



THE HONORABLE SOCIETY OF KINGS INNS

ENTRANCE EXAMINATION

AUGUST 2025

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| Examination: | Irish Constitutional Law |
| Date: | Tuesday 12 August 2025 |
| Time: | 10.00 a.m. – 1.00 p.m. |
| Internal Examiner: | Mr T John O'Dowd |
| External Examiner: | The Hon Mr Justice Gerard Hogan |

Instructions

Candidates **must answer Question 1**
AND any other TWO of the remaining questions.

Question 1 carries 50 marks. All other questions carry 25 marks each.

The question paper is 5 pages long, including this cover sheet.

(An answer to this question is compulsory)

The Programme for Government, published prior to Dáil Éireann nominating the current Taoiseach and approving the appointment of the other current members of the Government, commits the Government (a) to commissioning a review of whether the number of judges in each court within the State could appropriately be reduced and (b) to exercising its executive power to advise the President to appoint a judge only where it is satisfied that such an appointment is actually necessary. As a rule, the number of ordinary judges of the High Court shall not exceed 48 (Courts and Court Officers Act 1995, s 9(1) as substituted by the Courts Act 2023, s 4). Based on a report by a private consultancy firm, the Government decides that—due to the increased judicial productivity likely to result from application of artificial intelligence—the current number of High Court judges is grossly excessive and should, through natural wastage, be allowed to fall to 31 (which was the maximum number from 2004 to 2007) and then be fixed at that level.

The Minister for Justice, Home Affairs and Migration tells Dáil Éireann that, in line with the Programme for Government, it is Government policy not to advise the President to appoint any more ordinary High Court judges until the total number of such judges, disregarding any vacancies among the membership of that Court, has fallen to 30. The Judicial Appointments Commission has a statutory duty to issue a public invitation for applications to be considered for selection and recommendation for appointment as an ordinary High Court judge where the Commission anticipates there will be such a vacancy, even if the Minister has not requested any such recommendation (Judicial Appointments Commission Act 2023, s 42(3)). The Commission continues to seek applications in respect of each High Court vacancy as it arises. However, in the absence of a request by the Minister, it cannot make any recommendations as to who should be appointed. Orla, a senior counsel with over 30 years' practice as a solicitor, applies for consideration by the Commission in relation to several High Court vacancies. She believes that, if the Minister were to request recommendations as to who should fill any of these vacancies, she is likely to be one of those recommended. In judicial review proceedings Orla seeks a declaration that the Government's decision not to advise the President to appoint anyone to fill the relevant High Court vacancies is an unlawful exercise of the executive power of the State, vested in it by Article 28.2 of the Constitution.

The Government authorises the Minister for Justice, Home Affairs and Migration to have a Bill drafted that will, if it becomes an Act, provide that (a) for as long as the number of ordinary High Court judges exceeds 30, it shall not be lawful for the President to appoint any person to be such a judge and (b) as soon as there are only 30 ordinary High Court judges, there shall be substituted for section 9(1) of the 1995 Act a provision fixing the maximum number of such judges at 31. This Bill is presented by the Minister and passed by both Houses of the Oireachtas. The President convenes a meeting of the Council of State for the purpose of consulting it in relation to whether he should refer the Bill, or any specified provision or provisions of it, to the Supreme Court. Advise the Attorney General as to (a) the prospects of Orla succeeding in her judicial review application, and (b) what should be the Attorney General's contribution to the Council of State's deliberations on the Bill, omitting any points that she could already have made in response to query (a). (50 marks)

2. Sue (aged 16) meets Dan (aged 19) for the first time ever at a party in his family home; that night, they have sexual intercourse, to which she consents and through which she falls pregnant. Dan has an intellectual disability, normally not obvious to strangers or mere acquaintances, that makes him incapable of understanding the nature or reasonably foreseeable consequences of sexual intercourse; in that sense, he lacks the capacity to consent to it and is thus a “protected person” for the purposes of the Criminal Law (Sexual Offences) Act 2017. It is an offence for a person to engage in an act consisting of sexual intercourse with a protected person knowing that, or being reckless as to whether, that person is a protected person (s 21(1)). It shall be presumed in any prosecution for that offence, unless the contrary is shown, that the accused knew that, or was reckless as to whether, a protected person with whom he or she had sexual intercourse was a protected person (s 21(3)). The Gardaí send a file to the Director of Public Prosecutions for a decision on charging Sue with a section 21 offence, carrying a maximum sentence of life imprisonment if convicted on indictment. Under section 5 of the Criminal Law (Sexual Offences) Act 2006 a female child under the age of 17 cannot be guilty of any offence under that Act (such as defilement of a male child younger than 15 or of a male child younger than 17) only by reason of engaging in an act of sexual intercourse. There is no such defence for a female child charged with an offence under the 2017 Act. Advise the DPP as to whether, in such circumstances, the Constitution creates any impediment to prosecuting Sue for, or her being convicted of, the offence that the Gardaí suspect has been committed. (25 marks)

3. Cnoc na Baoise (The Hill of Folly) looms over Ballymagash and is prone to landslides, often menacing houses and other buildings on the edge of town. The Local Authorities (Works) Act 1949 empowers the County Council to carry out works on any land in the county in order to give relief or protection from damage to other land that, in the Council’s opinion, has been or is likely to be caused by flooding, landslide, subsidence or other similar events, if in the Council’s opinion it is in the public interest to do so. To do so, the Council may enter land from which the risk of damage originates (i) to carry out works that are, in its opinion, immediately necessary to prevent serious injury to persons or land or (ii) with the owner’s consent or (iii) having given 14 days’ notice in writing of its intention to enter. An owner given such notice may apply, within 14 days, to the District Court for an order prohibiting the proposed entry. If the judge makes that order, “it shall not be lawful for any person to enter on such land” under the section that gives the Council its powers of entry. Where works carried out under the Act cause any interference with land, an owner who suffers damage as a result of that interference is entitled to compensation from the Council in respect of such damage, to be determined, in default of agreement, under the Acquisition of Land (Assessment of Compensation) Act, 1919 as if the compensation were the price of land compulsorily acquired, regard being had to any protection or benefit for the claimant by reason of the works.

After a massive storm, the County Council seeks Joe’s consent to enter his land, on Cnoc na Baoise, for the purpose of creating an embankment that will prevent landslides engulfing much of Ballymagash. Joe refuses. The Council gives him the required notice of entry. On Joe’s

application, the District Judge, having heard both sides, makes a prohibition order. Based on new data, the Council's expert advisers then raise their estimate of the risk of a huge landslide from "medium-term" to "imminent". The Council therefore enters Joe's land, despite the prohibition order, in order to meet what, in its opinion, is the urgent need to create a protective embankment. Joe seeks compensation, not just for the damage caused to that part of his land now under this embankment and for directly-related disturbance, but also for the reduction in value of the rest of his land due to the works carried out. Advise Joe as to whether any arguments founded upon the Constitution might underpin and reinforce his claims. (25 marks)

- 4.** Liam and Sarah are the father and mother of three children, after living together as a couple in an intimate and committed relationship for almost twenty years. Although they could have married each other at any point in their relationship, they have chosen not to do so. In 2018, without Sarah's knowledge and successfully concealing from the lender that Sarah may be entitled to redress from him under Part 15 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Liam mortgages the house, that he alone owns, in which he, Sarah and their children, have lived since 2016 and are still currently all living. Due to accumulated mortgage arrears, the lender now sues for possession of the mortgaged property, with a view to exercising its statutory power of sale under the Conveyancing Act 1881. If a spouse, without the other spouse's prior consent in writing, purports to convey any interest in the family home to any person except the other spouse, then, in general, the purported conveyance (including a mortgage) shall be void (Family Home Protection Act 1976, s 3(1)). "Spouse" is not defined; "family home" is defined, as "primarily, a dwelling in which a married couple ordinarily reside ... [or] in addition, a dwelling in which a spouse whose protection is in issue ordinarily resides or, if that spouse has left the other spouse, ordinarily resided before so leaving" (s 2(1)). The Act refers to "the marriage of the spouses" (s 3(2)) and to registering notice of the existence of a marriage (s 12). Sarah's solicitor advises that she is very unlikely to defeat the lender's claims, particularly because a bank is not obliged to respect any constitutional rights Sarah might be able to assert against the State and because any reinterpretation of the 1976 Act in her favour would be unconstitutional as a retrospective interference with the bank's property rights. Advise Sarah as to whether the Constitution assists her in any way as things stand and, if not, whether the Oireachtas could at this stage validly legislate in her favour and to the bank's detriment. (25 marks)

- 5.** Answer either (a) or (b) or (c) or (d) below, but not more than one of them. Answer by reference to any relevant decided cases, which need not include those cited in the question.

- (a) Most judges, practitioners and scholars agree that Article 40.1, at least as currently drafted, does not entitle the courts to adjudicate upon claims that are fundamentally political, in the sense that the Constitution requires that they be advanced in Leinster House rather than in the Four Courts. *Quinn's Supermarket Ltd v AG* [1972] IR 1 (SC) 13-14 states that people are not to be subjected to inequalities grounded on the assumption that, by reason of their human attributes or their ethnic or racial, social or religious background they are to be treated as inferiors of others. However, even that

broad principle is not normally understood to give the courts a wide-ranging brief to remedy systemic or institutional injustices or to apply a higher level of scrutiny to a measure simply on the ground that it disproportionately affects less powerful members of society. Has the Supreme Court yet provided an appropriate definition or description of the narrower, more specific, types of discrimination that are likely to be found to be invalid having regard to Article 40.1 of the Constitution? (25 marks)

or

- (b) “63. The Supreme Court has repeatedly deprecated the determination of constitutional issues unless that is necessary to determine the issues in dispute. Both the rule against *jus tertii* and the general rule of avoidance, which ensures that the question of the invalidation of a statute is only reached if a case cannot be determined on some other ground, have this effect: ... These principles are linked with the need to ensure that the resources and jurisdiction of the High Court are only employed when necessary to determine concrete issues in dispute and to do justice between the parties.” *O’Meara v Westmeath County Council* [2025] IEHC 192 [63] (Farrell J).

Critically assess how, in cases other than the one just cited, Irish courts currently apply those two rules. (The second rule, referred to by the judge as “the rule of avoidance” can also be expressed as “reach” or “address the constitutional issue last”.) (25 marks)

or

- (c) ‘35. ... It is said [to be legally significant] that the right to privacy is a purely unenumerated (or “derivative”) constitutional right ... 36. ... I find this submission unconvincing. In the first place, the distinction between enumerated rights and those which are simply derivative is often simply just one of degree. ...37. Second, even if there was such a difference, it would not be material to the scope of constitutional protection and the range of remedies provided by the Constitution. Thus, for example, no one suggests that this Court could not find a law unconstitutional by reference to some derivative or unenumerated rights: ...’ *DPP v Smyth* [2024] IESC 22 (Hogan J [35]-[37]).

Discuss a selection of cases illustrating each of Hogan J’s two propositions in respect of derivative or unenumerated rights. (25 marks)

or

- (d) “The guarantee of freedom of expression set out in Article 40.6 seems weak, and in any event it has not been interpreted robustly by the Irish courts to date.”

Is this a fair assessment? Discuss, with reference to relevant case law.

Relevant extracts from the Constitution of Ireland

Article 5

Ireland is a sovereign, independent, democratic state.

Article 6

1 All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

2 These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.

Article 13

9 The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

Article 15

2 1° The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.

2° Provision may however be made by law for the creation or recognition of subordinate legislatures and for the powers and functions of these legislatures.

Article 26

This Article applies to any Bill passed or deemed to have been passed by both Houses of the Oireachtas other than a Money Bill, or a Bill expressed to be a Bill containing a proposal to amend the Constitution, or a Bill the time for the consideration of which by Seanad Éireann shall have been abridged under Article 24 of this Constitution.

1 1° The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof.

2° Every such reference shall be made not later than the seventh day after the date on which such Bill shall have been presented by the Taoiseach to the President for his signature.

3° The President shall not sign any Bill the subject of a reference to the Supreme Court under this Article pending the pronouncement of the decision of the Court.

- 2 1° The Supreme Court consisting of not less than five judges shall consider every question referred to it by the President under this Article for a decision, and, having heard arguments by or on behalf of the Attorney General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference.

2° The decision of the majority of the judges of the Supreme Court shall, for the purposes of this Article, be the decision of the Court and shall be pronounced by such one of those judges as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed.

- 3 1° In every case in which the Supreme Court decides that any provision of a Bill the subject of a reference to the Supreme Court under this Article is repugnant to this Constitution or to any provision thereof, the President shall decline to sign such Bill.

2° If, in the case of a Bill to which Article 27 of this Constitution applies, a petition has been addressed to the President under that Article, that Article shall be complied with.

3° In every other case the President shall sign the Bill as soon as may be after the date on which the decision of the Supreme Court shall have been pronounced.

Article 28

- 2 The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government.

- 4 1° The Government shall be responsible to Dáil Éireann.

2° The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.

3° The confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made in respect of a particular matter –

- i in the interests of the administration of justice by a Court, or
- ii by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Houses of the Oireachtas to inquire into a matter stated by them to be of public importance.

- 9 1° The Taoiseach may resign from office at any time by placing his resignation in the hands of the President.

2° Any other member of the Government may resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.

3° The President shall accept the resignation of a member of the Government, other than the Taoiseach, if so advised by the Taoiseach.

4° The Taoiseach may at any time, for reasons which to him seem sufficient, request a member of the Government to resign; should the member concerned fail to comply with the request, his appointment shall be terminated by the President if the Taoiseach so advises.

Article 28A

1 The State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law and in promoting by its initiatives the interests of such communities.

2 There shall be such directly elected local authorities as may be determined by law and their powers and functions shall, subject to the provisions of this Constitution, be so determined and shall be exercised and performed in accordance with law.

3 Elections for members of such local authorities shall be held in accordance with law not later than the end of the fifth year after the year in which they were last held.

4 Every citizen who has the right to vote at an election for members of Dáil Éireann and such other persons as may be determined by law shall have the right to vote at an election for members of such of the local authorities referred to in section 2 of this Article as shall be determined by law.

5 Casual vacancies in the membership of local authorities referred to in section 2 of this Article shall be filled in accordance with law.

Article 30

1 There shall be an Attorney General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law.

2 The Attorney General shall be appointed by the President on the nomination of the Taoiseach.

3 All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose.

4 The Attorney General shall not be a member of the Government.

5 1° The Attorney General may at any time resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.

2° The Taoiseach may, for reasons which to him seem sufficient, request the resignation of the Attorney General.

3° In the event of failure to comply with the request, the appointment of the Attorney General shall be terminated by the President if the Taoiseach so advises.

4° The Attorney General shall retire from office upon the resignation of the Taoiseach, but may continue to carry on his duties until the successor to the Taoiseach shall have been appointed.

6 Subject to the foregoing provisions of this Article, the office of Attorney General, including the remuneration to be paid to the holder of the office, shall be regulated by law.

Article 34

1 Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

2 The Courts shall comprise:

- i Courts of First Instance;
- ii a Court of Appeal; and
- iii a Court of Final Appeal.

3 1° The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.

2° Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court, the Court of Appeal or the Supreme Court.

3° No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.

4° The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law.

5 1° The Court of Final Appeal shall be called the Supreme Court.

2° The president of the Supreme Court shall be called the Chief Justice.

3° The Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the Court of Appeal if the Supreme Court is satisfied that-

- i the decision involves a matter of general public importance, or
- ii in the interests of justice it is necessary that there be an appeal to the Supreme Court.

4° Notwithstanding section 4.1° hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:

- i the decision involves a matter of general public importance;
- ii the interests of justice.

5° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.

6° The decision of the Supreme Court shall in all cases be final and conclusive.

Article 35

1 The judges of the Supreme Court, the Court of Appeal, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.

2 All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.

2 All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.

3 No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument.

4 1° A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.

2° The Taoiseach shall duly notify the President of any such resolutions passed by Dáil Éireann and by Seanad Éireann, and shall send him a copy of every such resolution certified by the Chairman of the House of the Oireachtas by which it shall have been passed.

3° Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove from office the judge to whom they relate.

5 1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

Article 36

Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:—

- i the number of judges of the Supreme Court, of the Court of Appeal, and of the High Court, the remuneration, age of retirement and pensions of such judges,
- ii the number of the judges of all other Courts, and their terms of appointment, and
- iii the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.

Article 37

1 Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

Article 38

1 No person shall be tried on any criminal charge save in due course of law.

Articles 40-44

FUNDAMENTAL RIGHTS

PERSONAL RIGHTS

ARTICLE 40

1 All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

2 1° Titles of nobility shall not be conferred by the State.

2° No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government.

3 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

3° Provision may be made by law for the regulation of termination of pregnancy.

4 1° No citizen shall be deprived of his personal liberty save in accordance with law.

2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.

3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Court of Appeal by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Court of Appeal has determined the question so referred to it.

4° The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.

5° Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.

6° Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.

5 The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

6 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality: –

i The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of seditious or indecent matter is an offence which shall be punishable in accordance with law.

- ii The right of the citizens to assemble peaceably and without arms.

Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

- iii The right of the citizens to form associations and unions.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

2° Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

THE FAMILY

ARTICLE 41

- 1 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

- 2 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

- 3 1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

- i there is no reasonable prospect of a reconciliation between the spouses,
- ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iii any further conditions prescribed by law are complied with.

3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.

4 Marriage may be contracted in accordance with law by two persons without distinction as to their sex.

EDUCATION

ARTICLE 42

1 The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

2 Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.

3 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

4 The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

CHILDREN

ARTICLE 42A

1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.

3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.

4 1° Provision shall be made by law that in the resolution of all proceedings—

i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

ii concerning the adoption, guardianship or custody of, or access to, any child,

the best interests of the child shall be the paramount consideration.

2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

PRIVATE PROPERTY

ARTICLE 43

1 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

2 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

RELIGION

ARTICLE 44

1 The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

2 1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.