

The Courts of Justice in Malta and the Legal Profession

simplifying complex legal concepts and practices
and Summary of all of the module

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Undergraduate Certificate in Notarial
Law Fundamentals for Office Assistants

Lecture 10

Court Structure, Legal Bodies and Professions



Why is it important to have a court structure?

- Having a structured court system in Malta is essential for several key reasons, as it ensures the proper administration of justice, promotes fairness, protects individual rights, and upholds the rule of law. The court structure provides a framework within which legal disputes can be resolved, laws can be enforced, and justice can be served.

Here's the list why? .. You should know these by heart by now ..

- Upholding the Rule of Law
- Separation of Powers
- Access to Justice
- Fair and Impartial Resolution of Disputes
- Protection of Individual Rights and Freedoms
- Enforcement of laws
- Specialization and Efficiency
- Consistency in Legal Rulings



... the cont'd list.

- Appeals and Review Mechanism
- Safeguarding Public Order
- Checks on Government Power through the Constitutional Court

The court structure in Malta is a cornerstone of its legal system and democratic society. It ensures that laws are fairly applied, disputes are resolved impartially, individual rights are protected, and public order is maintained. Without a structured court system, there would be no consistent or reliable mechanism for enforcing laws, resolving disputes, or upholding the rule of law, which would lead to legal uncertainty, chaos, and a breakdown of societal trust. Therefore, the existence of a well-defined and functional court system is crucial for justice, stability, and prosperity in Malta.

The Courts – The Civil Remit

- The courts of justice of civil jurisdiction for Malta are either superior or inferior.
- Each court may be divided into different sections.
- Unless otherwise established by law, the President of Malta may by Order establish the sections of each Court, and designate the categories of cases assigned to each section; and may by subsequent Order amend, revoke or substitute such Order.
- Saving any other provision of law, the courts of justice of civil jurisdiction are exclusively vested with the judicial authority in civil matters within the jurisdiction of the tribunals of Malta.

The Superior Courts

- The superior courts are:
- (a) the Civil Court;
- (b) the Court of Appeal; and
- (c) the Constitutional Court.



The Inferior Courts

- The inferior courts are:
- (a) the Court of Magistrates (Malta) for the Island of Malta;
- (b) the Court of Magistrates (Gozo) for the Islands of Gozo and Comino

Jurisdiction of superior and inferior courts.

- Save as otherwise provided by law, the jurisdiction of the superior courts is general for *Malta*.
- The jurisdiction of the inferior courts is limited to particular places.

Constitution of superior courts

- The Chief Justice and President of the Court of Appeal and all other judges shall sit in the superior courts as by law provided.
- Besides the Chief Justice, the judges of the Superior Courts shall be thirteen or such greater number as the President of Malta may by Order prescribe.

Constitution of inferior courts

- The magistrates shall sit in the inferior courts.
- The Chief Justice may designate one of the magistrates as Senior Magistrate; such designation shall be for a specified time or until another magistrate is so designated.
- Without prejudice to the provisions of Chapter 12 of the Laws of Malta or of any other law prescribing the court or courts in which a magistrate shall sit, the Senior Magistrate shall perform such duties and functions as may be assigned by the Chief Justice or as may be provided by any law for the time being in force.



Distribution of duties of judges and magistrates

- The President of Malta shall assign to each of the judges his duties by assigning to him the court or the chamber of the court or section in which he is to sit ordinarily, and may transfer a judge from one court or chamber or section of a court to another:
- Provided that a judge may be assigned to sit ordinarily in more than one court or more than one chamber or section of one or more courts.
- The President of Malta is also empowered to surrogate (substitute, especially a person deputizing for another in a specific role or office) a judge in case of a vacancy in the number of judges.



The Chief Notary to the Government

- The Chief Notary to Government shall in January of each year post on one of the Government websites the lists mentioned hereunder which he shall update from time to time as the need arises:
 - (a) the names of the notaries practising their profession in Malta and Gozo;
 - (b) the names of notaries who are the keepers of the acts of deceased notaries or of notaries who have ceased to practise their profession, together with the names of the notaries whose acts are so kept.
- Whenever the Chief Notary posts or updates the lists, he shall make a print-out thereof stating thereon the date and time of the print-out which he shall sign and preserve in a register for the purpose. The print-out and any copy thereof duly authenticated by the Chief Notary or a Notary to Government shall be evidence of its contents for any purpose of law.
- The Minister responsible for notarial affairs may make regulations prescribing the manner in which such lists and their updates are to be drawn up

The Notarial Council

- The Notarial Council serves as the regulatory body for the notarial profession, overseeing the conduct of notaries. It can initiate investigations into any notary's behaviour that deviates from professional standards or respond to complaints.
- The Council also addresses allegations of negligence or misconduct in a notary's professional duties, unless such matters fall under the jurisdiction of another authority as outlined in Articles 85 and 94 of the Notarial Profession and Notarial Archives Act of the Laws of Malta, or other applicable laws.



The Notarial Council cont'd

- The Notarial Council is the official representative body of the Notarial College, composed of nine members, elected by the General Assembly of the Notarial College from among Notaries in the exercise of their profession composing the said College.
- All the members of the Council remain in office for three years and are eligible for re-election. One third of the members of the Council are replaced yearly, the first and second batches of vacancies being determined by lot.
- Any elected member of the Notarial Council may contest the office of President, who shall be elected by the members of the College by means of secret ballot. The member having an absolute majority of valid votes polled will be elected President.



Composition of the Notarial Council

- The Notarial Council shall be composed of nine members to be selected by the Notarial College from among Notaries in the exercise of their profession composing the said College.
- Consequent to the death or resignation of a Councillor, the Notarial Council shall either co-opt a member from among the members of the Notarial College by unanimous vote or else call a bye-election.
- Should the necessary number of members to form the Notarial Council not be reached, the Council as elected shall co-opt the necessary number of members from among the members of the Notarial College.
- The Notarial College is empowered to appoint any Notary to attend its council meetings as an adviser.
- The members of the Council shall remain in office for three years and shall be eligible for re-election.
- One third of the members of the Council shall be replaced yearly, the first and second batches of vacancies being determined by lot.



Election of Members of the Council

- The election of the Members of the Council shall be made by secret ballot and those obtaining the most votes shall be deemed to have been elected. On an equality of votes preference shall be given to the member who is most senior in the exercise of the profession, and in cases of equal seniority to the elder member.
- Any elected member of the Notarial Council may contest the office of President, who shall be elected by the members of the College by means of secret ballot. The member having an absolute majority of valid votes polled shall be elected President. If more than two members contest the office of President, and no member obtains an absolute majority (more than fifty per centum) of valid votes polled, a fresh election is to take place between the two members polling most votes. On an equality of votes preference shall be given to the member who is most senior in the exercise of the profession, and in cases of equal seniority to the elder member.
- The Notarial Council shall elect from its own body the Vice President, the Secretary, the Assistant Secretary and the Treasurer, in accordance with the rules established in the law. They shall retain their post for a period of one year.
- In the absence of the President and the Secretary, their duties shall be discharged by the Vice-President and the Assistant Secretary respectively.



The President of Notarial Council

- The President shall convene the Council, shall be its representative, shall preside its meetings, shall regulate its proceedings and shall correspond with the public authorities in consultation with the Council on matters falling within its competence.
- The Secretary shall have the charge of the office of the Council and be responsible therefor; he shall prepare the minutes of the proceedings; he shall keep all documents relative thereto, and shall issue copies of the deliberations of the Council and the Notarial College to any member who so requests.
- The minutes of proceedings shall be signed by the President and the Secretary.



Decisions of the Notarial Council

- The decisions of the Council are taken by a majority of the members present, and on an equality of votes the President shall have a casting vote. Votes shall be recorded openly; however, any member can request a secret vote.
- In matters concerning persons the voting shall be by secret ballot, and in case of an equality of votes, the deliberation deemed favourable to the person to whom it refers shall prevail.
- Any member who fails to attend three consecutive meetings of the Council shall 'ipso facto' cease to be a member of the Council provided:
 1. such member has been duly notified of the sitting.
 2. such member has not within one month from the last sitting given a written explanation which in the opinion of the Council renders such absence to have been justified.



Functions of the Notarial Council

- In addition to the functions devolving on it by law the Council:-
 1. shall ensure the observance of due decorum in the exercise of the profession and in the professional conduct of Notaries in Malta, and of the correctness in the performance of their duties;
 2. shall at the request of the competent authorities give its views on matters relating to the Notarial profession;
 3. shall intervene with a view to settling differences between Notaries, or between Notaries and third parties, concerning the return of papers or documents, questions of expenses or honorarium, or any other matter relative to the exercise of the Notarial profession.
 4. shall have the right to set up structures conducive to the betterment of the Notarial Profession in general.



What shall be kept at the Notarial Council ?

- In the office of the Notarial Council there shall be kept:-
 1. all minutes relating to the sittings, decisions and proceedings taken by the Notarial Council and the Notarial College;
 2. all correspondence received and sent by the Notarial Council;
 3. a Register of the Roll of Notaries in the exercise of their profession;
 4. a register of Trainee Notaries;
 5. a register of Notaries giving practice to Trainee Notaries.



Rights

- The Notary who accepts a Trainee Notary to practise with him/her in terms of section 6 of Chapter 55 of the Laws of Malta shall, prior to the commencement of the said practice, inform the Council in writing of the date of commencement of the said practice.
 - The Council reserves the right to object to the Notary giving such practice to the Trainee Notary:
 1. if the Notary giving such practice has not held a warrant to practise as Notary Public for at least 10 years, or
 2. if two thirds of the Members of the Notarial council object to the Notary giving such practice.
- The Council has the right to inspect the office of the proposed Notary giving practice and to inspect his work.

- Any change in the composition of the Notarial Council shall immediately be published in the Government Gazette
- A member of the Council or of the Notarial College shall have the right to take part in deliberations or be present at discussions, when the matter being dealt with concerns such person personally or concerns such person's relatives by blood or affinity in direct line to any degree or in any collateral line to the third degree inclusively. However such member shall **abstain** from voting and the voting shall be taken by secret ballot during which such member shall **leave** the meeting.



Members of the Notarial College who wish to terminate their profession

- Members of the Notarial College who wish to terminate their profession shall, prior to such termination, advise the Notarial Council in writing of their intention and give the name of the Notarial keeper whom they intend to appoint, whereupon the Notarial Council shall without delay inform the competent authorities.
- The Notarial College and the Notarial Council shall have the right to affiliate with, or become members of, International and National Institutions.
- Any amendments or additions to this Statute must to become operative and binding, be approved by two-thirds majority of all Members of the Notarial Council in Council Meetings, or by a majority of fifty per cent plus one present and voting, of the members of the Notarial College in meeting of the Notarial College.



The Notarial College

- Notarial College shall be composed of all the notaries who are in possession of a warrant to exercise the profession of a Notary Public.
- Notaries who have been suspended, incapacitated, or temporarily interdicted from the exercise of their profession shall continue to form part of the College but shall not attend the sittings as long as the suspension, incapacitation or interdiction lasts.
- Students who have started their practice shall have, during the period of the said practice, the right to attend the meetings of the College, without the right to vote.
- The College will hold ordinary and extraordinary meetings which shall be called by a notice published by the Notarial Council and transmitted to each Notary in possession of a warrant to exercise the profession of a Notary Public, with an indication of the **Agenda**, at least ten days beforehand, except in cases of real urgency.



The Notarial College cont'd

- Matters not listed in the Agenda may be discussed but may not be voted upon. A member may however ask for a suspension of the regulations and, if this is granted unanimously by those members present and voting, such matters as are not listed in the agenda may thereby be voted upon.
- When an urgent meeting has been called, the majority of the members present shall approve of its urgency before the meeting may proceed to deal with the Agenda; the notice for such meetings shall be given at least 24 hours previously.
- The ordinary meeting of the College shall be held yearly during the month of December with the object of nominating the members of the Council for the ensuing year.
- Extraordinary meetings shall be held whenever the Council will deem it necessary, or one third of the Notaries in the exercise of their profession composing the college will apply for the holding of such meeting.
- The office of President and that of Secretary shall be held by the President and the Secretary of the Notarial Council respectively, or, in default, by those acting as such.
- For the validity of the proceedings a quorum of at least one third of the College is required. In the absence of the quorum at the appointed time the proceedings may be validly carried on half an hour after the appointed time whatever the number of members present. Any decisions and any deliberations shall be deemed to have been validly taken or made.



Notarial Archives

- The Notarial Archives date back to the times of the Order of the Knights of St. John. They were set up by Grand Master Lascaris in virtue of an instrument dated 10th July 1640. This instrument was registered in the Acts of the Order and is found in Manuscript number 469, ff. 260-261, in the National Library of Malta. Notary Salvatore Ciantar was the first Archivist. The oldest volume of notarial deeds preserved in the Archives is that of Notary Paolo Bonello which dates from 1465 to 1521.
- The Notarial Archives are a rich source of research. Notarial deeds and records, being legal documents, are frequently examined and studied mainly for their legal implications, for establishing the root of title to property, for tracing inheritances, and generally for checking on legal rights and duties as regulated by written covenants. However, especially as regards the older records, from the beginning of last century to earlier dates, the Notarial Archives are a primary source for historical research.

Office of the Notary to Government and Notarial Archives

- The main functions of the Office of the Notary to Government and Notarial Archives are to provide notarial services to Government and to maintain an archive of notarial records. Functions and responsibilities are laid down in the mission statement and are regulated by the Notarial Profession and Notarial Archives Act (Chapter 55 of the Laws of Malta).
- The Notarial Section publishes deeds to which the Government, any corporate body established by law or, as may be authorized by the Minister in each case, any partnership or other body in which the Government of Malta or any such body has a controlling interest or over which they have effective control, is a party. The Notarial Section liaises directly with various Government Departments to give effect to certain government policies and activities. Prior to proceeding with the publication of a deed, details are provided and processed in the departmental form of particulars (which is also posted on the Government intranet) which specifies that information being requested is to be used for the drawing up and publication of a public deed to be entered into by the data subject with Government (thereby providing “fair and lawful processing” information to the data subject whose consent is given by his/her signature on the form).
- This Office also processes particulars concerning human resources in the Department according to the Data Protection Act and in conjunction with the regulations and policies set out in the Public Service Management Code. The Department processes as well applications for student notaries to apply to sit for the notarial warrant examination.
- Archival services are provided in accordance with Chapter 55 of the Laws of Malta. The Notarial Archives is a repository for notarial deeds for custody and safe-keeping. In the Archives deeds “*inter vivos*” and public wills published by notaries public who have practised or are practising in Malta (including deeds received by notaries to Government) are deposited. Original deeds are housed at 2, Mikiel Anton Vassalli Street, Valletta, whereas registers (faithful transcriptions) of same are housed at 2, St. Christopher Street, Valletta, which is a branch of the Maltese Notarial Archives.

Services provided by The Office of the Notary to Government and Notarial Archives

- The Office of the Notary to Government and Notarial Archives provides various services such as:
- Drafting and publishing of notarial deeds to which the Government or any corporate body established by law is a party;
- Receiving bound volumes of original notarial deeds published by notaries in Malta following their review in terms of Chapter 55 of the Laws of Malta;
- Serving as a depository of such volumes containing notarial deeds for their safekeeping and preservation;
- Indexing, marking, storing and conserving such volumes of notarial deeds and taking all security measures to prevent loss by fire, theft or other circumstances, of these notarial records conserved in the Notarial Archives;
- Providing service to members of the public wishing to inspect any deed published by notaries practising in Malta from the fifteenth century to date and to order a copy thereof;
- Serving as a useful source of reference material to researchers and scholars;
- Reviewing of public wills published by notaries in Malta and Gozo;
- Preparation and organisation of the notarial warrant examination held annually and subsequent procedures leading to the award of notarial warrants;
- Preparing and updating of the list of notaries in Malta and Gozo which is published annually in the Government Gazette.



Services provided by The Office of the Notary to Government and Notarial Archives cont'd

- Serving as Keepers of other notaries who are deceased or who have renounced their warrant or have been disbarred from practising the notarial profession;
- To effect in a professional manner the restoration of old notarial volumes as well as the repair or rebinding of other volumes as necessary from time to time;
- To cater for proper modern storage facilities particularly by means of digitisation of the notarial records housed in the Archives;
- Active participation to promote the Notarial Archives both at St. Christopher Street, Valletta, and at M.A. Vassalli Street, Valletta. In this regard this Office has managed to obtain EU funding for two projects, one relating to the rehabilitation of a new building acquired in 2015 adjacent to the Notarial Archives in St. Christopher Street, and the other for the digitisation of notarial deeds at the main Archives; both projects are currently under way;
- Promoting new policies for the simplification of bureaucracy with regard to notarial affairs such as the revocation of mandates and incapacitation or interdiction.



Revision of the whole course





Questions ???



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