance. Also, according to article 257, the court may, on grounds of urgency, order the enforcement of any judgment even before the expiration of the time limits (of twenty-fours or two days); the order for such enforcement may be made in the judgment itself



(cont'd) Enforceability of Executive Titles

On the other hand, the executive titles mentioned in sub articles (b) to (e) require a further procedure prior to their execution. An intimation for payment made by means of a judicial letter is to be sent to the debtor. It is only after the lapse of **two days** from date of service of such judicial letter that the title may be enforced.

A distinction is made in the **enforcement periods** of the Executive Titles.



(cont'd) Enforceability of Executive Titles

- ☑ In respect of **Judgments and decrees, taxed bills of judicial fees and disbursements, and awards of arbitrators of the Superior Courts** may be enforced within **10 years** from the date when such judgment could have been enforced.
- ☑ **Judgments and decrees, taxed bills of judicial fees and disbursements and awards of arbitrators of the Inferior Courts or the Small Claim Tribunal** may be enforced within **5 years** from the day on which such judgment, bill or award could have been enforced.
- ☑ **Constitution of debts or similar contracts, bills of exchange and promissory notes, and also judicial letters which have been rendered executable in terms of Article 166A of the COCP**, may be enforced within **3 years** from the date when such contract, bill of exchange or judicial letter could have been enforced.



(cont'd) Enforceability of Executive Titles

LAPSE OF TIME PERIOD: does not render the executive title unenforceable BUT upon expiration an application is to be filed before the competent court requesting executive title be enforced — Must be confirmed on oath (the nature of the debt/claim and such debt still due).

Time starts running not when the judicial letter is sent BUT when the debt is due (i.e. if there is a contract thus debt is due and judicial letter is sent after — 3 years start when debt falls due)



(cont'd) Enforceability of Executive Titles

It is to be noted that, the lapse of the above mentioned periods does not render the respective executive title unenforceable, and hence the periods mentioned in the law are not equivalent to prescriptive periods. After the lapse of the time periods mentioned above, enforcement of such titles may only be done after court authorisation has been granted. Hence, once the time periods expire, an application must be filed before the competent court requesting the court to authorise such enforcement. The applicant shall also confirm on oath the nature of the debt or claim sought to be enforced and that the debt is still due.

It is to be noted that if the debtor is dead and the executive title is thus enforceable against the heirs of the deceased, the demand by application mentioned above is to be filed in all cases, notwithstanding the fact that the applicable time period has not elapsed.



(cont'd) Enforceability of Executive Titles

An executive title may be enforced on both immovables and movables. Moreover, two executive titles may be enforced by means of one instrument.

The law contemplates the possibility of the enforcement of an executive title of a creditor by such creditor's creditor. Hence where X is a creditor of Y and Y is in turn a creditor of Z, if Y is in possession of an executive title against Z, X may request the court, upon the filing of a sworn application, to step into the shoes of Y and enforce the judgment or other executive title against Z in order that Y may recover the debt originally due to him by Z. Such application must be served both on the debtor against whom enforcement is sought (Z) and on his creditor (Y).



(cont'd) Enforceability of Executive Titles

Executive titles, according to article 273, may be enforced by any of the following executive acts:

- A. warrant of seizure of movable property;
- B. warrant of seizure of immovable property;
- C. warrant of seizure of a commercial going concern;
- D. judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;
- E. executive garnishee order;
- F. warrant of ejection or eviction from immovable property;
- G. warrant *in factum*;
- H. warrant of arrest of sea vessels;
- I. warrant *in procinctu*.



(cont'd) Enforceability of Executive Titles

Any of the above-mentioned warrants or orders is to be issued by the court on the demand of the party asking for such an execution; the law also provides for exceptions where the Registrar might issue such a warrant. The demand for the issue of a warrant or order shall be made by an application, which shall include the sum and/or article demanded by the applicant, and shall also include the remedies and provisions that are being demanded by the applicant. The court executing officer shall deliver of copy of the warrant or order at the first available opportunity to the party against whom it is issued; once the warrant is delivered, the executing officer shall return to the registrar with a certificate stating that the delivery was complete.



Procedure for Enforcement when Debtor is Dead

Where the debtor has died — the executive title is enforceable against the heirs of the original debtor.

The procedure is as follows:

1. File application in Court stating the original debtor has died
2. Request the Court to authorise the enforcement of the executive title against his heirs.
3. Court will then inform the heirs — they are given a limited time within which to file a reply.
4. Court will then decide whether to allow the creditor to execute the title and if so, against whom.



(cont'd) Procedure for Enforcement when Debtor is Dead

IF THE HEIRS ARE UNKNOWN:

One must follow the procedure of appointing a curator — in which case he represents the heirs until they are known:

- Another application is to be filed requesting the Court to notify heirs or the presumed heirs or appointed curator to act on behalf of the inheritance to enforce the title against them.
- Where heir/presumed heir does not reply/heir doesn't accept inheritance — a curator is appointed



(cont'd) Procedure for Enforcement when Debtor is Dead

ACTIO SURROGATORIA

Article 263 tackles the application of the principle inherent in the actio surrogatoria by means of which creditor may execute or enforce a debt owed to his debtor.

EXAMPLE: B is the debtor of A. C is the debtor of B. A can enforce the debt due from C to B in order to get paid for what B owes him. Therefore, A would be claiming the execution of the debt of C.

The sworn application (Rikors guramentat) would be served both on C and on B (the enforcement has to be back by a writ of summons served both on the debtor and his creditor)



Provisional Enforcements of Judgements

The rule is that the court will not order the enforcement of a judgment unless it is a res judicata. Therefore, one may ask for provisional enforcement of a judgment, even though the time limit for appeal has not elapsed, or an appeal has been filed. This remedy is exceptional and extraordinary since a factor that must be weighed by the court is that the judgment at first instance may be reversed by the COA.

According to article 266, the court can declare that a judgment be provisionally enforceable, even though such a judgment isn't yet a res judicata, and this on the demand of any interested party; this demand shall be made by means of an application, which will be served on the other party, who is entitled to answer within two working days. The court of first instance shall, after summarily hearing the parties, dispose of the application as soon as possible. If the appeal application has not yet been filed, that is, the period of thirty days within which one is to file an appeal has not yet elapsed, then in such a case, one files such a demand before the Court of First Instance. If on the other hand the appeal application has been lodged, then the application for provisional enforcement has to be deposited in the Court of Appeal.



(cont'd) Provisional Enforcements of Judgements

The party requesting provisional enforcement has the burden of proof to show that even though the matter is still under appeal and subject to a potential reversal, there will be greater prejudice in postponing or delaying execution, when compared to the situation were execution were to be granted provisionally. One has to show that one will suffer greater prejudice if the judgment isn't provisionally enforced.

It is important to point out that where the Court of First Instance has declared a judgment to be provisionally enforceable, the appellate court may, at any time before delivering judgment, on the application of the interested party, **confirm, vary or revoke** the decision. Furthermore, the party against whom execution of a judgment was provisionally enforced, may be entitled to damages and interest in the case of reversal or variation of such judgment. Also, the court that ordered the provisional enforcement of the judgment, may at any time order the party entitled to such executive to give the opposite party sufficient security for the payment of damages and interest that may become due if the decision on provisional enforcement is reversed or varied. Where the judgment refers to the payment of moneys or security, the court may stay the execution if the interested party gives sufficient security for the execution of the judgment on its becoming a res judicata.



(cont'd) Provisional Enforcement of Judgements

Finally, according to article 267, the following shall be in all cases provisionally enforceable:

1. any judgement with regards maintenance;
2. any interlocutory decree; and
3. any judgment providing redress against infringement of the individual's right to life or providing remedies against illegal arrest or forced labour.



(cont'd) Provisional Enforcement of Judgements

In summation, the rule is that the Court will not order the enforcement of a judgement UNLESS it is a res judicata — however it is possible for 3rd party to ask for a provisional enforcement of a judgement, even though the time limit for the appeal has not lapsed/an appeal has been filed.

This is seen In the case: **Garden of Eden Garage Limited vs. Awtorita' dwar it-Transport ta' Malta (FHCC) (2011)**



(cont'd) Provisional Enforcement of Judgements

- This remedy is exceptional because such decision may reverse the first judgement.
- The application must be filed before the FHCC or CoM and must be served to the opposite party who will be entitled to file an answer within 2 days.
- Court of First Instance will summarily hear the parties and dispose of the application as soon as may be after the filing thereof.



(cont'd) Provisional Enforcement of Judgements

4 Scenarios concerning when the application is filed:

1. If the application has been filed before the delivery of the judgement by the first Court, that court is to hear the applicant and the opposing party summarily and decides the matter ASAP
2. If the application is filed after the delivery of the judgement by court of first instance BUT before the other party enters an appeal — the first court is to decide whether or NOT to order the provisional enforcement of the judgment
3. If the application is not disposed of by the Court of First Instance BEFORE the lodging of records of proceedings before the CoA, then this court will decide whether or not to allow provisional enforcement of the first court's judgment
4. And if on appeal from the judgment the lodging of the record of proceedings before the CoA takes place BEFORE the application disposal of the application at first instance — the application shall be dealt with and disposed of by the CoA.



(cont'd) Provisional Enforcement of Judgements

BURDEN OF PROOF lies with the applicant to show that even though the matter is still under appeal and subject to a potential reversal, there will be greater prejudice in postponing or delaying execution if not granted provisionally.

If the Court of First Instance declares a judgement to be provisionally enforceable, the appellant court may, at any time before delivery of judgement, confirm, vary or revoke the decision.





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(cont'd) Provisional Enforcement of Judgements

EFFECTS OF REVOCATION OR VARIATION.

The party against whom execution of a judgment was provisionally enforced may be entitled to damages and interest.

Where judgement becomes provisionally enforceable the Court may, at any time, order the party entitled to such executive title to give the opposite party sufficient security for the payment of damages and interest that may be due.



Provisional Enforcement by Operation of the Law

There are a number of judgements which are always provisionally enforced, while others can never be provisionally enforceable.

JUDGEMENTS WHICH ARE ALWAYS PROVISIONALLY ENFORCEABLE:

1. Any judgement regarding maintenance.
2. Any judgement providing redress against infringement of an individual's rights to life or providing remedies against illegal arrest or forced labour
3. Any interlocutory decree (judgement which is temporary and not intended to be final, until other matters come before the judgement or until a passage of time, as determined by the decree)



(cont'd) Provisional Enforcement by Operation of the Law

JUDGEMENTS WHICH ARE NEVER PROVISIONALLY ENFORCEABLE:

1. Judgements dealing with the registration of hypothecs in the Public Registry;
2. Judgements dealing with the ratification or cancellation of the registration of an act of civil status; and
3. Judgements on industrial patents



Requirements of a Judgement

The validity of a judgement is dependant upon:

1. Substantial & Internal Requisites
2. Formal & External Requisites



(cont'd) Requirements of a Judgement

SUBSTANTIAL (INTERNAL) REQUISITES

1. VOTING:

- This is necessary when the court is composed of several members and secret votes must be taken due to disagreements
- Majority is needed as it constitutes the opinion and judgement of the entire Court — but is pronounced by one judge in the name of the others



(cont'd) Requirements of a Judgement

2. DEMAND AND PLEAS

- Statement of demands and pleas must be drawn up to render the judgment intelligible / understandable / comprehensible



(cont'd) Requirements of a Judgement

3. GROUNDS OF THE DECISION

Arguments relating to the facts and the law that determine the decision of the Court. Such arguments are to be carefully examined.



(cont'd) Requirements of a Judgement

4. THE DECISION - PARTE DISPOSITIVA

This is the final part of the judgement that (i) accepts OR (ii) dismisses the claims of the plaintiff (in whole or in part OR subject to conditions and limitations).

- what the court intends to be a conclusive or binding declaration — is to be included in the operative part of the judgement
- All decisions that are binding to the parties shall be contained in the judicatum
- The decision must ONLY address what is in the sworn application.
- Court cannot decide on matters extra petita and ultra petita - Where the judgement accepts a claim for some special performance — judgement must state a time within which the party must perform the act.



(cont'd) Requirements of a Judgement

4. FINAL PART

This decides the costs — the rule is that the defeated party is bound to bear the costs of the proceedings.

- Costs may be divided equally when:
 - a. Each party has lost some of the points in controversy
 - b. When the matter at issue involves difficult points of law
 - c. Where there is any other good cause



(cont'd) Requirements of a Judgement

FORMAL (EXTERNAL) REQUISITES

1. DELIVERY:

- Judgement is to be read out of the operative part of the judgement in open court — by the judge before whom the suit has been dealt with (or read by one)
- OPERATIVE PART:
 - Reference to claims/pleas decided upon
 - Declarations intended to be conclusive/binding
- A signed transcript of the judgement is deposited in the records of the case



(cont'd) Requirements of a Judgement

2. REGISTRATION

- Registrar will record the decision and the reasons the Court gave upon delivery of the judgement.
- Record is to be kept in the register of judgments constituting an authentic proof of the judgement.



(cont'd) Requirements of a Judgement

TYPES OF JUDGEMENTS

Judgements can be of 2 types:

- On the Merits of the case; or
- On the Proceedings — here the plaintiff may institute fresh proceedings since there is no final judgement. Judgement refers to the regularity or otherwise of the proceedings, thus questions of merit are not dealt with yet.



Decrees

Decrees are the declarations, excluding those pronouncements or decisions on the merits, whereby lawsuits/parts thereof are decided upon.

A digriet is a Court order issued either during the proceedings or at the termination of proceedings.

PURPOSE: to determine particular issues, unlike judgements that aim to manage and direct proceedings.



(cont'd) Decrees

INTERLOCUTORY DECREES

Interlocutory decrees are delivered during the decision.

- Such decrees are those that do not imply a decision on the merits of the case but are those that are pronounced in open court — whilst discussion is underway and before judgement is passed.
- Required for the proceedings to eventually continue.



(cont'd) Decrees

INTERLOCUTORY DECREES VS JUDGEMENTS

Differences

1. Article 230 - Interlocutory decree does not operate as a res judicata for the court that may have pronounced it, if good cause to depart from it is shown. It can be revoked (when it is lawful to do so) A Final Judgement is deemed to be conclusive on the parties and thus constituted res judicata.
2. An interlocutory decree does not award costs, while judgement on the merits has an operative part wherein costs are generally awarded (the decide).

(cont'd) Decrees

INTERLOCUTORY DECREES VS JUDGEMENTS

Similarities

Interlocutory decrees have to be delivered and recorded in the same manner as judgements and must be justified.



Appeals from Decrees

One can appeal from the 13 forms of decrees listed — only after the definitive judgement AND together with an appeal from such judgement.

The following decrees CANNOT be challenged before the definitive judgement is delivered — Article 229(1)

A. Those simply allowing a form of decree

- (i) A request for urgency
- (ii) Appointing a referee

B. Those simply allowing disallowing a form or decree

- (i) A request for stay of proceedings



(cont'd) Appeals from Decrees

C. Those that either allow or disallow a form of decree

- (i) A request for the adjournment of a cause
- (ii) An objection to put questions to a witness
- (iii) A request for the production of documents
- (iv) A request for the connection of actions or sopraccessjoni
- (v) Request for suspending the delivery of a decree
- (vi) Expunging of a document from the records of a case; and
- (vii) Request for the revocation or amendment of decree (subject to provisions of the same article).



(cont'd) Appeals from Decrees

EXCEPTIONS

5 exceptions to the rule — Article 229(2) — may be appealed from immediately, prior to the definitive judgement:

- (i) Refusing the appointment of additional referees
- (ii) Transferring an action for trial to another court
- (iii) Refusing the joinder of a third party
- (iv) Disallowing a request for urgency and
- (v) Ordering the stay of proceedings.



(cont'd) Appeals from Decrees

Such decrees must be read out in open court on a day duly notified to the parties.

- The appeal must be filed by the aggrieved party within 6 days from the date on which decree is read out in court — provided that an application for appeal has not been filed.
- **MUST CONTAIN:** full and detailed reasons in support of the request and must be served on the other party.
- The other party has 6 days to reply, running from the date of service.
- The Court's decision as to whether it shall accept or deny the application for reconsideration must be done quickly — containing detailed reasons for the decision and read in open court.



(cont'd) Appeals from Decrees

APPEALS FROM OTHER INTERLOCUTORY DECREES

'Other' refers to decrees which do not fall under Sub-article 1 and 2, and fall under Article 229(3).

- Decrees may be entered before the definitive judgement **ONLY** by special leave of the court hearing the case — request must be made within 10 days from when decree is read out in open court.
- After hearing the parties, the Court may grant such leave of appeal — if deemed expedient and fair — such matter is brought before the CoA before the definitive judgement and the time limit for such filing of appeal shall commence from date of the decree.





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