

Diploma in Law (Malta)

Introduction to the Maltese Legal System

Lecturer: Dr Sarah V. Ciliberti

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CAMILLERI PREZIOSI
ADVOCATES

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 - Miscellaneous

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

Separation of Powers and the Rule of Law

The Executive

The Judiciary

The Legislature

Separation of Powers and the Rule of Law

The Executive – Prime Minister + Cabinet of Ministers

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

The Judiciary - Judges + Court

Separation of Powers and the Rule of Law

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 unconstitutional. Similarly, parliament can hold the executive accountable through questions & votes of confidence

Separation of Powers and the Rule of Law

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



Separation of Powers and the Rule of Law

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

Separation of Powers and the Rule of Law

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 ultimately allow persons to take the law into their hands which would then, result in the disruption of the rule of law



Attorney General

Attorney General.
Amended by:
[LVIII.1974.43](#);
[XIV.2007.4](#);
[XLV.2020.3](#);
[XLI.2020.3](#).

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 advice of the Prime Minister.

(2) A person shall not be qualified to hold office as Attorney General unless he is qualified for appointment as a judge of the Superior 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 authorise him to exercise that power in his individual judgment the Attorney General shall have Constitutional independence 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 judicial review of a decision not to prosecute or of any other decision taken by the Attorney General, on the grounds of illegality or unreasonableness; or
 - (b) for the judicial review on the basis of criteria established by law of a decision of the Attorney 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) Subject to the provisions of sub-article (5) 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

State Advocate.
Added by:
[XXV.2019.10](#);
Amended by:
[XLV.2020.4](#).

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.

(3) The State Advocate shall be the advisor to Government in matters of law and legal opinion. He shall act in the public interest and shall safeguard the legality of State action. The State Advocate shall also perform such other duties and functions as 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 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 Voluntary 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 Courts

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 Courts

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

Deals with matters related to human rights and constitutional matters

The Courts

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 Courts

The Court of Voluntary Jurisdiction – Presided over by one Judge

Non contentious 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 Courts

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 Courts

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 Courts

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 Courts

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 Courts

The Court of Criminal Appeal

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

The Courts

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 consist 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

The Industrial Tribunal – related to employment

Rent Regulation Board – related to rent

Small Claims Tribunal – claims of under €5,000



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 Voluntary Jurisdiction

656. (1) A secret will may be printed, type-written or written in ink either by the testator himself or by a third person.

Form of secret will.
Amended by:
[XVIII.2004.76.](#)

(2) Where the testator knows how to, and can write, the will shall, in all cases, be signed by him at the end thereof.

(3) Where the testator does not know how to, or cannot write, the provision of article 663 shall apply.

657. (1) The paper on which a secret will is written, or the paper used as its envelope shall be closed and sealed.

Paper containing secret will to be closed and sealed.

(2) The testator shall on delivering such paper declare that it contains his will.

658. (1) A secret will shall be delivered by the testator to a notary, or, in the presence of the judge or magistrate sitting in the court of voluntary jurisdiction, to the registrar of such court.

Delivery of secret wills.

(2) The will shall be deemed to have been made on the day on which it is so delivered.

659. (1) The notary who receives a secret will shall draw up the act of delivery, recording therein the declaration prescribed in sub-article (2) of article 657, on the paper itself on which the will is written, or on the paper used as its envelope.

Duties of notary receiving a secret will.

(2) The act of delivery shall be signed by the testator, the witnesses, and the notary.

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

35. (1) By personal separation pronounced by a judgment, or authorised by a decree, of the competent civil court, the obligation of cohabitation of the spouses shall cease for all civil effects.

Obligation of cohabitation to cease on separation.

Amended by:
[XXI.1993.22](#);
[LXV.2020.7](#).

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

(3) The court shall, in the decree or judgement 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 notify 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 personal separation.

36. Personal separation may not take place except on the demand of one spouse 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.

How separation may be obtained.

Amended by:
[XXI.1993.23](#).

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:

Personal separation.

Amended by:
[XXI.1993.24](#).
Substituted by:
[XXXI.2002.210](#).
Amended by:
[XX.2005.22](#);
[L.N. 218 of 2012](#);
[XIII.2018.25](#).

Provided that prior to the commencement of proceedings, a demand 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 spouses, if any, shall during the pendency of the proceedings continue to reside in the matrimonial home.

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

Sub-title VI

POWERS OF ARREST AND DETENTION

Arrest under warrant.
Added by:
[III.2002.74](#).

355V. Where there are lawful grounds for the arrest of a person, the Police may request a warrant of arrest from a Magistrate, unless in accordance with any provision of law the arrest in question may be made without a warrant.

Arrest by private persons.
Added by:
[III.2002.74](#).
Amended by:
[XII.2018.24](#).

355W. (1) Any person not being a police officer may arrest without warrant anyone who is in the act of committing or has just committed any crime concerning sexual offences, any crime of wilful homicide or bodily harm, or any crime of theft or of wilful unlawful entry or damage to property.

(2) The person making any arrest under sub-article (1) shall without delay inform the Police of the fact of the arrest and shall exercise such power only until it is strictly necessary for the Police to take over the person arrested.

Arrest by police without warrant.
Added by:
[III.2002.74](#).
Amended by:
[L.N. 274 of 2007](#);
[XI.2018.25](#).

355X. (1) Any police officer may arrest without warrant anyone who is in the act of committing or has just committed a crime punishable with imprisonment, or whom he reasonably suspects to be about to commit or of having just committed such a crime.

(2) Any police officer may also proceed to the arrest of any person in respect of whom an alert for his arrest has been entered in the Schengen Information System.

(3) Any police officer may also proceed to the arrest of any person who knowingly, or after due warning, obstructs or disturbs him in the execution of his duties, or disobeys his lawful orders.

(4) The powers mentioned in sub-articles (1), (2) and (3) shall only be exercised until it is strictly necessary for the police officer to convey the person arrested to a police station and deliver him to a superior officer not below the rank of sergeant.

355XX. Any police officer may detain without warrant any person who is indicated in an alert in the Schengen Information System as a missing person or a person who, for his own protection or in order to prevent threats, needs temporarily to be placed under police protection.

Detention without warrant under Schengen Information System.
Added by:
[L.N. 274 of 2007](#).

355Y. (1) In the case of contraventions, or of crimes not subject to the punishment of imprisonment, it shall be lawful for the Police to proceed to the arrest of any person without a warrant, provided that -

Arrest for minor offences.
Added by:
[III.2002.74](#).
Amended by:
[XI.2018.25](#).

- (a) the person be detected in the very act of committing the offence; or
- (b) the arrest be necessary to prevent the commission of an offence in respect of which the Police may institute criminal proceedings without the complaint of the injured party; and
- (c) in either of the cases mentioned in paragraphs (a) or (b) one of the conditions mentioned in article 355Z is satisfied.

(2) A person shall be deemed to be detected in the very act of committing an offence, if he is caught, either in the act of committing the offence, or while being pursued by the injured party or by the public hue and cry.

355Z. The general arrest conditions are -

General arrest conditions.
Added by:
[III.2002.74](#).

- (a) that the identity of the person is unknown or cannot be readily ascertained by the police officer; or
- (b) there is a doubt whether the particulars furnished by the person are true; or
- (c) that the person has not furnished a satisfactory address for service, or there are doubts about whether the address provided is satisfactory for service, or that at least some other person may according to law receive service on his behalf at the address given; or
- (d) that the arrest is necessary to prevent the person -
 - (i) causing physical harm to himself or to any other person; or
 - (ii) suffering physical injury; or
 - (iii) causing loss or damage to property; or
 - (iv) committing an offence against public decency; or

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

355Z. The general arrest conditions are -

- (a) that the identity of the person is unknown or cannot be readily ascertained by the police officer; or
- (b) there is a doubt whether the particulars furnished by the person are true; or
- (c) that the person has not furnished a satisfactory address for service, or there are doubts about whether the address provided is satisfactory for service, or that at least some other person may according to law receive service on his behalf at the address given; or
- (d) that the arrest is necessary to prevent the person -
 - (i) causing physical harm to himself or to any other person; or
 - (ii) suffering physical injury; or
 - (iii) causing loss or damage to property; or
 - (iv) committing an offence against public decency; or
 - (v) causing an unlawful obstruction on any public road; or
- (e) that the police officer has reasonable grounds for

General arrest conditions.
Added by:
III.2002.74.

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CAP. 9.]

CRIMINAL CODE

believing that the arrest is necessary to protect a child or any other vulnerable person.

Conduct towards person arrested.
Added by:
III.2002.74.

355AB. The officer or any other person authorised by law making an arrest shall not use any harshness, bond or other means of restraint unless indispensably required to secure, or rendered necessary by the insubordination of the person arrested.

Information to be given on arrest.

355AC. (1) When a person is arrested, the arrest is not lawful unless the person arrested is informed that he is under arrest, even though the arrest is made by a person not authorised by law to make an arrest.

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

OF THE EFFECTS OF OBLIGATIONS

Liability in case of non-fulfilment of obligation.

1125. Where any person fails to discharge an obligation which he has contracted, he shall be liable in damages.

Obligation to give a thing includes obligation to preserve and deliver.

1126. (1) The obligation to give a thing carries with it the obligation to deliver the thing, and to preserve it until the delivery.

(2) If the debtor is in default for delay in making the delivery, the thing shall be at his risk and peril, even though before such default it was at the risk and peril of the creditor.

Non-performance of an obligation to do.

1127. In case of non-performance of an obligation to do, the creditor may be authorized to cause the performance thereof himself at the expense of the debtor.

Infringement of obligation to forbear to do.

1128. Where the obligation is to forbear to do, the debtor who infringes the obligation is liable in damages for the mere fact of such infringement.

Rights of creditor where obligation to forbear to do is infringed.

1129. Saving his action for damages, the creditor may demand that anything done in breach of the obligation be undone, and may be authorized to undo it himself at the expense of the debtor.

When debtor is in default.

1130. (1) Where the obligation is to give or to do, and a time is fixed in the agreement, the debtor is in default by the mere lapse of such time, saving, as regards the payment of interest under article 1141, the provisions of that article.

(2) If no time is fixed in the agreement, or if the time expires after the death of the debtor, the debtor or his heir is not put in default except by an intimation by a judicial act.

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

ROAD CHECKS	
<p>355. The Police may organise a road check where there are reasonable grounds for believing that a check on vehicles in or passing through a locality may lead to -</p> <ul style="list-style-type: none"> (a) the arrest of a person who has committed or is reasonably suspected of having committed or of being about to commit a serious crime or (b) the discovery of anything the possession of which is prohibited or restricted by law or which is connected in any way whatsoever with the commission of a serious crime or which is evidence of any such crime; or (c) the arrest of any person whose arrest has been ordered by a court or any other lawful authority or who is otherwise unlawfully at large; or (d) the ascertainment that a person is not abiding by a condition lawfully imposed on him by a court; or (e) the ascertainment of violations of any law regarding motor vehicles or traffic regulation; or (f) the arrest, or ascertainment of whereabouts, of a person in respect of whom an alert has been entered in the Schengen Information System; or 	<p>Conditions for road checks. Amended by: VIII.1857.II; V.1868.20. Substituted by: III.2002.74. Amended by: L.N. 247 of 2007; XI.2018.25.</p>
210	CAP. 9.] CRIMINAL CODE
<p>(g) the discovery of any property in respect of which an alert has been entered in the Schengen Information System;</p> <p>Provided that for the purposes of this article "serious crime" means any crime liable to the punishment of imprisonment.</p>	

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 ?

*CRIMINAL CODE***[CAP. 9.]****7**

1. The title of this Code is Criminal Code.

Title.

PRELIMINARY PROVISIONS

2. Offences are divided into crimes and contraventions.

Classification of offences.

*Amended by:
XI.1900.1.*

3. (1) Every offence gives rise to a criminal action and a civil action.

Actions arising from an offence.

*Amended by:
VI.1871.1.*

- (2) The criminal action is prosecuted before the courts of criminal jurisdiction, and the punishment of the offender is thereby demanded.

- (3) The civil action is prosecuted before the courts of civil jurisdiction, and compensation for the damage caused by the offence is thereby demanded.

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