



Law Society of Ireland

FINAL EXAMINATION

FIRST PART

SYLLABUS
Spring 2012

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*, 3rd Ed., (2005), Tottel.
McMahon & Binchy, *Irish Law of Torts*, 3rd Ed., (2000), Butterworths.
Quill, *Torts in Ireland*, 3rd Ed., (2009), Gill & Macmillan.

Supplemental Reading

LRC Consultation Paper on Limitation of Actions (LRC CP 54 – 2009).
Brazier & Murphy, *Street on Torts*, 12th Ed., (2007), OUP.
Brennan & Hennessy, *Forensic Accounting*, (2001), Round Hall - chapter 12.
Canny, Limitation of Actions (2010) Round Hall
Craven & Binchy, *Civil Liability and Courts Act 2004*, (2005), First Law.
Connolly, *Tort*, (2005), Roundhall Nutshell.
Cox, *Defamation Law*, (2007) First Law.
O'Callaghan, *The Law on Solicitors in Ireland*, (2000), Butterworths - chapter 11.
Healy, Medical Malpractice Law (2009) Round Hall
Kelly, *Post Traumatic Stress Disorder, Injury and the Law*, 2nd Ed., (2008), 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. Offer and Acceptance
2. Consideration and Estoppel
3. Capacity to enter a Contract
4. Intention to Contract
5. Uncertain and Incomplete Contracts
6. Formal Requirements
7. Interpretation of Contracts
8. Contract Terms, Express and Implied
9. Importance and Relative Effects of Contractual Terms and Mere Representations
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 (including duty of disclosure)
 - 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) Specific Performance
 - c) Restitutionary relief
15. Privity of Contract and Third Party Rights
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*, 6th Ed, (2008), Round Hall Sweet & Maxwell.
Enright, *Principles of Irish Contract Law* (2007), Clarus Press.
Friel, *The Law of Contract*, (2000), Round Hall Sweet & Maxwell.
McDermott, *Contract Law*, (2001), Butterworths.

Supplemental Reading

Clark & Clarke, *Contract, Cases and Materials*, 4th Ed, (2008), Gill & Macmillan.

It is recommended that students refer to English Contract Law texts such as those authored by Treitel, Cheshire, Fifoot & Furmston, Poole or McKendrick for general supplemental reading.

Real Property

Candidates should have a sound knowledge and understanding of the body of law embraced by the syllabus including the changes introduced by the Land and Conveyancing Law Reform Act 2009. 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. Finding. Determining ownership of objects found on land, including treasure trove.
3. The Doctrine of Estates.
4. 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.
5. Co-ownership - Joint Tenancy and Tenancy in Common.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. Future Interests- Reversion and Remainders, Executory interests, the Rule against Perpetuities.
 12. Landlord and Tenant. Nature of relationship. Creation and termination. Assignment and subletting. Agreements and covenants.
 13. 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.
 14. Incorporeal Hereditaments. Easements and Profits a Prendre. Nature and Essential Features of Easements and Profits. Similar Concepts. Acquisition. Extinguishment.
 15. Covenants. The Position at Common Law and in Equity. The Rule in *Tulk v Moxhay*. Discharge and Modification.
 16. Succession Law. The Succession Act, 1965. Wills - requirements for a valid will. Operation of wills. Construction of wills. Testamentary freedom. Intestacy.
 17. 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 and Trusts. 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
 - (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*, 5th Ed, (2011), 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*, 18th Ed, (2008), Sweet & Maxwell

Hudson, *Equity and Trusts*, 6th Ed, (2010), Routledge

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

Penner, *The Law of Trusts*, 7th Ed, (2010), OUP

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 a 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, 1978, the Theft (Amendment) Act, 1996 and the Fraud Act, 2006 are not applicable in the Republic of Ireland 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) 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.

Campbell, Kilcommins & O'Sullivan, *Criminal Law in Ireland: Cases and Commentary*, (2009), Clarus Press

Hanly, *An Introduction to Irish Criminal Law*, 2nd Ed, (2006), Gill and MacMillan

McIntrye and McMullan, *Criminal Law*, 2nd Ed, (2005), Thomson Roundhall

For the general principles of criminal responsibility, candidates are also recommended to read Smith and Hogan, *Criminal Law* (2009), *Criminal Law: Cases and Materials* (2006), and Ashworth, *Principles of Criminal Law* (2009). 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 very useful for gaining an understanding of the law in those areas. The *Criminal Law Review* (an English Journal) which has been published since 1954 and the *Irish Criminal Law Journal* (published since 1991) are valuable for their articles on criminal law and even more so for its case-notes on all the leading developments in English and Irish law.

Supplemental Reading

Candidates should consult Byrne and Binchy, *Annual Review of Irish Criminal Law*, (published since 1987) for recent updates on the criminal law. For areas of the law that relate to criminal procedure, relevant works include Walsh, *Criminal Procedure* (2002), Fennell, *The Law of Evidence in Ireland* (3rd ed) (2009), O'Malley, *The Criminal Process* (2009), Walsh, *Human Rights and Policing in Ireland* (2008), McGrath, *Evidence* (2005), Healy, *Irish Laws of Evidence* (2005), and Law Society of Ireland (Butler) *Criminal Litigation* (2009). Other specialist texts that can be referred to include The Offences Handbook (2010), de Blacam, *Drunken Driving and the Law* (3rd ed), and McGreal, *Criminal Justice (Theft and Fraud Offences) Act 2001* (2011).

European Union Law

The examination shall be three hours in duration and candidates will be required to attempt five out of eight questions presented. In all the following subject areas, candidates should demonstrate knowledge and understanding of the relevant provisions of the Treaty on European Union (“TEU”) and the Treaty on the Functioning of the European Union (“TFEU”), as amended and renumbered by the Treaty of Lisbon (candidates are referred to the Table of Equivalences in the Annex to the Treaty of Lisbon to which Article 5 thereof refers), legislation and case-law of the Community judicature. Candidates will be expected to apply their knowledge to given factual situations, citing appropriate Treaty provisions, case-law and legislation.¹

Subject Headings

The subject may be divided as follows:

1. Sources of European Union 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, as well as the Treaty of Lisbon 2007;
 - b) Legal acts (secondary legislation) of the EU - Regulations, Directives, Decisions, Recommendations and Opinions and EU Framework Decisions;
 - c) General Principles of Law, in particular:
 - i) Fundamental Rights (including the Charter of Fundamental Rights of the EU);
 - ii) Equality /Non-Discrimination;
 - iii) Legal Certainty;
 - iv) Proportionality;
 - v) Subsidiarity;
 - vi) Legitimate Expectations;
 - d) Transparency under Article 15 TFEU (formerly Article 255 EC) and as a developing general principle of EU law.

¹ All references to Treaty articles in this syllabus are to the Treaties as amended, repealed, replaced and renumbered by the Treaty of Lisbon; *i.e.* to the TEU and to the TFEU as renumbered.

2. The European Union Institutions.

Candidates will be expected to have a detailed knowledge of the role, powers and mode of election/appointment of: the European Parliament (including its relationship with national parliaments and the democratic principles upon which the European Union is now expressly stated to be based pursuant Title II of the amended TEU (see Articles 9 to 12 TEU); the European Council, the Council of the European Union, and the European Commission. Special emphasis will be placed on: (a) the legislation-making processes in the European Union and the importance of legal basis; (b) the concepts of institutional balance and attributed/conferred powers and the other principles set out in Article 5 TEU; and (c) EU international relations law with particular emphasis on the external competence of the EU and the conclusion of international agreements by the EU.

3. A Union/Community governed by the rule of law.

The jurisdiction and powers of the Court of Justice (re-named the Court of Justice of the European Union under the Treaty of Lisbon) and comprising within the EU legal hierarchy the Court of Justice and the General Court (formerly the Court of First Instance prior to the Treaty of Lisbon), as well the Civil Service Tribunal and such other specialised courts as may be established (see Articles 251 to 257 TFEU: formerly Articles 221 to 225a EC: *note*, there was no EC Treaty equivalent to Article 255 TFEU). Candidates should pay specific attention to Articles 258 to 260 TFEU and Articles 260, 263, 265, 267, 268-269, 277 and 340 TFEU (formerly Articles 226, 227, 228, 230, 232, 234, 235, 241, 243 and 288 EC: *note*, there was no EC Treaty equivalent to Article 269 TFEU), the Statute of the Court of Justice, and with particular reference to:

- a) Judicial review of acts of the Union institutions;
- b) Infringement actions against Member States for failure to comply with their obligations;
- b) Cooperation between national courts and the Court of Justice in the preliminary reference procedure; references on interpretation and validity of EU law.

4. The Nature of EU law, in particular its relationship with national law and the reception of EU law in Irish law:
 - a) The direct effect and supremacy of EU law and related doctrines, including the obligation of consistent/harmonious interpretation (indirect effect) and incidental effect;
 - b) National procedural autonomy and its limits; State liability in damages for breaches of EU law;
 - c) The status of EU law in the national legal systems, in particular the status of EU framework decisions and decisions;
 - d) National Constitutional provisions particularly Article 29(4) of the Constitution, as amended, Acts of the Oireachtas and Statutory Instruments necessary to implement EC law in Ireland, including in particular the European Communities Acts 1972-2007, the attitude towards and receptiveness of Irish courts to the application of EU law, as well as the use of the preliminary reference procedure by Irish courts.

5. Substantive rules governing the Free Movement of Goods (with a particular focus on case-law) to include:
 - a) Article 110 TFEU (formerly Article 90 EC);
 - b) Articles 34, 35 & 36 TFEU (formerly Articles 28, 29 & 30 EC);
 - c) Articles 28, 29 & 30 TFEU (formerly Articles 23, 24 & 25 EC);
 - d) Regulating the internal market, with particular emphasis on harmonisation-legislation and the scope of Article 114 TFEU (formerly Article 95 EC).

6. Substantive rules governing Free Movement of Persons, Services and the Freedom of Establishment, with a particular focus on the Treaty (Article 18 TFEU (formerly Article 12 EC) and Articles 45 to 66 and 75 TFEU (formerly Articles 39 to 61 EC) and relevant case-law to include:
 - a) Freedom of Movement of Workers;
 - b) Freedom of Establishment;
 - c) Freedom to provide and to receive Services
 - d) Freedom of Movement of Capital and Payments;

Limitations on the above freedoms both under the Treaty and under the imperative requirements case-law of the Court of Justice.

7. Union citizenship, particularly under Article 18 TFEU and Articles 20 to 25 TFEU, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (as it may be amended from time to time) and the relevant case-law of the Court of Justice.
8. EU Competition Law - a detailed understanding will be required of Articles 101-102 TFEU (formerly Articles 81-82 EC) and of their application. A detailed knowledge is also expected of the enforcement of EC Competition Law and the procedures followed in its enforcement at European and national levels, and in particular of Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty (now Articles 101 and 102 TFEU, and as Regulation 1/2003 may be amended from time to time).
9. Public undertakings, revenue-producing monopolies and undertakings granted special and exclusive rights under Article 106 TFEU (formerly Article 86 EC) and the relationship with Articles 101-102 TFEU as developed in the relevant case-law, with particular reference to Member State obligations under Articles 4(3) TEU (formerly Article 10 EC) and 101-102 TFEU in combination with Article 106 TFEU and Article 14 TFEU (formerly Article 16 EC) and case-law developed principles concerning services of general economic interest. Candidates should also specifically note Protocol (No 26) on Services of General Interest to the Treaty of Lisbon.
10. The control of concentrations/mergers having a European dimension.
11. The regulation, review and control of State Aids under Articles 107-108 TFEU (formerly Articles 87- 88 EC) and the relationship

with Article 106 TFEU. Candidates should also specifically note the legislation adopted on the basis of Article 109 TFEU (formerly Article 89 EC).

12. Social policy with special emphasis on Treaty provisions and key secondary legislation relating to equality, in particular to equal pay and equal treatment for men and women, pregnancy and maternity, parental leave and the measures adopted under Article 19 TFEU (formerly Article 13 EC) combating discrimination on other grounds namely racial or ethnic origin, religion or belief, disability, age or sexual orientation.
13. The area of freedom, security and justice, with particular emphasis on the recognition and enforcement of judgments in civil and commercial and matrimonial matters.

Legislative Sources

Candidates are permitted to bring *unmarked* copies of the following publications (or earlier editions) 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 EU Treaties & Legislation*, 22nd Ed, (2011–2012), Blackstone; or
Rudden & Wyatt, *EU Treaties and Legislation*, 9th Ed, (2004), Oxford University Press;
Consolidated versions of the EU Treaties as published by the Office of Official Publications of the European Union.

Recommended Reading

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

Craig & De Burca, *EU Law: Text, Cases & Materials*, 4th Ed, (2007), Oxford University Press;
Barnard, *The Substantive Law of the EU – the Four Freedoms*, 2nd Ed. (2007), Oxford University Press;

Wyatt & Dashwood's, *European Union Law* 5th Ed, (2006) Sweet & Maxwell,
Chalmers, Hadjiemmanuil, Monti and Tomkins, *European Union Law*, (2006) CUP 2006 [and latest supplement].

Supplemental Reading

Useful supplementary reading would include:

Tridimas, *The General Principles of EU Law*, 2nd Ed. [2007], Oxford University Press;
Hartley, *The Foundations of European Community Law*, 6th Ed, (2007), Oxford University Press;
Ward, *Individual Rights and Private Party Judicial Review in the EU*, 2nd Ed. [2007] Oxford University Press;
Cahill, Kennedy, Power, *European Law*, 2nd Ed. (2006), Oxford University Press;
Fairhurst, *Law of the European Union*, 7th Ed. [2010], Pearson/Longman;
Steiner & Woods, *Textbook on EC Law*, 9th Ed, (2006), Oxford University Press
Whish, *Competition Law*, 6th Ed, (2008), Oxford University Press;
O'Donoghue & Padilla, *The Law and Economics of Article 82 EC*, [2006] Hart;
Arnulf, *The European Union and its Court of Justice*, 2nd Ed (2006), Oxford University Press;
Eeckhoet, *External Relations of the European Union: Legal and Constitutional Foundations*, [2005] Oxford University Press;
Weatherill, *Cases and Materials on EU Law*, 7th Ed, (2007), Oxford University Press;
Goyder, *EC Competition Law*, 4th Ed, (2003), Oxford University Press
Power, *Competition Law & Practice*, (2001), Butterworths;
C Costello and E Barry (eds), *Equality in Diversity: The New EC Equality Directives* (2003) ICEL/Equality Authority, Dublin;
Carolan, *EU Law for Irish Students*, (2004), Gill & Macmillan.

Candidates are also referred to the topical articles and case notes which appear *particularly* in the following periodicals: *European Law Review* (Sweet & Maxwell, London); the *Common Market Law Review* (Kluwer Law International, Deventure), the *European Competition Law Review* (Sweet & Maxwell), the *European Law Journal* (Wiley-Blackwell) and the *Irish Journal of European Law* [Roundhall].

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; Misfeasance.

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 - 2009 (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.

OR

McCann & Courtney, *Companies Acts, 1963 – 2009*, Student Edition, Bloomsbury Publishing.

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.
McCann & Courtney, *Companies Acts, 1963 – 2009*, Student Edition, Bloomsbury Publishing.
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

Although Constitutional Law is primarily an academic subject, the FE-1 exam will require candidates to consider the way in which constitutional principles might apply to factual situations. As practitioners are most likely to encounter Constitutional Law in the context of litigation, there will be a number of problem questions on the paper. For similar reasons, exam questions will pay particular attention to issues of fundamental rights.

Candidates will be expected to show knowledge and, **crucially**, understanding of the constitutional caselaw of the Irish courts. To this end, candidates should demonstrate the ability to critically analyse, discuss and apply the principles of Irish Constitutional Law. It is recommended that candidates directly read the decisions of the courts rather than exclusively relying on secondary summaries.

An up-to-date knowledge of the decisions of the Superior Courts will also be required. Areas of relatively recent consideration will be particularly important.

The major topics (which are not exhaustive) include:

- ◆ Constitutional Interpretation
- ◆ Locus standi
- ◆ Judicial Review
- ◆ Justiciability
- ◆ Habeas corpus
- ◆ Separation of Powers
- ◆ Emergency Powers
- ◆ The President
- ◆ The Attorney General
- ◆ The election and referenda provisions
- ◆ Enumerated personal rights
- ◆ Unenumerated personal rights
- ◆ Socio-economic rights
- ◆ The Family
- ◆ The Courts and the administration of justice
- ◆ The Executive
- ◆ The Oireachtas
- ◆ Constitutional justice
- ◆ Consequences of a declaration of unconstitutionality

- ◆ The impact of the European Convention of Human Rights Act 2003 on constitutional issues.

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

Recommended Reading:

Hogan & Whyte, Kelly: *The Irish Constitution*, 4th edition, (2003), Butterworths.

Doyle, *Constitutional Law: Text, Cases and Materials*, (2008), Clarus.

F. Ryan, *Constitutional Law* (2008), Roundhall.

Supplementary Reading

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

O. Doyle, *Constitutional Equality Law*, (2004), Round Hall.

A. O'Neill, *The Constitutional Rights of Companies*, (2007), Round Hall,

E. Carolan & O. Doyle (eds), *The Irish Constitution: Governance and Values*, (2008), Thomson Round Hall.

H. Delany & E. Carolan, *The Right to Privacy*, (2008), Round Hall.

E. Carolan, *The New Separation of Powers: A Theory for the Modern State* (2009), Oxford University Press, Chapters 2-4 (some material freely available online as “*The Problems with the Theory of the Separation of Powers*” on SSRN).

U. Kilkelly (ed.), *The ECHR and Irish Law* (2nd ed., Jordan, 2009)

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