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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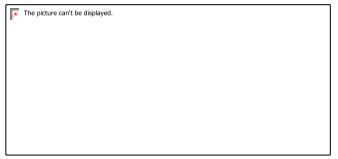

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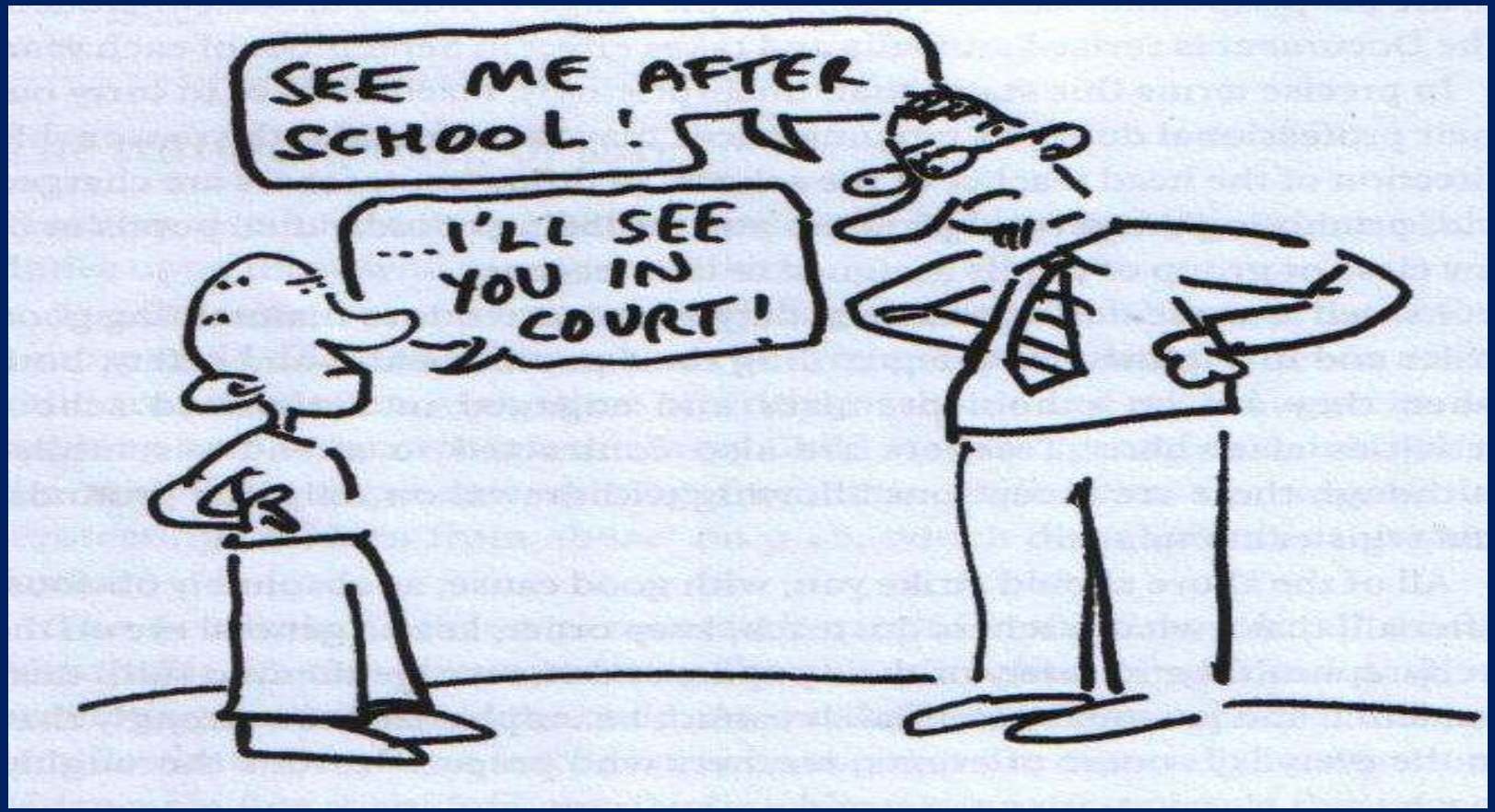
Educational administrators must navigate a myriad of legal considerations in their daily decision-making and leadership practices. From ensuring compliance with education laws and regulations to addressing legal risks and liabilities, educational administrators play a critical role in promoting legal compliance, safeguarding students' rights, and maintaining the integrity of educational programs and services.



- "Being one's own lawyer is as sensible as amateur brain surgery…" John Partington.

- A framework for these lectures – a number of topics

- Six areas:

a) General concepts + Historical background of education and education law

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 /

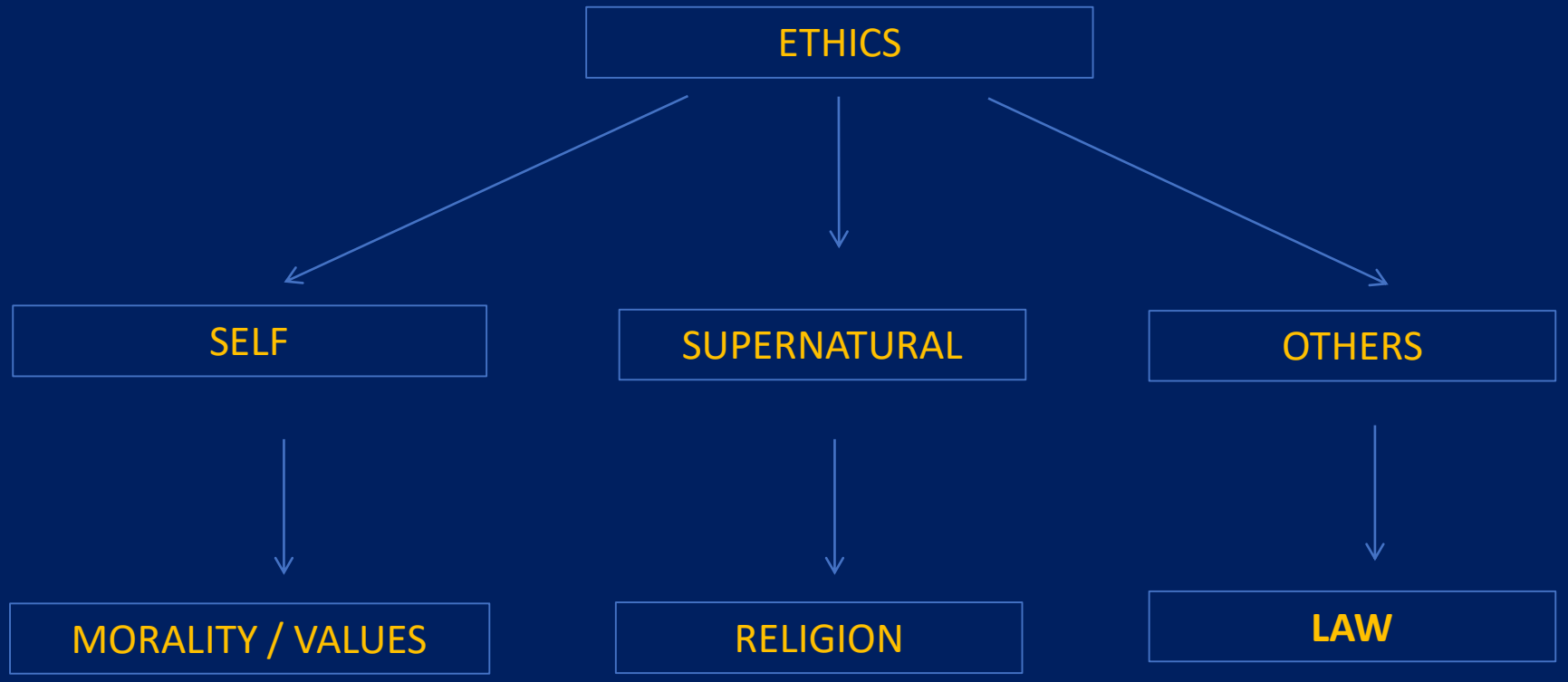
d) Teachers' employment, Contracts and Unions

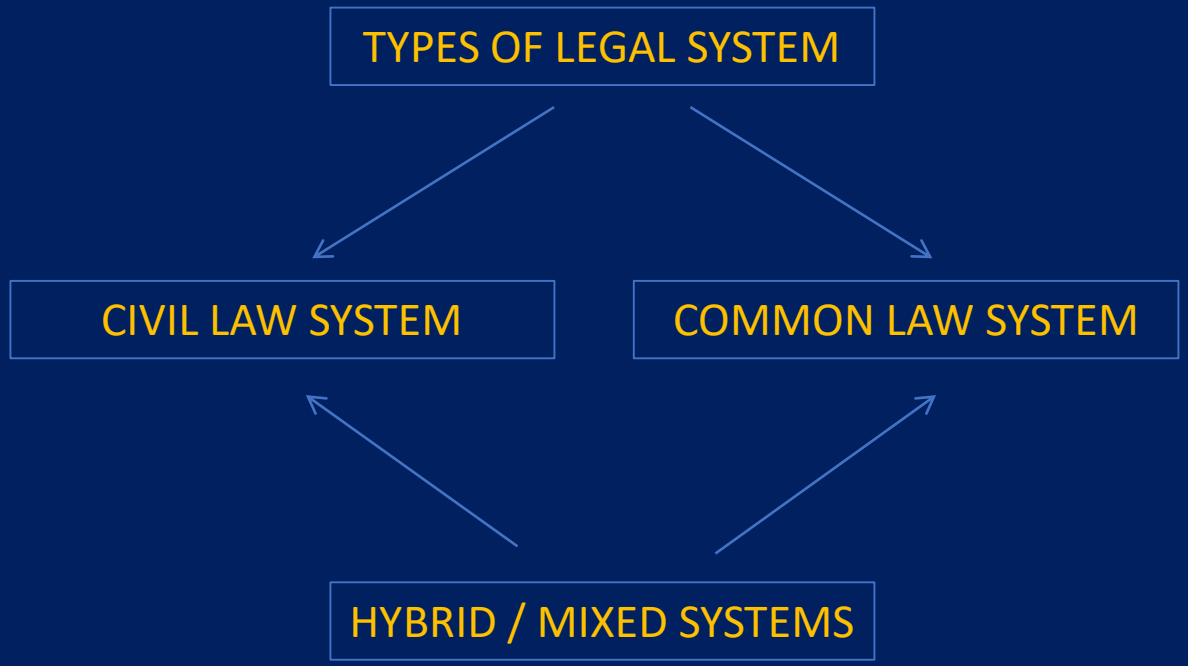
e) The three roles of the Teacher (to teach/educate - to take care - to supervise [Discipline, Child Abuse and Neglect]

f) Teachers Liability and Standard of Care and Duty.

Why Legislate?

Fundamental ethical principle – all human behaviour has to be regulated




TYPES OF LEGAL SYSTEM
CIVIL LAW SYSTEM
COMMON LAW SYSTEM
HYBRID / MIXED SYSTEMS

HISTORY OF MALTESE LAW

9 ERAS OF INFLUENCES ON MALTESE LAW

· Roman Malta 218BC – 370AD :	Roman Law & Edict of Caracalla 212AD
· Arab Malta 870 AD – 1090 AD :	Maltese language in law, not much else
· Norman Malta 1090 AD – 1530 AD :	Roman law and Sicilian maritime usages
· Order of St. John 1530 AD – 1798 AD :	Roman Law & Code De Rohan
· French Malta 1798 – 1800 :	Little time to legislate but Code Napoleon
· British Malta 1800 – 1964 :	5 Codes on Civil Law but the rest is Common Law
· Independent Malta 1964 – 2004 :	The influence of British legal system continues
· European Unionised Malta 2004 – :	Uk became member in 1972 (indirect influence
· Revival of codification 2009 AD – :	Exercise continuing

Major Influences on our Law:

Private law – continental codification
Public Law – British customary laws & numerous statutes from other commonwealth
Canon Law – Marriage, abortion, teaching, euthanasia, IVF, tribunal systems
Public International Law – Conventions, Treaties, Customary IL, Ius Cogens, Decisions, Authors
EU Law

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]

- Civil Law and Criminal Law
- Public Law and Private Law
- Substantive Law and Procedural Law
- Primary and Secondary Law.

Civil Law: rights / obligations, remedies, damages, specific performances
Criminal Law: rules concerned with acts / omissions contrary to public order / society - punishment (imprisonment / fine).

Public Law: Constitutional Law, Administrative Law, Criminal Law. (Inc. **Education**)
Private Law: Civil Law and Commercial Law (private interests).

Substantive Law: the legal relationship between people / the people and the state
Procedural Law: rules to enforce substantive laws

Primary Legislation: Constitution and Acts of Parliament (630 chapters)
Secondary Legislation: rules and regulations by Ministers / other local authorities under delegated powers from Parliament

PRIMARY AND SUBSIDIARY LAWS

PRIMARY

Acts –	all post independence primary laws (Education Act)
Ordinances –	under British rule (Medical and Kindred, Port Workers, Burial, Housing (Decontrol), Rent Restriction (Dwelling Houses).
Codes –	Civil, Commercial, Criminal, Organisation and Procedure, Police.

SUBSIDIARY

Regulations –	(Mandatory Use of Medical or Cloth Masks Regulations L.N. 326/2020)
Administrative –	(eg Dir. 5 - Political Participation / Communications with Media)
Rules –	Common in Procurement and EU legislation
Orders	(Freezing Order, Attachment Order, Investigation Order)
By laws –	University, Local Government, Stock Exchange, Institute of Accountants
Schemes –	Common under Companies Act.
Warrants -	Financial, Administration and Audit Act – Minister may issue warrants

THE MALTESE COURTS SYSEM

Constitutional Court:	3 judges. Appeals violations of human rights, the interpretation of the Constitution and invalidity of laws. H.O.R. and elections
Court of Appeal:	3 judges in appeals from Civil Court. 1 Judge from C.o.M. Also appeals from administrative tribunals / other authorities' decisions
Court of Criminal Appeal:	3 judges from Criminal court. 1 Judge from C.o.M.
Civil Court:	1 Judge. 4 Sections : Family, Voluntary, Commercial, General (1st Hall).
Criminal:	Offences exceeding C.o.M competence. Judge or Judge & Jury
Magistrates:	Civil (€5K to €15K) and Criminal (<2 years punishment / 2-12yrs extended competence)
Juvenile Court:	Offences by < 16 yrs. Also Care orders. Restricted attendance.
Gozo Court:	Civil and Criminal. For Criminal it is the same as Maltese. For Civil it includes inferior jurisdiction (C.o.M.) as Malta but also superior (those exercised in Malta by Civil Court – Civil / Commercial / Voluntary Jurisdictions).

COMPONENTS OF ACTS OF PARLIAMENT

Primary legislation consists of Acts of Parliament (Revised Edition of the Laws of Malta).

The structure of each Act of Parliament follows a common pattern:

1) Long title
2) The enacting formula (which lists inter alia the legislative history of the Act)
3) Short title (which is usually the first article in the Act)
4) Commencement date, if any
5) The ‘interpretation’ clause, defining key terms which appear throughout the Act
6) Main provisions
7) Administrative provisions
8 Transitional provisions - cover certain issues from the old legal regime to the new one
9) Repealing provisions
10) Schedule/s

SUBSIDIARY / DELEGATED LEGISLATION

- The legislative supremacy of Parliament allows it to grant to some other person or body the authority to make subsidiary legislation such as regulations or orders
- Subsidiary to the 'primary' or 'parent' Act under which this authority is created.
- The need to enact many laws - difficulty of limited parliamentary broad issues of principle and policy in the sense of providing a framework law.
- Laws contain provisions empowering regulations under the authority of the parent Act.
- Parliament not always in session. Legislative procedures necessarily slow. Delegated legislation more flexible, speedily created and may be easily revoked.
- Some legislation is better handled by a specialised minister with experts.
- Useful for further regulation which might not be foreseen by Parliament.

Criticism of delegated legislation:

- Even though power is delegated / authorised, it amounts to legislating by the executive which goes against the strict interpretation of the doctrine of separation of powers.
- Laws are in skeleton form, details through delegated legislation. The devil is in detail.
- Not always satisfactory drafting.
- Limited parliamentary time does not allow full control of what its delegates.

BUT precautions are taken against abuse of power in the form of **judicial review**.

THE CONCEPT OF PERSON

The very first article of Civil Code

1A. (1) Persons may either be natural persons or legal persons.

(2) When used in any law the term "person" shall include both natural persons as well as legal persons, unless the context otherwise requires.

(3) Natural persons are regulated by Title I to Title VIII of Book First of this Code.

(4) Legal persons are regulated by the Second Schedule to this Code.

(5) Legal persons enjoy all rights and powers pertaining to natural persons except those excluded by their very nature, by their constitutive act or by an express provision of law.

V. IMP CASES : Dr Jose Herrera noe et vs Tancred Tabone et noe [1989]
Supermarkets Ltd. vs Le Cram Dev. Co. ltd [2002] – good faith
Dr. Borg Cardona v. Victor Zammit et. – Lifting of Corporate Veil.

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

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