



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2004

Examination: Irish Constitutional Law

Date: Tuesday 24 August 2004

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.

CONSTITUTIONAL LAW

1. The development of the proportionality doctrine has ensured that the manner in which the courts apply the Constitution's property rights guarantees results in a fair balance between the interests of the individual and the community.

Discuss.

2. Ballymagash Airport is owned and operated by a company specially registered under the Companies Acts, in which the Minister for Transport or his or her nominees hold all the shares. Under the Air Navigation and Transport Act, 1950 ss 16 and 17 the Minister has made bye-laws prohibiting certain activities within the airport, including (a) acts injurious, or tending to be injurious, to the amenities of an airport, (b) obstructing or interfering with the airport's proper use or operation, and (c) displaying flags, banners, posters or other emblems, which might cause a disturbance or offence or annoyance or a nuisance to other airport users. The company's prior permission is required for: (i) distributing—to staff, passengers or visitors—or displaying or leaving (on vehicles or elsewhere) leaflets, pamphlets or other documents; (ii) conducting or taking part in public meetings, demonstrations or processions, and (iii) musical performances or any other performance akin to public entertainment. Furthermore, an authorised officer may forbid any person to enter the airport, or any part of it. A person breaching a bye-law could, if convicted on indictment, receive a fine of €126,973 and/or imprisonment for three years.

Several local teenagers claim that the Virgin Mary has been appearing to them in a remote corner of the airport—far from the runways and terminal buildings—and that she has an important spiritual message for the world. Despite the local Roman Catholic bishop's advice not to do so, hundreds of faithful are now gathering at the site each evening—praying silently, saying the Rosary aloud and singing hymns. Initially, the airport company tolerated these gatherings, but there are indications that the numbers involved are increasing rapidly—the organisers, for instance, have begun to relay the prayers and singing over a public address system. The company consider

that, although the gatherings pose no immediate danger to flight operations, their increasing scale and obtrusiveness are incompatible with the proper functioning of an airport. The company has therefore notified the organisers that in future, only the girls themselves and at most twenty other persons will be allowed to gather at the site and that no amplification will be permitted. Advise the girls and their supporters as to whether they could rely on the Constitution in order to challenge this decision.

3. The Garda Síochána responded to a reported attempt to kidnap a Russian businessman from his Dublin home. They exchanged gunfire with persons unknown, who escaped—abducting the businessman’s teenage daughter. There was no subsequent sign (such as a ransom demand) of the girl’s fate. During the fire-fight, one of the businessman’s security guards, *Pyotr* received a serious gunshot wound. His co-workers alleged that *Pyotr* had assisted the criminals. The detective in charge, suspecting that *Pyotr* aided and abetted the kidnapping, arrested him but allowed him to be taken directly to hospital—under escort—for medical treatment. During the several days that *Pyotr* was recuperating in hospital, his solicitor, *Gráinne* attempted to visit him for the purposes of a consultation. At Garda request, the hospital refused *Gráinne* access to her client. The Gardaí claim that *Pyotr* had no right to consult a solicitor before his detention in a Garda station began, pointing to the Criminal Justice Act, 1984 s 4(8)—

Where it appears to a member of the Garda Síochána that a person arrested . . . is in need of medical attention, or where during his detention it comes to notice that he is in need of such attention, and he is taken for that purpose to a hospital or other suitable place, the time before his arrival at the station or the time during which he is absent from the station, as the case may be, shall be excluded in reckoning a period of detention permitted by this section.

Though the Gardaí did not question *Pyotr* in hospital, he was under twenty-four police guard. After several days of being denied any visits and wrongly fearing that he was about to die, *Pyotr* spontaneously confessed his involvement in the kidnapping to his police guard and revealed where the girl’s body would probably be found—on the assumption that she must be dead by that time. The Gardaí searched place indicated and found her dead body. Based on this evidence, *Pyotr* has been charged with murder and kidnapping. Advise *Pyotr* as to whether the evidence against him is inadmissible on the ground that it was obtained through a breach of his constitutional rights.

4. “[A] law which has the effect, even if totally unintended of discriminating between human persons on the basis of money is an attack upon the dignity of those persons as human beings who do not have money. This is far removed for instance from issues such as alleged rights to wage parity or increases or issues of the uneven impact of taxation upon citizens in various marital or non-marital relationships or on farmers or householders or occupiers. The history of poverty and of social deprivation in Ireland, but by no means exclusively in Ireland, demonstrates overwhelmingly the extent to which the essential dignity of persons as human beings is involved.” Herbert J in *Redmond v Minister for the Environment* [2001] 4 IR 61.

In some cases, such as *Redmond*, courts have held that legislation that has limited the exercise of political and civil rights—such as voting or jury service—by the poor or by people who face other barriers to full participation in society is unconstitutional. Do the courts however consistently attempt to combat social exclusion in this fashion? Are there other reasons why it is less difficult to persuade the court that legislation dealing with traditional political or civil rights—as compared with socio-economic rights—is unfairly discriminatory and unconstitutional?

5. What implications, if any, does the enactment of the European Convention on Human Rights Act 2003 have for the future development of Irish constitutional law?