

Diploma in Law (Malta)

Legislative Process

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Date: 2nd October 2024



Diploma in Law (Malta)



CAMILLES 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 will be:
 - Exploring 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 – persons also includes legal persons

Civil Wrongs = Private Wrongs = Private Interest

Criminal Law deals 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 v Private Law - Revised

Public law encompasses criminal law, administrative law and constitutional law – all of which have an effect on the public at large

Private law deals with private individuals, their rights and obligations hence, enjoys a larger set of laws - civil code

Substantive Law

Substantive law defines the rights and obligations of individuals and entities. It is concerned with the actual content of the law, determining what actions are legal or illegal and specifying the consequences of breaches. Substantive law governs various areas, such as criminal offenses, civil rights, contracts, property law, and family law.



Procedural Law

Procedural law, on the other hand, dictates the processes and methods by which substantive law is enforced and applied. It establishes the rules courts and other legal bodies must follow in order to hear cases and resolve disputes. Procedural law does not define the rights and wrongs but provides the steps necessary to enforce or defend those rights.

Main

Criminal Code

Civil Code

Code of Organization and Civil Procedure

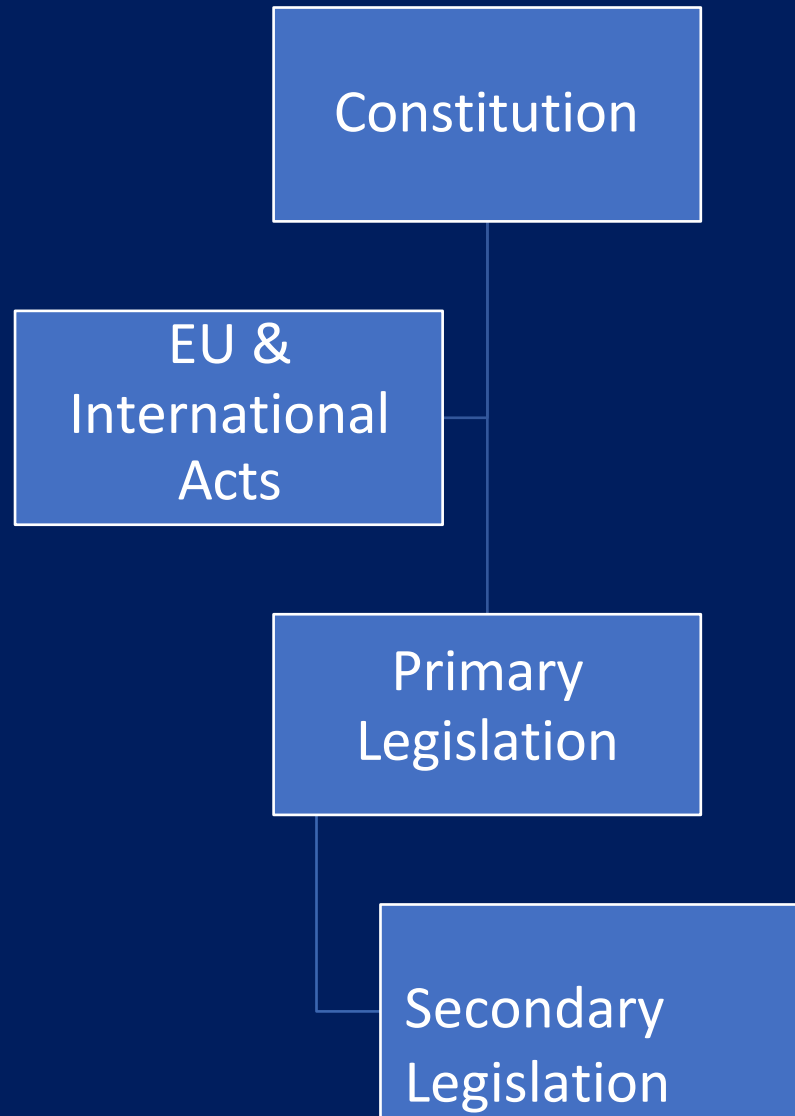
Private International Law – Public International Law

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



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

- Parliament may delegate its powers to bodies such as local councils, transport malta etc



Primary Legislation - Acts



Primary & Subsidiary Legislation

Primary Legislation – Acts or codes – divided into chapters – Parent Act



Chapter
Title

Primary & Subsidiary Legislation

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT [CAP 452]

CHAPTER 452

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT

In accordance with amendments, the Conditions of Employment (Department) Act (Cap 452) and the Industrial Relations Act (Cap 452)

Last December, 2002
27th December, 2002

ACT 2002 of 2002, as amended by ACT 20 of 2001, 27 of 2004 and 28 of 2005 (Sect 404 of 2005, Act 11 of 2006, Part 2007 and 2012 of 2012, Sect 404 of 2012 and 2013 of 2013, 2014 of 2014, 2015 of 2015, 2016 of 2016 and 2017 of 2017 and 2018 of 2018)

ARRANGEMENT OF ACT

	Articles
General	1-2
Title I: Employment Relations	
Part I Agreement Relations Board	1
Part II Recognized Conditions of Employment	4-14
Part III Protection of Wages	15-20
Part IV Protection against Discrimination related to Employment	21-32
Part V Termination of Contracts of Service	33-40
Part VI Settlement and Dispute Resolution related to Employment	41-47
Part VII Administrative related to Employment	48
Title II: Industrial Relations	
Part I Organization of Workers and Employers	
Sub-Part 1 Status, registration and conduct of trade unions and employers' associations	49-60

Rationale

Primary & Subsidiary Legislation

The image shows a screenshot of the New Zealand Government website for the Employment and Industrial Relations Act 2002. The page is titled "EMPLOYMENT AND INDUSTRIAL RELATIONS ACT" and "CHAPTER 452". It includes a table of contents and a list of sections. A blue circle highlights the "Employment" link in the sidebar.

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT

CHAPTER 452

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT

In accordance with amendments, the Conditions of Employment (Agreements) Act 1992 and the Industrial Relations Act 1980.

Enacted December 2002
27th December 2002

ACT 2002 of 2002, as amended by acts 20 of 2004, 20 of 2004 and 200 of 2004 (except Section 407 of 2004), Act 1 of 2005, Part 2002 and 2003 of 2002, Section 407 of 2002 and 2003 of 2002, 2003 of 2002, 2003 of 2002, 2003 of 2002 and 2003 of 2002

ARRANGEMENT OF ACT

	Section	
General	1-2	
Title 1: Employment Relations		
Part 1	Agreement Relations Board	1
Part 2	Recognised Conditions of Employment	4-14
Part 3	Prohibition of Wages	15-20
Part 4	Prohibition against Discrimination related to Employment	21-22
Part 5	Termination of Contracts of Service	23-40
Part 6	Settlement and Dispute Resolution related to Employment	41-47
Part 7	Administrative related to Employment	48
Title 2: Industrial Relations		
Part 1	Organisation of Workers and Employers	
Sub-Part 1	Status, registration and conduct of trade unions and employers' associations	49-60

Primary & Subsidiary Legislation

Short title
Definitions & Interpretations

The image shows a screenshot of a legal document, specifically the 'EMPLOYMENT AND INDUSTRIAL RELATIONS' Act. The document is displayed on a mobile device, with a dark sidebar on the left containing a table of contents. Two blue arrows point from the text on the left to the corresponding sections in the document. The main text of the document is in white on a dark background. The title 'EMPLOYMENT AND INDUSTRIAL RELATIONS' is at the top. Below it, the word '(GENERAL)' is centered. The first section is 'Short title', which states: 'The short title of this Act is the Employment and Industrial Relations Act.' The second section is 'Definitions & Interpretations', which defines 'act' and 'action' as including initiation and enforcement of an act or taking action that is connected accordingly. It also defines 'class' when used in the context of a group or category of employers as referring to the group or category listed in a collective agreement. A note specifies that where there is no collective agreement or where a collective agreement does not regulate groups or categories of employees, it shall refer to the work performed or required to be performed independently of the site or work given to the post. The definition of 'collective agreement' is given as an agreement entered into between an employer, or one or more organizations of employers, and one or more organizations of employees regarding conditions of employment in accordance with the provisions of any law in force in Maldives. The definition of 'wholly time employee' is given as a wholly time employee in the same establishment who is engaged in the same or similar work or occupation, due regard being given to other considerations including maturity, qualifications and skills. A note specifies that where there is no comparable wholly time employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar categories wholly time employees in other establishments. A final note specifies that where there is no applicable collective agreement, reference shall be made to law or to default provisions of the law or the contract of employment, as the case may be.

Primary & Subsidiary Legislation

Article

Sub Article

PART I
EMPLOYMENT REGULATING BOARD

3. (1) A Board to be designated Employment Relations Board and hereinafter referred to as the "Board", shall be appointed by the Minister.

(2) The Board shall be composed as follows:

- (a) an independent chairman;
- (b) the Director responsible for Employment and Industrial Relations who shall act as Deputy Chairman;
- (c) four representatives of employees nominated by the Works Council for Economic and Social Development from amongst the representatives of the workers' organisations sitting on the said Council;
- (d) four representatives of employers nominated by the Works Council for Economic and Social Development from amongst the representatives of the employers' organisations sitting on the said Council; and
- (e) three other persons to be appointed by the Minister.

(3) The functions of the Board shall be -

- (a) to make recommendations to the Minister as to any national minimum standard conditions of employment, hereinafter referred to as a national standard recommendation, for eventual inclusion in a national standard order;
- (b) to make recommendations to the Minister as to any national conditions of employment, hereinafter referred to as a national regulation recommendation, for eventual inclusion in a national regulation order;
- (c) to advise the Minister on any matter relating to conditions of employment, or on any matter referred to



Enacted
by the
Minister

Primary & Subsidiary Legislation

PART I
EMPLOYMENT REGULATIONS BOARD

5. (1) A Board to be designated Employment Relations Board and hereinafter referred to as the "Board", shall be constituted by the Minister:

(b) (i) to be constituted by the Minister

(2) The Board shall be composed as follows:

- (a) one member to be appointed by the Minister;
- (b) the member responsible for Employment and Industrial Relations who shall act as Deputy Chairman;
- (c) four representatives of employers nominated by the State Council for Economic and Social Development from amongst the representative national workers' organizations sitting on the said Council;
- (d) four representatives of employees nominated by the State Council for Economic and Social Development from amongst the representative national employees' organizations sitting on the said Council; and
- (e) three other persons to be appointed by the Minister.

(3) The functions of the Board shall be -

- (a) to make recommendations to the Minister as to any national standard bonded conditions of employment, hereinafter referred to as a national standard recommendation, for eventual inclusion in a national standard order;
- (b) to make recommendations to the Minister as to any national conditions of employment, hereinafter referred to as a national regulation recommendation, for eventual inclusion in a national regulation order;
- (c) to advise the Minister on any matter relating to conditions of employment, or on any matter referred to

Primary & Subsidiary Legislation

PART 5
REGULATED CONDITIONS OF EMPLOYMENT

4. (1) Where the Minister receives any national standard recommendation or any sectoral regulation recommendation he may, subject as hereinafter provided, make a national standard order or a sectoral regulation order, as the case may be, to be published in the Gazette, giving effect to the national standard recommendation or the sectoral regulation recommendation as from such date as may be specified in the order.

Provided that the Minister may, if he thinks fit, before making an order as aforesaid, refer any national standard recommendation or the sectoral regulation recommendation received by him back to the Board and the Board shall thereupon reconsider it having regard to any observations made by the Minister and may, if it thinks fit, re-submit the national standard recommendation or the sectoral regulation recommendation to the Minister either without amendment or with such amendments as it thinks fit having regard to those observations.

(2) Any national standard recommendation and any sectoral regulation recommendation as well as any national standard order or sectoral regulation order for giving effect thereto, may make different provisions for different cases and may contain provisions for the amendment or revocation of previous national standard orders or sectoral regulation orders and may contain any incidental, supplementary or consequential provisions which may appear necessary for carrying out the provisions of any national standard order and any sectoral regulation order.

(3) No national standard order or sectoral regulation order shall have effect as to its prohibition any right as to conditions of employment conferred on any employee by or under any law other

Proviso



Subsidiary Legislation

Chapter Number



Relative S.L



Chapter Number	Relative S.L	Description
	Reg. 602	Regulation concerning Administrative Procedures
1.8.402.01		Regulation concerning the Rules of Procedure
1.8.402.02		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.03		Regulation concerning the Rules of Procedure
1.8.402.04		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.05		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.06		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.07		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.08		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.09		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.10		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.11		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.12		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.13		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.14		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.15		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.16		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.17		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.18		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.19		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.20		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.21		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.22		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.23		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.24		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.25		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.26		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.27		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.28		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.29		Regulation concerning the Rules of Procedure of the Board of Investigation
1.8.402.30		Regulation concerning the Rules of Procedure of the Board of Investigation

Subsidiary Legislation

Same layout as primary legislation

As previously noted



Exhaustive & Non Exhaustive lists

Rights of persons coming to the partners.	<p>34. (1) A partner who is expelled or who by virtue of the immediately preceding article is not entitled to continue as partner shall have the right to have his interest in the partnership liquidated.</p> <p>(2) There shall be included in the liquidation of the interest of a partner who is expelled, or who by virtue of the immediately preceding article is not entitled to continue as a partner, a pro rata share of the profits or losses on all work in progress up to the date of the expulsion.</p>
Termination of partnership or how and by whom dissolved.	<p>35. A partnership or how dissolved -</p> <ul style="list-style-type: none">(a) where the period, if any, fixed for its duration expires;(b) if, subject to the provisions of article 21, all the partners so agree;(c) if the partnership is adjudged bankrupt;(d) if in the opinion of the Court there exist grounds of sufficient gravity to warrant dissolution;(e) if the number of partners is reduced below two and remains so reduced for more than six months;(f) subject to the provisions of article 21, in such other cases for which provision is made in the deed of partnership.
Notice of Dissolution.	<p>36. (1) On the dissolution of a partnership, and in no case later than fourteen days after such dissolution, the partners having the administration or the representation thereof shall deliver to the Registrar for registration a notice of the dissolution.</p> <p>Provided that, where a partnership is adjudged bankrupt or</p>

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.”

Prof. David J. Attard



Language

Reflected in the Maltese Language

1934 – Italian

National Language v Official Languages

Chapter 189 Judicial Proceedings (Use of English) Act

Maltese prevails over English (sidebar)

“every person shall be deemed to be Maltese-speaking unless the court shall be satisfied to the contrary”

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





Legislative process

- From that already dealt with, which legislation regulates the legislative process?



Parliament

In Malta, the power to legislate is exclusively granted to Parliament which can delegate such powers

Enactment of Laws

Main Legislation – Enacted by Parliament

First Reading – Title

Bill – Draft Law published on Government Gazette

Second Reading – Minister to introduce the Bill to the house – debate

Committee Stage – provisions revised – amendments etc

Third Reading – Formally read as revised and amended

Bill transmitted to President of Republic who's signature makes the bill officially law

Enforceable upon publication in the Government Gazette

The Legislative Process

President assent and publication in the Government Gazette

- **Coming into force**

Immediate effect – signed and published

The Legislative Process

1. Subsidiary legislation – passed through authority given by the parent act.
2. Minister or government authority such as TM drafts regulation
3. Published in the government gazette
4. Not debated in Parliament unless a motion to amend or annul is initiated

Chapter 363 – Local Government Act

*Procedure for
making Bye-laws.
Amended by:
XXI, 1999, 3, 17;
XVI, 2009, 20;
XIV, 2019, 27.*

35. (1) A Local Council shall, on application, furnish to any person a copy of the proposed bye-laws, or of any part thereof, without payment.

(2) The Executive Secretary shall submit to the Director a copy of the proposed Bye-Laws after these have been discussed and approved by the Council.

(3) If within eight weeks from the receipt of the proposed Bye-Laws by the Director, the Minister decides to propose any amendments he shall inform the Council in writing of any such amendments.

(4) After discussing the amendments proposed by the Minister, if any, the Council may either approve or not approve the Bye-Laws. If the Council so approves, the Executive Secretary shall forward a copy of the approved Bye-Laws to the Minister.

(5) The Minister shall have the right to object to any bye-law approved by any Council and shall signify such objection and the justification thereof in writing to the Council by not later than eight weeks.

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



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



Interpretation Act – Chapter 249

Diploma in Law (Malta)

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.

Judicial Interpretation is the interpretation of the law given by the Courts.

Parliamentary Debates – Spirit of the law v letter of the law already discussed.



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.

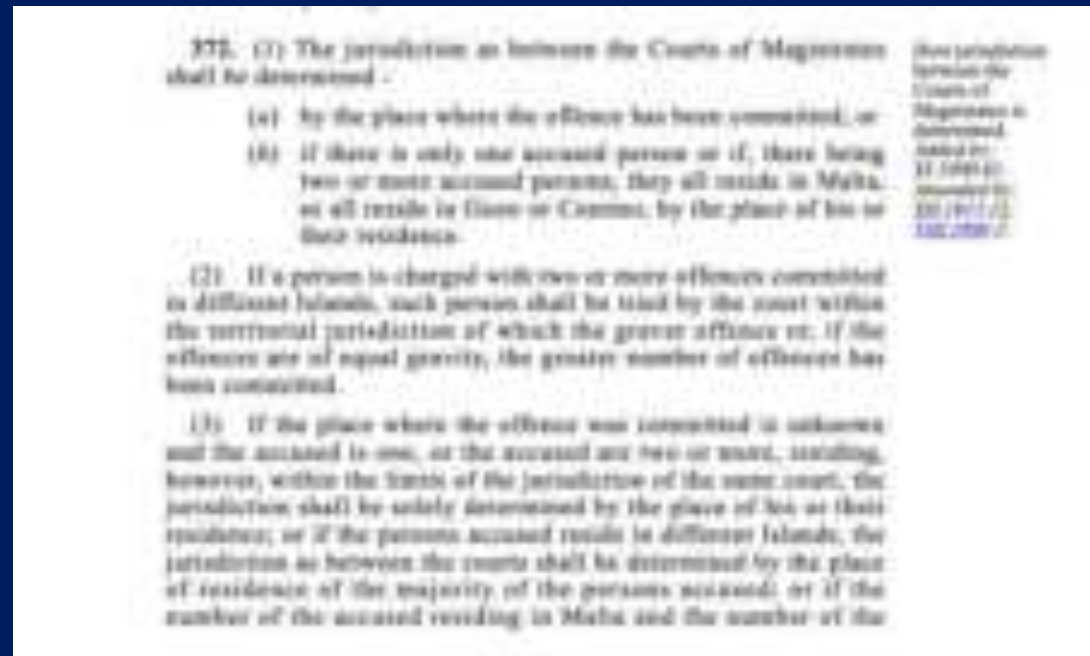
Maltese Courts apply the following principles over and above the provisions of the Interpretation Act:

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



Jurisdiction & Competence

Jurisdiction relates to where a judicial entity can carry out its duties or enforce decisions – for instance Malta & Gozo in criminal matters – Article 372 of the Criminal Code, Chapter 9 of the Laws of Malta



Jurisdiction & Competence

Competence on the other hand refers to the limitations imposed on courts in so far as their authority to deal with a specific matter – 15,000 for the Court of Magistrates



Competence - Brief

Small Claims Tribunal - €5,000

Court of Magistrates - €15,000

166A - €25,000

Judgments

The image shows a screenshot of a web form for 'Tableau Desktop'. The form is organized into several sections, each with a title and a description. The sections are: 'Tableau Desktop', 'References', 'Date', 'Business', 'Platform', 'URL', 'Price', and 'More Details'. Each section contains one or more input fields, some of which are pre-filled with text. The form is displayed on a white background with a blue header bar at the top.

Tableau Desktop
Tableau Desktop is a data visualization software that allows users to connect to various data sources and create interactive dashboards and reports.

References
Tableau Desktop is available on the Tableau website.

Date
Tableau Desktop is available on the Tableau website.

Business
Tableau Desktop is available on the Tableau website.

Platform
Tableau Desktop is available on the Tableau website.

URL
Tableau Desktop is available on the Tableau website.

Price
Tableau Desktop is available on the Tableau website.

More Details
Tableau Desktop is available on the Tableau website.

Judgments

Risultati

Visualizza i risultati per il tuo caso. Se hai più di un risultato, puoi filtrare i risultati per stato o data.

Visualizza i risultati per il tuo caso. Se hai più di un risultato, puoi filtrare i risultati per stato o data.

Data	Referenza	Corte	Partecipanti	Atto e Dettagli
2018/01/01	123456789	Corte di Cassazione	GIULIO vs MARIA GIOIA PIRELLA	Decreto <input type="checkbox"/>
2018/01/01	987654321	Corte di Cassazione	PIRELLA GIORGIO vs GIOIA MARIA PIRELLA	Decreto <input type="checkbox"/>
2018/01/01	112233445	Corte di Cassazione	GIORGIO PIRELLA vs MARIA GIOIA PIRELLA vs PIRELLA PIRELLA	Decreto <input type="checkbox"/>
2018/01/01	556677889	Corte di Cassazione	GIORGIO PIRELLA vs MARIA GIOIA PIRELLA vs PIRELLA PIRELLA	Decreto <input type="checkbox"/>
2018/01/01	990011223	Corte di Cassazione	GIORGIO PIRELLA vs MARIA GIOIA PIRELLA vs PIRELLA PIRELLA	Decreto <input checked="" type="checkbox"/>
2018/01/01	445566778	Corte di Cassazione	PIRELLA GIORGIO vs GIOIA MARIA PIRELLA vs PIRELLA PIRELLA	Decreto <input type="checkbox"/>
2018/01/01	334455667	Corte di Cassazione	PIRELLA GIORGIO vs GIOIA MARIA PIRELLA vs PIRELLA PIRELLA	Decreto <input type="checkbox"/>

Judgments

Used in Search



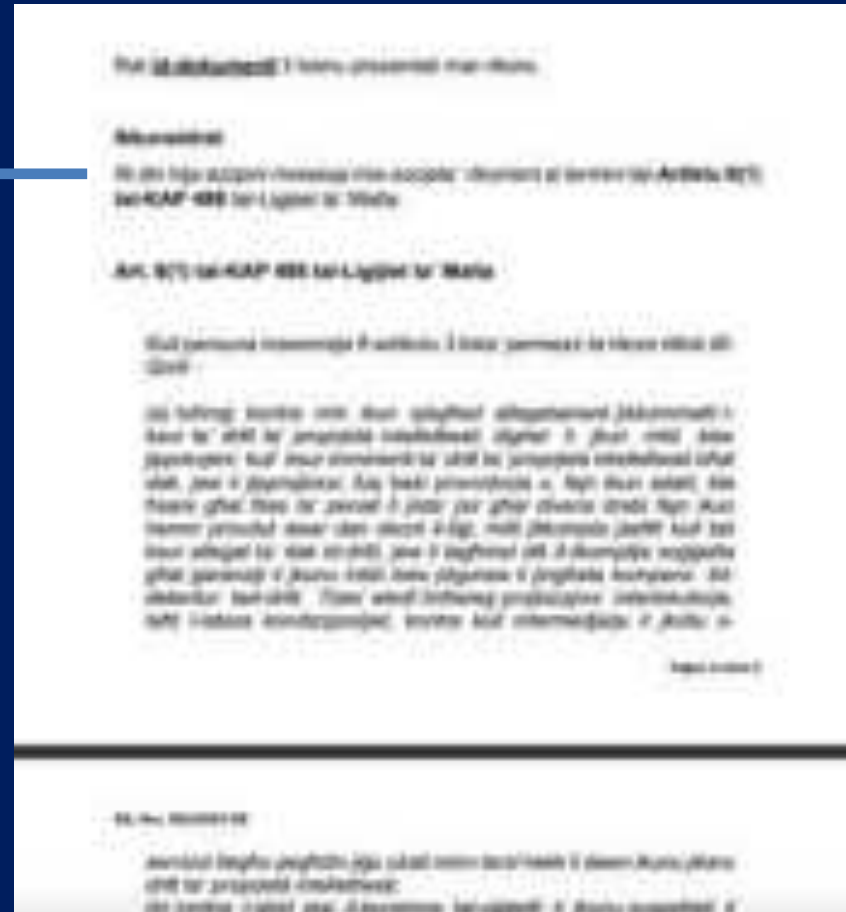
Okkju - parties

Rikors/ Application - by which court proceedings are initiated

Talbiet

Judgments

Basis on which the Court made its decision



Judgments

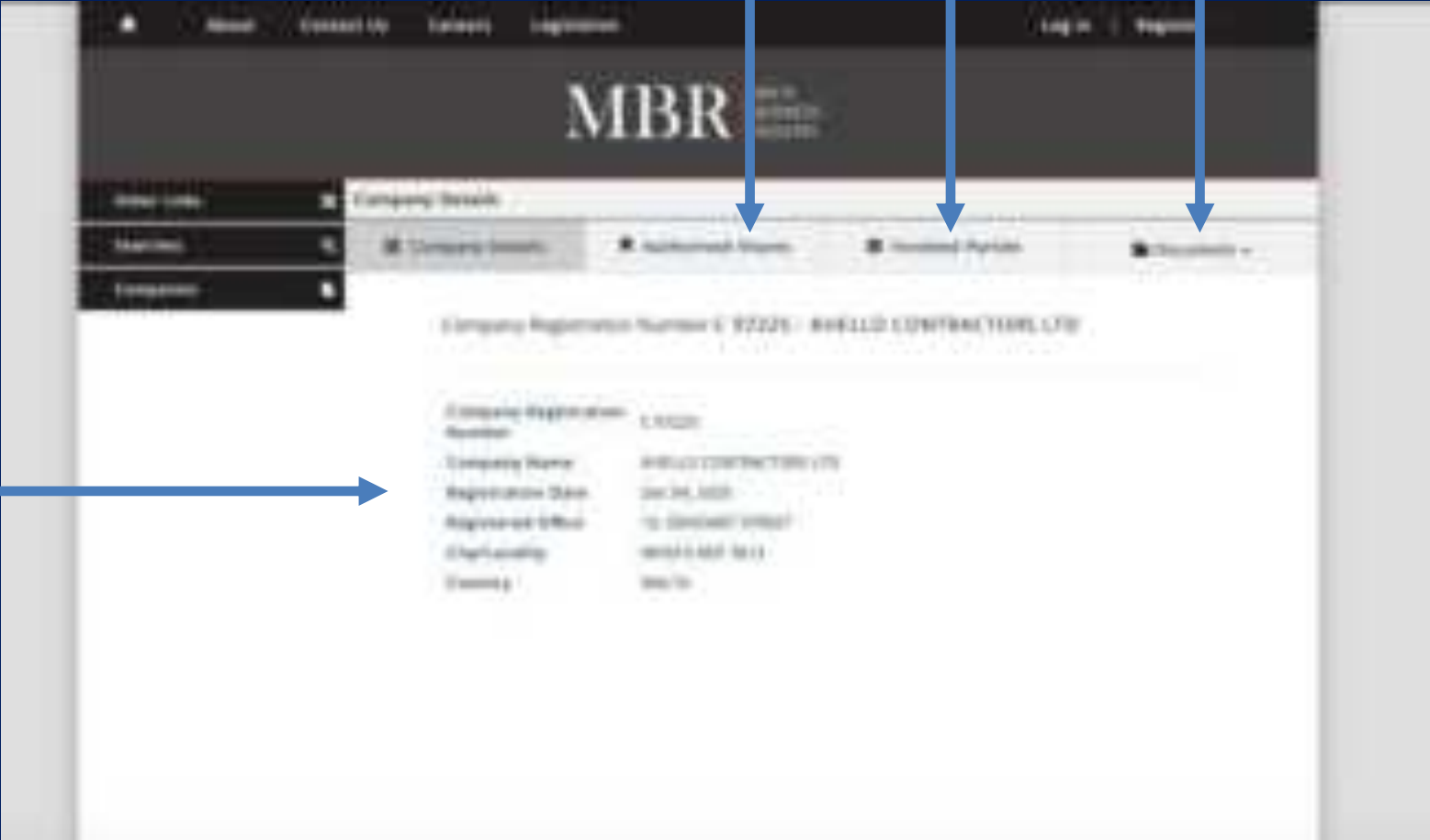
Decision



Company Search Malta Business Registry



Company Search



Judgment analysis

256/2004

472/2012

34. (1) Save as provided in this article, intoxication shall not constitute a defence to any criminal charge.

Intoxication
Added by:
E.M. 1935 2
Amended by:
V. 1928 8.

(2) Intoxication shall be a defence to any criminal charge if -

- (a) by reason thereof the person charged at the time of the act or omission complained of was incapable of understanding or volition and the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
- (b) the person charged was by reason of the intoxication insane, temporarily or otherwise, at the time of such

act or omission.

(3) Where the defence under sub-article (2) is established, then, in a case falling under paragraph (a) thereof, the person charged shall be discharged, and, in a case falling under paragraph (b), the provisions of articles 620 to 623 and 625 to 628 shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purposes of this article "intoxication" shall be deemed to include a state produced by narcotics or drugs.