

The Functions of the Court of Voluntary Jurisdiction

The Functions of the Court of Voluntary Jurisdiction, Adoption and Trusts

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

The court of voluntary jurisdiction- an explanation

- The Civil Court (Voluntary Jurisdiction Section) shall be assigned applications falling within the competence of the Civil Court and which relate to matters regulated by Titles III, V, VI and VII of the Book First of the Civil Code and Part II of Book Second of the Code of Organisation and Civil Procedure.
- These areas include authority to proceed the tutorship of minors, adoption, the interdiction and incapacitation of persons, the opening of successions and the confirmation of testamentary executors.
- The Civil Court (Voluntary Jurisdiction Section) is a voluntary jurisdiction court and is responsible for the interdiction or incapacitation of persons of unsound mind, the nomination of tutors for these persons, the opening of successions and the confirmation of testamentary executors.



Subsidiary Legislation 12.19- Civil Courts (Establishment Of Sections) Order

- There shall be five sections in the Civil Court to which shall be assigned, as provided by this Order, the category of cases, hitherto falling within the jurisdiction of the Civil Court (First Hall) and the Civil Court (Second Hall), or as may be assigned to the Civil Court by any law.
- The sections of the Civil Court shall be the Family Section, the Voluntary Jurisdiction Section, the Commercial Section, the Asset Recovery Section and a general jurisdiction to be styled the First Hall of the Civil Court.



What cases are assigned to the Civil Court - Voluntary Jurisdiction Section (CVJ)?

- The Civil Court (Voluntary Jurisdiction Section) shall be assigned applications falling within the Competence of the Civil Court and which relate to matters regulated by:
 - (a) Titles III, V, VI and VII of Book First of the Civil Code; and
 - (b) Part II of Book Second of the Code of Organization and Civil Procedure.



Where does the CVJ shall sit ?

- The Civil Court (Voluntary Jurisdiction Section) shall sit in Malta and in Gozo.
- It shall be lawful to add the words "(Gozo)" in any written pleading, judicial act, court decree, court judgment, procès-verbal, form or any other document whatsoever filed or used by the Civil Court, First Hall, the Civil Court (Family Section) or the Civil Court (Voluntary Jurisdiction Section) when such documents relate to acts, claims or proceedings of the said courts in respect of which sittings are held in the island of Gozo.
- The Court of Magistrates (Gozo), consisting of one magistrate to be named by the President of Malta in that behalf, shall also have, within the limits of its local jurisdiction, the same powers as are assigned to the Civil Court, in its voluntary jurisdiction.



The jurisdiction of the CVJ

- In Malta, the Court of Voluntary Jurisdiction primarily handles non-contentious civil matters.
- Its jurisdiction covers a range of issues that require judicial approval or oversight but do not involve disputes between parties.
- The Court of Voluntary Jurisdiction generally handles cases that concern:
 - **Guardianship and Curatorship:** Applications for appointing or removing guardians or curators for individuals who are minors, mentally incapacitated, or otherwise unable to manage their own affairs.
 - **Adoption:** The court oversees adoption applications, ensuring all legal requirements are met and that the adoption is in the best interest of the child.
 - **Affidavits for Publication of Banns:** Issues related to marriage banns, such as the posting and publication, where one party may require court assistance.
 - **Opening and Executing Wills:** Supervises the procedures for opening, reading, or executing a will, particularly if there is any complexity that requires court oversight, though not involving disputes among beneficiaries.
 - **Notarial Acts and Registrations:** Oversees specific notarial actions or approvals related to property, especially when involving minors or incapacitated persons.
- The Court of Voluntary Jurisdiction is also involved in approving certain agreements, as well as legal matters that may involve public or private entities, where consent or supervision from the judiciary is necessary but not contentious.



Filing an application (rikors) before this The CVJ

- Such application shall be signed by:
 - The applicant himself or by
 - An advocate,
 - Notary, or
 - Legal procurator.
- Upon any such application the judge shall obtain the necessary information, and for such purpose he shall order the production of documents, examine, on oath or otherwise, the applicant himself or any other person, and also, if he deems it material to ascertain the value of the property forming the subject-matter of the application, appoint one or more experts



Court may, in certain cases, order the production of an opinion in writing of an advocate.

- If the matter refers to any waiver, compromise or security, or to an authorization to begin a suit, it shall be lawful for the court to order the applicant to produce a reasoned opinion in writing of one or more practising advocates.
- It shall be lawful for the court to :
 - order any person to appear on a given day, at a stated time, to be examined on the subject-matter of the application.
 - appoint one or more persons to collect the necessary information on the subject-matter of the application
- It shall be lawful for any person spontaneously to appear to give to the court the said information.



Examination of applications behind closed doors

- The court may, and in the case of adoption proceedings shall, proceed with closed doors in examining and determining applications.
- In the case of adoption proceedings, every application, decree and record connected therewith shall be secret and shall not be accessible to any person except by authorisation of the court.
- If it shall appear from the contents of the application, or from the examination, or from the information obtained, that any third party is interested in the matter, the court shall order the application to be served on such interested party to whom a reasonable time shall be allowed to file an answer.



Custody of applications and decrees

- Every application and every decree shall be kept in the Registry.
- A decree authorizing the execution of any deed shall state the name of the notary before and by whom such deed is to be received and published.
- Any copy of a decree to be inserted in any notarial act shall be countersigned by the judge.
- Regular indexes shall be kept of all applications and decrees



Use Legal Representation and Specialized Counsel

- While non-contentious cases may seem straightforward, they benefit from **legal expertise** to ensure compliance and avoid delays.
- **Engage a Lawyer:** Legal practitioners in family or estate law are well-versed in non-contentious procedures and can offer guidance, helping to address potential legal questions from the court.
- **Involve Notaries for Authentication:** Notaries in Malta are crucial for verifying documents like wills, property deeds, or declarations of guardianship. Having a notary present can prevent errors and ensure documents are court-ready.



Demonstrate Transparency and Accountability

- For cases that involve management of assets (e.g., curatorship or administration of an absentee's estate), transparency is critical to ensure court confidence.
- **Prepare Financial Summaries:** Present a clear breakdown of assets and liabilities, especially for estate or curatorship cases.
- **Submit Regular Reports if Required:** Some cases, such as guardianship or curatorship, may require periodic reports on the status of the person's health or finances. Maintaining up-to-date records makes compliance easier.
- **Use Trusted Appraisers for Valuations:** In cases of property management, using certified appraisers for accurate valuations can help in obtaining fair market values and court approval for any sales or transfers.



Avoid Delays by Anticipating Potential Obstacles

- Being proactive about possible challenges can prevent delays in the court's decision-making.
- **Verify Legal Capacity and Consent:** Ensure all involved parties, especially in adoption or guardianship cases, have been informed and have legally consented, if required.
- **Identify and Resolve Conflicting Interests:** If there are family members or parties with conflicting interests (common in cases of incapacitation or estate management), consider mediation to reach a preliminary agreement before petitioning the court.
- **Submit Accurate Translations:** If the case involves non-Maltese documentation, make sure they are accurately translated and certified, as the court will not accept incorrect or incomplete translations.



Utilize Alternative Dispute Resolution Mechanisms (if applicable)

- Even though non-contentious cases are generally free of dispute, certain issues can arise among family members or other parties.
- **Mediation Services:** For cases with minor disagreements (like conditions of a trust or guardianship terms), mediation can help resolve issues without escalating to contentious proceedings.
- **Family Court Services:** The Family Court in Malta offers support services to mediate family-related cases, which may be useful for adoption or guardianship matters.



Understand the Requirements and Documentation Needed

- Non-contentious cases typically rely heavily on **specific documentation** and **formal procedural requirements**. Preparing these thoroughly can expedite the court's decision-making process.
- **Gather Documentation:** Ensure all required documents are available and accurately filled out. This may include birth certificates, medical reports, financial statements, notarial deeds, and any legal authorizations.
- **Organize Financial Statements** (for curatorship and estate administration): Accurate financial documentation demonstrates transparency, which is especially critical in cases involving asset management.
- **Obtain Medical Reports** (for incapacitation or interdiction cases): Medical certificates from certified practitioners will be necessary to establish the need for curatorship or guardianship.



Plan and prepare draft and template legal documents,

- **Applications** and **sworn applications** are types of formal documents used in court procedures, but they serve different purposes and involve distinct requirements.



Application

- An **application** is a document submitted to the court to request a specific action or ruling on a matter. It is commonly used to initiate proceedings, make procedural requests, or request a particular order from the court.
- **Use:** Applications are used for various requests in court, from initiating civil cases to procedural motions, without the need for verification under oath.
- **Content:** It includes a summary of the facts, the relief sought (what the applicant wants the court to decide), and relevant legal grounds or citations.
- **Requirements:** Typically does not require a sworn declaration; it is sufficient to submit the facts and legal arguments.
- **Examples:**
 - Applications to commence civil cases.
 - Applications for procedural orders (e.g., to extend deadlines).
 - Requests for administrative decisions.



Sworn Application

- A **sworn application** (or **rikors ġuramentat** in Maltese) is similar to a regular application but has the added requirement of being **sworn before a Commissioner for Oaths** or a notary. This makes it a formal statement made under oath, where the applicant attests that the facts presented are true to the best of their knowledge.
- **Use:** Sworn applications are generally required in cases where there is a need for higher certainty regarding the accuracy of the facts presented, often in **non-contentious proceedings** or where significant interests are at stake.
- **Content:** Includes the statement of facts, legal claims, and a declaration that the facts are true and accurate, signed under oath.
- **Requirements:** The applicant must take an oath in front of a Commissioner for Oaths or a notary, who then verifies the authenticity of the sworn statement.
- **Examples:**
 - Applications in the Court of Voluntary Jurisdiction for matters like **adoption, guardianship, incapacitation, or curatorship**.
 - Applications in estate-related cases, like **probate** (the legal process by which a deceased person's **will** is recognized as valid by the court, and their assets are distributed according to the terms of that will. If the deceased did not leave a will (a situation known as **intestacy**), the probate process also handles the distribution of their estate according to relevant laws).
 - Certain requests in family law, such as seeking permission for specific parental actions.



Manage and draft legal documents – the different types of legal documents.

- A range of legal documents serves various functions in **civil, criminal, and administrative law**. These documents are essential for the enforcement and protection of legal rights, the transfer of property, the formation of contracts, and many other legal transactions.
- Legal documents in Malta encompass a wide range of functions, supporting personal, financial, business, and judicial matters. Their **creation, authentication, and preservation** under Maltese law ensure that they are valid, enforceable, and usable as evidence. Each document type has a specific purpose, from transferring property to formalizing legal agreements and ensuring compliance, and plays an essential role in the country's legal and administrative processes.



Contracts

- Contracts are fundamental legal documents that outline agreements between parties, specifying terms and conditions that bind each party legally.
- **Types of Contracts:**
 - **Sale Contracts:** Used to transfer ownership of movable or immovable property (often known as "konvenji").
 - **Lease Agreements:** For the leasing of property, specifying rights and duties of both landlord and tenant.
 - **Employment Contracts:** Outline terms of employment, including duties, pay, and conditions.
 - **Service Agreements:** Define the terms for providing specific services.
 - **Loan Agreements:** Legal agreements between lenders and borrowers that define the loan terms.
- **Purpose:** Contracts ensure clarity, reduce disputes, and provide a basis for legal recourse if terms are breached.



Notarial Deeds

- Notarial deeds are official documents drawn up by a **notary public**. In Malta, a notary is required for certain transactions to ensure they comply with the law.
- **Types of Notarial Deeds:**
 - **Deed of Sale (Final Deed):** Final document for the sale of property, transferring ownership.
 - **Deed of Donation:** Used when property or assets are gifted from one person to another.
 - **Deed of Partition:** Used in dividing property among co-owners or heirs.
 - **Marriage Contracts:** Also known as marriage settlements, which are prenuptial agreements regulating property between spouses.
- **Purpose:** Notarial deeds provide legal certainty and are considered public records. Notaries authenticate the deed and ensure that all parties understand the content and implications.



Wills and Testaments

- A will is a legal document in which a person specifies how their property and assets should be distributed after their death.
- **Types of Wills:**
 - **Public Will:** Drawn up by a notary in the presence of witnesses and deposited with the Notarial Archives.
 - **Secret Will:** Written and sealed by the testator and handed to a notary in front of witnesses without revealing its contents.
- **Purpose:** Wills ensure that a person's wishes are respected after their death and provide a clear direction for inheritance and asset distribution



Power of Attorney (POA)

- . A **Power of Attorney** is a document in which one person (the principal) grants another person (the agent) the authority to act on their behalf.
- **Types of Power of Attorney:**
 - **General Power of Attorney:** Grants broad authority to the agent, allowing them to act in various legal and financial matters.
 - **Special Power of Attorney:** Limited to specific tasks or decisions, such as selling property or handling a specific business transaction.
- **Purpose:** POAs allow individuals to delegate decision-making power, typically in cases where they cannot act themselves due to illness, absence, or other reasons.



Trust Deeds

- A **Trust Deed** is a legal document that establishes a trust, specifying the rights, duties, and responsibilities of the trustee and the beneficiary.
- **Types of Trusts:**
 - **Living Trust:** Created during the settlor's lifetime, allowing them to manage assets until a certain event, such as death.
 - **Testamentary Trust:** Created in a will, coming into effect after the settlor's death.
- **Purpose:** Trust deeds provide for the management and protection of assets, especially for beneficiaries who may be minors or otherwise unable to manage the assets themselves.



Public and Private Documents

- Legal documents are classified as either **public** or **private** depending on their formal requirements and evidentiary weight.
 - **Public Documents:** Drawn up by a notary or public authority and have significant evidentiary weight. Examples include notarial deeds, wills, and judicial acts.
 - **Private Documents:** Signed by the parties involved without needing a notary, such as simple contracts or agreements. While enforceable, they lack the same weight as public documents unless they are verified.
- **Purpose:** Public documents provide higher evidentiary value, while private documents are simpler to create and enforce in straightforward agreements.



Affidavits and Sworn Declarations

- An **affidavit** is a written statement of facts sworn to be true by the person making the statement, while a **sworn declaration** is a signed statement confirming certain facts.
- **Purpose:** These documents are often used as evidence in legal proceedings, serving as written testimony under oath.



Promissory Notes and Bills of Exchange

- These are financial documents that serve as promises to pay or as instruments to facilitate payment.
- **Promissory Note:** A written promise by one party to pay another a specific amount at a determined time.
- **Bill of Exchange:** An order written by one party directing another to pay a specified sum to a third party at a specified time.
- **Purpose:** These documents facilitate financial transactions, providing legal evidence of the debt or obligation.



Court Documents

- Court documents are official forms and filings used to initiate, pursue, or resolve legal proceedings.
- **Types of Court Documents:**
 - **Writ of Summons:** Initiates civil proceedings and is filed by the plaintiff, stating the claim against the defendant.
 - **Judicial Letter:** Used to formally communicate legal demands or inform parties of legal action.
 - **Application for Appeals:** Filed by a party requesting a higher court to review a lower court's decision.
 - **Injunctions (Mandate):** Filed to prevent a party from doing something harmful to the other party's rights (e.g., prohibitory injunction).
- **Purpose:** Court documents establish the legal process, inform all parties, and ensure the court has the necessary information to render a judgment.



Formulate a comprehensive understanding of the legal applications

- To build a comprehensive understanding of **legal applications** covered by the court in areas like **adoption, trusts, tutorship, curatorship, interdiction, incapacitation, and absentees**, it's essential to examine the purpose, structure, and underlying principles governing each area.
- These applications primarily aim to protect vulnerable individuals, manage property and assets responsibly, and provide legal recourse when individuals cannot act in their own best interests.



Key Principles in Legal Applications

- Across these legal applications, several principles guide judicial decision-making:
 - 1. Best Interests of Vulnerable Persons:** Courts prioritize the welfare of minors, incapacitated adults, and absentees to ensure their rights and needs are met.
 - 2. Duty of Care and Fiduciary Responsibility:** Guardians, tutors, trustees, and curators are held to a high standard of care. They must act prudently, honestly, and in the best interests of the individuals they represent.
 - 3. Judicial Oversight:** Courts actively supervise the performance of those appointed to manage others' affairs, requiring accountability and regular reporting.
 - 4. Flexibility and Adaptability:** Judicial orders such as incapacitation or interdiction can be modified as circumstances change, allowing for more personalized solutions.
 - 5. Legal Safeguards Against Abuse:** Maltese law includes provisions for the removal or replacement of tutors, curators, or trustees who fail to fulfill their duties adequately or act in ways contrary to the interests of those they serve.



Adoption

- Adoption is the legal process by which a person or couple assumes the role of parents to a child who is not biologically their own. In Malta, the adoption process is governed by the **Adoption Administration Act (Chapter 495)** and is also guided by principles in **Chapter 16 of the Civil Code**.
- **Purpose:** Adoption provides children who cannot be raised by their biological parents with a stable, permanent family environment, and it grants adoptive parents full parental rights and responsibilities.
- **Procedure:** The process includes several stages, such as assessment of the adoptive applicants, court approval, and follow-up support. Adoption orders are made by the court and are final, irrevocably transferring parental rights from the biological parents to the adoptive parents.
- **Legal Effects:** Once the adoption order is granted, the child is considered, for all legal purposes, the child of the adoptive parents. The adoptive family's surname and inheritance rights apply as if the child were born into the family.



Tutorship

- Tutorship is a legal mechanism under the **Civil Code** (Chapter 16) in Malta, which provides for the appointment of a tutor to care for the property and personal welfare of minors who lack active parental care, such as in cases where both parents are deceased or incapacitated.
- **Purpose:** The aim of tutorship is to ensure the minor's best interests are protected and that someone is responsible for their well-being, property, and legal matters.
- **Duties of the Tutor:** A tutor's duties include overseeing the minor's education, managing their assets, and making personal and financial decisions in their best interest until the minor reaches adulthood.
- **Court Oversight:** Courts appoint tutors and monitor their performance. Tutors are often required to report to the court on the minor's status and the management of assets.



Curatorship

- Curatorship, also provided for under the **Civil Code** (Chapter 16), is used to manage the affairs of individuals who cannot do so themselves, often due to absence, incapacity, or minority in cases involving significant estates or legal matters.
- **Purpose:** Curatorship is essential when individuals are unable to handle their own affairs but are not under full interdiction or incapacitation. This includes cases where someone is absent or temporarily incapacitated, and there is a need to manage their assets and legal interests.
- **Role of the Curator:** Curators have similar responsibilities to trustees or guardians, including managing property, handling legal affairs, and acting in the person's best interest.
- **Court Appointment:** Courts appoint curators, particularly when family members or others petition for someone to oversee the absent or incapacitated person's affairs. Curators must follow court directives and may need to provide periodic reports.



Interdiction

- Interdiction is a judicial measure applied when a person is entirely incapable of managing their own affairs due to severe mental or physical incapacity, which may be permanent.
- **Purpose:** The primary aim is to protect individuals from exploitation or harm due to their inability to make informed decisions. Interdiction restricts the individual's capacity to act independently, transferring decision-making authority to a guardian or curator.
- **Legal Effects:** Interdicted individuals lose the legal capacity to act on their own behalf, and their assets and legal interests are managed by a court-appointed representative.
- **Court Proceedings:** Interdiction requires a court application supported by medical evidence. The court assesses the person's capacity and determines whether interdiction is necessary, and may review the decision periodically.



Incapacitation

- Incapacitation is a partial form of judicial restriction on a person's legal capacity due to limited mental or physical abilities. Unlike interdiction, incapacitation may be temporary or limited to specific areas of life, such as financial management.
- **Purpose:** The goal is to assist individuals who have diminished capacity while allowing them to retain some autonomy in other areas where they remain capable.
- **Scope of Incapacitation:** Courts tailor the limitations based on the person's specific needs, such as restricting their ability to enter into significant contracts or manage large assets while allowing day-to-day personal decisions.
- **Judicial Oversight:** Incapacitation requires a court order, and guardians or curators appointed to assist the individual must act under judicial supervision. Courts may modify or lift incapacitation orders as circumstances change.



Absentees

- The law also makes provisions for individuals who are **absent** (untraceable or missing for an extended period), particularly in cases where their absence impacts legal or financial matters.
- **Purpose:** Absentee laws are designed to manage the property and interests of individuals who are not present or traceable, protecting the rights of dependents or beneficiaries.
- **Declaration of Absence:** After a certain period, a court may declare a person absent. A curator may be appointed to manage their assets, pay obligations, and safeguard the interests of any dependents.
- **Effect of Absentee Status:** Declaring a person as absent enables dependents to access financial resources, manage property, or dissolve certain contracts that might otherwise remain in limbo.



Trusts

- Trusts in Malta are governed by the **Trusts and Trustees Act (Chapter 331)**. A trust is an arrangement where one party (the settlor) transfers assets to another party (the trustee), who manages the assets for the benefit of a third party (the beneficiary).
- **Purpose:** Trusts are primarily used for asset protection, estate planning, and managing property for beneficiaries who may not be able to do so themselves, such as minors or incapacitated individuals.
- **Legal Structure:** The trustee holds legal title to the assets and has fiduciary duties to act in the best interests of the beneficiaries. Trust deeds specify the terms and conditions of the trust, as well as the rights and duties of each party.
- **Court's Role:** Courts may intervene in trust matters, especially in cases of breach of fiduciary duty, disputes among beneficiaries, or if the trust's purpose becomes unachievable.



What is adoption? How is it regulated?

- Adoption in **Malta** is a legal process that allows a person or couple to become the legal parents of a child who is not their biological offspring. The adoption process is highly regulated and is overseen by the **Court of Voluntary Jurisdiction**. The Maltese legal system ensures that the child's welfare and best interests are always the priority.
- Adoption in Malta is primarily governed by the **Adoption Act** (Chapter 495 of the Laws of Malta) and related regulations. This law outlines the procedures and requirements for adoption, including eligibility criteria, the process of adoption, and post-adoption procedures.
- Adoption may only take place with the authority of the competent court granted by decree ("an adoption decree") following a recommendation made by the Adoption Board, made on the application of a person of either sex.



Who can make an application for adoption?

- An adoption decree may be made on the application of two spouses, civil union partners or cohabitants whose cohabitation is regulated by means of a contract in accordance with the Cohabitation Act, or of cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, authorizing them jointly to adopt a person and may not be made on the application of only one of such spouse, civil union partner or cohabitant
- Where the person to be adopted is the natural offspring of either of the spouses, a civil union partner or a cohabitant in a cohabitation registered under the Cohabitation Act or enrolled by means of a public deed under the Cohabitation Act, 2020, in that eventuality, the adoption decree may be made notwithstanding that the application is filed only by the natural parent of the person to be adopted and the Court shall not be bound to request or review the recommendation of the Adoption Board.
- Save in the case of two spouses living together civil union partners , cohabitants whose cohabitation is registered under the Cohabitation Act and cohabitants whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, an adoption decree shall not be made authorizing more than one applicant to adopt a person.
- An adoption decree may be made in respect of a person who has already been the subject of an adoption decree under this Title of the Civil Code and in relation to an application for an adoption decree in respect of such a person, the adopter or adopters under the previous or last previous adoption decree shall be deemed to be the parent or parents of that person.
- 5) In the case of a person who has attained the age of eighteen years and who is to be adopted, no recommendation shall be required from the Adoption Board and no social worker and, or children's advocate shall be appointed.



Adoption decrees

- An adoption decree shall not be made –
 - (a) in respect of a person who has attained the age of eighteen years except:
 - (i) in favour of a sole applicant who is the natural parent of the person to be adopted; or
 - (ii) in favour of the parent and the spouse, the civil union partner or the cohabitant whose cohabitation is registered under the Cohabitation Act, or the cohabitant whose cohabitation is enrolled by means of a public deed under the Cohabitation Act, 2020, if the person to be adopted has lived with the said applicants for at least five (5) consecutive years and consents to the adoption;
 - (iii) in favour of a foster carer who has fostered the person to be adopted for at least the preceding five(5) years, or three (3) years in extraordinary circumstances in accordance with article 54 of the Minor Protection (Alternative Care) Act, if the person to be adopted consents to the adoption;
 - (b) in favour of a person who is in holy orders or bound by solemn religious vows; or
 - (c) in favour of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.



An adoption decree shall not be made

- (a) in any case, other than the case of a person conceived and born out of wedlock, except with the consent of every person who is a parent of the person to be adopted and is alive, even if the parent has not yet attained eighteen years of age;
- (b) in the case of a person conceived and born out of wedlock, except with the consent of the person who gave birth to the child if such person is alive, even if she has not attained eighteen years of age as well as the natural father, if he has acknowledged the person to be adopted as his child;
- (c) on the application of one of two spouses under the provisions of sub-article (2) of article 114, except with the consent of the other spouse;
- (d) when the person to be adopted has attained the age of eleven years, except with his consent and after having been assisted by a children's advocate.



Eligibility for Adoption in Malta

- To adopt a child in Malta, certain eligibility criteria must be met, which include:
- **Adoptive Parents**
 - **Age Requirement:** Adoptive parents must be at least 25 years old, and there must be a minimum age difference of 18 years between the adoptive parent and the child. However, exceptions can be made under certain circumstances.
 - **Marital Status:** Single individuals, married couples, and civil partners can adopt a child. If a couple is adopting, both spouses must agree to the adoption. Cohabiting couples can also adopt, though adoption by unmarried couples is more restricted.
 - **Financial and Emotional Stability:** Adoptive parents must be able to provide a stable environment for the child. This includes a sufficient income to support the child and the emotional readiness to take on the responsibilities of parenting.
 - **Health:** Adoptive parents must be physically and mentally healthy. Medical assessments are usually required as part of the adoption process



Adoptive Children

- A child eligible for adoption in Malta is typically one who has been abandoned or whose biological parents have given up their parental rights. The child must be under the age of 18 at the time of adoption.
- In some cases, the court may also consider adoption of children from families where the parents are not in a position to care for the child due to incapacity.



Adoption Process in Malta

- The adoption process in Malta is detailed and involves several stages to ensure the welfare of the child is prioritized.
- **Pre-Adoption Assessment**
 - **Application:** Interested prospective adoptive parents must submit an application to the **Adoption Board** (which operates under the Ministry for Social Policy and Children's Rights).
 - **Home Study:** A thorough **home study** is conducted, where social workers assess the potential parents' background, financial status, health, and emotional readiness for adoption.
 - **Training and Support:** Prospective adoptive parents may also be required to attend training programs or receive support on topics such as child development, adoption issues, and the rights of the child.



Types of Adoption

1. Domestic Adoption:

1. This involves Maltese children who are either abandoned or whose biological parents are unable to care for them, often due to incapacity, death, or other reasons. In such cases, a child is placed for adoption in Malta.

2. International Adoption:

1. Maltese citizens or residents can also adopt children from abroad, provided that the adoption complies with both Maltese law and the laws of the country from which the child is being adopted. International adoption requires compliance with **Hague Convention** regulations, if applicable.



Matching and Placement

- The Adoption Board identifies children who are available for adoption. The Board will work to **match** a child with suitable prospective adoptive parents. The match is made based on the child's needs and the abilities and preferences of the adoptive parents.
- Once a match is made, a **trial period** (also known as **placement**) may be initiated, during which the child is placed with the adoptive parents temporarily to ensure that the child's needs are being met and that the arrangement is suitable for all parties.



Post-Adoption

- After the adoption is finalized, the adoptive parents are legally responsible for the child. The child may take the surname of the adoptive parents, and their birth certificate is amended to reflect the adoption.
- **Post-adoption support** is also available, with services designed to help families with the transition, especially if there are any psychological or emotional challenges.



Court Procedure

- Once the child has been successfully placed with the adoptive parents, an application for adoption is made to the **Court of Voluntary Jurisdiction**. The court will review the application, ensuring that all legal requirements have been met and that the adoption is in the best interests of the child.
- The court may require additional documentation and information, including reports from social workers and psychological assessments, before issuing an adoption order.
- The **court hearing** is not adversarial, and there are typically no opposing parties. It's a matter of ensuring that the adoption is legally sound and that the child's best interests are respected.
- Once the court is satisfied, it will issue an **adoption decree** which grants full legal parentage to the adoptive parents. The child is considered legally the child of the adoptive parents, and the biological parents' rights are terminated.



International Adoption in Malta

- International adoptions follow additional procedures, primarily governed by international conventions, such as the **Hague Convention on Intercountry Adoption** (for countries that are parties to the convention). The process is similar to domestic adoption but requires adherence to both Maltese law and the adoption laws of the child's home country.
- The **Adoption Board** also plays a critical role in coordinating international adoptions, ensuring that the child's welfare is safeguarded throughout the process



Rights and Welfare of the Child

- The Maltese legal system prioritizes the **best interests of the child** in every adoption. A child's voice may also be heard, especially if they are older or able to express their preferences. Maltese adoption law ensures that the child's identity, culture, and religion are respected during the adoption process.
- Furthermore, Maltese adoptees can **retain links to their biological family** in certain circumstances, though their adoptive parents will be their legal parents. In cases of international adoption, the adoptive parents are expected to respect and preserve the child's cultural heritage.



Summary on adoptions

- **Adoption in Malta** is a legal process where the child's welfare and best interests are central to every decision.
- The **Court of Voluntary Jurisdiction** oversees adoption proceedings to ensure the law is followed and that the child is placed in a loving and capable home.
- Both **domestic and international adoptions** are subject to detailed procedures that ensure the child's best interests are safeguarded.
- Maltese law allows both **single individuals** and **couples** (married or cohabiting) to adopt, with a focus on stability, emotional and financial readiness, and the welfare of the child.
- Adoption is a major life decision that requires careful consideration, and in Malta, it is carefully regulated to protect the interests of children and ensure they are placed in loving, stable homes.



Post-Adoption Contact

- In some cases, particularly in international adoptions, there may be provisions for **post-adoption contact** with the biological family.
- This is subject to the laws of the child's home country and the agreement of the adoptive parents.



What are Trusts?

- In **Malta**, trusts are governed by the **Trusts and Trustees Act** (Chapter 331 of the Laws of Malta), which provides the legal framework for the creation, administration, and regulation of trusts. This Act outlines the rules surrounding the establishment of trusts, the duties and powers of trustees, and the rights of beneficiaries, among other aspects. Trusts are a significant part of both personal and commercial law in Malta and are often used for estate planning, asset protection, and various financial purposes.
- Under **Chapter 16 of the Laws of Malta**, which is the **Civil Code**, trusts are recognized and regulated, though they are not as extensively outlined as they are in the **Trusts and Trustees Act** (Chapter 331). The provisions under the **Civil Code** concerning trusts are focused on their **legal effects**, particularly in relation to the transfer of property, inheritance, and the relationship between the settlor, the trustee, and the beneficiaries.



Key Provisions of the Trusts and Trustees Act (Chapter 331)

- The **Trusts and Trustees Act (Chapter 331)**, enacted in 1988, provides a modern legal structure for trusts in Malta. The law was designed to encourage the use of trusts, especially in private wealth management and estate planning. Here are some of the key aspects of the Act:



Key Provisions of Trusts Under Chapter 16 (Civil Code) of the Laws of Malta

- While the **Trusts and Trustees Act** (Chapter 331) provides the more comprehensive legal framework for trusts in Malta, **Chapter 16** of the **Civil Code** includes specific provisions concerning the legal treatment of **trusts**, particularly in relation to **ownership**, **succession**, and **contracts**.



Definition of a Trust

- A trust is a legal arrangement whereby a person (the **settlor**) transfers property or assets to another person or institution (the **trustee**) to hold and manage on behalf of a third party (the **beneficiaries**). The trust must have the following elements:
- **Trust property:** The assets placed in the trust.
- **Trustee:** The person or institution responsible for managing the trust in accordance with the trust deed.
- **Beneficiaries:** The individuals or entities who will benefit from the trust.
- **Trust deed:** The written agreement or document that sets out the terms of the trust, including how the trust is to be administered.



Creation of a Trust

- A trust in Malta can be created in various ways, including through:
- A **deed** or **written document** executed by the settlor (often referred to as a **trust deed**).
- A **will**, which creates a testamentary trust to come into effect upon the settlor's death.
- A **trust by declaration** or oral agreement, although a written document is usually preferable for clarity and legal enforceability.



Key Requirements for a Valid Trust

- There must be an **intention** to create a trust.
- The **trust property** must be clearly defined.
- The trust must have **ascertainable beneficiaries**, either by name or class.
- The **purpose** of the trust must be legal.



Types of Trusts in Malta

- The Trusts and Trustees Act recognizes several types of trusts, which include:
- **Express Trusts:** These are created explicitly by the settlor's intention, typically through a written trust deed.
- **Implied Trusts:** These arise when the law assumes that a trust exists due to the circumstances, such as **constructive trusts** (e.g., where property is transferred under conditions that suggest the transferee should hold it in trust for another).
- **Resulting Trusts:** These arise where the property is transferred without a clear declaration of a trust, and the law presumes that the settlor intended to retain an interest in the property unless the contrary is established.
- **Testamentary Trusts:** These are created by a will and only come into effect upon the death of the settlor. They are often used in estate planning.
- **Charitable Trusts:** Trusts created for the benefit of a charitable purpose. Charitable trusts are subject to specific rules and must fulfill certain legal requirements, such as benefiting the public or a particular section of society.
- **Private Trusts:** These trusts are created for the benefit of specific individuals or entities, such as family members or business partners.



General Duties of a Trustee

- **Duty of Loyalty:** The trustee must act in the best interests of the beneficiaries and avoid conflicts of interest.
- **Duty of Prudence:** The trustee must manage the trust property with care, skill, and diligence, avoiding risky investments or actions that could harm the trust.
- **Duty of Impartiality:** Trustees must act impartially, treating all beneficiaries fairly, especially in cases where there are multiple beneficiaries with conflicting interests.
- **Duty to Act According to the Trust Deed:** Trustees must follow the terms set out in the trust deed and the settlor's instructions, unless doing so is contrary to the law.
- **Duty to Disclose:** Trustees must provide beneficiaries with information regarding the administration of the trust upon request, unless the trust deed specifies otherwise.



Powers of a Trustee

- The Trusts and Trustees Act also allows trustees to exercise specific powers as outlined in the trust deed. These powers may include:
- The **power to distribute** income or assets to the beneficiaries.
- The **power to invest** the trust assets in a manner that aligns with the goals of the trust and complies with the law.
- The **power to appoint agents** or advisors to help manage the trust.



Beneficiaries and Their Rights

- Beneficiaries are the individuals or entities who stand to benefit from the trust. The **rights of beneficiaries** in Malta include:
 - **Right to Information:** Beneficiaries have the right to request information about the trust's assets, investments, and financial performance.
 - **Right to Fair Treatment:** Trustees must treat beneficiaries impartially unless the trust deed explicitly states otherwise.
 - **Right to Enforce the Trust:** Beneficiaries can go to court to enforce the terms of the trust if the trustee fails to meet their obligations.



Key Aspects of Trusts in Malta

- **Regulation:** Governed by the **Trusts and Trustees Act (Chapter 331)**, providing the legal structure for the creation and administration of trusts.
- **Types of Trusts:** Include **express trusts, testamentary trusts, charitable trusts, and private trusts.**
- **Trustee Duties:** Trustees must act in the best interests of beneficiaries, with prudence, loyalty, and impartiality.
- **Beneficiary Rights:** Beneficiaries are entitled to transparency, fair treatment, and the right to enforce the trust.
- **Taxation:** Trusts in Malta are subject to specific tax laws, including income tax and stamp duty.
- **Estate Planning:** Trusts are widely used in **asset protection and estate planning.**
- The Maltese legal system has created a robust framework for trusts, which has made it a popular jurisdiction for individuals seeking to protect and manage their assets efficiently, particularly in the context of wealth management, estate planning, and business succession.



Guardianships- Planning the appointment of guardians is necessary

- In **Malta**, **guardianship** refers to the legal responsibility for the care, protection, and upbringing of a child when their biological parents are unable to fulfil these duties.
- A major who has a mental disorder or other condition, which renders him incapable of taking care of his own affairs may be subject to guardianship, the parents of a person of age, with disability, with a mental disorder and with another condition, which makes such person incapable of taking care of his or her affairs, shall first seek to place the person with disability under guardianship before seeking the interdiction or incapacitation of that person



The demand for the appointment of a guardian or of joint guardians

- The demand for the appointment of a guardian or of joint guardians may be made by any person who voluntarily wishes to be made subject to guardianship or by any person mentioned in article 189(3) of this Code or in article 521 of the Code of Organization and Civil Procedure.
- If in any civil proceedings the Court considers that a party may need to be subject to guardianship, the Court shall refer the matter to the Guardianship Board for its determination.



The Guardian

- A guardian shall:
 - (a) be responsible to safeguard the personal and proprietary well being of the person to whose guardianship he is appointed;
 - (b) act instead of the person to whose guardianship he has been appointed in matters of a personal or of a proprietary nature during such time when the said person is considered as not being capable of doing anyone or more acts of civil life as specified in the Guardianship Order;
 - (c) to do any other thing for or on behalf of the person to whose guardianship he is appointed as he may be ordered or authorised to do by the Guardianship Board or by the Court of Voluntary Jurisdiction or as may be prescribed by regulations.



Obligations in respect of acts of guardianship

- Every function, power, authority, discretion, duty or right Under Chapter 16 shall be exercised in such manner that:
 - (a) the will of the person subject to guardianship is respected and given effect to the maximum extent possible;
 - (b) the welfare of the person subject to guardianship is promoted and fostered;
 - (c) the means used for the purpose of guardianship shall be proportionate to the aims which they are intended to achieve; and
 - (d) the freedom of choice and action of the person subject to guardianship shall only be restricted when necessary and only to an extent that is proportionate to the aim pursued.



The exercise of his obligations the guardian

- In the exercise of his obligations the guardian shall act **in the best interests of the person subject to guardianship** and shall:
 - (a) take appropriate measures to provide the support that the person subject to guardianship may require in exercising his legal capacity himself insofar as this is possible;
 - (b) consult with the person subject to guardianship and take into account and respect the rights, will and preferences of the person insofar as this is possible;
 - (c) encourage the person subject to guardianship to participate as far as possible in the life of the community;
 - (d) encourage and assist the person subject to guardianship to become capable of caring for himself and for his property and of making responsible judgements in respect of matters relating to his person and property;
 - (e) protect the person subject to guardianship from neglect, abuse or exploitation; and
 - (f) provide to the person subject to guardianship, as far as possible, any assistive means as may be required for the proper fulfilment of the obligations provided in Chapter 16





Questions
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