



# THE HONORABLE SOCIETY OF KING'S INNS

## ENTRANCE EXAMINATION

AUGUST 2017

Examination:	Irish Constitutional Law
Date:	Thursday 17 August 2017
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. This papers contains 5 pages.

A copy of the Constitution of Ireland, 1937 is supplied. No specific knowledge of the legislation mentioned in some questions is required; the references are instead prompts to discuss the issues of constitutional law that provisions of this kind may raise.

# 1. (An answer to this question is compulsory)

*Anna* is sixteen years old. *Emma*, the current girlfriend of *Anna*'s former boyfriend, was recently attacked with a corrosive substance, leaving her with permanent serious facial scars and impaired sight in one eye. Several Gardaí will testify that they obtained and viewed a relevant CCTV recording, which showed that the attacker was approximately 1.65 metres tall and of slight build (broadly similar to *Anna*) dressed in grey tracksuit bottoms and a blue jacket with a hood. The attacker's face was obscured by the hood and a face scarf. *Emma* cannot identify her attacker and there are no other witnesses. *Anna* was on bad terms with *Emma* and several witnesses will testify that *Anna* made threats of violence toward her in the days before the attack. Tests have determined that the substance used to attack *Emma* was sulphuric acid. As electronics is one of his hobbies, *Anna*'s father *Jim* has a supply of this acid in the family home. Based on these facts *Anna* was arrested under section 4(3) of the Criminal Law Act, 1997, on suspicion of having caused serious harm to *Emma*, brought to the nearest Garda station and detained there under section 4(2) of the Criminal Justice Act, 1984. A member of the Gardaí will testify that, while she was accompanying *Anna* to a holding cell on arrival at the station, *Anna* spontaneously confessed to attacking *Emma* in the manner suspected. *Jim* arrived at the station shortly after this. *Anna* and *Jim* were informed by the member in charge of the station of her entitlement to consult a solicitor before she was interviewed. *Anna* chose to exercise that right and had a twenty-minute consultation with her solicitor by telephone before being interviewed. The Gardaí informed *Anna* and *Jim* that they could also have a solicitor present during her interviews and that the first interview could be delayed for this purpose. Speaking on *Anna*'s behalf, *Jim* declined this offer. The Gardaí conducted two interviews with *Anna*, each lasting ninety minutes. *Anna* answered "no comment" to all questions put to her in both interviews, including those relating to the confession she is alleged to have made earlier. As one of *Anna*'s parents, *Jim* was present at both interviews, as is required by section 61(1) of the Children Act, 2001. In between the two interviews *Anna* was again allowed to consult with her solicitor by telephone, for fifteen minutes. Before the commencement of her second interview the Gardaí did not remind *Anna* and *Jim* of her entitlement to have a solicitor present. Towards the end of the second interview, *Anna* was asked to account for traces of sulphuric acid found on clothes, said to resemble those the attacker was seen to be wearing in the CCTV recording, that she was wearing when arrested and which were removed from her after she was brought to the station. *Anna* again answered "no comment". The Gardaí cannot now locate the CCTV recording of the attack on *Emma* that they will testify that they had recovered.

Advise *Anna* as to whether, on these facts, she could rely on constitutional grounds to prevent a successful prosecution for the offence for which she was arrested. **(50 marks)**

2. At common law, a person may generally change his or her name just by executing a deed poll declaring that he or she is giving up the old name and specifying a new one. However, it is unlawful, without a licence from the Minister for Justice and Equality, for any alien (except for British citizens, who are exempt from this by ministerial order) of full age to assume or use any name other than that by which he or she was ordinarily and usually known on the day before he or she attained full age (Aliens Act, 1935 s 8(1)). Similar restrictions apply to changing trade or business names (s 8(2)). An exception is made for a woman who adopts her husband's surname after marriage (s 8(4)). Contravening section 8 is an offence punishable on summary conviction by a Class D fine (one not exceeding €1000) and a further fine not exceeding €500 for every day on which the offence continues (s 8(5)). If an alien applies for a licence to assume and use a new name, the Minister "may, at his absolute discretion, either issue or refuse to issue a licence ... and ... may attach thereto such conditions as he shall think proper and shall specify therein" (s 9(2)) and may revoke the licence at any time at his or her absolute discretion (s 9(7)). The issue and revocation of a licence must be advertised in *Iris Oifigiúil*, along with such particulars of the licence as the Minister thinks proper (s 9(8)).

*Yves Lemaître* is a forty-year-old Canadian citizen. Having legally resided in Ireland since 2008, he has permission to remain without condition as to time. *Yves* and *Claire Murphy* (an Irish citizen) are the parents of twins, *James* and *Paul* (aged ten) who bear *Claire's* surname. *Yves* does not live with *Claire* and the boys. *Claire* has obtained barring orders against him, although none is currently in force. *Yves* has failed in his applications for guardianship of his sons. Instead, the District Court gave him limited, supervised access. *Yves* applied for a licence to change his name to *James Paul Murphy*, to reflect that the twins are his sons. The Minister refused, stating that *Yves* had not demonstrated a legitimate and substantial reason for changing his name. *Yves* believes that he is entitled to change his name and that the Minister's decision does not respect this. Advise *Yves* whether he could successfully challenge the constitutionality of section 8 or otherwise rely on the Constitution to challenge the Minister's decision. **(25 marks)**

3. The Government considers that legislation is needed to give it the power to deal with the severe disruptions to the Irish economy that it fears may result from the United Kingdom's departure from the European Union. Under the planned legislation, if the Government were of opinion that an economic crisis had arisen of such character that it was expedient in the public interest that extraordinary measures should be taken to ensure the due supply and distribution of "the essentials of life" to the community, it might by proclamation declare a state of economic crisis. Such a proclamation would stay in force for a month only, but might be renewed from month to month. During such an economic crisis, the Government might by order make such regulations as it thought "proper for ensuring the due supply and distribution of the essentials of life to the

community”. In particular, these regulations might (a) restrict accumulation of undue stocks of “food, fuel or other necessities”, (b) prevent the withholding of any such necessities from the community, (c) regulate and control prices charged by wholesale or retail traders, distributors and others for any such necessities or for their carriage or distribution, (d) confer such powers and authorities for the carrying out and enforcement of the regulations as the Government thought proper, (e) provide for any matter or thing ancillary or incidental to any of the matters aforesaid and in particular anything necessary for or incidental to the regulation and control of the supply and distribution of food, fuel and other necessities to the community and (f) create summary offences, with a maximum penalty of a class A fine (currently up to €5,000) or imprisonment for up to 12 months or both, along with the forfeiture of any money or goods in respect of which the offence was committed. The regulations might be annulled by either House within 21 sitting days of being laid before it, in the usual manner. The Government believes there is already a national housing crisis and plans to use the proposed Act to establish a *National Housing Authority*, with the power to compulsorily acquire any land the *NHA* deemed suitable for housing. The compensation paid to the owner would disregard any value attributed to the land because of its potential for residential development, whatever its current planning status. The *NHA* would be funded by a 7.5% levy on builders’ and property developers’ turnover. Advise the Government as to whether its planned legislation, especially the specific use it intends to make of it in relation to housing, would be repugnant to the Constitution. **(25 marks)**

4. *Carol* claims that she was unfairly dismissed by *Rusty Cat Enterprises*. Her claim was referred to an adjudication officer (a member of staff of the Workplace Relations Commission, but independent in the performance of her functions) (Workplace Relations Act 2015 s 40(8)). The adjudication officer conducted an inquiry during which she heard submissions and evidence presented by lawyers for both parties, in proceedings conducted otherwise than in public (as the Act requires: s 41(13)). She decided that *Carol* was unfairly dismissed and that she should be reinstated and compensated for her loss of salary and other benefits. *Rusty Cat* appealed to the Labour Court. The appeal was heard by a division of the Labour Court consisting of a Deputy Chairman of the Labour Court, an employers’ member and a trade union member (none of them legally qualified). The appeal was conducted in public (as is the general rule: s 44(7)). Having heard submissions and evidence presented by the parties’ lawyers, the Labour Court upheld the adjudication officer’s decision in full. *Rusty Cat* failed to carry out the Labour Court’s decision within 42 days of the date on which it was given notice of it. *Carol* applied to the District Court to enforce the decision. According to the Act, in such cases “the District Court shall ... without hearing the employer or any evidence (other than in relation to the [employer’s failure to comply]) make an order directing the employer to carry out the decision in accordance with its terms” (s 45(1)). If *Rusty Cat* had not appealed the adjudication officer’s decision and *Carol* had applied to the District Court to have it enforced, although *Rusty Cat* would still not

have been heard (s 43(1)), the judge might have replaced the order for reinstatement with “an order directing the employer to pay to the employee compensation of such amount as is just and equitable having regard to all the circumstances” (s 43(2)). This option is absent where the judge is enforcing a decision of the Labour Court. Neither an adjudication officer nor the Labour Court nor the District Court may award compensation exceeding 104 weeks’ remuneration. Advise *Rusty Cat* as to whether there are constitutional grounds upon which it could successfully challenge the application of this legislation to it, particularly by reference to the scope of the judicial power under Article 34.1 of the Constitution. **(25 marks)**

**5.** Answer either (a) or (b) or (c) below, but not more than one of them. Answer by reference to decided cases, not necessarily including those cited in the question. No specific knowledge of any of the three cases cited is required. **(25 marks)**

(a) “[The 1970s and 1980s were] an era when unenumerated rights were discovered if not declared, almost on the basis of propositions with which no one could disagree.” *N(H) v Minister for Justice and Equality* [2017] IESC 35 (30 May 2017) O’Donnell J, para 12.

In your view, are the criteria for identifying what is an unenumerated personal rights for the purposes of Article 40.3.1° any clearer now than they were when the doctrine was first formulated in 1963?

**or**

(b) “A person charged with a crime is entitled to know with a reasonable degree of precision what he is charged with and more particularly what alleged conduct, activity or lack of activity is said to constitute the offence in question.” *McNamee v DPP* [2017] IECA 230 (25 July) Mahon J, para 18.

Describe and analyse how the law on this aspect of constitutional law has developed in Ireland over the last decade.

**or**

(c) “Exceptional circumstances can override this [doctrine of mootness]. That may occur where one or both parties have a material interest in a point of law of exceptional public importance. In such circumstances, this Court may, in the interests of the due and proper administration of justice, determine a spent point ... A moot issue may also be considered if a case is designated as a test case ... Sometimes a pending decision may have a real consequence for a significant number of other cases ...” *Child and Family Agency v McG and CJ* [2017] IESC 9 (23 February 2017) Charleton J, para 36.

How much flexibility have the Irish courts displayed in applying the doctrine of mootness in recent years? What seem to be the most significant factors in such decisions?