

The Court of Revision of Notarial Acts

An analysis of Chapter 55 of the Laws of Malta



Lecturer: Avv. Maria Ruth Ciantar

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**Undergraduate Certificate in Notarial Law
Fundamentals for Office Assistants**

Learning Outcomes

- Chapter 55 of the Laws of Malta – A deep analysis of the legal framework governing the Court of Revision of Notarial Acts.
- The understanding of this court's role and functions.
- The system of overseeing and reviewing notarial acts by the Court of Revision of Notarial Acts.

Chapter 55 of the Laws of Malta

**A deep analysis of the legal framework
governing the Court of Revision of Notarial
Acts**



Powers of the notary

- Notaries are public officers. They are charged to receive acts *inter vivos* and wills, and to attribute public faith thereto; they shall be responsible for their custody and shall give out copies and extracts of or from such acts or wills.
- Notaries are appointed for life by the President of Malta by a notice published in the Gazette, and may exercise their functions in any part of Malta.
- But what more ??



Further powers of the notary

- (a) to sign applications or other acts relating to matters cognizable by a court of voluntary jurisdiction;
- (b) to receive on oath "acts of notoriety" in civil and commercial matters, and dying declarations;
- (c) to administer oaths to experts or referees or translators or other persons in connection with any extra-judicial report or reference or translation of any act or document or with any declaration relating to capitals, stocks and shares and relative coupons, when the parties desire to have such report, reference, translation or declaration verified on oath;
- (d) to authenticate signatures in private writings, or the mark of any person who is unable or does not know how to sign, affixed to any such writing by way of approval of the contents thereof in the presence of two qualified witnesses, after such contents have been explained to the parties by the notary;
- (e) to give out on the demand of any person certificates in proof of the life or existence of such person;
- (f) to draw up protests for non-acceptance or non-payment of bills of exchange or promissory notes, for money or goods;



Further powers of the notary ... cont'd

- (g) to give out certificates attesting the accuracy of copies of or extracts from books or documents produced by the parties, as compared with the originals of such books or documents;
- (h) to give out certificates attesting the faithful translation of acts or documents from one language into another provided both languages are known by the notary;
- (i) to act as mediators;
- (j) ex officio to act as Commissioners for Oaths for the purposes of the Commissioners for Oaths Ordinance;
- (k) to issue a European Certificate of Succession;
- (l) generally, to exercise such other powers as are assigned to them by law



What else ? Notaries are empowered to :

- Draft private writings containing agreements that purport to create legal rights and obligations between third parties.
- Examine title to immovable property.
- Give advice on any of the functions and powers vested in them by Chapter 55 , whether exclusively or otherwise, under any law or regulation, and in general, on anything relating to the proper discharge of their obligations or engagement, and this notwithstanding anything that may be stipulated under any other law.



Who cannot be a Notary?

- Any person if
 - (a) he holds the warrant of advocate or legal procurator;
 - (b) he is a bank manager;
 - (c) he is an estate agent or similar broker;
 - (d) he is a partner in a commercial partnership or a director or shareholder in a limited liability company whose principal service is estate agency.
- Exception:
 - The President of Malta may authorize such person to practise as a notary on his surrendering the said warrant or on his ceasing to be such manager, estate agent, broker, partner, director or shareholder.



The Notary .. Fined ??!!

- Any person who, not being one whose name has appeared in the Gazette, assumes the designation of Notary or in any manner purports to be entitled to practise the profession of a Notary Public in Malta, shall be guilty of an offence under Chapter 55 and shall, on conviction, be liable to a fine (multa) of not less than one thousand euro (€1,000) but not more than five thousand euro (€5,000), and in respect of a second or subsequent conviction to imprisonment for a term not exceeding three months or to both such fine and imprisonment.



Publication on Government websites of an annual list of practising notaries, keepers of acts and depositaries

- 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.

No person shall be appointed as a notary, unless –

- (a) he is a citizen of Malta or of a Member State of the European Union or of a State of the European Economic Area.
- (b) he is of good conduct and good character;
- (c) he has obtained the academic degree of Doctor of Law (LL.D.) in accordance with the provisions of the Statute, Regulations and Bye-Laws of the UoM, or such other qualification at masters level as the Minister, or a comparable degree from such other competent authority in accordance with the principles of mutual recognition of qualifications, after having read law in Malta or in a Member State;
- (d) he has been a trainee at the office of a notary for a continuous period of not less than two years prior to the date when the qualifying examination.
- e) he is fully conversant with written and spoken Maltese and English; and
- (f) he has passed the qualifying examination.
- Provided that no person shall be allowed to sit for the qualifying examination more than **three times**.

A notary shall cease from exercising his functions:

- (a) if he accepts a government employment, or is in full-time employment, or else if he exercises a profession or assumes any office incompatible with the office of notary;
- Provided that a notary who accepts an appointment to act as Chief Notary to (with exceptions);
- b) if he is permanently absent from Malta for a continuous period **exceeding five years** or fails to publish any act for a period of seven consecutive years preceding the current basis year of review, to be ascertained annually, from the basis year of review 2021;
- (c) if he is interdicted under the provisions of the Criminal Code;
- (d) if he resigns his office and presents his resignation in writing to the President of Malta provided that the Notary may indicate that his resignation is temporary;
- (e) if he is removed from his office by Deprivation of office (articles 138 and 139 of Chapter 55);
- (f) if he is removed from his office by the President of Malta following a sentence by any competent tribunal for theft, fraud or any crime against public faith;
- (g) if he is incapacitated by the President of Malta with the advice of the Board, on account of illness, blindness, deafness or other cause which renders the notary unfit for the performance of his duties;
- (h) if he assumes an appointment as a Government Minister or Parliamentary Secretary, provided that in such cases said cessation shall be deemed to be temporary, and the said Notary shall immediately be rehabilitated upon cessation of his duties as Minister or Parliamentary Secretary, upon a notice to this effect appearing in the Gazette.

Cessation or disqualification or suspension to be published in Gazette

- The cessation, incapacitation or suspension from the exercise of notarial duties in any of the cases prescribed by law, and the rehabilitation for the exercise of such duties shall be published without delay in the Gazette by means of a notice to that effect.

Keepers of notarial acts

- Any notary to whom the Court of Revision of Notarial Acts entrusts the custody of the deeds and registers of any deceased notary or of any notary who has ceased to exercise his functions in any of the cases laid down in this Act, for the purpose of taking due care thereof, of allowing them to be inspected and read, and of giving out copies and extracts of or from the same as provided in Chapter 55 or issue a declaration in terms of the same law, is said to be a keeper of notarial acts.



Notaries delegate

- Notaries delegate are those whom the said court appoints for the temporary custody of the deeds and registers of a notary during his absence from Malta, or of a notary who is unable to exercise his functions on account of illness, temporary suspension, incapacitation or interdiction or of any other temporary impediment, and for giving out copies and extracts of or from such deeds, or issue the declaration in terms of Chapter 55, or merely for giving out copies or extracts of or from the deeds and registers or issue the said declaration in cases where the notary has, without just cause, refused to give out such copies or extracts or issue such declarations.

Appointment of Notary Delegates and Keepers

- In circumstances where a notary is unable to fulfill their duties due to incapacitation, resignation, or other reasons, the court appoints a notary delegate or keeper. This ensures the continuity and integrity of notarial services and the safeguarding of public interests

The system of overseeing and reviewing notarial acts by the Court of Revision of Notarial Acts

- Every notary must with all due care and diligence keep in a safe place the acts received by him with the relative annexes until he shall have deposited the same in the Archives.
- The notary shall bind in volumes, in chronological order, all the acts received by him in the course of a year, affixing on the margin of each act a progressive number; each annexe shall have a distinguishing alphabetical letter.



Custody and safe keeping of acts. Important formalities

- All the written pages of the said acts received in the course of a year and of the annexes thereto shall bear a progressive number:
 - Provided that where any of the written pages or annexes bears a similar progressive number, the notary shall either rectify the error and initial the correction or add to the page number a distinguishing alphabetical letter which he shall initial.
 - In the latter case, he shall at the end of the volume make a signed declaration referring to the pages where such letters have been added and shall state that he has done so to avoid duplication in the volume's pagination.



Custody and safe keeping of acts. Important formalities ... cont'd

- Public wills, however, shall be bound in separate volumes, and those received in the course of a year shall likewise bear in the margin of each a progressive number, and all their written pages and annexes shall also bear a progressive number.
- The volumes of public wills shall be kept separate from the other volumes, and under lock and key.
- Both in the minute-book and in the register, a blank leaf cancelled on either side by two transversal lines must be left between the end of one public will and the beginning of another.



Custody and safe keeping of acts. Important formalities ... cont'd

- a) Both wills and acts inter vivos shall be numbered within twenty-four hours of the execution thereof.
- (b) The numbering of the written pages and annexes, if any, shall be made within twenty-four hours of the execution of a will, and within thirty days in the case of any other act.
- The notary must, within twenty-four hours of the execution of each act, write the title thereof in the margin.



Blank pages to be crossed

- It shall not be lawful to tear out any unwritten pages or part of any unwritten page of any act or of any annexe thereto.
- On every such unwritten page or part thereof between one act and another the notary must, within twenty-four hours of the execution of the act, draw two transversal lines across the whole length of the unwritten space.

Registration of acts

- The notary must register each act within three months from the date of the publication thereof:
 - he must also register the annexes thereto even when in the act it is stated that the same are annexed for preservation only.
- The registration is made by transcribing the act and annexes on other pages, with the number and title of the act, and with the references mentioned in the law, placing in their proper places all the words of the act without distinguishing any variation made therein or reproducing the words cancelled.
- The notary shall make a signed declaration at the end of each volume, that he has collated the register with the relative original acts.
- No erasure shall be made and there shall be no cancellation or addition of more than fifty words in or to any one act in the register:
 - Provided that where any words are cancelled and substituted by any one or more words, account shall only be taken of the number of words cancelled or words added in substitution thereof, whichever is the greater.



The mode in which the original acts are to be written

- The provisions of article 30 as to the mode in which the original acts are to be written, and any variation, addition or cancellation is to be made, shall also apply to the registration of the acts, and any variation, addition made in the original act as provided in that article shall in the registration of the act be copied in its proper place in the body of the act:
 - Provided that no single volume shall be partly handwritten and partly typewritten or printed, except that where any part of the original, or any annexe attached thereto, is printed, a facsimile of the same may be used in the registration thereof:
 - Provided further that cancellations and additions may be hand-written notwithstanding that the register is typewritten or printed.



Wills to be separately registered

- The registers of public wills received by the notary during a year shall be kept separate from the registers of the acts *inter vivos* received during the same year, and shall be bound in separate volumes.



Numbering of registers

- The said registers shall be numbered within one month from the last day of the time prescribed for the registration.
- Such numbering shall begin, both for the registers of wills and for the registers of acts *inter vivos*, from the first page of the respective first act and shall continue to the last page of the last act received during the year.



The notary is the owner of his registers

- Every notary is the owner of the registers of the acts received by him and of their respective indexes.
- He may dispose of the said registers and respective indexes as a whole in favour of any person by a public deed or by will.
- The original acts, registers and indexes, shall not be subject to any precautionary or executive warrant and may not be sold by judicial auction.

Volumes not to contain more than 350 pages

- No volume of the original acts or of the registers shall contain more than **three hundred and fifty pages**:
 - Provided that where any single act is contained in more than three hundred and fifty pages, the original or register of such act may be contained in a separate volume containing that sole act, and in such case such volume may consist of more than three hundred and fifty pages.



Indexes

- Every notary must keep two alphabetical indexes, one of the deeds *inter vivos*, and the other of wills.
- The said indexes shall be formed in the alphabetical order of the surnames of the parties, and every act shall be entered under the surname of each of the parties thereto.
- Such indexes shall contain the name and surname of each of the parties, the nature of the act, the progressive number thereof.
- The notary must preserve and take care of the said registers and indexes, during his lifetime, with the same diligence as the original acts



The understanding of this court's role and functions

- The **Court of Revision of Notarial Acts** in Malta plays a crucial role in overseeing and regulating notarial work to ensure compliance with legal and ethical standards. Its primary functions include:
 1. Supervision of Notarial Acts – The court reviews notarial deeds, wills, and other documents to ensure they are properly drafted and legally sound.
 2. Disciplinary Oversight – It has the authority to investigate complaints against notaries and take disciplinary action in cases of professional misconduct.
 3. Audit and Inspection – The court conducts regular audits of notarial records and registers to maintain integrity and prevent fraud.
 4. Legal Interpretation – It provides guidance and rulings on matters related to notarial law and practice in Malta.
 5. Protection of Public Interest – By ensuring the authenticity and legality of notarial acts, the court helps protect individuals and businesses relying on such documents.



The Court of Revision of Notarial Acts

- The **Court of Revision of Notarial Acts** in Malta is a judicial body established under the **Notarial Profession and Notarial Archives Act**, encapsulated in Chapter 55 of the Laws of Malta.
- This court is pivotal in supervising and regulating notarial practices to ensure adherence to legal standards and the protection of public interests.



1. Supervision and Regulation of Notarial Acts

- Notaries in Malta are entrusted with drafting legally binding documents, including contracts, wills, and public deeds. To safeguard the integrity of these documents, the Court of Revision:
- **Ensures compliance** with Maltese law and notarial best practices.
- **Reviews and verifies** the proper execution and registration of notarial deeds.
- **Prevents fraudulent or improper practices** in the preparation of notarial acts.



Key Notarial Acts Under Supervision:

- Sales and transfers of property
- Contracts and agreements
- Wills and inheritance documents
- Powers of attorney
- Loan and mortgage agreements



2. Disciplinary Oversight and Notarial Conduct

- The court has **disciplinary authority** over notaries who fail to uphold their professional obligations. This includes:
- Investigating complaints and misconduct allegations against notaries.
- Issuing warnings, fines, or penalties where necessary.
- Suspending or revoking a notary's warrant in cases of serious malpractice.



Examples of Misconduct Monitored by the Court:

- Failure to properly register notarial deeds
- Unethical conduct, such as conflict of interest
- Forgery or falsification of documents
- Misuse of funds entrusted to the notary (can be also heard by the Civil Court)
- Negligence or failure to perform duties properly
- By holding notaries accountable, the court ensures the credibility and reliability of notarial services.



3. Audit and Inspection of Notarial Records

- To maintain transparency and prevent fraud, the Court of Revision has the power to **audit and inspect** all records kept by notaries. These inspections include:
- Examining **notarial registers** to verify accuracy and completeness.
- Checking for **irregularities** in the handling of documents.
- Ensuring that **wills and other sensitive records** are securely stored.
- Notaries are legally required to maintain detailed and accurate records, which must be periodically submitted to the court for review. This **prevents document tampering, fraud, and illegal transactions.**



4. Interpretation and Enforcement of Notarial Law

- Since the legal framework surrounding notarial work can be complex, the Court of Revision also acts as an **advisory and enforcement body**. It:
- Interprets **laws, regulations, and ethical standards** related to notarial acts.
- Issues **binding rulings** on disputes concerning the validity of notarial documents.
- Updates **notarial practices** in accordance with legal developments in Malta.
- This function ensures that both **notaries and the public** operate within a well-defined and consistent legal system



5. Safeguarding Public Interest and Trust

- The **primary purpose** of the Court of Revision is to **protect the public** by ensuring that notarial acts are **authentic, transparent, and legally valid**. Since notaries play a crucial role in transactions involving property, inheritance, and business agreements, the court ensures that:
- Individuals and businesses **can rely on notarial documents** without fear of fraud.
- The general public has **legal recourse** in case of disputes related to notarial acts.
- Notarial work contributes to a **well-functioning legal and economic system** in Malta.



Establishment and Composition

- As delineated in Article 110 of Chapter 55, the Court of Revision of Notarial Acts is constituted to oversee the notarial profession.
- The court's composition and specific functions are detailed within this legislative framework, ensuring a structured approach to notarial supervision.
- **Recent Legislative Amendments**
 - The Notarial Profession and Notarial Archives Act has undergone amendments to enhance the regulatory framework governing notarial practices. Notably, Act No. LXI of 2020 introduced changes aimed at promoting gender equality in the drafting of public deeds and other related provisions.



Inspection of acts *inter vivos*

- The originals and the registers of acts *inter vivos* shall be open to the inspection of any person.
- Public wills and the registers shall not be accessible, during the life of the testator, except to the testator himself, or to a person holding a special authority from him, which authority shall be duly authenticated and shall be kept by the notary in a register for the purpose, where the authority shall be numbered.
- A reference to the number of the authority shall be made on the will or the register.
- The Notary who had drawn up a will *unica charta* or his keeper or delegate Notary shall, after the death of one of the testators and without the need of any further authorisation, have the authority to issue to any person an extract from such will which shall contain all the testamentary dispositions of the deceased testator.

Accessibility of deeds of trusts

- All deeds of trusts done by notarial deed, except any act of settlement under trust or unilateral declaration of a trust of immovable property or real rights over such property, and any vesting or divesting of a trustee in respect of such property or rights, shall not be accessible to any person other than the settlor, the trustee or such other person as may be permitted access by the terms of the trusts, the applicable law or under authority of any court.
- Notarial deeds creating purpose foundations shall be accessible to any person requesting to have access thereto even if the purpose is not exclusively social or public benefit.





Questions ???



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