What is the Maltese Administrative Law? Where does it come from?
Discuss the following statement: Article 469A COCP should not exist at all!
FACT CHECK

- OBSERVATION: According to Wade & Forsyth, ‘the reviewing court should look into ‘ the more obvious cases of inconsistency with statute, such as failure to follow expressly prescribed procedure, irregular delegation, and breach of jurisdictional conditions: but also more sophisticated types of malpractice, such as unreasonableness, irrelevant considerations, improper motives, breach of natural justice and, most recently, mere error of law.’

- QUESTION: Do you agree with this statement?

- QUESTION: Should the parameters within which the administration may act be in accordance with the powers conferred to it by law? Why?

- QUESTION: Should decisions of the administration be scrutinised and checked for their legality? To what extent?

- QUESTION: Should judicial review include the examination of an administrative act as a whole, including the merits?
FACT CHECK

OBSERVATION: Article 469A COCP is the fruit of the 1995 amendments. Act XXIV of 1995 deleted the previous Article 742 of the COCP which gave to the courts the power to review administrative acts but in a much narrower fashion, and subsequently introduced sub-title VII of the COCP entitled Judicial Review of Administrative Action, which effectively is the present judicial review.

QUESTION: Do you agree?
FACT CHECK

OBSERVATION: ‘Save for any differences that may be due to the diversity of place and circumstances, and in the absence of any statutory provisions to the contrary, it is by the principles of the Public Law of England that the relations and dealings between the Crown and its subjects are governed in Malta.’ (Marquis James Cassar Desain vs. James Louis Forbes C.B.E. nomine, H.M.’s Court of Appeal, per His Honour Sir A. Mercieca, President, and Mr Justice R.F. Ganado and Mr Justice Sir A. Bartolo, 7 January 1935)

QUESTION: Does this judgment carry any relevance from a historic perspective?
FACT CHECK

- OBSERVATION: Until this day, Malta does not have any administrative courts.

- QUESTION: Did our courts follow the precedents which were being created in the UK, reserving in their favour, the right to review administrative decisions?

- QUESTION: Could you identify a period where the Maltese courts showed a certain degree of weakness in ruling against the government in certain cases?
OBSERVATION: In Neg. Ugo Pace et vs. Prof. Joseph Anastasi Pace noe, Civil Court, First Hall, 1 June 1946 (Kollezzjoni ta’ Decizjonijiet Tal-Qrati Superjuri ta’ Malta, Vol XXXII.II.317), the Court said ‘A discretional act of an official or an administrative body may be reviewed by the Court only in the sense that the tribunal examines whether the act is legal, if the required procedures were observed, and if the exercise of the discretion was fair and honest. The Court however cannot substitute its own discretion, as an opportunity or expediency for that of the official of the body concerned.’

QUESTION: Does the fact that the above is a 1946 judgment tells you anything?
FACT CHECK


• QUESTION: Do you agree with this judgment?
• QUESTION: Do you agree with this statement?
• QUESTION: Should the parameters within which the administration may act be in accordance with the powers conferred to it by law? Why?
• QUESTION: Should decisions of the administration be scrutinised and checked for their legality?
• QUESTION: Should judicial review include the examination of an administrative act as a whole, including the merits?
FACT CHECK

OBSERVATION: That said the majority of the modern administrative tribunals are the result of the intensive social legislation which was enacted following the Second World War.

QUESTION: What do you make out of this observation?
FACT CHECK

OBSERVATION: Up until 2007, hence until the introduction of Chapter 490 into the Laws of Malta which set up a general administrative tribunal - the ART together with its competence and jurisdiction - the situation was one whereby our system embraced the model adopted by the British system namely that of having various specialised administrative tribunals.

QUESTION: Is the situation today any better?
FACT CHECK

OBSERVATION: Although an efficient justice system is essential, yet, a state cannot have an efficient justice system without also having efficiency in the administration of justice.

QUESTION: Do you consider a tribunal better placed than a court to make it easier and convenient for a citizen to challenge an administrative decision?
FACT CHECK

• OBSERVATION: In virtue of article 469A COCP a person may also resort to the ordinary courts for a judicial review. Hence, since the ordinary courts retained their original power to review administrative acts, where in fact the said Article 469A COCP was left untouched, this led to a situation where now we have two juridical entities, both having the jurisdiction to review administrative acts. Nonetheless, although Article 469A COCP was left unchanged, sub-article 4 of this same article makes it clear that a judicial review under Article 469A COCP is only a measure of last resort, that is, one should only file an application under Article 469A COCP when no other remedy is provided for under any other law.

• QUESTION: What do you make out of this?
• QUESTION: Is there a possibility of forum shopping?
• QUESTION: Imagine Article 469A is removed - would Parliament be diminishing the independence and impartiality of the judicial review?
FACT CHECK

• OBSERVATION: Article 7 AJA is stating that the ART has the competence to review administrative acts both on points of law and on points of fact, although the Act uses the word ‘review’, what is actually being intended is appeal. Indeed, all the special laws and regulations, over which the ART has been granted jurisdiction, grant a right of appeal not a right of review.

• QUESTION: What do you make out of this?
FACT CHECK

• OBSERVATION: In 2005, the then Nationalist administration published a white paper entitled ‘Lejn Ġustizzja Ahjar u Ehfef (White paper 2005)’- The first recommendation was that, to draft an Administrative Code which gathers the legal principles that were developed in Malta and in other countries including the administrative law of the European Union. Secondly, it was also recommended that the various administrative tribunals be gathered under a comprehensive administrative tribunal or court. It was suggested that one should consider the establishment of such a court or tribunal, before the drafting of an Administrative Code, since even though Malta does not have an Administrative Code there are still general principles of an administrative law

• QUESTION: Did the white paper achieve its aims?