GAZETTE

REGULARS

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Misleading the court and each other

There is a universal rule that lawyers are legally and ethically prohibited from offering testimony that they know to be false. The word 'false' is crucial. We must provide a zealous representation of our client's interests but must do so within the bounds of law. Of course, in this imperfect world, that boundary may sometimes be fuzzy.

The fuzzy ethical boundary line was illustrated recently by the Court of Appeal (England and Wales) in *Vernon v Bosley* (TLR, 19 December 1996). Sometimes it is convenient (from many perspectives) to illustrate a difficult ethical dilemma by referring to another jurisdiction! The case presents a stark reminder of our duties. In 1995, Peter Vernon was awarded £1,332,231 in damages and interest for nervous shock or psychiatric injury sustained when he witnessed unsuccessful attempts in 1982 to rescue his two daughters from a motor car which had been driven into a river in South Wales by the defendant, who was employed by Mr Vernon and his wife as a nanny.

The nanny's lawyers appealed, claiming that Mr Vernon's subsequent psychological problems were reactions to life's events unconnected to the accident, such as the loss of his business, his inability to obtain employment and the break-up of his marriage. In March 1996 (in an earlier hearing), their Lordships handed down draft judgments reducing the total award of damages to £643,425. Issues then arose as to the correct calculation of past and future loss of earnings, which affected the calculation of interest.

Anonymous tip-off

No final order of the court had been drawn up when, in April 1996, counsel for the defendant received anonymously in the post copies of a judgment in another court in proceedings between Mr Vernon (the plaintiff) and his wife relating to their three children. These papers revealed that the evidence before those courts was that

Mr V[illegible]ent dramatically improved and that he had substantially, if not fully, recovered. The defendant applied for the appeal to be listed for rehearing, for discovery and inspection of the relevant reports and evidence and for leave to take copies of them. Leave was granted.

Their Lordships ruled in October 1996 that further evidence should be admitted since it was relevant to the plaintiff's medical condition at the appropriate time. The Court of Appeal considered that Mr Vernon had made a substantial recovery which had been progressive since September 1993 (save for temporary deteriorations).

Duty of practitioners

In *Vernon*, Lord Justice Stuart-Smith, with whom Lord Justice Thorpe agreed, stated that it was the duty of every litigant not to mislead the court or his opponent. He or she might do so not only by giving evidence that he or she knew to be untrue but by misleading the court to believe that a certain state of affairs, which he or she once believed to be true, was now known to be no longer so. That duty continued until the judge had given judgment.

The Court of Appeal considered that, at the time relevant submissions were made, the plaintiff knew that his medical condition, as stated, did not represent the true position and shortly afterwards his legal advisers knew the same. Unless the altered position was communicated to the judge, there was clearly a risk that the court would give judgment on a basis that was no longer true and that was exactly what happened.

In this case, Mr Vernon's condition at the trial and the prognosis were significantly different. The court was being misled by the failure of the plaintiff and his advisers to correct an incorrect appreciation which the court would otherwise have.

The Court of Appeal considered that where there was a danger that the court would be misled, it was the duty of the lawyers to advise the client that disclosure should be made. If the client refused to accept that advice, then it was not for the lawyers to make the disclosure but the practitioner could no longer continue to act. If the plaintiff had not accepted the advice, then the non-appearance of counsel and solicitors before the judge would immediately have alerted the defendant's advisers, if not the judge, that something was afoot. Lord Justice Stuart-Smith stated that there was no doubt that the lawyers for the defendant 'would have smelled a rat'.

Lord Justice Evans dissented in *Vernon*. He stated that he was concerned that no steps had been taken to discover who had anonymously sent documents to the defendant's counsel in breach of statutory confidence and apparently in contempt of court. He stated that this case already deserved a place in the history books or in some legal museum as an example of how costs and the length of proceedings could get entirely out of hand. Damages were reduced to £541,493. G

Dr Eamonn Hall is Chief Legal Officer of Telecom Eireann plc.

CROSS-EXA

Whatever possessed you to become a lawyer?
The wonderful encouragement from my parents Patricia and Gerald Kean, and the influence of my uncles Liam, David and Donal Hamilton (RIP).

Which living person do you most admire?
All of those people who assist, support and work with terminally ill children.

What's the best piece of advice you ever got?
To help others where possible and to remain loyal to your family and friends.

How do you cope with stress?
Spending time with my wife Clodagh and daughter Kirsten, travelling in support of Manchester United, and attending rock concerts.

Which case do you wish you had been involved in?
Royal British Bank v Turtuand. How could a modern day commercial lawyer function without 'the indoor management' rule?

What's your favourite piece of music?
Celebrate by An Emotional Fish, *Isn't it a wonder* by Boyzone, and anything by Pulp or Alanis Morrisette.

If you could make one change to the legal system, what would it be?
Extend compulsory registration in the land registry to all 26 counties.

Panic measures make bad law

The dramatic collapse of the Carl Bridgewater case in England should give us pause for thought in this jurisdiction as well. Three men convicted in that case served 18½ years in prison for a crime they did not commit, while a fourth, Pat Molloy from Kildare, died in prison.

The brutal murder of the 13-year-old newspaper boy Carl Bridgewater in 1978 caused a wave of revulsion in the English Midlands. The police were under pressure to get somebody for the crime and they broke, or at least bent, the rules to do so. They got the wrong men.

The lengthening list of British miscarriages of justice shows very poignantly that measures taken at a time of high emotion about brutal crimes can often lead to injustice. Panic measures make bad law.

Emotions ran understandably high in this jurisdiction after the murders of Garda Gerry McCabe and Veronica Guerin last June. One result was the Government's crime package, including the *Criminal Justice (Drug Trafficking) Act*, which allows for detention for seven days for questioning about drug trafficking offences.

Admittedly there are certain safeguards built into this Act, but it contains considerable dangers that drug addicts and other vulnerable persons may make false admissions or accusations under the threat of extended detention. There is also provision for the courts to draw inferences from a suspect's silence about certain matters – a significant inroad upon the long-cherished right to silence.

There is little evidence that these draconian measures were actually needed and they have been used fairly sparingly so far, but they have already coarsened our criminal law and eroded some basic rights that are fundamental to our adversarial criminal justice system. Another result of the crisis last summer was the bail referendum, though it was also, of course, inspired by the general public alarm about crime levels, fuelled by lurid tabloid reporting with headlines like *A city in fear* to describe Dublin after dark.

We are still awaiting the detailed legislation on bail but by definition it must involve the possibility, or even probability, that innocent people, or people who do not merit a custodial sentence, will spend time in prison. And so far the Government does not even propose to compensate those who were remanded in custody but subsequently acquitted.

Michael Farrell is a solicitor in the firm of Michael E Hanahoe & Co and is Co-Chairperson of the Irish Council for Civil Liberties

Election fever

The public alarm about crime was dramatically illustrated by an *Irish Times* opinion poll in January last when 86% of respondents said they believed that crime was rising, and 24% said that crime and law and order would be key election issues. The *Irish Independent* commented that the current Government's failure to reduce crime levels 'could cost [it] the next election'.

With that election coming ever closer, there is a real danger that the two alternative coalition groupings will engage in a sort of Dutch auction on crime measures, each trying to appear tougher than the other. Already the signs are there. Fianna Fail's John O'Donoghue has called for mandatory minimum sentences for a number of offences. Mary Harney of the Progressive Democrats has suggested extending the use of the non-jury Special Criminal Court to drug trafficking charges.

What will be the Government's response? Recently, a management study of the Garda Síochána recommended, *inter alia*, extending detention periods for all arrestable offences – not just drug trafficking and scheduled offences under the *Offences Against the State Act* – and doing away with the right to silence. The Government has welcomed the general tenor of the report. Will it be tempted to implement the proposals on detention and the right to silence in the run-up to the election?

Crime is rising, but not as dramatically as the tabloid headlines would have us believe, and the solution lies a lot deeper than just passing ever more draconian legislation. In particular, it requires getting to grips with the drugs problem, which is behind so much crime.

And it means restoring some hope to the despairing urban wastelands which produce the vast bulk of our drug addicts and offenders.

Anti-crime measures taken in response to a mood of public anger and panic and, in the overheated atmosphere of a general election, may lead to a lot of injustices down the road. We have had our own equivalents of the Bridgewater case – Sallins, the Kerry Babies case, the Tallaght Two, Peter Pringle – and we do not need any more. Perhaps we should have a moratorium on discussion about new measures on law and order by the political parties until after the election, and then have a serious debate on the causes of crime, as well as on our response to it. G

Michael Farrell was formerly a journalist, when he wrote about the Carl Bridgewater case and other miscarriages of justice.

AMINATION

Gerald Kean is the principal of Keans Solicitors in Dublin. He qualified in 1980. He represented Michelle Rocca in her recent 'vicarage tea party' with Cathal Ryan. That makes him a very big cheese indeed.

What would improve the quality of your life?
To retire at 40!

If you were a cheese, what cheese would you be?
Stilton – I would have no objection to spending more time in wonderful restaurants, mixing with the best of wines, enjoying good cigars and never having to worry about being thrown out when the restaurant closes.

If you weren't doing what you do, what would you like to work at?
A golf professional in Doral Golf Club, Miami.

Could technology kill the legal profession?

It is a fact of history that when demand for something reaches a critical point (and usually an expensive one), a substitute obliterates the group that previously controlled supply. The first act of the Industrial Revolution has been repeated in countless industries and will continue to repeat itself. It is only a matter of time before the modern profession of law joins the victims.

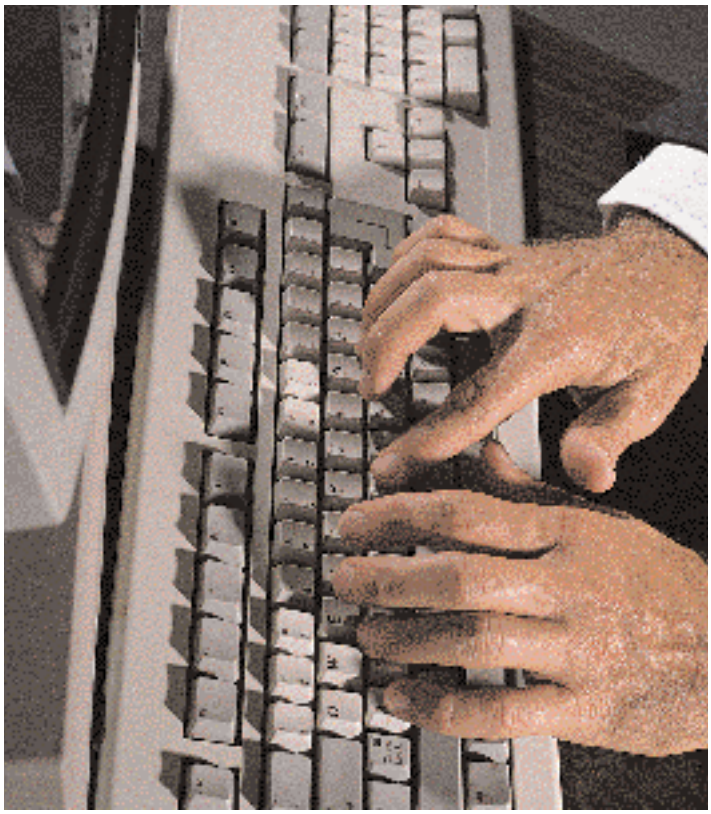
In the 18th century, the Spinning Jenny was developed to card and spin wool and cotton. This machine had a huge capacity to spin yarn for cloth, and weavers (the next stage in producing cloth) were suddenly much in demand. Then due to the shortage of skilled weavers, technologists invented the power loom. This improved reliability, standardised quality and de-skilled weaving, while boosting productivity beyond the capacity of any weaver. This reduced the cost of cloth and boosted demand. In the gap between the jenny and the power loom, weavers were very well paid professionals.

It's been claimed that 90% of all scientists that ever lived are alive today. This is easy to believe since science is a relatively new discipline. The legal profession, an older discipline, might find that perhaps 75% of its practitioners who ever lived in Ireland are alive today. If it ignores the threat of substitution, it could soon be 75% dead.

In every solicitor's office sits a silent, potentially brilliant, legal brain. With a little more software development, the humble office computer will best most practitioners in the country; it just needs access to the right data. It is already quicker at finding information, rarely loses anything, and can repeat the same document word perfectly for longer than anyone would want to read it.

It was recently reported that one US law firm spends about $10,000 a year just to keep up with the basic legal texts it needs for its office library. Extensive legal databases have been created because of this high cost, and provide instant access at a few dollars a document. This helps to fracture the profession, giving sole practitioners access to the most up-to-date and comprehensive information as quickly as the largest firm.

It is the high cost of authoritative or specialised Irish legal advice that may prove to be the legal profession's undoing.



There has been an absolute and iron rule that any high-cost group with singular skills is open to de-skilling through technology. The typesetter is now simply a computer keyboard operator, the skill of the compositor from the days of hot metal has gone the way of mainline steam engine drivers.

Some would argue there are parts of a solicitor's practice that are not open to competition, but consider the evidence: the legal profession is simply the application of an accepted set of rules with accepted definitions and processes. This is an ideal activity for a computer; it will happily check every single entry in a massive database using any set of rules imposed by an operator searching for words and phrases. It happens every minute of the day on the Internet.

The solicitor is already under threat from small pockets of computerised competition. In company formation and debt collection, specialised firms have already arrived, easing the general practitioner out of these areas.

When simple 'templates' are applied to conveyancing and commercial contracts, these areas will be under assault next. Such templates would allow any computer-literate person to draw up relatively straightforward contracts that are the bread and butter of many practices. As an example of this process, consider the number of specialised will-writing programs available from the United States and the UK, where there are a large number of untrained individuals now offering this service. Today, on Dublin's O'Connell Street, in one of the largest retail stationers, you can buy a blank 'will form' for a few pence.

It will not be long before a simple contract package with built-in accepted legal formulae will empower a company to draw up its own commercial agreements with its clients. When these are widely available, conceivably, a body of acceptable practice will build up, defining the terms being used and speeding up the agreement of contracts. This could lead to greater use of inexpensive arbitration in disputes, which in turn would ease the application of law from the client's perspective. The cost of law would be reduced and the arcane made redundant.

So how can the legal profession respond to this threat? The answer is, of course, to innovate through specialisation. Develop the skills and talents of the practitioners through training. Already in the United States there are an increasing number of 'hyphenated' professionals with a mixture of specialisations, such as the lawyer/doctor, who is not uncommon in injury cases, or the lawyer/engineer in product liability cases, or the biggest earner of them all – the lawyer/banker.

As clients get easier access to legal databases and programs, the demand for simple legal advice – the bread and butter of the small practice – will simply wither away. This will require greater specialisation in individuals and firms in order to compensate.

Maybe not today, and maybe not tomorrow, but some day solicitors may join another group who were simply flushed away by technology: the Night Soil Man, who had a dirty job when someone had to do it! G

Aidan O'Neill is a management consultant and Managing Director of the on-line shopping service Ireland Mall.

LAW SOCIETY OF IRELAND ARBITRATION SEMINARS

Organised by the Arbitration Committee
in association with the Younger Members Committee

VENUES & DATES

Dublin Presidents Hall, Blackhall Place, Tuesday 25 March, 9am to 1pm
A light continental breakfast will be available between 8am and 8.45am

Cork Jury's Hotel, Western Road, Thursday 10 April, 2pm to 5pm

PROGRAMME

INTRODUCTION BY CHAIRPERSON	
ARBITRATION	How does a party get to arbitration Arbitration schemes Statutory arbitration advantages and disadvantages of arbitration
ARBITRATION CLAUSES AND APPOINTMENT OF ARBITRATOR	Drafting arbitration clause pre dispute Drafting arbitration clause post dispute Appointment of arbitrator
POWER OF ARBITRATOR	Section 19 of the *Arbitration Act,1954* Attendance of witnesses Procedural issues
CONTROL BY THE COURTS	Section 22 of the *Arbitration Act, 1954* Case stated Section 5 of the *Arbitration Act, 1980*
ENFORCEMENT AND CHALLENGING AWARD	*Rules of the Superior Court* Power of court to remit award Power of court to set aside award
ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES	Conciliation Mediation Mini trials
COSTS	Power of the arbitrator Power of the court
PANEL DISCUSSION	

SPEAKERS INCLUDE

Solicitors
Timothy Bouchier-Hayes, *McCann Fitzgerald*

Gary Byrne, *BCM Hanby Wallace*

Michael Carrigan, *Eugene F Collins*

Eamonn Gill, *A&L Goodbody*

Bernard Gogarty, *Smyth & Son*

Kevin Kelly, *McCann Fitzgerald*

Legal Cost Accountant
Robert Cannon, *Cyril O'Neill & Co*

APPLICATION FORM: ARBITRATION SEMINAR

Fee: £60 per person

Venue: (PLEASE TICK) Dublin, Tuesday 25 March ☐
Cork, Thursday 10 April ☐

Name _____ DX _____

Firm _____ Phone _____

Address _____ Fax _____

_____ Year(s) qualified _____

Please reserve _____ place(s) for me on the above seminar

I enclose cheque £ _____

Please return to: Mary Lynch, Law Society, Blackhall Place, Dublin 7

Letters

Section 68 'knee-jerk nonsense'

From: Richard R O'Hanrahan, Limerick

With reference to section 68, this ridiculous piece of legislation says that a solicitor shall provide (at first contact with the client) in the following order: the actual charges; estimates; and, failing that, the basis of charges.

Here are some realities that I would like my colleagues to address and note.

At a recent preliminary court hearing in the High Court, the judge directed my barrister to direct me to write to my client in compliance with the above section. It was done in such a manner that not to comply with it would certainly have put me in the following situation:

- Gross negligence
- Professional negligence
- Contempt of court
- Breach of professional code for which a deliberate and non-compliance would certainly lead to a person's practising certificate being reduced, suspended or removed.

The mind boggles at what that inept bunch in the Dail were trying to achieve when they passed this particular legislative concoction.

Imagine going to a doctor and telling him that you have a pain and asking him to quantify at the first meeting the costs of addressing your problem. Bearing in mind the cost of hospital tests, specialists' tests, specialists' reports, treatment, medicines and recuperation, there is no way the man could even hazard a guess.

Solicitors are generally pretty poor at drawing bills of costs after proceedings have been finalised, and their bills of costs are almost always much lower than the costs achieved by cost drawers. If a cost drawer were to be asked to apply the section 68(1) criteria to an anticipated bill of costs before the matter is started, I suggest that even he would have great difficulty in complying with section 68(1)(a), (b) or (c).

I have approached at least two cost drawers to date in regard to this matter and both of them have informed me that, although they are qualified in drawing costs, they would not be able to provide the particulars in writing set out in accordance with this section. If they cannot do it, where are we going with this piece of legislative nonsense?

I believe this piece of legislation should be challenged in the High Court as being an unworkable piece of knee-jerk nonsense from politicians. If anybody is interested in joining me in such an action, I will be pleased to hear from them.

I am still concerned that when this piece of nonsense was being foisted on the profession, what were the sleepyheads in Blackhall Place doing? But that's another matter for another forum.

New-look *Gazette*

From: Orán Williams, Houlihan McMahon, Ennis

Congratulations on the new layout of the *Gazette* which is a vast improvement on what we have had for so many years. Obviously it will take a little bit of time for the new format to settle down and for us to get used to it, but it seems very positive. The new format has put the *Gazette* on a par with other professional publications.

Hospital charges revisited

From: Patrick Maher, Maher & Co, Dublin

By way of addendum to the article by Keenan Johnson in the November issue of the *Gazette*, could I add a further *caveat* when finalising hospital accounts. It would appear that despite entering into agreements such as those discussed in the article, charges appearing on a hospital's account may not cover all the expenses incurred during a stay in hospital.

It is not unusual, despite payment being made in full and final settlement and receiving an acknowledgement that the account is fully discharged, to be advised later of private fees due to the hospital which would not normally appear on the hospital accounts system. This may include radiologists' fees and other doctors' fees which a solicitor may not know about until sometime after a bill has been settled. Therefore, it might be useful to ascertain from the hospital whether there are any fees outstanding for x-rays, consultants or other referrals which do not appear on the account furnished.

This may alleviate the difficulty of explaining to a client that, despite obtaining such a discharge from the hospital, there are still charges due.

The myth of the paperless office

From: Richard Devereux, Legal Counsel, Intel Europe

I write to add my comment to Kyran Fitzgerald's article on the paperless office (*Gazette*, Jan/Feb, page 12). At the recent World Economic Forum in Davos, Switzerland, Dr Andy Grove, President and CEO of Intel, warned European leaders that the consequences of not adopting and encouraging the use of PC-based technology as a fundamental part of business and education could leave future generations of Europeans with a technology deficit. Using Intel as an example, he demonstrated how Intel's business around the world uses PC-based electronic communications to give it a competitive advantage (Intel has 42,000 PCs for its 48,500 employees who send one million e-mails each day).

Although Andy Grove did not specifically mention Irish solicitors, there is in my view no way in which any member of the profession can avoid the technology race. Clients large and small have already done several laps of the track. For example, one of the first questions our European legal department asks any of its outside legal advisers in Europe is what their Internet address is for e-mail purposes. The objective here is that as much communication as is possible is transmitted electronically. The paperless office?

From: Michael D Murray, Limerick

The author of the article on the paperless office in the Jan/Feb issue of the *Gazette* failed to quote the sceptical American lawyer who expressed the view that the prospect of the paperless office was as remote as the prospect of a paperless loo.

Welcome to the world of LawLink & SecureMail

LawLink provides you with the most up to date services and information straight to your desktop. It also provides the most modern and secure method of sending documents and files around the world. And the best part is that it's easy!

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.

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n THE COMPANIES' OFFICE DIRECT

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n COMPANY FORMATIONS INTERNATIONAL

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n THE LAND REGISTRY

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n THE LEGAL DIARY

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n THE IRISH TRADE PROTECTION ASSOCIATION

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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 not only communicate securely within the legal world, but would also give them access to other e-mail users around the globe.

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Council to get tougher on acting for both sides

The Statutory Instrument barring solicitors from acting for both the builder of a new house and the buyer has been signed by Law Society President Frank Daly. The *Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997* (SI 85 of 1997) will come into force on 1 April 1997, and any solicitor breaching the new rules after that date will be guilty of misconduct. *(The full text of the regulations is printed on page 32.)*

According to President Frank Daly, there were views aired at the last Council meeting that the new regulations did not go far enough.

Since then, an even tougher motion restricting solicitors from acting for both the vendor and purchaser in any conveyancing transaction has been tabled for consideration at this month's Council meeting.

Frank Daly: 'One of the most important council motions ever'

The text of the motion reads: *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 involuntary transfers where the parties have been advised in writing of the desirability of taking independent legal advice.*

According to Frank Daly: 'This is one of the most important motions ever to come before Council and we want to hear the views of bar associations and individuals around the country who want to contribute to the debate'.

Submissions should be sent to Therese Clarke, Secretary to the Professional Guidance Committee, at the Law Society, Blackhall Place, tel: 01 671 0711.

Dublin personal injuries list cut

The waiting time for personal injury hearings in Dublin is expected to be cut to 12 months by the end of July. The reduction is the result of new practice directions introduced last November, which aimed to remove settled cases from the Dublin Personal Injuries List before they could be allocated a court date.

According to the High Court Central Office, the new system meant that there were four extra weeks of personal injury hearings in the capital during the Michaelmas Term and that the waiting time was cut from 34 to $24^{1}/_{2}$ months. The High Court Central Office projects that the waiting time for a hearing might be as short as 12 months by July.

Under the new system, any cases numbered 28,000 or lower will be assumed to be adjourned from callover to callover unless an application to have them listed for hearing is made to the Registrar on 19 March or on succeeding callovers during the Easter term. The next callover date is 9 April for cases to be listed in the week starting 22 April. Further information can be obtained from Marcia Reid, List Enquiries, High Court Central Office, tel: 872 5555.

Quicker reserved judgments on the way?

The High Court has introduced a new system to cut delays in the delivery of reserved judgments by members of the High Court Bench. Under the new arrangement, the Chief Registrar will send a list of outstanding reserved judgments to the President of the High Court towards the end of each law term. The President will use this list to allocate time in the forthcoming term for the judges concerned to write their judgments.

The President of the High Court has also said that any solicitor worried about the late delivery of a reserved judgment should contact his office and he will try to ascertain the date when the judgment may be expected.

Grant aid hits the roof

The Law Society has secured grant aid of £25,000 under the Urban Conservation Scheme administered by the Department of the Environment for refurbishment of the turrets on the north and south end of Blackhall Place. Announcing the grants on 28 February, Minister Liz McManus advised that 41 organisations out of 104 that had applied for grant aid had been given grants. The Society's Premises Committee would like to thank Michael D Murphy for achieving this outcome after a hard-fought campaign.

BRIEFLY

Barcelona Conference 1997

There are still a few places left for the Law Society's annual conference which is being held in Barcelona from 3-6 April. Anyone interested in booking a place should contact Mary Kinsella at the Law Society on 01 671 0711.

Travellers and the law

The Irish Traveller Movement is looking for the legal profession to help it establish a legal support service for travellers. The movement would like to hear from solicitors throughout the country who might be willing to support such a service. Anyone interested should contact the co-ordinator Fintan Farrell at the Irish Traveller Movement, 4-5 Eustace Street, Dublin 2 (tel: 01 679 6577, fax: 01 679 6578).

WillAid extends booking deadline

The booking date for WillAid, the charity fundraising initiative, has been extended as a result of unprecedented demand. The campaign will run until 24 March, and further information can be obtained by calling Margaret Dorgan on 1850 214420.

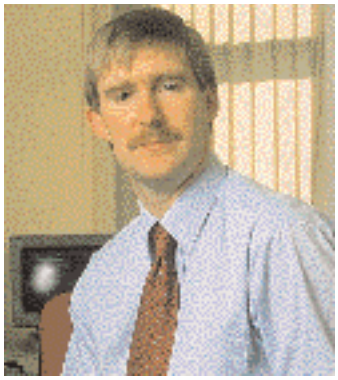
On the road again

Ireland's EU Commissioner Padraig Flynn has launched the ***Epic Roadshow***, a 60 foot long high tech mobile unit which will travel the country distributing information about the work of the European Union. The roadshow will focus on three areas: the Euro, citizens' rights, and work in progress on drafting a new EU treaty. Requests for the roadshow to visit towns, colleges and schools can be made by calling 01 662 5113.

Society goes global on Divorce

The biggest audience ever for the Law Society's views must surely have been the one that heard a CNN television interview with Director General Ken Murphy on the day that the divorce legislation came into force. The four minute interview was conducted late at night Irish time, for prime time in the United States, and was broadcast live to 200 countries across the world.

Murphy explained in simple terms the legal principles underlying divorce Irish-style, the manner in which it had come about and the issues it raised for Irish society now and in the future.



Ken Murphy: live to 200 countries

In the run up to 27 February, the day the legislation was enacted, Murphy or, in his absence, other Society spokespersons, gave over 20 broadcast and print interviews, as well as 'off the record' briefings, to the media in Ireland and abroad. Where the media requested specialist expertise in the field, several members of the Society's Family Law Committee stepped into the breach.

A particularly effective performance was given by Muriel Walls on RTE Television's *Prime Time* programme. She rejected a criticism of lawyers that Irish divorces would be both complicated and expensive by pointing out that this was inevitable given the form of divorce for which the people had voted.

Three Courts?

Monday 3 March 1997 was the first date in the history of the State in which the Supreme, High and Circuit courts sat in the Four Courts complex but the District Court did not. The Court of the District Court President, Peter Smithwick, was the last to be expelled from the Four Courts to satisfy the High Court's demand for extra space to accommodate the expanding High Court judiciary. From April, three District Courts will have a new home in the former Richmond Hospital building in North Brunswick Street.

The move is known to have been bitterly opposed by District Court judges who feel that their court has not been treated with sufficient respect.

Pictured at the Vienna Presidents' conference last month: Law Society President Frank Daly, with Thorunn Gudmondsdottir, Supreme Court Attorney, Iceland, and Achim Von Winterfield, Head of the German delegation to the CCBE

BRIEFLY

1998 expert witnesses directory

The English Law Society is inviting expert witnesses from Ireland and Northern Ireland to apply for a listing in the *Law Society directory of expert witnesses*, which is published as a joint venture between the English Society and FT Law & Tax publications. The directory contains over 5,000 experts with 1,600 specialisms. Further information from FT Law & Tax publications (tel: 0044 171 420 7500).

Fines for ignoring ECJ

The European Commission has proposed introducing a series of fines for non-compliance with rulings from the European Court of Justice.

The Commission has recommended that the Court should fine both Germany and Italy for their failure to comply with previous ECJ rulings on environmental law.

Quality award for solicitors

A firm of solicitors in Malahide, Co Dublin, has been awarded the Irish Quality Association's Q mark. NP Black & Co was only the eighth solicitors' firm to gain the Q mark.

Fa

Divorce became a reality in Ireland at the end of last month, and it is estimated that up to 30,000 couples could be eligible to take advantage of the new law in order to remarry. In the first of a series of three articles on the *Divorce Act*, Eugene Davy outlines its main provisions and how it will affect the work of solicitors in this country

The *Family Law (Divorce) Act*, 1996 came into force on 27 February and gave legislative effect to the fifteenth Amendment to the Constitution, which is now contained in Article 41.3.2°. The Act sets out the ways by which individuals may seek a decree of divorce and empowers the court to make financial, property and other ancillary orders after a divorce has been granted. It also allows the court to make certain preliminary orders pending the granting of a decree.

Section 5(1) of Part II of the Act allows the court to grant a divorce where it is satisfied that:

a) 'At the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years'
b) There is no reasonable prospect of a reconciliation, and
c) Proper provision has been or will be made for the spouses and any dependent members of the family.

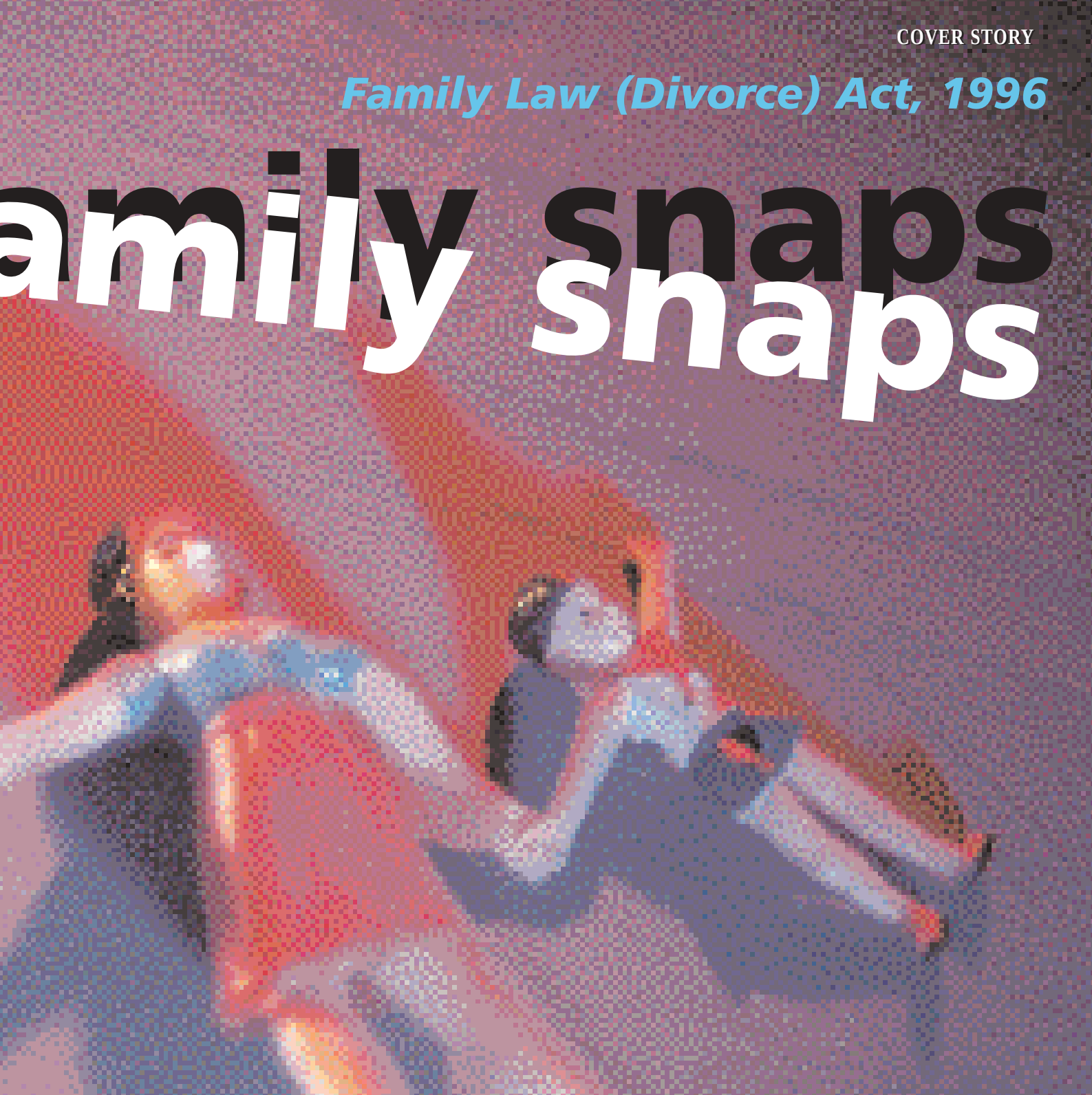
It is important to note that the phrase 'the spouses have lived apart from one another' is not defined in the Act. The same wording is to be found in the *Judicial Separation and Family Law Reform Act, 1989*, which defines it at section 2 as follows: 'spouses shall be treated as living apart from each other unless they are living with each other in the same household, and references to spouses living with each other shall be construed as references to their living with each other in the same household'.

For the purposes of the 1989 Act, this provision has been interpreted in such a way as to allow two households to exist under the one roof. Given that there is no definition of the phrase in the *Family Law (Divorce) Act, 1996* and that the very same wording is contained in Article 41.3.2°, the interpretation of the phrase by the superior courts will be eagerly awaited.

It should also be noted that section 5(1)(c) refers to 'dependent members of the family' whereas Article 41.3.2° refers to 'children'. Under the 1996 Act, a child comes within the definition of a dependent member of the family only if he or she is 'a dependent child' (that is, a child under

Family Law (Divorce) Act, 1996

Family snaps



18 years of age, or over 18 years of age but under 23 and still in full-time education, or suffering from a serious mental or physical disability). It remains to be seen whether the definition of a 'child' in the Act will cause any Constitutional difficulties.

Sections 6 and 7 of the Act (like sections 5 and 6 of the 1989 Act) place very onerous obligations on solicitors to discuss the possibilities of mediation and reconciliation with their clients. Solicitors must supply their clients with the names and addresses of people qualified to help in this regard. When they institute divorce proceedings, the applicant's solicitor must file a certificate in court stating that he or she has complied with this obligation; the respondent's solicitor must do likewise when filing an appearance. *(See also page 40 for a list of counselling services.)*

Section 9 of the 1996 Act ensures that the evidence of marriage counsellors and mediators shall not be admissible in court.

Section 10 spells out the fact that a decree of divorce dissolves the marriage and that both parties can marry again. It also stipulates that divorce does not affect the right of parents to be joint guardians of their children.

There is nothing in the Act that changes the law in relation to the recognition of foreign divorces. A foreign divorce will only be recognised as valid when one of the parties is domiciled in the jurisdiction in which the divorce is granted at the time the divorce proceedings were instituted. So if a foreign divorce is not recognised in this jurisdiction, an application for a decree of divorce would have to be made under the 1996 Act in order to have the marriage properly dissolved. If there is some uncertainty about the validity and recognition of the foreign divorce, either party can apply to court under the *Family Law Act, 1995* for a declaration as to marital status.

Section 20(1) provides that the court, in deciding whether to make ancillary orders under sections 12-18 or section 22 (which deals with variation) 'shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and

any dependent member of the family concerned'. It is interesting to note that this wording differs slightly but significantly from the wording of the equivalent section (section 16(1)) in the *Family Law Act, 1995* which stipulates that 'the court shall endeavour to ensure that such provision ...'.

Section 20(2) lists the things that the court must particularly look at when determining applications for ancillary orders. These include income, earning capacity, property, financial resources, likely future obligations, age and conduct of the spouses. The court must also take into account any contributions made by either spouse to the welfare of the family.

This section is very similar to section 20(2) of the *Judicial Separation and Family Law Reform Act, 1989*; however, like section 16(2) of the *Family Law Act, 1995*, there are two additional factors which the court is obliged to take into consideration:

- The value of any benefit (for example, a pension scheme) which a spouse may lose as a result of the divorce, and
- The rights of any person other than the spouses but including a person to whom either spouse is remarried.

Because the rights of any second spouse must be taken into consideration by the court, it would be advisable for a dependent spouse to pursue his or her applications for ancillary orders at the time of the divorce hearing itself since at this stage there would be no 'second spouse' to consider.

Under section 20(3), the court must take into account the terms of any separation agreement which is still in force. But it is not restricted to making orders in the terms of such an agreement.

Disputes over the upbringing and welfare of children can be determined by the court under the *Guardianship of Infants Act, 1964*. Section 42 of that Act allows the court to seek a child welfare report from, among others, a probation or welfare officer or from a person nominated by a health board. A report obtained on the court's directions may be received in evidence in the divorce proceedings.

Under the Circuit Court Rules, proceedings in the Circuit Family Court are instituted by a family law civil bill. In addition to filing a certificate pursuant under section 6 of the Act, when the applicant is looking for financial relief, he or she must also file an affidavit of means, setting out comprehensive details of all assets, liabilities, income, expenditure and pension entitlements. Furthermore, if there are any dependent children, the applicant must file an affidavit of welfare, setting out details of the arrangements for the children and replies to various questions posed.

The procedure for filing an appearance and defence and for serving notice of trial is similar to that of any other civil bill; however, when the defence is being filed, the respondent must file an affidavit of means and (where appropriate) an affidavit of welfare. The Rules provide that if the respondent indicates in the defence that the orders being sought are not being contested, the applicant will be able to speed up the application for divorce by issuing a notice of motion. In this case, a much earlier date will be obtained for finalising the proceedings.

While no new High Court Rules under the 1996 Act have been issued yet, it is envisaged that the procedure in the High Court will continue to be the same as before in respect of other family law cases. G

Eugene Davy is principal of Eugene Davy, solicitors.

Family Mediation Service

Agreeing to differ

Mary Lloyd, a solicitor and qualified mediator, has recently been appointed as Service Co-ordinator of the Family Mediation Service. Catherine Dolan talks to her about her new role and the importance of mediation in the context of marital breakdown

Mary Lloyd previously worked as a family law solicitor with McCann FitzGerald, and it was while she was working there in the 1980s that she first became interested in mediation. In 1985, a voluntary steering committee was set up by the then Minister of State for Family Reform, Nuala Fennell, to look into the possibility of setting up a State-run mediation service in Ireland. As a result of the recommendations of the committee, a three-year pilot scheme was put in hand. It opened its doors to its first clients in September 1986.

Mary Lloyd: 'Much more ownership of an agreement you make yourself'

Lloyd has worked as a mediator with this service since its launch in '86. From the beginning, the service undertook 'comprehensive mediation'. This means that the mediators cover all issues which concern the separating couples, including financial issues, the division of property and assets, and a parenting plan when children are involved.

'At the time, we were way ahead of the UK, where mediators only dealt with the parenting of children from the marriage', says Lloyd.

In 1989, at the end of the three-year pilot scheme, a report was compiled and, as a result, a permanent State-run Family Mediation Service was established. This now operates under the auspices of the Department of Equality and Law Reform. Mary Lloyd continued to work with the service as a mediator until her appointment last November as overall Service Co-ordinator. She is also a member of the Law Society's Family Law Committee and chairperson of the Mediators Institute of Ireland, the organisation which sets standards for practising mediators and assesses training programmes in mediation.

One of Lloyd's aims is to increase awareness among solicitors of what mediation is and what mediators do. Under section 6(2)(b) of the *Family Law (Divorce) Act, 1996*, solicitors are obliged to discuss with their clients the possibility of engaging in mediation to help effect a satisfactory separation. *(A list of family counsellors can be found on page 40.)*

She suggests the following as a good synopsis of what mediation is: 'Mediation has been defined in marital separation as a means or process whereby a couple whose marriage has broken down and who have decided to separate or divorce may, with the help of a mediator, work out mutually acceptable arrangements. The mediator is a person who has acquired the substantive knowledge necessary to practise family mediation: they have trained in conflict resolution theory, negotiations, and have had enough training in psychology and family systems to understand the context of parties in mediation'.

The main difference between the functions of a mediator and a solicitor in the area of marital separation is that the mediator deals with the couple together, whereas the solicitor deals with only one party to the marriage. But even in cases where a couple opts for mediation, there is often still scope for a solicitor's input. A mediated agreement is an informal one and if the couple wish to formalise it, it would have to be included in a legal separation agreement drawn up by their respective solicitors.

Legal issues often arise during the sessions with the mediator and the parties may need to consult their respective solicitors for independent advice before the mediated agreement is made. The disposal of property also requires the input of a solicitor. As a result, both the mediator and the solicitor have a role to play when a couple are separating.

According to Lloyd, there is an increase in the number of solicitors who are also qualified as mediators but they can only wear one hat at a time.

When asked why she prefers working as a mediator rather than as a family law solicitor, she says: 'I have a belief in people's ability to make their own decisions, and to work out an agreement which each considers fair. There is much more ownership of an agreement made by yourself. You take responsibility for it and this means that you have a greater respect for it at the end of the day'.

With her experience as a family law solicitor, she is particularly concerned about the welfare of the children of a broken marriage and how a family restructures itself after separation. She says: 'Divorce or separation is not the end, but simply a different state of affairs. How a marriage is ended can have a positive or negative effect, and mediation is the positive way'.

She also emphasises that even if a relationship between two people has ended, they still have joint responsibility as parents and it is important to manage this properly. A mediator moves the situation forward and gives hope to the separating couple that there is life after separation.

The Family Mediation Service can be contacted at the Irish Life Centre, Block 1, Floor 5, Lower Abbey Street, Dublin 1, tel: 01 8728227 or 8728708. G

Catherine Dolan is an editor for law publishers Round Hall Sweet and Maxwell and is a former editor of the Gazette.

Tax and the separated cou

When a married couple split up, the last thing on their minds may be their tax status. But, as Terry Oliver explains, careful tax planning can save them money – if not their marriage

For income tax purposes, a husband and wife are treated as living together unless either they are separated under a court order or by a deed of separation, or they are separated in such circumstances that the separation is likely to be permanent.

A husband is regarded as still living with his wife if they are living apart temporarily because of circumstances outside their control *(D Ua Clothasaigh v Patrick McCartan,* ITC vol 2, p367). If the husband and wife are not treated as living together, then they are treated as separated spouses and are taxed as single persons, unless they elect to be jointly assessed under section 4 of the *Finance Act, 1983*. In this instance, the separated spouses would be treated in the same way as a married couple living together, with all income assessed in the name of the husband and tax calculated using double rate bands.

If a couple want to be assessed jointly, they must satisfy a number of conditions:

- A payment, as defined under section 3 of the *Finance Act, 1983*, must have been made in accordance with the terms of a maintenance arrangement
- Both spouses must be resident in the State for the year of assessment for which the joint assessment is to take effect
- The marriage must not have been dissolved or annulled
- Both parties must make the application for joint assessment in writing to the Inspector of Taxes.

Where separated spouses elect for joint assessment, the actual assessment and collection of the tax liability is carried out by means of separate assessment. This preserves the appropriate independence for each of the spouses but ensures that they enjoy the benefit of joint assessment. For the purposes of a joint assessment, any payments under a maintenance arrangement are ignored in the calculation of the joint tax liability.

The decision on whether or not to elect for joint assessment may be influenced by the fact that one or both spouses is entitled to the single parent allowance. This is available to the parent of a qualifying child provided that parent can demonstrate that he or she is not entitled to the married person's allowance of £5,300 nor the special allowance of £5,300 available to a widowed person in the year of assessment in which that person's spouse has died.

In order to qualify for the allowance, the parent must demonstrate that the child is in the custody of, and is maintained by, that person for the whole or part of the year of assessment. A qualifying child is one who is under 16 years of age at the beginning of the year of assessment or who, if over 16 at the beginning of the year of assessment, is in full-time education or is permanently incapacitated through mental or physical infirmity.

The additional allowance is £2,650 and is designed to give a single parent the equivalent of the married person's allowance. If the child has income of more than £720, the allowance will be restricted by the excess. Any payments made for the benefit of a child are ignored when calculating this income limit. It would appear that if both spouses have custody of a child of the marriage for at least part of the year of assessment, then each may be entitled to claim the single parent allowance. The entitlement to the single parent allowance may outweigh any advantage which might accrue from claiming joint assessment. There is no general rule; each case will have to be looked at separately.

Maintenance payments

Maintenance payments can affect the tax treatment of both the spouse making the payment and the spouse receiving it. Payments may be the result of a legally enforceable obligation, such as a court order, deed of separation, foreign divorce and so on, or may be the result of some voluntary arrangement not involving any legal obligation.

EXAMPLE OF TAX PAYABLE

Michelle and Eric separated in 1996. Michelle has custody of Patrick, aged five, their only child. Eric pays £8,000 a year under a separation order of which £2,000 is for the benefit of Patrick. Eric has non-PAYE income of £20,000 a year, but Michelle has no other income in her own right.

Calculate the total tax payable by the couple, assuming that a) they do not elect for joint assessment, and b) they do so elect.

SOLUTION

a) No election			**£**
Eric			
Income			20,000
Less charge			6,000
			14,000
Less allowance			
Personal allowance			2,650
Taxable income			11,350
Tax payable:	£9,400 @ 27%		2,538
	£1,950 @ 48%		936
			3,474
Michelle			
Income			6,000
Less allowance		2,650	
Lone parent allowance		2,650	5,300
			700
Tax payable:	£700 @ 27%		189
Total tax liability:			**3,663**

b) Election		**£**
Eric – income		20,000
Less allowance		
Personal allowance		5,300
		14,700
Tax payable:	£14,700 @ 27%	**3,969**

Note: the election causes additional tax to fall due as Michelle can no longer claim the lone parent allowance in respect of the resident child. All figures relate to tax bands set under Finance Act, 1996.

ple

The tax treatment of maintenance payments is governed by section 3 of the *Finance Act, 1983* which defines a maintenance arrangement as:

- An order of court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation, and
- Made or done in consideration or in consequence of the dissolution or annulment of a marriage or such separation of the parties to a marriage as is referred to in section 1, ITA 1967 (section 192(i) inserted by the *Finance Act, 1980).*

In addition, for section 3 of the *Finance Act, 1983* to apply, payments under such a maintenance arrangement must be made at a time when the husband and wife are no longer living together; they must be legally enforceable; and they must be made on an annual or periodic basis. Any payment which does not comply with each of these conditions is outside the scope of section 3 of the *Finance Act, 1983.* Payments which are covered by section 3 may be further distinguished as payments made for the benefit of the other party, or payments made for the benefit of a child.

Payments for the benefit of the other party. The tax treatment is set out by sub-section 2 of section 3 of the *Finance Act, 1983.* The person making the payment is not entitled to deduct tax at the time the payment is made. In the hands of the recipient, payments will be treated as income for the year of assessment in which the payments are received and income tax is to be charged on the recipient under case IV of Schedule D. The person who has made the payments is entitled to a deduction in arriving at total income for the year in which the payments are made.

Once-off lump sum payments under the terms of the maintenance arrangement will not qualify for tax relief for the payer and will not be taxable in the hands of the recipient.

Payments for the benefit of a child. Payments which are made directly or indirectly for the benefit of a child are effectively ignored for tax purposes. Voluntary payments are also essentially ignored for income tax purposes. However, where a husband makes voluntary payments, he may be entitled to claim the married person's allowance if he can show that his wife is wholly or mainly maintained by him, even though she is not living with him. The spouses will continue to be taxed separately.

Separation during the year

Joint assessment. Where joint assessment applies, the husband will be assessed on his wife's income up to the date of separation and will continue to get the benefit of the married person's allowance and the double rate bands for that year of assessment.

But the wife is still entitled to be treated as a single person from the date of separation and will get the benefit of a single person's allowances and single rate bands and will be assessed for that year of assessment on income from the date of separation up to 5 April only.

Separate assessment. Under separate assessment or single treatment, the impact of the actual separation will not alter the calculation of the income tax liabilities using single person allowance and rate bands. The exception is that for cases dealt with under separate assessment there will be no review of the respective liabilities.

An example is set out in the **panel** opposite. It is important to seek professional advice in this area as the example given does not reflect all possibilities. G

Terry Oliver is Taxation Director with chartered accountants O'Sullivan Keogh.

In the Mantruck case in the High Court last December, Mr Justice Shanley warned that solicitors had a duty to advise their commercial clients about the proper running of their companies. Pat Igoe looks at the duties and obligations on company directors

Business

In the past ten years, the legal climate in which companies are run has changed dramatically. The reckless trading provision in our law since 1990 is similar to the wrongful trading provision in Britain's *Insolvency Act* of 1986 – a provision described by leading British academic lawyer DD Prentice as 'one of the most important developments in company law this century'. An exaggeration, perhaps; but only perhaps.

To what extent do company directors, including the at-home spouses of the owners, need to know about what they can do, must do and must not do? And whose responsibility is it to ensure that they do know?

A limited liability company is not simply a vehicle for commerce. It can also be a vehicle for fraud. And fraudulent trading. And reckless trading. And negligent trading. The list is long. Like democracy, limited liability has serious shortcomings – and, like democracy, no-one has yet come up with a better way.

Phoenix companies

Since long before Aron Salomon developed a liking for debentures, the protection given by incorporation has been a tempter to cheat or at least to be casual with other people's goods and money. People who have done business with limited companies have got unfairly hurt, suffered huge losses, lost their own businesses as a result and then seen their debtors rising from the ashes with new companies.

Salomon's case, exactly 100 years ago, gave a knock-out blow to the argument that companies were not separate legal entities but merely agents of their owners. The House of Lords' decision, which overturned both the original judge and the Court of Appeal, has been criticised, and even reviled. But it still remains a fundamental pillar of corporate law in the common law world, which, of course, includes Ireland. The company *is* a separate legal entity, with all that that means.

But, more than ever, times are changing. *Caveat* director – and *caveat* director's advisor. Consider that within the past decade alone we have had the *Data Protection Act*; the *Companies Act, 1990*; the *Criminal Damage Act, 1991*; the *Insurance Intermediaries Act, 1991*; the *Criminal Evidence Act, 1992*; and the *Stock Exchange Act, 1995*.

The days of the courts giving a fool's pardon to directors are over. Unpaid creditors have rights, including the right to rely on a debtor company protecting its assets so that it will be able to pay its debts and, of course, the right to be paid. If those rights are infringed, and if it goes before a judge, the directors may no longer walk away whistling.

The old gentlemanly standard of 'high on honesty, low on competence' has become as historical as the 'sunshine theory' of Lord Justice Buckley, who said in 1960 that there was nothing to say that directors 'who genuinely believe that the clouds will roll away and the sunshine of prosperity will shine upon them again and disperse the fog of their depression are not entitled to incur credit to help them to get over the bad times'.

This January, the High Court restricted three more directors from acting unconditionally as directors, bringing the total number of restricted directors under the 1990 *Companies Act* to 101. Two directors have also been disqualified from acting as directors. Personal liability and, finally, imprisonment are the ultimate sanctions of the courts on rogue directors who abuse the system. Last October, a Tipperary businessman was jailed for fraud in addition to disqualification from being a director. And, of course, there is Mark Synnott, whose insolvent brokerage left unpaid debts of £2.3 million. His place in legal history is assured as the first company director to be jailed for fraudulent trading.

Solicitors have a duty to advise commercial clients both on the meaning and importance of proper trading, and also on the implications for them personally if they trade fraudulently or recklessly or do not keep proper company procedures, including records of meetings and books of account.

Taking commercial risks

Company law is not unreasonable. Directors are not commercial lawyers (although sometimes signs of confusion do appear). Taking commercial risks is what they do.

concerns

In the second *Re Hefferon Kearns Ltd* case in 1993, Mr Justice Lynch clarified that the courts were fully aware that 'it would not be in the interest of the community that whenever there might appear to be any significant danger that a company was going to become insolvent, the directors should immediately cease trading and close down the business'. Many businesses which might have survived by continuing to trade coupled with remedial measures could thus be lost to the community.

Mr Justice Lynch's judgment gives an excellent feel of what is now required of directors. An element of moral laxness beyond mere negligence may still be required before conviction under section 297(A) of the *Companies Act* as amended.

Judges, who in their courtrooms see far more of life as it is on the streets than appears from some of the caricatures, do know that commerce is risky by its nature. It involves taking decisions, mortgaging properties, taking debentures and ordering goods and services to be paid for later.

Duties of the director

So what are the duties of the new director in 1997? Firstly, to be informed about what is going on in the company. An excuse that the annual accounts were late will be of no avail as the directors in the 1989 *Produce Marketing Consortium (No 2)* case in England discovered. They were deemed to have known from the date that they should have got the accounts. Directors were held personally liable. Without monthly management accounts, a board of directors is foolishly 'flying blind' and the directors will pay the price accordingly.

Secondly, it is no good having information if nothing is done with it. Directors must hold properly-recorded regular meetings at which arguments and decisions are recorded, even if only in outline. In the Produce Marketing case, the liquidator's first step was to ask for details of all the board meetings held.

Only last December in the High Court in Dublin, in a further pushing-out of the boundaries here, Mr Justice Shanley made a director of Mantruck Services Limited (In Liquidation) personally liable for the liquidation costs of £91,239.80 necessitated by the failure to keep proper books and records.

Finally, directors should beware of pushing their companies' line too hard. A director in England last year was ordered by Mr Justice Langley to compensate a customer of his franchising company for the total net loss incurred. His company had overstated projected profits from operating a health food franchise shop. He himself had directed the exaggerated financial projections.

Resignation no way out

What then should an individual director do if there is a hint of insolvency in the air? Firstly, ascertain the facts, by arguing if necessary for professional guidance and reports. It would be a further defence to show that the individual director sought a board meeting on the issue and, if necessary, tried to have a general meeting of the company's shareholders. Resignation, although simple, might not be the way out.

Britain's 1986 *Insolvency Act* provides that it is a defence for an individual director to be able to show that he or she took what Lord Denning described as 'every reasonable step' to minimise the potential loss to unpaid creditors.

But can rogue directors ever get away with it in Ireland? Of course they can – and do. To what extent? Nobody knows. In 1994, the Government established the Company Law Reform Group. Its first report contained 100 suggestions, but many remain unimplemented.

Just one might be highlighted here. Policing the country's 250,000-plus companies (the number is growing at an average rate of almost 250 a week) is a serious task. Bringing corporate abusers to task, assuming they are uncovered, can be an expensive affair. An Executive Unit in the Department of Enterprise and Employment, to which liquidators would be obliged to report, could make applications to the court to sanction corporate miscreants. This was suggested by the Company Law Reform Group, but so far no legislation has appeared.

Judiciary stepping in

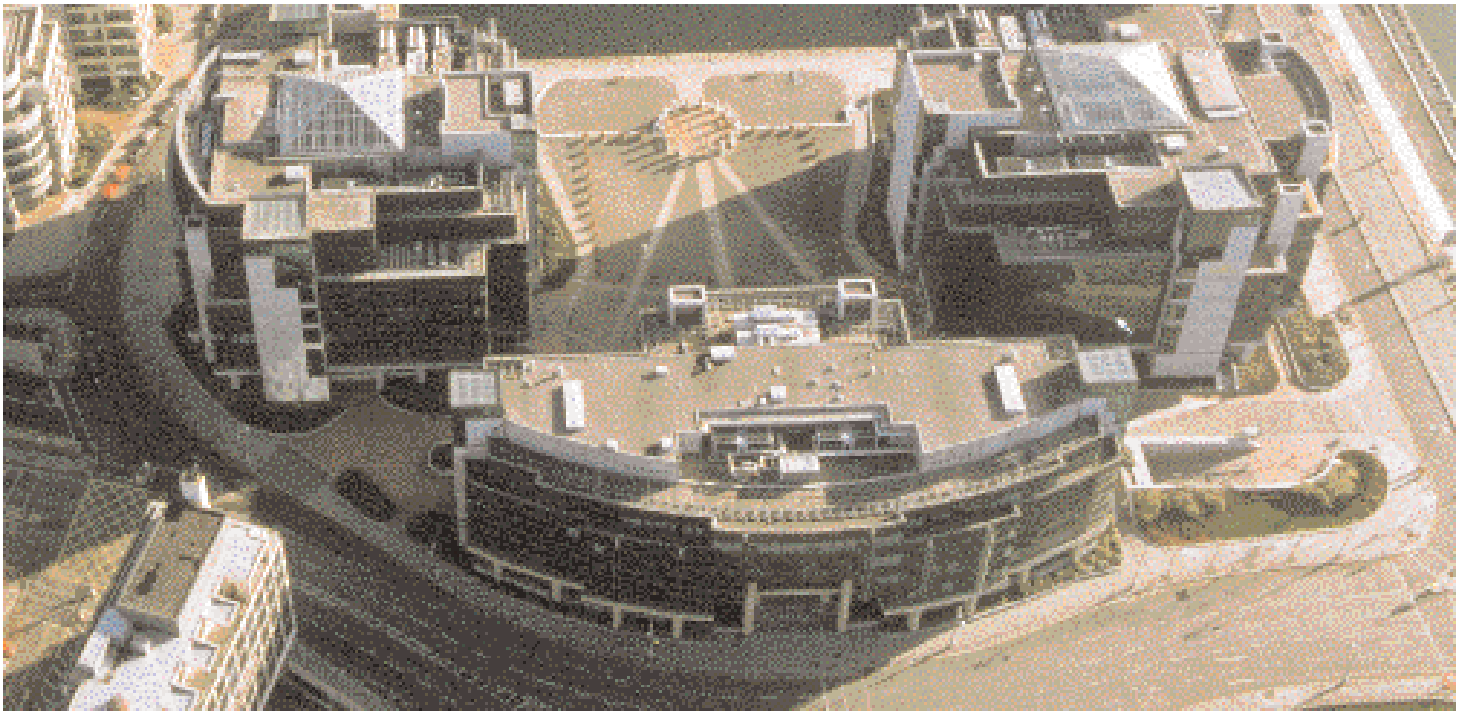
Judges cannot decide on matters not before them. They cannot implement laws that are not on the Statute Book.

As matters stand now, the 101 restrictions and two disqualifications are the unlucky few. Most liquidations are creditors' voluntary liquidations and the vast majority of these do not trouble the courts. It was trouble that Mr Justice Murphy wanted prior to his appointment to the Supreme Court. He began ordering liquidators before him to seek restriction or disqualification orders against errant directors. This move was seen by many lawyers as the judiciary yet again stepping in where the Government and legislature feared to tread.

Limited liability companies are the main vehicle of enterprise in the Irish economy, so it is appropriate that the *Companies Act* as amended should be one of the largest Acts on the Statute Book. That it should contain a vast array of criminal punishments, ranging from imprisonment for insider dealing and fraudulent trading to fines for not filing the annual accounts should not surprise. Despite what is seen by some lawyers as Government neglect, these provisions are getting increasing attention in the courts.

As compliance by directors with company law becomes less of a choice and more of an imperative, solicitors will be under increasing pressure to ensure that they are informed of their duties and obligations. G

Pat Igoe is principal of Pat Igoe and Company.



World Trade Centre

The International Financial Services Centre in Dublin is the envy Europe and the driving force behind the booming Irish economy, but will the good times still roll when the tax breaks run out? Kyran FitzGerald considers the IFSC's performance so far and what the future might hold for it

In the Spring of 1987, the International Financial Services Centre set sail on a great sea of hype. At that time, many people had serious doubts about the project. The critics dismissed out of hand the optimistic job projections and fears were expressed that Irish financial institutions would make heavy use of the centre in order to avoid domestic taxation.

Within six months of the establishment of the centre, the financial world was rocked by Black Monday. Around the world, stock markets went into free-fall, signalling the beginning of the end of the great Eighties financial boom.

The IFSC survived this setback and has gained new respect, not least in the City of London where there were many who smirked at the whole notion of an international financial centre close to the heart of Dear Old Dirty Dublin.

By the end of 1996, around 3,500 people were directly employed by IFSC companies, an increase of 800 in just one year. There are around 400 projects operating out of the centre, including half of the world's top 50 banks. The IFSC is now Europe's leading location for collective fund management.

The impact of the centre on the wider Irish economy has been considerable. It is reliably estimated that between 20–25% of the State's take from corporation tax comes from IFSC-related activities. (Official sources are reluctant to speculate on a matter which is highly sensitive.) This adds up to some £200–300 million. The IFSC has attracted thousands of free-spending visitors and has helped to put Dublin on the international investment map, greatly bolstering the efforts of the Industrial Development Authority to attract overseas projects.

According to Brendan Logue, the IDA executive in charge of promoting the centre, 'the benefits are colossal. Apart from the obvious physical renewal, you have seen a huge level of business tourism being generated. Places like the K-Club and Mount Juliet have done very well out of the centre'.

Large Irish law and accountancy firms have been quick to exploit the opportunities presented by the centre. It is estimated that well over

1,000 people are employed by professional firms servicing IFSC clients.

Brendan Logue says that six law firms in particular have enjoyed the lion's share of the IFSC business: Arthur Cox, McCann FitzGerald, A&L Goodbody, William Fry, Dillon Eustace and Matheson Ormsby Prentice. All have invested heavily in marketing, publishing brochures and newspaper articles, attending conferences and sending top staff overseas on IDA-sponsored promotional activity.

In Logue's view, the relationship is one of mutual benefit. The IDA is able to tap the lawyers' technical expertise while they, in turn, receive the 'stamp of respectability' overseas that comes from being associated with a State organisation.

Within the legal profession, there has been some resentment at what is perceived to be a carve up of the IFSC pie by the big firms. To some extent, this is because the IDA has referred potential investors to the large firms which have proven expertise and an established reputation. These firms have had to invest heavily to build up their IFSC business. For example, according to Dillon Eustace partner Andrew Bates, the firm has ten to 12 solicitors who devote the bulk of their time to IFSC business. Much of this work relates to fund management, captive insurance and securitisation transactions. But there are now signs that the financial jam is being spread a bit more widely, with medium-sized firms beginning to target IFSC business.

Chicken and egg situation

David Beattie is a partner with one such firm, O'Donnell Sweeney. He built up his experience in the financial services field while acting for Shannon-based leasing companies, including GPA and SIL. Leasing is one of the IFSC's main activities, alongside funds and trust work. 'It's a chicken and egg situation', he says. 'You cannot sell your expertise until you have first developed it. For this to happen, it is necessary to practise your skills'.

This means acquiring clients – which is easier said than done. The IFSC companies tend to be loyal to particular individuals as opposed to firms, Beattie adds. Breaking into this circle means a considerable investment in marketing, travel and networking, no mean task for a medium-sized firm with relatively modest resources.

So what type of legal skills have been in particular demand as a result of the centre's development? Clearly, an in-depth knowledge of tax and company law, cross-border tax systems and the details of various double taxation agreements is vital. The ability to deal with a variety of regulatory authorities has also been in demand.

IFSC lawyers have had an important brokerage function to fulfil. The ability to draft agreements under considerable time pressure and without the benefit of precedents is another vital ingredient of the successful IFSC lawyer. 'It is amazing that the law firms have adapted so well', says Brendan Logue. 'Ten years ago, most firms had no experience of the off-shore industry'.

Siobhan Lohan is a partner with the banking/financial services unit of A&L Goodbody, and is heading up the firm's new branch office at the centre. The head office of McCann FitzGerald has been located at the centre, next door to the headquarters of Arthur Andersen, for the past five years.

ABN/Amro and its brokerage subsidiary, Riada, will also be down at the IFSC soon. Links between IFSC companies are also growing tighter, a function of the on-going daily contact between individuals. Increasingly, deals are being arranged between companies operating out of the centre.

New areas of law

Karl O'Sullivan is a partner with Arthur Cox & Sons. In his view, the development of the IFSC has resulted in the opening up of new areas of law, particularly taxation and funds management. 'In the case of mutual funds', he says, 'there is a considerable amount of drafting work involved in preparing prospectuses. Clients are geographically diverse'. This area of business can involve several different tax and regulatory systems.

A key element in the growth of the centre has been the gradual expansion of the country's tax treaty network. Agreements with almost 30 countries are now in place, with more in the pipeline. Such agreements are vital for those IFSC companies that earn income from overseas. In the absence of suitable treaty provisions, tax deductions on income can be crippling.

Many job opportunities for lawyers have been created outside the profession in client firms. Virtually every organisation based in the centre now has an in-house solicitor.

Denise Kinsella qualified as a solicitor and trained with McCanns before joining the Investment Bank of Ireland in 1988 to work in their newly-established IFSC department. In 1990, she moved into the investment funds area and is now a director of Bank of Ireland Security Services, the group's fund management arm. Much of her work was in the area of marketing and client contact. The funds business has grown to such an extent that there are now four lawyers working with her.

One big difference with private practice is that the lawyer working for the bank is involved at a much earlier stage in the transaction, says Kinsella. 'In private practice, typically, the lawyer is brought in after the deal is done to tidy things up whereas working for the bank I have an input into the process along the way. I have one client as opposed to a variety of different ones'.

The IFSC has now acquired a tangible physical presence and is set to spill over beyond its original boundaries. There is already 1.2 million square feet of office space completed, with planning underway for up to 500,000 square feet on an adjoining site, according to Gus MacAmhlaigh, General Manager of the Custom House Dock Development Authority. The authority is the body charged with developing the area. The ten-year double rent allowances and rate holiday on offer at the

IFSC have been particularly attractive to partnerships locating in the centre.

Demand from IFSC companies now exceeds supply. MacAmhlaigh estimates that close to 400,000 extra square feet of space will be required just to meet the demands of those companies with existing IFSC certification approval.

The Customs House Dock Development Authority will shortly be replaced by a new Docklands Development Authority which will cover a much wider geographical area (around 1,650 acres in total as opposed to the original 27 acres). Executives from the CHDDA will be transferred to the new body, and a draft master plan for the whole docklands area is expected to be ready next month.

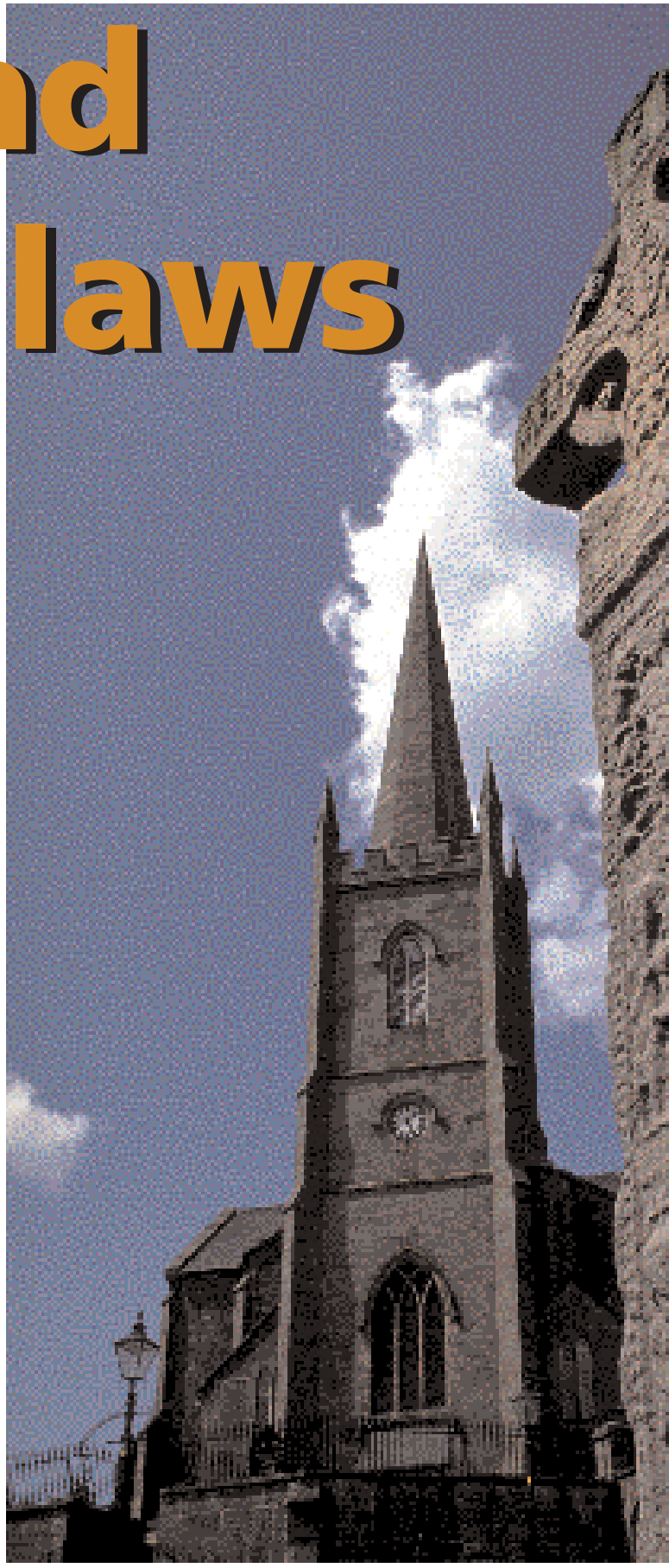
But can the centre continue to expand at this rate? There is some concern that when the special 10% corporation tax regime runs out in 2005, the IFSC could begin to wither and die. However, most participants remain fairly upbeat about the future. An advisory group made up of officials and IFSC players is due to report shortly, but there is a feeling that the centre has achieved the sort of critical mass that should enable it to survive.

Even if Brussels were to decide that Ireland could no longer offer the special 10% regime for manufacturers and IFSC companies, a new low corporation tax rate of 15% might be introduced. The impact of any change in the tax regime would be felt in areas such as leasing, but in the funds area quality of personnel is seen as a much more critical issue. Ensuring a continued supply of skilled manpower at competitive salaries could be the critical challenge in the coming years.

'Provided the general economic background remains positive', says the IDA's Brendan Logue, 'and the Government continues to support the project, then the future for the IFSC is very bright indeed'. G

Kyran FitzGerald is a freelance journalist.

Irish ways and Irish laws



The Battle of Kinsale in 1601 was bad news for Ireland's Celtic overlords, but worse news for the country's Brehon lawyers who saw their client base make a mad dash for the exit. Conal O'Boyle talks to solicitor Brian Sheridan about the Brehon laws, Brehon lawyers and the Burren Law School

Michael Collins was never a man to do things by half. Even when they made a film of his life, they had to make it twice as long as most other films.

Back in 1922, after beating the British, the Big Fella appears to have had a big idea. Collins didn't want the newly-freed Free State to be a slavish copy of England, so he sent a memo to his cabinet colleagues instructing them that the new administration must be 'thoroughly Irish'.

'We shall have complete freedom for all our purposes', he later wrote. 'We shall be rid completely of British interference and British rule. We can establish in its place our own rule, and

exactly what kind of rule we like. We can restore our Gaelic life in exactly what form we like ... Let us advance and use these liberties to reconstruct our ancient civilisation along modern lines'.

We'll never know where these modern lines might have run because the Big Fella took a bullet at Beal na mBlath. But we do know that he would have had to go back some 300 years to find any decent semblance of Gaelic life because that was when the earls caught the last flight out of the country and the system of Brehon laws collapsed.

Most of our knowledge of the Brehon system dates from the fourteenth to the sixteenth centuries, but linguistic evidence shows that many of the surviving texts were originally written in the seventh and eighth centuries and were copied, recopied and amended over the years. The Brehon system was first codified in the early monasteries but by the fourteenth century the laws were being developed through law schools run by a number of legal families, such as the MacAodhagaíns (MacEgan) and the O'Davorens.

According to solicitor Brian Sheridan, who organises the annual Brehon Law School in the Burren, 'the MacAodhagaíns were the McCann FitzGerald of their day'. But it was the smaller O'Davoren practice in the Clare-Galway area that has contributed most to our knowledge of Brehon law and the law schools.

The main surviving text is a folio of documents compiled by Domnall O'Davoren in the sixteenth century. The folio is now called *Egerton 88* and resides in the British Library, but it originated in Ballyvaughan in the Burren. *Egerton 88* includes an extensive glossary, explaining how the Brehon laws were interpreted, but it also throws an interesting light on the practice of law. (Sheridan points out that there are a number of other old Gaelic law texts languishing, untranslated, in the British Library for want of funds to employ a translator for a two-year period. A project for some philanthropic Irish law firm perhaps?)

In his book *A guide to early Irish law,* Fergus Kelly cites one anonymous pupil who complains in the margin of *Egerton 88* that Domnall O'Davoren is making him work so hard 'that the week seems to have two Thursdays'. There are also frequent complaints about the quality of the ink, the pens and the vellum, and references to the cold and lack of food. Apprentices have always found something to grumble about, it seems.

But it wasn't all sackcloth and ashes. The Brehon equivalent of an advocate, called an *Aigne*, could do quite nicely. If, for example, his client won the case and was awarded three cows, the *aigne* got one-third of the award. Talk about 'no foal, no fee'. The foal was the fee, and you might throw in the mare for good measure.

Despite what might be regarded these days as exorbitant fees, Brehon lawyers were highly respected in their communities. 'They were extremely important men', says Brian Sheridan. 'They were mainly the administrators to the local kings. They would also be his civil service to a large extent, and they had a very high status along with the poet, who was basically the king's public relations man'.

Bridging the gap

Another significant difference, he adds, is that where these days the lawyer might be seen as apart from society, in Brehon times legal education and interest in legal topics was not confined simply to the lawyer. 'That's the kind of effect we're trying to achieve in the Burren Law School', says Sheridan. 'It's not a pure legal conference: it's lawyers and other interested parties. The seminars are an attempt to try in a small way to bridge the gap between the public and the lawyer. It's trying to cross the divide'.

The response to the Law School, he says, has been huge. Previous speakers have included the Director of Public Prosecutions, Eamonn Barnes, Equality Minister Mervyn Taylor and various members of the judiciary. A number of well-known lawyers will be addressing this year's sessions.

So what, if anything, does the Brehon system have to teach the modern lawyer? 'I think its main significance is that it was an extremely developed legal system that reflected the needs of the society at the time', says Brian Sheridan. 'It mightn't be comparable with the system that exists now, but there were lawyers and there were all the trappings of the legal system and the legal practice. And the fact that there is such a huge tradition is very encouraging'.

'Bluntly, we must be doing something right if we've lasted this long'. G

The Burren Law School runs from 18–20 April at the Burren College of Art, Newtown Castle, Ballyvaughan, Co Clare. The subject will be The media in Irish law – a modern and Brehon perspective. *For further information, contact Mary Greene on 065 77200.*

Health risks

The entry of BUPA into the Irish health insurance market has broken the monopoly enjoyed by VHI for the last 40 years, but what will this mean for the consumer? Simon Glancy reports

The Irish market for private medical insurance is one of a small number of insurance markets that continue to apply the principle of community rating. The rest of Europe and North America apply the same principles of pricing cover for health insurance as for any other type of cover, that is, on the basis of the risk. In the context of health insurance, this mainly refers to the policyholders' previous medical history (including that of their family) and their lifestyle.

In contrast, the principles of community rating involve:

- A lifetime commitment on the part of the insurer to provide cover regardless of changes in the policyholder's state of health or previous claims history
- Open enrolment. There is limited scope for private medical insurance providers to refuse cover to any customer who requests it so long as they can pay the appropriate premium.

Recent European legislation, aimed at opening up national insurance markets to greater competition, has allowed Ireland to maintain community rating over risk rating in the 'public interest'. Despite the recent controversy over the legality of BUPA's product offerings, further reforms of the current regime are unlikely in the short to medium term. Following the recent review of BUPA's products by the Department of Health, the company has not attempted to challenge the Government in the courts.

This does not rule out moves by the current or future governments to improve the efficiency of the existing regime, which explains the interest in recently proposed reforms to the Australian health insurance market (which also operates on community-rated principles).

We may also see future changes aimed at distancing the present relationship between the State as both the market regulator and the largest supplier of private medical insurance (PMI) in Ireland. This could involve setting up an independent board with appointees nominated by the State, the insurance industry and a range of interest groups to which the VHI would be answerable.

The range of products on offer is indicative of the current legal regime. All products must conform to the principles of community rating, so opportunities to differentiate products and services have focused on the extent of insurance coverage that the policyholder needs to meet medical expenses and obtain the services of certain hospitals.

There have been benefits: the cost of taking out private medical insurance is far cheaper here than in the UK which operates on a risk-rated basis. Almost 40% of the population in Ireland have PMI cover compared with only 15% in the UK, 16% in Germany and 19% in France. The present system has also guaranteed consumers peace of mind insofar as their claims will rarely be declined and the cost of health insurance remains affordable for the majority of people.

People living longer

But for how much longer? As the number of elderly people rises in Ireland as elsewhere in Europe (it is projected to reach 20% of the total population by 2010), expenditure on caring for the elderly will greatly increase. People are living longer and the quality of treatment people expect is much higher in terms of surgical procedures and post-operative care. People are also far more inclined to use health services if they are paying for them through private insurance, even for minor complaints, which adds to the financial strains on the system. All of these factors will further add to the cost of providing medical care.

I believe that new products and services will be as necessary in PMI as in any other area of financial services: consumers want flexible products that meet their specific lifestyle demands and income requirements. This may well require a departure from the present principles of community rating in the medium term, with the introduction of some form of risk rating.

The most important recent development has been the entry of BUPA earlier this year, following the ending of the VHI's monopoly. Central to its competitive positioning has been the separation of community-rated medical services from the discretionary convenience and comfort of a risk-rated plan for purchasing different levels of hospital accommodation.

By combining both types of cover in one policy, BUPA found itself accused of operating in contravention of the existing legislation. This subsequently meant it had to relaunch its products, splitting these policies into two separate contracts.

Although BUPA has sought to lead the way in giving consumers greater choice, the continuing commitment to the community-rated regime will act as a strong disincentive to further new entrants whose product range is risk rated. The tiny size of the Irish market also means that, in European terms, there are far greater growth opportunities elsewhere in markets such as Italy, Spain and Scandinavia.

Australia is one the few overseas markets which continues to apply community rating to private medical insurance. The escalation of medical insurance costs in recent years has meant that there has been a dramatic fall in the number of people covered. In 1983, 64% of the population were covered by PMI schemes; by 1996, this had nearly halved to 34%.

As a result, the Australian government set up a commission to review the structure and funding of PMI, resulting in a series of recommendations in December last year. These have particular relevance to Ireland since the Australian government has declared itself to be equally committed to maintaining the principle of community rating. The most important changes under review are:

- The introduction of four new community rating categories aimed at facilitating product innovation and making private health insurance more affordable. These categories cover single people, couples, single parent families and two parent families
- The introduction of lifetime community rating which penalises those joining PMI schemes late in life
- No-claims bonuses for policyholders
- The introduction of a deferment period before which no claims can be made on the policy. This aims to prevent people claiming from the insurer's funds without having made a sufficient level of premium contributions

- A tax rebate for families already covered by health insurance is to be introduced to encourage existing policyholders to stay in the system.

This effectively represents a half-way house between community rating and risk rating, as it introduces a form of risk rating based on people's lifestyles. It is, however, seen as a politically acceptable compromise to avoid funding difficulties in the future.

Customers will continue to seek peace of mind that their health insurance policy will cover them for most types of routine medical treatment and nursing care and that they will not be faced with sharp increases in premiums. This will mean that there will be continued support for the principles of the community rating regime, notwithstanding the potential for a widening gap emerging between younger people subsidising the growing elderly population. It will be difficult for providers to deliver unless there is greater use of managed care to control costs or the introduction of some form of lifestyle-related risk rating.

Closely related to the issue of ensuring peace of mind will be the need to ensure a high degree of trust in providers who are selling all types of health financing products. The life assurance industry has already witnessed a reluctance on the part of consumers to trust providers. This is partly due to the complexity of products – consumers are not familiar with the terminology or the range of options and features – and the emotional nature of the purchase.

Any future introduction of risk-rated products, or a sub-division of the present community rating regime into lifestyle categories, would undoubtedly add to product complexity. This could further diminish consumers' understanding of product coverage and benefits, so product providers will need to provide professional advice to customers about what they are buying and what benefits they can reasonably expect.

The VHI is in a strong position to benefit from gaining the trust of consumers through being the only provider in the market since 1957 until BUPA's arrival. As a result, it has built up a very strong brand name in the market, being seen as virtually synonymous with PMI in consumers' minds. Yet the VHI may need to consider investing in significant relationship management and customer loyalty programmes if it is to retain existing customers in the longer term. G

Simon Glancy is Head of Research at Prospectus consultants. He is the author of Healthcare: the customer agenda, *a strategic review of the Irish and European healthcare markets.*

Council report

Report on Council meeting held on 17 January 1997

1. Judge Pat McCartan

The President welcomed the newly-appointed solicitor Circuit Court judge, Pat McCartan, who was in attendance at the Council meeting. On behalf of the solicitors' profession, he congratulated Judge McCartan on his well-deserved appointment. Judge McCartan expressed his deep gratitude to the profession for the warmth shown to him since his appointment. As one of four solicitor Circuit Court judges, he was aware of the onus he bore to demonstrate that solicitors are perfectly well capable of performing as judges. He then left to a standing ovation from the Council.

2. Law School finances

John Costello and Terence McCrann proposed a debate in relation to the finances of the Law School and the manner in which student fees were applied in this regard. Following a brief discussion, it was agreed that all relevant information should be brought before the Council at its meeting in March when the matter could be properly discussed.

3. Adjudicator

Following the debate at the December Council meeting, the President had written to the Minister for Justice requesting a meeting and the opportunity to examine the evidence which had apparently led her to the view that an independent appeals forum for complaints about the Society's handling of complaints was warranted. A date for the meeting had now been set and the Law Society representatives would comprise the President, the Senior Vice President, the Director General and the Director of Policy.

4. The Attorney General

Correspondence between the Director General and the Attorney General, complaining about the advertisement of positions of legal assistant in the Attorney General's office with eligibility confined to barristers, had been circulated to the Council. The Attorney General had sought to justify this on the basis that only barristers would have the particular understanding of litigation which his office required to advise the Government and the State on a wide range of issues. He had also queried the Society's position on the fundamental question of a unified profession or not. A letter from the State Solicitors' Association expressing concerns was also circulated to the Council. A preliminary discussion suggested that the Council was clear in continuing to support in the public interest a legal profession divided into solicitors and barristers while believing that appointments to public service positions for which both solicitors and barristers were equally qualified (including superior court judgeships) should be made on merit alone. However, it was accepted that, as the major questions which had been raised by the Attorney General required a fuller debate than time allowed at the meeting, the issue should be adjourned to the next Council meeting on 7 March.

5. UINL

John Fish said that the *Union Internationale Notariat Latin* was a worldwide organisation and the Society had observer status for many years. He questioned the preliminary view of the Finance Committee that the sum of £2,200 should be saved by the Society ceasing to be directly represented on this organisation. Following a debate, the Council agreed that the benefits of representation on UINL were such that full representation should continue.

6. Purchasers and developers

In response to a query from Niall Farrell, the Chairman of the Professional Guidance Committee explained that the regulation prohibiting solicitors from acting for both purchasers and developers was now in final form and could be signed by the President. A separate more general motion to be considered by the Council at its March meeting would deal with solicitors acting for both vendors and purchasers, including developers and purchasers.

7. Criminal law

James MacGuill said that the gratitude of the profession was due to Michael Staines who had secured a back-dated increase in the criminal legal aid fees. The back-dated amounts were already being paid.

8. Stamp duty

Patricia McNamara urged that the Society should be vocal in opposing the proposed new stamp duty rates. The Chairman of the Taxation Committee, John Costello, reported that the committee had already written to the Minister for Finance and intended to issue a press statement to vigorously oppose the new stamp duty rate.

9. Motion for Council meeting on 7 March

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 involuntary transfers where the parties have been advised in writing of the desirability of taking independent legal advice.

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

Committee reports

PROFESSIONAL GUIDANCE

As with all Law Society committees, the work of the newly-appointed Professional Guidance Committee started in December. The committee will continue to carry out the following functions:

- Providing guidance for individual members by way of a telephone helpline and response to written queries
- Inviting solicitors setting up as sole practitioners with their first practising certificate to meet two committee members and one of the Society's investigating accountants to help with any queries relating to the solicitor's new practice. The committee is anxious to ensure that solicitors in this situation are aware of the help available, not only from this committee but from all the committees of the Law Society
- Using the Society's good offices to help resolve problems and disputes arising between solicitor colleagues and between solicitors and other professionals, provided that both parties have first been informed of the functions of the committee and agree to the matter being processed in this way
- Providing a mediator, if requested, in disputes between solicitors
- Monitoring and developing policy on matters of practice and conduct.

Bar associations are being contacted to invite them to highlight current practice issues which are causing difficulty in their individual areas.

Elsewhere in this issue of the *Gazette*, the attention of solicitors is being drawn to a new statutory instrument which prohibits solicitors from acting for both a builder and a purchaser of residential units. The committee will now be recommending to Council that regulations should be made prohibiting, with some exceptions, solicitors acting for any vendor and purchaser in conveyancing transactions. The committee is convinced that this is in the best interests of the public and the profession. Your views on this topic will be welcome.

Practitioners in this country are now seeing more and more evidence of the lifting of restrictions barring lawyers from practising throughout Europe. One view is that this is extra competition for solicitors here, but the reality is that it also brings significant business opportunities for Irish solicitors who wish to practice elsewhere, either occasionally or in a branch office. The committee will examine the matter and ensure that guidelines which will be of practical assistance to members are published.

Legal expenses insurance is another matter which brings business opportunities for solicitors. The insurance partly funds a client's legal expenses. The current insurance schemes will continue to be monitored, and the committee would welcome feedback from solicitors who have experience in situations where their client held legal expenses insurance.

Solicitors cease practice for many different reasons. Many practical difficulties are encountered when winding up a practice. We hope to arrange a seminar which will bring together the information which solicitors need in those circumstances.

I look forward to keeping you informed of progress and invite you to help the committee's work by contacting us in the event of issues of significance arising.

James MacGuill
Chairman

YOUNGER MEMBERS REVIEW

The Younger Members Review Committee acts as a bridge between the newly-qualified solicitor and the profession itself. Its main aim is to try to provide encouragement for the newly-qualified solicitor to take an interest in the work of the Society and to contribute to it. It is also interested in hearing the views of the profession on any topic that concerns them.

The committee includes some excellent people who have so far this year demonstrated great enthusiasm and ability for the projects that have been decided.

Every Law Society committee is expected to produce an action plan for the year, and this committee is no different. In 1997, the committee has the following objectives:

- To publish the results of a survey results of attitudes within the profession
- To produce regular newsletters or articles for the *Gazette*
- To have the regular soccer blitz (an excellent occasion, which encourages a lot of people to use the Law Society)
- To host a quiz night in the autumn, probably in Cork
- To undertake special projects, perhaps in the area of costs/education
- To maintain contact with apprentices
- To improve contact with SADSI representatives.

The members of the committee are John S O'Sullivan (Carlow), Gail O'Keeffe (Dublin), Monika Leech (Dublin), Phillipa Howley (Dublin), Stuart Gilhooly (Dublin), Graham Hanlon (Dublin), Pat Crowley (Dublin), vice-chairman Andrew Dillon (Cork), and chairman Philip Joyce (Tipperary).

Philip Joyce
Chairman

CORPORATE AND PUBLIC SERVICES

The main project for 1996 was the facilitation of the launch of the independent Corporate and Public Services Solicitors Association. As you all know, this was successfully launched at a meeting on 23 October. The Association has lost no time in starting work and we wish them well in their endeavours.

For us, this represents the completion of the first phase of our task, but our work is only beginning. The committee will now turn its attention to identify the services which the Law Society should provide to its members who are not in traditional private practice. Two current projects are nearing completion:

- **Information booklet for solicitors** taking up employment in these sectors. The final touches are being put to this booklet.

The committee hopes to launch it in April or May.

- **Directory project.** Much of the background work for this project has now been completed. This is a final call to solicitors who wish to be included in the directory to return the questionnaires sent to them. Further copies of the questionnaire are available from Therese Clarke at the Law Society (tel: 868 1220).

Membership of the Law Society

I would encourage those of you who do not have practising certificates to become members of the Law Society. Membership will entitle you to vote at general meetings and in elections, to go forward for election to the Council and to qualify for all of the offices, including President. In addition, you will receive the *Law Society Gazette* free of charge, which will keep you informed of developments in the profession, and you will be entitled to use many other facilities available to the members of the Society.

The membership rates are: £25 for an ordinary member and £1 for a member in the first year of admission.

Michael Carroll
Chairman

COMPANY AND COMMERCIAL LAW

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

These regulations, dated 5 February 1997, implement Directive 92/101/EEC of 23 November 1992, and extend the provisions relating to capital maintenance of public limited companies to their subsidiaries which have limited liability. One important provision is that subsidiaries of Plcs will no longer be able to avail themselves of the section 60 validation procedure so as to financially assist the purchase of, or subscription for shares in, the Plc's parent company. The regulations come into effect on 1 March 1997.

Other European company law

Since 1972, European Directives have been the mainstay of the company law legislative programme. With the enactment of the regulations mentioned above, there are no further company law Directives at present due to be implemented. There are a number of draft and proposed Directives in circulation – the fifth on company structures, the tenth on cross-border mergers, and the thirteenth on takeover bids, as well as the draft proposed *Statute for the European company*. But none of these is expected to be adopted by the Council of Ministers before next year. The proposed Thirteenth Directive will, to some extent, be pre-empted legislatively in Ireland by the *Irish Takeover Panel Act*, once it is enacted.

Irish Takeover Panel Bill, 1996

The *Irish Takeover Panel Bill* is due to pass all stages in the Oireachtas with the panel being legally established by the time of publication of this *Gazette*. However, it is anticipated that it may be some time before it is actually active, given the small number of public company takeovers. The new panel is to be made up of seven members of whom one is to be nominated by the Law Society. The Law Society's nominee-designate is Brian O'Connor of McCann FitzGerald, with Alvin Price of William Fry as an alternate. A key point about the new Irish structure is that the Irish Takeover Panel's directions will have a legal status whereas the English panel's do not.

Paul Egan

LEGISLATION UPDATE: 1 JANUARY – 15 FEBRUARY 1997

ACTS PASSED

No **Title of Act and date passed**

1 ***Fisheries (Commissions) Act, 1997*** **(12/2/97)**
Provides for the validation of an order made by the Minister of State at the Department of the Marine under s3 of the *Fisheries (Amendment) Act, 1995*, which established, and conferred functions on, the Southern Regional Fisheries Commission.
Commencement date: 12/2/97 (date of validation of order retrospective from 21/2/96)

SELECTED STATUTORY INSTRUMENTS

357/1996 ***EC (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations, 1996***

45/1997 **Registration of Births Act, 1996** ***(Commencement) Order, 1997***
Appoints 1 October 1997 as the day on which the *Registration of Births Act, 1996*, comes into operation.

52/1997 ***Rules of the Superior Courts*** **(No 1) of 1997**
Adds a new sub-rule 10(10) to order 22 to provide for applications for approval of awards proposed to be made to minors by any tribunal. Comes into operation on 11 February 1997.

63/1997 **Criminal Justice Act, 1994** ***(Section 37(1)) Order, 1997***
Specifies, in accordance with section 37(1) of the *Criminal Justice Act, 1994,* States which are party to the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.*

66/1997 **Criminal Evidence Act, 1992** ***(Sections 14 and 19) (Commencement) Order, 1997***
Appoints 3 March 1997 as the day on which section 14 and section 19, in so far as it relates to the reference in it to section 14(1)(b), come into operation. These sections empower a court to appoint an intermediary to convey questions to a witness who is under 17, or to persons with a mental handicap over 17, in physical or sexual abuse cases where evidence is being given through a television link.

74/1997 **Criminal Justice Act, 1984** ***(Electronic Recording of Interviews) Regulations, 1997***
Provides for the electronic recording of interviews with suspects detained under s4 of the *Criminal Justice Act, 1984*, s30 of the *Offences Against the State Act, 1939*, s2 of the *Criminal Justice (Drug Trafficking) Act, 1996*, or s2 of the Act as modified by s4(3), in Garda stations where equipment has been provided and installed for this purpose.

78/1997 ***Local Government (Planning & Development) Regulations, 1997***
Amends the second schedule to the *Local Government (Planning & Development) Regulations, 1994* (SI No 86 of 1994) – exempted development – by including, subject to certain limitations, the adding of antennae for mobile telephony to an existing radio mast, and the replacement of masts, to the list of exempted development.

84/1997 ***Rules of the Circuit Court*** **(No 1) of 1997**
Provides for procedures in relation to making applications to the Circuit Court under the *Judicial Separation and Family Law Reform Act, 1989*, the *Family Law Act, 1995*, and the *Family Law (Divorce) Act, 1996*. Come into operation on 27 February 1997. Revokes *Circuit Court Rules* (No 1) of 1989 (SI No 289 of 1989) and *Circuit Court Rules* (No 1) of 1994 (SI No 225 of 1994).

List compiled by the Law Society Library.

STATUTORY INSTRUMENT NO 85 OF 1997

Solicitors (Professional Practice, Conduct & Discipline) Regulations 1997

Restrictions on solicitor acting in a conveyancing transaction on behalf of both the builder and purchaser of residential units

A Statutory Instrument regulating the above matter was signed by the President on 29 January 1997. The effective date of the regulation will be 1 April 1997. The text of the Statutory Instrument is set out below.

It has long been the recommended practice of the Society that solicitors should not act on behalf of both vendor and purchaser in a conveyancing transaction. This is set out in the Law Society publication *Guide to professional conduct of solicitors in Ireland*, which was published in 1988. However, many solicitors did engage in this practice. This was largely in response to a demand from builder clients that the sale of a house should include a special deal for legal fees for the purchaser, if the purchaser instructed the builder's own solicitor.

The Society has been concerned for some time that solicitors were placing themselves in a position where there was such a clear potential for conflict of interests between two clients. The builder would usually have significantly more power in the situation than the purchaser.

The attention of the Society has been drawn to many specific instances where difficulties have arisen. Some of these cases have been the subject of litigation in the courts. There has been adverse judicial comment that the practice has been allowed.

Members will have noted reports in the *Gazette* of the matter being debated by the Council of the Law Society. At the Council meeting in December, the Regulations were approved.

The Society sought a counsel's opinion as to the relevance of the *Competition Act, 1991* and has been advised that the Act has no application where a regulatory body acts in its regulatory capacity to make regulations to meet a situation which has inherent risks. The regulations will not affect relevant conveyancing transactions where the solicitor was employed prior to 1 April 1997. The issue of a section 68 letter would be evidence of the date of employment.

Council will now move to debate whether a total prohibition against solicitors acting on behalf of both vendor and purchaser in any conveyancing transaction should be introduced. Such a prohibition is in force in neighbouring jurisdictions. Members' views to the Professional Guidance Committee will be welcome.

STATUTORY INSTRUMENT NO 85 OF 1997

Solicitors (Professional Practice, Conduct and Disipline) Regulations 1997

The Law Society of Ireland, in exercise of the powers conferred on them by section 5 of the *Solicitors Act, 1954* and section 71 (as amended by section 69 of the *Solicitors (Amendment) Act, 1994*) of the *Solicitors Act, 1954* hereby make the following Regulations:

1. a) These Regulations may be cited as the *Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997*

b) These Regulations shall come into force on the first day of April 1997

2. a) In these Regulations:

'related to the purchaser' means related by blood, adoption or marriage

'residential unit' means a house or apartment intended for use as a residence

'solicitor' has the meaning assigned to it in section 3 of the *Solicitors (Amendment) Act, 1994* and includes two or more solicitors acting in partnership or association

b) Other words and phrases in these Regulations shall have the meanings assigned to them by the *Solicitors Acts, 1954 to 1994*

3. The *Interpretation Act, 1937* shall apply for the purposes of the interpretation of these Regulations, as it applies for the purpose of the interpretation of an Act of the Oireachtas, except insofar as it may be inconsistent with the Act of 1954, the Act of 1960, the Act of 1994 or these Regulations

4. a) A solicitor shall not act for both vendor and purchaser in the sale and purchase for value of a newly constructed residential unit or a residential unit in course of construction, where the vendor is the builder of that residential unit or is associated with the builder of that residential unit

b) The prohibition in sub-clause (a) of this Regulation shall not apply in the following situations unless there is a conflict of interest between the vendor and the purchaser:

i) where the vendor and the purchaser are associated companies or the purchaser is a member, director or employee of the vendor or an associated company of the vendor

ii) where the vendor or, where the vendor is a corporate entity, any member or director of the vendor, is related to the purchaser.

5. Without prejudice to the generality of section 3 (as amended by section 24 of the Act of 1994) of the Act of 1960, any breach of these Regulations may, upon due enquiry by the Disciplinary Tribunal pursuant to section 7 (as substituted by section 17 of the Act of 1994) of the Act of 1960, be found by the Disciplinary Tribunal to be misconduct within the meaning of section 3 (as amended by section 24 of the Act of 1994) of the Act of 1960. G

MEDICO-LEGAL FEES FOR CONSULTANTS 1997-1999

THE IRISH INSURANCE FEDERATION AND THE IRISH HOSPITAL CONSULTANTS' ASSOCIATION HAVE AGREED A NEW SCALE OF FEES FOR THE PERIOD 1 JANUARY 1997 TO 31 DECEMBER 1999. THESE ARE SET OUT BELOW.

	1997 £	1998 £	1999 £
Examination and first report			
• Standard	125	134	134
• Psychiatrist's report	138	142	147
Follow-up report			
• Standard	110	114	118
• Psychiatrist's report	120	124	129
Attendance in court (to include consultation with counsel on day of hearing if necessary)			
• Half-day (am or pm)	307	318	329
• Full-day	432	447	462

	1997 £	1998 £	1999 £
Consultation with counsel other than on day of hearing			
• At consultant's rooms	85	87	90
• At court	125	129	134
Consultation with another party's medical adviser			
• By telephone	26	27	28
• By correspondence	52	54	56
• By attendance at examination	74	76	79

STANDBY FEES

For standby within 20 miles of consultant's hospital: 25% of appropriate attendance fee. For standby for a court more than 20 miles from consultant's hospital: 50% of appropriate attendance fee.

COURT ATTENDANCE CANCELLATIONS

Cancellations within two working days of court hearing to attract the full court attendance or standby fee, as appropriate. Cancellations advised more than two working days but less than five working days to attract 50% of the court attendance or standby fee, as appropriate.

Practice management

VIDEO REVIEWS

Stress management for professionals

(running time: four hours)

I never had the time to read a book on stress management – that's why I needed to read a book on stress management. And that's why I was delighted to view this newly-acquired set of videos in the Law Society library on *Stress management for professionals.*

Everyone suffers from stress, not just solicitors. A certain amount of stress is essential in life. Without it, we would not have the energy to get up in the morning. But when we lose control of stress, and it begins to control us, then it becomes a problem.

Roger Mellott is an American psychologist who specialises in stress management for professional and business people. He clearly understands the dynamics of a busy office and how it can take over a person's life. *Stress management for professionals* is a series of lectures delivered by him and starts with an examination of how we can become quickly filled with stress right from the moment we get out of bed. In this section, he tells us how to heed the warning signs and what to do.

In the second section, Mellott deals with the four primary areas that cause stress: *change, powerlessness, approval* and *hostility.* Each of these sections is dealt with in a concise and comprehensive manner, using examples from the real world. Although this lecture series is not designed specifically for lawyers, it is very relevant to us.

For example, *change* is something that is now an ever-present feature of business. Mellott tells us there are times to tackle change and times not to – and how to recognise these times.

Powerlessness for solicitors is also relevant. Mellott gives the example of sitting at your desk with the phone ringing, people waiting to see you, deadlines to meet and correspondence building up. Sound familiar? The solution is the 'salami' method. Take one slice at a time. Where possible, recapture the initiative and regain control of your schedule.

Seeking approval is the third cause of stress. Mellott teaches that instead of needing approval, improve your self-esteem to eliminate the need.

Finally, he deals with *hostility.* Again, he asks searching questions: for example, why do we carry grudges? (many business people 'remember' previous dealings and the way in which they were conducted by opposing parties). Grudges are merely stress baggage that we bring with us constantly, and never let go.

This production is a comprehensive yet subjective study of the causes of stress in modern business and life. It provides 11 stages to recovery from the viewer's stressed life, and the last lecture deals fully with all these aspects.

When I came to view *Stress management for professionals,* I was expecting a general overview of the problem, a sort of television documentary that dealt with the issues like fingerfood. What I got was a full meal.

The tape set lasts about four hours (on three tapes) and comes complete with a workbook. For solicitors, borrowing is free from the Law Society library and (subject to a refundable deposit) can be retained for ten days. Book it today, and have your staff and family watch it. It will improve your lives immediately. G

Brian O'Reilly is Managing Partner at BP O'Reilly & Company and is a member of the Law Society's Practice Management Committee.

Controlling interruptions

(CareerTrack Publications; running time: one hour)

There are 168 hours in a week: can we get more from these? The objective of this video is to help you find 20-60 minutes of uninterrupted time each day to work on important tasks. The key is not eliminating interruptions but controlling them when they occur. The video suggests a formula to eliminate or anticipate such interruptions and so to reduce their impact.

It gives specific tips and tricks on:

- Efficient conduct of meetings
- Dealing with telephone interruptions
- Dealing with face to face interruptions
- How to say no.

It may help you to convert the 'do you have a minute?' meeting from a 30-minute matter to ten minutes.

The video does not give you the answers, but it will make you think about the problem. If a sole practitioner takes one tip from this video, and works at it, it will be worth the hour. In larger practices, all staff should view this video together – it will make them aware of how disruptive we are to each other's work patterns.

Rating: seven out of ten. G

Cillian MacDomhnaill is the Law Society's Finance and Administration Executive.

PRACTICE MANAGEMENT GUIDELINES

Do you ...

- Set goals for the practice for the coming three to five years?
- Adopt a 'practice purpose statement', describing the long-term aims of the practice?
- Identify specific objectives that the practice would like to achieve?

Law Society Practice management guidelines, section A2

Staff consultation and the European works council

The *Transnational Information and Consultation of Employees Act*, came into operation on 22 September 1996, putting EU Directive 94/45 EC into Irish law. This provides for the establishment of transnational arrangements for informing and consulting employees in any business with at least 1,000 employees in Member States of the European Union and at least 150 employees in each of at least two of the Member States.

The Act says that a European works council or arrangements for consulting employees should be set up in every such company or group of companies. The responsibility for creating the conditions and means necessary to put these arrangements in place rests with the central management. In a case where the central management is not located, say, in Ireland, the management's representative in the State assumes the responsibility for this. The obligations of the central management or their representative in a particular Member State arise only when employees request the right to information and consultation provided for in the Act.

Management may, on its own initiative, or at the request of 100 employees or their representatives in at least two Member States, establish what is referred to as a 'special negotiating body' whose function is to negotiate with the central management for a written agreement, setting up arrangements for informing and consulting employees. Such an arrangement may involve the establishment of what is referred to in the Act as a 'European employers' forum', but it is open to management and the special negotiating body to establish one or more information and consultation procedures instead of a forum. The special negotiating body is dissolved when it stops being responsible for negotiating such agreements.

If management refuses to start negotiations within six months of the request being made or if, after three years from the date of this request, the parties are unable to conclude an agreement, the Act provides for the setting up of a European works council. The council has the right to meet management once a year, to be informed and consulted on the progress of the business and its prospects.

The central management and the special negotiating body may determine for themselves the issues for information and consultation, provided they are able to agree. Otherwise, where the circumstances invoke the establishment of a European works council, the yearly meeting between the council and management will cover such things as: the economic and financial situation, probable trends in employment, investments, substantial changes to the organisation, introduction of new working methods or production processes, transfer of production, mergers, cutbacks or closures, and collective redundancies.

Management is entitled to withhold commercially sensitive information provided it can meet the requirements set out in the Act. In addition, the members of the special negotiating body, European employers' forum or the European works council or the employees' representatives are prohibited from disclosing information given to them in confidence.

The Act sets out a number of criminal offences attracting fines of £1,500 and – at the court's discretion – imprisonment for up to six months. In the case where the offence is committed by a company or body corporate, a director, manager, secretary or other similar officer is deemed to be guilty of the particular offence, provided it was committed with their consent or connivance or was attributable to any neglect on their part.

Disputes over confidentiality or the withholding of sensitive information, or over the interpretation and operation of agreements between the parties, may be referred to arbitration, but the *Arbitration Acts* do not apply in these cases. G

John Gaffney is a solicitor with O'Flynn Exhams and Partners.

CONFERENCE DATES

Law Society of Scotland Annual Conference
Date: 14-16 March
Venue: Gleneagles Hotel, Scotland
Contact: Iona Cockburn, (tel: 0044 131 226 7411)

Law Society of Northern Ireland Annual Conference
Date: 25-27 April
Venue: Langdale Hotel and Country Club, Lake District, England
Contact: Norma Gartside (tel: 080 1232 231 614)

Solicitors' European Group
Venue: English Law Society Conference Office, London, UK
Contact: Fiona Morris/Sarah Harden (tel: 0044 171 320 5784)
Topic: *European multimedia*
Date: 18 March
Topic: *European Monetary Union*
Date: 24 April
Topic: *Latest developments in EU merger control*
Date: 20 May

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

AIJA Congress
Date: 1-6 September
Venue: Florence, Italy
Contact: Gerard Coll (tel: 01 676 0704)

ILT Digest

of legislation and superior court decisions

Compiled by David Boyle

ADMINISTRATIVE LAW

***Registration of Births Act, 1996* (No 36 of 1996)**

This Act was signed by the President on 19 December 1996. (See also (1997) 15 ILT 18.)

***Appropriation Act, 1996* (No 40 of 1996)**

This Act, as presented by the Minister for Finance and signed into law by the President on 20 December 1996, appropriates monies from the Central Fund for the services and purposes expressed in the schedule to the Bill.

***Oireachtas (Miscellaneous Provisions) and Ministerial and Parliamentary Offices (Amendment) Act, 1996* (No 39 of 1996)**

This Act, which is deemed by virtue of s7(4) to have come into effect on 1 January 1996, extends the range of payments and allowances made to political parties and members of the Oireachtas.

Freedom of Information Bill, 1996

This Bill, as presented by Senator Maurice Manning, aims to provide a right of access to information held by public bodies. Among the proposed provisions are: the establishment of a legal right for each person to have access to information held by public bodies; a right for each person to have such information corrected where it is incorrect, incomplete or misleading; a presumption that official information should be available; and the establishment of an independent appeals system to oversee decisions of public bodies under the proposed legislation.

***Jeremiah Lovett v Minister For Education, Ireland and the Attorney General* (Kelly J), 11 July 1996**

Applicant retired teacher—pleaded guilty to charges of dishonesty and sentenced to two years suspended sentence—informed that, pursuant to provisions of Superannuation Scheme 1935, pension was forfeit—whether forfeiture provisions of scheme fell within scope of enabling Act—whether Minister had acted *ultra vires* in introducing provisions—whether provisions justified by State's aim to deter crime—whether right to pension was property right—whether provisions vindicated applicant's constitutional rights—*Teachers Superannuation Act, 1928*, ss2, 3 and 5—*Secondary Teachers Superannuation (Amendment) Scheme, 1935*, para 8(1).

Held: When considering whether a power in subordinate legislation is *ultra vires* the enactment from which it purports to derive its authority, the court must see that the power in question does not exceed or interfere with or negative the provisions and intentions of the enactment as a whole.

AGRICULTURE

***Milk (Regulation of Supply) (Amendment) Act, 1996* (No 41 of 1996)**

This Act has been signed by the President and came into effect on 30 December 1996 by virtue of SI No 427 of 1996. (See also (1996) 14 ILT 288.)

ANIMAL WELFARE

***Control of Horses Act, 1996* (No 37 of 1996)**

This Act was signed by the President on 19 December 1996. (See also (1996) 14 ILT 175.)

COMMERCIAL

Credit Union Bill, 1996

This Bill, as presented by the Minister of State at the Department of Enterprise and Employment, aims to consolidate existing credit union legislation and to provide for an updated framework for the development and regulation of the credit union movement. If passed, the Bill would allow credit unions to offer additional services and would expand the supervisory powers of the Registrar of Friendly Societies.

***European Communities (Control of Exports of Dual-Use Goods) Regulations, 1996* (SI No 362 of 1996)**

These regulations provide controls on the export of goods which may be used for both civil and military purposes ('dual use-goods') in line with Council Regulation 3381/94 as amended by Council Regulation 837/95. Penalties for non-compliance are provided for by the regulations.

***Control of Exports Order, 1996* (SI No 363 of 1996)**

This order enables the Minister for Tourism and Trade to control the export of, *inter alia*, arms, ammunition, explosive devices, fire control equipment, military vehicles and aircraft, warships, toxological agents, electronic equipment specially designed for military use, armour, certain types of surveillance equipment and other similar items. The order came into operation on 10 December 1996.

CONSTITUTIONAL

Sixteenth Amendment of the Constitution Act, 1996

This Act was signed by the President on 12 December 1996. (See also (1996) 14 ILT 288.)

CRIMINAL

***Sexual Offences (Jurisdiction) Act, 1996* (No 38 of 1996)**

This Act was signed into law by the President on 19 December 1996. (See also (1995) 13 ILT 202.)

Criminal Law Bill, 1996

This Bill has been passed by Dail Éireann. (See also (1996) 14 ILT 129.)

***Detention of Offenders (The Curragh) Regulations, 1996* (SI No 390 of 1996)**

These regulations specify the classes of persons who may be detained in the Curragh and provide for the running of the place of detention and the training and treatment of the offenders detained there.

***The People (at the suit of the Director Of Public Prosecutions) v Michael McDonagh and Anor* (Supreme Court), 11 July 1996**

Rape—defence of consent—charge to jury—explanation of requirements of valid defence of consent—failure to explain relevant subsection of statute to jury—conviction—refusal by Court of Criminal Appeal to grant leave to appeal—appeal against Court of Criminal Appeal's refusal to Supreme Court—whether jury charge was adequate—whether judge had to explain relevant subsection of statute to jury—whether conviction could stand—*Criminal Law (Rape) Act, 1981*, s2(1), (2).

Held: From its own terms, s2(2) of the 1981 Act did not have to be explained to the jury in every case, but only in those cases in which the jury was required to consider whether a man believed that a woman was consenting to sexual intercourse. That did not mean that the subsection had to be read to the jury in every case in which it was claimed that the complainant had consented to intercourse, because the nature of the crime (including the need to establish the accused's knowledge of absence of consent) as set out in s2(1) must, in every such case, have already been explained to the jury.

***John Gallagher v Director of the Central Mental Hospital, Minister for Justice, Ireland and the Attorney General* (High Court), 6 September 1996**

Murder—applicant found guilty but insane—detained in Central Mental Hospital until further order—complaint of being unlawfully detained—*habeas corpus*—release a question for the Executive—quasi-judicial decision subject to review by the courts—failure to make timely decision not fatal—Minister's proposals not unreasonable or disproportionate—failure to show that decision and decision-making process was flawed—application refused—*Trial of Lunatics Act 1883*, s2—Constitution of Ireland 1937, Article 40.

Held: Failure to establish that the decision-making process and decision were so fundamentally flawed and in breach of the applicant's constitutional rights as to vitiate the legality of the applicant's detention.

O'Brien v Governor of Limerick Prison (Geoghegan J), 31 July 1996

Judicial review—enquiry into detention—applicant sentenced to ten years' imprisonment with last six suspended—applied for remission after three years claiming he was entitled to one quarter off custodial sentence—whether remission should be calculated on custodial sentence or on aggregate of custodial and suspended part—Rules for the *Government of Prisons 1947*, r38(1).

Held: Remission can only be earned by a prisoner on the whole of his sentence. Therefore, where part of the sentence has been suspended, it can only be earned on the aggregate of the custodial part and the proposed suspended part.

ELECTIONS

***Electoral (Amendment) Act, 1996* (No 43 of 1996)**

This Act was signed into law by the President on 25 December 1996. (See also(1996) 14 ILT 176.)

EMPLOYMENT

***Protection of Young Persons (Employment) Act, 1996 (Commencement) Order 1996* (SI No 371 of 1996)**

This order appoints 2 January 1997 as the day on which the *Protection of Young Persons (Employment) Act, 1996* came into operation. (See also (1996) 14 ILT 78.)

FAMILY

MP v AP (Laffoy J), 26 June 1996

Conduct of proceedings—*in camera* rule—effect—contempt—privilege—whether witness or potential witness in proceedings covered by s34 of the *Family Law Reform Act, 1989* liable to investigation by non-statutory professional society—parties separated—custody and access arrangements for children—terms contained in 'consent' agreed between plaintiff and defendant and made part of court order—in event of disagreement concerning access, first recourse to be meeting with consultant psychologist—application by defendant for attachment and committal of plaintiff for alleged breach of terms of consent—request by plaintiff's solicitor for views of consultant psychologist—reply by letter containing views unfavourable to defendant's capacity as a parent—complaint by defendant to psychologist's non-statutory professional society—non-disclosure of existence of court proceedings, plaintiff's interest or role of psychologist under consent's terms—copy of letter from psychologist to plaintiff's solicitor enclosed with complaint—application by psychologist to High Court for directions—*in camera* rule—whether psychologist could enter into discussions with society concerning

matters at issue between plaintiff and defendant—privilege—whether defendant could maintain complaint against psychologist in light of his privileges as witness or potential witness—nature of proceedings under s34 of the *Family Law Reform Act, 1989*—whether defendant by submitting documentation to society had divulged to public confidential matters required by s34 to remain confidential—whether defendant had acted in breach of s34—court's power to ensure compliance with s34—whether court should consider whether defendant's conduct constituted a contempt—whether expert witness or potential witness immune from disciplinary proceedings or investigation by his voluntary professional organisation—effect of s34—*Judicial Separation and Family Law Reform Act, 1989*, s34—*Guardianship of Infants Act, 1964.*
Held: The court had an inherent jurisdiction to take whatever steps were necessary on its own motion to ensure that s34 of the *1989 Family Law Reform Act* was complied with.

GARDA SÍOCHÁNA

Garda Síochána Bill, 1996
This Bill has been amended in the Select Committee on Legislation and Security. (See also (1996) 14 ILT 152.)

HEALTH AND SAFETY

***Infectious Diseases (Amendment) Regulations, 1996* (SI No 384 of 1996)**
These regulations designate Creutzfeldt Jakob disease and nv Creutzfeldt Jakob disease as infectious diseases which must be notified (pursuant to the *Infectious Diseases Regulations, 1981*) to the medical officer of the appropriate health board and the Minister for Health once definitively diagnosed.

JUDICIAL REVIEW

***Allen O'Brien v Commissioner of An Garda Síochána* (Kelly J), 19 August 1996**
Certiorari—Garda Síochána—termination of employment of trainee garda—decision challenged—applicant had suffered a head injury during a football match—injury led to concussion—concussion diagnosed a psychotic disorder—Commissioner terminated probation of trainee garda prior to his graduation—whether Commissioner entitled to reach his decision—whether he afforded applicant adequate opportunity to be heard prior to the decision being made—whether decision was made within the bounds of constitutional justice—whether the principle of *audi alteram partem* had been breached—whether the decision-making process was flawed—whether the decision ought to be quashed—*Garda Síochána (Admissions & Appointments) Regulations, 1988*, art 16—*Rules of the Superior Courts 1986*, O84, r26 (4).
Held: Judicial review is concerned with the decision-making process, not with the decision itself, and is not an appeal from a decision, but a review of the manner in which the decision was made.

***McC and Anor v Eastern Health Board* (Supreme Court), 29 July 1996**
Applicants wanted to adopt foreign baby—legislation provided for information session and then commencement of assessment as to suitability—delay of at least seven months between session and commencement of assessment—legislation provides assessment should be carried out 'as soon as practicable'—whether respondent health board had failed in its statutory duty—whether respondent's limited resources and increased responsibilities could be taken into account—whether applicants had constitutional right to adopt child—*Adoption Act, 1952*, s13—*Adoption Act, 1991*, ss5(1), 8, 10—*Child Care Act, 1991*—Constitution of Ireland 1937, arts 40, 41, 42.
Held: When construing the words 'as soon as practicable' regard had

to be paid to the context in which the words were used and the surrounding circumstances.

LEGAL COSTS

***Giovanni Gaspari v Iarnród Éireann/Irish Rail and Ors* (Kinlen J), 30 July 1996**

Plaintiff one of number of people with claims arising out of same incident—plaintiff's case rescheduled to come on first—whether it was test case—whether there should be greater difference in costs awarded to plaintiff and costs awarded to third named defendant—whether court should interfere with decision of taxing master.

Held: A taxing master is only entitled to disallow any part of a solicitor's disbursement if he is satisfied that no solicitor acting with reasonable care and prudence would have determined such fees.

LOCAL AUTHORITIES

Housing (Miscellaneous Provisions) Bill, 1996

This Bill, as presented by the Minister for the Environment, aims to provide a range measures to assist local authorities in addressing problems arising on their housing estates arising from drug dealing and related serious anti-social behaviour. Among the measures proposed are: a facility to exclude one member of a household rather than eviction of the entire household; a power to refuse to let or sell to any given person on certain specified grounds; and a power to withdraw supplementary welfare assistance towards private accommodation.

PLANNING AND DEVELOPMENT

***Francis Terence McCann v An Bord Pleanála and Anor* (Lavan J), 20 June 1996**

Time limits—application for leave to apply for judicial review—grant of planning permission subject to conditions dated 7 June 1995—appeal against conditions received by An Bord Pleanála on 7 July 1995—whether appeal made within prescribed period—meaning of 'month'—whether compliance with prescribed period mandatory—whether substantial compliance—whether breach trivial—*Local Government (Planning and Development) Act, 1963*, ss26(5)(a), 26(5)(f), 26(9)(a)(i), 82(3)(B)—*Local Government (Planning and Development) Act, 1992*, ss17(1)(a), 19(3)—*Interpretation Act, 1937*, s11(h), para 19.

Held: The requirements of ss26(5)(a) and 26(5)(f) of the *Local Government (Planning and Development) Act, 1963* (as amended) that an appeal from a decision of a planning authority be brought within the period of one month beginning on the day on which the decision was made is mandatory and strict compliance is necessary. By virtue of the *Interpretation Act, 1937*, the word 'month' means calendar month and the prescribed period of one month includes the day on which the decision was made. Accordingly, an appeal received by An Bord Pleanála on 7 July 1995 against a decision made on 7 June 1995 is out of time.

***Margaret O'Reilly and Ors v Kevin O'Sullivan and Ors* (Laffoy J), 25 July 1996**

Judicial review—*ultra vires*—county manager of opinion that emergency situation existing within meaning of s2(10) of the *Housing Act, 1988*—managerial order directing development of halting site—county development plan permitting proposed development subject to compliance with relevant policies, standards and requirements of development plan—whether material contravention of development plan—principles to be applied—whether onus of showing emergency situation on county manager—whether decision irrational—*City and County Management (Amendment) Act, 1955*, ss2(9), 2(1)—*Housing Act, 1988*, ss2, 13, 27—*Local Government (Planning and Development) Act, 1963*, ss4(1), 39—*Local Government (Planning & Development) Regulations 1990*, art 34—*Local Government (Planning & Development) Regulations 1994*, art 116—*European Communities (Environmental Impact Assessment) Regulations, 1989*, art 24, sch 1, pt 2, para 11(a).

Held: Where a controversy arises on judicial review as to the application of the relevant policies, standards and requirements set out in a county development plan, that controversy must be resolved by reference to the principles set out by the Supreme Court in *O'Keeffe v An Bord Pleanála* [1993] 1 IR 39.

PRACTICE AND PROCEDURE

***Gerard McGee (a minor) v Francis O'Reilly and Anor* (Supreme Court), 9 July 1996**

Motion on notice—discovery—medical negligence—defendants' discovery sought—principles to be applied—High Court refused to grant relief—appeal to Supreme Court—whether plaintiff entitled to discovery from defendant—whether pleadings justify plaintiff seeking discovery from defendant—*Rules of the Superior Courts 1986*, O19, r19.

Held: The machinery of pleadings and particulars, while of critical importance in ensuring that the parties knew the case that was being advanced against them and that matters extraneous to them would not be introduced at the trial, were not a substitute for the oral evidence of witnesses and their cross-examination before the trial judge.

***Pasquale Pat Petronelli v Stephen Collins* (Costello J), 19 July 1996**

Judgment obtained against defendant in US—defendant then issued proceedings in US alleging 'fraud on the court'—in meantime plaintiff obtained Irish judgment against defendant enforcing US judgment—application to set Irish judgment aside and give defendant leave to enter appearance—whether summons had been properly served—whether judgment had been obtained by surprise—whether Irish court should enforce foreign judgment obtained by fraud—whether Irish court could re-try fraud issue—*Rules of the Superior Courts 1986*, O13, r11.

Held: On hearing a motion to set aside a judgment, it is inappropriate for the court to decide the issues that would arise if the action went on for hearing.

SOCIAL WELFARE

Anti-Poverty Bill, 1996

This Bill, as introduced by Mr Joe

Walsh TD, aims to establish an inter-departmental anti-poverty committee to prepare an anti-poverty strategy for approval by the Government. The Bill also seeks introduce a system to review the activities of all public bodies to ensure that they are in accordance with such a strategy.

STATUTORY INTERPRETATION

***National Authority for Occupational Safety and Health v Fingal County Council* (Murphy J), 4 July 1996**

Safety, Health and Welfare at Work Act provides for 12 month time limit for institution of proceedings—Act further provides that where inquiry/report/inquest into death, time is limited to six months from conclusion of such inquiry/report/inquest—case stated—whether proceedings could be instituted within one year notwithstanding fact that time limit under s51(4) had already expired—*Safety, Health and Welfare at Work Act, 1989*, s51(3), (4).

Held: As a rule of construction, general words should not be taken to undermine or abrogate a special word where used to deal with a particular situation. However, this is just one of a number of rules which are material in the construction and proper interpretation of a statutory provision.

TELECOMMUNICATIONS

***Telecommunications (Miscellaneous Provisions) Act, 1996* (No 34 of 1996)**

This Act was signed by the President on 10 December 1996. (See also (1996) 14 ILT 247.)

***Telecommunications (Miscellaneous Provisions) Act, 1996 (Commencement) Order 1996* (SI No 385 of 1996)**

This order fixes 16 December 1996 as the date on which certain provisions of the *Telecommunications (Miscellaneous Provisions) Act, 1996* relating to worker directors and price control shall come into force. Further provisions of the Act repealing previous price control systems are brought into operation with effect from 1 January 1997.

***Telecommunications Tariff Regulation Order, 1996* (SI No 393 of 1996)**

This order, covering a group of services for which Telecom Éireann has a monopoly or a dominant position in the relevant market, places a price cap on Telecom Éireann's tariffs requiring an overall downward movement at least equal to the annual change in the consumer price index minus 6%. Within this group of services, Telecom will have flexibility to increase individual tariffs, but not by more than the annual change in the consumer price index plus 2%. A further restriction is imposed in that the average bill of a low volume user may not increase by more than the annual change in the consumer price index. The order applies on an annual basis from 1 January 1997 onwards.

TORT

***Civil Liability (Amendment) Act, 1996* (No 42 of 1996)**

This Act came into operation on 25 December 1996 (the date of its signature by the President) as regards accidents happening on or after that date. (See also (1996) 14 ILT 202 and (1997) 15 ILT 21.)

***Eamonn Howard and Ors v the Right Honourable the Lord Mayor, Aldermen and Burgesses of Dublin* (Lavan J), 31 July 1996**

Negligence—local authority—housing authority—transfer pursuant to s90, *Housing Act, 1966*—plaintiff tenant purchasers installing defective heater—plaintiffs obtaining loan from defendant housing authority pursuant to s40, *Housing Act, 1966*—implied warranty that premises transferred pursuant to s90, *Housing Act, 1966* fit for human habitation—whether duty of care arising on making of loan—whether defendant negligent—whether implied warranty applicable to installation of heater—*Housing Act, 1966*, s40—*Housing (Miscellaneous Provisions) Act, 1979*, s23.

Held: A housing authority owes a duty of care to persons to whom it makes a loan pursuant to s40 of the *Housing Act, 1966* for the purpose of carrying out works.

TRANSPORT

***Merchant Shipping (Liability of Shipowners and Others) Act, 1996* (No 35 of 1996)**

This Act was signed by the President on 14 December 1996. (See also (1996) 14 ILT 80.)

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Marriage counselling organisations

This list is supplied by the Department of Equality and Law Reform

CO CARLOW
St Catherine's Community Services Centre, St Joseph's Road, Carlow. Tel: (0503) 31354

CO CAVAN
ACCORD, Cana House, Farnham Street, Cavan. Tel: (049) 31378

CO CLARE
ACCORD, Ennis Centre, Harmony Road, Ennis, Co Clare. Tel: (065) 24297

CO CORK
ACCORD, Parochial House, Castlemagner, Mallow, Co Cork. Tel: (022) 27600
The Counselling Centre, 7 Fr Matthew Street, Cork. Tel: (021) 274951
Cork Marriage Counselling Centre, 34 Paul St, Cork. Tel: (021) 275678
Bantry Marriage Counselling Centre, St Finbarr's Church, Bantry, Co Cork. Tel: (027) 50272
Skibbereen Marriage Counselling Centre, North St, Skibbereen, Co Cork. Tel: (028) 22564
NAOMI, 36 Washington St, Cork. Tel: (021) 272213

CO DONEGAL
ACCORD, Arus Mhic Fhicheallaigh, Derrybeg, Letterkenny, Co Donegal. Tel: (075) 32333
ACCORD, Diocesan Pastoral Centre, Letterkenny, Co Donegal. Tel: (074) 22218
ACCORD, Teagasc Centre, Doonan, Donegal Town. Tel: (074) 22218
ACCORD, Inishowen Pastoral Centre, Barrack Hill, Carndonagh, Co Donegal. Tel: (077) 74103
Family Ministry Support & Development Group, Pastoral Centre, Letterkenny, Co Donegal. Tel: (074) 21853

CO DUBLIN
ACCORD, Head Office, All Hallows College, Drumcondra, Dublin 9. Tel: (01) 8371151
ACCORD, 39 Harcourt St, Dublin 2. Tel: (01) 4780866
ACCORD, Ballymun Shopping Centre, Dublin 11. Tel: (01) 8621508
ACCORD, Church Avenue, Blanchardstown, Dublin 15. Tel: (01) 8201044
ACCORD, 'St Kevin's', Monastery Rd, Clondalkin, Dublin 22. Tel: (01) 4593467
ACCORD, 7 Eblana Ave, Dun Laoghaire, Co Dublin. Tel: (01) 2801682
ACCORD, 71 Griffith Ave, Marino, Dublin 3. Tel: (01) 8338631
ACCORD, 15 Dalymount, Phibsboro, Dublin 7. Tel: (01) 8680028
ACCORD, Seatown Rd, Swords, Co Dublin. Tel: (01) 8404550
ACCORD, The Square, Tallaght, Dublin 24. Tel: (01) 4590337
ACCORD, 265 Templeogue Rd, Templeogue, Dublin 6W. Tel: (01) 4908739
Gingerbread Ireland Ltd, 29/30 Dame St, Dublin 2. Tel: (01) 6710291
Clanwilliam Institute, 18 Clanwilliam Terrace, Dublin 2. Tel: (01) 6761363/6762881
Northside Counselling Centre, Coolock Development Centre, Bunratty Dr, Coolock, Dublin 17. Tel: (01) 8484789
AIM Family Services, 6 D'Olier St, Dublin 2. Tel: (01) 6616478
Mater Dei Counselling Centre, Clonliffe Rd, Dublin 3. Tel: (01) 8371892
Marriage & Relationship Counselling Services Ltd, 24 Grafton Street, Dublin 2. Tel: (01) 8720341
Marriage & Relationship Counselling Services Ltd, 1 Main St, Tallaght, Dublin 24. Tel: (01) 8720341
Marriage & Relationship Counselling Services Ltd, Sarsfield Medical Centre, Ballyfermot, Dublin 10. Tel: (01) 8720341
Newlands Institute for Counselling, 2 Monastery Rd, Clondalkin, Dublin 22. Tel: (01) 4594573
NAOMI, 16 North Great Georges St, Dublin 1. Tel: (01) 8786156/8331300
Target, St Kevin's School, Newbrook Road, Donaghmede, Dublin 13. Tel: (01) 8671967
St Anne's Resource Centre, Fettercairn, Tallaght, Dublin 24. Tel: (01) 4526411
ELAH Voluntary Counselling Services, 48 Hamilton St, Dublin 8. Tel: (01) 4541278
Corduff Counselling Service, 10 Corduff Grove, Corduff, Dublin 15. Tel: (01) 8202764
Dublin Counselling & Therapy Centre, 41 Upr. Gardiner St, Dublin 1. Tel: (01) 8788236
Oasis Counselling Services, 1 Drumfinn Park, Ballyfermot, Dublin 10. Tel: (01) 6268519
Hesed House, 74 Tyrconnell Road, Inchicore, Dublin 8. Tel: (01) 4549474
St Brigid's Parish, Cabinteely, Dublin 18. Tel: (01) 2858835

CO GALWAY
ACCORD, Arus de Brun, Newtownsmith, Galway. Tel: (091) 562331
ACCORD, Cathedral Terrace, Tuam, Co Galway. Tel: (093) 24900
Galway Family Guidance Institute, Arus de Brun, Newtownsmith, Galway. Tel: (091) 562196
ACCORD, Family Centre, Brackernagh, Ballinasloe, Co Galway. Tel: (0905) 43573
Forum, Letterfrack, Connemara, Co Galway. Tel: (095) 41116

CO KERRY
ACCORD, The Pastoral Centre, Rock Road, Killarney, Co Kerry Tel: (064) 32644
ACCORD, St John's Pastoral Centre, Castle St, Tralee, Co Kerry. Tel: (066) 22280/(066) 20194

CO KILDARE
ACCORD, Parish Centre, Newbridge, Co Kildare. Tel: (045) 431695
RAINBOWS, Presentation Convent, Kildare Town, Co Kildare. Tel: (045) 521481

CO KILKENNY
ACCORD, St Mary's Centre, James' St, Kilkenny. Tel: (056) 22674

CO LAOIS
ACCORD, St Joseph's, Portlaoise, Co Laois. Tel: (0502) 61581

CO LIMERICK
ACCORD, Limerick Centre, 66 O'Connell St, Limerick. Tel: (061) 313287
ACCORD, Parish Centre, Newcastle West, Co Limerick. Tel: (069) 61000

CO LONGFORD
ACCORD, Family Centre, St Mel's Road, Longford. Tel: (043) 47222

CO LOUTH
Dundalk Christian Counselling Centre, Ardee Terrace, Dundalk, Co Louth. Tel: (042) 27094
ACCORD, St Patrick's Grounds, Roden Place, Dundalk, Co Louth. Tel: (042) 31731
Dundalk Counselling Centre, 'Oakdene', 3 Seatown Place, Dundalk, Co Louth. Tel: (042) 38333
Family of God Community, Bethany House of Prayer, Castle St, Dundalk, Co Louth. Tel: (042) 35851
ACCORD, 'Verona', Cross Lanes, Drogheda, Co Louth. Tel: (041) 43860

CO MAYO
ACCORD, Pastoral Centre, Cathedral Grounds, Ballina, Co Mayo. Tel: (096) 21478
ACCORD, Castle Street, Castlebar, Co Mayo. Tel: (094) 22214
Knock Counselling Centre, Knock Shrine, Co Mayo. Tel: (094) 88100
ACCORD, Pastoral Centre, Charlestown, Co Mayo. Tel: (094) 54944

CO MEATH
ACCORD, CYMS Hall, Fair Green, Navan, Co Meath. Tel: (046) 23146
Family Ministry, Dowdstown House, Dalgan Park, Navan, Co Meath. Tel: (046) 21407

CO MONAGHAN
ACCORD, St Macartan's College, Monaghan, Co Monaghan. Tel: (047) 83359

CO OFFALY
ACCORD, St Brigid's Place, Tullamore, Co Offaly. Tel: (0506) 41831

CO ROSCOMMON
Vita House, Abbey Street, Roscommon. Tel: (0903) 25898
ACCORD, St Coman's Club, Abbey St, Roscommon. Tel: (0903) 26619
The Family Life Centre, Knockashee, Boyle, Co Roscommon. Tel: (079) 63000/(079) 62012
The Family Institute of Achonry, Ballaghadereen, Co Roscommon. Tel: (0907) 61000

CO SLIGO
ACCORD, Social Services Centre, Charles St, Sligo. Tel: (071) 45641
St Michael's Family Life Centre, Church Hill, Sligo. Tel: (071) 70329

CO TIPPERARY
ACCORD, St Patrick's College, Thurles, Co Tipperary. Tel: (0504) 22279
ACCORD, Plunkett House, Shower, Newport, Co Tipperary. Tel: (062) 51521/33330
ACCORD, Loreto House, Kenyon St, Nenagh, Co Tipperary. Tel: (067) 34300
ACCORD, St Mary's Pastoral Centre, Irishtown, Clonmel, Co Tipperary. Tel: (052) 24144
Knockanrawley Resource Centre Ltd, Knockanrawley, Tipperary Town. Tel: (062) 52688

CO WATERFORD
ACCORD, 4 George's Street, Waterford. Tel: (051) 78333
St Brigid's Family & Community Centre, 37 Lr. Yellow Rd, Waterford. Tel: (051) 75261

CO WESTMEATH
ACCORD, 'Alverna', Northgate Street, Athlone, Co Westmeath. Tel: (0902) 75491
ACCORD, Social Services Centre, Bishopsgate St, Mullingar, Co Westmeath. Tel: (044) 48707

CO WEXFORD
Family Life Service, St Briget's Centre, Roches Rd, Wexford. Tel: (053) 23086

CO WICKLOW
ACCORD, New St, Wicklow Town, Co Wicklow. Tel: (0404) 67119
Marriage & Relationship Counselling Services Ltd, Bray Health Centre, Bray, Co Wicklow. Tel: (01) 8720341
Marriage & Relationship Counselling Services Ltd, Dr Rita Doyle's Surgery, Meath Rd, Bray, Co Wicklow. Tel: (01) 8720341

Continuing legal education

The essentials of personnel management

Venue: **Jury's Hotel, Dublin** Time: **2–6pm**
Date: **Thursday 20 March** Fee: **£55 per person**

The object of this seminar is to provide practitioners with an insight into the core skills of personnel management. The course will assist practitioners in developing a positive personnel policy in line with the needs of their practices. The format of the seminar will include lectures and case studies.

The seminar will focus on the following issues:

- Human resource objectives and strategies
- Recruitment and selection of staff
- How to motivate for improved performance and to motivate staff to higher levels of responsibility
- Performance management and appraisal
- Delegating work and responsibility
- How to understand, avoid and resolve conflict
- How to promote positive employee relations.

The course leader, Mary Hanson, is a training consultant who specialises in selection interviewing, performance appraisal and the development of personnel policies for leading business organisations and professional bodies. She has run a number of training programmes for the IMI. She has also run a series of management development programmes for the European Commission. She previously held posts both as a training specialist and Personnel Manager with the Institute of Public Administration and was Employee Development Manager with Bank of Ireland Lifetime Assurance.

Places available on this course are strictly limited

Application form overleaf ➜

Stress management: tips and traps

Venue: **Blackhall Place** Time: **5–7pm**
Date: **Wednesday 9 April** Fee: **£35 per person**

Stress is a widely used but little understood term. In essence, it occurs when there is a mismatch between a person's interpretation of the demands being placed on him or her and the ability to cope with those demands. Thus, stress is not tied to a situation but to an individual's interpretation of a situation.

The social system of the western world is founded largely on the work ethic. Since most of us spend at least a third of our lives in some sort of job, work is a major aspect of our lives.

The nature of a solicitor's practice which encompasses high work load, the constant necessity to meet deadlines, financial worries, the need to work long hours, relationships with clients, colleagues and staff and administrative duties would indicate that stress in the profession is a relatively commonplace phenomenon. Indeed, it has now been clearly established that stress is the trigger mechanism for many illnesses.

The object of this seminar is to enable practitioners to identify the causes, signs and effects of disabling stress. It will also seek to identify methods of managing and preventing organisational stress.

The seminar will focus on the following issues:

- The main sources of stress in the work place
- The emotional, psychological, physical and behavioural effects of stress
- Methods of minimising or eliminating stress and its effects.
- Dealing with overload
- The major techniques for changing sources of stress:
  – time management
  – delegation
  – prioritisation
  – conflict management
- Methods of increasing your tolerance of stress
- How to design an action plan to replace stress reactions by a more positive response.

The course leader, Professor Ciaran A O'Boyle, is Professor of Psychology in the Medical School of the Royal College of Surgeons in Ireland. He is a consultant psychologist to Aer Lingus, to the PARC group, to the Irish Defence Forces and to the International Air Transport Association. He is a management training consultant for the World Health Organisation. His major training specialisations are in applied psychology and stress management. He has run management consultancy and stress management courses for leading business organisations and professional bodies. He has recently lectured on this subject to members of the Law Society of Northern Ireland.

Application form overleaf ➜

Transfer of a business: implications of the Acquired Rights Directive

Venue: **Mont Clare Hotel, Merrion Square, Dublin** Time: **4–6pm**
Date: **Wednesday 16 April** Fee: **£35 per person**

The purpose of the Acquired Rights Directive and implementing Regulations are to protect certain rights of employees in the event of the business in which they are employed being transferred to a new employer. This protection only applies when there is a change of employer. Therefore, the Directive/Regulations have no relevance on a share transfer. The Regulations may apply where a transfer is effected by asset merger which could include a reorganisation within member companies of a group of companies. The Regulations will also apply to many day-to-day transactions such as sales of newsagents and pubs.

Recent decisions of the European Court have brought the Regulations into sharper focus and have widened the scope of the Directive.

The object of the seminar is to provide practitioners with an overview of the implications of the Directive and to assess its practical significance for practitioners in the context of recent developments.

Among the questions which will be addressed at the seminar are the following:

- How has the scope and effect of the Directive been expanded as a result of recent case law? In particular, is the application of the Directive restricted to commercial ventures or will it also apply to employees engaged in non-profit making activities?
- Will the Directive apply where there has been a transfer of management but no transfer of ownership/title?
- To what extent is the retention by the business of its identity a material consideration in deciding whether a transfer has taken place?
- Will the Directive apply to the transfer of part of the business? In particular, will the fact that the activity transferred is only an ancillary activity of the transferor prevent the Directive applying?
- What inquiries should be made by conveyancing practitioners at pre-contract stage and when raising *Requisitions on title*? What are the consequences of failure to make such inquiries?
- To what extent are dismissals for economic, technical or organisational reasons entailing changes in the workforce allowable?
- Is there an obligation to notify employees prior to a transfer and what information must be furnished?
- Is the transferor or transferee liable if employees' entitlements are not honoured?
- When and in what circumstances is interim/interlocutory relief available to employees?
- What is the significance of the Regulations in the context of a receivership?
- Will the Regulations apply where a court has appointed an examiner under the *Companies (Amendment) Act, 1990*?
- Will the Regulations apply to transfers which occur in the context of insolvency proceedings instituted with a view to the liquidation of the assets of the transferor?

In view of the wide-ranging implications of the Directive, detailed knowledge of this area is imperative for practitioners.

Consultants:
Gary Byrne and
Michael Kennedy,
BCM Hanby Wallace, Solicitors,
Dublin.

THE ESSENTIALS OF PERSONNEL MANAGEMENT (20 March)

STRESS MANAGEMENT: TIPS AND TRAPS (9 April)

TRANSFER OF A BUSINESS: IMPLICATIONS OF THE ACQUIRED RIGHTS DIRECTIVE (16 April)

Name _____ (BLOCK LETTERS) Firm _____

Address _____

DDE _____ Phone _____ Fax _____

Please reserve _____ place(s) for me on *THE ESSENTIALS OF PERSONNEL MANAGEMENT (£55 per person)*

Please reserve _____ place(s) for me on *STRESS MANAGEMENT: TIPS AND TRAPS (£35 per person)*

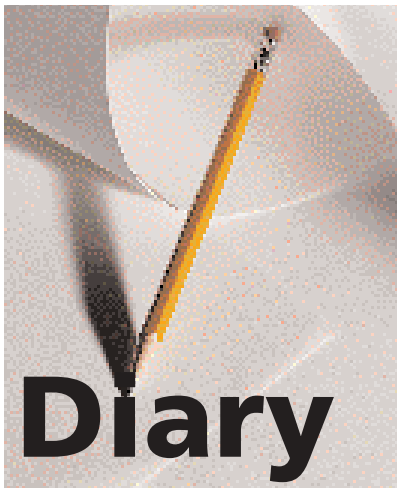
Please reserve _____ place(s) for me on *TRANSFER OF A BUSINESS: IMPLICATIONS OF THE ACQUIRED RIGHTS DIRECTIVE (£35 per person)*

I enclose cheque £ _____

Signature _____

Date _____ Year qualified _____

Please return to: Barbara Joyce, Solicitor, Law Society, Blackhall Place, Dublin 7, tel: 01 671 0200, fax: 01 671 0064.



Diary dates

CONTINUING LEGAL EDUCATION

Contact: Barbara Joyce, 01 671 0711

Topic: *The essentials of personnel management*
Speaker: Mary Hanson, training consultant
Date: 20 March
Venue: Jury's Hotel, Dublin

Topic: *Stress management: tips and traps*
Speaker: Ciaran A O'Boyle, Professor of Psychology, Royal College of Surgeons in Ireland
Date: 9 April
Venue: Blackhall Place

Topic: *Transfer of a business: implications of the Acquired Rights Directive*
Speakers: Gary Byrne and Michael Kennedy, BCM Hanby Wallace
Date: 16 April
Venue: Mont Clare Hotel, Merrion Square, Dublin

Family Law Lecture Series
Topic: Lecture 6, *Divorce legislation*
Speakers: Mary O'Toole, BL, Brian Gallagher
Date: 12 March
Venue: Blackhall Place

SEMINARS

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

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

AIJA Seminar on legal and practical aspects of Investments in the People's Republic of China
Date: 1-4 May
Contact: AIJA (*Association Internationale des Jeunes Avocats*), tel: 00322 3472808; fax: 00322 3475522

CONFERENCES

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

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

Bright young things? At the Society of Young Solicitors' Autumn Conference in Ashford Castle were (back row, from left) David Ward, Fidelma McManus, Julian Yarr (Northern Ireland Young Solicitors' Association), Law Society Director General Ken Murphy, Paul Marren, Sinead Behan, Declan O'Sullivan, Suzanne McHugh, Dave Allen (Marketing Director, National Irish Bank), Helen Allen, Susan O'Connell, David Bergin and Joe O'Sullivan. Front row: Rosemary Loftus (Mayo Bar Association), Yvonne Chapman, Orla Beatty, Walter Beatty (SYS chairman), Niamh Hyland and Wendy Hederman

Northern exposure: Deputy Director of Education, Harriet Kinahan, who has left the Law Society on one year's leave of absence to work with Co-operation North as Strategic Planning and Development Manager

(right) Senator Liam Cosgrave, solicitor, who has been elected Cathaoirleach of Seanad Éireann

Top men: Attorney General Dermot Gleeson; Bar Council Chairman James Nugent; Frank Daly, President of the Law Society; and Mr Justice Liam Hamilton, the Chief Justice

Gazette Editor Conal O'Boyle speaking at the reception, while (below) President Frank Daly officially launches the new magazine

Launch of the new *Gazette*

Director General Ken Murphy (right) with Council member Gerry Griffin, Michael Quinlan, County Registrar of Dublin, and Brendan Ryan, Administration Manager at the Four Courts

(inset) ***Gazette*** Editorial Secretaries Louise Rose and Andrea MacDermott (left and right) flanking the Law Society's Tina Beattie and Kay Byrne

WillAid Ireland's Margaret Dorgan and Carmel Harte

(right) Publisher Peter Kinahan, Shane Lynch of Aubrey Fogarty and Associates, and ***Gazette*** Advertising Manager Seán Ó hOisín

Editorial Board Chairman, Dr Eamonn Hall, brings the formal part of the evening to a close

Book reviews

Arthur Cox 1891-1965: A biography

Eugene McCague. Gill and Macmillan (1994), Goldenbridge, Inchicore, Dublin 8 .
ISBN 0 7171 2194 1. Price: £14.99 (hardback)

On 5 October 1961, the President of the Law Society, Ralph J Walker, announced to the Council of the Law Society assembled in Solicitors' Buildings in the Four Courts that he had received Arthur Cox's resignation from the Council of the Law Society and the solicitors' profession. The Council passed a formal resolution and placed on record its appreciation and gratitude for Arthur Cox's outstanding service to the Council, the Law Society and the legal profession. The resolution noted that, as an ordinary member of the Council, later as President in the Society's Charter Centenary year, and finally as Father of the Council, the advice of Cox had been invaluable to his colleagues.

Arthur Cox's resignation was accepted with deep regret and the very sincere wishes of the solicitors' profession were conveyed to Arthur in his 'new calling'. On 15 October 1961, Cox arrived at the Milltown Park Institute, the Jesuit House of Studies, to become a priest and was subsequently ordained.

At the time of his resignation from the solicitors' profession, Arthur Cox donated to the Law Society the chair of John Mitchell, attorney and author of the *Jail journal* and the bust of Chief Justice Malone by Nollekens.

Cox was born at the height of the Parnell split to a family intimately involved in the political upheaval of the time. He became a brilliant student, an accomplished public speaker and the foremost lawyer of his generation. He was a member of the Irish Senate and finally a missionary priest. When at University College, Dublin, Cox was a contemporary of Kevin O'Higgins, Patrick McGilligan and John A Costello, and he became the confidant and adviser to the creators of modern Ireland. Fr Cox was killed in a car accident on the African mission in June 1965.

Eugene McCague, a partner in the firm of Arthur Cox, has written a moving account of the life of one of the great Irish lawyers of the twentieth century, a solicitor who has left a profound mark on our legal and corporate landscape. The biography gives us the life of a man integrated with the life of a lawyer, a scholar and a clergyman. It is also written by a man, a scholar and a lawyer uniquely qualified to write it. G

JUST PUBLISHED

Northern Ireland environmental law
Sharon Turner and Karen Morrow
Gill and Macmillan (1997), Goldenbridge, Inchicore, Dublin 8
ISBN: 0 7171 2274 3.
Price: £50

EC anti-dumping law and practice
Edwin Vermulst and Paul Waer
Sweet & Maxwell Ltd (1996), Cheriton House, North Way, Andover, Hants SP10 5BE, England
ISBN: 0 421 56150 5.
Price: stg£95

Misuse of drugs and drug trafficking offences (third edition)
Rudi Fortson
Sweet & Maxwell Ltd (1996), Cheriton House, North Way, Andover, Hants SP10 5BE, England
ISBN: 0 421 56550 0.
Price: stg£39.50

Practice and procedure in the superior courts

Benedict Ó Floinn BL (consultant editor: the Hon Mr Justice Sean Gannon)
Butterworth Ireland (1997), 26 Upper Ormond Quay, Dublin 7. ISBN: 1 854475 2200. Price: £95

The need to know the rules of practice and procedure in the superior courts was highlighted by the Supreme Court only last year in the case of *Murphy v Donohoe*. Mr Justice Barrington said: 'The courts have repeatedly stated that rules of procedure exist to serve the administration of justice and must never be allowed to defeat it. Nevertheless, those who ignore the rules run the risk of finding themselves on an uncharted sea'.

Until now, the navigational chart of practitioners has been the *Rules of the superior courts*, drawn up by the Rules of Court Committee and published ten years ago by the Stationery Office. With more than 1,000 pages and weighing in at three-and-a-half pounds, the RSC doesn't exactly make for lightweight reading. Subsequent changes and additions, such as those introduced by SI 265 of 1993, make the old *Rules* of limited value.

But now a new book, by barrister Ben Ó Floinn and former High Court judge Sean Gannon, overcomes the problem by gathering all the current *Rules* into one volume. The 82-page index shows that it includes everything from 'Abatement, certificate of solicitor' to 'Witness, master, before the'!

Tipping the scales at more than four pounds and with almost 1,500 pages, it's even heftier than the original *Rules* – and nearly two-and-a-half times as dear. But for solicitors or counsel whose work involves the initiation of proceedings, drafting of pleadings or presentation of cases in the superior courts, it's a vital addition to the bookshelf.

The book is effectively an annotated *Rules*, with each rule set in bold type, followed by an interpretation section, illustrated by well over a thousand examples of case law. It includes Orders 11A, 11B, 13A and 42A relating to parties out of the jurisdiction, as well as Order 70A on family law proceedings and Orders 75A and 75B on *Companies Act* proceedings.

Oddly, although the margins have been reduced to squeeze in all the text, the publishers have chosen to include superfluous cross-references to common issues such as service, motions and pleadings on almost every page. It might have been simpler to mark such words in the text with an asterisk and to include a referenced index of the meanings of the words.

Naturally, with a book of this size and scope, one expects a few errors to slip through: reference to the 1988 *Judgments* (rather than *Jurisdiction*) of *Courts Act* was one that jumped out of page 39. But with spell checks now available on most software programs, it's odd to see typographical errors, such as 'medicl' on page 250 or 'suuported' on page 548.

It is also somewhat surprising that the publishers didn't delay publication for a couple of months until the new *Rules of Court* for divorce were available. They are an important omission from what is otherwise an invaluable and timely publication. G

Kieron Wood is a barrister and was formerly RTE's legal correspondent. His simplified guide to High Court practice and procedure is due to be published later this year.

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 7 March 1997)

Regd owner: Mary O'Doherty; Folio: 23242; Lands: of Killasseragh in the Barony of Duhallow; Co Cork

Regd owner: Nora Larkin; Folio: 3568; Land: Coolanure; Area: 95a 2r 20p; Co Kings

Regd owner: Patrick Byrne; Folio: 3140; Lands: Ballinasilloge barony of Arklow; Co Wicklow

Regd owner: Mary Bernadette O'Regan; Folio: 4307F; Lands: of Ardarrig and barony of Cork; Co Cork

Regd owner: Hanora O'Connor (deceased); Folio: 14711; Land: Abbeyfeale West; Area: 0a 0r 20p; Co Limerick

Regd owner: Aodoghan O'Rahilly; Folio: 47r; Land: Deffier; Area: 23a 1r 1p; Co Leitrim

Regd owner: John Flanagan; Folio 38L; Land Puttaghan; Co Kings

Regd owner: George Delaney; Folio: 5890 closed to 6477F; Land: Prop 1 and 4 Coolbaun, Prop 2, 3 and 5 Gorteen; Area: Prop 2, 3 and 5 5.197(h), 8.463(h) and 7.485(h), Prop 1 and 4 3.571(h) and 2.734(h); Co Kilkenny

Regd owner: Edmund D Roche; Folio: 17393F; Land: Ballygillistown; Area: 0.371 acres; Co Wexford

Regd owner: Brendan Forde, Moyleen, Loughrea, Co Galway; Folio: 17174; Townland: Fairfield (part); Area: 9a 1r 10p; Co Galway

Regd owner: Patrick Millea; Folio: 687; Lands: Wallslough; Area: Prop 1 13a 0r 23p, Prop 2 18a 3r 30p; Co Kilkenny

Regd owner: Ludwig and Mary Tschabold; Folio: 19838; Land: Anneville or Rathduff; Area: 0a 2r 0p; Co Westmeath

Regd owner: Mary Murphy, Devlis, Ballyhaunis and Kiltibo, Ballyhaunis, Co Mayo; Folio: 2662; Townland: Cherryfield; Area: 5a 2r 18p; Co Mayo

Regd owner: Neil A Bracken and Catherine C Bracken; Folio: 2262F; Land: Keadew, barony of Boylagh; Area: 2a 2r 2p; Co Donegal

Regd owner: Georgina Roche; Folio: 11458F; Land: Altahalla; Area: .186a; Co Donegal

Regd owner: Peter McTague; Folio: 1003L; Land: Killegland; Area: 0a 0r 10p; Co Meath

Regd owner: Martin (otherwise Noel) Kearney, Carrowcullen, Ballycastle, Co Mayo; Folio 30342; Townland: 1. Carrowkilleen, 2. Carrocuilleen, 3. Aghaleague, 4. Aghaleague, 5. Aghaleague (an undivided moiety); Area: 1.30a 2r 19p, 2. 74a 2r 27p, 3. 11a 3r 12p, 4. 12a 2r 29p, 5. 14a 2r 30p; Co Mayo

Regd owner: Kate Higgins, Cloongoonagh, Tourlestrane, Ballymote, Co Sligo; Folio: 3765; Townland: Part of the lands of Banada; Area: 6a 1r 33p; Co Sligo

Regd owner: James Langan, Carrowlacka, Kilmovee, Ballaghaderreen, Co Mayo; Folio: 3393; Townland: Carrownlacka; Area: 20a 3r 26p; Co Mayo

Regd owner: Donal Lynch; Folio: 10229; Lands: Killeen, Slievereagh, in the Barony of Muskerry West; Co Cork

Regd owner: John Nagle and Mary Nagle, Villa Nova, Ballyhannon South, Quin, in the County of Clare; Folio: 1806F; Townland: Ballyhannon South; Area: 0a 1r 39p; Co Clare

Regd owner: Liam Cormyn (orse Cornyn) and Grace Johnston; Folio: 960F: Land: Tullynapurtin; Area: 6a 0r 0p; Co Leitrim

Regd owner: Juergen Gerlach and Inge Gerlach (nee Jetter), Castletown, Cross, Claremorris, Co Mayo; Folio: 1004F; Townland: Castletown (E.D. Houndsnood); Area: 2a 1r 27p; Co Mayo

Regd owner: Patrick Noel and Margaret Kiernan; Folio: 1717F; Land: Ballinderry; Co Westmeath

Regd owner: John J Harran, The Quay, Ballina, Co Mayo; Folio: 34716; Townland: Culleens; Area: 22.305 acres; Co Mayo

Regd owner: Reverend Cecil McGarry SJ, Reverend John Hughes SJ, Reverend Patrick Meagher SJ, and Reverend Thomas Morrissey; Folio 27370 and 14646; Land: Dooradoyle; Area: 0a 1r 5p and 67a 0r 16p; Co Limerick

Regd owner: Pauline Ann McQuillan; Folio: 21589F; Land: Ballymacarthur; Area: 0.544 hectares; Co Donegal

Regd owner: Thomas McDonald (deceased); Folio: 5488; Land: Greaghagibney; Area: 12a 0r 13p; Co Cavan

Regd owner: John Laverty; Folio: 35763; Land: Drumboe Lower: Area 8a 2r 20p; Co Donegal

Regd owner: Patrick Woulfe (deceased); Folio: 4232F; Land: Derreen; Area: 0a 3r 28p; Co Limerick

Regd owner: Nicholas Cheasty (deceased); Folio: 645; Land: Ballykinsella; Area: 27a 3r 0p; Co Waterford

Regd owner: Phil Callan (deceased); Folio: 1953; Land: Prop 1 Agheeshall, Prop 2 Corrateeon; Area: Prop 1 9a 3 r 35p, Prop 2 27a 3r 35p; Co Monaghan

Regd owner: The County Council of the County of Wexford; Folio: 20527 and 20598; Land: Prop 1 Mauritiustown, Prop 2 Rosetown; Area: 1a 3r Op and 22a Or 22p; Co Wexford

Regd owner: Patrick Brogan, Sraheen, Foxford, Co Mayo; Folio: 17422; Area: 29a 1r 2p; Co Mayo

WILLS

Mulhall, Eileen, deceased, late of 192 Kincora Road, Clontarf, Dublin 3 and former of 18 Seapark Drive, Clontarf, Dublin 3. Would any person having knowledge of a will executed by the above named deceased who died on 11 November 1996, please contact A T Diamond & Company, Solicitors, 217 Clontarf Road, Clontarf, Dublin 3, tel: 8333792; fax: 8334126.

Donnelly, Nuala Mary, deceased, late of 3620, Lorne Crescent, Montreal, Quebec, Canada and formerly of Buckit Nanas, Carrickbrennan Road, Monkstown, County Dublin. Would any person having knowledge of a will, including a will dated 21 March 1991, executed by the above named deceased who died on 26 June 1996, please contact Messrs Eugene F Collins, Solicitors, 61 Fitzwilliam Square, Dublin 2 (Ref: JC), tel: 6761924; fax: 6618906.

Glass, Albert, deceased, late of 129 Greenhills Court, South Douglas Road, Cork and formerly of Lough Hyne, Skibbereen, Co Cork. Would any person having knowledge of a will executed by the above named deceased who died on 17 January 1997, please contact P J O'Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co Cork, tel: 023 41322; fax: 023 44669.

Lehane, John, deceased, late of Carriginass, Kealkil, Bantry, Co Cork. Would any person holding a will made by the above named deceased who died on 18 January 1997 at Mount Carmel Hospital, Clonakilty, please contact O'Mahony Farrelly, Solicitors, Wolfe Tone Square, Bantry, Co Cork (Ref: FOM/KL/71274), tel: 027 50132; fax: 027 50603.

Pettigrew, Ita, deceased, late of 37 Ardpatrick Road, Navan Road, Dublin 7. Would any person having knowledge of a will executed by the above named deceased who died on 17 November 1996, please contact C J Louth & Son, Solicitors, Ferrybank, Arklow, Co Wicklow, tel: 0402 32809; fax: 0402 31126.

O'Brien, Eileen (otherwise Eily), deceased, late of Loughbeg, Ballyallinan, Rathkeale, Co Limerick. Would any person having knowledge of a will executed by the above named deceased who died on 4 February 1997, please contact Casey & Company, Solicitors, Rathkeale, Co Limerick, tel: 069 64045; fax: 069 64783.

Cronin, Jeremiah, deceased, late of 8 Coyle Square, Evergreen Road, Cork. Would any person having any knowledge of a will executed by the above named deceased who died on 13 December 1996, please contact Michael Powell & Company, Solicitors, 48 Grand Parade, Cork, tel: 021 270451; fax: 021 270454.

Durkan, Bridget (otherwise Durcan), deceased, late of Carrowcushlaun, Ballina, Co Mayo and formerly of The Sacred Heart Home, Castlebar, Co Mayo and formerly of The Nurses Home, Mater Hospital, North Circular Road, Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 27 September 1995, please contact Ian Dodd, Solicitor, Abbey Street, Ballina, Co Mayo, tel: 096 21611; fax: 096 22227.

Lloyd-Blood, **Nevil,** deceased, late of 10 Winton Road, Dublin 6. Would any person having knowledge of a will executed by the above named deceased who died on 16 January 1997, please contact Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4, tel: 6689622; fax: 6689004.

Good, James, deceased, late of 74 Pembroke Cottages, Donnybrook, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 9 January 1997, please contact Maurice Leahy & Company, Solicitors, 165/169 Howth Road, Killester, Dublin 3 as soon as possible, tel: 8336670.

Cullen, Sean, deceased, late of 20 Haddington Road, Ballsbridge, Dublin 4. Would any person having knowledge of any will or wills executed by the above named deceased who died on 28 April 1996, please contact McKeever Rowan, Solicitors, 34 Fitzwilliam Square, Dublin 2, tel: 6767034; fax: 6611053.

Bennett, William Leo, deceased, late of Tunduff Park, Abbeyleix, Portlaoise, Co Laois. Would any person having knowledge of the whereabouts of a will executed by the above named deceased who died on 21 July 1995, please contact Messrs Fetherstonhaughs, Solicitors, Coote Terrace, Mountrath, Co Laois, tel: 0502 32535; fax: 0502 32770.

Keane, Martin, deceased, late of 30 Rathvale Park, Ayrfield, Dublin 13. Would any person having knowledge of any will executed by the above named deceased who died on 8 September 1996, please contact Robert Walsh & Company, Solicitors, 2 Herbert Street, Dublin 2, tel: 6612823; fax: 6612045.

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 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, TEW 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.

Westport: Bord Failte Highest Grade Self/Catering Home overlooking Westport Quay and Clew Bay. Adjacent to all amenities, 4 bedrooms, conservatory, en suite master bedroom, tel: 098 27333.

Solicitor required for Midland practice for conveyancing and probate work. Applications to J Harrington & Company, Accountants, Main Street, Moate, Co Westmeath.

For sale Irish Current Law Statutes Annotated. 1984 to date. Please contact 046 40753.

Irish Law Reports Monthly 1978-1986 plus Index '91-'95 (10 vols.). List price £1,185, sell for £500 ono Also Society of Young Solicitors vols. 1-9 £200, tel: 091 565873.

For sale ordinary seven day publican's licence, Co Monaghan. Contact Barry, Hickey & Henderson, Solicitors, Clones, Co Monaghan, tel: 047 51004.

For sale seven day ordinary publican's licence. Replies to Pat Enright, Lees Solicitors, 45 Church Street, Listowel, Co Kerry, tel: 068 21279.

Wanted seven day licences for rural area. Apply Harry P Hunt & Company, Solicitors, Market Square, Cavan, tel: 049 32947; fax: 049 32922.

EMPLOYMENT

Experienced legal secretary available to work at home. Own computer - Microsoft Word 7, tel: 01 493483.

NOTE FOR ADVERTISERS

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