

LECTURES IN
ADMINISTRATIVE LAW
XX

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.

Improper Purpose

In certain situations, those in positions of authority may exploit their power to pursue objectives that exceed the intended scope of the law. In such cases, the exercise of power is considered to be for an improper purpose. A fundamental principle emerges: discretionary decision-making authority should not be employed for purposes other than those for which it was granted. When this occurs, it is said that the decision-maker or administrative body has utilized the law for an unauthorized or illegitimate reason or purpose, diverging from what is permitted by the applicable legislation.

At this point, I would like to discuss the significant legal case known as the **Blue Sisters** case¹. The case revolves around a historical event in 1911 when Mrs. Emilia Clapp generously donated a hospital she had personally constructed to the Government of Malta. However, the donation was subject to a specific condition stated in the deed - the Sisters were bound by an obligation to utilize the donated premises as a hospital, catering to patients of all genders and nationalities in accordance with their Institute's rules. The deed conditions went on that if the Sisters failed to fulfil this obligation by either ceasing hospital operations or leaving Malta, full ownership of the hospital would be transferred to Government.

In 1980, the nuns of the Blue Sisters applied for a permit to operate the hospital. However, upon issuance of the permit, a condition was imposed by the Minister to the effect that the hospital must allocate at least fifty percent of its facilities to the care of patients under the National Health Scheme, as mandated by the Government.

The Blue Sisters objected to accepting this condition and government took action

¹Prime Minister et v Sister Luigi Dunkin noe (FH) (26th June 1980)

to evict them from the hospital, citing a breach of the terms outlined in the donation deed. According to the deed, the Sisters were only entitled to enjoy the use of the premises as long as they operated it as a hospital. However, since they did not obtain a hospital license due to their refusal to comply with the imposed condition, the Government deemed their occupancy in violation of the terms specified in the deed.

In reality, the situation unfolded as follows: The government desired control over a hospital operated by the nuns, prompting them to search for a legal basis to achieve their objective. Government came across a provision that granted the Health Minister the authority to impose any conditions he deemed suitable when granting or renewing a license. This provision also allowed the Minister to restrict the services and activities provided within the licensed premises. On the surface, this provision seemingly granted the government the power to impose any conditions they saw fit on the operator, in this case, the nuns. Ultimately, the nuns were unable to hold the hospital for its intended purpose of providing medical care without a permit issued by the Health Minister. However, the government's use of this provision can be seen as an improper purpose, as they employed the law against its intended thrust, scope, and meaning to serve their own objectives, rather than those of the law itself. The Minister, utilizing **Article 84(1)** of the law, refused to issue a license to the nuns not because he was obligated to ensure the provision of high-quality medical care or safeguard public health in Malta, as outlined in **Article 84(1)**. Instead, the Minister sought to exert political control over the situation by imposing a condition on the nuns, mandating that they provide the government with at least 50% of the hospital's facilities, including 50% of the beds. However, this demand, in essence, had no direct connection to the principal objective for which **Act No. XX of 1977** was enacted. Therefore, the government's actions can be characterized as utilizing the law for an improper purpose, deviating from its intended goals and scope.

The example of the Blue Sisters demonstrates that the government utilized the law

to serve its own ends, rather than adhering to the genuine purpose for which the law was enacted by Parliament.

Before delving into the Blue Sisters example, I should have discussed how we can ascertain whether a purpose is proper. At its core, decision-makers are expected to conduct a comprehensive analysis of the entire statute and gain a thorough understanding of the regulatory context within which they are bound to act. This holistic approach involves considering the statute as a cohesive entity rather than focusing solely on isolated clauses or provisions.

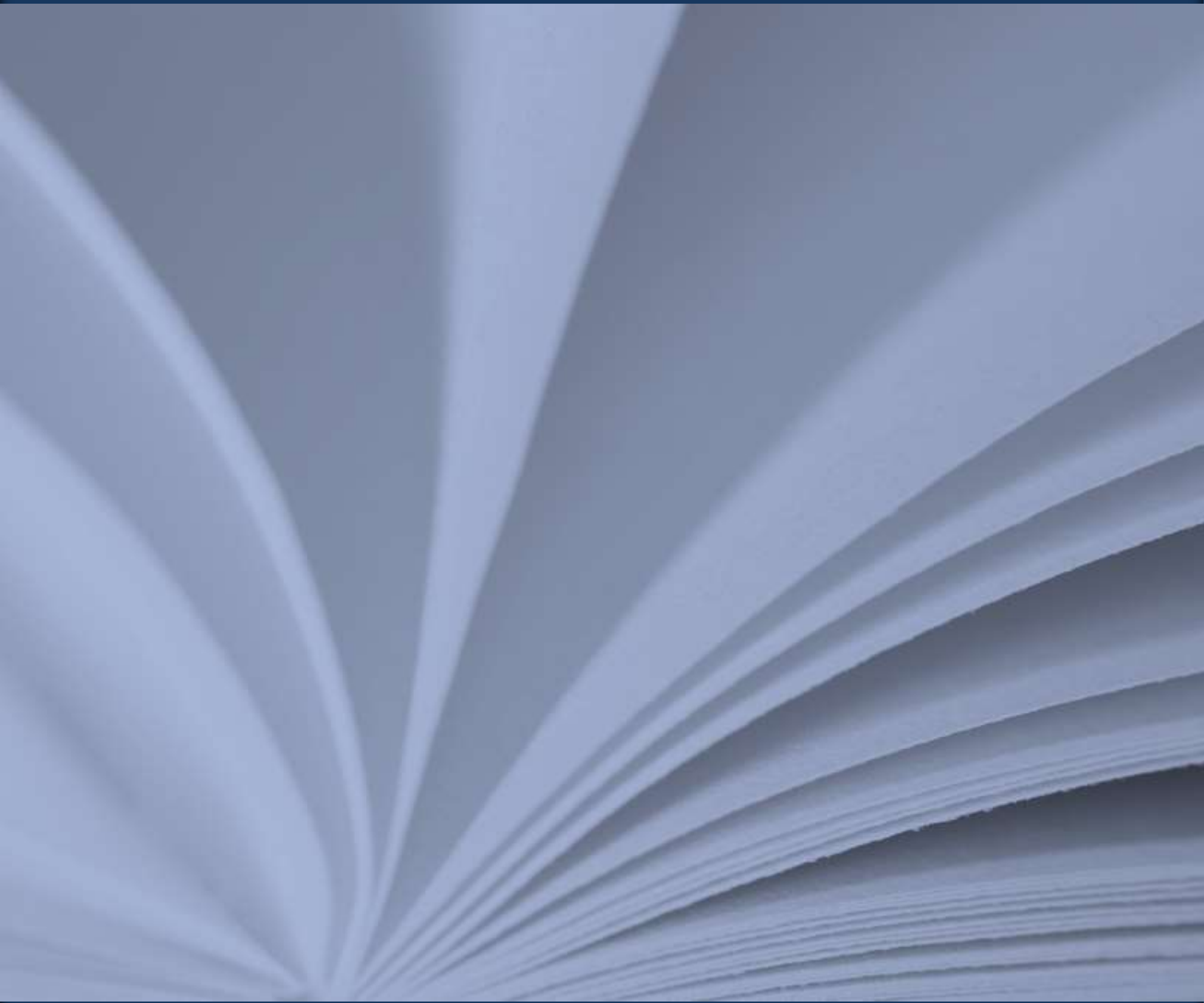
What I am saying is that merely reaching a reasonable outcome is not sufficient; the outcome must align with the legislative intent. If the same law is utilized to achieve outcomes that are permitted by the law but not in line with the intended purpose or objectives stated in the law, it can be deemed an improper purpose. The focus is on aligning the use of the powers with the intended purpose outlined in the statute.

Indeed, it is entirely possible for a decision-maker to exhibit good faith while still being deemed to have acted for an improper purpose. When I refer to good faith, I am emphasizing the decision-maker's sincere belief or honest intention in fulfilling their responsibilities. It is crucial to recognize that while acting in good faith is generally regarded as a positive quality, it does not excuse or justify actions taken for an improper purpose. Consequently, there are instances where a situation may give the appearance of an improper purpose, while the individual's actions are actually driven by a genuine desire to assist others.

Let's explore an example involving Mayor Brincat and their distribution of funds to assist the impoverished. Mayor Brincat, recognizing the increasing levels of food insecurity within the city, decides to leverage an existing law that provides funds for community development projects. Their aim is to establish a program focused on distributing food to those in need. While the law was originally intended to

support infrastructure improvements, Mayor Brincat believes that it can be interpreted more broadly to encompass initiatives addressing the basic needs of the community. Although Mayor Brincat may have genuine intentions of addressing hunger and aiding vulnerable individuals, their utilization of the law for a purpose it was not explicitly designed for could be considered an improper purpose. Some may argue that Mayor Brincat is stretching the interpretation of the law beyond its intended scope, and in this case, they would be correct. By repurposing the law to fit their objective, Mayor Brincat may be deemed to have acted for an improper purpose, despite their good intentions.

Indeed, the situation takes a more severe turn if Mayor Brincat had ulterior motives behind their actions. For instance, if it is revealed that there were no impoverished individuals in the first place, and Mayor Brincat fabricated a hunger issue as a pretense for their actions and orchestrated the distribution of food to benefit a specific food importer who needed to distribute their soon-to-expire products. In such a scenario, where Mayor Brincat falsely represents the existence of a hunger issue and utilizes the situation to assist a particular food importer, their actions can be seen as even more problematic. This behaviour involves a manipulation of the circumstances for personal gain, rather than genuinely addressing the needs of the community. Such actions would be considered to be motivated by improper purpose and, even worse, bad faith.



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