

SUMMER EXAMINATIONS 1998/1999

LL.B. - ALL YEARS
OCCASIONAL STUDENTS

CONSTITUTIONAL LAW (LW327)

Mr. G. Whyte
Dr. G. Quinn
Ms. N. Nic Shuibhne

Time Allowed: THREE Hours. Erasmus Students have 3½ Hours.

Answer FOUR Questions. Erasmus Students THREE Questions.

1. *Our Constitution is as it is today because the State came into existence in particular circumstances which involved deep divisions amongst the Irish people, the healing of which was certainly a legitimate objective of public policy...The other way in which [the 1937] Constitution is very clearly the product of its time is the manner in which...some of its provisions were deeply influenced by a particular form of Catholic social teaching prevalent in the 1930s.* (Garret FitzGerald)

Discuss this statement, referring in your answer to academic commentary and using specific constitutional provisions as examples where appropriate.

2. Write a case-note on ONE of the following cases:

(a) Howard v. Commissioners for Public Works[1993] ILRM 665

OR

(b) Attorney General v. Hamilton (No. 2) (Parliamentary Privilege)[1993] ILRM 821

3. In your view, has the Supreme Court decision in Meagher v. Minister for Agriculture clarified or confused our understanding of the interrelationship between the Separation of Powers, Delegated Legislation and European Law? Refer in your answer to case-law and to academic commentary where appropriate.

4. The Attorney General is compiling a list of candidates for possible appointment to the Supreme Court and is considering including you. To help him make up his mind he has requested all candidates to draft a memo setting out their views on the various methods of constitutional interpretation and – more importantly – their legitimacy. He is anxious, for example to learn about non-interpretivist methods of interpretation in the case law and the conditions under which resort to such methods may be considered legitimate.

Draft your memo to the Attorney General.

5. Assess the strength or otherwise of the equality provision under the Irish Constitution – Article 40.1.

p.t.o

6. Answer ONE of either (a) OR (b).

(a) Consider the development of the case law under the Eight Amendment (right to life of the unborn) up to (but not including) Attorney General v X.

OR

(b) Write a casenote on the Attorney General v X [1994] ILRM.

7. Joan is aged twenty and is married to Jim. She learns she is pregnant and wishes to travel to the UK to have an abortion. She approaches a doctor who gives her information regarding the availability of abortion in the UK. The doctor does not contact Jim in connection with the matter even though he knows Jim is married to Joan. Joan has made preliminary plans to travel for an abortion to the UK. Jim learns about this by accident and is interested to know whether he has any rights with respect to the giving of the information and whether he has any standing to prevent her from travelling to the UK for an abortion.

Advise Jim.

8. The Minister of State for Family Affairs is keen to introduce legislation providing for the legal recognition of partnership agreements between persons of the same sex. Although partnership agreements are not marriage in the strict sense the proposed law will confer all the rights of married couples (e.g., taxation, adoption, welfare and housing). The Minister is concerned that married couples might challenge the constitutionality of such legislation under *Article 41* and seeks your opinion whether such an attack might succeed.

Draft your opinion for the Minister.

9. Write an essay on the right to property under the Irish Constitution. In your answer please consider the Supreme Court's rulings concerning the *Employment Equality Bill (1996)* and the *Equal Status Bill (1997)*.

10. "*If freedom of expression is designed to create and maintain a marketplace of ideas thatn the first obligation of the Government is to abstain from the market*".

Please discuss the above statement. Refer in your answer to McKenna - V - An Taoiseach (No. 2) [1995] ILRM and subsequent case law.