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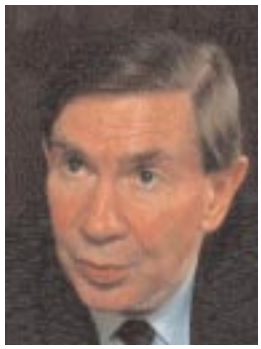

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Must a judge believe in God?

The late Professor Robert Heuston, Regius Professor of Law at Trinity College Dublin and judicial biographer, considered that judges 'belong to a priesthood for ever'. Justice Cardozo, one of the great judges of the US Supreme Court, noted that 'the earliest judge was the ruler who uttered the divine command and was king and priest combined'.

Judges, wrote Sir John Fortescue, himself a member of that priesthood, sit and 'then study the law, read Holy Scripture or use other contemplation at their pleasure'. That was, however, in the reign of Henry VI. Lord Chief Justice Hale once stated that Christianity was part of the common law. In fact, the early courts of the common law (the shire courts) were presided over at first by the great regional officers of the king called aldermen, and the bishops of the region sat in court with the aldermen as there was no separation between ecclesiastical and secular matters.

Given the origins of the judicial office and the Irish constitutional imperatives (considered later), must a solicitor or barrister who is considered suitable for judicial office (and a judge already appointed) believe in God? God, in this context, does not mean a God according to Catholic, Protestant, Jewish, Muslim or other beliefs, but a supreme being – the creator and ruler of the universe.

Every person appointed a judge in Ireland must 'make' and 'subscribe' pursuant to article 34.5.1 of the Constitution a solemn declaration in the presence of Almighty God. The judge solemnly declares that he or she will, to the best of his or her knowledge or power, execute the office of judge without fear or favour and will uphold the Constitution and the laws. The declaration concludes with the following words of the appointee: 'May God direct and sustain me'. It is of significance that the judge not only makes but must also subscribe to the declaration. One meaning of 'subscribe' is to declare assent. Any judge who declines or neglects to make such a declaration shall be deemed, according to the Constitution, to have vacated his or her office.

Humble obligations

The preamble to the Irish Constitution opens with the invocation of 'the Most Holy Trinity from Whom is all authority, and to Whom, as our final end, all authority both of men and States must be referred'. The preamble 'humbly acknowledges all our obligations to our Divine Lord, Jesus Christ'. Article 6 of the Constitution, a seminal provision in the organisation of our democracy, stipulates that all powers of government, legislative, executive and judicial, derive under God from the people.

Blasphemy, the crime that consists of offensive attacks on Christianity, or the scriptures, is designated as a specific offence under the Constitution. The family is recognised as 'a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law'.

Article 44 of the Constitution provides that 'the State acknowledges that the homage of public worship is due to Almighty God', shall hold 'His name in reverence, and shall respect and honour religion'. Freedom of conscience and the free profession and practice of religion, subject to public order and morality, are guaranteed to every citizen. The State is also obliged not to impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

Last year the Constitution Review Group considered that the requirement to make the judicial declaration in its present form could be thought to discriminate against people who do not believe in God or who believe in more than one God. The Review Group recommended that the reference to God in the judicial declaration be deleted.

True religion

Sir Alfred Denning (as he then was), a Lord Justice of Appeal, wrote in *The road to justice* (1955) that a judge on his appointment did swear 'by Almighty God' and, accordingly, affirmed his or her belief in God 'and implicitly his belief in true religion'. Denning wrote of the 'great precepts of law and of religion' and how close they were to each other.

A Christian people

Judge Brian Walsh in *Quinn's Supermarket v Attorney General* [1972] IR1 said that the Constitution 'reflects a firm conviction that we are a Christian people' because 'the preamble acknowledges that we are a Christian people'. Chief Justice TF O'Higgins in *Norris v Attorney General* [1984] IR36 said that it could not be doubted that the people so asserting and acknowledging in the preamble 'their obligation to our Divine Lord Jesus Christ, were proclaiming a deeply religious conviction and faith and an intention to adopt a Constitution consistent with that conviction and faith and with Christian beliefs'.

All the evidence appears to point to the conclusion that a judge must believe in God. As one who has not been anointed, I cannot determine the issue. On this earth, the issue may fall to be determined by persons who are often infallible – partly because they have the final say – the judges of the Supreme Court. G

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

Hanahoe damages sends an important message

The £100,000 damages awarded to the partners in the solicitors' firm Michael E Hanahoe & Co by Mr Justice Kinlen in the High Court on 14 November sent a very strong message. It is now clear that the courts will not allow to go unpunished such a sinister and intimidatory act as the advance leaking to the media of the fact that a warrant had been issued and would be executed against a firm of solicitors in relation to a very high profile case. The leak was calculated to create a media circus which could, and did, severely damage the reputation of the solicitors' firm concerned.

Malicious intent

That the intention was malicious cannot be doubted. 'This was a wilful act done to damage the Hanahoes', Mr Justice Kinlen found. 'The court is satisfied from the evidence of various senior solicitors, including former presidents of the Law Society, and from the Hanahoe brothers that it has done them considerable and probably irreparable harm', he continued. 'People came in and abused them and they were perceived by the media as being involved in the murder of Veronica Guerin and in money laundering'.

It is difficult to conceive of a more damaging perception that could be created about a firm of solicitors. It represented an outrageous smear of a long-established firm which Mr Justice Kinlen found 'had and has the highest reputation in legal circles'. That press photographers and reporters actually arrived outside the Hanahoes' offices in Parliament Street in advance of the Gardai revealed something deeply rotten in this Garda operation. The exact source of the tip-off has never been identified. The court appeared to accept that it was not officially sanctioned, although Mr Justice Kinlen was unimpressed by the rather perfunctory internal Garda inquiry subsequently conducted.

'Agents of the State': detectives leaving the offices of ME Hanahoe & Co

Official intimidation

Solicitors everywhere were outraged by what was done to this firm. Some viewed it as an officially-sanctioned attempt by the Gardai to intimidate all firms of solicitors who regularly act for the accused in criminal law matters.

Mr Justice Kinlen's strong judgment not merely seeks to some extent to redress the damage to the firm by means of his award but also makes a statement about the role of criminal defence solicitors in protecting fundamental rights in our democracy. It is a powerfully expressed statement, and his words deserve to be quoted here in full.

'It is essential in our society that lawyers of the highest ability should be available to provide a full and proper defence to persons accused of criminal offences. Unfortunately, public opinion does not always accept that principle and sometimes lawyers are identified with their clients which clearly violates Principle 18 of the United Nations Basic Principles on the role of lawyers. It is a fundamental right in a democratic society that an accused person be fully appraised of all charges made against them and that they have the choice of legal representation. This right is embodied in article 6 of the *European convention of human rights*. It would undermine our society if that were not so. The courts must protect these standards. Sometimes criminal lawyers are wrongly accused of colluding with their clients and sharing in the profits of crime. These are very serious allegations and should not be accepted until there is proof to establish them. The vast majority of criminal lawyers provide wonderful work to secure liberty and to protect our democratic institutions. Sometimes a lawyer might be regarded because of his success as an enemy of the State. They are, in fact, a bulwark to protect justice and the people and are essential in any real democracy.'

Outrageous treatment

The Hanahoe brothers and all of their staff were treated outrageously by some agents of the State on 3 October 1997. The £100,000 award of damages is the least that the firm deserves. Mr Justice Kinlen's ringing statement about the essential work that criminal lawyers do to protect freedom and democracy is a timely reminder to lawyers and society as a whole that intimidation by the State must always be resisted, as it has been successfully in this case.

We all owe a debt to the Hanahoes for bringing and winning this action. G

Ken Murphy is Director General of the Law Society.

North-South bodies: a loss of sovereignty?

Probably the most important aspect of the recent Irish presidential election was the focus on the fact that Mary McAleese is a Northerner, born and bred in Belfast. Despite the anti-Northern diatribe from some commentators and politicians, the people of Ireland soundly rejected a partitionist mentality and elected a woman who brings flair, intelligence and charisma to the highest office in the State.

Having been born and bred in Belfast myself, it is truly satisfying to see such a development. The reason for such satisfaction is simple: one of our own has made it to the top. This can be the case, by the way, just as much for unionists as nationalists. When the likes of Brian Mawhinney rises to the top of British politics in the Conservative Party, the (unionist) people of Belfast are entitled to be proud of the fact that one of their own has made it. Equally, I'm sure that I remember the people of Cork being proud of the fact that Jack Lynch became Taoiseach.

Hurricane Higgins

Now, we can all love Van Morrison's music, or glory in the sporting heyday of George Best and Alex Higgins, but the election of a Belfast lawyer as President of Ireland is different. This is politics. It is not just that Mrs McAleese has been chosen by the people of Ireland to be their Head of State. This is fundamentally a declaration by the people of the South (since only they have the vote) that they accept the notion enshrined in the Constitution that Ireland is an entity encompassing the whole island.

Without getting too involved in the politics of the Northern peace process, there is one issue which this election highlights: the involvement of Northern Ireland in 'Irish' politics, economics and law. Since this column is intended to comment on European law, I will discuss only one important matter: the extent to which executive power should be transferred, in the event of a settlement in Northern Ireland, to North-South bodies responsible for implementing European Union programmes and initiatives.

Pressure on the Government

This question was astutely raised by former Taoiseach Garret Fitzgerald in his *Irish Times* column on 15 November. Dr Fitzgerald asked whether, because so many of Northern Ireland's EU interests coincide with those of the Republic rather than with those of Britain, there might be pressure on the Irish Government from a Northern Ireland administration to share a large proportion of this most important part of foreign policy.

Is it right to regard such a development as a loss of economic and political sovereignty? My opinion is that it is emphatically wrong to regard it as such. Insofar as this will hopefully be part and parcel of an overall settlement to the Northern constitutional problem, it is wrong to look at any one part of that settlement in isolation from the rest of the package.

Since a resolution of the political crisis which has afflicted the North for the last 30 years can only be to the benefit of the island as a whole, the establishment of North-South bodies must be regarded as being to the benefit of both parts of Ireland. Thus, in exactly the same way as entry into the European Community involves a pooling of economic sovereignty for the common good, from which all participants benefit, so the establishment of North-South bodies will represent a transfer of power which will enhance the economic status of the South as well as that of the North.

Conor Quigley: the South is not a wholly autonomous entity

Moreover, as the election of Mary McAleese confirms, it must be recognised that the South is not a wholly autonomous entity separate from the North in any case. Northerners figure frequently in all aspects of Irish public and private life, whether it be in politics, business, trade unions, education, law, culture, sports or whatever. Many trace their ancestry to other parts of Ireland and have relatives throughout the country. They are part of the Irish people and have given as much to the development of Ireland at home and abroad as any other part of its people.

In this way, the establishment of North-South executive bodies does not involve the same notion of a transfer of sovereignty as entry into the European Community entailed. The latter involved fully sovereign states agreeing to enter into a new form of international partnership. In the case of North-South bodies, on the other hand, at least as far as the South is concerned, the main intention must be to give effect to the stated constitutional imperative of seeking to develop Ireland into a single national territory.

Will of the people

Whatever changes may be made to the Irish Constitution in order to reflect the new political arrangements and to endorse the principle of consent, it is unlikely that wholly separate political states will be established north and south of the border. Thus, the Irish Constitution will continue to reflect the wish of the Irish people to establish an Irish nation. North-South bodies should therefore be regarded not just as a means of reflecting the aspirations of northern nationalists but as an integral part of the modern Irish nation. The granting of executive powers to such bodies cannot logically be considered as a loss of sovereignty. G

Conor Quigley is a barrister at Brick Court Chambers, Brussels, specialising in European Union law. He is the author of European Community *contract law (Kluwer Law International).*

Letters

Competition Authority advertisement

From: Professor Patrick McNutt, Chairman, Competition Authority

I refer to the article on the Competition Authority's recent advertisement for a legal adviser in last month's issue of the *Law Society Gazette* (November, page 11).

In relation to the specific advertisement to which you refer and in reply to the substantive points on eligibility and experience, I would like to point out the context in which the advertisement occurred. In October 1996 the Authority advertised for two vacancies for legal advisers with the intention of appointing a solicitor and a barrister. On the basis of that competition, a solicitor has recently been appointed but, because of a number of factors, no suitable barrister was appointed. It is to fill this specific barrister vacancy that the advertisement you referred to was placed.

The Competition Authority understands and appreciates the roles of a solicitor and of a barrister. As lawyers, they each have different advocacy training and experience. For the avoidance of doubt, let me assure you that the Competition Authority does not discriminate in its appointments or indeed in any other area of its activities.

Out of touch clap-trap

From: John G Murphy, John A Sinnott & Company, Wexford

Regarding the review of the NI Law Society video *The trials of William Browne* (*Gazette*, November, page 38). May I first quote briefly from the review:

> *'All practitioners, especially sole practitioners and two or three man operations, should watch this video. It does not provide the solutions, but it does clearly describe the problem. It serves to raise consciousness among solicitors and their staff of the everyday potential to leave oneself open to negligence actions'.*

I hope many of my colleagues will join with me in roundly rejecting the notion that practitioners in one, two or three man operations are not aware of 'the problem' or 'the everyday potential to leave oneself open to negligence actions'.

This facile claptrap from the Law Society is typical of the apparent notion in the Society that all one has to do is talk about or write about a problem to solve it (see, for instance, the mish-mash generalisations in the 'risk management' documentation which has issued from the Law Society over the past few years).

As the principal of a rural office, it is my experience over almost 20 years that the vast majority of my colleagues in the country are extremely conscientious in keeping up-to-date with legislation which is in itself risk management. While I have no interest in mudslinging between various sizes of solicitors' firms, it is also my experience that in many of the larger firms, very young people are assigned to tasks for which they are clearly inexperienced.

I intend no personal criticism of the author of the review. I have found him to be a most courteous individual. The tenor of the article, however, is to me typical of the 'out of touch' attitude of the Law Society, with some few notable exceptions, for too many years. Flying visits around the country by the President (any President) may be good for a few jars and a little chat but, beyond that, is a useless and financially wasteful exercise.

So please, members of the Council, drop the ego and as the review puts it 'get a life'. We, the 'sole practitioners and two or three man operations', have one: try to give us a hand with it.

And no, I haven't watched the video; I could make such a video once a week!

Dumb and dumber

From: Michael Murray, State Solicitor, Limerick

I was present in the District Court when the following plea of mitigation was made on behalf of a farmer charged with driving his tractor on the public road without tax and insurance.

Solicitor for the accused: 'My client is a farmer whose car was broken down and he took out the tractor in an emergency'.
District judge: 'What was the emergency?'
Solicitor: 'He had to go to the funeral of a very sick friend'.

From: Oisin Murphy, Actons Solicitors, Dublin

Further to a recent conversation I had with a client:

The question: 'Was their proposal put to you in writing?'
My answer: 'No'.
Response: 'In that case it's not worth the paper it's written on'.

From: John Mark Downey, Patrick F O'Reilly & Co, Dublin

The following is an extract from an *Irish Times* report on 14 October 1992.

Judge commends Garda action
Six Kildare gardai were commended by the President of the High Court, Mr Justice Spain, for displaying what he described as 'great courage and bravery' in dealing with a gunman who had just wounded a leading family-planning consultant. At an earlier hearing, the court was told that the doctor had performed a vasectomy on the gunman, causing him much pain.'

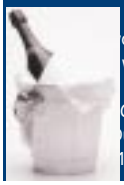
Michael Murray wins the bottle of champagne this month

I don't like Mondays

From: Kieron Wood BL

In my research for a book I am currently writing, I discovered that section 46(a)(ii)(l) of the *Consumer Credit Act, 1995* says that a creditor may not visit or telephone a consumer without his consent at any place 'between the hours of nine o'clock in the evening *on any week day* and nine o'clock in the morning on the following day'. Since Sunday is not a week day, does that mean that a consumer may be pestered at any time until 9pm on Mondays?

A bottle of the finest champagne will go to the reader who sends in the funniest contribution to *Dumb and dumber* each month.



our examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, ublin 7 or you can fax us on 1 671 0704.

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Director General

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Impact of controversial court rules delayed

Controversial new superior courts rules – viewed as unfair and possibly unconstitutional by both branches of the legal profession – are unlikely to have any effect for several months, according to Law Society President Laurence K Shields.

The rules (SI No 348 of 1997) came into force on 1 September. They require that the solicitors of personal injury plaintiffs hand over expert reports and other statements to defendants' lawyers within three months of serving notice of trial.

The change in introduction date results from an additional new rule signed by the Superior Courts Rules Committee on 20 November, to which the Minister for Justice John O'Donoghue gave his necessary concurrence on 26 November. This reverses the effect of a High Court practice direction which had previously sought to give SI 348 retrospective effect.

In a letter to all solicitors, the President says the rules will apply only to High Court proceedings taken after 1 September 1997, and to documents which come into existence after the same date.

'It is unlikely, therefore, in practice that compliance with SI 348 will be required in any cases for a considerable number of months to come', he says. 'The new rule reverses the effect of an earlier practice direction which sought to have SI 348 apply to proceedings already in existence on 1 September, 1997'.

The introduction of the rules sparked furious opposition from the Law Society and Bar Council, who have united in a push to have them amended. The slow-down in their introduction has created some breathing space for both sides of the legal profession to meet a new Superior Courts Rules Committee sub-committee to push for further changes.

The President now believes that the changes demanded by the profession will be made. 'I believe that the Law Society and Bar Council representations in this regard will receive a fair and sympathetic hearing', he states in the letter.

A key change of approach being sought by the Society will be a relaxation of the confidentiality surrounding the drafting of superior courts rules. This would allow the Law Society and the legal profession the opportunity to constructively criticise draft rules before they are made.

New officer team for Law Society

A new officer team has taken the helm of the Law Society for the coming year. The new President is well-known Dublin solicitor Laurence K Shields, who has pledged to monitor new legislation through a parliamentary and law reform executive which he plans for the Society to appoint.

Shields is the managing partner of LK Shields, Solicitors. A graduate of UCD, he was admitted to the Roll of Solicitors in 1972. He has been a Council member since 1978, and has chaired a number of the Society's most important committees.

Top three: the Law Society's new officers (left to right): President Laurence K Shields; Junior Vice President, Geraldine Clarke; and Senior Vice President, Pat O'Connor

The Senior Vice President is Mayo man, Pat O'Connor. He was admitted to the Roll of Solicitors in 1974. The coroner for the Mayo East region, he is principal of P O'Connor & Son, a Swinford-based firm with two offices in Kiltimagh and Belmullet.

Geraldine Clarke has been elected Junior Vice President. She was admitted to the Roll of Solicitors in 1978. She is a partner in Gleeson McGrath Baldwin on Dublin's Anglesea Street.

(See also New President promises winds of change, *page 12.)*

Retirement trust deadline nears

The final deadline for making your 1996/97 retirement contribution is approaching. Members who want to get tax relief for the 1996/97 year of assessment have until 31 January 1998 to contribute and claim the available relief.

Full tax relief can be claimed for each year of assessment on retirement contributions of up to 15% of net relevant earnings. This goes up to 20% for those aged over 55. Anyone interested in becoming a member of the trust, should contact Kim Lloyd or Brian King on 01 604 3629 for an explanatory booklet and application form.

BRIEFLY

ECJ seminar

The Academy of European Law (ERA) will host a seminar on *Litigation in the European Court of Justice* on 12 and 13 January 1998 in Luxembourg. The speakers will include David Keeling of the Office for Harmonisation in the Internal Market, and London-based barrister Philippa Watson. The conference will cover the court's role, different types of proceedings and procedures. Participants will visit the court on the second day of the seminar.

VHI offers new options to members

The VHI is offering members a healthy bonus to their existing policies. The insurer has added extra benefits to Law Society members under the *Options* scheme. The *Options* have all the benefits of Plans A to E, and include some extra benefits available on subscription. These include:

- Substantial extra out-patient benefits
- Wider hospital access for heart surgery
- Major enhancements to maternity benefits
- Special student rates.

And if you are paying your premium at the individual rate, you can join the Law Society's group scheme and get a 10% discount. For more details, contact Ann McDarby at the VHI (tel: 01 799 7073).

Partnership study backed by new fund

A new legal education fund is backing the first comprehensive study of Irish partnership law. Michael Twomey, a graduate of University College Cork and legal adviser in the European Commission, has taken on a PhD in the subject with the help of the Rodney Overend Trust Fund. The new fund was set up by the partners of A&L Goodbody in memory of their late colleague, Rodney Overend. It will be used to give cash aid to post-graduate law students.

Florence '98

Law Society Annual Conference

16-19 April 1998

Florence is proving to be a popular choice of venue for the 1998 annual conference. An unprecedented number of advance bookings have already been received. If you are thinking of attending the conference, avoid disappointment and book now.

(Top) View of the Duomo from one of the conference hotels (Right) Panoramic view of Florence dominated by the Palazzo Vecchio

The River Arno and the Ponte Vecchio

Advance bookings can be made by forwarding a booking fee of £200 per person travelling to Mary Kinsella, Law Society, Blackhall Place, Dublin 7 (tel: 01 671 0711). Mary will be happy to answer any queries you may have.

We can also offer travel options to delegates who would like to travel to Italy in advance of the conference or stay on in Italy afterwards.

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No of persons travelling _____ Please enclose booking fee of £200 per person travelling

I enclose cheque in the sum of £ _____ representing booking fee for _____ persons

Plans to curb right to silence 'could lead to Garda abuses'

New proposals to curb the right to silence and lengthen detention times will give Gardai free rein to mistreat criminal suspects and produce unsafe convictions, a leading criminal practitioner has warned.

The new proposals – contained in the *Report of the steering group on the efficiency and effectiveness of the Garda Siochana* – were endorsed by Justice Minister John O'Donoghue, who has pledged to make them law.

They include giving the Gardai power to detain all serious crime suspects for up to 48 hours. Currently suspects are held for up to 12 hours under the *Criminal Justice Act, 1984*, unless they are held under the *Offences Against the State Act, 1939* or the *Drug Trafficking Act, 1996*.

The report also proposes limiting the right to silence by introducing a narrowly-worded statute declaring that a suspect's refusal or failure to answer 'relevant questions' will allow a judge or jury to draw inferences from that during a trial.

MacGuill: investigation, not interrogation

Commenting on the proposals, Law Society Criminal Law Committee member James MacGuill said they were a direct attack on citizens' rights and on the principle that the State must prove a criminal charge beyond a reasonable doubt.

'The safeguards are there for a reason', he said. 'There were abuses in the past. This is designed to help the Gardai get convictions simply by getting the suspect to confess, and not through investigation.

'It's a fact of life that people are mistreated in Garda custody. Confessions are got by assaulting suspects, misleading them or threatening them. This results in unsafe convictions'.

MacGuill called for the recommendations of the 1990 Martin report to be implemented. Among other things, the report suggested that all Garda interrogations should be taped and filmed.

Business not ready for Year 2000 crisis

The Celtic Tiger could be reduced to a mewling pussycat by a technology crisis in just over two years, but most Irish businesses are doing nothing to deal with the problem. These are the shock findings of a Price Waterhouse survey of Irish business' plans for the Year 2000 crisis.

The survey found that 71% of leading companies, financial institutions and Government departments believe that the Year 2000 is either serious or fundamental to their organisation. But almost half the organisations had no formal written plans to deal with the problem and had no idea how much it would cost them to prepare for the crisis. Some estimated the cost at £10 million.

Many businesses and large organisations will have to change their computer systems to recognise the Year 2000. Because most computer systems recognise only two-digit dates, they will switch back to zero at the end of the century. This will cause havoc in business' databases, financial records and information which is linked in any way to a date which includes the year.

Sex assault case may spark more civil actions

Sex assault victims are more likely to sue their attackers in the future following the landmark 'Bonny and Clyde' case where a woman who claimed she was sexually assaulted by her former boss won £140,000 in the High Court.

Law Society Director General Ken Murphy subsequently predicted in the *Irish Times* that the case will 'rightly encourage other victims of sexual assault to seek justice through the courts for such disgraceful and unacceptable behaviour'.

'This is a landmark decision in Irish law on sexual assault', he said.

Monica Reilly claimed she was continually assaulted by her former boss William Bonny when she worked as a lounge girl in his pub, the Bonny and Clyde in Dublin's Newmarket. He denied the allegations.

BRIEFLY

Property VAT changes guide

The Revenue Commissioners' *Guide to 1997 VAT changes on property* is now available. Copies can be obtained from the Revenue forms and leaflets service (tel: 01 8780100). Anyone looking for more information on the subject should look up Michael O'Connor's article in the September 1997 issue of the *Irish tax review*.

Murphy takes arbitrators' chair

Roderick Murphy SC is the new chairman of Chartered Institute of Arbitrators' Irish branch. Murphy is a member of the International Court of Arbitration in Paris. The institute has over 400 members in Ireland, and over 100 cases were referred to it for settlement last year. The chairman's role is to appoint arbitrators to conduct and determine disputes.

CLASP reception

Concerned Lawyers for the Alleviation of Social Problems (CLASP) will hold its annual cheese and wine reception on Friday 12 December at the King's Inns. The Salvation Army and Father Peter McVerry are examples of the charities helped by CLASP. For tickets and information, contact Josepha Madigan (tel: 01 668 9143) or Suzanne McNulty (tel: 01 679 3565).

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 November: James C Glynn, Dublin Road, Tuam, Co Galway – £300; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £6,676; Malocco & Killeen, Chatham House, Chatham Street, Dublin 2 – £500; Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £1,030.

New Preside winds o

The new Law Society President, Laurence K Shields, talks to Conal O'Boyle about his background and what he hopes to achieve in his presidential year

There but for the Grace of God goes another accountant. In 1967 Laurence Shields was actually registered to study commerce at UCD but changed his mind at the last minute.

'My father was not at all satisfied that I would make it in accountancy and was encouraging me to try to follow in his brother's footsteps as a solicitor. I woke up in the middle of the night before I was to start college and decided that the next day I would switch from commerce to BCL'.

While he was in college, the young Laurence was apprenticed to the Dublin firm Orpen & Co (subsequently Orpen Franks) and had to go into the office every day before cycling off to his lectures. One of the net results of this arrangement was that, unlike his classmates, Laurence probably won't be haunted by old pictures of himself wearing flowers in his hair and feeling groovy. On the plus side, he won second place in the UCD degree examinations and consistently topped the class in the Law Society exams.

By the time he was 21 he had finished his degree and qualified as a solicitor. In 1972 Shields left Orpens to join William Fry & Sons and remained with that firm until 1977 (having been made partner in 1975).

At this point, in a move that today might be regarded as somewhat precipitate, he decided it was time to set up his own practice, along with three colleagues.

'At that stage I had been qualified for five years', he explains. 'I didn't have any responsibilities – except to myself and my clients – and I was confident enough in my own abilities. But it's a decision you would make very carefully nowadays'.

'The partnership of Lysaght, Dockrell, Shields and Farrell (now known as Dockrell Farrell) lasted from 1977 to 1987, when Shields again decided to go it alone.

'I was getting married in 1987 so I reviewed everything in my life. I decided to leave and set up LK Shields & Partners with four people who worked closely with me. The firm's now called LK Shields, Solicitors, and there are 50 people working there'.

Professional achievement

Perhaps not surprisingly, Shields regards the success of this firm as his greatest professional achievement: 'Setting it up from scratch and seeing it thrive and prosper is very fulfilling'.

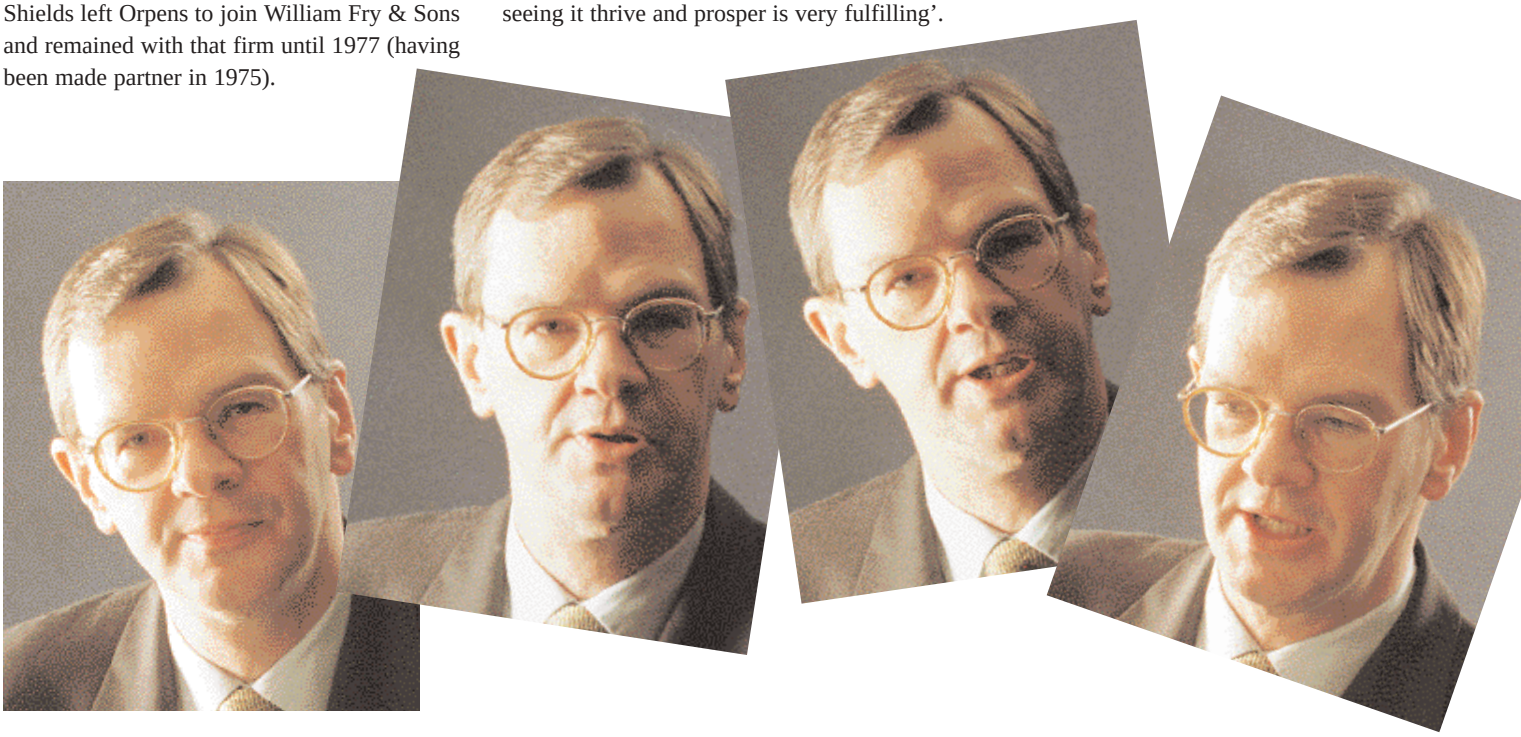
Adapting to change seems to be a pattern in Shields' professional career, and looks likely to be a theme for his year as Law Society President. So how does he think the solicitors' profession must adapt to the demands that the twenty-first century will put on it?

'The profession needs to look outwards', he says. 'We have to be much more conscious than perhaps we were in the past of the needs of our clients and to make sure that we are satisfying and fulfilling their needs. I think we have a tendency to tell people what our services are rather than making sure that our services in fact meet their requirements.

'Obviously over the coming years the marketing of our services is going to be a big area of change, too. When I was an apprentice, marketing was non-existent; 29 years later it's essential'.

And if the profession must become more responsive to its clients, he adds, so too must the Law Society.

'The Society has to make sure it is still relevant to its members, and it needs to find out very clearly what services members wish it to



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provide and how it should go about providing them. I know some people seem to think we are nothing but a regulatory body at times, but we are trying to balance that equation. We must focus much more on giving service to members as well as regulating them.

'We already provide a great many services and we hope to increase those over the next year or two. That's why we appointed a new members' services executive.

'Equally, that is why we are now advertising for a parliamentary and law reform executive – because we believe that it's in the members' interests, and the public interest, to be promoting law reform. We are dealing with the law every day of the week and we are better placed than most to see those areas of law and procedure that need to be changed.

'I recognise, of course, that in my 12 months as President we are not going to change the world, but we can put in train processes that will improve the Law Society and ultimately improve the image of the profession'.

Over the next year, Shields has committed himself to making contact with as many members of the profession as possible and involving them in consultations. He has already written to the secretaries of every bar association in the country, asking them to come up with one idea for law reform and one suggestion for what they would like to see the Law Society achieve in the coming months.

So far the responses have been reasonably predictable, with the recent amendments to the superior court rules and services provided to lending institutions without charge topping the list. But the new President is not disheartened: 'If that's what the bar associations wish to achieve, then progress in both those areas has to be achieved'.

Council meetings outside Dublin

Other planned initiatives include holding some Law Society Council meetings outside Dublin, with the Council meeting in Galway in May and Cork in June. Local bar associations will be invited to meet the Council at these regional sessions.

Shields has also proposed an open forum where ordinary members can put their views to Council about the Law Society and what they feel it should be doing for them. It would also be an opportunity for the Society to tell members about the work it is doing on their behalf.

'At this point in time', he says, 'it is just a concept of an open day because the AGM does not give enough time for a meaningful and open discussion. There's simply not enough time between 6pm and 9pm on an evening to deal with the serious issues facing the Society'.

Younger members, too, will be feeling the winds of change.

'I have asked the Younger Members' Committee to have a complete rethink about its remit and to look again at ways of involving younger members of the profession in the Society. I believe that the whole area needs to be restructured because there is great energy and enthusiasm out there on tap and it should not be beyond our ingenuity to try to encourage and involve those people'.

But it's not going to be all work. The new President is keen to revive the social element that seems to have fallen into abeyance in recent years.

'We are hoping to host a twentieth anniversary ball next June to celebrate our 20 years working in the Blackhall Place building, and all members will be invited to participate. Twenty years in this building is something worthy of celebration and something we should be proud of. Blackhall Place clearly has its drawbacks, but overall I think the solicitors' profession should be very proud that it has such a prestigious headquarters'.

A Law Society Ball? Maybe there's still a chance to wear those flowers and feel groovy after all. G

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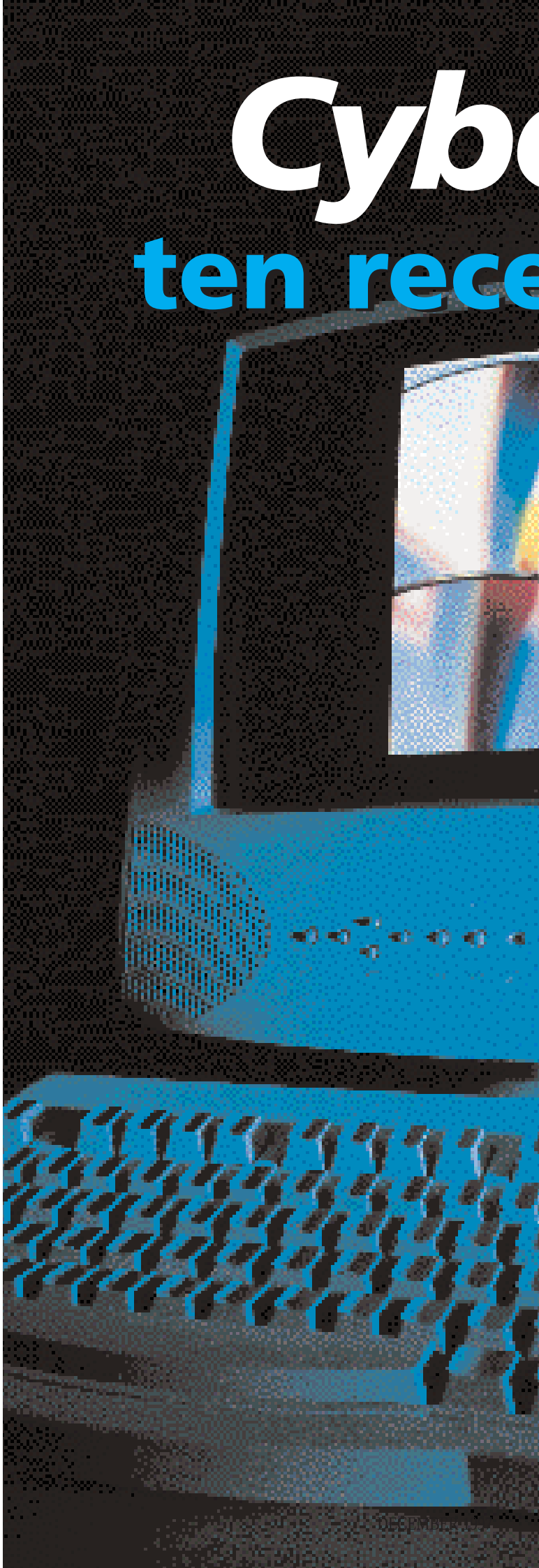
As the number of people doing business over the Internet grows, so too does the number of court cases arising out of this new form of communication. Dai Davis looks at some recent landmark Internet cases from around the world



1 *Shetland Times v Shetland News*

This Scottish case is unusual in that, unlike many of the cases involving the Internet, it does not concern allegations of one company wrongly procuring the Internet address of another. Instead, it is a copyright dispute revolving around the Internet practice of using 'hypertext links'. These enable an Internet user who is issuing information at one particular Internet address to transfer automatically to another Internet site merely by pressing a single key. A hypertext link therefore enables ease of movement on the Internet from one site to another.

The *Shetland Times* is the main newspaper circulating in the Shetland Islands. It was founded in 1872 and has a circulation of 11,000. This is quite significant since the entire population of the islands is only 23,000! The *Shetland News* is a 250-page electronic newspaper which was set up approximately a year before the dispute.

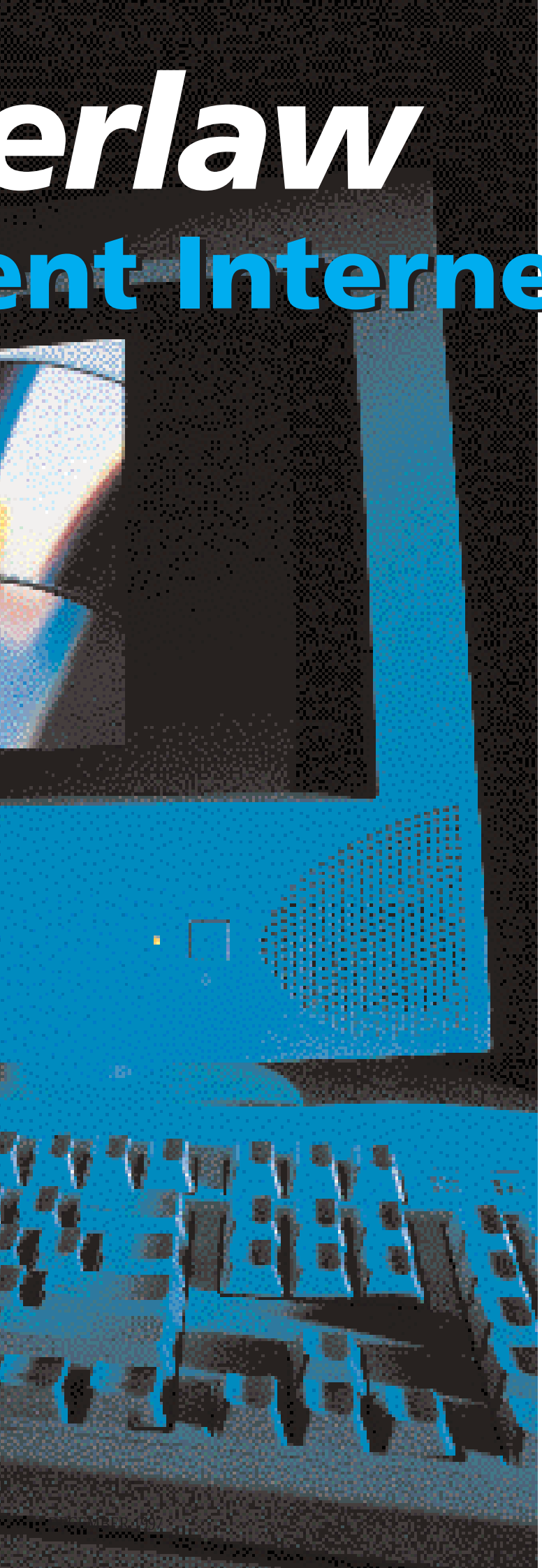
The dispute came to court in October 1996. *Shetland News* had a 'news headline' section on its web site. It had linked that site directly to articles posted at the web site run by the *Shetland Times*. *Shetland Times* alleges that *Shetland News* was breaching its copyright. The case came before the Court of Session which is the top Scottish civil court (from where an appeal lies only to the House of Lords). Unfortunately, however, the case was merely one in which a temporary injunction was requested and therefore the legal arguments were not as well-rehearsed as they would be had a final injunction been sought.

The Court of Session held that copyright infringement was arguably occurring and granted an injunction which bound the *Shetland News* from 'storing or including in any service operated by [the *Shetland News*] on the Internet, any headline, text or photograph from any edition of the *Shetland Times* newspaper or [the *Shetland Times*] Internet web site'. The legal grounds for granting the injunction must, however, be questionable. It is to be hoped that this case will return to the court on an application for a final injunction when more coherent reasons will be given for extending (or withdrawing) the injunction.

2 *Harrods Ltd v UK Network Services Ltd and others*

This case is the first case relating to Internet web site addresses that has reached the UK courts. There is a long history of Harrods protecting its trade mark and trade name both in the UK and overseas. Harrods had registered the UK domain name 'Harrods.co.nk'. However, it had failed to register the equivalent United States (and international) domain name 'harrods.com'. When it came to do so, it found that it could not because the defendants had already themselves registered 'harrods.com'.

Harrods claimed that there was a breach of both its registered trade mark rights and unregistered trade mark rights (that is, their rights relating to passing off). The High Court decided on 9 December last that Harrods was successful in its arguments. The judgment in favour of Harrods was given in default since the defendants failed to turn up! Although the value of the legal precedent is somewhat diminished by this (since the case was never fully argued), it is nevertheless salient to note that the defendants' arguments were not worthy enough of justifying their expense and bother of turning up to fight the case.



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3 *American Civil Liberties Union et al v US Attorney General*

This is perhaps the most significant Internet case being litigated in the United States. The US legislature passed the *Communications Decency Act* on 8 February 1996 in which it attempted to subject abuse of the Internet to the criminal law. Three judges of the US district court unanimously condemned the Act as unconstitutional. The judges found that the Act was not consistent with the first amendment to the US constitution which protects freedom of speech. Although the first amendment was not limitless, they said, it was nevertheless breached in the present Act. The controls within the new law were disproportionately stringent.

While it is difficult to distil the precise reasoning of the judges (who all gave slightly different reasons in their judgments), one of the main grounds for rejecting the Act was the vagueness of the legislation. In addition, they said that the Internet was becoming a very important medium for people to exchange ideas and this meant that it was difficult to justify control of the Internet.

Another reason given by the court was the fact that the Internet provided a medium for 'ordinary' people to give their views and ideas. Ordinarily, such people did not normally have the opportunity to give their views, since they were unlikely to be rich enough to own a television or radio station or a newspaper; it was, therefore, even more important to allow uncontrolled free speech on the Internet since this may be the only real way that ordinary people can express their ideas.

4 *Church of Spiritual Technology v a number of Internet access providers*

This case involved both copyright infringement and breach of confidentiality. The plaintiff, the Church of Spiritual Technology (which was related to the more well-known Church of Scientology), held the copyright in a number of unpublished works of L Ron Hubbard. One of the defendants published large parts of these works on her home page on the Internet. The home page was stored and made available to other users by the Internet access providers.

The case was heard by a district court in the Netherlands on 12 March 1996. The court held that there was no continued copyright infringement for two reasons. First, the portions of the work that were taken could be justified as 'citations' within the meaning of the Dutch copyright legislation. Furthermore, the plaintiff claimed that the works were confidential but this was found to be untrue, since the works that were complained of had already been published in a US court case.

The case against the Internet access providers was also flawed since the court held that the Internet access providers could not be held liable for copyright infringement by the subscribers. There was a possible exception to this rule where there was a clear-cut infringement and the access provider had been warned by the copyright owner that action would be taken against the access provider. Since there was clearly not a clear-cut infringement in the present case, that exception did not apply.

5 State v Lars Licht

As the name might suggest, this case was a Swedish case. It was decided on 22 February 1996 by the Swedish Supreme Court. The case was one of copyright infringement in which the defendant, Mr Licht, was accused of a criminal offence by permitting computer software that belonged to a third party to be uploaded onto, and subsequently downloaded from, the bulletin board service which he ran.

The case was important in that it determined whether a bulletin board owner could be liable in these circumstances, despite the fact that he had not actively permitted the infringing copies of the programs to be made.

The defendant was acquitted on the grounds that he could not be criminally liable under Swedish copyright legislation merely by taking a passive role and allowing third parties to access his bulletin board service. It was only if he had taken some positive measures to permit the copyright infringement that he would be liable.

The court went on to say that it may be difficult to take action against a bulletin board owner who takes some active measures to prevent uploading and downloading of the computer programs in breach of copyright, but where those active measures are insufficient. The court said that it would be perverse that someone who takes some measures to prevent copying would be at a greater risk than someone who, as in the present case, had taken no steps at all. At the same time, the court acknowledged that the result of the case was that copyright owners would lose effective means to protect their works.

6 Peinet Inc v Kevin O'Brien

This was a Canadian case. Kevin O'Brien carried on a business under the name 'Island Services Network'. The plaintiffs, Peinet Inc, had the Internet domain name 'peinet.pc.pa'. They claimed that the defendant's use of the domain name 'peinet' would be confusing with their own corporate name and their own domain name. The defendant was, like the plaintiff, an Internet access provider. The plaintiff alleged that the defendant had infringed its unregistered trade mark rights in the name Peinet.

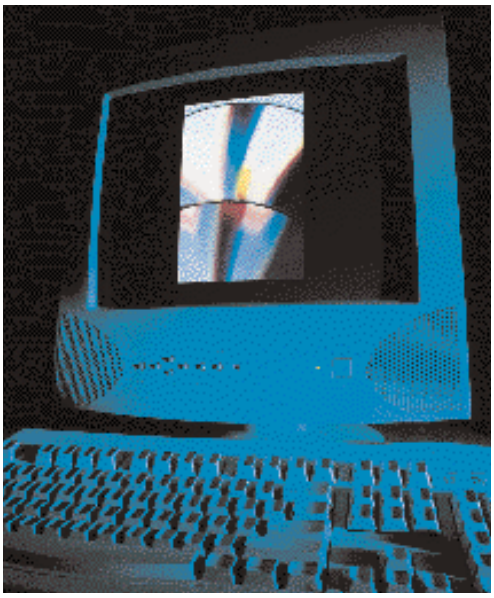
However, the court held that the plaintiff had not proved that it was likely to lose any goodwill. The court was not persuaded that there was likely to be any confusion. Indeed, there was no evidence of actual confusion, despite the fact that the defendants had been using the domain name 'peinet'.

The case appears to have been weakly argued by both parties and one of the comments the court made was that the plaintiff had failed to properly explain the Internet and Internet jargon to the court. The court seemed to hold this fact against the plaintiff when giving its judgment!

7 Intermatic Incorporated v Dennis Toeppen

The facts of this case are fairly straightforward. 'Intermatic' was a trade mark which had been registered since the 1940s by Intermatic Incorporated. Mr Toeppen registered the domain name 'intermatic.com' (along with some 250 domain names based on famous US trade marks). He then tried to extract money from Intermatic Incorporated before releasing the right to use the domain name.

Intermatic Incorporated refused to pay and instead took proceedings in the United States to require Mr Toeppen to release the right to use the domain name. The court did not have much trouble in holding that Intermatic was a famous mark and that, since it had been used exclusively for over 50 years by Intermatic Incorporated, could not be 'acquired' by Mr Toeppen in this manner. Mr Toeppen was ordered to release the domain name to Intermatic Incorporated.



8 Maritz Inc v CvberGold Inc

This case was decided on 19 August 1996 by the United States district court for Missouri. The case is an interesting example of the so-called 'long-arm' legislation of certain US states. The plaintiff, Maritz, claimed that there was an infringement of his trade mark 'GoldMail'. Although the plaintiffs were based in Missouri, the defendants were located on a web site at Berkeley, California. The web site address was 'www.cybergold.com'.

Of course, people throughout the world (including those in the State of Missouri) accessed this web site, which was available to all users of the Internet. In a preliminary judgment on the issue, the court held that Missouri's 'long-arm' statute did permit the case to be tried in Missouri. Since this was only a preliminary decision on whether the court of Missouri had jurisdiction, the substantive issue (of whether there is a trade mark infringement) has yet to be decided.

9 United States v Robert Thomas and Coleen Thomas

This was another example of the US courts having to determine the proper jurisdiction for Internet disputes. In this particular case, a bulletin board was run in California by Mr and Mrs Thomas. The bulletin board contained pornographic material. The material did not infringe the laws of pornography in California but was an obscene image within the pornography laws of the State of Tennessee. The bulletin board operator was prosecuted in Tennessee for inter-state transportation of obscene material.

The US supreme court upheld the conviction of a lower court in these circumstances. The court stated that the (morality) standard that should be applied was the standard of the place where the trial took place – that is, the standard of the state where the bulletin board contents were downloaded.

10 ProCD Inc v Zeidenberg

Although this case revolves around the enforceability of a shrink-wrap licence, it is nevertheless of interest from an Internet point of view. ProCD spent a substantial sum (over $10 million) compiling a nationwide telephone database in the United States. It distributed the database on CD and permitted the general public to purchase it for $150. Businesses were supplied with copies of the CD, but at a higher price.

The copies which were distributed to the public were sold by way of a shrink-wrap licence. This is a licence printed on the cellophane of the packet which requires the person opening it either to accept the terms or else to return the product, in which case their money will be refunded. What Zeidenberg did was to purchase the consumer product and then form a business in order to resell the product by allowing access to it over the Internet. This was a breach of the terms of the shrink-wrap licence. ProCD sought an injunction to stop Zeidenberg breaching the terms of the shrink-wrap licence.

The case came before the seventh circuit court of appeal which held that the shrink-wrap licence was enforceable and could be used to prevent Zeidenberg from doing what he intended. The case is important not least because it is the first to rule directly on the enforceability of a shrink-wrap licence. G

Dai Davis is a partner in the Leeds office of the UK solicitors Eversheds.

No foal, no fee

The British Lord Chancellor's address to the annual Solicitors' Conference in Cardiff in October caused a storm in legal circles: sweeping cuts were to be made to Britain's legal aid system while the 'no foal, no fee' system was to be extended to all areas of civil litigation. Sinead Conneely discusses the background to the changes in the UK

For the last two years in Britain the 'no foal, no fee' method of payment has been in place for personal injuries, insolvency and European human rights cases. Although lawyers are allowed to double their fees, the Law Society recommends that increased fees do not swallow more than 25% of the client's damages.

In September of this year, the Policy Studies Institute published a report based on a review of 200 conditional fee arrangements from a selection of 121 firms, all of which were personal injury specialists. The findings of the survey were diverse, but significantly were accepted by Legal Affairs Minister Geoff Hoon as a substantial vindication of the experiment. The study showed that the Law Society model agreement was used in virtually every instance, and that the 25% upper limit had been accepted by the profession. A fear expressed by some before the survey was published was that the maximum uplift of 100% would become the norm, but this has been shown to be without foundation: the report found that the uplift of 90-100% was charged in only one out of ten cases.

But the news was not all good. In six out of ten cases where the chances of winning had been assessed as very good, the success fee appeared to be too high. A surprisingly high proportion of cases were regarded as having a low chance of success in spite of the fact that, in general, personal injury case have a high success rate. The report concluded that 'this may indicate that some solicitors may be overestimating the chances of failure and therefore charging a higher success fee'. The average uplift charged was 43%, yet the average risk of losing in personal injury cases is nowhere near as high an average as 43% (this is evident from the low premium charged for the Accident Line Protect policy, where a plaintiff can cover himself against the risk of losing a case by paying a premium of £85).

There have been suggestions that conditional fee arrangements have widened access to justice because, in three out of four cases, the client would not have qualified for legal aid. But even if this is so, it is impossible to say that these cases would not have gone ahead regardless.

Nor does the Bar Council appear to be particularly supportive. In his speech to the Annual Bar Conference, Bar Council Chairman Robert Owen reiterated his concerns that conditional fee arrangements had the potential to create a conflict of interest between the litigant and the lawyer giving advice, giving the lawyer too great a financial interest in the outcome of the case.

By contrast, the Law Society has recommended an expansion of the scheme from the start: an editorial in the England and Wales Law Society's *Gazette* suggested that 'the quiet success of the scheme so far, which is largely down to solicitors, makes an early and significant expansion of the scheme wholly sensible'.

The Lord Chancellor appears to be aware of this division of opinion. He suggested in his address to the Law Society in October that barristers have been reared in a culture where they are paid 'win, lose or draw', while conditional fee arrangements are well understood and accepted by solicitors. Nevertheless, he was adamant that 'change is inevitable and desirable', regardless of the fact that it may disturb the financial future of some.

MAIN POINTS OF THE CHANGES

- 'No foal, no fee' to be extended to all civil proceedings, except family cases, from next April
- Legal aid to be withdrawn from claims for money or damages
- Legal aid to be available only for criminal, family and social welfare cases
- In order to qualify for legal aid, cases must have a 75% chance of success
- Contracts to be introduced in civil cases, with the Legal Aid Board 'buying' services from lawyers at agreed prices. Contracts will be withdrawn from firms that repeatedly overestimate their chances of success in court

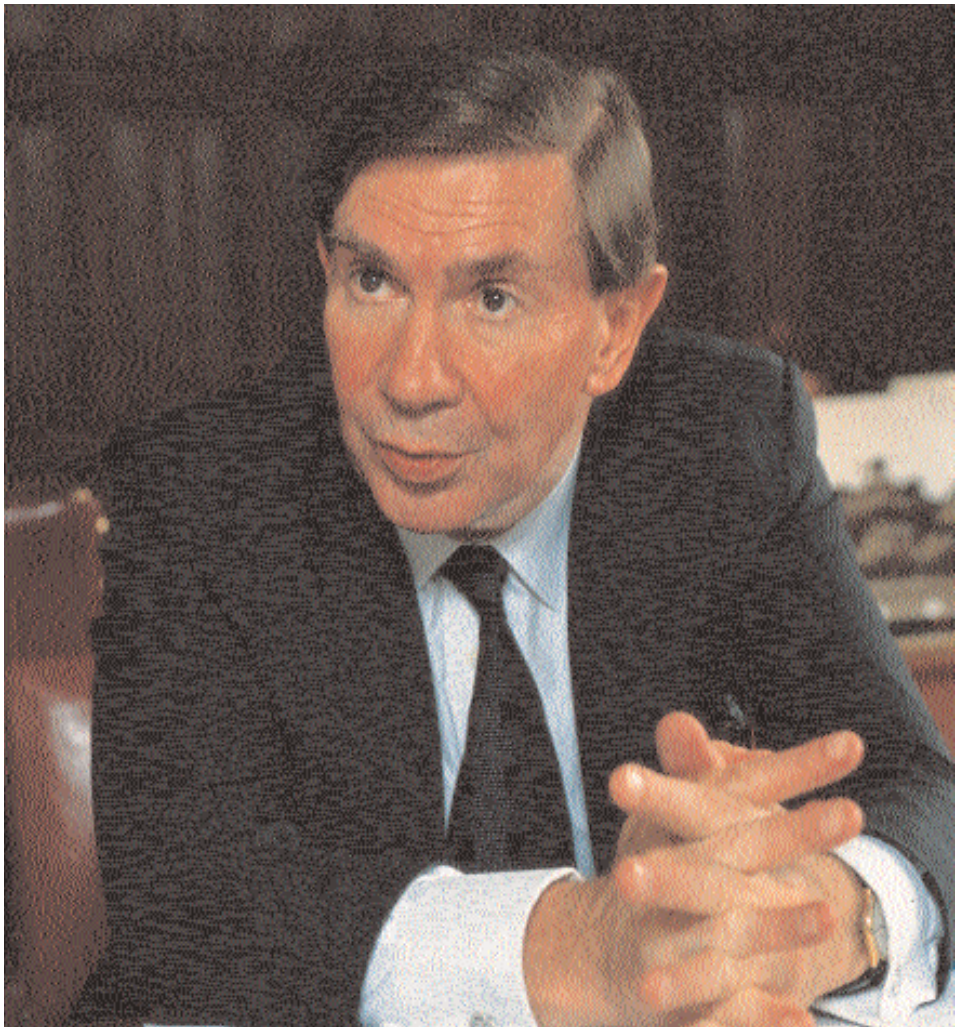
The centrality of insurance

The simple question of whether or not the insurance companies would be prepared to go into the markets and offer reasonably-priced premiums is pivotal to the success or failure of any conditional fee system. The scheme is unattractive to clients without insurance, as vulnerability in relation to opponents' costs remains. The Association of British Insurers' Deputy Director, Tony Baker, has said that where you widen access to the law and extend the availability of litigation 'insurers will have to act, and premiums will go up'.

It is not entirely clear that insurers are committed to the system, or indeed what consultation, if any, has been undertaken with them. However, there have been contrary indications in recent days: it seems that many insurers are, in fact, keen to participate, but will only underwrite cases handled by expert solicitors and at least one article has appeared in *Insurance Day* hailing the Lord Chancellor's proposals as 'goods news for insurers'.

In his address to the Law Society of England and Wales' Cardiff conference, the Lord Chancellor, Lord Irvine of Lairg, confirmed the press rumours that the Government intended to extend conditional fee agreements to all civil proceedings other than family cases by April 1998. He justified this move in terms of access to justice for the middle classes, and the need to provide an incentive to lawyers to take more care in their advice, their assessment of prospects and

in the UK



Britain's Lord Chancellor, Lord Irvine of Laing: wielding the axe over English legal aid

the steps they decide to take in litigation. But it could be argued that the extension of conditional fees is merely a means of sugar-coating the real change, which is the abolition of legal aid in money and damages claims which will now fall under the conditional fee agreements instead.

While the Lord Chancellor stressed the need for consultation with the professional bodies, this appeared to be for the sake of the detail. There is little room to manoeuvre on the decision to extend the scheme as such. The Lord Chancellor's efforts to convince the profession took two routes: the first was to put the benefits of conditional fees in terms of an increase in business for lawyers, while the second – more controversially – suggested that public cynicism towards the profession was at its height and that this system would give lawyers a chance to 'compete in public esteem with teachers, nurses and doctors in terms of what they put into society'.

The Middleton report

October also saw the publication of the *Review of civil justice and legal aid* by Sir Peter Middleton GCB. This report appeared to have been seen and approved by the Lord Chancellor at the time of his Law Society address. Here again, conditional fees were listed as an alternative to legal aid, although his approach would not remove these cases from the remit of the Legal Aid Board entirely, but merely allow the board to take account of the availability of a private arrangement in a particular case. Moreover, he considers that the time is ripe to reconsider contingency fees (that is, where a fee is a proportion of the amount recovered rather than an uplift to the normal bill).

Middleton believes that there is no essential difference in principle between conditional and contingency fees, and, indeed, there have been strong indications that the Government may have this in mind also (Legal Affairs Minister Geoff Hoon has said publicly that contingency fee arrangements 'may in fact have a place in our legal system'). Middleton refutes the suggestions that the negative experience of contingency fees in the United States is likely to be repeated in the UK. Considering the cost-shifting rule and the fact that juries in Britain do not generally set damages, he feels that such concerns could be misplaced.

The aftermath

Some vital questions remain unanswered, particularly the commitment of both the insurance industry and the legal profession to the proposals. Without the loyalty of both, any scheme is unlikely to succeed. Contingency fee arrangements cannot apply in criminal, family or public law work, where legal aid must continue. Moreover, it has been suggested that there is a chance that the work of lawyers will be complicated as conflicts of interest become more likely. Increased litigation will mean inevitable delays in an already overcrowded system. Nevertheless, a decision has been reached, and it appears that lawyers in the UK have been presented with a virtual *fait accompli*.

This short article seeks only to forewarn solicitors in Ireland of the issues which are likely to arise in any debate on the subject. Let's hope the Irish Government keeps a firm eye on the progress in the UK before it seeks to implement any similar strategy over here. G

Sinead Conneely BA LLB (NUI) LLM (Cantab) is a research assistant in the company and commercial law team of the UK Law Commission.

Communications technology and the Irish legal industry

Experience overseas indicates that the legal industry in Ireland can be among the first to be able to enjoy significant cost savings and to exploit new service developments arising from the technical advancements of a modern digital telephone network

Services such as e-mail, electronic file transfer, paging systems and video-conferencing are enabling people to communicate in new ways, almost instantly, and over any distance, at much lower costs than conventional communications channels. At its most basic, the simple installation of e-mail facilities means that an individual has the power to receive and send any computer-generated file which could be a short message, a document or a photograph, to any number of other e-mail users. And the mail can be despatched in encoded format, thereby barring any unwanted recipients from seeing it. These security features, combined with ease of use and low-cost of service, have accelerated the adoption of e-mail by many Irish solicitors.

The introduction of videconferencing is expected to provide an effective alternative to travel. An example of this has recently arisen in Britain with regard to Her Majesty's Prison Service. Three quarters of Britain's 120 escaped prisoners last year made their break while in transit. The UK prison service now plans to use videoconferencing for pre-trial hearings in criminal cases, according to a recent report in *Communications week international*. It is said that the prison service hopes to reap huge time and cost savings by beaming the accused's image into the courtroom from jail.

Aside from the cost savings that can be gained through videoconferencing, the adoption of the technology in a courtroom environment demonstrates the security advantages conferred by using videoconferencing. This security may be an attractive proposition for Irish courts. In California, virtual meetings between prisons, courts, lawyers and probation officers save the state $300,000 annually. In Australia, every courtroom is equipped with video links.

The potential usefulness of videoconferencing in Ireland is not confined to the courtroom. Today, every solicitor that has to journey between Dublin and Cork or Limerick regularly in order to attend business meetings has also the alternative option of exploiting video technology to achieve the same purpose, making the physical journey, in many cases, unnecessary. The ability to videoconference arises as a result of the on-going installation of high capacity ISDN links throughout the Irish telephone network. With ISDN-compatible equipment installed on computers at both ends of the network, the user can take full advantage of a new generation of telecoms services. And the advantages are many, with the capability available on standard equipment already to carry out, for example, on-line searches of the Land Registry, and the Companies Registration Office or to surf the Internet in search of precedent cases from local or other jurisdictions. This service is available today from LawLink on a nationwide basis.

The cost of these facilities is relatively inexpensive. The simple fact is that by using electronic communications links a person can avoid the investment of time, energy, and the risks to personal safety and security inherent in undertaking an unnecessary journey. Telecom Éireann has appointed LawLink as an authorised distributor to promote advanced communications services to members of the Law Society of Ireland.

For more information, contact Eugene Smyth, Head of Reseller Channels, Telecom Éireann (esmyth@telcom.ie), or Andrew Fraser, Director, LawLink (lawlink@ifg.ie).

Is your property intellectual?

Most businesses possess trade marks which - when equated with goodwill - represent valuable and all-too-often unprotected corporate or business assets.

MacLachlan & Donaldson specialise in protecting, registering and managing intellectual property rights - including patents, trade marks, technology licences, industrial designs and copyright. We also provide expert advice on and assist in intellectual property litigation covering infringement of intellectual property rights and passing off. Furthermore, we are the only intellectual property management firm in Ireland accredited with the prestigious ISO 9002 Quality Award.

If you are not sure how vulnerable your clients' intellectual property rights might be, MacLachlan & Donaldson can advise and perhaps safeguard some of your clients' most valuable assets.

For further information on how we can help you or your clients, contact Cliona

ISO 9002 MacLachlan & Donaldson

excellence IRELAND

..making Ireland a centre for Excellence

Excellence Ireland (formerly the Irish Quality Association) is the key provider of Business Improvement Programmes in the Irish Market. The most well known programmes culminate in the awarding of the Q-Mark, Hygiene Mark and the recently launched Business Excellence Award.

These programmes, along with the training, assessment and facilitation services offered by Excellence Ireland enable Irish business to compete and earn increasing profits.

If you are interested in learning more, contact:

Seán Conlan, Chief Executive or Andrew Conlan, Development and Marketing Manager at:

Approved Quality System

HYGIENE APPROVED

business excellence

Working on Quality Street

How can you make sure that you are delivering a quality service and that your clients know all about it? The easiest way is for your firm to win one of the two hallmarks of quality, ISO 9000 or the Q Mark. Barry O'Halloran finds out what's involved and speaks to some firms that have achieved it

Nearly all Irish manufacturers have at least one of two recognised quality marks: the internationally-rated ISO 9000 or the Q Mark, the standard promoted by Excellence Ireland (formerly the Irish Quality Association).

Systems like this are all very well when you're making CDs and computer parts that fit a standard set of specifications, but are they relevant to a solicitor's practice where every situation is different? Do they really make a difference in litigation or conveyancing?

The short answer is yes. Both the ISO certification and the Q Mark allow you to lay down a set of procedures which are followed for every client, and will help make sure that nothing gets missed. Introducing a quality management system will not make you a better legal adviser, but it could leave you with happier clients.

Failure to communicate

Last year's annual report of the Law Society showed that solicitors' failure to communicate with their clients was the 'single biggest cause of complaint' from the general public. Implementing a quality system could improve communication with clients and help you to get a clearer understanding of what they are looking for.

According to the Law Society's Director of Finance and Administration, Cillian MacDomhnaill, these quality marks are effectively management systems which help to ensure that you and your staff or partners are consistent.

'It's a documented management system', he says. 'The idea is to develop various systems in the office for dealing with each case and client. The documents are drawn up and then the practice is audited every six months or once a year to ensure that you are sticking by the rules.

'For the smaller firms particularly, it forces them to put a case management system in place. A clear procedure is laid down for everything that must be done which includes a consultation note, letters that have to be written and all the relevant dates, including statute bars. It reduces the chances of a cock-up.

'Another benefit is that clients will recognise the practice's quality mark. Because some large organisations and businesses have these management systems in place, they insist that all their suppliers do the same to ensure consistency throughout the chain of supply.

'This means they could insist that their solicitors also put these systems in place. That is not happening here much at the moment, but it is happening in the UK and that is sure to spread to Ireland. That could affect large firms with large commercial clients. You might have to get ISO or the Q Mark to survive'.

Norman MacLachlann of trade mark agents MacLachlann and Donaldson agrees that ISO makes the practice 'better and more efficient'.

More competitive

John Purcell of the National Standards Authority of Ireland says quality rating will make firms more competitive. 'It can be very valuable for them', he argues.

With an eye on this trend, the Law Society is this month launching a drive to encourage more firms to go for one or other of the quality ratings. All members will be getting a pack that includes a comprehensive series of questions and answers about ISO 9000 and the Q Mark.

By the beginning of this year, around a dozen Irish practices or corporate law departments had one or other quality mark. A number of others are working on it or considering it. In Britain, an estimated 100 practices have the ISO 9000 rating.

Streamlined system

Pat O'Connor, the Society's Senior Vice President, introduced the Q Mark to his Mayo practice, P O'Connor and Sons, five years ago. 'Because I was getting so heavily involved in the Law Society, I knew I would be away quite a lot', he says. 'I wanted to document the procedures that would have to be followed by the staff when I was away.

'The advantage is that you have a streamlined system in your office. The staff and solicitors know what they should be doing. It is also a good way of building a team focus and motivating people in the firm'.

The system is applied right across P O'Connor and Sons' three offices in Swinford, Kiltimagh and Belmullet. The firm has applied it so rigorously and successfully that it won Excellence Ireland's overall prize for quality in the service industry in 1995 and 1996. The firm was the second solicitors'

practice in the country to get the Q Mark.

Streamlining and laying down a standard set of procedures was very much on Peter McDonnell's mind three years ago when he amalgamated three firms to form Peter McDonnell and Associates (up to recently known as MJ O'Neill and Son). He used the ISO 9000 mark to do this.

'It helps you to decide what you are doing and what the procedures are. It is also very good at getting you to focus on what you are actually doing and what's paying the bank manager. You are forced to decide what's paying and what is not'.

Way of life

The firms say that after implementing the system, it becomes integral to the way the company handles its work. 'You have to apply yourself at first, but then it becomes a way of life for everyone', says O'Connor. They also agree that quality certification is a good marketing tool and can attract new customers.

There is very little difference between ISO 9000 and the Q Mark, according to McDonnell, who introduced the latter standard recently. Both involve writing down all the steps that have to be followed and then following them. But ISO is an international standard, recognised in 300 countries around the world, while the Q Mark is only recognised in this country.

The other difference is the way they are audited. ISO is audited twice a year by independent consultants. They can simply decide to call in without warning, but McDonnell says they generally phone a few days in advance to let you know they are coming.

The Q Mark is audited once a year by Excellence Ireland. The same rules apply. Both systems have to be internally audited twice a year. This means that someone has to be nominated to take responsibility for ensuring that everyone else in the firm has been sticking to the procedures. And everyone means everyone: so even if you are the firm's principal, someone still has to keep tabs on you and pull you up if you fall down on the job.

The external audits take one day to complete. ISO 9000 is controlled by the International Organisation for Standards in Geneva, but there are a number of certification bodies in this country with the right to carry out audits.

To obtain certification, you apply for registration once you have written down and implemented your management system. The documentation is sent to the relevant body with the application. The certification body will then tell you if it has any deficiencies.

Once these have been dealt with, the body then sends out an assessor to audit your business. If no major discrepancies are found, you get your certificate; if there are problems, these have to be ironed out before you join the select band of quality-rated solicitors.

It takes an average of eight months for a practice to reach the standard, depending on size, commitment and if the firm is getting outside help from one of the growing number of quality consultants in this country.

Broadly speaking, the auditors look for two things:

- That your management system is written to ISO or Q Mark standards and addresses all the requirements of these standards, and
- That your business complies with the procedures.

Remember: your quality certificate can be lost. All registered businesses are periodically reassessed to ensure they are sticking to the system.

Implementing the system

There are two basic categories of cost: implementation and accreditation. Implementing the system includes the time taken to evaluate your current practices and making the changes that are needed. The cost depends on the size of the practice and how well it already conforms to ISO 9000 or Q Mark standards. The work can be done by an in-house team or by hired consultants.

The accreditation fees also depend on the size of the practice and the time it takes the certifying body to audit the business. These fees generally range between £600 and £1,200 for the first assessment. After that there is an annual charge of £600 to £1,000.

It is not strictly necessary to hire outside consultants, but the Law Society recommends that you do, as this cuts the time taken to get accreditation. Interpreting the standard's requirements could take a lot of time and effort, even though it is not impossible to do this on your own.

MacDomhnaill says that it is a good idea to discuss your plans with a qualified consultant who can then give you a package tailored to your needs. One way of going about this might be to go to a firm that has certification and getting them to tell you who helped them implement their system.

Finally, if you are going for certification, be sure that you and your staff are fully committed to it. These systems demand that everybody plays their part, and if some people are found wanting, you could fall at the first fence. G

Pat O'Connor: 'ISO is a good way of building a team focus and motivating staff'

Cillian MacDomhnaill: 'You might have to get ISO or Q Mark to survive'

SBA: the year in review

The work of the Solicitors' Benevolent Association must remain confidential and for that reason it cannot get the publicity it deserves. The Association is currently giving financial assistance to 60 people, 52 of whom reside in the 26 counties, two in England and six in Northern Ireland. Geraldine Pearse describes the SBA's work over the last year

There are currently 22 directors, three of whom reside in Northern Ireland. They meet monthly in Blackhall Place, with a meeting in Belfast every other year. Although the meetings take place in Blackhall Place, the Association is entirely separate from the Law Society. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants. They also keep the income and expenditure position under regular review and employ a firm of stockbrokers for advice on investments. The directors make themselves available to those who may need personal or professional advice, a service which recipients have found very helpful in the past.

An analysis of the age profile of those currently in receipt of grants from the Association is shown in **Figure 1**. The beneficiaries are those to whom the grant is made payable. Those beneficiaries themselves are supporting a total of 66 dependant spouses and children. Accordingly, the total number of people currently benefiting from financial assistance provided by the Association is 126.

At the start of the Association's financial year on 1 December 1996, the total number in receipt of grants was also 60 people. However, during the year one of these died and five no longer required assistance, mainly because either the beneficiary or his or her spouse had obtained employment.

The six new beneficiaries in 1996 are supporting a total of 17 other dependants indicating that in recent years applicants tend to be from the younger age groups and have young families. Because of the increase in the number of dependants, larger individual grants are necessary. This is apparent from a comparison of the number of persons assisted and total grants paid out in recent years. For example, 70 people received a total of £131,931 in 1992; in 1996, 72 people received a total £187,260.

The Association has been extremely fortunate in the past three years. It has received single legacies of £50,000 in 1995, £20,000 in 1996 and £37,000 in 1997. But for these, the Association would have a very large deficit indeed. Legacies of this magnitude have been unprecedented and may not be repeated. They will only enable the Association to continue payment of grants out of income until the annual subscriptions paid by members of the profession North and South are received in early 1998.

FIGURE 1
AGE PROFILE OF BENEFICIARIES

Age	No of beneficiaries
30-39 years	3
40-49 years	11
50-59 years	14
60-69 years	8
70-79 years	12
80-89 years	10
90-99 years	2

The grants are provided solely for maintenance and day-to-day living expenses. Sometimes they are provided on a loan basis. In that instance, applicants are asked to sign a form of loan agreement undertaking to repay the loan whenever the applicant is in a position to do so or on his or her death if there are sufficient assets.

Because of the increase in demand for assistance, donations are very welcome. The Association is very grateful to all those who contribute by way of annual subscription paid with the fee for their practising certificate, to the Law Society and organisers of special events and for donations from individuals and bar associations. The less fortunate members of the profession and their dependants who benefit from such generosity are extremely grateful and their regular letters of gratitude are testament to this. G

Geraldine Pearse is secretary of the Solicitors' Benevolent Association.

Telework world

More Irish people are avoiding traf superhighway to the office. Grainne Roth it works fr

Cheaper and more advanced technology has freed workers from the office prison and allowed them to choose where they serve their time. Personal computers, telephones, modems and faxes have turned the home into the workplace of the 'nineties.

Over 100,000 Irish people do some or all of their work from home or some other remote location. An estimated 15,000 of these are full-time teleworkers. In Europe around two million people now work this way. The EU believes that because most continental companies are small – the average size is seven workers – teleworking can boost their competitiveness.

Following the 1994 *Bangemann report on Europe and the global information society*, the EU set out to convert ten million people to teleworking by the year 2000. But, despite its efforts, many people are still unsure of what teleworking actually is.

Its main characteristics are the distance between the employee and the employer or customer, and the technology which connects them. Many teleworkers operate from their own homes although this is not an absolute requirement; alternatives include call centres, back offices, mobile working and telecottages.

Obvious advantages

Teleworking benefits employers and workers. One of the most obvious advantages from the employer's perspective is a reduction in overheads because less office space is required when a section of the workforce is operating off the premises. But even more important is teleworkers' increased productivity, which can be anything between 10% and 40%.

Because location is not an obstacle, employers can tap into a wider skills base than is possible with traditional working practices. They can also access specialist skills which are needed only occasionally. The single biggest advantage for workers is probably that they spend less time commuting. Teleworking also allows more flexibility for people with family and other commitments. For rural people, it increases opportunities for getting work. But its main downside is the lack of contact with colleagues.

A 1995 survey commissioned by Forbairt and Telecom Éireann found that 34% of Irish people were willing to telework. The same report predicted that a growing number of small firms and individual professionals would use teleworking more over the coming years.

While many teleworkers are professionals, few appear to be solicitors. Phoning around several of the bigger firms revealed that while most people think teleworking is a positive idea, they have not really considered it in any depth. Many people believe that it will become more of an option in the future, but only for certain types of work. At the moment, it appears that solicitors who are using technology to operate from home are doing so only to get through extra work rather than to reduce their workload.

One personnel manager in a large solicitors' firm said that, while nobody in her office is yet teleworking on a formal basis, she believes it makes perfect sense if the technology is available. Because of the benefits of providing more office space as well as an alternative to commuting, she fully endorses teleworking. But she pointed out that law firms are unlikely to be innovators in this area.

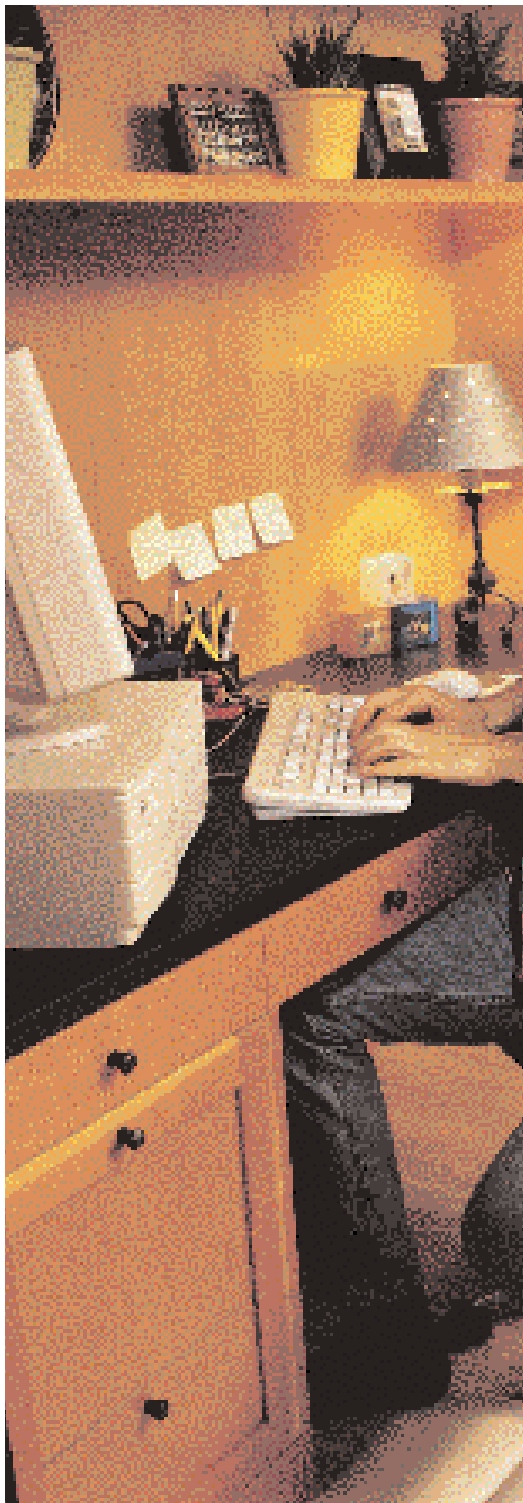
Another personnel manager said that a number of her firm's solicitors had expressed an interest in working from home in the evenings and on weekends, rather than as an alternative to working in the office. She argued that teleworking is not really suitable for most solicitors because they have large numbers of clients and many in-house meetings.

Availability of staff

One common theme that seemed to emerge was that availability of staff was a key issue for firms. If you have a central location, clients are accustomed to dropping in at any stage during the day. This facility would be greatly reduced if a large number of staff were working outside the office.

John Shaw, former chairman of the Law Society's Technology Committee, believes that teleworking could become more common in the future. 'It would probably be suitable for solicitors who are working on large transactions but I think that it has a relatively limited application at this stage', he says. 'Some solicitors can currently plug into their office network and work at home on weekends'.

Don McAleese of Matheson Ormsby Prentice believes that teleworking will certainly become more widespread in solicitors' firms in the future. 'If you think about it, the telecommunications facilities are in place', he



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says. 'Incoming calls can be patched through to teleworkers while traditional office facilities such as the library are becoming less important as more information can be accessed electronically'. But he warns that supervising younger solicitors will be an issue if teleworking increases.

Teleworking law firm

While none of the Irish firms seem to have embraced teleworking fully, London-based lawyers Davis & Co recently won BT's *Work smarter award* for its teleworking system, which involves personnel spending most of their time working from their own private offices at home. The firm was set up 1993 and now employs 45 people, including 20 solicitors.

Partner Christopher Davis said earlier this year in the British *Teleworker* magazine that a law firm is almost the ideal organisation for teleworking because solicitors tend to work almost entirely on their own. But the magazine believes that Davis & Co is the only City law firm relying on full-time teleworking.

Teleworking cut Davis & Co's overheads and allowed the firm to offer cheaper and more competitive rates to its clients. According to the magazine, the firm charges around £150 an hour, compared with normal London rates of between £170 and £350 an hour. In addition to being able to provide reduced charges, the firm has the potential to grow without having to invest money in its infrastructure, which makes big difference in a city where premises can cost up to 20% of your turnover.

The main legal issues relating to teleworking involve health and safety, planning regulations and data protection. Teleworkers also need to find out about their status as either self-employed or employed on a PAYE basis. Other concerns include VAT, medical insurance and pension schemes. The latest edition of the *Teleworking handbook* by Imogen Bertin and Alan Denbeigh includes a chapter on staying safe and legal.

Although the Health and Safety Authority is entitled to inspect all workplaces, including those in the home, teleworkers are rarely inspected because they are not on the HSA's register. However, all health and safety at work laws apply to teleworkers operating from home and a HSA inspector can inspect a home-based workplace without applying for a court warrant. The most relevant piece of health and safety legislation for teleworkers is probably the EU's *Display Screen Directive* (90/270/EEC).

The law says that homeworking is not permitted without planning permission, but this is rarely enforced as any changes are usually deemed to be temporary. Decisions as to whether any change is material are based on alterations to the property's appearance and whether the change will cause a nuisance or increased traffic.

While the data protection laws are very complex in the UK, they are relatively straightforward in Ireland, where only those who are directly involved in processing financial or personal data as the primary part of their business must register with the Data Protection Registrar. But teleworkers are obliged to protect any personal data held on computer.

There is some confusion about the distinctions between the self-employed and PAYE workers in the eyes of the Revenue Commissioners. Self-employed people have a contract for service while PAYE employees have a contract of service. But the Revenue Commissioners can decide that contracts for services are actually contracts of services and charge PAYE, PRSI and penalties. There is also a certain amount of confusion when the same teleworker is generating both PAYE and self-employed incomes.

Reclaiming VAT

If an Irish VAT-registered teleworker carries out a service for a VAT-registered company located in another EU country, no VAT is charged. This is seen as a particularly important rule for Irish teleworkers because of the relatively high VAT rate here and the bureaucracy involved in overseas clients trying to reclaim any differences in rates. But the *Teleworking handbook* points out that this VAT category is not widely known in the regional Revenue offices.

Teleworkers should also be aware that their social welfare rights are considerably reduced after a year of self-employment. If their employers are not paying PRSI, they will probably need to take out their own health insurance and pension schemes. G

Grainne Rothery is a freelance journalist specialising in technology issues.

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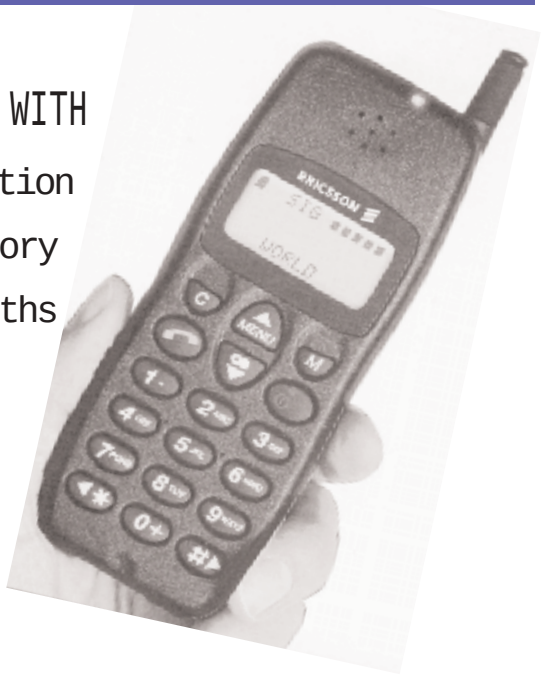

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Committee reports

COMPANY AND COMMERCIAL LAW

Companies (Amendment) Bill

A Bill is planned for early in the new year to deal with certain matters relating to examinership and audit, two of the areas covered by the first report of the Company Law Review Group, which reported in 1994. No date has been indicated for its introduction, but Spring 1998 is now considered the most likely time.

Directors' reports

The Oireachtas has continued its approach to the amendment of company law by diverse *mesnes* statutes. This time it is the *Electoral Act, 1997* and the *Prompt Payment of Accounts Act, 1997* which provide amendments: the former requiring disclosure of political donations of over £4,000 in the directors' report, and the latter requiring auditors of state bodies and companies to report on compliance with the latter Act. The Government has announced that it proposes making changes to the *Electoral Act*: where better to make them than in the forthcoming *Companies (Amendment) Bill*?

Companies Registration Office

The Companies Registration Office (CRO) is proposing to introduce a new computer system. It is anticipated that this new system will go live on Monday 19 January 1998. Staffing levels have also recently increased at the CRO and there are future staff increases planned for next year.

Company law precedents

Since the 1996 special general meeting of the Law Society, a working group of the Company and Commercial Law Committee has been working with a publisher to put together a set of commercial law precedents for use by Irish practitioners. In the meanwhile, the attention of practitioners is drawn to the extensive precedents published by Butterworths and FT Law and Tax (formerly Longmans) which are available for consultation in the Society's library. While based mainly on English law, they can be of considerable.

Paul Egan

EDUCATION

Law Society prizes

AIB Conveyancing Prize
£500 for best conveyancing result on Professional Course in any calendar year.

Law Society Conveyancing Prizes
£250 for second best conveyancing result on Professional Course in any calendar year. £150 for third best conveyancing result on Professional Course in any calendar year.

Butterworths Prize
£250 book token for best result in property in the final examination – first part annually.

Findlater Scholarship
£500 for best result on combination of Professional and Advanced Course results.

Guinness & Mahon Prize
£250 for best taxation result on the Professional Course.

Halpin Prize
Debating prize awarded through SADSI.

John B Jermyn Prize
£50 for best result in probate.

King's Hospital Prize
£100 for the highest results in the leaving certificate achieved by a King's Hospital student.

Overend Scholarship
£250 for best result in the final examination – first part.

Patrick O'Connor Memorial Prize
£200 for best result in equity in the final examination – first part.

JP O'Reilly Memorial Scholarship
Award of up to £10,000 awarded annually to contribute towards the cost of attendance at an MBA course.

Law School bursaries
Any student who feels that his or her own or available family resources are inadequate to fund the Society's course of study should make an application for a bursary. Application forms are available from the Law School reception.

Education Committee

TAXATION

The following is a case summary, prepared by Brian Bohan, which the committee believes the profession should be aware of.

Hurlingham Estates Limited v Wilde & Partners

Management buy-out; solicitor acting in acquisition of shelf company and shares, assignment of lease, shareholders and service agreements etc; solicitor claimed his remit was limited by excluding any duty to advise on tax; structure of the scheme led to charge to tax which could have been avoided; client sued solicitor for recovery of tax, associated costs and interest.

Held: An agreement to limit a solicitor's duties had to be clear and unambiguous to have any legal effect; such limitation is not a normal term of a solicitor's engagement. Any reasonably competent solicitor practising in the field of conveyancing or commercial law would be expected to be aware of the tax trap. The solicitor had a duty to advise the client of the existence of that trap.

Facts of the case

Hurlingham Estates Limited was a property development company which was owned by S and his wife who were its directors. S and another individual G were parties to a management buy-out of another company, ALM Limited, by its key employees, T and his wife. The four parties agreed:

1. To increase the share capital of ALM from 2 to 1,000 shares to be held 51% by Mr and Mrs T and 49% by G and S
2. To execute a shareholders' agreement
3. To enter service agreements between ALM and Mr and Mrs T
4. To acquire an 'off the shelf' company to acquire the lease of the premises in which ALM traded, for £200,000, from the lessor (which also owned ALM) and for T and his wife to acquire the two shares in ALM for £1
5. For S to lend to the shelf company a greater part and G a lesser part of the £200,000 required to purchase the lease, at interest, repayable by instalments
6. For ALM to indemnify the

Diploma in Legal French

The 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 a 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.

shelf company against all liabilities on the lease
7. For ALM to repay to the shelf company the £200,000 loan and interest and, on payment of the last instalment, the shelf company should assign the lease to ALM.

The clients met the conveyancing and commercial partner of Wilde and Partners, instructed him of their agreement and asked him to act for them on the transaction. He agreed to do so. He agreed to acquire the necessary off the shelf company, to act on the acquisition of the shares and the assignment of the lease and to draft the shareholders' agreement and service agreements.

Later, the clients informed their solicitor that they had agreed that Hurlingham Estates Limited (which was to occupy a neutral non-profit and non-loss-making role in the transaction) would take the place of the shelf company as assignee of the lease and that Hurlingham should grant a sublease to ALM on the same terms as those contained in the lease. The solicitor agreed to act for Hurlingham on the same terms as he had agreed for the proposed off the shelf company.

The solicitor raised a number of questions directed to taxation matters in preliminary enquiries to the solicitors acting for the lessor and the indemnity against corporation tax which was given in response was incorporated by the solicitor in the documentation. Later, the solicitor gave advice on the liability to pay VAT in respect of the rent payable under the lease and he undertook to research certain taxation questions raised by the lessor's solicitors. Finally, he advised that a sum was payable for stamp duty.

The structure of the scheme was such that it exposed Hurlingham to a charge to tax under the UK equivalent of section 83(1) *Income Tax Act, 1967* on a proportion of the premium. It also incurred associated costs. That charge to tax and those costs could have been avoided if a different structure had been adopted.

Hurlingham claimed damages against Wilde & Partners to recover the sums expended together with interest.

The solicitors contended: a) when accepting instructions, the partner acting had obtained the agreement of the clients that his remit would be limited by excluding any duties to advise on tax and that the clients would seek tax advice elsewhere; and b) that even in the absence of such a limitation, the solicitors had been under no duty to advise or warn Hurlingham of its exposure to a tax charge. The solicitor confirmed that he had no knowledge of tax law and was unqualified to give tax advice or to appreciate any tax risk save in the simplest situations.

It was held that:
1. An agreement to limit a solicitor's duties had to be clear and unambiguous if it was to have any legal effect; the client had to be fully informed as to the limited reliance he might place on the solicitor and the reason for it
2. Such a limitation was not a normal term of a solicitor's engagement
3. The clients might be better advised to go to another solicitor who was not so handicapped and could be retained with no such limitation on his duties.

It was pointed out that there was no written record of the alleged limitation nor had the alleged limitation been recorded in the solicitor's attendance note of the meeting. It was not confirmed in a subsequent letter. The solicitor's evidence was unsatisfactory and unconvincing and the judge took the view that he assumed the full role in the transaction and the responsibilities to be expected of a solicitor.

The judge also held that any reasonably competent solicitor practising in the field of conveyancing or commercial law would be expected to be aware of the concealed trap (in section 83(1) *Income Tax Act, 1967*). The solicitor had the duty to advise Hurlingham of the existence of that trap and should have appreciated that Hurlingham needed his advice and guidance in relation to the tax liability.

The judge also commented that the other remarkable feature was that the solicitor was unaware of the provisions (of rules 1.1 and 1.2 of the current *A guide to professional conduct of solicitors in Ireland*: conflicts of interest) prohibiting solicitors accepting instructions from two or more clients where there is a conflict of interest between them.

Some of the comments of the judge are worthy of mention:
- 'I find it difficult to comprehend how a solicitor possessed of no real knowledge of tax law can be allowed to occupy such a position, at any rate in a case such as the present, where he does not have the necessary tax law back-up'.
- In relation to the lack of a written record of the limitation of the solicitor's duties: 'Common-sense requires that all these matters should also be recorded in an attendance note of the meeting and should subsequently be recorded in a letter to the client'.
- 'A solicitor is ordinarily retained to advise on matters of law and not of business, and accordingly, in the absence of unequivocal instructions to advise on a matter of business will not (save in exceptional circumstances) be held to have any duty to advise on a matter requiring a business decision'.
- 'A solicitor retained on a transaction may not be under a duty to advise on some legal aspect of the transaction, for example, taxation because it may be reasonably apparent to him that

Postal polls on general meeting resolutions

The AGM 1997 (held on 6 November 1997) approved of an amendment to provide for the following.

1. That any resolution presented and debated at an annual general meeting or at a special general meeting could be the subject of a poll of all the members of the Society or (where appropriate and reasonable having regard to the subject matter of the resolution) of a relevant geographic section of the members of the Society.
2. That such a poll could be called for immediately prior to the taking of a vote on the resolution by:
   i. the chairman of the meeting (usually the President of the Society), or
   ii. at least 25% of the members present (being not less than 21 in number) at the particular annual general meeting or special general meeting, or
   iii. a request in writing to that intent signed by at least 100 members of the Society presented to the Secretary of the Society (the Director General) at least 48 hours prior to the meeting
3. That a memorandum summarising the arguments advanced at the particular meeting in favour of the resolution and a memorandum summarising the arguments advanced against the resolution (not being longer than 500 words each) would be circulated with the voting paper as part of the poll procedure
4. That the voting papers would be sent out to members within a period of not more than 28 days following the passing of the resolution and would be required to be returned by a specified date being not less than ten days thereafter
5. That, if approved by a majority of those voting, the resolution would be deemed to be a resolution binding in the Society and if not so approved would be deemed to be a resolution **not** passed at the meeting in question
6. That the form of voting paper both for a poll on a resolution presented to and debated at an annual general meeting or special general meeting or for a poll by the Council under existing bye-law 5(5) (on an issue or issues connected with the business of the Society) would be scheduled to the bye-laws.

advice on that aspect is not needed by the client and accordingly is not within his remit, but within the remit of someone else, for example, a substantial client's expert tax department. Turning to the facts of this case, there were no specific terms of the solicitor's retainer limiting what would be the ordinary duty of a solicitor instructed on such a transaction. There was no specific reference to tax on 29 May 1991, but that does not mean that Mr Rowe did not assume responsibilities to advise as to tax'.

Taxation Committee

Correction

In the last issue of the *Gazette*, a briefing on professional indemnity insurance was published. At paragraph 3(b), the statement was made that the minimum level of cover of £350,000 for each and every claim, excluding costs and expenses. The statement ought to have stated that 'the minimum level of cover of £350,000 each and every claim including claimant's costs and expenses, but excluding the insured's costs'. We apologise for the error.

LEGISLATION UPDATE: NOVEMBER 1997

ACTS PASSED

No Title of Act and date passed

36 ***Interpretation (Amendment) Act, 1997* (4/11/1997)**

Provides that where a common law offence is abolished, abrogated or repealed by a statute, proceedings for any such offence committed before such abolition, abrogation or repeal may be instituted, continued or maintained in respect of such offence as if the offence had not been abolished, abrogated or repealed. Necessitated following uncertainty over the legality of provisions of the *Non-Fatal Offences against the Person Act, 1997*, which abolished certain common law offences, replacing them with new statutory offences.

Commencement date: 4/11/1997

***Seventeenth Amendment of the Constitution Act, 1997* (14/11/1997)**

Inserts a new sub-section 28.4.3 in the Constitution which provides that the confidentiality of discussions at meetings of the Government shall be respected in all circumstances except where the High Court determines that disclosure should be made either in the interests of the administration of justice by a court, or by virtue of an overriding public interest pursuant to an application in that behalf by a tribunal appointed by the Government to enquire into a matter of public importance. Addresses the issues arising out of the Supreme Court decision in *Attorney General v Hamilton (No 1)* [1993] IR 250.

Commencement date: 14/11/1997

37 ***Merchant Shipping (Commissioners of Irish Lights) Act, 1997* (18/11/1997)**

Empowers the Commissioners of Irish Lights to provide radio-based aids to marine navigation and gives retrospective effect to these powers, where appropriate. Arises out of a Supreme Court decision, *Keane v Commissioners of Irish Lights*, 18/7/1996, which held that the Commissioners' powers under the *Merchant Shipping Act 1894* could not be interpreted to include the provision of radio-based aids to marine navigation which were unknown at the time of enactment.

Commencement date: 18/11/1997

SELECTED STATUTORY INSTRUMENTS

359 **Refugee Act, 1996 *(Sections 1, 2, 5, 22 and 25) (Commencement) Order 1997***

Appoints 29 August 1997 as the commencement date for sections 1, 2, 5, 22 and 25 of the Act.

360 ***Dublin Convention (Implementation) Order 1997***

Gives effect to the State's obligations as a party to the convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities done at Dublin 15/6/1990 (*Dublin Convention*). Among other things, it puts in place procedures for determining whether an application for asylum should, in accordance with the terms of the convention, be dealt with in the State or in another convention country.

409 **Wireless Telegraphy Act, 1926 *(Section 3) (Exemption of Mobile Telephones) Order 1997***

Provides for the exemption of GSM and TACS mobile telephones from the requirement to be licensed under the *Wireless Telegraphy Act, 1926*.

410 **Wireless Telegraphy Act, 1926 *(Section 3) (Exemption of Cordless Telephones) Order 1997***

Provides for the exemption of cordless telephones from the requirement to be licensed under the *Wireless Telegraphy Act, 1926*.

440 **Hepatitis C Compensation Tribunal Act, 1997 *Regulations 1997***

441 **Hepatitis C Compensation Tribunal Act, 1997 *(Number of Ordinary Members of Tribunal) Regulations, 1997***

443 **Hepatitis C Compensation Tribunal Act, 1997 *(Establishment Day) Order 1997***

Appoints 1 November 1997 as the establishment day.

444 **Hepatitis C Compensation Tribunal Act, 1997 *(Reparation Fund) (Appointed Day) Order 1997***

Appoints 1 November 1997 as the appointed day for the purposes of section 11 of the Act.

445 ***EC (Application of Open Network Provision to Voice Telephony) Regulations 1997***

Gives effect to Directive 95/62 the purpose of which is to provide for the harmonisation of conditions for open and efficient access to and the use of fixed public telecommunications networks and public telephone services and the availability throughout the Community of a harmonised voice telephony service.

Practice notes

Guidelines for conveyancers: re Safety Files

Background

The regulations on foot of which Safety Files must be prepared and kept are the *Safety, Health and Welfare at Work (Construction) Regulations 1995* ('the regulations') which came into effect on 1 March 1996. The regulations were made on foot of the *Safety Health and Welfare at Work Act, 1989* ('the Act'). The words *Contractor*, *Client*, *Project Supervisor*, and *Safety File* are defined in the regulations and are intended to have the same meaning in these guidelines where used with capital letters. It should be borne in mind that 'construction work' under the regulations means nearly everything you could think of in relation to a building – conversion, fitting-out, repair, commissioning, upkeep, redecoration etc. 'Structure' is equally widely defined.

These guidelines ignore any possible direct operation of the relevant EU directive and concentrate solely on the regulations as introduced in Ireland. There are subtle differences between the 1992 directive and the regulations which may give rise to legal argument in the future, but while a commentary on this might be very interesting it is not really appropriate for this document.

A Client who commences a project after 1 March 1996 is required by the regulations to appoint a Project Supervisor for the design stage and a Project Supervisor for the construction stage. There is a duty to appoint a competent person as Project Supervisor. Where more than one contractor is engaged in a Project, the Project Supervisor (construction stage) must have a Safety File prepared and on completion of the project must give this to the Client. The Client must keep the Safety File available for inspection by any person who may need information in this Safety File for the purpose of that person complying with duties imposed on them under the relevant statutory provisions. This includes the Act and/or regulations on health and safety made under the Act or the *European Communities Act, 1972*. The obligation to keep the Safety File is open ended and is not just to keep it for a particular period.

The Safety File is a reference document and must contain relevant health and safety information to be taken into account during any subsequent construction work following completion of the project. The Safety File is akin to a safety maintenance manual. The intention is that the Client would be given the Safety File on completion of the project and would arrange to carefully 'keep' it and would transfer the original Safety File to any future purchaser of the completed project. It is envisaged that the Safety File would be updated as a building is altered but of course the work on the building (such as a fit-out or an extension) may itself be a project and a new Safety File may have to be prepared for it. It may be thought that any new Safety File which involves the alteration of a building should be retained by the same person who is 'keeping' the Safety File for the original construction of the building. The regulations do not deal with this. If the new project is a 'fit-out' and is carried out by a tenant, the owner of a building will be obliged by the regulations to 'keep' the Safety File prepared in connection with the construction of the building while the tenant will be obliged by the regulations to 'keep' the Safety File prepared in connection with the fit-out of the same building.

The Client can give the Safety File in respect of a project to a successor in title whereby the successor is statutorily obliged to 'keep' the Safety File available in the same way as the Client was. Giving the Safety File to a successor in title discharges a client from the obligation to 'keep' the Safety File available. The Client is not obliged to give the Safety File to a successor in title. That may be what was intended but the regulations do not require this. Neither it seems is a successor in title obliged to accept delivery of the Safety File. We would expect purchasers to insist on getting the Safety File because it will be an asset which will make it easier to alter the building or its services, and will facilitate the purchaser in fulfilling its duties under the relevant statutory provisions.

There is of course an indirect 'encouragement' to a Client to hand over the Safety File to a successor in title. The Client is obliged to 'keep' the Safety File available forever whereas if it is given to the successor in title the obligation to 'keep' the Safety File is discharged. It remains to be seen how effective this will be where the person charged with 'keeping' the Safety File is a company which has got into financial difficulties and the Safety File cannot be found when the building is being sold.

Sanctions

Where the Act or the regulations impose a requirement on any person (whether an individual or a body corporate), failure to comply with that requirement leaves the person open to prosecution by the Health and Safety Authority.

A person convicted on foot of a summary prosecution in the District Court can be fined up to £1,500. On indictment there is no limit to the fine and there is power to impose imprisonment of up to two years in certain circumstances.

Section 48(19) of the Act states that where an offence by a corporate body *'is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of the director, manager, secretary or other similar officer ... he (or she) as well as the body corporate shall be guilty of that offence'.*

The Act obliges all employers to identify the hazards and assess the risks to safety and health in the workplace as part of a safety statement which they are obliged to prepare. Section 12 of the Act also requires that the directors' report under section 158 of the *Companies Act, 1963* must contain an evaluation of the extent to which the policy in a safety statement has been fulfilled during the period of time covered by the report. The detailed provisions included in the regulations under the Act clarifies the obligation on the directors, and directors should note that, apart from criminal prosecution for non-compliance with the Act or regulations, there is also the possibility of disqualification under the *Companies Act, 1990* for breaches of health and safety laws. A director has been disqualified under similar UK legislation.

In our opinion, developers and builders who neglect to prepare and keep a Safety File for a project are unlikely to receive sympathetic treatment by the courts.

A typical Safety File will contain:

1. The most recent revisions of construction drawings of the structure or structures
2. Specification detailing methods of construction
3. Specification detailing fire safety features
4. As built drawings showing services in the structure or structures including wiring, plumbing, gas etc
5. As built drawings of the layout of services outside the structures including wiring plumbing, gas etc
6. Any information available on materials used which are known to be hazardous
7. Instructions for routine maintenance especially where it may require particular safety measures
8. Maintenance manuals for all plant and equipment installed
9. Names and addresses of suppliers of plant and equipment installed
10. Names and addresses of contractors or suppliers of various important elements in structures (such as windows, balconies, handrails, fire alarm etc).

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Solicitors should bear in mind that a typical Safety File for a substantial office building may be large enough to fill a large suitcase and may present certain logistical problems if the Safety File is being handed over on the closing of a sale. It is important however that solicitors ensure that the handover of the Safety File is dealt with correctly and that the handover is documented.

The arrangements envisaged by the regulations are fine in relation to a self-contained commercial property such as an office block or factory building and in relation to those developments the regulations are working quite satisfactorily. This is the first attempt to set out guidelines for practitioners.

New commercial buildings

A solicitor acting in connection with a new commercial building should:

1. Check if the regulations apply
2. If they do, should make sure that a Safety File is going to be available to be handed over to the purchaser
3. Try to arrange to have the Safety File handed over by the 'Client' to the purchaser on the completion of the purchase. Make sure that a documentary record is made of the fact that the Safety File was handed over so as to be able to establish this as a fact should it ever become an issue; advise the purchaser as to the obligations to keep the Safety File available and to ensure that it is updated to reflect all relevant alterations to the building. A specimen document to record the handover is set out in the appendix. This document envisages a handover from the Project Supervisor (construction stage) to the Client and then on to a purchaser at one meeting. The handover may take place on separate occasions and the specimen can be easily adapted to meet the particular circumstances. Some solicitors may prefer to deal with each handover separately
4. If the entire building is being leased include provisions in the lease obliging the lessee to:
   a) provide updates for the Safety File in relation to all relevant alterations to the building – including fit-outs
   b) provide a duplicate copy of a Safety File in respect of any work which is itself a project carried out to the building by the lessee in respect of which the lessee is obliged to keep the Safety File
   c) hand over any copy Safety File given to the lessee by the owner together with any updates to the same and any original Safety File in respect of any project carried out to the building by the lessee to a successor in title – ie, on a surrender, assignment or forfeiture of the lessee's interest in the lease

   A solicitor acting for a lessee may seek to amend the lease to oblige the lessor to make the Safety File available when required. It can do no harm to include this provision but this is not really necessary as a lessor is obliged by the regulations to make the Safety File available to anyone who needs information from it. A lessor may deliver the Safety File to a lessee on the granting of a lease although it is felt that most owners will not do this because of the risk of it not being available when the owner needs it in connection with a sale. For example, if the lessee is a company and goes into liquidation it may be difficult for an owner to get anyone to take an interest in delivering back the Safety File. If, however, a lessor does deliver the Safety File to a lessee it would seem reasonable to provide in the lease, or in a separate undertaking for safe custody, an obligation on the lessee to update the Safety File to reflect all relevant alterations to the building, to 'keep' it safe and to make it available to the lessor on any change of ownership so that the lessor can hand it over to a successor in title thereby discharging the obligation to 'keep' the Safety File. It should also oblige the lessee to make the Safety File available to any other person entitled to information from the file for the purpose of complying with duties imposed under the regulations. It is unlikely that a lessee would be prepared to keep a lessor indemnified against any failure to do any of this. Also it should be borne in mind that delegating the task to the lessee (on the basis that it may perhaps be the logical person to look after the Safety File) does not remove the obligation from the person charged with the responsibility for the time being to 'keep' the Safety File.
5. Where a number of leases are being made (for example in the case of a shopping centre) it will probably be impractical to give a copy of the Safety File to each lessee and the suggested provisions to be included in the leases will require to be altered accordingly.

A solicitor acting for a vendor of a new building should immediately check whether the vendor wishes to deliver the Safety File to the purchaser and if so that he will be able to deal with any of the above requirements which are relevant and should provide in the contract that the purchaser will accept delivery of the Safety File.

New apartment block

The usual contract providing for the sale of the freehold of the entire development and the common areas when the last apartment is sold should include a provision that a Safety File will be handed over to the management company on completion of the sale. It should go on to impose an obligation on the management company to accept delivery of the Safety File. At contract stage solicitors for purchasers should ask for confirmation that a Safety File is being kept and will be handed over to the management company in due course. The location of the Safety File at the date of completion is not important because during the course of construction it would normally be kept in a site office which will usually disappear when the building work is finished. Solicitors should however insist on being told who the Client is and where the Safety File will be kept by the Client until it is handed over to the management company. The Client will normally be the developer.

New housing

In our opinion it is clear that the development of one hundred houses is one 'project' within the meaning of the regulations. It has been argued that a development can comprise a number of different 'projects'. We agree that this may be possible in some situations but we do not accept that it could relate to each house in a housing development.

Take for example a typical house building project. A house builder we will call Surebild Limited is involved in the development of a site by building 100 houses thereon and selling the same. In our opinion, the project is the overall development – that is, the building of 100 houses and their infrastructure. The Client is Surebild Limited and the Project Supervisor it is obliged to appoint will prepare the Safety File and give it to Surebild Limited which is obliged by the regulations to 'keep' the Safety File available. A typical housing project (of 100 houses) would include the following:

1. The house plots which will be individually conveyed to house purchasers
2. Roads, footpaths, grass margins
3. Public open space.

The public open space is often just dedicated to the public with the freehold remaining with the developer. The roads, footpaths, kerbs and grass margins are 'taken in charge' by the local authority and the freehold interest often remains in the developer also. There is therefore no 'successor in title' of the entire project.

We can see no basis on which a purchaser of one house of the 100 houses forming part of the project is entitled to a copy of the Safety File nor is Surebild Limited obliged to give it to a house purchaser. A house purchaser should clearly be entitled to see the file that Surebild Limited is obliged to keep provided that they 'need information' from the Safety File.

How can Surebild Limited discharge its liability to 'keep' the Safety File by giving it to someone else? Clearly if it gave every house purchaser a copy of the entire file and also gave a copy to the local authority as successor in title to the roads, footpaths, grass margins and open spaces it should be regarded as having discharged its obligations. This may not be practical. It certainly should be considered, because the obligation to 'keep' a proper Safety File and have it available for inspection is quite unattractive to a developer (and perhaps also to the other parties concerned) on a long-term basis.

From a common-sense point of view one could argue that a house purchaser should get a 'mini-safety file' containing a copy of all the relevant information regarding his own house and so much of the roads and common areas as may be used for providing relevant services to the house. This is in effect what is suggested by the Health and Safety Authority in their guidance notes dated October 1996 (page 48). However, this almost certainly does not discharge Surebild Limited from its obligation to 'keep' the Safety File. There is little point in going to the trouble of giving these mini-files to house purchasers unless it is going to remove the obligation from Surebild Limited to 'keep the Safety File' as well. It could be argued that if a mini file is given to purchasers it will save the Client having to produce the Safety File for that person when they want to alter the house. However, it is just as likely that the purchaser will have lost the mini-file by the time it is needed and the fact that a developer who is a Client could demonstrate that he had given all the necessary information to the purchaser already would not discharge the obligation to keep the original Safety File, and make it available to any pur-

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chaser or subsequent owner of a house who needs information from it.

In our opinion the regulations need to be changed to enable a housebuilder to discharge itself from its obligations to 'keep' the Safety File if it gives each house purchaser anything a house purchaser should reasonably require to know regarding the house they purchased which should contain and gives the local authority such details as it should reasonably require to know regarding the roads, footpaths, open spaces etc such as 'as built' drawings of the layout of services or suchlike.

For the moment solicitors acting for house purchasers should try to establish at contract stage that they will be given on closing a letter confirming who the 'Client' is and where the Safety File will be kept and may be inspected. A letter confirming this should be obtained on closing.

What will happen if the Safety File is lost?

A Safety File is obviously a useful document which the owner of a building will try to keep safely and which a purchaser would like to get. However, it is inevitable that from time to time Safety Files will be lost or not kept up to date. A building should not be unsaleable just because its Safety File is not available, or is deficient. A person who purchases a building in respect of which the Safety File is not forthcoming is not liable to any sanction. A Safety File not being available will result in more care and extra cost having to be taken or incurred in altering the building. There is no obligation on the purchaser to do their best to replace the Safety File although that may be a good idea if it is at all possible. If a Safety File is fully or partly destroyed solicitors should try to record what happened and this record should be placed with the deeds for future reference. The preparation of a safety statement may be more difficult in the absence of a Safety File.

What should solicitors advise purchasers in relation to Safety Files?

Solicitors should advise purchasers to get the Safety File in relation to a building checked as part of their pre-contract 'due diligence'. The best person to examine the Safety File on behalf of the purchaser would be whoever is going to survey the building for him. The surveyor would need to be briefed with the planning history of the building so as to see if there are any obvious omissions from the Safety File, and the survey should extend to the areas of safety, health and welfare. Solicitors should leave the examination of Safety Files to persons who have the necessary training.

Should solicitors for purchasers seek certificates of compliance in relation to Safety Files as they do in relation to planning?

We do not recommend that solicitors should seek 'certificates of compliance' to confirm that Safety Files contain everything they should contain and/or that it has been updated to have regard to all alterations made to the building or its services.

Should the Law Society General Conditions of Sale be altered to provide a warranty by the vendor as to compliance with the regulations?

We do not recommend that the General Conditions of Sale should include a warranty that the Safety File or Safety Files are complete.

Conveyancing Committee

Dublin Circuit Court

Please note the setting down procedure in the Dublin Circuit Civil Court. Prior to lodging a notice of trial, a plaintiff must:

1. Ensure all interim matters such as discovery and all third party procedures are completed
2. Have obtained and complied with advice on proofs
3. Ensure that all witnesses and parties are available at the trial date
4. Advise the Circuit Court Office of the type of case, its duration and whether it is an assessment or not
5. Ensure that the defendants are ready to proceed. A defendant may not set down a trial without the leave of the County Registrar on notice.

Note: the next available date shall be given by the Circuit Court Office unless a specific date is requested.

Michael Quinlan, County Registrar

Checklist to accompany notice of trial

The following is a check list which must be completed by the solicitor for the plaintiff before tendering a notice of trial for filing in the Circuit Court Office. The check list shall accompany the notice of trial.

- Has a 12-month period elapsed since the date of the accident (personal injury claims only)?
- Has a defence been filed by all defendants? Alternatively, confirm that judgment has been obtained against the defendants in default?
- Has a letter been obtained from the defendants and third parties declaring their readiness for trial. Alternatively, has the plaintiff obtained an order from the County Registrar waiving the necessity for this letter?
- Have proofs been advised and are all proofs in place?
- Are all pre-trial issues resolved between all parties (such as discovery, particulars etc)?
- Estimated total number of witnesses giving evidence on all sides?
- Estimated duration of trial?

Litigation Committee

Use of professional notepaper in debt collection matters

Members are reminded that a solicitor should not agree to operate in a situation where he is merely a token solicitor. He should not allow his name and status to be used by third parties, to enable third parties to conduct a legal practice.

Section 59 of the *Solicitors Act, 1954* provides as follows:

1. *A solicitor shall not wilfully –*
   a) *act, in business carried on by him as a solicitor, as agent for an unqualified person so as to enable that person to act as a solicitor,*
   b) *permit his name to be made use of, in business carried on by him as a solicitor, upon the account, or for the profit of, an unqualified person, or*
   c) *do an act enabling an unqualified person to act as a solicitor.*
2. *This section shall have effect subject to the provisions of this Act and to any exceptions that may be made by regulations under section 71 of this Act.*

It would not be correct to supply a client with professional notepaper to enable the client print a standard letter of demand on the solicitor's notepaper, following which the letter issues from the client.

Information relating to the debtors must be sent to the solicitor's office, the letters printed on the solicitor's professional notepaper in the solicitor's office and the letters issued from the solicitor's office.

The proper supervision of the matter is essential. In a private practice situation, only employees of the firm can be under the necessary supervision.

If a solicitor is employed in-house, only staff reporting to the solicitor can be considered to be under the solicitor's supervision.

James MacGuill
Professional Guidance Committee

Due to proofing errors in last month's issue of the *Gazette*, these two practice notes were printed incorrectly. Practitioners should note that the following are the corrected versions of these practice notes

Obligations of vendor's solicitor in relation to the explanation of non-monetary burdens which appear on folios or appear as 'acts' on Registry of Deeds searches

General

It would appear that a vendor's duty in respect of prior burdens affecting registered land is the same as the vendor's duty would be in respect of prior acts appearing on searches in the Registry of Deeds against unregistered land. The simplistic explanation 'does not affect' would not be acceptable in relation to unregistered land and a similar explanation should equally be unacceptable for registered land.

Land Registry

From time to time, especially in regard to housing estates, there appears a burden registered such as the following:

'The property is subject to such of the conditions relating to the use and enjoyment thereof contained in deeds of transfer made between AB of the one part and the registered owners of this and other property formerly part of the folio x of the other part'.

Difficulties arise in practice in that the vendor's solicitors are reluctant to furnish the instrument creating the burden and further because there is none with the title they are not prepared to certify that it does not adversely affect. In most cases the instrument is the transfer lodged with the application to have the transferee registered as the first registered owner. The transfer contains the usual covenants, conditions, exceptions, grants and reservations applicable to such an estate. In order to avoid such difficulties, it is suggested that the better practice should be that the transferee should retain a copy of the completed transfer with the title documents and this could then be furnished with the other documents when furnishing title on a sale of the property. However, if a copy was not retained, the vendor's solicitor should obtain a copy from the Land Registry.

If there are similar burdens on the original grantor's/transferor's title, a copy of the instrument should be with the prior title and is usually contained in a booklet of title with a written explanation of the burden.

There are, however, other cases where the burden is not as informative as the above – for example:

AB became registered with a covenant in the instrument of registration in the following terms: *'AB hereby covenants with CD not without the prior consent in writing of CD to transfer during the lifetime of the said CD the lands hereby transferred or any part thereof'.*

However, the burden appearing on the folio showed only the following: *'The covenants specified in instrument X relating to the use and enjoyment of the property'.*

This is not very satisfactory and, despite an exchange of correspondence with the Land Registry, the Land Registry have stated: 'Please note that it is generally our practice to register covenants by reference to the instrument (see Rule 105 of the *Land Registration Rules 1992* in this regard)'.

However, Rule 105 sets out two options as to how the burden may be recorded:

1. By reference to the instrument; or
2. By setting out an extract therefrom or the affect thereof.

It is submitted that it would be far preferable for the extract itself to be registered rather than a mere reference to the instrument which a third party looking at the folio must then take up. There is, of course, the added difficulty that there is no entitlement on anybody's part to take up the instrument without the consent of the registered owner (see Rule 188). However, it is the stated policy of the Land Registry to register only by reference to the instrument, the purpose being to reduce the drafting and engrossing times and increase productivity in the Land Registry and that such a policy shall continue until the arrears of dealings have been significantly cleared after which time it may be reviewed.

It would appear, therefore, that the only satisfactory solution for the time being is for the vendor to include, by way of title, copies of all instruments appearing on the folio.

It is the intention of the Conveyancing Committee to keep the matter under review and to keep it on the agenda for any future meetings with the Land Registry.

Registry of Deeds

With regard to acts appearing on Registry of Deeds searches, the explanation where applicable 'does not affect' is not acceptable. The vendor's solicitor should check the relevant documentation to ensure that the 'act' does not, in fact, affect the property in sale. Unless the vendor's solicitor has personal knowledge of the particular transaction, the fact that an 'act' refers to particular lands such as 'Site 7 Black Acre' does not entitle the vendor's solicitor to assume that 'it does not affect', for example, Site 2 Black Acre and **enquiries should be made**.

When it is established that the act does not affect the property in sale, the explanation should read 'affects only Site 7 Black Acre; does not affect Site 2 Black Acre'.

It is not unknown for such acts to affect other property – and it may be necessary to inspect the relevant memorial.

Conveyancing Committee

Residential property tax

The Conveyancing Committee has been requested to publish to the profession the following practice note by the Revenue Commissioners

'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.

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.

It should be noted that where a certificate of clearance is not furnished by a vendor on the closing of a sale, and the sale consideration exceeds £115,000, the purchaser is obliged to deduct a 'specified amount' from the consideration and to pay it over to the Revenue Commissioners. The specified amount is 1.5% of the difference between the sale price and the market value exemption limit (as at the previous 5 April), multiplied by the number of years that the vendor has owned the property, up to a maximum of five years. It is **not** acceptable for a vendor to give an undertaking to a purchaser that a certificate of clearance from residential property tax will be provided **after** the sale has been closed.

A leaflet (RP5) relating to the operation of the certificate of clearance from residential property tax is available from tax offices or from the Capital Taxes Division in Dublin Castle. Assistance or information regarding the clearance certificate may be obtained by calling (01) 6792777, exts 4308, 4626 and 4628.'

Conveyancing Committee

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Draft notice on agreements of minor importance

A draft notice was published on 30 January 1997 (1997 OJ C29/3) relating to the revision of the notice of 3 September 1986 on agreements of minor importance which are not caught by the provisions of article 85(1). The objectives of the amendments were to:

- Enhance the legal clarity of the text in order to facilitate its application
- To adapt the text to the current state of development of Community law and to make it more realistic from an economic point of view
- To avoid imposing unnecessary administrative burdens on undertakings and on the services of the Commission due to requests and notifications of agreements which manifestly could not exert any appreciable influence on competition.

The draft notice attempts to define certain categories of agreements which can be said with a sufficient degree of probability not to be covered by the provisions of article 85(1) – that is, agreements which are not likely to significantly affect inter-state trade or to have as their object or effect an appreciable restriction on competition. Although the meaning of 'appreciable effect' on competition is defined using quantitative criteria (as in the current notice), the draft notice no longer contains a turnover threshold for the parties (previously 300 million ECU). The Commission explained that it is unjustifiable to reserve the benefits of a *de minimis* notice only for small and medium-sized undertakings. From now on, even large undertakings should be able to benefit from the application of the notice, provided that their market share remains insignificant.

The draft notice distinguishes between horizontal agreements, which pose a greater risk for competition, and vertical agreements. It sets the approachability threshold at 5% and 10% respectively, while stressing that these figures are simply of indicative value. The Commission noted that the restrictive effects of vertical agreements often constituted a factor of minor importance compared with the positive influence which such contracts may have on the development of dynamic competition in the single market.

In the case of mixed horizontal/vertical agreements or where it is difficult to classify agreements as horizontal or vertical, the 5% threshold is applicable. Moreover, the Commission holds the view that the said agreements do not fall under the prohibition of article 85(1) if the market shares indicated are exceeded by no more than one-tenth during two successive financial years.

The draft notice pays particular attention to small and medium-sized enterprises, recognising that agreements between undertakings of this type are rarely capable of significantly affecting trade or competition within the common market. The Commission thus indicates in chapter III of the draft notice that, even where the thresholds are exceeded, it will not generally institute proceedings to apply the provisions of article 85(1) to such agreements. G

Michael O'Neill is Jean Monnet Lecturer in European law at University College Galway.

European law healthcheck

On Saturday 1 November, the EU and International Affairs Committee held its inaugural European law seminar. The aim of this venture was to provide solicitors with an easy facility to become aware of recent EU law developments in a number of different practice areas.

There was an enthusiastic response and 87 solicitors and apprentices signed on for the seminar. Many of those attending had travelled some distance. The committee is considering repeating this seminar in locations other than Dublin.

Much of the seminar was run with two sessions being conducted simultaneously, to allow those attending opt for practice areas of their preference. The following papers were given:

- *EU law in practice:* Vincent Power (A&L Goodbody)
- *Product liability developments:* Sean Barton (McCann FitzGerald)
- *Implications of the switch to the Euro:* Bryan Sheridan (AIB)
- *Consumer law developments:* John Larkin (William Fry)
- *Public procurement developments:* Sarah Johnson (Lee McEvoy)
- *Employment developments:* Gary Byrne (BCM Hanby Wallace)
- *Environmental law developments:* Deborah Spence (A&L Goodbody)
- *Amsterdam Treaty – practical implications:* John Handoll (William Fry)
- *Practical difficulties in enforcing judgments and serving summonses in other jurisdictions:* Petria McDonnell (McCann FitzGerald)
- *Competition update:* Denis Cagney (Matheson Ormsby Prentice) and Damian Collins (McCann FitzGerald)

Copies of these papers can be purchased from TP Kennedy in the Law Society. It is hoped to hold this 'healthcheck' on an annual basis. The committee would welcome any suggestions about topics to be covered or the format for the seminar. Any suggestions should be given to TP Kennedy (tel: 01 671 2000).

State monopolies upheld

The Court of Justice has recently handed down two important decisions narrowly upholding the monopoly position of state companies. In the first case, the court upheld the retail monopoly for alcohol in Sweden. In the second, the court rejected an application by the Commission, seeking a finding against the Netherlands, Italy, France and Spain regarding their national monopolies on the import and export of electricity.

***Public Prosecutor v Harry Franzén* (case 189/95)**

This case arose from proceedings taken against Harry Franzén in the Swedish courts for unlawfully selling and holding alcoholic beverages in breach of the Swedish laws on alcohol (Alkohollag 1994:1738 of 16 December 1994). This law gives the state a retail monopoly of alcoholic beverages through Systembolaget. This body operates 384 monopoly shops and also sells through other outlets. It can only obtain supplies from holders of production or wholesale licences, the issue of which is subject to restrictive conditions by the Swedish Alcohol Inspectorate. Its purpose is to limit the consumption of alcohol beverages for health reasons.

The Swedish court asked the Court of Justice whether this retail monopoly was compatible with the *Treaty of Rome*. The Swedish retail monopoly of alcohol was a sensitive issue in its negotiations over accession to the European Union.

The court held that the system by which Systembolaget selected products was operated in a non-discriminatory way. Beverages were not selected on the grounds of their origin but on their alcohol content. Despite the small number of retail outlets, the monopoly, did not compromise the obtaining of supplies of national or imported beverages by consumers. The monopoly was in place for public health reasons. Thus, the retail monopoly did not contravene the free movement of goods provisions in the treaty.

However, the court questioned the Swedish legislation allowing only traders holding a production or wholesale licence to import alcoholic beverages. This hinders trade between Member States as it creates additional costs for imported alcoholic beverages which are not borne by Swedish drinks. Such an obstacle could not be justified on grounds of protecting public health. This aim could have been achieved by measures less restrictive of intra-Community trade. The court, therefore, held that those provisions of Swedish law were contrary to article 30 of the *Treaty of Rome*.

***Commission v Netherlands* (case 157/94), *Commission v Italy* (case 158/94), *Commission v France* (case 159/94), and *Commission v Spain* (case 160/94)**

In 1994, the Commission sought a finding by the court against the Netherlands, Italy, France and Spain concerning their national monopolies on the import and export of electricity (and, in the case of France, gas).

In the Netherlands, consumers are entitled to import electricity for their own needs, but for voltages exceeding 500 volts only the state electricity company is authorised to import electricity. In Italy all electricity generation, import, export or transmission was restricted to ENEL, the state company. Imports and export are subject to the grant of a licence by the Minister for Public Works. In France, likewise, all electricity generation, import, export or transmission was restricted to two state companies. In Spain, also, the electricity system is managed by a state company.

The Commission argued that these national rules conferring a monopoly on import and export of electricity were liable to restrict trade between Member States. Thus, the rules were contrary to the principle of free movement of goods and to the requirement that national monopolies of a commercial character should be operated in such a way as to eliminate discrimination between nationals of Member States (article 37). Producers in other Member States were prevented from selling electricity within the Netherlands, Italy, France or Spain to customers other than the state electricity companies. Likewise, a customer in these states is unable to choose his source of electricity supply from other Member States.

In the case of Spain, the court held that the Commission had not proved the existence of a statutory monopoly. In the case of the other states, the court held that the free movement of goods was impeded by the exclusive import and export rights.

The states invoked article 90(2), which allows non-observance of the treaty rules by undertakings entrusted with the management of services of general economic interest, where such rules would prevent them from duly accomplishing their particular tasks under economically acceptable conditions. The states argued that any change in the way national electricity systems were organised would be detrimental to the objective of national energy policy and management of the national systems.

The Commission had confined its submissions to legal considerations and had not addressed the special feature of the national systems. The court accepted the article 90(2) defence. It said that it was not in a position to consider whether other means were available to the Member States or whether they had exceeded the limits which they should observe when entrusting to an undertaking tasks of general interest to be carried out under economically acceptable conditions. G

Austrian judges visit to the Law Society

On Monday 6 October, a group of 50 Austrian judges and judicial trainees visited the Law Society. The EU and International Affairs Committee was pleased to co-ordinate and host this visit. Each year a group of Austrian judges and trainees visits a different country to learn about its legal system and to compare its operation with the Austrian system. Since Austria joined the European Union, the focus has been on visiting EU Member States to learn about the operation of EU law.

While in Dublin, the judges attended lectures in the courts and the King's Inns. The committee provided them with a workshop on the implementation of European law in Ireland and a brief reception. Frank Heistercamp from Matheson Ormsby Prentice gave the group a brief overview of the Irish legal system and the Irish legal profession. Brendan Heneghan of William Fry then presented a paper on the implementation of European law in Ireland. Both lectures were well received by the participants and a vigorous questions and answers session followed. The evening was rounded off with a wine reception where the Austrians had an opportunity to meet members of the Irish solicitors' profession.

The committee would like to thank Frank Heistercamp and Brendan Heneghan for their papers and the then Law Society President Frank Daly for his warm words of welcome at the wine reception. G

Draft directive on the sale of goods

A draft legislative act whose progress should be monitored by practitioners is the proposal for a directive on the sale of consumer goods and associated guarantees (1996 OJ C 307/8), published in October last year.

According to article 1, this directive's purpose is the approximation of the law, regulations and administrative provisions of the Member States on the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market. This provision also includes definitions of 'consumer', 'consumer goods', 'seller' and 'guarantee'.

Goods must be in conformity with the contract of sale, as set out in article 2. Article 3 sets out the obligations of the seller, stating that the seller shall be liable to the consumer for any lack of conformity which exists when the goods are delivered, or which become manifest within a period of two years unless, at the moment of conclusion of the contract of sale, the consumer knew or could not have been unaware of the lack of conformity.

Article 4 sets out the consumer's obligations. The consumer must notify the seller of any lack of conformity with the contract of sale within a period of one month from the date on which he detected, or ought normally have detected, the lack of conformity.

Article 5 deals with the issue of guarantees and states that guarantees shall legally bind the offeror (seller or producer) under the conditions laid down in the guarantee document and the associated advertising and must place the beneficiary in a more advantageous position than that resulting from the rules governing the sale of consumer goods set out in the national provisions applicable.

Article 6 states that any contractual terms which waive or restrict the rights in this directive shall not be binding on the consumer. Finally, according to article 7, the terms of this directive do not preclude Member States from adopting more stringent provisions which give a higher level of protection. G

Michael O'Neill is Jean Monnet Lecturer in European law at University College Galway.

Conferences and seminars

Academy of European Law
Topic: *Litigation in the European Court of Justice*
Date: 12-13 January 1998
Venue: Luxembourg
Contact: Dr Gavin Barrett (tel: 0049 651147100)

AIJA (Association of Young Lawyers)
Topic: *Annual congress*
Date: 20-25 September 1998
Venue: Sydney, Australia
Contact: Gerard Coll (tel: 01 6761924)

European Institute of Public Administration
Topic: *Schengen's final days? Incorporation into the new TEU, external borders and information systems*
Date: 5-6 February 1998
Venue: Maastricht, the Netherlands
Contact: Jacqueline Zijlmans (tel: 0031 433296320)

Recent developments in European law

ASYLUM

EU rules for processing asylum applications

The EU Member States had concluded a convention for deciding the state responsible for examining applications for asylum (OJ C 254, 19 August 1997, 1). An application for asylum by an alien will be examined by a single state in accordance with the specified criteria. Where the applicant has a family member who has refugee status in a Member State, that state will examine the application. Where the applicant has a residence permit or a visa issued by a Member State, that state will examine the application. Alternatively, where an applicant has irregularly crossed the border into a Member State from a third state, that state will examine the application (unless the applicant has lived for six months or more in a Member State from which he is applying). Where none of the above are applicable, the Member State with which an application is lodged will examine it. However, if the applicant requests, any Member State may examine the application on request from another Member State on humanitarian grounds.

The convention provides that a state which starts to examine an application can transfer it to another state on the grounds that the latter properly has jurisdiction. This convention is subject to ratification by the Member States and will enter into force after ratification.

COMPETITION

Mergers

The Commission had approved, under the Merger Regulation, the acquisition of Woodchester Investment plc by General Electric Capital Corporation. Both companies are involved in financing of assets, in particular, equipment and vehicle financing. The Commission found that the merger will not result in any significant combined market share in the financing of assets sector. Therefore, it decided not to oppose the merger.

DIRECT EFFECT

Directives

In *McBride v Galway Corporation*, High Court, 31 July 1997, Quirke J looked at the criteria for invoking a directive in a directly effective sense to decide a case. The case concerned an attack by way of judicial review on a proposed location of a sewerage plant for Galway City. The applicant claimed that there had been a failure to comply with the requirements of two EC directives. The court found that the relevant provisions of the directives were not unconditional and sufficiently precise and thus could not be relied upon by an individual litigant before they were transposed into Irish law.

FREE MOVEMENT

Persons

The Commission has recently proposed an extension of regulation 1408/71 on the application of social security schemes to employed persons and their families moving within the EU to third country nationals. The regulation ensures that persons moving within the EU do not lose their social security rights and do not become doubly liable for social security contributions.

LITIGATION

Brussels convention

On 31 October, the House of Lords gave judgment in *Kleinwort Benson v Glasgow City Council*. This judgment brings a long-running litigation saga to an end. The point at issue was whether claims arising from a void contract could be considered as falling within the article 5(1) exception for 'matters relating to a contract', or within article 2 – the general rule giving jurisdiction to the courts of the defendant's domicile. At first instance, Hirst J held that it came within article 2. This was reversed by a majority of the Court of Appeal which held that quasi-contractual matters did fall within article 5(1). The House of Lords has now, by a 3/2 majority, held that the claim came within article 2. The majority held that the case concerned a void contract, no contract was in existence and the claim could not come within 'matters relating to a contract'. The minority sought to uphold the Court of Appeal decision.

In *Pearce v Ove Arup Partnership Ltd & Ors* [1997] Ch 293, the English High Court ruled on the application of the convention to copyright. An English-domiciled plaintiff sued a number of defendants, the first of which was domiciled in England for breach of English and Dutch copyright. The defendant sought to have the action dismissed on the basis that acts of breach of Dutch copyright were not justiciable in the English courts. Lloyd J ruled that the English courts did have jurisdiction. He held that copyright actions came within the scope of the convention. Furthermore, under article 6(1) where there are a number of defendants, a plaintiff can bring the action in the home jurisdiction of any one of them.

Disciplinary Tribunal A

The Disciplinary Tribunal is a statutory body wholly independent of the Law Society of Ireland. The Tribunal was established under section 6 of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994*. It consists of ten solicitor members and five lay members and its powers are mainly confined to receiving and hearing complaints of professional misconduct against members of the solicitors' profession. Misconduct includes, *inter alia*, unethical conduct, breaches of the Solicitors Accounts Regulations and conduct tending to bring the solicitors' profession into disrepute. This latter category embraces most complaints which come before the tribunal. The proceedings before the tribunal are formal and a high standard of proof is required as a decision of the tribunal may well affect the livelihood of a respondent solicitor.

While the majority of solicitors are seeking to provide a quality service for their clients, the tribunal nevertheless encounters a number of complaints each year from members of the public who are dissatisfied with the performance of their solicitors. This year was no exception, and it will be noted from the above table that the tribunal received 22 direct applications from members of the public.

The Tribunal recognises that making an application may not be an easy task for some members of the public due to the standard of proof required, the emotional stress and scarcely any knowledge of the tribunal's procedures. In order to assist the public and to alleviate any difficulty real or otherwise, the tribunal has tried to ensure that clear and comprehensive information is available to all members of the public wishing to make a complaint in respect of their solicitors' conduct.

However, there are a number of areas where the tribunal cannot be of assistance to the public. For example, the tribunal cannot give legal advice or advise a solicitor on how to handle a case. Further, it cannot interfere with court proceedings or decisions.

Different clients require different kinds and amounts of information and it is essential to outline to them the main steps which need to be taken, together with some indication of the time scale involved. Furthermore, communication should be on-going to ensure that clients are kept fully informed of progress. However, in the majority of cases before it, the tribunal found that respondent solicitors had failed to respond to clients and/or the Law Society in a timely manner or at all. In one particular case, the respondent solicitor admitted he had failed to reply to 13 letters written to him by the Law Society and that he had failed to attend meetings of the Registrar's Committee on three occasions. Further, the tribunal took a very serious view of a respondent solicitor's conduct which included, *inter alia*, making misrepresentations to the Law Society and a lending institution in addition to failing to respond to the Society's correspondence. The respondent solicitor was before the tribunal in respect of two cases and in both matters the tribunal recommended that his name be struck off the Roll of Solicitors.

As Chairman of the Tribunal, I would like to take this opportunity to re-iterate that every solicitor has a duty to reply promptly, fully and accurately to clients and to the Law Society in response to enquiries directed to them.

It would appear from the cases coming before the tribunal

Disciplinary Tribunal

Solicitor members
Walter Beatty (Chairman)
Clare Connellan
Andrew O Donnelly
Terence Dixon
Michael Hogan
Donal Kelliher
Eugene McCague
Moya Quinlan
Grattan d'Esterre Roberts

Lay members
Pauline Coonan
Sean McCarthy
Mary Morris
Marie O'Brien
Jacqui O'Dowd

Between 1 November 1996 and the 31 October 1997 the Disciplinary Tribunal met in divisions of three on 22 occasions. One general meeting also took place during the period under review.

The following applications were considered by the tribunal during this period:

New applications:.....38
Law Society
Prima facie case found 12
Awaiting *prima facie* decision 3

***At hearing*.....12**
Misconduct 3
Adjourned 2
Awaiting inquiry 7

Private
Prima facie cases found 4
Prima facie cases not found 5
Awaiting *prima facie* decision 13

***At hearing*.....4**
No misconduct 1
Adjourned 1
Awaiting inquiry 2

Orders made by the Disciplinary Tribunal pursuant to section 7(9) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994*:

Censured, fined £2,000 and costs awarded.....1
Advised, admonished and costs awarded.....2

Applications from previous year
Law Society.....14
Misconduct 6
No misconduct.....1
Adjourned 7

Private.....17
Prima facie cases not found 12
Misconduct 1
No misconduct.....2
Adjourned 2

Orders made by the Disciplinary Tribunal pursuant to section 7(9) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994*:
Censured and ordered to make restitution.....1
(Appeal filed under section 7(II) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors (Amendment) Act, 1994.*)
Advised and censured.....1

Awaiting presentation to the High Court
Reports of the Disciplinary Tribunal under section 7(3)(b)(ii) of the *Solicitors (Amendment) Act, 1960* as substituted by section 17 of the *Solicitors Amendment) Act, 1994.*
Recommendation:
Strike off*.....1
Strike off with costs*.....2
Strike off with restitution 1
Prohibited from practising on his own account.....1
(* reports in respect of the same solicitor)

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that some respondent solicitors may be unable to cope with the responsibilities of private practice. They complain that difficulties arise because of the amount of time spent in court and an excessive workload. In one such case, the tribunal has indicated, in its report to the President of the High Court, that in its opinion the respondent solicitor is not fit to practise on his own account and recommended that he be prohibited from so practising.

The tribunal has held that failure by a solicitor to honour an undertaking is professional misconduct. Undertakings should not be given lightly and should only be given in circumstances where a solicitor knows he can comply with its terms. Failure to honour an undertaking not only brings the profession into disrepute but also undermines the profession's ability to operate efficiently.

In two cases which involved a number of breaches of the Solicitors Accounts Regulations, including the misappropriation of clients' funds, the tribunal in its reports to the President of the High Court stated that in its opinion the respondent solicitors were not fit to be members of the solicitors' profession and recommended that their names be struck off the Roll of Solicitors. Every practising solicitor is expected to file an accountant's certificate within six months from the end of his financial year. The importance of lodging an accountant's certificate and maintaining proper books of accounts cannot be emphasised enough as this enables the solicitor to ensure that he is complying with the provisions of the Solicitors Accounts Regulations.

Under section 9 of the *Solicitors (Amendment) Act, 1960*, the tribunal has the power to remove, at his own request, the name of a solicitor from the Roll of Solicitors. This usually arises when a solicitor wishes to be called to the Bar. During the period under review the tribunal made three such orders.

In the past year Mr W Brendan Allen retired from the tribunal and I would like to thank him for his hard work and dedication not only to the tribunal but to the Disciplinary Committee of which he was a member since 1 April 1985.

In conclusion, I would like to record my thanks to the members of the tribunal and to Ms Mary Lynch, Clerk to Tribunal, for their hard work and support during the past year.

Walter Beatty, Chairman.

Subject matters of complaints

Solicitors Accounts Regulations
Conveyancing
Probate
Civil claims

Main grounds on which the tribunal found misconduct

- Misappropriating clients' funds which were used by the solicitor for his own benefit.
- Allowing deficits to arise in client funds in breach of the Solicitors Accounts Regulations.
- Improperly drawing money clients' funds in breach of regulation 7 and 8 of the Solicitors Accounts Regulations.
- Failing to account to client in respect of monies deducted from clients' funds.
- Falsifying the books of account and in some instances traded off the books of account thereby making an accurate assessment of liabilities to clients impossible to ascertain.
- Failing to maintain proper books of account in accordance with the Solicitors Accounts Regulations.
- Failing to file an accountant's certificate and a final closing accountant's certificate in respect of a former practice in breach of regulation 21(1) of the Solicitors Accounts Regulations.
- Causing claims on the Society's Compensation Fund.
- Misleading the Compensation Fund Committee by advising all files and client funds had been handed over to a colleague when this was not the case.
- Misleading the Compensation Fund Committee on a number of occasions by stating that a final closing accountant's certificate would be furnished in respect of a former practice, when this was not the case and when the solicitor knew he could not do so.
- Practising or purporting to practise at a time when the solicitor had no practising certificate and was prohibited from practising as a solicitor.
- Failing to comply with the terms of the High Court order in respect of costs.
- Failing to comply with payment in respect of the certificate of taxation issued on foot of an order for costs.
- Failing to represent a client at a court hearing.
- Failing to comply with an undertaking to discharge a client's mortgage out of the proceeds of the sale of property and to furnish the purchaser's solicitor with the vacated mortgage.
- Failing to provide an adequate explanation to the Society as to why the complainant's case did not proceed on the appointed date.
- Failing to honour an undertaking in that the solicitor failed to proceed without delay to stamp and register all documents connected with a case, and to keep the building society (or its solicitors) advised of progress.
- Misrepresenting to the Society that the delay was occasioned by the failure of his clients to discharge fees and outlay when the solicitor in fact had sufficient funds in his client account at the date of the completion of the conveyancing to stamp and register the title documents concerned.
- Misrepresenting to the Society that the reason for the delay in registration was that a number of queries were being dealt with.
- Failing to comply with a notice served under the provisions of section 10 (1) of the 1994 *Solicitors (Amendment) Act.*
- Failing to comply with a direction of the Registrar's Committee to furnish correspondence to the Society in a timely manner.
- Failing to furnish to the Society confirmation that payment had been agreed and/or paid in accordance with the direction of the Registrar's Committee.
- Failing to reply to a colleague's correspondence.
- Failing to reply to his client's correspondence or to deal with his client's affairs in a timely manner or at all.
- Failing to provide an adequate explanation to the Society as to why the complainant's case did not proceed on the appointed date.
- Failing to respond to the Society's correspondence in a timely manner or at all.
- Failing to attend at the Registrar's Committee meeting when requested to do so or to give an explanation as to his failing to attend.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ARBITRATION

Arbitration (International Commercial) Bill, 1997

This Bill, as presented by the Minister for Justice, Equality and Law Reform, aims to enable the State to adopt the United Nations Commission on International Trade Law (UNCITRAL) *Model law on international commercial arbitration*. The *Model law*, adopted by UNCITRAL on 21 June 1985, specifies that the term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or otherwise. It further aims to provide for: definitions; rules of interpretation; a form of arbitration agreement; details of the composition, procedures and location of an arbitral tribunal; a mechanism allowing an arbitral tribunal to rule on its own jurisdiction; and the making of an award. If passed, the Bill would also amend s34 of the *Arbitration Act, 1954*, relating to the award of interest in arbitration proceedings which are outside the scope of this proposed legislation

COMMERCIAL LAW

Credit Union Act, 1997 *(Commencement) Order 1997* (SI No 403 of 1997)

This order brings most of the *Credit Union Act, 1997* into operation with effect from 1 October 1997. The parts of the Act brought into operation are: parts I and II; part III (other than ss46-52); part IV (other than s68(1)(C)); parts V and VI; part VII (other than ss120(5) and 122(1)(f)); parts VIII-XIV; and schedules 1-5.

Stock Exchange Act, 1995 *(Determination Committees) Rules of Procedure 1997* (SI No 380 of 1997)

These rules prescribe the procedures to be followed by determination committees appointed under s65 of the *Stock Exchange Act, 1995*. They further provide that a chairperson of each determination committee shall be appointed.

Investment Intermediaries Act, 1995 *(Determination Committees) Rules of Procedure 1997* (SI No 381 of 1997)

These rules prescribe the procedures to be followed by determination committees appointed under s74 of the *Investment Intermediaries Act, 1995*. They further provide that a chairperson of each determination committee shall be appointed.

***Goodman v Kenny* (Kinlen J), 30 July 1996**

Contract; loan; debt; summary summons; motion for summary judgment; money-lending; stamp duty; plaintiffs claiming repayment of sum advanced to defendant; agreed security not provided; monies coming into control of third party; defendant claiming plaintiffs failing to lodge monies into account designated by his agents; defendant claiming provision of security a precondition of liability; defendant claiming lodgement of monies into designated account a precondition of liability; defendant claiming documents chargeable to stamp duty and inadmissible; documents adjudicated by Revenue Commissioners; whether monies lodged into account designated by agents of defendant; whether preconditions to defendant's liability; whether plaintiffs carrying on unlicensed money-lending; whether defendant entitled to challenge adjudication of Revenue Commissioners; whether proceedings instituted in Cyprus concerning same cause of action; whether genuine issues of fact between parties; *Moneylenders Act 1900*; *Moneylenders Act, 1933*; *Supreme Court of Judicature (Ireland) Act 1877*, s28(6); *Stamp Duties Act 1891*, s12(5).

Held: The court must refer a motion for summary judgment for oral hearing if it is satisfied that there is a genuine issue of fact between the parties, but is obliged to give judgment for the plaintiff if satisfied that the matters advanced by the defendant are advanced for the purpose of delaying and avoiding judgment.

COMPANY LAW

***O'Keeffe v Ferris* (Supreme Court), 19 February 1997**

Winding-up; carrying on business with intent to defraud creditors or any fraudulent purpose; court declaration; persons knowingly involved made personally liable without limit for company's debts or liabilities; sanctions for conviction on indictment; legislative provision to have effect notwithstanding person concerned might be criminally liable; constitutional guarantee that no person to be tried on any criminal charge save in due course of law; whether civil proceedings under s297 in reality criminal in nature; conditions before person amenable under section; whether section created criminal offence; *indicia* of a criminal offence; whether civil proceedings really disguise for attempt by Oireachtas to impose criminal sanction in civil context; purpose of section; whether proof of fraud confined to criminal proceedings; punitive element; loss of limited liability protection for shareholders and repayment; proportionality of sanction imposed; whether sanctions available infringed Constitution; Constitution of Ireland 1937, article 38(1); *Companies Act, 1963*, s297.

Held: Section 297 of the 1963 *Companies Act* did not create a criminal offence; it did not involve civil proceedings being dressed up to involve criminal

procedures, and the sanctions available did not trench on the Constitution in any respect.

CONSTITUTIONAL

Seventeenth Amendment of the Constitution (No 2) Bill, 1997

This Bill has been passed by both Houses of the Oireachtas. (See also (1997) 15 ILT 126.)

Eighteenth Amendment of the Constitution Bill, 1997

This Bill, as presented by TDs Jim O'Keeffe and Paul McGrath, aims to amend Article 12.4 of the Constitution by the substitution of the following text for the existing sub-section 2º:

'Every candidate for election, not a former or retiring president, must be nominated either by:

i) not less than 20 persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or

ii) by the councils of not less than four administrative counties (including county boroughs) as defined by law, or

iii) by not less than 20,000 citizens, each of whom is entitled for the time being to vote in an election held under this article, such nomination to be made in a manner prescribed by law.'

Barry v the Medical Council (Costello P), 11 February 1997

Medical profession; disciplinary procedures; constitutional right to fair procedures; whether decision to hold fitness to practise proceedings in private was *ultra vires* committee's powers; misconduct allegations against practitioner; statute establishing medical council and fitness to practise committee; provisions governing functions of council, committee and registrar; allegations of improper conduct against doctor; application made pursuant to statute to fitness to practise committee for inquiry; council's decision on inquiry based on committee's findings; council decision subject to High Court confirmation or variation; decision of fitness to practise committee to hold inquiry in private; whether committee entitled to rule that the inquiry should be held in private; whether committee had discretion as to whether hearing in private or public; whether committee's findings had any legal effect on the right to practise; whether council's decision on committee's findings had any legal effect on right to practise; whether the proceedings were prosecuted and the decision made in circumstances inconsistent within the objective separation of functions of 'prosecutor and adjudicating tribunal'; whether absolute right to a public hearing in all cases; qualification of right; whether right could only be denied where evidence of confidential nature being given relating to doctor/patient relationship; whether right to public hearing should give way to the rights of others should a public hearing infringe those rights; whether special circumstances where publicity would prejudice the interests of justice; whether risk that proceedings against practitioner might not take place if hearing held in public; circumstances of the case; whether impartial hearing obtained; nature of the proceedings; whether analogous to criminal trial; whether circumstances surrounding employment of certain legal representatives unfair and prejudiced the interests of justice; *Medical Practitioners Act, 1978*; Constitution of Ireland 1937, article 34; *European Convention on Human Rights*, art 6.1.

Held: While it might be the case that there was a right to a public hearing before a professional disciplinary body, when this right conflicted with a right to privacy, the right to privacy should in the circumstances prevail.

The Irish Times Ltd v Ireland (Morris J), 18 February 1997

Courts; trial of accused on criminal charge; constitutional right to trial in due course of law; constitutional provision that justice to be administered in public save in special and limited cases as may be prescribed by law; constitutional right to freedom of expression; right of the media to report proceedings; trial of several accused on drug importation charges; significant media attention and inaccurate reports of the case; plea of guilty by one accused on arraignment; all accused in custody; order made by trial judge limiting contemporaneous reporting of the proceedings; whether trial judge had power to ban or limit reporting of criminal trial; manner in which any such power to be exercised; whether trial subject to reporting restrictions held 'in public'; conflict of constitutional rights; hierarchy of rights; whether accused's right to a fair trial ranked higher; origin of common practice by media to restrict reporting in certain circumstances; whether necessary to limit reporting to ensure fair trial; circumstances of the case; whether a 'real risk' of an unfair trial if contemporaneous reporting allowed; whether damage caused could be remedied by trial judge in directions to jury or otherwise; whether wishes of accused or prosecution to be considered by trial judge in reaching decision; whether order valid; Constitution of Ireland 1937, articles 34.1, 38.1, 40.6.1º(i).

Held: Before a trial judge presiding over a trial imposed a ban on reporting, he had to be satisfied that there was a 'real risk of an unfair trial' if contemporaneous reporting were permitted, and that the damage which such improper reporting would cause could not be remedied by the trial judge, either by appropriate directions to the jury or otherwise.

CRIMINAL

Criminal Evidence Act, 1992 *(Section 29) (Commencement) Order 1997* (SI No 371 of 1997)

This order brings s29 of the *Criminal Evidence Act, 1992* into operation with effect from 6 October 1997. The section provides that evidence may, with leave of the court, be given from abroad through a live television link by a person other than the accused.

DAMAGES

Allen v O'Suilleabhain (Blayney and Murphy JJ), 11 March 1997

Personal injuries; *quantum*; future loss of earnings; relevant multiplier; whether adjustment to be made to award where damages exempt from tax, if plaintiff being compensated for loss of income which would be liable to tax; whether principle limited to damages for wrongful dismissal or breach of contract of service; payment to persons permanently and totally incapacitated by reason of mental or physical infirmity from maintaining themselves; provision in *Finance Act* exempting from tax income from investment of payment for such injury; whether entire of adjusted figure exempt from income tax; general damages; pain and suffering; comparison with other awards in cases of severe personal injuries; whether amount awarded was excessive in the circumstances; factors to be taken into consideration in reaching a fair and reasonable award; *Finance Act, 1990*, s5.

Held: Where damages (or the actual or notional income to be derived from the investment thereof) were exempt from tax, an appropriate adjustment or reduction in those damages had to be made if the plaintiff was being compensated for a loss of income or profits which would have been liable to tax in his hands. The principle applied in every case where the failure to make an appropriate adjustment in assessing the damages awarded would result in a windfall for a plaintiff.

ELECTIONS

Electoral (Amendment) Bill, 1997

This Bill, as presented by Brendan Howlin TD, aims to make provision for polling day in the extraordinary presidential election and the referendum on the *Seventeenth Amendment of the Constitution (No 2) Bill, 1997* (as to which, see also (1997) 15 ILT 126 and above). The Bill also aims to make certain alterations to polling days and to the role of the Minister for the Environment and Local Government in electoral matters.

ENVIRONMENT

Environmental Protection Agency Act, 1992 *(Control of Volatile Organic Compound Emissions Resulting from Petrol Storage and Distribution) Regulations 1997* (SI No 374 of 1997)

These regulations transpose elements of Directive 94/63/EC (of 31 December 1994) into domestic law with the effect of introducing controls on volatile organic compound emissions resulting from petrol storage and distribution at terminals. The regulations provide for the operation of a system of permits by the Environmental Protection Agency. Other provisions of the Directive are transposed into domestic law by the Air Pollution Act, 1987 *(Petroleum Vapour Emissions) Regulations 1997* (as to which, see below).

Air Pollution Act, 1987 *(Petroleum Vapour Emissions) Regulations 1997* (SI No 375 of 1997)

These regulations transpose elements of Directive 94/63/EC (of 31 December 1994) into domestic law with the effect of introducing controls on petroleum vapour emissions (volatile organic compounds) resulting from the storage and distribution of petrol which is intended for use as fuel for motor vehicles. The regulations provide for the monitoring of compliance by service station and mobile container operators by the relevant local authority. Other provisions of the directive are transposed into domestic law by the Environmental Protection Agency Act, 1992 *(Control of Volatile Organic Compound Emissions Resulting from Petrol Storage and Distribution) Regulations 1997* (as to which, see above).

EMPLOYMENT

Organisation of Working Time Act, 1997 *(Commencement) Order 1997* (SI No 392 of 1997)

This order appoints three days – namely, 30 September 1997, 30 November 1997 and 1 March 1988 – as the days on which certain specified provisions of the *Organisation of Working Time Act, 1997* shall come into effect.

***Flynn v Primark* (Barron J), 12 February 1997**

Remuneration; discrimination; workers doing like work; lower rates of pay for predominantly female complainants than male comparators; alleged discrimination indirect in nature; practice complained of affected significantly more women than men; Labour Court determination that discrimination in pay based on grounds other than sex; rates achieved separately through collective bargaining process; whether pay practice impugned constituted *prima facie* discrimination; whether discrimination prohibited by EU law; onus on employer; function of national court with jurisdiction to make findings of fact; whether Labour Court failed to consider whether or not there was an objective justification for the difference in pay; whether appropriate date concerning objective justification was the date of the claim; whether matter to be remitted to Labour Court for consideration and determination; *Anti-Discrimination (Pay) Act, 1974*; EEC Treaty, art 119.

Held: It was the function of the national court, which had sole jurisdiction to make findings of fact, to determine whether, and to what extent, the grounds advanced by an employer to explain a pay practice, which applied independently of sex but which in fact affected more women than men, could be regarded as objectively justified on economic grounds. The Labour Court's function was not to consider merely whether there was a reason unconnected with sex for the difference in pay, but whether that reason was objectively justified on economic grounds and not merely an indirect means of reducing the pay of a group of workers exclusively or predominantly of one sex.

***Central Bank of Ireland v Gildea* (Supreme Court), 14 March 1997**

Case stated; respondent employed by appellant as security guard; dismissed for misconduct; Employment Appeals Tribunal found he had been unfairly dismissed; appeal to Circuit Court; case stated to Supreme Court as to whether respondent had been employed 'by or under the State' and was thus excluded from operation of 1977 Act; *Unfair Dismissals Act, 1977*, s2(1)(H); *Central Bank Acts, 1942 and 1989*; *Civil Service Regulation Acts, 1924 and 1926*.

Held: A person employed by a semi-State body created by statute is not a person employed

'by or under the State' for the purposes of the *Unfair Dismissals Act, 1977*.

GARDA SÍOCHÁNA

***Church v Commissioner of An Garda Síochána* (Costello J), 18 March 1997**

Plaintiffs were gardaí who, acting on information received, carried out drug search; proceedings issued claiming search illegal; suggestion that information had been given maliciously; plaintiffs refused to reveal identity of informant; defendant ordered them to reveal information or face disciplinary procedures; whether defendant's order was *ultra vires*; whether information was privileged on grounds of public policy; whether defendant had been guilty of delay.

Held: The law of evidence has no application when considering whether an order of the Garda Commissioner, to reveal information, is *ultra vires* his legal powers.

MARITIME

***In re 'Blue Ice' MV* (Barr J), 21 March 1997**

Arrest of vessel; plaintiff claiming that owners of vessel in breach of contract of carriage; plaintiff obtaining and executing warrant of arrest for vessel; defendant applying for discharge of warrant; whether plaintiff having 'good and sufficient reason' for causing arrest of vessel; whether fair, statable case sufficient; *Admiralty Court (Ireland) Act 1867*, s47.

Held: A warrant for the arrest of a vessel will not be discharged on the grounds that the plaintiff does not have 'good and sufficient reason for having caused the issue and execution of the warrant of arrest' within the meaning of s47 of the *Admiralty Court (Ireland) Act 1867*, where the plaintiff establishes a fair, statable case in support of his claim.

PRACTICE & PROCEDURE

***Rules of the Superior Courts (No 7) of 1997* (SI No 348 of 1997)**

These rules provide for an addition to o39 of new rr45-52, making provision for a new system of disclosure and admission of reports and statements between parties, pursuant to s45 of the *Courts and Court Officers Act, 1995*. The rules came into operation on 1 September 1997.

***District Court (Fees) Order 1997* (SI No 369 of 1997)**

This order revises fees payable in connection with all types of proceedings in the District Court. The order revokes all previous district court fees orders and came into operation on 1 October 1997.

***Uwaydah v Nolan* (Barron J), 21 February 1997**

Service; summons served on defendant's wife; whether mode of service good; whether summons could be validly served when defendant normally resident or domiciled outside jurisdiction; *Rules of the Superior Courts 1986*, o9, r15.

Held: Submission to the jurisdiction of the court is dependent on presence within the jurisdiction rather than normal residence or domicile.

***Irish Press plc v EM Warburg Pincus & Co International Ltd* (McGuinness J), 12 March 1997**

Security for costs; company; arguable case; sufficient resources to meet defendant's costs; application refused; *Companies Act, 1963*, s390.

Held: Where a company has sufficient resources to meet the defendant's costs, an application for security for costs will be refused.

***O'Malley v Ceann Comhairle* (O'Flaherty J), 14 March 1997**

Ceann Comhairle amended Dáil

question without consultation with member who tabled question; plaintiff claimed that this was contrary to Dáil Standing Orders; whether decision of Ceann Comhairle could be judicially reviewed; whether this would be contrary to doctrine of separation of powers.

Held: It is inappropriate for the courts to interfere with the internal working of the Dáil except in the most extreme of circumstances.

***Shannon v McGuinness* (Kelly J), 20 March 1997**

Locus standi; judicial review sought of District Court's dismissal of criminal proceedings; applicants not party to proceedings; applicants to give evidence in proceedings as witnesses; application to withdraw criminal proceedings on instructions of Director of Public Prosecutions; whether applicants lacked *locus standi* in judicial review proceedings; whether applicants' interests had been adversely affected by the operation of the orders made in the District Court; merits of the application; *Rules of the District Court*, r66.

Held: Where the applicants for judicial review of the District Court's dismissal of criminal proceedings at the Director of Public Prosecution's request were mere witnesses in those proceedings, they failed to show the necessary *locus standi* to bring the application.

***O'Brien v Fahy* (Supreme Court), 21 March 1997**

Limitation of actions; negligence; personal injuries; plenary summons issued just before expiry of limitation period; summons out of date when served; order renewing summons; defendant's motion to set aside renewal; what plaintiff had to prove in seeking renewal of summons; whether plaintiff had good reason for renewal; lapse of time before defendant knew claim to be brought; whether prejudice to defence theoretical or actual; balance of justice.

Held: In order to have a plenary summons renewed, a plaintiff had to show that there was some difficulty in service or other good reason for renewal. A lapse of more than four years without knowing that a claim was to be brought was enough of itself to imply prejudice for the defence.

TAXATION

Taxes Consolidation Bill, 1997

This Bill, as presented by the Minister for Finance, is the largest single piece of proposed legislation in recent years, with over 1,000 sections covering some 1,600 pages. It seeks to consolidate enactments relating to various taxes, including capital gains tax, corporation tax and income tax.

TELECOMMUNICATION

***European Communities (Satellite Telecommunications Services) Regulations 1997* (SI No 372 of 1997)**

These regulations give effect to Commission Directive 94/46/EC (of 13 October 1994) amending Directives 88/301/EEC and 90/388/EEC (of 16 May 1988 and 28 June 1990 respectively). The aim of this directive is to provide for the liberalisation of the markets for satellite communications services, networks and equipment.

TORT

***McKenna v Best Travel Limited trading as Cypriana Holidays* (Lavan J), 17 December 1996**

Negligence; personal injuries; package holiday; duty of tour operator and travel agent; implied terms of contract for sale of package holiday; plaintiff purchasing holiday to Cyprus from defendant tour operator through defendant travel agent in September 1990; option to purchase trip to Bethlehem from Cypriot agent of defendant tour operator; plaintiff injured by stone thrown at bus in Bethlehem; whether defendants negligent; whether defendants taking reasonable care for safety of plaintiff; whether breach of implied terms; whether breach of s39 of the *Sale of Goods and Supply of Services Act, 1980*; whether duty to warn plaintiff of dangers of destination; whether defendants liable in respect of criminal activity of third party; extent of duty; duty of care of tour operator; duty of care of travel agent; whether plaintiff negligent; damages; assessment of damages; deductibility of compensating benefits; plaintiff suffering loss of teeth and bone; plaintiff sustaining scars to face; plaintiff awarded compensation by Israeli Compensation Fund; whether compensation deductible from award; *Sale of Goods and Supply of Services Act, 1980*, s39; *Civil Liability (Amendment) Act, 1964*, s2; *Social Welfare Consolidation Act, 1981*, ss68(1), 306(A).

Held: A person may be liable for the criminal activities of a third party where the criminal activity is reasonably foreseeable. The court held that a travel agent and tour operator were negligent in failing to warn a client of the dangers of travelling to Bethlehem at a time when they ought reasonably to have known that inhabitants of the West Bank were hostile towards westerners. The court held that in the unusual circumstances of the case, the sum awarded to the plaintiff by the Israeli Compensation Fund was not deductible from the damages awarded to the plaintiff.

***O'Brien v Armstrong* (Supreme Court), 19 March 1997**

Negligence; road traffic accident; personal injuries; defendant approaching blind bend on narrow stretch of road; continuous white line for some distance; accident black spot sign posted at bend; plaintiff attempting to overtake; plaintiff claiming defendant increased speed and pulled out to the right; High Court dismissing action; appeal to Supreme Court; whether defendant ought reasonably to have anticipated that plaintiff would attempt to overtake; duty of defendant; whether plaintiff negligent.

Held: The driver of a truck approaching a blind bend on a stretch of road so narrow that it was inevitable that he would have to move out to his right could not reasonably have foreseen that the plaintiff would attempt to overtake him at that point and was not negligent in failing to see that the plaintiff was attempting to overtake him. G

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Law Society President Laurence K Shields being congratulated on his election by his predecessor Frank Daly at Blackhall Place

Soccer blitz raises £1,200 for benevolent fund

On the charity ball: the Society's soccer-playing younger members netted £1,200 for the Solicitors' Benevolent Association recently

The Younger Members' Committee scored for the Solicitors' Benevolent Fund recently when it raised £1,200 for the charity in its annual soccer blitz. Good weather allowed tough competitive games to be played between teams from Dublin, Cork, Kildare and Meath. Two teams from the Bar also competed.

Kildare-based Reidy Stafford's team had much better luck than the county's All-Ireland side when it came out on top after a tough final against Sherlocks, Dublin.

The committee would like to thank all the firms which entered a team and every one who participated on the day for their support. The trophies were kindly sponsored by Terry Oliver, O'Sullivan Keogh Accountants, and the committee would like to thank Mr Oliver for presenting them on the day.

New Council members

Helen Sheehy

Helen Sheehy is a solicitor with Dun Laoghaire solicitors Partners at Law. She obtained her BCL from UCC in 1981. She was entered on the Roll of Solicitors in 1985, obtained a Masters degree in commercial law in 1994 and became a trademark agent in 1996. She joined the council of the Dublin Solicitors' Bar Association in 1990 and has been its honorary secretary since 1996. She is a member of the *Gazette* Editorial Board.

Hugh O'Neill

Hugh O'Neill qualified in May 1980. A partner in Marcus Lynch Solicitors, Dublin, he was the Dublin Solicitors' Bar Association nominee on the Law Society Council for two years.

Maeve O'Driscoll

Maeve O'Driscoll has been qualified for six years and in that time has worked in both Dublin City and Cork County for her family firm PJ O'Driscoll & Sons, where she is a third generation practitioner. She has been the litigation officer of the West Cork Bar Association for the past two years. In her apprenticeship days, she was the elected representative of her class on the Law Society Education Advisory Committee.

Peter Allen

Peter Allen was educated at Castleknock College, Dublin. He qualified as a solicitor in 1980, and first worked with the firm of John C Sinnott & Company, Enniscorthy, Co Wexford, for a year. He then returned to the family firm of MacDermot & Allen, and has been principal there since 1988.

David Martin

David Martin qualified in 1978. He works for the Dublin-based firm of Gore and Grimes.

Angela Condon

Angela Condon qualified in 1973. She works for JB Healy Crowley and Co in Killorglin, Co Kerry.

Class of 52 still going strong

Solicitors who passed their finals and/or got their parchments during Michaelmas term 1952 recently got together for a reunion at Blackhall Place. The group celebrated 45 years in the profession with a dinner at the Law Society's headquarters. The event was a resounding success. All the participants were in excellent health and are already looking forward to meeting again in 2002 for their 50th anniversary. The group's own resident photographer Fionnbar Callanan photographed the class.

Front row (from left): Frank Keane, Patrick OR Markey, Mary King, Nora McDowell, Colm Price, Eileen Bourke, Margaret Callanan, David Punch
Back row (from left): Tim Ryan, Brendan O'Flynn, Enda Gearty, Jack Phelan, Reggie White, Brian Price, Brendan Boushel, Brian K Overend, William Corrigan, Laurence O'Reilly, Fionnbar Callanan

Visit to EU institutions

Saturday 14 February to Saturday 21 February

The Law School is again, in 1998, organising an educational visit to the institutions of the European Union for apprentices and a number of solicitors. 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.

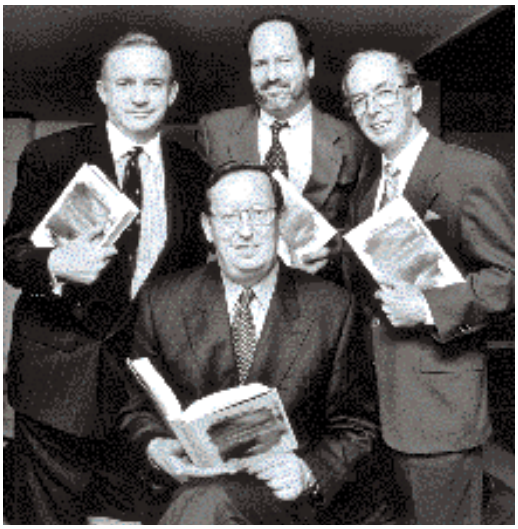
Those interested in attending should pay a booking deposit of £100 on or before Friday 12 December. There will be a draw among those apprentices who pay booking deposits and the winner will travel for free.

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

William Fry celebrates 150 years

This year marks the 150th anniversary of the founding of William Fry, Solicitors. The firm recently held a black tie ball for all its staff and their partners to celebrate the occasion. Pictured at a reception to mark the occasion were (left to right): Houghton Fry, Oliver Fry and Brian O'Donnell

Sound man: Niall Farrell presenting a copy of his *Sound law* tape to Law Society President, Laurence K Shields



(Right) Pictured at the launch of *Insurance law in Ireland* (left to right): Mr Justice Michael Moriarty; the author, Austin Buckley (seated); David Givens, Oak Tree Press, publishers; and Coyle Hamilton chairman and chief executive, Ronan Fearon

Book reviews

Personal sketches and recollections of his own times

Sir Jonah Barrington

Ashfield Press (1997), 26 Eustace Street, Dublin 2. ISBN: 1 901658 04. Price: £29.95 (h/b), £19.95 (p/b)

Sir Jonah Barrington, barrister, politician, judge, historian and writer, was born near Abbeyleix in 1760. Clever, witty and perceived to be full of the social graces, he was returned to the Irish House of Commons as a member for Tuam in 1790.

As a barrister he appeared in some of the celebrated cases of his day – some of which he describes in this book. One such case was his defence of Theophilus Swift, a fellow barrister, who had been greatly upset because the fellows of Trinity College Dublin did not do justice 'to the cleverest lad in Ireland' – Swift's son, christened Dean Swift. Swift wrote that the fellows of Trinity College were perjurers, profligates and impostors. He added further insult by writing that the fellows, who were clergymen, and obliged to be celibate according to the statutes of the university, were acting flagrantly in the face of the Holy Evangelists and the virgin queen and lacking in morality, religion, common decency and good example.

An information was granted against Swift, the barrister, and he was prosecuted for gross libel. The case came before the King's Bench and Barrington cross-examined some of the fellows including Dr Barret, described by Barrington as 'a little, greasy, shabby, croaking, round-faced vice-provost' who knew nothing on earth 'save books and guineas, never went out, held but little intercourse with men, and none at all with women'. Swift was found guilty of publishing that certain persons, fellows of Trinity College, had been living conjugally with certain persons of an entirely different sex and was sentenced to 12 months' imprisonment.

Barrington became a judge of the Court of Admiralty in 1798 and received a knighthood in 1807. Sir Jonah was extravagant in his lifestyle and was charged in 1828 in the House of Commons of malversation in office. This involved the misappropriation of court funds. An address for the judge's removal was made to the Crown by petition of both Houses of Parliament and he was removed from judicial office in 1830. He left the country, never to return, and died at Versailles on 8 April 1834.

Personal sketches is a vivid and racy portrait of a remarkable and ingenious people: the politicians, lawyers, judges, scholars and citizens in Ireland during the late 1700s and early 1800s. Full of wit, satire and humour, Sir Jonah presents us with a passionate, provocative and riveting window into a fascinating period of Irish life. G

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

An eye on the whiplash and other stories

Henry Murphy SC

Ashfield Press (1997), 26 Eustace Street, Dublin 2. ISBN: 1 901658 10 4. Price: £16.95 (h/b), £9.99 (p/b)

This book contains many hilarious accounts of the life of a struggling barrister trying to establish his career. The short stories revolve around Dermot McNamara BL receiving his first briefs from Arnold O'Reilly, a middle-aged solicitor, most of whose endowments have been channelled into his body rather than his mind. Arnold's briefs normally contain a bundle of papers, not in any particular order, which purports to contain all the information a barrister needs for the case, but rarely does.

Dermot is charitable enough to compare Arnold to Mrs Gandhi. He recalls Mrs Gandhi saying that, whereas there was a time long ago when she had all the answers, now that she was older she only had questions. Arnold, too, only had questions – normally to Dermot at home at 6.25pm each evening when he is feeding his twin babies.

The stories involve a number of routine court cases and the court hearings which often escalate out of Dermot's control with surprising and unpredictable results. One case involves a dangerous driving charge against the voluptuous Ms Wilkinson, for whom driving within the speed limit had all the excitement of a Vatican encyclical on sexual morality.

There is also the case of William Dunne who issued proceedings against his publican for serving him too much alcohol, followed by the nightclub waitress who suffers whiplash when opening a bottle of Chateau Neuf du Pape.

In between the many witty and ironic lines, certain nuggets of truth emerge about the legal profession. Dermot admits, early on in his career, that one of the hallowed traditions of the Bar is the pursuit of money. This tradition is passed on from generation to generation by word of mouth. In fact, the more enlightened recruits to the Law Library do not even have to be taught this tradition. It is part of what they are.

Lawyers and non-lawyers will revel in these hilarious anecdotes of the court system in operation. This is the perfect Christmas present for anyone looking for light relief over the holiday period. If Henry Murphy SC continues with his writing, Dermot McNamara could become the next Rumpole. G

John Costello is a solicitor with Dublin solicitors Eugene F Collins.

Information technology law in Ireland

David Kelleher and Karen Murray

Butterworths (1997), 26 Upper Ormond Quay, Dublin 7. ISBN: 1 85475 825X. Price: £50

This book has been published at an opportune time. Information technology is a rapidly growing industry and is making a large contribution to Ireland's growing economy. New technologies, the Internet and the World Wide Web are changing the way we do business and communicate with each other. The purpose of the book is to clarify the legal structures within which information technology law operates.

The authors take a global view of the various legal issues affecting information technology. Due to the breadth of the task, many issues are not dealt with in any great depth but are included to give the reader a full picture. Having said that, however, it is clear that a large amount of research work has been done and there is a wealth of material contained in the footnotes. It is indeed an excellent starting point for the student, and a handy reference book for the practitioner.

The thing I especially liked about this book is that it contains straightforward explanations of the technology involved and does not use computer buzz-words which are incomprehensible to the general public. It is clear that the authors are as much at home with technology as they are with the law, and the basics – such as definitions of 'computer', 'software', 'information technology', 'multimedia' and so on – which allow the reader to understand the rest of the work are very well covered. The source materials used are surveys compiled for and by the computer industry, computer magazines, economic journals and newspapers, as well as the usual legal precedents and legislation.

The book concentrates on intellectual property law, computer crime and privacy and data protection, but has short segments on competition law, trade secrets and confidential information, evidence, electronic commerce, liability for defective computer products and services, and computers in the workplace.

Intellectual property, and more particularly copyright law, is responsible for protecting the information technology industry. In Ireland, we are still dependent on the 1963 *Copyright Act*, promulgated before the computer even existed, for the bulk of our copyright law. Specific protection was accorded to computer programs by the EU Council Directive on the *Legal protection of computer programs* which was transposed into Irish law by regulations made in 1993. These regulations are considered in depth and very well done.

Most importantly, this book shows how general law applies to information technology, and that information technology law is really an amalgam of intellectual property, criminal, tort, employment law and competition law.

I found the book to be easily read and I would recommend it to students and practitioners alike. G

Helen Sheehy is a solicitor with Dun Laoghaire solicitors Partners at Law.

Psychiatric detention: civil commitment in Ireland

Tom Cooney and Orla O'Neill

Bailkonur (1996), Delgany Post Office, Co Wicklow. Price: £23.95

This extremely well-researched book contains a detailed commentary on the present law and the need for substantial law reform in the whole area of both voluntary and involuntary admissions to psychiatric hospitals.

The book analyses the *Mental Treatment Act, 1945* as amended and the Government White Paper on a new *Mental Health Act* (July 1995), but argues cogently that the White Paper, despite its merits, fails to take the rights of persons experiencing mental disorder seriously enough.

The authors analyse many decided cases in the mental health area, including both Irish cases and cases of the European Commission and European Court of Human Rights. They also examine how the *European convention on human rights and fundamental freedoms* and the *United Nations charter*, should affect domestic law.

The authors suggest new safeguards to protect people being admitted voluntarily to psychiatric hospitals under conditions that are not, in fact, voluntary. They have even drafted a statutory bill of rights of psychiatric patients which attempts to remedy the defects, as they see it, in the White Paper. The controversial issue of the right of involuntary patients to refuse treatment is also aired.

There is a useful summary of the present wardship legislation, with suggestions for reform, such as:

- A provision for prompt discharge of a wardship order with periodic reviews of the ward's health, if necessary
- A provision whereby a ward would not lose all individual rights where some capacity existed
- A provision for personal care guardianship where decisions could be made for individual patients by guardians without reference to the wards of court office, such as with an enduring power of attorney
- A provision for a guardian to make decisions regarding mental health care for a patient without the authority of the High Court. The guardianship order would indicate in specific terms which forms of treatment the guardian had power in any given case to give substitute consent on behalf of the ward
- A provision for an advocate who would represent the patient in learning about, protecting and asserting the patient's rights within the healthcare context and to act in consultation with the patient, where appropriate. It is suggested that an advocacy service would be placed on a statutory basis, with an advocates office appointed to act as advocates in appropriate cases
- A provision for an adult care order as suggested in the White Paper, whereby a health board could seek the court's approval to the placement of the person with a mental disorder in the care of a relative, a health board or a voluntary agency.

This book is essential for anyone interested in law reform in the mental health area. The practitioner will also find invaluable information for enforcing the rights of individuals with a mental disability. G

John Costello is a solicitor with Dublin solicitors Eugene F Collins.

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 December 1997)

Regd owner: Patrick (orse Patrick J) Coleman, Muckinagh, Strokestown, Co Roscommon; Folio: 6817; Townland: Muckinagh and Drumagissaun; Area: 11a 1r 14p and 1a 1r 24p; **Co Roscommon**

Regd owner: Michael Duffy; Folio: 22528; Lands: Letterkenny; Area: 6a 1r 5p; **Co Donegal**

Regd owner: Dorothy O'Reilly; Folio: 1812; Lands: Maudlings Barony Naas North; **Co Kildare**

Regd owner: Ellen O'Neill of 68 Balally Park, Dundrum, Dublin 14; Folio: 6007L; Lands: Townland of Balally in the Barony of Rathdown; **Co Dublin**

Regd owner: Patrick D MacConville & Kathleen MacConville, Cummeen, Strand Hill Road, Sligo; Folio: 19519; Townland: Cummeen; Area: 0a 1r 0p; **Co Sligo**

Regd owner: Ailish Byrne; Folio: 832L; **Co Meath**

Regd owner: Michael O'Reilly, Shanaglish, Gort, Co Galway; Folio: 32091F; **Co Galway**

Regd owner: Edward Clegg, Folio: 12279; **Co Monaghan**

Regd owner: Andrew Moloney (Junior), Skehana, Clarecastle, Co Clare; Folio: 20238; Townland: Skehanagh; Area: 9.950 acres; **Co Clare**

Regd owner: Joseph Cooney, Carnmore, Oranmore, Co Galway; Folio 20884F; **Co Galway**

Regd owner: Vincent Leavy; Folio 9873; Land: Aghnagore and Cloondara; **Co Longford**

Regd owner: Thomas Begley; Folio: 4650; Land: Ballybinaby; Area: 21a 2r 34p; **Co Louth**

Regd owner: John J Monks of Balbutcher House, Ballymun Road, Santry, County Dublin (The Forest, Cloghran, County Dublin); Folio: 15690; Lands: Townland of Forrestfields in the Barony of Nethercross; Area: (Hectares) 1.577; **Co Dublin**

Regd owner: Roger Forde, Gaurus Road, Roslevan, Ennis, Co Clare; Folio: 5134F; Townland: Rosslevan; **Co Clare**

WILLS

Malcolmson, Kathleen, deceased, late of Ervey, Kingscourt, Co Cavan. Would any person knowing of the whereabouts of a will of the above named who died on 29 October 1997, please contact FN Murtagh & Company, Solicitors, Main Street, Kingscourt, Co Cavan, tel: 042 67503, fax: 042 67429

Frost, Patrick Joseph (otherwise Padhraig Seosamh), deceased, late of 30 Murphystown Road, Leopardstown Heights, Foxrock, Dublin 18, and formerly of 291 Sutton Park, Dublin 13, and formerly of Tuam, civil servant. Would any person knowing the whereabouts of a will of the said deceased or who has any information relating to a will of said deceased, who died on 24 October 1994, please contact Kearns Price & Co, Solicitors, 2 Lr O'Connell Street, Dublin 1, tel: 8742131, fax: 8740709

Higgins, Helen (also known as Fradley, Helen), deceased, late of 51 La Touche Road, Bluebell, Inchicore, Dublin 12. Would any person having knowledge of a will executed by the above named deceased who died on 6 September 1997, please contact Ms Nora Ward of A&L Goodbody, Solicitors, 1 Earlsfort Centre, Hatch Street, Dublin 2, tel: 01 6613311, fax: 01 6613278

EMPLOYMENT

Solicitor semi-retired, interested in part-time/locum position. **Box no 100**

Attractive job and Salary in Kildare. Solr 2/3 PQE, experience in commercial leases, computer literate, own car, flair. Part 1: commercial, conveyancing, litigation; part 2: research, writing, editing, recording, marketing. CV and letter now to Patrick J Farrell and Company, Newbridge

A solicitor with a least two years' post-qualification experience is required for busy South West practice – mainly probate, conveyancing, district court and general legal work. All applications in writing to **Box no 101**

Round Hall Sweet & Maxwell requires a Legal Editor. Editors are responsible for progressing publications of all types through production. The candidate now being sought will have particular responsibilities in monitoring legal developments for the *Irish Current Law Monthly* Digest and allied publications. Applicants should demonstrate a meticulous eye for detail, an ability to interpret and preçis law, willingness to work to deadlines and the confidence to deal with authors and external editors. Basic information technology skills are essential. Full training will be given to the right applicants, who should hold a professional legal qualification, and have a desire to make a career in law publishing. Please apply in writing enclosing a CV, stating your current salary (if any) and explaining why you feel that a career in legal publishing is right for you, to: Aideen O'Regan, Round Hall Sweet & Maxwell, Brehon House, 4 Upper Ormond Quay, Dublin 7

MISCELLANEOUS

Northern Ireland agents for all contentious and non-contentious matters. Consultation in Dublin if required. Fee sharing envisaged. Offices in Belfast, Newry and Carrickfergus. Contact Norville Connolly, D&E Fisher, Solicitors, 8 Trevor Hill, Newry, tel: 080 1693 61616, fax: 080 1693 67712

Personal injury claims, family law, criminal law and property law in England and Wales. We have specialist departments in each of these areas, and offices in London (Wood Green and Camden) and Birmingham. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Company, Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England, tel: 0044 181 881 7777, fax: 0044 181 889 6395, and The McLaren Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000, fax: 0044 121 233 1878

London solicitors will advise on UK matters and undertake agency work. All areas. Corporate/private clients. Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 171 589 0141, fax: 0044 171 225 3935

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

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: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. M L White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 080 1693 68144, fax: 080 1693 60966

Tax consultants offer a complete tax advisory service covering the problems which may arise from income tax, VAT, CGT and CAT within a legal practice. Dermot Byrne & Associates, Larch House, 44 Northumberland Avenue, Dun Laoghaire, Co Dublin. tel: 01 2808315, fax: 01 2843092

LOST TITLE DEEDS

Ryan, Richie, deceased. Would any person holding or knowing the whereabouts of title deeds of the above-named to a dwelling at Market Street, Bantry, Co Cork, please contact O'Mahony Farrelly, Solicitors, Bantry, tel: 027 50132, fax: 027 50603 **(Ref KL/71308)**

THE REGISTRY OF WILLS SERVICE

Concern has been expressed by some practitioners at the overhead imposed by the registration of existing wills. It is widely accepted that registration fees for future wills are not a concern as the outlay can be advised and charged to the client at the time of making the will.

In recognition of this concern, the cost of registration of wills (made up to and including the 31st day of October 1997) has been reduced to a fee of £1.00 plus VAT @ 21% per will, total £1.21.

This reduction will apply provided registration takes place prior to the 28th day of November 1997 next. After that date, the normal registration fee will be payable.

The Registry of Wills Service Limited
Tuckeys House, 8, Tuckey Street, Cork
Tel: +353 21 279 225 Fax: 353 21 279 226

Employment register/vacancies

The following is a list of current vacancies which have been notified to the Law Society recruitment service. An updated list can be obtained at any time by fax or post from Geraldine Hynes, Career & Professional Development Adviser (tel: 01 671 0200).

Ref 6.51 DUBLIN 7:
Conveyancing and general practice, newly-qualified. Woods & Co, 41 Arran Quay.

Ref 6.60 DUBLIN 2:
Conveyancing and general practice (min two years' pqe). Brophys, 38-40 Parliament Street.

Ref 6.73 DUBLIN 2:
Litigation and general practice, recently-qualified; Denis Murnaghan & Co.

Ref 6.74 SLIGO:
i) Litigation and (ii) general practice; Damien Tansey & Co.

Ref 6.75 CO WEXFORD:
General practice; Anthony O'Gorman & Co, Gorey.

Ref 6.77 IFSC:
Commercial lawyer; two-six years' pqe. Orix Aviation Systems Limited (David Power).

Ref 6.83 DUBLIN 15:
Conveyancing and general practice; Seamus Maguire & Co, Blanchardstown.

Ref 6.84 GALWAY:
Conveyancing and general practice (min two years' pqe). Patrick M Keane & Co.

Ref 6.86 DUBLIN 2:
Solicitors with civil litigation experience; written applications to Dr EG Hall, Telecom Eireann.

Ref 6.88 DUBLIN 12:
General practice (min two years' pqe). Michael Hayes & Co.

Ref 6.91 LIMERICK:
Experienced conveyancer (full-time or part-time). Mai McMahon, Hartstonge Street.

Ref 6.93 BANK OF IRELAND TRUST SERVICES:
Recently-qualified solicitors (six month contract). Applications to Bridget Kenna, Personnel Department.

Ref 6.97 LIMERICK:
Locum solicitor for general practice Jan-Apr 1998; Geraldine Thornton, O'Connell Street.

Ref 6.98 JERSEY:
Recently-qualified solicitors required by trust company; Applications to Kevin O'Connell, Atlantique Trust Ltd.

Ref 6.99 LONGFORD:
Litigation and general practice; John J Quinn & Co.

Ref 12.1 DUBLIN 2/14:
Litigation & conveyancing locum; Dec-Mar. Brendan J Dillon, Dundrum.

Ref 12.2 CO WICKLOW:
Litigation, recently-qualified; Augustus Cullen & Son.

Ref 12.3 STOCK EXCHANGE:
Investment funds listing adviser; suit recently-qualified solicitor with some commercial experience; applications to Hilary Griffey.

Ref 12.4 DUBLIN (BLACKROCK):
Conveyancing and probate; recently-qualified; Michael Sheil & Associates.

Ref 12.5 SLIGO:
Conveyancing and general practice (temporary position). Howley Carter & Co.

Ref 12.6 CO WEXFORD:
General practice; Nolan & Co, 31 South St, New Ross.

Ref 12.7 DUBLIN 2:
Litigation and employment law (temporary contract); min three years' pqe. William Fry (Boyce Shubotham).

Ref 12.8 CO CLARE:
General practice; Patrick F Molony & Co, Ennis.

Ref 12.9 CO CLARE:
Recently-qualified (temporary contract); must be computer literate. Applications to Rose Hynes, General Counsel, GPA Group plc, Shannon.

Ref 12.11 CORK:
Experienced locum for general practice, Jan-Mar '98. Gerald Y Goldberg & Co (Anne O'Mahony).

Ref 12.12 CO KERRY:
Tralee Law Centre; temporary position; tel: Eamonn Purcell, Legal Aid Board, 01 6615811.

Ref 12.13 CO CAVAN:
General practice; Mel C Kilrane & Co, Bailieborough.

Ref 12.14 DUBLIN 22:
Locum solicitor required, Jan-Jun '98. Applications to Hugh Cunniam, Clondalkin Law Centre.

Ref 12.15 BUILDING SOCIETY:
Conveyancing solicitor, recently-qualified; applications to Aisling Pierce, INBS, Grand Parade, Dublin 2.

Ref 12.16 DUBLIN 8:
Senior property solicitor with commercial experience; applications to Michael Carroll, CIE Solicitor's Office.