



LAW SOCIETY OF IRELAND

FINAL EXAMINATION - FIRST PART

SYLLABUS

AUTUMN 2021

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*, 4th Ed., (2013), Bloomsbury.

Quill, *Torts in Ireland*, 4th Ed., (2014), Gill & Macmillan.

Supplemental Reading

LRC Consultation Paper on Limitation of Actions (LRC CP 54 – 2009).

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

Byrne, *Safety, Health and Welfare at Work Law in Ireland*, 2nd Edition, (2008) NIFAST.

Canny, *Limitation of Actions*, 2nd Edition (2016) Round Hall.

Carolan & O'Neill, *Media Law in Ireland* (2010) Bloomsbury (Chapters 6 & 7).

Casey, Brady, Craven & Dillon, *Psychiatry and the Law*, 2nd Edition (2010) Blackhall Publishing.

Cox & McCullogh, *Defamation: Law and Practice* (2014) Clarus Press.

Craven & Binchy, *Civil Liability and Courts Act 2004*, (2005), First Law.

Dorgan & McKenna, *Damages* (2015) Round Hall.

Healy, *Medical Malpractice Law* (2009) Round Hall.

Holohan & Curran, *Lawyers' Professional Negligence and Insurance*, (2012) Round Hall.

Jennings, Scannell & Sheehan, *The Law of Personal Injuries* 2nd Edition (2016) Round Hall.

Kelly, *Neighbours and the Law* (2012) Clarus Press

Kerr, *The Civil Liability Acts* 5th Edition (2017) Round Hall.

Maher, *The Law of Defamation* (2011) Round Hall.

Shannon, *Health and Safety Law and Practice* 2nd Edition (2007) Round Hall.

Tully, *Tort Law in Ireland* (2014) Clarus Press.

Witting, *Street on Torts* 15th Edition, (2018), OUP.

Candidates should consult Byrne & Binchy, *Annual Review of Irish Law*, (published since 1987) and the chapters on Ireland in the *European Centre of Tort and Insurance Law Yearbooks* (published since 2001, see <http://www.ectil.org/>) 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 statutory consumer protection and 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 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 the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 into the examination. Candidates are expected to have knowledge of other relevant statutes (see above).

Recommended Reading

Clark, *Contract in Ireland*, 7th Ed, (2013), Round Hall.
Enright, *Principles of Irish Contract Law* (2007), Clarus Press.

Supplemental Reading

Clark & Clarke, *Contract, Cases and Materials*, 4th Ed, (2008), Gill & Macmillan.
Friel, *The Law of Contract*, (2000), Round Hall Sweet & Maxwell.
McDermott, *Contract Law*, (2001), Butterworths.

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 unmarked copies of the following into the examination.

Succession Act 1965

Land and Conveyancing Law Reform Act 2009

Recommended Reading

Any one of the following:

Wylie, *Irish Land Law*, 4th Ed, (2010), Butterworths.

Lyall, *Land Law in Ireland*, 3rd Ed, (2010) Round Hall / Sweet & Maxwell.

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

Pearce and Mee, *Land Law*, 3rd Ed, (2011), Round Hall.

Supplemental Reading

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

Wylie, *Landlord and Tenant Law*, 5th Ed, (2013), Bloomsbury.

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 on Probate, 4th Ed., (2012) Round Hall/Sweet and Maxwell.

Spierin, *Wills - Irish Precedents and Drafting*, 2nd Ed., (2013) Bloomsbury Professional.

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

Gray, *Elements of Land Law*, 5th Ed, (2008) OUP.

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

Bland, *Law of Easements and Profits a Prendre*, 2nd Ed, (2009) Round Hall/Sweet & Maxwell.

Delany, *Equity and the Law of Trusts in Ireland*, 5th Ed, (2012), Round Hall/Sweet & Maxwell.

Keane, *Equity and the Law of Trusts in the Republic of Ireland*, 2nd Ed, (2011), Bloomsbury Professional.

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 for Express Trusts
 - 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
 - n) Liability of Third Parties to account in Equity

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

Biehler, *Equity and the Law of Trusts in Ireland*, 6th Ed, (2016), Round Hall/Sweet & Maxwell.

Supplemental Reading

Burn, *Maudsley and Burn's Trusts and Trustees - Cases and Materials*, 7th Ed, (2008), Oxford University Press.

Hudson, *Equity and Trusts*, 9th Ed, (2016), Routledge.

Pettit, *Equity and the Law of Trusts*, 12th Ed, (2012), Oxford University Press.

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

Keane, *Equity and the Law of Trusts in Ireland*, 3rd Ed. (2017), Bloomsbury Professional.

Penner, *The Law of Trusts*, 11th Ed, (2019), Oxford University Press.

Glistler and Lee (eds), Hanbury & Martin, *Modern Equity*, 21st Ed, (2018), Sweet & Maxwell.

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
 - 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 and McCutcheon, *Criminal Liability* (2000), Round Hall Sweet & Maxwell.

Charleton, Bolger & McDermott, *Irish Criminal Law* (1999), Butterworths.

Campbell, Kilcommins and O'Sullivan, *Criminal Law in Ireland: Cases and Commentary* (2010) Clarus Press.

Hanly, *An Introduction to Irish Criminal Law, 3rd Ed.*, (2014), Gill and Macmillan.

McIntyre, McMullan and O'Toghda, *Criminal Law* (2012) Thomson Roundhall.

For the general principles of criminal responsibility, candidates are also recommended to read Smith, Hogan and Ormerod, *Criminal Law*, 15th Ed. (2018); Smith, Hogan and Ormerod *Criminal Law: Cases and Materials* (2017) (12th ed) (Oxford University Press), Horder, *Ashworth's Principles of Criminal Law* (2016) (OUP). 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* (2016) (2nd ed), 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, (2nd ed) (2015), Healy, *Irish Laws of Evidence* (2005), and Law Society of Ireland (Butler) Criminal Litigation, 3rd Ed. (2017). Other specialist texts that can be referred to include O'Moore, *Non Fatal Offences Against the Person: law and practice* (2018), Coen, *Garda Powers: Law and Practice* (2014), Leahy and Fitzgerald O'Reilly, *Sexual Offences in Ireland* (2018); O'Malley, *Sexual Offences* (2013) *The Offences Handbook* (2010), de Blacam, *Drunken Driving and the Law* (3rd Ed), and McGreal, *Criminal Justice (Theft and Fraud Offences) Act 2001* (2011), Bracken, *Criminal Definitions* (2010), Whelan, *Mental Health Law and Practice: Civil and Criminal Aspects* (2009), Horan, *Corporate Crime* (2011), and Connery and Hodnett, *Regulatory Crime in Ireland* (2009).

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, with strong emphasis on 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.

Legislative Sources

Candidates are permitted to bring *unmarked* copies of **one** of the following publications (or earlier/later editions) into the examination as Union Treaties and legislative sources:

The Consolidated European Union Treaties and Charter of Fundamental Rights, as published by the Office of Official Publications of the EU (2010 editions);

OR

Foster, *Blackstone's EU Treaties and Legislation 2019- 20*, Oxford University Press.

OR

Conor Duff and Anthony Walsh, *European Union Treaties and related secondary legislation* (Clarus Press 2020).

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*, 6th Ed, (2015), Oxford University Press;

Barnard, *The Substantive Law of the EU – the Four Freedoms*, 5th Ed. (2016), Oxford University Press;

Chalmers, Davies & Monti, *European Union Law*, 3rd Ed, (2014) Cambridge University Press;

Additional Reading

Useful supplementary reading would include:

Tridimas, *The General Principles of EU Law*, 2nd Ed. [2007], Oxford University Press (3rd edition due in 2020);

Hartley, *The Foundations of European Community Law*, 8th Ed, (2014), Oxford University Press;

Whish, *Competition Law*, 9th Ed, (2018), Oxford University Press;

Weatherill, *Cases and Materials on EU Law*, 12th Ed, (2016), Oxford University Press.

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) and the *European Law Journal* (Wiley-Blackwell).

Company Law

This examination must be answered on the basis of the law contained in the Companies Act 2014 (the “Act”).

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 different types of companies recognised by the Companies Act 2014: the private company limited by shares (“LTD”); the designated activity company (“DAC”); the public limited company (“PLC”); the company limited by guarantee (“CLG”); unlimited companies (“UC”) and external companies.

Differences between Types of Companies – The structure of the Act; The differences between the private company limited by shares (“LTD”); the designated activity company (“DAC”); the public limited company (“PLC”); the company limited by guarantee (“CLG”); unlimited companies (“UC”); and External Companies. Distinguishing their key features and the different provisions of the Act as apply to them.

Formation and Registration - Formation and registration of 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.

Company’s constitutions (including memorandum and articles of association) - Constitutional documentation; The single-document constitution of an LTD; the compulsory clauses and the supplemental regulations; the "optional provisions" applicable to companies; ; The Clauses in the Memorandum of Association; Association for companies other than LTDs; 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 Constitution; The Statutory Contract contained in section 31 of the Act; 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*. The abolition of the objects clause for LTDs and conferment of full contractual capacity; Corporate Capacity and Ultra Vires for other types of companies with objects clauses; The Objects Clause; Substantive Objects and Ancillary Powers; Express and Implied Powers; 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. Types of director: de facto, shadow and formally appointed or de jure director.

Summary Approval Procedure ("SAP") – The rationale behind the SAP; the seven different "restricted activities" that can be validated using the SAP; the different requirements for different activities; the consequences for directors where a company which has utilised the SAP is wound up insolvent within 12 months.

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 of shares.

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 212 of the Companies Act 2014; 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*.

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; Unanimous Written and Majority Written Resolutions; Decisions by Sole Members of Single-Member Companies; Informal Resolutions of the Members. Directors' Meetings: Purpose of Directors' Meetings; Notice of Directors' Meetings; Meetings and Decisions by Sole Directors.

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 codification of fiduciary duties in the Companies Act 2014; 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. Personal liability of directors and others under the Companies Act 2014.

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. Meaning of "connected person" The requirement that loans are in writing; The Summary Approval Procedure provided for by the Companies Act 2014.

Financial Statements, statutory auditors and annual return - 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. Appointment, removal of statutory auditors. Function, powers, duties and role of statutory auditor. Audit exemptions. Annual returns.

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.

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.

Registration of Charges - The Register of Charges; The Consequences of Non-Registration; The Conclusiveness of the Register of Charges; Registrable Charges; The two-stage registration procedure provided for by the Companies Act 2014; Judgment Mortgages; Non-Registrable Charges; Retention of Title Clauses Which Constitute 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– 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.

Schemes of Arrangement, Mergers and Divisions – (Part 9 of the Companies Act 2014); The law relating to schemes of arrangement; scheme classes; court approval of schemes; Merger of companies; types of merger; merger by SAP and Merger by court order; Divisions; Types of divisions; need for court order.

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.

Compliance and Enforcement – Disqualification and restriction of directors; disqualification and restriction undertakings; prosecution of offences under the Act.

Statutes

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

The Companies Act 2014
Companies (Accounting) Act 2017
Companies (Amendment) Act 2017
The Companies (Statutory Audits) Act 2018

OR

Bloomsbury Professional's Companies Act 2014 (most recent edition)

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 Companies* 4th Ed, (2016) Bloomsbury Professional.

Hutchinson, *Keane on Company Law* 5th Ed, (2016) Bloomsbury Professional.

Supplemental Reading:

Courtney (ed), *Bloomsbury Professional's Guide to the Companies Act 2014*, (2015) Bloomsbury Professional. (Please note that this publication cannot be brought into the examination as it contains commentary on the legislation).

Courtney & Curtis, *Bloomsbury Professional's Company Law Guide 2017* (2017) Bloomsbury Professional.

Thuillier, *Company Law in Ireland*, 2nd Edition (2015) Clarus.

Cahill, *Company Law Compliance and Enforcement*, (2008) Bloomsbury Professional.

Lynch Fannon Murphy, *Corporate Insolvency and Rescue*, (2nd ed; 2012) Bloomsbury Professional.

Ussher, *Company Law*, (1986), 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 Davies, *Principles of Modern Company Law*, 10th ed; (2016), Sweet & Maxwell.

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.

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:

Kelly: *The Irish Constitution*, 5th edition, (2018), Bloomsbury Professional.

E. Carolan (ed.), *Judicial Power in Ireland* (2018), IPA.

Supplementary Reading

E. Carolan (ed.), *The Constitution of Ireland: Perspectives and Prospects* (2012), Bloomsbury.

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

S. Egan, L. Thornton & J. Walsh, *Ireland and the ECHR: 60 years and beyond* (2014), Bloomsbury.

L. Cahillane, J. Gallen & T. Hickey, *Judges, Politics and the Irish Constitution* (2017), Manchester University Press.

B. Dickson, *The Irish Supreme Court* (2019), Oxford University Press.