

The Courts of Justice in Malta and the Legal Profession

Qualifications for obtaining a warrant and impact of misconduct and illegal practices

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Undergraduate Certificate in Notarial
Law Fundamentals for Office Assistants

Lecture 5

Qualifications required for obtaining a warrant
in the legal professions and impact of
misconduct and illegal practices on the legal
profession



What is a warrant ?

- In Malta, a warrant to practice as a lawyer is a formal license granted by the state, allowing an individual to practice law and represent clients in courts of law. The process of obtaining a warrant is regulated by the Code of Organisation and Civil Procedure (COCP) and the Legal Profession (Warrant) Regulations, as well as other laws that govern the legal profession in Malta.
- In Malta, a warrant to practice as a notary public is a formal license granted by the state, allowing an individual to perform the duties of a notary, such as drafting, authenticating, and registering legal documents, including contracts, wills, and public deeds. The notarial profession is regulated by Maltese law, primarily under the Notarial Profession and Notarial Archives Act (Chapter 55 of the Laws of Malta).



Admission of Lawyers

- No person may exercise the profession of advocate or provide legal services in Malta or otherwise hold himself out as providing any legal service in Malta without the authority of the President of Malta granted by warrant under Public Seal of Malta acting on the recommendation of the Committee and after such person is duly admitted to the Register in accordance with the provisions of the Code of Organisation and Civil Procedure.
- Upon the grant of a warrant the Committee shall register the advocate in the Register maintained by the Committee.



Admission of Legal Procurators

- No person may be admitted to practice as a legal procurator without the authority of the President of Malta granted by warrant under the Public Seal of Malta, acting on the recommendation of the Committee.
- Upon the grant of a warrant, the Committee shall register the legal procurator in the Register maintained by the Committee.
- Any person who acts in contravention of the provisions of Article 85(1) of the Code of Organisation and Civil Procedure shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment for a period not exceeding one (1) year, or to both such fine and imprisonment.

Application Process for a Warrant

- **Submission of Documents:** The candidate must provide proof of their qualifications (degree certificates, chambering certification) and any other required documents to the Ministry responsible for Justice.
- **Review by the Committee for Advocates and Legal Procurators:** The application is reviewed by a committee that ensures all qualifications and training requirements have been met. This committee is appointed by the President of Malta and includes members of the judiciary and senior members of the legal profession.
- **Background Checks:** Applicants are subject to checks to ensure that they are of good moral character and have no criminal record that could prevent them from practicing as a lawyer.
- **Examination:** Candidates are required to pass an exam or interview to demonstrate their knowledge of Maltese law and ethics before being granted a warrant.



Obtaining a warrant as a lawyer

- No person shall be entitled to obtain the warrant, unless –
 - a) he is a fit and proper person as recommended by the Committee;
 - b) he is of good conduct and good morals, and is not or has not engaged in or is not or has not been associated with any activity or practice which in the view of the Committee is not compatible with the exercise of the legal profession or has not otherwise conducted himself in such a manner which casts doubt on his honesty and integrity;
 - c) he is a citizen of Malta or of a Member State or is otherwise permitted to work in Malta under any law;
 - d) he has obtained the academic degree in law in accordance with the provisions of the Statue of the University of Malta, or such other qualification as the Minister, after consultation with the Committee, may from time to time prescribe, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;
 - e) he has, after satisfying the requirement of paragraph(d), or, in the case of persons regularly following the academical course of law in the University of Malta, at any time after the commencement of the last academic year of the said course, for a period of not less than one year regularly attended at the office of a practising advocate of the Bar of Malta and at the sittings of the superior courts;
 - f) he possesses a full knowledge of the Maltese language as being the language of the courts;
 - g) he has been duly examined and approved by two judges who shall issue, under their signature and seal, a certificate attesting that they have found him to possess the qualifications mentioned in paragraphs (b) to (e) and that he is competent to exercise the profession of advocate in the courts of Malta.



Obtaining warrant of a Legal Procurator

- No person shall be entitled to obtain the warrant unless –
 - (a) he is a fit and proper person as recommended by the Committee;
 - (b) he is a citizen of Malta or of a Member State or is otherwise permitted to work in Malta under any law;
 - (c) he has been approved by the examining board of the Faculty of Law, at a regular examination in the subjects of the course of studies to be followed by candidates for the profession of legal procurator, in accordance with the regulations of the University of Malta, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having studied law in Malta or in a Member State;
 - (d) he has, after passing the examination referred to in paragraph (c) or at any time after the commencement of the last academic year of the said course, for a period of not less than one year, attended at the office of a practising advocate of the Bar of Malta and trained himself in the practice of the profession;
 - (e) he has been duly examined and approved by two judges, who shall issue under their signature and seal a certificate attesting that they have found him to possess the qualifications mentioned in paragraphs (b) to (d) and that he is competent to practice as legal procurator in the courts of Malta.



Application for the Notary's Warrant

- After fulfilling the educational and training requirements, the candidate can apply for a warrant to practice as a notary public. The process includes the following steps:
- **Submission of Documents:** The applicant must submit their educational certificates, training certification, and any other necessary documents to the Office of the Notary to Government or the Ministry responsible for Justice.
- **Examination:** The applicant must pass a warrant examination that tests their knowledge of Maltese law, especially in areas relevant to notarial practice, such as civil law, property law, and succession law. The examination is usually held by the Board of Examiners, which is composed of legal experts and members of the judiciary.
 - The exam typically includes written and practical components, assessing the candidate's legal drafting skills, knowledge of notarial procedures, and ability to apply legal principles in practice.



Causes of disqualification of a lawyer

- A person may be disqualified perpetually or for a time to practice the profession of advocate on the recommendation of the Commission for the Administration of Justice, if that person:
 - (a) is no longer a fit and proper person;
 - (b) has seriously, repeatedly or systematically failed to satisfy his obligations under the Prevention of Money Laundering Act or the Prevention of Money Laundering and Funding of Terrorism Regulations;
 - (c) has been found guilty by a court of law of a crime affecting public trust or theft or of fraud or of knowingly receiving property obtained by theft or fraud or of any crime punishable by a term of imprisonment exceeding one (1) year with the exception of involuntary offences; and
 - (d) is considered to suffer from an infirmity of mind that seriously affects the exercise of his profession.
- The temporary or permanent withdrawal, by the competent authority in the Member State in which the advocate acquired the right to use the professional title, of the authorisation to practice the profession shall automatically lead to the advocate being temporarily or permanently prohibited from practicing in Malta.
- The disqualification shall be declared by the President of Malta by means of a letter to the registrars of the Courts of Malta and Gozo and to the advocate so disqualified, unless the advocate is interdicted by means of a final judgment delivered by a court. Provided that the Committee may advise the President of Malta to remove the disqualification as aforesaid.

Misconduct and illegal practices

- Misconduct and illegal practices within the legal profession can have serious and far-reaching consequences in Malta, both for the legal practitioner involved and the broader profession.
- The legal framework in Malta sets out stringent regulations to maintain the integrity and ethics of the legal profession, and violations can lead to disciplinary actions, sanctions, or even criminal liability.

Conduct of Lawyers

- The conduct of lawyers (known as advocates in Malta) is governed by several key pieces of legislation and regulatory frameworks:
- The Code of Ethics and Conduct for Advocates: This code, issued by the Commission for the Administration of Justice (CAJ), outlines the ethical obligations that legal professionals must adhere to.
- The Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta): : This ordinance regulates the legal profession and includes provisions regarding misconduct and illegal practices.
- The Criminal Code (Chapter 9 of the Laws of Malta): Addresses criminal offenses that may be committed by legal professionals, such as fraud or corruption.
- The Civil Code (Chapter 16 of the Laws of Malta): Covers civil liability that may arise from professional misconduct.



Types of misconduct and Illegal Practices

- Misconduct or illegal practices in the legal profession in Malta can take various forms, including but not limited to:
- Breach of Professional Ethics: This includes violations of the Code of Ethics, such as conflicts of interest, failure to maintain confidentiality, or improper client communication.
- Fraudulent or Deceptive Practices: Involves engaging in dishonest practices, such as falsifying documents, misrepresenting facts, or committing fraud.
- Conflict of Interest: Representing multiple parties in the same matter where their interests conflict, or failing to disclose such conflicts to the client.



Types of misconduct cont'd

- Negligence: Failure to provide competent representation, missing deadlines, or giving improper legal advice.
- Misappropriation of Client Funds: Mishandling or embezzling client money held in trust accounts.
- Unlicensed Practice: Practicing law without proper qualifications or failing to maintain registration with the Malta Chamber of Advocates.
- Criminal Offenses: Lawyers can be charged with crimes such as bribery, corruption, money laundering, or drug trafficking, which are especially damaging given their role in upholding justice.
- Advertising Misconduct: Violations of rules related to advertising and solicitation for legal services.



Impact of Misconduct on the Legal Profession

Disciplinary Actions

- When an advocate is found to have committed misconduct, disciplinary proceedings may be initiated by the Committee for Advocates and Legal Procurators under the CAJ. The possible disciplinary actions include:
- Reprimands: For less serious breaches, a formal reprimand may be issued, which serves as a warning but is recorded on the lawyer's professional record.
- Fines: The lawyer may be fined for ethical violations or other misconduct. The amount can vary depending on the severity of the offense.
- Suspension: A lawyer may be temporarily suspended from practicing law for a specific period, especially in cases involving serious breaches or repeated misconduct.
- Disbarment (Striking Off the Roll): In the most severe cases, such as gross misconduct or illegal practices (e.g., fraud or embezzlement), the advocate may be permanently struck off the roll of advocates, effectively ending their legal career in Malta.

Impact of Misconduct on the Legal Profession cont'd

b. Criminal and Civil Liability

- For illegal practices, lawyers can face criminal prosecution and civil lawsuits in addition to professional disciplinary proceedings:
- Criminal Penalties: If a lawyer engages in illegal activities such as fraud, bribery, corruption, or money laundering, they may be prosecuted under the Criminal Code. Depending on the crime, penalties could include imprisonment, heavy fines, or both.
- Civil Liability: Clients who suffer financial or other forms of damage due to lawyer misconduct may file civil suits for negligence or breach of duty. This can result in the lawyer being ordered to compensate the client for their losses.
- In cases of gross negligence, the lawyer may be held personally liable for damages, and their professional indemnity insurance may not cover certain forms of misconduct.



Impact of Misconduct on the Legal Profession cont'd

c. Reputation and Trust

- Misconduct, even minor, can severely damage a lawyer's reputation. The legal profession relies heavily on public trust, and breaches of ethical or legal standards can lead to:
- Loss of Clients: A damaged reputation often leads to a loss of clients and business opportunities.
- Loss of Trust: The legal system relies on public confidence in lawyers as officers of the court. Misconduct undermines trust in both the lawyer involved and the legal profession as a whole.
- Peer Disapproval: Legal professionals found guilty of misconduct may face informal sanctions from peers, such as loss of membership in professional bodies (e.g., Malta Chamber of Advocates) or exclusion from social and professional networks.



Impact of Misconduct on the Legal Profession cont'd

d. Regulatory Actions

- Misconduct can prompt regulatory reforms or stricter enforcement of ethical standards by the governing bodies of the profession. This can lead to:

Stricter Licensing and Monitoring: The licensing and monitoring of lawyers may become stricter following instances of widespread misconduct, making it harder for individuals to practice law without thorough scrutiny.

New or Revised Regulations: Professional misconduct may lead to the introduction of new ethical guidelines or revisions to the existing Code of Ethics to prevent future violations.



Impact of Misconduct on the Legal Profession cont'd

- The impact of misconduct and illegal practices on the legal profession in Malta is severe. Legal professionals are held to high ethical and legal standards, and breaches can lead to disciplinary action, criminal and civil liability, and significant reputational damage.
- The system in Malta, through its governing laws and professional bodies, aims to ensure that advocates uphold the integrity of the legal profession and maintain public trust in the administration of justice.

Obligations and Ethical Duties

- Once a lawyer or a notary is granted a warrant, they are bound by strict ethical and professional obligations, as outlined in Maltese law and the Code of Ethics for Advocates. These include:
- Duty of Confidentiality: Lawyers must maintain the confidentiality of their clients' affairs and not disclose any privileged information.
- Duty of Competence: Lawyers must provide their clients with competent legal advice, based on thorough legal knowledge and skill.
- Impartiality and Integrity: Advocates are required to act with honesty and avoid conflicts of interest.
- Upholding the Rule of Law: Lawyers must respect the laws of Malta and the courts' decisions and act in ways that promote justice and fairness.



Suspension or Revocation of a Warrant

- A lawyer warrant may be suspended or revoked if they breach professional or ethical standards. Serious misconduct, negligence, fraud, or criminal behaviour can lead to disciplinary actions taken by the Commissioner for Justice or the Court of Appeal.
- Lawyers facing disciplinary actions may be subject to sanctions, fines, or loss of their warrant, depending on the severity of the offense.



Supervision and Regulation

- The notarial profession in Malta is regulated by the Notarial Council and the Office of the Notary to Government. These bodies ensure that notaries adhere to professional standards and ethical guidelines.
- The Commissioner for Justice has the authority to investigate complaints against notaries and take disciplinary action in cases of misconduct or negligence.



Disciplinary Measures and Revocation of a Notary's Warrant

- A notary's warrant can be suspended or revoked in cases of serious professional misconduct, fraud, negligence, or criminal behaviour. Disciplinary proceedings are overseen by the Superior Courts or the Notarial Council or the Court of Revision of Notarial Acts.
- Penalties can include fines, suspension, or, in extreme cases, the permanent loss of the warrant to practice as a notary.

Impacts of misconduct of a notary

- In Malta, notaries play a critical role in legal transactions, ensuring the legality, authenticity, and proper execution of important documents such as contracts, wills, and property transfers.
- When a notary fails to behave ethically or does not obey the law, the consequences can be severe, both for the parties involved and the broader legal system.



Legal Invalidity of Documents

- Contracts, Wills, and Deeds that have been drafted, authenticated, or executed by a notary who has failed to comply with legal standards may be declared null and void. This means that the legal effects of these documents would be invalid, which could result in:
 - Property transfers being reversed.
 - Wills being contested or nullified.
 - Contracts between businesses or individuals being voided, potentially leading to significant financial losses.
- If the notary did not follow proper procedures, such as failing to verify the identity of the parties or neglecting to explain the legal effects of the documents, the courts may deem the documents invalid



Loss of Public Trust

- Notaries are entrusted with a position of public confidence. Their role is to act impartially and ensure that legal transactions are carried out properly. If a notary acts dishonestly or negligently, it undermines public trust in the legal system.
- Loss of trust in notaries can have a ripple effect, causing individuals and businesses to question the reliability of the legal framework that governs transactions. This may lead to a greater reluctance to engage in formal legal transactions, particularly involving property or succession matters.

Financial Losses for Parties Involved

- A notary who does not behave in accordance with the law can cause significant financial harm to the parties involved. For example:
 - In property transactions, errors or fraud in the notary's documentation could result in disputes over ownership, leading to costly legal battles or the loss of property.
 - If a will is improperly drafted or executed, heirs and beneficiaries may lose out on their inheritance, and lengthy litigation could follow to resolve the estate.
 - Business contracts that are improperly authenticated by a notary could be challenged, resulting in financial losses, contractual disputes, or loss of business opportunities.



Compromise of Legal Certainty

- One of the key roles of notaries in Malta is to ensure legal certainty by drafting clear, accurate, and enforceable legal documents. If a notary fails to adhere to legal procedures, it creates uncertainty in legal transactions, making it difficult for individuals and businesses to rely on the validity of their contracts, property rights, or wills.
- Legal certainty is fundamental to maintaining a stable legal system. Without it, confidence in property transactions, inheritance law, and business agreements could erode, leading to increased litigation and disputes.

Potential Fraud and Misconduct

- A notary who engages in fraudulent activities, such as falsifying documents, misappropriating funds, or collaborating in illegal schemes (e.g., money laundering), can have serious consequences:
 - Fraudulent deeds or contracts could result in the wrongful transfer of property or assets.
 - Misconduct in handling public funds (such as holding funds in escrow) could lead to financial losses for clients or other parties involved.
 - A notary who intentionally facilitates illegal transactions, such as through the creation of false documents, could expose both themselves and their clients to criminal prosecution.



Criminal and Civil Liability for the Notary

- Notaries who fail to obey the law may face criminal charges and civil liability. Depending on the severity of the misconduct, penalties can include:
 - Fines or imprisonment for criminal behaviour such as fraud or corruption.
 - Civil lawsuits from individuals or businesses seeking compensation for financial losses caused by the notary's negligence or wrongdoing.
 - Disciplinary actions, such as the suspension or permanent revocation of the notary's warrant to practice.
 - A notary may also be held personally liable for damages, meaning that they would be required to compensate parties who have suffered financial harm due to their actions.



Disciplinary Action and Loss of Warrant

- The Notarial Council and the Commissioner for Justice are responsible for overseeing the conduct of notaries in Malta. If a notary is found to have violated the law or ethical standards, they may face disciplinary proceedings, which could result in:
 - Suspension or revocation of their notarial warrant, preventing them from practicing as a notary in the future.
 - Fines or sanctions imposed by the Notarial Council or the courts.
 - Public censure, damaging the notary's professional reputation.
- The Notarial Profession and Notarial Archives Act gives legal authorities the power to investigate complaints against notaries and take appropriate action in cases of misconduct.



Impact on the Notarial Archives and Public Records

- Notaries in Malta are responsible for maintaining accurate and reliable records in the Notarial Archives. If a notary does not comply with legal obligations, this could lead to:
 - Incorrect or incomplete public records, which could complicate future legal transactions or property transfers.
 - The loss or mismanagement of historical documents that may have significant legal, cultural, or historical importance.
 - The misuse of public documents could have long-term implications for the integrity of the legal system.

Litigation and Prolonged Legal Disputes

- When a notary acts improperly, it can result in litigation between the parties involved. Legal disputes over the validity of documents, ownership rights, or financial transactions can be lengthy, expensive, and stressful.
- Prolonged litigation can delay important processes, such as the transfer of property ownership, the execution of wills, or the enforcement of contracts, which may cause significant disruption to individuals and businesses.



Undermining the Rule of Law

- Notaries play a critical role in upholding the rule of law by ensuring that legal transactions are conducted transparently, fairly, and according to legal standards. If a notary does not act in accordance with the law, it can undermine the rule of law in Malta.
- An individual's or business's rights and obligations may be jeopardized when a notary fails to comply with legal procedures, leading to unequal access to justice and potential abuse of power.
- Repeated instances of notarial misconduct could diminish confidence in the legal profession and weaken the integrity of Malta's judicial system.

Conclusion

- The warrant to practice as a notary public in Malta involves a rigorous process of education, professional training, and examination, followed by an oath of office and strict adherence to ethical and legal duties.
- Notaries play a critical role in ensuring the legality and formalization of important legal transactions, including contracts, wills, and property transfers.
- Their impartiality, accuracy, and adherence to the rule of law are vital to maintaining public trust in Malta's legal and property systems.





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