



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

SEPTEMBER 2003

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| Examination: | IRISH CONSTITUTIONAL LAW |
| Date: | TUESDAY 2 SEPTEMBER 2003 |
| Time: | 10.00 am—1.00 pm |
| Internal Examiner: | Mr T John O'Dowd |
| External Examiner: | Dr Gerard Hogan SC |

Instructions:

Answer *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.

CONSTITUTIONAL LAW

1. Where stand socio-economic rights in the light of the Supreme Court's decision in *TD v The Minister for Education* [2001] 4 IR 259?

2. The Health Act, 1947 s 38 applies where a chief medical officer (CMO) is of opinion (which may be based on an examination by another doctor) that (a) a person is a probable source of infection with an infectious disease, (b) his or her isolation is a necessary safeguard against the spread of infection, and (c) he or she cannot be effectively isolated at home. The CMO may then, by an order in writing (signed by another doctor: Health Act, 1953 s 35) order the person's detention and isolation in a specified hospital or other place, until the CMO certifies that the person is no longer a probable source of infection. The detainee (or, if a child, his or her parent) may appeal in writing to the Minister for Health and Children for a direction for his or her release. The Minister shall appoint a medical officer to examine the detainee as soon as practicable and, if necessary, thereafter at six monthly intervals. The detainee shall be released if the Minister at any time so directs (or fails, within 21 days of receiving the appeal, to communicate a decision to the person in charge of the place of detention.) Cases of a new form of drug-resistant bacterial infection have begun to emerge in Ireland. The bacterium is moderately infectious, but has a high mortality rate and is particularly dangerous to children and young people. Some individuals are merely carriers of the infection, displaying only very mild symptoms. Government policy is to place all infected persons in quarantine, using the powers given by the Health Act, 1947. *Joe* and *Alison* have a six year old son, *Fintan*. Their family doctor has reported to the relevant CMO that *Fintan* appears to be a carrier of the infection. The CMO sends *Joe* and *Alison* a notice warning them that, if they do not voluntarily place *Fintan* in a quarantine centre, he will order his detention. *Joe* and *Alison* sincerely believe that they can effectively isolate *Fintan* at home, and that this is the best place for him. Advise them as to whether they could rely on constitutional grounds to prevent the CMO making such an order.

3. *Brendan* is on trial in the Central Criminal Court for the murder of a Romanian asylum seeker. The prosecution alleges that *Brendan* had a racist motive for the offence and intends to introduce evidence to that effect. Under the Juries Act, 1976 s 20(2) in a criminal case both the prosecution and each accused person may object to seven jurors “without cause shown” that is, make a “peremptory challenge” without stating any reason for the objection. No person to whom such an objection has been made may serve on a jury. In the course of empanelling a jury in *Brendan*’s case, his defence counsel use all seven of their objections without cause shown, while the prosecution uses none of its. The seven people excluded from the jury as a result are: a person who is obviously of African descent, a person known to defence counsel to be Jewish, a person whom they assume from his demeanour to be homosexual, the only three women whose names were selected by ballot and a young man who appears to be a student. After the jury has been empanelled the prosecution make an application, in the absence of the jurors, to have the jury discharged on the grounds either that (a) the right of peremptory challenge is itself unconstitutional or (b) it has been used in an unconstitutional manner in this case. The trial judge adjourns the hearing in order to hear further argument on this point. Advise *Brendan* as to what counter-arguments would be appropriate in response to the prosecution’s application.

4. Has the doctrine of proportionality brought any certainty and objectivity to the judicial protection of property in Article 40.3.2° and Article 43 of the Constitution?

5. Under the Radio and Television Act, 1988 s 10(3) “[n]o advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.” *Caitriona*’s son died in a fight outside a nightclub in the centre of Dublin. It emerged at the subsequent criminal trial of those accused of his manslaughter that alcohol played a major role in the incident. *Caitriona* has started a campaign against what she sees as the exploitation of young people by brewers and distillers. Her main aims are a ban on all advertising of alcoholic drinks, in any media, and further, punitive increases in the excise duty on them. She relies on her own modest financial resources and small contributions from the public. *Caitriona*’s campaign has already received considerable free publicity (as when she chained herself to the gates of a well known Dublin brewery—the company have since

obtained an injunction to prevent her from doing so in future.) She is now well-known nationally for her views on these issues.

Caitriona submits a proposed radio advertisement to several independent radio stations. Broadly speaking, the advertisement (in which she speaks directly to the listener) would be aimed at persuading young people to abstain from alcohol, or at least to drink more responsibly. The advertisement would not make any specific reference to her policy proposals but it would invite people to subscribe to her newsletter (in which her policy proposals are discussed in detail) and would end with the statement "Together let's beat the power of the bottle." The radio stations consult the Broadcasting Commission of Ireland, which decides that it is an advertisement for a political end and so is prohibited by s 10(3) of the Act of 1988. Advise *Caitriona* as to whether she might succeed on constitutional grounds in having the decision of the Authority set aside and, if not, what prospects she has of succeeding in an application under the European Convention on Human Rights.

Article 10 of the European Convention Of Human Rights

Freedom of Expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.