

Constitutional Interpretation

Examinable Issues

1. Constitutional interpretation and judicial activism/self-restraint
2. Presumption of constitutionality; and mootness
3. *Locus Standi*

Constitutional Interpretation

- Various approaches taken by judges and what the pros and cons of each approach
- NB: **Curtin case** where Murray J outlined principles of constitutional interpretation
- Refer to fact that differing approaches can be used even within individual judgements - **Sinnott case** and the focus on natural law endorsed by Keane CJ in contrast to the historical methods advocated by Hardiman J and Murray J
- **Interpretation Act 2005**
- Constitution does not expressly state the method to be used for its own interpretation
- Thus, 5 various approaches to interpretation - courts have not rejected any one approach
- **Curtin v. Dáil Éireann**
 - **Murray J:**
 - Where meaning is clear, courts apply literal approach
 - Where text is silent or the meaning of words is not totally plain, then a purposive, harmonious or historical approach
- 1. **The Literal Method**
 - **Default/Primary rule**
 - **Plain and natural meaning of the words are interpreted, taken in the context of the Act as a whole**
 - ***Curtin v. Dáil Éireann***
 - 'A correct balance has to be struck between the effect to be given to the literal meaning of particular words and the need to have regard to the terms of the Constitution as a whole'
 - **Rule must be followed even if its results are ambiguous and not the intention of the parliament**
 - **DPP v O'Shea**
 - SC held 3:2 that SC can hear appeals against acquittals in the Central Criminal Court

Constitutional Interpretation Study Guide

Larry Elowitz



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