

**LECTURES IN**  
*ADMINISTRATIVE LAW*  
XXIV

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.

## Wrong application of statutes

---

Now, I'm shifting my focus to an additional dimension capable of undermining administrative proceedings – the incorrect application of legal statutes. In the context of "statutes", I am specifically alluding to codified laws, regulatory frameworks, and established policies.

A pivotal consideration to retain is that the veracity of the facts, as ascertained by the administrative body, remains uncontested within the scope of this discourse. Our concern, therefore, pertains exclusively to the manner in which, within scenarios marked by unequivocal and unchallenged facts, the tenets of written law, regulations, or policies have been misapplied, culminating in decisions that transgress the boundaries of legality.

To initiate our exploration, I will delineate the specific ways in which this misapplication of written statutes manifests in practical contexts:

**MISINTERPRETATION OF A LAW:** In this context, I am discussing the application of written statutes in a manner inconsistent with their intended meaning or scope. I've already touched upon this matter while addressing unreasonableness.

I consider the following legal maxima to be the cornerstones of rule interpretation:

- *"Claris non fit interpretation"*: In plain English, translates to "clear language does not need interpretation". This principle emphasizes that when the wording of a statute is unambiguous and clear, there is no necessity for further interpretation beyond its plain and apparent meaning. For example, let's examine a planning regulation that requires proof of a dilapidated building being inhabited prior to 1978 in order for it to qualify for conversion into a residence. In

this particular scenario, if the regulation clearly stipulates the requirement for habitation before 1978, the present unoccupied state of the building, if that is the case, should not be used as a reason to reject the request.

- “*Generalia Specialibus Non Derogant*”: This principle signifies that a general provision should not override or nullify a specific provision addressing the same subject matter. It underscores the precedence of specific provisions over general ones. Continuing with the same example, the general requirement might be that a building should be in a habitable condition for conversion into a residence, while the specific requirement is that it must have been inhabited before 1978. Applying the principle of “*Generalia Specialibus Non Derogant*,” even if the building is currently unoccupied, the specific requirement of habitation before 1978 should take precedence over the general requirement for current habitability. This means that if the building can provide evidence of being inhabited before 1978, it should still be eligible for conversion into a residence, even if its current condition does not meet the general habitability standard. This principle ensures that specific and detailed regulations are given more weight when they address particular circumstances, overriding more general regulations that might otherwise conflict with them.

- “*Expressum Facit Cessare Tacitum*”: This maxim indicates that when a law explicitly addresses an issue, it implies that related matters not explicitly mentioned were intentionally omitted. In other words, when a situation is not covered by the statute's wording, the decision maker should refrain from attempting to fill the gap. Now, let's apply the principle of “*Expressum Facit Cessare Tacitum*” to the same example. In the context of our planning policy, the specific requirement of proving habitation before 1978 for conversion is explicitly expressed. This requirement is clear and specific. Therefore, any potential implied condition, such as the general requirement for current habitability, would be considered equally inactive or ceased in this scenario due to the application of “*Expressum Facit Cessare Tacitum*.” In practical terms, this means that the fact

that the building is unoccupied at present, which could have been interpreted as conflicting with the general habitability requirement, becomes irrelevant when the specific condition of habitation before 1978 is expressly stated. The explicit provision takes precedence and effectively nullifies any other conditions that are not in alignment with it.

- “*Expressio Nullius Est Exclusio Ulterius*”: This maxim implies that if a statute specifically excludes a particular thing or category, it suggests that similar things or categories are not included. In the context of the same above example, if the requirement for habitation before 1978 is explicitly mentioned as a condition for conversion, the principle of “*Expressio Nullius Est Exclusio Ulterius*” would imply that any other conditions related to eligibility not explicitly mentioned are to be excluded or disregarded. Therefore, even if the building's current unoccupied status might have been a factor in other cases or interpretations, if the policy clearly states the requirement of habitation before 1978, it could be understood that the intention of the policy is to focus solely on this specific aspect of eligibility. The principle suggests that the policy makers deliberately included this requirement while intentionally excluding other potential criteria. In summary, the application of “*Expressio Nullius Est Exclusio Ulterius*” in this scenario reinforces the notion that the expressed condition of habitation before 1978 takes precedence over any other unmentioned eligibility factors, emphasizing the specific criteria outlined in the policy.
- “*Ejusdem Generis*”: This principle suggests that when a general term follows a list of specific terms, the general term should be interpreted to include only things of the same kind as those listed. In the context of our example, if the policy includes a list of specific criteria, such as the requirement of habitation before 1978, along with other specific conditions related to the eligibility of buildings for conversion, the principle of “*Ejusdem Generis*” would guide the interpretation of any general terms that come after the specific list. For instance, if the policy lists specific criteria for eligible buildings and then ends with a more general term like

"and other relevant conditions," the principle of "*Ejusdem Generis*" would mean that the general term "other relevant conditions" should be interpreted to include only conditions that are of the same kind or nature as the specific criteria listed before it. In practical terms, if the policy's specific criteria include historical habitation before 1978 and other specific conditions related to the building's structure or location, the principle of "*Ejusdem Generis*" would suggest that any other conditions falling under the general term "other relevant conditions" should be similar in nature to the specific criteria, rather than entirely unrelated conditions. This principle helps avoid overly broad interpretations and ensures that any additional conditions are in line with the context and intent of the specific criteria mentioned in the policy.

- "*Noscitur a Sociis*": This principle holds that the meaning of a word or phrase in a statute can be inferred from the surrounding words or the context in which it is used. Using the above example, if the policy uses a term like "historical significance" in relation to eligible buildings, and this term is followed by specific conditions such as the requirement of habitation before 1978 and preservation of original architectural features, the principle of "*Noscitur a Sociis*" would guide us to interpret "historical significance" in the context of these associated terms. In this case, "historical significance" might be understood to mean buildings that have a documented history of habitation before 1978 and possess original architectural features worth preserving. The associated terms provide clarity and specificity to the otherwise broad term "historical significance." By using the principle of "*Noscitur a Sociis*," the interpretation of potentially vague or ambiguous terms becomes more precise, ensuring that the overall meaning of the policy aligns with the context in which it is presented.
- "*Contemporanea Expositio Est Optima et Fortissima in Lege*": This principle emphasizes that the interpretation of a law or provision at the time of its enactment is a robust indicator of its intended meaning. In the context of the same above example, if the policy was established in the 1980s and includes a

requirement of habitation before 1978, the principle of "*Contemporanea Expositio*" would guide us to interpret the term "habitation before 1978" based on how those terms were commonly understood in the 1970s or earlier. This interpretation would take into account the historical and societal context of that era. By considering the policy's original intent and the understanding of the terms at the time of its creation, the principle of "*Contemporanea Expositio*" aims to prevent modern interpretations that might deviate from the original purpose and context of the policy. It ensures that the policy is interpreted in a way that reflects the mindset and circumstances of the time it was established.

- "*Reddendo Singula Singulis*": This maxim advises that words should be individually and distinctly understood, avoiding the mingling of terms that might distort their intended meanings. Using the same above example, if the policy includes a clause that states "buildings with historical significance, architectural heritage, or pre-1978 habitation," the principle of "*Reddendo Singula Singulis*" would require that each condition is clearly matched with its corresponding element. "Historical significance" should be applied to buildings with that attribute, "architectural heritage" to those with that feature, and "pre-1978 habitation" to buildings meeting that criterion. By following the principle of "*Reddendo Singula Singulis*", the policy's provisions are interpreted with precision, ensuring that each term is appropriately linked to the specific aspect it is intended to refer to. This reduces the potential for confusion and supports a more accurate and consistent interpretation of the policy.

- "*Ut Res Magis Valeat Quam Pereat*": This maxim suggests choosing an interpretation that gives effect to the intention of the law, rather than rendering it void. Back to the above example, if there is some ambiguity regarding the exact criteria for "habitation before 1978," the principle of "*Ut Res Magis Valeat Quam Pereat*" would encourage an interpretation that makes the policy workable and achieves its underlying goal of preserving historically significant buildings. This might involve giving a reasonable and practical interpretation to

the term "habitation before 1978" that aligns with the overall purpose of the policy. By adopting this principle, the focus shifts from strict textual interpretations that might lead to the policy's failure to more practical and reasonable interpretations that ensure the policy remains functional and serves its intended purpose effectively.

- *"In Pari Materia"*: This term refers to when two or more statutes or legal provisions relate to the same subject matter or share a common purpose, they should be interpreted together as a cohesive framework. This principle recognizes that laws addressing similar issues or aiming to achieve the same objectives should be read in conjunction with one another. For example, if the planning policy we are considering is part of a larger set of regulations that address historical preservation, architectural heritage, and building conversions, the principle of *"In Pari Materia"* would encourage us to interpret the specific provision about habitation before 1978 in light of the broader context of these related regulations. This way, the interpretation of one provision would be influenced by the understanding of other provisions dealing with similar matters. By applying *"In Pari Materia,"* the aim is to create a harmonious interpretation of all relevant provisions, ensuring that they work together to achieve the intended goals of the broader legal framework. This principle helps prevent contradictory or inconsistent interpretations and promotes a unified approach to legal interpretation within a specific subject area.
- *"De minimis non curat lex"*: This principle indicates that in legal matters, decision makers should not overly concern themselves with insignificant or trivial matters. Instead, they should focus on substantial issues that have significant legal or societal implications. Back to our example. If there is a slight deviation from the specific requirement of "habitation before 1978", but the building's historical significance and architectural heritage are well-documented, the principle of *"De minimis non curat lex"* might be invoked to suggest that the slight deviation should not be a barrier to the building's eligibility for conversion. In essence, this



principle acknowledges that the law is designed to address matters of importance and significance, and it does not concern itself with trivial deviations or matters that have little or no real impact. It allows for a practical and reasonable approach to legal interpretation by focusing on what truly matters within the context of the law's objectives.

**APPLICATION OF A LAW NOT RELEVANT TO THE FACTS AS EVALUATED:** An error of law arises when the decision maker applies a law or regulation or policy that lacks relevance to the circumstances as evaluated. In this context, it's important to remember that we're acknowledging the facts as evaluated by the decision makers, regardless of whether we concur with that evaluation or not. Thus, to illustrate a scenario where a wrong law is applied to the facts at issue, think of a situation where, even though it is established that the site falls within a designated development zone, the decision to refuse planning permission is based on policies meant for areas outside of such zones. This situation differs when there are multiple policies concerning the same issue. In such cases, giving more weight to one policy over another does not necessarily indicate a mistake in legal judgement. Such a decision can be grounded in valid reasons tied to specific conditions or considerations, without necessarily implying an error in the legal reasoning.

**IMPLEMENTATION OF A REPEALED LAW:** Laws undergo continuous changes due to legislative revisions. Failing to stay updated with these changes can lead to the reliance on obsolete or invalidated laws. This commonly occurs when decisions are based on laws or regulations or policies that have been repealed and no longer possess legal validity. For instance, a planning decision could hinge on a previous policy that has been revoked by the time the planning application was determined.

**APPLICATION OF A LAW YET TO BE FORMALIZED:** A law or regulation or policy, even in its draft stage, cannot be enforced until it undergoes the necessary formal

assent as prescribed by law. Imagine a situation where the Planning Authority is in the process of formulating a new zoning policy that would considerably influence the allowable land use in specific regions. The draft policy puts forth more stringent regulations for, say, commercial projects within residential zones. However, until this draft policy is officially published in accordance with the prescribed legal protocols, it cannot be utilized to dismiss planning applications based on its stipulations.

**APPLICATION OF A GENERAL LAW INSTEAD OF A SPECIAL LAW:** In cases where a conflict arises between a comprehensive, general law and a narrower, specialized law concerning the same subject, the latter prevails over the former. This principle aligns with the Latin maxim "*Lex specialis derogat legi generali*". To illustrate, consider a broad transportation regulation outlining the prerequisites for obtaining a commercial driver's license, which encompasses various vehicle types including taxis. This overarching regulation stipulates criteria such as age, driving history, and medical fitness applicable to all commercial drivers. Concurrently, a specific and specialized policy named the "Taxi Licensing Ordinance" exists. This ordinance delineates precise requirements exclusively for individuals seeking a taxi license. These requirements could encompass supplementary conditions like background assessments, vehicle inspections, and specified insurance coverage. Now, envision a scenario where an individual aims to become a taxi driver and applies for a commercial driver's license based on the general transportation regulation. The applicant satisfies the fundamental age and driving history criteria outlined in the general regulation. However, upon careful review, the transportation authority discovers that the Taxi Licensing Ordinance, tailored specifically for taxi licenses, mandates an additional background check not stipulated by the general regulation. Here, the principle of "*Lex specialis derogat legi generali*" comes into effect. Despite the general transportation regulation permitting the acquisition of a commercial driver's license, the more targeted Taxi Licensing Ordinance takes precedence due to its specialized nature tailored to taxi drivers.

**APPLICATION OF A LAW IN A RETROSPECTIVE MANNER:** This relates to the concept of vested rights. A commonly acknowledged principle dictates that laws must not be retroactively enforced to change circumstances or invalidate established rights, unless there is a specific provision that makes them relevant to past events or ongoing activities. This underscores that a positive statute, by itself, does not inherently grant new rights or invalidate existing ones unless the legislative intent unequivocally intends to eliminate the coexistence of these rights. For example, John obtains a warrant to practice as a lawyer while already holding a warrant as a pharmacist. Subsequently, a new law is enacted stating that individuals cannot possess two warrants simultaneously. Since John already holds both warrants before the new law comes into effect, the new law might not automatically invalidate his current situation.



**ROBERT MUSUMECI**  
avukat - perit