The Courts of Justice in Malta and the Legal Profession

The Appointment of judicial assistants and the Oaths of allegiance and of office

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Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants

Lecture 3

Appointment of judicial assistants and the Oaths of allegiance and of office

Judicial Assistants

- The President of Malta shall appoint judicial assistants to perform such functions as are by the Code of Organisation and Civil Procedure or by any other law assigned to them.
- Judicial assistants shall be appointed from amongst persons who hold the warrant of advocate.
- In the performance of their functions judicial assistants shall be assigned to a court and shall act under the direction and control of the court before which the case is pending and shall, in addition to any power lawfully assigned to them by such court, have the power to order the attendance of any person for the purpose of giving evidence or to make an affidavit or a declaration, or to produce documents, at such place and time as they may specify in the order.

The appointment of judicial assistants

- The appointment of judicial assistants in Malta is an essential aspect of the judicial system, aimed at supporting the judiciary in the performance of their duties.

- Here's a detailed overview of the process, roles, and significance of judicial assistants in Malta

Primary Responsibilities

- Conducting legal research to aid judges in their decision-making processes.
- Drafting judgments, opinions, and other legal documents under the guidance of the judge.
- Reviewing case files and preparing summaries to help judges understand the matters before them.
- Assisting in case management, including scheduling hearings and managing court proceedings.
- Providing support during trials, including taking notes and preparing materials.

Appointment Process

- **Eligibility Criteria:** Candidates for the position of judicial assistant are usually required to possess:
- A law degree from a recognized university.
- Relevant legal experience, often including time spent working in law firms, government legal departments, or as legal clerks.
- Strong analytical, research, and writing skill

Selection Process

- The appointment of judicial assistants is typically conducted by the judiciary, often based on recommendations from judges or relevant judicial bodies.
- An open call may be held, where candidates are assessed based on their qualifications, experience, and interviews.

Appointment Authority

- The Chief Justice or other senior judicial figures may have the authority to appoint judicial assistants, ensuring that the appointments align with the needs of the court and the judiciary.

Training and Professional Development

- Training Programs: Judicial assistants may undergo training programs to enhance their skills in legal research, court procedures, and judicial ethics.
- Continuing Education: Opportunities for professional development, including seminars and workshops, may be available to ensure judicial assistants stay current with legal developments and best practices.

Significance of Judicial Assistants

- Efficiency in the Judiciary: Judicial assistants contribute significantly to the efficiency of the judicial system by helping judges manage their caseloads, thus reducing delays in the administration of justice.
- Quality of Judgments: By providing thorough legal research and drafting assistance, judicial assistants help enhance the quality of judgments and legal decisions, promoting legal certainty and justice.
- Support for Judicial Independence: The presence of well-trained judicial assistants supports judicial independence, enabling judges to focus on their core responsibilities without becoming overwhelmed by administrative tasks.

Oversight and Accountability

- Supervision by Judges: Judicial assistants work under the supervision of judges, ensuring that their work aligns with the standards expected within the judiciary.
- Accountability Mechanisms: Judicial assistants are subject to the same ethical standards and accountability mechanisms as other members of the judiciary, ensuring integrity and professionalism in their roles.

Summary on the appointment of judicial assistants

- The appointment of judicial assistants in Malta is a critical component of the judicial system, contributing to the efficiency, quality, and integrity of the judiciary. By supporting judges in their legal responsibilities, judicial assistants play a vital role in promoting the rule of law and ensuring that justice is delivered effectively and fairly.
- Their appointment process, responsibilities, and the training they receive are designed to align with the overarching goal of maintaining a robust and responsive legal system in Malta.

Definition and Role of Judicial Assistants

- Judicial Assistants: Judicial assistants are legal professionals appointed to assist judges in various capacities. They play a crucial role in managing the workload of the judiciary and ensuring the efficient functioning of the courts.

Judges and Magistrates

- Judges and magistrates are appointed by the President of the Republic based on the recommendations of the Judicial Appointments Committee, as established under Article 96A of the Constitution. The Chief Justice is appointed by the President following a resolution from the House of Representatives, which must be supported by a two-thirds majority vote of its members.
- All judges and magistrates operate independently of the executive branch and enjoy security of tenure. To qualify for appointment as a magistrate, an individual must have practiced as a lawyer in Malta for no less than seven years, while a minimum of twelve years is required for appointment as a judge. Disciplinary measures affecting members of the judiciary, which do not result in removal from office, fall under the jurisdiction of the Commission for the Administration of Justice. Decisions made by the Commission in this regard are subject to appeal before the Constitutional Court. In carrying out its functions, the Commission possesses all the powers conferred upon the courts of civil jurisdiction. Should the Commission determine that the conduct under investigation may warrant the removal of an adjudicator, it shall advise the President of the Republic to remove said adjudicator based on established misconduct or proven incapacity to fulfil their official duties. The adjudicator retains the right to appeal this recommendation before the Constitutional Court.

Judges and Magistrates cont'd

- It shall not be lawful for any judge or magistrate to carry out any other profession, business or trade, or to hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international Court or tribunal or any international adjudicating body, the office of examiner at the University of Malta.

Judges and Magistrates cont'd

- A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta or has partly so practised and partly so served.

- The Chief Justice shall be appointed by the President acting in accordance with a resolution of the House supported by the votes of not less than two-thirds of all the members of the House.
- However, if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, the person occupying the office of Chief Justice shall, in any circumstance, remain in office until the Resolution is supported by the votes of not less than two-thirds of all the members of the House.

Types of oaths

- Oath of Allegiance: Public officials, including members of Parliament and the President, typically take an Oath of Allegiance to the Republic of Malta. This emphasizes loyalty to the nation and its institutions.

- Oath of Office: This oath explicitly refers to the duties and responsibilities associated with the position. It often includes a commitment to uphold the Constitution and administer duties fairly and impartially.

The oath of Allegiance

- Article 124(1) under the Third Schedule of the Constitution holds the Oath of allegiance.

"I ..... solemnly swear/affirm that I will bear true faith and allegiance to the people and the Republic of Malta and its Constitution. (So help me God)."

The oath of office

- The **Oath of Office** in Malta is a formal declaration made by individuals assuming public office, including members of Parliament, the President, judges, and various public officials. This oath signifies a commitment to uphold the Constitution, laws, and duties associated with the office. Below are detailed aspects of the Oath of Office in Malta:

The legal basis of the oath of office

- **Constitution of Malta:** The Oath of Office is mandated by the **Constitution of Malta**, specifically in Article 65 for members of Parliament and Article 102 for judges and magistrates. Other public officials also take similar oaths, ensuring adherence to their respective duties.
- **Regulatory Framework:** The specific wording and procedures for the oath can be detailed in relevant legal texts and regulations governing the respective offices.

Significance of the oath

- Symbol of Commitment: Taking the Oath of Office is a solemn commitment to the duties and responsibilities of the position. It signifies the official's dedication to public service and the principles of democracy.
- Accountability: By taking the oath, officials acknowledge their accountability to the public and the law, emphasizing the importance of integrity and ethical conduct in public office.

Consequences of the breach of the oath

- Legal Ramifications: Breach of the Oath of Office can lead to legal consequences, including removal from office or criminal prosecution, depending on the nature of the violation.
- Public Trust: Violations of the oath can erode public trust in government institutions and officials, highlighting the importance of ethical conduct.

The significance and requirements of the Oaths of allegiance and of office.

- A judge of the Superior Courts or a magistrate of the Inferior Courts shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.

- "*oath of allegiance*" means the oath of allegiance set out in the Third Schedule to The Constitution or such other oath as may be prescribed by Parliament.

The Oath of Office and the Oath of Allegiance

- The **Oath of Office** and the **Oath of Allegiance** are two distinct but related oaths that serve different purposes in the context of public service in Malta and other jurisdictions.

- Here's a detailed comparison of the main differences between the two.

Purpose of the oath

- Oath of Office: The primary purpose is to formally commit the individual to perform the specific duties and responsibilities associated with a particular office or position. It emphasizes the obligation to act in accordance with the laws and regulations governing that office.

- Oath of Allegiance: This oath is a pledge of loyalty to the state or nation, expressing an individual's fidelity to the country and its institutions. It signifies a commitment to uphold and defend the sovereignty, laws, and interests of the nation.

Scope of commitment

- Oath of Office: Focuses on the specific duties and responsibilities of the individual in their official capacity. Includes commitments to uphold the Constitution and administer the office impartially and ethically.

- Oath of Allegiance: Broader in scope, encompassing loyalty to the nation as a whole rather than the specific duties of a particular office. It often relates to the general obligations of citizenship and allegiance to the government.

Who takes the oath?

- Oath of Office: Taken by individuals assuming specific public positions, such as members of Parliament, judges, magistrates, and other officials in public service. The wording and content may vary based on the role and responsibilities of the office.
- Oath of Allegiance: Taken by individuals, including citizens, public officials, and those entering public service. It may also be part of the process for individuals applying for citizenship or naturalization in some jurisdictions.

Legal and ethical implications

- Oath of Office: Violating the Oath of Office can lead to disciplinary actions, removal from office, or even criminal charges, depending on the nature of the violation. Emphasizes accountability in performing official duties and ethical conduct in public service.
- Oath of Allegiance: Breaching the Oath of Allegiance may have consequences such as loss of citizenship or legal status, particularly in cases of treason or other severe offenses against the state. Reinforces the ethical and civic responsibilities of individuals towards their country.

Conclusion on the oath of office and oath of Allegiance

- While both the Oath of Office and the Oath of Allegiance involve commitments to the public and the state, they serve different purposes and address distinct aspects of public service and loyalty.
- The Oath of Office is focused on the specific duties of an office holder, while the Oath of Allegiance expresses broader loyalty to the nation and its laws. Together, they help ensure that public officials act in the best interests of the citizens and uphold the principles of democracy and governance.

Oaths of Magistrates and Judges

- A judge of the Superior Courts or a magistrate of the inferior courts shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.

Oaths of allegiance and of office of Lawyers

- Any person on being so authorized shall, before entering upon the exercise of the profession, of advocate take before the Court of Appeal, in a public sitting of the same court, the oath of allegiance according to the form referred to in article 10, and the oath of office in the terms following:

"I ..... do swear, that I will faithfully and with all honesty and exactness perform the duties of advocate in the courts of justice of Malta, to the best of my knowledge and ability. So help me God"

The oath of allegiance and office of Legal Procurators

- Any person on being so admitted shall, before commencing to practise as legal procurator, take before the Court of Appeal, in a public sitting of the same court, the oath of allegiance according to the form referred to in article 10, and the oath of office in the terms following:

"I ..... do swear, that I will faithfully and with all honesty and exactness perform the duties of legal procurator in the courts of justice of Malta, to the best of my knowledge and ability. So help me God."

The Oath of Office of Judicial Assistants

- A judicial assistant shall not enter upon the functions of his office before he has taken, before the Court of Appeal, the oath of office in the following terms:

"I.....do swear that I will faithfully and with all honesty and to the best of my ability perform the duties of judicial assistant as prescribed by law."

Oaths of allegiance and of office to be taken by judges and magistrates

- Judges shall, before entering on the execution of their office, take, before the President of Malta, the oath of allegiance set out in the Constitution of Malta and the following oath:

- *"I..... do swear that I will faithfully perform the duties of Judge without favour or partiality, according to justice and right, and in accordance with the laws and customs of Malta, to the honour of God and the Republic of Malta, and that I will not hold, either directly or indirectly, any communication with any suitor in any of the Courts, whether superior or inferior, his Advocates or Legal Procurators, or with any other person on behalf of such suitor, in regard to any suit pending or about to be commenced or prosecuted in any of the said Courts, except in open court, saving the cases expressly provided for by law; and that I will disclose in open court, and make known to the President of Malta any such communication as may be made to me. And I do further swear that I will not act, either directly or indirectly, as an Advocate, or arbitrator, nor give in any case counsel or advice to any person in regard to any suit already commenced or to be commenced in any of the said Courts, saving the cases excepted by law, without the permission of the President of Malta first had and obtained upon an application to that effect. So help me God."*

Oath of office of the Director General (Courts) and each Registrar

- The Director General (Courts) and each registrar, on entering upon the execution of their respective offices, shall take, before the Court of Appeal, the oath of allegiance referred to in article 10, and the oath of office in the following form:

"I ..... do swear that I will faithfully and with all honesty and exactness perform the duties of Director General / Registrar, to the best of my knowledge, skill and ability. So help me God."

Oaths of allegiance and office of a Notary

- The notary, before entering upon the exercise of his functions, shall –
- (a) take before the Court of Appeal the oath of allegiance in terms of article 10 of the Code of Organization and Civil Procedure and the oath of office in the terms following:

"I,....., promise and swear that I will faith fully and with all honesty and exactness exercise the office of notary according to the best of my skill and ability. So help me God."

(b) write in a book kept for the purpose in the office of the Attorney General his specimen signature as he is thereafter to use it in signing deeds;

(c) cause to be registered in the office of the Attorney General the act of his appointment, as well as the date on which he took the oaths referred to in paragraph(a);

(d) submit to the Notarial Council proof that he has adequate insurance cover for professional liability;

(e) submit to the Notarial Council the personal details and other information required by regulations made by the Minister responsible for notarial affairs after consulting the Notarial Council.

- A notary shall not enter upon the exercise of his functions before notice of his appointment has been published in the Gazette.

Conclusion on the oath of office

- The Oath of Office in Malta is a vital element of the country's democratic framework, reinforcing the principles of accountability, integrity, and commitment to public service. By formally committing to uphold the Constitution and the law, public officials affirm their dedication to serving the people and maintaining the rule of law within the Maltese legal system.

Questions
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