

Stage 2

2.1 Module 6 Constitutional Law

2.1.1 Headline information about the module

Module title	Constitutional Law
Module NFQ level (only if an NFQ level can be demonstrated)	N/A
Module number/reference	Module 6
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	2
Semester (semester1/semester2 if applicable)	Semester 1 and 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	15
List the teaching and learning modes	Full Time, Part Time
Entry requirements (statement of knowledge, skill and competence)	Learners to have successfully completed Stage 1 of the Programme.
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	Two Semesters, 24 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	4
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
96	1:60						279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				40			60	100%		

2.1.2 Module aims and objectives

This module aims to provide the learner with a detailed understanding of fundamental principles of constitutional law and the rule of law as well as to familiarise the learner with the fundamental principles and substantive rules of Irish constitutional law.

Primary objectives for this module also include for the Learners to acquire an in-depth understanding of the doctrine of separation of powers, to familiarise the learner with the role of international legal instruments such as the ECHR in the constitutional order and finally to provide the learner with a knowledge of the substantive rules of constitutional law particularly in relation to fundamental rights and to develop in the learner an understanding of the impact of these rights in factual situations.

2.1.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Discuss the context in which Irish constitutional law developed and how this impacts on current jurisprudence
- (ii) Analyse the function and composition of the institutions of the State and apply fundamental constitutional principles in Irish constitutional law such as the separation of powers
- (iii) Analyse factual scenarios and apply their understanding of Irish constitutional law to them
- (iv) Evaluate the nature and effect of individual fundamental rights
- (v) Investigate and critique the obligations of the State to the individual
- (vi) Discuss the role of the Constitution in the protection of the citizen
- (vii) Evaluate and apply the fundamental principles operating throughout the Constitution
- (viii) Employ research skills and communicate effectively in relation to Constitutional Law

2.1.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Constitutional law is a core module where learners become familiar with the interpretive principles, legislation and case law and how these operate in the context of constitutional adjudication within the Irish legal system. The subject matter of constitutional law is fundamental to an understanding of ordered liberty with respect to individual rights and the organisation of the government and public institutions.

The constitution the enduring, foundational legal document to which all other legal systems are subordinate; therefore, learners must understand the precepts and guarantees which are contained and operative within it and in the practice of constitutional adjudication. The module learning outcomes are aligned to a number of the Programme Learning Outcomes including to critically analyse the theoretical and philosophical underpinnings of the law and to effectively employ advanced research skills, including use of legal databases, to investigate, interrogate and critique the law.

2.1.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement:

- Module descriptor,
- Module learning outcomes
- Class plan
- Assignment brief
- Assessment strategy
- Reading materials
- Notes etc.

Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

2.1.6 Module content, organisation and structure

Constitutional Law is a 15 ECTS credit module taught and assessed over one academic year. The module is delivered over 24 lecture sessions of 4 hours duration for Full Time learners and 2 hours duration for Part Time Learners.

The Learning Outcomes for this programme have been aligned with the knowledge, skills and competencies indicated as appropriate for Level 8 on the NFQ. They have been explicitly articulated using the Quality and Qualifications Ireland (QQI) Generic Awards Standards.

The module curriculum is as follows:

Semester 1

- Constitutional History in Ireland
- The Nation, the State & Sovereignty
- Constitutional Interpretation
- The President
- The Legislative Power and Separation of Powers Issues
- The Executive Power and Separation of Powers issues
- The Judicial Power and Separation of Powers issues
- Socio-economic Rights and Mandatory Orders
- Judicial Review
- International Law and the Constitution, including The European Convention on Human Rights

Semester 2

- Rights Adjudication
- Express Personal Rights
 - Right to life
 - Right to life of the unborn
- The Family, Education & Children
- Unremunerated Rights
- Fair Trial & Personal Liberty
- Equality
- Free Speech, Free Assembly, Free Association
- Private Property
- Religion
- The Referendum Process

2.1.7 Module teaching and learning (including formative assessment) strategy

This module is delivered by means of participative lectures which consist of tutorial-style discussions, group work sessions and exercises. Formative assessment is provided through tutorial-style discussions, group work and exercises focus on specific case law and problem-based learning requiring the learner to analyse the law and apply it to practical disputes or issues. The lectures are supplemented by structured on-line resources and reading.

In order to support learners through the exam process they engage in the answering of sample exam questions and correction of their own or peers' papers, thereby familiarising

themselves with the module learning outcomes and marking criteria. Learners also engage in activities whereby they draft their own exam question in order to recap and reconsolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

2.1.8 Work-based learning and practice-placement

Constitutional Law is a class based 15 ECTS credit module and does not require work-based learning and practice placement.

2.1.9 E-learning

Moodle is used to disseminate notes, advice, and online resources to support the learners. The learners are also given access to Lynda.com as a resource for reference.

2.1.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

Moodle can be accessed in the learner's home, various open labs on campus and in the library.

The College library has a dedicated law section and online legal research tools (JustisOne, Westlaw, Hein Online).

2.1.11 Reading lists and other information resources Primary Reading:

Primary Reading

Doyle, O. (2008) Constitutional Law: Text, Cases and Materials. Dublin: Clarus Press Kavanagh,

J. (2018) Constitutional Law in Ireland. Dublin: Clarus Press

Forde, M. (2013) Irish Constitution. Dublin: Bloomsbury

Hogan G.W. et al (2018) Kelly: The Irish Constitution. Dublin: Bloomsbury

Secondary Reading

Carolan, E. & Doyle, O. (2008) The Irish Constitution: Governance and Values. Dublin: Roundhall

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

Casey, J. P. (2000) Constitutional Law in Ireland. Dublin: Round Hall

De Blacam, M. (2009) Judicial Review. Haywards Heath: Tottel
Dewhurst, E. (2012) Principles of Irish Human Rights Law. Dublin: Clarus Press
Doolan, B. (1994) Constitutional Law and Constitutional Rights in Ireland. Dublin: Gill & Macmillan
Doyle, O. (2018) The Constitution of Ireland: A Contextual Analysis. Oxford: Hart Publishing.
Egan, S. (2015) International Human Rights: Perspectives from Ireland. Dublin: Bloomsbury.
Egan, S. & Thornton, L. (2014) Ireland and the European Convention on Human Rights. Dublin: Bloomsbury
Fennelly, D. (2014) International Law in the Irish Legal System. Dublin: Roundhall. Foley, B. (2008) Deference and the Presumption of Constitutionality. Dublin: IPA Kenneally, A. & Tully, J. (2013) The Irish Legal System. Clarus Press: Dublin
Morgan, D. G. (1997) The Separation of Powers in the Irish Constitution. Dublin: Round Hall
Smyth, C.M. (2017) Social and Economic Rights in Ireland. Dublin: Clarus Press.

2.1.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

2.1.13 Module summative assessment strategy

Theoretical knowledge will be assessed by both continuous assessment (40%) and a summative end of year examination (60%). The continuous assessment shall consist of a written assignment (40%). The examination will consist of both essay and problem style questions. Essay style questions will place emphasis on the demonstration of understanding pertaining to Constitutional Law. Problem Style questions will enable learners to apply the principles of Constitutional Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No.	Description	MIMLOs	Weighting
1	Exam	i-vii	60%
2	Assignment	viii	40%

2.1.14 Sample assessment materials

Sample Assignment

Assignment Title

The office of President of Ireland is merely a ceremonial office with little or no real power. Critically analyse the above statement citing relevant case-law and academic commentary.

Submission Information and Presentation Guidelines

The submitted assignment should be 2,500 – 3,000 words in length. This does not include reasonable footnotes. Referencing must be in accordance with the OSCOLA referencing system.

Assignments should be typed in Size 12, Times New Roman Font, 1.5 spacing.
Please submit via the link on the Land Law Moodle page. Completed assignments must be uploaded as one document with the first page being the Assignment Cover Page (available on the Law of Contract Moodle page).

Assignment Marking Criteria – See Appendix 1

Sample Examination
Answer any three of the following questions.
All questions carry equal marks.

Question 1

“This approach requires an identification of relevant differences. If a difference naturally existing between two classes of persons is relevant to the matter being regulated by the legislation, it is permissible for the legislation to reflect that distinction and discriminate accordingly. If the difference is irrelevant, however, the legislation cannot reflect that distinction”. Oran Doyle – Constitutional Law: Text, Cases, and Materials (Clarus Press, 2008) (p 63).

With reference to the above quotation, critically discuss how the Constitutional principle of Equality has been interpreted by the courts.

Sample Answer 1

Students should start off by discussing the concept of Aristotelian Equality. Students should discuss the context of discrimination and, in particular, to analyse Quinn’s Supermarket v AG, Murtagh Properties v. Cleary, Brennan v. AG, Redmond v Minister for the Environment. Students should illustrate how the basis of the discrimination must not be arbitrary or invidious by discussing cases such as Somjee v Minister for Justice, De Burca & Anderson v. AG, Dillane v. AG.

Question 2

Bart, an 18-year-old Leaving Cert Student was at home last year when two Gardai walked into his house waving around what he was told was a search warrant for 724 Evergreen Terrace. Bart told them that the house they were then in was 742 Evergreen Terrace. One of the Gardai stated that it didn’t matter as they had got what they came for as he pointed to a spray paint can lying next to Bart on the couch. The Gardai arrested Bart for Criminal Damage contrary to Section 2 of the Criminal Damage Act 1991 for defacing the house in which his Principal lived by spray painting “You’re turning me into a criminal when all I want to be is a petty thug” on the side of the said house. Bart was detained for questioning pursuant to Section 4 of the Criminal Justice Act 1984. He was told of his rights under the Custody Regulations and specifically informed of his right to a solicitor. He asked for the family solicitor, Lionel, and asked whether Lionel could sit in on the questioning. The member in charge, Garda Wiggum, informed him that that is not possible. Garda Wiggum then told Bart that questioning would start soon as “the clock is against us” and in those circumstances, he sent Bart into the interrogation room to be interviewed by Garda Lou.

During questioning, Garda Lou asked Bart to explain the spray paint can on the couch back at his house. When Bart didn’t respond Garda Lou informed him that a court could draw certain inferences from such silence but that that was his own business. Bart was charged with Section 2 Criminal Damage and subsequently appeared before the District Court on the charge. When his case was called, his solicitor Lionel was nowhere to be seen. It later transpired that he had gotten the date wrong. The presiding Judge, Ms. Justice Constance

Harm was so exasperated by the non-appearance of the Lionel that she refused to allow Bart another Solicitor or to wait for Lionel. During the hearing Bart pointed out that there was nothing connecting him to the spray paint on the house in question. The paint had been immediately washed off without any forensics being carried out as the Gardai agreed with Bart's Principal that the most important thing was to get rid of the unsightly mess. The Judge rounded on Bart and told him that he "shouldn't be telling the Gardai how to do their jobs". Bart was convicted.

Advise Bart on whether the above conviction was got as a result of a trial in due course of law. Students should reference relevant articles of the Constitution, case law, and legislation.

Sample Answer 2

Students should discuss the relevant aspects of a trial in due course of law such as the consequence of a breach of a constitutional right (inviolability of the dwelling) by way of O'Brien, Kenny, JC. Students should then analyse an arrested person's right of access to a solicitor (Gormley and White, Doyle). Students should address a person's right to silence and in particular what inferences can be drawn in certain circumstances (Rock, Heaney). Students should point out that a trial in due course of law means that a person should be allowed to defend themselves should they so wish and/or if they are not in a position to do so and that in those situations legal aid should be afforded to them if the accused is in danger of losing their liberty (Donoghue). Students should mention that the Gardai have a duty to seek out and preserve evidence (Braddish).

Question 3

Lisbeth is a seventeen-year-old girl who is in Foster care. While she got on very well with her Foster Mother, her Foster Father, Harold, was a brutish man who raped her on several occasions. This resulted in Lisbeth becoming pregnant with his child. While Lisbeth was not coping well as a result of the sexual abuse, the fact that she is now set to have the child of her rapist is too much for her. She feels that she may do something drastic if she does not have an abortion. Lisbeth's Foster Mother, Erica has also become pregnant by her husband, Harold. Erica and Harold do not get on well and sexual relations between the two are never consensual with Harold continuously forcing himself on her. Erica welcomes the idea of a baby, however, and believes the child may be a welcome distraction from her marriage. Erica, though, after 22 weeks of pregnancy was told by her obstetrician that the baby she would have, has anencephaly and would not survive long after birth.

Lisbeth and Erica now both want to terminate their pregnancies. They are unsure as regards several matters. They want to know whether they can obtain reliable information with respect to such termination. They want to know whether the procedure can occur in Ireland. They also want to know that if it is not possible to get the procedure carried out here, then can they go somewhere else to get it done.

Advise Lisbeth and Erica.

Sample Answer 3

Students should begin by stating that abortion is illegal in this Jurisdiction other than in the most extreme circumstances as a result of The Protection of Life During Pregnancy Act 2013. Students should discuss Lisbeth's situation, in particular that being a victim of rape is not a ground for abortion in this jurisdiction but that if the 'drastic' thing that Lisbeth intends to do as a result of the pregnancy is to die by suicide then she would be allowed to have an abortion here as a result of the above Act, the X case, and the A, B, and C case. There is a potential difficulty for Lisbeth as regards travel as she is still a minor so students should address this situation with reference to the Ms D case and the 13th Amendment of the Constitution. The information she may need, as with Erica can be obtained as a result of 14th Amendment of the Constitution. In advising Erica, students should point out that she cannot currently obtain an abortion in this Jurisdiction. Her only option is to travel for one and can do so as a result of the negative right of freedom to travel as a result of the 13th Amendment of the Constitution and as with Lisbeth, is allowed to receive literature related to abortion services abroad as a result of the 14th Amendment.

Question 4

Referring to the consequences of a declaration of unconstitutionality, Murray CJ in *A v Governor of Arbour Hill Prison* [2006] 4 IR 88, at 131, observed:

"The judicial dicta and conclusions in cases which have come before this court and which touch on the question of the retrospective effect of judicial decisions condemning a law for unconstitutionality in my view, support the principle of limited rather than complete or absolute retrospectivity."

Critically discuss the approach of the courts to the issue of retrospective effect of a declaration of unconstitutionality. In doing so you must refer to case law and academic commentary.

Sample Answer 4

- *The student is expected to expose the law in relation to the consequences of such a declaration.*
- *The student should explain the rules in relation to when an invalidity is regarded to arise, i.e. date of judgment -v- enactment, the primary principle of absolute retroactivity, the policy considerations which militate against absolutism: McMahon, Maher, DeBurca, State (Byrne), McDonnell, A, Damache and related cases such as Kavanagh, Bolger, O'Callaghan, Willis*
- *The notion of partial unconstitutionality and severance, King, Maher, TO'G, Douglas, McLnerney*
- *Students should provide a competent account of the law, and should in addition be able to relate this account to academic debates in the area.*

- *Better students will display a deeper understanding of the law and in particular, the relevant policy factors which militate against absolute retroactivity, and will in addition be in a position to place the policy analysis of the court in this area in juxtaposition to the reticence to engage in policy considerations in other areas.*

Question 5

The Church of the First Order is a recognised religion with around 5,000 adherents in Ireland. All members of the church live on Inis Allan, a remote island off the coast of County Louth. There are houses, shops, a post office, a hotel and a pub on the island. One of the central teachings in the Church of the First Order is that its members should only drink alcohol on Sundays.

The Minister for Justice and Equality, in response to growing rates of alcoholism in Ireland, has introduced the Public House (Regulation) Act 2018. Section 9 of the 2018 Act prohibits all public houses in the jurisdiction from opening on Sundays. Any publican who opens his public house on a Sunday faces a fine of up to €10,000 and/or 3 months imprisonment.

However, following representations made by the Church of the First Order, the Minister allows for an exception to the provisions of the 2018 Act in the case of the pub on Inis Allan. This exception allows that pub to open on Sundays from 4pm until 9pm.

Muhammad is a publican in North Dublin. He is horrified at the provisions of the 2018 Act, as a huge amount of his weekly revenue is made on Sundays. While he accepts that the government needs to take action to address alcoholism, he thinks it is particularly unfair that some pubs (such as the one on Inis Allan) can open on Sundays just because their customers have particular religious beliefs.

In defiance of the law, Muhammad decides that he is going to continue opening on Sundays, and lets his customers know that he will not be obeying the provisions of the 2018 Act. Muhammad has also discovered from a conversation with one of his regulars (who claims to have a law degree) that he can go to the High Court and challenge the 2018 Act, by arguing that it is impermissible under our Constitution.

Muhammad asks for your opinion, firstly, on whether he is entitled to challenge the provisions of the 2018 Act, and secondly, whether any such challenge would be successful.

Sample Answer 5

This question address two discrete elements of the Constitutional Law course: locus standi and freedom of religion.

In respect of locus standi, students should refer to the classic test in Cahill v. Sutton and any relevant exceptions thereto. In particular, students should conclude on the basis of the Norris case that Muhammad has locus standi to bring the proceedings, as his rights are under immediate threat and/or he is faced with a potential criminal prosecution.

In respect of the freedom of religion element of the question, students should identify the tension inherent in Article 44 between the State's obligation not to discriminate on religious grounds, and the right of citizens to practice freely their religion. On the basis of the Quinn's Supermarkets case, students should conclude that the Act is constitutional.

Stronger students may also include other Irish case law and discuss the implications of Article 9 of the ECHR.

Question 6

The constitutional position adopted by the State towards Northern Ireland has not only been politically controversial, but has provoked much legal discussion, including from the Supreme Court. How has the constitutional position towards Northern Ireland changed over the years? To what extent have the Irish courts interfered with government policy in relation to Northern Ireland?

Sample Answer 6

*Students are expected to chart the trajectory of the position of Ireland's national sovereignty from 1937 to date. Clearly, this will require an analysis of the text of the Constitution, and a comparison of the pre-Good Friday Agreement Articles 2 & 3 and the post-Good Friday Agreement Articles 2 & 3. Students are also expected to deal with cases such as *In re Article 26* and the *Criminal Law (Jurisdiction) Bill*, *Boland* and *McGimpsey* in the context of the position adopted by the courts. Stronger students will contextualise their answer by reference to concepts of the People and Sovereignty generally, and by reference to the relevant political backdrop.*