

Award in Maltese Education Law and Data Privacy Implications in the Education Sector

Lecture Title: **The Acts Regulating Education in Malta**
Part I

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“... today’s schools have to function in a very complex legal environment. There are a wide range of legal issues that influence the lives of teachers ... and administrators. (Fischer)



- **Do not consider these lectures as a substitute for legal advice or union assistance**
- **“Being one’s own lawyer is as sensible as amateur brain surgery...” John Partington.**
- **A framework ... what is important is to be able to see the red flags!**
- **Six areas:**
 - a) **General concepts + Historical background of education and education law and the role of the teacher**
 - b) **The various laws related to Education (e.g. Education Act, Commissioner for Children Act, Teachers Code of Ethics, National Minimum Conditions, School Council Regulations, and a number of Policies.**
 - c) **Academic and Other Freedoms / Teachers’ employment, Contracts and Unions**
 - d) **The three roles of the Teacher (to teach/educate - to take care - to supervise.**
 - e) **Discipline, Child Abuse and Neglect.**
 - f) **Teachers Liability and Standard of Care and Duty.**



History of Maltese Education

1592	—	(Jesuit) College
1397	—	(Cathedral Chapter and Religious Orders)
1769	—	(University of Malta)
1850	—	(Primary Education)
1920's	—	(1st compulsory education)
1944/5	—	(1st full fletched teacher training)
1978	—	(Faculty of Education established)



History of Maltese Education Legislation

- Compulsory Attendance Act, 1924 (12years, then raised to 14 in 1928)
- Compulsory Education Ordinance, 1946 (all children between 6 and 14)
- Education Act, 1974 (grouped all legislation and practices in existence)
- Education Act, 1988
 - (rights and duties of parents, of the state)
 - (School Councils and schools as bodies corporate)
 - (National Minimum Conditions)
 - (Legal basis for Professional Status of Teachers)
 - (Granting of Licenses)
 - (Offence of Employment of Minors)
- Education (Amendment) Act, 2006
 - (Administrative changes – regulatory and operative branches)
 - (Colleges and Principals)
 - (Teachers Council)
- Education Act (2019) and Teaching and Allied Professions Act (2019) [NYIF]



General Concepts:

What is care and custody?

Data Protection – 9 Principles

Court Procedures – Affidavit vs. viva voce

Jurors

Injury / Damage to property

Teachers as Public officers

Absenteeism

Child Welfare – Health Happiness and Well Being

Age and School Leaving

Criminal Law vs. Civil Law (inc. emancipation to commerce)

Degrees of Responsibility

Tort, Willful Negligence, Negligence.

In Loco Parentis

Bonus Paterfamilias

Depending on age and maturity (quality)

Code Napoleon created a presumption vs. teachers.

Vicarious Liability. Culpa Aquiliana. Culpa in Eligendo



What is care and custody?

“3B. (1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who:

(a) are students who are participating in full-time education, training or learning and are under the age of twenty-three;”

F’idejn iż-żewġ ġenituri indaqs u flimkien (1993 Amendments)

Meta hemm digriet tal-qorti

Dritt ta’ Aċċess



Article 57

“(1) Whosoever may be the person to whom the minor children are entrusted, the spouses shall maintain their right to watch over their maintenance and education, and shall still be bound to contribute thereto, according to law.

(2) It shall be in the discretion of the court, according to circumstances, to fix the time, place, and manner in which the spouses shall have access to the children.

(3) It shall be lawful for the court entirely to forbid such access to their minor children if it may be detrimental to the welfare of such minors.”

- Guiding Principle: Paramount Importance to the Interest of the Child
- School to have court ruling

Data Protection – 9 Principles

The controller shall ensure that:

1. Personal data is processed fairly and lawfully;
2. Personal data is always processed in accordance with good practice;
3. Personal data is only collected for specific, explicitly stated and legitimate purposes;
4. Personal data is not processed for any purpose that is incompatible with that for which the information is collected;
5. Personal data that is processed is adequate and relevant in relation to the purposes of the processing;
6. No more personal data is processed than is necessary having regard to the purposes of the processing;
7. Personal data that is processed is correct and, if necessary, up to date;
8. All reasonable measures are taken to complete, correct, block or erase data to the extent that such data is incomplete or incorrect, having regard to the purposes for which they are processed;
9. Personal data is not kept for a period longer than is necessary, having regard to the purposes for which they are processed.



Court Procedures

- Affidavit vs. viva voce
- Jurors
- Injury / Damage to property
- Teachers as Public officers

Age and School Leaving

"compulsory school age" means any age from five (5) years to fifteen (15) years, both inclusive, and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five (5) years and has not attained the age of sixteen (16) years or has not yet completed the last year of secondary school

6. "It shall be the duty of every parent of a minor -(d) to cause the minor to be registered in a school for the first scholastic year and during the period when he is of compulsory school age,..."

Absenteeism

Article 6 “It shall be the duty of every parent of a minor -(e) to ensure that the minor attends school on each scholastic day during all the period of compulsory school age, or up to the end of such further period as the Minister may prescribe by regulations, unless the minor has a good and sufficient cause to be absent from school;

Article 58. (1) No person may employ a minor of compulsory school age or otherwise bound to regularly attend school under the provisions of this Act without the written permission of the Division of Education.

59. (1) Any parent of a minor who -

(a) fails to register that minor in a State school or in a licensed school under this Act for the first scholastic year starting when he is of compulsory school age or fails to ensure that the minor is so registered at all times for every scholastic year during the whole period that the minor is of compulsory school age....”



Article 59 (1) (b) fails to ensure, without a good and sufficient cause, that the minor attends school regularly on each scholastic day during such period that the minor is of compulsory school age and up to the end of the scholastic year during which the minor ceases to be of compulsory school age....



Child Welfare – Health Happiness and Well Being

The following are collectively termed child abuse:

- Child sexual abuse
- Neglect including the failure to take adequate measures to safeguard a child from harm and/or gross negligence in providing for a child's basic needs
- Physical abuse
- Psychological abuse

The Duty to Refer

Minor Protection (Alternative Care) Act – CAP 602

Art. 9 (2)any professional who has knowledge of an act causing or which may cause significant harm on a minor as defined in sub-article (4) or which constitutes a criminal offense on a minor, or has knowledge that a minor is in need of care and protection shall immediately report to the Director (Child Protection) or the Executive Police and no such reporting made in bona fide may constitute a criminal offence

(5) "significant harm" includes abuse, neglect, harassment, ill treatment, exploitation, abandonment, exposure, trafficking, fear of violence and female genital mutilation as defined and provided for in Book First of the Criminal Code. It also includes being a victim of domestic violence as defined and provided for in Gender-based Violence and Domestic Violence Act.

(4) Any professional who fails to take any action including the filing of a report when necessary as mentioned in sub-article (2) shall be guilty of an offence and upon being found guilty shall be subject to imprisonment for a period of not less than three months and not more than nine months, or a to a fine (multa) of not more than five thousand euro (€5,000), or to both such fine and imprisonment



Criminal Law vs. Civil Law (including emancipation to commerce)

Minor vs Over 18

< 9 ;

9 > 14 ;

After 2014 amendment <14

14 > 18 ;

After 2014 amendment <14

> 18.

Different Degrees of Responsibility

Tort, Negligence and Gross Negligence.

Tort: a civil wrong or act, whether intentional or accidental, from which injury occurs to another.

Torts include all negligence cases as well as intentional wrongs which result in harm. Some intentional torts may also be crimes such as assault, fraud, theft, libel.

Negligence: Law speaks of culpable negligence: Article 1033.

“Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom.”

1032. (1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a bonus paterfamilias.

Gross Negligence: carelessness in reckless disregard for the safety or lives of others, which is so great it appears to be a conscious violation of other people's rights to safety. It is more than simple inadvertence, but it is just shy of being intentionally evil.



Bonus Paterfamilias - Depending on age and maturity (quality)

Code Napoleon created a presumption vs. teachers.
We followed the code but not this presumption.

Vicarious Liability (3rd party). Culpa Aquiliana (Tort). Culpa in Eligendo - respondeat superior

Torrente Manuale di Diritto Privato: “differenza netta bejn il-colpa akwiljana u dik kontrattwali”.

“La rilevanza pratica della distinzione tra i due tipi di responsabilit  riguarda innanzitutto l’onere della prova: nella responsabilit  contrattuale all’attore   sufficiente provare il suo credito e la scadenza dell’obbligazione;   il debitore che, se vuole giustificarsi, ha l’onere di dimostrare di non aver potuto adempiere per una causa a lui non imputabile (art. 1218). Nella responsabilit  extracontrattuale, invece,   l’attore che ha l’onere di provare non soltanto che la condotta del convenuto gli ha causato un danno, ma anche che si tratta di un comportamento tenuto con colpa o, peggio, con dolo.”

The In loco Parentis doctrine

“The schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could be no better definition of the duty of a schoolmaster”

Williams vs Eady 1893

“Din il-Qorti taqbel u taċċetta li f’każ ta’ skola hemm obbligu kontrattwali fuq l-awtoritajiet li jieħdu ħsieb it-tfal fdati taħt il-kura tagħhom in loco parentes”

Patrick Bezzina et vs Ministru tal-Edukazzjoni u Rizorsi Umani et 2005

DELEGATUS NON POTEST DELEGARE

Civil Code

1034. Any person having the charge of a minor ... shall be liable for any damage caused by such minor or person of unsound mind, if he fails to exercise the care of a bonus paterfamilias in order to prevent the act.

1035. ..., children under nine years of age , and, unless it is proved that they have acted with a mischievous discretion, children who have not attained the age of fourteen years, shall not be bound to make good the damage caused by them; saving, where competent, any action of the party injured against such persons as may be liable for such damage, under the provisions of the last preceding article.



Some of the Laws related to Education Law

CAP	605	-	Education Act
	S.L. 605.01	-	Fees (Tuition) Regulations
	S.L. 605.02	-	National Minimum Conditions for all Schools Regulations
	S.L. 605.04	-	School Council Regulations
	S.L. 605.05	-	English Language Teaching Council Regulations
	S.L. 605.06	-	Students Maintenance Grants Regulations
	S.L. 605.07	-	National Curriculum Framework Regulations
	S.L. 605.08	-	Registration of Summer Schools as Educational Establishments Regulations
	S.L. 605.09	-	Recruitment, Initial Training and Continuous Professional Development and Protection of Minors in Compulsory Education Regulations
	S.L. 605.10	-	National Skills Council (Establishment) Order
	S.L. 605.11	-	Institute for the Public Services (Establishment) Order

Some of the Laws related to Education Law

CAP	606	-	Teaching and Allied Professions Act (<i>Not yet in force</i>)
CAP	327	-	Education Act
	S.L. 327.02	-	Teachers (Code of Ethics and Practice) Regulations.
	S.L. 327.220	-	Migrant Workers (Child Education) Regulations
	S.L. 327.323	-	Registration of Childcare Facilities as Educational Establishments Regulations
CAP	607	-	Further and Higher Education Act
	S.L. 607.01	-	Malta Qualifications Framework for Lifelong Learning Regulations
	S.L. 607.02	-	Validation of Non-Formal and Informal Learning Regulations
	S.L. 607.03	-	Further and Higher Education (Licensing, Accreditation and Quality Assurance) Regulations

Some of the Laws related to Education Law

CAP	614	-	Cohabitation Act
CAP	602	-	Minor Protection (Alternative Care) Act
	S.L. 602.01	-	Children's House Regulations
CAP	586	-	Data Protection Act
CAP	569(R)	-	Child Protection (Alternative Care) Act Never came in force – Repealed 2019
CAP	9	-	Criminal Code
CAP	16	-	Civil Code



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