

Diploma in Law

Lecture 17: Module Revision

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**Diploma in Law
(Malta)**

Foundational Principles of Civil Law



Foundational Principles of Civil Law

What law is the basis of Maltese civil law?

What fundamental principle is established through the Corpus Juris Civilis? What does it mean?

What are servitudes? Give examples.



Foundational Principles of Civil Law

What law is the basis of Maltese civil law?

Roman law

What fundamental principle is established through the Corpus Juris Civilis? What does it mean?

Rule of law - the principle that one cannot take the law into their own hands, but must seek redress

What are servitudes? Give examples.

Legal burdens on property.

The right of passage, right of use, right to have drains passing through adjacent property

Court Structure & Competences



Court Structure & Competences

How are the Maltese Courts established?

What is the language of the Courts?

What do Court Registries do?

Which are the Superior Courts?



Court Structure & Competences

How are the Maltese Courts established?

By law & order of the President.

What is the language of the Courts?

Generally Maltese, but English may be used.

What do Court Registries do?

Oversee the filing and service of all judicial acts, execution of titles, warrants, and judicial sales

Which are the Superior Courts?

Civil Court (& its subdivisions), Court of Appeal, Constitutional Court

Court Structure & Competences

Which are the Inferior Courts?

Name 3 Tribunals.

What is the competence limit of the Court of Magistrates?



Court Structure & Competences

Which are the Inferior Courts?

Court of Magistrates - Malta & Court of Magistrates - Gozo in its inferior jurisdiction

Name 3 Tribunals.

Local Tribunals, Small Claims, Administrative Review, Industrial, Consumer Claims

What is the competence limit of the Court of Magistrates?

Claims of up to €15,000

Judicial Acts



Judicial Acts

What are Judicial Acts / Atti Uffiċjali? Give examples.

How is a judicial act served to the opposing party?

Judicial Acts

What are Judicial Acts / Atti Uffiċjali? Give examples.

Any document filed in Court through the Registry. Judicial letters, Applications, Warrants

How is a judicial act served to the opposing party?

1st attempt: registered post

2nd attempt: Court marshal

3rd attempt: after legal hours

4th attempt: publication in Gazette, 1 daily newspaper, affixation to the place of residence, police station, or local council

Judicial Acts

Name elements which are common to all judicial acts.

What elements are specific to a 166A judicial letter?

What is the aim of a Judicial Protest / Protest Ġudizzjarju?

Judicial Acts

Name elements which are common to all judicial acts.

Must be printed / typed / in ink, must include details on the forum before which it is being filed, the parties involved, reference to the case no (if any), the substantive pleading

What elements are specific to a 166A judicial letter?

Debt has to be liquid, certain, and due and not exceeding €25,000. Judicial letter needs to be sworn and needs the warning found in the law. Needs to detail the cause of claim; reasons why claim should be upheld; statement of facts in its support; confirmation on oath

What is the aim of a Judicial Protest / Protest Ġudizzjarju?

Used to place a party in bad faith - dolo, moro, et culpa, as a warning to do / stop doing something. Interrupts prescription.

Precautionary Acts & Warrants



Precautionary Acts & Warrants

What are precautionary acts? Give examples.

How are precautionary acts demanded?

How are precautionary warrants revoked?



Precautionary Acts & Warrants

What are precautionary acts? Give examples.

Acts intended to preserve a situation pending proceedings. Warrant of description, seizure, garnishee order

How are precautionary acts demanded?

By means of an application with the details required by law.

How are precautionary warrants revoked?

By means of an application for a counter-warrant. May request the total or partial revocation and must include all submissions in its support.

Executive Titles & Warrants



Executive Titles & Warrants

What are executive titles? Give examples.

How are executive titles generally enforced?

Can an executive title be enforced against a deceased party?

Give examples of executive acts



Executive Titles & Warrants

What are executive titles? Give examples.

Legal tools allowing practical execution of a claim. Include judgments, contracts on debts, arbitration awards, bills of exchange, etc

How are executive titles generally enforced?

By means of a judicial act against the other party, then the issue of an executive act.

Can an executive title be enforced against a deceased party?

Yes - by application against their heirs.

Give examples of executive acts

Warrants of seizure, judicial sales by auction, executive garnishee orders

Judicial Procedure



Judicial Procedure

What are the cardinal rules of the law of evidence?

Who can be summoned to testify as witness?

What is hearsay evidence? Is it admissible?



Judicial Procedure

What are the cardinal rules of the law of evidence?

Relevance, best evidence, onus of proof

Who can be summoned to testify as witness?

Any person of sound mind, as long as they understand the obligation to tell the truth, and are competent

What is hearsay evidence? Is it admissible?

It is evidence which is based on what others have told the witness, not what the witness perceived directly. As a rule this is not admissible but the court may allow it if the third party cannot be produced, or if the relation between the witness and the third party has a material bearing on the issue

Judicial Procedure

How are witnesses examined?

Who are the main parties to an action? Can there be other parties?

What is a referee?

What is Contumacy, and does it always lead to the plaintiff's victory?



Judicial Procedure

How are witnesses examined?

Examination in chief, cross-examination, re-examination and re-cross-examination if permitted by court

Who are the main parties to an action? Can there be other parties?

The plaintiff & defendant. In some cases you may also have intervenors and joinders

What is a referee?

The court appointed technical expert, guiding it on technical matters.

What is Contumacy, and does it always lead to the plaintiff's victory?

Contumacy is a state the defendant falls into if they do not file a reply or file it too late.

The plaintiff cannot rest on this 'silence' - the case must be proved to the court's satisfaction.

Judicial Procedure

How is an appeal filed?

What can an appeal demand?

What is a cross-appeal?

Can a case be renounced? How?



Judicial Procedure

How is an appeal filed?

Within the time frame at law and by means of an application

What can an appeal demand?

Reversal, variation, or annulment of the original judgment, in part or in whole

What is a cross-appeal?

An appeal from heads of the judgment which are not appealed from in the original appeal.

Can a case be renounced? How?

Yes, by means of a note at any stage of the proceedings before judgment.

Judicial Procedure

What are pleas?

What is a peremptory plea? Give an example.

What is a dilatory plea? Give an example.



Judicial Procedure

What are pleas?

Any submission of fact or law intended to neutralise the plaintiff's claim or act as an obstacle to it.

What is a peremptory plea? Give an example.

A plea that affects the merits of the case and can extinguish the action. Plea of capacity of the parties, lis alibi pendens, connection of actions

What is a dilatory plea? Give an example.

A plea that merely delays the action. Plea of recusal, jurisdiction, benefit of discussion, falsification, change of parties



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Special Proceedings



Special Proceedings

When can special summary proceedings be demanded?

What administrative actions can be challenged by judicial review?

What judicial act must be filed before starting actions against Government?



Special Proceedings

When can special summary proceedings be demanded?

For the recovery of a debt that is certain, liquid, due; eviction of any person; eviction of any operator from vessels or aircrafts

What administrative actions can be challenged by judicial review?

Any order, licence, permit, warrant, decision, or rejection of a demand by a claimant by a public authority

What judicial act must be filed before starting actions against Government?

A judicial letter or protest stating the right / demand sought. A 10 day wait following service is also required by law.

Special Proceedings

What action can I file if someone is claiming they have a right which affects my own rights?

At what stage can a counter-claim be filed?

On what basis can a counter-claim be filed?



Special Proceedings

What action can I file if someone is claiming they have a right which affects my own rights?
Jacitation.

At what stage can a counter-claim be filed?
Immediately upon service of the application starting proceedings, together with the filing of the reply.

On what basis can a counter-claim be filed?
When it arises from the same fact, contract, or title giving rise to the original claim.



The Civil Court (Family Section)



The Civil Court (Family Section)

Define maintenance, whether it be for spouses or for children

What can extinguish separation proceedings?

What is the difference between separation and divorce?

When can parental authority be forfeited? Give examples

The Civil Court (Family Section)

Define maintenance, whether it be for spouses or for children

Maintenance is the payment of expenses including food, clothing, health, habitation, and education

What can extinguish separation proceedings?

Reconciliation or death of either spouse

What is the difference between separation and divorce?

Separation ends the obligation of cohabitation among others; divorce grants the right to remarry

When can parental authority be forfeited? Give examples

*Ill-treatment, neglect, danger to the child's education, interdiction of the parent
mismanagement of property, failure to care for the child*

The Civil Court (Family Section)

Can minors marry?

What are the effects of a civil union?

How is cohabitation established?



The Civil Court (Family Section)

Can minors marry?

No

What are the effects of a civil union?

Identical to those acquired when marriage is contracted

How is cohabitation established?

By means of a public deed enrolled in the Public registry



The Civil Court (Family Section)

What is the first step in most actions in the Family Section?

When can mediation be dispensed with?

What happens when the parties agree on a separation agreement?



The Civil Court (Family Section)

What is the first step in most actions in the Family Section?

Mediation

When can mediation be dispensed with?

When domestic violence is alleged or proved.

What happens when the parties agree on a separation agreement?

The mediator refers the agreement to the judge for authorisation, then it is signed before a notary, then enrolled in the Public Registry

The Civil Court (Family Section)

Do the parties have to be legally separated to file for divorce?

What are the main issues which are disputed in actions over children?

Can a person bring an action to clarify their own parentage? How?



The Civil Court (Family Section)

Do the parties have to be legally separated to file for divorce?

No

What are the main issues which are disputed in actions over children?

Care and custody, maintenance, access

Can a person bring an action to clarify their own parentage? How?

Yes, by application against the parents and alleged natural parent.

The Civil Court (Voluntary Jurisdiction Section)



The Civil Court (Voluntary Jurisdiction Section)

What is the nature of the COVJ?

What is the consequence of adoption for adopted children?

Can a minor sibling apply to be their minor sibling's tutor?

Who may be the subject of a Guardianship Order?



The Civil Court (Voluntary Jurisdiction Section)

What is the nature of the COVJ?

Voluntary, non-contentious

What is the consequence of adoption for adopted children?

They acquire all rights and obligations of natural children

Can a minor sibling apply to be their minor sibling's tutor?

No - tutors must be over the age of 18.

Who may be the subject of a Guardianship Order?

Persons with mental disorders / conditions rendering them incapable of taking care of their affairs

The Civil Court (Voluntary Jurisdiction Section)

What is the difference between interdiction and incapacitation?

When can a tutor or curator be appointed?

Can a secret will be withdrawn? How?



The Civil Court (Voluntary Jurisdiction Section)

What is the difference between interdiction and incapacitation?

Interdiction: loss of all legal capacity

Incapacitation: loss of specific legal capacity

When can a tutor or curator be appointed?

To care for minors, vacant inheritances, absentees, or any other reason at law

Can a secret will be withdrawn? How?

Yes, directly by the testator or his special attorney.

The Civil Court (Voluntary Jurisdiction Section)

How may an inheritance be accepted?

When do COVJ decrees expire?

Who issues a Guardianship Order?

What is done with a decree of interdiction or incapacitation?

The Civil Court (Voluntary Jurisdiction Section)

How may an inheritance be accepted?

Unconditionally or with the benefit of inventory

When do COVJ decrees expire?

Generally after 6 months from delivery

Who issues a Guardianship Order?

The Guardianship Board

What is done with a decree of interdiction or incapacitation?

Published in the Gazette and notified to the Archivist of the Notarial Acts and registered in a specific register

Alternative Dispute Resolution



Alternative Dispute Resolution

What is ADR?

What are the main principles of ADR?

Name 3 forms of ADR

Do all forms of ADR lead to conclusive, legally binding outcomes?



Alternative Dispute Resolution

What is ADR?

Any dispute resolution system that does not involve court litigation

What are the main principles of ADR?

Fairness, accessibility, efficiency, timeliness, effectiveness

Name 3 forms of ADR

Negotiation, early neutral evaluation, conciliation, ombudsmen, arbitration, mediation, med-arb

Do all forms of ADR lead to conclusive, legally binding outcomes?

No





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