

Award in Civil Procedure

Lecture 1: Court Structure and Competences

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Diploma in Law (Malta)



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References:

- Chapter 12 of the Laws of Malta, The Code of Organisation and Civil Procedure;
- Subsidiary Legislation 12.33: Superior Courts (Number of Judges) Order;
- Subsidiary Legislation 12.19: Civil Courts (Establishment of Sections) Order;
- The Constitution of Malta;
- Chapter 9 of the Laws of Malta, The Criminal Code;
- Chapter 380 of the Laws of Malta, the Small Claims Tribunal Act.



The Courts of Justice of Civil Jurisdiction

- The courts of justice of civil jurisdiction are either superior or inferior. Each court may be divided into different sections.
- The general rule is that the courts of justice of civil jurisdiction are exclusively vested with the judicial authority in civil matters within the jurisdiction of the tribunals of Malta.



The Courts of Justice of Civil Jurisdiction

- The superior courts are:
 - a. The Civil Court;
 - b. The Court of Appeal;
 - c. The Constitutional Court; and
 - d. The Court of Magistrates (Gozo) in its superior jurisdiction.

- The inferior courts are:
 - a. The Court of Magistrates (Malta) for the Island of Malta;
 - b. The Court of Magistrates (Gozo) for the Islands of Gozo and Comino (in its inferior jurisdiction).

- The jurisdiction of the superior courts is general for Malta.
- The jurisdiction of the inferior courts is limited to particular places.



The Courts of Justice of Civil Jurisdiction

- The Chief Justice and President of the Court of Appeal and all other judges shall sit in the superior courts.
- Besides the Chief Justice, the judges of the Superior Courts shall be thirteen or such greater number as the President of Malta may by Order prescribe. In terms of S.L. 12.33, *“the President of Malta has prescribed the number of judges of the Superior Courts, besides the Chief Justice, to be twenty-six (26)”* – 11th October 2022.
- The magistrates shall sit in the inferior courts.



Judges of the superior courts

- The judges of the superior courts are appointed by the President acting in accordance with the recommendation made by the Judicial Appointments Committee.
- A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.
- A judge of the Superior Courts shall vacate his office upon reaching the age of sixty-five (65) years. However, judges of the Superior Courts shall inform the Chief Justice and the President of Malta of their decision before they reach the age of sixty-five (65) years once they choose to remain in office until they reach the age of sixty-eight (68) years.



Magistrates of the inferior courts

- Magistrates of the inferior courts shall be appointed by the President acting in accordance with the recommendation made by the Judicial Appointments Committee.
- A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.
- A magistrate of the inferior courts shall vacate his office upon reaching the age of sixty-five (65) years. However, a magistrate of the inferior courts shall inform the Chief Justice and the President of Malta of this decision before he reaches the age of sixty-five (65) years once he chooses to remain in office until he reaches the age of sixty-eight (68) years.



The Judicial Appointments Committee

It is composed of:

- The Chief Justice;
- Two members elected for a period of four years by the judges of the superior court from among themselves;
- One member elected for a period of four years by the magistrates of the inferior courts from among themselves;
- The Auditor General;
- The Commissioner for Administrative investigations (Ombudsman); and
- The President of the Chamber of Advocates.



The Judicial Appointments Committee

- The Committee is chaired by the Chief Justice;
- In the exercise of their functions, the members of the Committee shall act on their individual judgment and shall not be subject to the direction or control of any person or authority.



The Judicial Appointments Committee

The functions of the Committee are:

- (a) to receive and examine expressions of interest from persons interested in being appointed to the office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts;
- (b) to keep a permanent register of expressions of interest mentioned in paragraph (a) and to the acts relative thereto, which register shall be kept secret and shall be accessible only to the members of the Committee, and the President of Malta;
- (c) to conduct interviews and evaluations of candidates for the above-mentioned offices in such manner as it deems appropriate and for this purpose to request information from any public authority as it considers to be reasonably required;



The Judicial Appointments Committee

(d) when a vacancy in the office of judge or magistrate occurs, the Committee shall send to the President, through the Secretary, the names of three candidates that the Committee considers to be most suitable along with a detailed report on the suitability and merit of these three candidates who, in the opinion of the Committee, are deemed to be the most suitable for the appointment of these offices: Provided that the President shall be entitled to elect a judge or a magistrate exclusively from the names of the three candidates transmitted by the Committee which names of the three candidates shall be made public in the President's decision;

(e) to give advice on appointment to any other judicial office or office in the courts as the Minister responsible for justice may from time to time request;

(f) to approach with a view of eliciting interest amongst qualified persons for the office of judge or magistrate.



The Judicial Appointments Committee

- The evaluation referred to in paragraph (d) is to be made by not later than sixty days from when the Committee receives the expression of interest and the advice mentioned in paragraphs (e) and (f) is to be given by not later than thirty days from when it was requested, or within such other time limits as the Minister responsible for justice may, with the agreement of the Committee, by order in the Gazette establish.
- The proceedings of the Committee are confidential and are held in camera and no member or secretary of the Committee may be called to give evidence before any court or other body with regard to any document received by or any matter discussed or communicated to or by the Committee.



Appointment of judges and magistrates

- Whenever a vacancy occurs in the office of judge or magistrate, the Minister responsible for justice issues a public call for applications open to persons who have the necessary qualifications and experience required to be appointed to the office of judge or magistrate.
- No person shall be entitled to be appointed to the office of judge or magistrate unless that person:
 - a. has the number of years of practice of the profession of advocate in Malta required by law;
 - b. at the time of application be in possession of a valid warrant to practice as an advocate in Malta and must not be precluded from appointment as a member of the judiciary by any legal impediment;
 - c. is able to express oneself in the Maltese and English language and able to communicate in a clear and concise manner;
 - d. possesses integrity, correctness and honesty in public and private life;
 - e. has knowledge of the law, of court procedures and professional experience;
 - f. is industrious, able to work under pressure, diligent, analytical and able to make decisions;
 - g. is impartial and independent;
 - h. is not involved in any commercial or business activity and does not have a financial situation which raises doubt about the ability to perform judicial duties in a proper manner;
 - i. is able to work in a collegial environment; and
 - j. possesses knowledge of the Code of Ethics for members of the Judiciary and is willing to undertake continuing professional development.



Language of the Courts

- The Maltese language is the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.
- Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.
- Any evidence submitted by affidavit shall be drawn up in the language normally used by the person taking such affidavit. The affidavit, when not in Maltese is to be filed together with a translation in Maltese, which translation is furthermore to be confirmed on oath by the translator.



Causes tried in public

- Causes are tried in public. However, it is lawful for the court to order that the cause be heard with closed doors, should decency or good morals so require.
- It shall also be lawful for the court, in any other case, at the request of both parties, upon good reason being shown, to order that the cause be heard with closed doors.
- In any of the said cases, the order of the court shall be recorded.



Judgments are delivered in public

The judgment shall in all cases be delivered in public. The court delivering the judgment shall read out the operative part which is to be included in the concluding part of the judgment. The operative part of the judgment shall include a reference to the claims or pleas which have been decided upon and every declaration intended to be conclusive or binding. Immediately upon delivery the judge or magistrate shall deposit a signed transcript of the judgment in the records of the case.



Għalhekk u għal dawn ir-ragunijiet, din il-Qorti qegħda taqta' u tiddeċiedi dwar it-talbiet u l-eċċezzjonijiet li ma kienux deċiżi bis-sentenza ta' din il-Qorti tal-21 ta' Jannar 2006 u dik tal-Qorti tal-Appell tas-26 ta' Mejju 2021 billi:

1. Tiċċhad l-eċċezzjonijiet fil-mertu;
2. Tilqa' l-ewwel talba kif dedotta;
3. Tilqa' t-tieni u t-tielet talba u tillikwida kumpens fis-somma ta' disa' u erbghin elf mitejn u wiehed u disghin Ewro (€49,291) liema ammont għandu jithallas mill-konvenuti kif fuq ingħad.

L-ispejjeż ta' din il-kawża inkluż dawk tal-ewwel istanza għandhom jithallsu kollha tal-konvenuti.

The Superior Courts – the Civil Court

- One Judge shall sit in each section of the Civil Court.
- The Civil Court: takes cognisance of all causes of a civil and commercial nature and of all causes which are expressly assigned by law to the said Civil Court.
- The exercise of voluntary jurisdiction in matters of a civil nature are assigned to the Civil Court.



The Superior Courts – the Civil Court

- Judgments of the Civil Court, First Hall, are subject to appeal to the Court of Appeal (save where otherwise provided by law).
- Decrees of the Court of voluntary jurisdiction are not appealable, however, any party who deems himself aggrieved may bring an action before the Civil Court, First Hall, for the necessary order.



The Superior Courts – the Civil Court

The Civil Court has a number of sections:

- a. The First Hall of the Civil Court;
- b. The Family Section;
- c. The Commercial Section;
- d. The Asset Recovery Section; and
- e. The Voluntary Jurisdiction Section.



The Civil Court, First Hall

Hears all cases that are of a civil and/or commercial nature which exceed the competence of the Court of Magistrates. It has competence to determine cases that deal with an indeterminate value, cases dealing with immovable property, cases dealing with real rights and cases dealing with specific attributes. Moreover, the First Hall also has competence to hear all cases within the competence of the Civil Court and not assigned to the Family Section or the Voluntary Jurisdiction Section or the Commercial Section. Therefore, if no other court is competent to hear the matter, it is the First Hall of the Civil Court which is given competence.



The Civil Court, Family Section

- This Section has competence in matters relating to rights and duties arising from marriage, filiation, parental authority and also in matters regulated by the Maintenance Orders (Facilities for Enforcement) Ordinance, the Maintenance Orders (Reciprocal Enforcement Act), the Marriage Act and the Child Abduction and Child Custody Act.



The Civil Court, Commercial Section

This Section is assigned applications falling within the competence of the Civil Court and which relate to matters regulated by the Companies Act, the Competition Act and any regulations made thereunder, by the Consumer Affairs Act and any regulations made thereunder, and by the Malta Competition and Consumer Affairs Authority Act.



The Civil Court, Asset Recovery Section

This Section tackles applications relating to matters concerning the recovery of proceeds of crime and to non-conviction based confiscation of property by the State or by an entity of the State as may be provided by any law from time to time in force and all other causes expressly assigned by law to the said section of the Civil Court.



The Civil Court, Voluntary Jurisdiction Section

This Section gives decrees and not judgments and it has competence in matters relating to interdiction and incapacitation of persons of unsound mind, guardianship, trusts and foundations, adoption, minority and tutorship, curatorship, inventories, the approval of accounts, taxation of certain fees, authorisation to enter into certain contracts, execution of acts in pursuance of decrees of the Court of Voluntary Jurisdiction, certain matters regarding absentees, procedure of edicts, opening of successions, testamentary executors and secret wills.



Court of Magistrates (Gozo) in its Superior Jurisdiction

- The Court of Magistrates (Gozo), consisting of one magistrate to be named by the President of Malta in that behalf, shall also have, within the limits of its local jurisdiction, the same powers as are assigned to the Civil Court, in its voluntary jurisdiction.
- There shall be in the Court of Magistrates (Gozo), in its Superior Jurisdiction, two Sections to be styled respectively “The Family Section” and “The General Jurisdiction Section”.
- The Family Section handles the same cases as the Civil Court (Family Section)
- The General Jurisdiction Sections handles cases which are not assigned to the Family Section or which do not relate to its voluntary jurisdiction.



The Superior Courts – the Court of Appeal

- The Court of Appeal is divided into two sections. It acts in its superior jurisdiction and is presided by three judges (the chief justice and two other judges) when it hears and determines all appeals from judgments of the Civil Court, First Hall, the Court of Magistrates (Gozo) in its superior jurisdiction, the Civil Court (Family Section) and the Civil Court (Commercial Section).



The Superior Courts – the Court of Appeal

- The Court of Appeal in its inferior jurisdiction is presided by one judge and is competent to hear and determine appeals from judgments of the Court of Magistrates (Malta) and Court of Magistrates (Gozo) in its inferior jurisdiction.
- The Court of Appeal in its inferior jurisdiction also hears appeals from certain tribunals such as the Small Claims Tribunal and also has exclusive competence from many semi-judicial boards.



The Superior Courts – The Constitutional Court

- The Constitutional Court has both an original and an appellate jurisdiction.
- Broadly, it is competent to hear and determine:
 - Cases on questions on the membership to parliament
 - Cases relating to parliamentary elections
 - Appeals from judgments delivered by the Civil Court on human rights
 - Appeals from decisions of a court of original jurisdiction in Malta on the interpretation of the provisions of the Constitution of Malta
 - Appeals from decisions of a court of original jurisdiction in Malta on validity of laws
 - Appeals from questions decided by a court of original jurisdiction in Malta together with an appeal on any of the above issues



The Superior Courts – The Constitutional Court

- Being a superior court, the Constitutional Court is composed of three judges.
- Appeals to the Constitutional Court – when a case is one relating to a Constitutional right or law, the case is first heard by the First Hall of the Civil Court (Constitutional Jurisdiction) and then appeals are heard by the Constitutional Court.





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The Inferior Courts – the Court of Magistrates

- A magistrate shall sit in the Court of Magistrates (Malta), and such court shall, as a court of first instance, hear and determine all claims of an amount exceeding five thousand euro (€5,000) and not exceeding fifteen thousand euro (€15,000), against persons residing or having their ordinary abode in any part of the Island of Malta.
- Such court shall also take cognizance of all other causes expressly assigned to it by law.
- Nevertheless, causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, including any claim for the ejectment or eviction from immovable property, whether urban or rural, tenanted or occupied by persons residing or having their ordinary abode within the limits of the jurisdiction of such court, shall not fall within the jurisdiction of the Court of Magistrates (Malta) independently of the value of the claim.



The Inferior Courts – the Court of Magistrates

- In its inferior jurisdiction, the Court of Magistrates (Gozo) has the same competence as the Court of Magistrates (Malta).
- From the judgments of the Court of Magistrates (both Malta and Gozo) an appeal shall lie to the Court of Appeal in its inferior jurisdiction.



The Small Claims Tribunal

- The Small Claims Tribunal shall have jurisdiction to hear and determine only all money claims of an amount not exceeding five thousand euro (€5,000).
- Causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, even though the claim does not exceed five thousand euro (€5,000), and causes of ejectment or eviction from immovable property shall not fall within the jurisdiction of the Tribunal.
- The Tribunal is presided by an adjudicator sitting alone. More than one adjudicator may be appointed to sit in any of the said Tribunals, but only one adjudicator shall sit in any one case.
- Adjudicators are appointed for a term of five years and, on the lapse of their term, they are not eligible for re-appointment.



The Small Claims Tribunal

- Adjudicators are appointed by the President acting in accordance with the advice of the Prime Minister. A person shall not be qualified to be appointed as Adjudicator unless he has practised as an advocate in Malta for a period or periods amounting in the aggregate to not less than seven years.
- A person shall be disqualified to be appointed adjudicator if such person:
 - a. is a member of the House of Representatives; or
 - b. is a member of a Local Council; or
 - c. is an undischarged bankrupt; or
 - d. has been sentenced by any court to imprisonment for any term or has been found guilty by any court of any crime found in the Criminal code in the following sections: crimes against public trade, crimes affecting public trust and crimes against the Administration of Justice and other Public Administration.



Other Tribunals/Boards

- There are then other tribunals such as:
- the **Administrative Review Tribunal**: reviews administrative acts of public administration on points of law and points of fact;
- the **Partition of Inheritances Tribunal**: handles cases relating to partition of inherited property that is held in common;
- the **Industrial Tribunal**: hears cases relating to unfair dismissal, payment of sums for termination of fixed term contracts, discrimination, victimization, harassment, breaches of the principle of work of equal value and trade disputes.



Other Tribunals/Boards

There are then also boards such as:

- the **Rent Regulation Board**: hears disputes relating to leases of urban property;
- the **Land Arbitration Board**: hears cases related to the expropriation of land;
- the **Rural Lease Control Board**: competent to hear and determine cases dealing with agricultural leases.



What happens when a case is filed before the wrong Court?

- When the action, although one within the jurisdiction of the courts of Malta, is brought before a court different from that by which such action is cognizable, if the court considers that this is the case, the court, by means of a decree in camera, which is not be subject to appeal, orders that the acts of the proceedings are to be transferred to the court, board or other tribunal by which it considers that such action is cognizable.
- If the court, board or other tribunal to which the acts of the proceedings are transferred considers that it is not vested with jurisdiction to take cognizance of the action transferred to it, the court, board or other tribunal shall within ten days from the receipt of the acts of the proceedings or from the first hearing of the action before it transmits the acts of the proceedings to the court of appellate jurisdiction entitled to take cognizance of appeals from judgments of the court, board or other tribunal which court shall within thirty days and by a decree in camera determine by which court, board or other tribunal such action is cognizable.



Alternative Dispute Resolution

Arbitration

- Arbitration may be mandatory or voluntary
- Examples of mandatory arbitration: condominium disputes, motor traffic disputes and disputes connected with electricity and water services.
- Voluntary arbitration on the other hand is where the parties agree before hand that should a dispute arise between them, the dispute should be referred to arbitration and not to the ordinary courts.



Alternative Dispute Resolution

Mediation

- Another form of alternative dispute resolution is mediation, which is defined as:
“ a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute”
- the parties arrive at a voluntary agreement with the help of a neutral third party, the mediator.
- Can also be voluntary or mandatory – example of mandatory mediation is in family disputes.



The Courts of Justice of Criminal Jurisdiction

Inferior Courts:

- Court of Magistrates (Malta);
- Court of Magistrates (Gozo);
- Juvenile Court.

Superior Courts:

- Criminal Court;
- Court of Criminal Appeal.



The Inferior Courts: the court of Magistrates

- Every Court of Magistrates shall consist of a magistrate and shall have a two fold jurisdiction, namely, as a court of criminal judicature for the trial of offences which fall within its jurisdiction, and as a court of inquiry in respect of offences which fall within the jurisdiction of a higher tribunal.
- There are two Courts of Magistrates, one for the Island of Malta and one for the Islands of Gozo and Comino to be styled Court of Magistrates (Malta) and Court of Magistrates (Gozo) respectively.



The Court of Magistrates: criminal judicature

The Court of Magistrates shall be competent to try:

1. all contraventions referred to in the Criminal Code;
 2. all crimes referred to in this Code which are liable to the punishments established for contraventions, to a fine (multa) or to imprisonment for a term not exceeding two years with or without the addition of a fine (multa) or interdiction;
 3. all offences referred to in any other law which are liable to the punishments established in the preceding paragraph, unless the law provides otherwise.
- The Court of Magistrates as a court of criminal judicature also has an extended competence in that the Attorney General may send for trial by the said court any person charged with a crime punishable with imprisonment for a term exceeding two years but not exceeding twelve years if there is no objection on the part of such person.



The Court of Magistrates: criminal inquiry

- In respect of offences liable to a punishment exceeding the jurisdiction of the Court of Magistrates as court of criminal judicature, the Court of Magistrates shall proceed to the necessary inquiry.
- During the inquiry, the compilation of evidence takes place.



The Juvenile Court

- The Juvenile Court is deemed to be a Court of Magistrates (Malta) or a Court of Magistrates (Gozo), as the case may be.
- This Court hears charges against and holds other proceedings relating to minors under the age of 18 years. It may also issue Care Orders.



Superior Courts: The Criminal Court

- The Criminal Court consists of one of the judges sitting with a jury for the trial of every offence which may be prosecuted according to law in Malta, except those which are heard before the court of magistrates as a court of criminal judicature.
- The jury shall decide on any matter touching the issue as to whether the accused is guilty or not guilty and on any collateral issue referred to in Title VII of Part II of Book Second of the Criminal Code and the court shall decide on the application of the law to the fact as declared by the jury, as well as on all other points of law or of fact relative to the proceedings.



Superior Courts: Court of Criminal Appeal

- Hears appeals from judgments of the Court of Magistrates as a court of criminal judicature. In such instances, one judge without a jury presides the Court of Criminal Appeal;
- Hears appeals from judgments of the Criminal Court. In such instances, the Court of Criminal Appeal consists of the Chief Justice, who is the President of the Court and two other of the judges.



Practical Examples

- Joe owes Charles Eur4,000 for services he rendered to him. He wishes to institute court proceedings. Which court or tribunal is the competent court?
- Alex sold a car to Mark for the amount of Eur17,000. Mark refuses to pay him. Which court should Alex file proceedings in front of?
- Martina provided services to Mario for the amount of Euro 7,000 and Mario has failed to effect payment despite several reminders from Martina. Which court is competent to hear the case?
- John and Kurt both claim to be owners of the same property. Which court is competent to determine the merits of the case?





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