Employment Law:

Protection of Wages

Wages are to be paid in full, on time and without deductions except as allowed by the law. The employer may not, unless in very specific circumstances, fail to pay the full salary to employees (if the employer is bankrupt or under liquidation this creates an impossibility but if the money is there, wages have to be paid). There are few circumstances in the law which allows the weekly wage to be reduced. Obviously, if you don't turn up for work (for example you're on strike), then the employer is not obliged to pay you and you are allowed to be fired. If you do not work the hours that you have to work, the employer is entitled to reduce your salary. Even if you don't go to work because you say you're sick but they find out you are not sick. Other than that, the employer has to pay you. Except in very specific circumstances such as a court order, the court may issue an order ('Mandat ta sekwestru') which orders anyone who owes anybody something, in this case the salary, to not pay that salary. The employer is also entitled not to pay the full salary if for example the employee has signed a statement that directs the employer to pay his union fee.

The employer may have the system in place and may pay less money at the end of the week to the employee. Obviously tax and social security (bolla) are deducted from salary. But there are very few other circumstances where the employer is allowed to make deductions in salary, for instance if the place of work is covered by a collective agreement and there is a system of fines in place, the employer, if the provisions of the agreement are followed Is allowed to make deductions. But other than these, there is no defense that an employer can raise if the employee is not paid in full. Including if the employee has been found guilty of stealing from the employer or has made damages during his work, the employer is still not allowed to make deductions from salaries.

The employer cannot impose terms and conditions on how things are spent. Certain employers used to pay employees on conditions that they spend their money in their company business. In fact some used to pay the employees using vouchers rather than cash. There is a provision that says you have to pay them in cash and cash equivalents; cheque, direct credit, etc. Direct credit used to be debatable because up to a few years ago employees used to be reluctant to accept salary by direct credit because they said that no everybody has a bank account, but this doesn't apply nowadays. The law also tells us that except for people employed within such establishments you cannot pay salary in the place of public entertainment or where alcohol is sold (legal minimum contract terms).

Pro-Rata Benefits

The law requires that employees on a part-time or short working week (reduced hours), are paid proportionately (pro-rata) the same as people on a full-time contract. These employees are entitled to pro-rata benefits of leave and to comparable treatment across the board. The employer will calculate the number of hours worked on average by the employee by taking the total number of hours in a reference period; i.e. 13 weeks from 1st January, and 13 weeks after that and 13 weeks after that and so on, divide by the number of days of work and that is the average (Formula by which the employees' rights are replenished). If the comparable full time employee earns 10 euros an hour, any other employee should earn 10 euros an hour doing the same work.

Leave is depended on the formula, so if the employee works an average of 20 hours a week on a 40 hour week, then he gets half the leave entitlement. Any person who works as an employee for another is entitled to the pro-rata benefits, there are no other criteria.

Protection of an employee

- Discrimination:

The law has always given employees protection against discrimination. This is not simply a phenomenon that came into effect because we joined the European Union. However, when the law was amended or rewritten, we got the protections to which we are referring to today.

It is an offence which gives rise to fines, criminal sanctions, and in extreme cases imprisonment which is very rare; and also gives rise to civil liability. The employee has a right of action in employment and in the industrial tribunal. Rights come into effect even before there is any contract or relationship. An employee who feels aggrieved by an advertisement in the situations vacant column, as the advertisement would be directed at one of the various sexes that are around, then this would be discriminatory. It requires an attribute which is not required for the job. Example: having long blonde hair does not make you better for a job than any other person. When advertising or offering employment or interviewing, an employer must not discriminate. Therefore, it is not only when you have an employment relationship in place, there the employees are covered by the next part of the law. Here we have a situation where the law contemplates a pre-contractual relationship therefore and rather creates a liability on the part of the employer if the employer does not comply with the law. The law covers not only employees already in employment but also potential employees.

What is discrimination? The law gives us 2 levels of looking at discrimination:

1. Any distinction, exclusion or restriction (any way of acting in disrespect towards a person) which is not justifiable in a democratic society. It is a concept that should be objectively defined but it is defined by human beings; the Chairperson of Industrial Tribunal, the Judge of the Civil Court, etc. There is always a subjective element.

2. The law goes on to tell us that the division of discrimination includes discrimination made on the basis of marital status, pregnancy and potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union. All of these are even more difficult for the alleged transgressor to get out of if anyone alleges discrimination on this basis. But the law does not restrict itself on this list only. Example if there is behavior that is unacceptable in a democratic society, it is therefore likely to be discrimination.

[redacted] • victimisation

This is a specific cause of action. The employer may not victimize or react against any person who has either; sought to stick up to his rights (if the employee tries to stick up for his rights, for example for sick leaves or other benefits, if you react in any way which is in breach of this section of the law, you are liable to prosecution and liable for a civil case in the Industrial Tribunal if the employee wants to take it further) or taking part in industrial action.

The law goes on to protect employees who may have disclosed information, confidential or otherwise to designated public regulating body regarding illegal or corruptive activities being committed by his employer. The extent to which an employee who has been to the financial services authority to blow the whistle on his boss or employer for making illegal money or money laundering, is protected is not really great. An employee who has blown the whistle is not supposed to be victimized by the employer. This is not to say that any other form of bullying, harassment, etc. is legal. An employee has the right to be treated reasonably at the place of work. The employer owes a duty of care to the employee and

should protect employees from such behavior and to actively preferably not take part in such behavior himself.

• Harassment

It is not any form of annoyance, it is only sexual harassment in the context of employment law. The other two protections relate to employer, here we have both employer and other employees; it shall not be lawful for an employer to harass an employee, but also the other way round and employees to other employees. There should not be any form of discrimination (difference of treatment) based on behavior which is sexual in content.

We're not talking about complete absence of human interaction, but about unwelcome acts (operative word). This applies across the board. Any sort of sexual harassment whether at the place of work or not is only harassment if it is unwelcome. Unfortunately, so heavy is the duty of care on employers that most employers nowadays are tending towards the attitude of authority. It is any unwelcome act, request or conduct including spoken words, gestures or the production, display or circulation of written words, pictures or other materials which in respect of that other person is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidation to such person. The word 'reasonably' is important when it comes to judging if the action is regarded as harassment or not. Here we are talking about value judgements, subjective interpretation of an objective set of words. The court will go around in circles trying to establish whether an act or set of acts in the circumstances of the case, is unwelcome. Would it be reasonable for the employer to assume that the comment was unwelcome? Was it serious enough to constitute harassment under the law?

These three areas and failure to act reasonably in general allow employees two rights of action, sometimes three. There is the direct remedy: criminal action or civil regress in the industrial tribunal, which must be within 4months of the event, and the tribunal may give compensation if being fit. There is also an indirect remedy which might link up to next week's lecture about dismissal. If an employee's life has been made so miserable by the employer because the employer has allowed harassment to take place, because the employer has victimized, because the employer has discriminated; then the employee may in certain circumstances be within his or her rights to resign and claim constructive dismissal. That is to say the employer may find himself in a situation where the employee is claiming wrongful dismissal not because the employee was fired but because the employer caused him or her to resign.

The industrial tribunal can have 3 structures: 1. The tribunal is composed of one person (chairperson) chosen by roster from a panel of chairperson that are appointed by the prime minister after consultation with the Malta council, on cases of dismissal, alleged unfair dismissal... In fact there is a list of 14 people who are all chairpersons of industrial tribunal. When a case is filed you just get assigned from one of the list, you do not choose a chairperson, the chosen are of some experience in employment matters .e.g. ex union persons, ex HR managers of some seniority, lawyers etc. The case relates to an employee or an ex-employee against an employer. You don't take someone to tribunal to get them fired. In fact, dismissal cases are in the form of an appeal to the industrial tribunal of the employee/ex-employee against the decision of the employer to fire. Normally in court the person who makes the allegation has to prove them. In employment matters, the employer usually has to prove the case, the employer has to give evidence that there was good and sufficient cause for dismissal. 2. In the cases of harassment, victimisation, discrimination, etc... a lawyer out of the four of the tribunal, with 7 years' experience, has 7 exclusive jurisdiction. The lawyers also take unfair dismissal cases but when it comes to only the cases described above, the lawyers have exclusive jurisdiction. Therefore there is the full structure of tribunal for industrial disputes, the single person tribunal for unfair dismissal cases and the single person tribunal which must be a lawyer for claims of harassment, discrimination and victimisation. The reasoning is that these are complexly legal issues which can only be decided by people with legal training. 3. Composition that takes into account industrial disputes. The law provides that when there is an industrial dispute in place, either of the party may refer the matter to the industrial tribunal for decision. Collective agreements, collective bargaining, recognition cases etc. you have 2 unions both saying that they have majority. The employer, having to choose, refers the matter to tribunal which decides according to the evidence brought forward. In this case the tribunal is made up of three people: a chairperson chosen from the panel of chairpersons (the same of those who deal with dismissal cases), one person chosen from the panel, nominated by the minister of consultation to represent the interest of trade union, and one person chosen to represent the interest of the employers. These are not there to represent the parties to the case, the people sitting on the panel are supposed to act under a general rule as a judicator themselves as well. The people representing the trade unions and employers (the parties) are their lawyers, their advisors etc. they represent the same way any lawyer represents a client in court. A case in the industrial tribunal has to be filed within 4 months of the harassment, etc... 8 The tribunal takes only into consideration industrial disputes. An industrial dispute is basically a dispute related to the place of work which concerns unions and employers or a union and an employer. Ex. a dispute on whether a group of employees are being paid correctly. Industrial disputes are referred to in the law as trade disputes. The tribunal hears the case and the decision is gives is binding on the parties. On the tribunal sitting therefore, as part as the judicating body, you have a representative of trade unions and of employers, from a panel of persons. In practice, each side nominates its representatives. If it's the employer's representative, the party for the case will suggest one or two people from the panel of employers, the union does likewise. Every dispute is tackled by both sides agreeing to the nomination of the other side as a normal courtesy. If a government entity is involved it gets complicated because then the chairperson of the tribunal chooses the employee and trade union representative. Conciliation Panel (S.68) The basic dispute resolution mechanism under the IRA is two-phased. First there is the Conciliation phase (mediation, the guidance council)

which tries to bring the parties to an agreement. Secondly, there is the litigation stage of the Industrial Tribunal. Under the Conciliation phase the law requires a number of persons who are conciliators/mediators to be existent and these persons will intervene to hold conciliation meetings between the two sides (normally the union and an employer) to seek an agreed way forward. The conciliator does not have the power to give a decision or award penalties but he/she tries to get the parties to reach an agreement. A good percent of the cases are agreed upon by the parties in 9 dispute. Conciliation is a lot preferable to litigation and is also more effective. The following are agencies which represent the tripartite structure: Occupation Health and Safety Authority (OHSA) The occupation health and safety authority establishes health and safety rules on the workplace. It has an inspectorate and enforcement function, and apart from creating rules to ensure safety, they also investigate and prosecute work related injuries, etc... If there is an incident in a place of work of an employee, this authority may hold liable all managers or persons above the person injured. The Occupational Health and Safety Law puts liability not only on the employer but also on the managers or anybody in any sort of authority over the person who was injured. The Employment Training Corporation (ETC) The ETC is a government owned entity which has a three-way function: it provides training and re-training facilities from public funds which will enhance opportunities of work, it is the employment registry, keeping employment records and may fine you if you do not follow procedure such as registering when employed or self-employed, and they are the processing agency for work permits or employment licences (foreign employees must get a permit from ETC to be able to work).

Maltese Law

Termination of contracts

Probation, one is not obliged to give a reason
During probation the employer and the employee may terminate without giving a reason but not during pregnancy and not during injury leave.

In the indefinite contracts there is the circumstance of redundancy

- Structural Redundancy - I do not need that many people to do the job
- Financial Redundancy – I cannot afford that many people

Last in first out operates
If it's a substantial number, the collective redundancy will lose consultancy ...

In a definite contract there is no redundancy, employer terminates just by paying one half of the outstanding salary.

It is no longer possible to change an indefinite contract to a definite contract, except if there is a material change to the job contract.
The employer can terminate any type of contract if there is a good and sufficient cause and it is then terminated summarily, i.e. without compensation, one will just leave(Get fired).
Before taking this step, the employer should at least have some form of disciplinary process.
If there is a part of arrangement, which is established as a process, example a discretionary report, time limits, and rights of appeal...the employer is obliged to follow that procedure.

If there is no procedure, the employer is obliged to create some type of procedure, e.g. giving the employee a reasonable opportunity to state his or her position/defense.
The employee must know: what is she accused of, what the facts are against her and the employee must have the opportunity to make a defense.
This does not mean that one must have a sort of court room/jury trials.
It's quite possible for a disciplinary process to take place within minutes. Example: I walk in my shop and I see the shop assistant stealing money, I ask her what is she doing and her reason doesn't make sense and I fire her, that is a sufficient disciplinary process. I have given her the opportunity to explain her case and she didn't convince me.

As of today, we do not have anything in the law, which forces the employer to have some sort of disciplinary procedure. In England for example the employment law has a structure, in Malta we do not have this. What we mentioned are points that the court of appeal has mentioned.

The court of appeal has decided and made it very clear that some form of fair hearing must be taken into account before the employer is dismissed. There is no definition in the law of what is a good and sufficient cause for the employer to dismiss people

There is no definition of a sufficient cause

A sufficient cause should be such as to strike at the heart of the relationship between the employer and the employee and if not proceeded by warnings. There is nothing in the law that states that warnings are obligatory. If not preceded by warnings the sufficient gravity to justify summary instant dismissal has to be stated, (this does not mean that the employee didn't have the chance to explain oneself).

<u>The law tells us what is not a good cause to terminate employment if</u>:

- The employee was an employee representative, form part of a union, one cannot dismiss someone who is a representative of a union
- The employer no longer has confidence in the employee except in the case of private domestic employee: butler, gardener, maid,
  People who work in your own personal home have to be people you trust, those you don't can be dismissed at will.
  The law is not telling us that an employer losing confidence in an employee for a good reason is not a good cause to dismiss. If I have an employee and I have good evidence that he is not taking care of accounting is a good cause. Even though that employee hasn't stolen anything but he has messed with the books, than the industrial tribunal has said that the employer has lost confidence in his employee for a good reason .....
- (i) Employee contracts marriage – Up to 1972, women who worked in banks or as teachers were on marriage required to leave employment
  (ii) If employee is pregnant with child, one cannot terminate employment if women is pregnant or who is absent a few weeks before having the child
- Employee has filed a complaint against the employer for something bad or is participating proceedings to regress any wrong doing by the employer to the employee or if employee is a whistle blower
  The law confirms that the employee who seeks to abide by the law is protected because the extent to which a whistle blower is protected, e.g. If an employer fires you for reporting to the MFSA or some other authority as the company is not doing things right according to the law
- The business had a change in ownership, if the employer sells the business or even parts of the business, the employee has the right to follow the business. If the business still exists, the employees have the right to follow the business. This does not mean that the employer cannot down-size (dismiss people because new employer can work with 40 people rather than 50)

This provision doesn't apply only to the core business of the employer even for example the cleaner of a petrol station, he has the right to follow the business even though the petrol station now are having compact cleaners. This is a protection for the employees and it is effective mostly when there are mergers or take-overs...

<u>What is a good and sufficient cause?</u>

- Theft, example one was fired because he stole a carpet, which was supposed to be thrown away. He wasn't supposed to do that. In previous years, theft was a good reason

to be fired. Theft in order to be appalled by the tribunal must be relatively serious relating to the circumstances. Theft of a few bank notes would be extremely serious whereas the theft of a few bank notes which are worth nothing as they are not put in circulation yet and they are just paper would be completely different.

- Violence at the work place, fighting, insults, harassment, racism
  The tribunal will look at the circumstance, it will look if someone is provoked, if the person was involved in a 2 way argument and one only was dismissed...
  Violence is listed in most collective agreements as being one of the reasons for dismissal. The tribunal will look at the circumstances of the case.
- Performance, if someone is consistently under-performing example only producing 12 breakfast and he s supposed to do 15 as compared to other employees, cleaning 10 rooms instead of 12, bad performance, bad quality work tribunal will investigate what happened and reasons, example was it the employees fault, whether the employee tried to help the employee improve his performance, were warnings given before-hand. Simply turning around ads state that an employee has a lousy performance probably won't stand up
- Sick leave not appropriately used, the employer need sot be very careful, look at medical opinion, company doctor giving you opinions on whether the employee was really sick or have a specific certificate from his own doctor. Take sick leave cautiously, sick leave is very sensitive area. If an employee is sick, one will have to assume that the employee has the right not to come to work and be very careful if it's not. You may be convinced that the employee is not really sick and is screwing around and you may be right but remember that the case will be heard 7 months down the line in a court room and the guy judging the case will have on one side big company and on the other hand one sick employee...
- Insubordination, if employee was rude, and doesn't obey orders, lying,
  Example: employee went to report the employer that the employer had hit her and it was a complete lie. Formality between employer and employee, one has to be careful on how to speak to his/her employer, as there were cases that the employee was dismissed because of her language, she said something like stop pissing me off...

Lack of motivation, refusal or legitimate orders and directions...
These are all areas where the employee is endangered of being fired. However, the employer has to approach this carefully, the employer cannot for example expect one hundred % survile respect if up to the day before the manager has been pissing around with everyone and then the next day reacts normally.
Employer has to be reasonable. If you re working in an environment where a little bit of swearing is not unusual, one cannot expect everybody as if they are in a convent. These issues have to be measured by the employer in the real world.

If employer sets unreachable targets, one cannot blame the employees, as it is the employer's fault. One has to keep these in mind.

Repetition of minor offences

Being late once is not a reason to be dismissed, but if this keeps happening on a regular basis, employer can take action. There have been tribunal cases, which would uphold this sort of thing, and there have been others that said that the employer had over-reacted. This is the sort of example one uses to ensure that the point about disciplinary procedure is driven home. It is in the employer's interest to have a disciplinary procedure as well as the employees. In the tribunal one will give reasons for being late and will be able to explain oneself.

A reason for termination is reaching retirement age as provided in the social security act. An employee had been terminated after reaching retirement age and the tribunal has been asked to determine how to find that the termination was sufficient or not. Retirement age can be considered as discriminatic.

Example an employee was a delivery guy of a large import company and was rude to one of the clients. He told her that he wishes that her son would get cancer and the tribunal rules to lay that the employer's dismissal was for a good and sufficient cause. Ironically the same chairperson about 6 years ago decided that a bank employee who had used a forged bank document in his appear was dismissed for a good but insufficient cause. The employee owed somebody some money and told that person that he would transfer the money straight into his account gave him a deposit slip and the deposit was false. The tribunal decided that that wasn't a sufficient cause of dismissal and was reinstated.

Why it is important have to a disciplinary procedure?

2001 11th September Twin towers are burning, world is in panic. An employee of MIA decided to phone the airport headquarters and tell them there was a bomb and he phoned from the telephone boxes where there was a CTVV camera. Police headquarters started investigating and checked from where was the call and found that it was from a telephone box near MIA. They phoned MIA and checked who was on schedule that day... and on the tape of the call, there was some evidence that stated who was calling (lecturer says "nirra jixxawwat". This employee was found guilty and MIA's discretionary?? procedure states that if an employee is found guilty of a crime relating to the place of work (calling a bomb threat on the place of work is related in this matter), the HR manager has the right to dismiss but the employee might want to be heard by the board of directors. The employee and his lawyer didn't turn up and the dismissal appalled. This employee took the company to tribunal for unfair dismissal; the tribunal decided that once he was not giving a fair hearing he should be reinstated. The company tried to argue that fair hearing means the opportunity of a fair hearing, and this was given, and the employee had gotten his way. The point is that the company followed the procedures to the latter and still got stuck in the tribunal, imagine if it hadn't followed procedures, it would had to give some type of compensation...

Lecture 5

Contracts of employments.
Section 33 of employment act.

Fixed term or an indefinite term.

There are 3 types of employment contracts:

1. The basis for the fixed term definite contracts or specified terms contracts, you know when it starts and when it finishes. Example summer jobs, internship jobs etc.

2. Indefinite term used to be called default contract, open ended, it is no longer allowed that everyone is in contract.

3. And last project based contract- a contract which is a bit of a hybrid, it is the contract for the length of time during which the employer will complete the project, or the employee will complete the project, such as a building. It is based on the concept that you can't be certain on how long will you be there and at the same time you don't know when it will finish.

Example: Project based contract: an employee was going to be employed with an airline, and the employment was for as long as it takes for the employee to complete 800hours of service.

There are concepts relating to costs, every hour costs the employer the same, no matter under which contract he is in. Under the contracts law there should be no distinction in so far as conditions of employment are concerned, between the different types of contracts.

The difference between these contracts is:

1. The number of hours
2. The way in which the contract may be terminated.

In a definite contract, the contract terminates at the end of the engagement.

The 12 day rule

If the employee of a definite contract, turns up for 12 straight calendar days after the contract ended, they end up being indefinite contract employees. In an indefinite contract you may be terminated in a certain type of circumstances, in a definite contract in different circumstances.

Each of these contracts have a probation period. It starts at day 1 of the probation contract and stands for 6 months in most cases, but for 12 months in the case of senior employees, in these cases probation is of one year. Probation is a trial period which implies from the 1st day of employment for the period of 6 or 12 months, depending on the type of employment. It can be modified lower, in favor of the employee. The law sets out a **rolling period of notice**, depending on how long you have been with the employer, but that can also be modified provided we are talking about relatively senior employees otherwise the law will apply. **Therefore probation and notice can be varied in certain parameters.**

Each of the 3 types of contracts can be subdivided:

- ✓ Whole time
- ✓ Full time with reduced hours
- ✓ Part time
- ✓ Casual: it means what is now being called in other countries as **zero hour contracts**, contracts where by the employee shall be available to the employer but the number of hours per week are not fixed. Maybe the employer doesn't have any work for a whole week, or maybe he needs the employee for 30hours. Zero hours means I am not committing myself any number of hours, but I will give you hours. Conditions may not be less favorable to the employee than the law states. **Difficulty arises on how to calculate the pro rata benefits**. Previous references period, are to be calculated on average hours per week, the formula by which the proportion is worked out 20 hours a week averages and whole time employee works 40 hours, therefore you are entitled to 50% of the employment benefits. All of these contracts have the probation, during which either party can end employment. The ETC already recognizes the validity of this type of arrangement because it classifies employees under this style of employment (zero hour contracts) but the law doesn't.

All of these arrangements are valid, subject to the overarching theory to employment; there must be the minimum standards in favor of the employee. The employer is always free to give more, the employee may not be given conditions that are less available to the employee than the law allows. All of these contracts are subject to the law. The court will deal the law to apply if they're not in favor of the employee.

Provision of legal notice44, 2012- establishes what constitutes employment states.
The 5 out of 8: applies to the contract relationship, if the employee is found to be in an employment relationship with the employer, the employee notwithstanding the contract, the effects of the legal notice 44 are that the employee will be in an indefinite contract with probation, which is why employers are strongly told not to mess around with contracts.

75 to 80% of the times there are no problems on the place of work. In the other 25% of cases, somebody ends up getting fired and that is the employee.

Termination of contracts: 3000 cases since 1977, 2500 have been dismissal termination of employment cases, where the employer won.

In what circumstances may the employment relationship be terminated?

Employee Side:

- ✓ An **employee** may terminate employment at any time by giving notice according to the law of contracts, in the case of definite contracts he has to pay the employer one half the salary that was left to be paid, no notice in definite contract. The employer and employee may agree that the contract is for 3 years, but the employee may resign simply by giving 5 weeks' notice. The employee is allowed at any time to terminate employment, also entitled to walk away without notice. If the employer is discriminatory, unreasonable, harassed the employee; the employee has the right to walk away without giving notice. In circumstances like that the employee may also have a case of **constructive dismissal.** The employee will walk away and sue the employer.
- ✓ Termination can occur at any point.

- ✓ At the moment in the tribunal there is an employer that is being sued for not renewing the employment contract. The tribunal deals only with dismissals and not with renewing, but the other side said that the contract was not renewed because she is pregnant, and therefore the law of discrimination comes into account, which is higher than the law of contracts.

Employer Side:

- ✓ An **employer** may terminate without justification and without contract running out is during probation. During probation(trial period) the employer (and the employee) may terminate by giving one days' notice during the first month and one weeks' notice during the rest of the probation, without giving any reason, this had been discussed in the tribunal. In circumstances where the employee has been or is injured as a result of an occupational injury out of the job or where the employee is pregnant, the law related to probation takes a seat behind those probations, employment can't be terminated. In normal events, whichever contract, if the employee is on probation employee can be terminated. There is a right for the employer not to give a reason for termination during probation, and tribunal won't go into it. It is better if employers do not give a reason for the termination of contract, but if the employer gives a reason, the employer is risking for a tribunal case, which is not pleasant.
- ✓ Example: The Gozo channel employed one to act as a master, captain, when he was terminated; the company told him that he did not achieve the certificate he was required to achieve.
- ✓ If you are terminated during probation, and there is no reason given, this is of advantage because you will be able to apply on **part 1 of the employment register of the ETC** which means that you can get employment benefits. Employment can be terminated at will, provided the employer pays one half of the salary that was outstanding to the employee for the period unworthy. The employer may do it at any point, and the employee has no right to repress.
- ✓ **Definite contracts**: the law doesn't allow an indefinite contract to be converted to a definite contract unless there is a material change to job content, maybe because of promotion or something else. Up to a year ago it was allowed to change from indefinite to definite, today the law doesn't allow it unless there is material change of job content.
- ✓ No fault reason: in a definite contract situation, an employer may terminate employment in a redundancy and paying 1 half. In an indefinite, an employee may terminate without reason and paying 1 half.
- ✓ Fault and no fault reasons. No fault reasons: an employer may terminate employment in redundancy situation or because the employer needs to downsize because of financial reasons. When an employer has determined that out of 20 waiters the hotel can only afford or needs only 10 then the employer is allowed to terminate on a last in first out basis 10 waiters, for redundancy reasons. Reasons: either structural, employer no longer needs that number of people to work or financial reasons. **LIFO operates within classes of employment, not within the company as a whole.** The law tells us that redundancy operates in class of employments, you look at what you need and you terminate what you do not really need. For instance if you employed accountants, it doesn't mean that you fire the accountants needed, but the waiters that aren't needed.

- ✓ We are not Americans, therefore **hire and fire** does not exist. In a definite contract situation, where redundancy doesn't apply (in a definite contract situation), and the employer wants to downsize, he will have to pay half the salary left.

- ✓ Reasons where the employer can dismiss someone without paying any notice. Also without paying notice money, penalties, only if the employee has given the employer a good cause.
- ✓ The laws of discrimination override the law of contracts. An employee finds that he has been discriminated; it may be that the employer has a problem.

Summary dismissal:

Dismissal without notice. The employer can't simply fire someone, there has to be a reason. The cause has to be attributed to the employee, it is not simply that I am suspicious that someone stole something from the cash register, the employee has to have **done something** or **fails to do something**, fails to be efficient. Something attributable to an act or omission of the employee.

The law tells us what not a good clause is and not what a bad clause is.
Legal and minimum standards go all the way through employment law.

Unemployment:

When there is an individual within the age of 15-64, who is actively looking for employment. Someone who is in that age bracket but not actively looking is considered to be inactive, so we cannot include that person as part of the Labour Supply.

Labour force survey (LFS)- carried out by the NSO

Jobsplus- Malta's public employment service
Part 1 of register- individuals that are looking for employment for the first time and it also includes who are made redundant (because of economic reasons). Around 1650 individuals
Part 2 of register- those who are fired because of disciplinary actions and those who fail to fulfill some forms of mandatory action when they are looking for work. Around 200 individuals
Part 3 of register- want to work either part time or they are students and want to work only in weekends. Also include those employees who are already in employment but they are looking for something else.

For statistics it is the LFS that we have to use because it is common all around EU countries.
Questions:

- Have you been actively looking for work for the past few weeks?
- If there were an opportunity would you take it?

If both questions are answered as yes, you are considered as part of unemployment – actively looking for a job.
There are about 6000 people looking for work according to the NSO survey.

Photo of equation

Types of unemployment:

- Frictional
- Seasonal
- Cyclical (Demand- Deficient)
- Structural

There can never be an economy where unemployment= 0 rate. In fact every economy is bound to have some. When unemployment is very low it is frictional unemployment.

Frictional: Moving from one place to another- people who are mobile in the labour market (around 40 people every week are made redundant)
In addition to this there are new employees who are entering the workplace.

Seasonal: linked to seasonality, according to demands of the year.

Cyclical/ demand deficient: linked to the business cycle. The demand for labour is a derived demand. That is if we are going to produce goods and services, we have to increase the employees. However if the business cycle slowdown, we have to employee less people. Whenever there is a recession, the demand for labour falls and the rate of unemployment goes up.

Structural: If cyclical unemployment is prolonged it is highly likely that those individuals become structurally unemployed. Even human beings tend to suffer from wear and tear. This is also backed up by the signal theory. If a person stays out of unemployment for a long time, there is a signal that employers tend to notice with respect to the individual. The more reluctant employees are to take you on board. This is happens in structural unemployment.
Structural- when employees do not have the required skills to fit in employment. Those employees who have only few skills, they become obsolete (jinqaghtu mis sistema)

Inflation: A general and sustained increase in the price level

How to measure inflation: By NSO
They have to establish g + s the Maltese households are consuming. Every 6-7 years they do house hold budgetary survey (HBS). Quite expensive – 1m
They do an exercise over a year, with a sample of 40 thousand households, because our consumption tends to differ according to seasons.
For ex: in summer we tend to eat out more, more use of the ACs etc.
It is representative of all the society – single married rich poor middle class etc.
They distribute a book and obliged by law that the particular families they have to list all the g + s that they are buying and keep all receipts as well.
At the end of the month they give them weighting so then they publish a single number.

In order to come up with the Index:
2 methods:

1. RPI – retail price index
2. HICP – harmonized index of consumer price index

HICP is the same as RPI but is worked on EU – yardstick used by EU commission to compare inflation across the member states. In the latter there is more weight on expenditure on hotels and restaurants (consumer consumption) when compared to RPI. Otherwise are the same.

RPI is important:

1. Used a lot in legal contacts.
2. Cost living adjustment- KOLA (specifically for Malta)
   Way back in the 1990- together with social partners (unions)- employees compensating for the previous years inflation. Each year the minister of finance, in the budget, we take the compensation according to the value of the KOLA.

- **Demand-pull inflation**
- **Cost-push inflation**

Demand-pull inflation:
Diagram:

AD is refereeing to the total amount of expenditure in the economy. Therefore it is refereeing to J.
It occurs where there is a lot of money that is chasing to few goods.
Anything that is related to C and J will lead to demand pull inflation. If people have more income and wealth, (ex: in property- if there is not enough supply the price increases- demand pull inflation)
If a lot of expansionary FP, it drives prices up. Something that is not related to a shift in AD but it still feeds into higher inflation

When it comes to depreciation- we take into consideration only the Euro value. If for example the exchange rate changes from 1 euro to 1.50- the value taken into consideration is the 50c only for the weighting to come up with the index.

GDP increases since Y increases.

In certain situation the demand-pull inflations may lead to cost push inflation.

Cost-push inflation:

When the inflation affects the AS. The AS shifts inwards.
There is more demand- demand-pull inflation
Workers ask for compensation – labour becomes more expensive because of higher wages
Therefore cost-push inflation is created.

Malta has a wage price spiral mechanism: it is a cycle, which continues. Kola mechanism it feeds inflation into inflation. (from a theoretical point of view)

To have inflation- demand has to shift outwards
Supply has to shift inwards

Inflationary together with unemployment:

Phillips Curve:

Diagram:

Employers try to bargain more and when they do that people will have less money, therefore demand less, therefore deflation is created.
When the labour market is tightening up, unemployment is low, things change. It is the job seeker that has the upper hand. They are the ones who have the bargaining power, if wages go up, even the prices go up.

At point A- government is not happy with that level of unemployment. One way of how to arrange it is through expansionary FP.
AD will shift outward. As this happens, there will be an increase in GDP. More labour is increased. Since more labour is employed, there is lower unemployment but given that there is a shift outward in ad, there is also an increase in inflation. It leads to demand pull inflation but having a lower unemployment.
Because of our expectations we ask for compensation for inflation because we think that inflation is going to remain high. That fulfill self-proficiency, will retain inflation at a high level, and because of cost push inflation, it goes automatically move to point c. (new Philips curve)
Therefore it only happens in the short term.
If government intervenes again, from C we move to D, but then after a while we move again to E.
Hence in the SR we depart from unemployment point, there is an increase in inflation and go back to unemployment. Therefore the government ends up helping only for he short term.

NAIRU- if we do not want inflation to accelerate we have to accept that level of unemployment.
Demand side policies, expansionary FP and MP, the end result is always going to be nothing but inflation.
The remedy to decrease unemployment without increasing inflation we have to move to supply side policies. If we create more employment opportunities will lead to NAIRU, which leads to shift inwards
Create sustainable employment through supply side policies.
Demand side policies are beneficial in Keynesian (in a slow down).

(Haartz- supply side policies (came up with 4 cycles of reforms))

Supply- side polices:
Encourage employers to take more workers
Encourage investment
Encouraging training
Reduce benefit dependency

Contracts

There are three types of Contracts that one could be offered when signing up for a job. These are definite, indefinite, and project based contracts.

The contract of definite durations is the one were in the contract, the entry of the employee and the dismissal of the employee will be listed. The employee is hired for duration of time and not indefinitely. The employee will therefore know when he begins work, and when he will stop. Such a type of contract is fixed term contract which states that the employee will work for a number of years.

The contract for indefinite duration is a kind of contract where the employee has the benefit of secure work if of course he is able to perform his work efficiently. The employee will only be laid off if the employer resigns.

Project based contracts are used when the employer is employed for the duration of contracted work. Such a contract will remain as long as the employer has a contract of himself to provide a service.

These three contracts mentioned above offer four different types of employment which are casual employment, part time employment, whole time employment with reduced hours, and full time employment.

Casual employment is when the employee is only called for work when he is needed which is usually a few hours a week. The nature is not employment and there is no reference in the regulations employment act, however these are still covered by health and safety regulations.

Part-time employment is defined by reference to wage-regulation articles. An employee who works for less than twenty hours a week is classified as a part time employee. To be able to qualify as a part timer, one has to work a number of hours a week. The importance of classifying part timers is simply because if a person's main income and main employment is part time, than he is subject to pro rata benefits. A person is a qualifying part time worker if he contributes his part time income to national contribution (social security) and if the employee works a minimum of 20 hours a week.

A whole time employee with reduced hours works more hours than a part time worker but less than full time. They receive pro rata benefits and have all the rights of full time employees.

Full time employment is when a person is employed to work for over 40 hours a week and pays national contribution. The law states clearly that one cannot have two full time employments at the same time.

Labour Law

The Employment Industrial Relations Act (EIRA) introduced in 2002 came into action in January 2003, brings into effect the AKI (Social Policy Ministry website). It was discussed on an equal representation between the government, unions, employees and committees of ILO. Labour law is not static. Things change by discussion and necessity. Currently changes in the way consultation takes place are undergoing. In 2002, the main areas of controversy related to the industrial relations side of the Act. The Act is supplemented by a vast number of Legal Notices. These are meant to supplement the principles mentioned in the Act.

Collective Redundancy Law

Redundancy is the process by which the employment of a number of people is terminated because their employer needs to cut costs, not because the employee has done something wrong.

Health and Safety Law

This forms part of the Labour Law. It states that the employer is obliged to be pro-active and to carry out risk assessments where required, especially where pregnant or potentially pregnant women and juveniles work. Employees have to be reactive, meaning that if there are accidents they have to investigate. The Labour Law provides the obligation to give effect to a safe and secure workplace. This is a condition under the Labour Law.

Definitions

In law words have particular meanings. Natural law does not have a codification, unlike the written law.

- Comparable whole time employee: in order to establish the treatment which is to be given to part time employees, whole time with reduced hrs, casual contract employees, there must be a base line. Thus the law requires comparability of treatment; the law does not require equality of treatment, but comparability. It establishes the base line as the comparable whole time employee: an employee that works 40 hr, 5 day wk and works on an open ended, indefinite contract. It is this employee that the law will require the rest to be compared to. Eg the comparable person for a part time waiter is a whole time one, the comparable of a payroll clerk may be a front office receptionist.
- Conditions of employment: obliges that all terms and conditions related to the employment of the person concerned should be respected.
- Contract of service: can be written or unwritten. An unwritten one should be confirmed by way of a letter or note which lays down the conditions

of employment. The disadvantage of this is that without evidence of the nature of the contract arguments about what the employee is entitled might arise.

- Discriminatory treatment: treatment which is diff form person to person which is unacceptable i a democratic society; gender, politics, place of origin, religion, trade union, affiliation or otherwise
- Employee: a person who works under the instruction of the employer, and does not include a contractor.
- Part timer: relates to the number of hours that a person is supposed to work.
- Unfair dismissal: a dismissal which occurs without a good and justifying cause which is not during the probation period (first six months of employment) and without the reason of redundancy.
- Trade or industrial dispute: a dispute between an employer and the employees (not necessarily the employer's employees). We follow English law, which gives a high level of protection to trade unions.
- Whole time employees, part time employees and whole time employees with reduced hours: under the law, all these employees get proportionally the same treatment.

Institutions relevant to employment

- Department of Employment and Industrial Relations

Its primary function is to ensure compliance with the labour law, including compliance with contracts. If employees have rights which are not being recognised, officers will take up the matter with the employer and if this does not work, the employer will be prosecuted through criminal court. The department offers advisory services to the government and acts as a reconciliation service. Its function is to intervene when there is an industry dispute. The department is not empowered by law to give binding rulings but uses a method of discussion.

- Employment Relations Board

This board was established under the law in order to provide a forum where the conditions of employment are debated. It creates the forum in which labour relations are discussed and recommendations are made to the minister about the legislation.

- The Industrial Tribunal

This refers to the labour courts. It takes up matters of dispute which are referred to adjudicate authorities on two levels:

- Individual level: victimisation, discrimination, harassment. An employee has the right of recourse in the tribunal to resolve individual employment allegations. The tribunal is lead by one person only – the chairman. When the case is not a dismissal case (as in the case of victimisation), the chairman has to be a lawyer that was appointed to the panel of chairmen.
- Industrial dispute: The employee or employer may refer the case to the tribunal and it will decide who is right in the case of a dispute in the industry. The chairperson is one of those already appointed to the panel. He is accompanied by two people on the panel that make up the tribunal: one appointed to represent unions and the other appointed to represent employers. These are the adjudicating panel.

- The Conciliation Panel

This is a panel of persons established to act as mediators. The problem is that this panel has not been appointed yet. The Department of Employment and Industrial Relations carries out this function instead.

- The OHSA (Occupation Health and Safety Authority)

It is established under the health and safety regulations, making sure that workplaces comply with these regulations. Anybody who works either in the industry or in the private sector will come across this institution at one point or another. It also carries prosecutions all the way down the line.

- The ETC (Employment and Training Centre)

The organisation was established to promote training and education at the workplace and in the workforce. Its main duties include:

- Retraining people whose skills are not required
- Making resources available for both the employers and the employees to be trained
- Matching the skills of employees with the requirements of employers at the workplace
- Taking care of the administration and processing of work permits, those of European Union citizens and also those from outside the European Union.
- Acting as the registering institution for employment statistics or records. Anyone who stops or starts employment is obliged to register with the ETC.
- It also maintains registers of people who want to find employment.
- Part 1: employment with benefits
- Part 2: employment with no benefits

- Part 3: people already in employment but available for other employment

Sources of recognised conditions of employment

- National Standard Orders

These are issued by the minister after being drawn up by the Employment Relations Board.

- Collective Agreements

These agreements are entered into by a single employer with a representative union. They are agreements on the conditions of employment. They also have the force of law and constitute of the contract of employment for the employees covered by the agreement.

- Statute

- Contract of Employment

This is a source of recognised conditions of employment. It is enforceable by law.

- Sectoral Standard Orders

These were previously called Wage Regulation Orders (WROs) and have not yet been enacted because there still is a wide range of WROs. These are pieces of subsidiary legislation which give minimum standards of employment. WROs are not the maximum standard but the minimum below which the conditions of employment cannot go. There is nothing to stop the employer from giving you more pay or leave, thus there is no maximum. Where there is a contract of employment, the conditions cannot be less favourable to the employee than the law states it should be.

- Practise

When something is done long enough it becomes law. This has lost much ground since the law was radically changed in 2003.

Matters of General Application

These are areas that affect all employees and employers.

- Maternity leave

Employees who are women are entitled to 13 weeks of maternity leave. It is being discussed that this should be put up to 18 weeks on a European level.

- Annual bonus and weekly allowance

The bonus is paid twice a year, irrespective whether the employee deserves it or not or whether the company is doing well or not. The weekly allowance is similar to the bonus but it is given in quarters. Weekly allowances are amounts payable to all employees, including part-timers if that part-time employment is their only employment.

- Protection of wages

Employers are obliged by law to pay employees their wages to the full. Wages cannot be messed around, meaning that there cannot be any reductions or set offs.

- Protection from discrimination and victimisation

As an employee one cannot be subjective to victimisation, harassment or discrimination. An employer is always liable in a harassment case even if he did not do the act himself because he is responsible of what happens at the place of work of his employees.

- Maximum working hours

The law states that employees are able to work up to a maximum of 40 hours on a normal basis and then can work more hours in overtime.

- Occupational health and safety

Employees are entitled to protection at their place of work.

- Information and consultation

The relevant consultation mechanisms must be in place so that workers are informed about the health and safety issues relating to them.

- Sick/special leave entitlement

All employees are entitled to sick leave and special leave. There is a minimum standard according to LN432/07 which is taken into account when the number of days given for sick or special is not specified in the collective agreement or the contract of employment.

- 4-year rule

According to LN51/07, when an employee is on a definite contract of

employment for more than 4 years the employee will become an indefinite contract employee.

Family-friendly issues

Tele-working

The protections given to employees under the law

- Protection of wages

The law provides that wages are to be paid in full, without reductions and in time, except when as allowed within the law. The law does not allow employers to mess around with wages. Under the law of insolvency, employees' wages are privileged under the law and they come before anyone else. A monthly salary is the maximum spacing between salaries. The lower down the job is the more frequent salary is paid. If the employee does not turn up for work, the employer is allowed to deduct wages in proportion. This, however, does not include times when the employee does not turn up because of industrial action. If the employee has given instructions to the employer to make union deductions, he is allowed to make deductions. Court orders, contractual insurances, pending debts, tax issues, social security (bolla) are all good reasons for the employer to deduct salaries.
One cannot impose conditions on the way wages can be spent.
The wage should be paid in tender, by cheque or by direct credit. One cannot make payments of wages in pubs, because most probably the employee will spend it on alcoholic beverages in that pub.

- Pro-rata benefits

Employees working on reduced hours are entitled to receive the pro-rata benefits of leave and bonus and weekly allowance. Employees working on reduced hours are usually paid pro-rata payment, comparable to that of the full-time employee.
Principle of employment: where the employee is entitled to pro-rata benefits such as social security and NI. Conversely, where the employee does not get social security paid by the employer, one is not entitled to general benefits such as government bonus.

- Protection against discrimination

The employee or potential employee is to be protected from any discrimination. The law also takes into consideration the time period before the employee was employed.

Difference in treatment does not mean that one is discriminating. The treatment can be different, depending whether it is justifiable or not. If discrimination is justifiable then one is not discriminating, but one is simply treating differently. In order for a difference in treatment to be considered as discriminatory it has to be unjustified in a democratic society.
The law gives us examples of what constitutes reasons which are not justifiable. For example, the fact that gay teachers are not allowed to be employed in church schools is not justifiable. One cannot discriminate on the basis of marriage, pregnancy or potential pregnancy, colour, sexual orientation, disability, religious belief (However, a catholic school is not entitled to allow teachers with a different religious belief to teach religious studies. The teacher should be allowed to teach any other subject since his/her religious belief will not affect the way he/she teaches), political opinions and membership with a trade union.
This does not mean that discrimination on any other basis not mentioned above is not regarded as discrimination. However, it is ideal for the employer not to mention the reasons for not employing a certain person or to discriminate on the basis of age in an advertisement. The employer should not be open about the reasons for his decisions. In certain cases, people have to be treated differently, even though it may be seen as discrimination.

- Protection against victimisation

Victimisation under the labour law is the unacceptable treatment of employees because they have either claimed their rights under the law or because an employee has reported an employer to a statutory or legal authority (such as the MFSA or MEPA).
In practical terms, this does not mean that employees are really protected against victimisation, especially when the reporting of their employer is involved.

- Protection against harassment

If acts, gestures, written words and material are based on sexual discrimination this will become harassment. The employer is deemed responsible, even if he is not the person that committed the harassment.
This does not mean that one cannot have the normal human relationship. If there is someone who objects certain actions, the employer has the duty to make a stop to what is going on. This does not mean that the employer has to agree with every employee's requests, but each case has to be looked into separately and dealt with accordingly. The employer must be proactive in preventing harassment along the whole line of work. Employers should have policies in this regard.

- Redress in the tribunal

The employee has the right to redress in the industrial tribunal in each of the cases mentioned above. A complaint on unfair treatment has to be filed within 4 months of this treatment taking place. The tribunal can give any reasonable order, including the compensation of money, for the action that had taken place.

Contracts of Employment:

The contract of employment is usually a brief document which makes direct reference to the law. However, contracts of employment can be divided into a number of types:

- Indefinite duration: the employee knows the start date but not the end date
- Definite duration: the employee knows the start and the end date. If an employee is on this type on contract for more than 4 years, the contract will automatically become an indefinite contract.
- Project based contract: a type of contract that is specific to a certain project. It takes as long as the project takes to finish. The employee knows when he started and that he will finish, but he will not know the exact date that he will finish.

All the above contracts can be further divided into:

- Part-time employment – not working in excess of 20-30 hours per week
- Full-time employment
- Full-time employment with reduced hours
- Casual employment is when the employee goes to work whenever the employer needs him.
- Formal employment is registered with the ETC and attracts or does not attract social security pro-rata benefits.

All types of employment are subject to probation. The employee or the employer can quit employment without giving any reasons during this period of probation. The probation period is usually 6 months but it can be extended to one year depending on the type of employment.

Termination of Contracts:

Probation: a period of 6 months, which can be extended to 1 year in certain circumstances, where the employer or employee can terminate the contract of employment without liability. There has to be one week's notice and there is no need to give a reason for the termination.

With an indefinite contract of employment, the employee may terminate the contract by giving notice in accordance with the law. This means that the number of weeks given as notice have to be related to the period done in employment. The maximum period of notice is 12 weeks. If the employee does not give the appropriate notice period, the employee has to pay the employer half the salary earned during that notice period.

With a definite contract the employee shall pay the employer half of the balance outstanding, meaning that half of the salary that was supposed to have been paid for the period of the definite contract.

When an employer deliberately makes the employee feel uncomfortable at the place of work (such as in the case of harassment, bullying), the employee can terminate the contract without paying any penalties and can even sue the employer. However, the result from suing depends on the interpretation of the tribunal.

Dismissals or terminations by the employer:
During probation (as explained earlier): the employer can waive the probation period explicitly in the contract. In this case, the employer and the employee do not have grounds to use the benefits of probation. Here the employer can terminate the contract in 3 circumstances:

- In the case of a definite contract the employer may terminate the contract at anytime and pay the employee half of the outstanding salary (or all the salary if the contract says so – this is more favourable to the employer and so the contract precedes the law). For example, if an employee has a 3-year contract and after 1 year the employer decides to terminate the contract, the employer would be entitled to pay the employee 1 year salary (half of the 2 years remaining). This is a situation where there is no fault attached to the employee.
- In the case of an indefinite contract the employer can terminate the contract under the conditions of redundancies. This is a situation that arises in 2 types of circumstances:
  - In the case of cost saving; where losses have become too large and, due to the economic situation, the employer is obliged to dump employees
  - When the employer establishes that there are too many employees to do a particular function. Termination can occur even though the company may be making a profit. The company is entitled to shed employees to meet the required number of headcount.

Maltese law relies on seniority. Termination in the case of redundancies occurs on a LIFO basis in the category where the operation is being done. The employer is obliged to give the employee notice in accordance to law or contract of employment. Maltese law does not apply termination benefits.

- In all contracts, the employee can be dismissed if there is a good cause.

Dismissal without liability may occur in the case when the employee gives the employer a good and sufficient cause for the termination of employment. This cause has not been clearly defined by law. A close definition of this cause is that it is a cause attributable to an act or omission by the employee which renders continuing employment impossible. If it is not preceded by warnings it has to be sufficient on its own to terminate the employment. (If employee fucks up, it has to be a major fuck up!) The disciplinary procedure has to be abided by, if it exists, in any case of redundancy.

Not good causes for dismissal

Possibly good causes for dismissal

Disciplinary Procedures:
A good and sufficient cause is what the employer believes and what the industrial tribunal confirms to be so. Before dismissing, a good employer (for his own self-interest) will have instituted some form of disciplinary procedures. This is done by means of the contract of employment. The employer will be obliged to follow this procedure. However, if there is no contract, he will still be obliged to follow certain procedures. There is no legal or statutory obligation for formal procedures. When following this procedure, the employer would be giving the opportunity to the employee to give his side of the story. A fair hearing does not necessarily involve procedures.

Industrial Relations:
Industrial relations refer to the relationship between unions and employers. It could be on a national level, but in Malta it is more on an entrepreneurship level (in the case of a relationship between the union and any company). During an industrial dispute a union is immune from any action for damages by the employer. If the union's actions do not comply with the collective agreement, then it is liable in damages. A union is registered under the Industrial Relations Employment Act. Employers have the same rights as employees. Therefore, they can form unions too. Certain grades of employees in a company may not have a union. They simply follow the contract of agreement. Different categories of employment are enlisted in different

unions. For example, a union for engineers would be different from a union for managers. The employee is free to be part of any union and as many unions as he wants.

What type of union may enter into a collective agreement?
Not all unions can enter into a collective agreement with a company. The aim of a collective agreement is to be the same for, at least, most of the employees in the company. Thus, the number of collective agreements within the same company is limited, irrelevant to the amount of different unions that its employees form part of.
The union must be recognised by the employer for collective bargaining purposes. Usually the union that enjoys the majority of support from the employees has the right to be recognised.

Two Structures of the Industrial Tribunal:
Anything that constitutes a fight between employers and trade unions more often than not develops into a trade dispute. This will result in a case in front of the Industrial Tribunal.

The full structure of the Industrial Tribunal consists of a chairperson, chosen by roster from the panel of chairpersons, accompanied by a representative from the union side and a representative from the employer side. These persons do not represent the parties involved in the dispute but the trade union as a whole.

In most cases brought in front of the tribunal, the structure would not be composed fully. This tribunal would be composed of only one person: the chairperson, chosen by roster from the panel of chairpersons. This panel decides on cases relating to individual rights; when the employee is appealing about the decision of the employer to dismiss. The chairperson chosen does not necessarily have to be a lawyer. The outcome of the decision may result in a reinstatement or compensation.

The chairpersons who are lawyers usually hear cases that have to do with discrimination, harassment and victimisation at the place of work.

Subsidiary Legislation:
Fixed-term or definite contracts: no discrimination between the employees. The four-year rule is also included in this legislation.

Part-time employees: entitled to pro-rata benefits. The principal employment

is that on which NI is paid. For example, if a person has 3 part-time jobs but doesn't pay NI on any of the jobs, this would mean that the person is not entitled to any benefits. On the other hand, if the person pays NI on one of the jobs only, he will be entitled to the benefits for that particular job only.

Foreign workers are generally speaking treated in the same way as Maltese workers.

Collective redundancy: the employer is obliged to enter into a process of consultation with the union before doing performing such as redundancy.

Guarantee Fund: rules of operation.

Transfer of business: employers who transfer part of their business to other employers have to ensure that the employees are given the opportunity to follow the job. Employees cannot be made redundant just because the employer has changed, but they can be made redundant if there are too much employees.

Parental leave: a form of expanded rights

Urgent family leave: taken in the case of emergencies, no notification is necessary.

Organisation of working time: an employer cannot force employees to work more hours than the work time stated (48 hours a week), unless they opt to sign such an agreement.

Information and consultation

The other legislation:

- Social Security Act
- Occupational Health and Safety Authority Act
- Employment and Training Services Act

Exam details
No need to know the details of the regulations
It is important to know principles:

- What constitute the aspects of justified dismissal?
- What are the structures of the industrial tribunal?
- The types of contracts of agreement?

All the aspects should be mentioned in the cases mentioned above.

Maltese Law- Lecture 1

Employment Law/Labour Law

Chapter 452 (Laws of Malta)- Law related to employment

Law that regulates the employment relationship. The employee and the employer- what rights does the employee/employer have, what happens when you break contract.

Industrial relations- relation now between employers and unions.

Enacted in 2002- still called the new law- bought with some controversies with The industrial act- that union and unity will be diminished. What really happened was the merger of the two laws with the additions of concepts which although existed in practice before 2002 example discrimination were not yet codified(written in law) However now chapter 452 is supplemented with a large number of legal noticies.

By two pieces of legislations

1952- CERA

1976- Industrial Relations Act

Fixed term contracts- found in the fixed term contracts regulations. The act is divided in two parts:

1) Goes into detail about employment relations- employment contracts, termination of employment, content of contracts
2) Industrial actions- how industrial tribunal (our labour courts) works

The first section of the act contains a number of definitions. The law is designed and has developed in a relatively simpler language.

Important definitions:

- Comparable whole time employee- since joining the EU we became bound by a central plank/thesis of European employment law. This thisis there should be no black labour, no dodgy employment practices. We already have the appropriate protection because when we joined the EU the main thesis was adopted in our law. The law tells us that an hour of work performed by someone who works 40 hours a work or someone who works one hour a week or so on must receive proportionate benefits for each of the hours they work. For every hour worked for any type of employee –that hour

proporitionatly should cost the employee the same. Example a waiter works for a hotel on a whole time basis or part time should have the same benefits- bonuses etc..
In fact in real life, people do not stand up for their rights and therefore some employees get away with it. The law gives a mechanism by how this is combated. This mechanism is the comparing the conditions of casual employee.
Employee can be whole time, parttime (less than 30 hours normally) /full time, casual- should be payed the same

2)Conditions of employment- under the old law, condition of employment used to be specific such as wage etc. Today definition of employment is extremely wide. Including a health and safety measurements. Every other condition including the right to have training, work in a decent envirionment, company car- can form nowadays part of the conditions of employment, and which the law will back the employee.

3)Contract of service: Employment contract. The fact that there is no contract in writing does not mean that there is no employment- employment is a state of fact. Contracts of employment can be divided between partime time/ full time, definite/indefinite. A contract of service- contract of employment. Should be distinguished from when someone gives service not as en employee (contract for service.

3) Discrimination treatment- there is discrimination when someone is treated differently; sex/age/gender/sexuality/place of origin/political beliefs. In such areas the law assumes that because of these factors there is discrimination. You cannot terminate a contract because SHE got married. You cannot discriminate against anyone. The law also disalowes discrimination which is diff treatment for reasons which are not justifiable in a democractic.
4) Employee: The law tells us that an employee is someone working under a contract of service under the employer. Employment law is going one step ahead- not just this definition. We also have a legal notice which establishes a procedures to start wether one is aen employee or not. (If you hit 5 of the characteristics- you are an employee.) the status of an employee/ the protection that an employee gets under the law-
5) Partime employee- employees who are not whole time employees. Whole time employees-work a minimum number of hours a week depending on the sector. This is not so relevant anymore because conditions of employment is that they have pretty much the same benefits.
6) Unfair dismissal- A termination of employment which is not for the reasons aloowed by law (Ex redundancy/ employee was late for a number of times).

7) A trade dispute- not a dispute between a shop and another shop, but between employer and a union. Employees who take part in industrial action are protected by the law- cannot be dismissed. But if they take part in something that is not a trade dispute- not justifiable (not protected by law)
8) Whole time employee – Each hour costs the same. Its not really imp for practical practices. The manner in which the relationship developed. If someone joined the company as full-time and the employee requested reduced hours and therefore proportionate less benefits.

Termination of Contracts

The law states what is, and what not a good cause for termination of contracts is. It also states that during a probation period, the employer is exempted from giving a reason, since it is probation period.

There are a number of cases that are not good causes for dismissal. Some of which are:

- Lack of confidence in employee (except for domestic employees such as maids)
- If an employee is part of a union the employer cannot dismiss him for such a cause.
- That the business in which the employee is engaged has undergone a transfer of ownership, unless he proves that the termination is necessary for economic, technical or organizational reasons entailing changes in the workforce.
- The employee gets married, is pregnant or is injured at the place of work.
- That the employee has filed a complaint or is participating in proceedings against the employer involving alleged violation of laws or regulation or is having recourse to competent administrative authorities.
- That the employee discloses information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by has employer or by persons acting on the employer's name and interests.

There may also be good reasons which justify the dismissal of employees which are the following:

- Abuse of sick leave and other leaves
- Performance not as required
- Violence in workplace
- Repetition of minor offenses
- Real theft
- Insubordination – refusal of order

An employee can be dismissed if he is responsible for an act or omission which is serious enough to ruin an employee relationship. When an employee is dismissed, he is given some natural rights such as the right to bright and the right to be heard and to be judged objectively.

Until a few years ago, stealing was good enough a reason to terminate a contract, but today the industrial tribunal has further defined this and each case involving stealing is personally looked upon by the tribunal.

There are certain basic disciplinary procedures:

1. The employee must know why he/she is being dismissed
2. The employee must have a right to defend himself
3. The employer must be objective, meaning that he must take into account matters that only take place at work.

An employee terminating a contract:

Definite contract – assuming that probation has gone past, the employee should pay the employer half of his outstanding salary unless he has a good enough a reason to walk away without paying.

Indefinite contract – must give a period of notice when he will stop working. He may also opt to pay the employer half of the salary for the period of notice which goes un-worked.

If an employer wants to terminate a contract:

Definite contract – is obliged to pay employee half of the outstanding salary as at the date of termination, assuming employer has no reason to terminate.

Indefinite contract – if the employer wants to decrease costs by reducing labour he use the concept of redundancy and therefore use the LIFO method. He could also dismiss an employee

f there is a good and sufficient reason for summary dismissal. In this case there is no need of notice and doesn't have to pay half of the salary.

When the employer or employee are terminating a contract of employment of an indefinite term, the advance notice to be given by the terminating party to the other party is calculated according to the period of employment

1month-6months..... 1 week

6months-2years.....2 weeks

2years-4years.....4 weeks

4years- 7 years.....8 weeks

7+ years, add 1 week for each subsequent year up to a maximum of 12 weeks.

The Industrial Tribunal

The industrial tribunal is split into three parts.

- The first part tackles cases which fall under the category of unfair dismissal. Here only one chairman is present to deal with this case. Any person that may feel that he/she was dismissed unfairly, either because of the reason they were dismissed, or the process the employers used, may be able to complain to an industrial tribunal. There are several ways your dismissal could be unfair:

  If the employer does not have a fair reason for dismissing the person (for example, if there was nothing wrong with the job performance)

  If the employer did not follow the correct process when dismissing the person (for example, if they have not followed their company dismissal processes or the statutory minimum dismissal procedure (if it applies)

  If the person were dismissed for an automatically unfair reason (for example, because she wanted to take maternity leave)

- The second part tackles cases which fall under one of these categories: harassment, victimization and discrimination. In these cases there is only one chairman needed, but this time, the chairman needs to be a lawyer, specified in the type of case to be examined.

  One could only complain to an industrial tribunal if harassed, solely if the unwelcome acts have occurred at the place of work.

  One would be victimized by being subjected to different treatment because the employee went to the labour office to report the employer.

  One can complain to the industrial tribunal if he/she is discriminated on the basis of any distinction, exclusion, or restriction which is not justifiable in a democratic society, including discrimination on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious convictions, political opinion or membership in a trade union. If a person is foreign, he can go under the EU convention for protection against discrimination. For n employee to justify discrimination he must be able to compare with other employees in the same class of employment in order to prove discrimination

- The third part tackles cases which fall under the category of industrial tributes. The Industrial Tribunal is a juridical Tribunal made up of a Chairman and two members (one representing Workers' interests and the other Employers' interests) drawn up from separate panels in the case of an Industrial Dispute in order to be fair. The Dispute might occur for reasons such as because of the amendments of the national standard order, the collective agreements, the statute (including health and safety), the legal notice or wages below minimum wage and several more.