

The Courts of Justice in Malta and the Legal Profession

Construction of well-structured documents

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

Lecture 9

Construction of well-structured documents, such as reports or guides, that explain the functions of legal professions, duties of notaries



Legal professions in Malta

- The legal profession in Malta is organised under a unitary system and public prosecutors are appointed from among practising advocates.
- There are three main types of legal professionals in Malta – lawyers, notaries public and legal procurators, each with a specific role.
- In addition, the Attorney General is the public prosecutor before the Criminal Court and the Court of Criminal Appeal. The Attorney General's roles include acting as legal advisor to the Government, even in front of the Maltese Courts, and representing Malta before international courts and at international meetings concerning legal and judicial issues.
- Judges and Magistrates are appointed by the President of the Republic, acting in accordance with the advice of the Prime Minister. They are independent of the executive and enjoy security of tenure up till the age of sixty-five years.



Appointment and duties of Notaries to Government, Assistant Notaries to Government

- There shall be a Chief Notary to Government and one or more Notaries to Government for the Island of Malta and a Notary to Government for the Islands of Gozo and Comino and there shall also be one or more Notaries Public with the Lands Authority and one or more notaries with the Housing Authority.
- The Chief Notary to Government, Notaries to Government, Notaries Public with the Lands Authority and the Notaries Public with the Housing Authority shall be appointed from among notaries appointed by the President of Malta.



The functions of Chief Notary to Government, Notary to Government for the Islands of Gozo and Comino, Notary Public with the Lands Authority and the Notaries Public with the Housing Authority



- The office of Chief Notary to Government or of Notary to Government is not incompatible with the office of Archivist and Director or Assistant Director of the Public Registry or Director or Assistant Director of the Land Registry.
- The functions of Chief Notary to Government, Notary to Government for the Islands of Gozo and Comino, Notary Public with the Lands Authority and the Notaries Public with the Housing Authority shall consist in receiving those deeds only to which the Government, any corporate body established by law, or the Notarial College, or, as may be authorized by the Minister in each case, any partnership or any other body in which the Government of Malta or any such body as aforesaid have a controlling interest or over which they have effective control, is a party, in having the custody of the deeds respectively received by them and in serving out copies and extracts of or from such deeds during their tenure of office



- Notary to Government for the Island of Malta shall exercise such duties, powers and functions as may be delegated or assigned to him by the Chief Notary to Government.
- In the case of absence or other lawful impediment of the Chief Notary to Government or of the Notary to Government for the Islands of Gozo and Comino, the Prime Minister may delegate the Notary to Government for the Islands of Gozo and Comino or the Chief Notary to Government, as the case may be, or one of the Notaries to Government for the Island of Malta, or appoint another notary, to discharge the duties of the Chief Notary to Government or of the Notary to Government for the Islands of Gozo and Comino, as the case may require;
- In the case of absence or other lawful impediment of a Notary Public with the Lands Authority or a Notary Public with the Housing Authority, the Prime Minister may delegate one of the Notaries to Government, or appoint another notary, to discharge the duties of the Notary Public with the Lands Authority or of a Notary Public with the Housing Authority, as the case may require.



What are the common legal documents ??

Let's delve into some important legal documents in Malta which you need to know or be aware of ...

I will separate these into two:

- Notarial Documents
- Court Related Documents



Notarial Documents

- Maltese notaries are central to the legal framework, and the documents they prepare are foundational to many important life and business transactions.
- They not only authenticate these documents but also ensure that all parties understand their legal implications, protecting the rights and interests of everyone involved.
- The legal certainty provided by notarial acts is essential for maintaining trust in the Maltese legal system.



Public Deeds

- **Contracts of Sale (Kuntratt):** Notaries prepare and authenticate **contracts for the sale of immovable property** (such as land or buildings). This is one of the most common documents notaries handle, ensuring that property transfers comply with legal requirements and that the transaction is properly recorded.
- **Promise of Sale Agreement (Konvenju):** This is a preliminary agreement between a buyer and seller, where both parties agree to complete the sale of a property within a specified time. The notary ensures that the terms are legally binding and that any necessary conditions are met.
- **Deeds of Donation (Att ta' Donazzjoni):** A notary may draft a deed where one party donates property to another, usually within family settings, ensuring it is properly executed and recorded.
- **Deeds of Partition (Att ta' Tqassim):** These deeds are prepared when co-owners of property agree to divide their property among themselves.



Wills and Testamentary Documents

- **Wills (Testmenti):** Maltese notaries prepare **wills** according to the wishes of the testator, ensuring that they meet all legal formalities. The will outlines how the testator's estate will be distributed upon their death.
- **Codicils:** These are amendments or additions to an existing will, and notaries ensure that these modifications are legally valid and properly documented.



Power of Attorney (Prokura)

- A **power of attorney** is a legal document where one person (the grantor) authorizes another person (the attorney) to act on their behalf. Notaries in Malta draft these documents, which can be general or limited to specific tasks (e.g., handling property transactions or managing business affairs).
 - General power of attorney
 - Special power of attorney



Loan Agreements and Hypothecs

- Notaries prepare **loan agreements** where one party lends money to another, particularly when the loan is secured by immovable property.
- They also handle **hypothecs**, which are legal instruments securing a debt against immovable property (similar to a mortgage). The notary ensures that the hypothec is properly registered to protect the creditor's rights.



Marriage Contracts (Kuntratti taż-Żwieġ)

- Notaries prepare **marriage contracts** that govern the financial arrangements between spouses, including the management and ownership of property during marriage.
- These can include **separation of property agreements**, where spouses keep their property separate during the marriage.



Company Formation Documents

- Notaries assist in the **incorporation of companies** by preparing documents such as **memoranda and articles of association**. These documents set out the company's structure, its objectives, and the responsibilities of its directors and shareholders.
- Notaries may also draft agreements related to **share transfers and partnerships**.



Deeds of Trusts and Foundations

- Notaries prepare documents establishing **trusts** and **foundations** in Malta.
- These legal entities are often used for estate planning, charitable purposes, or managing family assets.



Settlement Agreements

- **Settlement agreements** drafted by notaries can be used to resolve disputes between parties.
- This can include settlements related to family law matters (e.g., divorce settlements) or civil disputes.



Court-Related Documents

- Notaries may prepare and authenticate **court-related documents**, such as **court orders** that need to be enforced or **judicial sales by auction** of properties.



Emphyteutical Deeds

- These documents relate to **long-term leases** (emphyteusis) of immovable property.
- The notary ensures that the contract complies with legal requirements and records the terms under which the property is leased.



Acts of Adoption

- Notaries may be involved in preparing **adoption documents**, ensuring that all legal steps are followed to formalize the adoption of a child in Malta.



Affidavits and Statutory Declarations

- Notaries in Malta also prepare **affidavits** and **statutory declarations**, where individuals make sworn statements under oath about specific facts, often used in legal proceedings or for official purposes.



Court Related Documents



Cedola – Schedule of Deposit

- A payment schedule is a predetermined plan between two parties outlining the timing, frequency and amount of payments.
- It includes essential details such as payment due dates, instalment amounts, any applicable interest rates, and additional fees or charges associated with the transactions.



Protest

- The object of a protest is to make a solemn intimation or declaration in order to place other parties in bad faith, or to preserve one's own rights.
- Nevertheless, where the law provides that such intimation or declaration is to be made by means of a judicial act without specifying the form thereof, the intimation or declaration may be made by means of a judicial letter.
- Where the law does not prescribe the manner in which such intimation or declaration is to be made, the intimation or declaration may be made orally.



166A

- The judicial letter 166A can only be used for debts amounting to less than €25,000. In cases where the debt is greater, the creditor may choose to reduce their claim to meet the criteria or forfeit the excess amount.
- This is a useful legal mechanism because of its efficiency and cost-effectiveness.



Application

- A **legal application** refers to the use of legal principles, laws, or regulations in practical scenarios or contexts. It typically involves interpreting and applying statutory law, case law, or legal doctrines to real-world situations, disputes, or issues. Legal applications can arise in various contexts



Legal reply

- A **legal reply** refers to a formal written or oral response made in a legal proceeding, usually by one party in response to the claims, arguments, or motions made by the opposing party. It is part of the legal communication and process in a court or legal matter.



Constructing well-structured legal documents

- Constructing well-structured legal documents, such as reports or guides, requires clarity, precision, organization, and attention to detail.
- Whether you're writing a legal report, guide, or any other legal document, the following steps and instructions will help you produce a well-structured and professional document.
- What are the General Guidelines for Legal Writing ?



Be Clear and Concise:

- Use **clear language** to convey your points. Avoid overly complex or convoluted sentences.
- Be **concise**: Avoid unnecessary jargon or repetition.



Follow a Logical Structure:

- Your document should follow a clear structure with headings, subheadings, and numbered paragraphs to organize the information logically.
- Always lead with the most important or relevant information.



Ensure Legal Accuracy:

- Double-check all legal references (e.g., case law, statutes, regulations) to ensure accuracy.
- Ensure the information provided is up-to-date.



Maintain Formality:

- Legal documents are typically formal, so use appropriate tone and language.
- Avoid colloquial or overly casual terms.



Write Objectively and Impartially:

- Avoid bias and present the facts objectively.
- Use neutral language and back up assertions with relevant evidence or legal authorities.



Key Tips for Specific Legal Documents

- Legal Reports: Focus on factual accuracy, legal analysis, and structured reasoning. Always cite legal authorities for every conclusion drawn.
- Legal Guides: Simplify the legal language for non-legal readers, explaining concepts clearly while avoiding technical jargon.
- Contracts: Ensure precise language in outlining terms, conditions, obligations, and rights of the parties. Clarity and specificity are critical.
- Memos: Keep them short and focused on specific legal issues or advice, with a clear conclusion or recommended course of action.



Conclusion or Recommendations

- Summarize the main findings or outcomes based on your analysis.
- Offer conclusions on each legal issue or provide recommendations on how to proceed.
- For reports, clearly state whether a claim is likely to succeed, and what further actions should be taken.





Questions
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