

Diploma in Law (Malta)

Legislative Process

Lecturer: **Dr Antonio Depasquale**

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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 categories of laws
 - Legislative Process
 - The use of subsidiary legislation
 - Legal Jargon
 - Judicial Interpretation



Different categories of Maltese law

- Civil Law – Criminal Law
- Public Law – Private Law
- Substantive Law – Procedural Law
- Private International Law – Public International Law



Civil Law – Criminal Law

Civil Law deals with rights and obligations of persons towards one another and provides remedies in conflicts between persons

Civil Wrongs = Private Wrongs = Private Interest

Criminal Law deal with acts or omissions contrary to public order and provides for punishment

Criminal Wrongs = Public Wrongs = Public Interest



Civil Law – Criminal Law

‘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 Anthony Mamo



Public Law – Private Law

Public Law includes laws relating to the public as a whole – for example Criminal Law, Administrative Law and Constitutional Law (which is the highest law of Malta making up the State and regulating it at the same time through the organs of the State)

Private Law includes laws on the individual persons rights, relations, and conducts of persons and businesses engaged between themselves in any way. It is about civil law (includes the Civil Code, but not exclusively)



Substantive Law – Procedural Law

Substantive laws govern the behaviour of a people in society. They stipulate rights and obligations

Procedural laws provide for the application and enforcement of substantive laws and when required for their enforcement



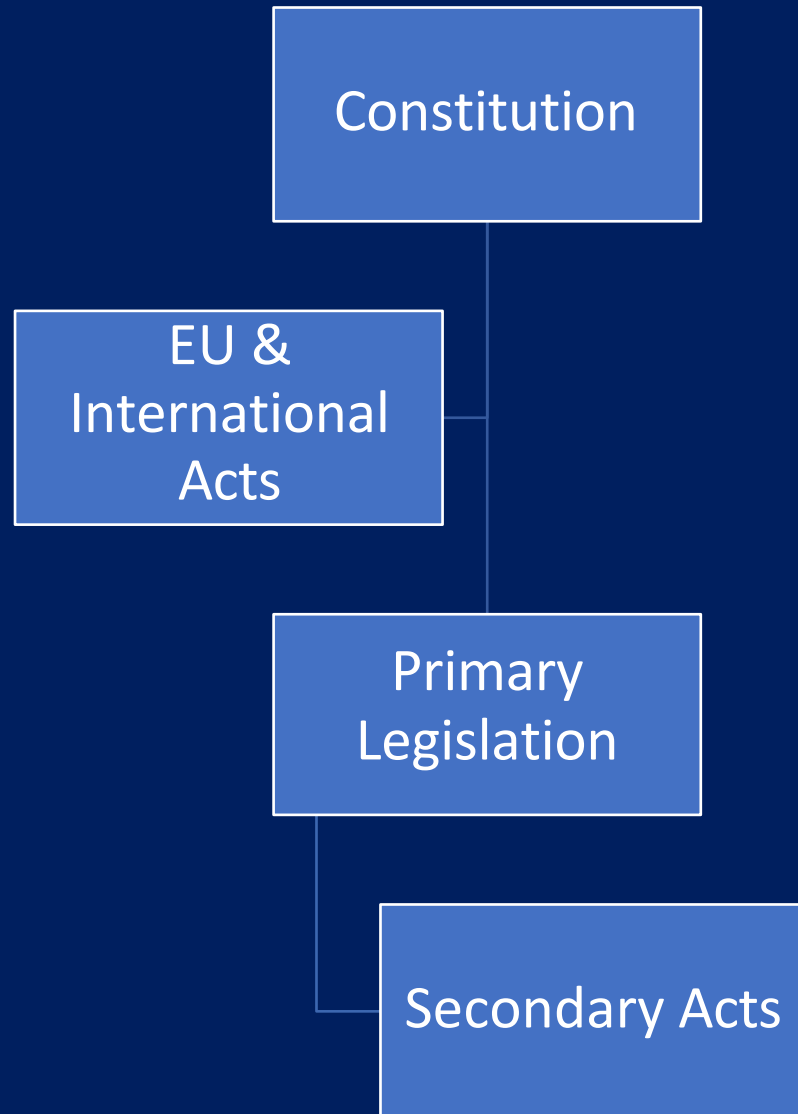
Private International Law – Public International Law

Private International Law regulates local law issues exposed to a foreign element

Public International Law is a more specialised field of Law which regulates the relation between States and international Organisations



Legal Hierarchy



Factors Developing Maltese Law

- Beliefs and values
- Religion
- Socio Economic Influences
- Cultural Influences
- Historical Influences
- International influences



Law and Language

"Clarity of expression is a fundamental attribute of good advocacy which requires that the law is expressed in precise and concise terms. It is advisable to remember, when writing or expressing a legal opinion, that the best approach is the one where clear, unambiguous, precise, and short sentences are used. Once you have made a legal statement, it may be useful to stand back and re-examine it to ensure that the message you wish to transmit is clearly and easily understood by a third party who may not have the benefit of the background which led to your opinion. For this purpose, basic concepts should be used if this contributes to the clarity and understanding of the message. Do not be concerned that this approach may be regarded as too simplistic. The genius of legal communication lies in the clarity, conciseness, and simplicity by which a person's train of thought is reflected. So, it is not advisable to use obscure words or phrases instead of ones that are immediately familiar, notwithstanding the fact that they may sound pleasant and even impressive."

Profs. David J. Attard



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



Primary Legislation - Acts

Drafted as follows:

- i. Chapter Number
- ii. Chapter Name
- iii. Enacting Formula
- iv. Title (Article 1)
- v. Interpretation Clauses
- vi. Provisions – including main, administrative, transitional, provisos, repealing, schedules



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, XX of 1984, VII of 1985, VII and VVVI 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.

Mariginal 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 – From Bill to Law (1)

- A Bill is initiated within ministries, government departments, public authorities, statutory bodies, members of the House of Representatives, private members bill
- Drafted by the same
- Passed on to the office of the Attorney General for legal vetting
- Minister presents Bill in Parliament
- Consultations, Debates, and White Papers



Legislative Process – From Bill to Law (2)

- Text presented to House of Representatives in the form of a Bill (Abbozz)
- First Reading
- Second Reading
- Committee Stage
- Report Stage
- Third Reading – It is here where the House of Representatives approves the Bill, has it sent to the President who in turn signs the Bill. It is then then that the Bill becomes Law, enforceable once published in the Government Gazette

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



Delegated / Subsidiary Legislation

- A minister must have the authority to delegate through the primary legislation
- Flexible & Faster process
- Dependent on Parent Act
- Disadvantages, checks and balances



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



Interpretation Act – Chapter 249

The Law itself reads – To make provision in respect of the construction and application of Acts of Parliament and other instruments having the force of law and in respect of the language used therein.

For the applicability of the law it must be first and foremost properly interpreted and understood. Law must be clear and free from uncertainty.

Doctrinal Interpretation and Authentic Interpretation are mostly aids to the process of interpretation whilst Judicial Interpretation is the interpretation of the law given by the Courts.



Judicial Interpretation

It is the interpretation of the law given by the Courts in its application of the same law to the facts of the case it is deciding upon.

It is imperative that the Court ensures that it does not usurp the functions of the legislator.

Maltese Courts apply the following principles over and above the provisions of the Interpretation Act:

- i. Literal or Grammatical Method – the literal meaning
- ii. Logical or Purposive Approach – focus on the probable intention of Parliament



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:



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