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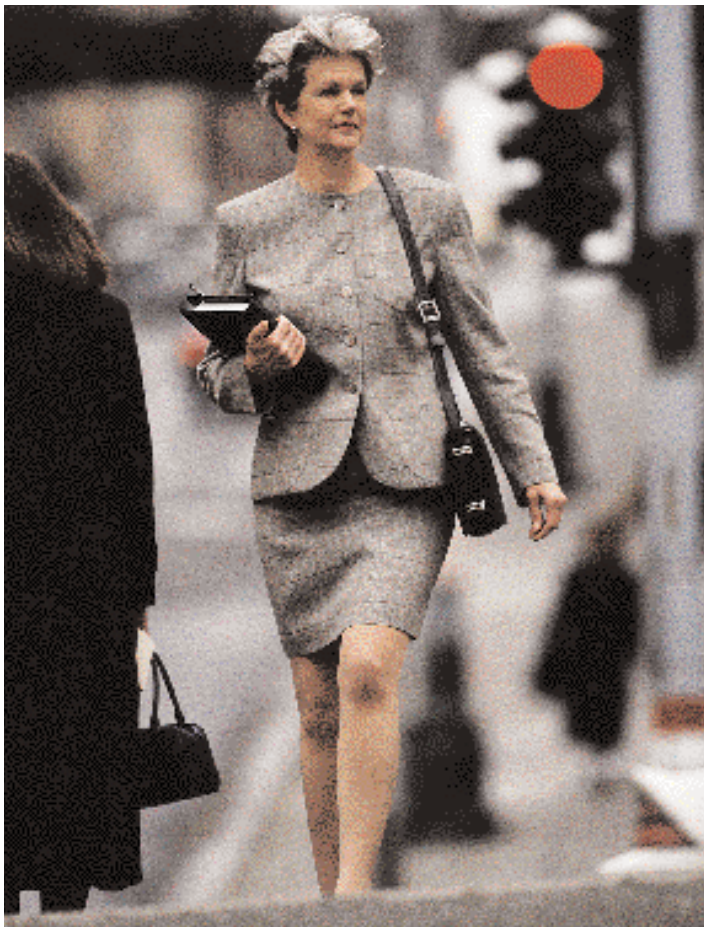
Shattering the glass ceiling: women in the law

'Male economic power is in decline: the male biological role is usurped by jam jar and syringe; men are finding it more difficult to convince women of their worth.' These are the opening words of the leader writer in *The Times* on 10 June. The words were written, however, in the context of modern males being more at risk than females in terms of health, and being far less likely to do anything about it.

In a trivial sense, these words struck home recently. The staff in one legal office in Dublin run a syndicate for the twice-weekly Lotto. But men are barred. There are, as far as the writer knows, no written rules barring males from joining the syndicate but the ban appears absolute. Is this an assertion of female power? In the same office, the professional staff of solicitors is balanced evenly between men and women. On a more serious note, changes are occurring in the role of the male and female sexes in Ireland and this is evident in the legal profession.



Barred from legal profession

It may seem extraordinary, but for most of mankind's history women were barred from entry to the legal profession. It was not until the enactment of the *Sex Disqualification (Removal) Act 1919* that women could become members of the legal profession. In fact, women were not admitted to full membership at Trinity College, Dublin, until 1904. It was not until 1 November 1921 that the Lord Chief Justice of Ireland, Sir Thomas Molony, admitted the first woman to the Irish Bar. Miss Frances Kyle was the first woman entered on the roll on that day. Miss Kyle demonstrated the intellectual powers of the liberated sex by winning the prestigious Brooke Scholarship. The first female solicitor was admitted in Ireland in 1923. The first woman to take silk was Dr Frances (Fanny) Elizabeth Moran. Chief Justice Sullivan called her to the Inner Bar on 9 May 1941. Her practice was almost entirely in conveyancing. She subsequently became the first woman Professor of Laws (1934) and the first woman Regius Professor of Law (1944) at Trinity College, Dublin.

Professor Fanny Moran (and nobody called her Fanny to her face twice) was described by McDowell and Webb in *Trinity College, Dublin (1992)* as 'a strong mixture of progressive feminism and strong conservatism in the field of politics, morality and social behaviour'. She was said to be a lady who 'dressed and talked with style and her conversation was full of well-informed gossip, pithily expressed'. The first female President of the Law Society was Moya Quinlan in 1980. The first woman appointed to the High Court was the Honourable Mella Carroll. (See generally, Daire Hogan's *The legal profession in Ireland 1789-1922* (1986) and RFV Heuston's *Frances Elizabeth Moran* (1989) 11 DULJ 1.)

Few women partners

Women contribute more than half of each graduating class of solicitors, so why are there so few women partners in the major firms? One explanation must be the responsibility that women assume for care of children and elderly parents. The terrible pressure for billable hours is often not compatible with any significant commitment outside the law firm. Any significant commitment outside the firm forces women solicitors to seek part-time work. Some have argued that this has resulted in a new sub-stratum populated principally by women. Research has shown in other jurisdictions that women who work part-time are regarded by some colleagues as less committed and are often engaged in less interesting and lower status work.

Mona Harrington in *Women lawyers: rewriting the rules* (1994) succinctly summed up the dilemma faced by many women lawyers: 'Either they go by men's professional rules while shouldering the main burden of families and thus live under constant, punishing, pressure or they gain exceptions for themselves from men's rules and are thus not taken seriously as fully authoritative colleagues'.

Some commentators have noted that the concept of the 'wise counsellor', the 'well-rounded specialist', has been abandoned in many firms and replaced by early specialisation – the technocrat. The age of 'the renaissance lawyer' may be gone. The relentless pressure for billable hours, the demands of specialisation and the decline of a mentoring process may force senior partners to look for total commitment and dedication, hence forcing women lawyers into abandoning the law firm or seeking part-time work. Many women are thereby shunted off the partnership track.

Many large companies in Ireland and elsewhere have benefited from recruiting women lawyers. Some theorists have argued that women can provide perspectives, analysis, skills and client care that their male colleagues may lack to a certain degree.

What is the solution? Re-evaluate part-time work; consider part-time partnerships. The author of *Why law firms cannot afford to maintain the Mommy track* in 109 *Harvard Law Review* (1996) suggests employer-assisted day-care programmes, viable part-time work, alternative billing processes and a method of compensating lawyers by means of money *and* time.

The law and our clients will suffer if the needs of women lawyers are ignored. G

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

Is time running out for the right to silence?

The right to silence is one of the law's most popular notions. Every suspect soon learns of the right to stare at a spot on the wall. In America, they 'plead the Fifth'.

But the right to silence and the privilege against incriminating yourself are not as embedded in the law as popular culture imagines. And, if the new Government accepts recommendations both of the Government Advisory Committee on Fraud and of the Law Reform Commission, they may shortly become even less so.

Successive Ministers for Justice have promised overdue reforms of criminal law. Politicians, judges, barristers, solicitors, even defendants, see the absurdity of relying on such legislation as the *Debtors (Ireland) Act* of 1872 or the *Falsification of Accounts Act* of 1875. Draft legislation is now said to be almost complete.

Law reform is also a key priority of the Department of Justice, according to *Tackling crime*, the recent discussion paper on crime. The paper warned, however, that fundamental human rights and freedoms must be protected.

Last defence of the vulnerable

Abuses by suspects of the right to silence have been strongly condemned by the Director of Public Prosecutions, Eamonn Barnes, particularly in the context of 'white-collar' crime. He has argued that it is invariably portrayed as the last defence of the vulnerable and lonely man pitted against the mighty apparatus of the State, while being nothing of the sort.

'It is availed of regularly, resolutely and routinely by the successful practitioner of large-scale fraud, by the hardened general criminal and by the terrorist', he told a major seminar on criminal law six years ago. If a person was innocent, he would have nothing to fear from an investigation. Since then, there has been no change in the law.

The long-awaited reform of our criminal law is expected to include many recommendations of the *Report by the Government Advisory Committee on Fraud*, which was chaired by Peter Maguire SC and which concluded its deliberations in December 1992. Among the most important reforms suggested is significant change to the right of silence, which received an entire chapter in the report.

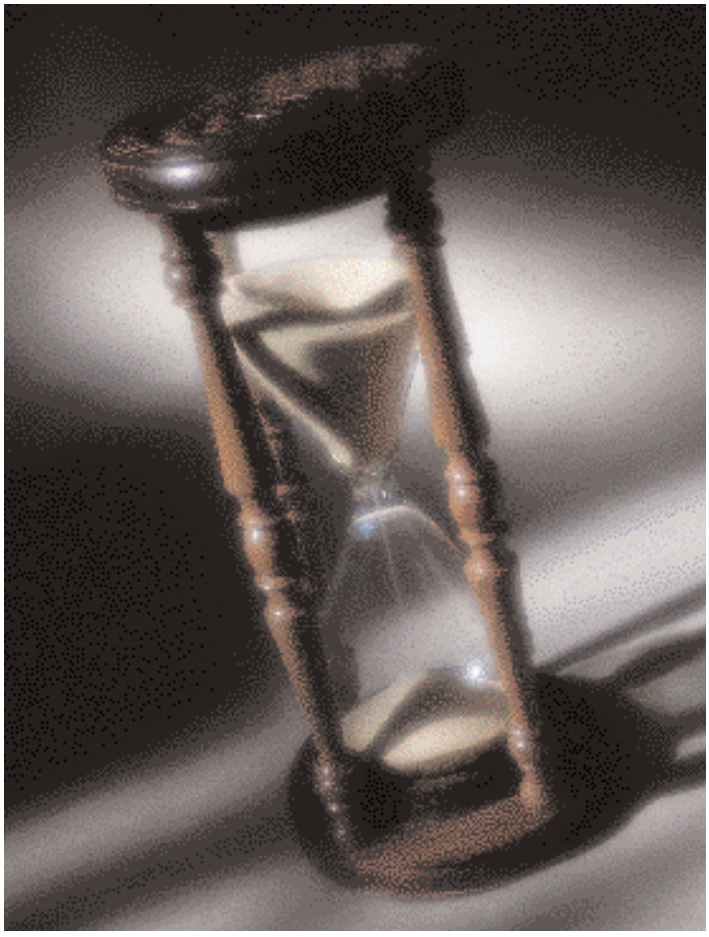
The Law Reform Commission has also recommended in a report on dishonesty that, if it was desired to have more prosecutions for fraud, there should be investigatory procedures such as those in section 2 of the UK's *Criminal Justice Act 1987*.

This British provision is a landmark piece of legislation which constitutes a major inroad into the right to silence. Under the section, a fraud suspect is required to answer questions put by officers from the Serious Fraud Office. However, the answers cannot be used in a later trial unless false information is provided. Of course, they may lead to admissible evidence.

The House of Lords in London decided four years ago that answers could be demanded even after the defendants had been charged with offences. Safeguards for the defendant range from judicial review at one end to judges using the court's powers to try to ensure that trials are fair.

Negative inferences

For its part, the *Maguire report* (which former Minister for Justice Padraig Flynn promised in 1992 was 'not going to be left to gather dust') looks set to get deserved, if belated, attention in this matter. The recommendation of the report is simply that a jury should be entitled to draw inferences (which would, of course, be negative inferences) from the silence of a suspect during a Garda investigation in contrast with explanations offered in court.



The four safeguards suggested by the report are worth noting. Firstly, the jury must be assisted by the judge on when they can make such an inference; secondly, an accused must be told during a Garda investigation of this possible consequence of non-co-operation, with such Garda interviews being video-taped; thirdly, a person cannot be convicted on such an inference alone; and, fourthly, no inference can be drawn if a person remains silent both during the investigation and also during the trial.

Northern Ireland

A similar 'possible half-way house' has been suggested for England by the out-going director of the Serious Fraud Office in London, George Staple. He suggested that it might be worth following the position in Northern Ireland where silence by a suspect during questioning in relation to some facts might amount to corroboration of evidence and thus be admissible in court. He called this 'negative corroboration'.

The right to silence has particularly strong application in the laws against fraud and other white-collar crime. Its role in company law has already attracted attention and comment. Can an officer of a company who is compelled under Part II of the *Companies Act, 1990* to answer questions in court about the company simply refuse to answer by claiming the right against self-incrimination? At this time, there is no definitive answer.

In England, however, a succession of celebrated cases has confirmed that Part XIV of their *Companies Act 1985* (similar to Part II of our 1990 Act) removed the privilege against self-incrimination. Officers of companies are thus obliged to answer questions

about the conduct of their companies even if it involves implicating themselves as individuals and thus exposing themselves to criminal prosecutions.

After a careful examination of Part XIV of their *Companies Act*, a judge in the Court of Appeal noted that inspectors would in very many cases have been appointed to examine the affairs of companies only where there was already a suspicion of fraud. Lord Justice Dillon in the 1992 case of *Re London United Investments* added that persons questioned by the inspectors were indeed required to answer and that the privilege against self-incrimination was not available to them.

In Ireland, reform of the law relating to the right to silence and the privilege against self-incrimination is fraught with danger. On the one hand, there is the Constitution and, on the other, there is the European Court of Human Rights.

As most people know – and this includes the suspect staring at the spot on the wall in the Garda station – one of the most basic tenets of our justice system is that a person is innocent until proven guilty in accordance with the law. And such law must not be oppressive or unfair. Article 38 of the Constitution provides that no person will be charged with a serious criminal offence without a jury, apart from in special or military courts. It clearly implies the basic principle of innocent until proven guilty. So, can a suspect then simply sit on his or her hands and see whether the State can prove its case? The simple answer, with exceptions, is 'yes'.

These statutory exceptions, apart from such obligations as having to tell a garda your name and address under the *Road Traffic Acts*, are important. One example is section 52 of the *Offences Against the State Act, 1939* when a person arrested under section 30 of that Act must give information to the gardai about his or her movements. A second instance where the right to silence is curtailed is where a person is arrested under the *Criminal Justice Act, 1984*. Under sections 18 and 19 of that Act, inferences may be drawn in court about suspicious objects or body marks.

Treading warily round the Constitution

But these are particular exceptions. Any significant reform of the law on the right to silence must tread warily round the Constitution. Secondly, the *European Convention on Human Rights* and also the *Covenant on Civil and Political Rights of the United Nations* require that reform of the right to silence does not significantly undermine the fundamental principle of innocent until proven otherwise.

The *European Convention* was successfully used by Ernest Saunders of Guinness fame to achieve a victory in the European Court of Human Rights against Britain last December. A majority of the judges, including Ireland's Mr Justice Brian Walsh, held that his privilege against self-incrimination had been violated. He had, in effect, been compelled to be a witness against himself.

The right to silence dates back to the English ecclesiastical courts of the thirteenth century. It was one of the few protections available to an accused person in the dock against the mighty resources of the Crown. It has an ancient pedigree.

But in an era of international white-collar and street crime, it has an increasingly high price tag. Times have changed – and so, it seems, has a significant section of legal and public opinion. Within the constraints of the Constitution and international obligations, reform in this vital area of criminal law is likely. G

Pat Igoe is principal of Patrick Igoe and Company.

Criminal injuries compensation 'a disgrace'

From: Sean O'Ceallaigh, Dublin

Our President, Frank Daly, has reminded us in the June *Gazette* that the Criminal Injuries Tribunal has no power to award compensation for pain and suffering. This is a disgraceful state of affairs.

We may not all be instructed to defend someone on a murder charge but most of us are, from time to time, consulted by an innocent victim of a violent crime who wishes to know what redress is available to him or her for the physical injuries and mental trauma suffered. Sadly, our answer must be 'none'.

Of course, a civil action may be brought if the identity of the wrongdoer is known, but it is poor consolation for our client to be told that the prospects of collecting on foot of any court judgment will be virtually nil.

Each of us ought to request the next Minister for Equality and Law Reform to take immediate steps to right this dreadful wrong. We have a duty to our clients to do so.

Ni neart go cur le ceile.

Your views

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

Obviously time well spent

From: J Breen, Administrative Officer, Tralee Urban District Council

I wish to advise that at the May monthly meeting of Tralee Urban District Council held on 19 May 1997 the following motion was adopted:

That this council calls on all Government departments, the legal profession and anybody who in the course of their business etc describes unmarried human beings as 'spinsters' to cease from doing so and use the words 'single' or 'bachelors' or some word which signifies respect which all women deserve.

I would be obliged if you would outline any proposals which the Law Society may have to amend this situation.

Solicitors win majority in new Dáil


John O'Donoghue: Justice Minister


Brian Cowen: Health Minister


Alan Shatter: in opposition

Solicitors have a majority of their own in the 28th Dáil. A tally of the deputies returned after last month's general election shows that there are nine solicitor TDs, but only seven barristers. And there are two legal 'independents': Liz O'Donnell (PD) and Pat Rabbitte (DL) are both law graduates but have never practised professionally.

The profession proved most popular with the voters in Laois/Offaly, which elected solicitors to three out of the five seats. The three are Health Minister Brian Cowen (FF), Tom Enright and Charles Flanagan of Fine Gael.

Besides Brian Cowen, the FF/PD coalition has three other solicitors. They are Justice Minister John O'Donoghue and Social, Community and Family Affairs Minister Dermot Ahern, both of Fianna Fail, and former PD leader Des O'Malley. The Government also has four barristers, Brian Lenihan, David Andrews, Willie O'Dea and Michael O'Kennedy, all of whom are in Fianna Fail.

There are five solicitors in opposition, four in Fine Gael and one in Labour. The FG contingent includes Cork deputy Jim O'Keeffe, and Alan Shatter, who led the party's divorce campaign and wrote one of the first comprehensive Irish family law books. The profession's sole Labour TD is Derek McDowell.

• **Law Society Director General Ken Murphy reacted to the new Cabinet, saying: 'Everyone in the profession will be delighted to see no less than three of our colleagues bringing their expertise as solicitors to the Cabinet table. No previous Irish government boasted so many solicitors. Our warmest congratulations go to Brian Cowen, John O'Donoghue and Dermot Ahern on their appointments'.**

Euro DPP to tackle fraud against EU funds

There is growing concern that the opening-up of EU frontiers is allowing the free movement of criminals and the proceeds of crime, while prosecutors have to stop at the individual borders, according to Mr Justice Paul Carney.

Speaking at a recent Dublin conference on fraud detection and prosecution, Mr Justice Carney said that the traditional methods of co-operation in law enforcement had been found to be inadequate. As a result, the European Commission was proposing that judges' warrants would 'run throughout the Union' in relation to fraud against the EU budget. This would be established as a European crime, with offices of the new European Director of Public Prosecutions in the capital cities of every EU Member State.

Crimes against EU funds will be prosecuted by the European Director of Public Prosecutions, and will be tried by a national independent court in each Member State. These courts will consist of professional judges specialising in economic and financial matters.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting last month: Peter M Fortune, 38 Molesworth Street, Dublin 2 – £5,420; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £31,766.55; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £184,152.97.

BRIEFLY

New Horizons business breakfast

The *New Horizons* programme will continue with a business breakfast at 8am on 23 July in Blackhall Place. The theme will be *Media and entertainment law*, and the speaker will be James Hickey of solicitors Matheson Ormsby Prentice.

Lloyd's reports on CD-ROM

Lloyd's law reports will be available on CD-ROM from next autumn. According to the publishers LLP Ltd, all cases reported in the last ten years will be in the new *Lloyds electronic law reports.* There is a special 10% discount for orders received by 12 September 1997. Orders and queries should be made to Suzanne Goldwin, LLP Ltd Sales and Marketing Department (tel: +44 171 553 1260, fax: +44 171 553 1106).

EU convention on judicial documents

The European Union wants to make it easier in the future for judicial authorities to exchange documents in civil and commercial cases. Its justice and home affairs council has agreed a convention that aims to simplify the exchange of such documents.

European Green Paper on pensions

A newly-published EU Commission Green Paper on pensions explores the possibility of co-ordinating the rules governing the supervision of pension funds at European level. The paper also suggests that where State pensions are under pressure from a rise in the number of elderly, they could be supplemented by pensions based on investment funds. The Commission would welcome comments on the paper, which is available on the Internet at: http://europa.eu/en/comm/dg15/dg15home.html.

Tax changes on property deals 'could face court challenge'

Changes in VAT on property transactions introduced by the *Finance Act, 1997* could be challenged in an Irish or European court, according to a leading tax specialist. Denis Cremins, tax partner at Price Waterhouse, told a recent breakfast briefing at Dublin's Berkeley Court Hotel that new provisions for VAT charges on the surrender assignment of leases should not be enforced until the Revenue Commissioners have issued their promised statement of practice on the matter.

He claimed that a recent European Court of Justice (ECJ) ruling could leave the new law open to challenge. The case, *Finanzamt Bergisch Gladbach v Skripalle*, concerned a derogation obtained by the German government from EU law VAT provisions, which allowed the introduction of new charges designed to prevent avoidance. The ECJ found that the derogation did not allow tax authorities to value a property at above its commercial value.

VAT on property tranactions: could fall foul of ECJ ruling

The Irish provisions were passed on foot of a derogation similar to that obtained by the Germans. Cremins argued that the Irish provisions could fall foul of this ruling because they may value property interests at their open market price, irrespective of any terms in the lease that would reduce this.

'Our law is saying the property must be valued on the basis of unencumbered rent, ignoring any restrictive terms. This could be more than the actual commercial rent. If the Revenue Commissioners impose a value that is higher than the commercial rent, that could be challenged. We need to see the Revenue's statement of practice before this is introduced', he said.

New income tax regulations

Disability benefit is now tax-free for the first three weeks in the tax year 1997/98 following new income tax regulations published by the Revenue Commissioners. The regulations, the *Income Tax (Employment) Regulations, 1997* (SI No 23 of 1997), also declare that disability payments will be tax-free for the first six weeks from the 1998/99 tax year. The same regulations have increased the PAYE registration threshold to £30 where someone is employing just one domestic worker.

The new regulations are available from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2, price: 60p. A leaflet on the domestic employer scheme is available from all tax offices.

CRO promises big improvements

Improving the Companies Registration Office's performance 'is a matter of on-going priority', the Department of Employment and Enterprise has said.

The department was responding to President Frank Daly's recent attack on the CRO which, he said, 'seemed to be on the verge of collapse'.

The criticism was sparked by a computer crash at the CRO which made it impossible to incorporate a company, caused part of the register of business names to be lost and corrupted the system's search function. In a letter to the Minister (see *Gazette*, May, page 7), Daly warned that the computer problem and other inefficiencies could provide a disincentive to business people to comply with the requirements of Irish companies legislation.

Frank Daly: 'CRO seemed to be on the verge of collapse'

A reply from the Minister's private secretary, Clare Tiernan, accepted the President's general argument that the CRO could not keep up with an increasing workload, but said planned changes would improve the situation. The letter says that the CRO is moving to larger premises at Parnell Square and that £1.2 million will be spent on upgrading the IT system. Transition to the new system is due to be finished by the end of this year.

The department has pledged that extra staff will be hired to help the office deal with this backlog, and this will include the appointment of a legal adviser. It is also committed to considering any legislative changes that may be necessary to improve the CRO's operation.

Takeover Panel gets down to business

Brian O'Connor, senior commercial partner at solicitors McCann Fitzgerald, has been appointed a director of the new Irish Takeover Panel. Mr O'Connor is a former chairman of the Law Society's Company and Commercial Law Committee and was nominated for the position by the Society.

The Takeover Panel begins operating from this month. It will supervise takeovers and other related activity in this country to ensure fair treatment for all shareholders.

The panel was established by the *Irish Takeover Panel Act, 1997* and was registered as a public company in April. Apart from the Law Society nominee, it is made up of representatives of other interested bodies, including the Stock Exchange, Bankers' Federation, the Association of Investment Managers and the Consultative Committee of Accountancy Bodies. The Panel will be chaired by Daniel O'Keeffe SC.

New Dublin District Court callover system

From 1 September, the Monday callover for district courts nine and ten in Dolphin House, Dublin, will be held in court nine only, while all of each day's cases will be listed at 10.30am. Currently, there is a separate callover in each court, while cases are listed at 10.30am and 2.30pm. Practitioners are not happy with this, and the President of the District Court, Judge Peter Smithwick, has agreed to change to a new system.

Land Registry on the move

Decentralisation will allow the Land Registry to deliver a more efficient service to solicitors, the office pledged this month. The Registry's new building on the Cork Road, Waterford, is nearly completed, and two regions will be moved there over the next two months.

The Cork region will be moved there on Monday 18 August next, while the Kerry, Limerick and Waterford region will be shifted on Monday 1 September. All applications relating to these regions should be lodged with the Waterford office from those dates.

The Carlow, Kilkenny, Laois, Offaly, Tipperary and Wexford region will not be moved until sometime in spring next year, as there will not be enough trained and experienced staff available until then.

According to Ann Fetton, group leader, Kerry, Limerick and Waterford region, decentralisation will allow the Registry to introduce computers and make the service more accessible to lawyers in the south of the country.

'Decentralisation will result in a more efficient and better service for solicitors. At present, the service is spread out over three buildings in Dublin. In Waterford, each region will have one floor to itself, there will be one reception for each region, and documents and instruments will be more accessible', she told the *Gazette*.

BRIEFLY

New stamp duty service

A new express assessment and marking service has opened in the stamp duty office at Dublin Castle. The service is available from Monday to Friday, between 11.30am and 1pm and 2.45pm and 4pm, for callers with five cases or less. The service applies to instruments needing adjudication or straight stamping.

EU seeks constitutional law experts

The European Commission is seeking experts in constitutional law to help set up legal structures in Africa, Central and South America, and Eastern Europe. The commitment could involve anything from short stays to one year or longer. Contact the Hon Mr Justice Paul Carney at the High Court (tel: 01 872 5555).

Revenue in freebie shock

The Revenue Commissioners have produced a pocket-sized information card, *Capital tax facts,* covering capital acquisition tax, stamp duty and the clearance certificate requirements for residential property tax, including the changes made by the *Finance Act, 1997.* A copy is enclosed with this issue of the *Gazette.* Extra copies are available from the Revenue Commission Forms and Leaflets Service (tel: 01 878 0100).

Contract law review urged

The EMU legal group of the Irish Bankers' Federation is calling for an urgent review of Irish contract law to establish if changes are needed to prepare for monetary union. In a recent statement, the group said this matter 'should be referred by the Attorney General to the Law Reform Commission for its urgent consideration and with a request for a report, at least on a preliminary basis'.

Suing in

With the increase in popularity of Florida as a tourist destination, practitioners can expect enquiries arising out of car accidents, slip and fall cases and the myriad of other problems that can befall the unsuspecting holiday-maker. In this article, US-based solicitor Donall O'Carroll sets out the basic rules of civil practice and procedure in Florida

Personal injury actions are generally brought in state rather than federal court. For claims under $15,000, jurisdiction lies with the County Court, with a right of appeal to the Circuit Court. Claims over $15,000 are filed in the Circuit Court, with an appeal to the District Court of Appeal (DCA). The DCA will not rehear the matter but will rely on the transcripts of the trial court proceedings. The jurisdiction of the Supreme Court will rarely be invoked in personal injury actions.

Venue lies where the cause of action occurred or the defendant resides. All tort actions have a four-year statute of limitations with the exception of professional malpractice and wrongful death actions, both of which have a two-year limitation.

Pleadings and discovery

Pleadings start with the filing of a complaint, which is the equivalent of a civil bill or civil process. An answer must be filed within 20 days. An answer admits or denies each allegation in the complaint. The defences of lack of jurisdiction over the person, improper venue and insufficient service of process are waived if not made in a pre-answer motion or in the answer. Provision is made in the *Rules of civil procedure* for the filing of counter and cross claims, and the joinder of claims.

There are six discovery devices – oral depositions, written depositions, interrogatories, production, medical examination and admissions. Interrogatories are the equivalent of a *Notice for particulars*. The number of questions is limited to 30, including all sub-parts, unless leave of court is granted. In contrast, a request for admissions seeks to have a party stipulate to certain facts, or to the genuineness of documents, without the need for producing supporting evidence at trial.

Perhaps the most important discovery device is the deposition. Any party may depose any person. Depositions are normally recorded stenographically. They can, by court order, be taken by telephone. Counsel may examine and cross-examine as at trial. The person being deposed may have counsel present, as may all parties. If a question is objected to, it must be answered subject to the objection. Failure to object waives the objection and the answer may be admitted at trial. If a person being deposed refuses to answer a question, the deposition may be adjourned and a court order sought to compel an answer. As depositions can become somewhat heated, a party can suspend the deposition and seek a court order to terminate the continued taking of the deposition or to limit its scope, based on grounds of annoyance, embarrassment or oppression.

Written depositions differ in that the person to be deposed appears before a court-appointed officer who asks questions filed by the deposing party and records the answers.

The transcribed deposition can be used at trial under limited circumstances. The deposition can be used if the deponent is dead, farther than 100 miles from the place of trial or outside the state. It can also be used if the deponent is unable to attend trial because of age, illness, infirmity, imprisonment or if the witness cannot be found to subpoena or refuses to attend. An expert witness's deposition can be introduced even if the expert is available. A witness's deposition may also be used to impeach that witness when the witness takes the stand.

A party may request that another party submit to a medical or other examination. There is no obligation to share a report unless the other side requests it. By requesting a copy, the examined party is obliged to share all of his or her reports and testimony pertaining to the condition in question.

Pre-trial and trial

Pre-trial development of a case is achieved by the use of case management and pre-trial conferences at which the attorneys appear before the judge to set the time for trial, control discovery, consider motions *in limine*, narrow issues by stipulation, and explore case settlement. The court can require any person who has authority to settle the case to attend.

If there has been no record activity in an action for a period of one year, the case may be dismissed, without prejudice, for lack of prosecution. This does not, however, toll the statute of limitations.

There is a right to jury trial in matters at law at the request of a party. The jury is composed of six persons, plus alternates, drawn from the registry of voters. There are three peremptory challenges allowed, plus any number for cause.

A party seeking a continuance (the equivalent of an adjournment) must do so by way of written motion, or orally at trial. Except where the motion is for good cause, it must be signed by the moving litigant as well as the attorney.

the sun

As part of the verdict, the jury must itemise the amount of damages to be awarded under three headings: economic losses, including future losses; non-economic losses, including pain and suffering and loss of capacity for enjoyment of life; and punitive damages. Punitive damages are statutorily limited to no more than three times the amount of compensatory damages awarded, but the amount awarded can be reviewed by the court. The punitive damages are apportioned, with 65% going to the plaintiff and 35% to the state.

A cap on damages of $450,000 a person was statutorily imposed but later found to be unconstitutional by the Florida Supreme Court as a denial of the right of access to the courts and trial by jury (*Smith v Department of Insurance*, 507 So 2d 1080, Fla 1987).

Claims against public entities by an individual are limited to $100,000, with a $200,000 limit applying to all claims arising out of the same claim or occurrence. There is no liability for pre-judgment interest or punitive damages.

Post-trial motions

Where a verdict is entered for the plaintiff, the court may review the amount of the award to determine if it was excessive or inadequate. The court may look to factors such as an award reflecting prejudice by the jury or if it believes the jury ignored the evidence in reaching their decision. Notice of appeal must be filed within 30 days of the rendition of the order. Similarly, a motion for a new trial or rehearing must be filed within ten days of the verdict. It can be based on errors in the conduct of the trial.

Fees

A contingency fee arrangement is the most common in personal injury actions. The applicable rate is: one third of any recovery up to $1 million through the time of filing an answer, 40% of any recovery after the answer is filed, 30% of any recovery between $1 million and $2 million, and 20% of any recovery in excess of $2 million. If the matter proceeds as an assessment only, the fee is one third of the first million, 20% of the second, and 15% of the balance.

While these percentages appear generous, they are counter-balanced by the fact that attorneys' fees cannot be recovered from an opposing party in personal injury actions. The sole applicable exception is that attorneys' fees can be awarded if the court finds that there was a complete absence of any issue of either law or fact raised by the complaint or defences of the losing party. Fees can also be awarded against an insurer for bad faith failure to settle claims.

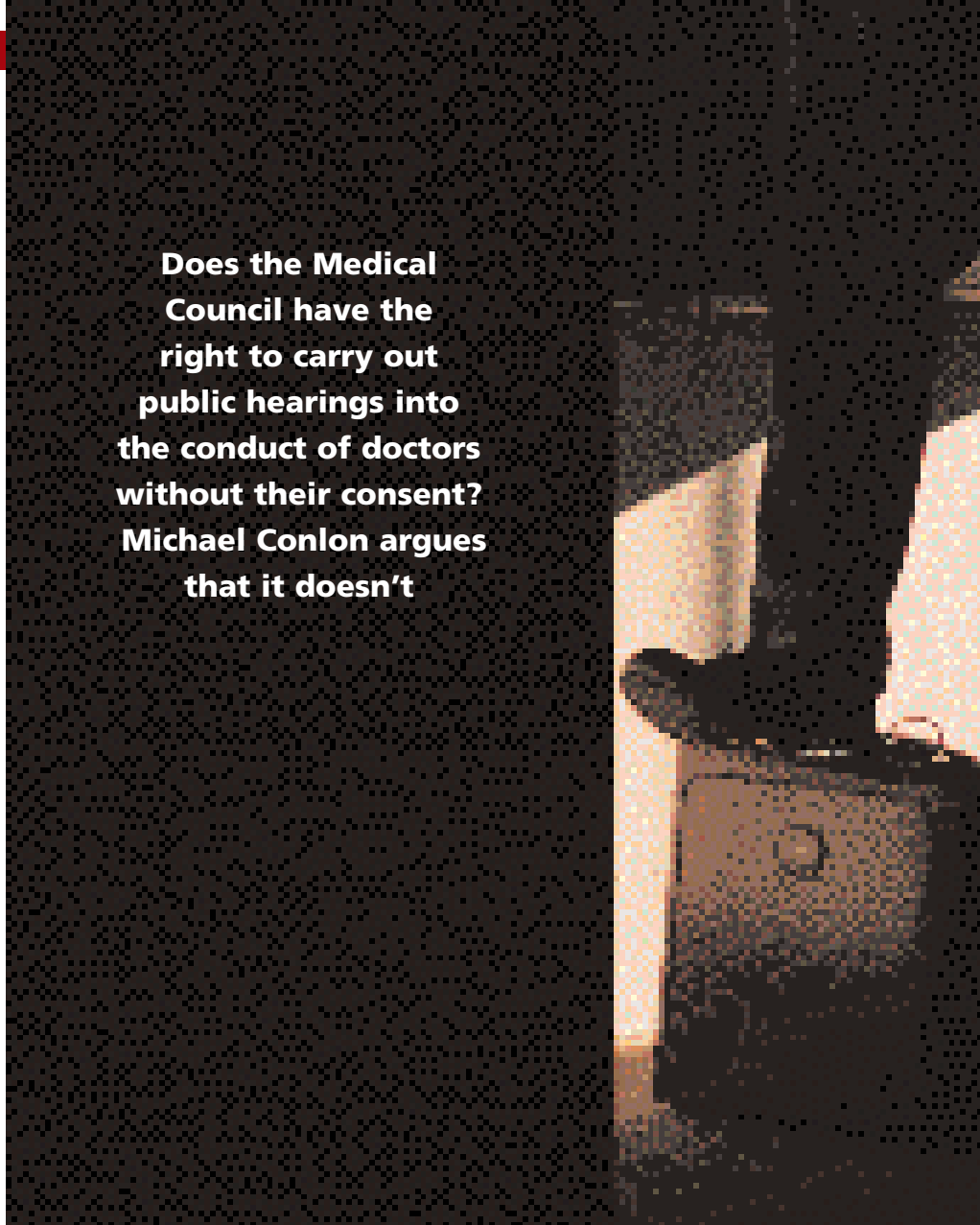
The corresponding lodgment rules to those in effect in Ireland provide for attorneys' fees when the offeror is a defendant and the judgment is at least 25% less than the offer, or if the plaintiff offers a settlement figure and recovers a judgment at least 25% greater than the offer.

When associating with a Florida firm for the purposes of pursuing an action, there are applicable rules regulating the division of fees. At least 75% of the fee must go to the attorney assuming primary responsibility for the case. This limitation does not apply when the attorneys accept substantially equal active participation in the case and the fee division is authorised by the Circuit Court in a separate proceeding. The 25% limit applies mainly to attorneys whose principal practice is acquiring personal injury clients and then farming out the work to other practitioners, at which time their involvement in the action essentially ends. By merely finding the client, they can get up to 25% of the fees.

As all this shows, the intricacies involved in adhering to the rules of civil procedure make it imperative for any practitioner to pay an extended visit to the jurisdiction to conduct the necessary preliminary investigations. Lounging on the beach, soaking up the sun and sipping a margarita is a dirty job, but ... G

Donall O'Carroll, solicitor, is a Florida-based law clerk and has just been admitted to the Florida Bar.

Does the Medical Council have the right to carry out public hearings into the conduct of doctors without their consent? Michael Conlon argues that it doesn't



Behind cl doors

Last November, in the course of an inquiry into the conduct of Dr James Barry under section 45 of the *Medical Practitioners Act, 1978*, the Fitness to Practise Committee of the Medical Council decided to hold its proceedings in private even though this was contrary to Dr Barry's wishes.[1] The following month, in the course of the Dr Maire Woods inquiry, the stances of committee and medical practitioner were neatly reversed. Dr Woods requested that the proceedings before the Fitness to Practise Committee in her case would be held in private but the committee ordered that they be held in public (see *Irish Times*, 3 December 1996).

The purpose of this article is to argue that, on the correct interpretation of the *Medical Practitioners Act, 1978*, the Fitness to Practise Committee was not legally permitted to rule as it did in the Woods case.

The *Medical Practitioners Act, 1978* establishes a Medical Council and provides for the establishment of a Fitness to Practise Committee. The procedure which must be adhered to in respect of a complaint against a medical practitioner under section 45(1) may involve three bodies: the Fitness to Practise Committee of the Medical Council, the Medical Council itself and the High Court. The procedure, which is elaborate,[2] may be summarised as follows.

The Medical Council or any other person may apply to the Fitness to Practise Committee for an inquiry into the conduct of a registered medical practitioner on the grounds of alleged professional misconduct or fitness to engage in the practice of medicine. Provided the Fitness to Practise Committee is satisfied that there is a *prima facie* case for holding the inquiry or, not being so satisfied, if it has been given a direction by the Medical Council to hold such an inquiry, the inquiry shall proceed.

On completion of the inquiry, the Fitness to Practise Committee shall put its findings in a report to the Medical Council. Where the medical practitioner has been found by the Medical Council, on the basis of the committee's report, to be guilty of professional misconduct or unfit to engage in the practice of medicine, the council may decide that his name should be erased from the register.

The practitioner can apply to the High Court for the cancellation of the Medical Council's decision within 21 days. If he does this, he is entitled to a full rehearing of his case before the High Court. If he does not apply to cancel the decision, then the Medical Council may apply to the High Court to confirm the decision.

Interpreting section 45(5) of the *Medical Practitioners Act, 1978*

Section 45 (5) of the Act provides that: *'The findings of the Fitness to Practise Committee on any matter referred to it and the decision of the council on any report made to it by the Fitness to Practise Committee shall not be made public without the consent of the person who has been the subject of the inquiry before the Fitness to Practise Committee unless such person has been found, as a result of such inquiry, to be a) guilty of professional misconduct, or b) unfit to engage in the practise of medicine because of physical or mental disability, as the case may be'.*

It seems that the section seeks to protect a medical practitioner who has been found 'not guilty' by the Medical Council from adverse publicity which might result from publication of the fact that disciplinary proceedings were taken against him. It is easy to see that such publicity might have a harmful effect on his practice and reputation even if he was ultimately found to be completely innocent of any wrong or misconduct.

But sub-section 45(5) refers to 'the findings of the Fitness to Practise Committee' and does not expressly prohibit the publication of *proceedings* before that committee. In the Woods case, this lack of an express prohibition was apparently read by the committee as allowing it to order that the proceedings be held in public (with the press, presumably, permitted to attend and report). This interpretation, however, allows in the mischief which the sub-section was designed to outlaw – in other words, it allows publication of the fact that an inquiry has taken place in circumstances where such publication is contrary to the wishes of the medical practitioner (who may in due course be found to be innocent of all wrongdoing). The decision of the committee renders section 45(5) pointless and absurd in the Woods case.

The committee's interpretation creates the kind of absurdity which Bennion (*Statutory interpretation*, Butterworths, 1992) has categorised as 'a legal anomaly'. It is a principle of statutory interpretation that a court will seek to avoid a construction *'that creates an anomaly or otherwise produces an irrational or illogical result. Sometimes however there are overriding reasons for applying such a construction, for example, where parliament really intended it or where the literal meaning is too strong'* (Bennion, p692).

Bennion goes on to give a number of examples of cases where the courts have given a statute a strained construction (one not in accordance with its grammatical meaning) in order to avoid such an anomaly.

In the Irish case of *Nestor v Murphy* (1979 IR 326), Henchy J interpreted section 3(1) of the *Family Home Protection Act, 1976* in such a way as to avoid an absurdity. That section purported to render void any conveyance of a family home entered into without the prior consent in writing of the other spouse. In *Nestor*, both spouses had signed the contract to sell the house (the contract was 'a conveyance' for the purpose of the Act) but there was no prior written consent. Henchy J gave the Act a purposive interpretation and held that where both spouses were parties to the conveyance, there was no need for a prior written consent although, on a literal reading of the Act, it appeared to be necessary.

Section 3(1) of the *Family Home Protection Act* was found, in its literal meaning, to be too broad. Conversely, I believe that the *Medical Practitioner's Act, 1978* is, at section 45(5), too narrow in its literal meaning.

In deciding whether to adopt the suggested 'construction against an anomaly', the court would, of course, have to weigh the fact that there is no literal prohibition on the proceedings being held in public[3] against the fact that an anomaly would result from a literal construction. Bennion expressly states as part of his code that there may be occasions when the literal meaning is too strong to allow for construction against the anomaly, but in this case I believe that the literal meaning is not too strong. The Oireachtas has not expressly permitted the publication of *proceedings*; it has

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merely omitted expressly to forbid their publication while expressly forbidding the publication of *findings.*

The Dáil debates and *Pepper v Hart*

A court is now permitted, in certain defined circumstances, to seek assistance by looking at parliamentary materials (*Wavin Pipes v Hepworth*, High Court, 8 May 1978, Costelloe J; see also Casey, 1981 3 DULJ, 181). In the case of *Pepper v Hart* ([1993] 2 WLR 1135), the UK's House of Lords set out what, in its view, those circumstances are. They may be summarised as follows:

1 The Act is ambiguous, obscure or leads to absurdity
2 The materials relied on consist of statements by the promoter of a Bill (normally the Minister) and such other parliamentary material as is necessary to understand the nature of such statements and their effect, and
3 The statements relied on are clear.

If the *Medical Practitioners Act* is interpreted in the way it was by the Fitness to Practise Committee of the Medical Council in the Woods case, then condition (1) is satisfied. For reasons I have already stated, that interpretation leads to absurdity.

In relation to condition (2), it should be noted that what became sub-section 45(5) was introduced as a proposed amendment at the report stage by the then Minister for Health Charles Haughey who said: *'I am making this amendment to meet a point raised by Deputy O'Connell on committee stage. He withdrew his amendment on the basis that I would favourably consider an amendment along the lines of his amendment. He was concerned about the findings of the Fitness to Practise Committee. My Report Stage amendment includes also the council's decision on the report of the Fitness to Practise Committee. It is absolute privilege'* (*Dáil Debates*, 23 November 1977, vol 301, cols 1637-1638).

Clearly, to understand Mr Haughey's statement it is necessary to look at 'the point made by Deputy O'Connell on committee stage'. At the committee stage, Dr O'Connell introduced a proposed amendment which is similar to what is now section 45(5). In particular, it is notable that he uses the word *findings.* The proposed wording which he introduced reads as follows: *'The* findings *of the Fitness to Practise Committee shall not be made public by the council without the consent of the accused medical practitioner unless the accused medical practitioner is found guilty'* (*Dáil Debates*, 3 November 1977, vol 301, cols 328-9).

In advocating the above proposed amendment, Deputy O'Connell used the word *proceedings* rather than *findings*. He said: *'This is*

an important amendment. As we know, a doctor may be arraigned before this committee but he is innocent until proved guilty and one may sometimes find lurid details in the media of an alleged offence. In the case of a doctor, his livelihood is at stake and unless the proceedings were held in private the doctor would lose his livelihood. Even if found innocent he could not practise again. This has happened to many doctors and they have had to emigrate. I remember one poor fellow who was fined one penny by the court; he lost his practice and went to Australia. I should like to make it clear that there should be no cover-up and justice must be seen to be done. Where the accused is found guilty by virtue of the evidence, then it should be made public. The proceedings *should not be published without the consent of the accused, unless he is found guilty'* (*Dáil Debates*, 3 November 1977, vol 301, cols 329).

Intention of the Oireachtas

That statement speaks for itself. Clearly, what Deputy O'Connell intended, and by extension what Deputy Haughey intended, was that the *proceedings* would be secret. Unfortunately, as a result of what is probably a drafting error (which was not corrected when what was to become section 45(5) was introduced at report stage), the literal meaning creates an anomaly and does not reflect the intention of Oireachtas.

The statements by deputies Haughey and O'Connell are clear, as required by part (3) of the test outlined above. Against this, it could be argued that the fact that Mr Haughey says in relation to Dr O'Connell that 'he was concerned with the findings of the Fitness to Practise Committee' introduces a doubt as to whether Deputy Haughey really intended that *proceedings* as opposed to *findings* would be covered. But the key point is surely that he was seeking to alleviate the concerns expressed by Dr O'Connell which, as appears from the above quotation from his Dáil speech, related to *proceedings*. It seems that neither Mr Haughey nor the parliamentary draftsman picked up on what appears to have been a drafting error by Dr O'Connell.

I believe that the ordinary textual principles of statutory interpretation support the proposition that proceedings before the Fitness to Practise Committee of the Medical Council may not be held in public without the consent of the person who is the subject of those proceedings. If a court is not satisfied with this argument, it may look at parliamentary materials which reveal that the proposition just outlined reflects the true intention of the Oireachtas.[4] G

Michael Conlon is a Dublin-based barrister.

Footnotes

1 *This decision was the subject of a judicial review challenge which was unsuccessful in the High Court in front of Costelloe P. The High Court decision is now under appeal to the Supreme Court. For the High Court decision, see* James M Barry v the Medical Council and the Fitness to Practise Committee of the Medical Council, *High Court, unreported, 11 February 1997, Costelloe P.*

2 *Because of a desire to ensure that the medical disciplinary body could not be accused of 'administering justice' as had been found in relation to the solicitors' disciplinary body in In* Re Solicitors Act 1954 *[1960] IR 239.*

3 *As there is, for example, in section 51(2) of the Act which provides that: 'an application under this section shall be made in a summary manner and shall be held otherwise than in public'. A section 51 application is an application to the High Court for an order that 'during the period specified in the order, registration of that person's name in the register shall not have effect'.*

4 *I have not made any reference to the question of whether the statute should be interpreted differently in the light of either Article 34.1 of the Irish Constitution or Article 6.1 of the European Convention on Human Rights. The proceedings before the Fitness to Practise Committee do not amount an 'administration of justice' and therefore Article 34.1 is not applicable (see* M v the Medical Council *[1984] IR 485). Neither is Article 6.1 applicable because,* inter alia, *the Fitness to Practise Committee does not make any 'determination' within Article 6.1 (see* Barry v the Medical Council and the Fitness to Practise Committee of the Medical Council, *unreported, 11 February 1997, Costelloe P).*

A lot has been written about arbitration as an alternative to the court system, but often the perceived benefits have proved illusory. In many cases, this is because what passed for arbitration has in fact merely been litigation by another name. Here, Bernard Gogarty looks at the advantages of arbitration in the area of dispute management

The arbitrator, like any judge or tribunal, is governed by the two basic rules of natural justice *audi alteram partem* and *nemo judex in sua causa*. While he or she may be influenced by the rules of court, these do not govern the arbitration unless specifically adopted in the arbitration agreement. It is therefore possible, if not essential if the advantages are to be availed of, that the arbitrator and the parties be aware of opportunities to adapt the procedures in order to manage the dispute more efficiently, or in a more 'business friendly' manner. For it is in the area of dispute management that the major benefits of arbitration lie.

The advantages of arbitration may be listed as:

- Privacy
- Lower cost
- The process can be speedier than a court case
- The arbitrator can be matched to the dispute
- Appropriate procedure.

Privacy. An arbitration is a private hearing. The public therefore may not be admitted if their admission is objected to by either party or the arbitrator. While parties to disputes may consider the fact that there will be no publicity relating to the dispute as an advantage, my experience is that in smaller consumer-related disputes, such as those run by the Chartered Institute of Arbitrators for travel operators or the scheme run by the Society of the Irish Motor Industry, the consumer rarely considers privacy to be an advantage, particularly when it is explained to him that he will not be in a position to threaten the supplier of the motor vehicle or the holiday with the publicity which so often is attendant upon court procedures.

Consumers aside, I believe that the majority of litigants, particularly in the business community, feel much happier disputing issues in the knowledge that their 'linen will not be washed in public'. An interesting example of a court's attitude towards the privacy of arbitrating procedures was in the High Court of Australia's decision in *Esso Australia Resources Limited and Others v the Minister for Energy and Minerals and Others* where the Chief Justice of Australia stated *inter alia* that: 'as was the case in court proceedings, there was in relation to documents discovered during the course of the arbitration an implied undertaking that the recipient would not use such documents for any purpose other than in relation to the proceedings in which those documents were disclosed'.

The remaining advantages of arbitration over court procedures are all intertwined and dependent upon the sophistication of both the arbitrator and the legal representatives of the parties in dispute.

Expense. The first of these is the perception that arbitration can, in some way, lead to cost savings. It has been my experience that if the arbitration is run in accordance with the *Rules of the superior courts*, without the procedures being adapted in any way to suit the dispute, the arbitration will inevitably be at least as expensive as a trial in either the Circuit or High Courts. I say this because, if the procedures are not adapted, the same expenses will be incurred as in court, to which must be added the expense of paying not only the arbitrator's fees but also the hire of the facilities in which the arbitration is held rather than availing of the court facilities and, indeed, a judge, all of which expenses are substantially borne by the State. A properly run arbitration should be considerably less expensive than going to court.

The process can be speedier than a court case. This is undoubtedly true, although less so given the recent changes in the Circuit and High Courts. This is an advantage which can be of particular benefit if there is a willingness on both sides to have the matter determined. The arbitrator, in this jurisdiction, does have one substantial disadvantage over a judge of the High or Circuit Court in that while an arbitrator has jurisdiction to proceed on an *ex parte* basis

(*Grangefort Securities Ltd v SH Ltd* [1990] ILRM 277), the accepted wisdom is that he does not have jurisdiction to dismiss a claim for want of prosecution. It can therefore be extremely difficult for a respondent to force the pace of an arbitration in the face of a reluctant claimant.

This disadvantage can be circumvented by a respondent drafting a counterclaim in the form of requesting a declaratory order that the claimant does not have a valid claim. This is a particularly useful strategy in claims arising under clauses 15 or 33 of the *Law Society contract for the sale of land*. By doing this, the claimant would be forced to enter a defence to this counterclaim, thereby permitting the issue to be determined.

Appropriate arbitrator. It is surprising the arbitrator is not more frequently chosen and at a much earlier stage in disputes when one considers that there is available a substantial panel of experienced lawyers who are not alone experienced in their chosen fields within their profession (which can be matched to the subject matter of the dispute) but who have also undergone extensive training in arbitration. The majority of the panel members are, in the eyes of the Oireachtas, officially qualified to be appointed to the Circuit Court bench.

When the President of the Law Society is appointing an arbitrator, he tries to appoint somebody with experience in the field of the dispute. Indeed, the President has an unfettered discretion in his appointment of an arbitrator. The panel includes not only solicitors but chartered surveyors (who are often appointed in rent review cases) and engineers.

Whether or not the arbitration is going to be speedier than a court proceeding will depend very much on the procedure to be adopted by the parties. In this regard, perhaps the most important part of any arbitration is the preliminary meeting, for it is at this meeting (in the absence of rules) that the arbitrator determines the procedure to be adopted (in most cases, with the consent of the parties but not necessarily so).

If this meeting is a successful one, then the arbitration might well be carried out much more speedily, at much less expense and to the greater satisfaction of the parties than any court procedure. This, however, requires a willingness on all parties to address the question as to how best the dispute should be run. It is the practice of most arbitrators, when setting a date for the preliminary meeting, to send out an agenda for the meeting to both parties. It is not necessary for him to do so but I believe that it is a useful practice which could, and indeed should, be adopted by arbitrators.

Appropriate procedures. The preliminary meeting is the first opportunity for the *dramatis personae* to meet. This in itself can be an advantage, particularly since the partitioners now have an opportunity to discuss and perhaps agree how various items can be dealt with. Procedures to deal with items which would otherwise be enormously time-consuming can be devised or agreed, thus saving time when it comes to the hearing. Even when they have been unable to agree, they will at least have met the arbitrator and the representatives of the other side, which can be a substantial benefit.

The **panel** overleaf shows the form of agenda which I send to the parties in relation to all disputes and which, while it contains a good many items which would not be relevant to all disputes, is a useful *aide memoire* for the arbitrator.

Programme for pleadings

In considering the programme for 'pleadings', the arbitrator should remind both parties that the purpose of pleadings is to highlight the issues in dispute rather than to disguise them. Perhaps a slightly longer time than that allowed in litigation should be allowed in arbitration for the claimant and the defendant to draft their points of claim and defence with clarity.

Scott Schedule

The *Scott Schedule* is an example of a procedure which might be adopted in construction-related arbitrations. This schedule is named after an official referee in the UK who adopted the practice of requiring the claimant to prepare a schedule of each and every item contained in the claim, which schedule would include both an identification of the item, the amount being claimed and the basis of the claim. The respondent then in due course would fill in with his defence the amount, if any, being tendered in respect of the particular claim and his reason for this.

There is, of course, a final column in the schedule where the arbitrator would fill in his determination on the particular item. This might appear to be a very simple matter but it is one which demands a great deal of pre-trial work on behalf of the parties. It is, however, a most useful management tool for the actual running of the hearing.

Bundle of documents

A further procedural adaptation which is of great benefit and can greatly shorten the actual hearing is for the arbitrator to order both parties to produce a single bundle of documents which

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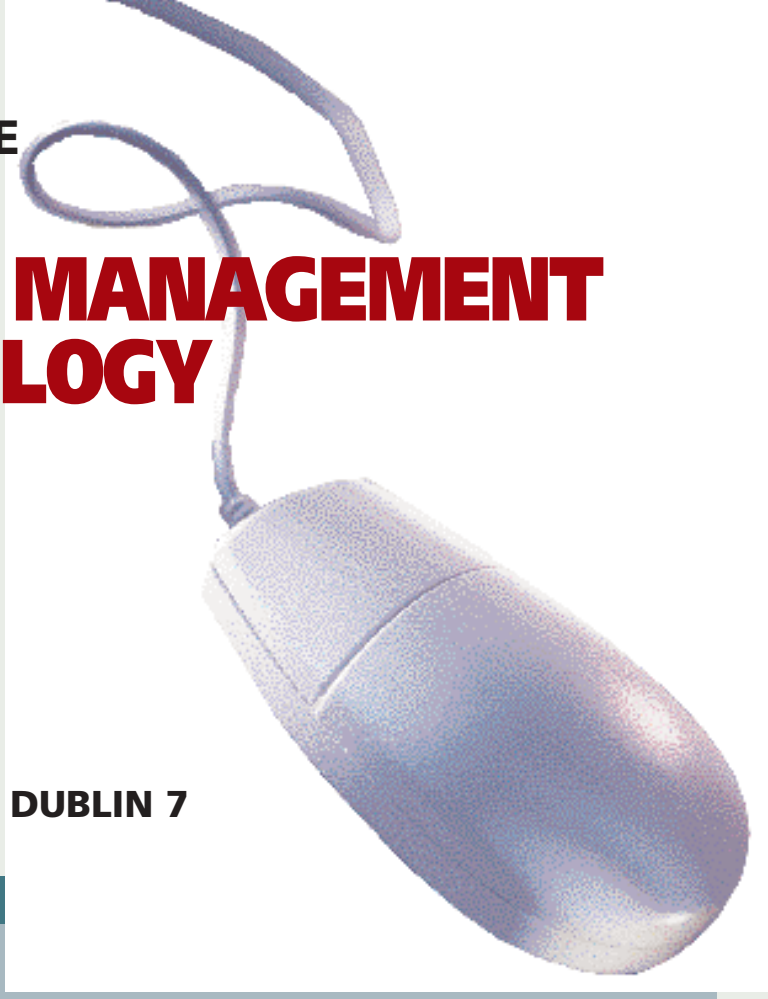

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PROGRAMME

9.30	*Registration*	
9.45	*Chairman's opening remarks*	
10.00	*How to choose a system*	Matthew Chambers Axxia Systems Ltd
10.30	*Current and future trends in practice management systems*	Neil Cameron Society for Computers & Law
11.00–11.30	*COFFEE*	
11.30	*Management systems and technology*	Bill Rickard BComm Managing Director ECF Ltd
12.00	*Electronic Business Banking*	Michael O'Neill, AIB
12.30	*Questions and answers*	

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Draft agenda for preliminary meeting

If the arbitrator intends to have a pre-hearing review with the parties, he may well confine the agenda for the preliminary meeting to matters dealing with the conduct of the arbitration other than the hearing on the basis that the agenda for the pre-hearing review will cover all matters pertaining to the conduct of the hearing.

1. Review of arbitration agreement.
2. Check on any pre-conditions to be complied with before commencement of arbitration proceedings or appointment of arbitrator.
3. Validity of appointment of arbitrator.
4. Identification of parties in dispute.
5. Outline of dispute:
   - i) Subject matter of dispute
   - ii) Approximate amount of claim
   - iii) Details of any counterclaim
   - iv) Approximate amount of any counterclaim.

6. Representatives of the parties and whether counsel are being briefed.
7. Rules of procedure.
8. Any preliminary issues to be determined.
9. Pleadings:
   - i) Points of claim
   - ii) Points of defence (and counterclaim, if any) } Scott Schedule
   - iii) Points of reply (and defence to counterclaim) } Scott Schedule
   - iv) Reply to defence to counterclaim
   - v) Close of pleadings.

10. Evidence:
    - i) Witnesses of fact
    - ii) Expert witnesses
    - iii) Extent to which expert reports and other evidence can be exchanged and agreed.

11. Discovery:
    - i) Extent to which discovery is required
    - ii) Arrangements to be made.

12. Hearing:
    - i) Need for hearing
    - ii) Estimated duration of hearing
    - iii) Venue
    - iv) Provisional date
    - v) Need for transcript
    - vi) Arrangements to be made and responsibility therefor.

13. Inspection:
    - i) Need for inspection of any property or items involved in the dispute
    - ii) Date of inspection
    - iii) Arrangements to be made
    - iv) Persons to be present.

14. Award:
    - i) Need for any interim award
    - ii) Final award
    - iii) Procedure in relation to sealed offer.

15. Costs of the award:
    - i) Basis of arbitrator's charges
    - ii) Joint and several liability
    - iii) Time and method of payment.

16. General directions:
    - i) All communications by any party to the arbitrator (except for the purpose of fixing dates) to be simultaneously copied to the other party and to be noted on the correspondence accordingly
    - ii) Exhibits, photographs and plans to be agreed where possible
    - iii) Reports and other evidence to be agreed where possible
    - iv) Figures to be agreed as figures where possible
    - v) What documents to be submitted to the arbitrator and when
    - vi) Liberty to apply.

17. Any other business.

should include all documentation which either party will refer to in the hearing. The documents should be indexed and delivered to the arbitrator in sufficient time before the hearing to allow him to have gone through them.

The arbitrator can also greatly expedite the actual hearing by ordering both parties to exchange legal submissions a number of days before the hearing. These submissions should be as comprehensive as possible at the date of their exchange. The document should include all references to all statutes, statutory instruments and precedents being relied on by either party, thus allowing the arbitrator to familiarise himself with the legal arguments prior to the hearing.

Pre-trial meeting

Another area where great savings can be made on time spent at the hearing is at the preliminary meeting, or perhaps at a second meeting, when parties might be requested to outline the number, name and discipline of the expert witness being called on their behalf. It is worthwhile, also, requiring the experts to prepare reports and to exchange these reports simultaneously. This would result in both parties and the arbitrator being fully aware of each side's case.

It is sometimes also possible to require the experts in the same discipline to meet on a without prejudice basis to prepare an agreed report, or at least to agree on as much of their evidence as possible, so allowing a great saving on the time spent by experts at the hearing. If such an approach is adopted, it would be possible for a substantial part of the examination-in-chief of the various experts to be shortened to a mere request by the legal representative that the expert confirm that the report before the tribunal is his and confirm his belief in its contents. It would then be possible to go straight to the contentious items in the report.

It is, of course, possible to request the parties to prepare statements of their witnesses as to fact and to exchange them in like manner, although I would not suggest that witnesses of fact should not be requested to meet (on a without prejudice or, indeed, any basis).

All of the above procedural adaptations result in a great deal of the preparation of a case being taken on a much earlier date than is traditional in court proceedings. I believe that, if adopted, these would result in many cases being settled at a much earlier stage or lead to much shorter hearings, both of which would give rise to tremendous savings in time and expense. If these procedural adaptations – or at least some of them – were adopted in arbitration proceedings, I believe that all the advantages I listed earlier would accrue to the parties.

This would, of course, have the additional advantage of disputes being processed much more quickly for the litigant and ultimately would result in a much more satisfied client base for the professional. G

Bernard Gogarty is a partner with Drogheda-based solicitors Smyth & Son, and a member of the Law Society's Arbitration Committee.

Doing the

What motivates people to leave private practice for the cut and thrust of business? How do they fare outside the relatively structured world of the legal profession? What are the benefits and the drawbacks of such a move? Kyran FitzGerald talks to some of those who have made the jump

A small but growing proportion of qualified solicitors are now working outside private practice. Many have found work in the burgeoning financial services sector, while accountancy firms are taking on more and more solicitors to work in their legal departments. An increasing number of lawyers are now also working in business as in-house lawyers, company secretaries and so on.

Ann Dolan is a recently-qualified solicitor. After two years in private practice, she opted to take up a position as head of the legal service at the Irish Travel Agents Association. Before this, she worked in the banking department at A&L Goodbody, a job which she describes as 'document oriented'. She believes that she became a solicitor without really giving the matter a huge amount of thought.

She found out about the position she now occupies through the Law Society's *Employment Register*. Previously, she had attended the College of Europe at Bruges and she believes that her knowledge of European law combined with her background in commercial and banking law turned out to be crucial when the ITAA were filling the position.

'My current workload is quite varied', she says. 'I act as legal advisor to the association and I run its legal information service for the membership. The 1995 *Package Holiday and Travel Trade Act* has brought big changes. There is now a much greater focus on legal liabilities'.

The association publishes a quarterly bulletin on legal affairs for its membership and Dolan is also involved in running seminars for the members, with up to 1,000 travel agents attending. Much of her time is spent working with the European travel agency umbrella association in Brussels. There is also a fair bit of lobbying and general PR work on her plate.

This means that she finds herself in the position of trying to influence legislation while it is being formed as opposed to assessing in detail the impact of legislation already written in stone. She believes that her legal grounding has given her the ability to assess problems in a detached way. 'You read everything very carefully. You also develop very good research skills. I find that I rely more now on the Law Society's facilities than I did when I was in practice'.

Eithne MacDonald is a young solicitor who is making a career for herself in industry as a lawyer with Waterford Crystal. She received what she describes as a 'very good commercial grounding' while working for solicitors William Fry. A number of her workmates have also found jobs outside private practice: one is working for Telefís na Gaeilge; another is lecturing in University College Galway.

'I was interested in getting into the business area so I had my name down with the *Careers Register*', says MacDonald, who completed a diploma in business studies at the Smurfit Business School after completing her BCL degree, but prior to starting her Law Society professional course.

Broadening horizons

In common with Ann Dolan, MacDonald believes that the move into the world of business has resulted in a broadening of her horizons. 'It has given me a great insight into the marketing of products, into production and into information technology. Every day brings something different'.

Much of her workload is in the area of intellectual property. The work ranges from trademark applications and brand launches to the development of a policy on the Internet which has huge implications for the marketing and sale of Waterford Crystal's product range. One of her on-going responsibilities is to check on the legal implications of various technological changes.

Marie Daly has taken a slightly different career route. She works as a lawyer with the employers' body IBEC. Daly qualified as a solicitor in 1987, before joining Dublin Corporation. During her period there, the corporation was the object of a steady increase in the number of claims for compensation. In 1991, she joined IBEC's predecessor, the Federation of Irish Employers. Her responsibilities range from the provision of advice on industrial relations issues to training courses for member firms.

'There are not many disadvantages to working away from private practice', she says. 'It does mean that one is outside the mainstream and is no longer embroiled in the legal world, but that does not matter to me. In my job, the sort of issues thrown up are not at all predictable. One is kept on the edge and does not get stuck in a niche'.

'Our clients are not necessarily coming into IBEC for a legal opinion, but to get general

Ann Dolan: trying to influence legislation while it is being formed

Marie Daly: 'not many disadvantages to working away from private practice'

e business

advice on business law and industrial relations issues'. Daly believes that there is now an increased tendency for IBEC member firms to hire in-house lawyers, particularly as comp-any secretaries, to handle the increasing number of legal compliance issues now faced by companies.

Raymonde Kelly, a member of the Law Society's Career Development Committee, was one of the first solicitors to branch out of the profession.

She moved from McCann FitzGerald to a senior position with the Revenue Commissioners in 1983, before subsequently joining Irish Life in 1986. She now works for Irish Pensions Trust, having moved into the area of general management.

When she joined the Revenue Commission, the service was beginning to become much more proactive in its dealings with the public, reflecting the shift in public opinion on the issue of tax avoidance. 'I did a lot of revenue litigation work and enjoyed it enormously', she recalls.

In 1986, she secured a job in Irish Life as a pensions legal advisor. 'The company normally recruited school leavers. I was in my thirties at the time. However, Irish Life was attracted by the variety of my work experience. I knew what I wanted and I was straight with them'.

Unusually, Kelly moved straight into the pensions division rather than into the company's legal department. 'There is a close interaction between pensions and tax law. The pensions industry is tax-driven'. At the time there were few, if any, lawyers employed by life and pensions companies, though this has changed.

The transition to mainstream corporate life was not entirely painless. 'Initially, I missed the whole involvement with the courts and I found the company's structures rather constraining. I soon found, however, that one could use one's initiative'.

Consumer coalface

In 1993, she decided to move to Irish Pensions Trust, Ireland's biggest pensions consultancy, to fill a managerial vacancy. 'I wanted to get closer once again to the consumer coalface'. A member of the Pensions Board since 1994, she is now the board's legal representative. She also helped set up the Association of Pension Lawyers which now has 130 members.

'All of the big pensions consulting firms now have one, if not two, lawyers on their books. All the life offices have lawyers within their management structure. This is a recent development', says Kelly.

'Companies are looking for people with good legal qualifications. It is a definite advantage to have combined a business degree with a legal training'.

'I look for numeracy in people. The Law Society needs to increase its links with the business world. It is difficult in the absence of this for business people to be aware of the sort of skills that exist within the legal profession'.

'The lack of business and financial skills among lawyers is a big problem. This is where accountants score', says Kelly, who welcomes the fact that new financial and accounting modules are being integrated into the solicitors' professional course.

Robert Barker is a tax partner with Big Six accounting firm KPMG/SKC and shares many of Kelly's sentiments. 'We would see perhaps half a dozen lawyers coming in each year', he says. 'At present, we have around 20 qualified lawyers working for us, including a couple of solicitors in the company law and taxation areas'.

'It has been building up over the years. Normally, at graduate level we look for someone with a good 2:1 degree. We encourage them to do the Institute of Taxation exams. The quality of applicants is good, though the usual problem with lawyers is that they are not accountants! We always look for people with numeracy skills'.

Demand within the accountancy profession for qualified solicitors looks set to increase. Overseas, the big accountancy firms are now setting up their own legal practices, displaying the accountants' usual skills at muscling in on other people's sacred turf. For example, KPMG in France runs what is now the biggest legal practice in Europe, according to Robert Barker.

As yet the Dublin firm confines its recruitment of qualified lawyers to a small number of people at very senior levels, at salaries between £35,000 and £45,000. However, things could well change dramatically if the accountancy firms here get the green light to open law firms of their own.

Within the Law Society, there is a recognition that more advantage must be taken of the opportunities out there. According to John Costello, chairman of the Law Society's Career Development Committee, solicitors will have to become more numerate while an on-going public relations exercise involving members of the business community will be required.

Solicitors should build on their professional qualification by completing MBAs or diplomas in relevant subjects. As things stand, business people are not attuned to the idea of employing solicitors as managers. A process of persuasion will be required.

As the Law Society Director General Ken Murphy puts it: 'We will have to broaden our professional territory, or areas of operation, so that we can be brought into line with legal professions in other countries'. G

Raymonde Kelly: 'I wanted to get closer to the consumer coalface'

Robert Barker: 'the usual problem with lawyers is that they are not accountants!'

Kyran FitzGerald is a freelance journalist.

Welcome to LawLink &

WHAT IS LAWLINK?

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

WHO IS BEHIND LAWLINK?

In late 1994 IFG Group plc acquired a majority shareholding in LawLink and, with the partnership of the Law Society Technology Committee, the original objective has now come to fruition with the launch of LawLink '96 last April by the Minister for Justice, Nora Owen.

WHAT CAN THE LAWLINK '96 SERVICE PROVIDE FOR MY PRACTICE?

The LawLink '96 service is an essential cost saving tool for every office that deals in legal issues.

The following core elements of the LawLink '96 service are all easily accessible from the computer on your desktop:

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COMPANY FORMATIONS INTERNATIONAL

The second company search facility accessible though LawLink '96 is the comprehensive CFI database.
This database instantly provides you with all of what the Companies' Office can offer, including Accounts Information, Charges, Directors etc.

THE LAND REGISTRY

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

THE LEGAL DIARY

With the co-operation of Mount Salus Press (the printers of the paper *Legal Diary*), LawLink '96 facilitates sending the *Legal Diary* directly to your computer the evening before publication. Comprehensive searching facilities are available allowing you to print the section you especially require.

THE IRISH TRADE PROTECTION ASSOCIATION

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

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LawLink Limited can be contacted at: 19 Fitzwilliam Square, Dublin 2.
Tel: 6766222, Fax: 6762616, e-mail: lawlink@iol.ie

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

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SECUREMAIL — THE ULTIMATE IN DOCUMENT EXCHANGE FROM LAWLINK

This service utilises the most up to date technology and is specifically designed for the legal community. It is intended that SecureMail will be the standard for electronic transfer of files and documents amongst the legal profession. SecureMail is already established in a large number of practices in Ireland.

WHY SECUREMAIL?

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

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

THE SECUREMAIL SOLUTION

SECURE — Unlike ordinary e-mail, SecureMail cannot be accessed externally, so you can have total confidence that documents which are confidential remain exactly that. SecureMail also transparently attaches to X400 protocols, the ISO approved platform that is used by the Department of Social Welfare for the electronic payments system nationwide.

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

— FRANK DALY, PRESIDENT, LAW SOCIETY OF IRELAND

The In
What's all

The Internet is the largest network of computer systems in the world and, over the last couple of years, has developed from being a tool used almost exclusively by academics and technophiles into a globally important communications facility for both home and commercial users. In the first of a series of articles on the Net, Grainne Rothery explains what all the fuss is about

The Internet phenomenon has its roots in ARPANET, an experimental network funded by the US government during the 1960s and 1970s. Some Internet historians claim that the motivation for ARPANET was to discover whether a communications network would survive nuclear war. Others suggest that it was developed simply to enable the exchange of information between remote research and development sites, particularly in the areas of education and the military. As technology became more sophisticated in the early 1980s, ARPANET became the Internet and the real expansion of the network began.

It is estimated that there are currently 45 million Internet users, and this figure is expected to reach well over 100 million by the end of the decade. The more recent explosive growth in usage can be attributed both to the increasingly widespread use of personal computers (PCs) in general and the ease of getting connected, through Internet Service Providers, in particular. The take-up of applications like e-mail, meanwhile, has tended to have a snowball effect, in the same way that the telephone and fax machine grew in popularity.

The most widely used applications on the Internet are the World Wide Web, electronic mail and Usenet newsgroups. Between them, they facilitate electronic messaging, on-line discussions and the viewing and exchange of massive quantities of information. Over the Internet, it is possible to access, send and receive any data that can be digitised, including text, sound, video, photographs and graphics. Computers with Internet connections can communicate with each other regardless of their geographic location or time zone.

Commercially, the Internet has huge potential for any business capable of exploiting it correctly and this fact hasn't been lost on some of the more forward-thinking Irish firms. A survey carried out recently by Irish Internet company Nua found that 74% of Ireland's top 500 companies had access to the Internet and that nearly half of these had their own web-sites. Nua publishes the results of Internet surveys on a weekly basis and recently quoted the findings of market research company Durlacher, which claimed that more than 85% of large UK companies are currently connected to the Internet and that this is expected to grow to 92% within six months.

A survey carried out recently by NOP Research Group, meanwhile, showed that 250,000 people were shopping on-line each month. And yet another survey, this time carried out by @d:tech, claimed that ten million people would use the Internet for purchasing decisions by the year the 2000.

Forbairt, meanwhile, has also stressed the importance of the Internet. In a discussion document published a couple of years ago, it said that, for business, it is not a case of whether to be on the Internet, but when and how. The document continued: 'In five years, the Internet will be as fundamental to business as the telephone and fax are today'.

Electronic mail

One of the most popular Internet applications, both for commercial and home users, is electronic mail, which allows users to transmit multiple messages all over the world for the price of a single phone call. E-mail has a number of advantages over other forms of communication: it's cheap, fast, convenient and oblivious to any time zone differences. Because the messages are digital, any information sent or received can be reused. Once sent, messages are stored in an electronic mailbox until accessed by the receiver. This means that the computer does not have to be switched on to receive a message.

The World Wide Web, however, is credited by many people as the application which has

ternet the fuss?

driven the popularity of the Internet. Basically, it is a vast multimedia library of information consisting of millions of different websites, developed by companies, public institutions, private individuals and the media. It contains information on travel, shopping, entertainment, education, governments and, quite literally, everything else. A website can contain text, graphics, sound, video and photographs and will generally be linked to other relevant sites: by clicking on highlighted words or phrases within a document, the user is transported to another document. Most websites provide full access free of charge. Some, however, require credit card details before certain areas of the site can be accessed.

Commercial opportunities

Any Internet user, whether corporate or private, can set up a website and register it with the various search engines. Corporate websites can include information on products and services, pricing and company details. While some commercial websites actually sell products over the World Wide Web, others simply use it as an advertising medium. Dell Computers apparently generates sales of $1 million a day through its website.

From a commercial point of view, the World Wide Web provides a new and exciting medium on which companies can market their products and services on a worldwide basis. Because it is effectively a shop window, the Web offers the potential to create illusions: by establishing an impressive Web presence, a small, possibly struggling, solicitors' firm can easily appear to be a thriving multi-partner practice. The global nature of the Web also means that Irish firms have a better chance of competing in a larger market on an equal footing.

The Web is also an important research tool for anyone seeking information on practically any topic. Examples of sites and services which may be of particular interest to the legal profession include Lexis-Nexis, LawLink, Irish Law Page, New Law On-Line, Law Society of Ireland, Society for Computers and Law and Lawtel (for more details, see last month's *Gazette*, page 22).

Another popular application on the Internet is Usenet, the collective name for newsgroups or interactive bulletin boards which provide topical and relevant information to businesses and individuals. It is estimated that Usenet consists of more than 15,000 bulletin boards and has over 30 million users.

Connecting to the Internet has become a relatively simple process. At the moment, there are approximately ten Internet Service Providers (ISPs) in Ireland offering connection by subscription. The average cost of subscription is between £10 and £20 a month and a start-up fee of around £25 is normally charged. This should allow for unlimited use of the Internet. The ISP will provide all the software necessary for both e-mail, the World Wide Web and Usenet. In addition to these general ISPs, the legal profession has the option of subscribing to LawLink, the provider of *SecureMail*, which has been described by the Law Society as the 'standard platform for electronic communication in the legal profession'.

Most relatively new computers, anything from a 486 with 8 Megabytes of RAM (random access memory), should be sufficient for running the software to access the Internet. However, the latest generation of Web browsers will perform better with higher specification computers. A modem is also needed for connecting the computer to the telephone line. While a 14.4 kbps modem will do the job, a faster model with speeds of 28.8 or 33.6 kbps will significantly cut down on the amount of time it takes to access website information. This can make a substantial difference to the usability of the system. Most modems should cost less than £200 and many of the newer multimedia PCs are shipped with internal or external devices.

Business benefits

Over the next couple of years, the legal profession is expected to embrace the Internet, both for the business benefits and because it will be increasingly driven to do so by larger clients insisting on e-mail communications. Of the many business sectors that can benefit from the Internet, the legal profession stands out because more than most it requires rapid and accurate access to databases, which are being updated on-line continuously, such as statutes and precedents. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Glossary of Internet terms

Browser: A software program used to access the World Wide Web, such as *Netscape, Mosaic, Microsoft Explorer.*

E-mail: Electronic mail or messages sent from one PC to another via the Internet.

Internet: The Internet is a worldwide network of thousands of computer networks. Any computer or PC connected to the Internet via a modem can speak directly to any other computer linked to the Internet.

ISP or Internet Service Provider: This is a company like Ireland On-Line, Indigo or Compuserve which supplies PC users with access to the Internet.

IRC or Internet Relay Chat: Text-based chat line by which users can talk to each other in real time. Usually, IRC is divided into topics so that people with similar interests can talk to each other.

FTP: File transfer protocol, a commonly used way of transferring files from an Internet site to a PC.

Gopher: A text-based, menu-driven form of publishing information on the Internet. Although initially very popular, this has now been eclipsed by Hypertext and the World Wide Web.

HTML: Hypertext Mark-up Language used to create Hypertext documents for use on the Web.

Hypertext: Text on the World Wide Web which contains words and phrases with links to other documents. The user can retrieve new documents by clicking on a highlighted word or phrase.

Modem: Communications device fitted internally or externally to a computer, it uses the telephone line to connect to a network. Can transmit at speeds of 14.4, 28.8 or 35 Kbps (kilobits per second).

Newsgroup: A discussion group within Usenet.

Search engine: A search tool such as *Infoseek, Yahoo* or *Alta Vista* used for quickly finding information stored on the World Wide Web. After keying in the word or phrase, the user will receive a list of sites, categorised in order of relevance.

URL: Uniform resource locator – the website address.

Usenet: This is the collective term for all the newsgroups, of which there are many thousands.

Website: One or more web pages set up by an individual or company. Many Internet service providers will allow each user a certain amount of space to develop their own web pages, usually free of charge. Most of them will also develop the pages, for a fee. Websites can contain text, graphics, photographs, sound and video.

CONFERENCE FACILITIES

For your business meetings in a professional setting, why not avail of the Law Society s first-class facilities next time your company is preparing any business event, dinner or reception.

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PRACTICE MANAGEMENT GUIDELINES

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

Services and forward planning

Case management

Office administration

Financial management

Managing people

Council report

Report on Council meeting held on 18 April 1997

1. Motion: Statutory Instrument

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

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

The proposer reported that all local bar associations had been circulated with the text of the motion, which had also been published in the *Gazette* with a request for the views of the members. The Professional Guidance Committee had received 26 submissions, 22 of which were either strongly or, on balance, opposed to the motion. The preponderance of views indicated a belief that the practice was justified in certain circumstances and that the matter should be dealt with by guidelines. Accordingly, he proposed to defer the motion for further consideration with the likelihood that guidelines would be prepared. A lengthy debate followed in which more than a dozen council members participated. In conclusion, the Council agreed to adjourn the motion generally, with liberty to re-enter it at a future date.

2. Motion: Financial hardship

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

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

The proposer said that the motion was motivated by concern for those members who genuinely suffered financial hardship in January of each year in seeking to meet their obligations to pay practising certificate fees, professional indemnity insurance premiums, VAT payments and income tax liabilities under self-assessment. In his view, if a single solicitor suffered hardship as a result of these combined obligations, the Council was obliged to address the issue. Michael V O'Mahony explained the provisions of section 26 of the *Solicitors (Amendment) Act, 1994* and, in particular, the requirement that the insurance year must coincide with the calendar year. Legally, it would not be possible to provide for the payment of practising certificate fees or professional indemnity insurance premiums by instalments. Accordingly, separate parallel borrowing provided the best means for minimising the burden on solicitors. As a result, the Society had negotiated favourable arrangements with various financial institutions which were being availed of by many solicitors. Laurence K Shields said that as a result of these favourable arrangements the total interest payable on a loan for the practising certificate fee of £1,230 over ten months was £42.50. He was convinced that the Society would not be able to provide or arrange more attractive financing. James MacGuill said that the text of the motion implied that the Council was neither conscious of the financial burdens faced by solicitors nor concerned enough to take steps to alleviate these burdens. This was not the case as the matter had been fully investigated and appropriate arrangements had been made. On

a show of hands, the motion was defeated.

3. Eligibility for judicial appointment to High and Supreme Courts

The Director General reported that following a number of meetings of the working group which had been established by the Minister for Justice, the non-lawyer members of the working group seemed unlikely to adopt either the Law Society's or the Bar Council's submission *in toto*. The Bar Council were having some difficulty in their defence of the traditional monopoly while the Society was facing some opposition to its argument that every solicitor should be eligible for appointment. While the Bar monopoly might well be broken, it was also likely that some type of court experience by solicitors would be required. No consensus had emerged on the working group as yet, however, and the Director General, together with the other Law Society representatives Geraldine Clarke and Ernest Cantillon, would be attending an important meeting scheduled for 12 May after which work would probably commence on a report to be forwarded to the Minister.

4. Courts Service

The Director General noted that the *Viewpoint* in the most recent issue of the *Gazette* had argued why a *Courts Service Bill* should be introduced by the Government as a matter of extreme urgency. The Minister for Justice had informed him that she was so pleased with the article she had arranged for copies to be sent to the Taoiseach, the Tanaiste and the leader of Democratic Left. The Society would continue to press for the earliest possible establishment of the proposed Courts Service.

5. Compensation Fund

The Chairman of the Compensation Fund Committee, Gerard Griffin, sought the Council's approval in the usual fashion for the amount of claims proposed for payment which this month was £382,870.26. He noted that in respect of one of the firms concerned, the amount originally claimed was in excess of £400,000 which, due to the excellent work of the Society's investigating accountants and solicitors, had been settled at £135,000. The Council approved the schedule of claims as submitted.

6. Education

The Chairman of the Education Committee, Pat O'Connor, in the course of his report, announced that the Society's new apprenticeship officer would shortly commence a series of visits to solicitors' offices. The purpose of the visits was to assist both masters and apprentices in any way possible. The Chairman of the Premises Committee, Tony Ensor, reported that planning permission in respect of the new Law School had been granted although no work would be commenced pending the report of the Education Policy Review Committee. The Society would now exercise its option to purchase the Hendrick Place site in accordance with the resolution passed at the Special General Meeting. The Chairman of the Education Policy Review Committee, Ray Monahan, reported that the committee had met on a number of occasions. It had become apparent that the issues were much broader than originally thought. Pat O'Connor urged the committee to produce its report as soon as possible and the Director General noted that the level of pressure on the Law School staff, consultants and tutors was becoming unbearable, particularly in instances where additional courses were being run.

7. Barcelona

Laurence K Shields complimented all who had been involved in the highly successful conference held in Barcelona which had attracted the highest level of participation of any Law Society Annual Conference at 15 people. In the light of this he was considering whether the 1998 conference might also be held abroad.

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.

Practice notes

Family Home Protection Act, 1976, as amended *Powers of Attorney Act, 1996*

Consents and declarations

1. Ordinary powers of attorney

1.1 Consents

The Conveyancing Committee receives many queries as to whether it is safe to accept the execution of a prior consent under the *Family Home Protection Act, 1976* ('the 1976 Act') by the donee of a power of attorney. The committee is satisfied that a donee can execute any document on foot of an appropriate power of attorney as fully and effectively as the donor could personally execute it. This includes the execution of all consents including a prior consent under the 1976 Act. Ideally, the power of attorney should be specifically drafted to empower the donee to execute a consent, including prior consent, to a specific transaction, although a properly drafted general power of attorney, including one provided for in section 16 of the *Powers of Attorney Act, 1996* ('the 1996 Act'), would be adequate.

Solicitors should give careful consideration before agreeing to accept an appointment under a power of attorney to give a consent under the 1976 Act, and ensure they have the clearest possible written instructions. Solicitors should also ensure that they advise the donor to consider the general wisdom of appointing the donee in question, and the importance of obtaining, or waiving, independent legal advice. It is really no different from appointing any agent to execute a deed under a power of attorney, but it is obviously a particular type of agency that should not be given lightly.

1.2 Declarations

It is sometimes believed that a donee acting under a power of attorney which clearly empowers the giving of consent under the 1976 Act can also, as such attorney, complete a statutory declaration verifying the relevant facts of the marriage and compliance with current family legislation ('a family home declaration'). Such a declaration would be evidentially worthless, being hearsay. An agent cannot give evidence on behalf of another either in court or by statutory declaration. A donee can only complete a statutory declaration of his or her own knowledge, and in this event is not doing so as donee on foot of the power of attorney. This type of declaration could be acceptable where the underlying circumstances are made clear, and there is no more proximate evidence available.

2. Enduring powers of attorney

2.1 Consents

The position stated above is little different where the donee has been appointed under an enduring power of attorney ('EPA') which has been registered. An EPA does not come into force until it has been registered under section 10 of the 1996 Act, in circumstances where the donor is, or is becoming, mentally incapable. Section 6(2) of the 1996 Act provides that 'where an instrument is expressed to confer general authority on the attorney, it operates to confer, subject to the restriction imposed by sub-section (5) and to any conditions or restrictions contained in the instrument, authority to do on behalf of the donor anything which the donor can lawfully do by attorney'. Accordingly, the donee of a registered EPA which complies with section 6(2) may execute a consent, including a prior consent, under the 1976 Act.

2.2 Declarations

Once an EPA has been registered, the donor will be, or will be becoming, mentally incapable, and any family home declaration made by the donor will be unacceptable. Therefore, in the absence of any other person who can swear a family home declaration in relation to the donor's marriage, the donee would be an appropriate person to make the family home declaration, but it would be made of his or her own personal knowledge, and not as donee. This raises the importance of the donee under an EPA taking steps to ensure that he or she is fully conversant with all the donor's affairs, both personal and financial.

Conveyancing Committee

Law Society rent review clauses

In 1993, the Law Society in conjunction with the Irish Auctioneers and Valuers Institute issued standard forms of rent review clauses to be used in commercial leases.

It has now come to the attention of the Conveyancing Committee that these rent review provisions are being incorporated into leases without appropriate amendments having first been made to the leases to connect the rent review schedule to the *reddendum.*

If due regard is not first given to the wording in the lease itself, the rent review may not be operable or at best may only give a review after the first five years. Accordingly, it is essential in the lease to have the following words so that the rent review provisions in the schedule become part of the lease.

'Yielding and paying therefor and thereout during each of the first [ ] years of the said term the yearly rent of £ ____ and thereafter during each of the successive periods of [ ] years of which the first shall begin on the ____ day of _____ 19 a yearly rent equal to:

a) The yearly rent payable hereunder during the preceding period, or

b) Such revised yearly rent as may from time to time be ascertained in accordance with the provisions in that behalf contained in the [ ] schedule hereto

Whichever shall be the greater'.

Conveyancing Committee

Recommendation of the Conveyancing Committee

Insurance company bonds in relation to lost documents and defects on title

Lost deeds

A solicitor has asked the committee to indicate in what circumstances it is reasonable for the solicitor for a purchaser or a solicitor for a lender to require an insurance company bond in relation to the non-availability of a deed or deeds, which are lost.

The committee feels that the following are reasonable guidelines. Obviously these guidelines have no relevance in relation to registered land.

A bond may be necessary in addition to the usual declaration explaining the circumstances of the non-availability of the missing deed or deeds.

1. Practitioners must distinguish between the loss of all the deeds and the loss of a document. The kernel of the matter is whether whatever is lost is sufficient to take by way of equitable mortgage. What a purchaser or lender is trying to guard against is some type of mortgage, lien or pledge having been created with the missing documents which would gain priority to his deed or mortgage. If the documentation missing would not be sufficient to create such a mortgage, lien or pledge, then it would be unreasonable to insist on an insurance company bond.
2. In all cases, it is reasonable to ask for a declaration accounting for the disappearance of the deeds and, where at all possible, this should be supplemented by declarations from each subsequent owner on title confirming that no claim had been made, and that the document had not come into his possession since. Normally a confirmatory declaration or letter from the owner's bank is also furnished.
3. If a solicitor is able to make a positive declaration that a deed or deeds had been lost in his or her office and excluding the possibility of the missing documents having been given to the client, then it would be reasonable for the purchaser's solicitor to accept this without an insurance company bond. Such a declaration should be supported by a declaration by the client.
4. In furnishing a bond in connection with a mortgage, the amount of the bond should be the amount of the loan. In a sale there are differing views. *Prima facie*, the committee feels that a bond should at least be for the amount of the sale price. Given the ever-present reality of inflation, its inconstant nature and other relevant factors, it is inevitable that in most instances, a figure in excess of the sale price should be sought, but the question does arise as to who should bear the cost of that part of the premium as is referable to such excess. In this context, the circumstances of each individual case will have to be examined, but logic should prevail. It is suggested that, where the potential increase in value is triggered by outside factors – as, for example, by inflation *per se* – the resultant enhancement over, say, the succeeding five years should be estimated with the bond (at the cost of the vendor) covering same in addition to the purchase price. On the other hand, where the potential for enhancement is due to the activity of the purchaser (as in the exploitation of development potential), it is very difficult to lay down any hard and fast rules. Much will depend on the underlying circumstances, with particular reference to the price being paid and the proportion of same attributable to the (development or other relevant) potential. There may conceivably be an argument for the apportionment of premium(s) between the respective parties.

It will be appreciated that it is virtually impossible to give meaningful guidance in the abstract on the amount of the bond. Hopefully, the foregoing observations will be of some basic assistance, but each case should be considered on its own merits and from a practical perspective.

If a property which was sold with the benefit of a bond is being re-sold at a higher price, the current vendor might reasonably be required to furnish a top-up bond.

Title defects

Difficulties posed by some title defects or deficiencies (usually of such a nature as to be curable by the passage of time) can, on occasion, be met by bonds. The latter and the procedures attending same will usually be in vein somewhat similar to bonds covering lost documents. As a pre-requisite to the issue of such a bond, the insurance company will invariably require the submission of a statutory declaration detailing all the relevant features, and perhaps an opinion from counsel on the legal issues arising. Duplicates or certified copies of these should, of course, be retained with the bond itself and the muniments of title.

Bonds in the last mentioned category will more than likely only be of relevance in exceptional circumstances. Many of the defects encountered on title are capable of being remedied by getting in outstanding interests. However, it may be desirable to secure a bond where the owners of such interests cannot be identified or located, as can occur in, say, the tracing of parties entitled to undivided shares arising on the distribution of estates or in dealing with missing leasehold terms where there are still a number of years to run.

General

All such bonds as those mentioned above and any further bonds dealing with problematical aspects of a particular property should be so drawn as to enure for the benefit of all relevant successors in title (including mortgagees). This is an important point, which should be checked meticulously, as there have been cases where, on the wording thereof, the cover extended only to the applicant or to his immediate purchaser/ mortgagee.

The protection in monetary terms to be provided by the bond should be considered with care. Reference is made above to the positions with regard to lost documents in the respective circumstances of mortgages and sales. Special and, perhaps, different criteria may have to be applied in approaching the financial aspects of cases involving defects on title.

Thought should also be devoted to the life span of the bond. Its practical effectiveness should not be diminished by the imposition of inappropriate time limitations.

Conveyancing Committee

News from the EU and International Affairs Committee

Edited by T P Kennedy, Education Officer, Law Society

Draft Commission notice on the definition of the relevant market for the purpose of Community competition law

In April, the Commission released a revised version of a draft notice on the definition of the relevant market for the purposes of European competition law. While there is little that is new or surprising in this draft, it does provide a good summary of the approaches taken by the Commission to define markets. The purpose of the notice is to provide guidance on how the Commission applies the concept of relevant product and geographic market in its enforcement of competition law. Thus, the notice is to provide guidance on the application of Articles 85 and 86 of the Treaty, Regulations 17/62 and 4064/89, as well as their sectoral equivalents.

The Commission has defined the product market as comprising 'all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use'. It has defined the geographical market as comprising 'the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas'.

The relevant market within which an individual competition case is assessed is established by a combination of the product and geographic markets. In terms of establishing basic principles for market definition, the notice looks to *demand substitution* and *supply substitution.*

Demand substitution looks to those products which can be substituted for the product in question. Demand substitution looks to interchangeability of products. If consumers would switch from the product to readily available substitutes or to suppliers located elsewhere in response to a small price increase in the product, it is interchangeable with other products.

Supply substitution looks to those products which suppliers can use in production to meet the needs of a particular consumer market. If a producer can switch production from one product to another, the two products are interchangeable.

Evidence relied on to define relevant markets

The Commission had indicated that it looks to a range of evidence to assess the extent to which substitution takes place. The evidence looked at will vary from case to case.

The notice outlines the Commission's approach to defining relevant markets. Based on the preliminary information available or the information submitted by the undertakings, the Commission broadly establishes the relevant market within which the complaint is to be assessed. In establishing the product market, the Commission seeks to establish whether various products belong to the same product market. Frequently, the inclusion of other products in the market is enough to remove any competitive concerns.

When a precise market definition is necessary, the Commission often contacts the main customers and the main companies in the industry to enquire as to their views about the boundaries of the product market and in order to obtain the necessary evidence to reach a conclusion. The Commission may also contact the relevant professional associations and may request additional information from the companies concerned.

Product markets

The Commission looks to the characteristics of the product and its intended use to identify possible substitutes. However, this is not sufficient on its own to conclude whether two products are interchangeable. The Commission looks to several different types of evidence:

- **Evidence of substitution in the recent past.** It may be possible to look to evidence relating to recent past events or shocks in the market that will show examples of substitution between two products. Changes in relative prices are also examined
- **Statistical approaches to delineating markets.** The Commission takes into account a number of quantitative tests specifically designed for this purpose
- **Views of customers and competitors.** The Commission often contacts the main customers and competitors of the companies concerned to get their views on the boundaries of the product market as well as such factual information as it requires. It asks customers and competitors as to what would happen if relative prices for the relevant products would increase in the relevant geographic area by a small amount
- **Consumer preferences.** In the case of consumer goods, it is difficult for the Commission to gather consumers' views about substitute products. The Commission looks to marketing studies the companies commissioned in the past and which they have used in making decisions as to pricing of products. Other evidence examined will include consumer surveys on usage patterns and attitudes, data from consumers' purchasing patterns, views expressed by retailers and market research studies submitted by the parties and their competitors
- **Barriers and costs** associated with switching demand to potential substitutes
- **Different categories of customers and price discrimination.** A distinct group of cus-

tomers exists where:

a) It is possible to identify clearly which group an individual customer belongs to at the moment of selling the relevant products to him, and

b) Trade among customers or arbitrage by third parties should not be feasible.

A distinct group of customers for the product may constitute a narrower, distinct market.

Geographic markets

The exercise of determining the geographic dimension of the relevant market is done in a similar manner to defining the product dimension.

The Commission initially takes a preliminary view of the market on the basis of broad indications regarding the distribution of market shares of the parties and their competitors as well as a preliminary analysis of pricing and price differences at national and EU level. The type of evidence which the Commission considers relevant to reach a conclusion as to the geographic market is:

- **Past evidence of diversion of orders to other areas.** In some cases, evidence on changes in prices between different areas and customer reaction might be available
- **Basic demand characteristics.** The nature of the demand for the product may determine the scope of the geographical market. Factors such as national preferences, language, culture and life-style and the need for a local presence have a potential to limit the geographic scope of competition
- **Views of customers and competitors.** Where appropriate, the Commission contacts the main customers and competitors of the parties to obtain their views on the boundaries of the geographic market as well as the factual information required to reach a conclusion on the scope of the market
- **Current geographic pattern of purchases.** Assessing customers' geographic pattern of purchases provides valuable evidence as to the possible scope of the geographic market
- **Trade flows/patterns of shipment**
- **Barriers and switching costs associated to divert orders to companies located in other areas.** Barriers isolating particular markets include transport costs and customs tariffs. Significant switching costs in obtaining supplies from companies located in other states or regions are additional sources of such barriers.

Incentives for 'whistle-blowing' to the Commission

In July of last year, the Commission issued a notice on the non-imposition or reduction of fines in cartel cases ([1996] OJ C 207/4). The notice is designed to tackle the problem the Commission faces in getting hold of sufficient information to establish the existence of classic infringements of Article 85, such as cartels and market-sharing agreements. It seeks to provide a number of incentives for undertakings participating in a cartel to 'blow the whistle'.

The primary incentive for 'whistle-blowing' is a total reduction in the fine which would otherwise be imposed. However, total immunity is only granted if a number of strict conditions are complied with. The notice also provides a sliding scale of reduction in fines in return for assistance from cartel participants – ranging from a 75% to a 10% reduction – depending on the level of help.

To obtain between a 75% and a 100% reduction, the following conditions must be met:

- The undertaking must inform the Commission about a secret cartel before the Commission has undertaken an investigation, provided the Commission does not already have sufficient information to establish the existence of the alleged cartel
- The undertaking must be the first to adduce decisive evidence of the cartel's existence
- The undertaking must put an end to its involvement in the illegal activity no later than the time at which it discloses the cartel
- The undertaking must provide the Commission with all the relevant information and all the documents and evidence available to it regarding the cartel and maintain continuous and complete co-operation throughout the investigation
- The undertaking must not have compelled another undertaking to take part in the cartel and not acted as an instigator or played a determining role in the illegal activity.

These conditions are cumulative – that is, all these conditions must be complied with if a 65%-100% reduction is to be granted.

If the Commission has already undertaken an investigation of the premises of the parties to the cartel (that is, if the first condition is not satisfied) and that investigation has failed to provide sufficient grounds for initiating the procedure leading to a decision, the undertaking may benefit from a 50%-75% reduction provided it satisfies the other conditions set out above.

Undertakings may benefit from a 10%-50% reduction in fines if they co-operate with the Commission by, for example:

- Providing the Commission with information, documents or other evidence which materially contributes to establishing the existence of the infringement before a statement of objections is sent, or
- Informing the Commission that they do not substantially contest the facts on which the Commission bases its allegations after receiving a statement of objections.

Can an undertaking realistically ever satisfy the conditions specified for substantial immunity? What should the undertaking's solicitor advise? This is, of course, a professional decision to be taken by each lawyer depending on the facts of any particular case. However, a number of general observations can be made:

- It is not possible to determine with any certainty whether a discount will be granted in advance, or indeed the size of such a discount
- An undertaking may not backtrack on its decision to co-operate: if it is obtaining a reduction in its fine of the basis that it does not substantially contest the facts of the Commission's decision, it may find the reduction depleted if it later changes its mind and contests the facts before the Court of First Instance. The notice provides that where an undertaking changes its mind, the Commission can ask the Court of First Instance to raise the fine
- The 'blowing of the whistle' will constitute an admission which may ground an action for damages for past participation in a cartel, in a situation where it is impossible to determine the amount of the reduction in the fine. Thus, liability in a civil suit may constitute a significant disincentive to co-operating
- No undertaking will be in a position to know in advance whether the information that it is offering is new to the Commission – DGIV may already have received a secret tip-off that a cartel is in operation. In such a case, the first condition cannot be complied with and, therefore, the size of the reduction would be significantly cut
- The second criterion requires 'decisive' evidence to be given to the Commission – this is a dangerously vague concept for an undertaking considering co-operation. G

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Affirmative action and the *Equal Treatment Directive*

In the USA and in other jurisdictions great controversy surrounds the issue of affirmative action – discrimination in favour of under-represented groups in employment or education.

In the European Union affirmative action in favour of women has been challenged on the basis that it is incompatible with the principle of equality, guaranteed by European law.

The *Equal Treatment Directive* puts into effect in the Member States the principle of equal treatment for men and women, in particular for access to employment including promotion. Article 2(1) of the Directive provides that there must be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

Article 2(4) of the Directive provides an exception to that general principle in respect of measures 'intended to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities'.

Conferences and seminars

International Bar Association
Topic: *New forms of business organisation for the new millennium*
Date: 9-11 July
Venue: Egham, UK
Contact: 0044 171 629 1206

Topic: *Language and the law – the clash of legal culture in central and eastern Europe*
Date: 8-9 September
Venue: Bratislava, Slovakia
Contact: Ailsa McLaughlin (tel: 0044 171 629 1206)

Topic: *Energy law seminar*
Date: 17-19 September
Venue: Caracas, Venezuela
Contact: 0044 171 629 1206

Topic: *International Arbitration Day*
Date: 25 September
Venue: New York, USA
Contact: 0044 171 629 1206

Topic: *Business law and general practice conference*
Date: 2-7 November
Venue: New Delhi, India
Contact: 0044 171 629 1206

AIJA (International Association of Young Lawyers)
Topic: *Seminar on international mobility*
Date: 25-28 September
Venue: Oxford, UK
Contact: Gerard Coll (tel: 01 676 0704)

Topic: *Legislation related to wine*
Date: 24 October
Venue: Torino, Italy
Contact: Gerard Coll (tel: 01 676 0704)

Solicitors' European Group
Topic: *The role of the European ombudsman*
Date: 10 July
Venue: London, UK
Contact: Fiona Morris/ Sarah Harden (tel: 0044 171 320 5784)

Franco-British Lawyers Association
Topic: *Justice and money*
Date: 11-13 September
Venue: Inverness, Scotland
Contact: 0044 131 2267411

DIPLOMA IN APPLIED EUROPEAN LAW

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

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

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

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

Modules
Participants will be required attend modules in a) *Introduction to European law* and b) *European business law*. They will then have a choice of four of the seven other modules (with the option of attending all). Numbers interested in attending the course will dictate whether it is possible to offer all these modules.

- Introduction to European Law
- Business

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

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

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

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

Recent developments in European law

COMMERCIAL LAW

Intellectual Property

The Council of Ministers has reached agreement on the proposed Directive for the legal protection of designs. The draft includes definition of a design, protection requirements, the term of the protection, grounds of invalidity or refusal that would deny protection and the rights conferred by the design right. The draft will now return to the European Parliament for its second reading.

The European Parliament has adopted a report on the draft Directive on the rights of artists to receive royalties when works of art are sold. The report recommends that guaranteed rights conferred by the Directive should only apply to works sold for 1,000 Ecu or more. It also recommends legal protection for works sold between 500 and 1,000 Ecu. The draft Directive will now be considered by the Council of Ministers.

COMPETITION LAW

Articles 85 & 86

The Commission has decided to adopt a new statement of objections against Unilever, outlining its intention to find that the company's distribution arrangements for 'impulse' ice cream in Ireland infringe competition rules. Unilever provides freezer cabinets 'free on loan' to retailers, subject to the condition that the cabinets are used exclusively for storage of Unilever products. The Commission believes that the practical effect of this practice is to prevent most of the retailers concerned from selling other than Unilever 'impulse' ice cream. In 1992 the Commission had concluded that a similar arrangement entered into by HB Ice Cream in Ireland infringed Articles 85 and 86. Following this, Unilever had modified its arrangements to allow an option of hire purchase of freezer cabinets from it. Once the cabinets were purchased, the retailers would have been free to stock ice cream from any manufacturer. However, this option did not prove as attractive as the 'free on loan' option.

Block exemptions

The block exemption for specialisation and research and development agreements between companies which had been due to expire at the end of the year has been extended until 31 December 2000. Agreements falling within the scope of Regulations 417/85 and 418/85 are deemed to be exempt from the EU's competition rules.

Mergers

The Council recently agreed to amend the 1989 *Merger control regulations* to give the Commission increased powers to investigate and vet future mergers. Currently, companies wishing to merge with companies in other Member States are obliged to seek approval from several different national competition authorities. The Council has proposed a 'one-stop-shop' procedure with a single uniform system throughout the EU. Merging companies would file a single notification with the Commission, rather than with national authorities.

State aids

In *Land Rheinland-Pfalz v Alcan Deutschland GmbH* (Case 24/95), the Court of Justice ruled that a recipient of State aid could not rely on national procedural rules and time-limits to resist recovery of aid by national authorities pursuant to a Commission decision. The national authority had not sought to recover the aid until nearly four years after the Commission decision.

CONSUMER LAW

Food treated with ionising radiation

The Council has agreed on directives on food or food ingredients treated with ionising radiation. These proposals have been discussed by the Council since 1985. The Council has agreed to adopt a framework Directive laying down general provisions such as the conditions for treatment, the rules governing the approval and control of irradiation facilities and labelling and an implementing Directive establishing an initial list of foodstuffs which would be treated with ionising radiation. Food irradiation will be authorised only if there is a reasonable technological need, it presents no health hazard, it is of benefit to the consumer and it is not used as a substitute for hygiene and health practices or for good manufacturing or agricultural practice. Food irradiation may only be used to reduce the incidence of foodborne disease, to reduce spoilage or loss of food or to rid foods of harmful organisms. The initial list of goods that may be treated is to be limited to dried aromatic herbs, spices and vegetable seasonings. These draft Directives have been adopted by qualified majority and are to be submitted to the European Parliament for a second reading.

EMPLOYMENT

Gender discrimination

The Commission has recently put forward a draft Directive providing for the reversal of the burden of proof in cases of discrimination between the sexes. The Directive shifts the burden of proof from the plaintiff to the defendant, so that as soon as discrimination is alleged it is for the defendant to show that it does not exist. The draft Directive has not been approved by the European Parliament and is being discussed by the Council of Ministers. Despite some disagreements between States, it is hoped that the Council will reach agreement on this proposal shortly.

LEGAL PROFESSION

Establishment Directive

The Council of Ministers has agreed a common position on the draft establishment Directive for lawyers (see *Gazette*, May, page 31). The Council has agreed that the draft will provide that lawyers qualified in one EU State will have the right to work permanently in another EU State under their home title for an unlimited period of time. The draft also provides that lawyers who practise for a period of three years in another State are to be admitted to the legal profession in that State, subject to a verification mechanism but not to an examination. The Directive has now been sent back to the European Parliament for a second reading. It is on course for adoption by early 1998. Member States will have until 2000 to implement the measure.

LITIGATION

Service of judicial documents in civil or commercial matters

On 3 June, representatives of the Member States of the European Union signed a convention on the service in the Member States of the European Union of judicial and extra-judicial documents in civil or commercial matters. The convention is based on and is a successor to the Hague Convention, which Ireland recently adopted. However, this convention is confined to the EU and provides easier means of service of judicial documents such as summonses. It establishes direct relations between a claimant or his lawyer and the person responsible for service. This dispenses with the requirement in the Hague Convention that documents had to be transmitted through a central authority, such as the Minister for Foreign Affairs. The convention provides for the use of modern transmission methods such as fax, where a prescribed form accompanies the transmission. Where particular States agree, e-mail can be used.

The document to be served must be in the language of the place of service or in a language the addressee knows. Common rules are established for fixing the date of service. The Court of Justice is given jurisdiction to interpret the convention by an annexed protocol.

The convention will come into force following ratification by the 15 Member States. The interpretative protocol will come into force once the convention has and the protocol is ratified by three Member States.

ILT Digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

***Freedom of Information Act, 1997* (No 13 of 1997)**

This Act was signed by the President on 21 April 1997. (See also (1997) 15 ILT 41).

***Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997* (No 17 of 1997)**

This Act was signed by the President on 5 May 1997. (See also (1995) 13 ILT 304.)

Metrology Act, 1996 *(Commencement and Establishment Day) Order 1997* (SI No 177 of 1997)

This order appoints 12 May 1997 as the day on which *Metrology Act, 1996* came into operation and provides that the Legal Metrology Service be established on the same day.

***Ann Ryan v the Compensation Tribunal* (Costello P), 15 November 1996**

Tribunal; decision; challenge; administrative scheme to compensate women infected with hepatitis C from the use of human immunoglobulin-anti-D blood products; tribunal to award compensation; tribunal entitled to take into account benefits arising from condition giving rise to claim; no appeal from tribunal's decision; *ex gratia* awards of compensation for future help in the home, future loss of earnings and general damages; whether decision should be quashed; jurisdiction of court in application for *certiorari* of tribunal's decision; whether tribunal acted *ultra vires* its powers; whether decision in accordance with principle of 'reasonableness'; test of reasonableness; grounds on which court can interfere with decision of administrative decision-making authority; whether each part of award tribunal's decision plainly and unambiguously flew in the face of reason and common-sense; court's jurisdiction to quash decision of tribunal where error appearing on the face of the record; whether tribunal's decision to take into account future assistance from children an error on the face of the record as regards future help in the home; matters to be considered by tribunal in reaching figure for future help in the home; whether such compensation available where statutory obligation on health board to provide home help services; whether, even if error on face of record, *certiorari* would be of practical benefit to applicant; court's discretion as to remedy of *certiorari*; whether tribunal's awards irrational; function of tribunal; social welfare payments for single parent and deserted wife; whether payments constituted benefits 'payable under statute or otherwise in consequence of the injury' and should be disregarded in fixing the level of compensation for loss of earnings; types of benefit covered by provision excluding them from calculation; nature of benefits in this case; whether an error on the face of the record; whether sum for general damages irrational; whether compelling reasons advanced to justify conclusion tribunal acted irrationally; *Health (Amendment) Act, 1996; Civil Liability (Amendment) Act*, 1964, s2.

Held: The courts had defined 'reasonableness' in such a way as to make clear that a tribunal's decision would not be quashed merely because a court disagreed with it. The test to be applied was whether the impugned decision plainly and unambiguously flew in the face of fundamental reason and common-sense.

ANIMAL WELFARE

***Control of Horses Regulations 1997* (SI No 171 of 1997)**

These regulations prescribe the form of the 'on-the-spot' fine notice under s10(1) and of the horse licence under s20(4) of the *Control of Horses Act, 1996*. A fee of £25 to accompany an application for a horse licence is prescribed and provision is made for a local authority to retain not more than £10 of this fee where the application is refused. The regulations also prescribe the use of a micro-electronic system for the identification of horses under the Act.

CHILDREN

Children Bill, 1997

This Bill, as presented by the Minister for Equality and Law Reform, aims to update the law on guardianship, custody of, and access to, children and on the evidence of children in civil proceedings. The principal measures proposed are: i) the introduction of a procedure allowing a father who is not married to the mother of a child to be appointed joint guardian of the child by agreement with the mother without the need to go to court; ii) the introduction of a procedure allowing certain relatives of a child to apply for access; iii) introducing a new emphasis on counselling and mediation; iv) the specification of a system of *guardian ad litem* with legal representation subject to certain conditions; v) an obligation on the court to consider, where appropriate, the wishes of the child in proceedings concerning the child's welfare; vi) a power for the court to order the payment of costs of counselling, mediation or the legal representation of the *guardian ad litem*; vii) an extension to the District Court of the power to order social reports in guardianship, custody and access proceedings; viii) provision for the giving of evidence by children by live television link in certain civil proceedings; ix) provision for the admissibility of hearsay evidence of children in certain civil proceedings subject to cer-

tain safeguards; and x) provision for the court, subject to certain conditions, to hear the evidence of children under the age of 14 years in civil cases without requiring them to take an oath or make an affirmation.

COMMERCIAL

***Credit Union Act, 1997* (No 15 of 1997)**

This Act, as amended in the Select Committee on Enterprise and Economic Strategy, was signed by the President on 3 May 1997. (See also (1997) 15 ILT 41.)

Prompt Payment of Accounts Bill, 1997

This Bill, as presented by the Minister for Enterprise and Employment, aims to ensure that public bodies (and suppliers to public bodies when they sub-contract) pay amounts due to suppliers of goods and services promptly. If passed, the Bill will provide an automatic entitlement to interest in respect of amounts due but not paid.

ICC Bank (Amendment) Bill, 1997

This Bill, as presented by the Minister for Finance, aims to provide for an increase in the borrowing limit of ICC Bank Plc from £1,300 million to £2,300 million and to provide for an increase in its authorised share capital from £12 million to £40 million.

Irish Takeover Panel Act, 1997 *(Commencement) Order 1997* (SI No 158 of 1997)

This order brings the *Irish Takeover Panel Act, 1997* into operation with effect from 14 April 1997 with the exception of ss5(3), 7(1)(2) and 9–15.

CONSTITUTIONAL

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

This Bill, as presented by the Taoiseach, aims to amend the Constitution by the insertion of the following after Article 28.4.2°: '3° The confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made in respect of a particular matter:

i) in the interests of the administration of justice by a court, or
ii) by virtue of an overriding public interest, pursuant to an application in that behalf by a tribunal appointed by the Government or a Minister of the Government on the authority of the Houses of the Oireachtas to inquire into a matter stated by them to be of public importance.'

If the Bill is passed, the existing subsection 3° would be renumbered as sub-section 4°.

CONSUMER

***Retail Price (Diesel and Petrol) Display Order 1997* (SI No 178 of 1997)**

This order requires that persons selling diesel and petrol products specify, in a prescribed manner, the price per litre being charged to the consumer for either diesel or petrol. The order came into operation on 19 May 1997.

***Consumer Information (Diesel and Petrol) (Reduction in Retail Price) Order 1997* (SI No 179 of 1997)**

This order prescribes the manner in which a diesel and petrol retailer must advertise a reduction in the retail price charged to the consumer for these commodities. The order came into operation on 19 May 1997.

CRIMINAL

***Criminal Law Act, 1997* (No 14 of 1997)**

This Act was signed by the President on 22 April 1997. (See also (1996) 14 ILT 129.)

***Bail Act, 1997* (No 16 of 1997)**

This Act was signed by the President on 5 May 1997.

Non-Fatal Offences Against the Person Bill, 1997

This Bill has been passed by Dáil Éireann. (See also (1997) 15 ILT 85.)

Licensing (Combating Drug Abuse) Bill, 1997

This Bill, which was presented by the Minister for Justice, has been passed by Dáil Éireann. It aims to introduce licensing measures with a view to reducing the supply of controlled drugs at public houses, dances and other places of entertainment. There are three principal measures proposed: i) a permanent disqualification from obtaining intoxicating liquor, public dancing, or public music and singing licences would apply to any person convicted of a drug trafficking offence; ii) a permanent disqualification from renewing intoxicating liquor, public dancing, or public music and singing licences would apply to any person convicted of a drug trafficking offence or an offence under s19(1)(g) of the *Misuse of Drugs Act, 1977*; and iii) an extension in powers of the Garda Síochána to prevent unlicensed dances from taking place (it is understood that this last provision is primarily aimed at 'rave'-type events).

EDUCATION

Youth Work Bill, 1997

This Bill has been passed by Dáil Éireann. (See also (1997) 15 ILT 85.)

***Labour Services Act, 1987 Apprenticeship Rules 1997* (SI No 168 of 1997)**
These rules (made by An Foras Áiseanna Saothair) provide for a single standards-based apprenticeship system, to be administered by FÁS, leading to craft worker status.

ELECTIONS

European Parliament Elections Act, 1997 *(Commencement) Order 1997* (SI No 163 of 1997)
This order brings the *European Parliament Elections Act, 1997* into operation with effect from 21 April 1997.

EMPLOYMENT

***Organisation of Working Time Act, 1997* (No 20 of 1997)**
This Act was signed by the President on 7 May 1997. (See also (1997) 15 ILT 20.)

***Hotels Joint Labour Committee (for the areas known until 1 January 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire) Establishment Order 1997* (SI No 174 of 1997)**
This order establishes a Joint Labour Committee with the powers specified in Part IV of the *Industrial Relations Act, 1946* and ss44–50 of the *Industrial Relations Act, 1990*, regarding the fixing of the minimum rates of remuneration and the regulation of conditions of employment of certain workers employed in hotel establishments anywhere throughout the areas known until 1 January 1994 as the County Borough of Dublin and the Borough of Dun Laoghaire. The order came into operation on 1 May 1997.

ENVIRONMENT

***Litter Pollution Act, 1997* (No 12 of 1997)**
This Act was signed by the President on 18 April 1997. (See also (1997) 15 ILT 20.)

EQUALITY

Equal Status Bill, 1997
This Bill has been passed by both Houses of the Oireachtas. (See also (1997) 15 ILT 85.)

FAMILY

***Family Law (Miscellaneous Provisions) Act, 1997* (No 18 of 1997)**
This Act was signed by the President on 5 May 1997. It amends s32 of the *Family Law Act, 1995* so as to provide for the validation of marriages where notification is or was given in error to the wrong Registrar of Marriages under that section. The Act further: clarifies the position of cohabitants who seek renewal of a barring order in cases of violence in the home; amends the law in relation to powers of attorney given without security under ss8 and 9 of the *Conveyancing Act 1882*; and clarifies the law on disclaimers of interest in cases of intestate succession.

FISHERIES

Fisheries (Amendment) Bill, 1997
This Bill has been passed by Dáil Éireann. (See also (1997) 15 ILT 20.)

HEALTH & SAFETY

***National Council on Ageing and Older People (Establishment) Order 1997* (SI No 120 of 1997)**
This order establishes under the *Health (Corporate Bodies) Act, 1961*, as amended, a body to be known as the National Council on Ageing and Older People which will, *inter alia*, advise the Minister for Health and other Ministers on all aspects of ageing and the welfare of older people. It succeeds the National Council for the Elderly which is being wound up.

***European Communities (Detailed Provisions on the Control of Additives, other than Colours and Sweeteners, for use in Foodstuffs) Regulations 1997* (SI No 128 of 1997)**
These regulations implement Directive 95/2/EC on food additives other than colours and sweeteners for use in foodstuffs (commonly known as the *Miscellaneous Additives Directive*). They set out the detailed provisions which apply to the use in food for human consumption of the categories of food additive specified in art 4(2). The general provisions which apply to these, and to all other food additives, are set out in the *European Communities (General Provisions on the Control of Additives and in Particular, Colours and Sweeteners, for use in Foodstuffs) Regulations 1995*. The regulations came into operation on 25 March 1997.

***European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 1997* (SI No 151 of 1997)**
These regulations amend the *European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations 1982* and give effect to Commission Directive 94/54/EC as amended by Council Directive 96/21/EC. They require a specific indication on the labelling of foodstuffs of the presence of sweeteners and/or added sugars. The presence of particular sweeteners, such as aspartame and polyols, which may cause adverse effects in some people, must also be indicated. The regulations came into operation on 1 July.

INTERNATIONAL AID

***International Development Association (Amendment) Act, 1997* (No 19 of 1997)**
This Act was signed by the President on 7 May 1997. (See also (1997) 15 ILT 86.)

JUDICIAL REVIEW

***Mary O'Dwyer v James Patrick McDonagh and Ors* (Barr J), 14 October 1996**
Employment application; Limerick Regional Technical College; selection board; alleged bias; whether procedures employed by board were unfair; whether selection process bad; whether court should interfere with selection process; principles to be applied by the court; *Regional Technical Colleges Act, 1992*, s11(1)(b).
Held: In the absence of *mala fides*, it is not the function of the court to investigate whether the opinions of certain members of a correctly empanelled selection board are well founded.

LOCAL AUTHORITIES

Local Government (Financial Provisions) Bill, 1997
This Bill, which was presented by the Minister for the Environment, has been passed by Dáil Éireann. It aims to assign the proceeds of motor tax to local authorities (with provision for equalisation of financial resources between local authorities) and to abolish charges for water and sewerage services to domestic consumers.

PLANNING AND DEVELOPMENT

***Housing (Miscellaneous Provisions) Act, 1997* (No 21 of 1997)**

This Act was signed by the President on 7 May 1997. (See also (1997) 15 ILT 43.)

Local Government (Planning and Development) Bill, 1997

This private member's Bill, as introduced by Seán Ryan TD, aims to provide that an application for planning permission may be denied if the applicant (or a connected person) has failed to complete works that were a condition of the granting of planning permission for a previous development by them.

PRACTICE AND PROCEDURE

***Rules of the Superior Courts* (No 2) of 1997 (SI No 166 of 1997)**

These *Rules* amend the *Rules of the Superior Courts 1986*, O39, r30, to provide that the rule shall not apply to any action to which s1(1) and (2) of the *Courts Act, 1988* applies. The *Rules* came into operation on 28 April 1997.

***Cue Club Ltd and Ors v Navaro Ltd* (Supreme Court), 23 October 1996**

Landlord and tenant; judicial review; lease; relief against forfeiture for non-payment of rent; calculation of communal charges; judgment granted on consent of parties; party wished to set judgment aside; whether lessor abided by terms of original lease; whether parties entered into consent order on foot of common mistake; whether lessee entitled to relief sought; whether proceedings to be dismissed as being frivolous and or vexatious; principles to be applied; *Rules of the Superior Courts 1986*, O19.

Held: The jurisdiction to strike out proceedings as being frivolous and vexatious or as being an abuse of the court where a cause of action is disclosed in the pleadings, though well settled, should only be exercised with the greatest care and circumspection, or sparingly and only in clear cases.

***Director of Public Prosecutions v Francis Fox* (McGuinness J), 7 November 1996**

Statutory interpretation; prosecution under *Diseases of Animals Act*; summonses issued pursuant to *Courts (No 3) Act, 1986;* summonses issued almost two years after date of alleged offence; *Bovine Diseases Act* allows prosecution to be commenced within two years; whether summonses issued pursuant to *Courts (No 3) Act, 1986* could be validly issued more than six months after the date of the alleged offence; *Bovine Tuberculosis (Attestation of the State and General Provisions) Order 1989*; *Diseases of Animals Act, 1966; Bovine Diseases (Levies) Act, 1979*, s18; *Courts (No 3) Act, 1986*, s1; *Petty Sessions (Ireland) Act 1851*.

Held: If a statute refers to the time within which proceedings of the nature indicated must be instituted and the proceedings are instituted by way of an application for a summons pursuant to the 1986 Act, then the application for the issue of the summons can be made within the time indicated.

***James McGuinness v Motor Distributors Ltd and Anor* (Barron J), 22 October 1996**

Estoppel; damages for breach of contract; earlier proceedings; third party issue; finding against plaintiff; plaintiff instituted new proceedings against third party; third party contended that plaintiff estopped from continuing proceedings because of earlier decision; plaintiff claimed that nominee of insurance company was party to earlier proceedings and not he; plaintiff claimed that

there was no privity between nominee and himself; whether plaintiff entitled to maintain action; whether plaintiff estopped by earlier decision.
Held: The court would only consider refusing to allow an earlier decision amount to an estoppel of a plaintiff's action where there was no privity of interest as between the relevant party in the first action and the relevant party in the current action.

***Henry McSorley and Anor v James O'Mahony* (Costello J), 6 November 1996**
Professional negligence; plaintiffs had recovered damages from vendor arising out of sale of property; plaintiffs now sued solicitor who had acted for them in sale; application to stay proceedings by defendant; whether vendor and defendant were concurrent wrongdoers; whether plaintiffs could recover additional damages from defendant; whether proceedings would confer any benefit on plaintiffs; *Civil Liability Act, 1961*, ss2, 11, 16 and 18.
Held: The court should not entertain proceedings where the plaintiff can obtain no benefit from maintaining the proceedings in question.

PUBLIC SERVICE

Public Service Management (No 2) Bill, 1997
This Bill has been amended in committee and passed by Seanad Éireann.

TAXATION

Finance Bill, 1997
This Bill has been amended in the Select Committee on Finance and General affairs and passed by Dáil Éireann.

***Capital Gains Tax (Multipliers) (1997-98) Regulations 1997* (SI No 157 of 1997)**
These regulations specify the multipliers to be used in calculating the capital gains tax payable on the disposal of an asset in the year of assessment 1996-97.

TORT

***Patrick O'Shea v Tilman Anhold and Anor (Supreme Court),* 23 October 1996**
Animals; horse straying onto road; statutory duty of land owner; onus on defendant; not strict liability; reasonable care taken; appeal allowed; *Animals Act, 1985, s2(1).*
Held: The statutory duty imposed on the defendants by the *Animals Act, 1985* to take such care as is reasonable is not a duty of strict or absolute liability.

***John McDonagh v Brian O'Connell Ltd* (Barr J), 24 October 1996**
Employer's liability; negligence; occupational injury; personal injuries; workers contracted to another employer; liability of original employer; degree of care and control of the second employer; duty of care to workers; whether original employer owed duty of care to the plaintiff; whether that duty was passed onto second employer; whether second employer breached duty of care to employee; whether employer had devised a safe system of work for the employees; assessment of damages.
Held: The liability that an original employer has in negligence to a worker he had loaned to another turns upon the direction and control of the worker at the material time.

TRANSPORT

***European Communities (Motor Vehicles Type Approval) Regulations 1997* (SI No 147 of 1997)**
These regulations further amend the *European Communities (Motor Vehicles Type Approval) Regulations 1978* to give effect to the following Council and Commission Directives: i) 96/44/EC (of 1 July 1996) adapting to technical progress Council Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles; ii) 96/64/EC (of 2 October 1996) adapting to technical progress Council Directive 77/389/EEC on the approximation of the laws of the Member States relating to motor vehicle towing devices; iii) 96/69/EC (of 8 October 1996) amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles; and iv) 96/79/EC (of 16 December 1996) on the protection of occupants of motor vehicles in the event of a frontal impact. The regulations came into operation on 4 April 1997.

Apprentices placed third in the world

A team of five apprentices representing the Law Society has recently returned from the United States having been placed third overall in the Phillip C Jessup International Law Moot Court Competition 1997. Their achievement in what is recognised as the largest and most prestigious moot court competition in the world is the best ever performance by an Irish team. Only one other Irish team had ever qualified for the final knockout stages before.

This year the competition attracted the participation of over 300 teams in law schools and universities in 50 different countries.

The Law Society was represented in the World Finals in Washington DC in April by Matthew McCabe and Gavin Woods of Arthur Cox, Josephine Deasy and Kenneth Hatton of A&L Goodbody and Julie Murphy O'Connor of Matheson Ormsby Prentice. The Law Society team represented Ireland after defeating Trinity College, Dublin, in the national round final last February.

The Jessup Moot Court competition is based on the practice and procedure of the International Court of Justice, and an international legal dispute between two imaginary states is formulated each year by a group of international lawyers. This year the case concerned the plight of 400 children, evacuated from a volcanic disaster zone, who were then detained by the new fundamentalist regime of the rescuing country. Following unsuccessful legislative and economic counter-measures, the children's country of origin petitioned the International Court of Justice for the return of the children, while the respondent sought reparation for the use of the counter-measures, which it claimed were illegal in international law. Obviously, not the type of problems apprentices deal with every day of the week.

Legal pleadings totalling 12,000 words on behalf of each state were submitted in January,

The Law Society team: (back row) Gavin Woods, Matthew McCabe, Kenneth Hatton; (front row) Julie Murphy O'Connor, Josephine Deasy, and T P Kennedy, the Law Society's Education Officer

and these formed the basis of the legal arguments in the national rounds and the World finals. In the competition, each team presents a 40-minute oral submission on behalf of either state and during this they are cross-examined by the panel of three judges on their legal arguments, their knowledge of the general principles of international law and on their knowledge of the facts of the case. In Washington, the judges were made up of practising lawyers, academics and judges, including a judge of the European Court of Human Rights.

In the quarter finals the team defeated the top seeds, the University of New South Wales, before finally meeting its match in the semi-finals in the form of the Universidad Católica Andres Bello, Venezuela. This team was competing together in the competition for the third successive year and subsequently won the overall competition the following day in the final against the University of Calgary, Canada. In the final results, the Law Society team was placed third overall and received a plaque at the prize-giving in recognition of its achievement.

Despite the disappointment at finally being eliminated from the competition, all the members of the team thoroughly enjoyed the week's experience in Washington. The work and effort which was put in consistently since October finally paid off. The competition is a truly worldwide competition and the opportunity of competing and socialising with law students and practitioners from five different continents is one which the five team members will remember for a long time.

The team hopes that the success of this year's team which built on the success of the many other Law Society teams that have represented Ireland in this competition will offer encouragement to others to participate next year.

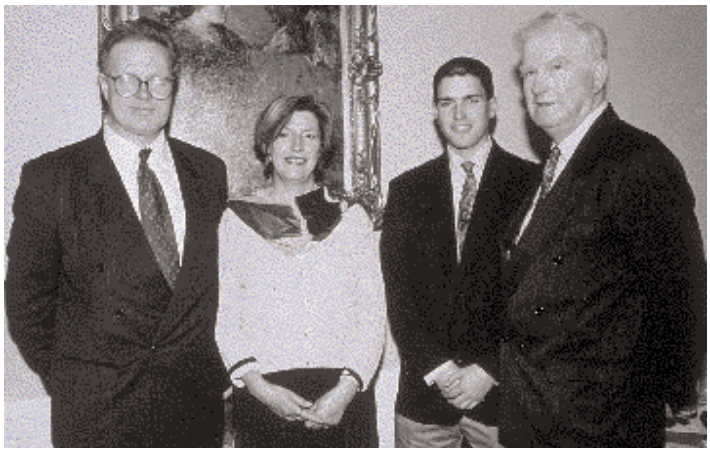
The team would like to extend its warmest thanks to all those who contributed to its efforts. In particular, special thanks must be given to the coach T P Kennedy, the Law Society's Education Officer, who offered encouragement and advice to the team from the beginning all the way to Washington. The team would also like to acknowledge the generosity of the teams sponsors: the Law Society, Arthur Cox, A&L Goodbody, Matheson Ormsby Prentice, the Irish Moot Court Committee, the Dublin Solicitors Bar Association, CRH Plc, Peter Sutherland SC, Eoghan Fitzsimons SC and James O'Reilly SC.

Gavin Woods

Judge Buckley joins UCD Law Faculty

Judge John F Buckley has been appointed visiting fellow and adjunct faculty member of University College Dublin's Law Faculty. The college's adjunct faculty is designed to allow the legal academics in UCD to tap into the expertise of distinguished practitioners.

Judge Buckley is himself a graduate of UCD and practised with Hickey, Beauchamp, Kirwan and O'Reilly before being appointed to the bench. He is a former Law Society Council member and also served on the *Gazette*'s editorial board.



Judge John F Buckley (right) at a reception to mark his appointment as a visiting fellow, adjunct faculty of law, UCD. Also pictured are (left to right), Paul O'Connor, Dean, UCD Faculty of Law, Claire Buckley and Niall Buckley

Solicitor runs for Seanad

Nora Owen's former programme manager, solicitor Linda O'Shea Farren, will be wooing the 93,000 NUI voters in the Seanad elections later this month.

While she is a member of Fine Gael, O'Shea Farren will be running as an independent candidate, as she did not seek a nomination from her party. She is targeting one of the three NUI seats because she feels that as a 36-year-old university graduate, this is her natural constituency.

'There is a very broad range of voters for this panel, but if you look at the three who held the seats in the last Seanad, they were all men who were over 50. This is something that younger NUI voters have not taken up, but it is something that's very important', she told the *Gazette*.

O'Shea Farren graduated from University College Cork in 1981 and completed her training at the Law Society in 1984. She worked as a commercial lawyer in New York and London before returning to Ireland in 1994 to join the investment arm of Irish Intercontinental Bank.

Gerry Doherty, President of the Dublin Solicitors Bar Association, presents a cheque for monies raised by the DSBA to Thomas Menton, Chairman of the Solicitors Benevolent Association. Also in the picture is Orla Coyne, Chairman of the DSBA's Social Events Committee

CLASP garden party

Concerned Lawyers for the Alleviation of Social Problems (CLASP) will hold a garden party on 18 July at Blackhall Place from 6pm to 9.30pm. Tickets will be £15, or £12 for apprentices and devils, and are available from Murrough O'Rourke (tel: 01 8724379) or Suzanne McNulty (tel: 01 6993565).

The 38th Advanced Course soccer team which recently defeated the Law Library 9 – 1 in a challenge match at Blackhall Place. Back row (left to right): Donal O'Muircheartaigh, Kevin Langford, Stephen McDevitt, Ronan McLoughlin, Stephen Reel, John MacNamara, Chris O'Connell; (front row) Dermot Kelly, Fintan Lawlor, Garbhain O'Nuallain, Ian O'Reilly, Conor O'Brien

Pictured at the 1997 Brehon Law School, *The poet and media in Irish law – a Brehon perspective* at Newtown Castle, Co Clare, are (left to right) Marie McGonagle, Kieron Wood, Nuala Ó'Faoláin, Brian Sheridan, Dr Muireann Ní Bhrolcháin, the Hon Mr Justice Declan Budd

At the Southern Law Association Annual Dinner in Cork were SLA President Martin Harvey, Law Society President Frank Daly and Jim Donegan, Dinner Committee

Book reviews

Misuse of drugs and drug traffic offences (third edition)

Rudi Fortson LLB

Sweet & Maxwell (1996), Cheriton House, North Way, Andover, Hants SP10 5BE, England. Price: £39.50 (paperback)

With the exception of legislation introduced in Ireland in 1996, in many respects Irish law since 1977 has reflected the law and practice as it applies in England and Wales.

The text of this book deals extensively with the background to the introduction in England and Wales of the primary *Misuse of Drugs Act 1971*, the current *Misuse of Drugs Regulations 1985 to 1995*, the *Criminal Justice (International Co-operation) Act 1990*, the *Customs & Excise Management Act 1979*, the *Police and Criminal Evidence Act 1984* (PACE) and the *Drug Trafficking Act 1984*. The comparable legislation in Ireland is the *Misuse of Drugs Act, 1977*, the *Misuse of Drugs Act, 1984*, the *Customs & Excise (Miscellaneous Provisions) Act, 1988*, section 20, and the *Criminal Justice Act, 1984*, section 6.

On 8 July 1986, the *Drug Trafficking and Offences Act 1986* introduced in England and Wales sweeping and radical changes in the law to enable the courts to recover the proceeds of drug trafficking. This Act was subsequently consolidated in the *Drug Trafficking Act 1994* to give effect to the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* done at Vienna on 20 December 1988. This Convention was directed at international measures to confiscate the proceeds of crime. Prior to this, such powers were severely restricted: in Irish law, section 30 of the *Misuse of Drugs Act, 1971* was confined to the forfeiture of 'anything relating to the offence', as directed by the court.

Part II of the (Irish) *Criminal Justice Act, 1994* is, with very few modifications, based almost entirely on the equivalent English legislation and provides for applications by the Director of Public Prosecutions to the High Court to determine whether a person convicted and sentenced for drug trafficking has benefited from drug trafficking.

Section 62 of the 1994 Act extends the 'forfeiture provisions' of section 30 of the 1971 Act to new drug-related offences created by the 1994 Act – that is, sections 33 and 34, money laundering in relation to proceeds of drug trafficking and offences under the *Customs Acts* involving the import/export of controlled drugs. The recent decision of the European Court of Human Rights in *Welsh v United Kingdom* (1995) 20 EHRR 247 is of interest; in holding that confiscation orders made under the *Drug Trafficking Offences Act 1986* were in breach of Article 7 which provides 'Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed', the judgment goes on to state (para 36) that 'The court would stress, however, that this conclusion concerns only the retrospective application of the relevant legislation and does not call into question in any respect the powers of confiscation conferred on the courts as a weapon in the fight against the scourge of drug trafficking'.

During 1996, Irish legislation was expanded significantly by the introduction of three new Acts of the Oireachtas. The first is the *Criminal Justice (Drug Trafficking) Act, 1996* which provides for additional powers of detention of suspected drug traffickers.

The second Act introduced during 1996 is the *Proceeds of Crime Act, 1996*. This deals with applications to the High Court for various orders directing that property with a value of not less than £10,000 not be disposed of or otherwise dealt with, and the subsequent disposal by the State of that property, as appropriate.

The *Criminal Assets Bureau Act, 1996* completed the trilogy and created the Criminal Assets Bureau with the power to identify, investigate, deprive and deny the assets wherever situated of persons which derive in any way from criminal activity.

Notwithstanding the fact that the Irish legislature has gone ahead of the UK, specifically in terms of the 1996 trilogy of legislation, this new publication contains a wealth of background, references and case law which, in its international context, can only be helpful to any practitioner in this important area of criminal practice. At the moderate cost of £39.50, it represents by present day standards good value for money. G

Tom Cahill is a Dublin-based barrister.

Constitutionalism in contemporary Ireland: an American perspective

Francis X Beytagh

Round Hall Sweet & Maxwell (1997), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1-8 99738-42-8. Price: £40 (paperback)

The author is Professor of Law at Ohio State University and has published several works on US constitutional law. So why Ireland? In fact, a judge of the Irish Supreme Court posed this question to the author at dinner. In his preface, the author answers this question by referring to Irish ancestors, his interest in constitutional law including comparative constitutional law, and Ireland's experiment in self-government that provides lessons for other countries. In a number of respects, Professor Beytagh considers that Ireland has become a microcosm for assessing the future of constitutionalism around the world. The author admits to

being 'a friendly foreigner'.

Sometimes, the human dimension – the factors and persons who influence the writer to devote such a significant amount of his or her life to writing a book – helps us to understand the genesis and purpose of the book and, if appropriate, the writer's philosophy and ideology. Incidentally many sensible writers, like members of the judiciary, are proud to boast of no particular set philosophy or ideology.

This book is dedicated to the Hon Brian Walsh, one of Ireland's greatest judges, described by the author as having provided both information and inspiration which were invaluable to the author in completing his undertaking. Dr Gerard Hogan, barrister and Fellow of Trinity College Dublin, one of Ireland's great jurists, in his foreword to the book writes of Professor Beytagh's obvious enthusiasm and interest that has resulted in 'an extremely fine analysis of contemporary Irish constitutional law'.

The book is divided into six chapters. Chapter one introduces the book and gives a general background and historical overview. In the second chapter, the author offers perspectives on individual articles of the 1937 Constitution. Chapter three considers in some detail: a) cases prior to the 1960s, with the theme of searching for the judicial role in a young constitutional democracy; b) cases decided after 1960, with the theme of the judiciary as an integral part of contemporary constitutionalism in Ireland; and c) contemporary cases. Unique features of Irish constitutionalism are the subject of chapter four. In chapter five, the author considers the need for change and offers analysis and observations on the *Constitutional Review Group Report (1996)*. In the final chapter, the author offers his concluding thoughts.

It is indeed a rare achievement for a 'friendly foreigner' of Professor Beytagh's stature to produce a scholarly work on an important aspect of Irish law. Professor Beytagh's book is both authoritative and stimulating. The book is a most welcome addition to Irish legal literature. G

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

Confiscation and the proceeds of crime (second edition)

Andrew R Mitchell, Susan M Taylor and Kennedy Talbot

Sweet & Maxwell (1996), Cheriton House, North Way, Andover, Hampshire SP10 5BE, England. ISBN: 0-421-54490-2. Price: £99 sterling (hardback)

The heinous murders of Veronica Guerin and Detective Garda Gerry McCabe shocked the nation. These atrocious events galvanised the legislature to make a determined effort to fight organised crime. The *Criminal Assets Bureau Act, 1996*, the *Disclosure of Certain Information for Taxation and Other Purposes Act, 1996* and the *Proceeds of Crime Act, 1996* represent significant legislative measures to tackle organised crime in Ireland.

Depriving an offender of the proceeds or profits of crime by confiscation is an effective weapon in the armoury of the law enforcers. With prisons overflowing and a reduction in time spent in prison, it is of paramount importance that there is no encouragement given to the greedy criminal.

Key features of this book include a practical guide to the relationship between forfeiture, restitution and confiscation. Appropriate legislative measures are reproduced with a consolidated Part VI of the UK *Criminal Justice Act 1988* and the UK *Drug Trafficking Act 1994* being the most significant. The authors consider the civil powers of the High Court to make restraint and charging orders and its powers of enforcement. Incorporated in the book are specimen indictments, notices, orders certificates and a full description of all relevant legislation and case law, including domestic and international law.

Lord Justice Paul Kennedy in his foreword to the second edition refers, with approval, to Sir Derek Hodgson's comment about the first edition being 'comprehensive and intellectually elegant'. This description is apt; this second edition is published at an appropriate time. G

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

WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of **X** pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund-raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

IRISH CANCER SOCIETY

5 Northumberland Road, Dublin 4. Tel: (01) 668 1855

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The Irish Kidney Association was formed in 1978 to:

1. Promote the general welfare of persons suffering kidney failure - financial and psychological.
2. To give advice and guidance to parents and relatives.
3. To arrange lectures, conferences and meetings pertaining to kidney disease.
4. To support research projects into the causes and effects of inherited disorders and kidney failure.
5. To print and distribute the Multi-Organ Donor Card and actively promote public awareness of organ failure.

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WHO WILL FIGHT IRELAND'S NUMBER ONE KILLER?

Heart Attack and Stroke cause 46% of all deaths in Ireland

WE WILL

IHF, a registered charitable organisation, fights Heart Disease and Stroke through Education, Community Services and Research.

IF YOU WILL

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IRISH HEART FOUNDATION

4 Clyde Road, Dublin 4
Telephone: 01-6685001

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 4 July 1997)

Regd owner: Anne Stynes; Folio: 155L; Land: Naas West situate to the east side of Carragh Road; **Co Kildare**
Regd owner: Patrick Cunningham; Folio: 18369; Land: Clonminam; Area: 0.866 acres; **Co Queens**
Regd owner: Kathleen Doherty, Frenchpark, Co Roscommon; Folio: 11982; Townland; Part of the lands of Corskeagh containing 22 perches or thereabouts; **Co Roscommon**
Regd owner: Patrick Hayes (deceased); Folio: 39684; Land: Prop 1+2 Killeen, Prop 3 Aughavehir; Area: Prop 1 27a 1r 12p, Prop 2 14a 1r 31p, Prop 3 12a 3r 2p; **Co Tipperary**
Regd owner: Edith Wagner Boss c/o J J Kennedy & Company, Birr, Co Offaly; Folio: 4122F; **Co Galway**
Regd owner: Denis Eric Nulty; Folio: 9709; Land: Slane; Area: 8a 3r 23p; **Co Meath**
Regd owner: Christopher Burke; Folio: 10054; Land: Agharra; **Co Longford**
Regd owner: James Carroll & Marian Carroll of 103, Watergate, Tallaght, Co Dublin; Folio: 44165L; Lands: Property situate to the west of Oldbawn Road in the town of Tallaght, Townland of Oldbawn and Barony of Uppercross; **Co Dublin**
Regd owner: Margaret M Gawley, Knockavroe, Boyle, Co Roscommon; Folio: 30006; Townland: Knockavroe, Lisserdrea; Area: 16a 1r 17p, 4a 2r 0p; **Co Roscommon**
Regd owner: Joseph and Ann Daly; Folio: 31232F; Land: Gortboy; **Co Limerick**
Regd owner: Kenneth John Richard Smith and Clare Harwood-Smith; Folio: 2865F; Area: Garrymore; **Co Cavan**
Regd owner: Kieran McNeill and Kieran McNeill & Sons Ltd: Folio: 911F, and 3517F; Land: Scrub and Glenmacolls; Area: 0.338 acres and 0.300 acres; **Co Queens**
Regd owner: John Nolan; Folio: 2007F; Land: Sheean; Area 84a 0r 11p; **Co Carlow**
Regd owner: Timothy G Corridan; Folio: 10247F; Land: Glenogra; Area: 22.000 acres; **Co Limerick**
Regd owner: Barbara Joyce, 67 Grosvenor Road, Rathmines, Dublin 6; Folio: 5526F; Townland: Newtown and Newtown; Area: 0.500 acres and 0.180 acres; **Co Roscommon**
Regd owner: Robert Porter; Folio: 21664; Land: Moneen; Area: 0a 2r 30p; **Co Donegal**
Regd owner: Francis Gardiner; Folio: 20701; Lands: Ballyclough, Barony of Orrery; **Co Cork**
Regd owner: John Farrell, Schoolview, Donabate, Co Dublin; Folio: 4968; Lands: Townland of Burrow in the Barony of Nethercross; **Co Dublin**
Regd owner: Patrick Costelloe (deceased), 37 Priory Grove, Stillorgan, Co Dublin; Folio: 4616L; Lands: Property situate to the west side of Priory Avenue in the townland of Woodland and Barony of Rathdown; **Co Dublin**
Regd owner: John Long Junior; Folio: 24752; Land: Ballydoyle; Area: 21a 3r 36p; **Co Tipperary**
Regd owner: John O'Donoghue; Folio: 3237L, Land: Shean Upper Barony of Muskerry East in the town of Blarney; **Co Cork**
Regd owner: Mervyn Young, Alice Lloyd & John Sandal; Folio: 4142F; Land: Roseberry in the Barony of Connell; **Co Kildare**
Regd owner: Michael Ryan, 6 Beechpark, Blackrock, Dundalk, Co Louth; Folio: 13766, Lands: Townland of Knockaunranny in the barony of Moycullen, County of Galway; Area: 0.569 acres; **Co Galway**
Regd owner: John Donlon; Folio: 6100; **Co Sligo**
Regd owner: John Lambert (deceased) of 'Dromartin Farm', Dundrum, Co Dublin; Folio: 3649; Lands: Townland of Drummartin in the Barony of Rathdown; **Co Dublin**
Regd owner: Bridget Lambert-Walsh of Seskin, 126 Churchtown Road Lower, Dublin 14; Folio: 17573; Lands: Townland of Drummartin in the Barony of Rathdown; **Co Dublin**
Regd owner: John Lambert (deceased) of 'Dromartin Farm', Dundrum, Co Dublin; Folio: 4478; Lands: Townland of Drummartin in the Barony of Rathdown; **Co Dublin**
Regd owner: John Joseph Carney, Corracreigh, Clooneyquinn, Castlerea, Co Roscommon; Folio: 870; Townland: Carragreigh (part); Area: 14a 2r 16p; **Co Dublin**
Regd owner: William McEvoy; Folio: 14103; Land: Prop 1 Ardaloo, Prop 2 Jenkinstown; Area: Prop 1 33a 0r 0p, Prop 2 15a 0r 15p; **Co Kilkenny**
Regd owner: James Egan; Folio: 1752 (closed to 25770); Land: Kilkip West: Area: 6a 0r 6p; **Co Tipperary**
Regd owner: James Henry Harron; Folio: 3266; Land: Prop 1 Drumchory Glebe, Prop 2 Nurvagh Upper Glebe; Area: Prop 1 14a 3r 9p, Prop 2 2a 0r 10p; **Co Donegal**
Regd owner: James Cross; Folio 3481; Lands: Capponargid, Barony of Offaly East; **Co Kildare**
Regd owner: Martin Morgan and Teresa Morgan; Folio: 25807F; Lands: Crosshaven Hill, Barony of Kerrycurrihy; **Co Cork**
Regd owner: William E Culbert; Folio: 3969; Lands: Kiltegan, Barony of Talbotstown Upper; **Co Wicklow**
Regd owner: Thomas Callaghan, Boho, Ballintubber, Co Roscommon; Folio: 99L; Townland: Demesne; Area: 0a 2r 11p; **Co Roscommon**
Regd owner: Patrick J Moroney (Junior) (Farmer) and Mary Moroney (Married Woman), Carnamadra, Kilnaboy, Ennis, Co Clare; Folio: 6634F; Lands: Carrownamadra and Rinnamona Barony of Inchiquin; **Co Clare**
Regd owner: Margaret Kelly, 10 Greendale Avenue, Dublin 5: Folio: 6189L; Lands: Property situate to the north side of the Dublin Howth Road in the parish of Kilbarrack, District of Raheny; **Co Dublin**

WILLS

Hayes, Cecil Edward, deceased, late of 10 Brabazon Court, 2 Gilford Road, Sandymount, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 25 May 1997, please contact Moore, Kiely & Lloyd, Solicitors, 31 Molesworth Street, Dublin 2, tel: 6767485, fax: 6767853. (Ref JHR/10,896)

Barrett, Michael, deceased, late of Finnor House, Croghan, Boyle, Co Roscommon. Would any person having knowledge of a will executed by the above named deceased who died on 21 April 1997, please contact Sheridan & Company, Solicitors, Boyle, Co Roscommon, tel: 079 63542, fax: 079 63542

Moore, Kathleen and Moore, Mary A, late of 43 Shandon Drive, Phibsboro, Dublin 7. Obituaries 13 February 1978 and 10 March 1979 respectively. Should any person have any knowledge of individual wills executed by the above named deceased sisters on 17 September 1976, please contact the Solicitor in Charge, Law Centre, 44/49 Main Street, Finglas, Dublin 11, tel: 8640314; fax: 8640362

Campion, Maura, deceased, late of Campion's Public House, Balgriffin, Malahide Road, Dublin 17. Would any person having knowledge of a will executed by the above named deceased who died on 4 March 1997, please contact Michael J Kennedy & Company, Solicitors, Parochial House, Baldoyle, Dublin 13, tel: 8320230, fax: 8393663

Ryan, Margaret (otherwise Peggy), deceased, late of Ballydoole, Kildimo, Co Limerick, also with an address at Ballymacashel, Mungret, Co Limerick. Would any person having knowledge of a will executed by the above named deceased who died on 29 March 1991, please contact

John J Hayes & Company, Solicitors, 98 O'Connell Street, Limerick, tel: 061 311766, fax: 061 311751

Geraghty, John Augustine, deceased, late of St Anthony's, 104 Goatstown Road, Goatstown, Dublin 14. Would any person having knowledge of an original will executed on 16 November 1964 by the above deceased who died on 16 May 1996, please contact Mannion Solicitors, Oranmore House, Taney Road, Dundrum, Dublin 14, tel: 2989344, fax: 2989846

Fitzgerald, William, deceased, late of 38 Clarence Mangan Road, Dublin 8. Would any person having knowledge of a will executed by the above named deceased on 1 July 1966 or on any other date, the deceased having died on 22 November 1974, please contact David Binchy & Company, Solicitors 72 Merrion Square, Dublin 2, tel: 01 6764511, fax: 01 6764708

MISCELLANEOUS

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

Personal injury claims in England and Wales. Specialist PI solicitors with offices in London and Birmingham can assist in all types of injury claims. One of our staff is in Ireland for one week in every month. Legal aid available to clients that can qualify. Contact David Levene & Company, Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England, tel: 0044 81 881 7777, fax: 0044 81 889 6395, and Bank House, Cherry Street, Birmingham B2 5AL, tel: 0044 21 633 3200, fax: 0044 21 633 4344

London West End solicitors will advise and undertake UK-related matters. All areas – corporate/private client. Resident Irish solicitor. Reciprocal arrangement and fee sharing envisaged. Agency work also. Contact Ellis & Fairbairn, 26 Old Brompton Road, South Kensington, London SW7 3DL, tel: 0044 71 589 0141, fax: 0044 71 225 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. Established for over 20 years. Will advise and undertake all contentious and non-contentious Northern Irish legal matters on an agency or otherwise basis. Contact: Karen O'Leary, T E W Huey & Company, 11 Limavaddy Road, Londonderry BT47 1JU, tel: 080 1504 42184, fax: 080 1504 311231; e-mail: tewhueyc@iol.ie

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

For sale: ordinary seven day publican's licence. Replies to James Binchy & Son, Solicitors, Charleville, Co Cork, tel: 063 81214, fax: 063 81153 (Ref: P McD)

To let: fully secure enclosed car park space at the Richmond Apartments (24 hours – seven days per week) directly adjacent to Dublin Metropolitan District Court, North Brunswick Street, Dublin 7. £100 per month. Tel: 088 2745410 or 8787220 (after 6pm)

Solicitors wish to purchase practice from sole practitioner in Dublin, Louth or Meath. Absolute confidentiality assured. Reply to **Box No 60**

For sale: seven day ordinary publican's licence, County Cavan. Please contact George V Maloney & Company, Solicitors, 6 Farnham Street, Cavan, tel: 049 31444, fax: 049 32237 (Ref JM)

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: 08 01693 68144, fax: 08 01693 60966

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Practice for sale in West Cork. Sole principal retiring. Please contact Geraldine Hynes, Solicitor Link, Law Society, tel: 6710200

AIJA (International Association of Young Solicitors) Conference. Topic: *International worker mobility of young solicitors*. Date: 25-27 September. Venue: Worcester College, Oxford, England. Contact Michael Tyrell, Matheson Ormsby Prentice, tel: 6671666

LANDLORD AND TENANTS

LANDLORD AND TENANTS (GROUND RENTS) (NO 2) ACT 1978 NOTICE OF INTENTION TO ACQUIRE FEE SIMPLE – SECTION 15

To: the County Registrar, Circuit Court Office, Church Street, Longford

1. **DESCRIPTION OF LAND TO WHICH THIS NOTICE REFERS:** All that plot of ground part of the Townland of Drinan situate in the Barony of Rathcline and County of Longford containing one half rood Irish Plantation measure or thereabouts and meared and bounded by three sides by lands in the occupation of Austin Greene and on the fourth side by the road leading from Ballymahon to Longford and measuring in breadth about 53 feet and in length 170 feet or thereabouts
2. **PARTICULARS OF APPLICANTS LEASE OR TENANCY:** Applicants hold leasehold interest in respect of the property which was originally held under a lease dated the 11th day of August 1886 and made between John Bond of the First Part, Austin Greene of the Second Part and the Rev Edward Mahon of the Third Part for the term of 99 years from the 1st day of November 1886.
3. **PART OF LANDS EXCLUDED – (IF ANY):** None

Take notice that I, **Michael Kelly** being the person entitled under section 15 of the above Act propose to purchase the freehold interest in the lands described in paragraph 1.

Signed: Michael Kelly, Drinan, Ballymahon, Co Longford

EMPLOYMENT

Solicitor seeks employment. Any location, any type of work considered. Qualified 1994 and recently conferred with LLM Commercial Law. Reply to **Box No 61**

Kenmare: assistant solicitor wanted to manage our Kenmare office. The successful applicant will be given every help, incentive and encouragement to expand an already well-established practice which has considerable scope for further expansion. Commitment to the social and sporting activities of the practice area will be as much a plus factor for the solicitor as ability and ambition. Applications in writing please to O'Mahony Farrelly, Solicitors, Bantry, Co Cork (Ref PF)