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Judicial appointments: time to widen the pool

Just before Christmas, the Minister for Justice, Nora Owen, set up a working group to '*consider the question of qualifications for appointment for judges of the High and Supreme Courts*'. The Law Society has made a detailed submission to the working group, and members might find it useful if I were to spell out our general position here.

The Law Society has argued for a long time that solicitors should be eligible for direct appointment as judges in all courts, and not just the district and circuit courts as at present. In saying this, we are not trying to do away with the barristers' profession. Indeed, the Society does not believe that fusion of the legal profession is necessary or desirable.

But we do challenge the Bar Council's contention that it is only practising barristers who are qualified to act as judges and that the public interest requires a continuation of the *status quo*. The Law Society believes that this argument doesn't hold water and to accept it is to continue an unwarranted monopoly which is contrary to the public interest.

We are not in any way questioning the high quality of those who have been appointed as judges in the superior courts to date. Indeed, the State has been very well served by the judiciary since we achieved independence in 1922. But our constantly-changing world means that the institutions of the State have to adapt and respond to Society's needs if they are to discharge properly the responsibilities that have been entrusted to them. The judicial system is no different.

Under the present system, eligibility for appointment to the superior court benches is confined to practising barristers of 12 years' standing and Circuit Court judges with at least four years' experience on the bench. This provides a pool of no more than 175 possible candidates.

Widening the base from which judges might be selected is not a rejection of the qualities and skills traditionally associated with eligibility for appointment, but a recognition of the merits of a broader choice and diversity in the selection pool. The wider the pool, the more likely it is to be representative of the make-up of society as a whole. And the wider the pool, the wider the range of available talent.

Minimum requirements for inclusion

There must, of course, be some minimum requirements for inclusion in the pool. In our view, these should be, first, a professional legal qualification and, second, legal knowledge and expertise. Once these requirements have been met, individuals should be eligible for selection regardless of which branch of the profession they come from. A pool based on these two criteria would include practising barristers and solicitors, judges, legal academics, public sector lawyers, and non-practising barristers and solicitors working in a legal environment.

As regards the first criterion, the Law Society is satisfied that the professional legal training provided to its members is of the highest quality. Indeed, in the late 1970s, we were among the first in the world to introduce the 'learning by doing' training system that has since been followed in many other countries. Our Professional and Advanced Courses for apprentices have been acclaimed by international experts in legal professional training.

In terms of the second criterion, legal knowledge and expertise could be measured by the Judicial Appointments Advisory Board through a combination of detailed curriculum vitae, interview and peer review. The board would also be able to assess other 'merit criteria', such as track record as a practitioner, additional qualifications or experience, and personal qualities such as (in no particular order) common sense, independence, integrity, intellect, humanity, humility, fairness, courtesy, compassion and so on.

Much has been made of the advocacy experience gained by barristers in their practice at the Bar, but the assertion that advocacy skills should be an essential requirement for appointment as a judge is unsustainable. Is it really being suggested that judges should exercise an advocate's skills when hearing a case? Surely, one would think, it is the judge's role to administer justice by listening to the evidence adduced, applying the law to the facts as presented and making a determination. Most experienced lawyers can see a lie when it is offered. And I think it would be universally accepted that the four solicitor Circuit Court judges are doing an excellent job.

No monopoly on legal knowledge

Besides, those who practise as advocates before the higher courts do not have a monopoly of knowledge of the law. In fact, there are vast areas of law in which members of the Bar rarely participate. The solicitors' profession contains many more experts in, for example, land law, family law, company law, commercial law, financial services law, tax law, environmental law and intellectual property law than does the barristers' profession.

Solicitors have significant first-hand experience of work in the superior courts. This, the Society believes, is of greater relevance than oral presentation skills. A barrister never appears in court without an instructing solicitor, so solicitors are equally familiar with court procedures as the barristers they brief. Because of their regular direct dealings with clients, solicitors also have well-developed inter-personal skills which are desirable attributes for members of the judiciary. Indeed, the lack of experience which advocates have of dealing with clients directly can lead in some instances to a rather unworldly approach on the bench.

All in all, there seems to us to be an irrefutable argument for widening the pool of eligible candidates to include solicitors for direct appointment as judges to *all* courts in the State. We are not arguing this case on the basis of fair competition, the free market or any other spurious reason. We are doing it because, in some cases, solicitors are simply the best men and women for the job. And if that means breaking a monopoly, then so be it.

Frank Daly
President

Why we need a *Courts Service Bill* now

Recent reductions in court delays have been dramatic. Statistics released in March 1997 by the Department of Justice demonstrate the remarkable progress which has been achieved in a short space of time.

In the Dublin Circuit Court, new litigants in civil cases can now obtain a court hearing date within six weeks of the case being set down for trial. This compares with a delay of two years last July. In family law cases, the delay in the Dublin Circuit Court has been reduced from 16 months to four months and delays in the hearing of criminal cases have been eliminated. Delays in the hearing of personal injury actions in the High Court have been reduced from 35 months to 20 months, and delays in the hearing of cases in the Central Criminal Court have been reduced to six months in some cases.

There have been similar substantial reductions in delays in the hearing of both civil and family cases in the provincial Circuit Court in almost all venues. For example, delays in the hearing of civil cases and family law cases in Carlow, which extended up to two years last July, have now been eliminated. Delays in Cork and Limerick in the hearing of civil cases have been reduced from three years to 18 months.

Delays in the hearing of civil cases in Galway have been reduced from two years to as low as three months, and delays in the hearing of family law cases in Galway which had extended to six months have been eliminated. Delays in the hearing of family law cases in Dundalk have been reduced from 16 months to two months and delays in the hearing of criminal cases in this venue have been eliminated.

How has this extraordinary and on-going success story been achieved? First and foremost, it has been achieved by the appointment of additional judges. Secondly, it has been achieved by a series of comprehensive administrative exercises which have resulted in the identification and elimination of the 'deadwood' of already settled cases which were clogging up the court lists.

The two women leading the reform of the courts system, Mrs Justice Susan Denham and Justice Minister Nora Owen at the launch of the first Courts Commission Working Group report

Raining judges

For the last year or so it seems to have been raining judges. The number of additional judicial positions created within the last 12 months alone may well exceed the number created in any single decade since the foundation of the State. The legislative provision for judges has been increased by the current Government from 86 to 107, and to date all but five of the additional judges provided for have been appointed.

The *Courts Bill, 1997*, which finished all stages in the Seanad in early March, provides for a further increase of three in the maximum number of judges that can be appointed to the High Court. No less than nine Circuit Court judges – including three solicitors – were appointed on a single day last July. By and large, the necessary support staff have also been appointed.

Editorials in the *Law Society Gazette* have for many years complained bitterly at the failure of successive Governments and Ministers for Justice to appoint sufficient judges to allow the courts to operate. Accordingly, it is only fair for the *Gazette* to give due recognition and praise to the current Government and its Minister for Justice, Mrs Nora Owen, for making such substantial increases in the numbers of the judiciary. Solicitors are delighted to see the resulting reductions in court delays which we had so often predicted were possible.

As Minister for Justice, Mrs Owen has had a number of well-publicised reverses on various aspects of the crime issue. However, her success in reforming the court system has been greater than most of her predecessors. Her commitment in this regard has been demonstrated not just in securing unprecedented increases in judicial appointments, support staff and financial allocations to courthouse construction projects (although much greater allocations of the latter are required to overcome decades of shameful neglect) but in her establishment of, and subsequent firm support for, the Courts Commission Working Group – chaired with such energy and vision by Mrs Justice Susan Denham.

Transforming management

This working group has produced to date no less than four reports to Government on: management and financing of the courts; case management and court management; how to establish the courts service; and the 'job description' for the court service's chief executive.

These reports have received not only the enthusiastic endorsement of the Government but also of opposition parties and of all others involved with the courts system, including the Law Society. The key recommendation of the first report was that *'there should be established by statute an agency of the State, to be known as the Courts Service, as an independent and permanent body to manage a unified court system'*.

This would be by far the best way, perhaps the only way, of addressing the key problems in the management of the courts system – namely the multiplicity of structures and lack of cohesion. A single structure with clear lines of authority and communication could at last put the management of the court system on a modern, efficient and progressive basis. It is essential that the dramatic reduction in delays referred to above should not deflect attention from the chronic need for the establishment of the courts service.

It is now just short of a year since the Government committed itself to the establishment of a courts service. If the momentum behind this vital proposal is not to risk dissipation, then it is essential that the *Courts Service Bill* be published prior to the dissolution of the current Dáil – even though it is clear that there is not sufficient time remaining before the general election for the Bill to be passed into law.

It may well be that, regardless of the outcome of the election, Nora Owen is coming to the end of her term as Minister for Justice. As Minister, she has made a major contribution to reform of the courts. The blueprint for the future transformation of management of the courts system has been drawn up by Judge Denham's working group. It would be a fitting final achievement on the Minister's part to ensure the publication now of the Bill to establish a courts service. G

Ken Murphy is Director General of the Law Society and a member of the Courts Commission Working Group.

An eminent judge advises his solicitor son

Judges, of course, are eminent men and women. The metamorphosis between the practising lawyer on a Friday and the elevated and rarefied status of the judge on the following Monday is phenomenal and inevitable. The metamorphosis is classically illustrated by the doctrine of judicial 'infallibility'. Judges are frequently 'infallible' because they have the final word – at least on this earth! One observer noted that, on receipt of the seal of judicial office, the brain of the newly-appointed judge is saturated, in a metaphorical sense, almost overnight with all the extant law and legal rules, together with extraordinary wisdom and learning.

The Vincentian Fathers in Ireland have nurtured some great lawyers and judges. One of their most eminent must be Charles Russell, a past-pupil of Castleknock College. Charles Russell, a native of Newry, County Down, qualified as a solicitor in 1854 and practised as a solicitor for some years before transferring to the Bar. Elected to the House of Commons, he became England's Attorney General in Gladstone's administration, a Lord of Appeal in 1894 and subsequently Lord Chief Justice of England under the title of Baron Russell of Killowen, the first Catholic to hold the position since the Reformation.

Letter to his son

Charlie, Baron Russell's son, followed in his father's footsteps and became a solicitor. On his admission as a solicitor, Lord Russell wrote his son a letter that speaks to each of us today with the same vivid energy and truthfulness as the minute the judge's ink dried on his writing paper:

My Dear Boy,

I've been thinking over some rules which I think you ought to follow in the more responsible position you now fill. They are not new, and probably have already occurred to you as wise.

1) *Begin each day's work with a memo of what is to be done, in order of urgency.*
2) *Do one thing only at a time.*
3) *In any business interviews, note in your diary, or in your entries dictated [to your secretary], the substance of what takes place – for corroboration in any future difficulty.*
4) *Arrange any case, whether for brief or for your own judgement, in the order of time.*
5) *Be scrupulously exact down to the smallest item in money matters, etc, in your account of them.*
6) *Be careful to keep your papers in neat and orderly fashion. This you must be careful about, for I think you have a tendency to negligence.*
7) *There is no need to confess ignorance to a client, but never be above asking advice from those competent to give it in any matter of doubt, and never affect to understand when you do not understand thoroughly.*
8) Get to the bottom *of any affair entrusted to you – even the simplest – and do each piece of work as if you were a tradesman turning out a best sample of his manufacture by which he wishes to be judged.*
9) *Do not be content with being merely an expert master of form and detail, but strive to be a lawyer.*
10) *Always be straightforward and sincere.*
11) *Never fail in an engagement made, and observe rigid punctuality. Therefore be slow to promise unless it is clear that you can punctually fulfil.*

Follow these rules, and with your natural intelligence and good address I prophesy you can soon make yourself indispensable.

My dear Boy,
Your affectionate Father,
C Russell.

What sensible advice! All of us would like to think we have a capacity for greatness. How touching for a father to write to his son complimenting him on his 'natural intelligence', his pleasant personality, and his wish that his son would make himself 'indispensable'. G

Dr Eamonn Hall is Chief Legal Officer in Telecom Éireann plc.

Apology

The Council of the Law Society, the Law Society and the members of the Professional Guidance Committee wish to express their regret and to apologise most sincerely to Mr Andrew Dillon as a result of certain decisions made by that Committee about Mr Dillon.

The Law Society accepts that certain correspondence from an English firm of accountants concerning Mr Dillon was dealt with improperly by the Professional Guidance Committee. The Law Society accepts that the Committee acted *ultra vires* and behaved in a manner which is unacceptable.

The Law Society accepts that Mr Dillon has been caused distress and embarrassment by the improper actions of the Professional Guidance Committee and apologises for this.

The Council of the Law Society, the Professional Guidance Committee and the Law Society wish it to be known that they hold Mr Dillon in good standing and confirm their respect for his professional integrity.

The National Treasury Management Agency

announces

the launch of new issues of

Savings Certificates and Savings Bonds

.....

THE RATES OF INTEREST AND INVESTMENT PERIODS FOR THESE NEW ISSUES ARE AS FOLLOWS:

	RATE OF INTEREST	INVESTMENT PERIOD	AVERAGE ANNUAL RATE OF RETURN*
SAVINGS CERTIFICATES	30%	5 YEARS & 6 MONTHS	4.89%
SAVINGS BONDS	14%	3 YEARS	4.46%

* IF INVESTMENT IS HELD FOR THE FULL TERM.

THE NEW ISSUES WILL BE AVAILABLE FOR PURCHASE FROM TUESDAY 18TH MARCH, 1997. THE CURRENT ISSUES OF SAVINGS CERTIFICATES AND SAVINGS BONDS HAVE NOW BEEN WITHDRAWN FROM SALE.

SAVINGS CERTIFICATES AND SAVINGS BONDS ARE STATE GUARANTEED AND INTEREST IS TAX FREE. THERE ARE NO FEES, CHARGES OR TRANSACTION COSTS OF ANY KIND.

INVESTORS CAN PLACE UP TO £60,000 IN EACH OF THE NEW ISSUES. THERE IS A MINIMUM INVESTMENT OF £50 IN THE CASE OF SAVINGS CERTIFICATES AND £100 IN THE CASE OF SAVINGS BONDS.

INVESTMENTS IN SAVINGS CERTIFICATES AND SAVINGS BONDS MAY BE MADE THROUGH AN POST. THEY ARE ALSO AVAILABLE FROM BANKS AND STOCKBROKERS.

ISSUED BY THE NATIONAL TREASURY MANAGEMENT AGENCY

MARCH, 1997

Vicious circle: domestic violence and the law

At a recent conference on the *Domestic Violence Act, 1996*, John Edwards, a barrister and State prosecutor for Kerry, argued that while the legal profession may know alot about the new legislation, it knew 'very little about domestic violence'.

To all those who are labouring hard to get justice for victims, this may seem harsh. But I think it is a fair judgement that applies in fact to all the 'people professions' – social workers, psychologists, the police, and so on. We all need to be open to learning about the dynamics of a dreadful problem which goes to the very core of how we view intimacy and gender relations – especially at a time when so many women are meeting violent deaths.

'Why does she stay?'

A question that is commonly asked about those who have suffered domestic violence, especially women who return to violent men or let men who have been barred back into the home, is 'why does she stay?'. One lawyer (I make no claim that he is representative of the profession) once went so far as to remark to me that for such couples domestic violence 'is an elaborate form of sexual foreplay'.

His was a very crude version of the highly influential 'cycle of violence' theory in which the man's violence is said to follow a cyclical pattern of frustration building, explosion, violence, followed by remorse and making-up – the 'hearts and flowers phase'. The frustration builds again and the cycle repeats itself.

But this won't do. It has become much clearer that many batterers feel no remorse and are consistently abusive to their partners. The dynamics of the problem must be understood in terms of what writers like Evan Stark and Anne Flitcraft (*Women at risk: domestic violence and women's health*, Sage, 1996) are calling 'coercive control'.

Dr Harry Ferguson: 'Therapy should never be an alternative to a custodial sentence'

There is a totality to the violence that batterers perpetrate – physical, sexual, emotional abuse, control of money, control of the woman's movements and so on. What we need to be asking is not *why* does she stay, but *why* and *how* does he abuse his partner? And how does he manage to do this in a way that makes it so difficult to protect the woman?

Batterers are typically in denial, minimising the violence they perpetrate. In his mind, if he does have a problem, then it's his wife. This blaming stance is exemplified by a man who had been very violent to his wife and who, when asked what he was going to do to make sure that he never does it again, replied: 'I'm going to make sure that she never makes me so angry again that I have to hit her'.

Fear of reprisals

The abuse involves the man systematically transfering his (irrational) belief system onto the woman, terrifying her in the process. One of my most frightening experiences was in a group-work session with a man who role-played vividly how he was a 'verbal terrorist'. Little wonder that the most common reason why Irish women don't carry through on legal actions is fear of reprisals (Kelleher and Associates and Monica O'Connor, *Making the links*, Women's Aid, 1995).

These are well-founded fears. One of the most dangerous times for women is when they decide to have the abuser barred or prosecuted. To properly assess dangerousness, the professional community needs to move from a paternalistic model where they, at best, intervene *for* victims and work instead *with* abused women in planning intervention. A court accompaniment service and other forms of advocacy and support are essential to boosting victim confidence and safety.

Manipulating the system

Intervention can no longer be seen as simply facillitating victims to find a 'solution', but is itself a potential part of the problem. Batterers are highly motivated to manipulate the entire professional system, but especially lawyers and the courts, given the threat to freedom they represent. Tactics include appealing to the court for a chance because they are getting help in a treatment programme like MOVE, when in fact they are not. Or, having joined a programme, they leave once they have got what they want – the barring order application by the woman denied, or the charges dropped or downgraded by the court.

Or they may convince the court that what is needed is a remedy like couple's counselling or family therapy because the problem is in the family/marital relationship. Some professionals also favour such approaches because the first impulse is to stop the violence without threatening the integrity of the relationship.

Batterers also attempt to play the role of victim by using excuses such as drink or an unhappy childhood to avoid being made accountable. But such sympathy should be avoided as it only reinforces their irrational beliefs and rage towards their partner, putting the woman even more at risk. The best estimates suggest that any individual work with the man can only be safely done after coercive control has been confronted through completion of a batterer's programme. He should also have taken full responsibility for his actions and been violence-free for at least six months.

So no decision of the court, be it therapy or attendance at a batterer's programme, should *ever* be an alternative to a custodial sentence or the granting of a barring order. Wherever possible, the law should be used to tie perpetrators into 'treatment' programmes as part of a sanction. Research confirms that men who attend mandated programmes are more likely to reduce their violence than those who are given other criminal justice sanctions.

Assessments as to whether or not men have changed must ultimately be determined by what the partner says about how safe or unsafe she feels. This all requires the statutory and voluntary sectors, and women's and men's services, to work together in integrated ways.

Training the judiciary

Training for all concerned, including the judiciary, is essential to promote the kind of learning that is not only about relevant legislation but about the nature and dynamics of domestic violence itself. The more that this includes personal as well as professional reflection on issues of gender and power, the better the outcomes will be for survivors in the process. G

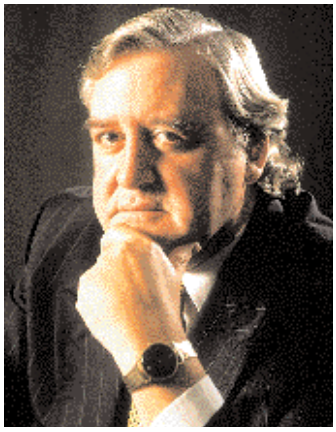
Dr Harry Ferguson is a senior lecturer in the Department of Applied Social Studies, University College, Cork and a member of the Government Working Group on Violence Against Women.

Law Society fights back over 'army hearing' fees

The Law Society has hit back at suggestions that the legal profession is enjoying a fee 'bonanza' from soldiers pursuing hearing damage claims against the State. President Frank Daly branded one recent newspaper report as 'grossly exaggerated' and 'a gratuitous attack on the legal profession'.

The paper had commented that the estimated legal bill for the 5,000 cases would 'beggar belief' and called on the Law Society to set up an inquiry. But, in a letter to the paper's editor, Daly pointed out that the State's policy of fully defending the claims up to the door of the court and then settling was only going to add to the costs.

'The costs could be reduced to very modest proportions indeed', he said, 'if the State were to concede liability generally and have the assessment of damages as the only issue'.



Frank Daly: 'gratuitous attack on legal profession'

The Society's position has been supported by PDFORA, the organisation representing rank and file soldiers, which described the Government's hard-line position as 'daft'. The organisation's Deputy Director General, Gerry Rooney, told the *Gazette*: 'I can't see any practical reason why they're doing it. The bill is just getting bigger and bigger'.

PDFORA supported the soldiers' claims, he said, because up until recently the hearing protection provided in the defence forces was inadequate.

'You hear horror stories about soldiers in the early years being issued with cotton wool and vaseline to protect their hearing. It's only in later years that they've finally got down to providing proper equipment and the proper practices for its use'.

But the Chief State Solicitor's Office defended the approach taken to the claims, saying that some of them dated back decades. 'We have one set of people who appear to have got deaf in the Emergency', Chief State Solicitor Michael Buckley told the *Gazette*. 'We do have to contest these'.

Consolidated District Court Rules

A new version of the District Court Rules was launched last month, the first consolidation of the Rules since 1948. Launching the 1,200 page volume, the Minister for Justice described the work as 'a mammoth task and a very important one'.

The *District Court Rules 1997* sets out the main body of procedures for use in the District Court. It covers 102 types of business to be transacted in the court and prescribes almost 700 forms of the various remedies available in the court. The *1997 Rules* also introduces rules to cover the *Domestic Violence Act, 1996*, procedures for environmental protection, and procedures for implementing a number of international conventions here. Work is due to begin soon on putting the whole text of the *1997 Rules* on computer diskette and on CD-Rom.

Society launches new business programme

The Law Society is to launch a programme of events designed to reflect the increasing diversification by young solicitors into business roles. The corporate and public services sectors now account for about 10% of the profession, with lawyers fulfilling a wide range of roles from in-house legal advisers and company secretaries to financial services executives, general managers and chief executives.

The initiative, called New Horizons, is being sponsored by accountants Price Waterhouse and will kick off with a launch on Wednesday 9 April at Blackhall Place. The guest speaker will be Paul Coulson, chief executive of Yeoman International Group. The programme will continue with a summer business breakfast in late July. Similar events with high profile speakers are planned for the rest of the year. For further information, contact Geraldine Hynes on 01 671 0711.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting last month: Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £1,600; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £10,795; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £486.73; Malocco & Killeen, Chatham House, Chatham Street, Dublin 2 – £5,541; Thomas Furlong, Lower Main Street, Letterkenny, Co Donegal – £21,000.

BRIEFLY

Burren Law School

Places are still available on the Burren Law School, which runs from 18-20 April at Newtown Castle, Ballyvaughan, Co Clare. The subject of the weekend conference is *The media in Irish law,* and speakers include author and broadcaster Nuala O'Faolain, Law Society President Frank Daly, Michael McDowell TD, the Hon Mr Justice Declan Budd, Dr Muireann Ni Bhrolcain from the Department of Celtic Studies at Maynooth College, and solicitor Brian Sheridan. The weekend costs £50 (daily rate £20). For further information, contact Mary Hawkes-Greene on 065 77200 or 77091.

New senior counsel

Three new barristers have been appointed senior counsel. They are Eileen Lydon SC, Turlough O'Donnell SC, and Aidan Walsh SC. This brings the number of senior counsel to 151.

Credit notes for stamp duty

From 1 April, credit notes for excess payments will no longer be issued by the Cash Office in the Stamp Duty Public Office. Under new arrangements, if the amount exceeds the tax or duty liability by £10 or less, a cash refund will be made. In all other cases, a receipt will be provided by the Cash Office and a refund will be forwarded.

New computer system for CRO

The Companies Registration Office is to get a new £1 million computer system by the end of the year. The project will be carried out by a consortium led by consultants Deloitte & Touche. Announcing the project, Commerce Minister Pat Rabbitte promised that the new system would be 'more reliable and flexible'.

BRIEFLY

Accreditation as a lawyer in Germany

The German Lawyers Academy is to run an intensive course for those preparing for the qualifying examination to become a lawyer in Germany. The course will begin on 26 May in Baden-Baden, Germany, and further information and a prospectus can be obtained from the *DeutscheAnwaltAkademie*, Ellestr 48, D-53119 Bonn, Germany.

Death of former judge

A former Donegal District judge, Liam McMenamin, died on a walking holiday in the Himalayas, just two weeks after retiring from the bench. Mr McMenamin was a former Fine Gael county councillor and State Solicitor in Donegal. He retired at the end of February.

Jolly hockey sticks

SADSI has entered a team in the Dublin Business Houses Mixed Hockey Tournament. Matches will be played on weeknights between 24 April and 6 May in the grounds of Three Rock Rovers Hockey Club at Marley Park. Anyone interested in playing should contact Emma Boylan on 01 671 5522. Players of all standards are welcome.

SFS share and valuation fees

The fees for the Solicitors Financial Services' *valuation service* are as follows: 0.1% on the first £100,000, and 0.05% on the balance, subject to a minimum overall charge of £25 or £10 a stock. So ten stocks valued at £250,000 would cost £175, while one stock valued at £5,000 would cost £25. The SFS *dealing service*, which covers the purchase of Irish and UK gilts and equities, charges 1% commission on the first £5,000 and 0.35% on the balance.

Move to tackle discrimination against women in law firms

Are female solicitors discriminated against when it comes to getting a partnership in a law firm? The Minister for Equality and Law Reform, Mervyn Taylor, a solicitor himself, suspects they are, and Law Society Director General Ken Murphy agrees.

Both were interviewed recently on RTE television's *The week in politics* programme in relation to the introduction of the *Equal Status Bill, 1997*. Section 8 of the Bill prohibits discrimination by partnerships in relation to the admission of new partners on the grounds of gender, among other things. Murphy said he suspected such discrimination was still a problem in the solicitors' profession although no research existed which would allow the extent of the problem to be quantified. The solicitors' profession was probably no different from any other profession which had been completely male-dominated in the past.

Ken Murphy: unreserved welcome for the draft legislation

About 35% of solicitors nowadays are women, Murphy pointed out. And he added that, while he was not sure to what extent the draft legislation would help eliminate the problem, to whatever extent it did so 'the Law Society unreservedly welcomes it'.

The proposed legislation will apply not simply to solicitors but to all who practise their professions through partnerships. It is designed to implement a 1986 EC directive.

Victims' charter published

The Government has published a *Charter for the victims of crime*. The charter sets out the standards by which victims can expect to be treated and it will be distributed to the gardai, the courts, the probation and welfare services and other agencies. The charter was developed in association with the organisation Victim Support.

The document pinpoints the relevant victim legislation, explains the role of the gardai and details the various services available. The special needs of children, the elderly, tourists, and the victims of sexual offences and domestic violence are identified separately. The Government is to give £280,000 to Victim Support this year.

Irish Legal History Society

At the launch of an initiative to increase membership of the Irish Legal History Society in the Chief Justice's chambers in the Four Courts were (seated) the Chief Justice, Mr Justice Liam Hamilton; Daire Hogan, President of the Irish Legal History Society; and (standing, from left) Ronan Gallagher; Professor WN Osborough; Robert Marshall; and Roderick O'Hanlon. The Society has about 200 members but is aiming for a target of 300 so that it will have a secure financial base to continue its programme of annual scholarly publications

Coming to a venue near you?

Law Society President Frank Daly and Director General Ken Murphy, are hitting the road. They recently met the Midlands Bar Association at the Bridge Hotel, Tullamore, and jointly the Kilkenny and Carlow Bar Associations at the New Park Hotel, Kilkenny.

Among the items addressed at both meetings were section 68 letters, costs, the proposed courts service, solicitor judges, Law Society education policy, the effects of money laundering legislation, new regulations on builders' solicitors and proposed general regulations on acting for both sides, the proposed personal injuries tribunal and the image of the profession.

Meetings such as these provide briefings for the members on issues currently facing the profession, together with invaluable direct feedback from members to the President and Director General. Any bar association secretary who wishes to arrange such a meeting should write to Ken Murphy at Blackhall Place, Dublin 7.

House o

Solicitors have done pretty well out of the property boom of the last few years, particularly in the areas of conveyancing, tax planning and investment advice. But this could all come to an end if house prices fall through the floor, as they did in Britain a decade ago. Kyran FitzGerald looks at the opportunities and threats in today's property market

The building industry has never been busier. Demand for housing is running at such record levels that desperate buyers are now prepared to queue outside sites to book their dream homes before they are even built. Irish builders are having to recruit ex-pat workers in London because demand has outstripped supply at home.

Last year around 33,000 units were completed, well in excess of the predictions of economic forecasters. House and apartment completions have been rising steadily since the end of the currency crisis in 1993. In 1994, over 26,500 units were constructed, rising to what was then a record 30,500 in 1995.

A number of factors have combined to create this situation. Economic growth has obviously underpinned the surge in demand, but so have demographic trends. According to a recent survey by auctioneers Sherry FitzGerald, almost 20% of first-time buyers are unmarried, a sign that people are breaking away from home at an earlier age. As the economic boom bolsters their bank balances, more and more young people are moving up and moving out.

But for other sectors of the property market, the economic boom has thrown up a few problems. Office rents are now beginning to soar as shortages of suitable space become apparent. And institutional developers have remained cautious, having been badly burned at the start of the Eighties when the State, previously a major taker of space, largely pulled out of the market.

Gordon Gill, a director of Sherry FitzGerald, believes that the property investment market is very strong but is facing a major problem. 'There is a tight supply of alternative investment, and money market rates on offer are at grim levels', he says. 'Holders of properties are wondering what they would do with the money if they sold. If they got out of property, could they get back in?'.

The result has been a degree of restriction on the supply of suitable

f cards?

investments, a situation not to the liking of the property middlemen. Nevertheless, this is a good market by any standards. The boom has thrown up a new breed of wealthy individual with plenty of spare cash and a willingness to take on speculative projects.

Opportunities and threats

For the legal profession, the surge in the property market, particularly on the residential side, has acted as a long overdue shot in the arm. But it is not all good news.

For one thing, the conveyancing market remains highly competitive largely because of the increase in the supply of property lawyers which, in turn, has led to cut-throat competition on fees. Another problem is that financial institutions have become less 'loyal' to their traditional legal advisors. 'People are negotiating with their legal advisors', says Patrick Sweetman, a partner in solicitors Matheson Ormsby and Prentice and member of the Law Society's Conveyancing Committee. 'Equally, some developers consider it good practice to use three or four different solicitors. The feeling is that it keeps them on their toes'.

To add to the list of solicitors' woes, conveyancing transactions are becoming even more complex. For evidence, just look at the increase in size of the requisition on title and standard contracts that are being used now.

Paul Eustace, a partner with Dillon Eustace, agrees. 'Thirty years ago', he says, 'a conveyancer's job was to check that the title to the property was good; now, you have to deal with a wide range of taxes. The whole area of planning has become much more complex. Conditions are much more severe and cumbersome. Environmental issues must increasingly be dealt with'.

'And tax issues are impacting more and more. It is important for clients to be aware of tax planning, and solicitors should not pass the buck on planning matters'.

The emergence of the private investor has proved to be something of a mixed blessing from the point of view of the property intermediaries. On the plus side, they tend to be more flexible and less nit-picking than their institutional equivalents. But many are unfamiliar with the complexities of the market and, in effect, have to be shown the ropes.

The increasing physical complexity of developments has itself contributed to the legal complexity of many transactions. Matheson Ormsby and Prentice partner Andrew Muckian cites the example of the 1990s' generation of shopping centres where materials are produced to much higher specifications, using more sophisticated methods.

'The management of shopping centres has become much more sophisticated', he says. 'Tenants now assume a wider number of obligations, and case law has shown that sophisticated drafting is necessary'.

Gordon Gill of Sherry FitzGerald agrees: 'The standard commercial lease is now an 80-90 page document. Thirty years ago, you would be talking about ten to 15 pages'.

Cut-price conveyancing market

The emergence of competition in the residential conveyancing market has created a degree of disquiet among some providers of legal services who fear that it may lead to corners being cut. They point to the danger of crashed property titles further down the road. And though these concerns are not confined to the legal profession, it is solicitors who are finding themselves increasingly at the sharp end.

According to MOP's Patrick Sweetman: 'You have a situation where some people will offer a conveyancing service on a house purchase for a couple of hundred pounds, but it is difficult to see how they can economically carry out the job of reading the title properly. A myriad of things can go wrong. There is a real danger that when the person comes to sell on, they may not have good title'.

This problem is probably more acute in Dublin than elsewhere, but outside the capital equally pressing local issues can present themselves. In the Munster area, the practice of looking for staged payments from house purchasers means that the buyers of new estate houses are left exposed to the financial collapse of the firm which has put up the houses in question.

But such local issues, while not unimportant, are dwarfed in scale by nationwide issues. Not least among these is the question of whether lending institutions are now throwing too much money at borrowers. The fear is that many people could find themselves severely exposed financially in the event of a sudden rise in interest rates.

The Central Bank has already expressed concern about reports that lending institutions are now breaching their guidelines. Loans of up to four times annual income are not uncommon. The Institute of Auctioneers and Valuers is also worried. Its chief executive, Alan Cooke, is pressing the Central Bank to take action to calm a situation which has strong echoes of Britain around 1989. The real threat of an increase in repossessions could then emerge.

Historically, the number of repossessions in Ireland has been low, and for cultural reasons is unlikely to reach British proportions. There, at their peak, annual repossessions easily exceeded 50,000 a year. However, people tend to forget that during the currency crisis of 1992/93, repossessions here also rose significantly.

In Alan Cooke's view, the courts may have to think very carefully before issuing decrees in favour of lending institutions where it can be proved that they acted irresponsibly. Many in the business appear more sanguine, but there is plenty of evidence that with the emergence of new players, such as the new mortgage corporation intermediaries, traditional guidelines may be being abandoned.

That said, prospects for the property market remain good. The number of households being formed far exceeds the supply of residential properties. And while the growth in the level of shopping centres' rents would appear set to taper off following the huge increase in supply of space, office rental values look set to remain firm for the foreseeable future.

The biggest worry now is that Dublin office rents may be too high, though it is likely that supply will rise to meet demand, particularly as the new Dublin docklands development authority comes on stream. But key zoning issues may yet have to be addressed. For example, many areas are zoned for industrial use which could be more usefully devoted to office purposes. There is now a real shortage of zoned and serviced land, a development that threatens to act as a brake on the growth of Dublin and Galway, in particular.

Future trends

In the residential market, auctioneer Ken MacDonald believes that there may be a growing trend towards upmarket Continental-style apartment blocks. This would amount to a dramatic change in Irish living patterns and could, in turn, have a dramatic impact on the workload of conveyancers.

For his part, the IAVI's Alan Cooke foresees a gradual shift away from ownership and a growth in the rental market as properties are priced beyond the reach of many on low to middle incomes. He believes that ownership levels may already have begun to fall, having reached over 80% in the early 1990s. The tax attractions of home ownership have certainly diminished greatly.

Within the legal profession, the trend is towards increased specialisation. Large firms such as Cox's and Goodbody's have already set up specialist environmental law units, and medium-sized firms such as LK Shields and Partners are also moving in this direction.

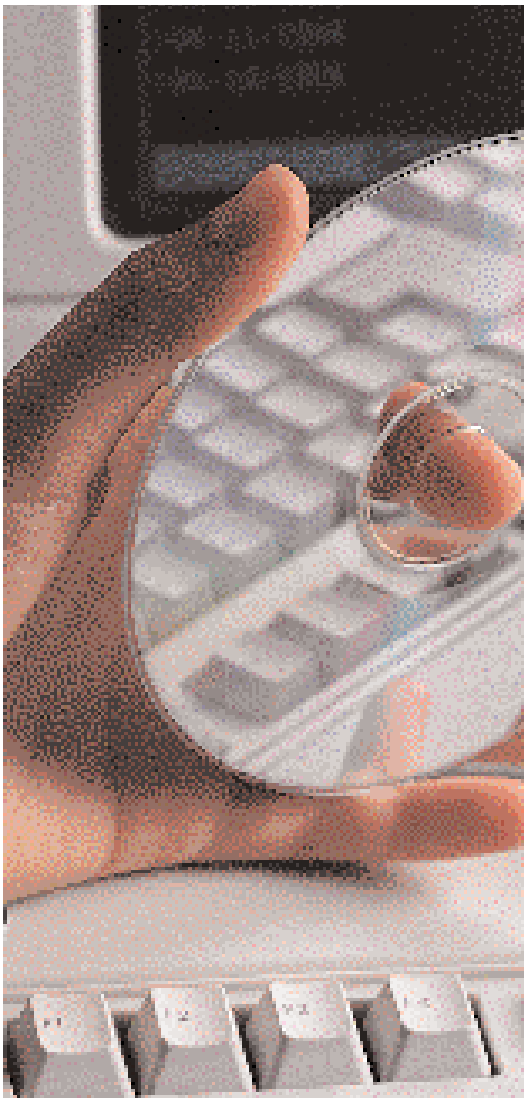
In Britain, town planning law has become a well-developed speciality in its own right. According to John Tarpey, a commercial property lawyer with LK Shields, 'property lawyers will increasingly have to operate at the front end of transactions rather than pulling up the rear. They will have to have a deeper understanding of how transactions fit into the business'.

It is all a far cry from the days of the dusty deeds with the neatly tied ribbons. These days, it is those property lawyers who don't keep up with the times who run the real risk of being tied up in knots. G

Kyran FitzGerald is a freelance journalist.

Defective

who should pay?



A recent judgment in the UK Court of Appeal could have far-reaching implications for software suppliers and their customers alike. Rex Parry examines the fall-out from the St Albans case

In 1994, St Albans City & District Council sued computer giant ICL because a database package which ICL had supplied failed to complete one of its functions accurately. In effect, the software overstated how many people lived in the St Albans area, and so the council set its poll tax levy at a lower rate per head than it would have done if it had known how many people were really in its area. The court which initially heard the case decided that ICL was responsible for the loss that resulted. At the time, this was considered extremely significant because ICL had limited its liability in its contract with St Albans, saying in effect that regardless of what went wrong and what damage was suffered, it would pay St Albans no more than £100,000. The judge in the initial case thought St Albans' loss was around stg£1.3 million. The effect of limitation clauses, if they work, is clear: very considerable risk of defect is made to the purchaser.

ICL was extremely unhappy with the initial decision and appealed to the Court of Appeal. That court's decision was given on 26 July last year. It is important for two reasons. It clarifies some of the thinking from the earlier decision and also provides the first opinion of a higher English court in relation to liability for defective software. A number of the points before the Court of Appeal related to the specifics of the case, but there are two areas in which suppliers of software, and those responsible for buying licences, can learn some valuable lessons.

Those lessons are important, not only to businesses based in England, but also those based in Ireland or elsewhere, particularly if they supply software on the basis of contract terms which are used in a standard form across a large part of the globe.

Broadly, the law provides that where a consumer buys from a supplier or where one business buys from another on that other's written standard terms of business, the supplier cannot exclude or restrict its liability for breach of contract unless it is reasonable to do so. ICL argued that the judge in the initial decision had made an error in that a negotiation of ICL's standard terms had taken place and so the supply had not been on ICL's standard business terms. As a result, the question of whether the exclusion was reasonable did not arise.

In fact, ICL's limitation clause remained unchanged during the negotiations, and the Court of Appeal endorsed the initial decision that, because ICL's terms had remained effectively untouched in the negotiations, St Albans had dealt on ICL's standard terms.

In the past, software purchasers have been concerned that by trying to negotiate a supplier's limitation clauses, they were in effect giving up the right to argue under English law that an exclusion clause was unreasonable and therefore

software

unenforceable. But now purchasers should be taking more interest in exclusion clauses and challenging those where they clearly provide inadequate protection for the purchaser if something goes wrong. If they are unsuccessful, they will not have prejudiced their right to challenge an unreasonable exclusion. Suppliers, on the other hand, need to be extremely careful to make sure that their limitation clauses are reasonable and therefore enforceable. This applies particularly to suppliers who are used to the laws of one country and who simply adopt their standard approach which was developed in some other market (usually the United States) in the UK, Ireland or elsewhere, merely changing the provision dealing with the law of the contract to make local law apply.

What limitations is it reasonable for a supplier to use? The Court of Appeal has endorsed the initial judge's view and stated that this is a question of fact to be determined by the first court involved, unless the Court of Appeal is sure that this initial view is demonstrably wrong.

There were a number of factors which led the court to believe that capping liability at stg£100,000 was unreasonable and which led to that cap being unenforceable.

First, ICL was one of a limited number of companies that could meet St Albans' requirements. All of those companies dealt on similar terms and conditions, and the council was at the time suffering from severe time and financial constraints (there was an extremely tight deadline from the introduction of the poll tax to the date when the council had to make its first assessment). The bargaining positions were therefore extremely unequal.

Also, St Albans could not obtain insurance against the risk of the software not functioning correctly and yet ICL had group-wide product liability cover of £50 million worldwide. The insurance position therefore suggested that ICL should have been prepared to take the risk of loss arising from the software.

Indirect losses

Suppliers still habitually limit their liability to a figure which usually equates to the price of the software and exclude liability for 'indirect and consequential loss' such as loss of profit. Suppliers need to look very carefully at their particular contract in light of their product and industry sector. They also need to assess whether the risks they are accepting are reasonable, particularly with regard to the insurance they have or can obtain, against that which the purchaser of software can obtain. Any supplier trading in the UK that has not considered this question carefully with its legal advisors and recorded what was decided (and why) should do so as quickly as possible. Failure to do this may jeopardise the enforceability of their limitation clauses.

This is important because once a clause has been held unenforceable, the courts will not replace one figure with a higher figure which they consider reasonable. All benefit from the clause is lost. One final thought for the supplier: the decision it makes on its limitation clause may be the difference between pain and embarrassment and going to the wall if its software is defective. Given the potential exposure, suppliers should discuss these questions with their insurers.

From the purchaser's point of view, the more records there are from the purchasing process to show that the purchaser considered the initial clause unreasonable, and was unable to insure the risk that the supplier was refusing to take, the stronger its case will be should something go wrong.

The nature of software

As an aside, one of the Court of Appeal judges considered the question of whether software constitutes goods. While this may seem purely of academic interest, it is in fact very significant. When goods are sold or hired, unless something to the contrary is agreed, there is an implied term in the contract that the goods will be of 'satisfactory quality'. This is assessed by taking into account all the relevant circumstances including, whether the goods are fit for the purpose for which they are commonly supplied, their appearance, their freedom from minor defects and their safety and durability. The Court of Appeal's comment (which is only a persuasive statement of the law) was that software is goods if the software is provided on a disk or some other medium which is provided to the purchaser.

Some interesting consequences arise from this. Software must have no more minor defects than a reasonable person would consider satisfactory in all the circumstances. Perhaps the screen layout and general user-friendliness of the package will be accepted as its appearance; if this is the case, then that layout must be at least to the standard which a reasonable person would consider satisfactory.

For purchasers, these extra rights – even though they have not been tested to any extent in the courts as yet – may well provide a pressure point for those software products which, while they do achieve their main aims, are not good examples of the programmer's art. As this implied term cannot be excluded from a consumer contract and can only be excluded in a standard form business contract if it is reasonable to do so, the pressure is on suppliers to improve their products.

Purchasers should be careful that they do not give up this otherwise implied right easily. Suppliers, on the other hand, particularly those used to operating overseas, need to ensure that if they can exclude liability, they do so. Even though this implied term came into effect in January 1995, a large number of supply contracts still refer to the provision which this replaces. The result is that suppliers have failed to exclude a liability which they believed they had excluded. The pressure on suppliers to perform is increasing. G

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Up n

The arrival of Esat Digifone into the Irish telecommunications market heralds a new age for mobile phone users who, after more than a decade, finally have a choice of service provider. Grainne Rothery reports

At last, the gloves are off and the real fight in the mobile phone market can begin. The official launch of the Esat Digifone service on 21 March effectively ended Eircell's ten-year monopoly of the market while also ending months of speculation as to whether Esat would be able to hold out until it had 80% coverage before offering its service.

When it was officially awarded a licence on 16 May 1996, Esat was given nine months to have its service in place. An Esat spokesman blames a lack of co-ordination between planning departments and local authorities as the reason why 80% coverage could not be achieved within the specified period. The five week delay cost Esat a £1 million fine, but the company says that Digifone is the first GSM mobile phone operator in the world to launch with full national coverage.

Existing and potential customers will now be interested solely in what the new service can offer them and how it compares to Eircell's service. For the past year or so, Eircell customers have benefited from the impending competition: new tariffs were introduced last year and the company has vastly improved its attention to customer care by increasing customer support staffing levels by 300%.

Eircell's marketing has been so effective that the 100,000 customers who signed up in the first ten years of operation have been joined by another 185,000 over the past 14 months. These customers are said to be equally divided between the company's analogue and digital services.

But part of this growth must be attributed to the fact that the market here in Ireland is still relatively under-developed. Despite the huge number of new customers, market penetration in January of this year was just 7.2% of the population. In Sweden, one of the most advanced mobile telephone markets in the

world, market penetration currently stands at 27%.

Over the next five years here, the number of mobile phone customers between the two service providers is expected to grow to anything between 800,000 and one million, with up to 30% market penetration. Some industry sources, however, believe that penetration of between 20% and 25% is a more realistic target. There are suggestions that this market could be worth £300 million a year.

Over the last 12 months, Eircell has subsidised the cost of handsets by up to £100. According to Catherine O'Connor, the company's media relations manager, this initiative was in direct response to research carried out by the company which found that one of the main obstacles to uptake was the initial hardware cost. In return for the subsidy, customers are obliged to pay a connection fee of £42.35 and sign a contract for one year. Digifone, which also has a signing up fee of £42.35, is not planning to offer the same subsidy and customers will not be tied into the service through any contract.

Eircell recently introduced a new pricing structure called *Eirtime Options* which allows customers to choose a tariff based on how often they use their phones. Occasional users can select *Eirtime* which has a flat rate of £12.10 a month, including line rental, and a calling fee of 54.45p a minute peak or 27.23p a minute off-peak. Heavier users, meanwhile, have a choice of four options (see **Table 1**).

Existing customers can move to any of the *Eirtime* options free of charge, but unused minutes cannot be brought forward to the next month. Diverted calls are charged at a flat rate of 12.1p, while diverted calls to playback are free.

Digifone chose to hold off announcing its tariffs until a couple of days before the service was launched. While Eircell has coined the word *Eirtime*, Digifone has opted for the *Digiplan*, within which it has two basic options, *DigiMax* and *DigiLite*. *DigiMax* is aimed at heavy business users and has a monthly rental of £24.20. Although there is no distinction between peak and off-peak times, call charges to land lines become progressively cheaper the more the phone is used (see **Table 2**). Rates range from 24.2p a minute down to 15.1p a minute depending on usage. Calls to other Digifone users cost 15.1p a minute, while calling Eircell customers costs 24.2p a minute.

DigiLite is targeted at more occasional users and people who tend to use the phone outside standard working hours. This has a basic monthly rental of £15 which includes £5 worth of free calls. If any of this £5 value is unused, it is credited to the following month. When calling land lines, *DigiLite* users are charged 50p a minute during peak hours and 15p a minute at all other times. The rates to call other Digifone and Eircell users at peak times are 25p and 50p a minute respectively, and 15p and 25p at off-peak times.

It is very difficult to compare the two services on price because of their complex structures and varying peak and off-peak rates. However, it appears that the Digifone prices work out cheaper for most users, particularly those with high calling requirements. The Digifone structure, particularly for business users, also seems to allow for greater flexibility. Heavy Eircell users are charged a relatively high flat rate every month, whereas *DigiMax* users are not charged so heavily if they have a lower call rate during certain months.

Digifone has also launched a number of new services such as *DigiFax* and *DigiData*. These allow the user to send and receive faxes and e-mail messages by connecting the mobile phone to a computer. To receive fax or data messages, the user needs an additional *DigiFax* or *DigiData* number, each of which costs an extra £6.05 a month. Eircell has also developed data and fax transmission services which are currently in the test phase.

Over the past few months, Eircell has received a certain amount of criticism over the quality of its service. Catherine O'Connor admits that coverage is not yet as good as the company would wish but points out that Eircell is doing everything it can to improve this. 'We are currently trying to build our network and have advertised for sites in areas where coverage is poor. Black spots tend to be in busy areas where it is difficult to buy land. Planning permission can take up to two years', she explains. 'It's also a question of balancing the demand for better coverage with community and commercial interests'. At the moment, there is 85% population coverage for GSM and 90% coverage for the analogue service.

Digifone is dealing with potential coverage problems in advance by introducing dropped call compensation. 'We do not believe that customers should be penalised for bad coverage in an area where coverage is promised', says Barry Moloney, the company's joint chief executive. 'If customers experience a dropped call and re-dial the same number within five minutes, up to one minute's worth of the dropped call will be automatically credited on their bill'.

One industry source has pointed out that dropped call compensation has been looked at across the world but has not yet worked because of the possibilities of fraud.

Eircell will continue to be the only company providing an analogue service (the 088 number). Most new customers to the network opt for the GSM or digital service, identified by an 087 number, which is more secure and can be used in 65 countries around the world. Esat Digifone has so far made agreements with 20 countries, which it says represent 95% of the mobile phone traffic overseas.

Concerns have been expressed by Eircell customers about the cost of diverted calls to their phones when they are overseas. Catherine O'Connor points out that if a customer is in the UK, for example, a call may have to go through three or four networks before connection is achieved. Each of these networks will charge a fee. To deal with this, customers can switch their phones to playback when they are overseas and turn it on only when they want to make a call. 'We're trying to help people to use their phones better. We have excellent literature and a helpline which we encourage people to use', she says.

In addition to the ability to use the phone when travelling, users of the digital network have greater built-in security. However, the analogue service can provide better coverage within Ireland. The handsets required for the analogue and GSM services are different, so Eircell's analogue customers would need to change phones if they were to switch to the Digifone network.

Esat Digifone users can be identified by the 086 prefix. Users changing from Eircell will be able to keep their existing numbers if they wish. Anyone with a six digit number will need to add a '2' to the start of the number, as all mobile numbers will have to become seven digit numbers by October 1998.

Both service providers are confident of their ability to provide a quality service within the new competitive market. 'We believe that competition is a good thing because it changes the dynamics of the market', says Eircell's chief executive Stephen Brewer. 'Eircell's main priority has always been and will continue to be concentrating on providing the right products and services for our customers. We are very much a customer-driven company and won't allow ourselves to be affected by any individual efforts made by our competitor'.

Catherine O'Connor says that the company has been working hard to prepare for competition. The GSM network has doubled in the last year to improve coverage while capacity has increased threefold. Eircell also says it has spent £130 million upgrading its system and will continue its investment programme.

Digifone is also offering a guarantee that it will invest in infrastructure and technology on a continuing basis. A Digifone spokesman says that competition and choice is a good thing for the consumer. 'We hope that a level playing field exists and that people will judge us on the criteria of value for money and quality service'. Barry Moloney claims that Digifone has had a massive response to initial contacts with both personal and corporate customers. 'They are impressed with our coverage and our concentration not just on geographic coverage but on the quality of our network', he says.

Whichever one of these companies wins the battle between the mobile phone service providers, it looks like the consumers may win the war. That said, the potential growth of the market suggests that there's plenty of room for two or even three players, in the future. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Table 1: Eircell's basic pricing structure

Option	Flat rate charge	Number of minutes included	Peak rate per minute thereafter	Off-peak rate per minute thereafter
Eirtime	£12.10	None	54.45p	27.23p
Eirtime 30	£24.20	30	36.30p	18.15p
Eirtime 60	£36.60	60	30.25p	15.13p
Eirtime 180	£72.60	180	24.20p	12.10p
Eirtime 480	£145.20	480	21.78p	10.9p

Table 2: Digifone's basic pricing structure

	DigiLite		*DigiMax*
Monthly rental	£15 (includes £5 of calls)		£24.20
First 75 minutes (per minute)	n/a		24.2p
76-150 minutes (per minute)	n/a		21.2p
151-300 minutes (per minute)	n/a		18.2p
301+ minutes (per minute)			15.1p
	Peak	**Off-peak**	
Per minute	50p	15p	n/a
Calls to Digifone	25p	25p	15.1p
Calls to Eircell	50p	25p	24.2p
National data and fax calls	50p	15p	24.2p

All prices include VAT.

SWITCH AND SAVE

Switching is easy with Esat Digifone. You can keep your existing number* and you are not tied into a 12 month contract!

You also save money. Switch now and you save £40 worth of free calls*. You also save as Esat Digifone will compensate you for any calls dropped on their network.

Also, think about this... if you are calling from a Digifone 086 number to another Digifone 086 number, it will only cost 2.5p (+ VAT). That's cheaper than calling from a Telecom Eireann fixed line to any mobile!

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Following the paper trail

White-collar crime and insurance scams have given accountants the opportunity to move away from their dull, grey image and to reinvent themselves as latterday accounting sleuths. Sean Kelly looks at the work of these watchdogs turned bloodhound

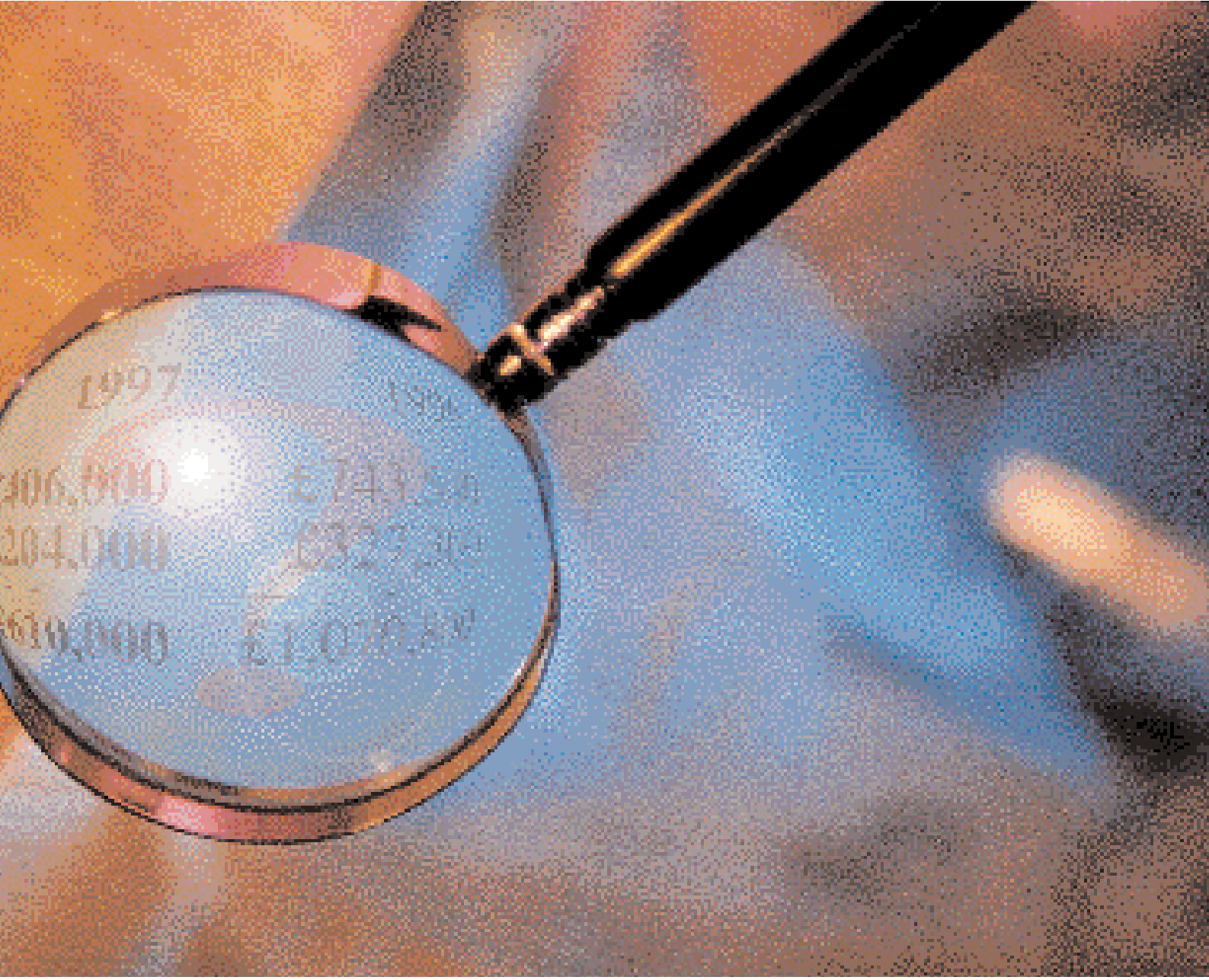
Forensic accounting, the application of financial expertise to legal disputes and investigations, has been a significant growth area in the 1990s. Society in general is becoming more litigious, the public and press are more demanding of government and regulatory authorities, and white-collar crime is on the increase. With the advent of divorce and matrimonial disputes, there is a growing recognition that a high level of expertise is needed to dissect and analyse complex business dealings.

In contrast to the auditor, whose main concern is ensuring statutory compliance with the *Companies Acts*, the forensic accountant goes a step further and acts as the private investigator of the corporate world. As well as having the core accounting skills, the forensic accountant must possess common business sense and the ability to analyse data thoroughly. He must also be familiar with the court system and the judicial mind-set and be able to question suspected white-collar criminals effectively.

There are two broad categories of forensic accounting: litigation support and investigative accounting. In litigation support, the accountant acts as part of a legal team and is generally used to quantify a level of damages in cases involving professional negligence, commercial disputes, personal injury claims, fraud and matrimonial disputes. This has become a major service area for accountants recently and can be attributed to the growth of white-collar crime and increasingly complex business transactions.

The second, and perhaps more interesting, area of forensic accounting is investigative accounting. This involves reporting on such things as the reasons for a company's financial failure, fraud, misfeasance actions against company directors, and investigating insurance claims. Cases of professional negligence against auditors, accountants and company directors also come under the forensic microscope.

Litigation and fraud are booming in the 1990s and this has created an opening for forensic accountants to act as experts. The need for expert opinion generally arises when there is a dispute involving an accountant's area of expertise. Forensic accountants are often required to prepare reports on the issues at stake, covering such areas as the nature of the assignment, the scope of the investigation, the approach taken, limitations of scope, and any findings or opinions. In the event that litigation is not settled and court proceedings ensue, the accountant may be called on to act as an expert



witness on complex accounting issues.

Many accountancy firms are forming specialised forensic units to deal with the increasing demand for their investigative skills. A good forensic accounting team will draw on the experience of professionals who have a wide range of complimentary specialised skills. Ideally, it would include an expert in family law and tax planning, an insolvency specialist, and an expert in the day-to-day running of a business.

One divorce case in which I was involved saw us trying to identify full details of income and expenditure of the individual concerned. We also had to project income levels and expenditure for future years and identify the individual's assets and liabilities. As part of this process, we carried out a detailed examination of all bank accounts, credit card statements and other relevant documents. These findings were included in a report and a representative of the firm attended court as a witness.

In another instance, a newly-appointed managing director had become suspicious of the conduct of a senior manager who held a somewhat privileged position in the company because of historic family ties to the shareholders. My team were called in to investigate the activities of the manager under the guise of a financial review of the company. This investigation revealed that the individual in question had taken advantage of the weak management structure within the company and had abused his position as a senior administrator over a considerable period of time.

In addition to his authorised pension, it transpired that he had put in place a second pension with large premium payments being made by the company on his behalf. We also discovered that he had arranged for the company's oil suppliers to deliver considerable quantities of home heating oil to his house at the company's expense for several years. On top of this, household and private motor insurance policies had been paid for by the company over a long period of time without authorisation.

The team advised the directors on what procedures should be taken to first suspend the manager and then terminate his contract of employment. This resulted in legal proceedings which were settled very satisfactorily from the company's point of view. We also advised the company on putting in place a system of checks and balances to ensure the proper control of finances and avoid future repetition of fraud.

It is often useful to call in a forensic accounting team at an early stage in an investigation or dispute so that they can get to grips with the core issues from the outset and determine the financial transactions which are at the heart of the investigation. A preliminary analysis of the financial evidence can also play an important role in helping to determine the lawyer's strategy early on.

Unfortunately we are not living in a world where everyone is honest and law-abiding. Society has changed dramatically, and with it must change the skills of the professionals we rely on. In years gone by, the use of a watchdog may have been enough, but today there seems to be a growing need for the bloodhound. G

Sean Kelly is Manager of the Insolvency Department of chartered accountants Farrell Grant Sparks.

No place

The first article in this three-part series examined the grounds on which a person can apply for a divorce decree. Here, Muriel Walls looks at how the courts treat family residence and property issues in divorce cases

Before a court will grant a divorce, it must be satisfied that the spouses and dependent members of the family have been, or will be, properly provided for. The term *proper provision* is not defined in the *Family Law (Divorce) Act* and will depend on the circumstances of each case.

The court will take into account the factors set out in section 20 of the *Divorce Act.* The menu of ancillary relief orders available for divorce is similar to what is available in the context of separation under the *Family Law Act, 1995*. Maintenance, lump sum orders, property adjustment, pension adjustment and

Family Law (Divorce) Act, 1996

like home

financial compensation orders can be made, in addition to orders in relation to the residence and/or sale of the family home.

As divorce will sever the marriage relationship, an ex-spouse can apply for provision out of the estate of a deceased spouse. I would also refer practitioners to the article by Brian Gallagher (*Gazette*, June 1996, page 201) on the pension aspects of the *Family Law Act, 1995*. The pension provisions of the *Divorce Act* are virtually identical to those under the 1995 Act.

Proper and secure accommodation

The main focus of this article is on the family home and property adjustment orders, and the related conveyancing and taxation issues. When granting a divorce, the court must acknowledge that when the decree is granted, it is not possible for the spouses to live together and that proper and secure accommodation should, if possible, be provided for the dependent spouse and for any dependent member of the family.

This is a very live issue in the context of separation as often spouses are living in the family home up to the date of the court hearing. However, in order to apply for a divorce, the spouses must have lived apart for four years and so most couples will have lived in two separate houses (though in some cases they may have lived in the same house but in separate households).

The court may give one spouse the right to live in the family home for life, or for a period certain or contingent, or it may direct that the family home should be sold and the proceeds divided. In addition to these miscellaneous ancillary orders (contained in section 15), the court also has power to make a property adjustment order under section 14. It may, on granting a decree of divorce *or at any time thereafter,* order one spouse to transfer the family home:

- To the other spouse, or
- To any dependent member of the family, or
- To a specified person on behalf of the dependent member of the family.

A property adjustment order is most commonly used in transferring the family home from one spouse to the other; however, the word *property* has a wide meaning and can include residential or commercial property, proceeds of bank or building society accounts, shares or investments, motor vehicles, boats, furniture, animals, even pets – in fact, anything which can be owned.

In the context of judicial separation, the courts have tended to order one spouse to transfer their interest in the family home to the other, either free from encumbrances or subject to an existing mortgage. The effect of this has been to give certainty and security to the benefiting spouse. The value of these benefits is then taken into account by the court when deciding other issues such as maintenance, lump sum payments and *Succession Act* rights.

The court cannot make a property adjustment order in favour of a spouse who has remarried. It should also be noted that a property adjustment order cannot be made in relation to a family home in which either of the spouses concerned ordinarily reside with their new spouse if they have remarried. This could be a trap for the unwary practitioner if they do not advise their clients accordingly.

Post-nuptial settlements

The court may also order a spouse to settle property for the benefit of the other spouse. This provision could be used in circumstances where the spouse may not be capable of managing his or her own affairs because of some mental disability or alcohol or substance addiction. The court also has the power to vary a pre-nuptial or post-nuptial settlement or to extinguish or reduce any interest the spouses have under such a settlement.

The term *post-nuptial settlement* has been held to mean a deed of separation and so existing separation agreements are subject to review under this provision. But, in addition, many other settlements can be varied by the court if they come within the meaning of pre-nuptial or post-nuptial settlement. For example, the father of a bride may, on her marriage, create a trust in favour of his daughter, her husband and children. This would be construed as a post-nuptial settlement. Settlements created by will or codicil can also be varied.

There are some helpful provisions in section 14. Once a property adjustment order is made, a certified copy must be sent by the registrar or clerk of the court to the land registry or registry of deeds so that its details shall appear on any searches that may be made against the property.

In the event that a person refuses or neglects to comply with a court order to transfer a property, the court may order another person to execute the deed or instrument in the name of the transferring spouse. It may make such a direction when it grants the order. For example, if the transferring spouse lives outside the jurisdiction, or if other circumstances indicate likely non-compliance, this order can be made. Once a property adjustment order in respect of a transfer of property is made, it cannot be varied.

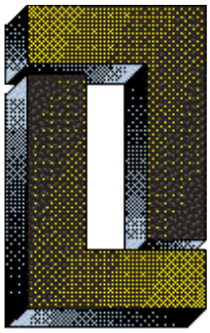
The stamp duty relief available on transfers of property from one spouse to the other is continued, provided the transfer takes place pursuant to an order under the *Divorce Act.* The relieving provisions contained in the *Family Law Act, 1995* in relation to capital gains tax, capital acquisitions tax and probate tax are also continued in the *Divorce Act* provided that the transaction is as a consequence of an ancillary relief order.

Although divorce ends the marriage of the parties and allows them to remarry, the court's power to grant relief at any time after a decree has been granted, if the circumstances warrant (and provided that the applicant has not remarried), does not give any finality to the financial arrangements.

While the courts in England have a duty to consider whether there should be a clean break between the parties, the courts in Ireland have no such duty and have been given the power to review the circumstances of each case on an on-going basis.

The final article in this series will look at relief orders in respect of maintenance, both periodic payments and lump sum, financial compensation orders and succession. G

Muriel Walls is a solicitor with McCann FitzGerald.



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Council report

Report on Council meeting held on 7 March 1997

1. Motion: Statutory Instrument

That this Council approves the terms of a draft Statutory Instrument circulated herewith in relation to a prohibition against solicitors acting for both vendor and purchaser in the sale, purchase, transfer or lease of any land except in voluntary transfers where the parties have been advised in writing of the desirability of taking independent legal advice.

Proposer: *James MacGuill*
Seconder: *Michael Peart*

The proposer reported that this motion had generated great interest. He asked for it to be adjourned to allow consultation with bar associations, the Society's Conveyancing Committee and so on. This was agreed.

2. Adjudicator

The Director General reported that, following the last Council meeting, the President, Senior Vice President, Director General and Director of Policy had met the Minister for Justice. Following a discussion, the Minister made it clear she was still open to hearing further evidence from the Society on whether or not the appointment of an adjudicator was really necessary. It was agreed that a major review of certain complaint files would be undertaken by the Society and the results sent to the Minister for consideration of whether there was anything an adjudicator could, in fact, do to satisfy the complainants in question.

3. The Attorney General

The Council resumed its discussion of the wide range of issues raised by the Attorney General in response to correspondence from the Director General complaining about the advertisement of positions of legal assistant in the Attorney General's office with eligibility confined to barristers. Agreement was reached on the most appropriate basis for a reply.

4. Eligibility for High and Supreme Courts

A draft document had been circulated in advance for approval by the meeting. This document would constitute the Society's submission to the working party on qualifications for appointment to the High Court and Supreme Court. It set out in detail the reasons for the Society's view that the public interest would be served if the pool of legal talent from which High Court and Supreme Court judges are drawn were greatly broadened by the inclusion of solicitors as eligible for direct appointment to these courts. The document was wholeheartedly approved by the Council, subject to incorporation of a number of amendments on points of detail.

5. Personal Injuries Tribunal

The Chairman of the Litigation Committee, Ernest Cantillon, reported that his Vice Chairman, Eugene O'Sullivan, together with Ken Murphy and Mary Keane, had met the three-member working group which had been appointed by Minister Pat Rabbitte to advise the Government on the establishment of a Personal Injuries Tribunal as suggested in the Deloitte & Touche Report. The proposal was that such a tribunal would be established so that personal injury actions where liability was not an issue could, by agreement, be submitted to adjudication on *quantum* in what was thought would be a speedier and less formal forum. The Society had made strong representations in writing and orally that such a tribunal was questionable in principle and, in any case, simply would not work in practice. Given the dramatic reductions in delay in the courts system, such a tribunal would be a solution without a problem. Any attempts to improve the handling of these cases should be made within the court system and not outside it.

6. Section 68

The Chairman of the Section 68 Committee, Terence McCrann, had circulated a paper setting out a series of measures by which the Society could seek to assist the profession in complying with section 68.

7. LawLink

John Shaw referred to the paper which he had circulated and obtained approval in principle for a Society endorsement of a new LawLink technology package, whose primary selling feature would be the secure electronic mail. This, it was hoped, would very quickly become a standard means of communication for the profession. It was noted that the Society has a 30% shareholding in LawLink.

8. Practising certificates

Following a discussion, approval was given in principle to the Compensation Fund Committee to institute District Court prosecutions of the small number of solicitors who have not yet applied for practising certificates for the current practice year. There was also a discussion on the practicality of implementing the review working group recommendation that the Compensation Fund Committee operate in divisions.

9. Course with King's Inns

The Chairman of the Education Committee reported that the historic first joint litigation course between solicitors' apprentices and students of the King's Inns had completed a very successful first week. Special thanks were due to James MacGuill and Mary Fenelon, the Society's lecturers, for the enormous effort they had put in to making the course a success.

10. Motion for April Council meeting

That this Council, noting that financial hardship may be caused to some solicitors when required to pay the cost of (i) a practising certificate, and (ii) the premium for professional indemnity insurance in the month of January in each year, directs the officers of the Society (in consultation with the Compensation Fund, Finance and Professional Indemnity Insurance Committees) to report on what steps may be taken by the Society to alleviate any hardship so caused. The report from the officers is to be given to all Council members at least ten days in advance of its meeting scheduled for July next.

Proposer: *Pat O'Connor*
Seconder: *Hugh O'Neill*

Committee reports

PROFESSIONAL GUIDANCE COMMITTEE

Voluntary mediators

The committee exercises the Society's good offices to help resolve problems and disputes arising between solicitor colleagues and between solicitors and other professionals. In the past, this function has been carried out mainly by exchange of correspondence and consideration of the matter by the committee. However, from time to time, the committee is asked to consider disputes which, in the opinion of the committee, necessitate the attention of an individual mediator. A typical dispute in this category would be the dissolution of a partnership.

In the past, the committee members themselves have mediated individually when necessary. The committee wishes to expand the pool of mediators and invites solicitors, including retired solicitors, who would be willing to be listed on a panel of mediators who could be called upon to mediate in these disputes, to contact the committee.

It is envisaged that the disputes referred for mediation will require a practical rather than professional input and that the input from the mediator will be limited to what could be reasonably expected to be undertaken on a voluntary basis. Names and some indication of availability should be sent to me at the Law Society.

Interests of minors in conflict with interests of client

Problems of conflict of interest for solicitors where minors are involved are very much on the increase, given the dramatic increase in the numbers of cases which solicitors are required to handle in the areas of child sexual abuse, tug of love etc. The committee is preparing guidelines to help solicitors in situations where this conflict arises.

The committee would be interested in receiving the views of solicitors who have had experience of these matters on correct conduct in these cases.

James MacGuill
Chairman

COMPANY AND COMMERCIAL LAW

European Communities (Public Limited Companies Subsidiaries) Regulations 1997 (SI No 67 of 1997)

Last month's *Briefing* brought these regulations, which came into effect on 1 March 1997, to your attention. You should be aware of the possibility that where security has already been given by companies caught by the new regulations (limited companies that are subsidiaries of Plcs) and is due for renewal, or where a deed of further assurance is to be given, such renewal or further assurance may be caught by the regulations.

Companies Registration Office

In early March, the CRO computer crashed for a number of weeks. This meant that, among other things, no incorporations of new companies were registered. When it came back on line, incorporations were dated as of the day upon which incorporators would, if the computer had been on line, have expected their companies to be incorporated. One consequence of the computer breakdown is that registered business names registered in the last three months are not accessible at the time of going to press.

The situation in the Companies Registration Office will be the subject of a further report in the next *Briefing.*

Paul Egan

PRACTICE MANAGEMENT COMMITTEE

Revenue audits

The Practice Management Committee intends to issue a guidance document on revenue audits for solicitors. The committee is anxious to hear from solicitors who have been subjected to a revenue audit and also intends to establish a panel of solicitors who are prepared to offer services in this regard to other solicitors on a fee-paying basis. If you can help, please telephone Cillian MacDomhnaill on 01 671 0711.

ISO 9002/Q Mark

The Law Society is compiling a list of all firms that have obtained ISO 9002 or Q Mark accreditations. These listings are not available centrally anywhere and it would be of assistance to the committee if firms that have achieved either of these marks could telephone Cillian MacDomhnaill at 01 6710711.

Practice management course

The committee also intends to rerun its successful practice management course in conjunction with the IMI. The next course is being planned for Autumn 1997, will take place over four days and is specifically targeted at one and two solicitor practices. More details will be issued closer to the date.

Practice management

Practice comparison: how are you doing?

Many solicitors will be receiving their annual accounts for 1996 around this time. While, hopefully, the performance of the firm has been good, no doubt there is always the nagging question of 'how am I doing compared to others?'.

To help answer this question, the Law Society's Practice Management Committee has devised a practice comparison questionnaire with the objective of conducting a survey which would allow individual practices to 'bench-mark' or measure themselves against like-sized practices nationwide.

Bench-marking allows comparisons to be made in terms of costs, revenue, profit, staff profiles, salary levels and a host of financial ratios which would help practices determine the areas of business which need improvement and allow them to assess general trends in the market.

This type of survey is very common among the professions in the UK and North America. Normally it is a yearly exercise which allows practices to bench-mark their own growth year upon year, while at the same time comparing their growth to the industry as a whole. For many, these comparisons provide a powerful measurement and planning tool which become essential for planning for growth and a profitable future.

Reports are normally presented as a generic industry-wide report and a customised report for specific practices. The industry-wide report would be available to firms that participated in the survey and to those that did not. The customised version is a practice-specific report provided to those firms that participated in the survey and compares the results of that practice with those of the profession in general. It allows for direct comparison of practices of a similar size and structure located in similar geographic areas. It can answer such questions as:

- Whether your billing rates are too high or too low
- Your revenue, costs and profit by employee, partner, or solicitor
- What are the profitable and not so profitable areas of your business?
- The level of your bad debts compared to similar practices
- How competitive are your salary levels for all classes of employees?
- How do you compare to industry trends in terms of the growth/decline of areas of your business?
- Are you under-staffed or over-staffed for a practice of your size?

The Practice Management Committee has spent a considerable amount of time fine-tuning a questionnaire suitable for this purpose. The objective is to be able to categorise firms on two levels: size (as measured by number of solicitors) and location (Dublin, urban, rural). This means that all practices can be categorised into nine meaningful sub-sectors for the purposes of comparison (see **Diagram**). The sections in the report would cover the following topics:

- **Practice profile:** containing data on the age of the practice, number of branches/offices, number of partners, solicitors and support staff; size and location of premises; ownership/tenancy status and rents payable
- **Human resources, recruitment and remuneration:** containing data on salary levels for all staff categories; staff numbers by category; staff recruitment levels; overall remuneration; packages/benefits; annual leave
- **Partnership structure:** containing data on partnership agreements; goodwill policies; number of partners by legal category
- **Revenue/income:** containing data on hourly rates; income levels and number of clients per area of business; growth/decline percentages by area of business
- **Costs/expenditure:** containing data on levels of costs on a range of profit and loss account and balance sheet items; net profit over three years
- **Target market profile:** containing data on percentage turnover by business area and industry sector
- **Financial and accounting structure:** containing data on management accounts; work in progress; billing periods.

Categories for comparison

Size (No of solicitors)

	1-2	3-10	11+
Dublin			
Urban*			
Rural			

*** Galway, Waterford, Cork, Kilkenny, Limerick**

The Practice Management Committee has used the services of an external consultant to devise the questionnaire and a third party would also be used to process returned questionnaires in order to ensure confidentiality. A principal/managing partner or office manager would have to spend approximately one hour completing the questionnaire as well as forwarding a detachable section of the questionnaire to your accountant, which should take him approximately one hour to complete.

We need your help!

The questionnaire was sent to a 'test market' of 40 randomly selected firms. Unfortunately, the response level to the questionnaire was not sufficient to ensure that there would be a representative selection of firms from each of the sub-sectors identified. Rather than letting this project die without getting the views of members, the committee would like to hear from any firms that think this type of exercise is worthwhile and would be willing to participate. Contact Cillian MacDomhnaill on 01 671 0711 – you can do this on a 'no names' basis if you wish.

News from the EU and International Affairs Committee

Edited by T P Kennedy, Education Officer, Law Society

Public access to Commission documents

The European institutions are often criticised for the veil of secrecy which is draped over the way they work and the manner of making decisions. In recent years, they have committed themselves to greater transparency in decision-making and to making internal documents more widely available. In 1992, the Council of Ministers and the European Commission drew up a *Code of conduct on public access to Commission and Council documents.*

In Decision 94/90, this code was formally adopted. It is based on the principle that 'the public will have the widest possible access to documents held by the Commission and the Council' and lays down the grounds on which an institution may reject a request for access to documents. Grounds for refusal include protection of the public interest and confidentiality.

However, in the recent case of *WWF (UK) v Commission of the European Communities* (Case T-105/95) recourse to the courts was necessary to ensure disclosure of documents.

In 1991, the Irish Government announced plans to build a visitors' centre at Mullaghmore in the Burren National Park. It proposed to use European structural funds for the project. Following objections from a number of parties (including the World Wide Fund for Nature), the Commission opened an investigation into the project, concluding that it did not breach European environmental law and thus there was no obstacle to structural funds being allocated to this project. An action for annulment of the Commission decision brought jointly by the WWF and An Taisce was unsuccessful.

Counsel for WWF requested access to all Commission documents relating to its examination of the Mullaghmore project and particularly those relating to the examination of whether structural funds might be used for it. The Commission refused access. The applicant appealed to the Secretary General of the Commission who confirmed the refusal. The applicant then applied to the Court of First Instance to annul the Commission's decision.

Judgment of the Court of First Instance

The Court considered the legal force of Decision 94/90 and the scope of the exceptions provided for. Though the decision represented a series of obligations which the Commission had voluntarily assumed for itself on an internal basis, it was capable of conferring legal rights on third parties which the Commission was obliged to respect. The exceptions to the code should be interpreted in a restrictive manner to ensure the greatest degree of transparency in decision-making.

The exceptions were in the public interest and for reasons of confidentiality. The first exception was mandatory and the second discretionary. The Court held that the Commission should exercise that discretion by striking a balance between the interests of the citizen in gaining access to the documents and its own interests in protecting the confidentiality of its deliberations.

The Court went on to consider whether the documents in this case fell within the first or second exception. In circumstances such as the award of aid, the confidentiality which the Member States were entitled to expect of the Commission in such circumstances clearly fell under the protection of the public interest. The documents in question could lead to an infringement procedure against a State, even where a period of time had elapsed. However, the Court ruled that the mere possibility of an infringement procedure could not justify complete refusal of access to such documents. The Commission would be required to list the categories of documents concerned, setting out the reasons why the documents detailed in the request were related to the possible opening of an infringement procedure.

In this case, the Commission had failed to state the reasons for its failure to disclose the documents and had failed to specify which of the exceptions in the *Code of conduct* it relied on. The Court, therefore, annulled the decision to refuse access to the documents. The Commission was ordered to pay the costs of the applicant.

Multi-disciplinary practices

The Dutch Order of Advocates by its regulations prohibits partnerships between advocates and accountants. On this basis, it sought to prevent multi-disciplinary partnerships between lawyers and accountants. These regulations were challenged by Arthur Andersen and Price Waterhouse as being contrary to several provisions of the EU Treaty and the European Convention on Human Rights. These accountancy firms argued that a prohibition on multi-disciplinary practices is anti-competitive and that it breached the Treaty rules on free movement of services and the freedom to establish. The Dutch Order of Advocates argued that the ban was justified on public interest grounds. The action came before the District Court of Amsterdam.

The Court ruled in favour of the Dutch Order of Advocates and found that the regulations did not breach European law. It held that there are major differences between the accounting and legal professions. Accounting is a public function involving the monitoring of accounts, with a view to the interests of others than the client. It is a public function and therefore the accountant has no legal privilege. In contrast, lawyers are guided principally by the interests of their clients and do have the benefit of legal privilege.

The Dutch Order of Advocates was held to be a public authority, created by statute to ensure the

availability of properly-qualified legal lawyers to help the public. As such, to require compulsory membership of it did not conflict with Article 11 of the European Convention on Human Rights, which provides the right of free association.

On a similar basis, the Order was not considered to be an association of undertakings within the meaning of Article 85 of the EU Treaty. The Court also held that it was not abusing a dominant position and therefore Article 86 did not apply. As the Order was not an association of undertakings, the delegation of regulatory and disciplinary powers to it by the Dutch Government by legislation was not contrary to Article 5 of the Treaty.

Even if the rules of the Order imposed a restriction on the free provision of services, the restriction would be justified for compelling reasons of public interest. The object of the regulation was to protect the independence of lawyers and to protect their clients. This is of direct relevance to the proper administration of justice. Furthermore, the regulation was not disproportionate as it did not prohibit all forms of co-operation between accountants and lawyers.

The regulation did not discriminate between parties within and without the Netherlands. It was within the discretion left to Member States to regulate the legal profession. As such, it was not contrary to the right of free establishment guaranteed under the Treaty.

Price Waterhouse and Arthur Andersen have indicated that they will appeal this decision. The Dutch Order of Advocates believes that a reference to the European Court of Justice is inevitable. The outcome of this case will have important implications for the self-regulation of the legal profession throughout the European Union and may call into question the rules prohibiting co-operation between accountants and lawyers.

Recent developments

COMMERCIAL LAW

Free movement of goods

In *Merck & Co Inc and Ors v Primecrown Ltd and Ors and Beecham Group plc v Europharm of Worthing Ltd* (Case 267/95 & 268/95), the Court of Justice considered whether patent protection in Member States can impede the free movement of goods. Patent legislation in the United Kingdom allowed patent holders to oppose the importation of such products from another Member State where the law provides no patent protection for such product. Merck and Beecham sold patented drugs in the United Kingdom and also sold such drugs in Belgium and Greece where there was no such protection. They wished to prevent companies importing the drugs from Greece and Belgium into the UK. The Court held that Articles 30 and 36 prevented such opposition.

COMPETITION

Mergers

In late December 1996, the Commission approved the take-over by one insurance company, AXA, of another, UPA. The new entity has a market share of approximately 15% of the insurance market in France and Belgium, rising to about 30% in particular sectors. The Commission did consider that the accumulation of such market shares, where the market share of competitors was relatively modest, could create the risk of a dominant position. However, as there were numerous established and emerging competitors who were well placed to compete, the Commission decided to approve the acquisition.

CIVIL LIABILITY

Blood safety

The Commission is to present proposals during 1997 to ensure the safety of blood and plasma used in transfusions. The form that this proposal will take is unclear as the European Union has no binding powers in this area.

EMPLOYMENT

Gender discrimination

In *Gillespie* (Case 342/93), the Court upheld the right of a woman absent on maternity leave to receive a pay rise granted to working colleagues. The Court held that payments made to a woman who is on maternity leave are pay within the meaning of Article 119 of the Treaty and the Directive on Equal Pay. The Court said that these provisions do not require that women should receive full pay during maternity leave but the amount of benefit payable must not be so low as to undermine the purpose of the leave. In assessing the adequacy of payment, the national court should take into account the length of the maternity leave as well as other forms of social protection afforded by national law in the case of justified absence from work.

In contrast, in *Handels-og Kontorfunktionaerernes forbund i Danmark, acting on behalf of Helle Elisapeth Larsson v Dansk Handel & Service, acting on behalf of Føtex Supermarked A/S* (Case 400/95), Advocate General Colomer proposed that the Court should find a dismissal contrary to Directive 76/207 on equal treatment. The employee had been dismissed due to absences from work, in excess of the normal sick leave period, resulting from an illness which had appeared during maternity leave.

LITIGATION

Brussels Convention

In *Antonius van den Boogard v Paula Laumen* (Case 220/95), the Court on 27 February held that an order made during divorce proceedings concerning payment of a lump sum and transfer of ownership in property by one former spouse to another was to be regarded as relating to maintenance and thus coming within the scope of Article 1 of the Convention.

ENVIRONMENTAL LAW

Environmental impact assessments

The Commission has recently put forward a proposal which would force local authorities to integrate environmental considerations into the planning process at a much earlier stage of proceedings. Directive 85/337 currently requires assessments to be carried out in certain limited circumstances and for certain major projects such as the construction of highways. The new proposal seeks to tighten up the Directive which is seen as too weak, with too much discretion left to the Member States. The Commission has proposed that the new Directive would be implemented throughout the EU by 2000.

GENERAL PRINCIPLES

Legitimate expectation and legal certainty

The Court of First Instance considered these principles in *Opel Austria GmbH v Council* (Case T 115/94) on 22 January. The Court found that the principle of good faith is a corollary of the principle of the protection of legitimate expectation which has been recognised as part of Community law. The Court also held that the principle of legal certainty was infringed where a Council regulation was expressed to come into force from the date of its publication in the Official Journal and the regulation was then published in a volume of the Official Journal which was back-dated. Legal certainty requires not only that any measure of the institutions having legal effects must be clear, but also that it must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and starts to have legal effect.

ILT Digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

***Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations 1997* (SI No 32 of 1997)**

These regulations apply the provisions of the *Ethics in Public Office Act, 1995* to individuals occupying specified positions of employment in the wider public service. Certain positions are designated as 'designated directorships' or 'designated positions' (as defined in ss17 and 18 of the Act respectively). Persons occupying such positions are required to furnish a statement of registrable interests (as defined in the second schedule to the Act) to the relevant authority within their own organisation. Designated directors will also be required to furnish a statement of registrable interests to the Public Offices Commission.

AGRICULTURE

***Diseases of Animals (Bovine Spongiform Encephalopathy) (No 3) Order 1996* (SI No 415 of 1996)**

This order introduces labelling requirements in respect of feeding stuffs intended for feeding to animals or poultry (with the exception of feeding stuffs for cats and dogs) which contain mammalian meat and bone meal. The order came into operation on 1 January 1997.

CENSORSHIP

Video Recordings Act, 1989 *(Classification of Video Works) Regulations 1996* (SI No 403 of 1996)

These regulations provide for changes in the classification of video works under the *Video Recordings Act, 1989*. The changes in video classifications implemented are: firstly, the substitution of the words 'under parental guidance' for the words 'in the company of a responsible adult' in the classification 'fit for viewing generally, but in the case of a child under 12 years, only in the company of a responsible adult'; and, secondly, the introduction of an additional classification of 'fit for viewing by persons aged 12 years or more'.

Video Recordings Act, 1989 *(Supply Certificate and Labelling) (Amendment) Regulations 1996* (SI No 407 of 1996)

These regulations provide for changes in relation to the labels and labelling of video recordings, necessitated by the Video Recordings Act, 1989 *(Classification of Video Works) Regulations 1996 (see above)*. Because of these changes, two new symbols are prescribed by the present regulations. The previous symbols (prescribed by the Video Recordings Act, 1989 *(Supply Certificate and Labelling) (Amendment) Regulations 1994)* remain unchanged.

CHILDREN

Child Care Act, 1991 *(Commencement) Order 1996* (SI No 399 of 1996)

This order brings ss49 to 65 and s67 of the *Child Care Act, 1991* into operation from 18 December 1996.

***Child Care (Standards in Children's Residential Centres) Regulations 1996* (SI No 397 of 1996)**

These regulations prescribe various requirements to be complied with by voluntary children's residential centres for the proper conduct of such centres pursuant to part VIII of the *Child Care Act, 1991*. Provision is also made for the inspection of such centres by health boards to ensure the enforcement and execution of these regulations. The regulations came into operation on 31 December 1996.

***Child Care (Pre-School Services) Regulations 1996* (SI No 398 of 1996)**

These regulations set out various requirements to be complied with by persons carrying on pre-school services for the purpose of securing the health, safety and welfare and promoting the development of pre-school children. These regulations came into operation on 31 December 1996.

COMMERCIAL

***Fuels (Petroleum Oils) (Amendment) (No 2) Order 1996* (SI No 404 of 1996)**

This order obliges persons who import into the State certain petroleum products (either for their own use or for disposal in the State) to purchase up to 20% of their requirements from the Irish National Petroleum Corporation Limited (refining at the Whitegate oil refinery). Previously, the purchase requirement was 35%. The order came into operation on 1 January 1997.

***European Communities (Commercial Agents) Regulations 1997* (SI No 31 of 1997)**

These regulations seek to clarify the *European Communities (Commercial Agents) Regulations 1994* by confirming that, after the termination of an agency agreement, a commercial agent shall be entitled to compensation under art 17(3) of Council Directive 86/653/EEC (of 18 December 1986).

COMPANY

***European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 1996* (SI No 357 of 1996)**

These regulations amend the *European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 1989* to provide that the requirements of ss58, 119 and 125 of the *Companies Act, 1963* will not apply to investment companies with fixed capital or investment companies with variable capital which are engaged in the collective investment business. Additionally, the regulations provide that ss70 and 72 of the *Principal Act* will not apply to companies with fixed capital engaged in the collective investment business. The regulations came into operation on 1 January 1997.

CONTRACT

***Seamus McCann and Anor v Brinks Allied Limited and Anor* (Supreme Court), 4 November 1996**

Duty of care—security men assaulted while delivering cash to bank—employer's duty of care—contractual relationship between security firm and bank—security firm seeking indemnity from bank—contract prevented any duty of care arising on the part of the bank—appeal dismissed—*Civil Liability Act, 1961*, s21.

Held: The contractual relationship between the parties prevented a duty of care arising on the part of the bank *vis-à-vis* the security firm's employees.

CRIMINAL

***John Corway v Independent Newspapers plc and Anor* (Geoghegan J), 23 October 1996**

Blasphemous libel—application pursuant to s8 of the *Defamation Act, 1961* for leave to commence a criminal prosecution for blasphemous libel—cartoon depicting politicians rejecting Eucharist and chalice offered by priest—cartoon accompanying article discussing influence of Catholic church with reference to referendum on divorce—cartoon captioned *Hello progress, bye-bye father*—principles to be applied—whether cartoon blasphemous libel—*mens rea*—nature of intent necessary—whether public interest served by prosecution—Constitution of Ireland 1937, art 40(6)(1)°(i)—*Defamation Act, 1961*, s8—*Newspaper Libel and Registration Act 1881, s3—Law of Libel Amendment Act 1888*, s81.

Held: Leave to commence a prosecution for blasphemous libel will be granted where there is a clear *prima facie* case that the matter complained of attacks a doctrine or tenet of the Christian religion and where the libel is so serious that the criminal law ought to be invoked and where the public interest requires the institution of criminal proceedings. It is relevant but not necessary that the libel is likely to provoke a breach of the peace.

EDUCATION

Education Bill, 1997

This Bill, as presented by the Minister for Education, aims to provide for a range of measures in relation to rights and duties arising in respect of education (other than third-level education) and for the structure and administration of the education system. The Bill seeks to establish a statutory framework in which the education system can function. If passed, the Bill would provide for: the establishment, composition, operation and functions of education boards; the recognition of schools for the purposes of funding by public funds; the establishment of the inspectorate on a statutory basis; the establishment, composition and functions of boards of management of schools; the establishment and role of parents' associations; appeals by students or their parents; and the making of regulations by the Minister.

ELECTIONS

European Parliament Elections Bill, 1996

This Bill has been passed by Dail Éireann. (See also (1996) 14 ILT 200.)

***Presidential Elections (Forms) Regulations 1997* (SI No 29 of 1997)**

These regulations prescribe the forms to be used in connection with the election of a president.

***Registration of Electors Regulations 1997* (SI No 5 of 1997)**

These regulations prescribe dates in relation to the preparation of the postal voters list for electors with a physical illness or disability for the 1997/98 register of electors.

EMPLOYMENT

***Protection of Young Persons (Employment) (Exclusion of Workers in the Fishing or Shipping Sectors) Regulations 1997* (SI No 1 of 1997)**

These regulations allow employers in the fishing or shipping sectors to employ a young person on terms other than those specified in para (a) or (b) of s6(1) of the *Protection of Young Persons (Employment) Act, 1996* provided that any young person so employed who is assigned to work between 10pm and 6am is allowed equivalent compensatory rest time.

***Protection of Young Persons (Employment of Close Relatives) Regulations 1997* (SI No 2 of 1997)**

These regulations provide that ss3, 5, 6(1)(a) and 11 of the *Protection of Young Persons (Employment) Act, 1996* shall not apply to the employment of close relatives.

***Protection of Young Persons (Employment) (Prescribed Abstract) Regulations 1997* (SI No 3 of 1997)**

These regulations set out the abstract of the *Protection of Young Persons (Employment) Act, 1996* which an employer of persons under 18 years of age must display at the principal entrances to his or her work premises. (See also the Terms of Employment (Information) Act, 1994 (*Section 3(6)) Order 1997* below.)

Terms of Employment (Information) Act, 1994 *(Section 3(6)) Order 1997* (SI No 4 of 1997)

This order provides that employees under 18 years of age must be given a copy of the abstract of the *Protection of Young Persons (Employment) Act, 1996* not less than one month after employment commences. (See also the *Protection of Young Persons (Employment) (Prescribed Abstract) Regulations 1997* above.)

FAMILY

Family Law (Amendment) Bill, 1997

This private member's Bill, as introduced by Michael Woods TD, aims to provide that s32 of the *Family Law Act, 1995* (imposing a requirement to notify intention to marry to the Registrar) shall not apply to marriages solemnised between 1 August 1996 and 31 March 1997. (See also the *Marriages Bill, 1996*, 14 ILT 176, which has not been passed.)

FISHERIES

Fisheries (Commissions) Bill, 1997

This Bill, as presented by the

Minister for the Marine, aims principally to validate the Fisheries (Amendment) Act, 1995 *(Southern Regional Fisheries Commission) Order 1996*. The order purported to establish and confer certain functions on the Southern Regional Fisheries Commission.

GARDA SÍOCHÁNA

***Minister for Justice v Garda Representative Association* (Geoghegan J), 13 September 1996**

Injunction—staff representation dispute—proposed new legislation—Minister made new regulations and sought to delay September elections—relief granted—Garda Síochána (Associations) Regulations—*Garda Síochána Act, 1924*, s13—*Garda Síochána Act, 1977*, s13—*Police Force Amalgamation Act, 1925*, s14.

Held: The balance of convenience favoured the granting of the injunction; the Garda Síochána are a special category of public servant and the Minister's fears were well founded in the circumstances.

HEALTH AND SAFETY

***European Communities (Knackery) Regulations 1996* (SI No 396 of 1996)**

These regulations, implementing Council Decision 95/348/EC (of 22 June 1995), provide for the licensing and registering of knackery premises. They lay down the rules applicable to the collection, treatment and disposal of animal waste to be used as feeding stuffs for animals not intended for human consumption. The regulations came into operation on 31 December 1996.

***Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations 1996* (SI No 408 of 1996)**

These regulations provide for restrictions on expenditure on advertising and sponsorship of tobacco products. They came into operation on 1 January 1997.

INTELLECTUAL PROPERTY

***European Patent Organisation (Design and Immunities) Order 1996* (SI No 392 of 1996)**

This order enables the privileges and immunities of the European Patent Organisation under the European Patent Convention (done at Munich on 5 October 1973) and the Protocol on the Privileges and Immunities of the European Patent Organisation to be implemented pursuant to the *Diplomatic Relations and Immunities Acts, 1967 and 1976.*

***Anheuser-Busch Inc v Controller of Patents, Trade Marks and Anor* (Costello P), 23 October 1996**

Trade mark—application to rectify register expunging trade mark on ground of non-use—applicant merely stated enquiries had not revealed any instance of use—application refused on grounds of lack of evidence—whether applicant had established *prima facie* case—whether applicant entitled to infer from counter-claim that respondent not claiming use of trade mark in this country.

Held: There was no hard and fast rule as to what was required by way of evidence to establish non-use of a trademark.

LOCAL GOVERNMENT

***Local Government Staff Negotiations Board (Establishment) Orders 1971 to 1996 (Revocation) Order 1996* (SI No 411 of 1996)**

This order dissolves the Local Government Staff Negotiations Board with effect from 1 January 1997 and provides for consequential matters.

***Local Government Management Services Board (Establishment) Order 1996* (SI No 410 of 1996)**

This order provides for the establishment of the Local Government Management Services Board. It came into operation on 1 January 1997.

PENSIONS

***Occupational Pension Schemes (Member Participation in the Selection of Persons for Appointment as Trustees) (No 3) Regulations 1996* (SI No 376 of 1996)**

These regulations provide that members covered by a pension scheme with not less than 50 qualified members and a directly invested scheme with not less than 12 members may participate in the selection of trustees. The total number of trustees to be selected shall be two or half the total number, whichever is the greater, unless otherwise agreed by the members. The regulations allow for the process to be initiated by not less than 15% of the qualified members of the scheme, or trade unions representing not less than 50% of the active members, or the employer, and make provision for the appointment of a returning officer and give guidelines as to how polls and elections should be conducted. The regulations further provide for, *inter alia:* nominations; the term of office of member trustees (six years); the procedure for the appointment of a chairperson; the filling of casual vacancies; procedures for reselection of member trustees at the end of their term of office; and also allow for the Pensions Board to execute vesting orders in certain limited circumstances. The regulations came into operation on 20 November 1996.

PLANNING AND DEVELOPING

***Kenneth Gregory v Dun Laoghaire/Rathdown County Council and Anor* (Geoghegan J), 16 July 1996**

Judicial review—planning permission—construction of unauthorised construction—objections—application for retention permission—permission granted—appeal to An Bord Pleanála—permission granted with conditions—revised plans to be approved by planning authority—authority interprets condition of the board—revised plans agreed—challenge to authority's interpretation—whether authority's decision open to judicial review—whether authority wrongly interpreted condition—whether any reasonable authority would have so interpreted the condition—whether applicant entitled to the relief sought.

Held: Where a planning authority approves revised plans with a planning permission applicant, that authority is carrying out its public functions pursuant to conditions imposed by An Bord Pleanála, and, therefore, the authority's decision is capable of being judicially reviewed.

***Littondale Ltd v Wicklow County Council* (Laffoy J), 10 July 1996**

Application to extend period of planning permission—whether substantial works had been carried out—whether development had commenced before the expiration of the appropriate period—whether the development would be completed within a reasonable time—application refused—order of *certiorari* sought—whether respondent had taken irrelevant matters into account—whether decision was unreasonable/irrational and therefore *ultra vires*—whether the decision-making process had been fundamentally flawed — *Local Government (Planning and Development) Act, 1982*, s4.

Held: When determining whether 'substantial works' have been carried out within the meaning of s4 of the *Local Government (Planning and Development) Act, 1982*, the word 'substantial' should be ascribed its natural or ordinary meaning, that is, of ample or considerable amount, quantity or dimensions.

PRACTICE AND PROCEDURE

***District Court Districts and Areas (Section 26) Orders 1997* (SI Nos 20, 22-28, and 34-42 of 1997)**

A series of 17 orders abolishing, amalgamating and altering district court areas has been made.

***District Court Areas (Alteration of Place) Orders 1997* (SI Nos 6-17 of 1997)**

A series of 12 orders altering the location of district court sittings has been made.

***Peter Carleton v Denis O'Regan* (Barr J), 14 October 1996**

Admiralty—time limit—extension of time—defendant's trawler colliding with plaintiff's trawler—defendant disputing *quantum*—proceedings not commenced within two-year period prescribed by *Civil Liability Act*—plaintiff seeking extension of time pursuant to *Civil Liability Act, 1961*—principles to be applied—cause of failure to issue proceedings—whether defendant contributing to failure to issue proceedings—*Civil Liability Act, 1961*, ss46(2), 46(3)—*Maritime Conventions Act 1911*, s8.

Held: The time limit prescribed by s46(2) of the *Civil Liability Act, 1961* will not be extended except in special circumstances. Persons acting for plaintiffs should either issue proceedings or obtain a firm and clear undertaking that the proposed defendants will consent to an exten-

sion of the time limit. In considering whether to grant an extension, the court will consider the length and cause of the delay in commencing proceedings, whether the delay was beyond the control of the party who was dilatory, whether the proposed defendants contributed to the delay, and whether, if the extension were granted, justice would be done between the parties. Accordingly, an extension of time will not be granted where, although liability is not in issue, *quantum* is disputed, where no explanation is given for the delay in issuing proceedings and where the defendant has not contributed to the delay.

REAL PROPERTY

Landlord and Tenant (Ground Rent Abolition) Bill, 1997

This private member's Bill, as presented by Michael Woods TD, aims to abolish all ground rents in respect of private dwellings, local authority dwellings, and all other dwellings currently held under a ground rent lease. If passed, that Bill would ensure that, on an appointed day, the interest of the ground rent tenant would be enlarged into a fee simple and the ground landlord would receive a right to compensation, payment of which would be secured by a charge on the new freehold premises (the compensation due would be paid on the same basis as already applies to the purchase price under the *Landlord and Tenant (Ground Rent) Acts, 1967 to 1989)*. Each householder would receive a freehold certificate showing that he or she is the absolute freeholder of the house and a system of simple registration in the Land Registry would be introduced. For leases which have expired, or have less than 20 years to run, the householder would be entitled to the freehold on a similar basis, without having to pay a portion of the value of the house as was the case up to now.

Valuation Appeal (Fees) Regulations 1996 (SI No 417 of 1996)

These regulations specify new fees in respect of an appeal to the Commissioner of Valuation under ss19 and 31 of the *Valuation (Ireland) Act 1852*. Where the valuation of the property, as determined by the Commissioner of Valuation, is less than £25, then the appeal fee shall be £50; where the valuation of the property is between £25 and £99, the fee shall be £100; where the valuation of the property is between £100 and £499, the fee shall be £150; and where the valuation of the property is over £500, the fee shall be £225.

Valuation (Revisions and New Valuations) (Fees) Regulations 1997 (SI No 418 of 1997)

These regulations prescribe that the fee in respect of an application by an owner or occupier of any property or by a rating authority under s3(1) of the *Valuation Act, 1988* shall be £100.

Valuation Tribunal (Fees) Regulations 1997 (SI No 21 of 1997)

These regulations specify new fees in respect of an appeal to the Valuation Tribunal under s3(5) of the *Valuation Act, 1988*. Where the valuation of the property, as determined by the Commissioner of Valuation, is less than £25 then the appeal fee shall be £75; where the valuation of the property is between £25 and £99, the fee shall be £100; where the valuation of the property is between £100 and £499, the fee shall be £200; and where the valuation of the property is over £500, the fee shall be £300.

Aer Rianta cpt v Commissioner of Valuation and Ors (Supreme Court), 6 November 1996

Valuation—licence agreement—case stated—immediate use and enjoyment of property—liability for rates—second-named defendant performing task on behalf of the Minister—no withdrawal of possession by Minister—function of second-named defendant merely to manage and operate aerodrome—second-named defendant not in rateable occupation—*Valuation Act, 1988*, s5—*Poor Relief (Ireland) Act 1833*, ss61, 124.

Held: The right of the applicant to use the facility was no more than that of an employee or independent contractor and it was never in rateable occupation of the property as the Minister had never withdrawn from possession of the facility.

TELECOMMUNICATIONS

Telecommunications (Miscellaneous Provisions) Act, 1996 *(Commencement) (No 2) Order 1996* (SI No 402 of 1996)

This order brings ss8, 9, 10(4) to (11) and 14(1) (other than the provisions of the *Wireless Telegraphy Act, 1926* and ss46(10) and 90(2) of the *Postal and Telecommunications Services Act, 1983*, mentioned in col (3) of part I of the third schedule to the Act) of the *Telecommunications (Miscellaneous Provisions) Act, 1996* into operation from 19 December 1996.

TRANSPORTATION

Córas Iompair Éireann Bye-Laws (Confirmation) Order 1996 (SI No 394 of 1996)

This order confirms bye-laws made by CIE for the regulation of travel and the use of bus services provided by Dublin Bus and the maintenance of order on these services. It came into operation on 17 December 1996.

Diary dates

CONFERENCES

The 1997 Woman Lawyer Conference
Date: 12 April
Venue: New Connaught Rooms, Covent Garden, London
Speakers: Tony Girling, President, UK Law Society; Robert Owen QC, Chairman, UK Bar Council; Lord Woolf, Master of the Rolls
Contact: Blair Communications & Marketing (tel: 0044 171 722 9731; fax: 0044 171 586 0639)

Burren Law School
Topic: *The media in Irish law – a Brehon perspective*
Date: 18-20 April
Venue: Newtown Castle, Ballyvaughan, Co Clare
Contact: Mary Greene on 065 77200

Solicitors' European Group
Topic: *European Monetary Union*
Date: 24 April
Venue: Law Society of England and Wales, London, UK
Contact: Fiona Morris/Sarah Harden (tel: 0044 171 320 5784)

Institute of European Law
Topic: *The US, the EU and the globalisation of world trade*
Date: 24 April
Venue: University of Birmingham, UK
Contact: Nadene Scott (tel: 00 44 121 414 6298)

AIJA (International Association of Young Lawyers)
Topic: *How to litigate in Community law*
Date: 25-27 April
Venue: Exeter, UK
Contact: Gerard Coll (tel: 01 676 0704)

Topic: *Legal and practical aspects of investments in the People's Republic of China*
Date: 1-4 May
Venue: Shanghai, China
Contact: Gerard Coll (tel: 01 676 0704)

SEMINARS

London School of Economics International Summer School in Law
Date: 30 June-18 July
Contact: Colleen Etheridge, Department of Law, LSE (tel: 00 44 171 405 7686)

Corporate and Public Services Solicitors Association Inaugural Conference
Topic: *The law of privilege: how it affects you*
Speakers: Niall Fennelly, Advocate General, Professor David Gwynn Morgan, Eamonn Barnes, Director of Public Prosecutions
Date: 11 April
Venue: The National Gallery of Ireland Conference Hall, Merrion Square, Dublin 2

Attendance is complimentary to members of the Corporate and Public Services Solicitors Association

Recent criminal legislation

SEMINAR

at BLACKHALL PLACE on FRIDAY 25 April 1997 at 5pm

There have been a number of important changes in criminal law recently and the purpose of this seminar is to highlight the implications of these for criminal law practitioners.

There will be a reception afterwards for the Judges of the District Court and all who attend the seminar are invited to attend the reception also.

SPEAKERS: **Judge Gerard J Haughton**
James MacGuill
Barry Donoghue

APPLICATION FORM

CRIMINAL LAW COMMITTEE, SEMINAR: RECENT CRIMINAL LEGISLATION, 5pm, 25 APRIL 1997, BLACKHALL PLACE

NAME _____

PRACTICE NAME & ADDRESS _____

Please reserve _____ place(s) for me. I enclose £ _____

FEE (includes seminar, materials and reception): £35 solicitors
£20 apprentices

Please return to: Colette Carey, Solicitor, Criminal Law Committee, Law Society, Blackhall Place, Dublin 7.

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Chairman of the Incorporated Council of Law Reporting, Michael McDowell TD, with journalist and broadcaster Vincent Browne and Siobhan Phelan, Chairperson of FLAC

Linda O'Shea-Farren, Programme Manager to the Minister for Justice, ***Irish Times*** columnist Renagh Holohan, Progressive Democrats' Justice Spokeswoman Liz O'Donnell TD, and Catherine Treacy, Registrar, the Land Registry

Evelyn Owens, Judicial Appointments Advisory Board, Judge Kevin O'Higgins, Circuit Court, and Noel Synnott, Courts Section, Department of Justice

(Left) Bar Council Chairman James Nugent, Law Society Council member Philip Joyce, and Past President Paddy Glynn

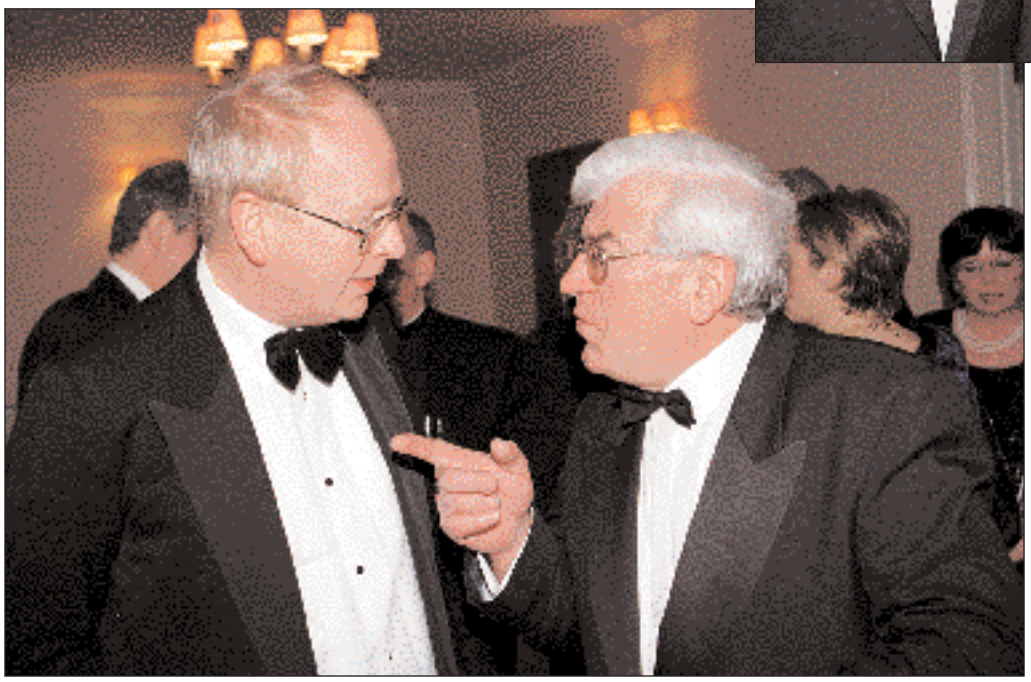
(Above) Edith Wynne and Dr Valerie Richardson, both members of the Working Group on Qualifications for Appointment as Judges of the High and Supreme Courts

dinner the ociety

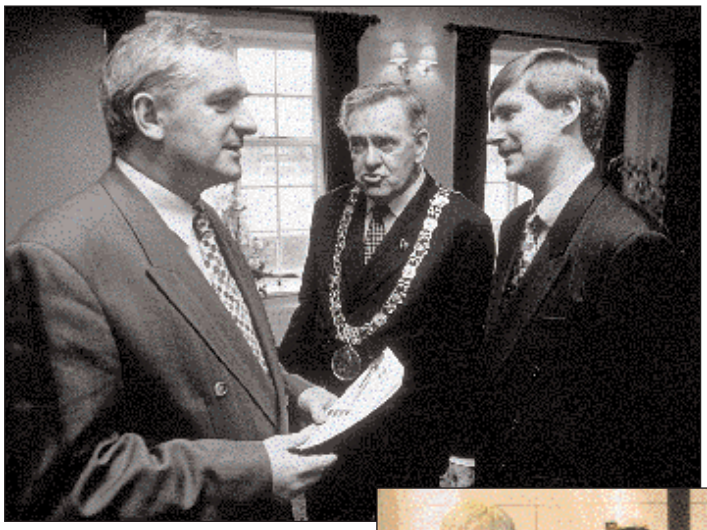
Law Society President Frank Daly (right) with Junior Vice President Elma Lynch and Senior Vice President Laurence Shields

Chairman of the Legal Aid Board Clare Connellan, Junior Vice President Elma Lynch, and Progressive Democrats' Leader Mary Harney TD

(Above) Law Society Director of Education Albert Power (left) with Alastair Rankin, President, Law Society of Northern Ireland



(Left) Director of Public Prosecutions Eamonn Barnes buttonholes Michael McDowell TD



Fianna Fáil leader Bertie Ahern TD with Dublin's Lord Mayor Brendan Lynch and Law Society Director General Ken Murphy at the Dublin launch of the WillAid initiative in Blackhall Place

(Above) Law Society President Frank Daly and Dublin Solicitors Bar Association President Gerry Doherty (3rd from left) with the four solicitor Circuit Court judges (from left) Michael White, Frank O'Donnell, John F Buckley and Pat McCartan

(Left) At the Cork launch of WillAid were: (from left) Frank Dold, Regional Manager, Canada Life, Martin Harvey, President of the Southern Law Association, the Lord Mayor of Cork James Corr, David Donegan, PRO for the Southern Law Association, and Gorta's Jim Coughlan

LIAM M COLLINS (1920-1997)
An appreciation

The death occurred on 9 March 1997 of Liam M Collins (77), solicitor, Collins Brooks & Associates, Clonakilty, Co Cork. Liam practised in 'Clon' since his admission in Trinity 1943 and over that long period he earned a reputation second to none in West Cork as both a fearless District Court advocate and as a consummate and dedicated all-round practitioner. In the former context, from the 1940s to the 1980s, it was a rare edition of the *Southern Star* which did not have at least one report of a Collins courtroom encounter presided over by District Judge James F Crotty or his District No 18 successors, Judges Kevin I McCourt, Michael J O'Hara or Brendan J Wallace.

He was a great supporter of the continuing legal education activities of the Society of Young Solicitors and recognised the value of the bi-annual SYS weekend seminars (particularly in the earlier years when there was a complete absence of current Irish legal texts) and the desirability of keeping up to date on legal developments in order to properly serve his clients. Liam often wryly joked about his early years in practice when his 'library' of Irish law books was complete but yet only comprised six tomes – including a rare pristine copy of *Kiely's Equity!* He was particularly proud of the publication in 1989 of *Road traffic law in the Republic of Ireland* by his solicitor nephew Robert Pierse (now in its second edition).

Liam was a man small in stature but large, so large, in integrity, spirit and resolve. Yet at the same time he was a deeply private and spiritual person in his many unheralded charitable endeavours and in his fortitude in coping throughout his life with poor eyesight. However, he was never private in the face of what he perceived as unjust or wrong, where a combined sense of indignation and public duty gave rise to many well-reasoned letters to government ministers or civil servants.

As a nephew of Michael Collins, he would have been placed on one particular side of our unnaturally divided political order, but despite such a pedigree, Liam was thoroughly apolitical in the traditional Irish context. His long-nurtured ambition was to 'hand back' Collins to the nation as a whole and to put an end to the post-Civil War characterisation of Collins as purely an icon of one political party.

His opportunity to achieve this came in October 1990 with the centenary of Collins' birth. Liam, who owned the Collins birth site at Woodfield, Clonakilty, organised (in conjunction with the Clonakilty Historical Society) a celebration which was intended to draw together those who had become divided on the emotional fulcrum of the Treaty and its aftermath.

The keynote speaker at this centenary event at Woodfield was Peter Sutherland and the platform party included President Patrick J Hillary, Brian Lenihan (RIP) and Sile de Valera (FF), Liam Cosgrave, Garret Fitzgerald and Alan Dukes (FG), Dick Spring (Labour), Mary Harney (PDs) and Proinsias de Rossa (then WP, now DL). It also included Chief Justice Thomas A Finlay, Army Chief of Staff James Parket, Garda Commissioner Eugene Crowley, British Ambassador Sir Nicholas Fenn and senior representatives of all the Christian churches in Ireland.

By that unique centenary gathering at Woodfield, Liam was instrumental in reviving a broadly-based interest in Michael Collins and his achievements. Tim Pat Coogan's book on Collins, published to coincide with the centenary, became a best seller. People across the political divide were no longer inhibited from debating in a non-emotional way the 1916/22 period and the contributions of Collins and those who supported the Treaty as well as the contributions of de Valera and those who opposed the Treaty. The final act of this 'handing back' of Collins was in July 1991 when the then Taoiseach, Charles J Haughey, came to Woodfield and on behalf of the State received from Liam the deeds of the Michael Collins Heritage Centre.

It was therefore fitting that when the Neil Jordan movie *Michael Collins* came to be launched in Ireland on 6 November 1996 that Liam, with some reticence, was propelled into the forefront of the publicity surrounding the simultaneous inaugural first nights in Cork and in Dublin. His influence was aptly reflected by the fact that the proceeds of the Cork event went to COPE (for sheltered housing for the aged), being one of a number of charities he had become involved with over many years of confidential, unheralded work in that 'vineyard'.

Whether as a lawyer and confidant, as an historic 'bridge-builder' or as a man of charity and compassion, Liam will be sorely missed by all who had the honour and pleasure to know him. To his sorrowing wife, Betty, and his children, Mary, Helen (solicitor), Catherine, John, Michael (solicitor), Ann, Elizabeth and Maurice (barrister) and to all in Collins Brooks & Associates, we offer our sincere sympathy on their great loss.

MVOM

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Book reviews

Archbold: Criminal pleading, evidence & practice 1997

Editor: James Richardson; Sentencing Editor: Dr David Thomas
Sweet & Maxwell Limited (1997), Cheriton House, North Way, Andover, Hants SP10 5BE, England
ISBN 0 42156670 1. Price: £165 hardback

The 175th anniversary of the first publication of *Archbold* was marked in 1996. John Frederick Archbold edited the first three editions. The present editor pays tribute to his legal expertise and editorial skills that are reflected to this day throughout the text. In the preface to the first edition, Archbold wrote: 'I have taken infinite pains … to compress the whole into the smallest possible compass consistent with perspicuity'.

In 1988, *Archbold* was published in more than one volume. However, in this present 1997 edition, it has again reverted to a one-volume work, replacing the previous three-volume format. The present volume contains over 3,500 pages. *Archbold* has been correctly viewed by the legal profession as an unrivalled authority on criminal law practice and procedure, involving authoritative up-to-date coverage of the latest legal developments in the field of crime.

A team of practitioner editors has assisted the editor and the sentencing editor to revise substantially and re-write in a clear and organised style, concentrating on material that is of significance to the practitioner. Certain offences of a highly specialised nature are no longer dealt with, including certain offences under the (UK) *Trade Descriptions Act 1968*, and the *Copyright, Designs and Patents Act 1988* and the *Trade Marks Act 1994*.

The United Kingdom, as in this jurisdiction, has witnessed the usual torrent of legislation in the field of criminal law in the past few years. The editor rightly draws attention to the fact that the British Government appears to be deaf to pleas from the judiciary and others to stem the tide of piecemeal legislation and its apparent unwillingness to learn from its own mistakes. We do require a codified system of criminal law.

For many lawyers, *Archbold* is a single and indispensable work of reference. It is, and probably will remain, a classic and a legal 'best-seller'. G

Dr Eamonn Hall is the Chief Legal Officer of Telecom Éireann plc.

Sexual offences: law, policy and punishment

Thomas O'Malley
Round Hall Sweet & Maxwell (1996), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1 899738 34 7. Price: £45

Professor Tom O'Malley of University College Galway has long established a reputation as a leading expert on criminal and constitutional law in Ireland. With the publication of this book that reputation will surely be consolidated. The book runs to 449 pages and averages about four or five footnotes a page.

It may be difficult to see how a topic which is dealt with in *Cross & Jones* or *Smith & Hogan* in less than 60 pages could occupy such a large volume. The answer to that question spells out the merits of this work. Each individual offence is dealt with, first of all, in terms of a straightforward factual presentation of the relevant legal elements. For each individual offence the relevant statistics, insofar as these are available, are abstracted from the relevant Garda reports and considered.

Finally, as one might expect in an area where law and policy are the driving elements, Professor O'Malley deals with the relevant sociological and political material.

As a legal textbook, it is first rate. All of the law relevant to sexual offences is set out in a simple and clear form, with relevant statutory and judicial extracts presented skilfully. As a textbook for lawyers, and for students, this book is essential.

When it comes to academic analysis, the strength of a non-practitioner who stands back from the cut and thrust of every day litigation lies in the ability to think and analyse. This Professor O'Malley does with striking success, making this book an essential tool in understanding the complex issues of policy underlying this aspect of criminal law.

There has been a great deal of nonsense written on the question of sentencing in sexual offences; almost a quarter of this book is devoted to that topic. Comparative analysis is done in terms of policy between this country and other leading common law jurisdictions. From these, the author has found it possible to construct a sense of fundamental principles upon which sentencing and sexual offences should be based. These are of enormous help. For the first time we are able to see, in a coherent form, apparently contradictory elements that tend to drive a sentence towards opposite directions.

One has to admire, as well, the manner in which Professor O'Malley has laid his hands upon every scrap of information that might be regarded of assistance to his analysis. These include newspaper reports and a number of unreported judgments of the Court of Criminal Appeal delivered simply *ex tempore* and later recovered by him from what I presume are transcripts of the relevant tape recording.

The bulk of sentences for rape is in the five to ten year bracket

over a period of seven years. The next highest category are those who receive more than ten years. The smallest category are those offenders who receive less than three years. When it comes to indecent assault, which is of course a lesser included offence in rape, incest, buggery and aggravated sexual assault, the preponderance of sentences are in the one to two year band, with the next highest category being offenders who receive less than one year for such an offence.

It is difficult, therefore, to construct a case that the courts are, in general, too lenient when it comes to sentencing for sexual offences. On the contrary, a conviction for rape carries a high probability that one will serve more than five years. Even when it comes to indecent assault, the vast majority of sentences are in the one to five year bracket.

Another of this book's strengths lies in the materials to which it refers. For example, it is particularly helpful that Professor O'Malley in referring to an academic study in a footnote generally gives a concise summary of the results found or the particular thesis argued for. This book serves us as an excellent reference point when starting to research any individual topic.

In the final chapter, Professor O'Malley calls for proper research to be carried out on the criminal justice system in the context of sexual offences. He calls for better information to be given to the victims and for the codification of what is now a virtually unintelligible jumble of statute law. Although he has made our way through this morass much easier with this book and has, by his effort, made a start towards introducing the rationality and compassion into the system which he calls for, Professor O'Malley still feels it is necessary to quote US President Abraham Lincoln's first State of the Union address in 1861:

> *'The statute laws should be made as plain and intelligible as possible, and be reduced to as small a compass as may consist with the fullness and precision of the will of the Legislature and the perspicuity of its language'.*

I hope that the people who matter will read and pay heed to this book. It is a major contribution to the most controversial area of criminal law and is a work which no politician, lawyer, journalist and judge should be without. G

Peter Charleton SC.

Irish pensions law and practice

Kevin Finucane and Brian Buggy

Oak Tree Press (1996), Merrion Building, Lower Merrion Street, Dublin 2. ISBN: 1-86076-036-8. Price: £65 (hardback); £49.95 (softback)

Since 1975, the aggregate funds of Irish pension schemes have grown from an estimated £1.2 billion to £18 billion, and growth is far from over. There are 44,702 pension schemes registered with the Pensions Board, of which the great majority have been established within the last 20 years. Pension rights accrue over a worker's entire career, so these schemes can expect several more decades of growth before they reach maturity.

Pension schemes are creatures of law. Most are established as trusts; the remainder are contractual or statutory. All create a network of legal rights and obligations between employers, employees and (usually) trustees, and most also involve the investment and management of substantial amounts of money. Solicitors advising on pension schemes must combine a knowledge of trust law, employment law, administrative law, tax law, insurance law and the law relating to financial services, as well, of course, as the increasingly complex statutory regulation of pension schemes.

Despite the range of legal issues involved, there was until recently little professional legal involvement in the establishment and operation of pension schemes. Only the legal advisers to life insurance companies and the larger brokers would expect to deal regularly with pensions matters. This is changing; demand for legal services in relation to pension schemes is growing and will continue to grow. There are now about 180 members of the Association of Pension Lawyers in Ireland, and a proportion of these, including a growing number of private practitioners, specialise largely or exclusively in pensions law.

The publication of this work, the first Irish textbook on the subject, is evidence of the growing market for legal services in relation to pension schemes. As yet, the number of specialist pension lawyers is insufficient to support a textbook, so the work is necessarily aimed at a wider audience. In the words of the authors: 'We have attempted to deal with all of those matters which would be of concern to persons involved with or interested in the law and practice relating to pensions.'

Thus they seek to explain pensions concepts to lawyers, and legal concepts to actuaries, benefits consultants and other pensions practitioners. The task of presenting a comprehensive survey of pensions legal issues to a diverse readership has resulted in a work of considerable breadth – there are 595 pages of text, followed by several appendices, including the consolidated text of the *Pensions Acts, 1990 and 1996.*

As a result, the work is not one to be read straight through. Different sections will appeal to different readers. Lawyers can skip quickly through much of chapter 4 (explaining the nature of trusteeship) but will pay more attention to those sections which deal with unfamiliar matters (such as chapter 9, explaining the role of the actuary, and the mechanism by which a pension scheme is funded) or which apply familiar legal principles in the unfamiliar context of pensions matters (such as chapter 16, exploring the effect of the equal pay requirements of European law).

Those already familiar with pensions legal issues will also find much of interest; chapter 15 provides a lucid introduction to the difficult topic of the pension adjustment orders granted in conjunction with judicial separation or divorce, and chapter 8 contains a useful survey of the special considerations that arise when dealing with public sector pension schemes.

A work of such breadth must sacrifice some depth. Most pensions legal issues are covered, but practitioners might wish that some points were addressed in more detail. To take a few examples, the trustees' duties in relation to unpaid contributions are covered in a single paragraph, which is scarcely a sufficient discussion of a problem which in practice arises frequently. The need for trustees to conclude a written agreement with their investment managers is mentioned, but there is no discussion of what should or should not be in the agreement. Nor is there any discussion of the conflict of interest issues which arise when trustees are invited to invest a part of the fund in the employer company.

It would be unfair to condemn the work for these deficiencies. A comprehensive survey aimed at both professional and lay readers cannot discuss issues in the depth to be expected of more specialist writing. To acknowledge that there is a need for more writing and publishing in this field is not to deny that this is an excellent work, indispensable to any practitioner whose clients operate or participate in pension schemes. G

Ultan Stephenson is a solicitor with McCann FitzGerald.

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April 1997

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An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the Registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner:. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 4 April 1997)

Regd owner: Michael Harkin, Maugheraboy, Sligo, Co Sligo; Folio: 18885; Townland: Maugheraboy; Co Sligo
Regd owner: John J and Eleanor O'Donovan; Folio: 22691; Lands: Curraghard, Barony of Barrymore; Co Cork
Regd owner: Harry P Hunt and Nora P Hunt; Folio: 16321; Land: Swellan Upper; Area: 0.562 acres; Co Cavan
Regd owner: Susan Mulhall; Folio: 311r and 2892; Land: Ballylehane Upper and Boley; Area: 24a 0r 12 p and 5a 2r 33p; Co Queens
Regd owner: Mary Hanly, Roundstone, Co Galway; Folio: 23792; Co Galway
Regd owner: Adrian Gallagher (deceased) of 8 Shenick Park, Skerries, Co Dublin; Folio: 58080F; Lands: 8 Shenick Park situate to the south side of Strand Road in the town and Parish of Skerries; Co Dublin
Regd owner: Nicholas Corcoran (deceased) and Veronica Corcoran (deceased) of 157 Cooley Road, Drimnagh, Dublin 12; Folio: 18345F; Lands: A plot of ground known as 157 Cooley Road situated on the south side of Cooley Road in the Parish and District of Crumlin; Co Dublin
Regd owner: Declan Flaherty and Paula McCann; Ballyneilan, Lisdoonvarna, Co Clare; Folio: 15939F; Townland: Ballyneillan; Co Clare
Regd owner: Thomas Larkin: Folio: 8770F; Land: Boolareagh and Newton; Co Tipperary
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WILLS

Shattock, Arthur Roy, deceased, late of 51 Osprey Drive, Templeogue, Dublin 6w. Would any person having knowledge of a will executed by the above named deceased who died on 2 June 1991, please contact P J O'Driscoll & Sons, Solicitors, 179 Church Street, Dublin 7, tel: 8728144; fax: 8728425.

Hannifin, Timothy, deceased, late of 11 Waggetts Lane, Pope Lane, Cork. Would any person having knowledge of a will executed by the above named deceased who died late in February 1997, please contact M J Horgan & Sons, Solicitors, 50 South Mall, Cork, tel: 021 273074; fax: 021 270846.

Ruane, Bridget, deceased, late of 112 McCormack Court, Springfield, (also of Sacred Heart Home) Castlebar, Co Mayo. Would any person having knowledge of a will made on or after 5 October 1988 executed by the above named deceased who died on 26 October 1996, please contact Messrs Patrick J McEllin & Son, Solicitors of Claremorris, Co Mayo, tel: 094 71042; fax: 094 71539.

Cuffe, Eamonn otherwise Edward, late of Streamstown, Claremorris, Co Mayo. Would any person having knowledge of any will executed by the above named deceased who died on 16 February 1997, please contact Durcans Solicitors, Castlebar, Co Mayo, tel: 094 21655; fax: 094 23780 **(Reference C/TD/11106)**.

Maguire, Sean Peter, deceased, of 36 Main Street, Longford. Would any person having any knowledge of the original will and codicils executed by the above named deceased who died on 25 May 1995 and which said will was dated 6 December 1990 with codicils dated 6 December 1990, 22 December 1992 and 2 February 1994, please contact Frank Gearty of E C Gearty, Solicitors, 4/5 Church Street, Longford, Co Longford, tel: 043 46312; fax: 043 47017.

Connelly, James, late of Green Alley, Athy, Co Kildare and 'Drumlee', Newpark Drive, Kilkenny, painter and artist, who died on 28 February 1997 at Green Alley, Athy. Would any person having knowledge of any will executed by the above named deceased, please contact Messrs John Lanigan & Nolan, Solicitors, Abbey Bridge, Dean Street, Kilkenny, tel: 056 21040; fax: 056 65980, DX 27005 Kilkenny **(Ref No SB)**.

Shanahan, William, deceased, late of 6 Goatstown Road, Goatstown, Dublin 14. Would any person having knowledge of a will made by the above named deceased on 18 May 1978 or on any subsequent date, the deceased having died on 7 December 1995, please contact Arthur P McLean & Company, Solicitors, 31 Parliament Street, Dublin 2, tel: 6772519; fax: 6772325.

Crowne, Mary Johanna, deceased, late of 4 Douglas West, Douglas, in the City of Cork. Would any person having knowledge of a will executed by the above named deceased who died on 11 March 1997, please contact Patrick A Hurley & Company, Solicitors, 15a Adelaide Street, Cork, tel: 021 276225; fax: 021 274652.

Keane, Michael, deceased, late of Glandart, Bantry, Co Cork. Would any person having knowledge of a will made by the above named deceased who died on 21 March 1992, please contact O'Mahony Farrelly, Solicitors, Bantry, tel 027 50132; fax: 027 50603 **(Ref. 71282F)**.

MISCELLANEOUS

Northern Ireland Agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D & E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 0801693 61616; fax: 0801693 67712.

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Agents – England and Wales. We are willing to act as agents for Irish solicitors in civil and criminal litigation. Contact: Olliers, Solicitors, Alderman Downward House, 2/3 The Birtles, Civic Centre, Wythenshawe, Manchester M22 5RF, tel: 0044 161 437 0527; fax: 0044 161 437 3225.

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Northern Ireland Solicitors. Will advise and undertake NI related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 0801 693 64611; fax: 0801 693 67000. Contact K J Neary.

Licences wanted: (a) ordinary seven day publican's licence (b) beer retailers on licence. Contact James E Cahill & Company, Solicitors, Abbeyleix, Co Laois, tel: 0502 31246; fax: 0502 31220.

One clean seven day ordinary publican's licence required, tel: 065 28706. **Reference JS/27191**.

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Solicitor's practice required, Dublin City area. Flexible and confidential arrangements. Might suit retiring practitioner. Reply to **Box No 34**.

LOST TITLE DEEDS

Mullaney, Mary Teresa, deceased. Dwellinghouse and Area Post Office at Main Street, Stoneyford, Co Kilkenny. Would anyone knowing the whereabouts of the title deeds to the above property, please contact Messrs M J Crotty & Son, Solicitors, 45 Parliament Street, Kilkenny, tel: 056 22056.

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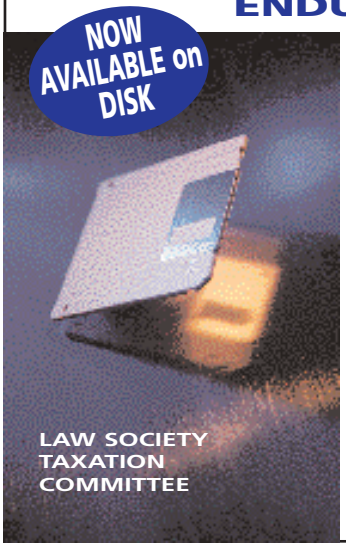

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