

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

Lecture Title: The Acts Regulating Education in Malta
Part II

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Diploma in Law (Malta)



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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, ..., who:

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

Both parents equally and conjointly (1993 Amendments)

When there is a Court Decree / Order

Right of Access

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

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

Minor vs Over 18

< 9 9 > 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.

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

Data Protection – 9 Principles

The controller shall ensure that Personal data is:

1. **Lawfulness, fairness, and transparency.** [Legal Basis]
2. **Purpose limitation:** Collect data only for specified and explicit
3. **Data minimization:** Gather only the data that is strictly necessary
4. **Accuracy:** correct, complete, and updated, fixing or deleting mistakes
5. **Storage limitation:** only as long as needed for your stated purpose
6. **Integrity and confidentiality:** Secure strong technical and organizational measures
7. **Accountability:** Take responsibility and demonstrate compliance
8. **Data protection by design and by default**
9. **Individual rights:** Respect and enable people to access, correct, or delete personal data easily



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

CHAPTER 327 – OLD EDUCATION LAW – STILL PARTLY IN FORCE

<https://legislation.mt/eli/cap/327/20260204/eng/portalpdf>

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CHAPTER 605 – NEW EDUCATION LAW – IN FORCE

<https://legislation.mt/eli/cap/605/20220301/eng/portalpdf>

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CHAPTER 605

Article 2:

"childcare centre" means an institution providing education and care services to children aged one (1) day to three (3) years;

"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;

"educator" means, for the purposes of this Act, heads of departments, heads of schools, assistant heads of schools, education officers, teachers, kindergarten educators and learning support educators;

"entity" includes a division, a college and any directorate, agency or other organisation as may be established by virtue of this Act or regulations made thereunder, or under any other law, and "entities" shall be construed accordingly;



"entity" includes a division, a college and any directorate, agency or other organisation as may be established by virtue of this Act or regulations made thereunder, or under any other law, and "entities" shall be construed accordingly;

"home educator" means any person, including the parent of a child, in possession of a teachers' warrant issued under article 11 of the Teaching and Allied Professions Act who is duly authorised to provide home education to a child in accordance with the provisions of Part III;

"home education" means the progressive education of a minor provided or organised by his parent whereby a home educator provides tuition to the minor, at the expense of the parent, in substitution to state or non-state education in accordance with the provisions of Part III and any regulations made under this Act, and "home education programme" shall be construed accordingly;

"licensed school" means a school which has been granted a licence to operate in accordance with the relevant provisions of this Act and, or any regulations made thereunder;

"national minimum conditions" means the national minimum conditions for all schools referred to in article 5;



"national minimum conditions" means the national minimum conditions for all schools referred to in article 5;

"parent" means the father or the mother and includes any person who has the care and custody, whether legal or actual, of a child;

"public officer" has the same meaning as is given to it by article 124 of the Constitution;

Article 3

Every person of a compulsory school age residing in Malta has the right of access to education without any distinction of age, sex, religion or belief, economic means, race or ethnic origin, political opinion, disability, colour, sexual orientation or gender identity.



Article 4 - Obligations of the State

"It is the duty of the State –

1. (a) to promote education in Malta.....; and
(b) to ensure the existence of a system of schools and other educational institutions in Malta
2. In particular, it shall be the duty of the State -
 - (a) to develop and implement an education policy;
 - (b) to establish such educational facilities as are necessary;
 - (c) to ensure the teaching of the core curricular entitlement;
 - (d) to ensure that there exist early childhood education and care centres;
 - (e) to provide for education of children of compulsory school age;
 - (f) to ensure the provision of post-compulsory and tertiary education;
 - (g) to promote the teaching of the liberal and expressive arts, science, languages, technology, vocational education, personal development, life skills and sports among all students.



Article 6 - Obligations of the Parents

It shall be the duty of every parent of a minor –

- (a) to ensure that the minor receives all the necessary education
- (b) to ensure the motivation of the minor for education;
- (c) to ensure his disposition for good behaviour and discipline;
- (d) to cause the minor to be registered in a school
- (e)to ensure that the minor attends school on each scholastic day
- (f) to cooperate fully and with due respect with the Head of School and all the staff ...; and
- (g) to adhere to policies issued by the Division, the College and the school.

Article 7 - Rights of the Parents

Subject to the provisions of this Act, it is the right of every parent of a minor to give his decision with regard to any matter concerning the education of the minor, provided that such decision is in the best interests of the minor in accordance with article 8(1).

8.(1) Decisions with regard to matters concerning the education of a minor shall be based primarily on the best educational interests of the minor



Article 9 - Duties of schools.

It shall be the duty of schools –

- (a) to accomplish the education strategy for Malta and the National Curriculum Framework ..;
- (b) to secure and ensure compliance with the national minimum conditions
- (c) to establish a culture of lifelong learning and conducive conditions for effective quality teaching and learning.....;
- (d) to promote high standards of learning and teaching
- (e) to encourage student involvement and active participation;
- (f) to establish a safe and inclusive learning environment;
- (g) to ensure good conduct from any person within the school premises;
- (h) to ensure the use of positive discipline;
- (i) to self evaluate, consult and engage in dialogue to identify the needs of educators, learners and parents through student-centred approaches
- (j) to establish good leadership and management and to promote a team culture
- (k) to promote the continuous professional development of educators;
- (l) to establish a culture conducive to an effective home-school partnership; and
- (m) to develop an active role within the community, and encourage community involvement and participation.



Article 14 - Right to information.

- (1) Without prejudice to the generality, the Division of Education may request, collect and verify any information, data and statistics, as may be required for the performance of its functions.
- (2) The Division of Education shall have access to all information which schools, State and non-State, may possess, and shall be entitled to request and obtain all data, and this data shall be given to the Division within a reasonable time from the date of request.
- (3) Without prejudice to the generality, the Division shall have access to other statistics and data of personal, economic and social nature as required in order that it may perform its functions according to this Act.

Article 17 - Power of entry and of inspection.

- 1) Duly authorised officers of the Division shall have the power to enter at any time, without prior notice, in any school, childcare centre, class or place of instruction, and inspect and report
- (2) Schools, childcare centres and home educators shall provide any information and access requested by these officers



Article 21 & 22 - Licences to establish schools, childcare centres / home education.

21 It shall not be lawful to establish and, or run a school, a childcare centre or to provide home education without a valid licence issued by the Division.....

22. (1) Any person shall have the right to apply to the Division for the grant of a licence to establish and run a school, a childcare centre or to provide home education.

(2) The Division,, **MAY** grant the licence mentioned in sub-article (1) where the school, childcare centre and home education conforms with the prescribed conditions and the Division deems the grant of the licence to be **in the public interest**:

Provided that a licence **SHALL** be granted if the Government is bound to do so by an international agreement and the school conforms with the national minimum conditions:

23. The granting of a licence is **a concession and a revocable privilege**, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder.

24. Where it deems it to be **in the public interest**, the Division may grant a **temporary licence** to a school or a childcare centre for a period of up to one year. (**Up to 3 years**)



Article 26

- (1) In the case of a school or a childcare centre, any licence granted under the provisions of this Part shall be in the name of the designated person in his personal capacity or in representation of a body corporate, institution or religious order, as the case may be.
- (2) The designated person in whose name a licence is granted shall be personally responsible to ensure that all the obligations attached to that licence are observed at all times whether that licence has been granted in his name personally or in representation of a body corporate, institution or religious order.

Article 28

Where the designated person in whose name a licence is issued:

- (a) where the licence is in the name of that designated person in his personal capacity, a fresh application for a licence shall be made;
- (b) where the licence is in the name of that designated person in representation of a body of persons,give notice in writing to the Division of the change



Article 30 - APPEALS

- (1) When an application for a school licence has been refused suspended or cancelled, the applicant or licence holder may appeal to the Administrative Review Tribunal in accordance with the provisions of the Administrative Justice Act
- (2) An appeal under sub-article (1) shall be made in writing within two (2) months from the date on which the decision refusing the application or the decision suspending or withdrawing the licence was notified to the applicant.....
- (3) Notwithstanding that an appeal would have been lodged in accordance with this article, a licence shall be considered as having been suspended or cancelled, as the case may be, pending the final decision of any appeal

Article 41 - Use of school premises for learning, cultural or other activities.

The Head of School may enter into agreements of a limited duration with third parties, for such consideration as he deems appropriate, for the use of the premises and facilities of State Schools, or part thereof,

Provided that (a) such activities shall not cause interference with teaching and (b) for such activities as the Government considers appropriate.

Article 43 - Good behaviour and discipline in schools.

- (1) Head of School and the teaching and non-teaching staff of a school, ..., shall be responsible to ensure the maintenance of good behaviour by the students and for the keeping of positive discipline in the school.
- (2) The Minister may, ... make such regulations or policies or directives ..., including a code of discipline, to ensure that good behaviour and discipline is maintained in State Schools. Such regulations, policies or directives may also make provision for the suspension and the exclusion of students from the class and the school
- (3) ... the regulations and the code of discipline mentioned in sub-article (2) shall include provisions about the conduct and the discipline required from educators, other school staff, parents and visitors to a school.
- (4) In line with applicable policies and codes of behaviour a student may be kept in detention.
- (5) Where a student's behaviour is violent or aggressive ... school may take such measures which are reasonable, proportionate and necessary in the circumstances to avert such danger.

Article 45 - Teaching of the catholic religion and of philosophy of life and ethics in State schools.

1. The State shall make provision for the education and teaching of the catholic religion in State schools for those students whose parents have chosen to instruct the children in such religion and to establish the curriculum for the education and teaching of this religion in those schools according to the dispositions in this regard of the Bishops in Ordinary of these Islands.
2. The State shall make provision for the education and teaching of philosophy of life and ethics for those students whose parents have chosen not to instruct their children in the catholic religion.

Article 46 - Home education.

It shall be lawful for a parent of a minor of compulsory school age to apply to the Division of Education to provide home education to the minor:

Provided that the application for home education is not made on racist or similar grounds, or for reasons which the Division does not consider to be proper taking into account the circumstances; and in any of the above cases, home education is considered to be in the best interest of the minor taking into account the circumstances and situation of the minor and his family.



Article 47- Authorisation for home education.

- (1) Where the Division is of the opinion that the necessary conditions for the provision of home education to a minor have been satisfied, it shall authorise the parent of the minor to provide home education to the minor at the parent's expense and subject to the following conditions -
 - (a) the minor must have a social experience equivalent to that provided in schools;
 - (b) the minor is afforded the same experience and facilities as those in schools;
 - (c) minors must follow an accredited programme as approved by the Division and such conditions set by the Division as it may deem appropriate in the best interests of the minor.
- (2) A parent who causes his minor child to follow a home education programme in accordance with all the conditions imposed by the Division shall be deemed to have satisfied his obligations under article 6.



Criminal Code - CAP 9

95. Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (*multa*) of not less than eight hundred euro (€800) and not more than five thousand euro (€5,000).
214. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.
222. The punishments shall be increased by one degree when the harm is committed ... on the person of whosoever was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions

Teaching and Allied Professions Act - CAP 606

Art. 2 "allied professions", means kindergarten educators and learning support educators in possession of a warrant, or a licence or a temporary licence;

"educator", for the purposes of this Act, means a person in possession of a teachers' or a kindergarten educator or a learning support educator warrant; license or temporary warrant or temporary licence;

Art. 3 Composition of the Council for the Teaching and Allied Professions

Art. 4 Functions of the Council – advise Minister, examine applications for warrants / licenses, inquiries.

Art. 5 Proceedings of the Council – Meet at least every 1 month, quorum half the members, regulate its own procedure

Art 6 onwards – Decisions, Inquiries, Appeals and Offences



Further and Higher Education Act - CAP 607

Art. 2 "further education" means all non-compulsory formal learning which serves to obtain a national qualification classified up to and including level 4 of the Malta Qualifications Framework, or a foreign qualification at a comparable level;

"higher education" means all non-compulsory formal learning or research which serves to obtain a national qualification classified at level 5 or higher of the Malta Qualifications Framework, or a foreign qualification at a comparable level;

"public officer" has the same meaning as is given to it by article 124 of the Constitution;

Art. 3 (1) The National Commission for Further and Higher Education established by means of the Education Act is being re-established and incorporated in this Act as the Malta Further and Higher Education Authority, hereinafter referred to as "the Authority"

(3) The Authority shall generally regulate, guide, evaluate, verify, research and report, accredit education providers, and their programmes, granting of a licence to further and higher educational entities accredited, renew, refuse, suspend or revoke licences, validate any learning, prescribe fees, appoint its officers, review qualifications, request information and establish and impose tariffs, fees and administrative penalties.



Art. 4 Power to enter and search any educational premises, to have access to any relevant document in any form, to require any person to supply any relevant information, to carry an on-site inspection, to issue an order to any person to cease from doing anything which constitutes an infringement.

Art. 5 access to all pertinent information available to educational institutions and it shall have the right to request all data it may require to perform its functions both from public and private providers.

Art. 8 Composition of the Board (Term of Office 3 years)

Art 12 Procedure – at least once a month, quorum half the members, regulate its own procedures, treat information on commercially sensitive matters in a highly confidential manner

Art 19 In addition to the punishment established in the Criminal Code, ... power to revoke any licence, or statement or any other document and shall make public such revocation.

A fine (multa) not exceeding fifty thousand euro (€50,000) for each offence and, or one hundred euro (€100) for each day of non-compliance from



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