

LAW SOCIETY OF IRELAND

FINAL EXAMINATION

FIRST PART

SYLLABUS
2005 / 2006

Issued – May 2005

Tort

Candidates are required to have a sound knowledge and understanding of the principles of Tort. They are expected to have a comprehensive and detailed knowledge of the law relating to the following matters:-

1. The nature and function of the Law of Tort.
2. Causation (both factual and legal). Remoteness of damage: Novus Actus Interveniens and recklessness. The direct consequence and reasonable foreseeability rules.
3. Concurrent wrongdoers, joint and several tortfeasors.
4. Negligence, including:-
 - a) The duty and standard of care;
 - b) Proof of negligence;
 - c) Affirmative duties;
 - d) Physical and economic loss;
 - e) Nervous shock;
 - f) Professional negligence;
 - g) Negligence on the roads;
 - h) Negligent care of children.
5. Product liability.
6. Occupiers' liability.
7. Employers' liability.
8. Public Authorities.
9. Liability of Vendors, Lessors, Builders and Public Authorities for quality and fitness of purpose.
10. Liability of the State.
11. Vicarious Liability.
Non delegable duties.
12. Trespass to the person and trespass to land.
13. Statutory Duties and Rights.
14. Defamation.
15. Nuisance (both public and private).
16. The Rule in *Rylands v. Fletcher*.
17. Liability for injuries caused by animals.
18. Liability for fire.
19. Passing Off.
20. Fatal Injuries and Survival of Actions on Death.
21. Damages.
22. Defences (contributory negligence, assumption of risk, and illegality (ex turpi causa)).
23. Limitation of actions; accrual of causes of action; multiplicity of actions; survival of causes of action.

Candidates will be expected to be familiar and to demonstrate familiarity, with the underlying statutory foundation to each ingredient of the prescribed syllabus in cases where such statutory foundations exist. Candidates must also demonstrate familiarity with appropriate case law.

Recommended Reading

McMahon & Binchy, *Casebook on the Irish Law of Torts*, 2nd Ed, (1992), Butterworths.

McMahon & Binchy, *Irish Law of Torts*, 3rd Ed, (2000), Butterworths.

Quill, *Torts in Ireland*, (1999), Gill & Macmillan.

Supplemental Reading

Brady & Kerr, *Limitation of Actions in the Republic of Ireland*, (1994), The Law Society of Ireland.

Brazier & Murphy, *Street on Torts*, 11th Ed., (2003), Lexis Nexis

Brennan & Hennessy, *Forensic Accounting*, (2001), Round Hall - chapter 12.

McGonagle, *A Textbook on Media Law*, 2nd Ed., (2003), Gill & Macmillan - chapter on defamation.

McDonald, *Irish Law of Defamation* (1989), Round Hall.

O'Callaghan, *The Law on Solicitors in Ireland*, (2000), Butterworths - chapter 11.

White, *Medical Negligence Actions*, (1996) Oak Tree Press – part II, general principles of liability

Kelly, *Posttraumatic Stress Disorder and the Law*, (2000), Round Hall.

Kerr, *The Civil Liability Acts* 2nd Edition (1999) Round Hall

Walsh, *Agriculture and the Law*, (1996), Round Hall - chapter on occupiers' liability.

Burke & Corbett, *The Law of Torts*, (2003), Round Hall

Candidates should consult Byrne & Binchy, *Annual Review of Irish Law*, (published since 1987) for recent developments in Ireland.

Contract

1. Agreement, Offer and Acceptance
2. Consideration
3. Formation of a Contract
4. Capacity to enter a Contract
5. Intention to Contract
6. Privity of Contract
7. Construction of Contract
8. Contract Terms, Express and Implied
9. Importance and Relative Effects of Contractual Terms
10. Exemption and Exclusion Clauses
11. Consumer Protection (which includes the impact of European Union legislation) and Standard Form Contracts
12. Vitiating and Voiding Factors, including:
 - a) Mistake
 - b) Misrepresentation
 - c) Duress
 - d) Undue Influence
 - e) Equitable Intervention
 - f) Illegality
13. Termination of Contract through:
 - a) Performance
 - b) Agreement
 - c) Breach
 - d) Frustration
14. Remedies for breach of Contract:
 - a) Underlying principles
 - b) Damages
 - c) Restitutionary relief
15. Quasi-Contract
16. Law of Agency (in outline only)

Candidates will be expected to be familiar and to demonstrate familiarity, with the underlying statutory foundation to each ingredient of the prescribed syllabus in cases where such statutory foundations exist. Candidates must also demonstrate familiarity with appropriate case law.

Statutes

Candidates may bring unmarked copies of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 into the examination.

Recommended Reading

Clark, *Contract in Ireland*, 4th Ed, (1998), Round Hall Sweet & Maxwell
Friel, *The Law of Contract*, (2000), Round Hall Sweet & Maxwell.
McDermott, *Contract Law*, (2001), Butterworths.

Supplemental Reading

Clark & Clarke, *Contract, Cases and Materials*, (1994), Gill & Macmillan

Extracts from the appropriate chapters of a major English text on Contract should be read to supplement Clark on the basic principles governing Agency. It is recommended that students refer to English texts for general supplemental reading.

Real Property

Candidates should have a sound knowledge and understanding of the body of law embraced by the syllabus. Candidates will be expected to apply their knowledge to given fact situations, citing appropriate cases and statutes.

1. The nature of Land Law and its historical background.
2. The Doctrine of Estates. Fee Simple, Fee Farm Grant, Fee Tail and Life Estate.
3. The Influence of Equity. The Concept of the Use. The Statute of Uses (Ireland), 1634. Effects of the Statute of Uses today and the Modern Trust. The Concept of Equitable Interests and Estates.
4. Co-ownership - Joint Tenancy and Tenancy in Common.
5. Extinguishment of interests in land.
 - (a) Adverse Possession. The Origins and Requirements of Adverse Possession. The Effect on Title and the Concept of Parliamentary Conveyance. Meaning of Possession and *Animus Possidendi*. The Statute of Limitations. Retention for Future Use. Adverse Possession of Leasehold Property.
 - (b) Merger.
6. Licences and Proprietary Estoppel. The Concept of a Licence. Bare Licences. Licence coupled with an Interest. Contractual Licences. Proprietary Estoppel. Requirements and Recent Developments. Third Parties. Rights of Residence, their Nature and Effect.
7. Mortgages.
 - (a) Legal and Equitable Mortgages. Registered and Unregistered Land. The Position of the Parties under Mortgages. The Doctrine of Consolidation. The Doctrine of Marshalling. Priorities.
 - (b) Judgment Mortgages. Nature and Effects. The Judgment Mortgage (Ireland) Acts, 1850-1858. Registration and Well Charging Orders.
8. Settlements of Land. Origins and Purpose. The Settled Land Act 1882-1890. The Definition of Settled Land. Powers and duties of the Tenant for Life. Trustees of the Settlement. Overreaching Effect of Sale. Trusts for Sale.
9. Family Property. Trusts of the Family Home. Direct and Indirect Contributions. The Presumption of Advancement. Family, Matrimonial and Co-owned Property. The Family Home Protection Act, 1976. The Meaning of Conveyance, the Family Home and Consent. The Family Law Act, 1995 and the Family

- Law (Divorce) Act, 1996. Property Adjustment Orders. Impact of Divorce and Family Breakdown.
10. Future Interests- Reversion and Remainders, Executory interests, the Rule against Perpetuities.
 11. Landlord and Tenant. Nature of relationship. Creation and termination. Assignment and subletting. Agreements and covenants.
 12. Registered and Unregistered Land.
 - (a) Registered Land and the Registration of Title Act, 1964. Voluntary and Compulsory Registration. Classes of Title. Conclusiveness of Register. Overriding interests.
 - (b) Unregistered Land. The Registration of Deeds (Ireland) Act, 1707. The Registry of Deeds and Documents Registrable. Searches. Priorities. The Doctrine of Notice. Effect of the Bona Fide Purchaser Defence.
 13. Incorporeal Hereditaments. Easements and Profits a Prendre. Nature and Essential Features of Easements and Profits. Similar Concepts. Acquisition. Prescription Act, 1832. Extinguishment.
 14. Covenants. The Position at Common Law and in Equity. The Rule in *Tulk v Moxhay*. Discharge and Modification.
 15. Succession Law. The Succession Act, 1965. Wills - requirements for a valid will. Operation of wills. Construction of wills. Testamentary freedom. Intestacy.
 16. Disabilities.

Candidates may bring an unmarked copy of the Succession Act 1965 into the examination.

Recommended Reading

Any one of the following:

Wylie, *Irish Land Law*, 3rd Ed, (1997), Butterworths.

Lyall, *Land Law in Ireland*, 2nd Ed, (2000) Round Hall / Sweet & Maxwell

Coughlan, *Property Law*, 2nd Ed, (1998) Gill & Macmillan

Pearce and Mee, *Land Law*, 2nd Ed, (2000), Round Hall / Sweet & Maxwell

Supplemental Reading

Wylie, *Casebook on Irish Land Law*, 2nd Ed, (2000), Professional Books (now Butterworths)

Wylie, *Landlord and Tenant Law*, 2nd Ed, (1998), Butterworths

Brady, *Succession Law in Ireland*, 2nd Ed, (1995), Butterworths

Maguire/Pearce, *The 1965 Succession Act- A Commentary*, 2nd Ed, (1986), Law Society of Ireland.

Keating, *Probate Law and Practice*, (1999), Round Hall/Sweet and Maxwell.

Spierin, *Wills - Irish Precedents and Drafting*, (1999), published by J. Spierin, Law Library.

Fitzgerald, *Land Registry Practice*, 2nd Ed, 1995 Round Hall Press.

Gray, *Elements of Land Law*, 3rd Ed, (2000) Butterworths.

Brady & Kerr, *The Limitation of Actions*, 2nd Ed, (1994) Law Society of Ireland.

Bland, *Law of Easements and Profits a Prendre*, (1997) Round Hall/Sweet & Maxwell.

Delany, *Equity and the Law of Trusts in Ireland*, 3rd Ed, (2003), Round Hall/Sweet & Maxwell.

Keane, *Equity and the Law of Trusts in the Republic of Ireland*, (1988), Butterworths.

Equity

Candidates will be expected to have a thorough knowledge and understanding of the modern principles of Equity. The syllabus also covers those aspects of the historical development of Equity which are necessary to understand the modern law.

1. The Nature of Equity and Historical Background, including the Maxims of Equity.
2. Modern Equity:
 - a) Equitable Interests and *equities*
 - b) Equitable Doctrines
 - (i) Notice
 - (ii) Estoppel
 - (iii) Fraud, Undue Influence & Unconscionable Transactions.
 - c) Equitable Remedies
 - (i) Injunctions (including anton pillar orders)
 - (ii) Specific Performance
 - (iii) Rescission
 - (iv) Rectification
 - (v) Tracing
3. Trusts
 - a) Nature and Classification of Trusts
 - b) Formal Requirements
 - c) The Three Certainties
 - d) Constitution of Trusts
 - e) Void and Voidable Trusts
 - f) Secret and Half-Secret Trusts
 - g) Resulting Trusts
 - h) Constructive Trusts
 - i) Trusts of the Family Home
 - j) Charitable Trusts and Purpose Trusts
 - k) Cy-pres Doctrine
 - l) Appointment, Removal and Retirement of Trustees
 - m) Powers and Duties of Trustees

In addition to the above, candidates are required to have an outline knowledge of the law in the following areas:

- ✚ Election
- ✚ Conversion and Reconversion
- ✚ Powers of Appointment
- ✚ Satisfaction

Recommended Reading

Delany, *Equity and the Law of Trusts in Ireland*, 3rd Ed, (2003), Round Hall/Sweet & Maxwell.

Supplemental Reading

Burn, *Maudsley and Burn's Trusts and Trustees - Cases and Materials*, 5th Ed, (1996), Butterworths

Hanbury & Martin, *Modern Equity*, 16th Ed, (2001), Sweet & Maxwell

Keane, *Equity and the Law of Trusts in the Republic of Ireland*, (1988), Butterworths

Pettit, *Equity and the Law of Trusts*, 8th Ed, (1997), Butterworths

Wylie, *A Casebook on Equity and Trusts in Ireland*, 2nd Ed, (1998), Butterworths

Criminal Law

1. Principles of Criminal Law
 - a) Origins and Purpose of Criminal Law
 - b) Distinction between Crime and Tort
 - c) Classification of Crime
 - d) Elements of Crime - Actus Reus and Mens Rea
 - e) Crimes of Strict Liability
 - f) Degrees of participation and association (aiders, abettors, counsellors of crime, incitement to commit crime, conspiracy and attempts to commit)
 - g) Right to Silence, Presumption of Innocence
2. Criminal Procedure
 - a) The Courts of Criminal Jurisdiction
 - (i) Scope
 - (ii) Composition
 - (iii) Procedure (in summary and indictable cases)
 - (iv) Jurisdiction
 - b) Bail
 - c) Arrest and detention without trial
3. Substantive Law
 - a) Offences against the person
 - (i) Murder
 - (ii) Manslaughter (including vehicular manslaughter)
 - (iii) Infanticide
 - (iv) Assault
 - (v) Rape, aggravated sexual assault and other sexual offences
 - (vi) Abduction
 - (vii) False Imprisonment
 - b) Offences against property
 - (i) Theft
 - (ii) Robbery
 - (iii) Making Gain or Causing Loss by Deception
 - (iv) Obtaining Services by Deception
 - (v) Making Off without Payment
 - (vi) Unlawful Use of a Computer
 - (vii) False Accounting
 - (viii) Burglary
 - (ix) Aggravated Burglary
 - (x) Handling Stolen Property/Possession of Stolen Property
 - (xi) Forgery/Offences Relating to False Instruments

- (xii) Arson
- (xiii) Criminal Damage

If using English texts, students should be aware that the provisions of the Theft Act 1968 and 1978 are not applicable in the Republic where most of the offences against property are dealt with in the Criminal Justice (Theft and Fraud) Offences Act, 2001.

- c) Offences against the Administration of Justice
 - (i) Perjury
 - (ii) Contempt of Court
- d) Offences of a Public Nature (Outline knowledge only required)
 - (i) Offences against the State
 - (ii) Offences against Public Order

4. Defences

- a) General
 - (i) Insanity
 - (ii) Intoxication
 - (iii) Self-Defence
 - (iv) Infancy
 - (v) Mistake
 - (vi) Duress
 - (vii) Consent
 - (viii) Automatism
 - (ix) Necessity
 - (x) Unconstitutionality
- b) Defences Specific to Murder
 - (i) Provocation
 - (ii) Excessive Self Defence
 - (iii) Proposals in relation to Diminished Responsibility

Candidates will be expected to have a knowledge of all current statutes and Irish case law. They will also be expected to be familiar with Law Reform Commission recommendations or other pertinent developments in these areas and with non Irish persuasive precedents.

Recommended Reading

McAuley & McCutcheon, *Criminal Liability*, (2000) Roundhall Sweet & Maxwell
 Charleton, Bolger & McDermott, *Irish Criminal Law*, (1999), Butterworths.

For the general principles of criminal responsibility and certain offences against the person, candidates are strongly recommended to read Smith & Hogan, *Criminal Law*, 10th Ed, (2002), Butterworths. Candidates are also strongly urged to have a copy of Smith & Hogan, *Criminal Law: Cases and Materials*, 8th Ed, (2002), Butterworths. All of these, however, are English texts and candidates must be ever vigilant in checking whether rules and principles stated in them are also true in Irish law.

Candidates will also find certain Reports and Consultation Papers of the Law Reform Commission, notably those on Receiving Stolen Property, Rape, Child Sexual Abuse, Malicious Damage and Dishonesty Offences, very valuable for gaining an understanding of the law in those areas.

The *Criminal Law Review* (an English journal) which has been published since 1954 is valuable for its articles on criminal law and even more so for its case-notes on all the leading developments in English law during the past forty years.

Supplemental Reading

Candidates should consult Byrne & Binchy, *Annual Review of Irish Law*, (published since 1987), Walsh, *Criminal Procedure*, (2002), Thomson, Round Hall, Hanly, *An Introduction to Irish Criminal Law*, (1999), Gill & McMillan and the *Irish Criminal Law Journal* (published since 1991) for recent developments in Ireland.

European Union Law

The examination shall be three hours in duration and Candidates will be required to attempt five out of eight questions presented. They should be able to assess the establishment and effect of the new legal order at European level, and its inter-relationship with the Irish legal system. They should understand the legislation making process and have a thorough knowledge of the case law of the ECJ/CFI in the areas covered by the syllabus.

The subject may be divided as follows:

1. Sources of Community Law
 - a) Primary Sources - the Treaties establishing the European Community, in particular the EC Treaty as amended by the Single European Act 1986, the Treaty on European Union (Maastricht Treaty) 1991, the Amsterdam Treaty 1997 and The Treaty of Nice 2001. The Treaty establishing a Constitution for Europe, as approved by the Intergovernmental Conference on 18th June 2004, will not be examinable unless and until it is ratified and enters into force. Candidates, where appropriate and relevant, may, however, make references to the provisions of this Treaty for comparative purposes.
 - b) Secondary Legislation - Regulations, Directives, Decisions, Recommendations and Opinions.
2. The European Union Institutions and their role and powers, with special emphasis on (a) the legislation making process; and (b) the jurisdiction and powers of the Community Courts; the Court of First Instance and the Court of Justice.
3. General Principles of Law, in particular:
 - a) Fundamental Human Rights
 - b) Equality of Treatment/Non Discrimination
 - c) Legal Certainty
 - d) Proportionality
 - e) Principle of Legitimate Expectation
4. The case law of the Community Courts. The criteria required to be satisfied regarding the application of Articles 226, 227, 230, 232, 234, 235, 241, 243 and 288 EC.
5. The Supremacy of EU law and its relationship with national law:
 - a) The autonomy, direct effect and direct applicability of EC law

- b) The preliminary reference procedure and references from the Irish courts to the European Court of Justice
 - c) The application and enforcement of EU law
 - d) Constitutional provisions, Acts of the Oireachtas and Statutory Instruments necessary to implement EC law in Ireland, including the European Communities Act 1972 and the European Communities (Amendment) Act 1973
 - e) The process of EC legislation making
 - f) State liability for non-implementation and mal-implementation of EC law
- 6. Substantive rules governing the Free Movement of goods (with a particular focus on case law) to include:
 - a) Article 90 EC
 - b) Articles 28, 29 & 30 EC
 - c) Articles 23 – 25 EC
- 7. Substantive rules governing Free Movement of persons, services and the Freedom of Establishment (with a particular focus on case law) to include:
 - a) Free Movement of Workers
 - b) Freedom of Establishment
 - c) Freedom to provide and to receive Services
 - d) Limitations on Free Movement/Establishment/Services Rights
 - e) Union citizenship
- 8. Free Movement of Capital and Current Payments.
- 9. EU Competition Law - a detailed understanding will be required of Articles 81, 82 EC Treaty and of their application. A detailed knowledge is also expected of the enforcement of Community Competition Law and the procedures followed in its enforcement.
- 10. The regulation of State Aids (Arts 87 – 89 EC).
- 11. Article 86 EC case law and principles concerning Special or Exclusive Rights Holders or Operations serving the general economic interest or revenue-producing monopolies.
- 12. EU Social Policy with special emphasis on gender-based equality, in particular in relation to Equal Pay and Equal Treatment.

Legislative Sources

Candidates are permitted to bring unmarked copies of any edition of the following publications into the examination as legislative sources:

The Compiled European Community Treaties, including the Single European Act and the Treaty on European Union; or

Foster, (Ed), *Blackstone's Statutes & EC Legislation*, 14th Ed, (2003–2004), Blackstone; or
Rudden & Wyatt, *EU Treaties and Legislation*, 9th Ed, (2004), Oxford University Press

Recommended Reading

Candidates are recommended to have studied in detail the relevant sections from the following text:

Craig & De Burca, *EU Law: Text, Cases & Materials*, 3rd Ed, (2002), Oxford University Press

Supplemental Reading

Useful supplementary reading would include:

Bernard, *Substantive Law of the EU – the Four Freedoms* (2004), Oxford University Press

Cahill, Kennedy, Power, *European Law*, (2003), Oxford University Press

Hartley, *The Foundations of European Community Law*, 5th Ed, (2003), Oxford University Press

Steiner & Woods, *Textbook on EC Law*, 8th Ed, (2003), Oxford University Press

Whish, *Competition Law*, 4th Ed, (2000), Butterworths

Arnulf, *The European Union and its Court of Justice*, (1999), Oxford University Press

Wyatt & Dashwood's, *European Union Law* 4th Ed, (2000) Sweet & Maxwell

Weatherhill, *Cases and Materials on EU Law* (2003), Oxford University Press

Weatherill & Beaumont, *EU Law*, 3rd Ed, (1999), Penguin

Goyder, *EC Competition Law*, 4th Ed, (2003), Oxford University Press

Power, *Competition Law & Practice*, (2001), Butterworths

Carolan, *EU Law for Irish Students*, (2004), Gill & Macmillan

Candidates are also referred to the topical articles and case notes which appear periodically in the *European Law Review* (Sweet & Maxwell, London); the *Common Market Law Review* (Kluwer Law International, Deventer), and *European Competition Law review* (Sweet & Maxwell).

Company Law

Candidates are required to have a sound knowledge and understanding of the concepts, principles and rules of Company Law in Ireland, and are expected to be fully familiar with the law relating to the following matters:

Types of Companies and Business Organisations - Companies and other Legal Forms of Business Organisation; Sole Traders; Partnerships; Registered Companies; the History of Registered Companies; The European Community Dimension in Irish Company Law; The Private Company; The Public Company; Single-Member Company to Private Company.

Formation and Registration - Formation and registration of private and public Companies; Registration; Statutory Obligations Incidental to Registration of companies; Conversion from one type of company to another. Promoters' Duties: Corporate Promoters; Fiduciary Duties of Promoters; Breach of the Promoter's Fiduciary Duty; Promoters' Transactions with a Company.

Memorandum and Articles of Association - Constitutional documentation; The Memorandum of Association; The Nature of the Memorandum of Association; The Clauses in the Memorandum of Association; Association; Alteration of the Memorandum of Association; The Articles of Association; The Nature of the Articles; Alteration of the Articles of Association; Informal Alteration of the Articles of Association by Shareholders' Agreement; The Relationship between the Memorandum and the Articles; The Construction of the Memorandum and Articles of Association. The Statutory Contract in section 25 of the Companies Act, 1963; Shareholders' Agreements

Incorporation and Its Consequences - Incorporation and its Consequences; Registration, and Issue of the Certificate of Incorporation; Effect of the Certificate of Incorporation; The Consequences of Incorporation; Separate Legal Personality; Limited Liability; Transferability of Interests; Perpetual Succession; Common Seal; Floating Charges; Corporate Litigation; Security for Costs; Enforcing Judgments and Orders Against a Company.

Lifting the Veil - Disregarding Separate Legal Personality in all its manifestations whether by the Courts or by Statute or otherwise.

Corporate Contracts - Corporate Contracts: Form and Formalities; Oral, Written and Contracts under seal; The Requirement to have a Seal; Attestation of the Common Seal; Powers of Attorney; Pre-Incorporation Transactions; The Authority of Corporate Agents;

Authority of Corporate Agents and Capacity of Companies - Actual Authority of Corporate Agents; Ostensible Authority of Corporate Agents; Corporate Representations; The Indoor Management Rule/ Rule in *Turquand's Case*; SI 163 of 1973. Corporate Capacity and Ultra Vires; The Objects Clause; Substantive Objects and Ancillary Powers; Express and Implied Powers; Section 8 of the Principal Act; Regulation 6 of SI 163/1973; Corporate Enforcement of Ultra Vires Contracts; Prevention of Ultra Vires Actions; Recovery of Money given Ultra Vires by a Company; Reform of the Doctrine of Ultra Vires.

Corporate Governance - The Division of Powers: Members and Directors; Delegation of Powers to Directors; The Resurgence of Members' Powers; The Powers Retained by Members; Directions to Directors. Directors; Appointment of Directors; Disqualification and Restriction of Directors; Removal of Directors; Status and Remuneration of Directors. The Secretary: Appointment, Status, Functions and Duties. Auditors: Appointment, Qualifications; Removal, Resignation and Replacement, Rights and Liabilities.

Members' and Directors' Meetings - Members' Meetings; Annual and Extraordinary General Meetings; Ordinary and Special Resolutions; Notice of Members' Meetings; Notice of Business to be Conducted at a Meeting; The Quorum and Other Formalities; Voting at Members' Meetings; Minutes of Members' Meetings; Registration and Lodging of Resolutions; Decisions by Sole Members of Single-Member Companies; Informal Resolutions of the Members. Directors' Meetings: Purpose of Directors' Meetings; Notice of Directors' Meetings

Duties of Directors and Others - To whom owed. Duties to creditors. General Duties of Directors at Common Law; The Nature and Source of Duties; The Exercise of Directors' Powers; Directors' Conflicts of Interests; Competition with the Company; Directors' Duties of Care, Skill and Diligence; Directors' Statutory Duties; Directors' Duties on Insolvency; Reckless Trading; Criminal Fraudulent Trading; Civil Fraudulent Trading; Mifseasance.

Statutory Regulation of Transactions Involving Directors and Companies - Disclosures concerning Directors and Secretaries; Contracts Involving the Directors and the Company; Substantial

Property Transactions; Loans, Quasi-loans, Credit Transactions, Guarantees and the Provision of Security In Favour of Directors and connected persons.

Accounts - Books of Account; Introduction; Contents of the Books of Account; Location of the Books of Account; Form of the Books of Account - Inspection of the Books of Account; Liability for Failure to Keep Proper Books of Account. The Annual Accounts; Accounting Principles; Application to different sized companies; The Profit and Loss Account; The Balance Sheet; The Notes to the Accounts; The Directors' Report; The Auditors' Report; Group Accounts.

Investigations and Inspectors - Appointment of Inspectors; The Conduct of the Investigation; Powers of Inspectors; Minister's Power to Impose Restrictions on Shares and Debentures; The Inspectors' Report; The Costs of the Investigation; Other Investigations and Inquiries.

Shares and Membership – Introduction - Membership; Those who May Become Members; The Register of Members; Shares; The Legal Nature of Shares; Formal Requirements Relating to Shares; Allotment of Shares; Shareholders' Rights and Duties; Classes of Shares; Conversion of Shares; Liens on Shares; Forfeiture and Surrender of Shares; Disclosure of Interests in Shares. Share Transfer; Transferability and Restrictions; Directors' Powers to Refuse Registration; Pre-Emption Rights on Share Transfer and Allotment; Compulsory Transfers of Shares; Compulsory Transfer under Section 204 of the Principal Act

The Maintenance of Capital - The Rationale; Redemption of Shares; Acquisition by a Company of Its Own Shares; Assisting the Purchase of a Company's Own Shares; Court Sanctioned Capital Reduction; Court Ordered Capital Reduction; Distributions and the Payment of Dividends; Miscellaneous Capital Maintenance Rules; Meetings On A Serious Capital Loss.

Shareholders' Remedies – Minority Shareholder Protection - Oppression: Section 205; Disregarding Members' Interests; "Affairs of the Company" and "Powers of Directors"; The Rule in *Foss v. Harbottle*; Derivative Actions and Exceptions to *Foss v Harbottle*.

Debentures and Charges – Debentures. Transfer of Debentures; Secured Debentures: Mortgages and Charges; Mortgages and Fixed Charges; Fixed Charges on Book Debts; Floating Charges; Negative

Pledge Clauses; Events Which Affect Assets Subject to Floating Charges; Crystallisation of Floating Charges; The Causes of Crystallisation; The De-Crystallisation of Floating Charges; Retention of Title Clauses Which Constitute Charges.

Registration of Charges - The Register of Charges; The Consequences of Non-Registration; The Conclusiveness of the Register of Charges; Registrable Charges. Judgment Mortgages; Non-Registrable Charges; Charges Over Property Outside of the State; Charges Created by Foreign Companies; Late Registration of Registrable Charges.

Receivers - Appointment of a Receiver; Duty Owed by Debenture Holders; Qualifications of Receivers; Resignation and Removal of Receivers; The Effect of the Appointment. The Status of a Receiver; The Duties of Receivers; Liabilities of Receivers; The Powers of Receivers.

Examinerships and Schemes of Arrangement – The Appointment of an Examiner; The Effects of Court Protection; The Position of Creditors; The Powers of Examiners. The Examiner's Reports and Schemes of Arrangement; Examiner's Remuneration, Costs and Expenses. Schemes of Arrangement; Arrangements & Reconstructions; The Court's Power to Sanction an Arrangement.

Winding-Up and Striking Off Companies - Members' Winding Up; Creditors' Voluntary Winding Up; Compulsory Court Winding Up. Voluntary Liquidators; Provisional Liquidators. Official Liquidators. Striking Off the Register; Restoration to the Register of Companies.

Matters Arising in a Winding- Up - Powers to Obtain Information; Examination. Powers of Civil Arrest; Freezing Corporate Assets in a Liquidation; Preventing Execution, Attachment of Property and Judgment Mortgages; Disclaiming Onerous Property. Post-Commencement Dispositions; Fraudulent Preference; Fraudulent Dispositions of Property; Invalidating Certain Floating Charges; Contribution by Related Companies to the Assets; Pooling the Assets of Related Companies; The Distribution of Corporate Assets, Priorities.

Statutes

Candidates should note that they must be familiar with, and may take into the examination unmarked copies of the following:

The Companies Acts 1963 - 2001 (as amended), the EEC Directive on Company Law 1968 as enforced by SI No 163 of 1973 and SI No 275 of 1994 (European Communities (Single Member Private Limited Companies) Regulations, 1994).

OR

Bastow Charleton, *Combined Companies Acts*, (2000), Gill & Macmillan and the Company Law Enforcement Act, 2001.

Candidates should be familiar with company case law. Candidates should also be familiar with all EU Directives and Regulations on Company Law currently adopted and implemented in Ireland and have an awareness of relevant Directives and Regulations awaiting implementation.

Recommended Reading

Any of the following texts:

Courtney, *The Law of Private Companies* (2nd ed; 2002) Butterworths
Keane, *Company Law in the Republic of Ireland*, 3rd Ed, (2000), Butterworths
Forde, *Company Law*, 3rd Ed, (1999), Round Hall / Sweet & Maxwell

Supplemental Reading

Ussher, *Company Law*, (1986), Sweet & Maxwell

Commercial Law Practitioner (1994 – date) Roundhall especially the bi-monthly Company Law Updates
The Company Lawyer, Sweet & Maxwell

Candidates should consult articles and notes in leading journals of relevance to the syllabus and current editions of English texts such as those by Gower and Pennington.

Constitutional Law

A thorough knowledge of the major provisions of Bunreacht na hÉireann 1937 (as amended) and of their effect on other areas of law will be required. There will be a particular emphasis on fundamental constitutional rights because of their importance in litigation. The relevant case law must be studied in detail.

The major headings (which are not exhaustive) include:

- ◆ The concepts of the People, the Nation and the State
- ◆ Sovereignty
- ◆ Relationship between International and/or regional law and the Irish constitutional system
- ◆ Separation of Powers
- ◆ Constitutional Interpretation
- ◆ Judicial Review
- ◆ Locus standi
- ◆ Consequences of a declaration of unconstitutionality
- ◆ The Oireachtas (Main Principles)
- ◆ The Executive
- ◆ The President and Council of State
- ◆ The Courts
- ◆ The Attorney General (main functions and principles)
- ◆ Constitutional issues in the Courts
- ◆ Enumerated personal rights
- ◆ Unenumerated personal rights
- ◆ Emergency Powers of the State
- ◆ Amendment of the Constitution

Regarding the Oireachtas and related issues, candidates are only required to study the following Articles of the Constitution in so far as they (and the relevant case law) are relevant to the main principles of parliamentary democracy:

Articles 15.7 to 15.15 Rules, procedures and privileges of the Houses of the Oireachtas)

16.1 Membership of Dáil Éireann

16.2 Dáil constituencies and proportional representation

16.3 to 16.7 Dáil elections

17 Dáil's financial function

18 Seanad Éireann

19 Direct election to the Seanad

20 Legislation
21 and 22 Money bills
23 and 24 Time for consideration of bills by Seanad
25 Signing and promulgation of laws
33 Comptroller and Auditor General

Constitution

Candidates are permitted to take an unmarked copy of the Constitution into the examination.

Recommended Reading

Bunreacht na hÉireann 1937, as amended, and the case law thereon.

One of the following texts:

Casey, *Constitutional Law in Ireland*, 3rd Ed., (2000), Round Hall / Sweet & Maxwell

Forde, *Constitutional Law*, 2nd Ed., (2004) First Law

Hogan & Whyte, J.M. Kelly, *The Irish Constitution*, 4th Ed., (2003), Lexis Nexis

Supplemental Reading

Doolan, *Constitutional Law and Constitutional Rights in Ireland*, (1994), 3rd Ed, Gill & Macmillan

Foley & Lalor, *Annotated Constitution of Ireland*, (1995), Gill & Macmillan

O'Reilly & Redmond, *Cases and Materials on the Irish Constitution*, (1980), Law Society of Ireland.

Report of the Constitution Review Group, (1996), Stationery Office, Dublin

Ryan, *Constitutional Law*, (2001), Round Hall