#### Diploma in Law (Malta)

#### **Legislative Process**

Lecturer: Dr Sarah V. Ciliberti Date: 2nd October 2024



#### **Diploma in Law (Malta)**



## **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



# **Todays' 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.



Criminal Code Civil Code Code of Organization and Civil Procedure

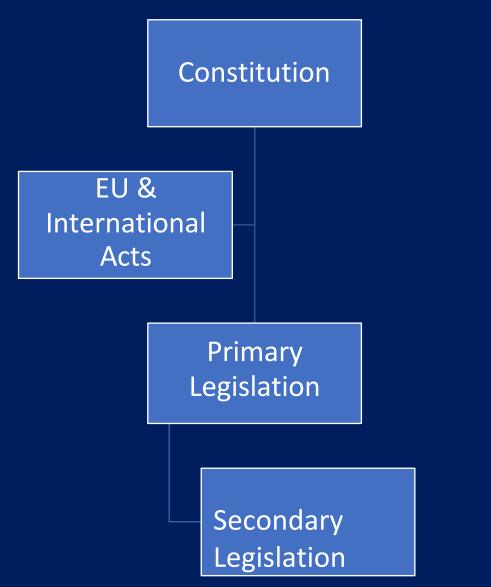
# Private International Law – Public International Law

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**

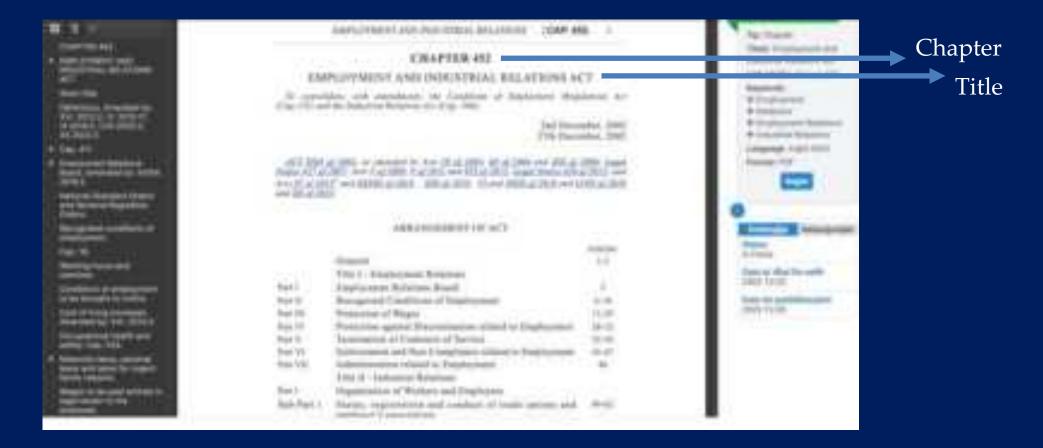
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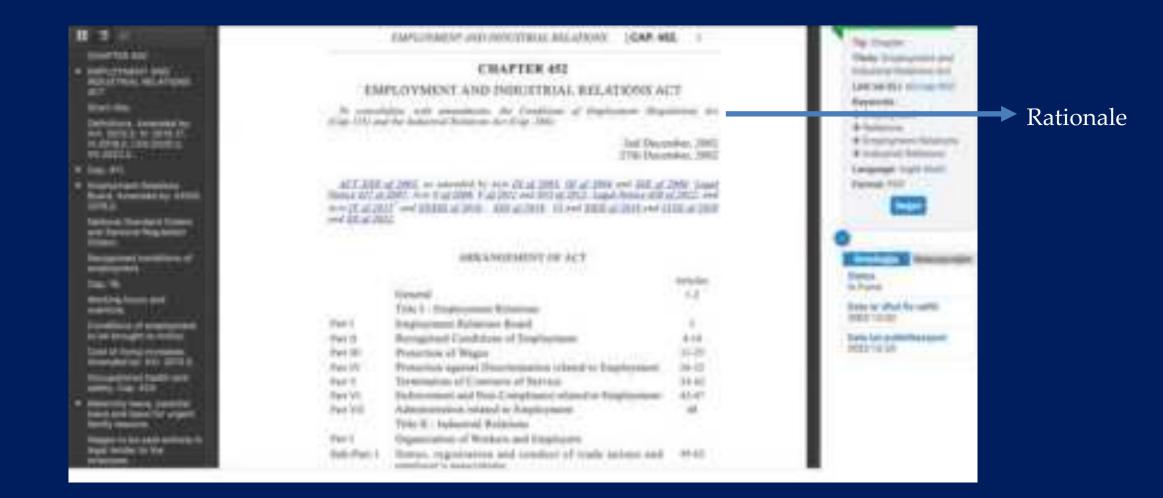


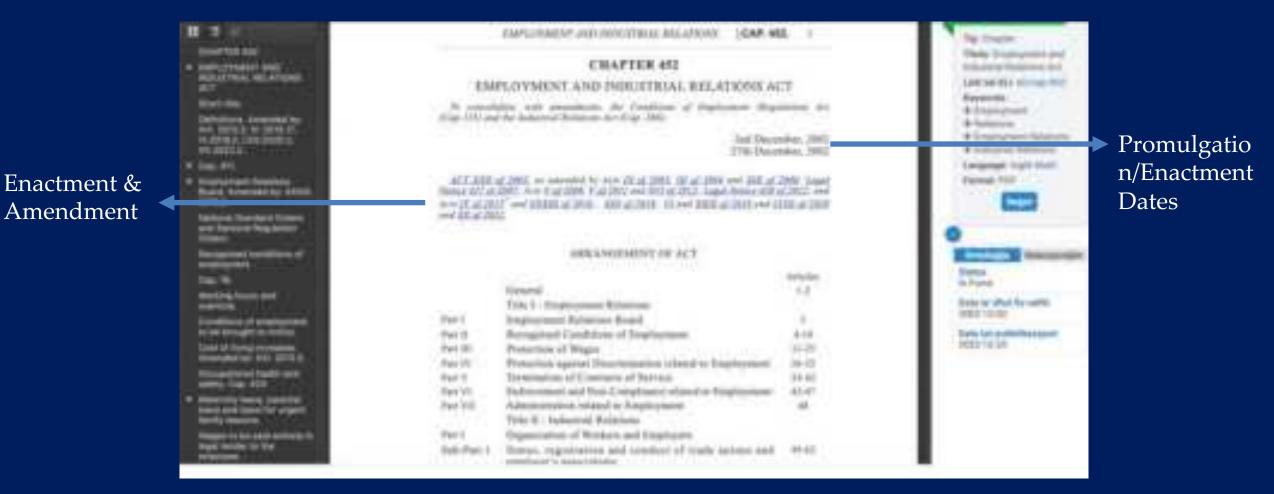
Diploma in Law (Malta)

# **Primary Legislation - Acts**

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







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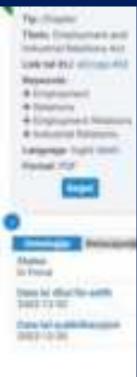
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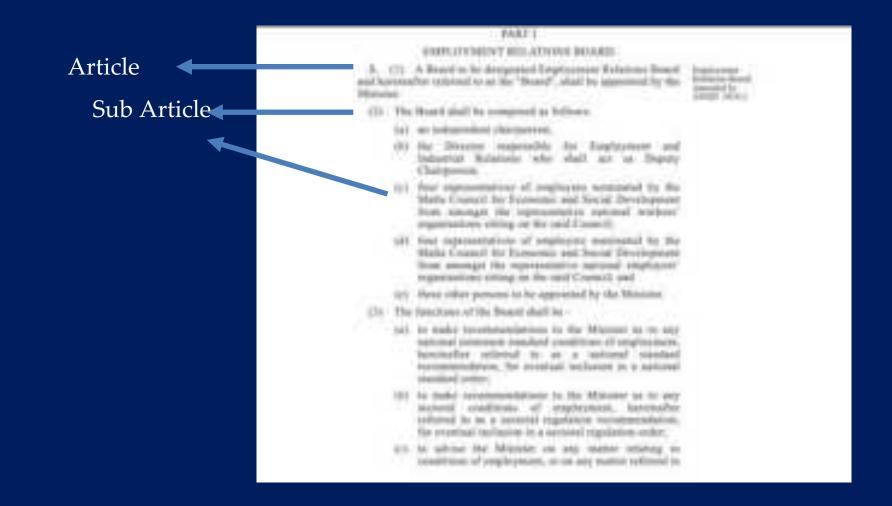
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#### Exhaustive & Non Exhaustive lists

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Annual An	34. (1) On the dissolution of a partnership, and is no case later that foreture days after such dissolution, the partners barring the administration or the representation thereof shall definer to the Registers for regulation a value of the dissolution.

# 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





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. Ameridad by: XXI, 1999,3,17: XXI, 2069,20: 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 hye-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

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**

Jurisdction 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

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## Jurisdiction & Competence

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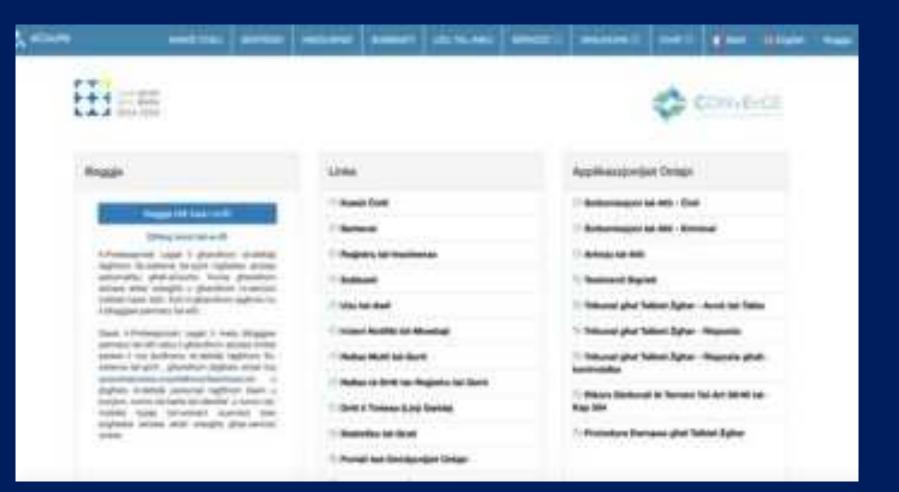
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# **Competence - Brief**

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### Judgments - eCourts



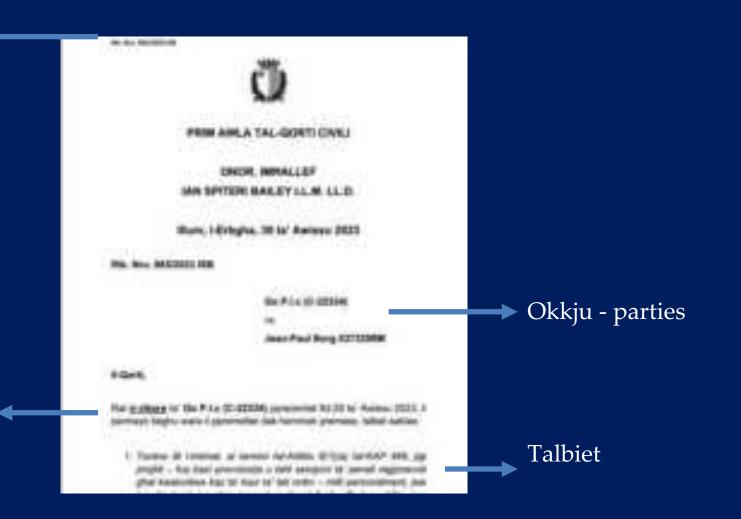
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Decision

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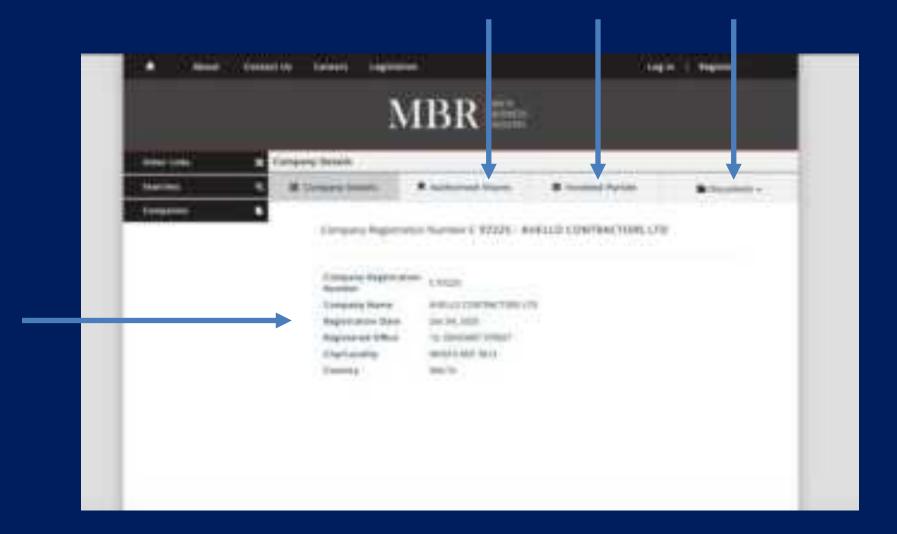
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# **Company Search Malta Business Registry**

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# **Company Search**



## Judgment analysis

256/2004 472/2012

	constitute a (2) la (a)	Save as provided in this article, intoxication shall not defence to any criminal charge, tonication shall be a defence to any criminal charge if - 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 the person charged was by reason of the intoxication unsane, temporarily or otherwise, at the time of such	Denne synthem. Audited Rey RIM, 19875 Z. Amerinated Inv. V.1978.8.
32	CAP 1	CRIMINAL COME	
		act or omission.	
		(3) Where the defence under sub-article (2) is establistic a case falling under paragraph (a) thereof, the personal be discharged, and, in a case falling under paragraph provisions of articles 620 to 623 and 625 to 628 shall approximation.	on charged aph (b), the
		(4) Introducation shall be taken into account for the determining whether the person sharged had formed an specific or otherwise, in the absence of which he wo guilty of the offence.	ry intention
	3	(5) For the purposes of this article "intexication deemed to include a state produced by narcotics or drug	