

The Functions of the Court of Voluntary Jurisdiction

Service of documents, Impugning documents, Challenging or Abstaining of a Judge

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Infer how the service of application on interested third parties is calculated and managed

- The COCP holds that there shall be court executive officers who shall been trusted with the service and the execution of any judicial acts, warrants and other orders given by the Courts, Judges and Magistrates and to perform such other duties as may be assigned to them by the Director General (Courts) and the registrars.
- If any person knowingly avoids, obstructs or refuses service of any act or court order or execution of any warrant or order by any executive officer of the courts, he shall be guilty of contempt of court and shall be liable, on conviction, to the punishments mentioned in the Article 990 of the COCP



Service of an application

- In Maltese law, service of an application refers to the formal process of delivering legal documents, such as applications or court notices, to a party involved in a legal proceeding to ensure they are aware of the action and have an opportunity to respond.
- The service process is essential to uphold the principles of natural justice and fair hearing in the judicial system.
- The primary rules regarding service of applications and other judicial documents are outlined in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).



Key Points on Service of an Application Under Maltese Law

- **Types of Service Methods**

- **Personal Service:** The application is delivered personally to the recipient, typically through a **court marshal** (official officer of the court). This is the preferred method for ensuring the recipient directly receives the document.
- **Service by Registered Mail:** Applications may also be served by registered mail, with proof of receipt provided by the postal service.
- **Electronic Service:** In certain cases, the court may permit electronic service via email or other electronic methods, though this is less common and depends on the specific type of case or court order.



Address for Service

- The application must be served to the recipient's **last known residential or business address**. If the recipient has appointed a legal representative (such as a lawyer), service can also be made to the representative's registered address or law fi



Proof of Service

- For service to be legally recognized, proof of service must be established. This can be:
 - A signed acknowledgment from the recipient.
 - A **certificate of service** issued by the court marshal.
 - A receipt or tracking confirmation in cases of registered mail.
- Proof of service is important because if the recipient does not respond, the court will verify that they were properly notified before proceeding with default judgments or further actions.



Substituted Service

- If an applicant cannot serve the document personally due to the recipient's unavailability or unknown whereabouts, they can apply to the court for **substituted service**.
- This can include:
 - Service by publication in local newspapers.
 - Posting a notice at the recipient's last known address.
 - Any other method the court deems appropriate to reasonably inform the recipient.



Service Abroad

- When the recipient is located outside Malta, service of the application follows the provisions of **international agreements** or **European Union regulations** for cross-border cases.
- This may involve cooperation with foreign authorities or the use of registered mail and is regulated under **Regulation (EC) No 1393/2007** for service of judicial and extrajudicial documents within the EU.
- Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000)



Failure to Respond After Service

- If the recipient does not respond within the prescribed time after proper service, the court may proceed with the case and potentially issue a **default judgment**.
- However, the applicant must demonstrate that service was correctly executed, ensuring the court's decision is based on fair process.
- **Challenges to Service-** A recipient who claims not to have received proper service can challenge the application on this basis. They may file a request with the court to **void the service** and possibly reopen the case if a judgment was issued in their absence, provided they can show evidence of improper service



Significance of Proper Service in Maltese Law

- Proper service of an application is fundamental to the Maltese judicial system, as it:
 - **Guarantees a fair hearing** by ensuring all parties are informed.
 - **Upholds procedural justice** by requiring proof of delivery before proceeding in absentia.
 - **Allows for alternative methods** of service to account for difficulties in locating the recipient.
 - Ensuring correct service procedures helps prevent cases from being delayed due to procedural objections and reinforces the integrity of the court's decisions.



Derive an understanding and appreciation of the organisation and custody of applications and decrees

- The organization and custody of applications and decrees are key aspects of judicial administration. Proper management of these documents ensures **transparency, accountability, and efficiency** in the legal process, as applications initiate proceedings and decrees serve as binding court orders or judgments. The **Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta)** provides the foundation for how applications and decrees are organized, handled, and stored by the court, contributing to the orderly progression of cases and the reliability of the judicial system.
- The organization and custody of applications and decrees in the Maltese court system are vital to maintaining a well-functioning judiciary. Through systematic categorization, secure storage, and digitization, the court can handle cases more efficiently, protect sensitive information, and ensure fairness in judicial proceedings. The continued modernization of document management will further enhance transparency, accessibility, and security, supporting the court's mission to deliver justice effectively and responsibly.



Organization of Applications and Decrees

- **Filing and Registration:** When an application is filed, it is registered by the **court registry**. Each application is assigned a unique case number for easy identification, referencing, and tracking throughout the legal process. This case number links all documents associated with the matter, such as affidavits, responses, and related applications, ensuring a systematic arrangement.
- **Categorization:** Applications are categorized based on the type of case—civil, family, criminal, or administrative. Within each category, applications are further organized by nature (e.g., voluntary jurisdiction, interdiction, or guardianship cases in non-contentious matters). This helps court officers quickly identify the relevant cases and process them according to the applicable procedures.
- **Electronic and Physical Storage:** While physical files are still maintained, Maltese courts are increasingly using **electronic document management systems** to store and track applications and decrees digitally. This digitization improves efficiency, security, and accessibility, allowing court personnel, lawyers, and judges to access documents more rapidly. It also helps minimize the risk of document loss or damage.



Custody and Security of Documents

- **Court Registry's Role:** The **court registry** is the central custodian of all applications and decrees. It is responsible for the safekeeping, organization, and timely processing of these documents. The registry staff must ensure that applications are accurately filed, recorded, and made accessible to authorized persons while maintaining confidentiality.
- **Secure Storage:** Documents held in custody must be protected against unauthorized access, tampering, or destruction. Physical copies are typically stored in a secure area within the court premises. Electronic records are maintained in a secure database with controlled access and are often backed up to prevent data loss.
- **Confidentiality and Privacy:** The custody of applications and decrees must also respect privacy, particularly for sensitive cases such as family law or mental health applications. Access to these documents is restricted to the involved parties, their legal representatives, and authorized court personnel. Sensitive cases may require additional privacy measures to safeguard the information of the individuals involved.



Accessibility and Retrieval of Applications and Decrees

- **Public Access vs. Restricted Access:** Certain applications and decrees, such as those in criminal or commercial cases, may be accessible to the public, while others, especially in family or guardianship matters, remain confidential. The court balances transparency with the privacy rights of individuals by designating specific cases as **confidential** and restricting access accordingly.
- **Digital Access for Legal Professionals:** Lawyers, advocates, and registered legal representatives can often access case documents, including applications and decrees, through the court's digital platform, where available. This promotes efficiency in managing cases and preparing for hearings.
- **Retrieval of Historical Records:** Historical applications and decrees are archived by the court, typically in both physical and digital formats. These archives are maintained for legal, historical, and research purposes, and they help ensure that past decrees can be referenced in future proceedings or appeals.



Processing and Issuance of Decrees

- **Judicial Review and Decision-Making:** Once an application is filed, it is assigned to a judge or magistrate who reviews the case and may issue decrees as necessary to manage proceedings. A **decree** may serve various purposes, such as granting permissions, appointing guardians, or issuing interim measures.
- **Recording of Decrees:** Decrees are recorded in the case file, and an official copy is issued to the parties involved. This document becomes a legally binding order that must be respected by all parties. It is stored within the court registry, ensuring it can be referenced or enforced if necessary.
- **Communication to Parties:** Copies of decrees are made available to the relevant parties, typically via their legal representatives. They may be served directly or made accessible electronically if the court permits. Proper service of decrees is essential, as it provides formal notice to the parties, allowing them to comply or appeal as necessary.



Efficiency and Modernization of Document Custody

- **Digitization Efforts:** The Maltese courts have been making significant strides toward digitizing case files and records to streamline the judicial process. Digital records improve **efficiency, reduce costs**, and allow faster access to documents, enhancing the overall administration of justice. By reducing dependency on physical files, the court can handle cases more quickly and address inquiries or requests for information more effectively.
- **Data Backup and Disaster Recovery:** Ensuring the security and integrity of stored applications and decrees is crucial. Courts use data backup and disaster recovery systems to prevent data loss and quickly restore records if technical issues arise. This approach safeguards records against accidental or deliberate destruction, ensuring continuity in the judicial process.



What is the difference between challenging or abstaining from a judge/magistrate

- Both **challenging a judge** and **abstaining from a judge** refer to situations where a party in a legal proceeding expresses a concern about the impartiality or independence of a judge. However, they differ in terms of the **legal process** and **reasoning** for each action.



Challenging a Judge

- Challenging a judge involves a formal request to **remove** or **disqualify** a judge from hearing a particular case. This can occur when a party believes that the judge may not be impartial or has a conflict of interest. The challenge can be based on specific legal grounds, and it typically occurs before the trial or hearing proceeds further.
- The judges may not be challenged, nor may they abstain from sitting in any cause brought before the court in which they are appointed to sit, except for any of the reasons mentioned in the COCP.



Grounds for Challenging a member of judiciary

- A judge /magistrate may be challenged or abstain from sitting in a cause –
- (a) if he is related by consanguinity or affinity in a direct line to any of the parties;
- (b) if he is related by consanguinity in the degree of brother, uncle or nephew, grand-uncle or grandnephew or cousin, to any of the parties, or if he is related by affinity in the degree of brother, uncle, or nephew, to any of the parties;
- (c) if he is the tutor, curator, or presumptive heir of any of the parties; if he is or has been the agent of any of the parties to the suit; if he is the administrator of any establishment or partnership involved in the suit, or if any of the parties is his presumptive heir;
- (d) (i) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon;
(ii) if he had previously taken cognizance of the cause as a judge or as an arbitrator;
- Provided that this shall not apply to any decision delivered by the judge which did not definitely dispose of the merits in issue or to any judgment of non-suit of the plaintiff;
(iii) if he has made any disbursement in respect of the cause;
(iv) if he has given evidence or if any of the parties proposes to call him as a witness;
- (e) if he, or his spouse, is directly or indirectly interested in the event of the suit;
- (f) if the advocate or legal procurator pleading before a judge is the son or daughter, spouse or ascendant of the said judge;
- (g) if the advocate or legal procurator pleading before a judge is the brother or sister of the said judge;
- (h) if the judge or his spouse has a case pending against any of the parties to the suit of happens to be his creditor or debtor in such a manner as may reasonably give rise to suspicion of a direct or indirect interest that may influence the outcome of the case



Process for Challenging a member of the judiciary

- The challenge is made by filing an **application** to the court, usually before the hearing begins. The application should include the **specific grounds** for the challenge.
- The court will then decide whether the judge should be disqualified based on the challenge. The decision is typically made by a **different judge or a court panel** to ensure impartiality in the assessment.
- If the challenge is accepted, the judge/magistrate will be removed from the case, and a different judge will be assigned.



Further challenging and abstention

- A judge /magistrate may be challenged or abstain from sitting in a cause when he has previously taken cognizance of and expressed himself on the same merits of that cause when sitting as a judge in the Court of Voluntary Jurisdiction.
- Any judge /magistrate being aware of the existence in his respect of any of the grounds of challenge, shall make a declaration to that effect previously to the trial of the cause, either verbally in open court, in which case a record of such declaration shall be entered in the proceedings of the cause, or in writing, in which case it shall be lodged in the registry before the day appointed for the trial of the cause, notice thereof being given to the parties.
- Nevertheless, it shall be lawful for the judge /magistrate to hear and determine the cause if the parties shall expressly give their consent thereto, unless, in the particular circumstances of the case, he shall deem it proper to abstain from sitting notwithstanding such consent.



Objection to be made in open court

- Any objection to a judge /magistrate shall be raised by the parties in open court, and the reasons thereof shall be alleged and, where necessary, proved.
- Where the court consists only of one judge /magistrate and such judge /magistrate is objected to, he himself shall decide on the alleged ground of challenge, and no appeal shall lie against his decision, and he shall either abstain from sitting and rule that a surrogation of another judge /magistrate is required, or else proceed with the trial, as the case may be.
- Where the court consists of more than one judge, all the judges, including the one objected to, shall decide on the ground of challenge, and where there is any reason to doubt as to whether an alleged ground of abstention is a good ground or otherwise, all the judges, including the judge alleging such ground, shall decide on such ground.



When objection to judge/magistrate is not admissible

- The challenge of a judge/magistrate shall not be admissible where the party raising the objection, if the plaintiff, has already submitted his claim at the trial, or, if the defendant, has already set up his pleas in defence, unless the ground of challenge shall have arisen subsequently, or unless the party raising the objection, or his advocate, shall declare upon oath that he was not aware of such ground, or that it did not occur to him at the time.



Interpret matters of voluntary jurisdiction should not serve as grounds for challenging or abstaining from a judge

- **Matters of voluntary jurisdiction** are specific types of non-contentious proceedings that the court oversees, such as **adoptions, guardianships, curatorships, incapacitation cases, and trust administration**. These cases do not involve a dispute between opposing parties but rather a request for the court to provide oversight, approve arrangements, or appoint representatives. Because of their nature, voluntary jurisdiction cases are typically less adversarial and focused on ensuring the best interests of vulnerable individuals or proper administration of legal arrangements.
- When we say that **matters of voluntary jurisdiction should not serve as grounds for challenging or abstaining from a judge**, it means that the typical reasons for disqualifying or recusing a judge may not apply in these cases.
- The principle that **voluntary jurisdiction matters should not serve as grounds for challenging or abstaining from a judge** under Maltese law is intended to reflect the non-adversarial, administrative, and protective nature of these proceedings. Since these cases do not involve disputes between parties and focus on the court's statutory role, the likelihood of bias or prejudice is significantly minimized. This approach enables the judiciary to process non-contentious cases efficiently while maintaining public trust in the court's neutral and objective role.



Limited Scope for Personal Prejudice

- The purpose of a voluntary jurisdiction proceeding is often simply to verify factual information or to appoint individuals who can act in the best interests of another, such as minors or incapacitated individuals. These decisions are **based on statutory criteria and objective assessments** rather than subjective judgments about guilt, liability, or blame.
- The absence of contentious issues means that there is less room for perceived **personal prejudice** or **bias** by the judge, which reduces the need for parties to feel that they must challenge the judge's impartiality.



Efficiency and Accessibility in Judicial Administration

- If challenges or recusals were regularly permitted in voluntary jurisdiction cases, it could unnecessarily **delay proceedings** and create inefficiencies, especially in time-sensitive matters like guardianship or adoption, where delays may adversely impact those involved.
- For the court, **limiting the grounds for challenging or abstaining** in voluntary jurisdiction cases helps maintain efficient case management, ensuring that judges can quickly and effectively carry out their protective functions without being removed over minor perceived conflicts.



. Public Trust in Neutral Oversight

- Voluntary jurisdiction cases are typically procedural and involve statutory duties where the judge acts almost as an administrator or overseer. Public trust in the court's ability to perform these duties objectively is generally high because the judge's role is neutral by nature, focusing on **applying the law** rather than interpreting it in a contested way.
- Since the purpose of voluntary jurisdiction is often protective, the public and those involved can usually have confidence in the judge's impartial role without needing to question their potential biases (**unfair preference or prejudice**)



Reduced Potential for Bias or Adversarial Interest

- Since voluntary jurisdiction cases lack adversarial parties, the judge's role is primarily **protective** and **administrative**, rather than one of adjudicating a conflict or dispute. This reduces the likelihood that a judge would have a personal stake in the outcome, rendering the usual concerns about **impartiality** and **conflict of interest** less relevant.
- The judge's focus in these cases is generally on **due process** and ensuring that the necessary legal requirements are met, rather than making subjective decisions about competing claims or rights.



Interpret the grounds for solving and impugning acts executed by leave or with authorisation of the court

- Impugning means to dispute the truth, validity, or honesty of (a statement or motive); call into question.
- **Acts executed by leave or with authorisation of the court** generally refer to actions taken under court supervision or approval, often in non-contentious matters like guardianship, administration of an estate, or management of property for minors or incapacitated persons.
- To challenge or impugn such acts, the concerned parties usually apply to the court for a review. The court may order corrective actions or, if necessary, nullify the act and restore any affected rights or property. The primary purpose of these grounds is to ensure that court-authorized actions are executed fairly, transparently, and in the best interests of all relevant parties, particularly those who cannot represent themselves.



The grounds for solving and impugning (challenging or invalidating) acts related to guardianship, administration of an estate, or management of property for minors or incapacitated persons

- **Fraud or Misrepresentation:** If it is shown that an act was based on false information, deception, or concealment of material facts, it can be challenged or set aside. Fraud invalidates the court's approval, as the court would not have granted authorization had it known the true circumstances.
- **Conflict of Interest:** Acts may be impugned if it is proven that a representative (such as a guardian or curator) had a personal interest in the transaction that conflicted with the best interests of the person they represented.
- **Exceeding Authority:** If an individual carrying out an act exceeded the specific terms or scope of the court's authorization, the act can be challenged as being beyond the authority granted by the court.
- **Lack of Good Faith or Abuse of Power:** Any act done in bad faith or as an abuse of the court-granted authority may be subject to impugnement. This is especially relevant where the representative's actions were not intended to serve the best interests of the person they were supposed to protect.
- **Non-Compliance with Legal Requirements:** If the act did not comply with legal procedures or requirements set by the court or the law, it may be subject to invalidation. This can include failure to notify interested parties or to conduct the act in a legally prescribed manner.



Mode of impugning decrees of Court of voluntary jurisdiction

- No appeal shall lie from any decree of the Court of Voluntary jurisdiction; but it shall be lawful for any party, who deems himself aggrieved, to bring an action before the Civil Court, First Hall, for the necessary order.



Interpret and infer legal concepts and principles underlying the court's role in safeguarding rights and interests and apply them in practical scenarios or case studies to solve complex legal problems

- The court plays a crucial role in safeguarding the rights and interests of individuals who may not be able to act independently or who are vulnerable in specific situations.
- This protective role is rooted in legal principles designed to ensure justice, equity, and fairness, especially in non-contentious or voluntary jurisdiction cases, such as adoption, guardianship, trusts, interdiction, incapacitation, and probate.
- These cases involve individuals such as minors, incapacitated persons, or absentees, and focus on protecting their rights and ensuring that their interests are properly represented and managed.



Best Interests Principle

- The principle of **best interests** is central in cases involving minors, individuals with disabilities, or those unable to act for themselves. This concept requires that the court make decisions based on what will most benefit the vulnerable individual, rather than on external or self-interested motives of guardians or administrators.
- **Practical Application:**
 - In **adoption cases**, the Maltese court applies the best interests principle to ensure that the adoption serves the welfare and happiness of the child. Before granting adoption orders, the court thoroughly reviews the prospective adoptive parents' suitability, the stability of the home environment, and the potential for emotional and social development of the child. This helps ensure that every decision serves the child's long-term well-being.



Impartiality and Independence

- The court's role in non-contentious cases requires it to be an **impartial and independent decision-maker**. This is essential for maintaining public trust, especially in cases where family members or interested parties might have competing interests.
- **Practical Application:**
 - In **probate** cases (where someone has died and left a will. It's a court document that confirms a person's last will and testament and allows the executors of the will to deal with assets left behind), disputes may arise over the distribution of a deceased person's estate. The court acts impartially to administer the estate according to the will, or intestate rules if no valid will exists. If a family member challenges the validity of a will, for example, alleging undue influence or lack of capacity, the court assesses the claims objectively and ensures that the distribution reflects the true intent of the deceased while protecting beneficiaries' rights.



Equity and Fairness

- Maltese law emphasizes **equity and fairness** in judicial decision-making. In non-contentious cases, the court ensures that decisions do not unjustly favor one party over another, particularly in situations where one party has a legal advantage or more resources.
- **Practical Application:**
 - In **trust cases**, for instance, a trustee is legally responsible for managing the trust assets for the beneficiaries' benefit. If a beneficiary suspects the trustee of mismanagement or self-dealing, they may seek the court's intervention. The court ensures the trustee adheres to the principles of equity and that the trustee's actions are in the best interests of the beneficiaries, possibly ordering compensation if trust assets were improperly handled.



Protection of Vulnerable Persons

- The court has a duty to protect **vulnerable persons**, such as minors, elderly persons, and individuals with disabilities, by ensuring that their rights and property are safeguarded from exploitation or abuse.
- **Practical Application:**
- In cases of **interdiction** or **curatorship**, if a person is judged to be incapable of making decisions (for example, due to mental illness), the court appoints a curator to manage their property and affairs. This ensures that the individual's finances and welfare are protected from potential exploitation or neglect by others. Additionally, in cases where an elderly person may be subject to financial abuse by a relative, the court can intervene to revoke or review powers of attorney, providing legal protection against exploitation



Transparency and Accountability

- The principle of **transparency and accountability** underlies the court's authorization of actions involving the property or rights of individuals who cannot fully represent themselves. Court-appointed guardians, curators, or administrators are often required to report back to the court or act with transparency to avoid any potential abuse.
- **Practical Application:**
 - In **guardianship** matters, guardians appointed by the court must sometimes submit periodic reports on the personal and financial affairs of the ward. If there is suspicion of misconduct, the court may review these reports or require an accounting to ensure the guardian's actions are transparent and in the ward's best interests. For example, if a guardian uses the ward's assets inappropriately, the court can order restitution and replace the guardian.



Finality and Legal Certainty

- The court's rulings in non-contentious matters often establish **finality and certainty**, which is important for the legal system and for the involved parties to move forward. This principle ensures that, once decided, matters are conclusively resolved, preventing unnecessary disputes or delays.
- **Practical Application:**
 - In cases of **declaration of death** for absentees, if an individual has been missing for a prolonged period and presumed dead, the court may issue a declaration of death. This allows the individual's estate to be administered, assets to be distributed, and surviving family members to achieve closure. This finality provides legal certainty for the family and heirs, enabling them to address inheritance and other related matters.



Applying These Principles in Complex Legal Problems

- In practical scenarios, these principles guide the court's decisions, especially when balancing competing interests or handling complex issues in non-contentious cases. For example:
- If a family member seeks control over a minor's inheritance, the court would apply the **best interests principle** and **transparency requirements** to protect the minor's assets.
- In trust disputes, the court might apply **equity and fairness** to assess whether a trustee acted in the beneficiaries' interests and may order restitution for any mismanaged assets.
- In situations involving incapacitated individuals, the court exercises **parens patriae** to appoint a trusted person as curator or guardian, ensuring their rights are protected and that the decisions are transparent and just.
- By applying these principles, Maltese courts work to protect the rights and interests of vulnerable individuals and ensure that non-contentious cases are resolved fairly, impartially, and in a way that preserves public confidence in the judicial system.





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