Court of Magistrates (Malta)

As a Court of Criminal Judicature

Magistrate Dr. Joseph Mifsud LL.D.

The Police

(Inspector Matthew Vella)

vs

Radoslav Szymon Skalski

Case number 102 / 2012

Today 30th January 2018

The Court,

Having seen the charges against Radoslav Szymon Skalski holder of Polish passport number AM1215498 and Maltese ID Card number 53113A accused for having in these Islands, between the months of July 2009 and December 2009, committed several acts, even if at different

times which constitute violations of the same provision of the law, and such acts were committed in pursuance of the same design, misapplied, converted to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him, by reason of his specific profession, trade, business, management, office or service or in consequence of a necessary deposit; under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, the sum of money exceeding two thousand and three hundred and twenty nine Euro and thirty seven cents (€2,329.37), to the detriment of Betfold Ltd, LifeGaming Ltd., their directors and shareholders, the company's clients and other people.

The Court was also asked to apply the provisions of article 533 of Chapter 9 of the Laws of Malta.

Having seen that this case was assigned to this Court as presided by means of a decree dated 30 June 2015 delivered by the Honorable Chief Justice;

Having seen the note of the Attorney General dated 6th November, 2012 (*a fol*. 169), whereby the Attorney General found that from the preliminary investigation, there might result an offence under the provisions of:

(a) In terms of articles 18, 293, 294 and 310 of the Criminal Code, Chapter 9 of the Laws of Malta;
(b) In terms of articles 17, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

In terms of Articles 370(3)(a) of the Criminal Code the Attorney General decided that the accused is to be judged by this Court.

Having seen that during the sitting of the 25th February 2016 the accused declared there was no objection on his part to the case being tried summarily.

Having seen that, on the 25th February 2016, the above-mentioned Articles of Law were read out to the accused;

Having seen that during the sitting held on the 25th February 2016 (*a fol.* 278) the Prosecution declared that it was resting its case and on the same sitting in terms of Article 370(3)(b) of the Criminal Code, the Court, after reading out the contents of the formal accusatory document to the accused (*a fol.* 278), requested the accused whether he found any objection to his case being dealt with summarily. After giving the accused a reasonable time within which to reply, and after consulting his Legal Counsel, he declared that he had no objection to his case being dealt with summarily. The Court therefore took note of this declaration in writing in the records of these proceedings in terms of Article 370(3)(c) of the Criminal Code;

Having heard the final oral submissions of the Prosecuting Officer and seen the written submissions of the Legal Counsel to the accused following which the Court adjourned this case for judgment in terms of Article 377 of the Criminal Code.

Legal Considerations Regarding the Level of Proof Required

That the Prosecution is bound to bring forward evidence so that the Court can find the accused guilty as charged. Manzini[1] notes the following:

> *"Il così detto onero della prova, cioé il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit".*

In the Criminal field the burden of the Prosecution is to prove the charges beyond reasonable doubt. With regards to the defence, enhanced by the presumption of innocence, the defence can base or prove its case even on a balance of probabilities meaning that one has to take into consideration the probability of that version accounted by the accused as corroborated by any circumstances. This means that the Prosecution has the duty to prove the tort attributable to the accused beyond every reasonable doubt and in the case that the Prosecution being considered as not proving the element of tort the Court has a duty to acquit the accused.

That the following principles, as clearly outlined by the Constitutional Court in its judgment of the 1st. of April 2005 in the case **The Republic of Malta vs. Gregory Robert Eyre et**, must be applied:

> *"(i) it is for the Prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the Prosecution, to prove or disprove certain facts, he need only prove or disprove that*

[1] Diritto Penale (Vol. III, Chapter IV, page 234, Edition 1890).

fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the Prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence."

That Lord Denning in the case **Miller vs. Minister of Pension** explained what constitutes "*proof beyond a reasonable doubt*".

He stated:

"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing shall of that will suffice".

THE EVIDENCE PRODUCED

Dr. Claudette Fenech, legal officer with the Registrar of Companies gave evidence on the 20th February, 2012 and exhibited two documents

which were marked as Doc. CF1 and Doc. CF2. During the sitting of the 27th February, 2012 the Court declared that due to a technical problem the testimony given by the witness could not be heard clearly and thus could not be transcribed. The witness gave her evidence once more on the 2nd April, 2012. She confirmed the documents which had been exhibited during the sitting of the 20th February, 2012 as being the documents in connection with Betfold Limited (C-44430) (doc. CF 1 a fol. 17) and Life Gaming Limited (C-45719) (doc. CF2 a fol. 43). The witness stated that who the shareholders and directors are or were should result from the said documents. The same applies with regards to transfers.

Romwald Attard, a representative of Bank of Valletta p.l.c. gave evidence on the 20th February, 2012 and exhibited five documents which were marked as Doc. RA1, Doc. RA2, Doc. RA3, Doc. RA4 and Doc. RA5. During the sitting of the 27th February, 2012 the Court declared that due to a technical problem the testimony given by the witness could not be heard clearly and thus could not be transcribed. The witness gave his evidence once more on the 2nd April, 2012.

With regards to doc. RA 1 (fol. 73) he stated that this is a current account (number 40018396753) held by Life Gaming Limited. This document is linked to doc. RA4 (fol. 82). The signatories to this account are Chetcuti Hugo, Mizzi Omar, Pedersen Niki Mirecki and Skalski Radoslaw Szymon. Under the heading "*additional mandate Instructions Memo*" there are the words "*Hugo Chetcuti with any two of the others*".

Doc. RA2 is a savings account (number 40018099267) also held by Life Gaming Limited. This document is linked to doc. RA5 (fol. 83). The signatories to this account are Chetcuti Hugo, Mizzi Omar, Pedersen Niki Mirecki and Skalski Radoslaw Szymon. Under the heading "*additional mandate Instructions Memo*" there are the words "*Hugo Chetcuti with any two of the others*".

Doc. RA3 is a document pertaining to two accounts held by Betfold Limited. The signatories for the first account bearing number 40017392635 are Pedersen Niki Mirecki, Mizzi Omar and Chetcuti Hugo. According to the top part of this document under the heading "*additional mandate Instructions Memo*" there are the words "*Chetcuti to sign always with any one from rest*". The signatories for the second account bearing number 40017392635 are Mizzi Omar, Chetcuti Hugo and Skalski Radoslaw Szymon and one also finds, in the lower part of the document the heading "*additional mandate Instructions Memo*" there are the words "*Chetcuti to sign always with any one from rest*".

Inspector Daniel Zammit gave evidence on the 20th February, 2012 and exhibited one document which was marked as Doc. DZ1. During the sitting of the 27th February, 2012 the Court declared that due to a technical problem the testimony given by the witness could not be heard clearly and thus could not be transcribed. During this last mentioned sitting, Inspector Zammit gave evidence once again and produced another document marked as DZ2. He stated that on the 19th December, 2009 Hugo Chetcuti and Omar Mizzi, shareholders and directors of Betfold Limited had sent a letter to the police, through their lawyer, Dr.

George Cutajar, whereby they claimed that "*another two shareholders and directors of the company has* (recte: had) *misappropriated a large amount of funds which were being held in the company's accounts*" (fol. 99). Subsequently on the 21st of December, 2009 a complaint was made by Dr. Cutajar on behalf of the said Hugo Chetcuti and Omar Mizzi against the accused and another person Niki Mirecki Pedersen. The former inspector of police continued stating that "*as a background to this company Betfold.com which is the online gaming site there was first Betfold Limited where the Maltese persons and the foreigners were shareholders but then because there are tax concessions for major shareholding if they are foreigners another company Life Gaming Limited was formed. Betfold.com got its software from Tane Limited and Tane Limited supply* (recte: supplied) *the software that was developed by later* (recte: by the latter). ... *The gaming site Betfold was using online bank accounts with Netteller.com and moneybookers.com. In these accounts the players used to deposit their money and once he or she can withdraw the remaining balance from their account.*" (fol. 99-100).

On the 2nd April, 2012 the Inspector continued giving evidence. This time round, in his evidence, he stated that Betfold Limited and Life Gaming Limited reported to the police that another two shareholders and directors of the company Bedfold Limited that is Radoslav Szymon Skalski and Niki Pederson misappropriated money. He said that towards the end of November, 2009 the complainants became aware that the company was making unexplainable losses and that players were not being paid on time for their winnings. It was also noticedthat the accused and Pedersen were spending a large amount of money in various clubs in the area of Paceville.

The former inspector also stated that "*the online bank accounts of the company were checked and it resulted that there were various transactions from the company's account to the suspects's personal account*" (fol. 119). With regards to these transactions, he stated that €25,000 were transferred to the account of the accused and another €24,000 were transferred to the account of Niki Pedersen. He continued that the amount of $61,500 were transferred by the suspect to a fake account. The inspector confirmed the statement released by the accused on the 28th January, 2012 (fol. 84). He stated that the accused after speaking to his lawyer answered the questions put to him and he also chose to sign the statement. The accused gave his version of events "*... and when asked about the money, for what it was used: he said that they were used for wages, conferences, marketing and to pay for services and a new website*" (fol. 120). He said that when the accused was asked what he meant about conferences and marketing, the accused replied that "*he went to Budapest for a conference and to promote Betfold.com and marketing for meetings... and also explained that we pay the bills for dinners and clubs and also explained that in Budapest they had dinner meetings with potential clients and they paid them as well*" (fol. 120).

The inspector stated that eventually the accused "*was charged in Court with misappropriation from the company Betfold.com*" (fol. 120).

With regards to the complaint lodged by Dr. Cutajar dated 21st December, 2009 (doc. DZ2 a fol. 101) this was made only on behalf of Betfold Limited. This results from the contents of the letter and the last paragraph of it which states quite clearly the following "*In the*

circumstances I am instructed by my clients Mr. Chetcuti and Mr. Mizzi to kindly request you to investigate further and obtain a European Arrest Warrant against the said Skalski and Pedersen with a view to have them arrested and returned to Malta to face prosecution on charges of fraud, misappropriation and theft to the detriment of Betfold Limited" (fol. 103).

Dr. George Cutajar gave evidence on the 27th February, 2012. He confirmed that the letter marked as Doc. DZ2 was written by him under instructions from Hugo Chetcuti and Omar Mizzi as shareholders of a company. The accused and Pederson were also shareholders. Dr. Cutajar stated that his clients had formed a company with the accused and Pederson "*... which was meant to run internet gaming under a special licence from another Maltese registered company called Tane*" (fol. 104). He stated also that towards mid-November (no mention of the year is made, but presumably it is 2009) Hugo Chetcuti requested him to write a letter to the accused and Pedersen concerning some money which they owed him personally with regards to unpaid bills in bars which are or were owned by Mr. Chetcuti. He said that when the accused and Pedersen were confronted in this regard, his clients started getting suspicious about the lifestyle that the accused and Pedersen were embarking on. Eventually, "*certain players who were playing on these poker rooms on the internet site Betfold Limited started complaining that they were not perceiving their winnings*" (fol. 105). Dr. Cutajar further stated that "*myself and Mr. Chetcuti called a meeting with the other two who were in effect running the site and when confronted they did not come up with a reason or explanation why thousands of euros were not being paid and why thousand of Euros which went into the company were siphoned from the company*" (fol. 105). He declared

that Mr. Chetcuti reached an agreement with the accused and Pederson that the company be sold to a third party, which third party was represented by Dr. Marco Ciliberti. Dr. Ciliberti carried out a due diligence exercise on behalf of his client and from said exercise, according to Dr. Cutajar, "*... it resulted that there were various serious discrepancies in the withdrawal of accounts*" (fol. 105). Dr. Cutajar further declared that "*... what was happening was that money was being deposited into the company accounts transferred into another account and withdrawn either by Mr. Skalski or Mr. Pederson*" (fol. 105). On the 17th December, 2009 a meeting was to be held between the accused, Pederson and Hugo Chetcuti, but this meeting never materialised. Dr. Cutajar further alleged that the "*... next thing we know was that they had took* (recte: taken) *the final amount which was in the accounts, purchased two tickets flights to London, and they simply left the island leaving the company running in debt of thousands of Euros for which there was setting of guarantees through which the players have been paid*" (fol. 105). He finally concluded his evidence by stating that "*... effective management of the running of the company, transfer of funds etc, was solely in the hands of the accused and his Danish partner ... They were the persons who effectively managed and ran the company*" (fol. 105).

Per Gustav Sahlberg gave evidence on the 27th February, 2012. He stated that he was a director and the Chief Financial Officer for Tane. Tane, explained the witness, sells betting software, a payment platform and he further stated that "*basically it's a poker software or a casino software*" (fol. 107). With regards to Betfold Ltd, the witness stated that there was a relationship with it in the sense that Betfold Ltd used Tane's products. Obviously a contract would need to be signed so that Tane's

products could be used. He said that the service agreement between the two companies was stopped because no payments were ever received by Tane from Betfold Ltd. He stated that when Betfold Ltd was not honouring its commitments, they tried to investigate and understood that they had internal problems. Asked whether some form of investigation was carried out by Tane into this issue, the witness replied and stated "*not really. I mean when we see that they don't pay we stop giving them the service*" (fol. 108). The witness stated that Betfold Limited owes Tane roughly the sum of two hundred and ninety two thousand Euros (€292,000). This money was paid by Tane to the end users, that is to the private customers of Betfold Limited. These end users according to a guess by the witness amount maybe to a couple of hundred. He said that Tane took the decision internally "*... to pay the end users because we didn't want problems with our external software providers which is PlayTech*" (fol. 108). In cross examination, the witness promised to exhibit the contract signed between Tane and Life Gaming Limited. Asked with whom the business was being carried out, the witness stated that this was being done by "*Betfold through Life Gaming. Betfold was more their brand so to speak*" (fol. 109). Thus the business relationship was being carried out with "*Life Gaming*" (fol. 109).

Hugo Chetcuti gave evidence on the 14th of May, 2012. He stated that the accused approached him to open a gaming company together with another person. He agreed to it and went on to finance the formation of the company. The witness stated that "*I borrowed the money through the company and then the company had to give me the money*" (fol. 124). The name of the company was Betfold. He continued stating that the

company was 50:50 and that the accused and the other person (Niki) were to take care of the business. The witness further stated that "*They used to take care of everything, actually I let them do anything. I trusted the people, then I realised when they were working. I realised that there was something wrong because they were buying botles of champagne that cost five hundred euros, one, two, three and spending money. Then when I told them what are you doing? And they stopped coming to my place and they were going to other places. But still people were telling me that they were spending a lot of money. And then they rented a flat. I don't know how much, about three thousan euros a month and I said what is going on here? What's happening like you know? I was getting suspect* (recte: suspicious). *Then we realised what was going on*" (fol. 125). He explained that "*They were taking money of the clients, they were spending the money of the clients that they were depositing in the company. I approached them, they said yes, they told me the story that I had to believe and they were taking definitely the money from the client*" (fol. 125).

The prosecution asked the witness "*you told us that at first they were taking care of it, the accounts of the company, finances, depositing into the bank and withdrawing from the bank who was doing it?*" (fol. 125) and he replied "*they were doing everything, they were doing everything*" (fol. 125).

The witness also stated that he did not have access to what the people were depositing in the accounts.

The company eventually stopped operating. The witness also said that the debts of the company amounted to €550,000.

The witness stated that he had invested over a €100,000 "*naħseb*" in the company (fol. 126). He continued stating that "*I was taking a bit from them but then they still owed me about ninety thousand. This is approximate*" (fol. 126).

The witness also stated that "*... I even had someone that used to work with him or work together that I met and he told me listen they used to change money, they used to put me in the middle and he said I am ready to come there and witness, and he tells me all the stories because he knows how these things work. They used to tell him let's put it on your name so that it does not look back. He knows everything about this and he said it's good to come and tell the truth to Court. And he said I am ready to come and tell the truth to Court*" (fol. 126).

Kirmo Kolehmainen gave evidence on the 25th June, 2012. He stated that when he came to Malta he started working in gaming and he met him there. Asked by the prosecution about an email he sent in 2009, the witness stated that "*yes it was about Nicky, he asked to make a transaction, in my personal account, so that he could pay rent and deposit rent I think*" (fol. 136). The Nicky referred to by the witness was Niki Pedersen. Asked by the prosecution how the transaction went through, the witness stated that "*he... to my account and he asked me to create another email address ... and he made the transfer to my personal account*" (fol. 136). Asked from whose account this transfer was made, the witness said "*that i don't know*" (fol. 137). The witness concluded by stating that the records of these transactions were sent by email and that "*everything is in the email*" (fol. 137).

Omar Mizzi gave evidence on the 4th of February, 2013. He stated that he used to help the accused and Niki Pedersen. He continued stating that the accused asked him if he knew of someone who wanted to form a gaming company and he spoke to his ex-boss Hugo Chetcuti who was interested in the idea. He said that once the company was formed, it was the accused and Niki Pedersen who ran the company and they had access to everything. This meant, according to the witness "*basically everything ... The software, the betting office, the accounts, the setting of the company*" (fol. 214). He said that one day Tane informed them that the players were not being paid and when Hugo Chetcuti and the witness confronted the accused and Niki Pedersen about this, "*... they used to deny, everything is going fine, this, that. Money is going to come in. Then all of a sudden they vanished*" (fol. 215). He also stated that the netteller and bookmaker accounts were controlled by the accused and Niki Pedersen. He also stated that the accused and Niki Pedersen used to withdraw their wages from the accounts of the company. The witness also stated that the accused and Niki Pedersen used to take care of the marketing and that nothing was ever mentioned about the budget for the marketing. In cross examination, asked whether he received money only from Niki Pedersen, the witness denied this and stated that both the accused and Niki Pedersen did so. Aasked whether he ever gave a receipt for the monies received, the witness replied in the negative.

On the 25th February, 2016 the Prosecution declared that it had no further evidence to produce in this case.

The accused Radoslav Szymon Skalski gave evidence on the 11th November, 2016. He started by stating that Betfold Limited was created with a starting capital of €40,000 with 4 directors, Hugo Chetcuti, Omar Mizzi, Niku Pedesen and himself. After a few weeks, Hugo Chetcuti withdrew the €40,000 starting capital. Betfold never had any income or outcome. Therefore, the accused states "*... there could be no withdrawal from the company. The only money that Betfold had were withdrawn by Mr. Hugo Chetcuti, I think three (3) weeks after that it was deposited. Therefore the company was automatically minus forty thousand (40,000) in debt*" (fol. 995). With regards to Life Gaming Ltd, the accused satated that this was the second company that was created. This time, the starting capital was of €100,000. He further stated that he was an intial shareholder of this latter company until Hugo Chetcuti transferred, without his knowledge, all the shares of the company to his name. He got to know of this transfer from Dr. Marco Ciliberti LL.D., who was commissioned by another company to carry out the relative due diligence exercise when talks were underway between the company represented by Dr. Ciliberti and Hugo Chetcuti to have the former buy the latter's company. The accused stated that a copy of this transfer from him to Hugo Chetcuti is to be found at page 52 of these acts. The date on this document is the 26th November, 2009. After having confronted Hugo Chetcuti about this, the said Hugo Chetcuti once again transferred back the shares to the accused and this as can be evidenced at page 51 of the acts. The date on this document is the 7th December, 2009. The accused stated that whilst in Betfold Ltd he was both a shareholder and a director, in Life Gaming he was only a shareholder whilst the Managing Director was Hugo Chetcuti.

The accused once again reiterated that Betfold Ltd never operated as the initial investment was too small. The contract was signed between Life Gaming Ltd and Tane. This was confirmed by the Chief Financial Officer of Tane (**Per Gustav Sahlberg**). Tane was the software provider for Life Gaming's business. The accused stated that Life Gaming was the middleman between the software company (Tane) and the end users who are the players. Life Gaming Ltd provided poker and casino services.

Accused further stated that "*to run a company like this obviously you need to advertise it, you need to have the proper marketing and you need to co-operate with affiliates. Affiliates are middlemen, middle companies between players and us. Those are the companies that have huge traffic of the people and they are providing us with the traffic which we later convert to players*" (fol. 292) and "*When the players are playing obviously we are gaining the money. That is why it is very important to have a lot of affiliates with a lot of traffic. Obviously we need to share with them the income that they are generating for us. They are getting the commission and the percentage. Depending of affiliate different commission and different deal*" (fol. 292)

The accused confirmed that what Mr. Chetcuti stated through his lawyer's letter was not true as he was not involved in the company in November 2009. He categorically stated that "*It is not true. If it were true he would provide us with evidence*" (fol. 292).

With regards to the bank accounts, the accused stated that since Hugo Chetcuti knew the bank representatives, it was agreed that they open up

bank accounts with Bank of Valletta. He also stated that Mr. Chetcuti withdrew three amounts from the bank accounts of the company. Two amounts of €10,000 each and one amount of €20,000. The accused confirmed that for any cheque to be issued, Mr. Hugo Chetcuti must always sign with anyone from the rest and this as confirmed in the BOV documents marked as Dok. RA3 at pages 81, 82 and 83 of these proceedings.

The accused also stated that the person who was responsible to create the accounts with netteller.com and moneybookers.com was Niki Pederson.

With regards to what Hugo Chetcuti stated as to the spending of large amounts of money in the Paceville area the accused stated that this agian was not true "*The person who had the power to sign any single cheque, any single deal, was Mr. Chetcuti. He was the person, as we showed on the BOV notes, that he is the person who always must sign any kind of cheque, anything that is coming out of the company. Yet again the other statement about the bottles is not true. If that would be true yet again he would provide us with some kind of evidence*" (fol. 297).

With regards to the transfer of money as wages, the accused stated that it was Niki Paderson who was transferring the wages to everyone including Omar Mizzi. In cross-examination he stated that "*.., it was equal to every person, Niki Pedersen, Omar Mizzi and me. There was no specified, there was no minimum, maximum. There was no bonus because we made this goal or not. Each month was on different basis*" (fol. 305). Asked from where

he was receiving his monthly wage, the accused stated that he sometimes received them from neteller and moneybookers accounts. Ased whether this sounded strange to him, getting paid from the payment gateway, the accused replied "*No. That its not against terms and conditions of the netteller or moneybooker*" (fol. 310). He also stated that Omar Mizzi and Niki Pedersen also had netteller and moneybooker accounts. Hugo Chetcuti was withdrawing his share from the accounts held with Bank of Valletta.

With regards to his departure from Malta, the accused stated that he was afraid for his safety.

Finally with regards to the domains, i.e. betfold.com and betfold.org, the former was owned by Niki Pederson whilst the latter was owned by Mr. Hugo Chetcuti.

In cross-examination, the accused stated that he was a director and shareholder in Betson Limited whilst he was the majority shareholder in Life Gaming Limited. Hugo Chetcuti was the Managing Director of this latter company and it was Mr. Chetcuti who signed the contract with Tane for the software, and it was also Mr. Chetcuti who signed all the cheques that where coming out of the company.

The accused role in the company was to bring "*... the big companies with massive traffic that we can convert later on into money and to gain for the company*" (fol. 302). Niki Pederson was responsible for the accounting, banking and the marketing. Omar Mizzi was responsible for the day to

day work in the office as well as to reply to all the emails that they received. Mr. Chetcuti was the person who created the company and who put out the intial investment.

Asked about the company accounts, the accused stated that it was Niki Pedersen who created the accounts and he was the person in touch with the banks. It was Niki Pedersen who transferred the money which were received on a monthly basis to other accounts.

Asked by the prosecution what measures he took when the shares of Life Gaming Limited were transferred from him to Hugo Chetcuti, the accused replied "*... I left Malta because I was afraid of my safety*" (fol. 307).

With regards to withdrawals made from the company (Life Gaming Limited), asked by the Prosecution if he (the accused) had asked the permission from someone, or whether he just took the money without asking anyone's permission, the accused replied that "*Omar Mizzi, Hugo Chetcuti, Niki Pedersen. And Niki Pedersen was the person who was confirming all of the withdrawals. And obviously Hugo hetcuti and Omar Mizzi knew about everything*" (fol. 308).

The accused stated that when affiliates used to come to Malta, in order to make them use Life Gaming's services, they used to meet with them and many times, they used to wine and dine them. Sometimes they (the affiliates) paid and sometimes they (the company) paid. These affiliates were important for the business of the company. Many times, these outings where held at Hugo Chetcuti's places. Asked about the

procedure adopted to pay for these meals, the accused stated that he never asked because "*Omar Mizzi stated that we never had any limit, minimum or maximum on this, as long as we were going out. Omar Mizzi was present and Hugo Chetcuti most of the time on every single meeting because we were going to his places. So any time that an affiliate was coming usually we were coming to Hugo's Lounge. And Hugo was present at every, most of the meetings. Omar Mizzi as well, as well as Niki Pedersen. There was no objection by any of them*" (fol. 309).

Legal Procurator Quentin Tanti gave evidence on the 1st March, 2017 and he stated that former Inspector Daniel Zammit and Luke Chetcuti, Hugo's son where shareholders in a company called Diabolik Entertainment Limited (C-51442)..

LEGAL CONSIDERAATIONS

The Law as it stands (30.1.2018)

Misappropriation. (Amended by: IV.1874.3; VIII.1909.28; XLIX.1981.4; III.2002.55.)

> *"293. Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:*

Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party".

Aggravating circumstances. *(Amended by: VIII. I909.29; XLIX.1981.4; III.2002.56.)*

294. Nevertheless, where the offence referred to in the last preceding article is committed on things entrusted or delivered to the accused by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, criminal proceedings shall be instituted ex officio and the punishment shall be of imprisonment for a term from seven months to two years.

Article 310 mentioned by the Attorney General in his note dated 6th November, 2012 (fol. 169-170) refers to the scale of punishment according to the amount of the damage should guilt be found under articles 293 and 294 of Chapter 9. Article 18 also mentioned by the Attorney General in his note refers to continuous offences.

Historical aspect of the law

From a historical aspect, the law as it was originally enacted by Proclamation I of the 10th March, 1854 **is different to how the law is today**. The relative substitution of the original law was made with the amendments of Ordinance VIII of 1909.

The following is a table of variances of the articles of the law from date of the first enactment todate.

1984	**1942**	**1914**	**1901**	**1854**
293	307	294	295	276
294	308	295	296	277

The law as it stood when Proclamation I of 1854 was enacted read as follows:

> *"276. Chiunque, avendo ricevuto la cosa altrui in deposito volontario o per uso determinato, per causa di lucro negasse la ricezione, od allegasse un falso motivo per liberarsi dall' obbligo della restituzione, sara' punito coi lavori forzati o colla prigionia da quattro a sei mesi*[2].
>
> *277. Colla pena stabilita nell'articolo precedente sara' punito chiunque, volontariamente, avesse distornato o dissipato a danno e contro la volonta' del proprietario, del possessore o del detentore, effetti, denari, mercanzie, biglietti, quietanze o qualsivoglia altro scritto che contenga o produca obbligazione o discarico, che gli*

[2] *276. Whosoever, having received the property of another as a voluntary deposit, or for a determinate use, shall, for the purpose of gain, deny having received the same, or allege a false plea with a view to free himself from the obligation to restore the same, shall be punished with hard labour or with imprisonment from four to six months.*

fossero stati consegnati, col peso di restituirli, di presentarli o di farne un uso od impiego determinato"[3].

These articles were similar to the ones found in the **Codice per lo Regno Delle Due Sicilie, Parte Seconda, Leggi Penali** namely article 430, 1˚ which stated that

"*Quando, dopo essersi ricevuta la cosa altrui in deposito volontario o per altro uso determinato, se ne sia per causa di lucro negata la ricezione, o allegato un falso motivo per liberarsi dall' obbligo della restituzione*"

and article 433, 4˚which stated that

"*quando e' commessa da chiunque avra distornato o dissipato a danno del proprietario, del possessore o del detentore, effetti, danari, mercanzie, biglietti, quietanza, o qualsivoglia altro scritto che contenga o produca obbligazioni o discarico, che gli erano stati consegnati col peso di restituirgli, di presentargli, o di farne un uso o un impiego determinato: senza pregiudizio delle pene stabilite per le sottrazioni e per gl'involamenti di danari, di effetti o di documenti, commessi a pubblici depositi*".

[3] *277. The punishment established in the preceding article shall be awarded to any person who shall have wilfully misapplied or dissipated, to the damage and against the will of the owner, possessor, or holder, any effects, monies, merchandize, notes, or acquittances, or any other writing containing or importing an obligation or a discharge, which may have been delivered to him under obligation to restore the same, to present them, or to make any determinate use or application thereof.*

By means of article 3 of **Ordinance IV of 1874** article 276 was revoked and replaced with the following:

> "*276. Chiunque, avendo ricevuto la cosa altrui in deposito volontario o per uso determinato, per causa di lucro negasse la ricezione, od allegasse un falso motivo per liberarsi dall' obbligo della restituzione, sara' punito coi lavori forzati o colla prigionia da due a nove mesi*[4]".

The amendment mainly concerned the increase in punishment.

With the enactment of **Ordinance VIII of 1909**, the law as it originally stood was substituted by the following articles:

> "*295. Chiunque si appropria, convertendola in profitto di se' o di un terzo, una cosa altrui che gli sia stata affidata o consegnata per qualsiasi titolo che importi l'obbligo di restituirla o di farne un uso determinato, sara' punito, a querela di parte, coi lavori forzati o colla prigionia fino a nove mesi*[5].
>
> *296. La pena e' da cinque mesi ad un anno, e si procede di ufficio, quando il delitto preveduto nell' articolo precedente sia commesso*

[4] *276. Whosoever, having received the property of another as a voluntary deposit, or for a determinate use, shall, for the purpose of gain, deny having received it, or allege a false plea with a view to free himself from the obligation of restoring it, shall be punished with hard labour or with imprisonment from two to nine months.*

[5] *294. Whoever shall misappropriate and apply to his own profit, or to that of another person, any thing entrusted or delivered to him under a title implying an obligation to return such thing or to make a particular use thereof, shall be liable to be punished, at the suit of the injured party, with hard labour or with imprisonment for a term not exceeding nine months.*

sulle cose affidate o consegnate per ragione di professione, industria, commercio, azienda, ufficio, servizio, o deposito necessario"[6].

With the amendments contained in **Ordinance VIII of 1909** the law as previously enacted was substituted and therefore reference should no longer be made to authors and judgements with regards to the **Codice per lo Regno Delle Due Sicilie, Parte Seconda, Leggi Penali**.

Articles 295[7] and 296[8] as substituted by **Ordinance VIII of 1909** were taken from articles 417 and 419 of the **The Codice Penale per il Regno D'Italia** of 1889. These articles read as follows:

"*417. Chiunque si appropria, convertendola in profitto di se' o di un terzo, una cosa altrui che gli sia stata affidata o consegnata per qualsiasi titolo che importi l'obbligo di restituirla o di farne un uso determinato, e' punito, a querela di parte, con la reclusione sino a due anni e con la multa oltre le lire cento*".

And

"*419. La reclusione e' da uno a cinque anni, e si procede d'ufficio, quando il delitto preveduto negli articoli precedenti sia commesso*

[6] *295. The punishment shall be from five months to one year, and proceedings shall be instituted ex officio, when the offence referred to in the preceding article is committed with regard to things entrusted or delivered to the accused by virtue of his profession, industry, trade, office, or service, or as a necessary deposit.*

[7] Previously article 276 of Proclamation I of 1854

[8] Previously article 277 of Proclamation I of 1854

sulle cose affidate o consegnate per ragione di professione, industria, commercio, azienda, ufficio, servizio o deposito necessario".

This was confirmed in the case **Sua Maesta il Re vs Giuseppe Felice** decided by the Criminal Court on the 29th March, 1912[9] composed of three Judges stated that:

"*Attesocche' nei termini dell'articolo 295 delle Leggi Criminali come emendato coll'articolo 28 dell' Ordinanza VIII del 1909, conforme all' articolo 417 Codice Penale pel Regno d'Italia "commette frode chiunque si appropria convertendola in profitto di se' o di un terzo una cosa altrui che gli sia stata affidata e consegnata per qualsiasi titolo che importi l'obbligo di restiturila o di farne un uso determinato*".

So when refering to authors, doctrine and foreign jurisprudence on these two articles of the law, reference must be made to the Codice Penale pel Regno d'Italia or as it is commonly known, **il Codice Zanardelli**, and not to article 646 of the Codice Penale Italiano which notion on misappropriation is different to ours and that found in the Codice Zanardelli. Article 646 of the Codice Penale Italiano, or as it is commonly known **il Codice Rocco** reads as follows:

"646. *Chiunque, per procurare a sé o ad altri un ingiusto profitto, si appropria il denaro o la cosa mobile altrui di cui abbia, a qualsiasi*

[9] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXI/IV/16

titolo, il possesso, è punito, a querela della persona offesa, con la reclusione fino a tre anni e con la multa fino a euro 1.032.

Se il fatto è commesso su cose possedute a titolo di deposito necessario, la pena è aumentata.

Si procede d'ufficio, se ricorre la circostanza indicata nel capoverso precedente o taluna delle circostanze indicate nel n. 11 dell'articolo 61".

On this issue, the Honourable Court of Appeal (Inferior Jurisdiction) in the case **Il-Pulizija vs George Bellizzi et** decided on the 28th July, 1988[10], on an appeal filed by the Attorney General with regards to the issue above mentioned stated that:

"*Illi din il-Qorti mingħajr eżitazzjoni ta' xejn hi tal-fehma illi l-appell ta' l-Avukat Ġenerali huwa radikat skond il-liġi. Infatti bejn l-artikolu 293 tal-Kodiċi tagħna li jittratta dwar l-approprjazzjoni indebita u bejn dak tal-Kodiċi Penali Taljan, l-artikolu 646, hemm differenzi notevoli illi minħabba dak li ser jiġi deċiż f'din is-sentenza, din il-Qorti jidhrilha li m'hux korrett li għall-mument tidħol fihom. ... Dan ikkunsidrat, minħabba li s-sentenza appellata tidher illi hija bbażata fuq l-interpretazzjoni tal-kunċett ta' l-approprjazzjoni indebita fil-liġi Maltija bbażata pero' fuq in-nozzjoni legali u l-ġurisprudenza tal-Kodiċi Taljan, il-Qorti hi tal-fehma illi l-appell ta' l-Avukat Ġenerali huwa radikat tajjeb*".

[10] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. LXXII/V/949 at pgs.954-955

This was again confirmed by the Court of Criminal Appeal (Inferior Jurisdiction) in the case **Il-Pulizija vs Paul Portelli** decided on the 11th September, 2015 when in a footnote, the current Chief Justice H.H. Dr. S. Camilleri, after quoting the author **Majno**, stated that:

> **"***Majno kien qieghed jikkummenta fuq ir-reat ta' approprjazzjoni indebita kif definit fl-artikolu 417 tal-Kodiċi Penali Taljan tal-1889 (Codice Zanardelli) li jikkorrispondi mal-artikolu 293 tal-Kodiċi Kriminali tagħna. Awturi oħrajn, bħal Antolisei u Manzini, jikkumentaw dwar ir-reat kif definit fil-Kodiċi Penali Taljan tal-1930 (Codice Rocco) liema definizzjoni ma tikkorrispondix mal-artikolu 293 imsemmi".*

The amendments made by Act XLIX of 1981 removed the reference to hard labour from the articles of the law under consideration, and by Act III of 2002 the relative punishment was increased in the case of article 293 from "*for a term not exceeding nine months*" to "*for a term from three to eighteen months*" and in the case of article 294 from "*from five months to one year*" to "*from seven months to two years*".

The elements needed to be proven

The elements which the prosecution needs to prove in this case, in accordance with articles 293 and 294 of the Criminal Code (Chp. 9) are the following:

1) The accused has misapplied by converting to his own benefit, or to the benefit of any other person, anything which has been entrusted to him or delivered to him under a title which implies an obligation to return such thing or to make use of such thing for a specific purpose.

In the above eventuality, the complaint of the injured party must be exhibited.

2) That the above offence was committed on things entrusted or delivered to the accused by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit.

In this later case, no complaint of the injured party is necessary and the police can proceed ex officio.

JURISPRUDENCE

1. **Sua Maesta il Re vs Samuel Maymon** decided by the Criminal Court on the 17th June, 1932[11].

   "Che l'articolo 294 (today art. 293 Chp. 9) delle Leggi Criminali sancisce che "chiunque si appropria, convertendola in profitto di se' o di un terzo, una cosa altrui che gli sia stata affidata o consegnata per qualsiasi titolo che importi l'obbligo di restituirla o di farne un uso determinato", consuma il reato di appropriazione indebita. La patria legge non si limita al

[11] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXVIII/IV/18 at pgs. 19-20

concetto della sola consegna per la costituzione del reato ivi contemplato, ma aggiunge l'altro elemento dello "affidamento", come non si limita a richiedere essere stata la cosa consegnata ed affidata "per farne un uso determinato", ma aggiunge l'altra idea della consegna ed affidamento della cosa "per qualsiasi titolo che importi l'obbligo" della restituzione, dando cosia divedere che in tale figura di reato il legislatore vorrebbe includere la distrazione che alcuno facesse della cosa altrui a lui affidata o consegnata in virtu del mandato, della locazione, della institoria, del pegno, del deposito, o di qualunque altro contratto secondo cui il detentore ne sarebbe sempre obbligato alla restituzione. Il detto concetto e' maggiormente chiarito da quanto e' stabilito nel susseguente articolo 295 (today art. 294 Chp. 9), ove e' comminata una pena piu grave, ed il reato e' deducibile anche di ufficio, quando l'appropriazione indebita sia commessa sulle cose affidate o consegnate per ragion di professione, industria, commercio, azienda, ufficio, servizio o deposito necessario. Da tale disposizione si evince che provata o presupposta la consegna o l'affidamento della cosa per ragion di commercio od altro, la distrazione che se ne fa costituisce il reato di appropriazione indebita, e non gia quello famulato o furto domestico. Perche si configuri tale delitto e' infatti necessaria da parte del servitore o del commesso l'ablazione della cosa contro la volonta del padrone, e deve presuppore necessariamente che tale cosa non sia stata consegnata od affidata al domestico. Tanto e' vero che l'articolo 270 (today

art. 268 Chp. 9) delle leggi suddette, contemplando il caso sotto considerazione, usa l'espressione che per commettere il reato di furto gli sia servita di facilitazione la qualita' di domestico, vera o simulata. Il servitore non si impossessa abusivamente di una cosa se non quando e' a lui consegnata o almeno affidata, violando cosi la fiducia in lui riposta, ma commette il furto sia nella cosa del padrone sia altrove, quando pero gli sia servita di facilitazione per penetrarvi a venire in contatto con la cosa da lui sotratta la suq qualita di domestico. **Chevau e Helie** nella loro pregevole opera Teorica del Codice Penale (Vol. III, pag. 235, Traduz. Dal **Prof. E. Pessina**), esaminando il reato in quistione, osservano che e' "nell'appropriarsi della cosa affidata che risiede la distrazione, sia che l'agente la conservi per se' stesso, sia che ne faccia un uso qualunque; ed e' col fare da proprietario e disporre a suo profitto delle cose che non gli sono state consegnate che per fare un uso determinato, che questo agente distrae o dissipa la cosa"; e i commentatori di tale opera a pag. 355 del detto volume osservano che l'individuo che consegna altrui la propria cosa per tenerla in custodia o per farne un uso determinato, si spoglia del possesso materiale "della cosa stessa ... Il depositario o mandatario che volge a suo profitto la cosa affidatagli, non solo non adempie ad un obbligo assunto, ma ancora insorge contro il diritto del proprietario, immanente su la cosa; sottrae, in altri termini, la cosa all' attivita giuridica del proprietario;"

2. **Sua Maesta il Re vs Emmanuele Cardona** the Criminal Court on the 16th June, 1933[12] stated that:

   "Sarebbe responsabile di appropriazione indebita colui che converte in profitto proprio degli oggetti che gli siano consegnati in ragione della sua industria, commercio, azienda o servizio per farne un uso determinato, quando ache egli esercita quella industria o commercio che sia senza licenza o contrariamente alle leggi"

3. In **Il-Pulizija vs Karmnu Catania** decided by the Criminal Court on the 18th October, 1941[13] it was stated that:

   "Illi biex ikun hemm il-figura ta' approprjazzjoni ndebita huwa meħtieġ li l-ħaġa li tkun approprjata tkun ġiet "entrusted or delivered" lil min ikun ħadha "under a title implying an obligation to return such thing or to make a particular use thereof" (art. 294 tal-Liġijiet Kriminali) (today art. 293 of Chp. 9). Fil-każ tagħna ma jirriżultax li l-bottijiet tal-ħalib imsemmijin fiċ-ċitazzjoni ġew fdati jew kunsinnati lill-imputat bl-obbligu li jerġa jirrestitwihom jew li jagħmel minnhom użu determinat; u għalhekk mhux il-każ ta' approprjazzjoni ndebita"

[12] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXVIII/IV/33

[13] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXI/IV/434 at pg. 435

4. **Il-<u>Maesta Tiegħu r-Re vs Antonio Pisani</u>** decided by the Criminal Court on the 2nd December, 1941[14] it was stated that:

"Illi l-art. 294 tal-Kodiċi Kriminali (today art. 293 of Chp. 9) jikkontempla r-reat ta' kull min jappproprja ruħu, billi jikkonvertiha bi profitt tiegħu jew ta' ħadd ieħor, minn ħaġa ta' persuna oħra li tkun ġiet lilu fdata jew kunsinnata b'titolu kwalsijasi li jġib l-obbligu li jirrestitwiha jew li jagħmel minnha użu determinat. L-artikolu ta' wara, li jikkontempla l-approprjazzjoni indebita aggravata, jitfa' dawl fuq x'jista jkun f'ċerti każijiet dan it-titolu tal-kunsinna, u jsemmi li jista jkun minħabba professjoni, industrija, negozju, karika, servizz, jew depozitu neċessarju, apparti titoli oħra ta' kunsinna fejn ma tirrikorrix il-kwalifika;

Illi għalhekk il-pont sollevat mill-Qorti huwa dan: jekk, peress li l-kaxex tal-petrol ġew kunsinnati lil Pisani biex jagħmel minnhom użu determinat, jiġifieri biex jagħtihom banda oħra, u Pisani żammhom bi profitt tiegħu jew ta' ħaddieħor (almenu kif tippretendi l-Prosekuzzjoni u salv dejjem il-meritu), ir-reat hux ta' serq jew reat ieħor;

Illi għalkemm il-liġi tagħna ma tagħtix definizzjoni tas-serq, huwa paċifiku dottrinalment illi s-serq huwa l-kontrettazzjoni doluża tal-ħaġa ta' ħaddieħor, magħmula "invito domino" bi

[14] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXI/IV/299 at pgs. 300-303

skop ta' lukru. Huwa anki komunement aċċettat fid-dottrina illi fis-serq proprju hemm il-vjolazzjoni mhux biss tal-proprjeta, iżda anki tal-pussess; u għaldaqshekk, meta hemm biss il-vjolazzjoni tal-proprjeta mingħajr il-vjolazzjoni tal-pussess, għaliex f'dak il-waqt sid il-ħaġa jkun spolja ruħu għal xi raġuni mill-pussess, allura jonqos wieħed mill-objettivi tas-serq, ċjoe l-vjolazzjoni tal-pussess, u l-fatt jgħaddi fil-klassi svarjata tas-serq improprju, jiġifieri tal-frodi (ara **Carrara** Programma, Parti Speċjali, Vol. Nru. IV par. 2279). Igħid dak l-awtur, f'parti oħra tat-trattat tiegħu (ibid. Para. 2103), illi l-konsenja tal-ħaġa teskludi l-figura ġuridika tal-kontrettazzjoni, u għal din tisostitwixxi l-figura l-oħra distinta tad-distrazzjoni. Il-ħati jkun ivvjola l-proprjeta, iżda mhux il-pussess; u, jikkonkludi l-**Carrara**, dan huwa biżżejjed biex jiskomparixxi t-titolu ta' serq u biex iċiedi l-post għat-titolu tal-frodi;

Illi huwa veru (u forsi fuq dan qiegħda tibbaża ruħha l-Prosekuzzjoni) illi kien hemm xi awturi illi biex is-serq tas-seftur (imsejjaħ dottrinalment "famulat") iwaqqgħuh taħt it-titolu ta' serq ippruvaw jagħmlu distinzjoni bejn il-pussess naturali u l-pussess ġuridiku. Huma qalu illi sid il-ħaġa ikun spolja ruħu biss mill-pussess naturali jew fiżiku, iżda jkun żamm il-pussess ġuridiku, illi l-konsenja magħmula lis-seftur hija neċessarja, u, ikomplu jgħidu, is-seftur jippossjedi għan-nom tas-sid, u jikkonkludu fis-sens li għalhekk hemm, anki f'każijiet simili, il-vjolazzjoni tal-pussess barra mill-proprjeta,

u konsegwentement hemm it-titolu tas-serq. Il-**Carrara** pero jikkumbatti din it-teorija (ibidem para. 2105), u jgħid bir-raġun illi d-distinzjoni bejn serq u frodi qiegħda fil-vjolazzjoni tal-pussess naturali u mhux fil-pussess ġuridiku jew ċivili; tant illi f'xi każijiet l-istess possessur ċivili jista jirrendi ruħu ħati ta' serq jekk jieħu l-ħaġa minn għand il-possessur naturali; u jkompli jgħid, ugwalemtn bir-raġun, illi b'din it-teorija tad-distinzjoni tal-pussess ma jibqax, fl-ebda każ, il-possibilita ta' frodi jew truffa. Hekk jaħsbuha wkoll il-**Crivellari**, fit-trattat tiegħu "Commentario al Codice Penale", Vol. VIII, paġ. 81, fejn jgħid illi jekk is-sid ikun ikkonsenja l-ħaġa lil min imbagħad ħadha u żammha għalih jew għal ħadd ieħor, allura, peress li ma hemmx vjolazzjoni tal-pussess, jonqos il-kunċett tas-serq, u l-**Manzini**, Trattato di Diritto Penale Vol. VIII, paġ. 218, fejn jgħid illi meta l-ħaġa tiġi konsenjata mis-sid lil bniedem ieħor biex dana jeħodha band' oħra, mhux fil-preżenza jew taħt l-indukrar tas-sid, allura, jekk dan il-bniedem ieħor jieħu l-ħaġa, hemm approprjazzjoni ndebita u mhux serq;

Illi huwa veru illi, kif irrilevat il-Prosekuzzjoni, fl-insenjamenti tad-Dritt Ingliż saret fil-każ tal-famulat l-istess distinzjoni bejn pussess fiżiku u pussess ċivili ("constructive and legal possession"), u illi dina d-distinzjoni saret minħabba "the necessity of protecting masters against the dishonesty of their servants" (ara l-**Kenny**, ċitat mill-Prosekuzzjoni fin-nota tagħha); imma s-sistema Ingliża dwar dina l-materja huwa

divers minn tagħna, u ma jistax jingħibed argument minn dawk l-insenjamenti la darba s-sistema huwa divers. Fil-liġi tagħna hemm speċifikat mill-liġi, fl-art. 291, ir-reat ta' approprjazzjoni indebita, u ma tistax dik id-disposizzjoni tiġi mwarba bil-konsegwenzi kollha tagħha. Għandu anki jiġi osservat pero' illi fl-istess liġi Ingliża, taħt il-Larceny Act 1916, section 20, hemm kontemplat ir-reat ta' "Fraudulent conversion" (presumibilment l-approprjazzjoni indebita tagħna), u fost il-figuri diversi ta' "fraudulent conversion" jidħol il-fatt ta' min, "having been entrusted with any property in order that he may ... deliver the property ... fruadulently converts to his own use or benefit, or the use or benefit of any other person the property or any part thereof ...";

Illi huwa ċert illi l-ġurisprudenza maltija segwiet dak li ngħad fuq ir-raġunamenti tal-Carrara, kif jidher mis-sentenza **Rex vs Buhagiar** mogħtija minn dina l-Qorti fit-28 ta' Ġunju, 1889, **Rex vs Felice**, 29 ta' Marzu, 1912 u aktar reċentement in **Rex vs Maynon**, 17 ta' Ġunju, 1932;

Illi jista jkun hemm każijiet li fihom il-kunsinna tkun tali li ma tneħħix it-titolu ta' serq, bħal meta l-kunsinna tkun ġenerali; hekk per eżempju, meta s-seftur ikollu f'idejh il-konsenja ġenerali ta' l-affarijiet kollha li jkunu fil-post fejn irid jesplika l-operat tiegħu; f'dal każ, jekk jieħu xi wieħed minn dawn l-oġġetti, it-titolu jkun ta' serq aggravat bid-domestiċita. Iżda meta l-konsenja tkun speċjali, b'mod li s-seftur ikollu

responsabbilita partikulari ta' dak it-tali oġġett lilu partikolarment ikkunsinnat, allura t-titolu ta' serq jimproprja ruħu u jsir frodi. Hekk ukoll tista l-konsenja tkun magħmula f'ċirkustanzi li juru illi s-sid ma riedx jikkonsenja l-pussess lil bniedem ieħor, bħal meta wieħed ikun qiegħed jitkellem ma' ħadd ieħor, jurih oġġett u jagħtih dak l-oġġett f'idu biex dak jarah dak il-mument, u mbagħad dak il-ħadd ieħor jitlaq jiġri bl-oġġett; f'dan il-każ hemm it-titolu ta' serq. Hekk ukoll, fil-każ li fih, għalkemm sid il-ħaġa jkun ta' dik il-ħaġa f'idejn ħadd ieħor biex jikkunsinnaha band' oħra, ikun pero bagħtlu miegħu lil xi ħadd ieħor biex jissorveljah (ara dawn id-diversi każijiet ta' konsenja li ma tneħħix it-titolu ta' serq prospettati mill-**Majno**, Codice Penale Italiano, Vol. IV., no. 1869; mill-**Carrara**, ibid. No. 2285; u mill-**Forli**, Conclusioni Criminali, paġ. 241-242);

Fil-każ preżenti kien hemm il-konsenja li tbiddle it-titolu minn serq għal reat ieħor, għaliex kienet konsenja partikulari, mhux ġenerali, u kienet magħmula bil-volonta tas-sid u b'fidċja, fis-sens illi s-sid tal-petrol fada lill-impjegat tiegħu Pisani bil-pussess fiżiku tal-petrol, sabiex jieħdu u jagħtih banda oħra, bla ma bagħtlu lil ħadd miegħu biex jissorveljah".

5. **Il-<u>Maesta Tiegħu r-Re vs Pawlu Vella</u>** decided by the Criminal Court on the 3rd September, 1942[15] it was stated that:

[15] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXI/IV/318

"Meta ssir konsenja ġenerali ta' xi oġġetti lil persuna, u din il-persuna tieħu minn dawk l-oġġetti, hemm ir-reat ta' serq, u mhux dak ta' approprjazzjoni ndebita".

6. **Il-<u>Pulizija vs Anthony Chircop</u>** decided by the Criminal Court on the 16th September, 1944[16] it was stated that:

"*Iżda hemm fil-każ preżenti r-reat minuri ta' approprjazzjoni ndebita; għaliex fil-fatt Chircop approprja ruħu, billi kkonverta għap-profitt tiegħu l-flus u ċ-ċrieket li kienu lilu fdati b'titolu ta' depożitu. Dana huwa r-reat kontemplat fl-art. 294 tal-Kodiċi Kriminali* (today art. 293 of Chp. 9)*, persegwibili bi kwerela tal-parti, li fil-każ teżisti. Huwa veru li għal dan ir-reat teħtieġ il-prova tal-konverżjoni, li fis-sens tagħha ġuridiku ta' inversjoni tal-"causa possidendi" hija anzi l-mument konsumattiv tar-reat. Din il-konversjoni pero, ma tfissirx distrazzjoni (ara Qorti Kriminali "**Rex vs Antonio Pisani**" 19 ta' Frar, 1942). Ġie ġustament ritenut illi, f'każ ta' flus, il-konversjoni, meta ma tkunx ivverifikat rħha qabel, issir bil-fatt stess tan-"negata restituzione" (**Maino**, ibidem); kif ġara f'dan il-każ, li fih l-appellant ġie ripetutament interpellat, verbalment u b'ittra legali, biex jirritorna l-flus, iżda għal ta' xejn*".

7. **Il-<u>Pulizija vs Albert Mallia</u>** decided by the Criminal Court on the 25th April, 1949[17] it was stated that:

[16] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXII/IV755 at pgs. 756-757

[17] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXIII/IV/868 at pgs. 869-870

"Id-denunzjant Briffa, fix-xhieda tiegħu qal hekk: "Lill-imputat kont nagħtih xi merkanzija biex ibiegħha għan-nom tiegħu stess". Minn din ix-xhieda jidher ċar illi l-merkanzija ma kienetx tingħata lill-imputat biex ibiegħha għan-nom tal-padrun, imma kienet tiġi mibjugħa lilu a kreditu biex l-imputat ibiegħha għak-kont tiegħu stess;

Issa hu prinċipju affermat unanimament mid-dottrina u l-ġurisprudenza, u qatt dubitat, illi, jekk it-titolu tal-konsenja jkun traslativ tad-dominju, allura ma jistax ikun hemm approprjazzjoni indebita; għaliex jekk ikun hemm traslazzjoni tad-dominju, allura d-dispożizzjoni tal-ħaġa tkun mhux vjolazzjoni, imma konsegwenza tal-jedd li jakkwista dak li jirċievi l-ħaġa b'disponibilita pjena (ara f'dan is-sens l-insejamenti tal-**Carmignani** (Elem. Guris. Crim., para. 1020; il **Carrara**, Progr. Parte Speciale, Vol. IV, para 2284; **Majno**, art. 417, para.1949; u l-**Crivellari**, Comm. Cod. Pen., art. 417; u l-ġurisprudenza ċitata minnhom in nota);

U hu loġiku li jkun hekk, għaliex l-approprjazzjoni indebita, kif opportunatament ġie osservat fid-diskussjonijiet tal-Kummissjoni tar-Reviżjoni tal-Kodiċi Kriminali Taljan, mill-**Lucchini**, verbale XXXVI, p. 720, tissupponi fil-kliem tal-liġi tliet affarijiet li huma inkompatibbili mat-traslazzjoni tad-dominju, jiġifieri: "ħaġa ta' ħadd ieħor", kwindi mhux ta' l-imputat; it-tieni "ir-radd tal-ħaġa", li timplika "vera restituzione", u għalhekk "la indisponibilita"; u fl-aħħar,

alternattivament, "li jsir użu minnha speċifikat", u kwindi mhux fakolta ta' disponibilita f'mod assolut. Meta hemm traslazzjoni ta' dominju, il-ħaġa, ma hix ta' ħadd ieħor, u l-ħaġa jista jiġi dispost minnha assolutament;

F'dan il-każ kien hemm bejgħ u kreditu. Kien hemm, għalhekk, translazzjoni tad-dominju minn Briffa għall-imputat, għalkemm kien hemm żmien għall-ħlas tal-prezz. Ma jirriżulta bl-ebda mod (u dan hu importanti) li kien hemm il-"pactum riservati dominii usque ad praetii solutionem";

F'dawn il-kontiġenzi ma kienx hemm reat. Vjolazzjoni ta' l-obbligu tal-ħlas tal-prezz tista tagħti lok għal responsabilita ċivili. Il-każ kien ikun divers kieku l-merkanzija ngħatat lill-imputat biex ibiegħa għak-kont tal-padrun, jew kieku kien hemm dak il-"pactum""

8. **Il-<u>Pulizija vs Anthony Mary Bajada</u>** decided by the Criminal Court on the 1st of March, 1952[18]

"Fis-sentenza appellata l-Ewwel Qorti eżaminat l-elementi tad-delitt skond il-liġi u d-dottrina, u rrilevat li għall-konsumazzjoni ta' dak id-delitt jeħtieġ l-att ta' l-approprjazzjoni tal-ħaġa, u qalet li dana l-att irid jirriżulta minn fatt esterjuri li ġuridikament jikkostitwixxi att ta' dominju. L-Ewwel Qorti eżaminat ukoll min xhiex tista

[18] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXVI/IV/711 at pgs. 712-713

tirriżulta r-rieda ta' l-imputat li jappproprja l-ħaġa, u rrilevat illi r-rieda tista tirriżulta mill-att stess li jkun għamel, meta dak l-att jippresupponi l-proprjeta, bħal każ ta' bejgħ jew konsum, inkella tirriżulta minn ċirkustanzi diversi u minn atti veri ta' dominju inkompatibili mar-raġuni tal-pussess. B'dana l-Ewwel Qorti wriet li ħadet fil-konsiderazzjoni tagħha l-element kollu tad-dolo u l-mument tal-konsumazzjoni tad-delitt, iżda rriteniet li r-rieda kriminuża trid tiġi esternata per mezz ta' atti li juru li hemm effettivament dik ir-rieda flimkien ma' l-att materjali ta' l-approprjazzjoni. Hawnhekk ma hawn ebda enunċjazzjoni ħażina ta' l-ipotesi tal-liġi. U tabilħaqq, id-delitt ta' l-approprjazzjoni indebita jiġi kkunsmat malli dak li jkun jagħmel atti ta' dominju fuq il-ħaġa bil-volonta li jeżerċita dominju fuqha; u dan ikun ippruvat meta ċ-ċirkustanzi u l-atti jkunu verament tali li univokament juru l-intenzjoni ta' l-approprjazzjoni, billi fihom innifishom mhumiex kompatibili mal-kawża u t-titolu tiegħu tad-detenzjoni ta' dik il-ħaġa;

Meta mbagħad l-Ewwel Qorti applikat dawk il-prinċipji kompliet tiġbed konklużjoni oħra li "l-approprjazzjoni tiġi magħmula meta dak li lilu tkun affidata l-ħaġa jagħmel kwalunkwe att li bih ipoġġi ruħu f'posizzjoni tali li ma jkunx jista jeżegwixxi l-obbligi lilu mposti mill-kuntratt li minħabba fih ġiet lilu fdata l-ħaġa, ċjoe illi jirrestitwiha, jew li jagħmel minnha dak l-użu speċifikat; u preċiżament għax allura huwa jkun wera veru att univoku ta' dominju li jeskludi l-assenza tad-dolo. Fuq dawn il-prinċipji l-Ewwel Qorti eżaminat il-fatti

li jirriżultaw mill-provi, u waslet għall-konklużjoni li dak li kien laħaq għamel l-imputat ma kienx inkompatibili ma' l-obligu kontrattwali tiegħu, u li għalhekk kien għad ma hemmx l-att ta' approprjazzjoni indebita;

Immela l-Ewwel Qorti illiberat lill-imputat fuq apprezzament ta' provi, u ma għamlet l-ebda enunċjazzjoni ħażina ta' l-ipotesi tal-liġi".

9. **Il-<u>Pulizija vs Giuseppa Cauchi</u>** decided by the Criminal Court on the 21st November, 1953[19]

"Għad-delitt ta' approprjazzjoni indebita jeħtieġ li l-ħati jkun għamel mill-ħaġa lilu fdata "konverżjoni". Hemm konversjoni "inter alia", meta l-ħati jkun irċieva ħaġa biex jagħmel minnha użu determinat, u minflok ikun ikkonvertiha għal benefiċċju tiegħu stess, kif kien dan il-każ, li fih l-imputata rċeviet il-flus biex tislifhom lil terzi, u minflok daħħlithom ġewwa butha. Kif igħid l-Alemanni, dan ir-reat hu "crimn inversionis"; u hemm l-approprjazzjoni indebita (**Carrara**, <u>Opuscoli</u>, Diritto Criminale, Volume V, pagina 344), meta l-ħati jiddisponi mill-ħaġa "contro la legge del patto stipulato in buona fede"".

10. **Il-<u>Pulizija vs Salvu Depares</u>** decided by the Criminal Court on the 6th March, 1954[20]

[19] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXVII/IV/1202 at pg. 1204

"Kwantu għall-gravam l-ieħor tad-difiża, li għaż-żewġ reati ta' approprjazzjoni indebita ... tonqos il-kwerela, apparti li, stante r-rinunzja tal-parti leża verbalizzata ..., il-kwistjoni saret akkademika, eppure għandu jiġi osservat, għar-regolament futur, li evidentement id-difiża insiet id-dispost ta' l-art. 402 (5) tal-Kap. 12 (today art. 390 Kap. 9), li jippreżumi l-kwerela meta l-imputat ma jitlobiex, u l-Qorti ma tkunx ordnat il-produzzjoni tagħha. L-imputat seta' talab il-kwerela meta sar ir-rinviju u l-fatti, preċedentement dedotti bħala serq, ġew dedotti mill-Attorney General bħala approprjazzjonijiet indebiti. Jekk ma talabhiex, u l-Qorti ma ordnathiex, legalment kien hemm il-preżunzjoni ta' l-eżistenza tal-kwerela, u l-Maġistrat seta japplika, kif għamel, id-dispost ta' l-art. 415 (2) Kap. 12 (today art. 403 (2) tal-Kap. 9) bla ma d-difiża tista tgħid li ma setgħax ikun hemm rinunzja għax ma kienx hemm kwerela. Kif ingħad, il-lum saret ir-rinunzja, u għalhekk l-iskop prattiku hu ottenut b'din ir-rinunzja, mentri l-kwistjoni saret purament teoriku"

11. **Il-<u>Pulizija vs Carmel Cassar Parnis</u>** decided by the Criminal Court on the 12th December, 1959[21]

[20] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XXXVIII/IV/822 at pg. 825

[21] Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta Vol. XLIII/IV/1140 at pg. 1142

"Fl-approprjazzjoni indebita l-liġi riedet tevita li min ikollu leġittimament f'idejh ħaġa ta' ħadd ieħor ma jabbużax mill-fiduċja lilu mogħtija u jiddisponi minnha bħala tiegħu".

L-approprjazzjoni indebita għandha bħala karatteristika prinċipali leżjoni tad-dritt tal-proprjeta jew dritt reali ieħor mingħajr il-vjolazzjoni tal-pussess u hija magħrufa fid-duttrina bħala "furto improprio".

12. **Il-<u>Pulizija vs Carmelo Vella et</u>** decided by the Court of Criminal Appeal (Inferior Jurisdiction) on the 7th Febrary, 1985 stated that:

"1. Mill-att fattwali irriżulta li t-tankijiet tal-petrol kienu miftuħa minn qabel ma' l-imputat Bonnici ha l-vettura u dan skont l-espert tekniku.

2. Skont l-istess appellanti fl-istqarrijiet tagħhom il-pjanca li kienet tgħatti t-tankijiet kienet inberrqa għalkemm imsakkra b'katnazz.

3. Ma sar l-ebda sgass da parti tal-imputati biex ittieħed il-petrol.

4. In tema legali ġie ritenut fuq l-insenjament tal-**Majno**, Commenti al Codice Penale Italiano Parte 2, illi "*vi e' appropriazione indebita quando per libera volonta del proprietario la cosa viene consegnata a taluna per un titolo qualunque che imposti*

*l'obbligo di riconsegnerla o di farne un uso determinato, e questi, invece abusando della fiducia in lui riposta, la converte in proprio prefetto e di un terzo" (**Sua Maesta vs Antonio Mercieca Miller**)* riportata nel Vol. XXV/IV/580 tal-Kollezzjoni.

5. Ġie ritenut ukoll li meta "l-konsenja hi speċjali u limitata, kif inhu l-każ ta' min jafda oggett f'idejn ħaddieħor, biex dan iqegħdu f'post determinat, li mbagħad minflok jappropja ruħu minnu, huwa l-każ mhux ta' serq imma ta' approprjazzjoni ndebita" (**Il-Pulizija vs Maria Bezzina**, 19 ta' April, 1958 f'Vol. XLII/IV/1324).

6. Fil-każ odjern lill-imputat Bonnici ġie fdat lilu oggett speċifiku (vettura) mingħajr sorveljanza, li minnha approprja ruħu minn parti inereti għaliha, u ċioe l-petrol, infatti, jsostnu l-appellanti, jkun "stultifikanti li tgħid li hu ngħata affidament tal-karozza iżda mhux tal-affarijiet ta' ġo fiha". Tant hu hekk, jissoktaw, illi l-istess Qorti ta' Prim' Istanza irriferit għall-Appell Kriminali **Il-Pulizija vs Emanuel Cassar** deċiż fl-20 ta' Ottubru, 1977, fejn kien ġie deċiż illi t-tneħħija minn karozza mikrija lill-imputat ta' oggetti li nstabu nieqsa kien jikkostitwixxi approprjazzjoni indebita.

7. Kien ikun divers il-każ kieku avolja l-konsenja kienet speċjali u limitata, min għamel il-konsenja mar hu stess, jew bagħat lil xi ħadd ieħor, biex jiżgura li dak l-oggett affidat jitqiegħed fil-post determinat. F'dal każ, isostnu l-appellanti,

ikun si tratta ta' reat ta' serq (ara appell Kriminali **Il-Pulizija vs K Camilleri** Vol. XXXII/IV/823; u Appell Kriminali **Rex vs Antonio Pisani** deċiż fit-2 ta' Diċembru, 1941) iżda fil-każ in diżamina jezistu l-kostituttivi tar-reat ta' approprjazzjoni indebita u mhux dak tas-serq.

Ikkunsidrat;

Illi fid-dottrina u anki fil-ġurisprudenza tagħna ġie studjat pjuttost fil-fond x'jiddelimita s-serq u l-approprjazzjoni indebita u kif wieħed jista jasal biex jikklassifika b'ċerta fondatezza kull każ taħt reat u mhux ieħor minn dawn it-tnejn. L-iktar sentenzi importanti ta' din il-Qorti kif differentement kostitwita tul is-snin saret referenza għalihom kemm mis-sentenza appellata kif ukoll mill-appellanti fir-rikors ta' l-appell tagħhom u għalhekk mhux ser tingħata rassenja tagħhom aktar anki peress illi effettivament il-posizzjoni legali kif generalment s'issa aċċettata tinsab spjegata sewwa kemm mill-Ewwel Qorti kif ukoll mill-appellanti.

Wara li kkonsidrat sewwa il-fatti speċji tal-każ fid-dawl tad-duttrina u ġurisprudenza msemmija din il-Qorti hi tal-fehma li ċ-ċavetta tas-soluzzjoni kollha tal-kwistjoni legali sollevata tinsab fil-mod kif għandha tiftiehem il-konsenja tal-Jeep b'kull ma fiha u x'importanza għandha tingħata għal fatt li t-tanks

tal-petrol kienu jinsabu segregati għalihom suppost sikuri bil-qfil tal-katnazzi.

Din il-Qorti hi nfatti tal-fehma illi anki jekk wieħed isegwi mingħajr riservi d-dicta ta' din il-Qorti fis-sentenza sup. cit. in re **Pisani** (1941) u jaddotta fedelment il-kriterji ta' distinzjonijiet bejn furti proprji u furti inproprji wieħed ukoll bħall-Ewwel Qorti għandu jasal għall-konkluzzjoni li f'dal każ si tratta ta' serq u mhux ta' approprjazzjoni indebita. Infatti jekk wieħed jikkonsidra li minn naħa l'waħda l-appellant Bonnici kienet saritlu l-konsenja tal-Jeep jidher biċ-ċar li ma kien hemm qatt l-intenzjoni li jkollu għad-disposizzjoni tiegħu ukoll il-petrol. Tant hu hekk li ttieħdu misuri, anki jekk dawn wara rriżultaw ineffikaċi biex min ikollu l-pussess tal-Jeep ma jkollux aċċess dirett għat-tank tal-petrol dana s'intendi għal ragunijiet ovvji. Mhux sodisfatti lanqas pero l-istess kriterji stabbiliti bis-sentenza in re Pisani sop. citata kwantu jirriferixxu għal jekk kienx si tratta ta' konsenja ġenerali jew speċjali. Infatti din il-Qorti tħoss li jekk tirraguna li konsenja ta' vettura b'tant partijiet minnha li huma rimovvibbli hija konsenja speċjali tkun qed tistultifika kollox.

Kollox ma kollox pero' din il-Qorti hi tal-fehma li wasal iż-żmien li wieħed jifhem li d-dottrina enunzjata fis-sentenza tagħha in re Pisani oltre erbgħin sena ilu titpoġġa fil-perspettiva proprja tagħha fid-dawl ta' żviluppi b'dik li hi dottrina fuq il-kontinent u fl-Ingilterra u tenut kont li barra l-

art. 307 u 308 tal-Kodiċi Kriminali jeżisti ukoll fost oħrajn l-artikolu 281 tal-istess Kodiċi li jpoġġi in dubbju ħafna mill-massimi li s'issa jidhru li ġew aċċettati. Forsi dan mhux il-każ indikat biex din il-Qorti tidħol fil-fond fil-kwistjoni pero' jiġi rilevat għalkemm brevement illi meta wieħed jikkonsidra illi fl-artikolu 281 tal-Kodiċi Kriminali il-leġislatur ittratta speċifikatament fuq l-abliazzjoni tar-rifurtiva minn persuni partikolari bħal drivers ta' vetturi, suldati u impjegati in genere u in speċje verament forsi hu l-każ li wieħed jara x'atteggjament għandu, jittieħed fir-rigward ta' kwistjonijiet bħal dik tal-każ in diżamina. Fuq kollox jingħad ukoll li d-dottrina ta' "furto proprio" u "furto improprio" tinsab kompletament injorata minn awturi bħal **Petrivielli** u **Antolisei** kif anki ġiet skartata fl-aħħar edizzjoni tal-**Manzini**. Ma dan jiżdied li filwaqt li l-art. 307 kien modellat fuq il-Kodiċi Antik Taljan bil-Kodiċi Rocco saret riklassifikazzjoni sħiħa ta' dawn il-kapijiet insoliti ta' spossessament. Oltre dan l-artikolu 281 tal-Kap. 12 (today art. 268 Chp. 9) hu modellat fuq l-art. 386(4) tal-Kodiċi Franċiż li mill-1837 kien suġġett għall-żvilupp tremend mill-Qrati Franċiżi. Fil-fatt forsi jista jkun diffiċli l-eżerċizzju biex wieħed jiddistingwi bejn każ li għandu jaqa' taħt l-artikolu 281(c) u każ ieħor li jaqa taħt l-art. 308 tal-Kodiċi Kriminali (today art. 294 of Chp. 9). Fil-fatt fil-fehma tal-Qorti kollox jiddependi minn jekk kienx hemm f'kull każ it-trasferiment tal-pussess tal-oġġett, pero bir-rispett kollu dovut għal kull min daħal fil-kwistjoni qabel illum in-nozzjonijiet żviluppati biex jiġi stabbilit x'pussess qed

nitkellmu fuqu m'humiex ċari u kategoriċi daqs kemm wieħed jaħseb. Fil-fatt fil-fehma ta' din il-Qorti il-fatt li jeżisti l-artikolu 281(c) (today art. 268(c) of Chp. 9) juri li l-legislatur ma kellux f'rasu li fil-każ ta' xufier ta' vettura per eżempju hemm it-trasferiment tal-pussess tal-vettura u wieħed għandu jżomm dan il-każ distint mill-każ l-ieħor ta' "contract of carriage".

Barra minn hekk pero' din il-Qorti kif issa presjeduta tixtieq tissottolineja punt ieħor li jġagħlha ma tintrabatx iżjed bid-dicta f'in re **Pisani**. Infatti sal-emendi tal-1909 l-artikolu 308 (allura 296) (today art. 294 of Chp. 9) kien jiddefinixxi "deposito necessario" bħala "including the case of the delivery of a thing to any person mentioned in section 253" (illum 281) (today art. 268 of Chp. 9) liema artikolu jikkontempla is-serq aggravat bil-persuna. Din kienet ovvjament funzjoni legali li permezz tagħha furto kien isir approprjazzjoni indebita. Bl-emendi tal-1909 l-art. 308 (today art. 294 of Chp. 9) sar kif inhu llum u għalkemm hemm referenza għal depożitu neċessarju l-funzjoni legali fuq imsemmija ma għadhiex inkluża. Minħabba f'hekk fil-fehma ta' din il-Qorti wieħed għandu jirrikorri għal Kodiċi Ċivili biex jistabilixxi x'jikkostitwixxi depożitu neċessarju u bir-rispett kollu dovut sempliċement ma tistax tara kif tali eżami jista xi darba b'xi mod jinkludi ukoll il-konsenja ta' oġġett mis-sid lid-driver fil-kors normali ta' l-affarijiet. Qed jingħad għalhekk li hi l-fehma ferma ta' din il-Qorti li wara l-emendi tal-1909 il-legislatur ried li serq ta' xi ħaġa minn vettura fdata f'idejh bħala driver u fil-kors ta' l-

impjieg tiegħu għandha titqies bħala serq aggravat bil-persuna taħt l-art. 281(c) (today art. 268 of Chp. 9) u mhux bħala każ ta' approprjazzjoni indebita".

13. **Il-<u>Pulizija vs Carmel sive Charles Mizzi</u>** decided by the Court of Criminal Appeal (Inferior Jurisdiction) on the 21st March, 1985

"Ir-reat ta' approprjazzjoni indebita huwa reat formali u allura ma jammettiex it-tentattiv"

14. The Court of Criminal Appeal (Inferior Jurisdiction) in the case **Il-<u>Pulizija vs John Gauci</u>** decided on the 14th February, 1997 stated that:

"*9. Minn ezami ta' dan l-artikolu jidher car li wiehed mill-elementi essenjali ta' l-approprjazzjoni indebita, fil-kontest tal-kaz prezenti, huwa kostitwit mill-frazi:".... taht titolu illi jgib mieghu l-obbligu..... li jsir uzu minnha specifikat....." Specifikat minn min? Ovvjament minn min ikun ikkonsenja l-haga lill-agent, u minn hadd izjed. Hija l-persuna li tikkonsenjha l-haga, u hadd hliefha, li jkollha jedd timponi l-obbligu ossia tispecifika lill-agent dwar kif ikollu jaghmel uzu mill-oggett konsenjat lilu minnha. Jekk il- konsenjatur jaghti flus lill-agent biex dan bihom jixtrilu dar, l-agent jikkommetti r-reat ta' approprjazzjoni indebita jekk minflok jaghtihom karita'. Jekk il-konsenjatur jaghti flus lill-agent biex dan jixtrihom armi bi skop ta' serq, l-agent ikun approprja ruhu mill-flus indebitament jekk jaghtihom karita', apparti l-kwistjoni tal-moralita'. Jekk*

jixtrihom armi, allura l-agent ikun ghamel uzu mill-flus kif specifikat. F'kull kaz, fl-indagini dwar l-htija jew le ta' approprazjoni indebita, ghandha issir prova ta' l-uzu tal-haga specifikat mill- konsenjatur, u prova ta' jekk l-agent ikunx ghamel mill-haga dak l-uzu jew uzu divers".

15. **Il-<u>Pulizija vs Paul Portelli</u>** decided by the Court of Criminal Appeal (Inferior) on the 11th September, 2015 it was held that:

14. … F'dan l-istadju hu biżżejjed li jingħad li mid-definizzjoni stess tar-reat jirriżulta li huwa <u>t-titolu</u>, li bih ġie riċevut l-oġġett, li għandu jġib miegħu l-obbligu ta' użu speċifikat, u mhux neċessarjament li tali użu għandu jiġi speċifikat mill-proprjetarju mal-konsenja tal-oġġett.

15. Di fatti, l-awtur **Luigi Majno** (Majno kien qieghed jikkummenta fuq ir-reat ta' approprjazzjoni indebita kif definit fl-artikolu 417 tal-Kodiċi Penali Taljan tal-1889 (Codice Zanardelli) li jikkorrispondi mal-artikolu 293 tal-Kodiċi Kriminali tagħna. Awturi oħrajn, bħal Antolisei u Manzini, jikkumentaw dwar ir-reat kif definit fil-Kodiċi Penali Taljan tal-1930 (Codice Rocco) liema definizzjoni ma tikkorrispondix mal-artikolu 293 imsemmi). dwar dan l-element jgħid:

"Parlando la legge di affidamento o consegna senza specificazione di modalità, è indifferente che la cosegna sia fatta direttamente e materialmente dal proprietario, oppure la

cosa poi appropriata fosse pervenuta in possesso del colpevole per effetto di un rapporto contrattuale non traslativo di dominio." (Luigi Majno, Commento al Codice Penale Italiano, Unione Tipografico – Editrice, Terza Edizione, 1911, pg. 592, #1948)

16. Għalkemm fil-paragrafu citat Majno jitkellem dwar impossessament mill-ħati b'effett ta' rapport kontrattwali – li hija ċertament is-sitwazzjoni l-aktar komuni -- tenut kont tal-fatt li, kif jgħid sew l-istess Majno fl-istess paragrafu, l-liġi ma tillimita b'ebda mod il-modalità ta' kif isir l-affidament jew il-konsenja, ma hemm ebda raġuni sabiex tiġi eskluża s-sitwazzjoni fejn il-konsenja u l-affidament isiru b'operazzjoni tal-liġi u t-titolu li jagħti lok għall-obbligu tar-radd tal-ħaġa jew li jsir mill-ħaġa użu speċifikat ikun ukoll bl-operazzjoni tal-istess liġi.

17. Kif ġia ġie rilevat, mid-definizzoni tar-reat fl-artikolu 293 tal-Kodiċi Kriminali jirriżulta li huwa t-titolu li bih is-suġġett attiv irċieva l-pussess tal-oġġett li għandu jkun tali li jobbliga lis-suġġett attiv li jagħmel użu speċifikat u mhux neċessarjament li l-użu għandu jiġi speċifikat mill-konsenjatur mal-konsenja tal-oġġett. Dan huwa msaħħaħ b'dak li jipprovdi l-artikolu 294 tal-Kodiċi Kriminali li minnu jirriżulta li r-reat ta' approprjazzjoni indebita jista' jseħħ ukoll fuq ħaġa "fdata jew ikkunsinnata lill-ħati minħabba ... depożitu neċessarju" fejn l-affidament u l-konsenja u l-użu speċifikat ma jsirux

direttament mill-propjetarju tal-oġġett depożitat iżda jsiru in virtù tal-liġi.

16. **Il-<u>Pulizja vs Abdoul Moumine Abdoulaye Maiga</u>** decided by the Court of Criminal Appeal on the 14th December, 2017 it was stated that:

"… Il-Qorti tqies illi *una volta* stabbilit illi l-appellanti bl-uzu ta' raggiri u artifizji gieghel lill-parti leza tizvesti ruhha minn ammont sostanzjali ta' flus b'tali mod illi hija giet ingannata, ma jistax jinghad allura illi hemm ukoll l-elementi li isawwru r-reat tal-approprjazzjoni indebita. Dan ghaliex fil-kummissjoni ta' dan l-ahhar reat huwa nieqes l-element ta'l-ingann fis-sens illi it-trasferiment tal-pussess tal-oggett mobbli mis-suggett passiv ghas-suggett attiv tar-reat ikun sar ghal ghan specifiku in forza ta' ftehim bejn dawn t-tnjen minn nies, izda l-awtur tar-reat minflok li jaghmel uzu ta' dak l-oggett mobbli ghal ghan specifikat fil-kuntratt milhuq bejn il-partijiet, japproprjah ghalih innifsu daqslikieku kien is-sid u bi vjolazzjoni ta' dak il-kuntratt jaghmel uzu divers minnu sabiex jikseb vantagg ghalih innifsu. Issa f'dan il-kaz ghalkemm huwa minnu illi l-parti leza ghaddiet il-flus lill-appellanti ghal ghan specifiku, madanakollu hija giet indotta taghmel dan b'ingann u cioe' bl-uzu ta' raggiri u artifizji li permezz taghhom l-appellanti gieghlha temmen illi huwa seta ikattrilha l-flus li ghaddietlu, sabiex b'hekk il-kunsens taghha kien wiehed ivvizzjat minhabba l-uzu tar-raggiri frawdolenti mill-

awtur, kuntrarjament ghal dak li jsehh fil-kaz tal-misapproprjazzjoni.

Mhux biss izda ukoll l-Prosekuzzjoni fil-kaz tar-reat tal-misapproprjazzjoni trid necessarjament tipprova illi l-awtur tar-reat ghamel uzu divers mil-flus minn dak li ghalih kienu gew fdati lilu. Tali prova ma saritx. L-appellanti fl-istqarrija tieghu jammetti li huwa ghandu fil-pussess tieghu il-flus mghoddija lilu mill-parti leza, izda ma hemm l-icken prova dwar x'uzu seta' ghamel minn dawn il-flus ghajr illi dawn zammhom ghalih. Illi fil-fatt fid-decizjoni **Il-Pulizija vs Edwin Petroni et** iccitata superjorment mil-Ewwel Qorti hemm mghallem illi:

"Ir-reat ta' approprjazzjoni indebita jiddistinwgi ruhu …. ukoll mit-truffa ghax id-detentur tal-haga ma jigix ingannat permezz ta' raggiri jew artifizji biex jitlaq minn idejh dik il-haga favur l-agent."

"L-element partikolari tar-reat ta' approprjazzjoni indebita mhuwiex l-uzu ta' l-ingann da parti ta' l-agent biex jottjeni l-oggett, izda l-inversjoni tat-titolu tal-pussess tal-haga li l-agent ikun ottjena minghand is-suggett passiv bil-libera volonta' ta' dan. Fl-approprjazzjoni indebita ma jezisti ebda element ta' frodi fis-sens li fl-approprjazzjoni indebita m'hemmx l-element ta' fiducja li essenzjalment jiffacilita tali reat (ara ***Il-Pulizija vs Joseph Muscat*** *– App.Inf. (03/03/1997))***".**

"Ir-reat ta' truffa jiddistingwi ruhu essenzjalment minn dak ta' approprjazzjoni indebita, in kwantu fl-ewwel ipotesi l-pussess tal-oggett li minnu jsir profitt indebitu jigi ottenut bhala rizultat ta' ngann adoperat mil-konsenjatarju, mentri fl-ipotesi l-ohra dak il-pussess ikun gie konsegwit mill-konsenjatarju legittimament, cjoe' minghajr ingann.

Fit-truffa l-ligi riedet timpedixxi l-inganni ghat-trasferiment ta' oggett biex isir profitt indebitu minnu; fl-approprjazzjoni ndebita l-ligi riedet tevita li min ikollu legittimament haga ta' haddiehor ma jabbuzax mill-fiducja lilu moghtija u jiddisponi minnha bhala tieghu.

Ghalkemm minhabba f'din id-distinzjoni, l-approprjazzjoni ndebita hija kunsidrata mill-ligi anqas gravi mit-truffa, iz-zewg reati ghandhom bhala karatteristika principali l-lezzjoni tad-dritt tal-proprjeta', jew dritt iehor reali, minghajr il- vjolazzjoni tal-pussess; u huma t-tnejn talvolta maghrufa fid-dottrina bhala "furto improprio"" (ara ***Il-Pulizija vs Carmel Cassar Parnis*** *– App.Inf. (12/12/1959)).*

<u>Application of the facts to this case</u>

First and foremost, a procedural point has to be decided.

By means of an application dated 28th January, 2012, the Commissioner of Police informed the Court that the police were investigating a case of

misappropriation to the detriment of Betfold Limited, its directors and clients, which offence occurred between July 2009 and December 2009 (fol. 5). The said Commissioner of Police in his application stated that a European Arrest Warrant was issued in regards the accused who was brought back to Malta on the 27th January, 2012.

This is being stated since the missappropriation charges issued against the accused included also another company Life Gaming Limited. This issue was raised during the sitting of the 11th November, 2016 at fol. 995-996.

Former police Inspector Daniel Zammit stated at fol. 120 that the accused "*was charged in Court with misappropriation from the company Betfold.com*" (fol. 120). This was confirmed by the late colleague, Dr. George Cutajar, who in his testimony stated that the complaint, by letter dated 21st December, 2009 was made only on behalf of Betfold Limited. This sldo results from the contents of the letter and the last paragraph of it which states quite clearly the following "*In the circumstances I am instructed by my clients Mr. Chetcuti and Mr. Mizzi to kindly request you to investigate further and obtain a European Arrest Warrant against the said Skalski and Pedersen with a view to have them arrested and returned to Malta to face prosecution on charges of fraud, misappropriation and theft to the detriment of Betfold Limited*" (fol. 103).

The accused was returned to Malta because the police were investigating an alleged offence of misappropriation to the detriment of Betfold Ltd which offence happened during July, 2009 and December, 2009.

No mention was ever made with regards to Life Gaming Limited before the charges where issued by the police on the 28th January, 2012.

The Court took note of the interpretation given to this provision of the Order and the Framework Decision in the European Scrutiny Committee, The UK's block opt-out of pre-Lisbon criminal law and policing measures, HC 683, 7 November 2013, para 107 as quoted in a Briefing Paper to the House of Commons, bearing number 07016 of the 15th June 2015 written by Joanna Dawson and Sally Lipscombe entitled The European Arrest Warrant, wherein it is stated that : -

> The basis of the European arrest warrant (EAW) is the 2002 Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (the Framework Decision).
>
> The Framework Decision superseded the previous extradition arrangements between EU Member States as set out in the Council of Europe's 1957 European Convention on Extradition (the ECE). The main intention behind the Framework Decision was to speed up the extradition process between Member States:
>
> > The purpose of the European Arrest Warrant (EAW) Framework Decision is to speed up the extradition process between Member States, reducing the potential for administrative delay under previous extradition arrangements. The EAW system has abolished "traditional" extradition procedures between Member States and instead adopts a system of surrender between judicial authorities, based on the principle of mutual recognition and mutual trust between Member States. The

> EAW removes certain barriers to extradition that existed under previous extradition arrangements – the 1957 Council of Europe Convention (ECE) – including the nationality of those sought and the statute of limitations, where the extradition offence would be time-barred under the law of the requested State.

The Court noted the Order of the Court of Justice in Case C-463/15 PPU, **Openbaar Ministerie v A.** [22]

> *'Article 2(4) and Article 4.1 of Council Framework Decision 2002/584 (...) must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.'*

In its judgment in Case C-388/08 PPU **Leymann and Pustovarov**[23] the Court of Justice examined how to establish whether the offence under consideration is an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision on EAW requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of the Framework Decision on EAW. The Court held that:

> *'(...) it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State,*

[22] Order of the Court of Justice of 25 September 2015, A., C-463/15 PPU, ECLI:EU:C:2015:634.
[23] Judgment of the Court of Justice of 1 December 2008, Leymann and Pustovarov, C-388/08 PPU, ECLI:EU:C:2008:669.

are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.'

Therefore, the prosecution first and foremost are barred from proceeding against the accused for any alleged offence of misappropriation against Life Gaming Limited because they never asked, in their European Arrest Warrant for the extradition of the accused on this offence but only asked for his extradition with regards to the alleged misappropriation with regards to Betfold Limited. Secondly, the prosecution were only asked to proceed against the accused for alleged misappropriation against Betfold Limited and not with regards to Life Gaming Limited.

<u>The offence of misappropriation</u>

On the 11th June, 2008 the company Betfold Limited (C-44430) was registered (fol. 23). The shareholders of this company were Lifetime Limited (16,000 "A" Ordinary Shares) Omar Mizzi (4,000 "A" Ordinary Shares) Niki Mirecki Pedersen (10,000 "B" Ordinary Shares) and Radoslaw Szymon Skalski (10,000 "C" Ordinary Shares) (vide fol. 26).

On the 4th December, 2009 Lifetime Limited transferred its shares to Hugo Chetcuti. This document was registered with the Registrar of Companies on the 19th of January, 2010 (fol. 20). The directors of the company were Hugo Chetcuti, Omar Mizzi, Niki Mirecki Pedersen and Radoslaw Szymon Skalski

On the 28th November, 2008 the company Life Gaming Limited (C-45719) was registered (fol. 56). The sole shareholder of this company was the accused Radoslaw Szymon Skalski and the sole director was Anthony Axisa. On the 8th July, 2009 Anthony Axisa resigned from his position as director and in his stead their was appointed Hugo Chetcuti. This document was registered with the Registrar of Companies on the 15th July, 2009 (fol. 55). On the 11th November, 2009 their is a document which states that the accused transferred all his shares to Hugo Chetcuti, which document was registered with the Regsitrar of Companies on the 26th November, 2009 (fol. 52) and a further document dated also 11th November, 2009 whereby Hugo Chetcuti transferred his shares to the accused Radoslaw Szymon Skalski again, which document was registered on the 7th December, 2009 (fol. 51).

Besides there being issues with the fact as to how the shares where transferred from the accused to Hugo Chetcuti and then back again to the accused, this reversal of shares automatically excludes any possibility of any offence being committed by the accused, since the accused is the ultimate beneficial owner of Life Gaming Limited. The defence asked how can a person be accused of having committed misappropriation to the detriment of a company which, according to the records of the case

belong to the accused. This is in reality confirmed also by the formal complaint made by Dr. Cutajar on behalf of Hugo Chetcuti and Omar Mizzi limitedly in regards to Betfold Limited. Hugo Chetcuti and Omar mizzi could never ask the police to proceed against the accused with regards to Life Gaming Limited. Having said this, and despite the fact that the formal complaint was made by Betfold Limited only, the police, nonetheless, proceeded against the accused with regards to charges of misappropriation to the detriment of Life Gaming Limited.

Despite the fact that Life Gaming Limited belonged exclusively to the accused, the Managing Director was Hugo Chetcuti. The prosecution called to testify the representative of Bank of Valletta p.l.c. Romwald Attard and he exhibited various documents.

(i) **Doc. RA 1** (fol. 73) a current account bearing number 40018396753 held by Life Gaming Limited. This document is linked to **doc. RA4** (fol. 82). The signatories to this account are Chetcuti Hugo, Mizzi Omar, Pedersen Niki Mirecki and Skalski Radoslaw Szymon. Under the heading "*additional mandate Instructions Memo*" there are the words "*Hugo Chetcuti with any two of the others*".

(ii) **Doc. RA2** (fol. 77) is a savings account bearing number 40018099267 also held by Life Gaming Limited. This document is linked to **doc. RA5** (fol. 83). The signatories to this account are Chetcuti Hugo, Mizzi Omar, Pedersen Niki Mirecki and Skalski Radoslaw Szymon. Under the heading "*additional mandate*

Instructions Memo" there are the words "*Hugo Chetcuti with any two of the others*".

(iii) **Doc. RA3** (fol. 81) is a document pertaining to two accounts held by Betfold Limited. The signatories for the first account bearing number 40017392635 are Pedersen Niki Mirecki, Mizzi Omar and Chetcuti Hugo. According to the top part of this document under the heading "*additional mandate Instructions Memo*" there are the words "*Chetcuti to sign always with any one from rest*". The signatories for the second account bearing number 40017392635 are Mizzi Omar, Chetcuti Hugo and Skalski Radoslaw Szymon and one also finds, in the lower part of the document the heading "*additional mandate Instructions Memo*" there are the words "*Chetcuti to sign always with any one from rest*".

Despite the prosecution having called this witness to testify, no evidence was put forward with regards to the deposits and withdrawals made. From the documentation it however transpires that Hugo Chetcuti withdrew the amount of €10,000 on the 29th October, 2009 (fol. 79) and a further amount of €3,395 on the same date by the same Hugo Chetcuti (fol. 79).

This goes to confirm the evidence given by the accused before the Court that Mr. Chetcuti had withdrawn monies from the bank. In any case, no monies could be withdrawn from the bank without Mr. Chetcuti authorising such withdrawal by means of his signature and this as evidenced by the instruction the bank had, in wiriting, and which were

exhibited as RA4 (fol. 82) and RA 5 (fol. 83). The accused did state that the accounting of the company was taken care of by Niki Pedersen, who, for reasons only known to the prosecution, was never brought to give evidence in Court. **Kirmo Kolehmainen**, who gave evidence on the 25th June, 2012 stated that the email he sent in 2009, "*... was about Nicky, he asked to make a transaction, in my personal account, so that he could pay rent and deposit rent I think*" (fol. 136). The Nicky referred to by the witness was Niki Pedersen. Asked by the prosecution how the transaction went through, the witness stated that "*he... to my account and he asked me to create another email address ... and he made the transfer to my personal account*" (fol. 136). Asked from whose account this transfer was made, the witness said "*that i don't know*" (fol. 137). This goes further to show that the accused was never involved in any wrongdoings.

Furthermore, no statements were exhibted pertaining to Betfold Limited. This goes further to show that the company conducting the business was Life Gaming Limited whilst Betfold Limited was just the brand name. This goes to show that Betfold never had any income and therefore no monies could ever have come out of the said company. The defence would refer to the testimony of **Per Gustav Sahlberg** given on the 27th February, 2012. He stated that the service agreement between the two companies was stopped because no payments were ever received by Tane from Betfold Ltd and they stopped giving them the service (fol. 108). The witness stated that Betfold Limited owes Tane roughly the sum of two hundred and ninety two thousand Euros (€292,000). This money was paid by Tane to the end users, that is to the private customers of Betfold Limited and when asked with whom the business was being

carried out, the witness stated that this was being done by "*Betfold through Life Gaming. Betfold was more their brand so to speak*" (fol. 109). Thus the business relationship was being carried out with "*Life Gaming*" (fol. 109).

By means of a decree dated 4th November, 2013 Dr. Steven Farrugia Sacco was nominated by the Court after acceding to the request made by the prosecution on the 5th April, 2013 (fol. 226). The request by the Prosecution of the 5th April, 2013 was "*... to appoint a technical expert who will have access to the accounts used in order to analyze the transactions carried out*" (fol. 226). The Prosecution stated that "*The charges are built upon the mentioned transfers between online accounts, specificaly accounts on Neteller and Moneybookers, together through accounts held in local banks of the companies Betfold Ltd. And Life Gaming Ltd. Also involved were accounts of the website operated by these companies, betfold,com, together with other accounts related to this website*" (fol. 226). The basis for this request was because, in the Prosecution's words "*The charges against the accused in this case amount to misappropriation of funds, which misappropriation was carried out by the transferring of funds on between online accounts*" (fol. 226).

During the sitting of the 6th October, 2014 before the Court Expert Dr. Steven Farrugia Sacco the Prosecution declared that "*... it needs the abovementioned information from the relative financial institutions, Neteller and Moneybookers, regarding the period between July 2009 until December, 2009*" (fol. 265). The accused did not object to this request "*... as long as he too will have access to the documents and records provided*" (fol. 266). The accused also requested that the information cover the period between 1st

January, 2009 until 31st December, 2009, to which request, the Prosecution did not object. The Court by means of a decree dated 6th November, 2014 acceeded to the request made by the Court Expert (fol. 267) to asking for the Courts direction since the accused had declared that he did not have access to the accounts requested by the Prosecution.

By means of a joint declaration on the 19th October, 2015 (fol. 274), the Prosecution and the defence exempted the Court from hearing once again all the testimonies which have already been heard by the Court as otherwise presided before this case was assigned to this Court as currently presided.

By a declaration of the 25th February, 2016, the Prosecution withdrew its request made by an application dated 5th April, 2013 (fol. 208 and 226).

Thus once again, no evidence was produced by the prosecution in order to sustain the charges it submitted for the determination of the Court.

The accused also stated that he was being paid his wages, as where the other persons from the company accounts. This with the consent of everyone. As already stated above, the accused was together with another three, a shareholder in the company Betfold Limited. Also, with regards to the expenses being paid for the affiliates to come to Malta, these too were being made with the consent of all the persons involved. The meetings were always held in the presence of Hugo Chetcuti or Omar Mizzi and these were always held in the properties belonging to Hugo Chetcuti.

The Court notes that the accused was consistent in his statement to the police and his evidence before the Court and his version of events respect the version of events.

The Court notes that the prosecution did not prove, beyond reasonable doubt, that the accused misapplied by converting to his own benefit funds pertaining to Betfold Limited which funds had been entrusted to him or delivered to him under a title which implied an obligation to return such thing or to make use of such thing for a specific purpose by reason of him being a director of Betfold Limited. The same applies, albeit with variances as explained above, to Life Gaming Limited.

DECIDE:

Therefore the Court finds defendant not guilty of the charges brought against him and discharged him therefrom.

DR JOSEPH MIFSUD
MAGISTRATE