

# Diploma in Law (Malta)

## The Constitution

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**Diploma in Law (Malta)**



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# Re-Cap of Lecture 2

- Categories of laws (Constitution, Acts, Subsidiary, Bye-Laws, Substantive, Procedural, Civil .....)
- Criminal Act can give rise to a civil action
- Legislative Process (Primary and secondary law)



# Today's lecture

- In today's lecture we should be covering the following topics:
  - Where to find laws  
(Justice/Parliament websites)
  - Judicial Interpretation
  - Jurisdiction
  - The Constitution



# Where to find Maltese law?

The screenshot shows the 'LEGISLATION MALTA' website interface. At the top, there is a navigation bar with 'LEGISLATION MALTA' and links for 'Advanced search', 'FAQs', 'Contact us', and 'eCourts'. Below this is a secondary navigation bar with 'Consolidated laws', 'Publications', and 'EU Law', along with a 'Quick search' input field. The main content area is divided into several sections:

- Chapters of the Laws of Malta:** A section featuring an image of an open book with floating letters and symbols.
- Publications:** A section featuring an image of a hand signing a document.
- Search all documents:** A section featuring an image of a magnifying glass over a document.
- EU Law:** A section featuring an image of a keyboard with a blue 'EU' key.

On the left side, there are two sidebar sections:

- LATEST UPDATED:** A list of regulations including:
  - Local Councils (Association) Regulations
  - Prosecution of Offences (Transitory Provisions) Regulations
  - Students Maintenance Grants Regulations
  - Electronic Communications Networks and Services (General) Regulations
  - Electronic Communications Networks and Services (General) Regulations
- FAQs:** A list of frequently asked questions:
  - What legislation is found on this website?
  - Will I find new legislation on the website?



# Parliament website

parlament.mt

Language: | [Contact Us](#) | [Search](#)

Mr Speaker | About Parliament | Parliamentary Business | Committees / Delegations | Reference Material | Get Involved

PARLAMENT TA' MALTA

Regulations issued by the Speaker concerning Covid-19

Parliamentary Calendar [RSS](#)

October 2021						
M	T	W	T	F	S	S
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Plenary Session  
 Committee Meeting

**Forthcoming Meetings**

**06 Oct 2021**

Public Accounts Committee	02:00 pm
Plenary Session	04:00 pm

**BUSINESS BEFORE THE HOUSE** [DOWNLOAD AGENDA](#)

**ORDERS OF THE DAY**



# Interpretation

- A law must be interpreted, and should be as clear as possible to eliminate uncertainty.
- When interpreting the law one should try and interpret it in a way which the legislator wanted it to be.
- 3 main kinds of interpretation
  - Doctrinal
  - Authentic
  - Judicial



# Doctrinal

- Refer to works of legal scholars and jurists
- Rather than interpretation the process here is to use the works of scholars to help in the process of interpretation



# Authentic

- The use of other laws or parts of laws to help in the interpretation
- There exist a specific Act to help in the interpretation of laws which is the Interpretation Act Cap 249 of the laws of Malta
- The Interpretation Act applies to all laws





# Interpretation Act (Cap 249)

- Gives a multitude of interpretation on various aspects of the law.
- Reference to masculine and feminine
- Time of entry into force
- Definition of person
- Procedure for Subsidiary Legislation
- Prevalance of Maltese Language



# Judicial

- The interpretation given to laws by the Courts
- Courts should try to interpret the law in the way it was intended by the legislator
- There are two main methods, the literal and logical interpretation
- Although in Malta there is no precedent principle, the way the courts interpret the law will definitely have a weight on the subsequent interpretation



A husband or wife who, during the subsistence of a lawful marriage, contracts a second marriage, shall on conviction, be liable to imprisonment for a term from thirteen months to four years.

Art. 196 Cap 9



# Jurisdiction

- The power of the State or the Court to exercise its authority over a territory or in determining a particular case.
- Where can Maltese law be applied?



# State jurisdiction

- Power of the state to exercise authority over its citizens and the people in the islands of Malta.



# Court jurisdiction

- The extent of the Court's authority
- The limits delineating the authority of the Courts of Malta



# Jurisdiction vs Competence

- A Court can have jurisdiction but not competence.
- Jurisdiction is the power of a Court to subject a person (or object/event) to its judicial process.
- Competence is the remit of that particular Court.
- A Court cannot take cognizance of a case if not within its competence



# Nationality & Jurisdiction

- Nationality is what gives the State the power to control its people
- States have jurisdiction over its nationals, wherever they are.
- This is called the **Active** principle and is also applied to sectors such as aircraft and ships.
- This is where the principle of extradition comes in





- There is another principle which governs Nationality and jurisdiction, which is the **Passive** principle
- Instead of focusing on the nationality of the offender it focuses on the nationality of the victim
- This principle is not used much and is more common in instances where crimes against humanity or acts of terrorism against a specific group of people occurs.



# Protective Jurisdiction

- Based on the principle of protecting the State as a whole
- Actions committed outside the national territory but threaten the State. (spying, plots of a coup d'etat.
- Eichmann case (abducted from Argentina)



# Universal Jurisdiction

- The particular State can intervene even if the act was not done in its territory and against its people
- Most common use of such principle is in the case of piracy



# The Constitution

- Highest law of the country
- Gives the parameters in which all other laws should operate
- Establishes fundamental rights
- Regulate how the organs fo the State should operate
- Not all of the Constitution is enforceable



# History

- 1919 revolts
- 1921 Constitution
- 1936 & 1939 Constitutions
- 1947 Constitution
- 1959 Constitution
- 1961 Constitution
- 1964 Constitution



# Constitutional Law

- Constitution of Malta is the actual Constitution
- Constitutional law refers to a wider array of laws such as electoral laws, decisions of the constitutional court, HoR standing orders....
- What gives life to the word of the Constitution



# Doctrines

- Can be considered as the basic principles of a Constitution and which the Constitution should strive to achieve:
  - Separation of Power
  - Rule of Law
  - Supremacy of the Constitution



# Seperation of Power

- 3 main organs of the State
  - **Legislature**

The organ responsible to legislate, enact laws and revoke laws, Parliament.
  - **Executive**

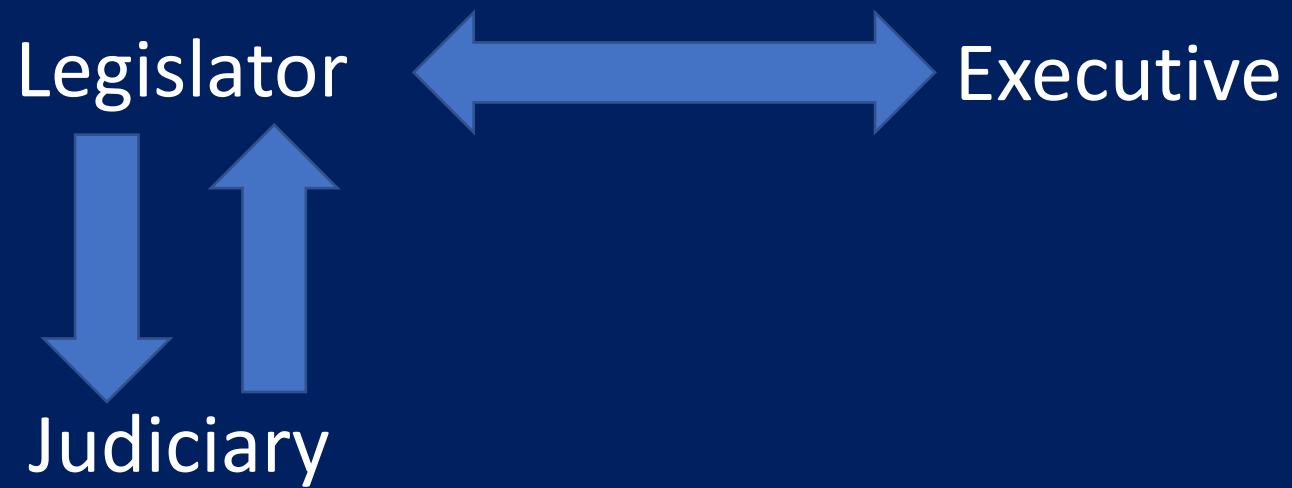
Execute the laws and the policy of Government.
  - **Judiciary**

Interpret the law and apply the law in the particular cases brought before it. Checks that laws are in line with the constitution.





# Checks and Balances



# Rule of Law

- Not just the application of the law but the elimination of arbitrary power
- Built on the below principles
  - Equality before the law
  - No arbitrary power
  - Principles of the Constitution



# Declaration of Delhi (1959)

- Representative and responsible government
- Protection of a minimum standard of law
- Remedy against the State
- Independence of judiciary and capable of enforcing the law



# Malta as a State

- Malta became a sovereign State on the 21st September 1964
- Sovereign denotes that the State has the power to legislate and govern without interference from another foreign authority?
- The power to make laws makes a State sovereign
- The British government relinquished any responsibility on Malta and this was assumed by the Maltese government.



# The Republic

- Lists the main features of the Republic
- Respect to fundamental rights and freedoms
- Neutral State
- Prohibition list
- Religion proclaimed as the Roman Catholic
- National Flag
- Official Languages
- Maltese is the National language



# Principles

- List of 14 principles which are not enforceable
- State should aim at applying these principles when enacting laws
  - Right to work
  - Promotion of culture
  - Compulsory and free education
  - Hours of work
  - Safeguarding children from child labour
  - Protection of artisan trades



# Fundamental Rights and Freedoms

- Applicable to any person in Malta (not just Maltese)... With certain exceptions which ultimately prove the rule!
- These rights apply also to legal persons since the preamble refers to 'any person'

