

Health and Safety Essentials

Lecture 3 – Health and Safety Legislation

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**Undergraduate Diploma in
Occupational Health and Safety**

Recap last week's topic

- **How many watched the full video and read the CSB investigation report?**
- **Based on what you saw in the video and read in the report, which of Fayol's management functions (Planning, Organising, Leading, Controlling) failed most clearly on the Deepwater Horizon rig and why?**



H&S Legislation - Learning Objectives

- **Understand Malta's legal system and how OHS legislation fits within it.**
- **Identify key Maltese OHS laws under Cap. 646 and its subsidiary legislation (S.L. 646.xx).**
- **Recognise the relationship between EU directives and national transposition.**
- **Compare Maltese, European, and global approaches to OHS regulation.**
- **Apply legal knowledge to real workplace compliance situations.**



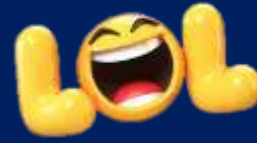
Introduction

What is Law and

Why
Do We
Need
laws?



Laws - Fun facts



1. **Drunk in charge of a cow?** 🐮🍺
 - In England and Wales, it is an offence to be drunk while in charge of cattle, a horse or even a steam engine in a public place. *Licensing Act 1872, Section 12.*
2. **Handling a salmon suspiciously?** 🐟
 - UK legislation actually contains an offence of handling fish in suspicious circumstances!
 - The real purpose is to combat illegally caught fish, not suspicious facial expressions. *Salmon Act 1986, Section 32. Legislation.gov.uk*
3. **Leaving a ladder unattended?** 🪜
 - Under Roman law, if you left a tool out (like a spade, a rope, or a ladder) and a thief used it to commit a crime, you weren't arrested as a thief, but you could be sued under a concept called culpa (negligence).! *Lex Aquilia*
4. **Selling chewing gum? Not in Singapore!** 🍬
 - Singapore generally prohibits the sale and advertisement of chewing gum, with exceptions for certain registered health products. *Sale of Food (Prohibition of Chewing Gum) Regulations. Singapore Statutes Online*



Historical Foundations of the Maltese Legal System

- **Influence of Foreign Rule:**
 - Malta's legal system is shaped by centuries of foreign domination.
 - Notable influences: Knights Hospitaller, French Napoleonic Code, and British Colonial Rule.
- **Code de Rohan (1784):**
 - Malta's first codification of laws during the rule of the Knights Hospitaller.
 - Replaced by a Maltese version of the Code Napoleon in 1852 under British influence

Development of Malta's Legal Codes

- **Key Codifications (mid-19th century):**
 - **Code of Organisation and Civil Procedure.**
 - **Criminal Code and Code of Criminal Procedure.**
- **Sir Adrian Dingli's Contribution:**
 - **Led the drafting of these codes, heavily influenced by continental law**
 - **Introduced trial by jury and rights for the accused, inspired by British legal traditions.**

Criminal and Civil Law – Dual System in Malta

- **Criminal Law:**
 - Deals with offenses against the state or society.
 - Punishments: Imprisonment, fines, community service, etc.
 - Governed by the Criminal Code (influenced by continental law with British procedural elements).
- **Civil Law:**
 - Governs disputes between individuals or entities (contracts, property, family law).
 - Governed by the Civil Code, rooted in Roman law and Napol traditions.

The Influence of UK Common Law on Maltese Law

- **Common Law Influence:**
 - British common law was never formally adopted.
 - Elements like trial by jury and procedural fairness were incorporated, especially in criminal law.
- **Blending with Civil Law:**
 - Malta's civil law remains continental (Roman law and Napoleonic Code).
 - UK's influence seen in company law, fiscal law, and constitutional structure.

Why Legislate Health & Safety?

- Because **safe and healthy work** is a *fundamental human right* recognised by the ILO and EU among many other countries.
- Legislation defines the **minimum standards** every employer must meet — regardless of size, resources, or awareness.
- It creates **accountability and consistency** — everyone understands their duties and liabilities.
- Provides a **framework for enforcement and legal redress** when harm occurs.
- Prevents the “**race to the bottom**” — ensuring fair competition between responsible employers.
- Encourages **prevention over reaction**, saving lives, costs, and reputations.

☐ **Key Message:**

“Without legislation, safety remains optional — with legislation becomes a shared obligation.”

becomes a



The Impact of Legislating OHS

- 1  **Workers** — Protected from injury, illness, and exploitation.
- 2  **Employers** — Clear duties, reduced liability, improved productivity.
- 3  **Society** — Fewer workplace accidents, reduced healthcare burden, and greater trust in institutions.

**“Effective health and safety legislation doesn’t only prevent harm
— it defines the moral standard of a civilised workplace.”**



Historical Context of Health and Safety Laws

- **The Industrial Revolution was a starting point.**
- **Notable disasters that influenced legislation.**
 - **Triangle Shirtwaist Factory Fire (1911 - US).**
 - **Seveso Disaster (1976 – Italy - EU).**
 - **Bhopal Disaster (1984 - India).**
 - **Piper Alpha Disaster (1988 - UK).**
 - **Jean Paul Sofia Inquiry (2024) – catalyst for Act XXXIII of 2024 – Health and Safety at Work Act (Cap. 646) replacing Cap. 424.**



Malta's Legislative Framework

- **EU Directives:** *Set the overarching framework for safety and health at work across all EU Member States.*



- **Cap. 646 – Health and Safety at Work Act (Act XXXIII of 2024)**



- **Subsidiary Legislation (S.L. 646.xx)**
Specific, detailed regulations giving practical effect to the Act



- **Administrative Instruments (also Guidelines)**
Issued by OHSa Malta to serve to clarify, guide, or operationalise the application of existing legal provisions in practice.



- **Company Policies & Risk Assessments**

From Act 27 of 2000 to Act 33 of 2024

Key Improvements

- **Increased Penalties (up to €50,000 and 4 years' imprisonment)**
- **Introduction of the Health and Safety Reporting Officer (HSRO)**
- **Expansion of Administrative Penalties and Special Compromise**
 - Publishing offences – name and shame over €3k
- **Broader Range of Offenses**
- **Employer's Continued Accountability**



From L.N. 88 of 2018 to L.N. 52 of 2025

Key Improvements

- **Empowerment of Project Supervisor for OHS Matters (PSHS)**
 - **Defined responsibilities**
- **PSHS empowered to act as HSRO on construction sites**
 - **May be obliged to report the Client and or contractors to OHSA**
- **Introduction of the role of Client Representative**
- **Client's Continued Accountability**

Penalties for Non-Compliance

Aspect	Act 27 of 2000 (Cap. 424)	Act 33 of 2024 (Cap. 646)
Maximum Fines	Fines varied by severity, generally from €465 to €11 000.	Fines significantly increased – from €1 000 to €50 000 for major breaches, including failure to appoint an HSRO.
HSRO Responsibilities	<i>Not provided for.</i>	HSRO must report non-compliance and is criminally liable for failure to do so.
Employer's Liability	Employers remained liable even with external contractors.	Employers remain fully liable, but the HSRO is also accountable for their designated duties.
Administrative Penalties	Limited; mostly reliant on judicial process.	Extensive administrative powers – OHSA may issue direct fines, directives or enforcement notices .
Special Compromise Fine (New)	<i>Not provided for.</i>	<p>OHSA may offer a Special Compromise under Article 22: an out-of-court settlement where the offender admits liability and pays a fixed fine.</p> <ul style="list-style-type: none">• Payment avoids criminal prosecution.• Fine level determined by OHSA within legal thresholds.• Non-payment results in reinstated legal proceedings.

Discussion – "Everything Is Compliant... Or Is It?"

- **Scenario:**
- **You have recently joined a manufacturing company as its H&S Officer.**
- **During your first inspection, you discover that:**
 - **The company has an H&S policy and documented risk assessments.**
 - **All employees have signed their safety training records.**
 - **A machine guard is regularly removed to speed up production when needed to.**
 - **Workers confirm that management is aware of the situation.**
 - **No accidents have occurred, and production targets are being met.**
- **The Production Manager tells you:**

"We've been operating like this for years without an accident. All our H&S paperwork is in order. What's the problem?"
- **Would you consider this company legally compliant? Why or why not?**

Break



European Legislation

EU Framework Directive 89/391/EEC

- **Introduction of measures to improve the safety and health of workers.**
- **Applies to all sectors, private or public.**
- **Employers' responsibility to ensure worker safety.**
- **Reinforced by the EU Strategic Framework on Health and Safety at Work (2021 – 2027) focusing on Vision Zero, digital and green transitions, and psychosocial wellbeing.**



Key EU Directives Impacting OHS

- **Directive 2009/104/EC – Use of Work Equipment (S.L. 646.24)**
- **Directive 2003/88/EC – Working Time (S.L. 452.87)**
- **Directive 98/24/EC – Chemical Agents (S.L. 646.10)**
- **Directive 2000/54/EC – Biological Agents (S.L. 646.11)**
- **And more.....**

Key Principles of the Framework Directive

- **Employers' Responsibility:** Employers must ensure the health and safety of workers in every aspect related to their work. This includes identifying hazards, conducting risk assessments, and implementing measures to eliminate or reduce risks.
- **Risk Assessment:** Employers must assess the risks that workers are exposed to and take preventive measures to control or minimize these risks. The assessment must be updated regularly to reflect any changes in working conditions or new hazards.



Key Principles of the Framework Directive

- **Preventive Measures:** The directive encourages a proactive approach to safety by prioritising prevention over reactive measures. Employers are required to avoid risks, evaluate unavoidable risks, and combat risks at the source.
- **Training and Information:** Workers must be provided with appropriate training and information related to their health and safety at work. This ensures that employees know potential hazards and how to protect themselves.



Key Principles of the Framework Directive

- **Worker Participation:** Workers or their representatives must be involved in health and safety discussions, allowing them to contribute to the development of safety policies and procedures. This promotes a culture of safety where employees have an active role in managing risks.
- **Health Surveillance:** Employers must provide workers with regular health surveillance, especially when the nature of their work poses significant risks. This allows for early detection of work-related health issues.



Key Principles of the Framework Directive

- **General Safety Principles:** The directive promotes several general principles of prevention, including:
 - Avoiding risks.
 - Evaluating risks that cannot be avoided.
 - Combating risks at their source.
 - Adapting the work to the individual (e.g., in terms of workplace design).
 - Replacing dangerous practices or materials with less hazardous ones.
 - Giving priority to collective protective measures over individual protective measures (e.g., protective equipment).
 - Developing coherent policies for health and safety at work.



EU Machinery Regulation (EU) 2023/1230

- **Not specifically OHS legislation – but directly relevant to workplace safety!**
 - **From 20 January 2027:** Replaces Machinery Directive 2006/42/EC.
 - **Direct applicability:** An EU Regulation, rather than a Directive requiring national transposition.
 - **Safe by design:** Establishes requirements for machinery design, manufacture, conformity assessment and CE marking.
 - **Emerging risks:** Addresses safety implications of AI, software and cybersecurity.
 - **Substantial modifications:** Significant changes to existing machinery may trigger new manufacturer obligations.
- **Two complementary legal responsibilities**
 - **Machinery Regulation:** Ensures machinery meets applicable safety requirements when placed on the market or put into service.
 - **OHS Legislation:** Requires employers to ensure machinery is safely installed, operated, inspected, maintained and used.
- **Key Message:**
CE marking is not a guarantee of continued safety. Employers remain responsible for safe machinery use throughout its working life.
- **Food for thought:** A company modifies a CE-marked machine to increase production speed. Is its original CE marking still sufficient?

Transposing EU Laws into National Law

- **How EU laws influence national legislation.**
- **Importance of harmonisation across member states.**
- **Malta transposes EU Directives through Subsidiary Legislation (S.L. 646.xx) issued under Cap. 646. Ensures consistency with minimum EU requirements and harmonisation across Member States.**



Breakout Activity – Discuss a Directive

- **In your groups, discuss:**

- 1 ☐ ***The Machinery Directive* (or the New Regulations) –**

- How do design and certification standards (e.g. CE marking, guarding, emergency stops) protect users in your workplace or sector?

- 2 ☐ ***The Work Equipment Directive* –**

- How does your company ensure safe use, inspection, and maintenance of machinery already in operation?

- 3 ☐ ***Linking the Two* –**

- Why do both directives need to work together?
What could go wrong if either one is ignored?

Global Health and Safety Legislation

- **OSHA (1970) in the US.**Health
- **Safety at Work Act (1974) in the UK.**
- **The legal and administrative framework for work safety. China's 2002 Work Safety Law (安全生产法)**

Are they important to know about?



Comparison of Global and Maltese Laws



- **How Maltese laws align with or differ from global standards?**
- **How Global best practices adopted in Malta?**

Similarities....some examples

All modern OHS laws share five core principles:

1 Employer Responsibility

- Every framework makes the employer legally accountable for workers' safety and health — not the worker or inspector.

2 Worker Rights

- The right to a safe workplace, training, consultation, and to refuse unsafe work appears in all systems.

3 Risk Prevention Approach

- Laws in the EU, UK, Australia, and Malta all require *risk assessment and preventive control* — not just reaction after accidents.

4 Joint Participation

- Worker representation (safety reps/committees) is protected in most laws — from Malta's Cap. 646 to OSHA (US) and India's 2020 Code on OSH.

5 Enforcement & Accountability

- Regulators are empowered to inspect, issue improvement/prohibition notices, and prosecute breaches — with administrative or criminal penalties.

Similarities....some examples continued...

- **EU Framework Directive (1989)** – foundation for Cap. 646, requiring prevention and worker involvement.
- **UK HASAWA (1974)** – introduced the “so far as is reasonably practicable” principle now used globally.
- **US OSHA Act (1970)** – made enforcement federal and standardised penalties across all states.
- **Australia’s WHS Act (2011)** – emphasises consultation, cooperation, and coordination across employers and contractors.
- **India’s OSH Code (2020)** – consolidates 13 previous laws, aiming to align with ILO conventions.
- **China’s Work Safety Law (2002, amended 2021)** – enforces heavy penalties for serious accidents and negligence.



Differences

1 Enforcement Models

- **EU / Malta / UK:** *Preventive and consultative* — inspectors guide, warn, and prosecute only for serious breaches.
Example: OHSa Malta issues improvement and prohibition notices before prosecution.
- **US (OSHA):** *Prescriptive and punitive* — heavy reliance on detailed standards and post-incident enforcement.
Example: Fixed penalties per violation, immediate citations.
- **China & India:** *Directive and command-based* — strong top-down enforcement; less worker participation.
Example: China's amended Work Safety Law (2021) allows plant closures and detentions for severe accidents.

Differences continued...

2 Legal Philosophy

- **UK / Malta / Australia:** “*So far as is reasonably practicable*” – risk must be reduced unless cost is grossly disproportionate.
- **EU:** “*Risk prevention at source*” – systematic hazard elimination and substitution.
- **US:** “*Compliance with prescriptive standards*” – legal safety achieved by following detailed OSHA rules.
- **Developing economies (e.g. Kenya, Nepal):** Often *reactive* — laws exist but enforcement capacity is limited.

Differences continued...

3 Scope of Coverage

- **Malta (Cap. 646 – Health and Safety at Work Act, 2024)**
Covers all workplaces and work activities in Malta except:
 - The Armed Forces of Malta, Disciplined Forces, and Police (when engaged in operational or combat duties);
 - Certain domestic employment contexts;
 - Other exempted cases as may be prescribed by the Minister.
→ *Enforcement remains under OHSA Malta for all other sectors, including public service and self-employed persons.*
- **EU (Framework Directive 89/391/EEC)**
Applies to nearly all workers, with similar exclusions for military, police, and emergency operations.
- **United States (OSHA 1970)**
Federal OSHA excludes state and local government workers (covered by state plans if any); military activities are excluded.
- **India & Sub-Saharan Africa (typical practice)**
Informal, domestic, and agricultural sectors often remain outside active inspection or enforcement.
- **Australia (WHS Act 2011)**
Broad coverage, but some state laws exclude defence and certain maritime operations
jurisdiction.

federal



Differences continued...

4 Safety Culture & Worker Participation

- **Northern Europe (Sweden, Finland, Germany):** High worker empowerment, strong union role, high trust in regulators.
- **Southern Europe / Malta:** Improving but still hierarchical; consultation less formalised in small enterprises.
- **US & Asia:** Lower unionisation → weaker day-to-day participation; reliance on management systems (ISO 45001).



Differences continued...

5 Penalties and Accountability

Country / Region	Maximum Fine / Penalty	Accountability Focus
Malta (Cap. 646)	€50 000 & 4 yrs imprisonment + Special Compromise fine (Art. 22)	Employer & HSRO personally liable
UK (HASAWA)	Unlimited fine & imprisonment	Employer, directors, and corporate manslaughter law
US (OSHA)	≈ \$15 000 per serious violation; \$156 000 for willful	Company and responsible managers
Australia (WHS Act)	A\$3 m company / A\$600 000 individual / 5 yrs prison	Officers + PCBU (Person Conducting Business or Undertaking)
China (Work Safety Law)	Up to ¥10 m + possible detention	Employer & senior officials
India (OSH Code 2020)	₹300 000 / 2 yrs imprisonment	Employer & occupier

Main Enforcement Bodies

- **Malta – Occupational Health and Safety Authority (OHSA)**
National regulator enforcing Cap. 646 and subsidiary legislation.
Roles: inspection, investigation, training, administrative fines, and prosecution.
- **European Union – European Agency for Safety and Health at Work (EU-OSHA)**
Based in Bilbao; promotes knowledge sharing, research, and policy coordination — not an inspectorate but supports member-state enforcement.
- **United Kingdom – Health and Safety Executive (HSE)**
Enforces the Health and Safety at Work Act 1974; issues improvement and prohibition notices, investigates incidents, and prosecutes breaches.
- **United States – Occupational Safety and Health Administration (OSHA)**
Federal agency under the Department of Labor; develops standards, conducts inspections, and levies penalties for violations.
- **Australia – Safe Work Australia**
National policy body; enforcement carried out by state and territory regulators (e.g. WorkSafe Victoria, SafeWork NSW).
- **Canada – Canadian Centre for Occupational Health and Safety (CCOHS)**
National agency promoting safe work through research and education; enforcement mainly by provincial ministries of labour.
- **India – Directorate General, Factory Advice Service & Labour Institutes (DGFASLI)**
Coordinates OHS enforcement across states under the OSH Code 2020; focuses on factories, ports, and
- **China – Ministry of Emergency Management (MEM)**
Oversees national safety supervision, investigation of serious accidents, and implementation of the Work Safety



Practical Compliance

Knowing the law is only the first step — Cap. 646 requires active implementation:

- **Risk assessments and preventive planning.**
- **Training and competence.**
- **Worker consultation and participation.**
- **Continuous monitoring and improvement.**

✓ ***Compliance is not a formality — it's a culture.***



- **"Can an organisation comply with the letter of the law and still have a poor health and safety culture?"**





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