

- 1.1 In Malta there is no formal concept of a uniform application of the law. A decision on any matter is left in the hands of the courts who are free to decide as to whether they should follow past jurisprudence on a particular point. As a rule, lower courts follow decisions of superior courts, but there is no law in this sense. Each case is decided by the judge on the facts and in accordance with the law as understood by him, and a judge is, technically, free to decide as his conscience dictates, but usually follows what other judges might have said in the past on a particular point.
- 1.2 In our country, by uniform application of the law, we understand uniform principles as developed by the courts.
- 1.3 The rationale of uniform application of the law is certainty of law. Once a point of law has been discussed and decided by a court of law, especially the court of appeal, it is wise to follow the relative judgments so as to provide lawyers with legal certainty. One judge may not fully agree with the interpretation given, but to prevent confusion, it is understood that it would be best to follow what was decided in the past. Any new direction should be treated carefully and only after a profound study of the legal principle involved.
- 2.1 There are no formal requirements to ensure uniformity in the legislative process.
- 2.2 No, but we do follow the principle the *lex specialis derogat generalis*.
- 2.3 Treaties have no effect in a court of law unless they are incorporated in local legislation by Parliament. If they are not so, treaties remain an obligation on the state enforceable only in international fora.
- 2.4 If the court is faced with contradictions in laws, it will try to reach its own conclusions on the matter by trying to decipher what was the intention of the legislature.
- 2.5 The law making process is vested exclusively in Parliament. Once a principle is established by the Courts, it is usually followed, but only so long as subsequent courts do not decide to change the principle. We do not have judge made law.
- 2.6 Administrative acts of the executive power have no legal effect. The executive can issue subsidiary legislation through Legal Notice when it is so empowered to do so by an Act of Parliament. An Act of Parliament may set out the main principles of the law, and authorises the executive to issue regulations by Legal Notice to provide details for the operation of the law. These Legal Notices have full effect of law.
- 2.7 Laws in the civil and commercial field, with little or no political implications, are not often amended.
- 3.1 Case law in Malta, in the strict sense of the word, does not exist. Judgments have persuasive effect only.
- 3.2 As noted, judgments have only an informal persuasive effect. A judge who is aware that a point has, in the past, been consistently decided in one way, would, generally, follow the trend, but he is not bound to do so.
- 3.3 The courts have no official role to unify case law. Judges feel that they should follow past decisions to avoid uncertainty.
- 3.4 The Maltese Courts are divided into the Criminal Courts, the Family Court and the Civil Court, this last catering for all cases which do not fall under the previous two categories. Every decision is appealable before the Court of Appeal composed of three judges; the Court of Appeal is composed of the Court of Criminal Appeal, which hears appeals from the criminal courts, and the Court of Appeal, which hears all other appeals (Family and the rest).
- 3.5 By long lasting practice.
- 3.6 Judges are not bound to follow past decisions (although, they usually do so), and there are no consequences if a judge decides not to follow past dicta and decide as his conscience feels is the correct way. It is for the Court of Appeal, then, to try and remedy the situation, but the Court of Appeal is

not itself bound by its own decisions, although, in principle, the Court of Appeal would be reluctant to alter its point of view on any legal point fully

debated and decided in a previous case, even if by different judges.

3.7 All judgments have legal binding effect only on the parties.

3.8 The only remedy is an Appeal.

3.9 As a rule, a judge will depart from past jurisprudence, if he feels that the principle should be changed due to changing circumstances, changes in the

social structure, developments in legal thought or a changed mentality in society.

3.10 Any person aggrieved by a decision of a lower court can file an appeal, and there is no need to get any prior permission from any authority. The

decision of the Court of Appeal, which is our supreme court, has only informal persuasive effect on other courts.

3.11 Decisions of the European Court of Justice, again, have only persuasive but not binding effect (they are obviously binding on the parties involved in the

case, but not on the courts). The decisions of the European Court are, however, held in high esteem and any ruling is generally followed by the courts in subsequent cases.

3.12 All decisions are available to the general public via the internet. A decision is generally on line within one or two days from its delivery.

3.13 Yes

3.14 There is a private company which publishes in book form what it considers to be important judgments, but once all judgments are easily and freely

available on line, it is felt that there is no need for further publications.

3.15 Sometimes you come across a particular judge who feels he should not toe the line on a particular issue. He is, technically, free to do so, but it

creates uncertainty and may involve parties in unnecessary expense to have the matter cleared by the Court of Appeal. Judges who err in this way

are informally talked to by the Chief Justice, but there is no rule binding a judge to follow a trend. In the past we did have one or two judges who

sought to go their own way, but fell into line when talked to by the Chief Justice.

Everything, however, is carried out in an informal way. Since 2001,

when all judgments began to be published on line, it has been easier for judges to follow what their colleagues are doing and generally a common trend is maintained.