

Diploma in Law (Malta)

Introduction to the Maltese Legal System

Lecturer: **Dr Sarah V Ciliberti**

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CAMILLERI PREZIOSI
ADVOCATES

Introduction

Today's lecture will cover the following

1. Legal professions
2. Court Structure
3. Court of Criminal Inquiry + Court of Criminal Judicature
4. Jury proceedings
5. Appeal applications + procedure – retrial
6. Assignment



To clarify

- Suspended sentence 28A Chapter 9
- Conditional – Article 22 of Chapter 446 – Probation act
- Unconditional discharge
- Conviction but discharged
- Article 991 of the COCP
- *It shall be lawful for the judge or magistrate referred to in article 988 forthwith to sentence to a fine (ammenda or multa) or to detention in terms of the Criminal Code, any person who, by any indecent word or gesture during the sitting, commits any act of contempt of court, or insults any other person.*



Legal Professions

- Lawyers
- Notaries
- Legal Procurators
- Judges
- Magistrates
- Chief Justice
- Attorney General
- State Advocate



Lawyers

- Lawyer or advocate ?

Can be used interchangeably however the term advocate often refers to a person who is qualified to practice law and specialises in litigation and court proceedings as opposed to the term lawyer which is more 'corporate oriented'



UK

- Solicitors – lawyers who give legal advice and may represent clients in lower courts
- Barristers – lawyers who are more court oriented



Lawyers

- In Malta– Masters of Advocacy would not render one to have any specialisation per se however one must obtain a warrant to practice law in order to give legal advise and represent clients before a court of law.



Lawyers

Lawyers are bound by the Code of Ethics which code regulates the following;

1. Deemed to be an officer of the Court
2. Relationships with clients
3. Duties towards the client
4. Professional fees
5. Conflicts of interests
6. Confidentiality
7. Relationships with third parties
8. Relationships with other advocates
9. Litigation and advocacy
10. Advocates in Employment
11. Law firms and associations



Lawyers

Chamber of Advocates Malta



Notaries

Chapter 55 of the Laws of Malta – Notarial Profession & Notarial Archives Act

Warrant to practice as a notary may be obtained after a two year traineeship with a notary who has over 10 years of experience – Exam held in March

Deemed to be public officers – overseen by the Court of Revision of Notarial Acts & Notarial Council

Also bound by a Code of Ethics

To attribute public faith to acts and keep copies of acts published



Legal Procurators

Can represent clients before the inferior Courts

Legal procurators are required to sign applications and other documentation to be presented in the Registry of Court



Magistrates

Appointed by the president in accordance with the recommendation made by the Judicial Appointments Committee

7 or more years of practice

Until the age of 65 which may be extended till the age of 68



Judges

Appointed by the president acting in accordance with the recommendation made by the Judicial Appointment Committee

12 years – practiced as an advocate in Malta or served as a Magistrate



Chief Justice

Appointed by the president acting in accordance with a resolution of the House supported by the votes of not less than two-thirds of all the members of the house



State Advocate

Public office – appointed by the president acting in accordance with the advise of the PM

Not qualified 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 this 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.



Attorney General

Public office – appointed by the president acting in accordance with the advise of the PM

Not qualified 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.

Court of Criminal Inquiry (Kumpilazzjoni)

1. Deals with cases which exceed the competence of the Court of Magistrates as a Court of Criminal Judicature
2. Investigative role – to collect and preserve evidence for the higher court
3. Decides whether there is enough prima facie evidence
4. Negative prima facie – accused is discharged



In Genere

Inquest/ investigation – different from the kumpilazzjoni (inquiry)

Duty magistrate – magistrat tal-għassa

1. Punishment of over 3 years, onsite investigation (report information, complaint), subject-matter of offence must still exist

Proces verbal

Inkjesta – hekk imsejha “inkjesta dwar l-In Genere” – għallanqas għal dak li jirrigwarda l-Artikolu 546 tal-Kodici Kriminali, ma hix intiza biex jigi stabbilit jekk sarx reat, izda hi intiza sabiex, rappurtata, denunzjata jew kwerela ta l-eżistenza ta’ reat... il-Magistrat ikun jista’ jipprocedi għall- accertament tal-In Genere ossia tal-preservazzjoni tat-tracċi materjali u (sa fejn hu possibbli) ta’ kif dawn it-tracċi materjali għew fis-seħh; u, jekk ikun il-kaz, sabiex jistabilixxi minn kien ħati tar-reat

Sudden death, unknown cause or suspicious

Juvenile Court

Chapter 287 of the Laws of Malta – Juvenile Court Act

Persons under the age of 18. care orders



Retrial - Ritrattazzjoni

Article 811 of the COCP

Only in exceptional circumstances as listed in the mentioned article



Retrial

Title IV OF NEW TRIAL

New trial of
decided causes.
Amended by:
XI.1859.33;
IX.1886.101;
XXII.2005.62;
VII.2007.23.

Grounds for new
trial.

811. A new trial of a cause decided by a judgment given in second instance or by the Civil Court, First Hall, in its Constitutional Jurisdiction, may be demanded by any of the parties concerned, such judgment being first set aside, in any of the following cases:

- (a) where the judgment was obtained by fraud on the part of any of the parties to the prejudice of the other party;
- (b) where the sworn application was not served on the party cast, provided that, notwithstanding such omission, such party shall not have entered an appearance at the trial;
- (c) where any of the parties to the suit was under legal disability to sue or be sued, provided no plea thereanent had been raised and determined;
- (d) where the judgment was delivered by a court having no jurisdiction in terms of article 741(a), provided no plea thereanent had been raised and determined;
- (e) where the judgment contains a wrong application of the law;

For the purposes of this paragraph there shall be deemed to be a wrong application of the law only where the decision, assuming the fact to be as established in the judgment which it is sought to set

Retrial

aside, is not in accordance with the law, provided the issue was not in reference to an interpretation of the law expressly dealt with in the judgment;

- (f) where judgment was given on any matter not included in the demand;
- (g) where judgment was given in excess of the demand;
- (h) where the judgment is conflicting with a previous judgment given in a suit on the same subject-matter and between the same parties, and constituting a *res judicata*, provided no plea of *res judicata* had been raised and determined;
- (i) where the judgment contains contradictory dispositions;
- (j) where the judgment was based on evidence which, in a subsequent judgment, was declared to be false or which was so declared in a previous judgment but the party cast was not aware of such fact;
- (k) where, after the judgment, some conclusive document was obtained, of which the party producing it had no knowledge, or which, with the means provided by law, he could not have produced, before the judgment;
- (l) where the judgment was the effect of an error resulting from the proceedings or documents of the cause.

For the purposes of this paragraph there shall be deemed to be such error only where the decision is based on the supposition of some fact the truth whereof is incontestably excluded, or on the supposition of the non-existence of some fact the truth whereof is positively established, provided that, in either case, the fact was not a disputed issue determined by the judgment.



Other

Res Judicata – judged matter

Prima Facie – on face value

Fuori termini – after the deadline

Kontro Ezami – Cross examination

Kjamat – joinder

Kontro Talba – counter claim

Attur/ Rikorrent – Plaintiff

Intimat/ Konvenut – Defendant

Parte Civile – Injured Party

Appellant – appellant

Appellat – the person against whom the appeal is filed



Other

Bonarjament – settlement

Buon fini – for all intents and purposes

Decree – digriet

Kontumaċi – contumacious

Pendente lite – until court proceedings are finalised

Rikuża – challenge of abstention

Rikors – application

Rikors maħluf – sworn application

Taħrika – summons

Verbal – minutes

Eċċezzjonijiet – plea

Ġurisprudenza – jurisprudence



Other

Patrimonju – Patrimony

Et – others

Saltna tad-dritt

Żgumbrament – Eviction



Witnesses

Any age – so long as the court is satisfied that they understand what is right and wrong

Under oath

Vulnerable/ minors

cannot testify in the presence of other witnesses

Examination + cross examination

Letters of request – ittri rogatorji

Summoning of witnesses



Assignment Titles

1. Write about two courts of your choice. Special attention is to be given to competence and insitution of proceedings.
2. Summarise and discuss the case Soering v United Kingdom
3. Compare and contrast the common law system and the civil law system. Give your opinion on the pros and cons of each system



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