

Diploma in Law (Malta)

Court Structure, Legal Bodies and Professions

Lecturer: Dr Antonio Depasquale

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CAMILLERI PREZIOSI
ADVOCATES

Re-Cap of Lecture 4

- President
- PM & the Executive
- Leader of the Opposition
- Speaker & Ombudsman
- Civil Courts



Today's lecture

In today's lecture we will be covering the following topics:

- CoM Criminal Judicature
- Administrative Review Tribunal, Small Claims Tribunal and the Industrial Tribunal.
- Legal Bodies & Professions
- Assignment
- Self Assessment



Civil Court – Voluntary Jurisdiction

- The Civil Court (Voluntary Jurisdiction Section) is responsible for the interdiction or incapacitation of persons of unsound mind, the nomination of tutors for same persons, the opening of successions and the confirmation of testamentary executors and adoptions among other things
- It is also a repository for secret wills.
- This Court does not deliver sentences but decisions (decrees)
- There is no appeal but one can ask Civil Court to quash the decree



Court of Appeal (Civil)

- Hears appeals from judgements of the Civil Court and from the Court of Magistrates (Civil)
- This Court is composed of three judges when it hears appeals from the judgements of the Civil Court, and of one judge when it hears appeals from the Court of Magistrates in its civil jurisdiction.
- An appeal also lies to the Court of Appeal from decisions of a number of administrative tribunals, mostly on points of law.



Commercial Court

- Deals with applications related to matters regulated by the Companies Act, the Competition Act and any regulations falling under the Consumer Affairs Act and the Malta Competition and Consumer Affairs Authority Act
- Competence to be extended to maritime issues, trademarks, intellectual property and patents.



Court of Magistrates (Criminal Judicature)

- The CoM is competent to hear cases whose punishment is up to 2 years imprisonment
- The procedure is quite informal
- If the offence falls within the **original** competence, the COM will deliver judgement without the need of the inquiry.
- The competence of the CoM can be extended.



Extended competence

- There are 2 categories:
 - 1. Punishment exceeds 2 years but not 6 years accused can decide to have his case dealt with summarily. This needs AG's consent too.
 - 2. Punishment exceeds 6 years but not 12 years – As per above but in this circumstance the inquiry must take it's entire course



Court of Magistrates (Criminal Inquiry)

- It is the same Court as the Court of Magistrates (Criminal Judicature)
- It acts such on cases which are above the competence of the CoM.
- The role is investigative rather than one which appreciates facts.
- The Court collects evidence, and preserve this evidence for a later use by the higher Court.
(kumpilazzjoni)



- The court looks at the evidence and decides whether there is prima facie a case against the accused.
- Prima facie means sufficient grounds.
- If the Courts decides that there is not enough grounds, the accused is discharged.
- If the Court is of the opinion that the charge is one which is within its competence it may pass on to give judgement.



Powers of Magistrate in an Inquiry (kumpilazzjoni)

- Collect all evidence related to the case.
- Order attendance of witnesses, production of evidence and issue of summons or warrant of arrest against any principle or accomplice.
- Order inquest, search, experiment or other things necessary for full investigation.



Criminal Court

- Competent of hearing cases from 2 years upwards if AG decides to send case for jury
- Normally only cases dealing with 12 years upwards are now sent to the Criminal Court
- Presided by a Judge and 9 jurors (there might be cases when it is only a judge)



The Jury

- 9 lay persons to decide the guilt or innocence of the accused
- The jury represents the ordinary person and therefore how such person would look at the evidence presented.
- There can be a jury without jurors and the decision is taken by the Judge



Court of Criminal Appeal

- Hears cases appealed from decisions of the CoM as a Court of criminal Judicature (Inferior Jurisdiction). It is presided by one Judge.
- Also hears appeals from judgements of the Criminal Court (Superior Jurisdiction). In these cases it is presided by 3 Judges.



- Court of Criminal appeal (superior) issues one decision even though made up of 3 judges.
- Vast power since the Court can determine any question for the purpose of doing justice.



Juvenile Court

- The Juvenile Court established under the Juvenile Court Act (Cap. 287) is deemed by law to be a Court of Magistrates.
- It hears criminal cases brought against persons who are under the age of 16 years.
- It also hears appeals against care orders
- In the Juvenile Court the Magistrate sits with two lay assistants, one of whom must be a woman.



Administrative Review Tribunal

- Set up to review administrative acts.
- It consists of a Chairperson appointed for a period of four years by the President of Malta acting on advice of the Prime Minister and assisted by 2 members.
- Deals with appeals about administrative decisions such as warrant decisions, licences,



Small Claims Tribunal

- Has jurisdiction to hear claims which do not exceed the sum of € 5000
- Cannot hear issues related to immovable property
- Presided by one adjudicator who needs at least 7 years of experience as a lawyer.
- Adjudicator equivalent to a magistrate.



Industrial Tribunal

- Made up of a Chairperson and two members (one representing Workers' interests and the other Employers' interests) drawn up from separate panels in the case of an Industrial Dispute whilst of a chairman alone in the case of alleged unfair dismissal.
- In cases of unfair dismissal the Tribunal may order re-instatement of the employee or award compensation.



Malta Arbitration Centre

- Promote Malta as a centre for international commercial arbitration
- Provide for the conduct of international arbitration in Malta
- Encourage domestic arbitration as a means of settling disputes
- Provide the necessary facilities for the conduct of arbitration
- Advise the Government on any matters mentioned in the foregoing



<https://ecourts.gov.mt/onlineservices/Judgements>



Attorney General

- Prosecutor in the Criminal Courts
- Decides whether to file a Bill of indictment
- The AG cannot be impartial in criminal proceedings
- AG's role in the stages before the Bill of indictment the AG has more power than the magistrate



State Advocate

- State Advocate took the role from the AG's Office of the Chief legal advisor of the Government.
- The SA shall not be impartial as the Government is his 'client'
- Assist in drafting of laws
- Represent the government in international Courts



The Lawyer

- Needs two qualifications to practice
 - Accademic qualification
 - Professional Qualificaton (warrant)
- Represented by the Chamber of advocates
- Considered as an Officer of the Court
- Guided by a Code of Ethics



The Notary Public

- Public Officers and therefore considered impartial
- Attribute public faith to acts
- Keep copies of the acts publish
- Need qualifications similar to that of a lawyer
- Required to perform duties whenever required



- Notaries are overseen by the
 - Court of Revision of Notarial Acts
 - Notarial Council
- Notaries bound by a Code of ethics



Legal Procurator

- Can appear in front of the Courts of Magistrates (Civil and Criminal)
- LP takes care of the paperwork needed to be filed in the Courts registry



Assignment

1. Outline the historical journey of the Maltese Constitution.
2. Describe the role of Parliament in our legal system. Also describe the electoral cycle it goes through.
3. Briefly go through the Court system in Malta. Describe the difference in competencies between the different Courts and the difference between judges and magistrates. Choose 2 specific Courts and go into some detail about them.



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