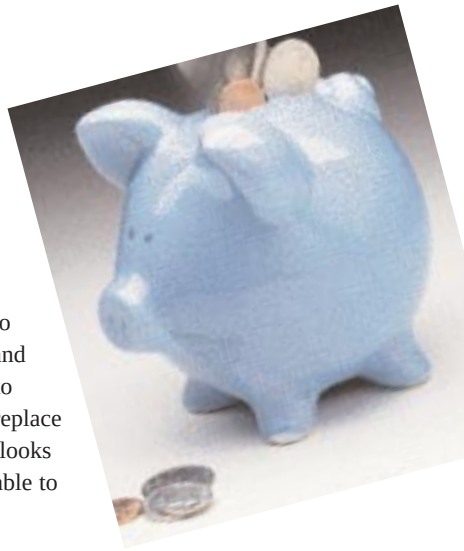
GAZETTE

REGULARS

12 Cover story: Blood lines

Some people have been demanding that those working in the health services should have to undergo compulsory blood tests. Kieran Doran looks at the complex legal issues involved in compulsory testing for HIV and asks whether it would create more problems than it would solve



16 Why it pays to plan ahead

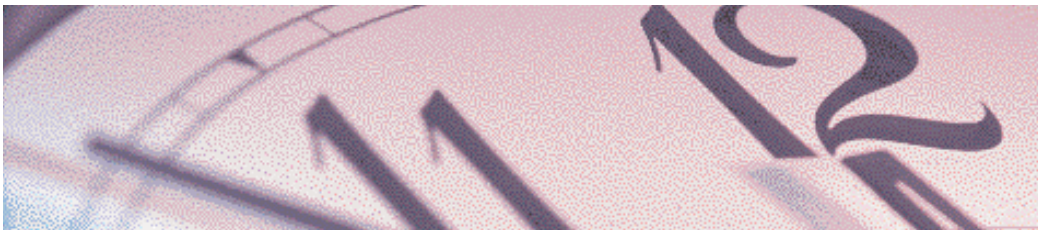
There is a lot of mystique attached to pensions, but stripped of its jargon and regulations the objective is simple: to accumulate money at retirement to replace pre-retirement pay. Kevin Finucane looks at the many pensions vehicles available to meet this objective

21 Solicitors on the Web

A number of Irish solicitors' firms have already set up sites on the World Wide Web. These range in size and sophistication from basic single page advertisements to multi-section areas containing valuable information. Grainne Rothery speaks to some of those firms about what it takes to go on-line

24 Punch the clock

The *Working Time Act* gives new rights to workers and creates another regulatory minefield for employers. Padraig Walsh pinpoints the pitfalls



Editor: Conal O'Boyle MA
Reporter: Barry O'Halloran
Designer: Nuala Redmond
Editorial Secretaries: Andrea MacDermott, Catherine Kearney
Advertising: Seán Ó hOisín, tel/fax: 837 5018, mobile: 086 8117116, 10 Arran Road, Dublin 9. E-mail: seanos@iol.ie
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Bad rules badly made

I am deeply concerned about the introduction of the new superior court rules which I know are causing confusion and anger among litigation practitioners. My concern relates to both the content of these new rules and the manner in which they were introduced.

The Law Society, jointly with the Bar Council, is to seek senior counsel's opinion on the possible unconstitutionality of these new rules. At its meeting on 26 September 1997, the Council of the Law Society also decided that, if advised that there is a constitutional frailty in the new rules, a legal challenge to the rules should be brought.

Doubts about the constitutionality of the new rules centre on their purported effect of retrospectively removing the legally-privileged status which reports prepared for litigation could otherwise have claimed. As a result, 'the goal posts are being moved after the game has started'. Reports which were prepared in the belief that they would not be seen by the other side are now facing compulsory disclosure. Even reports deliberately designed to identify weaknesses in a party's case must now be sent to the other side.

This is an attack on the legal privilege of thousands of citizens who have cases pending before the courts. Legal privilege is essential in the interests of justice. Any such rules should have been introduced only to cover cases which commenced after 1 September 1997 and not cases already in existence.

In the course of a heated debate at the Law Society Council meeting, deep dissatisfaction was expressed at the fact that these new rules were introduced without notice and without any adequate prior consultation with the solicitors' profession. I do not understand why the rules of court cannot be drafted and circulated in advance to the profession and other interested parties, for analysis and constructive comment, in much the same way as legislation is. With wider consultation, many of the problems with the new rules could have been identified in advance and avoided.

The Council directed that I should write both to the Superior Court Rules Committee and to the Minister for Justice to express the profession's anger at what has occurred. The Society's position is perfectly clear. We favour disclosure of documentation and information between the parties to litigation so that both sides have all necessary information to identify the issues in dispute and enable any settlement to take place at the earliest possible stage. However, litigation should be based on procedures which afford equal opportunity to both sides. For this reason we favour the mutual simultaneous exchange of reports and information which is a feature of the litigation system in England and Wales.

Justice requires that there be a level playing field. The rules should not provide an inherent advantage to either plaintiffs or defendants. These new rules favour defendants. For example, the only reports whose disclosure is not required are private investigators' reports. It is almost invariably the defence side, not the plaintiff's, which commissions such reports. Why should the party who may have been negligent and caused serious injury be given a procedural advantage over his victim by the rules of court?

Pending any constitutional challenge, the Society will seek to help the profession to plot a course through this confusing new maze of regulation. A special course of lectures is being prepared. They will, of course, highlight the personal liability that may be imposed on a solicitor in some circumstances where he has not complied with the requirements of the rules. This is draconian and deeply objectionable.

I believe that these are bad rules. No rules of this kind, indeed no court rules at all, should be introduced in the future without the fullest consultation with the legal profession.

Frank Daly
President

New rules of superior courts: the main points

The new rules of court came into effect on 1 September (under SI No 348 of 1997). They direct that a plaintiff's solicitor in a High Court personal injuries action must give copies of the expert reports and statements of all the doctors and other experts that he intends to call at trial to the defendant's lawyers within three months of serving notice of trial.

The definition of reports and statements is very wide, encompassing not only formal reports or statements but also correspondence containing comments on a case from an intended medical expert. The only type of report expressly excluded from compulsory disclosure are reports from private investigators.

The defence will be obliged to forward copies of their experts' reports to the plaintiff's lawyers within three months of receiving the plaintiff's reports. Any reports received after this must also be exchanged. Under a practice direction of the President of the High Court dated 15 September 1997, the compulsory exchange provisions apply only to cases where notice of trial was served on or after 1 June 1997.

The plaintiff's lawyers will also be obliged to give the defence lawyers the names and address of all witnesses they intend to call months before the case comes to trial. They must also provide details (including vouchers) of medical bills and other expenses that the plaintiff is claiming, and a written statement showing all social welfare payments made to the plaintiff subsequent to the accident (or authorisation to the defendant to apply for such information). The defendant's lawyers within two months of receiving this information must supply details of the defence witnesses to the plaintiff's lawyers. These provisions apply only to cases that were first listed for hearing on or after 1 July 1997.

Directives and damages: time for a rethink?

The slow but steady battle in asserting the rights of the individual granted by European Community law continues. Recent months have seen historic landmarks in the exercise of those rights against the State, although it remains to be seen just how effective this will be in practice.

First the good news. Following the references to the European Court of Justice in 1996 in *Hedley Lomas* [1996] ECR I-2553 and in *Factortame* [1996] ECR I-1029, in which the principle of liability in damages was established in respect of unlawful actions by the State which amounted to a sufficiently serious breach of its obligations under EC law, the cases have returned to the High Court in London with a view to determining whether the breaches in question were, in fact, sufficiently serious.

Unlawful action

On 28 July 1997, a consent order was sent for approval by the High Court by lawyers acting for Hedley Lomas and the Ministry of Agriculture, Fisheries and Food. For the first time, the Ministry accepted officially that its action was unlawful. Without further argument, the Ministry also accepted that the rule of Community law which had been infringed was intended to confer rights individually on the applicant and that the breach was sufficiently serious to engage the liability of the State in damages. Only the questions of causation, remoteness and *quantum* of liability remain to be settled.

Only a few days later, on 31 July, the Divisional Court handed down its ruling in the latest episode of the *Factortame* litigation. This time the Government put up a fight – and lost. It was held that the adoption of the *Merchant Shipping Act 1988*, which effectively limited the right to fish in British waters to British nationals, and the consequent inability of certain Spanish fishing vessels and their owners to benefit from the British fishing quotas, was after all a sufficiently serious breach of Community law.

So far so good. In the *Eurlegal* section of this *Gazette*, Dermot Cahill has usefully set out the law on State liability for non-implementation of EC directives. Essentially, the rule can be summarised as providing that a total failure to implement a directive is *per se* a sufficiently serious breach of EC law, whereas a partial failure to implement *may*, depending on the circumstances, give rise to such liability. In practice, most breaches by the State of EC law arise in this way, rather than by a breach of a directly effective provision of the EC treaty, such as article 34 in *Hedley Lomas* or article 52 in *Factortame*.

No duty on national courts

But there's the rub. Most disputes relating to inadequate implementation of directives arise in proceedings between private parties concerning private law rights. If EC law is to be effectively applied, surely it must be at that stage of the proceedings that rights and obligations are properly established. The problem is that not only has the European Court of Justice emphatically denied horizontal direct effect to directives but it has also stated that there is no duty on national courts to interpret national law in the light of directives in order to create obligations which are not otherwise there.

The result is a serious gap in the applicability of the putative rights of the individual. That gap is not closed by a rule of law which provides that the State is liable for a sufficiently serious breach of EC law where it has failed to implement a directive at all (*Francovich, Dillenkofer*) but not where an attempt, albeit inadequate, has been made at implementation (*British Telecommunications*). The final result is, therefore, not nearly as favourable to the individual as might at first sight appear.

In my view, there needs to be a radical rethinking at the European Court on this issue. Even if horizontal direct effect is rejected, there must in any case be a strengthening of the requirement to interpret national law in the light of any relevant directive. This should be coupled with a requirement, which should not be confused with the notion of direct effect, that the application of national law should be restricted where it is inconsistent with the content of an unimplemented directive.

Liability of the State for non-implementation of directives then becomes only an option of last resort. However, in that regard, the criteria for determining that a State has failed to implement a directive in a manner which is to be regarded as sufficiently serious so as to give rise to damages should be as flexible as possible in favour of the individual who claims loss.

Ambiguous drafting

In particular, it seems to be the case that frequent ambiguous drafting of directives due to last minute compromises in Council negotiations compounds the difficulty of establishing that implementing legislation is deliberately faulty. It is quite unacceptable that such ambiguity should then be used as a reason for denying the individual a right to damages. Rather the State, since it is involved in the negotiations and is therefore best placed to know what a Council directive ought to mean, should be presumed to know the real meaning of the directive. Any deviation from that meaning in the implementing legislation should be regarded as deliberate. 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).*

Why the rights of refugees must be safeguarded

The early history of refugee protection in this State was an ignoble one, highlighted by the now-infamous descriptions of Kurdish asylum-seekers being beaten back onto a plane at Shannon. Eventually, by dint of judicial review action, a loose framework for the examination of applications for refugee status took shape.

In *Fakih*, it was held that the content of a letter written in 1985 from the Department of Justice to the United Nations High Commissioner for Refugees (UNHCR) in London could be relied upon by an applicant *(Fakih and Ors v the Minister for Justice [1993] ILRM 274)*. The broad brush strokes of a procedure for the examination of refugee status applications had been laid down.

Revolutionary Act

Two private member's *Refugee Protection Bills* were introduced in the Dáil, drafted in an attempt to put the case-law based procedure on a legislative footing. But in the political turmoil surrounding the fall of government in 1994 they did not survive. Finally, in June 1996, the *Refugee Act, 1996* was signed into law by President Mary Robinson. Revolutionary by Irish standards, the Act even included an explicit protection for those who were persecuted on the basis of their sexual orientation or gender. The Act was heralded as one of the most progressive pieces of emergent refugee protection legislation in the world. The Act's gestation, however, was to be longer than expected.

By 16 May 1997, the number of initiated applications for refugee status had risen to 1,290. There was still no sign of the commencement of the Act which could have dealt effectively and efficiently with the increase. In June, in a desperate salvo on the day she relinquished office, the then Minster for Justice Nora Owen abolished the Common Travel Area by an order under the *Aliens Act*. In parallel, she also introduced a new non-statutory procedure to handle asylum-seekers arriving in Ireland via the United Kingdom. Constituted solely by the publication of a letter sent from the Department to the UNHCR in London (which that body had not even received at time of publication), it was contended by the Department that this new procedure would supersede the practice laid down in the *Fakih* judgment – restricted to hapless asylum-seekers who happened to arrive in Ireland via the United Kingdom.

It appeared immediately that the procedure both violated Ireland's international and constitutional law obligations to operate minimum procedural safeguards, quite apart from the hotbed of Article 2 and 3 issues raised by the presence of immigration officers at Dublin's Connolly Station. And the taxi drivers reportedly 'smuggling' asylum-seekers across the border were perhaps just helping the Department fulfil of its neglected legal obligations.

Since June, not one asylum-seeker has been permitted entry to lodge an application for asylum in Ireland if they have been intercepted at a border arriving via the United Kingdom. There is even evidence that asylum-seekers arriving from other destinations in Europe have been summarily removed.

Increase in racism

The increase in the ugly manifestations of racism, coupled with media hype claiming a 'flood of illegals', permitted a further tightening of Government resolve. By 1 September, only five sections of the *Refugee Act, 1996* had been commenced. A central pillar of the Act had also crumbled. An injunction (apparently related to the age limit set for appointments under Civil Service rules), taken out by the former Minister for Justice

Deirdre Clancy: solicitors have acted on emergency *pro bono* basis

Patrick Cooney, prevented the appointment of a Refugee Commissioner, the independent determination body conceived to make recommendations on applications to the Minister. In September '*former members of the Civil Service, Garda Síochána, or similar relevant public service employment who retired on pension*' were invited to consider applying for positions to help process requests for refugee status.

Ironic situation

Arguably, only two of the five implemented sections of the Act have changed the procedure in any significant manner. Minimum obligations to EU partners are being met by the commencement of the *Dublin Convention (Implementation) Order*, which sets out the procedure for determining whether or not an applicant may be returned to another European state. It is indeed quite ironic that the only comprehensive legislative procedural statement which exists in Irish law is one dedicated to making it easier to remove applicants from the State rather than one guiding the positive identification of protection needs.

Both the vital nature of the refugee procedure, as a protection for the most basic of rights, and its present complexity demand an adequate response from the State in terms of legal aid. As asylum-seekers are not permitted to work (unique in Europe), they generally cannot reimburse a representative for services.

Hearings *in camera*

In August of this year, hearings by the Interim Appeals Authority against refusals of refugee status resumed. No constituting document or written rules and procedure were issued and all cases were held *in camera*. A once-off appeals legal aid payment of £120 a case was announced – the first acknowledgement of the right of an asylum-seeker to legal aid. This scheme has been found by many solicitors to be inoperable, particularly in the light of the comprehensive attendance and research facilities required.

Over the last ten years, in the absence of a comprehensive scheme of legal aid, solicitors have acted on an emergency *pro bono* basis to protect refugees. Since 1994, a modest Legal Project at the Irish Refugee Council provided legal assistance and advice to asylum-seekers and supported the *pro bono* work of practitioners with legal and country of origin research services. It is now closing because of insufficient funding.

Our erstwhile President Mary Robinson recently talked of asylum as an 'opportunity for Ireland'. The human rights of asylum-seekers and refugees in Ireland must be protected through the provision of a comprehensive scheme of legal aid and an adherence to fair procedure. The spirit of the *Refugee Act, 1996*, hard-fashioned in the Dáil, must not be abandoned. And the challenge set by the new UN Commissioner for Human Rights must be faced head-on. G

Deirdre Clancy is Co-ordinator of the Irish Refugee Council's Refugee Legal Project.

Letters

Criminal injury compensation: a 'ludicrous state of affairs'

From: Sean O'Ceallaigh, Dublin

In a letter received from the Office of the Minister for Justice, Equality and Law Reform in reply to my request for the provision of compensation for the victims of violent crimes, it is stated that '*ex gratia* compensation may be paid to the injured person where the injury is directly attributable to a crime of violence'.

This is a ludicrous state of affairs. Murderers, muggers and rapists are guaranteed free legal aid while their unfortunate victims *may* receive *ex gratia compensation.*

We each have a duty on behalf of our clients (any of whom may suffer from violence at any time) to take up this matter immediately with the Government.

Agus aris: ni neart go cur le ceile.

Dumb and dumber

From: Ernest FS Williams, Cork

The following was obtained from the Internet and I thought the readership might appreciate it.

These are questions actually asked of witnesses by attorneys during trials and, in certain cases, the responses given by insightful witnesses:

- 'Now, doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?'
- 'The youngest son, the 20 year old, how old is he?'
- 'Were you present when your picture was taken?'

Q: 'Doctor, before you performed the autopsy, did you check for a pulse?'
A: 'No'.
Q: 'Did you check for blood pressure?'
A: 'No'.
Q: 'Did you check for breathing?'
A: 'No'.
Q: 'So, then, it is possible that the patient was alive when you began the autopsy?'
A: 'No'.
Q: 'How can you be so sure, Doctor?'
A: 'Because his brain was sitting on my desk in a jar'.
Q: 'But could the patient have still been alive nevertheless?'
A: 'It is possible that he could have been alive and practising law somewhere'.

- 'Was it you or your younger brother who was killed in the war?'
- 'Did he kill you?'
- 'How far apart were the vehicles at the time of the collision?'
- 'You were there until the time you left, is that true?'
- 'How many times have you committed suicide?'

Q: 'So the date of conception (of the baby) was 8 August?'
A: 'Yes'.
Q: 'And what were you doing at that time?'

Q: 'She had three children, right?'
A: 'Yes'.
Q: 'How many were boys?'
A: 'None'.
A: 'Were there any girls?'

Q: 'You say the stairs went down to the basement?'
A: 'Yes'.
Q: 'And these stairs, did they go up also?'

Q: 'Mr Slattery, you went on a rather elaborate honeymoon, didn't you?'
A: 'I went to Europe, Sir'.
Q: 'And you took your new wife?'

Q: 'How was your first marriage terminated?'
A: 'By death'.
Q: 'And by whose death was it terminated?'

Q: 'Can you describe the individual?'
A: 'He was about medium height and had a beard'.
Q: 'Was this a male, or a female?

Q: 'Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?'
A: 'No, this is how I dress when I go to work'.

Q: 'Doctor, how many autopsies have you performed on dead people?'
A: 'All my autopsies are performed on dead people'.

Q: 'All your responses must be oral, OK? What school did you go to?'
A: 'Oral'.

Q: 'Do you recall the time that you examined the body?'
A: 'The autopsy started around 8.30pm'.
Q: 'And Mr Dennington was dead at the time?'
A: 'No, he was sitting on the table wondering why I was doing an autopsy'.

Q: 'You were not shot in the fracas?'
A: 'No, I was shot midway between the fracas and the navel'.

Q: 'Are you qualified to give a urine sample?'
A: 'I have been since early childhood'.

Seanad election

From: Linda O'Shea Farren, Dublin

I would like to thank very much indeed so many solicitors who voted for me in the recent Senate election. While I did not get elected (this time), I was greatly encouraged by the show of support I got considering the competition I faced, the lateness of my decision to run (through circumstances beyond my control) and the fact that it was my first time running for any public office.

I was also very pleasantly surprised that so many solicitors went to the trouble of contacting me during the Senate campaign to express their support for a member of the profession running for the Senate. Unfortunately, an all too common thread was an expression of regret by many that they were not actually registered to vote, a discovery that surprised them all greatly.

Could I suggest that any NUI graduates who want to check if they are registered or who want to register should contact the NUI before 29 January 1998 (which is the closing date for the next annual updating of the register) at 49 Merrion Square, Dublin 2 (tel (01) 6763429, fax: 01 6621574; e-mail records@nui.ie). Trinity graduates should contact Trinity College.

Your views

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

Building boom lures Ireland's first foreign firm

The country's booming building industry has lured a London-based global law firm to Dublin. Construction law specialist, Masons, has become the first foreign solicitors' firm to open in Ireland.

Based in Gore & Grimes' offices in Arran Court on the capital's northside, Masons' Irish arm is being run by Irish-born partner Dudley Solan, and assistant Eamonn Conlon. Solan stresses that this is not the first wave of an invasion of British commercial firms hungry for the rich pickings offered by the Celtic Tiger. Masons is here largely because many of its clients are already doing business on this side of the Irish Sea.

'We act for 16 out of the top 20 construction operators in the UK and most of the UK people involved here fall into that category, and we are acting for most of them', he says. 'We are acting for some Irish construction companies and we would like to increase that'. He adds that Masons has no interest in the commercial market here, and points out that there is little opportunity for English firms to pick up this kind of business over here.

'There's no real evidence of discontent with Irish firms in the general area', says Solan. 'The point about Masons is that we have built up a body of knowledge in one particular area. There may be other specialist areas where there are opportunities, but not in the commercial field'.

'In many ways, it is surprising that it has not happened before now', says Law Society Director General Ken Murphy. 'Will others follow? As far as the presence of foreign firms is concerned', he quips, 'Dublin has lost its virginity'.

AIJA Sydney-bound

The International Association of Young Solicitors (AIJA) is going down under for its next annual shindig. The AIJA will hold its 36th annual congress in Sydney, Australia, between 20-25 September 1998. The registration deposit is AU$250 (£125) and further information can be obtained from Gerard Coll at Eugene F Collins on 01 676 1924.

English higher court benches open up to solicitors

British Lord Chancellor, Lord Irvine of Craig, has signalled his intention to appoint more solicitors to England's superior courts. He recently appointed two solicitors, Lawrence Collins QC and Arthur Marriott QC, deputy High Court judges. Announcing their appointment, Lord Craig pledged to open the higher judiciary's ranks to both sides of the legal profession. 'Where I have responsibility for judicial appointments, I intend to recognise the talents of all parts of the legal profession and to reward the ablest practitioners. I want to open up the ranks of the higher judiciary', he said.

Justice Sachs became the first solicitor to sit on the English High Court bench when he was promoted from the Circuit Court in 1993. Collins (56) will sit in the Chancery Division and Marriott (54) on the Queen's Bench. Collins, a partner with Herbert Smith, is general editor of *Dicey and Morris* on *Conflict of laws*. Marriott, a partner at Debevoise and Plimpton, is co-author of *ADR principles and practice*.

Both men made history for their profession earlier this year when they became the first solicitors to be appointed Queen's Counsel.

Sound law

With this month's *Gazette* you will have found an advertisement for a new product, *Sound law*. This is a series of audio tapes, issued eight times a year, which hopes to keep solicitors up-to-date with developments in the law and practice. It is designed particularly for in-car use.

Sound law is a private venture pioneered by a member of the Law Society Council and we wish him well and hope that this new concept in legal information succeeds in its aim of helping solicitors to keep up-to-date more easily in these times of information overload.

Ken Murphy

BRIEFLY

CRO fees slashed

The cost of registering a new company is down by nearly £100. The Companies Registration Office (CRO) has slashed its registration fees from £145 to £50. A number of the other, higher, fees have also been cut, but smaller fees charged by the CRO have gone up. Two Ministerial orders – the *Companies (Fees) Order, 1997* and the *Business Names Regulations, 1997* – prescribe the new fees charged by the CRO for its services.

Launch discount offered on CD-ROM reports

Legal publisher Lloyds is offering a £2,500 discount on the newly-launched *Lloyds electronic law reports*. In a special offer to mark publication of its law reports on CD-ROM, the company has knocked the selling price down from £8,000 to £5,500. *Lloyds electronic law reports* reproduces all cases reported between 1919 and 1997 on CD-ROM, including the headnote and full text of every case. For further information, contact Jane Barnett on 0044 1717 553 1450.

Scottish solicitors merge with Arthur Andersen

Arthur Andersen is one step closer to becoming a global law firm. The accountancy giant recently merged with Scotland's biggest solicitors' firm, Dundas & Wilson, giving it a significant legal presence in both England and Scotland. This is the latest in a string of moves made by the accountancy firm in its bid to become a world leader in the lucrative market for commercial legal services. It has already merged its Spanish operation with that country's leading commercial firm, JA Garrigues, creating the largest law firm in Spain.

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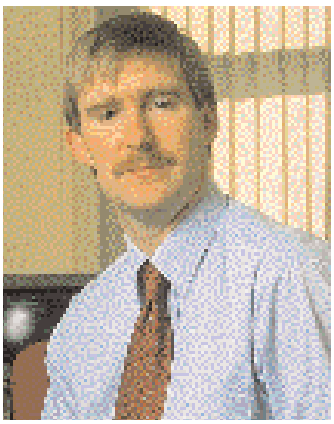
Costly collapse of law agent's firm

Law Society Director General Ken Murphy has said that it is as yet 'undetermined' whether the Society's Compensation Fund would be liable for any of the losses resulting from the collapse of a Dublin-based firm of law agents which has been under investigation by the Garda fraud squad for some months (see *Gazette*, May, page 7).

He was being quoted in an *Irish Times* report that claimed 'solicitor firms lose £1.5m of clients' money in fraud'. According to the paper, clients' money for stamping purchase deeds was passed on to the law agents by solicitors so that the deeds could be stamped by the Revenue Commissioners but it is believed that either counterfeit stamps were printed on the title documents or else they were simply not processed.

A man was arrested when this came to light last April and at least 50 sets of title deeds are currently being held by the Gardai on suspicion that they bear counterfeit stamps.



Ken Murphy: 'no member of the public will lose out'

The solicitors' firms affected by this suspected fraud are mostly in the Leinster area. As soon as the Law Society learned of it, it began working very closely with the solicitors affected, the Gardai, the Land Registry, the Revenue Commissioners and the solicitors' indemnity insurers to seek to resolve the matter.

Murphy was quoted in the newspaper as saying that the Society was 'absolutely satisfied that no member of the public would lose out' and that there was 'no question of any dishonesty on the part of any solicitor in this matter'. Steps had been taken to protect the priority of registration of the documents concerned, he said, adding: 'We believe they are not at risk. This is just a mess which takes time to resolve. Really, it becomes a question of who contributes, and in what proportion, to resolving the matter'.

The £1.5m figure in the *Irish Times* originated with the fraud squad. This is a substantially higher figure than any Law Society estimate. The Council of the Law Society is now considering whether or not guidelines should be issued to the solicitors' profession in relation to the use of legal agencies.

Council election with a difference

Ballot papers will shortly be sent to the profession for the first-ever election of 50% of the Law Society Council, *writes Ken Murphy.* This results from the recommendation of the Review Working Group last year which led to a new policy whereby Council members should be elected for two years instead of one. A ballot was conducted last November to determine which half of the current year's Council would enjoy a two-year term and which half would have to face the electorate again after 12 months.

Because the Senior Vice President, Laurence K Shields, had his name drawn from the hat among those to face the electorate after one year (under a different rule he is automatically returned), there are in fact only 14 seats on the Council being contested by direct election this year, together with two of the four provincial delegate seats.

The 14 Council members who must face the electorate in competition with any other candidates who present themselves, and secure re-election if they wish to serve on next year's Council are: Brian Sheridan, Andrew F Smyth, Terence McCrann, Michael Carroll, John Fish, Anthony Ensor, Ward McEllin, John Costello, Moya Quinlan, Owen Binchy, Gerard Doherty, John Shaw, Geraldine Clarke and the President, Frank Daly.

A slightly disproportionate number of these are based in Dublin. It will be interesting to see what effect the new system will have. At the time of going to press, the full list of candidates is not yet known.

Four Courts rooms upgraded

The Society's consultation rooms are better and brighter thanks to renovations carried out during the long vacation. Changes include a revised layout with two new rooms and the enlargement of others. Emphasis has been put on improving lighting and ventilation and giving a more modern feel to the area. Some extra services have also been added:

- Telephone extension in every room
- System for ensuring a quicker turnover of rooms, so that fewer people will be disappointed.

One major change to the facilities is the Friary Café. The new cafe – a response to members' demands for an on-site lunch, tea and coffee service – will open from 9am to 4pm. A service will also provide tea, coffee and snacks directly to the consultation rooms.

BRIEFLY

Court fees under review

Circuit and superior court fees are being reviewed by the Department of Justice. District Court fees have already been increased by 20%, and payments for cases taken in the State's three other courts are now being looked at. A Department of Justice statement announcing the District Court increase revealed that the review is under way.

Cash-basis VAT accounting extended

Businesses whose turnover is less than £500,000 can now account for VAT on a cash basis. This means that any registered person with a turnover of less than this can account for VAT on receipt of payment instead of on the issue of an invoice. Applications to account on the cash basis should be made to the relevant tax office, giving details of the annual turnover for the last year and an estimate of turnover for the next year.

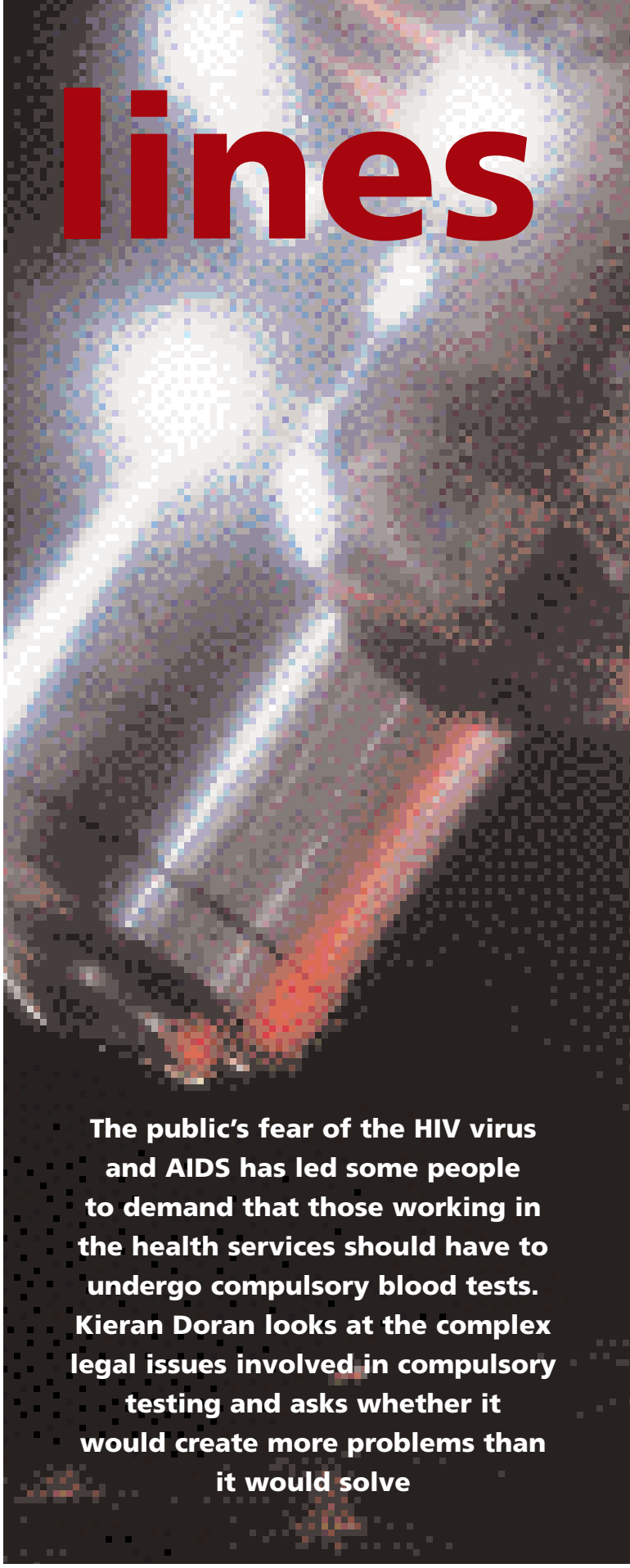
Constitutional and human rights experts sought

The EU Commission is seeking experts in constitutional and human rights law to help set up legal structures to protect these rights in Africa, Central and South America and Eastern Europe. The commitment could involve anything from short stays to one year and longer. Anyone interested should get in touch with Mr Justice Paul Carney at the High Court, Dublin 7 (tel: 01 872 5555).

Rates and EMU guide added to LawLink

Ulster Bank's live market rates and EMU guide can now be found on the LawLink service. The service has been broadened in an attempt to get accountants to join lawyers on this particular branch of the information highway. LawLink has added MAID corporate news extracts and other enhancements to increase the service's appeal to accountants.

Blood lines



The public's fear of the HIV virus and AIDS has led some people to demand that those working in the health services should have to undergo compulsory blood tests. Kieran Doran looks at the complex legal issues involved in compulsory testing and asks whether it would create more problems than it would solve

The question of compulsory testing for HIV infection is an extremely controversial issue and raises a number of medico-legal problems: what is the liability of a health board if it employs a HIV-positive health care worker? was the board negligent in failing to check the worker's HIV status? how safe are the patients in the health board's care? what rights does the worker have in the context of such a screening programme?

The purpose of this article is to discuss the medico-legal issues surrounding the compulsory testing of health care workers for HIV:

- First, the concept of compulsory testing of the patient – in this context, the patient is the health care worker himself
- Secondly, the medico-legal consequences of compulsory testing (including possible legal actions in the tort of battery or medical negligence)
- Thirdly, the issue of informed consent and its implications for compulsory testing, and
- Finally, the practical considerations of compulsory testing of health care workers.

Compulsory testing of patients

Britain's General Medical Council has firmly rejected the notion of compulsory testing for HIV in the absence of specific consent except in the most exceptional circumstances. For its part, the British Medical Association (BMA) feels that the doctor ought to ensure that the patient has given genuine consent to the test.

There are some circumstances in which the patient may imply consent to testing – for example, by holding out his arm to undergo a blood test (see *O'Brien v Cunard SS Co* [1891] 28 NE 266). But some experts argue that it is not realistic to talk of 'informed consent' in the context of diagnostic blood tests.[1] Others suggest that patients with a 'perplexing presentation' might be taken to have given an implied consent, due to their anxiety to diagnose what was wrong with them.[2] But is the HIV test just another diagnostic test or does it have its own unique characteristic that makes it different from any other diagnostic test?

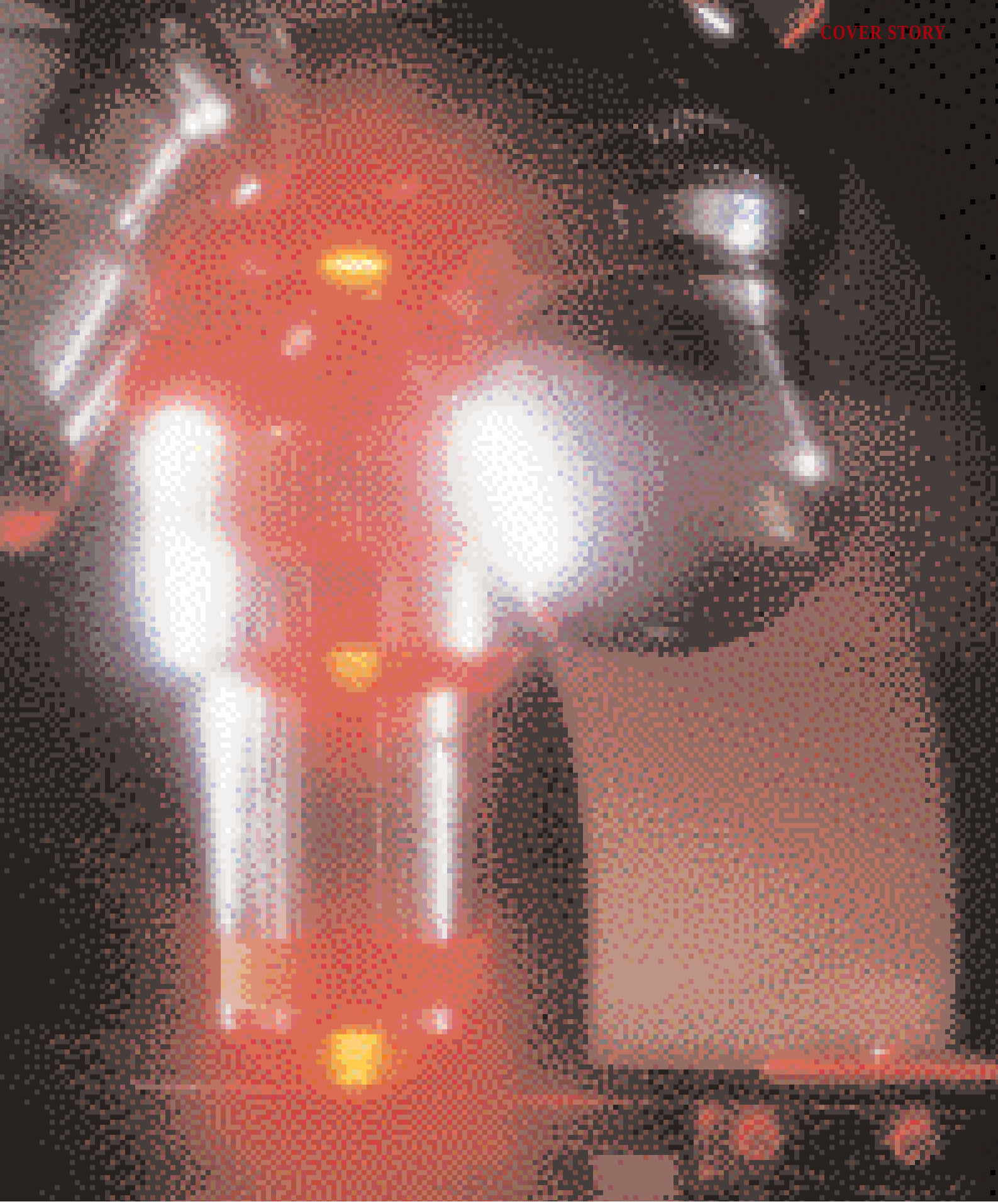
As one commentator has pointed out: 'There is no vaccine, primary treatment or cure [for HIV/AIDS] ... a positive result carries the trauma associated with the diagnosis of all serious conditions but is increased by the unique stigma of AIDS, and many patients prefer not to know that they are infected ... HIV testing, even when the result is negative, may affect applications for insurance'.[3]

Non-consensual testing

What if the HIV test is not thought to be unique and the doctor does not seek the patient's consent? In 1987, the BMA annual representative meeting voted in favour of non-consensual testing, relying on the *Bolam* principle. This principle springs from *Bolam v Friern Barnet Management Committee* ([1957] 2 AER 118) and says that a doctor will not be held negligent if he acted in accordance with the practice accepted by a responsible body of medical people skilled in that particular art. However, some maintain that this would amount to assault on the patient by testing without specific patient consent.[4]

Here in Ireland, the advisory group set up by the Government to look into the transmission of infectious diseases in the health services supported the principle of informed consent for all blood tests regardless of their clinical purpose. Along with the National AIDS Strategy Committee, it argued that in the case of HIV tests, testing should only be done on a voluntary basis with pre and post-test counselling.

However, others have argued that the patient need only be informed in the broadest terms of the nature of the testing in question, and that the doctor should seek to balance the considerations of gaining patient con-



sent with the advantage of furthering the process of clinical diagnosis.[5] If a responsible body of medical opinion supported diagnostic testing without the consent of the patient in question, then this would be justified. But what would be the medico-legal consequences if the doctor undertakes the test without the patient's consent? The first possibility is an action in the tort of battery.

The tort of battery is centred on the individual patient's right to bodily autonomy – that is, the right to prevent anyone touching his person without his consent. In *Wilson v Pringle* ([1986] 2 AER 440), it was held that the plaintiff must show that the touching by the defendant was hos-

tile (in other words, an objectionable intrusion on his right to personal autonomy).

Goff LJ (*In re F* [1990] 2 AC1) stated that the primary question was whether the plaintiff had consented to the touching or not. If the patient does not give an informed consent to an invasive procedure which is subsequently carried out, then the constituents of battery are present, so patient consent for the HIV test is vital in order to avoid an action for the tort of battery.

The second possible legal consequence is an action for medical negligence.

Medical negligence

The tort of negligence arises when the doctor has failed to do competently what he ought to have done. However, in *Bolam v Friern Hospital Management Committee*, it was held that a doctor will not be considered negligent if his actions are supported by a responsible body of medical opinion. Yet, according to Finlay CJ, in the case of *Dunne v National Maternity Hospital* ([1989] IR 91), this was no defence if the plaintiff could establish that such a medical practice had inherent defects obvious to any person giving the matter due consideration. Obviously, if a doctor can point to a body of medical opinion which considered that consent to a HIV test was not required, then he could avoid an action for medical negligence, provided there were no inherent defects in the approach having given it due consideration.

The Australian case of *Rogers v Whitaker* ([1992] 67 ALJR 47) rejected the *Bolam* principle. The court held that the appropriate standard of care was that which had given weight to the paramount consideration that a person is entitled to make his own decisions about his life. It is probable that the right to consent to a HIV test would be such a decision that a patient should be allowed make for himself, given that the result would have serious implications for his life. The court spoke of the need to disclose to the patient any material risk (a risk that any person in the patient's position would be likely to attach significance). In this context, the patient would obviously attach significance to the nature and consequences of the test.

All of this raises the question about how much should the patient know: this is the issue of informed consent.

Then there is the issue of risk – the greater the risks, the greater the corresponding duty to disclose information concerning them. In *Walsh v Family Planning Services* ([1992] 1 IR 496), Finlay CJ ruled that a warning had to be given regardless of the potential risk. So even if the potential risk of being HIV positive is negligible, the doctor would have to inform the patient of the nature of the proposed test. All of which covers the medico-legal issues: so what are the practical considerations of enforcing such a policy?

The practicalities of testing

Firstly, there needs to be a consideration as to the actual risk of infection of a patient by a health care worker. The only documented case of transmission of HIV from a health care worker was that of a Florida dentist.[6] Indeed, the risk of health care workers contracting the HIV virus from a patient is higher. For example, contamination with body fluids during obstetric procedures has been reported to be about 42%, and in the same study 23% of staff were found to have broken skin on hands and arms[7], while the estimated cumulative risk of a surgeon contracting HIV in his career is 12/10000. So does this mean that there should be a corresponding testing procedure for patients to protect health care workers?

The second question is the cost of compulsory testing. The average cost of testing has been recently estimated at £120stg, though the total bill would obviously depend on the scope of the testing programme. For example, in Britain in 1995 it was estimated that the cost of testing all hospital doctors and clinical staff in the National Health Service would be around £8 million in 1995; this figure rose to £65.7 million if all GPs, nurses, midwives, and hospital dentists were included. Although the figures for Ireland would be lower, the health budget is correspondingly smaller. Would this be money well spent given the low risk of a health care worker infecting a patient?

The third question concerns the consequences of a health care worker being found to be HIV positive. At the moment, there is no mechanism or system in place to compensate health care workers if they test HIV positive, and no provision for retraining or redeployment within the health service. This was highlighted by the Irish Medical Organisation as recently as March of this year, in the context of the proposed Hepatitis B tests and providing evidence of Hepatitis B status, which followed on from the advisory group's recommendations referred to above. Would this not have similar implications for a HIV screening programme?

It would appear from this analysis that the compulsory screening of health care workers for the HIV virus is hamstrung by numerous medico-legal and practical difficulties.

In the first place, there is the uncertainty over whether or not patient consent is required prior to a test being conducted. Secondly, there is the possibility of the staff carrying out the test facing legal action for the tort of battery or indeed medical negligence, despite the existence of the legal defence of the *Bolam* principle. Thirdly, the legal principle of informed consent suggests that the doctor ought to inform his patient of the nature of the test, despite the possibility that the doctor's medical judgement may establish that it would not be in the patient's best interests to do so.

Finally, there are further problematic considerations such as the remote likelihood of patient infection by health care workers, the high cost of compulsory testing, and the lack of compensation and retraining schemes for such workers should they test positive. As a policy, it would create as many problems – if not more – than it would solve. G

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

Footnotes

1 *JK Mason and RA McCall Smyth*, Law and medical ethics, *Butterworths (1994), London, p232.*

2 *C Dyer, 'Testing for HIV: the medico-legal view', (1987) 295 BMJ 871.*

3 *J Keown, 'The ashes of AIDS and the phoenix of informed consent', (1989) 52 MLR 790 at 793.*

4 *KK Mason,* Forensic medicine for lawyers, *Butterworths (1995), p91. This view is supported by Leo Charles QC, acting for the Central Committee for Hospital Medical Services, Gordon Langley QC, acting for the Medical Defence Union, as well as Ian Kennedy and Andrew Grubb of the Centre of Medical Law and Ethics, Kings College, London, England.*

5 *Keown, (1989), 52 MLR 790.*

6 *RW De Bry, LG Abele, and SH Weiss, 'Dental HIV transmission?', (1993) 361* Nature *691.*

7 *JJ Kabukobak and P Young, 'Midwifery and body fluid contamination', (1992) 305* British Medical Journal 226.

Why it pays to plan AHE

There is a lot of mystique attached to pensions, but stripped of their jargon and regulations the objective is simple: to accumulate money at retirement to replace pre-retirement pay. Kevin Finucane looks at the many pensions vehicles available to solicitors

A recent survey by the Economic and Social Research Institute disclosed that only 46% of employees and the self-employed are covered by a pension scheme. There are no statistics on solicitors only, but no doubt we are a little bit up on the average. The Irish Association of Pension Funds undertook a survey recently on why people do not belong to pension schemes. 'I can't afford a pension scheme at the moment', 'the charges involved in organising a pension are too high' and 'I don't really understand pensions' were three of the main reasons given.

Whatever the reason, any delay in starting to provide for a pension is expensive, as **Table 1** shows. A male solicitor aged 25 will need to pay just under 10% of his salary each year to provide for a single pension of two-thirds of his salary at age 65. If he does nothing until age 40, he will have to pay nearly 18% and at age 55 a staggering 51.7%. It is more costly if the solicitor wants a pension that increases every year and a spouse's pension on death. What makes it worse is that there are limits on the contributions that can be paid into a pension arrangement (see below).

The figures in **Table 2** illustrate the need to plan your pension as early as possible. What is the appropriate pensions vehicle? The common features of all approved pension arrangements are that:

- Contributions into the arrangement are fully relieved against income tax and PRSI
- Income and gain on the fund itself are exempt from tax
- The pension payable in retirement is liable to income tax, and
- Part of the fund can be taken at retirement as a tax-free lump sum.

But there are major differences also. In examining these differences, let us consider whether the solicitor is self-employed (sole practitioner or partner) or an employed solicitor.

Sole practitioners/partners

The pension that a sole practitioner or partner can take out is known as a 'retirement annuity contract', a 'self-employed arrangement' or a 'personal pension plan'. Whatever its name, it is a policy taken out with a life assurance company under section 235 of the *Income Tax Act, 1967* and is approved by the Revenue Commissioners. Retirement benefits are provided under section 235 and life assurance benefits under section 235A. The solicitor receives a retirement annuity certificate (RAC) from the insurer confirming the contributions which have been paid and gets relief against his or her income tax bill.

A maximum of 15% of net relevant earnings can be contributed each year, rising to 20% from age 55 onwards. Broadly, 'net relevant earnings' are income from the business less certain deductions such as mortgage relief, capital allowances and losses.

There is one important exception to the requirement that a self-employed arrangement be taken out with a life assurance company. A group scheme can be established under trust through a merchant bank or a life office. This is known as a trust scheme and a prime example is the Law Society's own scheme currently invested with Bank of Ireland Asset Managers. Trustees must be appointed to manage the scheme.

Table 1

ANNUAL COST OF FUNDING FOR A PENSION OF TWO-THIRDS OF SALARY AT RETIREMENT (COST EXPRESSED AS A PERCENTAGE OF SALARY)

Age at which solicitor starts	Single life pension 0% spouse's pension 0% escalation		Single life pension 50% spouse's pension 3% escalation	
	Male	Female	Male	Female
25	9.6%	10.7%	13.9%	14.2%
30	11.5%	12.9%	16.7%	17.2%
35	14.1%	15.9%	20.5%	21.1%
40	17.8%	20.1%	25.9%	26.6%
45	23.5%	26.3%	34.0%	35.0%
50	32.8%	36.9%	47.6%	49.0%
55	51.7%	58.1%	75.0%	77.1%

It is assumed for the purposes of these figures that investment return will be 8% a year and salary/pensionable earnings will increase at 6% a year.

EAD

Up to 25% of the fund value can be taken as a cash sum. The balance must be used to buy an annuity which secures payment of a pension for life. Benefits can be taken at any time between ages 60 and 70. This is not linked to retirement, so the solicitor can still carry on the business and take benefits at the same time.

Employed solicitors

Employed solicitors can be employed by a firm of solicitors, in the corporate sector or by the State. Employed solicitors are taxed under Schedule E of the income tax code. There are two ways that a solicitor in employment can plan for his or her pension. First, the employer may operate a pension scheme for its employees or may agree to set one up on request. Known as occupational pension schemes, these are approved by the Revenue Commissioners under Chapter II of Part I of the *Finance Act, 1972*.

Alternatively, if the solicitor is not included in such a scheme, he or she can establish their own self-employed arrangement in the same way as a sole practitioner or partner can do.

Occupational pension schemes are established under trust and are subject to general trust law and the *Trustee Acts*. Because the scheme is under a trust, the assets are held separately from the employer's assets. There will be a trust where the employer sets up a scheme for a group of its employees or even if the employer sets up a scheme just for one solicitor. The most significant thing from a legal perspective on becoming a member of an occupational pension scheme is that the solicitor comes under the protection of the *Pensions Act, 1990*. This legislation established the Pensions Board which is the regulator of occupational pension schemes.

Occupational pension scheme benefits can be taken at the normal retirement age specified in the scheme rules – usually age 65, but it could be any age between age 60 and 70. There are usually facilities for early retirement as well. There are no limits to the contributions that the employer and employee can contribute except that the employee can only receive tax relief on contributions up to 15% of remuneration in a given tax year. This is in marked contrast to self-employed arrangements which cap contributions. However, limits are imposed on occupational pension schemes at the other end – that is, at retirement. In general, the overall maximum pension that can be received from occupational pension schemes at normal retirement (subject to a minimum of ten years' service) is two-thirds of remuneration at that point. There is a sliding scale for lesser periods of service

State pension

So far, we have considered two distinct classes of pension. There are self-employed arrangements for the self-employed or employees whose employer does not operate a pension scheme. There are also occupational pension schemes for employees. There is, of course, a third and obvious source of retirement income – the State pension.

All self-employed and employed solicitors now pay PRSI to enable them to receive the State pension at 65. The current rate (June 1997 to June 1998) is £4,056 a year. Add a dependant spouse and it could be up to £6,937. There are certain conditions before the pension will be paid. One of the important ones is that average PRSI weeks of payment should not fall below 48 out of 52 in order to secure the maximum pension.

However, the State pension will not give a solicitor sufficient replacement income in retirement. **Table 3** shows the contributory State pension as a percentage of pre-retirement earnings. Even at the low end of the scale (£10,000), it amounts to only 41% of pre-retirement income. In other words, income drops by nearly 60% if you are just relying on the State pension. At the higher rates, the drop is more dramatic. For example, at an earnings level of £30,000, the State pension amounts to a mere 14%.

A combination of a private pension and other savings is therefore desirable.

Third pillar

If the State pension is the first pillar of retirement provision and the occupational pension or self-employed arrangement the second, then private savings and wealth is the third pillar. Some solicitors may have so much personal wealth that they have no need for a pension. Others may wish to supplement their pension by having a bit extra on top. A good pensions adviser will take all financial circumstances into account in advising on the appropriate strategy.

Professional advice

Solicitors pride themselves on offering independent advice to their clients; solicitors should themselves look for independent advice when planning for their pension. Many financial advisers are tied agents. They can only offer pension products from one provider and are therefore not truly independent. Look for independent brokers who have agencies with all the major pension providers and who will

give you the choice about how they are to be remunerated. You can then opt for fee-based advice or commission-based advice. Ideally, the broker should be well-resourced, with in-house pensions, actuarial and legal expertise and should have appropriate computer software to analyse the pensions market.

They should also have specialist software which compares the charges of the various providers. Find out by asking. In addition, the broker should be fully regulated and bonded under the *Insurance Act, 1989* and the *Investment Intermediaries Act, 1995*.

Protection

Pensions are an important part of the retirement planning picture, but what happens if you die or are disabled? If you have a spouse or children you will probably want to ensure that they are properly provided for: so how can this be done?

As mentioned earlier, the sole practitioner or partner can effect life assurance under a self-employed arrangement by taking out a section 235A policy. The premium under a section 235A policy counts towards the overall 15% limit on contributions (or 20% from age 55). The solicitor may want to invest as much for pension purposes as the contribution limit permits. Taking out a section 235A policy would reduce the limit even further. In those circumstances, it is better to take out ordinary life assurance outside of the self-employed arrangement framework. The solicitor does not receive tax relief on the life assurance premium but is able to put the amount he or she wants to invest in the pension scheme (and receives tax relief on those contributions).

The employed solicitor who is not a member of an occupational pension scheme (in other words, who is in non-pensionable employment) can also take out a section 235A policy. Members of occupational pension schemes will usually have life assurance cover under their pension scheme should they die in service. If the occupational pension scheme has no cover, or it is inadequate, the solicitor is restricted to taking out ordinary life assurance. He or she cannot take out a section 235A policy.

Disability and serious illness cover are also available. Disability cover is particularly advantageous from a pensions perspective as it usually continues to pay the pension premium into the pension arrangement while the solicitor is disabled from work. This is known as premium protection. Serious illness cover pays out a lump sum on the diagnosis of one or more of a specified list of serious illnesses such as cancer, stroke or coronary by-pass.

Key tips

Pension planning is a complex subject but the objective is simple: to accumulate income for that long and fulfilling retirement awaiting us! Here are a few key tips to avoid the pitfalls:

- Start early. The longer you wait, the more expensive it gets
- Find out what kind of pension you can take out. Are you self-employed or in pensionable employment?
- If you are an employee, find out if your firm has a pension scheme or will set one up
- Don't rely just on the State pension. It will not be enough
- Get independent advice from a reputable independent broker who is fully regulated and bonded
- Take out life assurance and examine whether you need disability and serious illness cover
- Keep playing the Lotto.

Kevin Finucane is a Director and Pensions Legal Adviser of Coyle Hamilton Limited and co-author of Irish pensions law and practice.

Table 2

COMPARISON OF OCCUPATIONAL PENSION SCHEMES AND SELF-EMPLOYED ARRANGEMENTS

Contribution and benefit limits	Occupational pension	Self-employed
Tax relief on member contributions	Up to 15% of remuneration each year. Any contributions above 15% do not enjoy relief.	15% of net relevant earnings, rising to 20% from age 55. A maximum of 5% towards life assurance, but this is inclusive of the 15%/20% limit.
Employer can contribute ...	**Yes. Employer contributions are also tax-relieved.**	**No.**
Benefits can be taken normally from ...	Age 60-70.	Age 60-70.
Benefits can be taken earlier ...	**On early retirement from age 50 or even earlier if ill-health is the cause.**	**On ill-health grounds only (from any age).**
Maximum tax-free cash that can be taken	1.5 times final remuneration, where at least 20 years' service. A sliding scale applies to shorter service.	25% of fund value.
Maximum pension on normal retirement	**Two-thirds of final remuneration, where at least ten years of service. A sliding scale applies to shorter service.**	**No limit. Benefits are restricted by reference to maximum contributions.**
Refunds of member's contributions	Yes. Taxed at 25%. The right to a refund is limited by the *Pensions Act, 1990*.	No.

'Final remuneration' is generally the last year's earnings or the average of the last three years.

Table 3

Annual pre-retirement earnings	State pension (£4,056 a year) as a % of pre-retirement income	Reduction in income if relying solely on State pension
£10,000	41%	59%
£20,000	20%	80%
£30,000	14%	86%
£40,000	10%	90%
£50,000	8%	92%
£60,000	7%	93%

The contributory State pension quoted above (£4,056) is that currently payable to a single person. In the case of a person with an adult dependant this could be increased by up to £2,881 a year.

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Solicitors on the Web

Some 20 or 30 Irish firms have already set up sites on the World Wide Web. These websites range in size and sophistication from basic single page advertisements to multi-section areas containing valuable information. Grainne Rothery speaks to some of those firms about the benefits of going on-line

The larger commercial practices which look overseas for new business point out that having a Web presence is as much about projecting an image of technological awareness and the ability to move with the times as it is about generating tangible business. Many firms also say that while they previously thought that having a website was innovative, they now believe it's a requirement for doing business with international corporations. 'International companies tend to think there's something wrong with you if you're not already on the Web', says Colman Curran of Mason Hayes and Curran.

According to John Furlong, information officer at William Fry, the firm had a number of key reasons for setting up a Web presence. 'We saw it as a way of attracting new business and, at the same time, of providing information to our existing clients. We also felt that having a website will be an absolute requirement of the future. Notwithstanding that we're listed in a number of directories on the Internet, we wanted to create an additional reference site that we'd actually designed ourselves'.

The website went on-line in April this year, after a development phase of around six months. The firm used Galway-based Web developer Interact, which designed the site and registered it with the appropriate search engines. In addition to a home page, the site consists of extensive information on specialist units and services, a references page, general information on William Fry and *Irish legal news*, the firm's electronic publication which is updated on a regular basis.

'It's vital to commit resources to a website and to keep all the information current', says Furlong. 'That means updating it regularly. We've committed to updating *Irish legal news* at least once a month. The publication has a strong emphasis on new developments in commercial and financial law and, because the information changes regularly, it is an incentive to bring people back to the site'.

Plans are being developed to update all aspects of the website internally. 'The firm wants to be able to expand and develop the site itself. Full control would allow us to include a news flash, for instance, that day', he says. 'In our experience, people won't be attracted back to a site that stays static'.

So far, the firm has received business through its Web pages. 'As a result of the site, we've had several enquiries which have led to new business', says Furlong. He believes that a Web presence is particularly important for medium to large commercial firms that are looking overseas for business, rather than those competing purely in the Irish market.

When John Glynn Solicitors established its Web presence just over a year ago, one of the attractions was the opportunity to create a cost effective method of advertising to large numbers of people. 'In a way, it's still a bit premature in Ireland because a lot of people still can't access the Web', says John Glynn. 'The initial incentive is the possibility of attracting overseas business. In a while, though, Web TV will put technology into the hands of the ordinary person and it will then be very important for solicitors to be on the Internet'. Glynn points out that Web TV, a plug-in low-tech piece of equipment for accessing the Internet, is currently available in the United States for around $199.

In addition to a home page, the firm's website consists of sections on road traffic accidents, employer liability, public liability claims, property transactions, wills and probate and obtaining an Irish passport. Within each of these sections is a detailed and informative guide aimed at the layman. The nature of the information means that the site does not actually have to be updated continuously.

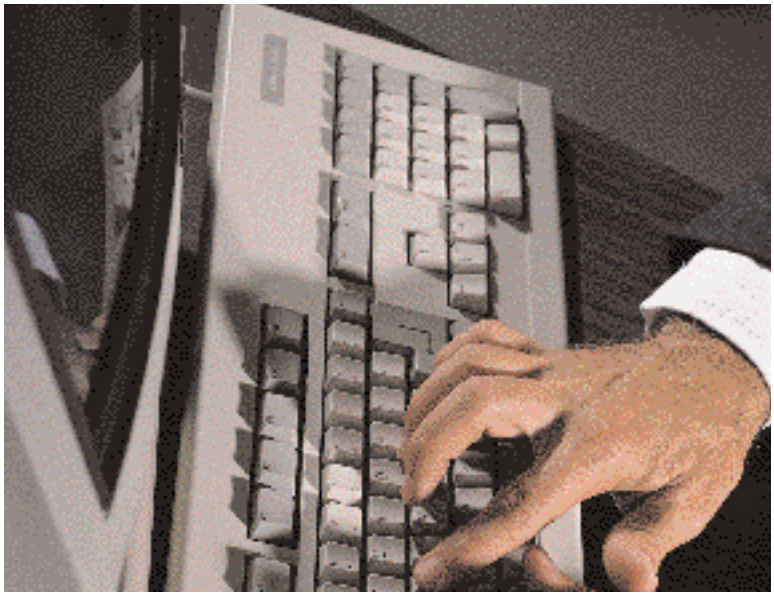
According to Glynn, the website has received up to 12,000 hits in a single month. He admits, however, that many of these responses are useless to the company, with a large percentage of them originating from individuals looking for Irish passports. 'The site hasn't directly created a huge amount of business although we have got at least three litigation cases through it', he says. 'Most of the Irish people currently accessing the site are involved in computer technology businesses'.

A&L Goodbody decided to launch a full website earlier this year, after maintaining a test site since the beginning of 1995. 'We had been looking at the technology for a while and were becoming increasingly aware of its growing influence, particularly in terms of international business', says the firm's marketing manager, Aine Maguire.

The site contains a news section, which is updated on a weekly basis. 'We deliberately included a section that would need continuous updating so that we'd be more disciplined about changing the content', says Maguire. 'We do have the advantage of using consultants for carrying out the updates. They tend to prompt us for new information'.

The website was never seen as a means of directly generating business, she says. 'It's hard to quantify what you get out of it. We see it as another business development tool and an integral part of our corporate image. Achieving a direct return was never a motivating factor in setting it up'.

Colman Curran of Mason Hayes and Curran agrees that a website will not necessarily create huge returns in terms of new business. 'We have got one or two pieces of business as a direct result of our Web presence', he says.



'We still feel it's well worth it. It's more of a marketing tool than an advertisement. For example, if a large American corporation is trying to choose between using us or one of our competitors, we can refer them to the website to provide an initial impression of the firm'.

Included in the site content are sections on corporate and commercial law, arbitration and litigation, property, publications and employment and safety law. In addition, the firm has developed a page in German, which provides basic details and the contact name of a German speaker within the practice.

The investment required to establish a Web presence can vary from a couple of hundred pounds to several thousand for a reasonable site. The sky's the limit as to how much can be spent on a really sophisticated venture. In addition, there are normally on-going costs for storage and updating. Despite the fact that there seems to be little or no discernible financial return, most of the firms who have so far set up sites seem to be convinced of their value and satisfied that this will only increase in the future. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Punch the clock

The *Working Time Act* gives new rights to workers and creates another regulatory minefield for employers. Padraig Walsh pinpoints the pitfalls

The *Organisation of Working Time Act, 1997* was the law that nobody seemed to want. Employers warned that it would add to their growing bureaucratic burden, while workers complained that it would cut lucrative overtime. But the statute which implements Council Directive 93/104 and puts a 48-hour ceiling on the working week has been law since 7 May. Its provisions have far-reaching consequences both for workers and their bosses.

Main provisions

This legislation will have a serious impact on the conduct of all businesses. Its main terms include the following:

1) All workers shall be entitled to 11 consecutive hours' rest in any 24-hour period
2) All workers shall be entitled to a rest break of 15 minutes for each consecutive working period of four hours and 30 minutes, and a rest break of 30 minutes for each consecutive working period of six hours, which latter period may include the aforementioned 15-minute break
3) All workers shall be entitled to a minimum uninterrupted rest period of 24 hours plus 11 hours for each seven-day period, which rest period shall in principle include Sunday. The employer may refuse to grant their employee the required rest period in one week, provided he gives them two rest periods of 24 hours in the following week
4) All workers shall be prohibited from working on average more than 48 hours for each seven-day period. The reference period for calculation of this rest period must be four months, in certain limited circumstances six months, or where agreed in a collective agreement, up to 12 months
5) An employer must take an employee's 'double-jobbing' into account when calculating points one to four above
6) All workers shall be entitled to four weeks' paid holidays
7) All night workers' normal hours of work shall not exceed on average eight hours in any 24-hour period
8) The employer is required to give 24 hours' notice prior to the start of the working week of the times at which the employee will be required to start and finish his work for that working week, and of the working days on which the employee will be required to work additional hours
9) In respect of 'zero-hour' contracts (where employers require employees to make themselves available for work, even though they may not be called in for work), an employee is entitled to be paid a minimum of 25% of either the contract hours, if specified, or the normal hours of work in a working week for that type of work
10) In respect of working on Sunday, the employer is obliged to give the employee an increased rate of pay, allowance or paid time in lieu, such as is reasonable.

Enforcement and procedures

The legislation does not specify who will be obliged to supervise and enforce these regulations, and merely grants the Minister for Enterprise and Employment the power to appoint inspectors. But it seems likely that the controlling authority will be the Health and Safety Authority (HSA).

The key point for employers to note is that they will be obliged to carry out the extra bureaucratic work needed to create and maintain the records which will demonstrate compliance with these regulations for a period of three years. And employers should be warned that the proper maintenance of these records will afford them the only likely successful defence to an action for not complying with the regulations.

Inspectors have the right to enter premises, make enquiries and ask to see these records. Failure to comply is an offence punishable on summary conviction by a fine of £1,500 plus £500 for each day the offence continues. An inspector may only exercise the right to enter an employer's premises with consent, or by production of a District Court warrant. In every case, the employer should require that the inspector produce a certificate of appointment from the Minister before allowing them in. But these provisions effectively mean that employers' own records can be used against them, and their right to silence is gone.

Proceedings under the legislation are by way of complaint by an employee or, with their consent, the employee's trade union, to a rights commissioner within six months of the alleged breach of the legislation. There is a right of appeal to the Labour Court within six weeks of the decision. The rights commissioner may declare the complaint well founded; require the employer to remedy the breach or compensate the employee with up to two years' pay; or order the employer to do both. An intransigent employer who does not abide by the decision of the rights commissioner or Labour Court will be compelled to do so on application to the Circuit Court.

The 48-hour week

The provision which will have the most intrusive effect on employers is the 48-hour week. Ireland has not availed of the seven-year derogation period in respect of the 48-hour week, and this provision has the full power of law. So far, no additional funding has been provided by the Government for the enforcement of these provisions.

Any attempt to contract out of the 48-hour week provisions – and the legislation's other provisions – will be void. If an employer and worker have a dispute, neither will be able to rely on the terms of the contract or agreement between them as they relate to the hours of work. The employee is given some protection by a provision stating that they shall not be penalised for their refusal to co-operate with the employer in activities which breach the employer's obligations under this act.

Unfortunately, the legislation states that if the employee is dismissed, he is not covered by unfair dismissals legislation. This is somewhat curious. Undoubtedly it was intended that the employer should not be entitled to dismiss the employee for refusal to co-operate with the breach of the regulations. In that case, it would be preferable to deem such a dismissal as unfair, with the most appropriate remedies being re-instatement or re-engagement.

Adapting the working environment

The legislation makes no provision for a very important provision in the grounding directive. Article 13 of Council Directive 93/104 requires that employers adapt the working environment to alleviate monotonous work and work at a pre-determined rate. This obligation to adapt the workplace to the worker represented a clear shift in the emphasis of health and safety legislation to date. So far, employers have been obliged to carry out risk assessments designed to show potential risk of physical injury or other accidents, and to draft a safety statement which addresses these potential risks.

But the directive's concern is for the worker's mental and psychological well-being. It was intended that employers would not only concern themselves with whether a repetitive task had a potential risk of physical injury, but would implement measures which ensure that the functionality of the workplace benefits the worker's physical and mental welfare. This new duty implied that the employer consult with the workers.

Unfortunately, the legislation does not carry this proposal forward, and its wording in the directive is too imprecise to be directly effective. Hopefully, this will not be another example of the Commission's good intentions floundering on the rocks of imprecise wording and indecision in enacting.

Another noteworthy emphasis in the legislation is that it uses collective agreements as instruments to flesh out detail or provide exemptions. This indicates a clear preference in the legislation for dealing with trade unions. The relevant provisions are points one to four and nine as set out above. While there is no obligation to recognise trade unions in order to negotiate with them (the Government may legislate in default), this is the clear intention.

Exemptions

The Garda Síochána and Defence Forces are exempt entirely from the legislation. The following areas are excluded from its working time sections but are subject to the holiday provisions: people with autonomous decision-taking powers in respect of their working time, family workers, and people engaged in sea fishing, other work at sea, or trainee doctors.

The Minister chose to exempt following areas from all or part of the legislation: the transport industry and the security, surveillance and civil protection industry. *Force majeure* is also an exception.

Workers will welcome this legislation's implementation, but employers will face the difficulties of managing the paperwork to comply with its provisions. It signals, yet again, the advance of employee's conditions at the behest of the European Union.

Maybe the next step is a 48-hour week for the self-employed, or would this require a stick to beat them out of their offices? G

Padraig Walsh is an apprentice solicitor with Westmeath-based solicitors' firm Tormey and Company.

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Council report

Report on Council meeting held on 25 July 1997

1. Motion: Salary scale

That the recommended salary scale payable to newly-qualified solicitors be increased in accordance with the Partnership 2000 agreement.

Proposer: *Philip Joyce*
Seconder: *John Shaw*

The proposers said that the proposal related to the various elements of the *Partnership 2000* agreement which included an increase of 2.5% after the first 12 months, 1.5% after the next nine months and 1% after the following six months. The current recommended scale is in a range from £15,000 to £18,000. The Council unanimously approved the motion.

2. Motion: Review Working Group

That this Council resolves to:

a) Implement the recommendations of the Review Working Group (including recommendation 36); or

b) Bring a motion to a general meeting to amend such recommendations as they are not able to implement.

Proposer: *Patricia McNamara*
Seconder: *James MacGuill*

Patricia McNamara said it was not her intention to argue the merits or demerits of the recommendations of the Review Working Group. The motion related purely to the implementation or amendment of these recommendations. Following a debate, the Council unanimously agreed in principle that the small number of recommendations which had not been implemented, such as recommendation 36 which the committees concerned had found unworkable, should be brought before the Annual General Meeting. The full text of a motion in this regard would be considered at the September Council meeting.

3. Independent Adjudicator

The Council noted the approval of the Minister for Justice for the Society's proposal to establish an independent adjudicator scheme. The President sought and obtained the Council's approval for the establishment of the scheme and the appointment of Eamon Condon as Independent Adjudicator of the Law Society for a period of two years.

4. Meeting with Minister for Justice

The Director General reported that he had met with Minister for Justice, John O'Donoghue, at the Minister's request. There had been no pre-set agenda or officials present. The Director General outlined the contents of what had been a very amicable, wide-ranging and positive exchange of views. Among many other topics, the Minister enquired into the Society's views on the length of the court vacations, in particular the Long Vacation. Following a debate on this and on the courts' sitting hours, the Council decided that the views of the profession should be sought through the bar associations before a response is given to the Minister.

5. Legal agency collapse

The Senior Vice President, Laurence K Shields, reported on the Co-ordination Committee's considerations of the Society's attempts to manage the fall-out from the collapse of a Dublin-based legal agency through co-operation with and co-ordination of the 20 solicitors' firms affected, the fraud squad, the Land Registry, the Revenue Commissioners, professional indemnity insurers and others. The Council endorsed the committee's further proposals for action in this regard.

6. Education

The Chairman of the Education Committee, Pat O'Connor, reported that the consolidated education and apprenticeship regulations were now contained in statutory instrument number 287 of 1997. The Council should be grateful for the trojan work of drafting done by Michael V O'Mahony. Mr O'Connor also reported that, of 207 candidates in the most recent FE1 examination, 26% had been successful. He also urged that the Education Policy Review Committee should report as soon as possible.

7. Postal voting

Michael Irvine reported that he had prepared amended bye-laws which would provide for postal voting as had been discussed at the previous Annual General Meeting. He hoped that a specific proposal in this regard could be put to the Annual General Meeting on 6 November 1997.

8. 150th Anniversary

The Council approved the appointment of a sub-committee under the chairmanship of Elma Lynch to plan an event on 5 April 2002 to mark the 150th Anniversary of the granting of the Society's charter.

9. Annual Conference 1998

The Council approved the holding of the Society's Annual Conference in Florence from 16 to 19 April 1998.

10. Congratulations

On behalf of the Council, the President extended congratulations to Laurence and Helen Shields on the recent arrival of their twins. He also extended congratulations to Geraldine Clarke and her husband Eric Faulkner on the recent arrival of their daughter.

11. Motion for Council meeting on 26 September

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 outlining
- *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*

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

State liability for implementation of directives (part 2)

This is the concluding part of this article: the first part appeared in the last issue of *Eurlegal*

Last month we looked at recent Court of Justice judgments (*Brasserie du Pêcheur/Factortame III*) in which the Court held that the criteria for determining Member State liability where the state had legislated contrary to EC law would be criteria other than the strict *Francovich* criteria. Thus, before Member State liability in this circumstance could arise, the breach must have been 'sufficiently serious'.

In *British Telecom* [1966] ECR I-1631, an interesting question arose. Which of the two sets of liability, determining criteria should apply where a Member State poorly implements a directive: the *Francovich* criteria or the *Brasserie du Pêcheur/Factortame III* criteria?

In this case, the Court had to consider whether the UK was liable in damages to British Telecom where it was alleged that the UK has transposed a public procurement directive incorrectly, thereby allegedly causing loss to British Telecom. Directive 90/531 on public procurement required certain contracts to be publicly tendered but permitted certain operators such as British Telecom to decide which contracts in its area should be so designated and which should not. However, the UK had implemented the directive by actually designating the relevant contracts without affording British Telecom the opportunity to do so.

The Court of Justice held that the UK had breached the directive as the directive intended British Telecom to have the right to designate the relevant contracts. But the Court went on to elaborate that the *Brasserie du Pêcheur/Factortame III* criteria (not *Francovich* criteria) would be the criteria that would apply to determine whether or not the UK was liable in damages for loss thereby allegedly caused to British Telecom.

The Court opted for the *Brasserie du Pêcheur/Factortame III* criteria as the relevant liability determining criteria. Why did it do this? Justifying its decision, the Court stated that it was concerned to ensure that the exercise of legislative functions by the state in a field governed by Community law should not be hindered by the prospect of actions for damages whenever the general interest required the state to adopt measures which may affect individual interests. As a result, it opted for the *Brasserie du Pêcheur/Factortame III* criteria rather than the *Francovich* criteria. Thus, the Court had to consider whether the UK's breach – incorrect implementation of a directive – was 'sufficiently serious' or not.

In making this assessment, the clarity and precision of the rule breached was relevant. In the case before it, the Court concluded that the relevant article of the directive was imprecisely worded and reasonably capable of bearing the interpretation given to it by the UK, which the Court found had acted in good faith. Furthermore, there was no guidance available to the UK as to the correctness or otherwise of its interpretation of the directive either from the case law of the Court or from the EC Commission, which at no time had indicated to the UK that it was unhappy with the way in which the directive had been implemented. Accordingly, the Court concluded that there had been a breach, but not a 'sufficiently serious' one.

This judgment is helpful in several respects. On one hand, it illustrates in a practical sense the kind of analysis the Court is likely to carry out when requested to consider whether a state's poor implementation of a directive constitutes a 'sufficiently serious' breach of EC law. This is particularly evident in the weight that the Court gives to relevant considerations which demonstrate whether or not the Member State had acted in good faith, such as: the imprecision of the directive's phrasing; the background to the legal dispute; whether the Commission had ever indicated to the Member State that it was unhappy with the national implementation measure etc. Also the Court appears to place emphasis on whether its previous judgments had any bearing on the legal issues raised in the dispute.

However, on the other hand, it is not such good news for parties who are adversely affected by a state's failure to implement a directive properly as the Court applied the less favourable *Brasserie du Pêcheur/Factortame III* liability criteria rather than the *Francovich* criteria.

The *Francovich* criteria therefore appear confined to determining state liability in damages where there has been a complete failure to implement a directive, rather than also applying to the poor implementation situation. This is not such good news for lit-

igants against the state who are affected by poor implementation – they will have to satisfy the *Brasserie du Pêcheur/Factortame III* liability criteria instead.

The potency of the *Francovich* criteria for errant states is demonstrated by the *Dillenkofer* judgment delivered by the Court in late 1996 (*Dillenkofer and Others v Germany* [1996] 3 CMLR 469). In this case, the Court was called upon to consider which set of criteria would apply to determine liability where a Member State (Germany) had failed to implement a directive by the due deadline for implementation. The directive in question, Council Directive 90/314, was intended to protect holiday-makers in the event of tour operator insolvency. Germany had particular difficulties implementing the directive on time, had failed to do so, and therefore in its defence argued that the 'sufficiently serious' test should apply (so that Germany's failure should not be deemed 'sufficiently serious' in light of its particular difficulties).

The Court held that where a Member State fails to take any measures to implement a directive, then the *Francovich* as opposed to the *Brasserie du Pêcheur/Factortame III* criteria apply to determine liability. No doubt there will be many other examples of this arising, thereby giving rise to Member State and ultimately taxpayer liability where Member States fail to implement directives on time.

Indeed, in Ireland, in *Tate & Robinson & Ors v Minister for Social Welfare* [1995] IR 418, the High Court in 1995 in a decision handed down by Carroll J applied *Francovich* criteria thereby awarding damages against the State in favour of female applicants who claimed that, as a result of the State's failure to implement Directive 79/7 on the equal treatment of men and women in social security matters, they had received less social security entitlements than their male counterparts. Carroll J held that the State's failure to implement the directive on time caused the applicants' loss and thus she awarded damages applying the *Francovich* criteria. This judgment cost the taxpayer about £270 million.

Overview

Clearly, the Court of Justice has recognised that Member States will be liable in damages under EC law to aggrieved parties who suffer loss as a result of either the failure of the state to implement a directive, or its poor implementation of the directive. However, crucially, depending on which situation it is, either the *Francovich* or the *Brasserie du Pêcheur/Factortame III* criteria will be applied. Undoubtedly, the *Francovich* threshold for a litigant is much easier to satisfy (the fact of non-implementation constitutes an actionable breach). But where the state has implemented the directive, but done so poorly, the *Brasserie du Pêcheur/Factortame III* criteria apply. In this situation, the evidential burden both on aggrieved litigants and their legal advisors requires a much greater effort in order to demonstrate successfully that a poorly implemented directive constitutes a 'sufficiently serious' breach so that it constitutes an actionable cause of action in damages against the state in the High Court.

The Court has also made it clear, that while Member States can also be liable in damages where the state legislates contrary to EC law, it is the *Brasserie du Pêcheur/Factortame III* criteria that will apply. G

Dermot Cahill is a solicitor and lecturer in law at UCD. A version of this article previously appeared in the Dublin University law journal, *vol 18, pp167-186.*

Recent developments in European law

CONSUMER LAW

Consumer protection

The Commission has recently adopted a *Communication* containing a package of proposals to enhance consumer protection (COM(97)309 final). The principal areas addressed include distance contracts for financial services, protection of victims of car accidents abroad, reviews of the Consumer-Credit Directive, the Insurance Intermediaries Directive, and an extension of the recommendation of new means of payment. Legislation is to be introduced in some, though not all, of these areas.

EMPLOYMENT LAW

Protection of employees

Member States have recently agreed on a draft directive on the protection of employees from excessive exposure to chemicals in the workplace. It specifies a maximum number of times within a given period that an employee can be expected to handle hazardous chemical agents. The Council has also adopted a directive on the protection of workers from the risks related to the exposure to carcinogens at work (94/42/EC – OJ L179 1997). This measure further extends the definition of a carcinogen to include, among other things, benzene, pesticides and certain medicines.

The Council has also adopted a new directive giving protection to those in contact with radiological treatment, both to patients and medical equipment operators (97/43/EURATOM – OJ L180 1997). The provisions apply widely – including those conducting their own treatments, volunteers for medical programmes and those involved in the support of patients undergoing radiological treatments.

ENVIRONMENTAL LAW

Waste

In *Tombesi, Santello, Muzi and Savini* (joined cases 304/94, 342/94 and 224/95), the Court of Justice has held that the concept of 'waste' in Community legislation does not exclude substances and objects which are capable of being re-used. The case arose out of criminal proceedings in which the defendants were accused of transporting, discharging, disposing of and incinerating waste without obtaining authorisation. The defendants argued that later directives concerning recycling meant that re-usable substances and objects no longer fell within the definition of waste. The Court rejected this, holding that there was a common definition of waste in all the environmental directives. Directives introduced to encourage recycling or re-use did not change this definition.

INTELLECTUAL PROPERTY

Patents

A Commission Green Paper, *Promoting innovation through patents* (COM (97) 314), has introduced the possibility of a simplified European-wide patent system that could ensure protection throughout the EU on the basis of a single patent application. Currently applicants must apply to the national patent office in each Member State to achieve protection throughout the EU. The proposals would also dispense with the need to translate patents into all the different languages of the Member States. The Green Paper raises the possibility of the introduction of a court with competence to settle patent disputes at European level.

LITIGATION

Road traffic cases

The Commission is preparing a directive which would help victims of motor accidents which occur in a Member State, other than their home state. The proposal includes provisions requiring all motor insurers to have a qualified claims representative permanently established in each of the Member States. The victim could then request the representative to manage the claim on his behalf. The directive also entitles victims to apply directly to the liability insurer of the other party to the accident and, if necessary, take legal proceedings against him.

Commercial agents directives

Commercial agents play a vital role in inter-penetrating markets so their freedom of establishment throughout the European Community is seen as a vital composite to the creation of a market where goods can move freely. The Commercial Agents Directive (86/653/EEC) seeks to remove those differences in the law of agency affecting commercial agents which are detrimental to the proper functioning of the Community. In doing so, the directive superimposes pro-agency continental civil law on the existing common law.

The source of the directive is Germany's long-established protection of commercial agents as per §§84-92C of the German commercial code. Unlike their common law counterparts, the German courts did not have the unenviable task of interpreting the implied terms of agency agreements; they merely had to refer to those terms implied in the absence of agreement to the contrary by the pro-agent model form rules of their commercial code.

This was in distinct contrast with the position which prior to the implementation of the directive pertained in Ireland. The common law did not deal with specific types of agency and left it to agents and their principals to negotiate the terms of their relationship. Commercial agents were largely regarded as independent traders who did not warrant any special protection. If anything, the common law, by imposing onerous fiduciary duties on agents, was protective of principals.

What is most novel is that the directive likens commercial agents dealing in goods to employees (this accords with Community competition law whereby commercial agents are not to be considered separate undertakings from their principals), by granting them the right to receive proper notice, compensation in case the business relationship is severed, and, save in cases where the third party fails to fulfil the contract, a right to be paid for their efforts once an order has been accepted by the principal. It should be noted that agents dealing in services are not protected by the directive. Principals must now decide whether they wish to continue to penetrate the market through agents or to use some other means, such as a distributorship.

Fundamental concerns exist about the *European Communities (Commercial Agents) Regulations 1994* (SI No 33 of 1994) retrospectively implementing the directive in Ireland as of the 1 January 1994. The regulations state that a commercial agency agreement 'shall not be valid unless it is evidenced in writing' without defining what 'evidenced in writing' means. Following the Supreme Court decision in *Meagher v the Minister for Industry and Commerce and the AG* [1994] ILRM 1, it is arguable that the Minister in choosing this option available under the directive (the other being that either party simply has a right to request a written agency agreement – the option availed of by most Member States) was deciding an issue of policy which had no precedent at common law and, thus, acting *ultra vires* his powers.

Nevertheless, taking a cautious approach to ensure compliance with this requirement, parties are advised to exchange formal commercial agency agreements signed by both parties. Principals who do not wish their commercial agents to obtain the protection of the directive might well seek to ensure that there is no evidence of the agreement in writing! Of course, the agent without an agreement evidenced in writing will still be able to rely on his or her more limited common law rights.

Doubt also existed until recently as to the effective implementation of either of the two options available under article 17 of the directive. Article 17 provides for either a no-fault indemnity or a no-fault compensation award payable to an agent on termination of the agency relationship. These awards are similar to a redundancy payment.

The first of these options is based on the traditional goodwill indemnity under German law and the second is based on principles of compensation under French law. In effect, they are both the same thing: compensation for the loss suffered by the agent on termination of the relationship. When implementing the directive, most Member States opted for the goodwill indemnity option, France opted for the compensation award option and the UK left it up to the parties themselves to decide on which option to choose. As neither of these options were referred to in the Irish regulations, it was arguable that article 17 has not been properly implemented in Ireland.

Following on from the *Francovich* decision and more recent case law, such failure to implement the directive properly left the State open to a claim for damages by an aggrieved commercial agent. Only after the European Commission issued formal article 169 proceedings against Ireland for a non-implementation did the Government take the necessary remedial action. SI No 31 of 1997 now retrospectively confirms that as and from the date of entry into force of the regulations the second of the options available under article 17 of the directive applies in Ireland – that is, an agent is entitled to compensation for loss resulting from termination of the agency agreement rather than a goodwill indemnity.

Unfortunately, it is not possible here to deal with all the issues arising out of the implementation of the directive. Commercial agents and principals operating in Ireland should be advised to review their relationship and take legal advice. The directive highlights the difficulties of harmonising Community law. Given the options available under the directive and the differing methods of implementation by individual Member States, anyone who believed that protection of commercial agents is now uniform throughout the Community would be severely mistaken. G

Philip Daly is a solicitor with the Dublin firm Dillon Eustace.

Conferences and seminars

Academy of European Law
Topic: *Consumer protection: directive on package tours and State liability*
Date: 16-17 October
Venue: Milan, Italy
Contact: Kirsten Borgsmidt (tel: 0049 651 1471014)

Topic: *Insolvency law in the EU*
Date: 20-21 October
Venue: Vienna, Austria
Contact: 0049 651 1471014

Topic: *The new Community Directive 97/7 on distance contracts and its significance for direct and distance selling within the Member States*
Date: 30-31 October
Venue: Trier, Germany
Contact: 0049 651 14710

AIJA (International Association of Young Lawyers)
Topic: *Corruption: recent developments in Europe*
Date: 17-19 October
Venue: Brussels, Belgium
Contact: Gerard Coll (tel: 01 676 0704)

Topic: *Problems of wine legislation in Italy, France and Spain*
Date: 24-25 October
Venue: Torino, Italy
Contact: Gerard Coll (tel: 01 676 0704)

Stage 1997
Topic: *The European lawyer in 2020*
Date: 24-25 October
Venue: London, England
Contact: Chris Maguire (tel: 0044 171 440 4000)

ILT Digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Registration of Title (Amendment) Bill, 1997
This Bill has been passed by both Houses of the Oireachtas. (See also (1997) 15 ILT 163.)

Harbours Act, 1996 *(Commencement) (No 3) Order 1997* (SI No 324 of 1997)
This order brings certain sections of the *Harbours Act, 1996* into operation with effect from 26 July 1997 (other than in relation to Arklow Harbour Co, Dundalk Port Co, Port of Waterford Co, and Wicklow Port Co. The sections are: s5(2) (insofar as it relates to the *Pilotage Act 1913* and the *Pilotage (Amendment) Act, 1962)*; those sections of part IV not previously in force; and ss83(2), 84 (insofar as it relates to s71) and 105.

National Cultural Institutions Act, 1997 *(Commencement) (No 2) Order 1997* (SI No 328 of 1997)
This order brings certain specified provisions of the *National Cultural Institutions Act, 1997* into operation with effect from 25 July 1997, including those relating to: the register of important cultural objects (with regard to paintings in the care of the National Gallery); indemnities for certain objects on the register; and the restriction on export and export licence provisions for archaeological objects and items on the register.

***Justice (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 298 of 1997)**
This order changes the name of the Department of Justice to the Department of Justice, Equality and Law Reform with effect from 9 July 1997. The title of the relevant Minister is changed accordingly.

***Transport, Energy and Communications (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 299 of 1997)**
This order changes the name of the Department of Transport, Energy and Communications to the Department of Public Enterprise with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Marine (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 301 of 1997)**
This order changes the name of the Department of the Marine to the Department of the Marine and Natural Resources with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Agriculture, Food and Forestry (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 302 of 1997)**
This order changes the name of the Department of Agriculture, Food and Forestry to the Department of Agriculture and Food with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Tourism and Trade (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 304 of 1997)**
This order changes the name of the Department of Tourism and Trade to the Department of Tourism, Sport and Recreation with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 305 of 1997)**
This order changes the name of the Department of Enterprise and Employment to the Department of Enterprise, Trade and Employment with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Arts, Culture and the Gaeltacht (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 306 of 1997)**
This order changes the name of the Department of Arts, Culture and the Gaeltacht to the Department of Arts, Heritage, Gaeltacht and the Islands with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Social Welfare (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 307 of 1997)**
This order changes the name of the Department of Social Welfare to the Department of Social, Community and Family Affairs with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Health (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 299 of 1997)**
This order changes the name of the Department of Health to the Department of Health and Children with effect from 12 July 1997. The title of the relevant Minister is changed accordingly.

***Environment (Alteration of Name of Department and Title of Minister) Order 1997* (SI No 322 of 1997)**
This order changes the name of the Department of the Environment to the Department of the Environment and Local Government with effect from 22 July 1997. The title of the relevant Minister is changed accordingly.

***Equality and Law Reform (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (SI No 297 of 1997)**

This order transfers to the Minister for Justice, Equality and Law Reform, with effect from 8 July 1997, all ministerial functions and departmental administrative powers in relation to equality and law reform.

***Forestry (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (SI No 300 of 1997)**

This order transfers to the Minister for Marine and Natural Resources, with effect from 11 July 1997, specified ministerial functions and departmental administrative powers in relation to forestry.

***Trade (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (SI No 303 of 1997)**

This order transfers to the Minister for Enterprise, Trade and Employment, with effect from 11 July 1997, specified ministerial functions and departmental administrative powers in relation to trade.

***Exploration and Mining (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (SI No 314 of 1997)**

This order transfers to the Minister for Marine and Natural Resources, with effect from 15 July 1997, specified ministerial functions and departmental administrative powers in relation to exploration and mining.

Ethics in Public Office Act, 1995 *(Section 3(1)(b) Regulations 1997* (SI No 320 of 1997)

These regulations provide that, where a person ceases to be an office holder, within the meaning of the *Ethics in Public Office Act, 1995*, the duty imposed by s19(4) of the Act shall, if not carried out before such cesser, be carried out by that person within 30 days of such cesser. The regulations also clarify certain references in s20 of the Act.

AGRICULTURE

***European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) (Amendment) Regulations 1997* (SI No 290 of 1997)**

These regulations, amending the *European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) (Amendment) Regulations 1994 to 1996* specify, *inter alia*, the detailed requirements relating to analytical methods and relating to residues in and on agricultural produce, to be submitted in support of applications for authorisation for marketing and use of plant products. The regulations came into operation on 3 July 1997

ANIMAL WELFARE

***Diseases of Animals (Protection of Animals During Transport) Order 1997* (SI No 326 of 1997)**

This order, giving effect to Directive 95/29/EC (of 29 June 1995) sets out, *inter alia*, detailed rules on watering and feeding intervals, journey times and rest periods for animals during transportation.

COMPANY

***In re Greendale Developments Limited* (Supreme Court), 20 February 1997**

Winding up; misfeasance; *ultra vires*; s298 of *Companies Act, 1963*; set-off; liability of officers of company for misfeasance; breach of duty; director also shareholder in company; director obtaining benefit from transactions with company; liquidator applying for order directing repayment of monies; director claiming right of set-off; High Court directing repayment of monies; appeal to Supreme Court; principles to be applied; whether transactions *ultra vires* the company; whether assent of shareholders curing irregularities; whether benefit obtained by director in capacity as director or shareholder; whether proceedings properly brought pursuant to s298 of 1963 Act; whether director entitled to set off sums alleged to be owing to him by company; *Companies Act, 1963*, ss213(f), 298; *Companies Act, 1990*, s142.

Held: Transactions which are *ultra vires* a company are not cured by the assent of all the shareholders in the company to the transactions. An officer of a company who has been found liable to pay money to the company in misfeasance proceedings is not entitled to set off a debt owing to him by the company against that liability.

***In re Aston Colour Print Limited* (Kelly J), 21 February 1997**

Appointment of an examiner; procedures to be followed; statute required conduct of a formal board meeting prior to presentation of petition; dispute as to whether requisite resolution had been passed by meeting prior to presentation of petition; dispute as to nature of intentions of directors; whether meeting was a proper board meeting; whether formal resolution was passed; whether petition validly presented; whether appointment of interim examiner to be discharged; *Companies Act, 1990*, s3; *Rules of the superior courts 1986*, o40, r1.

Held: A decision by a board meeting to invoke the jurisdiction of the High Court pursuant to the 1990 Act had to be made in such a manner which made the will of the board clear. The usual way to determine the clear will of a board was by means of the proposal of a resolution followed by a vote.

***Belton v Carlow County Council* (Supreme Court), 25 February 1997**

Malicious injuries; factory destroyed by fire; fire started deliberately; claim by local authority that fire not started by a third party; case stated to High Court; *res judicata*; same parties; no privity between company and directors; case stated answered in negative; *Malicious Injuries Act, 1981*, ss12, 21; *Civil Liability Act, 1961*, s29.

Held: There is no privity of interest between the owners of a company and the company itself.

CRIMINAL

***Connolly v Director of Public Prosecutions* (Supreme Court), 17 January 1997**

Delay; judicial review sought of prosecution; prohibition sought; many adjournments of applicant's case; two previous trials attempted; applicant alleged that the delay in his prosecution was excessive; whether delay excessive; whether respondent had been guilty of undue delay in the prosecution of the applicant; Constitution of Ireland 1937, art 38.1.

Held: The onus of demonstrating a breach of the right to a trial with reasonable expedition and of grounds warranting the intervention of the High Court lay at all times upon the applicant. In this case, the applicant had not discharged that onus of proof.

***B v Director of Public Prosecutions* (Supreme Court), 19 February 1997**

Prosecution of offences; trial in due course of law; accused's right to trial with reasonable expedition; delay of more than 20 years between commission of alleged offences and complainants' first

complaint to authorities; whether delay *prima facie* an inordinate lapse of time; whether delay was a breach of accused's right to trial with reasonable expedition; factors for court to consider; circumstances of each case; test to be applied; whether real risk accused would not obtain a fair trial by reason of delay; special category; allegations of sexual abuse of children and young people; interpersonal relationships and dominion; usual concepts as to reasonable time might not apply; accused charged with multiple sexual abuse offences against daughters; circumstances pertaining in home of accused and family; trial judge finding accused a violent and menacing husband and father; daughters exposed to systematic and severe emotional, physical and sexual abuse; complainants unwilling to inform mother; authorities approached only after death of mother; two periods of delay on complainants' part; whether delays unreasonable in circumstances; whether accused contributed by his actions to delay; unique properties of alleged sexual abuse within the home; Constitution of Ireland, arts 38.1, 40.3.

Held: Where allegations of sexual abuse within the home by a father against his daughters are proved, that accused's actions of control, subjugation and dominion over his family must be viewed as actions by him which delayed the trial, and, as such, should not entitle him to a form of immunity which would be to the detriment of the complainants and society in general.

***D O'R v Director of Public Prosecutions* (Kelly J), 27 February 1997**

Prosecution; alleged delay; offences alleged to have been committed many years ago; specificity of the charges; dates of the offences uncertain; reasons for delayed prosecution; prejudice; onus of proof in establishing prejudice; whether applicant prejudiced by delayed prosecution; whether applicant entitled to prohibition of trial; Constitution of Ireland 1937, art 38.1.

Held: The court was permitted to take into account all of the circumstances of the case in considering an application for prohibition because of delay. In particular special considerations arose in the case of charges involving the sexual abuse of children. One of the factors which the court had to consider was the extent to which the accused person may have contributed to the delay in the reporting to the prosecution authorities of the offences alleged.

ENVIRONMENT

***Waste Management (Farm Plastics) Regulations 1997* (SI No 315 of 1997)**

These regulations impose obligations on importers and manufacturers of certain farm plastics, including an obligation to operate a deposit and refund scheme, to collect waste farm plastics, to take steps for the recovery of such waste, to register with and provide information to local authorities and to provide information to purchasers. An exemption from these obligations is available to persons who participate in a waste recovery scheme operated by an approved body. The regulations came into operation on 1 August 1997.

EUROPEAN COMMUNITIES

***Emerald Meats Limited v Minister for Agriculture* (Blayney J), 3 March 1997**

Community quota for import of beef; Member States responsible for distributing share of quota among meat processors; plaintiff dealt in meat but was not processor; plaintiff came to arrangement whereby it would buy quota from meat processor and would import meat under licence expressed to be 'for and on behalf of' meat processor; rules changed and Commission now responsible for allocating shares of quota; allocated to companies who could prove they had previously imported meat; plaintiff and meat processors each applied for quota on basis of same meat imports; defendant submitted processors to Commission for quota; whether plaintiff had been acting as agent of meat processors; whether defendant had failed in its duty under new regulations to submit plaintiff; whether plaintiff was entitled to damages; whether plaintiff was entitled to special damages; Council Regulation 3889/89; Commission Regulation 4024/89; Commission Regulation 3021/91.

Held: Neither the State nor any other public body enjoys any special position in the law of torts. Thus, if a plaintiff recoups special damages against the State for a breach of statutory duty, he is also entitled to an award of general damages.

FISHERIES

***Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1997* (SI No 294 of 1997)**

These regulations, which replace the *Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1989*, provide for a new system for administering the register of fishing boats (previously set up by the 1989 regulations). The present regulations are deemed to come into operation on the commencement of s4 of the *Fisheries (Amendment) Act, 1994*.

HEALTH & SAFETY

***European Communities (Energy Labelling of Household Combined Washer-Driers) Regulations 1997* (SI No 319 of 1997)**

These regulations prohibit the placing on the market for sale, hire or reward of combined washer-driers unless accompanied by information relating to the consumption of electric energy in addition to some supplementary information. This information is to be conveyed to the customer by means of a specified label and an associated product information notice (known as a fiche). The regulations place the onus for the accuracy of the labels and fiches on suppliers, who will also be required to establish technical documentation sufficient to enable the accuracy of the information contained in the labels and fiches to be assessed. Enforcement powers are provided for and penalties established and transitional provisions are made. The regulations came into operation on 1 August 1997.

INSOLVENCY

***In re Chipboard Products Ltd (In Liquidation)* (Laffoy J), 27 February 1997**

Corporate insolvency; liquidation; fees to be paid; calculation of fees; definition of money received 'in realisation of the assets of the company'; whether the mere receipt of monies amounts to realisation of monies; whether the monies received by the official liquidator are liable to fees under paragraph 22 of the 1989 order; *Supreme and High Court (Fees) Order 1989*.

Held: While the official liquidator had to do no more than receive cheques from the receiver appointed by the bank and lodge then into his account, nonetheless, the monies represented by those cheques were received by the official liquidator 'in realisation of the assets of the company' and were, therefore, liable to para 22 fees.

PRACTICE & PROCEDURE

***Dunphy v Crowley* (Supreme Court), 17 February 1997**

District Court; summons; defendant's failure to attend court in person; defendant represented by solicitor; whether judge had jurisdiction to issue warrant for defendant's arrest; road traffic offences; summonses issued; defendant unable to attend in person; solicitor briefed to seek adjournment to enable location of relevant documents; adjournment refused; warrant for defendant's arrest issued; judicial review; whether judge had erred in law and acted without or in excess of jurisdiction in issue of warrant where defendant represented by solicitor; nature of summons; words used in summons; words used in statute the basis for summons; plain meaning of the words; whether 'appear' the same as 'attend'; options for judge where no attendance in person; discretion; *Petty Sessions (Ireland) Act 1851*, s11; *District Court Rules 1948*, rr7, 40.

Held: A summons requires a personal attendance by the defendant. Where a defendant does not appear in person, the judge of the District Court can adjourn the case, hear the complaint or issue a warrant for the arrest of the defendant.

***In re Greendale Developments Limited* (Supreme Court), 20 February 1997**

Evidence; fresh evidence; application for leave to adduce fresh evidence on appeal to Supreme Court; principles to be applied; whether fresh evidence relating to matters at issue in trial; whether fresh evidence relating to credibility of witnesses; adjournment; trial judge refusing application for adjournment; application to Supreme Court for re-hearing; principles to be applied; whether refusal of adjournment prejudicing applicant; *Companies Act, 1963*, ss213(f), 298; *Companies Act, 1990*, s142.

Held: Where fresh evidence relating to the credibility of witnesses is sought to be adduced on an appeal to the Supreme Court, such evidence will not be admitted unless, had it been adduced at the trial, it must have led the trial judge to arrive at different findings as to the facts.

***Director of Public Prosecutions v Doyle* (Geoghegan J), 5 March 1997**

District Court; amendment of summons; dismissal of summons which failed to disclose offence known at criminal law; whether District Court's power to amend summons had been limited by 1986 Act; *Courts (No 3) Act, 1986*; *Rules of the District Court 1948*, r88.

Held: The *Courts (No 3) Act* has not in any way affected the power of a district judge to amend a summons pursuant to rule 88 of the *District Court Rules*.

PRISONS

Prisons Act, 1970 *(Section 7) Order 1997* (SI No 257 of 1997)

This order continues s7 of the *Prisons Act, 1970* in force for a further period of 24 months beginning on 28 June 1997.

REAL PROPERTY

***Fenlon v Keogh* (O'Flaherty J) (*ex tempore*), 10 February 1997**

Landlord and tenant; lease; tenant's right to reversionary lease; tenant covenanting to spend insurance monies, in the event of destruction of or damage to premises by fire, on repairing and reinstating demised premises to landlord's satisfaction; hay barn; building destroyed by fire; tenant's plans to re-build hay barn frustrated by planning system; tenant erected better structure than original, with knowledge and approval of landlord; whether tenant under obligation to reinstate the building which was comprised in original lease; whether tenant entitled to reversionary lease; legislation deeming permanent buildings erected by tenant in pursuance of covenant to reinstate to have been erected by person who erected original buildings; *Landlord and Tenant (Amendment) Act, 1980*, s30(2); *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, ss9, 9(4), 10.

Held: Permanent buildings erected by a lessee, in pursuance of a covenant to reinstate the buildings comprised in the lease in the event of destruction by fire or otherwise, are deemed to have been erected by the person who erected the original buildings.

***ICC Bank plc v Gorman* (Laffoy J), 10 March 1997**

Mortgage; validity; mortgage executed in favour of defendant; consent to mortgage furnished by spouse; defendant went into arrears; plaintiff wished to obtain lands secured by mortgage; spouse contended that mortgage invalid due to lack of her informed consent; whether consent of spouse informed; whether mortgage valid; *Family Home Protection Act, 1976*, s3.

Held: There is no requirement in law that a spouse giving a consent for the purposes of s3 of the 1976 Act has to have the benefit of independent legal advice in the sense of advice from a legal practitioner who is not acting for the mortgagor spouse or the mortgagee. What is required was that the consent should be a fully informed consent.

TAXATION

Finance Act, 1997 *(Commencement of Sections 101 and 113) Order 1997* (SI No 313 of 1997)

This order brings ss101 and 113 of the *Finance Act, 1997* into operation with effect from 1 September 1997. The sections amend, respectively, s8(3)(a) and the sixth schedule of the *Value-Added Tax Act, 1972*.

***Value-Added Tax (Eligibility to Determine Tax Due by Reference to Moneys Received) Order 1997* (SI No 361 of 1997)**

This order increases from £250,000 to £500,000 the turnover amount referred to in s14(1)(b) (as inserted by s97(a) of the *Finance Act, 1994*) of the *Value-Added Tax Act, 1972*. The section in question allows a taxable person with a turnover less than the specified amount to use the monies received basis of accounting for VAT.

TORT

***Ewins v Carlton UK Television Ltd* (Barr J), 3 March 1997**

Defamation; libel; jurisdiction; defendant companies registered outside Ireland; jurisdiction challenged; proper forum; tort occurred in this jurisdiction; plaintiffs came within exception to convention; action to continue in this jurisdiction; *Brussels Convention 1968*, art 5(3); *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988*.

Held: The original publisher of a defamatory statement is liable for its republication where the repetition or republication was the natural and probable result of the original publication.

***Dawson v Irish Brokers Association* (Supreme Court), 27 February 1997**

Defamation; libel; insurance broker; broker must be a member of a recognised representative body of insurance brokers; dispute as to whether there was compliance with *Insurance Act, 1989*; member expelled; circular letter distributed; claim for libel; association in breach of own articles; not entitled to claim qualified privilege; jury award of £515,000; appeal; award excessive; retrial confined to question of damages; *Insurance Act, 1989*.

Held: Where, in an action for libel, an association has not acted in accordance with its own rules, it is not entitled to rely on the defence of qualified privilege.

TRANSPORTATION

***European Communities (Training for Drivers of Vehicles Carrying Dangerous Goods by Road) Regulations 1997* (SI No 311 of 1997)**

These regulations give effect to the training and certification requirements for drivers of vehicles carrying dangerous goods by road, as contained in Directive 94/55/EC (of 21 November 1994).

Meeting the members in Limerick

Charging for work done by borrowers' solicitors on behalf of lenders was top of the agenda recently when Law Society President Frank Daly and Director General Ken Murphy attended a meeting of the Limerick County and City Bar Association in the Limerick Inn Hotel.

The President of the Bar Association, Siobhan Fahy, had specifically asked in advance to have this issue dealt with at the meeting. Ken Murphy explained that the Society's Conveyancing Committee had been reviewing this issue for some time but had left it over until the new formal arrangements with the lenders, which came into effect early this year, had been put in place.

The different responsibilities of solicitors and of lenders had now been much more clearly identified with the responsibility of solicitors limited to title matters only. Everyone in Limerick considered this to have been a major achievement for the Conveyancing Committee.

Siobhan Fahy, flanked by Law Society President Frank Daly and Director General Ken Murphy

There was a strong body of opinion at the meeting, however, that the Society should now proceed to seek to abolish the 'free legal aid service' which the profession currently provides to the most powerful financial institutions in the country which are lenders to the profession's clients in property matters. Put simply, the solicitors in Limerick wish to be paid by the lenders for the work they perceive themselves as doing on the lenders' behalf, in addition to being paid by the borrower for the work done on the borrower's behalf.

The Society representatives explained that no final position had yet been reached on this issue by the Conveyancing Committee. A complex legal and tactical assessment would be made by the committee before it put a recommendation before the Law Society Council at the Council's meeting on 7 November.

One issue which had to be considered was whether seeking to recover payment from lenders would be likely to create a far greater solicitor exposure to liability to the lenders. In such circumstances, the profession's last state might well be worse that the first. However, it was noted and reported back to the Society that feelings on this issue were running very high indeed among solicitors in Limerick as in most other parts of the country.

PRACTICE MANAGEMENT COMMITTEE LAUNCHES OFFICE MANUAL

Pictured at the launch of the *Office manual*: Fred Binchy, Chairman, Practice Management Committee; Ken Murphy, Director General; and Elma Lynch on behalf of Solicitors' Mutual Defence Fund who sponsored the production. The manual along with a diskette will be distributed to all firms at the end of October

ISO9000/Q MARK BOOKLET LAUNCHED

At the launch of the ISO9000/Q Mark Questions and Answers pack were: Fred Binchy, Chairman, Practice Management Committee; Ken Murphy, Director General; and quality consultants Martin McCoy and Peter McGarry

Ho Wei Sim is an unusual name to appear on the roll of members of the Law Society of Ireland, but then she became one of our colleagues by an unusual route. She first qualified as a solicitor in her native Singapore and subsequently requalified as a solicitor in England. Having practised in London for a period she was recruited by the Dublin firm A&L Goodbody where she now applies her international experience of banking and financial services law

SADSI Ball a success

The annual Solicitors Apprentices Debating Society of Ireland (SADSI) Summer Ball was held in the Corrib Great Southern Hotel, Galway, on 28 June. The ball was a tremendous success with over 300 apprentices and young solicitors from all over the country attending for a night of dinner, drinking and dancing.

The committee would like to thank everyone for supporting the event and the many sponsors, all of whom cannot be mentioned here but include the following: A&L Goodbody, Mason Hayes and Curran, William Fry, Eugene F Collins, Connolly Sellors Geraghty and Fitt, Matheson Ormsby Prentice, LK Shields, McNally Opticians and many more.

Of course – it's the Midlands Bar Golf Society at Glasson golf and country club, Athlone. Pictured (left to right) Terry O'Keeffe, Captain; Alan Mitchell, winner of the registrar's and July cups; and Judge Raymond Groarke, President

Gazette man takes reporting council chair

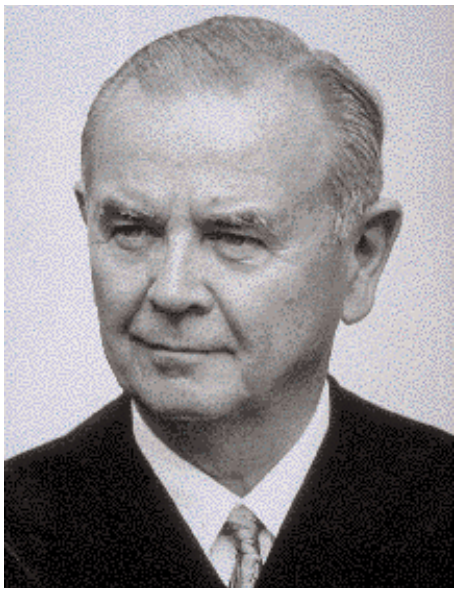
Gazette editorial board chairman, Dr Eamonn Hall, has taken the helm of the Law Reporting Council of Ireland. He was elected chairman of the council at its recent AGM in Dublin's Four Courts. The other officers elected were: Gerard Hogan BL, vice-chairman, and Grainne Clohessy BL, secretary of the Council.

The Law Reporting Council of Ireland, founded in 1866, is one of the oldest legal publishing houses in these islands. The council publishes *The Irish Reports*, the official reports of the Irish superior courts' decisions. It was one of the leading publishers of legal textbooks before the private publishing houses developed that market in Ireland over the last 20 years.

Legal accountant opens new office

Former Ronan Daly Jermyn accountant, Michael Daly, has opened a financial and legal consultancy in Carrigaline, Co Cork. The new office will offer a personal and confidential service to clients. Daly has 14 years' experience as a legal accountant. He is a founder member and chairman of the Institute of Legal Accountants of Ireland.

Death of a judicial visionary



Justice William Brennan (1906 – 1997): a towering figure of modern law

Former US Supreme Court Justice William J Brennan Jnr died on 24 July, aged 91. A towering figure of modern law, Justice Brennan served on the US Supreme Court for nearly 34 years before retiring in 1990. While he was never Chief Justice, he was regarded as pivotal figure in that influential court.

William J Brennan was the second of eight children of William Brennan and Agnes McDermott, who met and married in the US after emigrating from Frenchpark, Co Roscommon. His father – a metal polisher and brewery worker – was an active trade unionist and New Jersey Democrat. 'Everything I am, I am because of my father', he once told an interviewer. Asked whether his father would have been surprised about his elevation to the Supreme Court, Justice Brennan replied: 'No, he would have expected it'. What a magnificent tribute any son could pay his father.

In September 1956, Justice Brennan was invited to meet President Eisenhower in Washington. He assumed he was being invited to head a group on court administration and took an overnight train to Washington. He was 'flabbergasted' when the Republican Eisenhower nominated him, a Catholic Democrat and state court judge, to the Supreme Court. Both the press and legal commentators regarded Justice Brennan's appointment as a prime example of non-partisan merit selection.

Justice Brennan's tenure in the Supreme Court spanned eight presidential administrations. He was one of the longest serving judges in the court's history. One of his best known judicial testaments is his magisterial invocation of the importance of free expression in *New York Times v Sullivan*, 376 US 254 (1964). That case reshaped American libel law and may yet do so in Ireland.

The US Supreme Court decided that even when the media publish false statements about public officials, the freedom of expression guaranteed in the US Constitution permits no finding of liability, unless the official can show that the statement was deliberately false or published in reckless disregard of the truth. In words of seminal significance, Justice Brennan, delivering the judgment of the court, wrote of 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials'.

Constitutional interpretation 'demands of judges more than proficiency in logical analysis', Justice Brennan remarked during celebrations of the US Constitution's bicentennial. In an address to the Bar Association of the City of New York, he added: 'It requires that we be sensitive to the balance of reason and passion that mark a given age, and the ways in which that balance leaves its mark on the everyday exchanges between government and citizens', he declared. The Constitution existed to guarantee 'the essential dignity and worth of each individual', he said.

Each individual's inherent dignity was a passion of Justice Brennan's. In a 1987 speech in New York, *Reason, passion and the progress of the law*, he spoke about the importance of government officials meeting a citizen face-to-face before taking actions against that citizen's interests. This is an illustration of due process requirements. Justice Brennan continued:

'Due process asks whether government has treated somebody fairly, whether individual dignity has been honoured, whether the worth of an individual has been acknowledged … If due process values are to be preserved in the bureaucratic state of the late 20th century, it may be essential that officials possess passion – the passion that puts them in touch with the dreams and disappointments of those with whom they deal, the passion that understands the pulse of life beneath the official versions of events'.

The judge did not subscribe to the view that the Constitution must be interpreted in the light of the framers' original understanding and intent. The genius of the US Constitution (as indeed the genius of Ireland's Constitution) rested, he said, 'not in any static meaning it might have had in an age that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs'.

Throughout his time on the court, Justice Brennan supported the constitutional right to free choice on questions of contraception and abortion. He also believed that the US Constitution required strict separation of church and state. Although a life-long Catholic, he said in an interview: 'To say that prayer was not an appropriate thing in public schools, that gave me quite a hard time. I struggled'. But he added that when he was appointed to the Supreme Court, he had settled in his mind that he had 'an obligation under the Constitution which could not be influenced by any of my religious principles'.

Commentators have argued that Justice Brennan's achievements were due to his forceful intellect – he wrote 1,360 judgments in the Supreme Court – and to his personal magnetism, charm and generous nature. He was an excellent negotiator who treated his ideological opponents with respect.

Justice Brennan had an influence on Irish jurisprudence and contributed an essay in honour of Mr Justice Brian Walsh, a personal friend, in *Human rights and constitutional law*, edited by James O'Reilly (1992).

In 1995, Justice Brennan was honoured by former clerks and others in endowing the Brennan Centre for Justice at New York University. At the ceremony, White House counsel Abner J Mikva, a former Federal appeals court judge, coined a new word, 'Brennanist', which he defined as 'one who influences his colleagues beyond measure'. Justice Brennan is regarded by many as the most influential justice in the history of the US Supreme Court. G

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

Bryan Murphy 1917-1997: an appreciation

Bryan Murphy, for several decades one of Cork's leading commercial solicitors and Professor Emeritus in Law at UCC, died on 24 June last. He will be missed by his family and a wide circle of friends who admired his great integrity, boundless intelligence and sense of fun.

Bryan's background gave him the capacity to look on triumph and disaster and treat those two impostors just the same. His family had been up and down in the world. Their business was the treatment, sale and export of animal hides which was at one point successful enough to think of sending Bryan to Clongowes (though he won a scholarship), where he was a contemporary of the former Chief Justice O'Higgins and Alexis FitzGerald. But Bryan's father died young and the 1930s saw the family business at a low ebb, leading to a time of severe economic difficulty for his mother and her children.

His first degree was in classics at UCC, where he took the best degree for several years. Indeed, Bryan had some of the classical virtues: dislike of ostentation; preference for moderate living; and (as he showed, through the long illness which killed him) stoicism. But he would not thank me for the phrase 'classical virtues', since he had a horror of anything that was hi-falutin or precious, and enjoyed pricking any balloons of pomposity he came across.

After the classics degree, he took a law degree and became a solicitor, serving his apprenticeship with JJ Horgan. In the early 1940s, he bought the practice of McAuliffe, and his experiences for the next few years must have been what he had in mind when, later, he spoke with admiration for those who took the perilous path of 'putting up their plate' and waiting for clients to come through the door. After several years as a sole practitioner, he was joined by a partner, Dominic Murray. Towards the end of his career, in the late 1970s, he formed an association with the firm of Ronan, Daly, Hayes (as it was then).

Bryan was a leading member of the profession for several decades and was President of the Southern Law Association. He often spoke of the ways in which a far-seeing solicitor could help by good judgement and skill, at a time of maximum difficulty for the client. He performed numerous acts of quiet charity, for example, not charging for probate when the breadwinner had died and there were children under 21. His regard for his profession was fully reciprocated by his colleagues, who often went to him for sage advice, usually delivered in a tactful and humorous way, occasionally with a sting in the tail.

But he was realistic about the difficulties into which solicitors could get. An example of his clear-headedness was a remark he made: 'It is best if a solicitor does not adopt too high a lifestyle because that means that when he is faced with the temptation of doing something which he shouldn't do in order to keep the client, it is easier to make the correct choice'.

Bryan was also part-time Professor of Law from 1957-1986 at UCC. With the late Professor Ted Ryan BL, he devoted a generous proportion of his time to the college. There he made a point of specialising in subjects like constitutional law or legal history because they were not part of his daily diet as a practitioner. Yet on the South Mall, he had a reputation as a resourceful expert in the commercial/taxation field. For many years he advised the former Munster and Leinster Bank and other important corporate clients.

In fact, there were very few lawyers (practising, academic or anything else), in this or any other jurisdiction, with such a range and depth of legal or other relevant learning at their fingertips – and who wore it so easily. Apart from his technical virtuosity, he had a marvellous grasp of the social, political and economic context with which the law interacts. So variously gifted was he that if he had been prepared to leave Cork, he would have been one of the handful of his generation who could have taken his choice between the most prestigious chairs of legal history in these islands or the leading commercial practice in the City of London.

He had extraordinarily wide interests and enthusiasms. These embraced swimming, sailing, angling, rugby, maths, history, politics and economics. He would go to the Gaeltacht and return with his enthusiasm for the language sky high. In his sixties, he was learning German. He had a great love of music – whether the works of Mozart or the tunes and lyrics of the American satirist Tom Lehrer – and of the words of Bacon, Robbie Burns, Wilde and many others. All these he would perform with great gusto, for he had a good voice and was a talented mimic.

There were very few topics on which he did not have a view. Usually it was incisive, original and often unfashionable, as it was informed by a wider historical understanding of the question than is given to most of us. Invariably, his view would be cogently expressed and ornamented by a wealth of anecdote. And he had a mastery of two very different forms of expression – rotund eloquence and precise accuracy.

Bryan had a great love and tolerance of people. He celebrated their virtues and understood and forgave their faults. He was a wonderful husband to Eileen, (who died from a stroke two days after Bryan, fittingly, they were buried together), and a wonderful parent and grandparent.

He was a genial gentleman – when he came, he brought the party with him, and when he left, he took it away again. I wish he hadn't gone away.

A friend

Kathleen Montgomery

Dun Laoghaire solicitor Kathleen Montgomery died on 11 July. Qualified since 1935, she was a former principal partner with husband William Montgomery in Thomas Montgomery & Son. Her sons Giles and William are now practising partners in the same firm. She was a sister of former Circuit Court President John Durcan.

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Book reviews

Northern Ireland environmental law

Turner and Morrow

Gill and Macmillan (1997), Goldenbridge Industrial Estate, Inchicore, Dublin 8. ISBN: 07 17122 734. Price: £50

This work is intended to be the first comprehensive statement of environmental law in Northern Ireland and is directed at practitioners, promising to bring them straight to the point and to save time. The text may also be of interest to practitioners this side of the border as a study in comparative environmental law, not least for the excellent analysis of the influence of EC environmental law.

A study of the environmental law of our neighbouring jurisdiction naturally invites a comparison with the Republic. There appears to be a far greater emphasis in this jurisdiction on the public's right to participate in the decision making process: for example, in Northern Ireland there is no legal requirement that an application for a discharge to waters consent be advertised, nor is there a legal power to hold a public inquiry into the application. The absence of a separate Northern Irish environmental agency is noteworthy: apparently the British government believed that a jurisdiction as small as Northern Ireland did not justify the creation of such as agency. One feature which appears to be common to both jurisdictions is the delay in implementing certain EC directives.

The chapter on European environmental law and policy includes a remarkable summary of the manner in which EC law may be enforced in the national courts. The commentary is incisive and loses nothing for its conciseness. Of particular interest in the Irish context is the concept of indirect effect, which may allow an improperly implemented directive to be indirectly enforced by a purposive interpretation of national law. Its significance is that an indirectly effective directive may be enforced against private entities; it is not limited vertically so as to apply only against the State or an emanation of the State. But a recent Irish case, *Lancefort Ltd v An Bord Pleanála* (High Court, unreported, 6 June 1997), appears to have tried to avoid such horizontal effects. It indicates that a decision to grant planning permission legitimately reached in accordance with existing domestic legislation could not be impugned, even if the relevant environmental directive had not been properly implemented by the state.

The book puts forward the intriguing proposition that where a Member State introduces legislation which simply repeats the language of a directive without any elaboration, it has failed to transpose properly the directive so that the precise nature of the obligations and rights involved are not clear, contrary to legal certainty. If this is correct, it clearly has implications for the rather terse manner in which the Republic has implemented certain environmental directives.

One criticism which may be levelled at this work is that in its desire to state comprehensively the regulatory framework, too little analysis has been offered. This is a pity because such of the authors' own views as are evident provide a refreshing insight into the law. The chapter on waste is particularly disappointing in this regard: the discussion of the amended EC directives is merely perfunctory.

Given the vast boundaries of environmental law, the discussion of each topic must, of course, be limited. The authors clearly hope to provide a practical introduction to the whole gambit of Northern environmental law. Nevertheless, the sparse treatment afforded to topics such as the nature of, and *mens rea* element for, pollution offences, and the omission of reference to the wealth of case law, both European and domestic, on the environmental impact assessment directive may be a disappointment to some practitioners. G

Garrett Simons BL is a temporary lecturer in environmental law at Trinity College, Dublin.

The Dingle Dose

Shaun Elder

Minerva Press (1997), 195 Knightsbridge, London SW7 1RE, England. ISBN: 1 86106 254 0. Price stg£9.99

Rem Ember, a seasoned solicitor in the fictional provincial city of Derglea, takes over a difficult family law case from a colleague and a series of events unfold which test him to the limits. Mary Dingle is the client. She has escaped the terror of a violent marriage and relies on Rem to process her application to court quickly to protect her and her children. The file becomes all-consuming to Rem and to the staff of his office and is called *The Dingle dose*.

The way in which Rem steers the case through the legal complexities and sinister plots to thwart his efforts is the main focus of the book. But the story has many subplots which keep the reader immersed in all aspects of Rem's life: the demands of a busy practice; his efforts to help a friend in trouble; his battle with the newly-appointed district judge; his dealings with colleagues and gardaí; and his social and sporting life.

All this happens against the backdrop of a happy marriage and contented family life – but even this is stretched nearly to breaking point over the period of the drama. The events take place between 4 and 30 December, and the day-by-day format of the book keeps the story moving apace and the reader enthralled. A wide range of characters are introduced throughout the story, all finely drawn and believable.

The legal aspects of the book, the planning, the strategies, the tactics will be fascinating to the practising lawyer. If there is a weakness in this otherwise excellent first book by solicitor Shaun Elder, it is 'The long forgotten' part where the reader is introduced to Rem's background and early life. This part comes late in the story and does not necessarily add to the book and frustrates the eager reader who just wants to know what happens next. G

Muriel Walls is a partner with McCann FitzGerald.

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Justice co-operation in the EU: the creation of a European legal space

Edited by Dr Gavin Barrett

Institute of European Affairs (1997), Europe House, 8 North Great George's Street, Dublin 1. ISBN: 1-874109-33-8. *Price £15 (paperback)*

Before the *Maastricht Treaty* was signed, the European Community played little part in justice or home affairs. Among lawyers, European Community law was seen as essentially a civil law phenomenon. In 1992, the *Maastricht Treaty* changed this. The treaty was the Member States' first attempt to deal with internal security.

'Title VI' of the treaty contains provisions dealing with areas of common interest in this regard. Article K.1 provides that the member states are to regard the following as matters of common interest:

- Asylum policy
- Rules governing the crossing by persons of the external borders of the Member States and the exercise of controls
- Immigration policy and policy concerning nationals of third countries
- Combating drug addiction and international fraud
- Judicial co-operation in civil and criminal matters
- Customs co-operation, and
- Police co-operation to prevent and combat terrorism, unlawful drug trafficking and other serious forms of international crime.

Each one of these matters is taken by a contributor and analysed. The contributors grapple in their various ways with the lack of progress under 'Title VI'. This book sets the scene for future developments in European law. For instance, Seamus Woulfe in his chapter on judicial co-operation in civil matters, refers to draft jurisdiction and judgments conventions in the areas of family law and insolvency and a draft convention on service of documents (which has since been signed by all EU Member States), which when implemented will have a considerable impact on litigation, family law and insolvency.

Given that five years have elapsed since the *Maastricht Treaty* was signed and that lawyers are now scrutinising the *Amsterdam Treaty*, this is a timely publication. The breadth of coverage is both ambitious and commendable. This book succeeds in throwing light on areas of European law that have been seen as somewhat esoteric and remote from 'mainstream' concerns. However, the diversity of subject matter covered demonstrates the importance of these provisions.

Dr Barrett and the Institute of European Affairs in bringing out this book have rendered a great service to the informed European lawyer. G

TP Kennedy is the Law Society's Education Officer.

The law of divorce in Ireland

Muriel Walls and David Bergin

Jordan Publishing (1997), 21 St Thomas St, Bristol BS1 6JS, England. ISBN: 0 85308 4084. Price £21.20

A book on family law written by David Bergin and Muriel Walls has to be taken seriously. Both are well-known practitioners in the family law courts; both work almost exclusively in family law; and have taught family law to many qualified solicitors.

The authors state in the preface that they aim to give a comprehensive analysis of the provisions of the *Family Law (Divorce) Act, 1996*. This aim is certainly achieved. For reference purposes, the Act is reproduced entirely, as is the *Code of practice* issued by the Law Society's Family Law and Legal Aid Committee. Further-more, this book was not published until after the publication of the *Court rules*. These are dealt with in chapter 13 and are referred to throughout the book. This in itself is a boon to practitioners.

In essence, the book is an overview of family law in Ireland as it stands today. It is based on a survey of case law since the *Judicial Separation and Family law Reform Act, 1989* came into force and on the authors' wide experience. The sections dealing with *Marriage in Ireland*, *Children*, *Family home and contents*, *Property and other assets*, *Maintenance and lump sum orders*, and *Succession* contain not only an exposition of Irish family law but much practical information and advice to practitioners.

Chapter nine is a concise guide to the many and varied types of life assurance policies, and their uses. It deals in an easily understandable manner with financial compensation orders, a relatively recent concept in Irish family law. As many practitioners may not be conversant with life assurance policies and financial compensation orders, this chapter is a useful guide to best practice. The legislation dealing with pension adjustment orders is also relatively new and notoriously complicated. Chapter ten on *Pensions* is certainly worth a read and, despite the complexity of the topic, it is quite user-friendly.

Chapter 11 on the *Recognition of foreign divorces*, considers the Constitution, the *Domicile and Recognition of Foreign Divorces Act, 1986* and the question of establishing domicile. It also deals with the choice of jurisdiction. This may arise in a situation where parties could choose to obtain an Irish divorce or a recognisable foreign divorce. The authors' predictions and advice are invaluable in this hitherto uncharted area.

The law of divorce in Ireland devotes two-and-a-half pages to the thorny issue of the definition of living apart. At the time of printing, no case law existed so the authors confine themselves to referring to comments on the Bill made by Mervyn Taylor (the then Minister for Equality and Law Reform) English case law and various guidelines issued to the English inspectors of taxes. All are of the view that living apart can include living together in two separate households under the same roof. It will be interesting to see if the Irish courts follow this line.

The problem, which was of course unavoidable, is that despite their experience, the authors are confined in many cases to predicting what may happen in the future. Hopefully this book will itself help to form opinions and develop practices but I believe there is another book to be written. I look forward to the sequel, by Mr Bergin and Ms Walls, on the practice of divorce law in Ireland.

As a final note on the subject of developing good practices, I found the chapter on *Discovery, financial disclosure and anti-avoidance* very interesting and useful. Indeed, if all solicitors uniformly followed the authors' recommendations as to the documentation which should as a minimum be furnished to verify income in maintenance applications, then the practice of family law would be a much less acrimonious and more humane business. G

Helen Sheehy is a solicitor with Partners at Law in Dun Laoghaire and is a consultant and examiner in family law in the Law School.

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 3 October 1997)

Regd owner: Denis Lehane; Folio: 55063; Lands: Dromalour in the Barony of Duhallow; **Co Cork**

Regd owner: John Gerard Moynihan and Mary Helen Moynihan; Folio: 28268F; Lands: Spittal, Barony of Cork; **Co Cork**

Regd owner: Dermot O'Sullivan and Sheila O'Sullivan; Folio: 8426F; Lands: Ballycurreen, Barony of Cork; **Co Cork**

Regd owner: James and Margot McGrath; Folio: 21086F; Land: Ardfert; Area: 0.546; **Co Kerry**

Regd owner: William Hubert Keaney (deceased), 7 Pearse Street, Dublin 2; Folio: 1156; Lands: Townland of Claremont in the Barony of Coolock; **Co Dublin**

Regd owner: Margaret Conneely (Tom) (o/w Connolly) of West Village, Inisheer, Aran Islands, County Galway and Peter Connolly (Tom) (o/w Conneely) c/o Margaret Connolly (Tom); Folio: 21167; Townland: Inisheer (parts), Inisheer (two undivided sixteenth part of the part lettered 'G' on the plan), Inisheer (Parts) one undivided sixty-seventh part of part lettered 'A' on the plan; Area: 15a 3r 29p, 22a 2r 0p, 97a 0r 7p; **Co Galway**

Regd owner: Sarah Buttimer (deceased); Folio: 51972; Lands: Kilworth, Barony of Condons and Clangibbon; **Co Cork**

Regd owner: Kate Cleary; Folio: 4886; Lands: Tinahely, Barony of Ballinacor South; **Co Wicklow**

Regd owner: Patrick Francis Keane, Querrin, Kilrush, Co Clare; Folio: 6806; Townland: Part of the land of Querrin; Area: 49a 2r 37p or thereabouts; **Co Clare**

Regd owner: Maurice A Nolan; Folio: 28825; Land: Prop 1 - Moybella North, Prop 2: Kilteean; Area: Prop 1: 3a 1r 35p, Prop 2: 1A 0r 14p; **Co Kerry**

Regd owner: James Mahony, Moyasta, Ennis, Co Clare; Folio: 16780; Townland: Prop 1: Moyasta, Prop 2: Moanmore Lower, Prop 3: Moanmore South, Prop 4: Carrowmore South; Area: Prop 1: 36a 1r 18p; Prop 2: 0a 2r 23p; Prop 3: 0a 3r 38p; Prop 4: 2a 2r 3p; **Co Clare**

Regd owner: Eileen Margaret Bingham, c/o E A O'Doherty, Solicitors, Market Square, Kilrush, Co Clare; Folio: 469; Townland: Parts of the lands of Molougha; Area: 39a 15p or thereabouts; **Co Clare**

Regd owner: James Munis Greene; Folio: 6022; Land: Prop 1: Barne, Prop 2: Lissanure; Area: Prop 1: 12a 1r 10p, Prop 2: 46a 1r 30p; **Co Longford**

Regd owner: Paul Bates and Valerie Bates of 73 Castle Lawns, Tallaght, Co Dublin; Folio: 32965L; Lands: 73 Castle Lawns, Balrothery in the Town of Tallaght, Townland of Tallaght and Barony of Uppercross; **Co Dublin**

Regd owner: Josephine Beale; Folio: 26893; Area: 32a 1r 15p; Land: Situate in the Townland of Growtown, Barony of Ratoath; **Co Meath**

WILLS

Seagrave, Noel, deceased, late of 3 Liffey Terrace, Chapelizod, Dublin 20. Would any person knowing of the whereabouts of a will of the above named who died on 24 July 1997, please contact Sherrys Solicitors, Palmerstown, Dublin 20, tel: 01 6232182, fax: 01 6232183

Lydon, Thomas F (Frank), deceased, late of 8 Raglan Lane, Ballsbridge, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 1 August 1997, please contact Dillon Eustace, Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4, tel: 6670022, fax: 6670042

Donegan, Maurice (orse Mossie), deceased, late of Fawnmore, Kilcrohane, Bantry, Co Cork. Would any person having knowledge of a will executed by the above named deceased who died on 12 January 1997, please contact Mr Jerry Sheedy of O'Donovan Murphy & Company, Solicitors, Wolfe Tone Square, Bantry, Co Cork, tel: 027 50808, fax: 027 51554

Bellew, Mary G (otherwise Maureen), deceased, late of 11 Coolevin Road, Clanbrassil Street, Dublin 8. Would any person having any knowledge of a will executed by the above named deceased who died on 12 June 1997, please contact Padraig Turley & Company, Solicitors, 27 Bridge Street Lower, Dublin 8, tel: 6790166, fax: 6790168, DX 98

Lyng, Thomas, deceased, late of Carrenroe Upper, The Rower, Co Kilkenny. Would any person having any knowledge of a will executed by the above named deceased who died on 31 July 1993, please contact O'Shea Russell, Solicitors, Main Street, Graignamanagh, Co Kilkenny, tel: 0503 24106, fax: 0503 24687

Coyle, Mary, deceased, late of Barnes Upper, Termon, Co Donegal. Would any person having knowledge of a will executed by the above named deceased who died on 30 July 1997, please contact O'Gorman, Cunningham & Company, Solicitors, 16 Upper Main Street, Letterkenny in the County of Donegal, tel: 074 24828, fax: 074 21900

Clarke, Philip, deceased, late of 33 Grand Drive, The Old Vicarage, Herne Bay, Kent, England, and late of 29 Hazel Lawn,

Blanchardstown, Dublin 15. Would any person having knowledge of a will executed later than 8 March 1975 of the above named deceased who died on 25 August 1997, please contact Margaret McCann of McCanns, Solicitors, Main Street, Dunshaughlin, Co Meath, tel: 01 8250299, fax: 01 8250612

O'Sullivan, Patrick, deceased, late of 208 Pearse Road, Ballyphehane, Cork. Would any person having knowledge of a will executed by the above named deceased who died on 14 August 1997, please contact Messrs Doody, Solicitors, 21 South Mall, Cork, tel: 021 270053, fax: 021 273370

Clarke, Joe (Joseph), deceased, late of 60 Wedgewood Estate, Sandyford, Dublin 16. Would any person having knowledge of a will executed by the above named deceased who died on 18 August 1997, please contact VR Timon & Company, Solicitors, 9 Shanganagh Terrace, Killiney, Co Dublin, tel: 01 2826555, fax: 01 2626699

Padden, Anthony, deceased late of Heathfield, Ballycastle, County Mayo, or Aghaleague, Ballycastle, County Mayo or Rathwonagh, Ballycastle, County Mayo. Would any person having knowledge of a will executed by the above named deceased who died on 6 September 1995, please contact Messrs Adrian P Bourke & Company, Solicitors, Victoria House, Ballina, County Mayo, tel: 096 22055, fax: 096 21070

Ryan, Edmond, deceased, late of Foilacamin, Gortnahoe, Thurles, Co Tipperary. Would any person having knowledge of a will executed by the above named deceased who died on 7 September 1997, please contact Henry Shannon & Company, Solicitors, 2 Brighton Place, Clonmel, Co Tipperary, tel: 052 21700, fax: 052 25267

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

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

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. M L White, Solicitors, 43-45 Monaghan Street, Newry, County Down. Tel: 08 01693 68144, fax: 08 01693 60966

Scotland – solicitor (established own practice 1984) willing to act as agent for Irish solicitors in all Scottish legal matters. David C Clapham, Solicitor & Notary Public, 79 West Regent Street, Glasgow, Scotland, tel: 0044 141 332 5537, fax: 0044 141 353 2501

Solicitor of ten years' standing seeks arrangement with sole practitioner with a view to buy-out. Might suit solicitor planning retirement. **Reply to Box No 81**

American Bar Review course – prepare for the New York February 1998 exams. Part-time (weekends) course commences at Griffith College, Friday evening 31 Oct. Free introductory week-long day course commences 25 Oct. For info contact Vaeni McDonnell at 4545640

MISCELLANEOUS

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Fax: 01 2843092

Employment register/vacancies

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

Ref 6.1 CO WEXFORD: probate, conveyancing, tax and general practice. Peter G Crean & Co, Enniscorthy.

Ref 6.2 CO DONEGAL: general practice. McClachan Gunn, Letterkenny.

Ref 6.7 WATERFORD: conveyancing and general practice. Kinsella & Heffernan Solicitors.

Ref 6.14 CO LOUTH: general practice. Brendan Breathnach & Co, Dundalk.

Ref 6.15 CO LOUTH: conveyancing and probate. Paul A Moore & Co, Drogheda

Ref 6.31 ISLE OF MAN: tax/company/commercial/business development; min 3 years' pqe. Applications to Enda Connolly, Anglo Irish Trust (IOM) Ltd. Fax:1624-614983

Ref 6.34 CO TIPPERARY: general practice. FP Gleeson & Co, Thurles.

Ref 6.38 ACCOUNTANCY FIRM (DUBLIN): recently qualified solicitor for tax and pension law. Applications to Fred Kerr, Ernst & Young.

Ref 6.39 WEXFORD: general practice min 2 years' pqe. Huggard Brennan & Murphy

Ref 6.42 CO DONEGAL: conveyancing and probate. Michael D White & Co, Carndonagh.

Ref 6.46 DUBLIN 2: company law min 2 years' pqe. Cusack McTiernan Solicitors

Ref 6.47 IFSC: compliance officer with fluent German. Would suit newly-qualified solicitor. Applications to Oliver Kinski, MTH-MIDAS Trading House (Ireland) Ltd.

Ref 6.48 DUBLIN 2: conveyancing and litigation min 2 years' pqe. Randal Doherty & Associates.

Ref 6.49 CO OFFALY: newly qualified solicitor for general practice. Conway & Kearney, Tullamore.

Ref 6.53 CO KILDARE: conveyancing and general practice. Eoin O'Connor & Co, Naas.

Ref 6.56 LONGFORD: general practice. Michael F Butler & Co.

Ref 6.59 CO MAYO: litigation and general practice. Edward Fitzgerald & Son, Ballinrobe.

Ref 6.61 DUBLIN BANK: compliance department; recently qualified solicitor (6-month contract) Applications to Geraldine Hynes, Law Society.

Ref 6.62 ISLE OF MAN: corporate/commercial solicitor; 2-5 years' pqe. Applications to Paul Dougherty, Simcocks, PO Box 181, Douglas.

Ref 6.63 WEXFORD: conveyancing and tax; min 1 year pqe. MJ O'Connor & Co.

Ref 6.64 KILKENNY: litigation and general practice. Butler Solicitors.

Ref 6.65 CO MEATH: general practice; min 1 year pqe. Daniel J Reilly & Co, Trim.

Ref 6.66 GALWAY: general practice solicitor (part-time) Tom O'Regan & Co, Salthill.

Ref 6.67 DUBLIN 2: litigation; min 1 year pqe. Smyth O'Brien & Hegarty.

Ref 6.68 DUBLIN 2: corporate/commercial; 3-4 years' pqe. Applications to Jennifer Caldwell, Binchys.

Ref 6.69 IFSC: solicitor with fund management experience. Contact Jonah Sullivan, 12 Duke Lane (3rd Floor). Tel: 6797924.

Ref 6.70 DUBLIN 1: (i) litigation and (ii) conveyancing/probate; min 2 years pqe. James Fagan & Co

Ref 6.71 DUBLIN CITY: conveyancing; experienced locum solicitors required. Applications to Geraldine Hynes, Law Society.