Institute of Public Administration

Administrative Law

Supplemental Course Materials

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Contents

Purpose of This Document

The purpose of this document is threefold. First, it is to provide some written and general feedback on the first batch of assignments and to offer some guidance on how to approach the second assignment. Second, it is to supply students with some supplemental material which is *essential* reading for the course (and exams). Third, it is provide students with some concrete guidance as to the exam "shape" and to that effect, a sample paper is enclosed coupled with some observations on the "examinability" of materials discussed thus far.

Course Pacing

The on-site lectures began on September 20th, 2007 and ended on the 13th December 2007. This period has covered Chapters 1-11 in the manual inclusive. The second term includes the dates between January 7th and April 3rd, 2008 which covers 12 more classes. This period will see us cover the balance of the manual on (roughly) a one-chapter-per-class basis. Distance education students should have no hesitation in emailing me at brianfoleybl@gmail.com if they want a concrete position at any given time over the second term as to where we are in class.

Web Materials

As indicated previously, supplemental materials and slides (if any) used in class are posted at http://www.brianfoley.ie. The slides are, in no way, essential reading for the course, put simply assist in oral delivery of the materials. Any supplemental materials which have been posted on the web-site are included in this document.

On the web-site are various comments and guidelines which students might bear in mind when approaching the materials. I really advise that you consider some of the comments posted on the website in relation to how to answer particular exam questions (should they arise)

Again, my email is brianfoleybl@gmail.com and I am always available to answer any particular problems you may have.Assignments

Assignments

Hopefully, a few general words about the first batch of assignments will help you in the second one.

- Whereas this may seem very obvious, you should always, always, answer the question actually asked. The assignment asked you to discuss the effect of the theory of the separation of powers *on the development of administrative law*. Many candidates simply provided essays "on" the separation of powers.

- If you think you have a good idea, please explain it! Certain candidates had the very good idea that issues such as cabinet confidentiality and the non-delegation doctrine (i.e. delegated legislation) were relevant to the assignment. However, some candidates simply put down "all they know" about those different areas without explaining why or how the courts approach in such areas indicated anything about a particular approach to administrative law.

- Critical analysis will always warrant higher marks than pure description of case-law. You should bear this in mind for the second assignment.

Your second assignment requires you to research and write on the topic of executive privilege. As an absolute *minimum* you should read the materials at pages 17-20 of the manual. This should be supplemented by studying the materials at pages of 935-952 of Hogan and Morgan, *Administrative Law in Ireland*, (3rd ed, Thomson Round Hall, 1998). You will note, in particular, that the manual does not go into any detail relating to the issue of *cabinet confidentiality* and the circumstances leading to the 17th amendment of the Constitution. This is discussed in full in the textbook and is something you pay close attention to. You might note that Gerard Hogan (i.e. the Hogan in Hogan & Morgan) is also co-editor of Kelly, *The Irish Constitution* (Hogan & Whyte eds., 4th Ed., Dublin, Butterworths, 2003) which contains valuable analysis of the issue. You might note, however, that the third edition of Kelly (*The Irish Constitution* (Hogan & Whyte eds., 3rd Ed., Dublin, Butterworths, 1994)) is a good substitute on this particular issue given that the third edition was written when the cabinet confidentiality issue was a "live one".

What is the link between the cabinet confidentiality issue and executive privilege? Well, you will see that the *Murphy* and *Ambiorix* cases represent certain *values* and *principles* about the broad issue of "confidentiality" and "privilege" when it is claimed by the executive. The cabinet confidentiality issue arose because the Beef Tribunal ran into an obstacle when the Attorney General objected that certain matters on which Ray Burke TD was to give evidence would involve him disclosing the contents of government meetings. Now, Article 28.4 (which you should read) enshrines the notion of "collective responsibility" of the government. It was argued that *if* disclosure of the goings on of Government meetings was permitted it may well demonstrate that the Government is split on certain matters and so on which would

undermine the notion that the Government speaks with one agreed voice as it is collectively responsible. This line of argument won the day in the case of *Attorney General v Hamilton (No.1)* [1993] 2 IR 250. You need to pay close attention to how this decision "fits in" with the principles of *Murphy* and *Ambiorix* and you might pay close attention to the significance of the 17th amendment which, effectively, overturned *Attorney General v Hamilton (No.1)* [1993] 2 IR 250.

Throughout the assignment you should attempt to make the association between the courts stance on executive privilege and wider issues in the separation of powers. Why are the courts so keen to assert that only *they* can decide on claims of privilege? Do you think it is something to do with how jealously the courts guard their own "patch" – and does the decision in *Buckley v the Attorney General* [1950] IR 67

Supplemental Materials – Additional Materials

Ombudsman

Chapters 8 and 9 of the manual deal with the Ombudsman. Some of the observations made in those chapters are somewhat out of date. There is a post on the website of the 4th December where you can access the powerpoint slides used for this topic under the heading of "Notes – Updates etc" (the address for this particular post is http://www.brianfoley.ie/?p=73). You will also see the comment that "I indicated that an exam question on the ombudsman would likely be something like "write an essay on the ombudsman" with very wide scope for external research".

If the ombudsman features on your examination this, indeed, will be the kind of question you will see. There is incredibly wide scope for you write a very good essay on the ombudsman. I suggest that you should comb the ombudsman website (http://ombudsman.gov.ie/en/) for material which you may find useful. I would suggest that you become familiar with the Ombudsman Act, 1980 (and its amending legislation) and, in particular, you become familiar with the *types* of cases and general approach of the ombudsman which you can gleam from the case summaries on the ombudsman website and, indeed, from the annual reports of the office (also on the ombudsman website). I would suggest that a good essay on the ombudsman would seek to explain the statutory basis for the Ombudsman, the kind of disputes the office deals with and, perhaps, the kind of dispute it cannot deal with and would include some observations of *how* the ombudsman views his/her own functions. There is significant scope for you to take this essay by the scruff of the neck and do quite well. The key is to take the time, do the research, and put together a clear, cogent and well-written essay.

Lesson 5 – Supplemental Update I

Please insert the following text after page 31 in your manual or just be aware that this update should follow the materials at that page.

Lesson 5 deals with "non judicial controls of delegated legislation". As you will have gathered via the manual, tutorials and/or weekly lectures, there is good reason to be have concerns about delegated legislation. The simplest reason is that some may think it undemocratic for a single member of the executive or even a statutory body to make law. Primary legislation, at least in theory, is passed by our elected representative who (again, in theory) all vote on law's which are brought into effect. This "democratic input", one may think, is not present in secondary legislation.

Lesson 4, in part, dealt with how the courts through use of Article 15 have effected some degree of control over delegated legislation. Lesson 5 examines the non-judicial method for effecting such control. As you can see page 31 describes the use of joint Oireachtas/Senate committees with a remit over delegated legislation. Please be familiar with the operation of these committees. This supplemental note should be read after page 31.

The overall aim of this lesson is to get you thinking as to whether non-judicial controls of secondary legislation are effective. Think along the lines of being able to provide an overview of the controls and some analysis of their efficacy.

In recent years, however, the operation of Dáil and Seanad committees has been drastically overhauled. For many years, however, committee performance in Ireland has been underwhelming and, indeed, strongly criticised. The traditional problem was that "committees", insofar as the legislative process are concerned (i.e. committees like the joint committee on public accounts don't have a role in the legislative process), didn't exist – rather the entire house itself sat as a "committee" after the second stage. There was therefore, no American-style system of sub-committees with particular briefs. The move from this model began with the joint Fine Gael/Labour government of the early 1980s who introduced a system of seven select committees who could take over the third stage from the relevant house. The story, however, of the select committees remained a depressing one. On its return to power in 1987 Fianna Fáil rolled back on most of the reforms. By the 1990s they remained relatively ineffective.

It is only in very recent times (since 1997) that our legislature has really shown any interest in establishing a serious committee system in the form of a quasi-permanent system of select committees with particular areas of defined responsibility. These reforms came with the 28th and 29th Dáil's and the Standing Orders Relative to Public Business, 1997. These Orders permitted the setting up of select committees and the devolution of numerous powers which were the first "real" committee system since 1983. The "new" system has proved relatively durable and has continued to the present day, now under the Standing Orders Relative to Public Business, 2002. As it stands, there are thirteen select committees established to which legislative proposals are "farmed out" for the committee stage of the legislative process. These are the:-

- Select Committee on Arts, Sport, Tourism, Community, Rural and Gaelteacht Affairs,
- Select Committee on Communications, Marine and Natural Resources,
- Select Committee on Education and Science,
- Select Committee on Enterprise and Small Business,
- Select Committee on the Environment and Local Government,
- Select Committee on European Affairs,
- Select Committee on Finance and the Public Service,
- Select Committee on Foreign Affairs, Select Committee on Health and Children, Select Committee on Justice, Equality, Defence and Women's Right,
- Select Committee on Social and Family Affairs and the Select Committee on Transport.

The last terms of reference for the select committees were agreed in the Dáil on 16 October, 2002. See 555 *Dáil Debates* 739-763. Those terms give the committees various power devolved from the Standing Orders Relative to Public Business, 2002 and, for the most part, give these committees the power to scrutinise legislation during the *third* stage of the legislative process after a Bill has been read in open

session. The Bill gets referred to a committee for intensive debate and any proposed amendments are returned to the house for a vote.

Select committees, *themselves* are not given a remit over delegated legislation and here is where things get very interesting. The terms of reference also make provision for *joint committees* which are, essentially a joinder of Dáil and Seanad select committees. They are established to consider:-

> (i) such public affairs administered by the Department of Agriculture and Food as it may select, including, in respect of Government policy, bodies under the aegis of that Department;
> (ii) such matters of policy for which the Minister for Agriculture and Food is officially responsible as it may select;
> (iii) such related policy issues as it may select concerning bodies which are partly or wholly funded by the State or which are established or appointed by Members of the Government or by the Oireachtas;
> (iv) such Statutory Instruments made by the Minister for Agriculture and Food and laid before both Houses of the Oireachtas as it may select;
> (v) such proposals for EU legislation and related policy issues as may be referred to it from time to time, in accordance with Standing Order 81(4);
> (vi) the strategy statement laid before each House of the Oireachtas by the Minister for Agriculture and Food pursuant to section 5(2) of the Public Service Management Act, 1997, and the Joint Committee shall be so authorised for the purposes of section 10 of that Act;
> (vii) such annual reports or annual reports and accounts, required by law and laid before either or both Houses of the Oireachtas, of bodies specified in paragraphs 2(a)(i) and (iii), and the overall operational results, statements of strategy and corporate plans of these bodies, as it may select;

The most interesting here is that it is provided that "the Joint Committee shall have the powers defined in Standing Order 81(1) to (9) inclusive." This is very important. The Standing Orders permit the devolution of various *listed* powers onto committees and among those listed for potential delegation is the power to engage, subject to the consent of the Minister for Finance, the services of experts to assist the committee in its functions. That is contained in Order 81(8) of Standing Orders Relative to Public Business, 2002. Aside from the Order 81(8) power to engage external assistance, Order 81 also allows the devolution of, inter alia, the power to take oral and written evidence per Order 81(1), the power to invite and accept submissions per Order 81(2), the power to appoint sub-committees per Order 81(3), the power to require attendance of member of Government or Minister per Order 81(5).

Twelve *select* committees have had devolved onto them the powers in Orders 81(1)-(3), save the Select Committee on Health and Children, who was only granted the powers under Order 81(1)-(2). So *none* of the established thirteen select committees are empowered to engage external expert assistance. On the other hand, *joint* committees are empowered to engage external assistance because they are given the full range of powers in Order 81(1)-(9), but joint committees have no role in scrutinising Bills laid before the house as part of the legislative process. Thus, it would seem that when a joint committee *selects* to consider a piece of delegated legislation it has some important investigative powers.

Lesson 5 – Supplemental Update II

Please insert this after page 37 in the manual or just be aware that this update should follow the materials at that page.

At this point a student can see that where *E.U. legislation* contains sufficient principles and policies such that the Minister is simply implementing such, no primary legislation is needed and thus there is no problem. However, if there is no sufficient principles and policies at the European level, the secondary legislation is not sufficient.

The issue arose again in *Maher v Minister for Agriculture*[1] which concerned the regulation of milk quotas pursuant to a Council Regulation which permitted Member States to exercise discretionary powers to re-organise such quotas. Ireland did this in the European Communities (Milk Quota) Regulations, 2000 one effect of which was to do away with the previous entitlement of farmers to sell quotas on with their land, much like taxi-licences used "follow the car".

Keane CJ concluded that *Meagher* could not support the view that, in cases where it is convenient or desirable for the community measure to be implemented in the form of a regulation rather than an Act, the making of the regulation can for that reason alone be regarded as "necessitated" by the obligations of membership.

Thus, the test became the "EU version" of the principles and policies test. In the instant case it was held that whereas a discretion existed it was a discretion circumscribed by the objectives of the scheme authorising it, and the choices as to policy left to the member states in the operation of the milk quota scheme throughout the European Union, had been reduced almost to vanishing point. Thus there was no unconstitutional delegation of power.

The matter was nicely summarised by the Supreme Court in *Browne v Minister for Agriculture*[2]

> It is clear from the decisions of this court in *Meagher -v- Minister for Agriculture and Food [1994] 1 IR 329* and *Maher -v Minister for Agriculture and Rural Development and Others* that the fact that, in such cases, the principles and policies to which the regulation gives effect are not to be found in any Act of the Oireachtas, but rather in the community measure concerned, does not affect its constitutional validity. It is beyond argument at this stage that the law as laid down by this court in *Cityview Press Limited -v- An Chomhairle Oiliuna,* that secondary legislation will trespass on the exclusive law making role of the Oireachtas unless it does no more than give effect to principles and policies laid down in an Act of the Oireachtas, is not applicable to regulations intended to give effect, by virtue of S.3 of the 1972 Act, to EC measures such as the 1998 Council Regulation.

The *Browne* case also highlights one important qualification to the powers conferred by the 1972 Act:-

> There is, however, one crucial qualification to that general statement of the law, namely, that any such regulation cannot create an <u>indictable offence.</u>

[1] [2001] 2 IR 139
[2] Unreported, Supreme Court, 16 July 2003.

Supplemental (and Replacement) Materials for Lesson 6

Please use these materials ***instead*** of pages 43-45 in the manual except for the "run-on" text of page 42 where Article 37.1 is re-produced. I hope they make the somewhat difficult issue discussed in those pages somewhat clearer. If you have problems, please email me at brianfoleybl@gmail.com.

These materials are *very* important for exam purposes.

Introduction

By this point you have read the text of Articles 34.1 and 37.1. You should understand that those provisions impose a general restriction on *devolving* the judicial power to bodies other than courts. But *limited* devolution is allowed, so long as it is not a criminal matter. So, we always want to know about two things. First, what does it mean to devolve the judicial power. Second, even if that has occurred, what distinguishes a limited power from a power which is not limited.

The Principles

The case of *McDonald v Bord na gCon*[3] provides the generally applicable and often used indicia of the judicial power. Kenny J described them as follows:-

> 1. A dispute or controversy as to the existence of legal rights or a violation of the law;
> 2. The determination or ascertainment of the rights of parties or the imposition of liabilities or the infliction of a penalty;
> 3. The final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;
> 4. The enforcement of those rights or liabilities or the imposition of a penalty by the Court or by the executive power of the State which is called in by the Court to enforce its judgment;
> 5. The making of an order by the Court, which as a matter of history is an order characteristic of Courts in this country.

It is notable that whereas this five-fold test is used on many occasions O'Flaherty J in *Keady v Commissioner of an Garda Siochánna*[4] said, of the critieria, that "it is possible to isolate two essential ingredients from these characteristics and they are that there has to be a contest between parties with the infliction of some form of penalty or liability on one of the parties".

Students should bear in mind that determining that a particular is akin to the judicial power does not end the matter. Rather, assuming we are dealing with a non-criminal matter, the ultimate question is whether the powers are *limited* or not, a question which we will look at later. For now, we will examine a range of cases where the Courts have considered whether or not the judicial power is engaged and in operation.

[3] [1965] IR 217
[4] [1992] 2 IR 197

The Case of Tribunals of Inquiry

On a few occasions, it has been argued that the processes of tribunals of inquiry amounted to an exercise of the judicial power. On all occasions, these claims have been rejected. The most celebrated example of this is the case of *Goodman v Hamilton*[5] in relation to the beef tribunal. Finlay CJ applied the *McDonald* criteria and held that essential aspects of the judicial power (i.e. of the administration of justice) were missing. There was, of course, per the first criterion, the existence of a dispute (i.e. a factual dispute between all the players) as to the existence of legal rights or a violation of the law. This, however, could not be enough to render the tribunal's proceedings to be an administration of justice. In particular, it was noted that the fifth criterion was not in operation – i.e. whatever the tribunal could do, it could not make an order which, as a matter of history, was an order characteristic of a Court. Rather, it was simply a fact finding operation and it has *never* been a function of the Courts to simply find facts without ultimately leading to some Order in satisfaction of the dispute between the parties.

Hamilton CJ in the later case of *Haughey v Moriarty*[6] noted, in a somewhat stronger fashion that in *Goodman* that tribunals "fulfil none of the fundamental characteristics of the administration of justice".

When are disciplinary hearings an administration of justice? Students should, of course, bear in mind the discussion of the criminal provision in Article 37.1 above. If the proceedings, even if appearing disciplinary in nature, are related – in the legal sense as discussed above – to criminal matters, then they are matters purely within the judicial domain. In that regard, students should have regard to the discussion above.

The landmark case in this respect, around which many of the later cases try to argue and reason is *Re the Solicitors Act, 1954*.[7] This case concerned the exercise of the Law Society of its Disciplinary Committee into the affairs of two solicitors. The powers of the Committee are of vital importance. The Committee was empowered *inter alia* to strike a name off the roll of solicitors and order the payment by any party to the inquiry of the costs thereof or of a sum by way of contribution to the costs thereof. In the High Court Maguire CJ (he was a judge of the High Court when he heard it) held that this was an administration of justice. He paid particular attention to the fact that, as per *McDonald v Bord na gCon*[8],

> the committee purports to decide the controversy in a final manner and if necessary its decision will be enforced by the authority of the State. The fact that there is a right of appeal (s. 23) to the Courts does not take away from the finality of the decision.

He held, however, that the powers were limited in nature and thus there was no unconstitutional usurpation of the judicial domain. The Supreme Court disagreed on this point emphasising that the Court must look to the nature and effect of the powers exercised, not simply the "number" of powers held by such a body:-

> The test as to whether a power is or is not "limited" in the opinion of the Court, lies in the effect of the assigned power when exercised. If the exercise of the assigned powers and functions is calculated ordinarily to affect in the

[5] [1992] 2 IR 542
[6] [1992] 2 IR 197
[7] [1960] IR 239
[8] [1965] IR 217

> most profound and far-reaching way the lives, liberties, fortunes or reputations of those against whom they are exercised they cannot properly be described as "limited."

In this case, the Supreme Court held that the powers constituted an administration of justice:-

> The powers and functions conferred by the Act on the Committee to which we have called attention are of such a far-reaching nature that their exercise amounts to an administration of justice, nor, for the reasons given earlier in this judgment, can they be described as merely limited powers and functions of a judicial nature within Article 37. Their exercise is unconstitutional. It follows that the two appellants were not validly struck off the roll of solicitors.

A similar issue arose in *M v Medical Council*.[9] Under the Medical Practitioners Act, 1978 allegations of professional misconduct are investigated by a Fitness to Practice Committee who reports to the Medical Council. Section 46 provides that, having considered that report, the Council may decide (inter alia) that the practitioner's name should be erased from the general register of medical practitioners and, in that event, the practitioner may apply to the High Court under s. 46 for an order cancelling the decision of the Council; if no such application is made by the practitioner, the Council may apply to the High Court for an order affirming its decision. Students should note that the Council *itself*, unlike the Law Society, could not erase the name from the register. Here a "decision" had been made to erase and it was argued that it was unconstitutional for the reasons we have been discussing thus far. Finlay P rejected this argument.

He noted that a "very striking difference" existed between this case and *Re the Solicitors Act, 1954* insofar there was no power to erase the name from the register nor was there power to suspend a practitioner from practice or attach conditions to the continuation of his practice or to make him pay compensation or award costs against him. All the Council could do was initiate proceedings in the High Court which *could* lead to the Court making orders in respect of matters like the above. Thus he held that they were not judicial powers and if they were they were limited in nature. The only powers which the Committee or Council had were to publish the finding of the Committee or the decision of the Council and the power of the Council under s. 48 to advise, admonish, or censure a medical practitioner however Finlay P held that such would be so limited as to come within the Article 37.1 exemption.

A related case is *K v An Bord Altranais*.[10] The Nurses Act, 1985 contained powers very similar to under the Medical Practitioners Act, 1978. In hearing the appeal from the High Court the Supreme Court commented that *had* the power to erase from the register been invested to the respondent Board, there would have been a constitutional problem. The case essentially confirms that it is in the High Court where the effective decision leading to an erasure or suspension of the operation of registration is to be made.

These principles came to be applied in *Keady v Commissioner of an Garda Siochánna*.[11] This concerned the Garda Síochána (Discipline) Regulations, 1971, which provided that any act or omission described by a reference number in the Schedule to the Regulations shall be a breach of discipline for which, following such a

[9] [1984] IR 485
[10] [1990] 2 IR 396
[11] [1992] 2 IR 197

determination by a tribunal of inquiry established under Regulations, the Commissioner shall "decide what disciplinary action shall be taken". Keady was, essentially, accused of making false claims for hours worked and when an inquiry was held, it reported to the respondent who decided to dismiss him from the force. Now, bear in mind that *K* had seemed to say that this "kind of thing" was, perhaps, something for the High Court alone. O'Flaherty J did not agree. He argued that the *Re the Solicitors Act, 1954* was "exceptional" and "perhaps, anomalous" and "owes a great deal to the historic fact that judges always were responsible for the decision to strike solicitors off the roll …"

> In contrast, the Garda Síochána is a force, which consists of members each of whom on appointment undertakes the duty of preserving the peace and preventing crime. The members comprise a disciplined force who are subject to the authority of the commissioner in whom the general direction and control of the force is vested: section 8 Police Forces Amalgamation Act 1925. Membership of that force carries rights and privileges not possessed by other citizens; it also involves onerous duties not shared by others. The force could not properly carry out its essential function of preserving law and order unless there was an entitlement in the commissioner to enforce discipline, which necessarily involves the ultimate sanction of dismissal from the force for sufficiently grave breaches of discipline …

In respect of *K* he argued that:-

> The *K.* case was concerned with the taking away or the suspension of a professional qualification; it is to be distinguished from this case because while a garda who is dismissed loses his immediate employment he does not lose any qualification by virtue of his dismissal …

He concluded, therefore, that the inquiry did not trespass onto the judicial domain.

Whereas the decision in *Melton Enterprises v Censorship of Publications Board*[12] did not concern disciplinary proceedings per se, it is interesting in respect of the comments made about *Re the Solicitors Act, 1954.* In this case, whereas the Supreme Court held that various censorship powers were not in relation to "criminal matters" it came to be considered whether or not the powers were "limited". Keane CJ approved the test as to the meaning of "limited" from the *Solicitors* case:-

> The test as to whether a power is or is not 'limited' in the opinion of the court, lies in the effect of the assigned power when exercised. If the exercise of the assigned powers and functions is calculated ordinarily to affect in the most profound and far reaching way the lives, liberties, fortunes or reputations of those against whom they are exercised they cannot possibly be described as 'limited'.

However, in this case, the Court found that the powers were, in fact, limited and contrasted with the *Solicitors* case:-

> It is clear from the judgment of Kingsmill Moore J. that two factors led to the court's conclusion that the provisions were constitutionally invalid and not saved by Article 37.1. The first was the consequence for a solicitor of being struck off the rolls, which was described as a sanction of such severity that, in its consequences, it could be much more serious than a term of imprisonment.

[12] [2003] IESC 55

> The second was that the act of striking solicitors off the rolls had always been reserved to judges. No such considerations arise in the present case. Undoubtedly, a determination by the first respondent that a person or body has published an indecent or obscene periodical is one which could adversely affect the reputation of the publisher. The same could be said of many other decisions which are legitimately made by bodies other than courts which are entrusted by the Oireachtas with powers and functions of a judicial nature. The specific consequence which follows - a ban on the sale or distribution of the publications for a limited period - is far removed in gravity from the disqualification of a person from carrying on a trade or profession. The effects of the first respondent's functions, although in some instances at least of a serious nature, cannot in the view of the court, be described as"profound and far reaching".

By way of exam direction on this topic, you should bear the following in mind. Please also look at the sample paper.

- Be able to write an essay describing when it is unconstitutional to grant powers to a tribunal.
- Be able to provide advice (maybe in the form of a memo) to a Minister who asks you to help him with understanding when powers might trespass into the "administration of justice.
- Be able to spell out the indicia used in the *McDonald* case and elaborate on the *Re the Solicitors Act, 1954* case. Discuss how that case has been treated in later case-law.

Sample Paper

Ollscoil na hÉireann
NATIONAL UNIVERSITY OF IRELAND

An Foras Riaracháin
INSTITUTE OF PUBLIC ADMINISTRATION
BACHELOR OF ARTS

STAGE 3: ADMINISTRATIVE LAW

Answer FOUR questions. Use a separate answer book for each question. All questions carry equal marks. Please note that some questions have internal options – i.e. answer (a) or (b).

Duration 3 hours.

Please be sure to refer to case-law in your answers where relevant.

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1. ***Answer (a) or (b)***

   (a) Is Article 15 of the Constitution an effective tool for controlling the delegation of law-making power to the executive?

   (b) Write a essay analysing the *non-judicial controls* of delegated legislation.

2. The Minister for Justice. He is concerned about corruption and illegal charging in the banking sector. He wants to establish a body called the "Standards in Banking Tribunal" which will carry out investigations into any given bank official to determine if they are party to illegal charging or corruption. This will done in the "Standards in Banking Act, 2008" which the Minister wishes to introduce into law. If the official is found to be party to such activities the Act provides that they will be banned from any employment in the "banking and financial sector" for five years. The official may also be ordered by Standards in Banking Tribunal to *personally* pay for the costs of the hearing.

   The Minister is concerned that the Standards in Banking Tribunal could be found to be "administering justice". He does not fully understand what this means. Please provide a memorandum to the Minister outlining the circumstances in which any given decision-making body will be held to be "administering justice" and please advise him whether, in your view, the Standards in Banking Tribunal would be administering justice and, if so, whether you believe its functions would constitute a *limited* administration of justice.

3. Compare and contrast the Original (or "Pure") and Modern Theories of Jurisdiction.

4. Write an essay on the Ombudsman

5. Write an essay explaining the maxim "Nemo Iudex in Causa Sua" and outlining the way in which the courts have applied it.

6. How does one establish a "legitimate expectation" in law?

7. By referring to the maxim "Audi Alterem Partem" the courts have created a whole host of important protections which will always guarantee a fair hearing. **Discuss.**

8. Answer (a) or (b)

(a) When is it permissible for a court to judicially review an exercise of a *discretionary power*.

(b) Please explain the difference between mandatory and directory statutory provisions.