CHAPTER 12

CODE OF ORGANIZATION AND CIVIL PROCEDURE

To amend and consolidate the Laws of Organization and Civil Procedure.[*]

1st August, 1855

ORDINANCE IV of 1854 as amended by Ordinances: V, VII and X of 1856, XII of 1857, XI of 1858, XI of 1859, IV of 1862, III of 1863, V of 1864, IV of 1865, IV of 1868, IX of 1871, VII of 1876, I, VI and VII of 1880, XV of 1885, IX of 1886, VII of 1892; the Malta (*Use of the English Language in legal proceedings*) *Order-in-Council, 1899; Ordinances: XV of 1900, VI and VIII of 1901, II and VIII of 1903, V of 1904, IV of 1905, XV of 1913, I, II and XVII of 1914, II of 1916; Government Notices: No. 340 of 1916, No. 162 of 1917; Ordinance XII of 1918; Government Notices: Nos 136 and 137 of 1919, No. 203 of 1920; Acts: XVI of 1922, IV and XII of 1924, XIII of 1925, XI, XVI and XX of 1929; Government Notices: Nos. 78 and 475 of 1929; Act XI of 1932; Government Notice No. 105 of 1933; Ordinances: IV, XVI, XIX, XXXI and XXXIII of 1934; Government Notice No. 393 of 1934; Ordinance XXVIII of 1935; Government Notice No. 138 of 1935; Ordinances: XXI of 1936, XXXVI of 1938, III and XXIX of 1939; Government Notice No. 549 of 1939; Ordinances: II and XV of 1940; Government Notice No. 249 of 1941; Ordinances: XI and XII of 1942; Government Notice No. 653 of 1942. Incorporating also Ordinance II of 1868 as amended by Ordinance VI of 1895.*

The Code was subsequently amended by Government Notice No. 199 of 1944; Ordinance II of 1947: Acts: LIII and LXII of 1948: Government Notice No. 139 of 1949; Act XXIX of 1952; Government Notice No. 33 of 1953; Act II of 1954; Ordinances: IV of 1961, XXI and XXV of 1962; Act XXII of 1963; Legal Notice 4 of 1963; Acts: XIII and XV of 1964, XIX and XXXII of 1965; Legal Notice 46 of 1965; Acts: XXXI of 1966, XX of 1968; Legal Notices: 2, 7 and 9 of 1968; Acts: I and XXI of 1969, XXVII of 1970, XXIII and XXX of 1971; Legal Notice 78 of 1971; Acts: XI and XLVI of 1973, V, VII, XXXV and LVIII of 1974, X and XXIV of 1975; Legal Notices: 148 and 154 of 1975; Acts: XVIII and XXII of 1976, XI and XXVII of 1977, XII of 1978, XXVII of 1979; Legal Notices: 29 and 95 of 1979; Acts: XI, XIV and XXXI of 1980; Legal Notices: 49, 99 and 102 of 1980; Acts: VIII, XLIX and LII of 1981; Legal Notices: 56 and 96 of 1981; Act XVI of 1982; Legal Notice 42 of 1982; Acts: XIII and XV of 1983, IV and XI of 1984, XII, XIII and XX of 1985, V and XXXIX of 1986; Legal Notices: 3 of 1986, 1 of 1987, 28 of 1988, 120 of 1989; Acts: VIII of 1990, XVII of 1991; Legal Notice 116 of 1992; Acts: XXII of 1992, XXI of 1993, XI of 1994 and V of 1995; Legal Notices 91 and 190 of 1995; Act XXIV of 1995; Legal Notice 18 of 1996; Acts II and IV of 1996; Legal Notices: 121, 122, 124, 153 and 154 of 1996; 149 and 226 of 1997; Acts XI and XVIII of 1999; Legal Notices 1, 142 and 197 of 2000, and 8 and 34 of 2001; and Acts: IV and VI of 2001, and III, XVIII and XXXI of 2002.

*This Code, enacted by Ordinance IV of 1854, was promulgated by Proclamation No. VI of the 1st of May, 1855.

ARRANGEMENT OF CODE

*Repealed by Act No. XII of 1985.

*Repealed by Act XII of 1985.
†Repealed by Act XXIV of 1995.

SCHEDULES

Title.

1. The title of this Code is Code of Organization and Civil Procedure.

BOOK FIRST

Title 1

OF THE COURTS OF JUSTICE GENERALLY

Civil courts of justice.
Amended by: XXII. 1976.4.

2. (1) The courts of justice of civil jurisdiction for Malta are either superior or inferior.

(2) Saving any other provision of law, the courts of justice of civil jurisdiction are exclusively vested with the judicial authority in civil matters within the jurisdiction of the tribunals of Malta.

Superior courts.
Amended by: XIII. 1964.2.
Substituted by: L.N. 148 of 1975; XXIV. 1995.2.

3. The superior courts are:

(*a*) the Civil Court;

(*b*) the Court of Appeal; and

(*c*) the Constitutional Court.

Inferior courts.
Amended by: XV.1913.1; VIII. 1990.3.

4. The inferior courts are:

(*a*) the Court of Magistrates (Malta) for the Island of Malta;

(*b*) the Court of Magistrates (Gozo) for the Islands of Gozo and Comino.

Jurisdiction of superior and inferior courts.
Amended by: IX. 1886.1.

5. (1) Save as otherwise provided by law, the jurisdiction of the superior courts is general for Malta.

(2) The jurisdiction of the inferior courts is limited to particular places.

Constitution of superior courts.
Amended by: IX. 1886.2; IV. 1905.2; XV.1913.2; XVII.1914.1; XXXI.1934.2; XXVIII.1935.2.
Substituted by: XIII. 1964.3; L.N. 148 of 1975.
Amended by: XXII. 1992.2.

6. (1) The Chief Justice and President of the Court of Appeal and all other judges shall sit in the superior courts as by law provided.

(2) Besides the Chief Justice, the judges of the Superior Courts shall be thirteen or such greater number as the President of Malta may by Order* prescribe.

Constitution of inferior courts.
Amended by: IX.1886.3.
Substituted by: XIII.1964.4.

7. The magistrates shall sit in the inferior courts.

*By Legal Notice 58 of 1998 the number has been increased to "eighteen".

Judges may not communicate with suitors, etc.
Amended by:
L.N. 46 of 1965;
LVIII. 1974.68;
L.N. 148 of 1975;
XXXI. 2002.4.

8. (1) Saving the cases expressly provided for in this Code, the judges shall not, except in open court, either directly or indirectly, hold any communication with any suitor in any of the courts, or with any advocate, legal procurator, or other person on behalf of such suitor, in regard to any suit which is pending at the time, or is about to be commenced or prosecuted. Nor shall they, without the permission of the President of Malta, first had and obtained on an application to that effect, act as advocates or in any case give counsel or advice in regard to any suit which they know to be already commenced, or which they foresee as likely to commence.

Exceptions.

(2) The provisions contained in this article shall not apply in the case of lawsuits concerning any of the parties mentioned in article 734(*a*), (*b*), (*c*) and (*e*).

(3) Nothing in the preceding subarticle shall be deemed to preclude a judge or magistrate from communicating with the advocate or legal procurator of a party in connection with any matter concerning the management of a cause pending before the judge or magistrate:

Provided that a magistrate shall not be debarred from holding any communication for the purposes of any inquiry into any criminal matter when such magistrate is holding an inquiry under Title II of Part I of Book Second of the Criminal Code.

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Judges may not act as arbitrators etc.
Amended by:
L.N.148 of 1975.

9. Moreover, it shall not be lawful for any of the judges to act as an arbitrator, or to accept any tutorship or other administration except such as may be assigned to him by law.

Oaths of allegiance and of office to be taken by judges.
Amended by:
XIII.1964.5;
L.N. 46 of 1965;
LVIII. 1974.68;
L.N. 148 of 1975;
XII.1978.2;
XXIV. 1995.3;
XXXI. 2002.5.

10. (1) The judges shall, before entering on the execution of their office, take, before the President of Malta, the oath of allegiance set out in the Constitution of Malta and the following oath:

Form of oath of office.

Oath of Office

I..... do swear that I will faithfully perform the duties of Judge without favour or partiality, according to justice and right, and in accordance with the laws and customs of Malta, to the honour of God and the Republic of Malta, and that I will not hold, either directly or indirectly, any communication with any suitor in any of the Courts, whether superior or inferior, his Advocates or Legal Procurators, or with any other person on behalf of such suitor, in regard to any suit pending or about to be commenced or prosecuted in any of the said Courts, except in open court, saving the cases expressly provided for by law; and that I will disclose in open court, and make known to the President of Malta any such communication as may be made to me. And I do further swear that I will not act, either directly or indirectly, as an Advocate, or arbitrator, nor give in any case counsel or advice to any person in regard to any suit already commenced or to be commenced in any

of the said Courts, saving the cases excepted by law, without the permission of the President of Malta first had and obtained upon an application to that effect. So help me God.

(2) Where any communication as is referred to in the form of oath contained in sub-article (1) consists in an anonymous letter or in a letter the writer whereof cannot be readily identified, or where any such communication contains insulting or offensive expressions, the judge who received the communication need not read out the communication in open court but may instead disclose in open court the fact of such receipt and shall in any case make the content thereof known to the President of Malta.

Distribution of duties of judges. *Amended by: I.1914.1; XII.1918.2; XII.1964.6; L.N. 46 of 1965; XXIII.1971.2; LVIII. 1974.68; L.N. 148 of 1975; XXII. 1992.3; XXXI. 2002.6.*

11. (1) The President of Malta shall assign to each of the judges the court or the chamber of the court in which he is to sit, and may transfer a judge from one court or chamber of a court to another:

Provided that a judge may be assigned to sit in more than one court or more than one chamber of one or more courts.

Surrogation of judges.

(2) The President of Malta is also empowered to surrogate another of the judges, in lieu of the judge appointed to sit in any particular court, whenever the latter is, in the cases provided for in this Code, challenged or otherwise lawfully impeded.

(3) A surrogation may also be made in the case of a vacancy in the number of judges.

(4) Any assignment of duties, transfer or surrogation, and any distribution of duties in general, in respect of the judges, shall be deemed to have been properly and sufficiently notified for all purposes if notice thereof is posted in such registry as the Minister may under article 27 prescribe for the purpose before or at the beginning of the period during which such assignment, transfer, surrogation or distribution is to take effect.

(5) The registrar shall keep a record of all notices posted up in terms of the last preceding sub-article and of the date of such posting.

Applicability of certain provisions to President of Court of Appeal. *Amended by: I. 1914.2; XXXI. 1934.3; XIII. 1964.7; XXXI. 2002.7.*

12. (1) The provisions of articles 8, 9, 10 and 11 shall, *mutatis mutandis*, also apply to the President of the Court of Appeal.

(2) Whenever the President of the Court of Appeal is, in the cases provided for by law, challenged or otherwise lawfully impeded, the senior of the judges constituting the Court of Appeal shall be the President of that court.

13. *Repealed by XXXI. 2002.8.*

Appointment of supplementary judges.
Amended by: XII.1918.3; XXXI.1934.4. Substituted by: XIII.1964.8. Amended by: LVIII.1974.68.

14. *Repealed by XXXI. 2002.8.*

Oaths to be taken by supplementary judges.
Amended by: XV.1913.3; XII.1918.4; XIII.1964.9; L.N. 46 of 1965; LVIII.1974.68.

15. The provisions of articles 8, 9, 10 and 11 shall, *mutatis mutandis*, apply to magistrates.

Applicability of certain provisions to magistrates.
Amended by: XV.1913.5; IV. 1924.3; VIII. 1990.3; XXIV. 1995.4. Substituted by: XXXI. 2002.9.

16. It shall not be lawful for any judge or magistrate to carry out any other profession, business or trade, or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international Court or tribunal or any international adjudicating body, the office of examiner at the University of Malta.

Judges and magistrates may not hold other offices of profit. Exceptions.
Amended by: IV. 1868.1; XV. 1913.5; IV. 1924.4. Substituted by: XXIV. 1995.5. Amended by: XXXI. 2002.10.

17. *Repealed by XXXI. 2002.11.*

Oaths to be taken by magistrates.
Amended by: XV.1913.5; IV.1924.5; L.N. 46 of 1965; LVIII. 1974.68; L.N.148 of 1975; XII.1978.3.

18. *Repealed by XXXI. 2002.11.*

Surrogation of magistrates.
Amended by: XV.1913.6; XXXI. 1934.5; L.N. 46 of 1965; LVIII.1974.68; XXIV.1995.6.

Power of President of Malta to make regulations respecting the distribution of duties of magistrates in Malta or Gozo. *Added by: IX.1886.4. Amended by: XV.1913.6; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; XXIV.1995.7.*

19. *Repealed by XXXI. 2002.11.*

Supplementary magistrates for Gozo. *Amended by: XV.1913.6; XIII.1964.11; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; XXIV.1995.8.*

20. *Repealed by XXXI. 2002.11.*

Language of the courts. *Amended by: Order-in-Council of 1899, s.11; II.1914.1; Letters Patent, 1921, s.57(3); XVI.1929.5,6; XI.1932.1,2; XXXI.1934.6; XXI.1936.2. Substituted by: XXXII.1965.8. Amended by: XXIV. 1995.9.* Cap. 189.

21. (1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

(2) Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.

(3) Any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator.

Causes to be tried in public. Exceptions. *Amended by: IV. 1862.2.*

22. (1) Causes shall be tried in public:

Provided that it shall be lawful for the court to order that the cause be heard with closed doors, should decency or good morals so require.

(2) It shall also be lawful for the court, in any other case, at the request of both parties, upon good reason being shown, to order that the cause be heard with closed doors.

Order of court to be recorded.

(3) In any of the said cases, the order of the court shall be recorded.

Judgments to be delivered in public. *Substituted by: XXIV.1995.10.*

23. The judgment shall in all cases be delivered in public. The court delivering the judgment shall read out the operative part which is to be included in the concluding part of the judgment. The operative part of the judgment shall include a reference to the claims or pleas which have been decided upon and every declaration intended to be conclusive or binding. Immediately upon delivery the judge or magistrate shall deposit a signed transcript of the judgment in the records of the case.

Each court to deal with matters pending before it.

24. Any order in regard to any matter pending before the courts shall be given by the court to which such matter appertains, and any application for any such order shall be made to such court exclusively.

Suitors, etc., not to have private communication with judges or magistrates. *Amended by: XI.1859.1; XXXI. 1934.7; L.N. 148 of 1975.*

25. Saving the proviso to article 15, suitors as well as advocates, legal procurators and all other persons acting in the name and on behalf of such suitors, are, under the penalties laid down in article 997, forbidden to make any private application to the judges or to the magistrates in regard to matters pending or to be brought before any of the courts of justice.

Mode of applying to court for any order.

26. Any suitor, advocate or legal procurator, desiring to apply to the court for any order, may do so either when the court is sitting or at any other time; but, in the latter case, the application must be made through the registrar.

Registry of superior courts. *Amended by: VI.1880.2; L.N 46 of 1965; X. 1975.2; XXI V. 1995.11.*

27. (1) There shall be one registry common to all the superior courts.

Registries of inferior courts.

(2) Each of the inferior courts shall have its own registry.

Appointment of registrar.

(3) The registrar shall be appointed by the Prime Minister, and the other court officials mentioned in article 57(2) shall be designated to perform the duties of their office by the Minister responsible for justice.

Court archives. *Amended by: VI. 1880.3; XI.1942.2; L.N. 4 of 1963; XXXI. 1966.2.*

28. There shall be two general archives for all the courts, one in the city of Valletta and the other in the Island of Gozo; and all the acts of the said courts shall be deposited and kept in the said archives, as provided in article 65:

Provided that the Minister responsible for justice may, by notice published in the Government Gazette, direct that the archive in the city of Valletta be transferred to such other place as shall be indicated in the notice, and, or alternatively, that the said archive be divided into two or more articles to contain respectively the acts of the superior courts, of the inferior courts, or parts thereof, whenever such courts are established in separate edifices, and that, having given such directions, he may subsequently vary them.

Rule-Making Board.
Amended by: XV. 1913.7; XXXI. 1934.8; XXI. 1936.3; XIII. 1964.12; XIX. 1965.2; XXXII. 1965.8; L.N. 46 of 1965; XXX. 1971.3; LVIII. 1974.68; L.N. 148 of 1975; LII. 1981.2; XXII. 1992.4. Substituted by: XXIV. 1995.12. Amended by: XXXI. 2002.14.

29. (1) There shall be a Board composed of the Chief Justice, as chairman, who shall also have a casting vote, one judge, who shall be a judge sitting in the Criminal Court or the Court of Criminal Appeal, one magistrate, both judge and magistrate being appointed by the President of Malta, the Attorney General, the President of the Chamber of Advocates and the President of the Chamber of Legal Procurators whose function shall be to make rules, to be called Rules of Court, for the purposes specified in subarticle (2).

(2) Rules of Court may be made generally in respect of all matters concerning the conduct of causes with the object of ensuring a proper and efficient administration of justice and, in particular, but without prejudice to the generality of the aforesaid -

(*a*) for securing and maintaining order and decorum within the building of the courts;

(*b*) for fixing the days, hours, duration and number of the sittings of the courts, determining the manner of distribution of the causes among judges and the magistrates appointed to sit in a particular court or chamber thereof, and for making other provision in respect of any matter aforesaid as the Board may deem appropriate;

(*c*) for regulating leave of absence, for any reason, by judges, or magistrates, including a requirement of authorisation or sanctioning of such leave by the competent authorities;

(*d*) for establishing any forms not provided for in this Code;

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(*e*) for carrying into effect the provisions of the Judicial Proceedings (Use of English Language) Act, as regards the language to be used in the proceedings;

(*f*) for making provision with respect to judicial acts and matters of or incidental to practice and procedure not provided for in this Code or in any other law;

(*g*) for establishing case management procedures:

Provided that nothing contained in such rules shall be inconsistent with or repugnant to the provisions of this Code or any other law:

Provided further that the Minister responsible for justice may, in the absence of the Rules of Court made in accordance with the provisions of this subarticle, make regulations on any matter referred to in this subarticle.

(3) The Board may act notwithstanding any vacancy in its membership but shall not act unless at least the Chief Justice and another two members are present.

(4) Rules made under this article shall be subject to the approval of the President of Malta, and shall come into force on or after the day of their publication in the Gazette, as may be specified therein.

(5) The Minister responsible for justice may by regulations confer on the Board additional powers and functions for the amelioration of the administration of justice.

(6) The Chief Justice may from time to time convene meetings of judges and magistrates, either separately or collectively, and shall regularly consult with the same, individually or collectively, regarding matters concerning the conduct and trial of causes, the application and conduct of court procedures and proceedings, the implementation of administrative procedures connected with the trial of causes and the conduct of proceedings, the relationship between the judiciary and the Commission for the Administration of Justice, the making of rules of court and such other matters as the Chief Justice may deem appropriate to discuss.

(7) Subject to the foregoing provisions of this article and to any rules or regulations made thereunder, the judges and the magistrates shall have power to regulate the conduct of proceedings and of the trial of the causes before the respective courts over which they preside, and to give directives for the maintenance of order at the sittings of the court, according to law.

30. Advocates and legal procurators, when they appear before the superior or inferior courts, shall be deemed to be officers of the court.

Advocates and legal procurators when appearing in court to be deemed officers of court.

Title II

OF THE SUPERIOR COURTS

31. The Civil Court is divided into two Halls, that is, First Hall and Second Hall.

Civil Court. Division of same.

32. (1) One of the judges shall sit in the Civil Court, First Hall.

Civil Court, First Hall. Constitution and Jurisdiction. *Amended by: XI.1859.2; L.N.148 of 1975. Substituted by: XXIV.1995.13.*

(2) The Civil Court, First Hall shall take cognizance of all causes of a civil and commercial nature, and of all causes which are expressly assigned by law to the said Civil Court, First Hall, or which have hitherto been assigned to or cognizable by the Civil Court, First Hall, or by the Commercial Court, and in regard to which it has not been otherwise provided for in this Code or in any other law.

(3) Nevertheless, such court shall not take cognizance of causes within the jurisdiction of the inferior courts of the Island of Malta other than those in which the Government of Malta is plaintiff or defendant, in which case, the said Civil Court, First Hall, shall, within the limits of the jurisdiction of the said inferior courts, have a concurrent jurisdiction with those courts, saving any other provision of the law.

33. One of the judges shall sit in the Civil Court, Second Hall, to which is assigned the exercise of voluntary jurisdiction in matters of a civil nature.

Civil Court, Second Hall. *Amended by: L.N. 148 of 1975.*

Appeal from judgements of Civil Court, First Hall.
Amended by: XV. 1913.8; XXIV. 1995.14.

34. Save where otherwise provided by this Code or any other law, judgments of the Civil Court, First Hall, are subject to appeal to the Court of Appeal.

Mode of impugning decrees of Civil Court, Second Hall.

35. No appeal shall lie from any decree of the Civil Court, Second Hall; but it shall be lawful for any party, who deems himself aggrieved, to bring an action before the Civil Court, First Hall, for the necessary order.

Commercial Court. Constitution. Jurisdiction.
Amended by: IV. 1862.3; IX.1886.5,6; IV.1905.2,3; XV.1913.9; L.N. 148 of 1975: L.N. 154 of 1975.

36. *Repealed by: XXIV. 1995.15.*

Further jurisdiction of Commercial Court.
Amended by: IV. 1862.3; IV.1905.4.

37. *Repealed by: XXIV. 1995.15.*

Jurisdiction in bankruptcy, etc.
Amended by: XI. 1858.2; IV.1862.3; IV.1905.3; XV.1913.10.

38. *Repealed by: XXIV. 1995.15.*

Duties of Judge of Civil Court, First Hall in respect of proceedings concerning average and sea-protests.
Amended by: IV. 1862.3: IV. 1905.5; XXII. 1992.5; XXIV.1995.357.

39. Any Judge sitting in the Civil Court, First Hall or any chamber thereof shall regulate the proceedings concerning average and shall attend, either personally or through an advocate deputed by him for the purpose, at the drawing up of sea-protests.

Courts may consist of more than one chamber.
Added by: XXII. 1992.6.
Amended by: XXIV. 1995.16.

39A. (1) Notwithstanding the provisions of article 32(1) and article 33, the Civil Court, First Hall, and the Civil Court, Second Hall, may each be composed of more than one chamber, as the President of Malta may by order determine.

(2) A judge shall sit in each such chamber, and a chamber of any such court shall exercise and have all the powers as are conferred on such court by any law.

Appeal from judgements of Commercial Court.
Amended by: XV. 1913.11.

40. *Repealed by: XXIV. 1995.17.*

Court of Appeal Constitution. Jurisdiction. *Amended by: VII. 1880.7; XV. 1913.14; XIII. 1964.13; L.N. 46 of 1965; XXX. 1971.4; LVIII. 1974.68; L.N. 148 of 1975; VIII.1990.3; XXII. 1992.7; XXIV. 1995.18; VI. 2001.3.*

41. (1) The Court of Appeal shall consist of one or more chambers each consisting of the Chief Justice and two other of the judges. Each chamber shall exercise and have all powers as are by this Code or any other law vested in the Court of Appeal.

(2) The number of chambers shall be determined by an Order of the President of Malta.

(3) Where an Order is made by the President of Malta providing for more than one chamber of the Court of Appeal, the rule-making board established under article 29 of the Code shall provide the manner in which cases shall be distributed between the various chambers.

(4) (*a*) An Order as is referred to in sub-article (3) hereof may provide that where one of the judges, other than the Chief Justice, sitting in one of the chambers, abstains or is otherwise challenged and the challenge is accepted, the case in which such abstention or challenge takes place shall be heard by such other of the chambers as is prescribed in the Order.

(*b*) Where the Chief Justice is challenged and the challenge is accepted or abstains, the senior judge (other than the Chief Justice) in such other chamber as may be determined in the Order, shall be surrogated for the Chief Justice in the chamber where the case is being heard.

(*c*) Where notwithstanding the provisions of any orders made under paragraphs (*a*) and (*b*) hereof the case may not be heard by any of the chambers as provided for in such order because of a challenge or abstention of the Chief Justice or any other of the judges, the President of Malta shall surrogate another judge or other judges to sit in lieu of the judges challenged or lawfully impeded in the chamber in which the case was first assigned under the provisions of sub-article (3) hereof.

(5) It shall hear and determine all appeals from judgments of -

the Civil Court, First Hall; and

the Court of Magistrates (Gozo) in its superior jurisdiction.

Appeal from inferior courts for Malta.

(6) The Court of Appeal shall also hear and determine appeals from judgments of the Court of Magistrates (Malta) and Court of Magistrates (Gozo) in its inferior jurisdiction. But, for the purposes of such appeals, the Court of Appeal shall be constituted by one of its members only, and any one of the judges, appointed by the President of Malta to sit for the hearing of such appeals, shall be deemed to be a member of such court. The Court of Appeal as constituted under this subarticle may also be referred to as the Court of Appeal (Inferior Jurisdiction).

(7) Where the Court of Appeal is to hear appeals from the Court of Magistrates (Gozo) in its inferior jurisdiction or from judgments or decisions of any board or tribunal delivered by such board or tribunal when sitting in Gozo, it shall hold its sitting in the building of the Courts in Gozo, and for the purpose of such appeals the registry of the Court of Magistrates (Gozo) shall also be the Registry of the Court of Appeal.

Jurisdiction of Court of Appeal in respect of appeals under Marriage Legacies Law. *Amended by: VI.1880.4; XV.1913.15; II.1940.2.* Cap. 3.

42. The Court of Appeal shall be exclusively competent to take cognizance of the appeals referred to in article 6 of the Marriage Legacies Law.

Jurisdiction of Court of Appeal in issues connected with execution of judgments or warrants. *Amended by: IV.1862.5; IV.1905.6; XV.1913.13.*

43. *Repealed by: XXIV. 1995.19.*

Further jurisdiction of Court of Appeal.

44. The Court of Appeal, besides taking cognizance of the causes referred to in this Title, shall also take cognizance of all other causes which by express provision of the law are assigned to it.

Constitutional Court. *Added by: XIII.1964.14. Amended by: LVIII.1974.68.*

45. The Constitutional Court shall be so constituted and shall exercise such jurisdiction as is provided in the Constitution of Malta.

Saving. *Added by: XIII.1964.14. Substituted by: XXIV. 1995.20.* Cap. 319.

46. The provisions of article 34 and of article 41(6) shall be without prejudice to the provisions of article 46(4), and article 95(2) of the Constitution of Malta and article 4(4) of the European Convention Act.

Title III

OF THE INFERIOR COURTS

Civil Court of Magistrates (Malta). Constitution and jurisdiction. *Amended by: IV.1865.1; XV.1913.16; XXXI.1934.9; XXIII. 1971.3; XIII. 1983.5; XII.1985.2; VIII. 1990.3; XXIV.1995.21; VI. 2001.3.*

47. (1) A magistrate shall sit in the Court of Magistrates (Malta), and such court shall, as a court of first instance, hear and determine all claims of an amount not exceeding five thousand liri, against persons residing or having their ordinary abode in any part of the Island of Malta.

(2) Such court shall also take cognizance of all other causes expressly assigned to it by law.

Limitations.

(3) Nevertheless, causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, even though the claim does not exceed five thousand liri, shall not fall within the jurisdiction of the Court of Magistrates (Malta).

Further jurisdiction. *Amended by: XXXI.1934.9; XXIII. 1971.4; XIII. 1983:5; XII. 1985.3; VIII. 1990.3; XXIV.1995.22; VI. 2001.3.*

48. The Court of Magistrates (Malta), constituted as provided in the last preceding article, shall also take cognizance of any claim for the ejectment or eviction from immovable property, whether urban or rural, tenanted or occupied by persons residing or having their ordinary abode within the limits of the jurisdiction of such court, when the amount of the rent does not exceed five thousand liri, according to the rules established in this Code for determining the value of the matter at issue.

Appeal from judgment of Court of Magistrates (Malta). *Amended by: VII.1880.8; XV.1913.17; VIII.1990.3; XXIV.1995.23.*

49. From the judgments of the Court of Magistrates (Malta), an appeal shall lie to the Court of Appeal, constituted as provided in article 41(6).

Court of Magistrates (Gozo) as court of first instance. *Amended by: XV.1913.18; XIII.1925.2; XI.1929.2; XIII. 1964.15; L.N. 46 of 1965; LVIII. 1974.68; VIII.1990.3; XXIV.1995.24.*

50. (1) Subject to the provisions of article 770 and 771, the Court of Magistrates (Gozo) shall, to the exclusion of the courts of Malta, be competent to take cognizance of all claims against persons residing or having their ordinary abode in the Island of Gozo or Comino, as well as of all other causes expressly assigned by law to such court.

Constitution. Twofold jurisdiction.

(2) Such court shall consist of one magistrate, and shall have a twofold jurisdiction, namely:

Inferior, equal to jurisdiction of inferior court of Malta.

(*a*) an inferior jurisdiction, by virtue of which it shall take cognizance of all causes of the nature of those which, according to articles 47 and 48, are triable by a magistrate for the Island of Malta; and

and superior which is equal to Civil Court, First Hall. Cap. 319.

(*b*) a superior jurisdiction, by virtue of which, subject to the provisions of article 46 of the Constitution of Malta and article 4 of the European Convention Act, it shall take cognizance of all causes of the nature of those which, according to article 32, are triable by the Civil Court, First Hall.

Judgments subject to appeal to Court of Magistrates as an appellate court in its superior jurisdiction. *Amended by: XXIII. 1971.5; XIII. 1983.5; XII. 1985.4; VIII. 1990.3.*

51. *Repealed by: XXIV. 1995.25.*

Judgments subject to appeal to Court of Appeal. *Amended by: XXIII.1971.6; XIII.1983.5; XII.1985.5; VIII.1990.3.*

52. *Repealed by: XXIV. 1995.25.*

Applicability of provisions relating to superior courts, to Gozo Court in its superior jurisdiction. *Amended by: XV.1913.19; XXXI. 1934.10; VIII. 1990.3.*

53. In regard to causes within the superior jurisdiction of the Court of Magistrates (Gozo) the provisions relating to the superior courts shall apply.

Gozo court as court of voluntary jurisdiction. *Amended by: L.N. 46 of 1965; LVIII. 1974.68; VIII.1990.3.*

54. The Court of Magistrates (Gozo), consisting of one magistrate to be named by the President of Malta in that behalf, shall also have, within the limits of its local jurisdiction, the same powers as are assigned to the Civil Court, Second Hall.

Qualifications of magistrates and magistrates surrogate. *Amended by: VIII. 1990.3; XXIV. 1995.26.*

55. *Repealed by XXXI. 2002.25.*

Saving. *Added by: XIII. 1964.16. Amended by: L.N.148 of 1975. Substituted by: XXIV. 1995.27.* Cap. 319.

56. The provision of article 49 shall be without prejudice to the provision of article 46(4) and article 95(2) of the Constitution of Malta, and article 4(4) of the European Convention Act.

Small Claims Tribunal. *Added by: V. 1995.18.* Cap. 380.

56A. Notwithstanding any of the provisions of this Code the inferior courts shall not take cognizance of any claim falling within the jurisdiction of the Small Claims Tribunal established under the Small Claims Tribunal Act.

Title IV

OF THE REGISTRAR

Duties of Registrar of Superior and Inferior Courts. *Amended by: VI.1880.6; XV.1913.22; X.1975.3; XIV.1980.2. Substituted by: XXIV. 1995.28. Amended by: L.N. 34 of 2001.*

57. (1) The Registrar shall have the functions, powers and duties vested in him by the provisions of this Code and shall have under his direct responsibility the registry and the officers attached to it. The officers referred to in sub-article (2) and the executive officers of the court shall be under the administrative control of the registrar.

(2) (*a*) The registrar shall be assisted in the performance of his duties under this Code by the following:

(i) the Registrar (Civil Courts and Civil Tribunals, Malta);

(ii) the Registrar (Criminal Courts and Criminal Tribunals, Malta);

(iii) the Registrar (Gozo Courts and Tribunals);

(iv) assistant registrars;

(v) deputy registrars;

(vi) registry clerks;

(vii) court assistants;

(viii) marshals;

(ix) ushers;

(x) court messengers; and

(xi) court recorders.

(*b*) The Minister responsible for justice may by regulations add to or delete from or substitute the list of officers in paragraph (*a*) hereof and may also in such regulations specify the duties that may be carried out by the officers in the list as contained in or amended by such regulations.

(3) Subject to the provisions of this Code and of any rules made under article 29, the registrar shall take orders from the judicial authorities in relation to any judicial proceedings and in relation to any judicial act, that is to say:

(*a*) in the superior courts in matters concerning a particular court shall take orders from the judge or from the judges, if they are two or more, of that court; in other cases, he shall take orders from the Chief Justice;

(*b*) in the inferior courts shall take orders from the magistrates of the particular court, or, if the magistrates appointed to sit in a particular court are two or more and the matter does not refer to the business of any one of them in particular, from the senior magistrate.

Duties to be executed in part personally and in part by other officers of the registry. *Repealed by: XI.1858.3. Added by: VI. 1880.7. Amended by: XXIX. 1952.2; L.N. 4 of 1963; XV. 1964.2; XXXI. 1966.2; X.1975.4; XI.1977.2. Substituted by: XXIV. 1995.29.* Cap. 79.

58. (1) The duties of the registrar in the superior and inferior courts shall be carried out in part by the registrar personally, and in part as provided by any rules made under article 29, or, failing such rules, by special orders of the Minister responsible for justice, or, failing both, under the directions of the registrar himself, by any court officer mentioned in article 57(2) who may perform any of the duties of the registrar.

(2) The duties of the registrar in each court, during its sittings, shall, unless otherwise provided by the said rules or by any order of the Minister responsible for justice, be performed by the principal assistant registrar, any assistant registrar or any deputy registrar.

(3) The registrar and the officers mentioned in article 57(2)(*a*)(i) to (iii) shall have power to administer oaths and shall, for the purposes of the Commissioners for Oaths Ordinance, be *ex officio* Commissioners for Oaths.

Cases in which registrar is debarred from acting as such.
Added by: VI.1880.7. Amended by: IX. 1886.7; VIII 1903.1.

59. It shall not be lawful for the registrar or any other officer acting in his stead to discharge the duties of registrar in any of those cases in which a judge may be challenged.

Oath to be taken by registrar.
Amended by: VI.1880.8; IX.1886.8; XXIX. 1952.3; XV. 1964.3. Substituted by: XXIV. 1995.30.

60. (1) The registrar, on entering upon the execution of his office, shall take, before the Court of Appeal, the oath of allegiance referred to in article 10, and the oath of office in the following form:

I..... do swear that I will faithfully and with all honesty and exactness perform the duties of Registrar of Courts, to the best of my knowledge, skill and ability. So help me God.

(2) In regard to any other officer mentioned in article 57(2)(*a*)(i) to (iii), the same form of oath shall apply but a mention of their office or designation shall be included therein.

Other duties of registrar.
Amended by: V.1856.1; VI. 1880.9; XV. 1913.23.

61. (1) The registrar, unless otherwise provided in this Code, shall register the proceedings and the orders of the court, and the register kept by him shall constitute an authentic proof thereof.

(2) Where a verbal demand for any act or procedure whatsoever is made in cases in which such act or procedure may take place upon a verbal demand of any party, the registrar shall note down such demand, stating whether the same has been made by the party personally or by a legal procurator or by any other lawful representative; and such note shall constitute an authentic proof as to the demand itself and as to the person by whom it has been made.

Authentication of copies.

62. The registrar shall certify the authenticity of every copy which may be required of any act or document existing in the registry.

Liability of registrar.
Amended by: VI. 1880.10.

63. The registrar shall be responsible for any loss, mutilation or alteration of any act or document filed in the registry as well as for any delay in the course of any such act or document.

Taxing of judicial costs. Impugnment of assessment of costs.
Amended by: IV.1862.6; XXXI. 1934.11; XXIV. 1995.31.

64. (1) Judicial costs shall be taxed and assessed by the registrar, and the assessment made by him may not be impugned after the expiration of one month. Such action shall be instituted by application which shall be heard summarily by the court. Such period, in regard to the person applying for the taxed bill of costs, shall commence to run from the day on which the taxed bill was issued and, in regard to the debtor duly served with such taxed bill by means of a judicial act, from the day of such service.

(2) The applicant shall cause a copy of the application to be served on any person having an interest therein, who shall have twenty days within which to file a reply.

(3) The written pleadings in respect of the application shall be deemed closed by the reply or failing such reply with the expiration of the time allowed for such reply. The parties shall be notified with the date for the hearing of the application.

Deposit of records, etc., in archives. *Amended by: VI.1880.11.*

65. The registrar of each court shall within the period from the first day of July to the thirtieth day of September of each year deliver to the archivist the records relating to the causes determined or otherwise disposed of in the preceding year, together with the volumes containing the judgments delivered during that year as well as the volumes containing the protests, warrants and other acts, other than schedules of deposit, filed during the same year.

Absence or other lawful impediment of registrar. *Amended by: VI.1880.12; VIII.1903.2; XV.1913.24; XV.1964.4; L.N. 46 of 1965; X.1975.5; XXIV. 1995.32.*

66. (1) In the case of absence or other lawful impediment of the registrar, the senior available amongst the officials mentioned in article 57(2)(*a*)(i) to (ii) shall act instead of the registrar, unless another person be appointed by the Prime Minister.

Power of court.

(2) It shall be lawful for any court, where necessary, temporarily to assign the execution of the duties of the deputy registrar specially attached to such court, to another deputy registrar, or to any other officer, and such officer shall, before entering upon the execution of his duties, take before such court the oath prescribed in article 60.

(3) The provisions of sub-article (2) shall apply to the registrars of the inferior courts.

Title V

OF MARSHALS, USHERS AND OTHER EXECUTIVE OFFICERS

Amended by: VI. 1880.13.

Duties of marshals. *Amended by: VI. 1880.13; XIX.1965.3. Substituted by: XXIII.1971.7. Amended by: XII.1978.4; VIII. 1990.3; XXIV. 1995.33.*

67. (1) The executive officers of the courts shall be the following:

(*a*) Marshals

(i) chief marshals;

(ii) senior marshals;

(iii) marshals

(*b*) ushers;

(*c*) court messengers:

Provided that in the case of the Court of Magistrates (Gozo) the Minister responsible for justice may by a notice published in the Gazette designate any other officer to perform the duties of an executive officer of the said court.

(2) Chief marshals, senior marshals and marshals are the officers charged with service of judicial acts and the execution of warrants or other orders of the Superior Courts and of the Courts of Magistrates.

(3) Any reference in this Code to a marshal shall be deemed to include a reference to a chief marshal or senior marshal of the courts.

Other duties of marshals. *Amended by: VI. 1880.13. Substituted by: XXIV. 1995.34.*

68. (1) The marshals are also charged with the maintenance of good order and decorum in the building of the courts.

(2) Without prejudice to the provisions of article 72, every marshal shall, within the precincts of the building of the courts and of any office, building or other premises occupied by, or under the charge of, the Registrar of Courts, be empowered to exercise all such functions, powers and duties as are by law vested in Police officers.

(3) Subject to the provisions of article 990 and 992, where the marshal detains or arrests any person for any offence committed within the precincts mentioned in the previous sub-article, he shall forthwith bring the offender before a magistrate and charge him with breach of good order and decorum in the buildings of the court and if the court, on summarily hearing the case, finds the offender guilty of breach of good order and decorum in the building of the court, shall condemn the offender to any of the punishments mentioned in article 990.

Marshals to discharge duties personally or through ushers. *Amended by: VI.1880.13; XV. 1913.25; XXIV.1995.35.*

69. (1) Except for the duties referred to in article 68(2), the marshals shall discharge their duties personally or through any of the executive officers of the court mentioned in article 67(1) in accordance with the rules made under article 29, or, failing such rules, in accordance with the orders even verbal, of the judges or magistrates as provided in article 57.

(2) The provisions of article 59 shall apply to the marshals or other persons acting in their behalf.

Opposition to ushers in the execution of their duties. *Amended by: VI.1880.13; XIX. 1965.4; XXIV. 1995.36.*

70. (1) It shall, in no case, be lawful to make any opposition to any usher in the service of any act or in the execution of any warrant or order of any court or judge, magistrate or registrar, or to impugn the regularity of the service or of the execution of any act on the ground that, according to the rules, the warrant, order or act, should be or should have been served or executed by a marshal.

(2) Saving the provisions of article 992, if any person knowingly avoids, obstructs or refuses service of any act or court order or execution of any warrant or order by any executive officer of the courts, he shall be guilty of contempt of court and shall be liable, on conviction, to the punishments mentioned in article 990.

Executive officer to inform court of any warrant issued against an exempted person. *Amended by: VI. 1880.13.*

71. Where, before the execution of any warrant, it shall come to the knowledge of the executive officer that the person against whom the warrant has been issued is a person in favour of whom an exemption is granted by law, he shall, forthwith, through the registrar, or, in case or urgency, personally, report the fact to the court in order to receive such directions as may be requisite.

Powers of executive officers. *Amended by: VI. 1880.13.*

72. Every officer charged with the execution of any order of the court shall, for the discharge of his duties, have the same powers as are by law vested in Police officers.

Assistance of Police force. *Amended by. VI.1880.13.*

73. In the case of opposition by the use of violence, it shall be lawful for an executive officer to demand the assistance of any member of the Police force.

Title VI

OF ARCHIVISTS

Amended by: VI. 1880.74.

74. *Repealed by XXXI. 2002.37.*

Archivist. *Amended by: VI. 1880.14,15.*

75. *Repealed by XXXI. 2002.37.*

Duties of archivist. *Amended by: XI.1858.4; VI.1880.14; XV.1913.26.*

76. *Repealed by XXXI. 2002.37.*

Formation of list of records, etc. *Amended by: VI.1880.14,16.*

77. *Repealed by XXXI. 2002.37.*

Responsibility of archivist. *Amended by: VI.1880.14,17; XV.1913.27.*

78. *Repealed by XXXI. 2002.37.*

Registrar of Superior Courts to be *ex officio* Archivist of the Malta Courts and Registrar of Gozo Court to be *ex officio* Archivist of Gozo Court. *Amended by: VI. 1880.14,17; L.N. 4 of 1963; L.N. 46 of 1965; XXXI. 1966.2; XXIV.1995.37.*

Title V

Amended by: XXXI. 2002.38.

OF THE LEGAL PROFESSION

78A. For the purposes of this Title and of Title VIII of Book First of this Code, the expressions "Agreement", "Agreement State", "citizen of an agreement State" and "competent authority" shall have the same meaning assigned to them in the Mutual Recognition of Qualifications Act.

Definitions in this Title. *Added by: XVIII. 2002.10.* Cap. 450.

79. No person may exercise the profession of advocate in the courts of justice in Malta without the authority of the President of Malta granted by warrant under the Public Seal of Malta.

Administration of advocates and restrictions in respect of members of Parliament. *Substituted by: XXVII. 1977.2. Amended by: XII. 1978,5; XXIV. 1995.38.*

80. Any person on being so authorized shall, before entering upon the exercise of the profession, take before the Court of Appeal, in a public sitting of the same court, the oath of allegiance according to the form referred to in article 10, and the oath of office in the terms following:

Oaths of allegiance and of office. *Amended by: XXIV.1995.39.*

I ..... do swear, that I will faithfully and with all honesty and exactness perform the duties of advocate in the courts of justice of

Malta, to the best of my knowledge and ability. So help me God.

Qualifications for obtaining warrant. *Amended by: IX. 1886.9; XV. 1913.28; II. 1916.2,3; XVI. 1922.2; XXVIII. 1935.3; LXII. 1948.2; XX. 1968.2; L.N. 148 of 1975; XXIV. 1995.40; XVIII. 2002.10.*

81. No person shall be entitled to obtain the warrant referred to in article 79, unless -

(*a*) he is of good conduct and good morals;

(*b*) he is a citizen of Malta or of an Agreement State or is otherwise permitted to work in Malta under any law;

(*c*) he has obtained the academical degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute of the University of Malta, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having studied law in Malta or in an Agreement State;

(*d*) he has, after satisfying the requirement of paragraph (*c*), or, in the case of persons regularly following the academical course of law in the University of Malta, at any time after the commencement of the last academic year of the said course, for a period of not less than one year regularly attended at the office of a practising advocate of the Bar of Malta and at the sittings of the superior courts;

(*e*) he possesses a full knowledge of the Maltese language as being the language of the courts;

(*f*) he has been duly examined and approved by two judges who shall issue, under their signature and seal, a certificate attesting that they have found him to possess the qualifications above-mentioned and that he is competent to exercise the profession of advocate in the courts of Malta.

Regulations. *Added by: XVIII. 2002.10.* Cap. 450.

81A. The Minister responsible for justice may make regulations for bringing into effect the provisions of the Mutual Recognition of Qualifications Act and subsidiary legislation issued thereunder, in relation to the mutual recognition of qualifications of advocates.

Bargaining of fees prohibited. *Amended by: XXIV.1995.41.*

82. Save as may be provided in regulations made under article 1004, it shall not be lawful for any advocate to fix by agreement his fees in an amount higher or lower than that fixed in this Code, except when, for some particular purpose of the contending party, the action is restricted to an interest smaller than that on which the decision will have a bearing; in which case only it shall be lawful for the advocate to stipulate that his fees be reckoned on the basis of the whole interest involved, or fixed at a sum higher than that fixed in this Code in respect of the action as actually instituted.

Advocates not to enter into or make agreements or stipulations *quotae litis.*

83. Advocates shall not, either directly or indirectly, enter into or make any agreement or stipulation *quotae litis*.

Causes of disqualification. *Added by: IX. 1886.10. Amended by: XV. 1913.29; XXXI. 1934.12; III. 1939.2; L.N. 46 of 1965; LVIII. 1974.68; IX. 1976.9; VIII. 1981.2; XI. 1994.12; XXIV. 1995.42; XVIII, 2002.10.* Cap. 9.

84. (1) A conviction by any competent tribunal for any crime liable to imprisonment for a term exceeding one year, other than involuntary homicide or other crime against the person excusable in terms of the Criminal Code shall be a cause of perpetual disability to practise the profession of advocate.

(2) A person may also be disabled perpetually or for a time to practise the profession of advocate on the recommendation of the Commission for the Administration of Justice.

(3) The temporary or permanent withdrawal, by the competent authority in the agreement state in which the advocate acquired the right to use the professional title, of the authorisation to practise the profession shall automatically lead to the advocate being temporarily or permanently prohibited from practising in Malta.

Disqualification to be declared by President of Malta. Exception.

(4) Such disability shall be declared by the President of Malta by means of a letter to the registrar of the courts of justice and to the advocate so disqualified, unless the advocate is interdicted in the sentence itself:

Provided that it shall be lawful for the President of Malta at any time to remove the disability aforesaid.

Admission of Legal Procurators. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

85. No person may be admitted to practise as a legal procurator without the authority of the President of Malta granted by warrant under the Public Seal of Malta.

Oaths of allegiance and of office. *Amended by: XXIV.1995.43.*

86. Any person on being so admitted shall, before commencing to practise as legal procurator, take before the Court of Appeal, in a public sitting of the same court, the oath of allegiance according to the form referred to in article 10, and the oath of office in the terms following:

I ..... do swear, that I will faithfully and with all honesty and exactness perform the duties of legal procurator in the courts of justice of Malta, to the best of my knowledge and ability. So help me God.

Qualifications for obtaining warrant. *Amended by: IX. 1886.11; XV. 1913.30; II. 1954.2; XX. 1968.3; XXIII. 1971.8; L.N. 148 of 1975; XXIV. 1995.44; XVIII. 2002.10.*

87. No person shall be entitled to obtain the warrant referred to in article 85 unless -

(*a*) he is of good conduct and good morals;

(*b*) he is a citizen of Malta or of an Agreement State or is otherwise permitted to work in Malta under any law;

(*c*) he has been approved by the examining board of the Faculty of Law, at a regular examination in the subjects of the course of studies to be followed by candidates for the profession of legal procurator, in accordance with the regulations of the University of Malta, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having studied law in Malta or in an Agreement State;

(*d*) he has, after passing the examination referred to in paragraph (*c*) or at any time after the commencement of the last academic year of the said course, for a

period of not less than one year, attended at the office of a practising advocate of the Bar of Malta and trained himself in the practice of the profession;

(*e*) he has been duly examined and approved by two judges, who shall issue under their signature and seal a certificate attesting that they have found him to possess the qualifications above mentioned and that he is competent to practise as legal procurator in the courts of Malta.

Regulations. *Added by: XVIII. 2002.10.* Cap. 450.

87A. The Minister responsible forjustice may make regulations for bringing into effect the provisions of the Mutual Recognition of Qualifications Act and subsidiary legislation issued thereunder, in relation to the mutual recognition of qualifications of legal procurators.

Applicability of articles 83 and 84. *Amended by: XV.1913.31.*

88. The provisions of articles 83 and 84 shall apply to legal procurators.

Appointment of official curators, etc. *Amended by: XV. 1913.32; XXXI. 1934.13; L.N. 4 of 1963; XXXI. 1966.2; XXIII. 1971.10; XXIV. 1995.45; III. 2002.158.*

89. (1) The Minister responsible for justice shall nominate such panels as he may deem fit, each panel consisting of such number as he may deem fit of advocates, legal procurators and other experts, to perform the duties of curators, advocates or legal procurators *ex ufficio* and experts in the Courts of Malta and Gozo as occasion may require under this Code.

(2) The advocates and legal procurators appointed under sub-article (1) shall also be bound to give their assistance to any person who, not being entitled to the benefit of legal aid, shall apply to the competent court for such assistance, and shall satisfy the court, in such manner and by such means as the court may prescribe, that *prima facie* he has reasonable grounds for taking or defending or being a party to proceedings and that he did not succeed in engaging the services of another advocate or legal procurator:

Provided that any advocate or legal procurator appointed by the court to give such assistance as aforesaid, shall not be bound to give his assistance, unless the applicant deposits with the registrar a sum which, in the opinion of the registrar, is sufficient to cover the fees of such advocate or legal procurator.

Appointment of official curators, etc., for the Gozo court. *Amended by: XXXI.1934.14; L.N. 4 of 1963; XXXI. 1966.2: VIII. 1990.3.*

90. *Deleted by: III. 2002.158.*

Publication of lists. *Amended by: VI. 1880.18; VIII. 1990.3. Substituted by: XXIV. 1995.46; XXXI. 2002.42.*

91. A list of the members of the panels appointed as aforesaid shall be published in the Gazette.

Performance of duty in rotation.

92. The persons appointed under the provisions of this Title shall perform their duties in rotation.

Order of rotation.

93. The rotation shall be according to the order in which the names of the persons appointed are placed on the rota of the respective court by which the selection is to be made, unless there is some reasonable objection against the person whose turn it is on the rota, in which case the person immediately next on the rota shall be selected and the person objected to as aforesaid shall be entitled to the next turn in regard to which there shall be no objection.

Appointment of person outside the rota.
Amended by: XXXI. 1934.15.

94. Where, owing to impediment or challenge of the persons on the rota, the required selection of an advocate, legal procurator or accountant cannot be made from among such persons, the court shall appoint another person, although not on the rota.

Gratuitous legal aid by curators.
Amended by: XXIII.1971.11; XXIV.1995.47.

95. The curators selected under the preceding articles of this Title, in causes where either both parties or the party at whose request their selection was made have or has been admitted to sue or defend with the benefit of legal aid, or to be a party to proceedings or continue such proceedings with such benefit, shall give their services gratuitously, saving their right to such remuneration as is expressly allowed to them by this Code out of the amount or property recovered.

Misconduct or negligence of curators, etc.
Substituted by: XXIV.1995.48.

96. In case of misconduct, negligence or any reasonable objection to any curator selected from the rota to perform the duties of curator or advocate for legal aid, the court shall have the power to remove him from the case and to appoint another curator from the rota in his stead:

Provided that the court shall through the registrar communicate to the Minister responsible for justice, the relevant decree.

Illegal practices.
Added by: VIII. 1981.3.
Substituted by: XI. 1994.12.
Amended by: XXXI. 2002.44.

97. (1) It shall be an abuse in the exercise of his profession:

(*a*) for any advocate or legal procurator to knowingly, directly or indirectly employ or accept the services of any tout; or

(*b*) for any advocate to agree with a legal procurator or a notary public, or for a legal procurator to agree with any advocate or notary public, to give or to receive any share of the fees or other remuneration earned by any of them in respect of professional work; or

(*c*) for any advocate or legal procurator to act in contravention of any law or Code of Ethics that may be in force and applicable to him,

and any judge or magistrate shall report to the Commission for the Administration of Justice any advocate or legal procurator whom he suspects to be guilty of such abuse.

(2) In this article, the expression "tout" means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any other consideration, to find clients for any advocate or legal procurator.

Appointment of judicial assistants. *Added by: XXIV. 1995.49. Amended by: XXXI. 2002.46.*

97A. (1) The President of Malta shall appoint judicial assistants to perform such functions as are by this Code or by any other law assigned to them.

(2) Judicial assistants shall be appointed from amongst persons who hold the warrant of advocate.

(3) The functions of judicial assistants shall include the following:

(*a*) to assist in the judicial process and at the request of the court to participate in the proceedings pending before a court, including any research or other work required therefor, and for the purpose of carrying out such duties and exercise such powers as they may be required or authorised to perform by such court;

(*b*) to administer oaths;

(*c*) to take the testimony of any person that is produced as witness in any proceedings;

(*d*) to take any affidavit on any matter, including a matter connected with any proceedings taken or intended to be taken before any court or any court or tribunal of civil jurisdiction established by law;

(*e*) to receive documents produced with any testimony, affidavit or declaration, including in particular a testimony, affidavit or declaration as is referred to in this Code;

(*f*) to hold such sittings as may be directed by the court, to meet with the advocates and legal procurators of the parties for the purpose of planning the management of the lawsuit, and to issue deadlines for the submission of evidence, pleadings or other judicial acts by the parties.

(4) In the performance of their functions judicial assistants shall be assigned to a court and shall act under the direction and control of the court before which the case is pending and shall, in addition to any power lawfully assigned to them by such court, have the power to order the attendance of any person for the purpose of giving evidence or to make an affidavit or a declaration, or to produce documents, at such place and time as they may specify in the order.

Oath of office. *Added by: XXIV.1995.49. Amended by: IV.1996.2.*

97B. (1) A judicial assistant shall not enter upon the functions of his office before he has taken, before the Court of Appeal, the oath of office in the following terms:

I.....do swear that I will faithfully and with all honesty and to the best of my ability perform the duties of judicial assistant as prescribed by law.

Challenge.

(2) The provisions of Sub-Title II of Title II of Book Third shall apply to judicial assistants, except that the decision on any such matter shall be taken by the court before which the case is pending.

97C. Without prejudice to the provisions of sub-article (2) of article 97B, where in proceedings before a judicial assistant a question arises relating to or connected with the same proceedings, that question shall in the first place be decided by the judicial assistant who shall without delay and in any case not later than three days from the date of the said decision, inform the court of the decision, and the decision of the judicial assistant shall be binding unless the court shall by decree, decide otherwise.

Decisions by judicial assistants. *Added by: XXIV.1995.49.*

BOOK SECOND

OF THE PROCEDURE IN THE COURTS OF JUSTICE OF CIVIL JURISDICTION

GENERAL PROVISIONS

Amended by: XXXI. 2002.47.

98. Any judicial act done in virtue or in pursuance of an act which is null is equally null.

Nullity of judicial acts.

99. Any act which is null may be replaced by another, provided the peremptory time within which the act is to be done has not elapsed.

Reiteration of an act which is null.

100. No person may plead a nullity of form, of which he or his agent has been the cause.

Nullity of form not to be pleaded by person giving rise thereto.

101. Any legal or judicial time the running of which is dependent on an act requiring service or publication, shall commence to run from the day on which such act has been duly served or published.

Running of legal or judicial times.

102. Where any legal or judicial time is to be reckoned from a stated day, such day shall not be considered as included in the time itself; and where it is to be reckoned by hours, the hour in which service is effected shall not be considered as included in the time.

Dies a quo. Amended by: IX. 1886.12.

103. In the reckoning of any time, the day is reckoned at twenty-four hours, and the month and the year are reckoned according to the calendar.

Computation of times.

104. Save as otherwise expressly provided, the time of twenty-four hours shall be deemed to expire on the following day at the hour established for the closing of the registry.

Time of twenty-four hours.

105. Any legal or judicial time shall run also against the party at whose request or for whose benefit such time is allowed.

Legal or judicial time to run against both parties.

106. Any legal or judicial time, not being peremptory, may be extended on good cause being shown, provided the request for such extension is made within the time the extension of which is sought.

Times, other than peremptory, may be extended. *Amended by: IX. 1886.13; XXIV. 1995.50.*

Abridgement of legal time in urgent cases.
Amended by: VIII. 1981.4; XXIV. 1995.51.

107. It shall be lawful for the court, in cases of urgency, to abridge any legal time and to order that an act be carried into execution from one day to another or from one hour to another or forthwith.

Public holidays not to suspend the running of times.
Amended by: V.1904.7. Substituted by: VII.1974.2.

108. The days referred to in the next following article shall not suspend the running of times; but if the last day of any legal or judicial time is any such day, the time shall be deemed to expire on the next following day, not being any such day.

When sittings are to be held, etc.
Amended by: VII. 1876.1; V.1904.7; XV.1913.33; VII.1974.3; XXII.1976.4. Substituted by: XIV.1980.3; XXIV.1995.52.
Cap. 252.

109. (1) Court sittings may be held from Monday to Friday of every week during the time established under sub-article (2) for the opening of the registries of the court and during such other time as the court may fix:

Provided that, except by special order of the court, in case of urgency or for other reasons deemed sufficient by the court, no sitting shall be held on Saturdays, on public holidays as provided in the National Holidays and Other Public Holidays Act, or on Wednesday or Thursday of Holy Week.

(2) The registry of the superior courts and the registries of the inferior courts shall be open for the filing of judicial acts during such days and at such times as may by regulations be prescribed by the Minister responsible for justice:

Provided that any of the aforesaid registries may by special order of the court or by order given in writing by the registrar, be opened for the filing of judicial acts on any day or at any time.

(3) The registrar shall abide by and fully execute any order of the court to open the court buildings on any day and at any time as the court may specify in the order.

(4) A judicial act may be served or carried into execution from Monday to Saturday of every week and during the times mentioned in article 280(1):

Provided that by special order of the court or by order given in writing by the registrar in cases of urgency, it shall be lawful to serve or carry into execution any judicial act on any other day or at any other time:

Provided further that, where, under any regulations made under article 187(8), service is to be effected by officers of the post office, such service may, notwithstanding any other provision, be effected on such days and times during which such officers are called for duty in accordance with the rules of the post office.

(5) The registrar shall not refuse to give an order under sub-article (2) or (4) unless he has referred the matter to the competent court for its decision.

Power to administer oaths.
Amended by: XV.1913.34.

110. Every court and every judge or magistrate shall have power to administer oaths.

Form of oath in accordance with religious persuasion. *Substituted by: XXXV. 1974.6.*

111. A witness professing the Roman Catholic faith shall be sworn according to the custom of those who belong to that faith; and a witness not professing that faith shall be sworn in the manner which he considers most binding on his conscience.

Oath of witnesses and referees.

112. (1) Witnesses or other persons required to take the oath shall swear to tell the truth, the whole truth and nothing but the truth.

(2) Referees shall swear faithfully and honestly to perform the duties assigned to them.

Power of court to make warning as to obligation of oath.

113. The court, before which an oath is to be taken, shall have power to warn the party about to take the oath, as to the obligation of the oath and the consequences of perjury.

Oath to be taken personally.

114. The oath shall in all cases be taken personally by the party to be sworn.

Judicial acts accessible to all persons. Copies.

115. The acts of every court shall be accessible to all persons, and copies thereof shall be given out at the request of any person.

Original acts not to be taken out. Exception. *Amended by: XXIV. 1995.53.*

116. No original act may be given out to any advocate, legal procurator, litigant or other person not employed in the courts, unless the court, for any purpose connected with the cause or for any other just reason, shall otherwise order.

Acts issued in the name of the Republic of Malta. *Amended by: XI. 1977.2. Substituted by: XXXI. 2002.49.*

117. Every writ of summons or other warrant of the superior courts shall be issued in the name of the Republic of Malta and shall be witnessed by a judge or by a judicial assistant so delegated for the purpose by a judge; any such delegation shall be published in the Gazette:

Provided that no such delegation shall be made in respect of a warrant of prohibitory injunction.

Signing of acts by judge or magistrate. *Amended by: XV. 1913.35; XXXI. 2002.50.*

118. Without prejudice to the provisions of article 117, any act requiring the signature of a judge or magistrate shall be signed by the judge or magistrate of the respective court or, where the court consists of more than one judge or magistrate, by one of such judges or magistrates.

Any judge may give directions on *ex parte* applications. *Amended by: XV.1913.36.*

119. Notwithstanding the provisions of the last preceding article, any judge may give the requisite directions upon any *ex parte* application filed in any contentious matter in any of the superior courts, and may sign any warrant to be issued under the authority of any of the said courts.

Number of copies to be filed. *Added by: XXXI. 2002.51.*

119A. Any person shall, when filing in the registry of the court any act or document which requires service to another party, besides the original copy, file such number of copies as is equal to the number of persons who are to be served with the act or document.

Forensic year. Sessions. *Amended by: XI. 1859.3; XV. 1913.37.*

120. The forensic year is divided into three sessions:

(*a*) the first is called the session of Epiphany and commences on the seventh of January;

(*b*) the second is called the session of Pentecost and commences on the Thursday after Easter Sunday;

(*c*) the third is called the Victory session and commences on the first of October.

Vacations in superior courts. *Amended by: XI.1859.3; XV.1900.1; II.1903.1; VIII. 1990.3; XXIV. 1995.54.*

121. (1) In each session there shall be vacations in the superior courts, with the exception of the Civil Court, Second Hall.

Duration.

(2) In the session of Epiphany, the vacations shall be from Wednesday in Holy Week to the Wednesday after Easter Sunday inclusively; in the session of Pentecost, from the sixteenth of July to the fifteenth of September inclusively; and in the Victory session, from the seventeenth of December to the sixth of January inclusively.

Vacations in court of Gozo in its superior jurisdiction.

(3) The provisions of sub-articles (1) and (2) shall also apply to the Court of Magistrates (Gozo), in its superior jurisdiction.

Vacations in inferior courts.

(4) Subject to the provisions of sub-article (3), the vacations in the inferior courts shall be during the month of August of each year.

No sittings to be held during recess. Exceptions. *Amended by: XI. 1859.3; VII. 1880.8; XV. 1913.38; VIII 1990.3.*

122. No sittings shall be held during the vacations except for the hearing of -

(*a*) any cause which in view of its nature may require an urgent trial;

(*b*) any cause the trial of which may have commenced before the vacations, unless the parties have applied for an adjournment to a day after the last day of the vacations; and

(*c*) appeals from judgments of the Court of Magistrates (Malta) or of the Court of Magistrates (Gozo) in its inferior jurisdiction:

Provided that the court may hold sittings for the trial of any other cause during the vacations, if an application to that effect is made by both parties, and the court deems it expedient to allow the request.

Issue of warrants during recess. *Amended by: II. 1940.3.*

123. The vacations shall not be a bar to the issue or execution of any warrant, whether executive or precautionary.

Meaning of "working days". *Added by: VII. 1974.4.*

124. In this Code, the phrase "working days" does not include Saturdays.

PART I

OF THE ORDINARY MODE OF PROCEDURE IN CONTENTIOUS MATTERS

GENERAL PROVISION

Procedure in superior courts and inferior courts. *Amended by: XIII. 1964.17; VIII. 1990.3; XXIV. 1995.55.*

125. (1) In the superior courts and in the Court of Magistrates (Gozo) in its superior jurisdiction, proceedings are ordinarily instituted by writ of summons or application, as provided by law.

(2) In the Court of Magistrates (Malta), and in the Court of Magistrates (Gozo) in its inferior jurisdiction, proceedings are instituted by writ of summons.

Title I

OF THE MODE OF PROCEDURE BY APPLICATION FOR APPEAL

Substituted by: XXIV. 1995.56.

Proceedings by libel in first instance.

126. *Repealed by: XXIV. 1995.57.*

Libel.

127. *Repealed by: XXIV. 1995.57.*

Contents of libel. *Amended by: X. 1856.1.*

128. *Repealed by: XXIV. 1995.57.*

Documents to be produced with libel.

129. *Repealed by: XXIV. 1995.57.*

Mode of production of documents. *Amended by: IX. 1886.4*

130. *Repealed by: XXIV. 1995.57.*

Security for judicial costs.

131. *Repealed by: XXIV. 1995.57.*

Service of libel on defendant. *Amended by: XV. 1913.39; XIX. 1965.5.*

132. *Repealed by: XXIV. 1995.57.*

Time for answer to libel in Civil Court. *Amended by: IX. 1886.15.*

133. *Repealed by: XXIV. 1995.57.*

Time for answer to libel filed in Gozo court. *Amended by: IX. 1886.15; XV. 1913.40; VIII: 1990.3.*

134. *Repealed by: XXIV. 1995.57.*

Contents of answer.
Amended by: X. 1856.3; IV. 1868.2.

135. *Repealed by: XXIV. 1995.57.*

Mode of admitting claim.

136. *Repealed by: XXIV. 1995.57.*

Service of answer. Time for reply.

137. *Repealed by: XXIV. 1995.57.*

Contents of reply.
Amended by: X. 1856.4; IX. 1886.16.

138. *Repealed by: XXIV. 1995.57.*

Service of reply.

139. *Repealed by: XXIV. 1995.57.*

Power of court in regard to pleadings containing unnecessary matter.

140. *Repealed by: XXIV. 1995.57.*

Closing of written pleadings in first instance.
Amended by: XXXI. 1934.16.

141. *Repealed by: XXIV. 1995.57.*

Ordinary procedure before appellate court.
Amended by: IX. 1886.17; XV. 1913.41; XIII. 1964.18; XXIV. 1995.58.

142. (1) Save as otherwise provided by this Code or by or under any other law, the mode of procedure before an appellate court is by application.

(2) The application shall contain the prayer that the judgment appealed from or any part thereof be reversed or varied.

Contents of application of appeal.
Amended by: IX. 1886.17; XV. 1913.42; XXVII. 1979.2. Substituted by: XXIV. 1995.59.

143. (1) The application for the reversal of a judgment shall contain a reference to the claim and to the judgment appealed from together with detailed reasons on which the appeal is entered and a request that the said claim be allowed or dismissed.

(2) The application for the variation of a judgment shall contain a reference to the claim and to the judgment appealed from and shall distinctly state the heads of the judgment complained of together with detailed reasons for which the appeal is entered and, in conclusion, shall state, specifically, the manner in which it is desired that the judgment be varied under each head.

(3) The application for the reversal, annulment or variation of a decree shall contain a reference to the contents of the decree appealed from together with the detailed reasons for such reversal, annulment or variation.

(4) In the case mentioned in this article a request for reversal shall be deemed to include a request for annulment and variation of a judgment or decree, and a request for annulment shall be deemed to include a request for a reversal and variation of a judgment or decree.

(5) The default of compliance with any of the requirements of sub-articles (1), (2) and (3) shall not make void the application; but the court shall, in any such case, make an order directing the appellant to file, within two days, a note containing such particulars

as are required by law and which have not been duly stated in the application.

(6) The cost of the order and of the filing of the note shall be borne by the appellant.

(7) The provisions of sub-articles (5) and (6) shall, in the case referred to in article 240, apply to the answer.

Service of application of Appeal. Time for answer. *Amended by: IX. 1886.17; XV. 1913.43; XXVII.1979.3. Substituted by: XXIV 1995.60.*

144. (1) An appeal may be entered by any party against all the other parties or against any one of them. The appellant shall indicate in the application of appeal the parties against whom the appeal is directed. The application of appeal shall be served on all the parties but only the parties against whom the appeal is directed shall, within the time of twenty days, file their respective answer containing the reasons why the appeal should be dismissed.

Time for answer in case of cross appeal.

(2) In the case of a cross appeal in terms of article 240, the party against whom the cross appeal is directed shall within the said time of twenty days file a reply rebutting the allegations included in the cross appeal.

Production of documents. *Amended by: IX. 1886.17; XXIV.1995.61.*

145. All documents in support of the demand or defence shall be produced together with the application, answer or reply.

Closing of pleadings in appeal. *Amended by: IV. 1868.3; IX.1886.17; XXXI. 1934.17; XXIV. 1995.62.*

146.''(1) The written pleadings in appeal shall be deemed to be closed by the answer to the application, or, in default, on the expiration of the time allowed for such answer.

(2) Where, according to the provisions of article 144(2), a reply is allowed, the written pleadings shall be deemed to be closed by the reply, or, in default, on the expiration of the time allowed for such reply.

(3) The default of any party in filing an answer or reply within the prescribed time limits shall not preclude such party from appearing before, or making submissions to, the court during the hearing of the appeal.

Power of court to order additional pleadings. *Amended by: IX. 1886.18.*

147. (1) The court may, after the opening of the hearing, whenever, under the circumstances, it shall deem it expedient so to do, make an order allowing any of the parties to file an additional written pleading with leave to the opposite party to file, if he so desires, another written pleading in reply, within such times as the court shall direct.

Time for filing additional pleadings.

(2) If no time is fixed by the court, the party allowed to file such additional written pleading shall do so within ten days from the day of the order, and the opposite party shall file his answer within an equal time to be reckoned from the service of the former written pleading. Such times may be extended only once, on good ground being shown.

Time within which defendant may admit claim. *Amended by: XI.1859.4; IX.1886. 19; XXXI.1934.18.*

148. *Repealed by: XXIV. 1995.63.*

Time for filing written pleadings not to run during vacations. *Amended by: IV. 1862.7; XXXI. 1934.20.*

149. *Repealed by: XXIV. 1995.63.*

Cases in which production of documents is permitted outside prescribed time. *Amended by: IX. 1886.20; XV. 1913.44; XXIV.1995.64.*

150. (1) Where any document has not been produced as provided in article 145, its production shall only be allowed -

(*a*) if, notwithstanding all due diligence, the document could not be obtained before the filing of the pleading with which it should have been produced, and the filing of such pleading could not, without prejudice, be delayed; or

(*b*) if the court is satisfied of the necessity or expediency of having the document before it:

Provided that, in any such case, the court may, in adjudging the costs of the cause, take into account the tardy production of the document; or

(*c*) if the opposite party, by a separate note, or by an annotation in the margin or at the foot of the note by which the document is produced, gives his consent thereto; or

(*d*) if it is proved, by oath or otherwise, that the party producing the document, had not been aware of it, or could not, with the means provided by law, have produced it, in due time; or

(*e*) if the document to be produced is a book or other paper in the original, copies whereof or extracts wherefrom, relating to the matters at issue, were produced in due time; or

(*f*) before any referee, if bearing on the subject-matter of his reference.

Demands on collateral issues.

(2) Any necessary demand concerning any collateral issue shall, however, be allowed at any stage of the cause, as occasion may require.

Cause book. *Amended by: IX. l886.21; XXIV. 1995.65.*

151. The registrar shall note down in a book to be kept for the purpose, the causes the written pleadings whereof shall have been closed as provided in article 146, following the order of the date on which the written pleadings were closed.

List of causes set down for hearing. Parties to be served with notice of day of hearing. *Amended by: XXXI. 1980.2; XXIV. 1995.66; IV.1996.3.*

152. (1) The registrar, following the order mentioned in the last preceding article, shall, as soon as may be, publish such causes in the list of causes set down for hearing, indicating that such causes are being set for hearing trial for the first time, and shall cause the parties to be served with a notice of the day appointed by the court for the hearing of the cause which day shall be as soon as possible but not later than six months after the filing of the application for appeal:

Provided that any of the parties may by a note filed in the registry exempt the registrar from the duty of service of such notice.

Notice to be by summons.

(2) The said notice shall be by summons. If the appellant is not served with the said notice, the registrar, unless he has been exempted as stated in sub-article (1), shall, within ten days, inform in writing the advocate of such party that the notice has not been served, and the advocate shall sign a copy of the receipt of such communication:

Provided that no action shall lie against the advocate for failure to inform any such party.

Power of court.

(3) It shall be lawful for the court, for just cause, to order the hearing of a cause the written pleadings whereof have been closed, irrespective of its turn.

Default of written pleadings not to debar party from appearing at hearing of cause. *Amended by: IV. 1862.8; XXXI. 1934.21.*

153. The default of the filing of any written pleading shall not debar the party, who was entitled to file such written pleading, from appearing at the hearing of the cause and producing his evidence, provided he shows to the satisfaction of the court a good reason for such default.

Title II

OF THE MODE OF PROCEDURE BY WRIT OF SUMMONS

Proceedings by writ of summons. *Substituted by: XXVII. 1979.4; XIII. 1985.2.*

154. (1) The procedure is said to be by writ of summons, when the court issues or gives an order to a party to appear before it on the day and at the hour appointed, in order to show cause why the claim contained in the writ of summons should not be allowed.

(2) In the appointment of such day allowance shall be made for the time required for the preliminary written procedures of the case to be closed, provided that in urgent cases the court may appoint a day for the trial of the case before the close of the preliminary written procedures.

Form of writ of summons. *Amended by: IX 1886.22. Substituted by: XXVII. 1979.5.*

155. The writ of summons shall be in writing, according to the prescribed form.

Drawing up and contents of writ of summons.
Amended by: IX. 1886.22; XXXI. 1934.22; XXVIII. 1935.4; XXVII. 1979.6; XIII. 1985.3; XXIV.1995.67.

156. (1) The writ of summons shall be prepared by the plaintiff and shall contain -

(*a*) a clear and correct statement of the subject-matter and the cause of the claim;

(*b*) the claim or claims, which shall be numbered.

Production of documents.

(2) Such documents as may be necessary in support of the claim shall be produced together with the writ of summons.

(3) In the superior courts, the plaintiff or one of the plaintiffs shall, moreover, file together with the writ of summons a declaration with numbered paragraphs containing all the facts relevant to the cause and describing each fact in separately numbered paragraphs, in support of his claim, stating also which facts are within his knowledge. Such a declaration shall either be confirmed on oath before the registrar or be accompanied by an affidavit of the plaintiff or one of the plaintiffs confirming all the facts in support of the claim and stating which facts are within his knowledge.

(4) The plaintiff shall together with the declaration also give the names of the witnesses he intends to produce in evidence stating in respect of each of them the facts and proof he intends to establish by their evidence.

(5) Where several actions are brought together as provided in article 161(3), (4) and (5), at least one of the plaintiffs shall file a declaration which shall either be confirmed on oath before the registrar, or shall be accompanied by his affidavit, and the provisions of sub-article (3) shall apply.

(6) A copy of such declaration and of such affidavit, if any, as is mentioned in sub-articles (3) and (5) shall be served on the defendant together with the writ of summons.

(7) The registrar shall not receive any writ of summons which is not accompanied by such declaration and such affidavit if any as is mentioned in sub-articles (3) and (5) and the court shall not allow any witness to be produced unless his name shall have been given together with the writ of summons. If the necessity of producing a witness arises at any time after the filing of the writ of summons, or if the opposite party gives his consent in the manner prescribed in article 150(1)(*c*), or if the court deems it in the interest of justice to hear a particular witness, the court may allow such a witness to be heard.

(8) When the proof intended to be established by each witness is not stated or adequately stated in the declaration, the court shall on the first day appointed for the pretrial hearing order the plaintiff to indicate adequately the proof he intends to establish by each witness within a time to be fixed by the court.

Cumulative writ of summons.
Added by: XIII. 1985.4.

156A. *Repealed by: XXIV. 1995.68.*

Service of writ of summons.
Amended by: IX. 1886.23; XV. 1913.45,46; XXXI.1934.23, 24. Substituted by: XXVII. 1979.7; XXIV.1995.69.

157. It shall be the responsibility of the plaintiff to cause, through the registrar, a copy of the writ of summons and of the declaration and of any affidavit of the plaintiff to be served on the defendant.

Statement of defence and note of admission, filing etc.
Amended by: IX.1886.24; XV.1913.47; XXXI.1934.25; XXVIII.1935.5. Substituted by: XXVII.1979.9. Amended by: XXXI.1980.3; XV. 1983.2; XXIV.1995.70.

158. (1) The defendant shall file his statement of defence within twenty days from the date of service, unless he intends to admit the claim.

(2) Where the defendant intends to admit the claim wholly and unconditionally, he shall file a note to that effect.

(3) Otherwise, he shall file a statement of defence containing -

(*a*) any such pleas as would be taken to be waived if not raised before the contestation of the suit;

(*b*) a clear and correct statement of the pleas on the merits of the claim or claims without reference to authorities.

(4) The defendant or one of the defendants, if there are more than one, shall moreover, file together with the statement of defence, a declaration with numbered paragraphs containing all the facts concerning the claim, denying, admitting or explaining the circumstances of fact set out in plaintiff's declaration, stating which facts are within his own knowledge. Such declaration shall be confirmed on oath before the registrar or be accompanied by an affidavit of the defendant or one of the defendants on all the facts concerning the claim denying, admitting or explaining the circumstances of fact set out in plaintiff's declaration and the defendant shall also confirm that the facts stated therein are within his own knowledge. The defendant shall also give the names of the witnesses he intends to produce in evidence stating in respect of each of them the facts and the proof he intends to establish by their evidence. Together with the statement of defence, there shall be filed all such documents as may be necessary in support of the pleas.

(5) The registrar shall not receive any statement of defence which is not accompanied by such declaration and any such affidavit, as mentioned in sub-article (4) and the court shall not allow any witness to be produced whose name shall not have been given in such declaration. If the necessity of producing a witness arises at any time after the filing of the declaration, or if the opposite party gives its consent in the manner prescribed in article 150(1)(*c*), or if the court deems it in the interest of justice to hear a particular witness, the court may allow such a witness to be heard.

(6) When the proof intended to be established by each witness is not stated or adequately stated in the declaration, the court shall on the first day appointed for the pretrial hearing order the defendant to indicate adequately the proof he intends to establish by each witness within a time to be fixed by the court.

(7) Where the defendant is absent or is a minor or a person incapable according to law or a vacant inheritance, and is

represented by an attorney or a curator, then, instead of the declaration referred to above, a declaration may be made to the effect that the facts of the case are unknown and that it has not been possible to obtain the necessary information to contest the claim.

(8) Simultaneously with the filing of the note admitting the claim or of the statement of defence and declaration, as the case may be, the defendant shall cause an identical copy thereof, certified by himself or his advocate, to be served through the registry on the plaintiff or his advocate.

(9) Non-compliance with the provisions of sub-article (7) may be taken into account by the court in the application of the provisions of article 223(3).

(10) If the defendant makes default in filing the statement of defence and declaration mentioned in this article, the court shall give judgment as if the defendant failed to appear to the summons, unless he shows to the satisfaction of the court a reasonable excuse for his default in filing the statement and declaration within the prescribed time. The court shall, however, before giving judgement allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself against the claims of the plaintiff. Such submissions shall be served on the plaintiff who shall be given a short time within which to reply.

(11) The statement of defence, after the conclusion of the evidence of the plaintiff and before the defendant produces his evidence, may be amended by means of a separate statement either withdrawing any of the pleas set up or adding new pleas, saving those pleas which may be set up at any stage of the proceedings.

(12) With the filing of the statement of defence or on the expiration of the terms laid down in sub-article (1), the preliminary written procedures shall be deemed to be closed, and articles 151 and 152 shall apply.

(13) Notwithstanding the foregoing provisions of this article, where the court has appointed a day for the trial of the case before the time allowed for the filing of the statement of defence in accordance with this article, the defendant shall file the statement of defence and declaration not later than the time at which the case is first heard, and may also file them before the court at such hearing and serve a copy thereof on the plaintiff by delivering a copy to him or his advocate at that same hearing.

Writ of summons and statement of defence not to contain comments or superfluous matter.
Amended by: IV.1862.9; VI. 1880.20; IX. 1886.24.

159. (1) Except a reference to the law, the writ of summons and the statement of defence, which are to be in a summary form, may not contain any comment nor any matter which is not necessary for a statement of the material facts as regards the writ of summons, or for a rebuttal of those facts or for an indication of the pleas as regards the statement of defence.

(2) In the case of non-compliance, the court may order any superfluous matter to be struck out, or the written pleading to be removed from the record and replaced by another made in accordance with the provisions of this article.

Affidavits of witnesses. *Amended by: XV. 1913.48. Substituted by: XXIV.1995.71.*

160. Any party intending to produce a witness in any proceedings before any court may, together with the writ of summons or the statement of defence, as the case may require, file in the registry of such court an affidavit taken by such witness before a judicial assistant or any other person authorised by law to administer oaths, and a copy of such affidavit shall be served on the other party.

Title III

OF THE ORDINARY MODE OF PROCEDURE IN CONTENTIOUS MATTERS AS APPLIED TO THE RESPECTIVE COURTS

Mode of procedure in the Civil Court, First Hall, and in the Court of Magistrates (Gozo) in its superior jurisdiction. *Amended by: XV.1913.49; XIII.1964.19; VIII.1990.3. Substituted by: XXIV.1995.72.*

161. (1) In the Civil Court, First Hall, and in the Court of Magistrates (Gozo) in its superior jurisdiction, proceedings are ordinarily taken by writ of summons.

(2) Proceedings may also be taken by application in the cases prescribed by or under a law.

(3) Two or more plaintiffs may bring their actions by one writ of summons or by one application as the case may be, if the actions are connected in respect of the subject matter thereof or if the decision of one of the actions might affect the decision of the other action or actions and the evidence in support of one action is, generally, the same to be produced in the other action or actions. The cause and subject matter of the actions shall be clearly and specifically stated in respect of each plaintiff.

(4) Nevertheless, any of the actions so brought together shall be tried separately at the request of a plaintiff with regard to his action; and the court may also order that any action be tried separately when it is not expedient that the actions of all the plaintiffs be tried together. Any such order may be made at any stage of the proceedings before final judgement.

(5) Where the several actions are brought together as provided in sub-article (3) they shall be taken cumulatively for determining the competence of the court. Such court shall remain competent in respect of any action separated in accordance with sub-article (4).

Proceedings by writ of summons. *Amended by: XI.1859.5; XV.1913.50.*

162. *Repealed by: XXIV. 1995.73.*

Mode of procedure in Commercial Court and in Gozo court in its superior commercial jurisdiction. *Amended by: XI.1859.6; XV.1913.51; VIII.1990.3.*

163. *Repealed by: XXIV. 1995.74.*

Nullity of proceedings. *Amended by: XI. 1859.6. Substituted by: XXIV. 1995.75.*

164. (1) Saving the provisions of article 175, nullity shall ensue if proceedings which should have been instituted by writ of summons or by application of appeal are instituted by any other judicial act.

(2) No nullity shall ensue if a cause which should have been instituted by application is instituted by writ of summons:

Provided that the court may order plaintiff to substitute the writ of summons by an application:

Provided further that any additional costs incurred shall be borne by the plaintiff:

Provided further that the provisions of this sub-article shall not apply where in accordance with any law other than this Code proceedings are to be instituted by application.

Leave to file written submissions. *Amended by: XI.1859.6; XXXI. 1934.26.*

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

Written submissions in reply. *Amended by: XI.1859.6; XXXI.1934.27.*

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

Special summary proceedings. *Repealed by: IX. 1886.25. Re-enacted by: XV.1913.52. Amended by: XXXI.1934.28; VIII. 1990.3; XXIV.1995.76; IV.1996.16.*

167. (1) In actions within the jurisdiction of the superior courts or the Courts of Magistrates (Gozo) in its superior jurisdiction, where the demand is solely -

(*a*) for the recovery of a debt, certain, liquidated and due, not consisting in the performance of an act; or

(*b*) for the eviction of any person from any urban or rural tenement, with or without a claim for ground rent, rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement,

it shall be lawful for the plaintiff to pray in the writ of summons that the court gives judgment allowing his demand, without proceeding to trial:

Provided that the plaintiff shall, in his declaration made in terms of article 156(3) state that in his belief there is no defence to the action:

Provided further that the plaintiff may also file a sworn affidavit of any other person, containing facts relative to the claim, and confirming that such facts are within the knowledge of such a person.

(2) In the cases provided for in this article, the writ of summons shall be in writing according to the prescribed form and shall contain an order to the defendant to appear before the court, on an appointed day and at a stated time.

(3) The provisions of article 156(1), (2) and (3) and the provisions of article 159 shall apply to such writs of summons.

Service on defendant. *Repealed by: IX. 1886.25. Re-enacted by: XV. 1913.52. Amended by: XXIV.1995.77.*

168. A copy of the declaration and any affidavit and of the note of the documents produced with the writ of summons shall be served upon the defendant, together with the writ of summons.

Time for service of writ of summons. *Repealed by: IX. 1886.25. Added by: XV. 1913.52. Substituted by: XXIV.1995.78.*

169. In the cases referred to in article 167, the writ of summons shall be served on the defendant without delay; and he shall be ordered to appear not earlier than fifteen days and not later than thirty days from the date of service:

Provided that in the case of non-observance of the provisions of this article the court shall not stop proceedings by special summary proceedings but shall give such orders as it may consider appropriate so that the rights of the parties be not prejudiced.

Mode of service. *Added by: XIII. 1985.5. Substituted by: XXIV.1995.79.*

169A. The writ of summons, the declaration and any affidavit and note produced therewith, and any order referred to in articles 168 and 169 shall be served by means of any executive officer of the courts.

Trial in special summary proceedings. *Repealed by: IX. 1886.25. Re-enacted by: XV. 1913.52. Amended by: XXXI. 1934.29; XXIV.1995.80.*

170. (1) If the defendant fails to appear to the writ of summons, or if he appears and does not impugn the proceedings taken by the plaintiff, on the ground of irregularity or inapplicability, or, having unsuccessfully raised such plea, does not by his own sworn evidence, or otherwise, satisfy the court that he has a *prima facie* defence, in law or in fact, to the action on the merits, or otherwise disclose such facts or issues of law as may be deemed sufficient to entitle him to defend the action or to set up a counter-claim, the court shall forthwith give judgment, allowing the plaintiff's claim. The defendant may make his submissions to impugn the proceedings taken by plaintiff on the ground of irregularity or inapplicability by means of a note to be filed in the registry of the court or during the hearing.

(2) If the defendant successfully impugns the proceedings on the ground of irregularity, or inapplicability, or if he satisfies the court that he has a *prima facie* defence to the action, or discloses such facts or issues of law as may be deemed sufficient to entitle him to defend the action or to set up a counter-claim, he shall be given leave to defend the action and file a statement of defence within twenty days from the date of the order referred to in sub-article (4), in which case the defendant shall comply with the provisions of article 158 so far as applicable.

(3) Where leave to defend is given, the action shall be tried and determined, on the same acts, in the ordinary course as provided in this Code.

(4) The order giving leave to defend shall be made orally, a record thereof being kept in the proceedings.

Mode of procedure in inferior courts. *Amended by: XI.1859.7; VII.1880.8; XV.1913.53,54; XXIII.1971.12; XLIX.1981.6; VIII.1990.3. Substituted by: XXIV. 1995.81.*

171. (1) In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, proceedings shall be by writ of summons which shall take the form of a mere notice signed by the registrar, containing the name and the surname of the plaintiff and of the defendant, the demand of the plaintiff, and the day and hour when the defendant is to appear.

(2) The cause shall be summarily heard in terms of article 215.

(3) Without prejudice to article 23, in the said courts, the judgment need not contain all the reasons thereof, but may merely list the main points upon which the court would have based its conclusions.

Mode of procedure in appeals from judgments of inferior courts. *Amended by: XI. 1859.8; VII.1880.8; IX. 1886.26; XV.1913.56; XXVII.1979.10; VIII.1990.3; XXIV.1995.82.*

172. (1) Where a reversal or variation of any judgment delivered by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo) in its inferior jurisdiction, is sought, proceedings shall in all cases be taken by application.

(2) The application as well as any other subsequent act may even be signed by the appellant or by the respondent only.

Orders *in camera*. *Amended by: VII.1880.8; IX.1886,27; XV.1913.57. Substituted by: XXVII.1979.11. Amended by: XXIV.1995.83; XXXI. 2002.58.*

173. (1) The court may, in order to ensure full compliance with all matters of procedure, or to seek more detailed information, or to expedite proceedings or to avoid the unnecessary appearance of parties or witnesses, give *in camera* all such orders and directives it may think fit, and it shall be sufficient that such orders or directives be communicated by the registrar even by letter to the advocates or legal procurators of the parties or to the parties themselves. This provision shall apply to any stage of the proceedings before judgment is delivered. An appeal from such orders or directives, where admissible, may be entered only after the definitive judgment and together with an appeal from such judgment, and such orders or directives may not be challenged before the definitive judgment is delivered.

(2) Without prejudice to the foregoing provisions of this article the court may, at any stage of the proceedings -

(*a*) either on its own motion or on an application by any party to the proceedings, direct that the evidence of any person intended to be produced as a witness be taken before a judicial assistant at such place and time under such conditions as may be specified in the order;

(*b*) on an application by any party to the proceedings, desiring to confirm a fact stated in the application, or in a note accompanying it, by the affidavit of a person named by the party, order the person so named to appear for that purpose before a judicial assistant at such place and time as may be specified in the order.

(3) In the case of an order given under subarticle (2)(*b*), the judicial assistant shall ask the person named whether he confirms or denies each fact specified in the application or note and shall make a record of the replies given together with any other

statement, if any, qualifying his reply, and cause such record to be confirmed on oath by the person aforesaid. The judicial assistant shall insert the affidavit in the records of the case and cause a copy thereof to be served on the parties.

(4) When an application as in referred to in sub-article (2)(*b*) is filed together with any written pleading referred to in article 160, the Court may direct that the service of such written pleading shall be suspended for such period, not exceeding three months, as the court may determine.

Title IV

PROVISIONS APPLICABLE TO WRITTEN PLEADINGS AND OTHER ACTS OF PROCEDURE

Contents of written pleadings. *Amended by: XV. 1913.58; XXXI. 1934.30; XXIII. 1971.13; XXVII. 1979.12; VIII. 1990.3,4; XXIV. 1995.84; XXXI. 2002.59.*

174. (1) Every written pleading shall contain -

(*a*) an indication of the court or section thereof in which the pleading is filed, and, in the case of the Court of Magistrates (Gozo), an indication of the jurisdiction of the court;

(*b*) the name and surname of the party pleading and of the party against whom the pleading is directed, and the designation, if any, of the capacity in which the parties appear:

Provided that in any case as is referred to in article 181(1), it shall be sufficient to designate the office of the party pleading or of the party against whom the pleading is directed, as the case may be;

(*c*) the description of the pleading; and

(*d*) if the pleading refers to an action already brought before any of the superior courts, the number of that writ of summons to which it refers.

(2) Every written pleading or other act requiring service, must be accompanied by:

(*a*) the identity card number, if any, if the person is pleading in his personal capacity;

(*b*) the company number if the person pleading is a partnership or company registered in accordance with the Companies Act; Cap. 386.

(*c*) a proper and full indication of the place of residence or business of the party pleading and the professional address of his advocate and, or, legal procurator;

(*d*) a proper and full indication of the place of residence or business and of the party against whom the pleading or act is directed;

(*e*) any other particulars as may serve to identify the said parties as may be established by law or regulation.

Power of court to order or permit amendment of written pleadings. *Amended by: XV.1913.59; XIII.1964.20. Substituted by: XXIV.1995.85.*

175. (1) The court may, at any stage of the proceedings, at the request of any of the parties, until judgment is delivered after hearing where necessary the parties, order the substitution of any act or permit any written pleading to be amended, either by adding or striking out the name of any party and substituting another name therefor or by correcting any mistake in the name or in the character of the parties, or by correcting any other mistake or by causing other submission of fact or of law to be added even by separate note, provided that no such substitution or amendment shall affect the substance either of the action or of the defence on the merits of the case.

(2) Any court of appellate jurisdiction may also order or permit, at any time until judgment is delivered, the correction of any mistake in the application by which the appeal is entered or in the answer, including any mistake in the indication of the court which delivered the decision appealed from, in the name or character of the parties, or in the date of the judgment appealed from.

(3) Any judicial or administrative omission or mistake in a judicial act may until the court shall have delivered judgment and disposed of the case be remedied by a court of its own motion.

Mode of drawing up pleadings. *Amended by: XV.1913.60. Substituted by: XIX. 1965.7. Amended by: XXIV. 1995.86; XXXI. 2002.60.*

176. (1) Pleadings shall be printed, type-written or written in ink:

Provided that in every case they shall be drawn up in clear and easily legible characters, without blank spaces, interlinear words, abbreviations or erasures, and, except with the written authority of the registrar given before the filing of the act, without corrections, alterations or additions.

(2) Any quantity, sum or measure shall, at least where it first occurs in the pleading, be expressed in words.

(3) The copies of the pleadings, as would be required for the service thereof, shall be signed by the same persons as the original.

"With costs."

177. The words "with costs" shall in all cases be deemed to be included in any written pleading where costs may be asked for.

Signing of written pleadings. *Amended by: XXIV.1995.87.*

178. (1) The written pleadings shall be signed by the advocate and also by the legal procurator, if any.

(2) The writ of summons shall be signed in the margin thereof.

Where, when and how written pleadings are filed. *Amended by: VII. 1856.1; XV. 1913.61; VIII. 1990.3; XXXI. 2002.62.*

179. Written pleadings shall be filed in the registry of the respective court during the time in which, according to the regulations, the registries are kept open.

Persons who may file written pleadings. *Amended by: IX. 1886.28; XV.1913.62; XXIII.1971.14; XLVI.1973.108; XXIV.1995.88.*

180. (1) Subject to the provisions of article 181, written pleadings may be filed -

(*a*) personally by the party pleading in his own name, or by the person pleading in a representative capacity as the parent of the children placed under his paternal authority, or as the tutor, curator, administrator of the community of acquests, executor, head of a department or other public administrator, or as attorney on behalf of any church, community, hospital, or other pious institution or as administrator of property under litigation, or as partner or representative of a commercial firm, or as any of the persons mentioned in article 181A(2) in the case of a body having a distinct legal personality, or as agent or representative of any other lawful association, or as attorney on behalf of persons absent from the Island, either of Malta or Gozo, in which the written pleading is filed;

(*b*) by a legal procurator;

(*c*) by any other partner of a commercial firm to which the written pleading refers;

(*d*) by an ascendant, descendant, brother or sister, uncle or aunt, nephew or niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, husband or wife, appointed as an attorney for the purpose, by the party pleading whose signature is duly attested in accordance with article 634(2);

(*e*) by any joint party to the suit;

(*f*) by an advocate, if the written pleading is to be filed in any of the inferior courts, or in the Court of Appeal in cases of appeal from judgments of the inferior courts.

(2) Nevertheless, no written pleading containing a waiver of the proceedings or an admission of the claim or the consent for the withdrawal of any deposit, may be filed by any person other than -

(i) the persons mentioned in sub-article (1)(*a*) and (*c*), or

(ii) an attorney specially authorized for the purpose, or

(iii) the advocate, if any such written pleading is filed during the hearing of the cause.

Written pleadings filed by a Minister or a public officer. *Added by: XXIII. 1971.15. Amended by: XXIV. 1995.89.*

181. (1) When a written pleading is to be filed by the Prime Minister or other Minister, by a head of department or other public administrator, it shall be sufficient if there is designated in such pleading the office of the person filing it and it shall not be necessary to name the person for the time being holding such office.

(2) No formality shall be necessary in the records of a case or in any court proceedings upon any change in the person of the holder of any office designated as aforesaid or on the appointment

of any person in an acting capacity in any such office or where such office is merged with another office.

(3) The provision of the last preceding sub-article shall apply also where there is named in any written pleading the person for the time being filling the office designated in such pleading, provided that such office is clearly designated.

(4) The provisions of sub-articles (1), (2) and (3) shall apply also in respect of the party against whom the pleading is to be directed where such party is the holder of an office referred to in the said sub-article (1).

Written pleadings filed by or against a body having a distinct legal personality. *Added by: XXIV. 1995.90.*

181A.(1) Where a written pleading is filed by or against a body having a distinct legal personality, it shall be sufficient to state the name of such body.

(2) Any declaration or pleading to be sworn in terms of law shall, in the case of a body having a distinct legal personality, be sworn by the person or persons vested with the legal or judicial representation thereof or by any company secretary or by any other person authorised in writing by such body to file judicial acts on its behalf or to make any such declaration, statement or pleading.

(3) When a written pleading is to be filed by or against a ship or other vessel, it shall be sufficient if there is designated the name of such ship or other vessel, as the case may be, and it shall not be necessary to mention the name of any person to represent such ship or other vessel:

Provided that the written pleadings mentioned in this sub-article shall be served in accordance with the provisions of article 187(7).

Judicial representation of Government. *Added by: XXIV. 1995.91.*

181B. (1) The judicial representation of the Government in judicial acts and actions shall vest in the head of the government department in whose charge the matter in dispute falls:

Provided that, without prejudice to the provisions of this article:

(*a*) actions for the collection of amounts due to Government may in all cases be instituted by the Accountant General;

(*b*) actions involving questions relating to Government employment or to obligations to serve Government may in all cases be instituted by the Administrative Secretary;

(*c*) actions relating to contracts of supplies or of works with Government may in all cases be instituted by the Director of Contracts.

(2) The Attorney General shall represent Government in all judicial acts and actions which owing to the nature of the claim may not be directed against one or more heads of other government departments.

(3) Every application, writ of summons or other judicial act filed against Government shall be served upon each head of a government department against whom it is directed and upon the

Attorney General and every time limit for the filing of any reply or statement of defence to any such act by any head of a government department being a defendant or a respondent in judicial proceedings shall not commence to run before the act is served upon the head or heads of the government departments against whom it is directed and upon the Attorney General. The registrar shall not charge any fees for effecting the service on the Attorney General.

Persons filing written pleadings are bound to accept service of other written pleadings. *Amended by: XXIII. 1971.16.*

182. (1) Where any of the persons mentioned in article 180(1)(*b*), (*c*), (*d*) and (*e*) has filed any written pleading in terms of that article, such person shall be bound to accept service of any other written pleading relating to the cause, unless the opposite party has been informed by an intimation through the court of the cessation of the character in which the said person had filed the pleading.

Notice of trial to be served on party himself.

(2) Notwithstanding the provisions of sub-article (1), the notice of trial must be served on the party himself.

Duties of registrar in connection with the filing of written pleadings. *Amended by: IX. 1886.29; XV.1913.62.*

183. When a written pleading is filed, the registrar shall write thereon the date of filing, the name and character of the person filing the pleading, and the number of documents produced with the pleading. He shall also draw up the bail bond in respect of costs, whenever bail is required, as well as the bond of the parties where such parties have been admitted to the juratory caution. He shall note down in the margin the amount paid for fees and the name of the person paying them.

Difficulty about filing of written pleadings. *Amended by: XI. 1980.2; XXIV.1995.92.*

184. (1) If any difficulty shall arise in or about the filing of any written pleading, the registrar shall inform the party concerned, but he may not refuse to receive such pleading, except in the cases in which he is expressly enjoined or authorized so to do under the provisions of this Code. In the case of any such difficulty, he shall, as soon as possible, make a report thereof to the court, which shall give the necessary directions for his guidance. He shall, however, refuse to receive any written pleading which is in open violation of the provisions of articles 174, 176 and 178.

(2) In all cases, the registrar shall, upon a request to that effect, state in writing the reason for his refusal.

Service on all parties. *Substituted by: XXIV.1995.93.*

185. Saving the provisions of article 186(1), where an act is to be served on two or more persons even if they live together in the same address each of them shall be served with a copy of such act.

Designation of person to be served with written pleading. *Amended by: XV.1913.63; XXIV.1995.94; XXXI. 2002.64.*

186. (1) Where two or more parties are pleading together, they shall, on filing the pleading, apart from giving their respective addresses, designate, by means of a note, a person, being one of the persons mentioned in article 180, as that on whom the answer and any other act of the opposite party may be served on behalf of all the parties pleading,

(2) If a pleading is directed against two or more persons, such persons may, on filing a joint answer, designate, by means of a note, a person, being one of the persons mentioned in article 180, as

that on whom any act of the opposite party may be served on behalf of all of them.

(3) Where a person is so designated, any service relating to the act in respect of which such designation was made, shall be effected on such person:

Provided that any of such persons may by means of another note declare that he henceforth requires separate service at an address, being the address of his residence or place of business, to be indicated by him.

Mode of service. *Amended by: VII.1856.2; XV.1913.63; XIX.1965.8; XXVII.1979.13; XXIV. 1995.95.*

187. (1) Service shall be effected by the delivery of a copy of the pleading to the person on whom the pleading is to be served or by leaving such copy at the place of residence or business or place of work or postal address of such person with some member of his family or household or with some person in his service or his attorney or person authorized to receive his mail:

Provided that it shall not be lawful to leave such copy with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service. A person shall be presumed to be able to give such evidence unless the contrary is proved; and no objection may be raised on the ground of irregularity of the service for any of those reasons, if it is shown that the copy has actually reached the person to be served therewith:

Provided further that where a person to whom a pleading is addressed refuses to receive it personally from an executive officer of the courts, the court may upon an application by the interested party and after hearing the executive officer of the courts and considering all the circumstances of the incident, declare by means of a decree that service shall have been effected on the day and time of the refusal and such decree shall be considered as a proof of service for all purposes of law.

(2) In the case of persons on board merchant ships, or members of the crew having no place of residence in Malta, service may be effected by delivering such copy to the master of the ship or any other person acting in that behalf.

(3) If it appears from the certificate of the officer charged with the service of a written pleading or any judicial act that, although it does not result that the person upon whom such a pleading or act is to be served, is abroad, access to his place of residence cannot be obtained, or his place of residence in not known, the court may direct service to be effected by the posting of a copy of the written pleading or act at the place, in the town or district in which official acts are usually posted up, and by publishing a summary of such written pleading or act in the Gazette and in one or more daily newspapers as the court may direct and, where possible, when the residence is known, by posting up a copy of the pleading on the door leading to such residence. The court may also adopt such other measures as it may deem fit to bring the pleading or act to the notice of the person upon whom the same is to be served. In such cases, service shall be deemed to have been made on the third

working day after the date of last publication or after the date of such posting, whichever is the later. In cases where service has been ordered with urgency, service shall be deemed to have been made at such time, after posting or publication as the court may determine, which time is to be stated in the publication or posting.

(4) In the case of a body having a distinct legal personality, service on such body shall be effected by leaving a copy of the pleading:

(*a*) at its registered office, principal office, or place of business or postal address with any of the persons mentioned in article 181A(2) or with an employee of such body; or

(*b*) with any of the persons mentioned in article 181A(2) in the manner provided for in sub-article (1).

(5) If it appears from the certificate of the officer charged with the service of a written pleading that service as provided in sub-article (4) has not been effected, the court may, if it appears that at least one of the persons mentioned in article 181A(2) is in Malta, direct service to be effected by the posting up of a copy of the written pleading at the place in the town or district in which official acts are usually posted up, where the body has its registered office, principal office, or place of business, and by publishing a summary of such written pleading in the Government Gazette and in one or more daily newspapers as the court may direct and, where possible, by posting up a copy of the pleading on the door of the registered office, principal office, or place of business. The court may also adopt such other measures as it may deem fit to bring the pleading to the notice of any of the persons mentioned in article 181A(2).

(6) Where it appears that all the persons mentioned in article 181A(2) are absent from Malta or there exist no such persons, the court shall appoint a curator in the interest of such body as provided for in article 929(*d*).

(7) In the case of an action against a ship or other vessel, service shall be affected by the delivery of a copy of the pleading to the master thereof or any other person acting in that behalf or, in the absence of such persons, on the agent of the ship or other vessel, as the case may be, or in the absence of such persons and agent, on curators appointed by the court in terms of article 929:

Provided that the court may also adopt such other measures as it may deem fit to bring the pleading to the notice of the person upon whom the same is to be served.

(8) Saving the provisions of article 193, service may also be effected by officers of the Post Office in such manner and under such rules in conformity with postal regulations as the Minister responsible for justice may order by notice in the Gazette:

Provided that, applications of appeal, and applications made under the provisions of the Constitution of Malta and the European Convention Act and writs of summons, shall be served by the executive officers of the courts.

Cap. 319.

Certificate of service.
Amended by: XV. 1913.64.
Substituted by: XIX. 1965.9.

188. (1) The officer charged with the service of an act shall, on the same day when he serves or unsuccessfully seeks to serve the act, or, at the latest, on the following day, draw up a certificate stating whether the service was effected or not. In the affirmative, the certificate shall state the name and surname of the person on whom service was effected and, if the act was not served directly on the person on whom service was to be effected, the name and the surname of the person to whom the copy was delivered and the place where the act was served; in the negative, the certificate shall state the reason why service was not effected.

(2) Any certificate referred to in sub-article (1) shall be drawn up in the manner prescribed by the registrar, who may also direct that a form or forms printed, impressed or otherwise prepared be used for the purpose.

(3) The registrar may also require that any such certificate be confirmed on oath by the officer entrusted with the service and any such oath shall be administered by the registrar.

Service of acts and execution of warrants and orders in Gozo and Comino.
Added by: XIX. 1965.10.
Amended by: VIII. 1990.3.

189. (1) If an act filed in, or a warrant or garnishee order issued by any court in the Island of Malta is to be served or, as the case may be, executed in the Island of Gozo or Comino, a copy thereof shall be transmitted by the registrar of the said court to the Registrar of the Court of Magistrates (Gozo).

(2) The officer effecting service or execution shall deliver to the Registrar of the Court of Magistrates (Gozo) the certificate of service or execution, duly confirmed on oath before the registrar himself who shall transmit it to the registrar of the court in which the act was filed or by which the warrant or order was issued.

Service of acts and execution of warrants and orders in Malta.
Added by: XIX. 1965.10.
Amended by: VIII.1990.3.
Substituted by: XXIV. 1995.96.

190. (1) If an act filed in or a warrant or garnishee order issued by the Court of Magistrates (Gozo) is to be served or, as the case may be, executed in the Island of Malta, a copy thereof shall be transmitted by any officer of the said court to the registrar.

(2) The officer effecting service or execution shall deliver to the registrar the certificate of service or execution, duly confirmed on oath before the registrar who shall transmit it to any officer of the Court of Magistrates (Gozo).

Mode of preparing copies.
Substituted by: XIX.1965.11.
Amended by: XXIV.1995.97; XXXI. 2002.69.

191. (1) Copies shall be printed, typewritten, made by other mechanical or electronic means or by any photographic process or written in ink:

Provided that in every case they shall be drawn up in clear and easily legible characters.

(2) Copies shall also be certified by the person presenting them or by an advocate or legal procurator to be true copies of the originals.

Penalty in case of irregular copies.

192. In case of non-compliance with the provisions contained in the last preceding article, the party shall be entitled to have another copy made in conformity with the said article at the expense of the person who prepared the irregular copy, provided that the request for such other copy be made to the registrar by the party concerned within two days after the delivery of the irregular copy; and in any such case, if a time is fixed, it shall not commence to run except on the delivery of the regular copy.

Reckoning of time.

Provisions of this Title to apply to all courts and to all acts.
Amended by: XXVII. 1979.15.

193. The provisions contained in this Title shall apply to all the courts and to all other acts filed by the parties or issued by the court, in so far as such provisions may be applicable to such courts and to such other acts:

Provided, however, that precautionary and executive warrants may only be served or executed by officers of the courts.

Title V

OF THE TRIAL OF CAUSES

Posting up of cause list.
Amended by: XI.1859.9; XXVII. 1979.16; XXIV.1995.98.

194. (1) The registrar shall cause a list of the causes which are to be tried at a particular sitting to be posted up at the side of the entrance of the court room where the causes are to be heard at least one hour before the case is to be heard, saving urgent cases referred to in article 154(2).

(2) The list shall bear the date on which it is posted up as aforesaid and shall be signed by the registrar.

(3) The list shall be deemed to be posted up, according to the regulations, on the date which it bears and at the time of the closing of the registry.

Trial of causes.
Amended by: XXXI.1934.31; XXXIII.1934.2; XXVII.1979.17; VIII.1981.5; XXIV.1995.99.

195. (1) A cause, when set down for trial, shall, unless otherwise provided for in this Code, be tried uninterruptedly to a conclusion.

(2) Nothing in this article contained shall prevent the court from deciding a cause on the day stated in the writ of summons where the claim is not contested or the court is satisfied that the plaintiff has no claim or the defendant has no valid defence.

(3) The adjournment of a cause shall not be granted except for the purpose of compliance with any procedure laid down in this Code or, in exceptional circumstances, in accordance with the provisions of sub-article (4).

(4) A cause may be adjourned in exceptional circumstances

only if the court is satisfied that such circumstances exist and so states in the decree ordering the adjournment specifying those circumstances, and only on an application filed by the party demanding the adjournment not later than two working days before the day due for hearing or, if the cause of the adjournment arises after the expiration of the said time limit, as soon as practicable thereafter; and the application shall specify in detail the circumstances justifying the demand and shall be confirmed on oath by the applicant or, if the applicant is absent from Malta or is otherwise unable to confirm the application in person, by the advocate signing the application who shall, in such case, further confirm on oath the applicant's inability to confirm it himself.

Absence of witness to be a good ground for adjournment. *Substituted by: XXIV. 1995.100. Amended by: XXXI. 2002.73.*

196. (1) The absence of any witness regularly subpoenaed, shall be good ground for an adjournment of the cause, provided his evidence be shown to be material.

(2) The court may in this case appoint a judicial assistant to hear the evidence of such witness on such a day and at such a time as the court shall determine. Such day and time shall be prior to the date to which the cause is adjourned.

Order of trial. *Amended by: XI. 1859.10; XXXI.1934.32; L.N. 148 of 1975.*

197. (1) Causes shall be tried in the order in which they stand on the list, unless the court for a good reason shall otherwise direct.

Government causes.

(2) Nevertheless, the causes to which the Government of Malta is a party shall always be heard before any other cause unless the court shall deem it necessary, on grounds of urgency, to follow the order of the list or to try other causes.

Calling on of causes.

198. Before the hearing of a cause commences, the proper officer shall, outside the entrance of the court room, announce the hearing, calling out aloud three times the names and surnames of the contending parties:

Provided that when there are several plaintiffs or defendants he shall call out the name and surname of the party first mentioned in the title of the record, and shall refer to the others by the general nomenclature of "others".

Default of appearance of contending parties at trial. *Amended by: IX. 1886.30; XXXI. 1934.33; II.1940.4; XXIV.1995.101.*

199. (1) If, after a cause is called on three times, the contending parties or their advocates or, in the causes before the inferior courts, the contending parties or their advocates or legal procurators, fail to appear, it shall be lawful for the court to order the cancellation of the cause from the list at the expense of the plaintiff.

Default of appearance of plaintiff.

(2) If only the defendant or his advocate or legal procurator, as the case may be, appears, he shall be entitled to demand that the plaintiff be non suited with costs.

Right of plaintiff to have cause again set down for trial.

(3) In either case, if the plaintiff desires that the cause be restored to the list to be heard and determined upon the same acts, he shall, by means of an application to be filed within ten days, make a demand to that effect. Such demand shall be granted once

only, and the court shall appoint a day for the trial of the cause at the expense of plaintiff, on condition that the plaintiff shall make payment, or deposit in the registry of the court before the day fixed for the trial, all the costs stipulated in the tariff, in the consequence of the non-appearance of plaintiff, or of his advocate or legal procurator, as the case may be.

Non suit of plaintiff in default of security for costs.

200. (1) The plaintiff shall likewise be non suited with costs if, when the cause is called on, it is found that no security for the costs of the suit has been given as provided in this Code, unless, within a short time which the court may deem fit to allow, a sum in ready money, sufficient to secure the costs of the suit, be deposited with the registrar.

Security for costs not subject to claims of creditors.

(2) The sum so deposited shall not be subject to the claims of the creditors of the party making such deposit, so long as such sum is intended to meet the costs of the suit.

Default of appearance of defendant. *Amended by: XXXI. 1934.34; XXIV. 1995.102.*

201. If the defendant or his advocate, or, in the causes before the inferior courts, the defendant or his advocate or legal procurator, fails to appear, the cause may be determined according to law on the acts available after hearing such evidence as the court may consider necessary, notwithstanding his default of appearance.

Regulation of trial. *Substituted by: XXIV.1995.103.*

202. (1) The Court shall first appoint a date and time for a pretrial hearing of the cause.

(2) On the first day appointed for the pretrial hearing of the cause, the court shall identify and record the relevant points of law in question, and the points of fact which are in contention and the relative objects of proof to be made by each witness to be produced by the parties, and shall then proceed as follows:

(*a*) if the court considers that the cause can be expeditiously disposed of during that sitting, it shall conclude the hearing in accordance with sub-article (4) during the first sitting and deliver, or adjourn the cause for, judgment;

(*b*) if the cause cannot be disposed of according to the provisions of paragraph (*a*) of this sub-article, the court shall either fix a date and time for the hearing of the trial *viva voce* in accordance with sub-article (4) giving such orders or directives under article 173 as it may deem proper; and shall accordingly commence and continue to hear the trial of the cause on the date so fixed and continue such hearing uninterruptedly until the trial is concluded and the cause adjourned for judgment; or proceed in accordance with paragraph (*c*) of this sub-article:

Provided that either party can, unless otherwise expressly ordered by the court, produce any evidence of witnesses by means of an affidavit, until the date fixed for the hearing;

(*c*) the court, before proceeding to hear the case in accordance with sub-article (4) shall:

(i) grant to the plaintiff or plaintiffs a period of forty days within which they are to produce and file in the registry of the court all documents relative to the claims, and all the evidence of the declared witnesses by means of affidavits; and to the defendant or defendants a period of forty days, to run from the expiration of the period granted to the plaintiffs, to produce and file in the registry of the court all documents relative to the defence, and all the evidence of the declared witnesses by means of affidavits:

Provided that the court may reduce any of the periods in cases where such is required because of the relative urgency of the cause, and may also reduce any of the said periods, or dispense with them altogether, according to circumstances, in cases where affidavits have been filed together with the writ of summons or the statement of defence, and after taking into account any submissions made by the parties;

(ii) the court shall then adjourn the cause to a date as early as possible after the date by which the defendants are to file their evidence by affidavits as provided in sub-paragraph (i) of this paragraph for a second pretrial hearing. By such a date the parties shall by means of a note filed in the registry of the court, indicate the witnesses they intend to cross examine. At the second pretrial hearing the parties shall declare which points of law are still in question and which points of fact are still in contention. Taking into account the time likely to be taken for the hearing of the cause, the court shall then fix a date for the cross-examination *viva voce* of the witnesses subpoenaed for the purpose, and the uninterrupted continuation of the hearing of the cause until it is determined or adjourned for judgment, in accordance with sub-article (4). No witness may be cross examined unless the intention to cross examine such witness has been declared as provided in this sub-paragraph;

(iii) if any of the parties finds difficulty in producing the evidence of any witness by affidavit as aforesaid, such party shall inform the court accordingly, by means of a note to be filed in the records of the cause, within the time fixed for the production of the evidence by such party, and the court shall exercise the powers conferred on it by article 173(2)(*b*) to ensure that such evidence is heard and produced within the time fixed in this sub-article.

(3) Notwithstanding the foregoing provisions of this article -

(*a*) in the causes referred to in article 158(7), the court may grant more time to the attorney or curator therein mentioned as it may consider necessary for him to fully inform himself and produce the required evidence;

(*b*) in causes where any of the parties wishes to produce evidence which is to be obtained by letters of request or where documents have to be obtained from abroad, the court shall hear all the evidence otherwise available, and grant to the parties such time as is necessary to obtain the evidence or documents aforesaid;

(*c*) the court may also, in grave and justifiable circumstances which are to be recorded in the acts of the proceedings, extend or renew to the parties the time within which they are to produce their evidence by affidavit;

(*d*) the court either on its own motion, or on application by any party to the proceedings on good cause being shown, may at any time order that a particular witness or witnesses be heard *viva voce* before it; and may also recall any witness or witnesses to be so heard.

(4) After the termination of the pretrial hearing or hearings the order to be followed in the trial of a cause shall be as hereunder:

(*a*) the court shall, where it has not proceeded in accordance with sub-article (2)(*c*), give such directives as it may deem necessary as to the production of evidence;

(*b*) the witnesses of the plaintiff whose evidence has been produced by affidavit shall be cross examined, and in the case where the court has not proceeded in accordance with sub-article (2)(*c*) the plaintiff shall produce his evidence;

(*c*) the witnesses of the defendant whose evidence has been produced by affidavit shall be cross examined, and in the case where the court has not proceeded in accordance with sub-article (2)(*c*), the defendant shall produce his evidence;

(*d*) the plaintiff submits his case and the defendant makes his reply;

(*e*) the court in appropriate circumstances may allow a further reply by plaintiff and rejoinder by defendant.

Power of court to vary order of production of evidence. *Substituted by: XXIV.1995.104.*

203. It shall in all cases be lawful for the court, for just cause to be recorded in the acts of the proceedings, to regulate otherwise the production of evidence by varying the order set forth in the preceding article.

Party may plead personally or through advocate.

204. (1) The parties shall respectively submit the claim, or make the answer, the reply, or the rejoinder referred to in article

202, either personally or through an advocate.

Distribution of oral pleading when more than one advocate appears for the same party.

(2) If more than one advocate appears for the same party, it shall be lawful, if such party be the plaintiff, for one advocate to state the case and for another to make the reply and, if such party be the defendant, for one advocate to make the answer and for another to make the rejoinder. The advocates may also distribute among themselves the several issues of the controversy and the evidence.

Power of court to rule out useless matter in oral pleading.

(3) Nevertheless, in all cases the court is empowered to rule out from the oral pleading all matter which, in its opinion, may be calculated to cause useless delay, or consists in repetition, or is irrelevant or extraneous to the cause.

Party assisted by advocate not to address court. *Amended by: IX.1886.31; XXIV. 1995.105.*

205. (1) The party assisted by an advocate may not, without leave of court, make any submission except through his advocate.

Power of court where party appears without advocate.

(2) The court may order the party who is not assisted by an advocate to engage one if, in the opinion of the court, such party is unable adequately to plead his case; and if such party fails to engage an advocate, the court shall appoint, for the purpose, one of the official curators to be selected according to the turn on the rota; if the party refuses to give the necessary information to the advocate so appointed, the court may dispose of the case after hearing such evidence as the court may consider necessary.

Close of trial.

206. (1) The trial of the cause shall be deemed to be closed by the rejoinder, unless the contending parties or their advocates be called upon by the court to give further explanations or are, in special cases, allowed to make some particular submission.

No further evidence to be allowed after close of trial.

(2) When the trial of the cause is closed, no further evidence shall be allowed, except for just cause and by leave of the court.

Order of trial in appellate court. *Amended by: IX. 1886.32; XXIV.1995.106.*

207. Before an appellate court -

(*a*) where the appeal is entered by the plaintiff only, or by both parties, the order of hearing shall be the same as provided in article 202(3);

(*b*) where the appeal is entered by the defendant only, he shall commence by briefly stating the alleged grounds of complaint and praying that the judgment appealed from be reversed or varied, and the order of hearing shall then be as provided in article 202(3).

Production of witnesses before appellate court. *Amended by: IX. 1886.32; XV. 1913.65; XXXI. 1934.35.*

208. (1) No witness who was not produced in the court below may be produced on appeal, unless -

(*a*) the opposite party gives his consent thereto; or

(*b*) it is proved on oath or otherwise, that the party tendering the evidence of such witness had no knowledge thereof, or was unable, by the means

provided by law, to produce such witness in the court below; or

(*c*) the evidence of such witness was tendered and disallowed before the court below and the appellate court considers it admissible and relevant; or

(*d*) the appellate court is satisfied of the necessity or expediency of taking the evidence of such witness:

Provided that in any such case, the court may, in adjudging the costs of the case, take into account the tardy production of such witness.

(2) If in the court of first instance the defendant had failed to file the statement and declaration mentioned in article 158 and to appear at the trial of the cause, he shall be precluded from producing witnesses before the appellate court, unless he shows to the satisfaction of such court a good reason for his default.

Appeal to be declared abandoned in default of security for costs, *Amended by: IV. 1868.4; XXXI. 1934.36; XXIV. 1995.107.*

209. (1) In the Court of Appeal, if, when the cause is called, it is found that security for the costs of the suit is not produced as provided in article 249, the court shall forthwith proceed to declare the appeal abandoned:

Provided that the court may grant the appellant a short time to produce security for costs if the appeal is one which is to be heard with urgency, or if the registrar has not:

(*a*) fixed the amount for such security; and

(*b*) notified the appellant accordingly indicating in such notice the consequences of his default, at least ten days prior to the hearing.

and in default of appearance of both parties or of appellant. Right of appellant to have cause again set down for trial.

(2) If, when a cause is called on three times, neither of the parties nor their advocates appear, or if only the respondent or his advocate appears, the court may declare the appeal abandoned. Nevertheless, on an application by the appellant, filed within eight days from such declaration, the court shall order that the cause be again put on the list for hearing and determination, provided the appellant shall have deposited, within the said time, the amount of costs occasioned by his non-appearance.

Parties or advocates not to interrupt each other.

210. It shall not be lawful for the parties or their advocates to interrupt each other. Every person whose turn it is to speak shall address the court only.

Judgment to be given in the same or at earliest date.

211. When the hearing is concluded, the court, if it does not deliver judgment on the same day, shall reserve judgment for the earliest possible date to be fixed for the purpose.

Grounds of adjournment to be stated by court and noted down by registrar. *Added by: XXXI. 1934.37.*

212. (1) If the court does not deliver judgment on the day fixed for the trial of the cause, the court shall give the reason according to law for adjourning the cause to another day.

(2) The registrar shall keep a *procès-verbal*, to be inserted in the record, of the grounds of each adjournment and of everything done in each sitting.

In inferior courts, the court may adjudge on a right although not falling precisely within original claim. *Amended by: XV.1913.66; VIII. 1990.3.*

213. In first instance, in the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, where the claim as stated in the writ of summons has not been made to appear, but nevertheless, another right has been made to appear although such other right does not fall precisely within the terms of the claim as originally framed, the court may adjudge upon such other right so made to appear on the same writ of summons:

Provided that the court shall, if a request is made to that effect, or if it shall deem it proper so to do, allow a short time to the defendant to prepare his defence against such other right:

Provided further that in no case shall the court award a sum beyond that originally claimed.

Appearance of parties in inferior courts.

214. In the courts mentioned in the last preceding article, the parties shall appear personally or through any of the persons mentioned in article 180 who can lawfully represent them, or through an advocate.

Inferior courts to proceed summarily.

215. The courts mentioned in article 213 shall proceed summarily and with the utmost despatch consistent with the due administration of justice, and shall comply with the provisions contained in this Title in so far as such provisions may be consistent with the manner of proceeding of the said courts as aforesaid.

Title VI

OF DECREES, JUDGMENTS AND APPEALS

Delivery of judgment. *Amended by: XV. 1913.66; XXII. 1992.8.*

216. The judgment shall be delivered by the judge or magistrate before whom the cause has been tried; and when the court consists of more than one judge or magistrate, by one of such judges or magistrates; sohowever that it shall be lawful for the judge or magistrate presiding that court to deliver the judgment in the absence of the other members of the court provided that the judgment is signed by at least two of the members of the court.

Decision of majority to form judgment of court consisting of more than one member. *Amended by: IX. 1886.34; IV.1905.3.*

217. In a court consisting of more than one member, the decision of the majority shall form the judgment which shall be delivered as the judgment of the whole court.

Judgment to include reasons. *Amended by: VI. 1880.21; XXIV 1995.108.*

218. The court shall in the judgment premise the reasons on which the decision of the court is based, and shall include a reference to the proceedings, the claims of the plaintiff and the pleas of defendant.

Conclusive or binding declarations to be included in operative part of judgment.

219. Every declaration intended by the court to be conclusive or binding shall be included in the operative part of the judgment.

Proceedings for the recovery of a debt.
Added by: IV. 2001.35.

219A.(1) In proceedings for the recovery of a debt, a judgement given upon admission of the claim or upon a claim that has not been disputed by the defendant shall, so far as possible considering the circumstances of the case, be delivered within ninety days of the lodging of the action before the Court.

(2) The period mentioned in subarticle (1) shall not include the period of time taken for service of the writ of summons or application upon the defendant.

Recording of decision and reasons.

220. When judgment is delivered, the registrar shall record the decision together with the reasons given by the court for such decision.

Delivery and recording of interlocutory decrees.
Amended by: XI. 1859.11; XXVII 1979.18.

221. (1) Saving the provisions of article 173, interlocutory decrees shall be delivered and recorded in the manner provided in the preceding articles of this Title.

(2) The provisions of article 218 shall also apply to the said decrees, when they are subject to appeal according to the provisions of article 229.

Judgment upon claim for specific performance.

222. Where the claim is for some specific performance, the judgment shall state a time, according to circumstances, within which the party cast shall perform the act, and shall also state the manner of execution in case of non-performance of the act.

Costs.
Amended by: XIII. 1964.21; XXIV. 1995.109.

223. (1) Every definitive judgment shall award costs against the party cast.

(2) In the case of an interlocutory decree, it shall be lawful for the court to reserve the issue as to costs for decision in the definitive judgment or to award costs against the party cast.

(3) In all cases, it shall be lawful for the court to order that the costs shall not be taxed as between party and party, when either party has been cast in some of the points at issue, or when the matter at issue involves difficult points of law, or where there is any other good cause.

(4) In the case of any frivolous and vexatious appeal, the Court of Appeal or the Constitutional Court may award double costs against the appellant in favour of the respondent.

(5) In the case where an *ex parte* expert witness is produced by any of the parties in a cause, the court shall in the definitive judgment establish a fair amount which can be claimed as costs for the said witness. In determining the said amount, the court shall take into account the seriousness of the claims, in the case of an expert witness not resident in Malta, whether local expertise was available and all the other circumstances of the case. The court shall also establish how the said costs are to be apportioned between the parties to the cause.

Award of costs *in solidum* or *pro rata.*
Amended by: IX. 1886.35.

224. If two or more persons are condemned in costs, each person shall be deemed to be condemned *in solidum* or in proportion to his interest in the cause according to the decision on the merits.

Costs against tutors, etc.

225. Where any tutor, curator, heir under the benefit of inventory or other private or public administrator has in a cause acted to the prejudice of his administration, the court may, in the same judgment delivered in that cause, without the necessity of separate proceedings, condemn such tutor, curator, heir or administrator to pay personally and without any right to reimbursement costs as well as damages and interest according to law, saving any other penalties to which he may be liable according to circumstances.

Time for filing application of appeal. *Amended by: IX.1886.36; XV.1913.67; XII.1924.2; VIII.1990.3. Substituted by: XXIV.1995.110.*

226. (1) An appeal is entered by means of an application to be filed in the registry of the Court of Appeal within twenty days from the date of the judgment.

(2) Where an appeal is not entered from the whole judgment, there shall be stated in the application of appeal, the heads of the judgment against which an appeal is entered.

Judgments by appellate courts not subject to appeal. *Amended by: VII.1880.8; XXII.1976.4; VIII.1990.3. Substituted by: XXIV.1995.111.*

227. Judgments delivered by the Court of Appeal are not appealable.

Other judgments not subject to appeal. *Amended by: XV.1913.68; XXXI. 1934.38; XXIII.1971.17; XIII.1983.5; XII. 1985.6; VIII. 1990.3; XXIV.1995.112.*

228. (1) No appeal shall lie from any judgment given upon admission of the claim, or accepted by the renunciation of the right of appeal or by acquiescence in the findings of the judgment.

Appeal from inferior courts when admissible.

(2) Nor shall an appeal lie from any judgment of the Court of Magistrates (Malta), or of the Court of Magistrates (Gozo) in its inferior jurisdiction as a court of first instance, where the amount of the claim, assessed or assessable as provided in articles 748 and 761, does not exceed two hundred liri, and the matter at issue does not involve a point of law determined in the judgment or the determination of a claim for the eviction of any person from immovable property.

Appeal from decrees. *Amended by: XV. 1913.69. Substituted by: XXIV. 1995.113. Amended by: IV.1996.4.*

229. (1) An appeal from the decrees mentioned hereunder shall only lie after the definitive judgment and together with an appeal from such judgment, and such decrees may not be challenged before the definitive judgment is delivered:

(*a*) a decree allowing a request for urgency;

(*b*) any order or directive under the provisions of article 173;

(*c*) a decree allowing or disallowing a request for the adjournment of a cause under article 195(3);

(*d*) a decree allowing or disallowing an objection to the

competency of a witness under article 567;

(*e*) a decree allowing or disallowing a request to put questions to a witness under article 587;

(*f*) a decree allowing or disallowing a request for the production of documents under article 637;

(*g*) the appointment of a referee under article 646;

(*h*) a decree allowing or disallowing a request for the connection of actions under article 793(1);

(*i*) a decree allowing or disallowing a request for suspending the delivery of a decree;

(*j*) a decree allowing or disallowing the expunging of a document from the records of the case;

(*k*) subject to the provisions of this article, a decree allowing or disallowing a request for the revocation or amendment of a decree;

(*l*) a decree disallowing a request for special leave to appeal under sub-article (5);

(*m*) a decree disallowing a request for stay of proceedings.

(2) A decision of the court in the cause listed hereunder shall be given by a decree to be read out in open court on a day duly notified to the parties, and an appeal from such decree may be entered before the definitive judgment subject to the procedure laid down in sub-article (4) and (5):

(*a*) a decree refusing the appointment of additional referees under article 674;

(*b*) a decree transferring an action for trial to another court under article 792,

(*c*) a decree refusing the joinder of a third party under article 961;

(*d*) a decree disallowing a request for urgency;

(*e*) a decree ordering the stay of proceedings.

(3) Save as otherwise specifically provided for in this Code an appeal from any other interlocutory decree not included in sub-articles (1) and (2) may be entered before the definitive judgment only by special leave of the court hearing the case, to be requested by an application to be filed within six days from the date on which the decree is read out in open court. The court, after hearing the parties, may grant such leave of appeal if it deems it expedient and fair that the matter be brought before the Court of Appeal before the definitive judgment.

(4) In the case of any decree under sub-articles (2) and (3), provided that any application for an appeal has not been filed, the aggrieved party may file an application within six days from the date on which the decree is read out in open court, requested the court which delivered the decree to reconsider its decision. The application is contain full and detailed reasons in support of the

request and is to be served on the other party who shall have the right to file an answer thereto within six days from the date of service.

(5) The court shall decide, as expenditiously as possible by decree to be read out in open court, the application for special leave to appeal in terms of sub-article (3) or the application to reconsider its decision in terms of sub-article (4), expounding fully therein the reasons for the decision.

(6) The period for appeal from a decree before a definitive judgment shall be six days from the date on which the decree is read out in open court:

Provided that in the case contemplated in sub-articles (3) and (4) such term for appeal shall run from the day on which the decrees in terms of sub-article (5) are read out in open court.

(7) Subject to the provisions of this article, the provisions of this Code relating to appeals from judgments shall apply to appeals from decrees under this article.

(8) The security referred to in article 249 shall not be required in the cases referred to in sub-article (6).

(9) In the case of any frivolous or vexations appeal, the Court of Appeal shall award double costs against the appellant in favour of the respondent, and may condemn appellant to pay respondent a sum not exceeding one thousand liri by way of penalty, saving any right for damages that may be competent to respondent.

(10) Where an interlocutory decree has been given *in camera*, it shall for the purposes of this article and for the purposes of the calculation of any time therein established be deemed to have been read out in open court on the date of the first sitting in the case immediately after the decree was given *in camera* by the court.

Interlocutory decrees not to operate as *res judicata* for court delivering them.

230. Interlocutory decrees shall not operate as a *res judicata* in regard to the court by which they are delivered, if a good cause to depart therefrom is shown to the satisfaction of the court.

Appeal in case of separate judgments on several issues in the same action. *Substituted by: XXIV. 1995.114.*

231. (1) Where several issues in an action have been determined by separate judgments, appeal from any such judgments may only be entered after the final judgment and within the prescribed time, to be reckoned from the date of such final judgment; and in such an appeal express mention of the judgment or judgments appealed from shall be made:

Provided that an appeal from such separate judgments may be entered before the final judgment only by leave of court to be read out in open court; such request for leave to appeal shall be made either orally immediately after the delivery of such judgment or by application within six days from such judgment.

(2) In an action involving more than one plaintiff or more than one defendant a judgment disposing of the action in respect of any particular plaintiff or defendant may only be appealed from within the prescribed time to be reckoned from the date of such judgment.

Assessment of damages, etc., pending appeal. Liability for expenses in case of reversal of judgment.

232. It shall be lawful for the party in whose favour damages, interest, or fruits have been awarded, to proceed for the assessment thereof pending the appeal; but such party shall be liable for all expenses occasioned by such procedure in case the judgment appealed from is reversed.

Power of appellate court to assess damages, interest or fruits. *Amended by: XV. 1913.70. Substituted by: XXIV. 1995.115.*

233. (1) Where an appellate court reverses a judgment and allows the claim for damages or interest or for the recovery of fruits, it shall make such assessment without sending back the record to the court of first instance, unless the court for exceptional reasons considers it to be in the interest of justice to send back the cause to the court of first instance.

(2) Likewise the appellate court shall, in the case of reversal of a judgment of non-suit of plaintiff or of a judgment given under the provisions of article 170(1) or (2), either remit the records to the court of first instance or determine the merits, according to circumstances.

Decrees in regard to jurisdiction of court to be subject to appeal. *Amended by: XV. 1913.71; XXIV. 1995.116.*

234. Subject to other particular provisions of this Code concerning pleas to the jurisdiction by reason of the subject-matter of the cause, any judgment given by any court in regard to its jurisdiction to take cognizance of any particular cause, is subject to appeal; and the court may stay the hearing of the cause until the determination of that point by the appellate court, provided none of the parties shows to the satisfaction of the court that the delay would be prejudicial to him.

No appeal *ab omissa decisione. Amended by: IV. 1865.2; XXIV. 1995.117*

235. Where a court of first instance omits to determine any of the claims brought forward, no appeal shall lie *ab omissa decisione*:

Parties may request first court to decide claim not determined by application within fifteen days,

Provided that it shall be lawful for each of the parties, within the time of fifteen days from the date of the judgment, by means of an application, to request the court of first instance to determine such claim; and upon such application, the parties being summoned anew, the court shall adjudge upon the claim; in such case, the time for entering appeal from the whole judgment, or from any part thereof, shall commence to run from the day of the last judgment:

or by summons at any time.

Provided further that it shall be lawful for each of the parties, at any time, to sue by writ of summons before the court of first instance for a decision on the claim the determination of which had been so omitted.

Interested third parties may appeal.

236. An appeal may be entered not only by the contending parties but also by any person interested.

Judgment not to operate against third parties.

237. A judgment shall not operate to the prejudice of any person who neither personally nor through the person under whom he claims nor through his lawful agent was party to the cause determined by such judgment.

Persons who benefit from appeal. *Added by: IX. 1886.37.*

238. (1) The reversal or variation of a judgment shall operate in favour of the party at whose instance such reversal or variation is obtained.

(2) Such reversal or variation shall also operate in favour of any person -

(*a*) who has an interest essentially dependant upon that of the party at whose instance such reversal or variation is obtained;

(*b*) who, in any controversy relating to an indivisible thing, was joint plaintiff or defendant with the party at whose instance such reversal or variation is obtained;

(*c*) who in virtue of the judgment which is reversed or varied was condemned *in solidum* with the party at whose instance the reversal or variation is obtained:

Provided that the reversal or variation shall not operate in favour of the person referred to in paragraphs (*b*) and (*c*) where such reversal or variation is obtained on grounds exclusively affecting the party seeking such reversal or variation.

Certain judgments may only operate in respect of third parties if and from the time they are entered in the Public Registry. *Added by: IX. 1886.3. Amended by: XXIV.1995.118.*

239. (1) The judgments mentioned hereunder shall be operative with respect to third parties, only from the time when they are enrolled in the Public Registry, namely:

(*a*) any judgment by which any act having the effect of transferring the ownership of immovable property or any other real right thereon, is dissolved, rescinded or revoked;

(*b*) any judgment which directly adjudges the transfer of the ownership of immovable property or of any other real right thereon.

(2) Any interested party may obtain enrolment by delivering to the said registry a note of enrolment together with an authentic copy of the judgment as well as a certificate from the registrar that the judgment has become *res judicata*. The provisions of the Public Registry Act shall apply to the drawing up and filing of the said note.

Cap. 56.

(3) In the case of any judgment referred to in sub-article (1)(*a*), when the judgment shall have become *res judicata*, the registrar shall, at the request and at the expense of the interested party, deliver a note of reference to such judgment to the notary before whom the act which has been dissolved, rescinded or revoked was received, or who is the keeper thereof.

Cross-appeal. *Amended by: XI.1859.12; IX.1886.38. Substituted by: XXIV. 1995.119.*

240. (1) Any party may avail himself of an appeal entered from a judgment, including a partial judgment and from a head or heads of any judgment, or from an interlocutory decree and may enter a cross appeal not only in respect of the judgment, partial judgment, head or heads of a judgment, or interlocutory decree appealed from, but also in respect of any judgment or heads thereof or interlocutory decrees given in the same cause even if not appealed from by the appellant. Such cross appeal may be made even against or by any party not being one against whom a cross appeal is directed in terms of article 144(1):

Provided that a party may not so avail himself of the appeal in

respect of the particular judgment, if he has already appealed from such judgment or any head thereof.

(2) The party who intends to avail himself of such appeal shall make a declaration to that effect in the answer stating therein his demands and the grounds for his cross appeal.

Cross-appeal to hold good notwithstanding abandonment of appeal.

241. The declaration referred to in the last preceding article shall continue to be operative even if the opposite party abandons his appeal.

Notice as to validity of laws. *Amended by: IX.1886.39; XV. 1913.72; VIII. 1990.3. Substituted by: XXIV. 1995.120.* Cap. 319.

242. When a court, by a judgment which has become *res judicata*, declares any provision of any law to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention Act, or to be *ultra vires*, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.

Abridgement of time for appeal. *Added by: IX.1886.39. Amended by: XV. 1913.73; XXIV. 1995.121.*

243. (1) The court of first instance may, in urgent cases, upon a demand, even verbal, by any of the parties, immediately after the delivery of the judgment, abridge the time for the filing by the appellant of the written pleading before the appellate court.

(2) If no such demand is made by the parties immediately after judgment is delivered, it shall be lawful for the parties to make such demand by an application upon which the court of first instance, after summarily hearing the parties, will give the requisite directions.

(3) The provisions of this article shall apply to the answer, and, if there is a reply, to such reply.

Lodging of record. *Added by: IX. 1886.39. Amended by: XV. 1913.74; LIII. 1948.2. Substituted by: XXIV. 1995.122.*

244. (1) On appeal proceedings being taken, the record of the proceedings of the first court shall be lodged before the appellate court.

(2) The fee prescribed for the lodging of the record shall be paid concurrently with the fee for the filing of the application.

Mode of lodging record. *Amended by: VII. 1880.8. Substituted by: LIII.1948.3; XXIV. 1995.123.*

245. In regard to appeals from judgments or decrees of the Civil Court, First Hall, and from determinations by the Rent Regulation Board, the lodging of the record shall be effected as soon as possible by the production thereof before the Court of Appeal by the registrar.

Lodging of record in appeals before Gozo court as appellate court. *Amended by: VII. 1880.8; IX. 1886.39.*

246. *Repealed by: XXIV. 1995.124.*

Lodging of record in appeals from inferior court to Court of Appeal. *Amended by: VII. 1880.8. Substituted by: LIII. 1948.4. Amended by: VIII. 1990.3. Substituted by: XXIV. 1995.125.*

247. (1) In regard to appeals from judgments of the Court of Magistrates (Gozo) and from judgments of the Court of Magistrates (Malta), the lodging of the record shall be effected by the transmission thereof by any officer of the court concerned to the registrar in the Court of Appeal.

(2) For the purposes of sub-article (1) -

(*a*) the registrar shall, on the same day on which an appeal is entered, notify in writing the entering of such appeal to the officer of the court concerned;

(*b*) when notification is made to any officer of the Court of Magistrates (Gozo) the registrar shall, in addition to the notification in writing, make notification by telefax or other electronic device or orally by telephone.

(3) In respect of appeals entered against a judgment of the Court of Magistrates (Gozo) the transmission of the record shall be deemed to have been effected by the delivery of the record addressed to the registrar, to the Post Office, in Victoria, Gozo.

Fee on lodging of record, in appeal from Gozo court to Court of Appeal. *Substituted by: LIII.1948.5.*

248. *Repealed by: XXIV. 1995.126.*

Security for cost: *Amended by: IX. 1886.41; XV. 1913.75. Substituted by: XXIV. 1995.127.*

249. (1) Saving the provisions of the proviso to article 209(1) and unless otherwise provided in any other law, in the case of an appeal from judgments or decrees given in a cause initiated by writ of summons, security for costs is to be produced and deposited in court at least one day before the date of the hearing of such appeal.

(2) Such security shall be in an amount determined by the registrar and is to be made either by a deposit of ready money or by a guarantee of a bank licensed in terms of the Banking Act in accordance with Schedule C to this Code.

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(3) The deposit shall not be subject to the claims of the creditors of the party making such deposit, so long as it remains to meet the costs of the suit.

(4) The Government of Malta, public corporations, the Central Bank of Malta and banks licensed under the Banking Act are exempt from giving the said security.

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(5) The Minister responsible for justice may by regulations exempt any other category of persons or bodies from providing the said security.

(6) The provisions of articles 893 to 905 where inconsistent with this article shall not apply to the security given under this article.

Exemptions from security. *Amended by: VII.1880.9; IX. 1886.42; XV. 1913.76; XXIV. 1995.128.*

250. The security referred to in the last preceding article shall not be required in the cases referred to in articles 42 and 172, or in the case of an appeal from a judgment disallowing a demand for the benefit of the juratory caution, or in the case of any demand for admission to the benefit of juratory caution, or in the case of other

collateral demands.

251. Subject to the provisions of article 143, the times prescribed in article 226 are peremptory.

Times mentioned in article 226 to be peremptory.
Amended by: IX.1886.44; XV.1913.77; XXIV.1995.129.

Title VII

OF THE ENFORCEMENT OF JUDGMENTS AND OTHER EXECUTIVE TITLES

Amended by: IX. 1886.45.

Sub-title I

Added by: XXXI. 2002.84.

GENERAL PROVISIONS

252. Saving any other provision of the law in respect of warrants *in factum*, execution by any of the means mentioned in article 273 may be issued only in virtue of an executive title.

Mode of enforcement of executive title.
Added by: IX. 1886.46. Substituted by: XII. 1985.7.

253. The following are executive titles:

(*a*) judgments and decrees of the courts of justice of Malta;

(*b*) contracts received before a notary public in Malta, or before any other public officer authorised to receive the same where the contract is in respect of a debt certain, liquidated and due, and not consisting in the performance of an act;

(*c*) taxed bills of judicial fees and disbursements, issued in favour of any advocate, legal procurator, notary public, perit, judicial referee or witness, unless such taxed bills are impugned according to law;

(*d*) awards of arbitrators registered with the Malta Arbitration Centre.

Executive titles.
Added by: IX 1886.46. Amended by: XV. 1983.3; II. 1996.78; XVIII. 1999.33; XXXI. 2002.85.

254. *Repealed by: XII.1985.8.*

Judgments ordering release from imprisonment for debt to be enforceable immediately.

Judgments enforceable after twenty-four hours. *Amended by: XXIV. 1995.130; XXXI. 2002.86.*

255. The following may be enforced after the lapse of twenty-four hours from delivery:

(*a*) any judgment on any collateral issue or any interlocutory decree, provided the time for enforcement is not stated in the judgment or decree itself;

(*b*) any judgment rescinding a warrant of impediment of departure of any ship, or rescinding any warrant of seizure or any garnishee order relating to ships or merchandise;

(*c*) any judgment ordering the supply of maintenance;

(*d*) any award of an arbitrator in accordance with the Arbitration Act.

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All other judgments to be enforceable after two days from delivery. *Amended by: IX. 1886.47.*

256. (1) Any other definitive judgment which does not contain any suspensive condition, and which condemns a debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil any specific act or obligation whatsoever, may be enforced after two days from the day of its delivery.

Other executive titles to be enforceable after two days from judicial intimation.

(2) The enforcement of any other executive title may only take place after the lapse of at least two days from the service of an intimation for payment made by means of a judicial act.

Power of court to abridge time for enforcement of judgments.

257. The court may, on grounds of urgency, order the enforcement of any judgment even before the expiration of the times referred to in the last two preceding articles. The order for such enforcement may be made in the judgment itself.

Procedure for enforcement of executive titles after lapse of five years. *Amended by: IX. 1886.48. Substituted by: XXII. 1963.2; XXIV. 1995.131.*

258. Where a period of five years has expired since the day on which according to law any of the executive titles mentioned in article 253 could have been enforced, the enforcement may only be proceeded with upon a demand to be made by an application filed before the competent court. The applicant shall also confirm on oath the nature of the debt or claim sought to be enforced, and that the debt or part thereof is still due.

Procedure for enforcement of executive title where debtor is dead. *Amended by: IX.1886.48; XXIV.1995.132.*

259. (1) The demand by application mentioned in the last preceding article shall in all cases be necessary where it is sought to enforce an executive title against the heirs of the debtor, even though the period referred to in the said article shall not have elapsed.

(2) If there be no known heir, or if the heir has not as yet declared his intention as to the acceptance of the inheritance, a curator shall be appointed to represent the inheritance, and execution proceedings shall be taken against such curator.

(3) The time allowed to deliberate upon the acceptance of the inheritance shall not operate as a stay of the execution proceedings.

(4) The heirs, successors or assignees of the creditor may, by application served on the debtor, his successors or assignees, request the court to enforce any executive title in the name of the

creditor even though the period referred to in the previous article shall not have elapsed. Such request shall be allowed by the court if it is satisfied that:

(*a*) the applicants are the sole heirs, successors or assignees of the creditor;

(*b*) the executive title is still valid for what is being claimed; and

(c) the persons against whom enforcement is sought are the debtor, or his heirs, successors or assignees.

Executive titles to be enforceable on movable and immovable property of debtor. *Amended by: IX. 1886.50.*

260. Saving the provisions of article 353, the enforcement of any of the executive titles referred to in article 253, may be carried out on the movable as well as on the immovable property of the debtor, as the creditor shall state.

Joint enforcement of executive titles. *Amended by: IX. 1886.51.*

261. Any creditor of the same person under more than one executive title within the jurisdiction of the same court, may enforce such executive titles jointly in respect of all the claims due.

Payment or fulfilment in part of debt or claim not to operate as waiver of execution. *Amended by: IX. 1886.52.*

262. The receipt of any payment on account of the debt, or the fulfilment of or the release from any part of the claim, shall not operate as a waiver of execution in respect of that part of the debt or claim as yet unpaid or unfulfilled, unless the contrary be made to appear.

Enforcement by creditor of creditor. *Amended by: IX. 1886.53.*

263. (1) It shall be lawful for the creditor of a creditor, by writ of summons, to enforce or prosecute the enforcement of the title which his debtor was entitled to enforce.

(2) The writ of summons shall be served on the debtor against whom enforcement is sought and on his creditor.

By which court executive titles are enforceable. *Amended by: IX. 1886.54.*

264. (1) Save as otherwise provided in this Code, judgments are enforceable by the court by which they are delivered, even though the execution is to take place beyond the limits of the local jurisdiction of such court.

(2) Any other executive title mentioned in article 253 is enforceable by the court competent to take cognizance of the subject-matter thereof.

Enforcement of judgment of appellate court. *Amended by: IX. 1886.55; XV. 1913.78. Substituted by: XXXI. 2002.88.*

265. In cases of appeals, the judgement shall be enforceable by the court of first instance independently of whether the Court of Appeal confirms, varies or reverses the judgement of the court of first instance.

Provisional enforcement of judgments by order of the court. *Substituted by: XXII. 1963.3.*

266. (1) Except in the cases mentioned in article 267, a judgment which does not constitute a *res judicata* shall not be enforceable unless, on the demand of the interested party, such judgment has been declared by the court to be provisionally enforceable.

(2) Such demand shall be made by means of an application which shall be served on the opposite party who shall be entitled to file an answer thereto within two working days.

(3) The court of first instance shall, after summarily hearing the parties, dispose of the application as soon as may be after the filing thereof:

Provided that -

(*a*) if the application is filed before the delivery of the judgment, the court of first instance shall dispose of the application as soon as may be after such judgment is delivered; and

(*b*) if, on appeal from the judgment of the court of first instance, the lodging of the record of the proceedings before the appellate court takes place prior to the disposal of the application by the court of the first instance, such application shall be dealt with and disposed of by the appellate court, and, in any such case, if the answer to the application has not been filed prior to such lodging, it shall be filed in the appellate court.

(4) 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.

(5) The provisions of sub-article (2) shall apply to any application filed under the last foregoing sub-article.

(6) Where a demand for a declaration under subarticle (1) is not made to the court of first instance, such demand may be made to the appellate court at any time prior to the delivery of the judgment on appeal.

(7) The court shall declare the judgment to be provisionally enforceable if it is satisfied that delay in the execution of the judgment is likely to cause greater prejudice to the party demanding a declaration under subarticle (1) than such execution would cause to the opposite party.

(8) The party against whom execution of a judgment declared provisionally enforceable under this article is sued out, shall, in case of reversal or variation of such judgment, be entitled to damages and interest.

(9) The court before which the record of the proceedings relating to a judgment declared provisionally enforceable under this article is for the time being lodged, may at any time order the party entitled to the execution of such judgment to give to the opposite party sufficient security for the payment of the damages and interest which may become due under sub-article (8).

(10) Where a judgment has been declared provisionally enforceable under this article, its execution shall be stayed if the interested party gives sufficient security for the execution of the

judgment on its becoming *res judicata*, including, where the matter refers to the payment of moneys, security for the payment of interest, and, where the matter refers to other things, security to make good any damage which may be caused thereto through his negligence or fault and to restore any fruits derived therefrom.

(11) If any question arises as to the sufficiency of the security tendered under sub-article (10), the court may give such directions as it may deem proper as to whether the execution of the judgment should be suspended until such question is decided by another judgment constituting a *res judicata*.

(12) In this article the expression "court of first instance" shall be construed as if it included a reference to the Rent Regulation Board.

Provisional enforcement by operation of law. *Substituted by: XXII. 1963.4. Amended by: XXIV. 1995.133.*

267. The following shall be in all cases provisionally enforceable:

(*a*) any judgment referred to in article 255(*c*);

(*b*) any judgment providing redress against infringement of the individual's right to life or providing remedies against illegal arrest or forced labour; and

(*c*) any interlocutory decree.

Other articles applicable to provisional enforcement. *Substituted by: XXII. 1963.5. Amended by: XXIV. 1995.134.*

268. The provisions of articles 255, 256 and 257 shall apply to any provisional enforcement.

Appeal from judgment authorizing enforcement of other judgment, etc. *Amended by: XXII. 1963.7.*

269. An appeal from a judgment authorizing the enforcement of another judgment, shall in no case operate as a stay of execution of such other judgment.

Condition for registration in Public Registry of notes of reference deriving from a judgment. *Added by: IX. 1886.56. Substituted by: XXIV. 1995.135.*

270. The Director of the Public Registry shall not receive any note of reference resulting from a judgment relating to any hypothecary registration unless an authentic copy of the judgment together with a certificate from the registrar that no appeal against such judgment has been entered and that the time for entering an appeal has elapsed or that the judgment is not subject to appeal, as the case may be, are delivered to the said registry with the aforementioned note:

Provided that the foregoing shall not apply where the Director of the Public Registry is party to the suit, in which case he shall take the necessary steps as aforesaid as soon as the judgment has become a *res judicata.*

Enforcement of part of judgment notwithstanding appeal from another part.

271. It shall be lawful for a litigant to sue out execution of such heads of a judgment as are in his favour, notwithstanding an appeal from such heads as are against him.

Power of the court in the execution of titles. *Substituted by: XXXI. 2002.89.*

272. In the absence of an express provision of law to the contrary, the court may, in the course of the execution of an executive title, on the application of the court executive officer, or the parties, or any other interested person, without delaying such execution, adopt such measures as it may deem necessary in order to safeguard the rights of the parties.

Executive acts. *Amended by: IX.1886.57, 58; XII. 1985.9.*

273. The executive titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

(*a*) warrant of seizure of movable property;

(*b*) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;

(*c*) *Repealed by: XII.1985.9.*

(*d*) executive garnishee order;

(*e*) warrant of ejection or eviction from immovable property;

(*f*) warrant *in factum.*

Preparation and issue of executive warrants. *Amended by: XV. 1913.79; XXIX. 1939.2; L.N. 4 of 1963; XXXI.1966.2; XIV. 1980.4; XXIV. 1995.136.*

274. (1) Any of the warrants or the order mentioned in the last preceding article is issued by the court on the demand of the party suing out execution:

Provided that where in the opinion of the registrar the signature of the judge or magistrate empowered to issue a warrant of seizure of movable property or an executive garnishee order, cannot be obtained within a reasonable time and that delay may be prejudicial, the said warrant or order may be issued over the signature of the registrar personally after having first obtained verbal authorisation from the judge or magistrate to do so, the judge or magistrate is also to append his own signature under that of the registrar at the earliest opportunity as proof that the said authority had been given or, if it is not possible for the registrar to obtain beforehand such authorisation, the registrar shall issue the said warrant or order over his signature subject to the ratification of such action by a judge or magistrate as soon as possible and no action shall be available to impugn the regularity of such warrant or order on the grounds that the warrant or order could have been issued over the signature of a judge or a magistrate, as the case may be.

(2) The warrant or order shall be drawn up by the party suing out execution, according to the prescribed form, and filed in the registry, simultaneously with the demand for the issue thereof.

Form of demand for issue of executive warrant. *Amended by: IX. 1886.59; XXIII. 1971.18; XIII. 1983.5; XII. 1985.10; VIII. 1990.3; XXIV. 1995.137.*

275. (1) Such demand shall be made by an application.

(2) Where the executive title be other than a judgment of the court to which the demand is made, a copy of such title and of the act containing the intimation, where such intimation is required under article 256, shall be filed together with the demand.

Sum or thing due to be stated in the demand.
Amended by: IX. 1886.60.

276. The sum or the thing due in virtue of the title shall be stated in the application or oral demand mentioned in the last preceding article.

Amount of judicial costs to be stated in the demand.
Amended by: IX. 1886.61.

277. If by the same warrant or garnishee order it is sought to recover also judicial costs, the amount thereof shall be stated in the demand and the taxed bill of such costs shall be attached thereto, unless such taxed bill shall have been otherwise previously communicated to the debtor.

Powers of executing officer.
Amended by: XI. 1859.14; L.N. 148 of 1975.

278. (1) The marshal may, where necessary in connection with the execution of any warrant committed to him, after calling in two witnesses, break open any outer or inner door as well as any box or other thing in which there might be effects liable to seizure, saving the exceptions laid down in this Code.

Previous notice in case of warrants for seizure of Government property.

(2) Nevertheless, in the case of any warrant for the seizure of any property of the Government of Malta, the marshal shall not execute such warrant before the lapse of four working days from the day on which he shall have communicated in writing the issue of such warrant to the officer charged with the custody or care of such property.

No opposition to the execution of warrants.

279. No opposition to the execution of any warrant or garnishee order shall be considered until the execution has been effected.

Time for execution of warrants and orders.
Amended by: IX.1886.62; XIX.1965.13; XXIV.1995.138.

280. (1) Saving the exceptions laid down in this Code, no warrant or garnishee order shall be executed at any time before six o'clock in the morning or after eight o'clock in the evening, under pain of nullity of the execution.

Exception.

(2) Nevertheless, for reasons of urgency to be declared on oath by the applicant, the court may allow the execution of any warrant or order during the said time.

Service of copy of warrant on party against whom it is issued.
Amended by: IX. 1886.63; XIX. 1965.14.

281. (1) The marshal shall deliver a copy of the warrant or order to the party against whom it is issued, or to his lawful representative.

Warrant to be executed without delay.

(2) Unless the court shall otherwise direct, the marshal shall execute the warrant or order without delay, and, on the execution thereof, he shall return it to the registrar together with a certificate stating whether the warrant or order was executed: in the affirmative, the certificate shall also state the details of the execution, and in the negative, the reason why the execution was not effected.

Damage in case of nullity of warrant or its execution.

282. The nullity of any warrant or order or of the execution thereof shall entitle the party against whom the warrant or order is issued to an action for damages and interest against the person

suing out execution if the nullity arises out of any act of such person, or against the marshal who executed the warrant or order if the nullity arises out of any act of the marshal.

Duty of notary to give notice to registrar of the publication of a deed ordered by a judgment.
Added by: XV. 1913.80. Amended by: XI. 1977.2; XIII. 1983.5; XXIV. 1995.139.

283. (1) Any notary before whom any deed under a judgment is received shall, within fifteen days, and on pain of a penalty not exceeding twenty liri, or such greater sum not being more than one hundred liri as the Minister responsible for justice may from time to time by order in the Gazette establish, to be awarded by the court and enforceable as a civil debt give notice to the registrar of the publication of such deed.

(2) The registrar shall make an entry of such notice at the foot or in the margin of the judgment and shall, on request, deliver to the notary a certificate that the notice has been given.

How executive acts may be impugned. Appeal from decree.
Added by: XXIV. 1995.140. Amended by: IV.1996.5.

283A. (1) Without prejudice to any other right under this or any other law, the person against whom an executive act has been issued, may, make an application to the court issuing the executive act praying that the executive act be revoked, either totally or partially for any reason valid at law.

(2) The court shall appoint the application referred to in sub-article (1) for hearing, and shall hear the same within six days from the filing of the said application.

(3) A copy of the application shall be served on the person at whose request the executive act was issued who may not later than the day fixed for the hearing of the application state the reasons, if any, why such request should not be acceded to. In default of such opposition the court shall accede to the request.

(4) After hearing the parties, the court shall by a separate decree given in open court, either reject the application or accede to the request in the application under such conditions as it may deem fit to impose.

(5) An appeal from a decree delivered under sub-article (4) may be entered by application within six days from the date on which the decree is read out in open court.

(6) The security referred to in article 249 shall not be required in the cases referred to in the previous sub-article.

Sub-title I

OF THE WARRANT OF SEIZURE OF MOVABLE PROPERTY

Warrant of seizure.
Amended by: IX.1886.64.

284. The warrant for the seizure of movable property shall, besides the particulars stated in article 276, contain an order to the marshal to seize from the possession of the debtor, property equal in value to the sum claimed by the creditor, or to seize the thing mentioned in the title by virtue of which the execution takes place.

Description of property seized. Weighing, measuring and gauging of merchandise.

285. The marshal shall describe in detail at the foot of the warrant the property seized and, where such property includes any merchandise, he shall cause such merchandise to be weighed, measured or gauged, according to the nature thereof.

Seizure of money, etc.
Amended by: IX. 1886.65; XXXI. 1934.39: VIII. 1990.3.

286. (1) Where money or securities for money, jewellery, or articles of precious metal are seized, the marshal shall accurately state the amount or nominal value or weight thereof, and he shall within twenty-four hours take the same to the registry and lodge them therein by means of a schedule.

(2) Where, in the execution of any warrant of seizure issued by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo) in its inferior jurisdiction, money is delivered to the marshal to be unconditionally withdrawn by the creditor, it shall be lawful for the marshal to pay to the creditor the amount so delivered within twenty-four hours of such delivery against a receipt to be attached to the warrant.

Seizure of papers.

287. Where papers are seized, the marshal shall seal them and shall deliver them to the registrar. The seals may not be removed except by the authority of the court.

Seizure of unplucked or uncut fruits.

288. It shall be lawful to seize unplucked fruits or fruits not yet separated from the ground, provided the seizure takes place within the six weeks preceding the usual time of their maturity.

Contents of certificate of execution in case of seizure of unplucked or uncut fruits.

289. Where unplucked fruits or fruits not yet separated from the ground are seized as provided in the last preceding article, the certificate of execution of the warrant shall state the locality of the fields or gardens and the nature of the fruits.

Seizure of movable property possessed in common with others.

290. It shall be lawful to seize movable property which is possessed in common by the debtor and a third party, but such property may not be sold until after the partition thereof.

Consignatory.

291. If the debtor presents a person known to be suitable who is willing forthwith to take charge of the property seized, the marshal shall appoint such person as a consignatary.

Appointment of consignatary by marshal
Substituted by: XXIV. 1995.141.

292. (1) If the debtor fails to present a consignatary acknowledged to be suitable and not excepted under article 293, a consignatary shall be appointed by the marshal at the provisional expense of the creditor.

(2) If no consignatary is found, the marshal shall report the matter to the court and the court may, after hearing the creditor if necessary, order the marshal to take possession of the property seized and to deposit it under the authority of the court by means of a lodgement schedule at the provisional expense of the creditor and the registrar shall also ensure that such property where possible, is kept insured against damage and theft at the provisional expense of the creditor. The initial period of insurance shall be for a period of one year.

(3) The court may at any time on a request by application of the creditor, debtor, or any other interested party give such orders as it may deem necessary concerning the consignatary, including his

substitution, and may give such other directives it deems necessary for the better safekeeping of the goods seized.

Persons who may not act as consignatary. *Amended by: XLVI. 1973.108.*

293. It shall not be lawful to appoint as consignatary -

(*a*) the execution creditor;

(*b*) the husband or wife of the debtor or of the creditor;

(*c*) the father, mother, brother, sister, uncle, aunt, father-in-law, mother-in-law, son-in-law or daughter-in-law of the creditor;

(*d*) a servant of the creditor;

(*e*) any alien not having his domicile in Malta; or

(*f*) without the consent of the creditor, any person who claims to be the owner of the property seized.

Consignatary to sign or mark certificate of execution.

294. Where a consignatary has been appointed, he shall, in the presence of two witnesses, sign or, if unable to write, mark by his own hand the certificate of execution of the warrant.

Contents of certificate in case of unsuccessful execution.

295. If the marshal finds no movable property, or finds only such property as is not liable to seizure, he shall make a certificate to that effect, stating therein the nature of the movable property, if any, not liable to seizure.

Service of copy of certificate of execution in debtor.

296. The marshal shall forthwith deliver to the debtor a copy of the certificate signed or marked by the same persons who had signed or marked the original and the fact of such delivery shall be mentioned in the certificate itself. If, owing to the absence of the debtor or for any other cause, the marshal is unable to make such delivery, he shall state the fact in his certificate.

Duty of consignatary as to unplucked or uncut fruits.

297. Where unplucked or uncut fruits are seized, the consignatary shall be bound not only to take care of such fruits until they are gathered, but also to cause such fruits to be gathered as soon as they shall become ripe and afterwards to keep them in his custody.

Consignatory not to make use of property seized. *Substituted by: XXIV.1995.142.*

298. (1) The consignatary shall not make use of the property seized, nor shall he allow the debtor to use or remain in possession of the property seized nor shall he give out such property on hire or loan, under pain of forfeiting any expense incurred in connection with the custody of such property and of being condemned to the payment of damages and interest:

Provided that the debtor may be allowed to use or maintain in possession of such items of the property seized as the court may authorise if it considers that such items are normally required by an average household for decent living to maintain the human dignity of the debtor and his family.

(2) Where the property seized is of a perishable nature, the court may of its own motion or at the request of any person, order the consignatary to sell the perishable goods under such conditions as the court may determine and the proceeds thereof shall be deposited by the consignatary by means of a lodgement schedule in the registry of the competent court and such proceeds shall to all

intents and purposes of law represent the seized goods.

Rent, etc., of property seized to be accounted for.

299. If the property seized yields any rent, profit or interest, the consignatary is bound to give an account thereof.

Standard of diligence required of consignatary in respect of property seized.
Amended by: XXIV. 1995.143.

300. The consignatary is bound to exercise for the safe keeping of the property seized, such care as is exercised by a *bonus paterfamilias*; if the consignatary fails to present such property when called upon to do so, the court may order him to appear before it to explain his failure to do so and the court, after examining the circumstances of the case, may issue such orders including the consignatary's personal arrest, to compel him to present such property. The consignatary's failure to present such property when ordered by the court shall of itself constitute contempt of court.

Wages to consignatary.
Amended by: IX. 1886.66.

301. The person suing out execution shall pay to the consignatary such wages as shall be taxed by the registrar, saving his right of reimbursement against the debtor, where such reimbursement is admissible.

Other creditors may not oppose execution.

302. The creditor of any person, whose property has been seized, may not, for any cause whatsoever, make any opposition to the execution of the warrant:

Provided that it shall be lawful for such creditor to enforce his claim on the proceeds of the sale of the property seized.

Identification of property already seized.

303. (1) If the marshal in executing a warrant of seizure finds that execution of another warrant has already taken place and that a consignatary has been appointed, he shall not carry out a fresh seizure of the property already seized, but may proceed to identify the property so seized which the consignatary is bound to present to him.

(2) The marshal may only seize such property as shall not have been seized in execution of the first warrant and appoint a consignatary in respect thereof.

(3) The marshal shall moreover draw up a certificate of any such identification as aforesaid which shall have the effect of a garnishee order attaching the property in the hands of the consignatary.

Property not subject to seizure.
Amended by: XI. 1859.15,16; XV.1913.81; XXVII. 1970.186; L.N. 148 of 1975; XI. 1977.2; XIII. 1983.5; XXIV. 1995.144.

304. The property hereunder mentioned is not subject to seizure:

(*a*) such clothes for daily wear, bedding and such utensils and furniture as are considered reasonably necessary for the decent living of the debtor and his family;

(*b*) books relating to the profession of the debtor or of his children;

(*c*) the registers and minute-books of notaries public;

(*d*) tools and implements necessary for the instruction in or the exercise of any science or art or the debtor or of his children;

(*e*) animals and tools required for agriculture;

(*f*) vessels wholly chartered in the service of the Government of Malta;

(*g*) any property of any member of the Police Force or of the Armed Forces of Malta being arms, ammunition, equipment, instruments or clothing used by him in the discharge of his duties:

Exceptions.

Provided that any such property as is mentioned in paragraphs (*a*) to (*f*) may be seized -

(i) if the execution is demanded in respect of the price of such property;

(ii) if the execution is demanded in respect of rent or ground-rent of the tenement in which such property is kept;

(iii) if the debtor has no other property and the court, upon the application of the creditor, shall deem it just to order the seizure of such property.

Sub-Title II

OF JUDICIAL SALES BY AUCTION

Form of demand for judicial sale by auction.
Amended by: IX. 1886.67; XV. 1913.82; XI. 1984.2; VIII. 1990.3; XXIV. 1995.145.

305. (1) The demand for the sale by auction is made by an application, unless it is made simultaneously with the demand for the judicial recognition of the claim.

(2) The application shall contain a description of the property of which the sale by auction is demanded:

Provided that if the demand is for the sale of a going concern, the court may accede to such a demand stating in detail in the decree that it considers it in the best interest of the debtor and the creditor to accede to such a demand.

(3) In the inferior courts, other than the Court of Magistrates (Gozo) in its superior jurisdiction, the demand may be made orally.

(4) In the event of a decree as provided in the proviso to sub-article (2) the procedure to be followed shall be that laid down in this Sub-title for the judicial sale by auction of immovable property.

(5) For the purpose of this Sub-title the term "going concern" shall mean a firm which is still doing business and shall also mean such part of the estate of the debtor which is used or operative in a unified and complimentary manner, so that the sale of part or parts thereof without the other part or parts will render the assets sold, of lesser use or value to a purchaser and shall include all corporeal assets such as consumables, machinery, equipment and stock, but excluding all incorporeal assets other than intellectual property rights, and such other rights as may be determined by the court.

Appointment of appraiser.
Amended by: IX. 1886.68; XV. 1913.83; XXXI. 1934.40.

306. (1) Where an appraisement is necessary or if a request to that effect is made in the application, the court shall, in the decree ordering the sale by auction, appoint a referee, and, in the case of sale of immovable property, it shall appoint a day on which the

referee shall inspect such property.

Service of decree on debtor. Decree for sale of immovable property to be registered in Public Registry.

(2) The decree shall be served on the debtor, and, in the case of sale of immovable property or of rights annexed to such property, such decree shall, upon a notice in writing to be given by the registrar to the Director of the Public Registry, within twenty-four hours from the date of the decree, be registered in a book kept for the purpose at the Public Registry, showing the date of such registration.

Judgment ordering sale of immovable property to be registered in Public Registry.

(3) Where a sale by auction of immovable property, or of rights annexed to immovable property is ordered by a judgment of the court, the registration mentioned in sub-article (2) shall be made by the Director of the Public Registry, upon a notice in writing to be given to him by the registrar, within twenty-four hours from the date of the delivery of such judgment.

Book of registrations open to inspection.

(4) The said book shall be accessible to the public.

Valuation of property to be sold by auction. *Amended by: IV.1994.2; XI. 1984.3; XXIV. 1995.146.*

307. (1) Immovable property or rights annexed to such property, or movable property consisting of gold or silver articles, pearls or precious stones, shall always be appraised before the sale thereof by auction.

(2) With regard to other movable property, an appraisement shall only be made if required by the creditor or by the debtor.

(3) The demand for the appraisement may be made, even orally, at any time up to the issue of the advertisement of the sale by auction.

(4) An appraisal made in conformity with the provisions of article 310(1) and existing in the records of a sale by auction may be accepted by the court to be the appraisement for the purpose of this article.

Referee to be appointed by court, unless agreed on by parties. *Amended by: XXIV. 1995.147.*

308. (1) The referee shall be appointed by the court *ex officio*, unless the parties shall file a note submitting the name of a referee agreed on between them.

Court may appoint more referees.

(2) It shall be lawful for the court, according to circumstances, to appoint more than one referee.

Appraisement not subject to impugnment.

(3) The appraisement may not be impugned, but it shall be lawful for the court, on proceedings to be taken by application, to order any mistake in the appraisement to be amended.

Appraisement of gold or silver articles to show intrinsic value, etc.

309. In any appraisement of gold or silver articles, the referee shall state separately the intrinsic value thereof and the cost of manufacture, as well as the total.

Valuation of immovable property to contain description of property, etc. *Amended by: XXXI. 1934.41; XXIV. 1995.148.*

310. (1) In the valuation of immovable property, the referees 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 the debtor.

Debtor may be compelled to give information required for the purposes of the valuation.

(2) It shall be lawful, at the written or verbal request of the referee or the creditor, to compel the debtor to confirm on oath, to be administered by the court or the registrar, the information given to or required by the referee.

Debtor to be called upon by letter from registrar.

(3) The debtor shall be called upon to give the above information by means of a letter from the registrar.

Applicability to debtor of provisions relating to witnesses.

(4) The provisions relating to witnesses shall apply to any debtor called upon as aforesaid.

Valuation or appraisement to be sworn by referee. *Amended by: X.1856.5; VI.1880.23; VIII.1990.3; XXIV.1995.149.*

311. (1) The report containing the valuation or appraisement shall be filed by the referee within the time allowed in the decree of the court according to circumstances, and by him sworn in the presence of the registrar.

(2) Where a sale by auction of immovable property or of rights annexed to immovable property situated in the Island of Gozo or of Comino, is ordered by any of the superior courts, it shall be lawful for such court to order the referee to swear his report at the Court of Magistrates (Gozo) in the presence of any of the officers mentioned in article 57(2)(*a*) to (*c*), and to deliver the said report, so sworn, to the said officer, to be by him transmitted to the superior court which made the aforesaid order.

(3) When a sale by auction of immovable property or of rights annexed to immovable property situate in the Island of Malta, is ordered by the Court of Magistrates (Gozo) it shall be lawful for such court to order the referee to swear his report in the presence of the registrar and to deliver the said report, so sworn, to the said registrar, to be by him transmitted to the Court of Magistrates (Gozo).

Taxation and payment of referee's fee.

(4) The fee payable to the referee shall be taxed by the registrar, subject to appeal to the court. Such appeal shall be made by application. Such fee shall always be paid by the creditor, saving his right against the debtor for the reimbursement of such fee together with the other expenses of the sale.

Appointment of day of sale by auction. Issue of advertisements. *Amended by: IX. 1886.69; XXIV. 1995.150.*

312. (1) After the lapse of two days from the service of the decree ordering the sale by auction, or from the filing of the report of the referee, the court shall appoint one or more days for the sale by auction, and order the issue of advertisements.

Service of decree appointing day of sale on consignatary.

(2) The decree appointing the days for the sale by auction shall also be served on the consignatary, if any.

Form of advertisement of sale by auction. *Amended by: XXIV. 1995.151.*

313. (1) The advertisement shall be signed by the registrar and shall state the date of the judgment or decree ordering the sale by auction, the nature of the thing to be sold with the relevant details thereof, the place of the sale and the day and hour in which the auction is to begin and to end.

(2) Where a valuation has been made, the estimated value shall be stated in the advertisement.

Service and publication of advertisement of sale by auction. *Substituted by: XXIV. 1995.152. Amended by: IV.1996.6.*

314. (1) The advertisement shall be served by the marshal on the debtor, the execution creditor, and all other creditors who may have obtained a warrant of seizure of the article sold, or of a garnishee order duly served on the registrar.

(2) (*a*) The court shall order such advertisement to be published in the Gazette.

(*b*) The court shall also order such advertisement to be published in one or more daily newspapers in the case of:

(i immovable property; or

(ii) rights annexed to immovable property; or

(iii) movable property consisting of gold or silver articles, pearls, precious stones or other movables, the value of which exceeds five hundred liri; or

(iv) a going concern, or

(v) ships or other vessels; or

(vi) aircraft; or

(vii) securities listed in a recognised exchange under the Financial Markets Act; or Cap. 345.

(viii) insurance policies; or

(ix) any other object other than the above where the court deems it expedient so to do.

(3) The publication of the advertisement shall unless the court otherwise directs, take place, as regards the sale of immovable property or of ships or other vessels, or aircraft, at least fifteen days before the day appointed for the sale by auction, and as regards other movable property at least four days before the date appointed for the sale.

Certificate of service and publication.

315. The marshal shall draw up a certificate of the service and publication on the original advertisement.

Place and time of sale by auction. *Amended by: XIII. 1925.3; XXXI. 1934.42; L.N. 4 of 1963; XXXI. 1966.2; XXIV. 1995.153.*

316. (1) Subject to the provisions of this article, the auction shall be held in public either -

(*a*) in the building of the courts of justice; or

(*b*) in any other building provided by the Minister responsible for justice for the purpose of such auctions and at such time as may be determined by the court:

Provided that the court shall have the power for just cause to order that an auction shall be held at any place and at any time, due notice of such place and time being given in the advertisement.

(2) In the case of sacred vestments and vessels, the auction shall not be held in public but the court shall give such directions as it may deem proper for their disposal in the manner most advantageous to the interested parties with due respect to the sacred nature of the object to be sold by auction.

(3) In the case of a judicial sale by auction of listed securities in a recognised exchange, the auction shall be held by a licensed stockbroker according to the provisions of article 9 of the Financial Markets Act.

Cap. 345.

Removal of movable property to place of sale.

317. The marshal shall cause the movable property to be removed to the place of sale where it shall be exposed to public view at least two hours before the auction begins.

Sale by auction in gross, in lots, or under separate items.
Amended by: XI. 1984.4; XXIV. 1995.154.

318. Subject to the provisions of article 305, property may be sold by auction in gross, or in separate lots, or under separate items, as the court shall direct, regard being had to the circumstances of the case.

Opening of sale by auction.
Amended by: IX. 1886.70; XV. 1913.84. Substituted by: XXIV. 1995.155.

319. (1) The auction shall be conducted by the registrar or the auctioneer or broker appointed by the court to conduct the auction.

(2) Bids are made orally. Each bid shall be announced at least three times, unless a higher bid is previously made. The highest bidder, within the time stated in the advertisement, shall be the purchaser.

(3) The auctioneer or broker shall be entitled to a fee to be taxed by the registrar according to law.

Bids *pro persona nominanda* etc., not to be accepted.
Amended by: XI.1984.5; XXIV. 1995.156.

320. No bid *pro persona nominanda* shall be accepted in any auction. Nor shall any bid be accepted where it is made by any person whom the registrar or marshal does not consider suitable, unless such suitability be vouched for to the registrar or marshal by some person whom the registrar or marshal considers trustworthy.

Bids subject to the issue of edicts.

321. *Repealed by: XXIV. 1995.157.*

Binding force of bids.
Amended by: XI.1859.17; IX.1886.71; Xl. 1977.2; XIII. 1983.5; XXIV. 1995.158.

322. (1) A bid shall cease to be binding as soon as a higher bid is accepted, although such higher bid might subsequently be declared void.

(2) A higher bid shall be binding, provided the adjudication be made, in the case of immovable property or of rights annexed to such property, within one month, in the case of merchandise within two days; and in the case of other movable property, including ships, within seven days, from the day on which the bid is made.

(3) No bids shall be accepted subject to the condition of the issue of edicts.

Duration of auction.

323. An auction of immovable property or of rights annexed to such property, or of ships, shall last at least two hours:

Provided that the sale of divers things severally may be held during the same time.

Adjudication not to be made on day of sale in certain cases. *Amended by. IV. 1984.3; XXIV. 1995.159.*

324. The adjudication shall not be made on the day of the auction -

(*a*) if there be less than three bidders;

(*b*) if, in an auction of immovable property or of rights annexed to such property, there has been no bid exceeding one moiety of the estimated value;

(*c*) if, in an auction of gold or silver articles, there has been no bid amounting to the intrinsic value thereof:

Provided that the provisions of paragraph (*a*) shall not apply to the sale of movable property not being ships or other vessels, aircraft, gold or silver articles, shares or insurance policies.

Appointment of another day for continuation of sale. Adjudication to be made on such other day. Saving. *Amended by: IX. 1886.72. Substituted by: XXIV. 1995.160.*

325. (1) In the cases referred to in the last preceding article, the registrar shall by means of a note inform the court that the adjudication has not been made, indicating the reason therefor, and the court shall appoint another day for the continuation of the auction, and shall order the publication of a fresh advertisement stating therein that the property to be sold by auction will be adjudicated for any offer. The adjudication shall be made on the day named in such advertisement, unless the court, upon the demand of the creditor or any interested party other than the debtor, shall, for just cause, grant another adjournment, at the expense of the person making the demand, in which case a fresh advertisement shall be published. Such adjudication shall be made subject to the provision of article 327.

(2) When the auction does not take place for any reason other than those mentioned in article 324, the procedure mentioned in sub-article (1) shall *mutatis mutandis* apply.

(3) The provisions of article 314(2) and (3) shall apply in the cases mentioned in sub-articles (1) and (2).

Suspension of auction or adjudication. *Amended by: XV.1913.85; IV. 1984.4; XXIV. 1995.161.*

326. (1) The auction or adjudication shall in all cases be suspended upon the demand of the debtor with the consent of the creditor, or upon the demand of the creditor with the consent of the debtor, and in such cases, as well as in the case where the suspension is caused by any other lawful impediment, a fresh advertisement shall be issued for the continuation of the auction.

(2) If the suspension of the auction is demanded by the debtor or a third party, without the consent of the creditor, the demand shall not be entertained, unless contemporaneously with the demand a deposit is made with the registrar of a sum which in his opinion is sufficient to cover the expense occasioned by the suspension.

(3) Nor shall any demand for the suspension of an auction be entertained if such demand is made, without the consent of the creditor, less than six days before the day appointed for the auction, unless the person making the demand shall declare on oath before the registrar, that the reason for the suspension has arisen within that time, or that he was not aware of such reason before that time.

(4) Any interested person may by application request the court

to revoke *contrario imperio* its decree authorising the suspension of the auction or of the adjudication, and the court shall summarily hear the parties before delivering its decree. Any such decree may not be challenged in any court.

New bids within fifteen days of adjudication. *Amended by: IX.1886.73; IV. 1984.5; XXIV. 1995.162; IV.1996.7.*

327. (1) In the case of any adjudication of immovable property or of rights annexed to such property, it shall be lawful for any person to make, within fifteen days of such adjudication, a higher bid, and such as will comprise the cost necessary for putting up the property for auction again:

Provided that the higher bid mentioned in this sub-article shall in the case of an adjudication of an immovable be higher than three per cent of the price of adjudication and in the case of a going concern not be less than ten per cent of the price of adjudication.

Appointment of day for final adjudication.

(2) Where any such bid is made within the said time, the court shall appoint a day for the final adjudication of the immovable property, notice thereof being given to the debtor, the execution creditor, the first purchaser and the new bidder. The court shall also order the registrar to comply with the requirements set out in article 314(2) and to specify that the final adjudication is not taking place as a higher bid has been made within fifteen days from the adjudication in terms of sub-article (1), and shall indicate the day appointed for the final adjudication.

Payment into court of purchase money. *Amended by: XXIV. 1995.163.*

328. The purchaser shall pay the price into court within seven days from the date of the final adjudication, in the case of sale of immovable property or of rights annexed to such property, or of ships; and, within twenty-four hours of the adjudication, in the case of other movable property.

Defaulting purchaser liable to personal arrest.

329. (1) In default of such payment into court, the purchaser shall, upon the demand by writ of summons of the party at whose suit or against whom the execution was granted, be liable to personal arrest.

Fresh sale by auction at the expense and risk of defaulting purchaser.

(2) Moreover, in such case, the property adjudicated may, upon a demand by means of an application made by the party at whose suit or against whom the execution was granted, be again put up for auction at the expense of the purchaser; in which case, if the bids be lower, such purchaser shall be responsible for the difference; and if the bids be higher, the difference shall go in favour of the debtor, saving any right thereon of the execution creditor.

Decree to be served on purchaser.

(3) The decree made on the said application shall be served on the purchaser.

Lodging of purchase money of movable property.

330. The purchase money of movable property sold by auction may be deposited by the purchaser with the registrar, who shall within twenty-four hours lodge it into court by means of a lodgment schedule.

Delivery of immovable or movable property to purchaser. *Amended by: IX. 1886.74; XXIV. 1995.164.*

331. (1) The delivery of immovable property or of rights annexed to such property takes place *ipso jure* on the final adjudication and upon the payment of the price into court or the approval of the set-off.

(2) The delivery of movable property takes place upon the handing over of the thing and the deposit of the price or the approval of the set-off.

(3) In the case of ships or other vessels or aircraft, the court may make such orders, as it may deem fit, to ensure that the property adjudicated be delivered to the purchaser forthwith, upon the purchaser giving such security as the court may determine to safeguard the claims of the parties. Such orders may also be made in other cases in which the court considers that delay in the delivery of the property can cause serious prejudice to the purchaser. An order made under this sub-article shall not be challenged in any way and shall be implemented forthwith.

No payment into court is necessary on adjudication upon a bid *animo compensandi. Amended by: II. 1940.5.*

332. Saving the provisions of article 337(1) and (2), the purchaser is not bound to pay the money into court if by leave of court previously obtained he shall have made his bid *animo compensandi.*

Leave to bid *animo compensandi.*

333. (1) Any person to whom a liquidated debt is owing under any judgment or deed or other obligatory writing, may, by an application, apply to the court for leave to bid *animo compensandi.*

Time for application.

(2) Such application shall be made at least two days before the day appointed for the auction.

Conditional leave to bid *animo compensandi.*

334. (1) Where the application for leave to bid *animo compensandi* is made by any person other than the execution creditor, leave shall not be given except on condition that the bidder shall, previously to the auction, bind himself to pay the price into court, in case it shall be so adjudged by the court.

(2) Such condition shall also be imposed upon the execution creditor, if there is any opposition to his bidding *animo compensandi.*

Opposition to bids *animo compensandi. Amended by: XXIV. 1995.165.*

335. (1) Any person interested may enter an opposition to an application for leave to bid *animo compensandi.*

Form of opposition.

(2) Such opposition is entered by a note filed in the registry and inserted in the record of the auction proceedings.

Implied opposition.

(3) Any warrant for the seizure of property put up for sale by auction and any garnishee order in respect of such property or of the future proceeds thereof, and any warrant of impediment of departure of the ship or other vessel put up for sale shall have the same effect as a formal opposition.

Conditional leave to several creditors to bid *animo compensandi.*

336. If several creditors apply for leave to bid *animo compensandi*, it shall be lawful for the court to grant such leave to all the applicants including the execution creditor, under the condition stated in article 334.

Demand for approval of set-off. Payment into court of surplus of price, if any.

337. (1) A purchaser *animo compensandi* shall, within the times stated in article 328, demand the approval of the proposed set-off, and shall pay into court the surplus of the price where such price exceeds the amount of the debt and costs, producing the necessary vouchers.

Payment into court of costs incurred by execution creditor.

(2) If the purchaser be a person other than the execution creditor, he shall likewise pay into court the amount of the costs incurred by such execution creditor in respect of the judicial recognition of his claim and in respect of the auction proceedings.

Recovery of costs by execution creditor.

(3) The execution creditor shall recover the costs of the auction proceedings unconditionally, and shall recover the costs of the judicial recognition of his claim, upon entering into a bond with sufficient surety to restore the amount thereof to the purchaser in the event of eviction of the immovable property adjudicated.

Application for approval of set-off. Service of application. *Amended by: XXIV. 1995.166*

338. (1) The demand for the approval of a set-off shall be made by an application which shall be served on the debtor and on any other person who shall have entered an opposition, or sued out any warrant of seizure or garnishee order or impediment of departure, as provided in article 335.

Time for answer.

(2) The persons so served shall be allowed the time of three days to file an answer stating in detail the reasons for their opposition and the amounts in contestation; and where such opposition is based on a claim against the proceeds of sale an alleged cause of preference, they are to state the amount of such claim and the basis for the preference. Such persons shall with the answer file all relevant evidence to substantiate their opposition.

Where opposition is made.

(3) In the event of an answer opposing the demand for approval made in accordance with subarticle (2), the court shall allow the applicant three days to file a reply together with any evidence to rebut the opposition, and after summarily hearing the parties, shall make such orders as it considers fit in the circumstances.

(4) The court may approve the set- off subject to the condition that adequate security be provided by the applicant to secure the claims of all persons who until such date have made opposition in accordance with subarticle (2):

Provided that the court may, at any time, dispense the applicant from providing the aforesaid security or release or reduce such security as may have been provided if it deems that the claim or opposition made is in whole or in part frivolous or vexatious:

Provided further that in the event that the applicant has already provided security in accordance with article 331(3), the court may order such security to be maintained or reduced as it may deem appropriate.

(5) The court may at any time order the opposing party or parties to provide adequate security in such amount and within such

time as may be determined by the court in order to secure any claims the applicant may have against such opposing party for any damages caused through such opposition. In case such security is not provided, the court shall make such orders as it deems fit including an order that any security already provided by applicant be released in whole or in part.

(6) Where security have been provided in accordance with this article or in accordance with article 331(3), then any interested party may commence proceedings in accordance with the procedure laid down in article 416 for the final determination of any issues relative to such security.

(7) Any orders made by the court in accordance with this article, other than any determination under sub-article (6), shall be final and may not be challenged in any way and shall be implemented forthwith.

Condition which may be imposed by court on approval of set-off.

339. It shall be lawful for the court, in approving the set-off, to require the purchaser to give sufficient security to pay into court the price together with interest, in case it shall be so adjudged.

Effect of approval or disallowance of set-off.
Amended by: IX. 1886.75; XXIV. 1995.167.

340. (1) If the set-off be not approved, the provisions of article 329(2) and (3) shall apply:

Provided that any person who has made a bid *animo compensandi* under the condition specified in article 334 shall, within six days from the date on which he is served with the court order rejecting his application for the set-off, pay the price in the registry of the court in which case the provisions of this article shall not apply. In the event that such party fails to pay the price within such time limit, article 329 shall apply:

Provided further that in the event that the property adjudicated is transferred and delivered to the purchaser in terms of article 331(3) the provisions of this article shall not apply and the provisions of article 338(6) shall apply to the security ordered to be provided by the court.

(2) If the set-off be approved unconditionally, the purchaser shall be entitled to the formal transfer and delivery of the movable property adjudicated or, in the event that the property had already been delivered under article 331(3), the purchaser shall be entitled to the release of any security made by him.

Execution creditor, etc., may demand fresh executions in case of deficiency of proceeds.

341. If the proceeds of the sale by auction be not sufficient to meet the claims of the execution creditor and of the persons suing out a garnishee order, as well as the costs, fresh executions may be allowed upon the demand of any of them.

Restoration of balance of deposit to debtor.

342. If it appears from a report of the registrar that, after payment of the claims of the creditors and of the costs, there still remains a balance, the court shall, upon the demand of the debtor, order such balance to be restored to him.

Discontinuance of sale by auction and restoration of unsold property to debtor.

343. If it appears from a report of the registrar that a sufficient sum to meet the debts and the costs of the auction has been obtained, the court shall order the auction to be discontinued and the unsold property to be restored to the debtor.

Withdrawal of amount of claim and taxed costs by execution creditor.

344. The amount of the debt due to the execution creditor together with his taxed costs shall, upon his demand, be paid to him out of the proceeds lodged into court, provided there be no lawful impediment.

Sale of unplucked or uncut fruits or of perishable articles.

345. (1) In the case of seizure of unplucked or uncut fruits which are about to become ripe before the expiration of the time fixed for the auction, it shall be lawful for the court, upon the demand of the parties or the consignatary, to order such fruits to be sold in such manner as the court shall deem proper.

(2) The provisions of sub-article (1) shall also apply in the case of seizure of merchandise or other articles which are in a state of progressive deterioration.

(3) It shall moreover be lawful for the court, in the cases referred to in this article, to order the sale to be effected forthwith by the consignatary or by a licensed auctioneer or a public broker.

Right of other creditor to continue auction.
Substituted by: XXIV. 1995.168.

346. (1) Any other creditor may by a note to be served on the execution creditor and the debtor join in the auction proceedings as an addition execution creditor and such additional execution creditor shall have the same rights and obligations as the original execution creditor.

(2) Any execution creditor can continue the auction proceedings independently of the withdrawal by, or the death of any other execution creditor.

Procès-verbal of sale by auction.

347. (1) The registrar shall draw up a *procès-verbal*, specifically stating therein the day and hour of the auction, the nature of the property put up for auction, the name, surname and place of abode of the highest bidder and of the next highest bidder, and other incidental particulars.

(2) Such *procès-verbal* shall be drawn up by the marshal, if the sale by auction does not take place in the building in which the court sits.

Procedure in auctions of merchandise or other property.
Amended by: XV. 1913.86; VIII. 1990.3; XXIV. 1995.169.
Cap. 345.

348. (1) A sale by auction of merchandise or other movable property, not being securities listed on a recognised exchange under the Financial Markets Act, under the authority of the Civil Court, First Hall, or of the Court of Magistrates (Gozo) in its superior jurisdiction, or of the Court of Appeal, shall be carried out by a licensed auctioneer in the presence of the marshal.

(2) In any such sale, the advertisements shall be signed by the auctioneer; and the proceeds may be paid to the marshal who shall, within twenty-four hours, lodge such proceeds in court by means of a lodgment schedule.

349. It shall not be lawful for any judge, magistrate, registrar, marshal or licensed auctioneer or broker to bid, either directly or indirectly, in an auction in which he is concerned by reason of his office. Nevertheless, if any of them desires to bid, another person shall be surrogated by the competent authority in his stead.

Persons who may not bid in auctions.
Amended by: XV. 1913.87; XXIV 1995.170.

350. The debtor shall, upon an order of the registrar or marshal, be expelled from the place where the auction is held, if he attempts to hinder the proceedings or to dissuade bidders.

Expulsion of debtor from place of sale if he hinders proceedings.

351. (1) If the creditor leaves the auction suspended for more than one year, all the acts thereof shall become void.

Consequences of suspension of sale for over one year.
Amended by: IX. 1886.76.

(2) In all cases, the effects of the decree by which a sale by auction of immovable property or of rights annexed to such property is ordered, shall cease in regard to third parties on the expiration of one year from the date of the registration required under article 306, unless such registration shall have been renewed within that time, on the demand of the execution creditor.

352. (1) Any disposal of immovable property or of rights annexed to such property made by the debtor within a year to be reckoned from the date of the original or renewed registration of the judgment or decree by which the sale by auction of such property or rights was ordered, shall be null in regard to the person at whose suit the judgment or decree was obtained.

Disposal of immovable property, etc., by debtor within a year from registration of order of sale to be null.
Amended by: IX. 1886.77; XV. 1913.88; XXIV. 1995.171.

(2) In regard to such person, any lease or other disposal of the enjoyment of such property or rights and any diminution or restrictions of the enjoyment of such property or rights made by the debtor within the said year without the authority of the court by which the judgment or decree was delivered shall also be null.

Lease of property likewise void.

(3) If, pending the auction proceedings, the debtor remains in possession of such property, he may be compelled to lodge into court the fruits actually collected or which might have been collected.

Lodging of fruits collected by debtor.

353. (1) If the debtor offers for auction movable property sufficient to meet the claim of the creditor without any obstacle or difficulty, the auction of the immovable property shall be suspended.

Substitution of movable for immovable property put up for sale.
Amended by: IV. 1862.10.

(2) The auction of the immovable property stated by the creditor shall likewise be suspended, if the debtor offers other immovable property sufficient to meet the claim of the creditor without any obstacle or difficulty.

Substitution of other immovable property for the immovable property put up for sale.

Execution of judgment of Court of Magistrates (Malta) on immovable property. *Amended by: XV. 1913.89; II.1940.6; XXII. 1976.4; XIII. 1983.5; XII. 1985.11; VIII. 1990,3; XXIV.1995.172.*

354. (1) If the judgment sought to be executed is a judgment given by the Court of Magistrates (Malta), the execution, if sought to be enforced on immovable property or on rights annexed to such property, shall be carried out by the Civil Court, First Hall.

Joint execution of judgments to an amount exceeding two hundred and fifty liri.

(2) The same rule shall apply in the case where several judgments are sought to be executed, the amount of which, taken together, exceeds the sum of one thousand liri, exclusive of costs.

Jus redimendi. *Amended by: IX.1886.78; IV.1961.12; IV. 1984.6.* *Substituted by: XXIV. 1995.173.*

355. (1) The debtor shall have the right to repurchase his immovable property sold by auction provided such right is exercised within four months from the date of registration of the act of adjudication in the Public Registry.

(2) For the purposes of sub-article (1) immovable property shall also include a going concern.

(3) The right of repurchase shall be exercised by the filing of a schedule of redemption, and a concurrent deposit as is provided *mutatis mutandis*, in Sub-title VI of Title VI of Part II of Book Second of the Civil Code.

Cap. 16.

Right of creditor to re-sell immovable property to be exercised within two years. *Amended by: IX.1886.79; IV. 1984.7.* *Substituted by: XXIV. 1995.174.* Cap. 16.

356. (1) The time period contemplated in article 2086 of the Civil Code, in respect of property adjudicated in a judicial sale, shall be of two years to commence to run from the date of enrolment of the act of adjudication in the Public Registry.

(2) The said period of two years shall be reduced to four months from the date of service by a judicial act of a copy of the act of adjudication, or of a copy of the note of enrolment of the act of adjudication in the Public Registry, and this in respect only of any hypothecary or privileged creditor on whom such service is made.

(3) Where the judicial sale is of a going concern that includes immovable property, the said period of two years shall be reduced to four months to commence to run from the date of enrolment of the act of adjudication in the Public Registry.

(4) Any action by the hypothecary or privileged creditor against the third party in possession of an immovable acquired by virtue of a judicial sale shall be barred if the protest mentioned in sub-article (1) of article 2072 of the Civil Code, (calling upon the debtor to discharge the debt and the third party in possession either to discharge the debt or to surrender the property), is not filed within the period of two years or four months mentioned in the preceding sub-articles of this article, or if the creditor fails to demand judicially the sale of the immovable within six months from the filing of the protest mentioned in article 2072(1) of the Civil Code. Such action shall also be barred if the third party in possession surrenders the property and the creditor fails to start

proceedings for the judicial sale within six months from the service of a copy of the note of such surrender.

(5) Notwithstanding the provisions of article 2072(2) of the Civil Code, the demand for the judicial sale of the immovable can be made at any time after the expiration of sixty days from the date of filing of the protest.

(6) The creditors whose action has been barred in terms of the provisions of this article shall not have any right against the third party in possession who had acquired the immovable as a result of the new judicial sale under the said provisions; provided that such creditors shall retain their ranking prior to sale.

(7) If before an adjudication or after an adjudication, the bidder or purchaser, as the case may be, finds that the immovable property is subject to any burdens, leases or other rights whether real or personal, which have not been included in the valuation in terms of article 310, the bidder or purchaser, as the case may be, shall have the right in the former case to demand either to withdraw his bid or to have his bid reduced, and in the latter case the purchaser shall have the right to demand the rescission of the sale.

(8) Such demand for the rescission of the sale is to be made not later than six months from the date of the adjudication by means of an application to be served on the execution creditor and the debtor.

(9) The court shall allow the demand of the bidder or of the purchaser; as the case may be, if it is satisfied that the omission in the said valuation or in the said list was relevant so as to affect the bid made by the purchaser.

Sub-Title III

OF THE WARRANT OF IMPRISONMENT FOR DEBT

Repealed by: XII. 1985.12.

Articles 357 to 374, both inclusive, were repealed by Act No. XII of 1985.

Sub-title IV

OF THE EXECUTIVE GARNISHEE ORDER

Executive garnishee order. *Amended by: II. 1940.9.*

375. Where a creditor under a judgment or any other executive title, in order to obtain the payment of a debt owing to him, desires to attach in the hands of a third party moneys or movable property due or belonging to his debtor, he may do so by means of a garnishee order.

Contents of garnishee order. *Added by: XII. 1924.3.*

376. (1) The order shall state the amount or thing due as well as the title under which the creditor sues out execution and shall expressly enjoin the garnishee not to pay or deliver up to the

debtor, or any other person, such moneys or things as may be in his hands, under penalty of payment of damages and interest.

(2) The creditor shall, in the application or verbal demand for the issue of a garnishee order, correctly state the name and surname of the debtor, the name of the debtor's father or other particulars concerning the debtor, to be also included in the order, for the purpose of identification of the debtor by the garnishee.

Mode of executing garnishee order. *Amended by: XXIV.1995.175.*

377. (1) A garnishee order is executed by the delivery by the marshal of a copy thereof to the garnishee.

(2) A copy of the order shall also be served on the debtor in the same way as is provided under article 187, or if he is absent from Malta, on his lawful representative.

Declaration by garnishee. Time for such declaration. *Amended by: XI.1859.21; XV.1913.91; XXXI. 1934.44; XXIV. 1995.176.*

378. (1) The garnishee shall, within four days, if he resides in the Island where the court issuing the order sits, or otherwise within six days, declare to the registrar of the said court, what moneys or things, if any, belonging to the person against whom the order is issued he holds in his possession, unless he shall have already made such declaration to the execution officer at the time of the execution of the order.

Consequences of default.

(2) The default of such declaration shall, unless the contrary is made to appear, raise the presumption that the garnishee actually has in his possession the moneys or things attached by the order:

Judicial intimation to garnishee.

Provided that the foregoing provisions of this article shall not apply, unless the execution creditor shall, by means of a judicial act, call upon the garnishee to make such declaration. The said times shall run from the date of service of such judicial act.

Recording of declaration.

(3) If the declaration is made at the time of the execution of the order, it shall be recorded by the execution officer in his certificate of execution; and if made to the registrar, it shall be by him recorded at the foot of the order.

Form of declaration.

(4) The declaration may be made by means of a judicial act served on the execution creditor, or by means of a registered letter addressed to the registrar and copied to the execution creditor. The registrar is to attach the letter to the records of the judicial sale by auction.

Garnishee may be enjoined to deposit. *Amended by: XV. 1913.92; XXIV. 1995.177.*

379. (1) The garnishee may, upon the demand of the execution creditor or debtor, be enjoined to lodge into court the moneys or things attached by the order. Such demand may be made together with the demand mentioned in the proviso to article 378(2).

Applicability of sub-article (1) of article 275.

(2) The provisions of article 275(1) shall apply to any such demand.

Garnishee may deposit without any injunction.

(3) The garnishee may also lodge into court the moneys or things attached by the order if he is unwilling to continue to hold such moneys or things in his possession.

Costs of lodging moneys.

(4) In the case of attachment of moneys, the garnishee may before lodging such moneys in court retain the costs in respect of such lodgment and, 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.

(5) In all cases, the execution creditor and the debtor shall be notified of any such lodgment into court.

Creditor and debtor to be notified of lodgment.

380. (1) The injunction referred to in the last preceding article shall be by warrant of the court by which the garnishee order was issued.

Form of injunction. *Amended by: XV. 1913.93.*

(2) Such warrant shall be prepared by the applicant according to the prescribed form, and filed in the registry together with the demand for the issue of same.

381. (1) It shall not be lawful to issue a garnishee order upon -

Property not subject to attachment. *Amended by: XI.1859.22; XII.1924.4; XIII.1925.4; XX.1929.2; XXXVI.1938.2; II.1940.10; XXI. 1969.17; XXVII. 1970.186; XI.1973.377; L.N. 148 of 1975; XXI. 1993.87; XXIV. 1995.178.* Cap. 318.

(*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 made by the Government;

(*d*) any bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance;

(*e*) any sum due for maintenance whether awarded officio judicis, or by public deed if the debt itself is not due in respect of maintenance;

(*f*) upon any sum due by any civil or military department of the public service for the price of works or supplies.

(2) In the case of any garnishee order affecting a prebendary endowment, an ecclesiastical living or the income or dues deriving from immovable property constituting the endowment of a sacred patrimony, the court shall, on an action by the debtor by writ of summons, assign to such debtor an adequate portion from the amount attached, regard being had to all circumstances, and shall maintain the order in force on the residue, for the benefit of the creditor.

(3) Notwithstanding the foregoing provisions of this article, in causes for maintenance, the court may, either in the judgment or in a subsequent decree upon an application to that effect by the creditor suing for maintenance, where such creditor is the spouse, or a minor or an incapacitated child, or an ascendant of the debtor, order that a specified portion of the salary, allowance or bequest mentioned in sub-article (1)(*a*), (*b*) and (*d*) or of the salary of any person, be paid directly to the creditor; the service of any such order on the person by whom the said salary, allowance or bequest is payable shall have the same effect as a garnishee order; and the person so served shall pay directly to the creditor the portion of the salary, allowance or bequest specified in the order.

Exceptions.

Cap. 220.

(4) The provisions of article 149, 150 and 151 of the Malta Armed Forces Act shall apply in respect of the pay of an officer or man of the regular force of Malta.

Salary or wages not subject to attachment.
Added by: XXI. 1969.17.
Amended by: XIII.1983.5; XXI.1993.87.
Substituted by: XXIV. 1995.179.

382. (1) In the case of any salary, wage benefit, pension or allowance mentioned in article 381(1)(*a*) and (*b*) when the same exceed three hundred liri per month or such amount as may from time to time be established by order made by the Minister responsible for justice, the court may, on the application by any creditor, allow the issue of a garnishee order on that part in excess of the amount aforestated:

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:

Provided further that this article shall not apply to the pay of an officer or man of the regular force of Malta.

(2) The court may, at any time, vary the order given under sub-article (1), on a demand by application of the creditor or the debtor, if there be any change in the material circumstances of the debtor.

Garnishee order to cease to be operative on expiration of one year.
Substituted by: XXIV. 1995.180.

383. (1) A garnishee order ceases to be operative on the expiration of one year from the issue thereof, unless the court, upon an application by the person suing out the order, shall extend such time.

(2) Such application shall be filed at least seven days before the time expires and shall be served on the garnishee together with the relative decree of extension.

(3) The garnishee shall not incur any liability if after the expiration of the said time, whether original or extended, and before any such extension has beer served on him, he shall act as if the order had ceased to be in force.

Sub-title V

Amended by: IX. 1886.83.

OF THE WARRANT OF EJECTMENT OR EXPULSION FROM IMMOVABLE PROPERTY

Mode of execution of warrant of ejectment or expulsion from immovable Property.
Amended by: XXIV. 1995.181.

384. In the execution of any warrant of ejectment or expulsion of tenants or other occupants of immovable property, the marshal shall enjoin the tenants or occupants to quit the tenement within a period of not less than four and not more than eight days; at the expiration of such period, the marshal shall cause the tenant or occupant to quit the tenement which shall be cleared of all things belonging to such tenant or occupant.

Sub-title VI

OF THE WARRANT *IN FACTUM*

Warrant *in factum.* *Amended by: XXIV.1995.182.* *Substituted by: XXXI. 2002.146.*

385. (1) The warrant *in factum* shall contain an order to the court executive officer to convey to prison the party against whom the warrant is issued to be therein kept at his own expense, until the performance of the act ordered by the judgment or until such time as the court may deem necessary to ensure such performance.

(2) The warrant shall be issued on an application by the creditor and the court shall issue the warrant only if it is satisfied that the creditor has no other means of execution.

Where and against whom warrant *in factum* may be executed.

386. A warrant *in factum*, if so required for the enforcement of any judgment and where an express order to that effect is made by the court, may be executed in any place, other than a church, and against any person, other than the ascendants of the person suing out the warrant or any minister of religion while in the exercise of his ministry.

Maintenance at the expense of person demanding issue of warrant. *Substituted by: XII.1985.13.*

387. (1) No warrant *in factum* shall be executed unless the person demanding the issue of the warrant shall have first delivered to the marshal a sum, to be fixed by the court, to be given, through the gaoler, to the person against whom the warrant has been issued in respect of his maintenance for seven days, including the day of apprehension; and the gaoler shall not take the person apprehended in custody until such deposit is made.

(2) A like sum shall be deposited in the hands of the gaoler every seven days in advance and not later than twelve noon of the last day of each weekly period. Such sum shall be immediately delivered to the person apprehended.

(3) The marshal and the gaoler respectively shall give a receipt for the said deposit.

Execution of warrant in factum not to bar action for damages. *Amended by: IX. 1886.85.*

388. (1) The execution of any warrant *in factum* shall not affect the right of action for damages and interest consequent upon the non-performance of the act ordered by the judgment.

Warrant *in factum* inadmissible for enforcing cohabitation of husband and wife.

(2) Saving other provisions of the law as to damages and interest or for other purposes, no warrant *in factum* may be demanded for the purpose of compelling a husband to live with his wife or *vice versa*.

Sub-title VII

OF THE RENDERING OF ACCOUNTS AND LIQUIDATION OF FRUITS

Added by: IX. 1886.86.

Account to be supported by documents. *Added by: IX. 1886.86.*

389. (1) Any person who is bound to render an account, shall, together with such account, produce all the documents in support thereof.

(2) If any of the documents is a public deed, a reference thereto shall be sufficient.

Contents of account. *Added by: IX. 1886.86.*

390. (1) The account shall contain -

(*a*) a clear statement of the matter of which an account is rendered;

(*b*) the items of receipt;

(*c*) the items of expenditure;

(*d*) the balance still due and the things to be recovered.

(2) The account shall end with a summary.

Payment of balance not to imply approval of account. *Added by: IX. 1886.86.*

391. (1) If the receipts exceed the expenditure, the court, on the application of the interested party, shall order the payment of the balance:

Provided that this shall not be taken to be an approval of the account.

Order not subject to appeal.

(2) No appeal shall lie from the order given on any such application and such order may be enforced after the lapse of two days from the service thereof, in the same manner and with the same means as judgments may be enforced.

Objection to account. *Added by: IX. 1886.86.*

392. If the party to whom an account is rendered desires to impugn such account, he shall lodge his objection thereto specifying the items to which objection is taken, by writ of summons against the opposite party.

Certain items may be allowed although unsupported by vouchers. *Added by: IX. 1886.86.*

393. (1) Such items as cannot be or are not usually supported by vouchers may be allowed if they appear to be true and reasonable:

Provided that the party rendering the account may be compelled, where it is deemed necessary, to confirm the truth thereof on oath.

Reimbursement of expenses for making out account.

(2) On the demand of the party producing the account, the court may, according to circumstances, allow him such expense as it was necessary for him to incur for making out and rendering the account.

Failure to render account within prescribed time. *Added by IX.1886.86. Amended by XXI.1934.45*

394. (1) If the party bound to render an account fails to produce such account within the prescribed time, it shall be lawful for the court to allow the party suing for the account to fix, even by oath, the amount due.

Approval of account in default of objection.

(2) If the party to whom an account is rendered makes no objection thereto as provided in article 392, it shall be lawful for the court, on the demand of the opposite party, to approve the account.

395. The provisions of the preceding articles of this sub-title shall, so far as applicable, apply in cases of liquidation of fruits.

Liquidation of fruits.
Added by: IX. 1886.86.

Title VIII

OF CERTAIN SPECIAL PROCEEDINGS

Sub-title I

OF RECONVENTION

396. In any action, it shall be lawful for the defendant to set up a counter-claim against the plaintiff, provided the claim of the defendant be connected with the claim of the plaintiff as stated hereunder:

Reconvention.
Amended by: XXXI. 1980.4.

(*a*) if the claim of the defendant arises from the same fact or from the same contract or title giving rise to the claim of the plaintiff; or

Grounds for reconvention.

(*b*) if the object of the claim of the defendant is to set-off the debt claimed by the plaintiff, or to bar in any other manner the action of the plaintiff, or to preclude its effects.

397. The effect of reconvention as regards procedure, is that the original and the counter-claim are dealt with in one single record and both claims are disposed of in the same action.

Effects of reconvention.

398. (1) The defendant who desires to set up a counter-claim shall set up his claim in the statement of defence where proceedings are by writ of summons, or in the written reply to the application where proceedings are by application.

Form of reconvention.
Substituted by: XXXI. 1980.5.
Amended by: XXIV.1995.183.

(2) The counter-claim shall be set up after the defence to the original claim made out as required by law; and the defendant shall, with respect to the counter-claim, observe, as far as practicable, the rules established by this Code or by any other law for the written pleading by which the proceedings were first instituted.

(3) Where proceedings are by writ of summons, the setting up of a counter-claim in a statement of defence shall be equivalent to the filing of a writ of summons with respect to that claim, and shall be served on the plaintiff, who shall proceed as if he were the defendant with respect thereto; and in any such case, the closing of

the preliminary written procedures and the application of articles 151 and 152 shall take place with the filing of that statement of defence by the plaintiff or the expiration of the term for its filing.

Security for costs. *Amended by: XXXI. 1934.46. Substituted by: XXXI. 1980.6.*

399. *Repealed by: XXIV. 1995.184.*

Capacity of parties in reconvention.

400. The defendant may not set up a counter-claim in a capacity other than that in which he has been sued, nor may he, in setting up the counter-claim, sue the plaintiff in a capacity other than that in which the plaintiff has claimed.

Discontinuance of action by plaintiff not to bar prosecution of counterclaim.

401. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is in any manner discontinued, the defendant may nevertheless insist on his counter-claim lawfully set up being proceeded with.

Connection of actions.

402. Where the defendant in an action brings another action in respect of a claim connected with that of the plaintiff as provided in article 396, it shall be lawful for the court to order the two actions to be heard simultaneously.

Sub-title II

OF JACTITATION SUITS

Jactitation. *Amended by: XII. 1913.94.*

403. Where any claim is vaunted in any judicial act, or otherwise in writing, the party wishing to be liberated from such jactitation may, within a year of such jactitation, demand, by writ of summons, that a time be fixed within which the jactitator shall bring the claim for trial, and that in default thereof, the jactitator be precluded from ever proceeding on that claim.

Time for bringing claim for trial. *Amended by: XI. 1859.23; XV. 1913.94; XXIII. 1971.21.*

404. (1) The time mentioned in the last preceding article shall not exceed three months.

Suspension of time.

(2) Such time shall be suspended during the pendency of an application to sue with the benefit of legal aid, provided the application is filed by the jactitator within the first four days of the said time.

When jactitation suit is inadmissible.

405. The court shall not allow the demand referred to in article 403 if the jactitation is in respect of an uncertain right, contingent upon any event or condition, or of a right with regard to which no action can, for the time being, be taken.

Jactitator to proceed before court to the jurisdiction of which the party aggrieved is subject.

406. Any jactitator to whom a time has been fixed within which to bring his claim for trial, shall institute proceedings before the court to the jurisdiction of which the party aggrieved by the jactitation is subject.

Where jactitator declares before court that he has no claim against party aggrieved.

407. Where the jactitator, on appearing before the court, declares, by means of a note, that he has no claim against the plaintiff or his property, as the case may be, according to the demand in the writ of summons, the court shall not dispose of the merits, but shall only adjudge on the costs, where necessary; and in such case the said declaration of the jactitator shall have the same effect as an injunction of perpetual silence and it shall no longer be lawful for the jactitator to proceed on the claim to which the demand refers.

Fixing of time to jactitator.
Amended by: XV.1913.94.

408. Where the fact of the jactitation is proved and no declaration as provided in the last preceding article is made, the court shall allow the jactitator a time in accordance with the provisions of article 404, and shall reserve giving judgment as to the issue of perpetual silence in one of the first sittings to be held after the expiration of the time allowed as aforesaid.

Extension of time.

409. If in the course of the said time the jactitator shall ask for an extension thereof, the judgment on the issue of perpetual silence reserved as provided in the last preceding article, shall be adjourned until the demand for the extension be dealt with, or until the enlarged time shall elapse.

Injunction of perpetual silence.

410. If the jactitator shall fail to bring his claim for trial within the time fixed, the court shall dispose of the second demand contained in the original writ of summons enjoining perpetual silence upon the jactitator in respect of such claim.

Perpetual silence to apply only to jactitation referred to in writ of summons.

411. The perpetual silence enjoined as provided in the last preceding article shall be deemed to be restricted to the jactitation to which reference was made in the writ of summons.

Where jactitator brings his claim for trial.

412. If the jactitator shows that he has, within the time fixed, brought his claim for trial, the court shall abstain from disposing of the second demand contained in the original writ of summons, and shall leave the question of costs to be determined in the action instituted by the jactitator.

Effects of non-suit in action by jactitator.
Amended by: XV. 1913.94.

413. Where in the action instituted by the jactitator the court shall give judgment of non-suit against the jactitator, the time allowed under article 408, shall commence to run anew from the day on which the judgment of non-suit shall have become a *res judicata* but may not be enlarged.

Effects of default by jactitator to take fresh proceedings.

414. If, within the time renewed as provided in the last preceding article, the jactitator fails to institute fresh proceedings, the plaintiff in the jactitation suit may demand, by writ of summons before the court which fixed the original time, that perpetual silence be enjoined on the jactitator in regard to the claim which he had brought for trial.

Jactitation suit inadmissible against absent persons, etc. *Added by: XV.1913.94. Amended by: XXIV.1995.185.*

415. A jactitation suit may not be instituted against any absent person nor may any such suit be instituted or prosecuted against any minor or other person who is under any disability to sue or to be sued:

Provided that the provisions of this article shall not apply in relation to any person who within three months immediately preceding the institution of the jactitation suit shall have, either personally or through a mandatory, filed a judicial act vaunting his claim.

Sub-title III

OF COMPETING CLAIMS

Competition of creditors on moneys deposited in court. *Amended by: VII.1892.1; XV.1913.95; VIII.1990.3.* Publication of notice. Time for creditors to put in claims.

416. (1) If, in the superior courts or in the Court of Magistrates (Gozo) in its superior jurisdiction, there shall be deposited money in respect of which more than two parties allege claims of preference or priority or any other interest whatsoever, the court, upon the application of any of such claimants, shall, through the registrar, cause a notice to be published in one or more periodical newspapers, including in any case the Government Gazette, stating that the said money is standing in court, that there are claims upon such money, and calling upon all parties interested therein, to put in their respective claims within the time of one month, on the expiration of which it shall not be lawful for any party failing to put in a claim within that time, to delay or otherwise hinder the decision on the competition proceedings between the parties putting in a claim.

Notice to state day appointed for trial.

(2) The said notice shall state the day on which, after the expiration of the said time of one month, all the parties interested who shall have put in a claim shall appear in court for the trial of the claims.

Power of court to abridge time, in commercial matters.

(3) In commercial matters, the time above referred to may be abridged to any such shorter period as the court may deem adequate.

Service of notice.

(4) The said notice shall be served on the persons making the deposit, the debtor, the execution creditors as well as on any other creditor at whose suit any garnishee order may have been issued.

Jus avocandi.

417. The judgment given on the claims put in by the competing creditors within the prescribed time shall not operate so as to bar the exercise of any right on the part of any person who failed to put in his claim; and it shall be lawful for such person subsequently to recover, wholly or in part, from any ranked creditor the money received by him, if the claim of such person shall, on separate proceedings, prove to be prior, or equal to, that of the ranked

creditor: but if it shall be proved that such person having a prior or an equal claim could have put in such claim within the prescribed time, his default may be taken into account in adjudging the costs.

Competing claimants to proceed by application. *Amended by: XXIV. 1995.186.*

418. Any person desiring to compete on the money deposited in court shall, within the prescribed time, file an application containing his demand to be ranked on the fund. The first competitor shall together with his application file a copy of the lodgment schedule.

Service of application. *Amended by: XI. 1859.24; VII.1892.2; XXIV.1995.187.*

419. (1) The application shall be served on the debtor and on the person making the deposit, but no answer to such application shall be allowed.

Time for trial.

(2) The trial of the claims shall not take place before four days from the expiration of the time referred to in article 416.

Closing of written pleadings. *Amended by: XXI V. 1995.188.*

420. (1) Upon the expiration of the time referred to in article 416, the written pleadings shall be deemed to be closed both by the filing of the respective application of each claimant.

Trial.

(2) At the trial, the court shall hear each competing claimant both in support of his claim and the alleged priority or preference thereof, as well as in opposition to the claims of the other competitors, and on any other matter which may be necessary for a full statement of the claims. The debtor, the person making the deposit and any other interested person appearing at the trial shall also be heard.

Additional pleadings.

421. Where the court, for a further and better statement of the claims, in view of the intricacy of the issues involved, shall deem an additional written pleading to be necessary, the court may order such additional written pleading and make any other special order which it may consider expedient.

No money to be paid out without consent of parties interested or without order of court.

422. During the compilation of the competition proceedings, no money forming the subject-matter of such proceedings may be paid out without the consent of all the parties interested, unless the court, with a view to avoiding the accruing of interest to the prejudice of all the parties, or for any other good reason, shall deem it proper to satisfy the claim of any one of the competitors the priority or preference of which has not been contested.

Withdrawal of deposit subject to condition of surety.

423. Saving the provisions of articles 424, 425 and 427, if the competition refers to money deposited in court subject to the condition that it may not be withdrawn without a surety, such money or any part thereof shall not be paid out under any title or for any reason whatsoever without such surety.

Hypothecary security in lieu of surety.

424. Where the payment out is demanded by a government department, or any administration thereof, or by any pious institution or foundation, or any other body corporate, which can offer sufficient security on immovable property, the hypothecation of such immovable property made by a person lawfully authorised for the purpose, may be allowed in lieu of the surety referred to in the last preceding article.

Exemption from surety.

425. The following persons are exempt from giving surety notwithstanding that such surety be required by the person making the deposit:

(*a*) the dominus, where the claim is for payment of the ground-rent of the tenement on the proceeds of the sale of which there are competing claims;

(*b*) any seaman of any ship, where the claim is for payment of wages due for the last voyage, provided the money deposited in court is derived from the sale of such ship, or from the sale of the cargo of the said last voyage, or from the recovery of the ship or cargo, or from the freight earned in the said voyage.

Duration of obligation of surety.

426. The obligation of the surety referred to in article 423 shall remain in force -

(*a*) if the money deposited in court is derived from the sale of immovable property, until such time as the right of action to which the immovable property may be subject is exercisable;

(*b*) if the money deposited in court is derived from the sale of any ship, for a period of one year;

(*c*) if the money deposited in court is derived from any other source, until such time as the person making the deposit may be liable to any molestation against which he is entitled to be secured.

When condition requiring a surety is not operative.

427. The condition of the production of a surety referred to in article 423, shall not be operative -

(*a*) if the money deposited in court represents the price of movable property, with the exception of ships; or

(*b*) in any other case, if the court is satisfied that the depositor cannot be subjected to molestation.

Competing claims on primogenitures, etc.
Filing of the application.
Amended by: XXIV. 1995:189.

428. (1) In case of competing claims respecting any primogeniture, majorat, entail, succession or benefice, any person claiming to have a right thereto, and desiring to establish such right, shall file an application setting out his claim causing such application to be served on any person whom he believes to have a competing claim.

Production of documents.

(2) The documents in support of the claim shall be produced together with the application.

Answer and respective statement.
Substituted by: XXIV. 1995.190.

429. It shall be lawful for each of the parties on whom any such application shall have been served to file an answer containing the please which he desires to raise in opposition to the other competing claims and a statement of his own claim.

Service of answer and respective libel.

430. The written pleading referred to in the last preceding article shall be served on all the parties who shall have put in a claim as well as on any other person whom the party filing such pleading deems it to be in his interest to notify judicially of such pleading.

Closing of pleadings. *Amended by: XXXI. 1934.47. Substituted by: XXIV. 1995.191.*

431. (1) In the cases referred to in article 428, the pleadings shall be deemed to be closed -

(*a*) on the filing of the answers and respective applications of the contending parties; or

(*b*) on the expiration of the time prescribed in sub-article (2), if the parties or any of the parties served with the application shall fail to file the answer and respective application within such time.

(2) The party served with an application shall file an answer or a respective application within fifteen days from the date of service.

Parties served with answer and respective application may file a note. *Amended by: XV.1913.96; XXXI.1934.48; XXIV. 1995.192.*

432. There shall be no reply to the answer and respective application but it shall be lawful for the parties served with an answer and respective application to file a note in support of their own claim and in opposition to the claim of the other parties not later than the day appointed for the trial of the claims.

Other claimants may file application. *Amended by: XXXI. 1934.49; XXIV. 1995.193.*

433. Any other party claiming to have a right to the primogeniture, majorat, entail, succession, or benefice under litigation, may file his application at any time before the closing of the pleadings, causing it to be served on all parties who had put in a claim, in which case the provisions of the last four preceding articles shall apply.

Additional written pleadings.

434. Should a further and better statement of the claims prove to be necessary, it shall be lawful for the court to order all or any of the competing parties to file an additional written pleading in regard to such issues of law or fact as in the opinion of the court may require further elucidation.

Person not expressly notified not to be debarred from claiming his rights by separate proceedings.

435. Non-appearance, except in the case of a person served with a judicial notice, shall not debar any claimant who has not entered an appearance from exercising, by separate proceedings, any right of action to which he may be entitled against the successful party.

Sub-title IV

OF UNCERTAIN OR UNKNOWN HEIRS

Attorney General to take possession of inheritance where no known heirs are present in Malta. *Amended by: L.N. 46 of 1965. LVIII. 1974.68.*

436. If a person dies without leaving any known heir present in Malta, the Attorney General shall take possession of the inheritance to safeguard the interests of any person who may be entitled thereto.

Warrant of description. *Amended by: XI.1913.97; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; XXIV.1995.194.*

437. The Civil Court, First Hall, or the Court of Magistrates (Gozo) in its superior jurisdiction, as the case may be, shall, on the demand of the Attorney General, by an application, issue a warrant directing the marshal to make a description of the hereditary estate.

Interested parties may apply for leave to be present at description.

438. Any person claiming to have an interest in the estate, either in his own name or on behalf of any other person, may, upon an application, obtain leave from the court to be present at the description.

Seizure of movable property.

439. In virtue of the said warrant all movable property belonging to the deceased shall be seized.

Sale by auction of perishable property, etc. *Amended by: XXXI. 1934.50; L.N. 46 of 1965: LVIII. 1974.68.*

440. (1) The Attorney General may, by an application, demand that such property as he may think perishable or liable to deterioration, be sold by auction.

(2) The same rule shall also apply where the hereditary estate is of very small value.

Attorney General to be lawful representative of inheritance. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

441. The Attorney General shall be the lawful representative of the inheritance whether as plaintiff or defendant.

Estate not to be disposed of without order of court.

442. It shall not be lawful to dispose of the hereditary estate or any part thereof without an order of the court.

Duties of Attorney General where inheritance is of considerable value. *Amended by: L.N. 46 of 1965; LVIII.1974.68; VIII. 1990.3; XXIV. 1995.195.*

443. (1) The Attorney General vested with the possession of the hereditary estate shall, by means of a notice in the Gazette and in a daily newspaper, call upon all parties who may have a claim on such estate, to bring forward their claim before the competent court within a period of one year.

Placing of person in possession of estate. Security.

(2) It shall not be lawful for the court to put any person in possession of the inheritance before the expiration of the said time, unless such person shall give a bond with a sufficient surety to restore such inheritance to any other person having a better claim who may appear within the said time.

Persons exempted from giving security. *Amended by: XLVI.1973.108.*

444. (1) The following persons are exempted from giving the security referred to in the last preceding article:

(*a*) the heir institute;

(*b*) the legitimate children of the deceased;

(*c*) the parent or the brother or sister of the deceased, provided such parent, brother or sister shall state on oath before the respective court, that it is to his knowledge that the deceased had no legitimate children.

Power of court.

(2) In such cases it shall be lawful for the court to allow the

heir institute or the child, parent, brother or sister of the deceased to take possession of the entire inheritance, under an obligation on his or her part to surrender such portion as may be due to any other heir institute, child, parent, brother or sister of the deceased.

Delivery of estate to creditor. *Amended by: XI.1859.25; L.N. 46 of 1965; LVIII. 1974.68.*

445. (1) Where the hereditary estate is of very small value, it shall be lawful for the court, in the absence of any opposition on the part of the Attorney General, to order, even on an application, that such estate be delivered to any creditor claiming it in fall or partial payment of a debt owing to him.

Verification of account on oath.

(2) In any such case, the court may allow the creditor to verify his account on oath if, in the circumstances of the case, it is difficult to produce other evidence and the court is satisfied that such verification on oath is sufficient.

Summary procedure for delivery of estate to creditor where claim is proved by documentary evidence. *Amended by: XI. 1859.25; L.N. 46 of 1965; LVIII. 1974.68.*

446. In the case referred to in the last preceding article, the delivery of the estate to a creditor in full or partial payment of a debt owing to him, may also be made, without any order of the court and without any application on the part of the creditor, upon a note to that effect filed by the Attorney General, where the debt is proved by documentary evidence.

Sale by auction of estate and deposit of proceeds in court. *Amended by: L.N. 46 of 1965; LVIII. 1974.68.*

447. The Attorney General may, at the expiration of one year from the day on which he was vested with the possession of the hereditary estate, obtain an order from the court for the entire property of the deceased to be sold by auction, in which case the proceeds of the sale, after deducting therefrom the expenses incurred, shall be deposited in court for the benefit of the inheritance.

Sub-title V

OF DISENTAIL

Procedure for disentail.

448. Saving the provisions of Title I of Part II of Book Second of this Code, the demand for a disentail, in the cases permitted by law, is made by an application to the competent court of contentious jurisdiction.

Contents of application.

449. The application shall state the nature of the entail to which the immovable property is subject, as well as the object for which the disentail is demanded.

Production of documents and security for costs.

450. The application shall be accompanied by documents in support of its contents and by security for costs.

Issue of banns for appointment of curators.

451. Where any such application is made, the court shall, upon a separate demand by the applicant, or upon the demand which shall have been made for the purpose in the application itself, issue banns for the appointment of a curator or curators.

Publication of notice in newspapers announcing application for disentail.

452. The registrar shall simultaneously with the issue of banns cause a notice to be published in one or more periodical newspapers, including in any case the Government Gazette, announcing that an application for the disentail has been filed, and calling upon any interested party who may desire to enter an opposition to such application to file, within one month or within such shorter time as the court in some particular case sees fit to prescribe, an answer containing the grounds of his objection to the said application.

Service of application.

453. Moreover, the application shall be expressly served on the curator or curators appointed as aforesaid and on the parties next entitled to succeed to the entail, being present in Malta and known to the applicant.

Answer by curators, etc.

454. After the application has been duly served, the curator or curators and the other parties on whom the application has been expressly served as well as any other person claiming to be interested in the matter, shall be entitled to file an answer.

No written reply allowed.

455. No written reply to such answer shall be allowed.

Closing of written pleadings.

456. The written pleadings shall be deemed to be closed on the expiration of the time referred to in article 452, although no answer shall have been filed.

Appointment of day for hearing of application.

457. The court shall not appoint a day for the hearing of the application before the time fixed in the notice referred to in article 452 has expired.

Effect of judgment ordering the disentail.

458. The judgment ordering the disentail shall, as soon as it becomes a *res judicata*, have the effect of freeing the immovable property from any entail to which the same may have been subject.

Power of court to order cessation of effects of disentail.

459. (1) It shall be lawful for the court, at any time before the alienation of such property, upon the demand of any person interested, to order the cessation of the effects of the disentail if, owing to supervening circumstances, the object for which the disentail was granted shall have ceased to exist.

(2) In the absence of any such order or of a demand for such order, the alienation may not be impugned on the ground that it was made after the object for which the disentail was granted had ceased to exist.

Sub-title VI

Substituted by: L.N. 148 of 1975.

OF CAUSES OF THE GOVERNMENT

Proceedings against the Government. *Added by: VIII.1981.6. Amended by: XXIV. 1995.196; XXXI. 2002.149.*

460. (1) Subject to the provisions of sub-article (2), no judicial act commencing any proceedings may be filed, and no proceedings may be taken or instituted, and no warrant may be demanded, against the Government, or against any authority established by the Constitution, other than the Electoral Commission, or against any person holding a public office in his official capacity, except after the expiration of ten days from the service against the Government or such authority or person as aforesaid, of a judicial letter or of a protest in which the right claimed or the demand sought is clearly stated.

(2) The provisions of sub-article (1) shall not apply -

(*a*) to actions for redress under article 46 of the Constitution; or

(*b*) to warrants of prohibitory injunction; or

(*c*) to actions for the correction of acts of civil status; or

(*d*) to actions to be heard with urgency;

(*e*) to referrals of disputes to arbitration,

and where in accordance with the provisions of any law a particular procedure including a time-limit or other term is to be observed, the provisions of sub-article (1) shall not apply and the procedure aforesaid, including any time-limit or other term, shall apply and be observed in lieu thereof.

(3) Causes against the Government in respect of which there is in force a warrant of prohibitory injunction shall be heard by the court with urgency in preference to other causes.

Proceedings for recovery of fine (*multa*) by civil process. *Amended by: XV.1913.97; L.N. 46 of 1965; LVIII.1974.68; VIII. 1990.3; XXIV. 1995.197.*

461. For the recovery of any fine (*multa*) recoverable by civil process, the Attorney General shall proceed in the Civil Court, First Hall, or in the Court of Magistrates (Gozo) in its superior jurisdiction, as the case may be, by writ of summons.

Proceedings for forfeiture of goods by civil process. *Amended by: XV.1913.97; L.N. 46 of 1965; LVIII.1974.68; VIII. 1990.3; XXIV.1995.198.*

462. In the case of seizure of goods subject to forfeiture by civil process according to law, the Attorney General shall likewise proceed in the Civil Court, First Hall, or in the Court of Magistrates (Gozo) in its superior jurisdiction by writ of summons demanding that the goods in question be declared forfeited.

Person against whom writ of summons is to be directed.

463. The writ of summons referred to in the last preceding article shall be directed against the person in whose possession the goods shall have been found.

When writ of summons is to be directed against official curators. *Amended by: XXXI. 1934.51.*

464. (1) Where the goods were not in the possession of any person, the writ of summons shall be directed against the advocate and the legal procurator next in turn as curators on the rota.

Curators to represent unknown owner.

(2) Such curators shall represent the unknown owner of the goods.

Posting up of copy of writ of summons.

(3) A copy of such writ of summons shall be posted up at the entrance of the building in which the court sits, at least two days before the day appointed for the hearing.

Any interested person may appear at the trial to contest action.

465. It shall be lawful for any person interested, although not summoned, to appear at the trial of the action, and enter his objections against the demand referred to in article 462.

Proceedings for debts due to Government. *Amended by: XV. 1913.98. Substituted by: XXIV. 1995.199.*

466. (1) Where a head of any government department desires to sue for the recovery of a debt due to a department under his direction, or to any administration thereof, for any services, supplies, rent or for any licence or other fee or tax due, he may make a declaration on oath before the registrar, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due.

(2) The declaration referred to in sub-article (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgment of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded.

(3) The application filed in terms of sub-article (2) shall be served upon the head of department, who shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(4) In the cases of an urgent nature the court may, upon an application of the creditor or the debtor, shorten any time limits provided for in this article by means of a decree to be served upon the other party.

Opposition to proceedings under article 466. *Amended by: XV.1913.99,100; VIII. 1990.3. Substituted by: XXIV. 1995.200.*

467. (1) Any executive title obtained according to the provisions of the last preceding article in the absence of any opposition on the part of the debtor shall be rescinded if upon a request by writ of summons to be filed by the debtor within twenty days from the first service upon him of any executive warrant based on the said title or of any other judicial act wherein reference is made to the said title, the court is satisfied that the debtor was unaware of the service of the declaration referred to in sub-article (1) of the last preceding article during the period during which he could oppose the same and that the claim contained in the said declaration is unfounded on the merits.

(2) No opposition other than that specifically provided for in this article and in the last preceding article shall stay the issue or execution of any executive act obtained thereunder or the paying out of the proceeds of any warrant or sale by auction carried out in pursuance thereof.

468. *Repealed by: XXIV. 1995.200.*

Inadmissibility of opposition against execution or payment of proceeds.

469. Any taxed fees due to the law officers of the Government of Malta shall be paid into the Consolidated Fund.

Government costs. *Amended by: XVI. 1922.3; XXXI. 1966.2; L.N. 148 of 1975.*

Sub-Title VII

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Added by: XXIV. 1995.201.

469A. (1) Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

Judicial review of administrative action. *Added by: XXIV.1995.201. Amended by: IV.1996.8.*

(*a*) where the administrative act is in violation of the Constitution;

(*b*) when the administrative act is *ultra vires* on any of the following grounds:

(i) when such act emanates from a public authority that is not authorised to perform it; or

(ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or

(iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(iv) when the administrative act is otherwise contrary to law.

(2) In this article -

"administrative act" includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant, but does not include any measure intended for internal organization or administration within the said authority:

Provided that, saving those cases where the law prescribes a period within which a public authority is required to make a decision, the absence of a decision of a public authority following a claimant's written demand served upon it, shall, after two months from such service, constitute a refusal for the purposes of this definition;

"public authority" means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law.

(3) An action to impugn an administrative act under sub-article

(1)(*b*) shall be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

(4) The provisions of this article shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

(5) In any action brought under this article, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the public authority in tort or quasi tort, arising out of the administrative act. The said damages shall not be awarded by the court where notwithstanding the annulment of the administrative act the public authority has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.

(6) For the purposes of this article, and of any other provision of this and any other law, service with the government is a special relationship regulated by the legal provisions specifically applicable to it and the terms and conditions from time to time established by the Government, and no law or provision thereof relating to conditions of employment or to contracts of service or of employment applies, or ever heretofore applied, to service with the government except to the extent that such law provides otherwise.

PART II

OF THE MODE OF PROCEDURE BEFORE THE CIVIL COURT, SECOND HALL

GENERAL PROVISIONS

Procedure in matters of voluntary jurisdiction. *Amended by: XV.1983.4; XXI. 1993.87.*

470. (1) Saving the provisions of article 489, any demand for any authorization or leave to enter into or make any contract or disposition in respect of which the law requires a previous authorization or leave, or for any other order or direction in civil matters of voluntary jurisdiction, shall be made to the Civil Court, Second Hall, by an application:

Provided that in the application for leave to sue for personal separation or at a subsequent date but prior to the commencement of proceedings before the court of contentious jurisdiction, a demand may be made for determining the amount of an allowance for maintenance during the pendency of the proceedings before the court of voluntary jurisdiction and the court of contentious jurisdiction and for the issue of a decree ordering the payment of such allowance or a demand for the court to determine by decree who of the spouses, if any, shall during the pendency of the proceedings continue to reside in the matrimonial home.

(2) Such application shall be signed by the applicant himself or

by an advocate, notary, or legal procurator.

Powers of judge. *Amended by: IV 1868.5.*

471. Upon any such application the judge shall obtain the necessary information, and for such purpose he shall order the production of documents, examine, on oath or otherwise, the applicant himself or any other person, and also, if he deems it material to ascertain the value of the property forming the subject-matter of the application, appoint one or more experts.

Court may, in certain cases, order the production of an opinion in writing of an advocate.

472. If the matter refers to any waiver, compromise or security, or to an authorization to begin a suit, it shall be lawful for the court to order the applicant to produce a reasoned opinion in writing of one or more practising advocates.

Judge may examine any person on subject-matter of application. *Amended by: IV. 1868.6.*

473. It shall be lawful for the court to order any person to appear on a given day, at a stated time, to be examined on the subject-matter of the application.

Collection of information. *Amended by: IV 1868.6.*

474. It shall also be lawful for the court to appoint one or more persons to collect the necessary information on the subject-matter of the application.

Any person may spontaneously appear to give information. *Amended by: IV. 1868.6.*

475. It shall be lawful for any person spontaneously to appear to give to the court the said information.

Act to be within terms of decree.

476. Any act done in pursuance of an authorization granted by the court shall be within the terms of the decree; and if after a decree is given, it shall be found necessary to add any new stipulation, or agreement, or any other matter requiring authorization, another application shall be made for the necessary authorization.

Act to be valid only as far as authorized.

477. An act done in pursuance of a decree of the said court shall not be valid as regards such parts thereof as require judicial authorization, except in so far as such parts have been authorized.

Presence of judge at execution of acts *Amended by: X. 1856.6; XV. 1913.101; L.N. 148 of 1975; XXXI. 2002.151.*

478. (1) Where at the execution of any act, the presence of the judge of the said court is required by law, he shall attend personally:

Provided that the presentation or withdrawal of a secret will may be effected in the presence of any other judge, notwithstanding that such judge may not be the judge assigned to the said court.

will not validate defects.

(2) The presence of the judge at the execution of an act shall not cure any defect arising from any departure from the express terms of the decree of authorisation, nor shall it validate such part of the act as requires authorization if such authorization has not been granted by a decree of the court.

Judge may depute judicial assistant.

(3) It shall be lawful for the judge to depute a judicial assistant to be present at the execution of the act. It shall also be lawful for the judge to depute a judicial assistant to receive the information referred to in article 471, or any sworn declaration mentioned in

this Part, if the person to be examined or heard, or the deponent, is prevented by illness from attending in court or in such other place as may have been appointed by the judge.

Decrees.

479. Decrees are issued in the name of the court, and shall be signed by the judge and countersigned by the registrar.

Hearing of application for provisional maintenance etc. *Added by: XV. 1983.5. Amended by: XXI. 1993.87.*

480. (1) The application containing the demand referred to in the proviso to article 470(1) shall be appointed for hearing at an early date, in any case not later than six working days from the date of its filing, and shall be served on the respondent without delay together with the notice of such appointment.

(2) The court shall summarily hear the applicant and the respondent and shall then, by decree, decide on the demand:

Provided that the court may decide on the demand where the applicant or the respondent or both the applicant and the respondent fail to appear on the day of the hearing.

Enforcement of decree ordering provisional maintenance.

(3) (*a*) The decree referred to in sub-article (2) shall be an executive title deemed to be included amongst the decrees mentioned in article 253 and shall be enforceable after twenty-four hours from its delivery by means of any executive act mentioned in article 273 in the same manner and under the same conditions in which such acts are executed.

(*b*) The decree referred to in sub-article (2) shall be enforceable by the court of contentious jurisdiction before which the action for personal separation may be brought or is pending.

(4) The decree referred to in sub-article (2) shall cease to be enforceable if the action for separation for which leave is granted is not instituted within two months of the date of the decree or within such longer period as the court may in the same or in a subsequent decree allow.

(5) The provisions of article 381(3) in pursuance of which the court of contentious jurisdiction may make the order therein specified shall apply, *mutatis mutandis*, as if the reference to the court in that sub-article were a reference to the court of voluntary jurisdiction before which the demand referred to in the proviso to article 470(1) is made.

Mode of service. *Added by: XV. 1983.5. Substituted by: XIII. 1985.7.*

481. *Repealed by: XXIV. 1995.202.*

Review of maintenance decree. *Added by: XIII. 1985.7.*

481A. The decree and the order mentioned in article 480 may be only reviewed, altered or provoked upon an application to the court of voluntary jurisdiction or to the court of contentious jurisdiction before which the action for separation is pending, as the case may be.

Examination of applications with closed doors. *Substituted by: XXI. 1962.20.*

482. (1) The court may, and in the case of adoption proceedings shall, proceed with closed doors in examining and determining applications.

(2) In the case of adoption proceedings, every application,

decree and record connected therewith shall be secret and shall not be accessible to any person except by authorisation of the court.

Service of application on interested third parties.

483. If it shall appear from the contents of the application, or from the examination, or from the information obtained, that any third party is interested in the matter, the court shall order the application to be served on such interested party to whom a reasonable time shall be allowed to file an answer.

Default of answer by third party.

484. If the party so served shall fail to file an answer within the prescribed time, the court shall dispose of the matter according to law.

Opposition to demand.
Amended by: XV. 1983.6.

485. If any person enters an opposition to the demand, the court shall examine the grounds of opposition, and shall either grant the order applied for, or refer the parties to the court of contentious jurisdiction, as it shall deem proper:

Provided that the court shall not refer the parties to the court of contentious jurisdiction where, in the case of a demand made in accordance with the proviso to article 470(1), the court shall have upheld the opposition to the said demand.

Custody of applications and decrees.
Amended by: XV. 1913.102; XXXI. 2002.153.

486. (1) Every application and every decree shall be kept in the Registry.

Decree authorizing deed to state name of notary.

(2) A decree authorizing the execution of any deed shall state the name of the notary before and by whom such deed is to be received and published.

Copies to be countersigned by judge.

(3) Any copy of a decree to be inserted in any notarial act shall be countersigned by the judge.

Indexes of applications and decrees.

(4) Regular indexes shall be kept of all applications and decrees.

Cognizance of matters of voluntary jurisdiction not to be ground for challenge or abstention of judge.

487. The judge who shall have granted or refused the leave or authorization applied for, or who shall have otherwise taken cognizance of any matter of voluntary jurisdiction, may not on such ground be challenged or precluded from taking cognizance of any cause in any of the courts of contentious jurisdiction in which any issue relating to such matter may afterwards arise.

Grounds for impugning acts executed by leave or with authorization of court.

488. (1) In regard to any act executed by leave or with the authorization of the court, it shall not be lawful to adduce evidence to prove that the consent was given by error, or extorted by violence or fraud, or that the act was in any manner whatsoever injurious or prejudicial.

(2) Nevertheless any such act may be invalidated, if it is proved that the leave or authority of the court was granted in consequence of any misstatement or concealment of facts.

Applicability of provisions of this Part to court of Gozo as court of voluntary jurisdiction. *Amended by: X. 1856.7; VIII. 1990.3.*

489. (1) The provisions of this Part of this Code relating to the Civil Court, Second Hall, to the judge thereof and to the supplementary judges, shall also apply to the Court of Magistrates (Gozo) as a court of voluntary jurisdiction constituted under the provisions of article 54, to the magistrate sitting in such court and to the supplementary magistrates appointed for the Islands of Gozo and Comino, respectively.

(2) It shall also be lawful for such court to depute one of the supplementary judges for any of the purposes referred to in article 478, if the person referred to in that article is in the Island of Malta.

Title I

OF DISENTAIL BY DECREE OF COURT OF VOLUNTARY JURISDICTION

Added under the Statute Law Revision Ordinance 1936, incorporating ss. 1 to 8 of Ord. II of 1868.

Disentail where fruits do not exceed forty liri *per annum*. *Added by: II. 1868.1. Amended by: XIII. 1983.5.*

490. Notwithstanding any other provision of this Code relating to disentail, any person in possession of property subject to entail may, upon an application to that effect, obtain a disentail, in regard to all or any part of such property, by a decree of the court of voluntary jurisdiction, provided -

(*a*) the entail be dividual; and

(*b*) the fruits of all the property possessed by the applicant under the entail to which the application refers, do not, after deducting all burdens, exceed the sum of forty liri per annum; and

(*c*) the consent of all the parties next entitled to succeed to the entail be obtained:

Provided that if at the time of the application there be only one person next entitled to succeed, then, besides the consent of such person, it shall also be necessary to obtain the consent of any other person who, in the event of the predecease of the former, would be the person or one of the persons next entitled to succeed.

491. Where any of the persons whose consent is required as provided in the last preceding article, is a minor or is insane or interdicted, it shall, nevertheless, be lawful for the court to order the disentail if it is satisfied of the necessity or utility of such disentail in the interest also of such person.

Where person whose consent is required is a minor, etc.
Added by: II. 1868.2.

492. Where the fruits of all the property possessed by the applicant under the entail to which the application refers, do not, after deducting all burdens, exceed the sum of fifteen liri *per annum*, the court may order the disentail independently of the consent of any of the persons entitled to succeed.

Where fruits of all the property under entail do not exceed fifteen liri *per annum*.
Added by: II. 1868.3.
Amended by: XIII. 1983.5.

493. Where the fruits of any tenement possessed by the applicant under the entail, whether dividual or individual, to which the application refers, do not, after deducting all burdens, exceed the sum of four liri *per annum*, the court may likewise order the disentail independently of the consent of any of the persons entitled to succeed.

Where fruits of tenement do not exceed four liri *per annum.*
Added by: II. 1868.3.
Amended by: VI. 1895.19; XIII.1983.5.

494. (1) A decree ordering a disentail shall free the property from any other anterior dividual entail to which the property may be subject although no mention of such other entail shall have been made in the application.

Anterior dividual entail.
Added by: II. 1868.4.

(2) Such decree shall also free the property from any other anterior individual entail, if forty years shall have elapsed from the day of the death of the entailer, where the entail mentioned in the application was constituted by a will, or from the date of the deed where such entail was constituted by a deed *inter vivos*.

Anterior individual entail.

495. (1) The provisions of the foregoing articles shall also apply where the demand contained in the application is for the substitution of some immovable property for other property, whether movable or immovable, subject to a dividual entail.

Substitution.
Added by: II. 1868.5.
Amended by: XIII. 1983.5.

(2) In such case, the substitution may be authorized by a decree of the said court, even though the fruits of the property in regard to which the disentail is demanded, exceed the sum of forty liri *per annum*.

496. It shall also be lawful for the said court to grant to any person in possession of property of any value whatsoever, subject to any dividual or individual entail, authorization to give such property on lease for any period exceeding eight years, in the case of rural property, or four years, in the case of urban property, if it is shown to the satisfaction of the court that such lease would be for the benefit of the persons entitled to succeed:

Letting out of property subject to entail.
Added by: II. 1868.6.

Provided that the court may not grant any such authorization for a period exceeding twelve years, in the case of rural property, or eight years, in the case of urban property.

Letting out of property subject to entail on emphyteusis. *Added by: II. 1868.7. Amended by: VI. 1895.18.*

497. (1) It shall also be lawful for the said court to grant to any person in possession of property of any value whatsoever, subject to any dividual or individual entail, authorization to give such property on emphyteusis for a definite period or in perpetuity, provided the persons whose consent would, according to the provisions of article 490, be necessary for a disentail, give their consent thereto.

(2) The provisions of article 491 shall also apply in the case referred to in this article.

Where person refuses consent. *Added by: II. 1868.8.*

498. Where any person whose consent is required under the provisions of the foregoing articles fails, without just cause, to give such consent and thereby causes recourse to be had to the court of contentious jurisdiction for the disentail or other authorization, such court shall, in granting to the applicant that which, in the event of such consent, he could have obtained from the court of voluntary jurisdiction, condemn such person in the costs of the action.

Title II

OF THE DISENCUMBERMENT OF IMMOVABLE PROPERTY BY THE PROCEDURE OF EDICTS

Issue of edicts.

499. The liberation of any immovable property from any entail, hypothec, easement or other burden whatsoever, may be obtained by means of edicts issued by the Civil Court, Second Hall.

Application. *Amended by: X. 1856.8; IX. 1886.87.*

500. (1) The demand for the issue of edicts shall be made by an application.

Contents of application.

(2) The application shall state the mode in which the property has been acquired as well as every transmission of the possession thereof which may have taken place within the last preceding ten years.

List of hypothecary debts.

(3) The applicant shall, together with the application, or subsequently thereto, file a list of his hypothecary debts, showing distinctly the sums due by him, the name of the creditors and their respective titles, as well as the burdens and any other encumbrances to which the immovable is subject; and such list shall be by him verified on oath before the registrar.

Certificate of Public Registry.

(4) The applicant shall also produce a certificate from the office of the Public Registry, showing the liabilities, if any, registered against him as well as against such others as were vested with the possession of the property during the last preceding ten years.

Default of production of certificate.

(5) In default of the production of such certificate, it shall not be lawful to order the issue of edicts.

(6) If the applicant declares that the property is not subject to any debt or other burden, he shall confirm such declaration on oath.

Where applicant declares that property is not subject to debts.

(7) Where the application is made by an attorney or other representative of a person not residing in Malta, or incapable of taking an oath, the oath prescribed under this article shall be taken by such attorney or representative, who will declare that it is not to his knowledge whether the property in question is subject to any debt or other burden, or whether the property is subject to any other debt or burden besides those mentioned in the said list.

Where application is made by attorney or representative.

501. (1) The court shall issue two edicts with an interval of at least fifteen days between the first and the second edict.

Court to issue two edicts with interval of fifteen days. *Amended by: X.1856.9; XXIV.1995.203.*

(2) A copy of each edict shall be posted up at the entrance of the building in which the court sits.

Posting up of copy of edict.

(3) Such edicts shall call upon any person interested to appear and put in his claim by a protest within two months from the expiration of the time of fifteen days from the date of issue of the second edict; provided that any curator appointed by the court according to the provisions of article 504(1) may by application request the court to extend the said time. The court may, after considering the circumstances of the case, grant such other time as it may deem fit.

Interested parties to claim by protest. Time.

(4) The edicts shall contain a warning to the effect that at the expiration of the said time of two months, the property shall become free from any entail, hypothec, easement or other burden as regards any person who fails to appear, unless such person has been mentioned in the list referred to in the last preceding article.

Contents of edicts.

502. (1) The registrar shall, within fifteen days from the issue of the second edict, cause a notice, signed by him, containing the demand for the issue of edicts together with an intimation in terms of sub-articles (3) and (4) of the last preceding article, to be published in the Government Gazette, and posted up in the place in which Government Notices or other official acts are ordinarily posted up in the city, suburb or district in which the applicant resides, as well as in the city, suburb or district in which the property is situate.

Notice by registrar. Contents of notice. *Amended by: X. 1856.9; IV.1868.7.*

(2) Where, in regard to any liability shown on the certificate of the Public Registry, the applicant, if he appears in his own name, shall swear that such liability does not concern him and that he is not aware whether such liability concerns any of the persons vested with the possession of the property within the last preceding ten years, or, if he appears as attorney or representative of another person as provided in article 500(7), shall swear that it is not to his knowledge whether such liability affects the property, then in any such case, the said notice shall contain the names, as stated in the certificate, of the creditors in whose favour such liability is registered and shall contain an express warning to such creditors that, should they fail to appear and put in a claim, by a protest,

Where notice is to contain names of creditors.

within the time prescribed in sub-article (3) of the last preceding article, such liability shall be deemed to be non-existent in so far as the property referred to in the notice is concerned.

Posting up of notice. *Amended by: IV. 1868.8.*

503. (1) If the applicant does not reside in Malta, the said notice shall be posted up in the place in Malta wherein it is proved to the satisfaction of the court that he has resided within the last ten years; and failing such proof, the said notice shall be posted up only in the place within the limits of which the property is situate.

(2) Nevertheless it shall in all cases be lawful for the court to order that the said notice be also posted up in any other place.

Appointment of curators.

504. (1) The court shall appoint curators to represent any interested parties who are absent or minors or pupils having no tutor or curator or other lawful representative.

Duties of curators.

(2) It shall be the duty of the curators so appointed to make due inquiry as to the rights of the parties whom they represent, as well as to ascertain in the best possible manner whether the property is subject to any entail.

Written report by curators.

505. The curators so appointed shall make a written report to the court, stating therein the inquiries made by them for the purposes mentioned in the last preceding article; and if it shall come to their knowledge that the parties whom they represent have any claim whatever on the property, they shall bring forward such claim by entering the requisite protest.

Compilation of record.

506. The application, the certificate of the Public Registry, the list as verified on oath, the two edicts together with the certificate of the marshal with regard to their publication, the notice inserted in the Government Gazette, the documents, the protests of the interested parties who have entered an appearance and the report as well as the claims put in by the curators appointed as aforesaid, shall be compiled in a single record in chronological order and kept in their original.

Decree of court.

507. On the expiration of the time mentioned in article 501(3), the court shall examine the record, and if it is satisfied that the provisions contained in articles 499 to 506 inclusive have been complied with, shall give a decree declaring that the edicts have been purified, that it is proved that all the formalities prescribed by this Code have been complied with, and that the immovable property is free from any entail, hypothec, easement or other burden, which might be claimed by any person, or body corporate, although privileged, including the Government, except such as are available to the creditors or other interested parties who put in a claim, or whose claim appears from the certificate of the Public Registry, or from the list filed by the applicant, or from the protest of the curators.

508. (1) Any hypothec remaining in force as provided in the last preceding article shall subsist only for a period of one year to be reckoned from the day on which the debtor, who has disposed of the property, shall have, by protest or judicial letter, called upon the creditor to exercise his rights.

Time for which hypothecs remaining in force as provided in article 507 shall subsist.
Amended by: XI. 1859.26.

(2) If at the time of any such intimation, the rights of the creditor cannot as yet be exercised, the said period shall be suspended until such time as such rights can be exercised.

Suspension of time.

(3) The said period shall also be suspended, where the time for payment has been agreed upon in favour of the creditor.

509. Where the demand for the issue of edicts is made in consequence of a bid made in a judicial sale by auction subject to the condition of the issue of edicts, the purchaser shall, together with the application, file a copy of the act of adjudication; and in such case the list mentioned in article 500 shall be made by the purchaser himself, unless he states on oath before the court that he is not acquainted with the circumstances required to be mentioned in the list.

Issue of edicts in pursuance of condition attached to bid in judicial auction.

510. The curators appointed by the court under the provisions of article 504, shall use all due diligence to ascertain the history of the title to the property, and shall make an express mention thereof in their report. If the history of the title to the property is established by the curators, the court shall cause another edict to be published in the manner prescribed in article 501.

Curators to investigate history of title to property.
Amended by: X. 1856.9.

511. If the publication of the history of the title to the property as provided in the last preceding article, takes place during the second of the two months prescribed in the edicts, or during the extension of the period granted in terms of article 501(3), such time of two months or such extension of the period shall be extended by another month.

Extension of original time of two months.
Amended by: XXIV. 1995.204.

Title III

OF THE APPOINTMENT OF TUTORS, CURATORS AND OTHER ADMINISTRATORS

512. Any person may apply to the Civil Court, Second Hall, for the appointment of a tutor or curator to a minor, or for the appointment of a curator to a vacant inheritance or to an absent person, or of any other administrator, according to law.

Application for the appointment of tutors, curators, etc.
Amended by: XLVI.1973.108.

513. Upon the application of tutors, curators or other administrators for the examination and approval of their accounts and for their discharge, it shall be lawful for the court to appoint advocates and accountants from the rota, who shall file a report upon which the court shall give the requisite decree.

Appointment of experts for examination of accounts,

514. Where it shall be necessary to fix a maintenance allowance, it shall be lawful for the court to appoint a practising advocate or a head of a family, in order to report thereon, and on any such report, the court shall give the requisite decree.

for fixing maintenance allowances.

Power of court to exempt tutors, etc. from continuing to act,
Amended by: XLVI. 1973.108.

515. It shall be lawful for the court, on good cause being shown, to exempt any tutor, curator, or other administrator, appointed by the court, from continuing to act as tutor, curator, or administrator.

or to suspend such tutors, etc.
Amended by: XLVI. 1973.108.

516. It shall likewise be lawful for the court, of its own motion or upon the demand of any person, to suspend from the exercise of his office, any tutor, curator or other administrator appointed by the court, pending an action for his removal, or for any other just cause, and to appoint another tutor, curator or administrator to act in his stead.

Duration of suspension.

517. The suspension shall continue until it is revoked by the court which issued the relative order, or until, upon proceedings taken by the tutor, curator, or administrator so suspended, against the party who demanded the suspension, it is revoked by the competent court of contentious jurisdiction.

Substitution of executors, administrators, etc.

518. Applications for the substitution of any executor, administrator, procurator, or counsellor, for that appointed under a will or other instrument, where the latter refuses to accept office, or dies, or otherwise becomes unable to perform the duties of his office, shall likewise be made to the Civil Court, Second Hall, unless according to law such substitution is to be made by any other authority or person.

Service of application for substitution.

519. (1) Where no positive refusal or incapacity to perform the duties referred to in the last preceding article is made to appear, the court shall order the application for the substitution to be served on the party in lieu of whom the substitution is demanded, who shall be allowed the time of four days within which to file an answer;

Answer.

and the default of an answer within the said time shall be deemed to be an admission of the demand contained in the application.

Power of court.

(2) Where there are reasons to believe that the incapacity arises from insanity or any other cause which prevents such answer, the court shall take such steps as it may deem just and expedient in order to ascertain the facts.

Title IV

OF INTERDICTION AND INCAPACITATION

Amended by: IX. 1886.88.

Application for interdiction or incapacitation.
Amended by: IX. 1886.89.

520. (1) A demand for the interdiction or incapacitation of persons who are habitual idiots, insane, frenzied or prodigal, is made by an application to the Civil Court, Second Hall.

Contents of application.

(2) The application shall contain a statement of the facts on which the demand is founded and an indication of the witnesses, if any, to such facts.

Documents.

(3) Any documents in support of the demand, shall be filed together with the application.

Persons who may demand interdiction or incapacitation. *Amended by: IX. 1886.89; L.N. 46 of 1965; LVIII. 1974.68.*

521. Interdiction or incapacitation may be demanded -

(*a*) by a husband against his wife, or by a wife against her husband;

(*b*) by any person against another related to him by consanguinity;

(*c*) by any person who is related by affinity to the person whose interdiction or incapacitation is demanded and who may be called upon to supply maintenance to such person;

(*d*) in case of idiocy or other mental infirmity, by the Attorney General; unless the demand shall have been made by any other person.

Examination of person whose interdiction is demanded. Appointment of temporary curator. *Amended by: IX. 1886.89.*

522. It shall be lawful for the court to cause the person whose interdiction or incapacitation is demanded to appear before it, to question such person and cause him to be examined by one or more experts; and the court may, in all cases, appoint a temporary curator to take charge of his person and property.

Appointment of curator. *Amended by: IX. 1886.89.*

523. (1) If the court finds that there is just cause for the interdiction, it shall appoint a curator to administer the property of the person interdicted.

Applicability of provisions relating to tutorship.

(2) The provisions relating to the tutorship of minors shall, in so far as applicable, apply to the curatorship of persons interdicted.

Remuneration to curator.

(3) The court may also, on the demand of the curator, either at the time of his appointment, or subsequently, allow him a remuneration, regard being had to the nature of the services and to the property of the person interdicted.

Incapacitation. *Amended by: IX. 1886.89.*

524. (1) If no sufficient cause for the interdiction is made to appear, it shall be lawful for the court by a decree to order, if the circumstances of the case so require, that the person whose interdiction is demanded be incapacitated from suing or being sued, from effecting any compromise, borrowing any money, receiving any capital, giving a discharge, transferring or hypothecating his property, or performing any act other than an act of mere administration, without the aid of a curator to be appointed in the same decree.

(2) It shall also be lawful for the court, if it deems it necessary, to incapacitate any person from performing all or any of the acts of mere administration, entrusting the performance thereof to a curator in such manner as the court may deem fit to direct.

Interdiction or incapacitation to date from decree. Nullity of acts performed after decree. *Amended by: IX. 1886.89.*

525. (1) Interdiction or incapacitation shall take effect from the day of the relative decree; and any act performed by the person interdicted or incapacitated, subsequently to such decree, or even subsequently to the appointment of the temporary curator, shall be null.

Invalidation of acts performed previously to the decree.

(2) Any act performed previously to the interdiction or incapacitation may be annulled, if the cause of interdiction or incapacitation existed at the time of the performance of the act.

Revocation of interdiction or incapacitation. *Amended by: IX. 1886.89.*

526. Interdiction or incapacitation shall be revoked, when the cause of the interdiction or incapacitation shall cease to exist.

Notice containing terms of inhibition to be published in Government Gazette. Circular letter to notaries. *Amended by: IX. 1886.89; XV.1913.103; XVI.1922.4; XV. 1983.7; XXIV. 1995.205.*

527. (1) The court shall, in the decree of interdiction or incapacitation, direct that a notice thereof, specifying the terms of the inhibition, be published in the Government Gazette, and that an intimation of such interdiction or incapacitation be given, by means of a circular letter, to all notaries in Malta.

Notaries to enter note in book to be kept for the purpose.

(2) A note of such interdiction or incapacitation shall be entered by every notary in a book to be kept for the purpose and the notary shall affix his own signature to the circular which shall be kept in the record of the proceedings relating to the interdiction or incapacitation.

Book of interdictions and incapacitations, to be kept by registrar.

(3) The registrar shall keep a book in which he shall enter the name, the surname, the father's name, the place of birth, and the place of residence of the person interdicted or incapacitated and a summary of the decree of interdiction or incapacitation.

(4) The registrar shall before the end of the month of January of every year cause to be published in the Government Gazette a list showing in alphabetical order the names and surnames of the persons appearing in the book kept in accordance with sub-article (3), together where available with the name of the father, the place of birth and the number of the identity card of such persons, and the date of the decree of interdiction or incapacitation.

(5) From the list referred to in sub-article (4) there shall be excluded cases -

(*a*) where more than eighty years have elapsed since the date of the decree;

(*b*) where the person would have reached the age of one hundred years;

(*c*) where the decree has been revoked in terms of article 526; and

(*d*) where the person interdicted or incapacitated has died.

Book accessible to public.

(6) Such book shall, like any other judicial act, be accessible to any person wishing to see it.

Title V

Amended by: V. 1864.1.

OF THE PRESENTATION AND PUBLICATION OF SECRET WILLS

Presentation of secret wills. Receipt. *Amended by: V. 1864.1; VI. 1880.24.*

528. The registrar shall, in the presence of the judge, receive any secret will presented to him by any testator or notary, and shall give a receipt therefor to such testator or notary.

Particulars to be noted down by registrar on presentation of will. *Amended by: V. 1864.1.*

529. The registrar shall, either on the paper on which the will is written, or on the paper used as an envelope for same, note down the following particulars:

(*a*) the date of the presentation of the will;

(*b*) the name, the surname, the name of the father and the place of residence of the testator;

(*c*) by whom the will is presented, that is to say, whether by the testator himself, or by a notary, and, in the latter case, the name and surname of the notary;

(*d*) if the will is presented by the testator himself, his declaration that the paper so presented contains his will;

(*e*) the circumstance of the presence of the judge at the presentation of the will.

Note of particulars to be signed by registrar, etc. and registered in a book. *Amended by: V.1864.1; XV. 1913.104.*

530. (1) The note of such particulars shall be signed by the registrar, and countersigned by the testator or notary who shall have presented the will, and by the judge; and the registrar shall, within twenty-four hours, register such particulars in a book to be kept by him for the purpose.

Where testator is unable to write.

(2) If the testator declares that he is unable to write, a mention of such declaration shall take the place of his signature.

Judge to check registered particulars with wills.

(3) A copy of the said book shall be kept by the judge who shall, at least once every quarter, compare the registered particulars with the wills which, according to such book, must be in the custody of the registrar.

Wills to be endorsed with act of delivery. *Amended by: V.1864.1.*

531. (1) The judge shall not allow the registrar to receive from any notary any secret will, unless it is endorsed with the act of the delivery made by the testator to the notary.

(2) Nor shall the judge allow the receipt of any will endorsed as aforesaid, unless such endorsement contains the declaration required by law to the effect that the paper delivered to the notary contains the will of the person from whom the notary has received such paper.

Withdrawal of will. *Amended by: V. 1864.l.*

532. (1) A secret will may not be withdrawn before the time comes for its opening, except by the testator himself or by an attorney specially authorized for the purpose.

Act of withdrawal.

(2) The testator or attorney withdrawing the will shall sign in the presence of the judge, in the margin or at the foot of the entry in the book referred to in article 530(1) recording the receipt of such will, a declaration that he has withdrawn the will; and such declaration shall also be countersigned by the judge.

Appointment of time for opening and publication of will.
Amended by: V.1864.1; XV.1913.105. Substituted by: XXIV. 1995.206. Amended by: XI.1999.2.

533. (1) Where a will is to be opened, the court shall by a decree, upon the application of any party interested, appoint the day, time and place for the opening and publication of the will, and order that all interested parties be summoned: those known, by summons, and those unknown, by means of banns to be posted up at the entrance of the building in which the court sits and published in the Government Gazette and in a daily newspaper.

(2) The opening and publication of the will shall not take place before the expiration of four days from the date of service of the said summons, or of four days from the date of the posting up of the banns and their publication whichever is the later.

Opening of will.
Amended by: V.1864.1; XXIV. 1995.207.

534. (1) The will shall be opened by the registrar in the presence of the judge, at the time and place appointed by the decree of the court, after the signatures affixed by the judge and the registrar at the foot of the note of the particulars mentioned in article 530, shall have been verified.

Publication of will.

(2) After the will is opened, it shall be published in the presence of the judge and the registrar, by the notary who had presented it or, if such notary is dead or absent, or is prevented from attending on account of sickness or for any other reason, or if the will had been presented by the testator himself, by a notary to be selected by the party who made the application for the opening of the will.

Delivery of will to notary.
Amended by: V.1864.1; XV.1913.106; XXIII.1971.22.

535. (1) When the will is published as provided in the last preceding article, it shall be delivered to the notary by whom the publication of the will shall have been made.

Receipt.

(2) The notary shall, in the presence of the judge, sign a receipt in the book referred to in article 530; and such receipt shall be countersigned by the judge.

(3) Any will delivered in terms of sub-article (1) shall not be deemed to be cancelled from the book referred to in article 530; for the purpose of any document certifying the existence or non-existence of secret wills, and there shall be indicated in any such document, in respect of any such will, the name of the notary who published it and the date of its publication.

Opening of wills older than one hundred and fifty years.
Added by: XI.1999.3.

535A.(1) Where any secret wills have been received by the Registrar in accordance with the provisions of this Title which have not been withdrawn by the testators, or opened and published, and one hundred and fifty years have elapsed since the date of the presentation of the wills, the registrar shall prepare and publish a list of the said wills in the Gazette.

(2) After the publication of the list mentioned in sub-article (1) in the Gazette, the court shall establish a day and time in which the wills mentioned in the list shall be opened in public without the necessity of their being read. The court shall then order that the said wills be transmitted to the archivist of Notarial Acts who shall register these wills in a book to be kept by him and the other provisions of this Title regarding the opening and publication of

secret wills shall not apply. The court shall draw up a *procès-verbal* of the opening of the said wills, which shall only state the date and place of their opening, and whether the document so published contains a will or not. A copy of such *procès-verbal*, together with those wills shall be transmitted to the archivist of Notarial Acts, and from that date such wills shall be open to inspection and to the issue of copies thereof.

Title VI

OF THE DECLARATION OF THE OPENING OF A SUCCESSION

Declaration of the opening of succession. *Substituted by: XXIV.1995.208.*

536. In the absence of opposition, the declaration of the opening of a succession may be made by the Civil Court, Second Hall, upon an application, in favour of any person in whose name a claim thereto is made.

Issue and posting up of banns. Time for opposition. *Amended by: IV. 1868.9; XXIV.1995.209.*

537. (1) Upon the filing of the application, the court shall issue banns which shall be published in the Gazette and in at least one daily newspaper and be posted up at the entrance of the building in which the court sits, calling upon all parties interested to enter their opposition by a note, within a time of not less than eight days nor exceeding one month, to be fixed by the judge.

Commencement of time.

(2) Such time shall commence to run from the day on which the banns are posted up, or last published in either the Gazette or the periodical newspaper, whichever is the latest.

Publication and posting up of notice.

(3) The registrar shall cause a notice signed by him, containing a summary of the contents of the banns, to be published in the Government Gazette, and affixed in the place in which Government Notices or other official acts are ordinarily affixed in the city, suburb or district in which the deceased resided at the time of his death.

(4) If at the time of his death the deceased did not reside in Malta, the said notice shall be affixed in the place in which Government Notices or other official acts are ordinarily affixed in the city, suburb or district, in Malta, wherein it is proved to the satisfaction of the court that he has resided within the last ten years preceding his death; and, failing such proof, the said notice shall be affixed in the place where Government Notices and other official acts are ordinarily affixed in Valletta.

(5) Nevertheless it shall in all cases be lawful for the court to order that the said notice be also affixed in any other place.

Decree of court. *Substituted by: XXIV.1995.210.*

538. At the expiration of the said time, the court, in the absence of opposition, shall examine the claim of the applicant; and if the claim appears to be justified, the court shall allow the demand and shall declare the succession opened in his favour and may, at the request of the applicant, also establish in its decree, the identity of any other person called to the inheritance and his relative share therein.

Conservatory measures.

539. Pending the application and until the expiration of the said time, it shall be lawful for the court to make any special order with a view to preserving such hereditary rights or property as might suffer prejudice or deterioration.

Declaration of opening of succession not to bar action by other person before court of contentious jurisdiction.

540. The declaration of the opening of a succession in favour of any person in virtue of a decree of the Civil Court, Second Hall, shall not operate so as to bar any other person entitled thereto from claiming the inheritance or any portion thereof before the competent court of contentious jurisdiction.

Title VII

OF THE INVENTORY

Acceptance of inheritance with benefit of inventory to be made by a note. *Amended by: V.1864.2.*

541. The declaration by any person that he accepts an inheritance, whether testamentary or *ab intestato*, with the benefit of inventory, or that he will not accept the inheritance before the making up of an inventory, shall be made by a note to be filed in the Civil Court, Second Hall.

Oath by person filing the note. *Amended by: V. 1864.2.*

542. (1) Upon the filing of such note, the person desiring to make up the inventory shall swear, before the registrar, that he will faithfully describe the estate.

(2) The registrar shall at the foot of the note make a mention of the oath so taken.

Contents of inventory. *Amended by: V. 1864.2.*

543. (1) The inventory shall contain a description of all the estate, specifying in detail all wearing apparel and household goods, gold and silver articles, jewellery, money and other movable property, the debts due to the deceased, all rights of action and all immovable property as well as all debts or other liabilities of the estate.

(2) The inventory shall also state the value of the movable property, according to a valuation made by experts, unless the court, if it be satisfied that the absence of such valuation will not be prejudicial to the parties interested, shall, in lieu of such valuation, allow a mere statement of the value to be made by the person making the inventory.

Appointment of time for publication of inventory. *Amended by: V. 1864.2.*

544. Upon the application of the person making the inventory, the court shall, by a decree, fix the place, day and time for the publication of the inventory by a notary to be nominated by the applicant.

Summoning of interested parties, *Amended by: V. 1864.2.*

545. The court shall, in the said decree, direct that all parties interested be summoned to be present, if they so desire, at the publication of the inventory.

by summons, by banns. *Amended by: IV.1862.11; V. 1864.2; XXIV. 1995.211.*

546. (1) The parties interested shall be summoned: those known, by summons, and those unknown or uncertain, by means of banns to be posted up at the entrance of the building in which the court sits. The registrar shall also publish a notice in the Gazette

and in a daily newspaper inviting all those parties interested to be present at the publication of the inventory.

(2) The summons as well as the banns shall state the time and place of the publication of the inventory, and the name of the notary by whom the publication is to be made.

Publication of inventory. *Amended by: V.1864.2; XXIV. 1995.212.*

547. (1) The publication of inventory shall take place on the date and at the place and time established by the court.

Interested persons may impugn inventory.

(2) The inventory, after its publication, may be impugned by any person interested, even though such person may have been present at such publication.

Forfeiture of benefit. *Amended by: V.1864.2.*

548. The default of compliance with the provisions of the preceding articles of this Title, with intent to cause prejudice to any party interested, shall deprive the heir of the benefit of inventory.

Applicability of ss. 542 to 547 to all inventories under the authority of the Civil Court, Second Hall. *Amended by: V. 1864.2; XV. 1913.108.*

549. The provisions of articles 542 to 547 inclusive shall apply to every inventory which, according to law, is to be made under the authority of the Civil Court, Second Hall.

Title VIII

OF THE EXECUTION OF ACTS IN PURSUANCE OF DECREES OF THE CIVIL COURT, SECOND HALL

Emancipation. *Amended by: IX. 1886.90; XXIV. 1995.213.*

550. (1) Emancipation is effected by virtue of the decree by which it is granted.

(2) Nevertheless, if the court in the decree orders that such emancipation be effected by means of a notarial deed, the decree shall not become operative until such deed is executed.

Agreements requiring authorization of court to be effected by notarial deed. Exception. *Amended by: IX. 1886.90.*

551. Any agreement the validity of which is dependent upon the authorization or leave granted by the court, shall in all cases, under pain of nullity, be effected by means of a notarial deed:

Provided that this article shall not apply to any obligation entered in the acts of this court.

Validity of certain obligations authorized by the Civil Court, Second Hall, to depend on registration in Public Registry. *Amended by: XLVI. 1973.108.*

552. The decree of the court shall not make valid any obligation assumed by any minor in any contract in which other parties have expressly bound themselves to indemnify such minor, unless such contract be registered in the Public Registry within one month from the date of the decree or from the day stated in the decree.

Period of validity of decrees of authorization. *Amended by: X.1856.10; XV.1983.8.*

553. Any decree granting authorization or leave to enter into any agreement or to make any waiver shall cease to be operative, if the deed relating to the said agreement or waiver is not executed within six months from the date of the decree or from the day stated in the decree.

Duty of registrar to cause registration of hypothecs. *Amended by: XI.1859.27; VI. 1880.25.*

554. The registrar shall cause every obligation with hypothecation of property entered in the acts of the court to be registered in the Public Registry, within four days from the date of such obligation, unless within such time the registration shall have been made by any other person.

Duties of notaries. *Added by: XV. 1913.109.*

555. The provisions of article 283 shall apply in the case of notarial deeds executed in pursuance of decrees of this court.

Title IX

OF THE TAXATION OF CERTAIN FEES

Taxing of extra-judicial fees. *Amended by: VI.1880.26; XXXI. 1934.52; XXIV.1995.214.*

556. (1) Upon the demand of any party interested, the registrar shall tax the fees due to advocates, notaries public or legal procurators, for extra-judicial services performed by them, saving the right of appeal by application, within one month, to the court of contentious jurisdiction praying that the taxation be amended.

(2) The demand for the taxation of fees shall be made by means of a note showing the services in respect of which the taxation is demanded.

(3) f the taxation is demanded by the creditor he shall verify on oath, before the registrar, the contents of the note.

(4) The said time shall commence to run, in regard to the person demanding the taxation, from the day on which the taxation is made, and in regard to the debtor, from the day on which the taxed bill is served on him.

(5) The expiration of the said time shall not operate so as to bar the debtor from impugning the existence of the claim or from proving its extinguishment in any manner admissible according to law.

Taxing of fees in respect of proceedings under authority of superior courts. *Amended by: XXIV. 1995.215.*

557. The provisions of the last preceding article shall not dispense the registrar from taxing the fees due to advocates, notaries or legal procurators, where such fees, although not relating to causes brought before the courts, refer to proceedings under the authority of the courts.

BOOK THIRD

OF CERTAIN MATTERS RELATING TO JUDICIAL PROCEDURE

Title I

OF EVIDENCE

558. All evidence must be relevant to the matter in issue between the parties.

Relevance of evidence.

559. In all cases the court shall require the best evidence that the party may be able to produce.

Best evidence to be produced.

560. (1) The court shall disallow any evidence which it considers to be irrelevant or superfluous, or which it does not consider to be the best which the party can produce.

Rejection of irrelevant evidence.
Amended by: I.1880.1; LXII. 1948.3; XXIV.1995.216.

(2) Where evidence tendered by any party is disallowed, it shall be lawful for such party to demand that the ruling of the court in regard to the disallowing of such evidence be made by a decree; but, where only a question to a witness has been disallowed, the party may demand only that a record thereof be made in the proceedings, in the manner which the court shall, according to circumstances, direct.

Decree on rejection of evidence. Entry in record of disallowance of question to witness.

(3) Where in any cause or matter it is not possible, in consequence of damage to or loss of any court or other document, for any party to such cause or matter to comply with any requirement of this Code relating to the formal production of documents or otherwise, the court may either dispense with such requirement or give such other directions as the circumstances of the case require:

Provided that in proceedings before the courts of civil jurisdiction, the parties to the cause shall be bound to assist the registrar in compiling a copy of the court records or other documents which have been damaged or lost and, within such time as the court may establish, they shall provide the registrar with such information and documentation in their possession which will assist the registrar in compiling the court records or other documents damaged or lost in as full a manner as possible.

561. It shall be lawful for the court to require the party tendering evidence to state the object of the evidence.

Power of court to require object of evidence.

562. Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it.

Onus of proof on person alleging.

Sub-title I

OF WITNESSES

563. All persons of sound mind, unless there are objections against their competency, shall be admissible as witnesses.

Competency of witnesses.
Amended by: VII. 1880.14.

Admissibility of *ex parte* expert opinion and certain expressions of non-expert opinion. *Added by: XXIV. 1995.217.*

563A. (1) Where a person is called as a witness, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence only if, in the opinion of the court, he is suitably qualified in the relevant matter.

(2) Where a person is called as a witness, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

(3) The opinion given by any person according to the provisions of this article shall be without prejudice to the provisions of article 681 and to the court's power to appoint a referee according to the provisions of article 646.

Evidence of foreign law. *Added by: XXIV. 1995.217.*

563B. (1) A person who is suitably qualified on account of his knowledge or experience, is competent to give expert evidence as to the law of any other foreign state, irrespective of whether he has acted or is entitled to act as an advocate, or in any judicial or legal capacity in that state.

(2) The provisions of article 563A(3) shall *mutatis mutandis* apply to the provisions of this article.

Age not to constitute ground of inadmissibility.

564. Whatever may be the age of a witness whom it is intended to produce, he is admissible as such, provided he understands that it is wrong to give false testimony.

Admissibility of parties to give evidence. *Amended by: XV. 1913.110.*

565. (1) Any of the parties to a suit, whatever his interest therein, shall be competent to give evidence, either at his own request, or at the request of any of the other parties to the suit, or if called by the court *ex officio*.

(2) The provisions of this Code respecting witnesses shall apply to such party.

Admissibility of husband or wife of party to a suit as witness. *Added by: XV. 1913.111. Amended by: XXIV. 1995.218.*

566. (1) The husband or wife of a party to a suit shall be competent and compellable to give evidence in such suit at the request of any of the parties thereto:

Provided -

(*a*) that the husband may not be compelled to disclose any communication made to him by his wife during the marriage or the wife compelled to disclose any communication made to her by her husband during the marriage;

(*b*) that the husband or wife may not be compelled to answer any question tending to incriminate his wife or her husband.

(2) The provisions of this Code respecting witnesses shall also apply in the case of the husband or wife.

Interest in suit not to be a bar to admissibility of witness. *Amended by: XV. 1913.112.*

567. No objection to the competency of any witness shall be admitted on the ground that he is interested in the issue in regard to which his evidence is required or in the event of the suit, saving any objection touching his credibility.

Summoning of witnesses. *Amended by: IX. 1886.91.*

568. (1) Witnesses shall be summoned to appear by means of a subpoena to be issued on the application of the party interested.

When adjournment may be granted for production of witness.

(2) No adjournment of a cause shall be granted for the purpose of enabling the parties to summon witnesses, or on the ground of the non-attendance of any witnesses summoned, unless -

(*a*) the necessity for the production of the witness arises during the hearing of the cause; or

(*b*) the application for the summoning of the witness has been made in time to allow an interval sufficient for the service of the subpoena on the witness and for the lapse of the term before the expiration of which the witness, according to the provisions of article 572, is not bound to attend; or

(*c*) by a note, the opposite party gives his consent, in the manner provided in article 150(1)(*c*).

Subpoena *ad testificandum.* *Amended by: XV.1913.113; XV.1983.9.*

569. (1) The subpoena shall contain an order to appear at a stated place and time, for the purpose of giving evidence, whether before the court, arbitrators, or before referees, or before one or more officers authorized by law to examine witnesses.

Form and contents of writ.

(2) The writ of subpoena shall be in the prescribed form. The party applying for a subpoena shall fill in the particulars to be contained in the writ as provided in sub-article (1) and in article 570, and shall file the writ simultaneously with the application for the issue thereof.

Subpoena *duces tecum.*

570. The writ may require the witness to produce any book, document, or other thing, which belongs to the contending parties or to any of them, or which is under the charge or custody of such witness, or which, according to law, he is bound to produce.

Demand for issue of subpoena in inferior courts. *Amended by: XV.1913.114; VIII.1990.3.*

571. In the Court of Magistrates (Malta), and in the Court of Magistrates (Gozo) in its inferior jurisdiction, the demand for the issue of a subpoena may be made orally.

Time for attendance of witness. *Amended by: XV. 1913.115; XLIX.1981.6; VIII. 1990.3. Substituted by: XXIV. 1995.219.*

572. A witness is bound to appear in court on the date and time prescribed in the subpoena provided that he is served with the said subpoena four days before such date, which period is to run from the date of service of the subpoena:

Provided further that it shall be lawful for the court, in urgent cases, to order any witness to appear from day to day, or from hour to hour, or even only within such interval of time as may be necessary for him to appear in court.

Oath as to relevancy of evidence of witness outside the jurisdiction.

573. No witness residing in Malta is bound to attend to give evidence in Gozo, or vice versa, unless the advocate of the party applying for such evidence, or the party himself if he has no advocate, shall swear that in his opinion the evidence is material, and unless, simultaneously with the issue of the subpoena, he deposits with the registrar such allowance as may be due to the witness according to law.

Deposit of allowance.

Another person to give evidence instead of the person sub-poenaed. *Amended by: XXIV. 1995.220.*

573A. Any officer or employee of a government department or any officer or other employee of any body having a distinct legal personality may be authorised by the person subpoenaed to give evidence in his stead on any matter about which he is more knowledgeable and relating to the said department or body and on which the said person subpoenaed was required to give evidence:

Provided that the person subpoenaed shall give such evidence personally if it is so stated in the subpoena.

Persons present in court may be called to give evidence.

574. Any person being present in the court may, upon the oral demand of either of the contending parties, be called upon forthwith to give evidence, as if he had been summoned to attend by means of a subpoena.

Penalty for non-attendance of witness duly summoned.

575. If any witness duly summoned fails to appear when called on, he shall be guilty of contempt of court and shall forthwith be punished accordingly; and it shall also be lawful for the court, by means of a warrant of escort or arrest, to compel such witness to attend for the purpose of giving evidence.

Power of court to remit punishment.

576. In the case referred to in the last preceding article, it shall be lawful for the court, on good cause being shown to its satisfaction, to remit the punishment.

Witnesses to be examined *viva voce*. *Amended by: IX. 1886.92; XV. 1913.116.*

577. (1) Save as otherwise provided in this Code, the witnesses shall be examined in open court at the trial of the action and *viva voce*.

Witnesses may not be assisted or advised.

(2) Witnesses may not be assisted or advised by any person.

Oath.

(3) Witnesses shall be sworn previously to their examination, and the oath shall, unless the law provides otherwise, be administered to them by the registrar.

Leading or suggestive questions.

578. Leading or suggestive questions may not, without special permission of the court, be put on an examination-in-chief.

Cross-examination.

579. The opposite party has the right to cross-examine a witness; and in such cross-examination leading or suggestive questions are allowed.

Questions in cross-examination.

580. (1) In cross-examination, a witness may only be questioned on the facts deposed in his examination, or on matters calculated to impeach his credit.

(2) When the party cross-examining desires to prove by the same witness any circumstance not connected with the facts

deposed in the examination, he must, unless the court, for just cause, shall direct otherwise, produce such witness in due time and examine him as his own witness; and in such case, it shall be lawful for the court, upon the oral demand of such party, to order the witness not to leave the court in order that he may be again called and questioned; and such order shall have the effect of the subpoena mentioned in article 568(1).

Questions arising out of answers given by witness.

581. When both the examination and cross-examination are concluded, no further questions may be put by either of the parties; but it shall be lawful for the court, or for the party with the permission of the court, to ask such questions as arise out of the answers given in the course of the examination or cross-examination.

Questions by court.

582. It shall be lawful for the court, at any stage of the examination or cross-examination, to put to the witness such questions as it may deem necessary or expedient.

Witness may refresh his memory.

583. A witness may refresh his memory by referring to any writing made by himself or by another person under his direction at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing; but in such case, the writing must be produced and may be seen by the opposite party.

Party producing witness may not impeach his credit by evidence of bad character.

584. A party producing a witness shall not be allowed to impeach the credit of the witness by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony.

How opposite party may impeach witness.

585. A witness may be impeached by the party against whom he is called by contradictory evidence, or by evidence that his general reputation for truth is bad.

Former statement to be related to witness in case of impeachment of his credit by evidence of former statement.

586. (1) Before impeaching the credit of a witness by evidence that he has made at other times statements inconsistent with his present testimony, the alleged statements together with the circumstances of time, place and persons present must be related to him and he must be asked whether he has made such statements and he must be allowed to explain them.

(2) If the statements be in writing, they must be shown to the witness before any question concerning such statements is put to him.

Witness bound to answer questions allowed by court.

587. The witness shall answer any question which the court may allow to be put to him; and the court can compel him to do so by committing him to detention until he shall have sworn and answered.

Privileged communications. *Amended by: XXIV.1995.221.*

588. (1) No advocate or legal procurator without the consent of the client, and no clergyman without the consent of the person making the confession, may be questioned on such circumstances as may have been stated by the client to the advocate or legal procurator in professional confidence in reference to the cause, or as may have come to the knowledge of the clergyman under the

seal of confession or *loco confessionis*.

(2) Unless by order of the court, no accountant, medical practitioner or marriage counsellor may be questioned on such circumstances as may have been stated by the client to the said person in professional confidence or as may have come to his knowledge in his professional capacity.

Privilege to extend to interpreter.

(3) This privilege extends to the interpreter who may have been employed in connection with such confidential communications.

Incriminating questions.

589. A witness cannot be compelled to answer any question the answer to which may subject him to a criminal prosecution.

Discretionary power of court as to degrading questions, etc. *Amended by: XI.1859.28; II. 1940.11; XXIV.1995.222.*

590. (1) It shall be in the discretion of the court to determine, in each particular case, when a witness is not bound to answer a particular question on the ground that the answer to such question might tend to expose his own degradation, or when a witness will not be compelled to give evidence as to facts the disclosure of which will be prejudicial to the public interest.

Privilege as to facts known *ratione officii.*

(2) No witness may be compelled to disclose any information derived from or relating to any document belonging to or in possession of any civil, military, naval or air force department of the public service and which is an exempt document under article 637.

Person present at trial may not be produced as witness. Discretionary power of court.

591. In general, no person who has been present during the trial of a cause may be produced as a witness in the same cause; nevertheless it shall be in the discretion of the court, for just cause, to dispense with this rule in particular cases.

Witnesses to be examined separately. Confronting witnesses. *Amended by: XI. 1858.5; XV. 1913.117.*

592. (1) Each witness shall be examined separately. It shall, however, be lawful for the court to allow two or more witnesses to be confronted with each other; and in any such case, each of the witnesses may be questioned in the presence of the other witnesses.

Examination of referees.

(2) Referees shall be examined in the presence of each other, unless the court deems it expedient, in any particular case, to examine each referee separately.

Deaf and dumb witnesses, etc.

593. (1) If a witness is deaf and dumb but able to write, the questions shall be put to him in writing; and in such case the questions and the answers shall be publicly read out by the registrar, and afterwards kept in the record of the cause.

(2) If the witness is deaf and dumb and unable to write, it shall be lawful for the court to appoint as interpreter some person able to understand him.

(3) If the witness is dumb but not deaf, or vice versa, the court shall cause his examination to be conducted in such manner as may appear to it most conducive to ascertain the true testimony of the witness.

Notes of the evidence. *Amended by: Order-in-Council, 1899, s. 12; XV.1913.118; XVI.1929.7; XI.1932.3; XXXI.1934.53; XXXII. 1965.8; XIX.1965.15; XI. 1980.3.*

594. (1) The substance of the answers given by the witnesses shall be taken down. Every answer which may have a material bearing on the merits of the case shall be taken down word for word:

Provided that in the inferior courts, it shall be sufficient that notes of the evidence of the witnesses be taken down in brief.

Reading over of evidence to witness.

(2) The notes of the evidence so taken down shall be read over to the witness, and, after being signed by the registrar, shall be filed in original in the record of the cause.

Fact of reading of evidence to be recorded.

(3) The fact of the reading over of the notes of the evidence to the witness shall be recorded at the foot thereof before they are signed as aforesaid.

Alterations, corrections or additions.

(4) The notes of the evidence shall be clearly and legibly typewritten or written in ink. Any alteration, correction or addition required to be made before or after the reading over of such notes to the witness, shall be made by means of a postil in the margin or at the foot of the notes, to be countersigned by the registrar, and any cancellation shall be made in such manner as to leave the words cancelled distinctly legible.

Inclusion of notes of evidence in record not to bar recalling of witness before appellate court.

(5) The inclusion of the notes of the evidence in the record shall not operate so as to bar any witness heard before the court below from being recalled before the appellate court either by the parties or upon an order of the court *ex officio*.

Employment of stenographers. *Added by: XXXI.1934.54. Amended by: XII. 1978.6.*

595. (1) Notwithstanding the provisions of the last preceding article, the court may, at the request of both parties, or, having regard to the circumstances of the case, *ex officio*, order that the answers given by the witnesses, or the substance thereof, be taken down in shorthand by means of stenographers appointed for the purpose or be recorded by electromagnetic means. Shorthand notes shall be taken down in indelible ink and signed on each page by the stenographers and shall, together with the transcript, be inserted in original in the record. The electromagnetic recording shall be transcribed under the direction of the registrar and the transcript shall be inserted in the record. In either case, the transcript may be handwritten or typewritten and shall be read over to the witness, during or after the sitting, by the registrar who shall make a note of such reading at the foot of the transcript.

(2) Should the witness desire to correct or add anything in or to the deposition as transcribed, the registrar shall make a note of such addition or correction, and in any such case it shall be lawful for either of the parties to reproduce the witness before the court in order that he may confirm the addition or correction.

(3) The witness may be called upon to appear before the registrar by means of a letter signed by him, and the provisions of this Code enforcing the attendance of witnesses shall apply to any such witness so called upon.

(4) The party producing the witnesses shall deposit with the registrar an amount sufficient to secure the stenographers' or recording fees.

Employment of interpreter. *Amended by: XV.1913.119; XXXI.1934.55; L.N. 46 of 1965; XXIV. 1995.223.*

596. (1) If the court does not understand the language in which the evidence is given, it shall appoint a qualified interpreter at the provisional expense of the party producing the witness.

Oath by interpreter.

(2) The official interpreter shall, on entering upon the duties of his office, swear before the court that he will faithfully report the words of the witnesses.

Oath by interpreter appointed by court.

(3) The interpreter appointed by the court shall take the said oath previously to the examination of the witness.

Registrar to administer oath.

(4) The oath shall be administered to the interpreter by the registrar.

Objection to interpreter.

(5) Any interpreter may be objected to on good cause shown.

Examination or cross-examination not to be interrupted.

597. The examination or cross-examination of any witness shall not be interrupted, without leave of the court.

Hearsay evidence. *Amended by: XV. 1913.120.*

598. (1) As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

(2) The court may, either *ex officio* or upon the objection of any party, rule out or disallow any question tending to elicit any such testimony.

(3) Nevertheless the court may require the witness to mention the person from whom he obtained knowledge of the facts to which any such question refers.

When hearsay evidence is admissible. *Amended by: XV.1913.121.*

599. The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety.

Dying declarations, etc. *Amended by: V.1913.122.*

600. It shall be lawful to produce any declaration made in writing in any place before a magistrate or other person, whether *in articulo mortis* or at any other time, in the presence or in the absence of the parties, with or without oath, provided it is shown that such declaration was made deliberately and in such circumstances as lead to the belief that there was no intention to depart from the truth, and that the party who made such declaration

would have been a competent witness if he could be called to give his evidence at the trial.

Arrest of false witness. *Amended by: VIII. 1990.3.*

601. (1) Where it appears to the court that a witness has become guilty of false testimony, it shall order that he be forthwith arrested, and shall cause a copy of the acts to be transmitted, without delay, through the registrar, to the Court of Magistrates in order that proceedings may be taken according to law.

Stay of proceedings.

(2) In any such case, it shall be lawful for the court, upon the oral demand of either of the parties, to stay the proceedings in the action in which the witness has deposed, until the criminal proceedings against the witness shall have terminated, provided this may be done without prejudice to the other party, and provided the testimony impeached as false be such as to be likely to bear substantially on the merits of the cause.

Addition or correction by witness or interpreter. *Amended by: XXXI.1934.57.*

602. (1) If the witness or interpreter, at any time before the hearing of the cause is concluded, wishes to make any addition or correction, the court shall allow such addition or correction and shall give weight thereto according to circumstances.

(2) Any such addition or correction shall be noted down and certified in accordance with the provisions of articles 594 and 595.

Identification of persons or objects.

603. In order to prove the identity of any person or object it shall not be necessary that the witness should point out such person from among other persons, or pick out such object from among other similar objects, unless the court should think it expedient to adopt such course.

Witness not to leave court.

604. No witness may leave the court until he is dismissed by the court.

Communication between witnesses.

605. It shall be lawful for the court, either of its own motion or upon the demand of the parties, to prevent any witness who has been examined from holding any communication whatever with any other witness who is about to be examined.

Examination of witness about to leave Malta, etc. *Amended by: X. 1856.11; IV. 1868.10; IX. 1886.93; XV. 1913.123; VIII. 1990.3; XXIV. 1995.224; XXXI. 2002.155.*

606. (1) Where any person whose evidence is required in a cause which is pending, is about to leave Malta, or is so infirm or advanced in years that he might die or become unable to give his evidence before the time when such cause will come up for trial, or is unable to attend the trial, it shall be lawful for the court, saving the cases referred to in article 611, to commit the examination of such person to a judicial assistant; and in any such case, the questions put to the witness, together with his answers thereto, shall be taken down in writing, and the deposition shall be signed or marked by the witness himself.

Form of demand for examination.

(2) The demand for the examination of any person as provided in subarticle (1), if made before the day appointed for the trial or the continuation of the trial of the cause, shall be by an application and the applicant shall swear that he has reason to believe that the witness is about to leave Malta or is unable to appear before the court, as the case may be; during the hearing such demand may be made orally.

Examination of witness outside jurisdiction of court.

(3) Where the cause is pending before any of the superior courts, or before the Court of Magistrates (Malta), and the person to be examined under the provisions of this article is in the Island of Gozo or of Comino, it shall be lawful for the court to commit the examination of such person to a judicial assistant; and where the cause is pending before the Court of Magistrates (Gozo), and the person to be examined as aforesaid is in the Island of Malta, it shall be lawful for the court to commit the examination of such person to a judicial assistant.

Judicial assistant to administer oath.

(4) In the cases referred to in this article, the oath may be administered by the judicial assistant.

(5) The party by whom the evidence is required shall, before the order of the court is carried out, deposit with the registrar a sufficient sum to cover any expense which may be incurred for the execution of the order; and in default of such deposit, it shall be lawful for the court to decide the cause without such evidence.

Judicial assistant to take down objections to competency or credit of witnesses. *Amended by: XXIV. 1995.225. Substituted by: XXXI. 2002.156.*

607. The judicial assistant shall record any objection raised by the contending parties against the competency or credibility of any witness.

Examination of witness under article 606 may be ordered at any stage of the proceedings.

608. An examination under the provisions of article 606 may be ordered at any stage of the proceedings.

Signing and sealing of deposition. *Substituted by: XXXI. 2002.157.*

609. Any deposition taken in the manner provided in articles 606 and 607 shall also be signed by the judicial assistant, and shall then be sealed by the Registrar, and filed in the record of the proceedings.

Deposition may be taken independently of reasons mentioned in article 606. *Added by: XV. 1913.124. Amended by: XXVII. 1979.19; XXIV. 1995.226; XXXI. 2002.158.*

610. (1) The provisions of article 606 shall, independently of the reasons mentioned in that article, apply also in any case in which, in an action before the Civil Court, First Hall, a demand to that effect is made, by means of a note, by all parties to the action, and also in the case where the court so orders.

(2) In any such case, the provisions of the last part of article 606(1) shall not apply; but the answers given by the witnesses shall be taken down in the manner provided in article 594(1), and the deposition shall be signed or marked by the witness and countersigned by the judicial assistant who shall transmit it to the registrar.

Witnesses or questions objected to.

(3) If any question shall arise before a judicial assistant as to the competency or relevancy of a witness, or as to the admissibility or relevancy of any question put to a witness, the judicial assistant shall decide the question and record his decision, saving the right of the party aggrieved, in the case of rejection of the witness or question, to apply to the court.

(4) All other provisions of this Code relating to the

examination of witnesses before the court shall apply to any examination under this article, in so far as they are applicable.

Re-examination of witness in court.

(5) Nothing in this article contained shall prevent the court from ordering, either of its own motion or upon the demand of any of the parties, where necessary, that a witness examined under the provisions of this article be recalled and re-examined before it.

Examination of witness about to leave Malta, etc., whose evidence is required before inferior courts. *Amended by: X.1856.12; XV.1913.125,126 XXIX.1939.3; L.N. 4 of 1963; L.N. 46 of 1965; XXXI.1966.2; LVIII.1974.68; VIII.1990.3; XXIV. 1995.227.*

611. (1) Where the evidence of any person as provided in article 606 is required before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction, the witness shall be examined by the magistrate himself, but in the latter case the magistrate shall reduce the evidence to writing and shall cause it to be signed or marked by the witness.

(2) Whenever the Magistrate of the Court of Magistrates (Gozo) is temporarily absent from Gozo with the permission of the Minister responsible for justice, or is, through a lawful impediment, precluded from performing his duties, the registrar of the said court may be authorized by the Attorney General to take the evidence of any person as provided in article 606 and to administer the necessary oath.

(3) Nevertheless, the provisions of article 606(3) shall be applicable to any of the courts mentioned in sub-article (1) where the person to be examined is not in the Island or Islands where the court, before which the evidence is required, sits.

Applicability of article 606 in cases of witnesses disallowed by court of first instance.

612. (1) The provisions of article 606 shall also apply in the case where, for the reasons set out in that article, there are sufficient grounds to believe that a witness whose production has been disallowed in the court of first instance will not be able to attend before the appellate court.

(2) In any such case, the examination of the witness shall be ordered by the court before which the cause is pending, but the deposition shall be kept closed and sealed until the appellate court shall have declared the witness to be competent.

Evidence of person residing abroad. *Amended by: XI.1977.2; VIII.1990.3; XXIV.1995.228.*

Stay of proceedings.

613. Where it is made to appear to the satisfaction of any of the superior courts, or of the Court of Magistrates (Gozo) in its superior jurisdiction, that the evidence of any person who is absent from Malta is indispensable for the determination of any cause pending before any of such courts, it shall be lawful for the court to make an order declaring the examination of such witness to be necessary and the court may stay the proceedings after having complied with the provisions of article 158 and adjourn the cause to a time within which such evidence is to be obtained.

Form of application for letters of request. *Amended by: XV. 1913.127; XXIV. 1995.229.*

Production of interrogatories.

614. (1) The demand for any such examination shall be by application if made at any time before the hearing of the cause, or oral if made during the hearing; and in either case, the party demanding the examination shall produce the interrogatories reduced into writing, and state the name and address of the person who is to represent him during the examination.

Translation of interrogatories.

(2) The court shall not receive such interrogatories if they are

not accompanied by a translation in the language of the place where the witness is to be examined, unless it is made to appear to the satisfaction of the court that it is impracticable to prepare such translation; in which case, a note of such fact shall be entered in the record of the cause and mention thereof shall be made in the letters of request referred to in article 618.

Translation to be verified on oath.

(3) Any such translation shall be signed, and its correctness verified on oath before the registrar, by the translator.

Oath by person applying for letters of request.

615. The party demanding the examination shall affirm upon oath that he knows, or, that he possesses information which he has sufficient reason to believe to be true, that the proposed witness is in the place stated by him and that such witness is in a position to certify the truth of the facts stated in the interrogatories.

Opposite party may appoint a representative. *Amended by: XXIV.1995.230.*

616. If the demand referred to in article 614 is allowed, the opposite party shall have the right to appoint a person to represent him at the time of the examination, the name and address of such person being stated to the court within the time fixed in the decree.

Interrogatories to be accessible to opposite party. *Substituted by: XXIV. 1995.231.*

617. A copy of the interrogatories reduced into writing shall be served on the opposite party or on his advocate.

Drawing up of letter of request.

618. On the expiration of the time referred to in article 616, the registrar, upon a decree to be made by the court for the purpose, shall draw up a letter of request addressed to one of the judges or magistrates of the place in which the request is to be executed, or to any other person or persons as stated in the decree, requesting such judge, magistrate or other person or persons to examine on oath the witness; a copy of the decree and of the interrogatories shall be annexed to the letter of request which shall contain the name and description of the persons appointed by the parties as their agents.

Transmission of letter of request and documents to Minister responsible for justice. *Amended by: L.N. 4 of 1963; XXIV. 1995.232.*

619. The letter of request referred to in the last preceding article, together with the accompanying documents, shall be transmitted by the registrar to the Minister responsible for justice, who shall forward it to the proper authorities with a request that it may be executed.

Duty of person demanding examination.

620. It shall be the duty of the party demanding the examination to solicit the authority or person requested to take the examination, to carry out such examination in accordance with the terms of the letter of request.

Method of examination by interrogatories. Powers of examiner.

621. Before the authority or person requested to take the examination, the questions shall be put according to the interrogatories transmitted with the letter of request, and, in cross-examination, there shall be put such other questions as the agent of the opposite party may require; the examiner may also put any other questions which, as a result of the answers given, he may deem or the agent of the party demanding the examination may show to be necessary or expedient.

622. (1) The agents of the contending parties duly informed by the authority or person requested to take the examination shall attend on the day and at the place appointed for the examination; and it shall be the duty of the agent of the party producing the evidence to bring with him the witness to be examined; the examination shall be reduced into writing, signed or marked by the witness and signed by the examiner.

Notice of time and place of examination to be given to representatives of parties. Examination to be reduced into writing. *Amended by: L.N. 4 of 1963; XXIV. 1995.233.*

(2) The provisions of sub-article (1) shall be duly stated in the letter of request, which shall also contain a request to the effect that the said authority or person will transmit the examination, when completed, to the Minister responsible for justice, who shall cause it to be forwarded to the court.

Provisions of this article to be stated in letter of request.

622A. (1) Notwithstanding the provisions of articles 613 to 622, where the evidence of a witness residing outside Malta is required, and such person has made an affidavit about facts within his knowledge before an authority or other person who is by the law of the country where the witness resides empowered to administer oaths, or before a consular officer of Malta serving in the country where the witness resides, such affidavit duly authenticated may be produced in evidence before a court in Malta; and the provisions of articles 623, 624 and 625 shall apply to such affidavits.

Evidence by affidavit of witness residing abroad. *Added by: XXIV.1995.234.*

(2) The affidavit so obtained shall be served on the opposite party or parties, and any party to the proceedings desiring to cross-examine such a witness shall apply to the court for the examination of such witness by letters of request not later than twenty days from the service of the affidavit; and the provisions of this Code relative to letters of request shall apply with such modifications and adaptations as may be necessary.

(3) If no application is made as aforesaid no cross-examination of the witness shall be allowed unless the court for a good reason otherwise directs; and the affidavit shall be taken into consideration notwithstanding the absence of cross-examination.

(4) Notwithstanding the foregoing provisions of this article, if the parties agree, and the court deems it proper so to act, the court may make such other provisions concerning the conduct of the cross-examination as may be appropriate according to circumstances.

622B. Without prejudice to the provisions of article 622A, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.

Audio-recording or video-recording of evidence. *Added by: XXXI. 2002.159.*

623. When the court shall have received the examination, or if the authority or person requested to take the examination shall have reported that it was not possible to take the same, either because the witness was not produced, or for any other cause, or if, in the opinion of the court, having regard to the distance of the place and

Resumption of trial. *Amended by: XXIV.1995.235.*

to all other circumstances, sufficient time has elapsed without the examination having been received, it shall be lawful for the court, of its own motion or upon the application of the party interested, to order that the cause be set down for hearing, tried and determined.

Production of evidence taken upon letters of request. *Amended by: XXIV. 1995.236.*

624. (1) The examination taken in accordance with the provisions of articles 613 to 620 inclusive, may be produced as evidence not only in the court of first instance and in the appellate court, but also in the appellate court only, whenever the examination, although ordered by a decree of the court of first instance, shall have been received after the cause has passed to the appellate court.

(2) If the cause in which the examination was ordered has terminated and has subsequently been re-instituted in terms of law, the examination may also be produced both before the court of first instance and before the appellate court.

Reading of depositions in court. *Amended by: XXII. 1976.4.*

625. (1) The depositions of witnesses taken in the manner provided in articles 606, and 613 to 624, shall be read at the trial of the cause, if at the time of such trial, the witnesses who had been so examined be dead, or unable to attend, or kept out of the way by means of the procurement of the opposite party, or absent from Malta.

(2) Such depositions, although taken during the pendency of the cause before the court of first instance, may be made use of also before the appellate court, provided the impediment referred to in this article continues to exist.

Examination of witnesses by referee. *Amended by: IX. 1886.95; XXXI. 1934.58.*

626. (1) It shall be lawful for the court, in making an order of reference, to empower the referee to examine witnesses and to administer oaths.

Production before court of witnesses heard by referee.

(2) Any witness examined by the referee may, by leave of court, be again produced before the court, and it shall also be lawful for the court of its own motion to order the production of any such witness.

Sub-title II

OF DOCUMENTARY EVIDENCE

Documents requiring no proof of authenticity other than that which they bear on the face of them. *Amended by: L.N. 4 of 1963; XI.1973.377; XXII. 1976.4; XXIV.1995.237; XXIV.1995.357.*

627. The following documents shall be admissible in evidence without the necessity of any proof of their authenticity other than that which appears on the face of them, and shall, until the contrary is proved, be evidence of their contents:

(*a*) the acts of the Government of Malta, signed by the Minister or by the head of the department from which they emanate, or in his absence, by the deputy, assistant, or other officer next in rank, authorized to sign such acts;

(*b*) the registers of any department of the Government of Malta;

(*c*) all public acts signed by the competent authorities, and contained in the Government Gazette;

(*d*) the acts of the Government of Malta printed under the authority of the Government and duly published;

(*e*) the acts and registers of the courts of justice and of the ecclesiastical courts, in Malta;

(*f*) the certificates issued from the Public Registry Office and the Land Registry;

(*g*) the sea-protest made under the authority of the Civil Court, First Hall;

(*h*) the documents mentioned in article 68, in article 95(3), in article 227 and, in so far as it applies article 227, in article 274 of the Merchant Shipping Act, as provided in the said provisions. Cap. 234.

Acts of foreign Governments, etc. *Amended by: XXII. 1976.4.*

628. The acts of any foreign Government, or of any department of a foreign Government, or of foreign courts of justice, or of any foreign establishment, authenticated by the diplomatic or consular representative of the Government of Malta in the country from which they emanate, or by a person serving in a diplomatic, consular or other foreign service of any country which by arrangement with the Government of Malta has undertaken to represent this Government's interests in that country, or by any other competent authority in the country from which they emanate, shall also be admissible as evidence in the same manner as the documents mentioned in the last preceding article.

Acts requiring proof of authenticity. *Amended by: XI.1973.377.*

629. The following documents are admissible and shall, until the contrary is proved, be evidence of their contents, provided their authenticity be proved:

(*a*) the acts and registers of any establishment, or public body, authorized or recognized by law or by the Government;

(*b*) the parochial acts and registers relative to births, marriages and deaths, and the dispositions made according to law in the presence of a parish priest;

(*c*) the acts and registers of notaries public in Malta;

(*d*) the books of traders kept according to law, only with regard to any agreement or other transaction of a

commercial nature;

(*e*) the books of public brokers kept according to law, with regard to anything which may have taken place between contracting parties in commercial matters;

(*f*) the documents mentioned in article 134(3), in article 176(2) and in article 190(6) of the Merchant Shipping Act, as provided in the said provisions.

Cap. 234.

Acts and registers of foreign notaries.

630. The acts and registers of notaries public of other countries, authenticated in the manner provided in article 628, shall be admissible and shall be evidence of their contents, in the same manner as the acts mentioned in article 627.

Traders' books, etc., to constitute evidence against traders, etc.

631. The books of traders and ships' books shall constitute evidence against the traders themselves or the masters or owners of the ships, notwithstanding that such books are not kept according to law.

Declarations against interest, etc.

632. (1) Any declaration made by a party against his interest, or any other writing containing any admission, agreement, or obligation is admissible as evidence.

Material objects.

(2) Any writing, whether printed or not, and any inscription, seal, banner, instrument or tool of any art or trade, tally or score, map, sign or mark, which may furnish information, explanation or ground of inference in respect of the facts of the suit, are admissible as evidence.

Defective public act which may be admissible in evidence as private writing.

633. Any act which, by reason of the incompetence or incapacity of the officer by whom it was drawn up, compiled, or published, or which, owing to the absence of some formality prescribed by law, has not the force of a public act, shall be admissible as evidence as a private writing between the parties, if the parties have signed or marked the same, or if it is proved that such act has been drawn up or signed by some other person acting on their instructions.

Rules of evidence as to signatures or marks.
Amended by: IX. 1886.96; XV.1913.128; XII.1924.5; II.1947.2; XV.1983.10; XXI.1993.87; XXIV. 1995.238.

634. (1) A person against whom any paper apparently signed by him is produced, is bound to declare positively whether the writing or signature is his own or not, and in default of such declaration, such writing or signature shall, until the contrary is proved, be deemed to be his own.

(2) Any signature or mark attested by an advocate, a notary or a legal procurator shall, unless the contrary is proved, be deemed to be genuine if in the attestation it is declared by the advocate or notary or legal procurator that such signature or mark was subscribed or set in his presence and, where the person cannot sign his name, in the presence of two witnesses whose signature appears on the act, and that he has personally ascertained the identity of the persons setting such signature or mark.

Cap. 16.

(3) For the purposes of article 1233(1)(*g*) of the Civil Code, any signature or mark attested by a parish priest in the manner provided in sub-article (2) shall also, unless the contrary is proved, be deemed to be genuine.

Modes of proving handwriting.

635. Where it shall be necessary to ascertain the handwriting of any person by whom a document has been written or signed, such proof may be made -

(*a*) by the person who wrote or signed the document acknowledging his own handwriting;

(*b*) by means of witnesses who actually saw the person write or sign the document;

(*c*) by means of witnesses who, although they have not seen the person write or sign the document, are acquainted with his handwriting;

(*d*) by the comparison of handwritings, or by other circumstances or presumptions;

(*e*) by means of experts in handwriting, in cases of writings difficult to verify.

Copies.

636. (1) Authentic copies of the documents mentioned in articles 627, 628 and in article 629(*a*), (*b*), (*c*) and (*e*) are admissible as evidence.

Authenticity thereof.

(2) Copies shall be deemed to be authentic, when they are made in the form prescribed by law by the officer by whom the original was received or is preserved, or by the person lawfully authorized for the purpose.

Probatory force.

(3) Authentic copies shall be evidence to the same extent as the originals.

Sub-title III

OF THE DEMAND FOR THE PRODUCTION OF DOCUMENTS

Actio ad exhibendum. Amended by: XI.1859.29,30; VI.1880.27; XV.1913.129; II.1940.12; XXIV.1995.239.

637. (1) It shall be lawful to demand the production of documents which are in the possession of other persons -

(*a*) if such documents are the property of the party demanding the production thereof;

(*b*) if such documents belong in common to the party demanding their production and to the party against whom the demand is made;

(*c*) if the party demanding the production of the documents, although he is not the owner or a co-owner thereof, shows that he has an interest that such documents be produced by the other party to the suit;

(*d*) if the person possessing the documents, not being a party to the suit, does not declare on oath that, independently of any favour for either side, he has special reasons not to produce the documents;

(*e*) if the documents are public acts, or acts intended to constitute evidence in the interest of the public in general.

(2) It shall be lawful for the court to order the production only

of such part of books or other documents as relate to the matter in issue.

Privileged documents.

(3) It shall not be lawful to demand the production of any exempt document which forms part of any correspondence of any civil, military, naval or air force department or of any report belonging to any such department.

(4) For the purposes of sub-article (3), a document is an exempt document if -

(*a*) disclosure of the document would be contrary to the public interest for the reason that the disclosure -

(i) would, or could reasonably be expected to, cause damage to -

(*a*) the security of Malta;

(*b*) the defence of Malta; or

(*c*) the international relations of Malta; or

(ii) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of Malta;

(*b*) it is a Cabinet document, that is to say -

(i) a document that has been submitted to the Cabinet for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;

(ii) an official record of the Cabinet;

(iii) a document that is a copy of, or of a part of, or contains an extract from a document referred to in sub-paragraphs (i) and (ii) of this paragraph; or

(iv) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was published;

(*c*) it is a document which would disclose matters in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purpose of the deliberative processes involved in the functions of a Ministry, Government department, authority, corporation or parastatal entity;

(*d*) it is a document that would, or could reasonably be expected to -

(i) prejudice the conduct of any investigation of a breach, or possible breach, of the law, or prejudice the enforcement or proper

administration of the law in a particular instance;

(ii) disclose, or enable a person to ascertain the existence or identity of a confidential source of information; or

(iii) endanger the life or physical safety of any person;

(*e*) it is a document that would or could reasonably be expected to -

(i) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(ii) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would reasonably be likely to, prejudice the effectiveness of those methods or procedures; or

(iii) prejudice the maintenance or enforcement of lawful methods for the protection of public safety;

(*f*) there is in force any law applicable to information of a kind contained in the document and prohibiting persons referred to in the law from disclosing information of that kind.

(5) Saving the provisions of article 518 of the Criminal Code it shall not be lawful to demand the production of any *procès-verbal*, record of inquiry, or other document relating to criminal matters, unless such *procès-verbal*, record of inquiry, or document be deposited in the registry. Cap. 9.

(6) Where the Prime Minister is satisfied that the disclosure of the existence or contents of any document referred to in sub-article (4) would be contrary to the public interest for any reason therein stated, he may sign a certificate to that effect specifying that reason, and such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document and where such a certificate is produced it shall constitute final and conclusive proof that the document is one as is referred to in sub-article (4) and is an exempt document in terms of sub-article (3), and no court shall have jurisdiction to enquire thereon.

638. (1) Any person whose affairs are administered by another person, shall be deemed to be the owner of the books or other documents kept by the administrator in the discharge of his functions. Documents kept by administrator presumed to belong to person whose estate he administers.

(2) Documents relating to any succession, partition, or partnership, or to the affairs of any bankrupt debtor, shall be deemed to be common property. Documents relating to successions, etc. to be deemed common property.

Court to decide as to interest of party demanding production of documents.

(3) It shall rest with the court to decide as to the interest of the party demanding the production, regard being had to the nature of the case and to the nature of the document the production of which is demanded.

Contents of demand for production of documents.

639. The demand for the production of documents shall state the nature of the documents, and all the particulars which may be known to the party making the demand.

Form of demand for production of documents. *Amended by: XXIV. 1995.240.*

640. Where the demand for the production of documents is made by one contending party against another, it shall be made in the same manner as the demand for a reference to the oath of the opposite party; and where such demand is made against third parties, it shall be made by application or in the subpoena to give evidence as witness.

Proof of possession of documents.

641. In all cases, the party demanding the production of the document must prove that the document is in the possession of the person from whom the production is demanded.

Time in which demand for production of documents may be made.

642. The production of documents may be demanded at any stage of the cause, so long as evidence may still be adduced.

Indirect proof arising from default of production.

643. It shall be lawful for the court to consider the contents of a document to be as averred by the party demanding its production, if the opposite party, notwithstanding the order of the court, refuses to produce such document.

Sub-title IV

OF REFEREES

Order of reference. *Amended by: XXIV. 1995.241.*

644. The proof by means of a referee or referees is ordered on the demand of the parties or one of them, or by the court of its own motion.

Contents of order. *Amended by: XII.1985.14. Substituted by: XXIV. 1995.242.*

645. (1) The court shall not appoint a referee solely for the purpose of examining witnesses on oath and taking down their depositions in writing and establishing the relevant facts.

(2) In the decree appointing the referee, the court shall -

(*a*) state the object of the reference;

(*b*) fix the day and time when the referee is to conduct an inspection *in faciem loci* where necessary;

(*c*) give directions for the guidance of the referee in the execution of his task.

(3) The court may at any time, at the request of the registrar or on its own motion, order the referee to return the records of the cause that are in his possession, to the registrar there to remain for such time as shall be specified in that order. In case of non-compliance with the court's order, the referee shall without

prejudice to any other proceedings which may be instituted against him be guilty of contempt of court.

(4) The court may order the referee to attend for the hearing of the trial and to put to the witnesses any questions he may deem necessary or relevant to enable him to complete his report.

(5) Where affidavits have been filed in the registry of the court, the referee shall be served with a copy of such affidavits before the hearing.

Appointment of referee. *Amended by: XXXI.1934.59. Substituted by: XXIV. 1995.243.*

646. (1) Where the parties agree on the submission of a name of a referee, the court shall appoint the referee agreed upon by the parties.

(2) Where the parties fail to agree, the court shall appoint a referee of its own choice.

No person may have more than two references at the same time. *Added by: IV.1934.2. Amended by: XV.1940.2; XXIV.1995.244.*

647.[*] (1) No person may be appointed as a referee in any cause or matter if such person has already two references upon neither of which he has yet filed his final report; and any appointment made in violation of this provision shall be null and void:

Exceptions.

Provided that the provisions of this article shall not apply -

(*a*) in any cause or matter which requires special technical knowledge if the number of persons possessing such special technical knowledge is very limited; or

(*b*) where the necessity arises of referring to the same referee the consideration of further questions raised in the same cause or matter;

(*c*) to the appointment of additional referees in accordance with the provisions of this Code.

In the case provided under paragraph (*a*), the court shall in the order of reference state the reasons for appointing the person mentioned in the order.

Book of references.

(2) The registrar shall keep a record of any order of reference made by the court stating the date of the order and the date on which the referee shall have filed his report.

Challenge of referees.

648. A referee may be challenged by any of the parties on good cause being shown to the court.

Good cause for challenge.

649. *Repealed by: XXIV. 1995.246.*

Time for making peremptory challenge.

650. *Repealed by: XXIV. 1995.246.*

Power of court.

651. *Repealed by: XXIV. 1995.246.*

**See* Rule published by Government Notice No.106 of 1937.

Challenge of referee named by court.
Amended by: IV. 1862.12.

652. *Repealed by: XXIV. 1995.246.*

Time for challenging referee for good cause.
Amended by: XXIV. 1995.247.

653. A referee may be challenged for good cause at any time until he has filed his report, provided the party making the challenge declares upon oath that he was not aware of such cause at the time of the appointment, and that he never appeared before the referee, nor performed any act before him, from the time when he became aware of such cause.

Mode of making challenges for cause.

654. Challenges for any cause existing and known at the time of the appointment of the referee shall be made orally during the hearing; and challenges for any cause supervening after the appointment, or which, although existing previously to the appointment, was unknown, shall be made by an application demanding the appointment of another referee in his stead.

Hearing of grounds of objection.
Amended by: XV.1913.130; XXIV. 1995.248.

655. (1) Upon any such application, the court shall make an order suspending the proceedings before the referee and shall appoint a day for the hearing of the grounds of the objection.

Decree not subject to appeal.

(2) The decree of the court allowing or disallowing the objection shall not be subject to appeal.

Appointment of another referee.

(3) Where the court allows the objection, it shall in the same decree appoint another referee.

Service of order of reference on referee.
Amended by: XV.1913.130.
Substituted by: XXIV. 1995.249.

656. The decree making the order of reference shall be served by order of the court on the referee.

Declination of appointment.
Amended by: XV. 1913.130.

657. (1) Any referee who declines the appointment shall give notice in writing of his refusal to the registrar, within two days from the service of the decree.

Tacit acceptance.

(2) Failing such notice, the referee shall be deemed to have accepted the appointment.

Duties of registrar.

(3) The registrar, upon recording the refusal, shall forthwith by letter call upon the parties to appear on a date to be fixed by the court in order that another referee may be appointed in case the refusal is accepted by the court.

Penalty for certain persons refusing without reasonable excuse to act as referees.
Amended by: XV. 1913.130.

658. If the referee appointed by the court is a person duly authorized by the Government to act as an expert, or to exercise any trade or profession, and such referee shall, without reasonable excuse, refuse to accept the appointment, it shall be lawful for the court which made the appointment to interdict him from acting as referee in any of the superior or inferior courts for a period not exceeding six months.

659. Any referee who, after having accepted the appointment, shall, without reasonable excuse, fail to attend on the day and at the time fixed for the carrying out of the reference, may be condemned in costs and damages.

Penalty for default of referee to carry out reference. *Amended by: XV.1913.130.*

660. The parties or their advocates or legal procurators, as the case may be, may, in the course of the proceedings before the referee, make such submissions as they may consider to be in their interest, and a mention thereof shall be made by the referee in his report.

Submissions by parties to referees. *Amended by: XV 1913.130.*

661. If for the carrying out of the reference one sitting is not sufficient, the referee may hold other sittings on such days and at such time as he may fix.

Sittings of referees. *Amended by: XV. 1913.130.*

662. If the referee is for any just cause unable to carry out the reference within the appointed time, he may, before the expiration of that time, apply for an extension provided that the court may for good and sufficient grounds, to be recorded, grant a further extension or extensions.

Extension of time to carry out reference. *Amended by: XV.1913.130; XXIV. 1995.250.*

663. If any referee shall, without reasonable excuse, delay the report or refuse to file the report within the prescribed time, original or enlarged, his appointment shall *ipso facto* lapse and the court shall *ex officio* appoint another referee in his stead; in which case he shall not be entitled to any fee or reimbursement and shall be liable for costs and damages.

Penalty for delaying or refusing to file report without reasonable excuse. *Amended by: XV. 1913.130.*

664. (1) The court shall issue writs of subpoena to witnesses to appear before the referee, and if any such witness fails to attend, the court shall, upon a report in writing by the referee, proceed in the manner provided in article 575.

(2) The provisions of article 569(2) shall apply to such writs.

Summoning of witnesses before referees. Penalty for non-attendance of witnesses. *Amended by: XV. 1913.130.*

665. (1) The report of the referee shall state the inquiries made and his findings together with the grounds of such findings.

Contents of report. *Amended by: XV.1913.130; XIX.1965.16; XXIV. 1995.251.*

(2) The documents produced by the parties and the depositions of the witnesses shall be annexed to the report.

Annexes to report.

(3) The report shall not be supplemented by plans or models, unless the court so directs or the parties give their consent thereto.

When plans and models may be annexed to report.

(4) The report shall be signed by the referee or referees as the case may be unless otherwise provided by the court.

Signing of report by referee.

(5) The report shall be clearly and legibly typewritten or written in ink.

Report to be legibly written.

666. (1) Before the day appointed for the publication of the report, or on the same day, but before the cause is called, the referee shall present his report unsealed to the registrar for the taxation of his fees in accordance with the Tariffs in Schedule A annexed to this Code.

Taxation of fee due to referees. *Amended by: XV. 1913.130; XXIV. 1995.252.*

(2) Except where otherwise provided, the referee shall not be required to publish his report until the fee taxed by the registrar has

Report not accessible until fees are paid.

been paid to him or deposited with the registrar, and the registrar shall not disclose to any person any part of the report, until the fee has been paid or deposited as aforesaid, under penalty of paying to the referee the fees due to him.

Insertion of report in record.

(3) Upon the payment or deposit as aforesaid, the registrar shall insert the report in the record of the cause and such report shall thereupon be accessible in the same manner as other parts of the record.

Appeal by referee or party from taxation of fee. Time for appeal. *Amended by: XV. 1913.130; XXI. 1934.60; XXIV. 1995.253.*

667. (1) Any referee or party may appeal from a taxation made under the last preceding article to the court by which the referee was appointed, whatever the amount taxed or claimed, within eight days from the day mentioned in article 672 or, where the attendance of the referee has been dispensed with as provided in that article, from the day on which the referee or the contending parties shall have been notified of the taxation by letter of the registrar.

Form of appeal.

(2) Pending the decision of the cause in which the order of reference was made, such appeal may be entered by means of a note.

(3) After the decision, such appeal shall be by application and shall be heard by the court summarily.

Directions of court.

(4) If the appeal appears *prima facie* justified, the court shall, after hearing the parties, direct the registrar to make a fresh taxation.

By whom fee of referee is to be provisionally paid. *Amended by: IV. 1862.13; XV. 1913.130; XXIV. 1995.254.*

668. (1) The decree ordering the reference shall state the party by whom the fee of the referee shall provisionally be paid or deposited.

(2) When the reference is required by the plaintiff to prove some fact upon which he relies for his claim, the fee of the referees shall provisionally be paid or deposited by the plaintiff.

(3) In all other cases, it shall be in the discretion of the court to determine whether, and if so, in what proportion, each of the parties shall provisionally bear a part of such fee, regard being had to the respective interest of the parties to the action.

Court may order deposit of fee due to referee. *Amended by: IV. 1862.13; XV. 1913.130. Substituted by: XXIV. 1995.255.*

669. The court may in the decree appointing the referee or at any time before the referee presents his report to the registrar, order the party by whom the fee is to be provisionally paid, to deposit with the registrar, within such time as the court shall direct, a sum which, in the opinion of the court, approximately corresponds to the fee which will be due to the referee.

When court may decide cause without the reference. *Amended by: IV. 1862.13; XV.1913.130. Substituted by: XXIV.1995.256.*

670. The court may decide the cause without the reference or independently of the evidence produced before the referee -

(*a*) where the reference was not carried out within the original or extended time, for some cause attributable to the party in whose interest the order of reference was made; or

(*b*) where the fee taxed in favour of the referee as provided in article 666 has not been paid or deposited;

or

(*c*) where the deposit mentioned in the last preceding article has not been made.

Referee to divide fee in cases where parties are admitted to sue or to defend with the benefit of legal aid. *Amended by: XV.1913.130; XXIII.1971.23; XXIV. 1995.257.*

671. (1) Where one of the parties to an action has been admitted to sue or to defend with the benefit of legal aid, the referee shall be entitled to such part of the fee as may have been paid by the party not appearing with such benefit:

Provided that the referee shall be entitled to claim the other part of the fee if the party not appearing with the benefit of legal aid is condemned in costs.

(2) Where both parties appear with the benefit of legal aid, the referee, if he belongs to the class of persons mentioned in article 658, shall publish his report, although he may not have been paid the fee; and in the case of other referees, the fee will be paid by Government.

Publication of report. *Amended by: IV.1862.14; XV.1913.130; XXIV.1995.258.*

672. (1) On the day appointed for the publication of the report, the referee shall attend before the court for the object of publicly reading it out and confirming it on oath, unless his attendance is dispensed with by the court.

Oath.

(2) The oath shall be administered to the referees by the registrar.

Time for examination of report. *Amended by: XV. 1913.130; XXIV. 1995.259.*

673. The court shall allow the parties time to consider the report and to make their submissions thereon.

Additional referees. *Substituted by: XXIV. 1995.260.*

674. (1) It shall be lawful for the court, on the demand of any of the parties, to proceed to the appointment of additional referees who shall make their report on reaching a majority decision on the subject of the reference.

(2) Where the findings have been arrived at by a majority of votes, the report shall include a mention of the fact that there has been a dissenting member, what constituted the dissent as well as the grounds thereof.

(3) Subject to the provisions of this article, the provisions of this Sub-title shall *mutatis mutandis* apply to additional referees.

Average of amounts assessed by referees.

675. Where the subject-matter of the reference is a valuation or an assessment, it shall be lawful for the court, in either of the cases referred to in the last preceding article, on the demand of any of the parties, to appoint two additional referees; and upon their report, to fix an average of the amounts found in all the disagreeing reports.

When additional referee cannot be appointed.

676. *Repealed by: XXIV. 1995.261.*

Time for making demand for additional referees. *Amended by: XXXI.1934.61. Substituted by: XXIV. 1995.262.*

677. (1) The demand for the appointment of additional referees shall be made by means of a note to be filed within ten days.

(2) Such time shall commence to run from the date of the publication of the report. If the referees have been dispensed from attending before the court according to the provisions of article 672(1), such time shall commence to run from the date of the receipt by the party or his legal procurator of a notice signed by the registrar, stating that the report has been published.

Appointment of additional referees.

678. (1) The additional referees, whatever their number, shall be appointed by the court, unless the parties agree as to the referees to be appointed.

Challenges for good cause.

(2) The additional referees may be challenged for good cause.

Inadmissibility of fresh documents or witnesses after the filing of the report. *Amended by: XV.1913.130.*

679. Where authority has been granted to the referees to receive documents or to examine witnesses, no further documents or witnesses on the subject-matter of the reference shall be admissible before the court, except in the cases as provided in article 150(1)(*a*), (*b*), (*c*), (*d*) and (*e*) and in article 208(1)(*a*), (*b*) and (*d*).

Examination of referees. *Amended by: XV.1913.130; XXXI. 1934.62.*

680. (1) The referees may be examined and cross-examined on their report in the same manner as witnesses.

(2) The provisions of articles 594 and 595 shall apply to the answers given by the referees.

Court not bound to adopt report. *Added by: XV. 1913.130.*

681. The court is not bound to adopt the report of the referees against its own conviction.

When reference is permitted before appellate court. *Added by: XV. 1913.130.*

682. In an appellate court, no reference may be ordered, except in the following cases:

(*a*) where there was no reference made in the court below and no express renunciation of such reference was made;

(*b*) where the subject-matter of the reference is, wholly or in part, different from that of the reference made in the court below, or in respect of which there was a renunciation;

(*c*) where the directions given to the referee by the court below were, in the opinion of the appellate court, defective or insufficient;

(*d*) where the appellate court is of opinion that the report is not so complete as to enable it to decide the cause:

Provided that nothing in this article shall operate so as to bar the appellate court from requiring further elucidations from the referees appointed by the court below.

Sub-title V

OF INSPECTION *IN FACIEM LOCI*

Inspection *in faciem loci.*

683. It shall he lawful for the court, on the demand of the parties or of its own motion, to order an inspection of the place, whenever it may deem it expedient for the disposal of the cause.

Contents of decree.

684. The court shall, in the decree ordering an inspection of the place, appoint the day and time for the inspection, and may also order one referee or three referees to attend.

Service of decree on referees. *Amended by: XXIV.1995.263.*

685. The decree shall be communicated to the parties and to the referee or referees in the manner provided in and for the purposes of article 656.

Deputing judicial assistant for inspections outside jurisdiction of court. *Amended by: XXXI. 2002.160.*

686. Where an inspection outside the jurisdiction of the court is necessary, the court may in the decree delegate a judicial assistant to hold the inspection and to perform all acts relative thereto.

Presence of one member of court to be sufficient.

687. *Repealed by: XXIV.1995.264.*

Court to repair to place at the appointed time.

688. (1) On the day and at the time appointed, the court shall repair to the place of inspection.

Attendance of parties.

(2) The contending parties may, and, if their attendance is required shall, be present at such inspection.

Parties may be represented by advocates, etc.

(3) In all cases, the parties may he represented or assisted by their advocates or legal procurators.

Record of inspection.

689. A record of the inspection shall he kept by the registrar in the form of a *procès-verbal.*

Directions to referees.

690. The court shall, whensoever it may deem it necessary, order the referee or referees to draw up plans and to state the measurements, the distance, and any other thing which the court may consider conducive to the object of the inquiry.

Examination of witnesses.

691. It shall be lawful for the court either to examine the witnesses at the place of inspection, or to reserve examining them during the hearing in court.

Costs of inspection.

692. As regards the payment or deposit of the expenses of the inspection, the provisions respecting proof by referees shall apply.

Sub-title VI

OF THE PROOF BY ADMISSION OR BY REFERENCE TO THE OATH OF THE OTHER PARTY

Admission made in or out of court.

693. Any admission of a fact whether written or verbal, made in or out of court, may be received in evidence against the party who made it.

Probatory force of admissions made out of court. *Amended by: IV. 1862.15.*

694. (1) An extrajudicial admission is no evidence except against the party who made it.

Admission made upon reference to oath of party.

(2) An admission made upon a reference to the oath of one of the parties may be received in evidence of a fact even against the other parties to the suit.

Part of admission worthy of credit to constitute evidence.

(3) In all cases, only such part of an admission as the court may deem worthy of credit shall constitute evidence.

Declarations, etc., made by advocate, etc., can be withdrawn at any time before judgment.

695. (1) Any declaration or statement made, whether *viva voce* or in writing, by any advocate or legal procurator, can be withdrawn by a note at any stage of the suit, even in the appellate court, before judgment is given, provided it shall not be proved that the advocate or legal procurator made the declaration or statement with the special authority of the party.

Mere presentation of act by party not to constitute proof of authority by party to advocate, etc.

(2) The presentation of an act in court by the party personally, shall not of itself, without other circumstances, be evidence that the declaration or statement of fact was made by the advocate or legal procurator with the special authority of the party.

Reference to oath of defendant. *Amended by: XV.1913.131; XXXI.1934.63; VIII.1990.3; XXIV. 1995.265.*

696. (1) In the superior courts and in the Court of Magistrates (Gozo) in its superior jurisdiction, a plaintiff who intends to furnish evidence by a reference to the oath of the defendant shall give him notice thereof in the written pleading commencing proceedings.

(2) Where the plaintiff omits to give the defendant such notice as provided in sub-article (1), he shall, at least two days before the day appointed for the hearing of the cause, present a note in the registry in order that the defendant may be informed, by letter of the registrar, that reference to his oath is required.

(3) The letter shall be drawn up by the plaintiff and shall he filed simultaneously with the note.

Reference to oath of plaintiff. *Amended by: XV.1913.132; XXIV. 1995.266.*

697. The provisions of sub-article (1) of the last preceding article shall apply in the case where the defendant requires reference to the oath of the plaintiff.

Non-appearance of party to whose oath reference is required. *Amended by: XV.1913.133,134; XXXI. 1934.64; XXIV. 1995.267.*

698. (1) If the party, to whose oath reference is required, fails to appear on the day appointed for the trial, the party referring shall, upon the issues being settled, make a declaration to the effect that he intends making such reference and shall present questions and statements which shall be formulated in an affirmative manner as to require an affirmative answer which shall be sealed by the registrar.

(2) If the party to whose oath reference is made fails to appear on the day to which the court shall adjourn the trial of the cause, without good cause being shown for his non-appearance, the questions shall be deemed to be admitted and accepted.

In the superior courts, questions to be in writing. *Amended by: VIII. 1990.3; XXIV. 1995.268.*

699. (1) In all courts of civil jurisdiction, the questions shall be made in writing.

Approval of questions by court.

(2) The questions shall, during the hearing of the cause, be presented to the court for approval.

Written questions to be clear, etc. *Amended by: XXIV. 1995.269.*

700. (1) The questions shall be clear, concise and numbered, and signed by the advocate or legal procurator, as the case may be, or by the party referring.

Exclusion of superfluous questions.

(2) In all cases, questions which are superfluous or which the court may deem it fit to reject, may be cancelled or rejected.

Affirmative or interrogative form of questions.

701. *Repealed by: XXIV. 1995.270.*

Demand for reference to oath in inferior courts. *Amended by: XV.1913.135; XXIII. 1971.24; XIII.1983.5; XII.1985.15; VIII.1990.3; XXIV. 1995.271.*

702. (1) In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, the demand by the plaintiff for the reference to the oath of the defendant shall be made in the notice referred to in article 171.

(2) If the reference is required by the defendant, the demand shall be made orally, either before or during the hearing of the cause; and in the former case notice of such demand shall be given to the plaintiff.

Non-appearance of party to whose oath reference is required.

(3) If the party to whose oath reference is required fails to appear on the day appointed for the trial -

(*a*) the questions as taken down by the court shall be deemed to be admitted, unless good cause is shown for his non-appearance, in any case other than cases for ejectment or eviction from immovable property, in which the claim before the court does not exceed the amount of two hundred and fifty liri;

(*b*) the court shall adjourn the trial to a date not later than fifteen days from the date of the sitting, unless the party making the reference renounces thereto, in any case for ejectment or eviction from immovable property or in any case in which the claim before the court exceeds the amount of two hundred and fifty liri,

and the questions as taken down by the court shall be deemed to be admitted if the party to whose oath reference is required, without good cause being shown for his non-appearance, fails again to appear on the day to which the court has adjourned the case as aforesaid.

Replies to questions.

703. The party to whose oath reference is made shall answer in terms of the questions.

Taking of answers to questions. *Amended by: XXXI.1934.65; II.1940.13. Substituted by: XXXII.1965.8. Amended by: XXIV.1995.272.* Cap. 189.

704. (1) The provisions of article 2(*e*) of the Judicial Proceedings (Use of English Language) Act, shall *mutatis mutandis* apply to the answers to the questions in all courts.

(2) Such answers shall be certified by the registrar and shall form part of the record.

Further queries.

705. (1) It shall be lawful for the court to put or allow the party referring to put to the other party to whose oath reference is made any query which, although not included in the interrogatories, is connected with the subject-matter of the questions, or tends to elicit true and precise answers on the matter of the questions.

(2) The answers to any such queries shall also be taken down and certified by the registrar, and shall be inserted in the record.

Deputing judicial assistant to take answers upon a reference to oath. *Amended by: XV. 1913.136; XXIV. 1995.273; XXXI. 2002.161.*

706. (1) Where the party to whose oath reference is required is lawfully prevented from appearing in court, it shall be lawful for the court, on the demand of the other party, to order that the answers to the questions be taken, on the day and at the time to be stated in the order, at the place of abode of the party to whose oath reference is required, by a judicial assistant; and such order shall be served on the person or persons to whose oath reference is required. The party seeking the reference shall pay for such service, saving any right of reimbursement thereof in terms of the eventual decision of the court.

Attendance of parties, etc.

(2) It shall be lawful for the opposite party and for the advocates or legal procurators to attend.

Answers to be taken down and signed by judicial assistant.

(3) The answers shall be taken down and signed at the end thereof by the judicial assistant.

Applicability of subarticles (4) and (5) of s.606.

(4) The provisions of article 606(4) and (5) shall apply in the case provided for in this article.

Reference to oath of other parties not under impediment. *Amended by: XV. 1913.137; XXIV. 1995.274; XXXI. 2002.162.*

707. (1) Where, in the same cause, reference is required to the oath of other parties in respect of whom there is not the impediment stated in the last preceding article, it shall be lawful for the court to order that the depositions of such other parties under the reference be taken, one after the other, on the same day, by a judicial assistant at the place of abode of the party in respect of whom there exists the impediment, immediately after the deposition of such party under the reference, and in the same manner as provided in

that article; and such order shall be served on the person or persons to whose oath reference is required. The party seeking the reference shall pay for such service, saving any right of reimbursement thereof in terms of the eventual decision of the court.

(2) In any case under this article, the oath may likewise be administered by a judicial assistant.

Before inferior courts reference to be taken by sitting magistrate. *Amended by: X.1856.13; VIII.1990.3; XXIV.1995.275.*

708. In the cases referred to in the last two preceding articles, if the cause is pending before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction, the reference shall be taken by the magistrate before whom the cause is pending.

Applicability of sub-articles (3), (4) and (5) of article 606 where party to whose oath reference is required, is outside jurisdiction. *Added by: IX. 1886.97. Amended by: XV.1913.138.*

709. In the cases referred to in articles 706 and 707, if the cause is pending in Malta and the party to whose oath reference is required is in the Island of Gozo or Comino, or if the cause is pending in Gozo and the party to whose oath reference is required is in the Island of Malta, the provisions of article 606(3), (4) and (5) shall apply with regard to the person by whom the deposition under the reference is to be taken and the oath administered, as well as with regard to the person by whom the expenses are to be prepaid.

Power to forbid presence of one party during deposition of another.

710. *Repealed by: XXIV. 1995.276.*

Reference to oath of party absent not allowed.

711. It shall not be lawful to make reference to the oath of any party who is absent from Malta.

Deputing judicial assistant to take deposition upon reference of party who might die before day of trial. *Amended by: VIII. 1990.3; XXIV. 1995.277; XXXI. 2002.163.*

712. (1) Where any party to a cause pending in any of the superior courts, or in the Court of Magistrates (Gozo) in its superior jurisdiction, desires to make a reference to the oath of the other party and has reasons to fear that at the time of the hearing of the cause, such party might be dead or unable, through absence from the country, or sickness, to attend, it shall be lawful for the party requiring the reference to demand, by means of an application, that a judicial assistant be deputed to take down the deposition on the reference in the manner laid down in articles 706 and 707, provided he presents, simultaneously with the application, the questions, and the court considers such questions to be admissible; and if the court accedes to the party's request as aforesaid, the order of the court shall be served on the person or persons to whose oath reference is required. The party seeking the reference shall pay for such service, saving any right of reimbursement thereof in terms of the eventual decision of the court.

(2) Where the impediment anticipated be that of absence, the court shall appoint the place where the deposition on the reference is to be taken.

Evidence by reference admissible at any stage of proceedings.

713. Reference to the oath of the other party shall be competent in all cases, whether before or after the production of other evidence, both before the first court and before the appellate court.

Evidence by reference may not be refused, even if no other evidence is available.

714. It shall not be lawful to refuse evidence by reference to the oath of the other party, even though no other evidence is available in support of the claim or defence in respect of which the reference is required.

Subject-matter of reference.

715. (1) A reference to oath may be made in regard to the whole matter in issue, or to any part thereof, as well as in regard to any particular fact connected with the cause.

(2) Before the appellate court a reference to oath may be made in regard to facts not included in the questions presented before the court below; and it shall also be lawful for the appellate court upon a demand to that effect to order an explanation in regard to answers given before the court below.

Power to defer back questions.

716. (1) The party to whose oath reference is made may defer back the questions or any part thereof to the party referring.

(2) The provisions of this article shall not apply unless the matter relates to a *factum proprium* of the party referring.

For the purposes of this article, any act whatsoever in which the party referring participated or of which he has personal knowledge shall be deemed to be a *factum proprium* of such party, whether he appears in the proceedings in his own name or in the name of others.

Refusal of party to whom reference is made to answer or defer back questions.

717. (1) Where the party to whose oath a reference is made, refuses to answer the questions or, in the cases provided under the last preceding article, fails to defer them back to the oath of his adversary, the questions shall be deemed to be proved in favour of the party referring.

Refusal of party referring to answer questions deferred back to him.

(2) Where, in the cases allowed by law, the questions have been deferred back to the party referring and such party refuses to answer them, the questions shall be deemed to be proved against him.

Retracting of questions.

718. The party referring or deferring may not retract the questions, if the adversary declares that he is prepared to answer.

Party present in court to declare whether he intends answering or deferring back questions.

719. The party to whose oath a reference is made shall, if present at the hearing of the cause, forthwith declare whether he proposes to answer the questions, or to defer them back to the adversary.

Suppletory oath.

720. Where the evidence produced is not of itself sufficient to establish the proof required, and the court is of opinion that such evidence, if supplemented by the oath of the party, would establish to its satisfaction the proof required, it shall be lawful for the court to require a suppletory oath.

Oath may be administered before or after judgment.

721. The suppletory oath may be administered either during the hearing of the cause, or after the judgment if expressly ordered by such judgment.

Judgment to fix time within which suppletory oath is to be taken.

722. The judgment ordering the suppletory oath shall fix the time within which such oath is to be taken.

Oath *in litem.*

723. (1) Where a party who has proved his case generally is, through the negligence or fraud of the opposite party, unable to prove the amount, or the quantity, in whole or in part, due to him, he shall be admitted, if the court deems it proper, to the oath *in litem.*

(2) The party may also be admitted to such oath, independently of any negligence or fraud of the opposite party, provided there are sufficient inferences in support of the alleged amount or quantity.

Party admitted to oath *in litem* to produce list of sums, etc., due.

724. The party applying to be admitted to the oath *in litem*, shall produce a list showing distinctly the sums or things due to him, and the amount or quantity in regard to which the oath is to be taken, together with a declaration to the effect that he is prepared to verify on oath the contents of such list, both as regards the existence as well as the amount or quantity of the sums or things stated therein.

Power of court.

725. The amount or quantity shown on the list shall be accepted by the court in so far as, having regard to all the circumstances of the case, it shall deem it just:

Provided that it shall be lawful for the court to require further elucidations and for such purpose to appoint one or more experts.

Applicability of sub-ss. (3), (4) and (5) of s.606.

726. The provisions of article 606(3), (4) and (5) may also be applied in the case of any of the oaths referred to in articles 720 and 723, if the party whose oath is required is residing outside the jurisdiction of the superior or inferior court by which the oath is ordained.

Oaths to be administered by registrar.
Amended by: X.1856.14; XV.1913.140; XXIV. 1995.278.

727. Saving the provisions of articles 706, 707 and 708 and of the last preceding article, the oaths referred to in the foregoing articles of this sub-title shall be administered by the registrar.

Title II

OF PLEAS

Sub-title 1

OF PLEAS GENERALLY

Pleas to be raised in note of pleas or answer.
Amended by: XIII. 1964.22.
Substituted by: XXIV. 1995.279.

728. (1) Subject to the provisions of article 731 in actions instituted by writ of summons or by application, all pleas whether dilatory or touching the merits shall be raised in the note of pleas or in the answer, as the case may be. Those pleas touching the merits shall be raised without prejudice to the dilatory pleas.

(2) No other pleas can be set up at a later stage; provided that the court may on an application by the defendant or respondent allow the setting up of additional pleas, if it is satisfied that there were valid reasons for not including them in the note of pleas or in the answer.

Power of court to hear merits of case in order to dispose of preliminary plea.

729. If the court deems it expedient, before proceeding further, to deal with the dilatory plea, the court may hear the merits so far as the same may affect the decision on the preliminary issue.

Certain pleas to be determined under separate heads.
Amended by: IX. 1886.98.

730. Any plea to the jurisdiction of the court or to the capacity of the parties, and any plea of compromise, arbitration, *res judicata*, prescription, or nullity of acts, shall be determined under a separate head, either before, or together with the decision on the merits.

Pleas which may be raised at any stage of proceedings.
Substituted by: XXIV. 1995.280.

731. The provisions of article 728 shall not apply to such pleas as by an express provision of this Code may be raised at any stage of the proceedings, or to pleas the reason for which arises during the trial.

Peremptory pleas.
Amended by: IX. 1886.99.

732. (1) Saving always the provisions of this Code respecting the production of evidence, peremptory pleas may be raised even before the appellate court although they may not have been raised before the court of first instance.

(2) Nevertheless, the plea of desertion of a cause shall be deemed to have been waived, if not raised before any other peremptory plea.

Sub-title II

OF THE CHALLENGE OF JUDGES AND MAGISTRATES AND OF SURROGATION

Challenge or abstention of judge.
Amended by: L.N.148 of 1975.

733. The judges may not be challenged, nor may they abstain from sitting in any cause brought before the court in which they are appointed to sit, except for any of the reasons hereinafter mentioned.

Grounds for challenge or abstention of judge.
Amended by: XLVI. 1973.108; XXIV.1995.281.

734. (1) A judge may be challenged or abstain from sitting in a cause -

(*a*) if he is related by consanguinity or affinity in a direct line to any of the parties;

(*b*) if he is related by consanguinity in the degree of brother, uncle or nephew, grand-uncle or grandnephew or cousin, to any of the parties, or if he is related by affinity in the degree of brother, uncle, or nephew, to any of the parties;

(*c*) if he is the tutor, curator, or presumptive heir of any of the parties; if he is or has been the agent of any of the parties to the suit; if he is the administrator of any establishment or partnership involved in the suit, or if any of the parties is his presumptive heir;

(*d*) (i) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon;

(ii) if he had previously taken cognizance of the cause as a judge or as an arbitrator:

Provided that this shall not apply to any decision delivered by the judge which did not definitely dispose of the merits in issue or to any judgment of non-suit of the plaintiff;

(iii) if he has made any disbursement in respect of the cause;

(iv) if he has given evidence or if any of the parties proposes to call him as a witness;

(*e*) if he, or his spouse, is directly or indirectly interested in the event of the suit;

(*f*) if the advocate or legal procurator pleading before a judge is the son or daughter, spouse or ascendant of the said judge;

(*g*) if the judge or his spouse has a case pending against any of the parties to the suit of happens to be his creditor or debtor in such manner as may reasonably give rise to suspicion of a direct or indiret interest that may influence the outcome of the case.

(2) A judge may be challenged or abstain from sitting in a cause when he has previously taken cognizance of and expressed himself on the same merits of that cause when sitting as a judge in the Civil Court, Second Hall.

Abstention by judge. Written or oral declaration thereanent.

735. (1) Any judge being aware of the existence in his respect of any of the grounds of challenge mentioned in the last preceding article, shall make a declaration to that effect previously to the trial of the cause, either verbally in open court, in which case a record of such declaration shall be entered in the proceedings of the cause, or in writing, in which case it shall be lodged in the registry before the day appointed for the trial of the cause, notice thereof being given to the parties.

Judge may hear and determine cause, if parties give their consent thereto.

(2) Nevertheless, it shall be lawful for the judge to hear and determine the cause if the parties shall expressly give their consent thereto, unless, in the particular circumstances of the case, he shall deem it proper to abstain from sitting notwithstanding such consent.

Judge to sign writs of summons or warrants notwithstanding that he is otherwise precluded from dealing with cause.

736. The existence of any of the grounds of challenge mentioned in article 734 shall not preclude the judge from signing, where necessary, any writ of summons or warrant.

Objection to judge to be made in open court.

737. Any objection to a judge shall be raised by the parties in open court, and the reasons thereof shall be alleged and, where necessary, proved.

Decision on grounds of challenge or abstention.

738. (1) Where the court consists only of one judge and such judge is objected to, he himself shall decide on the alleged ground of challenge, and no appeal shall lie against his decision, and he shall either abstain from sitting and rule that a surrogation of another judge is required, or else proceed with the trial, as the case may be.

(2) Where the court consists of more than one judge, all the judges, including the one objected to, shall decide on the ground of challenge, and where there is any reason to doubt as to whether an alleged ground of abstention is a good ground or otherwise, all the judges, including the judge alleging such ground, shall decide on such ground.

When objection to judge is not admissible.

739. The challenge of a judge shall not be admissible where the party raising the objection, if the plaintiff, has already submitted his claim at the trial, or, if the defendant, has already set up his pleas in defence, unless the ground of challenge shall have arisen subsequently, or unless the party raising the objection, or his advocate, shall declare upon oath that he was not aware of such ground, or that it did not occur to him at the time.

Application of provisions to magistrates. *Amended by: IV. 1905.2; XV. 1913.141; XXIV. 1995.282.*

740. The provisions of this sub-title shall be applicable to magistrates of the inferior courts.

Sub-title III

OF PLEAS TO THE JURISDICTION

Plea to the jurisdiction. Grounds of plea.

741. It shall be lawful to plead to the jurisdiction of the court -

(*a*) when the action is not one within the jurisdiction of the courts of Malta;

(*b*) when the action, although one within the jurisdiction of the courts of Malta, is brought before a court different from that by which such action is cognizable;

(*c*) when the privilege of being sued in a particular court is granted to the defendant.

Persons subject to jurisdiction of civil courts of Malta. *Amended by: XXII. 1976.4; VIII. 1981.7. Substituted by: XXIV. 1995.283.*

742. (1) Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:

(*a*) citizens of Malta, provided they have not fixed their domicile elsewhere;

(*b*) any person as long as he is either domiciled or resident or present in Malta;

(*c*) any person, in matters relating to property situate or existing in Malta;

(*d*) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;

(*e*) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;

(*f*) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;

(*g*) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.

(2) The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that a foreign court is seized with the same cause or with a cause connected with it. Where a foreign court has a concurrent jurisdiction, the courts may in their discretion, declare defendant to be non-suited or stay proceedings on the ground that if an action were to continue in Malta it would be vexatious, oppressive or unjust to the defendant.

(3) The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that there exists among the parties any arbitration agreement, whether the arbitration proceedings have commenced or not, in which case the court, saving the provisions of any law governing arbitration, shall stay proceedings without prejudice to the provisions of sub-article (4) and to the right of the court to give any order of direction.

(4) On the demand by any person being a party to an arbitration agreement, the courts may issue any precautionary act, in which case, if such party has not yet brought forward his claim before an arbitrator, the time limits prescribed in this Code for bringing the action in respect of the claim shall be twenty days from the date of

issue of the precautionary act.

(5) A precautionary act issued in terms of the preceding sub-article shall be rescinded:

(*a*) if the party against whom it is issued makes such deposit or gives such security sufficient to secure the rights or claims stated in the act; or

(*b*) if the applicant fails to bring forward his claim, whether before the arbitrator or before the court, within the said time limit of twenty days; or

(*c*) on the expiration of the duration, original or extended, of the particular act in terms of this Code; or

(*d*) for just cause on the application of the debtor as the court may deem proper in the circumstances.

Immunity of the President of Malta. *Added by: XXIV.1995.284.*

742A. No civil proceedings whatsoever shall be taken against the President of Malta in respect of acts done in the exercise of the functions of his office.

Party against whom counter-claim is set up, subject to jurisdiction of the courts of civil jurisdiction. *Amended by: XXIV. 1995.285.*

743. (1) The party against whom the defendant in an action brought by such party sets up a counter-claim shall also be subject to the jurisdiction of the courts of civil jurisdiction.

(2) The provision of this article shall also apply in the cases referred to in article 402.

Where counter-claim may be set up in other competent court in Malta.

744. The provisions of the last preceding article shall apply also in the case where the counter-claim may not, for other reasons, be set up before the court before which the original action has been brought; in such case, the claim of the defendant, if connected with the subject of the action of the plaintiff on any of the grounds mentioned in article 396, may be brought before any other competent court in Malta.

Rules as to jurisdiction between the several courts of Malta. *Amended by: XLVI. 1973.108; XXII. 1976.4; XXIV. 1995.286.*

745. In regard to the jurisdiction as between the several courts of Malta, by reason of the presumed residence of parties, absent or under any legal disability, or of any body corporate or other body having a distinct legal personality, unless for other reasons the action be within the exclusive jurisdiction of one of the said courts, the following rules shall be observed:

(*a*) citizens of Malta and all other persons domiciled in Malta, who are absent therefrom, shall be presumed to be resident in their last place of abode in Malta;

(*b*) any other person, not domiciled in Malta, shall, in the cases referred to in article 742(1)(*c*) and (*f*), be presumed to be resident in the place in which the property is situate or exists, notwithstanding that the action be not, for such reason, within the exclusive jurisdiction of the court of the aforesaid place;

(*c*) a minor subject to paternal authority is presumed to reside in the place in which the parent exercising that authority resides;

(*d*) the wife is presumed to be resident in the place in which her husband resides, unless she is legally separated from her husband or has taken up a separate residence;

(*e*) any person under the care of a tutor or curator is presumed to reside in the place in which the tutor or curator or any one of the tutors or curators resides;

(*f*) any body corporate or other body having a distinct legal personality, is presumed to have its residence in the place in which any one of the representatives of such body or person resides;

(*g*) any person represented by an attorney or agent in Malta, or who is allowed to sue and to be sued in the person of his attorney or agent, is presumed to be resident in the place in which the attorney or agent or any one of the attorneys or agents, if more than one, resides, if the action is brought against such attorney or agent;

(*h*) in regard to a vacant inheritance, the competent court shall be that of the last place of abode of the deceased, where such place is known; where such place is not known, the competent court shall be that of the place in which the property is situate or exists, or if there is no property, the court of the place in which the plaintiff resides.

Plea to jurisdiction based on value of thing in issue.

746. Where the plea to the jurisdiction of a particular court depends on the value of the thing in issue, the rules contained in the following articles shall be observed.

Uncertain or indeterminate value.

747. (1) An uncertain or indeterminate value shall always be deemed to be outside the jurisdiction of a court of limited jurisdiction.

Indeterminable value.

(2) The following actions shall always be deemed to be of an indeterminable value:

(*a*) actions touching any honour, prerogative or prominence;

(*b*) actions as to filiation, adoption, interdiction or incapacitation of lunatics, imbeciles or persons insane or prodigal; or as to any tutorship or curatorship, or, generally as to the status of any person;

(*c*) actions in which the value of the thing in issue does not result from the demand of the plaintiff, and is not determinable under any of the rules set forth in the following articles.

Determination of value by the demand.

748. The value of the thing in issue is determined by the demand-

(*a*) when the demand is for the payment of a fixed sum;

(*b*) when the demand is for a thing the value of which is determined in the title which gives cause to the action,

or in any other writing binding upon the parties, or by common repute, or by the market price.

Determination of value of immovable property,

749. (1) Where the value of any immovable property is not determined in the manner stated in the last preceding article, such value is determined by the net amount of the rent of the last preceding year, multiplied by twenty-five.

or of right in perpetuity to ground-rents, etc.

(2) The rule prescribed in sub-article (1) shall also apply for the purpose of determining -

(*a*) the value of a right in perpetuity to ground-rents, annuities, or other yearly payments;

(*b*) the value of the thing in issue, in any action touching the revision of an emphyteutical grant in consequence of forfeiture or expiration.

Determination of value of right to ground-rents, etc., for a determinate period.

750. The value of a right to ground-rents, annuities, or other yearly payments for a determinate period, is determined by the total amount of the net income for the remaining period of time, reckoning the yearly income, where the same is not otherwise determined, on the basis of the income of the last preceding year.

Determination of value of right to annuities for life or for indeterminate period.

751. If the right mentioned in the last preceding article is for the lifetime of any person, or for an indeterminate period, the value is determined by the net income of the last preceding year multiplied by ten.

Determination of value in actions for maintenance. *Substituted by: XXIV. 1995.287.*

752. In actions for maintenance the value of the claim shall be the equivalent to the amount of maintenance claimed to be due in five years.

Determination of value in actions touching obligations the amount whereof is payable by instalments,

753. (1) In actions touching the performance of an obligation the amount whereof is to be paid by instalments, the value is determined by the amount claimed in respect of the instalment or instalments fallen due up to the day of the claim.

or in actions to enforce or avoid obligations.

(2) When the object of the claim is to enforce or avoid an obligation, the value is determined by the full amount of the obligation.

Avoidance of obligation *ope exceptionis*.

754. The rule laid down in sub-article (2) of the last preceding article shall apply also in the case where the obligation is sought to be avoided by way of defence:

Provided that in such case the court, if it declares the issue so raised to be outside its jurisdiction, shall reserve the costs of the proceedings before it for decision by the court before which the action is subsequently brought.

Determination of value in actions touching contracts of lease,

755. In actions touching the existence or validity of any contract of lease, or the determination of any lease before the term agreed upon, the value is established -

(*a*) in the first case, by the total amount of the rent in respect of the whole period for which it is claimed that

the contract is operative; and

(*b*) in the second case, by the total amount of the rent in respect of the whole period remaining for the completion of the contract.

in actions of ejectment of tenants.

756. (1) The rule laid down in paragraph (*b*) of the last preceding article shall apply to actions for the ejectment of tenants for arrears of rent, or for any other lawful cause.

(2) Where the ejectment is demanded after the expiration of the lease, the value is determined by the amount of the rent of one year, or, where the yearly rent in respect of urban property is payable by instalments, by the amount of one instalment.

Where no determinate period is alleged,

757. (1) In the actions referred to in the last two preceding articles, where it is not alleged that the lease was contracted for a determinate period, the value is determined by the amount of each termly payment, if the lease is in respect of urban property, or by the rent of one year, if the lease is in respect of rural property.

or where a determinate period is alleged by defendant.

(2) If the defendant alleges that the lease was contracted for a determinate period by reason of which the court declares the matter to be outside its jurisdiction, the provisions of article 754 shall apply as regards the reservation of costs.

Determination of value in actions relating to rendering of accounts.

758. (1) In actions concerning the rendering of accounts in connection with the administration of sums of money, the value of the thing in issue is determined by the amount of such sums.

(2) If the administration is in respect of immovable property, the value of the thing in issue is determined by the yearly rent, without any deduction therefrom, multiplied by the number of years involved in the claim of the plaintiff.

Actions for payment of several sums due for different causes.

759. If the plaintiff claims payment of several sums due for different causes, the value is determined by the highest sum, irrespective of the smaller sums.

Actions relating to capital and interest.

760. (1) In actions concerning capital and interest, the value is determined by the aggregate amount of capital and interest.

(2) Where the plaintiff, on being called upon by the court or by the defendant, refuses to state the period of time which has elapsed since he last received payment of the interest, the value in respect of such interest shall be determined by computing the amount thereof from the time when such interest was agreed upon.

Valuation by expert.

761. In all cases not provided for in the foregoing articles of this sub-title, any value which is uncertain may be determined by a valuation made by experts or by a declaration of the plaintiff to the effect that he is prepared to accept a fixed sum of money in lieu of the thing in issue.

Appointment of expert.

762. (1) The valuation in the case referred to in the last preceding article shall be made by one expert only.

Where parties do not agree on expert to be appointed.

(2) If the parties do not agree in naming the expert to be appointed, the expert shall be chosen and appointed by the court.

Expert may be challenged for good cause.

(3) The expert so appointed by the court may only be challenged for good cause.

Valuation not subject to appeal.

(4) No appeal shall lie from the valuation of the expert.

Determination of value for the purpose of establishing court to which appeals from judgments of Gozo court in its superior jurisdiction are to be brought. *Amended by: XIII. 1925.5; XXIII. 1971.25; VIII. 1990.3.*

763. (1) In order to determine the court to which an appeal from a judgment of the Court of Magistrates (Gozo) may be brought in cases where the value may only be determined by a valuation of experts, such valuation shall be made in the manner provided in the last preceding article, in pursuance of an order of the said Court of Magistrates upon a demand, which may be even verbal, of both parties or one of them, within the time of six working days from the day of the judgment.

(2) The report shall be sworn by the expert in the presence of the registrar, and inserted in the record.

(3) The demand for the valuation may also be made during the hearing of the cause.

(4) The default of a valuation made under sub-article (1) within the period therein prescribed shall not be a cause of the nullity of the appeal if, upon a valuation made in pursuance of an order of the court before whom the appeal has been brought, it results that the matter of the claim is, by reason of its value, within the appellate jurisdiction of that court.

Valuation of expert appointed by parties.

764. A valuation made by one or more experts appointed by consent of both parties, and verified on oath by the expert or experts in the presence of the registrar, shall, for the purposes of articles 761 and 763, have the same effect as a valuation made by an expert appointed by the court.

Fruits, etc., not to be reckoned in determining value.

765. For the purpose of determining the value of the thing in issue, no regard whatever shall be had to any fruits, accession, damages or interest, which may accrue or arise pending the suit.

Determination of value for purposes of jurisdiction only to form basis of taxation of judicial costs.

766. The value determined for the purpose of establishing the jurisdiction of the court shall not be availed of for any other purpose, except for regulating the taxation of judicial costs.

Privilegium fori. Amended by: XV. 1913.142.

767. The privilege referred to in article 741(*c*) is granted to parties residing in the Island of Malta with reference to the courts of such Island, and to parties residing in either of the Islands of Gozo and Comino with reference to the court of such Islands.

Rules as to jurisdiction where some defendants reside in Malta and some in Gozo or Comino.

768. (1) Where the number of the defendants residing in Malta exceeds that of the defendants residing in the Islands of Gozo and Comino, each of the defendants residing in Malta may deny the jurisdiction of the court of Gozo; and where the number of the defendants residing in the Islands of Gozo and Comino exceeds that of the defendants residing in Malta, each of the defendants residing in Gozo or Comino may deny the jurisdiction of the court of Malta.

(2) Where the jurisdiction of a court is denied by one of the parties, such court shall cease to have jurisdiction in regard to all the parties.

Cessation of *privilegium fori*, where number of defendants residing in Malta is equal to the number of defendants residing in Gozo and Comino,

769. Where the number of the defendants residing in the Island of Malta is equal to that of the defendants residing in the Islands of Gozo and Comino, the *privilegium fori* shall cease.

or where action touches obligation to be carried out in one particular Island.

770. The *privilegium fori* shall also cease, where the action touches an obligation which, according to the agreement, was to be carried out in any one particular Island.

Privilegium fori may not be claimed by heir if it could not be claimed by predecessor.

771. The *privilegium fori* may not be claimed by the heir, where, for the reason mentioned in the last preceding article, it could not have been claimed by his predecessor.

Express or tacit waiver of *privilegium fori.*

772. The *privilegium fori* may be waived, and if not claimed shall be deemed to be waived. The contumacy of the party shall be equivalent to a claim to such privilege.

Jurisdiction not affected by reason of the place where thing is. Jurisdiction *ratione depositi.*

773. Subject to the provisions of article 745(*b*) and (*h*), if a particular court in Malta is otherwise competent, such competence shall not be affected by reason of the place in Malta where the thing is:

Provided that in actions touching the recovery of deposits, the competent court shall be that under the authority of which the moneys or other things are deposited.

Where want of jurisdiction is to be declared by court of its own motion. *Amended by: XV. 1913.144. Substituted by: XXIV. 1995.288.*

774. In the absence of any plea to the jurisdiction, the court shall, of its own motion, declare that it has no jurisdiction -

(*a*) where the action is not one within the jurisdiction of the courts of civil jurisdiction of Malta and the defendant has either made default in filing the statement of defence or is an absent defendant represented in the proceedings by curators appointed in terms of article 929; or

(*b*) where by reason of the subject matter of the claim or of the value of the thing in issue, the action is not within the jurisdiction of the court; or

(*c*) where in actions touching the recovery of deposits, the monies or other things are deposited under the authority of another court:

Provided that in the cases referred to in paragraph (*b*) pleas to the jurisdiction may not be pleaded nor raised *ex officio* in an appellate court.

Conflicting decisions as to jurisdiction. *Amended by: XV. 1913.145; XXIV. 1995.289.*

775. Where two or more courts have respectively declared their want of jurisdiction in regard to a particular action, which, nevertheless, is within the jurisdiction of one of such courts, it shall appertain to the Court of Appeal to determine which of such courts is competent, notwithstanding that no appeal from any of the decisions of such courts has been brought before the said Court of Appeal in the ordinary way.

Procedure. *Amended by: XV 1913.145.*

776. Where the issue has not been brought before the Court of Appeal by an appeal in the ordinary way, it shall be lawful at any time for the purposes of the last preceding article, to make an application to that court and that court shall, after hearing the parties, determine which of the said courts is the competent court.

Court of first instance declared competent by Court of Appeal, to take cognizance of action. *Amended by: XV. 1913.145.*

777. The court of first instance which is declared by the Court of Appeal to be the competent court, shall take cognizance of the action.

Question of jurisdiction *ratione materiae*. *Amended by: XV. 1913.146; XXXI. 1934.66. Substituted by: XXIII. 1971.16.*

778. *Repealed by: XXIV. 1995.290.*

Question of jurisdiction as between civil and commercial division of Gozo court in its superior jurisdiction. *Added by: XV. 1913.147. Amended by: VIII. 1990.3.*

779. *Repealed by: XXIV. 1995.290.*

Sub-title IV

OF THE PLEA AS TO THE CAPACITY OF THE PLAINTIFF OR DEFENDANT

Plea as to capacity of plaintiff or defendant.

780. The plea as to the capacity of the plaintiff or the defendant may be raised, if the one or the other is under any legal disability to sue or be sued or if he sues or is sued in the name and on behalf of others without being lawfully authorized for the purpose.

Incapacity to sue or be sued. *Amended by: XV. 1913.148; XLVI. 1973.108.*

781. The following persons may not sue or be sued:

(*a*) a minor, except in the person of the parent exercising paternal authority, or, in the absence of such parent, of a tutor or a curator;

(*b*) a lunatic or an insane person, and any other person who is not vested with the free exercise or administration of the rights to which the action refers, except in the person of the party to whom such administration is lawfully entrusted, or of a curator *ad*

litem.

Exceptions. *Substituted by: XLVI. 1973.108.*

782. The provisions of article 781 shall not apply to -

(*a*) any minor, if such child carries on trade with the consent of the parent exercising paternal authority even though the action touches matters not relating to trade, or if the said parent has expressly given his assent for the child to sue or be sued without his assistance;

(*b*) any minor in any action against the said parent provided the child is represented by a curator *ad litem*.

Appointment of curator *ad litem*. *Amended by: XLVI. 1973.108.*

783. (1) In the cases referred to in this sub-title, the curator *ad litem* may be appointed by the same court before which the action has been brought, or is about to be brought, upon the application of any person interested.

(2) The application for the appointment of a curator to represent a minor who desires to sue, may be made by any person.

(3) The application for the appointment of a curator shall not be entertained by the court if the person in respect of whom such appointment is applied for is already represented by a tutor or a curator, unless the action is against such tutor or curator.

Authorization of court in lieu of assent of parent. *Amended by: XLVI. 1973.108.*

784. If the parent exercising paternal authority, owing to absence or for other reasons, is unable or refuses to appear for the child, or is unable or refuses to give his assent for his child to sue, the requisite authority may be granted by the court of voluntary jurisdiction, if such court shall deem fit to grant such authority.

General authority by court to child. *Amended by: XLVI. 1973.108.*

785. (1) In the case referred to in article 784, it shall be lawful for the court of voluntary jurisdiction to grant to the child a general authorization to sue or be sued in any action which may be pending at the time, or which may thereafter be brought.

(2) The court may grant such authorization under such special conditions as it may deem proper, according to circumstances.

Plea as to capacity of person may not be raised against procurator of revenue of Diocesan Bishop of Malta, *Amended by: XI. 1859.31; L.N. 46 of 1965; LVIII. 1974.68; XXIV. 1975.2; VIII. 1990.3; XXIV. 1995.291.*

786. (1) It shall not be lawful to raise the plea as to the capacity of a party suing or sued in the name and on behalf of any other party against the Economo or other official performing an equivalent function at the Archbishop's Curia in Malta and at the Bishop's Curia in Gozo, against any of the persons mentioned in article 180(1)(*a*).

or Attorney General,

(2) Nor may such plea be raised against the Attorney General in any action in which he is especially authorised by law to appear, or where he is authorized by the competent authority to appear in regard to any action touching public policy, and in so far as the public interest is concerned.

or public official in Gozo.

(3) Nor may such plea be raised against any official in charge of any branch of the public service in Gozo, who appears before the Court of Magistrates (Gozo) in connection with matters pertaining to his office, provided the head of the department to which the said official may by reason of such office belong, be residing in Malta; in such cases, the provisions of this Code relating to heads of departments, shall be applicable to such official.

When plea of incapacity is not allowed. *Added by: XXIV. 1995.292.*

786A. It shall not be lawful to raise the plea of incapacity of a party against any of the persons mentioned in article 181A(2) in the case of a body having a distinct legal personality, and in the case of any person mentioned in article 187(7) in the case of a ship or other vessel.

Nullity of acts by or against persons under disability. *Amended by: XLVI.1973.108.*

787. (1) Any judicial act performed by, or against, any person who is under disability to sue or be sued, and not duly authorized for the purpose, is null.

(2) Any nullity arising from minority may not be alleged except by the minor himself or his heir.

(3) Any nullity from want of assent of the parent, may not be alleged except by the parent; nor may it be alleged by the parent after the child ceases to be subject to paternal authority.

Cure of defect of nullity. *Amended by: IV.1862.16; XLVI. 1973. 108.*

788. The defect of nullity may be cured, if the parent exercising paternal authority or the curator, appearing of his own will, or on being made a party to the suit, affirms the acts.

Sub-title V

OF THE PLEA OF NULLITY OF JUDICIAL ACTS

Plea of nullity of judicial acts. *Amended by: XXIV. 1995.293.*

789. (1) The plea of nullity of judicial acts is admissible -

(*a*) if the nullity is expressly declared by law;

(*b*) if the act emanates from an incompetent court;

(*c*) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act;

(*d*) if the act is defective in any of the essential particulars expressly prescribed by law:

Provided that such plea of nullity as is contemplated in paragraphs (*a*), (*c*) and (*d*) shall not be admissible if such defect or violation is capable of remedy under any other provision of law.

(2) The plea of nullity of an act, under sub-article (1)(*c*), shall not be admissible if the party pleading such nullity has proceeded, or has knowingly suffered others to proceed, to subsequent acts, without pleading such nullity.

790. Where before an appellate court the plea of nullity of a judgment appealed from is raised, such plea shall not be entertained if the judgment is found to be substantially just, unless such plea is founded on the want of jurisdiction or default of citation, or the incapacity of the parties, or on the judgment of the court of first instance being *extra petita* or *ultra petita* or on any defect which prejudices the right to a fair hearing.

Where plea of nullity of judgment may not be entertained. *Substituted by: XXIV. 1995.294.*

Sub-title VI

OF PLEAS IN SPOLIATION SUITS

791. (1) The defendant in a spoliation suit brought within the period of two months from the day on which the spoliation took place may not raise any plea other than dilatory pleas, before he shall have restored the thing to its former condition and fully revested the party despoiled within the time which, according to circumstances, may have been fixed in the judgment, without prejudice to any other right appertaining to the defendant.

Pleas in spoliation suits. *Amended by: X. 1856.16.*

(2) The provisions of this article shall also apply in the case where a tenant has been dispossessed of the thing let out to him whether by the lessor or by a third party.

(3) The court shall limit its inquiry to the question of possession or detention, and to the question of spoliation.

Sub-title VII

OF THE PLEA OF *LIS ALIBI PENDENS* OR OF CONNECTION OF ACTIONS

792. Where an action is brought before a competent court after another action in respect of the same claim has already been brought before another competent court, the second action may be transferred for trial to such other court.

Lis alibi pendens.

793. (1) If two or more actions brought before one and the same court are connected in respect of the subject-matter thereof, or if the decision on one of the actions might affect the decision on the other action or actions, it shall be lawful for the court to order that the several actions be tried simultaneously.

Connection of actions, *Amended by: IX. 1886.100.*

(2) Where several actions have been tried simultaneously before the court of first instance, they may be tried in like manner before the appellate court, without the necessity of any other order of the court.

before appellate court.

(3) Nevertheless a separate judgment shall be given in each action, both in the court of first instance and in the appellate court, every judgment containing a statement of the respective reasonings, or a reference to the reasonings premised to the decision given in any other of the actions heard simultaneously.

Separate judgment in each action.

Period within which to oppose plea.
Amended by: XI. 1973.377; XXIV.1995.357.

794. (1) The plea of *lis alibi pendens* or of connection of actions may be raised at any time until judgment is delivered.

(2) The court shall determine the plea; and if such plea is disallowed, the court may at the same time decide on the merits of the action.

Cap. 234.

(3) Where an application to the Civil Court, First Hall has been made under article 355 of the Merchant Shipping Act, the foregoing provisions of this article shall apply only to the extent that they are not inconsistent with the provisions of that article.

Sub-title VIII

OF THE PLEA AS TO *BENEFICIUM EXCUSSIONIS*

Plea as to *beneficium excussionis.*
Amended by: IV. 1868.11.

795. The defendant who pleads the benefit of discussion shall present during the hearing of the cause, or previously, a list showing distinctly the property situate in Malta, possessed by the party of whom discussion is pleaded, and sufficient to satisfy the claim of the plaintiff.

Deposit of costs of discussion.
Amended by: IV. 1868.11.

796. If the plea of discussion is admitted, the defendant shall, within the time fixed by the court, deposit in favour of the plaintiff a sum to be also fixed by the court to meet the costs which will be occasioned by the discussion, and bind himself to provide the plaintiff with such further sum as may become necessary for the purpose.

Suspension of proceedings.
Amended by: IV. 1868.11.

797. Upon compliance with the requirements of the last preceding article, the court shall order that the proceedings of the cause in which the plea of discussion has been raised, be suspended indefinitely or for a fixed time, according to circumstances.

Default of defendant.
Amended by: IV. 1868.11.

798. If, on the contrary, the defendant fails to comply within the said time with any of the requirements above-mentioned, the cause shall be proceeded with irrespective of the plea of discussion.

Cause to be proceeded with if claim is not wholly satisfied.
Amended by: IV. 1868.11; VII. 1880.15.

799. (1) The provisions of the last preceding article shall apply also in the case where the plaintiff shall not succeed in recovering the whole amount of his claim out of the property mentioned in the list referred to in article 795.

(2) Nevertheless in any such case, the defendant may be allowed to indicate other property, if he shows to the satisfaction of the court, that at the time of the decree suspending the proceedings of the cause he was not aware of the existence of such other property.

Discussion of other property.
Amended by: IV. 1868.11.

800. If the defendant is allowed to indicate other property, the provisions of articles 796 to 799 shall apply.

801. (1) It shall be lawful for the defendant to waive the plea of discussion previously raised by him, and demand that the cause be disposed of even though the plaintiff may have already commenced the procedure of discussion.

Plea may be waived. *Amended by: XI. 1859.32; IV. 1868.11.*

(2) In such case, the costs incurred in connection with the procedure of discussion shall be borne by the defendant.

Liability for costs.

Sub-title IX

OF THE PLEA OF FALSIFICATION

802. The plea of falsification may be raised not only by the party to whom the document is attributed but also by any other party against whom the document is produced.

Plea of falsification.

803. Where the cause can be decided independently of the document averred to be false, the court shall decide on the merits, irrespective of the plea of falsification.

Where cause can be decided irrespective of plea.

804. The plea of falsification shall be determined independently of any criminal action.

Plea to be determined independently of criminal action.

805. If, at any stage of the proceedings, it shall appear to the court that there are strong grounds to suspect the falsification of any document, it shall of its own motion order the party suspected of such falsification to be arrested and brought before the Court of Magistrates, in order that he may be dealt with according to law.

Arrest of person suspected of falsification. *Amended by: VIII. 1990.3.*

Title III

OF THE CHANGE OF PARTIES BY DEATH, ETC.

806. In the case of death *pendente lite* of any party to a suit, the heir or executor of such party, or any other person interested may make an application for an order enabling him to continue the suit in substitution for the party deceased.

Where party to suit dies.

807. (1) Where no application is made by any person to continue the suit in substitution for the deceased party, it shall be lawful for the other party, by means of an application, to demand that the suit be continued in the name of the presumptive heir or heirs of the deceased party, if known.

Continuation of suit by presumptive heir or curators. *Substituted by: XXIV.1995.295.*

(2) Such application shall by order of the court, be served on the presumptive heir or heirs who shall have the time of one month within which to declare whether he or they are prepared to continue the suit.

(3) If no such declaration is made, then the court shall of its own motion proceed to appoint a curator *ad litem* to represent the

interests of the deceased in the suit in accordance with article 809.

(4) Where no person entitled to represent the deceased is known, such application may contain only the demand for the appointment of curators to continue the suit.

(5) The curator shall take all the necessary measures to identify and locate the presumptive heir or heirs of the deceased and when the presumptive heir or heirs are identified and located the curator shall request the court to notify him or them about the pendency of the case ordering him or them to declare within a specified time whether he or they are prepared to continue the suit.

Default of heir, etc., to continue suit not to imply renunciation of inheritance, etc. *Substituted by: XXIV. 1995.296.*

808. The default of the heir or executor to continue the suit shall not imply renunciation of the inheritance or executorship; and it shall be lawful for the heir or executor, by application, upon proving his title to the court, to assume at any time the continuation of the suit, and cause the effect of the appointment of curators to cease in regard to further proceedings. The application shall be served on the curators and the other parties in the suit who may file an answer thereto within such time as the court may establish.

Service of banns on presumptive heir. *Amended by: XXIV. 1995.297.*

809. The banns for the appointment of curators shall be served on the presumptive heir or heirs, if known; and if unknown such banns shall be published twice, in at least two daily newspapers, at an interval of one week between such publications, at the expense of the applicant without the need of any notification.

Acceptance of curatorship.

810. (1) It shall also be lawful for a party who has not as yet declared his acceptance of the inheritance or executorship, to appear and accept the appointment as curator, and in such capacity continue the suit.

Court may appoint official curator.

(2) It shall be lawful for the court, if it deems it expedient, to appoint, in addition to the said heir or executor, a curator from among the advocates on the rota referred to in article 91.

Change of parties due to other causes. *Added by: XXIV. 1995.298.*

810A. In the case of any other change of parties to the suit other than by the death *pendente lite* of any party to the suit, the person who wishes to take up the case shall file an application requesting authorisation to assume the acts of the case in addition to or instead of the party concerned, and any judgment shall also bind such party assuming the acts.

Title IV

OF NEW TRIAL

New trial of causes decided in second instance. *Amended by: XI.1859.33; IX. 1886.101.*

811. A new trial of a cause decided by a judgment given in second instance may be demanded by any of the parties concerned, such judgment being first set aside, in any of the following cases:

Grounds for new trial.

(*a*) where the judgment was obtained by fraud on the part of any of the parties to the prejudice of the other party;

(*b*) where the writ of summons was not served on the party

cast, provided that, notwithstanding such omission, such party shall not have entered an appearance at the trial;

(*c*) where any of the parties to the suit was under legal disability to sue or be sued, provided no plea thereanent had been raised and determined;

(*d*) where the judgment was delivered by a court having no jurisdiction in terms of article 741(*a*), provided no plea thereanent had been raised and determined;

(*e*) where the judgment contains a wrong application of the law;

For the purposes of this paragraph there shall be deemed to be a wrong application of the law only where the decision, assuming the fact to be as established in the judgment which it is sought to set aside, is not in accordance with the law, provided the issue was not in reference to an interpretation of the law expressly dealt with in the judgment;

(*f*) where judgment was given on any matter not included in the demand;

(*g*) where judgment was given in excess of the demand;

(*h*) where the judgment is conflicting with a previous judgment given in a suit on the same subject-matter and between the same parties, and constituting a *res judicata*, provided no plea of *res judicata* had been raised and determined;

(*i*) where the judgment contains contradictory dispositions;

(*j*) where the judgment was based on evidence which, in a subsequent judgment, was declared to be false or which was so declared in a previous judgment but the party cast was not aware of such fact;

(*k*) where, after the judgment, some conclusive document was obtained, of which the party producing it had no knowledge, or which, with the means provided by law, he could not have produced, before the judgment;

(*l*) where the judgment was the effect of an error resulting from the proceedings or documents of the cause.

For the purposes of this paragraph there shall be deemed to be such error only where the decision is based on the supposition of some fact the truth whereof is incontestably excluded, or on the supposition of the non-existence of some fact the truth whereof is positively established, provided that, in either case, the fact was not a disputed issue determined by the judgment.

New trial of causes decided in first instance. *Amended by: IX.1886.101.*

812. A new trial may also be demanded in respect of a cause decided by a judgment of a court of first instance and constituting a *res judicata*, by any of the parties concerned, on any of the grounds mentioned in the last preceding article, provided the facts constituting the grounds for such new trial shall have come to the knowledge of the party after the expiration of the time limited for the appeal.

Extent of admissibility of new trial. *Amended by: XI. 1859.34; IX. 1886.101.*

813. A new trial shall not be granted except on any of the grounds mentioned in article 811 and shall not be granted except in regard to such heads of the judgment complained of in respect of which any of such grounds exists and in regard to such other heads as are dependent thereon.

Court to which demand for new trial is made. *Amended by: XI. 1859.35; IV.1865.3; IX.1886.101. Substituted by: XXIV.1995.299.*

814. Subject to the provisions of Sub-title II of Title II of Book Third of this Code the demand for a new trial shall be made to the court by which the judgment complained of was given, and the same judges or magistrates may sit.

Form of demand for new trial. *Amended by: IX.1886.101; VIII. 1990.3. Substituted by: XXIV. 1995.300.*

815. In the superior and inferior courts, the demand for a new trial shall be made before a court of first instance, by means of a writ of summons, and before a court of second instance, by means of an application; the application shall be accompanied by security for costs in terms of article 249.

Contents of writ of summons or application. *Amended by: IX. 1886.101; XXIV. 1995.301.*

816. In the writ of summons or application, the plaintiff shall distinctly state the heads of the judgment which are complained of, and the grounds for the new trial in the terms in which they are stated in article 811, making reference to the relative provisions of that article. Moreover, the plaintiff shall state, in a concise and clear manner, the facts giving rise to every such ground; and where the ground is the wrong application of the law, the plaintiff shall make reference to the law which should have been applied.

Where demand is by writ of summons. *Amended by: IX. 1886.101.*

817. *Repealed by: XXIV. 1995.302.*

Time for demanding new trial. *Amended by: IX. 1886.101; XXIV.1995.303.*

818. (1) The time for demanding a new trial is three months, which shall commence to run -

(*a*) in regard to the cases referred to in article 811(*a*) and (*k*), from the day on which the fraud was discovered, or the document obtained;

(*b*) in regard to the case referred to in paragraph (*b*), from the day on which the plaintiff became aware of the judgment;

(*c*) in regard to the cases referred to in paragraph (*j*), if the falsity was, at the suit or complaint of the plaintiff himself, declared subsequently to the judgment complained of, from the day of such declaration, and if it was declared subsequently to such judgment, but at the suit or complaint of other parties, or if it was

declared previously, from the day on which the plaintiff became aware of such declaration;

(*d*) in regard to all other cases, from the date of the judgment complained of.

(2) A new trial may in no case be demanded after the lapse of five years from which the first judgment was given.

Time to be peremptory and to run against minors, etc.
Amended by: IX.1886.101; XI. 1977.2.

819. (1) The time limited in the last preceding article is peremptory.

(2) Such time shall run indiscriminately even against minors and persons interdicted.

If new trial is allowed, rehearing of cause to be proceeded with.
Amended by: IX. 1886.101.

820. (1) If a new trial is granted, the judgment complained of being set aside, the rehearing of the cause in respect of the merits shall be proceeded with on the same day or on some other day appointed by the court.

Separate judgment on demand for new trial.

(2) Nevertheless a separate judgment shall in all cases be given on the demand for a new trial.

Demand for new trial to be made once only. Exceptions.
Amended by: IX. 1886.101.

821. The demand for a new trial may not be made more than once, except on grounds which may arise subsequently to the first demand.

Demand for new trial may be availed of by defendant.
Amended by: IX. 1886.101.

822. (1) The demand for a new trial may also be availed of by any of the defendants who, in the answer to the libel or petition, or in a note filed previously to the trial on that demand, shall have agreed to it.

(2) In any such case, the defendant may continue the proceedings, notwithstanding that the party who made the demand shall have waived it.

Demand for new trial not to operate as a stay of execution.
Amended by: IX. 1886.101; XXII. 1963.8; XXIV. 1995.304.

823. (1) The demand for a new trial shall not operate so as to stay the execution of the judgment sought to be set aside.

Power of court.

(2) Notwithstanding the provisions of sub-article (1), the court before which a new trial is demanded may, at the instance, by application before the Court of Appeal and by writ of summons before the court of first instance, of the party making such demand, order a stay of execution of the judgment if -

(*a*) together with his demand such party gives sufficient security for the execution of the judgment, if it is not set aside, including such security as is mentioned in article 266(10); and

(*b*) it is shown to the satisfaction of the court that the execution of the judgment is likely to cause greater

prejudice to such party than the stay of execution would cause to the opposite party.

(3) The security referred to in sub-article (2)(*a*), when given, shall in all cases operate as a stay of execution of a judgment ordering the arrest or imprisonment of the debtor.

(4) The filing of the writ of summons containing the demand for the stay of execution of the judgment sought to be set aside shall not operate as a stay of execution of such judgment unless, upon an application to that effect, the court shall for just cause order such stay of execution.

(5) Where the enforcement of a judgment has been authorized by the judgment sought to be set aside the provisions of sub-articles (2), (3) and (4) shall not apply.

(6) An appeal from a judgment disallowing the demand for the stay of execution of the judgment sought to be set aside shall in no case operate as a stay of execution of the latter judgment.

No new trial in respect of judgment given upon new trial. *Amended by: IX. 1886.101.*

824. It shall not be lawful to grant another new trial in respect of a judgment given upon a new trial.

Errors of calculation in judgment. *Amended by: XV. 1913.152.*

825. (1) Nothing in this Title contained shall operate so as to bar the court, upon the application of any of the parties to be served on the other party, from amending at any time, by a decree, any error of calculation incurred in the judgment.

Errors of expression.

(2) Nor shall the court be debarred from correcting any error in the wording of the judgment, or from altering any expression which is equivocal, or which may bear a construction different from that evidently intended by the court, provided that an application is made to that effect within thirty days from the date of the judgment, and in such case, the time allowed by this Code for entering an appeal from any judgment so amended, shall commence to run from the date of the decree given on the demand for the amendment.

Title V

OF THE ENFORCEMENT OF JUDGMENTS OF TRIBUNALS OF COUNTRIES OUTSIDE MALTA

Enforcement of judgments of tribunals outside Malta. Cap. 52.

826. Saving the provisions of the British Judgments (Reciprocal Enforcement) Act, any judgment delivered by a competent court outside Malta and constituting a *res judicata* may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon a writ of summons containing a demand that the enforcement of such judgment be ordered.

Inquiry by court. *Amended by: XV. 1913.153; XXIV. 1995.305.*

827. (1) The provisions of the last preceding article shall not have effect:

(*a*) if the judgment sought to be enforced may be set aside on any of the grounds mentioned in article 811;

(*b*) in the case of a judgment by default, if the parties were not contumacious according to foreign law;

(*c*) if the judgment contains any disposition contrary to public policy or to the internal public law of Malta.

(2) For the purposes of this article, the plea to the jurisdiction of the court by which the judgment was delivered, may be raised in terms of article 811(*d*), even though that court may have adjudged upon a plea to its jurisdiction, in the case of any action brought against any person not subject to the jurisdiction of that court by reason of domicile or residence, unless such person had voluntarily submitted to the jurisdiction thereof.

Effects of registration of judgment in Public Registry.

828. The judgment ordering the enforcement of another judgment delivered by a court outside Malta, upon being registered in the Public Registry Office, shall create as from the day of registration a hypothec in regard to the debt judicially acknowledged by the judgment the enforcement of which is ordered.

Title VI

OF PRECAUTIONARY ACTS

GENERAL PROVISIONS

Party may safeguard his rights by precautionary acts.

829. It shall be lawful for any person, without the necessity of any previous judgment, to secure his rights by one or more of the following precautionary acts, which shall be issued and carried into effect on the responsibility of the person suing out the act, provided he shall have complied with the conditions prescribed by this Code.

Precautionary acts. *Amended by: IV.1862.17; Xl.1973.377; XII.1985.16; XXXIX. 1986.2; XVII.1991.82; XXIV.1995.306; XXIV.1995.357.*

830. (1) The precautionary acts referred to in the last preceding article are the following:

(*a*) warrant of description;

(*b*) warrant of seizure;

(*c*) garnishee order;

(*d*) warrant of impediment of departure;

(*e*) warrant of prohibitory injunction.

Rescission. Cap. 234.

(2) Saving the provisions of article 870 and of article 357 of the Merchant Shipping Act, any of the acts mentioned in sub-article (1) shall be rescinded, if the party against whom it is issued makes such deposit or gives such security as, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act, or if it is shown that a judicial act accepting liability as provided in sub-article (3) has been filed in the proper registry and notwithstanding that a deposit is made or security is given as aforesaid, the time limits established in this Title on the creditor to bring forward his action shall continue to apply. Such time limits shall run from the date of the issue of the precautionary act, and failure by the creditor to institute

proceedings within the said time limits shall entitle the debtor to withdraw the deposit or cancel the security.

(3) Where a precautionary act has been issued against any person, or such as to affect any property of such person, to secure a claim for damages arising out of the use in Malta of a motor vehicle, registered or licensed in Malta or abroad, and there is in respect of such motor vehicle a policy of insurance as complies with the requirements of the Motor Vehicles (Third Party Risks) Ordinance, whether it is an international certificate of insurance (as defined in the said Ordinance) or otherwise and the insurer or the local bureau (as defined in the said Ordinance) has by means of a judicial act, filed in the registry of the court issuing the precautionary act, accepted liability to pay all sums that may be due for damages arising as aforesaid, by the person against whom the precautionary act was issued, in connection with the claim contained in that act if such person is found to be responsible for such damages, such insurer or local bureau, as the case may be, shall be liable to pay all sums that may be due for damages arising as aforesaid and the claim for such damages may be pursued against them directly.

Cap. 104.

(4) (*a*) Every authorised insurer and the local bureau shall file by means of a note in the Registry of the First Hall of the Civil Court a declaration showing the name and address of the person or persons having the judicial representation of such insurer or the local bureau, as the case may be, and of the change of any such person or persons.

(*b*) The registrar shall cause the declarations filed in terms of paragraph (*a*) to be registered in a book which shall be open to inspection by the public.

(*c*) Any judicial act served on such person or persons as on the date of the filing of such act appear in the book referred to in paragraph (*b*) as having the judicial representation of an authorised insurer or the local bureau, as the case may be, shall be deemed for all purposes of law to be duly served on the person having the judicial representation of such insurer or local bureau.

(5) The registrar shall cause a copy of the precautionary act as is referred to in sub-article (3), to be served on the local bureau without delay and in any case not later than the working day next following the filing of the act.

(6) No precautionary act as provided in sub-article (3) shall be issued against the insured if the insurer or the local bureau has by a judicial act filed in the Registry of the Civil Court, First Hall, accepted liability for the payment of damages arising out of the use of a motor vehicle in Malta if the insured is found to be responsible for such damages, and in such case the claim for such damages may be pursued against the insurer or the local bureau, as the case may be, directly.

(7) No judicial act filed in terms of sub-article (3) shall be deemed to be valid for the purposes of sub-article (2) unless there is registered with the Registrar of Courts on the date of its filing a declaration in terms of sub-article (4).

831. (1) The demand for the issue of any of the said acts shall be made by an application prepared by the applicant according to the prescribed form.

Application for issue of warrant. *Amended by: XV.1913.154; XIV.1980.5; XXIV.1995.307.*

(2) The origin and nature of the debt or claim sought to be secured shall be stated on oath in the application:

Contents of application.

Provided that where in one application there is more than one applicant demanding the issue of any of the precautionary acts mentioned in article 830(1) against the same respondent, the oath shall be taken by at least one of the applicants.

(3) Any act issued without such sworn statement shall be null.

Oath.

(4) Any of the warrants or order mentioned in the preceding article shall be issued by the court:

Provided that, where in the opinion of the registrar the signature of a judge or magistrate empowered to issue a warrant of seizure or a garnishee order or a warrant of impediment of departure cannot be obtained within a reasonable time and that delay may be prejudicial, the said warrants or order may be issued over the signature of the registrar personally after having first obtained verbal authorisation from the judge or magistrate to do so. In this case, the judge or magistrate is to append his own signature under that of the registrar at the earliest opportunity to confirm that he had given the said verbal authority or, if it is not possible for the registrar to obtain such verbal authority, the registrar shall under his authority issue the said warrant or order over his signature, subject to the ratification of such action by a judge or magistrate at the earliest opportunity.

832. Where the right sought to be secured by the act is a debt, or a claim which may be satisfied by the payment of a sum of money, the applicant shall also in this sworn statement referred to in the last preceding article indicate approximately the sum to which, in his belief, the debt or claim amounts, and if a cause has already been filed in court, such a claim may specify and include any judicial costs, under pain of nullity of the act.

Where claim is for payment of sum of money. *Amended by: XXIV. 1995.308.*

833. The oath referred to in this Title may be administered by the registrar.

Administering of oath. *Amended by: XXIV. 1995.309.*

834. (1) The marshal charged with the execution of the act shall, within twenty-four hours from the day of the execution, give notice thereof in writing to the applicant.

Notice of execution of warrant. *Amended by: XIX.1965.17; VIII. 1990.3.*

(2) No application for the issue of a precautionary act shall be received in the registry, unless the applicant shall, in presenting such application, indicate the place where the said notice is to be given or left.

(3) Where a precautionary act issued by a court in Malta is to be executed in the Island of Gozo or Comino or a precautionary act issued by the Court of Magistrates (Gozo) is to be executed in the Island of Malta, the notice referred to in sub-article (1) shall be

given by the marshal of the court which issued the act within twenty-four hours from the day of receipt in that court of the notice of execution.

S. 834 not to apply to inferior courts. *Amended by: XV.1913.155; XXIII.1971.27; XIII.1983.5; VIII.1990.3; XXIV.1995.310.*

835. The provisions of the last preceding article shall not apply to warrants issued by the Court of Magistrates (Malta), or by the Court of Magistrates (Gozo) in its inferior jurisdiction, when the claim is not for an amount exceeding one hundred liri.

Counter-warrant. *Amended by: XV.1913.156; XIV.1980.6. Substituted by: XXIV. 1995.311.*

836. (1) Without prejudice to any other right under this or any other law, the person against whom any precautionary act has been issued, may make an application to the court issuing the precautionary act, or, if a cause has been instituted, may make an application to the court hearing such cause, praying that the precautionary act be revoked, either totally or partially, on any of the following grounds:

(*a*) that the precautionary act ceased to be in force;

(*b*) that any one of the conditions requested by law for the issue of the precautionary act does not in fact subsist;

(*c*) that other adequate security is available to satisfy the claim of the person at whose request a precautionary act was issued either by the issue of some other precautionary act or if such other security can to the satisfaction of the court adequately secure the claim; or

(*d*) if it is shown that the amount claimed is not *prima facie* justified or is excessive; or

(*e*) if the security provided is deemed by the court to be sufficient; or

(*f*) if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.

(2) In the case contemplated in sub-article (1)(*a*), the court shall ascertain that the precautionary act has ceased to be in force and decree accordingly and in the cases contemplated in the said sub-article (1)(*b*) to (*f*), the court shall hear the application with urgency.

(3) A copy of the application shall be served on the person at whose request the precautionary act was issued who shall not later than the day fixed for the hearing of the application by a note state his reasons, if any, why such request should not be acceded to. In default of such opposition the court shall accede to the request.

(4) After hearing the parties, the court shall by a separate decree which may be given *in camera*, either reject the application or accede to the request in the application under those conditions which it may deem fit.

(5) No appeal and no challenge shall lie from a decree acceding

to an application referred to in sub-article (1), and such decree shall be final and irrevocable, and except in the case contemplated in sub-article (1)(*a*) a similar precautionary act may not be issued in security of the claim against the person against whom the precautionary act so revoked was issued, unless in the application for the issue of such similar precautionary act the applicant states that circumstances have arisen since the revocation of the previous precautionary act which justify the issue of a similar fresh precautionary act to that which has been revoked, and the provisions of this article shall thereupon apply to such precautionary act freshly issued on the basis of such application.

(6) The provisions of article 831(4) shall apply to the decree issued under sub-article (1)(*a*).

(7) Notwithstanding that adequate security for the satisfaction of the claim of the person at whose request the precautionary act was issued is deposited in the registry of the court, the court which issued the counter-warrant under the provisions of this article may still, on a request made by application by any interested person, investigate the legality or otherwise of the relative precautionary act and the court may also order the reduction of the amount of security deposited or declare the precautionary act to be contrary to law, in which latter case it shall order that the precautionary act be revoked.

(8) The court may condemn the applicant at whose request a precautionary act was issued to pay a penalty of not less than five hundred liri and not more than three thousand liri in favour of the person against whom the precautionary act was issued, in each of the following cases:

(*a*) if the applicant does not bring the action in respect of the claim, within the time established by law;

(*b*) if, on the demand of the defendant for the rescission of the precautionary act, the plaintiff fails to show that the precautionary act had to be issued or that within the fifteen days previous to the application for the precautionary act, he had in any manner called upon the defendant to pay the debt, or, if the debt be not a liquidated debt, to provide sufficient security:

Provided that the provisions of this paragraph shall not apply where it is shown that there were reasons of urgency for the issue of the warrant;

(*c*) if the circumstances of the debtor were such as not to give rise to any reasonable doubt as to his solvency and as to his financial ability to meet the claims of the applicant, and such state of the debtor were notorious;

(*d*) if applicant's claim is malicious, frivolous or vexatious.

(9) In the case under the previous sub-article, the court at the request, by writ of summons, of the person against whom the precautionary act was issued may condemn the applicant at whose request the precautionary warrant was issued to pay such damages

as may have been caused by the issue of the warrant, and in any such proceedings the court shall refer to, and make use of, the records of the proceedings of the precautionary act and of any other proceedings arising therefrom or consequential thereto, and such records shall be admissible evidence for the purposes of this action.

Precautionary acts which may not be issued by inferior courts.
Amended by: XI.1859.36; I.1880.4; XV.1913.157; XXIII.1971.28; L.N. 148 of 1975; XII.1985.17; VIII.1990.3; XXIV.1995.312.

837. (1) It shall not be lawful for the Court of Magistrates (Malta), or the Court of Magistrates (Gozo) in its inferior jurisdiction to issue any warrant of description, impediment of departure for the purpose of a reference to the oath of the opposite party or for the purpose of securing the enforcement of a judgment not being for the payment of an acknowledged amount, impediment of departure of any ship or vessel.

Warrants which may not be issued against Government.

(2) It shall not be lawful to issue any precautionary warrant of seizure or garnishee order in security of any right or claim against the Government of Malta.

Persons against whom certain warrants may not be issued.

(3) It shall not be lawful to issue any warrant of seizure, garnishee order, or warrant of impediment of departure, in security of any right or claim against any of the persons mentioned in sub-article (4)(*a*), or any warrant of impediment of departure in security of any right or claim against any of the persons mentioned in paragraphs (*b*) or (*c*) of the said sub-article.

(4) The persons to whom sub-article (3) refers are:

(*a*) any person belonging to the armed forces of any country or any person belonging to any vessel wholly chartered in the service of the Government of Malta if such person is in Malta with the force or vessel to which he belongs;

(*b*) any master, seaman or other person regularly enrolled, if the ship to which he belongs has obtained her clearance; and

(*c*) any engineer of any rank, employed on any steam vessel.

Rescission of warrants unduly obtained.

(5) (*a*) If any such warrant or order has been unduly issued and carried into effect against any of the persons above-mentioned, it shall be lawful to obtain the rescission of the warrant or order or of anything done thereunder by making an application to that effect stating out the cause for his exemption, and producing in support thereof any certificate, document, or other evidence to the satisfaction of the judge or magistrate by whom the warrant or order was issued.

(*b*) The release of the person from the warrant or order may also be applied for as aforesaid by the officer commanding the vessel on which such person is enrolled, or by the officer commanding the force, the regiment or the company to which such person belongs, or by any other military, naval or air force authority.

838. The provisions of article 280 shall apply to precautionary acts.

Applicability of s. 280 to precautionary acts. *Added by: IX. 1886.102.*

838A. It shall be lawful for the court, on good cause being shown, upon the demand by application of the person against whom a precautionary act has been issued, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security for the payment of the penalty that may be imposed, and of damages and interest, and, in default, to rescind the precautionary act.

Security for payment of penalty, etc. *Added by: XXIV.1995.313.*

Sub-title I

OF THE WARRANT OF DESCRIPTION

839. A warrant of description may be issued in order to secure a right over movable things, for the exercise of which the applicant may have an interest that such movable things remain in their actual place or condition.

Object of warrant.

840. (1) The marshal shall execute a warrant of description by describing the things in detail stating the number and quality thereof.

Manner of executing warrant.

(2) He shall also state the weight or measure, and the value thereof, if the applicant makes an express demand to that effect in the application for the issue of the warrant, or subsequently, by means of a note; in any such case the value shall be stated upon an appraisement made by one or more experts appointed by the court.

841. The things so described shall remain in the custody of the person in whose possession they are found, and such person shall be responsible for their safe keeping, an express injunction to that effect being included in the warrant.

Liability of person in possession of things described.

842. It shall be lawful for the court, upon the application of any party notice whereof is given to the other party, to give any order calculated to prevent any loss, damage or deterioration of the things described.

Power of court.

843. (1) The applicant is bound to bring the action in respect of the right stated in the warrant within six days from the delivery of the notice of the execution of the warrant to the applicant or to an advocate or legal procurator whose signature appears on the application for the issuing of the warrant or within twelve days after the issue of the warrant, whichever is the earlier date.

Time within which to bring action. *Amended by: XII.1924.6; XXVII. 1977.3; XXIV. 1995.314.*

(2) If the applicant fails to bring such action, the effects of the warrant shall cease and he shall be liable for all damages and interest.

Consequences of default.

844. Where the party against whom the warrant was executed shall, by means of a note filed in the registry, allow to the applicant

Extension of time.

a time longer than that mentioned in the last preceding article, the warrant shall remain in force for such extended time.

Applicability of ss. 278 to 282.

845. The provisions of articles 278 to 282 inclusive, shall apply to the execution of a warrant of description.

Sub-title II

OF THE WARRANT OF SEIZURE

Applicability of ss. 278 to 304, 842 and 844.
Amended by:
XI. 1859.37;
IX. 1886.103;
XII. 1924.7;
XXXI.1934.67;
XXVII. 1977.4;
XLIX. 1981.6;
XIII. 1983.5;
XXIV. 1995.315.

846. (1) The provisions of articles 278 to 304 and articles 842 and 844, shall apply to warrants of seizure.

Time within which to bring action.

(2) The applicant is bound to bring the action in respect of the claim stated in the warrant, within four working days from the delivery to him or to an advocate or legal procurator whose signature appears on the application, of the notice of execution of the warrant or within twelve days after the issue of the warrant, whichever is the earlier date, and in default, the effects of the warrant shall cease.

Judicial acknowledgement of claim to precede judicial sale by auction.
Amended by:
XXIV. 1995.316.

847. The judicial sale by auction of the property seized shall not take place without a previous judicial acknowledgment of the debt or claim:

Provided that in the case of ships, other vessels, aircraft, perishable goods or other deteriorating assets, the court, on the application of claimant in pending litigation before the court, may order the sale of the asset *pendente lite* if it appears to the court upon an application of a creditor that the debtor is insolvent or otherwise unlikely to be able to continue trading and maintaining the asset. In reaching its conclusion the court shall consider all the circumstances connected therewith including the nature of the plaintiff's claim, the defence raised against such claim, if any, and such other steps which the debtor has taken to secure the claim, or otherwise to preserve the asset.

In inferior courts demand for judicial acknowledgment of claim to accompany demand for issue of warrant.
Amended by:
XV.1913.158, 159;
XXIII. 1971.29;
XIII. 1983.5;
XII. 1985.18;
VIII. 1990.3.

848. Saving the provisions of articles 466 and 467 respecting the claims of the Government, no warrant of seizure shall be issued by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo) in its inferior jurisdiction, unless, where the debt or claim does not exceed fifty liri, the demand for such warrant be accompanied by a demand for the judicial acknowledgement of such debt or claim.

Sub-title III

OF THE GARNISHEE ORDER

Precautionary garnishee order. *Amended by: IX.1886.104; XXVII. 1977.5.*

849. The effects of a precautionary garnishee order are the same as those of an executive garnishee order, and the provisions of articles 375 to 383 inclusive, and articles 842, 844, 846 and 848, shall apply to such order:

Provided that -

(*a*) the action in respect of the claim stated in a precautionary garnishee order shall be brought by the applicant within four working days from the delivery to him or to an advocate or legal procurator whose signature appears on the application, of the notice of the execution of the warrant or within ten working days after the issue of the warrant, whichever is the earlier date, and, in default, the effects of the order shall cease; and

(*b*) where the garnishee is a bank, a precautionary garnishee order shall not apply to any money payable by the bank in execution of any guarantee given by the bank that it will effect payment on the demand of the person in whose favour the banker's guarantee is made out; and in any such case, notwithstanding any garnishee order, the bank shall have power to pay out or otherwise dispose of any such money as free from any garnishee order and shall also be entitled to withdraw any such money from any court or other place, or from any person, into which, or with whom, it may have been lodged or deposited, and it shall be the duty of the registrar of such court or other person in possession or having control over such money to return it forthwith, to the bank.

Duration of garnishee order. *Amended by: XXXI. 1934.68; XXIV.1995.318.*

850. (1) Save as provided in articles 843 and 844, the effects of a precautionary garnishee order shall also cease in regard to the garnishee at the expiration of one year, unless the court upon the application of the party suing out the order shall grant an extension.

Extension may be granted more than once.

(2) Such extension may be granted more than once, but it may not be granted for a period exceeding one year each time.

Garnishee to be notified of each extension.

(3) Each extension shall, within the last preceding period, be notified to the garnishee, by letter of the registrar stating the date of the expiration of the time as enlarged.

Absence of demand for extension not to bar issue of fresh order.

(4) The absence of a demand for an extension shall not operate so as to bar the issue of a fresh garnishee order.

Order for judicial sequestration.

851. (1) The court may, at any stage of the cause, on the demand of either of the parties, or of its own motion, make an order for judicial sequestration.

Statement as to nature, etc., of claim not requisite.

(2) The sworn statement referred to in articles 831 and 832 shall not be requisite in regard to any such sequestration.

Duration of order.

(3) The sequestration order shall remain in force until rescinded by the court.

Power of court.

(4) Under such order, the court may direct that the thing in litigation be deposited with, or delivered to a third party who shall bind himself to restore such thing, on the termination of the cause or within the time fixed by the court, to the party to whom the court shall order the thing to be restored.

Sequestration order in regard to immovable property.

852. The sequestration mentioned in the last preceding article may also be ordered in regard to 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 any party interested.

Judicial sequestrator.

853. (1) The sequestrator shall be chosen either by consent of the parties interested, or by the court *ex officio*.

Duties.

(2) The sequestrator shall be subject to the same liabilities as the depositary.

Remuneration:

854. The sequestrator appointed under article 851 shall be entitled to a remuneration, in the discretion of the court.

Substituted by: XXI V. 1995.319.

Sub-title IV[*]

OF THE WARRANT OF IMPEDIMENT OF DEPARTURE[†]

Object of warrant.

855. A warrant of impediment of departure of any ship or vessel may only be issued to secure a debt or a claim which could be frustrated by the departure of the ship or vessel.

Contents and service of warrant.

856. By the warrant of impediment of departure the marshal is ordered to detain a ship or other vessel and to deliver to the Comptroller of Customs and the officer responsible for ports in terms of law a copy of the warrant enjoining him not to grant a clearance to such ship or vessel, or, if already granted, to withdraw it.

Persons on whom warrant is to be served.
Amended by: IV.1996.9.

857. A copy of the warrant shall also be served on the person whose ship or vessel is detained or the master or other person in charge of such ship or vessel or the agent of such ship or other vessel.

Consequences of disobedience of an injunction.

858. The warrant shall contain a warning to all persons served with it, that in case of disobedience, such persons shall be guilty of contempt of court.

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[*]*See* Article 2 of the Aircraft (Application of Laws) Ordinance (Chapter 80).
[†]The provisions of this Sub-title (articles 855 to 872) were repealed and substituted by articles 855 to 870 by virtue of Act XXIV of 1995.

Powers of marshal in the execution of the warrant.

859. The marshal is authorised to adopt, subject to the directives of the court or of the registrar, all such measures as may be deemed necessary for the due execution of the warrant.

Statements to be contained in application.

860. In order to obtain the issue of the warrant the applicant shall, in addition to the sworn statements required under articles 831 and 832, state on oath that by the departure of the ship or vessel, his claim could be frustrated.

Warrant available where claim is not less than Lm3,000.

861. A warrant may be demanded and obtained in security of a debt or any other claim whatsoever amounting to not less than three thousand liri, either before or after such debt or claim has been judicially acknowledged.

Where warrant is demanded after judicial acknowledgement of claim.

862. Where the warrant is demanded after a debt or claim has been judicially acknowledged, the applicant shall, in the application, make reference to the judgment acknowledging the debt or claim and, besides the sworn statements under articles 831, 832 and 860, declare on the same oath that the judgment has not been fulfilled or that it has not been wholly fulfilled.

Where warrant is demanded *pendente lite.*

863. Where the warrant is demanded *pendente lite* besides the circumstances referred to in article 860 the applicant shall also declare on the same oath the fact of the pendency of the action, giving the necessary details for the identification of the said action.

Penalty in case of malicious demand for warrant.

864. Where it is found that the warrant was obtained upon a demand maliciously made, the penalty in terms of article 836(8) shall not be less than three thousand liri.

Damages.

865. In all cases in which a warrant is declared to have been unjustly obtained, the party suing out the warrant may be liable for damages and interest and this in addition to the penalty in terms of articles 836 and 864.

Security for payment of penalty etc.

866. It shall be lawful for the court, on good cause being shown, upon the demand by application by a person whose ship or vessel is detained, the master, the person in charge, or the agent of the ship or vessel against which a warrant has been issued, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security, in an amount not less than three thousand liri, for the payment of the penalty, damages and interest, and, in default, to rescind the warrant.

Time within which to bring action for judicial acknowledgement of claim.

867. A warrant issued before the debt or claim has been judicially acknowledged shall cease to be in force if the applicant, within six working days from the issue of the warrant, fails to bring his action for the acknowledgement of the debt or claim. Moreover the applicant shall be liable for damages and interests:

Provided that where a person whose ship or vessel is detained, the master, person in charge or agent of the ship or vessel against which a warrant has been issued, shall have, by means of a note filed in the registry, granted an extension of such time, the warrant shall remain in force for the time so extended.

Warrant not to cease by deposit or security.

868. (1) Where the warrant has been issued for the purpose of securing the enforcement of a judgment, the warrant shall not cease to be in force by the deposit or security mentioned in article 830, but only on the payment, or the unconditional deposit in court free

from the effects of any garnishee order, of the amounts due in terms of the judgment including interests and judicial costs.

(2) Nor shall the warrant cease to be in force, in any other case, unless, in addition to the deposit or security, there be appointed a regular attorney or mandatory to judicially represent the ship or vessel.

Duration of warrant.

869. (1) A warrant which has not ceased to be in force for other reasons, shall remain in force for one year to be reckoned from the day on which it was issued, unless within such time the person suing out the warrant shall have, upon an application to that effect, obtained an extension.

(2) Such extension may be granted more than once, but it may not be granted for more than one year each time.

(3) The decree allowing the extension shall state the date up to which the warrant shall remain in force.

(4) The decree allowing the extension shall be served on the persons mentioned in articles 856 and 857.

(5) None of such persons shall incur any liability if, after the expiration of the said time, whether original or extended, and before the decree of any such extension has been served on him, shall act as if the warrant had ceased to be in force.

(6) The absence of a demand for an extension shall not be a bar to the issue of a fresh warrant.

Ships not subject to detention.

870. (1) No warrant shall be issued against any ship or vessel wholly chartered in the service of the Government of Malta or employed in any postal service either by the Government of Malta or by any other government.

(2) No warrant shall be issued against any ship of war.

(3) A warrant of impediment of departure of a ship or vessel shall, on an application by the Malta Maritime Authority, be rescinded if the court is satisfied that because of the nature of its cargo or of its length, draught or other circumstances concerning safety, navigation or port operation, it is advisable that the ship or vessel should leave port without delay.

Sub-title V

OF THE WARRANT OF PROHIBITORY INJUNCTION

Object of warrant.
Amended by: VIII. 1981.8; XXII.1995.320.

873. (1) The object of a warrant of prohibitory injunction is to restrain a person from commencing or continuing the erection of any building or work whatsoever or from demolishing or renovating any building or work, or to restrain a person from entering any premises or place or from doing any thing whatsoever which might be prejudicial to the person suing out the warrant.

Inquiry of court.

(2) The court shall not issue any such warrant unless it is

satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right.

(3) The court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused would not be capable of remedy.

(4) If on an application, it is proved to the satisfaction of the court that subsequent to the issue of the warrant of prohibitory injunction the person restrained has continued with the work or demolition in breach of the court's order, the court shall, without prejudice to any other action competent to it at law, at a request of applicant, condemn the person against whom the warrant had been issued to remedy what was committed in breach of its order and to authorise in default the applicant to carry out such remedial works as the court may direct at the expense of the person restrained.

(5) A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt, or any other claim whatsoever, amounting to not less than four thousand liri. The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing *inter vivos* by onerous or gratuitous title any property: provided that such a warrant shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order.

(6) The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right and that unless such warrant is issued the prejudice that would be caused would not be capable of remedy:

Provided that where the warrant is intended to be issued against the Government or an authority established by the Constitution or any person holding a public office in his official capacity, such warrant will not be issued if the authority or person against whom the warrant is demanded declares in open court that the thing sought to be restrained is not intended to be done.

(7) The court may initially issue any such warrant for an interim period under such terms and conditions as it may deem appropriate.

(8) Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment. Cap. 56.

(9) The warrant referred to in sub-article (8) shall upon its issue and at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry and the Land Registrar who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.

(10) Upon registration of the warrant referred to in sub-article (8) by the Director of the Public Registry, any future sale, alienation, transfer or disposal of immovable property to which the warrant refers shall be void and to no effect.

(11) Without prejudice to the provisions of article 836, the warrant referred to in sub-article (8) shall unless previously revoked or otherwise ceases to be in force, continue to have effect for a period of six months from the date of final judgment in favour of the creditor in his action for the recovery of the debt or claim referred to in sub-article (5); provided that the court may on an application filed by the person suing out the warrant within such period of six months, extend the validity of the warrant by one further period of six months. Notice of such extension shall, at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry and the Land Registrar.

Execution of warrant.

874. The marshal shall execute the warrant by serving a copy thereof on the party against whom it is issued.

Applicability of certain articles.

875. The provisions of articles 279, 280, 282, 843, 844 and 858 shall apply to the warrant of prohibitory injunction.

Warrant in cases of personal separation. *Added by: XXI. 1993.87. Amended by: XXIV. 1995.321.*

876. (1) Where a spouse has brought or intends to bring before the court of contentious jurisdiction, a suit for personal separation, the spouse may request such court to issue a warrant of prohibitory injunction:

(*a*) against the other spouse restraining such other spouse from selling, alienating, transferring or disposing *inter vivos* whether by onerous or gratuitous title any shareholding in any commercial partnership if such shareholding is comprised in the community of acquests; or

(*b*) against any commercial partnership in which the other spouse has a majority shareholding which pertains to the community of acquests from selling, alienating, transferring or otherwise disposing by onerous or gratuitous title, any immovable property or rights annexed thereto owned by that commercial partnership; or

(*c*) against the other spouse from contracting any debt or suretyship which is a charge on the community of acquests.

(2) The demand referred to in sub-article (1) may be made at any time after filing the application before the court of voluntary

jurisdiction for leave to proceed juridically for separation and until final judgement has been given in any such action for separation. The demand may also be made where it is the other spouse who has made the said application for leave to proceed or who has in fact so proceeded.

(3) Where the warrant is issued before the action for separation is brought before the court of contentious jurisdiction, the spouse who shall have demanded the issue of the warrant shall, within four working days from delivery of the notice of its execution, or within ten days from the issue of the warrant, bring an action before the court of contentious jurisdiction for personal separation where leave has been given for such action in court of voluntary jurisdiction. Where at the time of the issue of the warrant no such leave has been granted, the said action shall be brought within four working days from the grant of such leave.

(4) If the action is not brought within the times stated in sub-article (3) the warrant shall have no further effect.

(5) The warrant shall unless previously revoked continue to have effect up to the date of the final judgement in the action for personal separation. The court may, however, determine that the warrant shall remain effective for a further period or periods not exceeding six months each until the community of acquests is liquidated. The said warrant shall also cease to have effect if the said action or the application for the grant of leave before the court of voluntary jurisdiction is withdrawn or abandoned.

(6) A warrant issued under this article shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to any court order.

(7) Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person or partnerships against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person or partnership in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment. Cap. 56.

(8) Such warrant shall upon its issue and at the expense of the applicant, be served by the Registrar within twenty-four hours on the Director of the Public Registry, the Land Registrar and the Registrar of Commercial Partnerships who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.

(9) Upon registration of the warrant by the Director of the Public Registry, any sale, alienation, transfer or disposal of immovable property to which the warrant refers and not previously registered in the Public Registry or the Land Registry, shall be void and of no effect. The transfer of any shareholding made after the registration of the warrant by the Registrar of Partnership shall likewise be void.

(10) When the warrant is duly served, any obligation referred to in paragraph (*c*) of sub-article (1) contracted after such service by the spouse against whom the warrant is issued in favour of the person served with the warrant shall be void and of no effect, and this without prejudice to any liability for contempt of court under this Code.

(11) The spouse against whom the warrant is issued as well as any partnership referred to in the warrant and any person showing an interest may at any time by application request the court to revoke or vary the warrant under this article.

Warrant to restrain a person from taking a minor outside Malta. *Added by: XXIV. 1995.322.*

877. (1) A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.

(2) The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.

(3) The warrant shall also be served on: -

(*a*) the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and

(*b*) the Commissioner of Police enjoining him not to allow such minor to leave Malta.

(4) If, before the service of the warrant on the officer charged with the issue of passports, a passport in respect of the minor had already been issued or the name of the minor had already been included in the passport of another person, such officer shall take the necessary steps to withdraw the passport in respect of the minor, and of any other passport which includes the name of the minor, and to delete the name of the minor from such passport.

Contents of warrant.

(5) The warrant shall contain the name and surname of the minor and any other particulars, including the date and place of birth and the names of the parents when available, so as to enable the persons served with the warrant to establish the identity of the minor.

Contempt of court in case of breach.

(6) Any person served with the warrant who, directly or indirectly, takes the minor, or allows the minor to be taken, out of Malta shall be guilty of contempt of court.

Service of decree granting extension.

(7) The provisions of article 869(1), (2), (3), (5) and (6) shall apply to such a warrant.

(8) The decree allowing an extension of the warrant shall be served on the persons mentioned in sub-articles (2) and (3).

Sub-title VI

Repealed by: XII. 1985.23.

OF THE *MEDITATIO FUGAE* WARRANT

Articles 876 to 888, both inclusive, were repealed by Act No. XII of 1985.

Title VII

Amended by: IV. 1868.12.

OF THE PROTEST AND JUDICIAL LETTER

Protest and judicial letter. *Amended by: IV.1868.13; IX.1886.105.*

889. (1) The object of a protest is to make a solemn intimation or declaration in order to place other parties in bad faith, or to preserve one's own rights.

(2) Nevertheless, where the law provides that such intimation or declaration is to be made by means of a judicial act without specifying the form thereof, the intimation or declaration may be made by means of a judicial letter.

(3) Where the law does not prescribe the manner in which such intimation or declaration is to be made, the intimation or declaration may be made orally.

Effect from date of service. *Amended by: IV.1868.14.*

890. The protest or judicial letter shall take effect from the day of the service thereof.

Act interrupting prescription to take effect from day of filing. *Amended by: IV. 1868.14.*

891. (1) Nevertheless, where the protest or judicial letter is intended to interrupt the course of prescription, such protest or judicial letter shall take effect from the day on which it is filed, provided, if service is not effected within the eight days following, the party filing the protest or judicial letter makes a demand by an application for the publication in the Government Gazette of a notice, signed by the registrar, containing the substance of the act itself, and such notice is published in the Government Gazette within a month to be reckoned from the day on which the act is filed.

(2) Where the demand for the publication of the notice in the Government Gazette is not made in time for the publication thereof to take place on the day appointed by the Government for the ordinary publication of the Gazette, an issue of the Gazette containing the said notice shall be published as soon as possible, on another day, on the demand and at the expense of the party filing the protest or judicial letter.

(3) The provisions of this article shall also apply if the act interrupting the course of prescription is a warrant.

Cautio Angeli. *Amended by: IX. 1886.106.*

892. The *Cautio Angeli* is abolished.

Title VIII

OF SECURITY

Security.

893. Any security prescribed by law, or ordered by the court, or required in a lodgment schedule or in any other act, shall not, in contentious matters, be deemed to be sufficient for the purpose for which it is intended unless -

When deemed to be sufficient.

(*a*) the surety is accepted by the party concerned; or

(*b*) the time within which the sufficiency of the surety may be impugned has elapsed and the party giving the security has passed on to further acts, or has insisted on obtaining the object for which the security was offered; or

(*c*) the surety, if objected to, is declared to be sufficient by the court, on the demand of the party producing the surety against the party objecting; or

(*d*) the surety is named in the judgment, schedule, or other act, ordering or requiring the security.

How security is offered or objected to.
Amended by: XV. 1913.160.
Substituted by: XXIV. 1995.323.

894. (1) Unless otherwise provided by law, the security is offered by means of a note or an application, stating the name, surname, profession, trade, or other status of the surety, his place of abode, his identity card number or that of any other official document of identification; such note or application shall be served on the parties concerned who shall, within a time to be fixed by the court according to the circumstances of each particular case, declare whether they accept or refuse the surety offered.

(2) Objection against the surety may be entered by means of a note or in the answer to the application.

(3) If the security is offered in connection with proceedings taken by application or by writ of summons, the surety may be named in the application or in the writ of summons.

Where objection is made to sufficiency of surety.
Substituted by: XII. 1942.2.

895. (1) Where objection has been made to the sufficiency of the surety ordered or required for the withdrawal of the proceeds or of a portion of the proceeds of immovable property, the surety, unless such surety be a local bank or an insurance company locally represented, in each case approved by the court for the purpose, shall not be declared sufficient unless it be shown on proceedings taken against the party objecting that he possesses immovable property in Malta sufficient to meet the debt or obligation for which he has made himself liable.

(2) Nevertheless, the party seeking to withdraw the said proceeds in whole or in part may, in lieu of producing the surety prescribed by law or ordered by the court or required in a lodgment schedule or in any other act, or, where the surety produced has been objected to, in lieu of finding a new surety, demand that an advocate be appointed by the court at his own expense and subject to such other conditions as the court may in its discretion impose, in order that he may investigate the title to the property sold and to report whether there is any reasonable ground to fear that the

purchaser might be evicted or molested in the quiet enjoyment of the property, and in any such case, if the advocate's report shows to the satisfaction of the court that the title to the property is a good title and that there is no reasonable ground to fear that the purchaser might be evicted or molested in the quiet enjoyment of the property, the court shall, after hearing the purchaser, order that the hypothecation made by the party seeking the withdrawal of the proceeds, even if such party does not own immovable property, shall in itself be sufficient security for the recovery of the proceeds, regardless of any conditions originally imposed for such withdrawal.

(3) Where the surety required is not in respect of the proceeds of immovable property, it shall be lawful for the court on proof being made to its satisfaction to declare the proposed surety to be sufficient surety without the necessity of his having immovable property.

Security tor judicial costs. *Amended by: IX. 1886.108; XV. 1913.161.*

896. (1) Security for judicial costs shall not be required, except where prescribed by this Code.

Judicial costs to include registry fees.

(2) Judicial costs shall also include the fees due to the registry.

Objection to security.

(3) The security given may be objected to both by the registrar and the opposite party.

Form of objection. *Amended by: XV. 1913.162. Substituted by: XXIV. 1995.324.*

897. Any objection to the security for costs shall be made by the opposite party in the answer or, in the case of counter-claims, in the reply. Such objection may also be made by means of a protest, provided that such protest is filed, in regard to actions before a court of first instance, within the time allowed for the answer, or in cases of a counter-claim, within the time allowed for the reply.

Protest not to suspend running of time for filing pleadings.

898. The protest referred to in the last preceding article shall not operate so as to suspend the running of the time prescribed for the filing of any written pleading.

Enlargement of time for filing pleading, etc., not to imply enlargement of time for objecting to security.

899. Where the time allowed for the filing of any written pleading has been enlarged or where contumacy has been cleared, the time within which objection to the security for costs may be taken as provided in article 897 shall in no case be deemed to be thereby enlarged or granted anew.

Objection to be notified to party giving security. Party to give fresh security, etc. *Amended by: XXIV. 1995.325.*

900. (1) Where objection to the security for costs is regularly taken, the party giving the security shall be notified thereof; and before the cause is set down on the list for hearing, he shall either produce a fresh security, or file an application demanding that the security already offered be approved, or that he be admitted to the juratory caution if such caution is admissible.

Fresh security to be notified to party objecting.

(2) Any fresh security shall be notified as aforesaid, and objection thereto may also be taken in the first act filed by the party objecting within the time allowed for the filing of such act, or by a protest, within a time corresponding to the time referred to in

article 897.

Fresh security admissible, if previous security declared insufficient. *Amended by: XXI V. 1995.326.*

901. The disallowing of the demand contained in the application referred to in the last preceding article, shall not operate so as to bar the production of a fresh security; but such security may always be objected to within the said time, after notice thereof has been duly given to the parties concerned.

Where objection is taken after cause is set down for hearing.

902. (1) Where objection to the security for costs is taken after the cause is set down on the list for hearing, or where such objection is notified less than two days before the cause is so set down, the party giving the security may, on the day appointed for the hearing, demand orally that he be allowed to prove, before the commencement of the hearing, the sufficiency of the surety.

Where time for objecting expires after cause is set down for hearing.

(2) Where the time for taking objection to the surety expires after the cause is set down on the list for hearing, the objection may be taken orally before the commencement of the hearing, and in such case the party giving the security may demand that he be allowed the time of at least two days in order to prove the sufficiency of the surety.

Where party giving security fails to prove sufficiency of security.

(3) In either case, failing such proof, the provisions contained in articles 200 to 209 inclusive, shall be observed.

Objection to security by registrar. *Added by: XV. 1913.163.*

903. Where objection to the security for costs is taken by the registrar, such objection shall be made by a protest within the time referred to in articles 897 and 900:

Provided that in the cases referred to in the last preceding article, the objection shall be made orally, as provided in sub-article (2) of that article.

Juratory caution. *Amended by: XXIV. 1995.327.*

904. (1) It shall be lawful to admit the plaintiff or appellant to juratory caution, if he shows *prima facie* a *probabilis causa litigandi* and swears that he was unable to raise such security as is required by law.

(2) It shall be lawful for the court at the hearing of the application for the juratory caution, to proceed to hear the merits in so far as the same might bear on the issue as to the juratory caution.

Special rules respecting security. *Amended by: XV. 1913.164; L.N. 148 of 1975.*

905. In the absence of any special provisions to the contrary in regard to security, the following rules shall be observed:

(*a*) the Government of Malta is exempt from giving any security whatsoever prescribed or required;

(*b*) churches or other pious institutions or bodies corporate may, in matters in which they are concerned, and after having obtained the requisite authority, give a hypothecary security affecting property belonging to them, in lieu of any other security prescribed or required;

(*c*) in the case of a deposit representing the proceeds of a sale of immovable property, the person applying for

the withdrawal of such deposit may be allowed to give a hypothecary security on his own property, if he shows to the full satisfaction of the court, in proceedings taken against the party in whose favour the security is prescribed or required, that he possesses sufficient immovable property, situate in Malta, to safeguard the interest to be secured; the costs of such proceedings shall be borne by the plaintiff, saving his right, if any, to recover them from any person liable therefor;

(*d*) if a surety after being accepted becomes insolvent, another shall be produced;

(*e*) (i) the surety shall enter into a bail-bond in the registry of the competent court;

(ii) a bail-bond shall also be entered into by the principal debtor where he is required expressly to bind himself, even in the case of a juratory caution or a hypothecary security;

(iii) in either case the obligation on the bond may be enforced by personal arrest;

(*f*) it shall be lawful for the surety, at any time, to release himself from his obligation, by substituting another sufficient security;

(*g*) any person interested may cause the said obligations, as well as the hypothecary security referred to in paragraphs (*b*) and (*c*), to be registered in the Public Registry.

Title IX

OF DISCONTINUANCE

Withdrawal of acts. *Amended by: XXVII.1979.20; XXIV 1995.328.*

906. (1) Any of the parties may, by means of a note signed by him or his advocate, at any stage of the trial before definitive judgment is given, withdraw the acts filed by him.

(2) If on the day appointed for the trial as stated in article 152, the notice mentioned in article 152(2) was not served upon him, his advocate or his legal procurator, and the failure of service has persisted for more than one month from the date first set for the trial, the court shall adjourn the case *sine die*.

Effect of withdrawal. *Amended by: IX.1886.109.*

907. (1) The withdrawal produces the same effects as desertion.

Payment of costs before institution of fresh action.

(2) The party discontinuing the action shall pay the costs of the proceedings, and he may not commence another action for the same cause before he has actually paid such costs to the other party.

Conditional withdrawal. *Amended by: IX. 1886.109.*

908. Where the withdrawal is not unconditional, it shall be lawful for the other party not to accept it and to insist that the action be proceeded with and determined.

Annexing of exhibits to fresh record. *Amended by: XXIV. 1995.329.*

909. If the party discontinuing the action desires to commence another action for the same cause, any of the exhibits or any other evidence produced by him in the former proceedings, shall at his request be inserted in the record of the new action; and where the new action is, or has been instituted in another court, any such exhibits or any other evidence shall, upon a demand to that effect by an application, be forwarded to such other court.

Effect of discontinuance of appeal by some of the co-appellants.

910. Where several parties having the same interest have entered an appeal against a judgment and some of the parties have discontinued their appeal, it shall not be lawful for the other parties continuing the appeal to demand, in the same proceedings, the adjudication in their favour of the shares of the parties discontinuing the appeal in addition to what they have originally claimed.

Substituted by: XXIII. 1971.38.

Title X

OF THE ADMISSION TO SUE OR DEFEND WITH THE BENEFIT OF LEGAL AID

Benefit of legal aid. *Amended by: XXXI. 1934.76; XXIII. 1971.39; VIII. 1990.3. Substituted by: XXIV. 1995.330. Amended by: III. 2002.158.*

911. (1) The demand for admission to sue or defend with the benefit of legal aid in any court mentioned in articles 3 and 4 and before any other adjudicating authority where the benefit of legal aid is by law granted, shall be made by application to the Civil Court, First Hall.

(2) Nevertheless, such demand may also be made orally to the Advocate for Legal Aid.

(3) The decree granting the benefit shall apply to all the courts and adjudicating authorities mentioned in sub-article (1).

(4) The Advocate for Legal Aid shall render his professional services to persons whom he considers would be entitled to the benefit of legal aid, and prior to their obtaining such benefit, prepare and file all judicial acts, which may be of an urgent matter. The following procedure shall be followed:

(*a*) the Advocate for Legal Aid, shall file an application in the competent court in his own name requesting that he be authorised to file specific judicial acts, on behalf of a person or persons claiming the benefit for legal aid as he considers the matter urgent;

(*b*) the competent court shall, in such an event, allow such request unless there are serious reasons to the contrary;

(*c*) the Advocate for Legal Aid, after the judicial acts are allowed to be filed, shall then follow the normal procedure leading to the appointment or otherwise of an advocate and legal procurator *ex officio* as provided

in this Title:

Provided that if the Civil Court, First Hall, shall subsequently exclude the benefit of legal aid, this shall not produce the nullity of any judicial act filed with such benefit but shall merely terminate for the future the benefit of legal aid given as aforesaid, and the court may order that the person deprived of such benefit pay all costs incurred.

(5) The Minister responsible for justice shall provide such facilities as are necessary for the proper administration of the benefit of legal aid.

(6) There shall be an Advocate for Legal Aid and the expression "Advocate for Legal Aid" in this Code or in any other law includes any other lawyer, officer or public officer designated by the Minister responsible for justice to perform, under the guidance of the Advocate for Legal Aid, any function pertaining to the Advocate of Legal Aid or to the administration of the benefit of legal aid..

Conditions for admission to the benefit of legal aid. *Amended by: IX.1886.111; XVI.1922.6; XXXI.1934.77. Substituted by: XXIII. 1971.40. Amended by: XIII.1983.5. Substituted by: XXIV.1995.331. Amended by: IV.1996.12.*

912. No demand as is mentioned in article 911 shall be granted unless the applicant confirms on oath, in the case of an application, before the registrar, and in the case of an oral demand, before the Advocate for Legal Aid:

(*a*) that he believes that he has reasonable grounds for taking or defending, continuing or being a party to proceedings; and

(*b*) that excluding the subject-matter of the proceedings, he does not possess property of any sort, the net value whereof amounts to, or exceeds, three thousand liri, or such other sum as the Minister responsible for justice may from time to time by order in the Gazette establish, not including everyday household items that are considered reasonably necessary for the use by applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over, or such other sum as the Minister responsible for justice may from time to time by order in the Gazette establish:

Provided that in calculating the said net asset value, no account shall be taken of the principal residence of applicant or of any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject-matter of the proceedings in respect of which legal aid is being applied for:

Provided further that in calculating the income, the period of computation shall be the twelve months' period prior to the demand for the benefit of legal aid.

Non-applicability of s. 912. *Added by: XI. 1980.4.*

913. (1) The provisions of the last preceding article shall not apply to the granting of legal aid to any person for bringing an action for the correction or cancellation of any registration, or for

the registration, of any act of birth, marriage or death.

(2) Where any such action is disallowed the court shall deprive of such benefit the person admitted to proceed with the benefit of legal aid and, unless it sees good cause to the contrary, order him to pay all costs of the suit.

Examination of demand for benefit of legal aid by Advocate for Legal Aid. *Amended by: IX. 1886.112; XXXI. 1934.78; XXIII. 1971.41; XXIV. 1995.332.*

914. (1) Where the demand is made by an application, the Civil Court, First Hall, shall refer the application to the Advocate for Legal Aid who shall summarily examine the demand and report to the Civil Court, First Hall, whether the applicant has reasonable grounds for taking or defending proceedings, and where the demand is made orally to the Advocate for Legal Aid, he shall proceed directly with such examination and report:

Provided that no such examination shall be necessary where the demand for admission to the benefit of legal aid is made by the defendant in first instance or the respondent in second instance, and such defendant or respondent shall always be admitted to defend with such benefit upon taking the oath prescribed in article 912.

Examination of counter-claim.

(2) Where the defendant desires to set up a counter-claim against the plaintiff, the said examination shall be made in regard to such counter-claim.

Summoning of witnesses to be examined by Advocate for Legal Aid.

(3) Where the Advocate for Legal Aid deems it necessary to examine witnesses, he shall apply to the Civil Court, First Hall, for such witnesses to be summoned to attend before him.

Subpoena issued free of charge.

(4) The writ of subpoena to such witnesses shall be issued free of charge.

Administering of oath to witnesses.

(5) The Advocate for Legal Aid, before taking the evidence of the witnesses, shall administer the oath to them.

Where witnesses fail to attend.

(6) Should any witness, duly summoned, fail to attend, the Civil Court, First Hall, shall, on the report in writing of the Advocate for Legal Aid, proceed in the manner provided in article 575.

Notice of demand to opposite party. *Amended by: IX.1886.113; XXXI.1934.79; XXIII.1971.42; XXIV.1995.333.*

915. (1) Upon a demand for leave to proceed with the benefit of legal aid, the Advocate for Legal Aid shall through the marshal cause notice of the demand to be given to the opposite party calling upon such party to give, within four days from such notice, all necessary information respecting his reasons against the claim of the applicant.

Opposite party may demand summoning of witnesses.

(2) It shall be lawful for the opposite party to demand the issue of subpoenas to witnesses whom he desires to be examined in his interest by the Advocate for Legal Aid.

Applicability of subss.(4), (5) and (6) s. 914.

(3) The provisions of sub-articles (4), (5) and (6) of the last preceding article shall apply to such witnesses.

Report of Advocate for Legal Aid.

(4) Upon the conclusion of the examination of the witnesses, or upon the expiration of the time referred to in sub-article (1), the Advocate for Legal Aid shall, within four days, submit his report to the Civil Court, First Hall.

Enlargement of time for report of advocate for Legal Aid.
Amended by: XXIII. 1971.43; XXIV. 1995.334.

916. Where in any particular case, the character of the examination to be made by the Advocate for Legal Aid is such as to require a longer period of time, he shall make an application to the Civil Court, First Hall, and the court may grant such extension of the time as it may deem necessary.

Decree allowing or rejecting demand for legal aid.
Amended by: XXIII.1971.44. Substituted by: XXIV. 1995.335.

917. If the report of the Advocate for Legal Aid is in favour of the applicant, the latter shall be admitted to the benefit applied for; but if the report is unfavourable, it shall be examined by the Civil Court, First Hall, which shall give the parties the opportunity to make their submissions, before it decides on whether to accept the adverse report, or to reject the report and admit the demand.

Advocate and legal procurator to be assigned to person with benefit of legal aid.
Amended by: XXIII. 1971.45; XXIV. 1995.336.

918. The Civil Court, First Hall, shall assign to the party admitted to proceed with the benefit of legal aid the advocate and the legal procurator whose turn it is according to the rota referred to in article 91, and it shall be lawful for such party for a good cause, to request the court, through the Advocate for Legal Aid, to substitute the advocate or legal procurator by another advocate or legal procurator from the rota:

Provided that if the party is admitted to appeal with the benefit of legal aid from a judgment of first instance, he shall continue to be served by the advocate and legal procurator assigned to him as aforesaid.

When party may not be admitted to proceed with the benefit of legal aid.
Amended by: XXIII.1971.46.

919. (1) A person shall not be admitted to proceed with the benefit of legal aid -

(*a*) where in the same cause and by the same court a demand made by such party for admission to the juratory caution or any other benefit whatsoever has been disallowed for want of a *probabilis causa litigandi* on the part of the applicant in respect of the action which he intends to prosecute; or

(b) where in regard to the same action, such party has already been by the same court refused admission to proceed with the benefit of legal aid for want of a *probabilis causa litigandi*.

(2) The provisions of this article shall apply so long as the circumstances relating to the absence of a *probabilis causa litigandi* remain the same.

Person with benefit of legal aid to be exempt from payment of fees, etc.
Amended by: XXIII. 1971.47.

920. (1) The person admitted to proceed with the benefit of legal aid shall be exempt from the payment of all fees and from giving security for costs; but the plaintiff, or the defendant setting up a counter-claim, as the case may be, shall give a juratory caution to pay the costs, if able to do so, to the opposite party, in case it shall be so adjudged.

Where party proceeding with the benefit of legal aid is cast in costs.

(2) Where the party proceeding with the benefit of legal aid is cast in costs, it shall in no case be lawful for the registrar to claim from the successful party the fees due to the registry.

Where party proceeding with the benefit of legal aid succeeds in his action.
Amended by: XXIII. 1971.48.

921. If the party admitted to proceed with the benefit of legal aid succeeds in the action, he shall, out of the amount obtained or out of the proceeds of the judicial sale by auction of the movable or immovable property effected in pursuance of the judgment, pay the fees due to the registry, advocate, legal procurator and to the curators and referees, if any, saving his right of reimbursement as against the party who may have been ordered to pay such fees.

Nullity of acts not in accordance with terms of admission.
Amended by: IX. 1886.114; XXXI. 1934.80; XXIII. 1971.49.

922. (1) All acts filed by the party proceeding with the benefit of legal aid shall be null if they are not in accordance with the terms of the admission to such benefit.

Advocate may bring action in a manner different from terms of admission.

(2) Nevertheless, it shall be lawful for the advocate assigned to the party admitted to proceed with the benefit of legal aid to bring the action in a manner different from the terms of the admission, if he deems it expedient so to do in the interest of such party, provided he shall not substantially alter the claims admitted in the report of the Advocate for Legal Aid.

Where person may be deprived of benefit.
Amended by: XVI.1922.5; XXIII.1971.50; XIII.1983.5.
Substituted by: XXIV. 1995.337.

923. (1) The Civil Court, First Hall, shall deprive of such benefit the person admitted to proceed with the benefit of legal aid if it is shown that he possesses capital or income exceeding that established for the grant of legal aid.

Person deprived of benefit may be guilty of contempt of court.

(2) If it is shown that he knowingly possessed such capital or income at the time the benefit of legal aid was granted or that he knowingly had an increase in his financial circumstances *pendente lite* thereby possessing such capital or income in excess of that established for the grant of legal aid and had failed to report the same to the Civil Court, First Hall, then it shall be lawful for the said court to condemn him for contempt of court:

Provided that no contempt proceedings shall be taken by the said court if such a person is liable to legal proceedings for perjury, and the said court has ordered that he be forthwith arrested, and that a copy of the acts be transmitted without delay, through the registrar, to the Court of Magistrates in order that proceedings may be taken according to law.

(3) The Civil Court, First Hall, shall also deprive the applicant of such benefit if he is proceeding vexatiously.

(4) In all cases in which the applicant for the benefit of legal aid has been deprived of such benefit, he shall be liable personally for all the costs of the proceedings to which he would have been liable if the benefit of legal aid had not been granted to him.

Penalty for advocate or legal procurator refusing his aid without just cause.
Amended by: XXIII. 1971.51; XXIV. 1995.338.

924. If the advocate or legal procurator assigned to the person admitted to the benefit of legal aid, without good cause, refuses to undertake or continue the case, it shall be lawful for the Civil Court, First Hall, to sentence such advocate or legal procurator to pay the expenses necessary for the suit, or order him to undertake or continue the case under pain of interdiction from the exercise of his profession for a period not exceeding one month.

Duties of advocate or legal procurator.
Amended by: XXIII. 1971.52.
Substituted by: XXIV. 1995.339.

925. (1) The advocate or legal procurator assigned to the person admitted to the benefit of legal aid shall:

(*a*) act in the best interest of the person admitted to the benefit of legal aid;

(*b*) appear in court when the case of the person admitted to the benefit of legal aid is called;

(*c*) make the necessary submissions and file the requisite notes, writs of summons, statements of defence, notices, applications, and other written pleadings as circumstances require.

(2) The advocate or legal procurator shall remain responsible for a cause assigned to him as aforesaid, until the same has been finally disposed of, even though the period of his appointment may have expired.

Benefit of legal aid before Civil Court, Second Hall.
Added by: XXIII. 1971.53.
Amended by: L.N. 148 of 1975; XIII.1983.5.

926. *Repealed by: XXIV. 1995.340.*

Demand and grant of benefit of legal aid.
Added by: XXIII. 1971.53.

927. *Repealed by: XXIV. 1995.340.*

Applicability of preceding articles.
Added by: XXIII. 1971.53.

928. *Repealed by: XXIV. 1995.340.*

Title XI

OF CURATORS

Where curators are to be appointed in superior courts or Gozo court in superior jurisdiction.
Amended by: XXIII. 1971.54; XV. 1983.11; VIII.1990.3; XXIV. 1995.341.

929. Besides the cases where by express provision of this Code the appointment of curators is necessary, the court shall also appoint curators to appear in and defend proceedings in any of the superior courts or in the Court of Magistrates (Gozo) in its superior jurisdiction -

(*a*) in the interest of any absent person or minor not legally represented or imbecile or person interdicted or any person uncertain who is entitled to succeed to an entail or to any vacant inheritance not legally represented or any person who may in future be entitled to succeed to such entail or inheritance; or

(*b*) in the interest of any person not known to be living or presumed to be dead, where, for the purposes of any action, it is necessary judicially to call upon such person; or

(*c*) in the interest of any person presumed to be dead, where any other person claims to succeed to the rights of such person; or

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(*d*) in the interest of any commercial partnership registered or established under the Commercial Partnerships Ordinance* or any other law substituting the same Ordinance or any body of persons or other organization if the person or any of the persons vested with the representation thereof is or are absent from Malta or where there is or are no such person or persons, or enough persons vested with such representation.

Appointment of curators before or in the course of proceedings.

930. (1) The curators shall be appointed by the competent court on a demand made by an application filed together with the act whereby the action is commenced; in any such case the names of the curators shall not be stated in the act whereby the action is commenced, and it shall be the duty of the registrar, upon the appointment of the curators, to insert the names of such curators in the act before giving course thereto.

(2) Curators may also be appointed on an application *pendente lite* or even on a verbal demand made during the hearing of the suit, where the appointment of curators becomes necessary after the commencement of the suit.

(3) The filing of any such application shall suspend the course of any time respecting the acts of procedure.

Issue of banns. Posting up and service of banns. *Substituted by: XV.1983.12. Amended by: XXIV.1995.342.*

931. (1) The court, upon making an order for the appointment of curators, shall issue banns to be posted up at the entrance of the building in which the court sits.

(2) A copy of the banns together with a copy of the pleading or a summary thereof shall be served on one of the persons most closely related to the person to be represented or in respect of whose inheritance the appointment of curators is demanded, and where no relations are known, such copy shall be served on some other person known to be or have been a friend of the person concerned.

(3) Where no relation or friend as is mentioned in sub-article (2) is known to the person demanding the appointment of curators, the court may order that instead of the service mentioned in sub-article (2) a copy of the banns together with a copy of the pleading or a summary thereof be published in the Government Gazette and in at least two daily newspapers at the expense of the applicant.

*Repealed by Act XXV of 1995 (Cap. 386).

Contents of banns. *Amended by: XXIV. 1995.343.*

932. (1) The banns shall contain an indication of the demand for the appointment of curators and of the order of the court, together with an intimation that any person willing to accept the appointment is to appear, within six days in the registry and declare his acceptance by means of a note.

(2) There shall also be stated in the banns that, in default of any such declaration, the court shall proceed to appoint official curators.

Confirmation as curator of person offering to accept appointment.

933. Where any person appears and, by a note signed by him, offers to accept the appointment, it shall be lawful for the court, if it deems it for the benefit of the interest to be represented, to confirm as curator the person so appearing.

Appointment of official curators. *Amended by: XXIV. 1995.343.*

934. If no person appears within the said time of six days, or if the court does not confirm the person appearing, the court shall appoint as curators an advocate and a legal procurator from those on the rota mentioned in article 91.

Person confirmed as curator not entitled to expenses.

935. The person appearing to the banns, if confirmed as curator, shall not be entitled to the reimbursement of the expenses, except where a favourable judgment is obtained with costs.

Duties of curators. *Substituted by: XXIV. 1995.344.*

936. (1) The curators are bound to use their best diligence for the benefit of the interest which they represent. The duties of the curators shall include the following:

(*a*) to fully inquire as to the rights of the persons whom they represent and to identify these rights;

(*b*) to take all the necessary measures to safeguard the aforesaid rights;

(*c*) to contact forthwith the person or persons whom they represent, if the address is known; if unknown, they are to take all possible measures to find out their address including that of publishing, with the authority of the court, a notice in a newspaper of the place where last known;

(*d*) to inform the person or persons whom they represent of any judicial act and of the contents thereof;

(*e*) to obtain all the necessary information to defend the interests of the person or persons whom they represent;

(*f*) to continue looking after the interests of the person or persons whom they represent with regard to pending matters although the period of appointment under articles 89 or 90 may have expired; and

(*g*) to keep the court regularly informed of all actions taken in the execution of their duties.

(2) The curators shall be liable for damages and interest which may be occasioned by their negligence.

Duties of legal procurator appointed as curator.

937. The legal procurator appointed to act as curator shall obtain for the advocate such information as to facts as the advocate shall require, file the written pleadings, be present at the hearing, and afford all other necessary assistance to the advocate.

Fees due to official curators. *Amended by: IX.1886.115. Substituted by: XXIV.1995.345.*

938. The curators appointed from the rota shall, respectively, be entitled to the necessary expenses incurred by them and to such fees as according to the tariffs in Schedule A annexed to this Code are generally due to the advocate and the legal procurator in a cause:

Provided that the court may at the request of the curator order that a provisional sum be paid on account and in advance to the curator by the person requesting the appointment of such curator to cover expenses which the curator indicates that he would be incurring:

Provided further that where the court removes a curator in case of misconduct or negligence according to the provisions of article 96, the court shall order that no fees as aforesaid be paid to the curator or that only a specified portion thereof be paid, without prejudice to any other right competent to the person he was representing for damages suffered.

Appointment as curators of persons expert in the subject-matter of the curatorship.

939. Where the curator is to be entrusted with the charge of ships or merchandise, the court shall appoint as curator a person who is skilled in the matter for which the appointment is sought, but if any action shall arise, the court shall, in addition to such curator, appoint one of the advocates on the rota mentioned in article 91.

Appointment of curators *ad litem* in inferior courts. *Amended by: XV. 1913.165; VIII. 1990.3.*

940. In the Court of Magistrates (Malta) and in the Court of Magistrates (Gozo) in its inferior jurisdiction, the appointment of curators *ad litem* shall be made on the verbal demand of the party, observing the procedure laid down in articles 931, 932 and 933.

Power of court. *Amended by: IX. 1886.116.*

941. Where, in the cases referred to in the last preceding article, no person voluntarily appears to assume the curatorship, or the court does not deem it proper to confirm the person appearing, the court shall appoint as curator an advocate or a legal procurator even though not on the rota mentioned in article 91.

Procedure prescribed in Title to apply to cases arising before court of second instance or on new trial.

942. The procedure prescribed in this Title shall also apply where the occasion for appointing curators arises before a court of second instance or on a new trial.

Title XII

OF DEPOSITS

Irregular deposits (i.e. lodgment of money legally current in Malta). *Amended by: VIII.1903.3; XV.1913.166; L.N. 4 of 1963; XXXI.1966.2; VIII.1990.3; XXIV.1995.357.*

943. (1) Irregular deposits of moneys in the superior or inferior courts shall be effected by the filing of a schedule in the registry and the lodging of the moneys in the place appointed by the Minister responsible for justice by a notice in the Government Gazette.

(2) A copy of the lodgment schedule shall be served upon all parties interested.

(3) The lodgment schedule shall be signed by an advocate or a legal procurator, as the case may be:

Provided that in matters pertaining to the Civil Court, First Hall or to the Court of Magistrates (Gozo) in its superior jurisdiction in commercial matters or to the inferior courts, the signature of the person making the deposit shall be sufficient.

(4) The Government shall be responsible for such deposits.

Conditions for withdrawal of money. *Amended by: IX.1886.117; XV. 1913.167.*

944. (1) Save as otherwise provided by law, the money so lodged may not be withdrawn, in whole or in part, except on compliance with the conditions laid down in the lodgment schedule, unless the withdrawal of such money is effected in execution of a judgment constituting a *res judicata* or in pursuance of the express consent of the parties interested.

Where lodgment is made by execution officer.

(2) Where, however, the lodgment is made by the marshal or other executive officer to whom, in the execution of any warrant issued in virtue of a judgment or other executive title, the debtor may have delivered, either wholly or in part, the amount stated in the warrant, on condition that such amount shall remain on deposit, the creditor at whose suit execution was issued, shall, on his demand, even verbal, be allowed to withdraw such amount, unless the debtor, within fifteen days from the execution of the warrant, by writ of summons, shall have brought forward his reasons against the withdrawal by the creditor of such amount, wholly or in part.

Time for entering opposition to withdrawal.

Enlargement of time.

(3) The said time of fifteen days may be extended, on good cause being shown, to another fifteen days only, on the demand of the debtor by an application.

Duties of registrar in connection with withdrawal of money. *Added by: IX. 1886.118. Substituted by: XXIV. 1995.346. Amended by: II.1996.78.*

945. (1) Where a deposit is withdrawn, wholly or in part, either on account or in full settlement of a debt due under a judgement or other public deed, the registrar shall, on the demand and at the expense of any person interested, enter a note of such withdrawal in the margin of the judgment, and transmit a note thereof to the notary or other officer before whom the deed from which the debt arises was received or who is the keeper thereof.

Reductions and cancellations of lawful causes of preference.

(2) Where the debt referred to in sub-article (1) is secured by any one of the lawful causes of preference specified under article 1996 of the Civil Code, any interested party may effect the reduction or cancellation of the relative registration in the manner provided in articles 2065 and 2066 of the aforementioned Code.

The relative note shall be signed by the person requesting the reduction or cancellation of the registration or by an advocate, a notary or a legal procurator.

Additional pre-requisite for registration.

(3) It shall be a pre-requisite for such registration that an authentic copy of the note of withdrawal referred to in sub-article (1) be annexed to the note of reduction or cancellation.

Claim touching a deposit, equivalent to garnishee order. *Amended by: XV.1913.168; XXIV.1995.347.*

946. (1) Where a claim is made by writ of summons touching a deposit existing in any court, the registrar shall, on the demand of the party, make a note thereof on the lodgment schedule and such claim shall, upon such demand, have the effect of a garnishee order until the decision on such claim shall have become *res judicata*, saving the provisions relating to the enforcement of judgments pending an appeal therefrom.

(2) The provisions of sub-article (1) shall also apply in the case where the claim is made by an application, provided the applicant makes a demand to the registrar to enter a note of such claim on the lodgment schedule.

(3) The demand referred to in this article shall be made by means of a note.

Withdrawal of deposit made under a schedule of redemption. *Amended by: II. 1940.14; IV.1961.12.*

947. Any deposit made under a schedule of redemption may, the right of redemption being waived, be withdrawn by the party making the deposit without the necessity of the consent of the party against whom the right of redemption was sought to be exercised, even though the latter may have been notified of the deposit, provided he shall not have signified by means of a judicial act his acceptance of the redemption.

Deposit of things other than cash. *Amended by: XV. 1913.169.*

948. (1) Any deposit not consisting in cash shall be made in the manner prescribed in article 943, but a detailed description of the things deposited shall be made in the schedule.

(2) Saving the provisions of article 951, the things deposited shall remain under the custody of the registrar.

(3) The same rule shall be observed if the deposit is made by the marshal in the execution of a court warrant.

Rules regarding place for deposit of things other than cash. *Amended by: IV.1862.20; XV.l913.170; L.N. 4 of 1963; XXXI.1966.2.*

949. (1) The courts shall have power to make special rules in regard to the place appointed for the deposits referred to in the last preceding article, and for the due preservation of the things deposited.

(2) Where the things seized are so bulky or in such a number as to occupy considerable space, or if there is no more room in the place appointed by the Minister responsible for justice, the person making the deposit shall, at his own expense, provide another place, to the satisfaction of the registrar, saving in any such case the right, if any, of such person to the reimbursement of such expense against the party in whose favour the deposit is made or other parties interested.

Compulsory withdrawal of things other than cash in certain cases. *Amended by: VIII. 1901.1; XV.1913.171.*

950. (1) If the parties interested in any of the deposits referred to in article 948, fail to take the necessary steps for the disposal of the things deposited, it shall be lawful for the court, after ten years from the date of the deposit, if it consists of jewels or articles of precious metal, or after three years, if it consists of other things, upon the application of the registrar, to direct that the interested parties named in the lodgment schedule be called upon by the registrar by letter, to take the necessary steps, within such reasonable time as the court may fix; and, in default, to order the withdrawal by the owner of the things deposited, or the judicial sale thereof by auction; in the latter case, the proceeds of such sale shall be lodged in court.

(2) The proceeds so lodged shall for all purposes of the law be considered as if they were the identical thing sold.

(3) The intimation referred to in sub-article (1), if it cannot be made otherwise, may be made by means of a public notice to be posted up at the entrance of the building in which the court sits, and inserted in one or more of the periodical newspapers including in any case the Government Gazette.

Regular deposits (i.e. lodgment of money not legally current in Malta, gold or silver articles, etc.). *Amended by: XV.1885.1; IX.1886.119; L.N. 4 of 1963; XXXI. 1966.2.*

951. (1) Regular deposits of moneys not legally current in Malta, gold or silver articles, pearls or precious stones shall be made in the place appointed by the Minister responsible for justice by notice in the Government Gazette; and the Government shall be responsible for such deposits in the same manner as any other person with whom a regular deposit is made.

Conversion of foreign money into local currency.

(2) If the regular deposit consists of money not legally current in Malta, such money shall, on the expiration of four months from the date of the lodgment, be converted, by the officer charged with the custody thereof, into legal currency, at the current rate of exchange at the time of such conversion, and transferred to the place appointed for irregular deposits; and it shall for all legal purposes be considered as an irregular deposit from the date of such conversion and transfer.

Duties of registrar.

(3) Immediately upon such conversion and transfer, the officer effecting the same shall give notice in writing to the registrar who had received the relative schedule; and the registrar shall, in the margin of such schedule, enter a note of such conversion and transfer, stating the amount realized as a result of the conversion.

Title XIII

OF THE BENEFIT OF *CESSIO BONORUM*

Articles 952 to 959 were repealed by Act XXIV. 1995.348.

Title XIV

OF THE INTERVENTION AND JOINDER OF PARTIES

Admission of party *in statu et terminis.*

960. Any person who shows to the satisfaction of the court that he is interested in any suit already pending between other parties, may, on an application, be admitted *in statu et terminis*, as a party to the suit at any stage thereof, whether in first or in second instance; but such admission shall not suspend the proceedings of the suit.

Joinder of third party.

961. A third party may also, by decree of the court, at any stage of the proceedings before the judgment, be joined in any suit pending between other parties in a court of first instance, whether upon the demand of either of such parties, or without any such demand.

Effect of joinder of third party. *Amended by: XIII. 1964.23; XXIV.1995.349.*

962. The third party joined in the suit shall be served with the writ of summons or application, as the case may be, and shall for all purposes be considered as a defendant; and as such he shall be entitled to file any written pleading, raise any plea and avail himself of any other benefit which the law allows to a defendant; and the claim may, according to circumstances, be allowed or disallowed in his regard, as if he were an original defendant.

Title XV

OF THE DESERTION OF CAUSES

Time for close of pleadings. *Amended by: IX. 1886.120; XXXI. 1934.81; XXIV. 1995.350; IV.1996.13.*

963. (1) Saving the provisions of articles 416 and 420, the written pleadings in any cause shall be closed, in first instance, within the peremptory time of six months, and, in second instance, within the peremptory time of one year.

Running of time in first and second instance.

(2) The time shall commence to run, in first instance, from the day on which the writ of summons is filed, and, in second instance, from the date of the application of appeal for the reversal or variation of the judgment appealed from.

Power of court.

(3) If it is found that the pleadings in any cause set down for hearing are not closed, the court may order such cause to be again placed with the causes the pleadings whereof are not yet closed and fix for the closing of the pleadings of that cause a peremptory time not exceeding one month.

Pleadings to be deemed closed if party not served with pleading appears at trial.

(4) Notwithstanding the provisions of sub-article (3), the pleadings shall be deemed to be closed if the party not served with the pleading necessary for the close of the record, appears at the trial and does not raise the question that the pleadings are not closed and proceeds or knowingly allows others to proceed to further acts without raising such question.

If pleadings are not closed, cause to be deemed deserted.

(5) Saving the provisions of article 732(2), the causes the written pleadings whereof are not closed within the said time shall:

(*a*) where the cause is before a court of first instance be

deemed to be a cause which has been set down for hearing and subsequently by order of the court, adjourned to an unspecified date, and the provisions of articles 964 to 967 shall apply thereto; and

(*b*) where the cause is before a court of second instance, be deemed to be deserted.

Effects of desertion.

(6) The desertion of any cause in first instance shall operate as an abandonment of the proceedings, but shall not bar the right of action. In second instance, the desertion shall operate as an abandonment of the appeal and the judgment appealed from becomes *res judicata*.

Drawing up and publication of lists of causes adjourned *sine die* or otherwise suspended. *Amended by: XI.1859.40; IX.1886.120; XV.1913.173: XIII. 1964.24. Substituted by: LII.1981.3. Amended by: VIII. 1990.3; XXIV. 1995.351.*

964. (1) Where in any court of civil jurisdiction there are causes which had been set down for hearing and subsequently, by order of the court, adjourned to an unspecified date or otherwise suspended and more than three months have elapsed from such adjournment or suspension, the registrar shall, at the end of the month during which the period above mentioned shall have elapsed, draw up a list thereof entitled "List of causes suspended in the Court... (*inserting here the name of the court*)" stating therein the date of the last decree or order whereby each cause had been adjourned, and publish such list by posting it up at the entrance of the building in which the court sits.

(2) The registrar shall draw up and publish separate lists of the causes thus pending before each of the superior courts, namely, the Civil Court, First Hall, the Court of Appeal and the Constitutional Court. Similar lists shall likewise be drawn up and published by the registrar with regard to causes pending before the Court of Magistrates (Gozo) in its superior jurisdiction.

(3) Each list shall bear the date of its publication, and shall remain posted up at the said place for a period of at least one month from that date.

When cause is deemed deserted. *Amended by: IX.1886.120. Substituted by: LII.1981.4. Amended by: XXIV.1995. 352.*

965. Any cause included in any list as provided in the last preceding article, shall be deemed to be deserted if, within the time of one month to be reckoned from the last day of the said period of one month, the requirements hereunder mentioned, as the case may be, are not complied with, that is -

(*a*) if, where the cause has been suspended in consequence of the death, incapacity, or absence of any of the parties, or owing to any defect in the procedure, none of the parties shall have taken the necessary steps in order that the hearing of the cause may be commenced or proceeded with; or

(*b*) if where the cause has been suspended consequent to the fact that the plaintiff or appellant has not been served with the notice of the day appointed for the trial, none of the parties shall have taken the necessary steps for the hearing of the case to be commenced or proceeded with by the filing of the relative application accompanied by a note indicating the last known

address of the plaintiff or appellant, such note to be confirmed on oath by applicant; or

(*c*) if, where the cause has been suspended until judgment is pronounced in another cause and such other cause has afterwards been disposed of by a judgment which has become res judicata before the publication of the said list, none of the parties shall have made an application for the cause so suspended to be again set down for the commencement or prosecution of its hearing; or

(*d*) if, where the cause has been suspended until any of the parties shall have instituted another action, or carried out any obligation imposed by the court or created by any contract or provision of law, such other action or such obligation shall not have been instituted, or carried out, and none of the parties shall have made an application for the commencement or prosecution of the hearing of the cause so suspended; or

(*e*) if, in any other cause, not being one mentioned in paragraphs (*a*) or (*b*) or (*c*) or (*d*) above, or not being a cause for personal separation or maintenance, the fees payable to the registry in accordance with Tariff A in Schedule A annexed to this Code, in respect of such causes, are not paid to the registrar concurrently with the request for the reappointment of the cause.

Power of court to enlarge time. Demand for enlargement to be by application. *Amended by: XI.1859.41; IX.1886.120; LII.1981.5.*

966. (1) The court may, on just cause being shown, extend, once only, the time prescribed in the last preceding article to a further period not exceeding two months, on the demand, by application, of any party interested, provided such application is filed before the expiration of the original time.

Appointment of curators in certain cases.

(2) If, from the report of the execution officer, it appears that one or more of the persons to be served with the application, is or are dead or absent, or, for any other reason, may not be found, or if, in any manner, it appears that one or more of such persons is or are, through insanity or for any other cause, incapable to sue or be sued, and has or have no lawful representative, the application referred to in the last preceding sub-article shall be served upon official curators to be, upon the observance of the usual formalities, appointed by the court on the application of the party demanding the enlargement of the time; provided, however, that an amount corresponding to the fee which may be due to the registry and the curators, in respect of that demand, is deposited with the registrar, simultaneously with the filing of the application for the appointment of curators.

Curators to continue to represent interests of persons on whose behalf they are appointed.

(3) Where the hearing of the cause previously suspended be proceeded with, such curators shall, where necessary, continue to represent the interests of those persons on whose behalf they shall have been appointed.

(4) No appeal shall lie from the decision granting the enlargement of the time, although given by a court of first instance.

Decision granting enlargement of time not subject to appeal.

(5) A demand for the enlargement of the time shall be deemed to be waived, if the application for the appointment of curators shall not have been filed, or the deposit made, within ten days from the date of the said report.

Tacit waiver of demand for enlargement of time.

967. Where desertion takes place under the provisions of the last two preceding articles, it shall be deemed to take place on the day on which the time therein prescribed expires; and the registrar may from that day demand the fees payable to the registry, in accordance with Tariff A in Schedule A annexed to this Code.

Date on which desertion takes place.
Amended by: IX. 1886.120.

Title XVI

OF ARBITRATION

968. (1) Subject to the provision of sub-article (2), any cause concerning any matter in dispute which has been brought before a court of civil jurisdiction in Malta may be submitted at the request of all the parties for determination by arbitration, under the provisions of the Arbitration Act, and the provisions of the aforesaid Act shall apply thereto.

Arbitration.
Amended by: IX.1886.121.
Substituted by: II.1996.78.
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(2) Any submission to arbitration in regard to any dispute concerning questions of personal status including those relating to separation or annulment of a marriage between husband and wife, or in regard to things or rights which may not form the subject-matter of a contract, whether absolutely or without certain formalities required by law, is null.

969. Any submission to arbitration made by any administrator, or by any person who is not at liberty to dispose of the thing to which the dispute refers, is null.

Nullity of submission to arbitration.
Added by: IX. 1886.121.

970. *Repealed by Act II.1996.78.*

Form of submission.
Added by: IX.1886.121.
Amended by: XV. 1913.174.
Substituted by: XV.1983.13.
Amended by: XXIV.1995.353.

971. *Repealed by Act II.1996.78.*

Witnesses to be examined by arbitrators.
Added by: IX. 1886.121.
Substituted by: XV. 1983.14.

Persons under tutorship or curatorship may not act as arbitrators.
Amended by: XLVI. 1973.108.

972. *Repealed by Act II.1996.78.*

Certain disputes not to form matter of reference to arbitration.

Duration of submission.

973. *Repealed by Act II.1996.78.*

Submission to state dispute and name of arbitrators.

974. *Repealed by Act II.1996.78.*

Power to enlarge time for making award.
Amended by: XV.1913.175.

975. *Repealed by Act II.1996.78.*

Power of parties to submission to compel arbitrators to declare acceptance of reference within specified time.

976. *Repealed by Act II.1996.78.*

Time not to exceed fifteen days.

No person may be compelled to act as arbitrator.

Person accepting to act as arbitrator may not refuse to discharge reference.

Acceptance of appointment by arbitrators to be made in writing.
Amended by: IX.1886.122; XV.1983.15.

977. *Repealed by Act II.1996.78.*

Arbitrator refusing to act without just cause liable to damages.

978. *Repealed by Act II.1996.78.*

Lawful impediment of arbitrator.

Power of parties to withdraw from submission in certain cases.

979. *Repealed by Act II.1996.78.*

Demand of party to withdraw from submission to be made by writ of summons.

980. *Repealed by Act II.1996.78.*

981. *Repealed by Act II.1996.78.*

Formalities and times to be observed in arbitration proceedings.

982. *Repealed by Act II.1996.78.*

Arbitrators to adjudge according to rules of law. *Amended by: IX. 1886.123.*

983. *Repealed by Act II.1996.78.*

Notice to parties of publication of award. *Added by: IX. 1886.123.*

984. *Repealed by Act II.1996.78.*

Deliberation of majority to form award. Contents of award. *Added by: IX. 1886.123.*

985. *Repealed by Act II.1996.78.*

Deposit of the original of award, etc. *Added by: IX. 1886.123.*

986. *Repealed by Act II.1996.78.*

Rescission or annulment of award. *Amended by: IX.1886.124; XV. 1983.16.*

987. *Repealed by Act II.1996.78.*

When submission ceases to be operative. *Amended by: IX. 1886.126.*

Title XVII

OF THE RESPECT DUE TO THE COURT

988. (1) It shall appertain to the judges and the magistrates respectively to enforce order during the sittings of the courts in which they sit.

Order at sittings. *Amended by: XV. 1913.176; L.N. 148 of 1975.*

(2) It shall also appertain to the judges and the magistrates respectively to provide for the maintenance of good order and decorum within the precincts of the courts in which they sit.

Order within precincts of courts.

989. It is forbidden at any sitting of the court to utter exclamations of approval or disapproval, or to disturb in any other manner the attention of the court.

Unseemly behaviour *in facie curiae.*

990. In the case of any improper behaviour under the last preceding article, it shall be lawful for the judge or magistrate to whom it appertains to enforce order during the public sittings of the court under article 988 to punish the contemner -

Punishment of contemner. *Amended by: XII.1978.7.*

(*a*) with reprimand;

(*b*) with expulsion from the court;

(*c*) with arrest for a period not exceeding twenty-four

hours in a place within the building in which the court sits;

(*d*) with a fine (*ammenda* or *multa*) in terms of the Criminal Code. Cap. 9.

Punishment for indecent words or gestures or insulting remarks *in facie curiae.* Cap. 9.

991. It shall be lawful for the judge or magistrate referred to in article 988 forthwith to sentence to a fine (*ammenda* or *multa*) or to detention in terms of the Criminal Code, any person who, by any indecent word or gesture during the sitting, commits any act of contempt of court, or insults any other person.

Where act of contempt constitutes a criminal offence. Cap. 9.

992. Where any of the aforesaid acts constitutes an offence under the provisions of the Criminal Code, it shall be lawful for the judge or magistrate to order the arrest of the offender, draw up a *procès-verbal* of the fact, and remit the party arrested to the Court of Magistrates to be dealt with according to law.

Where act of contempt is committed by advocate, etc. *Amended by: XII. 1978.8.*

993. Any advocate, legal procurator or other officer of the court, who commits any of the acts referred to in article 991, or 994, may, in serious cases, be also forthwith condemned by the judge or magistrate to interdiction from the exercise of his profession or office for a period not exceeding one month.

Use of forbidden expressions etc. *Substituted by: XII.1978.9; XI. 1980.5.*

994. (1) It is forbidden to use in any written pleading or during the hearing of a cause any insulting or offensive expression or any expression which is otherwise objectionable, unless such expression is necessary for the purposes for which the written pleading is by law intended or for the cause in which it is used, or to produce without the previous permission of the court, any document which contains any such expression.

(2) Any person who acts in contravention of the foregoing provisions of this article or who presents or produces or attempts to present or to produce any written pleading or document which contains an expression forbidden by this article, and any person who has signed any such written pleading, shall be guilty of contempt of court and shall be sentenced by the court to reprimand or to a fine (*ammenda* or *multa*) or to detention in terms of the Criminal Code. Cap. 9.

(3) Where notwithstanding the provisions of article 184 a written pleading has been filed or a document has been produced which contains expressions forbidden by this article, the court shall, on its own motion or on the demand of the aggrieved party, order the whole of the written pleading or of the document to be expunged from the registry of the court or from the records of the proceedings, and the written pleading or document shall for all purposes be deemed never to have been filed or produced.

(4) Where it can be shown to the court that the contravention is slight and was not wilful and can be remedied adequately by the striking out of the forbidden expression, the court may in lieu of applying the foregoing provisions of this article order that the said expressions be struck out.

Punishment for insults to court officers.

995. Any functionary, referee or other officer of the court, who is insulted in the execution of any warrant, or in the discharge of his duties, shall report the matter to the judge or magistrate, and the- contemner shall be liable to be by the judge or magistrate sentenced to a fine (*ammenda* or *multa*) or to detention, saving any other punishment, applicable by the competent court, to which the contemner may be liable if the fact constitutes a more serious offence, according to law.

Excesses by advocate, etc. *Amended by: XV. 1913.177; II.1947.4,5; VIII.1981.9.* Improper behaviour towards advocate, etc.

996. The judge or magistrate shall repress any excess on the part of any advocate, legal procurator, or other officer, while in the discharge of his duties; it shall also be incumbent upon the judge or magistrate to ensure the most ample liberty to every advocate, legal procurator or other officer in the discharge of his duties consistently with the law, and he shall of his own motion repress any improper behaviour committed in his presence towards any advocate, legal procurator or other officer, while in the exercise of his duties, by inflicting any of the punishments referred to in articles 990 and 991 according to circumstances.

Contempt of court proceedings. *Substituted by: XXXI. 2002.191.*

997. (1) In proceedings for any act or omission amounting to contempt of court, the offender shall, on conviction, be liable to imprisonment for a term up to one month or to a fine (*multa*) of not less than one hundred liri but not more than one thousand liri or to both such fine and imprisonment.

(2) The court may, notwithstanding any punishment to which it may sentence the offender, order him to remove any nuisance or inconvenience to which the offence relates within a time, sufficient for the purpose but in any case not exceeding three months from the date of the judgment, to be fixed by the court; and, if the offender fails to comply with any such orders within the time so fixed, he shall be liable to the penalty of a fine (*ammenda*) of not less than ten liri and not more than fifty liri as the court may fix, for every day during which the default continues after the expiration of the said time.

Warrant of escort or arrest of offender.

998. Where, in the cases referred to in this Title, the party accused, on being summoned by order of the judge or magistrate, fails to attend, it shall be in the power of the said judge or magistrate to compel his attendance to answer to the charge, by means of a warrant of escort or arrest.

Place of custody for persons sentenced to detention.

999. Any person sentenced to detention by the judge or magistrate shall be kept in custody in the prison within the building of the courts, or in the prison appointed by law for the custody of persons sentenced to such punishment by a court of criminal jurisdiction.

Court may commute or remit punishment. *Amended by: XXIV. 1995.354.*

1000. It shall be lawful for the court to commute or remit any punishment which it may have awarded.

Fines forfeited to Government. *Amended by: XII.1978.10.*

1001. Every fine (*ammenda* or *multa*) shall be forfeited to the Government of Malta.

Pecuniary punishment convertible into detention or imprisonment. Cap. 9.

1002. In default of payment of a fine (*ammenda* or *multa*), the person sentenced shall undergo the punishment of detention or imprisonment as provided in the Criminal Code.

No appeal from sentences for contempt *in facie curae*. *Amended by: XV. 1913.178; XIII. 1964.25.*

1003. (1) No appeal shall lie from any sentence passed under article 990 or 991, and any such sentence may be carried into execution forthwith.

Right of appeal in other cases.

(2) In any other case, an appeal from a sentence passed under the provisions of this Title by any court, other than the Court of Appeal or the Constitutional Court, shall lie to the Court of Appeal. Such appeal shall be made by an application within two days from the date of the sentence.

Appeal to operate as stay of execution.

(3) Any such appeal shall stay the execution of the sentence.

Sentence not to form part of record.

(4) Any sentence passed under the provisions of this Title shall not form part of the record of the cause at the trial of which the sentence is passed.

Registrar shall institute etc. contempt proceedings. *Added by: XXIV. 1995.355. Amended by: IV.1996.14.*

1003A. Subject to the provisions of this Title, in any proceedings for contempt of court, the Registrar shall institute, as directed by the court, the necessary proceedings and, for all intents and purposes of law, he shall be considered as the plaintiff:

Title XVIII

OF JUDICIAL COSTS

Taxation of judicial costs. *Amended by: IV.1865.4; XV. 1913.179; L.N. 4 of 1963; XXXI. 1966.2. Substituted by: XXXI. 1980.8.*

1004. (1) Costs shall be taxed and levied in accordance with the Tariffs in Schedule A annexed to this Code and with regulations made by the Minister responsible for justice under this article.

(2) Regulations made by the Minister under this article may -

(*a*) amend, add to, revoke or substitute all or any of the Tariffs in the said Schedule A;

(*b*) make any provision relating to the payment of costs and in particular but without prejudice to the generality of the foregoing -

(i) to ensure the payment thereof at the time they are due;

(ii) to require the payment or deposit of any such costs or part thereof, as may be prescribed by the regulations; and

(iii) to provide for such consequences, effects and penalties with respect to any failure to pay costs or otherwise to comply with the regulations, as may be prescribed therein.

Agent of absent litigant, liable to registry fees and costs.

1005. (1) Where the party condemned to pay the fees due to the registry or the costs incurred by the other party was, at the time of the judgment, represented in the proceedings, as absent from Malta, by an agent appointed by him, it shall be lawful for the registrar, and for such other party, to demand payment of such fees or costs, from the said agent, in the same manner as if such agent had been personally and *in solidum* with his principal, condemned to pay such fees or costs.

(2) The right granted as aforesaid to the registrar and to the party to whom the costs are due, may be exercised notwithstanding that the principal be present in Malta, either before or at the time when payment of such fees or costs is demanded.

When registrar may claim registry fees from defendant.
Added by: XV. 1913.180.

1006. Where a defendant is ordered to pay the costs of the action or any part of the fees due to the registry, it shall be lawful for the registrar to claim from him, directly and *in solidum*, the payment of such fees, wholly or in part, according to the incidence thereof on such defendant.

Title XIX

OF FORMS

Forms.
Amended by: XXVII. 1979.21.

1007. (1) In the superior courts, all acts shall be drawn up in accordance with the forms in Schedule B annexed to this Code.

(2) In the inferior courts, the forms prescribed for the superior courts shall be used in so far as applicable, with such alterations or variations as may be necessary to adapt them to the inferior courts.

(3) The Minister responsible for justice may by regulations amend, substitute or make additions to the forms contained in Schedule B annexed to this Code.

Purchase of forms.
Added by: XV. 1913.181.
Amended by: L.N. 4 of 1963; XXXI.1966.2; IV.1996.15.

1008. Without prejudice to the provisions of article 1009, where under this Code an act is required to be drawn up by the party concerned according to a prescribed form, the form shall be provided by the registrar or any other officer designated by the Minister responsible for justice, upon payment of a fee to be shown thereon.

REPEALING PROVISION

Contrary usage to be inoperative.

1009. Any usage or custom contrary to or inconsistent with the provisions contained in this Code shall be of no effect.

Procedure by electronic means.
Added by: XXIV. 1995.356.

1009A. The Minister responsible for justice may make regulations providing for or allowing -

(i) the making of judicial acts by means of electronic equipment;

(ii) the transmission and service by the use of

electronic means;

in connection with judicial acts, court proceedings, records and services and without prejudice to the generality of the foregoing such regulations may provide for -

(*a*) the form of judicial acts prepared by electronic means;

(*b*) the transmission, filing and service of acts by electronic equipment and for the way in which such service is to be evidenced;

(*c*) the storing of court records by electronic means and the mode whereby such records are to be authenticated and how copies thereof are to be made and authenticated;

(*d*) the fees that may be charged in connection with the use of such electronic means in relation to the making, transmission, filing or service of judicial acts, and for the making of copies of court records; and

(*e*) such other matter consequential or incidental thereto including such transitional provisions as may appear to the Minister to be necessary or expedient in connection therewith.

Regulations. *Added by: XXXI. 2002.193.*

1009B. The Minister responsible for justice may make regulations for the implementation of the provisions of this Code and, in general, to bring the provisions of this Code into effect.

SCHEDULE A

(Articles 75, 179, 666, 967 and 1004)

TARIFFS REFERRED TO IN THE CODE OF ORGANIZATION AND CIVIL PROCEDURE

TARIFF A

Amended by: XI. 1859.42; IX.1886.128; G.N. 136 of 1919; G.N. 475 of 1929; G.N. 549 of 1939; G.N. 653 of 1942; G.N. 139 of 1949; L.N. 49 of 1980; L.N. 99 of 1980. Substituted by: L.N.102 of 1980. Amended by: L.N.56 of 1981; XIII. 1983.4,5; L.N. 3 of 1986; L.N. 28 of 1988; VIII. 1990.3; L.N.116 of 1992; L.N. 91 of 1995; L.N. 124 of 1996. Substituted by: L.N. 142 of 2000. Amended by: L.N. 197 of 2000; L.N. 8 of 2001.

Fees payable in respect of the trial of causes in the Registries of the Superior Courts of Justice and the Courts of Magistrates in Malta and Gozo excluding the Court of Voluntary Jurisdiction

1 (a) In actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating to the civil status of a person, relating to human rights or relating to general elections and in actions of spoliation or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment, all the fees provided for in this Tariff, with the exception of the tariff stated in paragraph 3 shall be rebated by 50%;

(b) No fees shall be due for any act filed by a curator *ex officio* acting in that capacity.

2 (1) For the filing of any petition, application, writ of summons or other act of procedure containing a claim which initiates a contentious procedure in a Court of First Instance and requiring the decision of a Judge or Magistrate as well as for any statement of defence, answer or other act of procedure in reply thereto and intended to contest, whether totally or partially, the claim made ..... Lm 50

Provided that the above fee shall include the filing of all other acts of procedure and court services (including but not limited to filing of warrants for the examination of witnesses, the examination itself, recording fees, transcriptions and copies, the services of judicial assistants, the transmission of the records of causes, taxed bill of costs and copies of the judgement) required following the initiation of the cause through the said act up to and including final judgement but excluding any fees due for the notification of acts and fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties.

(2) For the filing of any petition, application, writ of summons or other legal act initiating a contentious procedure in a Court of Appeal and requiring the decision of a Judge as well as for any statement of defence, answer or other act of procedure in reply thereto and intended to contest, whether totally or partially, the appeal ..... Lm 75

Provided that no fee shall be payable under this paragraph for any appeal filed in terms of any other law which already provides a fee to be paid for such an appeal:

Provided further that the above fees shall include the filing of all other acts of procedure and court services (including but not limited to the filing of warrants for the examination of witnesses, the examination itself, recording fees, transcriptions and copies, the services of judicial assistants, the transmission of the records of causes, taxed bill of costs and copies of the judgement) required following the initiation of the appeal through the said act up to and including final judgement but excluding any fees due for the notification of acts and any fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties.

(3) No fee shall be levied under this paragraph for the filing of any note of admission of a claim provided that the claim is admitted in full and unconditionally before any contestation thereon.

(4) No fee shall be levied on any counter-claim contained in any act of procedure mentioned in subparagraphs (1) or (2) of this paragraph.

3 (1) In addition to the fees stated in paragraph 2, on the filing any petition, application, writ of summons or other act of procedure containing a claim which initiates a contentious procedure in a Court of First Instance and requiring the decision of a Judge or Magistrate and when the registry fee is assessable on a determinate value or on a value which may be determined according to law or from the act itself, the following fees shall also be due:

(a)	up to Lm 3000, per Lm 100 or part thereof	Lm 3.50
(b)	in respect of any value in excess of Lm 3,000 up to Lm 5,000, per Lm 100 or part thereof	Lm 2.50
(c)	in respect of any value in excess of Lm 5,000 up to Lm 10,000, per Lm 100 or part thereof	Lm 2.25
(d)	in respect of any value in excess of Lm 10,000 up to Lm 50,000, per Lm 100 or part thereof	Lm 1.50
(e)	in respect of any value in excess of Lm 50,000 up to Lm 100,000, per Lm 100 or part thereof	Lm 1.00
(f)	in respect of any value in excess of Lm 100,000, per Lm 100 or part thereof	Lm 0.75

Provided that the fees established in sub-paragraphs (a) to (f) of this paragraph shall be inclusive of any declaration, which may be necessary, and of any decree given in a cause up to final judgement.

(2) (a) In addition to the fees stated in paragraph 1, on the filing of a statement of defence, answer or other act of procedure filed in reply to a claim and intended to contest, whether totally or partially, a claim made in a Court of First Instance, the fees stated in sub-paragraph (1) of this paragraph shall also be due but shall be rebated by 50%

(b) The amount to be paid in accordance with subparagraph (a) of this paragraph is to be paid not later than the day preceding the day of the first court sitting in the case, and in the event that such payment is not effected, such act of procedure shall be deemed not to have been done.

(c) In computing such amount, the Registrar shall, together with the notified act concerning which the act is done, inform such person of the amount to be paid and by which date.

(d) In the case of special summary proceedings or proceedings in the Court of Magistrates or any other proceedings where the act of procedure is filed in the Court and not in the registry, the fees due shall be paid not later than the day preceding the day of the sitting following the filing of the act, and if such payment is not effected, such act of procedure shall be deemed not to have been done.

(e) The provisions of subparagraph (c) shall not apply in the eventualities provided for in subparagraph (d).

(3) Any counter-claim contained in any act of procedure stated in sub-paragraphs (1) or (2) of this paragraph shall be treated as if it is a new claim and the fees set out in sub-paragraphs (1) and (2) of this paragraph shall be levied on the counter claim and the reply thereto.

(4) In actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating to the civil status of a person, relating to human rights or relating to general elections and in actions of spoliation or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment, causes of spoliation requesting that works be carried out under the supervision of the Court, the fees stated in this paragraph shall not apply but there shall be levied a one time fee of Lm 50

(5) The fees established in sub-paragraph (1) of this paragraph shall be raised by one-third on appeal, but no fee shall be due in terms of subparagraph (2) of this paragraph.

(6) No fee shall be payable under this paragraph for any appeal filed in terms of any other law which already provides a fee to be paid for such an appeal.

(7) In the case of appeals filed in terms of any other law for which no fee is established in terms of that law, the fees established in terms of this paragraph shall not be due but there shall be levied a one time fee of ..... Lm 50

4 (1) When the value of a claim is uncertain or indeterminate and the fees stated in paragraph 3 cannot be applied, the value of the claim shall be assessed in accordance with the following rules:

(a) In actions brought by the Government or by any Authority or Public Corporation where the claim is for the recovery of a penalty which has both a minimum and a maximum fixed by law, the value to be assessed shall be the maximum amount of the penalty fixed by law.

(b) In actions concerning the partition of property whether *inter vivos* or *causa mortis* and independently of whether the actual partition is requested or not, and in actions concerning succession, the claimant may, together with his claim, submit a list of the property the partition of which is being requested or which is involved in the succession together with a declaration, signed and attested to on oath by a perit in the case of immovables and by a competent valuer in the case of movables, certifying the valuation of such property, and the value shall be assessed on the total sum shown on such valuation:

Provided that in no case shall the fee taxed be less than ..... Lm 250

(c) In actions concerning the payment of annuities, allowances and the like the fee taxed shall be ..... Lm 250

(d) In actions relating to the ranking of creditors, bankruptcy proceedings or any other adjudication upon competing claims the claimant shall together with his claim submit a valuation by a certified accountant of the assets and liabilities being the subject of the claim and the value to be assessed shall be the higher sum between the assets and liabilities:

Provided that in no case shall the fee taxed be less than ..... Lm 250

(e) In causes concerning the validity of a redemption or the implementation of a promise of sale or transfer, whether of movables or immovables, the value to be assessed shall be the value of the property redeemed or which was promised to be sold or transferred and for this purpose the claimant shall, together with his claim, submit the promise of sale or transfer, if existent, or, if not existent, a declaration, signed and attested to on oath by a perit in the case of immovables and by a competent valuer in the case of movables, certifying the value of such property:

Provided that in no case shall the fee taxed be less than ..... Lm 250

(f) In causes where the claim is for the Court to declare the existence of a right of the claimant against any other person which right may reasonably be inferred to be followed by a liquidation of the amount due, even if such liquidation is not requested in the claim, the claimant shall be obliged together with his claim to submit a sworn declaration stating the approximate sum which he believes he could claim if his right is established, and the value to be assessed shall be the value declared by the claimant:

Provided that in no case shall the fee taxed be less than ..... Lm 250

(2) Where, notwithstanding the rules contained in sub-paragraph (1) of this paragraph, the value is still uncertain or indeterminate, the fee taxed shall not be less than ..... Lm 250

(3) Notwithstanding the provisions of this paragraph, if, following definitive judgement, the Court will have declared or liquidated an amount as the value of the cause and that value is determinate or may be determined according to law and the fees due on such value are higher than the amount paid as registry fees, the Registrar of Courts may demand the difference from the party filing the cause.

(4) Any action requesting the nullity of the issue of a precautionary or executive warrant or requesting the issue of a counter-warrant shall, independently of the act used to initiate the action, be taxed as if it were an application for the issue of a counter-warrant.

5 (1) In cases of compromise or discontinuance of any cause in a Court of First Instance:

after contestation of the claim but before the first hearing of the cause, all fees paid in terms of paragraph 3 or 4 will be rebated by 75%

following the first hearing of the cause but not later than the third sitting thereof, all fees paid in terms of paragraph 3 or 4 will be rebated by 50%

following the third hearing of the cause but before the cause has been put off for judgement, all fees paid in terms of paragraphs 3 and 4 will be rebated by 25%

(2) In cases of compromise or discontinuance of a cause in a Court of Appeal the rebates established in the previous sub-paragraph of this paragraph shall be applied as well but limited only to the fees paid relative to the appeals procedure.

(3) The fees stated in paragraphs 2 to 4 of this Tariff shall also be due on the filing of any application to a Court to be permitted to file any statement of defence, answer or other act of procedure filed in reply to a claim and intended to contest, whether totally or partially, a claim made in a Court of First Instance or in a Court of Appeal provided that in the event of a judgement of non-suit all fees paid in terms of paragraphs 2 to 4 shall be rebated by 50%

6 (1) For every notification of an act of procedure, including expenses incurred in the execution of such notification, the following fees shall be due:

(i) registry fee ..... Lm 2.50

(ii) fee due to the executive officer effecting the service ..... Lm 0.50

Provided that if service is to be effected outside normal working hours, the fees contained in this paragraph shall be increased by 100%.

(2) Notwithstanding anything contained in this Tariff, if the notification of any act is to be executed personally by an executive officer of the Court, in cases where the law permits that service be effected otherwise, the following additional fees shall be due for each notification:

(i) registry fee ..... Lm 20

(ii) fee due to the executive officer effecting the service ..... Lm 3

(3) The fees established in sub-paragraph (2) shall not apply when service is to be effected personally by an executive officer of the Court in terms of any law, and in such cases the fees established in sub-paragraph (1) of this paragraph shall apply.

7 For any other act of procedure indicated in the Code of Organisation and Civil Procedure but for which no fee is established in these Tariffs ..... Lm 5

8 For the opening of the registry outside working hours:

(i) registry fee ..... Lm 50

(ii) fee due to attending deputy registrar ..... Lm 20

(iii) fee due to each executive officer required to effect service ..... Lm 15

9 (1) Unless otherwise stated, all fees due shall be paid together with the filing of the relative act and the Registrar shall not accept for filing any act of procedure which is not accompanied by the relative fee.

(2) The assessment of the Registrar on the amount of fees to be paid shall be final.

(3) In assessing the fees laid down in this Tariff no account shall be taken of any fraction of Lm 1.

10 (1) The Court may, when delivering judgement, order that the plaintiff or defendant in a cause pay increased costs to the Registrar of Courts of not less than Lm 250 and not more than Lm 1,000 if the Court deems that the act of procedure initiating the claim or the act of procedure in reply was frivolous or vexatious or that either of the parties has unnecessarily prolonged the proceedings and in such case such sum will not be recoverable from the other party.

No appeal shall lie from the decision of the Court.

(2) The Court may, when delivering judgement, also refer to the Commission for the Administration of Justice the advocate of the plaintiff or of the defendant if the Court deems that the advocate is responsible, wholly or partly, for the frivolous or vexatious act of procedure or for prolonging the proceedings.

No appeal shall lie from the decision of the Court.

11 (1) The Registrar shall cause a taxed bill of costs to be kept in the file of each cause and shall immediately enter therein all payments made to the Registrar and all payments due to the advocates and legal procurators of the parties and the parties, their advocates and legal procurators shall have the right to a copy thereof at any time.

(2) Within one month of the delivery of the definitive judgement, the Registrar shall cause a final taxed bill of costs to be drawn up and a copy thereof shall be sent to the parties and their advocates and legal procurators.

12 With respect to causes which have been presented prior to the coming into force of this Tariff the Registrar shall, on the conclusion of that cause or on the compromise or discontinuance thereof, tax the fees due on the basis of this Tariff deducting therefrom any sums paid to date and any difference in favour of the Registrar shall be due by the party established in this Tariff:

Provided that this paragraph shall not apply to any cause -

(i) which, on the day of the coming into force of this Tariff, is put off for judgement;

(ii) which, following the coming into force of this Tariff but not later than the 30th June 2001, is unconditionally compromised or unconditionally discontinued:

Provided further that any agreement registered in the records of the cause stating that the parties have agreed to discontinue the cause and refer it to the binding decision of the Malta Arbitration Centre shall, for the purpose of this paragraph, be treated as an unconditional compromise or discontinuance.

Provided further that any person acting as mandatory of another person in a cause shall, if he renounces his mandate not later than the 31st October, 2000, be liable for fees calculated in accordance with this Tariff as in force on the 30th September, 2000.

Substituted by: L.N. 102 of 1980. Amended by: XIII.1983.4; L.N. 91 of 1995. Substituted by: L.N. 124 of 1996; L.N. 142 of 2000. Amended by: L.N.197 of 2000; L.N. 8 of 2001.

TARIFF B

Fees payable in respect of Judicial Acts and Services not connected with the trial of causes in the Registries of the Superior Courts of Justice and the Courts of Magistrates in Malta and Gozo excluding the Court of Voluntary Jurisdiction

1	For the filing of any judicial letter or judicial protest but excluding fees due for any notification required	Lm 10
	Provided that when the judicial letter or judicial protest is required by law the fee shall be	Lm 2.50
	excluding the fees due for service of the same.	
2	For every certificate required to be issued by the Registrar.....	Lm 10
3	For legalising any note required to be registered in the Public Registry	Lm 10
4	For the affixing of any seal of the Court where this is prescribed by law or by the Court	Lm 10
	Provided that no fee shall be due when such seal is required on any judicial act.	
5	For every copy, authenticated or otherwise, for each page	Lm 0.25
	Provided that no fee shall be due when the copies are provided by the person filing the original act or when copies are requested of a court order.	
6	For every translation required by law or by the Court:	
	registry fee	Lm 15
	fee due to the translator or interpreter	from Lm5 to Lm25
7	For every search in the archives of the Court, per individual cause	Lm 2
	and for any copy thereof, whether authenticated or not, per page	Lm 0.10
8	For the administration of an affidavit not in connection with court proceedings	Lm 5
9	For the lodgement of any monies in Court, for any schedule of set-off or redemption, a fee equal to	2%

of the money to be deposited, to be set-off or redeemed shall be levied but such fee shall not include the notification of such schedule on third parties indicated in the schedule and provided further that in no case shall such fee be less than ..... Lm 10

Provided that when such lodgement or schedule is required by law, a fee of Lm10 shall be paid in lieu of the fee of 2%.

10 For the lodgement in Court of any object not being monies excluding the service of such schedule on third parties indicated in the schedule Lm 25

11 For the searching for and inspection of any application for the withdrawal of any monies or things deposited in Court but not including the notification of such application on third parties indicated in the application and for any reply thereto ..... Lm 10

12 For the opening of the registry outside working hours:

(i) registry fee ..... Lm 50

(ii) fee due to attending deputy registrar ..... Lm 20

(iii) fee due to each executive officer required to effect service ..... Lm 15

13 (1) For every notification of an act of procedure, including expenses incurred in the execution of such notification, the following fees shall be due:

(i) registry fee ..... Lm 2.50

(ii) fee due to the executive officer effecting the service ..... Lm 0.50

Provided that if service is to be effected outside normal working hours, the fees contained in this paragraph shall be increased by 100%.

(2) Notwithstanding anything contained in this Tariff if the notification of any act is to be executed personally by an executive officer of the Court, in cases where the law permits that service be effected otherwise, the following additional fees shall be due for each notification:

(i) registry fee ..... Lm 20

(ii) fee due to the executive officer effecting the service ..... Lm 3

(3) The fees established in sub-paragraph (2) shall not apply when service is to be effected personally by an executive officer of the Court in terms of any law, and in such cases the fees established in sub-paragraph (1) of this paragraph shall apply.

14 For any other act of procedure indicated in the Code of Organization and Civil Procedure but for which no fee is established in these Tariffs ..... Lm 5

15 (1) All fees due shall be paid together with the filing of the relative act and the Registrar shall not accept for filing any act of procedure which is not accompanied by the relative fee.

(2) The assessment of the Registrar on the amount of fees to be paid shall be final.

(3) In assessing the fees laid down in this Tariff no account shall be taken of any fraction of Lm 1.

16 (a) In actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating to the civil status of a person, relating to human rights or relating to general elections and in actions of spoliation or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment, all the fees provided for in this Tariff shall be rebated by 50%

(b) No fees shall be due for any act filed by a curator *ex officio* acting in that capacity.

Amended by: IV. 1862.21; G.N. 162 of 1917; G.N. 549 of 1939. Substituted by: L.N. 102 of 1980. Amended by: XIII. 1983.4. Substituted by: L.N. 142 of 2000. Amended by: L.N. 197 of 2000; L.N. 8 of 2001.

TARIFF C

Fees payable in respect of Acts filed in the Court of Voluntary Jurisdiction

1 For every application filed and for every answer thereto, not being an application or answer indicated in any of the following paragraphs of this Tariff ..... Lm 5

Provided that the above fee shall include the filing of all other acts of procedure and court services (including but not limited to the filing of all procedural acts, examination of witnesses, preparation and publication of notices, banns and edicts, copies of decrees, taxation of fees and the like) required following the initiation of proceedings through the said application up to and including the final decree but excluding any fees due to referees or experts appointed by the Court or any fees which the Court may be required to pay to third parties.

2 For the presentation of every secret will ..... Lm 20

3 For any obligation entered in the records of the Court:

(i) if the value of the estate does not exceed Lm 1,000 ..... Lm 10

(ii) if the value of the estate does not exceed Lm 10,000 ..... Lm 30

(iii) if the value of the estate does not exceed Lm 50,000 ..... Lm 75

(iv) if the value of the estate exceeds Lm 50,000 ..... Lm 100

4 For every report on a reference as to the taxation of fees:

(i) registry fee ..... Lm 20

(ii) fee due to the referee appointed by the Court ..... Lm 50

Provided that the Court may order that a higher fee be paid to the referee appointed by the Court if it deems that the work involved so warrants.

5 For the examination of accounts:

(i) registry fee ..... Lm 25

(ii) fee due to the expert appointed by the Court ..... Lm 100

Provided that the Court may order that a higher fee be paid to the expert appointed by the Court if it deems that the work involved so warrants.

6 For every curatorship in cases of discharge or in connection with edicts:

(i) registry fee ..... Lm 10

(ii) fee due to the curator appointed by the Court ..... Lm 20

Provided that the Court may order that a higher fee be paid to the curator appointed by the Court if it deems that the work involved so warrants.

7 For the opening of the registry outside working hours:

(i) registry fee ..... Lm 25

(ii) fee due to attending deputy registrar ..... Lm 10

(iii) fee due to each executive officer required to effect service ..... Lm 5

8 (1) The fees stated in paragraphs 1 to 5 of this Tariff are inclusive of the filing of any subsequent act of procedure, transport expenses for court executive officers, the filing of valuations or reports by Court appointed experts, the publication of banns and notices in the Government Gazette and any other court service in connection thereto and which is not specifically excluded by this Tariff.

(2) The fees stated in paragraphs 1 to 5 of this Tariff do not include fees and expenses due to Court appointed experts and to third parties, which fees and expenses shall be taxed separately.

9 For any other service or act of procedure indicated in the Code of Organization and Civil Procedure but for which no fee is established in these Tariffs ..... Lm 5

Provided that fees for services or acts not specifically provided for in this Tariff but provided for in other Tariffs shall be taxed according to those Tariffs but rebated by 75%

10 (1) For every notification of an act of procedure, including expenses incurred in the execution of such notification, the following fees shall be due:

(i) registry fee ..... Lm 1.00

(ii) fee due to the executive officer effecting service ..... Lm 0.25

(2) Notwithstanding anything contained in this Tariff, if the notification is to be executed personally by an executive officer of the Court in cases where the law permits that service be effected otherwise, the following fees shall be due for each notification:

(i) registry fee ..... Lm 10

(ii) fee due to the executive officer effecting the service ..... Lm 2

(3) The fees established in sub-paragraph (2) shall not apply when service is to be effected personally by an executive officer of the Court in terms of any law, and in such cases the fees established in sub-paragraph (1) of this paragraph shall apply.

(4) In the case of circular letters requested by law the above fees shall be reduced by 50%

11 (1) All fees due shall be paid together with the filing of the relative act and the Registrar shall not accept for filing any act of procedure which is not accompanied by the relative fee.

(2) The assessment of the Registrar on the amount of fees to be paid shall be final.

(3) In assessing the fees laid down in this Tariff no account shall be taken of any fraction of Lm 1.

12 No fees shall be due under this Tariff for any act filed by a curator *ex officio* acting in that capacity..

TARIFF D

Amended by: VII. 1880.10; G.N. 340 of 1916; G.N. 393 of 1934; G.N. 249 of 1941; G.N. 653 of 1942; G.N. 139 of 1949. Substituted by: L.N. 78 of 1971; L.N. 102 of 1980. Amended by: XIII. 1983.4. Substituted by: L.N. 3 of 1986. Amended by: L.N. 28 of 1988; VIII. 1990.3; L.N.116 of 1992; L.N. 91 of 1995. Substituted by: L.N. 124 of 1996; L.N. 142 of 2000. Amended by: L.N. 197 of 2000; L.N. 8 of 2001.

Fees payable in respect of Precautionary and Executive Acts and Judicial Sales by Auction in the Registries of the Superior Courts of Justice and the Courts of Magistrates in Malta and Gozo excluding the Court of Voluntary Jurisdiction

1 For the filing of a warrant of prohibitory injunction:

(i) registry fee ..... Lm 50

(ii) fee due to the executive officer required to effect service, for each notification ..... Lm 3

2 For the filing of a warrant of impediment of departure including the service thereof:

(i) registry fee ..... Lm 25

(ii) fee due to the executive officer required to effect service, for each notification ..... Lm 3

3 For the filing of any other warrant:

(i) registry fee ..... Lm 15

(ii) fee due to the executive officer required to effect service, for each notification ..... Lm 3

4 For the filing of any counter-warrant:

(i) registry fee ..... Lm 15

(ii) fee due to the executive officer required to effect service, for each notification ..... Lm 3

5 (1) (a) For the filing of any application for a judicial sale by auction including an application to re-appoint a judicial sale by auction which has been suspended:

(i) registry fee ..... Lm 75

(ii) fee due to the executive officer required to effect service, for each notification ..... Lm 3

(b) No fee shall be levied for the suspension of a judicial sale by auction or for the re-appointment of a judicial sale by auction, the suspension of which was due to any notification required by law not having been effected or which has been suspended by the court following the request of the debtor.

(2) The fees due in accordance with sub-paragraph (1) shall include all services, fees and expenses required up to the sale itself, except for fees due for the service of any judicial act, which fees shall be taxed separately.

(3) For the storage in Government property of any movable to be sold by auction, per day ..... Lm 20

Provided that the applicant shall, together with the filing of the application for the judicial sale by auction, deposit a sum equivalent to seven days' storage which sum shall be adjusted following the adjudication of the sale or on its suspension.

(4) For the adjudication of any movable or immovable following a judicial sale by auction, for every Lm 100 ..... 1%

Provided that in no case shall the fee levied be less than ..... Lm 50

Provided further that when a licensed auctioneer performs the auction, the fee established in the Auctioneers Act shall, in addition be due to the auctioneer.

6 For the opening of the registry outside working hours:

(i) registry fee ..... Lm 50

(ii) fee due to attending deputy registrar .... Lm 20

(iii) fee due to each executive officer required to effect service ..... Lm 15

7 (1) Subject to sub-paragraph (2) of this paragraph, the fees stated in paragraphs 1 to 4 of this Tariff are inclusive of all expenses and services required in connection with the execution of the relative act of procedure, any police assistance which the executive officer may require in executing the act, the filing of valuations or reports by Court appointed experts and the publication of banns and notices in the Gazette.

(2) The fees stated in paragraphs 1 to 4 of this Tariff do not include fees and expenses due to Court appointed experts and to third parties which fees and expenses shall be taxed separately.

8 For any other act of procedure indicated in the Code of Organization and Civil Procedure but for which no fee is established in these Tariffs ..... Lm 5

9 For every notification, not previously mentioned in this Tariff, of an act of procedure, including expenses incurred in the execution of such notification, the following fees shall be due:

(i) registry fee ..... Lm 2.50

(ii) fee due to the executive officer effecting the service ..... Lm 1.00

Provided that if service is to be effected outside normal working hours, the fees contained in this paragraph shall be increased by 100%.

10 Notwithstanding anything contained in this Tariff if the notification is to be executed personally by an executive officer of the Court in cases where the law permits that notification be effected otherwise, the following fees shall be due, for each notification:

(i) registry fee ..... Lm 20

(ii) fee due to the executive officer effecting the service ..... Lm 3

11 (a) In actions for personal separation, annulment, maintenance, filiation, paternity, child abduction or custody, relating to the civil status of a person, relating to human rights or relating to general elections and in actions of spoliation or concerning personal injury, claims for the payment of wages or claims for unjust dismissal from employment, all the fees provided for in this Tariff shall be rebated by 50%

(b) No fees shall be due for any act filed by a curator *ex officio* acting in that capacity.

12 (1) All fees due shall be paid together with the filing of the relative act and the Registrar shall not accept for filing any act of procedure which is not accompanied by the relative fee.

(2) The assessment of the Registrar on the amount of fees to be paid shall be final.

(3) In assessing the fees laid down in this Tariff no account shall be taken of any fraction of Lm 1.

TARIFF E

Fees payable to Advocates, Legal Procurators and Official Curators

Amended by: VII. 1856.4,5,6,7; IV. 1868.15; G.N. 136 of 1919; G.N. 137 of 1919; G.N. 475 of 1929; G.N. 393 of 1934; G.N. 653 of 1942. Substituted by: L.N. 7 of 1968. Amended by: L.N. 9 of 1968; L.N.78 of 1971. Substituted by: L.N.102 of 1980. Amended by: XIII. 1983.4; L.N. 3 of 1986; L.N. 1 of 1987. Substituted by: L.N. 121 of 1996. Amended by: L.N 154 of 1996; XXXI. 2002.194.

	Lm c m
1. (*a*) For each note of acceptance of banns and for each protest against the sufficiency of a bail for costs, even if such protest is not filed separately	5.00,0
(*b*) For each note required to be filed under the provisions of the Commercial Code	5.00,0
(*c*) For every note of submission filed in any court, ... from	20.00,0
to	100.00,0
2. (*a*) For each application for summoning of witnesses	3.00,0
(*b*) For each first application for sale of immovables (including research in the Public Registry, the ordering of certificates of hypothec, and perusal of relative deeds ..... from	10.00,0

	Lm c m
to	30.00,0
(*c*) For any other application ..... from	5.00,0
to	25.00,0
(*d*) For any application filed after office hours or on a Sunday or public holiday, there shall be taxed an additional fee of	25.00,0
3. For each application filed in the Court of Voluntary Jurisdiction:	
(i) if it concerns the admission of minors to an industrial school or to an approved school	3.00,0
(ii) if it concerns the candidature in a marriage legacy or the renewal of an authorisation previously given, or the taxing of fees	5.00,0
(iii) in all other cases (including notes of acceptance or waiver of an inheritance)	10.00,0
Provided that an additional fee shall be taxed when the drawing up of the application, and/or the preparation and/or the filing of the relative documents, entails more work than is ordinarily required.	
4. For each attendance during sittings before the Court of Voluntary Jurisdiction	10.00,0
5. (*a*) For each lodgment schedule, even if such lodgment is made with or following a schedule of redemption:	
(i) when the value does not exceed Lm200	5.00,0
(ii) when the value exceeds Lm200 the fee shall be increased by one *per centum* (1%) for every additional Lm100 or part thereof;	
(*b*) For each schedule of set-off or redemption:	
(i) when the value does not exceed Lm200	5.00,0
(ii) when the value exceeds Lm200 the fee shall be increased by one *per centum* (1%) for every additional Lm100 or part thereof.	
These fees are inclusive of advice concerning the right to claim set-off or exercise redemption.	
6. (*a*) For the drafting of a judicial letter, whether filed or not	6.00,0
(*b*) For the drafting of a judicial protest, whether filed or not	10.00,0

	Lm c m
(*c*) For the drafting of an affidavit ..... from	2.00,0
to	15.00,0
7. For the drafting of each hypothecary protest	10.00,0
Provided that a fee shall be assessed for the perusal of entries of hypothec and of relative deeds, taking into consideration the number of entries and deeds perused, their importance and/or the amount involved ..... from	10.00,0
to	30.00,0
8. For every attendance, before a referee or before a judicial assistant and for every attendance at an inspection *in faciem loci*, whether ordered by the court or required by the client:	
(i) if the attendance does not last more than one hour and a half	10.00,0
(ii) if it lasts more than one hour and a half, and provided this circumstance is expressly noted in a *procès-verbal* signed by the referee, the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by Lm10 in respect of each additional hour or part thereof.	
9. When the attendance referred to at paragraph 8 takes place outside Valletta, the fee shall be	12.00,0
10. If the attendance referred to in the last preceding paragraph lasts more than one hour and a half, and provided this circumstance is expressly noted in a *procès-verbal* signed by the referee the judicial assistant or the deputy registrar, as the case may be, the fee shall be increased by Lm10 in respect of each additional hour or part thereof.	
11. (1) For drafting or perusal of a deed for publication by a notary public, which includes fees due for advice, research into liabilities and transfers, tracing of root of immovables, and attendance at publication:	
if the value of the interest concerned -	
(i) does not exceed Lm200 ..... from	5.00,0
to	10.00,0
(ii) exceeds Lm200 but does not exceed Lm3,000, per Lm100 or part thereof	2.00,0
(iii) exceeds Lm3,000 but does not exceed Lm25,000, per Lm100 or part thereof in respect of such excess	1.00,0

	Lm c m
(2) When, in connection with the drafting or perusal of a deed to be published by a notary public, an advocate does not perform all the services referred to in sub-paragraph (1) of this paragraph, the fee therein established shall be assessed in proportion to the services performed unless the advocate assumes the professional responsibility for the deed, in which case the fee established in that sub-paragraph shall be due.	
(3) If the value of the interest concerned exceeds Lm25,000 or if the value of the interest concerned is not expressed in money there shall be no Tariff.	
12. To curators appointed to attend at publication of a deed on behalf of absentees or defaulters for attendance and for perusal of the deed, and to any person who in virtue of a right vested in him by the court in terms of the Merchant Shipping Act, transfers any ship or share therein ..... from	30.00,0
to	250.00,0
13. For each definitive judgment:	
(i) in respect of the first Lm500 or part thereof	20.00,0
	minimum or 10% whichever is the greater
(ii) in respect of any value in excess of the first Lm500 up to Lm10,000, per Lm100	3.00,0
(iii) in respect of any value in excess of Lm10,000 per Lm100	1.00,0
Provided that in respect to the claims referred to in No. 7 (*b*) of Tariff A, the fee shall be taxed on one-half of the maximum fixed by law for the penalty contemplated therein.	
14. When a declaration containing a decision of any point of law or of fact concerns a value determinate or determinable according to law or from the records of the proceedings, the fee in respect of that decision shall be taxed in accordance with paragraph 13, on the value so determined.	
15. (*a*) For any other necessary declaration containing the decision of any point of law or of fact .....from	10.00,0
to	100.00,0

	Lm c m
(*b*) For each definitive judgement in a cause for a remedy under Chapter IV of the Constitution or under Chapter 319 or where the annulment of an administrative act is demanded in terms of contestation of article 469A of Chapter 12, or for the contestation of a claim in terms of article 466 of Chapter 12, or for the contestation of a seizure under Chapter 37, or for the payment or refund of a tax, levy, or duty .....from	20.00,0
to	300.00,0
16. In causes for the partition of property, independently of the number of demands contained in the writ of summons there shall be taxed only one fee *ad valorem* as in paragraph 13 on the greater sum between the assets and the liabilities of the property to be divided - provided that in causes of partition of property *causa mortis* such fee shall be taxed on the value established as above of each particular estate to be divided between the parties, saving that such fee shall in no case be less than	50.00,0
17. In causes for the partition of property where the partition of all property involved cannot be carried out except by way of licitation, provided that such a demand is made in the writ of summons and upheld in the final judgment, the fees due to each advocate in the cause shall be taxed at the rate of one *per centum* (1%) on the value of the property in licitation provided that in no case shall such fee be more than that assessed according to paragraph 13 or less than	50.00,0
18. In actions respecting the payment of annuities, allowances and the like, if the amounts be indeterminate, the fee shall be taxed as provided in paragraph 13 on the amount awarded in the final judgment, provided that in no case shall such fee be less than	50.00,0
19. In actions of maintenance, the fee shall be one half *per centum* (½%) on the amount of maintenance payable under the judgment for a period of ten years, provided that if the order refers to provisional maintenance the fee shall be ..... from	5.00,0
to	15.00,0
20. In actions of filiation, in other actions concerning the status of individuals and in actions relating to the separation of married persons irrespective of the number of declarations involved, but saving the fee in respect of any decision on any point of law or of fact which concerns a value determinate or determinab1e, there shall be allowed a fee .....from	35.00,0
to	75.00,0

Lm c m

21. In actions relating to the ranking of creditors, the minimum fee shall be 50.00,0

Provided that -

(i) when there is contestation of the claim either as to the amount or as to ranking the fee shall be as at paragraph 13;

(ii) where there is admission of the claim, but such claim does not result from a previous executive title, the fee shall be as at paragraphs 28, 29, 30 and 31, as the case may be.

22. To the advocate of the party making the lodgment there shall be allowed the fee of 10.00,0

But if there be contestation as to the amount lodged, the provisions contained in paragraph 13 shall apply.

23. In bankruptcy or insolvency proceedings, where there is no contestation concerning the proof of a claim, the fee in respect of that proof of a claim shall be that established for a declaration.

24. In any other action of adjudication upon competing claims, referred to in article 428 of the Code of Organization and Civil Procedure, there shall be taxed a fee as provided in paragraphs 13, 18 and 36.

25. In causes concerning the validity of a redemption or the implementation of a promise of conveyance, the value in the cause for purposes of paragraph 13 shall be the value of the property redeemed or of which the conveyance was promised.

26. For each decree in the cause ..... from 5.00,0

to 50.00,0

27. In case of judgments of non-suit, if the judgment is given on pleas touching the principal merits of the cause, there shall be allowed to the advocate the fee established in paragraph 13; in any other case one-half of the fee aforesaid shall be allowed.

28. Where a cause is discontinued in first or in second instance:

(i) after the writ of summons or the application has been filed, there shall be allowed to the advocate of the plaintiff one-third of the fee established in paragraph 13 when the cause is taxable *ad valorem;*

Lm c m

(ii) after the statement of defence or the answer has been drafted, there shall be allowed to the advocate of the defendant one-third of the fee established at paragraph 13 when the cause is taxable *ad valorem*.

29. In case of compromise or discontinuance at any other stage of the proceedings subsequent to contestation but prior to the hearing of the cause, or in case of admission at any stage prior to the commencement of the hearing, there shall be allowed one-half of the fees established at paragraph 13 when the cause is taxable *ad valorem*.

30. If the compromise or discontinuance or admission takes place after the commencement of the hearing of the cause, two-thirds of the fee established in paragraph 13 shall be allowed when the cause is taxable *ad valorem*.

31. If the compromise or discontinuance or admission takes place after the cause has been adjourned for judgment, the whole fee established in paragraph 13 shall be allowed, when the cause is taxable *ad valorem*.

32. (*a*) If more than one advocate is briefed by the same party in the same action, each of the advocates shall be entitled to the whole of the established fee:

Provided that the party in whose favour the head of costs is decided, although he may have briefed more than one advocate, shall not be entitled to claim from the party cast more than one whole fee.

(*b*) Where there are two or more plaintiffs or two or more defendants to a suit, each of the parties is entitled to have his own advocate or advocates even if the merit is similar in respect of all the plaintiffs or in respect of all the defendants; and the party ordered to pay the costs shall be bound to pay the proper fees of all the advocates on the prevailing side so long as no one party claims costs in respect of more than one advocate.

33. If an advocate abandons or is abandoned by his client:

(i) after the application, the writ of summons, the statement of defence or the answer has been filed, he shall be entitled to one-third of the normal fee;

(ii) after the above stages but before the cause has been adjourned for judgment, he shall be entitled to two-thirds of the normal fee.

Lm c m

34. The fee due to an advocate whose services have been engaged after the former one has been abandoned by or has abandoned his client before the cause is concluded shall be equal to the difference between the full fee and the fee taxed to the former advocate. The fee due to a third and subsequent advocate shall always be one-third of the full fee.

35. In every case covered by paragraphs 33 and 34, the party engaging the services of more than one advocate, one after the other, who happens to be on the prevailing side, cannot claim from the party cast more than one whole fee.

36. The fees due to advocates in connection with professional services requiring written pleadings, other than those referred to in paragraph 6, if such pleadings have been prepared but not filed shall be those established in paragraph 15.

37. In connection with professional services at paragraphs 13, 14, 27 to 31, 33 and 34 the minimum fee shall be Lm20.

38. On appeal the fees laid down in paragraphs 13 to 36 inclusive, shall be increased by one-third.

39. In regard to causes before the Court of Magistrates (Gozo) in its superior jurisdiction, there shall be taxed the same fees established in respect of causes before the superior courts and the provisions contained in paragraph 38 of this Tariff shall also apply.

40. Legal procurators shall receive one-third of the fees established by this Tariff for advocates as regards those judicial acts which bear their signature together with that of an advocate, and as regards services at paragraphs 7 and 8. No fees however are taxable to them for any of the services mentioned under the proviso to paragraph 3. For those judicial acts which do not require also the signature of an advocate and which are signed only by a legal procurator, the fee shall be as that due to an advocate.

41. (*a*) The fees of official curators shall be those established in this Tariff.

(*b*) Official curators when served with a copy of a judicial act, in connection with which they are not expected to file any written pleading, shall be entitled to the same fee due to an advocate and legal procurator for the same judicial act.

42. An additional fee of Lm25 shall be taxed for every attendance, when an advocate is required to appear before any superior court for any pleadings at an hour when the registry is ordinarily closed.

	Lm c m
43. Advocates and legal procurators, when required to appear before the Court of Magistrates (Malta), or before the Court of Magistrates (Gozo) in its inferior jurisdiction, shall be entitled to the following fees:	
(*a*) For every decision of any point of law or of fact contained in a judgment:	
Where the amount in issue does not exceed Lm500	20.00,0 or 10% whichever is the greater
in respect of any value in excess of Lm500, per Lm100	3.00,0
(*b*) Where the cause is admitted, compromised or discontinued at any stage of the proceedings the provisions of paragraphs 28 to 31 shall apply.	
(*c*) For the drawing up of a writ of summons or notice, the filing of which has not taken place	10.00,0
(*d*) For each subpoena and relative application	3.00,0
(*e*) For every warrant, counter-warrant, application or note of consent	5.00,0
(*f*) For each lodgment schedule:	
where the value does not exceed Lm200	5.00,0
where the value exceeds Lm200 but not Lm1,000 an additional fee of 1% of the excess shall be paid.	
(*g*) For a note of registration of a judgment or of any other executive title	5.00,0
(*h*) For each attendance before a referee or a judicial assistant and for each attendance *in faciem loci*	10.00,0
(*i*) For each attendance before a court required for the hearing of a cause at an hour when the registry is ordinarily closed but not during an ordinary sitting, or on a Sunday or public holiday, in addition to the fees mentioned in this paragraph, an additional fee of Lm10 shall be taxed in respect of each attendance.	
44. (*a*) Fees taxable to advocates who are appointed as legal referees for each opinion dealt with in the report shall be up to a maximum of Lm50 for each legal point decided. Any calculation or computation of an amount to be awarded as damages or compensation by the courts shall be deemed to be an opinion, and the maximum fee taxable for such an opinion shall be Lm100. The criterion shall be that of the work involved and never the amount assessed by the legal referee.	

Lm c m

(*b*) The above fees shall also apply to advocates who are appointed to report to the Court of Voluntary Jurisdiction and for the revision of accounts rendered.

45. For every copy required to be filed with the original, for service as laid down in sub-article (2) of article 174 of the Code of Organization and Civil Procedure 2.00,0

46. In every case where a fluctuating fee is indicated in this Tariff by a minimum and a maximum, the fee payable in a particular instance shall be established by the registrar, according to the criteria set out in the Code of Ethics and Conduct for Advocates:

Provided that in the taxation of fees due to any lawyer who has rendered professional services to a person admitted to the benefit of legal aid the fee shall always be assessed at the minimum:

Provided further that all such fees so assessed shall be subject to revision by the competent Court at the instance of any person interested in accordance with the provisions of article 64 of the Code of Organization and Civil Procedure.

47. (*a*) The foregoing provisions of this Tariff shall not apply, as between an Advocate or a Legal Procurator and his client, where a fee, or the basis on which the fee is to be determined is agreed between them which is different from that established by this Tariff, and in any such case the agreed fee or basis for determining it, not being a basis prohibited by law, shall apply, subject to the provisions of the following sub-paragraphs.

(*b*) Nothing contained in sub-paragraph (*a*) of this paragraph shall affect the taxing of fees as between the parties to judicial acts or proceedings or in respect of any extra-judicial work by advocates or legal procurators to be paid by the other party, which shall be regulated exclusively in accordance with the foregoing paragraphs of this Tariff.

(*c*) Notwithstanding sub-paragraph (*a*) of this paragraph it shall not be lawful for any advocate to fix by agreement his fees in an amount higher or lower than those fixed in this Tariff in respect of any matters arising under Chapter IV of the Constitution, Book First of Cap. 16, Cap. 5, Cap. 255 and Cap. 319 of the Laws of Malta; and in respect of deeds for the transfer of immovable property where the value does not exceed Lm25,000.

Lm c m

(*d*) A fee charged by an advocate under an agreement as is mentioned in sub-paragraph (*a*) of this paragraph shall be subject to review by the Committee for Advocates and Legal Procurators established by the Commission for the Administration of Justice Act (Cap. 369) on the request of the client filed within one month from the date of the agreement.

(*e*) The said Committee may reduce the fee charged as aforesaid if, in the light of the relative criteria stipulated in the respective Codes of Ethics and Conduct for Advocates and for Legal Procurators, the Committee considers the fee to be unreasonable.

(*f*) For the purposes of this paragraph, an agreement concerning fees shall be in writing.

48. (*a*) A fee charged by an advocate or a legal procurator in respect of any matter not covered by this Tariff shall be subject to review by the Committee for Advocates and Legal Procurators on the request of the client filed within one month from the date of the agreement or, if there is no agreement, from the date of the advocate's or legal procurator's note of fees.

(*b*) The said Committee may reduce the fee charged as aforesaid if, in the light of the relative criteria stipulated in the respective Codes of Ethics and Conduct for Advocates and for Legal Procurators, the Committee considers the fee to be unreasonable.

TARIFF F

Fees allowed to Supplementary Judges and Supplementary Magistrates

(Deleted by XXXI. 2002.195.)

Amended by: IV. 1862.22; IV.1905.7. Substituted by: L.N. 7 of 1968; L.N. 102 of 1980. Amended by: XIII.1983.4. Substituted by: L.N. 121 of 1996.

TARIFF G

Fees payable to Accountants and other Referees

Amended by: VII.1856.8,9; IV.1862.23; XXXI.1934.82. Substituted by: L.N. 102 of 1980. Amended by: XIII. 1983.4.

Lm c m

1. The fee payable to accountants shall be taxed at one *per centum* (1%) on the amount of the subject matter of the references, subject to a minimum of Lm5 and a maximum of Lm1,000.

	Lm c m
2. To other experts, for any valuation:	
on the first Lm500 or part thereof	5.00,0
on any further amount over Lm500, for every Lm100 or part thereof	1.00,0
Provided that the fee shall in no case exceed Lm500.	

3. The fees prescribed in the preceding numbers of this Tariff shall include the remuneration for making the report, accounts and statements, for holding sittings, and for attendance in court and elsewhere where necessary, but they shall not include the expense necessary for carrying out the reference.

4. Where, owing to the special circumstances of the case, it appears to be just that, besides the fees above established, an additional fee be allowed to the referee or expert, it shall be in the power of the court, upon hearing the parties interested, to allow such additional fee at its discretion.

Any such additional fee may be determined beforehand by the court in the decree appointing the referee or expert or by separate decree, but in no case otherwise than be decree.

5. The taxation made by the registrar may be appealed against by any referee or party in the manner prescribed under article 667 of the Code of Organization and Civil Procedure.

6. Fees due to taxing experts in the Court of Voluntary Jurisdiction shall be regulated in accordance with No. 13 of Tariff C.

Added by: G.N. No. 549 of 1939. Amended by: G.N. No. 653 of 1942. Substituted by: L.N. 7 of 1968; L.N. 102 of 1980. Amended by: XIII. 1983.4. Substituted by: L.N. 121 of 1996; L.N. 142 of 2000.

TARIFF J

Fees payable in connection with Sea Protests or proceedings concerning Average

1	For the procedures required following the filing of any application regarding sea protests or for proceedings touching average up to the filing of the report:	
	(i) registry fee	Lm 50
	(ii) fee due to the advocate	Lm 100
	(iii) fee due to the judge delegate	Lm 50
	(iv) fee due to the deputy registrar	Lm 25
	(v) fee due to the translator, if required	Lm 25
	(vi) fee due to the clerk transcribing the protest and depositions, if required	Lm 20
	(vii) fee due to the executive officer of the Court	Lm 15

2	When the sea protest is drawn up outside the edifice of the Law Courts the fees stated in paragraph 1 of this Tariff shall be increased by	25%
	Provided that if the sea protest is drawn up on board a ship lying outside a harbour the fees stated in paragraph 1 of this Tariff shall be increased by	50%
3	Where the sea protest is drawn up at any time after 4.00pm and before 9.00am the fees set out in paragraph 1 of this Tariff shall be increased by	50%
4	(1) The sea-protest shall be drawn up in English.	
	(2) An interpreter shall be employed when the declaration is made or the evidence given in a language with which the judge is not conversant.	

TARIFF K

Amended by: G.N. No. 203 of 1920; G.N. No. 78 of 1929. Substituted by: L.N. 7 of 1968. Amended by: XIII. 1983.4; L.N. 1 of 2000; XVIII. 2002.10; XXXI. 2002.196.

Fees payable to Periti

1. *Survey of Lands*

(*a*) *Survey without the submission of a plan showing boundaries only:*

	Level Land	Terraced Land or Level Land with trees and/ or other obstacles	Terraced Land with trees and/ or obstacles
If the area does not exceed 4496 sq. metres	Lm4.00,0	Lm5.00,0	Lm6.00,0
If the area exceeds 4496 sq. metres but does not exceed 8992 sq. metres	Lm7.00,0	Lm9.00,0	Lm 10.00,0
If the area exceeds 8992 sq. metres but does not exceed 13488 sq. metres	Lm10.00,0	Lm13.00,0	Lm16.00,0
If the area exceeds 13488 sq. metres but does not exceed 17984 sq. metres	Lm15.00,0	Lm18.00,0	Lm22.00,0
If the area exceeds 17984 sq. metres but does not exceed 26976 sq. metres	Lm20.00,0	Lm23.00,0	Lm30.00,0

If the area exceeds 26976 sq. metres, for each additional 1124 sq. metres or part thereof there shall be added	Lm0.75,0	Lm1.00,0	Lm1.25,0

(*b*) Survey with detailed plan:

(i) If the area does not exceed 8992sq. metres, the fees specified in sub-paragraph (*a*) shall be increased by Lm1 per 1124 sq. metres or part thereof.

(ii) If the area exceeds 8992 sq. metres, the fees specified in sub-paragraph (*a*) shall be increased by Lm1 per 1124 sq. metres in respect of the first 8992 sq. metres and by 50c in respect of each additional 1124 sq. metres or part thereof.

(*c*) Survey of streets including plans showing outlines:

In this sub-paragraph the word "street" means any street and includes any road, alley, square or other place of public passage.

For every 46 metres or part thereof of the length of the street shown in the plan	Lm2,00,0

(*d*) Levels:

Where spot levels with or without contours are required the fees payable under sub-paragraphs (*a*), (*b*) and (*c*) shall be increased by:

150% if levels are taken at intervals of	1.5 metres
100% if levels are taken at intervals of	3 metres
90% if levels are taken at intervals of	6 metres
80% if levels are taken at intervals of	9 metres
70% if levels are taken at intervals of	12 metres
60% if levels are taken at intervals of	15 metres
50% if levels are taken at intervals of	18 metres
40% if levels are taken at intervals of	21.5 metres
30% if levels are taken at intervals of	24.5 metres
20% if levels are taken at intervals of	27.5 metres
10% if levels are taken at intervals of	30.5 metres

2. *Survey and Plotting of Buildings*

(*a*) Buildings of simple disposition and regular in plan:

(i) if of not more than 6 areas	2.50,0

(ii) if of more than 6 areas, the above fee shall be increased by 50c in respect of each additional area.

(*b*) Buildings with irregular walls:

The fees specified in sub-paragraph (*a*) shall be increased by fifty *per centum* (50%).

Note: The above fees shall be in respect of one floor only.

For the survey and plotting of each other floor the fees shall be reduced by fifty *per centum* (50%).

(*c*) Buildings of a special character:

For every 9 square metres or part thereof of the gross area 0.25,0

3. *Plans of Building Sites and Relative Division into Building Plots*

For surveying a building site, preparing detailed plans and dividing the site into building plots:

(i) if the area does not exceed 878 sq. metres 5.00,0

(ii) if the area exceeds 878 sq. metres, for every additional 439 sq. metres or part thereof 3.00,0

4. *Measurements of Excavations and Embankments*

Up to 14 cubic metres, per 3 cubic metres or part thereof 0.60,0

Over 14 and up to 28.5 cubic metres, per 3 cubic metres or part thereof 0.47,5

Over 28.5 cubic metres, per 3 cubic metres or part hereof 0.35,0

5. *Measurement of Works or Preparation of Bills of Quantities*

(*a*) For measurement of work including pricing 2%

(*b*) For detailed bills of quantities by trade including pricing 2½%

(*c*) For measurement of works and pricing which require calculations other than the measurement of actually existing quantities and the assessment of the relative prices 3%

6. *Valuations*

(*a*) Rural property

If the value does not exceed Lm100	3.00,0
If the value exceeds Lm100 but not Lm 200	3.90,0
If the value exceeds Lm200 but not Lm 300	5.10,0
If the value exceeds Lm300 but not Lm 400	6.00,0
If the value exceeds Lm400 but not Lm 500	6.90,0
If the value exceeds Lm500 but not Lm 600	7.50,0
If the value exceeds Lm600 but not Lm 700	8.10,0
If the value exceeds Lm700 but not Lm 800	8.70,0
If the value exceeds Lm800 but not Lm 900	9.30,0
If the value exceeds Lm900 but not Lm 1,000	9.90,0

If the value exceeds Lm1,000 the fee shall be increased by 30c per Lm100 or part thereof.

(*b*) Urban property

If the value does not exceed Lm100	3.00,0
If the value exceeds Lm100 but not Lm 200	3.25,0
If the value exceeds Lm200 but not Lm 300	3.60,0
If the value exceeds Lm300 but not Lm 400	4.05,0
If the value exceeds Lm400 but not Lm 500	4.50,0
If the value exceeds Lm500 but not Lm 600	4.95,0
If the value exceeds Lm600 but not Lm 700	5.40,0
If the value exceeds Lm700 but not Lm 800	5.85,0
If the value exceeds Lm800 but not Lm 900	6.30,0
If the value exceeds Lm900 but not Lm 1,000	6.80,0

If the value exceeds Lm1,000 the fee shall be increased by 30c per Lm 100 or part thereof.

(*c*) Emphyteutical property and property subject to usufruct, burdens or easements.

The fee payable shall be assessed on the value of the property as free.

In the valuation of a *directum dominium* in perpetuity of any tenement or of any perpetual burden, the fee shall be assessed in accordance with paragraph 15.

(*d*) Usufruct

In the valuation of a usufruct the fee shall be assessed on the value of the property as freehold with the addition of a fee as provided under sub-paragraph (*b*) of paragraph 15.

(*e*) Portions of tenements

In the valuation of an undivided portion of a tenement, whether free or emphyteutical or subject to usufruct, easement or burden, the fee shall be assessed as laid down in sub-paragraphs (*a*) and (*b*) of this paragraph or on the basis of four *per centum* (4%) on the value of the portion so valued, whichever is the lesser fee, provided that in no case the fee payable shall be less than Lm3.

Note: The fees specified in this paragraph include any fees for valuations and measurements which may be necessary to arrive at the final value.

7. *Partition of Property*

The fee payable shall be one-fourth of the fee established for the valuation but it shall not exceed Lm15 for every proposed scheme of partition of property.

8. *Assessing value of Dilapidations or Improvements*

For preparing schedule, with or without the assessment of the value, the fee shall be equal to five *per centum* (5%) on the assessed amount:

Provided that if only an assessment of the value is required, the fee shall be of two *per centum* (2%) of the estimated cost.

In no case shall the fee be less than Lm3.

9. *Assessing Damage other than Dilapidations*

For preparing detailed schedule and settling the amount, the fee shall be equal to five *per centum* (5%) of the assessed amount:

Provided that the fee in respect of repeated works of an identical nature shall be reduced by sixty *per centum* (60%) for each work other than the first.

In no case shall the total fee be less than Lm3.

10. *Design and Erection of Buildings*

For taking the client's instructions, preparing sketch designs, making approximate estimates of cost by cubic measurement or otherwise, submitting applications for building and/or other licences, preparing working drawings and specifications, giving general supervision, issuing certificates of payment and certifying accounts, the fee in respect of new works is to be assessed as follows:

If the cost of the executed work does not exceed Lm100	10% of the cost
If the cost of the executed work exceeds Lm100 but does not exceed Lm300	9% of the cost
If the cost of the executed work exceeds Lm300 but does not exceed Lm500	8% of the cost

If the cost of the executed work exceeds Lm500 but does not exceed Lm 1,000	7% of the cost
If the cost of the executed work exceeds Lm1,000	6% of the cost

In the case of alterations to existing buildings, the percentage to be charged shall be increased by fifty *per centum* (50%) over the rate for new works.

Notes: (1) The fees specified in this paragraph shall not cover constant supervision of the work but only such supervision as may be required for the purpose of the professional responsibility of the perit under any relevant law at any time in force and as may be necessary to ensure that the works are being executed in general accordance with the contract.

(2) Such fees, however, shall cover the responsibility of the perit to ensure that no material deviation, alteration, addition to or omission from the approved design is made without the knowledge and consent of the client, and to inform the client if the total authorised expenditure is likely to be exceeded or if the contract period is likely to be varied.

(3) Where it is agreed between the perit and the client to retain the services of consultants, the fee of the perit shall be reduced by one-third of the fees on the cost of the works upon which the services of consultants are retained.

11. *Fees in cases when the Perit Abandons or is Abandoned by the Client or Works remain Unexecuted*

1. If a project referred to in paragraph 10 of this Tariff or part thereof is abandoned or if the perit abandons or is abandoned by the client:

(*a*) after the perit has taken the client's instructions, prepared preliminary sketch designs sufficient to indicate the interpretation by the perit of the client's instructions and made an approximate estimate of the cost of the project, the fee shall amount to one-third ($^1/_3$) of the fees specified in paragraph 10;

(*b*) after the perit has taken the client's instructions, prepared sketch designs, made an approximate estimate of the cost, submitted applications for building and/or other licences, and prepared working drawings and specifications, the fee shall amount to two-thirds ($^2/_3$) of the fees specified in paragraph 10.

2. The perit who has been engaged after a former one has been abandoned by, or has abandoned, his client as above shall be entitled to:

(*a*) five-sixths (5/6) of the fees specified in paragraph 10 in the case contemplated in sub-paragraph 1 (*a*) of this paragraph;

(*b*) one-half (½) of the fees specified in paragraph 10 in the case contemplated in sub-paragraph 1 (*b*) of this paragraph.

12. *Old Material or Material and Services provided by Client*

When building work has been executed wholly or in part with old material or where the material, labour and/or carriage is provided wholly or in part by the client, the fee of the perit shall be calculated as if the work had been executed throughout with new material and as if the material, labour and/or carriage had been paid for throughout at current cost.

13. *Services not included in Paragraph 10 and 11*

Additional fees shall be payable for:

(*a*) surveying sites of buildings and taking levels;

(*b*) altering drawings or preparing new drawings and for other services made necessary by variations or additions required by the client after the original drawings have been approved by him;

(*c*) the assessment of compensation due for rendering party walls common;

(*d*) measuring and pricing executed works.

14. *Statically Indeterminate Structures*

In cases involving the design of statically indeterminate structures or statically indeterminate structural members, a fee of two *per centum* (2%) on the cost of such structures or structural members shall be payable in addition to the fees chargeable under paragraph 10 hereof.

15. *Miscellaneous Fees*

(*a*) For minor service not otherwise provided for 0.60,0

(*b*) For important service not otherwise provided for 2.00,0

(*c*) Time charges:

In cases where it is agreed between the perit and the client that the fee is to be on a time basis, the fee shall be of Lm1.50,0. per hour, but when the perit requires the help of an assistant, the fee shall be increased by 40c an hour.

(*d*) Travelling allowance

From Malta to Gozo and vice versa or from Gozo to Malta and vice versa 3.00,0

(*e*) Costs in connection with Court duties:

(i) transportation costs to a site inspection 3.00,0

(ii) typing and printing minutes in the records of a case, per A4 sheet, for the first copy thereof 0.30,0

and each additional copy thereof 0.10,0

(iii) for the issue of each notice of a sitting or site inspection to lawyers and parties 0.50,0

16. Fees taxable to periti who are appointed as Court referees for each opinion dealt with in the report shall be up to a maximum of Lm50 for each legal point decided. Any calculation or computation of an amount to be awarded as damages or compensation by the Courts shall be deemed to be an opinion, and the maximum fee taxable for such an opinion shall be Lm100. The criterion shall be that of the work involved and never the amount assessed by the Court referee:

Provided that there shall be paid a fee to a perit appointed as a Court referee as follows:

(*a*) For each sitting held -

(i) for the first hour or part thereof ... 10.00,0

(ii) for each additional hour or part thereof 10.00,0

(*b*) For each site inspection held -

(i) for the first hour or part thereof ... 13.50,0

(ii) for each additional hour or part thereof 10.00,0

17. Periti, when ordered by a Court or required by a client to appear before any judicial assistant or a court referee, or for a site inspection shall be entitled to the following fees:

(i) for the first hour or part thereof ... 15.00,0

(ii) for each additional hour or part thereof 13.50,0

18. The fees set forth in this Tariff shall, in all cases, be exclusive of the cost of copies of documents, travelling expenses and all other disbursements not already provided for.

19. The expert appointed by the court shall not be entitled to any fee for services in connection with the presentation of the report or the confirming of the same on oath, but if, after he has presented the report and confirmed the same on oath, he is required to attend in court, he shall be allowed a fee for attendance in accordance with item (*f*) of Schedule A to the Witnesses (Fees) Ordinance.

TARIFF L

Fees payable in respect of proceedings under article 257 of the Civil Code, Cap. 16.

Added by: G.N. No. 199 of 1944. Substituted by: L.N. 102 of 1980. Amended by: XIII. 1983.4. Substituted by: L.N. 121 of 1996.

	Lm c m
Registry fee for the filing of any application or note	2.00,0
For subpoena of witness - for each witness	0.15,0
For every copy of any application or note - for every page	0.25,0
To the advocate or legal procurator - for any application or note	3.00,0
For other services in connection with these proceedings ..... from	3.00,0
to	10.00,0

SCHEDULE B

[ARTICLE 1007]

FORMS

Amended by: L.N. 153 of 1996.

No. 1

Application of a minor to bring action through a curator.

In (*here insert name of Court*)

.....

.....

versus

.....

.....

The application of the said

Respectfully sheweth: -

That, in the opinion of competent persons, he has good cause to bring an action against the said for the purpose of , but, as he is a minor, he being only years of age, he therefore humbly prays this Court that he may be allowed to bring the action through a curator appointed by this Court.

(*Decree of the Court*)

The Court,

Upon seeing the application of ,

Appoints to act as curator of during his minority, in the action mentioned in the application.

This day of

(*Registrar's signature*)

10 cents

Amended by:
L.N. 153 of 1996.

No. 2
Application of a third party for the appointment of a curator to represent a minor.

In (*here insert name of Court*)

.....

.....

versus

.....

.....

The application of

Respectfully sheweth: -

That, from information obtained, has good cause to bring an action against , for the purpose of , but, as the said is a minor, he being only years of age, the applicant, therefore, humbly prays that this Court may appoint a curator for the purpose of bringing the necessary action on behalf of the said minor.

(*Decree of the Court*)

The Court,
Upon seeing etc.,

This day of
(*Registrar's signature*)

10 cents

Amended by: XVI.1922.5. Substituted by: L.N. 42 of 1982. Amended by: XIII.1983.5; L.N. 190 of 1995; L.N. 153 of 1996.

No. 3

Application to sue/defend with benefit of legal aid.

In the Civil Court First Hall

.....

.....

versus

.....

.....

The application of the said

Respectfully sheweth: -

That in the claim by/against for he qualifies for admission to sue/defend with the benefit of legal aid.

Wherefore applicant humbly prays this Court that he may be allowed to sue/defend with the benefit of legal aid, and the said applicant declares on oath that he believes that his aforesaid claim/ defence is just, and that excluding the subject-matter of the proceedings, he does not possess property of any sort (not including wearing apparel) the net value whereof amounts to a sum of not more than three thousand liri not including everyday household items that are considered reasonably necessary for the use by applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over; and that in calculating the said net asset value, no account has been taken of the principal residence of the applicant or any other property, immovable or movable, which forms the subject matter of court proceedings, even though such other property is not the subject matter of the proceedings in respect of which legal aid is being applied for; and that in calculating the income, the period of computation has been calculated at the twelve months' period prior to the demand for the benefit of legal aid.

(Decree of the Court)

The Court

Upon seeing etc.,

Orders that this application be referred to the Advocate for Legal Aid to examine and report whether the applicant has a good cause of action.

This day of

(Registrar's signature)

10 cents

No. 4
Application for order
in connection with competition
proceedings.

Amended by:
L.N. 153 of 1996.

In (*here insert name of Court*)

The application of
for competition proceedings amongst the creditors of

Respectfully sheweth: -

That in the Registry of this Court there is lodged the sum of by schedule filed by on the day of .

That the applicant as creditor of the said claims that amount, but he is unable to obtain the same, as it is claimed by other parties (or other parties claim to have an interest therein) so that competition proceedings on the said deposit amongst the creditors of the said are now competent.

Wherefore the applicant humbly prays that this Court may order the publication of the notice relative to such competition proceedings.

(*Decree of the Court*)

The Court,

Allows the application, and appoints the day of for the appearance of the parties interested at the hearing of the cause, and directs the Registrar to publish the notice referred to in article 416 of the Code of Organization and Civil Procedure.

This day of
(*Registrar's signature*)

10 cents

Amended by: L.N. 190 of 1995; L.N. 153 of 1996.

No. 5

Notice in compliance with the preceding Order.

NOTICE

Registry of
This day of

It is hereby notified to whom it may concern that, in the Registry of the (*name of Court*) , there is the sum of lodged by schedule filed by on the day of in favour of , and that by a decree of the day of , on the application of , the Court has ordered that competition proceedings be instituted on the said deposit, and has appointed the day of for the appearance of the parties interested and the hearing of the cause.

Wherefore any person, claiming to have an interest in the matter, is requested to exercise his rights on the deposit aforesaid, by an application within days from the aforementioned date, for the purposes of the Code of Organization and Civil Procedure.

(*Registrar's signature*)

10 cents

Amended by:
XXXI.1934.83;
L.N. 46 of 1965.
Substituted by:
XXII. 1976.2;
L.N. 95 of 1979.
Amended by:
L.N. 190 of 1995
L.N. 153 of 1996.

No. 6

Writ of Summons.

SUMMONS NO. .....

REPUBLIC OF MALTA

COST NOT.				**IN THE FIRST HALL OF THE CIVIL COURT**
				IN THE COURT OF MAGISTRATES (GOZO) SUPERIOR JURISDICTION
				WRIT OF SUMMONS **Today.....** **presented by**

NOTICE

Whoever receives this writ of summons issued against him must file his statement of defence within twenty (20) days from the date of service, that is, from the date when he receives it. If a statement of defence in writing is not filed as required by law within the said time, the Court shall proceed to decide the cause in terms of law.

Therefore, it is in the interest of whosoever receives this writ of summons to consult an advocate without delay in order that the Court may hear what he has to plead in the cause.

ADVOCATE (signature) .....
(Name in Block Letters) .....
LEGAL PROCURATOR .....

To defendant/s

By order of the Court at the suit of

You shall appear before this Court on the day and time appointed and notified to you after the preliminary written proceedings of the cause will have been completed and there, every necessary declaration being prefaced and any expedient direction being given.

Given by the aforesaid (*name of Court*),

by the order of Doctor of Laws,
Judge of the said Court.

This day of 20 .

10 cents

Amended by: L.N. 46 of 1965. Substituted by: XXII. 1976.2. Amended by: L.N. 190 of 1995; L.N. 153 of 1996.

No. 7

Notice of hearing of cause.

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS in a cause the pleadings whereof have been closed in the (*name of Court*)

between

the Court has appointed the

for the hearing of the said cause.

Wherefore you are ordered that by the delivery of a copy hereof both to the said Plaintiff and Defendant or their agent, according to law, you summon them to appear at o'clock on the before this Court, on which day the cause will be heard and determined.

You are further ordered to warn in the same manner the aforesaid Plaintiff and Defendant that, should they fail to appear on the day, and at the place and time aforesaid, the Court will proceed in their default to deliver judgment, according to justice, at the suit of the said on the same day, or on any subsequent day, as may be determined by the said Court.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*),

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

Amended by: L.N. 46 of 1965. Substituted by: XXII.1976.2; L.N. 96 of 198l. Amended by: XXIV. 1995.358; L.N. 190 of 1995; L.N. 153 of 1996.

No. 8

Subpoena *Ad Testificandum* and/or *Duces Tecum* before the Court/referee.

In (*here insert name of Court*)

In the cause

.....

.....

versus

.....

.....

Application of

Respectfully requests the issue of a summons of a witness in the above-stated cause against the person mentioned hereunder to attend for the sitting and at the time stated hereunder, and/or to bring with him the documents referred to hereunder.

Name and address of the person summoned to attend as a witness:

Documents to be brought by him:

Date, time and place where he is to attend:

Advocate Legal Procurator

This, day of 20

Filed by

(*Registrar's signature*)

No. 8

Subpoena *Ad Testificandum*
and/or *Duces Tecum*
before the Court/referee.

REPUBLIC OF MALTA

COURT SUMMONS

To Marshal of the Courts

WHEREAS pursuant to the above application in the abovestated cause pending in this Court the evidence of the afore mentioned person is required;

You are, therefore, ordered to summon the said person to attend on the day and at the time mentioned, and so on any other day and at any other time to which the said cause may be put off to give evidence in that cause and/or to bring with him the documents indicated.

You will also warn the said person that in case of disobedience to this summons, he shall be liable to the penalties established for contempt of Court, and he may be compelled to attend by a warrant of escort or of arrest, and he shall be liable to all other consequences to which, according to the provisions of the Code of Organization and Civil Procedure, he may be liable for such disobedience.

And after execution, by delivery of a copy hereof to the said person or to his agent, according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Court.

Given by the (*name of Court*),

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

No. 9

Amended by:
L.N. 46 of 1965;
XIII. 1983.4;
L.N. 190 of 1995;
L.N. 18 of 1996;
L.N. 153 of 1996..

Warrant of seizure for fine (*ammenda* or *multa*) or of arrest against person failing to attend on subpoena *Ad Testificandum* and/or *Duces Tecum.*

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS by a decree given by the (*name of Court*) on the day of , was condemned to pay a fine (*ammenda* or *multa*) of Lm (*or was sentenced to detention or imprisonment for*) for having failed to attend as witness in the cause *versus*

Wherefore you are ordered to seize, without any delay, from the possession of the said a pledge equivalent to the aforesaid amount and to the costs of this warrant, or, in the absence of things liable to seizure, to convey the said to the prison appointed for persons condemned to detention (*or imprisonment*) to be kept therein for the aforesaid period of in default of payment of said amount.

And after execution, etc., (*as in Form No.8*).

Amended by:
L.N. 46 of 1965.
Substituted by:
XXII.1976.2.
Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

No. 10

Warrant of Escort
against person failing to
attend on subpoena
Ad Testificandum and/or *Duces Tecum*.

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS the (*name of Court*) has by a decree given on the ordered that , having failed to attend as a witness before this Court in the cause pending between and , be brought before this Court to give h evidence and/or to bring documents at the sitting of

Wherefore you are ordered to bring before this Court the said and to keep h until shall have given h evidence, and/or brought the documents or until this Court shall order h discharge.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*),

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

No. 11

Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

Bond of surety in cases prescribed by law in respect of certain warrants.

I, the undersigned, do hereby stand surety *in solidum* with for any amount to which he may be condemned by way of penalty, or for any other cause, according to law, in consequence of the execution of the warrant sought by him, and I declare on oath that I consider myself sufficient for the fulfilment of this my bond.

Amended by: XIII.1925.6; L.N. 46 of 1965. Substituted by: XXII. 1976.2; L.N. 96 of 1981. Amended by: L.N.190 of 1995; L.N. 153 of 1996.

No. 12

Garnishee Order.

In (*here insert name of Court*)

(Creditor) .....

.....

versus

(Debtor) .....

.....

Application of

Respectfully requests: -

That this Court orders the issue of a garnishee order to be executed on the garnishee or garnishees as hereinafter mentioned, against the debtor for the debt herein mentioned and for the costs of this procedure, as precaution against the debt hereinafter indicated/ by virtue of the executive title herein mentioned/as confirmed on oath hereunder.-

Debt: { Amount
Interest
Costs

Title/Executive title:

Garnishee/s

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 12

Garnishee Order.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the above application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivering a copy of this Order, in the first place, to the aforesaid garnishees and subsequently to the debtor, you shall enjoin the said garnishees to retain in their possession as sequestered until the expiration of the time for which this warrant shall remain in force according to law or until further orders, or otherwise to deposit in the Registry of this Court, so much of the things or moneys in their possession appertaining to the said debtor as may be sufficient to satisfy the aforementioned claim of the said creditor together with the costs hereof under penalty of the payment of damages and interest, in case of disobedience.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*),

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

Amended by: L.N. 46 of 1965. Substituted by: XXII. 1976.2. Amended by: L.N. 190 of 1995; L.N. 153 of 1996.

No. 13

Order for depositing after service of Garnishee Order.

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS in virtue of a garnishee order made by the (*name of Court*) and executed on it was ordered that so much of the things (or moneys) in the possession of and belonging to as may be sufficient to satisfy the claim of against be attached;

And whereas it has been represented by the said that the time for the delivery of the things (or moneys) attached as aforesaid has expired;

And whereas an application has now been made for an order that the said be enjoined to deposit in the Registry of this Court the things (or moneys) so attached;

You are, therefore, ordered to enjoin the said to deposit in the Registry of this Court, within two days from the date of service hereof, the things (or moneys) attached as aforesaid and to warn the said that in default of such deposit, within the aforesaid time, proceedings will be taken against him, according to law.

And after execution, by delivery of a copy hereof to the said or agent, according to law, or upon your meeting with any obstacle in the said execution, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

Amended by: L.N. 46 of 1965. Substituted by: XXII.1976.2; L.N. 96 of 1981. Amended by L.N. 190 of 1995; L.N. 153 of 1996.

No. 14

Warrant of Impediment
of Departure of a Vessel.

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath:

That the applicant seeks to safeguard the credit herein mentioned against the said respondent/vessel;

That by the departure of such vessel from Malta applicant's credit may be evaded;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of impediment of departure against the said vessel for the herein mentioned credit and for the costs of this procedure.

Credit:

Title/Executive Title:-

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of
witness to identity, and filed by

(*Registrar's signature*)

No. 14

Warrant of Impediment of Departure of a Vessel.

REPUBLIC OF MALTA

COURT WARRANT NO. . . . . .,

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered to detain the vessel therein mentioned, until further orders, and to adopt such measures as may be necessary for the said purpose.

You are further ordered to enjoin, by the delivery of a copy hereof, the Master of the said vessel not to cause the ship to proceed on her voyage, and the Comptroller of Customs not to deliver the clearance papers of the said vessel, and, if such clearance papers have already been delivered, to withdraw them, under penalty of the payment of damages and interest to the said applicant.

Lastly, you are notified that this warrant shall, in default of further orders of this Court, cease to have effect in six months' time from this day.

And after execution, or upon meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of the said Court,

This, day of 20

10 cents

No. 15

Amended by:
L.N. 46 of 1965.
Substituted by:
XXII. 1976.2;
L.N. 96 of 1981.
Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

Warrant of Seizure.

In (*here insert name of Court*)

(Creditor) .....

.....

versus

(Debtor) .....

.....

Application of

Respectfully requests and confirms on oath: -

That this Court orders the issue of a warrant of seizure against the said debtor for the amounts/objects hereinafter mentioned and for the costs of this procedure, as precaution for the credit mentioned below/in execution of the executive title mentioned below.

Debt: { Amount
Interest
Costs

Title/Executive Title: -

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 15

Warrant of Seizure.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the above application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered to seize without delay from the debtor herein mentioned a pledge equivalent to the debt/objects mentioned in the application together with the costs of this warrant should he fail to pay or deposit in the Registry of this Court the objects/amount mentioned as debts.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

Amended by:
L.N. 46 of 1965.
Substituted by:
XXII. 1976.2.
Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

No. 16

Warrant *in factum.*

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS by a judgment delivered by the (*name of Court*) on the day of 20 , was condemned to in favour of

And whereas the said has represented to this Court that the said has made default in carrying out the said judgment;

You are, therefore, hereby ordered to convey, without delay, the said to the prison of to be detained therein until further orders of this Court.

And after service by delivery of a copy hereof to the said or agent, according to law, or upon your meeting with any obstacle in the said service, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

Amended by:
L.N. 46 of l965.
Substituted by:
XXII.1976.2;
L.N. 96 of 1981.
Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

No. 17

Warrant of Ejectment.

In (*here insert name of Court*)

(Applicant).....

.....

versus

(Respondent).....

.....

Application of

Respectfully requests: -

That this Court orders the issue of a warrant of ejectment against the respondent (from the herein mentioned tenement) in execution of the judgment herein mentioned, whereas the respondent has so far failed so to do.

Tenement:

Judgment:

Advocate

Legal Procurator

This, day of 20

Filed by

(*Registrar's signature*)

No. 17

Warrant of Ejectment.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS by a judgment delivered by the (*name of Court*), as stated in the aforementioned application, respondent was condemned to quit the said tenement, and whereas the said respondent has so far failed to do so;

You are, therefore, on the said application, ordered to cause the respondent to be actually ejected from the tenement mentioned in the application, leaving the same free in favour of the said applicant, enjoining further the said respondent by delivering a copy of the warrant, not to disturb the aforesaid applicant in the free enjoyment of the said tenement, under the penalties established for contempt of Court.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

Amended by: L.N. 46 of 1965; LVIII. 1974.68. Substituted by: XXII. 1976.2. Amended by: L.N. 190 of 1995; L.N. 153 of 1996.

No. 18

Warrant of Description issued on the application of the Attorney General in case of any vacant succession.

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS it has been represented to the (*name of Court*) by the Attorney General that died on the and that his heirs, whether testamentary heirs or heirs-at-law, are unknown;

And whereas the said Attorney General has applied for the issue of a warrant of description of the property of the said in the interest of all parties concerned;

You are, therefore, ordered to proceed to the usual place of residence of the late and to any other place in which you may be aware that there is any property belonging to his estate, to state in detail such property, and to deposit all movable property appertaining to the said estate in this Court.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

No. 19

Amended by:
L.N. 46 of 1965.
Substituted by:
XXII. 1976.2;
L.N. 96 of 1981.
Amended by:
L.N. 190 of 1995;
L.N. 153 of 1996.

Counter-Warrant.

In (*here insert name of Court*)

Following the warrant of
.....
.
..... No.....
issued on the .....
in the names:-

.....
.....
versus
.....
.....

Application of

Respectfully requests:-

That this Court orders the issue of the opportune counter-warrant on the grounds herein mentioned.

Grounds:-

Advocate

Legal Procurator

This, day of 20

Filed by

(*Registrar's signature*)

No. 19

Counter-Warrant.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS, after the execution of the warrant referred to in the above application, there are grounds according to law for which the same warrant should not remain in force;

You are, therefore, ordered immediately to cause the effects of the aforesaid warrant to be stayed by serving copies hereof on all persons served with the preceding warrant.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of the said Court.

This, day of 20

10 cents

Added by:
L.N. 190 of 1995;
Amended by:
L.N. 153 of 1996.

No.20

Warrant of Description.

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath -

That the applicant seeks to safeguard against the respondent over the hereunder mentioned movable things for the exercise of which rights he has an interest that such movable things remain in their actual place and condition;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of description of (*here insert the movable things to be described and the place where situated*).

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's Signature*)

No. 20

Warrant of Description.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered to proceed to the place mentioned in the application and that, by delivering a copy of this warrant to the said respondent, you shall describe all the movable things in detail stating the number and quality thereof;

You are further ordered to enjoin the respondent to continue to keep in his custody the movable property so described and to warn him that he is responsible for their safe keeping, under the penalties established for contempt of Court;

And, after execution, or upon meeting any obstacle in the execution hereof, you shall forthwith report to the Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

Added by:
L.N. 190 of 1995.
Amended by:
L.N. 153 of 1996.

No. 21

Warrant of Prohibitory Injunction.

In (*here insert the name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath:

That the applicant has an interest that his rights be secured;

That the applicant, in order to secure his rights, desires to restrain respondent from (*here insert the acts to be restrained*)

That the applicant would be prejudiced if respondent is not so restrained;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction restraining him from the acts above-mentioned.

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 21

Warrant of Prohibitory Injunction.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivering a copy of this warrant to the said respondent, you shall restrain the respondent from carrying out those things mentioned in the said application which are prejudicial to the applicant, under the penalties established for contempt of Court;

And, after execution, or upon meeting any obstacle in the execution hereof, you shall forthwith report to the Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

No. 22

Added by:
L.N. 190 of 1995.
Amended by:
L.N. 153 of 1996.

Warrant of Prohibitory Injunction in cases of personal separation restraining the other spouse.

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath: -

That the applicant (*here insert "has brought" or "intends to bring"*) before the court of contentious jurisdiction a suit for personal separation;

That in order to secure his rights the applicant desires the court to issue a warrant of prohibitory injunction against the respondent:

(*a*) restraining the said respondent from selling, alienating, transferring or disposing *inter vivos* whether by onerous or gratuitous title any shareholding in any commercial partnership if such shareholding is comprised in the community of acquests, and in particular (*here insert particulars of the commercial partnership/s*); and

(*b*) restraining the respondent from contracting any debt or suretyship which is a charge on the community of acquests; Wherefore, the applicant respectfully requests that this Court orders the issue of the relative warrant of prohibitory injunction against the respondent.

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 22

Warrant of Prohibitory
Injunction in cases of personal
separation restraining the other spouse.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivering a copy of this warrant to respondent, you shall restrain such respondent from selling, alienating, transferring or disposing *inter vivos* by onerous or gratuitous title any shareholding in any commercial partnership if such shareholding is comprised in the community of acquests, and from contracting any debt or suretyship which is a charge on the community of acquests;

You are enjoined to notify the respondent that this warrant does not apply to the constitution of any right on, or alienation or transfer of, any property made pursuant to a court order;

You are further ordered to execute this warrant forthwith and to restrain the respondent from carrying out those things mentioned in the said application which are prejudicial to the applicant, under the penalties established for contempt of Court;

And, after execution, or upon meeting any obstacle in the execution hereof, you shall forthwith report to the Court.

Given by the name (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

Added by:
L.N. 190 of 1995.
Amended by:
L.N. 153 of 1996.

No. 23

Warrant of Prohibitory Injunction in cases of personal separation restraining a commercial partnership.

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath:

That the applicant (*insert here "has brought" or "intends to bring"*) before the court of contentious jurisdiction a suit for personal separation;

That the respondent has a majority shareholding, pertaining to the community of acquests in the commercial partnership/s (*here insert particulars of the commercial partnership/s*);

That in order to secure his rights, the applicant desires the Court to issue against the said commercial partnership/s a warrant of prohibitory injunction restraining it/them from selling, alienating, transferring or otherwise disposing by onerous or gratuitous title, any immovable property or rights annexed thereto owned by the commercial partnership/s, and in particular (*here insert particulars of immovables as required by the Public Registry Act*)

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the said commercial partnership/s.

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 23

Warrant of Prohibitory Injunction in cases of personal separation restraining a commercial partnership.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, in the said application, hereby ordered that, by delivering a copy of this warrant to (*here insert particulars of the commercial partnership/s*), you shall restrain the said commercial partnership/s from selling, alienating, transferring or otherwise disposing by onerous or gratuitous title, any immovable property or rights annexed thereto owned by the said commercial partnership/s;

You are enjoined to notify the respondent that this warrant does not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order;

You are further ordered to execute this warrant forthwith and to restrain the said commercial partnership/s from carrying out those things mentioned in the said application which are prejudicial to the applicant, under the penalties established for contempt of Court;

And, after execution, or upon meeting any obstacle in the execution hereof, you shall forthwith report to the Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court

This, day of 20

10 cents

Added by:
L.N. 190 of 1995.
Amended by:
L.N. 153 of 1996.

No. 24

Warrant of Prohibitory Injunction restraining a person from taking a minor outside Malta.

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath: -

That the applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;

That the respondent/s is/are the persons having, or who might have, the legal or actual custody of the said minor;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the respondent/s enjoining him/them not to take, or allow anybody to take, the said minor out of Malta;

Particulars of the minor: (*here insert the name and surname of the minor and any other particulars, including the date and place of birth and the names of the parents for establishing the identity of the minor*)

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 24

Warrant of Prohibitory Injunction restraining a person from taking a minor outside Malta.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivery a copy of this warrant to the respondent/s, you shall restrain the respondent/s not to take, or allow anyone to take, the said minor out of Malta, under the penalties for contempt of Court;

You are further ordered to enjoin, by the delivery of a copy hereof, the officer entrusted with the delivery of passports not to issue or deliver any passport in respect of the said minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person, and, if before the service of this warrant on the officer charged with the issue of passports, a passport in respect of the minor has already been issued or the name of the minor has already been included in the passport of another person, to enjoin such officer to take the necessary steps to withdraw the passport in respect of the minor, and of any other passport which includes the name of the minor, and to delete the name of the minor from such passport, under the said penalty, and to enjoin, by delivery of another copy hereof, the Commissioner of Police not allow the said minor to leave Malta, under the said penalty;

Lastly, you are notified that this warrant shall, in default of further orders of this Court, cease to have effect in one year's time from this day;

And, after execution, or upon meeting any obstacle in the execution hereof, you shall forthwith report to the Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

Added by:
L.N. 190 of 1995.
Amended by:
L.N. 153 of 1996.

No. 25

Warrant of Prohibitory Injunction (claim exceeding Lm4,000).

In (*here insert name of Court*)

(Applicant) .....

.....

versus

(Respondent) .....

.....

Application of

Respectfully sheweth and confirms on oath:-

That the applicant, in order to secure his credit mentioned against the respondent, respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against respondent restraining him from selling, alienating, transferring or disposing *inter vivos* whether by onerous or gratuitous title any property and in particular (*here insert particulars of immovables as required by the Public Registry Act*)

Wherefore, the applicant respectfully requests that this Court orders the issue of the relative warrant of prohibitory injunction against the respondent.

Credit:

Title:

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(*Registrar's signature*)

No. 25

Warrant of Prohibitory Injunction (claim exceeding Lm4,000).

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivering a copy of this warrant to the respondent, you shall restrain such respondent from selling, alienating, transferring or disposing *inter vivos* by onerous or gratuitous title any property;

You are enjoined to notify the respondent that this warrant does not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order;

You are further ordered to execute this warrant forthwith and to restrain the respondent from carrying out those things mentioned in the said application which are prejudicial to the applicant, under the penalties established for contempt of Court;

And, after execution, or upon meeting any obstacle in the execution thereof, you shall forthwith report to the Court.

Given by the (*name of Court*)

and witnessed by Doctor of Laws,

of this Court.

This, day of 20

10 cents

No.26

Added by:
L.N. 122 of 1996.
Amended by:
L.N. 153 of 1996.

Court order to perform
the function of Judicial Assistant.

REPUBLIC OF MALTA

To Doctor of Laws..... Judicial Assistant.

Whereas it is required that in a cause before the (*insert name of Court*)..... Summons No .....
between plaintiff .....
and defendant .....
it is necessary to appoint a Judicial Assistant therein and in particular to:

*(*a*) ascertain and establish the issues of fact or of law involved in the cause, as well as the issues of fact or of law on which the parties agree, and to endeavour to induce the parties to reach an agreement on the issues involved in the cause, and to make a report thereof to the said Court;

*(*b*) take the testimony of any person that is produced as a witness;

*(*c*) take any affidavit on any matter;

*(*d*) receive documents produced with any testimony, affidavit or declaration, including in particular a testimony, affidavit or declaration as is referred to in the Code of Organization and Civil Procedure;

*(*e*) .....
.....

You are, therefore, hereby ordered that in terms of the provisions of article 97A of the Code of Organization and Civil Procedure, you will perform the functions of Judicial Assistant in the aforementioned cause with all the powers given to you by law, and in such manner that a first sitting should be held on the ..... day of ..... 20 ..... at ..... a.m/p.m. at ..... and that you will thereafter file before this Court your report and the evidence received, if any, by not later than the date of the first sitting before this same Court.

.....
Judge of the said Court

This .....day of 20

10 cents

*Strike out where not applicable

Added by:
L.N. 122 of 1996.
Amended by:
L.N. 153 of 1996.

No. 27

Notice of hearing of proceedings/evidence before a Judicial Assistant.

REPUBLIC OF MALTA

To ..... Marshall of the Courts.

Whereas in a cause before the (*insert name of Court*) ..... Summons No .....
between plaintiff .....
and defendant .....
the Court has appointed Doctor of Laws.....
to perform the functions of a Judicial Assistant therein and in particular to:

*(*a*) ascertain and establish the issues of fact or of law involved in the cause, as well as the issues of fact or of law on which the parties agree, and to endeavour to induce the parties to reach an agreement on the issues involved in the cause, and to make a report thereof to the said Court;

*(*b*) take the testimony of any person that is produced as a witness;

*(*c*) take any affidavit on any matter;

*(*d*) receive documents produced with any testimony, affidavit or declaration, including in particular a testimony, affidavit or declaration as is referred to in the Code of Organization and Civil Procedure;

*(*e*) .....
.....

And whereas the said Court has appointed the .....
day of .....20 ..... at .....a.m/p.m.
for the hearing of proceedings/evidence at .....
before the above stated Judicial Assistant;

Wherefore you are ordered that by the delivery of a copy hereof both to the aforesaid plaintiff and defendant or their agent, according to law, you summon them to appear on the day and at the place and time aforesaid before the above stated Judicial Assistant, on which day the proceedings/evidence will be heard and a report thereon made to the Court.

You are further ordered to warn in the same manner the aforesaid plaintiff and defendant that, should they fail to appear on the day, at the place and time aforesaid, or on any subsequent day as may be determined by the said Judicial Assistant, a report thereof shall be made to the said court which shall take such action thereon according to law.

And after execution, or upon your meeting with any obstacle in the said service, you shall report forthwith to the above mentioned Judicial Assistant.

.....

Doctor of Laws
Judicial Assistant
of the said Court.

This ..... day of ..... 20 .....

10 cents

*Strike out where not applicable

No. 28

A Summons Order given by a Judicial Assistant.

Added by: L.N. 122 of 1996. Amended by: L.N. 153 of 1996.

REPUBLIC OF MALTA

In (*here insert name of Court*)

Summons No.....
pending before Doctor of Laws
.....
a Judicial Assistant, in the cause:
.....
.....

vs.

.....
.....

To the witness: .....

Address: .....

By virtue of the powers given to me by sub-article (4) of article 97A of the Code of Organization and Civil Procedure, you are hereby being ordered to appear before me on the day and at the place and time hereunder mentioned to give evidence in the aforementioned cause:

Date and time: .....
Place where to attend: .....
Documents to be produced: .....

You are hereby warned that should you fail to appear on the day and at the time and place hereabove mentioned, you may be liable to the penalties established for contempt of court, and you may be compelled to appear before me by an order of escort or of arrest, and you shall be liable to all the other consequences to which, according to the Code of Organization and Civil Procedure, you may be liable for such disobedience.

.....
Doctor of Laws
Judicial Assistant
of the said Court

This .....day of ..... 20 ....

10 cents

Added by:
L.N. 122 of 1996.
Amended by:
L.N. 153 of 1996.

No. 29

A Subpoena order *Ad Testificandum* and *Duces Tecum* before a Judicial Assistant.

In (*here insert name of Court*)

Summons No.....
pending before Doctor of Laws
.....
a Judicial Assistant, in the cause:
.....
.....

vs.
.....
.....

Application of.....

Respectfully requests the issue of a subpoena order in the above stated cause against the person mentioned hereunder to attend for the sitting and at the time stated hereunder, and to bring with him the documents hereunder mentioned:

Person summoned to attend as witness: .....
Address:.....
Date, time and place where witness is to attend: .....
Documents to be brought by witness:.....

Advocate: .....
Legal Procurator: .....

This..... day of.....20.....

Filed by.....

(*Registrar's signature*)

10 cents

REPUBLIC OF MALTA

AN ORDER MADE BY THE JUDICIAL ASSISTANT

To the witness/witnesses whose name/s appear/s in the application

By virtue of the powers given to me by sub-article (4) of article 97A of the Code of Organization and Civil Procedure, I am hereby ordering each person whose name appears as a witness in the application to appear before me on the day and at the place and time mentioned therein to give evidence in the cause mentioned therein.

Each witness is hereby being warned that should he fail to appear on the day and at the time and place mentioned therein, he may be compelled to appear before me by an order of escort or of arrest, and he shall be liable to all the other consequences to which, according to the Code of Organization and Civil Procedure, he may be liable for such disobedience.

.....
Doctor of Laws
Judicial Assistant

This ..... day of ..... 20 .....

10 cents

Added by:
L.N. 122 of 1996.
Amended by:
L.N. 153 of 1996.

No. 30

Escort Order issued by a Judicial Assistant against a person failing to attend on subpoena.

REPUBLIC OF MALTA

AN ORDER MADE BY A JUDICIAL ASSISTANT

In (*here insert name of Court*)

Summons No.....
pending before Doctor of Laws
.....
a Judicial Assistant, in the cause:
.....
.....

vs.

.....
.....

To Marshal of the Courts.

Whereas it had been ordered by me on the ..... that ..... should attend before me as a witness on the day and at the place mentioned in the order;

And whereas the same person has failed to attend as ordered;

Wherefore, after having seen the provisions of sub-article (4) of article 97A of the Code of Organization and Civil Procedure, I am hereby ordering you to bring before me the said person, and to keep him/her until he/she shall give his/her evidence, at the place and time mentioned hereunder, or until I shall give you another order.

Date and time: .....

Place where witness is to attend: .....

.....

Documents to be brought by witness .....

.....

.....
Doctor of Laws
Judicial Assistant

This ..... day of ..... 20 .....

Address of witness: .....

10 cents

SCHEDULE C

Added by: XXIV. 1995.359.

[ARTICLE 249]

(1) .....Bank Ltd. stands surety *in solidum* with appellant (2)..... for the costs of the appeal entered in the case (3) ..... up to the amount of (4)..... liri (Lm .....) and this for the purpose and in terms of article 249 of the Code of Organization and Civil Procedure, Cap. 12.

This suretyship shall remain in force up to six months from the date on which the said appeal is decided, withdrawn or deemed deserted and consequently it will lapse if no written demand arising from this suretyship is made within the said period of six months.

Before effecting any payment under this suretyship, the Bank may require the production of the Registrar's declaration stating the date on which the appeal has been decided, withdrawn or deserted as well as of the necessary documentation in support of the claim for payment.

Today the day of 20

(5) .....

for Bank Ltd.

(1) Name of Bank

(2) Details of application

(3) Details of appealed case

(4) Amount of surety

(5) Signatory of Bank