

GX 1730

**Ollscoil na hÉireann, Gallimh**  
**National University of Ireland, Galway**

**Semester II Examinations, 2003/2004**

<b>Exam Code(s)</b>	1BL1, 1BL2, 2BL1, 2BL2, 3BL1, 3BL2, 4BL2, 1EM1, 1OA1.
<b>Exams(s)</b>	1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup> & 4 <sup>th</sup> LL.B. Erasmus & Occasional Students
<b>Module Codes(s)</b>	LW327
<b>Module(s)</b>	Constitutional Law
<b>Paper No.</b>	1
<b>Repeat Paper __ Special Paper</b>	
<b>External Examiner(s)</b>	Professor Colin Harvey
<b>Internal Examiner(s)</b>	Professor Gerard Quinn Mr. Tom O'Malley
<b>Instructions</b>	Answer <b>FOUR</b> Questions
<b>Duration</b>	<b>THREE</b> Hours
<b>No. of AnswerBooks</b>	
<b>Requirements:</b>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
<b>Other Material</b>	The Irish Constitution 1937
<b>Department(s)</b>	Law

PTO

1. Describe the power vested in the President to refer a bill to the Supreme Court under Article 26 of the Constitution. Include in your answer a critical appraisal of this power, bearing in mind the difficulties sometimes faced by the Supreme Court when dealing with such referrals.
2. "The Constitution of Ireland has had a very powerful impact on the rights of accused persons to free legal representation during trial and on the rights of suspects to consult a lawyer while detained for questioning." Discuss.
3. At 6.00 a.m. on Monday 15 March, 2004, Michael was arrested on suspicion of having killed another person in a fight the previous Friday night. He was brought to a Garda station and detained for questioning under section 4 of the Criminal Justice Act, 1984. At about 11.45 a.m., he admitted that he was involved in the fight in which the deceased had died. The Gardai continued to question him and by 12.45 p.m., he had admitted that it was he in fact who delivered the fatal blow. He was released at 1.30 p.m. and a file was sent to the Director of Public Prosecutions. He has now been charged with murder. Under the Criminal Justice Act, 1984, Michael should not have been detained beyond 12.00 noon unless further detention was authorised by a Garda officer of Superintendent rank or higher. Such authorisation was not obtained. The two Gardai involved in the questioning say that they became so excited at the prospect that Michael would admit to the killing that they forgot to seek the necessary authorisation. Advise Michael as to whether his confession is likely to be admitted in evidence in these circumstances.
4. "The power of judicial review conferred by the Constitution of Ireland, combined with the manner in which the High Court and Supreme Court have interpreted Art. 40. 3 of the Constitution, creates a distinct danger of government by the judiciary." Discuss.
5. Marie is 14 years old and pregnant. Due to difficult family circumstances, she is presently in care with the local Health Board. She is not suicidal but decides that she wants an abortion. The Health Board is advised by its solicitor that since Marie does not meet the criteria of the 'X test' the Board cannot accede to her request for permission and assistance to travel to the UK for an abortion. Marie contacts you for advice.  
  
Advise Marie.
6. John, who is 7 year old and who attends his local primary school, has a learning disability and is advised by independent clinical psychologists that he requires a personal assistant for three hours a day in class. He was further advised that any delay might cause him to fall so far behind his peers that it may be impossible to catch up or otherwise enjoy an equal opportunity of education. The Department of Education does not contest this psychological assessment. His parents are informed by the Department of Education that it hopes to be able to provide the needed assistance in approximately two years time. John's parents approach you for advice on their Constitutional options.  
  
Advise John's parents.
7. The Minister for Justice plans to introduce legislation allowing same sex couples to marry and enjoy all the legal privileges of marriage including the right to seek adoption. He is worried that there may be Constitutional obstacles in the way of such legislation and seeks your advice.  
  
Advise the Minister.
8. Write an essay on the right to private property under the Constitution and the balance struck by the courts between this right and the need to attain social justice.
9. Judicial activism has been derided as 'the American disease' by Judge Bork (Coercing Virtue: The Worldwide Rule of Judges, 2003). He views activism as a direct threat to the democratic order. Can judicial activism, in your view, ever surmount the democratic challenge. How do you see this issue in a specifically Irish context?

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