



Slide 2 - What is Law and why is it needed?

- A set of regulations which aim to maintain order in society, solve disputes, protect rights and liberties and

Slide 3 - “The law is a living instrument”

- Society in general coupled with technological & scientific advancements often give rise to amendments and promulgation of laws which regulate such advancements.

- Interpretation of laws is coupled with judgments delivered by adjudicating bodies. Adjudicating bodies often refer to the ‘letter of the law’ and ‘the spirit of law’. Whilst the letter of the law, as the phrase implies is what the law states the black on white, the spirit of the law reflects the aims and intentions of the legislator which are not always expressly clear in the letter of the law or rather may be interpreted otherwise.

- EU Legislation & Human Rights, a field which is fundamental and ever-changing. Especially with regard to Human Rights, local courts tend to refer to judgements of the European Courts on Human Rights in order to deliver judgement in line with current interpretations. It is suggested that one has a look at the European Convention on Human Rights.

- Precedent is when adjudicating bodies are bound by previous decisions. In Malta, we do not follow precedent however, adjudicating bodies such as Courts & Tribunals do take into consideration previous judgements. Nevertheless, it is discretionary whether or not they decide in line with previous judgements unlike countries which are bound by precedent.

- Customary law is unwritten law which is based on norms set out by society or a group of people such as traders. As can be seen in slide 5 of the PowerPoint, custom requires that a number of characteristics are present such as uniformity and continuity. Also as seen in slide 5 and as stated in Article 3 of Chapter 13 of the Laws of Malta, Commercial law ranks first to apply however in

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absence of provisions catering for a specific concept or issue, custom shall become applicable. Furthermore, in the absence of custom, it is the civil law that shall prevail. So, to list them 1. Commercial code, 2. Custom, 3. Civil law.

Slide 4 - Legal History

- Up until the 21st of September 1964, the day when Malta gained independence, Malta had a number of rulers which left an impact on Maltese Law.
- Roman Law - Emperor Justinian brought together what is referred to the old law and the new law whereby legislation regulating family, property etc were gathered and codified into the Code De Rohan. It is important to note that during these early times the idea of a separate legal personality had already started to emerge.
- Order of St. John - here Roman Law was strengthened. At this point we had the Code de Rohan and the Consolato di Mare (The law of the sea)
- French - although their time on the island was limited, it is important to note that our Civil Code is largely based on the Code Napoleon
- The British - during their time on the island, the British introduced a procedural aspect to the substantive law we already had. So, as seen in the slides, the manner in which evidence was presented and trial by juries for example.
- All the above put together resulted in the legal system we have nowadays which is said to be a hybrid or mixed legal system.

Slide 8 - Civil law v Common law

- Civil law finds its origin in Roman law whereas common law finds its origin in British law.

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- In civil law it is custom which takes precedent rather than codification whereas in common law statute supplements custom.

- The difference between the adversarial system and the inquisitorial system - whilst in inquisitorial systems Judges play an active role in proceedings and gathering of evidence, in adversarial systems it is the lawyers or legal counsel who play the active role whilst Judges deliver judgement on what is brought or produced by the parties.

Slide 9 - Law table

- Private law regulates the relationships between private individuals so matters which concern, for instance family or property are considered private law. Given that companies and partnerships are considered to be legal persons, they too fall within the bracket of private law. As seen in the slide, public law encompasses criminal law, administrative law and constitutional law because there is a relationship between a private individual and the state as opposed to the relationship between two or more private individuals in private law.

- Article 3 of the Criminal Code, Chapter 9 of the Laws of Malta states as follows;

Article 3 (1) Every offence gives rise to a criminal action and a civil action.

(2) The criminal action is prosecuted before the courts of criminal jurisdiction, and the punishment of the offender is thereby demanded.

(3) The civil action is prosecuted before the courts of civil jurisdiction, and compensation for the damage caused by the offence is thereby demanded.

It is important to note the distinctions set out in sub article 2 & 3 as is indicated in bold. I.e. The nature of the actions, the jurisdiction of the courts and the outcome of proceedings.

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Slide 10 - European Union Law, Substantive and Procedural Law

- As discussed, and pointed out earlier on, European Union law is often transposed into Maltese law and judgements from European Courts are taken into consideration by local courts in their judgements. As seen in slide 78, two ways in which laws may be taken on are by means of regulations and directives.
- Procedural Law as the title implies regulates procedural aspects of proceedings. For example, how requests to the Court are made or how experts are appointed.
- Substantive Law, also as the title implies is the core of legislation dealing with matters such as care and custody of minors, maintenance, separation, divorce etc.
- Important to note - whilst the Criminal Code encompasses both substantive law and procedural law, the Civil Code contains substantive Law whereas the Code of Organisation & Civil Procedure regulates procedures to be paired with the substance found in the Civil Code.

Slide 11 - Separation of Powers

- The separation of powers is fundamental in a democratic society. It helps keep the executive, the legislature and the judiciary in check. There are a number of procedures which allow for such checks and balances such as the judicial review of administrative actions as seen in Article 469A of Chapter 12 of the Laws of Malta.

Slide 12 - Rule of Law

- As described in the slide the rule of law aims to ensure that all persons are subject to the law, that the rights and liberties of persons are embodied in the law of the land and that all persons are

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equal in the eyes of the law. An important factor in the rule of law is the independence and impartiality of the judiciary.

Slide 15 & 16 - The Attorney General & State Advocate

- Closer to the end of 2019, the role of Attorney General was divided to create the office of the State Advocate. Whilst the Attorney General is entrusted with criminal proceedings the State Advocate is entrusted with civil proceedings related to the state. As seen in Article 96 of the Constitution of Malta the appointment of judges as referred to in both slides mentioned above requires that; a person who has no less than 12 years' experience as an advocate or a person served as a Magistrate in Malta.


Slide 19 & 20 - Jurisdiction & Competence


- Jurisdiction relates to where a judicial entity can carry out its duties or enforce decisions. The provided examples on the slides only relate to the local scenario, foreign judgments etc are not featured as they require a more in-depth explanation. In the example given (Article 372 of the Criminal Code) the jurisdiction between the Malta and Gozo is regulated in the instances listed.


- Competence refers to the limitation imposed on courts in so far as their authority to deal with specific matters. As seen in the slides, and as an example, the small claims tribunals can hear claims up to €5,000 whereas the Court of Magistrates can deal with claims up to €15,000. Then again, limitations as seen in article 47(3) of Chapter 12 can be imposed by law upon the Courts.

Slide 22 - Subsidiary Legislation

- Powers delegated from parliament to ministers. The definitions provided in a parent act apply to subsidiary legislations. There may, however, be additional definitions and interpretations in the

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subsidiary legislations. Examples of subsidiary legislations relating to the parent act may be seen in Slide 44.

Slide 24 & 25 - Judges and Magistrates


- Highlights the difference between the two. Magistrates sit in the inferior courts whereas judges sit in the superior courts. The only exception is Gozo whereby a magistrate acts also as judge in certain cases.


Slide 26 & 27 - The Courts


- The inferior courts are the Court of Magistrates. These can deal with civil matters (below €15,00 & subject to limitations imposed by law), a Court of Magistrates as a court of criminal judicature and a Court of magistrates as a court of criminal inquiry. The court of magistrates can also act as a court of appeal to decisions taken by tribunals. The superior courts are presided by one judge and as seen in the slides, have different jurisdictions, so the First Hall Civil Court (Family Section), the First Hall Civil Court (Constitutional Jurisdiction), the First Hall Civil Court (Commercial Section), The Court of Voluntary Jurisdiction (non-contentious/ no litigation), and the Criminal Court. Judgements delivered by these courts may be appealed in the Court of Appeal before three judges. Appeals from the First Hall Civil Court (Constitutional Jurisdiction) are heard by the Constitutional Court (3 judges).

Slide 29 - Juridical Interest & Local Standi

- Parties to a case must have a juridical interest in the matter. Although juridical interest is not explicitly mentioned in law, it is often referred to in judgements delivered by local courts. Put simply, the institute of joinder and intervenor as seen in article 960 of the Code of Organisation and Civil Procedure is when parties are called into the cause, be it at first or second instance. They may be called by means of a court decree whether or not the parties make a request for such. The

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third party joined shall have the faculty to submit documents, raise pleas etc. Then again, nothing precludes a third party from submitting an application to be admitted to the case at hand.

Slide 30 - Persons

- Natural persons are physical persons whilst legal persons are a body or association of persons, such as commercial partnerships and companies. They are deemed to be persons in their own right, so, companies may for instance acquire properties in the companies' name. Patrimony is, as seen in the slide, refers to the assets and

liabilities attributed to a person, be that a natural or legal person. Whilst creditors are persons who are owed money, debtors are persons who monies are due from. One may have a look at Article 1994 and 2003 of the Civil Code, Chapter 16 of the Laws of Malta. The mentioned articles deal with privileges and hypothecs and ranking of creditors.


Slide 53 - Corporate personality


- Article 4 (4) of the Companies Act, "commercial partnership has a legal personality distinct from that of its member or members".


- A legal personality 'comes to life' upon valid registration. It is considered to no longer exist once it's struck off the register so, even in the process of dissolution, the partnership/ company is still deemed to be 'alive'. Companies have a company number which is practically a natural person's identity card number. In fact, in judgments this is quoted as are identity card numbers. The company number can be used to search for a company on the MBR website.

Slide 54 - Separate Juridical Personality

- Whilst the nationality and domicile of a company is determined by the place of registration of a company, the residency of a company is determined by the place where the company is managed

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and controlled. These are factors which are important to determine for two main reasons, the applicable law and taxation purposes.


Slide 55 - Lifting of the corporate veil


- This refers to the statutory or judicial inroads whereby the legal personality of a commercial partnership is put aside or ignored. In other words, the persons making up the company are no longer 'hidden' behind the partnership or company. These instances where the corporate veil is lifted are in cases where the number in a company falls below 2 or in cases of fraudulent or wrongful trading. In the latter case, local courts have delivered a number of consistent judgements. With regard to judicial inroads, again, we have a number of consistent judgements relating to fraud or improper conduct. The book Principles of Maltese Company Law by Prof. Andrew Muscat, listed in the reading list provided is a very good source.


Slide 63 - Management Clause

- Duties of directors are outlined in Articles 136 to 150 of the Companies Act, nevertheless, directors have other duties as may be outlined in tax legislation or employment legislation for instance. Factors such as the acting in good faith, treating shareholders equally and acting in the best interest of the company are often put at the forefront of duties. Nowadays, directors have numerous responsibilities and are to adhere to evolving legislation in order to ensure that the companies affairs and running is not deemed contrary to law or fraudulent. In the latter cases, directors may become personally liable.

- The companies act also outlines specific duties such as keeping statutory registers and minute books, filing returns and documents, board and general meetings and record keeping and accounts. Then again, some duties may be delegated to the company secretary or secretaries who are, as discussed, jointly and severally liable.

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Slide 73 - Trader and Acts of Trade

- The status of a trader is given to the partnership and not the individuals making up the partnership.
- Like companies, a partnership is considered to exist upon valid registration.
- As seen in the slides, there are a number of characteristics which make a trader, a trader, in addition to those mentioned on the slides, it is interesting to note that the French Commercial Code, which has great influence on our commercial code, explicitly states that a trader must trade publicly - this is not mentioned in our commercial code and hence it can be assumed that the intention of the Maltese legislator was to exclude such a characteristic.

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