

Diploma in Law (Malta)

Introduction to the Maltese Legal System



Lecturer: **Dr Sarah V. Ciliberti**

Date: **1st October 2024**

Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

Introduction

- Topics to be dealt with in this lecture;
 - General Introduction
 - Assessment overview – assignment and self-assessment
 - Self-assessment
 - Law and the main purposes of law
 - Different Legal systems and the evolution of the Maltese legal system
 - Sources of Maltese Law



Assesment

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



Award in The Maltese Legal System

Lecture Title: Self Assessment



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The Self Assessment

During this first sitting you MUST choose what you believe is the correct answer for each of the 20 questions by ticking the box next to the correct answer. There is only ONE correct answer.

In the second sitting you MUST either confirm your answer by ticking again the same box or tick a new box next to what you now believe is the correct answer.



The Self Assessment

Correct answer in Session 1 receives 1 point

Correct answer in Session 2 confirming answer in Session 1 additional 1 point

Correct answer in Session 2 correcting wrong answer in Session 1 receives 2 points

Wrong answer in Session 2 with wrong answer in Session 1 receives 0 points

Wrong answer in Session 2 with correct answer in Session 1 receives -1 points



The Self Assessment

There are 20 questions to be answered

By now you should have received a link to a Google form where you are expected to input the answers which are correct

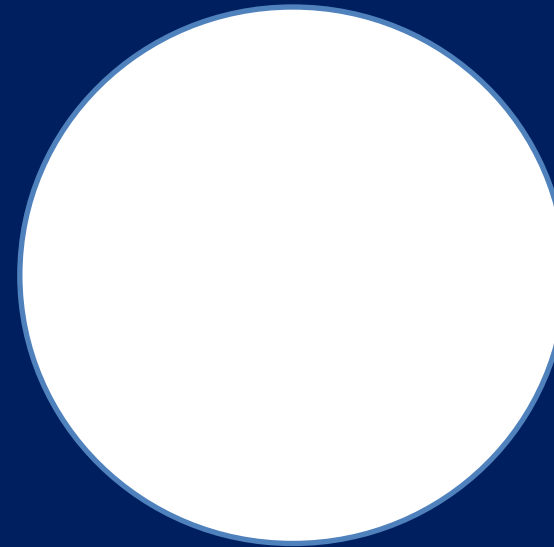
Each slide - having the question and possible answers - will be displayed for 60 seconds

Once you submit all the answers you will receive a copy of your answers by email.



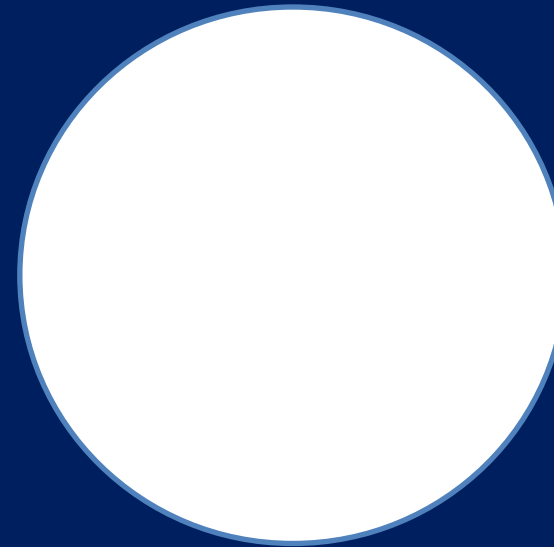
1. In proceedings before the Court of Magistrates an individual can be represented by a lawyer or;

- a. The Police
- b. A Notary
- c. A Parent
- d. A Legal Procurator



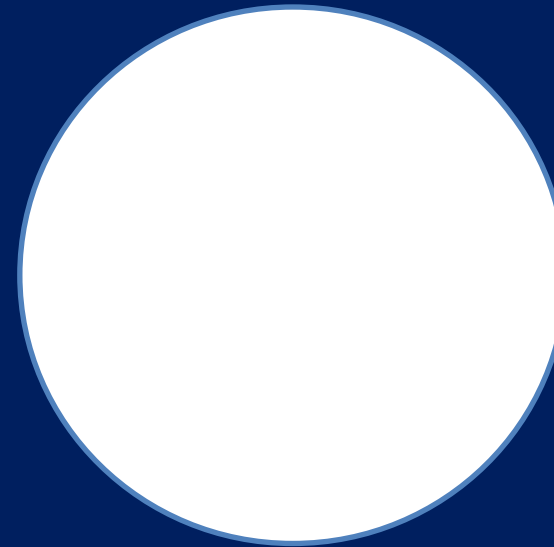
2. Which is the supreme law of Malta ?

- a. The Criminal code
- b. The Civil code
- c. The Constitution
- d. None of the above



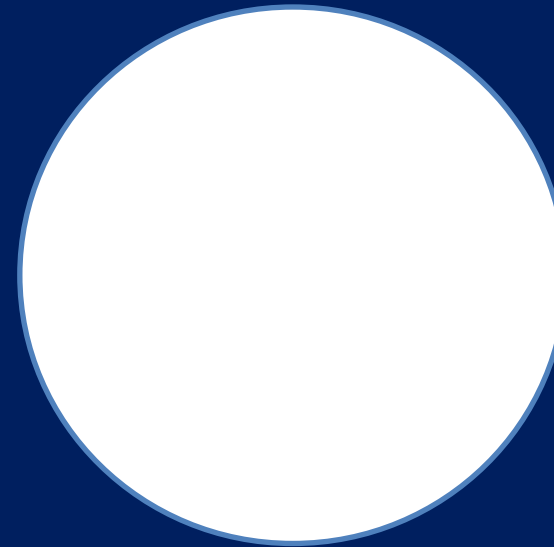
3. Which document outlines the fundamental rights of Maltese citizens ?

- a. The Civil Code
- b. The Constitution of Malta
- c. EU law
- d. The Criminal Code



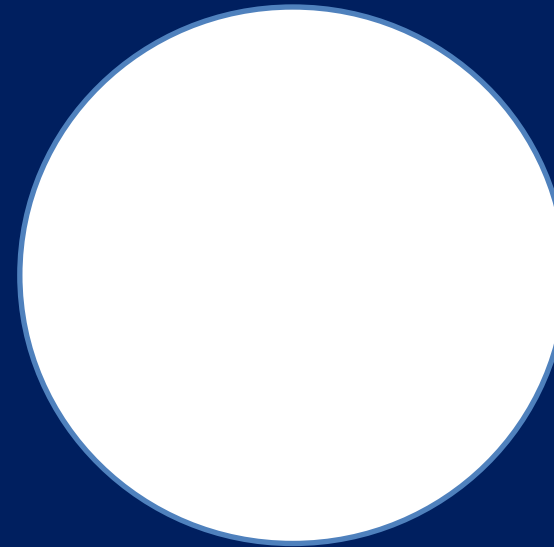
4. In civil matters, the State is represented by the;

- a. Police
- b. Attorney General
- c. State Advocate
- d. Lawyer



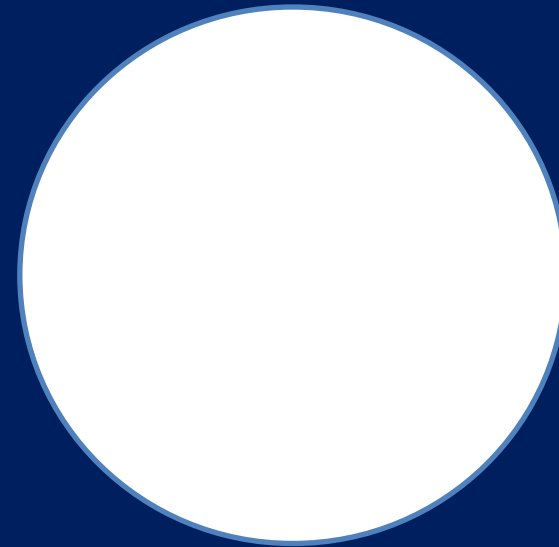
5. What is the primary source of Maltese law?

- a. Statutes
- b. Case law
- c. Custom
- d. The Bible



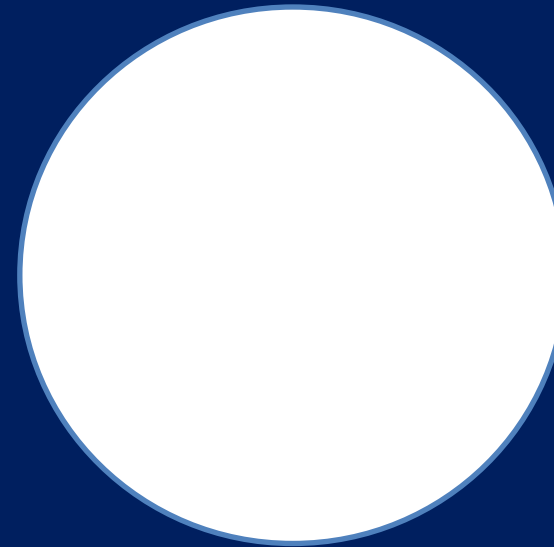
6. What type of cases does the Court of Magistrates deal with?

- a. High value disputes
- b. Serious criminal matters
- c. Family related matters
- d. Minor criminal and civil cases



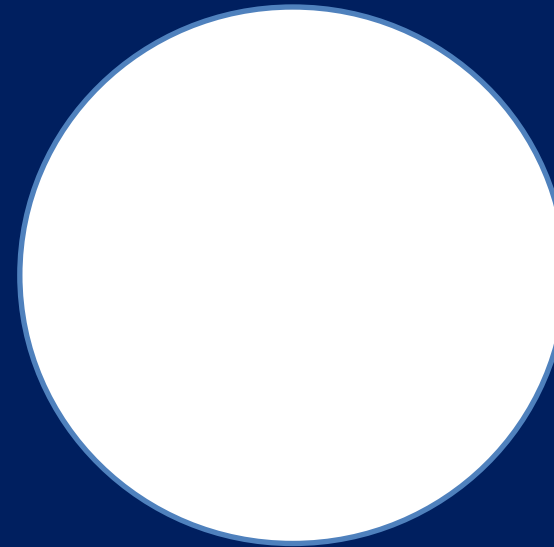
7. Who is responsible for enacting laws in Malta?

- a. The Judiciary
- b. The Prime Minister
- c. Parliament
- d. The Chief Justice



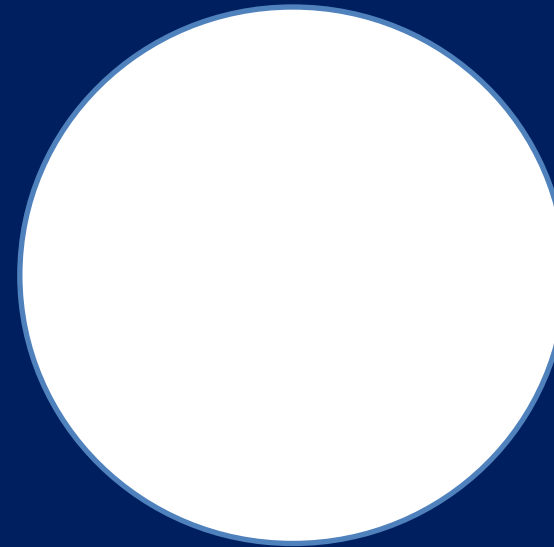
8. What is the main purpose of the Maltese Code of Organisation and Civil Procedure ?

- a. To establish criminal penalties
- b. To regulate administrative actions
- c. To outline procedures for civil litigation
- d. None of the above



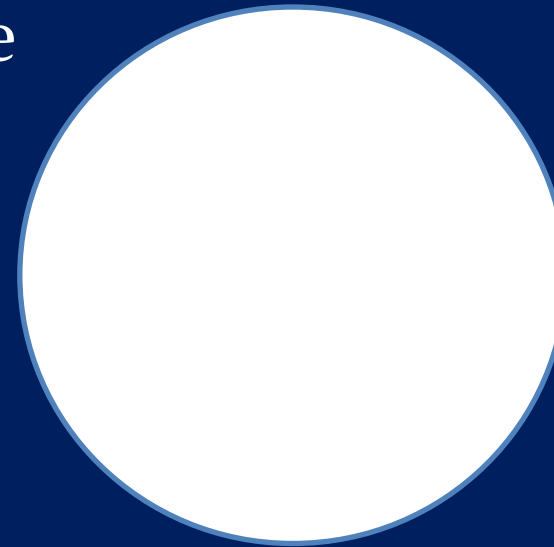
9. Which court is a non-contentious court ?

- a. The Criminal Court
- b. The First Hall Civil Court
- c. The Court of Appeal
- d. The Civil Court, Voluntary Jurisdiction



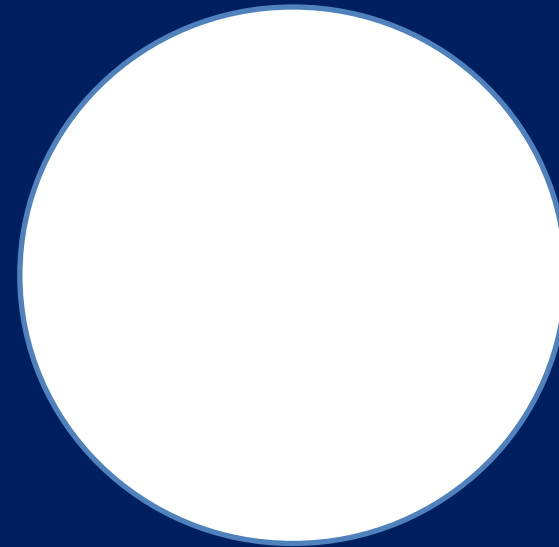
10. The term jurisdiction refers to;

- a. The number of cases a court can take
- b. The number of judges on the case
- c. The time a case can be heard
- d. None of the above



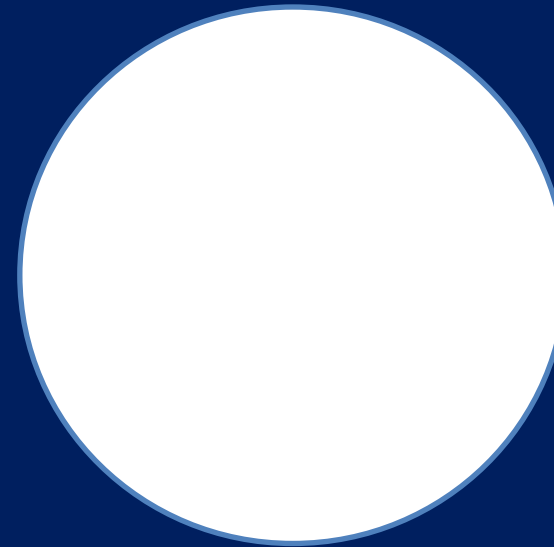
11. During a trial by jury the prosecution is led by the;

- a. Judge
- b. Lawyer
- c. Attorney General
- d. Jurors



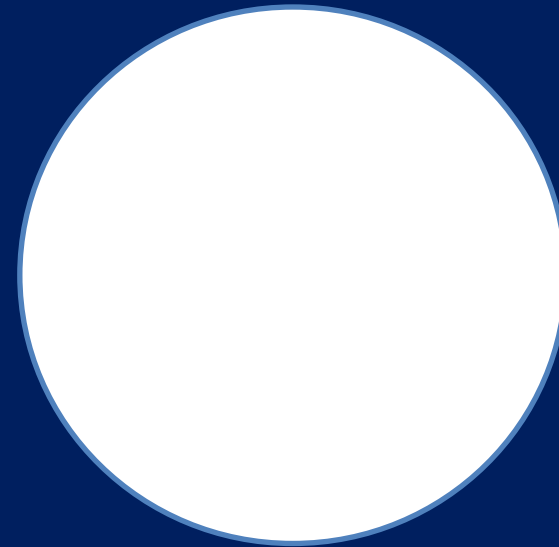
12. The most recent influence on the Maltese legal system was the;

- a. United Nations
- b. Local Court
- c. Constitutional Court
- d. European Union



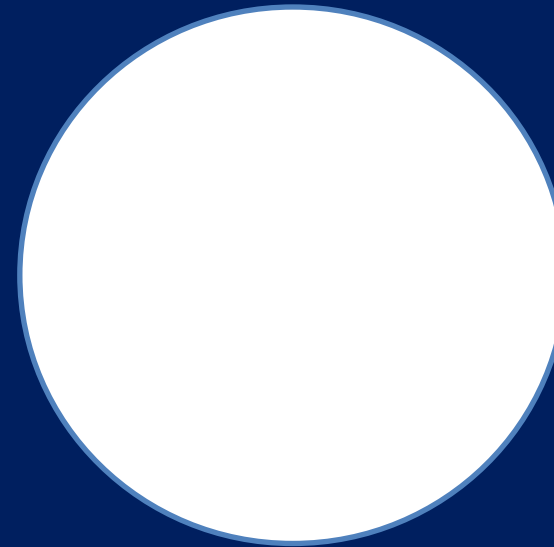
13. When appealing a judgement delivered by the First Hall, Civil Court, the appeal procedure will be presided by;

- a. The Chief Justice
- b. The President
- c. Three Judges
- d. Two Magistrates



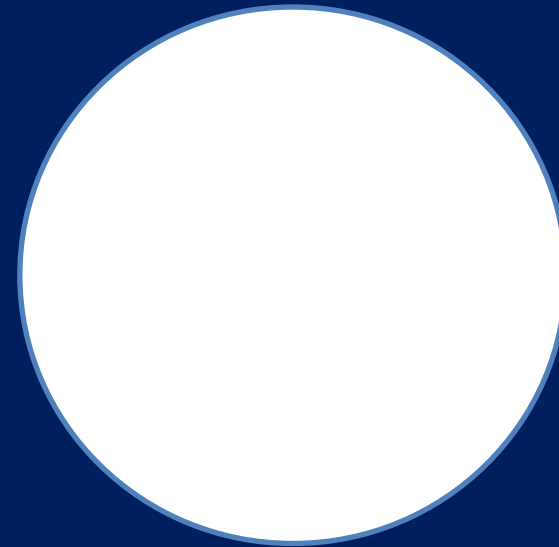
14. Who may institute proceedings before the Constitutional Court?

- a. Any individual
- b. The Prime Minister
- c. The Chief Justice
- d. A group of at least 5 people



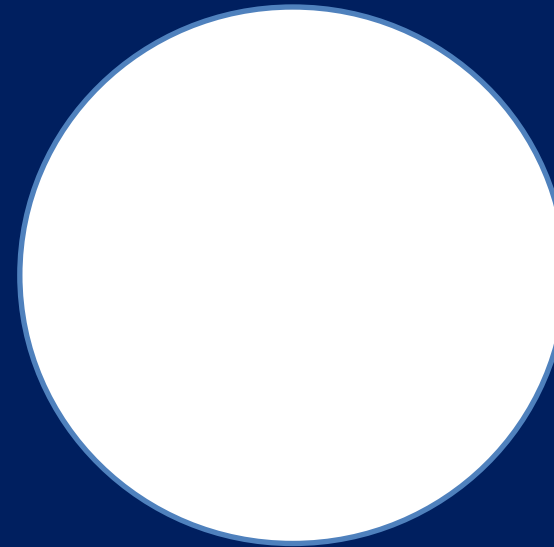
15. What type of law is primarily used to settle private disputes in Malta ?

- a. Commercial law
- b. Criminal law
- c. Civil law
- d. Administrative law



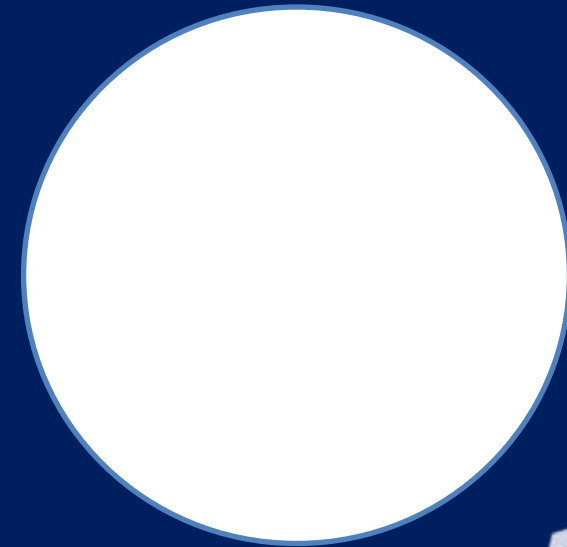
16. Which Court is responsible for interpreting the Constitution of Malta?

- a. The Prime Minister
- b. The European Court of Justice
- c. The Constitutional Court
- d. The President



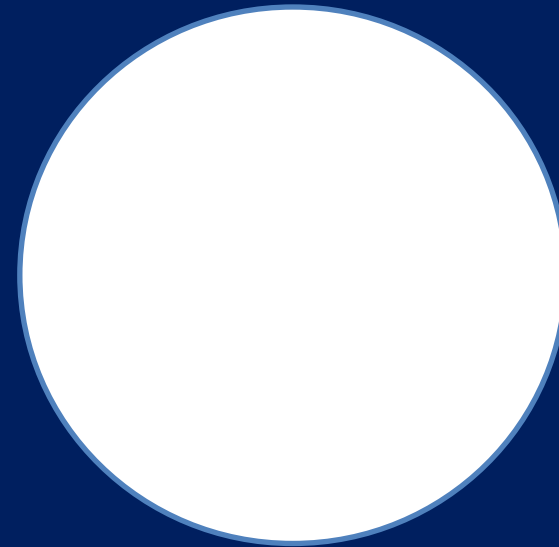
17. Which of the following is not deemed a superior court?

- a. The Court of Magistrates
- b. The First Hall, Civil Court (Family Section)
- c. The Constitutional Court
- d. The Court of Voluntary Jurisdiction



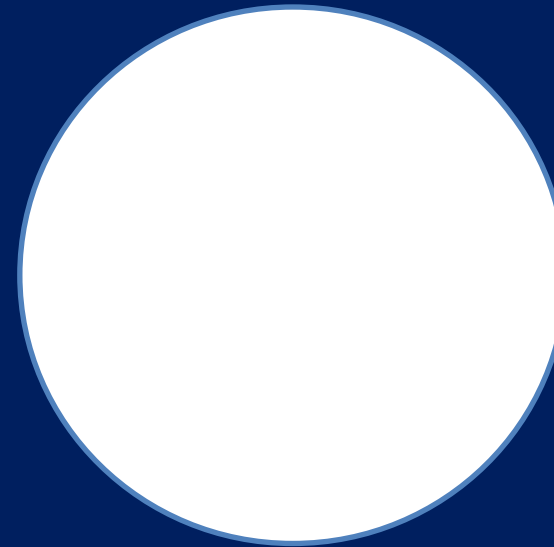
18. The First Hall Civil Court in its Constitutional Jurisdiction is presided over by;

- a. Three Judges
- b. Two Magistrates
- c. One Judge
- d. A Judge and a Magistrate



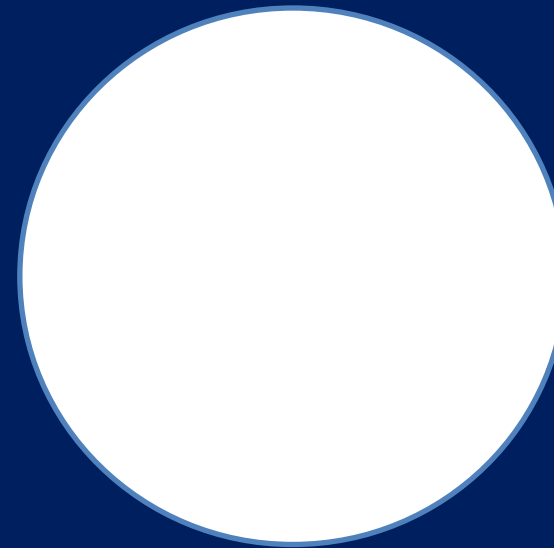
19. The small claims tribunal deals with claims:

- a. Over €15,000
- b. Under €15,000
- c. Over €5,000 but less than €10,000
- d. Under €5,000



20. Legal procurators cannot represent clients before

- a. The Small Claims Tribunal
- b. The Court of Magistrates
- c. The First Hall, Civil Court
- d. None of the above





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What is law?

What comes to mind when the word 'law' is mentioned?



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

- 1. Maintenance of public order & safety*
- 2. Protection of individual rights & liberties*
- 3. Regulation of economic & social liberties*
- 4. Mechanism for dispute resolution*
- 5. Establishment of Government Framework*



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.

The law changes to reflect changes in society, culture, technology and values in order to remain relevant and effective.



By which means is the law considered to be a living instrument ?

1. **Interpretation of laws** – the letter of the law vs the spirit of the law
2. **Precedent** – judgments delivered and decisions taken
3. **Legislative reforms** – democratic societies and public opinion
4. **EU Legislation and Human Rights** – constant evolution
5. **Customary Law** – unwritten law

In conclusion, the law;

- 1. Is continuously evolving*
- 2. Aims to balance tradition and progress*
- 3. Ensures justice and relevance*



Who can legislate?



Who can legislate?

Within a democratic society, the power to legislate is vested in Parliament by the Constitution



Ethics v Law



What are ethics?

Ethics - A business owner may feel that it is unethical to pay workers low wages even if the law allows paying minimum wage. The owner may decide to pay employees more than what is legally required because they believe it is the right thing to do.

Law - Minimum wage laws set the legal minimum amount that employers must pay workers. Failing to meet this standard would be illegal, even if the employer personally believes the wage is fair.



Ethics vs Law

- Definition
- Source
- Enforcement
- Scope
- Flexibility
- Objectivity v subjectivity
- Purpose



Ethics vs Law

- Definition

Moral principles and values vs. set of rules created by governmental institutions



Ethics vs Law

- Source

Moral beliefs, social norms vs. Legislative bodies



Ethics vs Law

- Enforcement

Not enforced by authority vs. Enforced by the state or legal system



Ethics vs Law

- Scope

All aspects of human behaviour depending on individuals and culture vs. Uniform laws for all



Ethics vs Law

- Flexibility

Both are to a certain extent flexible however whilst ethics may vary according to the circumstances, the law is more rigid and applied consistently within a jurisdiction



Ethics vs Law

- Objectivity v subjectivity

Ethics are subjective in nature whereas legislation is equal to all individuals



Ethics vs Law

- Purpose

Moral values aimed to create a sense of right and wrong whereas the law aims to maintain public order etc as discussed earlier

Legal Systems

Common Law v Civil Law



Common Law

- From medieval England
- Judicial decisions and precedent
- Judges play a more passive role – Adversarial system
- Evolves through case law – quicker to adapt



Civil Law

- Originates from Roman Law
- System codified such as the Code de Napoleon
- Written statute is the primary source
- Judges – Investigative and administrative role – inquisitorial system
- Not bound by previous decisions
- Provides a clear and structured legal framework

Conclusion

Civil law is more focused on codified statutes, with judges playing a less creative role, while common law is based heavily on precedents, with judicial decisions shaping the development of law over time. Both systems have their advantages, with civil law offering predictability through codes, and common law providing adaptability through precedents.





The Maltese Legal System

The **Maltese legal system** is unique due to the various influences it has absorbed over centuries from different civilizations and legal traditions. Malta's strategic position in the Mediterranean made it a point of interest for numerous foreign powers, each leaving its mark on the country's legal framework



Influences on our legal System

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

Roman Law

Roman law significantly influenced Malta, especially during the Roman Empire's rule. Roman law laid the foundation for many aspects of Malta's civil law, particularly in areas like **property law, contracts, and family law.**



Knights of St. John

Code de Rohan – one of the most important advancements in the Maltese legal system.

Clearer legal procedures and modernized aspects of criminal law.

Reformed civil, criminal and procedural law.



French

Their rule was short lived.

French principles of equality and freedom influenced Malta's legal and administrative reforms, including the abolition of feudal privileges and church powers in civil governance.

Code de napoleon – equality before the law and civil liberties with the main aim of separating church and state emphasising on individual rights



British Rule

The British rule can be said to be the most influential. During their rule the British realised that a total overhaul of legislation would be a disaster therefore they began to modernise the Code de Rohan. The British also introduced the Commercial Code (which is of French origin). The legal profession, court structures, and parliamentary democracy were all modelled on the British system. Mixed legal system.



Post-Independence

After gaining independence from Britain in 1964, Malta established its own Constitution, which remains the supreme law of the land. Malta's legal system continues to be influenced by its dual legal heritage of civil law and common law. Additionally, Malta's accession to the European Union in 2004 brought new legal obligations through EU regulations and directives. EU law now plays a significant role, particularly in areas such as human rights, environmental law, competition law, and consumer protection. The Maltese Constitution also incorporates principles from European human rights law.



Conclusion

The Maltese legal system is a **mixed legal system**, blending **civil law** traditions from Roman and Napoleonic law with **common law** influences from British rule. It has been shaped by centuries of foreign rule, reflecting a rich legal heritage that continues to evolve, especially under the influence of EU and international law. This unique combination makes Malta's legal system one of the most distinctive in Europe.



Sir Adrian Dingli

Sir Adrian Dingli (1817–1900) was a prominent Maltese lawyer, judge, and statesman, who played a crucial role in shaping the modern Maltese legal system. He is best known for his work as the **Crown Advocate** (the predecessor to the Attorney General) and as **Chief Justice** of Malta.



Private Law v Public Law

Whilst private law regulates the relationships between private individuals public law regulates the relationship between a private individual and the state



Public Law or Private Law

Family law ?

Criminal law?

Constitutional law?

Succession?

Tort?

Property ??



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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