

Beyond the Proper Limits: The Evolving Standard of Liability Under Article 1030 of the Civil Code

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This article by **Michela Cutajar** was previously submitted as part of CVL3000 and is being published with the author's permission. This article explores the evolving interpretation of Article 1030 of the Civil Code, the cornerstone of liability arising from the abuse of rights. It traces how Maltese jurisprudence has shifted from an early focus on neighbourly tolerance and the proper limits of exercising one's rights, toward a modern approach centred on the harm caused. Through an examination of landmark judgements, the study illustrates how even lawful acts may give rise to liability when they result in disproportionate or unjust harm. Ultimately, Article 1030 is shown to serve as a flexible and dynamic legislative instrument, empowering courts to balance the free exercise of rights with the imperative of protecting others from excessive damage in a changing society.

TAGS: Obligations, Liability, Civil Code, Abuse of Rights

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Introduction

Article 1030 of the Civil Code states that ‘Any person who makes use, within the proper limits, of a right competent to him, shall not be liable for any damage which may result therefrom’. *A contrario sensu*, liability arises when rights are not exercised within the proper limits, complementing article 1031 which provides that ‘Every person, ... shall be liable for the damage which occurs through his fault’.

Traditionally, liability in *delict* or *quasi delict* requires *dolus* or *culpa* on the defendant's part, a direct causal link between the act or omission and the resulting harm, and unjust behaviour. The latter requirement has been broadly interpreted to include an abuse of right from which damages ensue, based on article 1030.¹

Over time, the requirements for proving an abuse of rights have developed significantly. Whilst early jurisprudence was based on tolerance, modern interpretations have shifted importance onto the harm caused. A question thus arises whether unjust harm is enough for liability to arise.

Early Jurisprudence

Early case law was based on the idea that property rights were not absolute and defined proper limits on the basis of tolerance.

In *Bugeja vs Washington*, the *buon vicinato* principle was introduced. The court ruled that harm becomes unjust when it exceeds ‘the limits of tolerance a good neighbour must endure. If the nuisance is not easily tolerated, then it becomes unjust’.²

Similarly, in *Bezzina vs Galea* it was held that ‘*Il-proprjetarju għandu d-dritt li jgawdi bil-mod l-aktar assolut, sakemm ma jirrekax molestja gravi*’.³ The Court explained that:

... the owner has the right to use his property freely..., even if by doing so he is depriving his neighbour of any advantage; insofar as by doing so he is not causing a grave molestation to his neighbour.

The Court emphasised that, besides the nature of the abuse, one must consider the nature of the property, its location, destination and the common industries in the area.⁴ Harm was not deemed abusive if it derived from the

¹ David E Zammit, ‘Expert Report on Issues of Maltese Law’ (4 September 2013).

² *Bugeja et vs Washington et*, Civil Court (First Hall) 5 May 1897 Vol XV.571.

³ *Pio Bezzina vs Giacomo Galea*, Court of Appeal 27 June 1955 Vol XXXIX.i.413.

⁴ Diana Bajada, ‘Abuse of Rights in Maltese Jurisprudence: A Civil Law Concept within a Mixed Jurisdiction’ (LL.D. thesis, University of Malta 2013).

property's inherent nature and was tolerable, but it became abusive if it violated the rights of others.

Until this period, the courts were interpreting abuse of rights very narrowly, holding that there must be a grave harm to prove abuse of rights, and it was not enough to prove a slight inconvenience. Hence, even though damage may have been caused, the defendant is not liable where the damage is tolerable.⁵

Contemporary Jurisprudence

Modern jurisprudence marks a clear shift toward focusing on harm as the decisive element under Article 1030. Rather than assessing how a right was exercised, the courts now consider the degree and effects of the harm inflicted.

This shift was highlighted in the case of *Alfred J. Baldacchino vs Commissioner of Lands*.⁶ The plaintiff claimed that his property suffered significant harm, including loss of value, environmental degradation, noise, pollution and deprivation of views, due to the construction of a nearby power station.

The First Hall found the Government's actions abusive, illegal, and prejudicial to the plaintiff. Drawing parallels with the *Mintoff* case, a human rights case involving *de facto* expropriation due to diminished property enjoyment, the court similarly held in *Baldacchino* that the harm caused constituted *de facto* expropriation, warranting compensation under civil law.

The Court of Appeal held that liability arose not from the act itself, but from the disproportionate and intolerable harm caused. The Government's actions were deemed abusive due to the five-year suspension of expropriation, lack of just compensation, and the unreasonable requirement for the plaintiff to renounce claims for damages. The Court emphasised that Article 1030 requires rights to be exercised prudently and within the proper limits, or they become abusive, despite the lawfulness of the act.

This case underscores the courts' shift toward focusing on the degree of harm caused over how a right is exercised. While earlier interpretations hinged on whether rights exceeded the proper limits, the Court here emphasised that disproportionate harm alone renders an act abusive, even if lawful.

The courts' focus on harm is also evident in cases addressing economic loss. In *Fiorino D'Oro Co. Ltd vs Direttur tat-Toroq*,⁷ a restaurant owner sued

⁵ *ibid.*

⁶ 273/1993/2 *Baldacchino Alfred J vs Commissioner of Lands et*, Court of Appeal 23 September 2009.

⁷ 1781/2001/1 *Fiorino d'Oro Co Ltd vs Direttur tat-Toroq*, Civil Court (First Hall) 16 January 2003.

for damages due to unjustified delays in roadworks, which caused a reduction in clientele. The Court emphasised that anyone, including the Government, must exercise their rights reasonably and avoid unnecessary harm to third parties. Harm caused by prolonged projects, even when lawful, constitute an abuse of rights if the harm is disproportionate.

In *Grima vs Caruana*,⁸ construction works by the defendant caused business loss to the neighbouring hotel. The Court held that owners must minimise the harm caused to neighbours and that they must only tolerate inevitable inconvenience. Despite no documented decline, the question was not whether the year was good for business, but whether, without the defendant's interference, it would have been better.

In *Joanna Briffa vs Spinola Development Co. Ltd.*,⁹ the plaintiff claimed structural damage and lost rental income due to nearby construction. Proof of structural damage alone sufficed to establish liability under Article 1030, even in the absence of *culpa* or *dolus*. Anyone developing their property has the right to do so but must ensure it does not cause harm to others.

A wide application of article 1030 is illustrated in *Anthony Bezzina nomine vs Direttur tal-Kuntratti*.¹⁰ The court held that lack of good faith in contractual negotiations constitutes abuse of the right to negotiate, leading to liability in tort. Applying article 1030, it seems that precontractual liability may fit into tort as the damages stem from the abuse of the right to contract, rather than from the contract itself.

These cases highlight that the focus is not on the exercise of rights but on the harm inflicted. They solidify the modern interpretation of Article 1030, prioritising the effects of harm, including financial loss and structural damage, over the formal legitimacy of the act. The court's reasoning demonstrates a pivotal shift.

⁸ 410/1995/2 *Charles Grima vs John Caruana*, Court of Appeal 3 February 2009.

⁹ 755/2001/1 *Briffa Joanna vs Spinola Department Company Limited*, Court of Appeal 9 January 2009.

¹⁰ 170/2002/1 *Bezzina Anthony noe v Direttur tal-Kuntratti et*, Court of Appeal 27 March 2009.

Conclusion

The evolution of the interpretation of Article 1030 demonstrates a shift from earlier focus on tolerance to prioritising the degree and effects of harm caused in line with German Law. The concept of abuse of rights acts as a mechanism for courts to develop tort law and establish new standards of behaviour, beyond what is deemed lawful. This is evident in landmark cases like *Baldacchino*, where the Court extended liability solely on harm caused, despite the lawfulness of the act. It may thus be concluded that unjust harm alone is sufficient for liability to arise.

Therefore, article 1030 is a flexible provision which allows courts to balance the exercise of individual rights with the protection of others from harm, creating the possibility for tort to arise even in the lack of a breach of a duty imposed by law or of the failure to act like the *bonus paterfamilias*.



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