The Courts of Justice in Malta and the Legal Profession

The Legal Professions and the division of the Courts of Justice in Malta

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Lecture 1

Justice

Learning Outcomes

- Interpreting:
  - What is Justice, the Judiciary and their role ?
  - The Maltese Legal System – the basis of knowing from where our laws come from
  - Civil Law Tradition
  - Common Law Tradition
  - Continental (European Union) Law Influence
  - Sources of Law in Malta
  - Civil and Criminal Law in Malta
  - Criminal Law Influence in Specific Areas
  - The rule of law
  - The separation of powers and its different branches
  - Recent legal development in line with the EU

The Maltese Legal System – the basis of knowing from where our laws come from

- Malta's legal system is a unique blend of **Civil Law**, **Common Law**, and **Continental Law** traditions.
- This hybrid system reflects Malta's complex history, shaped by various foreign powers, including the Romans, Arabs, Normans, French, and British.
- While its foundations are primarily Civil Law (deriving from Roman law), the influence of British Common Law during the period of British rule (1800-1964) significantly impacted the development of certain legal institutions and processes.
- Additionally, Malta's EU membership since 2004 introduced Continental European influences, especially through European Union law.

Civil Law Tradition

- **Foundation**: Malta's legal system is predominantly based on **Civil Law**, inherited from its Roman and Continental influences. The civil law tradition is most evident in Malta's **Civil Code**, which governs personal status, family law, obligations, contracts, property law, and successions.
- **Codification**: Civil law in Malta is heavily codified, meaning that the laws are written down in comprehensive legal codes. Judges primarily interpret the law rather than make it.
- **Sources**: The **Civil Code** is the main source of law in civil matters. Other key codes include the **Criminal Code** and the **Commercial Code**.
- **Judicial Decisions**: Unlike in **Common Law** systems, where judicial precedent plays a significant role, Malta's system places less emphasis on case law as a source of law. However, Maltese courts do refer to precedents for guidance.

Common Law influence

- Commercial and Constitutional Law: Under British rule, Malta absorbed several Common Law principles, particularly in areas of commercial law, tort law, and constitutional law.
- This dual influence can be seen in the structure of the Constitution (introduced in 1964), which embodies Common Law principles like the rule of law, judicial independence, and separation of powers.
- Trial by Jury: The British introduced the system of trial by jury, a hallmark of Common Law systems, into Malta's criminal justice system. Major criminal cases are tried before a jury of peers, but civil cases are still predominantly heard by judges.
- Procedural Law: Many procedural aspects of Maltese law, particularly in litigation and court processes, are influenced by Common Law traditions, such as the adversarial system and the concept of natural justice.

Continental (European Union) Law Influence

- EU Membership: Since Malta joined the European Union in 2004, EU law has become a major source of law, particularly in areas such as competition law, consumer protection, data privacy, environmental law, and human rights.
- European directives and regulations are transposed into Maltese law and have direct effect.
- European Court of Justice: Maltese courts are bound by the rulings of the European Court of Justice (ECJ). In cases involving EU law, Maltese courts may refer questions to the ECJ for interpretation, ensuring consistency across member states.

Sources of Law in Malta

- Legislation (Statutes): Enacted by Parliament, laws are the primary source of law in Malta. The Constitution takes precedence, followed by statutes, and secondary legislation (e.g., regulations).
- Judicial Precedents: Though case law is less emphasized compared to Common Law systems, judicial decisions, particularly from the Constitutional Court and the Court of Appeal, can serve as persuasive authority.
- Customary Law: While rare, customary practices can be a source of law, particularly in areas of family and property law.
- EU Law: As a member of the European Union, EU regulations and directives are integrated into the Maltese legal system

Civil Law in Malta

- Civil Law governs private relationships between individuals, including contract law, torts, family law, and property law.
- Codification: The Civil Code is one of the primary codified texts in Malta and is largely based on Roman law traditions. The Civil Code covers several areas:
- Personal Status: Marriage, divorce, and family law.
- Obligations: Contractual and quasi-contractual obligations.
- Property Law: Ownership, possession, and real estate law.
- Succession Law: Inheritance and wills.

Criminal Law in Malta

- Criminal Law in Malta is codified in the Criminal Code, which defines offences and prescribes penalties. Criminal cases are usually heard before the Criminal Court, which may involve trial by jury for serious offences. For lesser offences, the Magistrates' Court has jurisdiction.

Common Law Influence in Specific Areas

- Commercial Law: The Companies Act and Commercial Code reflect a blend of Civil and Common Law influences. Common Law principles are visible in corporate governance, insolvency procedures, and contract law, particularly in commercial transactions.
- Tort Law: The concept of negligence, as applied in Common Law systems, has been incorporated into Maltese tort law. Maltese courts consider English Common Law principles when adjudicating tort cases.
- Constitutional Law: Judicial review and the protection of fundamental rights under the European Convention on Human Rights (ECHR) are areas where Common Law influence is apparent. Human rights cases are often heard in the Constitutional Court, which applies European human rights jurisprudence.
- Recent Reforms and Developments: Malta has been undergoing judicial reforms to enhance the transparency and efficiency of its courts, especially in light of its EU membership. The Judicial Appointments Committee was introduced to ensure merit-based and independent judicial appointments, minimizing political interference. The influence of EU law continues to grow, particularly in areas like consumer protection, competition law, and environmental law, as Malta aligns its laws with European standards.
- Conclusion: Malta's legal system is a hybrid model, drawing from Civil Law,

What is Justice ?

"Justice is the ethical, philosophical idea that people are to be treated impartially, fairly, properly, and reasonably by the law and by arbiters of the law, that laws are to ensure that no harm befalls another, and that, where harm is alleged, a remedial action is taken - both the accuser and the accused receive a morally right consequence merited by their actions."

– Cornell Law School

Justice

- Justice is the principle of fairness and moral rightness.
- It involves giving each individual what they are due.
- Justice ensures that laws are applied equally and impartially.

"Justice is the constant and perpetual will to render to each his due." — Justinian I

The Role of Justice in Society

- Social Order: Justice promotes peace by ensuring fairness and equality.
- Protection of Rights: It safeguards human rights and freedoms.
- Accountability: Justice holds individuals and institutions accountable for their actions.
- Trust in the Legal System: Fair and transparent justice builds public confidence in the law.

Justice and the Rule of Law

- Interconnectedness: Justice is closely linked to the Rule of Law, ensuring laws are fair and applied impartially.
- Fair Legal Procedures: Procedural justice ensures the law is implemented transparently and consistently.
- Access to Justice: Equal access to legal resources is essential for a fair society, preventing discrimination and bias in legal processes.

Interpretations

- "*Malta*" means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof. (Article 124 (1) of the Constitution).

- "*legal representative*" means a person entitled to practise in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator. (Article 39 (11) of the Constitution).

- "*advocate*" means a person authorised under the provisions of article 79 (Article 78A (1) of the Code Of Organization And Civil Procedure.

- *"Notaries are public officers. They are charged to receive acts inter vivos and wills, and to attribute public faith thereto; they shall be responsible for their custody and shall give out copies and extracts of or from such acts or wills"*. Chapter 55 of the laws of Malta Article 1(2).

- "*Court*" means any court of law in Malta other than a court constituted by or under a disciplinary law and in articles 33 and 35 of The Constitution includes, in relation to an offence against a disciplinary law, a court so constituted. (Article 47 (1) of the Constitution).

The rule of Law

- The rule of law is a durable system of laws, institutions, norms, and community commitment that delivers four universal principles: accountability, just law, open government, and accessible and impartial justice.
- The Rule of Law is a system in which the laws of a country are applied equally to everyone.

Key principles to the Rule of Law

- Equality Before the Law: No one is above the law.
- Transparency of Laws: Laws must be accessible and understandable.
- Legal Certainty: Laws should be stable and clear.
- Accountability: Government and private individuals are bound by the law.
- Access to Justice: Fair legal processes for all individuals.

Importance of the Rule of Law in Modern Societies

- Ensures justice and fairness for all citizens.
- Promotes economic stability by providing legal certainty for businesses.
- Prevents arbitrary use of power by governments.
- Protects human rights and civil liberties.
- Strengthens democratic governance.

The Role of the Judiciary in Upholding the Rule of Law

- The judiciary ensures laws are applied impartially.
- Judicial independence is critical to prevent political pressure.
- Courts interpret laws to protect individual rights and hold the government accountable.

The Rule of Law: Foundation for a Just Society

- The Rule of Law is essential for justice, human rights, and democracy.
- It is a fundamental safeguard against abuse of power.
- Challenges must be addressed to maintain a fair and equitable legal system.

"Where law ends, tyranny begins." – John Lock

Separation of powers

- The **separation of powers** is a fundamental principle in Malta's constitutional framework, aimed at preventing the concentration of power in one branch of government and ensuring a balance between different institutions.
- In Malta, the principle is reflected in the division of governmental authority into three distinct branches: the **Executive**, the **Legislature**, and the **Judiciary**. Let's delve into how each of these branches functions, their roles, and the specific details related to their separation in Malta.

Separation of powers

- Malta is a democratic republic based on the principle of separation of powers:

- The Parliament is the constitutional legislative body in Malta. The parliament is unicameral, with a democratically elected House of Representatives, in its 14th Legislature (2022-) and composed of 79 members, and the President of Malta, the constitutional Head of State.

- The judicial branch comprises the law courts with the Constitutional Court as the highest court, which, among others, deals with appeals related to the constitution, human rights and integrity of laws.

- Executive authority is vested in the President of Malta with the general direction and control of the Government of Malta remaining with the Prime Minister of Malta, who is the Head of Government and the Cabinet. The cabinet represents the executive power which is composed of the prime minister, ministers and parliamentary secretaries. Public administration is focused on Central Government. Some aspects of public administration are decentralised through Local government.

Overview of the Separation of Powers in Malta

- The separation of powers ensures that no single branch of government becomes too powerful.
- It is enshrined in Malta's Constitution, which was established in 1964 when Malta became an independent nation.
- Its Purpose is to provide checks and balances, uphold the rule of law, and protect fundamental rights and freedoms.

The Executive Branch

- **Structure:** The Executive is primarily composed of the **President of Malta**, the **Prime Minister**, and the **Cabinet of Ministers**.
- **The President** is the Head of State and has largely ceremonial functions. However, the President plays a key role in certain legislative and executive actions, such as the appointment of the Prime Minister and judges.
- **The Prime Minister** is the Head of Government and exercises executive authority. The Prime Minister is appointed by the President and is typically the leader of the party with a majority in the House of Representatives.
- **The Cabinet of Ministers:** Ministers are appointed by the Prime Minister and are responsible for various government departments and po

The Legislative Branch

- **Structure:** The legislative power in Malta is vested in **Parliament**, which is composed of:
- **The House of Representatives:** Unicameral (one chamber) body made up of elected representatives. Elections are held every five years under a proportional representation system.
- **The President:** Though part of the Executive, the President also has a role in the legislative process, such as assenting to laws passed by Parliament.

The Judicial Branch

- **Structure:** The judicial system in Malta is independent of the other branches, and it consists of:
- **The Constitutional Court:** The highest court in matters of constitutional interpretation and the protection of human rights.
- **The Court of Appeal:** Handles civil and criminal appeals.
- **Other Courts and Tribunals:** Civil, criminal, and specialized courts (e.g., the Industrial Tribunal)

Checks and Balances in the Maltese System

- Legislative Oversight: Parliament monitors the Executive through various mechanisms, such as parliamentary questions, committees, and debates.
- Judicial Review: The Judiciary can nullify laws or executive actions that are unconstitutional or violate human rights.
- Presidential Role: Although largely ceremonial, the President serves as a neutral figure who appoints the Prime Minister, assents to legislation, and has some discretionary powers in safeguarding the Constitution.
- Impeachment and Removal: The Prime Minister and government ministers can be removed by a vote of no confidence in Parliament. Judges can be removed through a process set out in the Constitution for serious misconduct or inability to perform their duties.

Recent Developments and Reforms

- Malta has undertaken judicial reforms in recent years to enhance the independence of the Judiciary and ensure greater transparency in the judicial appointment process.
- The Judicial Appointments Committee has been given more oversight to recommend judicial appointments based on merit.
- Efforts have been made to address concerns about the concentration of power within the Executive, particularly regarding the appointment of public officials and judges.
- European Union and Council of Europe Pressure: Both bodies have encouraged Malta to continue strengthening the rule of law and separation of powers to enhance transparency and accountability in governance.

Wrapping up on the separation of powers

- The separation of powers in Malta is a crucial element in ensuring checks and balances between the three branches of government.
- While Malta's Constitution provides for a clear separation of powers, challenges remain, particularly regarding the influence of the Executive on the other branches.
- Recent reforms have been steps in the right direction, but ongoing scrutiny and reform efforts are necessary to ensure the full independence and accountability of all branches.