

Welcome address – World Society of Mixed Jurisdiction Jurists 5th World Congress¹

Distinguished guests,

Good morning.

I feel extremely privileged to be here today, to personally welcome you to Malta, and to this 5th World Society of Mixed Jurisdiction Jurists World Congress. Judging from the list of distinguished speakers, some of you have travelled very far to be here. We are grateful that you took the trouble to make the trip, and relieved that you arrived safely on our shores. I trust we will make it worth the effort you went through to get here.

In terms of ‘mixes’ and ‘mixing’ Malta is, well maybe not unique but dare I say ‘particular’? A small rock in the sea, a country smaller than your average European capital city, with no natural resources, but which despite its limitations, is a full member of the EU, is one of the most densely populated nations in the world, is a country in which currently one in five people is non-Maltese, and has always managed to punch above its weight. The reasons for this are several: our current mix is due to our favorable economy and the political direction which our government has taken in recent years, encouraging foreign workers and inviting foreign businesses; in the past, primarily our geographical position put us in demand amongst seafaring nations leading us since time immemorial to have been ruled by different empires: Phoenicians, Carthaginians, Romans, Byzantines, Arabs, Normans, Sicilians, Spanish, the Knights of St John, the French and finally the British, all of whom left their marks on our language, on our culture, on our environment and, as is to be expected, on our laws. It is no surprise that we have a ‘mixed’ language, Semitic based, yet full of phrases and words derived from Italian and French e.g. our numbers any Moroccan will understand because they are semitic based *wiehed, tnejn, tlieta, erbgha, hamsa etc*, but then we use a lot of Italian and French derived words. For example in the morning many people say Bongu which is derived from the French bonjour, and Bonswa in the evening (Bonsoir). There’s the mix, and that is without mentioning all the words making their way from the Anglo Saxon tongue such as Kompjuter (computer), mowbajl (mobile

¹ Opening speech delivered by Dr Ivan Mifsud at University of Malta Valletta Campus conference organised by the *World Society of Mixed Jurisdiction Jurists* (14-16 June 2023).

phone). As for the influence on our physical environment, just look around the city you are in, built by the Knights of St John, and modified by the British, apart from the Maltese (although this is not intended in a negative sense e.g. the new House of Parliament). The same goes for our legislation: our Civil Code is particularly continental-based, while our Independence Constitution was written under strong English influence. Even within the same branch of law, one finds a mix of influences for example in our Criminal Code, criminal negligence is based on the 1889 Italian Code, while conspiracy (art 48) is derived from English criminal law. That's what I would refer to as a 'legitimate mix', then there are the may examples of what I call 'maverick' mixes which find no justification in our legal system but which happen anyhow because our judiciary and our legal profession have blended them in, sometimes without sparing a thought as to the technical correctness of this. A classic example is those articles in the Civil Code dealing with liability. On countless occasions one finds our courts, and our advocates too, citing English authors and English caselaw without hesitation, without giving a thought to whether they should be doing so or not, and whether our Civil Code provisions on colpa should be assimilated with the Common Law Tort of Negligence. This has been going on for many years; I pointed this out in my PhD thesis many years ago but nobody paid heed and nowadays it is so ingrained that one may wonder why query it at all. It's bound to get worse with time, thanks to Google, and thanks also to a generation of young legal professionals who did not grow up watching Italian television and do not know how to speak and read in Italian or French so obviously, due to their personal limitations, are incapable of referring to the correct sources when interpreting certain legislation for example the much coveted civil law negligence. So we can expect more of this. And to be fair, even if I for one never cease to be amazed at the manner in which English doctrine and caselaw are cited in the process of interpreting and applying civil law concepts based on continental doctrine, the court's final judgment is not necessarily a bad one.

Of course, one may ask what is a bad judgment? By a bad judgment I mean that from a purely pragmatic perspective, the outcome is fair and just; for example, there is nothing unfair, infact it is value added, to say that the local council owes a Duty of Care to that pedestrian who broke her leg walking over a very badly maintained pavement! And similarly that a Duty of Care is owed by the local council to the person who was injured in a public garden which was

undergoing extensive refurbishment, because there was inadequate signage and lighting and nothing to stop the general public from traversing through the garden despite the dangers! The Duty of Care and the English Tort of Negligence strictly speaking are not part of article 1032 Civil Code on *colpa* and the '*prudence, diligence and attention of a bonus paterfamilias*' but in my opinion, despite the technical incorrectness, I think there is value added here just the same, and the outcome was fair and good at least to the victim of the accident who won the day and received compensation.

Then there are the complications. It's easy to say that article 1032 civil code (which I just cited on the prudence, diligence and attention of the *bonus paterfamilias*) are not derived from English common law on tort, but what if it is the Duty of Care owed by the employer towards his employee, to provide a safe working environment? Yes, 1032 civil code does kick in, but there is also Health and Safety Legislation, and I can tell you that our legislation on OHS is based on English Law! So in such cases the court may have good reason to cite English court judgments which talk about a Duty of Care owed by the employer to provide a healthy and safe working environment for the employee and in case of breach we are faced with a combination of civil law (negligence) and breach of health and safety obligations (UK based).

So, it would seem that you are holding the congress in a country with a background akin to your interests as mixed jurisdiction jurists! You will be hearing much more on Maltese law during the course of this Congress, since the programme includes a number of presentations from Maltese academics colleagues and friends of mine, who happen to be amongst the best not only that the University of Malta has to offer, but I dare say amongst the best legal brains in Malta too.

On a different note, you are here in Malta because one person in particular has worked extremely hard over the years with Professor Vernon Palmer, contributing to his world renowned *Mixed Jurisdictions Worldwide – The Third Legal Family* (2nd Edition), and actively participating in so many WSMJJ events, to say nothing of other fora organised by friends and collaborators of the same World Society. I am of course referring to Dr David Zammit, who works

tirelessly within the Faculty of Laws of the University of Malta, and it is thanks to him and his brilliant team, and the deep roots they have fostered with so many of you, that the invitation extended to host this Congress was accepted, bringing so many eminent jurists from around the globe to our shores. A lot of work went into preparing for this Congress, but now its done, I trust that everything is going smoothly and in these few days those who worked so hard to make it happen will get to enjoy the fruit of their toils; as for the rest of the participants, I wish you a successful congress and a good stay in Malta.

Thank you.

Ivan Mifsud

Dean, Faculty of Laws

14th June 2023