

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2003/2004

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)	Professor Colin Harvey
Internal Examiner(s)	Ms. Shivaun Quinlivan
Instructions	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	
Requirements:	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	Constitutional of Ireland
Department(s)	Law

PTO

1. Answer A OR B

- A) "The system of Prospective Judicial Review provided for in Article 26 of the Irish Constitution requires fundamental reform before it can operate effectively." Discuss.

Or

- B) Your advice is sought by Jason, a leading member of CAMP (Campaign against Moral Promiscuity) who wishes to challenge the constitutionality of a recently enacted statute which will allow persons aged fifteen and over to obtain contraceptives of all kinds without their parents' permission. He claims that the Act is in violation of Article 41 (the Family) of the Constitution. Advise Jason, a bachelor with no children, as to whether he is likely to be regarded by the High Court as having the requisite *locus standi* to take the action (Students are not required to deal with the constitutional merits of the litigation, but simply to focus on the issue of standing).

2. Irish constitutional history would suggest that the process of removing the Crown from the 1922 Constitution was a gradual one. How then can it be asserted that the Free State was sovereign and that no crown prerogatives survived the enactment of the Constitution? Refer to decided cases and academic commentaries in answering this question.
3. The introduction of the Referendum Commission has served only to stifle debate and to confuse the issues surrounding the proposed amendments. Do the Oireachtas have any other choices open to them in how they impart information in light of *McKenna v. An Taoiseach (No.2)* [1995] 2 I.R. 10. Discuss.
4. To what extent, in your view, is the relationship envisaged by the constitution between the Oireachtas and Government reflected in practice?

5. Answer A or B

- A) In *re a Ward of Court*, the SC grappled with issues relating to the right to life of the disabled and the circumstances in which it might be proper to authorise the withdrawal of food from a person who is receiving nutrition through a tube.' (Annual Review of Irish Law, 1995). Why did this decision provoke such criticism of the court's analyses?

Or

- B) In light of the fact that we have had five referenda in twenty years on abortion in this jurisdiction, and numerous court actions, is it time we removed all reference to abortion from the Constitution and legislated instead. Please refer to decided cases and academic commentary in your answer.
6. Discuss the State's obligation to provide free primary education under Article 42. Discuss the interpretation of this obligation by the courts.
7. It has been stated that the doctrine of unenumerated rights in Irish constitutional law has been characterised "by a certain blurring of definition, a certain bursting of conceptual banks, rather as though legal rivers finding their confluence in the estuary of liberty and justice, had had their courses confused by flooding further upstream leaving a somewhat trackless delta for the constitutional geographer"? Do you agree with this statement? Give reasons for your answer referring to appropriate cases and academic sources.
8. In a *prima facie* sense, the Constitution of Ireland legitimates discrimination if it corresponds with a difference of capacity or social function. Discuss.

END