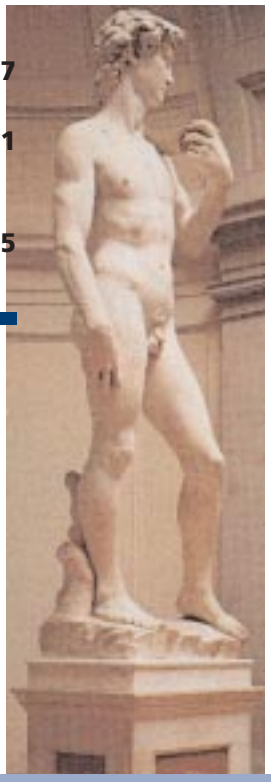
GAZETTE

REGULARS



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A year of progress

Well, I suppose I shouldn't be too surprised – I did put the 'development of the *Law Society Gazette* into a modern and dynamic magazine' as one of my main aims for my year as President. The fact that the *Gazette* recently carried off the top prizes at the prestigious *Irish Independent*/Communicators in Business magazine awards is a source of great pleasure for me – and pride for the profession.

Gazette Editor Conal O'Boyle was named *Editor of the Year* and Designer Nuala Redmond won the prize for *Best Design*. Congratulations to all concerned. The awards reflect all the hard work that has gone into the magazine since its relaunch back in February, and the fact that this recognition comes from their peers in the world of publishing must make their satisfaction even greater.

The response of members to the new *Gazette* has been overwhelmingly positive and enthusiastic. Indeed, the magazine has had such an impact that a sister Law Society recently sent over a team to meet Conal to discuss how their publication could similarly be revamped. I hope you will continue to submit material to the *Gazette*, particularly letters, comment, pictures, bar news and articles. I would particularly like to see more contributions of the *Dumb and dumber* kind that appear in this issue (page 7) and the last issue. You might even win a bottle of champagne for your trouble!

This will be my last message to you as President. These last 12 months seem to have flown by so fast, but I hope I can look back with pride on a year in which the Society has made great progress on a number of important fronts.

The annual conference in Barcelona was a wonderful success and thoroughly enjoyed by everyone who made the trip. This was only the second time that the conference had been held abroad but it turned out to be the best attended to date. I hope even more of you will make the journey to the wonderful Italian city of Florence next April (for a sneak preview, turn to the centre pages).

Another important step was the recent appointment of Eamon Condon as the Law Society's Independent Adjudicator. Mr Condon is responsible for examining and investigating the way the Society handles complaints made by members of the public against solicitors. His appointment is proof positive of our commitment to a transparent and effective complaints procedure. The Adjudicator's office is located at 26/27 Upper Pembroke Street, Dublin 2, and he can be contacted on 01 662 0457 (fax: 01 662 0365).

We've fought the good fight on a number of other fronts on your behalf also – from arguing that the pool for judicial appointments should be widened so that solicitors should be eligible for direct appointment as judges in all courts to fighting back against the new superior court rules that were introduced in September (see last month's *Gazette*, page 3). And in between we've tried to defend the profession against the usual slings and arrows of unwarranted criticism that are launched against us with monotonous regularity.

It has been a tough year – but a good one. I would like to take this opportunity to thank all those who have helped make my presidential year the success it has been. In particular, I would like to thank my Vice President Laurence Shields and Junior Vice President Elma Lynch for their unstinting help and support. I am sure that Laurence's presidency will see the Society go from strength to strength.

I would also like to put on record my appreciation for the support and encouragement I received from Director General Ken Murphy and Deputy Director General Mary Keane throughout my tenure. Thank you, one and all.

Finally, I would like to thank my wife Pat for her love and support. I couldn't have wished for a better companion during what has been a tremendously fulfilling year as your President. G

Frank Daly
President

A passion for the truth

'Truth, fact, is the life of all things; falsity, fiction or whatever it may call itself, is certain to be the death'. Ireland's official truth-seeker in relation to criminal wrong-doings, Director of Public Prosecutions, Eamonn M Barnes, did not coin these words; the celebrated philosopher, historian and critic Thomas Carlyle wrote them. Yet most of the professional life of Eamonn Barnes has been dedicated to searching for truth and justice – 'the life of all things'.

Director of Public Prosecutions Eamonn Barnes: steely determination

International Association of Prosecutors

This passion, this mission, the quest for truth and justice, have motivated the first holder of the office of the Director of Public Prosecutions in Ireland to play a pivotal role in the foundation of an international association of prosecutors.

In 1994, Eamonn Barnes became a founding member of a committee of prosecutors which subsequently established the International Association of Prosecutors at the United Nations Office in Vienna in June 1995. He was elected the first president of the prestigious international body and presided at the second international conference of the association in Ottawa this September.

When the office of Director of Public Prosecutions was established in 1975, trans-national crime did not greatly worry this nation. Yet the mid 1970s witnessed a new phenomenon in Ireland. Remember Nell McCafferty's focal articles in *The Irish Times* during the turbulent decade of 1970 to 1980.

In her book, *In the eyes of the law* (1981), a collection of her law reports – the articles in *The Irish Times* – she chronicles an era that brought into the open that which, to a significant extent, had remained secret and secure behind closed doors. Cabinet Ministers appeared in the dock; businessmen who assaulted each other in discotheques, husbands who physically molested their wives and mistresses, wives who occasionally assaulted their husbands, and an assortment of burglars, fraudsters and murderers were all publicly called to account – sometimes in the most dramatic circumstances. Religion, sex and politics, and their aberrations (albeit in a milder form than we witness today), presented their dark sides. The awesome responsibility of whether to prosecute or not has rested with the DPP, Eamonn Barnes, since 1975.

The rule of law

The office of the DPP and its first director soon established a centralised and uniform system of prosecution for the entire country. This demonstrated a vigorous assertion of a profound commitment to the rule of law, the bulwark of civilisation. Yes, there may be a crisis of disbelief among many today, but the search for truth and justice – the hallmarks of a civilised society – must never be abandoned.

Dangerous new challenges

Today, international co-operation in criminal law enforcement is crucial. The objectives of the International Association of Prosecutors include the promotion of effective and efficient prosecutions with the highest standards in the administration of criminal justice. Full international co-operation, the rapid, worldwide exchange of information regarding developments and techniques deployed by prosecutors in confronting the new and dangerous challenges posed by crime as we face the new millennium, constitute the fundamental objectives of the association.

The rule of law, in its finest attributes, surrounds us as invisibly and impalpably as the air we breathe and, as one wise person noted, almost as unnoticed as the health we appreciate only after it is lost. If we lose respect for the rule of law, we edge closer to the abyss.

The International Association of Prosecutors is the first and only worldwide organisation of prosecutors. Its formation reflects deep concern about the rapidly-rising menace of organised and international crime and the urgent necessity for an effective and coherent response from those who believe in the rule of law. The new international body includes in its membership prosecution services and associations of prosecutors in every region of the world, representing nearly 200,000 prosecutors. The Secretary General of the Bureau of the Association, Henk Marguart Scholtz, is based in Groningen, The Netherlands. The communications network of prosecutors will secure international co-operation to ensure that serious, violent and organised crime will be retarded and reversed.

A Sligo man, Eamonn Barnes is one of the longest-serving senior officer holders of distinction in Ireland. He possesses 'the genius of friendship'. Affable in a personal sense, he is modest about his national and international honours. He is motivated by a steely determination to pursue, within the confines of the criminal law, the cardinal virtue of justice together with its sister virtue, truth, upon which our society hinges. G

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

Company accounts and the solicitor's liability

To what extent, if any, do solicitors have an obligation to their commercial clients to ensure that they realise the significance of their statutory obligations, including that annual returns and accounts are filed?

Recent decisions in England, which have persuasive value to a greater or lesser extent here, seem again to be widening the duty of care that solicitors have to their clients, after a period of retrenchment in the early 1990s. The House of Lords decision in *White v Jones* two years ago put down a marker that solicitors neglecting to act on instructions to draft a will have a duty in tort to disgruntled would-be beneficiaries.

Could this decision conceivably help to ease the way in certain circumstances towards a duty by a solicitor to dissatisfied unpaid creditors of an insolvent company, where the company claimed it was unaware of the requirement to file proper accounts or even continued to trade after dissolution?

Fool's pardons increasingly rare

Of course, the courts are less and less indulgent to directors of such plaintiff companies and granting them a 'fool's pardon' is an increasing rarity. But if an insolvent company and its directors have a case to answer in misleading the market or individual companies by not complying properly with their statutory obligations, might pleas of ignorance ('my solicitor never advised me') conceivably lead to their solicitors being joined in litigation?

In the *White* case, Lord Justice Steyn felt that there ought in principle to be no distinction between negligence by commission or omission. 'The real question is whether it is fair, just and reasonable that the law should impose a duty', he said.

With commercial litigation growing in volume and the chancery courts in the Four Courts becoming ever busier, judges are increasingly being asked to decide on a wider range of issues. This year, again in London, a non-executive director of an insolvent company was disqualified from being a director because of his admitted inability to read the accounts. If he had bothered to read and understand the accounts, he would have discovered certain illegalities.

Duty to advise clients

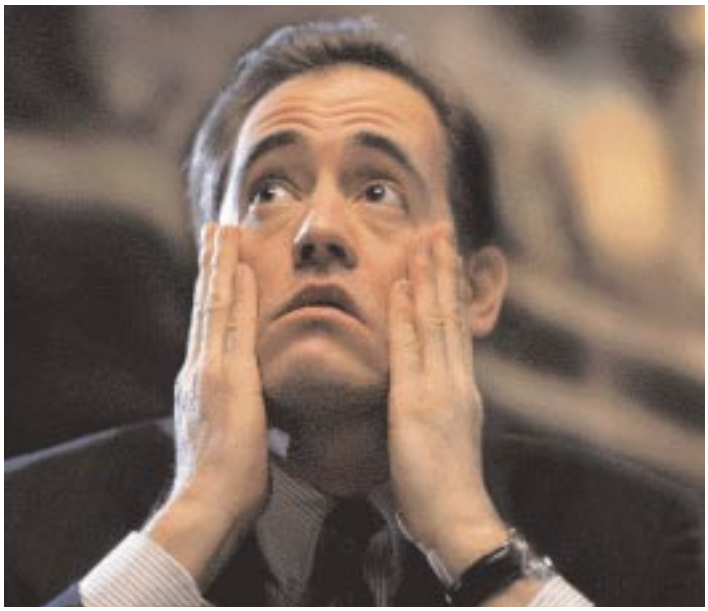
As enforcement of directors' duties increases (and with many directors apparently unaware of such a thing as directors' insurance), solicitors might become increasingly called on to advise errant directors of the dangers. Last December, Mr Justice Shanley in the High Court made a company director personally liable for the company's unpaid debts because the company had failed to keep proper books and records (in breach of section 204 of the *Companies Act, 1990*). The judge suggested that solicitors might have a duty to advise their commercial clients about the proper running of their companies.

Recently released figures show that more than 74,000 companies did not lodge their annual accounts with the Companies Office and thus comply with the EU's Fourth Directive. As a result, information, including accounts (however basic), is not available to their suppliers and their lenders.

And in another High Court case earlier this year, Mr Justice Kelly complained that decisions of the directors of a small company before him were made in a fairly informal way by consensus rather than by voting. He held that one particularly important meeting of directors and others was not a properly convened board meeting and that a decision to seek to have the company placed under the protection of the court was not properly reached.

It seems reasonable to ask whether such non-compliance with their own constitutions and with the *Companies Acts* is so unusual and whether company solicitors might be held to have some responsibility. It might be argued that the average local tennis club seems to have more respect for proper rules and procedures than many companies in the marketplace.

Most of Ireland's 153,000-plus companies are small, private family companies, often with just one person actually running the business. Do their solicitors have a duty to remind them that their business is a creature of statute?



The threat of exposing directors of companies to full personal liability is a serious one, particularly since the *Companies Act, 1990*. While directors of many companies are already personally and significantly exposed to banks and other lenders, it is still a stick with which to beat a careless director. So too is the threat of disqualification or restriction of a director by the court.

In England, there is an ongoing debate about the competence of directors and whether they are adequately trained for their often serious responsibilities. Research by the Industrial Society found many directors to be 'astonishingly ill-informed' and boardrooms to be 'remarkably complacent' about the scope of directors' roles in companies.

Sanctions for non-compliance

The recent figures here would suggest massive gaps in both knowledge of, and respect for, the law among Ireland's commercial community. There have been a number of false starts in promising greater enforcement of the *Companies Acts* for the benefit of all in business. Many would argue that compliance with company law should not be optional and that sanctions for non-compliance should be fully applied.

Former Commerce Minister Michael Smith was recently reported as saying that company law reform was to take place. For those of us awaiting significant reforms since the Company Law Review Group made its recommendations in early 1995, the legislation will be welcomed. In the meantime, perhaps more attention might be given to our existing laws – by companies and their professional advisors. G

Pat Igoe is principal of Dublin-based firm Patrick Igoe and Company.

Competition law and the Euro: All change please

Now that the United Kingdom government has made clear its position that it will not, barring certain (undefined) unforeseeable circumstances, enter European economic and monetary union before the next British general election, we can all get on with facing up to the reality that EMU will be launched on 1 January 1999 with a large number of the remaining Member States, including Ireland. It is time to put behind us the arguments as to whether Ireland should join the single currency without the UK and instead face up to the future.

Without a doubt, the difficulties, from an economic and political point of view, are profound. Nevertheless, given that most Member States will be taking part in this venture and given the political will in those countries that it will succeed, as well as the recently declared support of the United States government, the hope must be that the UK will follow a policy of economic convergence with a view to joining early in the next millennium.

More than an exercise

Political and economic uncertainty may remain for some time to come, but it is now time for lawyers to realise that this whole project is more than an exercise in monetary policy. There are numerous ways in which the law will be affected. First and foremost of these is that contracts which are presently drawn up specifying payment in any one of the national currencies which will become part of the Euro will have to reflect the new currency. The Council of the European Union has already anticipated such problems and has adopted Council Regulation (EC) No 1103/97 on certain provisions relating to the introduction of the Euro. This provides that, subject to anything which contracting parties may have agreed, the introduction of the Euro shall not have the effect of altering any contract or of discharging or excusing performance.

Leaving aside strict monetary aspects, there are other broader issues at stake. Certain members of the European Commission have made it clear that they view the introduction of the single currency as the correct time to strengthen the single market aspects of competition policy. The present review of the law on vertical restraints, announced in a Green Paper earlier this year, is only one aspect of this. The single currency is also likely to have a broader impact on other competition law issues, such as merger control. This follows from the impression given by the Commission that it takes the view that, with the arrival of a common currency, it ought to be able to apply competition policy in a more transparent and rigorous manner.

From the Irish point of view, it is the change of strategy on state aid that will give rise to the most serious cause for concern. State aid, which has often been treated as the less important side of EC competition policy, presents particular difficulties for the Commission. On the face of it, the EC treaty declares state aid to be incompatible with the common market. Yet the treaty also provides that the Commission can declare certain types of aid to be permissible. Mostly, those aids which are permitted concern regional or industrial aid for the benefit of the less well-off areas.

Not politically viable

It is inconceivable that the Member States will be willing to abandon all state aid. Yet it is also becoming increasingly obvious that the Commission has finally taken the view that it is not politically viable for it to take a stronger position against aid which distorts competition in the common market.

In the last year, there have been a number of incidents in which workers and industry in one Member State have complained bitterly about decisions to invest in another Member State which appear to be the result of state aid. The decision by Renault to close a factory in Belgium because better state aid was available elsewhere led to massive demonstrations on the streets. Similar problems arise because of aid granted in several other countries. As regards Ireland, there is increasingly a view being touted in the international financial press that the low rate of corporation tax, which is subject to clearance by the European Commission in so far as it concerns state aid, is distorting investment decisions from the United States in various industrial sectors. Such reports are causing obvious concern in Irish circles.

Distorting competition

While there is nothing new in state aid as such, the single currency will make it all the more obvious that favourable tax rates, in particular, distort competition and investment decisions. Although the Commission is preparing a code of conduct in relation to tax regimes in the EU with a view to making them more transparent, it is clear that one knock-on effect of the single currency will eventually be a closer alignment of the basic rules governing the corporate tax systems.

New competition law rules are in the offing. Continuing developments in familiar areas such as distribution, agency and franchising are shortly to be joined by a new Community regime on state aid. This will make the involvement of competitors in the control of state aid much more important. It is time for lawyers to face up to the importance for them of the single currency. G

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

Criminal injury compensation revisited

From: Patrick Cooney, Athlone, Co Westmeath

In the August/September issue, your correspondent John J Madigan writes that the scheme of compensation for criminal injury was introduced following the bombings of 1974.

My recollection is that the government decision to bring in that scheme preceded those outrages and was based on a wish to end the anomaly whereby the law provided for compensation for criminal injury to one's property but not to one's person.

The scheme was introduced on a non-statutory basis to get it up and running as quickly as possible but this approach made it more vulnerable to change, which happened, as your correspondent points out.

Society (in the person of the Minister for Finance) has now to decide again what measure of damages, if any, it wants to use to compensate its members unfortunate enough to be innocent victims of a criminal assault.

Dumb and dumber

From: Michael V O'Mahony, McCann FitzGerald, Dublin

The following are actual statements found on insurance forms where car drivers attempted to summarise the details of an accident in fewer possible words. They rather serve to confirm that even incompetent writing can be highly entertaining.

- Coming home, I drove into the wrong house and collided with a tree I don't have.
- The other car collided with mine without giving warning of its intention.
- I thought my window was down, but I found it was up when I put my head through it.
- I collided with a stationery truck coming the other way.
- The guy was all over the road. I had to swerve a number of times before I hit him.
- I pulled away from the side of the road, glanced at my mother-in-law and headed over the embankment.
- In an attempt to kill a fly I drove into a telephone pole.
- I had been shopping for plants all day and was on my way home. As I reached an intersection a hedge sprang up, obscuring my vision, and I did not see the other car.
- I had been driving for 40 years when I fell asleep at the wheel and had an accident.
- I was on the way to the doctor with rear-end trouble when my universal joint gave way causing me to have an accident.
- As I approached an intersection, a sign suddenly appeared in a place where no stop sign had even appeared before. I was unable to stop in time to avoid the accident.
- To avoid hitting the bumper of the car in front, I struck a pedestrian.
- My car was legally parked as it backed into another vehicle.
- An invisible car came out of nowhere, struck my car and vanished.
- I told the police that I was not injured, but on removing my hat found that I had a fractured skull.
- I was sure the old fellow would never make it to the other side of the road when I struck him.
- The pedestrian had no idea which way to run as I ran over him.
- I saw a slow moving, sad-faced old gentleman as he bounced off the roof of my car.
- The indirect cause of the accident was a little guy in a small car with a big mouth.
- I was thrown from my car as it left the road. I was later found in a ditch by some stray cows.
- The telephone pole was approaching. I was attempting to swerve out of the way when I struck the front-end.

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

Send your examples of the wacky, weird and wonderful to the Editor, *Law Society* kkhall Place, you can fax 671 0704.

Gazette scoops top awards

The *Law Society Gazette* has scooped the top prizes in Ireland's leading magazine awards.

Gazette editor Conal O'Boyle was named *Editor of the Year*, and designer Nuala Redmond won the prize for *Best Design* in the *Irish Independent*/Communicators in Business Awards 1997. The magazine also won a commendation for best non-staff publication. The prizes were presented by Public Enterprise Minister Mary O'Rourke in Dublin last month.

'The *Law Society Gazette* now has one of the most experienced and talented magazine teams in the business', said O'Boyle, 'and these awards are a tribute to their hard work. Considering that we only redesigned and relaunched the magazine in February, this is an extraordinary achievement'.

This is the third year in a row that O'Boyle's magazines have won awards. Before taking over the *Law Society Gazette* in September 1996, he was Deputy Editor of *Certified accountant* magazine and Editorial Manager at Cork Publishing.

Conal O'Boyle accepts the prize for *Editor of the Year* from Minister for Public Enterprise Mary O'Rourke. Also pictured is Frank Mulrennan, Business Editor of the *Irish Independent*

Under his stewardship, *Certified accountant* swept the boards at the 1995 Communicators in Business Awards, winning first prize for writing, a certificate of excellence in design and overall award for best editor. Last year it won first prize for design, and a certificate of excellence for writing.

Gazette's winning team (from left): Editorial Secretaries Catherine Kearney and Andrea MacDermott, Advertising Manager Sean Ó hÓisin, Editor Conal O'Boyle, Reporter Barry O'Halloran, and Designer Nuala Redmond

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in September: Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £9,764; Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2 – £436,638; Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £4,340; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £9,027.

Snap, Crackle and Pop in integrity shocker

Four out of five people in Britain trust Snap, Crackle and Pop more than their judges or policemen. According to a recent report from commercial think-tank, the Henley Centre, over 80% of British people have more faith in brand names like Kellogg's and Heinz than in traditional institutions.

Research for *Planning for social change 1997* found the vast majority of people trust the food manufacturers to be 'honest and fair', while far fewer numbers look up to the police and judiciary. A massive 83% believe what they read on a Kellogg's cereal box, and if Heinz says it meanz beanz, then 81% won't doubt the company for a second.

Judges have the trust of only 43%, while the British bobby fares better, with the respect of 62%. But a few great British institutions – Marks and Sparks, Sainsbury's and Tesco – still have the hearts and minds of the masses. In fact, anything Marks says is rated as highly as a cornflakes ingredients list: the retailer's integrity is unquestioned by 83%, while 74% believe Sainsbury's and 71% give the thumbs up to Tesco.

BRIEFLY

New streamlined system for share sales

New stamp duty procedures being introduced this month will streamline the sale of unquoted shares. A new SD4 form will tell practitioners how particular share transfers will be treated when presented for stamping. It will also outline the supporting papers needed and when they should be submitted. The procedures are being introduced on a pilot basis from 10 November by stamp duty offices in Dublin and Cork. They will be reviewed after four months. A mailshot explaining the new system, along with copies of the forms, will be sent to solicitors by the Revenue Commissioners this week.

Circuit Court rule change

Following a ruling on 16 October by acting Circuit Court President, Diarmuid Sheridan, order 59, rule 14 of the *Circuit Court Rules, 1950* no longer applies in the Circuit Court in relation to SI No 348 of 1997, *Rules of the superior courts (No 7) of 1997*. The regulation provides that: 'Where there is no rule provided by these *Rules* to govern practice or procedure, the practice and procedure of the High Court may be followed'. Pending the introduction of Circuit Court procedures in relation to the provisions of section 45 of the *Courts and Court Officers Act, 1995* (No 31 of 1995), the existing practice and procedure of the court will continue to operate.

ECJ hits info superhighway

Up-to-the-minute European Court of Justice (ECJ) judgments are now available on the Internet. The full text of all ECJ rulings will be on the Net in 11 different languages as soon as they are delivered. Several keywords will help you find the case you want, including dates, parties' names, case numbers, or area of law. You can access the court's page directly on: www.curia.eu.int

Competition watchdog scores own goal

The Competition Authority has scored an own goal. The competition watchdog recently advertised for a legal adviser but confined applications to barristers.

The job was advertised in the national and international press. It sought someone to advise the authority on competition law; and to take an active role in investigating breaches, including organising and leading searches, and advising on the law relating to collecting evidence and conducting investigations. But the competition was open only to barristers who have practised in this country for four years, and who have four years' experience in relevant litigation.

Law Society Director General Ken Murphy slammed the authority for flouting the basic principles of free and fair competition. Writing to both the Tanaiste Mary Harney and the Competition Authority itself, he demanded that the body re-advertise the post, making it equally available to both professions.

Tanaiste Mary Harney: urged to readvertise

'To exclude solicitors and confine the competition only to barristers not merely represents a severe restriction on the pool of potentially available talent from which your legal adviser may be drawn, but represents discrimination without objective justification on the part of the Competition Authority', he declared in a letter to the agency's chairman, Professor Patrick McNutt.

'It is frankly astonishing and supremely ironic that of all the bodies in the State, the Competition Authority should act in such a blatantly anti-competitive manner'.

Murphy pointed out that a large number of solicitors have post-graduate degrees and specialist experience in both Irish and EU competition law. He added that a number of solicitors had practised competition law with international firms in Brussels, London and New York, and even pleaded such cases in the European Court of Justice.

Courts service by next summer

The new independent Courts Service should be up and running by early next year. Following publication of the new *Courts Service Bill* late last month, the Department of Justice confirmed that the new State agency would be 'fully established' by next summer.

According to a spokesman, the Bill should be passed by Christmas. 'At that stage, transitional arrangements will be put in place, but they will not last for more than a couple of months, and the actual board itself will be fully established by next summer', he said.

Under the Bill, the new agency will run the system instead of the Minister for Justice and several other offices. It will also be responsible for all the State's court buildings. The service will be managed by a board chaired by the Chief Justice or a Supreme Court judge nominated in his place. Its members will include solicitors, barristers, the judiciary and representatives from all interested organisations.

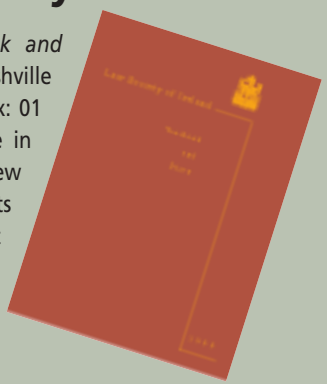
A chief executive appointed by the board will be responsible for the service's day-to-day operations. All court staff will transfer to it and new staff will be recruited.

Publishing the Bill, Justice Minister John O'Donoghue said a single management structure was the only feasible way of enabling the system to deal with the large volume of business coming before the courts.

Commenting on the development, Law Society Director General Ken Murphy said: 'We warmly welcome publication of this Bill. It is long overdue and should greatly improve the administration of justice in this country. The Law Society has been arguing for many years for changes such as these'.

Lawyers' Desk Diary

The 1998 *Law Society Yearbook and Diary* is now available from Ashville Media Group (tel: 01 283 300, fax: 01 278 4046). The Diary is available in either page-a-day or week-to-view formats and all Law Society profits go to the Solicitors' Benevolent Association. The week-to-view version costs £22.50 while page-a-day costs £28.50.



BRIEFLY

Law Society Council election results 1997/98

The following candidates were provisionally elected. Laurence Shields is deemed to have been elected. The votes they received appear after their names.

Name	Votes
1 John Shaw	1,198
2 Brian Sheridan	1,185
3 Anthony Ensor	1,163
4 Owen Binchy	1,154
5 Ward McEllin	1,140
6 Geraldine Clarke	1,123
7 Hugh O'Neill	1,064
8 Peter Allen	1,012
9 John Costello	992
10 Moya Quinlan	976
11 Angela Condon	971
12 Francis Daly	947
13 Michael Carroll	936
14 Gerard Doherty	909

The following were not provisionally elected:

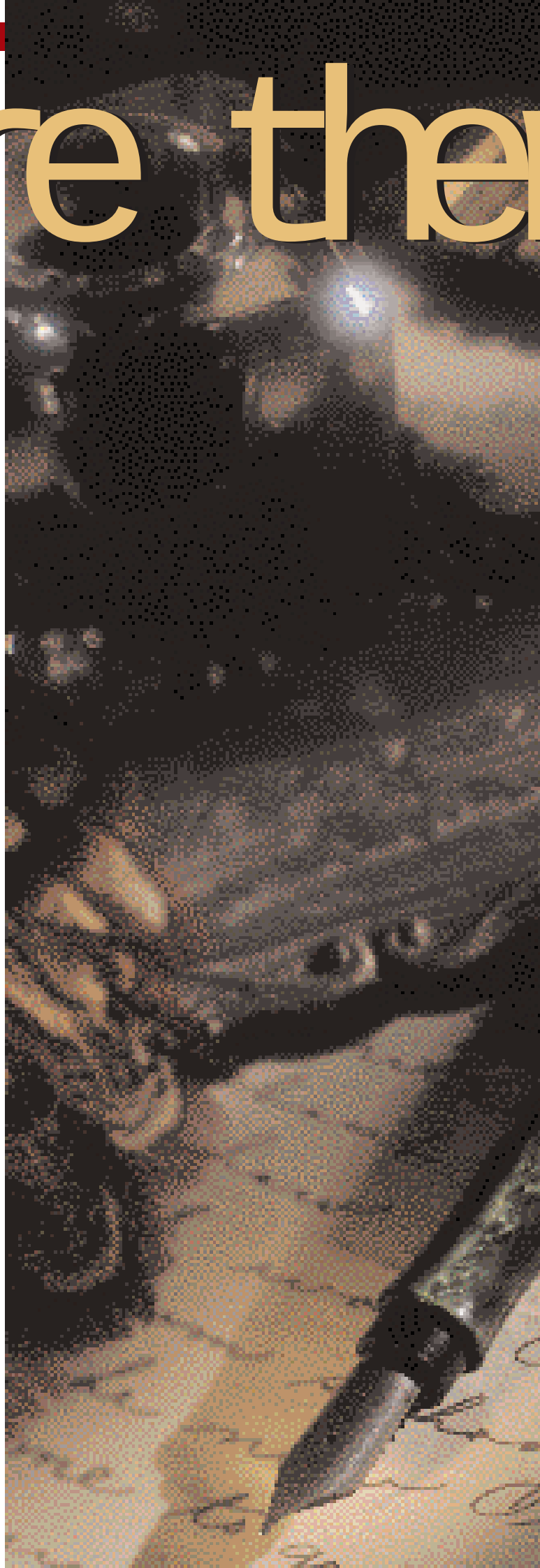
15 James McCourt	875
16 John Fish	838
17 Boyce Shubotham	818
18 John O'Malley	759
19 Sean O'Ceallaigh	619
20 Edward O'Connor	302

As only one candidate was nominated in each of the following provinces, there was no election and the two candidates were returned unopposed:
Eamon O'Brien: Munster
John Dillon Leetch: Connaught.

***Succession Act* 'changed by *Divorce Act*'**

All applications under s117 of the *Succession Act, 1965* must now be made within six months instead of a year. According to LK Shields, Solicitors, the Act was changed by the *Family Law (Divorce) Act, 1996* and applies to all estates, not just those where the deceased was divorced. Now, a child who has not been provided for, or who has not been properly provided for, must apply to the court within six months. The firm points out that solicitors who do not practise family law may not know of this change.

Where there



Why did William Shakespeare leave only his second-best bed to his wife in his will? How much money did Marilyn Monroe leave in hers? Eamonn Mongey has been collecting stories and information about unusual wills for more than 40 years, and has now pulled them all together in a book. Here he describes some of the weird and wacky wills he has found

Where did the earliest will come from? Well, the Mussulman claims that Adam made a will and that 70 legions of angels brought sheets of paper and quill pens to Paradise and that the Archangel Gabriel acted as a witness. There is no credible evidence to justify this. The probate judge would hardly be impressed.

It is now generally accepted that the oldest written wills were Egyptian, and the oldest of these was that of a man named Nek'ure, the son of Egyptian Pharaoh Khafre. It was inscribed on Nek'ure's tomb in 2061 BC and traces of it still remain. In it, he gave 14 towns, two estates and other property to his wife, his three children and another woman. It has not been established what role that other woman filled.

The well-known Egyptologist, Sir William Petrie, is credited as having found the first will written on paper at Kahun, also in Egypt. It was executed on papyrus in the year 2550 BC by a man named Sekhenren. Other wills from the same period were also discovered, some witnessed and containing attestation clauses that would allow them to be admitted to probate even today.

The Greeks had a form of will, too, but it was the Romans who developed the will as it is known today. They, however, had a major problem with forged wills, so Nero introduced the practice of securely fastening them with tape and sealing them – just as many of them are today.

Spears, shields and swords

As far as Ireland is concerned, a study of the Brehon laws shows that they had little to do with wills. The clan system, together with the simple life in ancient Ireland, fully provided for the devolution of property after death. But there were wills, and that of Cahir the Great, King of Leinster, who died in 177 AD, is recorded in the Book of Ballymote and the Book of Leacan, and appears in a footnote to the Annals of the Four Masters. It is a lengthy will, which includes gifts of spears, shields and swords, as

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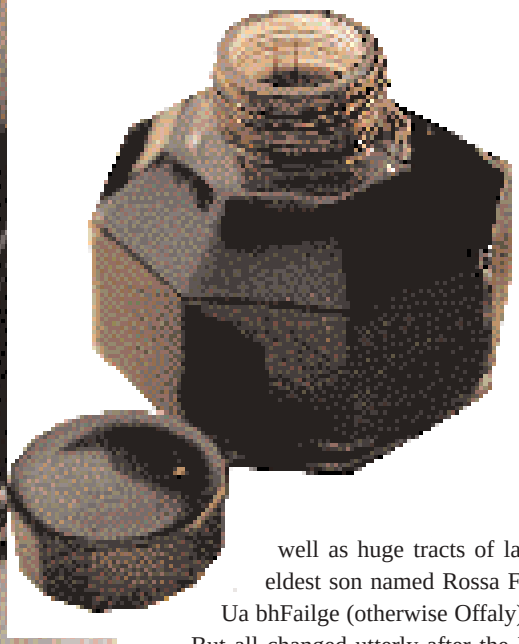


well as huge tracts of land, one of which was given to his eldest son named Rossa Failge. From this son, the princes of Ua bhFailge (otherwise Offaly) were descended.

But all changed utterly after the Norman Invasion (1169-1172). The old Irish laws and customs were gradually wiped out and, ultimately, English law came to dominate. The Ecclesiastical courts (in which Bishops acted like probate officers) were established and had custody of wills. This lasted until 1857, when the Court of Probate was established as a branch of the High Court. All wills, or practically all of them, were transferred to the Public Record Office in the Four Courts and, sadly, were destroyed when the Four Courts were burnt in 1922. The National Archives in Dublin's Bishop Street now holds whatever records remain of them.

But some wills did survive, for one reason or another. Jonathan Swift's will, for example, was so popular that it was published in London shortly after his death and sold well. Swift had spent part of his life in London, where he was highly esteemed. His writings were admired, his company sought and his opinions valued by the leading men of letters of the day, such as John Dryden, Joseph Addison and Alexander Pope. His will, which was written in the Swift style, but without the satire, includes a gift of a picture 'to my dearest friend Alexander Pope' as well as the famous legacy for building St Patrick's Hospital for 'idiots and lunaticks'.

Daniel O'Connell's will proved more difficult to trace, until I found it in the O'Connell papers in the Archives Department of UCD. And there I discovered that while he made his will and one codicil in Ireland, he left the country in January 1847, intending to visit Rome, and made six more codicils on the way before he died in Genoa on 15 May 1847. His will contains a legacy to the Repeal Association (with which he was in conflict) with a plea for peace.

I couldn't find Charles Stewart Parnell's will at all – because he didn't make one. A grant of administration intestate issued to his wife, Kitty, on

6 October 1891 and, interestingly, a *de bonis non* grant issued in the estate on 14 November 1978. Incidentally, in my researches, I found that a remarkable number of Irish political leaders and, indeed, other distinguished non-Irish world figures also died intestate, for one reason or another.

The wills of foreign personalities, and the circumstances in which they made them are also fascinating. The image of Nelson, after sending the signal 'England expects' at Trafalgar, going below deck, drafting and executing a codicil to his will, coming back up on deck and being killed by a musket ball is quite dramatic. The fact that England chose to ignore the wishes which were expressed in his codicil – and what followed as a result – could also be deemed dramatic. He had included a special plea to his King and country to provide for his mistress, Lady Hamilton. In fact, they didn't. The response was to imprison her for debt and even to conspire to drive her out of England.

Napoleon made a will and seven codicils in which, *inter alia*, he blames everybody else for his failures. The will and codicil were proved in London but the originals were released to France some years later.

The will of William Shakespeare was comparatively easy to find in the Public Record Office, now at Kew in Surrey in England. It was written by himself and contains a clause which has mystified all those who have read it since. Why did he give only his second-best bed to his wife?

It was comparatively easy to trace the wills of Marilyn Monroe and Jackie Onassis in the Surrogates Court in New York, but the contrast was somewhat startling. The executor's sale in realising Jackie's estate attracted enormous publicity and raised millions of dollars. For a film star, Marilyn died almost in poverty, leaving only $90,000, but her estate is now earning enormous income from merchandising her image – all of which, under the terms of a will, goes to strangers.

A good egg

But the will I liked best of all is, that of John B Kelly, father of Princess Grace of Monaco. It is held in the Register of Wills in Philadelphia. It is a real home-spun effort, although I understand that he got some legal advice in drafting it. It starts: 'For years I have been reading last wills and testaments, and I have never been able to clearly understand any of them at one reading. Therefore, I will attempt to write my own will for the hope that it will be understandable and legal. Kids will be called *kids* and not *issue*, and it will not be cluttered up with *parties of the first part, per stirpes, perpetuities, quasi judicial, to wit* and a lot of other terms that I am sure are only used to confuse those for whose benefit it is written'. The will goes on, mostly in that vein, for pages.

Kelly shows that wills can be fun and this extends into many areas of will-making. For example, wills are supposed to be in writing, but this does not mean that they must be on paper – as Lord Merrivale P found out when he came to hear a case of *Barnes, deceased, Hodson and Another v Barnes* (136 LT 380). There he was, sitting in his court one day, when the widow of the deceased arrived with a will written on an egg resting in a box filled with cotton wool. After the case started, his Lordship pointed out that the egg was not witnessed. He was met with the response that the testator was a mariner at sea (in fact, he was a pilot on the Manchester ship canal). The evidence and the argument went on for two days and, eventually, His Lordship gave his verdict: he condemned the eggshell will.

Nursing nonsense

The variety of other material used in emergencies for drafting wills, most of which also appeared to reach court, is, indeed, surprising. One, for example, was one written on a nurse's petticoat.

There is an extraordinary variety also in the range of eccentric wills or, should I say eccentric testators, which appear in the reports. It was probably this which inspired Shadwell, VC virtually to cry out in the case of *Vaughan v Marquis of Headfort* [(1840) 10 Sim 639 at 641]: 'By the laws of this country, every testator, in disposing of his property, is at liberty to adopt his own nonsense'. But these eccentric wills probably reflected the true personality of the man (or woman) which was never revealed during his lifetime.

Take the case of Charles Millar, deceased, which was dealt with by Judge McDonnell in Toronto. Charles Millar was a lawyer who died a bachelor, aged 71. During his life, his reputation was that of a staid member of the profession. But his will was so much a contrast to his life that not even his best friends could credit it. After some hilarious bequests, he gave the residue of the estate to his executor in trust and '... at the expiration of ten years from my death to give ... to the mother who has since my death given birth in Toronto to the greatest number of children.' It had the courts and the people of Toronto rocking for ten years until Judge McDonnell made his final order in 1938.

It became the subject of a best-selling book, *The great stork derby.* The will is now held in Toronto in the Archives of Ontario. Incidentally, the will was held to be valid and the residue was divided among four claimants, after two others failed to qualify on grounds of proof and construction.

Burial directions in wills can be truly bizarre – such as the lady in Los Angeles who directed that she be buried in her lace night-gown and in her baby-blue Ferrari. That created quite a headache for the courts too, and a spectacular departure for the testatrix.

Many of the wills I have come across over the years are home-made and, inevitably, many of them became the subject of probate action. In the circumstances, it might be appropriate to conclude with a piece of verse for which I accept no responsibility. G

Ye lawyers who live upon litigants' fees
And who need a good many to live at your ease;
Grave or gay, wise or witty, whate'er your degree,
Plain stuff or State's Counsel, take counsel of me.

When a festive occasion your spirit unbends,
You should never forget the profession's best friends;
So we will send round the wine, and a light bumper fill
To the jolly testator who makes his own will.

Eamonn Mongey is a barrister and author of the forthcoming book The weird and wonderful world of wills *(£8.90 plus £1 p&p from Fort Publications, 10d Carrickbrennan Road, Monkstown, Co Dublin, and all good bookshops).*

As we reach the fag-end of the twentieth century, the tobacco industry is set to become the butt of one of the biggest litigation payouts ever. Paul Lambert looks at the impending legal disaster facing cigarette companies and asks whether anything can prevent them from going up in smoke

The current chapter in tobacco litigation is yet to be completed but already it has been more than fascinating for observers. Its most recent instalment involves the proposed settlement between to co companies and party oppo nents – 40 US states. At present, the settlement amounts to $365 billion, including 5% of pre-tax profits for 25 years. Fines may also be imposed on the tobacco companies if the nu ber of young smokers doe decrease. A separate settlement with Florida was reached for $11.3 billion.

Since the overall settlement is so significant it needs to be ratified by the US government. The tobacco industry is currently lobbying for acceptance, for fear that the deal brokered will not be endorsed – because it is too small!

This may be the result of the slow but inevitable progression of over 40 years of tobacco litigation. Previously, there were airline bans, bans in public places, advertising restrictions, and US Justice Department investigations, compulsory packet warnings and an increasingly informed tobacco control movement. Some commentators have suggested that we are now witnessing the beginning of the end for tobacco.

In the interim, can litigants successfully sue tobacco companies?

Passive smoking

One must first differentiate between potential litigants. The first category encompasses passive or non-smokers who inhale the smoke of other people (environmental tobacco smoke or ETS). Such people may claim against their employer, for instance, because of a polluted work environment.

The first successful English passive smoking case was *Bland v Stockport MBC*. Here, the employer paid £15,000 for not protecting an employee from the effects of passive smoking. There have been similar claims in Australia (for example, *Australian Federation of Consumer Organisations Inc v Tobacco Institute of Australia Ltd*, Federal Court, 7/2/91, Morling J). Another Australian case involved an award of $85,000 (*Sholem v Department of Health*).

The United States has an even longer history of such claims. In *Helling v McKinning* (no 91-1958, 6/18/93), prisoners successfully claimed that their gaolers' smoking was a cruel and unusual punishment! McDonalds (of recent McLibel fame) are only one of many retailers also being sued. The US Environmental Protection Agency itself identifies passive king as a 'group A carcinogen'.

Direct smoking

Those who smoke themselves comprise the second category – direct smokers. Possibly the most important case is *Cipollone iggett* (112 SC 2608 [1992]). A of 'negligence, conspiracy and fraudulent misrepresentation' was permitted by the US Supreme Court. It also held that the Surgeon General's warning on cigarette packets did not preclude liability 'if they [the cigarette companies] misrepresented to the public the severity of the risks involved'.

Interesting also is the pre-trial comments of Bogen J in *Wilks v American Tobacco Co* where he said that 'cigarettes are, as a matter of law, defective and unreasonably dangerous for human consumption [being] the most lethal product which may be sold in this country'.

Anti-smoking lobby

Smoking claims have been litigated for decades, although plaintiff success is only a recent phenomenon. Reports now claim that up to 70% of smokers want to kick the habit. It is also claimed that smoking is responsible for one third of all cancers and the deaths of 2.5 million people each year (some authorities estimate that 30% of all deaths in the US and Britain are tobacco related). General medical opinion now accepts a causal link.

At a recent conference in Dublin, Dr David Kessler, head of the Food and Drugs Administration in the US (as he then was), outlined how Brown and Williamson Tobacco Corporation genetically engineered tobacco so as to enhance addiction. They succeeded in doubling the amount of nicotine in tobacco.

Having said that, the tobacco lobby points out that not everyone wishes to give up and they should therefore be free to continue if they desire. Indeed, every smoker at some stage has made a conscious choice to begin smoking. It could well be argued that anyone who smokes makes an informed choice, given that there is a general public awareness about the dangers.

The tobacco industry also argues that increasing tax on its product penalises the population, particularly the less well-off, who can dispose of 25% of their weekly income in tax. Since 1980, tax on tobacco in Britain has doubled. However, one can be sure that in the United States there will be little hesitation in passing the costs of settlements downwards – although rumour has it that the billion dollar settlement will mean only a moderate price increase for consumers.

Problems in litigation

Despite the publicity surrounding the US settlement, it remains uncertain how individual litigants may be affected. Will even the disclosed research be discoverable to individuals?

Causation may yet remain a considerable stumbling block despite these admissions. In this regard, *McGhee v National Coal Board* ([1973] 1 WLR I) held that a material increase in risk constituted proof of causation. And the *McPherson* case in Scotland held that evidence of substantial cause and effect, even without a biological link,

was sufficient to show causation.

It was further held in *Wright v Dunlop* ([1972] 13 KIR 255) that 'if the manufacturer discovers that the product is unsafe, or has reason to believe it may be unsafe, his duty may be to cease forthwith to manufacture or supply the product in its unsafe form'. The tobacco industry, it now appears, was aware of the dangers since the 1950s.

Another hindrance may relate to warning notices on packets. Can this preclude or limit liability? One lawyer believes that those who began to smoke before warnings can claim for failure to warn (see Hopkins, 'Tobacco litigation: the plaintiff's case', *Solicitors Journal*, 1992, 136 (41), 1052/3). Those who began subsequent to warnings on packets may also be able to claim for failure to adequately warn the consumer.

Other problems facing direct smoking claims include: a) the statute of limitations; b) the policy argument against a floodgate of claims; and c) the defence that the claimant knowingly partakes in a dangerous activity. Strictly speaking, only smokers who started smoking before warnings appeared could proceed. However, children may possibly be exempted from such a hard rule (see 'Medicine and the law: case reports', *Medico-Legal Journal*, 60(3), 209/11).

US claims have so far centred on negligence, breach of product liability law, fraud, misrepresentation and conspiracy, breach of conduct and, less commonly, addiction. Plaintiffs in England and Wales cite negligence and particularly failure to warn.

Apart from all of this, another issue centres on legal aid. Many people may not be able to fund a long and intensive legal battle. In England and Wales, the Legal Aid Board refused an application by lawyers for 300 would-be litigants, but this may yet be the subject of judicial review.

A similar approach met claims in Scotland, but legal aid was forthcoming in Northern Ireland in *Dean v Gallagher*. The action failed, however, at a preliminary medical hearing in November 1996. Up to six cases are at initial stages in that jurisdiction.

Nobody has yet applied for legal aid in Ireland, although a small number of cases are also in their early stages. An application for legal aid would involve a two-step test: a means test and a merits test. The latter may prove the more difficult as it requires a reasonable prospect of success.

As we await a test case, any claim may seem purely speculative. As with medical negligence, such an application would require expert evidence and counsel's opinion. Any class action would perhaps also have regard to section 29(9)(a) of the *Civil Legal Aid Act, 1995*. The least that can be said is that an application by a smoker for legal aid, with requisite illness, is not excluded by the Act.

While there is no Irish case law as yet, it seems only a matter of time. If the problem of a causative link can be overcome, one wonders what the level of damages claimed, in addition to specials, would be. On the other hand, might the State, or some emanation thereof, be first off the starting blocks?

To conclude on a more a speculative note, could this be the beginning of the end? An outright ban on tobacco would seem doomed to failure. But bans are becoming ever-more widespread and the industry has promised to reduce the age of young smokers. Pressure is mounting to increase both the tax on cigarettes and the age limit of those who may buy them. At any rate, it seems that the true meaning of the US settlement will only be understood in the years ahead. G

Paul Lambert is an apprentice solicitor with the Dun Laoghaire-based solicitors' firm Haughtons.

Tobacco litigation: a burning issue?

Freedom of Information Act, 1997

A legal cul de sac?

The *Freedom of Information Act, 1997* sought to give citizens legal access to all records held by Irish public bodies, but what about someone who wants to see his own medical records for the purposes of litigation? Kieran Doran argues that the new Act is nothing more than a legal blind alley

The common law position on patient access to medical records was initially set out in the Canadian case of *McInerney v McDonald* ([1992] 2 Med LR 267) which upheld the right of direct patient access to medical records. This was based on the legal principle that the information contained in medical records was highly personal and private in nature, and was the individual patient's to communicate or retain as he saw fit. The information stored in medical records was effectively the patient's property, and so access to the records was subject to his control.

Here the Canadian court established the legal principle of the fiduciary relationship between doctor and patient – that is, the doctor acted as trustee to the patient as regards the information in the medical records. While the doctor as trustee safeguarded the patient's clinical details, the patient, as owner of this personal medical information, was entitled to access at any time.

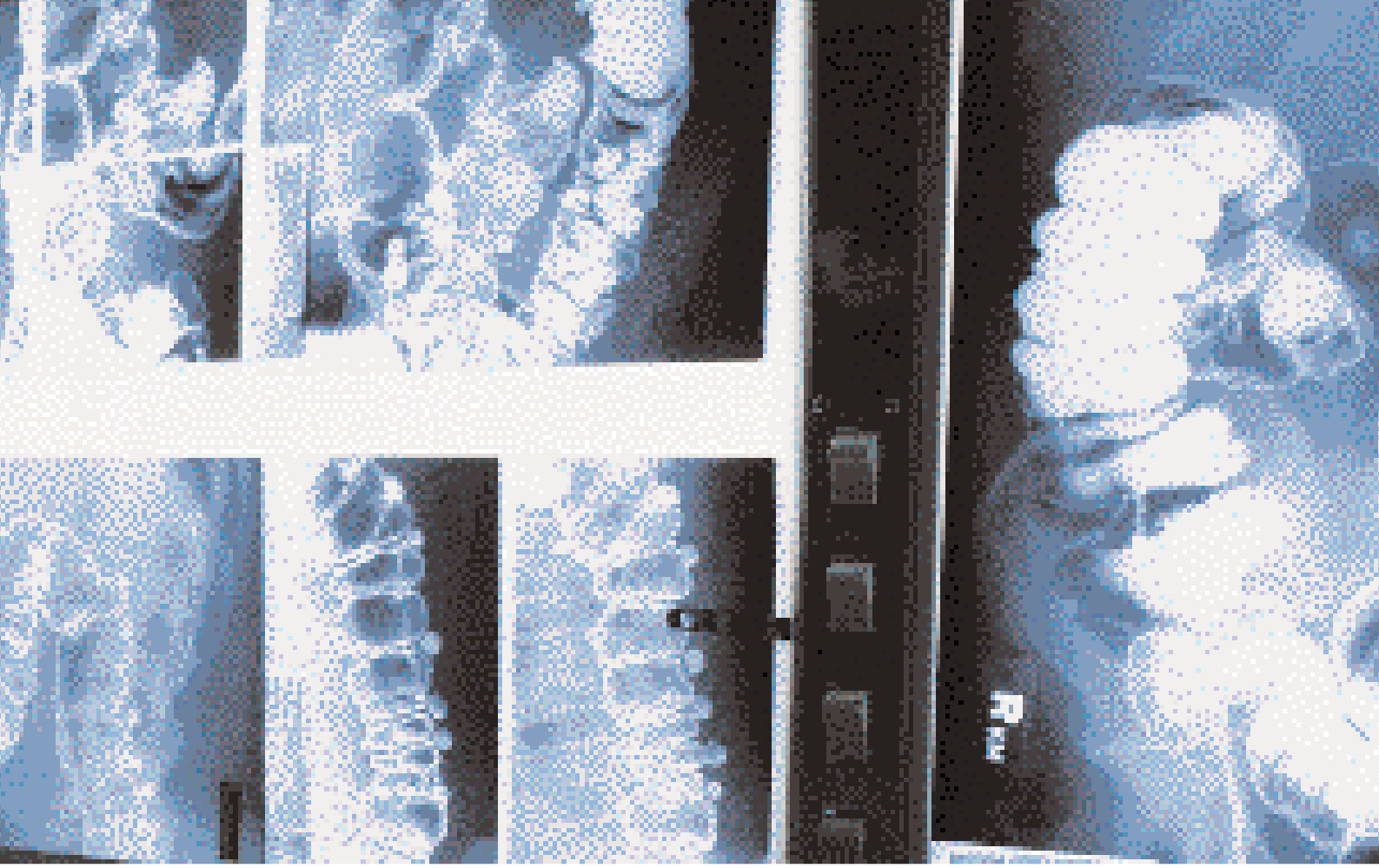
But this legal position was rejected by the English courts in the case of *R v Mid-Glamorgan FHSA and South Glamorgan Health Authority, ex parte Martin* (High Court of Justice, Queen's Bench Division, 14 May 1993). Here the court held that there was a distinction between the information given by a patient to his doctor in the course of a consultation and the resultant diagnosis the doctor made based on his interpretation of the information received from the patient. The court decided that the medical interpretation and resultant diagnosis, stored in the patient's medical records, was wholly the property of the doctor, and consequently he governed the access to such records.

The *Martin* case represents the current common law approach which limits the patient's access to medical records through the doctor, subject to the latter's medical judgement. In addition to the common law, there is the one piece of Irish legislation governing patient access to medical records prior to the *Freedom of Information Act, 1997*, namely the *Data Protection Act, 1988*.

Data Protection Act, 1988

This piece of legislation concerns only records held on computer disk; hard copies of records are not subject to its provisions. As under common law, it is the patient's doctor who controls the medical information stored on computer.

In this regard, the doctor must comply with the provisions of the data protection legislation and register with the Data Protection Agency. Under section 19(2)(d) of the Act, it is unlawful to disclose information about the patient to a person or institution not specified in the registration entry. Although it is lawful to give any person designated under the Act access to the patient's personal medical information, the doctor should interpret this freedom of access subject to the common law duty of confiden-



tiality. This underlines the fact that the patient's right of access is subject to the doctor's medical judgement.

As far as access to medical records is concerned, the Act confers a right on the patient to be informed of the fact that such personal medical information is held on computer disk, of which he is entitled to a copy. Should parts of the stored file be unintelligible, for example, through the use of medical terminology, then the patient is entitled to an explanatory note concerning such technical terms.

However, notwithstanding these general statutory rights, under section 4(8) of the Act the Minister for Justice is empowered to modify the right of access to personal data concerning physical or mental health should he consider it desirable in the patient's interests. Under the terms of the *Data Protection (Access Modification) (Health) Regulations 1989* (SI No 82 of 1989) personal information relating to physical or mental health may not be supplied to the patient if it is considered likely to cause harm, and the doctor is obliged to edit this information accordingly.

So, as in the case of the common law, the right of patient to gain access to his medical records is highly regulated and controlled by the doctor, and again is subject to the latter's control. Has the *Freedom of Information Act, 1997* succeeded in redressing the balance? Let's consider the provisions of the legislation and evaluate its effectiveness.

Freedom of Information Act, 1997

Access to records is governed by what the Act refers to as the 'head of the public body', namely, in the case of a patient's publicly-held medical records, the chief executive officer of the health board. The right of access to medical records is granted under section 6 of the Act. However, the Act applies only to public bodies, not those medical records held by private hospitals or clinics, so there is no right of access to such privately-held records.

Section 10 specifies the grounds upon which access may be refused – for example, because the records cannot be identified; do not exist or cannot be found; or that accessing the record would cause substantial and unreasonable interference or disruption of the other work of the public body in question; or if the request for access is considered frivolous. This provision gives the chief executive of the health board a very broad basis upon which to refuse access.

Section 11 talks of prohibiting access on the grounds that it would be contrary to the public interest. It is open to the chief executive to define the term 'public interest', and there appears to be no limits as to the breadth to which he may give this definition.

Part III of the Act specifies exempt records for the purposes of the Act. Section 20 again prohibits access to records if considered to be contrary to the public interest, while section 21 denies access should it interfere with the prop-

er management of the health board in question. As in the case of section 11, the definition of 'public interest' is left completely to the discretion of the chief executive. Si there is no specification as to t interpretation of the term 'inter- ference with the proper man- agement' of the board. Is th chief executive yet again the sole arbiter as to what is the prop legal definition of this term u the Act?

In addition, section 27 says that access to medical records itself is prohibited if it prejudices the physical or mental well-being of the individual concerned. Though access is possible through a nominated health professional, this is subject to that professional's medical judgement, as in the case of the common law and the provisions of the *Data Protection Act, 1988*. This is subject to the public interest in the request being granted outweighing a similar public interest in maintaining the privacy of the records in question.

There is under section 34 of the Act the power to review decisions regarding access to publicly-held records, through the office of the Information Commissioner. However the commissioner's primary power is that of intermediary between the individual citizen requesting access to medical records and the chief executive of the health board in question. The commissioner may gain access to these medical ords and request copies of the records or any part of them in order to review the health board's decision. However, there is no rovision to allow the commissioner reverse the chief executive's deci- on.

viously this is a major weakness of the legislation, in that there is no legal redress for the patient as regards access to his medical records should the chief executive merely confirm the original decision on being requested to review it by the Information Commissioner.

It would appear, then, that the *Freedom of Information Act, 1997* has done very little to widen the right of access to medical records, which is very restrictive under common law and under the provisions of the *Data Protection Act, 1988*.

Firstly, the Act concerns public bodies alone so does not govern the position of medical records held by a private hospital or clinic. It gives the chief executive of the health board very wide discretion to refuse access on the grounds of a shortage of staff or lack of resources, on the basis of broadly-based definition of the 'public interest', or on the premise that it would prejudice the proper management of the board.

Where access may be allowed, it is through a nominated health professional who will exercise his medical judgement in this regard, as under the existing legal position prior to the Act.

Finally, where there is provision for appeal through the Information Commissioner, his powers are limited.

Far from augmenting the existing right of access to publicly-held records, this new legislation appears to be very restrictive, giving a very wide interpretive discretion to the head of the public body in question – in this case, the chief executive of a health board. Although it may be argued that it is only right and proper that access to medical records be strictly controlled, surely the purpose of the Act is to help broaden the citizen's rights to publicly-held records?

It would appear, therefore, that regardless of the type of record to which access is sought, far from guaranteeing access to publicly-held records, this Act appears merely to lead the citizen down a legal *cul de sac*!

Kieran Doran is assistant lecturer in the Division of Legal Medicine, Medical Faculty, University College Dublin.

Come together

Mediation is increasingly being seen as a painless alternative to the courtroom in America and Britain. Barry O'Halloran reports on a new organisation set up to spread the good word in this country

The last place most business people want to end up is in a courtroom. Rightly or wrongly they see litigation as a slow, costly and painful process that will throw their private affairs open to the public's prying eyes. On top of that, there's always the risk that they will lose.

Mediation or alternative dispute resolution (ADR) is fast winning favour with businesses and courts in Britain. About one in three commercial cases are now referred to mediation. In answer to the growing demand for professional mediators, London commercial firm SJ Berwin & Co has just opened Britain's first dedicated ADR unit.

In fact, British courts have reached the stage where, if mediation is an option, judges will take the parties' failure to explore it into consideration when awarding the costs, a move that obviously focuses the litigants' minds.

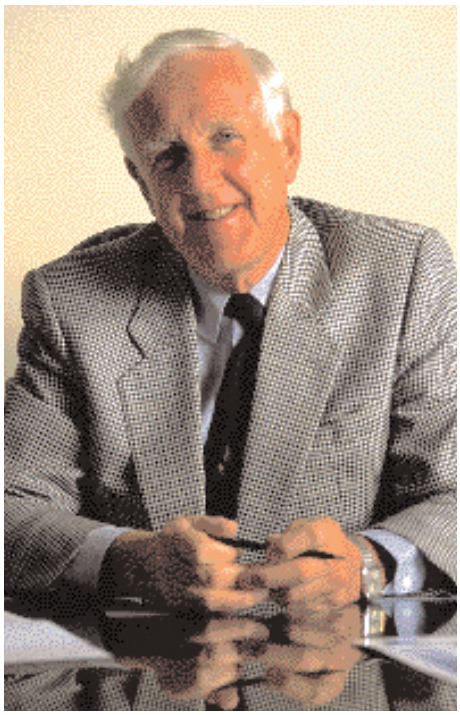
Over here, ADR is still in its embryonic stages. The Irish Centre for Dispute Resolution on Dublin's Merrion Square is just one year old, but at a recent seminar on the subject Justice Hugh O'Flaherty gave it his personal *imprimatur* when he pointed out that its aim, like the courts, was to do justice between the parties.

It's not quite the legal equivalent of 'make love, not war', but as the centre's managing director Jim Coleshill points out, its aim is to leave both parties feeling that the dispute has been settled to their satisfaction.

'What we try to do is get both parties to agree to their own settlement', he explains. 'It's non-adversarial and non-judgmental. We try to get to a situation where both parties feel they have won'.

In mediation, a neutral individual sits down with the parties in dispute and helps them hammer out a settlement. The sides can be met either separately or together, and either side can end the process at any time. All mediation proceedings are without prejudice. It does not guarantee settlement, but if ordinary negotiations are deadlocked and both parties are anxious to end the dispute or to avoid taking it further, then mediation is more than likely to work.

Alternative dispute resolution has obvious advantages: it's faster than going to court; it's confidential; and, of course, it's a lot cheaper than litigation. UK figures show that companies have made savings of up to £200,000 by calling in a mediator.



Jim Coleshill: 'Mediation means everybody wins'

From a solicitor's point of view, it may also guarantee quicker payment. Someone has to lose when a case goes to court, and clients who come out second best are not going to make paying their lawyers a priority. But if you are responsible for saving them money and avoiding a showdown, they might whip out the cheque book that bit faster.

Coleshill stresses that the CDR is not in competition with either branch of the legal profession, and argues that lawyers have a key role to play in the mediation process because their first priority is to protect their clients' interests. 'Companies want to have their lawyers present for dispute resolution and feel more comfortable when they are there', he says. 'Some solicitors think we are in competition with them, but we are not. We are here to promote the concept'.

He argues that mediation should slot in with the other formal procedures for settling disputes: negotiation, arbitration and litigation. 'It should be the next step after negotiation', he says.

Getting ADR recognised as part of this set of procedures is one of the main aims of the centre, which is a non-profit organisation. The centre is based on the British Centre for Dispute Resolution (CEDR) with which it has links. Both work together on setting up training for Irish mediators.

The CEDR runs annual training summer schools at which would-be Irish mediators are welcome. Within this country, the CDR runs seminars, and will provide training for any company or body which wants to have someone in-house with these skills. For its own members, it runs regular forums where the development of ADR is discussed.

Coleshill points out that ADR may be a fruitful area for post-graduate study, or for any newly-qualified solicitors looking for some way of augmenting their legal skills. The centre will provide help or training for anyone interested in this. The training itself goes through the principles of mediation, emphasising the fact that it is non-adversarial and non-judgmental, and focuses on bringing the parties to a settlement.

'What you have to do as a mediator is get over the psychological barriers', he says. 'There is still a lot of resistance to it: strong men don't mediate, so you have to get the parties over the perception that it is weak to mediate'.

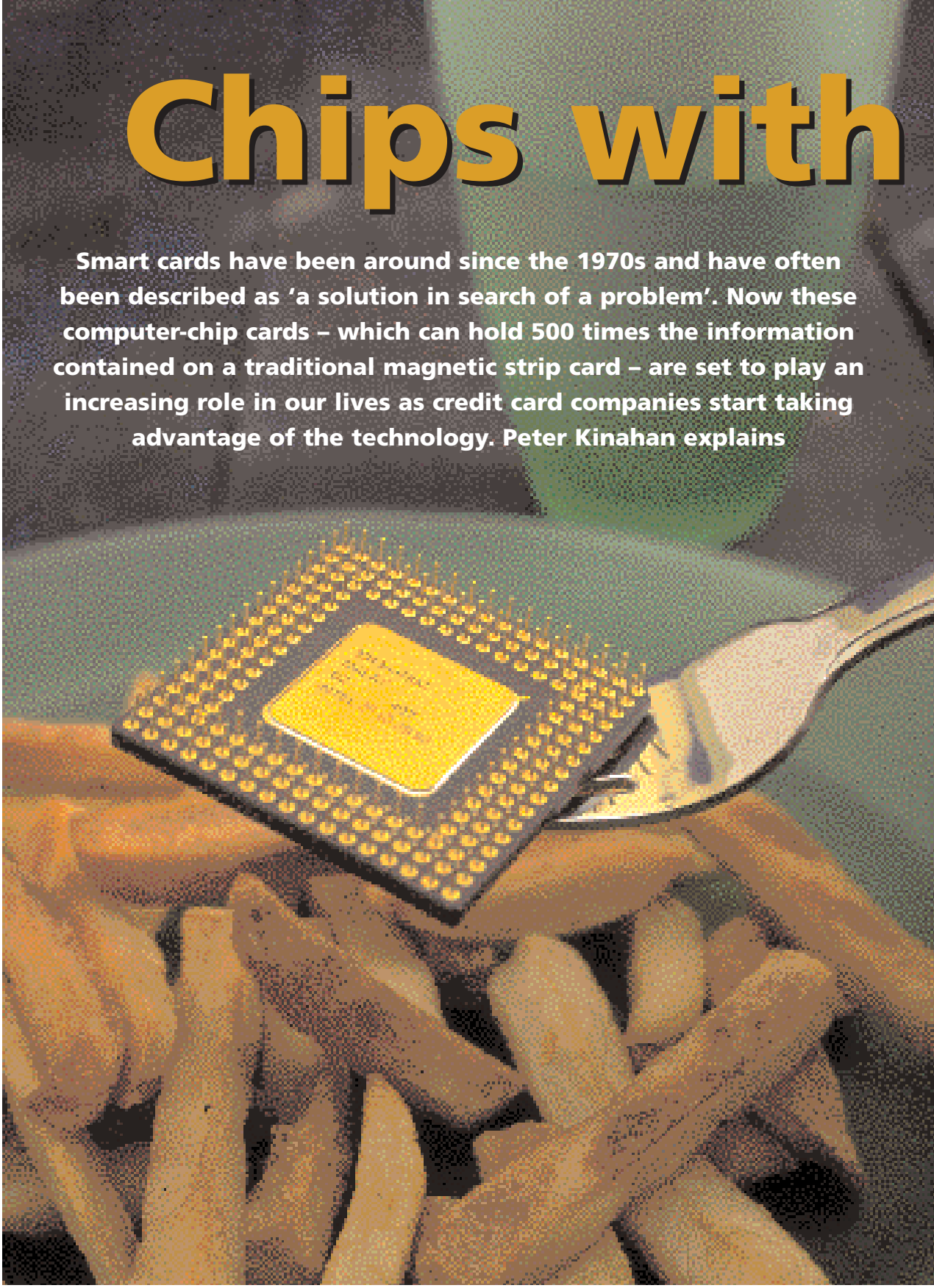
Because it's a new concept to us, there is still not a lot of ADR training in this country, but that doesn't mean that Jim Coleshill is a voice crying in the wilderness. The gospel is spreading and the centre's membership list is growing, and includes the large bodies like the ESB and Dun Laoghaire/Rathdown Council.

The legal firms which have signed up include LK Shields (which, of course, is home to the Society's next president, Laurence Shields), along with Eugene Collins and Bradshaw. Accountants Craig Gardner, Price Waterhouse and BDO Simpson Xavier are also members.

The centre is funded by membership fees, which are charged according to the size of the organisation joining up to a maximum of £1,000, and by the European Social Fund. But if you do want a mediator, you don't have to be a member. Anyone looking for the service can get it by going to the centre. However, members get a discount on all services it offers. G

Chips with

Smart cards have been around since the 1970s and have often been described as 'a solution in search of a problem'. Now these computer-chip cards – which can hold 500 times the information contained on a traditional magnetic strip card – are set to play an increasing role in our lives as credit card companies start taking advantage of the technology. Peter Kinahan explains



PIC: ROSLYN BYRNE

There is a fundamental law of computing progress which states that processing power doubles while related costs halve roughly every two years. The smart card concept, whereby a chip-sized computer is contained on a protective plastic card, is a powerful expression of this reality.

But not all smart cards are created equal. The humble telephone card represents the bottom rung of the smart card technological ladder – a 'memory-only' chip incapable of sophisticated interaction and disposed of once the content is exhausted. Nevertheless, the benefits of the chip-based phone card are significant: removal of cash handling and maintenance costs, a reduction of fraud and theft, and additional revenue from advertising and unspent values.

At the top end of the smart card range is the

everything!

typical GSM mobile phone smart card. Here, the full array of smart card features for a single application come into play: it allows unique identification and authentication of the subscriber that is transferable between phones, together with a sophisticated range of services such as abbreviated dialling numbers, message services, last number dialled and language preference.

But it is the multi-functional capability of smart cards that is perhaps the most persuasive aspect of the technology. The ability to run several applications independently on the same card and cut down on overall 'plastic proliferation' will make it easier for the consumer to accept the smart card. This is one reason why, for example, retailer loyalty schemes run well in tandem with bank-administered payment functions on a smart card. It would seem quite logical that the ultimate progression of smart card technology and business dynamics will lead to a single card capable of storing an individual's personal details, medical records, social security details, credit card and other payment transactions, frequent flyer mileage, driver's licence and even video store membership.

Security threat

But there are some disadvantages associated with smart cards. The cost is coming down but a read-only smart card costs about $1 in large quantities while a microprocessor card with up to 8kb of memory can cost between $6 and $10. There is also the associated expense of installing reading equipment and, until such equipment is widespread, there will be a problem with smart card acceptance. There have also been some fears voiced recently over the smart card's allegedly invincible security. Certainly, the ingenuity of the criminal mind should never be underestimated, but the attempts so far to crack smart card encryption have been likened to breaking into a car by such violent means that the car is rendered incapable of being driven.

The multi-functional capabilities of the smart card are exemplified by a Hong Kong construction site. This site uses a Racom smart card system not just as the only means of getting into the site but also for its entire operation. The card is loaded with the employee's weekly pay and the cashless site accepts the card as payment for food at site cafeterias and vending machines. The system has slashed paperwork and cash-handling costs and enabled a streamlined payroll procedure to be put in place.

An additional application for this type of single site system might be parking control with optional billing. The smart card is the ideal solution for this type of frequent-use environment and its advocates believe that it is the only solution robust enough to cope physically with a multi-functional environment.

Just the ticket

Ticket-issuing organisations can benefit greatly from the smart card. Airlines, for example, can streamline ticketing, check-in and boarding procedures. Reduced queues and faster boarding improve customer service. The smart card can hold all passenger and flight-related information such as ticket and seat number, check-in and boarding status.

But it is in the area of customer loyalty programmes where smart cards come into their own; their ability to carry and update detailed information makes them the perfect tool for such schemes. Their advantage over the old magnetic strip card is that, in the words of one senior executive from the payment cards association Visa International, they offer 'immediate gratification'. Customers are instantly credited with bonus points at point of sale and can immediately benefit from the relevant promotion such as a free gift or service. The customer also knows at once the running balance of points credited. Likewise, the retailer instantly receives updated details about the cardholder, allowing the interactive data exchange necessary for sophisticated database marketing.

There has been a great deal of speculation about the elusive 'killer application' that will propel the smart card into ubiquitous use. The truth is that widespread take-up is more likely to be achieved through the availability of several applications on a single card. Public transport systems would be a major candidate as the 'core' function to drive up acceptance of a multi-functional smart card scheme, and the first signs of this are to be seen as far apart as Paris and Seoul.

But in the short term, it would seem that the central function will be payments. Certainly, the major card associations, Europay, MasterCard and Visa (EMV), have bowed to the technological inevitability that is the electronic chip card and are now vigorously promoting the technology following the agreement of a joint EMV smart card specification.

Recent months have seen a spate of electronic purse trials throughout the world, with marques such as Mondex (now owned by MasterCard) and Visa Cash becoming increasingly prevalent. The smart card electronic cash solution promises to slash cash-handling costs for the associations' member banks and retailers alike. But the power of the chip card goes well beyond electronic cash: a single smart card has the ability to function as an electronic purse, a debit card and a credit card at the customer's discretion.

Less will be more

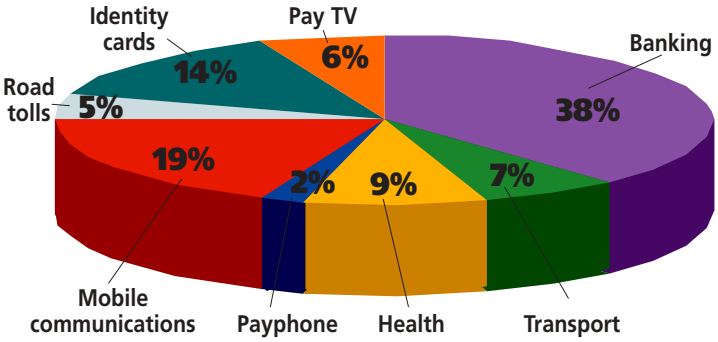
As the Internet takes hold of the popular imagination, the credit card associations now have their eyes on the electronic commerce marketplace. Until now the Internet has been perceived as a dangerous place to use a credit card, but with the on-going trials of the Secure Electronic Transaction (SET) standard, jointly agreed between the cards associations, there should at last be a secure environment for electronic commerce by the end of the year.

The SET standard will go a long way to easing consumers' security fears about the Internet and this is likely to be matched by a surge of vendors eager to be among the pioneers in the new and expanding market. As the typical smart card specification inevitably increases, so the number of applications on a single card will increase and the number of cards held by an individual will dwindle. G

Peter Kinahan is a freelance financial journalist.

Worldwide smart card applications by the year 2000

Source: Motorola



On the road again

Champagne, limos and penthouse suites are out. These days, business travellers are flying economy, travelling by tube and sleeping rough – well, rough-ish. Barry O'Halloran reports on the new approach to business travel and suggests ways of getting a bigger bang for your buck

The Celtic Tiger's businessmen are spreading their wings – but they are not doing it in style. Business trips abroad were once considered a perk of the job; now they are considered a necessary part of it. Gone are the first class flights and swish hotel rooms. Instead, business travellers are squeezing into economy class with ordinary mortals, and over-nighting in modest travel inns.

The booming economy, individual firms' attempts to increase overseas business and a thriving multinational sector mean that Irish businessmen are travelling more than ever before. But they have dropped the traditional trappings of luxury and are more interested in saving money and getting the job done.

Marie Moroney, a director of Sadlier Travel on Dublin's Mount Street and manager of the company's business travel section, says this hard-headed approach marks a clear change from the way things once were.

'The fact is that companies are looking for value for their money', she says. 'Trends have changed completely: business travellers are much more serious about saving money. Company directors are no longer travelling executive class; they're shopping around for the best deals, and the competition is huge'.

It's not surprising that people are watching the bottom line when they head off to do business abroad. Surveys show that the actual cost of business travel is rising. One American Express study revealed that between 1995 and 1996 business class fares went up by 6%, while economy class rose 4%. The same company

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Royal & SunAlliance is a leading provider of Business Travel Insurance which protects both the business and employees against losses which can occur during business journeys.

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found that business people want to keep a tight rein on the cost of travel and to maximise discounts.

Another reason for cutting out the frills is that you don't need them. Moroney points out that her clients are more interested in getting there, getting the job done, and getting back.

The same thing applies to accommodation. Penthouse suites in five star hotels are out, and comfortable but functional four-star hotel rooms are in. 'Business people are out for most of the day; they just want a place to put their heads down', says Moroney. 'We tend to book en-suite rooms in four-star hotels. They are basic, but they have everything that's needed'.

Reasonably-priced accommodation

Hoteliers woke up to this fact a long time ago. Over the last decade, they have been building four-star and travel lodge-style accommodation all over the UK and Europe, so finding decent and reasonably-priced accommodation is not a problem. And because they are geared specifically to the business market, they will provide you with all the things you need, including your own telephone line and, if necessary, a fax.

Rates for accommodation vary. At the lower end of the scale, you can pay around £60 or £70 per person per night. But if you fancy bedding down in one of the town-house style boutique hotels that have become popular in London and Paris, you will pay a three-figure sum for the privilege.

At the cheaper end, breakfast may not be included in the room charge. And you should watch what you pay for extras, as some hotels will charge heavy tariffs for phone calls and other services. This is where a GSM mobile and a decent laptop PC can come in handy.

The UK is the most popular destination for Irish businessmen, with mainland Europe a close second. Long haul journeys to the US, the Far East and Middle East are less popular, but still common enough. Getting there is the costliest part. Flying is obviously the best way but it's also the cost that is easiest to cut, depending on the deal you can get from your travel agent.

Dublin/London is now one of the busiest and most competitive routes in Europe and all deals are possible. You can fly to almost all Britain's major centres from the capital. Cork and Shannon airports also offer plenty of flights to the UK. But there are fewer direct flights to British cities from Cork than from Dublin, and you may have to get a connection at Dublin (or possibly Birmingham) if you are travelling to, say, Edinburgh or Glasgow.

There are a wide range of London flights on offer from one-day returns up, all of which vary in price, according to operator, class and destination. There is a choice of four airports: Heathrow, Stansted, Gatwick and City Airport in the docklands. Three Irish airlines operate on

the route: Aer Lingus, Ryanair and Citijet. Aer Lingus and British Midland are the only carriers that fly to Heathrow, but the others offer train and coach tickets from their destination airports for a small extra charge, or else as part of the fare.

Charges range from £295 for Aer Lingus' one-day return to £195 for Citijet's service to City Airport (this includes the cost of a coach ticket to central London). For overnight stays, all carriers offer a wide range of fares and classes, starting at anything from £84 to £135.

Back-to-back tickets

To get the best value, it obviously makes sense to book as far as possible ahead, and you should also note that staying overnight on a Saturday will allow you to take advantage of special weekend deals. Another way of getting a cheap fare is to get back-to-back tickets. Back-to-backs allow you to fly out on one ticket, and come home on the 'return' half of another. You don't use the return from the first flight and the outgoing half of the second. This system could mean you will fly for as little as £59 to £69.

There is less choice on continental routes, simply because there is a lot of traffic between here and Britain. If you are heading for Paris, you have two choices of airport: Charles de Gaulle and Beauveais.

Marie Moroney says Charles de Gaulle is favoured because it is more central, and the journey from Beauveais to Paris can take at least one-and-a-half hours. But the cost differs widely. Aer Lingus offers a £456 return to de Gaulle while Ryanair (which does not offer flights to de Gaulle) charges £149 for a flight to Beauveais.

Long-haul flights are the exception to the value-for-money rule. Businesses are willing to spend money on comfort, but only to ensure that their representative is not exhausted on arrival and can do their job effectively.

America is the most popular long-haul destination for Irish businessmen. There is plenty of choice here as well, and long stays also mean cheaper flights. Flights to the East Coast of America start at around £2,300, but for six or seven night stays, you can fly for as little as £329.

For American flights, Virgin Airlines has introduced a mid class which is half way between economy and business. A Virgin economy flight costs £868, mid class £1,200 and business £2,300.

Travel agents can offer big discounts on flights by selling tickets they have bought from consolidators, who are agents for the airlines. The airlines sell the tickets to the consolidators at low prices, these are then sold on to the travel operators, who offer them to customers at knock-down rates.

Travel insurance

If you are travelling – get insurance. Everybody remembers to pack their clean underwear and toothpaste, but nobody reckons on what could happen if they get sick, have an accident, lose their luggage or come a cropper in any one of a number of ways.

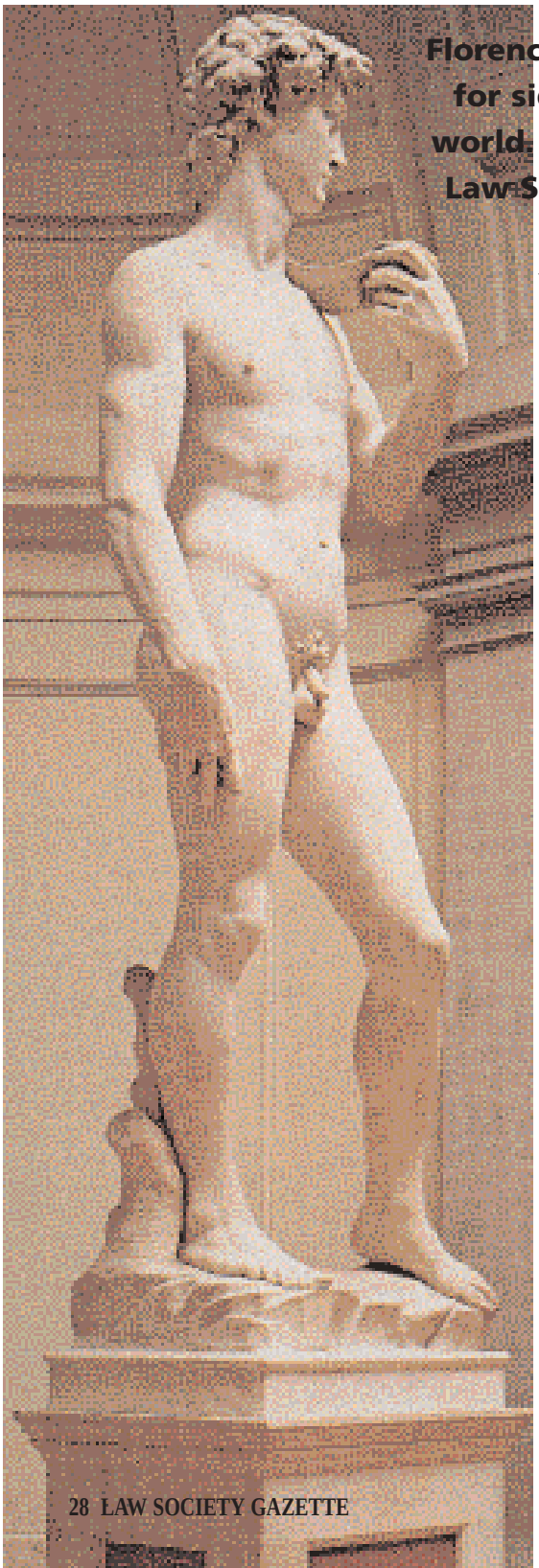
Thanks to a recent ruling by consumer affairs director Willie Fagan, you don't have to take the cover offered by travel agents – you can arrange your own. Better still, if you travel several times a year, you can get packages covering all trips.

Irwin Johnston of Royal & Sun Alliance recommends this approach to anyone who travels frequently. 'It's a renewable yearly contract covering all trips irrespective of the time and destination', he says. 'The cost depends on the number of trips you are likely to make. We review them every three years, so if you are travelling more often or less often than when you originally took out the policy, we change it accordingly'.

The insurance offered by companies like Johnson's covers such eventualities as sickness, accidents and loss of property. Cover for medical care stretches to everything including special treatment, but stops once you get home. At that point, whatever arrangements you normally make take over.

You can also get cover against causing a misfortune to befall somebody else. Royal & Sun Alliance offers protection against any civil legal liabilities that travellers might incur against other parties. This is something that, as a solicitor, you will probably be aware of but your clients might not. G

Law Society Annual Confere 19



Florence is a time-honoured mecca for sightseers from all over the world. It's also the location of the Law Society's annual conference which will run from 16-19 April next year

Florence is an artistic treasure trove of unique and incomparable proportions. A single historical fact explains the phenomenon: the city gave birth to the Renaissance. In the early 15th century the study of antiquity became a Florentine passion for creativity which is evident everywhere.

Every street, square and alley functions as a display window of Romanesque, Gothic or Renaissance architecture in churches, palaces and towers. Gaze at Michelangelo's *David*. Explore the Uffizi – shrine of the Renaissance – where you'll find Botticelli's and Raphael's most reverential Madonnas. Marvel at the magnificent chapels and homes (particularly the Palazzo Medici-Riccardi) of the Medici family, whose art patronage rocketed Florence to the forefront of the Renaissance.

Impressive piazzas and an incomparable 15th century skyline make outdoor sightseeing in Florence particularly rewarding. This is the city which became a favourite of those English ladies of the *Room with a View* type who flocked here to stay in charming pensiones and paint romantic watercolors of the surrounding countryside. Keats and Shelley came to Florence and were inspired by the grandeur of its classicism and elegance.

Fortunately, sightseeing in Florence is space-intensive – everything that you probably want to see is concentrated in a relatively small district in the core of the city and our conference hotels are located right in the heart of the city within easy reach of all Florence's treasures.

View of the Duomo from one of the conference hotels

Shopping in Florence is an experience not to be missed. 'Made in Italy' has become synonymous with style, quality and craftsmanship. The best buys are leather goods of all kinds, silk goods, knitwear, and gold jewelry. Choose from the Galleria Tornabuoni, the world's most fashionable shopping mall, leading the list for designer clothing. The Ponte Vecchio houses the city's jewelers, as it has since the 16th century. Boutiques abound on the Via Della Vigna Nuova and in the trendy area around the church of Santa Croce, heart of the leather merchants' district. There are several markets located close to the conference hotels where

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Panoramic view of Florence dominated by the Palazzo Vecchio

you can bargain to your heart's delight.

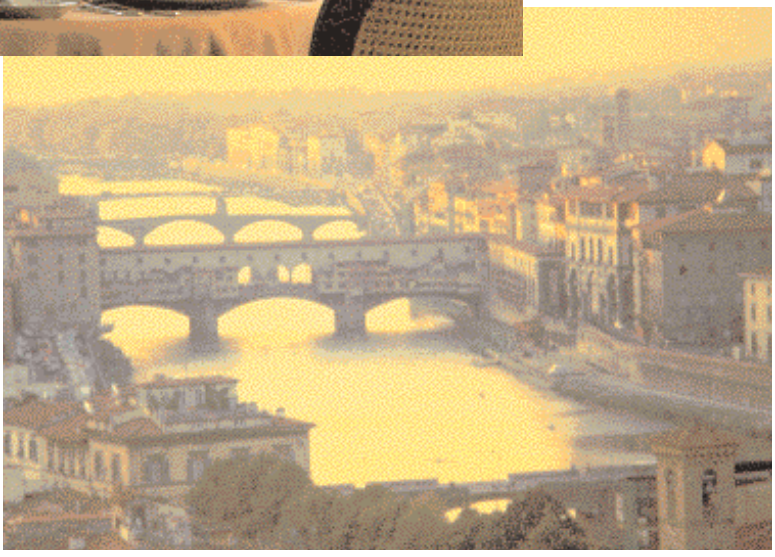
Dining is a marvelous part of the total Italian experience, a chance to enjoy authentic specialties and ingredients. Visitors have a choice of eating place ranging from a *ristorante* to a *trattoria* (usually a family-run place, simpler in decor and menu but with excellent food), and there are many to choose from.

Conference programme

An exciting line-up of conference speakers, social events, receptions and tours has been arranged. Full details will be included in the conference brochure which will be issued in January.

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

Travel options will be available to those who wish to travel in advance of the conference or stay on in Italy afterwards. G



The River Arno and the Ponte Vecchio

ADVANCE BOOKING FORM

Name: _____

Firm: _____

Address: _____

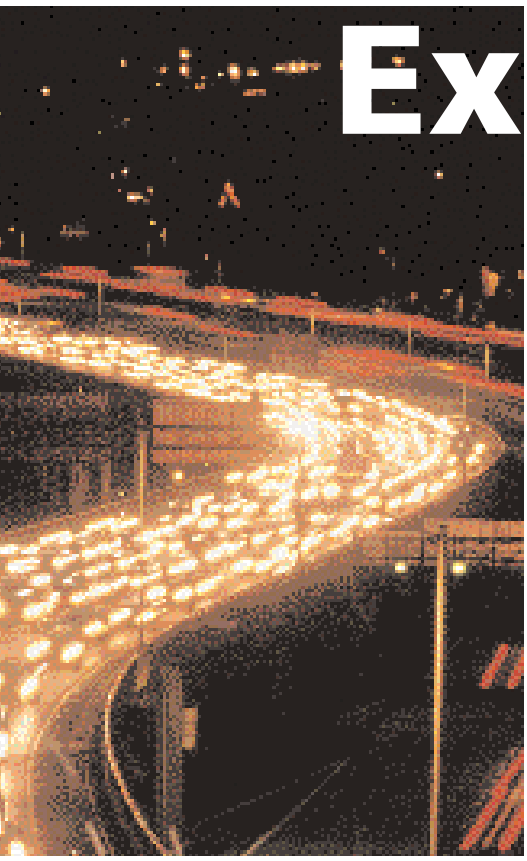
DX: _____

Tel: _____ Fax: _____

No of persons travelling

Please enclose booking fee of £200 per person travelling

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



Explaining the unexpected

Accident investigators can play an important role in helping solicitors to judge the merits of a client's road traffic case. John Reid describes the mixture of art and science that goes into interpreting a crash scene

By its very definition, a road traffic accident is the unexpected outcome of an unplanned event. It happens when one or more road users fails to cope with their environment and usually when a number of single factors, which on their own would not be disastrous, occur simultaneously. Quite simply, driving too fast into a bend and skidding does not become an 'accident' unless the driver encounters someone travelling in the opposite direction or an unyielding item of street furniture.

The role of the accident investigator is to gather all available information about a specific accident and draw balanced conclusions from what can often be conflicting evidence and wildly differing descriptions of the same event. To produce a reconstruction report, the accident site will be inspected and measurements and photographs taken. The expert can then review the various accounts of the pre-accident manoeuvres in the context of a detailed knowledge of the road layout, together with the signing and carriageway markings.

Quite often, unusual circumstances do give rise to accidents, so knowledge and experience of problems which usually occur at a given type of road location is not an infallible guide to what must have happened in a particular accident. For this reason, it is most important to give due weight to eye-witness evidence.

However, eye-witness evidence must be treated with some caution. In a recent case, the evidence of a witness who 'clearly saw a car driving through a gap between a lamp column and a brick wall' was brought into question after it was shown that the gap was several inches narrower than the car, which drove through it undamaged. Witness evidence must always be weighed against the physical possibilities.

It is also important for the investigator to be wary of a witness's interpretation of events: 'I saw this car come round the left hand bend. Well, I didn't actually see it come round, but it must have because it was facing that way when I came along a few moments later'. The car could, in fact, have been going in completely the opposite direction before hitting black ice and spinning through 180 degrees.

Road traffic accident investigations are frequently, and properly, supported by calculations. Measurements of lengths of skid marks can be used to calculate the speed of a vehicle when emergency braking was applied. Similarly, the radius of a bend can give an indication of the maximum speed at which it can be negotiated without loss of control. The damage sustained by a vehicle can be assessed to provide an estimate of its speed on impact. The distance which a pedestrian is thrown by an impact may be used to calculate the speed of a vehicle when it struck the pedestrian. All of these have their basis in sound theories of physics and mathematics.

But there are limitations on the data which can be fed into the calculations. The results of such calculations are often invested with an implication of unquestionable reliability as if they were produced by some sort of magic formula. The investigator's experience must be the guide to the accuracy and reliability of the input and the subsequent output. Beware of a speed quoted to the nearest mile per hour from an estimated skid length of 'about 30 or 40 yards'.

Some aspects of road users' behaviour are more simply evaluated than others. For example, one area which gives rise to frequent discussion and speculation is driver perception and reaction time. For a highly alert driver, or for tests in the laboratory, as little as half a second may be all that is necessary. For an average driver on a regular commuter route, one second may be appropriate. However, if at a critical moment our average driver is hunting for a favourite cassette which is definitely somewhere in the glove box ...?

Some 95% of all road traffic accidents have a component of human error. Accident investigations can therefore be an intriguing mixture of engineering and psychology.

The role of the accident investigator is to assess and quantify as many factors as possible which combined to create an accident situation. The interpretation of such evidence is both an art and a science. Accident reconstruction reports must be presented in plain English and should not be 'technical' to a point where only another expert can interpret the results. Mindful that there is often more than one version of events, the information contained in the report should, above all, help the lawyer assess the merits of a client's case. G

John Reid is associate director of consulting engineers the Denis Wilson Partnership.

Council report

Report on Council meeting held on 26 September 1997

1. Motion: Council motions

1) That henceforth all motions coming before Council should be accompanied by:

a) *A memorandum not to exceed two A4 pages in length from the proposer of the motion outlying*

- *the reasons for bringing the motion*
- *the benefits to be gained from passing the motion.*

b) *Copies of any Statutory Instrument which it is proposed to put before the Minister for signature as a result of Council passing the motion.*

2) In relation to any motion, the passing of which may have the effect of imposing disciplinary measures upon the profession, that within ten days of the motion first coming before Council, copies of the documentation at paragraph 1 hereof be sent to the secretaries and presidents of bar associations for the purposes of consultation and discussion prior to Council debating the motion.

Proposer: *Hugh O'Neill*
Seconder: *Ruadhan Killeen*

Following a discussion, this motion was approved by the Council with two amendments, which have been accepted by the proposers, namely the insertion of 'Where available' at the beginning of b) and 'except where the Council decides that the matter is one of urgency' at the beginning of part 2.

2. Legal agency collapse

The Director General reported on the progress being made by Gordon Holmes. In relation to legal agencies and third parties generally, the Professional Guidance Committee was asked by the Council to conduct an exercise, in consultation with the appropriate committees and the PII insurers, and report to the Council as to whether and when, as a matter of practice, solicitors should use legal agents or other third parties and what precautions they should take in doing so.

3. Postal voting

Draft amendments to bye-laws in relation to postal voting were debated at length in advance of their being submitted to the Annual General Meeting. There was lengthy discussion on whether a postal vote should be called before or after a motion has been voted on at an AGM and also whether or not the President should be able to call for a postal vote by analogy with the role of a chairman under company law. In the light of the debate, the subcommittee is to re-draft the proposed new bye-laws and a motion for the AGM.

4. Independent Adjudicator

The regulations to establish the Independent Adjudicator scheme were formally passed by the Council.

5. Investment intermediaries

The Council noted the memoranda from the Director of Policy, Mary Keane, and the Director of Finance and Administration, Cillian MacDomhnaill, in relation to the issues which the Society is required to address concerning both the regulation and the investor compensation schemes for investment intermediaries in the light of existing and pending legislation. Council approved the the proposal that a working group be established under Michael V O'Mahony.

6. Multi-disciplinary partnerships

The Director General referred to his memorandum on this subject which he had circulated in advance of the Council meeting. He said that the issue of multi-disciplinary partnerships involving lawyers and non-lawyers had been top of the agenda at most international meetings of lawyers throughout the world for some years. Was it an incoming tide? In country after country, MDPs were being established in spite of the fact that national law societies had policies of opposition to them. The debate had come very close to Ireland's shores recently when the largest law firm in Scotland had got into bed with the accountants Arthur Anderson. The Law Society of Ireland's policy, decided in 1991, is that MDPs would compromise the independence of lawyers and would be neither in the interest of the public nor the legal profession. However, many national law societies in Europe with similar policies were now reviewing them in light of the new realities. This was an issue with implications for the entire profession. Following a short debate, there was support for the announcement by the Senior Vice President, Laurence K Shields, that he intended to set up a task force to review the issue.

7. New superior court rules

The Chairman of the Litigation Committee, Ernest Cantillon, reported on the new rules requiring pre-trial disclosure of expert reports and other information. The new rules purported to give effect to section 45 of the *Court and Court Officers Act, 1995*. Towards the end of last year certain information in relation to draft rules had been made available on a confidential basis by solicitor members of the Superior Court Rules Committee to the Litigation Committee. The latter had made a number of criticisms in relation to the draft rules in December 1996. There the matter had rested as far as the Litigation Committee was concerned until the new rules had been published as signed by the Superior Court Rules Committee in December 1996 and by the Minister for Justice in August 1997. The Litigation Committee was horrified by the unfairness and the lack of transition provisions of the new rules. The latter was an attack on solicitor-client privilege. The provision that solicitors could be made personally liable in certain circumstances was unacceptable. The Bar Council was as shocked by the new rules as the Law Society. A few days after they first came to light, the Chairman of the Bar Council, John MacMenanin SC, and the Director General, Ken Murphy, jointly met the President of the High Court.

However, the subsequent practice direction had not improved things. The Litigation Committee recommendation was that the Society should jointly with the Bar Council obtain a legal opinion on whether or not the rules were open to constitutional challenge and, if so advised, that the Society should bring such a legal challenge. In the meantime, the strongest of complaints should be expressed to the Superior Court Rules Committee and to the Minister of Justice. The CLE Committee should organise lectures on the new rules in various parts of the country. In the course of a lengthy debate, to which many Council members contributed, anger was expressed at the lack of notice and the insufficiency of consultation in relation to these new rules as well as opposition to their content which was perceived to favour the defence side in personal injury litigation. The Council agreed that the Society should proceed as recommended by the Litigation Committee.

8. Motion: for Council meeting on 7 November

That this Council resolves to approve the draft advertising guidelines.

Proposer: *Owen Binchy*
Seconder: *Philip Joyce*

PRACTICE NOTE

Residential property tax

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

'Residential Property tax: certificate of clearance

Practitioners are no doubt aware that residential property tax has been abolished with effect from 5 April 1997. However, the existing tax clearance arrangements in the case of sales of houses above a specified value threshold are being maintained.

The value threshold relating to the residential property tax certificate of clearance procedure is £115,000 in 1997.

Tax clearance procedure

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

Applications

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

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

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

Conveyancing Committee

Practice notes

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

General

It would appear that a vendor's duty in respect of prior burdens affecting registered land is the same as the vendor's duty would be in respect of prior acts appearing on searches in the Registry of Deeds against unregistered land and a similar explanation should equally be unacceptable for registered land.

Land Registry

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

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

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

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

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

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

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

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

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

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

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

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

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

Registry of Deeds

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

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

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

Conveyancing Committee

Retention permission: certificate of compliance needed?

The Conveyancing Committee receives queries regularly as to the need for a certificate of compliance with a permission to retain a structure, particularly when there are no conditions in the grant of permission to retain. Practitioners assume that the planning authority inspects the structure being retained before granting permission and that a permission to retain therefore is granted for the structure as it exists.

In fact, planning authorities deal with planning applications, including applications to retain an existing structure, on the basis of drawings and specifications submitted with the application. The planners rarely, if ever, inspect a structure.

In the circumstances, the committee takes the view that it is reasonable for a solicitor for a purchaser to ask for confirmation by way of a letter of opinion by a suitably qualified person that the drawings submitted for the retention application correctly show the actual structure for which permission to retain has been applied for.

If there are conditions in the grant of permission to retain, the certifier should go on to deal with these in the usual way.

No certificate of compliance should be required where the permission relates only to the retention of a (changed) use.

Conveyancing Committee

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Professional indemnity insurance

1. Claims made basis

It is important for practitioners to understand that the nature of professional indemnity insurance is different to that of road traffic insurance, employer liability insurance or public liability insurance. In the case of professional indemnity insurance, the relevant cover is the cover that pertains on the date the claim is first made or the insured first becomes aware of a circumstance likely to give rise to a claim and notifies his insurer and not the date of negligence.

2. Run off cover

There is an obligation on solicitors pursuant to Statutory Instrument No 312 of 1995 to have run off cover when they cease private practice. This may arise, for example, if they retire, emigrate, move to the corporate sector or are appointed to judicial office. The obligation pursuant to the regulations is to have run off cover for a minimum period of six years. However, solicitors are strongly advised to have run off cover on a permanent basis as one cannot be sure that the *Statute of Limitations* will ban all actions after six years, for instance in the case of a minor or a person of unsound mind.

Run off cover is required in respect of acts of negligence which may have occurred during the course of private practice but which do not surface, in the form of a claim, until after the solicitor has ceased private practice. This is necessary because the insurance cover which one has whilst in private practice only covers claims made during the course of such private practice.

Apart from the fact that run off cover is a legal obligation, it is obviously very desirable for practitioners to ensure that they have this cover, as the consequences of a claim could be catastrophic.

3. Professional indemnity insurance details required by the Society

Solicitors are required to furnish the following confirmation from their insurers to the Society on a yearly basis, on renewal of cover:

a) Name(s) of underwriter(s) providing the cover. (If cover is provided by a Lloyds syndicate the reference name of the syndicate or syndicates should be stated.)

b) Minimum level of cover of £350,000 each and every claim, excluding costs and expenses. (It is important to check and examine policies to ensure that costs are not included in the £350,000 sum covered.)

c) Amount of self-insured excess on each and every claim.

d) Dates on which cover commences and expires.

(Actual policies should not be forwarded.)

4. Locum solicitors

There appear to be two problems arising under this heading.

a) Firms employing locum solicitors

Firms employing locum solicitors should make absolutely certain that their existing policy of insurance will cover locums. If not, they should take such steps as are necessary to provide that insurance. It may be that some insurers will require no extra premium while others will. It is emphasised, however, that while it is the legal obligation of each solicitor to have cover, prudence should prevail in this matter whereby an employer satisfies himself/herself that any locum in his/her employment is insured. It is also important to note that locum solicitors may have their own insurance. However, such independent insurance will only cover the locum's liability in the event of negligence and not the liability of the employer.

b) Locum solicitors

The committee is aware that the regulation requiring solicitors to have insurance for the full practice year prior to the issuing of the practising certificate has caused problems for locum solicitors. The committee reminds locum solicitors that it has power to grant a waiver of this requirement, upon written application to the committee. The practice adopted by the committee to date has been to accept professional indemnity insurance cover for the period of a particular locum position and require an undertaking from the locum solicitor not to practise without *first* putting in place proper professional indemnity insurance, and to then issue a practising certificate on this basis.

5. Changing employment

The regulations provide that it is the responsibility of the individual solicitor to ensure that professional indemnity insurance cover is in place and it is not that of the employer.

The solicitor is also required, within a period of not more than 21 days of changing employment, to furnish (or cause to be furnished) written confirmation from a qualified insurer that the solicitor has and maintains the minimum level of cover for the remaining part of that practice year.

6. Break in insurance cover

Apart from the obvious consequences of a break in insurance cover, there are less obvious consequences. Failure to keep insurance cover in place will almost certainly result in a gap between the expiry of one practising certificate and the commencement date of the next practising certificate. This may render a person ineligible for a judicial appointment or other appointments which require a minimum number of years in practice prior to the date on which an application for such appointment is made.

7. Solicitors employed in the public and corporate sectors

These solicitors are exempted from the necessity for having professional indemnity insurance. The exemption does not extend to exempt such solicitors from the necessity of having run off cover in respect of previous private practice.

Should they engage in the provision of legal services outside the scope of their employment, they will come within the scope of the regulations and therefore will require professional indemnity insurance. The provision of legal services may be as simple as providing advice for family or friends.

This, if it is negligent, might leave them personally liable and accordingly it is clear that it would be prudent in any event that they have insurance cover in place.

8. Worldwide cover

Solicitors giving advice on legal matters outside this jurisdiction should check their professional indemnity insurance policies to ensure they have such cover, as the policies on offer vary.

9. Minimum level of cover

The committee is aware that the sum of £350,000 for each and every claim (excluding costs and expenses) may not provide adequate cover for all solicitors in private practice and advises each solicitor to evaluate for themselves what they consider to be the relevant level of cover for their particular practice. Thought should be given to situations where higher cover is obtained for a particular case, as it may then be necessary to continue to have the higher cover in place as claims are (as already stated) on a claims made basis.

10. Solicitors employing law agents/law searchers/other third parties

The question of the relationship between solicitors and law agents/law searchers/other third parties carrying out tasks for clients on their behalf is currently being reviewed by the Society. There are situations in which difficult questions of responsibility and liability arise and all practitioners are cautioned to be mindful of these situations.

The committee in this practice note has attempted to highlight some of the problems that have come to light since the regulations came into force. Practitioners will understand that in a practice note of this type it is impossible to cover the whole range of problems that may arise, or to give authoritative advice on issues involving individual queries. Expert advice should be sought from your insurer or broker.

The simplest answer to all of the problems, however, is for practitioners to ensure that at all times they have cover not only for themselves but their employees as appropriate.

The committee welcomes any queries or suggestions particularly those which may be of general interest of the profession.

Gerard Doherty, Chairman, Professional Indemnity Insurance Committee

Assents and the decision in *Mohan v Roche*

The Conveyancing Committee has received a number of enquiries as to whether the principle enunciated in the *Mohan v Roche* decision [(1991) IR 560] alters the general practice of obtaining assents to the vesting of land forming part of a deceased's estate. The answer to this is clearly in the negative. The procedures with regard to assents as laid down in the *Succession Act, 1965* should, in the vast majority of cases be followed and, if pursue, should operate for the benefit of all parties concerned.

There will, however, be a limited number of cases where the *Mohan v Roche* doctrine could prove to be useful. These must be approached with care, and would seem to be limited to the following, the pertinent features of which will in each instance have to be substantiated:

i) Where the administrator alone is beneficially entitled to the estate of an intestate deceased *and* evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred.

ii) Where the executor alone is beneficially entitled to the unadministered part of the estate of a testate deceased *and* evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred and that all legacies, devises and bequests have been satisfied in full.

In certain circumstances, and provided that the appropriate proofs are made available, the doctrine laid down in *Mohan v Roche* can be helpful and may, in future dealings with the estate, obviate the necessity of seeking a *de bonis non* grant in the absence of an assent. However, as mentioned, it will in the majority of cases be far more satisfactory to have a formal assent completed.

Conveyancing Committee

Criminal Legal Aid Scheme: new system for payment of solicitors

A new scheme for payment of solicitors came into operation on 6 October 1997. Details of the scheme are contained in the Department of Justice memorandum set out below.

The Criminal Law Committee reminds practitioners of the requirement to sign the 'day sheet' to enable payment to be made. The committee has been advised that up to 20% of 'day sheets' cannot be processed on first submission due to the fact that they have not been signed by the case solicitor or a member of the solicitor's office, as appropriate. The return of the sheet for signature leads to additional administrative work which ultimately results in a delay in payment to the practitioner. The committee has been advised that a continuation of this practice may result in solicitors not being paid for such appearances.

Memorandum

New system for the payment of barristers and solicitors under the Criminal Legal Aid Scheme

1. A copy of each individual certificate granting free legal aid under the Criminal Legal Aid Scheme will be forwarded by each District Court office to the relevant Circuit Court office to which the case has been returned for trial. The Circuit Court office must forward the certificate to finance division in Killarney for their information. The case 'bill number' must be quoted by the Circuit Court office.
2. The Circuit Court office will produce 'day sheet(s)' in respect of each day's criminal sittings.
3. The court registrar will bring his 'day sheet(s)' to court each day and where a solicitor or barrister is representing a client under the criminal legal aid scheme he/she will sign his/her name and payee number opposite the case to record the fact that he/she appeared in court on that date to represent the defendant. It will be the solicitor's and barrister's responsibility to ensure that their appearances are recorded in every case.
4. At the end of each day the court registrar must sign the 'day sheet(s)' to verify that the particulars recorded on the sheet are correct. Any problems must be brought to the immediate attention of the county registrar who must sort the problem out immediately.
5. The 'day sheet(s)', correctly certified, must be forwarded by the county registrar to finance division within five working days of the court date. A copy of the 'day sheet(s)' will also be forwarded to Law Library Services Limited for its information. The court office will also keep a copy of each 'day sheet' for record purposes.
6. On the basis of the information contained on the 'day sheets', finance division will make payments to solicitors and barristers in accordance with the rates and criteria agreed with the Director of Public Prosecutions for the payment of prosecuting counsel.
7. Finance division will continue to receive fee sheets from the Office of Director of Public Prosecutions which will contain a flag to indicate non-standard payments which are made by the director. The information contained thereon will be checked against the payments already made and any underpayment/overpayment will be dealt with.
8. Solicitors and barristers should make separate claims to finance division in respect of any prison visits, quoting the relevant bill number.

Criminal Law Committee

LEGISLATION UPDATE: JUNE – OCTOBER 1997

ACTS PASSED

No Title of Act and Date Passed

35 ***Registration of Title (Amendment) Act, 1997* (16/7/1997)**
Amends section 7 of the *Registration of Title Act, 1964* to provide for the decentralisation of the Land Registry through the establishment of constituent offices in Dublin and outside Dublin.

SELECTED STATUTORY INSTRUMENTS

197 ***EC (General Product Safety) Regulations 1997***
Implement Council Directive 92/59/EEC on general product safety. Make it an offence to place unsafe products on the market. Specify the duties of producers and distributors in relation to placing safe products on the market. The Director of Consumer Affairs is given the authority to ensure that only safe products as specified in these regulations are placed on the market.

204 ***EC (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997***
Give effect to European Parliament and Council Directive 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a time-share basis. The regulations provide that consumers may withdraw from the contract within a ten-day cooling off period or, in the absence/non-provision of certain information, within three months. Regulations also provide that those seeking information on time-share properties must be supplied with a brochure, giving a description of the property, details on the vendor, location, services, facilities, price, right of cancellation etc.

209 **Health (Amendment) (No 3) Act, 1996 *(Commencement) Order 1997***
Appoints 1 January 1998 as the commencement date for paragraph (b) of the definition of expenditure in section 1 and for sections 5, 6,7, 8, 9, 10 and 12 of the Act.

213 **Litter Pollution Act, 1997 *(Commencement) Order 1997***
Appoints 1 July 1997 as the commencement date for the Act.

214 ***Litter Pollution Regulations 1997***
Set out prescribed forms for the purposes of offences under s28(1) of the Act.

222 **National Cultural Institutions Act, 1997 *(Commencement) Order 1997***
Brings into effect from 2 June 1997 certain provisions of the Act and brings into effect from 1 January 1998, s35 insofar as it relates to the National Gallery and s64(i) in relation to the National Theatre Society Ltd.

239 **Prompt Payment of Accounts Act, 1997 *(Commencement) Order 1997***
Appoints 2 January 1998 as the commencement date for the Act.

241 **Solicitors Act 1954 *(Section 44) Order 1997***
Provides that from 13 June 1997 an attorney qualified in New York or Pennsylvania may be admitted as a solicitor in Ireland subject to the corresponding conditions under which Irish solicitors may be admitted to practice in those states.

247 **Housing (Miscellaneous Provisions) Act, 1997 *(Commencement) Order 1997***
Appoints 1 July 1997 as the commencement date for the Act.

255 **Irish Takeover Panel Act, 1997 *(Commencement) (No 2) Order 1997***
Appoints 1 July 1997 as the date on which the remaining sections of the Act – s5(3), s7 (1) and (2), ss9-15 – will come into operation.

261 ***Local Government (Planning & Development) (No 3) Regulations 1997***
Amend the *Local Government (Planning and Development) Regulations, 1994* (SI No 86 of 1994) consequent on recent regulations made under the *Waste Management Act, 1996*, which introduced a licensing system for waste disposal activities.

273 ***Employment Regulation Order (Law Clerks Joint Labour Committee) 1997***
Fixes statutory minimum rates of pay and regulates statutory conditions of employment as from 1 July 1997 for certain workers employed in solicitors' offices.

339 **Public Service Management Act, 1997 *(Commencement) Order 1997***
Appoints 1 September 1997 as the commencement date for the Act.

340 **Registration of Title Act, 1964 *(Central Office) Order 1997***
Designates County Waterford as an area within which one or more than one constituent office of the Central Office of the Land Registry shall be located.

343 ***Rules of the superior courts (No 3) of 1997***
Provide for the substitution of a new order 70A for the existing order 70A to make provision in regard to family law proceedings (including divorce). Came into operation on 1 September 1997.

344 ***Rules of the superior courts (No 4) of 1997***
Amend order 77, rule 21 and rule 32(3) to make provision in regard to payment out of funds in court and interest to a defendant's solicitor in certain circumstances. Came into operation on 1 September 1997.

345 **Criminal Justice (Miscellaneous Provisions) Act, 1997 *(Section 6) Regulations 1997***
Prescribe the form of certificates under s6 of the Act.

346 ***Rules of the superior courts (No 5) of 1997***
Govern the procedure in appeals to the court under the *EC (General System for the Recognition of Higher Education Diplomas) Regulations, 1991* (SI No 1 of 1991) and EC Directive 89/48/EEC and the *EC (Second General System for the Recognition of Professional Education and Training) Regulations, 1996* (SI No 135 of 1996), EC Directive 92/51/EEC and Commission Directives 94/38/EC and 95/43/EC. Came into operation on 1 September 1997.

347 ***Rules of the superior courts (No 6) of 1997***
Provides for a new order 128 to make provision in regard to applications to the High Court arising under the *Transfer of Sentenced Persons Act, 1995*. Came into operation on 1 September 1997.

348 ***Rules of the superior courts (No 7) of 1997***
Provide for an addition to order 39 of new rules 45-52 to establish new procedures and impose time limits for the disclosure and admission of reports, statements and witness details pursuant to s45 of the *Courts and Court Officers Act, 1995*. Came into operation on 1 September 1997.

369 ***District Court (Fees) Order 1997***
Revises as and from 1 October, 1997, the fees chargeable in the District Court. Revokes all previous District Court fees orders.

371 **Criminal Evidence Act, 1992 *(Section 29) (Commencement) Order 1997***
Appoints 6 October 1997 as the day on which s29 of the Act will come into operation. Section 29 provides that evidence may, with the leave of the court, be given from abroad through a live television link by a person other than the accused. Such evidence must be video recorded.

380 **Stock Exchange Act, 1995 *(Determination Committees) Rules of Procedure 1997***
Came into effect on 10 September 1997.

381 **Investment Intermediaries Act, 1995 *(Determination Committees) Rules of Procedure 1997***
Came into effect on 10 September 1997.

392 **Organisation of Working Time Act, 1997 *(Commencement) Order 1997***
Appoints 30 September 1997, 30 November 1997 and 1 March 1998 as the commencement dates for specified provisions of the Act.

396 **Road Traffic Act, 1961 *(Section 103) (Offences) Regulations 1997***
Sets out list of offences, fines and prescribed forms consequent on the commencement of sections 35 and 36 of the Road Traffic Act, 1994 *(Regulation of Traffic).*

403 **Credit Union Act, 1997 *(Commencement) Order 1997***
Appoints 1 October 1997 as the commencement date for the Act, with the exception of sections 46 to 52 *(savings protection scheme, insurance against fraud of officers and provision of additional services to members);* section 68(1)(c) *(limitation of remuneration to a credit officer or credit control officer);* section 120(5) *(auditor's investigations);* section 122 (1)(f) *(failure of board of directors to respond to auditor's recommendations).*

406 ***Solicitors (Adjudicator) Regulations 1997***
Provide for the appointment of an Adjudicator by the Law Society to investigate complaints made by, or on behalf of, a client of a solicitor against the Law Society concerning the handling by the Law Society of a complaint against that solicitor made to the Society by, or on behalf of, that client. Come into operation on 1 October 1997

Lists compiled by the Law Society Library

Practice management

Video review

The trials of William Brown

(running time: 30 minutes)

This is a video produced by the Law Society of Northern Ireland on risk management. William Brown is a fictitious solicitor created by that Law Society to publicise risk management issues. He makes regular appearances in its monthly magazine, *The Writ*, normally in cartoon form.

William Brown, solicitor – a man under pressure. He is a typical solicitor: continually giving 100% of himself to work, but the pressure of the job is getting to him. He deals with clients, searches, case reviews, phone calls and all the normal day crisis events. The file mountain is growing. Late nights. After a hard day's work, he has a restless night thinking over cases. The video then moves to a nightmare.

William Brown is charged with not carrying out his duties as a practising solicitor. He pleads not guilty to the rapturous glee of the jury. He was firstly accused of the negligent execution of a will. Mrs Ida Fortune, the deceased, returns to give evidence. However, this had to be heard from a coffin! He arranged for a colleague to witness her will back at the office, having taken instructions in her home. The prosecution presents mountains of documents witnessed in this fashion. *'The witness must be actually present at the time of signing, is this not so Mr Brown?'* Pressures of time, workload, inability to find a witness were all rejected as excuses.

Then there was a statute barred nightmare. A poor diary system led to an action being statute barred. He lost the case because he got the date wrong. An unfortunate error, a somewhat complicated case with long delays between various parts of the transaction. His excuse of being too busy was not accepted. *'My secretary misplaced the file!'*; *'I got a phone call just as I was writing in the review date'*. The prosecuting lawyer makes the point that this error could cost him his life, his house, his dog. His sanity?

The next nightmare – acting for both parties in a conveyance transaction where the septic tank was overlooked proved not to be too wise. The building society was not pleased. *'Well, it was very complicated'*, said Mr Brown.

Failure to communicate, failure to follow simple procedures, bad supervision, diary like a scrapbook, an office that runs itself – badly! At this, Mr Brown wakes up.

The man from the insurance company enters. 'Where chaos reigns, disaster looms'. It is a matter of making time, regular reviews, courtesy calls, good diary practice and no bending the rules because they can all come back to haunt you. Remember: if it is not written down, it is not worth the paper it is not written down on.

The Law Society of Northern Ireland have to be congratulated on this. It is very professional, entertaining and very realistic.

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

Maybe this should be the starting point – so that you can get a life.

The video is available from the Law Society Library on payment of £20 refundable deposit for a ten-day loan. G

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

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Free movement of persons

The Court of Justice has recently provided clarification on the interpretation of the exceptions to the free movement provisions in the treaty – public policy, public security and public health – and on the remedies available to individuals refused access to Member States on the basis of one of these exceptions. (*The Queen v Secretary of State for the Home Department, ex parte: Shingara et Radiom*, judgment of 17 June 1997, joined cases 65/95 and 111/95).

Directive 64/221 lays down the conditions under which the Member States may refuse entry to nationals of other Member States on grounds of public policy, public security or public health, pursuant to Articles 48 and 56. Article 8 of the directive provides that a person subject to such a decision must be able to challenge it by means of the same legal remedies as are available to nationals of the state concerned in respect of acts of the administration.

Mr Shingara, a French national, attempted to visit the United Kingdom in March 1991. He was refused entry by the Secretary of State on grounds of public policy and public security, on the basis of his alleged links with Sikh extremists. In July 1993 he arrived in Dover and was admitted to the UK, after showing his French identity card. He was subsequently arrested and detained as an illegal immigrant.

He was granted leave to apply for judicial review of his detention, released and returned to France. He sought to have the decision to treat him as an illegal entrant, to detain him and remove him from the United Kingdom quashed. He also sought a declaration that he was entitled to appeal against his exclusion or to have his case referred for consideration to an independent authority.

Mr Radiom resided in Ireland and had dual Iranian and Irish nationality. Since 1983, he worked in the United Kingdom for the Iranian Consular Service. Following the severing of diplomatic relations between Iran and the UK, he was informed that he would be detained and deported if he did not leave the UK within seven days. He did so.

In October 1992, Mr Radiom applied to the Home Office for a new residence permit, stating that he was a national of a Member State. The Home Office refused, saying that if he attempted to enter the United Kingdom, he would be refused entry on grounds of public policy. He was also informed that he had no right of appeal. He subsequently applied to the Home Office for a residence permit. The application was refused on the basis of his links to the Iranian government. The letter of refusal stated that he had no right of appeal. He sought judicial review of the decision refusing his application for a residence permit.

The first question of the English High Court was whether under Article 8, it was sufficient that nationals of other Member States enjoyed the same remedies as those available against acts of the administration generally or whether there must also be separate remedies available in respect of decisions concerning entry of nationals of other Member States. The European Court of Justice ruled that the remedies available to nationals of other Member States in the circumstances defined by the directive cannot be assessed by reference to the remedies available to nationals concerning the right of entry as the two situations are in no way comparable. However, where national law provided no specific procedures for the remedies available to persons covered by the directive as regards entry, refusal to issue or renew a residence permit or expulsion decisions, the directive is satisfied where nationals of other Member States enjoy the same remedies regarding decisions concerning entry as those available generally against acts of the administration in that Member State.

The issue was whether there were specific procedures enjoyed by UK nationals in comparable circumstances. The court concluded there were not. Articles 48 and 56 of the treaty permitted Member States to adopt measures, which they could not apply to their own nationals, as they did not have the authority to expel them from the state or deny them entry to it. Thus, the rights available to nationals of other Member States in the circumstances defined by the directive could not be assessed by reference to the remedies available to nationals concerning the right of entry. A margin of discretion was left to Member States in terms of refusing entry to nationals of other Member States on grounds of public policy.

The court also stated that decisions prohibiting the entry into a Member State of a national of another Member State could not be of unlimited duration. Decisions prohibiting entry are derogations from the fundamental principle of freedom of movement. Thus, such decisions cannot be of unlimited duration. An EU citizen against whom such a prohibition has been issued must, therefore, be entitled to have his situation re-examined if he considers that the circumstances which justified prohibiting him from entering the state no longer exist.

When a fresh application is made for entry or a residence permit, after a reasonable time has elapsed since the preceding decision, the person concerned is entitled to a new decision, which may be subject to an appeal in accordance with the directive. G

Gender discrimination and same sex cohabitees

In *Lisa Grant v South-West Trains Ltd* (Case 249/96), Advocate General Elmer has recommended that the Court of Justice find pay regulations granting travel concession to co-habitees of opposite gender but denying them to co-habitees of the same gender as being discriminatory on grounds of gender and contrary to Article 119 of the treaty.

Lisa Grant was an employee of South-West Trains. Her employment contract included entitlements to certain free and reduced rate travel concessions. These concessions were also available to 'spouses' and dependants of the employees. The regulations defined 'spouse' to include a co-habitee of the opposite sex, provided that there had been a meaningful relationship for two years or more.

Ms Grant's predecessor had obtained travel concessions for his female co-habitee. She applied for travel concessions for her female co-habitee, with whom she had lived for more than two years. She was refused on the basis that concessions were not given to co-habitees of the same sex.

Lisa Grant brought a case before her local industrial tribunal, claiming that the refusal amounted to sex discrimination. The industrial tribunal stayed the proceedings and referred a number of questions to the Court of Justice concerning the interpretation of Article 119 and of the Equal Pay and Equal Treatment Directives.

The Advocate General's opinion

Advocate Elmer recommended that the questions referred should be decided on the basis of Article 119. He said that Article 119 covered all cases where there was discrimination based exclusively or essentially on gender.

He looked at whether there was gender discrimination in this case. The regulations made no reference to sexual orientation. However, they made the concessions conditional on the co-habitees being of the 'opposite sex' to the employer. The discrimination was therefore gender-based. The granting of the benefit depended on the gender of the employee and the co-habitee.

He rejected the argument that the discrimination was a consequence of the definition of 'a common law spouse' and thus was a family law matter which did not fall within the EC treaty. He pointed out that the term had no legal significance in England, either in common law or by statute. Thus, the gender discrimination was not the result of family law legislation in the UK and outside the scope of Community law.

He also held that the private conceptions of morality held by the employer were irrelevant, whether or not they corresponded to those prevailing in the UK. The court should not allow employers on the basis of private morality to set aside a fundamental principle of Community law in relation to some people because they disliked their lifestyle. The court safeguards the rule of law in the Community; it has no role in watching over questions of morality in the Community or any individual Member State.

The Advocate General said that there was nothing in the treaties indicating that the rights and duties derived from the treaties, including the right not to be discriminated against on the basis of gender, should not apply to homosexuals. Equality before the law is a fundamental principle within the Community legal order. The rights and duties which result from Community law apply to all without discrimination.

He re-affirmed that Article 119 of the EC treaty could be relied upon by individuals in national courts. G

Intellectual property and multi-media

The multi-media industry is developing rapidly. Multi-media describes the convergence of a number of existing technologies which can be used to transmit information such as text or film or sound. A crucial difference between multi-media and its predecessors is that multi-media contents are designed to be interactive so that the user is able to manipulate them to his own requirements. I will briefly outline some of the initiatives undertaken by the European Commission in this field.

The European Commission has set out proposals in a Green Paper entitled *Copyright and related rights in the information society* (COM (95) 382 Final Brussels 19.07.95). These proposals were part of the Commission's plan to establish a proper regulatory framework for what it calls the Information Society. The Commission recognises that if European companies are to be able to take advantage of the 'information superhighway', then a proper regulatory framework is needed to protect those investing in its development.

The Computer Software Directive (Council Directive 91/250) is designed to ensure that those investing in the development of software are properly protected. The directive deals with legal issues surrounding the creation, loading, transmission and use of software which are essential to the development of the new software society. Computer software programs are now protected throughout the Community as literary works. The directive is a compromise, designed to satisfy the needs of both the developers and users of software.

The Terms of Protection Directive (Council Directive 93/98) harmonises the terms of protection of copyright and certain related rights to 70 years for copyright works and 50 years for related rights.

The Databases Directive (Council Directive 96/9) is designed to protect databanks of information which will be accessed by users of the information superhighway. A new *sui generis* economic right now protects the investment in the acquisition, verification and presentation of the contents of the database. This new right is to last for a period of 15 years initially with the possibility of renewal if there has been substantial and subsequent re-investment made in the database. The right is to restrict the unauthorised transfer of the distribution of the database by any means of transmission.

The Rental Right Directive (Council Directive 92/100) provides a right for authors, performers and audio-visual producers to prevent rental and lending of copyright works, such as videos, without remuneration. The term 'rental' means making available for use for a limited period a cinematographic or audio-visual work.

The Commission considers the Satellite and Cable Directive (Directive 93/83) to be a possible model for the protection of works disseminated by digital transmission. This directive provides a single audio-visual area for broadcasting by providing that a single act of broadcasting in the Community is subject to the law of one country only and that is where the signals are introduced into the chain of communication. G

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Recent developments in European law

CONSUMER LAW

Consumer credit

The Council of Ministers has adopted a draft directive laying down a single EU formula for calculating the annual percentage rate of charge for consumer credit. The proposal has been forwarded to the European Parliament for a second reading. If the Parliament does not oppose it, the directive will soon be officially adopted and will come into force two years after its adoption.

Product liability

The European Commission is proposing to extend the Product Liability Directive (implemented in Ireland by the *Liability for Defective Products Act, 1991*) to primary agricultural products. The original directive allowed individual Member States to exclude agricultural products. Ireland chose to do so. This new proposal would compel Ireland to extend the strict liability regime to meat, fruit and vegetables. The Commission is to consider whether any further amendments to the Product Liability Directive are necessary.

EMPLOYMENT

Part-time workers

The European Commission has put forward a proposal for a directive on part-time work. The draft directive would entitle part-time workers to the same employment rights as full-time workers. It would encourage Member States to improve the quality of part-time work and to promote it by removing any obstacles to its development. The draft sets out general principles and minimum requirements leaving scope for Member States to introduce or maintain more favourable provisions.

Sex discrimination

The Council of Ministers has reached agreement on the draft directive on sexual discrimination. This draft directive is designed to encourage more women who are sexually discriminated against to make official complaints. It shifts the burden of proof from the plaintiff to the defendant in cases where there are reasonable grounds for suspecting discrimination. The directive has now been forwarded to the European Parliament for a second reading.

FREE MOVEMENT

Goods

In *Ditta Angelo Celestini v Saar-Sektkellerei Faber GmbH & Co KG* (Case C105/94), the Court of Justice on 5 June considered the compatibility of carrying out tests on wine (to ensure compliance with Community legislation) which has been already been subject to some testing in the Member State of origin. The court held that Article 30 and 36 did not preclude such testing provided that it is carried out in a non-discriminatory manner, that the tests observe the principle of proportionality and that account is taken of the tests carried out in the Member State of origin.

Persons

The Commission has recently adopted a proposal for a convention regarding the admission of third country nationals to the Member States. The convention is designed to standardise rules concerning admittance and residence of third country nationals, wishing to stay for longer than three months. The convention sets out rules concerning admission for employment, self-employment, study, non-gainful activity and family reunification. Long-term residents from third countries would be guaranteed the same minimum rights as EU citizens. The convention does not cover asylum seekers and refugees granted temporary protection under the *Geneva Convention*.

GENERAL PRINCIPLES

Non-discrimination

In *Hayes v Kronenberger GmbH* (Case 323/95), the Court of Justice found a provision of the German Code of Civil Procedure to be contrary to the principle of non-discrimination in Article 6 of the treaty. The provision required that foreign nationals who were plaintiffs in litigation before the German courts were required to give security for costs and lawyers' fees. The court also found this provision disproportionate to its stated aim of seeking to enforce costs against non-residents as there was no equivalent provision for German plaintiffs living outside Germany and who did not have assets in Germany. It was also disproportionate as foreign nationals living in Germany and having assets there were required to provide security under this provision.

HUMAN RIGHTS

Application of the *European Convention on Human Rights*

In *Kremzow v Republic Osterrich* (Case 299/95), the Court of Justice held that it was not competent to give a preliminary ruling on the interpretation of the *Convention on Human Rights* when the case before the national court does not fall within the application of Community law.

INSURANCE

Motor vehicles

The Commission in October proposed a directive to deal with the problems of car accidents abroad. The proposal is designed to protect the victims of car accidents which take place abroad and make it easier for them to obtain compensation. It provides that insurance companies must appoint a representative responsible for settling accident claims in each Member State and must set up information centres responsible for identifying the other party's insurer. Additionally, a direct claims system is to be introduced throughout the EU for this category of victims.

LITIGATION

Brussels Convention

In *Anthony O'Keefe v Top Car Ltd and Grants of Aviemore Ltd*, Flood J ruled on Article 6(1) of the *Brussels Convention*. The case concerned a plaintiff who had brought an action against a defendant from whom he had bought a car, which he alleged was seriously defective. He sought to join in a second defendant, domiciled in Scotland, who had carried out repairs to the car, while he was travelling in Scotland. Flood J held that the second defendant could not be joined in under Article 6(1). The action against the first defendant was in contract, relating to the condition of the car at the date of sale. The claim against the second defendant was in tort, in relation to his alleged poor workmanship on the repairs carried out after the contract. Accordingly, he held that the two actions were not so connected that it was expedient to hear them together.

Conferences and seminars

AIJA (Association of Young Lawyers)
Topic: *Annual congress*
Date: 20-25 September 1998
Venue: Sydney, Australia
Contact: Gerard Coll (tel: 01 676 1924)

Centre of European Law, King's College London
Topic: *The legal framework and social consequences of free movement of persons in the EU*
Date: 27-28 November
Venue: London, England
Contact: Liz Haigh (tel: 0044 171 873 2387)

European Institute of Public Administration
Topic: *Managing the new treaty on European Union: coping with flexibility and legitimacy*
Date: 27-28 November
Venue: Maastricht, the Netherlands
Contact: Winny Janssen-Curfs
(tel: 0031 433 296320)

Topic: *Schengen's final days? Incorporation into the new TEU, external borders and information systems*
Date: 5-6 February 1998
Venue: Maastricht, the Netherlands
Contact: Jacqueline Zijlmans
(tel: 0031 433 296320)

IBEC competition policy conference
Topic: *Irish and European competition policies, privatisation and State ownership*
Date: 18 November
Venue: Dublin
Contact: Deirdre Prendergast
(tel: 01 605 1573)

Law Society of England & Wales
Topic: *Incorporation of the* European Convention on Human Rights
Date: 21-23 November
Venue: Chichester, England
Contact: Fiona Mackenzie
(tel: 0044 171 320 5942)

ILT Digest

of legislation and superior court decisions

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ADMINISTRATIVE

***Registration of Title (Amendment) Act, 1997* (No 35 of 1997)**

This Act was signed by the President on 16 July 1997. (See also (1997) 15 ILT 163.)

***Registration of Title 1964 (Central Office) Order 1997* (SI No 340 of 1997)**

This order designates County Waterford as an area within which one or more constituent offices of the Central Offices of the Land Registry shall be located.

Public Service Management Act, 1997 *(Commencement) Order 1997* (SI No 339 of 1997)

This order brings the *Public Service Management Act, 1997* into operation with effect from 1 September 1997.

***Sexton v Minister For Justice* (Morris J), 26 February 1997**

District Court Clerks; whether independent statutory office; whether each entitled to appointment by the Minister, to be attached to the District Court and assigned a district; whether Minister had acted *ultra vires* in attempting to incorporate District Court clerks into the Civil Service and remunerate them accordingly; whether productivity and realignment agreements *ultra vires* the Minister; whether linking of rate of remuneration to the amount of cases handled arbitrary and unfair; *Court Officers Act, 1926*, ss46, 48, 60; *Civil Service Regulation Act, 1956*, s17.

Held: On a correct reading of the *Courts Officers Act, 1926*, and in particular s60 thereof, all District Court clerks appointed under that Act were appointed as civil servants, and the appointment of clerks from the ranks of civil servants was in complete accordance with the scheme of the Act.

COMPANY

***Companies (Fees) Order 1997* (SI No 358 of 1997)**

This order sets a new level of fees to be paid in connection with certain provisions of the *Companies Acts, 1963 to 1990*. The order came into operation on 15 September 1997.

COMMERCIAL

***Business Names Regulations 1997* (SI No 357 of 1997)**

These regulations set a new level of fees to be paid in connection with certain provisions of the *Registration of Business Names Act, 1963*. The order came into operation on 15 September 1997.

***Credit Suisse v CH (Ireland) Inc (in liquidation)* (Keane J), 2 February 1997**

Insolvency; liquidation; validity of transaction challenged; directions sought from the court; application to stay proceedings; Swiss and Canadian banks; *forum conveniens*; s60 governed solely by Irish law; appearance put in only to challenge jurisdiction; Ireland most convenient forum; Swiss case stayed; Canadian case to proceed; *Lugano Convention*; *Jurisdiction of Courts and Enforcement of Judgements Act, 1993*; *Companies Act, 1963*, s60.

Held: A proceeding which relates directly to, or arises out of, a winding-up is excluded from the scope of the convention. Where a state is not a party to the convention, the principles of private international law apply.

***Re Advanced Technology College Ltd* (Kelly J), 13 March 1997**

Insolvency; company; examiner; interim examiner; powers of interim examiner; advertisement of petition for appointment of examiner; students attending private college owned by company; management informing students that company insolvent; students presenting petition for appointment of examiner; advertisement of petition; advertisement defective; court directing readvertisement and adjourning hearing of petition; petitioners appealing to Supreme Court; Supreme Court dismissing appeal; petitioners applying for appointment of interim examiner; petitioners applying to vary order of court directing readvertisement of petition; whether court should appoint interim examiner; whether interim examiner may be granted power to manage company on application of petitioners; whether order directing readvertisement should be varied; *Companies (Amendment) Act, 1990*, ss2, 9, 13(7).

Held: Section 9 of the *Companies (Amendment) Act, 1990* provides that only the examiner of a company may apply to the court for an order that any or all of the functions of the directors of the company shall be exercisable only by the examiner. Section 13(7) of the Act does not permit such an application to be made by persons other than the examiner.

CONSTITUTIONAL

***Molyneux v Ireland* (Costello P), 25 February 1997**

Equality before the law; whether constitutional guarantee infringed where police in Dublin area given certain power under statute to arrest without warrant, such power not existing outside Dublin area; whether guarantee of equality before the law one of absolute equality for all citizens in all circumstances; whether statute

infringed the art 40.1 guarantee in providing for different treatment between one group of persons and another; approach to be adopted by court; *Dublin Police Act, 1842*, s28; Constitution of Ireland 1937, art 40.1.

Held: The guarantee of equality before the law contained in art. 40.1 of the Constitution was not a guarantee of absolute equality for all citizens in all circumstances, but was a guarantee of equality as human persons relating to their dignity as human beings, and a guarantee against inequalities based on an assumption that some individuals, because of their human attributes, ethnic, racial, social or religious background, were to be treated as inferior or superior to other individuals in the community.

CONTRACT

***McCarron v McCarron* (Supreme Court), 13 February 1997**

Specific performance; consideration; proprietary estoppel; plaintiff working on farm of deceased for 16 years; deceased promising to devise lands to plaintiff; deceased intestate; plaintiff claiming specific performance of contract; whether contract that deceased would devise lands to plaintiff; whether plaintiff entitled to rely on doctrine of proprietary estoppel; *Statute of Frauds (Ireland) 1695*.

Obiter: In principle, there is no reason why the doctrine of proprietary estoppel should not be applied to cases where a plaintiff has worked on the lands of another, although in practice it might be difficult to determine the extent of the estate or interest in the lands to which the plaintiff should be entitled as a result of his efforts.

***Irish Shell Limited v Ballylynch Motors Ltd* (Supreme Court), 5 March 1997**

Contract; company; breach; garage; exclusive sale of brand motor fuel; injunction restraining sale of other brands; breach of injunction; directors wilfully in breach of injunction.

Held: Where a defendant company has wilfully disobeyed an order of the court, the directors are accordingly liable to attachment, or in lieu thereof a fine.

CRIMINAL

Europol Bill, 1997

This Bill, as presented by the Minister for Justice, Equality and Law Reform, aims to enable the State to ratify the EU Convention of 26 July 1995 on the establishment of a European Police Office, together with certain protocols to that convention on its interpretation and the privileges and immunities of the proposed European Police Office. If established, Europol would have the following tasks: to obtain, collate, analyse, computerise and facilitate the exchange of information; and to notify Member States of any connection concerning them identified between criminal cases.

***Hegarty v Governor of Limerick Prison* (Geoghegan J), (Divisional Court) 26 February 1997**

Habeus corpus; constitutional rights; accused remanded before Special Criminal Court; court not properly constituted; remand order unlawful; accused released from prison; accused immediately re-arrested and charged again before properly constituted court; accused sought inquiry into his detention pursuant to art 40 of the Constitution; whether accused released from unlawful detention; whether accused validly re-arrested; whether accused could be charged twice in relation to the same offences; whether notice parties conspired to deprive the accused of his constitutional rights; whether accused entitled to the reliefs sought; *Offences against the State Act, 1939*, s30.

Held: The Director of Public Prosecutions was entitled to recommence the prosecution process by arranging that the accused person, once he had been released, would be re-arrested and brought before a properly constituted Special Criminal Court and there charged with the same offences. Such a course of action regularised the position and at the same time vindicated the accused person's constitutional rights.

***People (Director of Public Prosecutions) v Pringle* (Supreme Court), 4 March 1997**

Murder; appeal; newly-discovered fact; miscarriage of justice; refusal to grant compensation; point of law of exceptional public importance; onus on appellant; balance of probabilities; each party entitled to adduce further evidence; *Criminal Procedure Act, 1993*, s9.

Held: An inquiry as to whether a certificate should be given is not a criminal trial but an inquiry as to whether there has been a miscarriage of justice, the onus being on the appellant to prove that there has been a miscarriage of justice on the balance of probabilities.

***People (Director of Public Prosecutions) v Meleady and Grogan* (Supreme Court), 4 March 1997**

Malicious damage and assault; appeal; newly discovered fact; miscarriage of justice; refusal to grant a certificate that the newly-discovered fact showed that there had been a miscarriage of justice; appeal on a point of law of exceptional public importance; not necessary to have guilt or innocence of appellants decided by jury prior to issue of certificate; court erred in law; case remitted; *Criminal Procedure Act, 1993*, ss2, 9.

Held: The court was not entitled to refuse to grant a certificate by reason only of the fact that the guilt or innocence of appellants had not been determined by a jury at a trial where the non-disclosed material had been available to the accused.

DAMAGES

***Padraic O'Faolain v Dublin Corporation* (Lavan J), 10 December 1996**

Statutory interpretation; 1981 Act allows compensation when damage caused to property by one or more of number of people riotously assembled together; whether force in present case displayed in such a manner as to alarm person of reasonable firmness and courage; whether mere looks showed an obvious intent to use force or violence; *Malicious Injuries Act, 1981*; *Malicious Injuries (Amendment) Act, 1986*.

Held: In the absence of evidence of actual violence, it is possible to infer a measure of violence in a mere look or stare, when the effect of that look or stare is taken into account.

EMPLOYMENT

***Charles Mooney v An Post* (Supreme Court), 20 March 1997**

Dismissal; plaintiff employed as a postman; plaintiff accused of interfering with postal packets; plaintiff tried before Circuit Court and acquitted; employer decided to terminate employment contract with plaintiff; plaintiff challenged termination in High Court and lost; appeal to Supreme Court; whether respondent was entitled to terminate employment contract with appellant; *Postal and Telecommunications Act, 1983*; *Civil Service Regulation Act, 1956*.

Held: An employee is entitled to the benefit of fair procedures but what these demand will depend upon the terms of his employment and the circumstances surrounding his proposed dismissal.

FAMILY

***LM v Devally* (Carroll J), 13 March 1997**

Non-marital child; claim for maintenance against natural father under 1930 Act; claim dismissed by judge on grounds that he had no jurisdiction; agreement between the parties in 1983; in full

and final settlement; immunity under Act; Act repealed; immunity ceased to have effect; jurisdiction to make new order; must take lump sum into account; *certiorari* granted; matter remitted to Circuit Court; *Family Law (Maintenance of Spouses and Children) Act, 1976*; *Status of Children Act, 1987*; *Illegitimate Children (Affiliation Orders) Act, 1930*; *Courts Act, 1981*.

Held: The right to make an order under s5A of the *Family Law (Maintenance of Spouses and Children) Act, 1976* is not barred by reason of an agreement made under the 1930 Act, which only lasted until the repeal of the 1930 Act and ceased to have effect on the passing of the 1976 Act.

LOCAL GOVERNMENT

Local Government (Financial Provisions) Act, 1997 *(Commencement) Order 1997* (SI No 263 of 1997)

This order brings the *Local Government (Financial Provisions) Act, 1997*, other than s7, into operation with effect from 1 July 1997.

***Local Government (Value for Money) Unit (Establishment) Order 1997* (SI No 264 of 1997)**

This order establishes the Local Government (Value for Money) Unit under s14 of the *Local Government (Financial Provisions) Act, 1997*.

PRACTICE & PROCEDURE

***Rules of the Superior Courts (No 3) of 1997* (SI No 343 of 1997)**

These rules provide for the substitution of a new order 70A for the previous order 70A to make provision in regard to family law proceedings (including divorce). The rules came into operation on 1 September 1997.

***Rules of the Superior Courts (No 4) of 1997* (SI No 344 of 1997)**

These rules provide for the amendment of o77, rr21 and 32(3) to make provision in regard to payment out of funds in court and interest to a defendant's solicitor in certain circumstances. The rules came into operation on 1 September 1997.

***Rules of the Superior Courts (No 5) of 1997* (SI No 346 of 1997)**

These rules are for the purpose of governing procedure in appeals to the court under: *European Communities (General System for the Recognition of Higher Education Diplomas) Regulations 1991*; *European Communities (Second General System for the Recognition of Professional Education and Training) Regulations 1996*; EC Directives 89/48/EC and 92/51/EEC; and Commission Directives 94/38/EC and 95/43/EC. The rules came into operation on 1 September 1997.

***Rules of the Superior Courts (No 6) of 1997* (SI No 347 of 1997)**

These rules provide for a new order 128 to make provision in regard to applications to the High Court arising under the *Transfer of Sentenced Persons Act, 1995*. The rules came into operation on 1 September 1997.

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

These rules provide for an addition to order 39 of new rules 45 to 52 to make provision regarding disclosure and admission of reports and statements pursuant to s45 of the *Courts and Court Officers Act, 1995*. The rules came into operation on 1 September 1997.

***O'Leary v Minister for Transport, Energy and Communications* (Barron J), 14 February 1997**

Labour law; appeal on point of law from determination of Labour Court which upheld equality officer's findings; reasons for determination not elaborated upon; whether reasons given were sufficient to ascertain whether Labour Court had erred.

Held: The manner in which a decision of the Labour Court is expressed must leave no room for doubt as to its findings of fact and the reasons which led to its decision.

***Pat O'Donnell & Co Ltd v Truck & Machinery Sales Ltd* (Supreme Court), 18 February 1997**

Supreme Court; leave to adduce additional evidence relating to an appeal; liberty to amend notice of appeal; claim and counterclaim; cost of vehicles supplied and interest pursuant to agreement; appellant expressly admitting plaintiff's claim; judgment for plaintiff in High Court; notice of appeal served; appellant seeking to adduce 'new' evidence and ground of appeal; issues within knowledge of appellant during hearing of claim and counterclaim; whether 'new' or additional evidence became available to appellant since date of hearing; circumstances in which Supreme Court will receive further evidence on appeal from final judgment or order; guidelines; threefold test; whether conditions met; whether appellant could show evidence sought to be adduced could not have been obtained; whether appellant entitled to challenge on different basis and evidence plaintiff's right to interest despite order and judgment of High Court; absence of 'sharp practice' on plaintiff's behalf; whether justice required or permitted court to deprive plaintiff of judgment already obtained to allow appellant to make a case not made at appropriate stage; *Rules of the superior courts 1986*, O58, r8.

Held: The three conditions necessary before the Supreme Court would receive further evidence on an appeal from a final judgment or order were: (i) proof that the evidence could not have been

obtained with reasonable diligence for use at the trial; (ii) the evidence was such that if given it would probably have an important, if not decisive, influence on the result of the case; and (iii) the evidence must be apparently credible, though not necessarily incontrovertible.

***Harrington v JVC (UK) Ltd* (Supreme Court), 21 February 1997**

Company law; security for costs; defendants; plaintiff companies unable to meet costs of successful defendants; plaintiffs alleging inability to pay costs arising from wrongdoing of defendants; High Court directing that security for costs be provided; appeal to Supreme Court; principles to be applied; whether special circumstances; abuse of process of the courts; plaintiffs alleging conspiracy involving defendants; application by defendant to strike out plaintiffs' action; High Court striking out action; appeal to Supreme Court; principles to be applied; defendant company out of jurisdiction; leave to serve out of jurisdiction granted; application to set order granting leave aside; affidavits grounding application for leave to serve out of jurisdiction; averments required; proper deponent; whether application to set aside made in good time; whether fresh steps taken by defendant with knowledge of irregularity; objections to be stated in notice of motion; High Court refusing to set aside order giving leave; appeal to Supreme Court; *Companies Act, 1963*, s390; *Rules of the superior courts 1986*, oo11, 124.

Held: It is generally undesirable that the merits of a case be investigated on an application that an action be struck out against a party, where the facts of the case are in dispute. Although the High Court has an inherent jurisdiction to dismiss an action which constitutes an abuse of the process of the court, the High Court should be slow to do so. Where a plaintiff limited liability company would be unable to meet the costs of a successful defendant, it is for the plaintiff to establish that there are special circumstances which would justify the court in exercising its discretion to refuse to order that security for costs be provided.

REFUGEES

Refugee Act, 1996 *(Sections 1, 2, 5, 22 and 25) (Commencement) Order 1997* (SI No 359 of 1997)

This order brings ss1, 2, 5, 22 and 25 of the *Refugee Act, 1996* into operation with effect from 29 August 1997.

***Dublin Convention (Implementation) Order 1997* (SI No 360 of 1997)**

This order gives effect to the State's obligations under the *Dublin Convention* (relating to asylum seekers). The order, *inter alia*, puts in place procedures for determining whether an application for asylum should, in accordance with the terms of the convention, be dealt with in the State or in another convention country.

ROAD TRAFFIC

***O'Brien v Parker* (Lavan J), 25 February 1997**

Circuit Court appeal; road traffic accident; negligence; alleged automatism; defendant alleged that he suffered epileptic fit at the time of the accident; plaintiff's claim dismissed in the Circuit Court; appeal to High Court; defendant denied negligence because of fit; defendant claimed the fit occurred without prior warning; no history of epilepsy; whether defendant had in fact prior warning of his epileptic fit; whether defendant should have stopped driving prior to the accident; whether defendant was rendered into automatistic state; test to be applied; whether there was a

total destruction of voluntary control on the part of the defendant.
Held: With regard to the defence of automatism, the test to be applied required that there had to be a total destruction of voluntary control on the part of a defendant. Impaired, reduced or partial control was not sufficient to maintain the defence.

SOCIAL WELFARE

***European Communities (Occupational Benefit Schemes) Regulations 1997* (SI No 286 1997)**
These regulations give effect to Council Directive 96/97/EC (of 20 December 1996) on the implementation of the principle of equal treatment for men and women in occupational social security systems. The directive was required in order to ensure compliance with the judgment of the Court of Justice in the case of *Barber v Guardian Royal Exchange* (case 262/88). The present regulations clarify the range of schemes or arrangements which are outside the scope of Directive 86/378/EC and these exceptions are now more limited for employed persons than for the self-employed. The differences in treatment permitted, reflecting, in particular, the use of actuarial factors that differentiate between men and women are also clarified. The regulations apply with effect from 1 July 1997 but certain provisions have retrospective application to 17 May 1990, the date of the *Barber* judgment.

***Social Welfare (Consolidated Supplementary Welfare Allowance) (Amendment) Regulations 1997* (SI No 334 of 1997)**
These regulations provide, *inter alia*, that compensation payments awarded to people who have either contracted hepatitis C from certain blood products or have disabilities attributable to Thalidomide shall be disregarded in the calculation of means for the supplementary welfare allowance scheme.

TAXATION

***Gilligan v Criminal Assets Bureau* (Morris J), February 1997**
Income tax; chargeable person; husband and wife living together for year of assessment; husband and wife failing to make returns of income tax; husband and wife assessable for income tax in accordance with s194 of the *Income Tax Act, 1967*; wife assessed to tax on her income; husband not assessed to tax; whether wife 'chargeable person'; *Income Tax Act, 1967*, ss105, 194, 195, 478; *Finance Act, 1983*, s19; *Finance Act, 1980*, s18; *Finance Act, 1988*, ss9, 10.
Held: Where a husband and wife are to be assessed for tax in accordance with section 194 of the *Income Tax Act, 1967*, the husband shall be assessed and charged in respect of his total income and his wife's total income and, accordingly, the wife is not a chargeable person within the meaning of the income tax code.

TELECOMMUNICATION

***European Communities (Telecommunications Infrastructure) Regulations 1997* (SI No 338 of 1997)**
These regulations provide for the amendment of the exclusive privilege of Telecom Éireann, as prescribed in the *Postal and Telecommunications Services Act, 1983*, as amended, to exclude both the establishment of telecommunications networks, other than the public telecommunications network, and the use of cable television networks for the provision of liberalised telecommunications services; to provide for the amendment of existing provisions restricting the use of cable television networks and the making of provisions in relation to licensing the establishment of telecommunications networks; and to provide for the maintenance by Telecom Éireann of separate financial accounts in respect of its activities as a provider of telecommunications services and as a provider of cable television networks.

WILLS

***In Re Estate of Nevin* (Shanley J), 13 March 1997**
Probate; *caveat* on administration of estate entered by mother of deceased; spouse wished to remove *caveat*; whether mother of deceased was entitled to enter *caveat*; whether spouse is entitled to administer estate; nature of *caveat*; *Succession Act, 1965*, ss67 (1), 120 (1), (5); *Rules of the superior courts 1986*, o79, r5 (1).
Held: A *caveat* was a warning which stopped probates and administrations being granted without notice to the person entering the *caveat*. The presence of the *caveat* did not restrain the court from ordering a grant where a caveator was on notice of the application for a grant. G

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Defamation debate a success

Pictured at the SADSI defamation debate (left to right): Owen Binchy, Vice-Chairman, Parliamentary and Law Reform Committee; Law Society President, Frank Daly; Rossa Fanning, King's Inns (speaking); Matthew McCabe, Auditor, SADSI; and Michael McDowell SC

Protecting public figures' private lives was on the table at the last Solicitors Apprentice Debating Society of Ireland (SADSI) event in Blackhall Place. The debate was chaired by Law Society President Frank Daly. The Parliamentary and Law Reform Committee helped convene the meeting and provided the prize money.

Speakers from UCD's law society, the Literary and Historical Society, King's Inns and SADSI spoke on the motion that *This house would protect the private lives of public figures.* After a lively and competitive inter-varsity debate, guest speakers Michael McDowell SC and Donald Binchy, Vice-Chairman of the Parliamentary Committee, discussed issues arising from the motion, in particular, the *Defamation Bill* put forward by McDowell when he was an opposition Progressive Democrats TD.

Binchy argued in favour of tightening up the law to protect the good name of public figures. But McDowell responded that those who chose to put themselves in the public eye must risk having their private lives being exposed by the media.

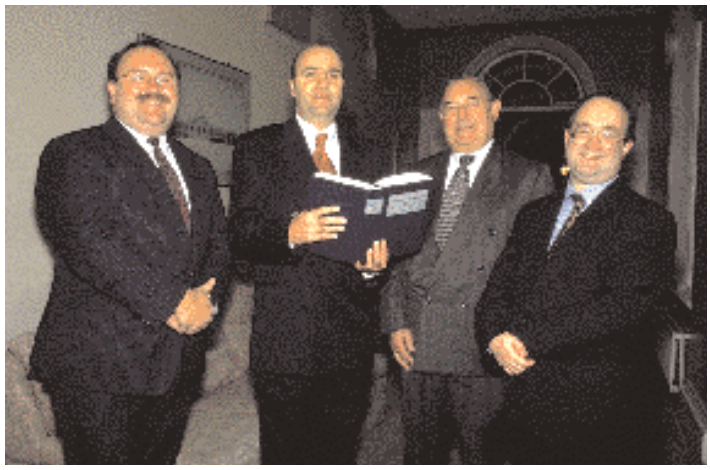
McDowell also used the debate as an opportunity to present his views on the cabinet confidentiality referendum.

The evening was a tremendous success and the prize for the best team went to the two speakers from the King's Inns, Rossa Fanning and John Gallagher.

SADSI members should note that 20 November is the closing date for nominations for the position of auditor. The AGM will be held on Monday 15 December in the Law Society.

The Law Library's Gráinne Yelob enjoys a java in the newly-opened Friary Café at the Four Courts

Mary Bisset, Terence Cosgrave and Brendan Garvan in the Law Society's newly-rennovated consultation rooms at the Four Courts



Pictured at the launch of *Intellectual property law in Ireland* (left to right): Gerard Coakley, Butterworths; Shane Smyth, author; Professor Robert Clark, author; and Mr Justice Brian McCracken

All the presidents' women: the wives of past presidents pictured at a recent lunch in Blackhall Place

Wexford Bar Association takes to the stage. Pictured on the stage regularly used for the town's prestigious Opera Festival in White's Hotel, Wexford, are (back row, left to right): Katherine Finn, Alan Murphy, Declan Joyce, Jack McEvoy, Sean Lowry, Fiona Reynolds; (middle row, left to right): Cormac Dunleavy, Declan McEvoy, James J O'Connor, James Murphy; (front row, left to right): Tressan Scott, Anthony Ensor, Dermot Dunleavy, Law Society President, Frank Daly, Law Society Director General, Ken Murphy, and Séamus Turner

Every one's a winner: Pictured at the *Irish Independent*/Communicators in Business (CIBI) awards in Buswell's Hotel, Dublin (back row, left to right): Brian McCabe, *Runway magazine*, Aer Rianta, best staff journal; Nuala Redmond, *Law Society Gazette*, best design; Ann Matthews, CIBI; Monica Igoe, *Arena*, Irish Institute of Training and Development, best non-staff journal; Mick O'Hanlon, *Tax News*, Revenue Commissioners, best writer; (front row, left to right): Conal O'Boyle, *Law Society Gazette*, Editor of the Year; Public Enterprise Minister Mary O'Rourke; and Frank Mulrennan, Business Editor, *Irish Independent*

Education Minister Micheál Martin pictured at a recent Law Society dinner with President Frank Daly and Vice-President Larry Shields

Visit to EU institutions

The Law School is again organising an educational visit to the institutions of the European Union for apprentices and a number of solicitors. The visit will take place from Sunday 14 February to Sunday 21 February. The group will be accommodated in the Irish Institute of European Affairs in Louvain and will visit the European Courts in Luxembourg, the European Parliament in Brussels and may also visit the European Court of Human Rights in Strasbourg. The total price for the trip will be in the region of £325 for apprentices and £375 for solicitors (prices are subsidised by the EU) which will include return flights from Dublin to Brussels, seven nights, accommodation and full board.

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

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

Pictured at a recent Institute of Legal Executives function in the Law Society (left to right): District Court President, Peter Smithwick, Law Society President, Frank Daly, Ray Ball, chief executive, English Institute of Legal Executives, and David Somers, President, Irish Institute of Legal Executives

Solicitor Dermot F McNamara and staff pictured (below) with the ISO 9000 quality mark recently awarded to the company

Book reviews

Good faith in sales

Reziya Harrison

Sweet & Maxwell (1997), Cheriton House, North Way, Andover, Hampshire, SP10 5BE England. ISBN: 0 421 58570 6. Price: stg£78

In his foreword to *Good faith in sales*, the Lord Chief Justice of England, Lord Bingham, writes of one of Congreve's characters in *The double dealer* who observes that 'conscience and law never go together'. Lord Bingham also quotes the opposite view taken by Trollope's elderly attorney Mr Grey in *Mr Scarborough's family*. The Lord Chief Justice says that many judges will sternly declare: 'This is a court of law, not a court of morals'. But he notes that many judges strive to reach a decision which reflects their view on the substantial merits of the case.

There are different legal views in relation to the interpretation of a contract. One extreme view is that the language of the contract, oral or written, is all. The courts should be very reluctant to imply terms which the parties have not expressed for themselves. The Lord Chief Justice notes one of the manifestations of this view in the current vernacular: 'This strict approach to construction enables one party to rip the other off, to take him for a ride, to hold him for ransom'.

The alternative view, of course, is that each contracting party owes the other a positive duty of good faith.

Good faith in sales examines the legal nature of the duty of good faith and its role in shaping the terms of a contract. It deals with good faith in insurance and surety transactions, sale of land, landlord and tenant, sale of company shares, and dealing with the vulnerable buyer or seller. It also examines the role of good faith during the contractual relationship and when the contract breaks down.

Key areas of discussion in the book include a commentary and analysis of recent European directives such as the Unfair Terms and Consumer Contracts Directive; an explanation of the shared influences on good-faith principles of the common law and continental contract law; and a focus on the role of the person describing what is sold.

This book provides an understanding of the doctrine of good faith in the contractual field, a topic becoming more and more important given the increasing harmonisation of European law. G

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

Butterworths competition law (issue 25)

Edited by Peter Freeman and Richard Whish

Butterworths (1997), 26 Upper Ormond Quay, Dublin 7. ISBN: 0 406 99482X. Price: £125

Most competition lawyers in the UK and Ireland regard *Butterworths competition law* and *Bellamy and Child on the Common Market law of competition* as the leading textbooks on EU competition law. *Bellamy and Child* is a succinctly-written single volume analysing EU competition law. *Butterworths* is a five-volume loose-leaf set analysing EU and UK competition law.

The former is useful because it is well-footnoted, portable and practical. The latter is equally useful – but in a different way – because it is so all-embracing, very detailed, practical and comprehensive with its materials that one ought not to need another book.

Solicitors who believe that they need a leading source on EU competition law should consider buying either or both. *Bellamy and Child* is published about every three to four years with a supplement published in the interim. *Butterworths* is published in loose-leaf format about four or five times a year and will ensure that one's library is not out of date for too long.

Butterworths' 25th issue has just been published. It contains a long overdue chapter on broadcasting; an updated chapter on the European Coal and Steel Community (ECSC); materials on gas and broadcasting; and new tables for the work as a whole.

The chapter on broadcasting was written by Daniel Sandelson of Clifford Chance. The chapter concentrates on the UK regulation of broadcasting with passing reference to EU law. It would be more useful for a non-UK audience if the chapter had more discussion of the EU dimension.

But the chapter is interesting reading for an Irish audience as it indicates the type of media regulation that may be necessary in this country. The chapter deals with cross-media ownership, licensing and bidding for licences, cable networks, satellite television, digital broadcasting, and ownership controls generally. Compared with sophisticated British regulation, geared to deal with the digital TV era, current Irish legislation is still stuck in the days of black and white. Irish regulators will find Sandelson's chapter a useful pointer to the future.

The chapter on the ECSC by Xavier Lewis is first class. Lewis draws on his experience in the EU Commission's legal service and the Luxembourg Court for this chapter. ECSC law may appear to be remote from Irish solicitors but it has come up several times in an Irish context in the last two years. Apart from the sale of Irish Steel plc and the attendant State aid and concentration of control issues, the merger of coal, steel and peat companies have all raised ECSC issues in Ireland. Irish competition law – including the *Mergers and Takeovers (Control) Acts, 1978 to 1996* – does not apply whenever the products involved are coal and steel as defined in the ECSC treaty. Lewis' chapter is a well-written introduction to the law and practice under the ECSC treaty not only in the area of acquisitions but also distribution agreements.

The material included in this issue tie in well with the material in the chapters and is useful. This release is proof that the high standards set at the outset have been maintained. All in all, Irish solicitors will find *Butterworths competition law* an excellent one-stop shop for EU competition law policy, practice and procedure. G

Vincent Power is a partner with A&L Goodbody.

Intellectual property law in Ireland

Robert Clark and Shane Smyth

Butterworths (1997), 26 Upper Ormond Quay, Dublin 7. ISBN: 1 85475 1247. Price: £60

The ability to protect intellectual property rights is an important aspect of many businesses' continuing success and is vital to the economy at large. If these rights cannot be protected, companies cannot benefit from the goodwill associated with their brand names or from their painstaking development of new technology. Patents, trademarks, trade secrets, industrial designs and copyright can all be very lucrative to their owners.

So practitioners need to focus more on this developing area of law and ways in which intellectual property is protected and used for the benefit of their clients. Robert Clark and Shane Smyth's excellent new work, *Intellectual property law in Ireland*, is the first Irish work to deal comprehensively with all aspects of this important area of law.

The book is substantial. It is divided into 37 chapters and seven appendices and deals with the individual intellectual property subjects in turn. Understandably, most of the book deals with the main topics of patents (eight chapters), copyright (12 chapters) and trademarks (12 chapters).

Each topic is dealt with extensively from its origins to the current law on the subject, culminating in a review of possible future developments. The review is particularly useful. As Mr Justice Brian McCracken states in his foreword to the book: 'There is a serious attempt to foresee the worldwide problems which the 21st century will bring to this field'.

Clark and Smyth also provide enlightening chapters on industrial design protection, the duty of confidence, semi-conductor chip protection and general tortious remedies such as passing-off. Tax lawyers will be particularly interested in the chapter on taxation of intellectual property rights.

One striking aspect of intellectual property law is the preponderance of European legislation. This – as well as the relevant Irish legislation – is analysed in detail, and the book highlights just how EU-driven intellectual property law has become.

The authors are conscious at all times of the need to cross-reference between different intellectual property topics. This ensures that each topic does not appear to operate in a vacuum, but is shown to overlap with other topics as part of the law's overall scheme of protection.

The three main tests of a book's quality and its usefulness to a practitioner are: its index, the answers it gives to the obvious and more obscure points of law, and the ease with which it can be read. There is no point in buying a book if it is impossible to locate pertinent points quickly through the index; if it fails to answer all but the most obvious questions; or if it is written in a manner destined to cure all but the most intransigent forms of insomnia. This book passes these tests with admirable ease. The index is extensive, the more obscure topics are properly addressed, and the book is written in a manner which retains the interest of the reader. This makes it a joy rather than a chore to read.

Intellectual property law in Ireland should appeal to practitioners, students and academics alike. I have no doubt that with time it will become as important to intellectual property law as Wylie has become to the law of property. G

Paul Lavery is a solicitor at McCann FitzGerald.

Sound Law

Sound Legal Productions Ltd, PO Box 5922, 27 Carysfort Avenue, Blackrock, County Dublin. Price £195 (excl VAT)

The first *Sound Law* tape was handed to me in the yard of the Four Courts shortly before a car journey to Co Mayo. I had a choice of over-played music tapes, unexciting radio programmes or the *Sound Law* tape. What a surprise! This is a magnificent concept and a well-produced tape of interest to all lawyers in this country, solicitor or barrister.

The tape starts with an overview of the concept of the producers and leads into a very interesting interview with Alan Mahon SC who deals with the recent spate of hearing loss cases taken by past and present members of the Irish Army.

Interesting judgments, including *O'Shea v Tilman McCann* and *Cummins v Brink's Allied Irish and Ulster Bank Ltd* and others are presented in a newsy and easy manner. News from the courts is dealt with while the changes that are to occur within the Council of the Law Society and Bar Council are advised.

Recent statutory developments, including the *Civil Liability (Amendment) Act, 1996*, the *Criminal Law Act, 1997*, the curiously entitled *Non-Fatal Offences Against the Person Act, 1997*, the *Control of Horses Act, 1996*, the *District Court Rules 1997* and the *Litter Pollution Act, 1997*, are all noted and referred to in a lively and presentable manner.

There is also on the tape a report of damages awarded in various cases. This is the one area that, although of interest, is probably unlikely to excite the practitioner, for we all know that each case stands on its own merits. It is extremely difficult to compare one case with another, though the decision of Judge Moran in *Kenny (a minor) v Dublin Corporation* and that of *Shields v Duffy Builders Ltd* make interesting listening.

There is no better way to spend an hour travelling along the motorway, catching up on current changes and developments in Irish law, than by listening to *Sound Law*.

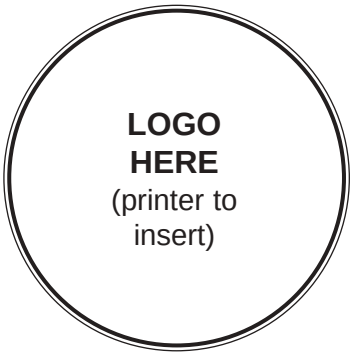
Keeping up with the ever-changing legal system, statutes, regulations, court cases and law in general is extremely difficult. Life is too short, but this tape goes a long way to helping you keep in touch.

Sound law will be published eight times a year. G

Patrick O'Connor is the chairman of the Law Society's Education Committee.

NOTICE

THE REGISTRY OF WILLS SERVICE



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

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

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

The Registry of Wills Service Limited
Tuckeys House, 8, Tuckey Street, Cork
Tel: +353 21 279 225 Fax: 353 21 279 226
Dx No: 2 534 Cork
Reg. No, 271395
Vat No. 8271395M

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 November 1997)

Regd owner: Michael Duffy and Margaret Duffy; Folio: 16049; Lands: Clonminch Barony of Ballycowan; Area: 0a 1r 0p; **Co Kings**

Regd owner: Provincial Housing Society Limited; Folio: 26037; Lands: Dooradoyle; **Co Limerick**

Regd owner: Dermot K Meagher; Folio: 21329; Lands: Cahore, Area: 1a 0r 0p; **Co Wexford**

Regd owner: Patrick Doyle; Folio: 11709; Land: Kilcoole; Barony of Newcastle; **Co Wicklow**

Regd owner: Patrick McKeown; Folio: 6638; Lands: Whiterath; Area: Prop 1: 83a 2r 10p; Prop 2: 16a 3r 23p; **Co Louth**

Regd owner: Patrick Vaughan Green (deceased); Folio: 3599; Land: Killowen; Area: 30a 1r 25p; **Co Waterford**

Regd owner: Ronald Sheane and Muriel Sheane; Folio: 21899; Lands: Townland of Kilbegnet, Barony of Gorey; Area: 0a 0r 24p; **Co Wexford**

Regd owner: Lorraine Wall of 47 Windmill Road, Crumlin, Dublin 12; Folio: 47873F; Lands: Property known as 47 Windmill Road situate in the Parish of Crumlin and District of Terenure; **Co Dublin**

Regd owner: James and Kate Hynes, Fahy, Gorteen, Ballinasloe, Co Galway; Folio: 4310; **Co Galway**

Regd owner: Francis O'Hehir; Folio: 19994; Land: Mullingar; Area: 0a 0r 18p; **Co Westmeath**

Regd owner: Michael McDermott; Folio: 5237; **Co Kings**

Regd owner: John MacCann; Folio: 2521; Land: Lune; Area: 8a 0r 30p; **Co Meath**

Regd owner: Matthew McManus; Folio: 20356; Land: Losset; Area: 2a 0r 27p; **Co Monaghan**

Regd owner: Patrick Rath and Ann Frances Rath; Folio: 6570; Land: Callystown; Area: 0a 1r 1p; **Co Louth**

Regd owner: Mary Henry; Folio: 13990F; Land: Stroove; Area: 0550 acres; **Co Donegal**

Regd owner: Patrick O'Reilly: Folio: 2872; Land: Feughbishop or Drumalla; Area: 18a 0r 4p; **Co Cavan**

Regd owner: Margaret McNamara (deceased): Folio: 43L; Land: Cloonalour; **Co Kerry**

Regd owner: William Boohan (deceased); Folio: 264 (closed to 3623F); Land: Gortgarralt; Area: 44a 1r 24p; **Co Limerick**

Regd owner: Mary Smith; Folio: 21497; Lands: Ballylosky Barony of Inishowen East; Area: Prop 1: 9a 2r 20p; Prop 2: 5a 2r 0p; Prop 3: 30a 0r 6p; Prop 4: 7a 3r 30p; **Co Donegal**

Regd owner: John S O'Connor: Folio: 96F; Land: Carrickmagrath; Area: 0.331 acres; **Co Donegal**

Regd owner: Mary Melleney, 10 Glenview Drive, Shelbourne Park, Limerick; Folio: 5982F; Townland: Ballynagleragh; Area: 1.220 acres; **Co Clare**

Regd owner: James Grant; Folio: 37374; Land: Owenkillew and Barnahone; Area: 92a 2r 10p; **Co Donegal**

Regd owner: Drumqunnia Manor Limited; Folio: 31237; Area: Prop 1: 38a 0r 24p; Prop 2: 0a 1r 36r; **Co Kerry**

Regd owner: David Gleeson; Folio: 28686; Land: Garrhesty; Area: 0a 0r 13p; **Co Cork**

WILLS

Lynch, Miss Mary, deceased, late of Kilronan, Aran Islands, Co Galway. Would any person having knowledge of the whereabouts of the original will dated 22 June 1984 of the above named deceased who died on 14 November 1994, please contact WB Gavin & Company, Solicitors, 4 Devon Place, The Crescent, Galway, tel: 091 583197; fax: 091 581220

Gibbons, Christina, deceased, late of 37 Goldenbridge Avenue, Inchicore, Dublin 8. Would any person having knowledge of a will executed by the above named who died on 11 March 1997, please contact JP Redmond & Company, Solicitors, Marshalsea Court, 22/23 Merchant's Quay, Dublin 8, tel: 6709461; fax: 6709467

Higgins, Ellen, deceased, late of 8 Brookfield, Ballyragget, Co Kilkenny. Would any person having knowledge of a will executed by the above named deceased who died on 5 May 1996, please contact James E Cahill & Company, Solicitors, Abbeyleix, Co Laois, tel: 0502 31220

McKernan, Catherine, deceased, late of 28 Fleming Road, Drumcondra, Dublin. Would any person having knowledge of a will, including a will dated 23 December 1967, executed by the above named deceased who died on 4 November 1968, please contact Messrs Michael Shinnick & Company, Solicitors, Baldwin Street, Mitchelstown, Co Cork, tel: 025 84081; fax: 025 84370

O'Grady, Martin, deceased, late of High Street, Kilkelly, Co Mayo. Would any person having knowledge of a will executed by the above named deceased who died on 22 September 1997, please contact Anthony Barry & Company, Solicitors, Milestone House, Irishtown, Athlone, Co Westmeath, tel: 0902 72132; fax: 0902 74744

Drury Byrne, Julian LM, deceased, late of Kilmantain, Westminister Road, Foxrock, Dublin 18. Would anyone who knows the whereabouts of the original last will of Julian

Louis Mario Drury Byrne, dated 13 July 1989, please contact Graham Richards of Matheson Ormsby Prentice, Solicitors, 3 Burlington Road, Dublin 4, tel: 6671666

EMPLOYMENT

In pursuit of the Celtic Tiger. Experienced solicitor, admitted Ireland and UK, wishes to return to Dublin. Expertise: litigation, commercial; EU law. All options considered. **Reply to** fax: 0044 171 491 2328

Solicitor: Over two years' PQE, presently in general practice (Dublin), seeks position in general practice: Clare, Limerick or Galway. AITI partially completed. **Reply to Box No 90**

Solicitor with at least two years' post-qualification experience required for busy practice in the Midlands. Probate, conveyancing, district court and general legal work. All applications in writing to **Box No 91**

Solicitor required for South West practice, mainly for probate and conveyancing, preferably with post-qualification experience. Reply to **Box No 92**

North Tipperary. Qualified solicitor with at least one year's experience in conveyancing required for busy practice. Please reply with full details to **Box No 94**

Temporary solicitors. Solicitors required for general civil litigation in solicitor's office of Telecom Éireann. Some experience required. Send CV to Dr EG Hall, Chief Legal Officer, Telecom Éireann, 52 Harcourt Street, Dublin 2

MISCELLANEOUS

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

Personal injury claims in England and Wales. Specialist PI solicitors with offices in London and Birmingham can assist in all types of injury claims. One of our staff is in Ireland for one week in every month. Legal aid available to clients that can qualify. Contact David Levene & Company, Ashley House, 235-239 High Road, Wood Green, London N22 4HF, England, tel: 0044 181 881 7777, fax: 0044 181 889 6395, and Bank House, Cherry Street, Birmingham B2 5AL, tel: 0044 121 633 3200, fax: 0044 121 633 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. 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 KJ Neary

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

For sale: seven day publican's licence. Replies to Michael Keane & Company, Solicitors, Claremorris, Co Mayo, tel: 094 71208, fax: 094 71977

Entire set of Statutes required by solicitor. Reply to **Box No 93**

Solicitor has town offices with rooms to rent or share Inns Court. Beside Civic Offices, Dublin. Double rent allowance may be available depending on arrangements, tel: 8532244

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