GAZETTE

REGULARS

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Hold your heads up high

This is my first message to you as President of the Law Society. It is important that we all remember that the Society of which I have the honour and privilege to be President is *your* Society. As I indicated to the Council when I took office on 7 November last, I intend to give this job my best shot.

You will have received in the last few days a Member Services folder and it is our wish, as a Council representing you, our colleagues, that we will deliver increased and additional services to you during the next 12 months.

Another priority for my year is the area of law reform, and I would ask that you all return the questionnaire sent to you with the Member Services folder so that the Law Reform Committee and the Council may be assisted and fortified by your views in the quest for law reform, in the public interest and in our own interest.

Since assuming office as President, our profession has come under attack for its role in the so-called 'compensation culture', particularly arising out of what are known as the army deafness cases. We must always remember that all the solicitors' profession is doing is advising and assisting those who have been wronged to remedy that wrong.

Solicitors and judges do not make the law. It is a particularly worrying aspect of the current criticism that the judges are also being criticised. They are independent in their determinations and must remain so. The whole question of our democracy is based on the separation of powers between the executive, the legislature and the judiciary.

The judicial arm is the independent bulwark in our democratic society against the excesses of the executive. In making its decisions, the judiciary does not have any interest in the matter. It is acting independently of any such interest. If the State is found to be negligent, which it has been in some of these army deafness cases, then it is right that the injured parties should be compensated, and attacks on the legal profession and the courts are not warranted.

One of the great judges of the 19th century, Chief Justice Palles, said in a charge to a jury:

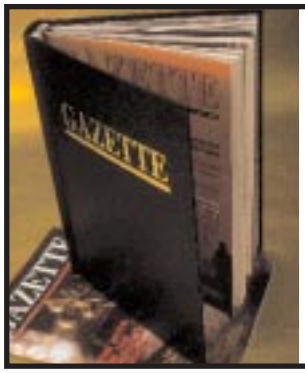
I know that you will show your consciousness that the basis of true liberty rests, not upon the Executive Government which may happen to be in power, and which must shift with the changing wheel of fortune, but upon that which will never change – the honest judgment of those to whom our Constitution has delegated the solemn trust of determining by their verdict the legality of the action of that Executive, and of keeping them within the limits to which the law restrains them. That, gentlemen, is the proud privilege which you possess and which I sincerely trust you may never lose.

While this principle of government under law was delivered to a jury, it is nevertheless applicable to determinations these days by the courts in personal injury matters when juries have been abolished.

It is wrong that lawyers should be blamed for doing their job, for protecting the rights of individuals and securing justice. By denigrating lawyers in the manner in which has happened in the past few months, I believe public respect for the law itself is being collaterally damaged, which will have a pernicious effect over time and which is dangerous for our whole society.

Despite all of the continued criticisms of lawyers, many lawyers strive passionately to achieve justice for their clients and are in fact the first bulwark to protect justice and the people, and are essential in any real democracy. To all my colleagues, I say: never forget that fact. Hold your heads up high and be proud to be members of this great profession.

Laurence K Shields
President



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Buy Irish campaign may infringe EU law

Every now and then the European Court of Justice comes up with a landmark judgment. Such is the case with a decision, delivered on 9 December 1997, in which France was condemned for failing to control the actions of its farmers in destroying imported agricultural products from other Member States of the European Union. The impact of this case, however, may go very far indeed.

Although France maintained that it had always strongly condemned the vandalism of its farmers and that certain preventive measures had been taken, the Commission was adamant that more could be done to protect free trade. This brought into play article 30 of the *EC Treaty* which prohibits restrictions on trade between Member States. In its previous case law, the ECJ had always stated that this provision applied to restrictions on trade resulting from *measures enacted by the State.* The novelty in this case was that the restrictions arose from *measures adopted by private individuals.*

Eliminating all barriers

Faced with this difficulty, the ECJ reviewed the logic of article 30. First, it stated that article 3(c) EC provides that the activities of the Community are to include an internal market characterised by the abolition of *inter alia*, obstacles to the free movement of goods between Member States. Article 7A EC then defines the internal market as an area without internal frontiers in which the free movement of goods is ensured. It followed that article 30 must be understood as being intended to eliminate *all barriers*, whether direct or indirect, actual or potential, to flows of imports in intra-Community trade.

Read in this context, the scope of application of article 30 has been extended explicitly for the first time so as not only to prohibit restrictions on trade imposed by the State but to apply also where a Member State abstains from adopting the measures required in order to deal with obstacles to free movement which are not caused by the State. The ECJ then invoked article 5 EC which requires the Member States to take all appropriate measures to ensure the fulfilment of treaty obligations. Member States were thereby required not merely themselves to abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade but also to take all necessary and appropriate measures to ensure that that fundamental freedom was respected on their territory.

Conor Quigley: Bad news for Irish cheese!

Following the ECJ's decision against France, a new analysis of the combined obligations imposed by virtue of articles 5 and 30 arises for consideration. On the basis that article 5 is frequently invoked to force national courts to ensure the full application of European Community law, it could now be argued that when court proceedings are brought involving a restriction on trade arising from the activities of a private individual, the court is bound to take all necessary and appropriate measures to ensure that the principle of the free movement of goods is respected within its jurisdiction. Bearing in mind that this principle has been re-stated as prohibiting all barriers, whether direct or indirect, actual or potential, to flows of imports in intra-Community trade, one analysis is that the effect of this is to turn article 30 into a requirement of equal treatment in so far as imported and domestic products are concerned.

Private trading relationships

There is, of course, nothing new about this as regards measures adopted by the State. But when it is brought into the sphere of private trading relationships, a whole new vista opens before our eyes.

One example might serve to illustrate the force of this. Several years ago, the ECJ ruled that the *Buy Irish* campaign, financed by the Irish Government and which encouraged purchases of Irish goods, had the potential effect of restricting imports of goods from other parts of the European Community. In the light of the decision against France, it may now be highly questionable whether it is compatible with article 30 where a private undertaking, such as a supermarket, runs a campaign encouraging customers to buy Irish, let alone where it specifically highlights Irish purchases on the check-out receipt! While such an undertaking could, of course, advertise so as to encourage purchases of its own produce, it is arguably contrary to article 30 to discriminate between other products on grounds of national origin.

French cheese

The question then arises of whether a producer of, say, French cheese could commence proceedings against a supermarket which offered its produce for sale but exhorted its customers to buy Irish cheese. Such a discriminatory practice is undoubtedly a barrier to trade. After all, that is the very purpose of the advertising campaign. However, if it is contrary to article 30, the court would be bound to afford protection to the French manufacturer's directly effective rights. It could award an injunction against the practice and, possibly, damages for loss of profit. G

Conor Quigley is a barrister at Brick Court Chambers, Brussels and London, specialising in European Union law.

Services and forward planning
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PRACTICE MANAGEMENT GUIDELINES

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

Whatever happened to 'presumed innocent'?

From the earliest Biblical times there has been evidence of the presumption of innocence. In the Book of Daniel, written between 167 and 164 BC, two elders – judges of the people – gave evidence of an offence allegedly having been committed by Susanna, for which the penalty for guilt under the law of Moses was death. Susanna had in fact been condemned to death on the elders' evidence, for her own uncorroborated protestations of innocence must have carried comparatively lightweight conviction. But when Daniel then cross-examined the elders separately, they gave contradictory versions of the alleged crime and it became evident that they had conspired to lie against her. The elders were themselves sentenced and put to death.

In modern Ireland, the principle of presumption of innocence is not a stated constitutional provision but simply an expression of recognition of the joint rights of personal liberty and to fair trial. Since liberty and fair trial *are* constitutional rights in Ireland, it is extremely difficult to interpret the principle of presumption of innocence as anything other than constitutional by extension – or at least quasi-constitutional.

It is accepted that society may legislate for the detention of people considered (by medical, not legal, experts) to have 'differences of capacity and social function' (see article 40.1 of the Constitution). These might include people considered to be mentally unfit to live in society and to be a potential risk either to themselves or to others in society (part XI of the *Mental Treatment Act, 1945*).

This law has not been successfully challenged in the constitutional courts. If it is constitutionally correct, could not a District Court judge similarly detain someone who, in his informed opinion, may be (but not necessarily is) a danger to himself or others in society?

The difference between the situations is, of course, that the person believed to be mentally incapacitated and a potential danger is detained in a hospital, which is a civil institution, while the other is detained in a prison, a place for convicted criminals. This is not a matter of little concern.

The incarceration of a citizen, presumed to be innocent, in a prison where he will be subjected to the indignity and psychological trauma of enclosure with convicted criminals is wrong, an injustice, and a disgrace to the society that imposes, let alone tolerates, the system. If our society is to maintain a claim to civilisation, a separate place of detention – civil, dignified but, if appropriate, secure – has to be provided.

While 'bail' is a concept that has to be regarded as a companion of pre-trial imprisonment (euphemistically termed 'detention'), the term could be made less offensive if we had a system whereby a District Court judge could order detention in the civil place I referred to above, if – and only if – he was satisfied that the detainee might abscond or offend the laws of the State if allowed to remain at liberty.

Punishment or reform?

Criminal law imposes penalties for transgressing those laws. The term implies punishment (from the Latin *poena* meaning *pain, suffering*). From the earliest times, penology has concerned itself with the philosophy and practice of the repression of criminal activities. However, modern penology regards the *raison d'etre* of criminal punishment not as being society's vengeance or as a deterrent to the criminal, but as a way of protecting society or the victim through the incarceration of the criminal. But confinement is not seen as an end in itself but as an opportunity for reforming the offender, for psychiatric or medical treatment, and for his education for re-adaptation to society.

Irish criminal jurisprudence has not really emerged from the concept of an 'eye for an eye'. In other jurisdictions, Nordic mainly, there is an active State objective of making a mental study of the criminal, thereby giving their psychologists and psychiatrists leading places in the world of development of modern penological theory. From studies made by them to date, the present school of criminologists have discovered that there is no single formula that accounts for all violators of the penal code, and a policy of individualisation of social response to crime has taken on the form of individualisation of treatment. Ireland, with a present policy of 'zero tolerance' and the creation of more penal institution space, may be unconsciously moving in the opposite direction.

Political reaction

This is the political reaction to society's concern at what is perceived to be 'the rising tide of crime'. But in fact it is a measure which tackles only the effect of crime, while unwittingly failing to tackle the prime cause of current urban crime, mainly drugs. Future and calmer reflections from the mirror of history may once more bring society to the realisation that hard law was, is and always will be bad law.

The true object of penology in an enlightened society is to protect society without destroying the offender against it. If and when we achieve that status of criminal justice, there will be no reprehension or stigma attached pre-trial to preventative, civil detention. And we will have looked again at the concept of bail, replacing it wherever possible with a humane system of guarantee to appear for trial, if required to appear. G

Frank O'Mahony is a partner in the Bantry solicitors' firm of O'Mahony Farrelly.

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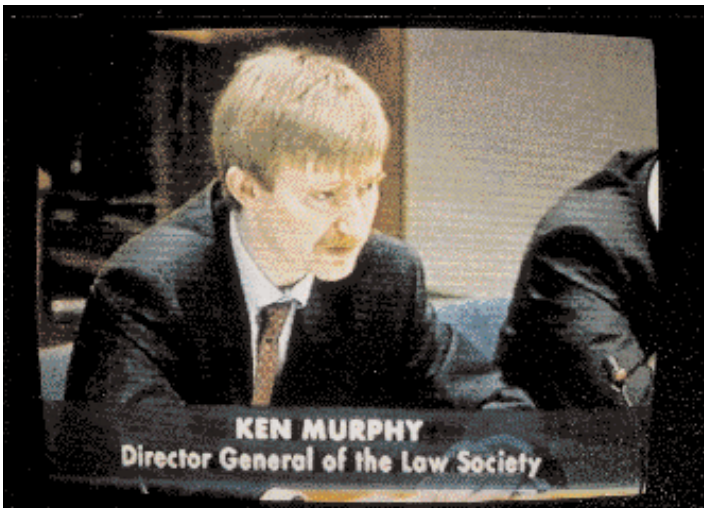
Scapegoats butt back

Defending the profession on army deafness cases



Ken Murphy: fighting the profession's corner on an issue of phenomenal media interest

Scapegoat: *a person bearing the blame for the sins, shortcomings etc of others, esp as an expedient – Biblical: a goat sent into the wilderness after the Jewish chief priest had symbolically laid the sins of the people upon it (the goat that escapes).*

The Concise Oxford Dictionary

'Morning Ireland wants you to phone them back'. It is seven o'clock on Sunday evening and I have just arrived home from a walk with the kids to find my wife's scribbled message.

I am not surprised. The phone has been jumping all afternoon with calls from several different journalists from both the *Irish Times* and the *Irish Independent*. The press release from Minister for Defence Michael Smith has been read to me. It slams solicitors in colourful, rhetorical terms for the costs of the army deafness cases. I have prepared and given a response on behalf of the Society.

Some 12 hours later I am in the *Morning Ireland* studio in RTE listening to Richard Crowley interviewing the Minister on the telephone from his constituency home. The Minister complains that solicitors' costs are out of control in the army deafness cases.

Rigorously controlled costs

I reject that as completely untrue. The legal costs are rigorously controlled by the taxing master system. However, the method by which the State is choosing to defend these actions is maximising rather than minimising the costs. I appeal to the Minister to meet with the Law Society to explore how these cases could be dealt with more cost effectively from the point of view of the taxpayer.

Full and frank exchange

On 9 December representatives of the Law Society and the Department of Defence meet. A 'full and frank exchange of views' ensues. However, we make it clear, and it is accepted, that the profession's approach is a constructive one. To make progress, it is agreed that a joint working group of Law Society and Dept of Defence representatives be established to examine in detail how the costs to the State of these cases can be minimised. By fighting every case to the door of the court and then settling, all possible legal costs, including the costs of expert witnesses and witnesses of fact are incurred. A more sensible approach involving earlier settlement should be taken in cases which experience to date demonstrates the State is certain to lose.

In the following days, solicitor advertising becomes the big issue. In various public statements the President and I point out the irony whereby advertising was originally imposed on the profession by politicians but now politicians are complaining about the result. In print and on the TV news I make it clear that the Society would support the legislation which would be required to prohibit advertising of the so-called 'ambulance chasing' type.

After a slight lull for Christmas, the Minister comes out fighting in the New Year. Day after day, in the print and broadcast media he lambastes solicitors for not merely the level of costs involved in the army deafness cases but for bringing the cases at all. On the Sunday lunchtime *This week* radio programme the Minister makes a series of claims of misconduct by solicitors in seeking and processing the army deafness cases.

Decades of neglect

The Society's patience snaps. I take the opportunity on RTE TV news to complain about a concerted effort to make scapegoats of solicitors to deflect attention from the true cause of this whole debacle, namely the decades of neglect by the Department of Defence and the army which has caused injury to the State's employees on a massive scale and equally massive costs to the taxpayer. If the Minister has any evidence of misconduct by solicitors he should bring it immediately to the attention of the Society as the body with statutory responsibility for the conduct of solicitors. If the evidence stands up, the complaints will be dealt with severely by the Society.

The President and I meet the Minister on 20 January for an hour and a half. He then tells us for the first time he now considers it 'too late' for the joint working group. We do not accept this.

Hammering home the message

That evening in debate on the *Prime Time* TV programme I again complain at the Minister's efforts to scapegoat the profession, and make it clear that solicitors are only doing their job, acting within the law and quite properly and successfully vindicating the rights of their clients. In the course of a dozen or more national and local radio station interviews over the next few days and in the print media I hammer home the 'scapegoat' message. The media interest is phenomenal: literally everything from ITN news to *Woman's Way*. I am pleased to note eventually that the 'scapegoat' message begins to come back at me as having lodged in the media and public's consciousness.

The Minister is driving a vast public relations machine which the Law Society cannot hope to match. However, we are countering at least part of his propaganda with messages of our own. There is a long way to go yet. G

Ken Murphy is Director General of the Law Society.

The joy and pain of writing

You, the reader, may be a judge, lawyer of either branch, a scholar, a legal executive or perhaps a person who is simply interested in law. Each one of us shares the joy and sometimes, perhaps often, the pain of word-smithing – in effect, composing words. Words are for us what numbers are for mathematicians and sounds are for musicians.

The law is a literary profession: words are our tools. Hence, writing is of paramount significance. We lawyers are different from medical doctors, accountants and most professionals. A surgeon may, in silence, perform a laminectomy or indeed a hemilaminectomy. The surgeon and the accountant need to know how to do their work. We, too, need to know how to do our work but we need to communicate effectively using written words. There is a Latin maxim that he who knows but cannot express what he knows might as well be ignorant (*Qui novit neque id quod sentit exprimit perinde est ac si nesciret*). This applies more to lawyers than to others.

The dreadful mountain

All writers, and we are all writers of letters, drafters of conveyances and agreements, face the dreadful mountain rearing up or the yawning chasm opening up before us. We experience the 'sheer terror of beginning'. Some lawyers suffer from creative anxiety associated with finding the right words to give effect to what their client wants or needs. Then there is the telephone, interrupting our flow of words.

The flourish

Lawyers are, in general, in awe of judges. Lawyers who write books frequently ask judges to write a foreword. Some lawyers have dedicated their writings to judges. Lawyers have soared to great literary heights in praise of judges. The most deferential dedication that I have read was by JF Redfield in his book *Carriers and other bailments*. The dedication read: 'To The Honourable T Metcalf, LLD, lately one of the justices of the Supreme Judicial Court of Massachusetts, the model reporter, the learned, able and pure-minded judge, the exceptional law writer, the accomplished scholar, the good citizen, the faithful friend, the earnest and devout and courteous Christian gentleman, this imperfect effort of his life-long admirer is inscribed, without seeking permission; knowing that his forbearing judgment cannot but look with some allowance upon so innocent an effort of the author to perpetuate his own remembrance among the profession, by associating his name on the same page with that of one of the greatest masters of the learning of the English common law which the American Bar has ever produced, by his obliged and grateful friend.' I admit, Redfield's book was published some time ago, in fact, on 10 April 1869.

Linguistic precision

Linguistic precision is our primary goal unless we intentionally wish to fudge. He or she who fudges may have to pay a price: a document susceptible to two interpretations will often be construed against the author. There is a principle of law in the United States of 'void for vagueness'.

Common failings

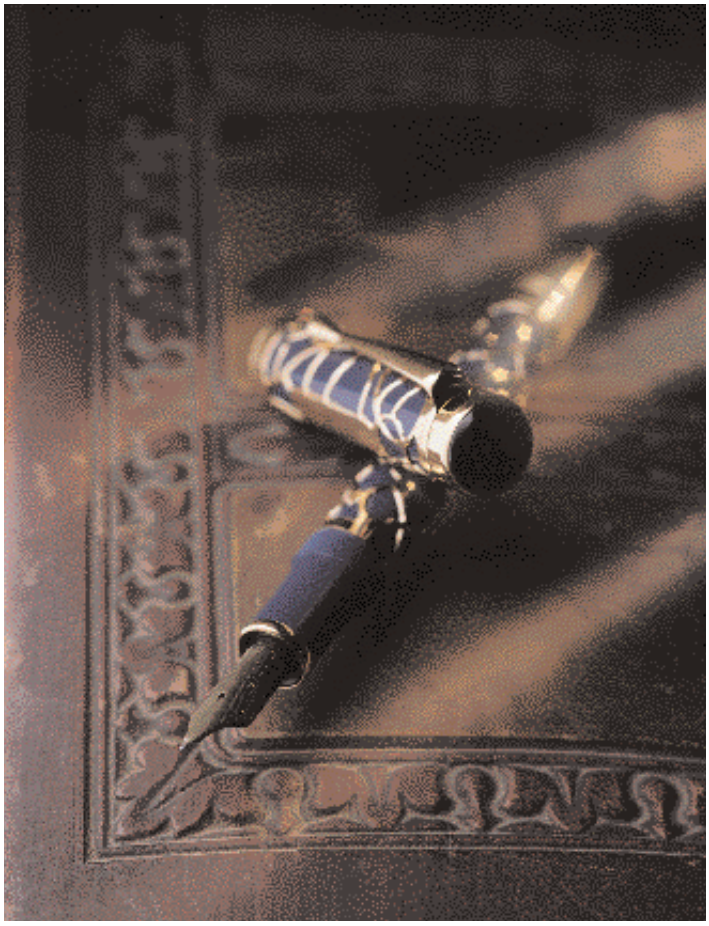
Carl Felsenfeld in 'The Plain English Movement in the United States', 6 *Canadian business law journal* (1981-82) observed: 'Lawyers have two common failings: one is that they do not write well and the other is that they think they do'. One person who has influenced official writing in Ireland and elsewhere was Sir Ernest Gowers whose *Complete plain words* is in the possession of many civil servants, lawyers and judges. In the context of criticism of how we write, his advice on writing is worth remembering: 'Be short, be simple, be human'. Clarity and persuasiveness are the keys.

The most celebrated published letters containing many nuggets of wisdom in relation to the law and writing were written between Supreme Court Justice Oliver Wendell Holmes and Harold J Laski. The correspondence began in 1916 when the Supreme Court Justice, the pre-eminent American judge, was 75 and the English budding political scientist was 23. There followed a 20-year correspondence between the two men, preserved for posterity, dealing primarily with reading, writing, the law, politics, and current events. The letters are full of lightheartedness, humour and deep affection. They are a great pleasure to read. Laski had a gift for teaching and writing, and he impressed his students with his intellect, his memory, and his passion for justice and the law. He was appointed to the chair of Political Science at the London School of Economics when he was 33.

Holmes and Laski were extraordinary people. Each reached the top of his profession. Both were weighted with responsibility and work and yet could find time to write so many wonderful letters to each other. Holmes' correspondence with Laski continued until the end of his life. Lawyers, like others, need friendship, although many would shy away from expressing their feelings in writing.

Lawyers, ordinary lawyers, have changed our social landscape by writing letters and instituting proceedings leading to judgments that have shaped our lives. We may have the word-processor and the microchip but we still need the human endeavour of putting words together. The proper use of words can make the world a better place. Remember Byron, *Don Juan*, Canto III:

But words are things; and a small drop of ink,
Falling like a dew, upon a thought, produces
That which makes thousands, perhaps millions, think. G



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

Letters

Fat cats on skimmed milk

From: Kieron Wood BL

There has been much talk lately of fat cat barristers and exorbitant fees charged by counsel. Perhaps my tale may help balance that.

Just before Christmas, a Dublin solicitor telephoned the Law Library looking for a junior counsel to handle an urgent family law matter. Two of my colleagues turned down the case before I was approached. The solicitor told me she was too busy to handle the case and asked if I could do it. She wasn't sure what it was about, but she'd send her apprentice with the file to meet me at Dolphin House. She confessed that there wouldn't be a big fee involved.

I gathered up my statutes, my text books and my copy of *Divorce in Ireland* and traipsed over to Dolphin House where I met the apprentice and the client. It turned out to be a matter relating to maintenance and access by an unmarried father. I interviewed the client, shuttled back and forth to counsel on the other side, arrived at an agreed solution, made my application to the court, and obtained the desired orders. The client went home satisfied.

In the lift, the apprentice – rather apologetically – pulled my fee from her pocket. A £10 note.

At least there's no fear of the Supreme Court halving *that*!

Dumb and dumber

From: Jim Brooks, Collins, Brooks & Associates, Co Cork

I received the following particulars of injury from the plaintiff's solicitor in a recent communication. 'The plaintiff has severe back injuries and associated whip difficulties. You are at liberty to have the plaintiff examined on the usual terms'. The offer was lightly but firmly declined.

From: Joan O'Mahony, Co Dublin

In a recent exchange of pre-Christmas 'stress' incidents, a colleague indicated to me that in the course of an interview she had requested her client to bring in his death certificate. Without batting an eye-lid, the client responded that he did not have one available, where would he get it, and that he would be happy to oblige as soon as it came to hand. For obvious reasons, my colleague wishes to remain anonymous for fear the men in white coats would come to remove her.

From: Cormac Hartnett, O'Donnell & Sweeney, Co Donegal

Recently I had dealings with a middle-aged client who had been involved in an accident while driving his own car and who was making a personal injury claim. The client regarded himself as honest, careful and efficient, and had quickly obtained himself an accident report form from the appropriate insurance company and had dutifully completed it.

He kept a copy to proudly present to me, to assist the processing of his potential claim. On perusal of the form, my eyes were attracted to the client's response to the usual question: 'How did the accident occur?' The client in a frightfully frank manner had responded: 'Don't know, I was too drunk to remember'.

From: Sinead Smith, Smith Foy & Partners, Dublin

The following advertisement was placed in the *Irish Independent* last November. As you will see, there was an unfortunate typographical error which changes the meaning completely:

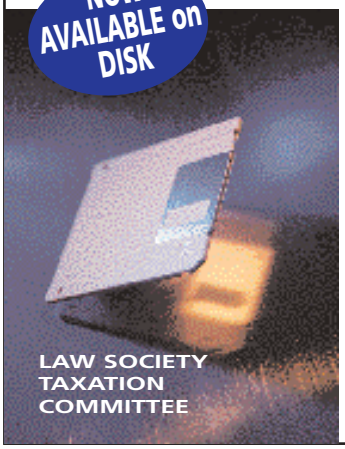
Foley, (Patrick), deceased late of Ballygarrane, Ballylooby, Cahir, Co Tipperary. Will anyone having knowledge of the whereabouts of the above named deceased who died on 13 May 1996 please contact Donal T Ryan & Company, Solicitors, Castle St, Cahir, Co Tipperary.

From: Patrick Dorgan, Coakley Moloney, Cork

A client rang me in a state of some excitement to say that the potential purchaser of his derelict inner city building would give him twice the money 'if the house was in a decimated area'.

Cormac Hartnett wins the bottle of champagne this month

ENDURING POWER OF ATTORNEY PRESCRIBED FORM



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Society will support legislation to ban personal injury advertising

The Law Society has said it will support legislation to ban any advertising that encourages people to make personal injury claims – provided that such a ban is applied to everyone and not just solicitors.

Speaking at a recent parchment ceremony, Law Society President Laurence K Shields said: 'The Council of the Law Society has indicated its support for any Government measure designed to ban advertising which solicits, promotes or encourages any person making a claim for damages for personal injury provided such a ban is applied to everyone and not just solicitors'.

He added that the Society would also support Government action to ban advertising 'in sensitive locations such as hospitals, clinics, doctors' surgeries or other places frequented by persons who might have suffered a personal injury'.

Shields also called on the Minister for Defence Michael Smith to give the Law Society as a matter of urgency any evidence he may have of misconduct by solicitors so that it could investigate the allegations immediately. 'The Society must be given the opportunity to examine these claims and investigate the matter and not be subject to unsubstantiated claims and rumours. If these are not substantiated by the Minister, he should cease to make them immediately'.

- A number of solicitors representing some of the plaintiffs in the army deafness cases met Law Society officers in late January in response to the Minister for Defence's suggestion that there should be a 50% discount in the level of fees charged by those solicitors in these cases.

Following the meeting, President Laurence K Shields said that solicitors were already substantially discounting the fees that they were recovering from the State on behalf of their clients in these cases. But he added that the solicitors believed they 'could demonstrate to the Minister that further substantial savings to the taxpayer could be achieved in the overall cost of these cases'.

Shields: 'Minister should produce evidence or cease claiming misconduct by solicitors'

Shields also called on the Minister for Defence to initiate a first meeting of the Law Society/Department of Defence joint working group on the management and processing of army deafness claims. The establishment of the group was agreed with the Minister last December but no meetings have yet taken place.

SA law on the net

The South African law journal *De rebus* goes on the internet this month. Anyone interested in updating themselves on South African law can access the magazine free of charge on *www.derebus.org.za*.

The 30-year-old publication is the official law journal of the Association of Law Societies of South Africa, and provides complete coverage of what is happening in the legal profession and legal developments in general.

Year 2000 crisis legal threat

The techno guru who discovered the Year 2000 computer blip is threatening to back lawsuits taken against companies which fail to act in time to prevent the bug destroying their data.

Peter de Jager – the man who first highlighted the problem – made the threat after coming across unprepared chemical factories and medical devices that will pack up at the turn of the century.

The threat could apply to a large number of Irish businesses and public bodies, many of which have yet to tackle the problem which is likely to grind their computer systems to a halt.

The 'millennium timebomb' is a simple problem that threatens huge complications to businesses and state organisations in two years' time. Older versions of chips used in a vast number of computer systems only recognise years as two digits. So they will read 2000 as 1900, if at all, throwing huge quantities of data into confusion.

A recent survey (see *Gazette*, December 1997, p11) found that over 50% of Irish businesses are doing nothing to adjust their systems, even though D-day is fast approaching.

While nearly three out of four leading Irish companies, financial institutions and Government departments believe the threat is fundamental to their business, over half had no written formal plans to tackle it, the survey found.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in December 1997: Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £26,896.635; Diarmuid Corrigan, 6 St Agnes Road, Crumlin, Dublin 12 – £1,600.19; Denis Murphy, 22 Denny Street, Tralee, Co Kerry – £1,630; Dermot Kavanagh; 2 Mary Street, New Ross, Co Wexford – £3,835; John O'Dwyer, 40 North Great George's Street, Dublin 1 – £5,400; Thomas Furlong, Lower Main Street, Letterkenny, Co Donegal – £20,620.53.

Law Society gives credit when it's due

A new Law Society credit card designed exclusively for solicitors and offering a comprehensive range of benefits is now available. The card offers a credit limit of up to £15,000 standard and £25,000 gold.

There is free purchase protection insurance, no liability for lost or stolen cards, no annual fee, and a 19.9% annual percentage rate (variable). Anyone using the card for anything available from Members' Services will have their name entered in a free prize draw at the end of the year.

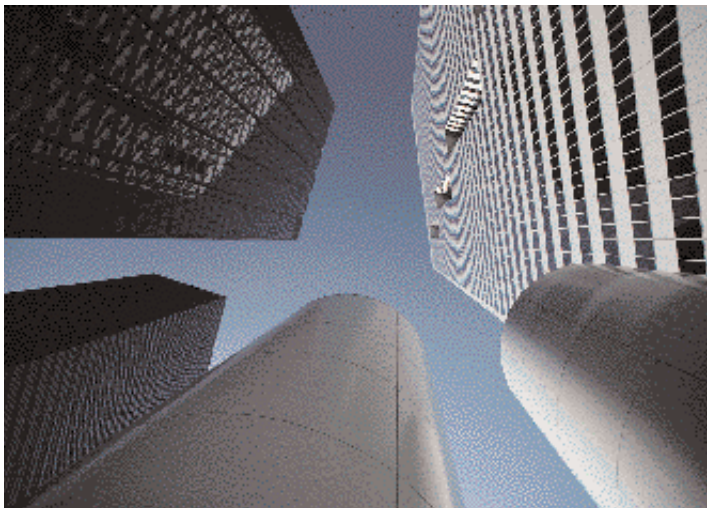
Takeovers earn £400 million for London firms

London City law firms are raking in record fees from the growing number of public company takeovers. Lawyers netted £400 million from the deals in 1997, the biggest ever pay-packet from mergers and acquisitions, according to British magazine, *Acquisitions monthly.*

The survey shows that top London firm Slaughter and May topped the earnings league table, taking home stg£19.5 million from 32 deals. But second-placed Allen & Overy seemed to be getting better value, pocketing stg£12.2 million from just 12 transactions. Third-placed Linklaters walked off with stg£11.9 million from 33 takeovers.

Overall, firms handled 190 deals worth stg£106.9 billion in 1997, compared with 137 worth stg£88.4 billion the previous year. City professionals made around stg£1.3 billion in fees from mergers and acquisitions during the year.

There are no comparable figures for this jurisdiction, though it is assumed that some firms benefited from the increased merger and takeover activity here over the last year.



- Meanwhile, instead of advising on deals, Dublin-based Arthur Cox has been doing some merging of its own. Arthur Cox Northern Ireland has merged with Belfast's Martin & Brownlie. It was not revealed if any cash changed hands on the deal.

The partners of the enlarged Arthur Cox Northern Ireland are: John Fish (59), Peter Martin (50), Angus Creed (46), Rowan White (44), and John Meade (37). Martin & Brownlie's core activities include commercial and employment law, transport, marine, insolvency law, and litigation.

Commenting on deal, Arthur Cox Dublin chairman James O'Dwyer said: 'We are pleased with this further expansion of our Belfast office. Arthur Cox is the only major law firm in Ireland with its own full service capabilities north and south of the border'.

FOCUS ON LAW REFORM

The Society's Law Reform Committee is undertaking a comprehensive review of anachronisms and anomalies in all areas of law, with the intention of pressing for changes that would benefit both the profession and the public.

Practitioners are invited to identify areas of law which have, or could, result in injustices and to submit proposals for change to Mary Keane, acting secretary of the Law Reform Committee, by Friday 13 February 1998.

Tough penalties for slow-paying public sector

State and public bodies which fail to pay suppliers on time will be penalised at the rate of 11.75% a year, under the terms of a new ministerial order. Tánaiste Mary Harney made the order under the *Prompt Payment of Accounts Act, 1997*. It imposes a penalty of 0.0322% a day for late payments and is now in effect.

The Act applies to all public bodies such as government departments, commercial and non-commercial State bodies, health boards, local authorities, and all subsidiaries. It also covers contractors to the public sector who sub-contract or buy goods and services in respect of the public contract from other organisations.

EU to streamline banking

The EU Commission plans to streamline banking by replacing the 19 directives currently governing the industry with a single code. The move will make banking 'more practical, accessible and transparent for financial institutions and their users' according to commissioner Mario Monti. The proposal will consolidate the seven basic directives and 12 amending directives, creating a single market for banking. Monti has also urged Member States to simplify their national laws.

BRIEFLY

English barristers get first woman chief

A woman has taken the helm of the English Bar Council for the first time. Heather Hallet QC (48) took over the organisation's chair in the New Year. Qualified since 1972, she is a deputy High Court judge and Crown Court recorder. She was the council's vice-chair last year.

Focus launches legacy leaflet

Homeless people's charity Focus Ireland has launched a new leaflet in a bid to be remembered in supporters' wills. As well as the usual good advice, the leaflet has a useful sample format for changing an existing will to include the charity. Anyone interested in getting the leaflet should contact Gráinne Keevers, fund-raising department, Focus Ireland, 140 Eustace Street, Dublin 2 (tel: 01 6713194).

Thank you

The 46th professional course would like to thank the *Law Society Gazette*, the Law Society, Matheson Ormsby Prentice, McCann Fitzgerald, A&L Goodbody and Arthur Cox for their generous sponsorship which made the production of *Beyond reasonable doubt* on 21 January possible.

Shetland Internet case settled

The key legal questions raised by the Shetland case on hypertext links (see *Gazette*, December 1997, page 14) are still unanswered as the parties settled out of court. The *Shetland News* agreed to credit any *Shetland Times* articles appearing on its website by including the words 'a *Shetland Times* story' in the same or similar-sized headline, and by including a link to the paper's website.

New guide to EU treaty

A straightforward overview of the proposed *Amsterdam Treaty*, which will bring European union a step closer, is now available from EPIC, European Union House, 18 Dawson Street, Dublin 2 (tel: 01 662 5113).

Partnerships: a

Huge negligence awards and unlimited liability are making life very dangerous indeed for Irish professionals. Stephen Glanville examines ways of protecting your personal assets and outlines new English proposals for limited liability partnerships

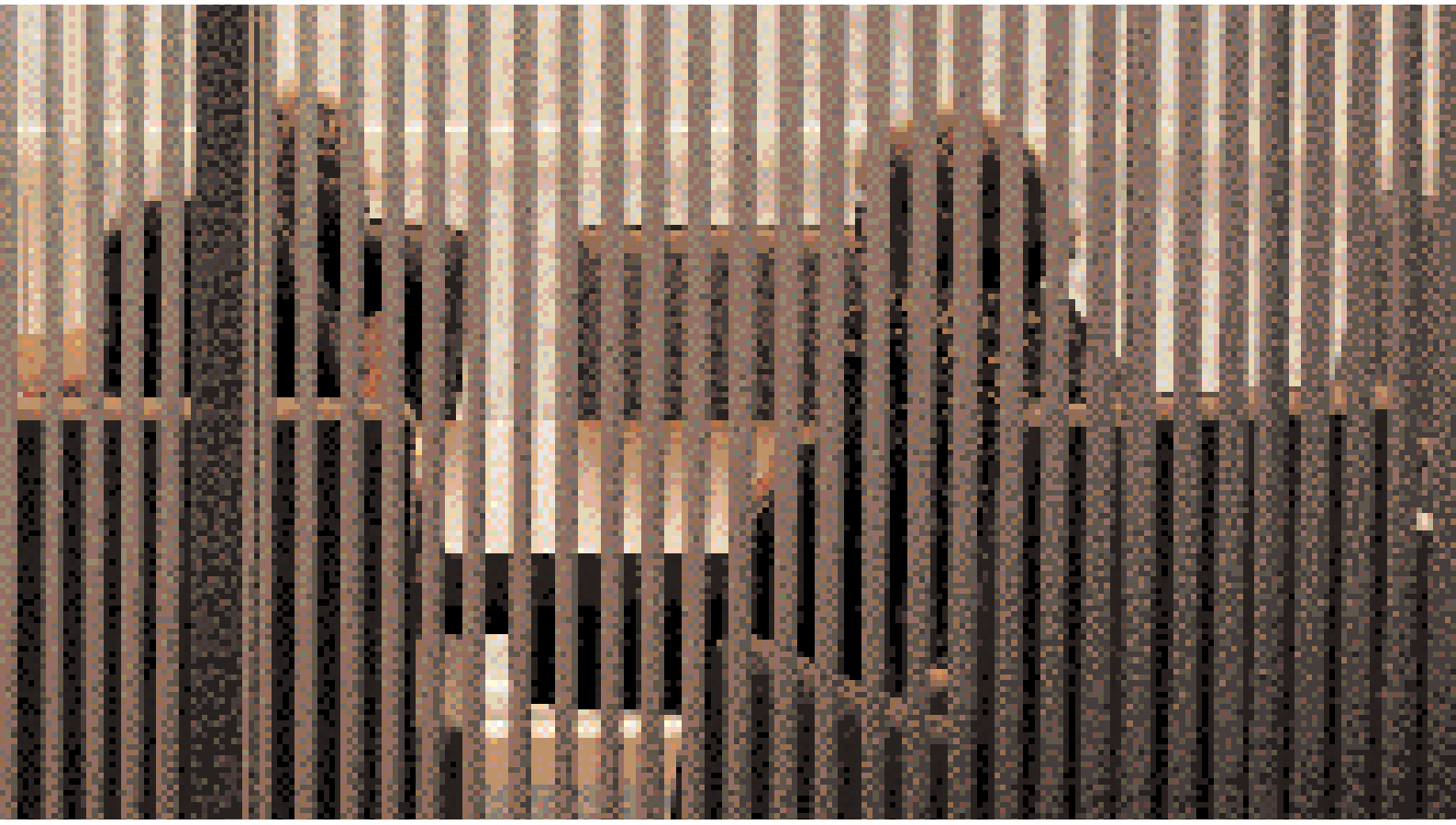
Liability for negligence in the professions is entering uncharted waters. At the moment, an action for negligence could bankrupt even one of the biggest accountancy firms. And in England, solicitors' firms are more frequently having to defend actions concerning the provision of what amounts to financial advice in relation to taxation, business sell-offs and buy-outs, and redundancy packages. Indeed, for insurers the entire issue of indemnity for those professionals supplying financial advice and services has taken on new life.

As far as partnerships are concerned, the case which has set off the alarm bells is *ADT Ltd v BDO Binder Hamlyn* ([1996] BCC 808) in which an award of £65 million was made on foot of a finding of negligent misrepresentation. A final settlement for £50 million was reached last April, because the indemnity insurance policy effectively covered only a portion of the award.

One big player in the UK accountancy market, KPMG, has divided its operations and gone as far as incorporating the auditing arm of its business as a limited liability company, despite the less advantageous tax regime and decreased flexibility of capital requirements in the UK which that entails.

Others in the accounting world have seen the establishment of a regime for effective limited liability partnerships in Jersey, Guernsey, the Isle of Man and the USA as an opportunity to put pressure on the UK government to set up a similar regime for resident firms. The whole area is now complicated by the recent amalgamations among the Big Six firms.

limited future?



In principle, the partners of firms placed in this position are faced with the possibility of having to satisfy the balance of negligence awards from their own personal assets. It may be going too far to see in all of this the prospect of a solicitors' firm facing the same risk, but it must now be asked whether the Irish partnership regime as it stands is a suitable vehicle for the future of the profession.

Irish partnerships

Partnership is defined as the relationship between persons carrying on a business in common for profit (section 1(1) of the *Partnership Act 1890*). But limited liability is confined under the *Limited Partnership Act 1907* to those partners who take no part in managing the business, while the other partners are each personally liable for all the firm's business obligations, including liability in negligence. Likewise, a limited partner has no power to bind the firm.

In this context, solicitors are compelled to operate under provisions of the 1890 Act, leaving them exposed to crippling negligence awards, a situation which is not helpful to anyone running a commercial concern. Under section 10, the firm is liable for the wrongful acts or omissions of any partner acting in the ordinary course of the firm's business, or with the authority of his co-partners. Under section 12, every partner in a firm is jointly and severally liable with the other partners for all such wrongful acts and omissions. As liability carries with it the risk of bigger and more frequent awards, partnerships are no longer an attractive way of doing business.

The worst scenario is where a full award of damages for losses which the firm had only a minor part in causing is made against the partnership and thus against each of the partners. Under the common law and the *Civil Liability Acts*, a rule of law – called the 1% rule – operates to allow recovery of the full amount of an award against any one of a number of concurrent wrongdoers where that person has caused any degree of the loss. So partners not only carry the can for each other, but also for those outside the firm with whom their business dealings may be minimal. In section 9, the 1890 Act also provides for the unlimited liability of every partner jointly with the other partners for all debts and obligations incurred by the firm while he is a partner.

Limited liability partnerships

For the professions there is one obvious solution: limited liability for management partners. Certain states in the USA allow the corporate establishment of limited liability partnerships (LLPs). The idea originated with the Delaware regime and has spread worldwide. The latest recruit is Jersey in the Channel Islands, where the appropriate legislation was passed by the Privy Council late last year.

Germany developed a partnership which allows limited liability for free professionals in 1995. While the trend in Europe does seem to follow the Delaware lead, there are a number of areas to be discussed before accepting the LLP solution as the most appropriate, namely, reforming unlimited liability, introducing proportionate liability, abolishing joint and several liability, excluding liability, and capping damages.

The UK has completed consultations for framing legislation in similar vein to these other jurisdictions. After an apparent reluctance, the England and Wales Law Society generally favours the new proposals and now advises that they be applied to the wider business community, and not just to professionals. But it is unlikely that the political will to introduce similar legislation exists here.

Reforming unlimited liability requires that management partners enjoy limited liability. Currently, firms may be set up with limited liability under the 1907 Act but the essence of this arrangement is that at least one general partner must have unlimited liability while the limited partners must stand aside and take no part in the managing the business.

Reforming joint and several liability focuses on the statutory introduction of proportionate liability and effectively abolishing the 1% rule in professional negligence claims. If a firm is at fault to some degree, the argument runs, let its contribution to the payment of damages reflect that degree of fault. But the English Law Commission rejected proposals for this change in the law.

Other suggestions include contractual limitation or exclusion of liability, which in the commercial – as distinct from the consumer – sphere remains fairly untrammelled by the law. A statutory cap on professional negligence awards has also been proposed, but significant constitutional hurdles would have to be cleared first, particularly with relation to the protection of access to justice under article 34 and equal rights under article 40.1 of the 1937 Constitution. One further suggestion is for defendant firms to claim contributory negligence.

English proposals

The UK has proposed to establish a new form of business association for professionals – the LLP – in all UK jurisdictions including Northern Ireland. This will become a separate entity from its members, with all the capacity of a legal person including the power to enter into contracts, hold property and grant charges over that property. Business will normally be transacted with the firm as principal, not the members, who will act as agents of it and not of each other. The LLP will be a body corporate, and the *Partnership Act 1890* will not apply to it, but various provisions of that Act will be included in modified form in the proposed legislation.

The firm will be liable for members acting in the ordinary course of its business but they will not be liable for each other's acts. Responsibility will be determined by general legal principles of agency and attribution, but these will not be set out in the new law in case their flexibility is diminished.

Of immediate concern will be the LLP's tax status, and it is intended to treat them as partnerships for the purpose of UK income and capital gains tax, and national insurance. At the moment it appears that the UK Revenue is sticking by its guns and proposes to tax Jersey LLP profits on a corporation basis.

Members' capacity to bind the firm

The legislation will include a provision analogous to section 5 of the 1890 Act, making every member of an LLP an agent of the firm for the purpose of its business and that every member acting to carry on the business in the usual way will bind the firm.

Individual members' liability will be limited to the extent of their stake in the business, but they will remain personally liable for their own acts. Because the LLP is a corporate body with limited liability, its creditors will have recourse to its assets, but not to the personal assets of members or former members, unless those assets are specifically pledged to the firm or the particular member assumes a personal obligation to the creditor.

Civil penalties for wrongful and fraudulent trading, along with the criminal penalties for fraudulent trading, will apply to LLP members, just as is the case with company directors. Members' liability will also be unlimited in certain circumstances, for example, where they knowingly act as members of an LLP which carries on business for a period of more than six months within two years of insolvency while eligible to be an LLP.

The Jersey legislation now effectively requires the applicant firm to enter a £5 million bond. The UK proposals include a three-fold solution:

- Restrict LLP eligibility to members of approved professions
- Provide a two-year clawback period prior to insolvency for excessive drawings by members
- Make personal guarantees up to a certain sum compulsory for members of applicant firms.

Registration and eligibility

The foundation of the system will lie in the determining firms' eligibility according to professional standards. To this end, the legislation will allow the government to restrict access to LLP status to those members and firms subject to the discipline of a regulator which sets and enforces sufficient standards of professional conduct.

To incorporate as an LLP, a firm will have to apply to the registrar of companies, supplying details in much the same manner as required on the registration of a company and with a declaration by a solicitor (or designated member of the firm) that all statutory requirements for registration have been fulfilled.

The information that will have to be open for public inspection includes the name of the firm and the address of its registered office, and the names and residential addresses of its members, two of those being designated members in much the same style as a company secretary. The LLP will be required to file annual audited accounts with the registrar. Detailed provisions have been drawn up to cover this. They are modelled on the pertinent rules for companies but appropriately modified and not as broad in their scope because there are no shareholders to whom account should be made.

The legislation will provide for the amendment of existing legislation to ensure that an LLP can create a floating charge over property and to extend the requirements of registration of charges to LLPs as if they were companies for the purposes of the *Companies Acts*.

Insolvency

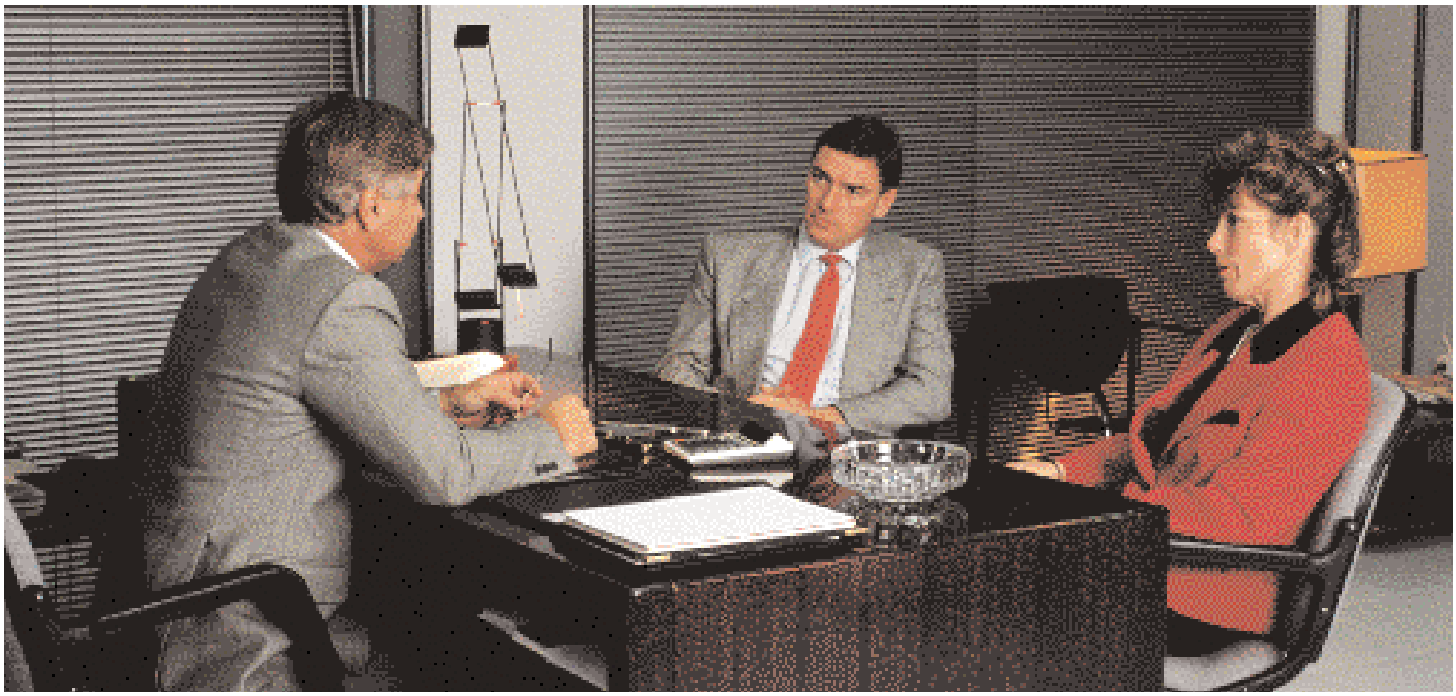
It is proposed in general to subject an LLP to the same rules on insolvency as a limited company in the same situation, but the details of this are vague. Various ranks of contributors are set out, including members, former members and salaried partners.

As it stands, our partnership regime has drawbacks. The most prominent is the increasing possibility of litigation financially destroying not only partnerships but the partners themselves. While facing this threat, firms are by constrained from limiting their managing partners' liability, either by legislation regulating the establishment of professional firms or by the hostile environment of corporate taxation.

Of course, the topic of corporate taxation in this jurisdiction is enjoying the increasingly favourable attentions of government. The debate about LLPs will only add to this. G

Stephen Glanville is a Dublin-based barrister.

Covering all angles



Over 100 solicitors' firms are now offering opponents' legal costs insurance to clients taking personal injury actions. Barry O'Halloran looks at how the scheme works and speaks to the man who introduced it

Opponents' legal costs insurance was officially launched just under a year ago by Dublin-based insurance brokers Cleary Donnelly. The product is underwritten by a German company, DAS, which does £700 million worth of legal insurance business a year.

Only those cases taken on a 'no foal, no fee' basis by the plaintiff's solicitor are covered by the policy. It does not extend to medical/clinical negligence, pharmaceutical, drug or tobacco related matters, defamation, or multi-party actions where there are ten or more claims arising from the same accident. Cleary Donnelly's Denis Cleary says there are no immediate plans to extend cover to other types of claim, but adds that his firm may consider this option in the future.

The premium costs £136, including a 2% government levy, and there is a total indemnity limit of £50,000. The policy includes own disbursements, such as medical examinations, up to £2,000. It is one-off and incident-specific, and it must be in place before proceedings are issued.

The brokers make no stipulation about who pays for the cover, and Cleary himself says that 50% of the cheques are coming from clients, while the other 50% come from solicitors. Some firms are willing to pay the premium without passing this cost on to their clients until they eventually seek payment.

The system is based on the old idea that 'the premiums of the many pay for the misfortunes of the few'. Cleary explains that because most plaintiffs win their cases, or else end up getting a good settlement out of court, it is a low risk business. However, he was unable to supply figures on pay-outs.

The idea was inspired by one of Cleary Donnelly's clients who had been injured at work. After asking the brokers' advice, he consulted a solicitor. However, on being advised of the risks involved in taking the case, the client backed out. Cleary Donnelly then persuaded him to go to a second solicitor, who took the case. The client won and pocketed £25,000 in damages.

'We realised that there was a need for this type of insurance', Cleary explains, 'and then spent two years approaching insurance companies here and in Britain with the idea until DAS finally came on board and agreed to underwrite the scheme'.

By the time the firm launched its policy last year, a similar system had already been operating for 12 months in England and Wales. Australia, another common law jurisdiction, has had this type of insurance for a number of years.

The cover is not available on spec to any solicitors' firm; firms must first become members of a panel, which currently numbers 100. To join the panel, firms must show that they are in good standing and are committed to offering the policy to clients.

'If law firms come on the panel, they must use it', says Cleary. 'If we find that we are only getting three cases from a firm where we should be getting 100, then we will increase premiums by ten or 20 times. If we are only getting three of their personal injury cases, then we are getting the three riskiest'.

The scheme will be reviewed when it is a year old in March, he adds.

Opponents' legal costs insurance has come under fire from some quarters for encouraging the so-called 'compo culture', particularly because it is limited to 'no foal, no fee' personal injury actions. However, many practitioners believe that a high proportion of legitimate claims do not make it to court because the prospective plaintiffs are put off by the risk of being made liable for their opponents' costs.

Only time will tell whether the concept is a boon to the profession or another public relations millstone round its neck. G

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In the seven years between 1987 and 1994, the number of reported cases of child abuse increased from 1,646 cases to over 4,600, and the current rate of confirmed cases of sexual abuse is around 600 a year. In the face of this alarming increase in instances of abuse, and in the absence of mandatory reporting, what arrangements currently exist to protect children?

In 1987, the Department of Health published a booklet entitled *Child abuse guidelines*, containing detailed advice for staff working in the health and social services on the identification, investigation, and management of suspected cases of child abuse. Since then, there have been the proposed initiatives outlined in the recent Government publication *Putting children first: promoting and protecting the rights of children*. These very much reflect an inter-agency and inter-professional approach.

This new Government initiative contains a number of proposals:

- Designated officers in health boards should co-ordinate inter-agency approaches to child protection at community care level
- Regional and local child protection committees should operate at health board and community care area level to enhance inter-agency and inter-professional approaches to child protection
- Multi-disciplinary training, under the aegis of regional child protection committees, should increase inter-agency and inter-professional approaches
- The new social services inspectorate should review the 1987 *Child abuse guidelines* and the procedure for the *Notification of suspected cases of child abuse between health boards and Gardai*
- There should be a public information campaign to heighten public awareness of child abuse
- Health boards should provide support services for victims of past abuse, and
- The funding of voluntary agencies dealing with children should be conditional on procedures being in place to deal with allegations of child abuse.

The case for ndatory reporting

Late last year the Government announced that it intended to renege on an election commitment to introduce the mandatory reporting of child abuse cases. Kieran Doran discusses the legal implications of a mandatory reporting policy and argues that it could be the most effective part of an overall Government child care strategy

All of which is highly prescriptive in nature, with the emphasis being placed on practical co-operation between the relevant bodies, on-going monitoring of professional practice, and updated training of the relevant healthcare and social work professionals. Yet is this enough to detect cases of abuse and protect the victims or potential victims of such abuse? What about mandatory reporting?

Clear statement

The reports of both the Law Reform Commission on child sexual abuse and the Kilkenny Incest Investigation Team addressed the issue of mandatory reporting. Each set out the advantages of this policy: it was a clear statement by society that child abuse was a perplexing social problem which needed to be addressed urgently; it would lead to the discovery of hitherto unknown cases of child abuse; it would give the relevant professional personnel the appropriate legal powers to handle such cases; and it would achieve consistency and equality in the management of the disclosure of child abuse cases.

However, there were also perceived disadvantages: mandatory reporting would lead to an over-reporting of cases of child abuse; resources might be wasted in the investigation of unsubstantiated allegations of child abuse; it might deter victims from disclosing cases of abuse; and it could undermine the therapeutic relationship between the relevant healthcare and social work professionals and their clients. So what has been the experience as regards the operation of a mandatory reporting policy?

In the United States the policy of mandatory reporting has been in operation under the *Child Abuse Prevention and Treatment Act 1974*. According to a 1996 Irish Department of Health report (*Putting children first: a discussion document on mandatory reporting*), there has been no comprehensive review of the effect of the policy in the USA. But it does point to some positive effects, such as the huge increase in the number of reported cases of abuse, which has led to increased protection for children by bringing troubled families to the attention of child protection agencies. In addition, the policy is considered to have forced relevant healthcare and social work professionals to educate themselves about abuse and have given them a basis to report such cases.

However, the report appeared to reject mandatory reporting on a number of grounds. First, that while such a policy would lead to an increase in the number of reported cases, there would not necessarily be a corresponding increase in the number of substantiated cases. Secondly, that the system would be swamped by reports of abuse. And, thirdly, that such a policy could not act as an overall solution to the problems of insufficient funding for the proper training of the relevant professionals and
in place of an appropriate infrastruct
follow-up investigations of alleged a

One leading American research
attacked the policy of mandatory re
ing as outdated, arguing that the l
applied through the policy were far
vague, particularly as to what consti
ed 'abuse' and as to which circumsta
warranted 'due cause for suspicion'.

Striking a balance

In the Irish context, we obviously have to strike a balance between the safety of the child, the confidentiality of the carer-victim relationship and the public interest in tackling the problem of child abuse in general. Some have suggested that in this country there should be a discretionary period of delay prior to any legal obligation on a professional to report the incident to allow the confidence of the victim to be earned in the first instance. It could also be argued that there should be different criteria for adults complaining of abuse during their childhood and that the consent of that adult should be required before the matter is reported to the Gardai.

If mandatory reporting were to be effective as a policy, there would also have to be guaranteed immunity for designated professionals who report child abuse in good faith. Finally, it would also require a thorough education drive for both the public and the caring professions to cope with the medico-legal, ethical and social complexities of the problem.

So which of the above policy approaches ought to be endorsed to tackle the social problem of child abuse? Should mandatory reporting be adopted, or is the Department of Health's current emphasis on greater inter-agency and inter-professional co-operation the best approach?

Agenda framed by adults

Although the official policy appears to be mov-
m mandatory reporting toward inter-
cy/inter-professional co-operation,
/ mandatory reporting should not be
etely rejected out of hand. Such a
y is only feasible if the law is specif-
nd supported by a properly instituted
d properly financed reporting frame-
ork. In addition, under section 3(b)(i)
the *Child Care Act, 1991*, health
oards must regard the welfare of the
hild as their first and paramount con-
ideration. Is this achieved by adopting an agenda primarily shaped by adult professionals? Is it not the Government's duty to fulfill the aspirations of the *Child Care Act, 1991*, and to legislate accordingly?

Mandatory reporting alone is not the answer, but as part of a properly instituted, administered and financed framework of child care legislation it could be the most effective part of an overall Government child care strategy. G

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

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How the petition system

A couple of years ago the High Court rapped the Minister for Justice over the knuckles for playing fast and loose with the petition system. Gerald Needham reviews that landmark decision and predicts that in the future Ministers may have to explain their decisions to the bench

The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction has its origins in the royal prerogative which the Sovereign enjoyed over and above all other persons by virtue of the common law.

This right and power, or system of petitions, is part of Irish law through article 13, section 6, of *Bunreacht na hEireann* which reads as follows:

The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities.

Following on from this article, the *Criminal Justice Act, 1951*, at section 23, reads, *inter alia*, as follows:

1) Except in capital cases, the Government may commute or remit, in whole or in part, any punishment imposed by a court exercising criminal jurisdiction, subject to such conditions as they may think proper

3) The Government may delegate to the Minister for Justice any power conferred by this section and may revoke any such delegation.

Pursuant to its powers under sub-section 3 of section 23, the Government has delegated to the Minister for Justice the power conferred by the section. Down through the years, successive Ministers for Justice have made use of this power and have remitted, in whole or in part, an enormous number of fines. Almost all of these fines were imposed in the District Court. An appeal to the Circuit Court would only have been taken in a very small proportion of these cases. These fines were remitted, in the vast majority of cases, on the recommendation of politicians, and no reasons were ever given, nor were any records kept of the reasons for allowing a successful petition. In addition, successive Ministers have adamantly refused to answer Dáil questions relating to successful petitions.

Exasperated by the continuance of this use of the petitions system, the then District Court Judge Patrick J Brennan (now retired) of Mayo was given leave by the High Court (Flood J) on 22 February 1994 to challenge, by way of judicial review, the system of petitions then in operation. The case was heard by the High Court (Geoghegan J) on 7, 8 and 9 February 1995, and his reserved judgment was delivered on 28 April 1995 and is reported under *Brennan v the Minister for Justice* [1995 IR 612].

The court held, *inter alia*, that:

1) In the four District Court cases on which the application was based, the Minister had not properly exercised her power of remission
2) The power of remission should be exercised only in the most exceptional circumstances
3) In the event of the Minister deciding to remit a fine, full details of the reason(s) must be recorded and retained
4) In any case which succeeds on petition, the judge who imposed the fine has the necessary *locus standi* to enable him or her to challenge the Minister's order.

There is an important *obiter dicta* in the judgment which must be considered by anyone submitting a petition:

I think that in very exceptional cases a Minister might be able to exercise his or her power in circumstances where he or she believed the judge's decision was wholly unsupportable. But it is not easy to conceive of circumstances where that would be justified even on an exceptional basis in the cases of a District Court judge's order which can be appealed to the Circuit Court, which court must in turn embark on a complete rehearing. Even though the appeal to the Circuit Court would be final, a Circuit Court judge who acted wholly irrationally would be subject to judicial review by the higher courts. It would seem to me, therefore, that it would be only in the rarest of circumstances (and I cannot conceive of what they might be) that the Minister can modify a District Court judge's order imposing a fine on the basis that he or she thought that the decision was wrong' (Page 628).

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works

Having regard to this *obiter dicta*, it is difficult to envisage how a petition can be successful unless and until there has been an appeal to a higher court. Mr Justice Geoghegan in his judgment approved of the fact that the Minister did not notify the relevant district judge *before* the Minister made his/her decision on any petition. Neither did his judgment provide that the relevant district judge be notified *after* the Minister's decision. Therefore, it could easily happen that a judge might never become aware of the fact that his or her decision had been petitioned.

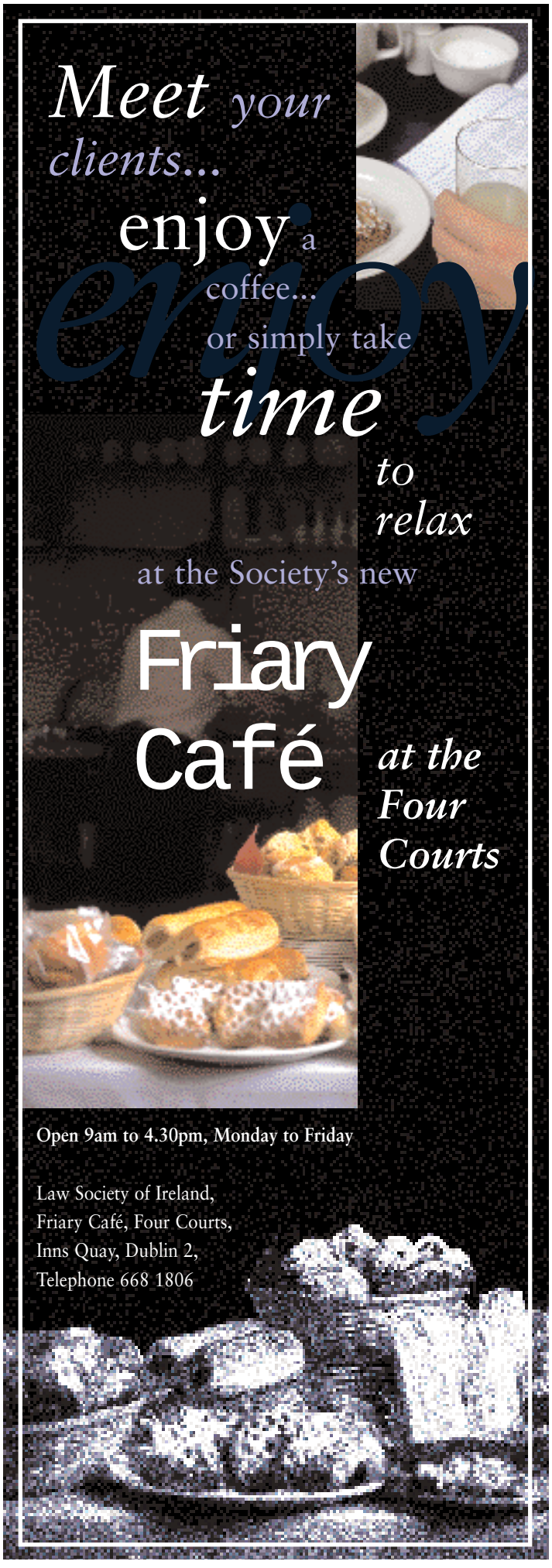
It just be pointed out, however, that district judges from whom a fine has been *successfully* petitioned may now, as a result of the Brennan case, request from the Minister for Justice full particulars of the basis for, and records of, such remission *after* the Minister has made his or her decision. However, there is the difficulty, already mentioned, that the district judge may be unaware of the fact that his or her fine has been petitioned in the first instance.

Because of the somewhat unsatisfactory situation regarding notification of petitions to district judges, all such judges might consider writing to the Minister requesting that, for the future, all relevant judges be notified *personally* of all successful petitions. This request is a logical follow on from Mr Justice Geoghegan's judgment, because a district judge is entitled to challenge any successful petition, and therefore should be given adequate notice.

Perhaps the Minister should, in the interests of justice seen to be done, introduce a rule in the Department of Justice that when he has decided to grant a petition, the district judge in question be notified *personally*, so as to ensure that such judge is fully aware of what has occurred. This would also give him or her an opportunity to consider a possible legal challenge.

A reply to a Dáil question some time ago disclosed that the Minister had finalised 295 petitions during 1996, and that there were approximately 5,000 petitions awaiting decision. It is quite possible that the judges involved in the 295 petitions are completely unaware of the situation. G

Gerald Needham BA BL is a Mayo-based barrister.



BES: Aft

Business expansion schemes no longer look quite the attractive investment option they once did now that Finance Minister Charlie McCreevy has drastically limited the amount you can invest. Barry O'Halloran assesses the likely impact on potential investors of the new lower threshold

For the last 14 years, the dual promise of tax savings and profits has sent thousands of people rushing to invest in business expansion schemes (BES) before the turn of the fiscal year on 5 April. In fact, for fund managers, Spring became synonymous with BES, sending them on an equally desperate dash to find projects likely to give their clients a decent return for their money.

But the same fund managers are now arguing that Finance Minister Charlie McCreevy took the wind out of BES's sails when he slashed the investment ceiling for individual businesses from £1 million to £250,000 in December's Budget. This move, they say, effectively sounded the scheme's death knell, and will turn the rush of the last 14 years into a trickle.

Within days of the Budget, AIB's investment arm, AIB Investment Managers (AIBIM), announced that it would not be launching a scheme this year. At the same time, other intermediaries declared that the limit would have to be increased to at least £500,000 if BES were to survive.

At the time of going to press, this campaign to 'save' the scheme was still going, and brokers were waiting with bated breath to see if McCreevy would relent and up the limit in this year's *Finance Act*. They argue that £250,000 is just too low to make BES attractive and say that investors will look for other places to put their cash.

Martin Kane of BCP Stockbrokers, which has run schemes since 1991, points out that the limit is not high enough to interest expanding companies in using the system as a way of raising money. He believes that most businesses need more cash than this to fund their expansion, and that the limit rules out many of the types of projects that used to attract this kind of funding.

'A ballpark figure for a leisure centre would be £800,000 to £1 million, and many of the projects we would be involved in need similar amounts of money', he says. 'If a business can get £750,000 from the bank, there is no reason why it cannot get £1 million.

'If this is the case, it makes no sense to raise part of the cash in another way. You've got two instruments: it's too much hassle and very difficult to deal with two sets of paperwork where one will do. And of course interest rates are low at the moment, so it makes sense to go to the bank'.

Unattractive proposition

He predicts that the new lower threshold could only be used by start-up companies, an unattractive proposition for investors because of the high risk. The only kind of businesses likely to use the newly-constrained BES will be just-launched small manufacturers looking for seed capital. Kane explains that the type of investors who put money into BES schemes tend to be conservative and would be unwilling to consider these companies.

The other problem is that potential investors have to pay a number of charges before joining a scheme. Fund managers make their cut by taking 3% on the way in, and by taking an exit fee when the scheme matures. These, along with some other administrative costs, make the newly-limited scheme less attractive both to the investor and the company seeking to raise funds, as they have to come out of the overall sum invested.

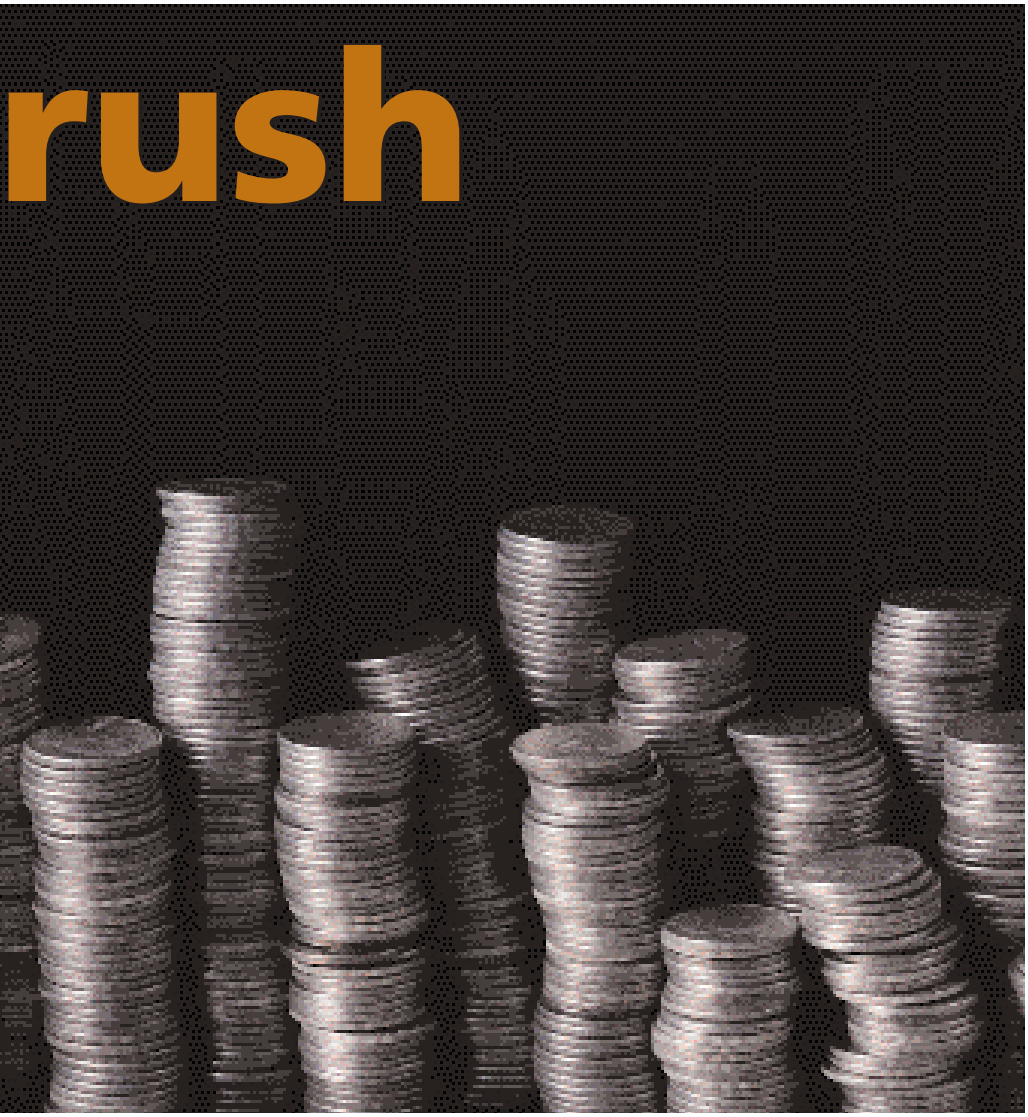
But it is worth pointing out that new businesses have always formed part of the BES portfolios offered to the public by the promoters, and that fixed charges have always been there.

BES schemes are likely to continue in some shape or form for the time being, even though Minister McCreevy may intend phasing them out altogether in favour of other tax-efficient investment incentives, so there may still be some opportunities there. If you do decide to join the annual Spring rush, there are a few things you should know.

BES schemes are designed to draw venture capital into new and growing Irish businesses by giving subscribers a chance to recoup their investment at the top income tax rate (46% from next April). All projects have to be approved by Forbairt, the State development agency.

The system works like this: you put £10,000 into a given fund with a commitment to leaving it there for five years, and you the get tax relief on that investment at 46% (in other words, you get £4,600 back). This means that the investment only costs you £5,400. At the end of the five years, you get your £10,000 back, along with (hopefully) a tidy profit. The payback terms are agreed on entry and every scheme has

er the rush



some exit mechanism, for example, preference shares redeemable at a set premium at the end of the time limit. Each individual investor is limited to £25,000 by the legislation and most promoters demand a minimum investment of £5,000.

At its height in 1989, BES attracted over £80 million in investors' cash. Since then it has declined to the point where last year it attracted just £53 million. Some of the companies promoting the schemes included MMI Stockbrokers, BCP, ICC Bank, Davy Stockbrokers, Ulster Bank, and Business Trading and Investment House (BTH).

Variety of projects

Many of the projects were focused on the leisure and tourist industry, for which the scheme was originally designed. Nevertheless, there was a good deal of variety in the type of projects, which covered everything from manufacturing to entertainment. Some examples include Portmarnock golf course, Wexford Electronics, Waterford Stanley and the Brandon Hotel in Tralee, which gave investors a 123% return in 1996.

While some promoters will offer entry to just one scheme, most operate portfolios consisting of a series of projects. The investors' cash is then spread through the portfolio so that the risk is limited as far as possible.

It's worth bearing in mind that, like any investment, BES does involve a risk. This varies from the project's outright failure to simply not getting the full return on the investment. The net result has been to make fund managers wary of picking losers because if one project makes a loss, the possibility of clawing that back from the more successful companies is ruled out by the fact that the payback terms are fixed.

This may also mean that the return will not be huge. In general, investors can expect to be repaid the full sum they invested along with between 5% and 10%. If you are repaid the principal, the tax saving still gives you a profit. But if you come out with say £1.05 for every £1 invested, then when this is measured against the investment's net cost – that is, the principal minus the tax saving – the return looks enormously healthy.

Huge profits

For example, two BCP schemes which have matured since 1991 and 1992 gave returns of 13% and 15% respectively on the principal. But when measured against the net cost, the returns actually came in at 19% a year, which is a huge profit by any investment standards.

The tax saving is central to BES, and so to get the best value you must get this money back as quickly as possible. One problem faced by many investors is that they do not get the necessary RICT forms from the Revenue, which entitle them to their tax clawback, until well after they have handed over their money.

The delay is the fault of fund managers who often do not place some of the cash until after the deadline is up. The result is that investors only get RICT forms for some of their investment on time or, worse, do not get them at all.

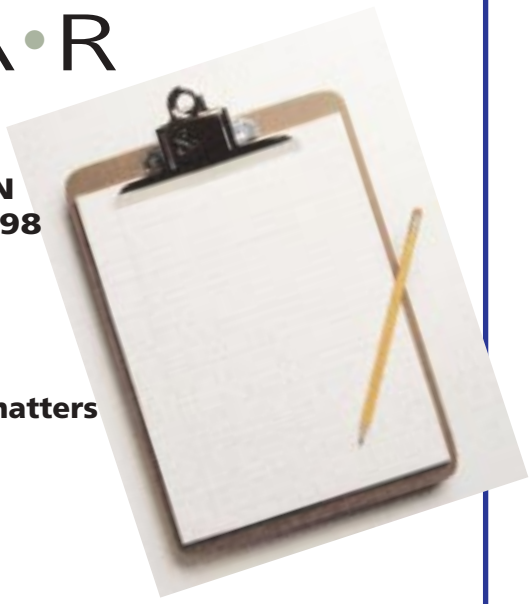
This has two consequences: first, you have to wait an extra 12 months for your money, which means you do not get the full return until a year after maturity; second, the delay means your money is sitting in the fund manager's bank account earning interest for him.

Finally, if BES is not for you, or the Minister fails to increase the ceiling, you should remember that there are other options. There are the tax incentives offered by the seaside resort scheme and by the film investment projects, though the latter is high risk by its very nature.

The other option may be to look at more conventional investment vehicles such as managed funds, the stock market, or even Dublin's developing companies market (DCM), designed to encourage new and smaller companies on the stock exchange. This market may yet prove to be a sensible option for companies that may once have benefited from BES schemes. G

CRIMINAL LAW COMMITTEE

S·E·M·I·N·A·R



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TOPICS:

- **Civil litigation arising out of criminal matters**
  Speaker: James MacGuill, Solicitor
- **Judicial review**
  Speaker: Michael Lanigan, Solicitor
- **Criminal legal aid claims procedure**
  Speakers: Dept of Justice Official & Niall Sheridan, Solicitor

Chairman: Michael Staines, Solicitor

The solicitor speakers will also give an update on recent criminal legislation

Registration:	10.00am
Seminar starts:	10.30am
Lunch:	1.00-2.15pm
Afternoon session:	2.15-4.30pm

Cost per person: solicitors £80, apprentices: £40.
Cost includes seminar materials, lunch and coffee

*Individual cases cannot be debated

BOOKING FORM

NAME: _____

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I enclose cheque for £_____ . Please book _____ place(s) for the above seminar.

If there are insufficient bookings the seminar will be cancelled, so please return this form with your cheque before 13 February to: Colette Carey, Solicitor, Criminal Law Committee, the Law Society, Blackhall Place, Dublin 7 (tel: 6710711; fax: 6710704)

Council report

Report on Council meeting held on 7 November 1997

1. Taking of office by President and Vice Presidents

The outgoing President, Frank Daly, expressed his gratitude and appreciation to the Council and to the staff of the Society for their courtesy and support throughout his year of office and congratulated the incoming President, Laurence K Shields, who was then formally appointed to office by the Council. Mr Shields expressed his sense of deep honour and privilege to be appointed President of the Law Society. With honour and privilege comes responsibility. He intended to bear that responsibility and to give it his best shot. His main theme for the next 12 months would be to have contact with, consult and involve as many members of the profession as possible. He also wanted to promote law reform, continuing legal education and a unified, dignified and cohesive profession. While he realised he could not change the world in 12 months, he proposed to make certain changes. From January onwards the Council meeting would be on Thursday mornings rather than on Friday afternoons and two Council meetings would be held outside Dublin – in Galway in May and Cork in June. He intended that the Law Reform Committee would make great strides for the members and the public this year and he intended to rename the Guidance and Ethics Committee to include Section 68 guidance. The Corporate and Public Services Committee would be given full committee status as also would the Continuing Legal Education Committee. Mr Shields then proceeded to pay tribute to Frank Daly who had been a wonderful, gregarious, representative and decisive leader of the profession over the last 12 months, devoting his time unselfishly in the interests of the profession. The Senior Vice President, Pat O'Connor, and the Junior Vice President, Geraldine Clarke, both then took office and thanked the Council for the honour that had been bestowed on them.

2. SI No 348 of 1997

The Director General referred to correspondence with the Chief Justice, the President of the High Court, and the Bar Council regarding SI No 348 of 1997. He said that since the previous Council meeting he had been heavily involved together with Ernest Cantillon and others in seeking a resolution to the difficulties presented by the statutory instrument. Jointly with the Bar Council, they had prepared a submission to the Superior Courts Rules Committee proposing certain fundamental changes to SI 348. The key theme of the document had been the preservation of the principle of legal privilege. In addition, the Director General and the outgoing President had met the Minister for Justice to outline the Society's concerns. A meeting of the Superior Court Rules Committee had been held on the previous day. No final decision had been taken at that meeting but it was clear that the committee was giving serious consideration to the joint submission and the indications were that change could be expected.

4. Eligibility of solicitors as judges of High and Supreme courts

Geraldine Clarke reported on the most recent developments of the working group on eligibility for appointment as judges of the High and Supreme courts. It was her view and that of the Society's other representatives, Ernest Cantillon and the Director General, that much progress was being made but that the Society would not succeed in having all its views accepted.

5. Outcome of Annual General Meeting

The President said that, in his view, the Annual General Meeting had been useful, practical and constructive. He referred to a number of motions which had been withdrawn on the basis that they would be considered jointly by the proposers and the review working group.

6. Education

Pat O'Connor reported that, following a meeting with the King's Inns, it has been agreed that another joint litigation module would be conducted in March 1998. The three professional courses scheduled for 1998 were full but, happily, there was now a full compliment of staff in the Law School.

7. Law Clerks JLC

The chairman of the Law Clerks JLC, Gerard Doherty, referred to a sub-committee on sick pay and pension schemes which had been established at the suggestion of the employee representatives on the JLC to explore the possible introduction of a pension and sick pay scheme for employees covered by the *Law Clerks Employment Regulation Order.* He understood that three of the existing eight JLCs provided for such schemes.

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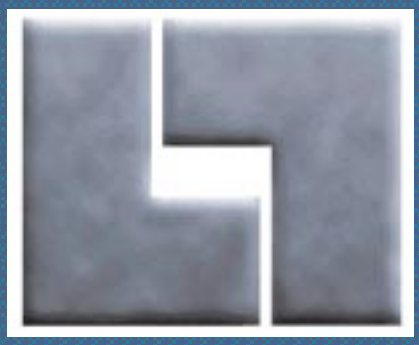
CONTACT LIZ O'BRIEN AT THE LAW SOCIETY, BLACKHALL PLACE, DUBLIN 7 (TEL: 01 671 0711).



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Committee reports

CONVEYANCING

The Conveyancing Committee of the Law Society meets on the second Tuesday of every month (excluding August when there is no meeting). If practitioners have any queries or require guidance on any aspect of conveyancing practice, they can submit a note of same to the committee in advance of the monthly meetings. In order for a query to be included on the agenda for the meeting, it should be sent to the committee secretary by the first of the month in which the meeting is to take place. In case of disputes between solicitors as to matters of conveyancing practice, the committee can issue a ruling provided both parties request same and agree to be bound by same.

GUIDANCE AND ETHICS

572 calls to Guidance and Ethics helpline

Following my appointment as chairman to the newly-named Guidance and Ethics Committee, formerly the Professional Guidance Committee, one of the first matters which I was briefed on was the statistics for 1996/97. I noted that last year 572 calls were made by solicitors to the Guidance and Ethics helpline. This demonstrates the vital service which this helpline provides for members, so many of whom are sole practitioners and for whom, consequently, the formal and informal support available from colleagues within a firm is not available.

In addition to the helpline, solicitors may write to the committee for guidance. This service and the other services provided by the committee are continuing.

Through the committee, the Society's good offices are available to help resolve problems and disputes arising between solicitor colleagues and between solicitors and other professionals, both parties having first been informed of the function of the committee and having agreed to the matter being processed in this way. This service includes the provision of individual mediators, if required.

The development of policy on matters of practice and conduct

Another important function of the committee is to monitor and develop policy on matters of practice and conduct.

The committee is currently working on further precedents to assist solicitors implement the provisions of section 68 of the *Solicitors (Amendment) Act, 1994*, requiring solicitors to give an estimate of costs at the commencement of a case.

The committee has also been asked to review the law and practice in relation to the employment by solicitors of law agents and other third parties to carry out work on their behalf. We would be interested in having members' views in relation to this matter. When the review is completed, the committee will issue guidelines.

I look forward to keeping you informed of progress on these and many other matters which are currently on the committee agenda. I invite solicitors individually, or through their bar associations, to help the committee's work by contacting us in the event of issues of significance arising.

Review of the use of legal agents by solicitors

The committee has been asked to review the law and good practice for solicitors when employing legal agents and other third parties to carry out work on their behalf. The committee hopes to draft and publish guidelines for the assistance of solicitors.

Members of the profession and others are invited to make submissions to the committee on this topic, either individually or through their bar associations. Please contact Therese Clark, secretary to the committee, in writing at the Law Society, or tel: 01 868 1220.

The committee will be reporting to Council at the March meeting. Consequently, it is requested that submissions would be with the committee by 20 February.

Keenan Johnson, Chairman, Guidance & Ethics Committee

TAXATION

Release of rights

Voluntary transfers of farms often reserve to the tranferor rights of support, clothing and maintenance and/or residence. A transferee child, after taking such a gift, may wish to transfer the farm into the joint names of himself and his spouse, and seek your advice as to the tax consequences.

Since 31 January 1990, gifts between spouses are exempt (FA90 S127). However, CATA 76 S8 provides generally that if a second disposition occurs within three years of the first then, the son's spouse is deemed to take a gift from his parents so that her applicable threshold is only £10,000 (indexed). However, S8 has no application if it can be shown (by statutory declaration or otherwise) that the two dispositions were completely unconnected.

What tax implications will then apply on the cesser of rights reserved on the ultimate death of the transferor? S28 stipulates that the cesser of such charge is an inheritance consisting of an 'appropriate part' of the property, that is, a proportion equivalent to the ratio of the annual value of the benefit to the annual value of the property.

Does this mean that the son and his spouse take this inheritance equally (her threshold being only £10,000)? S23 provides for an assignment by a remainderman (that is, the son) of a future interest (that is, the release of rights); when the assignee ultimately comes into possession of that interest, it is the remainderman who is deemed to take the inheritance (that is, the release of rights) under the original disposition save, however, that it is the assignee who is primarily accountable for payment of the tax. Accordingly, the child's exemption threshold applies.

UK tax news: clients' reliance on tax advisor

In the case of *Nunn v Gray (Inspector of Taxes)*, the Special Commissioners ruled on 30 May 1997 that the taxpayer could not be protected from interest in respect of a capital gain not

returned in his income tax return on the basis that he relied on his accountant to have made the full disclosure. The taxpayer signed a partially completed tax return for 1988/89 and left it with his accountant to complete, including, he says, incorporating details of the capital gain. He also says his accountant assured him the capital gain had been included. However, it subsequently emerged that the gain was not included and the Special Commissioner ruled that the taxpayer had been at fault and was therefore subject to interest on the undeclared tax.

TAX BRIEFING

The following extracts from *Tax Briefing*, issue 29, December 1997, are reproduced by kind permission of the Revenue Commissioners.

Owner-occupiers of residential property

This article clarifies the entitlement of owner-occupiers to relief in respect of conversion expenditure and the entitlement to relief in situations where qualifying properties are purchased from builders/developers.

General

Relief to individuals in respect of *construction or refurbishment* expenditure incurred on owner-occupied dwellings in urban renewal areas is provided in section 349 of the *Taxes Consolidation Act, 1997* (formerly section 46, *Finance Act, 1994*). Similar relief in respect of property in the Customs House Docks area, Temple Bar area, Dublin Docklands area and on designated islands is provided for in other *Finance Acts*.

To qualify for relief, the property involved must be first used, after the construction or refurbishment expenditure has been incurred, by the individual who incurred expenditure as his/her only or main residence. **Relief is not available to a subsequent owner of the property**.

The relief applies for the year of assessment in which the expenditure is incurred and for each of the nine subsequent years, provided the property is the only or main residence of the individual in the year of claim. The amounts which may be claimed are:

- Construction costs – 5% per annum (total = 50%)
- Refurbishment costs – 10% per annum (total = 100%).

Conversion expenditure

While conversion expenditure is not specifically mentioned in the sections which deal with owner-occupier relief, Revenue accept that such expenditure may be regarded as refurbishment expenditure and relief will be granted accordingly.

Properties purchased by owner-occupiers from builders/developers

Section 349, *Taxes Consolidation Act, 1997* (formerly section 46, *Finance Act* 1994) and the other sections which deal with owner-occupiers do not specifically cater for situations where newly constructed or refurbished (including converted) properties are purchased from builders/developers by owner-occupiers. Revenue accept that the *first purchaser* of such a building is entitled to claim owner-occupier relief where the property is used as that individual's only or main residence.

In deciding the amount of the purchase price which qualifies for relief to owner-occupiers, the same general rules as those which apply in relation to purchasers of rented residential accommodation will apply. In the case of the purchase of a newly constructed dwelling relief is allowed by reference to the amount of 'the relevant price paid'. This amount is arrived at by using the following formula:

Relevant price:

$$B \times \frac{C}{C + D}$$ where

B Net price paid
C Construction costs
D Site costs.

In the case of conversion or refurbishment expenditure, relief is confined to the lower of:

- The amount of conversion or refurbishment expenditure (as applicable), which was incurred in the qualifying period, *and*
- The net price paid (or appropriate portion of the net price paid where part of the conversion or refurbishment expenditure is incurred outside of the qualifying period).

Grants or other payments received directly or indirectly from the State or out of public funds are deducted, in all cases, from the amount of expenditure which qualifies for relief.

Solicitors and client accounts

Question

We have been asked to clarify the third party reporting requirements for solicitors regarding payments for services made from client accounts?

Answer

Section 889(6), *Taxes Consolidation Act, 1997* (formerly section 227, *Finance Act, 1992* which inserted sub-section (4A) into section 173, *Income Tax Act, 1967*) states that *'a return ... shall include payments made ... on behalf of any other person'*. The reporting provisions therefore clearly apply to payments made on behalf of clients including from 'client accounts'.

At the time of the passing of the Act, solicitors were concerned about client confidentiality and as a consequence meetings were held in 1993 between Revenue and the Law Society of Ireland. The result was that:

- Revenue gave assurance on solicitor/client confidentiality
- The information required on the return only concerns details of the payment made to the third party and no information about a client on whose behalf a payment is made or the circumstances giving rise to a payment is required.

Payments for services to any one person in any return period which do not exceed £3,000 in the aggregate do not have to be reported. The situations in which the reporting requirements are relaxed for solicitors are outlined in *Tax Briefing*, issue 12.* It should be borne in mind that the underlying structure and Revenue approach is such so as to ensure confidentiality.

** The relevant extract from issue 12 is available from the secretary of the Taxation Committee.*

Staff canteens and VAT

Background

Section 5(3), *Value-Added Tax Act*, as amended, provides that the supply of certain services may be deemed by regulation to be a supply of services by a person for consideration in the course of business.

Regulation 24 deems the supply of catering services by a person for his/her own private or personal use to be a supply of services for consideration in the course of business and, therefore, taxable. Similarly, the supply of catering services for staff to which he/she contributes in whole or in part is deemed to be a supply of services for consideration in the course of business and, therefore, taxable.

Regulation 24 states that the total cost of providing the service is taxable where it exceeds £500 in any taxable period but concessionally a limit of £20,000 per annum is applied.

Employers have the option of calculating their canteen liability on either the statutory basis or the concessional basis.

Statutory basis (section 5(3) and 10(4) VAT Act, 1972*)*

Under the statutory basis, the amount on which the employer is liable to account for VAT is *either* the total cost of providing the service, which includes such things as catering costs, light, heat, rent, wages etc or the takings, *which-ever is the greater*, at the 12.5% rate.

The employer will be entitled to take a deduction in respect of all VAT charged to him/her in connection with the operation of the canteen.

Concessional basis
The concessional treatment applies where a canteen is operated by an outside caterer on behalf of an employer who makes no contribution, apart from a subsidy, towards the running of the canteen. The outside caterer accounts for VAT on both cash received from the employees and the subsidy from the employer.

The employer in these circumstances will not have to account for VAT under the statutory basis outlined above but will also not be entitled to take a deduction in respect of any VAT charged in connection with the canteen, for example, caterer's invoice, VAT on building of the canteen area, VAT on capital equipment, light and heat etc.

Irrespective of which basis is used to calculate liability, the sale of alcoholic drinks, minerals and cigarettes is always subject to VAT at the standard rate. In addition, confectionery not consumed in the course of a meal is also liable to VAT at the standard rate.

Eligibility for cash receipts basis

Practitioners are reminded that the annual turnover threshold for eligibility for the cash receipts basis was *increased from £250,000 to £500,000* with effect from 17 July 1997. There are obvious cashflow benefits to be obtained by qualifying traders from changing to a cash receipts basis of accounting for VAT.

To date the numbers of traders availing of the opportunity to opt for the cash receipts basis has been less than that expected when the measure was introduced. Practitioners dealing with clients who wish to change to the cash receipts basis *should notify their local tax office* giving details of their turnover for the last 12 months and an estimate of their likely turnover for the next 12 months.

Clearance certificate: Form CG50A

It appears from feedback from tax districts that requests for the issue of capital gains tax clearance certificates are giving rise to a lot of correspondence, telephone calls and faxes between practitioners, solicitors and tax districts. Some of the problems being encountered are as follows.

Form CG50
Applications are being made on:
- The old version of the Form CG50 or photocopies of this version
- Practitioners'/solicitors' own PC version of the old version of Form CG50.

Practitioners are advised to destroy stocks of the old version of the Form CG50 and to use the new version only. Supplies of these forms can be obtained from the *Revenue Forms & Leaflets Service at (01) 878 0100* or any tax office.

Submission of applications
Tax practitioners and solicitors are once again reminded that applications should be submitted well in advance of the closing date. In many cases the applications are being received in tax districts on the date of closing. The applications should be posted so that they are *received* in the tax office at least three working days in advance of the closing date (this may mean actually posting the application four or five days in advance of the closing date).

If the closing date on the contract for sale has elapsed at the time of making the application, confirmation will be required that the consideration has not passed and a revised closing date must be specified.

We cannot guarantee the issue of a clearance certificate unless the CG50 is received three working days in advance of the closing date.

Grounds for application
The grounds for the application should be clearly marked on the Form CG50 and only one option should be specified.

Signature on Forms CG50
The Form CG50 must be signed by the person(s) making the disposal. Practitioners and solicitors are not permitted to sign the form on behalf of the vendor. Particular attention should be paid to note 10 of the notes on completion on the back of the form.

Disposal by non-residents
Where a disposal is being made by a non-resident, practitioners/solicitors are reminded that a computation of the capital gains tax liability is required and the tax on the disposal together with any other capital gains tax outstanding must be paid before a clearance certificate will be issued.

Cancelled sales
If a sale falls through or is cancelled, the clearance certificate Form CG50A issued should be destroyed. Under no circumstances should the certificate be retained and used for a subsequent sale of the property to a different purchaser.

Summary
To ensure that clearance certificates are issued promptly, practitioners and solicitors must:
- Submit a properly completed form CG50
- Including all relevant documentation (contract for sale, CGT computation where appropriate etc)
- To the inspector of taxes who deals with the tax affairs of the vendor
- At least three working days in advance of the closing date.

BUDGET 1998: CAPITAL TAXES UPDATE

Capital gains tax

The Minister for Finance has reduced the standard rate of capital gains tax from 40% to 20%. A number of points should be noted in this regard:
1) The reduction in the rate has been in force since 3 December 1997
2) Gains on disposals of development land are still taxed at 40%.

However, the Minister has also indicated that he will reduce the 'current annual allowance of £1,000 single and £2,000 married for capital gains tax to an individual allowance of £500 per annum'. This reduction in the allowance will not take effect until 6 April 1998.

The alteration in the standard rate of capital gains tax has meant the abolition of the 26% rate of capital gains tax on disposals of shares in certain small and medium-sized unquoted companies.

Capital acquisitions tax

The relief currently available to brothers and sisters under section 117 of the *Finance Act, 1991* has been extended. The purpose of that relief was to relieve the inheritance tax burden on brothers and sisters by reducing the taxable value of a dwelling-house by £80,000 or 60%, whichever is the lesser.

The relief applies where an inheritance is taken of a house or part of a house by a brother or sister of a disponer who has:
1) Attained the age of 55 years
2) Resided in the house continuously with the disponer for a period of five years ending on the date of the inheritance, and
3) Is not beneficially entitled to any other house.

The recent Budget proposes an extension of that relief to £150,000 or 80% of the value of the house, whichever is the lesser. Furthermore, the Minister decided to create a new relief for situations where the recipient of the family home is a close relative (class 2 category) of the deceased owner – for example, nephew, niece or grandchild and both have been living in the house for at least ten years prior to the inheritance. This new relief will have broadly the same terms as the improved elderly siblings relief, save that there not be any age requirement.

It should be noted that the extension of the siblings relief and the introductions of the new relief took effect on 3 December 1997.

Taxation Committee

Practice notes

Communication with the client of another solicitor: an in-house solicitor

Clause 7.7 of the *Guide to professional conduct of solicitors in Ireland* states: 'A solicitor should neither interview nor otherwise communicate with the client of another solicitor except with that solicitor's consent ...'

It is accepted that proper professional conduct requires that a solicitor's client should not be contacted directly by another solicitor. This is sometimes overlooked by solicitors in private practice when dealing with in-house corporate or public services solicitors. It should be remembered that the employer of the in-house solicitor is usually that solicitor's client. However, other personnel in an organisation are sometimes contacted directly, despite on-going correspondence with the in-house solicitor and despite the in-house solicitor being the solicitor on record in a litigation manner.

When this happens, it is no less frustrating for the in-house solicitor involved than it would be for a solicitor in private practice whose client is contacted directly by another solicitor. This action can affect the proper involvement of the in-house solicitor in a case and the result can be that the case cannot be property handled by that solicitor.

All solicitors are urged to abide by proper professional practice in this regard. G

Michael Carroll, Chairman, Corporate and Public Services Committee

Certificate of no dealings pending

The Conveyancing Committee has been requested to clarify the practice note published in the July/August 1993 edition of the *Gazette* as it applies to the practice of furnishing certificates of no dealings pending.

The committee had recommended that a certificate should only be given by a vendor's solicitor in relation to the purchase, lease or charge of part of a folio due to the difficulty of making a priority search *where there are dealings already pending* affecting other parts of the same folio.

The committee wishes to clarify that the purchaser's solicitor should not insist upon a certificate unless there are in fact dealings pending which are revealed by the purchaser's searches. It is then the responsibility of the vendor's solicitor to establish the subject matter of the relevant dealings and to give a certificate that those dealings do not affect the portion of the property being acquired, leased or charged (if this be the case).

However, it is recommended that the certificate should not be a blanket certificate but should be specific by reference to the numbers or other means of identification of the relevant dealings. This is because other dealings may have been lodged by third parties which may not be known to the vendor's solicitor such as those relating to judgment mortgages, cautions etc or relating to transactions in respect of which another solicitor had been instructed by the client or which may not be revealed on the search. A blanket certificate would arguably cover these other dealings and thus would leave the vendor's solicitor exposed to an action from the purchaser. G

Conveyancing Committee

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News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Recent ECJ cases on the *Acquired Rights Directive*

The *Acquired Rights Directive* has been litigated in the European Court of Justice (ECJ) to a level which is striking in comparison to many other areas of European Community law. The ECJ's unexpectedly broad interpretation of its provisions means that the directive – and consequently the 1980 regulations which give effect to it in Irish employment law – is of unexpectedly broad interest to Irish legal practitioners who have anything to do with business transfers.

Essentially (and with the risk of some over-simplification) the *Safeguarding of Employees' Rights on Transfer of Undertakings Regulations 1980* (SI No 306 of 1980) provides that where an undertaking is transferred, the rights and obligations of the transferor arising from any employment relationships in the transferred undertaking are to be taken over by the transferee of the business. The regulations block the avoidance of this obligation by also providing that the transfer cannot constitute grounds for dismissing an employee, but they do not stand in the way of dismissals for economic, technical or organisational reasons entailing changes in the workforce. In addition, information and consultation rights are provided for the employees and/or their representatives.

The purpose of this article is to examine briefly some of the most recent cases in this area and to examine the effect which they have had or will have on this most dynamic area of European jurisprudence.

Commission of the European Communities v United Kingdom (Case 382/92), 8 June 1994 [1994] ICR 664

The UK was brought before the ECJ by the Commission for defective implementation of directives *75/129/EEC* (the *Collective Redundancies Directive*) and *77/187/EEC* (the *Acquired Rights Directive*). The UK position was held to be contrary to the requirements of the latter directive in four respects:

- By reason of the limited nature of the penalties imposed for a breach of the requirements of the UK regulations
- On foot of the defective nature of its provisions designating employee representatives
- The failure of UK law to stipulate that consultations be with a view to seeking agreement
- On grounds of the non-applicability of the UK regulations to undertakings not of a commercial nature.

A number of implications for Irish law and practice can be drawn from this case. First, Irish law may also be in breach of the *Acquired Rights Directive's* requirements as interpreted in this case. For a start, the 'truly deterrent' nature of the ludicrously small fines for breach of the Irish regulations seems almost as legally dubious as were the equivalent provisions of the UK regulations. These were condemned for providing inadequate compensation in the event of a breach of the law in that jurisdiction.

A further breach of European requirements may exist. Although in contrast to UK law, Irish law has always provided that employee representatives must be consulted in transfer situations – regardless of whether a recognised trade union exists or not – what the 1980 regulations do not say is how such representatives are to be appointed.

This may not be good enough for the purposes of the directive since in the UK case, the court observes in paragraph 28 of its judgment that Member States are 'required to take all appropriate measures to ensure that employee representatives are designated with a view to the provision of information and consultation'. Ireland's failure to define such representatives contrasts with the UK law, amended to remedy the defects highlighted in the *Commission v United Kingdom*.

A further conclusion to be drawn from the case is that the fact that an undertaking is not-for-profit does not exclude the application of the directive. This is an important point for Irish practitioners who find themselves advising such a concern or its employees. As Advocate-General Van Gerven pointed out, neither the making of a profit nor the acceptance of a commercial risk are necessary to attract the application of the directive. Its scope is broader than that.

Finally, the case is of use in that it underlines that the objectives of consultations must be to obtain agreement. Employers who go to the trouble of consulting employee representatives, taking into account what they say, replying and providing reasons for rejecting their views, are still in violation of the directive if they are not attempting to reach agreement with them.

Ledernes Hovedorganisation (acting on behalf of Rygaard) v Dansk Arbejdsgiverforening (acting on behalf of Stro Molle Akustik A/S) 1995 [1996] ICR 333 (Case C-48/94), 19 September

This case involved the taking over by one undertaking of a contract to build a canteen which had been awarded to another undertaking. The purpose of the takeover was to complete ceiling and joinery work. It was held by the ECJ that previous cases 'presuppose that the transfer relates to a stable economic entity whose activity is not limited to performing one specific works contract'.

Care must be taken here, however. The court did not say that the taking over of works started by another undertaking could never be a transfer of an undertaking, but that it could be such a transfer 'if it included the transfer

of a body of assets enabling the activities of the transferor undertaking to be carried on in a stable way'. Thus, if not just a specific contract is transferred but also the wherewithal to continue a business after the completion of that specific contract, then there may nevertheless be a transfer for the purpose of the *Acquired Rights Directive*.

Although more limited in its ramifications than might at first be apparent, *Rygaard* is nonetheless a highly significant decision. For with this ruling, the seemingly endlessly expansive interpretation of the concept of a transfer of an undertaking by the ECJ (as exemplified in cases such as *Schmidt v Spar und Leihkasse der früheren Ämter Bordesholm, Kiel und Cronshagen* [1994] ECR 1311 and *Dr Sophie Redmond Stichting*) finally reached a zone marked *ne plus ultra.*

Spano and others v Fiat Geotech SpA and Fiat Hitachi Excavators SpA (Case C-472/93), 7 December 1995

Spano is a case which must be seen in the light of the jurisprudence of the ECJ relating to the applicability of the *Acquired Rights Directive* in insolvency situations. In a fairly long line of policy-based decisions beginning with that in *Abels v Bedrijfsvereniging voor de Metaal-Industrie en de Electrotechnische Industrie [1985] ECR 470*, the court established that the *Acquired Rights Directive* does not apply to transfers made in the context of 'insolvency proceedings' and went on to set out the precise parameters of the concept of 'insolvency proceedings'. At least part of what was at issue in this case was whether this line of precedents were applicable.

With the agreement of the trade union in a particular plant, Fiat Geotech transferred the factory and just under half the workers to a new owner. It was to operate in slimmed-down form to give it some chance of commercial survival. Geotech kept the remaining workers and had itself declared to be in 'critical difficulties' for the purposes of Italian law. This procedure involves the financial intervention of an Italian state agency and is designed to save jobs and to promote the continuation of businesses with a view to their subsequent transfer.

The ECJ held that the directive applied to such situations and applied to transfer the *entire* workforce, notwithstanding the legislation's social aims. A limited view was thus taken of the possibility of the non-applicability of the directive by reason of insolvency. The court noted that the directive applied to transfers under procedures aimed at ensuring the continuation of businesses – as opposed to liquidating them. That was the case here.

In a finding more directly relevant to Irish practitioners, the court also pronounced upon the significance of the agreement of the trade union to arrangements such as those made in this case. It should be explained that in *Katsikas and others v Konstantinidis and others [1993] IRLR 179*, the ECJ had already clearly established that the employee had the right not to go into the employment of the transferee.

In *Spano*, the court was careful to ensure that definite limits were put on the scope of this principle. Thus, it confirmed that 'the implementation of the rights conferred on employees by the directive may not ... be made subject to the consent of either the transferor or the transferee nor the consent of the employees' representatives or the employees themselves, with the sole reservation, as regards the employees themselves, that, following a decision freely taken by them, they are at liberty, after the transfer, not to continue in the employment relationship with the new employer'.

Among the implications that this ruling has for Irish employment law is that although under the 1980 regulations consultations are to be 'with a view to reaching agreement', the agreement cannot be that some employees are not to benefit from the application of the regulations or the directive which it implements. Secondly, the ruling contains an explicit indication that even the employee himself is not totally free to contract out of the terms of the regulations or the directive.

It is of interest to note that the reasoning applied in *Spano* was subsequently brought to its logical conclusion (although without reference to *Spano* itself) in the case of *Wilson and others v St Helens Borough Council* [1996] ICR 711 where the English EAT reached

Conferences and seminars

AIJA (Association of Young Lawyers)
Topic: *Environmental management and legal compliance*
Date: 20-21 February
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Contact: Gerard Coll (tel: 01 6761924)

Topic: *Extraterritorial application of US laws*
Date: 7-14 March
Venue: Vail, Colorado, USA
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Managing banking risks and combating fraud*
Date: 26-27 March
Venue: London, UK
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Annual congress*
Date: 20-25 September
Venue: Sydney, Australia
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Multinational dimension of legal practice*
Date: 28 November
Venue: Prague, Czech Republic
Contact: Gerard Coll (tel: 01 6761924)

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

Topic: *Sound and efficient management in the European Union*
Date: 5-6 March
Venue: Maastricht, the Netherlands
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International Bar Association
Topic: *Energy and resources law*
Date: 15-20 March
Venue: Cape Town, South Africa
Contact: 0044 171 629 1206

Solicitors' European Group
Topic: *Joint ventures, EC law and the merger regulation amendments*
Date: 10 February
Venue: London, UK
Contact: 0044 171 320 5791

Topic: *Private enforcement of articles 85 and 86 across Europe*
Date: 24 March
Venue: London, UK
Contact: 0044 171 320 5791

Topic: *Energy liberalisation: EC law and Commission policy*
Date: 30 April
Venue: London, UK
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Topic: *International anti-trust harmonisation initiatives*
Date: 21 May
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Topic: *Sport and competition law*
Date: 23 June
Venue: London, UK
Contact: 0044 171 320 5791

Topic: *Recent developments: EU employment law and related issues*
Date: 8 July
Venue: London, UK
Contact: 0044 171 320 5791

what has been described as the 'stunning decision' that employees cannot agree to vary the terms and conditions of employment if the transfer of an undertaking is the reason for the variation.

***Merckx and Neuhuys v Ford Motors Company Belgium SA [1996] ECR 1253* (Joined Cases C-171/94 and C-172/94), 7 March 1996**

This case involved the transfer of a dealership in Ford cars from one company (in which Ford was the major shareholder) to another completely independent company, with the co-operation of the transferor company. The claimants, two salespersons with the transferor company, objected to being transferred into the employment of the new company and argued – somewhat unusually for employees – that this was not the transfer of an undertaking to which the directive applied.

The court that held this was a transfer of an undertaking for the purposes of the directive. In holding that a transfer had occurred, the court took the view that: 'the decisive criterion for establishing whether there is a transfer for the purposes of the directive is whether the entity in question retains its economic identity, as indicated *inter alia* by the fact that its operation is actually continued or resumed'.

In determining that that criterion had been met here, the court had regard to all the facts characterising the transaction, noting that no single factor could be taken in isolation. Factors favouring the conclusion that a transfer had occurred here included the facts that: a) the same activity (a car dealership) was carried on before and after the alleged transfer; b) that this activity was carried on without interruption; c) that this activity was carried on in the same sector in similar conditions; d) that some of the staff were retained; e) that the new proprietors were recommended to the customers of the old; and f) that the economic risk associated with the dealership was transferred.

It is vital that this aspect of the decision be paid sufficient regard. It is tempting to regard *Merkx* as authority for the legal principle that a change of a dealership automatically involves the transfer of an undertaking. It is authority for no such proposition – but for the point that such a change is capable of being a transfer of an undertaking. Whether it is actually a transfer within the meaning of the 1980 regulations will depend on all the facts of the particular case.

In this regard it is particularly interesting that the court was prepared to hold that a transfer had occurred in *Merkx*, although most of the transferor's employees had already been dismissed at the time of the change of dealership, and even though no tangible assets had been transferred. As for the fate of the employees concerned in *Merkx*, the ECJ, in referring this question back to the referring national court, took the view that although the claimant employees' employment relationships had been transferred to the transferee company, the claimants could have been constructively dismissed by reason of the lack of guarantees as to their earning potential.

The concluding part of this article will appear in the next issue. G

Dr Gavin Barrett BL is course director with the Academy of European Law, Trier.

Recent developments in European law

FREE MOVEMENT

Persons

In *David Petrie and Ors v Universitá degli studi di Verona et Camilla Bettoni* (Case 90/96), a number of foreign language assistants challenged a rule restricting the filling of temporary teaching vacancies to tenured teaching staff and established university researchers. The UK nationals claimed that this Italian rule was contrary to articles 5 and 48(2) of the *Treaty of Rome*, as it excluded foreign-language assistants who were nationals of other Member States, even though their teaching activities were essentially as those eligible for the appointments. The court held that the position of tenured lecturers or established researchers was not comparable to foreign language assistants; lecturers and researchers were appointed through an open competition, while assistants were not. Thus, the rule was objectively justifiable and not contrary to article 48(2).

In *Commission v Greece* (Case 62/96), 27 November 1997, the ECJ held that provisions of Greek law restricting the right to registration in Greek shipping registers to vessels, in which more than half the shares are owned by Greek nationals or Greek legal persons more than half of whose capital is held by Greek nationals, were contrary to articles 6, 48, 52 and 221 of the *EC Treaty* and secondary legislation on free movement of persons.

INSTITUTIONS

References to the ECJ

In *Dorch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH* (Case 54/96), the court held that the German federal supervisory board responsible for reviewing public procurement awards was a court for the purposes of article 177 of the treaty. The Commission had argued that this body could not make a reference to the ECJ. The court examined whether the board was established by law; whether it was permanent; whether its jurisdiction was compulsory; whether its procedure was *inter partes;* whether it applied rules of law; and whether it was independent. The court found that it was established by law and that its decisions were binding. Procedure before it was not *inter partes* but the court held that this requirement was not an absolute criterion. It was independent and exercising a judicial function.

A similar decision was made in *Maria Antonella Garofalo and Ors v Ministero della Sanità*. The court held that the Italian Council of State, when issuing an opinion in the context of an extraordinary petition, was a court or tribunal for the purposes of article 177. It looked to the criteria detailed above.

INTELLECTUAL PROPERTY

Copyright

The Commission has proposed a directive harmonising aspects of rules on copyright and related rights. It proposes the creation of a single market in copyright and related rights. It proposes harmonising rules on the right of reproduction, communication to the public, distribution and the legal protection of anti-copying systems and information for managing rights.

The proposal would grant authors, performers, record and film producers and broadcasting organisations an exclusive right to authorise or prohibit reproductions. The definition of the reproduction right covers all acts of direct or indirect reproduction; temporary or permanent; whether on-line or off-line; in material or immaterial form. Member States would have the option of allowing exceptions to the reproduction right for private copying for private and non-commercial use by audio, visual, or audio-visual means. They may also allow an exception for reproduction by public libraries, museums and other establishments accessible to the public, which are not for direct or indirect economic or commercial advantage.

Authors would be provided with a general right to authorise or prohibit any communication to the public of originals or copies of their works by wire or wireless means. The proposal gives authors the exclusive right to control any form of distribution to the public, by sale or otherwise, of the original of their works or tangible copies of their works. This right shall be exhausted within the EU with the first sale, or other transfer of ownership within the EU, of the work by the rightholder with his consent. Thus, once an author has agreed that tangible copies of his work may be sold in one Member State, these copies may be sold throughout the EU.

Court upholds affirmative action programme

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

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

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

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

In *Hellmut Marschall v Land Nordrhein-Westfalen (Germany)* (Case 409/95), a challenge was mounted to a German law guaranteeing priority in promotions to women, on the grounds of its incompatibility with EC law generally and the *Equal Treatment Directive* in particular.

Mr Marschall is a teacher who works for the *land*. In early 1994, he applied for promotion to a comprehensive school. He was informed that a female candidate was to be appointed to the position. The local law governing civil servants provided that in a sector where there were fewer women than men in the higher grade post, women were to be given priority for promotion in the event of equal suitability unless there were reasons specific to an individual male candidate to tilt the balance in his favour. Mr Marschall then brought an action before an administrative court seeking an order directing the land to appoint him to the post in question.

The German court held that the priority given to women, seemed to amount to discrimination which was not eliminated by the possibility of giving preference, exceptionally, to a male candidate. It stayed proceeding and made a reference to the ECJ concerning the compatibility of the German law with the *Equal Treatment Directive.*

The court's decision

The ECJ observed that in general, men tend to be promoted in preference to women where they have equal qualifications. This 'glass ceiling' exists due to deep-rooted prejudices and from stereotyping the role and capacities of women. Thus, the fact that a male and a female candidate are equally qualified does not mean that they have the same chances.

For this reason, a legal provision such as the German law may help to reduce instances of inequality by introducing an additional criterion for promotion – status as a woman. This can be in conformity with the directive provided that it does not give automatic priority over men. If women had been given absolute and unconditional priority, this would have contravened the directive. The saving clause, allowing or a male candidate's special qualities to be taken into account meant that this law did not run counter to the directive.

The court emphasised that the criteria to be used when deciding on promotions must not discriminate against women. The case was sent back to the German court, which has to resolve Mr Marschall's case. G

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ADMINISTRATIVE

***Interpretation (Amendment) Act, 1997* (no 36 of 1997)**

This Act, which was signed into law on 4 November 1997 (the day of its presentation as a Bill to Dáil Éireann by the Minister for Justice, Equality and Law Reform), is an emergency measure designed to prevent the abolition, abrogation or repeal of an offence at common law from affecting the previous operation of the law in relation to that offence, penalties for it or proceedings in respect of such an offence.

Turf Development Bill, 1997

This Bill, as presented by the Minister for Public Enterprise, would, if passed, give Bord na Móna a modern company structure under the *Companies Acts*. To this end, the Bill aims, *inter alia*, to: convert Bord na Móna from a statutory corporation into a plc under the *Companies Acts*; incorporate individual businesses of the company as limited liability subsidiary companies; provide a basis for the injection of equity into the new company; and to provide for various related matters.

Irish Film Board (Amendment) Bill, 1997

This Bill, as presented by the Minister for Arts, Heritage, Gaeltacht and the Islands, provides for, *inter alia*: the raising of the limit which may be incurred by the Irish Film Board under s10 of the *Irish Film Board (Amendment) Act, 1980*, as amended by s1 of the *Irish Film Board (Amendment) Act, 1993* from £15,000,000 to £30,000,000; and the bringing of legislation relating to the board into line with similar statutory provisions applicable to other non-commercial State-sponsored bodies.

***Education (Alteration of Name of Department and Title of Minister) Order 1997* (SI no 430 of 1997)**

This order changes the name of the Department of Education to the Department of Education and Science with effect from 1 October 1997. The title of the relevant minister is changed accordingly.

AGRICULTURE

***Duff v the Minister for Agriculture and Food* (High Court), 4 March 1997**

National milk quota; milk super levy; no national reserve fund to deal with special categories of farmers; farmers who adopted milk production development plans; failure of minister to create reserve fund; allocation of special quotas to special category farmers only to be made out of national reserve; reference to the European Court of Justice; ruling that minister under no obligation to create a national reserve for the benefit of development farmers; plaintiffs sought judicial review of decision of minister not to grant development farmers special reference quantities; unreasonable decision; claim to legitimate expectation; mistake of law; appeal successful; case remitted to assess damages; Directive 72/159/EEC; Council Regulation nos 853/84, 857/84, 1546/88; *European Communities (Milk Levy) Regulations 1985*; *EEC Treaty*, arts 40.3, 177(3).

Held: The principle of legitimate expectation is one of the fundamental principles of Community law and persons who, in good faith, act under representations of the State are entitled to assume that their expectations will not be frustrated by a mistake of law made by a Minister of State.

CHILDREN

Children Bill, 1997

This Bill has been amended in committee and passed by Dáil Éireann. (See also (1997) 15 ILT 125.)

COMMERCIAL

Industrial training levy schemes for 1998 published

A series of SIs have been made which set out the levy to be imposed on various industries for 1998 for the purposes of meeting the expenses of FÁS under the *Industrial Training Act, 1967* and the *Labour Services Act, 1987*. The levy is assessed by FÁS in respect of each industry and there is a right of appeal to an appeal tribunal. The industries affected are:

- Food, drink and tobacco
- Chemical and allied products
- Clothing and footwear
- Engineering, and
- Textiles.

Industrial Training Levy (Food, Drink and Tobacco Industry 1998 Scheme) Order 1997 (SI no 450 of 1997); *Industrial Training Levy (Chemical and Allied Products Industry 1998 Scheme) Order 1997* (SI no 451 of 1997); *Industrial Training Levy (Clothing and Footwear Industry 1998 Scheme) Order 1997* (SI no 452 of 1997); *Industrial Training Levy (Engineering Industry 1998 Scheme) Order 1997* (SI no 453 of 1997); and *Industrial Training Levy (Textiles Industry 1998 Scheme) Order 1997* (SI no 454 of 1997)

CONSTITUTIONAL

***Society for the Protection of the Unborn Child v Grogan and Ors* (Supreme Court), 6 March 1997**

Injunction granted to restrain appellants from providing abortion information; High Court

judge bound by Supreme Court decision in *Open Door Counselling*; decision in *X v Attorney General* subsequently delivered; appeal; before hearing of appeal law changed by Fourteenth Amendment of Constitution and 1995 Act; whether injunction should be discharged; whether Supreme Court decision in *Open Door Counselling* should be overruled; whether matter should be decided on basis of law as it stood when injunction granted or law at time of hearing of appeal; Constitution of Ireland 1937, art 40.3.3º; *Information (Services Outside the State for Termination of Pregnancies) Act, 1995*.

Held: In considering whether an injunction should be granted, the court has to refer to the circumstances and state of law existing at the date on which the question falls to be determined and not at the date of issue of the writ.

Sherwin v Minister for the Environment (Costello J), 11 March 1997

Statutory interpretation; *Electoral Act, 1992* provides that candidates standing for election can appoint agents to be present at count; gives power to Minister for Environment to adapt any statute relating to administration of elections in special circumstances; *Referendum Act, 1994* provides that only members of Oireachtas can appoint agents for referenda; divorce referendum supported by all parties in Oireachtas; opposition groups had no access to members of Oireachtas to appoint agents on their behalf; minister refused request to amend 1994 Act; whether special circumstances had arisen giving minister power to amend; whether Act was constitutionally valid; whether Act had become unconstitutional in circumstances surrounding divorce referendum.

Held: A statute which contains a built-in remedial mechanism to remedy possible constitutional invalidity cannot be constitutionally invalid.

CRIMINAL

Europol Bill, 1997

This Bill has been passed by Dáil Éireann. (See also (1997) 15 ILT 206.)

Quinn v Director of Public Prosecutions (Morris J), 1 April 1997

Summons to appear on drugs charges; book of evidence; statement of charges failed to show alleged time and location of offences; prohibition sought on grounds of failure to show jurisdiction in District Court; summonses clearly showed date and location of offences; jurisdiction of court founded upon summons upon which accused appears before court; District Court judge not deprived of jurisdiction; relief refused; *Criminal Procedure Act, 1967*, s6; *Misuse of Drugs Act, 1977*, ss5, 15, 27.

Held: The jurisdiction of a District Court judge is founded upon the summons under which an accused is brought before the court and where the summons clearly states the jurisdiction of the court a District Court judge cannot subsequently be deprived of jurisdiction by a failure to state the location and date of an alleged offence in the statement of charges.

Mandatory minimum sentences for drug offences

Changes have been proposed in a new *Criminal Justice Bill, 1997* as part of a general series of anti-crime measures. If passed, the Bill would provide for:

- The creation of a new offence relating to possession of drugs with a value of £10,000 or more for the purpose of sale or supply (it is envisaged that evidence of market value would be given by a member of the Garda Síochána or an officer of customs and excise)
- Mandatory minimum sentences of life or ten years, together with an unlimited fine, for specified offences, subject to certain exceptions
- The abolition of preliminary examinations
- Automatic enquiries by the courts as to whether drug trafficking offenders have benefited from their offences, and
- The giving of evidence by certificate.

DAMAGES

Ann Kenny v Thomas Ryan (Supreme Court), 11 March 1997

Negligence; personal injuries; road traffic accident; assessment of liability and damages; contributory negligence; award of damages made; appeal to Supreme Court against award and assessment; whether court to interfere with award of damages; whether court to interfere with assessment of liability; whether court should substitute the figure for damages with a figure of its own.

Held: The Supreme Court did not interfere with an award of damages on appeal just because it was higher than the amount which the court thought should have been given. When the court substituted a figure, the court gave the highest figure which it felt could be properly stood over.

ELECTORAL

Constituency Commission (Establishment) Order 1997 (SI no 393 of 1997)

This order establishes a Constituency Commission, in line with Part II of the *Electoral Act, 1997*, to report on Dáil and European constituencies.

EMPLOYMENT

Christos Georgopoulus v Beaumont Hospital Board (Supreme Court), 4 June 1997

Wrongful dismissal; claim in common law for wrongful dismissal; claim dismissed in High Court; appeal to Supreme Court; hearing conducted by employer; legal advisor appointed by employer to advise the hearing; advice given to hearing; advice not disclosed to employee; standard of proof; opportunity to give plea in mitigation; precision of charges against appellant; whether the advice given by the legal assessor to the board had to be disclosed to the employee; whether the inquiry to adopt the criminal standard of proof or the civil standard; whether the employee should have been afforded the opportunity to make a plea in mitigation to the board; whether the dismissal to stand; whether the appeal to be allowed.

Held: A breach of fair procedures did not occur where a decision-maker acted on the basis of information which had been obtained outside of the hearing or inquiry and which was not disclosed to the party adversely affected where the information in question applied to questions of legal advice given to a board or tribunal in relation to the conduct of the hearing or inquiry.

New employment equality measures published

Following the striking down of the *Employment Equality Bill, 1996* by the Supreme Court last year (see (1996) 14 ILT 200 and (1997) 15 ILT 145), the Government has introduced a new *Employment Equality Bill, 1997* aimed at promoting equality in the workplace. If passed, the Bill will:

- Outlaw both direct and indirect discrimination
- Outlaw discrimination in employment on nine distinct grounds: sex, marital status, family status, sexual orientation, religion, age, disability, race and membership of the travelling community
- Seek to promote equality between employed persons on the nine grounds stated above
- Address discrimination in the areas of: equal pay for work of equal value, access to employ-

ment, vocational training, conditions of employment, work experience, promotion and dismissal, and
- Apply to: public and private sectors, employment agencies, vocational training bodies, trades unions, professional bodies and the publication of advertisements.

ENVIRONMENTAL

EPA time limits should be observed

The purpose of the time limit for reviewing decisions of the Environmental Protection Agency, in s85 of the *Environmental Protection Agency Act, 1992*, is to ensure that such proceedings are instituted at an early date so that uncertainty about the decision can be disposed of.

NiEili v the Environmental Protection Agency (Kelly J), 6 May 1997

EQUITY

Remedy when criminal sanction perceived to be ineffective

- The adequacy of the criminal sanction imposed by law could be judged by the absence of prosecutions
- If a person's right under a statute was being eroded by unchecked illegal activity, they were entitled to come into court and say that the criminal sanction was not just inadequate but, *de facto*, absent.

The plaintiffs paid annual rental to the minister and royalties to the copyright holders in respect of licences to broadcast a television service by means of a MMDS system. They were the only licence holders in their respective areas and contended that the licence gave them an exclusive right to provide TV relay services and that the exclusivity was necessary to earn a return on their large scale capital investments. The plaintiffs claimed that they were entitled to an injunction on the grounds that defendants' transmitter (enabling the defendants to re-transmit TV signals, a cheaper system than MMDS) was an unauthorised development. In reply, defendants said that if the court accepted such an argument that they would give an undertaking to apply for planning permission and that they would ask for that relief to be adjourned. The plaintiffs were granted the relief sought.

MMDS Television Ltd v the South East Community Deflector Association Ltd (Carroll J), 8 April 1997

GARDA SÍOCHANA

McAuley v Keating (Kelly J), 24 April 1997

Training; discipline; fair procedures; whether progression through phases of training could be halted pending inquiry into alleged breach of discipline by trainee; alleged incident the subject of High Court order and interlocutory injunction; authorities to take no further disciplinary steps until determination of inquiry; whether failure to let trainee progress to next phase constituted the taking of further steps; whether terms of injunction contravened; trainee prevented from attestation and progression to next phase; whether court could intervene in decision as to trainee's suitability; responsibility for proper management and functioning of Garda Síochána; whether prejudice could be recompensed by award of damages.

Held: The decision as to the suitability of a student garda to be attested to the force and to be permitted to exercise the serious and far-reaching powers of a garda was not one for the court but was for the Garda authorities, and the court would only intervene where such a decision was tainted by illegality.

HEALTH & SAFETY

Abattoirs Act, 1988 *(Amendment) Order 1997* (SI no 422 of 1997)

This order extends the definition of 'animal' in s2(1) of the *Abattoirs Act, 1988* to include ratite or running birds such as ostriches, emus and rheas and so extends the application of the Act to such animals. The order came into operation on 27 October 1997. Various additional regulations have been made concerning the inclusion of ratite birds in the operation of the Act and these are contained in SI nos 423-425 of 1997.

European Communities (Suspension of Imports of Pistachios and Certain Products Derived from Pistachios Originating in or Consigned from Iran) Regulations 1997 (SI no 432 of 1997)

These regulations give effect to Commission Decision 97/613/EC (of 8 September 1997) on the temporary suspension of imports of pistachios and certain products derived from pistachios originating in or consigned from Iran.

European Communities (Fresh Meat) Regulations 1997 (SI no 434 of 1997)

These regulations lay down the health rules for the production and placing on the market of fresh meat intended for human consumption. They require premises to comply with set standards of structural and hygienic operation. The regulations also provided for the health marking of all fresh meat produced in approved conditions and the veterinary supervision of such establishments. The regulations came into operation on 10 November 1997.

INSURANCE

Carna Foods Ltd v Eagle Star Insurance Co (Ireland) Limited (Supreme Court), 28 May 1997

Appeal to Supreme Court; policy terms; implied terms; cancellation of policy; no reasons given as to cancellation; whether there was an implied term for insurer to give reasons as to cancellation of policy; circumstances where terms will be implied into contract of insurance; whether an implied term existed in this case; *Competition Act, 1991*.

Held: The basic principles of law precluded the implication of a term into insurance policies to the effect that, in the event of a declinature or cancellation, the insurers had to state their reasons therefor.

Tighter controls on companies related to insurers

With effect from 15 December 1997:
- The Minister for Enterprise, Trade and Employment is empowered to seek information about companies related to insurance companies
- The minister is also empowered to require auditors of those related companies to inform the minister of any material circumstances in such a company likely to lead to a breach of the *Insurance Acts* and regulations in the insurance company, and
- The registered office of an insurer must be in the Member State of its authorisation.

European Communities (Non-Life and Life Assurance) Framework (Amendment) Regulations 1997 (SI no 457 of 1997)

Restrictions on number of agencies

From 1 January 1998, insurance agents are to be restricted to a maximum of four life agencies and four non-life agencies, in accordance with the provisions of s49 of the *Insurance Act, 1989*.

Insurance Act 1989 (Section 49(3)) Regulations 1997 (SI no 465 of 1997)

INTELLECTUAL PROPERTY

***Patents, Trade Marks, Copyright and Designs (Fees) Rules 1997* (SI no 433 of 1997)**

These rules, made under ss99 and 114 of the *Patents Act, 1992* and ss81 and 82 of the *Trade Marks Act, 1996*, rationalise certain patent fees: that is, the fees for renewal of patent applications and granted patents are combined into a single stream of fees which become payable from the third year of the date of filing. The rules also provide for certain revisions of existing fees payable in respect of patents and trade marks. Unlike previous fee rules, the present rules do not specify the manner of payment of fees, and consequently leaving open the possibility of more flexibility as to how fees may be paid in future. The rules came into operation on 1 November 1997.

JUDICIAL REVIEW

***Landers v the Garda Síochána Complaints Board* (Kelly J), 7 March 1997**

Alleged assault by Gardaí; no prosecution by Director of Public Prosecutions; complaint made to Garda complaints board; judicial review sought of failure by Director of Public Prosecutions to prosecute; procedural irregularity; application to have claim against Director of Public Prosecutions struck out; no *mala fides* by Director of Public Prosecutions shown; claim against Director of Public Prosecutions struck out; *Rules of the Superior Courts 1986*, o19, rr27, 28, o84 r21; *Garda Síochána (Complaints) Act, 1986*.

Held: A decision of the Director of Public Prosecutions to prosecute or not prosecute a person is only subject to review by the court if it can be demonstrated that the Director of Public Prosecutions reached that decision *mala fide* or was influenced by an improper motive or policy.

LANDLORD & TENANT

***Kerry County Council v McCarthy* (Supreme Court), 28 April 1997**

Case stated for the opinion of the Supreme Court; powers of District Court clerk to issue summons; civil proceedings as opposed to criminal proceedings; repossession of dwelling house; order for possession granted in District Court; appeal to Circuit Court; question raised over power of District Court clerk to issue the original summons; question referred to Supreme Court; whether clerk had power to issue summons; nature of proceedings; whether rule-making authority had acted *ultra vires*; whether District Court clerk had acted *ultra vires*; *Petty Sessions Ireland Act 1851*; *Landlord and Tenant Law Amendment, Ireland Act 1860*, ss86, 87, 88; *Housing Act, 1966*, s62(4); *Courts Officers Act, 1926*, s48; *Courts of Justice Act, 1924*, ss77, 91; *District Court Rules 1948*, r30(1)(c).

Held: It was within the remit of the District Court rule-making authority to provide that a District Court clerk should be empowered to issue a summons in a civil case of this nature, which in turn was clearly within the powers which it was contemplated that the rule-making authority should have under s91 of the 1924 Act.

LEGAL PROFESSION

***Solicitors (Adjudicator) Regulations 1997* (SI no 406 of 1997)**

These regulations establish an Adjudicator to administer a scheme for the receipt, examination and investigation of any complaint in writing to the Adjudicator by or on behalf of a client of a solicitor against the Law Society, concerning the handling by the Society of a complaint against that solicitor.

PLANNING & DEVELOPMENT

***Malahide Community Council Ltd v Fingal County Council* (Supreme Court), 14 May 1997**

Planning law; re-zoning; draft development plan; certain lands zoned for recreational purposes; zoning changed to residential; motions challenging re-zoning; motions defeated; development plan adopted; judicial review sought of refusal to re-zone lands; High Court re-zoned lands back to recreational; appeal to Supreme Court; whether courts had jurisdiction to re-zone lands; whether power to amend development reserved to planning authority; whether authority took certain matters into account when it reached its decision; whether authority was entitled to take such matters into account; whether decision of authority to be quashed; whether appeal to be allowed; *Local Government (Planning and Development) Act, 1963*, ss19(2), (7), 21A; *Local Government (Planning and Development) Act, 1976*, s37.

Held: All that a court could do if it found that a planning authority had exceeded its powers or acted in some seriously unlawful or irregular manner such as to invalidate a decision it had made, would be to quash the decision and perhaps the whole development plan if the decision was not severable and to direct that the planning authority reconsider the matter and decide the question at issue in a lawful and regular manner.

PRACTICE & PROCEDURE

***McCauley v McDermot* (Supreme Court), 24 April 1997**

Plaintiff passenger in car owned by father which collided with tractor; car driven by third party; tractor driver found to be negligent in Circuit Court material damage claim between plaintiff's father and tractor owner; no negligence on car driver's part; plaintiff sued tractor owner for damages for personal injuries; tractor owner joined car driver as third party; application to High Court to set aside third party notice refused; appeal to Supreme Court; whether the issue between the tractor owner and the car driver was *res judicata*; whether there was privity between car owner and car driver; whether the third party proceedings were an abuse of process; *Road Traffic Act, 1961*, s118.

Held: While the inherent jurisdiction of the courts to stay proceedings as an abuse of process had to be exercised with extreme caution, it could be invoked in a case where the stringency of the tests to be applied created a difficulty in treating the matter as *res judicata*.

***Lennon v Brennan* (Smyth J), 30 April 1997**

Criminal law; District Court; summons; objection to the form of application and complaint to District Court clerk; appearance made to object to jurisdiction; judge deleted words to show cause from the summons; accused sought order of prohibition; summons merely a process to compel accused person to attend court; summons complied with 1986 Act and *District Court Rules*; application refused; *Petty Sessions (Ireland) Act 1851*, s10(4); *Courts (No 3) Act, 1986*.

Held: Where a summons calls upon an accused 'to show cause' a District Judge acts quite properly in deleting the surplusage and proceeding to attend to the substance of the complaint.

***Foran v O'Connell* (Morris J), 6 May 1997**

Renewal of summons; alleged medical negligence; question of injustice to defendant if summons

renewed; summons renewed; *Rules of the Superior Courts 1986*, o8, r1.
Held: In considering whether to renew a summons the test to be applied is whether the renewal of the summons would work an injustice on the defendant.

Courts Service Bill relaunched

Owing to pressure on parliamentary time in Dáil Éireann, the Government has abandoned the *Courts Service Bill, 1997* and represented it as a new Bill in the Senate. As previously, the new *Courts Service (No 2) Bill, 1997* seeks to establish an independent body to be known as the Courts Service (based on the report *Towards a Courts Service*, November 1996). If passed, the Bill will:

- Enable the Courts Service to assume the current functions of the Minister for Justice, Equality and Law Reform in relation to the administration of the courts
- Establish a board to determine policy for the service
- Provide for the appointment by the board of a chief executive who will have responsibility for day-to-day management matters
- Transfer court property to the proposed Courts Service, and
- Provide for the appointment of other staff to the service.

New civil disclosure rules not to be retrospective

There have been a number of representations to the Superior Courts Rules Committee concerning the new rules relating to disclosure in civil matters and it is understood at the time of writing that these matters are on-going. In the meantime, the rules have been amended to provide that *Rules of the Superior Courts 1986*, o39, rr45-52 (relating to disclosure) shall not apply to proceedings instituted before 1 September 1997 or to any report or statement coming into existence before that date or for the purposes of such proceedings.

Rules of the Superior Courts (No 8) (Disclosure and Admission of Reports and Statements) (Amendment) 1997 (SI no 471 of 1997)

When to strike out for want of prosecution

The court has a discretionary power to strike out an action for want of prosecution if two preconditions are satisfied:

- That the plaintiff is guilty of inordinate and inexcusable delay, and
- Such delay gives rise to a substantial risk that it is not possible to have a fair trial, or is likely to cause or have caused serious prejudice to the defendant.

The court's inherent jurisdiction is not just to strike out proceedings in which there was prejudicial delay in prosecuting, but also where there is delay in instituting the proceedings.
PMPA Ltd (In Liquidation) v PMPS Ltd (In Liquidation) (Costello P), 20 February 1997

DPP and district judge must have opportunity to make submissions

- In the circumstances of this case, the lack of opportunity afforded to the district judge and the Director of Public Prosecutions to make submissions at the hearing meant that as far as they were concerned there was a breach of the requirement of *audi alteram partem*.

The appellant appealed to the Supreme Court against a decision that the failure by a district fudge to advise the applicants/respondents of their constitutional right to legal aid was such a denial of justice so as to render the convictions void. The appellant contended that the trial judge should have processed the applicants' application by way of judicial review. In particular, the appellant was of the view that the matter should not have been decided without either the district judge or the Director of Public Prosecutions being given the opportunity of stating their views. In reply, the applicants/respondents contended that they were justified in proceeding under art 40.4.2. on the basis that it was a more expeditious form of proceeding. Furthermore, they resided outside of the jurisdiction, and it would have been very difficult for them to get bail pending a judicial review hearing, especially given the delays which pertained in the court system at the time. The court allowed the appeal.
McSorley v Governor of Mountjoy Prison (Supreme Court), 24 April 1997

Whether delay is reasonable depends on the circumstances

- The use of the word 'reasonable' in the *Civil Liability Act* indicates that circumstances could exist which justify some delay in the bringing of third party proceedings
- What is reasonable delay in a particular case depended upon the behaviour of the defendant or his advisors.

The plaintiff claimed that he suffered food-poisoning as a result of eating oysters in the defendant's hotel in 1991. In 1993, the plaintiff issued proceedings against the defendant. A notice for particulars was raised by the defendant and this was replied to in April 1994. Though O'Byrne letters were served on the proposed third parties, the applicants, in November 1993, it was not until the replies to particulars were furnished to the defendant that it was confirmed that the plaintiff was relying on the oysters as the cause of his injuries. The defendant was then advised to seek the opinion of a microbiologist on the issue of who was at fault for what had occurred. This opinion was not furnished until January 1995. On receipt of the opinion, the defendant filed his defence and liberty to serve third-party notices on the applicants was sought from the court. Liberty to serve was granted in May 1995. The applicants then applied to have the notices set aside on the grounds that they were not served on them as soon as was reasonably possible. The court refused the applicants the relief sought.
Patrick McElwaine v Paul Vincent Hughes (Barron J), 30 April 1997

TAXATION

Taxes (Consolidation) Act, 1997

This Act was signed into law by the President on 1 December 1997. (See (1997) 15 ILT 224.) Persons taking an interest in the changes which Budget 1998 makes to the tax code will be obliged to acquire a copy of this new Act, since all Budget references are to the new sections of the Act, as opposed to the old sections of the legislation consolidated by the Act.

Road Vehicles (Registration and Licensing) (Amendment) Regulations 1997 (SI no 405 of 1997)

These regulations provide for the calculation of road tax arrears at a revised rate (of $1/10^{th}$ of the annual rate of duty) from 1 November 1997, where there is a delay in either taking the initial licence (that is, the tax disc) for a motor vehicle; or in renewing an existing licence. Provision is also made for statutory declarations at any garda station in the case of applications for refunds of motor tax duty. The regulations came into operation on 1 November 1997.

Mooney v McSweeney (Morris J), 6 April 1997

Capital gains tax; allowable losses; debt; company; cash loan by MD and major shareholder with right to convert to ordinary shares; no conversion; company wound up; total loss of MD's loan; MD's chargeable gain on sale of premises; allowable loss claimed by reason of loss of the loan; refused on

The Law Reform Commission

SEMINAR

on

THE IMPLEMENTATION OF THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION, 1993

To be held on 11 March 1998.

The seminar is part of the consultation process of the Commission and follows the publication of our Consultation Paper on this subject last September.

The purpose of the Seminar is for the Commission to ascertain the views of as wide a range of interested parties as possible.

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ground that the loan was merely a debt; if transaction a simple debt, no allowance permitted for loss; allowance if transaction a 'debt on security'; case stated; whether allowable loss incurred for capital gains tax; characteristics of a 'debt on security'; loan on security contrasted with pure loan; characteristics of debt in question; whether difficulty in finding purchaser relevant; whether loan was one on security and, therefore, an allowable loss; *Capital Gains Tax Act, 1975*, ss4(12), 12, 46; *Income Tax Act, 1975*.

Held: Debts on security were identified by such added characteristics as enabled them to be realised or dealt with at a profit, or such characteristics as enabled them to be dealt with and, if necessary, converted into shares or other securities.

Increase in pension not income for tax purposes

- The increase in a widow's social welfare contributory pension, granted in respect of qualified children residing with her, was not, for income tax purposes, the income of the widow.

The respondent was a widow since 1989, and had five 'qualified children', in terms of the social welfare legislation, residing with her. This matter came before the High Court by way of case stated from an Appeal Commissioner. The question was whether it was correct to hold that the respondent was not liable to income tax on increases in the weekly rates of widows' social welfare contributory pension, paid to her in respect of each 'qualified child' who resided with her. The court answered the question in the affirmative.

O'Siochain v Neenan (Smyth J), 4 April 1997

TELECOMMUNICATIONS

Wireless Telegraphy Act, 1926 *(Section 3) (Exemption of Mobile Telephones) Order 1997* (SI no 409 of 1997)

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

Wireless Telegraphy Act, 1926 *(Section 3) (Exemption of Cordless Telephones) Order 1997* (SI No 410 of 1997)

This order provides for the exemption of DECT and CT2-CAI cordless telephones and PBXs and analogue cordless telephones operating in the frequency bands 31.025-31.325 MHz and 39.925-40.225 MHz from the requirement to be licensed under the *Wireless Telegraphy Act, 1926*.

TRANSPORT

Air Navigation and Transport (Amendment) Bill, 1997

This Bill, as presented by the Minister for Public Enterprise, aims to provide for the following matters: the setting up of Aer Rianta as a normal State body; the transfer of all assets currently vested in the Minister for Public Enterprise at Dublin, Shannon and Cork airports to Aer Rianta; the assignment to Aer Rianta of certain functions currently undertaken by the minister in relation to the management and development of the three State airports; and the amendment and up-dating of miscellaneous provisions of civilian aviation legislation.

Merchant Shipping (Commissioners of Irish Lights) Bill, 1997

This Bill has been passed by both Houses of the Oireachtas. (See (1997) 15 ILT 87.)

TRIBUNALS

Hepatitis C Compensation Tribunal Act *Regulations 1997* (SI no 440 of 1997)

These regulations set out certain rules governing practice and procedure before the Hepatitis C Compensation Tribunal. Matters covered include: submission of medical evidence; submission of vouchers in respect of special damage; the seal of the tribunal; and costs.

Hepatitis C Compensation Tribunal Act *(Number of Ordinary Members) Regulations 1997* (SI no 441 of 1997)

These regulations fix the number of ordinary members of the Hepatitis C Compensation Tribunal at 14.

Hepatitis C Compensation Tribunal Act *(Establishment Day) Order 1997* (SI no 443 of 1997)

This order fixes 1 November 1997 as the establishment day of the Hepatitis C Compensation Tribunal.

Hepatitis C Compensation Tribunal Act *(Reparation Fund) (Appointed Day) Order 1997* (SI no 443 of 1997)

This order fixes 1 November 1997 as the appointed day for the purposes of s11 of the *Hepatitis C Compensation Tribunal Act, 1997*.

VALUATION

In re the Irish Management Institute Premises (Geoghegan J), 1 May 1997

Valuation of premises; case stated; what factors could be considered when valuing industrial premises; whether the valuation tribunal wrongly considered certain factors when reaching their original decision.

Held: The disagreements between the parties were all matters within the jurisdiction of the tribunal, and unless it could be shown that the tribunal went clearly wrong in law, they could not now be reopened on a case stated.

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Council of the Law Society 1997/98

(Front row, l-r) Frank Daly, Past President; Michael V O'Mahony, Past President; Patrick A Glynn, Past President; Pat O'Connor, Senior Vice-President; Laurence K Shields, President; Geraldine Clarke, Junior Vice-President; Ken Murphy, Director General; Brian Sheridan; Angela Condon, Gerard Doherty. (Second row, l-r) Niall Farrell; Orla Coyne; Eamon O'Brien; Fionnuala Breen-Walsh; Philip Joyce; Paul Connellan; Keenan Johnson; John Costello; Patricia McNamara; Maeve O'Driscoll; Gerard Griffin; Hugh O'Neill; Elma Lynch. (Back row, l-r) Owen Binchy; Michael Irvine; James McCourt; Anthony Ensor; Donald Binchy; John Dillon-Leetch; Michael Peart; John Shaw; John Harte; Peter Allen; Ernest Cantillon; Ward McEllin; David Martin

Increased commitment to policy, communication and member services

Administrative structures within the Law Society would not normally be of much interest to members. However, an exception to this is the recent establishment within the Society of a new department of Policy, Communication and Member Services headed by Deputy Director General, Mary Keane.

The creation of the new Department is part of a progressive re-orientation of the Society with policy, communication and member services being areas to which the Society has devoted much increased emphasis since I arrived as Director General and to which I envisage even greater commitment in the future.

The three departments in the Society until now have been, in alphabetical order, the Education Department, the Finance and Administration Department and the Professional Practice Department. In addition, a number of staff members have reported directly to me. The creation of the more clear and coherent organisational structure around policy, communication and member services makes sense both for the organisation of the Society as a whole and for the members whom we serve.

Mary Keane (front row, second from left) with her new department: (back row) Mary Gaynor, Margaret Byrne; (second row) Patricia Doolin, Mary Kinsella, Cliodhna Goggin; (third row) Catherine Kearney, Eddie Mackey, Conal O'Boyle; (front) Andrea McDermott, Collette Carey, and Liz O'Brien

I believe that the creation of this new department shows the Society to be a dynamic organisation adapting to meet new and exciting challenges. I hope that, over time, the members whom we serve will come to see and agree with this.

Ken Murphy,
Director General

Society of Young Solicitors' autumn conference

The Society of Young Solicitors (SYS) held its autumn conference in Adare on 21-23 November 1997. It was a joint conference for solicitors and barristers.

The lectures chosen were highly topical. The first paper was delivered by Robert Eager, and dealt with refugees in Ireland. The paper highlighted the fact that the existing procedures do not deal with the problem satisfactorily, and recommended the speedy implementation of the provisions of the *Refugee Act, 1996.*

The second paper dealt with the legal fall-out from the millennium timebomb and was delivered by Sarah Gallagher. The paper referred to the potential problem which is expected to arise on 1 January 2000, because various computer systems may not be able to identify 2000 as a valid date. The paper explored the possible causes of action in contract and in tort.

The third paper dealt with the law of defamation and was delivered by Garret Cooney SC. The paper dealt generally with the principles involved in defamation and the proofs required in practice.

The conference was very well attended and in fact over subscribed. We were sorry not to be able to accommodate all of those who applied. We realise that not all solicitors receive their *Gazette* on the same day, and therefore conference application forms are received at different times. Procedures will be put in place to address this difficulty for future conferences.

We would like to thank our sponsors, principally National Irish Bank, whose continued support of our conferences is greatly appreciated. We are also extremely grateful to our other sponsors namely A&L Goodbody, Axxia Systems Ltd, Behan and Associates, Brady & Co Law Searches, Cara Data Processing Ltd, Castletown Press, Dictaphone, Digital Solutions, Document Systems Group, Doyle Court Reporters, Gaynor & McVeagh Renault, Inns Court Legal Costs Accountants, Intercompany Comparisons, Jurys Hotel Group, Kings Legal and General Stationery, Law Society of Ireland Pensions Fund, Norwich Union, Rochford Brady, Ryan Hotels, Ski Club of Ireland, the General Council of the Bar of Ireland and *The Sunday Business Post.*

Young turks (left to right): Alison Kelly, Fiona O'Connell, Karen O'Sullivan, Catríona Harrington and Marguerite Gorry at the SYS autumn conference

Pictured at the SYS autumn conference (left to right): David Scott, Limerick Bar Association; Suzanne O'Kennedy, Dublin; Robert Hennessy, Dublin; Eileen Scott, Limerick; Declan O'Sullivan, SYS chairman

Good deeds: Former head of conveyancing at Telecom Eireann's solicitors' office, John McGrath (left) being congratulated by Dr Eamonn Hall at a presentation ceremony to mark his retirement

New legal publishers

Bart Daly is back in legal publishing with two new companies, Inns Quay and First Law. Inns Quay is about to produce the *Irish courts guide* and will have seven other titles this year. First Law will focus on electronic publishing and has a number of projects in development.

After leaving the bar in the late seventies, Daly founded Round Hall Press with a number of others, and launched the *Irish law reports monthly*. In 1993, he and Edward Walsh SC founded Brehon Publishing, which along with Round Hall, was bought by the Thomson Corporation in 1995.

Daly stayed on as managing director of the new company, Round Hall Sweet & Maxwell, until June last year.

Justice Kevin O'Higgins (right) pictured with (left to right): Margaret O'Connell, solicitor; Paddy Glynn, solicitor; Laurence K Shields, Law Society President; and Siobhan Fahy, at a presentation to mark his elevation to the High Court

Book reviews

Krueger on United States passport law

Stephen Krueger

Crossbow Corporation (1996), General Delivery, Koror 96940, Palau, USA. Price US$75

Most people need to get a passport at some point in their life. It is a document with a number of functions: it gives its holder a form of identification; when its holder is abroad, it is generally regarded by foreign governments as providing evidence of citizenship (for example, to receive the services of consular officers abroad); and it generally gains the holder entry to foreign countries, subject to any visa requirements. As a passport is probably one of the most important documents that an individual will ever need, the extent of any right which an individual may have to a passport, and any limitations to that right, are of great significance.

Only states have the power to issue and, where appropriate, to withhold, passports. In Ireland, under the *Ministers and Secretaries Act, 1924*, it is one of the Department of Foreign Affairs' functions to grant passports. In the United States of America, it is one of the Secretary of State's functions. The important nature of a passport and the facilities that are afforded to its holder explain the detailed regime governing their issue in most countries, and the fact that questions relating to the grant of passports have been the subject of constitutional actions in a number of countries, including Ireland.

Krueger on United States passport law is a guide to US passport law. It deals in a very detailed way with all aspects of the US passport regime, including:

- Eligibility for a passport and the significance of citizenship and nationality
- The function of the US Department of State in regard to the issue of passports
- Ownership of passports (that is, ownership by the State Department as opposed to the citizen)
- Types of passport
- The format of passports
- Application procedures, and
- Administrative remedies against the State Department where it takes adverse passport actions against passport holders.

In addition, Mr Krueger analyses the jurisprudence of the US Supreme Court which has dealt with the extent of the right to travel abroad under the US Constitution. This is of particular interest to an Irish reader. The first US Supreme Court case on the constitutional right to travel and the related right to a passport, *Kent v Dulles*, was cited in the first Irish case which found that Irish citizens have a constitutional right to travel. As a corollary to that, they have a right to a passport subject 'to the obvious conditions which may be required by public order and the common good of the State' (see *The State v Attorney General (1979) IR 73*).

It would seem that since *Kent v Dulles*, the US Supreme Court has distinguished between the virtually unqualified right of interstate travel within the US and the 'right' to travel abroad which is now regarded as an aspect of the 'liberty' protected by the due process clause of the fifth amendment to the US Constitution. The significance of this in practice appears to be that the US government has a greater scope to withhold passport facilities than it would otherwise have.

Notwithstanding that *Krueger on United States passport law* deals with US law, this book may be of interest to anyone who has cause to deal with passport law, because its author provides an interesting account of the history of passports, of the nature of passports and of the principles which underpin their uses. G

Bridin O'Donoghue is an assistant legal adviser to the Department of Foreign Affairs. The views expressed here are of an exclusively personal nature.

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THE JUDICIAL APPOINTMENTS ADVISORY BOARD

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Notice is hereby given that one vacancy is due to arise in the Office of Ordinary Judge of the Circuit Court and that the Minister for Justice, Equality & Law Reform has requested the Board under Section 16 of the Act to exercise its powers under that section and to make recommendations pursuant to it.

Practising Barristers or Solicitors who are eligible for appointment to the Office and who wish to be considered for appointment should apply in writing to the Secretary of the Board, Office of the Chief Justice, Four Courts, Dublin 7, for a copy of the application form. Completed forms should be returned to the Board's Secretary on or before Friday13th February, 1998.

Applications already made in respect of vacancies in the Office of Ordinary Judge of the Circuit Court will be regarded as applications for this and all subsequent vacancies in the Circuit Court unless and until the Applicant signifies in writing to the Board that the application should be withdrawn.

It should be noted that this advertisement for appointment to the Office of Ordinary Judge of the Circuit Court applies not only to the present vacancy but also to future vacancies that may arise in the said Office during the six months period from the 22nd January 1998.

Applicants may at the discretion of the Board be required to attend for interview.

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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 6 February 1998)

Regd owner: Anthony Malone and Teresa Malone; Folio: 20114F; Land: Dwelling house and premises at Knockanish in the Barony of Truganackmy; Area: ordnance survey map ref 76-29-9; **Co Kerry**

Regd owner: Imelda Butler of 'Abbeydale', Kilternan, County Dublin (full owner of 1 undivided $^1/_2$ share); Folio: 18870; Lands: property situate on the west side of the road leading from Enniskerry to Golden Ball in the Townland of Kilternan Domain and Barony of Rathdown; **Co Dublin**

Regd owner: Paul Butler of 'Abbeydale', Kilternan, County Dublin (full owner of 1 undivided $^1/_2$ share); Folio: 18870; Lands: property situate on the west side of the road leading from Enniskerry to Golden Ball in the Townland of Kilternan Domain and Barony of Rathdown; **Co Dublin**

Regd owner: Joseph Somers; Folio: 5946; Lands: Killinpark Barony of Newcastle; **Co Wicklow**

Regd owner: Maurice G Collins of 4 Sherkin Gardens, Dublin 9; Folio: 85110F; Lands: 4 Sherkin Gardens, Drumcondra in the City of Dublin; **Co Dublin**

Regd owner: James Gleeson of Rathesa House, Garristown, County Dublin; Folio: 86293F; Lands: Townland of Garristown in the Barony of Balrothery West; **Co Dublin**

Regd owner: Patrick Dunny; Folio: 18341; Lands: Killinpark Barony of Newcastle; **Co Kildare**

Regd owner: Orlait Woods; Folio: 17806; Land: Carricknabrack; Area: 0a 1r 0p; **Co Leitrim**

Regd owner: John Patrick Kielty, Rooskey More, Culfodda, Ballymote, Co Sligo; Folio: 2589F; Townland: Roosky More Barony of Corran; Area: 1.238 acres; **Co Sligo**

Regd owner: Mary Pownall, c/o Terence Doyle & Son, Solicitors, 32 Nassau Street, Dublin 2; Folio: 4420F; Townland: Ballymacsherron and Ballymacsherron (one undivided 11th part); Area: 9a 1r 33p and 15a 1r 2p; **Co Mayo**

Regd owner: Morgan McMahon (deceased), Canon Island, Kildysart, Co Clare; Folio: 2640; Townland: Canon Island and an undivided moiety of portion of the bed of the river Shannon adjacent to Canon Island; Area: 110a 3r 2p and 50a 3r 17p; **Co Clare**

Regd owner: Mary Duggan; Folio: 16800; Lands: Ballyfair Barony East Offaly; **Co Kildare**

Regd owner: Joseph Gerard McIvor; Folio: 20357; Land: Three Trees; Area: 15a 2r 26p; **Co Donegal**

Regd owner: Gerard Warren, Liss, Abbeyknockmoy, Co Galway; Folio 37664F; **Co Galway**

Regd owner: Most Reverend Dominic Conway, Reverend Edward Higgins, Reverend Patrick Skeffington, St Mary's Sligo, Folio: 17059; Townland: Rosses Upper; Area: 2a 0r 16p; **Co Sligo**

Regd owner: Patrick Larkin (deceased); Folio: 19490; Land: Boolabawn; Area: 17a 3r 3p; **Co Tipperary**

Regd owner: Rosemarie Kelly; Folio: 21875f; Land: Carrickatlieve; Area: 54.456 hectares; **Co Donegal**

Regd owner: Elizabeth Lowndes of 65 Seatown, Swords, Co Dublin; Folio: 11670; Lands: Townland of Seatown West in the Barony of Nethercross situate to the east side of North Street in the village of Swords; **Co Dublin**

Regd owner: Patrick Joseph Purcell; Folio: 691F; Land: Inistioge; Area: 0a 1r 19p; **Co Kilkenny**

PRACTICE COMPARISON

The sampling of a representative test market of 25 firms has just been completed. The results will be aggregated to provide useful information for all firms through an article in the March *Gazette*. The objective of the survey is to give firms benchmarks on various criteria on which to measure the firm's performance, eg:

- Revenue per fee earner
- Fee earner, support staff ratio
- Profitability of various sized firms
- Profitability of various types of legal work etc.

The participants in the survey were entered into a draw for a weekend for two in the Berkley Court Hotel. The winner was Sean O'Brien of Sean O'Brien & Co, Old Blessington Road, Tallaght, Dublin 24.

GAZETTE

NEW ADVERTISING RATES

From the March issue, advertising rates in the *Professional information* section are as follows:

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All advertisements must be paid for prior to publication. Deadline for March Gazette: 20 February. For further information, contact Catherine Kearney or Andrea MacDermott on 01 671 0711.

Regd owner: Catherine Nevin; Folio: 19661; Land: Mulphedder; Area: 42a 1r 13p; **Co Meath**

Regd owner: Anthony Fallon, Lisnagirra, Athleague, Co Roscommon; Folio: 18372; Townland: Lisnasillagh; Area: 41a 3r 26p; **Co Roscommon**

Regd owner: John Joseph Scally; Folio: 10980 (closed to 7958F); Land: Reynella; Area: 5.532 hectares; **Co Westmeath**

Regd owner: Michael F Barrett; Folio: 22075; Townland; Listowel Barony Iraghticonnor; Area: 1.775 acres; **Co Kerry**

Regd owner: Antoinette Kenny and Jean McManus of 145 Ballygall Crescent, Finglas, Dublin 11; Folio: 38178L; Lands: Townland of Balbutcher in the Barony of Coolock; **Co Dublin**

Regd owner: Thomas O'Connor; Folio: 21678; Lands: Losset; **Co Meath**

Regd owner: John Begnall; Folio: 9136; Land: Milltown; Area: 1a 0r 13p; **Co Westmeath**

Regd owner: Michael Hennessey; Folio: 33608; Land: Modeshil; **Co Tipperary**

Regd owner: John Bosco Carvill; Folio: 69F; Land: Drumleck South; Area: Prop (1) 20.781 acres and Prop(2) 8.300 acres; **Co Monaghan**

Regd owner: Robert James Pogue; Folio: 16867 and 16868; Land: Bessbrook; Area: 8a 2r 25p and 24a 2r 5p; **Co Cavan**

Regd owner: John Guinan, Ballinree, Killyon, Birr, Co Offaly; Folio: 5694; **Co Kings**

Regd owner: Patrick Fitzgerald (Financial Controller of 51 Lower O'Connell Street, Dublin and of 30 Rowanbryn, Blackrock, Co Dublin; Folio: 1904F; Lands: Townland of Newtown Castlebryn in the Barony of Rathdown; **Co Dublin**

Regd owner: Catherine R Howe (deceased) of 17 Offaly Road, Cabra, Dublin; Folio: 18382F; Lands: 17 Offaly Road situate in the Parish of Grangegorman and District of North Central; **Co Dublin**

Regd owner: Annie Ward; Folio: 8485; Lands: Usk and Killinane in the Barony of Narragh and Reban East and Barony of Kilcullen respectively; **Co Kildare**

Regd owner: Edward McCarthy (deceased) and Mary Christina McCarthy both of 47 Monville Road, Stillorgan, Co Dublin (7 Woodcliff Heights, Howth, Co Dublin; Folio: 34616L; Lands: Townland of Howth in the Barony of Coolock; **Co Dublin**

Regd owner: Alphonsus Mulroe (otherwise Munroe), Neale Road, Ballinrobe, Co Mayo; Folio: 48419; Townland of Knockfereen in the Barony of Kilmaine; **Co Mayo**

Regd owner: Ailish McFadden (otherwise Ailish Nic Phaidin); Folio: 42662; Land: Aghangaddy; Area: 8a 1r 19p; **Co Donegal**

Regd owner: John Smith; Folio: 19981; Lands: Pollamore Far Barony of Loughtee Upper; Area: 0a 1r 6p; **Co Cavan**

Regd owner: John Fitzgerald and Patrick Deasy; Folio: 22037F; Land: Currahally, Muskerry East, Bandon; Area: 0.2825 hectares; **Co Cork**

Regd owner: Patrick Monahan, Claregalway, Co. Galway, Folio: 10344, **Co Galway**

Regd owner: Dermot Moriarity of St. Josephs School for the Deaf, Cabra, Dublin 7, Folio: 9958F; Lands: Townland of Edmondstown in the Barony of Rathdown; **Co Dublin**

Regd owner: Joseph Taylor, Moyasta, Kilrush, Co Clare; Folio: 18143; Townland: (1) Moyasta, Barony of Moyarta, (2) Moanmore Lower, Barony of Moyarta, (3) Moanmore South, Barony of Moyarta, (4) Carrowncalla North, Barony of Moyarta; Area: (1) 14.706 acres, (2) 1.944 acres, (3) 1.794 acres, (4) 12.875; **Co Clare**

Regd owner: Elizabeth Ryan; Folio: 21799F; Land: Brodeen; **Co Tipperary**

Regd owner: William and Rosara O'Hagan; Folio: 18485; Land: Srah; Area: 0a 1r 3p; **Co Kings**

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Regd owner: Patrick Bernard Christal of 6 Elm Mount View, Beaumont, Dublin 9; Folio: 765L; Lands: Property known as 143 Iveragh Road situate to the west of the county road leading from Dublin to Swords in the Parish and District of Clonturk; **Co Dublin**

Regd owner: Edward Dillon; Folio: 28009; Land: Breansha; Area: 42.525; **Co Tipperary**

Regd owner: Edward Cussen; Folio: 3120; Lands of Mount Keeffe in the Barony of Duhallow, Co Cork; **Co Cork**

Regd owner: Thomas and Ann Rohan; Folio: 6162F; Land: Townparks; **Co Kings**

Regd owner: Mary Darcy and John Culleton; Folio: 20356; Land: Whitechurch; **Co Wexford**

Regd owner: Gerry Herwood, Knockdoe, Claregalway, Co Galway; Folio: 7167F and 7168F; Townland: Carrownmoreknock; Area: 0a 3r 39p and 0a 3r 39p; **Co Galway**

Regd owner: John Tann (Ireland) Limited (Limited Liability Company) of Harcourt House, Harcourt Street, Dublin; Folio: 37401L; Lands: Townland of Bluebell in the Barony of Uppercross; **Co Dublin**

Regd owner: Sadie Veronica Bonner; Folio: 23362; Land: Tullyally; Area: 7.35 hectares; **Co Donegal**

Regd owner: Bernard Leahy; Folio: 329L; **Co Longford**

Regd owner: Michael Furlong and Margaret Mary Delaney; Folio: 223L; Land: City of Kilkenny; Area: 0a 0r 10p; **Co Kilkenny**

Regd owner: Bridget Greene; Folio: 34762; Land: Meenmore; Area 0a 0r 30p; **Co Donegal**

Regd owner: Ann O'Donnell; Folio: 42220; Land: Stranorlar; Area: 0a 0r 29p; **Co Donegal**

Regd owner: Patrick Butterly formerly of 'Ferndale', Channel Road, Rush, County Dublin and now of Swords Road, Malahide, County Dublin; Folio: 4807; Lands: Townland of Rush in the Barony of Balrothery East; **Co Dublin**

WILLS

Kelly, Stephen, deceased, late of Carroweragh, Kilshanny, Co Clare. Would any person having knowledge of the whereabouts of the original will dated 6 August 1982 of the above named deceased who died on 18 September 1983, please contact Messrs John Casey & Company, Solicitors, Bindon House, Bindon Street, Ennis, Co Clare, tel: 065 28763 fax: 065 20519

Kelly, Patrick Christopher, deceased, late of 145 Ballygall Road East, Finglas, Dublin and formerly of 29 Sistova Road, Balham, London. Would any person having knowledge of the whereabouts of a will dated 16 October 1991 or a subsequent will of the above named deceased who died on 9 May 1997, please contact Joynt & Crawford, Solicitors, 8 Anglesea Street, Dublin 2, tel: 6770335, fax: 6777274

Doyle, Mary, deceased, late of 20 Arbour Close, Brentwood, Essex, England and formerly of Cappagh, Kilgobnet, Beaufort, Co Kerry. Would any person having knowledge of the whereabouts of the original will/codicil of the above named deceased who died on 6 June 1997, please contact Messrs JB Healy Crowley & Company, Solicitors, Killorglin, Co Kerry, tel: 066 61116, fax: 066 61733

O'Callaghan, John, deceased, late of 97 Kilalla Gardens, Knocknaheeny, Cork, formerly of 9 Sextons Park, Ballincollig, Co Cork. Philpott Creedon & Company, Solicitors, 43 Grand Parade, Cork, would be obliged if solicitors practising in the area of Cork city would check their wills register to ascertain if they hold a will of the above named deceased. Please contact the foregoing firm of solicitors under reference DC/SMcA tel: 021 271801 with regard to same

Barnes, Sean (otherwise John), deceased, late of Rednagh, Aughrim, in the County of Wicklow. Would any person having knowledge of the whereabouts of a will or any information relating to a will of the above named deceased who died at St Colman's Hospital, Rathdrum, on 31 July 1997, please contact CJ Louth & Son, Solicitors, Ferrybank, Arklow, Co Wicklow, tel: 0402 32800, fax: 0402 31126. Likewise, would any person having knowledge of the next of kin or any relations of the said Sean (otherwise John) Barnes please contact the said firm of solicitors

Power, Bridget, deceased, late of 'Bonmahon', Carrigeen Park, Ballinlough Road, Cork City. Would any person having knowledge of the whereabouts of the original will dated 30 July 1969 of the above named deceased who died on 23 January 1978, please contact Charles Hennessy, Solicitor of JW O'Donovan, Solicitors, 53 South Mall, Cork, tel: 021 275352, fax: 021 273704

Feighery, Michael, deceased, late of 'St Sarans', Killygally, Belmont, Co Offaly. Would any person having knowledge of a will executed by the above named deceased who died on 8 July 1997, please contact Hyland & Company, Solicitors, Dooradoyle Road, Limerick, tel: 061 301166, fax: 301466

Moroney, Martin, deceased, late of Ballintotty and Cunnahurt, Nenagh, Co Tipperary. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 25 July 1997, please contact MacGrath & Company, Solicitors, 51 Kenyon Street, Nenagh, Co Tipperary, tel: 067 33455, fax: 067 33462

Callaghan, John (otherwise John O'Callaghan), deceased, late of Glenthonacash, Ballyspillane, Midleton, Co Cork. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 30 August 1997, please contact Moloney & McCourt, Solicitors, Midleton, Co Cork, tel: 021 63107, fax: 021 631349

McDermott, Ann, deceased, late of Ofalia House, Edenderry and Derrymullen, Allenwood, Co Kildare. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 28 November 1997, please contact Byrne & O'Sullivan, Solicitors, Windsor Lodge, Edenderry, Co Offaly, tel: 0405 31522, fax: 0405 31828

Doyle, Margaret, deceased, late of 5 Rosary Road, Maryland, Dublin 8. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 27 December 1997, please contact Angela Marron, 5 Rosary Road, Maryland, Dublin 8, tel: 4532003/4570088

Kennedy, Anne, deceased, late of 18 Coolnevaun, Stillorgan, in the County of Dublin. Would any person having knowledge of the whereabouts of a will dated 12 March 1997 executed by the above named deceased who died on 12 May 1997, please contact Owen O'Mahony & Company, Solicitors, 5 John's Bridge, Kilkenny, tel: 056 61733, fax: 056 65762

Shoebridge, Walter, deceased, late of 171 Killester Avenue, Artane, Dublin 5. Would any person having knowledge of the whereabouts of the original will and testament of the said Walter Shoebridge dated 28 February 1996, who died on 29 May 1997, please contact O'Connor & Bergin, Solicitors, Ocean House, 26/31 Arran Quay, Dublin 7, tel: 8732411, fax: 8732517

Costelloe, Patrick, deceased, late of Lisheenkyle, Oranmore, Co Galway, Farmer. Would any person having knowledge of a will executed by the above named deceased who died on 7 December 1997 at University College Hospital Galway, please contact VP Shields & Son, Solicitors, Athenry, Co Galway, tel: 091 844443, fax: 091 844538

Lyons, John, deceased, late of Gorta Ficka, Crusheen, Co Clare and Carlow. Would any person having knowledge of a will execut-

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ed by the above named deceased who died on 24 May 1997, please contact John S O'Sullivan, Solicitor, 14 Castle Street, Carlow, tel: 0503 30833, fax: 0503 30256

Gilhooly, Thomas, deceased, late of Boherroe, Old Pallas, Pallasgreen, Co Limerick. Would any person having knowledge of a will executed by the above named deceased who died on 8 January 1998, please contact Messrs Vincent McCormack & Company, Solicitors, Bank Place, Tipperary Town, tel: 062 52899, fax: 062 52944

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Temporary solicitor required, part-time would suffice – Clontarf Area. Reply to **Box No 13**

MISCELLANEOUS

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

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

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

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

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

MIDLANDS
Substantial practice for sale. Owner retiring. Would consider outright sale or sale of interest. Reply Box No. J/F 01

Northern Ireland solicitors providing an efficient and comprehensive legal service in all contentious/non-contentious matters. Dublin-based consultations and elsewhere. Fee apportionment. ML White, Solicitors, 43-45 Monaghan Street, Newry, County Down, tel: 068144, fax: 08 01693 60966

Mature apprentice with business experience due to qualify this year wishes to purchase practice in South Munster. Options welcomed and considered. Reply to **Box No 14**

For sale: publican's ordinary seven day licence attaching to 24/25 Main Street, Roscrea, Co Tipperary. Replies to O'Connor, Menton & Company, Solicitors, Roscrea, Co Tipperary, tel: 0505 21720

Licence: ordinary seven day publican's licence for sale. Contact Chambers & Company, Parliament Street, Ennistymon, Co Clare, tel: 065 71150, fax: 065 71384

For sale: ordinary seven day publican's licence – Co Sligo. Would suit development in border counties. Contact Rochford, Gallagher & Company, Solicitors, Tubbercurry, Co Sligo, tel: 071 85011

Fire-proof, 20-Hour, Chubb filing cabinet, two drawer, £475, tel: 086 8102099

Solicitor has offices to share or rent – Inn's Court. Reply to **Box No 15**

LOST TITLE DEEDS

In the matter of the *Registration of Titles Act, 1964* and of the application of Michael Laffan and Patrick Laffan in respect of property in High Ridge Green, Kilmacud, County Dublin

Take notice that Patrick and Michael Laffan of c/o Desmond PH Windle & Co, Solicitors, 112 Morehampton Road, Donnybrook, Dublin, has lodged an application for their registration on the Freehold Register free from encumbrances in respect of the above mentioned property.

The original documents of title specified in the schedule hereto are stated to have been lost or mislaid. The application may be inspected at this registry.

The application will be proceeded with unless notification is received in the registry within one calendar month from the date of publication of this notice that the original documents of title are in existence.

Any such notification should state the grounds on which the documents of title are held and quote reference no 97DN18702. The missing documents are detailed in the schedule hereto.

Dated 3 December 1997, M O'Neill, Chief Examiner of Titles

Schedule

Lease dated 18 March 1955 General and Industrial Corporation Limited to Michael McInerney. Assignment dated 29 July 1964 Michael McInerney to Patrick Laffan

O'Connor, Mr Peter Allan, 33 Eglinton Road, Dublin 4. Would any person with knowledge of the whereabouts of the original documents of title of the above named in respect of premises **1 Idaville, Sharman, Crawford Street, Cork,** please contact John O'Connor, Solicitors, 168 Pembroke Road, Ballsbridge, Dublin 4, tel: 6684366, fax: 6684203

ENGLISH AGENTS:
Agency work undertaken for Irish solicitors in both litigation and non-contentious matters – including legal aid.

Fearon & Co, Solicitors,
Westminster House, 12 The Broadway, Woking, Surrey GU21 5AU.
Tel: 0044 1483 726272
Fax: 0044 1483 725807

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