

The Courts of Justice in Malta and the Legal Profession

The Superior and Inferior Courts

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Undergraduate Certificate in Notarial
Law Fundamentals for Office Assistants

Lecture 7

Superior and Inferior Courts



How does having a superior and inferior court effect in any way the role of the notary ?

- Questions:
 - Does it make any difference to the notary ?
 - Is it of any relevance to the notary ?



The existence of superior and inferior courts vis-à-vis the Notary

- The existence of superior and inferior courts in Malta significantly impacts the role and functions of notaries within the legal system
- Here's a list of how and why ?!! ... Can you guess some?

Legal Framework for Notarial Acts

- **Validity of Notarial Documents:** Notaries in Malta prepare and authenticate various legal documents, including contracts, wills, and property deeds. The distinction between superior and inferior courts influences how these documents are treated in legal proceedings. Superior courts may rely on notarial acts as evidence, lending them greater credibility and legal weight.
- **Standards and Regulations:** The functioning of notaries is governed by legal standards that are shaped by decisions made in both superior and inferior courts. This ensures that notarial acts adhere to proper legal protocols, reinforcing their legitimacy.

Conflict Resolution

- **Role in Disputes:** When disputes arise regarding the validity or interpretation of notarial documents, they may be brought before the inferior courts initially. If one of the parties is dissatisfied with the ruling, the case can be appealed to a superior court. This process underscores the importance of notarial acts as foundational documents in legal proceedings.
- **Dispute Avoidance:** By providing clear, legally sound documentation, notaries help prevent disputes from escalating to the courts. Their role in drafting and certifying documents reduces the likelihood of misunderstandings that could lead to litigation.



Legal Certainty and Public Trust

- Upholding the Rule of Law: Notaries contribute to the rule of law by ensuring that legal documents are properly executed, thereby minimizing disputes that could burden the court system. Their work adds a layer of legal certainty that is essential in maintaining public trust in the legal system.
- Recognition by Courts: The recognition of notarial acts by both inferior and superior courts enhances the credibility of notaries. Courts often refer to notarial acts as reliable evidence, which reinforces the professional standing of notaries within the legal framework.



Judicial Oversight

- Appeals and Judicial Review: If a party believes that a notarial act was improperly executed or contains errors, they may challenge the validity of the act in court. The inferior courts would typically handle such cases initially, with the possibility of appeal to superior courts. This process underscores the accountability of notaries and provides a mechanism for addressing grievances related to notarial acts.
- Legal Precedents: Decisions made by superior courts in cases involving notarial documents can set legal precedents that impact notarial practices and the drafting of legal documents, influencing how notaries perform their duties.



Interplay with Other Legal Professionals

- **Collaboration with Lawyers:** Notaries often work in conjunction with lawyers in preparing legal documents. The tiered court system emphasizes the roles of various legal professionals and clarifies the responsibilities of notaries in the overall legal process, especially in cases that may go to court.
- **Education and Training:** The relationship between notaries and the court system can influence the training and continuing education that notaries receive. Understanding how their work interacts with both superior and inferior courts helps notaries improve their practice and adapt to legal changes.



The existence of superior and inferior courts in Malta plays a crucial role in shaping the environment in which notaries operate. Why ?

- The existence of superior and inferior courts in Malta plays a crucial role in shaping the environment in which notaries operate. It enhances the legitimacy and reliability of notarial acts, facilitates the resolution of disputes, and reinforces the principles of legal certainty and public trust in the legal system.
- By providing a structured framework for accountability and collaboration with other legal professionals, the court system ultimately strengthens the role of notaries within Malta's legal landscape.

The Superior Courts

- One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court.

The Superior Courts cont'd

- This Court has jurisdiction to hear and determine a number of matters namely:
 - (a) such questions as are referred to in article 63 of the Constitution;
 - (b) any reference made to it in accordance with article 56 of The Constitution and any matter referred to it in accordance with any law relating to the election of members of the House of Representatives;
 - (c) appeals from decisions of the Civil Court, First Hall, under article 46 of The Constitution;
 - (d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of The Constitution other than those which may fall under article 46 of The Constitution;
 - (e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under article 46 of The Constitution; and
 - (f) any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this sub-article on which an appeal has been made to the Constitutional Court.
- Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.



The Superior Courts cont'd

- The judges of the Superior Courts shall be a Chief Justice and such number of other judges as may be prescribed by any law for the time being in force in Malta.
- The office of a judge of the Superior Courts shall not, without his consent, be abolished (formally put an end to) during his continuance in office.

The Inferior Courts

- There shall be in and for Malta such inferior courts having such powers and jurisdiction as may be provided by any law for the time being.
- Magistrates of the inferior courts shall be appointed by the President acting in accordance with the recommendation made by the Judicial Appointments Committee established by article 96A of the Constitution in force in Malta.
- A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

The Inferior Courts cont'd

- A magistrate of the inferior courts shall vacate his office upon reaching the age of sixty-five (65) years.
- However, a magistrate of the inferior courts shall inform the Chief Justice and the President of Malta of this decision before he reaches the age of sixty-five (65) years once he chooses to remain in office until he reaches the age of sixty-eight (68) years.

The Constitutional Court

- The jurisdiction of the Constitutional Court, composed of three judges.
- It is appellate in cases involving alleged violations of human rights, the interpretation of the Constitution and invalidity of laws.
- It has original jurisdiction to decide questions as to membership of the House of Representatives and any reference made to it relating to voting for election of members of the House of Representatives.



The Court of Appeal

- This Court is composed of three judges when it hears appeals from the judgements of the Civil Court (Superior Jurisdiction), and of one judge when it hears appeals from the Court of Magistrates in its civil jurisdiction.
- An appeal also lies to the Court of Appeal from decisions of a number of administrative tribunals, mostly on points of law.

The Court of Criminal Appeal

- The Court of Criminal Appeal, in its superior jurisdiction, is composed of three judges and can hear appeals from decisions of the Criminal Court. Any individual convicted on indictment has the right to appeal their conviction in all cases or challenge the sentence imposed, unless the sentence is mandated by law.
- Notably, an appeal by the accused cannot result in a harsher sentence. Additionally, the accused may appeal a verdict of not guilty on grounds of insanity. In certain circumstances, the Court may also order a retrial.
- The Attorney General, serving as the prosecutor in the Criminal Court, has the right to appeal a verdict of acquittal or, in specific cases, the sentence handed down. Furthermore, the Court hears appeals from both the accused and the Attorney General regarding decisions on preliminary pleas and the admissibility of evidence.
- In its inferior jurisdiction, the Court of Criminal Appeal is presided over by a single judge and handles appeals from judgments delivered by the Court of Magistrates acting as a Court of Criminal Judicature. In this context, the convicted individual may appeal in all cases, whether contesting the conviction itself or the severity and nature of the punishment. The Attorney General's right to appeal decisions of the Court of Magistrates in its ordinary competence is limited; however, in other cases, the Attorney General retains an unrestricted right of appeal.



The Criminal Court

- In trials by jury the Criminal Court is composed of one judge and a jury of nine ordinary persons.
- It has the competence to decide on cases which exceed the competence of the Court of Magistrates as a Court of Criminal Judicature.
- In certain cases the Court may also sit without an empanelled jury.

The Civil Court

- There are four sections in the Civil Court to which shall be assigned the category of cases.
- The sections of the Civil Court shall be the:
 - Family Section,
 - The Commercial Section,
 - The Voluntary Jurisdiction Section (previously known as the Second Hall) and
 - The General Jurisdiction section to be styled the First Hall of the Civil Court.
- All Sections are presided over by one Judge.
- The First Hall has jurisdiction over all civil and commercial cases that exceed the competence of the Courts of Magistrates. Notably, it is also responsible for hearing applications for redress related to alleged violations of human rights and fundamental freedoms, as safeguarded by both the Constitution of Malta and the European Convention on Human Rights. The Convention has been incorporated into Maltese law since 1987.



The Civil Court cont'd

- The Civil Court (Family Section) is entrusted with cases within the jurisdiction of the Civil Court that pertain to matters governed by Titles I, II, and IV of Book One of the Civil Code, as well as those under the Maintenance Orders (Facilities for Enforcement) Ordinance, the Maintenance Ordinance (Reciprocal Enforcement) Act, the Marriage Act, and the Child Abduction and Child Custody Act.
- Cases which relate to matters regulated by the Companies Act shall be assigned to the Civil Court (Commercial Section) who sits in both Malta and Gozo.
- To the Civil Court (Voluntary Jurisdiction Section) is assigned applications falling within the competence of the Civil Court and which relate to matters regulated by Titles III, V, VI and VII of the Book First of the Civil Code and Part II of Book Second of the Code of Organisation and Civil Procedure.
 - These areas include applications related to tutorship of minors, adoption, the interdiction and incapacitation of persons, the opening of successions and the confirmation of testamentary executors.

The Courts of Magistrates

- This Court, which is composed of one Magistrate, hearing cases of both civil and a criminal nature.
- The Court of Magistrates, in civil matters, has an inferior jurisdiction of first instance, limited to claims exceeding €5,000 but not exceeding €15,000.
- In criminal matters, the Magistrates' Court has a two-fold competence. These are:
 - Court of Criminal Judicature or as a
 - Court of Criminal Inquiry.
- The competence of this Court is determined by the punishment that a particular offence carries with it.
- In the case of offences that carry two years imprisonment or less, these fall within the original competence of the Court.



The Courts of Magistrates cont'd

- If the offences carries a punishment of more than two years and less than twelve years, these fall within the extended competence of the Court.
- The Magistrates' Court is also involved in the compilation of evidence in cases which exceed its competence, however in this case, the Magistrate's Court is only responsible for compiling the evidence, as judgement is then reserved for a higher court.
- There is a Magistrates' Court for the Island of Malta and one for Gozo and Comino.

Court of Magistrates for Gozo

- The Court of Magistrates for Gozo in civil matters, has a two-fold Jurisdiction :
 - An inferior jurisdiction comparable to that exercised by its counterpart Court in Malta,
 - A superior jurisdiction, both civil and commercial, in respect of causes which in Malta are cognisable by the First Hall of the Civil Court.
- Within the limits of its territorial jurisdiction, this Court has also the powers of a Court of voluntary jurisdiction.

The Juvenile Court

- The Juvenile Court consists of a Magistrate, as Chairman, and two members.
- Sittings are held outside Valletta, namely in Sta. Venera.
- The Courts hears charges against and holds other proceedings relating to minors under the age of 18 years.
- This Court may also issue Care Orders in their regard.
- Given the confidential nature of such sittings, attendance to hearings is restricted to persons mentioned in the law establishing the Court.



Notaries

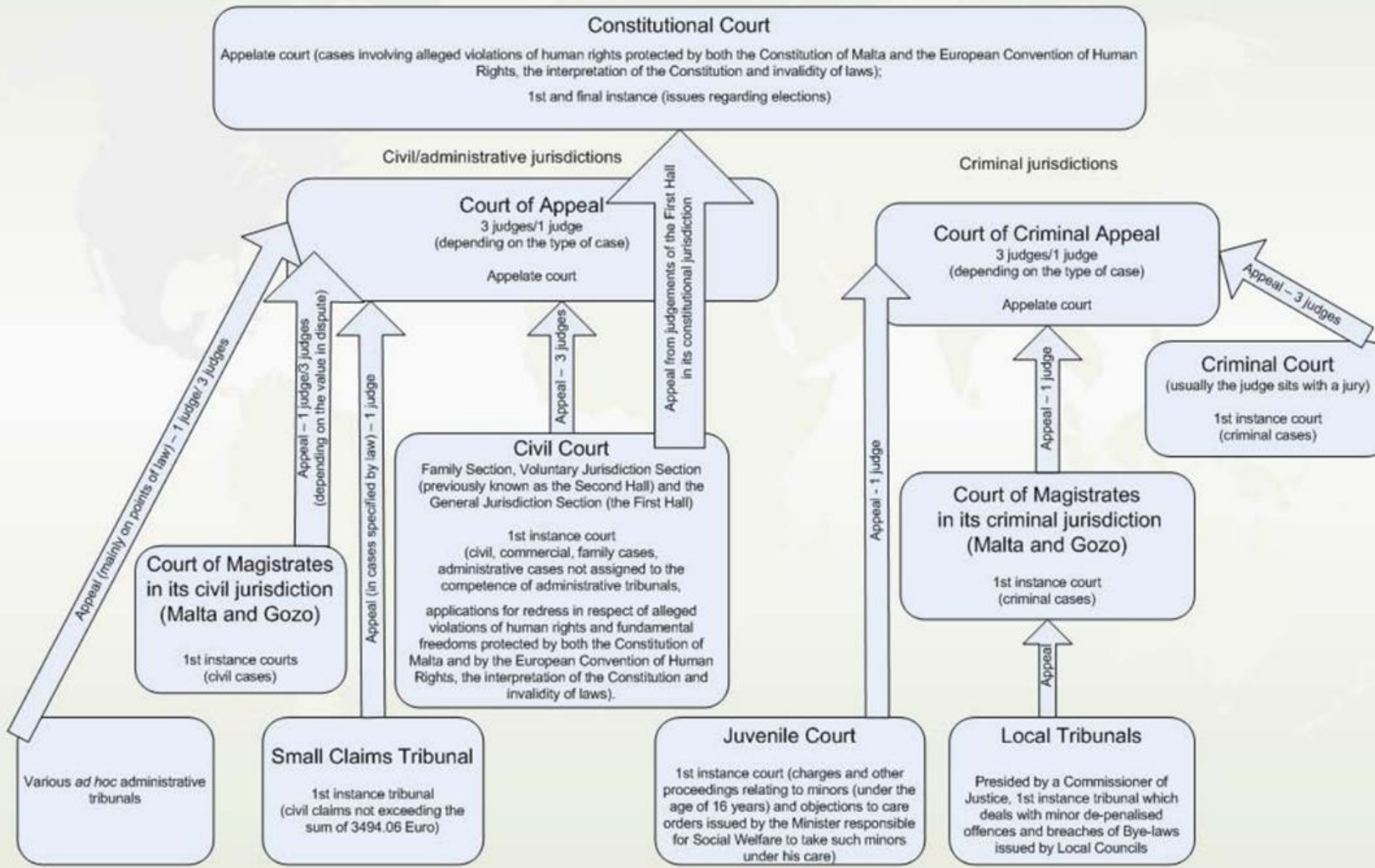
- Although the notarial profession in Malta is documented as early as 1271 with Notary Daniel de Danielis, few records of this period and the succeeding centuries have survived. The earliest notarial deeds preserved at the Notarial Archives today date to the fifteenth century.

The Court of Revision of Notarial Acts

- Supervision over all notaries, the Notarial Archives and the Public Registry shall be exercised by the Court of Revision of Notarial Acts.
- The court shall be presided by a retired Judge or a retired Magistrate or a retired advocate who has practised his profession for over twelve years.
- In case of abstention or challenge, any Magistrate in office shall take cognizance of the case.
- The court shall be a court of law having the functions set out in Chapter 55 of the laws of Malta and such other functions as may be assigned to it under any other law.



Court System of Malta



The Court of Revision of Notarial Acts cont'd

- The Minister responsible for notarial affairs shall appoint the retired Judge or retired Magistrate or retired advocate for such period of time as is specified in his appointment which shall not exceed two years.
- An appointee shall be eligible for further periods of appointment.
- "*retired*" with reference to the Judge, Magistrate or advocate who has accepted the appointment to preside the Court shall mean that such person is deemed to have renounced to the practice of his profession as an advocate.



The Court of Revision of Notarial Acts cont'd

- Upon the termination of his appointment or his resignation from office, the retired Judge, retired Magistrate or retired advocate shall, notwithstanding any law to the contrary and without the need for any further formality, no longer be deemed to have renounced to the practice of his profession as an advocate.



Overview of the Court of Revision of Notarial Acts

- The Court of Revision of Notarial Acts in Malta is a specialized court that plays a crucial role in overseeing and reviewing the actions of notaries public.



Purpose and Function

- **Judicial Review:** The primary function of the Court of Revision is to review and adjudicate on the legality and validity of notarial acts. This includes assessing whether notarial documents have been executed in accordance with the law and verifying the compliance of notaries with their legal obligations.
- **Protection of Parties' Rights:** The court aims to protect the rights of individuals involved in notarial acts, ensuring that any grievances related to notarial documents can be addressed fairly and efficiently.
- **Correction of Notarial Errors:** The court has the authority to correct or revoke notarial acts that are found to be irregular or improperly executed. This function is essential for maintaining the integrity of the legal documentation process.



Structure

- **Composition:** The Court of Revision is presided by a retired Judge or a retired Magistrate or a retired advocate who has practised his profession for over twelve years. (Though the law does not specifically mentions this .. But who have expertise in civil law and notarial matters. Their knowledge ensures that the court can effectively evaluate the legal issues arising from notarial acts.)
- **Procedures:** The court operates under specific procedural rules that govern how cases are presented, reviewed, and decided. These rules are designed to ensure fairness and transparency in the judicial process.



Significance of the Court of Revision

- **Upholding Legal Standards:** By reviewing notarial acts, the court ensures that legal standards are upheld and that notaries act within their legal authority. This oversight reinforces public confidence in the notarial system.
- **Facilitating Access to Justice:** The court provides a mechanism for individuals to seek redress for grievances related to notarial acts. This accessibility is crucial in ensuring that parties can effectively protect their rights.
- **Contribution to Legal Certainty:** The decisions made by the Court of Revision help clarify the legal framework surrounding notarial acts, providing guidance for notaries and the public. This contributes to a more predictable and stable legal environment.



Interaction with Notaries

- **Collaboration and Education:** The court may also engage in initiatives to educate notaries on best practices and legal standards. This collaborative approach helps improve the overall quality of notarial services in Malta.
- **Regulatory Role:** The court plays a regulatory role in the notarial profession, monitoring compliance and addressing any misconduct or malpractice by notaries.



Review Officers

- Under Chapter 55 of the Laws of Malta, known as the Notarial Profession and Notarial Archives Act, review officers are appointed to oversee the review of notarial acts. Here's a detailed overview of the review officers and their roles:



Oath of Office

- An appointee shall as soon as possible after his appointment and before starting to exercise his functions take the following oath before the Attorney General:

"I having been appointed to preside the Court of Revision of Notarial Acts hereby swear to examine and decide with impartiality, fairness and according to law the matters brought before me. So help me God."

Provided that an appointee who, immediately following a period in such a capacity, is re-appointed for a further period or periods to preside the Court, shall not take the oath of office again.



Appointment of Review Officers

- Designation: Review officers are appointed by the Minister for Justice in consultation with the Notarial Council. This ensures that individuals appointed to this role are qualified and knowledgeable in notarial law and practices.
- Review officers appointed under Chapter 55 of the Laws of Malta play a vital role in overseeing the notarial profession. Their expertise and independence are essential for ensuring compliance with legal standards, investigating complaints, and maintaining the integrity of notarial acts. This oversight mechanism helps protect the rights of individuals and upholds the rule of law in Malta's legal system.



Qualifications

- Expertise: Review officers typically possess substantial legal knowledge, particularly in notarial law, civil law, and related areas. They may be notaries or have experience in the legal field that equips them for this role or otherwise practicing lawyers.
- Independence: To maintain impartiality, review officers must be independent from the notaries whose acts they review, ensuring that their assessments are unbiased and fair.



Functions and Responsibilities

- **Reviewing Notarial Acts:** Review officers examine notarial acts to ensure that they comply with legal requirements and standards set out in the Notarial Profession and Notarial Archives Act. This includes verifying that documents are executed properly and contain all necessary elements.
- **Investigating Complaints:** They may also investigate complaints lodged against notaries regarding the execution of notarial acts. This helps maintain the integrity of the notarial profession and protects the rights of individuals affected by notarial errors or misconduct.
- **Reporting:** After conducting reviews, the officers report their findings to the Notarial Council or relevant authorities. If discrepancies or issues are identified, recommendations may be made for corrective actions or further investigations.
- **Training and Guidance:** Review officers can also play a role in providing guidance and training to notaries, helping them understand legal requirements and improve their practices.



Significance

- **Maintaining Standards:** The appointment of review officers is crucial for maintaining high standards within the notarial profession in Malta. Their oversight ensures that notaries adhere to legal and ethical obligations, promoting trust in notarial acts.
- **Ensuring Legal Certainty:** By reviewing notarial acts and addressing any issues, review officers contribute to the legal certainty of documents executed by notaries, ensuring that parties can rely on the validity of these documents in legal matters.





Questions ???



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