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SELECT ISSUES IN THE LAW OF LETTING AND HIRING

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MALTA

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Select Issues in the Law of Letting and Hiring.

Dr. Phyllis Aquilina.

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Lecture 1.

- During these four lectures, we will be considering chapter 69, so the Reletting of Urban Property (Regulation) Ordinance.
  - Although the remit is to introduce and as much as possible familiarise us with this ordinance, there is a lot of background including other laws which we will be considering necessarily for us to understand the quite complex scheme of this law.
  - In the law of letting and hiring, and Dr. Aquilina would say in contrast to many areas in the Law of Property, we have different laws regulating different aspects and the way in which the legislation developed reflects to a very large extent the different social and economic realities of our state over now the past 90 years.
  - Chapter 69, what is now chapter 69 so the Reletting of Urban Property (Regulation) Ordinance. Started off as a temporary law, a law with a deadline for a time. That was after world war I and before world war II, before the very first enactment of this temporary law, leases of urban immoveable properties and that would include residential tenements, commercial tenements, garages, boathouses, and in general all urban tenements, were exclusively regulated by the provisions on letting and hiring under the civil code as existing at the time.
  - Therefore before the first enactment of the temporary law, the parties were free completely free to decide on the rent and the terms and conditions of leases of urban immoveable properties.
  - As we can imagine, after the destruction of world war I the social reality and at the time we were still a colony so the economy reality as well, necessitated, don't forget that in 1921 we had the first maltese government, so the social and economic realities of the time necessitated legislative controls, to ensure security of tenure and rents which could be afforded in that reality. That was the reason behind the original enactment of the temporary controls in 1925.
  - Those temporary laws were extended over time until 1931, and in 1931, we have the enactment of this permanent law, that is the reletting of urban property regulation ordinance.

- As we shall see in more detail later on, the operative provision of this ordinance which we find in article 3.
- Obliges the lessor, the person granting on lease to renew (igedded) the lease at the same rent and on the same conditions without limitation of time in favour of the person who satisfies the definition of tenant in article 2 of the ordinance.
  - Article 2.
  - **2**. In this Ordinance, unless the context otherwise requires - the expression "the Board" and "the Rent Board" mean the Rent
  - Regulation Board constituted under article 16;
  - the expression "club" means any club registered as such at the Office of the Commissioner of Police under the appropriate provisions of law;
  - the expression "let" includes sub-let;
  - the expression "premises" means any urban immovable property;
  - the expression "shop" means any premises principally leased for the sale of any wares or merchandise, whether by wholesale or retail, any market stall, warehouse and any premises licensed for the sale of wine and spirits or refreshments, any cinema hall or any other premises principally leased for the exercise therein of any art or trade or for use as a club;
  - the expression "tenancy" includes sub-tenancy; the expression "tenant" means also:
  - (a) in the case of a dwelling-house:
  - (i) that person who has been recognised as a tenant in accordance with any law validly applicable before the 1st June 2021;
  - (ii) the widow or widower of a tenant:
  - Provided that the widow or the widower shall not have the right to be considered a tenant if he did not inhabit the dwelling-house for four (4) out of the last five (5) years prior to the 1st June, 2008 and, in the case
  - of this sub-paragraph did not continue living with the tenant until the date of his death;

- (iii) the siblings of the tenant who have continued the lease in solidum together with him:

- Provided that the siblings shall not have the right to be considered as tenants if they did not inhabit the dwelling-house for four (4) out of the last five (5) years prior to the 1st June, 2008, and, in the case of this sub-paragraph did not continue living with the tenant until the date of his death:

- Provided further that following the coming into force of the Controlled Residential Leases Reform Act, 2021, no person who has not yet been recognised as the tenant of a dwelling-house up to that date shall qualify as a tenant of a dwelling-house in terms of this definition, except for those who qualify in accordance with sub-paragraphs (ii) and (iii):

- Provided further that persons who do not qualify under sub-paragraphs (i), (ii) and (iii) and have lived in the dwelling-house for four (4) out of the last five (5) years before the 1st June, 2008 and have continued to live with the tenant until the date of the demise of the tenant shall continue occupying the dwelling-house for a period of five (5) years from the date of death of the tenant, at the end of which period they shall vacate said dwelling-house. The compensation for the occupation of the dwelling-house that shall be payable to the lessor during the aforementioned period shall be equal to the highest rent amount that may have been payable by the tenant:

- Provided further that following the death of the tenant the lessor may file an application in accordance with the provisions of article 4A and if these persons who do not qualify under sub-paragraphs (i), (ii), and (iii) do not satisfy the income and capital assets criteria of the means-test, the Board shall make a decision in terms of sub-article (4) of article 4A;

- (b) in the case of a shop, where the tenant leaves no widow or widower, such persons as are related to the tenant by consanguinity or affinity up to the degree of cousin inclusively, provided, in the latter case, such persons are the heirs of the tenant;

- (c) in the case of a club, the person or persons from time to time succeeding in the management or direction thereof, that it includes any sub-tenant in relation to the tenant.

• This has to be clear in our minds, what this ordinance does has nothing to do with the original term of the lease. What is the original term of the lease? The original term of the lease is the time for which the lessor and the tenant have contracted the lease, which at that time could be either expressly agreed, or implied in terms

of the law, what the law used to refer to as presumed original term in article 1532 of the Civil code, as it existed prior to act X of 2009

- Article 1532.

- **1532**. (1) In the absence of an express agreement or of circumstances tending to show the intention of the contracting parties as to the duration of the lease, the following rules shall be observed:

- (a) the letting of an urban tenement or of a movable shall be deemed to be made for the period in respect of which the rent has been calculated, that is, for one year, if the rent has been agreed upon at so much a year; for one month, if the rent has been agreed upon at so much a month; for one day, if the rent has been agreed upon at so much a day: Provided that if it is not made to appear that the rent has been agreed upon by the year, the month or the day, it shall be deemed to have been agreed upon according to usage;

- (b) the letting of a rural tenement shall be deemed to be made: if the tenement is capable of producing fruits, for the period which is necessary for the gathering of the produce of four years; if the tenement is not capable of producing fruits, for the period in respect of which the rent is calculated, as is provided in the case of urban tenements;

- (c) if any particular usage is proved in regard to the duration of the letting of certain things, such things shall be deemed to be let out for the period fixed by such usage.

- (2) The provisions of sub-article (1) do not apply with regard to the lease of urban, residential and commercial property made after 1st January, 2010:

- Provided that any private residential leases entered into after the 1st January, 2020, shall be presumed to have been entered into for a period of one (1) year, unless the parties agree to a short private residential lease or the letting of shared residential space in accordance with the Private Residential Leases Act.

- Going back to 1931, in 1931 we had the enactment of this permanent law which obliges the lessor to continue renewing the lease of urban immoveable properties in favour of the person who satisfies the definition of tenant, at the same rent on the same conditions without limitation of time.

- The problem is that the social and economic reality of Malta was not static, so it changed, first we had World War II so the circumstances were still very difficult, then we had the aftermath of World War II, we have Malta eventually becoming

independent building its own economy, thriving and this none the less no change was made to this ordinance for several decades. So we ended up with a situation of controlled leases with conditions and rents not making absolutely any economic sense in the bigger picture of the social and economic reality of Malta.

- Then we have the very first important date that we should keep in mind always when dealing with leases, that date is 1st June 1995. What happened in 1st June 1995? That is the cut-off date which Act XXXI of 1995 introduced, all the laws and acts mentioned will be found on the website. 1st June 1995 is the cut off date with effect from when new leases of urban immoveable properties were liberated/freed, from the controls of this ordinance.

- Dr. Aquilina means that from 1st June 1995 onwards, leases of urban immovable properties were no longer subject to this obligation of re-letting at the same rent and on the same conditions. But that liberation, that freeing was applicable only to leases contracted, so leases which start after 1st June 1995, so leases of immoveable properties which started after 1st June 1995 are not subject to the provisions of the reletting of urban property regulation ordinance and that is stipulated in article 46 of chapter 69.

  - Article 46.

  - **46**.* (1) The foregoing provisions of this Ordinance shall not apply to the lease of any premises entered into on or after the 1st June, 1995:

  - Provided that articles 16 to 45 shall also apply to all leases made after the 1st June, 1995.

  - (2) For the purposes of this article -

  - (a) the term "lease" includes any letting as defined in article 44(a), (b) or (c) and includes a sub-lease;

  - (b) the renewal of a lease on or after the 1st June, 1995 (whether such renewal be conventional, legal, customary or otherwise) shall not be deemed to be a lease entered into on or after the 1st June, 1995.

  - *Article 5 of Act XXXI of 1995 inter alia provides:

  - 5. Nothing in article 46 of the Reletting of Urban Property (Regulation) Ordinance shall be deemed to restrict any of the powers of the Director of Social Housing under the Housing Act, (Cap.125) and the provisions of the Ordinance as in force immediately before the coming into force of this Act (1st June 1995) shall, in as far as applicable, continue to apply with regard to the relationship

between the said Director and any owner of premises in possession of the said Director on that date, or between the said Director and any person legally in occupation of such premises. The provisions of the said Ordinance as aforesaid shall also continue to regulate the relationship between any person in occupation of such premises and the owner thereof.

- This freeing solved the problem prospectively, so from that date onwards new leases went back to being regulated exclusively by the civil code, but changed nothing to leases of urban immoveable properties which started before 1st June 1995.

- This is the first cut off date, 1st June 1995 leases contracted after are not subject to chapter 69 but leases which were originally contracted before continue to be subject to chapter 69. So the obligation of re-letting at the same rent and on the same conditions continued to apply unmodified (no change) to urban immoveable properties which were let before 1st June 1995.

- No change was made to chapter 69, until fast forward to act X of 2009 and the cut off date here is 1st January 2010. What happened then? For the first time in history act X of 2009, modified in the sense of started freeing some of the controls stipulated in chapter 69, in the reletting of urban property regulation ordinance, unfortunately that act X of 2009, is a very bad example of legislative drafting.

- So we have the modifications to the rules in chapter 69, not made by changes to chapter 69, but contained in new provisions with very bad drafting in English and maltese in the civil code. So instead of, tant kulhadd jibża min chapter 69 li folk immodifikaw lil Chapter 69 daħħlu r-regoli l-ġodda fic-Civil Code and these rules are numbered article 1531A and the following in the Civil Code.

  - <u>Article 1531A.</u>

  - **1531A**.(1) With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January, 2010, the contract of lease shall be made in writing and shall stipulate:

  - (a) the property to be leased;

  - (b) the agreed use of the property let;

  - (c) the period for which that property will be let;

  - (d) whether such lease may be extended and in what manner;

  - (e) and also the amount of rent to be paid and the manner in which such payment is to be made.

- (2) In the absence of one or more of these essential requirements, the contract shall be null.

- (3) The lease of an urban property, a residence and a commercial tenement made after the 1st January, 2010 shall be regulated exclusively by the contract of lease and by the articles of this Code:

- Provided that private residential leases shall be regulated by the Private Residential Leases Act

- 1531AA. With regard to the letting of any private residential lease entered into after the 1st January, 2020, the contract of lease shall be made in writing and shall stipulate the conditions specified under the Private Residential Leases Act, namely:

- (a) the tenement to be leased;

- (b) the agreed use of the tenement let;

- (c) the period for which that tenement shall be let;

- (d) whether such lease may be extended and in what manner;

- (e) the amount of rent that shall be paid and the manner in which such payment is to be made;

- (f) any amount deposited by the lessee by way of security, for the performance of his obligations; and

- (g) an inventory attesting the condition of the tenement as well as the state of any furniture and domestic appliances supplied by the lessor.

- Article 1531B.

- **1531B**. The contracts of lease made before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 sohowever that from 1st January, 2010 articles 1531C, 1531D, 1531E, 1531F, 1531G, 1531H, 1531I, 1531J and 1531K of this Code shall apply.

- Article 1531C.

- **1531C**.(1) The rent of a residence which has been in force before the 1st June, 1995 shall be subject to the law as in force prior to the 1st June, 1995 sohowever that unless otherwise agreed upon in writing after the 1st January, 2010, the rate of the rent as from the first payment of rent due after the 1st

January, 2010, shall, when this was less than one hundred and eighty-five euro (€185) per year, increase to such amount:

- Provided that where the rate of the lease was more than one hundred eighty-five euro (€185) per year, this shall remain at such higher rate as established.

- (2) In any case the rate of the rent as stated in sub-article (1) shall increase every three years by a proportion equal to the increase in the index of inflation according to article 13 of the Housing (Decontrol) Ordinance; the first increase shall be made on the date of the first payment of rent due after the 1st January, 2013:

- Provided that where the lease on the 1st January, 2010 will be more than one hundred eighty-five euro (€185) per year, and by a contract in writing prior to 1st June, 1995 the parties would have agreed upon a method of increase in rent, after 1st January, 2010 the increases in rent shall continue to be regulated in terms of that agreement until such agreement remains in force.

- Article 1531D.

- **1531D**.(1) The rent of a commercial tenement, unless otherwise agreed upon after 1st January, 2010 or agreed upon in writing prior to the 1st June, 1995 with regards to a lease which would still be in its original period on the 1st January, 2010, shall as from the date of the first payment of rent due after the 1st January, 2010, be increased be increased by a fixed rate of fifteen per cent over the actual rent and shall continue to increase as from the date of the first payment of rent due after the 1st January of each year by fifteen per cent over the last rent between the 1st January, 2010 and the 31st December, 2013.

- (2) The rent as from the first payment of rent due after the 1st January, 2014, is to be established by agreement between the parties. In the event that such agreement is not reached, the Property Market Value Index shall be considered as a guide to the rent as may be established by regulations made by the Minister responsible for accommodation and in the absence of such regulations, the rent shall from the first payment of rent due after the 1st January, 2014, increase by five per cent per year until the coming into force of the said regulations.

- (3) In the case of a commercial tenement, if there was an agreement between the parties for periodic rent increases, then such agreement shall continue to apply without the increases contemplated in this article:

- Provided that except in such cases where the increase in rent has been effected following an agreement, where the increase as proposed herebefore for commercial tenements is applied, the tenant may by means of a judicial letter served on the lessor or on one of the lessors, terminate the lease by giving him advance notice of three months and this shall also apply if the lease is for a definite period.

- Article 1531E.

- **1531E**. The external ordinary maintenance of a tenement leased prior to 1st January, 2010, save unless otherwise agreed upon in writing between the parties, shall be at the expense of the tenant and not of the lessor.

- Article 1531F.

- **1531F**. Repealed by Act XXIV.2021.5.

- Article 1531G.

- **1531G**. Repealed by Act XXIV.2021.6.

- Article 1531H.

- **1531H**.(1) In the case of garages leased before the 1st June, 1995 that do not form part of a residence leased to a tenant as an ordinary residence and which are not considered as a commercial tenement, in the absence of an agreement to the contrary there shall not be any right of renewal of the lease after 1st June, 2010.

- (2) In the case of a tenement leased before the 1st June, 1995 and used as a summer residence which is not the ordinary residence of the tenant, in the absence of an agreement to the contrary there shall not be any right of renewal to the lease after 1st June, 2010:

- Provided that for the purposes of this Title no tenant shall be deemed to hold more than one ordinary residence.

- Article 1531I.

- **1531I**. In the case of commercial premises leased prior to 1st June, 1995, the tenant shall be considered to be the person who occupies the tenement under a valid title of lease on the 1st June, 2008, as well as the spouse of such tenant, provided they are living together and are not legally separated, and also in the

event of the death of the tenant, his heirs who are related by consanguinity or by affinity up to the grade of cousins inclusively:

- Provided that a lease of commercial premises made before the 1st June, 1995 shall in any case terminate within twenty years which start running from the 1st June, 2008 unless a contract of lease has been made stipulating a specific period. When a contract of lease made prior to the 1st June, 1995 for a specific period and which on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and such period of lease has not yet been automatically extended by law, then in that case the period or periods stipulated in the contract shall apply. A contract made prior to the 1st June, 1995 and which is to be renewed automatically or at the sole discretion of the tenant, shall be deemed as if it is not a contract made for a specific period and shall as such terminate within twenty years which start running from the 1st June, 2008.

- Article 1531J.

- **1531J**. (1) In the case of a tenement leased to an entity and used as a club before the 1st June, 1995 including but not limited to a musical, philanthropic, social, sport or political entity, when its lease is for a specific period and on the 1st January, 2010 the original period "di fermo" or "di rispetto" is still running and the lease has not yet been automatically extended by law, then in that case the period of lease established in the contract shall apply. In all other instances where the contract of lease was made prior to the 1st June, 1995 the law and all definitions as in force on the 1st June, 1995 shall continue to apply:

- Provided that notwithstanding the provisions of the law as in force before the 1st June, 1995, the Minister responsible for accommodation may from time to time make regulations to regulate the conditions of lease of clubs so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.

- (2) The provisions of this sub-article and of the following sub- articles shall, notwithstanding any other law, apply in respect of the occupation of premises under title of lease by a club where all the following conditions are satisfied:

- (i) where the club consists of a band club which on the 1st March, 2018 has been in existence for at least thirty (30) years;

- (ii) where the said band club has on the 1st March, 2018 occupied the same premises as its principal quarters under a title of lease or emphyteusis or under a combination of both for a period of at least thirty (30) years;

- (iii) where the band club is still in occupation of the premises and the premises are the only premises of the band club, except for stores and similar premises or premises which are small and are not used as a club, on the 1st March, 2018; and

- (iv) where the eviction of the band club has been ordered by a final judgement of the Rent Board or of a Court for a reason other than the failure to pay rent due.

- (3) Where all the conditions listed in sub-article (2) are satisfied, the club shall be entitled to continue occupying the premises under a title of lease under the following conditions:

- (i) for a rent which shall amount to ten (10) times the amount of rent payable for the occupation of the said premises prior to the final judgement of the Rent Board or of the Court ordering eviction;

- (ii) the rent referred to in sub-paragraph (i) shall not be further increased in terms of regulation 2 of the Conditions Regulating the Leases of Clubs Regulations but the amount due to the owner in terms of regulation 3 of the said regulations shall still be due in addition to the rent;

- (iii) the rent due in terms of sub-paragraph (i) shall not be less than five thousand euro (€5,000) per annum or amount to more than one (1) per cent of the value of the premises on the 1st January 2018.

- (4) The owner of premises of which sub-articles (2) and (3) apply shall be entitled to apply to the Rent Board to contest the fulfilment of any condition provided for in sub-article (2) or to demand a variation in the conditions of the lease in order to make good for any situation of manifest disproportionality which may result from the application of sub-articles (2) and (3), due account being taken of the social and cultural functions performed by the band club:

- Provided that in considering whether there exists a situation of manifest disproportionality the Board shall not base its considerations on the potential of the premises for development for commercial use but it shall consider the premises in its actual state.

- (5) In any proceedings which may lead to the eviction from premises owing to structural alterations made without the consent of the lessor, when the premises from which the eviction is demanded consist of the principal quarters of a band club, the Rent Board or the Court shall not order the eviction from such premises where the structural alterations consist of works related to the

philharmonic or social activities or to the activities performed by the band club, and where the works consist of improvements to the premises or of structural alterations to the premises and the band club provides a guarantee which in the opinion of the Rent Board or of the Court is sufficient to allow the lessor to restore the premises and to make the reparations or alterations necessary in the premises at the termination of the lease and to make good for any loss suffered during the execution of the necessary works:

- Provided that the amount of the guarantee referred to in this sub-article shall be established on the basis of the prices current at the time of the judgement.

- Article 1531K.

- **1531K**. In the case of a tenement leased prior to 1st June, 1995 and which is used both as a residential premises as well as a commercial tenement for which one rent is paid, this shall be considered to be a residential tenement to which the rules of this article regarding residential premises shall apply:

- Provided that -

- (a) with regard to the rate of the rent, the rent shall be that established for a commercial premises as stipulated in article 1531D;

- (b) if the commercial part will not continue to be used as such, insofar as the rate of the rent is concerned, there shall continue to apply the rent which was payable immediately before the termination of the use of the commercial part; so however that, the increase in the rent from that time onwards shall be regulated on the basis of the rent as established by article 1531C;

- (c) where the rent increases in terms of regulations made as stipulated in article 1531D, the increase in rent shall be considered only on that part of the tenement which will actually be used for a commercial purpose.

- Article 1531L.

- **1531L**. With regard to leases which came into force on or after the 1st June, 1995 such leases, both of a residential and of a commercial tenement, and of urban property, shall continue to be regulated by the same terms and conditions agreed upon between the parties and by law as in force at the time.

- Article 1531M.

- **1531M**. With regard to leases made before the 1st June, 1995 of tenements which are not residences or commercial tenements, subject to the provisions of

article 1531J relating to clubs, and subject to the provisions of article 1531H with regard to garages and summer residences, the law and all definitions as were in force before the 1st June, 1995 shall continue to apply:

- Provided that the Minister responsible for accommodation may from time to time make regulations to regulate such leases so that a fair balance may be reached between the rights of the lessor, of the tenant and the public interest.

- Because of all this unfortunately for several years after the enactment of act X of 2009 we had many uncertainties of interpretation, several conflicting judgements even at court of appeal level until eventually all disputes of interpretation were set to rest and essentially what the changes were (and the changes were quite bold) we have the introduction of a minimum rent for residential tenements, we have very importantly a definite cut off date which is more approaching for the continued re-letting of commercial tenements that cut off date was set at 20 years from 1st June 2008, so it is 31st May 2028 now not so far away, we have a complete shifting of repair obligations saving for structural repairs onto the tenant. We have a periodic rent increase mechanism for both residential and commercial tenants, so we have different ways of starting to release various of the controls of the limitations which chapter 69 used to impose.

- At the same time of these developments, Act X of 2009, this difficulty of the interpretation of the law because it wasn't properly drafted, onto the international plane and now we're going to the European Court of Human Rights we have successful challenges to similar controlling laws of lease in other jurisdictions. So this system of having controls on leases to protect the tenant is not something only of Malta it was widespread across Europe and it was developed for the same purposes as we deed, so nothing different and other jurisdictions as we did, kept on dragging their feet to revise these laws despite the big social and economic changes over decades, and for this reason they were successfully challenged before the European Court of Human Rights for violation of article 1 of the 1st protocol to the european convention, peaceful enjoyment of private property.

  - <u>Article 1.</u>

  - **1**. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- The classic, most important and clearest judgement in this respect delivered by the European Court was against Poland in 2006, so we can understand why Act X of 2009, it was the climax at the time, it's called Hutten Czapzka vs Poland

2006, that fever so to speak came to Malta as well and in the aftermath of act X of 2009 we have the first challenges before our courts going up to the constitutional court of all controlling legislation for leases including this reletting of urban property regulation ordinance.

- Naturalment kulhadd antiċipa terremot li successful judgements in this respect could have had so the courts were initially quite reluctant to follow the jurisprudence of the European Court of Human Rights but eventually that had to happen and it happened and because of that successful challenge we have then fast forward to 2021 Act XXVI of 2021, which added article 4A in Chapter 69.

  - Article 4A.

  - **4A**. (1) When a person is in occupation of a dwelling-house on the basis of a lease which commenced before 1st June 1995 through the application of the provisions of this Ordinance, the following conditions shall, provided they are inconsistent with the provisions of the said articles of this Ordinance, apply in respect of such lease from 1st June 2021 notwithstanding the provisions of the said articles of this Ordinance or of any other law.

  - (2) The lessor shall be entitled to file an application before the Board requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1st January of the year in which the application is filed and in order to establish new conditions regarding the lease.

  - (3) (a) When the request is made by the lessor in accordance with sub-article (2) and the leased tenement is a dwelling-house, the Housing Authority shall be notified with the application and shall have the right to participate fully as intervenor in the proceedings;

  - (b) the tenant shall in any case be entitled to the benefit of legal aid provided by the Housing Authority in proceedings filed in terms of this article:

  - Provided that this shall not prejudice the rights of the lessor who shall be entitled to the benefit of legal aid provided by the Legal Aid Agency in proceedings filed in terms of this article if he is not in full-time gainful employment;

  - (c) at the initial stages of the proceedings, the Board shall conduct a means test of the tenant, which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations issued under article 1622A of the Civil Code and any regulations that may from time to time

replace them. The means test shall be based on the income of the tenant between the 1st January and the 31st

- December of the year preceding the year in which the proceedings are commenced and the capital of the tenant on the 31st December of the said year. The means test shall be conducted with particular reference, inter alia, to regulations 4 to 8 of the Continuation of Tenancies (Means Testing Criteria) Regulations which shall apply mutatis mutandis:

- Provided that when the lessor has the suspicion that the tenant may have transferred his property, both movable or immovable, with the intention of hiding these assets, he shall have the right to request that the means test on the capital assets shall go back to the 1st January 2021 or according to sub-regulation (5) of regulation 4 of the Continuation of Tenancies (Means Testing Criteria) Regulations, whichever date comes earlier, and when it is established that the tenant has disposed of these assets for malicious purposes, the Board shall nonetheless take them into consideration in its means test.

- (4) Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of two (2) years to vacate the dwelling-house. The compensation for occupation of the dwelling-house payable to the lessor during the said period shall be determined by the Board as the case may be.

- (5) Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub- articles.

- (6) The Board, in any case, after summarily hearing the parties and examining any evidence which it considers relevant, may also order that an increased amount of rent be paid during the hearing of a pending application filed in terms of sub-article (1).

- (7) When the rent amount is established in accordance with sub- article (2), that rent may increase according to the regulations published by the Minister responsible for housing from time to time:

- Provided that the demand for this increase shall be without prejudice to the lessor’s right to request the revision of the rent in accordance with sub-article (2), after a period of six (6) years from when the new rent would have been fixed in accordance with the same sub- article (2), unless an agreement is reached between the parties.

- (8) The lessor may, whenever it transpires that the economic circumstances of the tenant have changed, file a new application before the Board wherein he requests that a new means test of the tenant is conducted according to paragraph (c) of sub-article (3) and if the tenant does not satisfy the income and capital assets criteria of the means test, the Board shall decide the case in terms of sub-article (4).

- (9) The provisions of this article shall also apply to cases wherein a community of property on the dwelling-house exists and the tenant is a co-owner of the same dwelling-house. When this is the case the Board shall consider the tenant's share in the leased dwelling-house and subtract any part of the new rental amount payable by him to the other co-owners proportionally.

- In the reletting of urban property regulation ordinance, also transported and modified several of the amendments introduced by act X of 2009 in their proper place in chapter 69 and in virtue of this new article 4A now the lessor has the right to proceed before the rent regulation board which is the special tribunal for leases (we will tackle it in the last session), demanding an increase in rent which can go up to 2% of the market value of the tenement let, considered as vacant so free from the lease, and this procedure involves the housing authority which in several cases subsidises, so will actually pay, the increased rent.

- Din hija l-istorja tac-chapter 69 kif wasal illum, as we can imagine form the new developments especially in the past decade this area is changing every day so there are still changes coming up in the judgements and the most recent amendments are still very new so it is a very much evolving area of the law so it has been static for almost 70 years but then this past decade there was an overwork but one must keep in mind the milestone dates and legislations that we mentioned so we mentioned

  - 1st June 1995 act XXXI of 1995

  - 1st January 2010 and act X of 2009

  - Act XXVI of 2021

- To go now into chapter 69 itself, now when it comes to these special law of lease and we're not speaking of chapter 69 only but chapter 158 and the rest, we need to have the law before us all the time, unfortunately the drafting is very heavy, in some provisions so it is not easy to understand what the law is saying like we have in the civil code very short provisions and we understand immediately what is being said nothing of the sort, they can be complicated to understand. One needs to have the law before us and we will be referring all the time to the law.

- We will be referring quite often to judgements, in this area of the law judgements are paramount especially in the last 15 years so many of the developments which came into law eventually started off by the courts or they were triggered by the courts in judgements it is very important to follow judgements, Dr. Aquilina will be going through several judgements, there is a huge amount of judgements over the decades but in particular in this last period if you go in the website and put in the text words many judgements will come up and we are encouraged to read judgements to understand how the courts changed their reasoning over time. If you see older judgements (judgements before 1995 and even before 2010) you will see that the stand of the courts was largely pro-tenant so where there was a doubt or something was not clear the benefit of the doubt was almost always given to the tenant. That stand is now changed, so the courts especially with the advent of breach of fundamental human rights try to be more equal in their perspective when considering the rights and obligations of the lessor and the tenant.

- A judgement which we can read which explains what was changed in 1995 is George Briffa et vs Raymond Gauci et first hall Judge Joseph Azzopardi 6th May 2009.

- So, Dr. Aquilina referred to two provisions until now in chapter 69 article 3 and article 46, Dr. Aquilina will refer to the third important provision in chapter 69 which was changed, which was substituted by Act XXVI of 2021. Again make sure that you see the most recent version of chapter 69 so as to have all these amendments in it. Article 15 says

  - Article 15.

  - **15**. Clauses that bind the tenant to conditions which are significantly less advantageous than those provided in this Ordinance, whether such clauses have been stipulated prior to the 1st June 2021 or afterwards, shall be considered null and void.

- If you look up the previous version of this provision which had been with us since 1931, it's scope of operation was more extensive so it was more radical in favour of the tenant. But we still have it to this day as it stands now it continues to be a rule of public policy therefore the parties to a lease contract cannot opt out of it, cannot exclude it; and it protects the tenant, in so far as any acceptance which he can make or she can make to give up some part of his or her rights arising from this ordinance is not enforceable.

- Jekk il-partijiet jiftemu allura l-inkwilin jaċċettaw li xi benefiċju li għandu taħt din l-ordinanza jirrinunzja għalih, dak il-ftehim mhux inforzabli huwa null u mingħir effett and it is the way which the law secures that the controls which it has stipulated in

the law for the benefit of the tenant are actually availed of in favour of the tenant. So that is article 15 of chapter 69.

- Going to article 3 of Chapter 69, this is the operative provision obliging the lessor to renew the lease at the same terms and conditions as the original term, so now we're speaking about the renewed term of the lease, after the expiration of the agreed or the presumed time.

  - Article 3.

  - **3**. It shall not be lawful for the lessor of any premises, at the expiration of the period of tenancy (whether such period be conventional, legal, customary or consequential on the provisions of this Ordinance), to refuse the renewal of the lease or to raise the rent or impose new conditions for the renewal of the lease without the permission of the Board.

- That is this heading of obligation which is under chapter 69 which caused us so many problems.

- Dr. Aquilina would like to dissect this provision with reference to the definition provision found in article 2.

- We have there definitions of particular terms and Dr. Aquilina would like to consider three particular definitions.

- We have the definition of letting, what letting is and for letting we need besides article 2 to look at article 44 of chapter 69. Then she would like to consider with us the definition of tenant and to consider the definition of premises, because article 3 is speaking about the lease, the tenant and the premises.

- What is letting for the purposes of this ordinance? In practice which leases entered into before 1st June 1995, keep that date in mind fall within the scope of this ordinance. Dr. Aquilina would refer us to article 44 of the Ordinance. Article 44 says

  - Article 44.

  - **44**. (1) For the purposes of this Ordinance the term "letting" shall be deemed to include -

  - (a) any emphyteutical grant for a period not exceeding sixteen years; and

  - (b) notwithstanding any stipulation to the contrary, any agreement in pursuance of which any person has been accommodated in consideration of payment

periodically recurrent in any premises other than a hotel or lodging-house licensed as such by the Police; and

- (c) any other agreement whereby any real or personal right on any premises, which right includes that of occupation of those premises, is granted under an onerous or commutative title for a period of time, whether such time is established by fixing a certain specified day or whether it can be established by reference to a certain or to an uncertain future event.

- (2) The provisions of this article shall not apply to accommodation provided by the Government in requisitioned premises.

- In (a) even if the contract says that it is an emphyteusis, if the emphyteusis is for a term of less than 16 years, then by operation of this law it is a lease subject to the obligation of renewal in article 3. For those who will eventually work in practice we will see that for a long time people contracted emphyteutical grants for 17 years, why? To escape this provision so that there emphyteutical grant will not be subject to this obligation of renewal but an emphyteusis for a term not exceeding 16 years by operation of article 44 is letting which falls under the scope of article 3 of chapter 69.

- In (b) the law is saying, whatever you call the contract, irrespective of the name which you give it, if you are actually granting a place for accommodation purposes and the premises are not licensed as a hotel or a lodging house, then that concession is a letting/lease which falls within the scope of article 3 of chapter 69.

- In (c) this is so wide that it virtually includes any kind of agreement where premises as defined for the purposes of this ordinance, are granted for a time to be used for the occupation by the grantee (the person to whom it is granted).

- This extremely wide definition of lease which as we can see goes far beyond the definition of lease as a contract which we have in article 1525 of the civil code.

  - Article 1525.

  - **1525**. (1) A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.

  - The Rent Regulation Board (hereinafter referred to as the "Rent Board") established under the Reletting of Urban Property (Regulation) Ordinance shall decide all matters affecting the leases of urban tenements including residential as well as commercial tenements including causes relating to the occupation of

urban tenements where such leases have expired, and any damages resulting during such period of occupation. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act:

- Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.

- The Rent Board shall also have the competence to decide demands related to maintenance, repairs, defects and faults of the tenement including latent ones, damages or improvements, amounts due for water and electricity and any amount left by way of security deposit by the tenant, where such demands are included in other demands or pleas made before the Board, over which the Adjudicating Panel has no jurisdiction.

- The Rent Board has the authority to request information and documentation from government entities, departments and authorities as well as from any other entity to meet its functions as established in this Code.

- (2) Unless otherwise specifically stated in this Title, the provisions of this Title shall not apply to agricultural leases which shall continue to be regulated by the provisions of the Agricultural Leases Reletting Act.

- (3) For the purposes of this Title:

- "commercial tenement" means an urban tenement which is not a residence and which is leased to house an activity primarily intended to generate profit and includes, but is not limited to, an office, a clinic, a tenement leased out for the sale of merchandise by wholesale or retail, a market stall, a warehouse, a storage used for commercial purposes as well as any tenement licensed to sell things, wines, spirits or foodstuff or drinks, theatre, or tenement mainly used for any art, trade or profession:

- Provided that a tenement leased to a society or leased to a musical, philanthropic, social, sporting or political entity, that is used as a club, shall not be considered as a commercial tenement even if part of it is used for the purpose of generating profit;

- "club" means any club which is registered as such with the Commissioner of Police in accordance with the appropriate provisions of the law;

- "private residential lease" means any long or short private residential lease, including the letting of shared residential space, which is entered into after 1st January, 2020, and any leases for a residential purpose entered into before the 1st January, 2020, which would still be in its original or renewed period on the 1st January, 2021.

- *The transitory provisions relating to the amendments made to this Title by Act X of 2009 are reproduced at the end of this Chapter.

- Was the way in which the legislator extended as far as possible the remit of the obligation of renewal at the same rent and on the same conditions when this ordinance was originally enacted and it continued to be so until today.

- An interesting paragraph is article 44(2) what are requisitioned premises? What is this concept or requisition?

- We have a law called The Housing Act, which is Chapter 125 of the laws of Malta. In past decades, especially 60's, 70's and 80's private residential tenements, which were vacant, empty, where taken over by the government at the time director of Social Accommodation (direttur tal-akkomodazzjoni soċjali) and granted by title of lease to persons who would have applied for social housing.

- Joħroġ requisition order biex jiehu l-pussess ta' propjeta privata li hija vojta u jgħaddiha b'kiri lil min applika għas-social housing.

- Now this whole system of requisitions is now something of the past, it has been successfully challenged over and over again for human rights violations and because of that the administration in the 90's and after adopted a policy of cancelling completely all requisition orders but we still have many situations of people letting tenements which were originally granted on lease under a requisition order.

- When the requisition order was in force, the lease relationship used to exist between the administration (so the director of social accommodation or afterwords the housing authority) and the occupier.

- What the law is saying here in this sub-article (2) is that accommodation granted by the government in premises which were subject to a requisition order fall outside the definition of letting for the purposes of chapter 69.

- Recently the question arose before the constitutional court whether this exclusion means that the tenant does not enjoy the protections afforded by chapter 69 and in the most recent pronouncement on this question, the constitutional court said no, only article 44 is excluded the other provisions apply because following

derequisitioning (the cancelling of a requisition order) there is a direct lease relationship starting before 1st June 1995, between the lessor and the tenant. That judgement is Jeremy Cauchi et vs Avukat Generali et, Constitutional Court, 26th January 2022.

- Now we saw what letting is for the purposes of this ordinance, second term which we need to look at the definition of the term is tenant.
- We already saw that the scope of letting is wider than the original definition in the civil code, now we go to the definition of tenant.
- Here in time we also had three different definitions which applied, if you look at a version of Chapter 69 before act XXVI of 2021, you will find the old definition which had been there since 1931 and which included descendants and successors and therefore in practice, brought about this situation of permanent protection for the original tenant and his successors. So that was the first definition.
- After the enactment of Act X of 2009 we had the addition of articles 1531F and 1531G in the Civil Code. So the definition of tenant in chapter 69 continued to be the old one but in actual fact, it was changed through the introduction of articles 1531F and 1531G. If you look now at the civil code after act XXVI of 2021, articles 1531F and 1531G are repealed, their contact but in a modified way has finally found its place in the dentition of tenant in chapter 69. So if we look now at article 2 where tenant is defined we actually find the correct definition of tenant for the purposes of chapter 69 which is applicable today.
- Why is the definition of tenant so important? The fact that in the definition of tenant we have, and we have always had the inclusion of persons other than the original tenant in practice mean an extension of the scope of obligation of renewal in article 3.
- X'qed ngħidu? Immagina ħa ssir kirja llum, ta' ħanut, kirja ha ssir bejn 'A' li huwa s-sid u 'B' li huwa tenant, ħa jifthemu bejniethom li jridu, kemm ħa tkun il-kera, kemm ikun iż-żmien jekk ikon hemm renewal, min ghandu l-obbligu tal-maintenance, li grid ħa jifthiemu li jridu, imma tenant huwa wieħed, huwa l-persuna li qed tieħu l-kirja skond il-kuntratt.
- Under chapter 69 it was never like that, so the term tenant always included other people besides the original tenant and therefore when we come to apply the obligation of renewal, in favour of the tenant we cannot think only of the person who was originally granted the lease, but we need to look at the definition to see who else besides the original tenant is entitled to have the lease renewed.

- Meta qed nitkellmu fuq l-obligation of renewal għaliex id-definition of tenant f'chapter 69 kienet dejjem u ghadha sal-llum, tinkled nies oħra barra l-original tenant, dak iffisser li the right to have the lease renewed at the same rent and on the same conditions does not only vest in the original tenant, li seta' ħa l-kirja fin-1940 imma it vests also in all the other persons, relatives as we will see who are included in the definition of tenant.

- If you look at the original definition of tenant which was in this law in this chapter 69 until 1st June 2021, as recent as that the inclusion of other people was so extensive and without limitation that we have a situation where the same lease has been in force and with continued renewal in favour of different tenants which however all fall within that definition for 80 years for example.

- Who is now included in the definition of tenant? If you look at article 2 the expression tenant means also (besides the original tenant) and then there is paragraph (a), (b) and (c) so (a) refers to a dwelling house, so who is the tenant of a dwelling house, paragraph (b) says who falls within the definition of tenant of a shop, so a commercial tenement and paragraph (c) tells us who is the tenant of a club. So, dwelling house, shop and club three different definitions of tenants.

- Let's start with the case off a dwelling house, a dwelling house is a residential tenement. In the case of a dwelling house, that person who has been recognised as a tenant in accordance with any law validly applicable before the 1st June 2021. 1st June 2021 is the operative date of the last amendment we had which is act XXIV of 2021. Biex inkunu nafu, fl-ewwel ta' Ġunju 2021 min kien it-tenant irridu naraw il-ligijiet ta qabel, il-liġijiet ta' qabel huma id-definition of tenement li kelna qabel f'chapter 69 plus articles 1359F and 1359G.

- Then besides that person the widow or widower of a tenant, mela if after 1st June 2021, the tenant who was the valid tenant under the preceding laws passes away, his or her widow or widower would still fall under the definition of tenant and therefore would still be entitled to the renewal. Issa ġejjiin il-qualifications.

- 1st June 2008 is the date first mentioned in Act X of 2009. For a widow or widower to satisfy the definition of tenant after the death of the spouse who was the lawful tenant on 1st June 2021, said widow or widower must have lived in the dwelling house for at least 4 years between 1st June 2003 and 1st June 2018, and (cumulative) continued to live with the tenant in the dwelling house until the date of death. If both criteria are not satisfied cumulatively then the widow or widower are not tenants.

- Then besides the widow or widower, the siblings, in the case of siblings, so the siblings of the tenant who have continued the lease in solidum together with him,

tenant ma kienx waħdu tenant, kien it-tenant u ħutu flimkien tenants, provided that the siblings shall not have the right to be considered as tenants if they did not have the right to inhabit the dwelling house for four (4) out of the last five (5) years prior to the 1st June, 2008, and, in the case of this sub-paragraph did not continue living with the tenant until the date of his death:

- Iż-żewġ cumulative criteria li jrid ikollu widow jew widower japplikaw ukoll għas - siblings li kienu tenants mat-tenant li miet. Then, continuing to read from the definition of tenant.

- Provided further that following the coming into force of the Controlled Residential Leases Reform Act, 2021, no person who has not yet been recognised as the tenant of a dwelling-house up to that date shall qualify as a tenant of a dwelling-house in terms of this definition, except for those who qualify in accordance with sub-paragraphs (ii) and (iii): This paragraph is extremely important, this paragraph has once and for all put a stop, so ended the permanent indefinite succession of the obligation of renewal in article 3 of chapter 69.

- L-uniċi nies fil-każ ta' dwelling house li għad għandhom dritt għat-tiġdid tal-kiri bil-kera u l-kundizjonijiet ikkontrollati, huma min kien rikonoxxut bħala inkwilin fil-1st june 2021, l-armel jew l-armla tiegħu wara li jmut jekk dawk iż-żewġ rekwiziti huma sodisfattii u ħutu li kienu nkwilini miegħu (jekk kien hemm) jekk dawk iż-żewġ rekwiżiti huma sodisfatti and the end of it no more obligation to renew in favour of descendants. This is new after act XXVI of 2021, because articles 1531F and G introduced by act X of 2009, still allowed renewal in favour of descendants one time only that is now gone. No more extension to descendants.

- Then there is another proviso, provided further that persons who do not qualify under sub-paragraphs (i), (ii) and (iii) and have lived in the dwelling-house for four (4) out of the last five (5) years before the 1st June, 2008 and have continued to live with the tenant until the date of the demise of the tenant shall continue occupying the dwelling-house for a period of five (5) years from the date of death of the tenant, at the end of which period they shall vacate said dwelling-house. The compensation for the occupation of the dwelling-house that shall be payable to the lessor during the aforementioned period shall be equal to the highest rent amount that may have been payable by the tenant:

- What is this proviso saying? If there were persons living with the lawful tenant at the time of death, who are not the widow or widower or the siblings or who do not satisfy those two requirements of residence, they are not considered as tenants but are allowed to continue occupying the dwelling house for a maximum period of 5 years from the date of death of tenant mhux bħala tenants imma in virtue of this special concession of this proviso.

- In the case of a shop, in the case of a commercial tenement, the definition of tenant is granted in paragraph (b) so in the case of a shop, where the tenant leaves no widow or widower, such persons as are related to the tenant by consanguinity or affinity up to the degree of cousin inclusively, provided, in the latter case, such persons are the heirs of the tenant. In the case of a commercial tenement, what this ordinance calls a shop, after the death of the tenant, the obligation to renew, and therefore the right of renewal vests in the widow or widower, without any other qualification, and in their absence, it will vest in the relatives of the tenant, by blood or marriage up to the degree of cousin if they are also heirs of the tenant. Iridu jkunu werrieta, heirs of the tenant, plus relatives up to the degree of cousin if there is no widow or widower. Those are included in the definition of tenant of a shop (no difference whether testate/intestate succession)

- In the case of a club, the person or persons from time to time succeeding in the management or direction thereof, that it includes any sub-tenant in relation to the tenant. Min ikun qed imexxi s-social club huwa tenant, from time to time there can be changes but it will continue to be the tenant.

- One final point and some judgements of this point, that qualification of the widow or widower or siblings living with the tenant for at least 4 years between 03 and 08 and then continued to live with the tenant until time of death,what do we mean by living with the tenant? xi tfisser this mat-tenant? Tgħix mat-tenant tfisser tmur torqod f'dak il-post, jew tfisser tgħaddi ħinek f'dak il-post jew tfisser il-post fejn normalment iżżomm l-affarijiet tiegħek?

- Dr. Aquilina would like to mention some judgements where the courts explained what living with the tenant means for the purposes of this definition

- One can see

- Adrian Chetcuti et vs Raymond Vella, First Hall, 29th October 2014.

- Concetta Cili et vs Alfred Grima et, First Hall, 25th February 2016

- Saviour Vella et vs Teresa Ebejer, Court of Appeal, 8th May 2017.

- Next week we'll start with the definition of premises.

22nd March 2023

Lecture 2.

- Last week we were discussing the definition provision in the reletting of urban property regulation ordinance (chapter 69).

- If we remember last week we were given a bit of a historical overview of this law how it developed and how we came to have the ordinance as it is today, we saw the operative provision which has caused many problems and then last week we were considering particular definitions we have in chapter 69 and which are determining for understanding and then we saw the definition of letting, we saw the definition of tenant and we explained how that definition changed over time and the way in which in practice it meant that a lease continued to be renewed over decades without end and in favour of different generations of tenants, and we ended with the question what is meant by residing in the tenement and we referred to judgements where the court explained what residing as ordinary residents means.

  - Another definition which we need to look at in article 2 of chapter 69 is the definition of premises so if you remember article 3 says it shall not be lawful for the lessor of any premises, which tenements which were originally let before 1st June 1995 are subject to this obligation of renewal in article 3, if you look at article 2, in article 2 we have one of the definitions saying the expression premises means any urban immoveable property. Now if we remember last week we mentioned two important dates, 1st June 1995, and 1st January 2010. Corresponding to two different acts which made important changes to the laws of letting and those acts being act XXXI of 1995, and act X of 2009.

  - Going backwards to, before 1st January 2010, before 1st January 2010 and therefore before act X of 2009, for leases which started before 1st June 1995, the obligation of reletting in article 3 of chapter 69 applied to all urban immoveable properties. So any immoveable property in an urban environment so not rural environment, which was originally let before 1st June 1995, was subject to the obligation of reletting. That would mean that the obligation of reletting existed in regard to dwelling houses in urban settings so not a farmhouse, dwelling houses in urban settings, it applied to shops, and generally all commercial tenements, it applied to clubs, when we're speaking about clubs we’re not speaking about the paceville clubs we're speaking about the village and town band clubs and the other local similar clubs.

  - At the time it applied also to garages let for the parking of private vehicles, and it applied also to boathouses and generally all seasonal residences, so summer houses, residences etc.

  - That means generally speaking before act X of 2009 and as the definition of premises indicates to this day in chapter 69 the premises subject to the obligation of reletting for leases which started before 1st June 1995, applied generally to all urban tenements, irrespective of the purpose of the lease and the nature of the use for which the letting was made.

- In that regard, before act X of 2009, the obligation of reletting had no end date. So as long as all the requirements of article 3 are satisfied, in particular the occupier satisfies the definition of tenant, the obligation of renewal existed across the board for all urban premises.

- Now, first question is what do we exactly mean by urban? So if we're speaking about a huge garden or a huge field which happens to be situated in a generally urban environment so in the precincts of a town or a village, would that garden or field constitute premises for the purposes of chapter 69?

- We have a very good an extremely good judgement, Court of Appeal judgement, answering this question giving also a historical background of the law and it's purposes, and this judgement which is long (it's a long judgement but it's very clear straightforward Maltese, we are encouraged to read it).

- It is Major Peter Manduca vs Prim Imħallef Professur Hugh Harding, (the defendant was the chief justice) Court of Appeal 13th June 1995. The court concluded against the chief justice, that a garden situated in a completely urban environment in Sliema in this case it was, is not an urban immoveable property for which chapter 69, this ordinance intended the obligation of renewal to ensure security of tenure.

- So what happened with act X of 2009?

  - Act X of 2009 introduced in the Civil Code (unfortunately as we explained last week) the definition of commercial tenement which is more or less a replication of the definition of shop which we have in the ordinance and we will come to that soon but more importantly act X of 2009, introduced one and end date, so a final date when all protected leases of commercial tenements will be completely freed from the obligation of renewal. So it introduced a date after which there will no longer be an obligation of renewal under article 3 of chapter 69. And that date is 20 years from 30th May 2008, which is now getting closer and which is therefore 30th May 2028. So after 30th May 2028 there will no longer be an obligation of renewal for leases of commercial tenements which started before 1st June 1995.

  - Then act X of 2009 stipulated a date after which there is no longer an obligation to renew leases of private garages and summer residences or boathouses, so for leases which started before 1st June 1995 were the tenement let was a garage or a boathouse or summer residence the law says, the end date for the obligation to renew was set at 1st June 2010 and that is article 1531H of the Civil Code.

  - So as we speak today, private garages and boathouses or summer residences which at face value still constitute premises under article 2 of chapter 69 there is no longer an obligation of renewal in terms of article 3 of chapter 69 and therefore

we can say that after act X of 2009, premises for the purposes of chapter 69 are dwelling houses, shops and commercial tenements until 2028 and clubs.

- We have a definition in article 2 of chapter 69 of shop and of club. So, the definition of shop says any premises principally leased for the sale of any wares or merchandise, whether by wholesale or retail, any market stall, (kosta tal-monti) warehouse and any premises licensed for the sale of wine and spirits or refreshments, any cinema hall or any other premises principally leased for the exercise therein of any art or trade or for use as a club (in the case of club we have a specific definition).

- So essentially and this was reflected in the definition of commercial tenement which act X of 2009 added in the civil code in article 1525, a commercial tenement is an urban immovable property which was let for a commercial purpose. So for the carrying out of a commercial activity in the widest of senses. So any trade, any profession, the sale of goods in general, by retail or by wholesale, and even if carried out in the open air in a market stall. So all of this constitutes premises for the purposes of article 3 of Chapter 69.

- In so far as clubs are concerned, article 2 says the expression "club" means any club registered as such at the Office of the Commissioner of Police under the appropriate provisions of law. Now under more recent legislation than the ordinance, permissions for clubs, need not necessarily be issued by the commissioner of police, but the law here is referring to clubs which are registered and regulated in terms of the laws applicable from time to time.

- Dr. Aquilina would like to open a small bracket on shops, before act X of 2009 judgements used to distinguish between bare premises and “negozju avjat” so a business concern.

- Why did the courts make this distinction? And what are the differences between a shop being bare premises and a going concern, or a business concern, with the phrase bare premises the courts were referring to an urban tenement which was let without a business activity already running and still to be set up by the tenant for a commercial activity to take place. Jien krejt garage bil-permess ta’ hanut ma fieh xejn dal-garage ghadu voit u jein ha nahgmel l-attivita kumercjali tieghi f’dal post that was the bare premises to which the judgements refer. In the case of a business concern, negozju avjat, the lease besides premises themselves would include the already existing and the already running commercial activity. Jiena qed nikri haunt li diga huwa attrezat b’dak kollu li ghandu bzonn biex immexxieh bhala hanut, diga ghandu l-klijentela, dika ghandu l-isem hemm attivita kummercjali tezisti fih u jien qed tikri il-post b’attivita kummercjali b’kollox. That is the lease of a business concern.

- Before 1st June 1995 and without a specific exclusion in chapter 69, the rent regulation board and the courts had come up with this distinction between bare premises and business concern because they said that the lease of a business concern, negozju avjat, was not subject to chapter 69. So the courts without any specific provision in the law, had excluded the lease of a business concern from the scope of chapter 69, the re-letting of urban property regulation ordinance, meaning that if the lessor proved that the lease was not of bare premises but the object was a business concern, then he would free himself from the obligation of renewal which at the time applied across the board and would have had his lease regulated exclusively by the civil code which at the time meant a lot because the lease could have been terminated after the expiration of its term with a notice for termination, what we call a kongedo.

- If you read the older judgements you will be finding where the object of the lease is a commercial tenement all the time this distinction between bare premises and a business concern why? Because it made all the difference. If the lease was of a business concern then there was no obligation of renewal and some judgements which you can see where this is explained are;

  - A very good judgement is Carmen Bugeja et vs John Tanti Court of Appeal 25th February 2005.

  - Another good judgement is Emanuel Abela vs Paul Abela et, Court of Appeal, 5th March 2003.

  - You can also see Dr. Louis Vella Nomine vs Mediterranean Trading shipping company Court of Appeal 7th July 2003 and there are other judgements cited in the judgements we just mentioned. So the distinction between the lease of a shop as bare premises and the lease of going concern.

- Another kind of premises which we will find mentioned in judgements, especially older judgement is the Casa Bottega what is a casa bottega? And in the house it used to be quite common, a dwelling with an interconnected shop, in Italian it is casa (dar) bottega (shop). A dwelling with an interconnected shop but the tenement would be one and the same tenement and the lease would be one and the same lease so the tenement is let for residential purposes and part of it for commercial purposes.

- Keep in mind that before act X of 2009, there was no specific requirement for the lease agreement to be made in writing and the general rule was that the letting was made verbally.

- So the only documentary evidence of the letting at the time would be the small notebook with receipts of the periodical rent, so every term, every six months, three months or year you get a receipt from the lessor stating the amount of the rent the address of the premises let and the start date and end date of the current term of the lease for which the term was paid. It was a culture, it is still a culture but at the time it was prevailing. So the only document of the lease would be this so important notebook that is why there would be so many disputes about whether the shop was let as bare premises or a business concern whether a tenement was a shop or a casa bottega and all these disputes.

- Also because the board, the rent regulation board and the courts were consistent in their ruling that what the lessor indicates to be the nature of the tenement in these notebook receipts, was not determining. So whatever the lessor decided to write in the receipt was just another bit of proof but was not determining of what the purpose of the lease was.

- You always have to keep in mind the historical setting when the courts are saying this, so at the time in the 50's, 60's, 70's we had quite a chunk of the population who was illiterate so you could be very well have a tenant having these receipts but being even unable to read the receipts so the courts always said yes it is indicative of what the purpose of the lease was, but it's not determining so I would want to hear all the evidence on the propose of the lease and for what the tenement was actually used throughout the term of the lease.

- S'issa ghandna stampa ta' l-obligation tar-renewal, x'rekwiziti ghandha biex tapplika, mela naff id-definition tal-letting, rajna li hija iktar estensiva min lease normal u ghandna d-definition fil-ligi rajna who the tenant is mela l-obligation of renewal ghalxiex twal daqsekk u l-llum min ghandu d-dritt ta dak ir-renewal u nafu l-premises li ghalihom sal-llum even after acc X of 2009 sal-llum ghadu japplika dan l-obbligu tar-renewal.

- With this picture in mind we would go a little bit away from chapter 69 into the constitutional and human rights realm. For over a decade now but in Malta especially in the last five years this obligation under article 3 of chapter 69 imposed on the lessor of premises which are still subject to this obligation to continue renewing the lease in favour of the occupier who satisfies the definition of tenant at the same rent and on the same conditions without an end date, so without a finality date, without the possibility of adjusting very low rents to current market realities has been successfully challenged for breach of Article 1 of the 1st Protocol to the European Convention.

- So as we will know by now the European Convention on Human Rights and Fundamental Freedom is part of our law we have chapter 319 which transposes

this convention into our law and one of the provisions which has been transposed as part of our law is Article 1 of the 1st Protocol and this Article 1 says this

- Article 1.
- **1**. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- 2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

- The first judgement not against Malta which is particularly pertinent because it referred to controls on domestic leases through legislation was and we can download the entire judgement from the european court website this was Hutten Czapska vs Poland 2006.
- The challenge was against polish domestic laws controlling urban leases, the controls were very similar to ours, so controls ensuring security of tenure for the tenant and rent freezes like we have, the exclusion of the probability of the freezing of rents and in a very detailed judgements. The european court of human rights checked whether those domestic laws satisfied the three principles which it had previously renounced in regard to article 1 of the 1st protocol and these three principles are the principle of lawfulness, so the controls must come out of a law which was correctly enacted in terms of national legislation. Secondly the principle of legitimate aim in the general interest, so the legislation must have been enacted to satisfy a general purpose which is legitimate and the third principle which is the principle of fair balance (in particular read paragraphs 157 onwards of this judgement).
- In short the European court of human rights found that the Polish rent control laws satisfied the first two principles, so lawfulness and legitimate general aim but breached the third principle.
    - 157. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, inter

alia, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, James and Others v. the United Kingdom, 21 February 1986, § 37, Series A no. 98, which reiterates in part the principles laid down by the Court in Sporrong and Lönnroth v. Sweden, 23 September 1982, § 61, Series A no. 52; see also Broniowski v. Poland [GC], no. 31443/96, § 134, ECHR 2004-V)

- So paragraph 167 says the court says
  - (c) Principle of a “fair balance”
  - 167. Not only must an interference with the right of property pursue, on the facts as well as in principle, a “legitimate aim” in the “general interest”, but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual’s property. That requirement is expressed by the notion of a “fair balance” that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.
  - The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State’s interference the person concerned had to bear a disproportionate and excessive burden (see James and Others, cited above, § 50; Mellacher and Others, cited above, § 48; and Spadea and Scalabrino v. Italy, 28 September 1995, § 33, Series A no. 315-B).
- Proportionality (this is the crux word).
- The court must therefore ascertain whether by reason of the state’s interference the person concerned, that is the owner or the lessor had to bear a disproportionate and excessive burden.
- And in that case, the court found that yes because of the extensive security of tenure and the extensive rent fees, making no sense in the commercial reality of our times, the burden imposed on the lessor was disproportionate and excessive.
- That ruling in its entirety was applied against Malta by the same court initially in regard to another special law of lease, which is chapter 158 and we will cover that

with Dr. Vince Galea, so initially in regard to chapter 158 but later also in so far as chapter 69 is concerned so the reletting of urban property regulation ordinance.

- Dr. Aquilina can mention judgements against Malta which are particularly pertinent
  - Cassar vs Malta, Application number 50570, 2013/13 decided on 30th January 2018.
  - Then, Zammit and Attard Cassar vs Malta, 30th October 2015, and the case concerned a shop
  - Bradshaw and others vs Malta, 23rd October 2018, that one refers to a band club.
  - Grech and Others vs Malta, another band club case, 4th June 2019.
  - Testaferrata Bonici and others vs Malta, a case concerning the letting of a school, 30th June 2020.
  - Cauchi vs Malta, 25th June 2021, and this time it referred to a dwelling house.
- Although the constitutional court was initially reluctant to assert this finding of violation of Article 1 of Protocol 1 in regard to dwelling houses, it did so on 8th October 2020 in the judgement
  - Anthony Debono et vs Avukat Generali.
- It had previously confirmed violation of Article 1 Protocol 1, for commercial tenements Dr Aquilina can mention the Lombard Bank case, which is
  - Agnes Gera de Petri Testaferrata vs Avukat Generali et. Constitutional Court 29th November 2019.
  - Another the Marks and Spencers Sliema tenement Mario Cachia et vs Supermarkets (1960) limited et. Constitutional Court 20th July 2020
- And also the constitutional court found violation of this article in regard to the lease of a police station.
  - In the judgement Perit Ian Cutajar et vs Avukat General et Constitutional Court 6th October 2020.
- What our constitutional court never accepted to this day, so in complete dispute with the European Court of Human Rights, is that where it finds a violation it can order the tenant to leave the premises. This is a big dispute between our

constitutional court and the european court of human rights. The european court of human rights says clearly that the correct remedy for this violation is the termination of the lease and the order of eviction against the tenement.

- Our constitutional court, very boldly to Dr. Aquilina's mind in two judgements,
  - one the Gera de Petri case 29th November 2019.
- and in another judgement;
  - Josephine Azzopardi proprio et nomine vs Prim Ministru, Constitutional Court 29th November 2019
- Said very clearly that it can never give an eviction order because under our domestic law that competence, so that competence/judicial power is exclusively vested in the rent regulation board this is a procedural point which we will be discussing in our last session when we discuss the rent regulation board but for the moment keep in mind that even if they are in agreement, the European Court and the Constitutional Court are in complete agreement about the variation aspect, the substantive aspect, when it comes to the remedy the constitutional court refuses to give an eviction order. It only awards compensation in money, and there is now a formula which the constitutional court is applying.
- The first judgement where this formula was applied and explained and then it was followed Jeremy Cauchi vs Avukat tal-Istat et constitutional court 26th January 2022.
- This development, this constitutional very important development led to the introduction of a very important new provision in chapter 69, which is article 4A of chapter 69 introduced by act XXVI of 2021.
- What happened is before the enactment of this act, because there was no legislative remedy whatsoever for increasing the rent and therefore achieving proportionality the Constitutional Court was declaring that the tenant could no longer rely on Article 3 of Chapter 69 to renew the lease. Meaning that, at the end of the term, he could face eviction proceedings before the rent regulation board. The legislator thought better of it and introduced finally the mechanism for increasing the rent and to this day the Constitutional Court has found that mechanism as achieving proportionality for dwelling houses because article 4A refers only to dwelling houses. No parallel remedy was introduced for commercial tenements, a sort of mechanism was introduced for clubs which however to this day has been deemed not achieving this proportionality and we are still seeing the Constitutional Court giving orders that the tenant cannot rely any further on

Article 3 for renewing the lease in the case of commercial tenements other urban tenements like police stations and clubs.

- We come now to rent increases and once more we have to take you back to act X of 2009. Prior to act X of 2009, we had no minimum rent for dwelling houses. Konnha ghadna f'sitwazzjoni fejn dar tkun mikrija ghal xi LM 8 fis-sena.

- No mechanism for increasing periodically the rent, and Act X of 2009 changed this again unfortunately by introducing provisions in the civil code. So we have article 1531C introducing a minimum rent of €185 per annum, so annual €185 for dwelling houses, up until then we still had the concept of fair rent.

- Act X of 2009 introduced in the civil code article 1531C, which introduced a minimum rent for dwelling houses 185 per annum, up until then we still had the concept of fair rent tied to the rent payable in 1914, under the rent restriction (dwelling houses) ordinance which is chapter 116 of the laws of Malta. This chapter 116 was never repealed but in effect has been rendered redundant by the amendments in act X of 2009 and act XXIV of 2021.

- Article 1531C introduces also a mechanism for revising the rent every three years according to changes in the index of inflation published for the purposes of Chapter 158 of the laws of Malta, housing decontrol ordinance which we will cover with Dr. Vincent Galea.

- For commercial tenements, Act X of 2009, introduced article 1531D. It did not introduce a minimum rent, but it introduced a mechanism for increasing the rent annually, four consecutive years by 15% so 2010, 2011, 2012, 2013, 15% on the previous years rent, and thereafter every year by 5%, keep in mind the deadline of 30th May 2028.

- In regard to clubs we had the introduction of article 1531J and legal notice 195/14 (subsidiary legislation 16.13 from her memory) conditions regulating leases of clubs regulations with a mechanism for increasing the rent applicable only to clubs, housing a commercial activity. There's a method for calculating the increase in rent depending on the profit, the turn over and the profit of that turnover activity. These regulations again were found to breach the principle of fair balance which we mentioned earlier by the Constitutional Court and Dr Aquilina can mention three judgements.

  - Evelyn Montebello et vs Avukat Generali et. That referred to a bandclub in Zabbar, Constitutional Court 13th July 2018.

  - Lilianne Martinelli vs Avukat tal-Istat et, constitutional court 22nd June 2022. It was a Naxxar band club.

- More recently but this is still pending appeal,
  - Lewis Bianchi et vs Avukat tal-Istat et, 1st hall constitutional jurisdiction 4th October 2022. And pending appeal before Constitutional Court.
  - So we know the situation of clubs, we know the situation of shops we still have to go into article 4A of chapter 69, so what is this article 4A. This provision,
- Article 4A of Chapter 69 the Reletting of Urban Property (Regulation) Ordinance, was a reaction to judgements effectively leading to the eviction from dwelling houses after a pronouncement that the tenant cannot invoke anymore in his favour the obligation of reletting under Article 3.
- It applies only in regard to dwelling houses, to residences, and it has been introduced by Act XXVI of 2021. Prior to Act XXVI of 21, the only circumstances in which the lessor could increase the rent beyond the €185 minimum limit or higher set rent was either following the carrying out of improvements in the tenement let, in terms of articles 4, 5, 6 and 7 of chapter 69, or by a 6% increase where structural repairs have been carried out by the lessor, in terms of article 1540(4) of the civil code.
- This 6% increase remedy was added by Act X of 2009 but in practice these remedies so 427 of Chapter 69 and 1540 of the Civil Code were restricted to circumstances in which the lessor carried out works at his expense in the tenement let.
- The change which article 4A brought about was drastic because now the lessor has a general right to seek an increase in rent of a dwelling house which has been let since before 1st June 1995, up to a maximum of 2% per annum of the free and open market value of the dwelling house as of 1st January of the year which the lessor requests the increase in rent.
- Mela the new maximum up to which the rent of a dwelling house which has been let since before 1st June 1995 can be raised, is 2% of the market value of the dwelling house, with vacant possession, (so without the lease), as at 1st January of the year during which the increase is demanded.
- The demand for the increase in rent must necessarily be made through proceedings before the Rent Regulation Board, mela mhux kwistjoni ta' ftehim, mhux il-lessor jiftiehem mat-tenant biex jgħolli l-kera sa 2% tal-valur tal-propjeta, the only way in which the increase in rent can be demanded is through proceedings before the rent regulation board.

- So the lessor files an application, rikors bil-malti before the rent regulation board against his tenant requesting the board to carry out a means test in regard to the tenant and to increase the rent up to 2% of the open market value of the dwelling house if the tenant satisfies the criteria laid down in the means test regulations.
- The means test regulations are the continuation of tenancies (means testing criteria) regulations subsidiary legislation 16.11, so under the Civil Code and they are two tiered.
- The first tier is capital based, so the maximum value of capital that the tenant may have to qualify for protection in the controlled lease the second tier is income based, so the maximum annual income that the tenant may have to qualify for protection.
- The criteria are cumulative so both must be satisfied, and the limits, so the maxima, the limits, vary depending on the age of the tenant. So the older the tenant is the higher the capital and the income criteria are.
- The means test will be carried out during the proceedings so the evidence on the means is presented by the tenant before the Rent Regulation Board, a copy is given to the lessor and another copy is given to the Housing Authority because the Housing Authority is by law an intervening party in these proceedings. The reason being that the housing authority will then administer subsidies in favour of the tenant to assist him to pay the higher rent.
- As part of these proceedings, the Rent Regulation Board appoints two architects which are part of its composition, (we will explain this when we speak about the Rent Regulation Board). These two architects will exceed into the tenement let prepare a valuation report which is submitted to the board and a copy is given to the parties. It has been established by the rent regulation board that in providing a valuation of the tenement let, the potential, so the possibility/the potential for further development of the tenement must be taken into account.
- Unfortunately in the slots given we don’t have the time to go through article 4A we have to read it on our own. We will find many judgements in the past year delivered in enforcement of Article 4A remedy.
- A judgement where the board decided that the potential development of the tenement should also be considered in its valuation, and that is
  - Raymond Mifsud et vs Teresa Lanzon, Rent Regulation Board, 4th October 2021.

- Dr Aquilina would also like to mention a couple of judgements where this article 4A was applied.
  - John Grima et vs George Vella et, Rent Regulation Board, 3rd February 2023.
  - Mary Ellul vs Anthony Gauci et, Rent Regulation Board, 5th December 2022.
  - Alexander Attard et vs Grace Bonnici, Rent Regulation Board, 21st November 2022.

29th March 2023

Lecture 3.

- During the past two sessions, we went into the definitions and scope of operation of the re-letting of urban property regulation ordinance chapter 69. If you recall during our first session we went into the obligation of renewal in article 3 and the definition provision in order to understand the wide extent of operation of debt of obligation of renewal.
- Last week we considered the human rights difficulties which in these past years that obligation of renewal at the same rent and on the same conditions has given rise to.
  - Is there a way in which a controlled lease subject to this obligation of renewal in article 3 of chapter 69, can be terminated? So is there a way in which a controlled lease subject to this wild obligation of renewal without an end date that is, can be terminated?
  - Under the general principles of letting and hiring in the civil code, we have an entire subtitle dealing with the circumstances in which a lease can be dissolved. So the law speaks about dissolution of the lease in the civil code, and here we will refer to articles 1566, and the following of the civil code. So under the general law of lease, therefore we're not speaking necessarily about a lease which started before 1st June 1995 but we're speaking about any lease whatsoever, the lease can be dissolved, (bil-malti xolta, xoljiment tal-kirja), for the reasons and in the ways which the civil code mentions in articles 1566 and the following.
    - For example the expiration of the term of the lease, l-għeluq taż-żmien tal-kiri, is one of the ways in which a lease is dissolved. There are other ways and other reasons under the civil code, for which a lease can be dissolved. Given that general picture, how does that work with a controlled lease where the lessor (in maltese we refer to him as sid il-kera, jew lokatur), if under chapter 69 the lessor is obliged to renew the lease without an end date, can the lease ever be

terminated and if yes in what way or ways? The answers to these questions are set out in articles 8 and 9 of Chapter 69.

- If one looks at article 8 the marginal note says application by lessor for resuming possession of premises, note the language, resuming possession of the premises. So the law does not speak about dissolution, xoljiment, in the way it does in the civil code. The law speaks about presuming possession of the premises, meaning putting an end to the obligation of renewal in article 3 of chapter 69. So application by lessor for resuming possession of premises and article 8 says

  - Article 8.

  - **8**. (1) Where the lessor desires to resume possession of the premises at the termination of the lease he shall apply to the Board for permission to do so.

  - (2) The provisions of this article shall not apply to premises belonging to or administered by the Government.

- Why is the law speaking of determination of the lease? Because what the law allows in the circumstances and on the grounds which are exhaustively listed in article 9 of chapter 69, is for the lessor to be authorised, not to renew the lease.

- So the demand, it-talba, in proceedings filed under articles 8 and 9 of Chapter 69, should correctly read a demand for permission not to renew the lease. Because after the term of 2009 all disputes having to do with leases go before the rent regulation board, it is no longer so important or so determining to stipulate in the application whether the lessor is asking for a dissolution under the civil code or for permission not to renew under chapter 69, so because all such disputes go to the rent regulation board it doesn't make so much difference nowadays to be correct so to speak in the fame of the demand but we should always be correct and for those reading older judgements until 2009, this was extremely important because a demand for dissolution before act X of 2009 should have been filed before the ordinary courts, il-prim'awla tal-qorti civili, whilst a demand for permission to renew had to be filed before the rent regulation board.

- So, at that time determining whether lessor is asking for a dissolution or permission not to renew was critical. Today it is not so critical because all demands have to be filed before the rent regulation board. But under chapter 69 and for the grounds listed in article 9 of chapter 69 the correct demand is for permission not to renew.

- Article 8(2), excludes this remedy, that is the remedy for the permission not to renew, in regard to premises which belong to the state, and premises which are

administered by the state. So in regard to public property so property belonging to the state, when that property has been let since before 1st June 1995, the government, normally it is the lands authority on behalf of the government does not require permission from the rent regulation board to be able to resume possession of the premises. So premises belonging to the government or administered by the government, which have been lapsed since before 1st June 1995 can be taken back by the government without the need to request permission from the rent regulation board.

- Article 9, this is a very long provision and we are going to be referring to the law quite often.
- Article 9's marginal note reads cases in which application for resuming possession of premises may be granted.
- Please note, the discretion granted to the rent regulation board even in the marginal note.
- The court shall, in the provision the law says 'shall' grant the permission referred to in the last preceding article in the following cases. Although the law uses the mandatory term shall in actual fact it is up to the board and therefore discretionary to the board to assess the evidence which is produced by the lessor and the tenant and to determine whether anyone of these grounds (anyone or more) of these grounds is satisfied.
- So at the end of the day the power to determine whether any of the grounds is satisfied or not by the board's standard rests on the board.
    - For those more interested and who would read more judgements including older judgements you would see that in the early days, in case of doubts, the rent regulation board leaned more and more in favour of the tenant. So, the interpretation of the grounds was stricter, giving the benefit of the doubt where a doubt exists to the tenant.
- In time, and in particular in the light of so many judgements saying that the application of this ordinance very often imposes a disproportionate and excessive burden on the lessor for the exclusive benefit of the tenant, the board has become less lenient to tenants especially where a breach of their obligation is proved.
- As we will see, going over article 9 most of the grounds in fact all grounds in sub-paragraph (a) of this article are fault based so the consequence of resuming possession for the benefit of the lessor is the result of some infringement or breach of obligation on the part of the tenant, because of that nature of the grounds Dr Aquilina would say that the rent regulation board and the court of

appeal because as we will see from the last lecture from judgements of the rent regulation board there is a right to appeal in front of the court of appeal in its inferior jurisdiction with one judge in this case.

- On the whole they have become less lenient with tenants who would have breached their obligations throughout the letting.
- So the Board shall grant the permission referred to in the last preceding article in the following cases. So, these are the grounds on which a permission not to renew can be demanded.
  - Article 9.
  - **9**. The Board shall grant the permission referred to in the last preceding article in the following cases:
  - (a) if the tenant has in the course of the previous lease failed to pay punctually the rent due by him, or has caused considerable damage to the premises, or otherwise failed to comply with the conditions of the lease, or has used the premises for any purpose other than that for which the premises were leased, or has sublet the premises or made over the lease without the express consent of the lessor.
  - For the purposes of this paragraph:
  - (i) the tenant shall be deemed to have failed to pay punctually the rent due by him if in respect of each of two or more terms he has not paid the rent within fifteen days from the day on which the lessor has called upon him for payment;
  - (ii) any subtenancy of a portion only of the premises, made on or after the l3th day of July, 1945, for the use of the portion sublet otherwise than as a shop and the residue of the premises continuing to be occupied by the tenant or by any member of his family, shall not be deemed to be a subtenancy referred to in this paragraph;
  - (iii) any subtenancy or assignment of lease of any premises, including a shop, made at any time between the 10th day of June, 1940, and the l3th day of July, 1945, both days inclusive, shall not constitute a good reason for the grant of the permission referred to in article 8;
  - (b) if the lessor requires the dwelling-house for his own residence or for that of any of his ascendants or descendants, whether by consanguinity or affinity, and the Board is satisfied that the tenant has alternative accommodation, holding it in title of ownership, which is reasonably suitable to the means of the tenant

and his family as regards size and state of repair and proximity to his place of work (if he is employed):

- Provided that the Board shall also consider properties of the tenant which despite being in the possession or detention of third parties, may be recovered by the tenant within a short period of time:

- Provided further that the Board shall also consider properties, the use of which would have been granted to third parties under any other title including lease for the malicious purpose of evading the effects of this article:

- Provided further that this article shall not be applicable where the tenant is sixty-five (65) years of age or older:

- Provided further that this article shall be without prejudice to the lessor's right to obtain the termination of the lease in the case that the tenant does not meet the income and capital criteria of the means test mentioned under article 4A.

- (a) if the tenant has in the course of the previous lease failed to pay punctually the rent due by him, now what does the law mean by failed to pay punctually the rent due by him?

- We have a proviso in this paragraph, for the purposes of this paragraph 'the tenant shall be deemed to have failed to pay punctually the rent due by him if in respect of each of two or more terms he has not paid the rent within fifteen days from the day on which the lessor has called upon him for payment'.

- This is the original definition of failure to pay punctually the rent due which we had in the ordinance. Why are we using the past? Because act X of 2009 (remember that act X of 2009 had the defect of amending the ordinance through provisions of the civil code), so act X of 2009, modified this definition by the introduction of a new provision in the civil code and this new provision is article 1570 of the Civil Code

- So, after act X of 2009, for giving a correct interpretation of this ground, we must read article 1570 of the Civil Code, alongside what is stipulated in paragraph (a) of article 9 of chapter 69.

- Article 1570 says

  - <u>Article 1570.</u>

  - **1570**. A contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance

may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance:

- Provided that in the case of urban, residential and commercial tenements where the lessee fails to pay punctually the rent due, the contract may be terminated only after that the lessor would have called upon the lessee by means of a judicial letter, and the lessee notwithstanding such notification, fails to pay the said rent within fifteen days from notification.

- The first paragraph is just the introduction. What was the change which was introduced through this proviso by act X of 2009?

- Whilst the definition in paragraph (a) of article 9 speaks of the failure of the tenant to pay the rent for two different terms, article 1570 does not make reference to the two terms and seems to indicate and so the courts have said that a request by judicial letter for the payment of one terms' rent is sufficient.

- What is term? Bil-malti skadenza. Tinsewx li meta qed nitkellmu fuq kirjiet antiki li bdew qabel in-1995 iz-zmien tal-kiri ma kiexn miktub f'xi kuntratt imma konna naslu ghalih skont kull meta tithallas il-kera, jekk il-kera tithallas kull sena, mela the term l-iskadenza hija ta' sena

- When article 9(a) is speaking about terms, qed tirreferi ghall-iskadenzi, jekk ghandna skadenza ta' sena, il-kera tithallas kuull sena, biex jirnexxielek tottjeni mil-board permess biex ma geddidx il-kirja minhabba n-nuqqas ta' hlas tal-kera, l-inkwilin irid ikun naqas tal-inqas li jhallas zewg skadenzi, mela sena one u sena two u kull darba Sid il-kera innotifikah b'ittra ufficjali biex ihallas u xorta wahda l-inkwilin baqa ma hallasx fi zmien hmistax il-guarnata

- Those requirements before article 1570 came into fact had to be proved for this ground of non renewal to be satisfied in terms of article 9(a). After the coming into force of act X of 2009, the obligation is to send the judicial letter asking for the payment of the rent for at least one term, and if the tenant fails to pay, within fifteen days from service then the lease may be terminated.

- If he would have paid after the fifteen days he would be in violation but you will see in older judgements that the board was quite lenient so even if they didn't pay within fifteen days if eventually they paid there are judgements which hold the permission to renew was not granted because the perspective was giving the benefit of the doubt to the tenant. The situation is different today, the courts depart from the idea that the tenant has an undue advantage of being protected in the lease with conditions which are not today's market conditions, more beneficial for him so the least he could do is to abide strictly by his obligations.

- Dr Aquilina can mention to us some judgements which went into this ground, bil-malti in-nuqqas tal-hlas tal-kera, so the failure to pay punctual the rent due, fil-malti nirreferu ghalih ‘morozita’ fl-obbligu tal-hlas tal-kera’
- Morozita is default in the payment of the rent. Some judgements which we can see on this ground
  - Joseph Darmanin vs Giljan Cutajar, 23rd November 2005.
  - Renzo Abela vs John Gauci, Court of Appeal, 2nd August 1958.
- Then about the intergrade between article 9(a) the proviso definition and article 1570
  - Stanislaw Borg vs Borg and Aquilina Limited, Court of Appeal 24th September 2014.
- And more recently
  - John Gauci Maistre et vs Anthony Agius et, Court of Appeal Inferior Jurisdiction 22nd September 2021.
  - Daniel Saliba et vs Austin Darmanin et, Court of Appeal in Civil Jurisdiction 18th May 2022.
- The second ground listed which is listed in paragraph 9(a) of Chapter 69 is that the tenant has caused considerable damage to the premises.
- If you look at the maltese version of the law, considerable damage reads hsara hafna, and this hsara hafna has been explained by the courts to be deriving from the original italian text of the ordinance don’t forget that when the ordinance originally came into effect italian was an official language and that phrase could as such, points to the extensive nature of the damage which must be almost beyond repair and requiring structural changes.
- So it’s not every damage which constitutes the considerable damage to which the law is referring in this ground, the damage must be to a large extent, and must be the result of the breach on the part of the tenant of his obligation to make use and take care of the premises let as a bonus paterfamilias.
- For example in one judgement Philip Grima vs Louis Cauchi et Court of Appeal Inferior Jurisdiction 16th December 2002
  - “Il-fatt li l-fond ma ssirlux manutenzioni min barra ma jikwalifikax bhala deterjorazzjoni ghal-finijiet tal-kap 69. Din is-sanzjoni estrema (they are

referring to the permission not to renew as an extreme sanction) ma tistax tigi applikata meta l-materja ma tinkwadrax ruhha bhala hsara inkonsiderevoli.

- Then also, an old judgement
  - Santo Tonna vs Salvatore Portelli, Court of Appeal 10th December 1951.
  - Grazzio Gerada vs Salvatore Pace et, Court of Appeal 5th March 1984.
  - “Ghalhekk biex jirnexxi fl-azzjoni tieghu, ir-rikorrentti appellant irid jipprova (1) li hemm danni considerevoli fil-fond de quo u (2) li dawn id-danni gew ikkagunati mil-kerrej, cjoe mill-intimat appellat Salvatore Pace, Mhux bizzejejd li r-rikorrent appellant jipprova li l-kerrej ikkaguna danni fil-fond jekk ma jipprovax ukoll li d-danni huma konsiderevoli. Hekk ukoll lanqas huwa bizzejjed li jipprova li hemm danni konsiderevoli fil-fond jekk ma jippruvax li dawn gew ikkagunati mill-kerrej”
- So both requirements are cumulative.
  - Then Guza Camilleri et vs Raymond Chircop Court of Appeal 16th December 2002.
- Next a judgement which Dr. Aquilina likes as it explains the whole line of court judgements on this ground.
  - Frances Cassar et vs B&M Supplies Limited Court of Appeal Inferior Jurisdiction 1st December 2004.
  - Skond kif imfisser “it-terminu “hafna” hu kapaci li jigi apprezzat oggettivament imma hu wkoll miftuh ghall- interpretazzjoni soggettiva ta ’min irid jiggudika. Anke ghaliex tali hsarat iridu jkunu relatati mhux biss mal- kwalita` u l-kundizzjoni tal-fond lokat imma wkoll mal-mod kif dawn il-hsarat kienu jippregudikaw il-godiment tal-fond u l-interessi tal-lokatur.” - “Elizabeth Darmanin -vs- Rev. Kan. Anton Galea et”, Appell, 24 ta ’April 1998;
  - Issokta ghalhekk jinghad f ’din l-istess decizjoni illi “mhux kull nuqqas ta ’ manutenzjoni adegwata tal-fond mill- inkwilin, anke fejn din hi responsabilita` tieghu, ghandha twassal biex tiggustifika r-ripreza tal-fond fuq din il- kawzali. In-nuqqas irid ikun tali li jipprovoka hafna hsarat”;
  - Fi kliem iehor il-hsara trid tkun ta ’certa entita` u mhux ta ’importanza zghira. Kif deciz, “minn dawn il-kliem tal-ligi, kemm fit-test Malti kemm fit-test Ingliz, huwa evidenti li l- hsara konsiderevoli hemm kontemplata hija dik materjali fil-fond, u mhux hsara ohra ...” (Kollez. Vol. XXXVIII P I p 211);

- Dan affermat, jinsab enuncjat ukoll illi “certament wiehed mill-kriterji li jeskludi din l-entita` jista ’jkun dak tal-facili riparabilita` tad-dannu” (Kollez. Vol. XLVII P I p 264) u li allura tintitola lis-sid ifittex ir-rimedju li jgieghel lill-kerrej tieghu jaghmel it-tiswijiet necessarji minflok l-adoperu tas- sanzjoni estrema ta ’l-izgumbrament. Ara wkoll f ’dan is- sens sentenza fl-ismijiet “Paolo Farrugia -vs- Amante Murgo”, Appell, 29 ta ’April 1996;

- In practice, the damage that needs to be proven for this ground to be satisfied must be of a structural nature. Mhux per ezempju ghax ma zebax il-faccata, u l-faccata qed taqa’ z-zebgha taghha u jew ghax ma bajjadx min gewwa u hemm xi partijiet li huma mqaxxrin per ezempju, imma, m’ghamilx manutenzjoni tal-bjud dahal l-ilma u qed jixpakka l-wicc tal-concrete tas-saqaf u ghallura hemm bzonn intervent strutturali, dik hija hsara hafna.

- A recent judgement going into this ground where the premises were actually burnt down is

  - Lewis Apap Bologna et vs Alexander Borg Caruana, Court of Appeal Inferior Jurisdiction, 26th September 2019.

- So, the next ground for non-renewal of a controlled lease in terms of article 9(a), the tenant has otherwise failed to comply with the conditions of the lease.

- What are the conditions of the lease? We said in our very first lecture that most of the leases subject to this chapter 69, have no private agreement to show, but there could only be that small notebook with receipts for the rent paid in respect of the different terms and those receipts would not stipulate or specify any condition so to what is referring here the law when it says conditions of the lease?

- It is referring to the general obligation of the lessee, the tenant in terms of the civil law. So if you look at the civil code in the part dealing with the contract of letting and hiring you find a subtitle reading of the rights and obligations of the leasee, provisions articles 1554-1565.

  - Here we have for example the obligation to make use of the thing let, the premises in this case as a bonus paterfamilias.

  - The obligation to use the premises for the purpose for which they were let.

  - Not to cause any damage to the premises let.

  - To carry out any repairs and maintenance when due.

- All these are obligations of the tenant under the general law which has been deemed by the rent regulation board to constitute the conditions of the lease

where no other specific different agreement and the agreement may be verbal or in writing is proved to exist.

- Largely, judgements where lessors managed to obtain permission not to renew on the basis of this ground, referred to the obligation to enjoy as bonus paterfamilias, the obligation not to carry out any structural changes to the premises without the permission of the lessor, and the obligation not to transfer the lease, or give a sub-lease without the permission of the lessor.
- The obligation not to effect structural changes without the consent of the lessor, comes out of article 1564(1) of the Civil Code and is a very common ground on which lessors attempt to rely to obtain permission not to renew. Here again the courts have been quite restrictive in their interpretation. So, they have established requirements which should be satisfied for the changes in the premises to be allowed without a sanction.
- We have established caselaw by now, setting out five requirements which are to be assessed for the purposes of determining whether there is a breach of this condition of the lease.
- So, for a change to be permitted without the sanction of a possession, it must be and there are five requirements (we are going to mention them in Maltese because that is how they are found in the judgements).
  - Parzjali u mhux ta' importanza kbira.
  - Ma jbiddilx id-destinazzjoni (the use) espressa jew presunta (expressly agreed or presumed) tal-lokazzjoni.
  - Ma jipregudikax id-drittijiet tal-propjeta' (ownership), specjalment ghal dak li jirrigwarda is-solidita' tal-fabrikat (the stability of the construction).
  - Jistghu jigu rimessi flokhom (removed that is) fit-tarf tal-lokazzjoni.
  - Ikunu necessarji u utili' ghal godiment (enjoyment) tal-post.
- So if the changes are partial, do not involve a change in the use of the premises, do not prejudice the stability of the premises, can be reversed at the end of the lease and enhance the enjoyment of the tenement for the benefit of the tenement, if all five circumstances are satisfied then the changes do not constitute a breach of the conditions of the lease. If not, then there is a breach of the conditions of the lease.
- Some judgements which can be mentioned are

- Dr. Joseph Grech vs Joseph Mifsud nomine, Court of Appeal Inferior Jurisdiction, 10th October 2003.
- Joseph Farrugia et vs Albert Seychell et, First Hall, 31st January 2003.
- Yvonne Pulicino et vs Edward Mifsud et, Court of Appeal Inferior Jurisdiction 12th November 2003.

- And a very recent judgement
  - Carmen Cassar vs Maryann Aquilina et, Court of Appeal Inferior Jurisdiction 30th November 2022.
- The fourth ground, the tenant has used the premises for any purpose other than that for which the premises were let. In short, we refer to this ground as bdil fl-uzu jew bdil fid-destinazzjoni and the change can involve a change in the activity carried out by the tenant in the premises, as well as the tenant ending the use of the premises let.
- Either the tenant starts using the premises for a different purpose, per ezemju kien mahzen u ghamlu hanut, kien hanut u ghamlu mahzen, kien retail shop u ghamlu ufficju, kien residenza u ghamlu ufficju, so a change in the rules of non use, what we refer to in judgements as non uso, so stopping all use of the premises let, both possibilities satisfy this ground for non renewal.
- In fact, in the judgement Alfred Cassar et vs Antoine Agius et, Court of Appeal 7th December 2005, the court said this
- “1. L-uzu divers li jsir anki minn parti biss minn fond igib tibdil ta ’destinazzjoni a sensu ta ’l-Artikolu 9 (a) tal-Kapitolu 69 (“Pietro Galea -vs- Filippo Farrugia”, Appell, 7 ta ’Dicembru 1956). Dan hu hekk, hlief fil-kaz fejn ikun jitratta minn kambjament parzjali komplimentari ghad-destinazzjoni u kwazi konsegwenzjali taghhom; b ’mod li t-tibdil ikun accessorju ghall-uzu principali u b ’mod li jibqa ’ dejjem shih l-uzu stabbilit fil-ftehim (“Giuseppe Magro -vs- Farmacista Eric Mizzi”, Appell, 21 ta ’Jannar 1957);”
- “2. Iz-zamma ta ’fond maghluq ghal zmien twil huwa parifikat (is equated) ghal kambjament tad-destinazzjoni. Dan fuq it-taghlim tal-Laurent li jghid “non si usa della cosa secondo la sua destinazione non usandone” (“Elena Magri et -vs- Andrea Piscopo”, Appell, 12 ta ’Mejju 1950);
- So, failing to use the premises let and using the premises let for a purpose which is different from that for which the premises were let, both satisfy this ground.

- As we said for the previous ground, for pre-1995 leases there is often no written lease agreement. So very often, the purpose of the lease, so the use for which the premises were let, is not written anywhere, it has to be established by proof and the board that the courts have said that where in the course of the lease the premises were always used for a particular purpose then that purpose shall be considered as the presumed use for which the premises were let.
- Other judgements which Dr. Aquilina would like to give us on this point.
  - Saviour Cutajar et vs Frances Bezzina et, Court of Appeal, 20th October 2003.
  - John Abela vs Joseph Micallef proprio et nomine, Court of Appeal, 11th February 2004.
- More recently
  - Michael Casha et vs Mario Gatt et, Court of Appeal Inferior Jurisdiction 13th April 2016.
- One small note, act X of 2009 added article 1555A to the Civil code in terms of which the failure to use a residential tenement for an order to advance and the failure to use a commercial tenement for any period of time whatsoever for the purpose for which it was let are not expressly considered as instances of bad use (din hija t-terminologia li tuza l-ligi) of the tenement let.
- The fifth ground under paragraph (a) of article 9, the tenant has sub-let the premises or made over the lease without the express consent of the lessor.
- What does sublease mean? Sublease is, a new lease relationship between the tenant and a third party. The tenant becomes himself a lessor, what we refer to as sub-lessor, bil-malti sur lokatur, and the new occupier of the premises would be the sub-tenant. So it is a new lease relationship between the original tenant who becomes a sub-lessor and a new tenant whom we refer to as the sub-tenant.
- The actual enjoyment of the tenement let, would be in the hands of the sub-tenant. So in regard to one and the same premises, there would be two distinct lease relationships. The original lease relationship, and a sub-lease relationship. The sub-tenant pays the rent to the sub-lessor who is the original tenant, that original tenant himself continues to pay the rent to the original lessor who is normally the owner of the premises.
- So two lease relationships co-existing together in regard to the same premises and most importantly there is no direct contractual relationship between the original lessor and the sub-tenant.

- What about the transfer of the lease? Sub-lease bil-malti sur lokazzjoni, what about the making over of the lease, the transfer of the lease which in maltese we refer to as cessjoni tal-kirja. When there is a transfer of the lease the original tenant goes out of the picture and is replaced by a new tenant who in law has a direct contractual relationship with the lessor. Keep both institutes separate because unfortunately they are very often confused but the situation in law is completely different and the consequences are completely different.
- So sub-lease and transfer of the lease, surlokazzjoni u cessjoni tal-kirja. Ffor the purposes of paragraph (a) of article 9 both entitle the lessor to request permission not to renew if he has not given his consent to the sub-lease or the transfer of the lease.
- How can that consent be given? That consent can be given in writing, given verbally and can also be deemed to have been given through a course of conduct which must however clearly and undoubtedly point to the approval on the part of the lessor for the sub-lease or the assignment. This is deemed to constitute consent or approval on the part of the lessor.
- So sub-lease, transfer of the lease, an assignment of the lease and a clear consent of the lessor. Some judgements which we can see on this ground.
  - Joseph Gauci nomine vs MCL Limited, Court of Appeal, 20th October 2003.
  - Gino Trapani Galea Feriol proprio et nomine vs Paola Deguara et, Court of Appeal, 1st December 2004.
  - Guza Camilleri et vs Raymond Chircop, Court of Appeal, Inferior Jurisdiction, 16th December 2002.
- More Recently
  - Captain Charles Kerr vs Marcello Eminyan, Court of Appeal, Inferior Jurisdiction, 7th October 2009.
- So, those are the five fault based grounds for successfully requesting permission not to renew the lease under article 3 of Chapter 69.
- Then in article 9 we have paragraph (b), which says
  - (b) if the lessor requires the dwelling-house for his own residence or for that of any of his ascendants or descendants, whether by consanguinity or affinity, and the Board is satisfied that the tenant has alternative accommodation, holding it in title of ownership, which is reasonably suitable to the means of the tenant

and his family as regards size and state of repair and proximity to his place of work (if he is employed)”

- Provided that the Board shall also consider properties of the tenant which despite being in the possession or detention of third parties, may be recovered by the tenant within a short period of time:

- Provided further that the Board shall also consider properties, the use of which would have been granted to third parties under any other title including lease for the malicious purpose of evading the effects of this article:

- Provided further that this article shall not be applicable where the tenant is sixty-five (65) years of age or older:

- Provided further that this article shall be without prejudice to the lessor’s right to obtain the termination of the lease in the case that the tenant does not meet the income and capital criteria of the means test mentioned under article 4A.

- This paragraph (b) has been largely amended by act XXIV of 2021. It is the only non-fault ground for repossession which we have under article 9, and it applies only where the premises let are a dwelling house.

- What does the law mean by the lessor requires? Jehtieg? Judgements over decades have made it clear that the wish or the longing of the lessor to take back his premises are not enough. He must truly be in need of the premises for residential purposes, either his own residential purposes, or those of his ascendants or descendants by blood or by marriage.

- Before act XXIV of 2021 it extended also to the residential needs of a brother or sister by blood or marriage of the lessor, that is no longer the case.

  - Rita Mula vs Carmel Attard, Court of Appeal, 17th November 2004,

  - “"l-ewwel rekwizit biex sid jitlob ripreza ta' fond, hu x' inhu, ghall- okkupazzjoni tieghu taht din id-disposizzjoni tal-ligi (Artikolu 9 tal-Kapitolu 69) huwa li hu 'requires' li jaghmel hekk." Issokta jinghad, imbaghad, illi "huwa car li l-kelma 'requires' tindika 'bzonn', mhux semplici xewqa jew preferenza. (So a need not a wish) Il-piz tal-prova ta' dan il-bzonn hu fuq is-sid, (the bruden of proof is on the lessor) li jehtieg juri mhux biss illi hu qieghed jagixxi in bwona fede, imma anki illi hu ghandu bzonn li jirriprendi l-pussess tal- fond. Certament mhux mehtieg li tigi pruvata 'necessita` assoluta' izda, ugwalment hu cert illi jehtieg jigi provat grad ragjonevoli ta' bzonn." This is the key phrase which we find on judgements of this ground (grad ragjonevoli ta bzonn). Kif manifest fis-sentenza

appellata din l-interpretazzjoni giet riaffermata f' diversi sentenzi minn dik id-data 'l hawn."

- Requires is the first requirement, so the need is the first requirement, then there is a second requirement and they are cumulative. So both must be satisfied, the second requirement is that the tenant has adequate alternative accommodation where he can live.
- The words of the law is the tenant has alternative accommodation by title of ownership so he must own the accommodation which is reasonably suitable to his means and to those of his family, taking into account its size, its state of repair and its proximity to the place of work.
- A recent judgement which went into this ground before the changes by act XXIV of 2021 is
  - Filippa Ebejer vs Emanuel Attard et, Court of Appeal in its Inferior Jurisdiction, 24th June 2021.
- Finally, in regard to commercial tenements, so what we have defined as shops in the ordinance, permission not to renew the lease can only be sought for at least one of the fault based grounds set out in paragraph (a) of article 9 and that is article 12 of the ordinance that is stipulated in article 12 of the Ordinance.
- We will have another lecture regarding to the Rent Regulation Board, article 16 onwards, and there is a list of judgements on VLE.

19th April 2023

Lecture 4.

- This week being our last session on Chapter 69. We will today discuss the Rent Regulation Board.
  - So, the Rent Regulation Board very broadly speaking, is the judicial forum which is competent to decide on almost any dispute which arises in connection with a contract of lease and that competence extends to any contract of lease irrespective of the date when the lease started, and irrespective of the law which regulates the lease or its renewal.
  - Mela hi x'inhi l-kirja, bdiet meta bdiet hu x'inhu l-fond mikri, jekk hux residenza, jekk hux hanut, hu x'inhu, ir-rent regulation board huwa il-forum li jiddeciedi fuq il-kwistjonijiet li ghandhom x'jaqsmu mal-kiri.
  - Agricultural leases, are not subject to the competence of the Rent Regulation Board, there is a special tribunal which determines disputes on agricultural leases

which is the Rural Leases Control Board, there is also and we should have covered this with Dr. Kurt Xerri, the panel which is set up within the housing authority under chapter 604 which has limited competence in regard to disputes arising in connection with residential leases regulated by Chapter 604.

- So the Rural Leases Control Board and the panel aside, virtually all other disputes arising in the area of letting and hiring have to go in front of the Rent Regulation Board and that makes it a very important tribunal nowadays, in fact the case load of the Rent Regulation Board actually shows the importance of this forum.

- Some historical background, the Rent Regulation Board has been with us for a very long time so it is established under chapter 60, the ordinance which we are discussing and it has been so established for many decades.

- As the name of the tribunal indicates, Rent Regulation Board, originally, the competence of this board was not as wide and extensive as it is today, and it was limited to fixing the fair rent under chapter 116, Rent Restriction (Dwelling Houses) Ordinance, which has now become obsolete, so fixing the fair rent and determining requests for permission not to renew under article 9 of chapter 69 which is the provision which we considered during our last lecture.

- Originally the competence of the Rent Regulation Board was very limited, it was there to establishing fair rent for dwelling houses under chapter 116, and it was there for determining requests for permission not to renew under article 9 of Chapter 69.

- At the time, all other disputes involving a contract of lease fell within the general residual competence of the ordinary courts. So the court of magistrates in its civil judicature, and more importantly the first hall of the civil court and the situation remained so, until the enactment of Act X of 2009. So quite recent. So until act X of 2009, the Rent Regulation Board was there only to fix the fair rent and grant permissions not to renew under article 9 of chapter 69. All that, was overhauled by act X of 2009.

- Now, before going into those changes and the competence today, when we speak about the Rent Regulation Board what are we speaking about? What kind of tribunal is it? what is the composition of this tribunal? Who makes up this tribunal?

- We shall look at articles 16 and the following of Chapter 69, the Reletting of Urban Property (Regulation) Ordinance.

- So, article 16 says

  - <u>Article 16.</u>

- **16**. (1) There shall be a Board to be known as the Rent Regulation Board.
- (2) The Board shall consist of a Chairman who shall be appointed by the President of Malta from among the judges and magistrates.
- (3) The President of Malta may appoint several judges or magistrates to sit on the Board, but only one judge or magistrate shall sit in any one case.
- (4) Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property where such leases have expired after the termination of the rent, and any damages resulting during such period of occupation:
- Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.
- The Rent Board shall also have the competence to decide demands related to maintenance, repairs, defects and faults of the tenement including latent ones, damages or improvements, amounts due for water and electricity and any amount left by way of security deposit by the tenant, where such demands are included in other demands or pleas made before the Board, over which the Adjudicating Panel has no jurisdiction.

- In actual fact, in practice, the chairman of the rent regulation board is a sitting magistrate and present, because of the workload in the Rent Regulation Board, we have four different compositions of the Rent Regulation Board, so four magistrates who separately sit on the Rent Regulation Board. So the chairman of the Rent Regulation Board is a magistrate.
- If you look at article 23 then, of chapter 69, we have a reference in the law to the technical members of the Rent Regulation Board (Board li jirregola l-kera).
- The board has a panel of architects, and whenever a technical issue comes up in a case before the Rent Regulation Board, the Rent Regulation Board will appoint two members from that panel as members of the Rent Regulation Board for the particular case.
- This is important, these technical members are not technical referees (periti teknici) in the sense stipulated in chapter 12. These technical members are part

of the composition of the board. So they sit on the court together with the magistrate.

- Article 23.

- **23**. (1) Whenever a question arises before the Board requiring the valuation of any premises or any other technical opinion in connection with any case before the Board, the Chairman shall assign two of the members of the Panel to examine the premises in question, or to take cognizance of the record of the case relative to the matter in which the technical opinion is requested; and such two members shall present their report to the Chairman during the sitting or file the said report in the registry of the Board as the Chairman may direct.

- (2) The Chairman may also require the members of the Panel assigned to a case to attend the sitting of the Board when that case is being considered by the Board if the said members require additional information from the parties or need to hear any particular witnesses.

- (3) The Chairman shall only be bound by the reports of the Panel whenever the reports of the two members of the Panel assigned to a particular case are unanimous; where unanimity is not reached by the said two members, the Chairman shall on the basis of the reports submitted by the two members, decide the matter himself.

- Valuation is stima, so the technical experts are members, are part of the composition of the Rent Regulation Board. According to this article 23 in fact, the chairman, the magistrate may require these technical members to attend the sittings in the particular case and to request any additional information which may be required to determine the technical question at issue.

- This article 23, was largely amended last year in 2022, by act IV and the amendments were directed to avoid duplication of work when the case before the Rent Regulation Board follows a constitutional case on the same lease.

- Now, the board has the power not to appoint technical members if the technical opinion required is a valuation (stima) and that valuation would have already been provided in the other proceedings which would have been determined, so the other proceedings must have been decided by a judgement which becomes final and definitive.

- Sub-article (3) of article 23 is important, this sub-article (3), what the law seems to be saying is that the magistrate is bound ‘shall’ to adopt the opinion of the technical members of the board if they are unanimous in that opinion. Basically, if they agree.

- Now, when you read the law you get the impression that these two technical members work separately and independently and give two autonomous technical views. This is not what happens in practice, in practice the technical members work together and present one opinion and we are expecting a constitutional case to challenge this because as is, the law seems to imply that there's no purpose and no way for the parties to contest the opinion of the technical members if they state that opinion in unanimity and that means therefore that the right of contestation is being denied.

- Up to this day, we are not aware especially under article 4A of the leases, are not aware that the Rent Regulation Board has ever departed from a unanimous option of its technical members and the law seems to indicate that it cannot depart. Yet to Dr. Aquilina's mind this mandatory stipulation is very much positionally. That's in so far as the composition and the manner of working of the board is concerned.

- Going back to the competence of the board, what are the cases over which the board has authority to rule? As we said earlier before the enactment of act X of 2009 the extent of the competence of the Rent Regulation Board was quite limited and not difficult to decide which cases go before the Rent Regulation Board and which do not.

- before act X of 2009, the Rent Regulation Board had the authority to rule on demands for fixing the fair rent of a dwelling house under chapter 116 and also the power to determine the months for permission not to renew a lease under article 9 of Chapter 69 and all other disputes fell within the competence of act X of 2009 changed all this.

- The idea at the time was to have one specialised judicial body or tribunal which hears and determines more or less all disputes related to leases of non-agricultural tenements.

- Unfortunately, the way in which the legislator framed this extension of the competence of the Rent Regulation Board left much to be desired.

- The drafting was not good, and in fact we have act X of 2009 adding two different provisions in two different laws both referring to supposedly in the same manner to this extension of competence of the Rent Regulation Board.

- These two provisions were a proviso in article 1525(1) of the Civil Code and sub-article 4 of article 16, so 16(4) of the reletting of urban property regulation ordinance, Chapter 69.

- To make it worse, the wording of the two provisions was not the same and this unfortunate state of affairs gave way to a long five or six years of conflicting

judgements on which cases actually fall within the exclusive competence of the Rent Regulation Board and which do not.

- If you look at article 1525(1).
  - Article 1525.
  - **1525**. (1) A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.
  - The Rent Regulation Board (hereinafter referred to as the "Rent Board") established under the Reletting of Urban Property (Regulation) Ordinance shall decide all matters affecting the leases of urban tenements including residential as well as commercial tenements including causes relating to the occupation of urban tenements where such leases have expired, and any damages resulting during such period of occupation. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act:
  - Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.
  - The Rent Board shall also have the competence to decide demands related to maintenance, repairs, defects and faults of the tenement including latent ones, damages or improvements, amounts due for water and electricity and any amount left by way of security deposit by the tenant, where such demands are included in other demands or pleas made before the Board, over which the Adjudicating Panel has no jurisdiction.
  - The Rent Board has the authority to request information and documentation from government entities, departments and authorities as well as from any other entity to meet its functions as established in this Code.
  - (2) Unless otherwise specifically stated in this Title, the provisions of this Title shall not apply to agricultural leases which shall continue to be regulated by the provisions of the Agricultural Leases Reletting Act.
  - *The transitory provisions relating to the amendments made to this Title by Act X of 2009 are reproduced at the end of this Chapter.

- (3) For the purposes of this Title:

- "commercial tenement" means an urban tenement which is not a residence and which is leased to house an activity primarily intended to generate profit and includes, but is not limited to, an office, a clinic, a tenement leased out for the sale of merchandise by wholesale or retail, a market stall, a warehouse, a storage used for commercial purposes as well as any tenement licensed to sell things, wines, spirits or foodstuff or drinks, theatre, or tenement mainly used for any art, trade or profession:

- Provided that a tenement leased to a society or leased to a musical, philanthropic, social, sporting or political entity, that is used as a club, shall not be considered as a commercial tenement even if part of it is used for the purpose of generating profit;

- "club" means any club which is registered as such with the Commissioner of Police in accordance with the appropriate provisions of the law;

- "private residential lease" means any long or short private residential lease, including the letting of shared residential space, which is entered into after 1st January, 2020, and any leases for a residential purpose entered into before the 1st January, 2020, which would still be in its original or renewed period on the 1st January, 2021.

- Now, the Rent Regulation Board here often referred to as the Board, established under the reletting of urban property regulation ordinance shall decide on all matters affecting the leases of urban tenements including residential as well as commercial tenements, including causes relating to the occupation of urban tenements where such leases have expired and any damages resulting during such period of occupation. Other leases fall under the competence of the courts of civil jurisdiction whilst matters relating to agricultural leases shall fall under the competence of the rural leases control board.

- That was the first addition which act X of 2009 made in relation to the extended competence of the Rent Regulation Board. Then in the special law, in chapter 69, Article 16(4), says this

- “Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property where such leases have expired after the termination of the rent, and any damages resulting during such period of occupation”

- The question, the big question which these provisions gave rise to is whether the Rent Regulation Board was competent to determine all disputes concerning leases which have already expired irrespective of the subject matter of the dispute. The position was, are all issues arising after determination of a lease within the competence of the Rent Regulation Board or only those issues which are expressly mentioned in these two paragraphs?
- That debate between the courts finally came to rest with three judgements delivered by the court of appeal in its inferior jurisdiction preceded over by judge Anthony Ellul and all three judgements were delivered on the same date, 16th December 2015. So it took from 2009 to 2015. The three judgements are
  - Catherine Darmanin et vs Miriam Cutajar Fiorini et.
  - Trevor Buttigieg vs Martin John Easby.
  - Salvatore Bartolo et vs Anthony Deguara et.
- All of them are court of appeal in its inferior jurisdiction, all of them are by judge Anthony Ellul and all of them are delivered on the 16th December 2015.
- The court went into the debates, so it went into the reform which lead to the enactment of act X of 2009, identified the purpose of the legislator, admitted that the drafting is not as clear as one would like it to be, but concluded that the correct interpretation of these different provisions on the extended competence of the Rent Regulation Board, is that all disputes concerning leases of urban tenements irrespective of whether the lease is still in course (ghadha ghaddejja) or expired or terminated, fall within the exclusive competence of the Rent Regulation Board.
- Besides the difficulty of interpretation which we had with the first paragraph from articles 1525(1) of the Civil Code and 16(4) of Chapter 69, another difficulty which arose in judgements after the extension of competence of the Rent Regulation Board by act X of 2009, was whether the Rent Regulation Board was competent or is competent to determine disputes on the validity of; so besides the difficulty of interpretation which we had with the first paragraph of the proviso, another question which arose after act X of 2009 and the extension of competence was whether the Rent Regulation Board was also competence to determine questions of validity or invalidity of a contract of lease.
- The question arose whether the extended competence included disputes on the validity or nullity on the contracts of lease.
- To address that difficulty we had an addition of another paragraph in article 1525(1) and also the same exact paragraph in article 16(4) of chapter 69

- Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.

- What the law is saying here is that the question of validity or otherwise of a contract of lease is to be determined by the court of general jurisdiction so the first hall of the Civil court, once the lease is declared to be valid all other disputes have to be decided by the Rent Regulation Board, and also a third paragraph addition in both provisions;

  - The Rent Board shall also have the competence to decide demands related to maintenance, repairs, defects and faults of the tenement including latent ones, damages or improvements, amounts due for water and electricity and any amount left by way of security deposit by the tenant where such demands are included in other demands or pleas made before the Board, over which the Adjudicating Panel has no jurisdiction.

- And again this paragraph is reproduced in articles 1525 (1) and 16(4) of chapter 69. What this third paragraph is saying is that if the disputes include questions falling within the competence of the adjudicating panel constituted under chapter 604 and other questions which fall outside the competence of the adjudicating panel but within the competence of the Rent Regulation Board then everything has to go together before the Rent Regulation Board. That is what this third paragraph is saying.

- In practice, it is a big headache for the lawyer to decide where to file a case, this is across the board. When you are going to file a case it may be a standard case, an actio rei vindicatoria which has to go before the first hall civil court or it can be a dispute, a case which involves questions which may have to be filed in front of a special court or tribunal as in this case we have the Rent Regulation Board. It used to be a big source of pressure for the lawyer to decide where to file a case obviously because of the expense that filing a case involves. So you would not want your client to end up obtaining a judgement saying that the case was filed in front of the wrong court so the case cannot be decided on the merits and you can imagine during those years between 2009-2015 until this very big debate on the competence of the Rent Regulation Board was settled the big headache where to find a case.

- In 2016 a new mechanism came in allowing for the transfer of cases, if they are filed before the wrong court or tribunal. This applies across the board not only for Rent Regulation Board, any tribunal and any court. So after 2016, we have a mechanism which is set out in article 741 (b) and (d), of the Code of Organisation

and Civil Procedure, Chapter 12, allowing for the automatic transfer of a wrongly filed case to the properly competent court or tribunal. So if at the end of the exercise you file the case before the wrong court in our case in front of the Rent Regulation Board when it should have been in front of an ordinary court, then it will automatically be transferred to the correct court or tribunal. (The proviso in 741(b) is the amendment), whilst (d) is a definition of courts.

- Article 741.

- **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:

- Provided that if the court considers that the plea is justified, the court shall by a decree in camera, which shall not be subject to appeal, order that the acts of the proceedings be transferred to the court, board or other tribunal by which it considers that such action is cognizable:

- Provided further that if the court, board or other tribunal to which the acts of the proceedings are transferred considers that it is not vested with jurisdiction to take cognizance of the action transferred to it, the court, board or other tribunal shall within ten days from the receipt of the acts of the proceedings or from the first hearing of the action before it transmits the acts of the proceedings to the court of appellate jurisdiction entitled to take cognizance of appeals from judgments of the court, board or other tribunal which court shall within thirty days and by a decree in camera determine by which court, board or other tribunal such action is cognizable;

- (c) when the privilege of being sued in a particular court is granted to the defendant.

- (d) Any reference to a "court" in the first sentence and in paragraph (b) of this article shall be deemed to include a reference to a Board or Tribunal established by law, so however that when a cause is commenced before a Board or Tribunal it may also be transferred for hearing before a court in accordance with the provisions of paragraph (b) of this article. When a cause is transferred to be heard in front of the Court, Board or Tribunal in accordance with paragraph (b) the said Court, Board or Tribunal may give all orders and make provisions as necessary, subject to such conditions and time limits as appear to them to be appropriate, so that the hearing of the cause will proceed in accordance with

the formal and procedural requirements, including those relating to the payment of fees, applicable before that Court, Board or Tribunal.

- The headache of having a judgement saying that you filed the case in front of the wrong court or tribunal and it cannot be decided on the merits now with this addition is eliminated and that is article 741 of chapter 12.
- So, next, what are the powers of the Rent Regulation Board?
- The powers of the Rent Regulation Board are set out in articles 20 to 22 of chapter 69, the ordinance.
- Rent Regulation Board
  - Article 20.
  - **20**. (1) The Board shall have all such powers as are, by the Code of Organization and Civil Procedure, vested in the Civil Court, First Hall.
  - (2) The enforcement of the decisions of the Board in the manner prescribed in the Code of Organization and Civil Procedure, shall vest in the Board itself.
- Virtually the board has the same powers, the same authority as the code of organisation and civil procedure grants to the first hall of the civil court. Also the judgements of the Rent Regulation Board are enforced by the Rent Regulation Board itself. So the Rent Regulation Board decides on precautionary warrants, mandati kawtelatorji, which are in place for the course of the case fil-pendenza tal-kawza, and it also decides on executory warrants, mandati li bihom tigi ezegwita s-sentenza, hija iktar komuni fil-bord tal-kera huwa l-mandat ta zgumbrament.
- In fact article 21 says
  - Article 21.
  - **21**. Any warrant or order issued by the Board shall be signed by the Chairman and certified by the Registrar or Clerk of the Board.
  - Article 22.
  - **22**. The Registry of the Superior Courts in Malta, or the Registry of the Courts of Magistrates in Gozo, as the case may be, shall be the Registry of the Board and therein shall be deposited the records of the Board.
- Virtually power wise, the Rent Regulation Board although resided by a magistrate has more or less the same extent of powers as the first hall civil court.

- What about the procedure before the Rent Regulation Board? How does a case start? And how does it proceed before the Rent Regulation Board? Again, there is a historical side to answering this question, as we said originally the Rent Regulation Board had very limited competence for establishing the fair rent and determining requests for permission not to renew, at a time where tenants were usually during third parties and the idea of the legislator was to make the procedure before the Rent Regulation Board as simple and cheap as possible.

- To this end we have a schedule in chapter 69, with forms 'A', 'B' and 'C', form 'A', form 'B' and form 'C' with specimens of the application by which a case could be initiated and filed before the Rent Regulation Board. The method of proceeding before the Rent Regulation Board is generally the application, rikors. Not a sworn application like before the first hall civil court, mhux rikors guramentat imma rikors. There is no specific form or requirements as to the necessary content of this application. So, there should be the name of the board, Rent Regulation Board, left top of the application, then the names of the parties, A vs B, application of A, the applicant, solemnly declares, in maltese we say jesponi bir-rispett, then there are the statements of fact which are being declared and then the demands, it-talbiet, premessi ta fatt u t-talbiet, there's no need for listing witnesses, no need for attaching documents, no need for a note, gurament, so it's the simplest form of judicial act by which proceedings are initiated.

- Forms 'A', 'B' and 'C' in the schedules to chapter 69 confirm this. But those forms relate only to the competence of the board pre (so before) act X of 2009. No other schedules were added in regard to the extended competence of the Rent Regulation Board, but will normally follow more or less the same simple layout in the application by which the action is initiated. There are the grounds of fact, the premises of fact and then the demand.

- That application is served on defendant or respondent, the respondent has generally up until the first date of hearing of the case to file a reply and the reply is again a simple judicial act, with the same title of the board, number of the case and name of the parties and the pleas, l-eccezzjonijiiet. On the date of the hearing, the board will note the merit of the application and nature of the pleas, and organise the hearing of the evidence.

- There are as many sittings as are necessary for the production of the evidence of both parties, then there are the final submissions, orally or in writing, according to article 24 the board preceded over by the magistrate on his own delivers its decisions in open court. There is a right of appeal before the court of appeal in its inferior jurisdiction resided over by one judge, on a point of law, and in cases where request for permission not to renew a lease is determined so the right of

appeal is not a general right of appeal, not all cases or decisions can be appealed, only those which are listed in article 24 of chapter 69.

- Article 25 lays out the content of the application as already explained.
- Article 27 makes it clear that any departure from the specimens in the schedule will not cause the nullity of the application.
- Articles 28, 29 and 30, the manner of hearing before the court which we have just explained.
- Articles 31 and 32 the rights of defence of respondent, if the applicant does not appear for the hearing, the board shall dismiss the application, but within six days the applicant can request that the case be reheard.
- We said that, a case before the Rent Regulation Board is generally filed by an application. There is one very important exception, and this exception refers to what we call special summary proceedings, bil-malti procedura bil-giljottina.
- In the case of special summary proceedings, the action before the rent regulation board must be initiated by a sworn application, rikors guraomentat. Not a simple application but a sworn application.
- What are special summary proceedings and what is special about them? Special summary proceedings is an abridged (imqassam) civil process which exists also before the first hall of the civil court and which is also regulated in article 167-170 of the Code of Organisation and Civil Procedure. Il-giljottina quddiem il-bord li jirregola l-kera, it was introduced for the first time by act X of 2009, and is specifically regulated in article 16A of chapter 69.
- So we have an express special provision in chapter 69 which contemplates and regulates special summary proceedings before the rent regulation board. What is so special about these proceedings?
- If the special summary proceeding is accepted by the board, the board will deliver judgement on the demands of the applicant in the very first hearing, without hearing any evidence and without allowing the respondent to raise any pleas.
- Special summary proceedings are special because they are decided in the first hearing. So there will not be a process of hearing the evidence and making submissions after that, all of the dispute is determined in the very first hearing.
- Can all demands and all actions be pursued as special summary proceedings? Absolutely no. Only the demands and in the circumstances expressly

contemplated by law as possibly filed in this procedure and these limited actions are mentioned in sub article (1)(a) of article 16A.

- Article 16A.

- **16A**.(1)(a) In actions before the Rent Board, where the demand is solely for the eviction of any person from the lease or sub-lease of any urban, residential or commercial tenement, with or without a claim for 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 applicant to demand in the sworn application that the Board gives judgment allowing his demand, without proceeding to trial:

- Provided that when the demand for eviction is made with a claim for rent or any other consideration due or damages for any compensation, the Rent Board shall decide the demand for eviction at the first hearing before deciding any other demands made by the applicant:

- Provided that the applicant shall, in his sworn application state that the respondent has no defence to the action:

- Provided further that the applicant shall also file together with the application a sworn affidavit containing facts relative to the claim, and confirming that such facts are within his knowledge. The applicant may also file together with his application an affidavit of any other third party confirming facts relative to the claim.

- (b) In the cases provided for in this article, the sworn application shall be in writing according to the prescribed form and shall contain an order to the respondent to appear before the Board, on an appointed day and at a stated time.

- (c) In the cases provided for in this article, the sworn application shall also indicate clearly that the procedures conducted are special summary procedures where judgement shall be given at the first hearing of the case should the respondent fail to appear at that sitting or should he fail at that sitting to show that he has a valid defence to put forth to rebut the applicant’s claims.

- (2) A copy of the sworn application shall be served upon the respondent.

- (3) In the cases referred to in sub-article (1), the sworn application shall be served on the respondent 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 Board 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.

- (4) The sworn application, and the affidavit produced therewith, and any order referred to in sub-articles (2) and (3) shall be served by means of any executive officer of the courts after judicial hours.

- (5)(a) If the respondent fails to appear to the sworn application, or if he appears and does not contest the proceedings taken by the applicant, on the ground of irregularity or inapplicability, or, having unsuccessfully raised such plea, does not by his own sworn evidence, or otherwise, satisfy the Board that he has a prima facie defence, in law or in fact, to the action on the merits, or otherwise discloses such facts or issues of law as may be deemed sufficient to entitle him to defend the action, the Board shall forthwith give judgement, allowing the applicant's claim. The respondent may make his submissions to contest the proceedings taken by applicant on the ground of irregularity or inapplicability by means of a note to be filed in the registry of the Board or during the hearing.

- (b) If the respondent successfully contests the proceedings on the ground of irregularity, or inapplicability, or if he satisfies the Board 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 reply within twenty days from the date of the order referred to in paragraph (d).

- (c) 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 Ordinance.

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

- Jekk it-talba hija ghal zgumbrament, dik it-talba tista ssir bil-procedura tal-giljottina, jekk it-talba hija ghal hlas ta somma determinata diga' dik it-talba tista ssir permezz tal-procedura tal-giljottina. Jekk it-talba hija ghal zgumbrament u hlas ta somma determinata, joint, ukoll tista ssir bil procedura tal-giljottina. Jekk it-talba hiija biex il kirja tintemm ghaliex il-kerrej kiser l-obligi tieghu, that demand cannot be processed as special summary proceedings.

- So basically special summary proceedings are only available where the demands are for eviction, the payment of a determinate sum whether by way of rent arrears, damages or other considerations or both. Those are the demands which can be

pursued through special summary proceedings and in that case the action must be filed by a sworn application.

- Is the board bound to accept the procedure as special summary proceedings once they have been filed as such? No the discretion whether the action is heard and determined as special summary proceedings, vests in the Rent Regulation Board and in exercising that discretion, the board is very wary. The board is generally very much concerned to ensure that the respondent, the defendant is allowed full rights of defence. So, with the very minimal doubt on whether respondent has valid pleas to raise against the demand, the board will stop the process as special summary proceedings and the action will continue as a normal judicial action.
- The board will allow time for respondent to file a reply with his pleas and then after considering those pleas it will proceed to hearing the evidence of the parties and then their final submissions.
- Now, this article 16A, in the same way as articles 167-170 of chapter 12 lays down very particular requirements that are to be satisfied by the applicant when the action is filed as special summary proceedings.
  - Article 167.
  - **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, or
  - (c) for the eviction of an operator, lessee or other occupants, including any members of their staff from seagoing vessels or aircrafts,
  - it shall be lawful for the plaintiff to pray in the sworn application 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 sworn application 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)(a), (b) and (c), (2) and (3) and of article 159 shall apply to the said sworn application.

- Article 168.

- **168**. A copy of the declaration and any affidavit and of the note of the documents produced with the sworn application shall be served upon the defendant, together with the sworn application.

- Article 169.

- **169**. In the cases referred to in article 167, the sworn application 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.

- Article 169A.

- **169A**. The sworn application, 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.

- Article 170.

- **170**. (1) If the defendant fails to appear to the sworn application, 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.

- For example the sworn application must state clearly that the action is being pursued as special summary proceedings, the respondent is served with a copy, and an order to appear not earlier than fifteen days and (suppost) not later than thirty days from date of service, applicant must declare on oath in the sworn application that to his knowledge respondent has no valid pleas (eccezzjonijiet validi) to raise against the demands, and once he is served with the sworn application as special summary proceedings defendant is entitled to file a note in the acts of the proceedings given his reasons of fact and law for which the board should not allow the special summary process and should not accept and uphold the demands.

- That note is not mandatory, but it is very much advisable. If it is not filed, respondent has to physically attend the hearing and to convince the magistrate during that hearing of his reasons why the special summary process does not apply and applicants demands are unfounded.

- With the very big pressure that we have in practice, having all that already explained in a note which the magistrate can review before actually hearing and determining the case is normally very much advisable, so the note is not mandatory but it is very much advisable.

- After hearing the parties, the board can uphold the request for the special summary proceedings and proceed immediately to judgement there and then, that

has become always exceptional not the rule, or it can reject the demand that the process re-ensued as special summary proceedings given the respondent time to file a reply with his pleas, the eccezzjonijiet, and deferring the case for the hearing of the witness. That will end the process as special summary proceedings and the action continues as an ordinary judicial action.

- This article 16A of chapter 69 explains in detail bit by bit the special summary process.

- This brings us to a close on the lectures of letting and hiring.

Select Issues in the Law of Letting and Hiring.

Dr. Vincent Galea.

26th April 2023

Lecture 1.

- We are going to deal with Chapter 158 of the Laws of Malta. It deals with the housing decontrol ordinance. Under Chapter 158, there are several constitutional cases. It is aimed to provide for the decontrol and registration of certain dwelling houses, and for matters connected therewith, and to permit an adjustment in the rent payable in respect of a controlled dwelling-house where improvements have been carried out with the consent of the tenant.

  - There were some important amendments to this Ordinance. The legislator when he sees a piece of legislation is good, he needs to intervene. In 1979, he intervened. The most important Act which the legislator put forward is ActXXIII of 1979. The latter amendments had four main objectives. So, do not forget the name of the law is housing decontrol (tnehhi mil-kontroll). You remove from control, Ordinance.

  - The objectives were the protection of tenants of the decontrolled dwelling houses from eviction at the end of the lease. The regulation of other aspects of decontrolled houses namely the repair and maintenance, lease of furniture and payment of a premium. The third one is the elevation from hardship of owners of houses in need of repairs and the most famous, the conversion of the emphyteusis of dwelling house at its termination of the lease or into perpetual emphyteusis and he continuous of occupation under such a lease or emphyteusis in return for a rent or ground rent computed as indicated in the ordinance.

  - This ordinance created a special class of houses in special in which the special rent laws do not apply. The cumulative effect of such protective laws was that landlords were no longer willing to grant the tenement on lease due to various disadvantages imposed on them.

  - Most notably, the obligatory renewal of the lease under the same conditions except with the permission of the Rent Regulation Board. The restrictions on the amount of rent payable, the provisions dealing with fair rent under chapter 116 as well as the fact that such dwelling houses could potentially be the subject of a requisition order issued by the director of social housing under chapter 125.

  - These were in no way conclusive to the development of the economy in this particular sector. Therefore, in response to the counter protective effects of such

special rent laws, chapter 158 was enacted with the ultimate aim being the liberalisation of the rental market. In 1959, the legislator felt the need to liberalise the rental market.

- In the Preamble, upon its enactment's leases of dwelling houses subject to such decontrol where essentially governed solely by chapter 158 and the provisions of the civil code. However, in time it was felt that the lack of an entitlement to an automatic renewal of the lease under chapter 69 severely effected the interests of the tenants of the dwelling house the decontrol of which had been registered in virtue of the provision of chapter 158. It was for this reason chapter 158 was amendments by ActXXIII of 1979 to bring certain benefits especially of renewal which the tenant would have been entitled to prior to the enactment of such ordinance.

- This is one of the most constitutionally attacked laws in Malta, even with the amendments of 2020 which were made to try and reduce constitutional cases. Constitutional cases are still being filed with these amendments.

  - Article 3.

  - **3**. Subject to the provisions of article 6, the Land Valuation Officer, on the application of an owner made in such manner as may be prescribed, shall register as a decontrolled dwelling-house any dwelling-house which -

  - (a) is not completed or ready for use as a dwelling-house on the appointed day; or

  - (b) although completed or ready for use as a dwelling- house on the appointed day, has not been occupied as a dwelling-house on or before that day; or

  - (c) is completed or ready for use after the appointed day by the making of the structural alterations converting one or more dwelling-houses into a larger number of dwelling-houses; or

  - (d) was on the first day of March, 1959, occupied by an owner as his ordinary residence and has continued to be so occupied up to and including the appointed day; or

  - (e) was acquired under a scheme as is referred to in the Home Ownership (Encouragement) Act, and in respect of which the right to register as a decontrolled dwelling-house has been granted as an incentive in accordance with that Act; or

- (f) is on the date of the application, occupied by the owner as his ordinary residence and has been so occupied by him, under any title, throughout the period of ten years immediately preceding the date of the application. For the purpose of this paragraph the expression "ordinary residence" does not include a summer residence.

- Article 3 deals with registration of decontrolled dwelling houses. Houses build after 10th of April 1959 are not automatically decontrolled. The owners of said property are however, entitled to apply for such decontrol and the persons entitled to apply for such decontrol certificate are the absolute owner, the emphyteuta or sub-emphyteuta and the usufructuary.

- The first question we have to deal with is what happens in a situation where we have a person occupying the house prior this enactment and so, the special rent laws were applicable to him. this ordinance was enacted now and the owner applies for a decontrol certificate. What is the position of the tenant? Don't forget we had a situation prior 1959 where tenants were protected through the special rent laws, in came chapter 158, the housing decontrol ordinance and the landlord applied for a decontrol certificate, what happened to the rights of the individuals who were prior to the introduction of this ordinance? In 1958 there was someone in my house, I leased out/I rented this house to this person. In 1959, I applied for the decontrol certificate, I applied to remove the effects of the special rent laws. What happens to the tenant? Is the tenant still protected? Before with special rent laws, if you rent for one year it is automatically renewed, the special rent laws, this person qualified and ordinance of 1959 came into effect, what is his position?

- The concept of decontrol has important effects especially in relation to the owner's entitlement to an automatic increase in rent every three years according to the amendments of Act X of 2009. Prior to such amendment, the rent increased every fifteen years.

  - Gatt vs Attard, Court of Appeal, 8th January, 1971, seems to suggest that a sitting tenant would not be prejudiced by the acquisition of such decontrol certificate. The court said that the sitting tenant would not be prejudiced.

  - Caruana vs Mangion First Hall, 15th June 1989, and Antonia Vella vs Pauline Jones, 16th April 1993 Appeal, Inferior Jurisdiction suggest the opposite. If a decontrol certificate is obtained while in occupation, three effects such are applicable to the said tenant. Therefore, the owner is entitled to demand an increase in the rent payable for such tenant every fifteen years.

- Under Act X of 2009, the increase in rent is every three years. Now we're on to article 5 and the famous formulas.

- Article 5.

- **5**. (1) Subject to the following provisions of this article and of article 6, the provisions of the Rent Ordinances shall not apply to any decontrolled dwelling-house from the day on which the house is registered in accordance with the provisions of article 3.

- (2) Where on the expiration of the lease of a decontrolled dwelling-house (whether such period be conventional, legal, customary or otherwise) the tenant is a citizen of Malta and occupies the house as his ordinary residence, the provisions of sub- article (3) shall have effect and the provisions of the Reletting of Urban Property (Regulation) Ordinance shall also apply but only in so far as they are not inconsistent with the said provisions of this article.

- (3) The provisions referred to in sub-article (2) are:

- (a) It shall not be lawful for the lessor of the dwelling- house to refuse to renew the lease except in any of the circumstances set out in paragraph (b), nor shall it be lawful for him to raise the rent, or to impose new conditions for the renewal of the lease, except as provided in paragraphs (c) and (d).

- (b) The lessor may only refuse to renew the lease, and may only resume possession of the house, at the termination of the lease, if he shows to the satisfaction of the Board, on an application to resume possession, that in the course of the lease, the tenant has failed to pay the rent due by him in respect of two or more terms within fifteen days from the day on which the lessor called upon him for payment, or has caused considerable damage to the house, or otherwise failed to comply with the conditions of the lease or his obligations thereunder, or has used the premises for a purpose other than mainly as his ordinary residence.

- (c) The rent payable under the same lease after the date of the first renewal of the lease made by virtue of this sub-article may be increased by the lessor, upon such renewal and after the lapse of every fifteenth year thereafter during the continuance of the lease in favour of the same tenant, by so much of the rent payable immediately before such renewal or before the commencement of each subsequent fifteen year period, being an amount not exceeding the said rent, as represents in proportion to such rent the increase in inflation since the year the rent to be increased was last established.

- (d) Where, on or before the date of any renewal of the lease of the dwelling-house, the lessor files in the Registry of the Board, a certificate, signed by a qualified architect and civil engineer and which is either accepted as correct by

the tenant or has been so declared by the Board on an application by the lessor requesting such a declaration, showing that the house is in good state of maintenance and repair, all repairs and all maintenance of the dwelling-house shall thereafter, and throughout the continuance of the lease in favour of the same tenant, be at the charge of the tenant.

- (4) The following provisions of this sub-article shall also have effect with respect to all leases of decontrolled dwelling-houses where the tenant is a citizen of Malta. The said provisions are:

- (a) Where the lease of a decontrolled dwelling-house has been renewed as provided in sub-article (3) or under article 12(3), or has been established under sub-article (2) of the said article, it shall not be lawful for the lessor of any such house to require from any citizen of Malta, under a lease made thereafter, a rent higher than the amount which would have been payable by way of rent if the tenant in whose favour the lease was first so renewed or established had remained the tenant of that house; and any amount paid in excess shall be recoverable from the lessor.

- (b) It shall not be lawful for the lessor to require the payment of a rent which is subject to variation at any time prior to the expiration of the lease, whether the variation is due to an increase or a decrease of such rent; and where the lease of a decontrolled dwelling- house is made subject to such a variation the rent payable in respect thereof shall notwithstanding the agreement to the contrary, be the lowest rate payable for any part of the duration of the lease, and any amount paid in excess shall be recoverable from the lessor.

- (c) It shall not be lawful for the lessor to impose a condition requiring the repairs of the dwelling-house to be at the charge of the tenant unless the lease is in writing and a certificate as is mentioned in sub-article (3)(d) is attached to the instrument of lease.

- (d) Where the dwelling-house is leased furnished -

- (i) if the lease is made before the 21st June, 1979, the tenant shall be entitled, at any time not earlier than one year after the said date, to demand that, with effect from the expiration of six months after the date of such demand, the lease shall remain only in respect of the building and that he shall pay only such part of the rent as relates to the building as may be agreed between

- himself and the lessor, or, failing such agreement, as the Board may on application by either of them establish;

- (ii) if the lease is made after the date aforesaid, the lease shall distinguish between the part of the rent agreed in respect of the house and the part of the rent agreed in respect of the furniture and other household articles; and the tenant shall be entitled, at any time not earlier than one year from the date he first occupies the house under the lease, to demand the dissolution of the lease of the furniture and other household articles, and with effect from the expiration of six months after the date of the demand to have such lease dissolved and to pay only the rent agreed in respect of the house;

- (iii) (deleted by: XVIII. 2004.115.);

- (iv) the rights given by the foregoing provisions of this paragraph shall also be competent, mutatis mutandis, in respect of a transaction relating to furniture or other household articles where such transaction is so connected with the lease of a decontrolled dwelling-house to which this sub- article applies that the said lease would not have been contracted unless the said transaction had also taken place.

- (5) Subject to any agreement entered into prior to 21st June, 1979, and without prejudice to the rights to which a tenant may become entitled under this article after that date, the provisions of sub-articles (2) and (3) shall apply even though the expiration of the lease has taken place before that date if the tenant still occupies the house as his ordinary residence on that date.

- It was amended in 1979. Sub-article 3(c) establishes the formula which one must calculate for the increase in rent.

- Rent previously payable x inflation at time of renewal/inflation at time the rent was last established.

- To simplify a bit, rent previously payable times inflation at time of renewal divided by inflation at time the rent was last established. How are we going to bring the inflation at time of renewal and the inflation at time the rent was last established? These are found under the legislation.

- What happens if the lessor does not avail himself of the right to demand an increase in the rent payable upon the lapse of such fifteen year period, nowadays three years? Does the lessor have to wait for another fifteen-year period before he can ask to an increase of the rent?

  - Chetcuti vs Fenech, 8th January 1971, Court of Appeal, the Court came to the conclusion that the lessor must demand an increase in rent immediately as it becomes due. So, after the fifteen years. Failure to do so would imply that the lessor has to wait for the lapse of another fifteen years to claim such increase.

- This is post-1979, pre-2009

  - On the other hand, Caruana vs Mangion and Vella vs Jones, the Court stated that such increase may be claimed even after the lapse of the fifteen year period however, the new rent payable as increased in this case, would only become effective as from the date of demand.

  - Article 12.

  - **12**. (1) notwithstanding anything contained in the Civil Code or in any other enactment the following provisions of this article and of articles 12A and 12B shall have effect with respect to all contracts of temporary emphyteusis made at any time.

  - (2) Where a dwelling-house has been granted on temporary emphyteusis -

  - (a) for a period not exceeding thirty years, if the contract was made before 21 st June, 1979, or

  - (b) for any period, if the contract is made on or after the date aforesaid, and on the expiration of any such emphyteusis the emphyteuta is a citizen of Malta and occupies the house as his ordinary residence, the emphyteuta shall be entitled to continue in occupation of the house under a lease from the directus dominus -

  - (i) at a rent equal to the ground-rent payable immediately before the expiration of the emphyteusis increased, at the beginning of the lease of the house by virtue of this article, and after the lapse of every fifteenth year thereafter during the continuance of the lease in favour of the same tenant, by so much of the ground-rent payable immediately before such commencement or the commencement of each subsequent fifteen year period, being an amount not exceeding such ground-rent, as represents in proportion to such ground-rent the increase in inflation since the time the ground-rent to be increased was last established; and

  - (ia) subject to the conditions laid down in subarticle 5(3)(b); and

  - (ii) under such other conditions as may be agreed between them, or failing agreement, as the Board may deem appropriate.

  - (3) Where on the expiration of an emphyteusis as is mentioned in sub-article (2)(a) or (b) the dwelling-house is subject to a lease, the provisions of the Reletting of Urban Property (Regulation) Ordinance, shall not apply in respect of such lease:

- Provided that where the tenant under the said lease is a citizen of Malta and occupies the house as his ordinary residence he shall, on the termination of the lease, be entitled to continue in occupation of the house under a new lease from the directus dominus at the same rent and under the same conditions as are mentioned in sub-article (2)(i) and (ii) in respect of the emphyteuta.

- (4) On the expiration of a temporary emphyteusis of a dwelling house occupied by a citizen of Malta as his ordinary residence at the time of such expiration, not being an emphyteusis mentioned in sub-article (2)(a) or (b), the emphyteuta shall be entitled to convert the emphyteusis into a perpetual one under the same conditions of the temporary emphyteusis with the exception of those relating to the duration and the ground-rent. The ground-rent payable with effect from the conversion of the emphyteusis into a perpetual one and until fifteen years from that date shall be equal to six times the ground-rent payable immediately before such conversion, and shall thereafter be increased every fifteen years by so much of the then current ground-rent, being an amount not exceeding such rent, as represents in proportion thereto the increase in inflation since the time the said ground-rent was last established.

- (5) If the emphyteuta does not exercise the right granted to him by sub-article (4) within six months from the date such right is exercisable, such right shall, with the necessary modifications, pass to the occupier of the house who shall be entitled to demand, to the exclusion of the emphyteuta, that the dwelling-house be granted to him by the owner in perpetual emphyteusis under the same conditions as could have applied if the emphyteuta had converted the emphyteusis into a perpetual one.

- (6) Where the emphyteuta or the occupier is entitled to convert a temporary emphyteusis into a perpetual one under sub-article (4) or (5), he may require that a notarial deed be entered into to this effect, and the dominus or the owner shall comply with such request.

- (7) Where the date of expiration of the emphyteusis is a date prior to 21st June, 1979, the foregoing provisions of this article shall apply only if the emphyteuta or the tenant, as the case may be, still occupies the house as his ordinary residence on that date and shall not apply if he so occupies the house under an agreement entered into by him after the expiration of the emphyteusis.

- (8) Where, in the case of an emphyteusis mentioned in sub- article (2)(a) and expiring after the 21st June, 1979, the emphyteuta or the tenant occupying the house as his ordinary residence on the expiration of the emphyteusis is a person different from the person occupying the house as his ordinary residence

on 21st June, 1979, the provisions of sub-article (2) or (3), as the case may be, shall apply only -

- (a) if-

- (i) the person occupying the house on the date aforesaid continued in occupation of the house as his ordinary residence until his death; and

- (ii) the person occupying the house as his ordinary residence on the expiration of the emphyteusis resided with the emphyteuta at the time of his death and had then all the other qualifications to be treated as a tenant for the purposes of this article; or

- (b) if-

- (i) the person occupying the house as his ordinary residence on the date aforesaid derived the title under which he so occupied the house from the emphyteuta occupying the house as his ordinary residence on the expiration of the emphyteusis or, if the emphyteuta from whom the said title was derived dies before the expiration of the emphyteusis, from the emphyteuta whose heir occupies the house as his ordinary residence on the expiration of the emphyteusis; and

- (ii) until the expiration of the emphyteusis, no person other than the person aforesaid and the said emphyteuta, or his heir, and members of their family living with them, occupied the house in any manner whatsoever; and

- (iii) not later than 30th September, 1979, notice is given in writing to the Housing Authority of the title under which the house is occupied on 21st June, 1979, stating the nature of that title, the expected duration thereof and the name of the person occupying the house under that title.

- (9) For the purposes of this article -

- (a) in respect of an emphyteusis mentioned in sub-article (2)(a) or (b), emphyteusis includes a sub-emphyteusis;

- (b) in respect of any other emphyteusis, emphyteusis means the original emphyteusis, but where, on the expiration of such emphyteusis, the dwelling house is held on sub-emphyteusis -

- (i) the rights given by this article to the emphyteuta shall be exercisable by the last sub-emphyteuta and, without prejudice to the rights given to the occupier by sub-article (5), only by him;

- (ii) the directus dominus means only the person entitled to receive the original ground-rent;

- (iii) the ground-rent means only the original ground rent:

- Provided that where the ground-rent payable by the last sub-emphyteuta exceeds six times the original ground-rent, sub- article (4) shall have effect as if for the words "shall be equal to six times the ground-rent" there were substituted the words "shall be equal to the sub-ground-rent".

- (10) Where on the expiration of a temporary emphyteusis to which sub-article (2) or (3) applies, the dwelling-house is occupied by a person by title of usufruct or habitation, the right to continue in occupation of such dwelling-house conferred by those sub- articles or by sub-article (7) shall, notwithstanding those provisions, be competent to such occupier as if he were the emphyteuta or the tenant of the dwelling-house, as the case may require.

- (11) Where a temporary emphyteusis is converted into a perpetual one under sub-article (4), the dwelling-house shall remain subject to the rights enjoyed by third parties over such house immediately before such conversion.

- (12) Where any of the rights conferred by this article is exercisable by more than one person such right may be exercised notwithstanding any disagreement among them but only if not less than half the number of such persons agree to exercise such right; and in any such case it shall operate only in favour of those exercising it.

- An exception to this rule lies under Article 12(2) which deals with the conversion of a temporary emphyteusis into a lease. if upon conversion, an increase in the rent payable is not demanded such increase may be demanded at a later date and with retrospective effect.

- Article 12 was one of the main effects of Act XXIII of 1979. It is one of the reasons why this ordinance was again recently amended but you still get constitutional cases in this regard. The law under article 12 creates different classes of emphyteusis in dwelling houses.

  - (a) Contracts entered into before the 1st June 1979 for a period of more than thirty years.

  - (b) Contracts entered before the 21st of June in 1979 for a period of thirty years or less.

- (c) Contracts entered into after the 21st June in 1979 but before the 1st of June 1995 for any period.

- (d) Contracts entered into on or after the 1st of June 1995.

- It is only in the first three classes of effects that the law grants to the emphyteuta a right of conversion. The fourth class that is contracts entered into or after 1st June 1995, the law states under article 16 that the provisions of article 12 shall not apply to any contract of temporary emphyteusis entered into on or after the 1st June 1995.

  - Article 16.

  - *__16__. (1) The provisions of article 5(2) to (5), article 7, article 10 and article 11, shall not apply to the lease of any dwelling house entered into on or after the 1st June, 1995.

  - (2) For the purposes of sub-article (1) -

  - (a) the renewal of a lease on or after the 1st June, 1995 (whether such renewal be conventional, legal, customary or otherwise) shall not be deemed to be a lease entered into on or after the 1st June, 1995;

  - (b) the continued occupation of a dwelling house under a lease from the directus dominus at the expiration of a temporary emphyteutical concession expiring on or after the 1st June, 1995 in terms of article 12 shall not be deemed to be a lease entered into on or after the 1st June, 1995.

  - (3) The provisions of article 12 shall not apply to any contract of temporary emphyteusis entered into on or after the 1st June, 1995.

  - *Article 5 of Act XXXI of 1995 inter alia provides:

  - 5. Nothing in article 16 of the Housing (Decontrol) Ordinance shall be deemed to restrict any of the powers of the Director of Social Housing under the Housing Act, (Cap. 125) and the provisions of the Ordinance as in force immediately before the coming into force of this Act (1st June 1995) shall, in as far as applicable, continue to apply with regard to the relationship between the said Director and any owner of premises in possession of the said Director on that date, or between the said Director and any person legally in occupation of such premises. The provisions of the said Ordinance as aforesaid shall also continue to regulate the relationship between any person in occupation of such premises and the owner thereof.

- What happened in 21st June 1979?
    - The first judgement we are going to deal with is Joseph Debono vs Iris Giacomotto, 18th November 1987, Court of Appeal.
    - This judgement stated that for an emphyteuta to be entitled to exercise the right under sub-article 2 of Article 12, the contracts of temporary ground-rent which do not exceed thirty year and becomes converted into a lease. this was one of the main points enacted by the 1979 legislation. Upon the expiration of the temporary emphyteusis, the conversion takes place. For the conversion to take place we needs certain requirements.

- In the above case, listed four requirements to be satisfied.
- The object of the emphyteutical ground must be of a dwelling house.
- The object must be a dwelling house, in the case of a contract made before 21st June 1979, must not be for a period exceeding twenty years whilst in the case where the contract was made after the 21st of June can be made for any period of time at the termination of the emphyteusis.
- At termination the emphyteuta must be a Maltese citizen and the fourth requirement.
- At such termination the emphyteuta must be occupying the house at his ordinary residence.

- Four Requirements
    - The object of the emphyteutical grounds must be a dwelling house.
    - A piece of land is given on a temporary emphyteusis and later on, a dwelling house is built on this land. Would sub-article 2 of article 12 would be applicable?
    - In this instance we have a situation where a piece of land was given under temporary emphyteusis, I build a dwelling house on the temporary emphyteusis given to me under temporary emphyteusis. At the end of the temporary emphyteusis, what do I do? The reasoning is that it does not apply. But you have given me a piece of land and I build a house on it. So, the value of the land has increased. it has been argued by some that the answer should be in the affirmative since when one grants a plot of land on emphyteusis, whatever one builds is automatically part of the emphyteusis. However, one must note that the law is not clear for its specifically refers to a dwelling house given to emphyteusis and does not refer to land.

- Others argue that this right may be exercised in the case the tenement was a dwelling house when the emphyteutical grant was given and upon termination of the said grant. Others hold the value that the essential requisite that the tenement is a dwelling house upon termination of a dwelling house. These argue that once this benefit is granted to an emphyteuta who carried no improvements to a dwelling house, in such a manner that the tenement is a dwelling house both at the beginning and at the end of the emphyteutical grant. It follows that this benefit should also be granted and even more so to an emphyteuta who has invested his own money to develop the land into a dwelling house.

  - Debono vs Giocomotto case dealt with the issue where a dwelling house was granted on temporary emphyteusis and the emphyteuta gave one particular room of that house under a title of lease to a third party. (Casa bottega) Therefore, the question which the Court had to answer was whether the law afforded the emphyteuta and the protection given to him by law. The court stated that,

  - 'Il-legislatur ried li jipprotegi lil min qed jokkupa. Il-konvenuta ma tistax tinghad li qieghda tokkupa l-hanut bhala parti mir-residenza ordinaria taghha billi dan il-hanut jinstab f'idejn hadddiehor. Kieku d-dritt u l-protezzjoni moghtija taht l-artikolu 10B(2) illum art. 12(2) Kap 158 kellhom jigu estizi ghal dan il-hanut okkupan minn haddiehor, ikun qed jinghata dritt li l-ligi ma taghtix;

  - Fl-ahharnett jidher mill-istess petizzjoni ta' l-atturi li l-atturi jaqblu li l-konvenut Edgar Giacomotto m'ghandu l-ebda interess fl-azzjoni odjerna u kwindi ghandu jigi lliberat ab observantia

  - Ghal dawn il-motivi l-Qorti tiddisponi mill-appell billi fil-konfront tal-konvenuta tilda' l-istess appell, tirrevoka s-sentenza appellata u tilqa' t-talba ta' l-atturi fis-sens illi tiddikjara li d-dritt tal-lokazzjoni li l-imsemmi Att XXIII ta' l-1979 hålor fi timme il-koncessjoni enfitewtika fuq imsemmija huwa ristretto ghall-konvenuta Iris Giacomotto u limitat ghall-ambjenti mill-fond originarjament concuss li, fi tmiem il-koncessjoni, hija kienet tokkupa bhala r-residenza ordinaria taghha b'eskluzjoni tal-kamra laterali okkupata bhala hanut minn haddiehor u dana bl-ispejjez, sija ta' l-ewwel kif ukoll ta' din l-istanza, stante n-novita tal-kaz, bin-noffs bejn il-kontendenti, u billi ffil-konfront tal-konvenut Edgar Giacomotto, tillibera lill-istess Edgar Giacomotto mill-osservanza tal-gudizzju bl-ispejjez, sija ta' l-ewwel kif ukoll ta' din l-istanza, kontra l-atturi.

- In this case, at the termination of the emphyteusis the person who was originally granted the title of emphyteusis was granted to someone else. The owner wanted to evict the person from that shop. Thus, the Court of Appeal found in favour of the plaintiff and stated that the right of the lease at the end of the emphyteutical

period the defendant was occupying her residence with the exclusion of the room which was converted into a shop.

- In the case of a contract made before the 21st June 1979, the directus dominus and the emphyteuta can agree that at the end of the original emphyteusis, the emphyteuta can continue to occupy the dwelling house on a temporary emphyteusis.

- Sub-article 4 of article 12, you will see the importance of the temporary emphyteusis and you do a new contract of temporary emphyteusis, stating that this contract should not be understood as being a 'proroga'. This sub-article shows that the temporary emphyteusis becomes perpetual emphyteusis. This means that there could be a redemption. You redeem the property and it becomes yours.

- In article 12(4), there are grave constitutional issues because there is another formula and that you can have a contract of emphyteusis made in 1920s for ninety-nine years. It will expire in another 6 years. You do its conversion. At the termination of the emphyteusis, the emphyteuta must be a citizen of Malta, here, we have two situations.

- The first situation will be explained in the following case. Iff you are a maltese citizen when you were given the emphyteusis and you stayed in Malta, this article still applies, yet if you were not a Maltese citizen but before emphyteusis expires you have become a Maltese Citizen would you qualify under this law?

- The second situation would be if citizenship is obtained after the termination of emphyteusis, it is quite clear that the fact that one becomes a citizen of Malta after the period of emphyteusis has expired, he would not be able to claim the benefits of the law.

  - With regards to the first situation Gauci vs Borda, 13th January 1992, Court of Appeal, the question of citizenship should be seen at the end of the emphyteusis.

- At the termination of the emphyteusis, the emphyteuta must occupy his house as an ordinary residence, what is ordinary residence? It is somewhere you receive your post and where you spend your home at your leisure.

  - Montebello vs Grima, 5th May 2005, First Hall confirmed by Court of Appeal (29th February 2008).

  - Agius vs Agius, Court of Appeal, Inferior Jurisdiction, 2nd December 1994, Bianco vs Florence, 3rd November 1982, Court of Magistrates.

- Coppini vs Vella Bonnici, 8th February 1971.
- Gatt vs Mercieca 16th July 1982 Court of Magistrates.
- Ripard vs Stellini, Prim Awla First Hall, 21st March 1981
- Bezzina vs Cachia, Court of Appeal, Inferior Jurisdiction, 5th May 1989.

- These sentences should be read.
  - Montebello vs Grima provides that 'il-kapitlu 158 ma jipprovdi l-ebda tifsira għar residenza ordinarja u allura dawn, b'dawn b' neċessita kellhom ikunu interpretati skont ic-cirkustanzi tal-kaz partikolari pourque dejjem fl-ambitu tal-ligi'.
  - Imbghad Bianco vs Flores, "l-element tar-residenza gie interpretat mil-gurisprudenza taghna fis-sens li mhux bizzejjed li jkun hemm "mere physical presence" imma jenhtieg li l-post kien "permanently his ordinary residence" u "his only residence".
  - Coppini vs Vella Bonnici. '"in generali l- kliem residenza ordinarja jiddenota residenza f'post b'certu grad ta 'kontinwita`. Id-durata mhux kriterju esklussiv u necessarjament determinanti. Hu pero` kriterju tajjeb dak li jirrigwarda l-mod kif bniedem ugwalment jorganizza hajtu ... ... In definitiva ebda kriterju wiehed ma hu a priori konklussiv u f'kull kaz iridu jitqiesu c-cirkostanzi kollha".
  - Ripard vs Stellini, "residenza timplika okkupazzjoni permanenti, u mhux bizzejjed li wiehed jghix fil-post "in and out" jew li jkollu l-indirizz postali fuq dak il-fond.
  - Montebello vs Grima qalet ukoll "huwa minnu li fil-gurisprudenza taghna gie zviluppat il-kuncett legali dwar l-interpretenzazzjoni li ghandha tinghata lill-kliem residenza ordinaria, fis-sens li ghal finijiet ta kirjiet nghidu ahna wiehed jista jkollu pluralità ta' residenzi u mhux bilfors wahda biss.

- When you were given the dwelling house with temporary emphyteusis, you could have been a soldier having to go abroad for a period of years, and you were not occupying the residence or dwelling house as you ordinary residence because you are stationed in Germany, so can they take the dwelling house back? That is the important of dwelling house.

- A contract of temporary emphyteusis is entered into when the emphyteuta satisfies the four requirements. It converts. The garage will go back to the landlord as it is not part of the dwelling house.

- Next time, we will discuss the conditions of the lease.
  - What is the rent payable? And how do we work out the rent payable?
  - Sub-article 2 establishes two formulas. NR = PR x $I/_2$ / I_1. NR is the new rent, PR or NR = PR x 2 Pr = previous ground rent, Nr - new rent, I_1 = inflation index for the year when the ground rent was established mela from day 1, $I/_2$ when the conversion is going to happen the year when the lease is to be established.

3rd May 2023

Lecture 2.

- Last time we were going to discuss the conditions of the lease, and we mentioned a formula what was the formula NR = PR x $I/_2$ / I_1 or NR = PR x 2
  - Last time, we were going to discuss the conditions of the lease and we mentioned a formula. NR is the new rent, PR is previous ground-rent, I_1 is the inflation index for the year when the ground-rent was established. I/ is the inflation index for when the conversion is going to happen (i.e., the year the lease was to be established).
  - A contract of emphyteusis was entered into 1976 for 17 years, ground rent was fixed at LM50 Malta per annum. The conversion from Maltese Liri to Euro is done by the formula divided 42.93. This is equivalent to €116.47. The emphyteutical concession will come to an end in 1993. The ground rent was of LM50. The conversion is €116.47. From temporary emphyteusis will go into a lease. let us work with the formula we have - NR equals PR times $I/_2$ divided by I.
  - We go to the law per se, it is €116.47 times 49.60 divided by the rate of inflation for the year when the ground rent was established and so, it is 1976. So, now we know that according to the first formula €225.30. With regards to the second formula – NR = PR x 2. The previous rent is 116.47 x two. It is equal €232.94. You have two amounts. The correct formula is the first one. Why do we do the second formula?
  - So, that if the amount of the first formula is more than in the second formula then, the amount of the second formula will have to be the exact amount of the second formula. It cannot be more than twice. We always take the lesser amount. The first result is lower than the second result. The second formula is to check whether the first amount is in conformity with the law. So, it is just the first formula we need to take into account.

- The second example, a contract of emphyteusis was entered into 1980 for 30 years, ground rent was fixed at LM50. When converted, LM50 is €116.47. The concession will terminate in 2010. The amount is €345.01. The second formula is €323.94. The first formula is higher than the second formula.

- The law tells us not more than twice and so, the first formula has to go down to the second formula. These formulas are very important. 80% of all constitutional cases are based on this ordinance. In the second formula, we are saying that the amount of €245 does not fall within the parameters of the law and so, it has to be reduced to €323.94. the second amount is the one due.

- One must keep in mind that although the law establishes the rent due, it is permissible for the parties to agree implying or explicitly that the rent due would be less than that established by law.

- If both parties agree together that the lessee will pay less rent than that, then, there is nothing against the law. In Tonna vs Galea (COA, 1982), the court stated that the parties were not prohibited by law to fix a different amount to that established by law as long as that amount was less. However, in agreement to have that amount of rent payable less than that given by law, must be clearly and unequivocally manifested.

- So, if the dominus does not release that the emphyteusis has terminated, that does not amount to acceptance because as we said, there must be agreement. In such a case, the dominus would be entitled to demand the increase back dated to the day following the termination of the emphyteusis. One can look at Peresso vs Cuschieri, 5th June 1987, Court of Appeal.

- As regards to the other conditions of the lease, these may according to paragraph 12(i) agreed upon by the parties. Failing such agreement, they will be determined by the Court and the law. However, we need to be specific. They will need to be determined by the Rent Regulation Board. Where on the expiration of the lease of a decontrolled dwelling house, whether such period, the conventional, legal, customary or otherwise, the tenant is a citizen of Malta and occupies the house as his ordinary residence, the provisions of Article 5(3) shall have effect and the provisions of the Reletting of Urban Property (Chapter 69) shall also apply but only insofar as they are not inconsistent with the said provisions of this article.

- Article 5(3) of chapter 158 provides the circumstances for the lessor to refuse to renew the lease. There are those four instances.

- Some other points of interest.

- A property given under the title of lease during the temporary emphyteusis. What happens at the end of the temporary emphyteusis?
  - Borg Bartolo vs Bonello, Court of Appeal 14th September 1988,. The Court of Appel states that
  - “dan jfisser jekk tul l emfitewsi, hu kellu d-dritt jaghti parti bil-fond b’lokazzjoni, dan id-dritt spicca meta spiccat l-emfitewsi u certament, ma setax u ma jistax jippretendi drittijiet ta’ sub-lokatur jew lokatur li ma kienx ikollu fi kwalunkwe kaz mat terminazzjoni tal koncessjoni emfitewtika. Infatti, jekk qabel l Att XXIII tal-1979, il pozizzjoni kienet li mat-terminazzjoni tal-emfitewsi, l’utilista jispiccalu kull dritt fuq il fond de quo, bl Att XXIII tal-1979, kull ma tbiddel kien li jekk meta giet in figure din il-ligi l-utilista kien ghadu jokkupa il post bhala residenta tieghu seta hekk jibqa jokkupa pero b titlu ta lokazzjoni. Tista certament ma inghatax l istess drittijiet rejali li kellu fuq il fond tul id dekorenza tal emfitewsi.”
- On the expiration of the temporary emphyteusis, the dwelling house is occupied for example by a person by title of usufruct or habitation. The right to continue in occupation of such dwelling house shall also be competent to such occupier as if he were the tenant of the dwelling house.

- Now we are going to go into the Duration of the Lease.
  - The law mentions fifteen years. So, the increase happens every fifteen years. But we saw also that through Act X of 2009, the increase happens every three years and not every fifteen years. If you go into Act X of 2009, and you go into the particularly into the transitory provisions, you will realise why.
  - The position prior to the 1979 amendments
  - Article 1522 of the Civil Code states that when an emphyteusis comes to the end, the tenement reverts back to the owner unencumbered, saving in regard to any lease thereof the provisions of article 1530 and 1531 of the same code.
    - Article 1522.
    - **1522**. In all cases of reversion, any hypothec, burden or easement, even though such easement may have been created without the act of the emphyteuta, shall be dissolved both in regard to the tenement and to the improvements; and the tenement together with the improvements shall revert unencumbered to the dominus, saving, in regard to any lease thereof, the provisions of articles 1530 and 1531.
    - Article 1530.

- **1530**. (1) The letting made by a person possessing the thing under entail or in usufruct or under any other temporary or dissoluble title, shall be valid even in regard to his successors, if it is made on fair conditions and for a term not exceeding eight years, in the case of rural tenements, or four years, in the case of urban tenements, or an ordinary period according to usage in the case of movable property, or for any period, shorter than the said periods respectively, in the case of property the letting of which for a period exceeding such shorter period is prohibited.

- (2) The letting made for any longer period by a person possessing the thing as aforesaid shall, on the demand of his successors in the possession of the thing, be reduced to the reasonable period above-mentioned, to be reckoned from the date of the contract.

- Article 1531.

- **1531**. The provisions of the last preceding section in so far as they restrict the duration of the lease shall not apply where a longer period of lease has been covenanted with the authorization of the competent authority according to law.

- Article 1530 says amongst others that the letting made by the person possessing the thing under entail or in usufruct, or any other temporary or dissoluble title shall be valid even in regard to his successors if it is made of fair conditions and a term not exceeding 4 years in the lease of urban tenements.

- The original purpose of article 1530 which is an exception to the general principle of civil law ‘risolutio iure dantis soluitur et ius accipients ’was to enable people who held a tenement under a temporary title to let this property under fair conditions. The Civil Code therefore balanced the rights of the temporary owner with the rights of his successor by establishing a fair period during which the temporary owner can offer security of tenure and after which the successor can take back vacant position of his tenement. This was an equitable solution before the promulgation of the Reletting of Urban Property Ordinance.

- After this ordinance came into force, a problem arose because at the expiration of the period for which the temporary owner had let the thing, the successor as the new lessor was bound by law to renew the lease for a further period which in effect could be prolonged indefinitely.

- The Courts struggled with this problem for several years and for same time, they felt that had an equitable solution based on 1530 which balanced the need of the tenant for security of tenure with the justified expectations of the owner by allowing the tenant to enjoy the unelapsed period of the lease subject to the maximum

period allowed by article 1530 and recognising the lessor's right not to renew the lease after it expires. In Catherine Zahra vs Frendo, 21st July 1969, Court of Appeal, the court in this judgement observed that the owner who is bound to observe a lease according to article 1530 is as much a lessor for the purposes of Chapter 69 as if he had initially made the lease himself and as such, is bound not to refuse the renewal of the lease.

- The position after the 1979 amendments

  - The position was modified in respect if dwelling houses by sub article 3 of article 12 of Chapter 158. While the successor of the lessor who held the house under a temporary title is still bound by a lease made by his predecessor so long as the lease complies with the conditions set out in article 1530 of the Civil Code, he would not be bound to renew the lease after it expires unless the tenant is a citizen of Malta and occupies the dwelling house as his ordinary residence.

  - With regards to summer residence, one can look at Camilleri vs Stier Court of Magistrates 27th October 1982. One should note that Act XXIII of 79 did not upset the ruling of Catherine Zahra vs Frendo, where the tenement owned by the owner is not a dwelling house.

  - There are two requirements for one to avail of the right to a renew lease in terms of Article 12(3), the following conditions must be satisfied; on the termination of the emphyteusis as is mentioned in sub-article (2) (a)or(b) the dwelling-house is subject to a lease, the provisions of the Reletting of Urban Property (Regulation) Ordinance, shall not apply in respect of such lease, the tenement must on the termination of the temporary emphyteusis occupy the premise a citizen of Malta and as an ordinary resident. It is first of all necessary that the dwelling house is on the termination of the temporary emphyteusis subject to a lease.

  - One must here be careful because there may be cases where it may not be all that easy to ascertain whether on the termination of the temporary emphyteusis, the dwelling house is in fact subject to a lease reference is made to Agius vs Cutajar Court of Appeal, 18th March 1982.

  - A problem arises when a person in the premises at the termination of the temporary emphyteusis is occupying such premises in virtue of a requisition order. Who issues a requisition order? The Housing Authority.

  - George Azzopardi vs Alfred Cauchi, First Hall Civil Court, 31st October 1991, the Court observed that unless and until the person in occupation is recognised as a tenant by the owner it cannot be said that a lease exists between the owner and the occupier so much so as such recognition is affected the occupier pays compensation and not rent.

- The second requirement which is of urban residence will not be dealt in detail because this was already explained under sub-article 2. Another two cases which highlight the application of sub-article 3 are Maria Stella Debono vs Dr Zammit Court of Magistrate, 1st March 1988. The court stated that the term ordinary residence did not equate to the term domicile and this was also affirmed again by the COM in the case Father Carmelo Gatt vs. Emanuel Mercieca, 16th July 1982.

- The Conditions of the lease

  - If the above-mentioned requirements are satisfied, the tenant would be entitled to a new lease from the direct owner at the same rent and under the same conditions mentioned under sub article 2 paragraphs 1 and 2. Magro vs Mchiltton Court of Appeal 25th January 1989. It was decided that according to sub-article 3, the tenant who at the termination of the temporary emphyteusis is a citizen of Malta and occupies the premises as his ordinary residence will have the right to continue the occupation of the premises under a lease from the direct owner at the rent and under the same conditions as stated paragraphs (i) and (ii) of sub-article 2 of the same article in respect of the emphyteuta.

  - The waiver must be clear and unequivocally. The right for a new lease would not be considered to have been waived by the tenant unless this results clearly and unequivocally. Lawrence Vassallo vs Emanuele Portelli, Court of Magistrates, 7th December 1981.

  - Sub-Article 4, deals with temporary emphyteutical grounds even before 1st June 1979 for more than 30 years. Act X of 2009, paragraph 3(9) provides that even though it should be reviewed every three years, Chapter 158 is a bit outdated. The revision should be every three years.

  - Under sub-article 4, instead of seeing temporary emphyteusis, we are going to see temporary emphyteusis into perpetual emphyteusis. With regards to the conditions of the perpetual emphyteusis, the law states that the condition would be the same condition as temporary emphyteusis with the exception being the duration and ground rent.

  - What will the duration now be? It will be perpetual. The ground rent will be payable of effect from the conversion of temporary emphyteusis to the perpetual emphyteusis. This should be six times payable before the conversion. Therefore, due to the perpetual conversion, I need to pay €50 times 6 equal €300. €300 division by 42.93. Therefore, I need to pay €698. 698 times 20 is €13,960. Perpetual emphyteusis will be revised every 3 years. The formula is the same as sub-article (2). Furthermore, it cannot be more than twice.

- Sub-Article 5, If the emphyteuta does not exercise the right granted to him by sub-article 4 within six months from the date such right is exercisable, such right shall with the necessary modifications pass to the occupier of the house who shall be entitled to demand to the exclusion of the emphyteuta that the dwelling house be granted to him by the owner in perpetual emphyteusis under the same conditions as could have applies if the emphyteuta converted the emphyteusis into a perpetual one.

- The word ‘occupier ’also includes persons who are not tenants such as a person holding the premise in commodatum. The emphyteuta has six months but the occupier does not have any time limit. The only time limit is on the emphyteuta.

- Sub-Article 6, the emphyteuta or the occupier may acquire a notarial deed to be entered into this effect and the dominus or the owner shall comply with such request.

  - Balzan vs Calafato First Hall, 1st February 1988, the defendant gave the plaintiff a dwelling house on temporary emphyteusis for fifty years which commenced 1986. When the temporary emphyteusis was terminated, it was occupied by Portelli who was a Maltese citizen and used the place as his ordinary residence. The plaintiff claimed that she was entitled to convert a temporary emphyteusis into a perpetual one by virtue of article 12 sub-article (4) and request a notarial deed by virtue of 12(6). Some of the defendants claimed that such requirements were lacking and were not ordered to sign the contract. The court concluded that the plaintiff satisfied the requisites of article 4 and was entitled to the conversion not only but by virtue of 12(6), he could also demand a notarial deed be entered into to that effect. The court said that the dominus or the owner must accept such demand by the emphyteuta to declare quote omnes that the temporary emphyteusis was converted into a perpetual one.

- Sub-Article 7, What is a curator? A curator a person appointed on behalf of the landlord. His signage is equivalent to the landlord’s. In the above-mentioned case, the Court appointed a curator for him to sign. It deals with the situation where the temporary emphyteusis not only qualifies as one given before the 21st June 1979 and expired before the 21st June 1979. To In sub-article 7, the legislator stated that all of those which the emphyteuta expired before the 1979 will still benefit from sub-articles 2 to 5. He must not occupy the house under an agreement entered into by him after the expiration of the temporary emphyteusis.

10th May 2023

Lecture 3.

- Last time, we have mentioned that there were two conditions regarding sub-article 7 of article 12. Sub-article 7 deals with the situation where the temporary emphyteusis not only provides as one given before the 21st June 1979 but also terminates before such date.

  - The two conditions which must be satisfied we mentioned them, must be satisfied both of them so the emphyteuta and the tenant, as the case may be will become entitled to exercise the rights under sub-articles 2,3,4,5.

  - The following are the two conditions.

    - The emphyteuta or tenant must on the 21st June 1979 still be in occupation of the house as his ordinary residence.

    - He must not be occupying the house under an agreement entered into by him after the expiration of the temporary emphyteusis.

  - The first condition, the emphyteuta or the tenant must on the 21st June ’79 still be in occupation of the house as an ordinary residence. In respect of the first requirement the position in relation to sub-articles 2 and 3 is clear but in respect to sub-articles 4 and 5 some clarification is necessary.

  - Firstly according to sub-article 4 after the termination of the temporary emphyteusis, the emphyteuta will be entitled to continue in the occupation on perpetual emphyteusis as long as the dwelling house is on such termination occupied by a citizen of Malta as his ordinary residence.

  - As we might recall the emphyteuta may exercise the right contemplated in sub-article 4 even if it is not the emphyteuta himself who so occupies the dwelling house on the termination of the temporary emphyteusis. However if the case falls under sub-article 7, that is the temporary emphyteusis terminates before the 21st June 1979, the position is different since according to article 7 in such case the emphyteuta may exercise the right contemplated in sub-article 4, only if on the termination of the temporary emphyteusis it was the emphyteuta himself who occupied the house as his ordinary residence and he would not be entitled to exercise the said right where the house was occupied by someone else.

  - This conclusion can be sustained because sub-article 7 says that the emphpteyuta may exercise the right contemplated in sub-article 4 if he still occupies the house as his ordinary residence on the 21st June 1979. The words still occupies imply that the emphyteuta must have occupied the house as their ordinary residence both on the termination of the temporary emphyteusis and on the 21st June 1979.

- With regards to sub-article 5, if the temporary emphyteusis terminates prior to the 21st of June 79, the right given by this sub-article may not be exercised by the occupier, the only occupier entitled to exercise such right would be the tenant, as long as he still occupies the house on the 21st of junior 1979 as his ordinary residence.

- The second condition, here one must distinguish between the case where on the 21st of June 1979 one is occupying by virtue of an agreement, entered into between the parties and the case where on the said date, one is in occupation on the basis of some factor which is extraneous to the will of the parties.

  - Doris Borg et vs Marthese Portelli et decided by the First Hall of the Civil Court 20th October 1982, and later by the Court of Appeal on the 15th of March 1991.

  - The facts of the case; defendants have granted to plaintiffs a dwelling house on temporary emphyteusis which temporary emphyteusis terminated in 1977. Following such termination the defendants had instituted an action requesting that the plaintiffs be requested to vacate the premises. In May 1979 the plaintiffs had exceeded to the defendants' request, on condition that they be allowed three months within which to vacate the premises.

  - The defendants agreed, and Borg asked the court to give a court decision on this decision taken between both parties and the in May 1979 the court accepted this reasoning and gave a court sentence. In August of 1979, Act XXIII of 1979 came into force, so we are saying that the decision was agreed upon between the two parties and they had to leave in August, when Act XXIII came into force, and then Borg opened a case saying she had the right to occupy the premises by title of by lease by virtue of article 12 (2) and (7) of the Housing Decontrolled Ordinance. The defendants Portelli on the other hand submitted that sub-article 7 was not applicable because there had been an agreement after the termination of the temporary emphyteusis.

  - The court started by quoting article 12(2) and said that by quoting article 7 sub-article (2) also applies in the case where the date of termination of the temporary emphyteusis is a date prior to the 21st June 1979 as long as the emphyteuta still occupies the house as their ordinary residence on that date and as long as he does not occupy the house under an agreement entered into by him after the expiration of the temporary emphyteusis.

  - The court said that it had to decide as to whether what took place between the parties amounted to an agreement binding the defendants to terminate the premises.

- The court said that when the court had delivered judgement ordering the plaintiffs to vacate the premises within a time limit fixed by the court at it's discretion the defendants would not have been able to claim that sub article 7 did not apply because article 14 stated that the provisions of article 12 shall have effect not withstanding any agreement undertaking promise or other act or thing contrary to or limiting or purporting to limit any of the rights conferred by it.

- The court observed that the words any other acts or things include judgements. The court said that therefore plaintiffs, Borg could not argue that they were occupying the premises by virtue of that judgement but they occupied the premises in terms of an agreement incorporated in a judgement.

- The court of appeal confirmed the judgement of the first hall. Here we have a distinction where either it was a court imposed judgement or otherwise an agreement between the parties and incorporated into the judgment, there's a distinction between one type of judgement and the other.

- From which date is the rent due?

- Whenever article 7 applies, the tenant or the emphyteuta as the case may be is bound to pay the rent or ground rent established in terms of sub-articles (2) or (4) as from the date of the termination of the temporary emphyteusis and not from the 21st June 79'

  - In Paul Zahra et vs Julie Spiteri decided by the First Hall Civil Court on 31st January 1989, the plaintiffs had guaranteed a dwelling house on temporary emphyteusis for 17 years on the 15th January 1962 to the defendant. The emphyteusis terminated on the 14th January 1979. On which date the defendant was a citizen of Malta and occupied the house as her ordinary residence. A few months later act XXIII of 79' was enacted on which date the defendant was still occupying the house as her ordinary residence and no agreement had been rendered to by her of the expiration of the temporary empyeheusis.

  - Therefore the defendant satisfied the requirements of sub-articles (2) and (7) of article 12 to be entitled to continue in occupation by a title of lease under the conditions stipulated by Chapter 158. However a problem arose as to the time from which the rent established by virtue of the said act was to start falling due, and in this case the court said that the relevant date is the date of the termination of the temporary emphyteusis the 15th of January 1979 and not the date when act XXIII of 1979 came into effect.

- We are going to sum up Article 8. As has already been explained according to sub-article (2) when a dwelling house has been developed temporary emphyteusis for a period not exceeding 30 years, if the contract has been made before 21st June 1979 and on the termination of the temporary emphyteusis the emphyteuta is occupying the house as a citizen of Malta, and occupies the house as his ordinary residence, he would be entitled to continue occupation under the lease.

- Then we also saw that according to article 3, if on the expiration of a temporary emphyteusis the dwelling house is subject to a lease, and on the termination of the temporary emphyteusis the tenant is a maltese citizen and occupies a house as his ordinary residence, the tenant will on the termination of the lease be entitled to a new lease.

- However the above mentioned is subject to what is contemplated in sub-article (8). According to this sub-article (8) in the face of any temporary emphyteusis, if such temporary emphyteusis terminates after the 21st of June 79' the emphyteuta or the tenant as the case may be occupying the house as his ordinary residence on the expiration of the temporary emphyteusis will be entitled to exercise the rights contemplated in sub-articles (2) or (3) only if he was the same person who occupied the house on the 21st of June 1979.

- Saving two exceptional circumstances.

- The first exception is contemplated in sub-article 8 (a), which contemplates the case where the person who occupies a dwelling house on the 21st of June 79' continues to ordinarily reside in the dwelling house until he dies and the person who occupies the house at the end of the temporary emphyteusis as his residence has resided with the deceased until the latter dies and qualifies as a tenant.

- A problem which arises here is the requirement that the person occupying the immoveable property at the termination of the temporary emphyteusis must at the time of death of the emphyteuta had qualified as a tenant.

- In an article entitled Rent Legislation Malta, found in the May issue number 4, Gannino Caruana Demajo states that the case contemplated in sub-article (a) of article 8 must have been met as a straightforward application of the definition off tenant for the purposes of this article of the ordnance because tenant includes certain specific members of the first tenant's family who reside with him at the time of his death.

- However as Mr. Justice Caruana Demajo points out in his article the wording is rather strange and it seems to limit the applicability of this first exception to cases where the emphyteutical grant was for a period not exceeding 16 years.

- In fact, the occupier on the expiration of temporary emphyteusis must have resided with the emphyteuta as a member of his family at the time of the tenant's death, this excludes lessees, except in the unusual case where the emphyteuta has left the house to a member of the family but remain also in occupation of the house.

- Although not a lessee, the occupier must paradoxically qualify as a tenant, the one acquired is quality as a member of the emphyteuta's family who resided with him at the time of his death only if the emphyteuta himself qualifies as a tenant and the emphyteuta is considered as a tenant only when the period of emphyteutical rights is less than 16 years.

- One should also note that when the law says that the person concerned mist qualify as a tenant the said tenant should be understood as defined by article 2 as qualified by the proviso to the said article.

  - Let's go to Salvatore Borg vs Maria Strati, decided by the Court of Appeal Inferior Jurisdiction on the 9th June 1989.

  - The following are the facts of the case, reverend Joe Mizzi took a dwelling house on temporary emphyteusis on the 3rd January 1968, for 17 years from Salvatore Borg. The temporary emphyteusis should have come to an end on the 2nd January 1985. Reverend Mizzi died on the 28th June 1982. Strati was a first cousin of reverend Mizzi and lived with him at the said dwelling house since the beginning of the said grant until he died.

  - The years of reverend Mizzi had given the dwelling house under title of lease to the defendant Stradi, on the 3rd of August 1982. The emphyteutical grant terminated to an end on the 2nd January 1985 at which time the dwelling house was subject to the said lease.

  - Strati claimed that she was entitled to continue in occupation under a title of lease by virtue of sub-articles (3) and (8) of Article 12, Chapter 158. The plaintiff claimed (Borg claimed) that Strati had no such right because at the time of the death of the emphyteuta reverend Mizzi, Strati did not satisfy the qualifications to be considered as a tenant for the purposes of article 12 chapter 158.

  - The court stated that reverend Mizzi satisfied the requirements of sub-article (8)(i) that is he continued to reside in it until his death. However the court stated that the requirements of sub article (8)(a)(ii) were not satisfied. This is because although the defendant had occupied the premises as her ordinary residence at the time of the emphyteuta's death she did not satisfy the qualifications to be

considered as a tenant of the premises for the purposes of article 12 chapter 158.

- This is because Strati was a cousin of the deceased and therefore she did not qualify for protection. Following further examination of the proviso in relation to the definition of tenant, we can refer to the case Vincent Curmi et vs Maria Carmela Galea et decided by the Court of Appeal, 6th May 1990.

- Another difficulty that arises with the definition of a tenant is whether a married child who has been widowed qualifies as a tenant under the proviso. The difficulty is whether for the purposes of the definition of tenant he or she is to be considered as married or un-married.

- The second exception, this is found in paragraph (b) of sub-article (8) of article 12 chapter 158, this is a rather obscure provision which operates only as to create a lease in favour of an emphyteuta. It does not however operate in cases where on the expiration of the temporary emphyteusis the house is subject to a lease, because on that date the house must be occupied by the emphyteuta for this area.

- The law also contemplates the following situation, on the 1st of January 1966 (for example), 'A' grants a house on temporary emphyteusis to 'B' for 20 years. On the 1st January 1971 'B' grants the same tenant to 'C' on temporary sub-emphyteusis or lease, or any other temporary title for 10 years. Therefore on the 21st June 1979 'C' would be occupying the house under a title which he derived from 'B', the emphyteuta who gave the necessary notice to the housing authority. on the expiration of the temporary sub-emphyteusis or lease or other temporary title on the 31st December 1980, 'C' gives the house back to 'B' who continues in occupation until the original temporary emphyteusis expires on the 31st December 1985.

  - On that date, 'B' will be entitled to continue in occupation under a lease from 'A' even though he did not occupy the house on the 21st June 1979. 'C' in this regard, Dr. Anthony Cuschieri vs Alfred Francica decided by the Court of Appeal Inferior Jurisdiction on the 8th of November 1991. The court of appeal confirmed the judgement given by the court of Magistrates and stated that

  - 'Kif kienet il-ligi dak iz-zmien, bl-artikolu 12(8) tal-kap 158 kien jipprovdi li fil-kaz tal-emfitewsi temporanja il-kuntratt li sar qabel il-21 ta' Gunju 79, fil-kaz tal-empitewta jew kerrej li jkun jokkupa d-dar bhala residenza ordinarja tieghu, meta taghlaq l-emfitewsi u dan ikun persuna differenti min dik li kienet tokkupa id-dar bhala residenza ordinarja taghha fil-21 ta' Gunju 1979, ghad-dispozizzjonijiet tal-artikolu 12(2) u (3) tal-kap 158 kienu japplikaw biss fil-

kazijiet imsemmija. F'dan il-kaz odjern ma kienx igib il-protezzjoni tal-ligi, u ghalhekk gie deciz li ma kienx hemm dritt fl-artikolu 12(3) tal-kap 158.'

- You can read sub-articles (9) to (12) nothing out of the ordinary.
- Which is the competent court to hear a case concerning the eviction of a defendant from an emphyteutical property?
  - In John Debono et vs Edward Galea et decided by the First Hall of the Civil Court, on the 14th April 2015, the plaintiffs asked the court to order the defendants to relinquish the possession of a property given to them under title of temporary emphyteusis upon the expiration of the 99 year term.
  - The defendants stated that the first hall did not have the required competence (razione materie) to decide the case. The court disagreed and ordered the continuation of the proceedings.
- Let's go to article 12A
  - Article 12A.
  - **12A.** This article shall apply:
  - (1) (a) on the expiration of a temporary emphyteusis of sub- emphyteusis (hereinafter in this article referred to as "the most recent emphyteusis or sub-emphyteusis") which is not one the effects of the termination of which are regulated by article 12(2)(a) or (b) or by article 12(4) or 12(5);
  - (b) of a dwelling house which at the time of the expiration of the most recent emphyteusis or sub-emphyteusis:
  - (i) is occupied by a citizen of Malta as his ordinary residence; and
  - (ii) is subject to another emphyteusis or sub- emphyteusis (hereinafter in this article referred to as "the preceding emphyteusis or subemphyteusis") whether perpetual or temporary.
  - (2) On the expiration of the most recent emphyteusis or sub- emphyteusis the emphyteuta or the sub-emphyteuta who satisfies the requirements of subarticle (1)(b)(i) shall be entitled to continue in occupation of the dwelling house under a lease from the person holding the preceding emphyteusis or sub-emphyteusis at the same rent and under the same conditions applicable according to article 12(2)(i), (ia) and (ii) which shall apply mutatis mutandis.

- (3) On the expiration of the preceding emphyteusis or sub- emphyteusis the lease mentioned in subarticle (2) shall remain in force for the same rent and under the same conditions as mentioned in subarticle (2) between the tenant and the person who from time to time would, were it not for the tenancy, be entitled to the vacant possession of the house.

- (4) The provisions of this article shall also apply in all cases where although the most recent emphyteusis or sub-emphyteusis shall have expired before the 1st July 2007 the person who was the emphyteuta or the sub-emphyteuta in the most recent emphyteusis or sub-emphyteusis still occupies the house as his ordinary residence on the said date.

- (5) When on the expiration of the most recent emphyteusis or sub-emphyteusis the dwelling house is subject to a lease the provisions of article 12(3) shall apply mutatis mutandis

- (6) The rights given by this article to the emphyteuta and to the sub-emphyteuta of the most recent emphyteusis or sub-emphyteusis shall, where the said emphyteuta or sub-emphyteuta shall have died before the 1st July 2007, be exercisable by the person who resided with the said emphyteuta or sub-emphyteuta at the time of his death and had at that time all the other qualifications to be treated as a tenant for the purposes of article 12.

- (7) Where in the case of a most recent emphyteusis or sub- emphyteusis which expires after the 1st July 2007 the emphyteuta, the sub-emphyteuta or the tenant occupying the house as his ordinary residence on the expiration of the most recent emphyteusis or sub-emphyteusis is a person different from the person occupying the house as his ordinary residence on the 1st July 2007 the provisions of this article shall apply only in the cases mentioned in article 12(8)(a) and (b) which paragraphs shall apply mutatis mutandis to the emphyteusis and the sub-emphyteusis regulated by this article, provided however that references to the "21st June 1979" are to be read and construed as references to the "1st July 2007", references to "the emphyteusis" are to be read and construed as references to "the most recent emphyteusis or sub-emphyteusis" and references to "the emphyteuta" shall be read and construed accordingly, and the reference to the "30th September 1979" shall be read and construed as a reference to the "31st December 2007"

- Article 12A deals with dwelling houses subject to more than one emphyteusis. We are just going to mention a few cases of conjoint places.

  - Find Buttigieg vs Easby, up until 2013, as the law had just changed, everyone copies one judge, in 2013 there was someone who stated that things should

have been different in 2016. Up until now, judges still follow the 2013 decision even though there were other cases that say the opposite of the 2013 decision.

- Let's go back to 12A. The first case regarding 12A hija Movument Azzjoni Socjali kontra Noel Borg decided 30th September 2010, iddecidiet, spjegat iktar min kawzi ohrajn il-kelma 'ordinary residence' li ghamilna fil-bidu,
- Article 12 huwa simili hafna ta' 12A.
  - Ddin il-kawza qalet li 'Dawn jinkludu l-irqad u mistrieh regolari fil-fond in kwistjoni, il-fatt li fil-fond in kwistjoni jinzammu l-oggetti personali u l-hwejjeg ta' min jippretendi li ghandu residenza, il-fatt illi f'din ir-residenza huwa jghaddi z-zmien liberu tieghu fejn hu jipprattika d-delizzji tieghu u jaghmel ix-xoghol personali tieghu. Tindika wkoll il-kelma 'residenza', il-fond fejn wiehed jippranza u jiccena, fejn wiehed jircevi l-korrispondenza u anke fejn jircevi l-hbieb, u fejn il-hbieb u terzi jistennew li jsibu lil min hu hemm residenti.'
- Din hija definizzjoni tajba ghal xi tfisser ordinary residence ghax hija definizzjoni prattika.
- Din is-sentenza ghamlet referenza ghal sentenza ohra li diga rajna,
  - Coppini vs Vella Bonnici, 8th February 1971.
- We have
  - Angela sive Gina Balzan vs Hilda Lateo Matteo decided by the First Hall Civil Court 24th March 2015.
- And the court stated the following
  - 'Illi fil-fehma ta` din il-Qorti l-konnotati ta` residenza ordinarja huma derivati mill-fatti kollha f`daqqa riferibbli ghal persuna u fond. Dawn huma derivati mill-assjem tal-provi, u l-aktar influwenti huwa l-fatt ta` fejn il-persuna regolarment torqod u zzomm hwejjigha, inkluz id- dokumenti personali. Naturalment fil-post ta` residenza ordinarja persuna zzomm dak li abitwalment tilbes, kif ukoll dak li hu necessarju ghall- passatempi principali taghha. Normalment residenza ordinarja jkun fiha l- possibbilta` li bniedem jghaddi l-hin liberu tieghu, jaghmel il-kontijiet privati, jibghat l-ittri, izomm l-income tax returns, u kopji tal-kuntratti relattivi ghall-proprjeta` tieghu. Fir- residenza ordinarja bniedem izomm l-oggetti ta` valur sentimentali. Izda min-naha l-ohra mhux necessarju li bniedem jorqod hemmhekk kuljum. Il-fatt li bniedem ikollu villeggjatura ma jeskludix l-ewwel post milli tkun ir-residenza ordinarja. Normalment id-dokumenti tal-hajja civili bhal I.D. Card, registrazzjoni ma` Registru Elettorali, mal-Korporazzjonijiet, jikkostitwixxu prova izda mhux necessarjament prova

konklussiva (ara wkoll, Prim`Awla, Imhallef Valenzia, 26 ta` Ottubru, 1998, Borg Costanzi vs Debarro ; u Calleja vs Ellul, Appell, 29 ta` Novembru, 1996).'

- The fact that you have your ID Card on a place does not necessarily mean that that is your place of ordinary residence.
- A couple of more judgements
  - Carmelo Agius vs John Agius, Court of Appeal Inferior 2nd December 1994.
  - Joseph Barbara vs Nathalie Scicluna, First Hall Civil Court, 18th May 2010.
  - Borg Costanzi vs Navarro First Hall Civil Court, 26th October 1998.
  - Calleja vs Ellul, Court of Appeal, 29th November 1996.
- In 2018 following a number of constitutional cases and decisions article 12B was introduced
  - <u>Article 12B.</u>
  - **12B**. (1) When a person is in occupation of a dwelling-house on the basis of a title of lease, which may have also been established on the basis of a preceding title of emphytheusis or sub-emphyteusis, which commenced before 1st June 1995 through the application of the provisions of this Ordinance, the following conditions shall, provided they are inconsistent with the provisions of the said articles of this Ordinance, apply in respect of such lease from 1st June 2021 notwithstanding the provisions of the said articles of this Ordinance or of any other law.
  - (2) The lessor shall be entitled to file an application before the Board requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1st January of the year in which the application is filed and in order to establish new conditions regarding the lease.
  - (3) (a) When the request is made by the lessor in accordance with sub-article (2) and the leased tenement is a dwelling-house, the Housing Authority shall be notified with the application and shall have the right to participate fully as intervenor in the proceedings;
  - (b) the tenant shall in any case be entitled to the benefit of legal aid provided by the Housing Authority in proceedings filed in terms of this article:

- Provided that this shall not prejudice the rights of the lessor who shall be entitled to the benefit of legal aid provided by the Legal Aid Agency in proceedings filed in terms of this article if he is not in full-time gainful employment;

- (c) at the initial stages of the proceedings the Board shall conduct a means test of the tenant, which shall be based on the means test provided for in the Continuation of Tenancies (Means Testing Criteria) Regulations issued under article 1622A of the Civil Code and any regulations that may from time to time replace them. The means test shall be based on the income of the tenant between the 1st January and the 31st December of the year preceding the year in which the proceedings are commenced and the capital of the tenant on the 31st December of the said year. The means test shall be conducted with particular reference, inter alia, to regulations 4 to 8 of the Continuation of Tenancies (Means Testing Criteria) Regulations which shall apply mutatis mutandis:

- Provided that when the lessor has the suspicion that the tenant may have transferred his property, both movable or immovable, with the intention of hiding these assets, he shall have the right to request that the means test on the capital assets shall go back to the 1st January 2021 and when it is established that the tenant has disposed of these assets for malicious purposes, the Board shall nonetheless take them into consideration in its means test.

- (4) Where the tenant does not meet the income and capital criteria of the means test the Board shall, after hearing any evidence and submissions produced by the parties, give judgement allowing the tenant a period of two (2) years to vacate the dwelling-house. The compensation for occupation of the dwelling-house payable to the lessor during the said period shall be determined by the Board as the case may be.

- (5) Where the tenant meets the income and capital criteria of the means test the Board shall proceed according to the following sub- articles.

- (6) The Board, in any case, after summarily hearing the parties and examining any evidence which it considers relevant, may also order that an increased amount of rent be paid during the hearing of a pending application filed in terms of sub-article (1).

- (7) When the rent amount is established in accordance with sub- article (2), that rent may increase according to the regulations published by the Minister responsible for housing from time to time:

- Provided that the demand for this increase shall be without prejudice to the lessor's right to request the revision of the rent in accordance with sub-article (2), after a period of six (6) years from when the new rent would have been fixed in accordance with the same sub-article (2), unless an agreement is reached between the parties.

- (8) The lessor may, whenever it transpires that the economic circumstances of the tenant have changed, file a new application before the Board wherein he requests that a new means test of the tenant is conducted according to paragraph (c) of sub-article (3) and if the tenant does not satisfy the income and capital assets criteria of the means test, the Board shall decide the case in terms of sub-article (4).

- (9) The provisions of this article shall also apply to cases wherein a community of property on the dwelling-house exists and the tenant is a co-owner of the same dwelling-house. When this is the case the Board shall consider the tenant's share in the leased dwelling-house and subtract any part of the new rental amount payable by him to the other co-owners proportionally.

- (10) The provisions of this article shall also apply in every case when the lessor has commenced proceedings with the aim of requesting an increase in the rent under this law, as was applicable before the 1st June 2021.

- This new part of the law was introduced by act XXVII of 2018 and it was as a response to court judgments of the European Court of Human Rights mainly

  - Amato Gauci vs Malta application number 47045/06 15th September 2009.

  - Aquilina vs Malta 3851/12 final judgment 20th April 2015.

  - Cassar vs Malta 50570/13 final judgement 30th April 2018.

- In order to address all the court findings in these judgements, further amendments were introduced, amendments to the housing decontrol ordinance, by the amendment of article 12B, Act XXVII of 2018 which came into force on the 1st of August 2018. These provide amongst others that 12B(2) owners are entitled to file an application before the Board requesting that the rent be reviewed to an amount not exceeding two percent (2%) per annum of the free and open market value of the dwelling-house on 1st January of the year during which the application is filed and the new conditions are to be established in order to regulate the.

- The Regulation Board must means test the tenant in accordance in the continuation of tenancies with means testing criteria regulations, subsidiary legislation 16.11, if the means test is not met by the tenant the tenant has to

vacate the premises not later than 5 years from the judgement handed by the Rent Regulation Board and during the period of 5 years the tenant has to pay the owner double the rent payable. This was 12B(4)

- 12B(6), If the means test is matched by the tenant, the Rent Regulation Board shall establish the revised rent by giving new account to the means made by the tenant and to any disproportionate burden particular to the landlord. The Rent Regulation Board may also order the increase in the rent pending the hearing of the application.

- 12B(7), The revised rent shall be applicable for a period of 6 years after which period it shall be subject to being revised unless the parties mutual agreement.

- 12B(8), in the event of a material change in circumstances the owner may file an application before the Rent Regulation Board requesting the revision of the conditions, and in the case that the owner has a personal deed the owner may also demand the dissolution of the lease.

- Some court cases regarding article 12B. 12B is an important article because it tries to establish (not necessarily manages) some form of equality between the landlord and the tenant, equality in the sense that the landlord receives fair compensation and the tenant has security of tenure to remain in that property. Up till now the constitutional court has never ordered the eviction of an individual from a dwelling house because it says that it is not its competence to do so but the competence is of the Rent Regulation Board. Don't forget that the constitutional court, here's court cases dealing with the breach of human rights amongst other things but there isn't a limit as to its powers.

    - For example if there is ab reach just to give an idea of the powers of that court, if there is a breach during civil proceedings, a breach occurred, judgement was given and an appeal was lodged and lost and then you proceed to go to the constitutional court, first it goes to the civil court and then it goes to the constitutional court. If one of those courts finds a breach heard during the first re-hearing before the first hall the constitutional court can also say that the proceedings are sent back to the first hall, and continue from the date before that breach occurred. So if a breach occurred for example on the 15th March 2015, and now we are in 2023. The constitutional court can say go back to 2015 before the breach occurred and continue the case from there so that is the power from which the constitutional court has.

- The constitutional court has a lot of powers and until now it's always been stated that it is the competence of the regulation board to order the eviction from a property which was converted.

- The constitutional court will say that the person holding the lease is not entitled to use article 12(2) of chapter 158 and the defendant in the constitutional court says you can't use that conversion in your advantage it is stating that you are going to be evicted, later rather than sooner.

  - Catherine Cauchi vs Josephine Borg, decided by the Rent Regulation Board 28th October 2018 (reference 91/2013/1/AF)

  - By means of a judgement of the constitutional court given on the 2nd March 2018, in the names Thomas Cauchi vs Avukat Generali, the court declared that

  - '. Ma huwiex kompitu ta 'din il-qorti li tordna l-iżgumbrament, għax huwa kompitu ta 'qorti taġ 'urisdizzjoin ċivili li tgħid jekk il-konvenuta għandhiex titolu biex iżżomm il-fond. Li għandha tagħmel din il-qorti huwa li tgħid illi l-applikazzjoni tal-art. 12(2)(b)(i) tal-Kap. 158 iwassal għallksur tal-jedd tal-atturi għat-tgawdija taħ 'wejjiġhom, bi ksur tal-art. 37 tal-Kostituzzjoni u l-art. 1 tal-Ewwel Protokoll; billi liġi li tkun inkonsistenti mad-drittijiet fondamentali mħarsa taħt il-Kostituzzjoni jew taħt il-Konvenzjoni għandha, safejn tkun inkonsistenti, tkun bla effett, ilkonvenuta Borg ma tistax tinqeda bl-art. 12(2)(b)(i) tal-Kap. 158 biex tivvanta drittijiet fuq il-fond li dwaru saret il-kawża.'

- Hawn il-qorti kostituzzjonali qed tghid illi Borg did not go in front of the Rent Regulation Board and state I have a right to stay in this property because the law gives me that right, the law being 12(2) of chapter 158. So the constitutional case said that she could not utilise that particular law because the rent being payable was in breach of the owner's human rights.

- Subsequently to this case article 12D was introduced in chapter 158 and Cauchi proceeded to ask the Rent Regulation Board for the eviction of Borg and/or an increase in rent.

  - <u>Article 12D.</u>

  - **12D**. Where the lessor has resumed possession of the dwelling- house under the provisions of article 12C and it is proved that there has been simulation or fraud, the lessor shall be bound to pay, in lieu of damages, to the tenant who has quitted the dwelling-house a penalty not exceeding ten thousand euro (€10,000) to be fixed by the Board.

- So to go onto the facts of this case,

  - By means of a contract of temporary emphyteusis dated 3rd February 1983 Cauchi had given to Peter Barbara a dwelling house for 21 years, (so till 2004). The said Barbara was also given a right to transfer the property, indeed, the

dwelling house was transferred to various other people until it was eventually transferred to Carmel and Josephine Borg. The latter separated and Carmel Borg transferred obviously the rights on the dwelling house to his wife on the deed of separation. At the termination of the temporary emphyteusis Josephine Borg was a citizen of Malta and an ordinary resident in the dwelling house and thus by means of article 12(2), of Chapter 158 the temporary emphyteusis upon termination was converted to a lease. The rent payable was of €273.89c in 2016.

- The first issue which the Rent Regulation Board had to decide was whether article 12D was applicable to the case since the article of the law had come into effect after the constitutional court had declared that Borg could not use the dispositions of article 12(2)(b)(i) of chapter 158. The Rent Regulation Board decided that article 12D applied to this case even in view of what sub-article (11) of article 12B states.

- What the legislator did in here, because there were a lot of court judgements now stating that the tenants/lessees could not utilise the right to convert, the legislator said that any judgement stating that, cannot take effect before the owner goes to the Rent Regulation Board so that he may increase, first ask for the increase in rent.

  - The Rent Regulation Board then went on to decide the case that since Borg had limited financial means it would not order the eviction but instead raised raised the rent payable by 1% for the first two years and thereafter by 1.25% of the value determined by the members of the Rent Regulation Board. (1% because the law states not more than 2% so the magistrate here decided that the rent had to be 1% of the value).

- Up till now there were some judgements also attacking article 12B, some constitutional cases because and it doesn't necessarily mean the fact that there's an article in the law it doesn't mean that that article is foolproof.

  - Anthony Aquilina vs Michael Camilleri decided by the Rent Regulation Board, 28th October 2019. 122/18.

  - The Rent Regulation Board taking into consideration all the circumstances of the case decided against the eviction of the tenants but increased the lease from €1,888 per annum for €5,400, for the first two years per annum and increase equivalent to 1.25% and then for €6,600 per annum for the remaining years equivalent to an increase of 1.5% of the value of the freehold value of the property on a global market.

- Iana Said vs Joseph Cauchi decided by the Rent Regulation Board, 12th December 2019 18/2019

- Whereby the rent was increased from €334 per annum to €3,150 for the first two years, an increase of an equivalent to 1.5% of the value, of the free capital market value and then to €3,675 for the remaining four years, 1.75%.

- Pierre Cassar vs Joseph Grima 16th December 2019.

- The increase in this case was for 1.75% for the first two years and then 2% for the remaining 4 years.

• The last case to be dealt with is

- Paul Cuschieri vs Joseph Grima et decided on the 13th February 2020.

- The respondents in this case satisfied the requirements of the continuation of tenancies means test regulations, however the main difference between this case and the others was that the respondents in this case had a substantial amount of investments more than half a million euros, whilst the other respondents in the other mentioned cases had few or no means at all. In this case the rent regulation board whilst deciding against the request of the applicant for the eviction of the respondents decided that the respondents taking into consideration that they have the means to pay for amount established by law that is 2% of the open market free hold value with immediate effect proceeded to so declare and increased the rent from €650 per annum to €7,000 per annum.

• Next week we will see the constitutional aspects, (check on e-courts and search for Kap. 158)

15th May 2023

Lecture 4.

- Illum se naghmlu Article 37 tal-kostituzzjoni, protection from deprivation of property without compensation, u article 1 of protocol 1 right to property.

- Article 37.

- **37**. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition -

- (a) for the payment of adequate compensation;

- (b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

- (c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

- Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

- (2) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property -

- (a) in satisfaction of any tax, rate or due;

- (b) by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;

- (c) upon the attempted removal of the property out of or into Malta in contravention of any law;

- (d) by way of the taking of a sample for the purposes of any law;

- (e) where the property consists of an animal upon its being found trespassing or straying;

- (f) as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;

- (g) by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up or liquidated;

- (h) in the execution of judgments or orders of courts;

- (i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

- (j) in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain or the rights of succession competent to the Government of Malta; or

- (k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon -

- (i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or

- (ii) of agricultural development or improvement which the owner or occupier of the land has been required and has without reasonable and lawful excuse refused or failed to carry out.

- (3) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.

- (4) Nothing in this article shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by any legislature in Malta.

- Protocol 1, Article 1

- Protection of property

- **1**. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

- If you see article 37, it’s very long but the ripen convention a it’s just two paragraphs, meaning that the european convention is even wider than our article 37 of our constitution. Don’t forget the european convention Act is a special law it’s a sui generis law, more important than other laws but it is not more important than the constitution.
- So you might find situations where a particular law is in breach of the European Convention and not in breach of the law or vice versa. With regards to important cases by the ECHR, there are a few, which are very important to read.
- There are guide notes on the European Convention, so if you go on the guide notes to the European Convention there is Malta mentioned around 37 times.
- The following are the important cases according to Dr. Galea to the ECHR.
  - Amato Gauci vs Malta, 47045/2006, 15th September 2009.
  - Apap Bologna vs Malta, 46931/2012, 30th August 2016.
  - Azzopardi vs Malta, 16467/2017, and 2208/2020 9th June 2022.
  - Bradshaw and others vs Malta, 37121/2015, 23rd October 2018.
  - Cauchi vs Malta, 14013/2019, 25th March 2021.
  - Edwards vs Malta, 17647/2004, 24th October 2006.
  - Frendo Randon and others vs Malta, 2226/2010, 22nd November 2011.
  - Fleri Soler and Camilleri vs Malta, 35349/2005, 26th September 2006.
  - Marshall and others vs Malta, 79177/2016, 11th February 2020.
  - Saliba vs Malta, 4251/2002, 8th November 2005.
  - Schembri and others vs Malta, 42583/2006, 10th November 2009.
  - Shorazova vs Malta, 51853/2019, 3rd March 2022.
  - Vassallo vs Malta, 57862/2009, 11th October 2011.
  - Zammit and Vassallo vs Malta, 43675/2016, 28th May 2019.
  - Zammit et vs Malta, 16756/1990, 12th January 1991. (Din l-ahhar wahda hija decizjoni tal-Commission u mhux tal-ECHR).
- Bhala constitutional cases ta' Malta, hemm

- Galea Testaferrata et vs Prime Minister, First Hall Civil Court, 3rd October 2000 application number 348/91/2.
- Galea et vs Briffa, et Constitutional Court, 30th November 2001 application number 303/1990/1.
- Amato Gauci vs Avukat Generali et, Constitutional Court, 26th May 2006, application number 37/2001/1.
- Bugeja et vs Avukat Generali et, Constitutional Court, 7th December 2009, application number 1/2002/1.
- Bugeja vs Calleja nomine et, Constitutional Court, 11th November 2011, application number 1508/2000/2.
- Buttigieg et vs Avukat Generali et, Constitutional Court, 6th February 2015, application number 70/2012/1.
- Borg vs Avukat Generali, Constitutional Court, 11th July 2016, application number 25/2013/1.
- Cauchi et vs Avukat Generali et Constitutional Court, 2nd March 2018, application number 91/2013/1.
- Barbara et vs Vella et Court of Appeal (Normal Court of Appeal), 27th March 2020, application number 33/2007.
- Psaila vs Avukat Generali Constitutional Court, 27th March 2020, application number 12/2018.

• We’re going to go through the judgements and take it from there.

- Let’s go through the maltese judgements first.

• The first case we’re going to refer to is the Galea Testaferrata Case vs Prime Minister 3rd October 2000.

• This judgement was appealed but the Constitutional Court on the 16th October 2006 declared that the appeal was deemed to have been deserted since not all the parties were notified within the time limits stipulated by law.So we only have the judgement of the first hall to go by.

• The Galea Testaferrata stated that sub-articles (4) and (5) of article 12 chapter 158 ran counter to the constitution and the European Convention Act.

- Sub article (4) gives the right to the temporary emphyteuta if the conditions are satisfied to convert the temporary emphyteusis to the perpetual one whilst sub-article (5) gives that right to the occupier if the emphyteuta does not exercise the right granted to him in sub-article (4) within 6 months of the date such right is exercisable

- The first hall accepted the articles put forward by Galea Testaferrata and declared that these sub-article (4) and (5) were in breach of article 37 of the constitution. (For the reasoning go through the judgements). So that was the first judgement which stated that there was a breach of article 37 of the constitution, that was the important part.

- Galea vs Briffa, Galea stated that sub-article (2) was in breach of article 37, the First Hall declared that there was no breach of article 37, the Constitutional Court whilst agreeing with the First Court that there was no breach of article 37 declared that article 37 of the Constitution did not apply in this case. So, the First Court stated that Galea Testaferrata stated that article 37 was applicable, Galea vs Briffa, the first hall stated that the Galea Testaferrata case fell through because not everyone was notified so we only had a judgement at that particular point in time of the First Court.

- Galea vs Briffa the First Court said there was no breach of article 37 and the Constitutional Court went a step further saying that article 37 does not apply saying and quoting “hawn non si tratta ta ’tehid ta ’proprjeta ’jew ta ’jedd fuqha taht xi forma jew ohra izda ta ’limitazzjoni tal-uzu tal-istess proprjeta”

- Galea Testaferrata dealt with sub-articles (4) and (5), Galea Briffa dealt with sub-article (2), il-conversion min cens temporanju ghall-kera.

- So the constitutional court said that the fact that there was no conversion did not amount to a breach because the property was not being taken but there was a limitation of the use, the owner could not use it again after the temporary emphyteusis expired because there was the rent obviously, at the end of the day the property still belonged tot the owner so that’s why the Constitutional Court said that article 37 was not breached.

- Amato Gauci vs Avukat Generali, the Court stated that sub-article (2) of article 12 was in breach of article 37 of the Constitution and article 1 of Protocol 1 so now we have that difference. The constitutional court with reference to article 1 of protocol 1 stated that this article of the law establishes 3 principles.

- Tinsewx, Amato Gauci vs L-Avukat Generali, meta marru l-ewropa tghat hasla lil imhallfin tal-qorti kostituzjonali.

- Three principles, the first which is expressed in the first sentence of the first paragraph ta' article 1 ta' protocol 1 and is of a general nature, lays down the principle of peaceful enjoyment of property.
- The second rule in the second sentence of the seams paragraph covers deprivation of possessions and subjects it to certain conditions.
- The third rule contained in the second paragraph recognises that the contracting states are entitled amongst other things to control the use of property in accordance with the general interest.
- These rules are not distinct, in the sense of being unconnected. The second and third rules which are concerned with particular instances of interference with the right to peaceful enjoyment of property are to be construed in the right of the general principle laid down in the first rule.
- The constitutional court stated
  - "Issa, fil-fehma kunsidrata ta 'din il-Qorti, l-Artikolu 12 tal-Kap. 158 ma jizvestix lis-sid mit-titolu tal-proprjeta`, pero` jirristringi l-uzu tal-proprjeta` peress li l-enfitewta nghata d-dritt mil-ligi li jibqa 'fil-pussess tal-fond b'titolu ta 'kera. Fil-fehma tal-Qorti din hija restrizzjoni li l-legislatur seta 'jaghmel fl-interess generali proprju sabiex jipprotegi l-inkwilini li kienu qed jokkupaw post bhala dar ta ' abitazzjoni b'titolu ta 'cens jew sub-cens milli jigu sfrattati appena jiskadi l-perjodu ta 'dak ic-cens jew sub-cens; u ghalhekk f'dan is-sens tali mizura legislattiva tinkwadra prima facie taht it-tielet principju.
- And the constitutional court continued
  - "Jidher ghalhekk li l-margini ta 'apprezzament tal- Istat huma wiesa 'hafna, iktar u iktar fejn bhal kaz odjern l- iskop tal-ligi huwa biex tikkontrolla l-uzu tal-proprjeta" 'skond l-interess generali".
- Again the Constitutional Court in 2006 declared that article 37 of the constitution does not apply as the conversion from temporary emphyteusis to rent was no tantamount to the taking of property forcefully. With regards of article 1 Protocol 1 it also found no violation of Amato Gauci rights had occurred. This decision was obviously revoked (of the Constitutional Court) by the European Court of Human Rights in its judgement of the 15th September 2009.
- Il-qorti ma kienitx qed tidhol fil-punt ta meta jkollok conversion, il-qorti ma kienitx qed tidhol fl-ammont, izda principji generali.
- Bugeja vs L-Avukat General 7th December 2009, Mrs. Bugeja stated that sub-articles (4), (5), (6) of article 12 were in breach of her fundamental human rights

as protected by article 37 of the constitution and article 1 protocol 1 of the European Constitutional Act. The Constitutional Court declared that Bugeja's fundamental human right to enjoyment of property under article 37 of the constitution was not in breach as this latter article of the law did not contemplate the forced control of property but only the forced taking of property.

- Mela Bugeja vs L-Avukat General nistghu nqablbuha ma ta' Galea vs Testaferrata, Galea Testaferrata fit-2000 qalet li kien hemm breach t'article 37 Bugeja vs L-Avukat Generali fl-09, the Constitutional Court for the first time declared that there was no breach of article 37.

- The court reasoned that

  - 'Din il-Qorti, però, ma taqbilx mal-pretensjoni tal- appellanti, u dana billi, kif sewwa rrimarkat l-ewwel Qorti fis-sentenza appellata, bil-konversjoni tat-titolu ta 'enfitewsi minn wiehed temporanju ghal wiehed perpetwu d-dritt ta 'uzu u ta ' tgawdija favur l-enfitewta, originarjament koncess mis-sid, gie mtawwal in perpetwu però id-drittijiet reali tal-padrun dirett baqghu mhux mittiefsa, inkluz id-dritt tieghu li jitlob l-esekuzzjoni tal- koncessjoni enfitewtika u r-radd lura f'idejh tal-proprjetà f'kaz li l-enfitewta jikser xi kundizzjoni kuntrattwali jew imposta fuqu bil-Ligi.'

- The constitutional court also stated that

  - "Barra minnhekk, l-eventwali fidi tac-cens ai termini tal-Artikolu 1501 tal-Kodici Civili ma jwassalx ghat-telf awtomatiku tad-drittijiet reali kollha tal- padrun dirett fuq il-proprjetà, kif donnu pretiz mill- appellant."

- X'qieghda tghid hawn? Bugeja vs AG, mela hawn qed nghidu ghar-rigward ta article 37 constitution, il-qorti tghid x'jigri meta cens temporanju jigi cens perpetwu u nifdih, x'jigri mil kundizzjonijiet l-ohra, x'jigrilhom? Originarjament kien hemm il-kundiizzjonijeit fil-kuntratt, illi jiena per-ezempju ma nistax nibni iktar min sular l-'altus non tellendi', li ma nistax nib per ezempju min mitejn metru kwadru mill-art kollha li ghandi, li rrid inhalli sqaq vicin id-dar, whatever any other condition, kundizzjoni ohra tkun versu l-hlas ta cens ta' €50 fis sena. Meta nifdi jiena, x'inkun qed nifdi meta nidi c-cens, ghax issa c-cens gie perpetwu, ghalfejn tkun qed tifdi dawk il-kundizzjonijiet? Meta nkun irrid niddepozita l-flus il-qorti ghax is-sid ma jkunx irid jaccetta li naghmlu kuntratt ghallura nagghmillu cedola, jiena x'inkun qed inpoggi l-qorti biex nibni? Il-flus min fejn gibe l-ammont li rrid niddepozita? Mil-kuntratt ghax hemm miktub versu l-hlas ta 50 euro tac-cens, imma l-kundizzjonijiet l-ohra hemm xi hlas maghhom? Mela allura li qieghda tghid il-qorti u sentenzi qed jghidu ukoll, mea tifdi xi tkun qed tifdi? Il-kundizjonijiet tal-hlas. Jekk jiena ghandi l-altus non tellendi, is-servitur li jiena ma nistax nibni izjed min sular, mela tajtek

Wicca art fl-1890 ghal mitt sena, imbghad tista tifdi, jew tghajtielek in perpetwu fl-1890,

- il-ligi filfatt, ammont ittik, jekk fil-kuntratt mhmm xejn inti trid tifdi bil-5%, ikun hemm l-ammont x 20 jekk hekk tfisser 5%, jigifieri jekk hemm €20/€50 cens perpetwu, inti tifdi, tiehu id-dirett dominjum ta dak ic-cens b'€1,000 pero l-kundizzjonijiet l-ohra hemm ha jibqghu ghax inkella ghalxejn dawk il-kundizzjonijiet, u l-qroti kostitutzjonali hekk tghid, meta jkun hemm il konverzjoni min cens temporanju ghal cens perpetwu bic-Chapter 158, inti kull ma qieghed tifdi huwa l-ammont tal-flus m'intix qed tifdihom il-kundizzjonijiet l-ohra u allura la m'intix tifdi il-kundizjonijiiet l-ohra, is-sid originali dejjem se jibqalu xi ftit ta' kontrol jekk inti tikser wahda mill-kundizzjonijiet u tibni hames sulari, tista tmur il-qorti u tghid lill-qorti ggieghelu jwaqqa dawk l-erbgha sulari, jew inkella biex jigi xolt il-kuntratt ta' cens. U l-qorti hekk qieghda tghid, peres li s-sid, il-padrun dirett qed jibqalu dawk id-drittijiet allura m'hemmx breach ta article 37.

- Anke hawn diga messhom irrealizzaw li article 37 was in breach, but they said that it wasn't. However the constitutional court peress li kienet ghadha kif qalghet il-hasla fuq ta' Amato Gauci qalet ili under article 1 protocol 1 of the European Convention Mrs. Bugeja's fundamental human rights were breached in this regard, it started by saying

  - "Fil-fehma ta 'din il-Qorti, dan ir-rekwizit ta 'proporzjonalità irid dejjem jirrizulta sabiex l-intervent ossia interferenza tal-Istat fit-tgawdija tal-proprjetà tal-privat ma tammontax ghall-vjolazzjoni tad-dritt fondamentali protett fl-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni.

  - "l-effett legali u prattiku tal-Artikolu 12(4), (5) u (6) tal-Kap.158 tal-Ligijiet ta ' Malta hu li l-padrun dirett ma jistax jiehu pussess fiziku tal- proprjetà tieghu in kwantu tigi soggetta ghat-titolu ta 'enfitewsi perpetwa favur ic-censwalist, bil-possibilità tal- fidi tac-cens a tenur tal-Artikolu 1501 tal-Kodici Civili li jwassal ghat-temma ta 'dawk id-drittijiet tal-padrun dirett konsegwenzjali ghac-cens.

- Taht article 37 qed jghidu le ma jistax jigrilek hekk, taht article 1 protocol 1 qed jghidu iva jista jigrilek hekk

  - "Il-korrispettiv li jiehu l-padrun dirett ghal dan il-kontroll ta 'uzu tal-proprjetà tieghu huwa cens li jkun daqs sitt darbiet ic-cens li kien jithallas minnufih qabel il-konversjoni, liema cens jizdied kull hmistax-il sena b'daqstant mic-cens kurrenti, li jkun ammont li ma jkunx izjed minn dak ic-cens, li jirrapprezenta bi proporzjon mieghu z-zieda fl-inflazzjoni minn meta l-imsemmi cens ikun gie stabbilit l-ahhar."

- So hawnhekk qed jghidu taht article 37, the fact that you redeemed the ground rent there's no breach taht article 1 protocol 1 the fact that you redeem and even if you don't redeem there's a breach. Fl-istess sentenza.

- Bugeja vs Calleja, l-istess il-breach kien qieghed jghid li qieghed f'sub-article (4) ta' article 12 u article 1 tal-Protocol. The constitutional court with regards to article 37 of the constitution stated

  - "Din il-qorti, f'sentenza li kienet tat fis-7 ta 'Diċembru 2009 in re Josephine Bugeja et versus Avukat Ġenerali, kienet qalet illi ma hemmx teħid ta 'proprjetà meta ċens temporanju jiġi konvertit f'wieħed perpetwu, u għalhekk każ bħal dak ma jintlaqatx mill-art. 37 tal-Kostituzzjoni. Illum, iżda, din il-qorti hija tal-fehma illi ma hux għalkollox korrett illi tgħid illi każ ta 'konverżjoni ta 'ċens temporanju f'wieħed perpetwu ma jintlaqatx bl-art. 37 tal-Kostituzzjoni, li jħares ukoll kontra t-teħid ta 'kull "interess fi jew dritt fuq proprjetà ta 'kull xorta li tkun. Meta għalaq iċ-ċens temporanju s-sid kellu jikseb il-proprjetà sħiħa tal- immobbli; bis-saħħa tal-liġi, iżda, jitteħidlu għal dejjem l- utli dominju – sehem sostanzjali mill-jedd ta 'proprjetà – u għalhekk b'ebda mod ma jista 'jingħad illi ma ttehidlu ebda interess jew dritt fuq il-proprjetà. Essenzjalment, mela, kull teħid ta 'ius in re jintlaqat mill-37 tal-Kostituzzjoni."

- Qed naraw shift lejn li nghidu article 37, there was a breach of article 37 of the Constitution. The constitutional court continued staying

  - "Taħt l-art. 37, imbagħad, it-teħid ta 'proprjetà jew ta 'ius in re ieħor jista 'jsir biss bis-saħħa ta 'liġi illi, inter alia, tipprovdi għall-ħlas ta" 'kumpens xieraq". Ma hemmx ħtieġa għal wisq kliem jew wisq ħsieb biex tgħid illi kumpens ta 'euro u ħamsa u sebgħin ċenteżmu (€1.75) fis-sena għal proprjetà li tiswa aktar minn miljun euro taħt ebda kriterju ma jista 'jitqies kumpens xieraq. Il-jeddijiet imħarsa taħt il-Kostituzzjoni għandhom ikunu "prattiċi u effettivi", iżda l-pratiċità u l-effikaċja ta 'jedd li jista 'jittieħed kif jittieħed il-jedd tal-konvenut fil-każ tallum bis-saħħa tal- art. 12 (4), (5) u (6) tal-Kap. 158 huma biss illużjoni" … u ghalhekk …

  - "Fil-fehma ta 'din il-qorti, għalhekk l-applikazzjoni tal- art. 12 (4), (5) u (6) tal-Kap. 158 fil-każ tallum tkun bi ksur tal-jedd tal-attur imħares taħt l-art. 37 tal-Kostituzzjoni, u l- aggravji relativi tal-attur u tal-Avukat Ġenerali huma miċħuda".

- The constitutional court had also this to say with regards to Article 1 of Protocol 1 of the European Convention.

  - "Fil-fehma ta 'din il-qorti hemm ukoll ksur tal-art. 1 tal-Ewwel Protokoll. Ma huwiex kontestat illi l-istat għandu s-setgħa li jikkontrolla l-użu tal-proprjetà fl-

interess pubbliku, u ma huwiex kontestat ukoll illi d- dispożizzjonijiet tal-Kap. 158, safejn huma maħsuba illi n- nies ikollhom dar fejn joqogħdu, huma fl-interess pubbliku. Daqstant ieħor iżda ma jistax jiġi kontestat illi l-element ta ' proporzjonalità huwa għalkollox nieqes fil-każ tallum. Tassew illi l-kumpens mhux bilfors ikun daqs kemm jagħti s-suq ħieles, għax jista 'jkun hemm interess ġenerali leġittimu illi min ma jiflaħx iħallas daqskemm jitlob is-suq ħieles ukoll ikollu l-possibilità li jsib dar fejn joqgħod. Ċertament il-ħtieġa tal-proporzjonalità ma tkunx tħarset fejn jitħallas kumpens ta 'euro u ħamsa u sebgħin ċenteżmu (€1.75) fis-sena għal proprjetà li tiswa aktar minn miljun euro."

- "Fil-fehma ta 'din il-qorti, għalhekk l-applikazzjoni tal- art. 12 (4), (5) u (6) tal-Kap. 158 fil-każ tallum tkun bi ksur tal-jedd tal-attur imħares taħt l-art. 1 tal-Ewwel Protokoll, u l-aggravji relativi tal-attur u tal-Avukat Ġenerali huma miċħuda."

- This was the first judgement where both articles of the law were breached when there was the application of sub-articles (4), (5), (6) article 12 chapter 158.

- Buttigieg vs Avukat Generali Constitutional Court 6th February 2015, this case now we're discussing contracts of temporary emphyteusis entered into after the enactment of the law, of 1979. In this case the Buttigieg family had filed a court case before the Constitutional Court claiming that their fundamental rights as protected under article 37 and article 1 protocol 1 had been breached. When the contract of temporary emphyteusis entered into on the 4th august 1981.. was converted into a lease upon termination.

- So what is interesting in this case is that the contract of temporary emphyteusis had been entered into after the amendments of 1979, the respondents had agreed that the applicants knew what would happen when the contract of temporary emphyteusis expired and they could not now therefore claim that their human rights were breached. Here we have a contract post 79, you knew what the law was, the owners claimed a breach of human rights still. Constitutional court

  - "meta l-awturi tal-atturi taw il-fond b'enfitewsi fl- 1981 kienu jafu illi: (i) kienu qegħdin jiftiehmu fuq ċens relattivament baxx; (ii) l-enfitewsi meta tintemm kienet sejra tinbidel f'kiri li jintiret u jiġġedded; (iii) il-kera jinħadem fuq iċ-ċens miżjud bi proporzjon maż- żjieda fl-għoli tal-ħajja u għalhekk sejjer jibqa ' relattivament baxx daqs iċ-ċens li ftiehmu dwaru huma fl-1981; u (iv) il-ħtieġa tagħhom ma hijiex raġuni tajba biex ikunu jistgħu jieħdu l-fond lura."

  - "Mela meta għażlu li jagħtu l-fond b'enfitewsi fl-1981 l-awturi tal-atturi kienu jafu illi kienu qegħdin jintrabtu b'dawk il-kondizzjonijiet kollha, bħallikieku l-kuntratt

għamluh b'dawk il-kondizzjonijiet espressament imniżżla fih, għax l-art. 12 tal-Kap. 158 ġà kien fis-seħħ meta sar il- kuntratt."

- U ghalhekk fil fehma tal-qorti, la darba l-awturi tal-atturi dahlu b'ghajnejhom miftuha fil-kuntratt tal 81 meta setghu kisbu kundizzjonijiet ahjar li kienu jigu riflessi wkoll illum ma jistghax jinghad li garbu ksur tal-jedd taghhom ghat-tgawdija ta' hwejjighom

- Kien hemm sentenza ohra li biddlet din il-pozjzzjoni, u l-ahhar sentenza hija il-pozizzjoni korretta fil-femha ta' Dr. Galea.

- Borg vs Avukat General, 11th July 2016. The case involved the conversion of the contract of temporary emphyteusis dated 7th February 1981 for 21 years into a lease at determination. The constitutional court in this case stated

  - "Fil-każ tallum iżda, kif osservat l-ewwel qorti, l-għażla li kellhom l-attriċi u l-awturi tagħha kienu bejn kirja imposta wara ordni ta 'rekwiżizzjoni taħt l-Att dwar id-Djar ["Kap. 125"] u l-kuntratt ta 'enfitewsi. Għażlu l- kuntratt ta 'enfitewsi għax dan, għalkemm jolqot ħażin id-drittijiet tagħhom, ma jolqotx ħażin daqs kirja taħt il-Kap. 125. L-għażla għal- hekk ma tistax titqies waħda ħielsa u l-attriċi ma tistax titqies li, għax kienet taf bil-konsegwenzi taħt il-Kap. 158, daħlet minjeddha għal dawk il-konsegwenzi b'mod li irrinunzjat għall-protezzjoni li jagħtuha l- liġijiet li jħarsu d-drittijiet fondamentali."

- Fl-80's u 90's kien ikun hemm requisition orders biex il-gvern jiehu l-propjeta. Kien hemm zewg ghazliet, jew taghti l-propjeta b'cens temporanju u meta jiskadi jkun hemm il-conversion ghal kera, jew inkella thalli d-dar maghluqa jigi l-gvern jghidlek dik id-dar ha nehodha jien biex intiha lil xi hadd.

- So you had these two options.

- The constitutional court confirmed the first court's findings that Borg is fundamental human right under article 1 Protocol 1 had been breached when temporary emphyteusis on its termination was converted into a lease in accordance with sub-article (2) article 12.

- Another similar case is Cauchi vs Avukat Generali, in this case the Cauchi family had filed a court case in before the Constitutional Court claiming fundamental human rights breach under article 37 and Article 1 Protocol 1, they had entered into a contract of temporary emphyteusis on the 3rd February 1983 for 21 years and it was converted into a lease upon its termination. The government argued as it had done in the Buttigieg case that the Cauchi's knew when they signed the contract of the consequences of the law. The Cauchi's argued that they entered into such a contract because of a threat of a requisition order on their property,

the Constitutional Court made reference to Rose Borg vs AG decided on the 11th July 16 and stated that the main reason if not the only reason why the cauchi's had entered into the contract of temporary emphyteusis was because of the threat that their property would be requisitioned. As was the case with all the other property in the same road.

- Therefore their choice to enter into this contract of temporary emphyteusis was forced upon them and it could not be argued that they had accepted the fact that the emphyteuta had the right to covert the temporary emphyteusis into the lease out of their own free will.
- The constitutional court then went on to say
  - "Il-kwistjoni f'din il-kawza hija jekk il-kumpens li jircievu l-atturi fil-forma ta' kera daqs kemm kien ic-cens mizjud fil-forma tal-inflazzjoni u li jizdied b'kull hmistax-il sena (u hawnhekk l-ewwel darba li l-qorti indunat li kienet tbiddlet il-ligi min 15 years giet 3 years, jew illum kull 3 snin wara l-amendi maghmula fil-kodici civili) bl'att X tal-09 huwiex kumpenz xieraq u proporzjonat ghac-cahda tat-tgawdija ta' hwejjighom
- U kompliet tghid
  - Meta ntemmet l-emfitewsi f'2004 u nholoq kiri gdid bis-sahha tal-ligi, il-kera wkoll bis-sahha tal-ligi della tkun ta €218.17c fis-sena. Ir-rapport tal-perit tekniku mahtur mil-ewwel qorti jghid li l-kera kella tkun ta €280 fix-xahar u mhux fis-sena u ghalhekk ma jistax jinghad li tharset il-htiega ta' propozjonalita. Dan iwassal biex il-qorti tghid li garbu ksur tal-jedd taghhom ghat-tgawdija ta' hwejjighom imhares taht l-artikolu 37 tal-kostituzzjoni u article 1 tal-ewwel protocol.
- Barbara vs Vella the Court of Appeal qalet li article 12A issa illi wkoll was in breach of her fundamental human right as protected by Article 1 of Protocol 1
  - 'Tassew li dan kien ir-rimedju, as they were asking, sometimes we forget to be a bit oze in judgements ghax jekk naghmlu l-ewwel eviction jekk il-qorti kostituzzjonali se taghmel l-ewwel eviction ma tistghax imbghad idealment id-darba ta' wara tghid le, jekk se tibda tghid iva, sakemm ma tirrealizzax wara li ghamlet xi zball, tibia tghid iva u f'dan il-kaz Barbara kienu talbu l-eviction ta Vella, u il-qorti tal-appell isha l-ewwel darba, isha qalet li tassew illi dan kien ir-rimedju indikat, izda llum hemm artikolu 12B u ghalhekk ma tistax tordna l-izgumbrament.

- U minflok baghtet l-atti tal-kawza quddiem il-Bord tal-kera sabiex il-kwistjoni ta' kemm kellha tkun il-kera xierqa u jekk l-inkwilin ghandux jibqa f'dik il-propjeta ghandha tkun deciza mil-Bord tal-kera.

- Psaila vs Avukat General, the Constitutional Court stated that the question that needed to be resolved was whether

  - "Il-kwistjoni mela hi jekk id-disposizzjonijiet tal-art. 12 tal-Kap. 158 joħolqux proporzjonalità xierqa bejn l-għan soċjali leġittimu li jridu jilħqu u l-piż li jitfgħu fuq is-sidien.

- The constitutional court continued stating that

  - "Huwa minnu illi l-art. 1 tal-Ewwel Protokoll ma jiggarantix illi, meta tintwera ħtieġa soċjali għall-kontroll tal-użu tal-proprjetà, is-sid għandu jkollu dħul mill-proprjetà daqskemm jirrendi s-suq ħieles (jew, aħjar, daqskemm jitqies li jirrendi s-suq ħieles skond il-kalkoli tal-esperti maħtura mill-qorti). Huwa minnu wkoll illi wara d-dħul fis-seħħ tal-Att X tal-2009 ġew introdotti numru ta 'bidliet favorevoli għas-sidien, fosthom li l-kera jiżdied kull tliet snin u li l-kirjiet ma jibqgħux jintirtu kif kienu jintirtu qabel id-dħul fis-seħħ ta 'dak l-Att."

- And

  - Madankollu, ukoll wara d-dħul fis-seħħ tal-Att, għalkemm il-liġi kienet magħmula għal skop leġittimu ma jistax jingħad illi tħares ukoll il-ħtieġa tal-proporzjonalità u dan għal bosta raġunijiet elenkati mill-ewwel qorti, l- ewwel fosthom illi għad hemm diskrepanza notevoli bejn il-kera li tagħti l- liġi u l-kera li jagħti s-suq ħieles. Din il-qorti għalhekk ma taqbilx mal- Avukat tal-Istat illi l-kera "ma kinitx xi ammont li setgħet titqies bħala irriżorja tenut kont li l-interferenza hija waħda leġittima u li saret għal għan soċjali".

- Once again the court stated that there was a breach of article 1 protocol 1 with regards to article 12 of chapter 158.

- What we're seeing basically here is and that is what the cases which we will be dealing with from an ECHR perspective, that one has to keep in mind the element of proportionality.

- Just to go through what is needed, what the procedure is and what elements are needed into order to file constitutional proceedings before the courts of constitutional jurisdiction in order to have a judgement stating articles 12, 12A and 12B are in breach of the Constitution, article 37 or the European Convention Act article 1 of Protocol number 1.

- The procedure is initiated by filing an application in the registry of the court, the application will need to be filled in the First Hall of the Civil Court, do you need to qualify it? No. In a normal court case where you are, stating that your neighbour opened a window onto your yard you have to open a note, but where you state that the Government has breached your human rights, you do not need to take a note. We said that you have to file an application (rikors) in the registry of courts, the application will be filed in the first hall civil courts (constitutional jurisdiction).

- The first part of the application you would list the facts that have been brought to your attention by your client, which facts may be proceeded with constitutional proceedings. The main facts would be the date of contract of the temporary emphyteusis, the length of time of such temporary emphyteusis, when it terminated, whether the temporary emphyteusis was converted into a lease or into perpetual emphyteusis (and whether it was redeemed) and then you ask for a declaration that your client's fundamental human rights as protected under article 37 or article 1 of protocol 1 are being breached and how these fundamental human rights are being breached.

- Lastly you would make at the end of the application your client's request to the court and which have to be decided, in most cases a request for damages and compensation is also made. During the court proceedings the cour would be requested to appoint an architect to value the property in question, in the case of a conversion into perpetual emphyteusis and/or to indicate to the court what the rental value is in the case of a conversion into a lease. Ideally, before the client proceeds to file the constitutional case you would have already asked him to obtain such evaluation. It is with this evidence that one would know whether there's a breach or not. The court would have to decide then whether the legal regime in question managed to create a balance between its aim to provide social accommodation and the burden this legislation puts on the owner. If that balance, proportionality is not achieved then there will be a breach. 80% of constitutional cases deal with Chapter 158 at this moment in time in Malta

- We'll be dealing now with two main important cases;

  - Fleri Soler and Camilleri vs Malta application 35349/2005

  - Amato Gauci vs Malta application number 47045/06 judgement delivered 15th September 2009

  - Fleri Soler, the point in issue dealt with a property belonging to applicants being used by the government thus in the public interest.

    - "The court has stated on many occasions that in spheres of housing of the population, states necessarily enjoy the wide margin of appreciation not only in

regard to the existence of the problem of public concern warranting measures for control of individual property but also to the choice of measures and implementation. State control occur measures of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable. Also in situations where the operation of rent control legislation involves wide reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding of the appropriate timing for the enforcement of the relevant laws. Nevertheless that discretion however considerable is not unlimited dan this exercise cannot take consequences at variance with the convention's standards."

- However these principles do not necessarily apply in the same manner where as in the present case the requisition of property belonging to private individuals is aimed at accommodating public offices, rather than securing the social welfare of tenants or preventing homelessness. In the court's view in cases such as the present one, the effect of decontrol measures are subject to a closer scrutiny at the European Level. The court found in favour of the applicants.

- Il-gvern qabel kien jiehu propjeta, public interest u inti tircievi €200 fis-sena. Jew, xi haga iktar ricenti, ghasses tal-pulizija, dar kienet ittiehdet b'dawn il-ligijiet, tintuza mil-pulizija, public itnerest, tiswa 4.5 million u s-sid ma jridx jiibqa jircievi €200 fis-sena u ghamel kawza, biex jigi dikjarat li l-gvern ma jistax jibbeneifika. This judgement obviously ordered that the government pays the individual the money.

- Amato Gauci vs Malta delivered 15th September 09 application 47045/06.

- Applicant was the owner of a property which he inherited from his father, his father had entered into account of temporary emphyteusis for 25 years, Act XXIIII amending Chapter 158 was passed in 1979 and the emphyteuta as holders of the utile dominium and as Maltese Citizens occupying the premises as their ordinary residence were granted the right to retain possession of the premisses under a lease without the consent of the owner. tinsewx x'ghedna, x'qalet il-qorti f'din il-kawza, the amount of ground rent was of €210 a year, the court's assessment, mela ECHR issa qed nghidu,

  - "a) whether there was interference with the applicant's property rights. The court stated that the application of legislation affecting landlord's rights over many years constitutes a continued interference for the purposes of article 1 protocol 1. However the court stated that a restriction on an applicants right to

terminate a tenant's lease constitutes control of a person's property within the meaning of the second paragraph of article 1"

- "b) whether the maltese authorities observed the principle of lawfulness and pursued a legitimate aim in the general interest. Here we see that any interference by a public authority with the peaceful enjoyment of possessions must be lawful in particular the second paragraph of article 1 whilst recognising that states have the right to control the use of property subjected their right to the condition that the exercise by enforcing laws. Moreover the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible precise and foreseeable in their application. Furthermore, a measure aiming at controlling the use of property can only be justified if it is shown, inter alia to be in accordance with the general interest."

- "c) whether the maltese authorities struck a fair balance. Any interference with property must also satisfy the requirements of proportionality. Thus a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individuals fundamental human rights. The search of such a fair balance being inherent in the whole of the convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden. Fil-kawza t'Amato Gauci, the ECHR made reference to a decision by the Commission, Zammit vs Malta illi f'dak il-kas kien tressaq kaz fin-1990 minhabba breach u l-commission ma hallitux jghaddi quddiem l-ECHR u qalel illi l-gvern jista jaghmel ligijiet li jipprotegi c-cittadini tieghu, li jkollhom saqaf fuq rashom fejn jorqdu u allura m'ahniex qed naraw breach u mhux se nhalluha tmur quddiem l-ECHR."

- F'Amato Gauci l-ECHR qalet

  - "With reference to Zammit vs Malta, the Court stated that what might have been justified 18 years ago, the commission decision having been delivered in 1991, will not necessarily be justified today"

- Mela allura, qed naraw ukoll li veru wara l-gwerra meta jkollok propjeta kollha kwazi distrutta allura jkollok ftit fejn joqghodu n-nies, hemm il-gvern huwa intitolat u ghandu obbligu biex jaghmel ligijiet fejn in-nies ikollhom saqaf fuq rashom. Meta imbghad, illum il-gurnata meta ghandna eccess ta'propjeta mhux bilfors li dak li jkun qed jaghmel il-gvern ikun tajjeb ghax is-sidien tal-propjeta l-antika ikunu qed ibatu fil-konfront tas-sidien tal-propjeta il-gdida.

- The court went on to state that

- “In this case it was going to consider the impact that the application of the 1979 Act had on the applicant’s property. The court noted that the applicant could not exercise his right of use in terms of physical possession as the house was occupied by the tenants and he could not terminate the lease. Thus whilst the applicant remained the owner of the property he was subjected to a forced landlord tenant relationship for an indefinite period of time. It has already been established that the applicant did not have an effective remedy enabling him to evict the tenants either on the basis of his own need or that of his relatives or not the basis that the tenants were not deserving of such protection as they owned alternative accommodation”

- F’ dan il-kaz ta’ Amato Gauci it-tenants kellhom ukoll propjeta ohra.

  - “Consequently the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interest of the tenants and those of the owners”

- Ghax meta jkun hemm il-konverzjoni min cens temporanju ghal kera, jekk nafu illi taht Chapter 69 jekk inti jkollok bzonn id-dar ghal xi hadd tal-familja tista tiftah kawza u tressaq dik il-prova imbghad il-bord tal-kera jiddeciedi min minnhom se jkun hemm l-akbar hardship. Meta jkun hemm il-conversion taht chapter 158 dik il-hardship ma tezistix mela allura il-qorti qieghda tghid illi meta kien hemm il-conversion min cens temporanju ghal-kera, il-possibilita li jiehu l-propjeta lura l-individwu kienet remota hafna.

  - “The application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interest of the tenants and those off the owners.”

- “The court also stated that the rent was low. Finally the court stated in the present case

  - “Having regard to the low rental value which could be fixed by the rent regulation board the applicants state of uncertainty as to whether he would ever recover his property which now has already been subjected to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise of the standards of living in Malta over the past decades. The court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to the tenants. It follows that the maltese state failed to strike the requisite fair balance between the general interest of the community and the protection of the applicant’s right of property and the court found that there was a violation of article 1 protocol 1.”