

# Recap

- Historical Background of Legal Research – earliest written law on record – Code of Hammurabi – 3000+ years ago
- Common law attempt of codification – Blackstone’s era 1765. In Malta - *Del Dritto Municipale di Malta*’ 1784 a.k.a Code de Rohan later substituted by the Code Napoleon 1852
- Press technology – 1850s – increase in publishing material. New problem: volume management – curbed with online databases
- Artificial Intelligence – contract review and analytics, litigation prediction, legal research etc



# Recap

- Qualities of a legal researcher – grit (keep on search) and diligence, acknowledge limitations, relevance, search for the source
- Who carries out legal research – legislators, judges, lawyers, notaries, law lecturers, students and other professionals
- Sources – Primary (Acts, S.L, L.N, Bye-Laws, Custom law, Govt Gazette?, Ratified Treaties, Judgments), Secondary (insight on primary sources – no weight of law – legal textbooks, dictionaries, dissertations, unratified treaties, articles etc), tertiary (lists and summaries of other resources)
- S.L., L.N, Bye-Laws owe their existence and authority to other legislation



# Committee Video Link

- Audio <https://parlament.mt/en/13th-leg/consideration-of-bills-committee/kun-001-06072017-0100-pm/>



# Legal Research and Interpretation Methodology

Lecture Title: Legal Research Source P. II

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Date: 01/02/2023



**Diploma in Law (Malta)**



CAMILLERI PREZIOSI

ADVOCATES

# Other primary sources - Regulations, Directives and Decisions

- How does the EU pass new laws?

<https://www.youtube.com/watch?v=8COKq7ioOpk>

Various types of sources:-

- Regulations - a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU's regulation on ending roaming charges while travelling within the EU expired in 2022, the Parliament and the Council adopted a new regulation both to improve the clarity of the previous regulation and make sure a common approach on roaming charges is applied for another ten years
- Directives - is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. One example is the EU single-use plastics directive, which reduces the impact of certain single-use plastics on the environment, for example by reducing or even banning the use of single-use plastics such as plates, straws and cups for beverages.
- Decisions - are binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable. For example, the Council issued a decision on allowing Croatia to adopt the euro on 1 January 2023. The decision related to the country only.
- Recommendations - not binding. When the Commission issued a recommendation that EU countries' media service providers improve their ownership transparency and safeguard their editorial independence, this did not have any legal consequences. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. – Secondary Source
- Opinions - an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional or economic and social viewpoint. For example, the European Economic and Social Committee issued an opinion on the Commission's Next Generation EU's small and medium-sized enterprises strategy. – Secondary Source



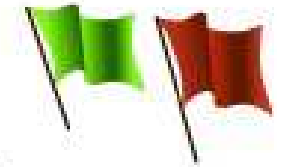
# Secondary Sources of Legal Research

- Secondary sources offer insight into the primary sources
- Don't carry the weight of law
  
- Legal Textbooks
- Treaties if not ratified
- Legal Commentaries
- Law Reviews and Articles
- Reports
- Dissertations
- Legal Dictionaries
- Govt Gazette to an extent as all laws are published therein but it includes also tenders, employment opportunities, court notices, door numbering, publication of licensed individuals etc



# How to evaluate sources?

## Evaluating sources



### Primary Sources

- Is it still good law?
- Is it on point?
- What court is the judgment from?
- Which court are you in?
- Which jurisdiction is it from?
- Legislation from the databases and not from legislation.gov

### Secondary Sources

- Is it up to date and is the date clear?
- Could it be biased?
  - Who is it written for and why?
  - What other sources does it link to?
- Who is the author?
  - Is this clear?
  - Is it a wiki?
- Is it reliable/authoritative
  - Are there clear references?
  - Is it 'professional' looking?

# Tertiary Sources

- These are sources that index, abstract, organize, compile, or digest other sources. Chief purpose is to list, summarize or simply repackage



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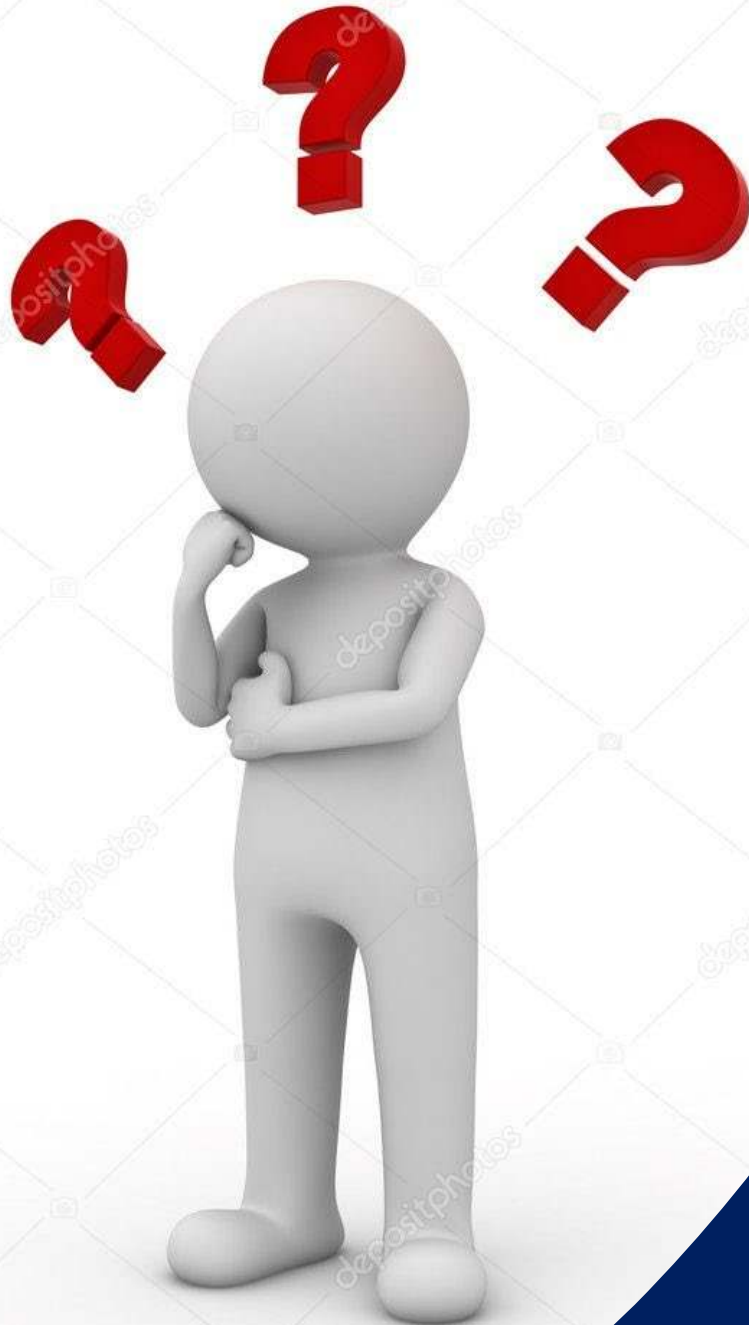
**CHAPTER 16**



# Are the following primary, secondary or tertiary?

- Court files/process/i
- Parliamentary minutes
- Decision given by a local tribunal in case of vehicle or COVID-19 contraventions
- Letters and speeches about the law or judgments
- Court judgment reference list
- Contracts





Do the sources of  
Legal Research differ  
by country?

Are some primary  
sources more  
important than other  
primary sources?

# Do the sources of Legal Research differ by country/ legal system? Are some sources more important than other?

- (Legal System - the set of laws of a country and the ways in which they are interpreted and enforced)
- Different sources may carry different weight according to the jurisdiction
- Researcher might focus on different sources if search is conducted in a jurisdiction contrary to another
- Maltese jurisdiction – is a hybrid system of both common and civil law
- Malta is heavily based on statutory law and does not apply the precedent notion meaning laws are made only by parliament though judgments hold authoritative weight especially in regard to interpretation of the law

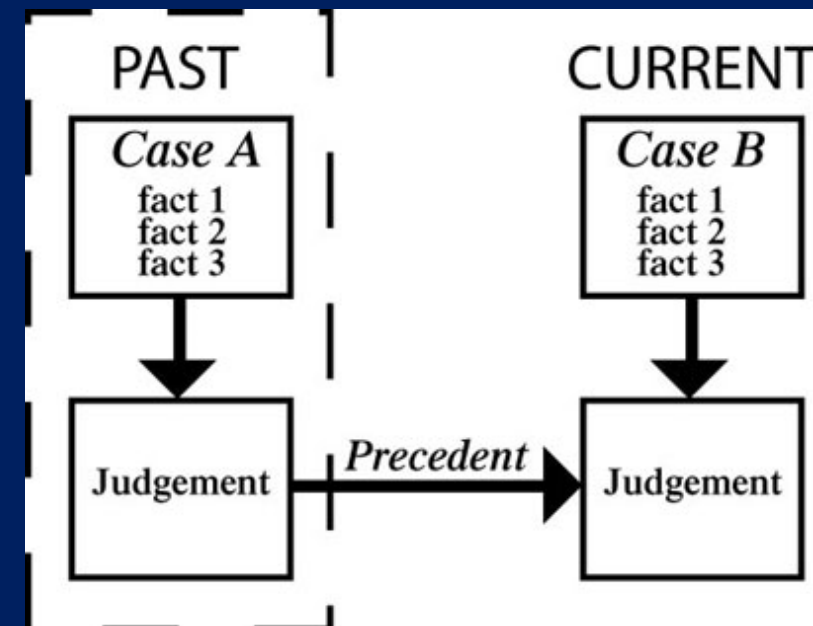


# Are some primary sources more important than other primary sources?

- Depends on the country one is looking at
- E.g. Common law Court Judgments = Parliament law
- In Malta judgments do not make law, meaning that acts of parliament may be considered at the top of the hierarchy

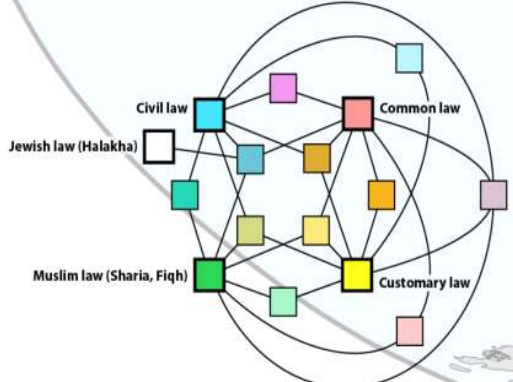
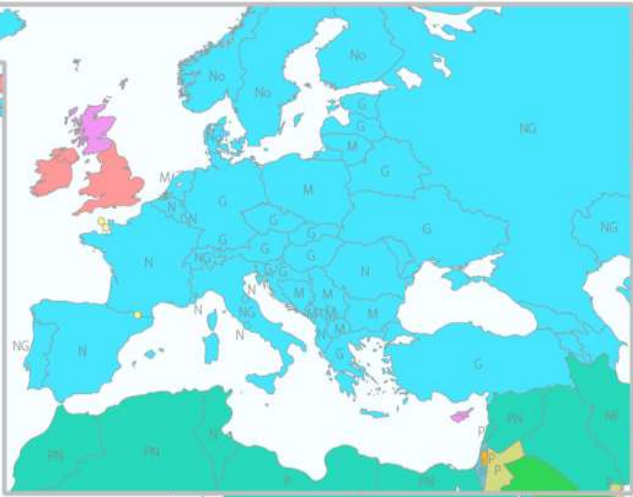
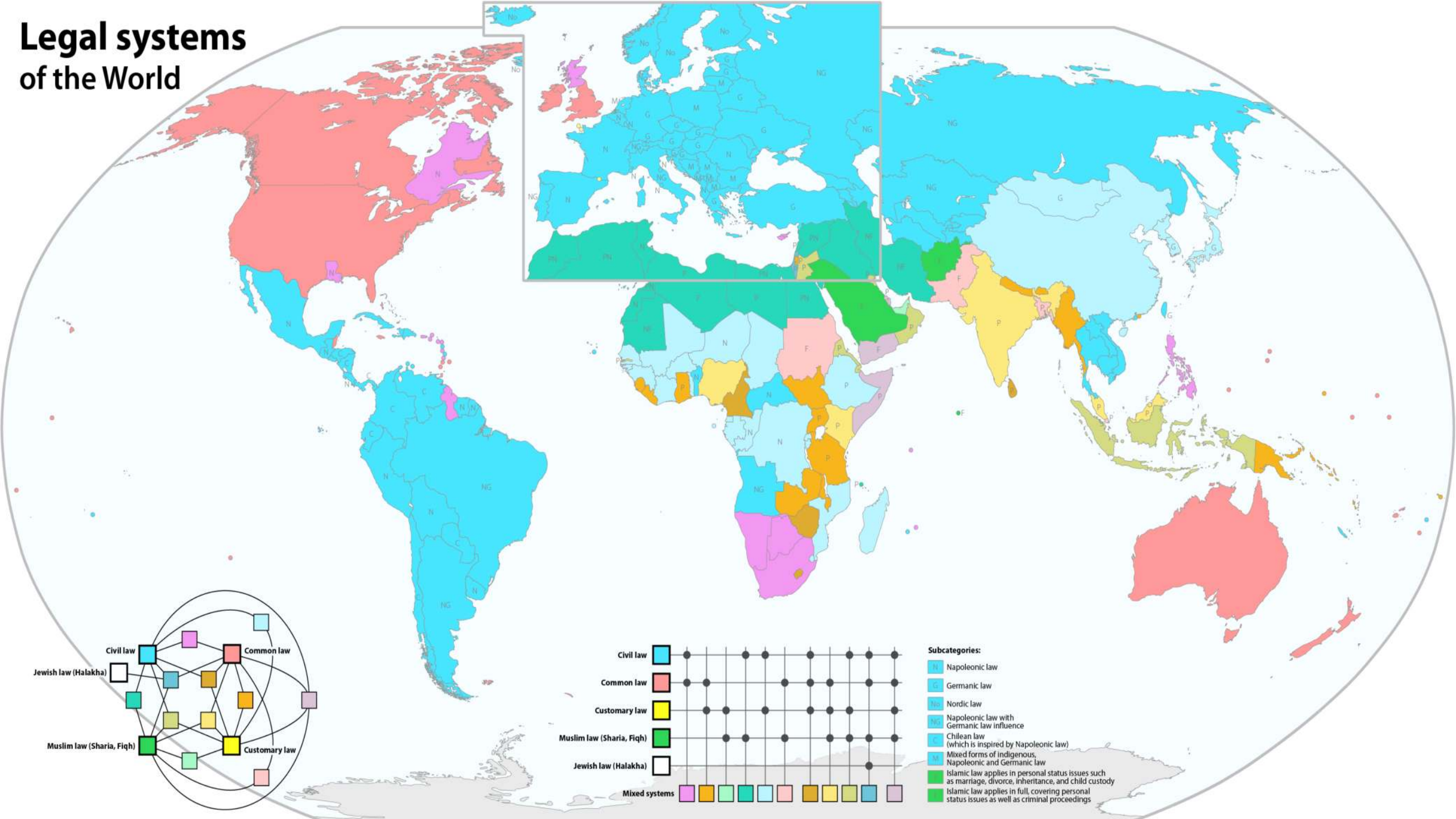
## The Doctrine of Precedent and Common Law

- The doctrine of precedent = **the very basis of the common law**
- Also referred to as **judge-made law** = result of court rulings
- **Equally important as the law enacted by Parliament** = result of the legislative procedure in the UK Parliament-made law
- It **enables more flexible reaction** to certain provisions of the legislation or concrete case details, which are not covered by statutes
- Also known as *stare decisis* = lat. „to stand by decided matter“





# Legal systems of the World



System	Color	Grid 1	Grid 2	Grid 3	Grid 4	Grid 5	Grid 6	Grid 7	Grid 8	Grid 9	Grid 10	Grid 11	Grid 12	Grid 13	Grid 14	Grid 15	Grid 16	Grid 17	Grid 18
Civil law	Cyan	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Common law	Red	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Customary law	Yellow	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Muslim law (Sharia, Fiqh)	Green	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Jewish law (Halakha)	White/Black	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Mixed systems	Various	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●

- Subcategories:**
- N (Napoleonic law)
  - G (Germanic law)
  - No (Nordic law)
  - NG (Napoleonic law with Germanic law influence)
  - C (Chilean law (which is inspired by Napoleonic law))
  - M (Mixed forms of indigenous, Napoleonic and Germanic law)
  - Green (Islamic law applies in personal status issues such as marriage, divorce, inheritance, and child custody)
  - Dark Green (Islamic law applies in full, covering personal status issues as well as criminal proceedings)

# Legal Systems – Common Law vs Civil Law

- Common Law vs Civil Law – Loose Brick example
- <https://www.youtube.com/watch?v=xajuFbtuK7E>



# Where to find the sources for Legal Research?

## Comprehensive but not exhaustive list

- Depends on the country where one is carrying out the research
- In Malta the most important sources are found:-
  1. Constitution, Laws, Acts, S.L, L.N, Bye-laws, Parliament Bills, EU Laws, Treaties- <https://legislation.mt/> How do amendments work for sources purposes? Never search the law from a search engine, it may not be the latest version!
  2. Judgments - <https://ecourts.gov.mt/onlineservices> Not all judgments are published – Criminal & Family vs Civil – court decrees - Right to be forgotten <https://ecourts.gov.mt/onlineservices/RightToBeForgotten>
  3. PCRB Decisions - <https://finance.gov.mt/en/The-Ministry/Departments-Directorates-Units/pcrb/Pages/decisions-2021.aspx>
  4. Planning Authority - <https://www.pa.org.mt/>
  5. Environmental and Planning Review Tribunal - <https://www.eprt.org.mt/>
  6. Govt Gazette <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Pages/default.aspx>

# Where to find the sources for Legal Research?

## Comprehensive but not exhaustive list

7. Electoral Register – <https://electoral.gov.mt/electoral-registers>
8. Bills and parliamentary debates - <https://parlament.mt/> Notarial Archives - <https://justice.gov.mt/mt/ntg/Pages/home.aspx>
9. Company Information - <https://registry.mbr.mt/ROC/>
10. CDB – The Common Database – Accessible for govt employees
11. ECHR caselaw - <https://hudoc.echr.coe.int/>
12. EU Directives and Regulations (Binding) - [Advanced search - EUR-Lex \(europa.eu\)](#)
13. Notarial Archives - <https://justice.gov.mt/mt/ntg/Pages/home.aspx>
14. Public Registry Searches - <https://pronline.identitymalta.com/login?ReturnUrl=%2f>
15. Court Archives (Civil & Criminal) and Court Library





# Where to find the sources for Legal Research?

- University of Malta Library incl. dissertations
- National Library of Malta – only for Maltese publications, old electoral registers, govt gazettes



Find the following:-

1. Article 47(1) of Cap. 12
2. Proviso of Art. 27(1) of S.L. 12.09
3. Definition of “Minister” in L.N. 364 of 2020
4. Title of bye-law 35/01/2020
5. Site plan A in schedule of bye-law 35/01/2020
6. Decision date of EPRT Appeal number PAB/00001/21
7. Planning Application PA/00123/22 description of works
8. Plaintiff and defendant names in law suit number 111/2022 — Mag. Noel Bartolo — Rent Regulation Board
9. Judgment in the case “Catherine Grech vs Patrick Bugeja et” (442/2015LSO) dated 30/05/2019. Was this case appealed? If so, has the appeal been appointed/ decided?
10. Tender title of PCRB case 831/2015
11. Notice 1355 Government Gazette number 20,719 published on 14/10/2021



# Where to find the sources for Legal Research? – Activity

## 1. Art. 47(1) of Cap. 12

47.(1) A magistrate shall sit in the Court of Magistrates(Malta), and such court shall, as a court of first instance, hear and determine all claims of an amount not exceeding fifteen thousandeuro (€15,000), against persons residing or having their ordinary abode in any part of the Island of Malta.

## 2. Proviso of Art. 27(1) of S.L. 12.09

Provided that where such person has been summoned to appear before a court or tribunal the said officer shall, before proceeding further, inform the Judge, Magistrate or member of the tribunal before whom that person was due to appear, and shall take instructions from the said Judge or Magistrate or member of the tribunal as to how he should proceed.

## 3. Definition of “Minister” in L.N. 364 of 2020

Reg. 2 (b) "Minister" means the Minister responsible for Justice

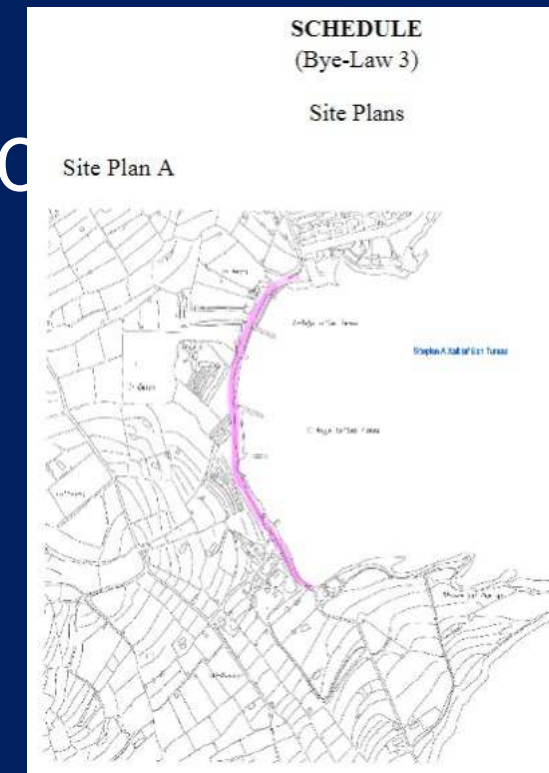


# Where to find the sources for Legal Research? – Activity

4. Title of bye-law 35/01/2020

Caravans in the Locality of Marsaskala (Marsaskala Local Council)  
Bye-Laws, 2020

5. Site plan A in schedule of bye-law 35/01/2020



# Where to find the sources for Legal Research? – Activity

6. Decision date of EPRT Appeal number PAB/00001/21 – 02/11/2021
7. Planning Application PA/00123/22 description of works - Change of use from garage to Class 4B shop including replacement of steel door with an aluminum door, placement of sign and ac units within the same door and construction of WC in the shop and removal of 3rd party ac unit from the facade.
8. Plaintiff and defendant names and magistrate in law suit number 111/2022 - GEORGE SPITERI & SONS LIMITED vs GAFA EMANUEL ET – Mag. Noel Bartolo/ Leonard Caruana – RRB
9. Judgment in the case “Catherine Grech vs Patrick Bugeja et” (442/2015LSO) dated 30/05/2019. Was the case appealed? If so, has the appeal been appointed/ decided? Appealed. Appeal was ceded
10. Tender title of PCRB case 831/2015 - Tender for Road Resurfacing Works at n/s in Triq il-Pellikan, San Gwann



# Where to find the sources for Legal Research? – Activity

11. Notice 1355 Government Gazzette number 20,719 published on 14/10/2021

TERMINATION OF AGRICULTURAL LEASE DECLARATION BY THE LANDS AUTHORITY I hereby declare that the under-mentioned land, which is Government property, is required for a public purpose in accordance with the provisions of the Government Lands Act (Cap. 573) of the Laws of Malta. 14th October, 2021 Description of the Land The following land at Gudja:

A plot of land measuring about 694 square metres, bounded on the North, on the West and North East by Government property or more precise boundaries and is registered on Authority records as part of tenement number J51249. The above-mentioned land in Triq il-Mitħna is being terminated for the extension of the ground. The above-mentioned land is shown marked with the colour blue on plan P.D. 2021\_0486, which may be viewed on demand at the Lands Authority, Auberge de Baviere, Valletta. (Sgd) Dr John Vassallo Chairperson of the Board of Governors of the Lands Authority







What process/  
structure/ stages do  
you usually follow  
when wanting to  
conduct research ?

# Stages in Legal Research and methodology

- Research is a process involving backward and forward movement between different stages
- Legal professional lack in legal methodology unlike sociologists who with practice developed a process of:
  1. Discovering
  2. Verifying/testing/analyzing
  3. Find relationships
  4. Develop new concepts/ suggestions





# Why is Legal Methodology needed?

- Professionals working in the legal sector undertake rigorous research for the law and critical evaluation of the articles, legal principles, concepts or doctrines.
- Professionals rarely would go beyond into the functional aspect of the law, behavior of individuals in relation to a particular law (akin to sociologists).



# How to start the process of research? – Preliminary stage – How to create a research plan?

- Know what you want to search for
- Familiarise yourself with the terminology
- Methodology
- Sources location

## Creating a Research Plan

- What is the legal issue?
- What is the appropriate search terminology?
- What type of research material is available?
- What jurisdictions are involved?
- What is the controlling law?
- What resources can be used?
- Is this the current, applicable law?
- Where should the needed research material be located?

# Preliminary stage – Know the terminology

- If writing a legal article/ paper/ application etc – use legal terminology
- Code/ Chapter/ Act / S.L/ L.N/ Bye-laws/ Plaintiff/ Defendant/ Judgment/ Decree/ Application/ Sworn Application/ Reply/ Sworn Reply/ Counter-claim/ Subpeona/ Appeal/ Judge/ Magistrate/ Deputy Registrar/ Registrar/ Court Marshal/ Legal Procurator/ Affidavit/ Sworn Declaration/ Note of Submissions or Observations/ Official Taxed Bill Of Costs/ Court Registry/ Court Archive/ Contract/ Private Writing/ Procedural vs Substantive Law/ Warrant of Seizure/ Garnishee Order/ Tenant/ Landlord/ Lessee/ Lessor
- Always use the terminology used in the Law e.g In emphyteusis (cens) (ground rent is payable yearly – emphyteusis is not a lease. Akin to ownership but with a yearly payment and set of conditions) - Dominus (transferor) and Emphyteuta (the purchaser)



# Preliminary stage - Draw up a draft Methodology

- How will you conduct the research?
- Most common types of legal methodology:
  1. Doctrinal Legal Research Methodology – a.k.a Black letter methodology
  2. Comparative
  3. Empirical



# Side note for all research methodologies

- Tip to all types of research methodology (doctrinal i.e. black letter law approach, comparative and empirical):-
  - The research question should be relevant to the real world. The study needs to provide practical and important implications for society
  - Useless to conduct a study which will have no relevance and implications – no one will read it meaning waste of time and resources



# Preliminary stage - Draw up a draft Methodology - Doctrinal

- Known as black letter methodology
- Focuses on the letter of the law rather than the law in action
- Researcher composes a descriptive and detailed analysis of legal rules found in primary sources
- Purpose of this method is to gather, organize, and describe the law; provide commentary on the sources used; then, identify and describe the underlying theme or system and how each source of law is connected
- Doctrinal methodology is good for areas of law that are largely black letter law, such as contract or property law
- Researcher conducts a critical, qualitative analysis of legal materials to support a hypothesis
- Researcher must identify specific legal rules, then discuss the legal meaning of the rule, its underlying principles, and decision-making under the rule (whether cases interpreting the rule fit together in a coherent system or not).
- Researcher must also identify ambiguities and criticisms of the law, and offer solutions
- Sources of data in doctrinal research include the law itself, cases generated under a particular rule, legislative history where applicable, commentaries and literature on the rule
- Approach is beneficial by providing a solid structure for crafting a thesis, organizing the paper, and enabling a thorough definition and explanation of the rule. The drawbacks of this approach are that it may be too formalistic
- Video: What is Black Letter Law <https://www.youtube.com/watch?v=Vd8WLFps3Fw&t=201s>



# Preliminary stage - Draw up a draft Methodology - Comparative

- Involves critical analysis of different bodies of law to examine how the outcome of a legal issue could be different under each set of laws
- Novel concept dating back to 19 century – globalization
- There may be different stages of comparative law – descriptive, identification and explanatory stage
- Comparisons could be made between different jurisdictions, such as comparing analysis of a legal issue under American law and the laws of another country, or researchers may conduct historical comparisons
- The study of differences and similarities of legal systems
- When using a comparative approach be sure to define the reasons for choosing this approach, and identify the benefits of comparing laws from different jurisdictions or time periods, such as finding common ground or determining best practices and solutions
- Comparative method can be used by a researcher to better understand their home jurisdiction by analyzing how other jurisdictions handle the same issue
- method can also be used as a critical analytical tool to distinguish particular features of a law
- Drawback of this method is that it can be difficult to find material from other jurisdictions. Also, researchers should be sure that the comparisons are relevant to the thesis and not just used for description.
- Cap. 398 The Condominium Act vs The Italian Civil Code Articles on Condominium (CAPO II DEL CONDOMINIO NEGLI EDIFICI)
- Most commonly used for substantive law (against procedural law which is not very common)
- Be cautious with translations
- Video: Comparative Law Terminology <https://www.youtube.com/watch?v=ICTkNst5rYQ>



# Preliminary stage - Draw up a draft Methodology - Comparative

## Macro v micro

- Macro-comparisons: comparing whole legal systems or a whole area of law
  - For example: comparative company law might compare company law in 2 jurisdictions
- Micro-comparisons: comparing a specific issue or a specific problem across 2 or more legal systems
  - For example, 'the postal acceptance rule' compared in the UK and Kuwait
- Whether the study is macro or micro, an understanding is needed of at least 2 legal systems but there is no maximum number





# Preliminary stage - Draw up a draft Methodology – Comparative Examples

- To give a sound advice you may need to do a comparative exercise e.g. tax advice in relation to companies - The corporate tax rate in Malta is set at 35% and companies incorporated in Malta are subjected to tax in Malta on their worldwide income. Main tax incentives include the following: ... The tax credits range between 10% and 30% for projects commencing between 1 January 2021 and 31 December 2023, depending on the undertaking's size.



# Preliminary stage - Draw up a draft Methodology – Comparative Examples

Client wants to know where it is best to contract marriage and which is the most beneficial marriage regime (what will happen to assets - community of acquests – common pot; separation of estates – everything is separate; Community of residue under separate administration (aka CORSA) hybrid system - spouses are the sole owners of what they acquire and administer property without the consent of the other spouse. Once the parties terminate the CORSA, what each spouse will have, after deducting debts (the residue) is shared with the other spouse

- Ultra high net worth individual (net worth of at least \$30M)
- Jewish born in Belarus 1960s
- Emigrated permanently in the US at age 4
- Russian law says that jews emigrating for more than 1yr lose citizenship
- Obtains US citizenship
- Opens business in Singapore
- Lives 6m in Hungary and 6m in a Caribbean Island
- Wife Russian
- Wants to acquire Maltese dual citizenship



# Preliminary stage - Draw up a draft

## Methodology – Comparative Methodology

- Brief methodology for comparative law:-

*The aim of the promulgation of the Condominium Act was to provide for a framework aimed specifically at regulating condominiums. The basis of the Maltese Condominium Act was the Italian Civil Code pre dating the 2013 amendments. Whilst the Italian Civil Code condominium provisions were amended in 2013 by virtue of law number 220 of 12 with the purpose to address certain lacunas and transposing into law jurisprudential dicta, our Act was only subject to minimal changes. This thesis examines the provisions of the Condominium Act, firstly by critically analysing its provisions by drawing a comparative study between Maltese law and Italian law whilst taking into account jurisprudence. Ultimately the final chapter will provide a set of suggested amendments to the Act. The thesis analyses the feasibility of attributing separate legal personality to the condominium and its consequences on the common parts. In relation to the common parts, an analysis is carried on the presumption that the shares in the common parts are presumed to be divided equally between the condomini even though this principle is not reflected in the apportionment of costs. Special reference is made to the voting rights connected therewith and also to possibility of attributing voting rights to the tenants, who at the moment enjoy no voting rights. A thorough study is carried with respect to the office of the administrator and highlighting certain deficiencies in the administration; in particular shortcomings in professionalizing the figure of the administrator, along with the introduction of safeguards from the administrator's actions in carry out his functions. An examination of the functions of the administrator is also delved into, consequent to which a set of obligations are proposed with the aim of creating a clear and cohesive system. Recommendations are also provided in relation to the revamping of the forum addressing condominium contentions. Last but not least this thesis collects the suggestions found in its chapters by providing for the introduction of a series of proposed articles and changes to the present Act in its final chapter.*