



THE HONORABLE SOCIETY OF KINGS INNS

ENTRANCE EXAMINATION

AUGUST 2018

Examination:	Irish Constitutional Law
Date:	Thursday 16 August 2018
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 paper is 5 pages long including the cover sheet. You should check that you have all the pages and inform the invigilator immediately if any are missing.

1. (An answer to this question is compulsory)

Several rapes have occurred in *Ballymagash* over the last five years that the Gardaí suspect were carried out by a gang rather than by lone rapists. They had vague descriptions of the rapists and information about dates, times and places, but no specific leads. *Jim* fits the description of one of rapists and lives in the area in which the attacks have taken place. His girlfriend *Julia*, who suspected him of being unfaithful, searched his mobile phone and discovered texts he had sent and received, which suggested to her that he might be one of the rapists whom the Gardaí were pursuing. Up to that point she did not suspect him of any crime. Concerned that she might be sleeping with a rapist, she contacted the Gardaí anonymously, for advice about what to do. The guidance that they gave *Julia* was that her personal safety should be her top priority, but that if she did decide to stay with *Jim* she should keep an eye out for anything suspicious and, if she felt that she had evidence against him that the Gardaí could use, she should bring that to them immediately.

Following what she understood to be the advice she had received, *Julia* kept a close eye on *Jim* over the next three months. She continued surreptitiously checking his texts and the call logs on his mobile phone, taking screen grabs of these. In case these could be of use to the Gardaí, *Julia* also put aside items bearing *Jim's* fingerprints, from plastic wrapping he had left for her to put in the rubbish and from cutlery he had used, and she collected samples of *Jim's* hair, saliva and blood—from his hairbrush, a handkerchief he had spat into and a bandage that he had thrown in the bin. She also conserved samples of his semen from occasions on which they had sexual intercourse. *Julia*, who is a laboratory technician, kept all these physical samples securely preserved at her workplace in case they were needed as evidence.

Having overheard a phone conversation between *Jim* and some unknown person that seemed to involve a plan to rape a specific woman they had been tracking later that evening, *Julia* decided that she had to bring her evidence to the Gardaí immediately, including an audio recording she made of *Jim's* part of that crucial phone conversation. Based on the material *Julia* had brought to them, the Gardaí arrested *Jim* and detained him under section 4 of the Criminal Justice Act, 1984. During his detention, they had oral swabs taken from him, to obtain his DNA. *Jim* refused to give a blood sample when required to do so. When asked to explain each of the items that *Julia* had brought to the Gardaí, *Jim* declined to answer. Testing of the oral swabs has since confirmed that *Jim's* DNA matches that of one of the rapists.

Advise the Director of Public Prosecutions as to whether any of the evidence gathered in this case might be inadmissible against *Jim* on constitutional grounds. **(50 marks)**

2. *Ballymagash Biscuits* owns several biscuit factories around Ireland. To improve staff morale and productivity, it created an internal company “radio” station—*Biscuit FM*. This audio feed is relayed throughout all its factories by loudspeaker, approximately one to every ten workers. The workers have some control over the volume, but they cannot turn it off altogether. *Biscuit FM* is also relayed into any ear protectors worn by workers and into company cars supplied to them. For health and safety reasons workers are not allowed to wear their own personal stereo headphones or ear-buds; any fire or other alarms, safety announcements or operational messages automatically override *Biscuit FM*.

Biscuit FM transmits 24/7 and has its own professional production staff. It is mainly a medley of requested popular music and items about day-to-day factory life. However, ten per cent of its daily output relates to news and current affairs, produced by *Biscuit FM* staff. These make no pretence to be objective or impartial or to avoid expressing an editorial viewpoint. Originally, all of this part of *Biscuit FM*'s output reflected the socially and culturally conservative opinions of the company's controlling shareholder, known to all as “*Big Bill*”. For example, the station uncompromisingly advocated retaining the Eighth Amendment. Although *Biscuit FM* as a whole is very popular with the workers, its lack of balance concerning news and current affairs led to an industrial dispute and then a strike. This was recently settled on the basis of a compromise brokered by the Workplace Relations Commission. “*Big Bill*” still controls the editorial content of two-thirds of its news and current affairs output, but the trade unions representing the workers control the remainder and use it to promote their opinions on economic, social and political issues.

Winston works in the company's head office in *Ballymagash*. *Biscuit FM* is audible in his workplace throughout the working day and he has no way of avoiding listening to it. As a radical libertarian, he has refused to join any of the trade unions and he finds forced exposure to their views just as objectionable as being compelled to listen to those of “*Big Bill*”. Advise *Winston* as to whether the Constitution would support a claim that the *Biscuit FM* is operating unlawfully. **(25 marks)**

3. *Seema* and *Ahmed* contracted an Islamic marriage in Saudi Arabia in 2008, when she was fifteen and at a time when *Ahmed* was already married to another woman, *Fatima*. *Ahmed* and his two wives moved to Ireland in 2012 and they lived together as a family, along with *Ahmed* and *Fatima*'s children, until early 2018. At that point, *Ahmed* discovered that *Seema* had been guilty of adultery and he immediately divorced her, in the eyes of Islamic law as it is applied in Saudi Arabia, simply by pronouncing “triple talaq”. He immediately put *Seema* out of the family home and refused to give her any maintenance or other financial support or provision, even though she had been financially dependent on him

since they married. On consulting a family lawyer, *Seema* was advised that (a) Irish law does not regard her as *Abmed's* wife (as she was the second wife in a polygamous marriage) and (b) she cannot make any claim as a 'cohabitant' under the Civil Partnership and Certain Rights of Cohabitants Act 2010 because she and *Abmed* were not living together 'as a couple'. If she did qualify as a cohabitant under the 2010 Act she would be entitled to financial support from *Abmed*, as she meets all the other requirements of the Act. *Seema* feels that, if the solicitor's advice is correct, Irish law is treating her unjustly. Advise her as to whether the Constitution might assist her in redressing this injustice, if it is one. **(25 marks)**

4. A candidate at the forthcoming election of the President of Ireland has asked you to advise on a proposal he intends to make as part of his campaign. His proposal is that several Acts should be amended so as to provide that each member of the Council of State other than the ex-officio members (the Taoiseach, the Tánaiste, the Chief Justice, the President of the Court of Appeal, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General: Article 31.2 i) would automatically also be an additional member of several statutory commissions or boards, such as the Judicial Appointments Commission, the Arts Council, the Irish Human Rights and Equality Commission and the Standards in Public Office Commission. This means that "every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice ..." (Article 31.2ii) and each of the persons appointed by the President to be members of the Council of State would also be a member of these boards and commissions. "The President may at any time and from time to time ... appoint such other persons as, in his absolute discretion, he may think fit, to be members of the Council of State, but not more than seven persons so appointed shall be members of the Council of State at the same time." (Article 31.3) "The President may, for reasons which to him seem sufficient ... terminate the appointment of any member of the Council of State appointed by him." (Article 31.7) The proposed legislation would provide that each member of the Council of State thus given membership of a board or commission might nominate a proxy to represent him or her in that capacity, but that both the member and the proxy would cease to be members of the board or commission if the member ceased to be a member of the Council of State. Automatic membership of these boards and commissions would extend to persons who were on the Council of State at the time the legislation came into force. The candidate's attention has been drawn to the fact that what he proposes might be held to be repugnant to Article 13.11 ("No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.") Advise the candidate as to whether it would be constitutional to implement what he proposes. **(25 marks)**

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

- (a) “ ... part of the reason why it was considered appropriate to go ahead with these proceedings notwithstanding the fact that they were moot was that it will almost inevitably be the case that questions concerning the extent to which the Minister may or may not have to take into account the circumstances of an as yet unborn child of a potential deportee will become moot before being finally determined by a Court by virtue of the birth of the child concerned. It follows that it is almost inevitable that the only way in which such legal questions can be finally resolved is by the determination of a moot appeal.” *M(IR) v Minister for Justice and Equality* [2018] IESC 14 para 6.9.

Critically assess whether the Irish courts have, in this and other recent decisions, provided sufficiently clear criteria as to when the legal issues posed by moot cases should be resolved by the courts. **(25 marks)**

or

- (b) Has the equality guarantee in Article 40.1 achieved its full potential? **(25 marks)**

or

- (c) How have the courts managed in practice to limit the legal and practical consequences and effects of a finding that a law is unconstitutional and void? **(25 marks)**