

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2002/2003

Exam Code(s)	1CW
Exams(s)	1 st Bachelor of Civil Law
Module Codes(s)	LW327
Module(s)	Constitutional Law
Paper No.	1
Repeat Paper __ Special Paper __	
External Examiner(s)	Dr. Gerard Hogan
Internal Examiner(s)	Ms. Shivaun Quinlivan
<u>Instructions</u>	Please answer FOUR questions All questions carry equal marks Please indicate on your answer books which questions have been attempted.
Duration	THREE Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	Constitutional of Ireland
No. of Pages	2
Department(s)	Law

1. Answer either A or B

- a. '(An applicant) must show that the impact of the impugned law on his personal situation discloses an injury or prejudice which he has either suffered or is in imminent danger of suffering. This rule, however, being but a rule of practice must, like all such rules, be subject to expansion, exception or qualification when the justice of the case so requires.' *Cahill v. Sutton* [1980] IR 269 Discuss this statement with reference to case law and academic commentary.

OR

- b. You are the President of Ireland and in a previous incarnation you were an eminent constitutional lawyer who had written extensively on the difficulties associated with systems of prospective judicial review. You are presented by the government with a Bill for the regulation of matrimonial property and asked to promulgate it. Opposition parliamentarians in both the Dail and Seanad have expressed serious doubts as to the constitutionality of the bill and you share those doubts. You feel the bill should be referred to the Supreme Court to test its constitutionality pursuant to Article 26 of the Constitution but your objections to the use, not to mention the very existence, of such a mechanism are well known. In order to resolve this dilemma, you decide to write, to yourself, a memorandum outlining the advantages and disadvantages of judicial review under Article 26. Write the memorandum.
2. In the course of digging foundations for his new home, Gerard discovers a large metal object which, upon further examination, is revealed to be an ancient necklace. He reports the find to the National Museum, which carries out a major excavation of his lands leading to the discovery of a significant number of ancient artefacts. When Gerard realises that he has no entitlement to realise the full value of the hoard, he seeks legal advice on the constitutional issues raised by his situation. Advise Gerard.
3. Describe the doctrine of the separation of powers as it operates in Irish Constitutional Law with particular reference to the relationship between the executive and the judiciary.

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4. Answer either A or B

- a. Assess the impact of the Supreme Court decision in *Attorney General v. Hamilton (No.1)* [1993] 2 IR 250 (cabinet confidentiality case). What effect does the 17th Amendment to the Constitution have on this issue?

OR

- b. 'The doctrine of the separation of powers demands that judges must interpret the law only and must refrain from creating new law.' Discuss this statement in the context of the various methods of interpretation open to the judiciary when deciding constitutional cases.
5. Trace the evolution of the proviso of the Equality guarantee under the Irish Constitution – Article 40.1. The Constitution Review Group recommended that the proviso be replaced. What would you recommend in its place and why?
6. Mary is aged twenty-five and is seven weeks pregnant as a result of rape. The pregnancy as such presents no medical danger and she is not suicidal. She enquires of you whether the ruling in *Attorney General v. X* can be properly interpreted to permit an abortion in her case. Advise Mary as to the basis of decision and outer parameters to the X ruling.
7. Discuss the difficulties with double coverage of property rights in two separate Articles, Article 40.3.2 and Article 43, and the qualifications attached to the Articles, which have led to restrictive interpretation by the courts.
8. Larry and Ursula are living together in a stable relationship and they do not intend to get married. They have jointly purchased a city-centre apartment for €300,000. Their apartment is in a block that has recently been constructed under a Government-sponsored scheme to encourage inner-city renewal and, in particular, to encourage families to settle in this area. Ursula and Larry now find that, because they are not married, they cannot take advantage of a special tax exemption for the first five years of mortgage repayment, which is available to married couples who purchase such apartments. They claim that the legislation instituting this scheme violates their rights under the Constitution. Advise them.

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