

NATIONAL UNIVERSITY OF IRELAND, GALWAY
FACULTY OF LAW

SUMMER EXAMINATIONS 1998/1999

BACHELOR OF ARTS - (PUBLIC AND SOCIAL POLICY)

LEGAL PROCESS
PAPER II (LW102)

Professor W. Duncan
Ms. C. Gardiner

Time Allowed: **THREE** Hours.

This paper carries 60% of the total marks for Legal Process

PART A

Please answer TEN Questions
(each question carries 2 marks)

1. Explain briefly what two of the following cases decided:

- a) Byrne v. Ireland [1972] I.R. 241
- b) McGimpsey v. Ireland [1990] 1 I.R. 110
- c) McGee v. A.G. [1974] I.R. 284

2. Explain briefly what is meant by two of the following terms:

- a) The presumption of constitutionality
- b) The separation of powers
- c) Ratio decidendi
- d) Equity

3. State clearly whether the following statements are True or False:

- a) When exercising its criminal jurisdiction, the High Court is known as the Special Criminal Court;
- b) Only the High Court and the Supreme Court have power to deal with matters of constitutionality;
- c) Statutory Instruments must be enacted by both houses of the Oireachtas;
- d) Decisions of the European Court of Human Rights are binding on Irish courts.

4. Indicate which courts would deal with the following matters:

- a) Compensation claims up to £30,000
- b) Minor traffic offences
- c) Murder trials
- d) Family law problems

5. What is the burden of proof in:

- a) Criminal cases; and
- b) Civil cases

What is the rationale for the distinction?

6. List four notable features of the 1922 Constitution

7. By Referendum on 22 May 1998, the people voted to approve of the proposal to amend Articles 2 and 3 of the Constitution contained in the Nineteenth Amendment to the Constitution Bill. **Briefly explain the nature and significance of the proposed changes to these Articles.**

8. What is delegated legislation and why is it used?

9. List the primary and secondary sources of EC Law

10. What is meant by an Article 26 reference?

11. In the context of statutory interpretation, explain what is meant by:

- a) The Literal Rule; and
- b) The Golden Rule

12. What was the effect of the Judicature (Ireland) Act 1877?

13. Briefly explain with reference to two decided cases, what is meant by the term "private attorney general"

14. In the context of constitutional interpretation, what is meant by:

- (a) purposive interpretation; and
- (b) historical interpretation.

15. Explain briefly what two of the following cases decided

- a) Kennedy & Arnold v. Ireland [1987] I.R. 587
- b) De Burca v. A.G. [1976] I.R. 38
- c) Murphy v. A.G. [1982] I.R. 241

16. State clearly whether the following statements are true or false:

- a) There is a specified right to privacy in the Irish Constitution
- b) The unenumerated right to bodily integrity was enunciated by Kenny J. in Ryan v. A.G. [1965] I.R.
- c) The State can be sued for the torts of its servants.
- d) The 1922 Constitution could be amended by legislation and did not require a referendum.

PART B

Please answer **TWO** Questions
(each question carries **20** marks)

1. Articles 34-37 of the Irish Constitution (Bunreacht na hEireann 1937) provide for the establishment of a hierarchy of courts in the Irish legal system. Discuss how this hierarchy operates and outline the jurisdiction of the civil courts in this structure.
2. A French law student writes to ask you what are the distinguishing features of the common law system and how the doctrine of precedent works. Write a reply, explaining these matters as clearly as possible and include an explanation of the terms *stare decisis*, *ratio decidendi* and *obiter dicta*.
3. Article 40 of the Irish Constitution (Bunreacht na hEireann 1937) specifies certain personal rights but does not include any express reference to a right to privacy. Analyse and discuss the doctrine of unenumerated personal rights and the approach taken by the courts in deciding whether a right to privacy exists.
4. Analyse and discuss any **TWO** of the following:
 - a) The manner in which the courts have interpreted and applied the constitutional guarantee of equality before the law in Article 40.1 of the Irish Constitution (Bunreacht na hEireann 1937)
 - b) The Locus Standi Rule in Constitutional actions
 - c) The history of Irish Constitutionalism
 - d) The concepts of Nation and State in the Irish Constitution (Bunreacht na hEireann 1937)
5. Explain:
 - (a) What happens to a Bill from the time it is introduced in the Dail or Seanad until it becomes law;
 - AND**
 - (b) The main principles adopted by the courts in interpreting legislation
6. "The Freedom of Information Act 1997 marks an important first step in a departure from the culture of secrecy which Irish public life embodied and heralds the dawning of a more open and confident society". Discuss.