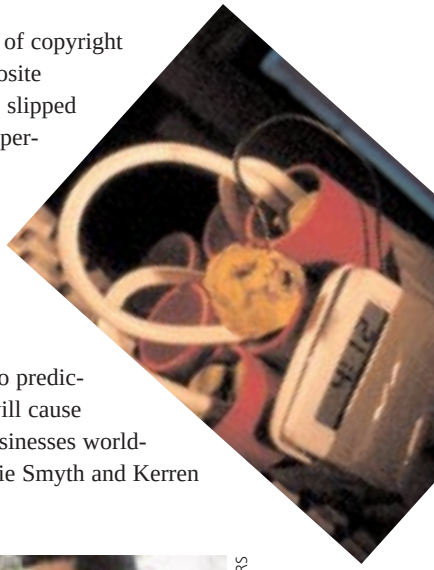
GAZETTE

REGULARS

COVER PIC: ROSLYN BYRNE



PIC: POPPERFOTO/REUTERS

No English fans need apply (see page 5)

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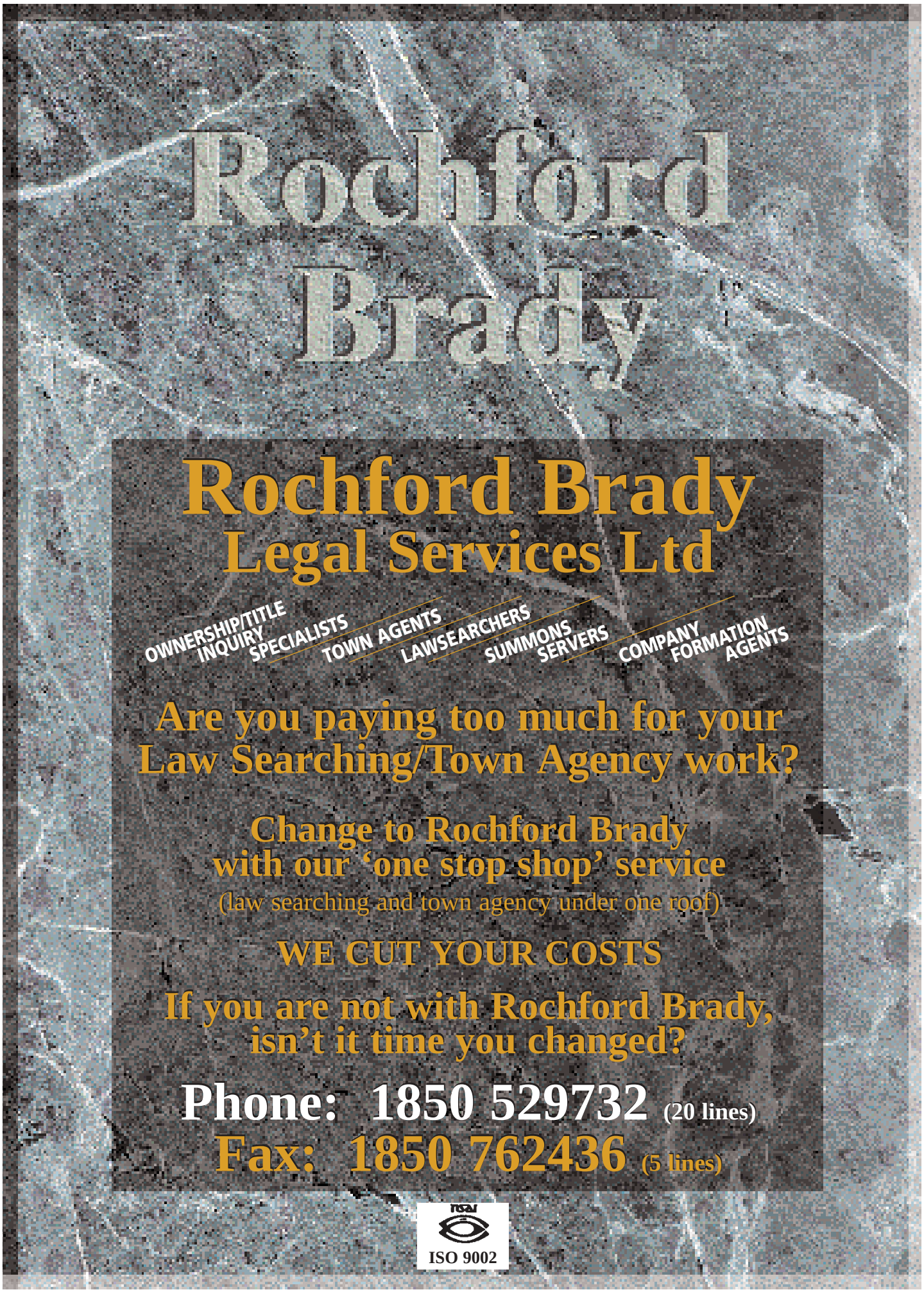
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Section 32 and the rights of clients

This month I wish to touch briefly on the area of the proposed designation of solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*. As you know, the 1994 Act gives effect *inter alia* to the EU money laundering directive. However, as part of its anti-crime package, the Government has now proposed extending the reach of section 32 of the 1994 Act to solicitors. It is important to bear in mind that the solicitors' profession is already covered under the *Criminal Justice Act* by virtue of the provisions of section 31, which makes it an offence for anybody to advise or assist in relation to the transfer or removal of any property which represents the proceeds of drug trafficking.

The Law Society has grave concerns about the proposed designation of solicitors, particularly in relation to the impact it might have on the individual's constitutional right against self-incrimination and on a client's constitutional rights of access to a solicitor. Designation could mean that solicitors have to report to the Gardaí even the mere suspicion of criminal activity on the part of a client who might have shared information with his solicitor on a confidential basis. It is inherent in the very nature of citizens' rights of access to a solicitor that they must not be impeded by fear or suspicion from obtaining the legal advice they require. This right could be compromised by the very possibility of compulsory legislative disclosure by a solicitor.

The privilege which surrounds professional communications is no mere technical rule of law, but is the very foundation of the relationship between solicitor and client. The client must feel entirely free to be completely open and candid with his solicitor, absolutely confident that nothing will be repeated, for only thus can a solicitor give the most effective advice. The Law Society regards any violation of these rights with the utmost concern, and I cannot stress strongly enough the necessity for these issues to be addressed prior to any designation of the solicitors' profession.

Solicitors are anxious to play their full part in the fight against crime, but the citizen's constitutional right to legal privilege and confidentiality in relation to what they tell their solicitor, as well as those other important constitutional rights against self-incrimination and access to legal advice, must not be undermined.

While unashamedly supporting the long-established principles which underpin the solicitor/client relationship, the profession must be equally aware of new developments affecting both lawyers and society in general. You will note that, on page 9 of this issue, there is a report on the work done by internationally-renowned defence lawyer Barry Scheck. While he may be more famous for his representation of high-profile clients such as Louise Woodward and OJ Simpson, Scheck sees his primary role as the promotion and development of new evidentiary systems involving DNA, which he believes should surmount the traditional rules governing the exhaustion of legal remedies. Undoubtedly his work raises questions about the proper balance between the rights to privacy of the individual and the necessity to vindicate innocent convicted persons, but it also highlights the way in which technological advances can enhance traditional procedures.

The cover story this month deals with the impact of technological developments on the day-to-day practices of solicitors. The probability is that e-mail and the Internet will quickly become as integral a part of every solicitor's office as the fax machine. The Law Society is currently developing a Web site designed to provide the profession with the most up-to-date source of relevant information and we hope to go 'live' in the Autumn.

Whether it's in the DNA world of Barry Scheck, on the World Wide Web or in the familiar surroundings of our own offices, we must be prepared to embrace progressive developments while steadfastly adhering to traditional values and principles and protecting the citizen's constitutional rights.

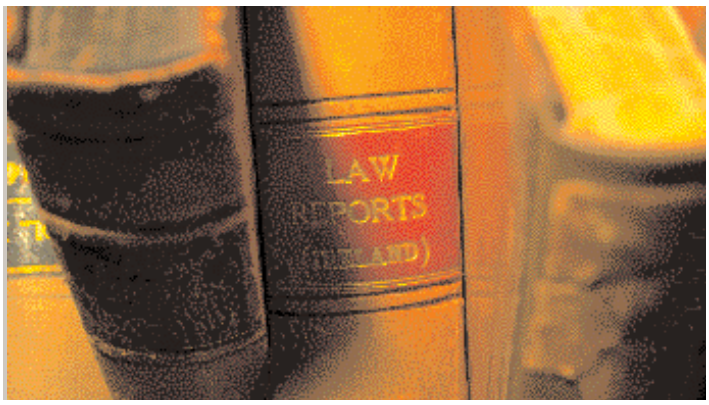
Laurence K Shields
President

In praise of the District Court

Recently I read a tribute to the judges of the District Court. It was written by Sir James O'Connor, solicitor, barrister and judge extraordinary in 1925. Sir James's tribute was contained in the preface to *A digest of criminal and quasi-criminal law* (1925) by barrister George Gavan Duffy, which itself was written as a supplement to Sir James's own book *The Irish justice of the peace*.

First, it may be appropriate to mention something about Sir James. Sir James was admitted as a solicitor in Ireland in 1894 and, in 1900, having ceased to be a solicitor, he was called to the Bar. Having taken silk in 1908, he became Solicitor General for Ireland in 1914, Attorney General for Ireland in 1917, judge of the Chancery Division in 1918 and, some months later, a Lord Justice of Appeal at the age of 46. He wrote several textbooks including *The licensing laws of Ireland*, *The Motor Car Acts*, *The Irish justice of the peace* and *History of Ireland 1798 to 1924*. Retiring on the abolition of the Court of Appeal in the new Irish State, Sir James became a member of the Privy Council and received a knighthood in 1925. He then practised at the Bar in England. Subsequently he returned to Ireland and was readmitted as a solicitor on certain terms. He died on 29 December 1931.

In his preface to the *Digest*, Sir James noted that the evolution of modern society had immensely increased the range of the judge's duties in the District Court. He pointed out that in earlier days the category of criminal offences was small and the offences themselves were of a quality that had nothing subtle or complex about them. They were, in the main, assaults upon the person or property of a simple, direct, visible character. But he noted that by 1925 things had changed. 'We are becoming, each day, more and more machined units of the State, and have to regulate our conduct by multifarious and constantly increasing statutes and rules intended for the public good', he wrote. How little has changed! Sir James noted that the enterprising but dishonest vendor of commodities lived in an atmosphere from which at all times public functionaries were liable to emerge with drastic powers. He noted that the possibilities of future police and magisterial inquisition and punishment were limitless. He noted that when the Wellsian concept of an apparatus that would enable the eye to pierce a brick wall and the ear to hear anything within a five mile range took shape, 'we may expect a monopoly [of truth] in the judges and the police who will use such devices to see if our tap is wasting water, or if our lips are uttering any treasonable formula'.



PIC: ROSLYN BYRNE

A judge is like a fish out of water without a book by his side, apparently

A great power in the land

The judge of the District Court has become a great power in the land, according to Sir James. The judge brings to the discharge of the duties of office a trained legal mind, 'a nose for evidence' and a certain 'aloofness' appropriate to the office.

Sir James considered, in effect, that a judge is like a fish out of water unless he has a book by his side. Urging judges to read the *Irish Law Times*, he noted that the sight of certain legal publications on the judge's breakfast table on Monday mornings would enable the judge to begin the week with the reflection that he is in touch with the world of legal thought.

Sir James then contrasted magistrates of an earlier period with the efficient new judge of the District Court. He noted that in previous times some magistrates knew no law and vaguely trusted to Divine inspiration, which was not usually forthcoming, to help the magistrate out of difficulty. 'He was domineering, choleric to the verge of apoplexy, and sometimes bibulous', he wrote. Now Sir James noted that judges of the District Court are 'models of dapper efficiency and legal lore – in two languages'. Under their superintendence the judicial work progresses smoothly. George Gavan Duffy, later president of the High Court, noted in his foreword that the creation of the District Court established a new landmark; the experiment had been a signal success and the authority of the judge in the District Court had grown steadily. He noted that the jurisdiction of the court had expanded with almost bewildering rapidity between British statutes, rules and orders, and the plethora of Irish Acts, decrees and regulations, to say nothing of years of accumulation of Irish, Scots and English case law.

In advising District Court judges, Sir James concluded: 'Be merciful to the first offender. We have all offended, not only once but many times. Encourage every honest attempt at improvement'. I have had the privilege of appearing professionally before many judges of the District Court and can state with pride that these words of advice have been fulfilled to the letter. G

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

Eat football, drink football, fight football!

World Cup fever, as well as providing a month of exhaustive football coverage, has raised a number of matters of interest to lawyers, ranging from the deportation of hooligans to the thorny question of whether Wimbledon FC should move to Dublin.

As with so many other issues, European Community law has its part to play in determining the answer. The impact of Community law on sports in general is considerable. In particular, where questions of movement of persons are concerned, it will almost always be the case that national rules and regulations will be subservient to the superior application of Community law. This is the case regardless of whether we are talking about players, teams or fans.

As long ago as 1974, in a case brought against the International Cycling Union, the European Court recognised that the composition of national sports teams is not affected by the prohibition on discrimination on grounds of nationality. But the court also pointed out that this exemption from the normal rule, which is otherwise the guiding principle of Community law, applied only in those cases where the formation of the team was purely a question of sporting interest and as such had nothing to do with economic activity.

After the famous *Bosman* case in 1995, it is now accepted that the rules of the *EC treaty* apply throughout professional soccer. Modern professional soccer is, at least in most of Europe, a commercial economic activity. The content of Premier League teams in England is certainly not 'purely a matter of sporting interest', even if this is what concerns the fans most of all. But the fans are only part of the picture. The other important participants are the players, other employees of the clubs, and the shareholders.

So while the English national team may still be composed solely of English nationals, no restriction is permitted on the number of players from other Member States that may take part in an English Premier League team.

PIC: POPPERFOTO/REUTERS

Have thug, will travel: an English 'fan' is arrested by French police

That does not mean that Community law has no part in regulating the World Cup. Two issues immediately come to mind. First, the appalling allocation of tickets by the French was the object of attention for the European Commission's competition authority. The restrictive practices and abuses involved in advertising and selling the tickets was alleged to be in breach of articles 85 and 86 of the *EC treaty*.

Drunken English

Secondly, the activities of the French police in tackling football hooligans must be appraised in the light of the rights of Community nationals to travel to see their national teams play. All fans who travel to see a team play in another Member State are, by their nature, taking advantage of their right under Community law of freedom to receive services. Article 59 of the *EC treaty* gives them the right to travel. Limitations on the right to freedom of movement may be justified only on grounds of public policy, public security and public health.

Any exercise of such a limitation by the national authorities must comply with another fundamental principle of Community law – proportionality. In other words, the French police must act within clearly defined limits. In particular, it is quite unlawful to brand all fans, or all English fans, or even all drunken English fans, as a threat to public security. Deportation may only be carried out in respect of specific individuals against whom there is sufficient evidence to show that they constitute such a threat. It is not to be used as a weapon *pour encourager les autres*. (Somebody might also care to tell the British Prime Minister, Tony Blair, that deportation from another country is no ground for dismissing that person from his employment.)

On the question of Wimbledon FC migrating to Dublin, a number of issues arise for consideration. First, it is obvious that the proposed transfer falls within the scope of application of the *EC treaty*. EC law guarantees the right to transfer an economic activity from one place to another within the Community. (It is true that there may be ancillary issues concerning the means of transfer, such as whether a new Irish company might need to be established in order to comply with tax and company law obligations, but these are of no real concern for present purposes.) It follows that the shareholders of the Wimbledon club have the right under Community law to move to Dublin.

The next question is whether either the English or Irish football associations could refuse to allow Wimbledon to play in the English Premier League. That involves much more difficult questions of public policy, which will no doubt be hotly debated in the months ahead. A recent, wholly unscientific, straw poll carried out in a London pub among my English lawyer friends one Friday evening found an overwhelming desire to see Wimbledon move to Dublin, so that they could have an excuse for a weekend in Ireland. Of course, there are important issues concerning the knock-on effect on Irish clubs. But, after France '98, the decisive issue might be whether the Irish really want the trouble associated with English soccer spilling onto their streets every fortnight. G

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

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"Undoubtedly, one of the main reasons for the success over many years of the Law Society Yearbook and Diary has been the fact that all the Society's proceeds from the diary's publication go to the Solicitors' Benevolent Association. I hope that you will once again support the diary and in doing so also support the Solicitors'' Benevolent Association."

Director General

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Less is more?

From: Richard Irwin, Irwin Kilcullen & Company, Cork

I was delighted to see your article on ten of Dublin's top pubs published in the June issue of the *Gazette*. No doubt each of these highly profitable enterprises was milked for a handsome sum in return for this publicity. Very few members of the licensed trade have had such a rare and potentially lucrative opportunity to reach every solicitor in the country in such a well presented high-tech format. No doubt we will all receive news of a reduction in our licence fees for the coming year.

On the other hand, I could be wrong. Maybe some of my contribution to the Law Society has been spent on producing this article. If this is the case, I take strong exception and consider it a profligate waste of resources.

All I expect from the *Gazette* is to be kept up to date with the latest legal developments by way of practice notes and articles. We do not need a glossy format or to pay for other people to advertise in a magazine which we fund. It would be preferable to see the resources of the Law Society being spent on beefing-up practical assistance to practitioners rather than financing this type of article. I think that my views reflect those of many of my colleagues.

The editor replies:

Actually, last year all ten issues of the Gazette *cost you the grand total of 60p. This year we are confident that the magazine will make a profit for the first time in its 90-year history and actually give something back to the Law Society – still, I take your point.*

Dumb and dumber

From: Malachy Boohig, Malachy Boohig & Company, Co Cork

I discovered the following comments from medical records in a recent copy of the *Readers' digest*. They have definitely not been doctored:

- 'Since the patient stopped smoking, his smell is beginning to return'.
- 'The patient is a 65-year-old woman who fell. This fall was complicated by a lorry rolling over her'.
- 'For his impotence, we will discontinue the medication and let his wife handle him'.
- 'She is quite hard of hearing. As a matter of fact, she can't hear at all in the left eye'.
- 'She has no rigours or shaking chills, but her husband states that she was very hot in bed last night'.
- 'Sinuses run in the family'.
- 'He was bitten by a bat as he walked down the street on his thumb'.
- 'The patient was advised to force fluids through his interpreter'.
- 'She is to refrain from sexual intercourse until I see her in the office.'

From: Shaun Elder Shaun Elder Solicitor, Limerick

Recently I discovered an interesting typo. When writing to the local garda superintendent seeking information about a case, a particular member of the force was referred to as 'Deceptive Garda X'. What an accolade!

Malachy Boohig wins the bottle of champagne this month.

Woodward lawyer warns on DNA evidence

Tough statutory measures will be needed to protect suspects' rights when Gardaí begin using DNA databanks in criminal investigations, according to Barry Scheck, the American lawyer who successfully defended Louise Woodward and OJ Simpson.

Scheck is best known for his role in a number of high-profile criminal trials in the United States but he spends most of his time running the Innocence Project in the prestigious Cardozo Law School in New York. The project has so far helped exonerate 55 wrongly-convicted prisoners with the help of DNA evidence.

But despite the fact that DNA evidence is powerful enough to overturn convictions that have stood for ten or 20 years, Scheck told the *Gazette* during his recent visit to Ireland that the storage and use of this information has to be strictly regulated by legislation to ensure it is not abused and does not itself lead to miscarriages of justice.

'You have to have a lab with the highest standards in quality assurance and you need to train the police to collect the evidence so its integrity is preserved', he said. 'When the samples are stored, you need to make sure that no-one can access them except for the purposes of identification in a criminal case'.

DNA evidence is used in criminal cases in this jurisdiction and there are plans to establish a databank of samples which would allow Gardaí to compare evidence taken from a crime scene with stored samples. But Scheck warned that safeguards need to be laid down clearly in legislation before we set up such a databank.

'Before anyone goes down the road of collecting and storing DNA samples, society needs to make a decision about how it's going to be used, and that means you need legislation', he stressed. The safeguards should also ensure that samples taken from suspects who are subsequently acquitted should be destroyed.

In the US, samples from convicted violent felons and those taken from crime scenes are the only types stored. But in the UK, biological evidence taken from arrestees – who may be cleared – are taken and stored along with those from people convicted of felonies or misdemeanours, including juveniles. There are currently 250,000 samples banked in the UK, a figure set to reach five million by 2010. The US has a backlog, largely because different states use different testing methods. The system in both countries allows the authorities to compare samples taken from the crime scene with those from the existing databank and from suspects, if there are any.

Barry Scheck: 'society needs to make a decision'

Scheck stressed that DNA evidence is a powerful tool because it holds so much intimate information. The samples can pinpoint racial characteristics, as well as a whole range of details about the individual and their family, such as their susceptibility to particular diseases and even their hair colour in some cases.

The potential for abusing this information is huge, he said. At a basic level, samples could be mishandled or contaminated, as they were in the OJ Simpson case. In another scenario entirely, the information could theoretically be used to incarcerate innocent people on the basis that they were genetically disposed to crime.

Scheck pointed out that the law in one American state allows for the civil commitment of people proven to be child sex offenders. 'The statute talks about "inherent characteristics". Profiling could be used to show this, as there is a suspicion amongst geneticists that the causes of child abuse could be genetic rather than environmental', he argued during a lecture at Trinity College, Dublin, recently.

But he does believe that DNA evidence has revolutionary potential. He told the story of Marine Corporal Kevin Greene, who was convicted on his wife's testimony that he beat her into a coma during the final month of her pregnancy. Eighteen years later, as the police were compiling their DNA databank, they came across a series of unsolved murders, carried out by the 'bedroom basher'. All the victims were women who had been raped and beaten to death in their own beds.

Subsequent DNA comparisons showed that a man named Parker, already in jail for another offence, may have been the killer. When he was questioned, Parker confessed to the bedroom killings, and to the attack on Greene's wife. DNA evidence also showed he was responsible for this. Greene was released – and has since divorced.

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 June: Michael Collier, 2 Ross Terrace, Malahide, Co Dublin – £2,413; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £706.25; Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £4,264.75; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £9,588.

BRIEFLY

Unlucky strike for tobacco company in USA

Litigators had a lucky strike against American tobacco giant Brown and Williamson recently. The company has been ordered to pay £625,000 ($1 million) to the family of Roland Maddox (67), who died from cancer after years of smoking its famous *Lucky Strike* brand of cigarettes. A jury in Jacksonville, Florida, found that the company had been negligent, made a defective product, and conspired with other tobacco product manufacturers to hide the dangers to health posed by smoking.

Registrar vacancy in Wexford

The Department of Justice is seeking a new county registrar for Wexford. Both the Law Society and the Bar Council have been informed of the vacancy. Anyone interested should contact the Department's courts division.

Builders to down tools

The building industry will grind to a halt later this month – but only for its annual two-week holiday. Workers will down tools on 20 July and return looking tanned and fit on 4 August, after the bank holiday. From this year, builders will take their holidays at the end of July instead of at the traditional time of early August.

Ireland ratifies new ILO conventions

Ireland has ratified two International Labour Organisation conventions aimed at improving conditions in the catering and exploration industries. ILO *Convention 172* requires the Government to ensure that all hotel and restaurant workers are not excluded from minimum standards governing working hours adopted at national level. *Convention 176* demands that the State appoint a competent body to monitor and regulate health and safety in mines. It also lays down employers' responsibilities for protecting their workers' safety in mines.

LAW SOCIETY

Celebration Ball

THIS YEAR THE SOCIETY CELEBRATES *20 years* AT BLACKHALL PLACE. TO MARK THE OCCASION A *CELEBRATION BALL* WILL BE HELD IN A MAGNIFICENT MARQUEE ON THE GROUNDS ON FRIDAY, 17 JULY 1998.

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First US firm opens in Dublin

Ireland's booming multinational sector has lured the first American law firm to open an office in this country. Chicago-based Schiff Hardin & Waite has affiliated with Dublin solicitors McKeever Rowan.

The American firm will provide services to clients in Ireland, the UK and Europe who want to enter the US market or expand there. The link-up will also give McKeever Rowan a base in the US, allowing it to win new clients who want to take advantage of business opportunities in the EU, where the Dublin practice has local law firm affiliations.

The Chicago firm's move to Ireland was driven by one of its partners, James Fahy, who emigrated to the US from Galway 17 years ago. He is now heading up the American practice's Dublin office at the McKeever Rowan headquarters. He told the *Gazette* this month that the high level of American investment in Ireland was central to his firm's decision to base its European operation here. 'Some 25% of all US investment in the EU is in Ireland, which makes it a good location for an American firm', he said.

James Fahy: good location

Fahy added that his firm spent two weeks seeking a suitable Irish affiliate, and chose McKeever Rowan because of the similarity between the two companies. Both are long-established commercial firms which specialise in litigation and general legal work. 'We both felt that there were mutual areas which we could develop', Gerard Walsh of McKeever Rowan explained.

Under the terms of the deal, both firms will remain independent and be solely responsible for their own work. But they will work together on a non-exclusive basis to serve existing and new clients.

Solicitors to challenge PI advertising ban

Some solicitors are planning to challenge the proposed ban on advertising for personal injury clients as soon as the new rules become law. Irish members of the British-based Association of Personal Injury Lawyers (APIL) could take the State to court to get the law overturned.

The *Solicitors' (Amendment) Bill, 1998* prohibits 'advertising expressly or by implication referring to claims for damages for personal injury'. The legislation – sparked by the public outcry over the army deafness claims – is backed by the Law Society. But the move has been criticised by APIL's regional organiser, Dublin solicitor John Schutte, who claims that it is unconstitutional as it seeks to restrict the public's right to seek redress for personal injury.

He confirmed to the *Gazette* that APIL is canvassing its 25 Irish members on their views, and said it would then make a final decision on what steps to take.

But whether or not the organisation decides to mount a challenge on behalf of its members, Schutte said that individual solicitors may decide to act themselves to contest the ban. 'There is a group of Dublin solicitors who will challenge it. They have retained a senior counsel who says there is a good case on two points of law', he said.

Law Society *Yearbook and diary*

The 1999 edition of the Law Society *Yearbook and diary* will be ready to post out by early November. The diary is specifically designed for solicitors and contains information and useful phone numbers, including details of law terms, government departments, financial institutions, State-sponsored bodies and legal professional services. As a special bonus, everyone who gets their order in by post or fax by 30 September will be placed in a prize draw. The winner will receive a weekend for two in Dromoland Castle in County Clare.

John Donnelly and Gary More, Directors of Ashville Media Group, present SBA chairman Tom Menton with a cheque for £7,500

All proceeds from the sales of the diary go to the profession's voluntary charity, the Solicitors' Benevolent Association (SBA), which has benefited greatly in recent years. 'The benevolent association greatly appreciates all those members who purchased a diary this year', says SBA chairman Tom Menton, 'and we want next year's diary to be even more successful'. Last year the association paid out over £188,000 to those needing assistance – an increase of over 40% since 1990.

BRIEFLY

Scots solicitors 'must take part in government'

The Scottish Law Society's new President wants his members to take an active role in the country's new legislature when it is established later this year. In his first public statement, Philip Dry urged lawyers to stand for election and stressed the importance of law reform in the new Scottish Parliament. 'Solicitors must be seen to be taking the initiative and playing a proper and appropriate role in the way that Scotland is governed', he said.

1,200 separation cases listed

Close to 1,200 judicial separation cases were waiting to be heard at the beginning of the year, according to the latest figures from the Department of Justice. In the 12 months to 31 July last year, 1,382 separations had been granted and 1,223 new applications had been received. But 1,534 cases were carried forward from the previous 12 months, leaving 1,126 applications on hand.

IVUTEC appoints Cork firm

IVUTEC has appointed the Cork-based Michael Daly Consultancy to act as the independent financial consultancy for training in the use of its *Italax* professional practice management software. *Italax* claims to be the most commonly used accountancy software in Irish solicitors' firms

New brochure on divorce

The Law Society's Family Law and Civil Legal Aid Committee has produced a brochure on divorce which members can send to clients and potential clients seeking information on this area. The brochure was produced in response to reports from firms that they have had a high number of enquiries on this subject. The brochure can be obtained from the Society at a cost of £6.65 for a pack of 25.

All down

It's now reckoned that over 120 million people worldwide have access to the Internet, with the European on-line community accounting for 24 million of that. As a result, an increasing number of companies are doing business on-line. Grainne Rothery looks at the power of the Internet as a means of communication and as a research tool for the legal profession

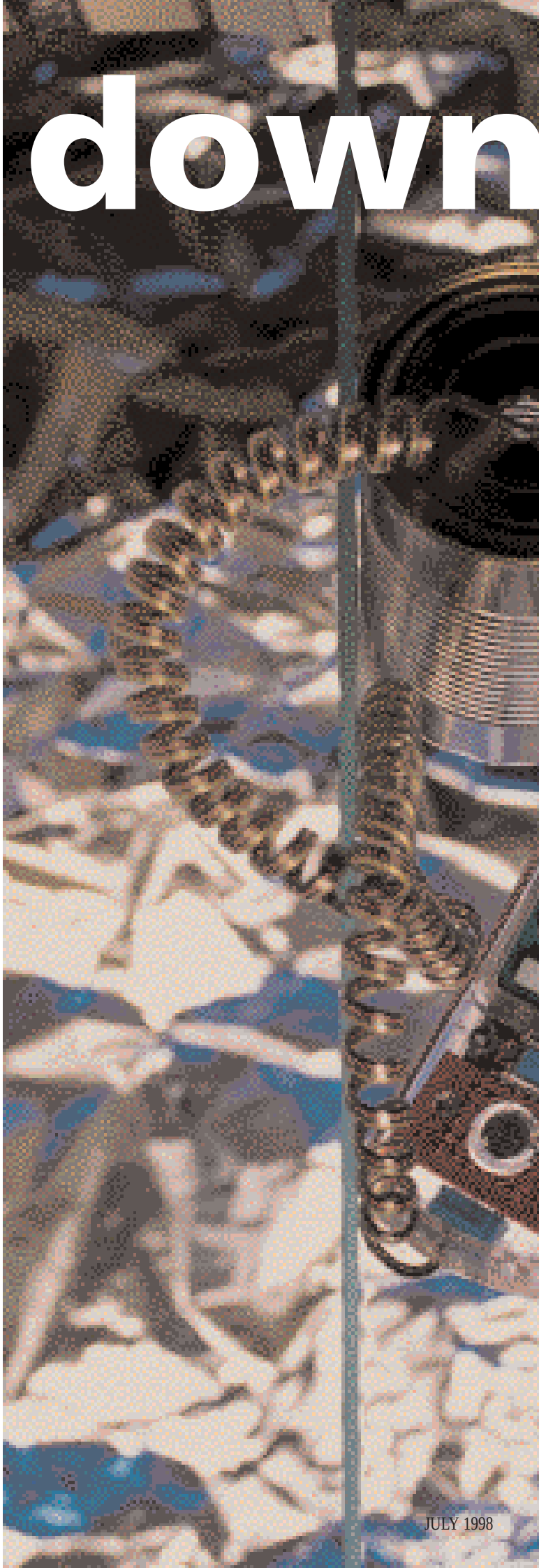
A definitive estimate of the number of Irish people with Internet access is hard to come by. In a very competitive market, Internet service providers (ISPs) are notoriously cagey about their subscriber numbers. However, Laura Lynch, marketing executive at Ireland On-Line, says that approximately 300,000 Irish people currently have access to the Internet. In addition to home and work accounts, this figure includes people who have access in colleges and libraries.

Martin Maguire, managing director of Dublin-based ISP Connect Ireland, says that the growth rate in the numbers getting connected to the Internet over the last year is between 120% and 140%. Laura Lynch says that, while the industry has seen significant growth over the past six to eight months, the coming year is expected to see the largest increase yet. 'Internet years are three months long – in other words, the market is constantly changing', she says. 'I use the example of the mobile phone industry over the past two years as a good model of the expected growth rate over the coming year for Internet usage and connection'. (For the record, the Irish mobile phone market has grown by an average of 72% a year since 1994. In the two years from April 1996 to April 1998, the number of mobile phone users increased from 158,000 to 520,000.)

Pressure to be on the Web

Recent growth in Internet usage is due to a number of factors, not least of which are the increasing ownership of high spec PCs, both at home and in the workplace, and the ease and cheapness of getting connected through an ISP. The Internet is also becoming an accepted medium in itself: newspaper advertisements often carry e-mail and Web site addresses, as do magazine articles and television programmes. And as more and more people get connected, all businesses face increased pressure to have access to the World Wide Web and to be contactable via e-mail. As they say, it's not a case of if, but when and how, you get connected.

As far back as three years ago, Forbairt predicted that by the year 2000 the Internet would be as fundamental to business as the telephone and the fax. Barry Rhodes of Esat-Net, which provides Internet access solely to corporate clients, agrees with this view. 'The most important reason for firms to implement e-mail is that it is now so ubiquitous that other busi-



PIC: ROSLYN BYRNE

nesses expect the organisations that they deal with to be able to send and receive e-mail', he says.

From a business point of view, and for the purposes of simplicity, the Internet can probably be divided into three basic applications: communications, research and marketing. As a marketing tool, the Web is really starting to take off, both in a branding and a direct sales capacity. The latest survey carried out by the Irish Internet Association (IIA) shows that 29% of respondents had made on-line purchases over the previous year while 32% intended to do so over the coming six months. A report published recently by the *e-Marketer,* meanwhile, estimates that consumers will spend $26 billion over the Internet by 2002. Within the same timeframe, electronic business transactions are expected to reach $268 billion.

At the moment, however, the most common use of the Internet is electronic mail (or e-mail) which over the last couple of years has revolutionised the way in which people communicate with one another. The Irish Internet consultancy Nua estimates the current number of business users of e-mail to be around 14.5 million.

According to Esat-Net, e-mail is the main factor behind the growth of the Internet and is accelerating its acceptance as a commercial communications medium. Although the Internet offers numerous other facilities, e-mail is the primary reason that many businesses decide to go on-line, mainly because of its discernible and considerable productivity gains and cost savings. The specific benefits of e-mail for solicitors include an almost immediate means of communication with clients and associates, as well as a convenient way of storing and tracking correspondence.

In very basic terms, e-mail allows Internet users to send messages to other Internet users, regardless of their respective ISPs or where they are located in the world: if two people have e-mail addresses, they can communicate with each other. Internet service providers supply each subscriber with a unique e-mail address and easy to use Windows-based software for sending and receiving messages.

Significant cost savings with e-mail

There are numerous advantages in sending messages electronically rather than by fax or through the post. First of all, it's incredibly cheap: most messages or even batches of messages will be sent for the price of a local phone call (as long as your ISP can provide you with local call access) to any destination in the world. So although electronic messaging is unlikely to completely replace the telephone or fax machine in the next couple of years, it can help to make significant cost savings by eliminating just some of the day-to-day phone and fax calls.

E-mail is quick: it's possible to send short, single-line correspondence, or even to attach word-processing documents, spreadsheets, graphic presentations or sound files to messages, and to transmit them in a matter of seconds. E-mail messages are digital so, unlike faxed documents, any information received can be reused or modified. Recipients can open up spreadsheets and word-processing documents and modify them as if they had created the files themselves.

Electronic mail is also very reliable: messages are rarely lost in transit. Just to be sure, however, the sender can request notification when the recipient receives the message. Once they are sent, messages are stored in an electronic mailbox on the ISP's computer until they are accessed by the recipient. This means that a PC does not have to be switched on to receive messages. Unlike a telephone answering machine, it also means

Getting started on the Net

The requirements for getting connected to the Internet vary considerably depending on the size of the practice. A basic single-user connection has the minimum hardware requirement of a 486 PC with 8 Mb of RAM, a modem and access to a phone line. A higher spec machine and a fast modem (33.6 kbps and above) will make the process of downloading Web pages a lot quicker and easier and will contribute significantly to the usability of the system.

Ireland now has a number of Internet service providers offering a range of connection options. Within the packaged options, a single user dial-up account can cost less than £10 a month, while a business connection, offering four or five different e-mail addresses, won't cost too much more. A number of ISPs also focus on the corporate market and offer complex business solutions which may be more appropriate for some of the larger practices.

Potential customers should ask the ISPs about the availability of local access, their user-to-modem ratio, modem speeds, the amount of Web space supplied and the levels of support provided.

The legal profession is understandably concerned about sending confidential documents over the public domain. The ISPs say that there is a growing number of hardware and software encryption products which can be implemented if organisations do require increased security for their e-mail. LawLink, meanwhile, offers the *SecureMail* private electronic mail service, developed specifically for the legal community, for transmitting confidential documents to colleagues and clients within a private network.

For simple dial-up accounts, it is usually possible to get connected in a matter of minutes once the account has been set up and the software sent out. While the software is usually reasonably self-explanatory, ISPs will generally talk users through the installation process over the telephone.

that a user can receive hundreds of messages at the same time without any risk of the mailbox being overloaded. Larger companies with leased lines and heavy communications requirements often choose to be on-line at all times. In such cases, recipients are usually alerted when individual messages arrive.

Apart from the cost savings in terms of phone and post bills, e-mail can help to increase productivity by reducing the amount of time that has to be spent in composing and printing letters, faxes and mailshots, or even copying documents onto floppy disks and either contacting couriers or personally delivering them. Despite all of its clear advantages, however, there's also a downside to electronic mail which is starting to become apparent among its heavier users. Sending and responding to an increasing number of messages can be very time consuming. Pitney Bowes recently funded a survey called *Workplace communications in the 21st Century*, based on interviews and diaries from more than 1,000 people. It found that 60% of executives, managers and professionals feel overwhelmed by the daily task of dealing with electronic communications. Of those interviewed, some are sending and receiving up to 190 messages a day.

In terms of researching information, the Internet, and the World Wide Web in particular, provide an increasingly important tool. The Web is a huge multimedia library of information consisting of millions of different Web sites, which have been developed by public institutions, companies, the media and private individuals. Web sites can contain text, graphics, sound, video and photographs. They are usually linked to other relevant sites by highlighted words or phrases.

While most Web sites provide full access free of charge some require credit card details before certain parts of the site can be accessed. 'The main benefit of Web access for research is that the information is easy to find, is up to date, and in the majority of cases is free', says Barry Rhodes of Esat-Net.

The Web is indexed by a number of search engines such as AltaVista, Infoseek and Yahoo. Some individual Web sites have their own intelligent search tools which allow users to access specific information by keying in relevant words or phrases. 'One of the key benefits of the Internet is the ability to filter information overload', says Frank Quinn, chairman of the Irish Internet Association. He points out that users must spend a bit of time learning how to use search engines properly if they wish to access the best and most relevant information.

For lawyers, there is a huge amount of valuable and up-to-date information on the Web, both legal and non-legal, which can be accessed in a matter of minutes from the desktop. Kathy Lee from LawLink points out that solicitors using the Internet have access to literally thousands of sources on a variety of issues. 'The LawLink online information service, for example, allows solicitors to look at different areas of interest, including cases and decisions made all over the world as they happen, news on industries, countries, companies and law, links to Web sites of interest to the legal profession and stocks and shares information', she says. 'Solicitors can also carry out searches for their clients and can access the legal diary and judgments'.

'You can compare the Internet to having ten million consultants on your payroll with an unlimited source of information on every topic', says Laura Lynch. 'There are numerous newsgroups relevant specifically to solicitors that can be accessed day or night 365 days a year. For example, if a solicitor wants to find out if any precedent exists that will affect a current case, he or she can source this information at the touch of a button, rather than ploughing through previous case studies'.

The range of law-related sites on the Web is enormous. Good starting points for absolute beginners in this area include the Delia Venables site (www.pavilion.co.uk/legal), the Hieros Gamos Web site (www.hg.org) and the LawLink pages (http://ireland.iol.ie/lawlink/). While by no means exclusively so, each of these sites provide good information and links to other relevant legal pages. *(See also* Webwatch *opposite.)*

Many publications, meanwhile, including *The Irish Times* and *The Times*, have special Web editions which appear every day. While these may lack the traditional feel of a newspaper, they often have the advantage of including links to other related news stories or offer the opportunity to view related items carried in previous editions of the publication. Many of them also have searchable archives over a number of previous years.

As with most areas of business, the legal profession is expected to make increasing use of the Internet over the next couple of years. E-mail will be the driving force for many, but most solicitors will also start to make more use of the Web as an invaluable information sourcing tool. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Webwatch

Law firms and the Internet

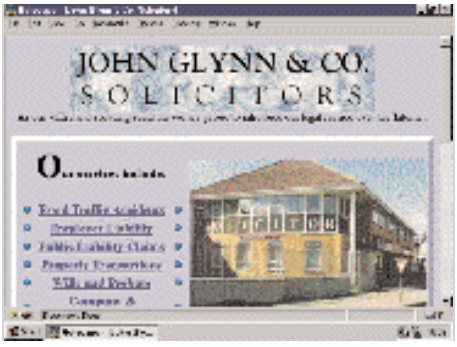
In the first in a regular series, Mark Reid looks at Web sites and Web links of interest to the legal profession

It is estimated that the number of Internet users doubles every 100 days. A glance at Ireland's legal directory on the World Wide Web *Legal-island* (www.legal-island.demon.co.uk) suggests that an ever-increasing number of law firms are choosing to promote their practices through the Internet. Many firms realise that a presence on the Web can be an effective and efficient way to reach a wide audience at little cost. One such firm is Duncan Grehan & Partners (www.duncan-grehan.com/main.html) which boasts an impressive Web presence with pages that are easy on the eye and simple to navigate.

It's clear, however, that Web sites are not the preserve of the big commercial Dublin-based firms. Cleary, McInnes & Co based in Letterkenny, Co Donegal, have a simple but effective site (www.letterkenny.com/cleary &co/) which allows the visitor to get to the information required quickly. The site obeys the first rule of Web design: content is King. 'All singing and all dancing' Web sites containing flashing logos and which are invariably plastered with photographs of the firm's partners usually take too long to download. They're also unlikely to attract return visitors.

Another firm which has kept its ego well in check on the Internet is John Glynn & Co, based in Tallaght, Dublin (www.tallaght.com/lawyer/index.html). This site is easy to access and contains essential information only.

Publishers have also woken up to the importance of the Internet, realising that it is a highly effective means of disseminating legal information. Butterworths has recently stated that it expects all electronic publishing to be produced via the Internet within five years. This statement suggests that the CD-Rom (with which many lawyers are just becoming familiar) is already destined for the IT museum. Among other things Butterworths' current on-line service, called *Butterworths Direct*, provides access, to legal news databanks and certain law reports – but for hefty sums of money. A free month's trial, however, can be obtained via its Web site (www.butterworths.co.uk).



The astute practitioner may be asking whether it is wise to make large investments for access to such commercial databanks when so much information can be obtained from the Web for free. Judgments, for example, of both European Courts are now available on the Web as are countless documents relating to public international law at the huge United Nations Web site (www.un.org/). Closer to home, many of the bigger Dublin law firms contribute to this 'free information databank' by featuring reviews of recent legal developments on their own Web pages. Mason Hayes & Curran (www.mhc.ie/), for example, currently have Web pages which deal with areas including the *Irish Takeover Panel Act, 1997* and changes in environmental law.

All this information can be found in or among millions of Web pages floating around in cyberspace, many of which are likely to be of no interest or benefit to the solicitor looking to research a legal problem. The greatest challenge facing most lawyers new to the Web is to work out how to find the information required in the shortest possible time. Thankfully, this task has been made much easier with the *Legal-island* Web directory of legal links. Although this site had a few teething problems at first, it is fast becoming the starting place for many research inquiries relating to law in Ireland. More general search inquiries are usually carried out with the help of a search engine such as AltaVista (www.altavista.digital.com) or by visiting mamma.com/ which runs the query through a number of engines simultaneously.

Some practitioners are already feeling left behind by developments in information technology and excluded from office conversation about size of ram, cache or processor speed. Happily, there are now many good guides to computer technology and Internet developments which can get even the most confirmed technophobes making reasonable use of new office technology fairly quickly. Many firms have learnt the value of providing formal in-house training to staff which usually ensures that the partner's word-processor does more than gather dust on a desk.

Some firms have experienced problems of a completely different kind, finding that employees are spending an inordinate amount of time on the Internet. Acknowledging this problem,

Cybersearch Ltd (www.cybersearch.co.uk) offers to do the on-line research for law firms upon receipt of a 'research brief' and a fee. Stephen Devitt of Cybersearch explains that law firms generally are not too concerned that their staff may be accessing illicit material on the Web. The worry is that they are wasting valuable fee-earning time looking for material that cannot be easily located among the millions of Web pages that now exist.

For those who feel they cannot leave the Web alone and are suffering from the newly-recognised complaint IAD (Internet Addiction Disorder), help is at hand. It's available, of course, on the Web at www.computeraddiction.com/. G

Mark Reid is a freelance journalist with a particular interest in the Web.

Splitting

Recent changes in family law mean that family law solicitors must have a working knowledge of conveyancing practice and conveyancing solicitors must have a knowledge of family law. Joan O'Mahony outlines some of the issues that practitioners must bear in mind

Under the provisions of section 9 of the *Family Law Act, 1995* and the *Family Law (Divorce) Act, 1996*, courts can make property adjustment orders in favour of a spouse (or another specified person) for the benefit of a dependent member of the family, including transferring the family home from one spouse to another. Property adjustment orders and transfers of the family home are now a regular feature of separations and divorce settlements. In these circumstances, family law solicitors cannot close their eyes to the implications of such transfers from a conveyancing point of view. Furthermore, it is important for conveyancing solicitors to be aware of the implications of the 1995 and 1996 Acts in both the sale and/or purchase of properties that have been the subject of court orders or settlements under these Acts.

A number of typical situations are likely to occur:

- Transfer of the family home without a mortgage from one spouse to another
- Transfer of the family home from one spouse to another with the benefiting spouse taking over responsibility for the mortgage
- Transfer of the family home from one spouse to the other on payment of a specified sum by the transferee spouse to the transferor spouse, and
- Transfer of the family home from one spouse to the other with one mortgage being cleared off and the transferee spouse re-financing with an alternative lending institution.

These situations also apply to former spouses that have since been divorced. What follows is a brief checklist of issues that need to be considered by practitioners handling such cases.

Title deeds. Because transfers of interest usually take place under a 'take it or leave it' scenario, or reluctantly under a court order, the solicitor for the proposed transferee should ensure that copies of the title documents are obtained prior to settlement to ensure that they are in order. This requires the consent of both spouses, which often is not forthcoming. Your client should be advised that it will be assumed that the title is in order up to the date of the mortgage.

Transfer subject to existing mortgage. If it is proposed that the property should be transferred to one spouse subject to the existing mortgage, the consent of the lending institution is required, as the transferor spouse will insist on being released from all liability on foot of the mortgage. Such consent will be contingent on the lending institution being satisfied about the repayment capacity of the transferee. It is vital to note that, notwithstanding a court order, the lending institution cannot be compelled to release the transferor from his or her liabilities on foot of the mortgage.

The searches. Prior to making any settlement or to any court hearing, searches should be made against the property and against the parties to clarify the situation with regard to mortgages and judgments. Note that the registration of a judgment mortgage on the title of a property which is registered in the joint names of a husband and wife automatically severs the joint tenancy and this can have very serious consequences as the spouses may be relying on the property passing by survivorship on the death of one or other of them.

Planning. Your client should be asked whether there have been any developments to the property which may have required planning permission, bye-law approval, and appropriate architects' certificates. If your client is financing the purchase of the interest of the transferor spouse by new borrowings, you will be required to complete a certificate of title and the requirements of the lending institution in this respect should be particularly noted.

Full requisitions on title. The question always arises as to whether or not a transferee's solicitor should raise a full set of requisitions on title and, if this is done, what the obligation of the transferor's solicitor in respect of replies should be. There is as yet no definitive answer or guidelines from the Law Society. Requisitions should be raised either with your own client or with the transferor's, if co-operative, dealing specifically with such issues as:

the difference

a) The planning and development situation
b) Whether any notices have been served
c) Whether there are any disputes with neighbours, or problems with regard to rights-of-way etc
d) Whether a freehold interest has been purchased, and
e) Whether there is an outstanding liability for residential property tax.

Residential property tax. If a spouse transfers a residential property to the other spouse, then any residential property tax (RPT) owed by the transferring spouse is charged on that property for a period of 12 years. On a subsequent sale or mortgage the charge will not remain unless the sale proceeds or mortgage amount exceed the relevant market value exemption, but it is imprudent to leave this issue to chance. It is essential that a clearance certificate is obtained from the Revenue Commissioners on the transfer and application is made to the Revenue Commissioners on form RP54 (*Finance Act, 1983*, section 110A(a)). Since RPT has been abolished since 1997, this particular section will lose its relevance in the year 2008.

Capital gains tax. Three issues arise under this heading:

a) Section 52 of the *Family Law Act, 1995* provides that property which passes from one spouse to the other by deed of separation or by court order is not liable to capital gains tax (CGT), but it is still necessary to obtain a CGT clearance certificate if the original cost or acquisition value of the asset to the spouse transferring it exceeds the exemption limit. Note that the spouse who receives the asset is deemed to have acquired it at the date on (and the cost at which) the other spouse acquired it. In the event of a subsequent disposal, the acquisition cost is used as the base value
b) Section 35 of the *Family Law (Divorce) Act, 1996* preserves this relief in the context of divorce provided that the transfer of assets between the spouses is by virtue of – or in consequence of – a court order. This is particularly relevant where the transfer of an interest may be deferred until the children of the marriage come of age. When availing of stamp duty and CGT reliefs, it is crucial that any transfers come within the provisions of the 1996 Act
c) In the event of a deferred sale – that is, when provision is made in any agreement that the property is not to be sold until the youngest child reaches his majority and in the meantime one of the parties vacates the premises – then a CGT liability will arise in respect of the non-residential spouse for the share of the proceeds of sale that he or she will acquire.

Declaration of solvency. Declarations of solvency are required where transfers take place on foot of voluntary dispositions. If a transfer of interest is taking place following a property adjustment order made by the court, it cannot be said that the transfer is a voluntary disposition so such a declaration should not be required. But if the transfer of an interest is taking place pursuant to a deed of separation, the element of valuable consideration may be unclear and in such circumstances a declaration of solvency should be sought.

Family home declaration. In addition to the deed of assurance, a family home declaration should be prepared for execution by the transferor spouse, notwithstanding the fact that the transfer is taking place on foot of a court order. This family home declaration will exhibit the marriage certificate and as much of the court order or separation agreement as is appropriate. Where the transferor has divorced and remarried, it may be appropriate to include details.

Execution of documentation. In the event of a property adjustment order being made, the court will generally empower the county registrar to execute all documents in the event of default by the transferor spouse. No such provision can be included in a deed of separation, and delays in regard to such transfers should be kept to a minimum to avoid the possibility of the transferor spouse leaving the country or becoming unco-operative.

Survey. The transferee spouse should be advised that the property is being taken as is, that they are fully within their rights to obtain a survey of the property, and that they should put themselves on notice as to any work which needs to be done.

Letter to the client. You should write to your client at the appropriate stage advising him or her of the extent of the conveyancing service which will be offered. The client should be advised that the standard investigation of title may not be possible and that the title is being offered on a 'take it or leave it' basis. In addition, the client should be sent the statutory section 68 letter advising that, in addition to the family law costs, additional conveyancing costs will become due. G

Joan O'Mahony is a Dublin solicitor and a member of the Law Society's Family Law and Civil Legal Aid Committee.

Mean dis

Children who feel they have been unfairly treated in the wills of their deceased parents can apply to the courts for relief under section 117 of the *Succession Act*. But, as the recent Supreme Court judgment in *B v S & McC* shows, even seemingly straightforward cases can be hard to prove. Maureen Cronin discusses the requirements of section 117 applications and the Supreme Court's decision in this case

Section 117 of the *Succession Act, 1965* allows a court, in limited circumstances, to substantially change the distribution of an estate under the terms of a will, thus altering what the testator intended. Obviously, this is a major encroachment on the concepts of freedom of testamentary disposition and freedom to dispose as one sees fit of one's assets or property.

In the most recent judgment on the section, *B v S & McC* (delivered 10 February 1998), the Supreme Court effectively upheld a substantial residuary bequest to various charities while declining to make provision for the son of the testatrix, an unemployed father of three, a recovering alcoholic and drug user. At first glance, it might seem that this case is exactly the sort of conflict which section 117 was originally intended to address: the 'disinheritance' (in a manner of speaking) of a child in dire financial and personal need by bequests to charity. However, a closer examination of the circumstances reveals a complex situation which militated largely against the granting of relief, at least in the majority view of the Supreme Court.

Sub-section 1 of section 117 of the 1965 Act says that: '*Where, on application by or on behalf of a child of a testator, the court is of the opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by his will or otherwise, the court may order that such provision shall be made for the child out of the estate as the court thinks just*'.

Since it was first introduced over 30 years ago, section 117 has been interpreted somewhat cautiously. Unlike a surviving spouse's legal right on testacy, the relief available under section 117 requires a court application and, even if successful, the remedy is still discretionary. There are several factors that the court may need to consider before deciding whether or not to grant relief.

The most obvious constraint on using section 117 is the very limited time within which to bring an application. The time limit for such an application is six months from the date of 'first taking out of representation of the deceased's estate' (sub-section 6, as amended by section 46

Section 117 of the *Succession Act, 1965*

of the *Family Law (Divorce) Act, 1996*). Moreover, no award under section 117 can interfere with the surviving spouse's legal rights under the *Succession Act* (sub-section 3). Or, if the surviving spouse is the mother or father of the applicant, any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy may not be affected either.

Factors relevant to an application

Although it helps if an applicant has been overlooked or ignored or treated less favourably than other children (either during the lifetime of the parent/testator or under the terms of the will), it's not essential. The fact that all children are treated equally in the will is not necessarily a bar to a successful application either. In some circumstances, to treat all children equally might be unjust and imprudent if the special circumstances pertaining to one child require special treatment.

In the case of *B v S & McC*, the fact that all the children received equal settlements during the lifetime of the testatrix was not relevant to the court's determination. Mr Justice Keane specifically stated that 'the maxim *equality is equity* can have no application where the testator has, by dividing his estate in that manner, disregarded the special needs (arising, for example, from physical or mental disability) of one of the children to such an extent that he could be said to have failed in his moral duty to that child'.

Nor is destitution on the part of the applicant a pre-requisite for relief. Several cases have been decided in favour of applicants who were already in what might be considered comfortable circumstances and who had received substantial benefits both during their lifetimes and under the wills of their deceased parents (see *B(S) (otherwise M(S)) v Bank of Ireland*, unreported, High Court, 27 July 1988).

The size of the estate is, of course, relevant in that if the estate is insubstantial it may not be worth fighting over or the costs of the application may be too onerous. Nevertheless, it does not have to be vast. Successful applications have been brought in large estates and in more

DIPLOMA IN APPLIED EUROPEAN LAW

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

The diploma is designed primarily for those with little or no knowledge of European law. The course will provide training in the basics of European law. It will also address in more detail areas of European law of relevance to practitioners. The diploma will also be of interest to lawyers with *some* working knowledge of European law who wish to gain greater expertise in various specialist areas.

Course participants

The diploma is open to solicitors, barristers, apprentices and others with an interest in the subject.

Timetable and venue

The course will be provided in modular fashion on Saturdays following academic terms over the course of a year (approximately 20 sessions). The course will be held in Blackhall Place and will commence in January 1999 through to November. There will be a two-month gap in lectures for summer and two/three weeks for Easter. No lectures will be given on bank holiday weekends.

Course requirements

Persons wishing to obtain the diploma will be obliged do a written assignment and pass an examination.

Certificate in European law

Candidates may attend lectures without sitting the examination and will be conferred with a *Certificate in European law* if they attend at least 80% of all lectures.

Lecturing team

Lecturers will be drawn from solicitors, academics and others with expertise in European law.

Materials

Candidates will be provided with the materials necessary to study for the diploma and will not be required to buy textbooks.

Modules

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

Introduction to European Law **(3 days)**

- Historical context and sources
- The treaties
- Community institutions and legislation
- Reading and interpreting Community legislation
- Fundamental principles
- General principles of Community law
- Incorporation of Community law into national law.

Business **(3 days)**

- The Single Market
- Customs duties and discriminatory taxation
- Free movement of goods and capital
- Freedom of establishment and free movement of services
- Public procurement
- Consumer legislation
- Product liability.

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

Introduction to competition law **(2 days)**

- Anti-competitive agreements: article 85
- Abuse of a dominant position: article 86
- Irish competition legislation
- Enforcement
- Competition law and employment contracts.

Competition **(2 days)**

- Article 85(3) – exemptions: individual and block exemptions
- Merger control
- State aids: articles 92-94
- Intellectual property and competition
- Position of Member States: article 90
- Extra-territorial application.

Agriculture **(2 days)**

- The Common Agricultural Policy
- Milk quotas
- Regional policies
- Food labelling and regulation.

Employment and social policy **(3 days)**

- Free movement of persons
- Recognition of qualifications
- Sex discrimination
- Health and safety
- Acquired rights
- Welfare provision.

Environmental Law **(2 days)**

- European environmental law
- Irish implementation.

Litigation **(3 days)**

- Choice of law provisions in contracts and agreements: *Rome Convention*
- Disputes over jurisdiction: *Brussels* and *Lugano* conventions
- Recognition and enforcement of foreign judgments: *Brussels* and *Lugano* conventions
- Court of First Instance
- Court of Justice
- References to the Court of Justice
- Enforcement actions
- Indirect challenges
- Remedies.

Human rights **(2 days)**

- European convention of human rights and fundamental freedoms
- Jurisprudence of the European Court of Human Rights.

Fee

The fee for the course is £477, which includes all materials and examination fees. £400 of the fee is refundable if the participant decides not to proceed with the course, and notifies the Law Society before 4 December 1998. There is a non-refundable booking deposit of £77 payable on application.

APPLICATION FORM

Name: _____

Firm: _____

Address: _____

DX no: _____

Telephone no: _____ (Home) _____ (Work)

Fax no: _____

What knowledge of European law do you have? _____

_____

Professional qualification: _____

Year qualified: _____

Options chosen (in order of preference)

1. _____
2. _____
3. _____
4. _____

Signature: _____

Date: _____

I attach non-refundable booking deposit of £77.

Final date for receipt of applications: 14 November 1998

Please return completed form to: T P Kennedy, Education Officer, Law School, The Law Society, Blackhall Place, Dublin 7, tel: 01 671 0200, fax: 671 0064

modest ones in equal measure. However, the larger the estate, obviously the greater the motivation to make an application!

Making a claim

To succeed in a section 117 application, the first hurdle is to convince the court that the deceased parent failed in his or her moral duty to make proper provision for the applicant. The standard by which the court measures the behaviour of the testator is generally that of a prudent and just parent. This breach of moral duty is generally evidenced by some failure to provide help or support, when it was possible for the testator to do so, either during the lifetime of the deceased parent or through their will. The testator must have been aware of the financial or marital difficulties or, at least, the difficulties must have been to some degree foreseeable. For example, the applicant might be physically or mentally disabled and in need of special care and treatment which the deceased testator could have paid for but failed to, either prior to his death or by means of a legacy or trust under his will.

Evidence that the applicant and deceased testator had a hostile relationship may also lend weight to the applicant's case (see *In LAC deceased, CC and Ch F v WC & TC*, [1990] 2 IR 143).

The onus of proof

Several cases have emphasised that the burden of proving the failure of moral duty places a high onus of proof on the applicant. This is where the applicant in *B v S and McC* failed. In this case, the testatrix had assets in excess of £1 million. She had four children, all in their thirties and forties, of whom the plaintiff/appellant was the youngest and the only son. The testatrix decided to make equal provision for all four children during her lifetime, as a result of which the plaintiff received company shares which realised approximately £275,000 in 1987.

Despite receiving such largesse, the plaintiff continued to be as unsuccessful in life as he had been prior to that. He dropped out of university in his first year. He then held various jobs and also lived abroad for some time. His father supported him financially in his business for a while, but this too was unsuccessful. In 1983, again with financial help from his father, he returned to university and completed an Arts degree at Trinity College. In the mid-1980s, he developed major problems – drink and drug addiction. He married in 1988 and had three young children. He and his family lived in a house which was given to him and one of his sisters by his father. By the time of his mother's death in 1992, his marriage was in trouble and he was unemployed.

Within a relatively short time of receiving the £275,000 from his mother, the plaintiff had dissipated practically the entire sum. By the time

Section 117: the court can decide that the parent has done enough

his mother made her final will in 1992, there was nothing left and the plaintiff was receiving social welfare assistance. He had no savings and no property, other than the half-share in the house. When the testatrix made her last will in 1997, she was fully aware of the plaintiff's difficulties and consciously decided not to help him any further. She left the residue of her estate, valued at approximately £300,000, to five named charities. The testatrix died in 1992. The son instituted proceedings for relief under section 117 in the High Court, where his application was unsuccessful.

Essentially, the issues before the Supreme Court on appeal were: did the testatrix fail in her moral duty to make proper provision for her son, knowing his difficult circumstances? and by refusing to help her child at his time of desperate need, and by leaving a substantial amount of her estate to charities instead, did she behave as less than a just and prudent parent ought to have done? The Supreme Court, affirming the High Court order, effectively answered 'no' to these questions.

The judgment

In the majority judgment (delivered by Mr Justice Keane, with Mr Justice Lynch agreeing), the Supreme Court held that it was beyond argument that the testatrix had made adequate and generous provision for the plaintiff in her lifetime. The test to be applied in section 117 cases was not which of the alternative courses the court itself would adopt; rather, the appropriate test was whether by her decision to opt for a particular course (to leave the residue of her estate to charity and not to her son) the actions of the testatrix constituted a breach of her moral duty to the plaintiff. The court was satisfied it did not. The decision of the testatrix not to make any further provision for her son was one which a responsible parent could take, and the High Court was correct in concluding that the plaintiff had failed to establish that the testatrix had failed in her moral duty.

In his dissenting judgment, Mr Justice Barron said that all the circumstances needed to be considered. He continued: 'Having regard to his obligations and the very considerable difference in his economic circumstances from those of his mother and the competing moral claims of the charities, it would have been right and proper for some further provision to have been made for the plaintiff'. The judge was satisfied that, given the applicant's need, the fact that the testatrix had the means to alleviate that need, even if only in part, and having regard to all the claims on her bounty, 'it would have been right and proper for the deceased to have used some of those means to alleviate at least part of that need'. He concluded that the overall purpose of this part of section 117 was to prevent a testator from wrongfully disinheriting his nearest family.

In contrast to Mr Justice Barron, the majority judgment focused largely on the *inter vivos* provision which admittedly was substantial. Would the court's decision have been any different if that provision had somehow been 'innocently' lost through no fault of the applicant (for example, on a stock market crash) rather than dissipated on drink and drugs? Also, did the court give sufficient weight to factors such as the fact that no other family member stood to lose anything by the award of relief and that the ultimate beneficiaries (five charities) were not 'personally' involved, in the sense that, again, no-one stood to lose anything by an award to the plaintiff.

On the other hand, the fact that the applicant did not 'reform' himself until some time after the death of the testatrix particularly operated against him as the court specifically ruled out any consideration of factors arising after the death of the testatrix. The court was not entitled to take into account the fact that the plaintiff, since his discharge from Cluain Mhuire in 1993, had not taken alcohol or drugs. Because his recovery from his addiction for that period came after his mother's death, it was not relevant to the discharge or otherwise of her moral duty to him, said the court. It therefore confined itself to the situation as it existed at the date of death.

In summary, the decision in *B v S & McC* shows that the onus of proof in such cases is a heavy one, and that a parent's moral duty to make proper provision for a dependent child is not completely open-ended. Depending on the circumstances, the court can decide a parent has done enough and need do no more. G

Maureen Cronin is a Dublin barrister.

DIPLOMA IN PROPERTY TAX

Law Society of Ireland

PROPOSAL TO RUN THIS 12-WEEK COURSE IN CORK, COMMENCING FEBRUARY 1999

This extensive course in property tax for qualified solicitors was first offered in October 1992. Participants have found that the course has greatly enhanced their confidence and competence in dealing with the various tax implications of property transactions.

The first section of the course deals with the individual taxes including CAT, CGT, income tax, VAT and stamp duty, and the impact of these taxes on trusts. The second part of the course deals with corporation tax and tax management, and helps solicitors to assess the inter-relationship of various taxes on specific property transactions.

There are many benefits attached to securing an in-depth knowledge of the rules of tax. Solicitors can practise with a greater sense of confidence and security, as they will be less likely to fall victim to many tax pitfalls that result from the maze of existing tax legislation.

Course participants
The diploma is open to solicitors and apprentices who have completed the Professional Course.

Timetable and venue
The course will be provided on Saturdays over 12 weeks. Lectures will run from 10am to 4.30pm. Examinations will be held during the course.

Lecturing team
Lecturers are either solicitors or accountants and are approved by the Law Society.

Materials
Candidates will be provided with the materials necessary to study for the diploma and will not be required to buy textbooks.

Fee
The fee for the course is £450, which includes all materials, course attendance for approximately 50 hours of class contact and examination fees. £375 of the fee is refundable if the participant decides not to proceed with the course, and notifies the Law Society before 1 December 1998. There is a non-refundable booking deposit of £75 payable on application.

APPLICATION FORM

NAME: _____

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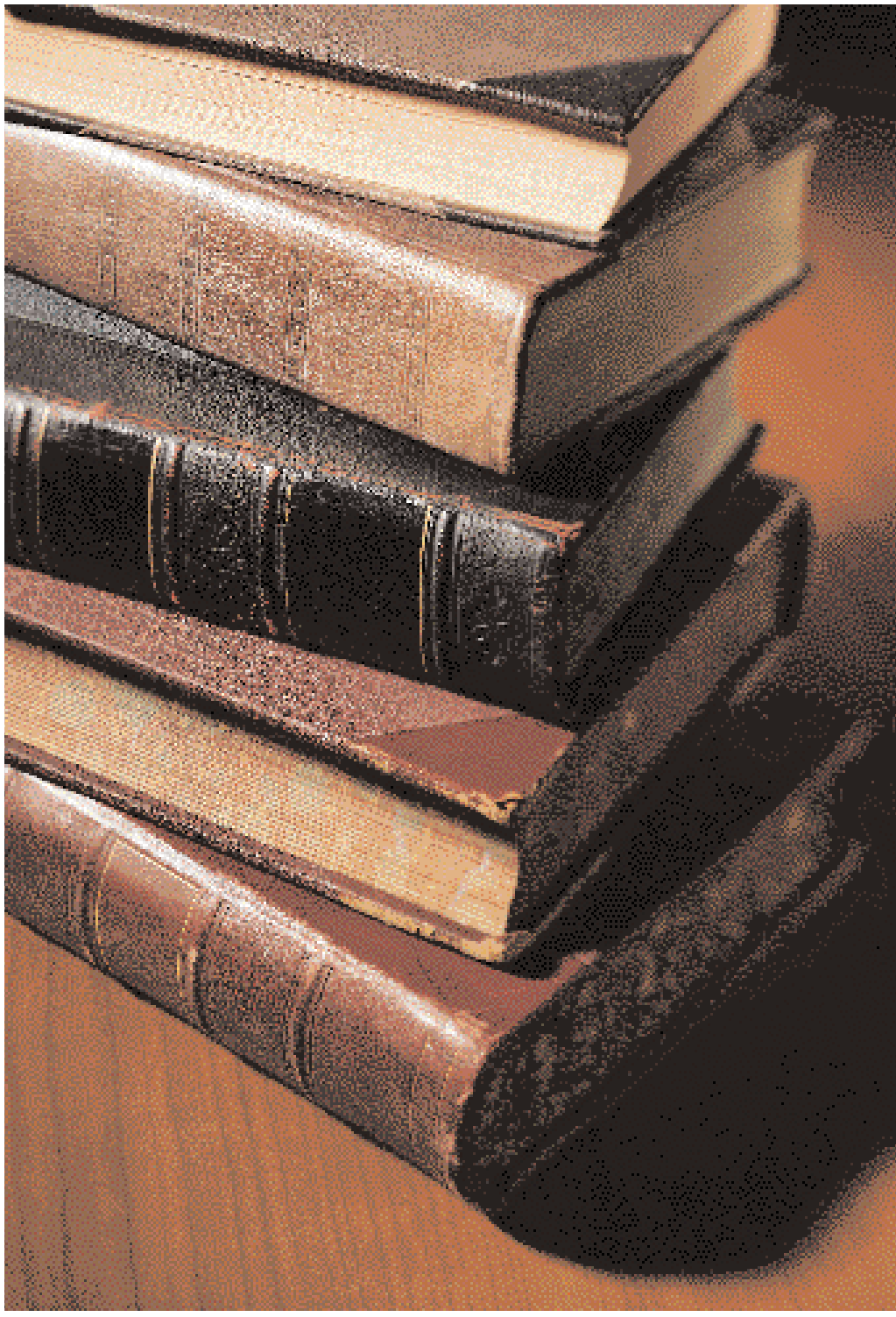
I attach non-refundable booking deposit of £75

FINAL DATE FOR RECEIPT OF APPLICATIONS: 20 November 1998

Please return completed form to: *TP Kennedy, Education Officer, Law School, The Law Society, Blackhall Place, Dublin 7.*

Copy catch!

A recent statutory instrument designed to strengthen the rights of copyright owners may have had precisely the opposite effect. Niall O'Hanlon explains how we slipped up in implementing an EU directive properly and why the Government could find itself in the dock as a result



The provisions of the *Term Directive*, transposed into Irish law by Statutory Instrument No 158 of 1995 (the *European Communities (Term of Protection of Copyright) Regulations*), make significant changes to the law relating to the duration of the period of copyright protection afforded to works (literary, dramatic, musical and artistic) and subject matters (films, broadcasts and sound recordings) under the copyright legislation.

Unfortunately, it appears that the regulations, as drafted, present new opportunities to persons other than the copyright owners to exploit the works of those whose rights the legislators intended to enhance. It is also

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arguably the case that the statutory instrument fails to properly transpose the provisions of the directive relating to cinematographic films. Not only does this represent a failure to protect copyright owners, it is also arguably a failure to properly comply with our EU obligations and could even lead to proceedings against the State under the aegis of the World Trade Organisation.

The purpose of the *Term Directive*

The broad purpose of the *Term Directive* (and the statutory instrument which transposes it into Irish law) is, among other things, to enhance the rights of copyright owners and to harmonise copyright and related rights across the Internal Market. In order to secure agreement among the EU Member States, it has been necessary to revise upwards the term of copyright to facilitate those states that give longer periods of protection than, for example, Ireland and the UK.

Literary, dramatic, musical and artistic works. Regulation 3 extends the term of protection to a period of 70 years after the death of the author in the case of literary, dramatic, musical and artistic works. A further effect of this regulation is that, in the case of works which are neither anonymous nor pseudonymous, it will no longer be possible to enjoy perpetual copyright by the expedient of withholding the work from publication.

In addition, the regulation is good news for photographers: copyright protection for photographs is now of the same duration as for works generally as against the 50-year term provided for in the *Copyright Act, 1963*. Protection will no longer run from publication but will be on the same basis as for works generally: that is to say, the lifetime of the author and a period of 70 years after his or her death.

Regulation 4 provides a 70-year term following publication of a work in the case of anonymous or pseudonymous works. Regulation 5 states that where the term of protection is not calculated from the death of the author, and the work has not been published or otherwise lawfully made available to the public within 70 years of its creation, protection shall terminate.

Cinematographic films and broadcasts. Regulation 6, which deals with cinematographic films, extends the protection available to a period of 70 years after the death of the last surviving 'author' of the film. Broadcasts, which are dealt with under regulation 7(3), are protected for 50 years from first transmission.

Sound recordings. Regulation 7(1) provides for a 50-year period of protection from the making of a sound recording, while regulation 7(2) provides for an alternative protection period if the recording is lawfully published or

lawfully communicated to the public within 50 years of its making, with this protection expiring 50 years from the date of first publication or first communication, whichever is the earlier. The combined effect of 7(1) and 7(2) is to allow a protection period of up to 100 years.

Entrepreneur's right. In cases where the term of protection of a work has expired and where publication has not previously occurred, a person publishing the work shall be entitled, by virtue of regulation 8, to rights equivalent to the economic rights conferred by the *Copyright Act, 1963*.

Transitional measures. The regulations contain transitional measures to deal with the problems that can arise where works which entered the public domain within the 20 years prior to the coming into effect of the directive go back into copyright.

The term of protection problem

As noted above, regulation 3 extends the term of protection for literary, dramatic, musical or artistic works. The previous period of protection, under the *Copyright Act, 1963*, expired 50 years after the death of the author. The regulation now provides that the term of protection shall be the lifetime of the author *and* a period of 70 years after his death. However, regulation 9 provides that the 70-year period begins on 1 January of the year following the year of death of the author. On the face of it, there appears to be a gap between the two periods of protection which could last for a period of up to 12 months depending upon when an author dies, thus offering opportunities during this gap for the reproduction and dissemination of works by the use of digital technology. It should be noted that, because of the different wording employed, the 1963 legislation does not suffer from a similar problem.

The language employed in the regulations on this specific issue is taken directly from the *Term Directive* which accordingly provides no assistance in solving this conundrum. The *Term Directive* wording is in turn based upon the *Berne convention for the protection of literary and artistic works*, article 7(5) of which does deal with the gap arising, by stating that: *'the term of protection subsequent to the death of the author ... shall run from the date of death ... but such [term] shall always be deemed to begin on the first of January of the year following the death'*.

Clearly, wording to this effect in the Irish regulations would remove any doubt as to the position of authors in this regard. I believe that the Minister for Enterprise and Employment should give consideration, as a matter of priority, to making an order to correct this potential gap in the protection afforded to authors. The alternative is to hope that the courts will adopt a teleological approach when interpreting the statutory instrument.

Where's the director's cut?

As noted earlier, regulation 6 extends the period of protection enjoyed by films. However, a reading of the *Term Directive* indicates certain deficiencies in the approach adopted in the statutory instrument. Article 2(1) of the directive, which deals with cinematographic and audiovisual works, states that the principal director of a film shall be considered its author or one of its authors and that Member States shall be free to designate other co-authors. The statutory instrument makes no reference to this

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Law Society of Ireland

The Law Society is delighted to announce its first course in *LEGAL GERMAN* in co-operation with the Goethe-Institut Dublin. The course will commence in October 1998 and consists of two terms. At the end of the course, the participants may obtain a CERTIFICATE IN LEGAL GERMAN, awarded by the Goethe-Institut Dublin and the Law Society of Ireland as proof of linguistic proficiency in the legal field.

Course dates:

1st term	28.09.1998–30.01.1999 (two weeks Christmas break)
2nd term	08.02.1999–12.06.1999 (two weeks Easter break)

Course times: 18.00–18.45, 19.00–19.45
Two teaching units @ 45 minutes,
once per week

Venue: Goethe-Institut
Language Department
62 Fitzwilliam Square
Dublin 2

Participants: Solicitors, barristers, apprentice solicitors and others with a good knowledge of German

Staff: All teachers are native speakers, fully qualified and experienced.

Assessment: Will take place on Wednesday, 23.09.1998, 18.00–20.00 or Thursday, 24.09.1998, 12.00–14.00.

Course aims:
On completion of the programme, successful participants will be in a position to conduct business ably and proficiently with German-speaking lawyers and business people. They will also have acquired an excellent knowledge and understanding of the German legal system. Practitioners will benefit from the application of their professional and language skills and apprentices will enhance their career prospects by undertaking the programme.

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Course material: Legal textbooks, law books, legal documents, videos, newspapers

Price: (6–13 participants) £500 each
(14–20 participants) £350 each

If you want to take part in the course, please fill in the attached pre-course language assessment application form below (the assessment is free of charge).

If you have any further queries, please do not hesitate to contact Anna Rankin at 01 6618506.

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☐ Wednesday 23 September 18.00–20.00
OR
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Signature: _____ Date: _____

The final date for receipt of application for language assessment is Monday 21 September 1998
Please return application form to: Anna Rankin, Goethe-Institut, Language Department, 62 Fitzwilliam Square, Dublin 2

new status for directors nor has the Irish Government exercised its option to designate others as co-authors.

Regulation 6 transposes article 2(2), which provides that the term of protection shall expire 70 years after the death of the last of the following persons to survive (whether or not they are designated as co-authors): the principal director, the author of the screenplay, the author of the dialogue, and the composer of music specifically created for use in the film.

In the absence of the designation of the principal director as an author of a film, any rights arising accrue, under s18 of the *Copyright Act, 1963*, to the maker of that film. The maker of a film is defined as the person by whom the arrangements necessary for the making of the film are undertaken. It is generally accepted in the Irish context that this is a reference to the producer of the film.

Article 3(3) of the directive, which is concerned with the duration of related rights, provides that the rights of the producers of a film shall expire 50 years after the first fixation is made, except where the film is lawfully published or lawfully communicated to the public during this period, in which case the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. Accordingly, a film could enjoy a period of related rights protection of up to 100 years. This provision has not been transposed into Irish law by the statutory instrument.

The position may therefore be summarised as follows:

1) The directive creates two sets of rights: firstly, a copyright which shall expire 70 years after the death of the longest surviving of the specified class of persons and which should accrue to the authors of the film; and, secondly, related rights of 50 years' duration which accrue to the producer
2) The directive specifies that the producer's rights, as defined in article 3(3), shall not exceed a period of 50 years
3) The statutory instrument fails to:
   - Designate the principal director as an author
   - Create a new class of related rights in films
   - Prevent copyright accruing in the first instance to the producer (although there would be no restriction on the principal director subsequently assigning copyright to the producer)
   - Prevent the producer's related rights from exceeding 50 years.

Arguably, the statutory instrument fails to properly transpose the provisions of the *Term Directive* into Irish law. This failure raises the possibility of an article 169 action against the State, while individual litigants may seek to rely on *Francovich*. In addition, since the United States has already expressed its unease in relation to Irish intellectual property laws, might not Ireland find itself subject to proceedings under the procedures of the World Trade Organisation?

The *Term Directive* is certainly ticking away, although not necessarily in the fashion initially envisaged. G

Niall O'Hanlon BA (Hons) (Acct & Fin) LLM (Comm Law) ACA AITI BL is a chartered accountant and practising barrister with a particular interest in commercial law and taxation. He is also a consultant to the Law Society's Law School.

Defusing the mil TIM

In recent months, acres of newsprint have been devoted to predictions that the millennium date change will cause chaos for the incalculable number of businesses worldwide that rely on computer systems. Here, Julie Smyth and Kerren Daly look at the legal issues surrounding the problem and suggest some practical solutions

The so-called millennium problem has arisen because computers have evolved rather than been replaced, leaving many programs still rooted in the 1970s. In those days, memory resources were costly and programmers were encouraged to save memory, so they stored years as two digits instead of four (so 1998 is recognised as 98). Since then, although the cost of computer memory has fallen, most computers and software still use only two digits to identify the year.

This makes it impossible for computers to distinguish between 1900 and 2000 where only the digits 00 are used. Therefore, the year 2000 will be recognised on many computer systems as simply 00 and, as a result, the program may not register the date or may corrupt the date thinking it to be 1900; it may even crash the system. To make matters worse, the year 2000 is a leap year.

The millennium timebomb may be upon us sooner than we may think because on many systems the year 1999 is used as an end-of-field marker and so may not be able to recognise 99.

The millennium problem will affect not only computer-based accounting systems, diary and booking systems but also any date-reliant systems such as telephone switchboards, and other time recording devices. In theory, the problem could create both national and international havoc with software malfunctions preventing the transfer such essentials as money and electricity, and leading to telecommunication failures, disruption of water supplies and traffic jams. It may conceivably affect process control systems for such things as power stations and chemical plants as well.

But the millennium problem does not relate only to computer systems. There is an even bigger problem with computer chips which contain internal clocks. These chips can be found in anything from household appliances to cars.

Software suppliers have issued warnings to the effect that up to 10% of businesses worldwide will go to the wall because they are not millennium-compliant. In the UK, British

PIC: ROSLYN BYRNE

Telecom has announced that it will stop doing business with companies thatj are unable to confirm that their systems are millennium-proof. It is obvious that all firms and business clients should be taking steps now to minimise the potential costs of the millennium time-bomb.

Practical steps to take

The people within the business, including senior management, must be made aware that there is a problem and must be prepared to commit sufficient resources to solving it. A full inventory needs to be carried out to establish what systems and equipment the firm has. Following this, the firm should conduct an urgent investigation into its date-sensitive systems in order to ascertain the scale of the problem (how many of its systems will be affected by the millennium?). It will also need to have each computer chip individually checked since just because one chip is millennium-compliant does not mean that every similar chip is.

Where the investigation uncovers a potential problem with the millennium date-change, users of licensed software should check the original user specification to see if the issue is covered. Even if it is, you should check whether the problem can be dealt with. If not, written assurances should be obtained from software suppliers to the effect that their software is millennium-compliant and that it will be compatible with other millennium-proof software. You may wish to check the Web sites of computer suppliers: these contain a great deal of information on this subject.

Where a business has software maintenance contracts, the terms of those contract specifications should be checked in detail to ensure that year 2000 issues fall within the scope of maintenance. If they do, then most software maintenance contracts should oblige the maintainer to use all reasonable endeavours to ensure that the software continues to perform in accordance with its specifications. However, most maintenance contracts do not cover this or, if they do, the cover offered may well be inadequate. Users may need to negotiate additional payments to secure millennium compliance work.

Where larger firms and businesses have outsourced their IT systems, the service description and levels of service should be checked to ascertain whether the service provider is obliged to ensure that the systems they run will continue to function correctly after the year 2000. Depending on the wording of the contract, service providers may be able to pass on their additional millennium costs to the system users.

Time and money

It may be more economical to invest the time and money required to resolve millennium problems by buying a new computer system. If this decision is made, it is important that any new software acquired will continue to function into the millennium. You should acquire warranties from any supplier that the software will be unaffected by the year 2000 date change and, if maintenance is also to be provided, that millennium problems will be covered by the contract.

In addition, as various millennium compliance solutions are being developed, it is important to ensure that the firm's millennium-proof software will be compatible with other systems operating both internally and externally to the business. You will need to consider the various different interfaces carefully. It would also be a good idea to ensure that all parties involved understand and accept what is meant by 'millennium compliant' as this phrase can be ambiguous without any precise legal definition.

Hefty premiums

Insurance arrangements should be reviewed to establish whether they cover potential losses. Relevant policies should include business interruption insurance and product liability insurance. Again, most policies will either not cover this problem or expressly exclude it. Even if you do find cover, this may be at a hefty premium and you may have to give full details to the insurance company of all the steps you have taken to reduce potential problems.

Firms should consider their exposure if key suppliers of goods and services have a major problem as a result of the millennium problem. The year 2000 compliance programs of those suppliers should be monitored and contracts with key suppliers should include appropriate protection. There are good contractual reasons for this. The legal time limit within which a breach of contract claim must be brought may run from the moment that the computer system was supplied (or even contracted for), and not necessarily from the date you became aware of the breach.

The message must therefore be to act now. As the millennium approaches, demands for expert programmers will soar and so will salaries. The current estimates are that year 2000 consultancy rates will increase by £1,000 a man-day for every six-month period from now until the year 2000. Even though the problem may sound simple, it is extraordinarily difficult, labour intensive and time consuming to fix. Not only are the costs increasing, but it is accepted by all in the computer services industry that there are not enough people to do the job so the problem may not be solved in time. The key is to anticipate the potential problems, and to take action now to minimise the problems and save on the cost of the remedy.

The millennium timebomb is unquestionably a problem – but it also represents a valuable opportunity to your firm or client's business. If you act quickly to solve the problem, it will not only give you a decisive edge in marketing; it will also give you the chance to re-evaluate your long-term information technology strategies.

See also practice note on page 33. G

Julie Smyth is a solicitor, and Kerren Daly is a trainee solicitor, in the commercial department of the Manchester-based solicitors' firm Eversheds.

Council report

Report on Council meeting held on 12 June 1998

1. Cork

The President welcomed the representatives from the Southern Law Association and the West Cork Bar Association who were attending the Council meeting as observers and thanked the Port of Cork for making their board room available for the meeting.

2. Motion: Professional indemnity cover

That the minimum level of compulsory professional indemnity cover be increased to £1 million from 1 January 1999

Proposed: Francis D Daly
Seconded: Ward McEllin

The proposers noted that the minimum level of professional indemnity cover had not been increased since 1995 and that the required minimum level of cover in Northern Ireland is now £2 million. They urged that, as many practitioners are involved in property transactions in excess of £350,000 and as indemnity claims are assessed on a claims-made (as opposed to a claims-occurring) basis, the minimum level of cover should be increased to £1 million with effect from 1 January 1999. Patricia McNamara expressed concerns about the consequent increase in the cost of premiums and it was suggested that an increase to £500,000 or £750,000 might be sufficient, although it was accepted that a significant proportion of the profession already had indemnity cover to at least these levels. Other speakers noted that the savings in premiums between cover of £750,000 and £1 million were quite small and that significant reductions in premiums could be obtained where practitioners 'shopped-around'. The Council approved the terms of the motion and agreed that the matter should be reviewed on an annual basis.

3. Motion: Multi-disciplinary practices

That this Council approves the report of the Multi-Disciplinary Practices Working Group

Proposed: Elma Lynch
Seconded: Gerard Griffin

The chairman of the working group on MDPs, John Fish, and working group member, Ann Colley, made a comprehensive presentation on the group's report. A lengthy discussion followed on a number of aspects of the matter, including the independence of the profession, competition and legal professional privilege. The Council agreed that the report raised a number of issues of fundamental importance to the profession and that the working group should continue its study, following which the profession would be consulted fully and would, ultimately, make any final decisions. The motion was withdrawn, pending the further work to be undertaken by the working group, and it was agreed that additional members would be appointed to the group, as required, to assist in the study.

4. Payment by lending institutions for work done by borrowers' solicitors

The President reported that senior counsels' opinions were being sought and would be available for the Council meeting on 16 July.

5. Solicitor advertising

The Director General reported that the *Solicitors (Amendment) Bill, 1998*, had been published, although there was now some doubt as to whether it would be considered by the Oireachtas before the Summer recess. The Council expressed disappointment that the Bill might not now receive legislative priority, given the very public and repeated Ministerial criticisms of solicitor advertising in personal injury actions.

6. Money laundering

The chairman of the sub-committee considering the implications of the Government proposal to designate solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*, John Fish, briefed the Council on the sub-committee's concerns regarding several constitutional issues arising from the proposal. The Council noted that section 31 of the Act already made it an offence for anyone, including a solicitor, to advise or assist in the transfer or removal of the proceeds of drug trafficking. The extension of section 32 of the Act to the solicitors' profession could require solicitors to report to the Gardaí the merest suspicion of criminal activity of any nature on the part of their clients, even if such information was given to them in confidence. The Council agreed that any erosion of the constitutional rights of citizens to legal privilege and confidentiality in their dealings with solicitors or to their constitutional rights against self-incrimination and of access to legal advice was a matter of grave concern.

7. Court vacations

The Council considered the results of the survey of bar associations on the court vacations (see June *Gazette*, page 13) and agreed that, as there was no consensus for change, the Society should support maintenance of the *status quo*. The Council noted that the question of change had first arisen at a time when there were still considerable backlogs in the hearing of cases, which had now largely disappeared. The Council supported a proposal by Michael Peart that the Society should call for changes in the opening hours of court offices, so that they remained open for full working days during the vacations. The Director General agreed to communicate the Council's views at the meeting of the Denham Working Group to be held on the following week.

8. Transitional Board of the Courts Service

The Council noted, with approval, the appointment of the President, Laurence K Shields, as a member of the Transitional Board of the Courts Service. The President reported that the Board had two primary tasks: a) preparations for the establishment of the Courts Service, and b) the appointment of a chief executive officer. He had been appointed to the sub-committee established to deal with the latter.

9. Guidelines on First National Building Society shares

The Council approved a practice note containing guidelines for the profession on the treatment of free First National Building Society shares *(see also page 33 of this issue)*.

10. Report of Education Policy Review Group

The chairman of the Review Group, Donald Binchy, reported that the group's report would be circulated in advance of the July Council meeting and that it was envisaged that a Special General Meeting would be held in September to consider its contents and the recommendations of the group.

11. Financial Services Task Force

The Council approved the membership of the Financial Services Task Force, as follows: Ronan Molony (Chairman), Anne Counihan, David Dillon, Joseph Gavin, Nathaniel Healy (alternate: Brian McDermott), John Larkin (alternate: Elaine Hanly), Ambrose Loughlin, David McGeough and Carl O'Sullivan. The President reported that the first meeting of the task force would be held on 15 July.

Practice notes

Disclaimers on intestacy

Practitioners will have noted the practice note from the Taxation Committee in the *Gazette* of August/September 1997 arising from section 72A of the *Succession Act, 1965* (as inserted by section 6 of the *Family Law (Miscellaneous Provisions) Act, 1997*).

A precedent disclaimer on intestacy as drafted by the Conveyancing Committee appears below. A number of points should be noted in relation to the execution of such a disclaimer:

1. It is desirable that the person disclaiming should be advised by an independent solicitor which will usually mean a solicitor who is not acting for either the personal representative or any person who will benefit from the execution of the disclaimer. Such solicitor, should, if possible, witness the execution of the disclaimer
2. The independent solicitor should explain the implications of the disclaimer and, ideally, should confirm his advice in writing. This will involve inquiries being made by the solicitor as to the assets and next of kin of the deceased. The person disclaiming should be made aware of:

a) The share of the estate to which he is entitled
b) The assets owned by the deceased, an estimate of their value and the approximate value of the share being disclaimed
c) Any relevant tax liabilities which might arise if the disclaimer was not signed
d) The effect of signing the disclaimer (and, in particular, to whom the disclaimed share will pass pursuant to section 72A)

It should be noted that apart from losing an entitlement to a share of the estate, the person disclaiming will also lose any right he may have to extract a grant of representation to the estate of the deceased in accordance with rule 79(5) RSC 1986 – unless a grant has been extracted before the disclaimer is signed. In the event of a disclaimer being signed after the person disclaiming has applied for a grant but before the grant has issued, the application should be withdrawn as the applicant would no longer be one of the 'persons having a beneficial interest' as provided for in rule 79(5).

It should also be noted that if an applicant's right to a grant arises from a disclaimer having been signed by a person who had a prior right, then the original of such disclaimer must be exhibited with the oath for administrator and lodged in the Probate Office.

If a husband, separated from his wife, does not wish to benefit from her estate, and there being no issue, he should sign a disclaimer which should be exhibited in the oath for administrator and lodged in the Probate Office who can then proceed on the basis that he predeceased his wife. (They could not proceed on that basis if only a renunciation was filed: in this example, there would then be no person next in order of priority to extract a grant.) It would not be necessary to refer to a disclaimer if the person disclaiming had an equal right, rather than a prior right, to apply for a grant – being one of a number of children, for example. If an original disclaimer is required for some other purpose, it would be desirable to have the disclaimer executed in duplicate.

As a person disclaiming is probably doing so to benefit another person, it is important to read section 72A carefully. (It would be a mistake, for example, for the brother of a deceased person to think he could benefit his own children by disclaiming a benefit to which he is entitled under the deceased's intestacy.)

Conveyancing Committee

Disclaimer of AB on death intestate of CD

Obit _____ day of _____ 19 ___

This **deed of disclaimer** is made this _____ day of _____ 19 by me AB **(occupation)** of _____ in the county of _____.

Whereas:

1 CD _____ late of _____ (hereinafter called 'the deceased') died on the _____ day of _____ 19__ having died intestate as to the interest hereby disclaimed.
2 The deceased was (**marital status**) and (**occupation**) and was survived by (state if survived by, for example, a spouse and two children **or** as the case may be).
3 I was a (**relationship**) of the deceased and, as such, I am entitled to a (for example, one sixth **or** as the case may be) share of the deceased's estate (**or** of that part of the deceased's estate as to which he died intestate) (hereinafter called 'the said share') under the rules for distribution on intestacy set out in the *Succession Act, 1965*.
4 I have not accepted the said share from the personal representative of the deceased or otherwise nor have I exercised any degree of beneficial ownership, control or possession in respect of the said share.

Now it is hereby witnessed that I hereby irrevocably disclaim absolutely all my right to the said share

(Insert the following paragraph unless a grant has already issued to person disclaiming or he has already signed a renunciation.)

And I hereby acknowledge that on the execution by me of this disclaimer I will lose any right I may have (by virtue of my entitlement to the said share) to extract a grant of administration to the estate of the deceased.

In witness whereof I have hereunto set my hand and affixed my seal the day and year first above written.

Signed, sealed and delivered by the said AB in the presence of:

Potential conflict of interest where a solicitor is acting for both a driver and passenger of the one vehicle

The view of the Guidance and Ethics Committee in relation to good practice in the above matter is as follows:

- It is in order for a solicitor to act on behalf of the passenger in a vehicle, although that solicitor has already acted for the driver, provided that any litigation involving the driver with any third parties settled on the basis that there was no liability on the driver's part, and that the passenger agrees with this view. The solicitor should obtain written confirmation from or on behalf of the third party that liability was not an issue.
- It is not in order for a solicitor to act on behalf of a passenger in a vehicle where that solicitor has already acted on behalf of the driver, if the case settled or was decided on the basis that any liability attached to the driver.

Keenan Johnson, Chairman, Guidance and Ethics Committee

First National Building Society: free shares/cash distribution

Law Society guidelines for solicitors, 12 June 1998

1. The Law Society is aware that some solicitors hold money on behalf of clients and/or trusts in accounts with the First National Building Society which come within the criteria entitling the sole or first-named holder of such accounts to receive as the case may be either free shares or a cash distribution on the occasion of the proposed conversion of the building society into a public limited company.
2. The *Conversion statement* available from the building society indicates that trustees may have to give careful consideration to any potential conflict of interest between their right to vote and/or receive free shares and the rights of the beneficiaries under the trust. Similar caution should be exercised by solicitors where such eligible accounts contain clients' monies.
3. The Law Society considers it appropriate to issue these guidelines to solicitors setting out how the Society considers solicitors should deal with free shares and any cash distributed.
4. Where an account which meets the eligibility criteria for the issue of free shares or for a cash distribution was established as a dedicated account to hold the funds of one particular identifiable client or trust, the full benefit of the free shares issued or the cash distribution should be passed on to that client or trust.
5. Under the conversion scheme, one allocation only is made to each (sole or first-named) account holder regardless of how many eligible accounts are held (for example, by a solicitor on behalf of several of his clients). Therefore, in situations where a solicitor has held qualifying minimum sums of money for the prescribed period with the FNBS in an eligible account or accounts on behalf of a number of identifiable clients, the following treatment should be adopted:
   i. Where a cash distribution is received from the building society, it should be distributed equally among the solicitor's clients who would have qualified for a cash distribution had they held an eligible account in their own name with the building society.
   ii. Where free shares are received, they should be distributed equally among those clients who would have qualified for a share allocation had they held an eligible account in their own name with the building society. Alternatively, in a *de minimis* situation where it would not make economic sense for clients to be each allocated a very small number of shares, the entirety of the shares received should be sold by the solicitor on the open market and the proceeds distributed equally to the eligible clients.
6. In situations where a practice maintains a general and non-dedicated account(s) at the First National Building Society which contains an admixture or pool of general client funds held for many clients, and which perhaps is only one of several general client accounts held with various financial institutions (and although the liability to each client will be properly and accurately reflected in the solicitor's clients ledger), it may not be possible to identify which particular clients' funds are held in which general client account and therefore it may well not prove possible to allocate the shares or cash received as between various clients.
7. If money is held on behalf of an identified client, then the shares or benefit are the client's. If difficulties are encountered in identifying who should be the beneficiaries of any proceeds received in respect of the building society's distribution, application may be made to the court, although the practicality of such an application would have to be considered in the light of the costs and the value of the shares involved.

Professional indemnity insurance: Year 2000 compliance issues

The Professional Indemnity Insurance Committee has been advised by one of the qualified insurers providing professional indemnity insurance cover to the profession that the commercial insurance market is currently discussing issuing a questionnaire and exclusion clauses similar to the one reproduced below to solicitors when their premiums become due for renewal, at the end of the current year. In view of this eventuality, the committee considered it prudent to bring the matter to the profession's attention, in order that members may make the appropriate preparations.

Please contact your insurers directly in relation to any queries you may have in relation to this matter, as the various insurers providing professional indemnity insurance may differ in their requirements.

Niall Casey, Chairman, Professional Indemnity Insurance Committee

Year 2000 exclusion

The insurers will not defend, indemnify or pay under this insurance in respect of any claim, loss, liability, or costs and expenses directly or indirectly caused by or contributed to or arising from or in connection with:

i) Any computer system, whether or not the property of the insured, not being Year 2000 compliant

ii) Any correction or any attempted correction, conversion, renovation, rewriting or replacement of any computer system related to Year 2000 compliance.

The following definitions are added to this insurance:

'Year 2000 compliant/compliance' shall mean that neither performance nor functionality of the computer system is affected by dates prior to, during and/or after the Year 2000. In particular:

- *Rule 1: No value or current date will cause or give rise to any interruption in operation of the computer system*
- *Rule 2: Date-based functionality and performance of the computer system must behave consistently for [date] prior to, during and/or after the Year 2000*
- *Rule 3: In all interfaces and data storage of the computer system, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules*
- *Rule 4: The Year 2000 must be recognised as a leap year by the computer system.*

'Computer system' shall mean any computer, date-processing equipment media or part thereof, or system of date storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device or any computer software (including not limited to application software, operating systems, run-time environments or compilers), firmware or microcode used, owned, operated or relied upon by the insured.

All other terms, conditions and limitations or this insurance, remain unaltered.

Sample year 2000 questionnaire

Please answer the following questions. If insufficient space to complete your answer, please use your headed paper to continue, stating question you are enlarging upon.

1. Does your firm have a working party/dedicated person charged specifically with addressed the Year 2000 issues? **Yes/No**
   If 'Yes', who comprises this group and what are the positions in your firm?
2. What is the primary characteristic of your computer system? (PLEASE TICK)
   - ☐ PC ☐ Networked PC ☐ Mini system
   - ☐ Midrange system ☐ Mainframe system ☐ Other (PLEASE GIVE DETAILS)
3. Which of the following will you need to assess for Year 2000 compliance? (PLEASE TICK)
   - ☐ Software provided by third parties ☐ Hardware
   - ☐ Software written by your firm ☐ Operating systems
   - ☐ Applications written by your firm ☐ Embedded system
   - ☐ Spreadsheets prepared by users ☐ Others (please give details)
4. Has your firm completed an impact assessment of the issue of Year 2000 compliance in connection with:
   - 4.1 The computer system? **Yes/No**
   - 4.2 Professional services provided to your clients, which involves reliance on your own on another's computer system? **Yes/No**
5. Please advise the commencement and estimated completion dates of the following in relation to Year 2000 compliance:

	Start date	Completion date
■ Identification of any non-Year 2000 compliant computer system		
■ Identification of the date from which a computer system remaining non-compliant will produce problems		
■ Review of all your licences and other contracts relating to the computer system		
■ Impact assessment of the computer system not being Year 2000 compliant		
■ Design of solution to ensure that computer system is Year 2000 compliant as soon as practicably possible		
■ Implementation of design solution		
■ Testing of the computer system to ensure Year 2000 compliance		
■ Acceptance of the Year 2000 compliant solution identified, designed and tested as above		
■ Training of personnel		
■ Creation of a contingency plan to assist in the event of failure of the computer system to be Year 2000 compliant in time		

6. What is the total budget allocated for Year 2000 compliance? £.....
7. If your firm is using third parties to ensure your computer system is Year 2000 compliant, have you already agreed the timetable for Year 2000 compliance with them? **Yes/No**
8. Are you required to provide progress reports to any regulators or professional bodies on Year 2000 compliance? **Yes/No**
   If 'Yes', please provide details.
9. Does your firm have a written contingency plan in the event of the computer system not being Year 2000 compliant (for example, manual back-ups)? **Yes/No**
   If 'Yes', please provide details.
10. Do you render services which require you to identify, consider, report upon or disclose Year 2000 compliance-related risks which are or may be faced by your clients or other parties relevant on the service you provide? **Yes/No**
    If 'Yes', please give full details.
11. Where appropriate, what has been done to warn your clients of potential problems in the event that their computer system may not be Year 2000 compliant?
12. Please give details of any ways the firm is restricting its exposure to Year 2000 liabilities both to date and in the future (for example, limiting liability in terms of appointment/contract.

I/we declare that the statements and particulars in this questionnaire which it is agreed form an integral part of our proposal to insurers are true and that I/we have not misstated or suppressed any material facts. I/we agree that this questionnaire together with the proposal form and/or any other information supplied by me/us shall form the basis of any contract of insurance entered into with insurers. I/we undertake to inform the insurers of any material alteration to these facts occurring before completion of the contract of insurance. Signing this questionnaire does not bind the proposer or the insurers to complete the proposed contract of insurance.

Signed: _____

Name: _____

Position: _____ on behalf of: _____

Date: _____

Information returns: personal injury awards

The *Finance Act, 1992*, part 7, introduced automatic reporting requirements for traders, professionals, agents and other relevant persons as defined. A statement of practice was issued by the Revenue Commissioners on 28 October 1992 (SP-IT1/1992). Modifications of these reporting requirements for solicitors were summarised in *Tax practice notes*, volume 1, issue 2 (August 1993).

The Revenue statement of practice clarifies the reporting obligations applying to the specified categories of persons. Under the category 'persons in receipt of income belonging to others', it provides that court awards/settlements need only be returned to the extent that they include specific non-capital amounts for loss of earnings or profits or other income amounts. Following representations from the Law Society, the Revenue Commissioners have since confirmed that in personal injury cases, where an award/settlement may include special damages for past or future loss of earnings, no information return is required save and except in the following circumstances.

1. Payments made without deduction of tax under a loss of profits/emoluments insurance policy. For example:
   - An insurance policy taken out by an employer to provide against an obligation to pay compensation on sickness, injury or death of an employee or against the employer's general liability to pay compensation for occupational injuries
   - A policy taken out by an employer which insures against loss of profits consequent upon the sickness, accident or death
   - A policy of insurance taken out by an employee or self-employed individual which provides for continuing benefit (whether or not capable of being commuted) during disablement through accident or sickness
   - A sick pay scheme/arrangement or trust deed which provides for continuing benefit (whether or not capable of being commuted) during sickness or disablement through accident or sickness
   - Permanent health insurance policy taken out by an employee or self-employed individual.
2. Structured settlements where the payments constitute annuities or annual payments which have not already been subjected to deduction of tax when received. This would only apply in the (rare) event that the court, in lieu of a lump sum, awarded an annual income for life or during disability.
3. To the extent that there is yearly interest, interest on the award or part of the award or interest for late payment (only the interest element need be returned and again only if it exceeds £500 in a year).

Taxation Committee

LEGISLATION UPDATE: 13 MAY – 12 JUNE 1998

ACTS PASSED

Arbitration (International Commercial) Act, 1998
Number: 14/1998
Contents note: Enables Ireland to adopt the UNCITRAL *Model law on international commercial arbitration* (as adopted by the United Nations Commission on International Trade Law on 21 June 1985) so as to provide a framework for international commercial arbitration in Ireland. Amends the *Arbitration Act, 1954* by the substitution of a new section 34 (interest on awards).
Date enacted: 20/5/1998
Commencement date: 20/5/1998

Eighteenth Amendment of the Constitution Act, 1998
Contents note: Amends art 29.4 of the Constitution to enable the State to ratify the *Treaty of Amsterdam*.
Date enacted: 3/6/1998
Commencement date: 3/6/1998

Finance (No 2) Act, 1998
Number: 15/1998
Contents note: Gives effect to the Government announcement on 23/4/1998 that mortgage interest relief in respect of residential investment properties will no longer be available – transitional relief may be claimed where there is a contract evidenced in writing prior to 23 April 1998 if the deed is executed on or before 31/12/1998. Introduces anti-avoidance measures to prevent the routing of borrowings through companies or partnerships. Provides for new rates of capital gains tax applying on gains on the disposal of development land. Curtails 'section 23' relief. Reduces the stamp duty rates for residential property and imposes stamp duty on new residential property transferred to or leased by investors. Subject to certain transitional arrangements, these new stamp duty provisions will apply to instruments executed on or after 23/4/1998.
Date enacted: 20/5/1998
Commencement date: various – see Act.

Gas (Amendment) Act, 1998
Number: 17/1998
Contents note: Repeals the *Gas Act, 1976*, s37, to enable Ireland to ratify the *Energy charter treaty* and the *Energy charter protocol on energy efficiency and related environmental* aspects.
Date enacted: 3/6/1998
Commencement date: 3/6/1998

Local Government Act, 1998
Number: 16/1998
Contents note: Provides for a new funding system for local authorities; establishes a local government fund which will be financed from two sources: the proceeds of motor taxation and an annual exchequer contribution. Also provides for increases in motor taxation, for the postponement of local elections until 1999, and for other related matters
Date enacted: 29/5/1998
Commencement date: Commencement orders to be made. 30/5/1998 for ss9, 10 and 15 of the Act (per SI 178/1998)

Nineteenth Amendment of the Constitution Act, 1998
Contents note: Amends article 29 of the Constitution (International Relations), by the addition of art 29.7, to give effect to the British-Irish Agreement done at Belfast on 10/4/1998. The amendment to art 29 includes the provision that if the Government declares that the State has become obliged, pursuant to the British-Irish Agreement, to give effect to the amendment of the Constitution referred to therein, then new articles 2 and 3 as set out in art 29.7.3 will be substituted for the existing text.
Date enacted: 3/6/1998
Commencement date: 3/6/1998

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998
Number: 13/1998
Contents note: Gives effect to the protocol of 1992 to amend the *International convention on civil liability for oil pollution damage 1969*, and the protocol of 1992 to amend the *International convention on the establishment of an international fund for compensation for oil pollution damage 1971*, both conventions having been amended by 1976 protocols. The *Civil liability convention 1969*, as amended, obliges owners of ships carrying oil in bulk as cargo to have appropriate insurance to cover liability to a specified limit for oil pollution damage. The *Fund convention 1971*, as amended, provides for the establishment of an international fund from which to supplement the amount of compensation for oil pollution where shipowners' liability is exceeded.
Date enacted: 14/5/1998
Commencement date: Commencement orders to be made.

SELECTED STATUTORY INSTRUMENTS

Criminal Justice (Legal Aid) (Amendment) (No 2) Regulations 1998
Number: SI 160/1998
Contents note: Provide for an increase in the fees payable under the criminal legal aid scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and for an increase to solicitors and counsel in respect of visits to prisons and other custodial centres (other than Garda Stations) and for certain bail applications.

District Court (Bankers' Books Evidence) Rules 1998
Number: SI 170/1998
Commencement date: 9/6/1998
Contents note: Amend order 38 of the *District Court rules 1997* to reflect the provisions of s7A of the *Bankers' Books Evidence Act 1879*, as inserted by s131 of the *Central Bank Act, 1989*, and as amended by s14 of the *Disclosure of Certain Information for Taxation and Other Purposes Act, 1996*.

Employment Regulation Order (Law Clerks Joint Labour Committee) 1998
Number: SI 181/1998
Commencement date: 12/6/1998
Contents note: Fixes law clerks' statutory minimum rates of pay and conditions of employment.

European Communities (Amendment of Waste Management Act, 1996) Regulations 1998
Number: SI 166/1998
Contents note: Enable a waste permit system to be operated by local authorities in relation to certain waste recovery and disposal activities.
Leg implemented: Dir 75/442, Dir 91/156

European Communities (On-the-Spot Checks and Inspections) Regulations 1998
Number: SI 168/1998
Contents note: Implement EC Council Regulation 2185/96 concerning on-the-spot checks and inspections carried out by the European Commission in order to protect the European Communities' financial interests against fraud and other irregularities. Provides for the appointment of national administrative inspectors who will accompany Commission inspectors on such inspections.
Leg implemented: Reg 2185/96

Housing (Accommodation Provided by Approved Bodies) Regulations 1992 (Amendment) Regulations 1998
Number: SI 151/1998
Contents note: Provide for the payment of increased grants by the Minister for the Environment and Local Government in respect of the provision of assistance by housing authorities to approved housing bodies and for the introduction of a higher rate of grant for such accommodation provided in certain built up areas and off-shore islands.

Housing (Improvement Grants) (Thatched Roofs) Regulations 1990 (Amendment) Regulations 1998
Number: SI 150/1998
Contents note: Provide for increases in the grants for the renewal or repair of thatched roofs of houses.

Housing (Mortgage Allowance) Regulations 1993 (Amendment) Regulations 1998
Number: SI 153/1998
Contents note: Provide for increases in mortgage allowances payable to certain tenants and tenant purchasers of local authority houses and for extension of entitlement to the allowances to tenants of approved housing bodies who surrender their tenancies.

Housing Regulations 1980 (Amendment) Regulations 1998
Number: SI 152/1998
Contents note: Provide for increases in income eligibility limits for, and the amount of, loans by local authorities for the purchase, construction or improvement of houses.

Housing (Sale of Houses) Regulations 1995 (Amendment) Regulations 1998
Number: SI 91/1998
Contents note: Amend art 7 of the *Housing (Sale of Houses) Regulations*

1995 (SI 188/1995) to take account of a person who is legally divorced or separated.

Local Government (Planning and Development) (Fees) (Amendment) (No 2) Regulations 1998
Number: SI 128/1998
Commencement date: 15/6/1998 for art 3(2)and the second schedule; 1/5/1998 for all other provisions
Contents note: Revise the fees payable to planning authorities in respect of planning applications, applications for the extension of the duration of planning permissions, requests for copies of entries in the planning register and licence fees payable to planning authorities in respect of specified appliances and structures with effect from 1/5/1998. Fees payable to An Bord Pleanála for planning appeals, references and other matters are revised with effect from 15/6/1998.

Local Government (Planning and Development) General Policy Directive (Shopping) Regulations 1998
Number: SI 193/1998
Commencement date: 10/6/1998
Contents note: Specify policy considerations, including a maximum retail floor space of 3,000 square metres, to which planning authorities and An Bord Pleanála must have regard in performing their functions in relation to specified supermarket development and other retail shopping development.

Local Government (Planning and Development) (No 2) Regulations 1998
Number: SI 194/1998
Commencement date: 10/6/1998
Contents note: Amend the *Local Government (Planning and Development) Regulations 1994* (SI 86/1994) to provide that a change of use of any premises to a supermarket the retail floor space of which exceeds 3,000 square metres shall not be exempted development.

Social Welfare Act, 1996 *(Section 30) (Commencement) Order 1998*
Number: SI 106/1998
Contents note: Appoints 6/4/1998 as the commencement date for section 30 of the *Social Welfare Act, 1996* for the purposes of supplementary welfare allowance payments and supplements.

Waste Management (Amendment of* Waste Management Act, 1996*) Regulations 1998
Number: SI 146/1998
Commencement date: 20/5/1998
Contents note: Amend the scope of s 51(2) of the *Waste Management Act, 1996* concerning the recovery of sludges and agricultural waste.
Leg implemented: Dir 86/278

Waste Management (Hazardous Waste) Regulations 1998
Number: SI 163/1998
Commencement date: 20/5/1998
Contents note: Implement provisions of a number of EU directives relating to asbestos waste, batteries and accumulators, polychlorinated biphenyls (PCBs), waste oils and hazardous wastes generally.
Leg implemented: Dir 75/439 as amended by Dir 87/101; Dir 87/217, Dir 91/157, Dir 91/689 and Dir 96/59

Waste Management (Licensing) (Amendment) Regulations 1998
Number: SI 162/1998
Contents note: Amend the *Waste Management (Licensing) Regulations 1997* which provide for the commencement and operation of the system of licensing by the Environmental Protection Agency of waste recovery and disposal activities under part V of the *Waste Management Act, 1996*. Prescribe the day on or after which further specified classes of waste disposal and recovery activity require a waste licence in accordance with s39(1) of the Act, and provide for related amendments to the 1997 regulations.
Leg implemented: Dir 75/439 as amended by Dir 87/101; Dir 80/68, Dir 87/217, Dir 91/689, Dir 96/61, Dir 96/59

Waste Management (Miscellaneous Provisions) Regulations 1998
Number: SI 164/1998
Commencement date: 20/5/1998
Contents note: Prescribe the day, 20/5/1998, on or after which the collection of waste oils requires a waste collection permit in accordance with s34(1) of the *Waste Management Act, 1996*. Also provides for other matters including the prosecution of offences by any person, the transfer of waste, the making of waste management plans, the defrayal of costs incurred by local authorities and the provision of information.
Leg implemented: Dir 75/439 as amended by Dir 87/101

Waste Management (Movement of Hazardous Waste) Regulations 1998
Number: SI 147/1998
Commencement date: 20/5/1998
Contents note: Provide for a system of consignment notes in respect of the movement of hazardous waste within the State. Also transpose into Irish legislation certain EU requirements regarding the labelling of waste containers and the mixture of wastes.
Leg implemented: Dir 91/689, Reg 259/93

Waste Management (Permit) Regulations 1998
Number: SI 165/1998
Commencement date: 20/5/1998
Contents note: Provide for the granting of waste permits by local authorities in respect of specified waste disposal and recovery activities in lieu of a licence by the Environmental Protection Agency under s39(1) of the *Waste Management Act, 1996*. Also provide for the registration by local authorities of the storage of hazardous waste, in excess of specified amounts, at its place of production and for the registration by the EPA of certain waste recovery activities carried on by local authorities.
Leg implemented: Dir 75/439 as amended by Dir 87/101; Dir 75/442 as amended by Dir 91/156; Dir 80/68, Dir 91/689

Waste Management (Transfrontier Shipment of Waste) Regulations 1998
Number: SI 149/1998
Commencement date: 20/5/1998
Contents note: Provide for the designation of competent authorities for the purpose of controlling waste transhipments, powers of competent authorities, the imposition of certain requirements in relation to the shipment of waste into or out of the State, and prohibition by the Environmental Protection Agency of waste imports.
Leg implemented: Reg 259/93

Waste Management (Use of Sewage Sludge in Agriculture) Regulations 1998
Number: SI 148/1998
Commencement date: 20/5/1998
Contents note: Prescribe standards for the use of sewage sludge in agriculture.
Enabling legislation: *Waste Management Act, 1996*, ss7, 51
Leg-implemented: Dir 86/278

Prepared by the Law Society Library

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

European citizenship and equal treatment

The Court of Justice has recently held that nationals of a Member State can rely on their European citizenship for protection against discrimination on grounds of nationality by another Member State. In *Maria Martinez Sala v Freistaat Bayern* (Case 32/98), judgment of 12 May 1998, the court ruled on the position of a long-term unemployed migrant who was refused a German child-raising allowance for her child.

Mrs Martinez Sala is a Spanish national who had been living in Germany since May 1968. She had alternating periods of employment and unemployment but was unemployed since October 1989 and has been in receipt of social assistance since then. Until May 1984, she obtained residence permits. Afterwards, she obtained documents certifying that the extension of her residence permit had been applied for. The 1953 *European convention on social and medical assistance* did not allow her deportation. In January 1993, she applied for a child-raising allowance for her newly-born child. Freistaat Bayern refused her application on the basis that she did not have German nationality, residence entitlement or a residence permit. In April 1994, a residence permit was granted to her and was extended for a further year on 20 April 1995.

Her application was dismissed at first instance. She appealed, and a reference was made to the Court of Justice. The court held that a benefit such as the child-raising allowance, which is automatically granted to persons fulfilling certain objective criteria, without any individual assessment of personal need, intended to meet family expenses fell within the scope of EC law. The court said that it had insufficient information to consider whether she was a 'worker'. It left this question to the national court for its consideration.

The court pointed out that German nationals were not required to produce an identity card for receipt of the benefit, whereas non-German nationals were. This amounted to unequal treatment and was contrary to article 6 of the *EC treaty*. If she was a worker, this unequal treatment would be incompatible with the *EC treaty* rules on freedom of movement for workers.

However, the court went on to hold that even if she was not a worker she still had a right to equal treatment as a European citizen. The court held that as a national of a Member State lawfully resident in the territory of another Member State she came within the scope of the treaty provisions on European citizenship. Article 8(2) attaches to the status of EU citizen the rights and duties laid down by the treaty, including the right in article 6 not to suffer discrimination on grounds of nationality.

Thus, Ms Martinez Sala was entitled to rely on article 6 to contest the German decision to refuse her a social benefit on the basis of her non-production of a residence permit, where German nationals were not required to produce this document. G

The *Brussels convention*: Commission proposes amendments

The *Brussels convention* of 1968 lays down Community-wide rules on jurisdiction and the recognition and enforcement of foreign judgments. It has been remarkably successful. It is currently being reviewed. The Commission has recently issued a communication to the Council and Parliament setting out a proposal for a revised convention. If these proposals are accepted by the contracting states, this will be the most radical amendment of the convention to date.

The major proposals of the Commission are as follows.

Jurisdiction. The central rule of the convention is article 2 which provides that a person domiciled in a contracting state shall be sued in the courts of that contracting state. The convention leaves the contracting states to define domicile. The Commission proposal replaces domicile with 'habitual residence'. For a company or legal person this is defined as the place of the central management or, failing that, its registered office. The proposal does not require the contracting states to define 'habitual residence'. Therefore, it is likely that the Court of Justice would give it an independent European law meaning. All references in the convention to domicile have been changed in the proposal to habitual residence.

Contract. The convention provides for a special rule of jurisdiction for contracts. In contractual matters, a defendant can be sued in the courts for the place of performance of the obligation in question. This has been the single most litigated provision of the convention. The Commission proposal limits this provision to matters relating to a contract for sale of goods. In such cases the defendant can be sued in the courts of the place where the delivery was or should have been carried out, except in cases where the goods were delivered, or deliverable, to more than one place. This is a somewhat clumsy attempt to bring certainty to a difficult head of jurisdiction.

Tort. Article 5(3) of the convention also provides a special rule of jurisdiction for tort. Defendants can be sued in the courts for the place where the harmful event occurred. The Commission has proposed chang-

ing this to allowing a defendant to be sued in the courts for the place where the event giving rise to the damage occurred or in the courts for the place where the damage or part thereof was sustained. This amendment reflects the interpretation of the original provision by the Court of Justice in *Bier v Mines de Potasse* (Case 21/76) [1976] ECR 1735, and subsequent cases.

Co-defendants. Article 6 provides that where a defendant is one of a number, he may be sued in the courts of the domicile of any of his co-defendants. The Commission proposal retains this article but goes on to provide that it does not apply where the action has been brought solely in order to cause the co-defendants to appear in a court other than their own court. This reflects the interpretation of this article by the Court of Justice.

Consumer contracts. The convention provides special rules for determining jurisdiction in disputes with consumers. Article 13 confines this protection to certain narrowly-defined categories of consumer contracts. The Commission proposal adds a fresh category of contract: a sale of goods contract where the consumer travels to another contracting state and places the order there, provided that the journey was organised for the purpose of inducing the consumer to enter into a contract for the sale of the goods. The proposal also provides that this section of the convention is to apply to contracts for the acquisition of a time-share in immovable property.

Submission to jurisdiction. Article 18 provides that a court of a contracting state before which a defendant enters an appearance, but not one solely to contest juris-

RECENT DEVELOPMENTS IN EUROPEAN ENVIRONMENTAL LAW

EMAS update

The ECO Management and Audit Scheme brought in by regulation in 1993 (as adopted by the Council of Ministers) introduced a voluntary scheme encouraging economic activities to establish and maintain environmental protection systems within each Member State. The Irish national Accreditation Board is the competent body for the purposes of administering the regulation and accrediting environmental verifiers under that scheme. However, the EMAS scheme is due to be updated in 1998 and the European Commission has since issued a decision on the recognition of ISO 14001 which will, in effect, take over from the current EMAS certification which will be subsumed into it. The Irish response to EMAS, namely IS 310, will similarly be overtaken by ISO 14001.

Directive on packaging and packaging waste

This directive (OJ No L365/10/94) was adopted on 15 December 1994 and is now implemented by virtue of the operation of the *Waste Management Act, 1996*. Ireland, along with Greece and Portugal, obtained a certain number of derogations in particular relating to the timing of the implementation of the directive. Ireland is entitled to fix a lower target to be achieved within the five years for recovery and recycling of packaging waste, which must not be less than 25%. The REPAK scheme, which is the only current recognised scheme under the *Irish Waste Managing (Packaging) Regulations* (along with local authority involvement), is designed to result in the successful implementation of the drive to reduce waste within the EU.

Climate change

In June 1997, at the meeting of the Council of Environment Ministers, an agreement was reached that the Community should propose that developed countries individually or jointly must reduce emission levels for carbon dioxide, methane and nitrous oxide by at least 7.5% below 1990 levels by the year 2005. A corresponding target (minus 15%) for 2010 was previously agreed in March 1997. However, there is a negotiating process taking place which it is hoped will be completed by the end of this year with a view to adopting the resulting protocol for the post-2000 era at the third conference of the parties in Kyoto, Japan, during December. Ireland's position is that it intends to make efforts to limit its increase in emissions of all green house gases to 15% above 1990 levels by 2010. Ireland's position is stated by the Irish Government to be in accordance with the practice within the EU that individual Member States contribute to an overall EU target according to their level of economic development and other national circumstances. Part of the proposed drive to slow down and ultimately stop climate change (if possible) is a tax to be levied on certain non-renewable sources of energy such as coal, lignite, peat, natural gas and mineral oils. However, alternative energy sources will not be taxable. This particular proposal remains under debate and its adoption cannot be guaranteed at any early date in the future.

Pollution control

The *Directive on integrated pollution prevention and control* was adopted by the Council of Ministers in September 1996 (OJ No L 257/26/96). However, Ireland has already introduced IPC licensing under the aegis of the *Environmental Protection Agency Act, 1992*. As the first Member State of the EU to do so, we are, to a large extent, ahead of this latest directive. There is a subtle difference between IPC and IPPC. Similar to the phasing in of IPC licensing, there will be a requirement that no new installations shall be operated without a permit and that no existing installations shall be operated without such a permit eight years after the coming into force of the directive.

Civil liability for damage caused by waste

A highly-debated proposed directive, this proposes that the producer of waste (as defined) will be liable under civil law for damage to property and to persons and for impairment of the environment caused by waste irrespective of fault. Damage caused by waste disposed of by persons in a private capacity is excluded. However, a producer as defined includes any person who in the course of commercial or industrial activity produces waste and/or is involved in mixing or other operations resulting in a change in the composition of the waste. Liability under the proposed directive may not be excluded by any contractual provision limiting or exempting any person from liability.

Conservation of wild birds

The *Birds Directive* of 1979 (Directive 79/409/EEC OJ L103/1, 25 April 1997) addresses the need to protect migratory species of birds within the various Member States. Wild birds and their habitats are meant to be protected. Their habitats are to be protected through designation of special protection areas (SPAs) which each Member State is required to identify. In advance of the *Birds Directive*, Ireland had enacted the *Wildlife Act, 1976* which anticipated many of the provisions of the *Birds Directive* but not sufficient to allow for the classification of SPAs. To date, the directive has been implemented on a piece-meal basis. In the recent past, however, Ireland has sped up implementation so that between February 1995 and October 1996 eight sets of amending regulations were passed and 106 SPAs designated by the end of 1996. Essentially, SPAs have been assumed into the planning process and the required consultative body of the local authority in that regard is the National Parks and Wildlife Service.

The *Habitats Directive*

The Council *Directive on the conservation of natural habitats and of wild fauna and flora* (Directive 92/43/EEC, OJ L 206/7, 22 July 1992) is more sweeping than the *Birds Directive*. It intends the establishment of a network of specifically-protected habitats in all Member States, this network to be called *Natura 2000*. Initial selection of sites will be carried out by individual Member States but the final selection is to be made by the European Commission which can also amend or add to the sites proposed by each Member State. Designated sites under the *Habitats Directive* will be known as special areas of conservation (SACs). Before becoming a designated SAC, the sites will be called sites of Community importance (SCIs). No SCIs have yet been selected. The directive envisaged that during the period June 1998 to June 2004, the Commission would formally accept designations by Member States of the adopted list of SCIs as SACs. The *Habitats Directive* is intended to protect both habitats of particular community interest and animal and plant species.

The *Habitats Directive*, instead of the piece-meal implementation by the *Wildlife Act* which has occurred with the *Birds Directive*, was implemented into Irish law in February 1997 through the *European Communities (Natural Habitats) Regulations 1997*. Chapter 1 of the regulations empowered the Minister for Arts, Culture and the Gaeltacht to prepare a provisional list of sites of special areas of conservation as prepared by the National Parks and Wildlife Service. Once an individual is notified of the proposal to designate his property as an SAC, he (or third parties) may object within a three-month period on certain stated scientific grounds. Most importantly, there is a provision for payment of compensation by the Minister on foot of a refusal of consent to an operation or activity on the designated site by the landowner. Exceptional cases of hardship are also a proper consideration for compensation. An SAC is essentially another designation within the proposed national framework designation of Natural Heritage Areas. G

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diction, shall have jurisdiction. The proposal attempts to clarify this article. It provides that a court shall have jurisdiction where a defendant enters an appearance and of his own volition take procedural steps other than those contesting the court's jurisdiction. It also provides that national rules governing the form in which jurisdiction may be contested may not operate to impair the expression of the defendant's intent to contest jurisdiction. This proposed amendment reflects a robust approach to the court's interpretation of this article.

Provisional/protective measures. It proposes a new rule conferring jurisdiction to order provisional/protective measures on the courts of the Member State in whose territory they may be executed. This new article 18a would give a broad interpretation of provisional measures. It defines them as including 'urgent measures for the examination of a dispute, for the preservation of evidence or of property pending judgment or enforcement, or for the preservation or settlement of a situation of fact or law for the purpose of safeguarding rights which the courts hearing the substantive issues are, or may be, asked to recognise'. The existing provision on pre-enforcement protective measures is deleted in the proposal.

It also proposes that provisional measures should be allowed where a non-enforceable judgment has been given on the substance of the claim or where an enforceable judgment has been given but has not yet been declared enforceable in the state applied to.

Related actions. The proposal does not amend the rules relating to related actions. However, it does put forward a definition of when a court is to be regarded as seised of an action. It will be so regarded when an application has been made to it and the document instituting proceeding has been served on or notified to the defendant. This addresses the procedural differences between the contracting states.

Enforcement of judgments

Recognition. The Commission had proposed that judgments should be automatically recognisable under article 26 on the basis of an international presumption of regularity. The proposal envisages a certificate being issued by the court giving the judgment in the state of origin, attesting that the judgment to which it relates is enforceable. The court asked to enforce the judgment could not look behind the certificate.

Enforcement. Article 34 requires the enforcing court to give its decision on enforcement without delay. The proposal amends this, requiring a decision within 15 days of the lodging of the application for enforcement.

There is a small but significant proposed textual amendment to article 31. This currently provides that a judgment given in one contracting state will be enforceable in another, on the application of any interested party. The proposal is phrased in the same language but it provides that the foreign judgment will 'have the same effect as attaches to any enforceable judgment in that state'. This new wording is included to make enforcement of judgments as automatic as possible. This is reinforced by a significant amendment to articles 46 and 47. These articles set out the documents to be produced to a court when seeking enforcement of a judgment from a court of another contracting state. The previous requirement to produce documents showing that the judgment is enforceable in its state of origin is deleted. In its place is a new requirement to produce a certificate in a form annexed to the convention. The proposal envisages a court issuing a certificate in respect of its own judgment. There will then be a strong presumption that the judgment accompanied by a certificate is enforceable.

A new sub-section is introduced into article 36. This provides that the foreign judgment will be enforceable in anticipation of the domestic judgment authorising its enforcement. Measures to secure rights recognised by the judgment are suspended for the one-month period for an appeal.

Defences. It is also proposed to limit the defences to enforcement of a foreign judgment under the convention. The enforcing court will only take the defences into account if raised by the defendant and the burden of proof is on him. Article 37a sets out the defences allowed by the proposal. The defence allowing a court not to enforce a judgment contrary to its public policy is deleted. The second defence – for judgments given in default of appearance – is slightly modified. The defence allowing a court not to enforce a judgment which is irreconcilable with an earlier judgment is retained. G

LATEST DEVELOPMENTS IN EUROPEAN LAW

On Saturday 17 October, the EU and International Affairs Committee of the Law Society is providing a European law 'health check' for solicitors. Speakers will provide coverage of the major developments in European law of relevance to solicitors. The speakers, who are solicitors that practice in the area being discussed, will provide an overview of topics. Topics to be covered will include:

- Solicitors and money laundering
- Milk quotas: recent developments
- Intellectual property update
- Recent developments in consumer law
- Changes in cross-border litigation
- Recent developments in employment law
- The Euro and your practice
- Establishment directive for lawyers
- Competition update

Venue: Law Society of Ireland, Blackhall Place, Dublin 7
Cost: £60/£30 for apprentices and students
The conference is scheduled to start at 10am and run through to 2.30pm on Saturday 17 October 1998, with a coffee break and a lunch break.

For further details, contact TP Kennedy, Education Officer, Law Society of Ireland, Blackhall Place, Dublin 7 (tel: 01 6710200).

Conferences and seminars

AIJA (International Association of Young Lawyers)
Topic: *Annual congress*
Date: 20-25 September
Venue: Sydney, Australia
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Tax and company law: relationship between parent and subsidiary*
Date: 9 October
Venue: Milan, Italy
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)

IBC
Topic: *Telecommunications and EC competition law*
Date: 24-25 September
Venue: Brussels, Belgium
Contact: Tel: 0044 453 5492

Topic: *Vertical restraints: the way forward*
Date: 12 October
Venue: Brussels, Belgium
Contact: Tel: 0044 453 5492

Topic: *Advanced EC competition law*
Date: 10-11 November
Venue: Brussels, Belgium
Contact: Tel: 0044 453 5492

Society of Public Teachers of Law
Topic: *Human rights and legal traditions*
Date: 8-11 September
Venue: Manchester, England
Contact: Shirley Tiffany
(tel: 0044 161 2757556)

Solicitors' European Group
Topic: *Recent developments: EU employment law and related issues*
Date: 8 July
Venue: London, England
Contact: Tel: 0044 171 320 5791

RECENT DEVELOPMENTS IN EUROPEAN LAW

AGENCY

***Barbara Bellone v Yokohama SpA* (Case 215/97), judgment of 30 April 1998.** Bellone was a commercial agent for Yokohama under an agency contract. After Yokohama ended that contract, Bellone claimed payment of various indemnities. The Italian courts refused her claim because under Italian law the contract was void as she was not on the Italian register of commercial agents when the contract was concluded. She sought to rely on the *Commercial Agents Directive* (86/653/EEC), which makes no provision for any such register and defines a commercial agent by reference to the activity pursued. The Court of Justice held that such a requirement was contrary to the directive. The directive is intended to eliminate restrictions on the freedom of establishment of commercial agents. The Italian provisions were capable of significantly hindering this goal.

COMPETITION

Article 85 and selective distribution

***Javico International and Javico AG v Yves Saint Laurent Parfums SA (YSLP)* (Case 306/96), judgment of 28 April 1998.** YLSP has a selective distribution network for its perfumes in the EC. It has an individual exemption for these agreements. It concluded distribution contracts with Javico, a German company, for Russia and the Ukraine and Slovenia. Javico did not form part of its EC network. Javico appeared to have sold some YLSP products in the UK, Belgium and the Netherlands. YLSP ended its agreement with Javico and brought proceedings for contractual compensation and damages. Javico argued that the relevant provisions in the contracts had to be looked at in the light of article 85(1).

The court held that article 85(1) would prevent a supplier in a Member State from imposing on a distributor in another Member State, entrusted with the distribution of its products outside the EC, a prohibition on making any sales in any territory other than the contractual territory, including the territory of the EC, either by direct marketing or by re-exportation from the contractual territory if that prohibition has the effect of preventing, restricting or distorting competition within the EC and is liable to affect the pattern of trade between Member States. It said that this could be the case where there is only limited competition within the EC network for the distribution of the products. Alternatively, this could be the case where there is a marked difference between the prices charged for the product within the EC and outside and this difference is likely to affect competition within the EC. This is not the case if the difference will be eroded by the cost of export from the EC and re-import into the EC or the products intended for non-EC markets account for a very small percentage of the total market for those products in the EC. The court also held that YLSP could not seek to rely on its selective distribution exemption. This only covered its selective distribution agreements within the EC.

State aids

Article 93 of the treaty requires a Member State which gives anti-competitive aid to a firm on an industry to order its repayment. The Commission has proposed a regulation laying down detailed rules for the application of article 93 (OJ C116/13). The regulation would require a Member State wishing to grant aid to inform the Commission in sufficient time to allow the Commission to reach a decision. Pending such a decision, the aid could not be granted. The Commission is required to reach a determination within two months of notification. The regulation also deals with the consequences of a grant on aid given without authorisation. The Commission may grant a suspensory injunction and is allowed to recover the aid on a provisional basis. If the Commission rules that the aid was granted without authorisation and is anti-competitive, the Member State is required to recover the aid, with interest, from the beneficiary of the aid, using domestic procedures.

CONSUMERS

Aircraft overbooking

Regulation 295/91 restricted overbooking of aircraft seats with respect to certain flights originating in the EU. The Commission has proposed an amending regulation extending the scope of this regulation. The proposed regulation would apply to all flights originating within the EU. It would give passengers the right not to be denied access to an overbooked flight for which the passenger has a confirmed reservation. This right could not be denied by a term in the contract of carriage. Where a flight has been overbooked, the regulation sets out rules for determining allocation of available seats. Any passenger denied access must be offered the choice between a full refund or alternative air transport under comparable conditions at the earliest opportunity or alternative air transport under comparable conditions at a later date at the passenger's convenience. Compensation must be paid immediately and must be in cash. The regulation sets out minimum levels of compensation, dependent on the length of the journey.

DEBT COLLECTION

The Commission has proposed a directive on late payment of debt in commercial transactions. Creditors would be entitled to claim interest from the payment date in the contract, or in the absence of such a provision 21 days from the date of the invoice. The directive proposes accelerated recovery procedures. In addition, Member States would be obliged to introduce simplified legal procedures for the recovery of debts of 20,000 Ecu or less.

EMPLOYMENT

Equality

***CNAVTS v Évelyne Thibault* (Case 136/95), judgment of 30 April 1998.** The CNAVTS was Ms Thibault's employer. During 1983, she took maternity leave. As she was not present for a total of six months, her employer, under its regulations refused to assess her work performance. Promotions depended on results in assessments and she was passed over for promotion. She claimed discrimination under the *Directive on equality* (Directive 76/207/EEC). The court held that the *raison d'être* of the directive was to ensure that men and women in employment were treated equally. The right of an employee to have her work assessed and thereby qualify for promotion is an integral part of an employee's contract of employment. To deny a female employee the right to assessment was discriminatory as, if she had not been pregnant and not taken the maternity leave to which she was entitled, she would have been assessed for the year in question and could have qualified for promotion.

Rights of residence

***Commission v Germany* (Case 24/97), judgment of 30 April 1998.** Germany imposes fines on residents who do not have a valid identity document. The scale of fines is proportionally much greater for non-German nationals without a valid identity document. The court held that the treatment of nationals of other Member States in this way violated articles 48, 52 and 59 of the treaty, Directive 68/360/EEC and Directive 73/148/EEC.

INTELLECTUAL PROPERTY

Internet

The Commission is proposing the introduction of two directives which provide that contracts for EU goods and services sold on-line via the Internet have the same legal validity as written contracts. One of the directives will cover general issues of on-line law and the other relates to the validity of electronic signatures. One of the legal issues to be addressed is the governing law of contracts formed on-line – that of the country of origin or of the destination to which the goods are to be sent?

LEGAL PROFESSION

***Establishment Directive* for lawyers**

Luxembourg has lodged an application to annul this directive which was passed by the Council in December 1997. The directive gives EU lawyers a right of establishment in other Member States and allows them to join the local profession after three years of practice. Luxembourg's challenge rests on two grounds. The first is that the directive removed Luxembourg's right to require its lawyers to meet certain criteria before admission to the local profession. As there is no university in Luxembourg, its lawyers have to do their initial studies in other states. Secondly, Luxembourg is challenging the legal basis for the adoption of the directive. It claims that it should have been adopted under a treaty provision requiring unanimity rather than on a treaty article allowing for a qualified majority.

ROAD TRAFFIC

Member States are considering a draft convention on road traffic offences. This convention would ensure that motorists who commit driving offences in other Member States will face punishment in their Member State of residence. It would oblige national authorities to include offences committed in other Member States on their citizens' driving records. The convention was approved by the European Parliament in April and has been forwarded to the Council. The convention will not become legally binding until it has been ratified by all Member States.

TAXATION

***Safir v Skattemydigheten i Dalarnas Län* (Case 118/96), judgment of 28 April 1998.** This case concerned Swedish legislation imposing tax upon capital life assurance. Swedish insurance companies were required to pay a tax based on the net value of their yield from this type of insurance, calculated by deducting liabilities from capital. Policyholders of Swedish insurance companies were not required to pay any tax on their premiums. Policyholders of non-Swedish insurance companies were required to pay tax on their premiums. Swedish insurers paid tax on their yield while other insurers did not pay Swedish tax on theirs. The purpose of the tax on policyholders with non-Swedish companies was to achieve a rough equivalence between the two types of insurance company. Swedish law allowed policyholders apply for exemptions where the insurance company was required to pay a similar tax in its home state. A policyholder with a British insurer applied for exemption from insurance premium tax as the insurer paid such a tax in the United Kingdom. The Swedish authorities reduced the tax by half but the policyholder objected to paying any premium tax. The Court of Justice held that the Swedish system contravened article 59 of the *EC treaty*. The court held that the system of application for exemption from tax was an onerous one and might discourage Swedish consumers from taking out policies with non-Swedish insurers. The court pointed to the fact that the policyholder was obliged to pay the tax first and then seek the relief. In order to apply for the exemption, the policyholder was obliged to obtain information from the insurer as to its tax position in its state of origin. It is difficult to get up-to-date tax information as national tax regimes change regularly. This deterred policyholders from taking out insurance with non-Swedish companies.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Courts Service (No 2) Bill, 1997

This Bill has been passed by both Houses of the Oireachtas.

Increased allowances for public representatives

A Bill has been presented, and passed by Dáil Éireann, which will, if passed, provide for:

- The payment of additional allowances to members of the Oireachtas who hold various positions within the Oireachtas
- A power for Ministers to increase existing allowances
- The payment of overnight allowances to non-Dublin members who attend Leinster House on non-sitting days, on a maximum of 25 additional occasions a year
- An allowance for TDs and senators of £5,000 and £3,500, respectively, with regard to secretarial services, in addition to those services currently provided
- The payment of out-of-pocket allowances on a tax-free basis, and
- The bringing of lump sum retirement payments to judges and court officers retiring on or after 19 December 1996 (the date of the Supreme Court judgment in *McMenamin*) into line with those payable to civil and public servants (that is, making the lump sum one-and-a-half times pay rather than one-and-a-half times pension).

Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Officers (Amendment) Bill, 1998

AGRICULTURE

New brucellosis rules

With effect from 23 February 1998, there exists:

- A compulsory 30-day pre-movement test for brucellosis for all female bovine animals and bulls aged 12 months or over, except for slaughter
- A requirement that bulls aged 12 months or over and female animals aged 18 months or over may be sold not more than once (whether publicly or privately) during the validity period of any 30-day movement test, and
- A requirement that such animals must move directly from the holding on which the test was carried out to the holding of the purchaser, or via a mart to the holding of the purchaser.

Brucellosis in Cattle (General Provisions) (Amendment) Order 1998 (SI No 39 of 1998)

ARBITRATION

Arbitration (International Commercial) Bill, 1997

This Bill has been passed by Dáil Éireann.

COMMERCIAL

Business statistics

An order has been made which stipulates that certain undertakings engaged in industries relating to prospecting, exploration for and extraction of non-energy producing minerals and associated manufacturing industries will be obliged to supply information, pursuant to surveys, to the Central Statistics Office at yearly intervals between 1998 and 2002. The information shall include particulars of:

- The name, registered office and place of business of the undertaking
- The name and address of its headquarters, if applicable
- Any business or trading name
- A description of the activities covered
- The year the undertaking commenced production in the State
- The number of persons employed
- Particulars of the quantity and value of commodities produced and sold during the year by the undertaking, and
- Where applicable, the amount received by the undertaking in respect of commodities produced by it on commission on behalf of another undertaking.

Statistics (Census of Industrial Commodities Production) Order 1998 (SI No 45 of 1998)

COMMUNICATIONS

Reasons not required for refusal to grant licence

- The detriment suffered by the applicants did not arise from the respondent's failure to give the reasons for its decision but from the actual rejection of their applications
- The giving of reasons for a decision made by an administrative body was not in all cases necessary.

In 1996, the respondent wanted to award a broadcasting licence to allow for radio broadcasting in the Limerick area. There were nine applications by March 1997. There was a preliminary meeting of the respondent at which a short-list of four applicants was compiled. The applicants were not on the short-list. No reasons were furnished to the applicants as to why they were unsuccessful and they sought leave

to quash the decision of the respondent. They alleged breaches of natural justice and procedural irregularities against the respondent in its compilation of the short-list of successful applicants and in its failure to give the applicants reasons as to why their applications were unsuccessful. The failure to give reasons prevented the applicants from knowing whether the procedures employed by the respondent were fair or unfair, which denied them the remedy of challenging those procedures in court. The applicants also contended that they had a legitimate expectation of an oral hearing as all other applicants in similar competitions for sound broadcasting licences had been granted one. The relief sought was refused.
Maigueside Communications Ltd v Independent Radio and Television Commission (McGuinness J), 18 July 1997

CONSTITUTIONAL

Eighteenth Amendment wording changed

This Bill has been amended in committee and passed by Dáil Éireann. The text of the proposed amendment (with new in italics) now reads:
'5º The State may ratify the *Treaty of Amsterdam* amending the *Treaty on European Union*, the *Treaties establishing the European Communities* and certain related Acts signed at Amsterdam on 2 October 1997.
6º The State may exercise the options or discretions provided by *or under articles 1.11, 2.5 and 2.15 of the treaty referred to in sub-section 5º of this section and the second and fourth protocols set out in the said treaty but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas*.'
Eighteenth Amendment of the Constitution Bill, 1998

Whether particular breach of constitutional right was tort within the meaning of the *Statute of Limitations*

- This case was at all times argued between the parties on the basis that the applicant was entitled to damages for alleged breach of constitutional rights but that the claim was barred either by virtue of the *Statute of Limitations* or laches
- It was dealt with on the basis that the applicant had an identifiable cause of action in 1974.

The applicant was a civil servant in the Department of Posts and Telegraphs from 1963. On 23 May 1974, the applicant was arrested and charged with an offence under the *Offences Against the State Act, 1939* of being a member of an unlawful organisation, the IRA. He was sentenced to imprisonment and, having served nine months, was released on 20 February 1975. On 3 July 1975, the applicant was informed by the third-named respondent that he had forfeited his position in the civil service under the provisions of s34 of the 1939 Act. After his release, he applied to be reinstated but was told on 1 May 1975 that his application could not be favourably considered. He instituted the present proceedings in the High Court after s34 of the 1939 Act was found invalid having regard to the provisions of the Constitution. The applicant claimed damages against the respondents for breach of his constitutional rights resulting from the 'exercise and implementation' of the relevant statutory provisions. His claims against the first, second and third-named respondents were dismissed in the High Court (Carroll J) on the ground that the action was statute barred by virtue of the *Statute of Limitations, 1957*. He appealed to the Supreme Court against the dismissal of his claim but his appeal was dismissed.
McDonnell v Ireland and Ors (Supreme Court), 23 July 1997

CONTRACT

Bank must breach contract before court will interfere

- The courts will only interfere with the way in which a bank conducts its business with a client where the bank's legal obligations and duties to the client have been breached.

The plaintiff issued proceedings claiming damages for negligence and breach of agreement. He was a farmer, who alleged that in 1981 he decided to sell part of his lands in order to reduce his indebtedness as it then stood to the defendant. However, he claimed that in a meeting in May 1981, his local bank manager advised him not to sell the said lands, showed him a farm loan analysis document which rated him highly as a farmer and assured him that the defendant would provide him with whatever finances he required to overcome the financial crisis he was experiencing. The plaintiff now alleged that no reasonable bank manager, knowing that it was likely to be acted upon, would have given such bad advice in the circumstances. Damages were awarded to the plaintiff.
Behan v Bank of Ireland (Morris J), 15 August 1997

CRIMINAL

Arrest on arrest upheld

- It was lawful to have an arrest upon an arrest.

The first and second-named applicants were convicted on various counts of possessing and importing drugs. Their vehicle had been stopped and searched coming off a ferry, and they were detained to be searched. Before that took place, they were arrested by a customs officer on a charge of importing prohibited goods into the country. They were also arrested by the Gardaí under the *Misuse of Drugs Acts*, and detained and interviewed pursuant to s4 of the *Criminal Justice Act, 1984*. They sought leave to appeal their conviction but the court affirmed their convictions *People (Director of Public Prosecutions) v Ferris and Vearer* (Criminal Court of Appeal) (ex temp), 11 March 1997

Release and re-arrest upheld

- There was nothing unlawful *per se* about an arrest of a person already in custody or detention provided that such arrest was carried out with the consent of the custodian or detainer
- As the prison authorities consented to the arrests taking place on prison property, that was sufficient to make the arrests lawful
- It was perfectly lawful for the Director of Public Prosecutions and the Special Criminal Court to deal with the new charges as they did
- It was clear that the court permitted the procedure which took place to be carried on before it, and it was clear that it had jurisdiction to allow a charge substitution, and that is what it did, and the charges substituted were identical to the old charges
- What took place before the Special Criminal Court was *intra vires* that court, lawful and regular.

The applicant sought two orders pursuant to art 40.4.2° of the Constitution. The first was an order directing his immediate release from custody. The second was an order prohibiting the members of the Special Criminal Court from proceeding with his trial. He further sought the quashing of remand orders made by an improperly constituted Special Criminal Court. When the problem was discovered, most of the affected prisoners were released from custody and immediately re-arrested and re-charged before a properly constituted court. However, the applicant was not released until some hours later. On his release, he was re-arrested at common law and re-charged before the Special Criminal Court. The applicant was not legally represented in court. He was, therefore, remanded till the next day. It was clear that the applicant had been re-arrested on prison property. He contended that the re-arrest

was unlawful in that he had not been released from the custody of the governor of the prison. The applicant further argued that his unlawful custody was merely continued by the new arrest, and that, therefore, the arrest was invalid and his detention continued to be unlawful. He contended that once a direction was given by the Director of Public Prosecutions to have the applicant charged before the Special Criminal Court that direction had to be proved before a court by the best evidence. The applicant argued that there had been a failure so to do both before the Special Criminal Court and the High Court. He further contended that the Special Criminal Court had no power to charge and remand him and contended that, while his earlier remand before the Special Criminal Court had been void, nonetheless the charges themselves were still validly before the Special Criminal Court. It was the applicant's contention that the court could not then purport to recharge a person with a charge which was still validly on its books. While the court was informed the next day that the charges were in substitution for those already made, the applicant submitted that the charging procedure had taken place the preceding day and that that was the time that the court ought to have been told of the substitution. In any event, the applicant contended that the State could not substitute one charge for another which was extant before the court. The court decided that the applicant's detention was lawful and refused the reliefs sought.

Cully v Governor of Portlaoise Prison (Kelly J), 18 June 1997

Sentence reduction where plea to lesser charge accepted

- There was a duty on the prosecution where a plea to a lesser charge was accepted to marshal the evidence in such a way as to ensure it remained within the boundaries of the offence before the court
- The Director of Public Prosecutions exercised his discretion as to what pleas to accept was of no concern to the court in the absence of *mala fides*.

The defendant pleaded guilty in the Central Criminal Court to sexual assault and received a sentence of four years' imprisonment. He had originally been charged with rape and indecent assault, and the rape charge did not proceed following his plea to the sexual assault on arraignment. He brought this application for leave to appeal against the sentence imposed. The sentence was reduced to two years.

People (Director of Public Prosecutions) v Stephen Magee (Criminal Court of Appeal) (ex temp), 29 July 1997

Enquiry into whether miscarriage of justice permitted

- Where a conviction was quashed by a court on appeal, the successful appellant was entitled to have the court enter into an inquiry as to whether he was entitled to a certificate that a newly-discovered fact showed that there had been a miscarriage of justice
- Whether he was entitled to the certificate was a matter to be determined by the court hearing the application.

The plaintiff's conviction for murder was quashed on appeal to the Court of Criminal Appeal in 1995 under the *Courts of Justice Act, 1924* and no new trial was ordered. In 1997, he applied for a certificate under s9(1)(a)(i) and (ii) of the *Criminal Procedure Act, 1993*, certifying that a miscarriage of justice had occurred in relation to his conviction. The issue of whether s9(1)(a)(i) and (ii) applied to the proceedings was ordered to be tried before the court as a preliminary issue. The Director of Public Prosecutions maintained that the 1993 Act's categories of conviction did not include the plaintiff's situation, as he was convicted at trial and had his conviction quashed in the ordinary manner. The court held that the plaintiff was entitled to apply for the certificate.

People (Director of Public Prosecutions) v Connell (Criminal Court of Appeal), 16 October 1997

Question of suspended sentence after imprisonment reviewed

- The courts could not impose a sentence of suspension after a sentence of imprisonment unless the court which imposed the sentence retained seisin of the case which remained in the judicial domain.

The first-named applicant and the second-named applicant pleaded guilty to charges of burglary and criminal damage, the first-named applicant receiving a total sentence of six years with the last year suspended, and the second-named applicant receiving a total of six years. For the first-named applicant, the sentence for criminal damage was made consecutive on the burglary sentence. The court reduced the first-named applicant's sentence to four years but affirmed the second-named applicant's sentence.

People (Director of Public Prosecutions) v O'Shea (Court of Criminal Appeal) (ex temp), 17 February 1997

Must be misdirection before appeal is granted

- Before the court, on appeal, can interfere with a conviction, it has to be satisfied that the trial judge had in some way misdirected himself on some applicable principle
- There was a power vested in the Gardaí to have the applicant arrested on suspicion of a felony, regardless of the search warrant, and this power had been exercised.

The applicant was convicted of assault occasioning actual bodily harm. A £5 note had been stolen from the victim of the assault and the Gardaí applied for and were granted a warrant to search the applicant's premises for that £5 note, eight days after the assault took place. Nothing was found, but the applicant was arrested. He complained that there had been no

authenticity in the Gardaí's belief that they would recover the note and that this had been merely a device. Leave to appeal the conviction was refused.
People (Director of Public Prosecutions) v Byrne (Court of Criminal Appeal), 14 April 1997

Issue of reasonable delay in complaint of rape

- The trial judge had decided that the complainant was in such a psychological state that it was not in fact reasonably possible for her to make the complaint until she did make it. That was a decision for the trial judge and he had evidence to support him in reaching that particular view.

The applicant was convicted of rape and sexual assault. He appealed against his conviction on the grounds that on the whole his trial was unsatisfactory. He contended that the trial judge had erred in law in holding that he had no power to exclude the complainant's husband from the court while she was giving evidence. The trial judge relied on s11(3) of the *Criminal Law (Rape) (Amendment) Act, 1990* in deciding not to remove the complainant's husband. The applicant further contended that the judge had erred in law and on the facts in admitting in evidence the complaint made by the complainant to her husband. The applicant had also argued that the judge had erred in law and on the facts in holding that it was not improper for the prosecution in cross-examination to put it to the accused that the complainant was either lying or perjuring herself. The appeal was refused.
People (Director of Public Prosecutions) v Denis Roughan (Court of Criminal Appeal), 23 June 1997

Dominion does not exist in all sexual cases

- The court could not accept that a situation of dominion existed automatically in all cases where a person was accused of sexual offences. The presumption of innocence had to play a part in the court's consideration and the court had to base its decision on the actual evidence before it.

The applicant was charged with various offences of a sexual nature. He sought an injunction preventing his prosecution by the respondent on the grounds of excessive delay and lack of specificity of the charges alleged against him and that the book of evidence contained impermissible statements. In reply, the respondent submitted that there was no time bar in the prosecution of the offences alleged, and that the applicant was responsible for any delay incurred. Furthermore, any lack of specificity of the charges did not render it impossible for the applicant to defend himself, and any deficiencies in the book of evidence could be dealt with by the District Court judge.
PC v Director of Public Prosecutions (McGuinness J), 24 July 1997

Words of caution need not be exact

- It was not necessary for police officers to repeat in parrot-like fashion the words of the caution on every occasion
- The issue of the jury's composition was a procedural matter of a trivial nature.

The defendant was convicted of the robbery of a bank official and brought this application for leave to appeal against the conviction. The prosecution's evidence was mainly circumstantial. The defendant claimed that the jury was improperly constituted by the judge, adding a juror in substitution for another juror after the defendant had been put in charge and the jury foreman elected. He also claimed that a verbal admission should not have been admitted as he had not been properly cautioned under the *Judges' rules*. The application was refused.
People (Director of Public Prosecutions) v Morgan (Court of Criminal Appeal) (ex temp), 28 July 1997

Murder conviction quashed on basis of charge to jury

- Where inconsistent instructions were given to a jury on a vital matter, it was impossible to be sure that a jury did not act on the incorrect direction, and a conviction in such circumstances ought to be quashed
- Even though the trial judge quoted from the correct relevant Irish case law, it was impossible to escape the conclusion that a jury being told about two quite inconsistent tests, namely the English objective test and the Irish subjective one, could be left in confusion.

The applicant was convicted of murder. He appealed against his conviction, contending that the trial judge, when charging the jury, had misdirected them in respect of the defence of provocation. The applicant contended that the judge had opened case law supporting an objective test on the nature of provocation, when the correct test was a subjective one. Such objections were not raised as requisitions at the trial itself. The applicant's conviction was quashed and a retrial was ordered.
People (Director of Public Prosecutions) v Paul Noonan (Court of Criminal Appeal), 7 October 1997

ELECTIONS

Referendum Act, 1998

This Act was signed into law by the President on 26 February 1998.

Referendum Commission established

With effect from 2 March 1998, a Referendum Commission is established to prepare and distribute to the electorate, statements for and against the proposed Eighteenth Amendment to the Constitution (see **Constitutional** above) and to promote debate on the proposal.
Referendum Commission (Establishment) Order 1998 (SI No 53 of 1998)

Political donations rules proposed

A Bill has been presented, and passed by Dáil Éireann, which will, if passed:

- Modify the definition of 'donation' used in parts IV and VI of the *Electoral Act, 1997* to exclude services rendered by a political party's staff on behalf of its candidates and expenditure by a party on behalf of its candidates
- Specify that donations received by an elected representative of a party, which are passed to that party, will be regarded as donations to the party, provided that the representative receives a written acknowledgement from the party
- Require a person making donations to several members of the same party in the same year to furnish a donation statement to the Public Offices Commission if the aggregated donations exceed £4,000 (this is intended to replace the existing requirement on parties to disclose multiple donations)
- Modify the definition of 'election expenses' used in parts IV and VI of the *Electoral Act, 1997* to clarify the items to be included and the period to be reckoned
- Clarify the position in relation to election expenses incurred by a party or candidate in elections, and
- Remove the existing 50% limit on the proportion of a candidate's expenses which that candidate's party may incur at an election.

Electoral (Amendment) Bill, 1998

EMPLOYMENT

Compensatory rest code of practice published

The Department of Enterprise, Trade and Employment has published a *Code of practice on compensatory rest and related matters* and this order declares the code to be a code of practice for the purposes of the *Organisation of Working Time Act, 1997*. The code is appended to the order.
Organisation of Working Time (Code of Practice on Compensatory

Rest and Related Matters) (Declaration) Order 1998 (SI No 44 of 1998)

Additional information to be supplied to employees

The *Terms of Employment (Information) Act, 1994* is amended so that, from 1 March 1998, any statement of terms and conditions of employment under the Act shall include details of the times and duration of (and any other conditions relating to) the rest periods and breaks referred to in ss11-13 of the *Organisation of Working Time Act, 1997* that are being allowed to the employee.

Terms of Employment (Additional Information) Order 1998 (SI No 49 of 1998)

Balance of convenience in dismissal injunction examined

- The balance of convenience lay in favour of the granting of an injunction restraining the defendant from implementing the purported dismissal of the plaintiff pending the trial of the action.

The plaintiff worked for a radio station. He was purportedly dismissed by the defendant. He sought an interlocutory injunction restraining the defendant from terminating his employment pending the trial of the action and reinstating him to his former position. The plaintiff contended that the purported termination of his employment was unlawful as it breached the principles of natural justice. In granting some of the reliefs sought, the court held that:

- Having regard to the attitude evinced by the defendant to the presentation by the plaintiff of live broadcasts, it would not be appropriate to make an order reinstating the plaintiff to his former position
- The balance of convenience lay in favour of the granting of an injunction restraining the defendant from implementing the purported dismissal pending the trial of the action, and
- It would perpetrate an injustice if the defendant were not to pay the plaintiff's salary pending the hearing of the action leaving the plaintiff with only the prospect of an award of damages at the trial of the action.

Courtenay v Radio 2000 (Laffoy J), 22 July 1997

Exemption from working time law for civil protection services

As and from 1 March 1998, persons employed as: providers of security in prisons and places of detention; fire fighters; authorised officers (other than gardaí) within the meaning of the *Air Navigation and Transport Acts, 1950–1988*; Dublin Port Company harbour police; and non-clerical employees of the Irish Marine Emergency Service are exempt from the application of ss11-13, 15 and 16 of the *Organisation of Working Time Act, 1997*, dealing respectively with daily rest, rest and intervals at work, weekly rest, weekly working hours and nightly working hours.

Organisation of Working Time (Exemption of Civil Protection Services) Regulations 1998 (SI No 52 of 1998)

Lunch breaks for shop workers

With effect from 1 March 1998, shop employees whose hours of work include the period from 11.30am to 2.30pm shall, after six hours' work, be allowed a break of one hour, which must commence between those hours (provided such commencement would not result in the break occurring at the end of the working day).

Organisation of Working Time (Breaks at Work for Shop Employees) Regulations 1998 (SI No 57 of 1998)

ENVIRONMENT

Oil pollution compensation measures

A Bill has been presented which will, if passed:

- Give effect to the protocol of 1992 to amend the *International convention on civil liability for oil pollution damage 1969* and the protocol of 1992 to amend the *International convention on the establishment of an international fund for compensation for oil pollution damage 1971*, as amended by their respective 1976 protocols, and
- To that end, amend the *Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1988*.

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Bill, 1998

Shannon body proposed

A private members' Bill has been introduced which, if passed, would:

- Co-ordinate the activities of bodies connected with the protection, conservation, management and pollution control of the Shannon river catchment
- Establish a body to be known as the Shannon River Council, and
- Define the functions and powers of that body.

Shannon River Council Bill, 1998

FISHERIES

Aquaculture licensing regime changes

In order to pave the way for the introduction of a new regulatory system for aquaculture, including the establishment of the statutory Aquaculture Licences Appeals Board, with effect from 1 April 1998, the following provisions of the *Fisheries (Amendment) Act, 1997* are brought into effect from 26 February 1998: ss2, 3, 4(1) (insofar as it repeals s54A of the 1980 Act), 5(2), 10, 23, 63, 64, 65(2)(3), 66 and 67.

Fisheries (Amendment) Act 1997 (Commencement) Order 1998 (SI No 46 of 1998)

GARDA SÍOCHÁNA

New GRA rules

The *Garda Síochána (Associations) Regulations* have been amended extensively, insofar as they relate to the Garda Representative Association.

Garda Síochána (Associations) (Amendment) Regulations 1998 (SI No 63 of 1998)

HEALTH AND SAFETY

New rules for recreational boats

New regulations give effect, from 27 February 1998 to Council Directive 94/25/EC (of 16 June 1994) on the approximation of the laws of Member States relating to recreational craft. The regulations:

- Apply to boats, partially completed boats and certain components
- Prohibit, with effect from 16 June 1998, the placing on the market or putting into service of products not in compliance with the regulations, and
- Require the affixing of the CE mark to goods which conform to the regulations.

European Communities (Recreational Craft) Regulations 1998 (SI No 40 of 1998)

Licensing system for incineration of hazardous waste

EU Council Directive 94/67/EC (of 16 December 1994) specifies certain standards and other requirements to be applied in relation to certain types of incinerators dealing with hazardous waste. New regulations provide for the implementation of the directive in the context of the licensing system operated by the EPA in relation to such facilities under the *Environmental Protection Agency Act, 1992*.

European Communities (Licensing of Incinerators of Hazardous Waste) Regulations 1998 (SI No 64 of 1998)

LEGAL PROFESSION

Legal aid fees disputes

In the event of a dispute as to the fee

payable to solicitors and barristers under the criminal legal aid scheme, the Minister for Justice is empowered to refer the question of assessment of the appropriate fees to the Attorney General or a person nominated by the Attorney General.
Criminal Justice (Legal Aid) (Amendment) Regulations 1998 (SI No 79 of 1998)

LICENSING

Opening hours to be extended?

A private member's Bill has been introduced which aims to:

- Extend public house opening hours so that the year-round closing time will be 12.30am (except Sunday)
- Abolish the so-called 'holy hour', thereby permitting trading on Sunday from 2pm to 4pm
- Allow Sunday trading from 12.30pm to 11pm
- Provide that St Patrick's Day no longer be treated as a Sunday for the purposes of opening hours
- Abolish mandatory closing on Good Friday
- Allow off-licences to sell non-alcoholic products from 7.30am, and
- Give all other licensed premises the same facility as public houses in relation to drinking-up time and exemptions.

Licensed Premises (Opening Hours) Bill, 1998

LOCAL GOVERNMENT

New financing system

A Bill has been presented which aims to introduce a new funding system for local authorities:

- The fund will be ring-fenced exclusively for local authority purposes, and
- Will be funded from the proceeds of motor taxation and an Exchequer contribution, to amount to £270,000,000 in 1999.

Local Government Bill, 1998

PLANNING AND DEVELOPMENT

Local Government (Planning and Development) Bill, 1997

This Bill has been amended in the Select Committee on Environment and Local Government and passed by Dáil Éireann.

Traveller accommodation

A Bill has been introduced which aims to:

- Provide that each major housing authority prepare and adopt a five-year plan for the provision of accommodation for travellers in their area
- Provide that the adoption of such programmes will be a reserved function, subject to control by the Minister for the Environment and Local Government
- Provide for public consultation
- Require housing authorities to take reasonable steps to secure the implementation of the programme in their functional area
- Establish a National Traveller Accommodation Consultative Committee to advise the Minister
- Provide for the establishment by each county council and borough council of a local traveller accommodation consultative committee
- Extend statutory backing for the provision of financial support to housing authorities and the voluntary sector for the provision and management of traveller accommodation
- Enhance the powers available to housing authorities to control unauthorised temporary dwellings in their area
- Amend the *Local Government (Planning and Development) Acts, 1963-1993* to ensure that development plans specifically include objectives concerning the provision of traveller accommodation
- Provide that annual reports by local authorities address these issues, and extend to halting-sites the powers available to local authorities under the *Housing (Miscellaneous Provisions) Act, 1997*, relating to anti-social behaviour.

Housing (Traveller Accommodation) Bill, 1998

PRACTICE AND PROCEDURE

District Court criminal rules changed

With effect from 15 March 1998, in order to give effect to the provisions of the *Criminal Justice (Miscellaneous Provisions) Act, 1997*, changes have been made to the rules governing criminal matters before the District Court. The changes cover:

- The provision of a seal for the District Court
- The amendment of form 24.7 (list of witnesses)
- The addition of r11 to o25 concerning the recital of charges in a warrant or recognisance, and
- An amendment to o38 regarding applications to the court to detain or further detain cash seized under the *Criminal Justice Act, 1994*.

District Court (Criminal Justice) Rules 1998 (SI No 41 of 1998)

District Court family law rules published

With effect from 15 March 1998, new rules govern the procedure to be followed and the forms to be used in applications to the District Court under both the *Family Law Act, 1995* and the *Family Law (Divorce) Act, 1996*.
District Court (Family Law) Rules 1998 (SI No 42 of 1998)

Animal drug regulations presumed constitutional

- There was no declaration by the High Court that the regulations in question were invalid and, as such, they enjoyed a presumption of constitutionality which the district judge was bound to observe.

The applicant sought an order of *mandamus* directing the respondent to hear and determine four charges against the notice party arising out of alleged breaches of the *European Communities (Control of Veterinary Medicinal Products and their Residues) Regulations 1988 and 1990*. In the District Court, the respondent declined jurisdiction to hear the case and struck out the charges against the notice party. The respondent declined jurisdiction on the grounds that, in his opinion, the impugned regulations had already been found by the High Court to be *ultra vires* and void. The applicant contended that the regulations had not been found to be *ultra vires*. The notice party submitted that the alleged offences had been committed in December 1992 which pre-dated the passing of the *European Communities (Amendment) Act, 1993*. Therefore, the notice party could not be prosecuted for an offence which was not an offence at law at the time of its alleged commission. The order of *mandamus* was allowed and the case was remitted to the District Court.
Minister for Agriculture, Food and Forestry v Brennan (Carroll J), 11 July 1997

SOCIAL WELFARE

Social Welfare Bill, 1998

This Bill has been passed by Dáil Éireann.

Dental benefit extended

The income limit provisions relating to dental benefit have been abolished.
Social Welfare (Consolidated

Payments Provisions) (Amendment) (No 13) (Treatment Benefit) Regulations 1997 (SI No 530 of 1997)

SPORT

Sports Council proposed

A private member's Bill has been introduced which will, if passed:

- Provide for the promotion, co-ordination and development of sport
- Establish a body to be known as the National Sports Council of Ireland, and
- Define the functions of such a body.

National Sports Council of Ireland Bill, 1998

TAXATION

Finance Act, 1998

This Act was signed into law by the President on 27 March 1998.

Whether goods 'manufactured within the State'

- In determining whether, for the purposes of taxation legislation, goods were 'manufactured within the State', the correct approach was to ask first whether the end product was capable of being produced by what would ordinarily be described as a process of manufacture.

The issue was whether dwarf potted chrysanthemum plants were 'goods manufactured within the State' for the purposes of tax relief under s39 of the *Finance Act, 1980*. The Circuit Court held that they were such goods, the High Court held to the contrary, and this decision was appealed to the Supreme Court which dismissed the appeal.

Brosnan (Inspector of Taxes) v Leeside Nurseries Ltd (Supreme Court), 30 October 1997

TRANSPORT

Wheelchair taxis: new regulations

New regulations set out amended criteria for wheelchair accessible taxis and clarify the powers of the Garda Commissioner in relation to the inspection of taxis, wheelchair accessible taxis and hackneys. The requirements include:

- Accommodation for a person seated in a wheelchair
- Accommodation for at least three passengers in addition to the wheelchair and its occupant
- At least two doors allowing access to the area accommodating the wheelchair
- A ramp or other mechanism to facilitate safe access, with a gradient of no more than 1:3.6
- An unrestricted view of the taximeter for the wheelchair occupant, who may be seated facing either forward or backwards, and
- An appropriate restraint system, including anchorage points for the wheelchair and a lap belt for its occupant.

Road Traffic (Public Service Vehicles) (Amendment) Regulations 1998 (SI No 47 of 1998)

Steps in small PSVs no longer required

The requirement for small public service vehicles to have a step fitted in certain circumstances has been repealed. The new requirements in this area are specified in the *Road Traffic (Public Service Vehicles) (Amendment) Regulations 1998*, see above.

Road Traffic (Construction, Equipment and Use of Vehicles) (Amendment) Regulations 1998 (SI No 48 of 1998)

TRIBUNALS

Changes in terms of reference of existing tribunals to be allowed

A Bill has been presented which will, if passed, allow for the amendment by the Oireachtas of an instrument appointing a tribunal under the *Tribunals of Inquiry (Evidence) Act 1921*.

Tribunals of Inquiry (Evidence) (Amendment) Bill, 1998 G

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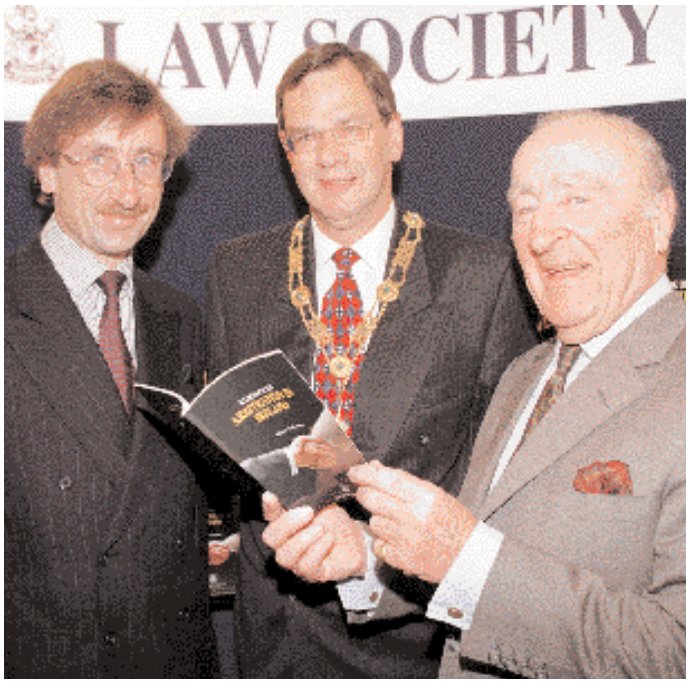
Grand tour: The President, Laurence K Shields, and the Director General, Ken Murphy, have been continuing their programme of visits to bar associations around the country. Here they are pictured with members of the Clare Bar Association (above), the Roscommon Bar Association (below left), the Limerick City and County Bar Association (below right), and (below centre) with members of the Dublin Solicitors' Bar Association

The Law Society recently hosted a conference on civil rights, sponsored by the Irish Council for Civil Liberties (ICCL), the Committee on the Administration of Justice in Northern Ireland, and *The Irish Times*. Pictured at the conference were Michael Boyle, European Court of Human Rights, Michael Farrell, Co-Chair of the ICCL, RTE broadcaster Miriam O'Callaghan, and Law Society Senior Vice-President Pat O'Connor

Not just desserts: The President recently hosted a dinner at Blackhall Place for Justice Minister John O'Donoghue. Pictured at the dinner were (from left) Senior Vice-President Pat O'Connor, Minister for Justice John O'Donoghue, Immediate Past President Frank Daly, President Laurence K Shields, Director General Ken Murphy, and Junior Vice-President Geraldine Clarke



Pictured at the launch of the Law Society's *Handbook on arbitration in Ireland* were the author Michael Carrigan, Law Society President Laurence K Shields, and his predecessor in that role some 40 years earlier John Carrigan (President, 1957-58) Above: High Court President, Justice Frederick Morris, launching the book

New appointment

Attorney General David Byrne SC congratulates Aidan Judge on his appointment as Chief State Solicitor for Co Limerick

South facing

Pictured (from left) are Law Society Director General Ken Murphy, President Laurence K Shields, and Deputy Director General Mary Keane

The Law Society Council held its meeting in the spectacular boardroom of the Port of Cork last month. This was only the second time in its 146-year history that the Council has met in Cork, the last time being in 1985 to mark the *Cork 800* celebration. The elected representatives of the Cork-based Southern Law Association and the West Cork Bar Association were invited to attend the meeting.

The relocation of the regular Council meeting from Dublin to Cork was part of an initiative by Law Society President, Laurence K Shields, to involve more solicitors at grassroots level in the processes of the Law Society. The previous month the Council had met in Galway city.

'The solicitors' profession is facing a number of major changes as we approach the new millennium and it is important that the Society consults as many members as possible to help them cope with these challenges head-on', said Mr Shields.

Before the Council meeting in Cork, President Laurence K Shields was invited to the meet the Lord Mayor of Cork, Dave McCarthy, at City Hall. Back row, from left: Immediate Past President Frank Daly, and the Southern Law Association's Martin Harvey and Sean Durcan. Front row, from left: SLA President Fionnuala Breen-Walsh, Lord Mayor Dave McCarthy, and President Laurence K Shields

Annual lawyers' fishing trip

Hook, line and sinker: from left to right Robert Ramsay, Hugh Rutherford, Simon McAleese, Patrick Molloy, John Jermyn, St John Dundon, Stephen Beverley, Catherine Dundon, Thadie McAleese, Michael O'Byrne, Laurence Elliott, Harvey Chant, Darren Blackburn, James Healy-Pratt, Stephen Richards, and Ross Marland

This year's Irish lawyers' annual fishing trip took place on Lough Corrib at Oughterard, Co Galway, in May. We were delighted to have a number of lawyers from England, Northern Ireland and Wales joining us in the search for the 'perfect fish'. We also had some Scottish representatives. Unfortunately, the weather was not conducive to fishing so the final count was pretty dismal. The prize for best fish went to Robert Ramsay (England), and the best overall catch went to Simon McAleese (Ireland). Although the fishing itself was pretty disappointing, the weekend was very successful and enjoyable. As one of our participants said: 'This was one of the worst fishing trips I have ever attended but the best weekend ever!' Newcomers are always welcome, and we look forward to next year.

Catherine Dundon

Franco-Irish Lawyers' Association

The Franco-Irish Lawyers' Association (*Association Irlandaise des Juristes Francophones*) was formally launched on 24 March this year at the conferring ceremony of the *Diploma in legal French* in the Law Society, Blackhall Place (see *Gazette*, April, page 47). The association was established to promote and foster professional and social links between Irish and French lawyers and to provide a forum for discussion on topics of mutual interest.

Buying property in France was the title of the association's first public meeting which was held in the Bridge Gallery, Ormond Quay, on 23 April. The meeting was addressed by Alan Millard, solicitor from Carlow and *Diplomé de français juridique*, who had recently bought a house in France and gave the audience the benefit of his personal experiences both as a 'foreign' purchaser and a practising solicitor.

Alan's talk was complemented by the contribution of French *notaire* Claire Halbout from Paris whose professional expertise gave further insight into the intricacies of French conveyancing, including some practical indicators relating to fees, taxes and general procedures relating to property transactions in France.

The association's next public information evening will take place on Thursday 16 July at 7.30pm in the Old Jameson Distillery on Bow St, Dublin 7. The discussion will centre on *French business clients in Ireland: their needs and expectations*. All are welcome.

For further details on the information evening and/or copies of the association's newsletter, please contact Sandra at (01) 6142387 or sandraj@indigo.ie.

Irish Solicitors' Golfing Society

The *President's Prize* took place at Glasson Golf & Country Club on Wednesday 20 May 1998 and 106 members took part. The *Captain's Prize* will take place at Adare Golf Club at Adare Manor on Friday 24 July. Any solicitors who wish to have their names placed on the mailing list should contact the Honorary Secretary, Henry Lappin, 2 Harbourmaster Place, Custom House Dock, Dublin 1.

Pictured above left: President Laurence K Shields and Henry Lappin with the first team to go out at the *President's Prize* competition in May

Pictured left: Law Society Past President Tom Shaw receives a presentation from President Laurence K Shields, while (right) Judge Patrick McCartan accepts the Director General's Cup

Divorce brochure launched

Members have reported that many clients and potential clients have been contacting their offices for basic information concerning divorce. In response to this demand, the Family Law and Civil Legal Aid Committee has produced a brochure called *Divorce in Ireland* which was sent to each member recently and which can be sent to clients in response to their queries.

Pictured at the launch of the divorce brochure were Eugene Davy, chairman of the Family Law and Civil Legal Aid Committee, and committee member Joan O'Mahony

Of moots and mooting

Mooting is mock court advocacy. Participants are given a complex fictitious legal problem on which they prepare detailed written arguments and then present these arguments orally before a panel of judges, who are free to make interventions and ask questions. Apprentice teams down through the years have shown a flair for the cut and thrust of this demanding form of advocacy. Many mooting competitions start in the autumn. Apprentices are invited to consider participation in the following.

Jessup International Law Moot Court Competition. This competition involves a team of five apprentices preparing 50 pages of legal arguments and then orally arguing an issue of international law. This year's problem is the *Protection of cultural identity as related to international trade and international copyright law*. The team will compete against other Irish teams. The winning team then represents Ireland in the international rounds of this competition in Washington DC in April 1999. The Law Society has a most impressive track record in this competition.

Winning team: Four apprentices recently returned from Washington DC in the United States after taking part in international rounds of the Jessup International Moot Court Competition. They are (from left): Cathryn Costello (Arthur Cox), Philip Nolan (Mason, Hayes & Curran), Donal King (Keanes), and Patrick Walshe (McCann FitzGerald). Also in the picture is Law Society Education Officer TP Kennedy, who coached the team. Some 42 teams from around the world took part in the competition, with the Irish team eventually finishing ninth (the highest ranking ever achieved by an Irish team).

Butterworths National Moot Court Competition. This is a national moot court competition involving all the universities and professional law schools in the state. Teams present arguments on issues of Irish law. The two winning teams argue the case before judges drawn from the Irish and Northern Irish bench in the Supreme Court.

European Moot Court Competition. This competition involves teams arguing issues of EC and European human rights law. Teams are initially asked to prepare written arguments in English but summarised in French. On the basis of the written pleadings, a limited number of teams are selected to travel to a regional round in another Member State. The final is held in the Court of Justice in Luxembourg.

If any apprentice wishes to get involved in any of the above competitions, please contact TP Kennedy, Education Officer, Law School, Law Society, Blackhall Place, Dublin 7, tel: 6710200.

Coward's Way

Morpus Delicti, the Irish Solicitor Apprentices' Dramatic Society, is delighted to announce its forthcoming production of Noel Coward's hilarious comedy *Hay fever*. Written in 1925, it is widely considered to be one of Coward's most accomplished works, perhaps only surpassed by the wonderful *Blithe spirit*. *Hay fever* shows the author at his acerbic best and features many classic Coward one-liners.

The play will be staged in Blackhall Place on Friday 28 and Saturday 29 August. Several of the cast appeared in the hugely successful production of *Beyond reasonable doubt* which was performed in January by the 46th Professional Course.

Hay fever boasts an equally talented cast and production crew, and should prove to be a great evening's entertainment.

Tickets are £3.50 and can be booked, or block-booked, in advance by writing to Corpus Delicti, 23 Ashfield, Templeogue, Dublin 6W. Please make cheques payable to 'Corpus Delicti'. There has already been a considerable interest in tickets, so please book early to avoid disappointment!

Patrick Walshe, Director, Hay Fever

Students from 40th Advanced Course celebrate after receiving their parchments at a ceremony in Blackhall Place last month

At the recent CLE seminar on *Safety, Health and Welfare at Work*, held in conjunction with Dublin City University, were (from left) DCU's Raymond Byrne BL, CLE co-ordinator Barbara Joyce, McCann FitzGerald partner Denise O'Connor, Law Society Council member Orla Coyne, and David Tomkins from DCU

Book review

Mediation: why people fight and how to help them to stop

Michael Williams

Poolbeg Press (1998), 123 Baldoyle Industrial Estate, Dublin 13. ISBN: 1-85371-7312. Price: £7.99

This book is quite clearly Michael Williams' personal story of his work and experience as a mediator, which makes it very readable. It is not a textbook for mediators; rather, it is for those who want to find out something about marital mediation and how one mediator works in this area.

Early on, he observes that a judge can determine a dispute but not resolve it, whereas a mediator in marital separation helps the couple to resolve their own issues or disputes. Michael says he prefers his clients to talk to their lawyers during the mediation process and not when it is over. He is concerned that the willingness to co-operate built up with the mediator's help may be unravelled by lawyers if clients only meet their solicitors at the end of mediation. In the Family Mediation Service, clients are encouraged to seek legal advice in order to be fully informed and to make decisions that they can stand over. He also recognises that to be accepted by lawyers mediators need to show that they are also professionals. Having practised as a lawyer himself, he understands lawyers asking themselves: 'what is my duty ?'

Chapters 7 and 8 are very useful. Michael illustrates some of the skills and techniques he uses as a mediator with very clear examples. He explains that the techniques a mediator uses serve his strategic plan – a plan which is directed towards inducing change and creating movement for the clients. I am not so happy, however, with mediation skills being described as a 'box of tricks'. It jars, and suggests that the mediator is controlling his clients rather than acting as a facilitator of change.

As a mediator, I believe the most useful skill we have is the art of questioning, which allows the client to reflect, to talk about their needs, to tell their story, to be understood, and to have their partner hear what is going on for them. It gives us a window into our clients' world. People tend to own what they say themselves, so I was surprised that Michael did not look more closely in his book at the use of questioning and the different types of questioning and their purpose.

As Michael says, the language used in mediation is very different to legal language – but because language is so important, I have difficulty with his use of the word 'wreckage' to describe the end of a marriage. I prefer to believe that one of the aims in mediation is to allow the couple to honour the good in their spousal relationship and to be able to negotiate together in the future in a co-operative way.

The issue of domestic violence is a very serious one in mediation. Michael quotes from Primo Levi's experience of the Nazi regime that 'torture is not over when it ends, but continues in the mind of the victim for the rest of his life'. This is believable. The manner in which Michael discusses terminating mediation because of intimidation is a very personal one and not one that we in the Family Mediation Service would subscribe to because of the risk of putting the victim in further danger. Workshops put on by the Cork Domestic Violence Project, which works with men overcoming violence, would say that violence is used by them for domination and control of the victim. Violence has always to be viewed as the responsibility of the perpetrator.

Chapter 10 (*More problems in mediation*) is a very useful one for couples who are going through a separation. It discusses 'absent warriors', families, the role of friends and how they can impede the mediation process. I also liked his discussion of 'bringing up the children'.

Early on in the book, Michael says that the mediator 'will hope, as someone who has come to care for (his clients), that any agreement they may reach will be a good one that will last'. A mediator is aware of the importance of 'caring' for the client. He or she must also respect each couple as unique individuals with their own stories, who are being offered the choice of whether to reach an agreement or not. G

Mary Lloyd is Service Co-ordinator with the Family Mediation Service in Dublin.

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 3 July 1998)

Regd owner: Jeremiah P Murphy; Folio: 576L; Land: Carlow; **Co Carlow**

Regd owner: The Council of the Urban District of Ennis, Townhall, Bindon Street, Ennis, Co Clare; Folio: 28989; Lands: Lifford (situate to the South of Lifford Road in the Urban District of Ennis; **Co Clare**

Regd owner: Michael Ahern; Folio: 47060; Property: Part land of Kilmoney situate in the Barony of Kerrycurrihy, County of Cork; **Co Cork**

Regd owner: Jeremiah McCarthy (deceased); Folio: 10025; Lands: Part lands of Glancam situate in the Electoral Division of Blackpool, Barony of Barreto and County of Cork; **Co Cork**

Regd owner: Andrew McSweeney; Folio: 35478; Lands: Townland of Cloongeel, situate in the Barony of Duhallow, County Cork; **Co Cork**

Regd owner: Ellen O'Driscoll; Folio: 2266; Land: Part lands of Garranecore situate in the Barony of Carberry East (West Division) and County of Cork; **Co Cork**

Regd owner: Donal O'Sullivan; Folio: 27499; Land: Knockroe Middle and Knockroe (part) in the Barony of Bear, County Cork; **Co Cork**

Regd owner: John Briordy, Carricknamohill, Killybegs; Folio: 1473F; Land: Carrickmoghill; Area: 0a 1r 35p; **Co Donegal**

Regd owner: Martin Mackey, Slieve Sneacht Avenue, Letterkenny, and Ballyar, Ramelton, Co Donegal; Folio: 10057F; Land: Ballyarr; **Co Donegal**

Regd owner: Eileen Cassidy of 59 Belgard Heights, Tallaght, County Dublin (Talbot Nursing Home, Kinsealy Lane, Malahide, Co Dublin); Folio: 992F; Lands: Property situate to the west of Belgard Road in the town of Tallaght, Townland of Cookstown and Barony of Uppercross; **Co Dublin**

Regd owner: Muftah Eljamel and Adoracion Eljamel of 100 Grace Park Meadows, Dublin 9; Folio: 16605; Lands: a plot of ground situate on the east side of Lorcan Avenue in the Parish and District of Santry and City of Dublin; **Co Dublin**

Regd owner: JS Lister Limited of Dorset Street, Dublin; Folio: 15840; Lands: Townland of Ballymount Little in the Barony of Uppercross; **Co Dublin**

Regd owner: James Culleton; Folio: 5715F; Lands: Townland of Gleensk, Barony of Iveragh; **Co Kerry**

Regd owner: John D Gallagher; Folio: 6119F; Lands: Townland of Coarha Beg, Barony of Iveragh; Area: 1.025 acres; **Co Kerry**

Regd owner: Joseph Conway; Folio: 77L; Lands: Townland of Castleconnell, Barony of Clanwilliam; **Co Limerick**

Regd owner: Laurence D McCarthy; Folio: 5077F; Lands: Townland of Dromtrasna South, Barony of Glenquin; Area: 15a 3r 21p; **Co Limerick**

Regd owner: Phil Johnston; Folio: 34785F; Lands: Townland of Gouldavoher, Barony of Pubblebrien; **Co Limerick**

Regd owner: Provincial Housing Society Limited; Folio: 26037; Lands: Townland of Doradoyle, Barony of Pubblebrien; **Co Limerick**

Regd owner: Hugh Dawnay; Folio: 7914F; Lands: Townland of Whitfield North, Middlethird; Area: (1) 14.125 acres, (2) 46.004 acres; **Co Waterford**

Regd owner: Pim Brothers Limited; Folio: 5326; Lands: Barony Parish of St Michael's; **Co Waterford**

Regd owner: Thomas Sheridan; Folio: 9980; Land: Townland of Bawnfune, Barony of Middlethird; Area: 1r 3p; **Co Waterford**

Regd owner: James Bermingham, Aughavoneen, Boylin, Athlone; Folio: 1712F; Land: Prop 1 – Aghanvoneen, Prop 2 – Fassagh, Prop 3 – Fassagh; Area: Prop 1 – 16.75 acres, Prop 2 – 5.558 acres, Prop 3 – 0.081 acres (one undivided ninth part); **Co Westmeath**

Regd owner: Rev Michael Nugent, Balroe, Ballynacargy, County Westmeath, Sonna Ballynacargy, County Westmeath; Folio: 7297; Land: Ballyhug, Sonna Demesne; Area: 26a 3r 1p, 0a 0r 16p; **Co Westmeath**

Regd owner: Laurence Fogarty, Ballyleigh, Ballywilliam, New Ross; Folio: 13060; Lands: Ballyleigh; Area: 5a 1r 17; **Co Wexford**

Regd owner: Mary Kelly; Folio: 114R; **Co Wexford**

Regd owner: Dominick McGrath, Coolback, New Ross; Folio: 912; Land: Ballywilliam; Area: 55a 2r 9p; **Co Wexford**

Regd owner: Thomas E O'Reilly; Folio: 12137; Lands: Coolbeg, Barony of Arklow; **Co Wicklow**

WILLS

Burke, Thomas, deceased, late of Levally, Ballinrobe, County Mayo. Would any person having knowledge of a will executed by the above-named deceased who died on 5 June 1998, please contact Michael McDarby & Company, Solicitors, Glebe Street, Ballinrobe, Co Mayo, tel: 092 41440, fax: 092 41762

Cashman, William, deceased, late of Cherrymount, Youghal, Co Cork, and St Otterans Hospital, Waterford. Would any person having knowledge of a will, dated 3 November 1982, of the above-named deceased who died on 18 June 1984, please contact James G O'Mahony & Company, Solicitors, City Park House, Sullivan's Quay, Cork, tel: 021 964655, fax: 021 964635

Costello, Peter Joseph, deceased, late of Greenhills Road, Tallaght, Dublin 24. Would any person having knowledge of a will, executed by the above-named deceased, who died at St Vincent's Hospital, Dublin 4, on 31 October 1997, please contact Cullen & O'Beirne, Solicitors, 2 Inns Quay, Dublin 7, tel: 8726131, fax: 6777352

MacNamara, Mary (formerly Walshe), deceased, late of 10 The Green, Boden Park, Rathfarnham, Dublin 16. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased who died on 17 January 1998, please contact Dermot O'Neill & Company, Solicitors, 43 Herberton Road, Dublin 12, tel: 4541574, fax: 4541574

Richardson, Patrick, deceased, late of Toureeny, Moycullen, Co Galway or Kylebroughlan, Moycullen, Co Galway. Would any person having knowledge of the existence of a will executed by the above-named deceased, please contact Horan & Son, Solicitors, 23 Eyre Square, Galway, tel: 091 462891, fax: 091 564717 **(Ref JN/AL/Mc157/3910)**

Tobin, Laurence, deceased, late of Rosapenna, New Road, Clondalkin, Dublin 22. Would any person having knowledge of the whereabouts of a will or codicil of the above-named deceased, who died on 26 April 1998, please contact James Flynn & Company, Solicitors, 10 Anglesea Street, Dublin 2, tel: 6798444, fax: 6795771

EMPLOYMENT

Legal secretary with experience in litigation and conveyancing seeks part-time/temporary position in Dublin area. Reply to **Box No 60**

Brian Lynch & Associates, Solicitors, 4 Courthouse Square, Galway. Bright, experienced solicitor required, starting August 1998. Computer literacy essential. Apply in writing, enclosing CV

Solicitor required for South Donegal area for locum position. August – October, general experience necessary. Reply to **Box No 61**

Solicitor required for busy office. Must have conveyancing, commercial and residential. Contact Guilfoyles, Solicitors, Courthouse Chambers, 95 Main Street, Midleton, County Cork

MISCELLANEOUS

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

Personal injury claims, 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: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

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

Wanted: seven-day ordinary publican's licence. Contact John V Kelly, Solicitors, Church Street, Cavan, tel: 049 31988, fax: 049 62653

Wanted: seven-day ordinary publican's licence. Any area. Contact Ahern Roberts Williams & Partners, Solicitors, 28 South Mall, Cork, tel: 021 277866, fax: 021 374244

Muredach Doherty & Company have moved to 7a South Richmond Street, Dublin 2. Please change our entry in the *Law directory* and in particular, please change our fax number to **4754598**. Faxes sent to our old fax number will not reach us.

LOST TITLE DEEDS

O'Riordan, Timothy (Ted), deceased. Would any person holding or knowing the whereabouts of title deeds of the above-named to a dwellinghouse at 'Arbutus' New Line, Charleville, Co Cork, please contact James Binchy & Son, Solicitors, Charleville (**Ref OMB/EL)**

In the matter of the *Registration of Title Act, 1964* and the application of Ivan Blake in respect of property in the county of Meath
County: Meath
Folio: None
Lands: Fletchestown
Dealing no: X6641/95

Take notice that Ivan Blake of Clongill House, Navan, County Meath, has lodged an application for registration on the freehold register free from encumbrances in respect of the above property.

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

The application will be proceeded with unless notice 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 notice should state the grounds on which the documents are held and quote the dealing reference above.
Sean MacMahon, Examiner of Titles

Schedule
a) Original deed of conveyance dated 6 September 1920 – Michael Reid and Hugh Connell to Mary Ward
b) Certified copy grant of administration *de bonis non* of Mary McCann (orse Ward)
c) Original deed of conveyance dated 29 March 1978 – Michael Finucane and Thomas Noonan to Richard Blake
d) Original deed of conveyance dated 31 December 1985 – Richard Blake to Ivan Blake
e) Original and counterpart deed of mortgage dated 5 March 1990 to Ivan Blake to Bank of Ireland