

The Functions of the Court of Voluntary Jurisdiction

Open Court Closed Doors, Protection of rights, Guardianships

Lecturer: **Avv. Maria Ruth Ciantar**

Date: **23rd January 2025**



Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

What is the difference between open court sittings and sittings held behind closed doors?

- The difference between **open court sittings** and **sittings held behind closed doors** (also known as *in camera* or *closed sessions*) lies in the level of public access and the type of cases typically heard in each setting.
- The choice between open and closed-door sittings reflects a balance between the **public's right to know** and the **individual's right to privacy**. While open court sittings uphold transparency, closed-door sittings are essential for safeguarding sensitive information and protecting vulnerable individuals in specific cases. Both settings are integral to a fair and functioning judicial system.



Open Court Sittings

- **Definition:** Open court sittings are public proceedings where members of the public and press are allowed to attend and observe. These are the default type of court sessions in many legal systems to ensure transparency.
- **Purpose:** Open court sittings are based on the principle of **public accountability** and **transparency**. They allow the public to witness the judicial process, promoting trust and confidence in the legal system.
- **Cases Typically Heard:** Most civil and criminal cases are heard in open court, as long as they don't involve sensitive personal issues or confidential information that could harm individuals or public interests if disclosed.
- **Public and Media Access:** Open sittings are accessible to journalists and the general public. Media can usually report on the proceedings, although there may be restrictions on publishing certain sensitive details (e.g., the identities of minors).



Closed-Door Sittings (In Camera)

- **Definition:** Closed-door sittings are private court sessions where only authorized persons, such as the parties involved, their legal representatives, and specific court officials, are permitted. The public and media are excluded.
- **Purpose:** Closed-door sittings are conducted to **protect the privacy** of individuals, maintain **confidentiality**, or **preserve public order**. This setup is used when the public disclosure of information could harm the parties involved, compromise sensitive details, or impact justice.
- **Cases Typically Heard:** Common examples include:
 - **Family law cases:** Matters like child custody, divorce, adoption, and guardianship are often heard in private to protect the privacy of minors and families.
 - **Cases involving minors:** Juvenile cases or cases where minors are victims of abuse may be held behind closed doors.
 - **Sensitive criminal cases:** Cases involving sexual offenses, national security, or classified information are often closed to avoid trauma to victims or the release of critical information.
- **Restricted Information:** Information from closed sittings is typically restricted from public reporting to protect those involved. Courts may issue orders that prevent the media from disclosing certain details or, in some cases, even acknowledging that the session took place.



Key differences

Aspect	Open Court Sittings	Closed-Door Sittings (In Camera)
Public Access	Public and press are allowed	Only authorized persons, no public or press access
Purpose	Transparency and accountability	Privacy, confidentiality, and public interest
Common Cases	General civil and criminal cases	Family law, sensitive criminal cases, cases involving minors
Media Reporting	Allowed (may have some restrictions)	Typically restricted or prohibited
Legal Principle	Open justice and public right to know	Protection of vulnerable individuals and sensitive information

Legal Principles Behind Each Type of Sitting

- **Open Justice:** Open court sittings are based on the principle of open justice, which ensures that court proceedings are accessible to the public, promoting fairness and accountability in the legal system.
- **Right to Privacy and Fair Trial:** Closed-door sittings protect individuals' privacy and ensure that cases involving sensitive information are handled appropriately. This setup helps maintain a fair trial environment when exposure could prejudice or harm those involved.



The COCP

- Causes shall be tried in public:
 - Provided that it shall be lawful for the court to order that the cause be heard with closed doors, should decency or good morals so require.
- It shall also be lawful for the court, in any other case, at the request of both parties, upon good reason being shown, to order that the cause be heard with closed doors.
- In any of the said cases, the order of the court shall be recorded.



Judgements to be delivered in public

- The judgment shall in all cases be delivered in public. The court delivering the judgment shall read out the operative part which is to be included in the concluding part of the judgment.
- The operative part of the judgment shall include a reference to the claims or pleas which have been decided upon and every declaration intended to be conclusive or binding.
- Immediately upon delivery the judge or magistrate shall deposit a signed transcript of the judgment in the records of the case.



Interpret the significance of arranging the examination of applications with closed doors

- Arranging the examination of applications behind closed doors, or *in camera*, holds significant implications for protecting the privacy, integrity, and effectiveness of the judicial process. In Maltese law, as in many other legal systems, this approach allows the courts to address sensitive issues while maintaining discretion, confidentiality, and public trust.



Protecting Privacy and Confidentiality

- **Sensitive Personal Information:** In cases involving personal or sensitive information—such as family disputes, child custody, adoption, or matters affecting vulnerable individuals—closed-door sessions protect the privacy of those involved. This is particularly important in cases where exposure to public scrutiny could cause emotional distress or harm to personal reputations.
- **Confidentiality in Commercial Cases:** In certain commercial cases, closed sessions allow the court to review sensitive business information without the risk of compromising trade secrets or proprietary data. This helps ensure fair competition and the protection of intellectual property



Upholding the Welfare of Minors and Vulnerable Individuals

- Closed-door hearings are essential in cases involving minors, such as custody battles, juvenile offenses, or cases where children are victims or witnesses. Protecting their identities and keeping sensitive details private are vital for their welfare, shielding them from potential trauma or stigmatization.
- The same approach applies to vulnerable adults, such as those with mental health issues or those experiencing abuse. A private hearing prevents further victimization and helps protect their dignity and rights.



Preserving Public Morality and Order

- Certain cases, especially those involving allegations of sexual offenses or domestic abuse, may contain graphic or disturbing details. Closed-door examinations limit exposure to sensitive information that could otherwise disturb public morality or order if disclosed publicly.
- This also serves to protect the dignity and personal privacy of victims, particularly in cases of sexual violence or exploitation, where public exposure could be retraumatizing.



Ensuring Fairness and Minimizing Prejudice

- By holding private hearings for certain applications, courts minimize the risk of media influence, public pressure, or prejudice that could impact the case's outcome. This is particularly crucial in high-profile or sensational cases where public opinion could affect the fairness of the proceedings.
- Closed-door examinations help maintain a fair environment for both parties, allowing the court to examine evidence and arguments impartially without outside influence.



Promoting Honest Testimonies and Evidence Disclosure

- In private settings, individuals may feel more comfortable providing candid testimonies or revealing sensitive information that they might hesitate to disclose in an open court. This leads to a more thorough and honest examination of evidence, which is particularly beneficial in cases of abuse, domestic disputes, or sensitive business dealings.
- Witnesses and experts may also feel more at ease presenting their findings or testimonies, knowing their statements are restricted to authorized individuals and won't be subject to public scrutiny.



Safeguarding National Security or Sensitive Information

- In cases involving national security, state secrets, or other highly sensitive information, closed-door hearings are essential. Allowing public access could compromise state security or reveal information that could pose risks to public safety.
- This approach ensures that sensitive intelligence or classified data remains confidential, while the court can still examine the evidence necessary to make an informed judgment.



Legal and Ethical Balance: Public Interest vs. Privacy

- The arrangement of closed-door examinations reflects a balance between the **principle of open justice** and the need to **protect individual rights**. While transparency is a foundation of the justice system, certain cases require privacy to safeguard the well-being and rights of the parties involved.
- This practice aligns with the European Convention on Human Rights, which acknowledges the importance of open justice while permitting exceptions in situations where privacy or security concerns justify them.



Predict and anticipate potential challenges or obstacles that may arise within the context of the court's jurisdiction and propose effective solutions or strategies to address them

- Within the Maltese court system, several challenges could impact the efficiency, accessibility, and fairness of justice delivery.
- The Maltese court system faces various challenges, from high caseloads and limited resources to evolving legal complexities and the need for improved accessibility. By implementing digital solutions, expanding resources, and enhancing training and public outreach, Malta can improve the effectiveness, efficiency, and fairness of its judicial system. These solutions can help uphold public trust in the judiciary while ensuring that the courts remain responsive to the needs of all individuals seeking justice.



High Case loads Leading to Delays in Proceedings

- **Challenge:** Malta's courts face a heavy caseload, especially in civil and family law cases, which can lead to long delays. Prolonged case durations affect access to justice and strain public trust in the judicial system.
- **Solution: Introduce Specialized Courts and Expand Alternative Dispute Resolution (ADR)** – Establishing more specialized courts, such as family courts or commercial courts, could help distribute the caseload more efficiently. Additionally, promoting ADR methods, like mediation and arbitration, can help resolve disputes outside of court and reduce case backlog.
- **Additional Strategy: Digital Case Management Systems** – Adopting digital systems to manage case filings, scheduling, and progress tracking can streamline workflows, allowing faster processing times and reducing administrative delays.



Privacy and Confidentiality in Sensitive Cases

- **Challenge:** Cases involving minors, family disputes, or vulnerable individuals require privacy to protect the involved parties. Ensuring confidentiality while maintaining a transparent judicial system is challenging.
- **Solution: Enhanced In-Camera Hearing Policies** – Develop standardized policies for holding in-camera (closed-door) sessions in sensitive cases, clearly defining when and why cases should be closed to the public. This approach protects privacy while maintaining fair processes.
- **Additional Strategy: Data Protection and Privacy Training** – Regularly train court staff on data protection laws and confidentiality protocols. Ensure all sensitive cases are securely stored, whether in digital or physical formats, and restrict access to authorized personnel only.



Challenges in Enforcing Court Orders

- **Challenge:** Enforcing judgments, particularly in civil and family law cases, can be difficult, leading to non-compliance and unresolved issues.
- **Solution: Establish a Court Enforcement Office** – Create a specialized court office focused on monitoring and enforcing court orders. This office could collaborate with other legal enforcement bodies to ensure orders are complied with efficiently.
- **Additional Strategy: Regular Monitoring Mechanisms** – For family law cases, such as custody or child support arrangements, implement monitoring mechanisms where court-appointed officers follow up to ensure compliance and address any issues of non-compliance.



Complex Legal Procedures and Lack of Understanding Among Self-Represented Litigants

- **Challenge:** Many individuals who represent themselves struggle to navigate complex legal procedures, which can lead to delays, errors, and potential miscarriages of justice.
- **Solution: Provide Court Navigators and Legal Information Centers** – Offer court navigation services where trained staff assist self-represented individuals in understanding court procedures and required documentation. Legal information centers could also offer basic guidance on filing cases or understanding rights.
- **Additional Strategy: Simplify Court Forms and Procedures** – Design simplified court forms and provide instructions in accessible language. Additionally, use online platforms to guide users through the filing process step-by-step, reducing potential errors.



Challenges in Handling Specialized Cases

- **Challenge:** As certain types of cases, like cybercrime or complex financial crimes, grow in complexity, courts may struggle with handling them effectively if judges and legal staff lack specialized knowledge.
- **Solution: Judicial Training in Specialized Areas** – Offer specialized training for judges and staff in emerging areas of law. This will improve the court's ability to address these complex cases effectively.
- **Additional Strategy: Establish Specialized Court Divisions** – Creating divisions within the court that focus on specific areas can provide a more specialized and efficient approach, resulting in quicker and more informed judgments.



Backlogs in Translation and Interpretation Services

- **Challenge:** Language barriers can pose challenges, especially in cases involving foreign nationals. Delays in interpretation services can slow proceedings and affect non-Maltese speakers' access to fair hearings.
- **Solution: Expand Interpreter Services** – Increasing the number of certified interpreters and translators can help clear backlogs and improve the accessibility of court services for non-Maltese speakers. Prioritize languages based on demographics and case requirements.
- **Additional Strategy: Remote Interpretation Options** – Use remote or video-based interpretation services to ensure interpreters are available even if they cannot be physically present, reducing wait times and improving scheduling flexibility.



Protecting the rights and interests of people who cannot or are not able to safeguard their own rights and interests.

- Several frameworks exist to protect the rights and interests of individuals who cannot safeguard their own rights or interests due to age, disability, mental incapacity, or other factors.
- **Guardianship and Administration Act**
- This law provides for the appointment of a **guardian** for persons who lack the mental capacity to make decisions for themselves, such as in cases of intellectual disability, mental illness, or old age. The guardian's role is to act in the best interest of the person, ensuring their rights and well-being.



Care Orders for Minors

- Maltese law provides that **care orders** can be issued by the Ministry responsible for social welfare in cases where a child's well-being is at risk due to abuse, neglect, or other harmful environments.
- Care orders allow authorities to intervene in a minor's life, placing them under the care and protection of **Aġenzija Appoġġ** or other designated entities.



Commissioner for the Rights of Persons with Disability (CRPD)

- The CRPD advocates for the rights of persons with disabilities and ensures compliance with the **Equal Opportunities (Persons with Disability) Act** (Chapter 413 of the Laws of Malta)
- The CRPD can investigate complaints and instances of discrimination, promoting equal treatment and accessibility in education, employment, and other public services.



Court-Appointed Advocates and Curators

- When individuals are involved in legal proceedings but are unable to represent themselves, the court may appoint a **curator** to represent their interests. This is especially common in cases involving minors, elderly persons with dementia, or individuals with mental health issues.



Guardianship

- Notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation of the Civil Code , 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;
- Notwithstanding the provisions of Sub-title II on Interdiction and Incapacitation of the Civil Code, to the extent possible, 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 same shall apply in regard to a minor referred to in article 156 (provisions Where minor carries on trade).
- 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.
- Article 189(3) of the CC
 - The demand for interdiction or incapacitation may be made not only by the persons mentioned in article 521 of the Code of Organization and Civil Procedure, but also by any person related by affinity who, under the provisions of this Code, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal (spending money or using resources freely and recklessly; wastefully extravagant.)
- Article 521 of the COCP → Persons who may demand interdiction or incapacitation
- 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.



Application for the appointment of a guardian

- A demand for the appointment of a guardian shall be made by application to the Guardianship Board in accordance with article 188A of the Civil Code.
- The application shall contain a statement of the facts on which the demand is founded and an indication of the witnesses, if any to such facts.
- Any documents in support of the demand shall be filed together with the application



Functions of 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 established under Title IIIA of Part II of Book Second of the Code of Organization and Civil Procedure or by the Court of Voluntary Jurisdiction or as may be prescribed by regulations made under this Sub-title



Obligations in respect of acts of guardianship.

- The provisions the Civil Code shall be construed and interpreted and every function, power, authority, discretion, duty or right conferred by the same Code or by any regulations made thereunder 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.



In the exercise of his function 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 the Civil Code.
- Subject to the limits imposed in the Guardianship Order or by any other decision which the Guardianship Board may give from time to time, a guardian may on behalf of a person subject to guardianship sign and do all such things as are necessary to give effect to any functions or obligations vested in the guardian.



Interpret the process of examining individuals for whom guardianship is sought and propose the appointment of a temporary guardian

- The process of examining individuals for whom guardianship is sought and appointing a temporary guardian is handled through the **Guardianship Board**, established under the **Guardianship and Administration Act**.
- This board oversees cases where individuals are unable to make decisions regarding their personal or financial affairs due to mental or physical incapacity.



Medical and Psychological Evaluation

- To assess the need for guardianship, the board requires a detailed medical and psychological evaluation.
- This evaluation should be conducted by qualified professionals who can attest to the individual's level of incapacity and inability to manage their own affairs.
- This process may involve consulting with the person's doctors, therapists, or other professionals involved in their care.



Hearing and Review by the Guardianship Board

- The board holds a hearing where all parties—including the person for whom guardianship is sought, the applicant, and any other relevant witnesses—can present their views. The board reviews medical reports, hears testimonies, and may ask questions to ensure they have a comprehensive understanding of the individual's circumstances and needs.
- The goal is to determine the extent to which the individual lacks capacity and the type of decisions they need assistance with.



Appointment of a Temporary Guardian

- In cases where an urgent need arises to protect the interests of an individual—such as when their health, finances, or welfare are at immediate risk—the Guardianship Board can appoint a **temporary guardian**. This temporary guardian has the authority to make decisions on behalf of the individual until a full hearing can be conducted. Here is how this process generally unfolds:

1. Application for Temporary Guardianship

1. A request for temporary guardianship can be made within the initial guardianship application or separately if an emergency arises. This request should include evidence supporting the immediate need for guardianship, such as potential financial exploitation or urgent medical decisions.

2. Evaluation of Urgency and Risk

1. The board quickly assesses the urgency of the case based on evidence provided. They may expedite medical or psychological evaluations if possible or rely on preliminary reports from healthcare professionals familiar with the individual's situation.

3. Interim Hearing and Temporary Appointment

1. In situations of immediate risk, the board may hold an expedited hearing to appoint a temporary guardian. This appointment grants limited powers tailored to the individual's immediate needs, such as authorizing necessary medical care or managing urgent financial matters.

4. Review and Full Guardianship Hearing

1. Temporary guardianship is a provisional measure and remains in effect only until a full hearing and decision can be made. At the full hearing, the board evaluates the long-term guardianship needs and determines if a permanent or ongoing arrangement is necessary.
- The goal of appointing a temporary guardian under Maltese law is to protect the individual's interests promptly while preserving their rights and dignity. This temporary measure acts as a safeguard, ensuring that time-sensitive harm does not come to the individual while the standard guardianship process is ongoing.





Questions
???



Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants