# Recap

- Collection of data in the judicial sphere what info. can you resort to when there is no legal info available? GWU case recusal of judge – made reference to the anthropological study of the Maltese society by anthropologist Jeremy Bossevain re amoral familism concept
- Social sciences collection of data method non-participant (observer is detached) vs participant observation (direct observation. researcher may take part in the group – various types e.g. Overt & covert)
- Other methods of collection of info interviews, questionnaires, case study
- Types of Qs open (explanatory examination in chief) vs close ended (yes/no – cross-examination)



# Recap

- Analysis & Interpretation of data
- 1. Edit
- 2. Code
- 3. Classification
- 4. Tabulation

Process used also in judgments e.g. Camilla Scerri et vs Awtorita tal-Artijiet (Lands Authority) – LAB had to award compensation – 9 differing valuations for the same land for the same period



# Legal Research and Interpretation Methodology

Lecture Title: Research Process Part III (Interpretations) and Legal Writing

Lecturer: Dr Elian Scicluna Date: 12/02/2025



Diploma in Law (Malta)

# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Law is stated in general terms since it is intended to apply to various situations. The law cannot be amended everytime someone thinks of a new possibility
- Legislators provide the law in generic terms. Courts/tribunals decide whether particular situations are covered by the law i.e. Match facts with legal rules
- Meaning of the law is explained in judgments (sometimes even in parliamentary debates)
- Depending on the provision of the law, interpretation may be literal or flexible



E.g. of generic law Art. 535 of Cap. 16 (Spoliation/ pretended rights):-

535.(1) Where any person is **by violence or clandestinely** despoiled of the **possession**, of whatever kind, or of the detention of a movable or an immovable thing, he may, **within two months from the spoliation**, bring an action against the author thereof demanding that he be reinstated in his possession or retention, as provided in article 791 of the Code of Organization and Civil Procedure.

(2) Such reinstatement shall be ordered by the court even though the defendant be the owner of the thing of which the plaintiff has been despoiled

Criminal action counterpart - Ragion Fattasi Art. 85 of Cap. 9:-

85.(1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months

*Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (multa):* 

Provided further that it shall be a defence for the person accused of this offence to prove that such disturbance was done as a temporary measure imposed by actual necessity either in lawful self-defence or in the lawful defence of another person:

Provided further that in cases of arbitrary or forced evictions of an occupant from the property which he occupies as his primary residence, including any unpermitted entry into the property, removal of furniture, appliances or personal belongings from the property, or the suspension or interruption of water and electricity services, in whichever manner, including the installation of devices which enable the owner to suspend the direct supply of water and electricity services to the property, the fine (multa) shall not be less than one thousand five hundred euro ( $\leq 1,500$ ) and not more than four thousand euro( $\leq 4,000$ ).

(2) The provisions of article 377(5) shall apply in the case of any conviction under sub-article (1) and when the conduct of the offender has resulted in a person being despoiled the Court shall apply the provisions of that sub-article in order to ensure that the person despoiled is fully revested in the position before he was despoiled.

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# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

E.g. of spoliation cases:-

- i. Landlord cuts electrical supply to the premises rented to the lessee
- ii. Spouse changes locks of the matrimonial home without giving a copy to the other spouse
- iii. Passing of conduits/pipes on neighbours' property
- iv. Opening of window in party wall overlooking neighbours' property
- v. Putting a water tank on neighbour's roof



# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Court interpretation of the law may be flexible or rigid
- Criminal law of procedure interpretation in relation to summons is rigid since it may affect the accused's right of defence. Errors are in favour of the accused – II-Pulizija vs Jason Azzopardi et – Court of Magistrates (Malta) – Mag. Joseph Mifsud 25/02/2020:-
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# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

 Civil procedure – Flexible in certain cases- 1990's nullity is accepted if the defect is prejudicial to the other party.
 Before, application was rigid e.g. nullity of a sworn application (before First Hall Civil Court) was accorded even in cases where claims were not numbered

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# Diploma in Law (Malta)

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# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Substantive law depends on the case at hand
- E.g. Interpretation of contracts rigid. If the meaning is clear there is no room for interpretation
- Nullity of will due to insanity rigid
- Possession of property cases wide and flexible
- Procedural law e.g. Admissability of new witnesses/proof –case by case basis



# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Warning: When searching for case law pay attention to wrong application of the law vs wrong interpretation of the law
- Wrong application of the law Objectively the wrong law/act/article was applied to the facts e.g. Apply Art. 85 of Cap. 9 to a civil suit – appealable and basis for re-trial
- Wrong interpretation of the law court provides a wrong interpretation of the article in relation to the facts/proof of the case. It is not a point of law matter – not appealable.
- Tip: Search several judgments to ascertain correct interpretation of the law + look for appeal judgments & judgments which weren't appealed



# 6. Analysis & Interpretation of Data – Legail<sup>loma in Law (Malta)</sup> Interpretation – E.g. Wrong application of the Law judgment



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# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation - Tips

- Read the law (both Maltese and English version)
- Read the whole article
- Read the articles about the definitions, if provided in the law
- Read judgments (for interpretation) and parliamentary debates (for contexts and interpretation)
- Read more than one judgment on the same matter from different periods
- Read journals, dissertations and authors, if any



# 6. Analysis & Interpretation of Data – Legal Interpretation – Interpretation Act – Cap. 249

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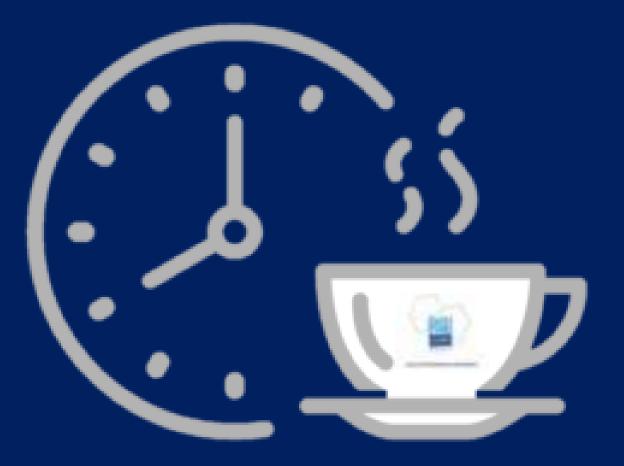
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# 7. Writing

- Last phase of research design
- Research remains incomplete until the write up
- The writing is an account of the problem, methodology, collection of data and their implications
- Contents and style depend on who are you targeting and the reason for your write up. The Format is also subjective.



# 7. Writing – Report's Objective

- Report needs to be presented in the appropriate manner so that the targeted readers may be able to understand and utilize it
- The objectives of a research report are:
- 1. Conveying of knowledge to the concerned people in the field of research
- 2. Proper presentation of the findings for further utilization of the recommendations.
- 3. Give impetus to research in the concerned knowledge area
- 4. To re-examine the validity of generalizations drawn by the researcher after the report has been submitted.



# 7. Writing – Types of Reports

- Reports are of different types depending on their area, purpose and the approach
- Most common types:-
- 1. Business Report
- 2. Project Report
- 3. Dissertation
- 4. Enquiry report of a commission
- 5. Thesis

• A legal report deals specifically with a legal problem



# 7. Writing – Guidelines for Report Writing

- 1. Knowledge of the research material
- 2. Organize the research material
- 3. Continuous report reflective thinking
- 4. Rough drafts
- 5. Rewrite and polish the rough drafts
- 6. Preparation of the final bibliography
- 7. Footnotes and head notes



# 7. Writing – General Structure

• Structure depends on the type of instrument being written:-

1. Introduction - Clear cut statements as to the nature of the study, Aims, Sources of information, Scope of study, Brief statement of the working hypothesis which guided the study.

2. Explicit definitions of the units of study

3. Brief statements of techniques used in study - Types of observations used and conditions under which observations were made, conditions under which the data was obtained, types of case history data secured, their sources, manner of presentation, and preliminary analysis made, Sampling procedures and conditions of selection and testing for appropriateness, representativeness, Statistical procedures, sources of statistical data conditions under which they were obtained;

4. Major findings

5. Conclusions reached – may include special remarks such as Problems encountered in gathering the data, classifying them, analyzing them, possible discrepancies in the data collected, suggestions to subsequent investigators on same topics in same context.

6. Bibliography

7. Appendix



# 7. Writing – Organization (Dissertations/ Long Essays)

No hard and fast rule about the pattern however most common organization of research is as follows:-

### 1. Preliminary Pages

- i. Title Page the cover of the report and the first thing that the targeted reader come in contact with. It indicates the main theme or the title of the study. The title should be appropriate and attractive. The title page may also contain the name of the researcher and date.
- ii. Abstract/ Preface Can be inserted after dedication section importance of the content.
- iii. Dedication
- iv. Table of Contents
- v. Table of Cases
- vi. Table of Statutes
- vii. List of tables, figures
- viii. Abbreviations
- ix. Acknowledgements Can be included in dedication page

## 2. Main Text

- i. Chapters with appropriate captions chapter ideally chapter will have headings and sub-headings
- ii. First chapter labelled as "Introduction" should include methodology i.e. the research design and method used in carrying out the research. It should give exact meaning of measurements or terms or variables used, selection of sampling, universe selected, tools of data collection, hypothesis etc.
- iii. End Chapter "Conclusion"/ "Conclusion and Recommendations"

# 3. End Pages

- i. Bibliography
- ii. Annexes Interviews/questionnaires conducted

# 7. Writing – Legal Article

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# 7. Writing – Legal Writing (Judicial \* Litigation related)

- 4 main types of legal writing:
- i. Judicial Acts (excl. legal briefs)
- ii. Case briefs summary of case
- iii. Legal Briefs submissions
- iv. Legal correspondence legal letters



# 7. Writing – Legal Writing – Judicial Acts

# • Different forms

- Application Rikors To start proceedings before Court of Magistrates, general applications before of every court e.g. To defer a court case to another date/ to admit a new witness before the FHCC, particular procedures before FHCC - Art. 495A of Cap. 16 – where the co-owners fail to agree in respect of a sale of a thing held in common
- 2. Judicial Letters
- 3. Sworn Application Rikors Guramentat Art. 156 COCP
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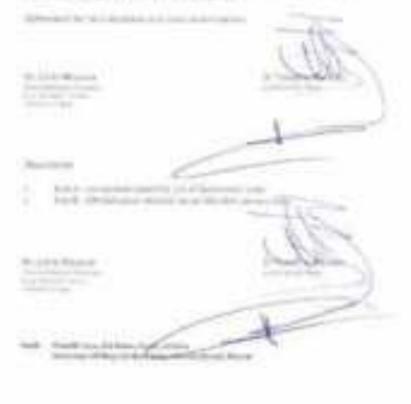
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