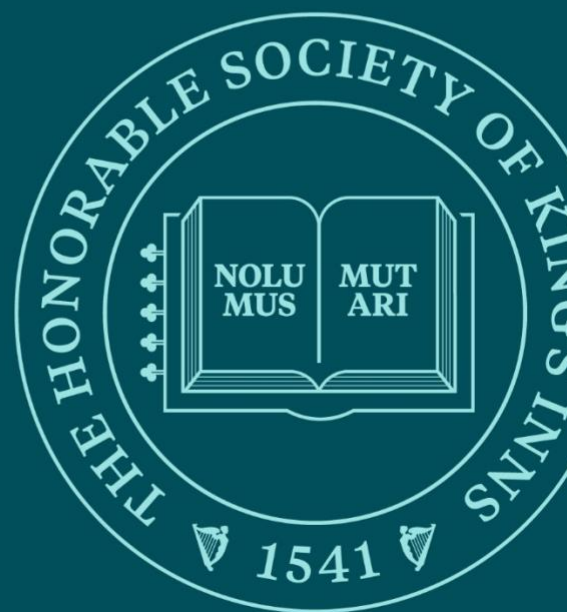


# DEGREE OF BARRISTER-AT-LAW ENTRANCE EXAMINATION 2021 – IRISH CONSTITUTIONAL LAW

OFFICE OF THE REGISTRAR  
APRIL 2021

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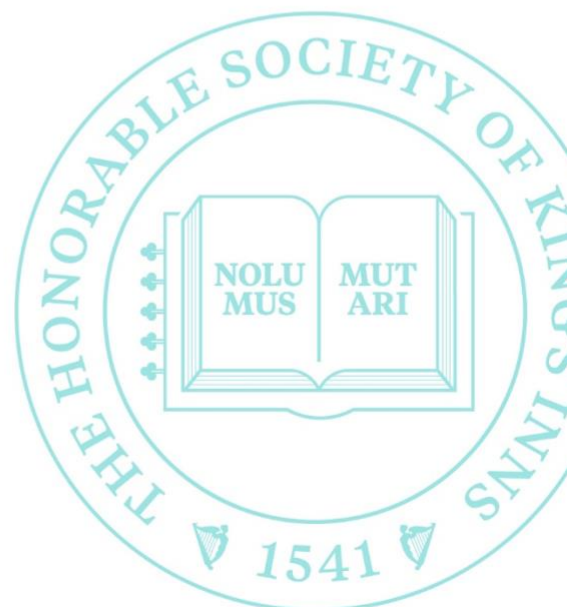


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**EXAMINER:** MR JOHN O'DOWD, UCD

**EXTERN:** MR CONLETH BRADLEY SC



# IRISH CONSTITUTIONAL LAW

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## Syllabus 2021.

### Topic 1: The Separation of Powers

#### The Executive Power

Article 28.1 -2

Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution*, pp. 164-170 and 431-437  
Casey, *Constitution Law in Ireland*, pp. 346-350  
Doyle, pp. 362-378  
Whyte, *Social Exclusion and the Legal System* (Dublin, 2002) pp. 340-363

McDermott, "The Separation of Powers and the Doctrine of Non-Justiciability" (2000) 35 *Irish Jurist* 55

Ruane, "The Separation of Powers and the Grant of Mandatory Orders to Enforce Constitutional Rights" [2000] 5 *Bar Rev* 416

Keating and Lowry "The Separation of Powers - The Supreme Court's Approach to Affirmative Duties - Part 1" (2003) 21 *ILT* 103; " ... Part 2" (2003) 21 *ILT* 118

Whyte and Doyle "The Separation of Powers and Constitutional Egalitarianism after the Health (Amendment) (No 2) Bill Reference" in O'Dell (ed) *The Older Person: Law and Policy in Modern Ireland*/ (Dublin, 2005)

Marques v MJE [2019] IESC 16 (20 March)

Damache v MJE [2020] IESC 63 (14 October)

Burke v Minister for Education [2021] IECA 67 (9 March)

#### The Executive Power: International Relations

Article 29.4, Irish Constitution

Casey, pp. 230-233 and 205-220

Hogan, Whyte, Kenny and Walsh, pp. 567-581

Doyle, pp. 341-348

Hogan, "The Supreme Court and the SEA" (1987) 22 *Irish Jurist* 55

Casey, "Crotty v An Taoiseach: A Comparative Perspective" in O'Reilly, ed., *Human Rights and Constitutional Law* (Dublin, 1992)

Pringle v Government of Ireland [2012] IESC 47 (19 October)

#### The President

Articles 1-2-14 and 26, Irish Constitution

See generally Casey, Ch.3

Jaconelli, "Reference of Bills to the Supreme Court? A Comparative Perspective" (1983) *Irish Jurist* 322

## The Houses of the Oireachtas

Articles 15, 17 and 20

See generally Casey, pp.101-103 and 123-152; Doyle, pp. 327-332 and 378-381

Kerins v McGuinness [2019] IESC 11 (27 February)  
O'Brien v Clerk of Dáil Éireann [2019] IESC 12 (5 March)  
Smith v An Ceann Comhairle [2019] IEHC 746 (6 November)

## Legislative Power and the Executive (Separation of Powers)

Casey, pp. 221-230  
Gwynn Morgan, *The Separation of Powers in the Irish Constitution*, Ch.11  
Doyle, pp. 309-327

Hogan, "The Implementation of EU Law in Ireland: the Meagher Case and the Democratic Deficit" (1994) 3 *Irish Journal of European Law* 190  
Hinds, "The Wireless Telegraphy Act 1926 after Laurențiu" (2000) 18 *ILT* 250  
Carolan, 'A Public Choice Analysis of the Non-Delegation Doctrine' (2007) 29 *DULJ* 111  
Carolan, "Democratic Accountability and the Non-Delegation Doctrine" (2011) 18 *DULJ* 220

Friends of the Irish Environment Ltd v Minister for Communications, Climate Action and Environment [2019] IEHC 646 (20 September)  
Smith v An Ceann Comhairle [2019] IEHC 746 (6 November)  
DPP v District Judge McGrath [2019] IECA 320 (20 December)

## Legislative Power and the Judiciary (Separation of Powers)

### The Judicial Power

Articles 34-38

Hogan, Whyte, Kenny and Walsh, pp. 693-726, 782-848  
Casey, pp.239-274  
Doyle, pp. 353-362

Damache v MJE [2020] IESC 63 (14 October)  
Zalewski v Adjudication Office [2021] IESC 24 (6 April)

## Judicial Power and the Legislature (Separation of Powers)

Hogan, "The Sinn Fein Funds Judgment Fifty Years On" (1997) 2(9) *Bar Rev* 375

Keane, “Across the Cherokee Frontier of Irish Constitutional Jurisprudence?” in O’Dell, ed., *Leading Cases of the Twentieth Century* (2000)

## What is the Judicial Power?

### Sentencing & Detention:

G(M) v Director of Oberstown Children Detention Centre [2019] IEHC 275 (3 May)

Ellis v MJE [2019] IESC 30 (15 May)

### Freezing and Forfeiture

See Hogan, Whyte, Kenny and Walsh, pp. 1354-55

## Topic 2: Personal Rights

Hogan, Whyte, Kenny and Walsh, pp. 1453-1524, 1683-92, 1775-78; Doyle, pp. 85-108; Constitution Review Group (“CRG”) Report pp. 213-219

Hogan, “Unenumerated Personal Rights: Ryan’s Case Re-Evaluated” (1990-92) 25-27 *Irish Jurist* 95

Humphreys, “Interpreting Natural Rights” (1993-5) *Irish Jurist* 221

Adrian Twomey, “The Death of Natural Law” (1995) *ILT* 270

Parker, “Must constitutional rights be specified? Reflections on the proposal to amend Article 40.3.1” (1997) 32 *Irish Jurist* 102

Kavanagh, “The Quest for Legitimacy in Constitutional Interpretation” (1997) 32 *Irish Jurist* 195

de Blacam, “Justice and Natural Law” (1997) 32 *Irish Jurist* 323

Whyte, “Discerning the Philosophical Premises of the Report of the CRG (1998) 2 *Contemporary Issues in Irish Law and Politics* 216

Hogan, “Directive Principles, Socio-Economic Rights and the Constitution” (2001) 36 *Irish Jurist* 174

Casey “‘Logically Faultless’ Argument for Unenumerated Rights in the Constitution’ (2004) 22 *ILT* 246

Coffey “Article 28.3.3, The Natural Law and the Judiciary - Three Easy Pieces” (2004) 22 *ILT* 310

O(ME) (Nigeria) v MJELR [2012] IEHC 448 (2 November)

Y(Y) v MJE [2017] IESC 61 (27 July)

M(IR) v MJE [2018] IESC 14 (7 March)

Friends of the Irish Environment v Government of Ireland [2020] IESC 49 (31 July)

## Doctrine of Proportionality

See Hogan, Whyte, Kenny and Walsh, pp. 1477-1507

P v MJE [2019] IESC 47 (31 May)

Burke v Minister for Education [2021] IECA 67 (9 March)

## Right to earn a livelihood

Hogan, Whyte, Kenny and Walsh, pp. 1699-1713

Casey v Minister of Arts [2004] 1 IR 402

Morrissey v Minister for Defence [2018] IEHC 672 (30 November)

### Fair procedures

Hogan, Whyte, Kenny and Walsh, pp. 1330-32, 1568-72, 1759-61

M(LS) (a minor suing through her mother and next friend M(K)) v Child and Family Agency [2018] IECA 385 (5 December 2018)

Shatter v Guerin [2019] IESC 9 (26 February)

Kelly v Dublin City Council [2019] IESC 56 (29 May)

P v MJE [2019] IESC 47 (31 May)

Damache v MJE [2020] IESC 63 (14 October)

Zalewski v Adjudication Office [2021] IESC 24 (6 April)

### Right to Travel

Hogan, Whyte, Kenny and Walsh, pp. 1761-63

### Access to the courts

Hogan, Whyte, Kenny and Walsh, pp. 1729-59

Doyle, pp. 128-132

### Privacy and Sexuality

Hogan, Whyte, Kenny and Walsh, pp. 1713-29

Muwema v Facebook Ireland Ltd [2018] IECA 104 (19 April)

Barry v Governor of Midlands Prison [2018] IEHC 279 (11 May)

DPP v McDonnell [2018] IECA 189 (28 June)

Dwyer v Commissioner of An Garda Síochána [2018] IEHC 685 (6 December)

Criminal Assets Bureau v Mannion [2018] IEHC 729 (17 December)

McMorrow v Governor of The Midlands Prison [2018] IEHC 765 (21 December)

DPP v v Brown [2018] IESC 67 (21 December)

P v Judges of the Circuit Court [2019] IESC 26 (30 April)

DPP v Doherty [2019] IECA 209 (31 May)

Dwyer v Commissioner of An Garda Síochána [2020] IESC 4 (24 February)

Dwyer v Commissioner of An Garda Síochána [2020] IESC 4\_1 (24 February)

### Conscientious objection

E(G) v Refugee Appeals Tribunal [2018] IEHC 564 (15 October)

## Protection of the environment

Merriman v Fingal County Council [2017] IEHC 695 (21 November)  
Friends of the Irish Environment v Government of Ireland [2020] IESC 49 (31 July)

## Personal identity

Habte v MJE [2020] IECA 22 (5 February)  
Habte v MJE [2020] IECA 22\_1 (5 February)

## Protection of “the person”

Hogan, Whyte, Kenny and Walsh, pp. 1666-69

Simpson v Governor of Mountjoy Prison [2019] IESC 81 (14 November)  
Simpson v Governor of Mountjoy Prison [2019] IESC 81\_1 (14 November)

## Right to Life

Hogan, Whyte, Kenny and Walsh, pp.1652-64

M(IR) v MJE [2018] IESC 14 (7 March)  
In the matter of JJ (Unapproved) [2021] IESC 1 (22 January)

Thirty-sixth Amendment of the Constitution Act 2018  
Health (Regulation of Termination of Pregnancy) Act 2018

## Topic 3: Property Rights

Hogan, Whyte, Kenny and Walsh, pp. 2347-2455; CRG Report pp. 357-367  
Doyle, pp. 133-165  
All-Party Oireachtas Committee on the Constitution, Ninth Progress Report: Private Property (2004, Pn 2218)  
McCormack, “Blake and its Aftermath” (1983) 5 DULJ 205  
Kingston, “Rich People have Rights Too? The Status of Property as a Fundamental Human Rights in Heffernan ed., Human Rights: A European Perspective (Round Hali Press, 1994) at pp. 284 -297  
McBride, ‘The Right to Property’ (1996) 21 European L Rev Human Rights Survey 40  
Hogan “The Constitution, Property Rights and Proportionality” (1997) Irish Jurist 373

## General Principles

Parkin (a debtor), Re: Lisa [2019] IEHC 56 (4 February)

*Interference with property rights and compensation*

Barry v Ennis Property Finance DAC [2018] IEHC 766 (21 December)

## Topic 4: Freedom of expression and freedom of association

Hogan, Whyte, Kenny and Walsh, pp. 2061-2121; CRG Report, pp. 291-304  
Doyle, pp. 194-207

McGonagle, *Media Law* 2<sup>nd</sup> ed (2003)

Fennelly, "The Irish Constitution and Freedom of Expression" in Curtin & O'Keefe eds., *Constitutional Adjudication in European Community and National Law*. (Butterworths, 1992)

O'Dell, "Does Defamation value Free Expression?" (1990) 12 DULJ 50

McGonagle, "Freedom of Expression and Information" (1995) *Irish Human Rights Yearbook* 31

Conroy, "Constitutionalising the Tort of Defamation" (2002) 5 Trinity College L Rev 1

Casey, "Injunctions and Freedom of Expression" in Breen, Casey and Kerr, *Liber Memorialis for Professor JC Brady* (Dublin 2001) at 139-147

### Expression: General Principles

DPP v Independent News and Media plc [2018] IECA 301 (10 October)

### Article 10 - ECHR

Murphy v Ireland (2004) 38 EHRR 13

Pedersen and Baadsgaard v Denmark (No 2) (2006) 42 EHRR 486

Independent News and Media & Independent Newspapers Ireland Ltd v Ireland (2006) 42 EHRR 1024

Lindon v France [2007] ECHR 836 (22 October)

Sanoma Uitgevers BV v The Netherlands [2009] ECHR 994 (31 March 2009) (under referral to the Grand Chamber)

Financial Times Ltd v United Kingdom [2009] ECHR 2065 (15 December)

Von Hannover v Germany (No 2) [2012] ECHR 228 (7 February)

Axel Springer AG v Germany [2012] ECHR 227 (7 February)

Aksu v Turkey [GC] [2012] ECHR 445 (15 March)

Mouvement raëlien suisse v Switzerland [GC] (2013) 56 EHRR 14 (13 July 2012)

PETA Deutschland v Germany [2012] ECHR 1888 (8 November)

Animal Defenders International v UK [GC] [2013] ECHR 362 (22 April)

Independent Newspapers (Ireland) Ltd v Ireland [2017] ECHR 567 (15 June)

### Freedom of Association

Hogan, Whyte, Kenny and Walsh, pp. 2135-68; CRG Report, pp. 312-317

Doyle, pp. 207-217

Lynch, "Lawyers and Unions—The Right to Freedom of Association in the Irish Constitution" in Murphy and Twomey eds., *Ireland's Evolving Constitution 1937-1997: Collected Essays* (Hart Publishing, 1998)



## Article 11 - ECHR

Refah Partisi (Welfare Party) v Turkey (2003) 37 EHRR 1  
ASLEF v UK [2007] ECHR 184 (27 February)  
Demir and Baykara v Turkey (2009) 48 EHRR 54 (12 November 2008)  
Redfearn v UK [2012] ECHR 1878 (6 November)

See also: Evaldsson v Sweden [2007] ECHR 129 (13 February)

## Topic 5: Equality before the Law - Article 40.1

Hogan, Whyte, Kenny and Walsh, pp. 1561-1643; CRG Report, pp. 220-243  
Doyle, *Constitutional Law: Text, Cases and Materials* (Clarus Press, 2008) pp. 61-82  
Connolly, "The Constitution" in Connolly ed., *Gender and the Law in Ireland* (Oak Tree Press, 1993)  
Hogan, "The Supreme Court and the Equality Clause" (1998) 3 Bar Rev 116-120.  
Doyle, *Constitutional Equality Law* (Dublin, 2004)

## General Principles

Shaw v MJE [2018] IEHC 288 (9 March)  
Donnelly v Minister for Social Protection [2018] IEHC 421 (17 July)  
Buck v Governor of Portlaoise Prison [2018] IEHC 354 (3 October)  
G(M) v Director of Oberstown Children Detention Centre [2019] IEHC 275 (3 May)  
O v Minister for Social Protection [2019] IESC 82 (21 November)  
O v Minister for Social Protection [2019] IESC 82\_1 (21 November)  
B v Director of Oberstown [2020] IESC 18 (29 April)  
M (Suing by His mother and next friend J) v Director of Oberstown [2020] IECA 249 (18 September)  
Údarás Uchtála v M [2020] IESC 64 (19 October)  
A v MJE [2020] IESC 70\_2 (8 December)  
Braney v Special Criminal Court [2021] IESC 7 (12 February)

## Sex Based Discrimination

See Hogan, Whyte, Kenny and Walsh, pp. 1356-1358

## Topic 6: Article 38.1: Trial in Due Course of Law

Hogan, Whyte, Kenny and Walsh, pp. 1231-1356 (general) 1356-82 (delay); CRG Report, pp. 191-209

Doyle, *Constitutional Law: Text, Cases and Materials* (Clarus Press, 2008) pp. 17-57

Balance in the Criminal Law Group, Final Report (15 March 2007) (copy available from [justice.ie](http://justice.ie) – see under Publications / Law Reform)

Bloom and Dewey "When Rights Become Empty Promises: Promoting an Exclusionary Rule that Vindicates Personal Rights" (2011) 46 Irish Jurist 38

## General Principles

Konadu v DPP [2018] IEHC 72 (5 February)  
MJE v Celmer [2018] IEHC 119 (12 March)  
MJE v Celmer [2018] IEHC 153 (23 March)  
DPP v Connolly [2018] IECA 201 (28 June)  
Bitá v DPP [2018] IEHC 385 (4 July)  
DPP v H [2018] IESC 32 (17 July)  
DPP v Forsey [2018] IESC 55 (8 November 2018)  
DPP v Casey [2019] IESC 7 (21 February)  
O’Callaghan v Ireland [2019] IEHC 782 (14 March)  
Ryan v Governor of Mountjoy Prison [2020] IESC 8 (19 March)  
DPP v N(T) [2020] IESC 26 (28 May)

## Autrefois Acquit and related principles

Courts and Court Officers Act 1995, s 44

"An appeal shall not lie to the Supreme Court from a decision of the Central Criminal Court to acquit a person, other than an appeal under s 34 of the Criminal Procedure Act 1967."

## Undue delay

See Hogan, Whyte, Kenny and Walsh, pp. 1144-70

### **Present-day general approach to delay**

H(M) v DPP [2018] IEHC 560 (12 October)  
S(H) v DPP [2019] IEHC 107 (1 March)  
O’Callaghan v Ireland [2019] IEHC 782 (14 March)  
S(H) v DPP [2019] IECA 266 (22 October)

## Right to counsel

See Hogan, Whyte, Kenny and Walsh, pp. 1299-1330

Butler, "The Right to be Informed of a Right to a Lawyer; The Constitutional Dimension" (1993) Irish Criminal Law Journal 173

Robinson, "If I Could Turn Back Time ..." (2017) 111(3) Law Society Gazette 22-25 (April 2017)

[lawsociety.ie/Documents/Gazette/Gazette%202017/April-2017-Gazette.pdf](https://lawsociety.ie/Documents/Gazette/Gazette%202017/April-2017-Gazette.pdf)

Criminal Justice Act 2011 ss 9-14 (not yet commenced)

McEntaggart v DPP [2018] IEHC 230 (20 April)  
DPP v Nash [2018] IECA 147 (8 May)

Farrell v Superintendent of Milford Garda Station [2019] IEHC 67 (11 February)

### Unconstitutionally Obtained Evidence

Balance in the Criminal Law Group, *Final Report*, pp 147 to 166

See Hogan, Whyte, Kenny and Walsh, pp. 1308-21

DPP v Flynn [2018] IECA 39 (20 February)

DPP v Tierney [2018] IECA 44 (23 February)

Criminal Assets Bureau v Murphy [2018] IESC 12 (27 February)

DPP v Doherty [2019] IECA 209 (31 May)

### Gathering and preservation of evidence

See Hogan, Whyte, Kenny and Walsh, pp. 1341-46

Non-criminal context: Curtin v Irish Coursing Club [2009] IEHC 175 (6 March)

### Unfair pre-trial publicity

See Hogan, Whyte, Kenny and Walsh, pp. 1333-41

### Power of search

See Hogan, Whyte, Kenny and Walsh, pp. 1328-30, 2019-60

### Right to silence

See Hogan, Whyte, Kenny and Walsh, pp. 1288-99

Hogan, "Right to Silence after National Irish Banks and Finnerty" (1999) 21 DULJ 176

Balance in the Criminal Law Group, *Final Report*, pp 17 to 98

Criminal Justice Act 2007 ss 28-32

DPP (Garda James Reynolds) v Burke [2018] IEHC 554 (11 October)

Sweeney v Ireland [2019] IESC 39 (28 May)

### Topic 7: Article 38.5 - Right to Jury Trial

See Hogan, Whyte, Kenny and Walsh, pp. 1429-48

Casey, "Interpretation of Constitutional Guarantees" (1996) 31 Irish Jurist 102

## Topic 8: Locus Standi, Mootness, Justiciability and Remedies

Hogan, Whyte, Kenny and Walsh, pp. 141-51, 719-26, 943-94, 1037-83

Carolan, “The Relationship between Judicial Remedies and the Separation of Powers: Collaborative Constitutionalism and the Suspended Declaration of Invalidity” (2011) 46 *Irish Jurist* 180

### A. Locus standi

Fitzpatrick v Minister for Agriculture Food and the Marine) [2020] IESC 50 (31 July)

### B. Jus Tertii

Mohan v Ireland [2018] IECA 13 (9 February)

P v Judges of the Circuit Court [2019] IESC 26 (30 April)

Friends of the Irish Environment v Government of Ireland [2020] IESC 49 (31 July)

DPP v Galvin [2020] IECA 319 (19 November)

Kennedy v DPP [2020] IECA 360 (21 December)

### C. Justiciability

See Casey, Constitutional Law in Ireland at 277-281

McDermott, “The Separation of Powers and the Doctrine of Non-Justiciability” (2000) 35 *Irish Jurist* 280

Kerins v McGuinness [2019] IESC 11 (27 February)

O’Brien v Clerk of Dáil Éireann [2019] IESC 12 (5 March)

Re Appropriate Care of a Ward of Court [2019] IEHC 393 (31 May)

### D. Mootness

M(IR) v MJE [2018] IESC 14 (7 March)

### E. Abstract judicial review: the Article 26 procedure

Hogan, Whyte, Kenny and Walsh, pp. 477-92

Jaconelli, “Reference of Bills to the Supreme Court” (1983) *Irish Jurist* 322

Re Article 26 and the Equal Status Bill, 1997 [1997] 2 IR 387

### F. Rule of Avoidance

See Hogan, Whyte, Kenny and Walsh, pp. 982-94

Morrissey v National Asset Management Agency [2019] IEHC 576 (2 July)

Friends of the Irish Environment Ltd v Minister for Communications, Climate Action and Environment [2019] IEHC 646 (20 September)

### G. Effect of declarations of invalidity or inconsistency

Hogan, Whyte, Kenny and Walsh, pp. 1037-83

C v Minister for Social Protection [2018] IESC 57 (29 November)  
Dwyer v Commissioner of An Garda Síochána [2018] IEHC 685 (6 December)  
Wansboro v DPP [2018] IESC 63 (20 December)  
Damache v Minister for Justice [2021] IESC 6 (10 February)

#### **H. Constitutional Lacunae**

Hogan, Whyte, Kenny and Walsh, pp. 1042-51

B v Director of Oberstown [2020] IESC 18 (29 April)  
Damache v Minister for Justice [2021] IESC 6 (10 February)

#### **I. Injunctions**

Friends of the Irish Environment Ltd v Minister for Communications [2019] IEHC 555 (23 July)

#### **J. Damages**

C(M) v The Clinical Director of the Central Mental Hospital [2020] IESC 28 (4 June)

### **Topic 9: Referendum Law**

Articles 46-47

Casey, pp.709-719  
Hogan, Whyte, Kenny and Walsh, pp. 2525-56

O'Neill, "The Referendum Process in Ireland" (2000) 35 *Irish Jurist* 305

Jordan v Ireland [2018] IECA 291 (27 August 2018)

### **Topic 10: Personal Liberty**

**Articles 40.4.1 and 40.4.6**

**Article 5 ECHR**

Hogan, Whyte, Kenny and Walsh, pp. 1807-79, 1885-1930  
Casey, pp. 476-511

Ryan v Governor of Mountjoy Prison [2020] IESC 8 (19 March)  
Braney v Special Criminal Court [2021] IESC 7 (12 February)

#### **Arrest and detention powers**

Offences against the State Act 1939, s 30  
Offences against the State (Amendment) Act 1998, s 10  
Criminal Justice Act 1984, s 4

Criminal Justice (Drug Trafficking) Act 1996, s 2(2)  
Criminal Justice Act 2006 s 9(c)  
Criminal Justice Act 2007 s 50

McCutcheon, "Section 30 Yet Again" (1988) 10 DULJ 158

Braney v Special Criminal Court [2021] IESC 7 (12 February)

### *Position of prisoners*

McD v Governor of X Prison [2018] IEHC 668 (1 November)  
Simpson v Governor of Mountjoy Prison [2019] IESC 81 (14 November)  
Simpson v Governor of Mountjoy Prison [2019] IESC 81\_1 (14 November)

### Therapeutic detention

L(P) v Clinical Director of St. Patrick's UH [2018] IECA 29 (14 February)  
M(A) v Health Service Executive [2019] IESC 3 (29 January)  
Child and Family Agency v LM [2019] IECA 109 (12 April)  
A(C) v Patricia Hickey General Solicitor [2019] IESC 73 (17 October)

## **Topic 11: FREEDOM OF RELIGION**

Hogan, Whyte, Kenny and Walsh, pp. 2457-2509  
Casey, pp. 685-708  
CRG Report at 368-388

Education (Admission to Schools) Act 2018

## **Topic 12: IMPACT OF THE ECHR**

Hogan, Whyte, Kenny and Walsh, pp. 635-40; 1555-59

O'Connell, "The Irish Constitution and the ECHR" (2000) Irish Human Rights Review 90 CRG Report at 213-219

Hogan, "The Belfast Agreement and the Future Incorporation of the European Convention of Human Rights in the Republic of Ireland" (1999) 4 Bar Rev 205

European Convention of Human Rights Act, 2003

McAuley v Judge Fergus [2018] IECA 30 (7 February)  
Clare County Council v McDonagh [2020] IECA 307 (12 November)

## **Topic 13: PROTECTION OF THE FAMILY AND CHILDREN**

Art 41.4 (inserted by the Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015)

Art 42A (inserted by the Thirty-first Amendment of the Constitution (Children) Act 2012)

Hogan, Whyte, Kenny and Walsh, pp. 2169-2346  
CRG Report pp. 319-337

Casey, pp. 612-652

## Protection of the family and children

S(MKF) (Pakistan) v MJE [2018] IEHC 103 (6 February)

M(P) v H(V) [2018] IECA 4 (24 January)

M(IR) v MJE [2018] IESC 14 (7 March)

Child and Family Agency v Adoption Authority of Ireland [2018] IEHC 172 (28 March)

Ford v MJE [2018] IESCDET 55 (11 April 2018)

Gorry v MJE [2018] IESCDET 56 (11 April 2018)

Luximon v MJE [2018] IESC 24 (24 April)

In the matter of the Adoption Act, 2010, Section 49 (2), and in the matter of JB (a minor) and KB (a minor) [2018] IESC 30 (16 July)

Child and Family Agency v Adoption Authority of Ireland [2018] IEHC 515 (25 September)

A Foster Mother v Child and Family Agency [2018] IEHC 762 (21 December)

Child and Family Agency v LM [2019] IECA 109 (12 April)

W(MW) v F(SJ) [2019] IECA 227 (30 July)

I(I) (Nigeria) v MJE [2019] IEHC 729 (29 October)

Gorry v MJE [2020] IESC 55 (23 September)

In the matter of JJ (Unapproved) [2021] IESC 1 (22 January)

Burke v Minister for Education [2021] IECA 67 (9 March)

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## Reading List 2021.

All students should have a copy of Bunreacht na hEireann/Constitution of Ireland; an up to date (January 2020) official text (in both languages) is available at:

[gov.ie/en/publication/d5bd8c-constitution-of-ireland/](https://www.gov.ie/en/publication/d5bd8c-constitution-of-ireland/)

This includes the most recent amendments:

- Twenty-Ninth Amendment of the Constitution (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) Act 2011
- Thirtieth Amendment of the Constitution (Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union) Act 2012
- Thirty-third Amendment of the Constitution (Court of Appeal) Act 2013
- Thirty-first Amendment of the Constitution (Children) Act 2012
- Thirty-fourth Amendment of the Constitution (Marriage Equality) Act, 2015
- Thirty-sixth Amendment of the Constitution Act 2018
- Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Act 2018
- Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Act 2019

There is no amendment entitled the Thirty-second or the Thirty-fifth Amendment of the Constitution.

Students may usefully refer to:

- Hogan, Whyte, Kenny and Walsh, Kelly: *The Irish Constitution* (Bloomsbury Professional, 2018, 5<sup>th</sup> edition)
- Casey, *Constitutional Law in Ireland* (Sweet & Maxwell, 2000, 3<sup>rd</sup> edition)
- Dewhurst, Higgins and Watkins, *Principles of Irish Human Rights Law* (Clarus, 2012)
- Forde and Leonard, *Constitutional Law of Ireland*, 3<sup>rd</sup> edition (Bloomsbury, 2013)

Doyle, *Constitutional Law: Text, Cases and Materials* (Clarus Press, 2008) and *The Constitution of Ireland: A Contextual Analysis* (Hart Publishing, 2018) are also useful.

*The Report of the Constitution Review Group* (Government Publication, 1996, Pn. 2632) remains a very useful source. The text of the Report is available on the web, on the website of the Constitutional Convention, which students may also find it useful to look at more generally: [constitutionalconvention.ie/](http://constitutionalconvention.ie/)

For an archived copy of the Report, see:

[archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf](http://archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf)

The 1<sup>st</sup> Report of the All-Party Oireachtas Committee on the Constitution (Pn. 3795, April 1997) provides a valuable overview of and response to the CRG Report. Gwynn Morgan, *The Separation of Powers in the Irish Constitution* (Dublin, 1997) contains a valuable analysis of separation of powers issues. *Ireland's Evolving Constitution 1937-1997* (Hart Publishing, 1998) also contains a valuable collection of essays on modern constitutional law.

For other background material, see Chubb, *The Politics of the Irish Constitution* (IPA, 1991); Farrell ed., *De Valera's Constitution and Ours* (Gill and MacMillan, 1988); Litton ed., *The Constitution of Ireland*, (IPA, 1988) and Foley & Lalor, *Gill & MacMillan Annotated Constitution of Ireland* (Dublin, 1994)

The focus of the examination will be on key constitutional principles: the separation of powers; principles of judicial review; the Oireachtas, Government and President and the key fundamental rights contained in Articles 38 and 40-44.

Some basic knowledge of relevant ECHR case-law is also expected.

This (comparatively) lengthy reading-list is designed to assist rather than to intimidate! Obviously, a good knowledge of the case-law is essential, but the ability of students to identify the issues; to reason by analogy and to apply the legal principles to the facts are also very important.

**The citation of Irish cases has been confined to those more recent decisions – Irish or European, generally ones not dealt with in the discussion of the relevant topics in Kelly, Hogan and Whyte *The Irish Constitution* (5th ed.) That does not mean that earlier cases are not still be just as relevant.**



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## Examination Format 2021.

The examination itself will be three hours in duration. Every effort will be made to ensure that the examination fairly reflects the syllabus, though not all topics will be examined each year. The examination is designed to bring out the best in each student, rather than to trip you with “trick” questions or questions with an unduly narrow focus. However, you should expect that some, at least, questions will combine material emanating from different topics.

The examination will be of 3 hours duration.

Candidates will be required to answer **three** questions.

There will be **five** questions on the examination paper.

The **first** question will be a **compulsory** problem question; it carries **50 marks**.

Each of the other four questions carries **25 marks**. Three of the four remaining questions are problem questions. There will be an internal choice within the fourth (non-problem) question, between part (a) and part (b).

Note: “MJLER” stands for Minister for Justice, Equality and Law Reform; “MJE” stands for Minister for Justice and Equality”; “MJLR” stands for “Minister for Justice and Law Reform”.

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