

The Courts of Justice in Malta and the Legal Profession

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**Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants**

Lecture 2

Notaries, Legal Procurators and disqualification of a legal profession



Learning Outcomes

- Interpreting:
 - The role of notaries in upholding the rule of law and legal certainty
 - The appointment of notaries
 - The Cessation, Incapacitation And Suspension From The Exercise Of Notarial Functions
 - The Profession of notary and where it is inconsistent with profession of advocate
 - The appointment of lawyers and legal procurators
 - The Attorney General and the State Advocate
 - The Notarial Council and The Chamber of Advocates



The Notary in Malta

- The concept of notaries in Malta has a rich historical background influenced by various legal traditions and historical events. Here's an overview of how the notarial profession was introduced and evolved in Malta:
- The concept of notaries in Malta has developed through centuries of influence from Roman, Norman, and British legal traditions, evolving into a crucial element of the Maltese legal system. Today, notaries are recognized for their role in ensuring the authenticity and legality of transactions, upholding the rule of law, and providing vital legal services to the public.



The role of notaries in upholding the rule of law and legal certainty

- The role of notaries in upholding the rule of law and ensuring legal certainty is crucial in various legal systems, including Malta's. Here's an overview of how notaries contribute to these fundamental principles:



Authentication of Documents

- **Verification of Identity:** Notaries verify the identities of the parties involved in legal transactions, ensuring that they have the capacity to enter into contracts or legal agreements.
- **Official Record Keeping:** By authenticating documents, notaries create official records that can serve as evidence in legal disputes. This helps establish a reliable trail of transactions and commitments.



Legal Certainty

- **Reduction of Disputes:** Notarized documents carry a presumption of authenticity and accuracy. This reduces the likelihood of disputes arising from conflicting interpretations of agreements, thereby promoting legal certainty.
- **Public Faith in Documents:** The role of the notary adds a layer of trust and credibility to legal documents. Parties can rely on notarized documents as valid and enforceable, which is essential for transactions involving property, wills, and contracts.



Impartiality and Neutrality

- **Independent Role:** Notaries are required to act impartially and independently, ensuring that all parties to a transaction are treated fairly. This impartiality fosters confidence in the legal process and upholds the principle of fairness, a cornerstone of the rule of law.
- **Conflict of Interest Avoidance:** Notaries are obligated to disclose any potential conflicts of interest, ensuring that their professional conduct aligns with ethical standards.



Compliance with the law

- **Legal Guidance:** Notaries provide legal advice to parties regarding the implications and consequences of their transactions. This guidance helps individuals and businesses comply with legal requirements and understand their rights and obligations.
- **Ensuring Legal Formalities:** Notaries ensure that legal formalities are observed in the execution of documents, which is vital for the validity of contracts and agreements.



Protection of rights

- **Safeguarding Individual Rights:** By documenting and authenticating legal transactions, notaries help protect the rights of individuals involved. For example, in the case of wills, a notarized will ensures that the testator's intentions are respected and enforced.
- **Facilitating Access to Justice:** Notaries play a role in making legal processes more accessible to the public. By providing essential legal services, they help individuals navigate complex legal frameworks, thereby facilitating access to justice.



Facilitating Economic Transactions

- Encouraging Business Confidence: The presence of notaries enhances the legal framework for business transactions. Entrepreneurs and investors are more likely to engage in commerce when they can rely on the legal certainty provided by notarized agreements.
- Real Estate Transactions: Notaries are particularly vital in property transactions, ensuring that the transfer of ownership is conducted lawfully and securely, which is essential for a stable real estate market



Regulatory Compliance and Accountability

- **Compliance with Regulations:** Notaries are bound by legal and ethical standards, ensuring that they adhere to regulations governing their profession. This accountability enhances public trust in the legal system.
- **Oversight Mechanisms:** The regulatory bodies overseeing notaries (such as the Notarial Council in Malta) ensure that notaries maintain high standards of practice and ethical conduct, further supporting the rule of law.



Wrapping up on the role of notaries in upholding the rule of law and legal certainty

- The role of notaries in upholding the rule of law and legal certainty is multifaceted. Through their functions as impartial witnesses, legal advisors, and document authenticators, notaries contribute significantly to the integrity of the legal system.
- Their presence fosters trust, facilitates commerce, and ensures that the rights and obligations of individuals are respected, thereby reinforcing the foundations of a just and equitable society.



The appointment of Notaries



Notaries public . Who are they ?

“Notaries are public officers. They are charged to receive acts inter vivos and wills, and to attribute public faith thereto; they shall be responsible for their custody and shall give out copies and extracts of or from such acts or wills”

Chapter 55 of the Laws of Malta.



Notaries public cont'd

- Notaries serve as public officials authorized to receive and authenticate acts performed by individuals during their lifetime, including wills, thereby providing these documents with public faith. Consequently, notaries are responsible for the safekeeping of these documents and may issue certified copies. The powers and functions of notaries are outlined in Chapter 55 of the Laws of Malta, specifically the Notarial Profession and Notarial Archives Act.
- Prior to commencing their professional duties, notaries must take an oath of allegiance and an oath of office before the Court of Appeal. Oversight of all notaries, notarial archives, and the Public Registry is conducted by the Court of Revision of Notarial Acts. This specialized court consists of members appointed by the Minister responsible for notarial affairs, including retired judges, magistrates, advocates, and public notaries.
- The Court holds the authority to conduct unannounced visits and inspections of the Archives, the Public Registry, and the offices of individual notaries as deemed necessary.
- Each January, the Malta Government Gazette publishes a list of all notaries currently practicing in Malta.



Notaries public cont'd

- In so far as they relate to the offices of the Chief Notary to Government, Notary to Government, Notary Public with the Lands Authority or Notary Public with the Housing Authority, or Notary Public with any other Government Authority or Agency, no person holding an office of profit with the Government, except the Office of Director or Assistant Director of the Public Registry or the Land Registrar or Assistant Land Registrar, may practice as a notary.
- Provided that the Director or the Assistant Director of Public Registry and the Land Registrar or Assistant Land Registrar may not exercise the notarial profession except in the capacity of Chief Notary to Government or Notary to Government.



The appointment of a notary

- Notaries are appointed for life by the President of Malta by a notice published in the Gazette and may exercise their functions in any part of Malta.
- The Minister responsible for notarial affairs may, from time to time, by a notice in the Gazette, regulate the number of notaries. Such notice shall not be published unless it has been approved by resolution of the House of Representatives, and it shall not affect such persons as at the time of such notice shall have already commenced in the University of Malta the course of studies prescribed for the notarial profession.



The appointment of a notary cont'd

- Any person who, not being one whose name has appeared in the Gazette, assumes the designation of Notary or in any manner purports to be entitled to practise the profession of a Notary Public in Malta, shall be guilty of an offence under Chapter 55 of the Laws of Malta and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand euro (€1,000) but not more than five thousand euro (€5,000), and in respect of a second or subsequent conviction to imprisonment for a term not exceeding three months or to both such fine and imprisonment.



The appointment of a notary cont'd

No person shall be appointed as a notary, unless –

- (a) he is a citizen of Malta or of a Member State of the European Union or of a State of the European Economic Area (with exceptions)
- (b) he is of good conduct and good character;
- (c) he has obtained the academic degree of Doctor of Law(LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the University of Malta, or such other qualification at masters level as the Minister, after consultation with the Senate of the University of Malta, may from time to time prescribe, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;
- (d) he has been a trainee at the office of a notary for a continuous period of not less than two years prior to the date when the qualifying examination is held and provided that the start of such traineeship shall commence after the attainment of the academic degree, provided that if he has been a trainee with one notary and has continued his traineeship with another notary or notaries, the aggregate period shall be taken into account.

Provided further that the notary or notaries with whom the period of traineeship is conducted shall have practised their profession in Malta for at least ten years

Provided further that such period of traineeship did not commence earlier than four years prior to the date when such qualifying examination is held and the start of such traineeship shall be communicated to and logged by the Notarial Council, which shall also have the faculty refuse the giving of such traineeship by the notary concerned, where the Notarial Council is of the opinion that the said notary may not provide adequate traineeship:

Provided further that the provisions of paragraph (d) shall start to apply from the year two thousand and twenty-two (2022) in so far as they relate to the attainment of the academic degree;

- (e) he is fully conversant with written and spoken Maltese and English; and
- (f) he has passed the qualifying examination held

Provided that no person shall be allowed to sit for the qualifying examination more than three times



Profession of notary inconsistent with profession of advocate

No person may practise as a notary if:

- (a) he holds the warrant of advocate or legal procurator;
- (b) he is a bank manager;
- (c) he is an estate agent or similar broker;
- (d) he is a partner in a commercial partnership or a director or shareholder in a limited liability company whose principal service is estate agency.

Provided that the President of Malta may authorize such person to practise as a notary on his surrendering the said warrant or on his ceasing to be such manager, estate agent, broker, partner, director or shareholder.



Cessation, Incapacitation And Suspension From The Exercise Of Notarial Functions

- A notary shall cease from exercising his functions:
 - (a) if he accepts a government employment, or is in full-time employment, or else if he exercises a profession or assumes any office incompatible with the office of notary (with exceptions);
 - (b) if he is permanently absent from Malta for a continuous period exceeding five years or fails to publish any act for a period of seven consecutive years preceding the current basis year of review, to be ascertained annually, from the basis year of review 2021;
 - (c) if he is interdicted under the provisions of the Criminal Code;
 - (d) if he resigns his office and presents his resignation in writing to the President of Malta provided that the Notary may indicate that his resignation is temporary;
 - (e) if he is removed from his office;
 - (f) if he is removed from his office by the President of Malta following a sentence by any competent tribunal for theft, fraud or any crime against public faith;
 - (g) if he is incapacitated by the President of Malta with the advice of the Board, on account of illness, blindness, deafness or other cause which renders the notary unfit for the performance of his duties;
 - (h) if he assumes an appointment as a Government Minister or Parliamentary Secretary, provided that in such cases said cessation shall be deemed to be temporary, and the said Notary shall immediately be rehabilitated upon cessation of his duties as Minister or Parliamentary Secretary, upon a notice to this effect appearing in the Gazette.



Cessation or disqualification or suspension to be published in Gazette

- The cessation, incapacitation or suspension from the exercise of notarial duties in any of the cases prescribed by law, and the rehabilitation for the exercise of such duties shall be published without delay in the Gazette by means of a notice to that effect.



Legal Professions in Malta

- Lawyers – These have rights of audience before all Courts of Justice.
- Notaries public – These are considered public officials, and they draft and publish public acts.
- Legal procurators – These have the right of audience before the lower Courts of Justice: in practice, most of their work consists of following up legal acts, both those related to court cases and those related to other claims in the court registry.



Lawyers

- Lawyers are professionals authorized to provide legal advice and opinions, as well as to represent clients before courts, tribunals, and other legal forums.
- To practice as a lawyer in Malta, individuals must hold a warrant issued by the President of the Republic, affixed with the Public Seal of Malta. Before commencing practice, warrant holders are required to take an oath of allegiance and an oath of office before the Court of Appeal during a public sitting.



Lawyers cont'd

- No person may exercise the profession of advocate or provide legal services in Malta or otherwise hold himself out as providing any legal service in Malta without the authority of the President of Malta granted by warrant under Public Seal of Malta acting on the recommendation of the Committee and after such person is duly admitted to the Register.
- Upon the grant of a warrant, the Committee shall register the advocate in the Register maintained by the Committee.
- Any person who acts in contravention of this, shall be guilty of an offence and shall on conviction, be liable to a fine (*multa*) not exceeding twenty five thousand euro (€25,000) or to imprisonment for a period not exceeding one (1) year, or to both such fine and imprisonment.



Lawyers and Legal Procurators

- Lawyers and legal procurators, when they appear before the superior or inferior courts, shall be deemed to be officers of the court.



Legal Procurators

- To practice as a legal procurator in Malta, individuals must possess a warrant issued by the President of the Republic, accompanied by the Public Seal of Malta. Before commencing practice, holders of this warrant are required to take an oath of allegiance and an oath of office in a public sitting before the Court of Appeal.
- The primary responsibility of a legal procurator is to assist the lawyer to whom they are assigned in relation to court proceedings. This includes filing written pleadings with court registries on behalf of clients and performing various tasks associated with the preparation of lawsuits.
- Legal procurators have the right of audience before magistrates' courts, as well as special tribunals and boards, and they are also authorized to provide legal advice.
- The regulation of the legal procurator profession in Malta is overseen by the Commission for the Administration of Justice.



Malta Chamber of Advocates

- Advocates admitted to the Malta Bar are represented by the Malta Chamber of Advocates. It is a non-governmental, non-political, voluntary organization that is supported by membership dues and proceeds from events it hosts. It is officially acknowledged by law as the advocacy community's consultative and participatory organ in matters pertaining to the administration and organization of justice.

In Malta, there is a single category of legal professional, with the terms "lawyer" and "advocate" being synonymous. The profession is overseen by the Commission for the Administration of Justice, which includes the President of Malta, the Chief Justice, two judges, two magistrates, the President of the Chamber of Advocates, and two other legal professionals. Complaints against lawyers are reviewed by a committee of five lawyers, who then provide recommendations to the Commission regarding appropriate disciplinary measures. Notably, three of the five committee members are appointed by the Chamber of Advocates, thereby granting the Chamber significant regulatory authority over the profession.



Prosecutors and the Attorney General

- Under Article 91 of the Constitution, the Attorney General is assigned specific constitutional functions, and the Office of the Attorney General is established as a government agency pursuant to the Attorney General Ordinance, Chapter 90 of the Laws of Malta, serving as the legal representative for the Republic. In accordance with the Constitution of Malta, the Attorney General enjoys security of tenure and exercises independent judgment regarding criminal prosecutions, as well as fulfilling responsibilities outlined in the Criminal Code related to these prosecutions. The Attorney General is supported by the Deputy Attorney General and other legal officers.



Article 91 of the Constitution

- 91 (1) There shall be an Attorney General whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.
- (2) A person shall not be qualified to hold office as Attorney General unless he is qualified for appointment as a judge of the Superior Courts.
- (3) In the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment the Attorney General shall have Constitutional independence and shall not be subject to the direction or control of any other person or authority except insofar as a law may provide:
- (a) for the judicial review of a decision not to prosecute or of any other decision taken by the Attorney General, on the grounds of illegality or unreasonableness; or
 - (b) for the judicial review on the basis of criteria established by law of a decision of the Attorney General that a prosecution should take place in a superior court of criminal jurisdiction where the punishment applicable would be higher than that which would apply had the same offence been tried before an inferior court of criminal jurisdiction.



Article 91 of the Constitution cont'd

- (4) Subject to the provisions of sub-article (5) of this article, the Attorney General shall vacate his office when he attains the age of sixty-five years.
- (5) The Attorney General shall not be removed from his office except by the President upon an address by the House supported by the votes of not less than two-thirds of all the members thereof and requesting such removal on the grounds of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.
- (6) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour under the provisions of the last preceding sub-article.



The Office of the State Advocate

- The Office of the State Advocate was established as a distinct legal entity on December 18, 2019, assuming certain functions and responsibilities previously held by the Office of the Attorney General. In accordance with Article 91A of the Constitution, the State Advocate performs specific constitutional duties. This office is constituted as a government agency under the State Advocate Act, Chapter 603 of the Laws of Malta.
- According to the Constitution of Malta, the State Advocate enjoys the same security of tenure as the Attorney General. In performing their functions, the State Advocate must exercise independent judgment and is not subject to the direction or control of any other person or authority.
- The State Advocate is supported by a Deputy State Advocate and additional legal personnel.



Article 91A of the Constitution

- 91A. (1) There shall be a State Advocate whose office shall be a public office and who shall be appointed by the President acting in accordance with the advice of the Prime Minister.
- (2) A person shall not be qualified to hold office as State Advocate unless he is qualified for appointment as a judge of the Superior Courts.
- (3) The State Advocate shall be the advisor to Government in matters of law and legal opinion. He shall act in the public interest and shall safeguard the legality of State action. The State Advocate shall also perform such other duties and functions as may be conferred upon him by The Constitution or by any law. In the exercise of his functions, the State Advocate shall act in his individual judgment and he shall not be subject to the direction or control of any other person or authority.



Article 91A of the Constitution cont'd

(4) Subject to the provisions of sub-article (5), the State Advocate shall vacate his office when he attains the age of sixty-five(65) years.

(5) The State Advocate shall not be removed from office except by the President upon an address by the House supported by the votes of not less than two-thirds of all the members thereof and requesting such removal on the ground of proved inability to perform the functions of office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(6) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour under the provisions of the last preceding sub-article

