



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2015

Examination:	Irish Constitutional Law
Date:	Thursday 20 August 2015
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.

A copy of the Constitution of Ireland, 1937 is supplied and Articles 8, 9 and 10 of the European Convention on Human Rights are set out below.

1. (An answer to this question is compulsory)

At 2.30pm on 22 February 2012, *Emma*, a member of An Garda Síochána, arrested *Joe* under section 30 of the Offences Against the State Act, 1939, on suspicion of unlawfully possessing a firearm. He was then seventeen years old. *Emma* immediately asked *Joe* whether there were any firearms in the vicinity. He replied that there were two sub-machine guns in a house across the road. *Emma* asked *Joe* for the front door key, which he handed over. The Gardaí used it to get into the house, where they found the weapons mentioned and a large quantity of controlled drugs. Having been thrown out of the family home by his parents, *Joe* had been living in this house (his cousin's) for the previous few weeks, while he looked for somewhere more permanent. In the back of a Garda vehicle during his journey to a Garda station, *Joe* is alleged to have said: "We had a good run, didn't we? How did it take you so long to nab us?" On reaching the station, *Joe* asked to speak with his solicitor *Anna* before answering any questions from Gardaí. He supplied *Anna's* mobile phone number. When a Garda rang it he got through to an answering service and left a message for *Anna* that *Joe* was being detained and wished to consult her. The Gardaí did not tell *Joe* that they had done this nor did they make any other attempt to contact *Anna*, although she is a partner in a large and well-known firm. After waiting three hours without word of or from *Anna*, the Garda in charge of the station told *Joe* that an interview could not be delayed any longer and that *Anna* would just have to catch up, if and when she turned up. *Joe* was then interviewed for two hours by two Gardaí, with two more Gardaí and a social worker nominated as *Joe's* "appropriate adult" silently present in the interview room. During this period, *Joe* admitted to being involved in armed robberies over the previous six months, but he refused to say when, where and with whom he perpetrated these, claiming that he was too afraid of his accomplices, who he believed had someone inside the Garda Síochána who would report to them any information he gave against them. Two hours after the start of the interview, *Anna* phoned the station. She had been at her mother-in-law's funeral, with her mobile phone switched off and she had only just listened to the Garda's message. She was angry that no attempt had been made to contact her firm so as to arrange the attendance of another solicitor whom *Joe* could have consulted. On receiving *Anna's* phone call *Joe's* interview was immediately interrupted and he was allowed to consult with her in private by phone. After this call, the interview was resumed. *Joe* then gave the Gardaí the name of the gun dealer from whom he bought the weapons found in his cousin's house. It took *Anna* another half an hour to reach the station. When she did, the interview was interrupted again and *Anna* and *Joe* were allowed to confer in private for fifteen minutes. When the Gardaí resumed the interview for a third time, *Anna* asked to be let accompany her client into the interview room, especially since *Joe* was a child. The Garda in charge replied that solicitors were not allowed to be present during interviews with suspects in any circumstances. During the resumed interview, *Joe* made a full and detailed formal statement, confessing to involvement in several armed robberies. Advise the Director of Public Prosecutions as to whether, on these facts, the Constitution prevents any of the evidence gathered from being used against *Joe* in a criminal trial. (50 marks)

2. *Desmond* is a well-known Irish stage, film and television actor. For many years, one of his main sources of income has been from voice-overs and narrations for advertisements, mainly on radio and television, but also in cinemas and – increasingly – on the internet. Among the cinema and internet advertisements which he has voiced, many promoted the views of different political parties and non-governmental organisations on various issues of public controversy, at election time and otherwise. The *People of this Land* campaign is an ad hoc group, involving travellers and non-travellers, seeking recognition of the travelling community as an ethnic minority in Ireland. A company limited by guarantee – *People of this Land Ltd* – was formed to help run an extensive advertising campaign for this purpose. *People of this Land Ltd* approached *Desmond's* agent to secure his services in providing voice-overs for cinema and internet advertisements that advocate recognising travellers as an ethnic minority in Ireland. The company submitted scripts for these voice-overs, which *Desmond* was to recite verbatim. *Desmond* told the company, through his agent, that he declined this commission, because he does not wish to be publicly associated with any side in this controversy and wishes to keep his views about it strictly to himself. The company notified *Desmond* that they considered him to be in breach of the Equal Status Act 2000, because he treated it less favourably than he would have treated a person who was not associated with persons who are members of the traveller community. *Desmond* ignored this complaint and the company referred the case to the Equality Tribunal. The Tribunal upheld the complaint and awarded the company €10,000 in compensation. *Desmond* has 42 days to appeal this decision to the Circuit Court; if he does not appeal, the decision will become binding at the end of that period and may be enforced against him in the Circuit Court. Advise *Desmond* on whether the Constitution offers him any support in avoiding payment of this award to the company. (25 marks)

3. *Jane* and *Bill* lived together as a couple in an intimate and committed relationship for over ten years. *Jane* was financially dependent on *Bill* for most of this time, having given up her career shortly after they got together. Before meeting *Jane*, *Bill* had been married to *Síle*, with whom he had two children. *Bill* and *Síle* divorced in 1998; the breakdown of his marriage left *Bill* with such antipathy for the institution that he refused, on principle, to marry *Jane*, although he professed unconditional commitment to her. In recent years, he said many times that if civil partnership were available to opposite-sex couples he would happily enter into one of those with *Jane* – but never a marriage. *Jane* believed that *Bill* had adequately provided for her in his will, by ensuring that she would receive an income from the dividends paid on shares in the company through which he ran an apparently highly successful business. After *Bill* died eighteen months ago no will could be found, even though he had assured *Jane* and others that he had made one. The beneficiaries of *Bill's* intestate estate were the children of his marriage to *Síle*. *Jane* applied under section 194 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

for proper provision to be made for her out of *Bill's* net estate. The High Court held that it would be proper for *Jane* to get half of *Bill's* estate (the most she could under section 194), particularly as she gave up a lucrative career to make a home for him. However, *Bill's* company turns out to be insolvent and facing liquidation, so his estate is practically worthless. If she were *Bill's* widow (or if she were a man and *Bill's* surviving civil partner) *Jane* would now be entitled to a widow's (or surviving civil partner's) contributory pension. As things stand, she is entitled to no social welfare payment on the ground of her relationship to *Bill*. She finds this particularly galling because *Síle*, although she and *Bill* divorced almost twenty years ago and she is financially independent, is still entitled to collect a widow's pension on account of her former marriage to him. Advise *Jane* whether the Constitution gives any prospect of redressing what she considers to be the injustice of not giving her such a pension, especially when *Síle* does receive one. (25 marks)

4. The Dublin Police Act 1842 (as amended and adapted) provides as follows:

14. Every person shall be liable to a [Class E fine, i.e. a fine not exceeding €500] who, within the limits of the [Dublin Metropolitan Area], shall in any thoroughfare or public place commit any of the following offences; (that is to say,)

...

3. Every person who by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care, or management of such cattle; and also every person, not being hired or employed to drive such cattle, who shall wantonly and unlawfully pelt, drive, or hunt any such cattle:

...

And it shall be lawful for any [member of An Garda Síochána] to take into custody without warrant any person who shall commit any such offence within view of any such [member].

The marginal note to section 14 is "Prohibition of nuisances by persons in public thoroughfares." While patrolling within the Dublin Metropolitan Area, *Stephen* (a Garda) saw an unattended cattle trailer parked on a public road, in full view of the children in a primary school playground. It contained a single bull and a single cow; the former was repeatedly attempting to mount the latter, as could be seen through the slats in the side of the trailer. To distract the bull from continuing in this vein, *Maura* (one of the children's teachers) was throwing pebbles at the trailer; some struck the bull, which did not seem to take much notice. Before *Stephen* could intervene, *Brendan* (the driver of the vehicle to

which the trailer was attached) and his assistant returned and *Brendan* and *Maura* began a heated argument over the rights and wrongs of the situation. *Stephen* then arrested *Brendan* and *Maura* under section 14 of the Act of 1842. Advise generally as to whether the Constitution gives, *Brendan*, *Maura* or both of them any grounds for successfully challenging the constitutionality of section 14 of the Act of 1842. (25 marks)

5. Answer either (a) or (b) below, but not both.

- (a) “The executive power provided for in Article 28 does not, of course, extend in itself to taking steps which would have the effect of criminalising certain conduct or actions. As Article 5 of the Constitution makes clear, the State is a democracy based on the rule of law. It follows that decisions of that kind must, in principle, be either legislative in nature or, if taken by the executive, have the appropriate legislative foundation.” *Bederev v Ireland* [2015] IECA 38 (10 March) Hogan J, para 27.

In recent decisions of the High Court, the Court of Appeal and the Supreme Court has the factor identified here by Hogan J given a distinct inflection to some cases dealing with the delegation of the power to make laws for the State or has it merely confirmed the effect of long-established principles of constitutional law in this area?

or

- (b) “The respondent accepts that the [Garda Representative Association] has the necessary standing to bring a challenge to the new Regulations on the basis of its legitimate expectation and on the basis that it would be consulted as alleged. But he does not accept that such standing extends to an entitlement to seek an injunction on behalf of all its members to suspend their operation pending the determination of that challenge, and in so far it seeks an injunction it does so only on the basis of a *ius tertii*. It is submitted that only an individual member who stands to be personally affected by the new Regulations could have an entitlement to seek such an injunction as part of a challenge to their lawfulness, since only in such a case could the Court realistically consider matters such as the adequacy of damages, the balance of convenience and the worth of any undertaking as to damages which may be available on the application.” *Garda Representative Association v Minister for Public Expenditure & Reform* [2014] IEHC 237 (7 May) Peart J, para 14.

In broad terms, Peart J accepted the Minister’s contentions on this aspect of that case. Where, in general, does the case law stand on the capacity of a representative body to bring an action relating to the interests of its members, without an objection of *ius tertii* being successfully raised against it?

EUROPEAN CONVENTION ON HUMAN RIGHTS: EXTRACTS

Convention for the Protection
of Human Rights
and Fundamental Freedoms
Rome, 4.XI.1950

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

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.