

Constitutional Law (LW253): Tutorial #2

Review the following material:

Doyle and Hickey, ch 8;
Cityview Press v ANCO [1980] IR 381;
Bederev v Ireland [2016] IESC 34;
O'Sullivan v Sea Fisheries Protection Board [2017] IESC 75; and,
Náisiunta Leictreacht v The Labour Court & Ors [2021] IESC 36.

MODEL PROBLEM

The Addictive and Harmful Substances Control Act 2022 (hereinafter ‘the 2022 Act’), as brought into force on March 1, 2022, seeks to help curtail the rise of ‘legal highs’ and to stop everyday items being misused for illicit purposes. This Act was brought in with some haste following the death of a sixteen year-old in County Down, who alongside her friends had spent an evening consuming legally acquired gas cannisters commonly used in cooking.

Since the beginning of the pandemic, this type of substance abuse use has been endemic among Irish youth. And this substance abuse has been endemic, despite government campaigns and warnings of the dangers within schools. These campaigns have reported similar usage across Ireland. Nevertheless, consumption of these substances has skyrocketed creating somewhat of a moral panic amongst parents, TDs, and other concerned members of local communities. In recognition of these developments, the 2022 Act was enacted after debate in the Dail. The debate on the 2022 Act was far from exhaustive or detailed; instead, the debate focused on the broader substance abuse-related issues the 2022 Act sought to address. After debate, the Act was duly passed and brought into force on March 1, 2022.

The Minister for Justice, Robert Clarke, has the authority vested in his office pursuant to Section 179 of the 2022 Act to:

Amend, alter, or add to the Schedule addended to this Act, in line with the Minister’s understanding based on expert departmental advice, the list of substances within this State which are open to abuse, addictive, or dangerous.

Section 198 of the 2022 Act states:

the effect of inclusion of an item on the Schedule addended to this Act is that its sale shall be restricted to an amount negating any possibility of abuse and also that sale of the same product shall be restricted to persons over the age of 18.

Jeff Leach owns and operates a bakery and bakery supply shop, Rising Kneads, on 42 Upper High Street, Dublin. He has worked hard to develop a loyal customer base which primarily consists of professional bakers who own their own bakery shops. This is

owing to the fact that Mr Leach imports and sells hard to find items used for specialised baking and, more specifically, for industrial baking on a large scale.

Subsequently, the Minister signed Statutory Instrument (hereinafter “S.I.”) 2022/03/05, which added several new items to the 2022 Act’s schedule. Indeed, Mr Leach was shocked to discover, by way of a letter dated March 6, 2022, from the Department of Justice (hereinafter ‘DOJ’), that one of his best-selling items, the crystal soufflé rising mixture (hereinafter ‘CSRM’), had been placed on the schedule of the 2022 Act. Why? CSRM contains a crystal, which when crushed can be ingested to gain a ‘high.’ The DOJ’s letter explained that there have been some reports of the crystal contained within CSRM being used for these illicit purposes in the United States of America, and as such, Mr Leach and other CSRM distributors will be required to sell only one souffle riser per customer per month and not to sell said product to anyone under the age of 21. Mr Leach is seriously disheartened by this new regulation. The average purchaser of this product purchases more than twenty of them at a time to facilitate (as far as Leach knows) large-scale commercial baking. Mr Leach called the helpline listed on the DOJ letter. Leach explained what this new regulation will do to his business, and the government officer listened, but otherwise reminded Leach that he had to comply with the new regulation.

Mr Leach seeks to challenge the legality or constitutionality of the 2022 Act and/or the statutory instrument. Advise Mr Leach.