

The Court of Revision of Notarial Acts

The notary, his roles and responsibilities

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

Learning Outcomes

- The understanding that as members of a professional body, notaries have an obligation to render their services with willingness and objectivity.
- What are the powers and responsibilities of a notary.
- When can they perform their duties.
- How to foster a spirit of unity among notaries.



When is the notary bound to give his service ?

- The notary may refuse his services or terminate any engagement for his services at his discretion without justification, and will not be required to consider the effect or consequence of such refusal.
- Without prejudice, the notary shall not be bound to give his services or to finalise any engagement, if subsequent to the acceptance of the engagement:
 - (a) the parties fail to deposit with him the amount of duties, taxes, fees and expenses in respect of any service or deed, either at the moment of publication of the deed or on the execution of the service requested; or
 - (b) his services are required on a public holiday or between 9.00 p.m. of one day and 8.00 a.m. of the following day.
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- Exceptions to the cases of a will and the in the case of a sea protest.



It shall not be lawful for any notary to receive any act

- (a) which is expressly prohibited by law or manifestly contrary to good morals or to public policy;
- (b) if any of the parties thereto is the notary's spouse or is related to the notary by consanguinity or affinity in the direct line in any degree or in the collateral line up to the **third degree** inclusively;
- (c) which being a will, contains any disposition in favour of the receiving notary, or any of the persons who is related to the notary by consanguinity or affinity in the direct line in any degree or in the collateral line up to the **third degree** inclusively, unless such disposition is allowed by law or is contained in a secret will not written by the notary or by any of the persons already mentioned in paragraph (b);, and delivered to him sealed by the testator:
 - Provided that the appointment of the notary, receiving a will wherein a testamentary trust is created, as trustee or protector shall not be interpreted to be a disposition in favour of the receiving notary;
- ii), being an inter vivos act, contains any provision concerning the receiving notary or any of the persons already referred to in paragraph (b);, unless such provision is required or allowed by law;



It shall not be lawful for any notary to receive any act ... cont'd

- (d) if any of the parties thereto is by the competent authority restrained from entering into contracts or disposing of his property, provided such act is affected by the terms of the inhibition, notified to the notary;
- (e) if any of the parties thereto is represented by an agent or other representative who is any of the persons referred to in paragraph (b):
 - Provided that the provisions of this paragraph shall not apply to a physical person's mandatary who declares that he is any of the persons referred to in paragraph(b) and none of the other appearers on the act objects to the mandatary appearing thereon in such a capacity, and provided that the notary records therein the relevant facts;
- (f) if any of the parties thereto is a commercial partnership, other than a public company
 - -(i) having at the time a director, partner or shareholder who is the notary or any of the persons referred to in paragraph (b), or
 - (ii) whose legal or judicial representation is vested in the notary or any of the said persons;



It shall not be lawful for any notary to receive any act ... cont'd

- (g) if any of the parties thereto is a civil partnership, foundation or association or a legal entity, other than a commercial partnership, and it has at the time a partner, founder, associate or a member of its governing or administrative body who is the notary or any of the persons referred to in paragraph (b);
- (h) being a notarial trust deed by virtue of which a trustee is appointed, saving the provisions of the Trusts and Trustees Act, where:
 - (i) any of the persons mentioned in paragraph (b) is the trustee or protector of the trust; or
 - (ii) the notary or any of the persons mentioned in paragraph (b) is a determined or determinable beneficiary of the trust;
- Provided that nothing in this paragraph shall prohibit the receiving notary from being nominated as a trustee or protector on a notarial trust deed;



It shall not be lawful for any notary to receive any act ... cont'd

- (i) if the notary or any of the persons referred to in paragraph (b) appears on the act as a trustee or protector acting in terms of a trust;
- (j) if any of the parties appears in his capacity as trustee or protector of a trust and the notary or any of the persons referred to in paragraph (b) is a determined or determinable beneficiary of such trust, unless the notary is not aware and not made aware, due to trust confidentiality, that he or the persons referred to in paragraph (b) is a determined or determinable beneficiary of such trust: (with exceptions)
- (k) which, being a contract of purchase or sale of immovable property, is paid in cash in whole or in part by or on behalf of the parties to the contract, where the sum of such payment amounts to ten thousand euro (€10,000) or more, or its equivalent in any other currency. (with exceptions)



Deposit Accounts

- The notary shall inform the Notarial Council in the manner and within the time prescribed of the opening and closing of the accounts.
- The notary shall keep a register in the manner prescribed wherein he shall list all the monies deposited in and withdrawn from the accounts, and he shall note therein all other information as may be prescribed.
- The notary shall hold monies deposited in such accounts in the name of the persons entitled thereto, and he shall be obliged to pay the equivalent of such monies to such persons as and when the monies become due. Any interest which may accrue in such accounts shall appertain solely to the notary as his remuneration for the service he gives in holding such deposits and operating such accounts.



Notarial Deposit Accounts

- Every notary, (with exception to Notaries to Government, Assistant Notaries to Government and Notaries Public with the Lands Authority) shall open an account with a local commercial bank, to be designated a "Notarial Deposit Account", in which he shall deposit all monies deposited with him in his professional capacity.
- where the notary closes such account he shall, unless he has already done so, open another one with the same or a different local bank in such a way that he shall always have one such account open:
 - Provided further that the notary may open more than one such account.



When an act is null

- (1) A notarial act is null:
 - (a) if it has been received by a notary before his name has appeared in the Gazette in terms of article 5(1); (appointment by the President of Malta)
 - (b) if it has been received by a notary who has ceased to exercise his functions, or who has been suspended or incapacitated and after such cessation, suspension or incapacitation has been published in the Gazette;
 - (c) if it is undated;
 - (d) if it has been received in contravention of any of the provisions of article 12(a), (c)(i), (c)(ii), and (d): (referring to Acts which notary may not receive.)
 - Provided that if the contravention refers only to one or more parts of the act, only such part or parts shall be null:



A notarial act is annullable

- : (a) if it has been received in contravention of any of the provisions of article 12(b), (e), (f), (g), (h), (i) and (j); (referring to Acts which notary may not receive.)
- (b) if the requirements of articles 36, 37, and 38 have not been complied with; (relating to the interpreters, deaf and dumb persons)
- (c) if the requirements of article 25(6) have not been complied with;
- (d) if the notary has not read the act to the appearers, saving the provisions of article 25(6);
- (e) if the notary has not explained the act to the appearers;
- (f) if the notary has not read and explained the act to the appearers in the presence of the witnesses, when the presence of witnesses is required.



Note in margin of original and register where an act is declared to be null or is annulled

- In the event of an act being declared null or is annulled by a judgment of the competent judicial authority, which has become *res judicata*, the notary by whom the act was received shall, after the order contained in such judgment has been communicated to him by the Registrar of the Court, immediately enter a reference thereto in the margin of the original of the act and of the relative register:
 - Provided that where the original of the act is deposited in the Archives, the communication shall also be made to the Archivist who, with regard to such act, shall have the same duty imposed on the notary.

Acts whereof a note is to be delivered to the Director of the Public Registry

- Every notary must, within fifteen working days from the date of the act deliver to the Director of the Public Registry a note of –
- (a) any act *inter vivos* transferring the ownership of immovable property or other real rights over such property;
- (b) any act *inter vivos* creating or varying any praedial easement or any right of usufruct, use or habitation relating to immovable property, or containing any renunciation of such easement or right;
- (c) any act of emphyteusis or sub-emphyteusis or of reduction or redemption of ground-rent, or of renunciation or rescission relating thereto;
- (d) any public will or any publication of a secret will;
- (e) any public deed of cohabitation;
- (f) any marriage contract, settlement of dowry, variation of or counter-declaration respecting any marriage contract, separation of property between spouses, or cessation of the community of acquests;



Acts whereof a note is to be delivered to the Director of the Public Registry ... cont'd

- (g) any act creating an annuity, in perpetuity or for a time as a real burden on immovable property and any act notifying the termination thereof;
- (h) any act imposing any burden, in perpetuity or for a time, on immovable property;
- (i) any act of compromise affecting immovable property or real rights over such property;
- (j) any act of partition of immovables or any declaration affecting the ownership of immovables or any rights over immovables;
- (k) any act of assignment of hereditary rights;
- (l) any act of renunciation made by any person on taking religious vows;
- (m) any act whereby a foundation is established or terminated and any act whereby a new endowment, other than an endowment under a scheme which is registered under the Second Schedule of the Civil Code, is granted to a foundation;
- (n) any notarial corrective act, any subsequent corrective act and any act of rebuttal in terms of article 45A;
- (o) any act to renounce to an inheritance;
- (p) any application for a European Certificate of Succession and every issued European Certificate of Succession.



Contents of note

- The said note must contain the date and nature of the act, the designation of the parties, a precise designation of the things forming the subject-matter of the act, and, in the case of an act in which the value can be determined, an indication of such value.
- In the case of a public will or of the publication of a secret will, the note shall only contain the date and nature of the act and the designation of the testator.
- The said note shall be signed by the notary who received the act or who is the keeper thereof.
- It shall not be lawful to draw up two or more notes on one sheet.



The understanding that as members of a professional body, notaries have an obligation to render their services with willingness and objectivity

- Notaries, as members of a regulated **professional body**, have a fundamental **legal and ethical obligation** to render their services with **willingness, impartiality, and objectivity**, ensuring that they act in the best interest of the public while upholding the integrity of the notarial profession.
- The **Notarial Profession and Notarial Archives Act** establishes the **duties and responsibilities** of notaries, emphasizing that their role is not merely administrative but also **quasi-judicial**, requiring them to exercise **independent judgment, neutrality, and diligence** when drafting and authenticating notarial acts. Notaries must serve the public with **fairness and without discrimination**, providing their services to all individuals who seek their assistance, regardless of personal beliefs, financial status, or social background.
- They are legally bound to **avoid conflicts of interest**, ensuring that their professional decisions are guided solely by the law and the principles of justice rather than any personal or external influences.



Execution of duties

- **Chapter 55** mandates that notaries must execute their duties with **integrity, accuracy, and full compliance** with legal requirements, ensuring that all acts they authenticate are properly recorded, archived, and adhere to statutory provisions.
- They must ensure that parties fully understand the **legal implications** of the contracts, wills, and other notarial acts they sign, promoting transparency and preventing any fraudulent or misleading transactions.
- In doing so, they are expected to provide **clear, objective legal advice**, assisting clients without exerting undue influence or personal bias.
- Additionally, the **Notarial Council**, established under Chapter 55, oversees the **ethical conduct and professional discipline** of notaries, ensuring that they fulfill their duties responsibly and take corrective action in cases of misconduct or negligence.



Professional service

- A crucial aspect of their **professional obligation** is the requirement to act with **willingness**, meaning that notaries must not unreasonably refuse to provide their services when lawfully requested, unless justified by valid legal grounds, such as a conflict of interest or an inability to act impartially.
- They must also **exercise due diligence** in verifying the authenticity of documents, confirming the identities of signatories, and ensuring that all parties act with **free will and informed consent**.
- Moreover, notaries are expected to maintain **continuous professional development**, staying updated with changes in laws and regulations to ensure that their services remain legally sound and effective.



Credibility and legal validity

- Through their **commitment to objectivity, impartiality, and public service**, notaries play a vital role in **safeguarding legal certainty**, protecting the **legitimate interests of individuals**, and ensuring that all notarial acts are **executed in accordance with the law**.
- Their adherence to these principles under Chapter 55 not only reinforces **trust in the profession** but also ensures the **credibility and legal validity** of the documents they authenticate, ultimately contributing to the **proper administration of justice** in Malta.



What are the powers and responsibilities of a notary

- **Chapter 55 of the Laws of Malta, specifically the Notarial Profession and Notarial Archives Act**, notaries are entrusted with extensive **powers and responsibilities** that ensure the proper execution, authentication, and preservation of public acts and legal instruments.
- Their role is of a **quasi-judicial nature**, requiring them to act with **independence, impartiality, and diligence** to safeguard legal certainty and protect the rights of individuals. Their **powers and responsibilities** can be categorized into several key areas



Authentication and Drafting of Notarial Acts

- One of the fundamental powers of a notary is to **receive, draft, and authenticate public acts and private agreements** that require legal formality, such as **contracts, wills, powers of attorney, property transactions, and matrimonial agreements**.
- They must ensure that these acts comply with **legal requirements**, are properly **executed and signed**, and are recorded in accordance with the law. Notaries also have the power to **certify signatures, administer oaths, and attest declarations**, ensuring the **veracity and validity** of documents.



Ensuring Legal Compliance and Objectivity

- Notaries are legally bound to **act with objectivity and impartiality**, ensuring that all parties involved in a transaction **fully understand the legal implications** of the acts they are signing.
- They must verify that all **statutory requirements** are met, including confirming the **identity and legal capacity** of the signatories, ensuring **free will and informed consent**, and preventing **fraud, coercion, or undue influence**.
- Under Chapter 55, notaries are **prohibited from engaging in conflicts of interest** and must ensure that they do not **favour one party over another**.



Custody and Preservation of Notarial Acts

- Notaries have a duty to **safeguard, store, and archive** their acts in compliance with **Chapter 55** and the **Notarial Archives Act**.
- They must ensure that all public deeds are **properly registered and indexed** and that copies of important documents are submitted to the **Notarial Archives** within the prescribed legal timeframes.
- Any failure to do so may result in **disciplinary action, fines, or liability**.



Powers of Verification and Refusal

- Notaries have the power to **refuse to authenticate an act** if they believe it does not comply with the law, if there are **legal deficiencies**, or if there is any **doubt regarding the capacity, identity, or consent of the parties involved**. They must act as **gatekeepers of legal integrity**, ensuring that transactions and agreements do not involve **fraud, illegality, or misrepresentation**.



Duty to Act with Due Diligence and Professionalism

- Chapter 55 requires notaries to act with **due diligence, accuracy, and efficiency**, ensuring that acts are drafted **clearly, precisely, and without ambiguity**. They are responsible for ensuring that the content of **contracts, deeds, and wills** aligns with the **true intentions** of the parties involved, preventing disputes or misinterpretations.



Obligation to Report and Cooperate with Authorities

- Notaries are subject to **strict anti-money laundering (AML) and counter-terrorism financing (CFT) regulations** and have a legal obligation to **report suspicious transactions** to the authorities, including the **Financial Intelligence Analysis Unit (FIAU)**.
- They are also required to **cooperate with judicial authorities** in the investigation of fraud or other legal infractions.



Professional Conduct and Disciplinary Oversight

- The **Notarial Council**, established under Chapter 55, oversees the **conduct and discipline** of notaries, ensuring that they adhere to **ethical and professional standards**. Notaries who **fail to fulfill their duties** or engage in **misconduct, negligence, or illegal practices** may face **disciplinary proceedings, suspension, or even revocation of their notarial warrant**.



Keeping Proper Records and Providing Certified Copies

- Notaries are responsible for maintaining **accurate records** of all notarial acts and are authorized to **issue certified true copies** of documents when requested.
- These certified copies carry legal weight and are often required in **court proceedings, public administration, and financial transactions.**



Representation Before Authorities

- Notaries also have the power to **represent parties before certain administrative authorities** in cases where their legal expertise is required, such as property transfers, inheritance matters, and the registration of deeds.
- **Continuous Professional Development-** To ensure their legal knowledge remains current, notaries are required to **engage in continuous professional education**, staying informed about **changes in legislation, case law, and best practices**.



When can they perform their duties

- **Chapter 55 of the Laws of Malta, the Notarial Profession and Notarial Archives Act**, notaries may perform their duties **only when they are legally authorized** and in full compliance with the statutory requirements set out in the law.
- The ability of a notary to exercise their functions is subject to specific **conditions, limitations, and obligations** that ensure the proper administration of notarial acts and the protection of public trust in the profession. The following are the key circumstances under which notaries may perform their duties:



After Being Duly Appointed and Holding a Warrant

- A notary may only perform notarial duties **after obtaining a warrant** issued by the **President of Malta** upon the recommendation of the Minister responsible for notarial affairs. The warrant is granted after the individual meets the **legal, educational, and professional qualifications** outlined in **Chapter 55**, including successfully completing the **necessary legal training, examinations, and practical internship**.
- **When They Have Taken the Oath of Office**
 - Before commencing their functions, notaries are required to take the **oath of office** before the **Court of Appeal**, swearing to uphold the **laws of Malta, act with integrity, and fulfill their duties with diligence and impartiality**. Only after taking this oath can they lawfully authenticate and receive notarial acts.



Within the Limits of Their Jurisdiction and Authority

- Notaries in Malta are authorized to act **within the national territory** and may perform their duties in **any part of Malta**, unless there are specific legal restrictions imposed on them. However, certain notarial acts may require adherence to **special procedural rules** depending on the nature of the transaction and the location of the parties involved.
- **During Their Term of Office and While in Good Standing**
 - Notaries can perform their duties **as long as they hold a valid notarial warrant** and are in good standing with the **Notarial Council** and regulatory authorities. If a notary is **suspended, disbarred, or temporarily prohibited** from practicing due to disciplinary action, failure to comply with professional obligations, or legal proceedings, they are not permitted to perform any notarial functions.



When Acting Impartially and Without Conflict of Interest

- A notary may only perform their duties **when they can act impartially**, without any **personal interest, bias, or conflict of interest** in the transaction. If a notary has a **direct or indirect financial, personal, or familial interest** in a transaction, they must **recuse themselves** and may not authenticate or execute the act.
- **During Official Business Hours and in Accordance with Legal Timeframes**
 - Notaries are generally expected to carry out their duties **during reasonable business hours**, ensuring that notarial services are accessible to the public. Certain acts, such as **the submission of documents to the Notarial Archives, tax authorities, and other regulatory bodies**, must be performed within the **statutory deadlines** set by law. Failure to meet these deadlines may result in **penalties, fines, or disciplinary action**.



When Properly Recording and Registering Notarial Acts

- A notary may only perform their duties when they can properly **record, register, and archive** notarial acts as required under Chapter 55. This includes ensuring that all public acts are **properly signed, witnessed, and submitted to the Notarial Archives** within the prescribed timeframes.
- **When Ensuring Compliance with Anti-Money Laundering and Legal Obligations**
 - Notaries are permitted to perform their duties only when they **comply with all legal and regulatory requirements**, including **anti-money laundering (AML) and counter-terrorism financing (CFT) regulations**. If a notary suspects a transaction involves illicit activity, they have a legal obligation to **refuse to proceed with the act** and report the matter to the **Financial Intelligence Analysis Unit (FIAU)**.
- **When the Act Falls Within the Scope of Their Legal Authority**
 - Notaries may only perform duties that **fall within their legal powers** under **Chapter 55**. They are not authorized to **provide legal representation in court proceedings** or perform duties **reserved for other legal professionals**, such as **judges or advocates**. However, they may give **legal advice** related to the execution of notarial acts.



When Acting in Accordance with Professional Ethics and Standards

- A notary can perform their duties only when they adhere to **professional ethics, codes of conduct, and the rules established by the Notarial Council.**
- Any actions that **violate ethical principles**, such as engaging in **fraud, misrepresentation, or negligence**, can lead to disciplinary action and disqualification from practice.



How to foster a spirit of unity among notaries

- Fostering a **spirit of unity among notaries** under **Chapter 55 of the Laws of Malta, the Notarial Profession and Notarial Archives Act**, is essential to maintaining the **integrity, credibility, and efficiency** of the profession while ensuring that notaries collectively uphold the highest standards of **ethics, professionalism, and public service**.
- As members of a regulated legal profession, notaries must **recognize their shared responsibility** in safeguarding legal certainty and promoting the **smooth administration of justice**. One of the primary ways to cultivate unity is by actively participating in the **Notarial Council**, which serves as the official regulatory and representative body of notaries.
- Through the Council, notaries can engage in **collaborative discussions, training programs, and policy development**, ensuring that all members are aligned in their interpretation and application of the law. Regular meetings, workshops, and legal conferences provide a platform for **open dialogue, exchange of knowledge, and resolution of professional challenges**, strengthening solidarity within the profession.



Mutual respect, cooperation, and collegiality

- Furthermore, notaries should uphold the principles of **mutual respect, cooperation, and collegiality**, avoiding unnecessary competition or conflicts that could undermine the profession's reputation. They must respect one another's work, provide support when needed, and **adhere to ethical guidelines** that discourage unfair practices, such as **under-pricing fees or soliciting clients dishonestly**.
- A spirit of unity is also fostered when notaries collectively advocate for **necessary legal reforms, modernization of notarial procedures, and improvements in public access to notarial services**, ensuring that their profession remains **relevant, progressive, and responsive** to societal needs.
- The **Notarial Archives and its preservation** is another area where unity is crucial, as the proper maintenance and digitization of records require **collaborative efforts** to ensure the safeguarding of historical legal documents for future generations. Additionally, mentoring and guiding new notaries entering the profession fosters a **culture of support and professional development**, ensuring that knowledge and ethical values are passed down effectively. Upholding a **high standard of practice and professional solidarity** also means **assisting colleagues in difficult legal matters, providing constructive feedback, and seeking amicable solutions in case of disputes** rather than engaging in adversarial behavior.
- Moreover, compliance with **anti-money laundering (AML) regulations, data protection laws, and other legal obligations** should be approached as a collective effort, ensuring that all notaries work together to **prevent fraudulent activities, protect the profession from reputational damage, and maintain public trust**. Ultimately, a strong sense of unity among notaries enhances **public confidence in notarial services**, reinforces **the profession's standing within the legal system**, and ensures that all members work towards a **common goal of upholding justice, transparency, and legal certainty**.





Questions ???



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