Diploma in Law (Malta)

Introduction to the Maltese Legal System



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ADVOCATES

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Introduction

Today we will be covering:

- The Constitution
- Separation of Powers & the Rule of Law
- Main functions of the judiciary, the president, parliament etc
- The Superior Courts
- The inferior courts
- Tribunals and Boards
- Main Chapters of Law



Review of the Constitution of Malta

- Chapter 1 The Republic of Malta
- Chapter 2 Declaration of Principles
- Chapter 3 Citizenship
- Chapter 4 Fundamental Rights and Freedoms of the individual
- Chapter 5 The President
- Chapter 6 Parliament
- Chapter 7 The Executive
- Chapter 8 The Judiciary
- Chapter 9 Finance
- Chapter 10 The Public Service



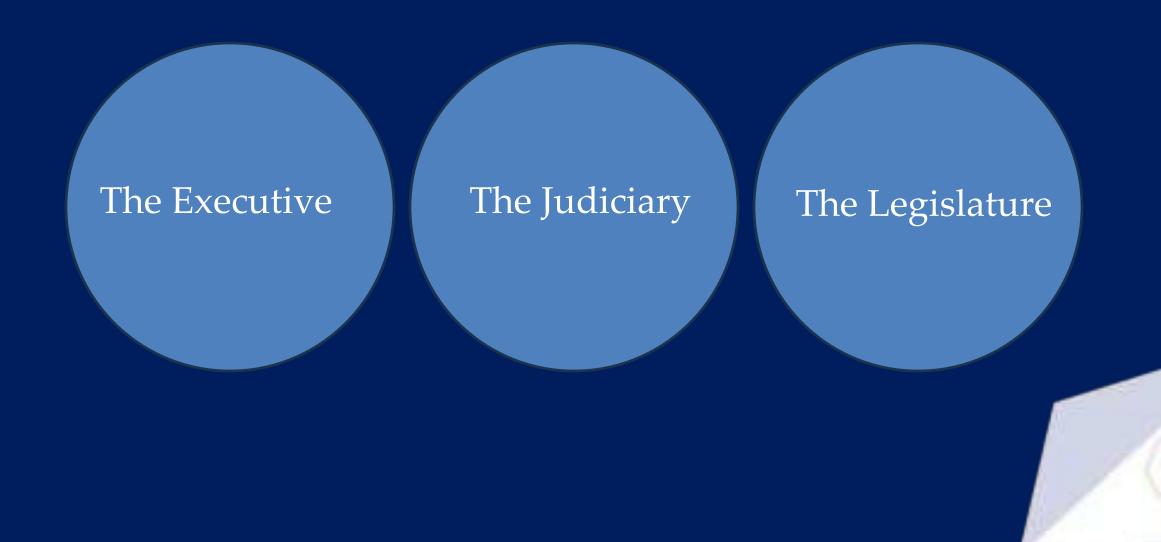
Review of the Constitution of Malta

- Chapter 11 Local Councils
- Chapter 12 Miscallaneous



The Constitution - Revised

- Highest law of the country
- Came into force on the 21st of September 1964 (Independence from UK)
- Most important amendments 1974 and upon joining the EU in 2004
- Structure of the State in general
- Defines the parameters of the roles of institutions
- Guarantees the fundamental human rights of citizens



The Executive – Prime Minister + Cabinet of Ministers

The Legislature – Parliament – House of Representatives as elected by the public

The Judiciary - Judges + Court

The main aim of ensuring the separation of powers is that each of them keep one another in check. So, for instance – whilst parliament can enact laws – the judiciary has the power to declare such a law unconsisutional. Similarly, parliament can hold the executive accountable through questions & votes of confidence



Equality before the law – everyone, including the government is subject to the same legislation



Legal Certainty – Sittings, legislation and judgements are made public. Laws must be clear and comprehendable. This also includes access to justice.



In order to achieve and fulfill the rule of law, it is crucial that power is separated in a manner as to allow the three institutions to keep one another in check. The role of the judiciary could be seen as the most distinctive of all three – loss of trust in the judiciary would ultimatly allow persons to take the law into their hands which would then, result in the disruption of the rule of law



Attorney General

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- 91. (1) There shall be an Attorney General whose office shall be a public office and who shall be appointed by the President acting in accordance with the advisor of the Prime Minuster.
- (2) A person shall not be qualified to hold office as Attorney General unless by is qualified for appointment as a judge of the Saperter Courts.
- (3) In the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorize him to exercise that power in his individual judgment the Amorsey General shall have Constitutional independency and shall not be subject to the direction or control of any other person or authority except insofar as a law may provide:
 - (a) for the judicual review of a decision not to presecute or of any other decision taken by the Attorney General, on the grounds of illegative or accessorableness; or
 - (b) for the judicial review on the basis of criteria established by law of a decision of the Atterney General that a prosecution should take place in a superior court of criminal jurisdiction where the punishment applicable would be higher than that which would apply had the same offence been tried before an inferior court of criminal jurisdiction.
 - (4) Religion to the premisions of sub-article (f) of this article,



The Attorney General

The Attorney General is the chief prosecuting officer. Has the power to institute, undertake and discontinue criminal proceedings



State Advocate

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- 91A. (1) There shall be a State Advocate whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.
- (2) A person shall not be qualified to hold office as State Advocate unless he is qualified for appointment as a judge of the Superior Courts.

CONSTITUTION OF MALES

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(3) The State Advocate shall be the advisor to Government in matters of law and legal opinion. He shall set in the public interest and shall safeguard the legality of State action. The State Advocate shall also perform such other duties and functions to may be conferred upon him by this Constitution or by any law. In the exercise of his functions, the State Advocate shall act in his individual judgment and he shall not be subject to the direction or control of any other person or authority.



State Advocate

A new office from that of the Attorney General was created in 2019 taking over the responsibility of the chief legal advisor to the Government. To represent government in all actions instituted against.



The Attorney General & State Advocate

• Both enjoy security of tenure and can only be removed from office by the President with 2/3 support of the members of the House of Representatives for proved inability or misbehaviour.



The Commission for the Administration of Justice

- Presided by the President of Malta
- Regulates amongst other things discipline over members of the judiciary and the legal profession
- Supervises the workings of the law courts



The Courts of Malta

- The Superior Courts
- The Inferior Courts







The First Hall, Civil Court

The First Hall, Civil Court (Family Jurisdiction)

The First Hall, Civil Court (Constitutional Jurisdiction)

The First Hall, Civil Court (Commercial Section)

The Court of Volontary Jurisdiction

The Court of Appeal

The Constitutional Court

The Criminal Court

The Court of Criminal Appeal

The Court of Magistrates as a court of criminal jurisdiction

The Court of Magistrates as a court of criminal inquiry

The Court of Magistrates (Gozo)

The Court of Magistrates (Malta)

Juvenile Court



The First Hall, Civil Court (Family Jurisdiction) – presided over by one Judge

Deals with matter relating to family – repudiation, filiation, separation, divorce, care and custody, maintenance, access etc



The First Hall, Civil Court (Constitutional Jurisdiction) – Presided over by one Judge

Deals with matters related to human rights and constitutional matters



The First Hall, Civil Court (Commercial Jurisdiction) – presided over by one Judge

Deals with matter relating to companies act, competition act and regulations related to the consumer affairs act



The Court of Volontary Jurisdiction – Presided over by one Judge

Non contenious court – deals with matters related to wills, adoptions, interdiction and incapacitation

No judgments – just decrees

No appeal but may apply to the civil court to quash the decree



The First Hall, Civil Court – Presided over by one Judge

Deals with all that not related to constitutional law, family law or that related to the companies act. Must be of a civil nature. Claims of over €15,000



The Court of Magistrates (Gozo)
The Court of Magistrates (Malta)

Presided over by one Magistrate

Claims of over €5,000 but less than €15,000

Article 47(3) of the COCP - Nevertheless, causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, including any claim for the ejectment or eviction from immovable property, whether urban or rural, tenanted or occupied by persons residing or having their ordinary abode within the limits of the jurisdiction of such court, shall not fall within the jurisdiction of the Court of Magistrates (Malta) independently of the value of the claim



The Court of Magistrates as a court of criminal judicature

Matters related to criminal law. Competence of less than 2 years imprisonment with an extended competence of up to 12 years imprisonment with the consent of the person accused and upon AGs suggestion.



The Court of Magistrates as a court of criminal inquiry

Shall hear all evidence in those cases exceeding the competence of the Court of Magistrates as a Court of Criminal Judicature



The Criminal Court

Over 12 years – jury – one foreman + 8 common jurors



The Court of Criminal Appeal

Presided by three Judges – deals with appeals coming from the criminal court including appeals from jury proceedings



The Court of Appeal

One always appeals to a higher court presided over by a different judge or magistrate One may only appeal once. Each chamber shall constist of the Chief Justice and two more judges.

So if one were to enter an appeal from a judgment delivered by the Court of Magistrates as a court of criminal judicature – one would need to file the appeal application to the criminal court which is presided by one judge as opposed to the court of magistrates which is presided by one magistrate

Tribunals and Boards

The Industrial Tribunal – related to employment Rent Regulation Board – related to rent Small Claims Tribunal – claims of under €5,000



Tribunals and Boards

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Constitutional References

From any court on matters relating to human rights



Main Legislation

The Criminal Code – Chapter 9 of the Laws of Malta

The Civil Code – Chapter 16 of the Laws of Malta

The Code of Organisation and Civil Procedure – Chapter 12 of the Laws of Malta

The Constitution



Which law should I refer to and in which court should I file proceedings?

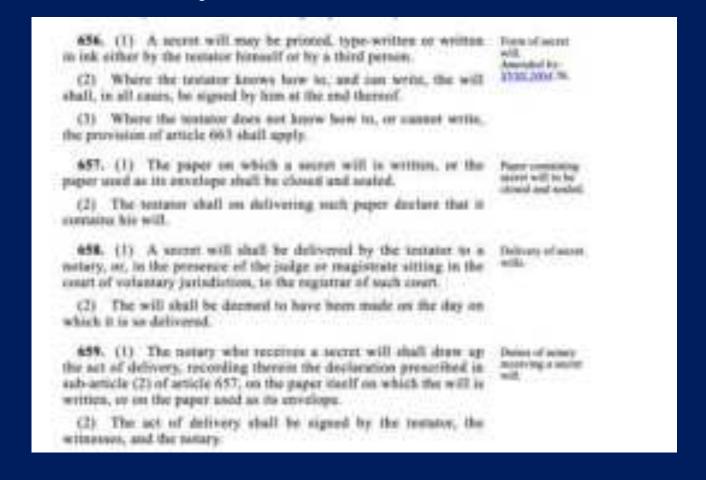
- 1. If I want check whether or not someone deceased made a secret will?
- 2. If I would like to proceed with personal separation?
- 3. If person A carried out works in my property however did not finalise the job which ended up causing damages to my property?
- 4. If I would like to know on what basis a road block can be carried out?

Which law should I refer to and in which court should I file proceedings?

6. If according to law I was charged with a contravention before the Court of Magistrates as a Court of Criminal Judicature and orders imprisonment for a term of 10 years?



1. If I want check whether or not someone deceased made a secret will? Civil Code, Chapter 16 of the Laws of Malta – Court of Volontary Jurisdiction





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If I would like to proceed with personal separation? Civil Code Chapter 16 of the Laws of Malta – First Hall, Civil Court (Family)

subsequent articles

36. (1) By personal separation pronounced by a judgment, or authorised by a decree, of the competent civil court, the obligation of cohabitation of the sposses shall come for all civil efforts.

(2) Separation pronounced by any other court shall not produce any civil effects.

(3) The court shall, in the decree or judgment of personal separation, clearly indicate the progressive number of registration of the Act of Marriage and identification number of the parties, and order the Registrar of Courts to society the personal separation of the parties to the Director of the Public Registry within the period established for this purpose by the same court, for the Director of the Public Registry to register that pursonal separation.

36. Personal separation may not take place except on the demand of one opouse against the other and on any of the grounds stated in the following articles, or by mutual consent of the spouses, as provided in article 59:

37. (1) All suits for personal separation shall be brought before the appropriate section of the Civil Court as may be established by regulations made by the Minister.

Provided that prior to the communications of proceedings, a derrand may be made for determining the amount of an allowance for maintenance during the pendency of the proceedings and for the issue of a decree ordering the payment of such allowance or a demand for the court to determine by decree who of the spenses, if any, shall during the pendency of the proceedings continue to reside in the maintenantal home.

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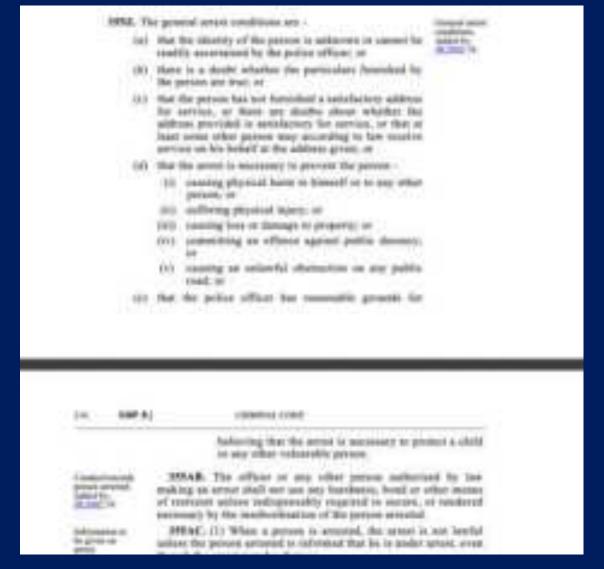
If I am out for a walk and the Executive police arrest me for no

apparent reason?



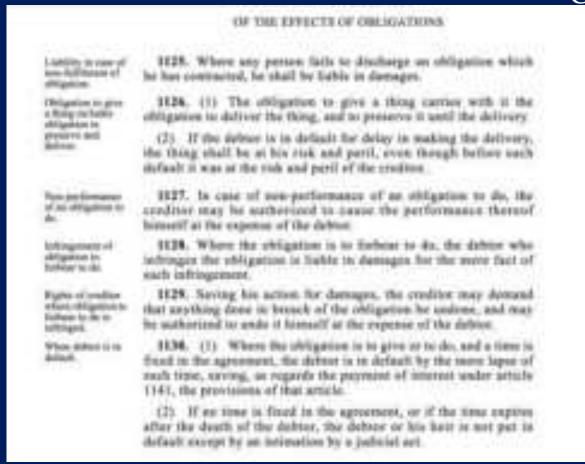


If I am out for a walk and the Executive police arrest me for no apparent reason?





If person A carried out works in my property however did not finalise the job which ended up causing damages to my property? Article 1133 Civil Code Chapter 16 of the laws of Malta – non fulfillment of obligations – First Hall, Civil Court





If I would like to know on what basis a road block can be carried out? Criminal Code, Chapter 9 of the laws of Malta

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6. If according to law I was charged with a contravention before the Court of Magistrates as a Court of Criminal Judicature and orders imprisonment for a term of 10 years?



	CRIMINAL CODE	CAP.	9.	7
L T	The title of this Code is Criminal Code.		Title.	
	PRELIMINARY PROVISIONS			
2.	2. Offences are divided into crimes and contraventions.		Classification of offeners. Amended by: XI.1900.1	
 (1) Every offence gives rise to a criminal action and a civil action. 			Actions arising from an offence.	
(2) crimii demai	The criminal action is prosecuted before the court hal jurisdiction, and the punishment of the offender is the nded.		VI.1871	
urise	The civil action is prosecuted before the courts of diction, and compensation for the damage caused by se is thereby demanded.			



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