

The Importance of Clarity in the Law in Offences Dealing with Traffic Offences

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Definition of the Law

- Law is a system of rules created and enforced through social or government institutions to regulate behaviour.
- It serves as a framework for maintaining order, resolving disputes, protecting liberties, rights and establishes standards for conduct in a society.

Key Components of Law

- **Rules and regulations** – law consists of formal written rules. (eg statutes, regulations and constitutions)
- **Authority** – laws are created by recognised bodies. (eg legislature, courts)
- **Enforcement** – violations of the law lead to penalties or remedies, enforced by institutions. (eg the police, LESA officers or/and the judiciary)
- **Justice and order** - law seeks to ensure fairness, social justice and stability.

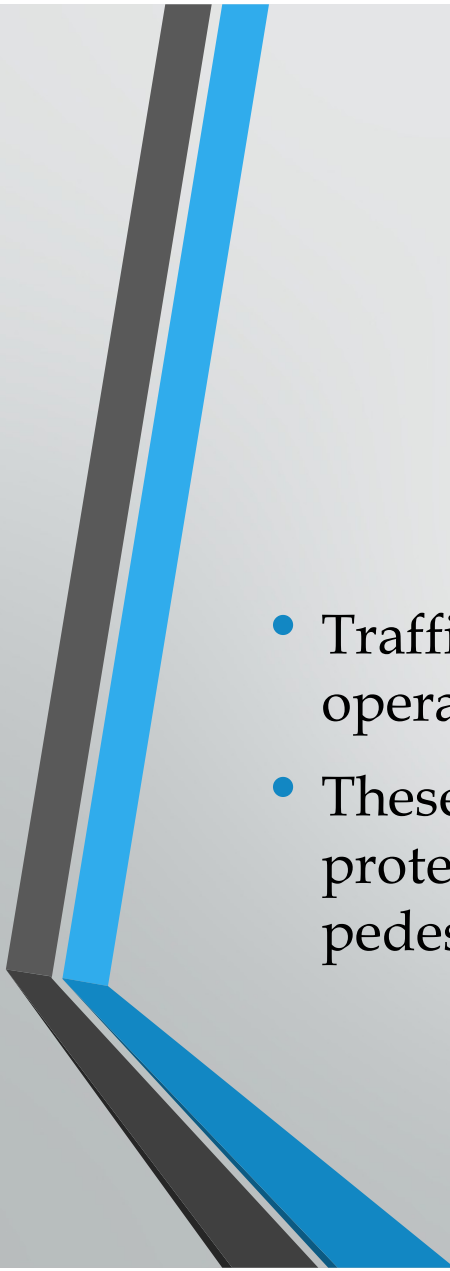


Importance of Clarity of the Law

- Clarity in the law means that legal rules and obligations are written and interpreted in a way that it is **understandable, precise and predictable**.

Why is it important to have clarity in the law?

- It ensures fairness and justice
- Promotes legal certainty
- Prevents misuse of power
- Supports the rule of law
- Improves access to justice
- Enhances public confidence



Definition of Traffic Offences

- Traffic offences are violations of laws and regulations that govern the operation of vehicles on public roads.
- These laws are designed to ensure safety, regulate traffic flow and protect all road users including drivers, passengers, cyclists and also pedestrians.

Types of Traffic Offences

Traffic offences are generally categorised into two types:

- **Minor offences** are usually punishable by fines and penalty points (eg over-speeding, running a red light, not wearing a seatbelt and using a mobile phone while driving)
- **Major offences** are more serious offences and result in criminal charges with higher fines, imprisonment and possibly license suspension (eg driving under the influence of alcohol, dangerous driving, driving without a valid licence or insurance)

Why Traffic Offences Matter?

- **Safety** - They help reduce accidents and injuries on the road
- **Order** - They maintain smooth traffic flow and reduce congestion
- **Accountability** - They hold drivers responsible for their actions and promote responsible driving behaviour

Laws Governing Traffic Offences in Malta

- **Criminal Code** (Chapter 9)
- **Traffic Regulation Ordinance** (Chapter 65) – The principal law regulating the use of roads and vehicles in Malta
- **Motor Vehicles (Driving Licences) Regulations** (S.L. 65.18) – Sets out provisions for driving licences including the penalty points system for traffic offences
- **Various Subsidiary Legislation** (Legal notices under Chapter 65)
- **Motor Vehicle Insurance (Third Party Risks) Ordinance** (Chapter 104)



Difficulties faced by the Court in Interpreting certain Laws

- This is leading to conflicting judgments
- Legal uncertainty
- Forum Shopping with regards to case management

Article 3 of Chapter 104

Motor Vehicle Insurance (Third Party Risks) Ordinance

3. (1) Subject to the provisions of this Ordinance, it shall not be lawful for any person to use or to cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance.

(1A) It shall be presumed that there was not a policy of insurance in force in terms of subarticle (1), unless the person charged with an offence under subarticle (1) shall show the contrary through the production of a certificate of insurance issued under article 4(4).

Duty of Insurers to Satisfy Judgments Against Persons Insured in Respect of Third Party Risks

10. (1) *If, after a certificate of insurance has been issued under article 4(4) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under article 4(1) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the authorized insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the authorized insurer shall, subject to the provisions of this article, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum and that sentence shall two days after it is notified on the insurer by judicial act constitute an executive act against the insured for all purposes of the Code of Organization and Civil Procedure, and may be enforced against him*

Maltese Courts' Inconsistent Interpretations of Article 3

- **The Police vs Marko Jovicevic, Il-Pulizija vs Moira Micallef, Il-Pulizija vs Josef Dalli, Il-Pulizija vs Christian Calleja, Il-Pulizija vs Alexander Johanne Gatt and Il-Pulizija vs Larkin Scicluna**
- In these cases, the Courts decided that since the driver did not have a valid driving licences, he was not covered by the insurance policy
- The obligation of the insurance company ensuing from Article 10 will only make good for civil debts
- In the above the accused was found guilty of driving without a valid driving licence, and thus without a valid insurance policy

The Other Side to the Coin

- **Il-Pulizija vs Angelo Scuderi** – The Court of Appeal reversed the judgment of the COM and acquitted Scuderi by reasoning that since he had a valid insurance he could not be found guilty of driving without an insurance, despite not having a valid driving licence. It did not limit the definition of Article 10 to apply only to civil debts
- A number of other judgments followed this reasoning

Suspension of Driving Licence

- In certain offences (eg driving without a valid licence, driving without an insurance cover, dangerous and reckless driving and driving under the influence of alcohol) it is mandatory upon the Court to order the suspension of the driving licence – therefore, the Court has no discretion
- At the same time, however, Article 30 of the Criminal Code, gives discretion to the Court to uphold a request, to remove the suspension or disqualification given on the application of such person, after having regard to his character, to his conduct subsequent to the conviction, to the nature of the offence and to any other circumstances of the case.
- Therefore, we are faced with an anomaly in that on the one hand the suspension of a driving licence is mandatory if guilt is established and on the other hand, such suspension may be revoked in the discretion of the Court
- This inconsistency creates legal uncertainty

Validity of Driving Licences Issued by Competent Authorities in Third Countries (SL. 65.18)

5. The holder of a driving licence issued by the competent authority in a third country may drive in Malta, for a period not exceeding twelve months from the date of his last entry into Malta, any class or description of vehicle covered by the driving licence issued to him by the competent authority in that third country

Difficulties in the application of Regulation 5 of S.L. 65.18

- **Il-Pulizja vs Khalil Al Hussein and The Police vs Sunil Gurung**
- The Court of Appeal revoked the judgments of the COM on the basis that it is the prosecution who has to prove that the accused person, has a valid licence issued by a third country and that such person has been in Malta for a period in excess of one year, contrary to what was decided by the COM wherein it shifted the onus of proof onto the accused
- Since the legislator provided for no shift of proof as contemplated in other cases, it is the prosecution who has to prove this state of affairs which at times may be impossible due to the right of silence and the right against self-incrimination that the accused is entitled to.

Breathalyser Test and the Right to Legal Assistance

Article 15A of Chapter 65

15A.(1) No person shall drive or attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place if he is unfit to drive through drink or drugs.

(2) For the purposes of this article, a person shall be deemed to be unfit to drive if his ability to drive properly is for the time being impaired.

Difficulty faced by the Prosecuting Officer to take such Test

- The test should be administered as soon as the driver is stopped
- The driver is considered to be a suspect of a criminal offence
- Thus, he is entitled to his legal rights (Schedule E of Chapter 9)
- In exercising such rights (eg legal assistance, the right to an interpreter, medical assistance) can cause delay in the taking of such test
- Although the law may be clear in its diction, its application may be faced with problems as delay in the taking of such test leads to the diminution of decimals in the alcohol sample

Way Forward

It is of paramount importance that the legislator enacts laws which are clear, well defined and not susceptible to multiple interpretations and this is being said for the following reasons:

- To ensure fairness and justice
- To prevent misinterpretation
- To promote legal certainty
- To protect against abuse of power
- To improve and facilitate enforcement and compliance
- To reduce legal disputes
- To support the rule of law



Conclusion

Ultimately, well worded laws strengthen trust in the legal system and provide a solid foundation for effective governance and future legal reforms

Thank You for your Attention



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