Legal systems in Ireland: overview

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CONSTITUTION

Form

1. What form does your constitution take?

The Constitution (Bunreacht na hÉireann, enacted in 1937) is the fundamental legal document that sets out in its 50 Articles how Ireland should be governed. The Constitution is set out in both the Irish and English languages.

General constitutional features

2. What system of governance is provided for?

System

The Constitution sets out the basic governance structure of the state. Article 5 provides that Ireland is "a sovereign, independent, democratic state". Article 6 recognises and establishes a tripartite separation of powers, dividing the powers of government between the legislature, executive and judiciary.

Head of state

The President is the head of state and is elected by presidential election. The role is largely ceremonial, although several discretionary powers are also provided for by the Constitution.

Structure

The Constitution provides for three powers of government:

- Legislative (Article 19).
- Executive (Article 28).
- Judicial (Articles 34 to 39).

Legislature

The Parliament (Oireachtas) has the sole and exclusive power of making laws. The Oireachtas is a bicameral legislature, composed of the House of Representatives (Dáil Éireann) and the Senate (Seanad Éireann).

Executive

Executive power in domestic and international affairs is exercised by or on the authority of the government. The government is comprised of seven to 15 members, including the Prime Minister (Taoiseacht) and the Deputy Prime Minister (Tánaiste), and is responsible to the House of Representatives and acts on the basis of collective responsibility.

Judiciary

The Constitution provides that justice must be administered in public in courts of first instance and courts of appeal by independent judges appointed by law. There are five tiers of courts, which are the:

- Supreme Court.
- Court of Appeal.
- High Court.
- Circuit Court.

District Court.

3. Does the constitution provide for a separation of powers?

The Constitution provides for a separation of powers between the legislature, executive and judiciary (see Question 2).

4. What is the general legislative process?

The sole and exclusive power of making laws is vested in Parliament (Oireachtas) which debates proposals and enacts legislation in a formal process governed by the Constitution and the Standing Orders of the House of Representatives and Senate. The process in relation to government Bills (rather than private members Bills, which are public general Bills drafted on behalf of a member of the opposition) is described below.

Proposal and drafting

All Bills except money Bills and consolidation Bills require cabinet approval before they can be drafted by the Office of Parliamentary Counsel. The relevant department must obtain the respective minister's approval for the proposal. A draft Memorandum for Government will be circulated to concerned departments (including the Attorney General's office). The Minister then submits the Memorandum to the government.

If approval is given for the Bill to be drafted, the promoting department requests the Attorney General to arrange its drafting.

Scrutiny

Before the Bill starts its passage through the formal parliamentary legislative process, pre-legislative scrutiny of the Bill must be undertaken by an appropriate parliamentary committee unless there are exceptional reasons that prevent pre-legislative consideration. Once the pre-legislative consideration stage has been completed, the drafting of the Bill is complete and it continues on to the formal process.

Enactment

Public bills and private Bills can be commenced in either the House of Representatives or the Senate. There are, however, a number of exceptions to the rule that Bills can be commenced in either House.

Money Bills dealing with taxation and expenditure and also Bills to amend the Constitution can only be initiated in the House of Representatives.

There are five stages in the legislative process in the initiating House.

- First stage: initiation of a BILL. A Bill can be initiated in one of two ways:
  - by the formal presentation of a Bill without the prior permission of the House;
  - by seeking leave to introduce a Bill.
Second stage: debate on general provisions. A debate takes place on the motion "That the Bill be now read a second time". The principal provisions of the Bill are considered and debated in the general context of whether the law should be amended as broadly envisaged.

Third stage: consideration by committee. A detailed section-by-section analysis of the Bill is undertaken, either in the committee of the whole House or, more frequently, in a select committee. It is during this stage that the Bill is considered in detail, along with a consideration of any potential amendments to it. The committee has the power to amend the Bill, providing the amendments do not conflict with the general principles of the Bill. Each section and each amendment proposed is voted on individually. Once the committee has completed its analysis, it orders the Bill to be printed and it will be placed before the House of Representatives or Senate, whichever is the relevant House, for its consideration.

Fourth stage: report stage. The relevant House reviews the Bill as amended at the committee stage. Consideration is limited to tabled amendments which arise from proceedings at committee stage. Where the committee did not make any amendments to the Bill, it can proceed directly to the fifth stage. The Bill can also be recommitted as a whole or in respect of certain sections or amendments. This essentially means that the Bill will be returned to the committee stage. If this occurs, the restrictions on amendments are removed.

Fifth stage: final stage. The House considers and votes on the motion "that the Bill do now pass". No further amendments, except verbal ones, are permitted. When the Bill has passed all five stages of the legislative process in the initiating House, the Bill is sent to the second House for consideration. The Bill goes through the same process in the second House with the exception of stage one. However, in relation to Money Bills, the Senate has only the capacity to make recommendations on what is proposed and is not empowered to make amendments.

Once a Bill has been passed or deemed to have been passed by both Houses, the Prime Minister presents it to the President for signature and for enactment as a law. Every Bill becomes law from the day on which it is signed by the President, and, unless the contrary intention appears in the Bill itself, comes into operation on that day. The final stage of the process is the promulgation of the Act which is done by publishing a notice in the Official Journal (Iris Oifigiúil).

Under the Constitution, there are two circumstances where the President can refuse to sign a Bill pursuant to Articles 26 and 27:

- Where the President has concerns regarding its constitutionality (Article 26). The President can, on the advice of the Council of State, refer the Bill to the Supreme Court to test its constitutionality. The Supreme Court must pronounce whether the Bill, or any of its provisions, is repugnant to the Constitution and where:
  - a Bill is found to be constitutional, the President must sign it into law "as soon as may be" once the Court's decision has been given. Once enacted, the Bill can never again be challenged in any court;
  - the Supreme Court decides the Bill is repugnant to the Constitution, the President must refuse to sign it into law.
- Where it contains a proposal of such national importance that "the will of the people thereon ought to be ascertained", in other words, a referendum must be held on the issue(Article 27). Article 27 has, however, never been invoked.

5. Is there a doctrine by which the judiciary can review legislative and executive actions?

Judges of the High Court, Court of Appeal and Supreme Court have the power to review the compatibility of statutes with the Constitution and to judicially review subordinate legislation, decisions or actions of the government or state bodies to determine their legality and compatibility with the Constitution and with principles deriving from it, such as due process.

A judge's function of reviewing legislation under the Constitution is limited to declaring an Act to be invalid and he or she cannot substitute a more desirable form of legislation nor indicate to the legislature an appropriate replacement for the impugned enactment. The courts have also held that the principle of severability should only be applied to save part of a statutory provision which is otherwise unconstitutional where such an exercise will not render the provision futile or turn the provision into something which the legislature had not envisaged.

The judiciary can review executive actions (actions of public bodies) by judicial review. Judicial review is a procedure which enables persons to challenge, in the High Court at first instance, decisions or omissions of public bodies, made in the course of exercising public functions. In a judicial review, the court is not generally concerned with the merits of the decision but whether it is being or has been made beyond the powers of the body. In this regard, public bodies must apply the relevant law, as well as exercising only those functions conferred on them, and do so in a procedurally correct and fair way.

Judicial review is a comparatively speedy and effective type of action that is brought to:

- Prevent a public body from doing something it ought not to do.
- Make it do something it has a duty to do.
- Stop it from doing something in an incorrect and/or unfair way.
- Set aside decisions made:
  - on the basis of an incorrect and/or unfair process.
  - without authority, irrationally or without supporting material.
- Ask the court to declare the position at law regarding the above matters, and, in some cases, award damages.

The courts can also grant interim relief, such as an injunction or a stay or freeze on a decision, pending further order, or the outcome of the proceedings as a whole.

A decision that has been set aside by the courts is void and of no legal force or effect. The court will not re-make any decision, but sends it back to the original decision-making authority so that the decision-making can be conducted in a proper fashion.

6. Are certain emergency powers reserved for the executive?

The scope of the executive's powers in a national emergency is set out in Article 28.3.2, which provides that in the case of invasion, the government can take whatever steps it considers necessary for the protection of the state. The government also has the emergency power to suspend ordinary constitutional safeguards and to withdraw Acts of the Parliament from judicial control "for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law."
The only exception to this emergency power is a prohibition on the legislative reintroduction of the death penalty.

The Protection of the Community (Special Powers) Act 1926 provides a statutory basis for the executive’s powers in a national emergency not necessarily associated with war or armed rebellion.

### 7. Are human rights constitutionally protected?

Articles 40 to 44 of the Constitution recognise the fundamental personal rights of individual citizens. The Constitution does not create these rights but acknowledges that the individual has an inalienable possession of them.

“Enumerated” rights are defined as follows:
- Rights to equality before the law, to life, liberty, good name, freedom of expression, assembly and association (Article 40).
- Family rights (Article 41).
- Right to education (Article 42).
- Children’s rights (Article 42A).
- Right to private property (Article 43).
- Right to free practice of religion (Article 44).

The judiciary has also declared that certain “unenumerated” rights are lawful if they flow from
- An existing enumerated right (see above).
- The “Christian and democratic nature of the state”.
- Natural law or as a natural corollary of another unenumerated right.

Examples of such rights include the right to bodily integrity and the right to privacy.

Fundamental rights are not absolute and the Parliament can limit or restrict them on the grounds, for example, of the common good or public order.

**Amendment**

### 8. By what means can the constitution be amended?

Under Article 46 of the Constitution, any provision of the Constitution can be amended by variation, addition or repeal. Every proposal for amendment must be initiated in the Parliament as a Bill. Once passed or deemed passed by both Houses of the Parliament, the Bill is submitted by referendum to the decision of the people.

Article 47.1 requires the people to express their approval or disapproval by a simple majority.

**LEGAL SYSTEM**

**Form**

### 9. What form does your legal system take?

Ireland has a common law legal system.

**Main sources of law**

### 10. What are the main domestic sources of law?

In Ireland, there are four primary sources of law:
- The Constitution. This is the highest ranking domestic source of law.
- Legislation. This is the next highest ranking domestic source of law. Legislation can create, alter or revoke law, once in compliance with the Constitution and Ireland’s obligations under EU law.
- Case-law. The third primary source of law is common law or case-law. A hierarchy also operates within the case-law system and a judge must generally follow decisions of courts higher than his or her own. Where there is a conflict between two judgments, the ranking of the court that issued the judgment decides which should apply.
- EU law. The fourth primary source of law is EU law. In certain areas of competence, EU law is the highest ranking source of law in Ireland, and where Irish law conflicts with EU law, EU law prevails (Article 29.4.6, Constitution).

### 11. To what extent do international sources of law apply?

**EU law**

Laws enacted by the EU have the force of law in Ireland. Certain forms of EU laws, such as regulations are directly applicable with no requirement for an intermediate implementing step to give them legal force in Ireland (see Question 10).

Other forms of EU laws, such as EU directives, set down certain results that must be achieved and establish the time limit for their implementation in domestic law. Implementing measures must be passed at national level to bring the domestic laws into line with the requirements of the directive. The Irish Government decides on the form and method of the legislation necessary to achieve the result required.

Where there is a conflict between EU law and any provisions of the Constitution or any other domestic law, EU law takes priority and is binding on the national courts. A referendum is required to amend the Constitution where it is proposed that the EU treaties be amended in a way that impinges on the sovereignty of the Irish state.

**International law**

Articles 29.1 to 29.3 of the Constitution commit Ireland to the rule of international law and the peaceful settlement of international disputes. Ireland is a signatory to numerous international treaties and conventions, including the:
- International Covenant on Civil and Political Rights.

Ireland is a dualist legal system, which means that international agreements do not have the force of law unless they are implemented into national law, usually by means of an Act of the Parliament pursuant to Article 29.6 of the Constitution. Such legislation must be consistent with the provisions of the Constitution. International agreements do not have higher status than ordinary legislation. Primary legislation giving effect to international agreements prevails over inconsistent secondary legislation or common law.

**Court structure and hierarchy**

### 12. What is the general court structure and hierarchy?

The Constitution outlines the structure of the court system which is comprised of the:

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• Supreme Court (the court of final appeal).
• Court of Appeal.
• Courts of first instance, which include:
  - the High Court with full jurisdiction in all criminal and civil matters (when the High Court is hearing criminal matters it is known as the Central Criminal Court);
  - courts of limited jurisdiction, that is, the Circuit Court and the District Court, which are organised on a regional basis.

The Supreme Court has appellate jurisdiction from a decision of the Court of Appeal which involves a matter of general public importance or against which an appeal is considered necessary in the interests of justice.

The Supreme Court also has appellate jurisdiction from a decision of the High Court in exceptional circumstances where the decision involves a matter of general public importance or an appeal is necessary in the interests of justice.

The Court of Appeal, save for the exceptions outlined above, has appellate jurisdiction from almost all decisions of the High Court (unless this is modified by legislation) and also has appellate jurisdiction from such decisions of other courts as is prescribed by law.

13. To what extent are lower courts bound by the decisions of higher courts?

All lower courts are bound to follow the decisions of superior courts.

14. Are there specialist courts for certain legal areas?

Commercial Court

The Commercial Court has operated as a division of the High Court since 2004. A special application must be made for entry into the Commercial Court and, in general, only disputes which fall into one or more of the prescribed categories of commercial proceedings and with a value of more than €1 million in value will be admitted. The Court retains the discretion to refuse admission to qualifying cases, for example where there is delay. Cases are dealt with quickly, with early trials, short deadlines and risk of costs penalties. Rules provide for directions hearings, case management conferences and pre-trial conferences, although most case management matters are dealt with at directions hearings. There are no pre-action protocols. There must be an exchange of witness evidence and experts’ reports before the hearing.

Children Court

The District Court sits as the Children Court when dealing with under 18 year-olds and came into operation in 2002. The Children Court deals with all charges against children in respect of minor offences and can deal with an indictable offence where the child consents. The Children Court cannot deal with the charge against the child where the judge decides that the offence with which the child has been charged is not a minor offence, that the offence is one which should be dealt with in the Central Criminal Court or the child has been charged with manslaughter.

In practice, the Children Court deals with the majority of indictable charges against children.

Special Criminal Court

The Special Criminal Court tries terrorism and serious organised crime cases. This court is established where ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. The court sits with three judges and no jury. The rules of evidence that apply in proceedings before this court are the same as those applicable to trials in the Central Criminal Court (see Question 12). The Special Criminal Court is authorised to make rules governing its own practice and procedure. An appeal against conviction or sentence by a Special Criminal Court can be taken to the Court of Appeal.

Specialist judges on personal insolvency

Specialist judges of the Circuit Court facilitate the speedy consideration of personal insolvency applications to that court. At present, there are three such specialist judges.

15. Are other quasi-legal authorities commonly used?

Tribunals of Inquiry and Commissions of Investigation

The Parliament has the power to establish tribunals of inquiry to investigate certain matters of public importance and can give any tribunal it sets up powers to, for example:

• Hold public or private hearings.
• Make orders to force witnesses to attend and give evidence.
• Apply to the High Court if a person refuses to give evidence or is in contempt of the tribunal.

If the tribunal considers that there is sufficient reason to do so, it can order any person to pay the costs of another person appearing before the tribunal or the costs of the tribunal itself. This can happen if a person fails to cooperate with the tribunal or gives false or misleading evidence.

At the end of the tribunal’s investigation, it submits a report to the Parliament setting out its findings. In many cases, a tribunal of inquiry will also be given the power to make recommendations. The tribunal’s function is purely fact-finding and investigative. Although it can make recommendations, it does not make a binding judgment on the rights of individuals. Any statement or admission made at a tribunal cannot be used in evidence against a person in criminal proceedings. However, sometimes the findings of tribunals can give rise to an investigation leading to independent criminal or civil proceedings.

The Commissions of Investigation Act 2004 provides for the establishment of commissions of investigation which can investigate matters of significant public concern. They are a less expensive and speedier method of investigating matters than a tribunal of inquiry. In certain circumstances, a tribunal of inquiry can be set up after a commission has reported. A commission is set up by government order, which must be approved by the House of Representatives and Senate. The terms of reference are set by the government or by an individual minister. These terms must be accompanied by statements setting out the likely duration and cost of an investigation.

Disciplinary Tribunals

Disciplinary tribunals are quite common within the professions, whether established by legislation (for solicitors, doctors and nurses, for example), or by contract (for accountants, for example). Disciplinary tribunals have important decision-making powers which can have a significant effect on an individual’s professional career. Where such bodies are established by statute, the courts may be directly involved, as in the case of the disciplinary bodies for solicitors. In other instances, the decisions of such bodies are subject to judicial control either by means of judicial review or other private law remedies.

Ombudsmen

Specialist ombudsmen have been appointed to deal with complaints about organisations. There are a number of ombudsmen including:

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16. Does the constitution provide for an independent judiciary?

Independence in exercise of judicial functions
Judicial independence is guaranteed by Article 35.2 of the Constitution which requires judges to be independent in the exercise of their judicial functions and subject only to the Constitution and the law. On appointment, judges make a solemn declaration that they will adjudicate impartially "without fear or favour, affection or ill-will."

Security of tenure
Security of tenure is also a key aspect of judicial independence. Subject to a retirement age (which is currently 70 in most instances), a judge holds office on good behaviour. This means that a judge of the High Court, Court of Appeal or Supreme Court cannot be removed except for "stated misbehaviour or incapacity" and then only on resolutions passed by both Houses of the Parliament (Article 35.4.1, Constitution). Similar guarantees for judges of the Circuit Court and District Court are provided for by statute law.

Independence of the political process
A judge must be independent of the political process, since Article 35.3 of the Constitution provides that no judge is eligible to be a member of either House of the Parliament. A judge is also barred from holding any other office or position of emolument.

Security of remuneration
Security of remuneration has also been traditionally regarded as a key feature of judicial independence, in particular (Article 35.5, Constitution):

- The remuneration of judges must not be reduced during their time in office save for the imposition of taxes, levies or other charges imposed by law.
- Where reductions are made by law to the remuneration of persons paid out of public money in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

Protection is therefore provided against any future arbitrary reductions designed to impinge judicial independence.

17. How are members of the judiciary typically appointed?

Appointment
Judges must be appointed by the President (Article 35.1, Constitution). While the formal appointment of judges is made by the President, this power is exercised only on the advice of the government.

The Judicial Appointments Advisory Board is charged with identifying persons and informing the government on their suitability for appointment to judicial office. The Board consists of the following 11 people:

- The Chief Justice.
- The Presidents of the Court of Appeal, High Court, Circuit Court and District Court.
- The Attorney General.
- A practising barrister.
- A practising solicitor.
- Three persons identified as suitable by the Minister for Justice.

The Board advertises for applications for judicial appointments and forwards a list of seven suitable candidates to the government, without any ranking as to suitability, although the Government is not obliged to appoint from this list.

Qualifications
The Board can only recommend persons with the relevant qualifications. The minimum qualifications for judges vary according to the particular court to which a person is to be appointed, as follows:

- For appointment as a judge of the Supreme Court, Court of Appeal and High Court, the person must be:
  - a practising barrister or solicitor of at least 12 years’ experience who has practised for a continuous period of at least two years before the appointment;
  - a person who is or has been during the two years immediately before the appointment a judge of courts such as the Court of Justice of the European Communities or the European Court of Human Rights and was a practising barrister or practising solicitor before that appointment;
  - a judge of the Circuit Court who has served for at least two years.
- For appointment as a judge of the Circuit and District Court Bench, the person must be a practising barrister or solicitor of at least ten years’ experience.

Litigation (civil and criminal)

18. Do the courts use an adversarial, non-adversarial or other system?

Ireland has a predominantly adversarial court system.

19. Who is responsible for gathering evidence?

Civil cases
The parties are responsible for gathering evidence. Once litigation is reasonably anticipated, parties are advised to retain all relevant documents. Discovery (disclosure of documents) usually takes place after the filing of all of the formal documents in the case has
concluded. Order 31, rule 12 of the Rules of the Superior Courts 1986 (RSC, as amended), sets out the rules governing discovery. The discovery process involves the disclosure of relevant documents by one or all parties to the proceedings. A party must make a written request for voluntary discovery by the other party of all documents now or previously in its possession, power or procurement which are relevant to the dispute. If a party refuses a request for voluntary discovery, an application is usually made to have the disputed categories determined by a judge. Once discovery has been agreed or ordered by the judge, an affidavit of discovery is sworn by each party which lists all relevant privileged and non-privileged documents. The documents are then made available for inspection, unless exempt from production for reasons of legal privilege.

**Criminal cases**

There is a duty on the police force (Garda Síochána) to seek out evidence having a bearing on guilt or innocence. The obligation does not require the investigator to engage in disproportionate commitment of manpower or resources in an exhaustive search for every conceivable kind of evidence. The duty must be interpreted realistically on the facts of each case. The obligation to seek out and preserve evidence is to be reasonably interpreted and the relevance or potential relevance of the evidence needs to be considered. There is an obligation and responsibility on defence lawyers to seek material they consider relevant.

### 20. Is evidence independently examined before a trial?

At present, there is no general requirement for witness statements to be prepared and exchanged before trial, unless the parties agree otherwise.

In Commercial Court proceedings, however, the court directs the preparation and exchange of witness statements. Witnesses can be cross-examined in their statements and may be permitted to expand the contents of their statement.

There is no independent examination of evidence before the trial.

Certain rules are to become operational which govern pre-trial procedure for chancery and non-jury actions (Order 63C, RSC). These provide that:

- Parties give advance notice if they intend to call expert evidence at trial. In addition, they have to serve a summary of that evidence on the other party no later than 30 days prior to the trial. The latter rule also applies in relation to witness statements where a witness as to fact will be called at trial.
- At the case management or pre-trial conference stage or in the course of the trial, the judge can make an order specifying the nature of the evidence, or the witnesses, including expert witnesses, required to enable the court to determine the questions or issue arising in each or any module. The parties will also be required to exchange witness statements under the new rules.

### 21. Are trials/hearings open to the public?

Justice must be administered in public in the courts except in such special and limited cases as is prescribed by law (Article 34.1, Constitution). Before ordering proceedings to be heard in camera (where the public have restricted access to the hearing), the court must be satisfied that a public hearing of all or part of the proceedings would operate to deny justice in the particular case. Civil cases that can be heard in private include family law proceedings.

### 22. Are reporting restrictions typically imposed in relation to a trial?

#### Civil cases

In general, there are no reporting restrictions before, during or after the trial.

In respect of in camera hearings in family and child care proceedings (see Question 19), the Courts and Civil Law (Miscellaneous Provisions) Act 2013 altered the rules to allow bona fide members of the press to attend such proceedings. The Act allows for the preparation and publication of a report of the proceedings and/or of the decision of the court, provided that the report or judgment does not contain any information which would enable the parties to the proceedings, or any child to which the proceedings relate, to be identified.

A further example of where there may be reporting restrictions is where a person whose civil case revolves around his or her medical condition can apply to prohibit the publication of any details that would lead to the identification of that person. This application will only be granted if the identification of the person would be likely to cause him/her distress.

#### Criminal cases

In the case of the imposition of reporting restrictions in relation to a trial, a trial judge must balance the accused's constitutional right to a fair trial in due course of law against the right of the media to freedom of expression and the right of the public to receive information.

To impose a ban on the contemporaneous reporting of a trial, a trial judge must be satisfied both that:

- There is a real risk of an unfair trial if contemporaneous reporting is permitted.
- The damage which such improper reporting would cause could not be remedied by the trial judge by appropriate directions to the jury or otherwise.

There are further instances where reporting restrictions can be applied. Where the justice system has an interest in protecting the identity of victims, the name of the accused cannot be reported. This is provided for in the case of Incest (section 3, Criminal Law (Incest Proceedings) Act 1995).

### 23. What is the main function of the trial and who are the main parties to it?

#### Civil cases

The trial is the principal method for resolving legal disputes that parties cannot settle themselves or through less formal methods. The judge hears the evidence and decides on the claim, ensuring the fair and impartial administration of justice between the parties to an action. As a general rule, all issues are tried at the same time. However, issues of law may arise in the pleadings which lend themselves to being tried as a preliminary issue. Evidence is usually given orally by the parties and their witnesses and can be cross-examined. However, the court can order evidence to be taken otherwise than orally. Where there is sufficient reason and justice requires it, evidence of a particular witness can be taken by affidavit. Certain types of proceedings, for example, judicial review, are also usually based only on affidavit evidence. The court can also order evidence to be taken out of court by examination of the witness by a person appointed by the court. Factual and expert witnesses are generally called to give evidence at trial.
24. What is the main role of the judge and counsel in a trial?

Role of judiciary
In cases where there is a jury, issues of fact are for determination by a jury and issues of law are reserved for the judge. The judge decides whether evidence is admissible. The judge sets out for the jury the law on each of the charges/claims made. The judge also gives directions about the duties of the jury before deliberation on the verdict.

In all other cases, the judge decides the outcome of the case by listening to the evidence and legal submissions. The judge can direct questions to witnesses and counsel on any point on which he or she requires clarification.

Role of legal counsel
In civil cases, a party may be represented by lawyers. Solicitors have conduct of the litigation and attend the hearing. If it is necessary to involve a barrister in the case, the solicitor will brief the barrister by sending him or her all the necessary documents and information. A solicitor can represent the client in court, although in the High Court, Court of Appeal and Supreme Court, a barrister will usually be engaged.

In criminal cases, prosecution and defence counsel present their evidence and when this has concluded, they summarise their evidence and present arguments to support their case.

25. To what extent are juries used?

Civil cases
Civil cases are generally heard at first instance by a single judge. Since the abolition of juries in actions for the recovery of damages for personal injuries, trial by jury in civil matters is now restricted to certain causes of action within the jurisdiction of the High Court. A person is still entitled to a jury trial in certain actions, such as defamation, assault and false imprisonment.

Criminal cases
Save for a number of exceptions, no person can be tried on any criminal charge without a jury (Article 38.5, Constitution).

Minor offences can be tried summarily, that is, without a jury (Article 38.2, Constitution). The criteria for establishing whether an offence is non-minor are the:

• Severity of the penalty.
• Moral quality of the act.
• State of the law at the time of enactment of the statute in question or of the Constitution.
• Public opinion at that time.

Other exceptions are provided by Article 38.3 (relating to special courts) and Article 38.4 (relating to military tribunals).

26. What restrictions exist as to the evidence that can be heard by the court?

The general rule is that hearsay evidence (evidence of statements made out of court) is inadmissible. However, there are a number of exceptions to the application of this rule, including:

• Admissions and confessions.
• Dying declarations.
• Public documents.
• Certain statements made in previous proceedings.

Opinion evidence is also inadmissible, with the most significant exception being that an expert witness is permitted to give evidence of his or her opinion on certain matters within his or her area of expertise.

In general, character evidence is regarded as inadmissible because it is irrelevant to the facts as issue in criminal or civil proceedings. However, there is a wide range of circumstances where character evidence is admitted because it is relevant to the issues in proceedings or the credibility of a party or a witness.

A court can exclude evidence if, in the opinion of the court, the prejudicial effect of evidence outweighs its probative value.

The effect of the introduction of inadmissible evidence depends on the circumstances of each case. A relevant consideration is whether an objection was raised at the time. Where inadmissible evidence has been put before a jury, it is possible for the judge to cure the prejudice by giving directions to the jury. However, if the evidence in question is so prejudicial that it creates a substantial risk of an unfair trial and that risk cannot be cured by giving directions, the discharge of the jury is appropriate.

27. Which party has the burden of proof in a trial and at what standard is this burden met?

Civil law
The standard of proof in a civil case is the balance of probabilities. The burden of producing evidence is initially carried by the claimant. Once the claimant satisfies the burden and makes out a prima facie case, the burden usually shifts to the defendant. The defendant must then adduce evidence to support a defence or to rebut the evidence produced by the claimant.

Criminal law
The standard of proof in a criminal trial is proof beyond reasonable doubt. The accused is presumed to be innocent in the eyes of the law until proven guilty. The presumption of innocence lasts throughout the trial, unless and until overcome by the evidence and changes only when the jury come to a decision to convict. The defendant only carries the burden of producing trial evidence if he or she wishes to assert an affirmative defence.

28. What verdicts can the court give?

Civil law
A claimant typically seeks relief from the court in the form of a declaration that the defendant has breached a relevant legal duty. Usually, a claimant also seeks a remedy. If the claimant seeks damages, the court decides whether the claimant is entitled to damages and the amount of such damages.
Where the claimant seeks an injunction, the court must decide the appropriate remedy and the precise terms of it.

**Criminal law**
The verdict can be either “guilty” or “not guilty”.

**29. What range of penalties/relief can the court order upon a verdict?**

**Civil law**
The court has wide power to grant the parties interim relief, including:
- Interim injunctions.
- Freezing injunctions.
- Search orders.
- Specific disclosure.
- Payments into court.

Usual substantive remedies awarded by courts include:
- Damages.
- Declarations.
- Injunctions.
- Specific performance.

**Criminal law**
The main types of sentence that a court can impose for a criminal offence are:
- Imprisonment.
- Suspended sentences.
- Community service orders.
- Fines.
- Curfew, exclusion and restriction on movement orders.
- Probation.
- Binding over.

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**ONLINE RESOURCES**

**Government of Ireland website**
*W* [www.gov.ie](http://www.gov.ie)
**Description.** Government of Ireland website which provides a listing of all Irish government websites and online services.

**Houses of the Oireachtas**
*W* [www.oireachtas.ie/parliament/](http://www.oireachtas.ie/parliament/)
**Description.** Information on Dáil Éireann and Seanad Éireann, parliamentary debates and the progress of legislation. Maintained by the Houses of the Oireachtas.

**Ireland courts services**
*W* [www.courts.ie](http://www.courts.ie)
**Description.** Information on the court system in Ireland, court rules and related practice directions. Maintained by the Courts Service of Ireland.

**Irish statute book**
*W* [www.irishstatutebook.ie](http://www.irishstatutebook.ie)
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Professional qualifications. Ireland, Solicitor

Areas of practice. Public and administrative law; constitutional law; regulatory law; professional disciplinary law; freedom of information and data protection.

Non-professional qualifications. BCL (European Legal Studies), University College Dublin; LL.M. University of Würzburg; Advanced Diploma in White Collar, Corporate and Regulatory Crime, Honorable Society of King’s Inns; Advanced Diploma in Legislative Drafting, Honorable Society of King’s Inns

Recent transactions.
- Advising numerous public and regulatory bodies in relation to their powers, functions and duties, including complex issues of statutory interpretation.
- Representing a number of professional regulatory/disciplinary bodies regarding complaints against their members, such as the Medical Council and the Nursing and Midwifery Board of Ireland.
- Advising private sector bodies in relation to the requirements of the Regulation of Lobbying Act 2015.
- Drafting legislation (both primary and secondary) for public body clients.
- Advising on a wide range of public sector information law issues, including privacy, freedom of information, data protection and access to information on the environment.

Languages. English, German

Professional associates/memberships. Association of Regulatory and Disciplinary Lawyers, German Irish Lawyers and Business Association, British German Jurists’ Association.