

NATIONAL UNIVERSITY OF IRELAND, GALWAYFACULTY OF LAWSEMESTER 1 EXAMINATIONS 2002-2003

3RD + 4TH ARTS (LEGAL SCIENCE)
 3RD ARTS (PUBLIC AND SOCIAL POLICY)
 2ND + 3RD BCL
 LL.B. - 2ND 3RD & 4TH YEAR
 VISITING/OCCASIONAL STUDENTS

MEDIA LAW LW354

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 Mrs. M. McGonagle

Time allowed **TWO** HOURS. (Students whose first language is not English may have **two and a half hours**)
 Answer **THREE** questions only. All questions carry equal marks.

1. Give an up-to-date account and assessment of the law relating to **ONE** of the following, referring to court decisions where possible:
 - i) The rule on repetition of a libel and the circumstances in which repetition in fair and accurate reports will be privileged under the Defamation Act 1961.
 - ii) The open justice principle of Article 34.1 of the Constitution, as expounded by the Supreme Court in *Irish Times and others v Judge Murphy* (1998) and related cases.
 - iii) The approach and methodology of the European Court of Human Rights in deciding media cases under Article 10 ECHR.
2. Joe Swindler has been found by a Tribunal of Inquiry to have obstructed its proceedings. There has been much coverage in the media of his demeanour before the Tribunal and of a variety of shady dealings in respect of which he, and a number of others, have now been charged and are facing prosecution in the courts. While the court case against Joe Swindler is pending, a number of cartoons and caricatures have been published that made fun of him and portrayed him in a sordid light, according to his lawyers. His lawyers claim also that there have been considerable inaccuracies in the media reporting on the proceedings of the Tribunal over the previous year. They claim that Joe will not be able to get a fair trial because of the intense media interest and they therefore seek to have his trial stayed indefinitely until all the media interest has died down. The judge decides that the trial should go ahead but imposes a ban on the publication of any photographs, cartoons, film, or other visual portrayals of the accused and on any comment on his appearance or demeanour during the trial.

Advise the media, briefly and succinctly, on each of the following, in light of the above circumstances, and by reference to decided cases, where appropriate:

 - i) When does the *sub judice* rule begin to apply and what are its implications, if any, for the inaccuracies in reporting on the Tribunal and the cartoons and caricatures?
 - ii) Will the media be free to comment as soon as Joe is convicted or freed?
 - iii) What rights and issues would have to be considered and weighed up to determine whether such a ban is justifiable under the Irish Constitution and European Convention on Human Rights?

PTO

A new television current affairs programme plans to carry a report on a scheme being operated by a financial institution, Grantaid Ltd, to enable clients to 'hide' their true assets so as to reduce their liability to tax and make them eligible for a range of state subsidies and grants. The report will state that a prominent businessman, Aidan Cash, is the mastermind behind the scheme. It will also state that the institution has been a major donor to a named political party in the past and has benefited from various favours with regard to planning and has obtained lucrative government contracts as a result.

The programme makers are confident that their information is correct and that they have reliable witnesses but seek your advice. Advise them as succinctly as possible on the following matters, referring briefly to relevant court decisions, where appropriate:

- a) Who could sue for defamation and why?
- b) What are the key features of the defence of justification and what would they have to do to establish it?
- c) If they found that they had got some of the details wrong, would an apology suffice or would it be necessary?

Answer **EITHER** a) **OR** b):

a) Irish law of privacy is much more attuned to property rights than to human rights. Privacy has traditionally been protected, if at all, through a collection of quasi-proprietary actions, such as trespass and nuisance. Discuss, with reference also to the influence, if any, of the Irish Constitution and the European Convention on Human Rights.

OR

b) "Protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the laws and professional codes of conduct in a number of Contracting states and is affirmed in several international instruments on journalistic freedoms. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest." (*Goodwin v UK*) Discuss, by reference to decided cases.

Suppose submissions are invited by the Information Commissioner, who is undertaking a general review of the operation of the Freedom of Information Act 1997 during its first five years. Make a submission detailing the following:

- i) What you consider to be **ONE** of the key strengths of the Act from the point of view of the media.
- ii) What you consider to be **ONE** of the main weaknesses in the Act that prevents the media from getting maximum benefit from it on behalf of the public.

While the Irish Constitution may be concerned with the publication or utterance of blasphemous, seditious, or indecent matter (Article 40.6.1i), law-makers and courts today are more concerned with developing appropriate legal means to tackle issues such as racism and pornography on the Internet. Discuss.

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