

The Courts of Justice in Malta and the Legal Profession

The appointment process of judicial assistants and the distinction different experts

Lecturer: **Avv. Maria Ruth Ciantar**

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Lecture 6

Appointment process of judicial assistants and the distinction between curators, advocates, or legal procurators ex officio and experts



The duties of the Director General (Courts)

- The duties of the Director General (Courts) are carried out by the Director General (Courts) personally or by such other persons or by court executive officers as the Minister responsible for justice may by regulation designate or, failing such regulation, by any person so delegated by the Director General (Courts); such regulation may also specify the duties that shall be carried out by each such person or officer.



Registries

- The registries of the Courts and other tribunals are established by law, as the Minister responsible for justice may by regulations under Chapter 12 of the Laws of Malta establish.
- These shall assign to each court or tribunal the registry that is to serve it and more than one court or tribunal may in accordance with such registries be so served by the same registry.
- Any reference in any law to the registry of any particular court or tribunal shall be deemed to be a reference to the registry assigned to such court or tribunal by the Minister in regulations.
- Each registry shall be headed by a public officer designated by the Minister for the purpose and, failing such designation, by the Director General (Courts). The head of each registry is referred to as *"The Registrar"*.



The Registrar

- Each registrar shall have the functions, powers and duties vested in him by Chapter 12 of the Laws of Malta or by any other applicable law as well as by any regulation which may, from time to time, be made by the Minister responsible for justice.
- The duties of the registrar, including any duties during sittings of the courts, shall be carried out by the registrar personally or by such other persons or by court executive officers as the Minister responsible for justice may designate or, failing such designation, by any person so delegated by the registrar, and such designation may also specify the duties that shall be carried out by each such person or officer.
- The registrar shall take orders from the judicial authorities in relation to any judicial proceedings and in relation to any judicial act, that is to say:
 - (a) in the superior courts in matters concerning a particular court, he shall take orders from the judge or from the judges, if there are two or more judges, of that court; in other cases, he shall take orders from the Chief Justice; and
 - (b) in the inferior courts, he shall take orders from the magistrates of the particular court.



Commissioners of Oath

- The Director General (Courts), the registrar and any of the court executive officers so designated by the Minister responsible for justice shall, for the purposes of the Commissioners for Oaths Ordinance, be ex officio Commissioners for Oaths.



The Executive Officers Of The Court

- The Director General (Courts) is appointed by the Prime Minister and, unless the Minister responsible for justice otherwise directs, he shall be responsible for the administration of all registries, archives, court services and all other administrative offices of the courts.
- The Director General (Courts) has the functions, powers and duties as are vested in him by Chapter 12 of the Laws of Malta or by any other applicable law, as well as by any regulations which may, from time to time, be made by the Minister responsible for justice.



Appointment of official curators

- The Minister responsible for justice shall nominate such panels as he may deem fit, each panel consisting of such number as he may deem fit of *ex officio* advocates, legal procurators and other experts, to perform the duties of curators, advocates or legal procurators and experts in the Courts of Malta and Gozo, and public auctioneers as occasion may require under the Code of Organisation and Civil Procedure.
- The advocates and legal procurators appointed shall also be bound to give their assistance to any person who, not being entitled to the benefit of legal aid, shall apply to the competent court for such assistance, and shall satisfy the court, in such manner and by such means as the court may prescribe, that *prima facie* he has reasonable grounds for taking or defending or being a party to proceedings and that he did not succeed in engaging the services of another advocate or legal procurator.
- Any advocate or legal procurator appointed by the court to give such assistance as aforesaid, shall not be bound to give his assistance, unless the applicant deposits with the registrar a sum which, in the opinion of the registrar, is sufficient to cover the fees of such advocate or legal procurator.



Misconduct or negligence of curators

- In case of misconduct, negligence or any reasonable objection to any curator selected from the rota to perform the duties of curator or advocate for legal aid, the court shall have the power to remove him from the case and to appoint another curator from the rota in his stead.



Illegal practices of curators

- It shall be an abuse in the exercise of his profession:
 - (a) for any advocate or legal procurator to knowingly, directly or indirectly employ or accept the services of any tout; or
 - (b) for any advocate to agree with a legal procurator or a notary public, or for a legal procurator to agree with any advocate or notary public, to give or to receive any share of the fees or other remuneration earned by any of them in respect of professional work; or
 - (c) for any advocate or legal procurator to act in contravention of any law or Code of Ethics that may be in force and applicable to him, and any judge or magistrate shall report to the Commission for the Administration of Justice any advocate or legal procurator whom he suspects to be guilty of such abuse.
- The expression "*tout*" means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any other consideration, to find clients for any advocate or legal procurator.



Court experts

- Under **Maltese law**, **court experts** are individuals appointed by the Courts of Justice to provide specialized knowledge, expertise, or technical analysis that is necessary to assist the court in understanding and resolving complex issues in a case. These experts are typically professionals in various fields, such as medicine, engineering, accounting, or forensics, whose input is deemed crucial for the court to make an informed decision.
- The appointment of court experts is regulated by **Chapter 12 of the Laws of Malta** (The Code of Organization and Civil Procedure) and other relevant legal provisions. Their role is to assist the court by offering objective, specialized insights that go beyond the legal expertise of judges and magistrates.



Why do the Courts of Justice need experts?

- The involvement of **experts** in the Courts of Justice is essential for several reasons, particularly when it comes to ensuring the accuracy, reliability, and fairness of judicial decisions.
- Experts play a vital role in the judicial process by providing specialized knowledge, enhancing the credibility of evidence, facilitating fair trials, and ensuring informed decision-making. Their contributions are essential in navigating the complexities of many legal cases, ultimately helping the courts deliver just and equitable outcomes. The inclusion of experts helps to uphold the rule of law and reinforces public confidence in the justice system.
- Let's see the detailed look at why the courts need experts:



Appointment of Court Experts

- Court experts can be appointed by the court in several ways:
 - 1.Ex Officio Appointment:** The court may, on its own initiative, decide to appoint an expert when it deems it necessary to understand technical issues that require specialized knowledge.
 - 2.At the Request of the Parties:** Either party in a legal case may request the court to appoint an expert to provide an opinion on a particular technical issue. The court will assess whether the appointment is necessary before granting such a request.
 - 3.Agreement Between the Parties:** In some cases, both parties may agree on the appointment of a particular expert to avoid disputes over conflicting expert opinions.



Duties of Court Experts

- Once appointed, court experts have several key duties under Maltese law:
 - 1. Neutrality and Impartiality:** Court experts must be impartial and provide an unbiased, objective opinion, regardless of which party may have requested their appointment.
 - 2. Preparation of Reports:** The primary role of the expert is to prepare a detailed report based on their analysis or investigation of the matter in question. This report is submitted to the court and may include the expert's opinion, findings, and any relevant data or observations.
 - 3. Testifying in Court:** Experts may also be required to testify in court, where they will explain their findings and answer questions from the judge, magistrates, or legal representatives of the parties involved.
 - 4. Compliance with Deadlines:** Court experts are expected to complete their analysis and submit their report within a time frame specified by the court.
 - 5. Fees:** The expert's fees are generally borne by the parties to the case, though the court may allocate these costs at the end of the proceedings. Fees are typically set in proportion to the complexity of the work required.



The Role of Court Experts in Civil Cases

- In civil cases, experts may be appointed to assist the court in a wide variety of disputes, such as:
- **Personal Injury Claims:** Medical experts can assess the nature and extent of injuries and provide insight into long-term impacts, treatment, or disability.
- **Construction and Property Disputes:** Engineers and surveyors can provide technical opinions on issues like structural damage, land valuation, or boundary disputes.
- **Matrimonial Cases:** Financial experts may assist in valuing assets for division between spouses during divorce or separation.



The Role of Court Experts in Criminal Cases

- In criminal cases, experts play a crucial role in providing technical evidence that can affect the outcome of trials, including:
- **Forensic Analysis:** Experts in DNA, ballistics, or fingerprint analysis may provide crucial evidence to identify or exonerate a suspect.
- **Medical Experts:** In cases involving injuries or deaths, a forensic pathologist may be appointed to determine the cause of death or assess the injuries sustained by a victim.
- **IT and Digital Experts:** In cybercrime cases, experts may be called upon to analyse data, retrieve deleted information, or investigate evidence stored electronically.



The Oath of Court Experts

- According to Maltese law, once appointed, court experts are required to take an **oath** before they begin their work.
- They must swear to perform their duties impartially and faithfully, and their reports and testimony must reflect honest and objective opinions based on their professional expertise.



Challenging Expert Opinions

- While court experts provide essential assistance to the judiciary, their opinions are not always conclusive. Parties to the case can challenge the expert's report or findings by:
 - 1. Cross-Examination:** During the trial, the expert may be cross-examined by the opposing party's lawyer to test the strength of their findings or identify any biases or errors in their analysis.
 - 2. Appointment of Another Expert:** In some cases, a party may request the court to appoint another expert or provide a second opinion, especially if there is a concern that the original expert's findings are flawed or biased.
 - 3. Court's Discretion:** Ultimately, the court is not bound to follow the opinion of the expert. The judge or magistrate can consider the expert's report alongside other evidence presented in the case and may choose to accept or reject the findings in whole or in part.



Role of court experts in the Maltese judicial system

- Court experts play a vital role in the Maltese judicial system by providing specialized knowledge that helps judges and magistrates understand complex issues in both civil and criminal cases.
- They are required to act impartially and provide objective reports based on their professional expertise.
- Their findings can significantly influence the outcome of a case, but they are subject to challenge through cross-examination or the appointment of additional experts.



Common types of court experts include

- Court experts in Malta can be appointed in both **civil** and **criminal** cases. Some common types of court experts include:
- **Medical Experts:** Doctors or specialists who provide opinions on medical conditions, injuries, or psychological states of individuals involved in a case (e.g., personal injury claims, criminal cases involving mental health issues).
- **Forensic Experts:** Experts in areas such as forensic accounting, DNA analysis, ballistics, or toxicology, who provide technical evidence in criminal cases.
- **Engineers and Architects:** Often appointed in construction disputes, property damage cases, or to assess structural integrity.
- **Accountants and Financial Experts:** Appointed in cases involving complex financial transactions, fraud, or valuation of assets (e.g., matrimonial property disputes, insolvency cases).
- **Surveyors:** In land disputes or property-related matters, surveyors may be appointed to determine boundaries or assess the value of land or property.
- **Handwriting Experts:** Used in cases involving contested signatures or allegations of forgery.
- **IT Experts:** Appointed in cases involving digital evidence, such as cybercrime or data breaches.



Evidence Evaluation

- **Expert Testimony:** Experts can provide testimony that helps to clarify complex issues for the court. Their insights can help judges and juries comprehend evidence that may be beyond the layperson's understanding.
- **Interpretation of Data:** In cases involving scientific or technical data, experts are crucial in interpreting and explaining that data in a way that is understandable and relevant to the case at hand.



Enhancing Credibility

- **Objective Insights:** The presence of experts can lend credibility to the evidence presented in court. Their independent analysis can help validate claims made by either party, fostering trust in the judicial process.
- **Counteracting Bias:** Experts can offer neutral perspectives that may counteract biases or subjective interpretations of the evidence, helping to ensure a fair trial.



Facilitating Fair Trials

- **Ensuring Equity:** By providing expert testimony, parties to a case can present a more balanced view of the issues involved. This is particularly important in cases where one party may have significantly more resources or legal expertise than the other.
- **Supporting Legal Standards:** Experts help ensure that legal standards are upheld in their specific fields, providing necessary context to the legal arguments presented in court.



Advising on Procedures

- **Technical Guidance:** In certain cases, experts may be called upon to advise the court on proper procedures or methodologies relevant to the field in question. This can be particularly important in fields such as forensic science or health care.
- **Recommendations for Further Investigation:** Experts may suggest additional lines of inquiry or evidence that the court should consider, helping to ensure a thorough examination of the case.



Aiding in Legal Reform

- **Informing Policy and Legislation:** The insights and findings of experts can play a crucial role in informing broader legal reform. Court cases can lead to important policy changes based on expert recommendations and evidence.
- **Developing Best Practices:** The involvement of experts can help courts develop best practices in handling specialized cases, contributing to the overall improvement of the judicial system.



Notaries as court experts

- As court experts, notaries in Malta have a multifaceted role that goes beyond their traditional functions. They provide essential expertise in document authentication, legal interpretation, mediation, and compliance. Their contributions enhance the integrity and reliability of legal proceedings, promote legal certainty, and reinforce public trust in the judicial system. By serving as experts in the courts, notaries help bridge the gap between legal practice and the needs of individuals and businesses navigating the legal landscape.



What role may the Notaries play as court experts in Malta?

- In Malta, notaries can play a significant role as court experts in various capacities. While their primary function is to serve as impartial witnesses to legal transactions and to authenticate documents, they also possess specialized knowledge and expertise that can be invaluable in legal proceedings



Expert Testimony

- **Specialized Knowledge:** Notaries have extensive training in legal matters and can provide expert testimony in cases involving notarial acts. Their insights can help clarify issues related to the interpretation of documents or the application of relevant laws.
- **Clarification of Notarial Procedures:** In cases where the legality of a notarial act is in question, notaries can explain the procedures they followed and the legal implications of the documents they prepared.



Advisory Role in Legal Proceedings

- **Consultation for Legal Professionals:** Lawyers may consult notaries for their expertise in drafting and interpreting legal documents, particularly in complex cases involving property transfers, business agreements, or inheritance matters.
- **Guidance on Compliance:** Notaries can advise on compliance with legal requirements for certain transactions, helping to ensure that all parties understand their rights and obligations.



Mediation and Dispute Resolution

- **Facilitating Settlements:** Notaries can act as mediators in disputes arising from contracts or agreements they have notarized. Their neutrality and understanding of the law make them well-suited to assist parties in reaching amicable settlements.
- **Clarifying Intent of Parties:** In cases where the intent of the parties to a contract is disputed, notaries may be called upon to provide insights based on their knowledge of the transaction and the context in which the notarial act was executed.
- **5. Contributing to Legal Certainty**
- **Reinforcing the Rule of Law:** By ensuring that legal documents are properly executed and that parties understand their implications, notaries help to uphold the rule of law. Their expertise contributes to legal certainty, reducing the likelihood of disputes arising from misunderstandings.
- **Trust in Legal Processes:** The involvement of notaries as court experts enhances public trust in legal processes. Their authority and professional standing provide assurance to parties that legal matters are handled with due diligence.



Training and Education

- **Educational Role:** Notaries may also play an educational role by providing training to legal professionals or the public on matters related to notarial practices, legal documentation, and compliance. This can help improve overall legal literacy in Malta.



Document Authentication

- **Verification of Legal Documents:** Notaries are responsible for the preparation and authentication of various legal documents, such as contracts, deeds, and wills. Their expertise ensures that these documents are executed correctly and in accordance with the law.
- **Admissibility in Court:** Notarial acts often carry a presumption of authenticity, meaning that they are generally accepted as reliable evidence in court. As court experts, notaries can provide testimony regarding the authenticity and validity of these documents.



Complexity of Cases

- **Specialized Knowledge:** Many legal cases involve technical or specialized fields, such as medicine, engineering, finance, or forensics. Experts provide the necessary knowledge to understand complex concepts that judges and juries may not be familiar with.
- **Informed Decision-Making:** By consulting experts, courts can make more informed decisions based on accurate and relevant information, which is critical in ensuring just outcomes

