



**THE HONORABLE SOCIETY OF KING'S INNS**  
**ENTRANCE EXAMINATION**

**AUGUST 2020**

**Examination:** Irish Constitutional Law  
**Date:** Saturday 29 August 2020  
**Time:** 2.30 p.m. – 5.30 p.m.  
**Internal Examiner:** Mr T John O'Dowd  
**External Examiner:** Dr Conleth Bradley SC

**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 questions are on pages 2-4.

Relevant provisions of the Constitution of Ireland are included after the questions at pages i-vi.

## Question 1 Compulsory

A person commits an offence by taking part in or being a spectator or otherwise being present at an animal fight (like a dog fight) except for an investigative purpose, the proof of which lies with the accused (Animal Health and Welfare Act 2013 s 15(2)) or by organising or causing any dog fight or permitting it to take place (s 15(1)(b)). Section 15(13) states that “investigative purpose” means investigating an animal fight and includes a criminal investigation or the taking of any photograph, video or filming for inclusion in a television programme. The maximum penalty for either offence is (a) on summary conviction, a Class A fine or not more than 6 months in prison or both or (b) on conviction on indictment, a fine not exceeding €250,000 or not more than 5 years in prison or both (s 52(2)). A Garda may arrest without warrant a person reasonably suspected of having committed either offence (s 39(1)). A person so arrested shall be taken to a Garda station and may be detained there or arrested and detained there under section 4 of the Criminal Justice Act 1984 (s 39(2)). If a Garda has reasonable grounds to believe there is evidence of either offence on a person, the Garda may without warrant search him or her (and detain him or her as long as is reasonably necessary to do so) or search a vehicle in which the Garda suspects that such evidence may be found. To perform that search, the Garda may, if he or she thinks fit, require the vehicle to be brought to a stop. (s 40(1)) Nothing in the Act operates to prejudice any power to search or to stop, or to seize or detain property, which a Garda may, apart from the Act, exercise (s 40(4)).

After a public outcry over media reports of widespread dog fighting, the Garda Commissioner instructed Gardaí to set up checkpoints at which any vehicle can be stopped and searched for evidence of such offences, without any prior suspicion that such evidence may be found. *Laura*'s van is stopped at such a checkpoint, searched and found to contain video recordings of many dogfights. *Laura* is arrested and brought to a Garda station. She is detained there for 6 hours initially and then 6 hours more. With her consent, she is afforded time to rest between midnight and 8am. She is then detained for another 12 hours. *Laura* tells the Gardaí that she is an animal rights activist who went undercover to attend dog fights merely in order to video them covertly, recordings that she is eventually going to put on the web. *Laura* can prove that she operates (under a pseudonym hiding her real identity) a website claiming to support animal rights. The Gardaí can find no other corroboration of her story. Almost 32 hours after *Laura* arrived at the station the Gardaí get a tip-off from a normally reliable source that *Laura* knows the location of an abandoned container of 20 fighting dogs in imminent danger of death. Although they do not believe that they have any statutory power to do so, the Gardaí detain *Laura* longer than is permitted by the Act of 1984, in order to find and rescue these dogs. After a further 6 hours of questioning, *Laura* admits that, to protect her cover, she helped organise dog fights. She reveals the container's location and the dogs' lives are saved. Advise the Director of Public Prosecutions as to whether the Constitution could be an obstacle to *Laura*'s being prosecuted for offences arising from the facts described or being convicted on such charges.

**(50 marks)**

**Question 2.**

*Frank* is serving a seven-year sentence for an offence of dishonesty. He is completely deaf and he communicates through Irish Sign Language. In an attempt to establish that he was the victim of a miscarriage of justice, *Frank* has engaged a lawyer (who needs an interpreter to communicate with him.) According to the Prison Rules, 2007 visits to *Frank* by his lawyer (whether accompanied by an interpreter or not) shall take place in the view of a prison officer but out of his or her hearing. (r 38) *Frank* and his lawyer have asked the Governor to undertake that no prison officer who understands Irish Sign Language will supervise these visits, but the Governor declines to give that undertaking, on the basis that this would be unlawful discrimination against such prison officers. *Frank* has also requested visits from a journalist who is investigating his case. The journalist applied to the Governor for permission to visit *Frank* (again accompanied by an interpreter) for this purpose, which has been granted. However, the Rules require that such a visit take place within the view and hearing of a prison officer, unless the Governor directs otherwise, which she refuses to do. (r 36(5)) Advise *Frank* as to whether any of his (or any other relevant party's) constitutional rights may have been violated in these circumstances.

(25 marks)

**Question 3.**

*The Ballymagash Courier* has obtained from a normally reliable source a leaked copy of what purports to be an unofficial, secret memorandum from a special adviser to the Minister for Social Solidarity and Development to senior officials in her Department, telling them to submit for his prior approval the draft of any answers to parliamentary questions to the Minister and stressing the importance of not giving any more potentially embarrassing information in such answers than is strictly necessary to avoid direct falsehoods. The newspaper's editorial staff are deeply concerned about what they see as a threat to the Government's accountability to Dáil Éireann and, indirectly, to press freedom. They communicated the leaked document and their concerns to *Maeve*, an Independent TD. She tried to raise this matter for debate in the Dáil, but the Ceann Comhairle ruled that she is not entitled to do so without disclosing the source of the document. *The Courier* and *Maeve* seek your advice as to whether the High Court could give them both or either of them any form of redress in respect of the policy set out in the leaked document or the Ceann Comhairle's decision not to allow the matter to be debated in the Dáil.

(25 marks)

**Question 4.**

*Boris* and *Síle* met and married in London in 2002 where they lived until informally separating twelve years later. They had three children together (now aged 9, 11 and 15). After the separation, *Síle* moved back to Ireland with the children, and *Boris* enjoyed rights of access to them by agreement. *Síle* and he continued to play an equal role in relation to major decisions about the children's education, medical treatment and other matters affecting their welfare. *Síle* died last year, having appointed her parents (who are both in their mid-eighties) as testamentary guardians of her children, who have lived with their grandparents ever since. *Boris* now wishes to obtain sole custody of his children and to bring them back to his home country. The children and their grandparents strongly object to this, despite the fact that the children were brought up to speak their father's native language as fluently as they speak English and that they regularly

spend long summer holidays in his homeland. One specific objection that the children and their grandparents have to *Boris's* plan is that the two eldest children identify as gay and lesbian respectively and that in their father's home country there are numerous policies and practices that are hostile to their sexual identity (such as "LGBTQ-free zones" and a criminal prohibition on "anti-family propaganda".) Advise the children's grandparents what bearing, if any, the Constitution could have on the resolution of this family law dispute. (25 marks)

**Question 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.

- (a) "Where the words used are clear and unambiguous, they are to be construed in their literal sense. Thus, for example, words denoting numbers, places or identified persons admit of no debate. ... it seems to us that the harmonious approach will only be taken in cases of apparent inconsistency. It will not be necessary to go beyond a literal interpretation of a constitutional provision unless such an interpretation gives rise to an apparent conflict with some other provision of the Constitution." *Bacik v An Taoiseach* [2020] IEHC 313 (29 June 2020) par 80  
In your opinion is this an accurate statement of the law, as it was when the members of the 25<sup>th</sup> Seanad ceased to hold office at the end of 29 March 2020, which gave rise to the main issue in the *Bacik* case? Is it desirable that departure from a literal interpretation should be permitted so sparingly?

**(25 marks)**

**or**

- (b) "... a finding of unconstitutionality in respect of legislation which has a bearing on criminal proceedings does not mean that steps taken in reliance on the legislation subsequently found to be unconstitutional will necessarily render the criminal proceedings invalid. A variety of factors will require to be considered ..." *Wansboro v DPP* [2018] IESC 63 Dunne J par 52  
Is there sufficient clarity in the case law as to what these various factors are and how much weight each should be given?

**(25 marks)**

**or**

- (c) "The rules on standing are designed to prevent persons whose constitutional rights could not, on any view, have been infringed from challenging legislation on the basis that someone else's constitutional rights may be infringed by the legislation in question, so that the plaintiff might benefit by the invalidity of the legislation concerned." *P v Judges of the Circuit Court* [2019] IESC 26 Clarke CJ par 3.2

Has the apparent clarity of this principle been obscured by recent decisions?

**(25 marks)**

## Relevant provisions of the Constitution of Ireland

### Article 15

- 8 1° Sittings of each House of the Oireachtas shall be public.
- 2° In cases of special emergency, however, either House may hold a private sitting with the assent of two-thirds of the members present.
- 9 1° Each House of the Oireachtas shall elect from its members its own Chairman and Deputy Chairman, and shall prescribe their powers and duties.
- 2° The remuneration of the Chairman and Deputy Chairman of each House shall be determined by law.
- 10 Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.
- 11 1° All questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member.
- 2° The Chairman or presiding member shall have and exercise a casting vote in the case of an equality of votes.
- 3° The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its standing orders.
- 12 All official reports and publications of the Oireachtas or of either House thereof and utterances made in either House wherever published shall be privileged.
- 13 The members of each House of the Oireachtas shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

### Article 28

- 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.

4° The Government shall prepare Estimates of the Receipts and Estimates of the Expenditure of the State for each financial year, and shall present them to Dáil Éireann for consideration.

## **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.