

LECTURES IN
ADMINISTRATIVE LAW
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Robert Musumeci

Biography



Dr Robert Musumeci obtained a PhD in Law from the University of Malta with his dissertation entitled '*Judicial Interpretation of Maltese development planning law. Eliciting the added value*' after having been previously selected by the same University for the prize of Best Doctor of Laws Thesis Award in 2016 for his work entitled '*The Development Planning Act 2016 – A critical Appraisal*'. Prior to being admitted to the Maltese Bar, Dr Musumeci had graduated as a *perit* in 1997 and then moved on to also obtain a Masters Degree in Conservation Technology in Masonry Buildings in 2004. He is a former chairperson of the Building Industry Consultative Council (BICC) and was later appointed as a government consultant in the reform which led to Malta Environment and Planning Authority's demerger, the establishment of the Lands Authority, the introduction of a regulatory framework for Estate Agents, the drafting of the constitutional amendments pertaining to the Gender Balance in Parliament Reform and the setting up of the Building Construction Authority. Dr Musumeci is a senior lecturer in planning law and administrative law at the University of Malta. He also authored the book '*Selected Principles of Maltese Planning Law*' (Kite Publications, 2021). Dr Musumeci is the first to hold warrants to practice both as a lawyer and a *perit* in Malta.

Legitimate Expectations

Legitimate expectation is a concept that pertains to the anticipation held by individuals or entities regarding the actions or decisions of a public authority. In practical terms, legitimate expectations can arise in two circumstances. Firstly, when there is an established practice, which refers to a permissible practice that individuals have been able to enjoy in the past. In such cases, unless there are rational and compelling reasons to withdraw it, the practice should be allowed to continue. Secondly, legitimate expectations can arise from promises made by public authorities. A promise occurs when individuals receive assurances of something from an authority.

Now, let's delve into the concept of past practices and their relationship to legitimate expectations.

PAST PRACTICES OR ESTABLISHED PROCEDURES: To begin with, when referring to past practices, representations, or established procedures, it is important to exclude past decisions that were not made consistently or according to a set procedure. To establish a reliable basis for forming a legitimate expectation, there needs to be an element of consistency. To better understand the concept, let's consider a concrete example. Imagine a street vendor named John who has been selling hot dogs at the entrance of Valletta for the past five years. Each year, John obtains an annual license from Transport Malta to operate his hot dog stand in that location, renewing it without any issues. However, when John applies for the license renewal for the sixth year, Transport Malta unexpectedly denies his application, despite John's compliance with regulations and lack of prior issues. Can John argue that he has a legitimate expectation based on his past practice of consistently obtaining the license each year and relying on its renewal to continue his business operations? If Transport Malta cannot provide a satisfactory explanation, John would have grounds to challenge the denial of his license.

renewal based on the principle of legitimate expectation. However, in reality, Transport Malta may have valid and justified reasons for not renewing the license. They might explain that the decision was made due to a change in land use plans aimed at prioritizing alternative land uses and addressing overcrowding or congestion concerns, thus denying the renewal to manage and control the use of public spaces more effectively. Therefore, it is important to note that there are instances where frustration of a legitimate expectation based on past practice may be considered acceptable if there are compelling reasons or a valid public interest justifying it. In other words, the principle of legitimate expectation is not absolute and can be set aside in certain circumstances if there are compelling reasons or a legitimate public interest justifies doing so.

Now, let's shift our focus to legitimate expectations arising from promises.

PROMISES: Legitimate expectations also arise when a public authority explicitly and unambiguously promises or represents something to an individual or entity, resulting in a reasonable expectation. To illustrate, let's consider a situation where a government agency initiates a tender process for a construction project. Multiple bidders participate by submitting their proposals, and the agency evaluates the bids based on predetermined criteria. After completing the evaluation, the agency sends a formal letter to Company X, one of the bidders, stating that they have won the tender and are awarded the contract for the project. The letter outlines the terms and conditions of the contract and invites Company X to proceed with the necessary steps to commence the project. In this case, the agency's written communication to Company X creates a clear and unambiguous promise that they have been awarded the contract. This promise generates a reasonable expectation for Company X that they will have the opportunity to carry out the construction project as outlined in the letter. Company X, in good faith, relies on this promise and takes actions such as mobilizing resources, hiring personnel, and making contractual arrangements with suppliers and subcontractors based on the expectation of being awarded

the project. The agency, having made the promise, is expected to act in accordance with the legitimate expectation it created. If the agency were to subsequently retract the promise and award the contract to another bidder without valid justification, it could be viewed as a breach of the legitimate expectation formed as a result of the promise. Therefore, legitimate expectations arising from promises hold significance in administrative law as they provide certainty and fairness in interactions with public authorities. They ensure that individuals and entities can rely on the assurances given by authorities, and that authorities are held accountable for fulfilling their promises.

However, it should be noted that even in cases of clear and unambiguous promises or representations made by a public authority, there may still be valid justifications to frustrate such legitimate expectations based on public interest or other compelling reasons. In other words, the principle of legitimate expectation is not absolute and can be outweighed by other considerations such as public welfare, the common good, or the need for policy changes.

Yet, in situations where individuals or entities have reasonably relied on a promise or past practice, only to find themselves unable to proceed due to a public authority invoking public interest concerns, there may be a basis to pursue damages. In fact, the justification for awarding damages when a promise is frustrated, could be even stronger than in instances involving established practices.

With that being said, it is crucial to acknowledge situations where expectations formed in individuals' minds cannot be deemed as 'legitimate' and do not give rise to a right to be invoked. Such situations can occur in the following scenarios:

WHEN THE LAW EXPLICITLY STATES THAT THE BENEFIT CANNOT BE ASSUMED TO CONTINUE INDEFINITELY: Legitimate expectations cannot be established when there are explicit and unambiguous provisions in the law, regulations, or policies

stating that the beneficiary cannot assume the continuation of benefits from an established practice indefinitely. For instance, let's consider the law governing the allocation of public land, which clearly states that land granted for encroachment purposes may be reclaimed by the government without prior notice. In such cases, individuals cannot assert a legitimate expectation based on the unexpected loss of their rights, as the law specifically addresses and allows for the possibility of such actions.

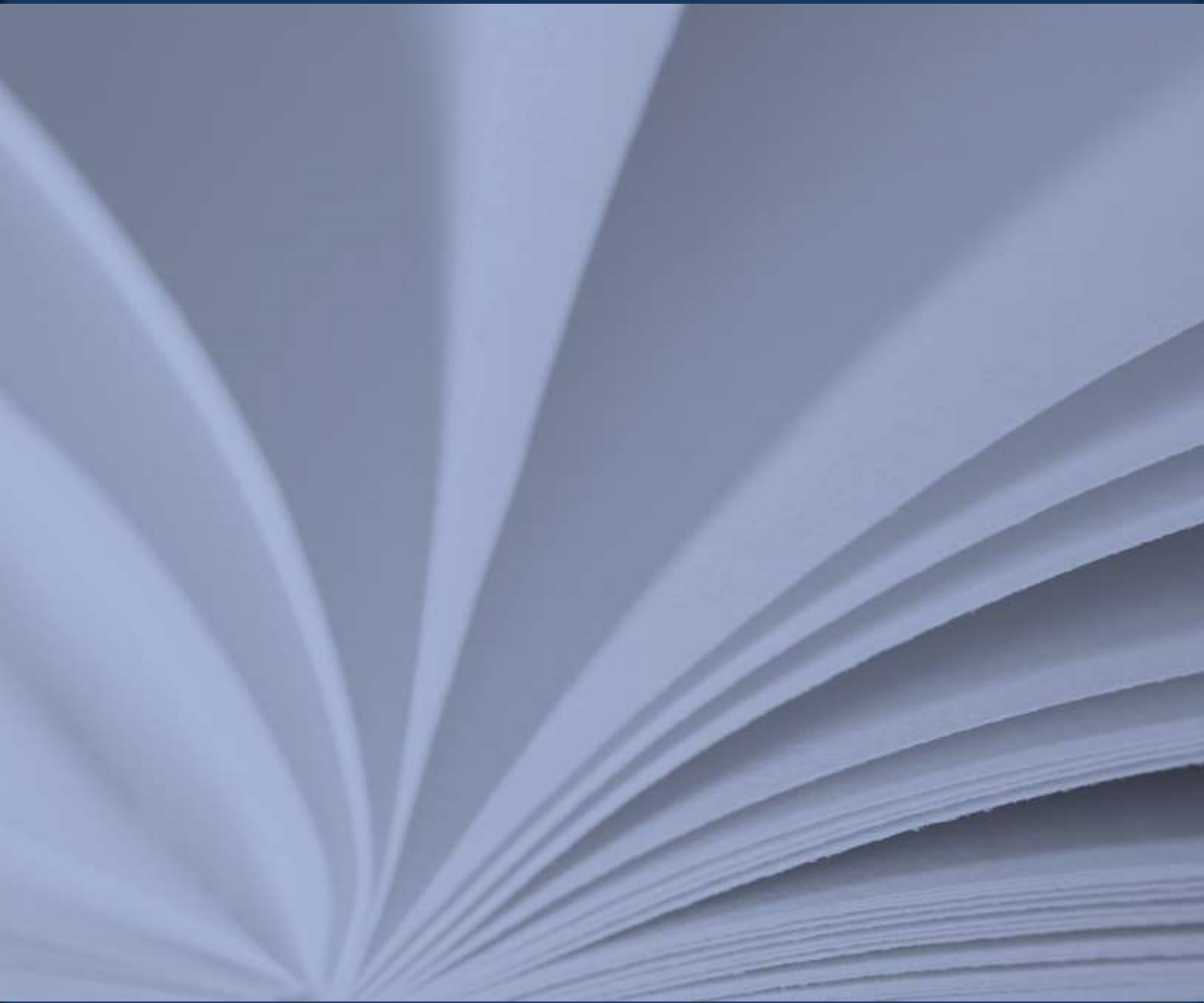
PROMISE OR PRACTICE ALLOWED DUE TO INCORRECT INFORMATION: It is essential to recognize that a legitimate expectation, being a "right" in itself, cannot be founded on illegal grounds. Therefore, a legitimate expectation cannot be established when past practices or promises are based on incorrect or misleading information provided by the party benefiting from such practices or promises. Let's consider an example where John has been running a hot dog stand in a public park for several years. He obtained all the necessary permits and licenses from the local government, allowing him to operate the stand in that specific location. Based on this established past practice, John legitimately expects to continue operating his hot dog stand in the park. He has invested time and resources in building his business, purchasing equipment, and hiring employees. However, if it is later discovered that the permits and licenses issued to John were invalid or obtained through fraudulent means, and the local government authorities did not have the authority to grant him permission, then John's legitimate expectation cannot be upheld. The benefits he enjoyed from the past practice of operating the hot dog stand may be deemed illegitimate because they were based on licenses that were not valid or lawfully obtained.

PROMISES OR PRACTICES CONTRARY TO LAW: If it is discovered that the benefits arising from a practice or promise are derived from legal powers that the authority did not possess in the first place, the beneficiary cannot claim a legitimate expectation. Suppose an individual, John, is promised a government job by a public authority. However, it later comes to light that the authority did not have

the legal authority or power to make such promises of employment. In this case, John cannot claim a legitimate expectation based on the promise of a government job because the authority lacked the necessary legal powers to fulfil that promise. Another example is an election candidate who promises a constituent that their underage daughter will be granted a driving license if elected. In that case, the promise contradicts legal requirements and therefore does not create a legitimate expectation.

CONDITION OF PROMISE NOT FULFILLED: A promise that is subject to certain conditions or contingencies may not give rise to a legitimate expectation if those conditions are not fulfilled or contingencies do not occur. For instance, if a local council grants a permit for an outdoor event in a public park subject to the event organizer providing insurance coverage, but no insurance company is willing to cover the event, the promise of the permit may not be considered a legitimate expectation.

PROMISE TAINTED WITH AMBIGUITY OR VAGUENESS: If a promise lacks clarity, is ambiguous, or lacks specificity, it may not give rise to a legitimate expectation. If, say, Mark applies for an outline permit to build a commercial building on a specific piece of land. After submitting his outline application, Mark receives a letter from the planning authority stating that his application has been approved in principle but it lacks specificity and does not provide clear details regarding the specific conditions, restrictions, or requirements for obtaining the full planning permission. Without the necessary specifics outlined in the permit, Mark cannot reasonably expect his application to be automatically granted or his construction project to proceed without further scrutiny or requirements once he lodges a full development application.



ROBERT MUSUMECI
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