



Law Society of Ireland

Qualified Lawyers Transfer Test – Syllabus

Applicable to Summer 2011 Examinations

The Qualified Lawyers Transfer Test comprises:

An oral examination in Professional Conduct and a written examination in: -

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| Paper 1 | Constitutional Law and Criminal Law or Constitutional Law and Company Law (at the option of the candidate) |
| Paper 2 | The Law of Contract and the Law of Tort |
| Paper 3 | Land Law and Conveyancing |
| Paper 4 | Probate and Taxation |
| Paper 5 | Solicitors Accounts |
| Paper 6 | European Union Law (Applicants from member states of the European Union are not required to sit this subject examination). |

This examination is offered by the Society twice every year usually in June/July and October/November. Each examination paper may comprise problem or essay type questions or a combination of both. The pass mark for each examination is 50%.

Every candidate for the Qualified Lawyers Transfer Test must first obtain a Certificate of Eligibility from the Education Committee to sit the Test. The Education Committee will also determine on receipt of the appropriate application form and documentation, what subject or subjects the applicant is required to take.

Legislative Sources

Candidates may only bring into the examinations the **original**, unmarked (except for highlighting and underlining) publications. Photocopies or copies printed from the internet are not acceptable. Supplemental material purchased from the Law Society is not acceptable.

The syllabus for each of these subjects is as follows: -

Professional Conduct - Oral Examination

The Professional Conduct examination comprises an oral examination of approximately 30 minutes. Candidates may be questioned on any of the following topics: -

- a) The Solicitor and his/her relationship with his/her client;
- b) Privilege and confidentiality between solicitor and client;
- c) The Solicitor and his/her relationship with the courts;
- d) The Solicitor and his/her relationship with third parties;
- e) The Solicitor and his/her relationship with other solicitors;
- f) The Solicitor and his/her relationship with counsel;
- g) Remuneration of a solicitor; and
- h) The Solicitor in practice.

Recommended Reading

A Guide to Professional Conduct of Solicitors in Ireland, 2nd Ed., (2002), Law Society of Ireland.

Solicitors Acts 1954 to 2008 - A Compendium, Law Society of Ireland.

Solicitors (Amendment) Act, 2002

Solicitors (Advertising) Regulations, 2002. SI No 518 of 2002

Family Law in Ireland Code of Practice, (2002) Law Society of Ireland

PAPER 1 - CONSTITUTIONAL LAW AND CRIMINAL LAW OR CONSTITUTIONAL LAW AND COMPANY LAW

This examination will comprise a four-hour examination during which two out of four questions must be answered in Section A of the paper (Constitutional Law) and two out of four questions from Section B (Criminal Law) or Section C (Company Law)

Section A - Constitutional Law

The syllabus embraces selected aspects of the constitutional law of Ireland as found in Bunreacht Na hÉireann 1937 (as amended) and in the relevant case law. Although all topics are equal in importance, especial emphasis will be placed on fundamental constitutional rights because of their contemporary importance in litigation.

The topics included in the syllabus are as follows:-

- 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
- The Courts
- The Attorney General (main functions and principles)
- Enumerated personal rights
- Unenumerated personal rights
- Emergency Powers of the State

Recommended Reading

A thorough knowledge of the principles of the Constitution as developed in the leading cases is essential. Cases can be found in The Irish Reports and The Irish Law Reports Monthly.

Summaries of cases are published in The Irish Digests. Only one casebook is available and, though dated, is a very useful tool for anyone who does not enjoy access to a well stocked Law Library.

Casey, *Constitutional Law in Ireland*, 3rd Ed., (2000), Round Hall Sweet & Maxwell
Kelly, Hogan & Whyte, *The Irish Constitution*, 4th Ed., (2003), Lexis Nexis, Butterworth

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

Supplemental Reading

Foley & Lalor, *Annotated Constitution of Ireland*, (1995), Gill & Macmillan
Forde, *Constitutional Law of Ireland*, (1987), Mercier Press

Section B - Criminal Law

The syllabus comprises the substantive Criminal Law of Ireland and criminal procedure.

The substantive field of Criminal Law comprises an understanding of the current law governing the major criminal offences including:

- a) Offences against the person
 - (i) Murder
 - (ii) Manslaughter (including vehicular manslaughter)
 - (iii) Infanticide
 - (iv) Assaults
 - (v) Rape, 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

Criminal procedure in the syllabus embraces:

- a) Pre-trial procedures, police powers and bail;
- b) Procedures governing the trial of summary and indictable offences.

Statutes

A large proportion of Irish Criminal Law is codified. Set out below is a short list of the more important of these statutes. This list is not intended to be exhaustive but a guideline.

Offences Against the Person

- Offences Against the Person Act, 1861
- Domestic Violence Act, 1996
- Domestic Violence (Amendment) Act, 2002
- Criminal Law Amendment Act, 1885
- Criminal Law Amendment Act, 1935

- Criminal Law Rape Act, 1981
- Criminal Law (Rape) (Amendment) Act, 1990
- Criminal Law (Sexual Offences) Act, 2006
- Criminal Law (Sexual Offences) (Amendment) Act, 2007
- Sex Offenders Act, 2001
- Criminal Justice (Sexual Offences) Act, 1993
- Sexual Offences (Jurisdiction) Act, 1996
- Child Trafficking and Pornography Act, 1998
- Criminal Law (Human Trafficking) Act, 2008
- Infanticide Act, 1949
- Criminal Law (Suicide) Act, 1993
- Criminal Law (Incest Proceedings) Act 1995

Offences Against Person and/or Property

- Criminal Damage Act, 1991
- Forgery Acts (1861-1913)
- Criminal Justice (Theft and Fraud) Offences Act, 2001
- Criminal Law Act, 1976
- Firearms Acts, 1925, 1964 and 1971, and Firearms and Offensive Weapons Act, 1990
- Offences Against the State Acts, 1939, 1940, 1972 and 1998
- Treason Act, 1939
- Emergency Powers Act, 1976

Offences Against Public Order

- Criminal Justice (Public Order) Act, 1994, 2003
- Misuse of Drugs Act, 1977, 1984
- Criminal Justice (Drug Trafficking) Act, 1996
- Road Traffic Acts, 1961, 1968, 1984, 1994, 1995, 2002, 2003 and 2006

Miscellaneous Provisions

- Criminal Law Act, 1997

- European Arrest Warrant Act, 2003
- European Convention on Human Rights Act, 2003
- Criminal Justice Acts, 2006, 2007, 2009
- Criminal Justice (Miscellaneous Provisions) Act, 1997
- Criminal Assets Bureau Act, 1996
- Proceeds of Crime Act, 1996
- Criminal Justice Act, 1994
- Criminal Justice Act, 1999
- Bail Act, 1997
- Criminal Justice (Amendment) Act, 2009
- Criminal Justice (Surveillance) Act, 2009

Evidence

- Criminal Justice (Evidence) Act, 1924
- Criminal Justice (Forensic Evidence) Act, 1990
- Criminal Evidence Act, 1992

Recommended Reading

McAuley and McCutcheon, *Criminal Liability: A Grammar* (2000), Round Hall.
 Charleton, McDermott and Bolger, *Criminal Law* (1999), Butterworths.
 Walsh, *Criminal Procedure* (2002), Round Hall.
 O'Malley, *The Criminal Process* (2009) Round Hall.
 Campbell, Kilcommins and O'Sullivan, *Criminal Law in Ireland: Cases and Commentary* (2010) Clarus.
 Charleton, *Criminal Law: Cases and Materials*, (1992), Butterworths.
 McIntyre and McMullan, *Criminal Law* (2005) Round Hall.
 Quinn, *Criminal Law in Ireland* (2002) Magh Itha Teoranta.
 De Blacam, *Drunken Driving and the Law*, 3rd Ed., (2003), Round Hall.
 Hanly, *An Introduction to Irish Criminal Law* (2006), Gill and Macmillan.
 Smith & Hogan *Criminal Law* 12th Ed., (2008) Butterworths.
 Smith & Hogan *Criminal Law: Cases and Materials*, 10th Ed., (2009) Butterworths.

Cases can be found in the Irish Reports and the Irish Law Reports Monthly. Candidates should also consult Byrne & Binchy, *Annual Review of Irish Law*. Useful articles appear in the Irish Criminal Law Journal, the Irish Jurist, the Irish Law Times and the (English) Criminal Law Review.

Section C - 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 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

OR

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

Supplemental Reading

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

Commercial Law Practitioner, (1994-date), Round Hall, especially the bi-monthly company law updates. *The Company Lawyer*, Sweet and 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.

PAPER 2 - LAW OF CONTRACT AND LAW OF TORT

This paper will comprise a four hour examination during which candidates will be requested to answer two out of four questions from Section A (Contract) and two out of four from Section B (Tort).

Section A - Contract

- a) Principles surrounding the formation of a contract namely offer, acceptance, consideration, intention to create legal relations and capacity.
- b) Exemption clauses;
- c) Illegality - voidable, void and unenforceable contracts;
- d) Privity of contract (and exceptions thereto), Assignment;
- e) Mistake, misrepresentation, duress, undue influence and other vitiating factors;
- f) Discharge, frustration;
- g) Quasi-Contract;
- h) Breach and remedies;
- i) Consumer Protection.

Statutes

- Sale of Goods Act, 1893
- Sale of Good and Supply of Services Act, 1980

Candidates may bring into the examination unmarked copies of these Acts.

Recommended Reading

Clark, *Contract in Ireland*, 6th Ed, (2008), Round Hall Sweet & Maxwell
Clark & Clarke, *Contract, Cases and Materials*, 4th Ed, (2008), Gill & Macmillan
Friel, *The Law of Contract*, 2nd Ed, (2000), Round Hall Sweet & Maxwell

Supplemental Reading

Articles on contract published in the Irish journals especially The Irish Jurist (old and new series), The Irish Law Times, The Dublin University Law Journal, The Commercial Law Practitioner and The Gazette of the Law Society of Ireland should be consulted by candidates.

Section B - Law of 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.
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).
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

Brazier & Murphy, *Street on Torts*, 12th Ed., (2007), Lexis Nexis
Connolly, *Tort*, (2009) Roundhall Nutshell
Cox, *Defamation Law*, (2007,) First Law
Craven & Binchy, *Civil Liability and Courts Act 2004*, (2005), First Law
Healy, *Medical Malpractice Law* (2009), First Law
McDonald, *Irish Law of Defamation*, (1989), Round Hall.
White, *Medical Negligence Actions*, (1996), Oak Tree Press – part II, general principles of liability
Kerr, *The Civil Liability Acts*, 2nd Ed., (1999), Round Hall
Walsh, *Agriculture and the Law*, (1996), Round Hall - chapter on occupiers' liability.

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

PAPER 3 - LAND LAW AND CONVEYANCING

This examination will be four hours in length and candidates will be requested to answer four out of eight questions. The examination paper will not be divided into sections and, as the subjects of Land Law and Conveyancing are intertwined, questions may well contain a mix of both.

- 1) Modern Irish land and conveyancing law
 - a. Land and Conveyancing Law Reform Act 2009, reform and modernisation
 - b. Continuing influence of equity, principles and remedies
- 2) Ownership of land, including
 - a. Estates and interests in land
 - b. Operation of future interests in land
- 3) Incorporeal Hereditaments, including
 - a. Easements
 - b. Profits à prendre
 - c. Rentcharges
 - d. Restrictive covenants
 - e. Licences
 - f. Rights of residence
- 4) Co-ownership of land, including
 - a. Joint tenancies
 - b. Tenancies in common
- 5) Settlements and trusts of land, including
 - a. Variation of trusts
 - b. Powers of appointment
- 6) Mortgages, including
 - a. Nature and creation
 - b. Rights and responsibilities of parties under a mortgage
 - c. Judgment mortgages
- 7) Succession Law, including
 - a. Wills
 - b. Intestacy
 - c. Administration of Estates
- 8) Landlord and tenant law, including
 - a. Nature, creation and determination of landlord and tenant relationship
 - b. Assignment, subletting and covenants
 - c. Statutory rights and responsibilities of the parties
- 9) Registration of land
 - a. Registry of Deeds
 - b. Land Registry
 - c. Registration of Deeds and Title Act 2006
- 10) Adverse possession, including
 - a. Basis and requirements of the doctrine

b. Operation and effect of the doctrine

11) Family Property, including

- a. Family Home Protection Act 1976
- b. Family Law Act 1995
- c. Family Law (Divorce) Act 1996

12) Conveyancing law, including

- a. Contracts for sale, including formation, contents and conditions
- b. Title, including deduction, investigation and requisition
- c. Possible impact of planning law (especially Planning and Development Act 2000) and family property provisions (point 11 above)
- d. Deeds, including drafting, construction, form and contents
- e. Completing the transaction and post-completion remedies

Recommended Reading:

Wylie, *The Land and Conveyancing Reform Act 2009: Annotations and Commentary*, (2009), Bloomsbury Professional.

De Londras, *Principles of Irish Property Law* (2007), Clarus Press.

Wylie and Woods, *Irish Conveyancing Law*, 3rd Ed., (2005), Bloomsbury Professional.

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

PAPER 4 - PROBATE AND TAXATION

This examination will be four hours in length and candidates will be requested to answer three out of four questions in Section A - Probate and three out of four questions in Section B - Taxation.

Section A - Probate

- a) Principles governing testate and intestate succession
- b) Drafting a Will - Statutory requirements and format
- c) Spouses and Children's rights, relevance of the Status of Children Act and Family Law legislation
- d) Principles and procedures governing the extraction of a Grant of Probate from the initial taking of instructions to final extraction of the grant, including relevant affidavits, forms and applications and procedures - Grant of Probate, Grant of Administration with Will annexed and Grant of Administration Intestate
- e) Limited and Special Grants, Grants to Trusts Corporations,
- f) Contentious and non-contentious Probate applications, rival applications.
- g) Domicile and foreign grants, second and subsequent grants
- h) Caveats, citations, subpoenas and petitions
- i) Amendment and revocation of grants
- j) Valuation of property, Protection of Assets
- k) Order of Payment of assets, Distribution, appropriation, joint property, undertaking, costs, accounts and notice periods
- l) Taxation implications including income tax and probate tax.

Statutes

- Succession Act, 1965 as amended.

Candidates may bring unmarked copies of the above legislation into the examination.

Recommended Reading

Spierin, Wills, *Irish Precedents and Drafting* (1999)

Keating on Probate, 2nd Ed., Round Hall, Sweet & Maxwell (2002)

Mongey, *Probate Practice in a Nutshell*, (1998)

Spierin with Fallon, *The Succession Act, 1965 and Related Legislation; A commentary*, 3rd Ed., (2003), Lexis Nexis Butterworths

Supplemental Reading

Law Society of Ireland, Professional Practice Course I and II Materials on Probate/Administration of Estates

Section B - Taxation

The taxation element of the Probate and Taxation examination will consist of four questions out of which candidates will be required to answer three. These questions will cover the areas of CAT, CGT, Stamp Duty, VAT, Income Tax and Corporation Tax. Questions asked will be problem questions involving the application of taxation principles to a given fact scenario.

For instance, candidates might be expected to be able to calculate the CAT due on a gift or inheritance or the CGT due on a disposal. Candidates will be expected to have knowledge of relevant legislation except legislation enacted in the six-month period before the examination.

a) Capital Acquisitions Tax

Capital Acquisitions Tax Consolidation Act, 2003 (as amended) including:

- Part I Definitions, meaning of on a death
- Part II Gift Tax, liability in respect of joint tenants, disponent in certain connected dispositions
- Part III Inheritance Tax
- Part IV Sections 26 to 30 inclusive (the value of property for tax)
- Part V All provisions including discretionary trusts, break-up of settlements, future interests, relief from double aggregation, powers of appointment, powers of recognition and cesser of liabilities
- Part VI Returns and assessments
- Part VII Payment and recovery of tax, Interest and Penalties
- Part VIII Appeals
- Part IX Exemptions (including Section 72/73 policies)
- Part X Reliefs

b) Capital Gains Tax

Basic principles of CGT relating to individuals contained in the Taxes Consolidation Act, 1997 (as amended) including:

- Part II Basic principles
- Part III Death/Settled property
- Part IV Exemptions and reliefs including the following:-
 - Principal private dwelling (section 604)
 - Family business reliefs (sections 597 - 599)
 - Compensation and insurance money (section 536)
 - Development land
- Part VII Anti-avoidance (sections 549 - 550; section 579; sections 589 - 590)
- Part VIII Transfers of value derived from assets, debts, options (sections 540-543)
- CGT relating to conveyancing transactions, trusts and settlements and the break up thereof.

c) Stamp Duty

General principles as contained in the Stamp Duty Consolidation Act, 1999 (as amended) including territoriality, time limits, penalties, adjudication, calculation of duty, exemptions, sub-sales, exchange)

Heads of Charge (conveyances/transfers on sale, voluntary transfers, leases, mortgages, bonds/covenants)

Anti-avoidance legislation in connection with leases, sub-sales and stocks and securities

Companies Capital Duty (excluding mergers and take-overs)

Transfers between associated companies

d) Value Added Tax

Sources of VAT law - Rules (Registration, returns, etc.) relating to:

1. Property transactions, and
2. Solicitors

e) Income Tax

Basic principles and computation rules. All provisions in relation to rents, leases and premiums.

f) General Anti-Avoidance (section 811, Taxes Consolidation Act, 1997)

g) Corporation Tax

Basic Principles.
Accountancy Periods.
Basis of assessment.
Computation.
Territoriality.

Statutes

- Capital Acquisitions Tax Amendment Act, 2003 (as amended by subsequent Finance Acts)
- Stamp Duty Consolidation Act, 1999 (as amended by subsequent Finance Acts)
- VAT Act, 1972 (as amended by subsequent Finance Acts)
- Taxes Consolidation Act, 1997 (as amended by subsequent Finance Acts)

Candidates may bring unmarked copies of the above legislation into the examination.

Recommended Reading

Bohan, *Irish Capital Acquisitions Tax*, 2nd Ed., (2004), Lexis/Nexis
Donegan & Friel, *Irish Stamp Duty Law*, 2nd Ed., (1998), Butterworths
Institute of Taxation, Latest editions of the following - Taxation Summary, Income Tax, Corporation Tax, VAT, CAT, CGT and Stamp Duty.
Law Society of Ireland, Professional Practice Course I and II Materials on Taxation.

Supplemental Reading

Moore, *The Tax Book*, Tax World International.
Brennan & Howley, *The Tax Consolidation Act, 1997*, Commentary, Institute of Taxation.

PAPER 5 - SOLICITORS' ACCOUNTS

This examination will be three hours in length and candidates will be requested to answer four out of five questions. Candidates will be expected to have covered the following topics in detail:

1. Double entry to Trial Balance
2. Basic Final Accounts
3. Solicitors' Accounts Regulations (Statutory Instrument No 421 of 2001)
4. Solicitors' Professional Practice, Conduct and Discipline Regulations, 1986 (Statutory Instrument No 405 of 1986)
5. Bank Reconciliation Statements
6. Solicitors' Accounts Regulations Reconciliation
7. Office and Client Ledger Accounts

Recommended Reading

Professional Practice Course Part II Materials on Solicitors Accounts
Solicitors Act No. 36 of 1954
Solicitors (Amendment) Act No37 of 1960
Solicitors (Amendment) Act No 27 of 1994
Solicitors (Amendment) Act No 19 of 2002
Statutory Instrument 304 of 1984
Statutory Instrument 108 of 1995
Statutory Instrument 421 of 2001
Statutory Instrument 719 of 2005

Supplemental Reading

Baker, *Solicitors Accounts – A Practical Guide*, (1999), Blackstone Press, Chapters 1, 2, 7, 8, 9 and 10
Frank Wood and Alan Sangster, *Business Accounting*, 8th Ed., Volume 1
Lawson, *Accountancy for Solicitors*, (1975), Butterworths
Halberstadt, *Accounts for Solicitors*, 5th Ed., (1995), Sweet & Maxwell

PAPER SIX - EUROPEAN UNION LAW

The examination will be three hours in duration and candidates will be requested to answer four out of eight questions. Candidates should understand and be able to explain the legal basis of the European Union and its Institutions. They should be able to assess the establishment and effect of a 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 (now renamed “the General Court”) in the areas covered by the syllabus.

The subject can be divided as follows:

Sources of Community Law

- a) Primary Sources - the Treaties establishing the European Community, in particular the EEC Treaty, the Single European Act 1986, the Treaty on European Union (Maastricht Treaty), the Amsterdam Treaty, the Nice Treaty, the Lisbon Treaty.
- b) Secondary Legislation - Regulations, Directives, Decisions, Recommendations and Opinions
- c) Amendment and Revision of the EC Treaties.
 1. The European Union Institutions, with special emphasis on (a) the legislation making process; and (b) the jurisdiction and powers of the General Court (formerly the Court of First Instance) and the European Court of Justice
 2. General Principles of Law, with special emphasis on:
 - a) Fundamental Human Rights
 - b) Equality of Treatment/Non Discrimination
 - c) Legal Certainty
 - d) Proportionality
 - e) Right to a Hearing
 - f) Principle of Legitimate Expectation
 - g) Subsidiarity
 3. Judicial review of EU law and its enforcement, in particular actions for annulment of an act of an EU institution and preliminary references from national courts.
 4. The Supremacy of EU law and its relationship with national law:
 - a) The direct effect of EU law and direct applicability of EU law
 - b) Preliminary references to the European Court of Justice
 - c) The application and enforcement of EU law
 - d) Acts and Statutory Instruments necessary to implement EU law including the European Communities Act 1972 and the European Communities (Amendment) Act 1973
 - e) The process of EU legislation making
 - f) State liability for non-implementation and mal-implementation of EU law
 5. Substantive rules governing the free movement of goods to include:
 - a) Customs Duties and Charges of Equivalent Effect
 - b) Prohibition of Quantitative Restrictions and derogations from the Prohibition.

- c) Internal Taxation
6. Substantive rules governing free movement of natural or legal persons to include:
 - a) Free Movement of Workers
 - b) Freedom of Establishment
 - c) Freedom to provide and to receive Services
 - d) Limitations on Free Movement
 7. Free Movement of Capital and Payments
 8. EU Competition Law - a detailed understanding will be required of both private sector competition and public sector competition rules and jurisprudence.
 9. The Regulation of State Aids
 10. 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 EC Legislation*, 20th Ed, (2009- 2010), Blackstone.

Recommended Reading

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

Craig & De Burca, *EC Law: Text, Cases & Materials*, 4th Ed., (2007), Oxford University Press.

Supplemental Reading

Useful supplementary reading would include:

Cahill, Kennedy, Power, *European Law*, 4th Ed., (2008), Oxford University Press.

Hartley, *The Foundations of European Community Law*, 6th Ed., (2007), Oxford University Press.

Steiner & Woods, *Textbook on EU Law*, 10th Ed, (2009), Oxford University Press.

Whish, *Competition Law*, 6th Ed., (2008), Oxford University Press.

Arnull, *The European Union and its Court of Justice*, 2nd Ed., (2006), Oxford University Press.

Wyatt & Dashwood's, *European Union Law*, 5th Ed., (2006), Sweet & Maxwell.

Goyder, *EC Competition Law*, 5th Ed., (2009), Oxford University Press.

Candidates are also referred to the topical articles and case notes which appear periodically in the European Law Review; the Common Market Law Review; the European Competition Law Review and the Irish Journal of European Law.