The Functions of the Court of Voluntary Jurisdiction

Tutorship, curatorship, Absentees, Interdiction and Incapacitation

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Undergraduate Certificate in Notarial Law Fundamentals for Office Assistants

Interpret the jurisdiction role of the court in safeguarding rights and interests that cannot be exercised by the rightful owner.

- In Malta, the court plays a critical role in safeguarding rights and interests for individuals who, due to absence, incapacity, minority, or other legal limitations, cannot exercise their own rights or manage their own interests.
- This responsibility is often handled by the Court of Voluntary Jurisdiction, which deals with non-contentious cases and protects the welfare, property, and legal interests of vulnerable parties.
- The court's jurisdiction in these matters is designed to ensure that the rights and interests of such individuals are upheld responsibly, fairly, and in accordance with the law. Here's how the court fulfills this protective role.
- The court's jurisdiction in protecting the rights and interests of individuals who cannot exercise them personally is a cornerstone of Maltese law. Through appointing legal representatives, safeguarding assets, protecting personal welfare, and overseeing succession matters, the court ensures that vulnerable individuals and those unable to manage their affairs are shielded from harm and have their rights preserved. This system not only provides practical support for those in need but also upholds justice and fairness within the legal framework.

A minor under the Civil Code

- A minor is a person of either sex who has not yet attained the age of eighteen years. (Art 157 of the Civil Code).

- A minor under the Civil Code has a different meaning than in the Criminal Code. This will be discussed in the upcoming lectures.

What is tutorship?

- Any minor, whose parents have died or have forfeited parental authority and who has not married, is subject to be placed under tutorship until he becomes of age or until he marries. (Art 158 of the Civil Code).
- The tutor shall have the care of the person of the minor; he shall represent him in all civil matters, and administer his property as a *bonus paterfamilias.*
- The court shall, as appropriate, prescribe the place in which the minor is to be brought up, the education which it is proper to give him, and the expense to be incurred for his maintenance and education.
- The minor shall obey the tutor in all that is permitted by the law and where the tutor abuses his authority, or neglects his duties, the minor himself or any other person on his behalf, may make a complaint to the competent court; and the court shall caution the tutor or give any other expedient direction.

Appointment of tutor

- A tutor is appointed by the court on the demand of any person.
- In appointing a tutor the court shall take into account any disposition contained in the will of either of the parents of the child relating to the appointment of a tutor.
- Where among the relatives of the minor there are competent persons, the court shall appoint one of such persons, preference being given, subject always to the best interests of the child, to the nearest relative by consanguinity.

Where more than one tutor is appointed

- It shall be lawful for the court to appoint more than one tutor.
- Where more than one tutor have been appointed the court may at any time, either of its own motion or upon the demand of any of the tutors, specify their respective duties; and, until such time as particular duties shall have been assigned to each of them, each of the tutors shall have all the powers and duties of a tutor, and they shall all be jointly and severally liable for the acts of each of them.
- Where any of the tutors dies or otherwise ceases to be tutor, the tutorship shall be exercised by the other tutor or tutors unless the court, of its own motion or upon the demand of any person shall have appointed another tutor in his stead.

Who cannot be appointed as a tutor

- The following persons cannot be appointed tutors:
- (a) persons who have not attained majority;
- (b)persons who are not vested with the free administration of their property or who are notoriously incompetent to administer property;
- (c) persons who are or are about to be, or whose spouse or relatives by consanguinity or affinity up to the degree of uncle and nephew, are, or are about to be involved in a lawsuit with the minor, in which the status of such minor, or a considerable part of his property is at stake;
- (d) undischarged bankrupts;
- (e) persons who have been sentenced to the punishment of imprisonment for a term exceeding one year, or to any punishment for an offence affecting the good order of families, or for fraud;
- (f) persons who are of a notoriously bad character, or manifestly untrustworthy or negligent;
- (g) persons who are trustees of property for the benefit of the minor.

Judges and magistrates as tutors

- The judges and the magistrates are not eligible for the office of tutor, except in the case of their own relative by consanguinity in any degree in the direct line, or up to the degree of cousin in the collateral line.
- Tutorship already assumed in regard to persons other than the aforesaid relatives shall cease on the appointment of the tutor to the office of judge or magistrate

Persons entitled to be exempted from accepting or continuing in the office of tutor

- The following persons are entitled to be exempted from accepting or continuing in the office of tutor:
  - (a) members of the House of Representatives;
  - (b) heads of public departments, and any other public officer having the direction of any particular branch of the public service;
  - (c) persons belonging to the armed forces of Malta, if on active service;
  - (d) persons who have attained the age of sixty years, or are suffering from a habitual infirmity, which incapacitates them from discharging the office of tutor without serious inconvenience;
  - (e) any person who is a father or a mother of five living children;
  - (f) persons who are already discharging a tutorial office;
  - (g) any person not being a relative of the minor, or being a distant relative, if there is in Malta a relative, or, as the case may be, a nearer relative competent to discharge the office of tutor, and not excused therefrom:
- Provided that where the incapacity or the ground of exemption of the relative or nearer relative ceases, the stranger or the distant relative, as the case may be, may claim to be relieved of the office.

Suspension or removal of a tutor

- The court may suspend or remove any tutor or curator from his office on any of the grounds mentioned in paragraphs (b),(c),(d),(e) and (f) of article 163 (persons cannot be appointed tutors- see slide above), or for failure to render an account in due time, or for unfaithfulness in the account rendered, or for any other just cause, saving the provisions of article 35 of Chapter 12.
- In all cases the court shall chiefly consider the interest of the minor.

- Article 35 of the COCP reads:
  - *"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."*

Disposal of moveable property

- The tutor shall, within the time of three months from his appointment, sell all such movable property of the minor as the court shall not have authorized him to keep.

- Unless otherwise authorized by the court the sale shall be made by public auction.

- It shall be in the discretion of the court, according to circumstances, to change the three months time.

Limitation of powers of the tutor

- It shall not be lawful for the tutor, without the authority of the court, to collect or transfer any capital belonging to the minor, take money on loan except in case of urgency, accept or renounce any inheritance, accept any donation or legacy subject to any burden, refer any matter to arbitration or effect any compromise, or alienate, hypothecate, or make any emphyteutical grant of immovable property, or let out property for a time exceeding eight years, in the case of rural property, or four years, in the case of urban property, or the ordinary time according to usage, in the case of movables.

- Upon a demand for authority to accept an inheritance, the court may, according to circumstances, allow the tutor to produce in lieu of the inventory, a note describing the property comprised in the inheritance which shall be verified on oath by the tutor.

Profitable investments of money

- The tutor shall, after deducting the expenses necessary for the minor, profitably invest the income or other moneys which he collects, when the amount thereof exceeds the sum of one hundred and sixteen euro and forty-seven cents (116.47).
- If the tutor fails to make such investment, he shall be liable in interest, unless he proves that notwithstanding all due diligence he has not succeeded in securing a profitable and safe investment.
- The tutor shall be liable for any loss occasioned by his failure to take, in making the investment, such precautions as a *bonus paterfamilias* would have taken.

Administration

- The tutor shall keep at least a book of receipts and expenditure.
- He shall, with his accounts, produce vouchers for any expense of a considerable amount.
- The said book, if verified on oath by the tutor, shall be sufficient to prove small expenses.
- The tutor shall only be credited with such expenses as are considered useful or, having regard to the position and the means of the minor, customary.
- Where the administration terminates for any other cause than that referred to in article 158 (Any minor, whose parents have died or have forfeited parental authority and who has not married, is subject to be placed under tutorship until he becomes of age or until he marries), the tutor shall render his account to his successor in the office of tutor.
- If the minor dies during the tutorship, the account shall be rendered to his heirs.
- If the tutorship terminates for any of the causes mentioned in article 158 the account shall be rendered to the person who was under such tutorship.

Nullity of acts performed by a tutor

- The nullity of any act performed in contravention of the provisions contained in Chapter 16, touching the interests of the minor, may only be set up by the minor or his heirs or other persons claiming under him.

- No act of the tutor may be impeached solely on the ground that the appointment of the tutor was made against the provisions of article 163 -> Persons not competent to hold the office of tutor- see slides above.

What is curatorship?
Application for appointment of curator.

- The presumptive heirs of an absentee, or any other person interested, may apply to the competent court in the island in which the absentee last resided, for the appointment of a curator to manage the property of such absentee, and for any other requisite directions for the preservation of his property.

Edict (Edi̇ċi)

- An edict under Maltese law is a formal public notice or announcement issued by the court, typically in cases involving inheritance, family law matters, or legal procedures requiring public notification. Edicts are common in the Court of Voluntary Jurisdiction for non-contentious matters, and their main purpose is to inform interested parties or the public of a legal action or requirement, allowing them an opportunity to respond or contest if necessary.

- Upon any such application, the court shall direct that an edict, drawn up according to Chapter 16 , be twice, with an interval of at least one month, published in the Government Gazette, and posted up at the entrance of the building in which the court sits, and in any other place which the court may deem proper, calling upon any person having information respecting the absentee to communicate such information to the court, through the registrar

Information respecting absentee

- Any information respecting the absentee may begiven either in writing, in any form, or orally.
- Where the information is given orally, the registrar shall make a note thereof at the foot or in the margin of the application, or, if this is not practicable, on a separate sheet of paper to be kept with the application.
- Any communication which is anonymous, or made by a person unknown and without an indication of the place in which such person may be found, will not be considered.

Inventory

- If, on the expiration of the time fixed in the second publication of the edict, no information shall have reached the court respecting the existence of the absentee, or the place where he maybe found, the court shall appoint a person to make up, within such time as the court shall fix, an inventory of the property of the absentee, or, according to circumstances, a description of such property to be verified on oath by such person
- Provided that if the court shall have had information warranting further enquiries, it shall be lawful for the court, before making any such appointment, to direct such further enquiries to be made

Obligations of the curator

- Upon the completion of the inventory or description, the court shall, before allowing the application, direct the curator designate to bind himself with hypothecation of his own property limited to a fixed sum, well and truly to administer the property of the absentee, and to render, on the termination of the curatorship, a true and faithful account of his administration.

- Where the court deems it expedient that the curator designate should give security, the obligation of the surety shall also precede the appointment of the curator.

Persons not competent to act as curators.

- The persons who according to the provisions of article 163 (persons cannot be appointed tutors- see slide above), are not competent for the office of tutor, shall not be competent for the office of curator.
- No person is bound to accept the curatorship of an absentee.
- It shall be in the discretion of the court to appoint two or more curators.

Account of administration

- The curator shall render an account of his administration to the absentee, if he returns, or if he appoints an attorney, or to such persons as are vested with the possession of his property.

Curator to represent the absentee

- The curator shall represent the absentee in civil act sand shall manage his property as a bonus paterfamilias.
- He is bound to prosecute the enquiries about the existence of the absentee or the place in which he may be found, and to communicate to the court any information which he may receive.
- Where the absentee has left an attorney for the management of his property, the court shall, during the time the power of attorney is in force, give directions only with regard to such acts as the attorney may not perform under the power of attorney or in virtue of the law.

Who are the absentees?

- An absentee under Maltese law is a person who has disappeared or has been absent for a prolonged period without any contact or information about their whereabouts, creating uncertainty about whether they are alive or dead.

- This concept is primarily addressed in the Civil Code of Malta (Chapter 16 of the Laws of Malta) and is important for managing the rights and obligations associated with the absentee's estate, family, and financial interests.

Opening of wills

- After the lapse of three continuous years from the day the absentee was last heard of, or of six years, if the absentee has left an attorney to manage his property, the competent court in the island where the absentee last resided, may, upon the application of any person interested, order the opening of any secret will, or declare, notwithstanding the provisions of the Notarial Profession and Notarial Archives Act, accessible any public will, which the absentee may have made.

Edict

- Upon any such application, the court shall hear the attorney or curator, if any, and, if it is of opinion that the order sought for should be given, shall direct that an edict similar to that referred to in article 195 (relating to curator of absentees) be published in the Government Gazette, and posted up at the entrance of the building where the court sits, and in any other place which it may deem proper.

- After the lapse of six months from the publication of the edict, the court, in default of any information respecting the absentee, shall, by a decree, order the opening of any secret will, or, as the case may be, declare accessible any public will which the absentee may have made.

Return of an absentee

- If the absentee reappears, or if his existence is established, the effects of the provisional possession, or of the authority to exercise the right in Chapter 16, shall cease, and the court shall give the necessary directions for the preservation and administration of his property.

- The possessors of the property, and such persons as may have obtained any payment by reason of the exercise of any right depending upon the death of the absentee, shall be bound to restore the same together with the fruits.

Death of an absentee

- If, during the period of provisional possession, the time of the death of the absentee is established, his succession shall become open in favour of such persons as at that time were his testamentary heirs or heirs-at-law, or of their successors; and the persons who have had the enjoyment of the property, shall be bound to restore it, together with the fruits.

Action by persons having rights against absentee

- After the grant of provisional possession, any person having any claim against the absentee shall bring forward such claim against the persons vested with the possession of the property.

Curatorship of minor children of absentee

- Where any of the children of the absentee are minors, and are not subject to parental authority, it shall be lawful for the court, upon the demand of any person, to appoint to such children one or more curators.

- The provisions relating to the tutorship of a minor whose parents are dead shall, in so far as applicable, apply to the curatorship of a minor ordered under this article.

Persons of unsound mind

- Under Maltese law, individuals deemed to be of unsound mind are those who, due to mental incapacity, cannot manage their own affairs or make sound decisions. The relevant provisions for the care, protection, and legal management of such individuals are primarily found in the Civil Code (Chapter 16) and the Mental Health Act (Chapter 525). Maltese law provides a framework to protect the rights and interests of these individuals, ensuring they receive appropriate care and that their affairs are managed responsibly.

Key Aspects of Maltese Law for People of Unsound Mind

- Definition and Legal Recognition of Mental Incapacity
  - Maltese law considers individuals to be of "unsound mind" if they suffer from mental disorders or conditions that significantly impair their ability to understand, make, and communicate decisions.
  - The law requires a medical or psychiatric assessment to confirm mental incapacity before any legal proceedings are initiated.

Court of Voluntary Jurisdiction and Interdiction

- Interdiction: When a person is declared of unsound mind, the Court of Voluntary Jurisdiction can issue an interdiction order. This strips the individual of their legal capacity to make significant decisions (such as financial transactions) to protect them from potential harm or exploitation.

- Incapacitation: If the impairment is less severe, the court may issue an incapacitation order, limiting the individual's legal capacity only for certain actions. This is often applied to protect specific rights or interests while allowing the person some degree of autonomy

Introduction to interdiction and Incapacitation Persons

- A major who is a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or who is insane or prodigal, may be interdicted or incapacitated from doing certain acts.
- The same shall apply in regard to the minor referred to in article 156
- Article 156 holds that where a minor, who has attained the age of sixteen years, has been authorized to trade, or, not being a trader, to perform certain acts of trade, such minor shall, in regard to all matters relating to his trade, or in regard to such acts, be considered as being of age.

Demand for interdiction or incapacitation

- The demand for interdiction or incapacitation may be made not only by the persons mentioned in article 521 of the COCP , but also by any person related by affinity who, under the provisions of this Code, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal.
- A demand for the interdiction or incapacitation of persons who have a mental disorder or other condition, which renders them incapable of managing their own affairs, or who are insane or prodigal, is made by an application to the Court of Voluntary Jurisdiction.
- The application shall contain a statement of the facts on which the demand is founded and an indication of the witnesses, if any, to such facts.
- Any documents in support of the demand, shall be filed together with the application.

Persons who may demand interdiction or incapacitation- Article 521 of the COCP

- Interdiction or incapacitation may be demanded –
- (a) by any one of the spouses against the other spouse;
- (b) by any person against another related to him by consanguinity;
- (c) by any person who is related by affinity to the person whose interdiction or incapacitation is demanded and who may be called upon to supply maintenance to such person;
- (d) in case of a mental disorder or other condition, which renders a person incapable of managing his own affairs, by the State Advocate; unless the demand shall have been made by any other person.

Examination of person whose interdiction is demanded. Appointment of temporary curator

- It shall be lawful for the court to cause the person whose interdiction or incapacitation is demanded to appear before it, to question such person and cause him to be examined by one or more experts; and the court may, in all cases, appoint a temporary curator to take charge of his person and property.
- If the court finds that there is just cause for the interdiction, it shall appoint a curator to administer the property of the person interdicted. A curator shall be appointed for a period not exceeding three years. Such appointment can be renewed, where the court considers it so appropriate, after evaluating the reports submitted by the curator

Incapacitation

- If no sufficient cause for the interdiction is made to appear, it shall be lawful for the court by a decree to order, if the circumstances of the case so require, that the person whose interdiction is demanded be incapacitated from suing or being sued, from effecting any compromise, borrowing any money, receiving any capital, giving a discharge, transferring or hypothecating his property, or performing any act other than an act of mere administration, without the aid of a curator to be appointed in the same decree.
- It shall also be lawful for the court, if it deems it necessary, to incapacitate any person from performing all or any of the acts of mere administration, entrusting the performance thereof to a curator in such manner as the court may deem fit to direct.

Nullity of acts performed by person interdicted

- The nullity of the acts performed by the person interdicted or incapacitated after the interdiction or incapacitation may only be set up by the curator, or by the person interdicted or incapacitated or his heirs or other persons claiming under him.
- Interdiction or incapacitation shall take effect from the day of the relative decree; and any act performed by the person interdicted or incapacitated, subsequently to such decree, or even subsequently to the appointment of the temporary curator, shall be null.
- Any act performed previously to the interdiction or incapacitation may be annulled, if the cause of interdiction or incapacitation existed at the time of the performance of the act.

Revocation of interdiction or incapacitation

- Interdiction or incapacitation shall be revoked, when the cause of the interdiction or incapacitation shall cease to exist.
- The court shall, in the decree of interdiction or incapacitation, direct that a notice thereof, specifying the terms of the inhibition, be published in the Gazette

The Registrar vis a vis interdicted or incapacitated persons

- The registrar shall keep an official online Register of Interdicted and Incapacitated Persons.
- Such register shall be continuously kept updated by the registrar.
- The register shall be held in electronic version and shall be accessible to the Commissioner for the Promotion of Rights of Persons with Mental Disorders and to advocates, notaries and legal procurators and to such other persons who the Minister may by regulations designate.
- The register shall be divided into three parts. The first part shall contain a list of interdicted persons, the second part shall contain a list of incapacitated persons and the third part shall contain a list of persons in respect of whom a certificate of lack of mental capacity has been issued in accordance with the Mental Health Act.

Construct opinions related to the administration of justice in areas covered by the court's jurisdiction based on the acquired knowledge and understanding.

- The administration of justice within the jurisdiction of Malta's Court of Voluntary Jurisdiction reflects a robust approach that balances protection, due process, and fairness for individuals who are unable to manage their own affairs. The court’s work covers areas such as guardianship, adoption, trusts, incapacity, curatorship, and absentee declarations. These cases require special care, as they involve people who may lack the capacity to safeguard their own rights and interests

Protection of Vulnerable Individuals

- The court's jurisdiction provides essential protections for vulnerable groups, including minors, incapacitated individuals, and absentees. By appointing guardians, tutors, or curators, the court ensures that people who cannot act on their own behalf are supported by responsible representatives.
- This oversight is vital for preventing exploitation, mismanagement, or neglect of their interests. However, continued improvements in training and ethical standards for these representatives could further safeguard vulnerable individuals by ensuring that appointed curators and guardians possess both the knowledge and empathy needed for such sensitive roles

Transparent Asset and Estate Management

- The Court of Voluntary Jurisdiction plays a significant role in asset protection for those unable to manage their finances, such as minors or people of unsound mind.
- Appointing curators or administrators to oversee estates ensures assets are preserved and responsibly managed. The court's requirement for regular reporting and oversight of significant transactions strengthens this accountability. However, a more streamlined reporting system, possibly digitized, could further enhance transparency while reducing administrative burdens on both the court and appointed curators. This might also help deter potential misappropriation of funds and enhance trust in the system.

Fairness in Incapacitation and Guardianship

- Maltese law grants the court authority to declare individuals incapacitated or interdicted if they are unable to make sound decisions due to mental health or other factors.
- This can protect individuals from exploitation or harm, but it also involves restricting personal autonomy.
- It is commendable that the court's decisions in these cases rely on medical assessments and require significant proof of incapacity. However, the process could benefit from periodic reassessments of incapacity, as some individuals may regain capacity or improve with treatment, allowing them to gradually reclaim their legal rights.

Conclusion

- The Court of Voluntary Jurisdiction in Malta demonstrates a well-rounded approach in handling non-contentious cases, ensuring that vulnerable individuals receive the protection they need while balancing due process and fairness.
- The areas covered by the court's jurisdiction require both compassion and strict legal standards, as they affect the rights of individuals who cannot advocate for themselves. With increased efficiency, greater transparency, and a continued focus on the best interests of vulnerable parties, the administration of justice in these areas could further enhance public confidence and support the welfare of individuals in need of judicial protection.

Questions
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