

# The Maltese Legal System

Award in Introduction to Business Law

*Dr Roselyn Borg*

*Dr Patrick Farrugia*

26<sup>th</sup> April 2021



[www.21academy.education](http://www.21academy.education)

1

## The Law

- What is the law?
- Why do we legislate?
- What motivates us to legislate?
- What is a legal system?
- What is jurisdiction?

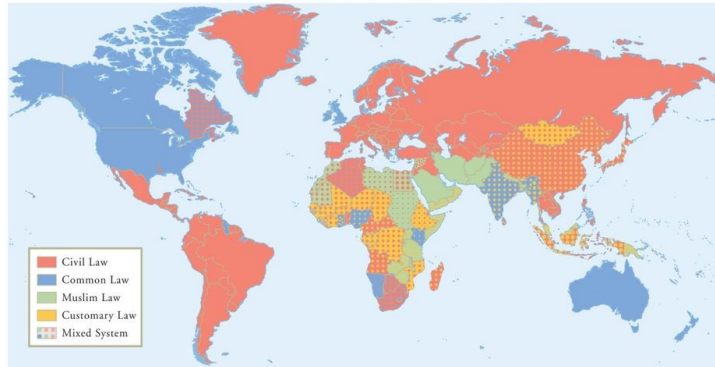


[www.21academy.education](http://www.21academy.education)

2

# The Legal Environment

The Wide World of Legal Systems



Copyright © 2013 Pearson Education

3-32



www.21Academy.education

3

Civil Law

Common Law

Legal Families

Socialist Law

Religious Law  
(Sharia, Hindu, Talmudic)



www.21Academy.education

4

## Civil Law

- Historically based on *codification*
- Civil law systems tend to find their roots in Roman law, and therefore generally stem from continental European systems and other states colonised by the same
- Generally regulates private law, meaning the relationships between individuals
- Aims to pre-empt situations and offer solutions
- Codification takes precedence over custom



www.21academy.education

5

## Common Law

- Finds its origins from local custom throughout regional courts all over England during the Middle Ages, with negligible, if any, influence of Roman law
- Largely based on legal tradition of the royal courts rather than a priori provisions, and therefore is of a more practical root, where statute supplements custom
- Development stems largely from judges rather than legislators, where central deliberation and subsequent judicial decisions were taken as law and subsequently followed, rather than the other way around



www.21academy.education

6

# Custom

- Custom is practice established by popular behaviour and norms applicable to a specific area/community
- Custom can be of 3 main types:
  - *Secundum legem* (based on law)
  - *Praetor legem* (beyond the law)
  - *Contra legem* (against the law)
- For example, custom remains important in contract law:
  - *Contracts must be carried out in **good faith**, and shall be binding not only in regard to the matter therein expressed, but also in regard to any consequence which, by equity, **custom**, or law, is incidental to the obligation, according to its nature*

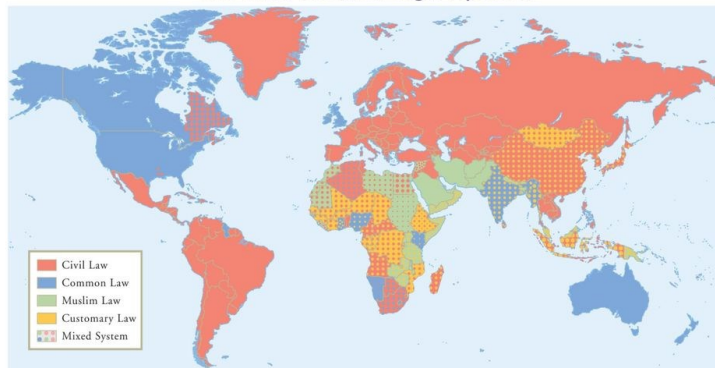


www.21Academy.education

7

## The Legal Environment

The Wide World of Legal Systems



Copyright © 2013 Pearson Education

3-32



www.21Academy.education

8

# Game of Thrones?

- The Maltese Islands have been colonised by a variety of different powers from all over Europe, and even beyond
- Each governing power had its own system of laws which had been applied to the islands, albeit to differing extents
- To what extent have these colonising power's legal systems remained today?



# The Romans

218BC – 870AD

- Very little historical evidence exists as regards the legal system applicable during Roman occupation in Malta
- It seems that initially local custom had been allowed to continue governing
- Roman citizenship meant subjection to Roman law



# The Arabs & the Normans

870 – 1090

1090 – 1533

- Very little is known on the laws during the Arab occupation, but it is believed that Malta was ruled by Muslim law in accordance with local custom
- Under Norman rule, Malta underwent a fiefdom period, with a slight degree of autonomy yet still bound under Sicilian law. This period however also saw the ever increasing influence of canon law



www.21Academy.education

11

# The Knights of St John

1530 - 1798

- Roman law & ius commune was still heavily sourced
- This period saw a significant drive for codification, based on Roman law, canon law and custom:
  - The Prammatiche (1681)
  - The Code de Rohan (1784)
- This period provided a legislative break from Sicilian dominance, allowing a semblance of autonomy for the islands



www.21Academy.education

12

## The French

1798 – 1800

- The French had very little time to legislate in Malta, as the majority of their stay was characterised by insurgencies and civil unrest
- Their influence focused more on social and administrative dynamics
- The French surrendered by 1800, and Malta essentially remained a British protectorate until 1815



www.21academy.education

13

## The British

1800 – 1964

- This period saw Malta begin to adopt a **mixed** system of law – somewhere between the civil and common law traditions
- The civil law (codification) tradition still applied heavily to private law (the law regulating individual relationships) whereas public law began to take on a common law approach
- Canon law still played an important role



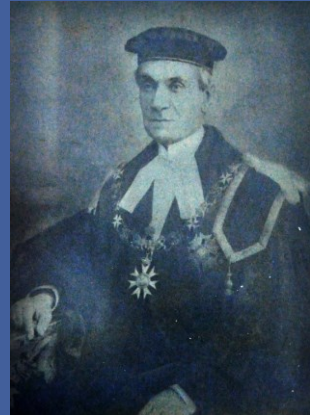
www.21academy.education

14



## The British

- The codes we know today are largely civil-law based – ironically, the Civil Code is heavily based on the French Code Napoleon, but was promulgated by the British
- A lot of British influence appeared in several procedural aspects, such as criminal procedure
- English law began to be applied for more modern concepts, such as commercial law, competition law, industrial law etc. This also continued to apply post-independence



www.21academy.education

15

## The European Union

- Post-independence, Malta was free to legislate autonomously in any manner it deemed fit
- The EU saw the Maltese legal system once again become subject to a superior legislative power which imposes legislation in two main manners (besides general policy):
  - Directives
  - Regulations
- Furthermore, any national law which is in conflict with EU legislation is to be deemed null and void



www.21academy.education

16



# Maltese Law

Private Law

Public Law



www.21academy.education

17

# Maltese Law

Private Law

Public Law

Criminal Law

Constitutional  
Law

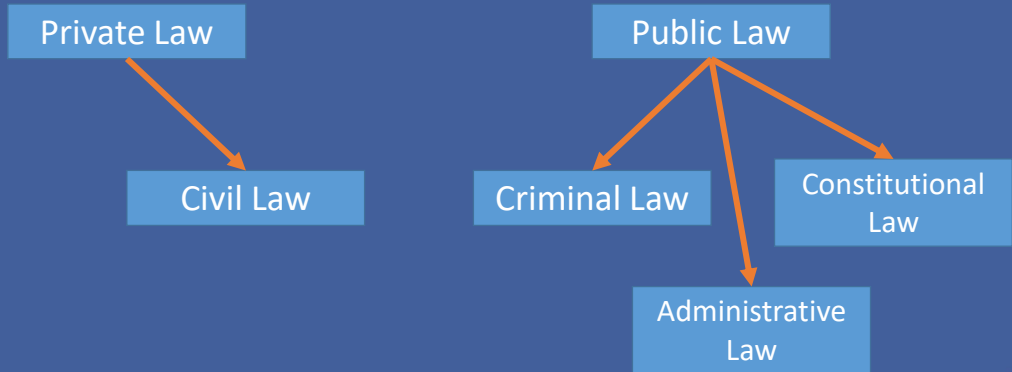
Administrative  
Law



www.21academy.education

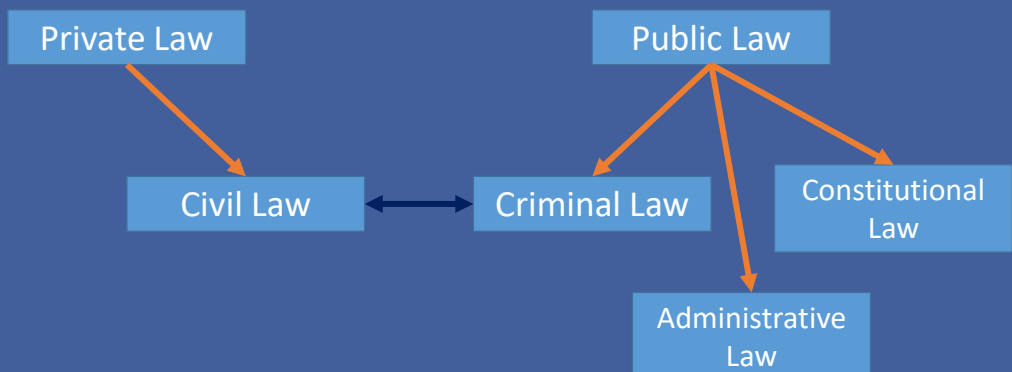
18

# Maltese Law



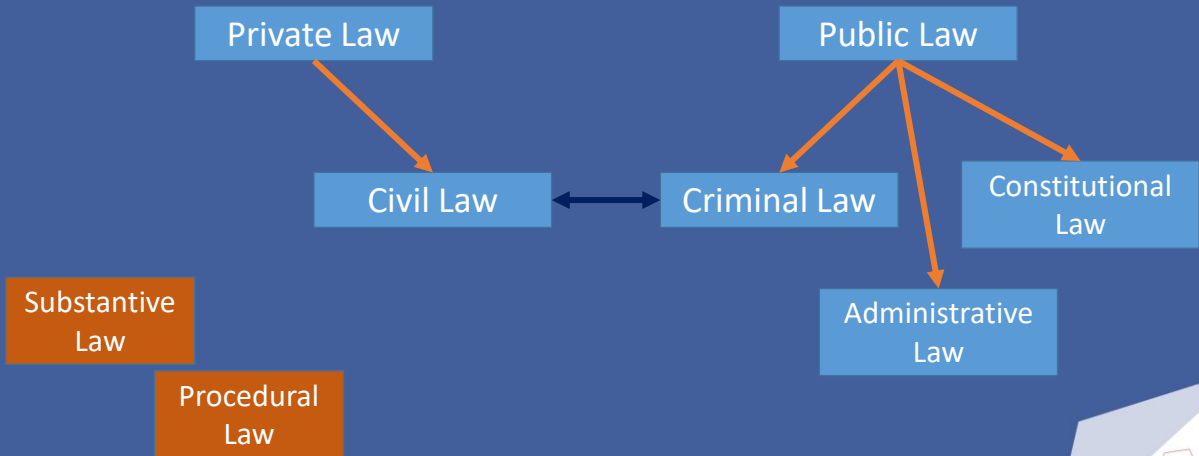
19

# Maltese Law



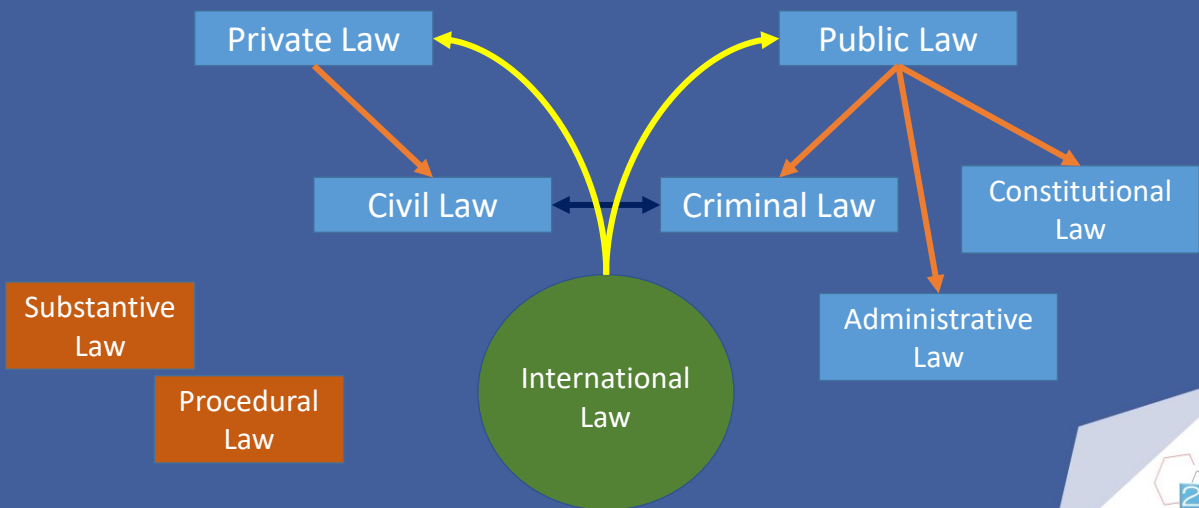
20

# Maltese Law



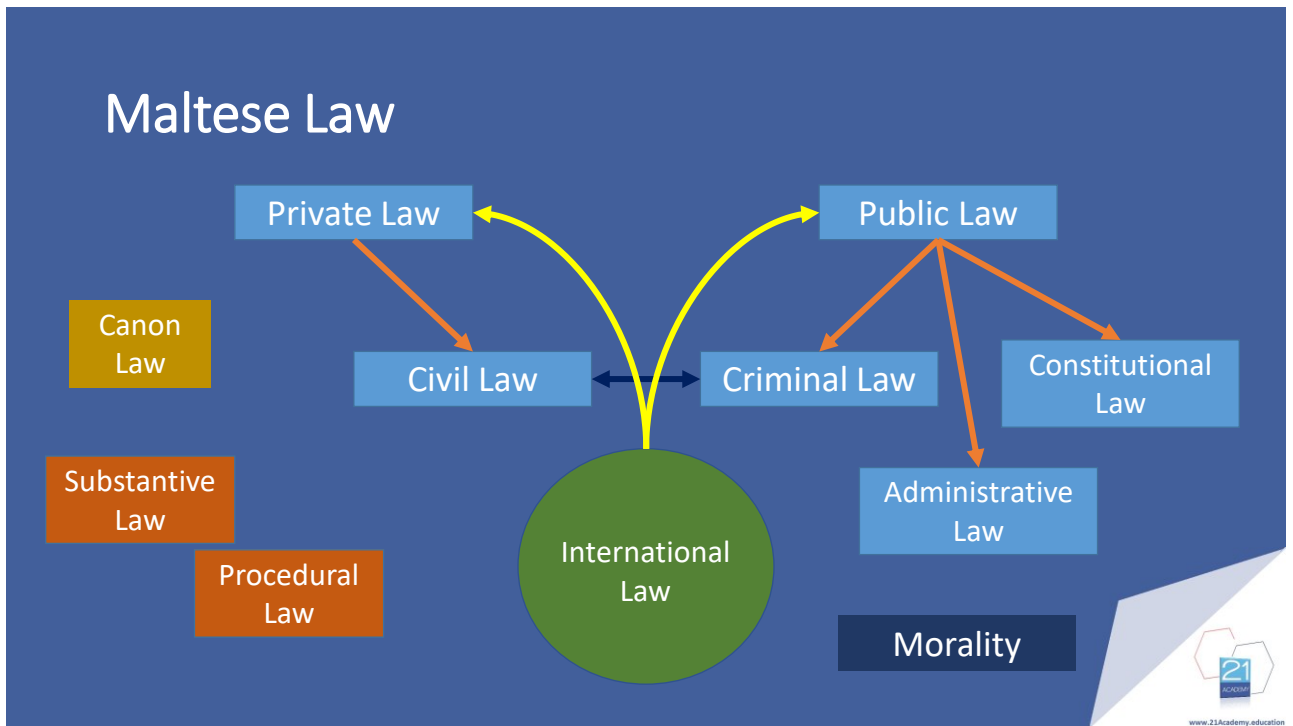
21

# Maltese Law



22

# Maltese Law



23

## The Constitution

- Since 1813, Malta saw no less than 12 different constitutions until its final independence constitution was drafted in 1964
- The Constitution is colloquially termed as *the highest law of the land* or *the supreme law* – the Constitution sets out the basic laws which govern several aspects, from the principles of the Republic and fundamental human rights, to the running of the 3 main arms of any democratic state – the legislative, the executive and the judicial arms
- Changes to the Constitution generally require a 2/3 majority of parliament (and so, the opposition would usually have to agree to a change to constitute such a majority)

24

# The Constitution

Constitution to be  
supreme law.  
Substituted by:  
LVII.1974.2;  
LVIII.1974.69.

6. Subject to the provisions of sub-articles (7) and (9) of article 47 and of article 66 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.



www.21Academy.education

25

# The Legal Hierarchy

1

The Constitution

2

- The European Convention Act
- The European Union Act
- The Diplomatic Immunities Act

3

- All other primary legislation (codes, acts, regulations etc.)



www.21Academy.education

26

## How are Laws Enacted?

- A draft law is referred to as a bill (*abbozz*)
- Bills generally emanate from ministries/departments, sometimes also developed together with consultations and white papers, and is usually also passed through Cabinet prior to tabling in Parliament
- That said, private bills are also a possibility yet these are largely unpopular
- Despite the above, the final say still rests with Parliament, which nonetheless retains the authority to challenge the content of the bill and suggest amendments



www.21academy.education

27

## Parliamentary Scrutiny and Enactment

- First Reading
- Second Reading
- Committee Stage
- Report Stage
- Third Reading
- Presidential Assent
- Publication



www.21academy.education

28

## Entry into Force

- A law may come into force on the date of enactment, or later
- Often, a law includes the date on which it shall commence to apply, which is generally determined by Parliament
- Some parts of a law may be left to become applicable at a later date than the rest of the law
- For the purposes of applicability, a **date** is given (not time) – therefore applicability counts from the moment the particular day begins (i.e. from the first second of the day following midnight of the previous day)



www.21academy.education

29

## The Language

- Up until 1934, the language of the law and the courts was **Italian**
- This therefore explains the significant Italianisation of Maltese legal jargon:
  - *Lamentela* – ilment / complaint
  - *Nostrali* – tagħna / ours
  - *Odjern* – preżenti / current
  - *Arreka* – ikkawża / caused
  - *Senjatament* – preċiżament / precisely



www.21academy.education

30



# Maltese vs. English

- The Constitution:
  - Maltese is the **national** language – *identity*
  - Maltese and English are the **official** languages – *administration*
  - The language of the Courts shall be the **Maltese language**
- Judicial Proceedings (Use of English) Act
- Maltese prevails over English (for matters of interpretation), except for
  - Pre-1964 laws and
  - Laws which have international attributes



www.21Academy.education

31

# Grammar & the Law

4. In this Act and in every other Act whether passed before or after the commencement of this Act, unless the contrary intention appears -

- the definition of any word or expression shall extend to all grammatical variations and to cognate expressions of the word or expression so defined;
- words importing the masculine gender shall include females and words importing the female gender shall include males;
- the words "spouse" and "husband and wife" shall be construed as referring to a spouse of either sex who has contracted marriage in accordance with the [Marriage Act](#);
- words in the singular shall include the plural, and words in the plural shall include the singular;
- the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the [Civil Code](#), or not.

Grammatical variations, gender, number, etc.  
Amended by:  
*XIII. 2007.16;*  
*XXIII. 2017.93.*

Cap. 255.

Cap. 16.

English-developed theory on interpretation:

*Eiusdem generis* – logical application of a word based on the meaning of more specific words mentioned previously

(Interpretation Act)



www.21Academy.education

32

# Interpretation

- The Interpretation Act (Cap 249 of the Laws of Malta) plays a crucial role in defining and clarifying basic linguistic elements in the Maltese legal system
- *“To make provision in respect of the construction and application of Acts of Parliament and other instruments having the force of law and in respect of the language used therein.”*



www.21academy.education

33

## Interpretation – *A Contrario*

- Applies limitations to the law, strictly based on what is specifically written in the law (which explains the extensive wording of most laws)
- Ubi lex voluit dixit – if the law wants it, it says it
- Generally the law is prohibitive, stating what is strictly prohibited – by contrary interpretation, this means you can do what is *not* prohibited
- This is a regular consequence of legal systems with repressed cultures



www.21academy.education

34

## Interpretation – *A Simili*

- Interpretation by analogy
- This system looks towards solving lacunae in the law
- Criticisms generally look to the lack of certainty of the *a simili* method, and the difficulty in pinning down to what extent it may be applied



www.21Academy.education

35

## “Person”

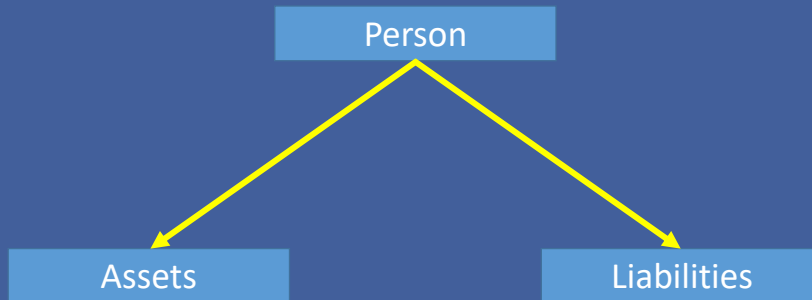
- *“the expression “person” shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not.”*
- A person can be **natural** or **legal**
- A law may exclude one or the other, however where no such exclusion/definition exists, the above applies automatically



www.21Academy.education

36

# Patrimony



# Patrimony

- Creditors = persons with a claim over a person's patrimony
- The **unity** of patrimony - a person's assets translate into a guarantee to a creditor
- Creditors may be subject to a ranking in terms of what they can claim, depending on their personality and the type of credit they are owed

## Locus Standi

- Persons have a right to petition a Court and appear before it, however this right is not absolute
- A decision of a Court is binding **between the parties only** - *res inter alios acta vel judicata aliis nec nocere nec prodesse potest*
- Parties may only be called upon to join in proceedings upon specific request and approval by the Court



www.21Academy.education

39

## Primary Legislation

- Maltese **primary legislation** is divided in **chapters**
- Generally referred to as 'codes' or 'acts'

▼	Constitution	Constitution of Malta
	Cap. 1	Ecclesiastical Courts (Constitution and Jurisdiction) Law
	Cap. 2(R)	Sanctuary (Abolition) Law <i>Repealed by Act II of 2015</i>
	Cap. 3	Marriage Legacies Law
	Cap. 5	Promises of Marriage Law
	Cap. 6(R)	Ecclesiastical Offices or Benefices (Appointment by Foreign Power) Ordinance <i>Repealed by Act II of 2015</i>
	Cap. 7(R)	Coal (Sale) Ordinance <i>Repealed by Act II of 2015</i>
	Cap. 8(R)	Cereals (Sale) Ordinance <i>Repealed by Act II of 2015</i>
▼	Cap. 9	Criminal Code
▼	Cap. 10	Code of Police Laws
	Cap. 11	Acts of Parliament (Application) (Powers of Court of Magistrates) Ordinance
▼	Cap. 12	Code of Organization and Civil Procedure
▼	Cap. 13	Commercial Code



www.21Academy.education

40

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

---

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap.135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015<sup>\*</sup> and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.



www.21academy.education

41

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

---

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap.135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015<sup>\*</sup> and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.

→ Chapter number



www.21academy.education

42

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap.135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.

Chapter number

Title



www.21Academy.education

43

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap.135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.

Chapter number

Title

Rationale



www.21Academy.education

44



# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap. 135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.

Chapter number

Title

Rationale

Promulgation/enactment dates



www.21academy.education

45

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap. 135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. 2. (1) In this Act, unless the context otherwise requires -  
Amended by: "act" and "action" each includes omission and references to  
XVI 2012.2; doing an act or taking action shall be construed accordingly;  
IV 2015.17; "class" when used in the context of a group or a category of  
VI 2019.2; employees shall refer to the groups or categories listed in a  
LVIII.2020.2.

Chapter number

Title

Rationale

Promulgation/enactment dates

Enacting formula



www.21academy.education

46

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap. 135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. Amended by: XVI 2012.2; IV 2015.17; VI 2019.2; LVIII 2020.2.

2. (1) In this Act, unless the context otherwise requires -  
"act" and "action" each includes omission and references to doing an act or taking action shall be construed accordingly;  
"class" when used in the context of a group or a category of employees shall refer to the groups or categories listed in a

Chapter number

Title

Rationale

Promulgation/enactment dates

Enacting formula

Short title

Interpretation



www.21academy.education

47

# Acts

EMPLOYMENT AND INDUSTRIAL RELATIONS [CAP. 452. 1]

**CHAPTER 452**

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT**

*To consolidate, with amendments, the Conditions of Employment (Regulation) Act (Cap. 135) and the Industrial Relations Act (Cap. 266).*

2nd December, 2002  
27th December, 2002

*ACT XXII of 2002, as amended by Acts IX of 2003, III of 2004 and XIX of 2006; Legal Notice 427 of 2007; Acts V of 2009, V of 2011 and XVI of 2012; Legal Notice 426 of 2012; and Acts IV of 2015\* and XXXIII of 2016, XIII of 2018, VI and XXIX of 2019 and LVIII of 2020.*

GENERAL

Short title. 1. The short title of this Act is the Employment and Industrial Relations Act.

Definitions. Amended by: XVI 2012.2; IV 2015.17; VI 2019.2; LVIII 2020.2.

2. (1) In this Act, unless the context otherwise requires -  
"act" and "action" each includes omission and references to doing an act or taking action shall be construed accordingly;  
"class" when used in the context of a group or a category of employees shall refer to the groups or categories listed in a

Chapter number

Title

Rationale

Promulgation/enactment dates

Enacting formula

Short title

Interpretation



www.21academy.education

48

Guarantee fund.

21. (1) There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.

(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -

- (a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;

Wages to be privileged debts.

20. Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:

Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.



www.21academy.education

49

Guarantee fund.

~~21. (1) There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.~~

(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -

- (a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;

Wages to be privileged debts.

20. Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:

Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.

→ Marginal notes



www.21academy.education

50

Guarantee fund.	<p><b>21.</b> (1) <del>There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.</del></p> <p>(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -</p> <p>(a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;</p>
-----------------	--

Marginal notes

Article number

Wages to be privileged debts.	<p><b>20.</b> Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:</p> <p>Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.</p>
-------------------------------	---



www.21academy.education

51

Guarantee fund.	<p><b>21.</b> (1) <del>There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.</del></p> <p>(2) <del>The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -</del></p> <p>(a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;</p>
-----------------	---

Marginal notes

Article number

Sub-article number

Wages to be privileged debts.	<p><b>20.</b> Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:</p> <p>Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.</p>
-------------------------------	---



www.21academy.education

52

<p>Guarantee fund.</p>	<p><b>21.</b> (1) There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.</p> <p>(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -</p> <p>(a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;</p>	<p>→ Marginal notes</p> <p>→ Article number</p> <p>→ Sub-article number</p> <p>→ Sub-section</p>
------------------------	---	--

<p>Wages to be privileged debts.</p>	<p><b>20.</b> Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:</p> <p>Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.</p>	
--------------------------------------	---	--

53

<p>Guarantee fund.</p>	<p><b>21.</b> (1) There is hereby established a Guarantee Fund (hereinafter referred to as "the Fund") for the purpose of guaranteeing payment of unpaid wages due by an employer to those employees whose employment is terminated because of the employer's proved insolvency, which fund shall be regulated and administered in such manner as the Minister may prescribe.</p> <p>(2) The Minister may, after consultation with the Minister of Finance and with the Board, prescribe regulations for the purpose of giving better effect to the provisions of this article; without prejudice to the generality of the foregoing, such regulations may establish -</p> <p>(a) the manner in which the Fund shall be set up and initially funded and for this purpose the Minister is authorised to endow the fund with such amount and for such period as the Minister may prescribe;</p>	<p>→ Marginal notes</p> <p>→ Article number</p> <p>→ Sub-article number</p> <p>→ Sub-section</p>
------------------------	---	--

<p>Wages to be privileged debts.</p>	<p><b>20.</b> Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:</p> <p>Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.</p>	<p>→ Proviso</p>
--------------------------------------	---	------------------

54

# Acts

- Some other elements which appear in Acts are:
  - Contents
  - Sections
  - Transitional provisions
  - Repealing provisions
  - Saving provisions
  - Schedules



www.21academy.education

55

# Subsidiary Legislation

- Subsidiary legislation emanates from the **parent act** – the law which effectively allows a delegate to issue such law
  - *The enabling power*
- Definitions of the parent act apply to the subsidiary law
- Subsidiary law is tabled in parliament, with a 28-day period for any motions to amend/annul
- What happens in a conflict between the parent and subsidiary?



www.21academy.education

56

## Subsidiary Legislation

- Primary legislation may also provide specific ministers/departments the power to be able to enact legislation in terms of the **parent act** (i.e. the main law) – this is referred to as **delegated legislation**
- *Delegatus non potest delegare* – is this an absolute rule?
- Criticism is generally addressed to the fact that this blurs and overlaps the separation of state powers
- Other issues include parliament's lack of scrutiny of such law



www.21Academy.education

57

## Article 469A – Judicial Review

- Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:
  - (a) where the administrative act is in violation of the Constitution;
  - (b) when the administrative act is ultra vires on any of the following grounds:
    - (i) when such act emanates from a **public authority that is not authorised** to perform it; or
    - (ii) when a public authority has **failed to observe the principles of natural justice or mandatory procedural requirements** in performing the administrative act or in its prior deliberations thereon; or
    - (iii) when the administrative act constitutes an **abuse of the public authority's power** in that it is done for improper purposes or on the basis of **irrelevant considerations**; or
    - (iv) when the administrative act is **otherwise contrary to law**.



www.21Academy.education

58



# Subsidiary Legislation

*MINIMUM SPECIAL LEAVE ENTITLEMENT*

[ **S.L.452.101**

1

## **SUBSIDIARY LEGISLATION 452.101**

### **MINIMUM SPECIAL LEAVE ENTITLEMENT REGULATIONS**

1st January, 2008

*LEGAL NOTICE 432 of 2007, as amended by Legal Notices 118 of 2010  
and 62 of 2020.*



www.21academy.education

59

	Chapter	↑↓	Title
▲	Cap. 452		Employment and Industrial Relations Act
	S.L. 452.01		Boards of Conciliation Regulations
	S.L. 452.02		Fees payable to Members of Boards of Conciliation Order
	S.L. 452.03		Courts of Inquiry Regulations
	S.L. 452.04		Fees payable to Members of Courts of Inquiry Order
	S.L. 452.05		Cinemas and Theatres Wages Council
	S.L. 452.06		Public Transport Wages Council Order
	S.L. 452.07		Printing and Publishing Wages Council Order
	S.L. 452.08		Construction Wages Council Order
	S.L. 452.09		Procedure of Wages Councils Regulations

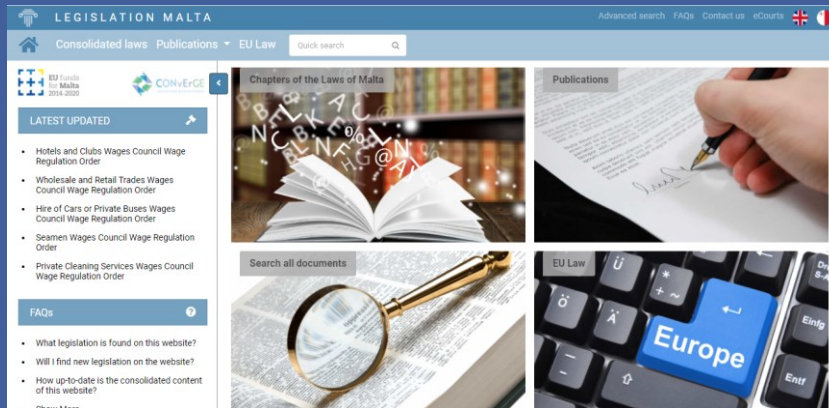


www.21academy.education

60

# Where can I find the law?

- <https://legislation.mt/>



www.21academy.education

61

## Jurisdiction

State

- Power of the state to exercise authority over citizens and persons within its borders

Courts

- Extent of the court's authority
- Delineation of powers among the different types of adjudicating bodies

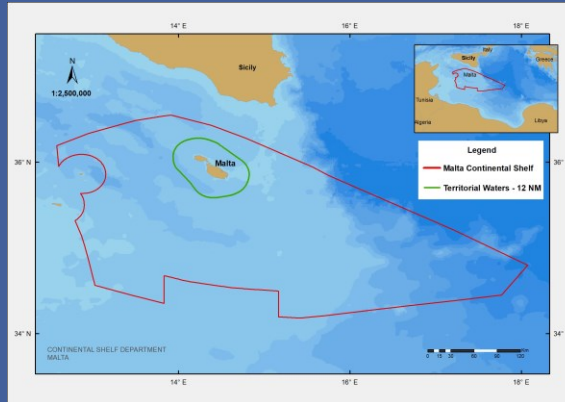


www.21academy.education

62

# Territorial Jurisdiction

- A state possesses authority over persons and property situated within its legally recognised borders – territory (land and sea) and air



# Territorial Jurisdiction

- The concept stems from the absolute sovereignty of the state, which cannot be infringed by the sovereignty of other states
- This concept nonetheless must be seen in line with certain international obligations, where it is permitted that such impinges on *domestic jurisdiction*
- Crimes pose a significant issue, especially due to their increasing transnational nature in a globalised world

# Nationality & Jurisdiction

- Nationality is the main link between a state and its people
- **Active principle:**
  - The state has jurisdiction over its nationals, wherever they are
  - From this principle also stem the concepts of *domicile* and *residence*
  - Ships and aircraft also share in this principle – they are under the law of the state whose flag they bear (subject to exceptions) and by extension, so are its passengers
  - A similar outlook is also given to bodies corporate
  - In the criminal sphere, this principle is largely connected with the possibility of **extradition**



www.21academy.education

65

# Nationality & Jurisdiction

- **Passive principle:**
  - A recently developed, albeit unpopular, concept
  - Focuses on the victim's nationality, stemming from the state's duty to protect its own nationals
  - Generally applies to universal crimes / crimes against humanity and terrorism issues



www.21academy.education

66

## Protective Jurisdiction

- Similar to the passive nationality principles, but on the other hand based on the protection of the state as a whole rather than individuals
- Textbook examples including insurrections, espionage, attempts at illegal entry into a state etc.
- The *Eichmann* case



www.21Academy.education

67

## Universal Jurisdiction

- Wherein a state claims jurisdiction in seeking to prosecute against a person for an offence, where neither have a link to such state, and where the state has no material interest in doing so
- International piracy is common in the application of this principle (and in fact piracy is excluded from flag state jurisdiction under the 1982 Law of the Sea)



www.21Academy.education

68

## Jurisdiction in Civil & Commercial Matters

- Article 742, Code of Organization and Civil Procedure
  - Citizens domiciled in Malta
  - Persons domiciled/resident in Malta
  - Matters relating to property in Malta
  - Obligations contracted in Malta (presence required)
  - Obligations to be carried out in Malta (presence required)
  - Obligations in favour of a citizen/resident of Malta or a body corporate incorporated/operating in Malta, if the judgment is enforceable in Malta
  - Express or tacit submission



www.21academy.education

69

## The Courts

- The Constitution establishes two levels of courts:
  - Superior
  - Inferior
- Courts are split into two – those of Civil jurisdiction and those of Criminal jurisdiction



www.21academy.education

70

# The Civil Court

- Superior:
  - Civil Court
    - First Hall
    - Family Section
    - Voluntary Jurisdiction
    - Commercial Section
  - Court of Appeal
- Inferior:
  - Court of Magistrates (Malta)
  - Court of Magistrates (Gozo)
  - Court of Appeal (Inferior)



71

# The Civil Court

- Superior:
 

- Civil Court
    - First Hall
    - Family Section
    - Voluntary Jurisdiction
    - Commercial Section

→

1 Judge
- Inferior:
  - Court of Magistrates (Malta)
  - Court of Magistrates (Gozo)
  - Court of Appeal (Inferior)



72

# The Civil Court

- Superior:

- Civil Court
  - First Hall
  - Family Section
  - Voluntary Jurisdiction
  - Commercial Section

1 Judge

- Court of Appeal

3 Judges

- Inferior:

- Court of Magistrates (Malta)
- Court of Magistrates (Gozo)
- Court of Appeal (Inferior)



www.21academy.education

73

# The Civil Court

- Superior:

- Civil Court
  - First Hall
  - Family Section
  - Voluntary Jurisdiction
  - Commercial Section

1 Judge

- Court of Appeal

3 Judges

- Inferior:

- Court of Magistrates (Malta)
- Court of Magistrates (Gozo)
- Court of Appeal (Inferior)

1 Magistrate

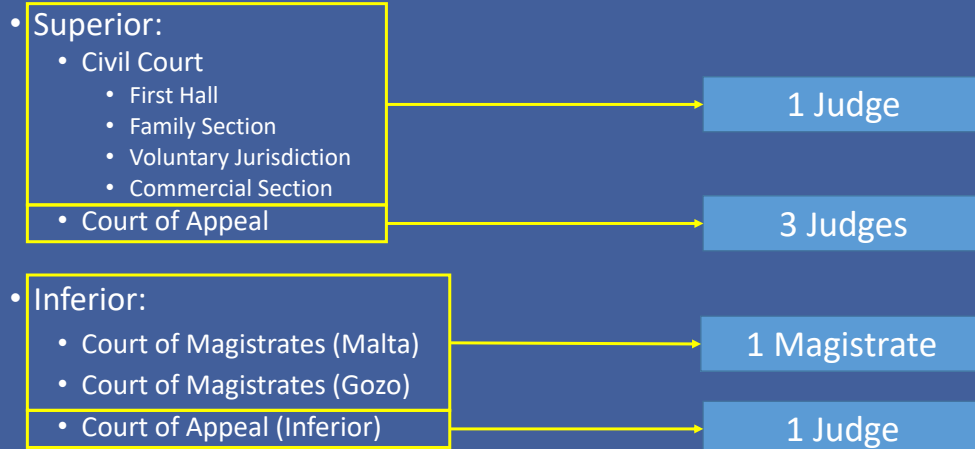


www.21academy.education

74



# The Civil Court



# The Civil Court

- *First Hall (Prim' Awla)*
  - Property
  - Civil claims of indeterminate value/of value exceeding €15,000
  - *Constitutional Jurisdiction* - redress for human rights cases, unless other remedies could have been previously pursued (appeals would go to the Constitutional Court)
- *Commercial Section*
  - The Commercial Court was disbanded in 1995
  - In 2018, the Commercial Section was introduced under the Civil Court to specifically deal with cases under the Companies Act (bankruptcy, dissolution, winding up etc.)

# The Civil Court

- *Family Section*
  - Family law matters, including separation, divorce, child custody etc.
- *Voluntary Jurisdiction Section*
  - Non-contentious, therefore calling for a different procedure based on individual application to the Court
  - Deals with applications for adoption, curatorship, tutorship, interdiction, incapacitation etc.



www.21academy.education

77

# The Constitutional Court

- Election validity
- Human rights (appeals)
- Constitutional interpretation
- Validity of laws
- Appeals on any case decided by a court of original jurisdiction in relation to a constitutional matter

Decisions of this Court have no authoritative power – it is up to the Parliament to repeal an unconstitutional law



www.21academy.education

78

## Proposals to remedy the constitutional conundrum on the validity of laws

- Judges should be empowered to amend the law (although this may not always be expedient as it may be that an entire body of law needs to be overhauled)
- Judgments of the Constitutional Court should simply become binding once issued
- If an amendment is not made within a specified period, the judgment's interpretation is to be applied



www.21academy.education

79

## The Court of Appeal

- Each section is composed of 3 judges, one of whom must always be the Chief Justice
- This Court hears appeals from all the Civil Courts (save for decrees of the Voluntary Jurisdiction section)
- The Court of Appeal may also hear appeals from inferior courts and other adjudicating bodies in its inferior competence, with 1 judge presiding



www.21academy.education

80

## The Court of Justice of the European Union



## The European Court of Human Rights



www.21Academy.education

81

## The Court of Justice of the European Union

- Part of the European Union
- Previously known as the European Court of Justice (ECJ)
- Decides on interpretation of EU law (decisions applicable union-wide)
- Decides on inter-state issues
- May also take action against institutions in some cases

## The European Court of Human Rights

- Part of the Council of Europe
- Enforces the European Charter of Human Rights (ECHR)
- A forum only to be petitioned as a last resort



www.21Academy.education

82

# Judicial Interpretation

- Laws attempt to cover as many situations as possible, however each individual case is distinct
- Judicial interpretation is where the courts apply the law to real cases in a justified manner as they deem fit
- The Courts look at both:
  - Literal interpretation
  - Logical approach



www.21academy.education

83

# Judicial Interpretation

- Literal:
  - What is expressly written in the law in black and white
  - Natural and ordinary meaning of words
- Logical:
  - What the legislator intended, for example:
    - *"A husband or wife who, during the subsistence of a lawful marriage, contracts a second marriage, shall on conviction be liable..."*



www.21academy.education

84

- What else can the courts look to?
  - Interpretation clauses
  - Marginal notes
  - Previous versions of the law
  - Congruent local and foreign laws
  - *Travaux préparatoires*
  - Jurist writings
  - Previous decisions – **precedent is not applicable in its fullest sense in Malta**



- <https://ecourts.gov.mt/onlineservices/Judgements>

www.21academyeducation

## Executive Titles

- 166A Letter
- Court judgment/decree
- Contracts relating to certain, liquid and due debts
- *It-Taxxa* (Court bills)
- Malta Arbitration Centre awards;
- Bills of exchange and promissory notes;
- Mediation agreements made enforceable by the parties in the mediation;
- Decisions of the Consumer Claims Tribunal
- Decisions and awards of the Arbiter for Financial Services
- Decisions of the Adjudicating Panel for Private Residential Leases



www.21academy.education

87

## How can I enforce an executive title?

- Warrant of seizure / *Mandat ta' qbid* (movables, immovables, commercial going concern)
- Judicial sale by auction / *Subbasta (irkant)*
- Garnishee order / *Mandat ta' sekwestru*
- Warrant of ejection/eviction / *Mandat ta' zgumbrament/tkeccija*
- Warrant *in factum* / *Mandat in factum*
- Warrant of arrest (vessels/aircraft) / *Mandat ta' arrest*
- Warrant *in procinctu* / *Mandat in procinctu*



www.21academy.education

88

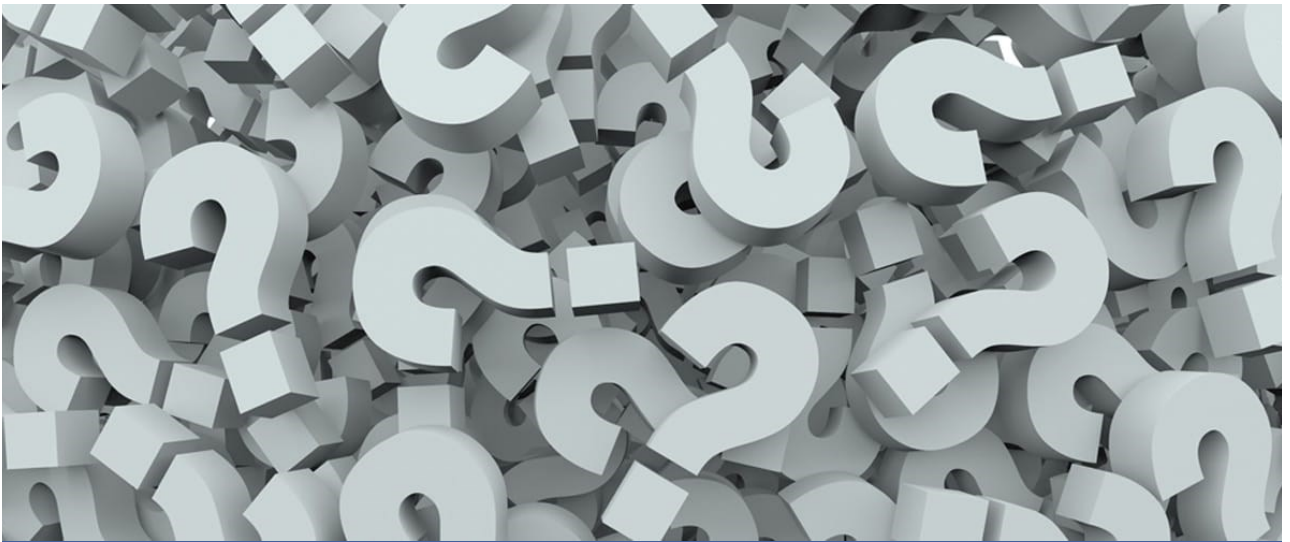
## Precautionary Warrants

- Warrant of description / *Mandat ta' deskrizzjoni*
- Warrant of seizure / *Mandat ta' qbid*
- Garnishee order / *Mandat ta' sekwestru*
- Warrant of impediment of departure/ *Mandat ta' impediment tas-safar*
- Warrant of arrest (vessels/aircraft) / *Mandat ta' arrest*
- Warrant of prohibitory injunction / *Mandat ta' inibizzjoni*



www.21academy.education

89



www.21academy.education

90