

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

**Lecture Title:** The Role, Rights and Responsibilities of the Teacher

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**Diploma in Law (Malta)**



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The three roles of the teacher:

- A) To teach / educate
- B) To take care
- C) To Supervise

### A) The Duty to teach / educate

- No Local case law BUT

**OLD** Article 62 “... the Head and the teaching ... staff of a school, including whosoever directly or indirectly is involved in the educational process of students in the school, shall be responsible for the teaching and the education of students.

**NEW** Article 62 “It shall be the duty of every Head of School to ensure that the functions of the school as provided for in article 36(1) are being accomplished... to (a)promote, implement and pursue the mission of the school in providing a high quality inclusive education for all students;

- Under UK Law until 1995 always considered that individuals may not sue for negligent provision of education
- Since then 5 cases presented to House of Lords, all decided against. BUT on the merits, not necessarily in principle.



2 cases related to social services and 3 cases related to education services.

Two important cases Phelps vs Hillingdon LBC (1998) and Christmas vs Hampshire CC (1998).

- Phelps vs. Hillingdon LBC – Psychologist did not diagnose dyslexia and thus failed to receive the necessary provision. First instance found for plaintiff and said that although school authorities were not negligent because they chose the psychologist with the applicable qualifications etc and also child was referred to psychologist, but through vicarious liability they had to shoulder responsibility of psychologist. But Court of Appeal reversed judgement because Psychologists had no duty of care to child directly but through LEA. And LEA followed the normal correct procedures.
- Christmas vs Hampshire CC – In this case the educational psychologist was not involved and court said threshold of duty of care for teaching staff was much lower.

### Action in Breach of Contract

Very difficult to establish unless the contract admitting the student establishes this duty – very unusual and improbable. But juridically possible in cases of private schools.



## **B) The Duty to take care**

- (i) the duty of care emanating from legislation;
- (ii) the duty of care as expressed and interpreted by case-law; and
- (iii) the duty arising from the contract of employment of teachers.

## **C) The Duty to Supervise**

Very much related to the duty of care in B above but usually refers to supervision in breaks, in yards, before and after schools.

Interesting Maltese case: Neil Cassar et vs Onor ministru tal-Intern et.(17/3/2004)

“F’ dan il-kaz il-perit legali askriva din il-htija fuq id- Dipartiment ta’ l-Edukazzjoni u dak ta’ l-Artijiet. Huwa sab ukoll fic-cirkostanzi tal-kaz illi b’ ghemilu kien hemm htija kontributorja da parte ta’ l-attur danneggjat u dan fil-mizura ta’ kwart tad-danni.”



Ir-responsabilita` amministrattiva f' Malta, ghalkemm tiffirma parti mid-dritt pubbliku, kienet ukoll regolata minn dawk il-provvedimenti fid-dritt privat u cjoe fid-dritt ordinarju li kienu applikabbli għac-cittadin privat sakemm il-ligi ma kinitx specificament tezenta lill-amministrazzjoni pubblika minn tali responsabilita`” - Elmo Insurance Services Ltd nomine -vs- PC 537 Joseph Micallef u Kummissarju tal-Pulizija

Huwa indiskutibilment ta' importanza primarja illi dawk kollha li jeżercitaw funzjoni edukattiva għandhom fost l-iprem dover dak tal-vigilanza u tas-sorveljanza tat-tfal li t-tutela tagħhom tkun giet fdata lilhom.

Fil-fehma tal-Qorti l-prova liberatorja ma tezawriex ruhha bis-sempliċi allegazzjoni li l-fatt ma setax jigi mpedut izda testendi ruhha wkoll għad-dimostrazzjoni li ttiehdu jew gew adottati l-mizuri kollha preventivi u idonei biex jigi evitat is-sinistru u l-event dannuz.

Another important local case is Patrick Bezzina et vs. Il-Ministru tal-Edukazzjoni et. (20/10/2005)

Din il-Qorti taqbel u taccetta li f'kaz ta' skola hemm obbligu kontrattwali fuq l-awtoritajiet li jiehdu hsieb it-tfal fdati taht il-kura tagħhom in loco parentes. Ma għandux ikun hemm dubbju illi l-awtoritajiet edukattivi għandhom responsabilita' ta' kura lejn l-istudenti, responsabilita' li tohrog bl-istess mod kif tirrizulta r-responsabilita' tal-genituri lejn uliedhom dment li dawn l-istudenti qegħdin taht ir-responsabilita' diretta tal-awtoritajiet edukattivi.



Gurista Ros Davis: Schools are legally responsible for the safety of school children in their care. They should be. Our children are the future of our society. Common Law impose a general duty of care on all persons to exercise 'reasonable care' to avoid acts or omissions (actions) that might foreseeably result in injury to others likely to be effected by those actions. What is or is not 'reasonable care' varies according to the magnitude of the risk and the gravity of the harm likely to occur.

Corte di Cassazione 22-10-65 (kaz 2202E), questo dell'educazione e della sorveglianza, un obbligo stabilito prima ancora che nell' interesse dei terzi estranei, nell'interesse dello stesso minore, che deve essere sorvegliato non solo perche' non cagioni danno a se stesso, ma anche' perche' non cagioni danni ad altri, incorrendo nella relativa responsabilita'".

"L-awtoritajiet li jkollhom taht ir-responsabilita' taghhom playground ghal-uzu tat-tfal, iridu jipprovdi a safe system of play u monitoragg adegwat (ara "Fenech vs Kunsill Lokali ta' Haz-Zebbug et", ( 21 ta' Ottubru, 2004)



San Frangisk t'Assisi School Case

Very Important Australian Case

Commonwealth vs Introvigne (1982), Judge Mason High Court

“There should have been provision for proper supervision of the pupils in the school ground during the period preceding the commencement of instruction. In ordinary circumstances, supervision at that time was provided by members of the teaching staff ranging in number from five to twenty.

This provides some measure of what was considered to be appropriate, it being notorious that school pupils in large numbers, if left to their own devices in a recreation area, will on occasions engage in activities involving some risk of personal injury. A school authority owes to its pupil a duty to ensure that reasonable care is taken to them whilst they are on the school premises during hours when the school is open for attendance.”

The Court found that, as the Commonwealth had required all children from the ages of 6 to 15 to attend a school operated by or on behalf of the Commonwealth, or one approved by the Commonwealth, it was responsible for the care of those children



- Criminal Code - Case of Pulizija vs John Vella (1958)

222. “(1) The punishments ... shall be increased by one degree when the harm is committed – (c) on the person of whosoever was a public officer ... and the offence was committed because of that person having exercised his functions”

604. (1) The following persons are exempt from serving as jurors:

Members of the House of Representatives, Mayors and Executive Secretaries of Local Councils, judges, honorary consuls, clergymen, members of the Armed Forces of Malta, persons holding the office of Head of a Government Department and their deputies, the magistrates, the Registrar of Courts, officers of the Executive Police, professors and full-time teachers of the University, teachers of the secondary, primary and technical schools, District Medical Officers, health inspectors, the Principal Probation Officer and Probation Officers and any other persons of such a description as the Minister responsible for justice may, from time to time, prescribe by Order in the Gazette.

604. (1) Huma meħlusin milli jservu ta' ġurati - ...il-professuri u l-għalliema full-time tal-Università, is-surmastrijiet tal-iskejjel sekondarji, primarji u tekniċi”





## Discipline, Child Abuse and Neglect



### UK White Paper for Education and Inspection Act:

“We will introduce a clear and unambiguous legal right for teachers to discipline pupils, backed by an expectation that every school has a clear set of rules and sanctions.”

“As a trainee teacher, I do not see how a government can improve behaviour in the classroom in the short term. Surely it is society at large, and not just education policy, that is at fault here...”

Comment on BBC

## Education and Inspection Act

### Salient features re discipline

- Behaviour has long been a major concern for school staff and parents alike.
- The Act will give effect to some of the key recommendations of the recent Steer report.
- It will create, for the first time, a clear statutory right for school staff to discipline pupils, putting an end to the “you can’t tell me what to do” culture.
- It will extend the scope of parenting orders and contracts and will improve provision for excluded pupils, with parents taking responsibility for excluded pupils in the first five days of their exclusion.
- Governing bodies and local authorities will be required to provide full-time alternative provision from the sixth day of exclusion.



## Legal responsibility of teachers

- 1) the duty of care emanating from legislation;  
Civil Code, Criminal Code, Education Act, Commissioner for Children Act, Data Protection Act, and other Regulations and Policies
- 2) the duty of care as expressed and interpreted by case-law;  
local and foreign
- 3) the duty arising from the contract of employment of teachers  
collective agreements, calls for applications, contract, etc.





- Hudson vs The Governors of Rotherham Grammar School et
- “If boys were kept in cotton wool , some of them would choke themselves with it. They would manage to have accidents: we always did, members of the jury – we did not always have actions at law afterwards.”
- Mr Justice Hilbury

## Tort Liability

Tort: Usually defined as a civil wrong, or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include:

- negligence cases and
- intentional wrongs, which result in harm. Some intentional torts may also be crimes such as assault, fraud, theft, defamation.

### A) Negligence

4 elements for any action of negligence

- there was a duty
- there was a breach (foreseeability, age, location, equipment, out of school, extra hazards)
- negligent conduct is the proximate or legal cause of the injury; and
- damage ensued

1) There was a duty.

Originally the duty was to take care as a bonus paterfamilias.

Williams vs Eady 1893 – 10 TLR 41, CA

“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”

This was juridically a sound argument at that time because parents chose the teacher themselves, they hired him and sent their children to him. They had the authority to hire and fire him.

By time this concept was marginally modified by placing a slightly different standard of care, that is, “The common law duty of a schoolmaster to his pupils is that of a prudent parent bound to take notice of boys and their tendency to do mischievous acts, not in the context of the home but in the circumstances of school life, and extends not only to how the pupils conduct themselves, but also to the state and condition of the school premises.” (Lyes vs. Middlesex CC (1962) 61 LGR 443, QBD).



However, this idea that the standard of care had to be equaled to the standard of care of a parent started to be challenged with the introduction of compulsory education for all. Courts started to argue that in a system where the child is compulsorily removed from the parents' protection and put in schools, it is not the parent but the Crown, or State that delegates authority to the teacher.

The standard of this duty of care owed to a student by a teacher then went a further modification in a way that it started to be viewed as that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes. This requires teachers to take reasonable care, and to avoid injuries to students which could reasonably be foreseen as possibly occurring. What is 'reasonable' and reasonably foreseeable will depend on the particular circumstances.

Usually, the specific duties owed to students are to:

- 1) provide adequate supervision
- 2) give proper instruction
- 3) maintain equipment, facilities and grounds
- 4) warn students of known dangers



Introvigne v Commonwealth of Australia (1980) 21 ALR 251.

The Court found that the Commonwealth had been negligent in:

failing to provide proper supervision;

failing to ensure that the flag pole was padlocked to prevent freedom of movement; and

failing to implement a rule that the flag pole could not be used without the express authority of a teacher.

The Court then approved the following formulation of the duty of care:

'The duty of care owed by the teacher required only that he should take such measures as in all the circumstances were reasonable to prevent physical injury to the pupils. This duty not being one to ensure against injury, but to take reasonable care to prevent it, required no more than the taking of reasonable steps to protect the plaintiff against risks of injury, which ex-hypothesi the teacher should reasonably have foreseen.'

Hentze v. School District, the standard of care will “depend upon many factors, including the nature and size of the area to be supervised, the number and ages of the students involved, and the nature of the activity or activities that are in progress.”





## 2) There was a Breach of that Duty

Once the duty is established, injured individual must show that the duty was breached because of the failure of another to exercise an appropriate standard of care. The degree of care owed to students will vary according to age, experience, maturity, the environment within which incident occurs.

## 3) Proximate or legal Cause

Proximate cause has been defined in the case of *Anselmo vs Tuck* as:

“that which in a natural and continuous sequence, unbroken by any efficient intervening cause produces the injury and without which the result would not have occurred.



#### 4) Injury is suffered

Legal negligence does not subsist unless actual injury is incurred either by the individual or by his property.

Problem when injury is not suffered immediately but takes months or even years – asbestos example. This can leave schools vulnerable to law suits for indefinite periods of time, also with an ever increased difficulty to defend a case after a lapse of time. Therefore prescription periods are established.

#### Defences

Consent (written for certain events?)

Act of God

Inevitable accident

Necessity

Contributory Negligence

Long and Accepted Practice



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