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Relevant to the following subjects;**

## **Formation 1: Business Laws The Irish Court System**

### **Introduction**

The Irish Court system in its current form was first established under the auspices of Articles 64 to 73 of the 1922 Constitution. This constitution was enacted after the creation of the Irish Free State under the *Anglo-Irish Treaty* and independence in 1921. The *Courts of Justice Act 1924* outlined much of what is recognised as the Irish Court system in modern Ireland, this Act sets out in detail the structure of the hierarchical system of Courts and their various jurisdictions. Since its enactment in 1937 the current Constitution under Articles 34 to 38 has been the constitutional basis of the Court system, though it largely remains the same as what was set out in 1924. The case of *The State (Killian) v Minister for Justice* [1954] IR 207, confirmed however that this new constitution would require fresh legislation to re-establish the Courts and their jurisdictions under the 1937 Constitution. The 1937 Constitution briefly outlines the structure of the court system as comprising of a court of final appeal, the Supreme Court, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters as well as courts of limited jurisdiction, the Circuit Court and the District Court which are organised on a regional basis. The new legislation that was required to implement the provisions of the new Constitution was finally passed in 1961 and this resulted in the *Courts (Establishment and Constitution) Act 1961* and the *Courts (Supplemental Provisions) Act 1961*, though this did not result in substantial changes to the system.

Article 34 of the Constitution states that justice will be administered by courts established by law and justice should generally be administered in public. However there are provisions for certain cases such as in family law to not be heard in public and instead to be heard *in camera* or in private. Judges are completely independent in the performance of their functions and on their appointment take the oath set out in Article 34.5.1. Article 38 of the Constitution affirms that '[n]o person shall be tried on any criminal charge save in the due course of law'. Minor offences are tried in courts of summary jurisdiction while a person accused of a more serious offence cannot be tried without a jury. The Constitution also allows for the establishment of special courts where the administration of justice requires this to happen.

The Irish Court system is hierarchical, the Supreme Court being the highest, followed by the High Court, the Circuit Court, and the District Court. There are a number of other administrative courts such as the Employment Appeals Tribunal, An Bord Pleanála, and the Labour Court which deal with specialised areas of the law. Section 9 of the *Courts of Justice Act 1924* sets out the order of precedence of the judges of the Supreme Court and High Court, this was confirmed in the 1997 *Courts Act*. The Chief Justice ranks first followed by the President of the High Court, former Chief Justices rank in priority of appointment and other judges of the Supreme Court rank in order of appointment as ordinary judges of the Supreme Court. Also the Chief Justice may sit alone to deal with applications for the appointment of Notaries Public and Commissioners for Oaths and in an administrative capacity for case management lists. The Chief Justice is also an *ex officio* additional judge of the High Court.

## The District Court

The District Court is the lowest court in the system and under the *Courts and Court Officers (Amendment) Act 2007* the numbers of judges should not be more than 60, excluding the President of the Court, though this has since been extended to 63. The country is divided into twenty four districts including the Dublin Metropolitan District. One or more judges are permanently assigned to each district as well as to the Dublin Metropolitan District. With the exception of the Dublin Metropolitan District each District Court office deals with all elements of the work of the District Court. The District Court is a court of local and summary jurisdiction. The business of the District Court may be divided into four categories: criminal, civil, family law and licensing. The District Court's civil jurisdiction covers matters up to €6,349 and the Court also grants dance and liquor licences. Its criminal jurisdiction covers summary offences and some indictable cases of a minor nature. It has a limited appellate jurisdiction in respect of decisions made by statutory bodies. In these situations the decision of the District Court is final unless there is a point of law at issue. It also has wide jurisdiction in issues dealing with family law. These are usually heard *in camera*. This includes cases under the *Domestic Violence Act*, 1996 which include both Safety and Barring Orders as well as under the *Guardianship of Infants Act*, 1964 as amended by the *Status of Children's Act*, 1987 where it makes custody and access orders and appoints guardians among other powers in the family law area.

## The Circuit Court

Under the *Court and Court Officers (Amendment) Act 2007* the Circuit Court has no more than thirty seven judges and a President. It is divided into eight circuits: one judge is permanently assigned to a circuit while in busier courts this number may be greater to deal with the volume of business; as an example the situation in Dublin is such that ten judges are assigned and in Cork there is provision for up to three judges. Civil cases up to €38,092 may be heard in the Circuit Court, though this figure may be amended by the parties. The Circuit and High Court have concurrent jurisdiction in the area of family law. The Circuit Court has jurisdiction in a wide range of family law proceedings, such as in judicial separation, divorce, nullity and appeals from the District Court. The Circuit Court covers indictable offences and has a jury. In criminal cases, in the case of all indictable offences except murder, rape, aggravated sexual assault, treason, piracy and related offences, the Circuit Court has the same jurisdiction as the Central Criminal Court. This jurisdiction is exercisable in the area where the offence has been committed or where the accused person has been arrested or resides. However on application from the prosecution or from the defence and if the Court is satisfied that it would be unjust not to do so, in Circuit Courts outside Dublin the trial judge may transfer a trial to the Dublin Circuit Criminal Court. It is also the court of appeal for both civil and criminal cases from the District Court. An appeal will result in a full rehearing and the decision of the Circuit Court is final. The Circuit Court is also an appeal court for decisions of the Labour Court, Unfair Dismissals Tribunal and the Employment Appeals Tribunal.

## The High Court

The High Court has jurisdiction over all matters to come before the Courts. This includes matters arising out of the Constitution. Under the 2007 *Court and Court Officers (Amendment) Act*, there is a President who is also a member of the Supreme Court and not more than thirty five judges. Though there are now 37 members of the Court. Generally judges sit on their own, though at times in certain cases three judges sit together. It has full jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. Its jurisdiction also extends to the question of the constitutional validity of any law that is passed by the legislature. A jury also sits on certain civil cases and in criminal cases

where a plea of not guilty has been entered. It is also the Court of Appeal from the District and Circuit Courts. For criminal cases the court sits as the Central Criminal Court. When hearing original actions the High Court sits in Dublin. It also hears personal injury and fatal injury actions in Cork, Galway, Limerick, Waterford, Sligo, Dundalk, Kilkenny and Ennis. It may also sit in these locations to hear appeals from the Circuit Court in civil and family law matters.

### Central Criminal Court

The High Court, when it sits and exercises its criminal jurisdiction, is alternatively known as the Central Criminal Court. The President of the High Court directs where the court will sit. It tries criminal cases which are outside the jurisdiction of the Circuit Court. The court mainly hears murder and rape trials though under *Competition Act*, 2002 it also hears criminal trials that fall within it. The court mainly sits in Dublin though it has also sat in Limerick, Sligo, Ennis, Cork and Castlebar. Jury trials are normally held.

### Court of Criminal Appeal

The Court of Criminal Appeal includes a Judge of the Supreme Court and two Judges of the High Court. It has jurisdiction to hear appeals from people convicted on indictment in the Circuit or Central Criminal Court if the trial judge designates it as a case which may be appealed. If the trial judge refuses to do so, the Court of Criminal Appeal may hear an appeal on this point and then grant leave to appeal. Appeals may be against the sentence, conviction or against both sentence and conviction. Under the *Criminal Justice Act* 1993 the Director of Public Prosecution may appeal to the Court of Criminal Appeal on grounds of undue leniency in sentencing. An appeal may be lodged under Section 2 of the *Criminal Procedure Act* 1993.

### The Special Criminal Court

The Special Criminal Court was set up under the *Offences against the State Act* 1939 and sits with no jury. It is only used for a limited number of cases. The same rules of evidence that are applicable to trials in the Central Criminal Court are exercised here. The Special Criminal Court is authorised under the 1939 Act to make rules governing its own practice and procedure. The special nature of the Court is exemplified by the nature of its composition. The Act provides that the Government shall appoint serving judges to sit in the Special Criminal Court; therefore these judges will all have experience as judges. There is a panel of 11 judges appointed to the court who are drawn from the High, Circuit and District Courts. Appeals from the Special Criminal Court against conviction or sentence are taken before the Court of Criminal Appeal.

### The Supreme Court

The Supreme Court is the highest court in the system and is the court of appeal for any cases which originated in the High Court and cases from both the District and Circuit Courts. It sits in the Four Courts in Dublin. The Chief Justice plus seven other judges sit on the Court and the President of the High Court is an *ex officio* member. Where one of the ordinary judges of the Supreme Court is president of the Law Reform Commission, the number of ordinary judges may be increased by one. Under s.5 of the *Courts (No. 2) Act* 1997, the number of judges may also be exceeded by one where a former Chief Justice serves as a judge of the Supreme Court. The Court normally consists of three judges; this is when there are procedural appeals or cases not involving major legal questions for the Court. The Court will sit as five judges where the constitutionality of a statute is challenged or where important

issues of law arise. Seven judges sit to hear cases of exceptional importance, such as reference of a Bill to the court under Article 26 of the Constitution. Under Article 26 the President has the power to send a Bill to the Supreme Court to test its constitutionality before signing it into law. The Supreme Court may sit in two or more divisions at the same time.

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