THE HONORABLE SOCIETY OF KINGS INNS

ENTRANCE EXAMINATION

AUGUST 2019

Examination:	Irish Constitutional Law
Date:	Thursday 15 August 2019
Time:	10.00 a.m. – 1.00 p.m.
Internal Examiner:	Mr T John O'Dowd
External Examiner:	Dr. Conleth Bradley SC

Instructions

Candidates *must answer Question 1*

AND any other TWO of the remaining questions.

Question 1 carries 50 marks. All other questions carry 25 marks each.

This paper is 5 pages long including the cover sheet. You should check that you have all the pages and inform the invigilator immediately if any are missing.

1. (An answer to this question is <u>compulsory</u>)

The *Society of Blessed Pius IX* is a group of Roman Catholic clergy and laity who oppose what they see as the modernist tendencies (allegedly apparent since 1878) within that religious denomination. For example, they want to reverse some of the main decisions of the Second Vatican Council, in relation to issues such as the language of the liturgy and ecumenism. The Society is the patron of *Scoil Pius IX Beannaithe*, a primary school recently opened in a Dublin suburb and recognised by the Minister for Education and Skills under section 10(1) of the Education Act, 1998. The school aims to provide education in an environment which promotes what members of the Society believe to be the true religious values of the Roman Catholic Church. The Society wishes to apply the following order of priority on grounds of religion in decisions about admission to the school: (1) the children of lay members of the Society, (2) other children who have been baptised and are being raised as Roman Catholics, and (3) all other children, regardless of religious background.

As a result of amendments made by the Education (Admission to Schools) Act 2018, a recognised primary school may lawfully decline to admit a prospective student based on a difference in religious belief between that person and someone who is or would be admitted in two situations only.

First, that a "school [which] provides a programme of religious instruction or religious education which is of the same religious ethos as, or a similar religious ethos to, the religious ethos of the minority religion of the student" may give priority to the admission of students belonging to the minority religion or religions concerned. (Equal Status Act, 2000 s 7A(2).) 'Minority religion' is defined as "a religion other than a religion whose membership comprises in excess of 10 per cent of the total population of the State based on the population as ascertained by the Central Statistics Office in the most recent census report published by that office setting out the final result of a census of population …". (s 7A(6)) Second, any school (recognised or not) which has the objective of providing education (primary or post-primary) in an environment which promotes certain religious values may refuse to admit as a student a person who is not of a particular religious denomination if it is proved that the refusal is essential to maintain the ethos of the school. (s 7(3)(ca))

If the school were to have its recognition by the Minister withdrawn, it could then lawfully admit Roman Catholics in preference to others. (s 7(3)(c)) However, this would mean losing State funding. *Scoil Pius IX Beannaithe* is oversubscribed and wishes to apply its preferred order of preference on the ground of religion in making admission decisions. The Irish Human Rights and Equality Commission and the Minister for Education and Skills have told the Society that it cannot rely on section 7A(2), because it is a recognised primary school and it is not providing an education according to the ethos of a minority religion.

Advise the Society as to whether the Constitution entitles *Scoil Pius IX Beannaithe* (without having to surrender its recognised status and funding) to admit children of members of the Society ahead of other children being raised as Roman Catholics and both these categories ahead of children of any other religion. **[50 marks].**

2. Under section 4 of the Public Health (Sunbeds) Act 2014 it is a summary criminal offence for the owner, manager or employee of a sunbed business to sell the use of a sunbed to a person under 18 years of age, permit such a person to be in those parts of the premises of the business where any sunbed is located, or permit such a person to use a sunbed on the premises. In the case of a first offence, the maximum penalties are a Class B (maximum €4,000) fine or imprisonment for 6 months or both, and in the case of a second or subsequent offence, a Class A (maximum €5,000) fine or imprisonment for 12 months or both (s 22(3)). In any proceedings for such an offence, it is a defence for the accused to prove that the person under 18 years of age produced to him or her—

(a) an age card (issued under the Intoxicating Liquor Act, 1988),

(b) a passport, or

(c) a driving licence, relating to that person. (s 4(3)).

Brendan is the owner of *Ballymagash Sunbeds*. Before the Act came into operation (in July 2014) a significant proportion of his customers were aged 16 or 17. *Brendan* has been prosecuted by the Health Service Executive on two charges of having violated section 4. The first relates to an allegation that an authorised officer of the HSE, having exercised her statutory power to enter *Brendan*'s premises without his consent, found a sixteen-year-old there, using a sunbed. His defence to this charge was that the young person in question had shown him what appeared to be a university student identity card, with a year code which implied that she was over eighteen. The second relates to a separate case where the HSE relied on its authority under section 18 of the Act to send an underage test purchaser into *Brendan*'s premises to ascertain whether he would comply with section 4. The test purchaser followed all the requirements of the Act and of the guidelines issued under it, which include not making any misrepresentation as to her age, whether orally or by the production of a false document. In relation to each charge, the District Court rejected *Brendan*'s claim that he had a good defence to the charge, convicted him and imposed a fine of €3,000. Advise *Brendan* whether the Constitution offers any basis for having these convictions and fines set aside. **[25 marks]**

3. Section 107(4) of the Road Traffic Act, 1961 provides as follows--

> (4) Where a member of the Garda Síochána has reasonable grounds for believing that there has been an offence under this Act involving the use of a mechanically propelled vehicle or a pedal cycle—
>
> ...
>
> (c) any person other than the owner of the vehicle shall, if required by the member, give any information which it is in his or her power to give and which may lead to the identification of the person who was actually using the vehicle at the material time and, if he or she fails to do so, commits an offence.

A person who commits such an offence is liable on summary conviction to a fine not exceeding € 2,000 (s 107(5). The Gardaí arrested *Joe* on suspicion of being a member of a gang of armed robbers and, as such, a passenger in the gang's getaway car, which was driven in a manner dangerous to the public during the getaway. The Gardaí do not know the identity of the driver of the getaway car or of the other two passengers. During *Joe*'s questioning while detained under section 50 of the Criminal Justice Act 2007, a member of the Gardaí required *Joe* to give any information which it was in his power to give that might lead to the identification of the driver. As with all other questions he was asked, *Joe* replied "No comment." *Joe* has now been charged with an offence under s 107(4). *Joe* did not at any relevant time himself hold a driving licence; he is mid-way through a three-year disqualification from driving. Advise *Joe* as to whether the Constitution enables him to avoid conviction for this offence under the 1961 Act. **[25 marks]**

4. *Carol* is fourteen years old. She was born in Australia. Her deceased father *Edward* held Australian citizenship only. Her mother *Helen* is both a Australian and an Irish citizen, because one of her grandparents was born in Ireland. *Helen* and the parent through whom she has Irish citizenship were both born in Australia, so *Helen* was not an Irish citizen until her birth was registered. This occurred after *Carol* was born, so *Carol* is not an Irish citizen by descent. After *Helen* was widowed five years ago, she and *Carol* moved to Ireland, to live with *Helen*'s Irish cousins. Because of *Helen*'s uncontrolled alcoholism and her consequent neglect of *Carol*'s welfare, *Carol* was committed to the care of the Child and Family Agency last year. *Carol*'s own substance abuse has contributed to her having committed many minor thefts and acts of deception and she is currently serving a period of detention in a children's detention school. The Minister for Justice and Equality refused *Helen*'s application for *Carol*'s naturalisation as an Irish citizen, on the ground that *Carol* is not a person of good character, exercising his absolute discretion not to dispense with that condition (as he might have done because *Carol* is of Irish descent) (Irish Nationality and Citizenship Act, 1956 ss 15(1)(b) and 16). The Minister has formally notified *Carol* that he is currently of a mind to order her deportation as soon as she reaches the age of eighteen, if there has been no relevant change in her circumstances in the interim. Advise *Carol* as to whether the Constitution offers her a basis to resist her planned deportation. **[25 marks]**

5. Answer **either** (*a*) ***or*** (*b*) ***or*** (*c*) below, **but not more than one of them**. Answer by reference to decided cases, not necessarily including those cited in the question.

(*a*) "We would wish to see a situation where the court would have a discretion to admit unconstitutionally obtained evidence or not, having regard to the totality of the circumstances and in particular the rights of the victim." *Final Report of the Balance in the Criminal Law Review Group* (2007) p 246.

In making that recommendation, the majority of the Review Group looked firstly to "seeing whether a change in jurisprudence emerges following use of the appeal provisions of [section 34 of the Criminal Procedure Act, 1967, as inserted by section 21 of] the Criminal Justice Act 2006" (ibid).

Has the jurisprudence on the exclusionary rule changed to such an extent since 2007 that no legislative or constitutional change is now required in order to give effect to the Review Group's recommendation?

or

(*b*) What scope do criminal defendants now have for relying on the Constitution to argue successfully that they cannot receive a fair trial and that they are thus entitled to an order of prohibition or injunction preventing a trial from taking place?

or

(*c*) "'Interest' is a deliberately broad term, extending beyond constitutional or even legal rights. It is sufficient if a person is, therefore, affected in a real way in in his or her life. If so, they normally have standing, at least, to contend that the operation of the Act upon them breaches some constitutionally protected right. It is not, I think, necessary to decide if it would be correct to describe a claim which failed because the plaintiff did not have the constitutional right contended for as a failure of standing, or an absence of an essential element of a claim. In general, it is at least a useful preliminary approach to ask if the Act affects the plaintiff as a matter of fact. Normally this will be enough to establish standing to challenge the Act, although it will not determine the range of arguments that may be deployed, and clearly does not determine whether any such argument which the plaintiff may be entitled to make will succeed." O'Donnell J in *Moohan v Ireland* [2019] IESC 18 (21 March).

Judged by this yardstick, have there been, in your opinion, examples in recent years of the *locus standi* doctrine being inappropriately applied by the courts in constitutional cases?