Sovereignty

Sovereign States: a state with a defined territory that administers its own government and is not subject to or dependent on another power.
Under international politics, the powers of the state are unlimited (only limited by reality of what the state can do).
Malta is a sovereign state.
International Law: derives its power from the willingness of sovereign states to restrain themselves and abide by certain rules when carrying out international affairs.

Legal Orders

Legal Order	a system of laws that exists independently of another system. It requires a basic law, *its Constitution* where there will be a democracy. The institutions in the system must follow the Constitution.
International Legal Orders	it is in the interest of states to do commerce with other states so there must be certain norms that all states must follow so that there is co-operation.
European Legal Orders	EU is a new legal order of international law; international states are sovereign but sacrifice part of this sovereignty to form part of the EU as a legal order.

Monism and Dualism

Monist Countries	accept that the internal and international legal systems form a unity. Both national legal rules and international rules that a state has accepted, for example by way of a treaty, determine whether actions are legal or illegal.
Dualist Countries	treat the international and domestic systems of law as separate and independent. The validity of international law in a dualist domestic system is determined by a rule of domestic law authorizing the application of that international norm.

Malta is **dualist**: our Constitution distinguishes between national and international law.

National law is applied in Maltese Courts whereas EU law is part of Maltese law through the European Union Act (Chp. 460) --> EU law is not made in parliament but overrides Maltese national law.

Principles of EU

Principle of Direct Effect	EU may confer rights on people which the courts of member states are bound to recognise and enforce.

Principles of EU (cont)

Principle of Subsidiarity	decisions are retained by Member States if the intervention of the European Union is not necessary. The European Union should take action collectively only when Member States' power is insufficient.

Intergovernmentalism and Supranationalism

Intergovernmentalism	whereby nation states, in situations and conditions they can control, cooperate with one another on matters of common interest
Intergovernmental Decisions	decisions by member states undecided by the EU between other state governments
Supranationalism	members create institutions, staffed by members of the nations and it takes decisions independent of the separate state governments for common interest
Supranational Decisions	sovereign nations have pooled their authority through a common institution which decides on behalf of members

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The Lisbon Treaty (2007)

Member States did not want to waste all the work that went into the EU Constitution draft. It **amended Treaty on European Union and Treaty establishing the EU. Renamed EC Treaty as Treaty of Functioning European Union.**
First 3 titles of constitution were kept and 7 parts were added; competences, discrimination and citizenship, policies and internal actions, association of overseas countries/territories, external action and institutional and budgetary provisions.

Therefore, **The EU is founded on The European Union and The Functioning European Union Treaties. They both hold the same legal value.**

The Nice Treaty (2000)

Community Pillar was changed where it was agreed on weighting of votes, distribution of seats in the parliament and composition of Commission.
Article 43 EU enhanced co-operation and relaxed some conditions required before enhanced co-operation could be used.
Charter of Human Rights was made and was used as a step for legitimacy, identity and human rights of EU.
Enlarged in 2004 where Czech Repblic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined.

The Treaty of Amsterdam (1999)

Deleted obsolete provisions from EC Treaty, added others, renumbered articles, titles, sections of TEU and EC treaties.
Principle of Openness was added where decisions where to be taken openly and close to EU citizens.

The Treaty of Amsterdam (1999) (cont)

Article 6 EU was changed to declare that EU was founded on respect for human rights, democracy and rule of law and this became a requirement to join the EU.

The Maastricht Treaty (1992)

Was primarily a vanishing treaty; it started off as a list of amendments consolidated into the EEC treaty (renamed as European Community Treaty) and the concept of the European Union was created politically. It also brought about the **Three Pillar Structure.**

The Merger Treaty (1965)

Merged high authorities, assemblies and courts of the past 3 treaties. Established the same institutions for 3 communities; merged 3 commissions, communities and courts into 1.

The European Economic Community (1957)

Was made to establish a common market, approximate economic policies of members, promote economic activities. *[also aimed to increase stability, raise standard of living and promote closer relations between members.]*
Barriers to trade ended, common customs tariff and national monetary policies were going to be set up. Economic and Social Committee (with advisory status) was set up.
European Social Fund was also created to improve employment. European Development Fund for overseas countries and territories of some members was made.

Became the Treaty of the Functioning EU (in 1957). Became European Community after Maastricht Amendments (94) TFEU (09).

The European Coal and Steel Community (1952-2002)

France and Germany agreed to create something which unites and discourages wars. Most important resources of the time were coal and steel and so, France and Germany created an authority to ensure that they do not use their resources against each other.
Also known as 'Treaty of Paris' and was signed by France, Belgium, Germany, Italy, Netherlands and Luxembourg.

The European Union as an Organisation

EU is **sui generis** (i.e. unique) where the organisation can make decisions for its member states. When joining the EU, **members are giving up some of their rights for the greater good of the state**.
For example: EU members together decide standard rate of VAT (meaning countries within EU cannot tax more than that limit).
EU and member states are equals; when joining the EU, member states must abide by certain common rules and give priority to EU law over domestic law.

EU was created to avoid wars and internal conflicts.

Single European Act (1986)

First substantive treaty amendment
Provided a list of amendments to last 3 treaties. It enhanced European Parliament's power in legislative process through a legislative co-operation procedure *(Article 95 EC)*
With this act, the markets were no longer shared but merged into one (in EEC treaty there was a common shared market).

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Three Pillar Structure

First Pillar	European Communities (EC Treaty, Eurotom and ECSC till 2002)
Second Pillar	Common Foreign and Security Policy (CFSP)
Third Pillar	Justice and Home Affairs

1st Pillar: Treaty of Rome (revised by SEA), single market, European citizenship, economic and monetary union (i.e. single currency, European central bank and co-ordination of economic policies).

2nd Pillar: Common foreign policy (systematic cooperation and common positions with joint actions) and eventual common defense policy.

3rd Pillar: Closer cooperation in various areas (such as asylum policy, immigration policy, combating drug addiction and more).

Costa v ENEL

ENEL was given monopolistic power (against the EEC treaties). Costa challenged ENEL because ENEL was not legally constituted and Costa did not want to pay his bills.
Since Italian law was contradicting the EEC treaty, the Italian Court reasoned that the treaty could not be overridden by domestic provisions (as seen in Luxembourg).

Changes to Pillar Structure by Amsterdam Treaty

Community Pillar	A **large part of the 3rd pillar was incorporated into it**. It's aim was to establish area of freedom, justice and security. The **co-decision procedure was amended** making European Parliament more powerful in decision-making.

Changes to Pillar Structure by Amsterdam Treaty (cont)

Common Foreign and Security Policy	Only a small change to the commission was made; it was allowed to submit implement-ation proposals.
Police and Judicial Cooper-ation in Criminal Matters	Parts were incorporated into 1st pillar and was renamed *Police and Judicial Cooperation in Criminal Matters*. Remaining provisions were subjected to institutional controls closer to those of community pillar. It's aim was to **provide citizens with high level of safety within area of freedom, security and justice**.

Van Gend en Loos Case (26 of 62)

Between Netherland and France, the Dutch authorities came up with a custom code that imposed custom duties (which contradicts the treaty).
Ven Gend en Loos was charged custom duties, and so sued the Dutch custom authorities in a dutch court. This case was then taken to the European Court of Justice (ECJ).
The ECJ established that provisions of the EEC treaty were capable of creating legal rights which could be enforced by natural and legal persons before the courts of the member states.

The European Economic Community treaty abolished customs duties for trade among the Member States of EU.

Non Ratified Constitutional Treaty

Was split into 4 parts:
Part 1: basic objectives and values, binding human rights, competences, forms of lawmaking and more.
Part 2: Charter of Rights
Part 3: Policies and functions of the EU
Part 4: final provisions

Member States could not agree on the final draft in December 2003. 15 Members ratified the treaty, but since France and Netherlands rejected the treaty, many members postponed their ratifications. Thus, **it never became law**.

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