

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

SEMESTER 2 Examinations, 2003/2004

Exam Code(s)	2BA1, 2BL1, 3BL1, 2CW1, 3CW1, 1EM1, 1OA1, 3BA6
Exams(s)	Second Bachelor of Arts (Legal Science) Third Bachelor of Arts (Public & Social Policy) Second & Third LL.B. Second & Third Bachelor of Civil Law Erasmus & Occassional
Module Codes(s)	LW385
Module(s)	European Human Rights
Paper No.	
External Examiner(s)	Professor David Harris
Internal Examiner(s)	Mr. Donncha O'Connell
<u>Instructions</u>	Please answer THREE questions All questions carry equal marks
Duration	TWO Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	European Convention on Human Rights and its Protocols
Department(s)	LAW

PTO

1. "The European Convention on Human Rights Act, 2003 is of symbolic importance but its practical impact on judicial review and other forms of legal action will be minimal". Discuss.
2. "The complex legal problems surrounding assisted suicide are not fully resolved by the decision of the European Court of Human Rights in *Pretty v. UK [2002]*". Discuss
3. Hector is arrested in Ireland on suspicion of involvement in international drug trafficking. His extradition is requested by the State of Independence which has recently ratified the European Convention on Human Rights. Recent reports of the European Committee for the Prevention of Torture indicate that conditions in places of detention in that state are "foul and dilapidated" and serious allegations made against police and prison officers are "not without foundation". In a series of reports published by reputable non-governmental organisations the general human rights record of the State of Independence has been criticised strongly. Hector believes that if he is extradited to the State of Independence his rights under Article 3 ECHR will be violated. He seeks your advice on the following matters:
 - (a) the admissibility rules applicable to applications under the ECHR;
 - (b) the scope of application of Article 3 ECHR; and
 - (c) his chances of resisting extradition based on decided cases.

Advise Hector.

4. Answer either (a) OR (b):
 - (a) "The jurisprudence of the European Court of Human Rights on the human rights of transsexuals has been given a new coherence by the decision of the Court in *Goodwin v. United Kingdom [2002]*". Discuss.
 - OR
 - (b) "The right to privacy under Article 8 ECHR may well develop to supplement or indeed replace accepted causes of action in Tort. Its conceptual flexibility is especially useful in protecting against abuses in the interception of telephonic communications". Discuss with reference to decided cases.

5. In the course of a live current affairs radio programme on national radio a member of the public, Macdara, phones in to participate in a debate on immigration. In response to a comment from a member of the National Anti-Racism Committee Macdara suggests that all asylum seekers are "crooks that should be run out of the country". The programme presenter suggests that this is a somewhat objectionable point of view and Macdara responds: "If we listened to politically correct people like you the country would be overrun with undesirable foreigners". This comment prompts a number of hostile e-mails from unnamed members of the *Irish National Front* all of which are read without any comment by the programme presenter and one of which proposes that Irish citizens should "take the law into their own hands and take whatever action is necessary to cleanse Ireland of unwelcome foreigners". The radio station, programme presenter and Macdara are successfully prosecuted under the Prohibition on Incitement to Racial Hatred Act and each are fined after a trial. The Act defines racial hatred in general terms and has never been used before despite the fact that it has had the force of law for ten years. Many authoritative commentators had publicly stated that the Act was probably redundant prior to this case and its use was a cause of general surprise. The *League for Maximum Free Speech*, which, *inter alia*, represents radio presenters and individuals (including Macdara) decide to make an application to the European Court of Human Rights under Article 10 ECHR alleging a violation of that article. On the assumption that the application is admissible advise the League on the merits of the application with appropriate reference to decided cases under Article 10.
6. Mary works as a Senior Researcher in a state-run research body investigating drug use and abuse, *An Bord Hash*. She becomes involved in a difficult dispute with her supervisor that results in her dismissal for "conduct unbecoming". Her dismissal results from a brief disciplinary process in which her supervisor tenders evidence in confidence to the Disciplinary Committee that is not seen by Mary until she appears in person before the Committee. Although Mary is accompanied to the hearing before the Committee by a trade union representative she does not receive formal legal advice and is not given any warnings by the Committee about the implications of answering their questions in the course of the hearing apart from being told that her failure to answer questions may give rise to an adverse implication against her. When she complains of a violation of Article 6 ECHR the state responds that her complaint does not come within the scope of Article 6 as it does not involve the "determination of her civil rights and obligations" as an employee in a public institution. Mary seeks your advice on the scope of application of Article 6 and on the substantive merits of her case. Advise Mary.

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