

Diploma in Law (Malta)

The Courts of Malta

Lecturer: Dr Sarah V Ciliberti

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Diploma in Law (Malta)



CAMILLERI PREZIOSI
ADVOCATES

Re-Cap of Lecture 3

- The Courts
- The Attorney General
- The State Advocate
- The Commission for the Administration of Justice
- The Separation of Powers
- The Rule of Law



Today's Lecture

In today's lecture we should be covering the following topics:

- Tribunals & Boards
- Courts
- Human Rights
- European Convention
- EU Law



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

Article 31 et seq. COCP

Article 367 Chp. 9



The Small Claims Tribunal

- Small Claims Tribunal Act – Chapter 380 of the Laws of Malta
- Money Claims not exceeding €5,000
- What about costs and interest?

The Small Claims Tribunal

3. (1) There shall be a Tribunal to be styled the Small Claims Tribunal.

(2) Subject to subarticle (5), the Small Claims Tribunal shall have jurisdiction to hear and determine only all money claims of an amount not exceeding five thousand euro (€5,000):

Provided that, in determining the sum referred to in this subarticle, no account shall be taken of fees and costs relative to the same claim.

- (3) (a) If the plaintiff claims payment of several sums due for the same cause, the value of the claim is to be determined by the total amount of the claims.
- (b) If the plaintiff claims payment of several sums due for different causes, the value of the claim is determined by the highest sum, irrespective of the smaller sums.
- (c) If the claim is for capital and interest, the value is determined by the aggregate of all the capital sums claimed, and the Tribunal shall have jurisdiction over the claim notwithstanding that the capital and interest claimed in their aggregate exceed five thousand euro (€5,000).

Establishment of tribunal.

Amended by:

XII. 1998.2;

VI. 2001.27;

XXXI. 2002.227;

L.N. 425 of 2007;

IV. 2016.26.

The Small Claims Tribunal

(5) Causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, even though the claim does not exceed five thousand euro (€5,000), and causes of ejectment or eviction from immovable property shall not fall within the jurisdiction of the Tribunal.

The Small Claims Tribunal

- Parties may be assisted by any person before the Small Claims Tribunal

Adjudicators.
Amended by:
VI. 2001.27.

4. (1) The Tribunal shall be presided by an adjudicator sitting alone:

Provided that more than one adjudicator may be appointed to sit in any of the said Tribunals, but only one adjudicator shall sit in any one case.

(2) Adjudicators shall be appointed by the President acting in accordance with the advice of the Prime Minister. A person shall not be qualified to be appointed as Adjudicator unless he has practised as an advocate in Malta for a period or periods amounting in the aggregate to not less than seven years.

Gozo – Court

Court of Magistrates in Gozo has a two-fold jurisdiction – acting both as the Court of Magistrates and as the First Hall Civil Court – presided over by a Magistrate and not a Judge

Human Rights – The European Convention on Human Rights



Human Rights – The European Convention on Human Rights

Ratified – 23rd January 1967

European Convention Act – Chapter 319 of the Laws of Malta

The Constitution of Malta

Dual protection of rights

EU Charter of Fundamental Human Rights



Human Rights – The European Convention on Human Rights

Section 1 of the Convention deals with Rights and Freedoms

Article 2 – Right to life

Article 3 – Prohibition of Torture

Article 4 – Prohibition of Slavery and forced labour

Article 5 – Right to Liberty and Security

Article 6 – Right to Fair Trial

Article 7 – No Punishment without law

Article 8 – Right to respect for private and family life

Article 9 – Freedom of thought, conscience and religion

Human Rights – The European Convention on Human Rights

Section 1 of the Convention deals with Rights and Freedoms

Article 10 – Freedom of Expression

Article 11 – Freedom of assembly and association

Article 12 – Right to Marry

Article 13 – Right to effective remedy

Article 14 – Prohibition of discrimination

Article 15 – Derogation in time of emergency

Article 16 – Restrictions on political activity of aliens

Article 17 – Prohibition of abuse of rights

Article 18 – Limitation on use of restrictions on rights

Human Rights – The European Court on Human Rights

The European Court on Human Rights was set up in 1959 and is based in Strasbourg

Proceedings are instituted against the state – v. Malta

Enforceable by individuals

Human Rights – The European Court on Human Rights

Individuals must have exhausted all national remedies prior to instituting proceedings before the European Court on Human Rights

Courts decisions are binding on States – must ensure that appropriate measures are taken

Changes or introduction of legislation + payment to individuals is to be ensured by the Committee of Ministers

Human Rights – The European Court on Human Rights

1. One judge from each member state – 46 judges
2. Term of 9 years which is non renewable
3. 1 judge – admissibility
4. 3 judges – repetitive cases
5. 7 judges – more complex cases
6. 17 judges – exceptional cases whereby caselaw is usually newly established (Grand Chamber)

Official languages are english and french

Rule of law

Camilleri v Malta (2021)

Article 6 – right to a fair trial

Concerned expropriation of land which was taken by the government for a public purpose without the payment of fair compensation. The court found a breach based on the fact that the case took excessively long resulting in the breach of the applicants right to a fair trial – reasonable time!

Falzon v Malta (2018)

Article 10 – Freedom of expression



Regulations v Directives

European Union regulations differ in a number of aspects;



Regulations

Regulations are DIRECTLY applicable. So, upon publication they automatically form part of national law.

Therefore, every member state has the same law on a given matter – ensuring uniformity

GDPR



Directives

EU Directives are still binding on member states however are not directly applicable. Directives provide states with a goal or result which they must achieve but it is up to every given member state as to how to achieve that result or fulfill that goal.

This is usually done by legislative amendments or introductions. Each and every member state is given a deadline. If the given deadline is not met a formal procedure is instituted whereby the state may be condemned to pay penalties according to the duration of infringement and the seriousness of the breach

Prescription

Prescription is one of the modes of exhaustion of an action.

OF PRESCRIPTION

687. (1) Sentences awarding punishment shall not be barred by prescription notwithstanding the lapse of any time.

(2) The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and, or bill of indictment is served on the person charged or accused until such time as a final and definitive judgment is delivered in the proceedings which commenced as a result of such charge or bill of indictment.

688. Save as otherwise provided by law, criminal action is barred-

- (a) by the lapse of twenty years in respect of crimes liable to the punishment of imprisonment for a term of not less than twenty years;
- (b) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;
- (c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;
- (d) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;

Prescription

CRIMINAL CODE

[CAP. 9.

403

- (e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (*multa*) or to the punishments established for contraventions;
- (f) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions.

Prescription

CIVIL CODE

[CAP. 16. 43]

83. Proof to the contrary may be made by evidence tending to show that the claimant is not the child of the person that he alleges has given birth to him, or, where this is proved, that he is not the child of the other spouse.

Evidence to the contrary.

Amended by:
[XXIII.2017.44.](#)

84. No prescription shall run for an action for a child to establish his proper filiation.

Action not barred by prescription.

Amended by:
[XVIII.2004.7.](#)
Substituted by:
[XV.2012.7.](#)

Prescription

1431. (1) The *actio redhibitoria* and the *actio aestimatoria* shall, in regard to immovables, be barred by the lapse of one year as from the day of the contract, and, in regard to movables, by the lapse of six months as from the day of the delivery of the thing sold.

(2) Where, however, it was not possible for the buyer to discover the latent defect of the thing, the said periods of limitation shall run only from the day on which it was possible for him to discover such defect.

(3) The said periods of limitation shall run as provided in sub-article (2) of article 1407.

Limitation of action.

Amended by:
[XXVIII.1994.45.](#)

Prescription

Actio redhibitoria
and *actio*
aestimatoria.

1427. In the cases referred to in articles 1424 and 1426, the buyer may elect either, by instituting the *actio redhibitoria*, to restore the thing and have the price repaid to him, or, by instituting the *actio aestimatoria*, to retain the thing and have a part of the price repaid to him which shall be determined by the court.

Prescription

CIVIL CODE

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Prescription

2153. Actions for damages not arising from a criminal offence are barred by the lapse of two years.

Actions for damages not arising from criminal offence.

Prescription

Actions barred by
the lapse of
eighteen months.
Amended by:
[L.2017.2.](#)

2148. The following actions are barred by the lapse of eighteen months:

- (a) actions of tailors, shoemakers, carpenters, masons, whitewashers, locksmiths, goldsmiths, watch-makers, and other persons exercising any trade or mechanical art, for the price of their work or labour or the materials supplied by them;
- (b) actions of creditors for the price of merchandise, goods or other movable things, sold by retail;
- (c) actions of persons who keep educational or instructional establishments of any kind, for the payment of the fees due to them;
- (d) actions of persons for the payment of their salary;
- (e) actions of brokers for brokerage fees;
- (f) actions of any person for the hire of movable things.

Actions barred by
the lapse of two
years.
Amended by:
L.N. 148 of 1975;
[VIII.2007.25.](#)

2149. The following actions are barred by the lapse of two years:

- (a) actions of builders of ships or other vessels, and of contractors in respect of constructions or other works made of wood, stone or other material, for the works carried out by them or for the materials supplied by them;
- (b) actions of physicians, surgeons, obstetricians and apothecaries for their visits or operations or for medicines supplied by them;

Prescription

Prescription can be interrupted in which case the prescriptive period shall once again begin to run

Proof

Civil law – on the basis of probabilities

Criminal law – beyond reasonable doubt



Proof

This evidence does not satisfy all the criteria mentioned above on the basis of which circumstantial evidence can secure a conviction. This Court, as a court of criminal jurisdiction cannot convict an accused person on the basis of a balance of probabilities – even though this balance could have been satisfied. Being a court of criminal jurisdiction this Court has to reach a higher degree of sufficiency of evidence and a higher level of moral satisfaction to secure a criminal conviction. It has to base itself on such quality of evidence that proves beyond a reasonable doubt that it was the accused, and no one else, who committed the crime. This level of sufficiency of evidence and moral satisfaction was not reached in this case and therefore the Court is bound to acquit the accused from the criminal charges brought against her.

The Police
(Inspector Joseph Mercieca) vs
Lela Ristic



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