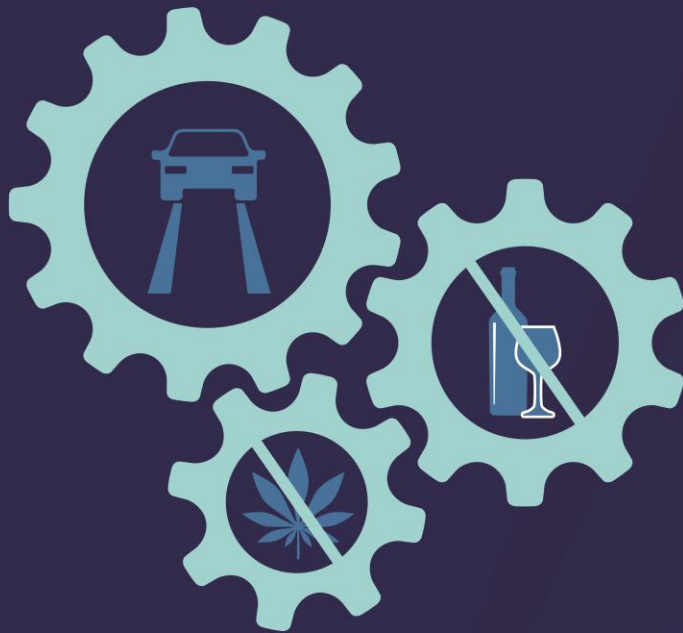


Gearing up



Madame Justice
Consuelo Scerri Herrera
Judge of the Criminal Court

An Overview of drink driving legislation in Malta.



Madame Justice Consuelo Scerri Herrera
Friday 12th April 2019



National legislation.

- Chapter 65 Traffic Ordinance namely article 65
- S.L. 65.18 Driving Offences Codes and Respective Penalty Points - SIXTH SCHEDULE
- Highway Code

The Breathalyzer Test was introduced by Act VI of 1998

Amended by:-



- Act XXIII of the year 2000
- L.N 408 of the year 2007
- Act VII of the year 2010
- Act V of the year 2011
- Act XV of the year 2017

Scope of the Breathalyzer Test



- Preventive measure -To try and stop or reduce drink driving
- Scientific measure - To calculate the level of alcohol in excess of prescribed limit

Unfit to drive



*“No person shall drive ,attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming much alcohol that the proportion of it in his **breath, alcohol** or **urine** exceeds the prescribed limit.”*

*” person is considered to be unfit to drive if his ability to drive properly is for the time being impaired.” **

**Article 15A of the Traffic Ordinance*

Demeanour of driver



- For the purpose of this offence of drink driving not necessary for the prosecution to prove that driver was in excess of prescribed limit.
- It is necessary to have a look at the physical condition of the driver, for example if he has slurred speech, walks haphazardly, red in the face, has a smell of alcohol .
- **Il Pulizija vs Francis Pace** decided on the 2.9.1999 by the C of CA.

Breath Tests

Police Officer with a 'reasonable suspicion' based on one of the following can ask for a Specimen of breath for the taking of a breath test:-

- A person is driving or attempting to drive on a road or public place and **has alcohol in his body or** has committed an offence against the traffic Ordinance or any regulation made thereunder whilst vehicle is in motion.
- A person is driving or attempting to drive on a road or public place with alcohol in his body
- A person is driving or attempting to drive on a road or public place and has committed an offence against the Traffic Ordinance or any regulation made thereunder .
- The person is driving or attempting to drive on a road or public placed and is involved in a traffic accident*



**Article 15C Traffic Ordinance*

‘Reasonable suspicion’

“Biex jigi radikat dan is-suspett ragonevoli l-ufficcjal koncernat jista jiehu anke in konsiderazzjoni dak li jkun qallu haddiehor.”

Il-Pulizija vs Emmanuel Camilleri decided on the 20.4.1999 by the C of CA



Powers of arrest of Police



As a result of a breath test, the police officer reasonably suspects that the proportion of alcohol in the driver's blood exceeds the prescribed limit;

or

The driver fails to provide a specimen of breath for a breath test when asked to do so, provided such person was warned that failure to take such test is tantamount to an offence*.

**Article 15D of the Traffic Ordinance*

Specimen analysis



- Specimen of blood and urine have to be taken at an approved laboratory.
- Specimen taken shall be admissible as evidence in a court of law.
- Presumption is that the analysis is correct unless the contrary is proved.



II-Pulizija vs Anthony Muscat decided on the 8.6.2007 by the C of CA

Failure to provide Specimen



This is tantamount to an offence unless the contrary is proved. It shall be presumed that the proportion of alcohol in the person's blood exceeds the prescribed limited*.

“ ..irid l-ewwel ikun hemm dan l-avviz f'dan is-sens mill-ufficcjal tal-pulizija u minkejja dan l-avviz dak li jkun jibqa jirrifjuta li jghod ghal dan it-test tan-nifs.”

Il-Pulizija vs Carmelo Briffa decided on the 28.4.2000 by the C of CA

**Article 15D of The Traffic Ordinance*

Defence

Person can prove that his failure to give sample was due to a *'physical or mental incapacity'* or that such test would entail a *'substantial risk to his health'**.

*“trid tezisiti **indipendentement** mill-ansjeta dovuta ghal fatt li dik il-persuna tkun involuta f’incident awtomobilistiku”*



Il-Pulizija vs Joseph Bonnici decided on the 15.9.2000 by the C of CA

“il-fatt li persuna ma tkunx tista tonfoq tajjeb minhabba l-istat ta’ tossifikazzjoni li tkun fiha jew minhabba l-istat ta’ ecitament li jahkimha, tkun habtet jew ghax tkun giet arrestata mill-pulizija ma jammontax ghall-inkapacita fizika jew mentali li tezoneraha”

Il-Pulizija vs Claire Falzon decided on the 5.3.2001 by the C of CA

*Article 15D of the Traffic Ordinance

Detention of persons affected by alcohol or a drug



A person required to provide a specimen of breath, blood or urine may be detained by the Police until it appears to the Police that such person is fit to drive.

Article 15G of The Traffic Ordinance.

Breath Tests can also be conducted by Community Officers



Article 15GA introduced by Act XV 2017.

- CO can ask a driver to give a breath sample for the same reasons explained earlier applicable to Police Officers.
- Should driver fail to take a test he may be forbidden to drive till Police Officer arrives on the spot.
- If driver keeps driving and ignores request of CO such behavior is tantamount to an offence as if such request was made by a Police Officer.
- If CO has a reasonable suspicion that the proportion of alcohol in the blood exceeds the prescribed limit, he shall request the Police on site and the driver will be forbidden to drive.

Punishment

First Conviction punishment is multa of **€1,800** or to imprisonment not exceeding 6 months or to both.

Second or subsequent conviction punishment is **€3,000** or to imprisonment not exceeding 1 year or to both.

In addition - Disqualification from holding a driving license

First Conviction for a period not less than 6 months.

Second Conviction for a period not less than 1 year*.

Important however that the prescribed limit does not exceeds 8 mg or more in the breath sample and 20 mg or more in the blood or 23 mg in the urine**.

Guilty person may also be condemned to pay expense involved in the taking of the test

***Article 15H of The Traffic Ordinance**

**** Article 15I (3) proviso of The Traffic Ordinance**



Driving Offences Codes and Respective Penalty Points



Drink or Drugs

- DD-1 Driving or attempting to drive or be in charge of a motor vehicle with alcohol level above the limit 3-11
- DD-2 Driving or attempting to drive then failing to provide a specimen for analysis 3-11
- DD-3 Driving or attempting to drive when unfit through drugs 3-11*

* SIXTH SCHEDULE - S.L. 65.18

Prescribed limits

- In the case of driving or attempting to drive **all cars**.

22 mg per100ml of alcohol in the breath

50mg per 100ml of alcohol in the blood

67mg per 100ml of alcohol in the urine

- In the case of driving or attempting to drive **commercial cars**, or whilst still **under a probationary driving license**.

9 mg per100ml of alcohol in the breath

20mg per 100ml of alcohol in the blood.

27mg per 100ml of alcohol in the urine



- In the case of driving or attempting to drive **buses, coaches and other vehicles carrying passengers**

0 mg per100ml of alcohol in the breath, blood and urine.

Difficulty in equating exact amount of alcohol



- Weight
- Whether driver is female or male
- Age
- Metabolism (how quick drivers body takes to turn food into energy.
- Stress levels
- Amount of food eaten before intake of alcohol.
- Type and percentage of alcohol.
- If accompanied with medication.
- If certain body organs are malfunctioning i.e. liver so driver would be less tolerant.

IT'S THE LAW

DRINKING AND DRIVING

DO NOT DRINK AND DRIVE.

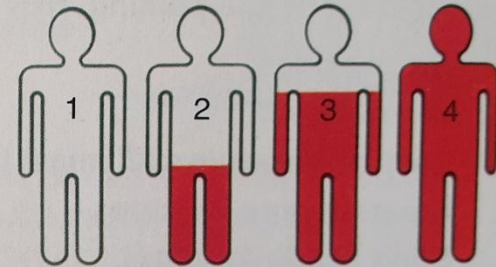
Did you know alcohol intoxicates?

Driver 1: 0 Drinks

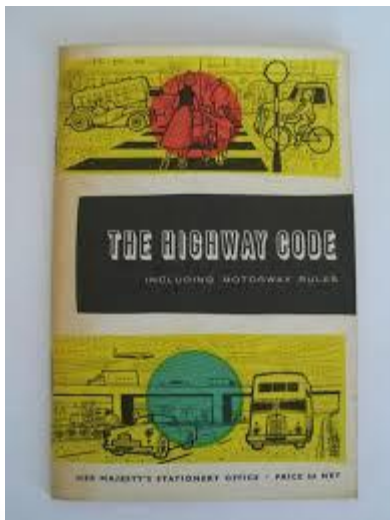
Driver 2: 1 Drink

Driver 3: 2 Drinks

Driver 4: 3 Drinks



Drinking and Driving = Death and Disabilities - DON'T DO IT!



Road Traffic Accidents 2017 - March 2019

Year	FATAL ACCIDENTS	INVOLVING INJURIES	SIMPLE AND GOV. PROP. (WITHOUT INJURIES)	Grand Total
2017	17	1519	2216	3752
2018	18	1345	2379	3742
2019	1	309	567	877

Refers to road traffic incidents attended to by the Police, as registered in the National Police System (NPS)

Other simple road traffic incidents dealt with by the Traffic Wardens and/or other 'Front to Rear' collisions are not included.

Breathalyzer Tests in Malta in the period 2015-2018.

Breathalyzer Tests in Mata in the period 2015-2018.

	2015	2016	2017	2018
Tests taken	146	241	155	165
Tested positive	106	188	109	106

Grounds why so many acquittals.

“Illi mill-provi prodotti *l-breath alcohol test record* huwa monk u ghalkemm m’ghandux il-firma tal-operatur tieghu lanqas ma rrizulta li ittiehed fil-laboratorju”



Pulizija vs Etienne Turner decided on the 6.6.2003 by the C of CA

“Dan id-dokument mhux wiehed komplet, strambil-Qorti tqis l-istess dokument alterat u mhux komplet u ma tqies li fuq tali prova in vista li zgur li ma jikkostitwix l-ahjar prova li ghandha ssib htija fuq l-istess.”

Il-Pulizija vs Aldo Fenech decided on the 1.11.2002 by the C of CA

Importance for education

Any amount of alcohol can have disastrous results on a driver due to the fact that:-

- It reduces your co ordination.
- Slows down your reactions.
- Reduces field of vision.
- Affects how you judge speed distance and risk.





Thank you for your attention

E mail - consuelo-pilar.scerri-herrera@gov.mt