

LEGAL UPDATE

THE QUANTIFICATION OF DAMAGES UNDER MALTESE  
TORT LAW – AN ANALYSIS OF *BUTLER VS. HEARD* IN  
CONSIDERATION OF PAST, PRESENT AND PROPOSED  
LEGISLATION

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The establishment of fault on the part of the tortfeasor and the determination and quantification of compensatory damages payable to the victim of the tort form the basis of Maltese tort law.

Articles 1045 and 1046 of the Civil Code provide a total of four heads of damages under which compensation may be claimed. As the French Court of Cassation<sup>2</sup> has reiterated continuously,<sup>3</sup> such compensation is to be viewed not in a punitive light but as compensation for any harm suffered and which will place the victim back in the position he was in before such tort was committed, known as *restitutio in integrum*. Locally, in *Mario Camilleri vs Mario Borg et noe*,<sup>4</sup> the Court has highlighted this principle stating that, '*Il-Ġustizzja li taf il-Qorti hija dik li fil-limiti tar-realta` u*

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<sup>2</sup> Maltese tort law is heavily based on the French *Code Napoléon*. Therefore such pronouncements inevitably constitute a relevant source of reference to its Maltese counterpart.

<sup>3</sup> The original text of the judgment stated as follows, '*le propre de la responsabilité civile est de rétablir, aussi exactement que possible, l'équilibre détruit par le dommage et de replacer la victime dans la situation où elle se serait trouvée si l'acte dommageable ne s'était pas produit*'.

Translated into English this means that the characteristic of civil responsibility is to restore, as precisely as possible, the balance destroyed by the damage inflicted, and to reinstate the victim in the condition he was before the tortuous act was committed. Michel Périer 'Régime de la Réparation – Évaluation du Préjudice corporel : Atteintes à l'Intégrité Physique. Principes Généraux de la Réparation' (2010) Fasc. 202-1-1 JurisClasseur Civil Code <[http://www.lexisnexis.com.ejournals.um.edu.mt/fr/droit/results/docview/docview.do?docLinkInd=true&risb=21\\_T11222797951&format=GNBFULL&sort=null&startDocNo=1&resultsUrlKey=29\\_T11222797954&cisb=22\\_T11222797953&treeMax=true&treeWidth=0&csi=268031&docNo=7](http://www.lexisnexis.com.ejournals.um.edu.mt/fr/droit/results/docview/docview.do?docLinkInd=true&risb=21_T11222797951&format=GNBFULL&sort=null&startDocNo=1&resultsUrlKey=29_T11222797954&cisb=22_T11222797953&treeMax=true&treeWidth=0&csi=268031&docNo=7)> accessed 12 February 2011.

<sup>4</sup> *Mario Camilleri vs Mario Borg et noe*, First Hall, Civil Court on 8 May 1990, Vol.LXXIII.III.516.

*kemm huwa possibli, terga tpoġġi il-vittma, ta' kwalsiasi att ingjust, fl-istat li kienet qabel.*<sup>5</sup>

While the notions of 'heads' of damages and 'quantification' of damages are interlinked and interdependent, an element of variation exists between them.<sup>6</sup> The former is enumerated in the abovementioned articles and states the different types of losses and damages for which a court may award compensation. These presently include the actual loss caused directly to the injured party, expenses which the victim incurred as a consequence of such damage, loss of actual wages or other earnings and loss of future earnings. The first three heads may be classified as *damnum emergens*, while the last one is *lucrum cessans*. On the other hand, the notion of quantification of damages refers to the amount of compensation awarded under each head. Formulae related to such quantification are not found anywhere in the law, therefore this task has been left up to the Courts to determine. Maltese Law, being rooted in Continental Civil Law, does not uphold the doctrine of judicial precedent. Judgments of the Maltese Courts, while being a vital component of our legal history and practice, diverge somewhat when dealing with the issue of quantification of damages. The Court retains discretionary power; after taking into consideration all the facts of the case and hearing any advice given by specially appointed experts, it is responsible to determine the quantity of damages, if any, to award the injured party duly paid by the tortfeasor.

*Michael Butler vs Peter Christopher Heard*<sup>7</sup> was the first authoritative case in which a standard formula for determining the quantity of damages was devised and effectively applied. Since then, a system akin to one of precedent has developed specifically in relation to the quantification of damages, as successive cases dealing with this notion have consistently applied this formula, albeit modifying it somewhat.

The facts of the case revolve around a motor vehicle collision in which defendant collided his car with plaintiff's motorcycle, causing to the latter not only serious damage to his motorcycle, but also '*feriti ta' natura gravi*'.<sup>8</sup> On the 30 June 1966, the First Court declared Heard to be responsible for the damages occasioned as a result of his

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<sup>5</sup> Translated into English, this quote refers to the fact that the Court will attempt, as much as is realistic and possible, to restore the victim to the state or condition he enjoyed prior to the occurrence of the unjust act.

<sup>6</sup> RJ Weintraub 'Choice of Law for Quantification of Damages: A Judgment of the House of Lords Makes a Bad Rule Worse' (2007) 42 Texas Int'l L. J. 311, 311.

<sup>7</sup> *Michael Butler vs Peter Christopher Heard*, Court of Appeal (Civil, Superior) [1967].

<sup>8</sup> Ibid 489, in English meaning 'grievous wounds'.

negligence and non-observance of traffic regulations<sup>9</sup> and awarded Butler a total of £6500 worth of damages.

Notwithstanding Heard's appeal, on the 28 February 1967, the Court of Appeal in its Inferior Jurisdiction confirmed what the previous Court decided, sending the matter to the Superior Court of Appeal. The latter Court's main task was to review its predecessors' apportionment of tortious responsibility. While recognising the fact that Heard was definitely driving within the legal speed limit enforced at the time,<sup>10</sup> the Court nevertheless attributed most of the tortious responsibility to him,<sup>11</sup> based on a combination of particular factors.. The Appellate Court thus confirmed Heard's responsibility for the unfortunate event.

The Court then moved on to consider the quantum of damages. The Inferior Court of Appeal confirmed the total sum of £6500 worth of damages payable by defendant to plaintiff calculated on the basis of Article 1045.<sup>12</sup> The Court also devised a formula to reach such amount, based on a permanent incapacity, whether total or partial, affecting the victim's future income earning capacity.

The formula provided for the multiplication of the income earned by the victim before the accident by the amount of the victim's estimated remaining working years, known as the 'multiplier'.<sup>13</sup> This would also be reduced slightly by taking into consideration the victim's state of health and the circumstances of the case, or what the Court has called the 'chances and changes of life.'<sup>14</sup> This would then be multiplied by the percentage of permanent disability, whether total or partial. Finally, the total sum would be further reduced should the total amount be paid in one lump sum payment made shortly after the delivery of the final Court judgment, known as the 'lump sum payment deduction'.

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<sup>9</sup> Described in the official Court document as '*traskuraġni, imperizja, inosservanza ta' regolamenti u negligenza.*'

<sup>10</sup> This was set at forty miles per hour in rural areas.

<sup>11</sup> The only form of responsibility which could be attributed to plaintiff after hearing defendant's testimony was that he was driving slightly over the crown of the road.

<sup>12</sup> Renumbered to art. 1088 in 1967.

<sup>13</sup> This amount was achieved after subtracting the victim's age from his retirement age; this calculation was therefore not based on the victim's general life expectancy, but upon his professional life expectancy.

<sup>14</sup> This refers to any possible events which might have taken place in the victim's life that would in themselves have reduced his income earning possibility.

Regarding the first head of damages quantified at £45, plaintiff raised no question on appeal. However, Heard appealed on the basis of the other two heads<sup>15</sup>, arguing that the Court-established rate of weekly income earned by Butler was excessive, as was the percentage disability attributed to him. Nonetheless, the Appellate Court opined that the rate of £13 per week established by previous Courts was adequate.

The Court also confirmed the liquidation of £455 in lieu of actual loss of earnings, after noting the possible fluctuations in Butler's wage as an upholsterer; the fact that he enjoyed a steady flow of work; as well as the fact that at the time of the accident he was twenty-two years old, was already married with two children and displayed a great motivation to keep on working and increasing his clientele.

The third head of damages mentioned, *lucrum cessans*, hinges upon the notion of a permanent incapacity which affects the victim's future income earning possibilities and according to Article 1045, must be calculated by taking into account the circumstances of the case at hand, the nature and grade of the incapacity and the condition of the victim.

Although Butler suffered greatly owing to the extensive injuries he endured, only the injury to his right side constituted a permanent incapacity as there was no way of effectively curing it.

As a result, it was concluded that Butler lost a total of 50% of his income earning capacity, with the possibility of it rising to 60% as his condition was likely to develop into chronic osteoarthritis. Curiously, this conclusion was arrived at in comparison to another person of Butler's same age and not in relation to Butler's particular occupation, implying some sort of distinction between the effect of Butler's injury and its effect on his particular trade. In this way, the Court was equating the physical abilities that an upholsterer like Butler requires in order to perform his trade, with those required and performed by another person carrying out a sedentary job. This author notes that this may lead to injustice, as how can one argue that the injuries suffered by Butler would have affected a clerk in the same way that they affected him?

However the Court, referring to the pronouncements of the Italian Court of Cassation, emphasised that what must be ascertained is the extent to which this degree of incapacity affected the victim's income earning capacity, whether present or future.

Even after considering the physical strains linked to the work of an upholsterer and how Butler would now be adversely hindered in the

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<sup>15</sup> Loss of actual earnings and loss of future earnings.

performance of his trade, the Superior Court reduced Butler's degree of incapacity to 45% after hearing testimonies that he could still work as an upholsterer mending old or small antique objects. It was also noted that there was even the possibility of Butler eventually starting his own business after acquiring the necessary expertise. The Court however confirmed the fifteen year multiplier established by previous Courts.

Up until 1962, Maltese law also provided for a £1200 limit for damages in respect of *lucrum cessans* for torts arising out of negligence. This, coupled with the fact that there was no standard set formula for the quantification of damages, impeded the Courts' ability to give full effect to the principles of justice and *restitutio in integrum* to victims of torts.

Therefore, by confirming the formula devised by the First Court, the Superior Court of Appeal established an overarching method which would guide future calculations.<sup>16</sup> While recognising that this was not the only possible method available for calculating damages, the Court opined that it was the most practicable. However, it was acknowledged that this method left a lot of discretion in the hands of the Judiciary. The Superior Court of Appeal's final judgment partially upheld Heard's appeal by reducing the previously established sum of liquidated damages of £6500, describing it as excessive and instead awarding a total of £5100 worth of damages.

Presently, Maltese law only compensates for patrimonial or pecuniary losses. The Court, referring to the UK House of Lords case of *Boys vs Chaplin*,<sup>17</sup> accepted that this fact might render Maltese law inferior to foreign jurisdictions that award compensation for moral damages. Here, in choosing to apply UK tort law to an event in Malta involving two British subjects, it was noted that, had Maltese law been applied, a total of £53 worth of damages would have been liquidated, while under UK law, the plaintiff would have been awarded £2303 worth of damages.

However, one might argue that by simply referring to 'heirs' in Article 1046<sup>18</sup>, the legislator left open the possibility of awarding damages, though not directly referred to as moral damages, to the heirs of the deceased victim who were not dependent on his financial

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<sup>16</sup> A slightly modified version of this formula in case the death of the victim of the tort ensues has been referred to by our Courts on numerous occasions, most notably in *Anthony Turner et vs Francis Agius et*, Court of Appeal (Civil, Superior), [2003].

<sup>17</sup> *Boys vs Chaplin* (1971), AC 356, 384.

<sup>18</sup> Civil Code, Chapter 16 of the Laws of Malta.

assistance at the time of the event. This point was elucidated in *Ronald Petrie et vs Sebastiano Ciappara*<sup>19</sup>, where the Court granted to the parents of the deceased 10-year old victim of a traffic accident, £120 in damages even though they were in no way financially dependent on the victim at the time of the accident. The Court even went as far as to admit that such compensation does not, in any way, compensate the plaintiffs for the pain and suffering resulting from their loss.

This tradition of not directly referring to moral damages stands to change with the proposed introduction of the 2010 amendments to the Civil Code provisions dealing with the quantification of damages due to victims of torts. These were described by the Hon. Dr. Carmelo Mifsud Bonnici<sup>20</sup> as a means of effectively progressing from the formula devised in *Butler vs Heard*, thus introducing an effective and certain way of providing justice to victims while lessening the hardships encountered by them in the quest for such justice. The amendments formally introduce the notion of moral damages into Maltese civil law,<sup>21</sup> hence effectively introducing what Act VI of 2004 failed to do.<sup>22</sup> Should the amendments make the whole process of quantifying damages easier and thus speed up the litigation process, then it is possible that at least, some of the pain suffered by the victims may be eased. However, it remains to be seen whether the figures and tables set out in the amendments truly do bring about some form of justice for the victims.

With regard to the proposed amendment to Article 1045 of the Civil Code, the damages which a victim of a tort may receive now include: actual damages suffered due, actual expenses incurred, loss of actual income or other earnings, loss of future earnings, non-pecuniary damages payable in respect of any permanent disability, whether total or partial, which the act may have caused and future expenses in lieu of future medical treatment or assistance that the victim may require owing to any consequential disability suffered.

The amended Articles 1045 (4) and (5) then re-introduce the notion of capping of damages in relation to the loss of future earnings and

<sup>19</sup> *Ronald Petrie et vs Sebastiano Ciappara*, Court of Appeal (Civil Superior) on 22 June 1964, Vol.XXXXVIII.B.I.I.364.

<sup>20</sup> At the time of publication, the Hon. Dr. Carmelo Mifsud Bonnici is the Maltese Minister for Justice and Home Affairs.

<sup>21</sup>—, ‘Emendi fil-Ligi Dwar Danni Ċivili’ (MJHA) <[http://www.mjha.gov.mt/MediaCenter/PDFs/1\\_emendi%20fil-ligi.pdf](http://www.mjha.gov.mt/MediaCenter/PDFs/1_emendi%20fil-ligi.pdf)> accessed 17<sup>th</sup> February 2011.

<sup>22</sup>—, Act VI of 2004, An Act to Amend the Civil Code, Chapter 16 of the Laws of Malta (DOI) <<http://www.doi.gov.mt/EN/parliamentacts/2004/ActVI.pdf>> accessed 17<sup>th</sup> February 2011. This Act has to date not entered into force.

future medical expenses respectively, at €600,000 each. Article 1046A caps non-pecuniary damages at €200,000. Since there are no fixed figures with which to calculate such amounts, as opposed to the case of calculating the actual losses incurred, where one has certain figures which can be applied to a set formula. This capping ensures that the amount of compensation awarded in this regard does not spiral out of control at the judiciary's discretion.

A Legal Notice is also envisaged, which will establish the rules and formulae for calculating such damages and in so doing will provide greater certainty and reduce the amount of discretion enjoyed by the Courts in this regard. This will evidently contribute to ensuring that the amount of compensation awarded to each case will reflect the true value of the injury suffered, a value arrived at with the help of rules and formulae devised by independent and impartial experts, and which apply irrespective of the circumstances of each particular case. In addition, the Legal Notice will introduce greater certainty to the calculation of damages for victims as well as defendants, who will be in a better position to assess the quantum of damages they will receive or have to pay, respectively. Knowing that such figures are quantified via pre-set rules and formulae may make the burden of payment a less bitter pill to swallow for the tortfeasor.

Article 2 (1) of the Legal Notice provides the formula for damages arising under Article 1045, which it establishes as  $(AE \times NY \times P\%) -$  twenty per cent. Here, 'AE' represents the victim's net annual income, which is calculated according to set rules in Article 2 (2); 'NY' represents the number of years for which compensation for lost income is requested and is calculated according to Article 2 (3), while 'P%' represents the victim's percentage disability which is calculated according to Article 2 (4). 20% represents the 'lump sum payment'.<sup>23</sup>

The formula regarding non-pecuniary damages arising from a permanent disability is set at  $P\% \times \text{€}200,000$ .

The Legal Notice then proposes a Schedule estimating the percentage of disability for a wide range of disabilities which may arise from the commission of a tort. Directed more at medical experts, the Schedule seeks to reduce the discretion of the Courts when attributing such percentage disability to victims, as this percentage depends entirely on the level and kind of disability suffered by the victim.

The question remains, had the case of *Butler vs Heard* arisen after the 2010 amendments entered into force, how would the quantification of damages awarded have been different? It appears that the loss of actual damages and expenses incurred would not

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<sup>23</sup> A formula is also devised with respect to multiple percentages of disabilities arising simultaneously.

have changed considerably, apart from differences arising from fluctuations in the value of money between 1967 and 2011.

However, in calculating Butler's loss of future earnings, the method of establishing his net annual income<sup>24</sup> would have differed from that in 1967; instead, the figure would have represented his average income earned over the five year period preceding the accident.<sup>25</sup> Also, the 'multiplier' would have been set at forty-three years<sup>26</sup> and not fifteen years as the Court established. His percentage disability rate would have been confirmed according to the Schedule to the Legal Notice and not according to the Court's discretion, while the 'lump sum deduction' would have been set at a standard of 20%. However, owing to the fact that Butler kept on working and generating income after the injury, according to the proposed Legal Notice<sup>27</sup>, the final quantum of damages for *lucrum cessans* would have to be reduced accordingly. Regarding the quantum awarded owing to loss of actual earnings, the method of establishing Butler's net annual income would have been calculated in the same way as his loss of future earnings.

Meanwhile, Butler would also have been awarded non-pecuniary damages in respect of the permanent disability he suffered, as well as any future medical expenses which he might incur as a result of the damage caused.

The Maltese legal system as it currently stands, with its emphasis on monetary compensation payments, mirrors greatly the Scandinavian countries, Common law countries including South Africa and a number of Civil law countries. This contrasts with the German system, which, as Richard Azarnia quotes, 'is characterised by compensation...in principles to be effected in kind and not payment in money.'<sup>28</sup>

Civil law jurisdictions share some similarities with the Maltese manner of awarding compensation for tortuous damages, yet they do

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<sup>24</sup> This departs from previous Court practice which used to take the gross annual income as a base for determining such quantum of damages. See *Maria Pace pro et noe vs Joseph Abela*, First Hall, Civil Court, 21<sup>st</sup> May 1993 (Vol.LXXVII.III.163).

<sup>25</sup> Proposed Legal Notice, art. 2 (2) (a).

<sup>26</sup> Given that the statutory retirement age is sixty-five years, while Butler was twenty-two years old when the accident happened.

<sup>27</sup> Art. 2 (2) (e).

<sup>28</sup> Richard Azarnia 'Tort Law in France: A Cultural and Comparative Overview' (1995) 13. Wis. Int'l L.J. 471 29.



diverge on a few aspects. Being heavily based on the French *Code Civile*, our heads of civil damages are rather similar to their Continental counterparts. In fact, as Vernon Valentine Palmer specifies, the French heads of damages may include compensation for ‘loss of consortium, service, and society, and shall be recoverable by the same respective categories of persons who would have had a cause of action for wrongful death of an injured person.’<sup>29</sup> However, while under the proposed 2010 amendments, a new head of damages will be included to compensate for future medical expenses which may become necessary owing to the injury suffered, the French system only awards such compensation if these are ‘directly related to a manifest physical or mental injury or disease.’<sup>30</sup> This implies a more stringent requirement to prove the direct and inevitable link between the injury suffered and the necessary medical expenses. The French system also refers to general, special and exemplary damages<sup>31</sup>, which seem to find no explicit mention in the Maltese system.

Meanwhile, in the Common law realm, two main heads of damages emerge: ‘monies which the claimant would have received but for the accident, and expenditure which he would not have incurred but for the accident.’<sup>32</sup> The British system, relying on pure economic loss as a yardstick, consequently also compensates not only general damages for pain and suffering together with loss of amenity, but also pecuniary losses endured as a direct result of his injuries and ‘residual disabilities.’<sup>33</sup>

Another country basing itself on compensation for pure economic loss, Germany, consequently compensates not only physical injuries, but also infringements of personal rights,<sup>34</sup>

Italy also has a practice similar to the Maltese one of working on a percentage of permanent disability ranging from 1 to 100, with 100

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<sup>29</sup> Vernon Valentine Palmer ‘The Fate of the General Clause in a Cross-Cultural Setting: The Tort Experience of Louisiana’ (May 2001) 5.2 EJCL p 17 < <http://www.ejcl.org/52/art52-1.html> > accessed 19 June 2011.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid 18.

<sup>32</sup> Basil Markesinis, Michael Coester, Guido Alpa, Augustus Ullstein ‘Compensation for Personal Injury in English, German and Italian Law’ (2005) CUP Cambridge Books Online p 116 <<http://dx.doi.org/10.1017/CBO9780511493881.006> > accessed 19 June 2011.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid 18.

being the highest. However, this system refers to such figures as points and not as percentages, and these too are fixed by the medical profession. Such figures also vary according to the particular characteristics of the victim, such as age, sex and health. However, particularities such as regional differences are also taken into account here.<sup>35</sup> The Italians also incorporated a system of tables with regard to the different degrees of permanent disabilities together with a capping system, as will be introduced locally should the amendments enter into force.<sup>36</sup>

With reference to the American system, compensation for ‘emotional distress’ is also awarded, which is the European equivalent of psychiatric injury<sup>37</sup> and which is slowly being introduced within the Maltese system through the proposed amendments.

While the proposed amendments draw elements from foreign systems, according to Fenech, these have not gathered the support which was hoped for<sup>38</sup>.

Fenech not only disagrees with the fact that the Court, in calculating a person’s average wage so as to determine loss of earnings, both present and future, is bound to take an average of the victim’s wage for just the previous five years before the accident; he also criticizes the fact that consideration for the increase in standard of living is valued at just 1% of this average wage, and this applies only if the victim’s remaining working years amount to more than ten years. Such figures are especially prejudicial to older victims who have earned a living for a good number of years, yet do not have ten working years left ahead of them before they retire.

Another shortcoming is the fact that the amendments only seek to compensate losses of future earnings to victims who have not yet reached the statutory retirement age of sixty-five years.<sup>39</sup> It might very well be the case that an individual opts to continue working past this age, at least on a part time basis. However, should the proposed amendments enter into force, such work will be uncompensated.

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<sup>35</sup> Ibid, 19: The authors here illustrate such regional differences with examples: taking a five year old girl suffering from a permanent disability, the Milanese Tribunal might award €550 in damages; the Tribunal in Rome might also award €550, while the Tribunal in Genoa might award €1200.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid 20.

<sup>38</sup> Interview with Dr. Peter Fenech LL.D M.A (Sussex) (Malta 16 March 2011).

<sup>39</sup> Ibid.

Moreover, Articles 1046 (3) (a) and 1046A of the proposed amendments only seek to award compensation for maintenance and damages for pain and suffering, in the event of the death of the victim, to persons living with the victim at the time of death.<sup>40</sup> Therefore, should an individual's parents die as a result of a tort, yet he himself would not have been living at the family home at the time of death, such individuals, notwithstanding the obvious grief and suffering occasioned by such loss, would not be compensated at all by the Court.

Criticism has also been leveled against the fact that should a child actually be compensated for the death of a parent, the maximum that could be awarded is €6000, a sum which can hardly be described as adequate.<sup>41</sup>

Lastly, Fenech draws attention to the injustice which may be suffered by those persons whose compensation for loss of future earnings is capped at the maximum €600, 000, who would in reality have suffered a greater loss. This may be due to the fact that they would have been earning a substantially high wage at the time of the tort, yet when this is calculated according to the pre-set formula, they would nevertheless only be compensated for such a maximum amount.

While these amendments are a step forward in the direction of emulating our foreign counterparts on the matter, the way they are being proposed tips the balance in favour of the likes of insurance companies. Fenech argues that should the balance be tipped in any way, this should be definitely be done to favour the victim and his dependants, as the true victims of the tort.<sup>42</sup>

In conclusion, while the Court in *Butler vs Heard* created a near precedent in Maltese Civil law in the formula it devised, this has subsequently undergone extensive development and variation in its interpretation, as is expected over a forty year period. This author thus holds that the well-timed proposed amendments eliminate any uncertainty and establish stability in the manner in which damages are quantified, so that the Courts may continue to mitigate the injustices suffered by victims of torts. However, as has been seen and as is evidenced by Bill No. 78 of 2011<sup>43</sup> which was recently presented

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> < <http://www.doi.gov.mt/EN/bills/2011/BILL78.pdf> > accessed 20 June 2011.

to the House of Representatives<sup>44</sup>, more work needs to be done to refine the proposals in the light of the loss suffered by the victim. While the loss of health, mobility and ultimately life can never be wholly compensated for in financial terms, adequate and fair compensation certainly goes a long way to make the pain inflicted more bearable.

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<sup>44</sup> 19 April 2011.