

Entrance Exam 2002

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THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

SEPTEMBER 2002

Examination: Irish Constitutional Law

Date: Tuesday 3 September 2002

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiners: Dr Gerard Hogan SC

External Examiner: The Hon Mr Justice Geoghegan

Instructions:

Answer three questions.

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

CONSTITUTIONAL LAW

1. "There is no material difference between the provisions of Article 40.6.1 of the Constitution and Article 10 of the European Convention of Human Rights. The real problem is that the Irish judiciary as a whole does not have the same respect for free speech which is one of the great glories of the Strasbourg Court. As a result, the Supreme Court has yet to prove that it takes the right to free speech sufficiently seriously."

Discuss with reference to the decided cases.

2. Aoife is arrested pursuant to section 30 of the Offences against the State Act 1939 on suspicion that she committed certain firearms offences. Pursuant to section 52 of the 1939 Act the Gardai require her to give an account of her movements on a particular day, but she declines to do so on the ground that she might incriminate herself. Aoife requests that a solicitor be present at all stages during police questioning. This request is refused, although Aoife is allowed regular consultations with her solicitor.

Aoife is subsequently charged before the District Court with the offence of failing to give an account of her movements, contrary to section 52 of the 1939 Act and she is convicted of this offence. She has also been charged with firearms offences. In the course of his ruling convicting Aoife of these offences the District Judge said:

"In relation to the firearms offences, if the accused had a satisfactory explanation she could have given to the Gardai when she was detained under section 30. She had a further opportunity to give a satisfactory explanation in this Court, but she pointedly declined to give evidence. I am accordingly driven to infer from her silence that she is guilty of these offences."

Advise Aoife as to whether there are any constitutional grounds on which her convictions under section 52 and for firearms offences can be quashed or set aside.

3. Under 1996 Regulations the opening of new pharmacies was effectively restricted. This in turn meant that the value of existing pharmacies was increased as a result. These Regulations were revoked earlier this year and resulting in a diminution in the value of pharmacies.

At the same time concern has been expressed as a result of very high profit margins in the pharmacy business. Under new legislation the Minister for Health is entitled to impose a limit on these margins. As a result, the Minister has now imposed a 20% limit on the profit margins for pharmacies whereas the industry norm was heretofore 35%. The Minister justifies the restriction in the public interest, saying that while it will entitle pharmacists to obtain a "very good" return, it only prohibits "excessive" profits.

Are there any grounds on which pharmacy owners can sue the State for a violation of their constitutional right to property as a result (a) of the revocation of the Regulations? and (b) the imposition of the profit margin limitations?

4. Do the locus standi rules laid down by the Supreme Court in *Cahill v. Sutton* [1980] IR 269 serve any useful purpose?

5. Order 75, r. 47 of the Rules of the Superior Courts 1986 provides that in any family law proceedings the wife (but *not* the husband) may apply for maintenance pending the determination of the proceedings.

Oisín is suing his wife, Aisling, for divorce. While he is virtually destitute, she is very wealthy. Assume that, given the gender based discrimination contained in Order 70, r. 47, Oisín finds that he cannot obtain maintenance from his wife pending trial.

Advise Oisín whether Order 75, r. 47 is compatible with Article 40.1 and whether he cannot obtain any practical benefit from a challenge to the constitutionality of this Rule of Court.