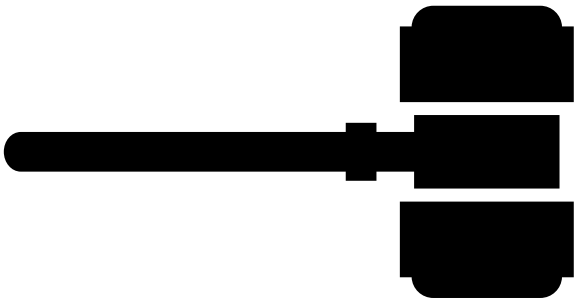
ADMINISTRATIVE LAW

PBL2015



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Administrative Law Intro

Definition is not an example - do not use 'like' when defining something.

Administrative Law:

- *law of empowerment and the law of remedies*
- *legal framework within which the public administration is carried out*
- *the law that regulates the activities of administrative agencies of the* ***government***

'Maltese Administrative Law' - Tonio Borg

Page 4; "administrative law focuses on only one of these three organs, namely the Executive, its structure, functions and relationship with the other organs of the State and the private individual."

"the Legislature and the Judiciary have a prime role to play in shaping administrative law"

Page 7; "the main purpose of administrative law is so that "the powerful engines of authority must be prevented from running amok" (cited from HWR Wade and CF Forsyth: Administrative Law).

"In Malta, we enjoy both constitutional and administrative law review, and this allows the courts to scrutinise, both from a constitutional and administrative law angle, the actions of the Executive."

Page 7-8 - "The fact remains that administrative law seeks to keep the administration in check"

NGO - serving a public function - does it fall within the realm of administrative law? No, as this NGO has nothing to do with Government.

We are challenging the Government = Public authorities, ministers, departments, body corporates established by law - we are here to defend our clients against the government elite -

DEPARTMENT	AUTHORITY
- The department is answerable to the administrative structure. - Departments fall under the purview of ministers	- Authority enjoys much more autonomy form the minister. - An authority is more autonomous. It is an entity established by law, but decisions are taken everyday by the ministers.

Example; The minister responsible for the Planning Authority - decision are taken by the Planning Authority and not by the minister. Prior to 1992, things were different in the case of the PA as planing decisions were take by the minster.

Hence a department is closer to the minister, whilst an authority enjoys more distant - but both are obliged by the laws of Malta.

BOTH: A department and an authority both have to abide by the law, failure which, it would act, ultra vires- (when an entity does not act according to law, and acts beyond the law)

Important to note; Failure to obey the law, leads to ***ultra vires*** which is one kind of abuse . Everyone is subject to the law, even the government

Rule of law = laws must be clear, everyone is subject to the same law - published and made available to the public

Important - All **agencies** that fall within government are equally subject - not immune to the provision of the law

RULE OF LAW - must be accessible, clear, fair for everyone, intelligible - everyone must be equal before the law

Article 469A , Chapter 12 of the Laws of Malta - the article that regulates judicial review; when you have a decision of a public court and you want to challenge that decision

Decisions taken by a public authority - once a decision is made by these public authorities, a person who feels aggrieved, can seek a remedy; this could be either through a judicial review or by an appeal - judicial review, not reviewing a decision by the court, but as decision taken by as public authority.

Article 469 A of Chapter 12, Code of Organisation and Civil Procedure of the Laws of Malta;

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

469A. (1) Saving as is otherwise provided by law, **the courts of justice of civil jurisdiction** may **enquire into the validity of any administrative act or declare such act null,** invalid or without effect only in the following cases:

- (*a*) where the administrative act is in violation of the Constitution;
- (*b*) when the administrative act is *ultra vires* on any of the following grounds:
- (i) when such act emanates from a public authority that is not authorised to perform it; or
- (ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or
- (iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or
- (iv) when the administrative act is otherwise contrary to law.
- "public authority" means the Government of Malta, including its Ministries agorities and any body corporate established by law.
  —> Body corporate established by law = because the government of 1995 had given this prior definition.

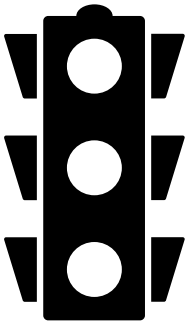
APPEAL	JUDICIAL REVIEW
It can be appealed on the basis of either fact or law When it was adjudged already and one party does not agree with the decision of the court	Can be appealed only on the basis of law Decisions taken by a public authority - once a decision is made by these public authorities, a person who feels aggrieved, can seek a remedy; this could be either through a judicial review or by an appeal - judicial review, not reviewing a decision by the court, but as decision taken by as public authority Judicial review - you can only raise question of lawfulness, not of facts - whether the public authority has acted lawfully.

What is the difference between a remedy under the realm of judicial review vs a remedy of the realm of an appeal - both are a remedy after a *reat aggravat*- the individual ihossu aggravat or there could be a two fold remedy

Appeal - have to prove point of facts and law in front of the court - can be based both on points of fact and points of law - the assessment is on points of law and points of fact - the big question is what are they ? They can be found in the book in the chapter of Musumeci - in a clip the dean asks what is points of law and points of fact - 'selective principles of Maltese planning law' - these points emerge in an implicit and explicit manner. Last chapter in the book - an appeal you can challenge a decision both on points of law and also on points of fact

Government Department	Public Corporations
public corporations (ie: agencies & authorities) -	(example agencies & authorities) - "public authority" means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law.

Government Departments as opposed to Public corporations that are either created by way of Act of Parliament (such as the Planning Authority) or the Public Administration Act (in the case of agencies such as Infrastructure Malta);



DIFFERENCE BETWEEN LAW AND POLICY

Law passed from parliament - **a parent act**, or delegated legislation, legal notice, regulation - statute from parliament -

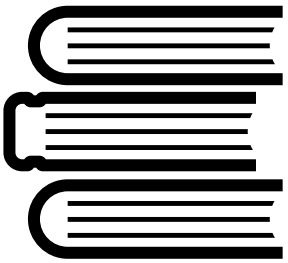
- more rigid to change **Policy** taken out from a board to facilitate a process. Policy is not law. So breaking a law would constitute as very bad therefor red. Policies of the planning authority - circulars of the PA includes that the architect has to put the id card, this form must be used. The consequences of breaching a law is wise than breaching a policy

Policy discretion that the authority has to implement it - Authority can make policies as it has power - Policy from relative authorities, that policy despite that it does not have the power of parliament, are there obligations, even though there are no obligations form the parliament

a document *ad hoc* from authority within the ambit of the law - both are documents

EXAMPLE given by Dr. Musumeci: In a traffic light scenario - RED, AMBER & GREEN - Amber; *"ghax mhux gravi daqsa imma mhux xejn lanqas"*- policy that is not law - a police of third country nationals taken out by ID MALTA - In order for a third country national to register and to have an ID card, he must be there for 10 years in malta, and passed from the basic course of Maltese basic - only these 2 criteria are given.

ID MALTA, can do what it did and change policy ? It is not acting for an improper purpose, or unlawfulness - someone panicked and saw to reduce immigrant and changed this policy.



SOMEONE informs him that as of yesterday, there is also the requirement, to do another exam - requirements were online, policy - this is a policy - is this fair ?

Legally is there an issue ? Legitimate expectation that when this person did the test, he believed that he was going to get the permit -

Is the policy bound ? Legitimate expectation - if you made the person believe that by following the law he was going to obtain such ID,.... He had a legitimate expectation and that person you change the policy, abruptly - that legitimate expectation is lawful as it is based on law - reasonable - legitimate expectation

If we are going to enrol in the law course got our A'levels and the requirement last minute changed from AND TO REQUIRE HOME EC ALEVEL

Legally is there a problem ? If there is one, one has a right to contest the problem - proper word is *ASPETTATIVA LEGITTIMA* - legitimate expectation - the essence of it is that things can not change abruptly, in the last hour. A person needs time to adjust to the change.

A body corporate established <u>by</u> law	**A body corporate established <u>under</u> a law**
Public corporation that is created by an act of parliament - Planning Authority. It is established by an act of parliament, that being chap 552 of the laws of Malta (Development Planning Act).	Regular companies established by the companies act but the majority of their shares are owned by the government.
There are other body corporates established by law - Lands authority, Lands Authority Act, Chapter 563. MFSA, Malta Financial Services Authority - Chapter 330 - Malta Financial Services Authority Act Infrastructure Malta - Agency for Infrastructure Malta Act, Chapter 588 Malta Resources Authority - Malta Resources Authority Act - Chapter 423 Transport Malta - Authority for Transport in Malta Act, Chapter 499 Malta Tourism Authority…. - a law that was enacted to establish the authority	An entity established under the commercial code, where the gov control is **not** essential under a law, no it is not essential. Ex Gozo channel; a company that is set up under the commercial code, and government has total control - in that case, one can safely say that Gozo channel company limited is a corporate body established under a law, where incidentally, there is the government involved. Hence, not each and every body corporate established under a law, the commercial code always has to include the government - not always. Ex Farsons - a company Go Plc - a company
Established by law - susceptible for judicial review	Established under a law - not susceptible under judicial review - this test has not always been like this

<u>IMPORTANT</u>

<u>NGOS -</u> neither established under or by law - an entity but falls outside the realm of ADMIN LAW - not an entity established by law

In the case of Grech Mario Kaptan vs Gozo Channel Company Limited Et - 27/4/10 - PRIM AWLA (90/2009))

For a body corporate under a law - "Il-partijiet jaqblu wkoll li l-kumpannija konvenuta kienet registrata taht il-Ligi tal-Kumpanniji u "..... li ma tezisti l-ebda ligi ad hoc li biha twaqqfet l-imsemmija kumpanija." (fol. 83)."

Konvenuta = Gozo Channel Company Limited Et

"Gozo Channel Company Limited ma twaqqfitx b'ligi imma bl- istatut li gie registrat mar-Registru tal-Kumpanniji u bil- hrug tac-certifikat ta' registrazzjoni.

— Analyse the judgement - the judgement said that not withstanding the fact that in the context of article 469 a the public authority, at least prima face, gives us the impression that the public authority is concerned about a body corporate established by law, the captain Grech judgement indicates that body corporates established under a law, ex the Gozo channel, also falls within the parameters of 469 A.

What are points of law ? Points of law are when you actually break the law, and we are here to identify typical instances which amount to a breach of the law.

Scenario 1 - Performing a task not authorized by law

Some context - I ask the local council, to lend me a sum of money, as I am in an urgent need, a genuine need - I ask for 500eu, he sees through my case and sees that it is a genuine one. The mayor decides to lend me the 500 eu and I promised the mayor to lend the money back. The lawfulness of administrative action - and the action of local councils, it amounts to administrative action.

The mayor decide to lend me 500euros - what is your take on his actions ? In his capacity he can do what he wants. There is no provision at law which permits the mayor to distribute funds to individuals, he can not, he can end up in prison, even though the action is morally correct, but the law specifically states how he disperse the allocated funds, so the minute the mayor decides to perform an act that he is not allowed to perform, then we have problems.

Scenario 2 - Deciding despite having a Conflict of Interest

An architect goes to the PA, goes with an application and goes before the board and one of the members of the board is my business partner, we have a business together, so really and truly this is not in the public domain but he is one of the people to decide whether my application goes through or not. Is it lawful ? It is not lawfully correct as he is my business partner, it's a conflict of interest - even if he votes against me ? Like the prosecutor and judge at the same time

VERY IMP - **one of the 3 pillars in the. natural justice rules** - regardless of the fact that my business partner will vote against me, there is something very wrong - so in that case, my business partner even though he is there, there is a conflict, and even though the law could be silent on the matter, it is a fundamental principle - the principles of natural justice, need not be written to take affect - so when a conflict arises, the person in the decision must abstain - ***Nemo iudex in causa sua/propia*** - Latin for "no one should be a judge in their own cause".

To ensure that conflict of interest does not take place in Court: **Article 734 of the COCP** - In the case of judges, there is a list, where judges or magistrates are bound to relinquish from a case if one of those points subsist - if the lawyer is a son or daughter...

Scenario 3 - Failing to motivate a decision

Another scenario - UM applications are out, and the call for first year law students is out - so in July the applications are open - this student received an email in September saying that he is not eligible for the course - he passed his a' levels — the duty to give reasons is fundamental - **that is the second principle of natural justice - the duty to give reasons; you need to motivate decisions -**

- The University of Malta is a body corporate established under a law, hence the university as. Part off its administration, has to give reasons to motivate a decision.

Scenario 4 - Treating one party different from the other

I have the planning Authority - I make an application on behalf of my client and there is a third party objecting to my application - this happens very often - any planning application - could actually be challenged by third parties - **any planning application could be challenged by anyone as the law allows it** - as third party objects to It and we are both admitted before the court = the court has to decide whether to grant it or refuse it, we are given a date to go before the planning board - who is entrusted with this application and it is my turn to speak and the court asks me to make my case - precedents... and I manage. To convince the court that my client should be allowed and the court is so convicted, that he is confident that the third party's no reason whatsoever to - so the court decides the application and before doing so, I am no given time to speak is there a problem with that ? ***Audi alterem partem - you have to allow the other parties to give them submissions - the third principle***

After today, you should be in a position to assert that the following scenarios constitute 'unlawful' action:

1. Performing a task not authorized by law
2. Deciding despite having a conflict of interest
3. Failing to motivate a decision
4. Treating one party different from the other

Rule against bias; How can this manifest itself ? By a conflict of interest

Nemo in propria causa sua - no one shoulf be the judge in his own case. Everyone is entitled to an impartial hearing.

Family Relationships	Obvious reasons - Article 734 of the COCP states the instances where a judge may be challenged to abstain from a sitting; (a) if he is related by consanguinity or affinity in a direct line to any of the parties;
Financial Interest/ Considerations	• I can not judge someone where their decision would further our mutual interest - So there is bias in this context as well. • Business relationship- if a person has a share from the company. The applicant and myself are both shareholders in a company that is there at the end of the day to make profits. Another issue is Financial interest.
Personal Antagonism	When the judge and applicant had previous conflicts - political interest is a type of personal antagonism. It is very difficult to prove.
Prior judgement	If you are going to mobilise pass judgement thereon, if you already assed judgement it does make sense to involve yourself in a sitting judgement - that is another way of bias - rule of prior assessment/ judgement.
Professional Rivalry	- Professional Bias - an example; it is when you have an architect or a lawyer or a professional and he is judging the case of his rival - you can not be bias due to professional rivalry

PRINCIPLES OF NATURAL JUSTICE

1. Nemo iudex in causa sua
2. Duty to give reasons
3. Audi alterem partem

Keywords; *nemo iudex in causa sua* (no one can be a judge in his/her own case), duty to give reasons (an authority cant just say yes or no - it has to support its position), bias, *audi altered partem* the right to be heard (two parties in front of someone, both parties must be heard), doing someone that you are not allowed to do- beyond the statute,

IMPROPER PURPOSE

Improper purpose - We have to see if the administrative act, even though at face value appears to be legal, if there is however, an improper purpose or an irrelevant consideration that led to this act. Exercising a power for an improper purpose

[The ramifications of improper purpose and irrelevant considerations. - these are the 2 phrases you should see and look at]

Example of improper purpose - ***Exercising*** power for an improper purpose - you have the authorisation but using that power for something incorrect.

EXAMPLE: If the local council has the power to seek approval from TM to actually install a sign, there is nothing wrong with that, but if that happens in order for a street to be one way in order to advantage a shop owner, and to kill someone else's business, that would be exercising a power for an improper purpose.

Exercising a power for an improper purpose

1. Performing a power which is not in your power to perform as the law doesn't allow you, *ab inizio*. Example; the Council decides to make a donation for someone in dear need. You can't as the local council prohibits that.

WHEREAS - The local councils have the power to install signs - but if that power is done for an improper purpose, like to give an unfair advantage to someone else, like in the example prior states, you do have the power but can not, as that is discrimination someone for a particular aim.

The best example to use in order for one to fathom the notion of improper purpose is the **Wheeler Case and Blue Sisters Case.**

FETTERING OF DISCRETION

Meaning: when you are inflexible with the policy - you do not have humanity, and engagement with whom you have in front of you - that is still exercising power for an improper purpose. When a decision maker does not genuinely exercise independent judgment in a manner. If a decision-maker fetters its discretion by policy, contract, or plebiscite, this can also amount to an abuse of discretion.

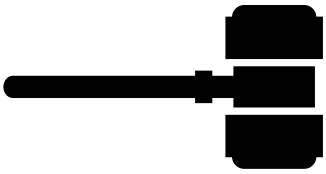
Fettering of discretion = when there is a policy that is passed in act of parliament and there is a policy, who is in charge of the policy as the right to listen to things contrary to it

- Under 'illegality' one can also classify the notions of: will exercise his discretion or feels legally bound to decide in a particular way when he isn't ;

- 'fettering ' of discretion i.e where a decision-maker commits himself beforehand as to how he - Unlawful delegation (delegatus non potest delegare)

The best example to use in order for one to fathom the notion of fettering of discretion is the **Oxygen Case.**

Unreasonableness & Irrationality



Unreasonableness - something which doesn't make sense - subjective test

Bad faith and lack of proportionality - associated with unreasonableness.

Example - If you tomorrow come in a red shirt, I will not let you in the lecture, it is **unreasonable** - as it is not something which doesn't make sense, it is something that is not reasonable.

Irrationality - factually does not make sense - an objective test

Example - I am going to Valletta and I am going to see the Vatican - what is that statement ? Is that unreasonable or **irrational** ? (Right answer is in bold)

On these two concepts, we have two cases;

1. Wednesbury case - 1948 - the element of **unreasonableness** came out - 1948 - theme; unreason bless

2. The case of Nottingham Shire county council vs secretary of state for the environment 1996 **Unreasonableness** - in a sensible mind - improper purpose and bad faith - IMP CASE

3. Council for the civil service union case - 1985 - lord dip-lock tries to argue - **irrationality**

4. 1996 - **R.vs Ministry of defence EX P. Smith** - IF a homosexual person can form part of the Army and the court said that at first it was he can not but then the court said that that decision is **irrational** - its irrational as we are touching fundamental human rights.

In this case, which took place in 1996, 4 people, 3 of them men, and one woman were all fired from the Army because of the sole fact that they were homosexual. Their argument was that they did nothing wrong, but simply because they are homosexual, they did not misbehave, and now their argument is that they did not have sexual acts .... The point of irrationality comes into the way, as the fact tat they are homosexual does not include that they are removed from their job. This matter went to the EU courts of human rights, and since the domestic **court as the domestic force could not enforce the law, the human rights court ruled the matter in their favour.**

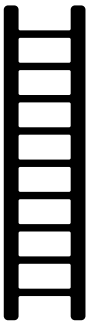
Lord Newman said it is unreasonable as we had discrimination. At the end of the day, when we come to unreasonableness and irrationality, that argument can be used even when the case is not of appeal bur of judicial review.

5. **RE-DUFfY(fc) (Nothern Ireland) 2008 -** were the claim for **irrationality** was successful - a case that - both mediators that were there to decide were already to discuss the material - *nemo iudex in causa sua*

6. **Ann Summers Limited vs Job Centres Plus - 2003** - this case the job centres plus was like our jobs plus - they decided not to sell the vacancy as in tis store they said to sell sex products

In this case, the plaintiff, Ann Summers, started a company in 1970, selling adult products. In the shops, there must be people responsible to explain the gadgets... in this time and era, this type of trade of sex products was not illegal. The company wanted to hire a shop assistant for the shop.

There was a ban in the policies that when Ann summers was promoting this job to hire our someone, it was not letting her. This case went up to the court and Mr. Justice Newman, decided that this was irrational, he says that the decision was **discriminatory** as since the trade is one which is legitimate, it is acceptable. The defendants said that this was embarrassing, ANN SUMMERS According to Newman, embarrassment was not enough to deprive such right - it is not something that no sensible person would arrive to such conclusion.



PROPORTIONALITY

Example: if you can, your aim is reached with 2 beatings don't give 10.

Legitimate aim; centre link - if I need a street that can have 9 lanes I can not put 15 - what I have to do must be rational - the aim must be legitimate, not illegal, and that the measures taken are rational and reasonable and that you do not do which is more than what the circumstances permit.

3 principles of proportionality:

1. **Legitimate aim** - there has to be a legitimate objective - the objective has to find some illegality in the law, in what is legally acceptable. What you are doing must be legitimate. Ex the building of new roads - the legitimate aim would be that traffic passes in a swifter motion.

2. **Measures taken have to be connected to the legitimate aim** - I decide to make 35 lanes, the legitimate aim is satisfied but are the measures connect to it satisfied as well ? Is the face that I make 35 lanes rationally connected to the legitimate aim ? In this case, even this is satisfied as there is a connecting link.

3. **Measures taken are not more than what is necessary** - in reaching the legitimate objective, are the 35 lanes more than what is necessary in Malta's case when the road only holds 6 lanes, the 35 lanes would be much more than what is necessary.

LEGITIMATE EXPECTATION

One can not change a law or a policy in the last hour - because there is legitimate expectation, because it is only legitimate to expect that that policy is there to take effect and if it has to be changed, then in that case, the authority has to alert from beforehand so that one can make a case.

An authority has to honour a promise - that is what legitimate expectation is.

Notwithstanding so, there are exceptions to this notion.

There are two main exceptions that are crucial:

Exceptions to a legitimate expectation: 2 instances where a legitimate expectation can be frustrated - when an exaction, can also be legitimate, but they can not be honoured:

1. **Public interest** - you could have a legitimate expectation, that I go (I go in a restaurant without a mask - that. Is frustrated by the health authorities because of the public interest)

2. **An expectation which is not legitimate, grounded on unlawful behaviour (it is legitimate for you only only if it is on illegal disposition) -** I can not have a circumstance whereby the expectation is I think to be legitimate but in fact it is not (there is a promise, and a system of conduct, .. the authority tells you it is true I promised you but I can do nothing, not because of the public interest, but because it is unlawful, an illegality - you receive a letter from a certain authority, telling you that you are entitled to A,B C.. - When that authority after it is found that it didn't have the vires, the power to perform that act, to promise you what it told you. So despite that expectation, that. Exception is illegitimate as it is based upon unlawful matters -

EX MAYOR who tries to help people of the locality. From t he funds as. They ar epoor, he can not do it as the law does. Not permit it)

On what basis can the legitimate expectation doctrine be frustrated ?

1. Public Interest
2. Abuse of power - illegal disposition of the law

The Coughlan case is a relative case to this notion. The Coughlan case related to a woman who suffered a severe disability after a car accident. The court of Appeal in this case believed that the fact that the authorities had frustrated the woman's legitimate expectation was highly unfair, to the extent that this action led to an abuse of power. To add to this, there was no public interest considerations to justify the authority's decision.

In the case of 'Socjeta Filarmonika La Stella vs Commissioner of Police' 1997. In this case, the fact that the defendant refused a permit in relation to fireworks from the plaintiff's behalf a few days prior to the feast was deemed to be an invalid refusal. This is because the permit such as this has always been issued in past years. The fact that the plaintiffs have always abided by all the conditions imposed on them by law gave no suffienct grounds for their refusal.

The court in this case said that

"The rule of law requires and presupposes that an individual should know a priori his position regarding a state of facts through laws and regulations which are clear on the relative matter, and no be suddenly faced by all kinds of conditions which he could not have foreseen before, as happened in this case.

Portanier Developments Limited vs. Architect V. Cassar noe.

"for an expectation to be legitimate, it must be one whose execution does not infringe the fundamental rights of another. Nor can there be such a legitimate legitimate expectation in situations where the law is broken and then a person requests that he be protected in such an illegal state."

CASES

Rule of law - everyone equal before the law - 'Former landowners compensated over Ċaqnu's Lidl supermarket' - previous owner of the land were compensated as they sold the land for a cheap price after PA did not let them develop it but when they sold it to Caqqnu, they allowed the latter to open a supermarket on such grounds.

Duty to give reasons - Paul Abela -vs- L-Awtorita' tal-Ippjanar (gia l-Awtorita' ta' Malta dwar l-Ambjent u l- Ippjanar) decided on 20th November 2017 by the Court of Appeal (Inferior Jurisdiction) - [23/2017]..... the Authority is required to provide clear reasons in support of is decision.

'Mhux bizzejjed li wiehed jissoponi x'seta' kellha f'mohha l-Awtorita ***izda trid tinghata raguni cara*** *ghaliex l-izvilupp qed imur kontra dan l-objettiv u fejn in partikolari. Id-dicitura uzata mill-Awtorita biex tiggustifika r-rifjut hi xotta wisq u ma tirriflettix l-fattispecie tal-kaz quddiemha izda biss tenuncja l-principju wara tali objettiv...*

"'dan il-kaz ir-raguni ma kinitx specifika izda generika ghall-ahhar billi issemma biss l-ispirtu regolatur tal-objettiv izda xejn dwar ilvjolazzjoni tal-izvilupp mqabbel mal-objettiv fl-ispecifiku tieghu.'"

The plaintiff contests that an **"unjust, anti-constitutional, discriminatory, unlawful, ultra vires, and violate the basic principles of natural justice as well as because they are founded on a wrongful interpretation of the law"**, due to the fact that the defendant made the plaintiff sit for an exam, as a condition which is not prescribed in the law. Isabella Zananian Desira vs. Kunsill Mediku, decided on the 14th of February 2017, by the First Hall, Civil Court. [Applic. No. 740/11JRM]

"the defendant Council...established under the law, whereby she claims that her request to be registered in the Medical Register (hereinafter referred to as "the Register") was turned down, unless she submits to and successfully pass an examination assessing her competence."

"that the condition imposed by the Council was unlawful, unconstitutional, beyond its remit ("ultra vires"), discriminatory and based on a wrong reading of the law."

"Plaintiff argues that this lack of express legal provision is proof in itself that the Council acted "ultra vires", because in plaintiff's case, all the Council had to do was to ascertain that her academic qualifications are recognized by the competent Maltese authorities and ratify her application by enrolling her name in the Register and not to resort to any contrived and obscure policy by imposing upon her a condition the law does not prescribe"

Appeal vs Review

"It is authoritatively held that the fundamental role of a reviewing Court is to ascertain that the administrative act does not fall short of legality, more than to assure that the administrative body has come to a correct decision. This distinguishes the role of a reviewing Court from that of an appellate Court, which has to investigate the substantive merits of an appeal. This is also the view upheld by our Courts"

Judicial review Case Law - Rule of Law - Principles of Natural Justice

Jan Bonello (K.I. 94093M) vs. L-Awtorità tal-Artijiet, 13th October 2021

"L-appellat qal li jekk ser ikun hemm policy, din għandha tkun konformi ma' dak li tgħid il-liġi, u tali policy m'għandhiex tagħmel limitazzjonijiet fejn il-liġi ma tagħmilhomx. Qal ukoll li tali policy trid tkun aċċessibbli u pubblika biex min ikun interessat li jitlob li tinħareġ tender, ikun jaf għal xiex ikun dieħel, u b'hekk mhux biss il-pubbliku imma anke t-Tribunal u l- Qorti jkollhom opportunità jiskrutinizzaw il-konformità u l-validità tal-eżerċizzju diskrezzjonali tal-Awtorità meta jintalbu jagħmlu eżerċizzju ta' judicial review."

"L-appellat qal li huwa b'hekk biss li jista' jiġi aċċertat li l-prinċipji tar-rule of law u tal-ġustizzja naturali u tar-raġonevolezza jiġu applikati bis-sħiħ. L-appellat qal li għalhekk fil-każ odjern huwa ċar u manifest li t-Tribunal għamel skrutinju akkurat tal-provi mressqa quddiemu, u t-Tribunal kien korrett fid-deċiżjoni tiegħu."

"L-appellat qal li huwa ċar li l-andament quddiem it-Tribunal huwa regolat bil-prinċipji tal-ġustizzja naturali u bil-prinċipji kollha li jirregolaw il- judicial review tad-diskrezzjoni amministrattiva"

Wheeler Case - improper purpose

Wheeler and others vs. Leicester City Council 1985

Leicester's city government did not agree with the fact that the rugby players was going to South Africa for the rugby championships, during Apartheid. Leicester council stated that it is agains Apartheid. The rugby players did nothing wrong with the fact that they still went to South Africa. These players played in the Leicester playgrounds, which were managed by the Leicester council.

When the players came back from South Africa, the Leicester council closed the ground where the team used to train, basing the argument on 2 existing laws;

1. Local spaces act 1906
2. Public health act 1925

These two laws specifically give you the power to close the grounds. So the council used the power which was contained in the laws, and really did exist. However there was no solid reason which paralleled with the conditions set out in the laws in order for the ground to be closed. Hence, The Leicester local council could use the public health act, and could close the grounds yes, but on different basis than that.

- *As per Lord Templeman: "the laws of this country are not like Nazi's, a private individual cannot be obliged to display zeal in pursuit of an objective pursued by a public authority. This use by the council of its statutory power was **misuse of power**, the council could not use its statutory power of management or any statutory power for the purpose of punishing the club when they had done no wrong".*

The Blue sisters Case - The Prime Minister et vs Sister Luigi Dunkin, decided - First Hall Civil Court - 26 June 1980 per J. J.H.Herrera

The aim of the Government of the 1980 was to nationalise the hospital concerned in the case. When the license had to be renewed, the minister found a condition in the law stating that he had the vires to impose any new condition he may "deem expedient". With the renewal of the license, he added a condition that he would take 50% of the hospital.

Blue sisters case - local case - "the minister may impose he may deem expedient" - can not be abused though.

The government told them, in order to give them the license, they must give him 50% of the hospital - it is unreasonable according to the court - it annulled the decision.

The Court in this case, said that it is true that the government can use any condition he may deem expedient, but such condition and power musty be reasonable - it is not reasonable to leave the nuns here without anything, the court said it is not reasonable

Oxygen Case

British Oxygen Co Ltd v Minister of Technology [1971] AC 610 - Fettering of Discretion

This case concerned a policy which was drawn up, which granted grants by the Government to entrepreneurs on items 25 sterling and upwards. The company in this case, British Oxygen Co Ltd, applied for this grant, bu its items were 20 sterling each and not 25 as required by the policy.

Hence the board of trade, could not give them grants as according to the policy. The applicants were offended and hence they opened a case, and the court for judicial review and Lord Reid said that the board of trade is obliged to listen all of the issues in front of it.

The court said okay you have a policy, of 20 sterling limit, but you ignored the fact that they spent millions on the investment (30 million), so it doesn't not make sense that the policy is applied in a rigid manner. The discretion was not applied in a wide sense, fettering as it was applied in a narrow sense.

Wednesbury Case - unreasonableness

Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948]

This case is a UK case, which is based on the religious belief that Sunday was the day of God, hence this day is solely dedicated to prayers. The licenses on Sunday when it comes to cinemas, were subject to such conditions as the authority think fit for purpose. The cinema in this case, gave them the license but imposed a condition that people under 15 years of age could not attend with or without their parents. To the cinema's belief, such condition was unreasonable and initiated proceedings.

Lord Green said that there is nothing unreasonable with such a condition. The English courts hence decide that the matter was reasonable as it was in the best interest of the child. The fact that the council put moral considerations in not allowing 15 year olds was relevant not irrelevant - was not an irrelevant consideration

This case brought about the notion of ‘Wednesbury unreasonableness’. The court defined this as being something "**so absurd that no sensible person could ever dream that it lay within the powers of the authority**”.

Absurdity - principle of unreasonableness - defines what is Wedensbury unreasonable - the ordinary person, can never think that it is absurd - there is an element of subjectivity - but at least there is a parameter -Lord Green gives the example of a teacher, who did not allow to be in for the simple fact that she was not allowed in because of her red hair.

Council of Civil Service Unions v Minister for the Civil Service 1985 ('the GCHQ Case') - irrelevant considerations

There was an issue as to whether the employees at this facility could be unionised. The House of Lords held that the civil servants had a right to a hearing before being prohibited by their employer from joining a trade union. The government wanted to prohibit civil servants who worked in this facility not from being members of any union (ex. A house union), but from being member of a national union. This was said to have been linked to political issues and security issues at the time, given that the national unions were seen to be very left wing and sympathetic with the governments of the communist block. The government did not want to have a situation were these national unions would have a foot hold in intelligence facilities. The Court held that civil servants had a legitimate expectation to a fair hearing before a decision was taken.

Ground of Judicial Review: Illegality:

No power to vary conditions

Breach of contractual rights
Irrationality
Action went against International Labour Organisation Convention
No Consultation had taken place before the change in conditions was implemented

As a defence the Government fielded *‘The Royal Prerogative’*
Defined by Dicey as “The residue of discretionary power in the Sovereign”
This argument was obscure and had received a mauling in a 1964 case –ex parte Lain
It seemed even then that the Royal Prerogative argument ***“was doomed by the modern law of Judicial Review”***

- The argument that there was no legal obligation to consult was also rejected and the Prime Minister’s decision was quashed in the first court only on this ground

The court of appeal decision - in August of 1984 - the court of appeal unanimously decided in favour of the Government. In the house of lords, In October 1984, the government was again unanimously successful.

The three main grounds of 'illegality, irrationality and procedural impropriety' in fact came to be known as the 'CSSU Trilogy' rights were only restored at the GCHQ in 1997.

even though the Government did not seem to act unlawfully/irrationally in the eyes of the court, the grounds for judicial review were established, as well as the fact that a royal prerogative is bound to be judicially reviewed by the courts, right ? Yes

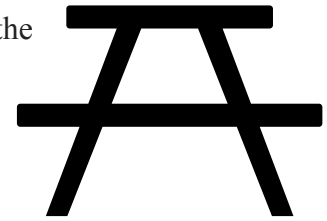
- - Lord Diplock in the GCHQ case (*R vs Minister for the Civil Service ex parte Council of Civil Service Unions* (1985)) divided the grounds of judicial review, reflecting the basic principles of AL under three heads:
- - 'Illegality', 'irrationality, and 'procedural impropriety'
- - He also saw a possible extension of these grounds to include 'proportionality'

REMEDIES

The **principle** that a person has **a right to an effective remedy** if his rights are **breached**.

This **right to an effective remedy** is linked to **the right of access to the courts and fair trial** as well as the notion of rule of law and independence of the judiciary. *Ubi jus, ubi remedium* (where there is a rule, there is a remedy).

- **The remedies are known by the law and they are 3**



1. AD HOC TRIBUNAL ((MAMUL APPOSTA, SPECIFIC), ex, the EPRT that has the power of appeal, or else the remedy infant of the (PA BISS JISMA) MAMUL APPOSTA AL PLANNING

2. Administrative Review Tribunal , chapter 490 of the Laws of Malta

3. **Article 469A, Chapter 12 of the Laws of Malta**

4. IF NOT, THE authority DOES NOT FALL UNDER AN ASDMIN ACT, WHAT IS THE REMEDY ELFT ? ON FRONT OF THE PRIM AWLA BY A31 OF THE COCP

Judicial Review - *STHARRIG GUDIZZJARJU* - The examination and review of a judicial organ

To contest judicial review, the context of A469A(4) needs to be applied;

(4) The provisions of this article shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

So the problem is that if you pursue another informal mechanism, that could lead you to nowhere at the end of the day - as once the tender is aware, IM could back and retrack the situation - you should always seek formal mechanisms when it comes to redress an the test is that you see where there is an *ad hoc* mechanism, either provided by an act, very often the act itself —- as there is environment and planning review tribunal act - in this case, there is an ad hoc act which provides for appealed fro public tenders.

If no ad hoc mechanism was available then one would try his luck in front of A469A - this is very imp - first you have tons if there is an ad hoc mechanism which takes takes you to an ad hoc tribunal or administrative review tribunal, if there is no mechanism then A469A, chap 12.

Always seek the formal remedies - unless that mechanism is not provided for specifically by law - the argument is that you should always seek formal from of redress then the dilemma is if you should go to the ombudsman -

If you go to the ombudsman, but what if you decide to take your case in front of te ombudsman and neglect and decide to take it later,

- Ombudsman conclusion has moral force - no binding force - hence you should always seek the formal remedies, an appeal of the law provides for an appeal, an appeal can over rule the decision of the authority and give its own decision, an official remedy before the admin review tribunal, provides that the law provides for that remedy - no route available then the only route available is A469a - THESE ARE THE FORMAL FORMS OF REDRESS

Dr. Musumeci's SUGGESTION; "I WOULD NOT GIUDE MY CLIENT TO INGORE A469A at the expense of the ombudsman - the best is to try to seek both conclusions but then the ombudsman can not enter into something which is being interpreted by the courts at the moment.

If there is specific mechanism, you go to that - you can have a specific mechanism deriving from the law itself, so in the case of the PA, we have the ad hoc mechanism, ART - but are there any other mechanisms available ?

We go to A469A when no remedies available - NOT WHEN YOU EXHAUST ALL THE

IF YOU KNOW HOW THIS MECHANISM WORKS, LIFE IS EASIER

—A CLIENT came to you as they refused his tender, and what should you do? He feels aggrieved. Seeking a remedy what opinion should you give ? 1. See if there is a remedy in the establish, see if there is a remedy ad hoc in the law - ex planning has special tribunals ad hoc - you go there - if there is you have to go there

2. If no, you go to Art - chapter 490

3. If the law is silent - A469A - chapter 12 of the COCP

GOVERNMENT LIABILITY

Jure imperii doctrine - for some time there was the idea that the governments actions are immune, just because he is the Government. His doctrine is no longer in practice, it ended. In Lowell vs. Caruana, the *jure imperii* doctrine came to an end and now if the Government makes a mistake he can be tried.

Imagine - you go back home from uni and u crash into someone. A lack of proper look out from your end. Should you as a driver be held responsible ? For the damages you caused? YES.

The government can be found guilty either by commission or by omission.

Basic principle at law and the civil code, that whoever causes damage to a third party, he or she who causes damage is bound to make good for the damage. He/she is bound to make good for the damage. The civil code is the binding document which regulates interactions between private individuals **- 2 types of interactions; interactions between 2 persons, the contractual interplay** - I enter into a contract and I agree that I enter into a contract and this contract, we agree that I transfer my property to Kelsey.

DIFFERENCE IN: **Tort law and Contract law**

Contracts = agreements that if you don keep with your word, there is an agreement a priori

Tort - no agreement - there is no garment of the tort, it just happens. It is ex post facto - there is an accident and your ability to inter party arises then. No agreement but both territories give rise to potential responsibility, which responsibility makes good for that liability.

- law of contract - pre-existing agreement
- Law of tort - no agreement - ILQATT BANKINA

Section 1037 in the Civil Code - my responsibility as an employer to make sure that my employees are up to scratch

A1037 of the Civil Code

1037*. Where a person for any work or service whatsoever employs another person who is incompetent, or whom he has not reasonable grounds to consider competent, he shall be liable for any damage which such other person may, through incompetence in the performance of such work or service, cause to others.*

- Where a person, I myself as an architect of the firm - service; architectural services. I employ another architect, my employee but who is "incompetent" or "whom he is has not reasonable grounds to consider competent"
- He - the employer is responsible for the damage of his employer made, to others
- So if I am an employer, I employ someone else, who is not competent or who he has not reasonable grounds to consider competent.

If it is a known fact that Erika has no idea, of how to pursue a job in plastering and I employ her nonetheless I could have a problem as an employer, if she defaults. So in jobs that do not require a warrant, this becomes tricky. **If that job requires a license, to carry out works, an architect example and I decide to engage someone in my firm who is familiar with the job but does not have a warrant, then it is a different story.**

PAOLA BUSUTTIL VS LA PRIMAUDAYE, 1872 - Judge Chapelle - mentioned this doctrine and - the plaintiff suffered damages when a police raid happened - it was a shop of gold and the police were in and they broke the shop. Jure imperii doctrine prevailed. The government was not liable in the case. He was immune and exempt from liability - the government is not liable.

ELVIRA ABELA VS PRIME MINISTER, 1994 - Elvira Abela - the ramp was allowed where there were no indications that there was the sea at the end of the ramp, the Government of Malta was responsible, hence the Government had to make good for that loss.

ARGUS INSURANCE AGENCIES VS KUNSILL EZEKUTTIV TAL-QREDNI 6TH JUNE 2018

TABIB GRECH VS. KUMMISSARJU

Important to keep in mind ->

Government liability is different from Administrative acts as A469A relates only to administrative action, whilst Government liability concerns things which are not administrative acts, under which act, under tort law, **A1033 and A1037**.

If in the exam if there is a question, can the gov be searched for ? In the beginning, Busuttil vs. La Primadauye the government was protected, until the Lowell vs. Caruana case, where the government was no longer protected.

Damages in Article A469(5)

(5) In any action brought under this article, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the public authority ***in tort or quasi tort,*** *arising out of the administrative act. The said damages shall not be awarded by the court where notwithstanding the annulment of the administrative act the public authority has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.*

A469A happens - in the first hall civil court, this court will ask to review, to declare the act null or void, on basis of law, unlawful behaviour, it can be *audi alterem partem,*

A469 - is against an administrative act, - this article talks also on damages - sub-article 5 speaks on damages - this sub article says that if the administrative authority is found to be unlawful, hence null and void, then you can search for damage**s. The act has to be bad faith and unreasonableness**.

The issue is that A469 - gives rise to damages, but this has to be in bad faith or unreasonable

Lowell vs Caruana - revocation of a permit building - a vested right which can not be taken away, and the concept of a legitimate expectation - the minster wanted *jure imperii* doctrine and the court mad eit very clear that that doctrine can not be adopted, the government can also be searched for damages - A469A with regards to damages but restricted

LEGAL NOTICE

Legal notice - gives power to the minister to act himself and do his own laws - the minister can do these legal notices - gives the power to the minister to make laws. This act gives the power to ministers ex a law on bill boards - how big they need to be … etc..
There is nothing unlawful for the minister to make laws so ling that the law permits this

If the minister passes a legal notice, and you have a problem with the elements of this legal notice. Legal notice - is it an administrative act ?

Administrative act definition in A469 A does it include a legal notice, made by the minister ?

A legal notice - despite the fact that it is promulgated by the minister is a legislative act and is **not an administrative act,** NO IT IS NOT THEN. A legal notice can never qualify as an administrative act. Never. It does not qualify as a law or legal notice, depute the fact that it is out from parliament act, it is still a legislative act. A469A is not open to legal notices, this is fundamental.

How do you challenge a legal notice or a law ? What is this other thing ? What remedy is there ?

Article 116 of the Constitution

CHAPTER XI

Miscellaneous

116. A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of articles 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action.

Actions on validity of laws.

Arnold Cassola v. L-Avukat tal-Istat, decided on the 7th March 2022
In 2021, a mechanism to ensure equality in parliament was introduced. Since this meachsim is applicable for the "**Skont l-Artikolu 52A (1) dan il-mekkaniżmu jiskatta biss f'elezzjoni ġenerali li tkun ġiet kontestata minn żewġ partiti jew iktar u l- kandidati ta' żewġ partiti biss ikunu ġew eletti."**

Cassola complained to the court that this mechanism is discriminatory to him and all others who are not in either one of the elected parties. Hence he claimed a discrimination in this matter. He asaid tat there is a breach in his human rights and that the remedy was A116.

"**Skont l-attur dan ifisser li kandidati tal-ġeneru l-inqas rappreżentat li jikkontestaw l-elezzjoni bħala entita` politika differenti miż-żewġ partiti l-kbar u jkollhom aktar voti minn dawk li kkontestaw ma' wieħed mill-partiti l-kbar jispiċċaw ma jibbenefikawx minn dan il-mekkaniżmu"**

“L-attur jilmenta li dan il- mekkaniżmu jikser id-dritt tal-liberta` ta’ assoċjazzjoni peress li hu xkiel u disinċentiv għall-parteċipazzjoni u l-kandidatura tiegħu u ta’ kandidati

oħra li jkunu jixtiequ jiffurmaw grupp jew alleanza politika differenti għal dawk tal-Partit Laburista jew Partit Nazzjonalista, billi jagħti vantaġġ mhux mistħoqq lil kandidati Laburisti u Nazzjonalisti sempliċiment għaliex huma affiljati ma’ partit kbir.

“l-attur jilmenta li dan il-mekkaniżmu jmur kontra d-dritt għall-elezzjoni ħielsa garantit permezz tal-Artikolu 3 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea għaliex jinterferixxi u jikkawża distorsjoni fl- espressjoni libera tal-opinjoni tal-poplu, għaliex vot għal kandidati taż- żewġ partiti kbar għandu iktar piż minn vot li jingħata lil kandidat li mhux assoċjat mal-istess partiti. Skont l-attur dan imur kontra l-prinċipju ta’ suffraġju universali, fejn kull persuna għandha dritt għal vot wieħed, u jilledi wkoll il-prinċipju ta’ rappreżentanza proporzjonali kostituzzjonali.”

PAST PAPER - JUNE/JULY 2020 EXAMINATION SESSION

Study Tip: KNOW THE Principles!!! FROM SEM 1 KNOW EVERYTHING AND APPLY THEM TO CASE STUIES.

Infrastructure Malta (IM) is a government entity responsible for coordinating and financing road construction in Malta and Gozo. **It issued a public tender for interested contractors** to undertake works in Regional Road, Msida. **A consortium of road contractors, named XYZ Ltd, tendered for the works. However so, they lost the tender to undertake said works, notwithstanding their bid being the cheapest.**

XYZ Ltd received a letter in which IM explained that XYZ Ltd were not technically equipped to do the job. Moreover, IM stated that XYZ Ltd was recently exposed in Lovintimes.com wherein it was revealed that XYZ Ltd was blacklisted due to money laundering.

XYZ Ltd appealed the decision before a review board set up by IM to overview complaints from aggrieved tenderers. This Board was chaired by an architect, a certain Architect Abela, who was appointed by IM for the purpose. The other member sitting on the Board was a lawyer, a certain Dr Bartolo, who is also a lecturer at University.

Architect Abela happened to have been a consultant to XYZ Ltd in the past. Nevertheless, he signalled no conflict of interest since that was more than ten years before. Using his private email, Architect Abela invited XYZ Ltd to make written submissions to substantiate their complaints.

XYZ Ltd, through Dr Vella (their lawyer) reverted by saying that they wanted a formal hearing. Subsequently, Dr Bartolo, **using his university email,** wrote to Dr Vella explaining that the **reviewing Board was willing to meet him (Dr Vella) through a zoom call**. Moreover, Dr Bartolo insisted that the call should take place on a Saturday afternoon.

Dr Vella refused this invitation since Saturday was not a decent time. Dr Vella suggested his clients XYZ Ltd to file a constitutional case in court, citing discrimination.

XYZ Ltd disagreed with Dr Vella's suggestion, and directed Dr Vella to meet Architect Abela privately. Dr Vella refused, citing ethical issues.

XYZ Ltd went on to appoint another lawyer, Dr Mangion. After XYZ Ltd explained the situation, Dr Mangion agreed to meet Architect Abela **privately** on condition that the latter is not taken by surprise. Dr Mangion decided to send a very courteous email to Architect Abela, requesting a meeting with a view to iron out any misunderstandings. Architect Abela agreed to meet.

Meanwhile, Infrastructure Malta gave the tender to another company ABC Ltd., even though their bid was not the cheapest. ABC Ltd, carried out a very good job. Towards completion, Infrastructure Malta requested ABC Ltd to tarmac an additional stretch of road through a direct order following which it was inundated with questions from Lovintimes.com due to it having abused its power when it gave the direct order of five hundred euros to ABC Ltd to carry out the additional works.

Infrastructure Malta replied to Lovintimes.com, stating that it was authorized to give direct orders up to ten thousand euros when an urgent matter arises. Moreover, Infrastructure Malta insisted that

it had decided to award the tender to ABC Ltd after it was Lovintimes.com who had exposed the other tenderer, XYZ Ltd, to be unfit.

(a) XYZ LTD had the cheapest bid and, yet was refused the tender to carry out the works.

(b) XYZ Ltd were not technically equipped to do the job and were blacklisted due to money laundering.

(c) The review board was set up by IM.

(d) Dr Bartolo was also a lecturer at University.

(e) Architect Abela happened to have been a consultant to XYZ Ltd in the past. Nevertheless, he signaled no conflict of interest since that was more than ten years before.

(f) XYZ Ltd, through Dr Vella (their lawyer), wanted a formal hearing.

(g) The reviewing Board was willing to meet Dr Vella through a zoom call instead of meeting in public.

(h) Saturday was not a decent time.

(i) Dr Vella suggested that XYZ Ltd that they should file a constitutional case in court, citing discrimination.

(j) XYZ Ltd disagreed, and suggested to Dr Vella that he should meet Architect Abela privately.

(k) Architect Abela agreed to meet Dr Mangion.

(l) Infrastructure Malta gave the tender to another company ABC Ltd., even though their bid was not the cheapest.

(m) The direct order was to the tune of five hundred euros, hence within reasonable limits.

(n) It was Lovintimes.com who had exposed the other tenderer, XYZ Ltd, to be unfit.

Guidance on how to answer the Past Paper Question

"Infrastructure Malta (IM) is a government entity"

The fact that Infrastructure Malta is a Government entity, means that it enjoys some connection with administrative law.

If it were a church, it is not an authority established by law. Infrastructure Malta an entity - which falls under the realm of administrative.

You need to know whether the entity falls within the rules of administrative law - if the entity is laid down by a particular law, it is an entity established by law, hence it is good for judicial review.

"It issued a public tender for interested contractors to…

an authorisation via act of law - and there is a section which allows infrastructure Malta to issue tenders
To issue planning permits ? No, PA has the vires to do such acts.
As long as it exercises these acts as acc to law, it is okay. One of the actions of infrastructure malta is to publish an issue tenders. The answer to that is not common sense but because there is a law which establishes this power.

Does it have the vires to undertake works on regional road? Yes, nothing wrong up till this point

IM issues a development planning permit, something odd ? YES, as the PA should do that issues permits, but it is not enough, as IM is not authorised to issue planning permits, so going back to the principle which we discussed way back that an authority can not perform an act which it is not authorised to do.

…undertake works in Regional Road, Msida."

RULE 1 - entity established under a law - AL applicable.
RULE 2 - so long as the entity performs a function that is allowed by law, it is fine.

"A consortium of road contractors, named XYZ Ltd, tendered for the works. However so, they lost the tender to undertake said works, notwithstanding their bid being the cheapest."

We have an issue here, as this contractor was the cheapest but not withstanding so, he was not awarded the tender. The fact that they were the cheapest doesn't mean anything, but may be the others were efficient with their machinery etc..

In Malta we have the procurement regulations - the thing is that in Malta we have regulations, laws, which allow the awarding of tenders not to the cheapest bid, provided that there are many criteria which need to subsist. I can not awards second cheapest as the contractor is my friend.
The procurement regulation allows awarding of tenders not to the cheapest bid - so if I decide to award a tender not to the cheapest bid which are extraneous to the regulations, then I am in the wrong. That is illegality at its best - as it is not one of the listed criteria in the procurement regulations, so long it is one in the procurement regulations, then it is fine. So although one could make an additional question as to why the cheapest tender was not awarded, there are some questions to award tender not to the cheapest bidder.
This is whether the reasons being given are legitimate or not. This is what we will discuss in the next paragraphs,

"XYZ Ltd received a letter in which IM explained that XYZ Ltd were not technically equipped to do the job. Moreover, IM stated that XYZ Ltd was recently exposed in Lovintimes.com wherein it was revealed that XYZ Ltd was blacklisted due to money laundering."

We now know the reason why the tender was not accepted - it was black listed - on this basis, even though it was the cheapest, there are reasons why, as this contractor was involved in money laundering.

Kercem vs Ajax case

Received a letter - nothing wrong with that

- if not technically equipped to do the job, is there a legitimate reason ? Yes, to refuse the tender. So, okay, well it is it could be justified, so IM, until this point would appear to be justified as not technically equipped.

UNTIL NOW - good reason to refuse the tender, in so as XYZ limited is concerned, as this reason is legitimated you can not have someone who is not technically equipped to carry out public works, in such a situation

HA JIBDA L BERAQ …

SECOND REASON - being XYZ limited is facing allegations of money laundering, acc to a news website. Is that enough ? NOT PROVED

GOD FORBID THAT WE RELY ON ALLEGATIONS EXPOSED ON THESE POPULAR WEBSITES

So is it enough that it is exposed on a website ? DEF NO, but it is legitimate to say that one should prove further, it entities you to prove further but LOVING MALTA is not enough.

JEKK TAQRA U MA SSIBX GHAMILHA LI DAQSEKK - "issib lok fej tara akatr u mhux tieqaf hemm"

"XYZ Ltd appealed the decision before a review board set up by IM to overview complaints from aggrieved tenderers. This Board was chaired by an architect, a certain Architect Abela, who was appointed by IM for the purpose. The other member sitting on the Board was a lawyer, a certain Dr Bartolo, who is also a lecturer at University."

If the law allows for this kind of review, there is nothing wrong with it.

IM is allowed to provide a review mechanism within its structure ? If one had to make a case on A469a - the clock starts ticking - you have 6 months - is there anything wrong to have a review mechanism going on, if it is not allowed by law - nothing wrong by itself but there is very wrong if the contractor is mislead if the formal mechanism, judicial review, period elapses of the period.

Public tenders - general mechanism provided by law if one is not happy with the tenders.

The other mechanism has to be provide by law - procurements regulations provide for ad hoc - precisely.

So the problem is that if you pursue another informal mechanism, that could lead you to nowhere at the end of the day - as once the tender is aware, IM could back and retract the situation - you should always seek formal mechanisms when it comes to redress an the test is that you see where there is an ad hoc mechanism, either provided by an act, very often the act itself —- as there is environment and planning review tribunal act - in this case, there is an ad hoc act which privies for appealed fro public tenders. If no ad hoc mechanism was available then one would try his luck in front of A469A - this is very imp - first you have tons if there is an ad hoc mechanism which takes takes you to an ad hoc tribunal or an administrative review tribunal, if there is no mechanism then A469A, chap 12.

Always seek the formal remedies - unless that mechanism is not provided for specifically by law - the argument is that you should always seek formal from of redress then the dilemma is if you should go to the Ombudsman -

If you go to the Ombudsman, but what if you decide to take your case in front of the Ombudsman and neglect and decide to take it later.

The Ombudsman conclusion has **moral force** - no binding force - hence you should always seek the formal remedies, an appeal of the law provides for an appeal, an appeal can over rule the decision of the authority and give its own decision, an official remedy before the admin review tribunal, provides that the law provides for that remedy - no route available then the only route available is A469a . THESE ARE THE FORMAL FORMS OF REDRESS.

I WOULD NOT GIUDE MY CLIENT TO INGORE A469A at the expense of the Ombudsman - the best is to try to seek both conclusions but then the ombudsman can not enter into something which is being interpreted by the courts at the moment.

A469A - 6 months - time bar
PA - 30 days

MAKE SURE THAT THE REVIEW BOARD EMANATES FROM A LAW

If there is specific mechanism, you go to that - you can have a specific mechanism deriving from the law itself, so int he case of the PA, we have the ad hoc mechanism, ART -but are there any other mechanisms available ?

We go to A469A when no remedies available - NOT WHEN YOU EXHAUST ALL THE REMEDIES, ALL TTHE AVAILABLE - A469A available where there is no other remedy - apart from these specialised tribunals, is there another tribal ? YES ART - Administrative Review Tribunal - established BY 490 OD THE LAWS OF MALTA, and there are certain situations where certain decisions are not directed to an ad hoc tribunal but by this tribunal - does not form part of the judiciary, does not form part of the judiciary,

Oddly enough forms part of the execrative. The decision of the ART is not final as you can appeal in the court of appeal of civil jurisdiction

The ART, is assigned with certain specific rules, such as decision of TRANSPORT MALTA, INLAND REVENUE,..

When no remedy, neither a special tribunal nor the ART, such as tax law, then you have last resort - A469A - of Chapter 12, judicial review before the First Hall Civil Court.

"Architect Abela happened to have been a consultant to XYZ Ltd in the past."

Is there a problem with that ? Yes, as the nemo index in causa sua principle applies not only to quasi judicial bodies but also in these entities, which have an almost quasi judicial character but sit in the executive.

"Nevertheless, he signalled no conflict of interest since that was more than ten years before."

YOU HAVE TO SEE IF THERE IS A CODE OF ETHICS PROVIDING FOR THIS SCENARIO - MANY A TIMES YOU WON'T FIND, will leave in the hands of individual to decide.

The truth is that most judges or lawyers were practicing lawyers very recently say that it must be argued - IF YOU THINK THAT THERE IS A CONFLICT, ARGUEE IT NO YES OR NO, and why.

"Using his private email, Architect Abela invited XYZ Ltd to make written submissions to substantiate their complaints."

With regards to this element, there is no law on this. Here one must see what the law says and not what one thinks.

NO LAW ON THIS FACT OF EMAILS - even if you are morally convinced that that should be the way forward, check if that is sanctioned by law or the legal complications if you do not abide by that line of thinking. Till now, we have nothing - not what ppl think but what the law says.

"XYZ Ltd, through Dr Vella (their lawyer) reverted by saying that they wanted a formal hearing."

Anything wrong? NO

- That is in line with the basic principles., AUDI ALTEREM RULE - a formal hearing is essential if there is a case.

"using his university email"

Depends if the UNI has rules as to which bind the employees in so far as the email is used, MUSUMECI THINKS NO rules against this !

"reviewing Board was willing to meet him (Dr Vella) through a zoom call."

IS THERE ANYTHING WRONG?
IT IS A FORMAL HEARING?

Once again, you need to look through the law and see if the law allows you to do that. If the law is silent, possibly there is no problem.

!!WHEN COVID HIT, ALL BORAD MEETINGS WERE ON ZOOM.

"Moreover, Dr Bartolo insisted that the call should take place on a Saturday afternoon."

The concept of reasonableness - is it so illogical or unreasonable to hold a meeting on a Saturday afternoon ? It is subjective but it is logical
Is it so unreasonable ? No, I don't think so but there us the concept of reasonableness (according to Dr. Musumeci).

"Dr Vella refused this invitation since Saturday was not a decent time. Dr Vella suggested his clients XYZ Ltd to file a constitutional case in court, citing discrimination."

Apart from discrimination to take place, it can only happen if there is the element of more than one person as discrimination is a relevant term, in this case who are you discriminated against ?

Is there in Constitutional terms that Saturday isn't a decent time, a breach of fundamental right ?? Maybe the right of fair hearing ?

Article 6 of the Convention of Human Rights- stipulates the right of fair haring - if you think so, don't go to A6 ECHR, not on discrimination but on fair hearing.

"XYZ Ltd disagreed with Dr Vella's suggestion, and directed Dr Vella to meet Architect Abela privately. Dr Vella refused, citing ethical issues. XYZ Ltd went on to appoint another lawyer, Dr Mangion."

IS THERE AN ISSUE ? There are instances were there are no issues. Not everything that happens is an issue. Many things are non issues

Another lawyer ? NO ISSUE.

"privately"

Is there an issue with the fact that they are meeting privately ? YES
In Administrative law - the transparency is essential

"Architect Abela agreed to meet."

Is there an issue ?
Board member - THERE IS A PROBLEM HERE !!!!! THE FACT THEY ARE MEETING !!
A FORMAL SET up meeting in an informal set up.

Private meetings are the antithesis of formality.

Meanwhile, Infrastructure Malta gave the tender to another company ABC Ltd., even though their bid was not the cheapest.

No, there is nothing illegal as long as it is supported with reasons, reasonable and that are found in the law - reasonableness only is not enough it must be present within the law.

Hence 2 requisites, the reasonable thing is important

Note - For every assertion I try to make my mind

"This Board was chaired by an architect, a certain Architect Abela, who was appointed by IM for the purpose. The other member sitting on the Board was a lawyer, a certain Dr Bartolo, who is also a lecturer at University."

- let's imagine that the law contemplates for the establishment of this review board, is there anything wrong with appoint the architect Abela

- By appointing these two persons = SA ISSA - nothing wrong - unless there is a provision in the law stating that lawyers and architects can not sit on this board - or any other requisite -

- You have to see if the person sitting on the board, meets the requirements of the law - it can also be open to the minister or pm to appoint whoever - but there are times which the law qualifies who sits

- In the PA , int he board lawyer has to have any least 5 years experience - the others, shall be well versed in environment

Company XYZ limited who made a TALBA - for a tender in front of IM - IM HAS VIRES TO LET OUT TENDERS FOR TOROQ as it is in the parameters of what the legislative assigned

XYZ did not win the tender, is it justified that IM rejects cheapest bid in terms of the law ? Obv there were allegations on money laundering but an allegation is not enough, it should be proved.

RECAP

Article 469A of the Code of organisation and civil procedure states that the courts of justice of civil jurisdiction can look into an administrative act and see if it is valid or not, and if not, have the ability to declare it null and void. The instances when an act can be deemed to be null is on the grounds of the points of law relating to **incompetence, abuse of power, instances of ultra vires, and acts done which are in violation of the law** by the public authority in question. In judicial review, the court of judicial review could censor the decision of it being unlawful, a breach in the principle of natural justice, the tasking of improper considerations, the taking of a law, misusing a law for improper purposes, the breach of a legitimate expectation. - all these amount to a breach to unlawful behaviour.

CASE: Isabella Zananian Desira vs. Kunsill Mediku, decided on the 14th of February 2017, by the First Hall, Civil Court. [Applic. No. 740/11JRM]

The plaintiff contests that an "unjust, anti-constitutional, discriminatory, unlawful, ultra vires, and violate the basic principles of natural justice as well as because they are founded on a wrongful interpretation of the law", due to the fact that the defendant made the plaintiff sit for an exam, as a condition which is not prescribed in the law.

Instances that could provoke *challenge* - examples;

1. **Rule against bias** - *nemo index in causa propia*
2. Duty to give reason
3. Performing an act beyond the statute
4. The right to be heard

Points of law

Scenario 1 - Performing a task not authorized by law; mayor example
Scenario 2 - Deciding despite having a Conflict of Interest; application to PA board example - *nemo iudex in causa sua*
Scenario 3 - Failing to motivate a decision - Law course example - *duty to give reasons*
Scenario 4 - Treating one party different from the other - planning application; decision taken before hearing third party; *audi alterem partem*

Rules against bias

This can manifest itself through:

1. Family relationships - most obvious.

2. Financial Interest/Considerations - I can not judge someone whom I have a financial interest with. If I am going to adjudicate an individual who I have a business with, it would be unfair as
the financial interest involved would be influencing my decision, which would be bias.

3. Personal Antagonism - this is when the judge and the applicant has previous conflicts. Political
interest for example, is a type of personal antagonism.

4. Prior Judgement/Assessment - one can not judge someone when in the past that person was already involved in the person's sitting. It would be highly unfair if one for example makes accusations about a person and then that person is being adjudicated by the same person who accused him.

5. Professional Rivalry - this is when there is a professional, and that professional is adjudicating the case of his rival.

Definition of a public authority

"public authority" means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law.

- This article 469A is the essence of judicial review, it regulates judicial review and lays the grounds for which an administrative act can be deemed as null and void.

- Once a decision is taken by the public authorities, one who feels aggrieved can seek a remedy. This could take form by a judicial review, as in a judicial review it is not a decision of the court that it's being reviewed, but a decision of the public authority.

Appeal vs. Judicial review

Both an appeal and judicial review serve as a remedy to the individual that feels aggrieved. An appeal can be appealed on the basis of fact and law, whilst a judicial review can be appealed only on the basis of law. An appeal is when one party does not agree with the decision of the court, whilst in a judicial review matter, it is the public authority's decision who the party disagrees with. **Judicial review is the power of the court of law to verify if the action of a public authority is legal or not.**

In judicial review, **one is challenging an administrative action based on its lawfulness. In an appeal the Planning Authority for example, one could contest an action saying that the proposed building is not visually pleasing. I**n an appeal, the court can enquire into such point of facts whilst in judicial review, an administrative can be annulled on point of law only**.** In judicial review, the court of judicial review could censor the decision of it being unlawful, a breach in the

principle of natural justice, the tasking of improper considerations, the taking of a law, misusing a law for improper purposes, the breach of a legitimate expectation. - all these amount to a breach to unlawful behaviour.

In judicial review, the assessment has to be limited to the points of law. It can not substitute the facts as seen by the administrative authority in first instance. Ex; the court of judicial review could declare the act illegal, due to it being tainted by some unlawful behaviour, and revert the case back to the authority to decide in light of the court decision. In an appeal, the difference is that the court at second instance can view the facts different from what the first court established. In an appeal the decision could be substituted by the court of appeal, without the need to revert the case back to the authority.

Principles of Natural Justice

Administrative law is founded on the principles of natural justice.

Nemo iudex in causa sua - The Rule Against Bias - no one can be a judge in his own case. This principle of natural justice ensures that the adjudicator us impartial and independent. It is not ethical or fair to have a judge which has an interest in the outcome or else be one of the parties, as it is only natural that the decision taken will be a biased one. The rules against bias can manifest itself in; Family relationships, Financial Interest/ Considerations, Personal Antagonism, Prior judgment/ assessment and Professional rivalry/bias.

The discretion, that adjudicators have must be used reasonably and fairly, in line with the principles of natural justice. This rule against bias covers two main possibilities, when the decision taken is likely to be biased, or else, if the decision is already biased.

Audi alterem partem - Right to be Heard, A fair hearing - Both sides of a party in a case have the right to be heard. It is not fair to have Party A which is heard by the competent adjudicator and a decision is taken after Party A have said their behalf. If Party B did not even get the time and chance to express their say on the matter, then that goes against the principles of natural justice, mainly the right to be heard. Both parties must be heard prior to a decision is taken, in order for a fair hearing to take place.

One has to be notified of the hearing, one has to have assistance, the right to make submissions.

If there is an applicant in front of the planning authority, the board can not take a decision without hearing both sides, it can not say, I've heard enough.

Duty to give reasons - it is good to give reasons so that the person can be in a position to challenge that decision. You have to be in a position where you can dispute the decision when you want. It is fair to know where you stand

If someone for example is trying to become a police man and he receives an email stating that his application has been declined and no reasons given. This goes agains the principle of natural justice as no reasons motivating the decision were given. Hence, this perosn can in no way contest such decision.

- The US Supreme Court stated that, *"procedural fairness and regularity are of the indispensable essence of liberty"*.

- TheCourtsofCivilJurisdictionmayenquireintothevalidityofanyadministrativeactordeclare such act null, invalid or without effect, **when a public authority has failed to** observe the principles of natural justice. (A469A of the COCP). Hence, acts in violation to the principles may be declared null and void by the Maltese courts.

"Improper purpose + Irrelevant considerations"

Improper purpose is when an authority has the power to perform acts but it is using that power for something incorrectly.

Example of improper purpose: this is if for example the local council has the power to seek the approval of Transport Malta, so as to install a sign in a street. That is a lawful act with which the local council has the power to do. However if this sign is done the purpose of giving advantage to a shop owner and to kill someone else's business, that purpose is deemed to be an improper one.

Wheeler case (Wheeler and others vs. Leicester City Council 1985) is the best example of using a power for an improper purpose. This case involves judicial review. The Leicester City council was found to be exercising power for an improper purpose after such council did not agree with the fact that 3 Rugby players went to South Africa, where they were going to take part in the rugby championships. Upon the player's return, the Council no longer allowed the team to make use of the club, on the basis of two laws; Local spaces act 1906 and Public health act 1925. These are the laws which give the council the powers to close their grounds. In this case, the council did have the power, but there was no reason to enforce such laws. The council acted with an improper purpose as Lord Templeman stated in the case;

*"This use by the council of its statutory power was **misuse of power**, the council could not use its statutory power of management or any statutory power for the purpose of punishing the club when they had done no wrong".*

Acting for an improper purpose is unlawful as laws have to be used within the ambit of that particular law.

The Prime Minister et vs Sister Luigi Dunkin, decided - First Hall Civil Court - 26 June 1980 per J. J.H.Herrera - The Blue sisters Case

This case concerned the renewal of a license of a hospital. The minister found a provision in the law to impose any condition that he may deem to be expedient. With the renewal of the license, a condition that 50% of the beds in hospital could be used by the government was imposed by the minister. The fact that he was going to have 50% of the hospital, made the government act for an improper purpose. This was annulled by the court on the basis that the Government acted ultra vires and in an unreasonable manner.

Performing a power which is ultra vires

This is when one performs a power which is not in your power to perform as the law does not allow it from the start, ab inizio. Example of this is if the Local council decides to make a donation from its funds to someone in need. It can not do such thing.

Fettering of discretion - (oxygen case is the best example)

Fettering of discretion means when one is inflexible with the policy. This is still a type of acting for an improper purpose. This fettering of discretion can lead to an abuse of discretion if it fetters its discretion by policy, contract or plebiscite. It can be said that one applies the law in a narrow sense. It can lead to an abuse of power.

This can amount to an abuse of discretion. The is when one shuts one's ears to an application, instead of listening and considering all the elements prior to making a decision. This fettering of discretion can give way to abuse. To summarise this notion, it can be the opposite of ultra vires, whereby in the case of ultra vires, one goes beyond the powers at law, whilst in fettering of discretion, the law is applied in a strict and narrow sense.

The best example for this fettering of discretion is the **British Oxygen Co Ltd v Minister of Technology [1971] AC 610,** which deals with gas cylinders. In this case, there was a policy concerned which stated that grants were being given to items which were 25 pounds and more. The plaintiff in this case, appleid for this grant. Since the items were 20 pounds each, the board of trade could not give them the grant in question, as according to the policy. The Plaintiff opened a case for judicial review and Lord Reid commented in the case by saying that even though the items in question were 20 pounds, and not 25 as required in the policy, but the defendants had ignored the fact that the plaintiffs spent millions on the investment (around 4 million pounds). Hence, this fact should be taken into consideration. Therefore the fact that the policy was applied in a rigid manner does not make sense, as it was appleid in a narrow sense.

Unreasonableness and Irrationality

Unreasonableness is something associated with bad faith and lack of proportionality.

Example of Unreasonableness - something which is not reasonable

Example of Irrationality - something which factually it doesn't make sense - I am going to Valletta and I am going to see the Vatican.

A case on Unreasonableness: **'Associated Provincial Picture Houses Ltd v Wednesbury Corporation'.**

This case also known as the Wednesbury case related to the principle of reasonableness. At the time of the case, in the UK, Sunday was a day of worship. The defendants in this case ruled that people under 15 years of age could not attend the cinema, neither with nor without their parents. The plaintiffs therefore opened this case so as to contest such decision. Lord Green in this case stated that such a decision was not unreasonable. This case established the definition of 'unreasonable' to the extent that the term 'Wednesbury Unreasonable' is still used. From this case, the definition of the term unreasonableness was established as being; "something, so absurd, that no sensible person could ever dream that it lay within the powers of the authority". Lord Green also gave the example of a teacher who did not allow her student to enter the room for the fact that she had red hair.

Council of Civil Service Unions v Minister for the Civil Service 1985 ('the GCHQ case'
This case concerned the issue of whether the employees at the facility, in question could be unionised, after the Government did not want the civil servants who worked at this facility to be part of a national union. This was desired for political and security issues. The court of appeal in this case decided in favour of the government, and the House of Lords decision was also siding with the Government. Therefore it was ruled that it was not irrational that the workers were not allowed to join trade unions, for the purpose of national security. This case is famous because of the definition of the grounds of judicial review in the British legal system. The three main grounds of 'illegality, irrationality and procedural impropriety' in fact came to be known as the 'CSSU Trilogy'.

Bad Faith vs. Good Faith

Bad faith - 2 people doing an agreement between parties where one of the parties performs a dishonest contract in order to mislead or decide

Good faith - honest
Diff is - that the element is that one \had the intent to deceive the other Bad faith - must be contrasted with unreasonableness

RE-DUFfY(fc) (Nothern Ireland) 2008 - were the claim for irrationality was successful - a case that - both mediators that were there to decide were already to discuss the material - ***nemo iudex in causa sua***

The northern Ireland Act created by Parades commission so as to impose conditions on parades, since such parades were always controversial. The secretary of state appointed seven commissioners and two of which were members of Protestant loyalists organizations, which had been in dispute with rival Catholic organizations.

Lord Bingham: "No reasonable person, knowing of the two appointees backgrounds and activities, could have supposed that either would bring an objective or impartial judgement to bear on problems raised by the parades."

Ann Summers Limited vs Job Centres Plus - 2003

This case represents the plaintiff who filed the case after the defendant did not want to sell her vacancy of the shop she owned, which needed salespersons to be hired. The shop in question used to sell adult toys, better known as sex toys. At the time of the case the industry of sex toys was not illegal, therefore the items concerned were not illegal. When Ann Summers tried to promote the job, through the defendant, Job Centres Plus, the latter did not allow her to do so. This case went up to the court, where Mr. Justice Newman, decided that this was **irrational,** he says that the decision was discriminatory as since the trade is one which is legitimate, it is acceptable. The defendants said that this was 'embarrassing'. According to Newman, embarrassment was not enough to deprive such right - it is not something that no sensible person would arrive to such conclusion.

Nottingham Shire county council vs secretary of state for the environment 1996

Unreasonableness - in a sensible mind - improper purpose and bad faith - IMP CASE
This case decided that the decision by the secretary of state to alter local authority budgets was irrational.
Lord carman "must have taken such absurd decision when he was not F SENSIH"

R.vs Ministry of defence EX P. Smith -
The decision was irrational was - another case 1996 - **R.vs Ministry of defence EX P. Smith** - IF a homosexual person can form part of the Army and the court said that at first it was he can not but then the court said that that decision is irrational - its irrational as we are touching fundamental human rights. **This matter went to the EU courts of human rights, and since the domestic court as the domestic force could not enforce the law, the human rights court ruled the matter in their favour.**

Lord Newman said it is unreasonable as we had discrimination. At the end of the day, when we come to unreasonableness and irrationality, that argument can be used even when the case is not of appeal bur of judicial review.

Proportionality

Proportionality is essential in administrative law matters. It ensures that one is rational and does not exaggerate in the act.
Three essential elements are required in order for proportionality to be maintained. The first of which is the legitimate aim. There must be a legitimate objective to your action. If one wants to make more lanes, the legitimate aim of that would be that traffic would pass in a swifter manner. Since this passes the first element, then we pass onto the second element. This second element is that the **measures to be taken have to be connected to the legitimate aim. This last element is that the measures taken are not mire than what is necessary in reaching the legitimate objective. In an instance when there is lack of proportionality, which leaves a person aggravated, that person must be compensated. This ensures the right to a fair balance.**

- One of the main functions of the administrative law system is to ensure that there is a balance between the private rights, of individuals on one hand, and the public interest on the other hand.

- 3 sub principle s- **suitability, necessity and balance**

Legitimate Expectation

Legitimate Expectation Doctrine

One can not change a law or a policy in the last hour - because there is legitimate expectation, because it is only legitimate to expect that that policy is there to take effect and if it has to be changed, then in that case, the authority has to alert from beforehand so that one can make a case.

An authority has to honour a promise - that is what legitimate expectation is. Notwithstanding so, there are exceptions to this notion.
There are two main exceptions that are crucial:

Exceptions to a legitimate expectation: 2 instances where a legitimate expectation can be frustrated - when an expectation, can also be legitimate, but they can not be honoured:

1. Public interest - you could have a legitimate expectation, that I go (I go in a restaurant without a mask - that. Is frustrated by the health authorities because of the public interest)

2. An expectation which is not legitimate, grounded on unlawful. Behaviour (it is legitimate for you only only if it is on illegal disposition) - I can not have a circumstance whereby the expectation is I think to be legitimate but in fact it is not (there is a promise, and a system of conduct, .. the authority tells you it is true I promised you but I can do nothing, not because of the public interest, but because it is unlawful, an illegality - you receive a letter from a certain authority, telling you that you are entitled to A,B C.. - When that authority after it is found that it didn't have the vires, the power to perform that act, to promise you what it told you. So despite that expectation, that. Exception is illegitimate as it is based upon unlawful matters - EX MAYOR who tries to help people of the locality. From t he funds as. They are poor, he can not do it as the law does. Not permit it)

On what basis can the legitimate expectation doctrine be frustrated ?

1. **Public Interest**

2. **Abuse of power - illegal disposition of the law**

The Coughlan case is a relative case to this notion. The Coughlan case related to a woman who suffered a severe disability after a car accident. The court of Appeal in this case believed that the fact that the authorities had frustrated the woman's legitimate expectation was highly unfair, to the extent that this action led to an abuse of power. To add to this, there was no public interest considerations to justify the authority's decision.

In the case of 'Socjeta Filarmonika La Stella vs Commissioner of Police' 1997. In this case, the fact that the defendant refused a permit in relation to fireworks from the plaintiff's behalf a few days prior to the feast was deemed to be an invalid refusal. This is because the permit such as this has always been issued in past years. The fact that the plaintiffs have always abided by all the conditions imposed on them by law gave no suffienct grounds for their refusal.

The court in this case said that

“The rule of law requires and presupposes that an individual should know a priori his position regarding a state of facts through laws and regulations which are clear on the relative matter, and no be suddenly faced by all kinds of conditions which he could not have foreseen before, as happened in this case.

Portanier Developments Limited vs. Architect V. Cassar noe.

“for an expectation to be legitimate, it must be one whose execution does not infringe the fundamental rights of another. Nor can there be such a legitimate legitimate expectation in situations where the law is broken and then a person requests that he be protected in such an illegal state.”

Margin of Discretion

Use of Discretion - an amount of discretion is needed in order for the public administrations to be able to perform their tasks. However this discretion can not go against the tule of law, as it would lead to an action which would be deemed as *ultra vires*.

The courts and institutions provide remedies in order to examine whether administrative authorities have properly performed their tasks and their use of discretion.

The fact that an authority has discretion, it does not imply that that cane exercised arbitrarily, unreasonably or in a disproportionate manner.

Administrative Law deals with this exercise of discretionary power. This power can be described as the power which enables an administrative authority to choose from different legally admirable courses of action. This exercise of such discretion is subject to review by the courts according to the branches of judicial review.

Discretion - **a choice between different options - the ability to choose one option out of many, of which are legal - not per se the power to decide, that is competence, or jurisdiction the discretion is about being in a position to choose, between different options of which are legal.**

Differences

Department & Authority

A department is closer to the minister, as it falls under the purview of the minister, whilst an authority enjoys more autonomy, as it is less close to the minister. However, both of them are obliged by the laws of Malta. If they do not act according to the law, it woulds amount to an action that is ultra vires.

Body corporate established by law & body corporate established under a law

Body corporate established by law

This is created by an act of Parliament, like the Planning Authority, for example, which is established by an act of parliament, under Chapter 552 of the Laws of Malta.

Body corporate established under a law

These are regular companies, whereby the involvement of the government is not necessary. An example of this is the Gozo Channel; a company which is set up under the commercial code, hence it is a body corporate established under a law. In this particular company, the Government is involved, but not each body corporate established under a law has the Government included in its establishment.

The judgement of Grech Mario Kaptan vs Gozo Channel Company Limited Et - 27/4/10 - PRIM AWLA (90/2009)) stated that not withstanding the fact that in the context of article 469 a the public authority, at least prima face, gives us the impression that the public authority is concerned about a body corporate established by law, the captain Grech judgement indicates that body corporates established under a law, ex the Gozo channel, also falls within the parameters of 469 A.