

# GAZETTE

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# An independent Adjudicator for the Law Society

If somebody does not like a decision, the first thing he does is to attack the decision-maker and there is no better grounds on which to do this than 'lack of transparency'.

The Law Society of Ireland is a self-governing, self-regulating body which is called upon many times – last year 1,249 times – to deal with complaints from members of the public. The Society's complaints-handling committee is the Registrar's Committee led by Council member Owen Binchy. The committee works with the Society's professional complaints-handling staff led by solicitor Linda Kirwan. We have a first class committee and staff and our procedures, in our opinion, operate well.

To ensure transparency and fairness, three years ago we invited outside bodies to nominate two lay observers to the Registrar's Committee. In 1995, with the passing of the *Solicitors (Amendment) Act, 1994*, we were able to appoint the lay members as full members of the committee. We therefore appointed the lay observers as members and increased their number on the committee to four.

The four lay members are now full and equal members of the Registrar's Committee. Their input and hard work are greatly appreciated by the other members of the committee and the Council. The profession as a whole is indebted to them.

Their job, as is the job of the committee, is to deal fairly and speedily with complaints from members of the public. But they are also there to demonstrate to the public that the Law Society has nothing to hide and is open and objective in its procedure.

In the last annual report of the lay members, they concluded:

'The lay members acknowledge the commitment of the Law Society to the investigation of complaints in an open and objective manner. Our participation in the work of the Registrar's Committee brings an independent dimension to bear on the consideration of those complaints that come before us and provides assurance that the system operates fairly with due regard for the interests of complainants'.

Of the 1,249 complaints last year, the 1,072 that were dealt with by the Society's professional staff were by and large speedily resolved. 177 were referred to the Registrar's Committee to deal with. The majority of these have now been satisfactorily resolved but a small few have not.



Here, the complainants remain unhappy. This unhappiness can be for such diverse reasons as the Society having no power to deal with the complaint or the complainant's complaint being largely imaginary or unfounded.

The unhappy complainant is vocal, and once unhappy with the Society's decision feels that we have 'fixed' the decision or treated the complainant unfairly or worse. They have no appeal – their next step is to picket somewhere, or write to their TDs or a Minister, or ring a radio chat show.

We have a complaints procedure we can stand over and, by and large, our lay members concur – so why not go the final step and appoint an independent Adjudicator or ombudsman to oversee the whole complaints area and give it ultimate transparency?

We decided to do just that at our Council meeting held on 25 July. We have decided to implement section 15 of the *Solicitors (Amendment) Act, 1994* and appoint an independent Adjudicator to – as the Act says:

'... establish, maintain and fund a scheme for the examination and investigation by an independent Adjudicator of any written complaint made to the Adjudicator by or on behalf of a member of the public against the Society, concerning the handling by the Society of a complaint about the solicitor made to the Society by any person'.


With effect from 1 September 1997, Mr Eamon Condon, a former senior bank manager with the Bank of Ireland, takes the position as the Society's first independent Adjudicator. His appointment is for a period of two years.

I have every confidence that Mr Condon will make a very capable and very fair Adjudicator. I have no doubt that he will find our complaints-handling procedure in order – but if he doesn't, we will have to get it in order. We are committed to a transparent and effective complaints procedure.

Lay members on the Registrar's Committee will continue to serve. They make an invaluable contribution to the committee and, in addition, make the workings of the committee more transparent.

I want to take this opportunity to extend to Mr Condon our good wishes during his term of office.

**Frank Daly**  
President



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# Recording telephone conversations

If only the telephone could talk! What stories it could tell about every man, woman and child in the so-called civilised world. While the telephone cannot talk, telecommunications technology can yield the fruits of what was said, when, by and to whom on the telephone. When a person's guard is down, God only knows what flows.

We speak on the telephone and perhaps utter words that on mature reflection ought not be said. That is because of human emotion, the nature of the human condition and the imprecision of words. TS Eliot summed up the problem with words:

*Word Strain,*

*Crack and sometimes break,*  
*under the burden,*

*Under the tension, slip, slide,*  
*perish,*

*Decay with imprecision, will*  
*not stay in place,*

*Will not stay still.*

This note explores issues relating to the recording of telephone calls. Specifically, the recording or tapping of telephone calls by the State or State agencies is excluded from consideration here.

## Criminal offence

Until the enactment of the *Interception of Postal Packets and Telecommunications (Regulation) Act, 1993*, it was a criminal offence for a person to record a telephone conversation transmitted on the public network operated by Telecom Éireann without the specific consent of the sender and receiver of the telephone call. The 1993 Act amended the definition of 'intercept' in section 98 of the *Postal and Telecommunications Services Act, 1983* thereby decriminalising the recording of a telephone conversation if either the person making the telephone call or the person receiving the telephone call recorded the conversation.

It is a criminal offence pursuant to section 98(1) of the *Postal and Telecommunications*

*Services Act, 1983* as amended by section 13 of the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993* for a third party to record any telephone conversation or to disclose the existence, substance or purport of any such recorded message. The penalties on summary conviction are a fine of up to £800 and imprisonment up to 12 months. On conviction on indictment, a person is liable to a fine not exceeding £50,000 or, at the discretion of the court, to a fine and imprisonment for a term not exceeding five years (section 4 of the 1983 Act). On conviction on indictment, the court may, in addition to any penalty, order any apparatus, equipment or 'other thing' used to commit the offence to be forfeited.

## Right to privacy

Although the recording of a telephone conversation by one party to the conversation may not con-

stitute a criminal offence, there are other dimensions. For example, in *Halford v the United Kingdom*, the European Court of Human Rights in its judgment of 25 June 1997 held in the circumstances of the case that telephone calls made from a business premises may be covered by notions of private life and correspondence under Article 8 of the *European Convention on Human Rights* on the basis that the applicant in the case (the maker of the telephone call) had a reasonable expectation of privacy.

Ms Halford, the applicant in the case, was an assistant chief constable with the Merseyside police and, as such, was the highest ranking female police officer in the United Kingdom. After failing to be appointed on several occasions to a more senior position, she started proceedings against the Home Office and the Merseyside Police Authority in the industrial tribunal alleging

discrimination on the ground of sex. Ms Halford withdrew her complaint in August 1992 following an agreement under which she was to retire from the police force and receive an *ex gratia* payment totalling £15,000.

Ms Halford alleged that certain members of the Merseyside Police Authority had launched a campaign against her in response to her discrimination complaint. That took the form, *inter alia*, of leaks to the press, the bringing of disciplinary proceedings against her and the recording of her telephone calls. It was accepted for the purposes of the case that there was a reasonable likelihood that calls from her office telephones had been recorded.

## Reasonable expectation

The European Court of Human Rights was influenced in its judgment by the fact that there had been no evidence of any warning given to Ms Halford as a user of the internal telecommunications system operated at Merseyside Police Headquarters that calls made on the system would be liable to interception. Hence, the court held that Ms Halford had a reasonable expectation to privacy. The court awarded Ms Halford £10,000 in compensation for the intrusion into her privacy, £600 towards her personal expenses incurred in bringing the case to Strasbourg and £25,000 of the £142,875 legal costs and expenses she had claimed.

Leaving aside the dimension of the *European Convention on Human Rights*, there is also the issue in Ireland of, perhaps, a constitutional right to privacy of one's telephone conversation. There is also the issue of breach of confidentiality, and breach of confidence and copyright. These have been considered in the Law Reform Commission's 1996 *Consultation paper on privacy, surveillance and interception of communications*. G

*Dr Eamonn Hall is Chief Legal Officer of Telecom Éireann Plc.*



PIC. ROSLYN BYRNE

# Travellers: the next battlefield

Back in 1982, when I first became involved in travellers' cases, local authorities were using the 'prohibition order' techniques (under the *Local Government (Sanitary Services) Act, 1948*) and were prosecuting travellers for roadside living. In some instances, there were no sites to move into; in others, the sites were unsuitable.

Many had been built without consultation with travellers and were positioned unsuitably and had poor facilities. Settlement in permanent housing was the long-term objective. A very crude enforcement policy was operating – some may even say it still is – and the methodology was intimidation and the moving of caravans by force.

In the past, the issue was sites or no sites. Now, the battlefield is the *Planning Acts*, the development plan, zoning problems and so on. In my opinion, the next battlefield will be standards and sizes of sites, and the way they are provided – including the specific needs and cultural rights of travellers. The local authority will probably move from being combatant to facilitator, although I think that is some way ahead.

## Report of the task force

The settled community and travellers both have reasonable expectations. The real task is to marry them together. Although we now have traveller accommodation committees (as recommended in the 1995 *Report of the Task Force on the Travelling Community*), in my view they won't be either sufficiently powerful or structurally efficient to meet that purpose.

Back in 1994, I had the privilege of providing a legal opinion to the task force in this area, and one of my recommendations was to establish an ombudsman with mediation powers. This wasn't accepted and so we are left with the law.

Local authorities wear various hats throughout their administration. They are housing authorities, fire brigade authorities, planning authorities, sanitation authorities.



Go, move, shift: crude enforcement policy led to intimidation and moving of caravans by force

Often there is conflict between these relevant duties. In four separate High Court actions section 13 of the *Housing Act, 1988* has been interpreted so as to impose a statutory duty on housing authorities to provide, improve, manage and control halting sites. Although appeals from at least two of those decisions were lodged with the Supreme Court, none proceeded, so to date the Supreme Court has never as yet expressed its opinion in this matter.

More recently, the High Court has made it expressly clear that where travellers are concerned they must be provided with a permanent halting site, not a house (*Mongan & anor v South Dublin County Council* (Laffoy J), 31 July 1996, unreported [1995/286JR]). Furthermore, the quality of services available on those sites must be the same as the quality of services provided for the housed tenantry. However, where the site is located in hygienic environs and is in proper physical condition and adequately serviced, offers of accommodation must be taken up. Travellers cannot refuse to accept proper accommodation merely on the grounds that in their view they

do not want to go to it or because they have to share that site with others or for similar reasons.

## Educational opportunities

As a matter of observation, it is clear that many more travellers as a result of educational opportunities made available to their children – to which they are freely responding – are rooting themselves to permanent halts apart from summertime migration. The official movement in statutory reform, task force reports, provision of funds for halting sites and travellers' projects, and judicial assistance have clearly helped the position from a traveller's point of view, but they have not resolved the conflict between the legitimate expectations of travellers and the settled community.

## Landmark decision

Almost ten years ago, the President of the High Court in the first of the big landmark decisions (*O'Reilly & ors v Limerick Corporation* (1989) ILRM 181) made it clear that sites must be suitable, bearing in mind the reasonable needs of travellers and the reasonable needs of members of the settled community, as well

as the responsibilities and duties of the local authority as planning authority. It is abundantly clear, therefore, that there will be conflict and there must be a mechanism set in place for resolution. Such a mechanism would best be taken out of the political arena. Certainly local authority social workers have a role to play, but they are agents of the local authority who themselves have an interest. There needs to be an independent mechanism so that all participants may feel comforted by the process.

Perhaps all those with an interest in this area could benefit from noting Mr Justice Henry Barron's recent remarks concerning the travellers' housing problem: namely, that 'it has been realised for many years that it exists and that although there is not a history of nothing being done, it may well be that not enough has been done and what has been done has been done too slowly'. **G**

*Shaun Elder is the principal of Limerick-based firm Shaun Elder, Solicitor, and author of the recently published novel The Dingle Dose (Minerva Press, 1997).*



# McCracken Report good news for profession's image



The tribunal team (from left): Anthony Aston BL, Joanne Dwyer, solicitor, Chief State Solicitor's Office, Denis McCullough SC, Mr Justice Brian McCracken, Michael Collins SC, and solicitor John Lawless

*'The McCracken Tribunal has presented the Government with a report of crystalline clarity. Judges and lawyers can do no more. What they have done, they did well. The sharp detective work which led the tribunal team through the maze of Mr Haughey's money-trail to the Cayman Islands has been matched only by the precision of Mr Justice McCracken's commentary and conclusions.'*

*Irish Times editorial,*  
26 August 1997

**T**he Beef Tribunal was a disaster for the image of the legal profession. That image has been significantly restored by the remarkable skill, professionalism and effectiveness of the McCracken Tribunal legal team.

The unaccustomed sight of lawyers being proclaimed as heroes, rather than villains, by the media, the political establishment and the public will cause quiet pleasure to the entire legal profession. And all of the praise is well-deserved by the legal team involved.

Praise has been deservedly lavished both on the manner in which the McCracken Tribunal was conducted and on the report itself.

In relation to the conduct of the

tribunal, the speed from first sitting on 24 February 1997, when Mr Justice McCracken made the frank admission that the amount of information available to him was 'almost non-existent', to the delivery of his comprehensive report on 25 August 1997, is particularly impressive. The tribunal did not waste a day and, indeed, might well have reported sooner but for the inevitable delay caused by the General Election campaign during which the tribunal properly did not sit.

When the tribunal was established, few believed that anything like the resulting degree of public exposure of Michael Lowry and, in particular, Charles Haughey was likely. People underestimated the investigative skill and determination of the tribunal team. Facts were found. Hidden truths were revealed. The bizarre parallel universe of offshore accounts and coded banking transactions was probed, comprehended and exposed.

It emerged in the evidence that in the early part of the year Charles Haughey did not expect he would ever be humbled by this tribunal. On the extraordinary day on which he did give evidence, he publicly paid an ironic tribute to the resourcefulness and tracing skills of the tribunal's legal team.

The maze was designed never to be penetrated. But in the end it was.

Mr Justice McCracken's report has the feel of an account rendered to the Irish people. The commentator Fintan O'Toole remarked: 'He knows right from wrong and puts that knowledge to brilliant use. He can distinguish the credible from the incredible and refuses to ask the public to accept the unbelievable. And he is willing to use the words that ordinary citizens might use to describe the behaviour of Mr Lowry and Mr Haughey: unacceptable, a sham, cynical, appalling, bizarre, untrue'.

This is heady stuff indeed. Lessons have been learnt from the Beef Tribunal experience. That tribunal became bogged down by its over-wide terms of reference, resulting in its perception as an over-long, ineffective 'lawyer-fat-tening exercise'. A handful of lawyers made a lot of money, but everyone in the profession paid the price.

The sheer efficiency and effectiveness of the McCracken Tribunal has not just served the public well – it has served the legal profession well too. **G**

*Ken Murphy is Director General of the Law Society.*

## Restoring a company to Register of Companies

*From: Feilim O'Caoimh, O'Donnell Sweeney, Solicitors, Dublin*

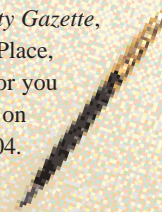
I refer to the June 1997 edition of the *Gazette* and more particularly to the *Briefing* section containing the article 'How to restore a company to the Register of Companies'.

Recently this firm acted for a company which had been struck off the Register of Companies for a period of more than one year. The procedure for reinstatement involved an application to the High Court under section 311(8) of the *Companies Act, 1963* and section 12(6) of the *Companies (Amendment) Act, 1982*. I note that at paragraph 1.12 of your article you refer to a fee of £500 being payable to the Registrar of Companies on delivery of the order. Please note that a filing fee of £5 only should accompany the order.

Where a company has been struck off for a period of less than one year, and application for reinstatement is being made directly to the Companies Registration Office (without application being made to the High Court) under section 311(a) of the *Companies Act, 1963* (as inserted by section 246 of the *Companies Act, 1990*) a filing fee of £500 should accompany Form H1.

### Your views

Your letters make your magazine and may influence your Society. Send your letters to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 671 0704.





## Letters

### Living in God's own country

From: Emer Holohan, Dublin

One of the great advantages of e-mail is receiving humorous mail. I recently received the following and thought the readers, especially those of us practising as conveyancing solicitors, might enjoy same.

A New Orleans lawyer sought a Federal Housing Administration (FHA) loan for a client. He was told that the loan would be granted if he could prove satisfactory title to a parcel of property being offered as collateral. The title to the property dated back to 1803, which took the lawyer three months to track down.

After sending the information to the FHA, he received the fol-

lowing reply: 'Upon review of your letter adjoining your client's loan application, we note that the request is supported by an *Abstract to title*. While we compliment the able manner in which you prepared and presented the application, we must point out that you have only cleared the title to the proposed collateral property back to the year 1803. Before final approval can be accorded, it will be necessary to clear the title back to its origin'.

Annoyed, the lawyer responded as follows:

'Your letter regarding titles in case No 18156 has been received. I note that you wish to have titles extended further than the 194 years covered by the present application. I was unaware that any

educated person in this country, particularly those working in the property arena, would not know that Louisiana was purchased by the US from France in 1803, the year of origin identified in our application.

'For the edification of uninformed FHA bureaucrats, the title to the land prior to US ownership was obtained from France, which had acquired it by Right of Conquest from Spain. The land came into the possession of Spain by Right of Discovery made in the year 1492 by a sea captain named Christopher Columbus, who had been granted the privilege of seeking a new route to India by the then reigning monarch, Isabella. The good

queen, being a pious woman and careful about titles, almost as much as the FHA, took the precaution of securing the blessing of the Pope before she sold her jewels to fund Columbus's expedition. Now the Pope, as I'm sure you know, is the emissary of Jesus Christ, the Son of God. And God, it is commonly accepted, created this world. Therefore, I believe it is safe to presume that He also made that part of the world called Louisiana. I hope you are satisfied. Now, may we have our title?'

I'm sure there are several solicitors who would be tempted to send a letter like this!

Keep up the good work. I really enjoy reading the *Gazette*.

### Criminal injuries compensation

From: John J Madigan, Dublin

I have read the letter from Sean O'Ceallaigh (*Letters*, July) in relation to compensation for criminal injuries, and I am in total agreement with his observations.

Criminal injuries were introduced subsequent to the bombings in Parnell Street and Nassau Street in 1974. The Government at the time was of the opinion that people who sustained serious personal injuries and other losses as a result of injuries sustained through criminal acts were entitled to compensation. Subsequently, in 1986, compensation for personal injuries sustained as a result of violent acts was abolished.

It seems unfair and against the tenets of the Constitution that people who are walking along the streets and are mugged and robbed and beaten up, through no fault of their own, receive no

compensation from the State. I understand that the only exception to this rule are prison officers who sustain injuries in the course of their employment.

Members of An Garda Síochána are compensated under the *Garda Síochána Acts* for injuries sustained by them in the course of their duties. But if an individual goes to the aid of a garda being attacked and sustains injuries in assisting the said garda, no compensation is available to him. However, the garda will obtain financial compensation in the courts.

Perhaps those who are of the opinion that the Criminal Injuries Compensation Tribunal should be re-introduced should lobby their public representatives to change the situation. Another avenue would be for members of the Law Society to petition the Government to introduce the necessary legislation.



Lena Early: a giant step for womankind

### Women in the law

From: Brian O'Brien, Dublin

I read with interest the article by Dr Eamonn Hall on page 2 of the July *Gazette* 'Women in the law'. I noted with disappointment that the name of the first female solicitor to be admitted as a solicitor in Ireland in 1923 was omitted. I can confirm that this lady was Helena Mary Early, better known as Lena Early (1888-

1977). Ms Early (pictured above) was an aunt of my mother, Nuala O'Brien (née Early), who was also a solicitor.

Ms Early was the first lady auditor of the Solicitors' Apprentices Debating Society in 1921-1922 and it is thought that she was the first female Commissioner for Oaths in Ireland, England or elsewhere.

## BRIEFLY

**UK Law Society appoints new ombudsman**

The British Lord Chancellor, Lord Irvine, has appointed Ann Abraham as legal services ombudsman. Abraham is currently chief executive of the National Association of Citizens' Advice Bureaux. She succeeds Michael Barnes, the first UK solicitors' ombudsman. The ombudsman can investigate the handling of complaints by the lawyers' professional bodies, re-investigate the complaint and recommend a proper remedy.

**Law clerks employment regulation order**

The Law Clerks' Joint Labour Committee has approved the application of the first phase of Partnership 2000, an increase of 2.5%. The Employment Regulation Order (ERO) governing this took effect on 1 July 1997. Members are advised that the last ERO expired on 1 April. Because the procedural arrangements relating to the issuing of the latest ERO delayed the application of the 2.5% increase, members may wish to consider backdating the implementation of this increase to 1 April 1997.

**Legal History Society AGM**

The annual general meeting of the Irish Legal History Society will take place at the Public Record Office of Northern Ireland, Balmoral Avenue, Belfast, on Friday 10 October at 4.45pm. After the meeting, Dublin solicitor Daire Hogan will read a paper on Lord Chief Justice Cherry, Lord Chief Justice of Ireland from 1913 to 1916.

**Fire Brigade seeks sponsors**

Dublin Fire Brigade sports and social club is seeking advertising sponsorship for the latest edition of its *Fire safety handbook*, which will be distributed free to all homes and businesses in the city. The money will be used to fund the booklet and fire awareness classes.

# First ombudsman for solicitors

The Law Society has appointed a retired senior bank executive as the first-ever independent ombudsman for the solicitors' profession. The new Adjudicator, Eamon Condon, will be responsible for examining and investigating the way the Society handles complaints made by members of the public against solicitors.

Announcing the appointment, Law Society President Frank Daly said: 'We are wholly committed to a transparent and effective complaints procedure. We are determined that where there is a *bona fide* and justifiable complaint against a solicitor, the complainant will have that complaint speedily resolved'.

'We all look forward to working with Mr Condon and we hope that his appointment as an inde-



Eamon Condon: first-ever Adjudicator for the solicitors' profession

pendent Adjudicator will lead to more transparency and more confidence in the Society's complaints procedure'.

He added that four independent non-lawyer lay people already sat on the Registrar's Committee, which deals with complaints against solicitors. Errant solicitors can subsequently be referred to the Disciplinary Committee where punishments range from the imposition of a fine or suspension to being struck-off.

Eamon Condon joined the Bank of Ireland in 1956, aged 18, and retired from the bank at the end of May. Over the course of his career he managed several of the bank's major branches in Dublin, before being appointed manager of the largest branch in the country – College Green, Dublin – in 1992. He is a fellow of the Institute of Bankers in Ireland.

## McMenamin takes over at Bar Council

John McMenamin SC succeeds James Nugent SC as chairman of the Irish Bar Council. Mr McMenamin was elected at the end of July by more than 1,000 practising barristers. Educated at Terenure College and UCD, he was called to the Bar in 1975 and to the Inner Bar in 1991.

McMenamin was in the news recently as one of the leading counsel for the defence – together with Michael McDowell SC – in the third and final instalment of the *De Rossa v Independent Newspapers* libel case.

Following his election, the *Irish Times* described McMenamin as

'a surprise victor in that he defeated the vice-chairman, Patrick Hanratty, for the two-year term. Hanratty was deemed a shoo-in but may have peaked too early'.

The same article reported that the Law Society/Bar Council Liaison Committee had met recently for the first time since November 1995.

'It was all very cordial and constructive, and the two branches of the law have put our unhappy differences firmly behind us. I congratulate John McMenamin and look forward to working with him', said Law Society Director General Ken Murphy.

## Society's pension trust tops £50 million

The Law Society retirement annuity plan's assets are now worth over £50 million. It passed this milestone on 30 June this year.

The plan, which is specifically designed to cater for the retirement needs of solicitors, has achieved excellent returns for members through the years. For example:

- A contribution of £10,000 made in January 1993 is today worth £21,300. The net cost to the contributor of this £10,000 contribution, taking into account tax relief at the top rate, was only £5,200

It is important to start saving for your retirement as early as possible. For information, including a copy of the explanatory booklet about the plan, please contact the Law Society or Brian King at Bank of Ireland Trust Services (tel: 01 6615933).

## Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in July: Thomas Furlong, Lower Main Street, Letterkenny, Co Donegal – £22,400; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £20,000; John K Brennan, Mayfield, Enniscorthy, Co Wexford – £1,500.



## De Rossa wins game of 'very high stakes'

In many ways it is the plaintiff who is on trial in a defamation action. Both Mr de Rossa and Independent Newspapers were playing for very high stakes'. That was the view of Law Society Director General Ken Murphy on RTE Radio's *Morning Ireland* programme the day after former Minister, Proinsias de Rossa, was awarded £300,000 plus costs by a jury in his action against Independent Newspapers and journalist Eamon Dunphy.

Although the award was the highest in a defamation action in the history of the State, Murphy refused to criticise it in any way, saying that: 'The jury heard 11 days of evidence and I did not. The law provides for the jury to make the assessment of whether the matters complained of were defamatory and the appropriate



Eamon Dunphy: not a great verdict

level of damages required to compensate for any injury suffered'.

He confirmed that the Law Society would be happy to become involved in the on-going debate about the defamation laws.

This seemed appropriate, he said, 'given that solicitors are centrally involved on both sides, in these cases'. However, he believed that the debate would go on forever as to where the balance should be struck between the media's right to 'freedom of expression' and the individual's right to 'vindicate their good name'. Both of these rights are protected by Article 40 of the Constitution.

Murphy added that the current debate would probably centre on the fact that the Supreme Court had effectively established an upper limit for general damages in even the most serious personal injury actions but that no such limit existed in defamation cases. In addition, no guidelines could be given by the judge to a jury in relation to the appropriate level of damages in a defamation case.

## Minister queries court vacations

The Law Society is seeking members' views on court vacations following a request from newly-appointed Justice, Equality and Law Reform Minister, John O'Donoghue.

Just weeks after taking office, the Minister invited Law Society Director General Ken Murphy to a meeting at his office. At the meeting, Murphy agreed to seek the Society's views on court vacations and, in particular, the long vacation. The Minister raised this issue during a very amicable and wide-ranging exchange of views which the Minister was happy to conduct without any officials present.

The Minister asked if the two-month long vacation is now an illusion, given that courts sit during the period much more frequently than in the past and the holiday effectively ends in many areas by mid-September. He also wondered if the whole notion of a long vacation was a relic of a bygone age – for which lawyers suffer in the eyes of the public – and if it might be more sensible to reduce it to August alone.

The Society's Litigation Committee and Council subsequently discussed these and other related questions, and all bar associations have been written to so that members' views can be canvassed.

The Director General once again expressed the profession's pride at seeing a solicitor appointed to the Justice portfolio for the first time since Des O'Malley in

the early 'seventies. But he added that members were concerned that because the Minister is a solicitor, he would feel obliged to be seen as particularly tough in dealing with the profession. The Minister denied this and said that he would deal with the issues affecting the profession solely on the grounds of merit, and in exactly the same way as issues affecting anyone else.



All smiles again between the Law Society and the Bar Council: (front row, left to right) Bar Council Director John Dowling, Law Society President Frank Daly, then Bar Council Chairman James Nugent SC, Law Society Director General Ken Murphy; (back row) Eugene O'Sullivan, Garrett Cooney SC, Pat O'Connor, and Mary Keane

### BRIEFLY

#### EU aid briefing

The Irish Centre for European Law will hold a briefing on State aid on Wednesday 15 October from 6.30pm to 9.00pm. The briefing will be given in Dublin's Westbury Hotel by the centre's director Anthony Collins, barrister and author of *State aid and EC Law*. For further information, contact the Irish Centre for European Law (tel: 01 608 1081).

#### Arbitration courses

UCD's Law Faculty is offering a *Diploma in arbitration* and *Diploma in international arbitration* from next October. Both courses will be run in the evenings and at weekends. For further information, contact Brian Hutchinson, Faculty of Law, UCD (tel: 01 706 8342).

#### Litigating in Germany

The Institute of Advanced Legal Studies will host a lecture, *Perspectives on civil litigation in Germany*, on Monday 29 September at 5.30pm in the Lecture Theatre, IALS, University of London, Charles Clore House, 17 Russell Square, London WC1B 5DR, England. For further information, contact Belinda Crothers (tel: 00 44 171 637 1731).

#### VAT Act amended

From this month, farmers retailing agricultural produce will have to pay VAT. Following the Ministerial order (SI No 313 of 1997) made by Finance Minister Charlie McCreevy in July, sections 101 and 113 of the *Finance Act, 1997* commenced on 1 September. Section 101 amends the VAT Act to provide that farmers selling agricultural produce by retail will be treated as taxable persons, subject to registration limits. Section 113 amends the sixth schedule to the VAT Act to provide for the application of the 12.5% rate of VAT to certain horticultural products.



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25<sup>TH</sup> AUGUST, 1997.

# Revenue must act on report

**The report of the McCracken Tribunal into payments to politicians is direct and unambiguous, writes Brian Bohan, and the Revenue Commissioners will have to act on its disclosures**

**M**r Justice Brian McCracken and his team are to be congratulated on a very erudite, considered and hard-hitting report. The report is unambiguous in its condemnation of certain practices, including tax evasion.

## Michael Lowry

The report sets out in some detail the various transactions which took place between Ben Dunne and Michael Lowry. The sums involved are substantial and the report frankly states that the various arrangements, including the opening of foreign accounts, were put in place with a view to evading tax or helping Mr Lowry to evade tax. This type of language is compelling, putting it up to the Revenue Commissioners to investigate his affairs thoroughly and I believe that they have no option but to do so.

The relationship between Dunnes Stores, Mr Lowry and Streamline Enterprises (Mr Lowry's company) was an unhealthy relationship under any circumstances, but it was particularly disturbing in view of Mr Lowry's position. By evading tax in this way, Mr Lowry made himself vulnerable to all kinds of pressures not only from Dunnes Stores, had they chosen to apply those pressures. The report is damning in this regard, although it admits that there is no evidence of political impropriety on the part of Mr Lowry.

## Charles Haughey

Again, the report goes into detail in dealing with the relationship between Mr Haughey and his advisors, Desmond Traynor and John Furze.

The tribunal was unable to accept much of Mr Haughey's evidence. It could not accept his assertion that he was at no time aware that the monies were held



Charles Haughey: 'deliberately shrouded gifts in secrecy'

for his benefit and the tribunal believes that he must have become aware of the existence of those monies, at the latest, shortly after the death of Mr Traynor.

The tribunal could not accept that Mr Haughey was unaware of the taxation implications of the receipt of these large gifts but it believes that Mr Haughey 'deliberately shrouded the gifts in secrecy' and allowed the money to be kept offshore in an attempt to ensure that the Revenue authorities should never know of the gifts, or indeed presumably of the existence of interest paid on the monies deposited on his behalf.

It accepted that there does not appear to have been any political impropriety on the part of Mr Haughey in relation to these gifts.

In a short paragraph, the report hints at some changes which may take place in company law. 'It was clearly unwise that one person should be given such unsupervised financial control of the affairs of a business the size of Dunnes Stores Group and, as a matter of general principle, the company must have some responsibility for the actions of an officer to whom it delegates such wide powers'.

The tribunal promises that all relevant papers relating to Mr

Haughey are to be sent to the Director of Public Prosecution for his consideration and for his decision as to whether Mr Haughey should be prosecuted under the *Tribunal of Enquiry (Evidence Act) 1921* as amended by the *Tribunal of Enquiry (Evidence) (Amendment) Act, 1979*.

## Recommendations

The McCracken report does not consider it practical or particularly effective to oblige bankers, accountants or other professional advisors to disclose any unusual or large financial transactions involving politicians or public servants. The tribunal points out the practical difficulty in that such an obligation could only be imposed on advisers in this State and could easily be avoided by acting through advisers and banks outside the State.

The report recommends that it should be mandatory for any *candidate* for either house of the Oireachtas produce to the clerk of the Dail or the Senate, as the case may be:

- A certificate from the candidate's tax inspector that his or her tax affairs are in order, and
- An accompanying statutory declaration from the person concerned to that effect.

It also believes that stronger sanctions are necessary, and that making a false declaration of interest should be a criminal offence

## Conclusion

There is already a reporting requirement for political donations contained in section 54 of the *Capital Acquisitions Tax Act, 1976* which appears to have been more observed in the breach than in the observance. Under that section, if a person takes a benefit for public (including political) purposes, he is deemed to take it beneficially and to take it as a stranger.

This means that each political contribution that an individual receives is aggregated with other gifts and inheritances and, accordingly, that individual has a reporting requirement to fulfil under the capital acquisitions tax code (subject to certain minimal exemptions).

Any such gift or inheritance which is taken for public purposes will be regarded as exempt and will not be taken into account when computing gift or inheritance tax 'to the extent that the (Revenue) Commissioners are satisfied that it has been, or will be, applied to purposes which in accordance with the law of the State are public ...'.

The report is direct and hard-hitting. It is unambiguous and now sets out for the Revenue Commissioners that they must take action in regard to the disclosures in the report. Although the tribunal's findings cannot be used as evidence, it is now up to the Revenue Commissioners to investigate, to gather their own evidence and to take such action as is necessary. **G**

*Brian Bohan is principal of Brian Bohan Solicitors and a former president of the Institute of Taxation.*



More and more high-profile cases are being fought in the media before they ever reach a courtroom and lawyers are forced to hire PR professionals to defend their clients in the press. Ita Gibney explains why the old-fashioned 'no comment' response is no longer enough

# Trial by media



Long before a high-profile trial, your client can take a battering in the media. While the legal team gets to work, the press gets to work as well – but to far more immediate deadlines. Witness the column inches generated in advance by cases like Greencore, Dunnes Stores, Irish Permanent, and Mercke Sharpe and Dohme.

Every time a major accident occurs, a senior employee is sacked, a planning application is opposed, or public debate is sparked by a tribunal of inquiry, crisis management takes over.

Media coverage can pre-judge your client long before a trial or tri-

bunal even begins. At that stage, the press is not restricted by the *sub judice* rule. It was once said that 'publicity is the soul of justice'. Long before cases are settled, a client's guilt or innocence is established by a three-minute TV news item, their ill-prepared response to a press query, or their silence in the face of human tragedy.

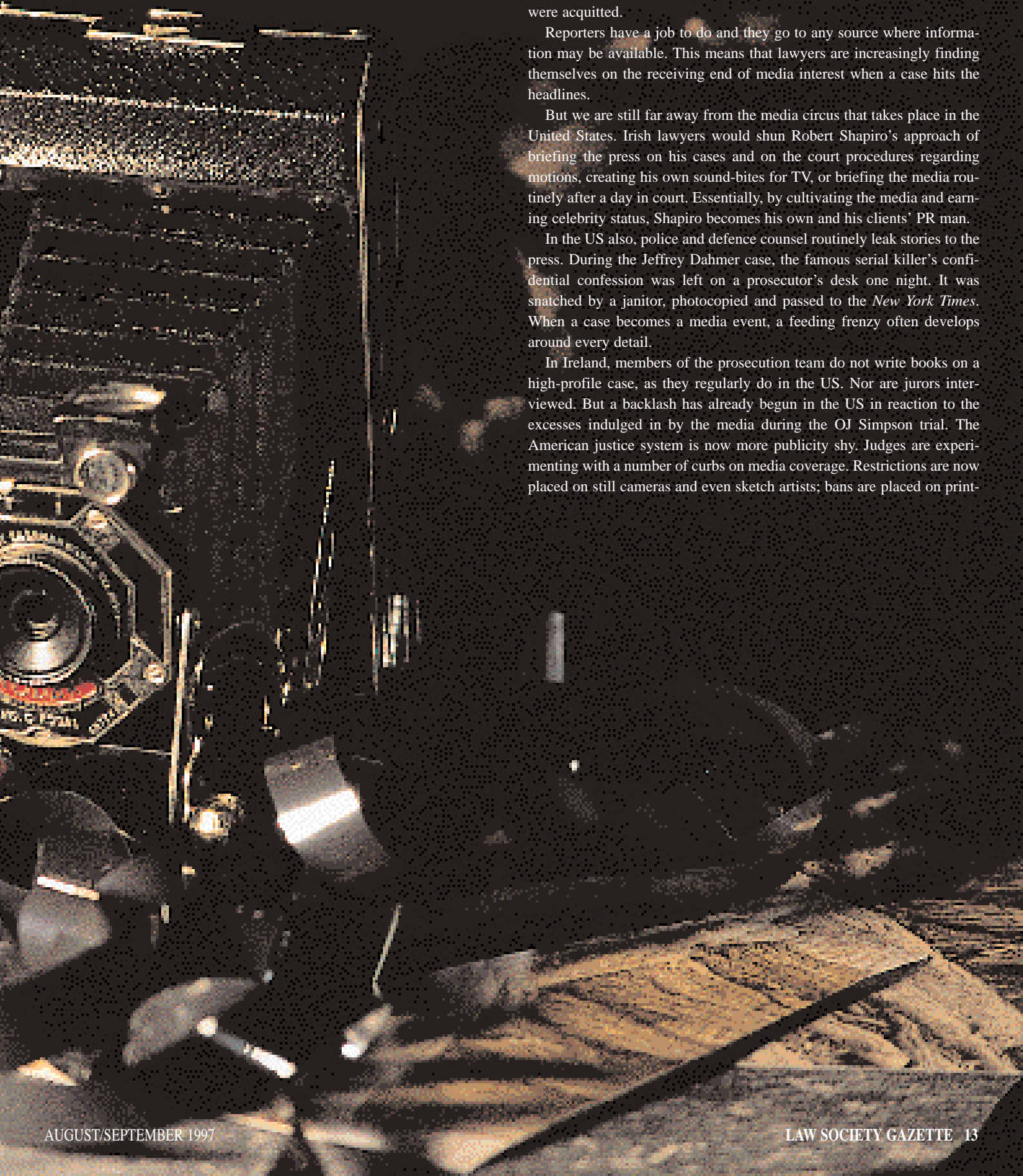
Lawyers have to ensure that damaging information about their clients is not bandied around. The Maxwell brothers' lawyers – Peters & Peters, and Kingsley Napley – kept the press on its best behaviour during the long trial. Both firms had the press served with gagging orders under the English *Contempt of Court Act 1981* to ensure a fair trial. The Maxwells were acquitted.

Reporters have a job to do and they go to any source where information may be available. This means that lawyers are increasingly finding themselves on the receiving end of media interest when a case hits the headlines.

But we are still far away from the media circus that takes place in the United States. Irish lawyers would shun Robert Shapiro's approach of briefing the press on his cases and on the court procedures regarding motions, creating his own sound-bites for TV, or briefing the media routinely after a day in court. Essentially, by cultivating the media and earning celebrity status, Shapiro becomes his own and his clients' PR man.

In the US also, police and defence counsel routinely leak stories to the press. During the Jeffrey Dahmer case, the famous serial killer's confidential confession was left on a prosecutor's desk one night. It was snatched by a janitor, photocopied and passed to the *New York Times*. When a case becomes a media event, a feeding frenzy often develops around every detail.

In Ireland, members of the prosecution team do not write books on a high-profile case, as they regularly do in the US. Nor are jurors interviewed. But a backlash has already begun in the US in reaction to the excesses indulged in by the media during the OJ Simpson trial. The American justice system is now more publicity shy. Judges are experimenting with a number of curbs on media coverage. Restrictions are now placed on still cameras and even sketch artists; bans are placed on print-



ing defendants' names in civil law suits; anonymous jurors are used; gagging orders are placed on lawyers during trial and legal documents are kept from public view.

But media silence is not always possible to maintain. While a client with a personal or corporate reputation to protect is waiting in silence for the outcome of a long legal process, extensive opinionated coverage of the issues involved can result in a very rough justice indeed. The old Perry Mason response – 'No comment, and you can quote me on that' – might not always serve the client's best interest.

There are groups which have a right to be told about what is happening – for example, employees, those affected by the event, bankers and creditors. The media can have a useful role in communicating a clear message on the company's or individual's behalf, once this does not prejudice the case. Strategically, the media can also help to further one's cause. Nick Leeson's famous interview with David Frost was the centrepiece of a campaign (unsuccessful in the end) of pre-trial publicity to muster support to fight his extradition to Singapore.

Stuart Barlow was a solicitor in Derbyshire who acted for Niklos Baungartner, a businessman responsible for the death of a burglar after a struggle in his house. Mr Barlow staged a press conference shortly after the arrest to put forward his client's position. Mr Baungartner's obvious distress may have helped his case for clemency when the papers were reviewed by the Crown Prosecution Service, which eventually decided not to prosecute.

Here are a few well-accepted practices which public relations professionals follow to support their clients in crisis management situations:

- Establish a clear procedure for dealing with queries from the press. Who will take press queries and how are they to be directed to a single source?
- Establish a media relations strategy in advance, with a clear understanding of what background information can be provided and what can or cannot be said publicly and by whom. Take the initiative if possible, and as early as possible, so you are setting the agenda.
- If the case is actually in court, prepare for its possible outcomes in advance. Draft the contingency statement to be issued to the press in each scenario. Decide the timing and the spokesperson and agree if the



PIC: ROSLYN BYRNE

client will be available. If it is a high profile case, put in place the logistical arrangements for dealing with the media interest immediately the case concludes. Prepare the client as thoroughly for talking to the public as they were for their cross-examination in court.

- Identify in advance the journalists who, in addition to the court reporters, will be most interested in following the case. Establish two-way lines of contact with them. Identify other external groups with whom communications need to be maintained.
- Be available to the press at all times, even if you have no information to impart. In a highly pressurised situation, the press has a job to do which respects no clock. Remember that the timing of any formal statement to suit media deadlines is important to generate coverage and thus ensure effective delivery of a message.
- Have relevant background factual information available as soon as possible. Don't allow an information vacuum to be filled by speculation or by misinformation fed by your client's opponent or by ill-informed commentators.
- Monitor all media coverage carefully and ensure copies of all coverage are with the client and legal team early each morning.

Most people are familiar with the participation of PR professionals in directing and implementing media strategy in flotations, fundraising, corporate takeovers, liquidations and examinerships. But now the skills of PR practitioners are just as often brought to bear in litigation, to communicate a clear message before or after a case is heard, or to help create a climate for settlements. The services of PR practitioners are now seen as complementary to those of the legal adviser.

Some solicitors who represent high-profile clients are learning the rules of engagement of media relations themselves. Others are working hand-in-hand with acknowledged PR experts. At the end of the day, there are legal battles and media wars, and the court of public opinion can be more immediate and powerful than the verdict of the justice system. **G**

*Ita Gibney is managing director of the public relations firm Gibney Communications.*

## MANAGING A MEDIA FEEDING-FRENZY

**C**ork solicitor Colm Burke believes that if your client is the focus of press attention, it is in their interest to make sure that reporters get the facts right.

Four years ago, Burke took on what became popularly known as the Scannell case, a bankruptcy case where it was alleged that close to £3 million had gone missing. The case quickly grabbed both local and national media attention. The client's name and picture featured every day on front pages and in news bulletins.

Burke could not stop the media feeding-frenzy, so instead he decided to make sure that the correct facts were published about his client – not speculation and rumour.

'The important thing for us was to monitor the local radio and the papers, and make sure that they got it right. If they said something wrong, we rang up straight away and corrected them', Burke recalls. 'After a while, we built up a relationship of trust, so they did listen and we were able to prevent a lot of inaccurate information being published'.

To add to his difficulties, Burke's firm had to lodge affidavits with the court giving the names and addresses of each claimant and the sum

they were looking for. These were then photocopied by the court officers and published and used as the Circuit Court list, which made the documents easily accessible to journalists covering the case.

This meant that when he was dealing with the press, he had to make sure that journalists did not misinterpret or misconstrue complex documents that they had very little experience in dealing with.

This allowed him to ensure that his client was not misrepresented in the media. 'The press actually appreciated being told what the correct and accurate legal position was', he says.

He believes that, at a time when feelings about his clients were running high, using the press to get across a clear picture of what was happening was the right thing to do.

'There were fears that my client could have been injured or his property, or property thought to belong to him, could have been damaged, so what we did helped to calm the situation. It was the right thing to do at the time. I do think it is important to know how to deal with the press, and some lawyers definitely don't know how to do this'.

*Barry O'Halloran*



# In the front line against fraud

**Judges should be given more powers to suspend or even close down businesses that have been involved in fraud, according to the new Director of the Serious Fraud Office in London, Rosalind Wright. Here she speaks to Pat Igoe about her plans to fight fraud**

**P**eople do not always sufficiently understand that fraud touches us all and costs jobs', says Rosalind Wright, the new Director of the Serious Fraud Office. The 54-year-old barrister took over the £100,000-plus a year job from solicitor George Staple in April, on the expiry of his term of office.

Wright believes that greater flexibility is needed both in the prosecution and trial of serious and complex frauds. There should also be imaginative ways of tackling fraud. Fraud trials can be both extremely complex and time-consuming for judge and jury. There must be a better way.

## Long-promised reform

Her views are of more than passing significance for us in Ireland. Reform in this area of our law is long-promised and long-awaited and is now expected before the end of this year.

The latest Garda Annual Report (for 1996) was presented to the former Minister for Justice Nora Owen in April by Garda Commissioner Pat Byrne. However, its 79 pages include a mere six lines on the work of the Garda National Bureau of Fraud Investigation, which replaced the former Fraud Squad. Yet the Garda's own estimate for the amounts involved in cases that they are currently investigating, which are only among the *known* frauds, exceeds £28 million. Even so, the real amount lost to Irish people and companies, with the resultant loss of unknown numbers of jobs, is most probably far higher. Nobody knows.

Wright is enthusiastic about the prospects for combating fraud in her jurisdiction which covers England, Wales and Northern Ireland.

She points to the powers under section 2 of the *Criminal Justice Act 1987* which enables the Serious Fraud Office to require suspects to answer questions. These powers, which have been confirmed by the courts, have proved to be a vital tool in getting to the heart of complicated frauds.

cedures such as those in England's section 2 should be enacted.

The current annual report of the Serious Fraud Office, which Rosalind Wright presented to the Attorney General in London in June, extends to 55 pages. It contains significant information on the fight against fraud and on the many low-profile successes and the few high-profile failures of the SFO. The statutory presentation of the report to the UK Parliament and its publication in July highlight the British Government's determination to fight fraud. This April, the SFO was examining frauds totalling about £2,000 million, which is more than £330 for every man, woman and child in Britain.

The report shows a likely similarity with Ireland in that it is investors who seem most vulnerable to fraud, followed by creditors of companies who are left unpaid, and then banks, followed by government departments.

## Multiplicity of laws

Despite the existing level of reforms in her jurisdiction, Wright is critical of the law on fraud. She would like to see one overall offence of 'fraud' which she regards as preferable to the multiplicity of laws which are now still necessary in prosecutions, both in Britain and in Ireland. While the Law Reform Commission here

rejected this option, the Houses of the Oireachtas can now learn from the British experience before at last attempting to reform our law in this area.

The most effective charge against fraudsters is *conspiracy to defraud* insofar as it is the only charge that can address the continuity of acts that fraud invariably involves. Yet there can be



The SFO's Rosalind Wright: 'The interests of the victims should be put to the forefront of our efforts'

Here in Ireland, the Department of Justice and the Attorney General's Office are invariably watching the successes and failures of the English system, which has been in place since 1987.

Indeed, the Law Reform Commission recommended that, if it was desired to have more prosecutions for fraud here, investigatory pro-

difficulty in satisfying the requirement of this charge to identify a clear victim. Indeed, the nature of fraud is that quite often it is not possible to identify individual victims, as opposed to groups of people or whole communities. It can even be difficult to establish that a crime was committed at all. Even the victims themselves, both individuals and companies, sometimes deny that they have been defrauded.

Because of the utter complexity of some commercial frauds, Wright would like to see a core nucleus of judges with specialist knowledge of fraud. Lord Justice Auld is preparing a report to the Lord Chancellor which will probably make suggestions in this regard. This is another issue that our legislators in Leinster House can be expected to consider.

### Repaying the victims

She also believes that judges should take a harder look at the assets of defendants' families in fraud cases when assessing a defendant's ability to repay victims. 'I am particularly concerned that the interests of the victims of fraud, often small investors, should be put to the forefront of our efforts', she says.

Here in Ireland, of course, such measures would need to be carefully drafted to avoid being constitutionally questionable. In addition, a type of plea-bargaining might also help to deprive fraudsters of at least some of their gains.

Serious fraud is not new. Neither is legislative effort to deal with it. One of the earliest laws against fraudulent businessmen (and they were men) was aimed 'divers and sundry persons, craftily obtaining into their hands great substances of other persons' goods, (who) do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any of their creditors, their debts and duties'. That was in 1542.

### Silent transfers of money

Little has changed – except the stakes. Technology is now part of the way we live. Instantaneous, international and silent transfers of money are commonplace. Controls by the authorities are becoming more difficult. Currency controls continue to be lifted around the world. Even the Financial Action Task Force set-up by the G7 group of leading industrialised countries in 1989 has great difficulty in knowing what is going on in an era where some advanced states, such as Austria, still allow anonymous savings accounts for their citizens.


Wright wants to see more use of computer technology, including computer graphic displays, in the fight against fraud. Their use should extend to the courtroom. She wants juries to have clear and helpful material on a computer disk to be better able to understand the vast complexities that are often involved. Here, too, Ireland can learn from our nearest neighbour.

The Central Bank here has an impressive role in relation to regulation of the financial services industry, she says. In Britain, the new Government is proposing to unify and consolidate in the Securities and Investments Board supervision of banks and building societies.

But the principal recommendation of the *Roskill fraud trials report* in 1986, that a unified body with responsibility for all major fraud prosecutions, has not been implemented. Closer links between bodies regulating individuals and companies, on the one hand, and the criminal justice system, on the other hand, would be more efficient.

### Magnet for fraud

'Allowing fraud to flourish unprosecuted in a highly reputed financial system would make Britain a magnet for international fraudsters', according to a recent Serious Fraud Office publication. This echoes the concerns of those who cherish the reputation of Dublin's IFSC.

The fight against 'white-collar' crime is out in the open in Britain. The new Director of the Serious Fraud Office is determined that Britain will not be a soft option for the criminals who wear business suits. We can look and, perhaps, learn. 

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*Pat Igoe is a principal of Patrick Igoe & Company, solicitors.*

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# Web sp

**As Internet usage in Ireland has grown over the past few years so too has the number of companies providing access to this information and communications network. Grainne Rothery looks at the main players in the market and what they are offering**

The range of services offered by internet service providers (ISPs) varies dramatically from one to the next, and choosing between them will depend very much on both initial requirements and a company's long-term Internet strategy (if such a thing exists). The choice will also depend on whether the Internet connection is for a single user or for a large organisation with multiple users. Many of the ISPs offering closer partnerships with their customers also provide an initial consultation, which may prove useful for developing a long-term Internet plan.

Once you have the minimum hardware requirements (usually a 486 personal computer, 14.4 kbps modem and a telephone line), it is possible to register with an ISP for a single-user connection for as little as £10 a month. Larger solicitors' practices may, however, benefit from choosing an ISP which focuses on the needs of the corporate market rather than on those of individual and home users.

One ISP recently made the point that it is unfair to use the same criteria to compare the ISPs providing basic dial-up accounts with those offering complex business solutions, and this may indeed be true. However, the following is simply intended as an introduction to a selection of the ISPs currently providing Internet connections to the Irish market. Additional research is obviously recommended before making a final decision.

## EUnet Ireland

EUnet Ireland was set up in 1991 and is affiliated with other EUnet internet service providers in over 25 countries throughout Europe. The company

provides Internet services solely for the corporate market. EUnet's entry level corporate access account *Officelink* operates over a normal PSTN connection from a single PC. The next step up from this is *Personal ISDN*, which is also a single machine service but operates over an ISDN line. EUnet provides a range of other connectivity options to both local and wide area networks.

Customers can have an unlimited number of e-mail addresses on any account and all must use their own domain name. EUnet does not disclose subscriber numbers on the grounds that 'a residential subscriber is not the same as a corporate subscriber, particularly if that corporate subscriber comprises 500 users on a network all using the service'.

## Club Internet

*Club Internet* is the brand name for MediaNet Ireland's Internet service which is geared towards the home-user market. The company says that it currently has more than 4,000 subscribers. MediaNet provides free unlimited Web space. At the moment it has local dial-up access in the Dublin area only. 'If a company outside of the 01 telephone area wants us to host their Web site, they can continue to use their local ISP for Internet access and for sending e-mail. We can then map their e-mail to their domain to their local e-mail address and they can collect at local call rate'. The cost for this service is £282 + VAT a year.

## Indigo

Indigo was established in December 1995 and offers a range of Internet services including ISDN and leased line connectivity, Web design and hosting, electronic commerce, network-wide e-mail solutions and domain name registration.

A single user dial-up account provides access to all Internet services including WWW, e-mail, ftp, newsgroups and IRC. Multi-user dial-up accounts provide these services plus four separate password protected e-mail addresses. Single users are provided with 1Mb of free Web space while multi-users receive 1.44Mb. The company has nodes in Dublin, Cork, Limerick, Waterford, Tralee, Bantry, Galway, Sligo, Letterkenny, Drogheda, Portlaoise, Wexford and Naas, which Indigo says provide local call access to approximately 90% of the population.

## Ireland On-Line

According to the company's senior marketing executive Niamh Collins, Ireland On-Line is

SERVICE PROVIDER	REGISTRATION	CORPORATE FEE	INDIVIDUAL FEE	WEB SPACE	LOCAL ACCESS	HOW TO CONTACT
Club Internet	None	Quarterly £36.30 (incl VAT); yearly £99 (incl VAT)	Quarterly £36.30 (incl VAT); yearly £99 (incl VAT)	Free, unlimited Web space	Dublin	01 662 3615; 1550-212223 (support)
Connect Ireland	None	£200	£85 (incl VAT)	5 Mb personal; 10 Mb corporate	Dublin	01 670 6701 sales@connect.ie
EUnet	OfficeLink: £25; Personal ISDN: £100	OfficeLink: £200 a year; Personal ISDN: £35 a month	Not available	10 Mb charged at £75 a month	Dublin, Cork, Limerick, Shannon, Galway	01 679 0832 info@eunet.ie
IBM Global Network		Starts at £17 a month			Dublin, Cork (shortly); 900 nodes worldwide	01 660 3744
Indigo	£8.26	Multi-user £200 a year	Single user: £10 a month or £100 paid in advance	1 Mb for single users and 1.44 Mb for multi-users	13 nodes - approx 90% of population	01 604 6901 info@indigo.ie
Ireland On-Line	£25	£20 a month or £200 a year	£10 a month or £100 a year	5Mb for non-commercial use	98% local call access	01 855 1739 sales@iol.ie
Telecom Internet	None (fee for software is £12.50 incl VAT)	£12 a month or £120 a year	£12 a month or £120 a year	5 Mb	Local call access nationwide	1850 203 204 sales@tinet.ie sales@eirtrade.ie

# dinner

Ireland's largest ISP with a 60% share of the total Internet market in the country and approximately 27,000 subscribers. 'IOL is regarded as a pioneer in the development and use of the Internet in Ireland', says Collins.

Both single and business users receive up to 5Mb of Web space for non-commercial use. Business users, who are entitled to up to five e-mail addresses, can also create and update a company Web site with up to three pages of text, which will subsequently be located in IOL's Business Park on-line database of businesses. Web hosting for commercial use costs £100 to set up, £300 for up to 5Mb of web space and £50 for each additional megabyte. Collins says that while it is very hard to determine, 5Mb of Web space could represent up to 100 pages of text. The company has nodes in 27 locations which, it says, provide local call access to almost 98% of the population.

## Connect Ireland

Connect Ireland was established in 1995 as a development of the community network service TOPPSI which was set up in 1988. The company provides all Internet services including domain registration. Corporate clients receive four e-mail and six virtual addresses. If a company takes its own domain, it can have unlimited addresses. The company also provides a range of specialist services including database development and advanced communications networking.

## IBM Global Network

The IBM Global Network is, according to its Irish sales manager Vincent O'Toole, one of the world's largest managed data networks and premium Internet service providers. It claims to have more than 30,000 customer accounts in over 850 cities in 100 countries.

The IBM Global Network provides a range of different Internet options, from dial up connections starting at £17 a month to leased lines. 'Our focus is primarily on the corporate end of the market', says O'Toole. The company does not offer free Web space, saying that it focuses on providing a robust, resilient service to corporate users. In Ireland, the company currently has a Dublin node and is planning to add one in Cork in the near future.

## Telecom Internet

Launched in December 1996, Telecom Internet

claims to have raised the standard of Internet service provision. According to Carole Reay, the company's marketing communications manager: 'Our service development will include a roaming facility which will allow our customers to access the Internet in any of 100 countries for the price of a local call. Our Eirpage Alert service, due for launch shortly, will allow customers to receive urgent e-mails via pager when they are out of the office and our electronic commerce service will allow businesses to charge for their services on-line with secure credit card validation systems'. The company's standard dial-up account includes three e-mail addresses and 5Mb of free Web space.

## Internet Ireland

Internet Ireland describes itself as having a very specific focus on providing business solutions using 'new technologies'. Billy Beggs, the company's sales manager, says: 'We reserve our bandwidth and our modem racks exclusively for the use of our business clients to ensure a level of service which is uncluttered by non-commercial users'. The company says that it has developed partnerships and allegiances with Hewlett Packard and Microsoft to enable it to bring unique and specific Internet and Intranet solutions to Irish business.

## LawLink Ltd

LawLink, a joint venture between the Law Society and IFG Group Plc, provides solicitors with a secure electronic mail network and on-line access to the Companies Office, Company Formations International, the Land Registry, the *Legal diary* and the Irish Trade Protection Association's judgments service.

*SecureMail* is a secure way of transmitting confidential documents. Messages sent over the *SecureMail* network do not enter the public domain, but remain in a closed and traceable loop. So far, approximately 130 solicitors have subscribed to LawLink.

Companies or solicitors requiring access to the service can use their existing ISP or can subscribe to Ireland On-Line or a preferred ISP through LawLink. For single users, LawLink and *SecureMail* registration fee is £250 plus £35 a month licence fee. Both LawLink searches and *SecureMail* transmissions are charged additionally per transaction. **G**

*Grainne Rothery is a freelance journalist specialising in technology issues.*

## Glossary of Internet terms

**Dial-up account:** An account that is used to connect a PC's modem to an ISP and to the Internet on a dial-up rather than continuous basis

**PSTN connection:** The Public Switched Telephone Network is the standard telephone system.

**ISDN line:** The Integrated Services Digital Network is a newish telephone system which allows for the transmission of voice, text, graphics and video at speeds of 64,000 kilobits a second.

**Local/wide area network.** A local area network (LAN) is a computer network limited to a closed area such as a single building. A wide area network (WAN) is a network linking a number of buildings which are not necessarily physically connected.

**Domain name:** A domain name is a unique address associated with a single computer and registered by national and international authorities on a first-come, first-served basis. Companies are recommended to take a domain name to protect the value of business names because e-mail addresses become name@company.ie rather than name@company.isp.ie. A domain name can be derived from the organisation name, a trading name, a product, trademark or service.

**Web hosting:** Most ISPs will 'host' their clients' Web pages. This means that they will hold the pages or Web sites on their servers.

**WWW:** The World Wide Web refers to all the documents on the Internet which have links to each other and can be accessed through Web servers.

**Nodes:** Connections or access points to a network. Most of these are host computers.

**Virtual address:** Non-personal e-mail address such as sales@company.isp.ie or support@company.isp.ie offered by some ISPs in addition to normal dial-up addresses.

**Bandwidth:** The amount of data that can be sent through a connection, usually measured in bits per second. The bigger the bandwidth, the greater the speed of data transmission. Bandwidth normally refers to the upper rate at which data can be transmitted over a computer network.

**Intranet:** A private network within a company that uses some of the same kind of software as on the Internet but is solely for internal use. It allows an organisation to use Internet technology to issue information to its own staff or to a select group of people.

# Welcome to LawLink &

## What is LawLink?

LawLink Limited was established by the Technology Committee of the Law Society to research and develop a nationwide communications service for the legal profession and also set up electronic access to Government and other relevant private databases.

## Who is behind LawLink?

In late 1994 IFG Group plc acquired a majority shareholding in LawLink and, with the partnership of the Law Society Technology Committee, the original objective has now come to fruition with the launch of LawLink last April by the Minister for Justice, Nora Owen.

## Services now available

The LawLink service is an essential cost saving tool for every office that deals in legal issues. The following core elements of the LawLink service are all easily accessible from the computer on your desktop:

### *The Companies' Office Direct*

LawLink allows you direct access to the Companies' Office providing you with the facility of name searching and access to company folios.

### *Company Formations International*

The second company search facility accessible through LawLink is the comprehensive CFI database. This database instantly provides you with all of what the Companies' Office can offer, including Accounts Information, Charges, Directors etc.

### *The Land Registry*

As with the Companies' Office, you can search the Dublin Land Registry files from your personal computer. Both name searches and folio number searches can be sought simply.

### *The Legal Diary*

With the co-operation of Mount Salus Press (the printers of the paper *Legal Diary*), LawLink facilitates sending the *Legal Diary* directly to your computer the evening before publication. Comprehensive searching facilities are available allowing you to print the section you especially require.

### *The Irish Trade Protection Association*

This unique service allows you to obtain all personal and company judgments going back 15 years, instantly. This service is easy to access and provides a useful tool at the touch of a button.



LawLink provides you with the most up to date services and information straight to your desktop

LawLink Limited can be contacted at: 19 Fitzwilliam Square, Dublin 2.

Tel: 6766222, Fax: 6762616, e-mail: [lawlink@iol.ie](mailto:lawlink@iol.ie)

LawLink Limited is committed through its on-going development programme to continuously enhance the existing benefits of the system

LAWLINK IS A PART OF THE IFG GROUP



# the world of SecureMail

## SecureMail — The ultimate in document exchange from LawLink

SecureMail is a specifically designed private and secure electronic messaging service that allows one to communicate electronically with other companies. SecureMail has now been set as the standard for electronic transfer of files and documents amongst the legal profession.

### Why SecureMail?

Initially e-mail was to join the legal profession with the rest of the world. No faxing, no posting, no couriers — and, better still, no waiting! E-mail would dramatically cut communication costs and free up valuable time.

Unfortunately for the legal profession, the highly confidential nature of the legal documents and concerns about the security of e-mail and the different types of e-mail meant that lawyers could not adopt this new technology. A secure e-mail system was required, which would allow lawyers to communicate securely within the legal world, and would also give them access to other e-mail users around the globe.

### Problems with normal e-mail

- Communications between different systems difficult and expensive
- No common standard
- No guarantee of deliverability
- NO itemised accounting
- NO protection from viruses
- Attachments do not always work.



SecureMail provides the most modern and secure method of sending documents and files around the world

**FREE SecureMail transactions until January 1998**

**“The Law Society is recommending SecureMail as the standard e-mail platform within the legal profession.”**

— FRANK DALY, PRESIDENT, LAW SOCIETY OF IRELAND

# THE PENSIONS ACT, 1990

## LEGISLATION and TECHNICAL GUIDANCE SERVICES

**T**he Pensions Board operates a Legislation Service by which it makes available to subscribers updates on amendments to the Pensions Act and its Regulations as soon as they are in force. This Service is primarily for practitioners, lawyers, accountants and other professionals involved in providing advice to occupational pension schemes. It may also be of interest to trustees, employers and students of pensions law.

### THE LEGISLATION SERVICE

Subscribers to the **Legislation Service** will receive

- a non statutory consolidated **text of the Pensions Act, 1990**, which includes all amendments to the Act since 1990
- a complete set of the **Regulations** made to date
- a specially designed **binder** to hold the texts
- **regular updates** on changes in the legislation and the new amendments for basic text.

**T**he cost of this service is £190 to include post and packaging and updates in respect of all changes in the legislation in 1997 and 1998. Orders for 5 or more copies attract 10% discount.

THE BOARD ALSO HAS A SERIES OF INFORMATION BOOKLETS AVAILABLE FREE OF CHARGE.

### TECHNICAL GUIDANCE SERVICE

The Board also provides technical guidance on the Act and its Regulations, especially in the areas which override pension scheme documentation.

Subscribers to the **Technical Guidance Service** can obtain **Guidance Notes** on

The Pension Provisions of the Family Law Act, 1995  
and the Family Law (Divorce) Act, 1996  
Member Participation in the Selection of Trustees  
Compulsory and Voluntary Reporting to the  
Pensions Board  
Preservation of Benefits  
Disclosure of Information  
Equal Treatment

**T**he cost for each set of **Guidance Notes** ranges from £3 to £10. A specially designed **binder** to hold the Notes costs £5.

Copies of the **Legislation Service and Guidance Notes** are available from

**Information Section**  
**THE PENSIONS BOARD**  
Holbrook House, Holles Street, Dublin 2  
Telephone No. (01) 6762622 Fax No. (01) 6764714  
Email: [info@pensionsboard.ie](mailto:info@pensionsboard.ie)

# National Pensions Policy Initiative

**The National Pensions Policy Initiative was launched by the Department of Social Welfare and the Pensions Board to establish the steps which need to be taken to achieve comprehensive pensions coverage. As part of the initiative, a consultation document was issued earlier this year and the following is a brief summary of the key points made by the Association of Pension Lawyers in Ireland in its response**

**T**he Association of Pension Lawyers in Ireland (APLI), through its Policy and Legislation Committee, submitted a detailed response to the consultation document and in July made an oral presentation at the National Pensions Conference organised by the Department and the Pensions Board.

## Information and awareness

In the APLI's view, one of the reasons for the relatively low levels of voluntary pensions coverage is the lack of knowledge of the importance of pensions. The APLI has suggested two fairly simple methods to increase pension awareness. First, the State could require that a 'pensions health warning' is included in the annual P60 of employees. This could simply draw employees' attention to whether or not they have a pension arrangement.

Secondly, while the law requires employers give to employees details of pension entitlements if they exist, it does not require them to expressly inform employees if no pension entitlement exists. A legal requirement to provide a written statement that there is no pension would highlight the issue.

## Improvements to the system

The APLI's response contained several suggestions to improve the existing voluntary pensions regime. In particular, provision could be made to require an employer who provides an occupational pension scheme for permanent full-time employees to include permanent part-time employees who do similar work. Other suggested improvements included reducing the maximum period within which benefits under an occupational pension scheme will vest from five years to two years, simplification of the Revenue treatment of pensions, and ensuring

that employees have a legal right to make additional voluntary contributions to an occupational pension scheme.

## Personal pensions

The APLI has suggested that existing arrangements in relation to section 235 contracts (retirement annuity contracts) under the *Income Tax Act, 1967* need to be examined. The APLI is of the view that some form of personal pensions along the lines of those in the UK should

believe that the success of any mandatory system will depend on the mandatory minimum level set. If the mandatory minimum is not sufficiently high, then we could end up with the worst of both worlds – provision for new employees of an inadequate level of benefit and a detrimental effect on the adequacy of existing benefit levels.

The effect on employment due to increased labour costs will also need to be examined. The APLI has pointed out that in any consideration of proposed legislation to introduce mandatory pensions it will be necessary to pay close attention to the recent decision of the Supreme Court concerning the *Employment Equality Bill*.

## Personal retirement accounts

The consultation document also looked at the introduction of personal retirement accounts (PRAs). The APLI envisages that these would be low cost, easily established bank account type products targeted at lower income workers or people not presently working. Key features would include that the PRA would be established with an authorised deposit-taker and would be interest-bearing and free of DIRT. The account holder would

be able to make deposits out of pre-tax income with a limit on the maximum annual level of contribution and limits on the ability to withdraw money prior to retirement date.

The Pensions Board is now proceeding to examine the various responses to the consultation document and draw up recommendations on the steps which need to be taken. **G**

*Eamon Brady is a solicitor with A&L Goodbody and a member of the Policy and Legislation Committee of the Association of Pension Lawyers in Ireland.*



Law Society Junior Vice President Elma Lynch, pictured at the APLI annual dinner with (from left) APLI Honorary Treasury Martin O'Callaghan, Honorary Secretary Michael Wolfe, and Chairman Kevin Finucane

be developed and employers should be allowed to contribute to these arrangements on behalf of employees. However, protections will be needed, in particular to avoid the personal pension mis-selling which occurred in the UK.

## Mandatory pensions

One of the proposals looked at in the consultation document is the possibility of making the provision of occupational pensions compulsory. The APLI, while acknowledging that the introduction of a mandatory system would increase the level of pensions coverage,



# Learning: a life sentence?

**Evening classes  
have left pottery and  
patchwork behind  
and now offer people  
a way of learning  
new skills and  
boosting their  
career prospects.  
Yvonne Healy looks  
at what's on offer**

**I**n the past, evening classes were all about things like lampshade making, car maintenance or carpentry. Nothing wrong with that, but times they are a-changing. Although hobby-based subjects remain an important strand of adult education, nowadays you'll find that a growing number of people are using their free time to develop new job-related skills.

Major companies now spend a significant part of their budgets on training and upskilling. Many high-tech firms guarantee their new recruits up to ten-weeks' training in any one year in order to keep them at the leading edge of developments. One of the disadvantages of working for a small company, or being a sole trader, is that because of a lack of both staff and time on-going training and upskilling often receive relatively little support. Yet failing to acquire new competencies can leave you on the margins; as a result, you may find yourself less effective in your job or even less employable.

## **Major changes in the law**

According to the Law Society's co-ordinator of continuing education, Barbara Joyce, ensuring that members are kept up-to-date with changes in the law is a priority. 'We cover all the major changes in law as they happen', she says. 'We also offer management and skills courses. Up to 100 people attend our programmes every week'. An unprecedented amount of legal change has taken place over the last five years, Joyce notes. 'Solicitors need to keep abreast of these changes', she stresses.

According to the National Association of Adult Education (AONTAS), there are over 1,000 schools, colleges and groups providing adult education courses around the country.

The VECs are the largest providers of education at this level. They offer a wide variety of inexpensive programmes throughout the country. The City of Dublin Vocational Educational Committee (CDVEC) offers a wide range of courses in 21 venues throughout the city. These

include computer courses, language classes and business programmes. Crumlin College of Business and Technical Studies, for example, offers a number of ten-week computer courses including: *An introduction to the Internet* (£55), *Microsoft Word for Windows* (£65); and two accounting packages which are geared for use in small offices – *Quick Books for Windows* and *Sage for Windows* (£55). The *CDVEC guide to courses* costs £1 and is available in Easons.

Included in the Cork College of Commerce prospectus are courses in computerised accounts (£50 for ten weeks), and a computerised 'applications in business' course which introduces students to word-processing, spreadsheets, database and desktop publishing. This 20-week course costs £80. Meanwhile, Limerick VEC organises a wide range of courses in schools and colleges throughout the city. Limerick RTC also offers a range of ten-week computer courses including an *Introduction to computing* (£105), *Elementary ACCESS* (£130) and *Microsoft EXCEL* (£130).

## **General management**

The Irish Management Institute (IMI) runs over 150 open programmes in general management, functional know-how and managerial and personal skills. Solicitors advising a lot of businesses may be interested in its *Company secretary programme*. The course runs over three days or five evenings. It includes an examination of the duties and responsibilities of company secretaries, interface with the Companies Registration Office and of the maintenance of share and charges registers. The course costs £740 and is led by Roderick Murphy SC.

The IMI's six-day programme, *Untap your true potential*, promises to teach you to be a brilliant communicator and motivator, to have more zest for work, to handle stress and thrive on it and how to excel at previously unsuccessful activities. This course costs £1,690 and is available on dates in November 1997/January 1998 and April/June 1998.

The IMI's two-day course on presentation skills costs £540. This course emphasises confidence and preparation and shows you how to make a relaxed and authoritative delivery.

If you'd like to improve your understanding of industrial relations and management, the National College of Industrial Relations diploma in management and industrial relations is worth investigating. This two-year evening course includes industrial relations, personnel management, management theory and practice, organisational behaviour, industrial sociology, social values and finance. The course costs £436 a year and is available in Dublin, Baltinglass, Co Wicklow, Cork, Limerick, Galway, Waterford and Drogheda.

The Institute of Public Administration offers

a *Management development programme* which develops key managerial skills areas and teaches managers to apply these to their organisations. The programme includes a half-day workshop, three one-week modules and one three-day module. The IPA also offers a short intensive course in management called the *Quickstart programme*, which is suitable for anyone wishing to improve their understanding and practice of management. 'The course', says the IPA, 'gives most benefit to professional staff moving into management'.

Deirdre Walsh, admissions officer at Portobello College, Dublin, says the college's three-year NCEA-approved evening degree *Business information management* provides 'a good mix' of computer and business skills. 'This course gives people all the skills necessary to run a business', she says. The course costs £1,300 a year.

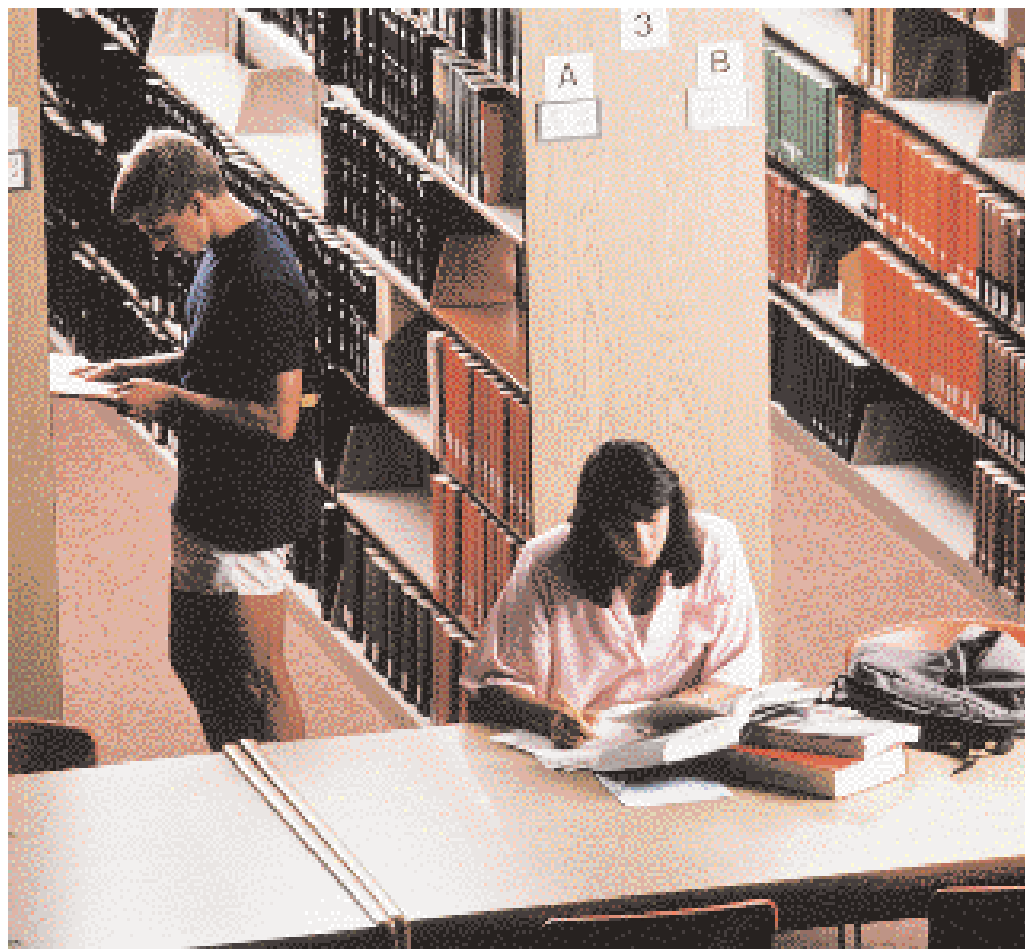
Like Portobello, LSB is a Dublin-based private college. According to Elaine Hughes, LSB's marketing executive, many professionals take its diploma in *Marketing, advertising and public relations*. Hughes says the course, which costs £890, is designed to give students a good grounding in PR and computer skills, and is aimed at anyone setting up in business.

LSB also runs a *Certificate in management studies*. This contains five modules: accountancy for managers, sales management, personnel management, effective communications and management decision-making – all of which may be taken separately. Each lasts five weeks and costs £165. The full course costs £775. LSB's *Diploma in information technology* may be worth checking out. This programme contains four seven-week modules: word-processing, spread sheets, ACCESS database and accounts.

### Language skills

Foreign languages are high on everyone's list of learning priorities. Maybe this is the year that you will decide to brush up on your French or German or even acquire a new language. Many of the VECs offer a range of language courses. At Limerick Senior College, for example, you can take a 20-week beginner's course in either German, Spanish, Italian or French for £64. Meanwhile, Rathmines Senior College, Dublin, offers evening classes in beginner's, intermediate and advanced French and Spanish, and beginner's German and Italian.

The Alliance Française offers a wide range of programmes to suit all levels in Dublin, Cork, Athlone, Carlow, Enniscorthy, Galway, Kilkenny, Limerick, Sligo and Waterford. Prices vary, but in Dublin a 16-week course costs from £160. The Italian Institute runs Italian courses from basic to advanced levels, which cost in the region of £130. The Goethe Institute offers 16-week German courses for



£175. And UCD's adult education department offers courses in Russian, Dutch, Irish, Italian and Greek, while the university's language centre runs programmes in French, German, Spanish, Japanese and Chinese.

UCD has long been famous for its extra-mural courses. Languages apart, the college offers a number of courses which, according to Kevin Hurley, director of adult education, would be of interest to solicitors keen to acquire new skills. He points to a range of computer courses including introductions to both Microsoft's ACCESS and EXCEL 5 programmes. These cost £150 for a ten-week course. The adult education director also highlights courses on report writing, speed reading, conflict resolution and mediation, stress management and business psychology.

At UCD, extra-mural classes – other than the computer courses – cost £60 for a ten-week course and £120 for a 20-week programme. Courses start at the end of September.

All this work-related study is all very well, but what if you just want to broaden your horizons? In both your personal and your professional life a dash of culture will never go amiss. If you live in Dublin, you could opt for UCD's courses *Recognising antiques*, *An introduction to art appreciation* or *The Tain and ancient Ireland*, for example. Included in UCD's extra-mural prospectus is a course in modern literature with the intriguing title

*Celtic tigers and English patients*. You can also opt for God or Mammon. Which of these two UCD evening classes – *The stock market: is it all just a gamble?* or *Is there a God? Yes, no, maybe* – would you choose?

### Belly dancing

If you'd like to surprise your friends and do something really unusual, why not try belly dancing? Marino College in Dublin's Fairview is offering a ten-week course on the *Art of belly dancing* on Tuesday evenings during the Autumn. Art can give you a lifelong interest. Art courses are on offer in most adult education centres throughout Ireland. If you're in Dublin, the National College of Art and Design offers some wonderful evening courses, but book early.

It may sound clichéd, but one of the benefits of attending evening courses is that you step outside your own circle and meet a wide range of people with different talents and interests.

Given the explosion in evening classes here in recent years, there can be no doubt that they are here to stay. 'We should all do evening courses', argues UCD's Kevin Hurley, 'because of the emergence of the learning society which requires us to engage in lifelong learning for personal as well as professional development'.

**G**

*Yvonne Healy is a freelance journalist.*



# Diploma in Legal French

**T**he Law Society is delighted to announce that the third *Diploma in Legal French* programme will commence in January 1998. The diploma is offered jointly by the Law Society and Alliance Française Dublin. Certified by the Paris Chamber of Commerce, the diploma will be taught by native French lawyers and lecturers. The diploma is a practical qualification, which provides a comprehensive study of the French legal environment.

## Course participants

The course is open to solicitors, barristers and apprentices.

## Course content

The course is divided into *Legal French (Français Juridique)*, which constitutes two thirds of the course, and *General French (Français General)*. The main modules will cover the French legal system, civil law and commercial law. Language modules will complement the legal syllabus.

## Course aims

It is envisaged that on completion of the programme, successful participants will be in a position to conduct business ably and proficiently with French-speaking lawyers and business people. They will also have acquired an excellent knowledge and understanding of the French legal system. Practitioners will benefit from the application of their professional and language skills and apprentices will enhance their career prospects by undertaking the programme.

## Fee

The course fee is £850 per person. This is inclusive of all course materials and examination fee.

## Venue and timetable

Lectures will be held at the Alliance Française, 1, Kildare Street, Dublin 2 and at the Law Society, Blackhall Place, Dublin 7. The programme will commence in mid-January 1998 and conclude in mid-

November 1998. There will be a two-week break at Easter and no classes during July or August.

## Information session

An open evening will be held at Blackhall Place at 6.30pm on Wednesday 12 November 1997. The Course Lecturers and Co-ordinators will attend to answer any questions you may have.

## Entry criteria and admission tests

Participants will be required to demonstrate a high degree of fluency in French prior to starting the programme. The minimum entry qualification is Leaving Certificate honours level in French (or equivalent).

Admission will be based on a pre-course language assessment. As the programme is highly interactive, numbers will be limited to 20. Places will be offered in order of merit.

Assessments will take place on Friday 28 November at 6.30pm and on Saturday 29 November at 10.30am at Blackhall Place. The assessment fee is £15 and an application form is attached.

## Preparatory course

This year, for the first time, a preparatory course will be offered to individuals interested in taking the assessment examination. The aim of this course will be to assist students in achieving the entry criteria.

The course will be run from 22 September to 15 December 1997. Classes will take place on Monday evenings from 6.30pm to 8.30pm at the Alliance Française, 1 Kildare Street, Dublin 2. Apart from improving general French, the course will highlight legal vocabulary and will include some sessions with Legal French teachers. The course fee is £160 per person.

*For further information contact: Deirdre Fox, the Law School, the Law Society, Blackhall Place, Dublin 7 (tel: 01 671 0200, fax: 01 671 0064) or Luke Brockie, Alliance Française, 1 Kildare Street, Dublin 2 (tel: 01 676 7116, fax: 01 676 4077).*

## Diploma in Legal French PRE-COURSE LANGUAGE ASSESSMENT APPLICATION FORM

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

I wish to apply for the pre-course language assessment on: \_\_\_\_\_

Friday 28 November at 6.30pm ☐ or Saturday 29 November at 10.30pm ☐

I enclose £15 assessment fee (cheques made payable to Alliance Française)

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

*The final date for receipt of applications for language assessment is Monday 21 November 1997.  
Please return application and cheque to: Deirdre Fox, Law Society of Ireland, Blackhall Place, Dublin 7.*





# Council report

## Report on Council meeting held on 13 June 1997

### 1. Law Society/Bar Council Liaison Committee

The President referred to a letter from John Dowling, Director of the Bar Council, which sought a meeting of the above to discuss a proposal by the Bar to introduce a system to deal with the non-payment of fees to barristers. The President said that the re-introduction of meetings of the liaison committee had been sought by the Society for some time and would be a most welcome development. It was an opportunity to dispel any cloud which remained over relations between the two bodies. It was agreed that other items should be placed on the agenda also. Surprise was expressed at the Bar Council raising the issue of non-payment of fees to barristers. A number of years previously the Society had unreservedly agreed that any barrister who had not received his fees from a solicitor could make a complaint to the Society and, if the complaint was well founded, the Society would take an extremely serious view of the matter. Hardly any such complaints had in fact been received, however. The Society was anxious to hear of such cases as it could be symptomatic of other financial problems in a solicitor's practice.

### 2. Adjudicator

The President referred to the recent letter from the Minister for Justice which had been circulated to the Council. Following further discussion, the Council decided to proceed with the implementation of its scheme for an adjudicator to

act as an independent third party who could review the Society's handling of clients' complaints about their solicitors.

### 3. Eligibility for High and Supreme Courts

The Council was advised of the conclusions of the discussions which the Society's representatives on the Ministerial Working Group, Ken Murphy, Geraldine Clarke and Ernest Cantillon, had with the Bar Council representatives, Mary Finlay SC, Garrett Cooney SC and Turlough O'Donnell SC. The Council endorsed the position recommended to it by the Society's representatives. It was noted that the content of these discussions remained confidential.

### 4. Personal injuries tribunal

The Council noted the report which had been circulated of the conclusions of the ministerial working group on a personal injuries tribunal. The working group's majority recommendation was for an occupational injuries mediation service operating within the existing court system. The President said the report and its conclusions represented a significant achievement for the Society in convincing the working group of the major flaws in the original idea of establishing a personal injuries tribunal to take certain cases away from the courts.

### 5. Law directory on computer disk

Following discussion there was agreement with the recommenda-

tion of Finance Committee Chairman, Ward McEllin, that a request from certain financial institutions for the provision to them on computer disk of up-to-date lists of solicitors with practising certificates should be rejected. It would be impossible to be certain at any given time that the computer records were absolutely accurate and this created a potential exposure for the Society which far outweighed the revenue which would be generated.

### 6. CCR Legal Agency

The Deputy Director General, Mary Keane, briefed the Council on the Society's efforts to resolve the problems which had resulted from the collapse of CCR Legal Agency. It appeared that approximately 20 solicitors' firms were affected. The next step was to progress discussions with the Revenue Commissioners in relation to documents which were unstamped or which bore fraudulent stamps.

### 7. Industrial relations dispute

In view of the fact that the dispute was at hearing before the Labour Court that day, the Council decided to postpone any discussion of the dispute until the court's recommendations had issued.

### 8. Compensation Fund

The Chairman of the Compensation Fund Committee, Gerard Griffin, obtained approval for payment of claims in a total amount of £221,339.52. He also reported that, following threatened District

Court proceedings, the number of solicitors who had not yet applied for practising certificates this year had been reduced from 70 to six, two of whom had only just qualified, two of whom were seriously ill and two of whom would be pursued by the Society. In addition, he referred to the Accountants' Certificates report which showed that up-to-date certificates had been received in 98.27% of cases. He complimented the Registrar of Solicitors, the investigating accountants and the other Society staff for their hard work and effort in securing such a successful result.

### 9. Recommendation 36

Patricia McNamara referred to recommendation 36 of the Review Working Group that *'individual matters being dealt with by the Society's regulatory committees should be listed by case number, rather than by name, in order to maintain greater confidentiality'*. She said that the Compensation Fund Committee was not complying with this and was bound to do so. The Chairman of the Compensation Fund Committee, together with the Chairman of the Registrar's Committee, Owen Binchy, reported that their committees had sought to implement the terms of recommendation 36 but that the results had been totally unsatisfactory and unworkable. Ms McNamara gave notice that she would bring a motion in relation to the matter before the next meeting of the Council. G



# Committee reports

## EDUCATION

### **Consolidation of Apprenticeship and Education Regulations (SI No 287 of 1997)**

The Law Society's *Apprenticeship and Education Regulations* are now consolidated into one set of regulations comprised in Statutory Instrument No 287 of 1997, which came into operation on 1 July 1997. The concurrence of the Minister for Justice to the making of these regulations, to the extent required pursuant to section 40(7) (as inserted by the *Solicitors (Amendment) Act, 1994* of the *Solicitors Act, 1954*, was given on 25 June 1997.

The previous regulations comprised in SI Nos 9/1991, 359/1992, 360/1992, 320/1993 and 102/1995 have been revoked. The principal regulations (SI No 9 of 1991) were extensively amended by SI No 102 of 1995 (which came into effect on 1 May 1995). The 1995 regulations had dealt with apprenticeship-related matters and with eligibility for admission to the Society's professional training system and its related Final Examination – Second Part and Final Examination – Third Part, but did not deal with the Final Examination – First Part.

The Final Examination – First Part (FE-1), which in substance is the Society's standard entrance examination (comprising eight 'core' legal subjects) to the Society's professional training system, was the subject matter of High Court litigation in 1995 (in the *Bloomer* proceedings) and again in 1996 (in the *Abrahamson* proceedings). The combined effect

of the High Court judgment (6 February 1996) in *Bloomer* and the High Court judgment in *Abrahamson* (15 July 1996) was that the FE-1 exemption system was struck down, subject to the Education Committee of the Society in those 'exceptional circumstances' (under regulation 30 of SI No 9 of 1991) recognising the rights to a whole or partial FE-1 exemption of those university law or 'mixed' law students already in the university system as of October 1995. The rights of those law/'mixed' law students in the university system as of October 1995 have been provided for under the *Bloomer* and *Abrahamson* decisions and by the application of the said 'exceptional circumstances' powers in regulation 30 of SI No 9 of 1991 (regulation 28 in the new consolidated regulations) and, accordingly, it is not necessary or appropriate to provide specifically for the protection of those rights in a new set of consolidated regulations of general application.

The amendment of the Society's current *Apprenticeship and Education Regulations* was necessary for the following reasons:

1. To remove from the Society's regulatory structure the FE-1 exemption provisions struck-down by the High Court/Supreme Court in *Bloomer*
2. To incorporate into regulatory form the actual rules for the sitting, setting, marking and passing of the examinations in the eight subjects comprising the FE-1
3. To provide in regulatory form for the appointment of internal and external examinations for

each of the eight subjects comprising the FE-1 and for the powers and functions of the FE-1 Board of Examiners and to provide for public interest representation on that board

4. To provide for other minor non-substantive amendments to the previous regulations.

**The Solicitors' Act Apprenticeship and Education Regulations 1997 (SI No 287 of 1997) are published by the Stationery Office and can be purchased from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2, or through any bookseller, price £4.80.**

### **Indentures of apprenticeship**

The Education Committee wishes to draw the attention of solicitors (acting as masters or intending to act as masters to apprentices) to the seriousness of the indenture deed as the basis of a contractual relationship between master and apprentice, and to the individual covenants contained in the deed.

It is a firm rule of the committee not to permit any covenant to be deleted from the deed, even if such deletion is based upon agreement reached between master and apprentice. In particular, solicitors/masters should be aware of the following covenants:

1. The master is obliged to pay the apprentice a gross salary of not less than the gross amount as recommended by the Law Society. The present rates are as follows: the first six months – £115, the second six months – £125, the remaining period – £135

2. The master is obliged to provide the apprentice with instruction and experience in conveyancing and landlord and tenant law, in litigation, in wills, probate and administration of estates, and in at least two of the following areas: commercial law, company law, criminal law and procedure, employment law, European Union law, family law, insolvency law, intellectual property law, law of trusts, pensions law, planning and environmental law, revenue law and taxation and social welfare law
3. The indentures of apprenticeship may only be terminated by: a) mutual agreement in writing between the parties, or b) by application by either of the parties to the Education Committee to have the indentures discharged.

*Education Committee*

## COMPANY AND COMMERCIAL LAW

### **Companies Registration Office moves**

The Companies Registration Office has moved from Dublin Castle to its new premises at Parnell House, 14 Parnell Square, Dublin 1 (tel: 01 804 5200). The committee will continue to monitor and will report on the developing situation in this office, which has been of increasing concern to practitioners in recent months.

### **Competition Authority**

The Competition Authority has also moved to Parnell House, its telephone number being 01 804 5400.

### Notes on the Listing Rules

The Irish Stock Exchange has produced new *Notes on the Listing Rules*, sometimes known as the 'Green Pages' (although these are white now). These are available from the Irish Stock Exchange, Anglesea Street, Dublin 2.

### Irish Takeover Panel Rules

On 1 July 1997, the Irish Takeover Panel, established pursuant to the *Irish Takeover Panel Act, 1997*, took over the former jurisdiction of the Panel on Takeovers and Mergers with respect to Irish-incorporated public companies whose shares are on the Official List or which are traded on one of the Irish Stock Exchange's other markets. The Irish Panel's new *Irish Takeover Panel Rules* mirror the *City Code on Takeovers and Mergers* of the London Panel. The *Rules* are available from the Irish Takeover Panel, 7 Upper Mount Street, Dublin 2 (tel: 01 678 9020) and cost £20 plus £2.65 p&p.

- The Irish Centre for Commercial Law Studies in the Faculty of Law at University College Dublin will be holding a seminar on the morning of Wednesday 1 October on the Act and the *Rules*.

### Draft category Certificate on mergers

The Competition Authority has published a draft *Certificate on mergers*, embodying the principles it has applied in its decisions since 1991. Subject to possible amendments, this is expected to be published as a category certificate in the near future. When this occurs, if a transaction is structured in a manner approved by the certificate, there will be no requirement for an application for a certificate for that particular transaction.

### Amendment to the EU Merger Control Regulation (MCR)

On 30 June 1997, the Council of Ministers adopted an amendment to the MCR, effective from 1 March 1998, which reduces the

thresholds for transactions notifiable thereunder. The amendment will have the effect of removing more transactions from local Irish regulation under the *Mergers and Takeovers (Control) Acts* and the *Competition Acts*. This will be the subject of more coverage in the *Briefing* as the implementation date approaches.

Paul Egan

## PRACTICE MANAGEMENT

### Office manual due

This publication, which is designed to encourage solicitors to put certain administrative systems in place in their offices, will be distributed to all firms next month. Additional copies can be purchased from the Law Society. The manual will also be produced on disk at a later date.

### Office Administrators course

A very successful Office Administrators course was held over three days in June/July. This course will be repeated in 1998.

### Audio tapes

The committee is producing a twin pack of audio tapes (70 minutes) with presentations on eight different practice management issues. The topics covered will include meeting clients' expectations, cashflow management, stress management, practice development, accreditation marks, how banks assess loan requests etc. These tapes will be distributed free of charge to all firms in October.

### Revenue audits

The committee's objective is to provide a short guidance document to solicitors suggesting how they might best come out of a Revenue audit.

This will cover how to minimise the potential for an audit, use of your accountant before and during an audit, client confidentiality, what the auditors look for, and settlements etc.

### Practice comparison

There was a significant response to the *Gazette* article on this topic in April. Following significant feedback and comments, the questionnaire has been revised and it is intended to survey up to 60 firms this month, with the objective of obtaining sufficient information to produce a report which will be published by way of *Gazette* articles. If this generates sufficient interest, then it is hoped to do a profession-wide survey next year.

### ISO9000/Q Mark

A *Questions and answers* pack about ISO9000 and Q Mark will be distributed to all firms this month. This is designed to answer the basic questions raised by solicitors such as: how much will it cost? how long it will take? what is the difference between ISO9000 and Q Mark? is it really worth the effort? The pack will also provide contact names for solicitors who have achieved ISO9000 and Q Marks and are prepared to discuss the process and benefits with other solicitors.

The committee is also investigating the publication of a more detailed handbook that would outline in detail the systems that would have to be put in place in a solicitor's office to achieve ISO9000 accreditation.

Cillian MacDomhnaill

## TAXATION

### Capital gains tax clearance certificate (Forms CG50)

Practitioners are reminded that application forms CG50 should be sent to the tax office at least three working days in advance of the closing date of the sale. Completed forms should be sent for processing directly to the relevant inspector of taxes who deals with the tax affairs of the vendor. Failure to submit timely applications may delay the issue of the clearance certificate.

### Multiple vendors

The Chief Inspector of Taxes has said: 'It is confirmed that where multiple vendors dispose of an asset, the application for clearance must be signed separately by each vendor. However, in the case of a husband and wife living together where separate assessment to CGT is not being claimed, an application signed by the relevant spouse only is acceptable'.

### Residential property tax certificate of clearance

Practitioners are no doubt aware that residential property tax has been abolished with effect from 5 April 1997. However, the existing tax clearance arrangements in the case of sales of houses above a specified value threshold are being maintained. The value threshold relating to the residential property tax certificate of clearance procedure is £115,000 in 1997 (formerly £101,000).

### Tax clearance procedure

The new threshold, which relates exclusively to the tax clearance procedure, applies to house sale contracts executed on or after 5 April 1997. From that date, where the sale consideration for residential property exceeds £115,000, the vendor must provide the purchaser with a certificate from the Revenue Commissioners indicating that all residential property tax due for years for which the tax was in operation has been paid. Otherwise, the purchaser must deduct an amount ('specified amount') from the purchase price and remit it to the Revenue Commissioners.

### Applications

Practitioners are once again requested to make applications for residential property tax clearance certificates immediately a contract for sale is executed and well in advance of the closing date. Failure to submit an application until days before the closing of a sale will prejudice the timely issue of the clearance certificate. Assistance or information regarding the clearance certificate may

be obtained by calling 01 6792777 (exts 4308, 4626 and 4629).

### Tax clearance certificates

The Revenue has announced that taxpayers who have their affairs up-to-date will receive a renewed tax clearance certificate annually on an automatic basis if they already hold such a cert. No further details are available at present.

### UK tax news: client's reliance on tax advisor

In the case of *Nunn v Gray (Inspector of Taxes)*, the Special Commissioners ruled on 30 May 1997 that the taxpayer could not be protected from interest in respect of a capital gain not returned in his income tax return on the basis that he relied on his accountant to have made the full disclosure. The taxpayer signed a partially completed tax return for 1988/89 and left it with his accountant to complete, including, he says, incorporating details of the capital gain. He also says his accountant assured him the capital gain had been included. However, it subsequently emerged that the gain was not included and the Special Commissioners ruled that the taxpayer had been at fault and was therefore subject to interest on the undeclared tax.

### Tax briefing

The April issue of *Tax briefing* is now available. It covers the following matters:

- VAT repayments can now be made direct to a nominated bank account
- Non-filers will receive direct reminders from the Revenue,

without copy to agent.

- Taxation of employment grants and recruitment subsidies: summary of the legal position in some detail
- What is a permanent establishment? Detailed article in the context of the UK/Ireland double-tax agreement
- Retirement relief and liquidations: concession where business assets disposed of in the six months prior to liquidation of family company
- In larger cases the Revenue will employ 'computer auditing'. This involves a program to extract data from client files
- Internal review/appeals: the internal review procedure (appeal to Chief Inspector's Office) cannot be employed once a date for an Appeal Commissioner Appeal Hearing has been set
- Medical insurance: who is authorised and who is not
- Disability benefit and tax: detailed review of a murky area
- Resort areas: short summary
- Relevant contracts tax: reminder of need to complete form RC21 for each new contract
- Lloyd's underwriters: relief for retirement annuity premiums and Irish accountancy fees
- CGT clearance cert: must be submitted three days before closing
- Sterling conversion rates 1996/97
- Average market closing exchange rates for all currencies to the Irish pound over a number of years
- CGT multipliers.

Colette Carey

## PRACTICE MANAGEMENT GUIDELINES

### Services and forward planning

### Case management

### Office administration

### Financial management

### Managing people

Available from the Law Society's Practice Management Committee, Blackhall Place, Dublin 7 (tel: 01 671 0711, ext 401).





# Practice notes

## Disclaimers on intestacy

Practitioners should note the provisions of section 6 of the *Family Law (Miscellaneous Provisions) Act, 1997* in relation to the distribution of a disclaimed estate or part of an estate, on intestacy.

Section 6 of the Act (enacted 5/5/97) inserts a new s72A into the *Succession Act, 1965*, as follows:

*72A - Where the estate, or part of the estate, as to which a person dies intestate is disclaimed after the passing of the Family Law (Miscellaneous Provisions) Act, 1997 (otherwise than under section 73 of this Act),*

*the estate or part, as the case may be, shall be distributed in accordance with this part –*

*a) As if the person disclaiming had died immediately before the death of the intestate, and*

*b) If that person is not the spouse or a direct lineal ancestor of the intestate, as if that person had died without leaving issue.*

### A word of warning

This legislative change affords only limited scope in terms of tax

planning. It is effective in typical circumstances where the deceased's estate on intestacy is intended to go to one or only a few of the deceased's children or where the entire estate is to vest in their surviving parent.

However, extreme care is warranted. For instance, if on the death of a surviving parent all the children disclaim, the estate will not pass to the grandchildren but rather to the deceased's brothers and sisters.

Likewise, where the deceased is survived by brothers and sisters

and they all disclaim, the estate does not pass to their children but to uncles and aunts of the deceased and, if none, to first cousins.

Practitioners are also reminded:

- a) If a beneficiary disclaims for a consideration, this consideration is deemed to be inherited from the deceased, and
- b) It is not possible to disclaim in favour of another (an assignment with attendant stamp duty and gift tax may be unavoidable).

*Taxation Committee*

## Architect's Certificates of opinion on compliance: reliance on confirmation from other professionals

The Royal Institute of Architects of Ireland (RIAI) Form 1 is an architects' *Opinion on compliance with building regulations* for use where a professional architectural service has been provided at the design and construction stage of the relevant building works.

This form envisages the architect giving an overall certification of compliance, but relying very much on having got confirmations from other professionals such as structural engineers, fire engineers, mechanical and electrical engineers etc in relation to the elements of the relevant building or works which those persons designed. The opinion relies solely on these confirmations in respect of such elements.

The Conveyancing Committee has received many queries as to whether solicitors should get copies of these confirmations and whether it is essential that the confirmations are in writing. Many of the confirmations such as those used by the structural engineers and mechanical and electrical engineers are on a standard form prepared by the Association of Consulting Engineers of Ireland. These contain certain important limitations. It is not possible for a purchaser's solicitor to advise their client properly without sight of these confirmations, particularly if there are extra exclusions or limitations to be considered.

The committee is aware that

certain architects and solicitors are refusing to furnish copies of the confirmations in the mistaken belief that this is the correct practice.

The committee is unanimously of the view that it is in the interests of both the architects, the engineers who furnish the confirmations and of the solicitors that copies of the confirmations be obtained, kept with the *Opinion* and furnished to purchasers' solicitors.

### Apartment developments

The content and format of an architect's *Opinion on compliance of an apartment dwelling with building regulations* (where a full professional service has not

been provided) has been agreed following prolonged discussions between representatives of the RIAI and the Law Society. The outcome of these discussions has been embodied in RIAI Form 1A (March 1997 issue) which is already in circulation. This, like RIAI Form 1 (above), relies on confirmations from other disciplines and providers, and it is vital that all such confirmations be furnished and retained with the Form 1A, the above recommendations being at least equally applicable thereto as to the Form 1.

The RIAI has confirmed that it agrees with the foregoing advices.

*Conveyancing Committee*

## PRACTICE NOTE

## Wills for parents

The general principles of conduct relating to circumstances where a testator wishes to benefit a solicitor are set out at clause 2.15 of the *Guide to professional conduct of solicitors in Ireland*. They apply equally to making a will for a parent.

*'Where a testator intends to make a gift by his will to his solicitor, or to a partner, a staff member, or a member of the family of that solicitor, and the gift is of a significant amount either in itself or having regard to the size of the*

*estate of the testator, then the solicitor should advise the testator to obtain independent legal advice as to that intended bequest. If the testator refuses to be independently advised and presses the solicitor to act, the solicitor must persist in his refusal to act. It is not sufficient for the will merely to be attested by an independent solicitor.'*

There are occasions for every solicitor when he or she is asked to take instructions in a situation where it is immediately clear to

the solicitor that instructions cannot be accepted because it places the solicitor in a position of conflict of interest. This can be very difficult to explain to a client who may wish to proceed because the client knows the solicitor and trusts that solicitor to act in a professional manner, no matter what the circumstances.

If a parent asks a solicitor son or solicitor daughter to make a will, there is potential for conflict of interest, if the solicitor is to benefit. A conflict may arise

between the interests of the solicitor son or daughter and his or her siblings. Even if the will is a simple will, and the estate is to be divided equally between all the children of a marriage, a difference in benefits granted by a parent to the children during the parent's lifetime may make the situation less straightforward than it appears. The solicitor must consider whether in these circumstances independent advice is essential.

*Professional Guidance Committee*

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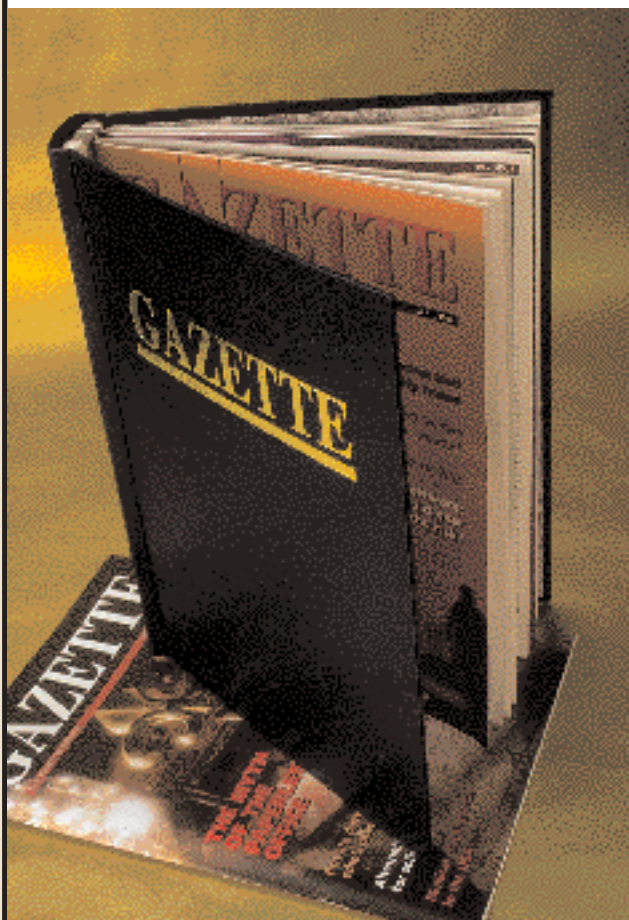
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# Practice management

Video review

## Your business and the Euro

(running time: 64 minutes)

**T**his video, produced in association with *Business & Finance* magazine, answers the major questions about the implications of the European Monetary Union/Euro for businesses: what issues should be addressed now? will your computer system handle Euros? what are the accounting issues? what are the legal implications? will it all happen on time?

The video is very useful in alerting you to the implications of the Euro for your practice and also helps you to usefully alert your commercial clients to the implications.

The single currency is definitely going to happen and firms must take the necessary measures to make sure they are prepared. The big winners in a single currency will be the small and medium-sized enterprises as they are the ones that are most inhibited by the current arrangements. The advice to Irish businesses is to get on with planning for the Euro as it is going to happen and not to be distracted by the current controversy or uncertainty highlighted by the media.

tainty highlighted by the media.

There will not be any impact up-front until the end of year 2001; however, inter-European bank transactions will be denominated and transacted in Euros. For three years, both the Irish Punt and the Euro will be legal tender, and organisations will have to adapt their accounting systems to handle this. By June 2002, there will only be one currency. Euro pricing will start in 1999 on products that are imported from Europe. For retailers, pricing in terms of signage will cause a problem. Proposed legislation will require putting price per kg as well as overall price on products and this will mean that four prices will have to be put on products during the transition period. Initially there will be a heavy cost – up to 2% of turnover for many industries, particularly the retail industry – and most of this will come in terms of technology changes. If your clients are in the IT business, then the Euro will represent a huge opportunity for them.

Practices, and businesses in general, have to be aware of what both their suppliers and their clients are doing in regard to Euro changeover. Many organisations are merging the Euro problem and the year 2000 problem into one and finding a comprehensive solution.

The conversion may not throw up good psychological prices, such as 99p. The Euro is a smaller unit than the pound and therefore what used to cost £1 will cost 1.25 Euros. Consequently, prices will appear to go up. Other European countries will benefit in reverse. Consumer watchdogs will be carrying out various surveys to make sure that a consumer is not disadvantaged by the conversion. Jefferson Smurfit Group anticipate producing their 1999 annual report in Euros.

It is anticipated that fund managers will shift a large amount of investment to European equities in order to have a more pan-European portfolio. This has serious implications for Irish companies and their investor relationships. Public companies with large capitalisation, such as the banks, will have to ensure that they have the confidence of European fund managers in order to address this balance. Obviously financial institutions will have redundancies in their treasury operations. The Euro will also result in significant competition for Irish financial institutions from European

banks, even on a domestic level. The implications for continuation of contractual rights vary from country to country, and this presents an opportunity for legal advisors.

EMU will increase pension costs because it will effectively result in decreased interest rates, therefore annuities will cost more. Businesses will have to reassess the type of pensions they give (for example, define contribution versus define benefit). The likely accounting policy will be that costs in converting to the Euro will have to be written off in one year and cannot be capitalised. Different clients and suppliers will move over to the Euro at different times in the three-year window. The shortage of computer skills will be magnified when firms start addressing the Euro and year 2000 issues.

Large and medium-sized firms, including solicitors' practices, should have an EMU co-ordinator appointed at this point.

*Your business and the Euro* is essential viewing for partners in medium-sized and large practices, particularly those with international clients or clients who are involved in exporting or importing goods or services. It's available from the Law Society Library for ten days' hire on payment of a £20 refundable deposit. **G**

*Cillian MacDomhnaill is the Law Society's Director of Finance & Administration.*

### DATE FOR YOUR DIARY

**Annual Conference 1998**

**FLORENCE**

**16-19 April, 1998**

Enquiries to Mary Kinsella at the Law Society





## News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

# State liability for non-implementation of Directives

In *Francovich & Ors v Italy* [1991] ECR I-5357, the European Court of Justice ruled for the first time that a Member State could be sued in damages by individuals in their national courts in the following circumstances. The Italian State had failed to implement an EC Directive, with the result that the applicants were unable to assert rights that the Directive had intended them to have. The applicants' position appeared hopeless when the Court rejected their main argument which was that, notwithstanding the State's failure to implement the relevant Directive by way of a domestic implementation measure, the Directive itself could be invoked against the State under the doctrine of 'direct effect'. This argument was rejected as the Directive did not satisfy the criteria for direct effect, according to the Court.

However, heralding a dramatic new development, the Court proceeded to rule that a Member State could be sued in damages where the following three criteria were satisfied:

- Did the Directive aim to create rights for individuals?
- Could the content of such rights be ascertained from the Directive's provisions?
- Was there a causal link between the State's failure to implement the Directive and the damage that resulted?

Thus, an individual who could satisfy these conditions now had the right under EC law to sue a Member State in damages in a national court where the State's failure to implement an EC Directive was the cause of the individual's loss. Particularly significant was the fact that an individual could assert such a cause of action even in respect of provisions of a Directive which were not capable of being directly effective.

However, several issues remained unclear. This note is concerned with one of those issues. At paragraph 38, the Court has stated: 'Although State liability is thus required by Community law, the considerations under which that liability gives right to a right to compensation depend on the nature of the breach of Community law giving rise to the harm.'

After *Francovich*, it was unclear whether these criteria would be used solely as the criteria to determine Member State liability where there was a complete failure to implement a Directive in a State's domestic legal regime or whether *Francovich* criteria would also be used for determining liability in other situations, such as where a Member State had poorly implemented a Directive, thereby causing an individual to suffer loss.

Several Article 177 reference judgments delivered by the Court of Justice in the last year have clarified this issue for the national

courts. In an Article 177 reference, the national court which is hearing the substantive action between the parties asks the Court of Justice to determine a point of EC law: the Court does not determine the substantive issue, however – that is left up to the national court which applies the Court's response to the reference to the substantive issue. The practitioner should take note of these cases as a proper understanding of them may be vital to the presentation of a client's damages case against the State in the High Court. From them, it will be seen how the *Francovich* criteria appear not to apply where the State, rather than failing to implement a particular Directive at all, instead has poorly implemented the Directive. Instead, other criteria appear to apply.

### Which liability criteria apply?

In order to understand why the Court has so ruled, consideration must first be given to the Court's case law on a separate issue – that is, what criteria apply to determine Member State liability in damages where there has been national legislation that is contrary to EC law. This issue arose in *Brasserie du Pêcheur/Factortame III* [1996] ECR I-1029.

In *Brasserie du Pêcheur*, the issue was whether Germany had acted contrary to EC law in enacting beer purity legislation which

had the spin-off effect of preventing the applicants from exporting French beer into Germany for two reasons. First, German beer purity law only allowed the sale of alcohol as 'beer' on German territory if it was produced in a certain manner. Second, German law prohibited the import of beer containing additives. The applicants claimed that such laws were contrary to Article 30 on the free movement of goods under the EC Treaty, and therefore they claimed that under EC law they should be afforded the right to seek damages from Germany in the German courts for alleged loss thereby arising (under German law the applicants had no cause of action).

The background to *Factortame III* was that it had been held earlier by the Court of Justice in *Factortame II* [1991] ECR 3905 that the UK *Merchant Shipping Act 1988*, was contrary to Article 52 of the treaty as it prevented Spanish fishing vessels being registered to fish from British ports. Article 52 prohibits EC Member States from unfairly discriminating on grounds of nationality or domicile against other EC Member State nationals who wish to set up in business. Accordingly, the applicants were now seeking to ascertain whether EC law would provide an action in damages actionable in the UK courts to compensate them for alleged loss arising from the UK's main-



tenance of laws that were clearly contrary to the treaty. British law did not provide any such remedy in damages.

As the essential issue in both cases was so similar, the Court joined both actions together. Referring to *Francovich*, the Court indicated that it had concerned a 'reduced' discretion type situation: the Community had adopted a Directive which set out Member State obligations and therefore the discretion of the Member States to adopt legislative or economic choices in implementing the Directive was severely restricted. Hence, the criteria for determining State liability in damages in a national court under EC law where the State had failed to exercise its reduced discretion had to be necessarily favourable to an aggrieved litigant who was alleging loss as a result of the State's failure to act.

However, crucially, the Court also recognised that different criteria must apply where the State was acting in a 'wide' discretion situation. Pointing out that the Member States must not always be living in fear of damages actions when acting in a field that falls within the scope of the EC Treaty, the Court held that in *Brasserie du Pêcheur* that the Member States had a wide discretion to legislate as there had been no Community harmonisation in the beer sector at the time of the enactment of the German beer legislation.

Similarly, in *Factortame III*, the Court pointed out that the EC fisheries policy left it up to the Member States to set out a registration

regime for fishing vessels. Therefore, according to the Court, both of these cases presented wide discretion type situations, and so the criteria to be used to determine Member State liability would be necessarily different from the *Francovich* criteria:

- EC law must have conferred rights on individuals (similar)
- The breach of that law must be 'sufficiently serious' (not similar), and
- There must be a direct causal link between the individual's loss and the damage sustained (similar).

In reality, it is the second criterion that is markedly different from the *Francovich* criteria. Elaborating on what it could mean, the Court held that in a wide discretion type situation a breach was 'sufficiently serious' where the State had 'manifestly and gravely' disregarded the limits of its discretion to legislate in conformity with EC law. Furthermore, the Court helpfully elaborated a number of criteria which may help in deciding this issue:

- The degree of clarity and precision of the rule breached
- The measure of discretion left by that rule for the Member State/EC authorities when called upon to implement it
- Whether the infringement and the damage caused was intentional or involuntary
- Whether any error of law was excusable or not
- Whether a Community institution's actions may have con-

tributed to the breach, and

- Whether the Member State had adopted or retained national measures contrary to EC law.

The Court continued to elaborate that a breach would be 'sufficiently serious' where, for example, a previous ruling of the Court had ruled that the point in issue in a dispute infringed EC law; or where an Article 177 preliminary ruling delivered by the Court already existed on the point at issue; or where the settled case law of the Court has previously taken a different view.

Applying such criteria to the two cases before it, the Court held in *Brasserie du Pêcheur* that Germany's beer marketing requirements constituted a breach of Article 30 which would be difficult to regard as 'excusable error' as similar measures had been condemned previously in the landmark *Cassis de Dijon* judgment as far back as 1979 – [1979] ECR 649 – and the incompatibility of such a requirement was 'manifest'. On the other hand, the Court pointed out that the German law prohibiting the importation of beers made with additives was 'less conclusive' until the Court held it was illegal in *Commission v Germany* in 1987 [1987] ECR 1227.

Clearly, therefore, the Court was attempting to assist the national court in indicating to it that while the 'beer' description law was definitely not an excusable legislative error, the national court would have to consider more carefully whether the additives prohi-

bition was a breach of 'sufficiently serious' proportions.

In *Factortame III*, the Court pointed out that the requirement of the *Merchant Shipping Act 1988* that registration of vessels was dependent on the owner's domicile was *prima facie* contrary to Article 52 of the EC Treaty. The guidance that the Court gave here to the national court in order to help it decide if the breach was 'sufficiently serious' would be the examination of factors such as:

- Legal disputes relating to certain features of the Common Fisheries Policy
- The attitude of the Commission which had made its attitude known to the UK in good time
- The views of the national court in the national proceedings as to the state of certainty of Community law, and
- Whether the Member State complied diligently with any interim relief ordered by the Court.

Therefore, it appears that where the State has legislated contrary to EC law, the criteria that will be used to determine the State's liability in damages will be the *Brasserie du Pêcheur/Factortame III* criteria – which lean more in favour of the Member State – rather than the *Francovich* criteria which lean much more in an aggrieved applicant's favour.

*The concluding part of this article will appear in the next issue of Eurlégal.* **G**

*Dermot Cahill is a solicitor and lecturer in law at UCD.*

## Conferences and seminars

### International Bar Association

Topic: *Energy law seminar*

Date: 17-19 September

Venue: Caracas, Venezuela

Contact: 0044 171 629 1206

Topic: *International Arbitration Day*

Date: 25 September

Venue: New York, USA

Contact: 0044 171 629 1206

### Academy of European Law

Topic: *Human rights and Community law*

Date: 18-19 September

Venue: Stockholm, Sweden

Contact: Kirsten Borgsmidt (tel: 0049 651 1471014)

Topic: *Consumer protection: Directive on package tours and State liability*

Date: 16-17 October

Venue: Milan, Italy

Contact: Kirsten Borgsmidt (tel: 0049 651 1471014)

Topic: *The new Community Directive*

*97/17 on distance contracts and its significance for direct and distance selling*

within the Member States

Date: 30-31 October

Venue: Trier, Germany

Contact: 0049 651 14710

AJIA (International Association of Young Lawyers)

Topic: *International worker mobility: the practical impact*

Date: 25-27 September

Venue: Worcester College, Oxford, UK

Contact: Gerard Coll (tel: 01 676 0704)

Topic: *Legislation related to wine*

Date: 24 October

Venue: Torino, Italy

Contact: Gerard Coll (tel: 01 676 0704)

Franco-British Lawyers Association

Topic: *Justice and money*

Date: 11-13 September

Venue: Inverness, Scotland

Contact: Ailsa McLaughlin (tel: 0044 131 2267411)

## EUROPEAN LAW 'HEALTH CHECK'

On Saturday 1 November, the Law Society is providing a European law 'health check' for solicitors. Speakers will provide coverage of the major developments in European law of relevance to Irish solicitors. The speakers are solicitors who practise in the

area being discussed. Topics to be covered will include:

- EU law in practice
- Product liability litigation
- Practical implications of the switch to the Euro
- Recent developments in consumer law

- EU rules on public procurement
- Recent developments in employment law
- Recent developments in environmental law
- The implications of the Amsterdam Treaty for solicitors

- Difficulties in enforcing judgments and serving summons in other jurisdictions
- Competition update.

Venue: Blackhall Place, cost: £55.

For further details, contact TP Kennedy (tel: 01 6710200).

## Recent developments in European law

### BROADCASTING

#### Television

The 'television without frontiers' Directive has finally been adopted by the European Parliament and the Council. The Directive will ensure that the public interest is secured through the co-ordination of national rules in such fields as advertising, sponsorship, teleshopping, the right of reply and the protection of minors. It continues the system set in place where broadcasters are required to broadcast a majority of European programming. Networks are also required to reserve 10% of transmission time or programme budgets for independent productions. Advertising is to be limited to 20% of any given clock hour of broadcasting.

It also introduces new rules to ensure that Member States are able to provide for access by the public to major events (for instance, sports events such as the Olympic Games or the soccer World Cup) on free television. Each of the Member States will be entitled to draw up a list of events which have to be broadcast unencrypted even if exclusive rights have been bought by pay-television channels.

### COMPETITION LAW

#### Agreement with the USA

For a long time, there have been recurring disagreements between the EU and the USA over the application of their respective competition legislation. The Commission has adopted a proposal to conclude an agreement between the EU and the USA on the application of 'positive comity' principles in the enforcement of their competition laws. The principle of positive comity provides that a party adversely affected by anti-competitive behaviour occurring in whole or in part in the territory of another party may request that other party to take action.

The proposed agreement creates a presumption that in certain circumstances a party will defer or suspend its own competition enforcement activities. Mergers do not fall within the scope of this proposed agreement.

This agreement is a very important development in relations with the USA. It represents a commitment between the EU and the USA to co-operate in the enforcement of competition law rather than seek to apply their competition laws extra-territorially.

#### State aids

The Commission has decided to raise no objections to aid granted in the form of interest-free loans by the Irish Film Board for the production of television documentaries and feature length films. Under the scheme, higher loans will be considered for documentaries of particular Irish interest and significance, for an annual series of first-time short films and for a minority of low-budget feature films of particular cultural significance. Production loans on average amount to £149,887 of the production budget of a film. The loans are repayable and repaid to the extent that the film generates sufficient resources. If a film is particularly successful, the board acquires an equity return.

### CONSUMER PROTECTION

#### Product liability

In *Commission v United Kingdom* (Case 300/95), the implementation of the *Liability for Defective Products Directive* by the UK was challenged by the Commission. The Directive at Article 7(e) provides: 'The producer shall not be liable as a result of this Directive if he proves: e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered'.

Section 4(1)(e) of the *Consumer Protection Act, 1987* (implementing the Directive) provides: 'In any civil proceedings by virtue of this part against any person ... in respect of a defect in a product it shall be a defence for him to show ... e) that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control'.

The Commission argued that the UK had considerably broadened the defence and converted the Directive's strict liability into liability for negligence. On 29 May the Court of Justice held in favour of the UK. It held that the English section contained much that was implicit in Article 7 of the Directive and that section 4 could be interpreted consistently with the Directive.

#### Safety of buses and coaches

The Commission had adopted a proposal for a Directive on stability and safety of buses and coaches. This is the first proposal to harmonise technical requirements for buses throughout the EU. Under this system, manufacturers of buses will be able to obtain approval in a Member State and this approval will be valid throughout the EU. The Directive will contain provisions concerning the stability of the vehicle, the minimum size of seats and spacing between them, the number and arrangement of the doors and emergency exits. It will also provide that such vehicles must be accessible to those with limited mobility, including wheelchair users.

### DIRECTIVES

#### State liability

In *Rosalba Palmisani v Istituto Nazionale*

*della Previdenza Sociale (INPS)* (Case 261/95), the Court of Justice considered the liability of a Member State arising from the belated implementation of a Directive. When Italy implemented the Directive it imposed a limitation period of one year for claims relating to the belated implementation of the Directive. The Court held that provided that this limitation was not less favourable than in similar actions of a domestic nature, Community law did not prevent it.

### EMPLOYMENT

#### Gender discrimination

In *Nils Draehmpaehl v Urania Immobilienservice ohG* (Case 180/95), the Court of Justice held that a requirement in German law making reparation of damage for discrimination on grounds of sex in the making of an appointment subject to a requirement of fault was incompatible with the *Equal Treatment Directive*. In line with previous cases, it held that the Directive does not make liability for discrimination conditional upon proof of fault and any act of discrimination is sufficient to make the employer fully liable.

In *Handels-og Kontorfunktionærernes Forbund i Danmark, acting for Helle Elisabeth Larsson v Dansk Handel & Service, acting for Føtex Supermarked A/S* (Case 400/95), the Court clarified the application of Directive 76/207 (which provides for equal treatment for men and women as regards access to employment and working conditions) to maternity leave. However, in this case the Court held that notwithstanding these provisions of the Directive a woman could be dismissed as a result of absences due to an illness attributable to pregnancy or confinement, even where that illness arose during pregnancy and continued during and after maternity leave.





### Working Time Directive

In a White Paper published on 15 August, the Commission has concluded that action should be taken at EU level to protect the health and safety, with regard to working time, of all employees excluded from the *Working Time Directive*. This includes doctors in training, employees in the air, road, rail, sea and inland waterways transport, sea fishing and off-shore sectors. The Commission is inviting comments on the White Paper by 31 October 1997.

## FREE MOVEMENT

### Food

In *Canadane Cheese Trading AMBA and Afoi G Kouri AVEE v Ministers of Commerce, Finance, Health, Social Security and Agriculture* (Case 317/95), a challenge was brought to Greek legislation reserving the name 'feta' for Greek cheese and prohibiting the sale of cheese from other Member States (even if lawfully produced and marketed there under the description 'feta'). Advocate General Ruiz-Jarabo Colomer has opined that this legislation is a measure having equivalent effect to a quantitative restriction incompatible with Article 30. He furthermore held that it cannot be justified on grounds of consumer protection or of protecting the

fairness of commercial transactions. However, he opined that as the legislation is designed to protect rights deriving from a specific geographic region, it could be justified on the basis of industrial and commercial property provided for by Article 36.

### Newspapers

In *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Henrich Bauer Verlag* (Case 368/95), the Court had to interpret Article 30. Bauer Verlag is a large publisher of German newspapers which are circulated in Austria and which offer readers the opportunity to take part in games with prizes. Familiapress, an Austrian newspaper publisher, claimed that the offer of participation in such games breached the Austrian law on unfair competition. Bauer Verlag claimed that the Austrian law hindered intra-Community trade (circulation of newspapers) and was a measure having an effect equivalent to a quantitative restriction.

The Court agreed that the Austrian law on its face appeared to breach Article 30. It held that for the law to be valid it must be proportionate to the objective pursued and that the objective must not be capable of being achieved by a measure less restrictive of the free movement of goods. This objective was

to ensure that small Austrian newspapers can continue to compete and to ensure pluralism of the press. The Court held that this latter requirement can be justified based on freedom of expression under Article 10 of the *European Convention of Human Rights*. This is a fundamental right which can override free movement. The Court remitted the case to the national court to determine whether the legislation achieved this objective, whether it was successful and whether the legislation was a restriction to newspapers with such games which were not open to Austrian readers.

### Persons

The Commission has put forward a proposal for a convention concerning admission of non-EU citizens to Member States. It sets out rules for admission of such persons for employment, self-employment, study, other non-gainful activity or family reunification. The convention proposes the same basic rights for long-term residents in all Member States as for EU citizens.

### Ships

In *Commission v Ireland* (Case 151/960), the Court of Justice recently considered Irish requirements for registration of vessels other than fishing vessels. The *Mercantile Marine Act* limits the right to

register a vessel, other than a fishing vessel, to a vessel owned by an Irish citizen or an Irish company. The Commission challenged the compatibility of this legislation with Articles 6, 48, 52 and 58 of the treaty, Regulation 1251/70 and Directive 75/34. The Court held against the Irish Government.

## LITIGATION

### Brussels Convention

In *Francesco Benincasa v Dentalkit Srl* (Case 269/95), the Court of Justice considered the interpretation of Article 13 on consumer contracts and Article 17 which concerns exclusive jurisdiction clauses. The two parties had entered into a franchising contract. The Court held that a person who concludes a contract with a view to pursuing a trade or profession in the future should be regarded as a consumer. It pointed out the consumer provisions are designed to protect a weaker party. Thus, it is confined to a contract concluded for the purpose of satisfying an individual's own needs in terms of private consumption. The Court also held that a court given jurisdiction under the contract, pursuant to Article 17, has exclusive jurisdiction, even where the purpose of the action is to have the agreement containing the clause declared void.

# DIPLOMA IN APPLIED EUROPEAN LAW

## The Law Society of Ireland (with the support of the European Commission)

The diploma is designed primarily for solicitors with little knowledge of European law. The course will provide training in the basics of European law. It will also address in more detail areas of European law of relevance to the practitioner.

The diploma will also be of interest to lawyers with some working knowledge of European law who wish to gain greater expertise in various specialist areas. The diploma is open to solicitors, barristers, apprentices and other persons working in legal offices.

### Timetable and venue

The course will be provided in modular fashion on Saturdays following academic terms over the course of a year (approximately 20 sessions). The course will be held in Blackhall Place and will commence in January 1998.

### Modules

Participants will be required attend modules in a) *Introduction to European law* and b) *European business law*. They will then have a choice of four of the seven

other modules (with the option of attending all). Numbers interested in attending the course will dictate whether it is possible to offer all these modules.

- Introduction to European Law
- Business

Candidates will then be required to choose four of the following:

- Introduction to competition law
- Competition
- Agriculture
- Employment and social policy
- Environmental law
- Litigation
- Human rights

### Fee

The fee for the course is £475, which includes all materials and examination fees. There is a non-refundable booking deposit of £75 payable before 31 October 1997.

Further information can be obtained from TP Kennedy, Education Officer, Law School, Law Society of Ireland, Dublin 7 (tel: 01 671 0200, fax: 01 671 0064).



# ILT Digest

## of legislation and superior court decisions

Compiled by David P Boyle

### ADMINISTRATIVE

#### **Registration of Title (Amendment) Bill, 1997**

This Bill, as presented by the Minister for Justice, Equality and Law Reform, seeks to amend s7 of the *Registration of Title Act, 1964* in order to allow functions carried out by the central office of the Land Registry to be decentralised through the establishment of constituent offices in and outside Dublin. The Bill aims to provide a clear legal basis for the planned transfer of certain Land Registry operations to Waterford.

#### **National Cultural Institutions Act, 1997 (Commencement) Order 1997 (SI No 222 of 1997)**

This order brings certain specified provisions of the *National Cultural Institutions Act, 1997* into operation with effect from 2 June 1997. These are: ss1-3, 5, and 6(1) insofar as they relate to the *Dublin Theatres Act 1786*; ss14, 26, 34, 36 and 41 insofar as they relate to the National Gallery; s20 (other than sub-section (4)) insofar as it relates to Marsh's Library; and ss42-45, 47, 60-64 (other than para (i) of s64), 68 (other than sub-sections (1) and (2)(b)) and 69. The order also fixes 1 January 1998 as the date on which s35 insofar as it relates to the National Gallery and para (i) of s64 shall come into operation.

### ADOPTION

#### **EF and FF v An Bord Uchtala (Supreme Court), 17 July 1996**

Adoption order; consent of natural mother; application by prospective adopters to dispense with mother's consent; validity of mother's consent; best interests of child; whether mother's consent had been fully informed and freely given; whether the consent, if freely given, should be dispensed with; whether to dispense with consent in best interests of child; principles to be applied; whether prospective adoptive parents were culpable in delaying in seeking adoption order; whether father's consent necessary to making of adoption order; *Adoption Act, 1952*, s15; *Adoption Act, 1974*, s3; *Adoption Act, 1988*; *Guardianship of Infants Act, 1964*.

**Held:** Where the natural mother consented to the placement of her child for adoption, her rights – based as they were on the unique biological link between mother and child – remained in being, although her right to exercise them was necessarily suspended pending the determination of the application for adoption by the Adoption Board.

### AGRICULTURE

#### **European Communities (Trade in Bovine Animals**

#### **and Swine) Regulations 1997 (SI No 270 of 1997)**

These regulations implement Directive 64/432/EEC (of 26 June 1964) on animal health problems affecting intra-Community trade in bovine animals and swine, as last amended by Directives 94/42/EC (of 27 July 1994) and 95/25/EC (of 22 June 1995). They further provide for the approval of authorised officers to enforce the regulations and for the prosecution of offences. The regulations came into operation on 1 July 1997.

### COMMERCIAL

#### **Irish Takeover Panel Act, 1997 (Commencement) (No 2) Order 1997 (SI No 255 of 1997)**

This order brings the remaining sections of the *Irish Takeover Panel Act, 1997* into operation with effect from 1 July 1997.

#### **Prompt Payment of Accounts Act, 1997 (Commencement) Order 1997 (SI No 239 of 1997)**

This order brings the *Prompt Payment of Accounts Act, 1997* into operation with effect from 2 January 1998.

### COMPANY

#### **In the Matter of Outdoor Advertising Services Ltd (In**

#### **Liquidation) (Costello P), 28 January 1997**

Directors; application for declaration that persons not to act as directors of any company for five years; statutory exception where person concerned acted 'honestly and responsibly' in relation to the conduct of the affairs of the company; onus of avoiding declaration; company insolvent and unable to pay its debts as they fell due; takeover negotiations; company continued to trade and to sign cheques; collapse of negotiations; payments made to non-creditor companies owned by directors; whether directors acted responsibly and honestly in making payments to benefit non-creditors; *Companies Act, 1990*, s150.

**Held:** The onus of avoiding a declaration under s150 was on the directors who must establish to the court's satisfaction that they had acted honestly and responsibly in relation to the conduct of the company's affairs.

### CONSTITUTIONAL

#### **O'Brien v Governor of Limerick Prison (Supreme Court), 13 February 1997**

Appellant convicted; two ten-year sentences imposed to run concurrently; last six years of each sentence suspended; intention of trial judge that appellant receive no further remission; appellant now claimed to be entitled to one quarter remission on four-year sen-



tence; whether detention was lawful; *Prisons Act 1907*; *Rules for the government of prisons 1947*.

**Held:** A sentence which involves a period of imprisonment remaining suspended over a prisoner's head after his release is inconsistent with the *Prisons Act 1907* and the *Rules for the government of prisons 1947* and should not be imposed.

**Iarnród Éireann/Irish Rail and Anor v Ireland, the Attorney General, Michael Diskin and Giovanni Gaspari (Supreme Court), 16 July 1996**

Train crash; judgment against co-defendants 30% and 70%; first defendant unable to make substantial contribution to claims; declaration sought that ss12 and 13 of *Civil Liability Act, 1961* are unconstitutional; declaration refused in High Court; appeal dismissed; statute fair and just; *Civil Liability Act, 1961*, ss12, 13.

**Held:** Sections 12 and 13 of the *Civil Liability Act, 1961* are not invalid having regard to the provisions of the Constitution.

## CRIMINAL

**O'Kelly v Director of Public Prosecutions (O'Donovan J), 20 February 1997**

Case stated; appellant accused of larceny in District Court; appellant convicted of crime of handling stolen property; whether judge was correct in adducing that there was sufficient evidence to convict the appellant of the latter charge; whether judge was correct in law to convict the appellant of the latter charge; whether appellant was entitled to have her conviction quashed; *Larceny Act 1916*, ss14, 33(1); *Larceny Act, 1990*, s3.

**Held:** Before a person could be convicted of the offence of handling stolen property there had to be evidence that the goods were stolen by a person other than the accused.

**Shannon Regional Fisheries Board v Cavan County Council (Blaney, O'Flaherty, Keane JJ), 30 July 1996**

*Mens rea*; strict liability; pollution of waters; sanitary authority discharging imperfectly treated sewage into waters; sanitary authority prosecuted under s171(1) of *Fisheries (Consolidation) Act, 1959*; sanitary authority contending that sewage treatment facilities inadequate; whether offence one of strict liability; whether s1 of *Probation of Offenders Act 1907* applicable; assessment of penalty; costs of prosecution; *Fisheries (Consolidation) Act, 1959*, s171(1); *Local Government (Water Pollution) (Amendment) Act, 1990*, ss24, 28; *Public Health (Ireland) Act 1878*, ss17, 23; *Fisheries Act, 1980*, s11; *Fisheries (Amendment) Act, 1962*, s2; *Probation of Offenders Act 1907*, s1.

**Held:** It is no defence to a charge of causing deleterious matter to fall into waters under s171(1) of the *Fisheries (Consolidation) Act, 1959* that the respondent had no option but to do so.

**Director of Public Prosecutions (at the suit of Garda H Lenihan) v Joseph McGuire (Kelly J), 31 July 1996**

Road traffic; drunk driving; name of member in charge of Garda station not in station diary; failure to enter name in diary not fatal; *Road Traffic Act, 1961*, s49(2) as inserted by s10 *Road Traffic Act, 1994*; *Criminal Justice Act, 1984*, s7; *Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987*, arts 4, 5, 6, 7, 8.

**Held:** Performance of the duties imposed by the Act and the regulations and the protection of the rights of persons in custody cannot depend upon the entry or non-entry of a garda's name in a station diary.

**Martin Curtis and Anor v District Judge Flann Brennan and the Director**

**Of Public Prosecutions (Moriarty J), 23 May 1996**

Assault; question as to title to lands; ouster of jurisdiction; judicial review; *Offences against the Person Act 1861*, s46.

**Held:** For ouster to apply, the alleged question of title to lands must go to the very heart of the matter to such an extent that an adjudication on the criminal summons or charge will fundamentally depend on such question of title.

**Ian Ross Smithers v Governor of Mountjoy Prison (Kelly J), 3 May 1996**

Extradition; fraud in USA; fled to Ireland; warrant issued for arrest; exact words of treaty and Act not used; an intention to request extradition exhibited in two documents; documents read as one; *habeas corpus* application; no deliberate and conscious act to interfere with applicant's constitutional rights; no unlawful detention; *Extradition Act, 1965*, ss8, 26, 27; *Constitution of Ireland 1937*, art 40.

**Held:** Once a request for extradition contains a statement demonstrating an intention on the part of the requesting State to send a request for extradition, the requirements of the treaty and Act have been complied with and it is not necessary to reproduce the precise formula of words in order to comply with the treaty and Act.

## DAMAGES

**McCarthy v Dunne (Barr J), 5 December 1996**

Assault; Circuit Court appeal; appeal on *quantum*; nervous shock alleged; conflict of evidence; whether appeal to be allowed; whether award of damages to be reduced; whether award of damages to be varied depending on the future conduct of the defendants; whether to injunct the defendants from interfering with the plaintiff.

**Held:** Though injunctive relief was not sought by the plaintiff, the consequences of any on-going

interference by the defendants with the plaintiff were so serious that it was an appropriate case in which to injunct the defendants from having any further contact with the plaintiff.

## DEFENCE

**Chemical Weapons Act, 1997 (Commencement) Order 1997 (SI No 269 of 1997)**

This order brings the *Chemical Weapons Act, 1997* into operation with effect from 1 July 1997.

## EDUCATION

**Youth Work Act, 1997 (Commencement) Order 1997 (SI No 260 of 1997)**

This order brings the *Youth Work Act, 1997* into operation with effect from 19 June 1997.

**Universities Act, 1997 (Commencement) Order 1997 (SI No 254 of 1997)**

This order brings the *Universities Act, 1997* into operation with effect from 16 June 1997.

## ELECTIONS

**Electoral Act, 1997 (Commencement) Order 1997 (SI No 233 of 1997)**

This order brings s77 of the *Electoral Act, 1997* (dealing with the expenses of returning officers at elections and referenda) into operation with effect from 1 June 1997.

## EMPLOYMENT

**Sweeney v Duggan (Supreme Court), 14 February 1997**

Contract; employee injured in accident at work; court order for damages; company went into liqui-

dation; company had not been covered by insurance; employee only likely to recover fraction of damages awarded; issued proceedings against main director/shareholder; whether company and, therefore, defendant had failed in duty to insure; whether duty to insure or warn employee of lack of insurance was implied in contract of employment; whether defendant could have such a duty if company did not.

**Held:** A director or shareholder does not have the necessary relationship with an employee of his company to give rise to any duty on the part of the director or shareholder for the economic welfare of the employee.

## ENVIRONMENT

### *Waste Management (Packaging) Regulations 1997 (SI No 242 of 1997)*

These regulations aim to facilitate the achievement of targets (established by Directive 94/62/EC) for the recovery of packaging waste. To this end, they impose certain specified obligations on persons who supply packaging (including packaging materials and packaged goods) within the State, whether as retailers, packers/fillers or manufacturers. Limits are also placed on the concentration levels of certain heavy metals in packaging.

## GARDA SÍOCHÁNA

### *George McNeil v Commissioner of An Garda Síochána, Ireland and the Attorney General (Supreme Court), 30 July 1996*

Garda; suspended from duty; allegations of false entries into books re hours worked; charges withdrawn by DPP; disciplinary investigation; delay; judicial review; mandatory obligation on Garda authorities to investigate alleged breaches as soon as possible; failure to discharge

obligation; injunction granted restraining respondents from proceeding with inquiry; *Garda Síochána (Discipline) Regulations 1989*, regs 8, 9, 10, 11, 14, 40.

**Held:** The obligation on the Garda authorities to investigate breaches of discipline as soon as practicable after they become aware of them is mandatory.

## HEALTH & SAFETY

### *European Communities (General Product Safety) Regulations 1997 (SI No 197 of 1997)*

These regulations, implementing Directive 92/59/EEC (of 29 June 1992) on product safety, make it an offence to place unsafe products on the market. They specify the duties of producers and distributors in relation to placing safe products on the market and the Director of Consumer Affairs is given an enforcement role. The regulations came into operation on 25 April.

## HEALTH SERVICES

### *Women's Health Council (Establishment) Order 1997 (SI No 278 of 1997)*

This order establishes a body to be known as the Women's Health Council which will, *inter alia*, advise the Minister for Health and other ministers on aspects of women's health.

## LEGAL PROFESSION

### *Solicitors' Acts, 1954 to 1994 (Apprenticeship and Education) Regulations 1997 (SI No 287 of 1997)*

These regulations, which revoke previous regulations, provide for various matters relating to: the Law Society's Law School; becoming an apprentice solicitor; misconduct by apprentices; and admission as a solicitor. The regulations came into operation on 1 July 1997.

## LOCAL AUTHORITIES

### *Bernard Ward and Ors v South Dublin County Council (Laffoy J), 31 July 1996*

Housing; duty on housing authority to members of travelling community; statutory prohibition on retention of unlawful temporary dwelling in public place where it could appropriately be accommodated on site provided by housing authority within five miles; notice served by housing authority requiring removal of temporary dwelling to site; whether housing legislation imposed any duty on authority to provide sites for caravans; whether housing authority obliged to provide serviced halting sites to those requiring them instead of conventional houses; whether statutory obligation to provide caravan sites for travellers identical to obligation to provide dwellings for settled community; whether there was in fact within five miles from the temporary dwelling a halting site provided by the housing authority on which the dwelling could appropriately be accommodated; whether authority in position to provide a bay which was adequate and suitable for continued occupation of temporary dwelling at that location; physical condition of bays and adequacy of services available; whether housing authority entitled to invoke s10; whether purported notices validly served; whether authority to take action on foot of notices; effect of serving s10 notice; whether authority obliged to take account of traveller culture and identity; *Housing Act, 1988*, s13; *Housing (Miscellaneous Provisions) Act, 1992*, s10.

**Held:** It was a precondition to the serving of a valid notice under s10 of the 1992 *Housing Act* that there was within five miles from the location of the offending temporary dwelling a halting site provided by the housing authority on which the offending temporary dwelling could 'appropriately be accommodated'. Section 13 of the 1988 *Housing Act* obliged the local authority to provide serviced halting sites to those who required

them instead of conventional dwellings.

## PLANNING & DEVELOPMENT

### *Local Government (Planning and Development) (No 3) Regulations 1997 (SI No 261 of 1997)*

These regulations amend the planning process so as to ensure that it operates in a manner consistent with recent regulations introducing a licensing system for waste disposal made under the *Waste Management Act, 1996* (as to which regulations see also (1997) 15 ILT 103).

### *Thomas McMahon & Ors v the Right Honourable the Lord Mayor, Aldermen and Burgesses of Dublin (Barron J), 19 June 1996*

Planning; unauthorised development; change of use; holiday homes in residential housing estate; material change of use; not authorised by planning permission; declaration refused; *Local Government (Planning and Development) Act, 1963*, ss5, 28(6); *Interpretation Act, 1937*, s28(6).

**Held:** In the absence of any specified use in the planning permission, it must be decided for what purpose the development was designed and this is to be construed in the sense of intended and one must look to the documentation and determine objectively a particular use.

## PRACTICE & PROCEDURE

### *Helen Maria Walker (née Fusco) v Ireland, the Attorney General and the Government of Ireland (Geoghegan J), 7 October 1996*

Notice of motion; discovery; claim of privilege; further and better discovery sought; defendant sought to

dismiss claim of plaintiff on grounds that no cause of action was disclosed in pleadings; preliminary issue to be tried; principles to be applied; public policy; whether defendant entitled to claim privilege over documents; whether discovery to be ordered before determination of preliminary issue.

**Held:** With regard to the provisions of the Irish Constitution, there was a strong case for not countenancing any form of absolute privilege in relation to communications passing between sovereign states.

***Constance Short and Ors v Ireland, the Attorney General, British Nuclear Fuels plc and Ors* (Supreme Court), 24 October 1996**

Service out of jurisdiction; order 11 of *Rules of the Superior Courts*; third named defendant operating re-processing plant for nuclear fuels; plaintiff's claim that plant adversely affecting health and environment; third named defendant in United Kingdom; first and second named defendants within the jurisdiction; *Rules of the Superior Courts 1986*, o11, 11A; *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988*; 1968 *Convention on jurisdiction and enforcement of judgments in civil and commercial matters*.

**Held:** Liberty to serve proceedings out of the jurisdiction pursuant to o11, rr1(f), 1(g) of the *Rules of the Superior Courts* will be given where a plaintiff establishes a good arguable case that activities carried on outside the State have caused or will cause harmful results inside the State.

## SOCIAL WELFARE

***Social Welfare Act, 1997 (Sections 10 and 11) (Commencement) Order 1997 (SI No 248 of 1997)***

This order brings ss10 and 11 of the *Social Welfare Act, 1997* into

operation with effect from 9 June 1997. The sections extend the maternity benefit and adoptive benefit schemes to the self-employed.

## TAXATION

***Saatchi and Saatchi Advertising Ltd v Kevin McGarry (Inspector Of Taxes) (Barron J), 30 July 1996***

Corporation tax; statutory interpretation; manufacturing relief; advertising company claiming manufacturing relief on income from films produced by it; claim in respect of films produced in accounting years prior to 1990; manufacturing relief on films introduced by *Finance Act, 1990*; assessments finalised before enactment of *Finance Act, 1990*; whether manufacturing relief available; *Finance Act, 1980*, ss39, 41(2), 41(8); *Finance Act, 1990*, s41(1)(b).

**Held:** Section 41(8) of the *Finance Act, 1980* clearly contains a condition precedent to obtaining manufacturing tax relief. As the meaning of s41(8) of the *Finance Act, 1980* is free from doubt, it is unnecessary and incorrect to construe the section in the light of the purpose or intention of the amending legislation. Such a construction would also infringe the principle that taxation statutes must be construed strictly

## TELECOMMUNICATIONS

***European Communities (Telecommunications Services Monitoring) Regulations 1997 (SI No 284 of 1997)***

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### TORT

#### **McCullagh & Anor v PB Gunne (Monaghan) Plc (Carroll J), 17 January 1997**

Negligence; negligent misrepresentation; duty of care; plaintiffs wishing to purchase licensed premises; plaintiffs having no business experience; plaintiffs contacting defendant auctioneers; plaintiffs informing defendant of their lack of business experience and resources and requesting defendant to 'keep them straight'; defendant arranging purchase of licensed premises; defendant arranging finance; finance inadequate; business failing; whether defendant voluntarily assuming responsibility for arranging adequate finance; whether negligent misrepresentation; whether duty of care; whether breach of duty of care.

**Held:** Where an auctioneer represents to clients that he will obtain a premises for them at a price they can afford and will arrange an adequate loan for this purpose and where, in all the circumstances, it is fair, reasonable and just that a duty of care be recognised by the court, the auctioneer will be liable for damages for negligent misrepresentation if the loan arranged by him is inadequate and his clients suffer loss as a consequence.

#### **S Smyth and Company Ltd v Aer Turas Teo (O'Flaherty, Blayney, Keane JJ), 3 February 1997**

Negligence; contract; implied term; international carriage of goods by air; *Warsaw convention*; plaintiff consigning calves to Italy; defendant carrier of goods; defendant delivering documents including invoices to body providing ground services at airport; body providing ground services delivering invoices to consignee; consignee or clearing agent delivering invoices to customs; fraudulent

invoices substituted; consignee refusing to pay; plaintiff claiming defendant and body providing ground services at airport negligent in handling invoices; duty of care of carrier; whether carrier negligent; whether body providing ground services negligent; whether body providing ground services agent of defendant; whether defendant vicariously liable for negligence of body providing ground services; *Warsaw convention on international carriage by air*.

**Held:** A carrier of goods owes a duty to the consignor to deal with customs formalities in a normal competent manner. The carrier discharges this duty when he delivers all necessary documents including invoices to a body providing ground services at an airport where this is the universal practice and where no damage is foreseeable as a result. Accordingly, the carrier is not liable in negligence to the consignor where fraudulent invoices are substituted for the consignor's invoices after the carrier has delivered the invoices to the body providing ground services.

#### **Walsh v Butler (Morris J), 21 January 1997**

Personal injuries; preliminary issue to be tried; plaintiff injured in a rugby match; plaintiff wished to sue rugby club; question as to whether plaintiff was a member of club; constitution of rugby club; whether club followed its own procedures; whether plaintiff a member of the club at the time of the accident; whether plaintiff estopped from denying that he was a member of the club at the time of the accident.

**Held:** No estoppel could arise in the circumstances of this case as the mere act of holding oneself out as a member of a club, without adverse consequences to a third party, could not give rise to the situation where one was estopped from denying that he was a member. **G**

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# Society light in the window for London Irish



Reaching out to the diaspora: some of the 70 Irish-qualified but London-based solicitors who attended a Law Society of Ireland reception recently at the Chancery Lane headquarters of the Law Society of England and Wales. Seated (left to right): Law Society Director General Ken Murphy, Law Society of England and Wales Secretary General Jane Betts, Law Society President Frank Daly, Irish Solicitors' Bar Association, London, President Cliona O'Tuama, then President of the Law Society of England and Wales Tony Girling, Law Society of England and Wales Director of Communications Barbara Cahalane, and Irish Solicitors' Bar Association, London, committee member Richard Devereux

**F**or nearly seven years, President Robinson has kept a light in the window for the Irish diaspora scattered across the globe. Although seldom mentioned, this diaspora includes hundreds of Irish solicitors.

Rather than put a light in the window of Blackhall Place, however, Law Society President Frank Daly, and Director General Ken Murphy thought it appropriate recently to show interest in, and support for, Irish solicitors abroad by accepting an invitation from the Irish Solicitors' Bar Association, London, to visit and host a reception for by far the greatest concentration of Irish solicitors practising overseas.

There are few counties in Ireland which have as many Irish-qualified solicitors as there are in London. The Society estimates that over the years more than 200 solicitors have crossed the Irish Sea to pursue career opportunities in England. The great majority of these were relatively newly-quali-

fied and their destination was London, a city which, with New York, is one of the world's two greatest centres of legal practice. Indeed, a number of Irish law firms, including A&L Goodbody and McCann Fitzgerald, have maintained permanently-staffed offices in London since the 1980s.

Just as in the 1980s, solicitors in London – the huge commercial law firms in the City of London, at any rate – are experiencing boom times once again. Irish solicitors are highly regarded and very much in demand if they have relevant specialist experience.

Since 1991 it has been possible for Irish-qualified solicitors, without any difficulty, to become members of the Law Society of England and Wales qualified to practise there. This breakthrough was due in large measure to the prolonged and very vigorous campaign of lobbying by London-based Irish solicitors from approximately 1988 to 1991. That campaign was led with great

determination and effectiveness by the 'mother foundress' and apparent President-for-life of the Irish Solicitors' Bar Association, London, Cliona O'Tuama. O'Tuama left the Dublin firm, Gerrard, Scallan & O'Brien for one of the top London-based international law firms, Linklaters & Paines, in the late 1980s. She has now established her own firm specialising in tax and probate matters.

One of biggest problems for the Irish Solicitors' Bar Association, London, is that many young Irish solicitors go to London, but never make contact with the association. Cliona O'Tuama reckons that as many as half the Irish solicitors in London are not on her database. Those who wish to have their names placed on the Association's circulation list should write to her at Hamilton House, 1 Temple Avenue, London EC4Y 0HA.

The Irish Solicitors' Bar Association, London, continues to

play a valuable role as a focus point for Irish solicitors in the British capital. To help it with this work, the Law Society of Ireland has made a grant of £1,500 to the association and a cheque for this amount was presented by Law Society President Frank Daly to association president Cliona O'Tuama recently at a reception attended by over 70 Irish solicitors at the Law Society of England and Wales headquarters at Chancery Lane. The reception was also attended by the Law Society of England and Wales's then President Tony Girling and Secretary General Jane Betts.

The reception appeared to be thoroughly enjoyed by all who attended and many of the Irish solicitors expressed delight and appreciation that they had not been forgotten by the Law Society of Ireland. Perhaps there is, after all, metaphorically speaking, a light in the window in Blackhall Place.

**G**

*Ken Murphy*

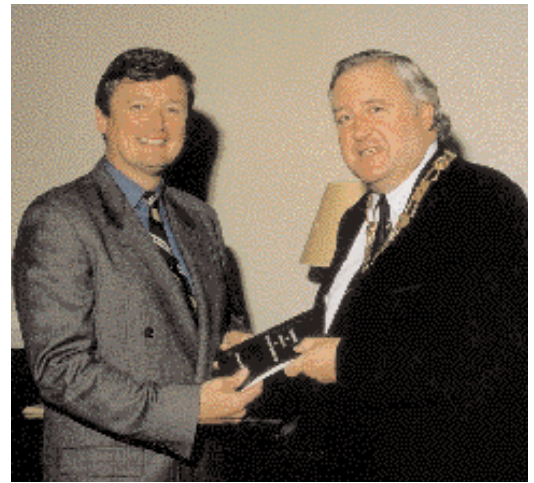
## Showbiz lawyer stars in *New Horizons* breakfast



Starring roles: James Hickey (centre) pictured with Laurence Shields, Law Society Vice President (right) and Tom Grace, partner, Price Waterhouse (left) at the *New Horizons* business breakfast

Entertainment and media lawyer, James Hickey of Matheson Ormsby Prentice, was the latest guest speaker at the Law Society's *New Horizons* programme. Hickey gave a talk on *Media and entertain-*

*ment law* to a group who gathered at Blackhall Place recently for a business breakfast. *New Horizons* is a programme of events run by the Law Society and sponsored by accountants Price Waterhouse.



Education Committee Chairman Pat O'Connor presents President Frank Daly with a copy of his newly-published book, *Handbook for coroners in the Republic of Ireland* (Old House Press, £12)



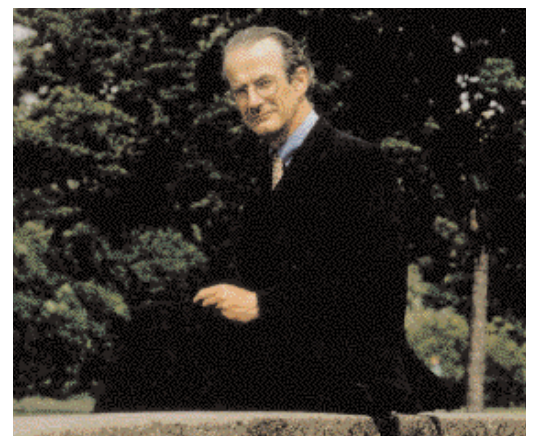
William Fry has appointed two new partners and four associate partners. Pictured (left to right) are: Edward Spain, partner, property; Daragh Bohan, banking; Lorraine Hayes, property; Edward Evans, partner, commercial; Brian O'Donnell, managing partner; Bryan Bourke, commercial; and Juliette Roche, commercial

## Tipperary and Offaly Bar Association



Spotted gardening: pictured at the Tipperary and Offaly Bar Association garden party at the Cashel Palace Hotel, Cashel, were (left to right) Deirdre Ryan, Linda Harney, Deirdre Lyons and Patricia Gleeson

## AG appoints charity solicitor



Bryan Strahan: new appointment

The Attorney General, David Byrne SC, has appointed Bryan Strahan to act as his personal solicitor in charity matters. Strahan is managing partner in Dublin solicitors Gerrard, Scallan & O'Brien. The post is a part-time one, and the holder acts on behalf of the AG in his capacity as protector of charities.

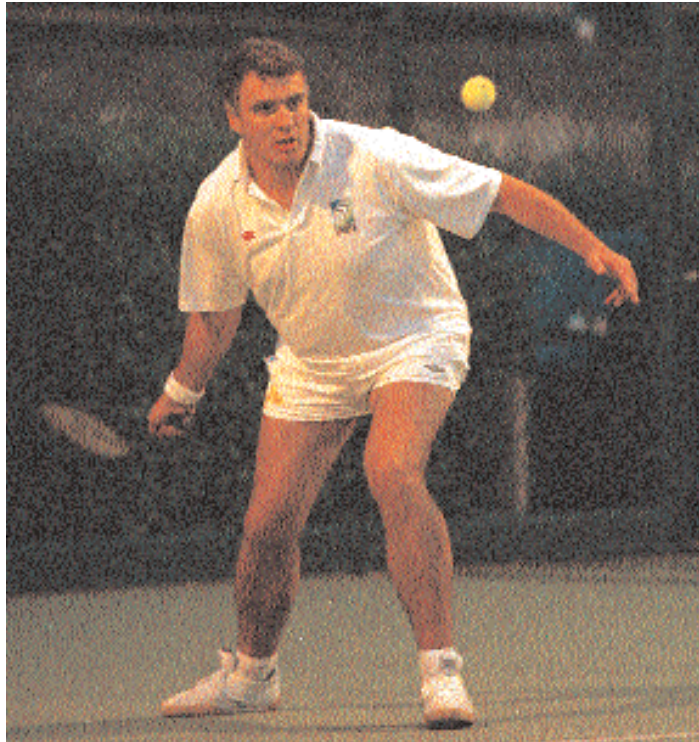


## Charity tennis tournament

This year's Dublin solicitors' tennis tournament raised nearly £1,800 for the Free Legal Aid Centres (FLAC). The first rounds were played on Friday 22 August at Donnybrook Lawn Tennis Club. Jointly organised by last year's winners, Beauchamps and Corrigan & Corrigan, the tournament involved 16 firms. Donations were made by both Kilroys and LK Shields & Partners.

The teams participating were made up of three mixed doubles pairings from each of the following firms: Dillon Eustace, Arthur Cox, A&L Goodbody, Sheehan O'Connor & Company, Michael E Hanahoe & Company, William Fry, Matheson Ormsby Prentice, and O'Donnell Sweeney (the eight qualifiers from play); also, Orpen Franks, Eugene F Collins, Good & Murray Smith & Company, Patrick F O'Reilly, Gerrard Scallan O'Brien, McCann FitzGerald, Gannon Liddy, McKeever Rowan, and Beauchamps.

In perfect weather conditions, play started shortly after 6pm, with teams playing on a round-robin basis. The 96 players and numerous office supporters generated a great atmosphere. The organisers wish to thank Donnybrook Lawn Tennis Club for the use of the facilities for the tournament and also the firms that participated for their generous donation to FLAC.



Peter Silvester of McKeever Rowan keeps his eye on the ball at the Dublin solicitors' tennis tournament



Tournament organisers Michael Corrigan (left) of Corrigan and Corrigan, and Robert Ryan of Beauchamps

## Visit to EU institutions

The Law School is again organising an educational visit to the institutions of the European Union for apprentices and a number of solicitors. The visit will take place from Sunday 21 February to Sunday 28 February. The group will be accommodated in the Irish Institute of European Affairs in Louvain and will visit the European Courts in Luxembourg, the European Parliament in Brussels and may also visit the European Court of Human Rights in Strasbourg. The total price for the trip will be in the region of £325 for apprentices and £375 for solicitors (prices are subsidised by the EU) which will include return flights from Dublin to Brussels, seven nights, accommodation and full board.

Those interested in attending should pay a booking deposit of £100 on or before Friday 12 December. There will be a draw among those apprentices who pay booking deposits and the winner will travel for free.

Application forms or further information can be obtained from TP Kennedy, Education Officer, the Law School, Blackhall Place, Dublin 7 (DX 79 - Dublin), tel: 01 6710200.



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# Book reviews

## Milk quotas in Ireland

*Irish Centre for European Law (1997), Trinity College, Dublin.*

**M**ilk quotas in Ireland, issued by the Irish Centre for European Law, is a collection of six papers dealing with differing aspects of milk quotas in Ireland, together with a review of the system in the UK. It does not claim to be a comprehensive review of the milk quota system in this country and is not written solely for the legal practitioner. Nevertheless, in view of the importance of the dairy industry, this publication is to be greatly welcomed.

Dairy farming is one of the major industries in Ireland, employing over 7,000 people and with an annual turnover in excess of £1.1 billion. Access to the production of milk is governed by a system of milk quotas which were first introduced in 1984. Milk quotas bear certain similarities to the intoxicating liquor licences in that they are attached to the land and can have a value often as great as the value of the land. There are more than 41,000 dairy farms with quotas in this country.

The law and practice of milk quotas are of major importance to conveyancing practitioners as well as to people working within the industry. But a person approaching milk quotas for the first time will, however, experience considerable difficulty in researching the law. The entire area is governed by European regulations, national statutory instruments and Department of Agriculture notices. These are worded in a combination of Euro-

speak and Department of Agriculture terminology as opposed to the normal language of parliamentary draftsmen. Having bought the relevant Community regulations and national statutory instruments, one might justifiably expect to be in possession of all relevant documentation. However, the day-to-day running of the quota system – including such matters of major importance as clawbacks (permanent reductions in the amount of quota) – are governed by administrative circulars and notices issued by the Department of Agriculture and published in the national press.

Considering the complexity and commercial importance of the area, one would expect it to be well covered in legal publications and in the legal education system. Sadly, this is far from the case. The Society's own Law School does not include it in its course of studies and, other than a brief mention in some publications, this is the first publication that deals with the area.

This book consists of six papers dealing with different aspects of the system. The first two papers are delivered by Oliver Ryan-Purcell, one of the leading practitioners in the area. He examines in detail the relevant European Council regulations and Irish statutory instruments implementing the quota system and also deals with the main conveyancing aspects arising from them. As such, Mr Ryan-Purcell's contribution will be of great help

to practitioners dealing in the area of milk quotas, sign-posting major pitfalls and also suggesting the possibility of some creative applications of the system. Newcomers to the area, however, might find some difficulty in following the quota system and terminology.

Michael Cardwell gives an interesting summary of the milk quota system as it applies in the United Kingdom. This is quite an interesting brief summary of how a different jurisdiction dealt with the problems arising from the European legislation by an author who has published a far more comprehensive work dealing with the entire area.

Denis Cronin, in his article, gives a Co-op perspective on the future of the system and examines the likely trend, particularly in the light of GATT requirements.

John Dillon, in his brief article, gives a useful reminder of the important social aspect of the dairy industry and the problems of loss of employment and consequent depopulation in less advantaged rural areas arising out of the trend towards larger dairy units and the financial barriers to entering dairy farming. It is a timely reminder that rules and regulations should have more regard to the social impact they can have.

The final and perhaps most interesting paper in this publication is the examination by James O'Reilly SC of the legal and administrative aspects of the operation of the milk quota system. Mr O'Reilly highlights the

difficulty and potential inequity of operating within a system where the rules are contained in a combination of statutory instruments, department notices and administrative circulars, which are not readily available or accessible and are frequently worded loosely.

He further highlights the difficulty of a system whereby the Department of Agriculture is solely responsible for the creation, interpretation and policing of the legislation, with no right of appeal other than potentially expensive High Court proceedings. Bearing in mind the importance of the dairy industry, Mr O'Reilly makes a number of useful suggestions for reform, including proper recording of the various notices and circulars issued and the setting up of an independent tribunal to interpret and police the operation of the system.

This publication provides a useful and informative examination of the operation of the milk quota regime in Ireland for people already involved in this area but, unfortunately, a newcomer to milk quotas will find it somewhat inaccessible. The publication does not itself lay any claim to being a textbook but perhaps it highlights the need for a more thorough publication dealing with the entire area of milk quotas, bringing together all the various forms of legislation in the area and dealing with their application. **G**

*Anthony J Murphy is a partner with Trim-based solicitors MA Regan, McEntee & Partners.*



# Specimen share purchase agreement

Dublin Solicitors Bar Association (1997)

60pp written text and on disk written on Word for Windows PC Format, Rich Text Format and Word Perfect 5.1. Price: £100 (£75 for DSBA members)

Arguably, an advantage in acting as solicitor for a purchaser of a private company is that by custom and practice the purchasing party prepares the first draft of the share purchase agreement and retains control of any re-drafting occurring at subsequent stages in the transaction. Practitioners, for whom company acquisitions are a regular feature of professional life, frequently develop their own sets of precedent agreements and clauses settled in the course of previous transactions. However, solicitors called on to engage in this area only on occasion, realising the hitherto dearth of relevant Irish precedents, may have questioned this perceived advantage as they embarked on the preparation of the first draft of the acquisition agreement, including the myriad of warranties and the tax deed of indemnity.

Now, the Dublin Solicitors Bar Association (DSBA) *Specimen share purchase agreement* ('the agreement'), if properly used, ought to relieve much of the anxiety which might otherwise be experienced, particularly by the solicitor who only rarely practises in this area.

I understand that the agreement is the product of some 18 months of effort by a dedicated working group of the DSBA comprised of prominent company law practitioners. The group's awareness of the intricacies of the subject has been brought to bear in generating a precedent which provides for the essential elements of a share purchase transaction, clearly and concisely written and presented.

In a share sale and purchase situation, it is not uncommon for a vendor's solicitor to receive

from a purchaser's solicitor an initial draft containing none of the provisions designed to protect the reasonable interests of the vendor. The DSBA, while acknowledging in the preface that the agreement has been prepared from a purchaser's point of view, has nonetheless included provisions which normally should be sought by a prudent vendor's solicitor. For example, the agreement contains provisions providing for: a ceiling on the total liability of the vendor for claims under the warranties and the tax deed of indemnity; a date after

the potential impact of the English case of *Zim Properties Limited v Proctor* which, although not yet considered by the Irish courts, is generally regarded as authority for the proposition that a payment made pursuant to an indemnity given to the subject company may give rise to capital gains tax liability in the subject company if the payment is received by the subject company, whereas this is generally regarded as not arising in respect of a payment made to the purchaser. The notes are a reminder to a vendor's solicitor

relevant State agency. In such cases, the purchaser might wish to include in the agreement appropriate conditions precedent to the contractual effect of the agreement, so that, if such matters are not completed to the purchaser's reasonable satisfaction prior to the completion date, the purchaser would not be legally obliged to complete the acquisition.

Where, as is likely, in the years to come, the agreement comes to be used in a large number of transactions, an interesting issue will arise as to whether the agreement will become the 'standard' against

which other draft share purchase agreements are measured. Since the agreement is drafted in favour of a purchaser, a question might arise in the future as to whether a draft agreement, which contained more extensive warranties and indemnities than those in the 32 relevant operative pages of this agreement,

could be said to exceed what might be regarded as the reasonable requirements of a purchaser and whether they should have been excluded or reduced in scope by a vendor's solicitor acting prudently.

It is, however, important to keep in mind that the facts and circumstances of each company share acquisition will continue to necessitate a variety of substantive and drafting approaches which cannot be fully reflected in one standard-form agreement, without appropriate amendments. Nevertheless, the agreement merits a place on any practitioner's bookshelf and database and the DSBA is to be complimented for this very worthwhile project. **G**

Sean Nolan is a solicitor with McCann Fitzgerald.



Pictured at the launch of the *Specimen share purchase agreement* (left to right) Brendan Heneghan, William Fry; Pauline O'Donovan, Matheson Ormsby Prentice; High Court Judge Peter Kelly; Ruadhan Killeen, Dublin Solicitors Bar Association; Barbara Cotter, A&L Goodbody; Paul Keane, Reddy Charlton and McKnight

which all liability of the vendor will cease; an acknowledgement that the purchaser has not been induced to enter into the agreement by any representation or warranty other than those contained in the agreement; and that the warranties and (subject to negotiation) the tax indemnity are to be qualified by the contents of a disclosure letter (a draft of which has also been produced).

Of particular value are the various footnotes and commentaries on those provisions of the agreement which might need to be amended to suit the facts of a particular case. These notes can usefully serve as a checklist for the purchaser's solicitor in preparing the first draft and the vendor's solicitor in reviewing the draft. One such example is

not to agree a 'grossing-up' of the tax deed of indemnity where a purchaser insists that the indemnity be given to the subject company in addition to the purchaser.

The agreement anticipates a contemporaneous execution and completion of the agreement. While this might be appropriate in most cases, it might not always be possible, particularly where the purchaser is under commercial pressure to execute a legally binding agreement before matters such as 'due diligence' on the subject company or title investigation have been pursued or completed or where the purchaser has yet to negotiate and obtain any necessary banking or regulatory consents or releases or obtained satisfactory grant aid from any



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## Revolt or revolution: the constitutional boundaries of the European Community

Diarmuid Rossa Phelan

Round Hall Sweet & Maxwell (1997), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1-899738-24-X. Price: £50 (hardback).

**D**r Diarmuid Rossa Phelan, barrister and Jean Monnet lecturer in European Law, Trinity College, Dublin, has produced a monumental work. Monumental in the sense that it will remain in existence for as long as the printed and electronic word survives. Monumental, in the words of Swinburne, because Dr Phelan has joined that 'gallery of monumental men' by producing a work of great intellectual substance and a significant contribution to jurisprudence.

The book explores European Community law and national law in their constitutional relationships with each other and in the

context of the different sets of higher rules or principles to which they conform.

The author argues that there were two spectres haunting the legal orders of Europe: revolt or revolution. The argument is that national constitutional law is at breaking point. The author believes that there is going to be either a revolution in law where consistent legitimation becomes impossible, or a revolt of national constitutional authorities – the national courts – to avoid a revolution.


In the context of what he describes as 'future directions', Dr Phelan argues that continua-

tion along current lines would result in either a revolt or revolution in national constitutional law. There is the possible reform of European Community law to solve the revolt or revolution dilemma by the adoption of a European Community law rule that the integration of European Community law into national law is limited to the extent necessary to avoid a legal revolution in national law.

Another scenario is a new European Community law constitution which would remove conflict but which would cause a revolution in national constitutional law and perhaps revolution in

European Community law.

A note of this nature cannot do justice to the work of the author, but I will make two observations. First, *nil desperandum*, the words as expressed by Horace in his *Odes*. We must not despair. Secondly, some solution will be found: the old and the new will blend and we will go forward with courage avoiding both a revolt or revolution.

Bench and Bar, lawyer and student will find this book both informative and most certainly deeply provocative. 

*Dr Eamonn Hall is Chief Legal Officer of Telecom Éireann Plc.*

## Colinvaux's law of insurance

Edited by Professor Robert Merkin

Sweet and Maxwell (seventh edition, 1997), Cheriton House, North Way, Andover, Hampshire SP10 5BE, England. ISBN: 0 421 55060 0. Price stg£120

**T**he Irish insurance market is substantial. Approximately £3.7 billion in gross premium income is paid each year in respect of life and non-life insurance business written in Ireland, and the figure is growing. It is not surprising, therefore, that the Irish courts have developed their own unique jurisprudence. Non-disclosure of material facts is but one example of an area of insurance law which has received the attention of the Supreme Court. *Chariot Inns and Kelleher v Irish Life* are two important decisions that come to mind. A casebook of Irish insurance law has already been published and an Irish textbook is awaited.

Notwithstanding these developments in Irish law, our insurance law still borrows heavily from UK law. The specialist textbooks on insurance law, such as those dealing with marine insurance, professional indemnity and

reinsurance are to be found in the United Kingdom. A number of general texts on UK insurance law are also consulted widely here, given that similar legal principles apply in both jurisdictions. One such text is *Colinvaux's law of insurance*. This is the seventh edition of the work and the second edited by Robert Merkin, who has also written, among other works, a book on EU insurance law. It sets out the law as at 30 September 1996.

Raoul Colinvaux first published his *Law of insurance* in 1950. He died in 1984 and Robert Merkin has in the subsequent editions substantially revised the work. The seventh edition adds almost 100 pages to the previous edition and has more than doubled the index with the result that the index is comprehensive and a pleasure to consult.


The book runs to over 520 pages of text and is divided into

three parts. In Parts I and II, all the main legal issues are covered from contract formation to claims and arbitration. The examination of such topics as insurable interest and non-disclosure will be helpful to both students and practitioners alike. The author examines special types of insurance in Part III. Marine insurance is well-analysed in chapter 23 and is in the form of a commentary on the provisions of the *Marine Insurance Act 1906*. The chapter on life insurance contains clear statements of the main principles. So also does the chapter covering accident insurance which considers such terms as 'accident' and 'bodily injury'.

There is a section on choice of law in chapter 1 which is entirely new and succinctly examines the proper law of insurance contracts, the *Rome Convention* and the life and non-life Directives. There is also a good but brief analysis of recent decisions of whether an

insurer is deemed to be carrying on insurance business in the United Kingdom. Conflicts of laws and in particular the *Brussels convention* on jurisdiction and enforcement of judgments are reviewed in detail and will be of particular relevance to the Irish readership, given the extent to which risks are insured with foreign insurers.

The regulatory framework applicable to insurers, brokers and agents considered in the work is obviously that of the UK and should be treated cautiously in the Irish context which is, of course, no criticism of the work.

*Colinvaux's law of insurance* is a comprehensive general text of UK insurance law and is a useful reference work. It is clear and precise and is extensively supported by relevant case law. 

*Kevin Finucane is a solicitor and a director of Coyle Hamilton Limited.*

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# The Copyright Bank

Eugene Murphy reviews a new client service available to owners of copyright works

**P**roblematically, there is no State registration system in respect of copyright works. This position is to be contrasted with the State registration systems which are administered by the Patents Office in respect of trade marks, designs and patents.

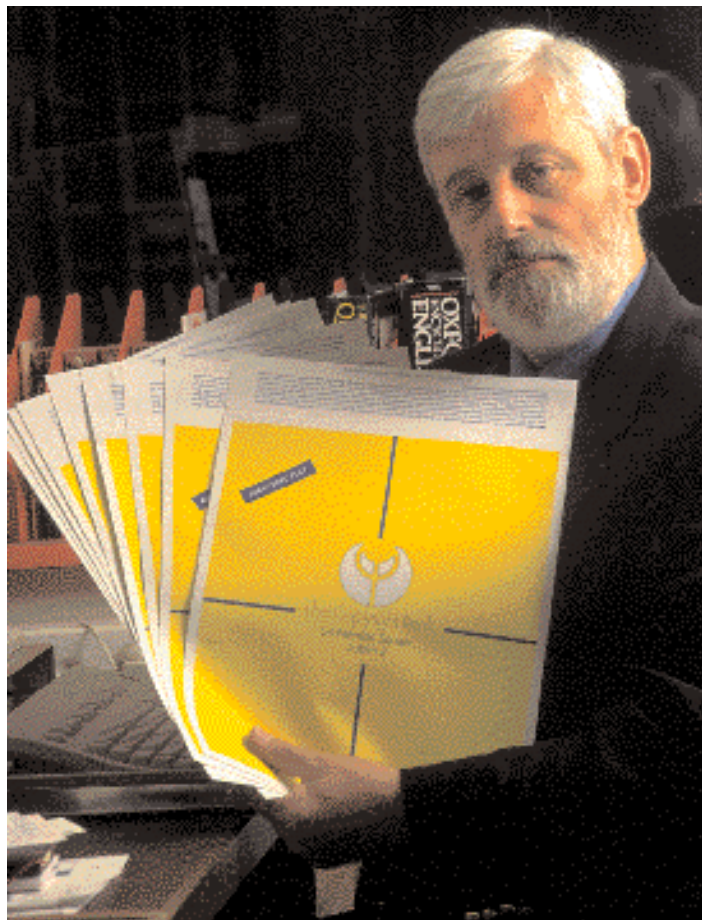
How to prove the originality of copyright works, the date of creation, and ownership have been (in certain circumstance) challenging tasks for the owners of such works.

An Irish company – the Copyright Bank Ltd – has developed a novel solution to some of these challenges. The novelty of the solution is further illustrated by the patent (in respect of the development) which has been registered by the Irish company.

What is this proposed solution? The company makes available an envelope of a size and design to hold copyright works of various volumes, and to identify the owner. On the conclusion of a sealing process, the envelope is sent by pre-paid registered post to the company. The company undertakes to hold the sealed envelope (until called upon) in such a manner as to allow it to establish the date of receipt (by the company) of the envelope, and the uninterrupted possession and safe custody of the envelope under the control and supervision of the company. Ownership of the envelope and contents remains with the person lodging it with the company.

## Essential features of the system

An envelope is purchased (costing £30.25 including VAT) from the company. The cost includes the charge for purchase and the charge for storage with the company for the first year, together with the charge for the company attending court (if required) to affirm the details of the possession and safe custody of the envelope with the company.



The Copyright Bank's Hugh Kearns

For each succeeding year of storage (after the expiry of one year from the receipt of the envelope by the company) a charge of £10 will be payable (together with VAT at 21%).

The purchaser of the envelope makes use of the envelope in the following manner.

He or she signs their name over a perforated panel and applies a date to the perforated panel. The signatory then tears through the perforated panel, thereby detaching the panel, leaving part of the signature and date on the envelope, and the remainder on the detached panel. The signatory completes a declaration of claim on the reverse of the detached panel and also provides a return address.

The panel is folded as prescribed in the instructions (which are printed on the back of the envelope) and placed in a secondary

pocket on the outside of the envelope; the pocket is then sealed. The copyright (or other works) is then placed in the main envelope which is then sealed. The half signature which remains on the envelope is then sealed (as directed) and dated. The envelope (in its completed condition) is then sent by registered post to the company.

## Exclusive control

On receipt of the envelope, the company will extract the panel from the secondary pocket, stamp it and return it by registered post to the addressee appearing on the panel. The company then logs it into its system and retains the sealed envelope in its possession. On the expiry of one year or such longer period as the owner continues to pay for, or until called upon in any intervening time to produce the envelope in court, the company

maintains exclusive control of the envelope.

With regard to its product (and its service) the company observes: 'copyright works are at their most vulnerable to theft in the period between their creation and being published under licence'.

The company has focused resources on developing a system whereby the creator or owner of the works can create a trail of evidence which may prove to be valuable if and when a dispute over copyright ownership should occur. This trail also may be valuable from the perspective of a party wishing to collaborate with a copyright owner for the exploitation and development of the work.

## Document storage

It seems to me that advisors to copyright owners should acquaint those owners with the availability of this service. In addition, such advisors should share information as to their experience of the value of this service which, on the face of it, appears to be a most useful one. I have not inspected the facilities where the company stores the envelopes. The company offers to intending depositors an inspection of the facilities which the company contracts from established specialists in document storage. The premises, located in Dublin, are vandal and fire proof, with an automatic inert gas injection system and automatic Fire Brigade alert should the temperature approach the flash point of paper, even before a fire can break out.

Hugh Kearns of the Copyright Bank, Clifton House, Lower Fitzwilliam Street, Dublin 2 (tel: 6613788, fax: 6615200) will be most helpful to those seeking clarification of any points occurring and access to a supply of envelopes. **G**

*Eugene Murphy is a partner with Dublin solicitors Eugene F Collins.*

# REVOLUTIONARY BANKING CONCEPT TO BENEFIT SOLICITORS

Since 1994, a considerable number of law firms have benefited from a revolutionary new banking consultancy service which was launched by Galway based firm, McCarthy & Associates, Banking Consultants. Established in 1994 by Managing Director, David McCarthy (former TSB Bank branch manager), McCarthy & Associates have managed to achieve substantial gains on banking arrangements for solicitors.

Whilst the service they provide is not confined to the legal community, solicitors in particular have found their reviews especially beneficial according to Mr McCarthy.

The process involved analysing the banking structure of client firms, focusing on where savings can be made in relation to bank interest and charges. They also look at the operation of set-off arrangements and the returns being achieved with regard to client funds. According to Mr McCarthy, 'We have found a considerable number of problems in the reviews we carry out in relation to set-off arrangements due in some cases to the incorrect establishment of the original set-off by the banks'.



David McCarthy, Managing Director,  
McCarthy & Associates

According to McCarthy & Associates, the background to this new concept is to provide an independent banking review service for clients and acts as an advisor between the client firm and their bank. The focus is aimed exclusively at seeing where savings can be made on banking arrangements or increase interest income.

According to Mr McCarthy, 'We sit down with the client initially and review their present structure to see if we can achieve savings on their banking arrangements. Subsequently, we will undertake a review which covers a period of one year and provide a detailed analytical report to our clients outlining and quantifying the savings which can be achieved. To date, we have found this process to be quite effective and we base our fees on an all-inclusive charge which is advised to clients at the outset'.

It would appear from past experience that distance is not a problem for this company as their client base covers the entire country. Details regarding this banking service can be obtained from McCarthy & Associates, 3 Lower Abbeygate Street, Galway, tel: 091 566022, fax: 091 561850.

## Careful scrutiny reduces costs

Being charged the wrong interest rate on bank loans and accounts – as reported by one of our readers recently – is more commonplace than most people imagine, writes banking consultant David McCarthy, of McCarthy & Associates, Galway.

"We carry out detailed banking reviews for both individuals and businesses, a substantial number of which have resulted in a dramatic reduction in interest and charges. To take up the point made by your reader, the incorrect establishment of accounts on the banking system is a common problem and can continue for some years without being detected. As a result the over charging can be incredible."

Aside from term loans and overdrafts being over charged, Mr McCarthy, a former TSB branch manager, says that many mortgage clients do not realise they have been "loaded". Loans taken out before 1994 are particularly susceptible, often because higher margins were charged then. Despite more competitive rates

today these higher margins are being maintained. Pre-1984 was also the period, he says, when endowment mortgages attracted a higher interest charge than annuities.

"In relation to the set-off arrangement of a business (i.e. where one account is in credit and another is overdrawn) this situation is notorious for not working properly, often due to an incorrect coding procedure. Another occasional problem is the categorisation for business of the interest rate on their borrowings – i.e. where borrowings are categorised as a personal overdraft (A) rate, instead of the normal business (AA) rate. Too often large borrowings which should be structured at market related rates (DIBOR) are charged at the normal business term loan rate which is considerably higher."

David McCarthy's advice: customers should keep their banking affairs "under close scrutiny – failure to do so can result in higher costs".

— Extract from *The Irish Times*, Friday, July 11, 1997.



## LOST LAND CERTIFICATES

### Registration of Title Act, 1964

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 5 September 1997)

Regd owner: Michael P Noone; Folio: 819F; Townland: Muckinish West; Area: 2a 0r 0p; **Co Clare**

Regd owner: Henry Hunt Limited; Folio: 5568F; Land: Knock; **Co Limerick**

Regd owner: James Carroll; Folio: 1814; Land: Cullenstown; Area: 4a 3r 36p; **Co Wexford**

Regd owners: John Foran and Peter Foran (as tenants in common); Folio: 31472; Land: Ballyseedy; Area: 18.249 acres; **Co Kerry**  
Regd owner: Kevin O'Sullivan, 11 Lee Park, Shannon, Co Clare; Folio: 1448L; Land: The leasehold interest situate in the townland of Tullyglass Barony of Bunratty Lower; **Co Clare**

Regd owner: James Doyle; Folio: 4603F; Lands: Wards of Tober, Barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Thomas White and John Francis White; Folio: 280F; Land: Ralaghan; Area: 19A 0r 7p; **Co Cavan**

Regd owner: Mary Ann McGill, Roscahill East, Kilmeena, Westport, Co Mayo; Folio: 12416F; Townland: Roscahill; Area: 0.356 acres; **Co Mayo**

Regd owner: Edward (otherwise Edmund) Murphy; Folio: 9862; Lands: Fenor North, Tramore; Area: 3.593 acres; **Co Waterford**

Regd owner: Elizabeth Coady (deceased); Folio: 15572; Lands: Tinnahinch; **Co Queens**

Regd owner: C&F Tooling Limited, 5/6 Cluster Units, Ballybane, Co Galway;

Folio: 15733F; **Co Galway**  
Regd owner: Gerard O'Neill and Carol O'Neill of 42 Irishtown Road, Dublin 4; Folio: 39733F; Lands: 42 Irishtown Road situate in the Parish of Donnybrook and District of Pembroke; **Co Dublin**

Regd owner: Bridget Barr; Folio: 12868; Land: Dunree; Area: 6a 2r 30p; **Co Donegal**

Regd owner: Mary McDonald Scott of the Abbey Farm, Bective, Co Meath; Folio: 72385L; Lands: Flat no 5 on the first floor of Block 1 of 'Gilford Pines', situate at the junction of Gilford Road and Gilford Park in the Parish of St Mary, District of Donnybrook and City of Dublin; **Co Dublin**

Regd owner: James Reilly (deceased); Folio: 11641; Land: Prop 1 Rathkenny and Prop 2 Horistown; Area: Prop 1 1a 3r 3p and Prop 2 35A 2R 14P; **Co Meath**

Regd owner: Liam and Patrick Moran; Folio: 25849; Land: Athlumney; Area: 0a 2r 0p; **Co Meath**

Regd owner: Peter and Katie Coady, Caherayan, Athenry, Co Galway; Folio: 28040; **Co Galway**

Regd owner: Donal Moloney, c/o IM Houlihan & Son, Solicitors, 10/11 Bindon Street, Ennis, Co Clare; Folio: 7392F; **Co Clare**

Regd owner: Jeremiah Fennell; Folio: 2588; Lands: Lugnagun Great, Blessington, Barony of Talbotstown Lower, **Co Wicklow**

Regd owner: James Aherne and Patricia Aherne, Hillcrest Drive, Greystones, Limerick; Folio: 1084F; Townland: Doonmore; Area: 0a 2r 0p; **Co Clare**

Regd owner: Patrick Banaghan, Cappagh, Kilroosky, Roscommon; Folio: 15146; Townland: Cappagh; Area: 18a 1r 15p; **Co Roscommon**

Regd owner: Patrick Declan Timoney and Mary Timoney; Folio: 18347F; Lands: Monread South; **Co Kildare**

Regd owner: Stephen Walsh, Altamont Street, Westport, Co Mayo; Folio: 38039; Townland: Killaghoor; Area: 1a 2r 0p; **Co Mayo**

Regd owner: Janice and Kieran Whitelaw, Ardclony, Killaloe, Co Clare; Townland: Ardclony; Area: 0.529 hectares; **Co Clare**

Regd owner: Thomas Feehily; Folio: 1923; Land Aghameetha Barr; Area: 18a 2r 35p; **Co Leitrim**

Regd owner: Michael J Dunne (tenant in common of an undivided moiety); Folio: 16357; Land: Kilnacash; Area: 1a 1r 30p; **Co Queens**

Regd owner: Christopher & Sheila Connaughton, Achill Sound, Co Mayo; Folio: 35446; Townland: (1) Pollranny (Sweeny), (2) Pollranny (Lynchaghan) (one undivided 61st part), (3) Pollranny (Sweeny) (one undivided 61st part); Area: (1) 3a 1r 27p, (2) 539a 0r 11p, (3) 742a 0r 06p; **Co Mayo**

Regd owner: Timothy and Betty Lynch; Folio: 24124F; Land: Kilmurrybog; Area: 0.202; **Co Limerick**

Regd owner: Gerard (orse Gerry) Fallon, Keoghville, Brideswell, Athlone, Co Roscommon; Folio: 3529F; Townland: (1) Carrowkeeran, (2) Corkip, (3) Cornageeha, (4) Carrowkeeran; Area: (1) 73.950 acres, (2) 6.138 acres, (3) 22.894 acres, (4) 9.906

acres; **Co Roscommon**

Regd owner: Owen Kirk; Folio: 12457; Land: Milltown; Area: (1) 99a 0r 5p, (2) 10a 0r 7p; **Co Louth**

Regd owner: Joseph O'Neill and Joan Murray of 380 River Valley, Forrest Road, Swords, Co Dublin; Folio: 53938L; Lands: the property situate to the West of Forrest Road in the town of Swords, townland of Hilltown and Barony of Nethercross; **Co Dublin**

Regd owner: William Tennant of 66 Lorcan Crescent, Santry, Dublin; Folio: 15747; Lands: A plot of ground situate on the north side of Lorcan Crescent in the Parish of Santry, District of Santry and City of Dublin; **Co Dublin**

Regd owner: Anthony Watterson; Folio: 8245; Land: Derrygassan Lower; Area: 13a 3r 0p; **Co Monaghan**

Regd owner: Michael Conlon (deceased); Folio: 9697 (closed to 7406F); Land: (1) Kellystown, (2) Kilfeacle; Area: (1) 13.299 hectares, (2) 16.969 hectares; **Co Queens**

Regd owner: Maurice and Margaret Hassett; Folio: 5046; Land: Ballyvorheen; Area: 32a 1r 30p; **Co Limerick**

Regd owner: Patrick White; Folio: (1) 22097, (2) 30656 (closed to 4716F); Lands: (1) Carrowkeale, (2) Glenough Lower; **Co Tipperary**

Regd owner: Tony and Jacinta Egan; Folio: 3576F; Land: Glendine; **Co Kilkenny**

Regd owner: Christopher Burke; Folio: 10054; Land: Agharra; **Co Longford**

Regd owner: Timothy McCarthy; Folio: 20605; Land: Dromdeeven; Area: 56a 1r 8p; **Co Limerick**

Regd owner: Ivor Carroll; Folio: 3113F, 3758F, 154; Land: Ballygubba South; **Co Limerick**

Regd owner: William Braddell Smith (deceased); Folio: 13939; Land: Ballyshonock; Area: 94a 2r 28p; **Co Wexford**

Regd owner: Bridget Martin; Folio: 2913L; Land: 25 Orwell Gardens, Rathgar; **Co Dublin**

Regd owner: Martin and Mary Lee, Strandhill, Co Sligo; Folio: 15975; Land: Doonally; Area: 0.900; **Co Sligo**

Regd owner: John Patrick Cox, Cuilbeg, Rooskey, Co Roscommon; Folio: 11742; Townland: parts of the land of Graffoge containing 7 acres and 5 perches or thereabouts; **Co Roscommon**

Regd owner: Dermot Doran; Folio: 3926;

Lands: Clonagh, Barony of Carbury; **Co Kildare**

Regd owner: Matthew Sheridan; Folio: 2214; Land: Gortermone; Area: 11a 3r 37p; **Co Leitrim**

Regd owner: Patrick McLoughlin, Mahanagh, Drumshanbo, Co Leitrim; Folio: 4521F; Townland: Derreenavoggy; Area: 3.838 hectares; **Co Roscommon**

## TITLE DEEDS

Would any person with knowledge of the whereabouts of documents of title of Miss Bridget Stack of 43 William Street, Listowel, Co Kerry, please contact John O Lee & Company, Solicitors, 30/31 South Mall, Cork, tel: 021 270588

## WILLS

**Mullins, Mary**, deceased, late of Ballyvadden Cross, Kilmacthomas, Co Waterford. Would any person having knowledge of the whereabouts of a will dated 9 December 1982 executed by the above named deceased who died on 23 June 1996, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

**Kiersey, Mary Leila**, deceased, late of The Hill, Kilmacthomas, Co Waterford. Would any person having knowledge of the whereabouts of a will dated 30 April 1990 executed by the above named deceased who died on 20 April 1997, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390  
**Connors, Ita Catherine**, deceased, late of Woodfield, Kilcop, Woodstown, Co Waterford. Would any person having knowledge of the whereabouts of a will dated 26

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March 1997 executed by the above named deceased who died on 6 April 1997, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

**Sherry, Margaret Una**, deceased, late of 47 Woodview Heights, Lucan, Co Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 19 June 1997, please contact Dempsey & Company, Solicitors, 26 Fitzwilliam Square, Dublin 2, tel: 6789182/185, fax: 6625770

**Lyons, Brendan**, deceased, formerly of 123 Meadow Bank, Bushy Park Road, Terenure, and of 10 Foxrock Wood, Foxrock, Dublin 18. Would any person having knowledge of an original will of the above named deceased who died on 22 July 1997, please contact AF Smyth & Company, Solicitors, 5 Clare Street, Dublin 2, tel: 6627780, fax: 6629059

**O'Brien, Philomena**, deceased, late of 22 Craoibhinn Terrace, North Road, Drogheda, Co Louth. Would any person having knowledge of a will executed by the above named deceased who died on 25 February 1997, please contact Dick Branigan Berkery & Company, Solicitors, 29 Laurence Street, Drogheda, Co Louth, tel: 041 31238, fax: 041 31145

**Canavan, Thomas**, deceased, late of Arywee, Fedamore, Co Limerick. Would any person having knowledge of a will executed by the above named deceased who died on 9 November 1996, please contact Messrs MacDermot & Allen, Solicitors, 10 St Francis Street, Galway, tel: 091 567071, fax: 091 567075

**Smith, Fr Mathias**, deceased, late of Frael, Ballyjamesduff, Cavan. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 25 March 1997, please contact Mr Anthony T Hanahoe, Solicitor, Michael E Hanahoe & Company, Solicitors, 21 Parliament Street, Dublin 2, tel: 01 6772353, fax: 01 6712660

**Coffey, Peter**, deceased, late of Cornalagaragh, Shercock, Co Cavan. Would any person having knowledge of a will executed by the

above named deceased who died on 21 April 1997, please contact G Jones & Company, Solicitors, Main Street, Carrickmacross, Co Monaghan, tel: 042 61822, fax: 042 61464

**Joyce, Finbarr**, deceased, late of 3 Glenview Place, Gardiners Hill, Cork. Would any person having knowledge of a will executed by the above named deceased who died on 7 June 1997, please contact MJ Horgan & Sons, Solicitors, 50 South Mall, Cork, tel: 021 273074, fax: 021 270846

**Rogers, Elizabeth Christina**, deceased, late of 8 Slievemore Road, Drimmagh, Dublin 12. Would any person having knowledge of a will executed by the above named deceased who died on 22 January 1986, please contact Delahunty O'Connor & Company, Solicitors, 179 Crumlin Road, Dublin 12, tel: 4540766, fax: 4531886 (reference DR.R131)

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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

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