

Diploma in Law (Malta)

Introduction to the Maltese Legal System

Lecturer: Dr Antonio Depasquale

Date: 2nd October 2023



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Introduction

- Module will give you an overview of the Maltese legal system.
- Module will cover the following topics
 - Introduction
 - General notions of law
 - Sources of Maltese Law
 - Legislative Process
 - The Constitution
 - The Courts
 - Legal professions



Assesment

- Module's assesment will be composed of two parts
 - 20% self assesment
 - 80% assignment



Today's lecture

- In today's lecture we should be covering the following topics:
 - 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



What is law?

- Provide for a method of behaviour
- Requires conformity with the conduct expected
- Provide solutions for conflict
- Provide for sanctions
- Law balances rights which make co-existence possible
- Law provides for the balance of powers to protect individuals – Human Rights/Freedoms



The just man or woman not only does justice to others, but demands that justice be done to him or her'

Aristotle

Law is a supreme reason, planted in nature which commands what should be done and prohibits what is contrary to it. This reason, when it is fixed in the minds of men and perfected, becomes law.

Cicero



Why do we legislate?

- Groups of people need to regulate the way in which they behave
 - States
 - Societies
 - Political Parties
 - Associations
 - Clubs
 - Schools
- Rules give the boundary of what is acceptable and what is not.



Liberty vs Law

UBI SOCIETAS IBI JUS – Where there is society there is law

- Law takes away some of our liberty to secure liberty and stability.
- Law helps to achieve, maintain and restore order.
- We are free because we have laws.



Who can legislate?

- In a democracy it is the State through its legislative organs
- The power to legislate comes from the Constitution and the power which the people give to legislators
- There are systems in place to create checks and balances
- Courts oversee the legislator



Ethics vs Law

- What is ethics?
 - An inner feeling which binds the individual but not others
 - Some personal ethics can be laws too
 - Some rules may also be derived from religion



Legal Systems

- There exist different types of legal systems
- Each State has its own system, which however can be classified under a general 'legal family'.
- This classification is not done on the basis of substantive law but on the roots of the law such as historical background, sources and ideology.
- Two main systems are the Civil and the Common law.



people

Common Law

- case law
- precedent
- interpretation
- honed over time
- from the

Civil Law

- codified
- from the government

Civil Law System

- Mainly made up of legal systems which originate from Roman Law (Justinian Code)
- One of the main characteristics is that the law is codified
- Mainly evolved from private law, that is the law which regulates the private relations of persons



Common Law

- Based more on legal traditions and Customs
- Mainly British and evolved through the years from orders and writs of the royals as well as decisions of the Courts.



Main differences

- Civil law provides for solutions before whilst the Common law rests on the solutions found on the issue by the Courts
- Civil law tries to create a system where it foresees situations or reacts to a situation and creates a solution. The Common law system basis itself on previous decisions on cases.
- Civil law is more based on theory whilst common based more on practical circumstances which occurred



Influences on our legal System

- Roman
- Order of St John
- French
- British
- Independence
- EU
- Religion
- Socio Economic
- Cultural
- Morality
- International



Roman Law

- Mainly based on the Corpus Juris Civilis
- Established as the main law of the island
- Influences not only Malta
- Influence can be still seen in principles embedded in certain laws such as Patria Potesta, Succession, and property law



Order of St John

- Order developed its own Code of laws by time
- Codice Municipale di Malta – Code De Rohan
- Most of this Code was also used by the British when enacting laws for the islands
- Still found in today's laws



French

- Napoleon's intention was to bring Malta in line with the French legal regime
- French wanted to establish a civil state, totally separated from the Church
- Short period didn't allow for the changes to take place.



British

- British realised that a total overhaul would be a disaster
- Though British system is common they still opted to codify Maltese law
- Based on the Code de Rohan they started modernising Maltese laws
- Introduced the Commercial Code ironacilly modelled on the French code (except the maritime part)
- Private law based more on civil law
- Public law more leaned towards the common law



The Code of 1854 combined the advanced philosophical thought of European legislation with the best liberal principles British law could offer, both applied in keeping the Maltese customs and traditions.

A.Ganado, The Maltese Criminal Code of 1854

Sunday Times of Malta 14/12/2003



When the draft Commercial Code was presented in 1853 it was quite clear that the French Code had been followed.....These ordinances were in harmony with British principles and they were therefore acceptable to the Secretary of State

J.M. Ganado, British Public Law and the Civil law in Malta



.... The leading principle by which H.M's Government in the island was to be regulated was.... That no alterations were to be made in the modes, laws and regulations according to which the civil affairs of Malta were till then managed, unless they appeared to be required for the safety and defence of Malta or to be beneficial and desirable as to leave no doubt of their expediency or of their being generally acceptable to the wishes and feelings and even the prejudices of the inhabitants

Sir A. Mamo



- Sir Adrian Dingli one of the greatest Maltese jurists drafted a number of laws based on the Code Napoleon.
- British used a system of *avvisi* to make public the new laws.



Post Independence

- Power to self legislate
- Legal mix continued to evolve with the possibility that Malta had to become signatory fo International Intruments
- EU accession meant a total overhaul and flood of new reulations and influences
- European Court decisions



Sources of Maltese law

- Sources are the different types of legislation we resort to
- Main sources are
 - The Codes in the different forms
 - Acts
 - Subsidiary Legislation
 - Bye-Laws
 - Regulations
 - Directives
 - Council Decisions
 - Evidential Sources
 - Parliamentary debates
 - Courts decisions
 - Learned writings



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