



THE HONORABLE SOCIETY OF KINGS INNS
ENTRANCE EXAMINATION
AUGUST 2006

Examination:	Irish Constitutional Law
Date:	Tuesday 22 August 2006
Time:	10.00 a.m. – 1.00 p.m.
Internal Examiner:	Mr T John O'Dowd
External Examiner:	Dr Gerard Hogan SC

Instructions:

Answer any *three* questions. All questions carry equal marks.

A copy of the Constitution of Ireland, 1937 and a copy of Article 10 of the European Convention of Human Rights are supplied.

1. Answer either (a) or (b) below, but not both.

(a) “Even though much of what one is doing is of a formal nature, so long as the observation of that form operates to preserve a fundamental principle, it is good and useful and so long as the Legislature retains and insists upon its ultimate right to have all legislation submitted to it or to its appointed delegate, a standing committee of itself, a very important principle is preserved.” *Private Deputies’ Business. - Legislation by Order—Motion (Resumed) 99 Dáil Debates* col 1881 (1 March 1946) James Dillon TD

Have the High Court and Supreme Court upheld this principle?

or

(b) What is the current state of Irish constitutional law in relation to who may choose what penalty is to be imposed on a person convicted of a criminal offence and what limits may be imposed on that choice by law?

2. The Radio and Television Act, 1988 s 10(3) provides: “(3) No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.” Under the Broadcasting Act, 2001 s 65:

Nothing in [s 10(3)] shall be construed as preventing the broadcasting of a notice of the fact—

(a) that a particular religious newspaper, magazine or periodical is available for sale or supply, or

(b) that any event or ceremony associated with any particular religion will take place,

if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

The World Atheist League (WAL) promotes atheism and encourages people to abandon their religious beliefs. It organises events throughout the world at which people make this affirmation (the “Humanity Pledge”):

“I believe that there are no gods or devils or angels or spirits or other supernatural beings.

“I believe that there is no supernatural reality or power or existence other than this material world.

“I believe that there is no life after death and that human beings do not have souls or spirits that exist separately from their bodies.

“Freed from these illusions, I dedicate myself to the love and service of my family, my friends, my community and of humanity as a whole, recognising that it is to them, and to them alone, that I must answer for my actions.”

The event at which the pledge is made also involves speeches and performances promoting WAL's message. Former religious believers are encouraged, when pledging, to symbolically cast off old beliefs by throwing objects (rosary beads, religious statuettes or icons or copies of the Bible or the Koran, etc) into a fire. News and current affairs programmes on radio and television and newspapers have extensively reported the controversy created by plans for such events in Dublin, Cork, Galway and Limerick. WAL has made a radio advertisement in which an actor speaks the words: "The Humanity Pledge. [Date, time and place]. Be there." The Broadcasting Commission of Ireland (BCI) has decided that this cannot be broadcast on local radio, deeming it to be an advertisement "directed towards a religious end" but outside the exception created in 2001, since WAL is not a "religion" and, even if it were, the nature of the event is such that any notice of it addresses the merits of adhering to a religious faith or belief.

Advise WAL. Does the Constitution give a basis to challenge the BCI's decision?

3. If a dog worries livestock (ie attacks or kills or chases livestock in such a way as may reasonably be expected to cause the death of or injury or suffering to it or to result in financial loss to its owner) the owner of the dog or any other person in charge of the dog shall be guilty of an offence, unless it is established that at the material time the dog worried the livestock for the purpose of removing trespassing livestock and that having regard to all the circumstances the action was reasonable and necessary (Control of Dogs Act, 1986 s 9(2)). A person guilty of an offence under s 9(2) is liable on summary conviction to a fine not exceeding €1,904.61, or to imprisonment for a term not exceeding three months, or, at the discretion of the court, to both such fine and such imprisonment (s 27, as amended). Reference to a dog's "owner" includes the occupier of any premises (including any house or land) where the dog is kept or permitted to live or remain at any particular time, unless such occupier proves to the contrary. If there is more than one dwelling in a house, the occupier of the dwelling in which the dog is kept, or is permitted to live or remain, shall, until the contrary is proved, be presumed to be the owner (s 1.)

Leonard has recently been discharged from a psychiatric hospital, but remains under the care of a psychiatrist. He has been allowing his old friend *Gerry* to stay in his house (in the spare room) while *Gerry* finds his feet after the breakdown of his marriage. *Gerry* brings his dog *Patch* to live in *Leonard's* house. One morning, *Gerry* disappears without warning, leaving *Patch* behind; *Leonard* continues to take care of him in *Gerry's* absence. Soon after this *Leonard* receives a summons requiring him to appear in the District Court to answer a charge that, on a date prior to *Gerry's* disappearance, *Patch* (being a dog of which *Leonard* is presumed to be the owner) worried a flock of sheep belonging to a local farmer, killing several of them and so badly wounding several more that they had to be destroyed. On appearing to answer the summons (without any lawyer to represent

him), *Leonard* is told by the District Judge that, while the case is being adjourned to the next sitting, sheep worrying is such a serious problem locally that, if he is convicted he is likely to receive a custodial sentence, as a warning to others. The judge makes no further comment. Advise *Leonard* as to what bearing, if any, the Constitution has on his situation.

4. *Aileen* and *Dermot* have been involved in an on-off sexual relationship since they were both seventeen years of age; each is now twenty-three. Within a few weeks of the start of this relationship *Aileen* became pregnant with *Dermot*'s child; the relationship ceased and had not resumed at the time *Aileen* gave birth to their child *Jason*. At that stage, *Dermot* showed no interest in being involved in the child's upbringing. Under considerable pressure from her parents and friends, *Aileen* agreed to place *Jason* for adoption; no one informed her, however, that she subsequently had the right to withdraw her consent at any point up to the making of the adoption order. *Jason* was placed with *Alan* and *Veronica*, a married couple, and an adoption order was subsequently made in their favour. *Jason* has been in their care and custody ever since. Four years after that order was made, *Aileen* and *Dermot* resumed their relationship; they married a year later. On learning recently for the first time that she had not been properly informed about her rights in the adoption process, *Aileen* consulted a solicitor who advised her that it might be possible to have the adoption order set aside and custody of *Jason* returned to her. *Aileen* and *Dermot* have commenced High Court proceedings to set aside the order and recover custody of *Jason*. Advise *Alan* and *Veronica* as to what bearing, if any, the Constitution and the European Convention on Human Rights Act 2003 might have on the outcome in this case.

5. Answer either (a) or (b) below, but not both.

- (a) “[A] balancing exercise . . . is . . . not infrequently required of judges in an appropriate case, but it can also be employed by a judge who is unwilling to take a particular right as seriously as it deserves to be taken.”
Hardiman J in *CC v Ireland & Ors* [2006] IESC 33 (23 May 2006)

Discuss, with particular reference to the doctrine of proportionality.

or

- (b) “[S]ome members . . . do not favour the constitutional protection of property rights. In their view, the assertion of property rights has historically been associated with the protection of commercial and business interests[,] is not designed to ensure to everyone the material prerequisites for a life with dignity [and] has no place

among the fundamental rights provisions of a constitution.”
Constitution Review Group Report (1996) p 360.

Given developments over the last decade, do you agree with the view of the majority of the Review Group that the Constitution should continue to protect the right to property?

Specifically, have the courts interpreted the property rights provisions in such a way as would favour the protection of business interests at the expense of the common good? Are there any instances of where the property rights of the less well off have also been protected?
