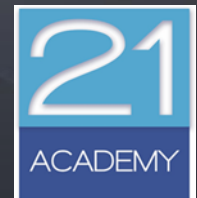


Foundations of Criminal Law

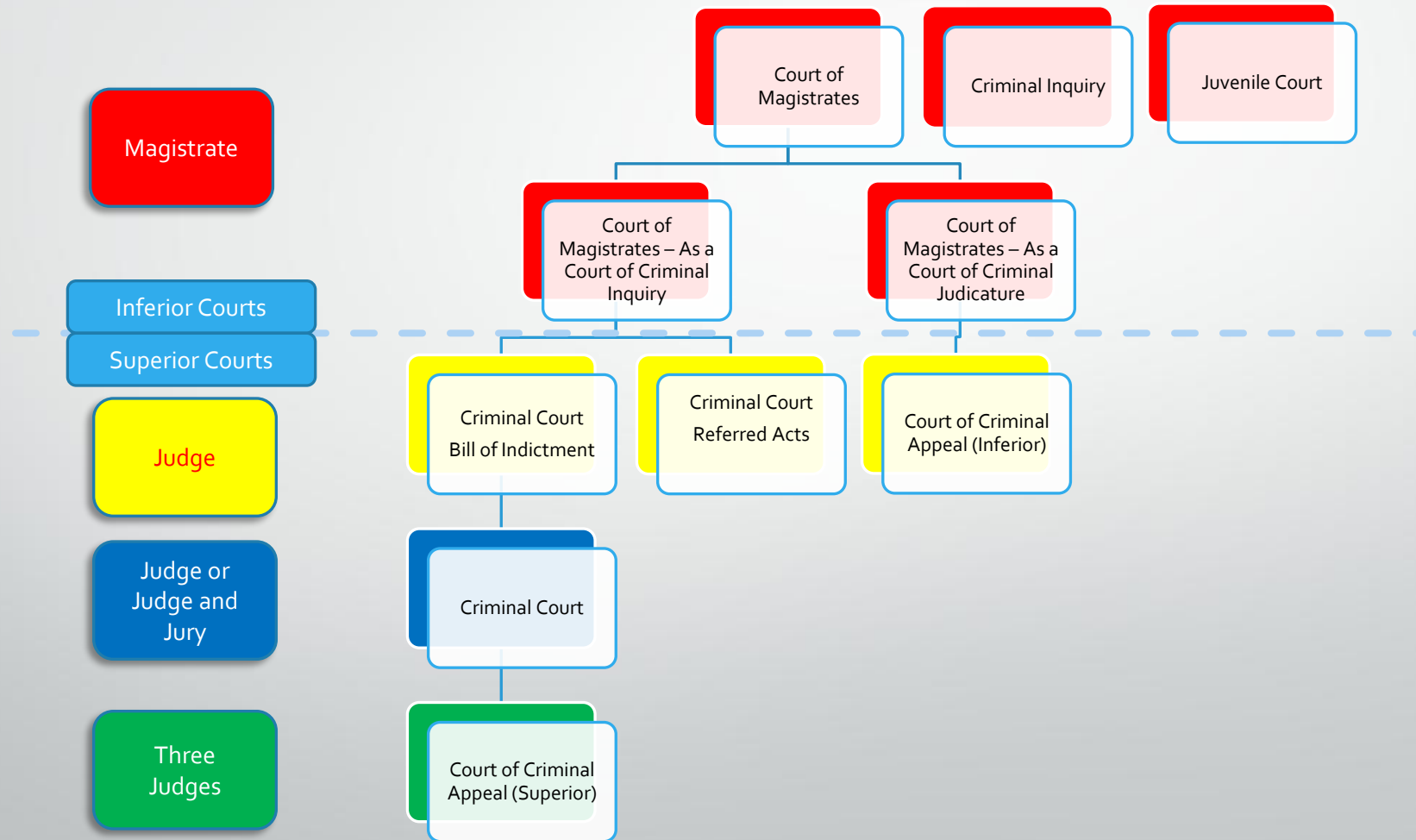
Law of Criminal Procedure

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Courts of Criminal Competence



Notitiae Criminis

- The start of a criminal investigation:
 - Information given to the police (*Informazzjoni*)
 - Police Report (*Denunzja*)
 - Complaint (*Kwerela*)

The Inquiring Magistrate

- When is the Magisterial Inquiry opened?
 - When there is suspicion that an offence that carries more than three years imprisonment has been conducted.
 - When a sudden death occurred.
 - When an object that is suspected to be used in an offence is
 - A report in terms of article 546(4A) of the Criminal Code

Magisterial Inquiry- Request under 546(4A)

- A report, information or complaint to the Executive Police together with a request to open an inquest.
- The report, information or complaint is to be confirmed on oath;
- Information on the suspected person;
- Information on the offences committed by the suspected person;
- The connection between the suspected person and the acts allegedly committed.
- Any evidence supporting this claim.

Magisterial Inquiry- Request under 546(4A)

- The Executive Police are to decide whether:
 - (i) there are grounds to initiate a prosecution;
 - (ii) there are no grounds for prosecution;
 - (iii) the case merits further investigation by the Executive Police;
 - (iv) an inquest upon the request of a private party on a suspected person should be opened in accordance with the provisions of this sub-article.
- If the Executive Police decide in accordance to (i) and (ii) they are to forward the case together with the acts to the Attorney General for a decision whether a prosecutions should be initiated.

Magisterial Inquiry- Request under 546(4A)

- If the Attorney General decides that there are no grounds for prosecution, he may either:
 - Order the Executive Police to continue with the investigation; or
 - Order that the person making the complaint be notified with the decision not to prosecute.- In this case the provisions of Article 469B – Chapter 12 apply.

Magisterial Inquiry- Request under 546(4A)

- If after six months from filing the report and the request for an inquest:
 - Prosecution was not initiated; or
 - A decision not to prosecute would not have been taken; or
 - An inquest would not have been opened
- The person making the request can file an application in the Criminal Court to ask the Court to order the Executive Police to transmit the report, information or complaint to the Magistrate for the commencement of the inquest.

Magisterial Inquiry- Request under 546(4A)

- The Criminal Court may decide to:
 - Allow further time for the investigation by the Executive Police
 - Terminate the proceedings by declaring the investigation closed
 - Accede to the request for the opening of an inquest
- If the Criminal Court decides to afford more time to the Executive Police, it has to set a date for continuation after that date and then proceed with a decision.

Magisterial Inquiry – The Procedure

- The Police receives a report, information or a complaint that an offence has been committed;
- The Police informs the Duty Magistrate that and the duty Magistrate would then give instructions on how to proceed. He/she can order that an inquest is held or order the police to continue their investigation;
- In the case that the inquest is held, the Inquiring Magistrate would nominate a number of experts that he would believe would be of service to the investigation.

Magisterial Inquiry – The Procedure

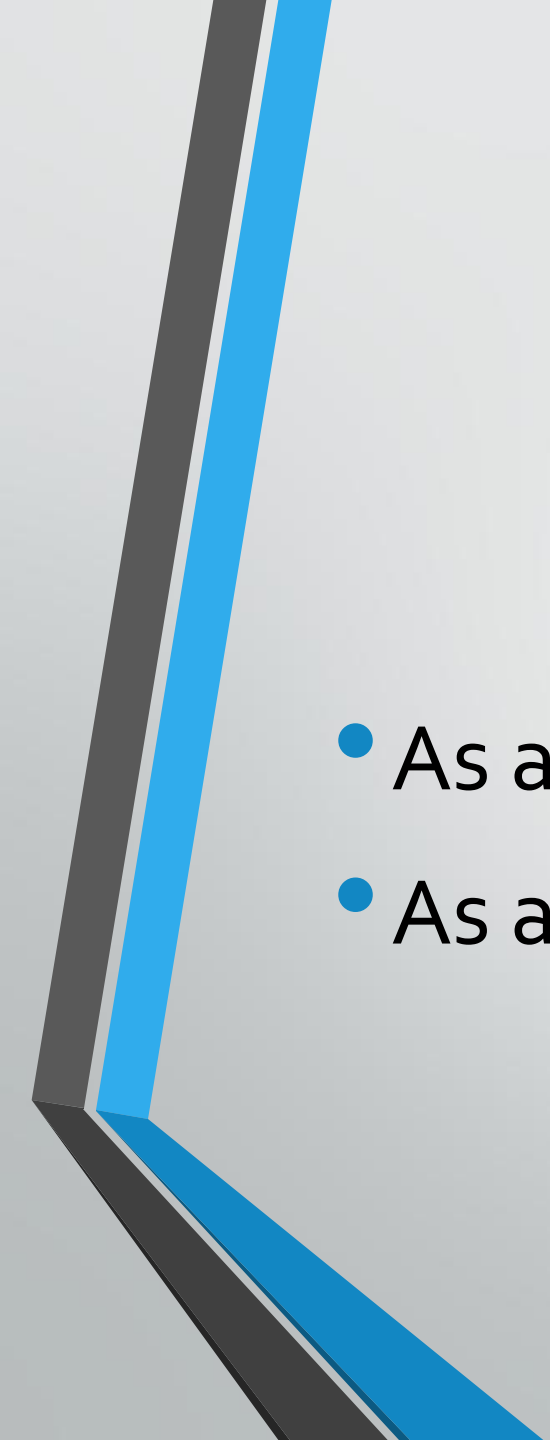
- Once the Magistrate accedes to the Police request to hold an inquiry, the Investigating inspector is to file a police report in writing within two (2) working days, (Sec.546 (4) Chap 9);
- The experts nominated by the Magistrate are to present their report within thirty days;
- The Magistrate is to conclude the *process verbal* within sixty (60) days from the filing of the report, or the complaint or from when the Police received the information;

Magisterial Inquiry – The Procedure

- If the Magistrate is not able to conclude the *process verbal* within the prescribed 60 days, he/she is to draw a report indicating the reason for the delay and this report is to be served upon the Attorney General by not later than three days from the expiry of the sixty days;
- The *Proces verbal* is to contain a brief description of the report, information or complaint received by the Police, a list of the witnesses heard during the inquest, the expert's conclusions and the evidence gathered. The Magistrate's conclusions would be at the end of the process verbal.
- The *Proces verbal* and all the documents of the inquest are to be preserved and are exhibited in court when someone is arraigned in connection with the case.

Prosecution

- The Prosecution in Courts of Criminal Competence is conducted by:
 - The Executive Police
 - The Attorney General (see SL. 90.01)
 - In some cases by the private individual (this is subject to debate)



The Court of Magistrates

- As a Court of Criminal Judicature
- As a Court of Criminal Inquiry

Court of Magistrates – As a Court of Criminal Judicature Competence

- Article 370 (1) – Chap 9 – **Original Competence**

The Court of Magistrates shall be competent to try:

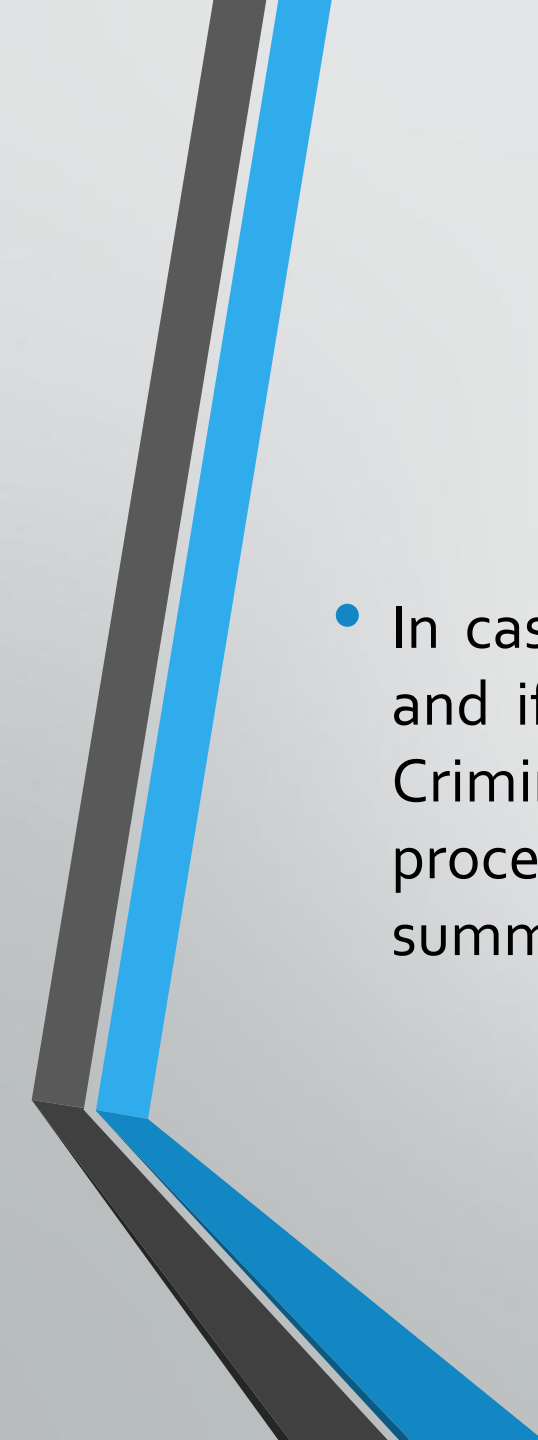
(a) All Contraventions; (vide Art. 338)

(b) All crimes referred to in this Code which are liable to the punishments established for contraventions, to a fine (*multa*) or to imprisonment for a term not exceeding two years with or without the addition of a fine (*multa*) or interdiction

(c) All offences referred to in any other law which are liable to the punishments established in the preceding paragraph, unless the law provides otherwise.

- Article 370(3) – Chap 9 – **Extended Competence**

(3) (a) Notwithstanding the provisions of sub-article (1)(b), the Attorney General may send for trial by the said court any person charged with a crime punishable with imprisonment for a term exceeding two years but not exceeding twelve years if there is no objection on the part of such person.



Court of Magistrates – As a Court of Criminal Judicature Extended Competence

- In cases where the punishment does not exceed six years imprisonment, and if the consent to proceed in the Court of Magistrates as A Court of Criminal Judicature is given by the Attorney General at the beginning fo the proceedings, the accused can consent that the proceedings are dealt with summarily;

Court of Magistrates – As a Court of Criminal Inquiry

- In cases where the punishment that can be inflicted for the offence is between six and twelve years imprisonment or exceeds the twelve years imprisonment the proceedings have to start in the Court of Magistrates as a Court of Criminal Inquiry.
- In these cases, the Court of Magistrates, has a month to decide whether there is *prima facie* evidence for the accused to be committed for trial. If in the affirmative, the Court will give another date for the continuation of the hearing and proceed to send a copy of the acts electronically to the Attorney General. If there is not enough evidence the Court will proceed to discharge the accused.

Court of Magistrates – As a Court of Criminal Inquiry

- When the Attorney General receives the copy of the acts, he has a month to send a copy of the note of renvoi back to the Court. In this note, the Attorney General would give instructions as to what evidence is to be produced in Court.
- These notes of renvoi would continue until the prosecution would have exhausted the evidence it needed to produce in the case and:
 - (a) If the case carries less than twelve years imprisonment, the Attorney General would issue a note with the articles of law under which he believes the accused can be found guilty.
 - (b) If the case carries more than twelve years imprisonment, the Attorney General would file the Bill of Indictment in the Criminal Court.

Court of Magistrates – As a Court of Criminal Inquiry/As a Court of Criminal Judicature

- When the Attorney General issues the note of renvoi with the articles of the law under which the accused can be found guilty (in cases carrying less than twelve years imprisonment), these would be read out to the accused and his consent would be requested in order for the Court to convert itself from a Court of Criminal Inquiry to a Court of Criminal Judicature.
- If the accused gives his consent, the Court automatically converts itself from a Court of Criminal Inquiry to a Court of Criminal Judicature and the court can then continue with the tenure of the case until final judgment.
- In the case where the accused does not give his consent to be tried by the Court of Magistrates as a Court of Criminal Judicature, the Court would then proceed with sending the copy of the acts to the Attorney General who in turn would proceed to file the bill of indictment in the Criminal Court.

Court of Magistrates – As a Court of Criminal Judicature

- Once the evidence of the prosecution is concluded, the defence would start to produce its evidence, starting with cross-examinations of prosecution's witnesses (if the cross-examination was not already done), continuing with the accused's testimony and any other evidence that the accused would need to produce.
- When the evidence stage is concluded, submissions by the parties would be presented and the Court would then adjourn the case for judgment.
- Once judgment is given, the accused, if found guilty, can ask for the suspension of judgment in order to appeal.
- The accused has to present the appeal within 12 working days, and if he does not, then the judgment would be executed.

Superior Courts

- The Criminal Court
- The Court of Appeal (Inferior Jurisdiction)
- The Court of Appeal (Superior Jurisdiction)

The Criminal Court

- The Criminal Court is composed of 1 Judge.
- However, during trials by jury, the case is heard by the Judge and a jury of nine lay-people.

Criminal Court

- **The Bill of Indictment**
- Once the compilation of evidence is concluded in front of the Court of Magistrates – As a Court of Criminal Inquiry, the Attorney General would present the Bill of Indictment and the list of witnesses and documents in the Criminal Court.
- The acts of the proceedings (court file) which until then would have been in the hands of the Court of Magistrates would then be transferred to the Criminal Court.
- The bill of indictment together with the list of witnesses and the list of documents is notified to the accused, who in turn has to present a note with any preliminary pleas together with the his list of witnesses and documents that he intends to use in the trial. In turn, these please and lists are served upon the Attorney General who has five days to present a note in relation to the admissibility of such evidence.

Criminal Court

- **The First Hearing**
- The first hearing in the Criminal Court is in relation to the preliminary pleas filed by the accused. During the hearing:
 - The bill of indictment is read to the accused;
 - Submissions are made in relation to the pleas;
 - Case is put off for judgment in relation to the preliminary pleas;
- The Court's judgment in relation to the preliminary pleas can be appealed by both the accused and the Attorney General and the time limit for the filing of the appeal is five days. Parties however need to file a note at the time of judgment notifying the court that they intend to appeal.

Criminal Court

- **The Trial By Jury**
- The appointment for the trial by jury must be not less than 20 days from the date when the Court issues the appointment decree.
- In cases where the punishment is not life imprisonment and in drug related cases which carry lifetime imprisonment, the accused can within ten days from when he is notified with the appointment for trial, present a note informing the Court that there is no need for the appointment of a jury in his case and the case can be heard by the Judge presiding.
- The accused, Attorney General and all the witnesses are summoned by the Court to attend for the trial.

Criminal Court

- **On the day of the Trial**
- Once the trial starts the accused is kept under arrest.
- The trial starts with the reading of the bill of indictment to the accused to which he is asked to answer whether he is guilty or not.
 - If the accused pleads guilty
 - The Court would warn him of the consequences of a guilty plea and give him additional time to consider his plea.
 - If the Accused persists with his guilty plea, oral submissions in relation to punishment are made.
 - Judgment is given.

Criminal Court

- **On the day of the Trial**
- If the accused pleads not guilty, the jurors are called into the hall and a foreman and eight jurors are chosen randomly to participate in the trial.
- The bill of indictment is read to the jurors, they are administered the oath and are informed that the accused has pleaded not guilty.
- It is important to note that during the trial by jury, the jurors decide on questions of fact and the judge decides on legal matters.

Criminal Court

- **The Prosecution**
- During the trial by jury the prosecution is vested in the Attorney General.
- At the start of the trial, the Attorney General introduces the case to the jury by giving a description of the offences and the facts case to the jury, a summary of the evidence he would be presenting and would request the jury to find the accused guilty according to the bill of indictment.
- The witnesses for the prosecution are:
 - Examined by the Attorney General;
 - Cross Examined by the Accused,
 - Re-examined by the Attorney General
 - Re-cross examined by the accused;
 - The Jurors and the Court can also ask questions to the witness.

Criminal Court

- **The Defence**
- The accused can testify if he so desires;
- The defence would then address the jury.
- Witnesses for the defence would then be heard.

Criminal Court

- **The Prosecution**
 - At this time the prosecution would have time to reply to the defence of the accused.
- **The Accused**
 - At this point the accused would have time to reply to the prosecution's address as the last word is that of the defendant.
- **The Court**
 - The Court would then address the jury on the case and guide them on how to decide on the various counts on the bill of indictment.

Criminal Court

- **The Jury**
 - After the presiding judge concludes his address the jury retires to consider it's verdict.
 - The votes of two thirds of the jury are required for a legal verdict (6-3).
 - During deliberation, the deputy registrar of the Criminal Court is the only means of communication between the Jury and the Court.

Criminal Court

- **The Verdict**
 - Once the jury reaches its verdict, it informs the Deputy Registrar that it has done, who in turn informs the Judge. Everyone reconvenes and the verdict is read out.
 - Once the verdict is declared legal, it is:
 - Registered in the acts of the proceedings;
 - The Jury is thanked and are asked to leave the Courtroom.

Criminal Court

- **Judgment**
- In the case where the accused is acquitted by the jury, he is immediately released.
- In the case where the accused is found guilty, oral submissions with regards to punishment are made by both the prosecution and defence and the Court puts off the case for judgment.
- Both the accused and the Attorney General can appeal from the Criminal Court's judgment. However, unlike in the case of the Court of Magistrates, there is no suspension from the execution of the judgment, hence, the judgment is executed there and then.

Criminal Court

- **Jurors**
- During the month of August of every year, a provisional list of jurors is compiled.. This list would constitute the list of foremen and ordinary jurors for the next year.
- The foreman of the jury, would be jurors that would have already served as ordinary jurors and would have been seen as fit for the role of foreman by the deputy registrar of the Criminal Court.
- The list is compiled by a Board composed of a Magistrate, the Commissioner of Police or his representative, the Attorney General or his representative, the President of the Chamber of Advocates, the President of the Chamber of Legal Procurators and the Registrar for Criminal Courts and Tribunals.
- Within fifteen days from the publication of the said list, persons who do not wish to be in the list for jurors may apply to the Court to be exempted, however the reason for exemption must be in line with art. 602 of the Criminal Code.
- Every month, a list with a number of jurors, depending on the amount of trials by jury for that month is published on the government gazette and would subsequently be summoned to appear in Court on the day of the trial.

Criminal Court

- **Remitted Acts**
- When the Court of Magistrates would have sent an electronic copy of the acts of the proceedings to the Attorney General, it would not be competent to entertain any request made to it and such requests are to be made to the Criminal Court.

Court of Criminal Appeal

- **Composition**

- Superior – Chief Justice together with another two judges.
 - Decides on appeals from judgments of the Criminal Court
- Inferior – One Judge
 - Decides on appeals from judgments of the Court of Magistrates