

Diploma in Law (Malta)

Legislative Process

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Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

Re-Cap of Lecture 1

- What is law?
- Why do we legislate?
- Who can legislate?
- Common law vs Civil law
- Historical Influences on the Maltese Legal System
- Sources of Maltese Law



Today's lecture

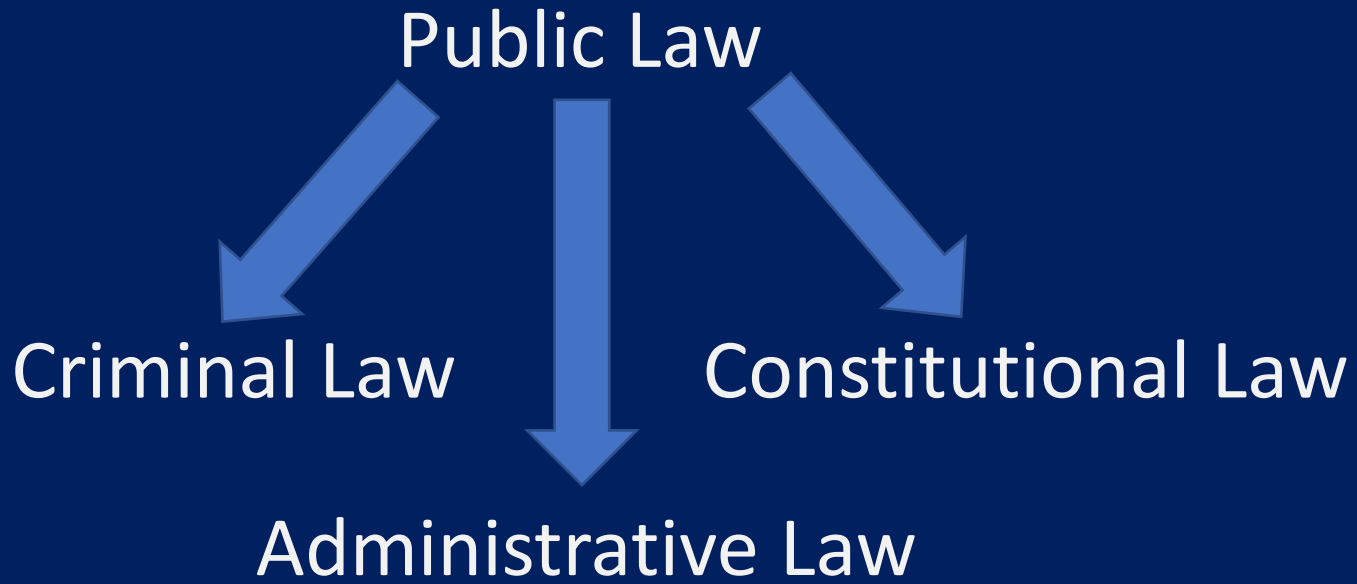
- In today's lecture we should be covering the following topics:
 - Explore the different types of laws which exist (Act, Subsidiary Legislation, Bye-Laws, Customs, Regulations/Directives)
 - Legislative Process
 - Judicial Interpretation
 - Using Justice Website/Parliament
 - Introduction to the Constitution



Different categories of Maltese law

- Civil/Criminal
- Public/Private
- Substantive/Procedural
- Municipal/Public International Law





Private Law



Civil Law



Substantive & Procedural

Public Law

Private Law

Criminal Law

Constitutional Law

Civil Law

Administrative Law

Morality

Canon law



International Law

Public Law

Private Law

Criminal Law

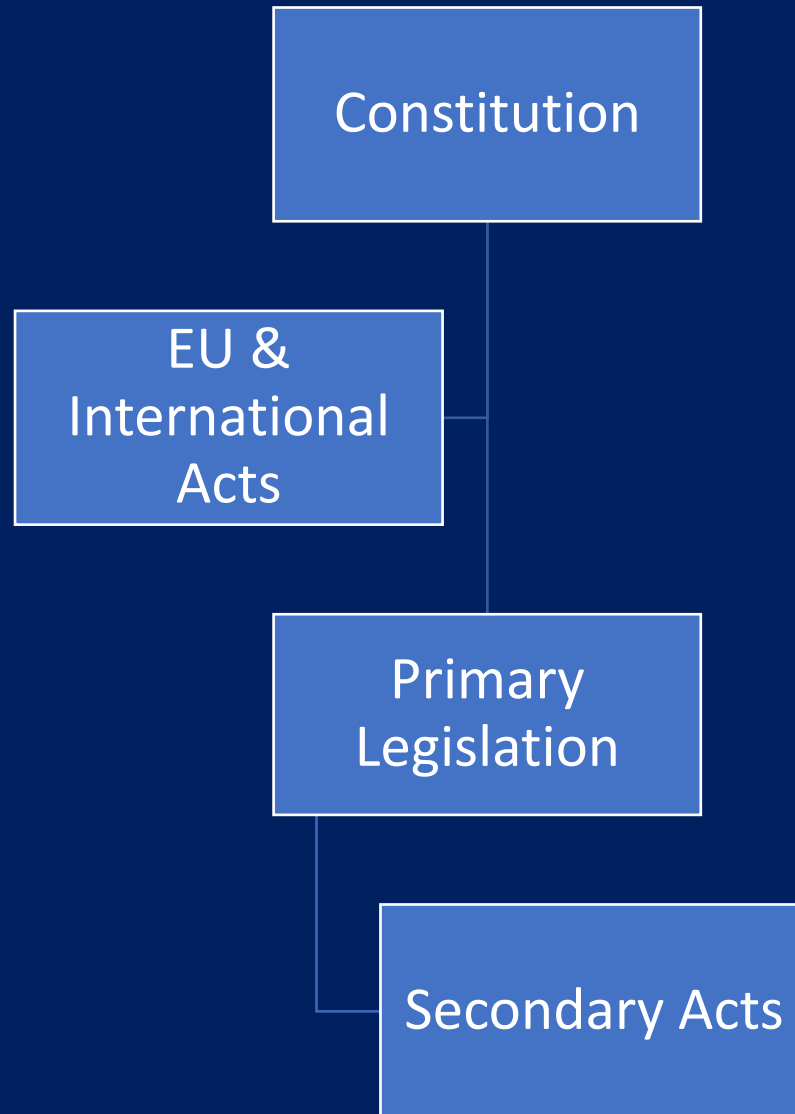
Constitutional Law

Civil Law

Administrative Law



Legal Hierarchy



Civil Law

- Rights and obligations of persons towards one another
- Provides remedies in conflicts between persons
- Relation between persons and the State



Criminal Law

- Concerned with acts or omissions contrary to public order
- Prescribe a punishment
- The State vs the Individual

‘By Public Wrong is meant an offence committed against the State or the community at large and dealt with in a proceeding to which the State itself is a party, while a private wrong is committed against a private person and dealt with at the suit of the individual so injured’

Sir A. Mamo



Public Law

- The Constitution which is the Highest law of Malta. It makes up the State and regulate it at the same time through the organs of the State.
- Administrative law which is concerned with the rights and duties of the individual and the actual functions of the government.



Substantive and Procedural

- Substantive law is the law which stipulates rights, obligations of the individual or the State
- Procedural laws are the laws which regulate the procedure to enforce the substantive law.



Primary legislation - Acts

- Acts are laws which regulate a specific area.
- They are promulgated by Parliament and must be published to become effective.
- They are given a number which is called the Chapter
- Acts are made up of Articles and sub-articles



Chapter name → **CIVIL CODE** → **CHAPTER 16** → **Chapter number**

To amend and consolidate the Laws relating to Persons and the Laws respecting rights relative of Things and the different modes of acquiring and transmitting such rights.

rationale

11th February, 1870
22nd January, 1874

Promulgation
/enactment
date

This Code consolidates the following:

ORDINANCE VII of 1868 (as amended by Ordinances: I of 1870, IV of 1907, XIV of 1913, II and V of 1920; Acts: III of 1930, XLII of 1933; Ordinances: XL of 1935, XIX of 1937, III of 1938, XXXIX of 1939 and XXV of 1940); ORDINANCE I of 1873 (as amended by Ordinances: I of 1908, XIII of 1932; Act XXI of 1933; Ordinances: XX of 1934, XVIII of 1938 and XXII of 1939); Article I of ORDINANCE VI of 1895 and Articles 2, 4, 5, 6, 7 (1) and 9 of ORDINANCE XIII of 1895.

Enacting formula

This Code was subsequently amended by Ordinances: II and VII of 1944; Acts: XXVIII of 1948, XI of 1952; Ordinances: IV and XXXIX of 1961, XXI and XXV of 1962; Legal Notice 4 of 1963; Act XXVIII of 1963; Legal Notice 46 of 1965; Acts: XXXI of 1965, II and XXXI of 1966, XVI of 1967, VI of 1968, VI and XXXVIII of 1972, XI and XXV of 1973; Legal Notice 54 of 1973; Acts: XLVI of 1973, I and LIV of 1974, XXXVII of 1975; Legal Notice 93 of 1975; Act LVIII of 1975; Legal Notice 148 of 1975; Act LV of 1975; Legal Notice 46 of 1976; Acts: XXII, XXVII and XXXIX of 1976; Legal Notice 43 of 1977; Acts: VII and XI of 1977, XXII and XXX of 1979, XXX, XLIX and L of 1981, VII and IX of 1982, VI and XIII of 1983, XV of 1984, VII of 1985, VII and VXXI of 1986; Legal Notice 161 of 1989;

1. The title of this Code is Code of Police Laws.

Short Title

2. In this Code, the following expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided -

Interpretation

Amended by:

VII.1889.8, 10;

IX.1900.21;

XIII.1913.9;

XV.1920.14;

XVI.1931.43, 47,

48;

XX.1957.2;

I.1959.8;

V.1960.2;

L.N. 4 of 1963;

XIV.1969.19;

L.1974.2;

XI.1977.2;

L.N. 161 of 1990;

XVII.1991.82;

XXIII.2000.30;

XXVII.2001.33;

XV.2009.49, 52.

Cap. 44.

← Marginal note

← Interpretation

← Article number

the expression "architect" means any person authorized to practise the profession of architect and civil engineer under the provisions of the Architects Ordinance;

the expression "cattle-pen" means any place in which there are more than two animals of the bovine species;

the expression "cellar" means any part of a house the floor of which is more than one metre below the level of the nearest street;

the expression "cemetery" means any cemetery, tomb or other site destined for the burial of dead bodies, wherever situate;

the expression "common tenement-house" means any house where more than two families reside and there is not in the room or apartment occupied by each family a separate privy and a separate water supply;



101. (1) The owner of any house constructed after the first of January eighteen hundred and eighty, shall constantly keep such house in conformity with the plan originally approved by the Superintendent of Public Health, without making any addition or alteration thereto except with the written approval of the said Superintendent.

Rules as to houses constructed after 1st January, 1880.

Added by:

XVI.1931.22.

Amended by:

XXIX.1935.4.

(2) It shall be lawful for the Superintendent of Public Health at any time to order any such house or part of such house to be made to conform, as far as may be practicable, to any other provision of this Code or of any regulation made under article 102.

102. (1) The Minister responsible for public health may, on the advice of the General Services Board, make regulations respecting the manner in which the provisions contained in articles 97 and 100 are to be carried out, and the materials to be used.

Power of Minister responsible for public health to make regulations.

Amended by:

XVI.1931.23,24;

XXIX.1935.5;

I.1959.8;

L.N.4 of 1963;

L. 1974.5;

XI.1977.2.

(2) Saving the provision of sub-article (1), the Minister responsible for public works may make regulations to provide -

- (a) for facilities to be made in favour of owners of houses to comply with the provisions of article 97(1)(g);
- (b) for empowering the Director of Public Works to make arrangements and enter into agreements with the said owners in respect of such facilities, including the contribution, if any, by the Government of part of the expenditure involved in such compliance;

Sub- Article

Sub Section



107. It shall not be lawful to use or suffer to be used for habitation, separately from the building of which it forms part, any cellar constructed or reconstructed after the first of January eighteen hundred and eighty, or which, in the course of the year previous to that date, was not used for habitation:

Cellars used for habitation.
*Amended by:
XXIX.1935.6.*

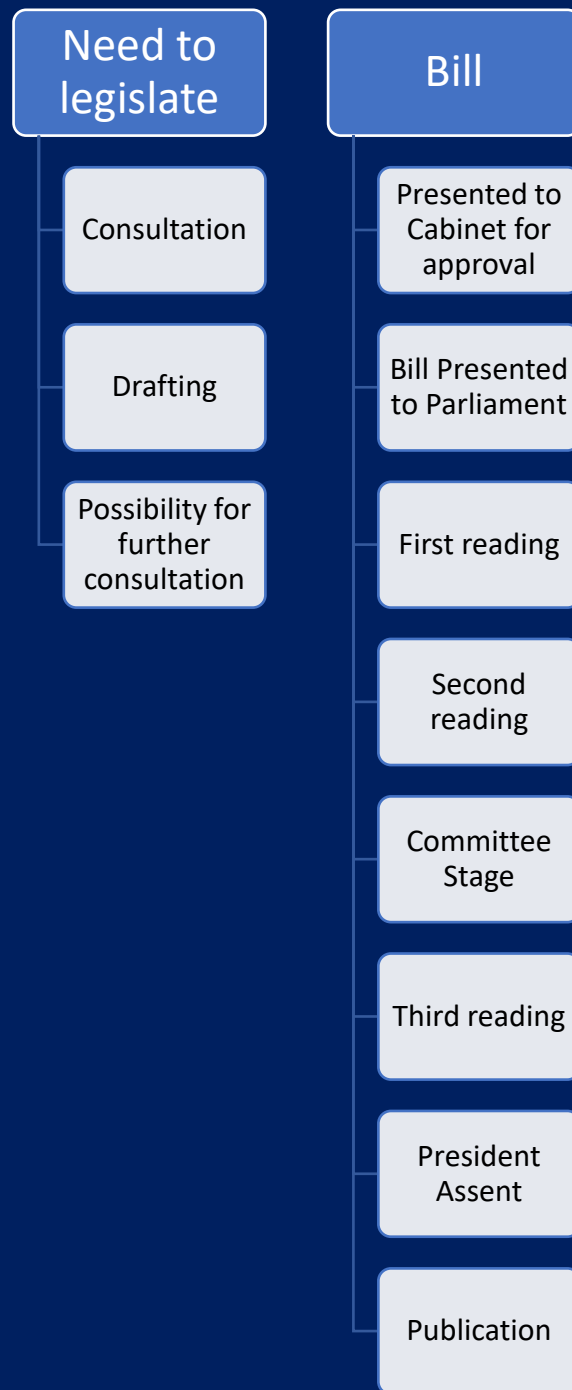
Provided that it shall not be lawful to use any cellar for sleeping purposes.

↑
Proviso

Legislative Process

- Any member of Parliament can practically propose a law through a Private member's Bill.
- Normally laws are put forward by ministers
- Laws have a life cycle





Entry into Force

- A law may have been promulgated and published but is not yet in force
- A law can be brought in vigore in parts
- If it does not have a date for the coming into force a Legal Notice indicating the date must be published when the minister decides to bring it into force
- The law comes into force exactly as the clock strikes midnight



L.N. 30 of 2021

**EDUCATION ACT
(CAP. 605)**

Commencement Notice

IN EXERCISE of the powers conferred by article 1(2) of the Education Act, 2019 (Cap. 605) the Minister for Education has established the 1st January, 2021, as the date when the provisions of article 71 of the said Act shall be deemed to have come into force.



EDUKAZZJONI

[KAP. 605.

1

KAPITOLU 605

ATT DWAR L-EDUKAZZJONI

ATT biex jirrifirma l-liġi dwar l-edukazzjoni f'Malta.

1 ta' Jannar, 2021^{*}

1 ta' Ottubru, 2021[†]



L.N. 373 of 2021

**EDUCATION ACT
ACT No. XXIX of 2019
(CAP. 605)**

Notice of Repeal of Chapter 327 of the Laws of Malta

IN EXERCISE of the powers conferred by article 71 of the Education Act, 2019 (Cap. 605), the Minister for Education has established the 1st October, 2021, as the date on which the provisions of the Education Act (Cap. 327), hereinafter referred to as "the Act", except the provisions hereinafter listed, shall be repealed:



Subsidiary Legislation










- Also known as delegated legislation
- A minister must have delegation through the primary legislation
- The reason behind this process is to have a faster process
- Most of the times SL deal with either technical issues or with regulations to beef up the law
- SL depends on parent Act
- What if there is a conflict with parent Act?
- Is it dangerous (checks and balances & separation of power)?



Process

- Need to regulate
- Drafting
- Consultation
- Final drafting
- Presentation by the minister to Cabinet
- Once approved by Cabinet it becomes law
- Publication & put on the table of the House
- Any MP can ask for the SL to be discussed within 28 days



	Chapter ↑↓	Chapter Title ↑↓	View
▲	Kap. 123	Att dwar it-Taxxa fuq l- <i>Income</i>	
	L.S. 123.01	Regoli dwar it-Tnaqqis meta l-Impjant u l-Makkinarju jitkabar bl-Użu Ordinarju	
	L.S. 123.02	Regoli dwar Tnaqqis ta Taxxa (P.A.Y.E)	
	L.S. 123.03	Ordni dwar l-Iskjen minn Taxxa Doppja (Taxxi fuq l- <i>Income</i>) (Ir-Repubblika l-Kbira Għarbija tal-Libja tal-Poplu Soċjalista)	
	L.S. 123.04	Regoli dwar Formuli Mixxellanji <i>Imħassrin bl-Avviż Legali 430 tal-2014</i>	
	L.S. 123.05	Regoli dwar Eżenzjoni mill-Flas ta' Taxxa Doppja fuq l- <i>Income</i> mar-Renju tal-Belġju	
	L.S. 123.06	Ordni dwar Eżenzjoni mill-Flas ta' Taxxa Doppja fuq l- <i>Income</i> mar-Repubblika Federali tal-Germanja	
	L.S. 123.07	Regoli dwar Tnaqqis fit-Taxxa fuq l- <i>Income</i>	
	L.S. 123.08	Ordni dwar Eżenzjoni mill-Flas ta' Taxxa Doppja fuq l- <i>Income</i> mar-Renju tan-Norveġja	

SUBSIDIARY LEGISLATION 123.07**INCOME TAX DEDUCTIONS RULES**

1st January, 2001

LEGAL NOTICE 322 of 2001, as amended by Legal Notices 100 and 409 of 2007 and 369 of 2009.

- | | |
|--|-----------------|
| 1. The title of these rules is the Income Tax Deductions Rules. | Title. |
| 2. In these rules, unless the context otherwise requires - | Interpretation. |
| "Act" means the Income Tax Act; | Cap.123. |
| "benefit" has the same meaning assigned to it under the Fringe Benefits Rules; | S.L.123.55 |
| "emoluments" has the same meaning assigned to it under the FSS | |

**LOCAL GOVERNMENT ACT
(CAP. 363)**

Outdoor Activities within the Locality of Mellieħa (Mellieħa Local Council) (Amendment) Bye-Laws, 2020

IN EXERCISE of the powers conferred by article 34 of the Local Government Act, the Mellieħa Local Council has made the following Bye-Laws:-

Citation.

1. The title of these Bye-Laws is the Outdoor Activities within the Locality of Mellieħa (Mellieħa Local Council) (Amendment) Bye-Laws, 2020 and these bye-laws shall be read and construed as one with the Outdoor Activities within the Locality of Mellieħa (Mellieħa Local Council) Bye-Laws, hereinafter referred to as "the principal bye-laws".

S.L. 363. 143.

Amends bye-law 2 of the principal bye-laws.

2. Bye-law 2 of the principal bye-laws shall be amended as follows:

