

**LEGAL GAP ANALYSIS IN MALTESE
BUILDING & CONSTRUCTION LAWS
AND REGULATIONS**

A FEW EXAMPLES

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WHY LEGAL GAPS?

A legal gap may arise from...

- the failure of the legislative framework to address a particular matter or to do so in a clear or comprehensive manner
- from overlaps or inconsistencies within the legislative framework, thus triggering legal uncertainty
- a result of some external factor that renders the legislative framework inoperable in practice.

**THESE ARE
FEW
EXAMPLES...**

INCONSISTENCIES

POLICE CODE

CHAP 10

97 (1) (n) (i) 'every house shall have at its back a court-yard exclusively belonging to it; and such court-yard shall be of the length of the wall of such house, and of a width not less than three metres, or half the height of the house, if such house be higher than six metres; one privy or more privies, one above the other, may be constructed in any such court-yard; but in any such case the surface of the court-yard shall be enlarged in proportion to the space thus occupied'....

Is this compatible with LN227/16?



**L.N. 227 OF 2016
DEVELOPMENT PLANNING ACT
(CAP. 552)
DEVELOPMENT PLANNING
(HEALTH AND SANITARY)
REGULATIONS, 2016**

(13) (2) 'Every dwelling, except corner dwellings, with a depth of more than fifteen metres, requires a back yard equivalent to at least six metres width or to the entire plot width if such plot width is less than six metres'....

Is the 6 metre criterion compatible with Article 97 (1) (n) (i) of Chapter 10?



OBSOLESCENCE

POLICE CODE

CHAP 10

98. No person shall cut, or cause or allow to be cut, from any quarry any franka stone of any dimension exceeding those, or any of those which the Minister responsible for public works may from time to time establish by order under this article...

Is this still relevant today?



SUBSIDIARY LEGISLATION

10.11

CONSTRUCTION OF HOUSES AND DRAINS REGULATIONS

(2) The layer of asphalt described in article 97 of the Code of Police Laws is to have the minimum thickness of point nine five centimetres and is to consist of hot pitch and coarse sand mixed to the satisfaction of the Sanitary Authority; the upper surface of the layer of asphalt, which must be at least ten point one six centimetres above the level of the street in the case of walls adjacent to a street, is to be reckoned from the level of the street as fixed in each case by the Public Works Department...

What about modern alternatives?



INCOMPREHENSIBILITY

CIVIL CODE

CHAP 16

1638. (1) If a building or other considerable stone work erected under a building contract shall, in the course of fifteen years from the day on which the construction of the same was completed, perish, wholly or in part, or be in manifest danger of falling to ruin, owing to a defect in the construction, or even owing to some defect in the ground, the architect and the contractor shall be responsible therefor....

What if different periti were involved for the planning process, structural design and monitoring?



**L.N. 72 OF 2013
BUILDING REGULATION ACT
(CAP. 513)
AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY
REGULATIONS, 2013**

10. Professional responsibility for the method statement remains with the perit who prepares the method statement, whilst ultimate responsibility for adhering to the method statement rests with the site manager and the contractor.

Is this compatible with Article 1638(1) of the Civil Code?



CRIMINAL CODE

CHAP 9

225.(1) Whosoever, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to

What is the meaning of 'unskillfulness'?



TECHNICAL DEFICIT

CIVIL CODE

CHAPTER 16

439. It shall not be lawful for any person to dig in his own tenement, any well, cistern or sink, or to make any other excavation for any purpose whatsoever at a distance of less than seventy-six centimetres from the party-wall....

What if underpinning is necessary?



**L.N. 72 OF 2013
BUILDING REGULATION ACT
(CAP. 513)
AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY
REGULATIONS, 2013**

(4) For excavations exceeding 3 metres in depth, prior to the commencement of any excavation on the development site, the developer shall carry out an appropriate geological investigation of the area to be excavated.....

Why 3 metres?



EXTERNAL FACTORS

**L.N. 72 OF 2013
BUILDING REGULATION ACT
(CAP. 513)
AVOIDANCE OF DAMAGE TO
THIRD PARTY PROPERTY
REGULATIONS, 2013**

7(2) The Director shall place the digital copy of the method statement on the website of the Building Regulation Office and also make available for the scrutiny of the public the hard copy of such method statement....

Is this carried out?



REPEALED LEGISLATION AFTERMATH

SUBSIDIARY LEGISLATION

424.06

BUILDING (SAFETY)

REGULATIONS

5. All operations involving construction, structural alteration or demolition of a building, or the preparation for, or laying the foundation of, an intended building shall be performed under the general supervision and control of a mason who shall personally superintend the following operations.....

Once these regulations were repealed, is mason still responsible for the personal general supervision?



COMPETENT PERSONS

POLICE CODE

CHAP 10

96.(1) There shall be a Board, to be called the Masons Board, to examine such persons as shall apply for the licence of mason...

But, do we still build exclusively in stonework?



SUBSIDIARY LEGISLATION

424.06

BUILDING (SAFETY)

REGULATIONS

All operations involving construction, structural alteration or demolition of a building, or the preparation for, or laying the foundation of, an intended building shall be performed under the general supervision and control of a mason who shall personally superintend the following operations.....

But is a mason competent to oversee excavation works?



L.N. 72 OF 2013 BUILDING REGULATION ACT (CAP. 513) AVOIDANCE OF DAMAGE TO THIRD PARTY PROPERTY REGULATIONS, 2013

a "site manager" is required to carry out the duty or duties derived from the provisions of these regulations. Such person shall be nominated by, and be responsible on behalf of, the developer for ensuring the correct implementation of these regulations....

Who is competent to qualify as a site manager?

