

GX178

NATIONAL UNIVERSITY OF IRELAND, GALWAY

FACULTY OF LAW

SEMESTER I EXAMINATIONS 2002/2003

**BACHELOR OF ARTS - SECOND YEAR
BACHELOR OF CIVIL LAW SECOND & THIRD YEARS
SECOND, THIRD & FOURTH LL.B.**

EUROPEAN HUMAN RIGHTS (LW385)

**Professor David J. Harris
Mr. Donncha O'Connell**

Time Allowed: **TWO** Hours. ERASMUS students have 2½ Hours
Answer THREE Questions. All questions carry equal marks.

1. Robert is a member of the Irish Liberation Army. In the course of an armed robbery of a bank he is fatally wounded by the Swift Reaction Unit of the Irish Police Service. The members of that unit have been trained to deal with terrorist-related crimes by a special unit of the Irish Army that specialises in emergency situations and has been the subject of serious allegations concerning a "shoot to kill" policy in the past. The particular incident leading to the death of Robert was not planned as there was no advance intelligence on the part of the Irish Police Service of the robbery. Following his death an inquest is held but, apart from a finding that his death resulted from bullet wounds to the head, it returns an otherwise inconclusive verdict as to the circumstances of death. There is also an internal police investigation but its report is never published. A public controversy ensues following allegations in the media that although other members of the Irish Liberation Army involved in the robbery were armed Robert was not. Robert's family decide to make an application to the European Court of Human Rights under Article 2 of the Convention. Advise his family, making appropriate reference to relevant case law under Article 2 of the ECHR.
2. Saoirse is a male-to-female transsexual who has received state assistance for a variety of medical procedures culminating in gender re-assignment surgery. Prior to this she was married to a woman with whom she had three children in the course of that marriage. Saoirse now wishes to marry her male partner of the previous five years, James. As marriage is only permitted between persons of the opposite sex and Saoirse has been registered at birth as a male she is not legally permitted to marry James. She believes this is a violation of her private and family life rights under Article 8 of the ECHR. She also believes that her rights under Article 12 of the ECHR have been violated. Advise Saoirse.

P.T.O.

3. Answer (a) **OR** (b):
- (a) "The right to silence or privilege against self-incrimination under Article 6 of the ECHR is a necessary bulwark against incursions on the presumption of innocence in criminal matters". Discuss with reference to the relevant case law. **OR**
 - (b) "The case law on what is meant by the determination of civil rights and obligations under Article 6 of the ECHR is unclear and inconsistent". Discuss.
4. "The bill to incorporate the ECHR into domestic Irish law, which involves interpretative incorporation at a sub-constitutional level, will do little to address the problem of 'dualism' for individual litigants seeking to ground their cases on provisions of the Convention". Discuss.
5. According to the Constitution of Ruralia, a new Member State of the Council of Europe, there is a guarantee of freedom of expression subject to a prohibition on blasphemy and hate speech. The Constitution does not define the terms blasphemy and hate speech but indicates that these are matters to be regulated by national law. The national legislature of Ruralia does pass a law on hate speech detailing a range of offences, setting out an elaborate complaints procedure and prescribing penalties to be imposed by the courts. No law on blasphemy is ever passed but the courts have developed a number of principles on a case-by-case basis which have been criticised by academics and non-governmental organisations for lack of clarity and inconsistency. The Attorney General of Ruralia is concerned that the legal position in her country in relation to freedom of expression may give rise to future applications under Article 10 of the ECHR. She seeks your advice on the following matters as they apply to the foregoing facts:
- (a) the scope of application of Article 10;
 - (b) the extent to which freedom of expression can be qualified by laws on hate speech and blasphemy.
6. "The rights of liberty and security of the person under Article 5 of the ECHR are more concerned with the regulation of detention than with the protection of liberty". Discuss.

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