



THE HONORABLE SOCIETY OF KINGS INNS

ENTRANCE EXAMINATION

AUGUST 2005

Examination: Irish Constitutional Law

Date: Tuesday 23 August 2005

Time: 10.00 a.m. – 1.00 p.m.

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, both not both.
 - (a) Assess the significance of the Supreme Court's decision in *City View Press v AnCO* [1980] IR 381. Do subsequent cases show that the courts will use the *City View Press* principle in order effectively to control the delegation of legislative power to the Government and other statutory agencies?

or
 - (b) What do you understand to be the present state of constitutional law in relation to who may exercise the power to remove a person's name from a roll or register of persons who have a legal right to practice a trade or profession?

2. *Paul* is the leader of *Workers' Resistance*, a registered political party, and its only TD. After a violent confrontation on a picket line, *Paul* was convicted of assault; he is currently half way through serving a four-month sentence for it. The poll at a general election is likely to take place within the next six weeks. For the first time, *Workers' Resistance* is presenting enough candidates to qualify for an election broadcast. *Paul* seeks the permission of the Governor of his prison for part of the election broadcast to be recorded in the prison, including (but not limited to) a statement by *Paul* as party leader. The Governor refuses on the ground that this would be against Irish Prison Service policy and specifically, because it would be contrary good order and discipline in prisons and because prison facilities and prisoners' privileges ought not to be used for party political purposes. The proposed broadcast's slogan is "By any means necessary"; its overall message is that the working class must employ both legal and, if left with no alternative, illegal means in its struggle with global capitalism. Anticipating a judicial review of the Governor's decision, *Workers' Resistance* submits a proposed script for the broadcast to *Radio Telefís Éireann*, so that it may confirm that it is prepared to broadcast it. *RTÉ* indicates that it is not, since the broadcast, in its current form, can reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State. Advise *Paul* and his party: does the Constitution offer them any redress in respect of either the Governor's or *RTÉ*'s decision?

3. *Damien* was arrested and detained on suspicion of drug trafficking offences. On being brought to a Garda station, the member in charge informed him that he was entitled to consult a solicitor. *Damien* asked the Garda to notify *Patrick*, a solicitor, and said that he wouldn't say anything more until he had consulted him. *Damien*'s evidence is that the member in charge merely replied that *Patrick* was "as twisted as a corkscrew" and that "things could only go worse for" *Damien* if he associated with that type. According to *Damien*, this persuaded him that it was pointless to insist on his rights. During his subsequent detention, he made no incriminating statements to the Gardaí. Many of their questions sought an explanation from *Damien* of a bag containing cannabis resin, bearing his fingerprints, being found in the boot of the car that he was driving when arrested. *Damien* did not answer any of these questions. At a hearing in the District Court, to consider whether his detention should be extended, the judge was concerned that *Damien* hadn't consulted a solicitor and urged him to do so. *Damien* responded with the story given above, which the judge thought was incredible. *Damien* then angrily rejected any further attempts to persuade him to take legal advice. The judge extended *Damien*'s detention for the period sought and during that time he made a full confession to a drug trafficking offence. The Book of Evidence clearly shows that the DPP is relying on *Damien*'s failure to answer questions about the bag, as well as his confession. When the defence seek to obtain the bag for forensic examination, the Gardaí say that it has been "lost." Advise *Damien* of his constitutional rights in this situation.

4. *Aisling* and *James* are the mother and father of an eight-year-old boy, *Gerald* who has a congenital heart defect, for which he has had a heart transplant. He has since had many serious infections as a result of taking anti-rejection medication, despite which his body is rejecting the new heart. His doctors advise that, unless he undergoes a second transplant, *Gerald* will only live a few more months. After a second transplant, he would face the same possible side-effects and his chances of surviving to age twelve would be about 50%. Even then, he would need lifelong medication and medical supervision. His doctors believe that a second transplant would nevertheless be in his best interests. As a part of her religion, *Aisling* puts her faith in spiritual healing instead of conventional medicine; she would not personally donate or receive organs for transplant. She agreed to *Gerald*'s first transplant because of *James*'s strong view that it was in his best interests. *James* has no religious or other conscientious objection to transplants. If it were up to him alone he is not sure what he would decide, given the distress *Gerald* has already suffered and the significant risk of a second transplant being unsuccessful. Since *James* is uncertain what's best for *Gerald* and as he regards this as a joint decision, he feels that *Aisling*'s religious objection should be upheld. *Gerald*'s doctors consider it inappropriate for *Aisling*'s religious views to play any role in the matter and have sought a High Court order making *Gerald* a ward of court and dispensing with the need for his parents to consent to the operation. Advise *Aisling* and *James*: in refusing consent, have they acted within their constitutional rights as parents?

5. Answer (a) or (b) or (c) below, both not more than one of them.

(a) The case law on Article 40.1 shows that the courts are still too heavily influenced by stereotypical thinking regarding gender and other similar issues and that clear criteria regarding the application of equality principles have not yet been developed. Discuss.

or

(b) The standing rules exemplified in leading cases such as *Cahill v Sutton* [1980] IR 269 are flexible, judicially-created rules of practice which are constitutionally *inspired*, but not actually *mandated* by the Constitution. Discuss.

or

(b) Irish judges are now adept at using the language of proportionality in their decisions. Do they pay more than lip service to that concept?