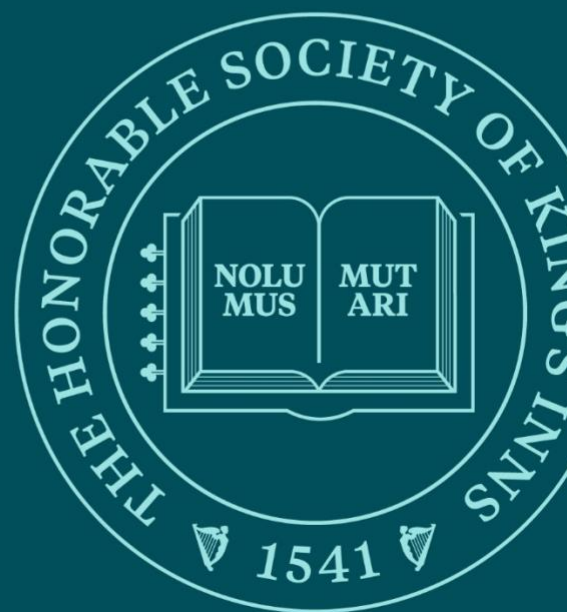


DEGREE OF BARRISTER-AT-LAW ENTRANCE EXAMINATION 2023 – CONSTITUTIONAL LAW

OFFICE OF THE REGISTRAR
APRIL 2023

KINGS
INNS¹⁵₄₁

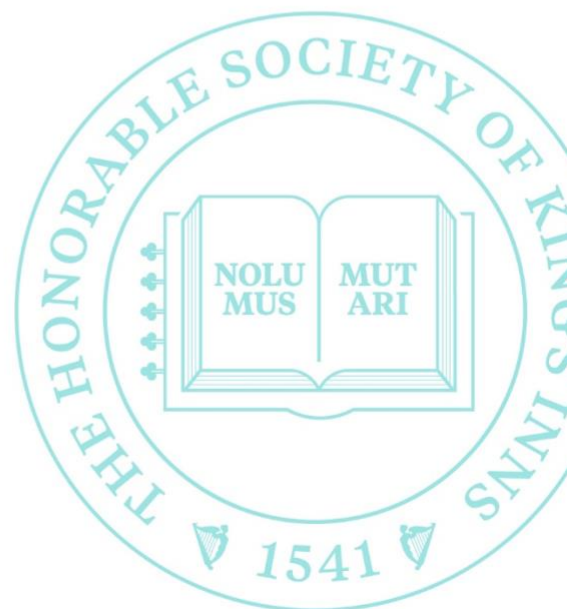


CONTENTS

SYLLABUS 2023.	3
READING LIST 2023.	17
EXAMINATION FORMAT 2023.	19

EXAMINER: MR JOHN O'DOWD, UCD

EXTERN: THE HON MR JUSTICE GERARD HOGAN



CONSTITUTIONAL LAW

Syllabus 2023.

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”.

Where there is a reference in what follows to the neutral citation of a case, that includes all the judgments delivered; for instance, a reference to [2023] IESC 7 is a reference to the judgments of Charleton, Hogan and Murray JJ in that case.

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)

Kelly v Minister for Agriculture [2021] IESC 23 (30 March)

Burke v Minister for Education [2022] IESC 1 (24 January)

Dowdall v DPP [2022] IESC 36 (29 July)

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)
Costello v Government of Ireland [2022] IESC 44 (11 November)

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

Right to Know CLG v Commissioner for Environmental Information [2022] IESC 19 (29 April)

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)
Kerins v Dáil Éireann [2022] IEHC 489 (29 July)

Seanad Éireann

Bacik v An Taoiseach [2020] IEHC 313 (29 June)
Heneghan v Minister for Housing, Planning & Local Government [2023] IESC 7 (31 March)

Legislative Power and the Executive (Separation of Powers)

Casey, pp. 221-230
Gwynn Morgan, *The Separation of Powers in the Irish Constitution* (Dublin, 1997) 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)
NECI v Labour Court [2021] IESC 36 (18 June)
DPP v District Judge McGrath [2021] IESC 66 (21 September)
Delaney v Personal Injuries Assessment Board [2022] IEHC 321 (2 June); [2022] IESCDET 133 (25 November)
Right to Know CLG v An Taoiseach [2023] IECA 68 (24 March)
Harte v Superior Court Rules Committee [2023] IEHC 192 (17 April)
Conway v An Bord Pleanála [2023] IEHC 178 (18 April)

Obligation to translate primary legislation and certain statutory instruments

Glann Mór Céibh Teo v v An t-Aire Tithíochta, Pleanáil 7 Rialtas Aitiúil [2022] IESC 40 (1 Samhain)

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)

Juridical (or judicial) sovereignty

Costello v Government of Ireland [2022] IESC 44 (11 November)

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

Damages

Delaney v Personal Injuries Assessment Board [2022] IEHC 321 (2 June); [2022] IESCDET 133 (25 November)

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)
Fox v Minister for Justice [2021] IESC 61 (14 September)
Burke v Minister for Education [2022] IESC 1 (24 January)

Doctrine of Proportionality

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

P v MJE [2019] IESC 47 (31 May)
DPP v Molloy [2021] IESC 44 (19 July)
Burke v Minister for Education [2022] IESC 1 (24 January)
Tallon v DPP [2022] IEHC 322 (2 June)
Donnelly v Minister for Social Protection [2022] IESC 31 (4 July)
O’Doherty v Minister for Health & Ors [2022] IESC 32 (5 July)
Delaney v Personal Injuries Assessment Board [2022] IEHC 321 (2 June); [2022] IESCDET 133 (25 November)

Right to earn a livelihood

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

Morrissey v Minister for Defence [2018] IEHC 672 (30 November)
Muldoon v Minister for Environment & Local Government [2023] IECA 61 (16 March)

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)
Kelly v Minister for Agriculture [2021] IESC 23 (30 March)
Zalewski v Adjudication Office [2021] IESC 24 (6 April)
Ivers v Commissioner of An Garda Síochána [2022] IECA 206 (18 August)

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)
Akram v MJE [2022] IECA 108 (12 May)
K(M) (Albania) v MJE [2022] IESC 48 (24 November)

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)

Protection of “the person” and the right to bodily integrity

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

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

W(L) & L(R) v Health Service Executive [2023] IEHC 48 (2 February)

Dwelling

DPP v Hannaway [2021] IESC 31 (4 May)

Clare County Council v McDonagh [2022] IESC 2 (31 January)

DPP v Behan [2022] IESC 23 (30 May)

DPP v Quirke [2023] IESC 5 (20 March)

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)

Fox v Minister for Justice [2021] IESC 61 (14 September)

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)

Crofton Buildings Management CLG v An Bord Pleanála [2022] IEHC 704 (20 December)

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

Carolan and O'Neill, *Media Law in Ireland* 2nd ed (Dublin, 2019) Ch. 2

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)
Start Mortgages DAC v Gilroy [2021] IECA 147 (18 May)
Higgins v Irish Aviation Authority [2022] IESC 13 (7 March)
Tallon v DPP [2022] IEHC 322 (2 June)
Corcoran v Commissioner of An Garda Síochána [2022] IECA 98 (22 April); [2022] IESCDET 110 (30 September)

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) (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)
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)
Mándli v Hungary [2020] ECHR 337 (26 May)
Big Brother Watch v UK [2021] ECHR 439 (25 May)
Standard Verlagsgesellschaft mbH v Austria (no 3) [2021] ECHR 1029 (7 December)
Yefimov v Russia [2021] ECHR 1028 (7 December)
Macatė v Lithuania [2023] ECHR 69 (23 January 2023)

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)

K(M) (Albania) v MJE [2022] IESC 48 (24 November)

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)

Freedom of Assembly

O'Doherty v Minister for Health & Ors [2022] IESC 32 (5 July)

Topic 5: Equality before the Law - Article 40.1

Hogan, Whyte, Kenny and Walsh, pp. 1561-1643; CRG Report, pp. 220-243

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)

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)

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 (8 December)

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

Quinn v Commissioner of An Garda Síochána [2022] IEHC 230 (11 April)

Donnelly v Minister for Social Protection [2022] IESC 31 (4 July)

O'Meara v Minister for Social Protection [2022] IEHC 552 (7 October)

O v Minister for Justice [2022] IEHC 617 (9 November)

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

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)
DPP v Hannaway [2021] IESC 31 (4 May)
DPP v Conroy [2021] IESC 48 (26 July)
DPP v Sheehan [2021] IESC 49 (29 July)
DPP v Cassidy [2021] IESC 60 (13 September)
Murphy v DPP [2021] IESC 75 (9 November)
W(C) v MJE [2022] IEHC 336 (1 June)
Tallon v DPP [2022] IEHC 322 (2 June)
DPP v D(J) [2022] IESC 39 (24 October)
DPP v B(M) [2023] IECA 85 (29 March)

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

O’Callaghan v DPP [2021] IESC 68 (30 September)

Present-day general approach to delay: representative cases

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

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)
DPP v Sheehan [2021] IESC 49 (29 July)
DPP v McDonald [2022] IESC 29 (30 June)

Unconstitutionally Obtained Evidence

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)
Brassil v DPP [2021] IECA 83 (23 March)
DPP v Hannaway [2021] IESC 31 (4 May)
DPP v Gold [2021] IECA 160 (2 June)
Lohan v Solicitors Disciplinary Tribunal [2023] IECA 18 (1 February)

Gathering and preservation of evidence

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

DPP v C(M) [2022] IECA 96 (7 April)
DPP v D(J) [2022] IESC 39 (24 October)
DPP v Q(S) [2023] IESC 8 (31 March)

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 or to take forensic samples

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

Corcoran v Commissioner of An Garda Síochána [2022] IECA 98 (22 April); [2022] IESCDET 110 (30 September)
Akram v MJE [2022] IECA 108 (12 May)
DPP v Behan [2022] IESC 23 (30 May)
DPP v McDonald [2022] IESC 29 (30 June)
DPP v Quirke [2023] IESC 5 (20 March)

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

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)
DPP v Sheehan [2021] IESC 49 (29 July)
DPP v Cassidy [2021] IESC 60 (13 September)
DPP v Carroll [2021] IECA 261 (13 October)
DPP v D(J) [2022] IESC 39 (24 October)

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

Special criminal courts

Dowdall v DPP [2022] IESC 36 (29 July)

Topic 8: Locus Standi, Mootness, Justiciability & 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)

Shields v Central Bank of Ireland [2022] IECA 241 (26 October)
Odum v MJE [2023] IESC 3 (2 February)

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)
Tallon v DPP [2022] IEHC 322 (2 June)
A & B v International Protection Appeals Tribunal [2022] IESC 35 (18 July)
Ivers v Commissioner of An Garda Síochána [2022] IECA 206 (18 August)

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)
Heneghan v Minister for Housing, Planning & Local Government [2023] IESC 7 (31 March)

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)
Hoey v Waterways Ireland [2021] IESC 34 (28 May)
Clare County Council v McDonagh [2022] IESC 2 (31 January)

J. Damages

C(M) v The Clinical Director of the Central Mental Hospital [2020] IESC 28 (4 June)
Kelly v Minister for Agriculture [2021] IESC 62 (15 September)
E(G) v Commissioner of An Garda Síochána [2022] IESC 51 (2 December)
O'Farrell v Governor of Portlaoise Prison [2023] IEHC 13 (12 January)

K. Declarations

Fox v Minister for Justice [2021] IESC 61 (14 September)
PMcD v The Governor of X Prison [2021] IESC 65 (17 September)

L. Certiorari

Kelly v Minister for Agriculture [2021] IESC 62 (15 September)

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)
E(G) v Commissioner of An Garda Síochána [2022] IESC 51 (2 December)
O'Farrell v Governor of Portlaoise Prison [2023] IEHC 13 (12 January)

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)
DPP v Banks [2022] IESC 7 (10 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)
PMcD v The Governor of X Prison [2021] IESC 65 (17 September)

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)
Fox v MJE [2021] IESC 61 (14 September)
Clare County Council v McDonagh [2022] IESC 2 (31 January)

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 L(M) [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)
C(FE) v MJE [2021] IECA 119 (16 April)
H v MJE [2021] IESC 32 (11 May)
Burke v Minister for Education [2022] IESC 1 (24 January)
H(S) v Minister for Justice [2022] IEHC 392 (27 June)
Z(A) v MJE [2022] IEHC 511 (27 July)
Child and Family Agency v Adoption Authority of Ireland [2022] IECA 196 (10 August)
BB v Minister for Justice [2022] IEHC 536 (30 September)
O'Meara v Minister for Social Protection [2022] IEHC 552 (7 October)
Achouri v MJE [2022] IEHC 576 (12 October)
M(S) v Minister for Justice [2022] IEHC 611 (4 November)
O v Minister for Justice [2022] IEHC 617 (9 November)
K(M) (Albania) v MJE [2022] IESC 48 (24 November)
Z(A) v Minister for Justice [2022] IEHC 693 (2 December)
Re A & B (minors) [2023] IESC 6 (30 March)

Reading List 2023.

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, 5th edition)
- Casey, *Constitutional Law in Ireland* (Sweet & Maxwell, 2000, 3rd edition)
- Dewhurst, Higgins and Watkins, *Principles of Irish Human Rights Law* (Clarus, 2012)
- Forde and Leonard, *Constitutional Law of Ireland*, 3rd edition (Bloomsbury, 2013)

Doyle and Hickey, *Constitutional Law: Text, Cases and Materials* 2nd edition (Clarus Press, 2019) and Doyle, *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/

For an archived copy of the Report, see:

archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf

The *1st 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.

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.

Examination Format 2023.

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.

Students must answer **three questions out of five**.

Question 1 is compulsory and carries **50 marks**.

Each of other 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).

- END -