

Malta

Code of Organisation and Civil Procedure of 1 May 1855

Chapter 12 Ordinance IV of 1854, promulgated by Proclamation No VI of 1 May 1855, as amended

[...]

Chapter 12

[...]

Book Third Of Certain Matters Relating To Judicial Procedure

Title I Of Evidence

[...]

Evidence of foreign law.

563B. (1) A person who is suitably qualified on account of his knowledge or experience, is competent to give expert evidence as to the law of any other foreign state, irrespective of whether he has acted or is entitled to act as an advocate, or in any judicial or legal capacity in that state.

(2) The provisions of article 563A(3) shall mutatis mutandis apply to the provisions of this article.

[...]

Title II. Of Pleas

[...]

Sub-title III Of Pleas to the Jurisdiction

Plea to the jurisdiction. Grounds of plea.

741. It shall be lawful to plead to the jurisdiction of the court –

- (a) when the action is not one within the jurisdiction of the courts of Malta;
- (b) when the action, although one within the jurisdiction of the courts of Malta, is brought before a court different from that by which such action is cognizable;
- (c) when the privilege of being sued in a particular court is granted to the defendant.

Persons subject to jurisdiction of civil courts of Malta.

742. Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:

- (a) citizens of Malta, provided they have not fixed their domicile elsewhere;
- (b) any person as long as he is either domiciled or resident or present in Malta;
- (c) any person, in matters relating to property situate or existing in Malta;
- (d) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;
- (e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;
- (f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;
- (g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.

(2) The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that a foreign court is seized with the same cause or with a cause connected with it. Where a foreign court has a concurrent jurisdiction, the courts may in their discretion, declare defendant to be non-suited or stay proceedings on the ground that if an action were to continue in Malta it would be vexatious, oppressive or unjust to the defendant.

(3) The jurisdiction of the courts of civil jurisdiction is not excluded by the fact that there exists among the parties any arbitration agreement, whether the arbitration proceedings have commenced or not, in which case the court, saving the provisions of any law governing arbitration, shall stay proceedings without prejudice to the provisions of sub-article (4) and to the right of the court to give any order of direction.

(4) On the demand by any person being a party to an arbitration agreement, the courts may issue any precautionary act, in which case, if such party has not yet brought forward his claim before an arbitrator, the time limits prescribed in this Code for bringing the action in respect of the claim shall be twenty days from the date of issue of the precautionary act.

(5) A precautionary act issued in terms of the preceding subarticle shall be rescinded:

- (a) if the party against whom it is issued makes such deposit or gives such security sufficient to secure the rights or claims stated in the act; or
- (b) if the applicant fails to bring forward his claim, whether before the arbitrator or before the court, within the said time limit of twenty days; or
- (c) on the expiration of the duration, original or extended, of the particular act in terms of this Code; or

(d) for just cause on the application of the debtor as the court may deem proper in the circumstances.

(6) Where provision is made under any other law, or, in any regulation of the European Union making provision different from that contained in this article, the provisions of this article shall not apply with regard to the matters covered by such other provision and shall only apply to matters to which such other provision does not apply.

Immunity of the President of Malta.

742A. No civil proceedings whatsoever shall be taken against the President of Malta in respect of acts done in the exercise of the functions of his office.

Jurisdiction in rem against ships or vessels.

742B. Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction in rem against ships or vessels in the following maritime claims:

- (a) any claim to the possession, ownership or title to or of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to the ownership, possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage, hypothec or charge on a ship or on any share therein;
- (d) any claim arising out of the contract for the sale of the ship;
- (e) any claim for damage received by a ship;
- (f) any claim for damage done or caused by a ship, either in collision or otherwise;
- (g) any claim for loss of life or personal injury caused, whether on land or on water, by any ship or occurring in connection with the operation of any ship or sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of –
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods in, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (h) any claim for loss of or damage to goods, including baggage, carried in a ship;
- (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship, whether by charter party or otherwise;
- (j) any claim in the nature of salvage operations or any salvage agreement including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(k) any claim for –

(i) damage or threat of damage caused by the ship to the environment, coastline or related interests;

(ii) measures taken to prevent, minimize or remove such damage; and for compensation for such damage;

(iii) costs of reasonable measures of reinstatement to the environment actually undertaken or to be undertaken;

(iv) loss incurred or likely to be incurred by third parties in connection with such damage; and

(v) for damage, costs or loss of a similar nature to those listed in subparagraphs (i) to (iv);

(l) any claims regarding costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of her crew;

(m) any claim in the nature of towage in respect of a ship;

(n) any claim in the nature of pilotage in respect of a ship;

(o) any claim in respect of goods, materials, provisions, bunkers, supplies and necessaries supplied or services rendered to a ship for her operation, management, preservation or maintenance;

(p) any claim in respect of the construction, reconstruction, repair, conversion or equipping of a ship;

(q) any claim in respect of port, dock or harbour dues and charges;

(r) any claim by the master, officers, or member of the crew, or complement of a ship, for wages and other sums due to them in respect of their employment on the ship including costs of repatriation, and social security contributions payable on their behalf;

(s) any claim by a master, shipper, charterer or agent in respect of disbursements made by them on account of a ship or her owners;

(t) any claim for commissions, brokerages, or agency fees payable in respect of the ship, by or on behalf of the ship owner or demise charterer;

(u) any claim arising out of an act which is or is claimed to be a general average act;

(v) any claim arising out of bottomry;

(w) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any such goods after seizure;

(x) any claim for insurance premia, including mutual insurance calls, in respect of the ship payable by or on behalf of the ship owner or demise charterer;

(y) any claim for fees and other charges due to the Registrar-General of Shipping and Seamen arising under the provisions of the Merchant Shipping Act, and any claim for tonnage dues.

Action in rem in cases mentioned in article 742B(a) to (c).

742C. In the cases mentioned in article 742B(a) to (c), an action in rem may be brought before the civil courts of Malta against the ship in connection with which the claim or question arises.

Action in rem in cases mentioned in article 742B(d) to (y).

742D. Save for those claims which attract a special privilege in accordance with article 50 of the Merchant Shipping Act, and which, in terms of article 37D(3) of the said Act, survive the voluntary sale of a vessel by up to one year, in the cases mentioned in article 742B(d) to (y), an action in rem may be brought before the civil courts of Malta against –

(a) that ship or vessel, where the person who would be liable on the claim for an action in personam (“the relevant person”) was, when the cause of action arose, an owner or charterer of, or in possession or in control of, the ship or vessel, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that ship or the bareboat charterer of it;

(b) any other vessel of which, at the time when the action is brought, the relevant person is the owner or beneficial owner as respects all shares in it.

Jurisdiction in rem against aircraft.

742E. (1) Save as otherwise provided by law, the civil courts of Malta shall have jurisdiction in rem against aircraft in the following claims:

(a) any claim to the ownership, or title to or of an aircraft, or to the ownership of any share therein;

(b) any claim for possession of the aircraft;

(c) any claim in respect of a mortgage or equivalent international interest;

(d) any claim giving rise to a special privilege in terms of article 42(1) of the Aircraft Registration Act (Cap. 503.);

(e) any claim based on a registered non-consensual right or interest registered in the International Registry in terms of the First Schedule and article 42(2) of the Aircraft Registration Act (Cap. 503.) for which the owner of the aircraft would be liable in personam;

(f) any claim in the nature of salvage in respect of an aircraft;

(g) any claim in the nature of towage in respect of an aircraft;

(h) any claim in the nature of pilotage in respect of an aircraft.

(2) The reference in subarticle (1)(f) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from an aircraft or in preserving cargo, apparel or wreck as, under article 14 of the Civil Aviation Act (Cap. 232.), are authorized to be made in connection with an aircraft.

(3) For the purposes of subarticle (1)(g) and (h), ‘towage’ and ‘pilotage’ mean towage and pilotage while the aircraft is waterborne.

Action in rem.

742F. (1) An action in rem may be brought against the relevant aircraft before the civil courts of Malta on a claim mentioned in article 742E when:

(a) the claim arises in connection with that aircraft;

(b) the person who would be liable on the claim for an action in personam (‘the relevant person’) was, when the cause of action arose, the owner or lessee of, or in possession or in control of, the aircraft, if at the time when the action is brought the relevant person is either an owner or beneficial owner of that aircraft or the lessee of that aircraft under a dry lease agreement; and

(c) the relevant threshold for the issue of a warrant of arrest of aircraft as provided in article 865E is satisfied.

(2) Notwithstanding the previous subarticle, in the case of a claim in terms of article 742E(1)(e), (g) and (h) in respect of an aircraft, an action in rem may be brought before the civil courts of Malta against the aircraft only if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

[...]

Title V Of the Enforcement of Judgments of Tribunals of Countries outside Malta

Applicability of this Title and European Union Regulations.

825A. Where regulations of the European Union provide, with regard to the matters regulated under this title, in any manner different than in this title, the said regulations shall prevail, and the provisions of this Title shall only apply where they are not inconsistent with the provisions of such regulations or in matters not falling within the ambit of such regulations.

Enforcement of judgments of tribunals outside Malta.

826. Saving the provisions of the British Judgments (Reciprocal Enforcement) Act, any judgment delivered by a competent court outside Malta and constituting a res judicata may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon an application containing a demand that the enforcement of such judgment be ordered.

Inquiry by court.

827. The provisions of the last preceding article shall not have effect:

- (a) if the judgment sought to be enforced may be set aside on any of the grounds mentioned in article 811;
- (b) in the case of a judgment by default, if the parties were not contumacious according to foreign law;
- (c) if the judgment contains any disposition contrary to public policy or to the internal public law of Malta.

(2) For the purposes of this article, the plea to the jurisdiction of the court by which the judgment was delivered, may be raised in terms of article 811(d), even though that court may have adjudged upon a plea to its jurisdiction, in the case of any action brought against any person not subject to the jurisdiction of that court by reason of domicile or residence, unless such person had voluntarily submitted to the jurisdiction there of.

Effects of registration of judgment in Public Registry.

828. The judgment ordering the enforcement of another judgment delivered by a court outside Malta, upon being registered in the Public Registry Office, shall create as from the day of registration a hypothec in regard to the debt judicially acknowledged by the judgment the enforcement of which is ordered.

Marriage Act of 1 October 1975

Chapter 255 Act XXXVII of 1975, as amended

[...]

Validity and annulment of marriages

Conflict of laws

18. A marriage, whether celebrated in Malta or abroad, shall be valid for all purposes of law in Malta if –

- (a) as regards the formalities thereof, the formalities required for its validity by the law of the country where the marriage is celebrated are observed; and
- (b) as regards the capacity of the parties, each of the persons to be married is, by the law of the country of his or her respective domicile, capable of contracting marriage.

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