

The Courts of Justice in Malta and the Legal Profession

The division and functions of the Courts Of Justice and eligibility criteria for practicing as a notary

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Lecture 4

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of Justice in Malta and eligibility criteria
for practicing as a notary**



Introduction

- The Courts of Justice in Malta form a critical component of the country's legal system, ensuring the administration of justice, the protection of individual rights, and the upholding of the rule of law. The Maltese judicial system is structured with a clear hierarchy and division of courts, each with specific functions and jurisdictions. This division is designed to handle various types of legal matters efficiently and effectively



The Courts of Justice

- The Constitution Of Malta holds that there shall be in and for Malta such Superior Courts/ having such powers and jurisdiction as may be provided by any law for the time being in force in Malta. (Article 95).



The division of the Courts of Justice

- The **courts of justice in Malta** are organized in a hierarchical structure, with distinct divisions handling different types of cases, both civil and criminal. These courts ensure that legal matters are heard at the appropriate level and jurisdiction. The system can broadly be divided into **Superior Courts** and **Inferior Courts**, along with **specialized tribunals** and other judicial bodies.
- **Superior Courts-** The **Superior Courts** deal with more serious and complex cases, both civil and criminal, and have jurisdiction over appeals from the Inferior Courts
- **Inferior Courts-** The **Inferior Courts** deal with less serious cases and generally act as courts of first instance for minor civil and criminal matters.
- These will be explained further in Lecture 7 of this course.



The reasons behind the division of the Courts of Justice in Malta

- The division and functions of the Courts of Justice in Malta are designed to ensure an efficient, fair, and accessible legal system. By dividing the courts based on the nature and seriousness of cases, Malta ensures that justice is administered promptly and appropriately. The specialized tribunals and courts also reflect the need for expertise in specific areas of law, while the appellate system provides an important safeguard for reviewing judicial decisions.



Specialization

- Expertise: Specialized courts and tribunals allow judges and adjudicators to develop expertise in specific areas of law, leading to more informed and effective judgments.
- Efficiency: Specialization streamlines procedures and reduces the time taken to resolve cases.



Accessibility

- **Simplified Procedures:** Courts like the Small Claims Tribunal offer simplified processes, making legal recourse more accessible to the general public.
- **Cost-Effectiveness:** Specialized tribunals often provide less costly options for dispute resolution.



Workload Management

- Distribution of Cases: Dividing courts by function and jurisdiction helps distribute the caseload evenly, preventing backlogs and delays.
- Focus: Allows higher courts to focus on more serious and complex matters.



Historical and Legal Traditions

- Influence of Various Legal Systems: The division reflects Malta's hybrid legal system, incorporating elements from Civil Law, Common Law, and European Union Law.
- Evolution of Law: As society and legal needs evolved, new courts and tribunals were established to address emerging areas of law



Protection of Rights

- **Constitutional Safeguards:** The existence of a Constitutional Court ensures that fundamental human rights are protected, and constitutional matters are given the highest priority.
- **Fair Trial:** Specialized courts help ensure that cases are heard by appropriately qualified judges, promoting fairness in the judicial process.



Judicial independence

- The judiciary operates independently from the executive and legislative branches of government.
- Judges and magistrates are appointed based on merit and have security of tenure, safeguarding them from external influences



Supervision and Enforcement of Court Orders

- The courts have the power to enforce their decisions, such as issuing orders for the payment of damages, restitution, or the imposition of fines and prison sentences.
- Through enforcement mechanisms, the courts ensure that their judgments are carried out, whether in civil, criminal, or administrative matters.



Promoting fairness and equality

- The courts play an essential role in promoting fairness and equality by ensuring that all individuals have equal access to justice and that laws are applied uniformly. They provide legal recourse to people who feel that they have been treated unjustly or discriminated against, ensuring that justice is available to everyone, regardless of their social or economic status.



Ensuring Legal Certainty and Rule of Law

- By providing clear, authoritative interpretations of the law, the courts ensure legal certainty and fairness in society. Individuals and businesses can rely on the legal system to protect their rights and enforce contracts.
- The courts also uphold the rule of law, ensuring that no one is above the law and that legal processes are fair and transparent.



Conclusion on the division and functions of the Courts of Justice

- The division and functions of the Courts of Justice in Malta are designed to create an efficient, accessible, and fair judicial system. By establishing a hierarchy of courts and specialized tribunals, Malta ensures that legal matters are addressed by the appropriate judicial body with the necessary expertise. This structure reflects the country's legal traditions and commitment to upholding the rule of law, protecting individual rights, and providing justice for all citizens.
- The reasons behind this division are rooted in the need for specialization, efficiency, accessibility, historical development, and the protection of rights. Understanding this structure is essential for appreciating how Malta's legal system functions to serve its society effectively.



The Court Services Agency

- The Court Services Agency oversees the administration of the Law Courts of Malta. Its responsibilities include managing court registries and their associated officers, handling the filing and service of judicial acts, and executing executive titles—such as judgments and warrants—through Court-appointed marshals and other officials. The Agency is also responsible for conducting auctions, jury trials, and other criminal court proceedings.



The language to be used at the Courts of Justice

- The Maltese language shall be 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.



The Registrars

- There are three registrars namely:
 - The Registrar, Civil Courts and Tribunals,
 - The Registrar, Criminal Courts and Tribunals and
 - The Registrar, Gozo Courts and Tribunals.
- The Registrars of the Courts are responsible for the registries and the officers attached to them, the filing and service of judicial acts, registration of sitting minutes, execution of executive titles, such as judgements, and warrants through Court appointed marshals, judicial sales by auction, trials by jury and other criminal court procedures.



The Executive Officers

- Chapter 12 of the Laws of Malta states (Article 67) that there shall be court executive officers who shall be trusted with the service and the execution of any judicial acts, warrants and other orders given by the Courts, Judges and Magistrates and to perform such other duties as may be assigned to them by the Director General (Courts) and the registrars.
- The Minister responsible for justice may, by regulations made under this article, designate the officers who shall be court executive officers prescribing their respective duties, powers and responsibilities and may regulate any other matter which he may deem necessary for the better performance of their functions.



The Executive Officers cont'd

- Court executive officers are also charged with the maintenance of good order and decorum in the building of the courts.
- Every such officer shall, within the precincts of the building of the courts and of any office, building or other premises occupied by, or under the charge of, the Director General (Courts), be empowered to exercise all such functions, powers and duties as are by law vested in Police officers.
- where such officer detains or arrests any person for any offence committed within the precincts mentioned in the point above, he shall forthwith bring the offender before a magistrate and charge him with breach of good order and decorum in the buildings of the court and if the court, on summarily hearing the case, finds the offender guilty of breach of good order and decorum in the building of the court, shall condemn the offender to any of the punishments mentioned in article 990 of the Chapter 12.



Execution of the duties of the Court Executive Officer

- Court executive officers shall execute their duties personally unless otherwise prescribed by regulations made by the Minister responsible for justice, by Rules of Court, or, in the absence of such regulations or rules, in accordance with the orders even verbal, of the judges or magistrates.
- If any person knowingly avoids, obstructs or refuses service of any act or court order or execution of any warrant or order by any executive officer of the courts, he shall be guilty of contempt of court and shall be liable, on conviction, to the punishments mentioned in article 990 of Chapter 12 of the Laws of Malta.



Powers of executive officers

- Every officer charged with the execution of any order of the court shall, for the discharge of his duties, have the same powers as are by law vested in Police officers.
- In the case of opposition by the use of violence, it shall be lawful for an executive officer to demand the assistance of any member of the Police force



Judgements versus decrees

- In the context of **Maltese law**, both **judgments** and **decrees** are legal decisions made by the courts, but they differ in their scope, finality, and the types of cases in which they are issued.



Judgements

- A judgment in Maltese law refers to the final decision given by a court at the conclusion of a case.
- It resolves the substantive issues in the dispute, determining the rights and obligations of the parties involved.
- Judgments are issued after the court has heard all the evidence, arguments, and legal submissions.
- Judgments are generally final and binding but may be subject to appeal if a party is dissatisfied with the decision.
- In Malta, judgments are typically delivered in civil, criminal, and constitutional matters. They can result in various outcomes, such as awarding damages, enforcing rights, or determining criminal guilt or innocence.



Decrees

- A decree in Maltese law is usually an interim or procedural decision made by the court during the course of legal proceedings.
- It does not resolve the entire case but deals with procedural matters or specific issues that arise before the final judgment is delivered.
- Decrees can include decisions on matters such as granting or denying a request for interim measures (e.g., injunctions), appointing a legal expert, or ordering the submission of further evidence.
- Decrees can be either interlocutory (issued during the process of litigation) or final when they conclusively determine specific procedural issues.
- Unlike final judgments, decrees may often be appealed only with special permission or under certain conditions.



Key differences between judgements and decrees

- Judgments resolve the case entirely, while decrees are often temporary decisions on procedural or ancillary issues.
- Judgments deal with the merits of the case (substantive law), while decrees typically address procedural matters or interim issues.
- Judgments can generally be appealed directly, whereas decrees may be subject to more limited appeal options, depending on the nature of the decree.
- In Maltese legal practice, both judgments and decrees are essential to the administration of justice, but they serve different purposes within the judicial process.



Where does the notary come into play in the sphere of the courts of Justice in Malta?

- In Malta, **notaries** hold a unique and important role within the broader sphere of the **Courts of Justice** and the legal system, even though they are not directly part of the judiciary. Notaries serve as **public officers** who are entrusted with the preparation and authentication of important legal documents, primarily related to civil and commercial matters.



Role as a Public Officer

- Notaries are considered public officers who act in the interest of both private parties and the state. Their responsibilities include ensuring that legal transactions, such as property transfers, contracts, wills, and public deeds, are properly formalized and registered.
- While not directly involved in litigation or dispute resolution, their work often forms the legal basis for matters that may eventually be brought before the courts.



Preparation of Legal Documents

- **Public Deeds and Contracts:** Notaries are responsible for drafting public deeds, contracts of sale, mortgages, and other formal agreements that require authentication. These documents must be carefully prepared, as they are legally binding and may be scrutinized in court if disputes arise.
- **Wills and Succession:** Notaries play a crucial role in drafting and registering wills and succession documents. In the event of a contested will or inheritance dispute, the courts may examine the work of the notary to determine the validity of the documents.



Authenticating and Certifying Documents

- Notaries ensure that contracts and deeds are authenticated—meaning that they certify the identities of the parties involved, confirm their consent to the terms, and guarantee that the documents comply with Maltese law.
- The notary's signature and seal are evidence of the legality and validity of the documents, which could be referenced in court cases, especially in disputes over property rights or contractual obligations.



Advisory Role

- Notaries act as legal advisors to parties in the execution of important transactions, ensuring that individuals understand the implications of their contracts and legal documents.
- In some cases, notarial advice can prevent disputes from escalating into litigation, thus reducing the burden on the courts.



Filing and Registration of Documents

- Once a public deed or contract is signed, notaries are responsible for filing and registering these documents with relevant public registries (such as the Public Registry and Land Registry).
- This formal registration is essential in legal processes, as it ensures that the courts and other legal authorities can easily access these documents in case of disputes.



Probate (establish the validity of (a will)) Succession

- In matters of succession, a notary may be involved in the drafting and execution of wills. In the event of a dispute over an inheritance, the Civil Court (First Hall) may require the notary's records to confirm the validity of the will.
- Notaries also oversee the publication of wills, which means they ensure that the legal procedure is followed, and that the deceased's intentions are properly executed. If there are challenges or irregularities, these may be resolved through the courts.



Court-Related Procedures Involving Notaries

- **Acts of Judicial Sale by Auction:** Notaries may be appointed by the courts to handle the legal aspects of judicial sales by auction in cases where a property must be sold to satisfy a debt or resolve a dispute. The notary oversees the drafting and registration of the sale documents, ensuring compliance with legal requirements.
- **Court Mandates:** In some cases, the court may issue a mandate for the notary to act on its behalf, particularly in matters involving guardianships, sequestrations, or cases where an individual cannot manage their own affairs.



Notarial Errors and Court Scrutiny

- If a notary fails to adhere to the legal requirements in drafting or authenticating a document, or if there is negligence, their work can be challenged in court. For example:**Civil Disputes:** Parties to a contract might bring a case before the **Civil Court** if there is a dispute over the validity or legality of a deed that was notarized.
- **Professional Conduct:** The **Court of Revision of Notarial Acts** or any **other Court** may examine the notary's conduct if there is a claim of malpractice, fraud, or failure to perform duties. The **Commissioner for Justice** may also be involved in disciplinary proceedings.



Notary's Role in Preventing Legal Disputes

- By providing a legally sound framework for agreements, notaries help prevent disputes from arising.
- Their work ensures that transactions are properly documented and legally enforceable, reducing the likelihood of misunderstandings or breaches that might lead to court cases.



Conclusion on the role of the notary *vis-à-vis* the Courts of Justice in Malta

- The role of notaries in Malta is integral to the legal system and intersects with the work of the Courts of Justice in several ways. Notaries do not directly adjudicate disputes or participate in courtroom litigation, but they play a key role in preventing disputes, formalizing legal transactions, and ensuring compliance with the law. Their work serves as the foundation for many cases that might come before the courts, particularly in civil and commercial law. By acting as public officers, notaries help uphold legal certainty, the rule of law, and the proper functioning of Malta's judicial system.



Notaries and the rule of law

- Notaries uphold the rule of law by ensuring that legal transactions comply with the legal standards set out by the courts and the legislature. Their role helps to maintain legal certainty and public trust in legal agreements.
- They act as neutral and impartial parties, ensuring that the law is followed regardless of the interests of the individual parties involved.

