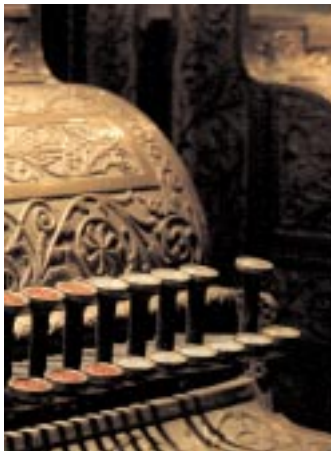
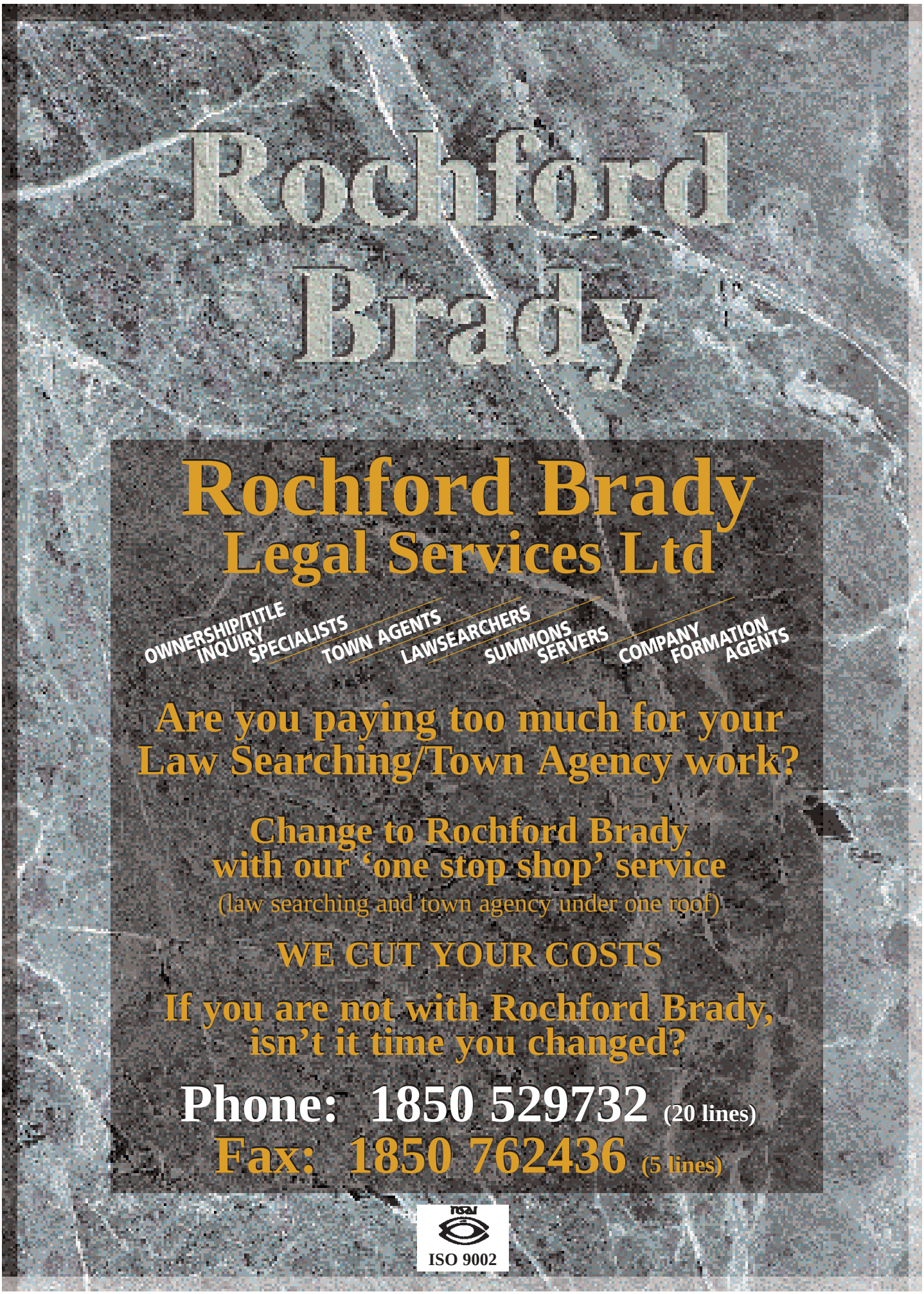
GAZETTE

REGULARS



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

Published at Blackhall Place, Dublin 7, tel: 01 6710711, fax: 01 671 0704.
Editorial Board: Dr Eamonn Hall (Chairman), Conal O'Boyle, Mary Keane, Ken Murphy, Michael V O'Mahony, Helen Sheehy
Subscriptions: £45
Volume 92, number 5



Rochford Brady
Legal Services Ltd

OWNERSHIP/TITLE INQUIRY SPECIALISTS
TOWN AGENTS
LAWSEARCHERS
SUMMONS SERVERS
COMPANY FORMATION AGENTS

Are you paying too much for your Law Searching/Town Agency work?

Change to Rochford Brady with our 'one stop shop' service
(law searching and town agency under one roof)

WE CUT YOUR COSTS

If you are not with Rochford Brady, isn't it time you changed?

Phone: 1850 529732 (20 lines)
Fax: 1850 762436 (5 lines)

NSAI
ISO 9002

The ties that bind

Laurence K Shields at the launch of the Justice Media Awards

Last month saw the launch of two important Law Society initiatives: the latest stage in the Law Reform Committee's *Focus on Law Reform* programme, and the relaunch of the Justice Media Awards Competition. The *Law Reform* initiative is discussed in more detail on page XX, but I want to concentrate here on the relationship between the media and the legal profession.

The main aim of the Justice Media Awards is to reward outstanding journalism in the print and broadcast media which contributes to the general public's understanding of the law, the legal system or specific legal issues.

I believe greater understanding is something that could benefit both of our professions.

At times you could be forgiven for thinking that the press and the legal profession have nothing in common, but of course that's not true. There are many ties that bind us – and I'm not just talking about the perennial subject of the libel laws. Truth and reputation are paramount for all of us.

A free press is generally regarded as one of the safeguards of a democratic society. It protects us from the excesses of the tyrant who would dearly love to control what the citizen knows and what the citizen thinks. The twentieth century has been the age of tyrants – you need look no further than the recent news reports to see that it is not over yet – and on almost each occasion that a dictator has come to power, his first act has been to shackle the press. His second act has been to put the lawyers up against the wall.

In many regimes around the world, human rights lawyers and outspoken journalists have found themselves side by side on the lists compiled by the death squads. That's because both professions really do have something in common: they care about protecting the interests of justice and vindicating the rights of the people.

Perhaps that's why lawyers in this country feel so strongly when they are attacked in the press for simply doing their jobs. Lawyers as a group are an easy target for negative comments in the media which seems reluctant to highlight the positive role played by the legal profession.

Certainly some lawyers have helped members of the defence forces sue the State in the so-called 'army deafness' cases. But, by and large, the State has been found to be negligent by the courts, which under our Constitution are independent of Government. So who is to blame, if the press is going to insist on apportioning blame? The client for being deafened? The lawyer for vindicating his client's legal rights? Or the State for its negligent actions over a period of decades? Or perhaps the judges for finding that people who have been deafened through negligence in their workplace have a right to compensation?

And what about the criminal lawyer, who may get called out in the middle of the night to represent his client who's being held in a Garda station? There's been a great deal of criticism in the media along the lines that criminal lawyers are nothing but mouthpieces for their miscreant clients. Maybe those critics would like us to dispense with the right to be represented by a lawyer? Perhaps we should even skip the trial and send suspects directly to jail? After all, there's no smoke without fire is there?

But those critics who complain the loudest about lawyers and the legal system should remember that every time you put restrictions on people's rights, you are chipping away at the cornerstone of democracy. And we all have a duty to fight for our freedom and to protect our democracy.

Journalists have been murdered in countries all over the world for standing up for freedom and free speech. According to the International Federation of Journalists, in Latin America alone 25 journalists were assassinated last year. Here at home we saw Veronica Guerin killed by those who didn't like what she had to say. In Belfast, solicitor Pat Finucane met the same fate – shot by people who appear to have confused the messenger with the message.

We're all in the same boat, and it's our job – lawyer and journalist alike – to make sure that we don't run aground. We may not be able to make the public like us any better, but if we can help them to understand how the law works and how the legal system operates, then we will have done a good day's work.

Laurence K Shields
President

Opening another person's letters

The preamble to the English Ordinance of 1657 establishing a General Post Office noted that it was 'the best means to discover and prevent many dangerous and wicked designs which have been and are daily being contrived against the peace and welfare of the Commonwealth'.

Government today still relies on the Post Office and the telephone companies to acquire intelligence about crime and matters pertaining to the security of the State. This article considers how the law tries to prevent 'dangerous and wicked designs' but leaves for another day consideration of interception of the post by the State, and agents of the State, pursuant to the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993*.

A heinous crime

The general principle that letters and postal packets in the course of transmission by post are inviolable is enshrined in the *Postal and Telecommunications Services Act, 1983*. Section 66(1) of the 1983 Act provides that postal packets and mailbags in course of post shall be immune from examination, detention or seizure except as provided under that Act or any other enactment.

The secretion or destruction of a letter in the course of transmission by post is regarded by the law as a heinous crime – heinous in the sense of the gravity of the possible punishment. Section 55 of the *Post Office Act 1908* as amended by the *Larceny Act, 1990* provides that: *'if an officer of An Post, for any purpose whatsoever, secretes or destroys a postal packet, which includes a letter, in the course of transmission by post, he or she shall be guilty of a felony and shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years, or to a fine or both'*.

The detention of any postal packet in the course of transmission by post which ought to have been delivered to any other person is also prohibited by the *Post Office Act 1908*. The expression 'postal packet' means a letter, postcard, newspaper, book or parcel and every packet or article transmissible by post and includes a telegram. The offences apply to a postal packet in the course of transmission by post. Once a letter or postal packet is delivered, it ceases to be in the course of transmission by post, and if it is opened by any unauthorised person different criminal prohibitions apply.

The penalties for unauthorised opening of letters are severe. A person found guilty under section 84 of the 1983 Act is liable on summary conviction to a fine up to £800 or, at the discretion of the court, to imprisonment for a term up to 12 months, or to both the fine and imprisonment. On conviction on indictment, such a person is liable to a fine up to £50,000 or, at the discretion of the court, to imprisonment for a term of up to five years, or to both the fine and imprisonment.

Exceptions to penal provisions

There are, however, specific exceptions to what may appear an absolute prohibition on anyone opening a letter or postal packet not addressed to him or her. The absolute prohibition on opening, delaying or detaining letters or postal packets does not apply to a person who is acting in An Post in the course of his or her duties, where such person is refusing, detaining, deferring, withholding, returning or disposing of postal packets which do not comply with statutory schemes made by An Post or which consist of, or contain, objectionable matter. An Post is authorised pursuant to section 83 of the 1983 Act to open unsealed postal packets, postal packets which are undeliverable, postal packets awaiting collection *poste restante* and not collected, as well as parcels due for collection and not collected.

The prohibition on opening letters and postal packets does not apply to the interception process whereby the Minister for Justice issues a warrant in certain circumstances under the *Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993*.

A postal packet may also be opened by a person who is acting under 'other lawful authority'. The expression 'other lawful authority' is not defined. Arguably, this would apply to a parent, or a situation where, for example, in a boarding school, the school authorities consider it proper to open a letter addressed to a student in certain defined circumstances or in certain other institutions, for example, a prison. Obviously, 'other lawful authority' applies to situations in offices where letters addressed to others, and not marked private, personal or confidential, are opened in a routine office manner.

I believe, however, that the words 'other lawful authority' would be construed in a very narrow sense, reflecting the respect which the law affords to the privacy of the individual. G

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

Microsoft: the mother of all litigation battles!

At the time of writing, it looks as if the United States Justice Department and Microsoft Inc are heading for one of the biggest clashes in the history of US anti-trust law. While the most immediate effects will, of course, be felt in the computer industry in the United States, there are considerable potential knock-on effects on the European market. More particularly, in Ireland both the hardware and software industries will be watching progress in this matter with eager anticipation.

In America, the immediate issue is whether Microsoft has been abusing its market dominance in the operating systems software market by including in the *Windows 95* operating software, and the *Windows 98* successor, its own Internet connection system. By effectively giving away this program for free, say its competitors, Microsoft has attempted to strangle at birth competing systems such as Netscape.

Change in direction

Microsoft's best bet may be to string out the litigation for several years, hoping for a change in direction at the Justice Department in the next administration, when Joel Klein, the present head of the anti-trust division, may be succeeded by someone with less zealous views on the subject. Klein is a remarkable lawyer and has achieved considerable success in his post, but there is no guarantee that he will still be there in a few years. The swings of policy at the Justice Department through the last 25 years have been considerable, with Republican administrations being more likely to adopt a non-interventionist strategy.

Short-term decline

One potentially disastrous side-effect for Ireland is that the computer industry in general could go through a short-term decline pending a resolution to this dispute. Microsoft has made much of its argument that other software companies will be unable and/or unwilling to launch new products in such a state of uncertainty. Computer manufacturers will have to decide whether or not to include *Windows 98* on their new models. But there are also other more far-reaching issues at stake.

The crux of the matter is really whether an operating system, especially one which dominates the PC industry, should include any further programs at all beyond start-up. The Justice Department view appears to be that it wishes to stop further functions being added to the initial package, thereby enabling the consumer to choose freely those functions which are most suitable for his own needs. Thus, for instance, while a PC would probably come with an operating system included, the consumer would choose (and pay for) his own word-processing package as well as tools such as Internet accessor, virus detector, speech recognition software and so on.

Microsoft chief Bill Gates has a fight on his hands

No doubt the well-meaning intention is that software producers would then compete on a level playing field. But equally there can be little doubt that there will then be accusations from smaller operators that the big boys, that is, Microsoft *et al*, are cross-subsidising the production of their software from profits from the sales of operating software.

This leads almost inexorably to calls for the computer software industry to be subject to some form of government regulation. Ironically, Microsoft's competitors, including Netscape Communications and Sun Micro systems, find the idea of quasi-regulation of the software industry anathema.

If there is a serious problem of abuse of market dominance, the same must surely arise on the European market, leading to action by the European Commission's competition authority and, possibly, national authorities such as the Irish Competition Authority. Little has been heard from these bodies to date, but watch this space!

Loss of profit

Microsoft's competitors might also seek in due course to sue for damages in the Irish, UK or other domestic European courts. It is, of course, by now well accepted that infringement of article 86 of the *EC Treaty* gives rise to an action for damages. Even if a settlement is reached out of court with the US authorities as to Microsoft's future conduct, competitors who claim loss of profits because of past abuses by Microsoft on the European market remain entitled to bring proceedings in their own courts.

So let the mother of all litigation battles begin! Remember, however, the IBM saga in the 1970s. This protracted legal battle dogged the computer giant for years, and is thought by many to have contributed to its temporary demise. The last thing Microsoft really needs is to be diverted into spending huge resources of time, money and effort in fighting distracting litigation. G

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

In camera: the case against courtroom TV

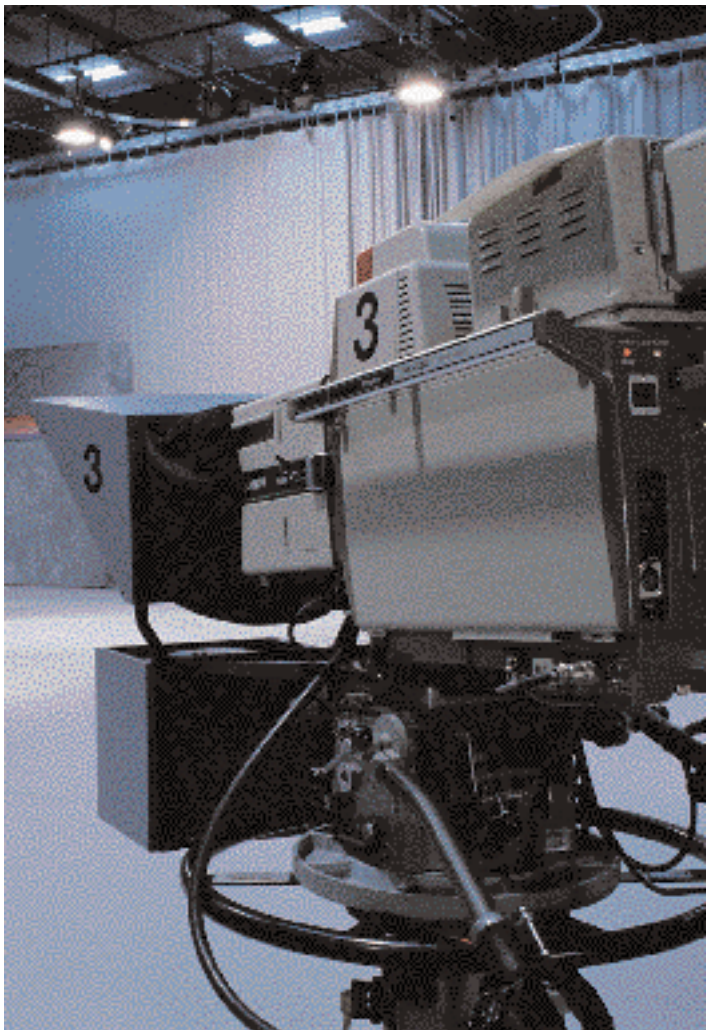
An article in last month's *Gazette* suggested that the Supreme Court ruling in the *Murphy* case may eventually prove the 'gateway' for Irish courtroom broadcasting (May issue, page 7). But the judges who answered an *Irish Law Times* survey last year were distinctly *not* in favour of cameras in court.

Those who have considered in detail the issues and available research in this debate, and who are not directly involved in its outcome, point out that the overall body of research is surprisingly small, unscientific and unmethodical. Susanna Barber (*News cameras in the courtroom*, Ablex, 1997) examined the great mass of US studies from 1975 to 1981. Some of the questions she raised were:

- Does TV rather than print better inform the public about a case?
- Can gavel to gavel broadcasts educate the public about the administration of justice?
- Do time constraints imposed on many broadcast news stories mean that a case is treated either unfairly or inadequately?
- Does the public get a distorted picture of the judicial system, or a biased view of a particular trial, if stories are edited to highlight sensational testimony, cross-examination, or simply the opening and closing arguments?
- How does the public's understanding of the courts and specific cases differ when broadcast rather than print is the medium of communication?
- What type of news coverage has consistently provided the most balanced coverage of legal issues, trial participants and court administration?

These questions have still not been addressed in any meaningful way.

Kieron Wood and Steven Brill (the founder of *Court TV*) suggest that cameras inside courtrooms will keep the media honest. This means that courtroom broadcasting would actually improve the media in some way. A more plausible suggestion would be that courtroom broadcasting would of itself correct misconceptions among the viewing public caused by inaccuracies elsewhere. But even this has not been established.



Courtroom TV: just a powerful weapon in the ratings wars?

The same applies to the argument that courtroom broadcasting may be educational. The short news broadcast may inform the public that a certain case is going on or that somebody was sentenced but, unless it is the lead item on the news, details are likely to be sketchy. 'Informing' in this minimalist sense cannot be equated with 'educating'.

Critics might argue that a news presenter's summary is inadequate. All it can do is elucidate one or two salient points or at worst show what it views as the most newsworthy. This is much more condensed than a newspaper article, where a reporter summarises a case or the day's proceedings. While a news item will probably be edited, it is still likely to be more comprehensive.

To say that courtroom broadcasting is educational is a bald statement. Its advocates should expand on why they believe it will be educational, and which form of courtroom broadcasting will have the greatest educational value.

The proponents of television coverage frequently ignore the accusation that court cases offer a form of cheap programming. Compared to other forms of broadcast, court cases are cheaper to cover and save on network overheads. If restrictions are minimal, then the possibility of producing a successful weapon for a ratings war is greatly enhanced.

The biggest fear for those opposed to cameras is the effect on courtroom actors or participants. Insufficient evidence exists to substantiate these fears. But of equal importance is the lack of research to support the mooted educational benefits.

Studies are few and far between and are comparatively unsophisticated. All but two of the 19 US studies reviewed by Barber are non-experimental. Such limited studies, while useful, cannot claim to give a definitive answer about the actual effects on participants. Comparative recall, use of language and an analysis of the supposed educational benefits are passed over. Follow-up studies are also ignored. Even some of the studies that set out to examine the effects of TV coverage on courtroom players ignore the more important participants, such as the defendants.

We should also bear in mind that Kieron Wood himself admits that certain US broadcasts would not be acceptable or even legal in this jurisdiction, and that the Law Reform Commission's *Report on contempt* (which recommended a courtroom broadcast pilot scheme) noted that public access to trials does not require the maximum publicity.

Without addressing these questions, those pushing for this debate are taking a step backwards, instead of taking a logical step forward by building on the studies and literature produced so far. G

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

We told you so! Law Society welcomes advertising curbs

No-one likes to hear the words 'we told you so'. However, I could not avoid using phrases to that effect and pointing out the irony of the situation when I appeared on behalf of the Law Society in front of the Dáil Committee on Public Accounts on 4 February 1998, on the army deafness litigation issue. For the better part of two hours, one of the main subjects on which I faced hostile cross-examination from politicians of all parties was solicitor advertising. One deputy repeatedly compared it to the advertising of telephone sex lines.

I was able to inform the deputies on that occasion that the Law Society Council had unanimously resolved to support the measure which the Government had announced, namely, legislation to ban advertising by solicitors in relation to personal injuries work. I was also able to point out that ten years ago the Law Society had predicted that to allow solicitors to advertise for claims for damages for personal injuries was likely to lead to precisely the situation of which the politicians now so bitterly complained.

Ministerial threat

Advertising has always been a controversial issue within the solicitors' profession. In 1988, following two divisive general meetings and a postal ballot – but primarily based on the threat from government Ministers that if it was not introduced on a 'voluntary' basis by the Law Society it would be imposed by statute – the centuries-old prohibition on solicitor advertising was dropped and the Law Society introduced regulations to provide for advertising within certain limitations.

These limitations were further eroded by political action in 1994 when the entire position was put on a statutory basis by section 71 of the *Solicitors (Amendment) Act*.

Justice Minister John O'Donoghue: responsible for the new *Solicitors (Amendment) Bill, 1998*

In essence, therefore, solicitor advertising was introduced in response to political pressure, against the will of probably the great majority of solicitors in 1988, and that position has since been reinforced by the Oireachtas. All of the politicians, no doubt, were motivated by the highest principles and in particular the *zeitgeist* that advertising leads to competition which, in turn, benefits the consumer. This was certainly the philosophy of the Fair Trade Commission report of 1990 on restrictive practices in the legal profession.

Our colleagues who, over the last ten years, have advertised for personal injuries work in the *Golden Pages* and elsewhere have done so within the prevailing rules, were perfectly entitled to do what they did, and should not be criticised for it. It sets matters in perspective, however, that in any one year the number of solicitors who would advertise for personal injuries work in, for example, the *Dublin Golden Pages* would usually represent as few as 1% of the solicitors in the Dublin area. Personal injuries work advertising has been engaged in by perhaps an even smaller percentage of the profession outside Dublin.

The increase in the volume of personal injuries claims over the last ten years may well be due to a number of factors. It is difficult to argue, however, that solicitor advertising was not one of those factors. The politicians certainly seem to believe so, as do the insurance companies, employers' representatives and public authorities.

Decline in public esteem

It is also difficult to prove that the introduction of solicitor advertising ten years ago has contributed more than any other single factor to the undoubted decline in public esteem for solicitors and the rise of the 'ambulance-chaser' jibe. Where these things are more carefully tracked, however, in the US, there was a significant correlation between the introduction of lawyer advertising in the mid-1970s and a subsequent plummeting of public esteem for lawyers.

It was the unanimous view of the Council of the Law Society on 22 January 1998 that this proposed legislation should be supported because, among other reasons, personal injuries advertising had reduced public regard and respect for the legal profession. In every one of the 15 or so local bar associations around the country which the President and I have visited since that date, the same view has prevailed.

The public esteem for lawyers is not an unimportant thing. It is related to public respect for the law itself. The Law Society predicted in the 1980s that solicitor advertising for personal injuries work would damage the reputation of the solicitors' profession. We told you so! G

Ken Murphy is Director General of the Law Society.

Solicitors' advertising Bill: the main points

The *Solicitors (Amendment) Bill, 1998* largely re-enacts the provisions of section 71 of the *Solicitors (Amendment) Act, 1994*, with a number of changes including the following. A solicitor shall not publish or cause to be published an advertisement which *'expressly or impliedly refers to:*

i) Claims or possible claims for damages for personal injuries,

ii) The possible outcome of claims for damages for personal injuries, or

iii) The provision of legal services by the solicitor in connection with such claims'.

The Bill will also prohibit an advertisement which *'expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claim or possible claims mentioned ... [above] ... or to contact the solicitor with a view to such claims being made'.*

Letters

Concern about Law Reform consultation

From: Paul O'Sullivan, Paul O'Sullivan & Co, Dublin

Recently I attended a meeting at Blackhall Place relating to the *Law Reform* programme and Law Reform questionnaires. I was disappointed that the opportunity was not taken to consult with the membership who had attended about law reform issues generally and specific issues of particular interest.

I trust that there will be no question of pursuing certain limited areas of law reform in areas and with proposals likely to further sectional interests like those of the print media in the defamation area.

As a member paying membership fees, which presumably fund the Society's new Law Reform Executive, I would be concerned that the issues for law reform chosen and the general direction of the proposals were endorsed by the membership.

James MacGuill, Chairman of the Law Reform Committee, replies:

The function of the meeting was firstly to thank the persons who had submitted well over 100 proposals in relation to law reform. The proposers and the proposals came from a wide variety of interest groups and it would have been unwieldy to attempt to have an open meeting dealing with all these issues. Instead, the opportunity was taken to discuss particular proposals in an informal way to assist the committee in the next phase of its project. The committee is now evaluating all the proposals with a view to recommend to the Council of the Society which proposals should be prioritised on behalf of the membership as a whole. Mr O'Sullivan may rest assured that any such decision will be made by the elected Council and not by the committee acting on its own.

Free mortgage work: time to be paid in full

From: Ray Moran, Aitken Clay & Collins, Dublin

I write to support the views expressed by Richard McDonnell in his letter in the May issue (page 9).

With each passing day, it seems to be becoming more difficult to satisfy the requirements of the mortgage-processing centres of the financial institutions. Thereafter, how much time (and time is still money!) is spent stamping and registering the mortgage, completing the certificate of title and delivering the title documents.

Would any other profession carry out all this work and carry the responsibility of it essentially without payment? As our financial institutions continue to make vast annual profits, is it not time for us to insist on being paid in full by them for the provision of our services?

Your views

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

Not a black and white issue

From: Angela Becker, Becker Tansey & Co, Dublin

Re: the May issue of the *Gazette* and the cover story 'Always on my mind'. What should have been a most interesting article was impossible to read due to the printing of same in white print on a black background. Surely, the principal purpose of such an article is to communicate information and not to produce a work of art. I would suggest that in the future all articles be printed in the normal format of black on white paper if practitioners are to be able to read same.

Dumb and

From: Michael D Murray, Michael D Murray & Company, Limerick

Reading the review of Paddy MacKenzie's book in the April *Gazette* reminds me of a story.

Paddy MacKenzie SC was on circuit in Limerick when his Rolls Royce was stolen from outside the courthouse. When the 'Roller' was recovered, there was some slight damage to the bonnet and the bold Paddy proceeded to open it to check underneath when he cut his finger.

He presented himself, in typical debonair fashion, at the nearby casualty department of Barringtons Hospital (since closed) to have his wound attended to. It was the year in which hospital service charges were introduced for people who earn more than £12,000 a year. Before treating him, a rather busy and brash junior doctor insisted on enquiring along the following lines:

Junior doctor: 'Do you earn £12,000?'

Paddy MacKenzie (somewhat taken aback at the impertinence and not realising the relevance of the enquiry) retorted indignantly: 'What?'

Junior doctor (impatiently): 'I said, do you earn £12,000?'

Paddy MacKenzie (in exasperation): 'Well, some days I do and some days I don't'.

From: Alan Daly, McCann FitzGerald, Dublin

Given the increasing use of technology in solicitors' offices, the following, which I recently received by e-mail, may be of interest to readers, especially those who are finding it hard to adapt! It claims to be a true story from the helpline of a well-known word-processing package. Needless to say, the helpdesk employee was fired; however, he/she is apparently currently suing the organisation for 'termination without cause'.

Customer support: 'May I help you?'

Customer: 'Yes, well, I'm having trouble with my word-processor program'.

Customer support: 'What sort of trouble?'

Customer: 'Well, I was just typing along, and all of a sudden the words went away'.

Customer support: 'Went away?'

Customer: 'They disappeared'.

Customer support: 'Hmm. So what does your screen look like now?'

Customer: 'Nothing'.

Customer support: 'Nothing?'

Customer: 'It's blank – it won't accept anything when I type'.

Customer support: 'Are you still in the program, or did you get out?'

Customer: 'How do I tell?'

Customer support: 'Can you see the C: prompt on the screen?'

Customer: 'What's a sea-prompt?'

Customer support: 'Never mind. Can you move the cursor around on the screen?'

Customer: 'There isn't any cursor: I told you, it won't accept anything I type'.

Customer support: 'Does your monitor have a power indicator?'

Customer: 'What's a monitor?'

Customer support: 'It's the thing with the screen on it that looks like a

No right to silence a reply

From: Gerard Haughton, Judge of the District Court

I read with interest the article in May's *Gazette* (page 5) entitled 'Is it time the judges waived their right to silence?' and in particular the quote from the last paragraph: *'There is surely a case for an easing of their self-imposed vow of silence, if only to reassure the public that, behind the wigs and gowns, there are real men and women, fully connected with the real world.'*

The thrust of the article is that we should open ourselves to the media and personally (and I stress that all views expressed here are personal). I would have no difficulty with this proposition if I could be satisfied that the media would 'play fair' and accurately represent what we say and do. Unfortunately, experience has shown that the position is otherwise.

Sensationalism and the desire to be popular are strong driving forces and all too often drive the so-called 'responsible press'. Perhaps I can illustrate what I mean by referring to certain relatively recent incidents. Your contributor's article refers to two matters which received widespread publicity both in the national press and radio, namely, the contempt issue involving a reporter, and the rebuke to the woman whose dress a judge considered inappropriate. These matters were exploited to the ultimate as sticks with which to beat the judiciary and, of course, the fact that sex or sexism was a component made the press (including the national radio station) all the more interested. The items made good press and the stick was firmly in the hands of the press. Contrast this with the following situation.

We will all recall a short time ago the tragic incident in the West of Ireland where a woman was killed in an accident allegedly involving an individual who was at the time on bail. On RTE the following morning, Pat Kenny referred to the tragedy and enquired: 'I wonder how the judge who released the culprit on bail feels this morning?'. This in my view was an outrageous comment.

As I felt so strongly about the situation, I made enquiries immediately about the facts and discovered that the alleged culprit had in fact been released on Garda station bail and not by a judge in court. I telephoned the *Pat Kenny Show* immediately to inform him of the facts and to express my views. RTE failed to refer to my comments that morning on the show or at all.

I then wrote Mr Kenny a letter which more fully set out the facts. To date, I have not even had the courtesy of as much as an acknowledgement although I personally delivered the letter to RTE the morning following the broadcast. Needless to say, no correction was made or apology forthcoming for the original remark. Of course, it would not sell newspapers or make good radio for the press to admit that they 'got it wrong'.

My letter to RTE expresses some strong views in relation to prison spaces, the 'bail' amendment to the Constitution, and the *Bail Act* itself. If I had expressed these views from the bench or in any other forum, and not in the context of trenchant criticism of 'the press', I venture to suggest that they would have been widely reported.

A media that professes itself to be concerned with 'justice and truth' is not entitled to be so concerned only when it is convenient or popular. I would therefore say to the press: first demonstrate that you will treat judges fairly, and you will then find that the judges' so-called 'self-imposed vow of silence' is no longer necessary. Furthermore, I would ask by what right you claim to be entitled to be critical of any group when you refuse to be critical in appropriate circumstances of yourselves?

It is not just charity that begins at home!

d dumber

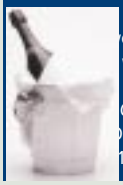
TV. Does it have a little light that tells you when it's on?'
Customer: 'I don't know'.
Customer support: 'Well, then, look on the back of the monitor and find where the power cord goes into it. Can you see that?'
Customer: 'Yes, I think so'.
Customer support: 'Great. Follow the cord to the plug, and tell me if it's plugged into the wall'.
Customer: '... Yes, it is'.
Customer support: 'When you were behind the monitor, did you notice that there were two cables plugged into the back of it, not just one?'
Customer: 'No'.
Customer support: 'Well, there are. I need you to look back there again and find the other cable'.
Customer: '... Okay, here it is'.
Customer support: 'Follow it for me, and tell me if it's plugged securely into the back of your computer'.
Customer: 'I can't reach'.
Customer support: 'Uh huh. Well, can you see if it is?'
Customer: 'No'.
Customer support: 'Even if you maybe put your knee on something and lean way over?'
Customer: 'Oh, it's not because I don't have the right angle – it's because it's dark'.
Customer support: 'Dark?'
Customer: 'Yes. The office light is off, and the only light I have is coming in from the window'.
Customer support: 'Well, turn the office light on then'.
Customer: 'I can't'.
Customer support: 'No? Why not?'
Customer: 'Because there's a power cut'.
Customer support: 'A power ... A POWER CUT? Aha, Okay, we've got it licked now. Do you still have the boxes and manuals and packing stuff your computer came in?'
Customer: 'Well, yes, I keep them in the closet'.
Customer support: 'Good. Go get them, and unplug your system and pack it up just like it was when you got it. Then take it back to the store you bought it from'.
Customer: 'Really? Is it that bad?'
Customer support: 'Yes, I'm afraid it is'.
Customer: 'Well, all right then, I suppose. What do I tell them?'
Customer support: 'Tell them you're too bloody stupid to own a computer!'

From: Anonymous, Limerick

I am currently involved in a transaction where I have just been advised by the purchaser's solicitors that his clients 'have received loan sanction *orally* at this point'. Desperate measures, no?

Michael D Murray wins the bottle of champagne this month.

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



our examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, ublin 7 or you can fax us on 1 671 0704.

Paying lip service to legal secretaries?

From: Pat Diamond, Legal Secretary, Co Dublin

I read with interest the article on legal secretaries (*Gazette*, March, page 20). It was refreshing to see an article which put a value on the role the legal secretary plays in the smooth running of the business, and far from feeling the term 'Girl Friday' was pejorative, I recognised it for what it was – an acknowledgement of the versatility and competence which we possess.

I was very surprised, therefore, to read Irene Lynch's 'defence' of legal secretaries from what she perceives as an attack 'so blatantly discriminatory as to be almost laughable' (*Gazette*, April and May).

I have to say I felt a touch cynical about the sincerity of her retort. Unless, of course, she tells me she pays her secretary £15,000 to £16,000 as recommended in the article. If this is so, then I will concede that, while acknowledging financially her worth, which, in these days is essential, rather than giving mere lip service, she truly was moved to write for worthwhile reasons.

Society relaunches media awards competition

The prestigious *Justice Media Awards* are back. The Law Society competition was relaunched after a four-year break by President Laurence K Shields at a reception in Blackhall Place recently.

The awards aim to reward outstanding journalism in print or broadcasting which contributes to the general public's understanding of the law or of any specific legal issue.

They will be made in five categories: daily and non-daily newspapers; magazines; books; radio; and TV.

A *Justice Award* will be presented to the best entry in each category, while runners-up will receive a certificate of merit. The competition is open anyone working in print, broadcasting, or book publishing. The winners will be chosen on the basis of information value and educational merit, creativity, thoroughness, and impact.

Laurence K Shields: 'An understanding of the way the law works has been central to the very best journalism'

The awards ran very successfully for a number of years, but have not been held since 1994. According to Shields, there has never been a better time to relaunch the scheme. 'An understanding of the way the law works has been central to the very best journalism of the last couple of years', he said, 'whether it be crime reporting, payments to politicians or a range of other social and legal issues. The *Justice Media Awards* will once again recognise excellence in Irish journalism, whether in print or the electronic media'.

He told journalists and lawyers gathered for the relaunch at Blackhall Place that both professions shared a common interest in vindicating truth and justice, and in protecting the rights that underpin democracy.

Compensation Bill for investors

Clients of solicitors and others acting as investment intermediaries will be able to claim compensation if they lose money through default. The *Investor Compensation Bill, 1998* – which transposes the EU *Investor Compensation Directive* into Irish law – gives clients the right to claim up to £15,500 in compensation for the default of an insurance or investment intermediary.

The money will be paid from a Central Bank-supervised fund to which the intermediaries will have to contribute. But if solicitors acting as brokers do not pay into this fund, the clients can claim from the Law Society's Compensation Fund.

According to junior Minister Martin Cullen, who published the Bill, compensation will only be available to private investors and small companies, and not to professional investors. The legislation was sparked by a number of scandals, including the collapse of the Tony Taylor group, which left small investors facing huge losses.

Reacting to the news, the Law Society's Deputy Director General, Mary Keane, said: 'Regulations made under this legislation will require solicitors to participate in the Central Bank-supervised fund where the services are not linked to the provision of legal services. Where the services are provided in conjunction with legal services, compensation will be available through the Society's Compensation Fund. In either case, clients will be provided with protection in the event of default.

'The Society is delighted that, at long last, professions other than solicitors are being required to provide compensation to their clients', she added.

Directors face Y2K liability

The so-called millennium bug could leave company directors facing personal liabilities running into millions of pounds, according to a top English solicitor. Chris Gooding of UK law firm Le Boeuf, Lamb, Greene & McRae added that insurance companies were unlikely to pay out to those businesses that suffered financial losses because their systems crashed as a result of Year 2000 problems.

Speaking at a recent conference in Dublin, Gooding warned that directors were now deemed to be aware of the crisis. 'If a director or officer fails to take steps, first, to identify whether there is a problem and, second, if there is a problem to take steps to implement a solution, then this will leave him open to claims for both breach of his fiduciary duty to act in the best interests of the company and breach of his duty of skill and care', he said.

BRIEFLY

Second *Finance Act* passed

The tax changes included in the Government's plan to tackle spiralling house prices are now on the statute books. The *Finance (No 2) Act, 1998* was signed into law by the President on 20 May, less than two weeks after the Bill was published. The measures include a radical shake-up of stamp duty, new capital gains tax rates for development land and the virtual elimination of section 23 reliefs (see *Gazette*, May, page 11).

'Surprise' at NIB ruling

The author of the latest Irish text on banking law says that the Supreme Court ruling in the recent National Irish Bank case against RTE was 'surprising'. William Johnston, a partner in the law firm Arthur Cox, points out in his book that that RTE had done little more than make allegations of wrongdoing against the bank. 'The lack of proof by the defendants of any wrongdoing, but simply an allegation of wrongdoing, made the majority decision somewhat surprising. It seems, therefore, according to the Supreme Court, that disclosure to the public at large is in the public interest not where there is wrongdoing but where there is a suspicion of wrongdoing', he says. *Banking and security law in Ireland* is published by Butterworths.

Over 500 complaints to English Bar Council

Michael Scott, the English Bar Council's Complaints Commissioner investigated 532 cases of alleged misconduct or inadequate professional service during his first year in office. The commissioner's recently-published annual report shows that 140 of these were referred to the Bar's professional conduct and complaints committee, and that 206 of these are still under investigation. The rest were withdrawn.

Views differ on shorter vacation

Views differ in the solicitors' profession over whether the current two-month 'long vacation' of the courts every summer should be shorter. According to a recent Law Society survey of bar associations around the country, nine associations felt that there should be some change while eight felt there should be none at all (see **table** below).

Among those who felt that the Long Vacation is too long, four bar associations favoured reducing it to just August, with fewer opting for a six-week break or limiting the vacation to the month of July only.

There was a clearer majority in favour of abolishing the Whit vacation, with ten associations recommending its elimination and seven voting against. A similar proportion also felt that the courts should sit for more hours in the day.

Although the number of bar associations which favoured change constituted a slight majority, by far the biggest of all, the Dublin Solicitors' Bar Association, and the second biggest, the Southern Law Association, favoured the status quo.

Ken Murphy: 'the word "vacation" is misleading'

Commenting on the findings of the survey, Law Society Director General Ken Murphy said: 'Given the diversity of views and the desire, if possible, to have a common position with the Bar Council on this issue, the Law Society Council is unlikely to take the lead in demanding change on this issue.

'The word "vacation" probably misleads the public, but as we all know lawyers are at their desks and the courts in any case continue to be open during the so-called vacations'.

Results of bar associations survey

	Yes	No
1. Should the length of the long vacation be changed*	9	8
2. If yes, do you favour a reduction to:		
a) August alone?	4	
b) July alone?	1	
c) Six weeks?	2	
d) Other?	2	
3. Should the Whit vacation be eliminated?	10	7
4. Should courts sit for longer hours, for example, High Court: 10am to 1pm, and 2pm to 5pm?	10	7

*The nine bar associations in favour of reducing the long vacation were Inishowen, Kerry, Laois, Louth, Mayo, Roscommon, Waterford, Wexford and Wicklow. The eight against were Carlow, West Cork, Donegal, Dublin, Longford, Midland, Sligo and the Southern Law Association.

Minister to shake the poor box

The Law Society has welcomed the Minister for Justice's decision to review the use of court poor boxes by judges, but has warned against abolishing the system entirely. Speaking on RTE radio recently, Law Society Director General Ken Murphy said that the use of poor boxes in lieu of fines or other penalties introduced 'some flexibility into the rigour of criminal law, which can be too blunt an instrument at times'.

'In some cases, a criminal conviction would be too severe, but the culprit should not excape scott free', he said. 'In those circumstances, a "voluntary" contribution to a court poor box may be appropriate, particularly if charities will benefit'. But he added that there could be a problem if the general public perceived that some people were buying their way out of justice.

'There may be fears that there could be some form of discrimination between those who can pay and those who can't. And it would certainly be a problem if a substantial voluntary contribution to a poor box was used as a substitute where a more severe penalty, such as disqualification from driving, was in the public interest'.

He described the Minister's review as an opportunity to discover the legal basis of the poor box system which seemed to have no statutory footing other than the general discretion in sentencing policy that judges enjoy under the Constitution.

BRIEFLY

Global forum for lawyers

Lawyers from all Organisation of Economic Co-operation and Development countries will gather in Paris on 9 and 10 November next for a *Forum on transnational practice for the legal profession*. The conference has been organised by the OECD to tackle specific problems relating to the globalisation of legal services. For further information, tel: +32 2 6404274.

Nigerian scam letters

Members are warned to beware of Nigerians bearing gifts. Once again persons claiming to be 'senior officials' in the African country's national oil company have been writing to Irish solicitors seeking aid in transferring massive amounts of cash in return for a cut running into millions of pounds. These unlikely philanthropists are merely looking for your bank account details. Law Society Director General Ken Murphy warned this month that 'no-one should be foolish enough to respond to such letters. Bin them!'.

Blackhall to host ECLA

Delegates from ten countries will attend the European Company Lawyers' Association (ECLA) half-yearly meeting at Blackhall Place this month. This will be the group's first visit to Dublin. The ECLA is a voice for in-house and public service solicitors in Europe.

A world of advocates

The *Worldwide advocacy conference* will be held at the Inns of Court School of Law, Gray's Inn Place, London, from 29 June to 3 July next. The conference, which will be opened by the British Lord Chancellor, Lord Irvine of Lairg, will examine how to prepare advocates for performing in court, and at evaluating skills and training. It will feature speakers from the US, South Africa, Australia and Japan. For further information, tel: 0044 171 400 3608.

Called to the

There are hundreds of public houses in Dublin alone, many of which are celebrated all round the world. One or two have even made it into the pages of literature. Edward Lee puts his liver on the line and profiles ten of the best. Some have traditional links to the legal profession and others are just very good places to take your colleagues or clients for a drink, a meal, a meeting or simply a chat

We all have our local pubs. They may not be our favourite ones, but at least they have the singular charm of being close. In contrast, most of us are happy to travel several miles to our favourite watering holes: maybe not so happy to travel home, but that's another story.

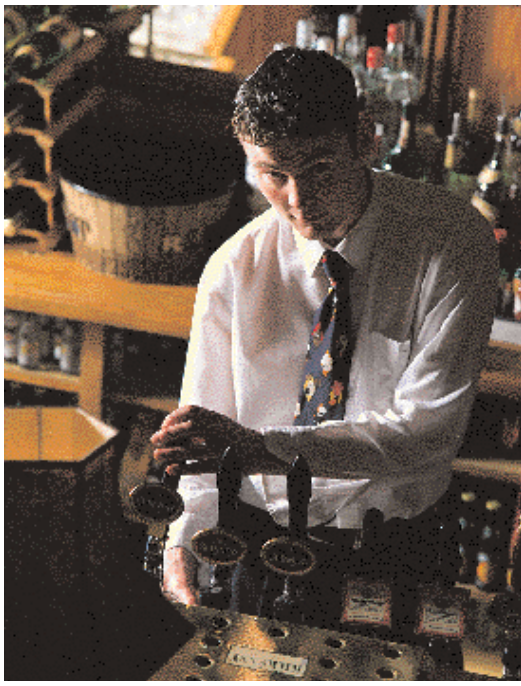
Dublin, like any good capital city, has hundreds of public houses. Many of them are dull, dreary or dangerous, but the city is blessed with a remarkably high percentage of top-notch bars. It's hard to define what makes a good pub: for some, it's the quality of service; for others, the quality of the stout. To some people, silence is golden; to others, it's just plain boring. Whatever way you look at it, Dublin is a goldmine for the ambience-chasing solicitor.

The Porter House, 16 Parliament Street, Dublin 2 has a hook to beat them all: it brews its own beer. The Porter House's beers cater for every type of taste, and the management is proud of its efforts to rekindle

Dublin's top ten pubs

bar!

ALL PICS: ROSLYN BYRNE

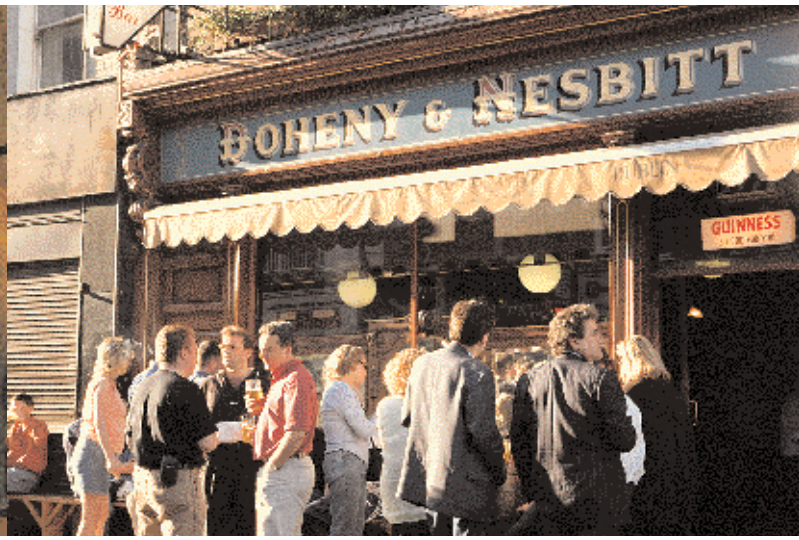


Above: The Muddy Boot in Stoneybatter – close to the heart of Law Society regulars

Left: a detail from the distinctive cash register in Doheny and Nesbitt's

Above: a detail from Davy Byrne's, while (below) one of Dublin's oldest pubs, the Brazen Head

One of the display cases of rare and unusual beers adorning the walls of the Porter House



A 'Nesbitts' of punters outside one of Dublin's most popular pubs

Dublin's once-booming brewing industry. Although not all the drinks hit the mark, the Oyster stout is strongly recommended. But be careful of the *Brainblasta*: it's 7% alcohol and they'll only serve it by the half-pint.

The food is excellent, well above par, and is served during the afternoon.

Among the interesting things to note as you sup your preferred tipple are the huge display cases on the walls which contain a vast collection of beer bottles, some of which you may recognise, some that you definitely won't. And when you're flat on your back, you can check out the unusual fan mechanism on the ceiling: very curious.

As you go down the stairs, you can see the vats where some of the beer is brewed, though thankfully you can't see inside anymore: beer in the making is not a pleasant sight. Overall, the Porter House is a place you have to visit at least once, just to see and taste. And if you go once, I guarantee you will go again.

Frank Ryan's is well-known to anyone who has had dealings with the Law Society. It is compulsory for students of the Advanced and Professional courses to drink there. It's a law. Look it up.

Frank's is a place to talk, to relax. With its curious knick-knacks on the ceiling and walls, and the friendly staff, this is the traditional venue where Law School students and solicitors alike meet over the pool table to argue about which rules they should follow.

A wide variety of food is served at lunchtime, when you'll see the pool table put to quite a different use.

The Irish Film Centre, 6 Eustace Street, Dublin 2 is a day out in itself. Get something to eat in the bar, go see a movie that the mainstream cinemas won't touch (art-house and foreign movies are the order of the day: you won't find any Hollywood 'Oscars' here), and then retire to the bar again for a drink or two. This is not necessarily the place to bring a client, but it's a great spot in which to kill a few hours or to go to with a friend. The Irish film posters decorating the walls of the bar are a nice touch. There's also a book and video store on the premises, stocked with enough goodies to put a smile on the face of even the most serious film buff. The food is simple but good, and is served at lunchtime and in the evening.

Doheny & Nesbitt, 5 Lower Baggot Street, Dublin 2. An unkindness of ravens, a flock of geese. Everything has a collective term. If one were to be coined for solicitors, it would have to be a 'Nesbitts'. Nesbitts is a small pub and can house a fair amount of people, but on a weekend night the free movement of citizens is not an option, no matter what the EU says.

The bar has that old wood feel – except that in this case it *really* is that old. It also has the now-compulsory collection of old advertisements littering the walls. You could begin to believe that you were in a country pub – the atmosphere and the smell create a presence you could lose yourself in – and forget that you are actually in the centre of Dublin. Add to that the friendliness of the bar staff and you have one of the most popular pubs in Dublin. A must-see if you've never been there.

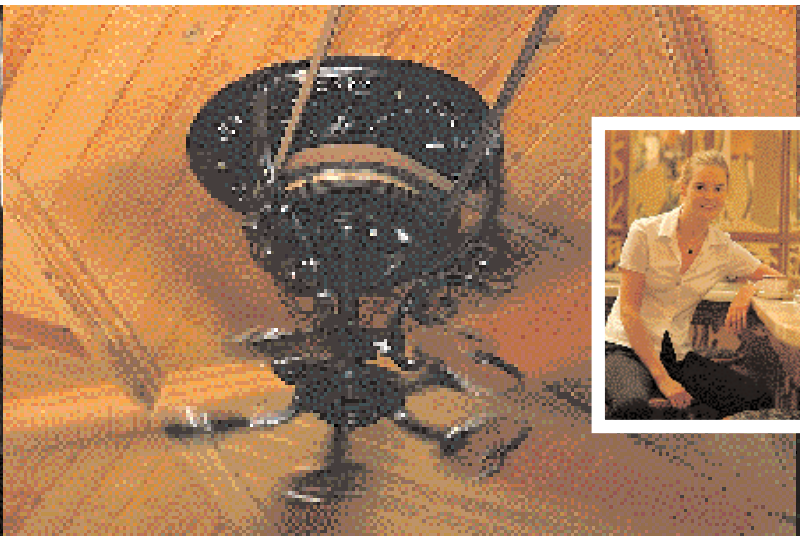
Davy Byrne's, 21 Duke Street, Dublin 2 was built in 1904 and immortalised in James Joyce's *Ulysses* as a haunt of Leopold Bloom's. Although intensive redecoration has removed the bar that once was there, there is still something – a liberty of the imagination – that allows you to believe you could be that Bloom, and see Davy Byrne's as it was so many years ago.

A somewhat modern pub, with beautiful paintings hanging on its walls, the first thing you notice is its size. From the outside it looks no bigger than the front room of a house, but once inside you see that its length defies its exterior. And as you sit down to drink or to eat the very good food on offer, maybe you'll be able to feel a little of the magic that led Joyce to include Davy Byrne's in his masterpiece.

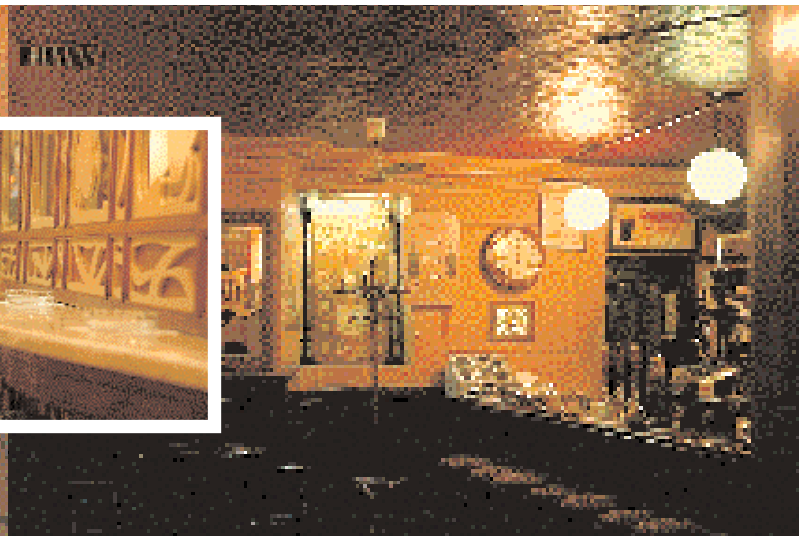
The Brazen Head, 20 Lower Bridge Street, Dublin 8 can boast of being Dublin's oldest pub; on top of that, it also plays host to the ghost of Robert Emmett. What more can you say? Well, quite alot actually.

The Brazen Head is quite vast, but is divided into several different bars, each one very small but comfortable, filled with a country essence. The lighting is what you might call 'subdued', with only the shafts of daylight streaming in through the window to help you read your news-

Dublin's top ten pubs



That curious fan on the Porter House roof



The inside of Doheny and Nesbitt's – uncharacteristically empty – and (inset) Sue Catlis, a waitress in Davy Byrne's

paper. If you're looking for ambience, this place has it in spades. It's only a stone's throw from the Four Courts and the Law Society, so it's the ideal place to console yourself with the thought that at least your client got off luckier than Robert Emmett.

The Muddy Boot, Stoneybatter, Dublin 7 is another 'must-see' for regulars to the Law Society, but it's frequented more by the Society's staff than by students. Like most pubs renovated over the past five years, it relies heavily on an unvarnished wood design, and has followed its country counterparts in adorning the walls and shelves with old ornaments, pictures and antiques. This doesn't always work, but the Muddy Boot has pulled it off. One particularly nice touch is the brass overhead-baggage holders that you used to see on the old trains.

Although the lunchtime carvery serves standard fare, the evening menu (available from 6-10.30pm) is as close to perfection as pub grub can come. And the new chef knows more than most when it comes to satisfying the taste buds.

The Muddy Boot has some of the friendliest and most experienced staff you'll find anywhere. It has no pretensions about itself but it certainly has a style all its own.

Anybody who was in **Molloy's, 59 Talbot Street, Dublin 1** over a year ago would not recognise the place now. With a complete facelift, inside and out, it has become the kind of pub it should always have been. It has gone over to the popular wood finish, and even though some of the beer pumps are new, they still serve a beautiful pint of Guinness (what more could a body ask for?). The staff are fast and capable and, more importantly, are inclined to serve slightly later than usual. But this pub is more an afternoon/evening pub: you would not believe how crowded it can get at night-time

Molloy's serves lunch between 1-3pm, so you can start early.

Lanagan's, Clifton Court Hotel, O'Connell Bridge, Dublin 1. One of the best things about Lanagan's is its roof, or at least part of it. There is a small stage where the trad band plays, and the roof above it is made out of wooden doors, which may cause you a few problems if you've had a couple of drinks.

Lanagan's has some of the finest Irish music, particularly at the weekends. Though sometimes full of tourists, this is another place you can walk into and forget that you are in the city centre of Dublin. The old wooden decor, and the low-level lighting – mainly cast from the candles set in old bottles on each table – creates a homely, comfortable atmosphere that is so very easy to slip into.

They serve food from early afternoon until 9pm, and even if you're not really hungry, once you smell the steak as it passes your table, you'll be quickly asking for a menu.

Oliver St John Gogarty, Temple Bar, Dublin 2 has some of the best Irish traditional sessions in Dublin, and some great food to go with it in the restaurant above. They're fond of the shelves of ridiculous knick-knacks, and a bicycle hangs over the bar where – miraculously – no-one ever seems to queue. Gogarty's serves excellent draught beer, and you're guaranteed to have a good time here (though at the weekends it tends to get a bit too crowded).

Gogarty's is a real man's pub – the kind of place that's popular with stag parties – even though such places should probably have gone out with the Ark. Still, that's the wave that rushes over you when you're inside, heavy laughter touching the low roof. This is a real Irish pub, with a real Irish atmosphere that welcomes you as you walk in.

The diversity and range of pubs in Dublin is outstanding, making the choice of selecting only ten a near impossible task, especially when people's opinions differ so much. Other pubs deserve an honourable mention, including: The Auld Dubliner, McDaid's, O'Reily's, the Horseshoe Bar in the Shelbourne Hotel, the Clarence Hotel, and the Grave Diggers in Glasnevin.

Eat, drink, and be merry, as St Augustine said, for tommorow, well, you can do it all over again. G

Edward Lee works in the bar trade and believes in the value of deep research.

Doctors in

Proving a medical negligence case against a doctor has never been easy and can leave you feeling that the cure is worse than the disease. Here, William Binchy and Ciarán Craven examine four problem areas in medical negligence litigation and discuss some recent decisions that have been handed down by the courts

The courts have been busy with negligence litigation in recent years. It is still hard to win a case against a doctor; adherence to customary practice will constitute a good defence unless the particular practice is one that has inherent defects which ought to be obvious to anyone giving the matter due consideration (*Dunne v National Maternity Hospital* [1989] IR 91).

We will examine four problem areas in which recent decisions have been handed down. They are:

- Hospital admissions procedures
- The doctrine of informed consent to treatment
- Patients' contributory negligence, and
- Exemplary damages awards in medical negligence litigation.

Hospital admissions procedures

The somewhat bizarre institutional procedures for the admission of patients to acute general hospitals in this jurisdiction – and the role of non-consultant hospital doctors in that process – came under judicial scrutiny in a fatal injuries claim in *Collins v Mid-Western Health Board* (High Court, Johnson J, 14 May 1996). The deceased developed symptoms generally regarded as characteristic of an intra-cranial haemorrhage. He did not, however, present as such to either his own general practitioner or a second general practitioner whom he consulted some weeks later and who, in the light of persisting headache, directly referred the deceased to hospital by letter. In addition, he rang in advance to make what he believed was an admission arrangement.

In the Accident and Emergency Department, a casualty officer examined the deceased and, considering the history as given to him by the deceased and the results of his clinical findings, decided that an emergency admission was not required. He referred the deceased to the medical out-patients department and discharged him. When subsequently contacted by the referring general practitioner, the casualty officer agreed to refer him to the medical team in the hospital if he returned, although the casualty officer could not guarantee his admission. In the circumstances, the deceased and the general practitioner decided to leave matters as they were for the time being. The following morning, the deceased's condition rapidly deteriorated and he was admitted to hospital unconscious. He died shortly afterwards.

It was alleged that the casualty officer had been negligent in failing to admit the deceased to hospital. Johnson J found that the deceased had not indicated the characteristic nature of his headache, in spite of being asked. Furthermore, as the deceased was lucid, there was no necessity to seek a collateral history. In the circumstances, following the examination of the deceased, the casualty officer had acted within the acceptable medical standard and, accordingly, there was no obligation either to confirm matters by ringing the general practitioner or to transfer the deceased on to the medical team. Johnson J further found that the casualty officer had not been negligent, on the basis of the history he had obtained and the test results, in exercising his judgment not to admit the deceased in spite of the general practitioner's referral letter. It appears that the court was

the dock

prepared to hold that, even if negligence had been established, the action would still have failed on the causation issue, given the timeframe involved.

It was also alleged that a system whereby a casualty officer has an effective right to countermand a request for admission from a general practitioner is a negligent system. Although initially surprised, Johnson J accepted the evidence to the effect that both in Ireland and in Britain, a general practitioner cannot by letter alone have a patient admitted to an acute general hospital. He accepted that referral through an Accident and Emergency Department involved examination by a casualty officer who would decide whether or not the patient should be admitted.

He also noted that, where there was a genuine desire or concern on the part of a general practitioner to admit a patient to hospital, the usual course would be to effect direct contact with the consultant concerned and to seek to have the patient admitted under his or her care. In the circumstances, and given that a similar system applies both here and in Britain, he found that the plaintiff had failed to establish negligence and dismissed the claim.

This conclusion is worthy of some reflection. The court does not appear to have examined whether, in the practical realities of hospital life, the system of admissions is one with inherent defects. The fact that the system is also operational in Britain seems to have been influential in the court's determination. Nevertheless, it is worth noting that repetition does not make an act any the less negligent.

Indeed, it may be argued that the question of

admissions procedures is not one involving the exercise of professional judgement protected by the *Dunne* test but rather is essentially a matter of administrative planning, in respect of which hospitals owe a duty of care determined by general negligence principles. At the very least, it should, intuitively, be of concern that the portal of entry for most citizens into the hospital system is controlled by some of the most junior – rather than the most senior – personnel in that system. This paradox may be revisited in future litigation. That said, the policy and resource implications inherent in a radical change in the system might well be sufficient to deter a court from stigmatising the present regime as lacking in due care to patients.

The doctrine of informed consent

The Irish courts have accepted the doctrine of informed consent of treatment, whereby a patient who undergoes treatment without having received proper disclosure of the risk involved may obtain damages if he or she suffers consequential injury. For a patient to succeed in this type of claim, the court must be satisfied that, had the patient known of the risk, he or she would not have undergone the treatment.

In *Bolton v Blackrock Clinic Ltd* (High Court, 20 December 1994), Geoghegan J dismissed proceedings for negligence against the defendants, a cardio-thoracic surgeon and a consultant thoracic physician. The *gravamen* of the plaintiff's claim was that the doctors had failed to obtain her informed consent to sleeve resection surgery. Applying the test favoured by O'Flaherty and Hederman JJ in *Walsh v Family Planning Services Ltd* ([1992] 1 IR 496), which required that the issue as to adequate disclosure 'be determined by the trial judge on the ordinary established principles of negligence ...', Geoghegan J held that the doctors had not failed in their duty to their patient.

The plaintiff appealed unsuccessfully to the Supreme Court, which delivered its judgment on 23 January 1997. Hamilton CJ (Barrington and Murphy JJ concurring) held that Geoghegan J's finding that the plaintiff had given 'a fully informed consent' was supported by the evidence. He quoted from Finlay CJ's judgment in *Walsh* ([1992] 1 IR 496, at 510), which includes the passage where Finlay CJ stated that the question of disclosure of risk should be determined by the test laid down by the Supreme Court in *Dunne v National Maternity Hospital* ([1989] IR 91). Applying this test to the context of disclosure, a doctor who adheres to a customary practice of the medical profession will not be guilty of negligence unless the need to disclose the particular risk ought to have been obvious to any person giving the matter due consideration.

Hamilton CJ made no reference to the fact that Geoghegan J had applied the more stringent test preferred by O'Flaherty and Hederman JJ. It seems clear from Hamilton CJ's judgment, which is largely composed of extracts from the transcript of the evidence given at trial, that the Chief Justice supported the test set down by Finlay CJ in *Walsh*.

It is unfortunate that the radical division of judicial opinion apparent in *Walsh* has not been resolved one way or the other by a thorough analysis of the competing approaches. It would still seem open to a litigant to argue that O'Flaherty and Hederman JJ's approach retains vitality since Hamilton CJ made no critical references to it or to the fact that Geoghegan J had adopted it, and the Chief Justice did not expressly state his preference for the approach favoured by Finlay CJ and (it would seem) McCarthy J in *Walsh*. Hamilton CJ ignored not only O'Flaherty J's judgment (with which Hederman J concurred) but also the judgments of McCarthy and Egan JJ. It would be hard to argue that *Bolton* has definitively resolved the debate.

Contributory negligence

It is very difficult for a doctor to establish a defence of contributory negligence on the part of the patient. The courts tend towards the view that part of the professional duty of care which a doctor owes his or her patient is to take account of the particular patient's foolish or contrary characteristics and to 'factor in' these elements in determining the treatment required and in monitoring it to ensure that the patient complies with it.

Reported cases are rare. Professor Michael Jones (*Medical Negligence*, 2nd ed, 1996, p236, fn 45) could find no English examples.

A patient can be careless in many ways. He or she may intentionally or carelessly mislead the doctor as regards his or her symptoms. After the treatment has begun, he or she may depart from instructions on such matters as taking the prescription at the stated times in the correct amounts or act in foolhardy disregard of his or her medical condition. Under section 34(2)(b) of the *Civil Liability Act, 1961*, a negligent or careless failure to mitigate damage is deemed contributory negligence in respect of the amount by which such damage exceeds the damage that would otherwise have occurred.

In the Circuit Court decision of *Maher v Midland Health Board* ([1996] Ir LLog W1), a patient who 'fell off the system' was held to have been guilty of contributory negligence in failing to have returned to hospital well over a year after a hernia operation had been performed on him, in spite of the fact that an open wound caused by a piece of sutured material had not been completely healed. The surgeon

and the hospital were negligent in failing to tell him that he should re-attend the hospital for a review. Judge Kenny reduced the plaintiff's damages by 50%, a proportion that seems somewhat severe on the basis of the brief report of the case.

In *Armstrong v Eastern Health Board* (High Court, 5 October 1990), where liability was imposed on psychiatrists for their failure to communicate properly with each other about the plaintiff's symptoms, the plaintiff was held not to have been guilty of contributory negligence when she attempted to commit suicide as 'she was not really in control of her thoughts when she jumped from the balcony'. The defence of contributory negligence was not apparently even raised in *Healy v North*

Western Health Board (High Court, Flood J, 31 January 1996). This is in accord with the general international trend to reject the defences of contributory negligence, *volenti non fit injuria* (that to which a man consents cannot be considered an injury) and *novus actus interveniens* (a new act intervening) in cases where mentally ill people commit suicide or are involved in attempted suicide.

Exemplary damages

In *Cooper v O'Connell* on 5 June 1997, the Supreme Court addressed for the first time in Ireland the question of whether *exemplary* damages may be awarded for negligent medical treatment. The defendant, a dentist, had carried out a course of treatment on the plaintiff for three years. After more than 180 sessions, the defendant finally accepted that he had failed the plaintiff and indicated that he would send him to another dentist who would be capable of remedying the situation. When the plaintiff went to this dentist, it transpired that he had not been contacted. The plaintiff went back to the defendant, who told him that he had made a mistake and that everybody was entitled to one mistake. He also advised the plaintiff that he could not afford to pay for the remedial treatment, and that, as the plaintiff had a good case against him, he should go to see his solicitor. The plaintiff took his advice and in due course sued him for negligence.

Barron J awarded the plaintiff £155,000 damages as compensation, declining to make any award for exemplary or aggravated damages. The plaintiff appealed to the Supreme Court, arguing that the defendant had abused a relationship of trust and that, in initially admitting his responsibility and then withdrawing that admission when a defence was delivered on his behalf denying liability, he, or those standing in his shoes, had been guilty of conduct meriting an award of exemplary or aggravated damages.

The Supreme Court rejected this argument. Keane J (Hamilton CJ, O'Flaherty, Barrington and Murphy JJ concurring) interpreted the earlier Supreme Court judgment in *Conway v Irish National Teachers' Organisation* ([1991] 2 IR 305) as rejecting the severe limitations prescribed by the House of Lords in *Rookes v Barnard* ([1964] AC 1129) on exemplary damages awards in tort claims.

Keane J considered that, in developing the law on exemplary damages, the courts were 'concerned with the principles of public policy which demand that, in a literal sense, an example should be made of the defendant'. The circumstances of the instant case would not conceivably be regarded as justifying the invocation of 'this drastic, although essential, rule, grounded on public policy'.

This statement could perhaps be interpreted as closing the door to an award of exemplary damages in all negligence cases. The Law Reform Commission in its recent *Consultation paper on aggravated exemplary and restitutionary damages*, published last April, is surely right in regarding the question as having been left open (see para 7.39 of the paper). Keane J's rejection of the claim for exemplary damages was expressed exclusively in terms of the factual circumstance of the case rather than on the basis that the claim was in respect of a particular tort for which an award of exemplary damages is never permissible.

As to aggravated damages, Keane J thought that the case fell short of the test set down by Finlay CJ in *Conway*, which referred to 'the manner in which the wrong was committed, involving such elements as oppressiveness, arrogance or outrage ...'.

While negligent conduct on the part of a medical practitioner might be stigmatised as a breach of trust, distinguishable from the general run of actions in negligence, the facts of the case bore no comparison with the English decision of *Appleton v Garrett* ([1996] PIQR 1, High Court, Dyson J, 1995), where a dentist, for financial gain, had carried out large scale unnecessary treatment on about 80 patients. In the instant case, although the defendant had conducted the treatment in a seriously negligent manner, there was 'nothing to distinguish his conduct from that of any other defendant in an action for negligence'. The decision of the defendant's insurers initially to put liability in issue could not possibly be a ground for an award of aggravated damages. To make such an award would create a novel deterrent for defendants which was 'contrary to fundamental principle and devoid of any support in the decided cases'.

Willfulness rather than carelessness?

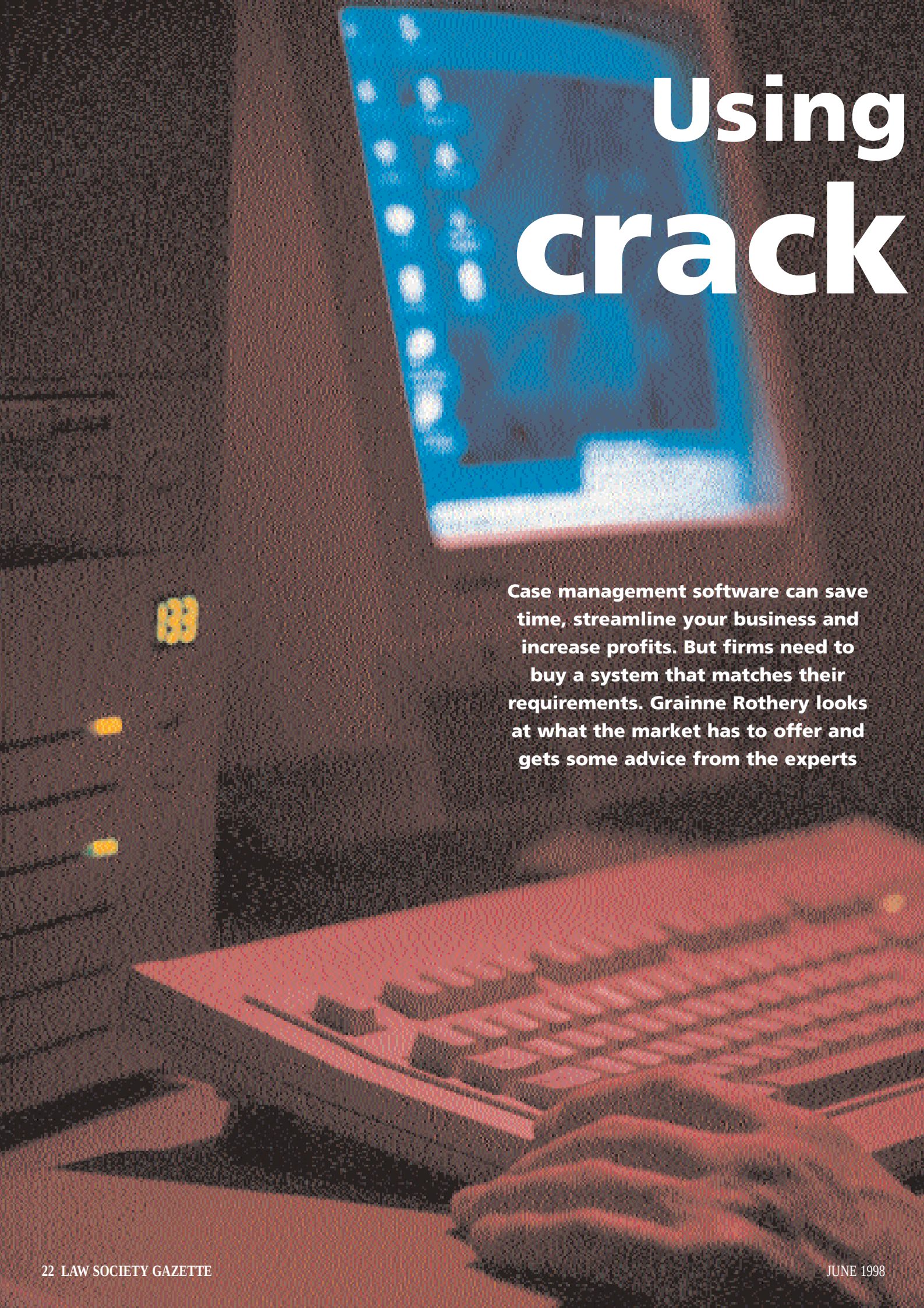
The tenor of Keane J's remarks would suggest that he considered that some element of willfulness rather than carelessness, however gross, must colour a defendant's conduct before an award of aggravated (or, *a fortiori*, exemplary) damages may be made. While it is possible to sue a wilful defendant in negligence, a question may arise as to whether the plaintiff should be obliged, rather than merely have the option, to sue such a defendant for some other tort, such as battery or deceit. Perhaps, as well as willfulness, a future court will place emphasis on the breach of a special relationship of trust or responsibility, or the inequality of the parties, when determining whether to award exemplary damages (see the Law Reform Commission's paper, para 7.41).

In not rejecting *in limine* the possibility that exemplary damages may be awarded for medical negligence, the Supreme Court has parted company with the English courts (see *Kralj v McGrath* [1986], 1 All ER 54, High Ct, Woolf J; *AB v South West Water Services Ltd* [1993] 1 All ER 609, CA; Jones, *op cit*, 455-456). A recent Australian decision, however, has accepted that exemplary damages may be awarded in this context (*Backwell v AAA* [1997], 1VR 182, CA; see also Fisher, *Exemplary damages and medical negligence* [1997] NZLJ 31 at 31-32). G

William Binchy is Regius Professor of Laws at Trinity College, Dublin, and Ciarán Craven is a practising barrister in Dublin.

Using crack

Case management software can save time, streamline your business and increase profits. But firms need to buy a system that matches their requirements. Grainne Rothery looks at what the market has to offer and gets some advice from the experts



technology to the case

Case management software has experienced a marked growth in popularity over the past six months as more and more firms try to find ways of managing their increasingly heavy workloads more efficiently. The trend towards computerisation in this area is predicted to continue as solicitors come under pressure to handle their cases in a more organised fashion.

Computerised management systems normally consist of a central database containing all the information relevant to each case being handled by a practice. Most systems are integrated with standard word-processing software and allow existing precedents and documents to be used again and again, so that much of the mundane and repetitive work relating to cases can be eliminated. This is particularly true in areas such as conveyancing, debt collection and probate.

Case management software is normally linked to a diary function which can provide prompts or alarms for important deadlines and create 'to do' lists for each member of staff. Many of the newer systems also include scanning options so that documents relating to each file can be scanned into the system and will subsequently be accessible to anyone in the firm without having to search physically through unwieldy paper-based files.

Some of the newer systems also have voice-dictation facilities that allow a dictation to be recorded and transmitted over the network to an assigned typist. Another useful feature, particularly when it comes to billing, is time recording. This sets the clock running automatically when a file is opened. Many of the packages also have reporting facilities, which allow senior partners to monitor each case's progress and to assess how individual fee-earners are performing.

The primary benefits of computerised case management include faster production of documents, quick access to all documents relating to a case, automatic updating of the diary for court dates, closing dates and client appointments, and greater opportunities for delegating the tasks relating to any case. These systems also make a case's progress less dependent on individuals because a full a detailed history is generally available at the touch of a button so anyone within a firm should be able to take over at any time.

'Solicitors need to be able to organise their time in a smarter way', says Brian O'Neill of Opsis Ltd, manufacturer of *Opsis Solicitor* case management systems. 'It is important to them that information is available quickly and that they don't have to spend time looking for physical files'.

O'Neill points out that case management systems allow solicitors to become more customer-focused. 'When solicitors are looking for work, sophisticated systems like these can be impressive to potential clients. Both commercial and private clients now expect a much higher level of service, and case management software is a very good tool for helping to provide that service'.

'These systems can significantly reduce the effort required to produce standard documents and carry out regular tasks associated with a case', says O'Neill. 'This can help to eliminate much of the repetitious work and reduce the time spent processing a case'. He adds that good case management software should allow firms to deal with cases in the same way they are doing it now, but more quickly, efficiently and cost effectively. 'It is vital that all relevant information is entered into the computer, otherwise the other benefits won't follow', he stresses.

Managing the workload

'A specialised case management system enables the user to predefine, with varying degrees of simplicity, the work-flow pattern that a particular type of case may take', says Dee Cooke of Sanderson Ireland Ltd, the distributor of *AlphaLAW* in Ireland. 'When we discuss the legal office and the definition of case management, do not confuse work flow with information flow. The management of a case is not just a matter of defining a series of steps and actions. It also entails allowing the user access, via their terminal, to all information held within the firm that may be relevant to that case.

'Precedent libraries need to be searched, accounting details may need to be accessed, court diaries may need to be known, land registry details may be required. The true management of a case requires making available a wide range of services to the user of which letters, documents and diaries form only part'.

Declan Branagan, managing director of Branagan Business Systems which has developed *The practice* case management system, says that management software's key advantage is the ability to move a case from one end of a building to another at the touch of a button. 'You can tag a case onto an internal e-mail and send it to anyone else in the office', he says. He also points out that the tracking element of such software greatly improves quality control.

The company's sales manager, Stephen Quinn, adds that case management software should provide a framework from which to work. 'It should be flexible so that you can build it into the existing practice. However, deciding to install a system can also provide the opportunity for a practice to evaluate its procedures and perhaps to change some things and become more efficient', he says.

'For a system to work, everyone has to use it. Everyone has to input the right data so that anyone looking at the system can immediately find out exactly what stage a case is at'. Quinn believes that his particular system can increase productivity by around 30%. 'Costs are reduced by cutting out cost accountants, eliminating the need to physically look for files and being able to delegate tasks very simply', he says.

Lennon Heather & Co has been using *The practice* since the end of last year. Office manager Aine Lernihan says that anyone in the firm can see everything to do with any particular file at the touch of a couple of buttons. 'This includes phone calls, letters sent or received, meetings and actions taken', she says. 'The system has internal e-mail so we can send notes to people with the relevant file attached. We're extremely busy so the system helps to speed things up and to move cases off our desks much more quickly'.

Companies selling case management solutions warn that solicitors need to evaluate what they want from a system, consider how much time they're going to invest in it and also think about the potential impact it can have on the workings of a practice. It's also important that everyone is committed to a new system.

Brian Sweeney of Lawsoft Systems stresses that solicitors need advice and guidance on computerising their firm and on the impact it can have on the office. 'The investment in time and money on the training of support staff or the cost of hiring a legal software consultant, and in preparing the office for computerisation, has in the past been overlooked because of current work pressure', he says.

Sweeney believes that while most firms are aware that file management systems exist, there is a cautious attitude towards investment in these packages. The changes needed require time and resources which are scarce commodities for many firms. 'In my experience, many firms are keen to move forward with file management systems and to use the power of their computers', he says. 'However, if they are to make the most of computerised systems, some of them will have to change their procedures and become more systematic in the way they approach their work'.

He says that any firm which does a lot of repetitive work, such as general litigation, residential conveyancing, probate and debt recovery, will benefit from the use of a case or file management system. Lawsoft's *File management system* combines existing word-processing precedents with a database containing client information and a diary. 'By standardising their work, solicitors can increase their efficiency and productivity and can then spend more time on profit-earning', he says. 'Users can customise the various stages of the process so that the software does exactly what is required'.

Discipline in the office

Michael Gilmartin of Legal and General Office Supplies, which sells the *Opsis* case management system, echoes the view that work practices may need to be changed to get the most out of case management systems. 'There's a great danger of thinking that a £10,000 investment means a solution. It can only work if there's discipline in the office and people want to put in the effort', he says. 'In my view, case management software will only be of benefit if everyone can use it and can access the information themselves'.

Gilmartin says that the effective use of case management software can result in more time for developing the client base and progressing files because less time is spent juggling paper and carrying out administrative work. He also believes that knowing exactly when the next action is due to be carried out on a case is critical. 'Everybody is chasing their diaries and worrying about a time-bomb in the filing cabinet', he says.

Aidan O'Neill of Ivutec Software says that the time-recording facility within these systems can be of enormous benefit. 'Because you're recording, you're assigning the time specifically to a particular client', he says. 'When you issue your fee, you can state with confidence that you spent that amount of time on the job'. O'Neill also points out that case management software can help firms to focus their work more accurately in areas that generate more income.

A number of case management systems are currently available on the Irish market. Any practice considering investing in one of these systems is advised to look at the various solutions available and request demonstrations from the vendors. Pre-investment analysis of what is required from a system and how far the firm is prepared to go to bring this about is also highly recommended. G

Grainne Rothery is a freelance journalist specialising in technology issues.

Here come the headhunters

Whether you call it headhunting, poaching or executive search, the process of identifying, approaching and recruiting senior professionals who are not 'on the market' is a growth business in 1998. Simon Waddington looks at the relationship between executive search firms and the legal profession

Will law firms here increasingly turn to headhunters to solve their recruitment problems?

The current economic buoyancy, combined with an unprecedented growth in inward investment and a surge of new legislation, has led to a marked increase in the number of opportunities for lawyers. An analysis of all the legal positions advertised in the *Irish Times* during the last quarter of 1997 and the first quarter of this year shows that both solicitors' firms and in-house legal departments are increasingly trying to attract new talent (see **Figure 1** overleaf).

But the legal sector is suffering from the laws of supply and demand in the same way as other business sectors: there is a scarcity of high-calibre, specialised professionals, and those seeking to recruit will naturally only settle for the best. In London, law firms have been using executive search consultants with increasing frequency over the last three years for that very reason.

The London market has also been shaken up by the arrival of US law firms for whom headhunting is already an accepted business practice. One American lawyer with experience of recruiting in the UK and the United States recently told the London-based *Lawyer* newspaper: 'UK recruitment is generally done by advertising. The natives here find calls from headhunters intrusive, but it is considered gentlemanly to respond to an anonymous advert. The US has a completely different culture. You expect to be sought out by headhunters. Advertising is seen as an admission of weakness, that you couldn't identify proper candidates in the market'.

How did executive search start?

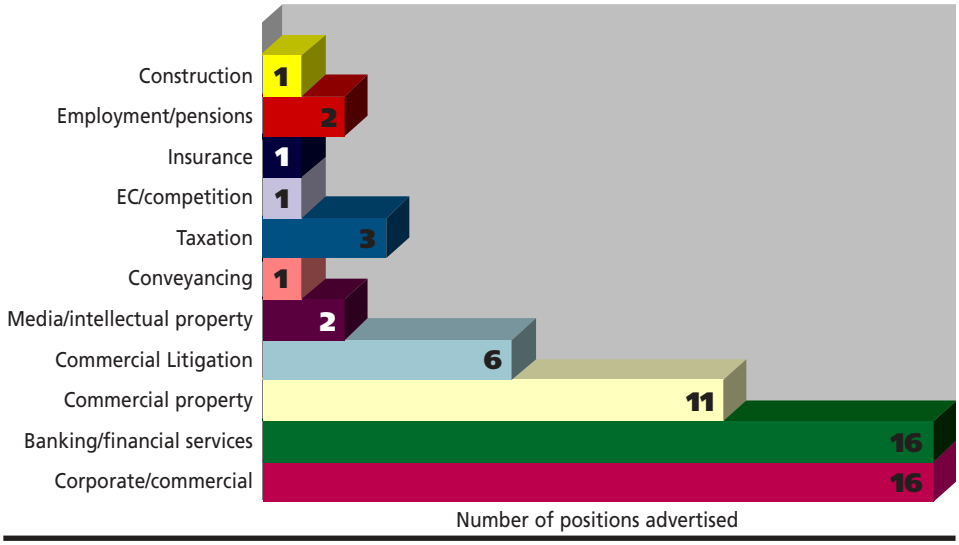
Executive search has its roots in America in the 1940s. Initially it was conducted on an informal basis through 'the old boys' network', but the 1950s and 1960s saw the formation of dedicated search firms, many of which have now grown into significant multinational operations servicing the international needs of their clients. The profession is relatively new in Europe, and has been on offer in Ireland only for the last 20 years or so.

Traditionally, the legal profession has been slower to embrace headhunting as an alternative to other recruitment methods – preferring word-of-mouth or possibly advertising – but attitudes appear to be changing. *Recruitment International* magazine has commented that 'probably the fastest growing headhunting niche is the legal sector', and that executive search 'has found a natural home within the legal sector'. Law firms have become more sophisticated in their management structures and in the way they conduct business, leading to a demand for a more focused recruitment approach.

To search or to advertise?

Advertising will often be the most effective way to proceed when recruiting at junior levels, or when a firm is not seeking lawyers with a partic-

Figure 1 **Analysis of legal positions advertised in the *Irish Times***



ularly technical specialisation. However, as many of the leading commercial firms will testify, an advertisement for corporate or banking lawyers with one to four years' experience will only be successful if such people are actively looking for a new position. There is obviously a problem if those looking for a new job fall short of the desired quality, or if the ideal candidate is overseas and out of range of an advertisement.

The problem is more acute at senior levels. For example, if a firm is seeking to enhance a particular niche area in its practice, the ideal candidate (complete with substantial client following) is highly unlikely to be scanning the recruitment pages. Recent research in London has shown that law firms looking to recruit key staff felt that an advertisement would not provide sufficient incentive to tempt most top individuals into making a move: a pro-active method of recruitment would, in many cases, be necessary.

Aside from the more focused, research-driven approach which a headhunting search will provide, this method does have certain other advantages over advertising. One of the obvious attractions is the confidentiality factor. For senior-level appointments, only a select few within a firm or company need to know that a search is taking place. Of course, confidentiality is also a key attraction to the prospective candidates, many of whom might be deterred from responding to an advertisement because they would not wish it known that they were considering a possible new opportunity. In addition, potential candidates themselves are often more comfortable speaking candidly with an intermediary.

The 'reach' of an executive search firm is another attraction. The international nature of many search companies means that a search consultant can draw on both local knowledge and international contacts. One valuable by-product of a search is that objective information about a firm's reputation and standing in the marketplace can be gleaned and analysed.

The relationship between the legal profession and headhunter firms is undeniably still in its infancy. However, as firms and in-house legal departments struggle to resolve their recruitment problems, they may, like their London counterparts, find that there is a niche for specialists who can come up with innovative and pro-active solutions. G

Simon Waddington is a senior consultant with recruitment specialists MERC Partners.

Planning

Next Ge

Most family-owned businesses in this country think the next generation is as far away as *Star Trek*. But what if there is no-one to take the bridge at the end of the current management's career? Colm Hughes outlines one option – selling the business to the employees

Family businesses cross the full spectrum of Irish industry. Not only are most of the country's small businesses family owned and run, but some of the major players here are also controlled by families. Regardless of their size, they all face one common problem – succession.

Some successions are planned well in advance. But a recent survey in the *Irish Independent* showed that 70% have no succession plan at all and indicated that only a small number of family businesses have a proper plan in place.

If these results reflect the national situation, this is a very serious issue. If all the owner/managed companies have successors ready, willing and able to carry on the business, there is still some hope for the future of these enterprises, but there may still be a legal nightmare to be sorted out. On the other hand, if some of these companies have no next generation, or an unsuitable next generation, then those businesses could be facing a potentially dangerous situation.

This is a common problem throughout Europe. In December 1994, an EU survey revealed that at least 30,000 businesses and 300,000 jobs disappear each year in the EU because of badly-managed transfers. And in February last year, EU Commissioner Papoutsis predicted that, by the year 2000, 1.5 million small and medium-sized enterprises (SMEs) and 6.3 million jobs could be at risk if every effort is not made to ensure successful business transfers from one generation to the next.

The problem is time. Because no-one knows with certainty how much they have time left, it is very important to plan now for a smooth transfer of the business. In Ireland, solicitors are ideally placed to deal with family businesses facing this serious problem.

As Simon Nugent, Chief Executive of the Chambers of Commerce of Ireland, pointed out at a recent conference: 'Next to marital counselling, there can be few subjects more tense and conflict-inducing than succession planning in family firms'.

Invisible web of dependencies

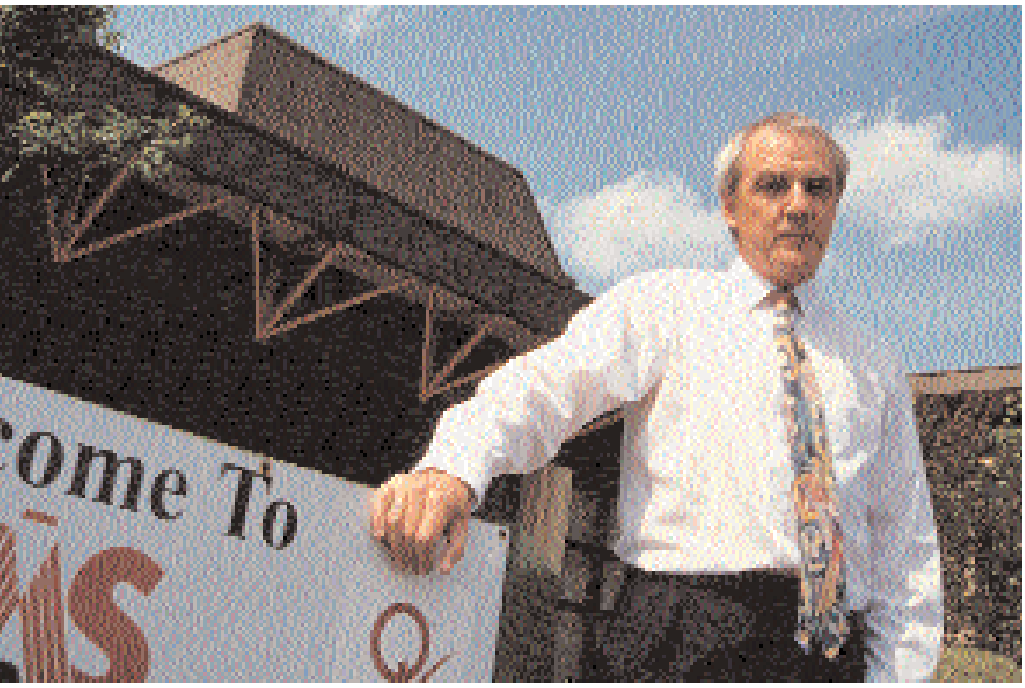
Should we be devising mechanisms where business owners can tease out their concerns? Again, the legal profession could be well poised to open up this discussion.

But the problems involve not only the family, but also the employees, the future of the business, the local economy and the potential loss of tax revenue to the Exchequer. The solicitors, accountants, bankers and suppliers lose a client, and the impact on the local economy could be the start of a general loss of wealth, unemployment and rural decline.

Each town or village benefits from the wealth generated by each individual business. An intricate, invisible web of inter-dependencies – one business on another – collectively add up to that town or district's prosperity.

Family businesses have certain strengths. They can weather hard times because their ethos is based on keeping the firm going. This often reflects itself in flexibility on pay and conditions, the family's willingness to reap the

g for the neration



Colm Hughes: solicitors are ideally placed to deal with family businesses facing succession-planning problems

rewards when things are going well but to cut back when conditions demand sacrifices.

This quick response to market forces is often what guarantees the survival and success of many of Ireland's family businesses. Preserving these strengths for the benefit of the next generation is vital to many communities.

The FÁS Co-operative Development Unit (CDU) – set up to help establish commercially viable worker co-operatives – has hit on one way of transferring the business to willing successors. It has developed a structure that allows the family to sell the enterprise to the employees over an agreed period. The structure used is the limited company, which is established as a worker co-operative by the articles of association.

The system allows for a phased withdrawal by the owners. The CDU advises that the family remains in the business for at least three years. This provides necessary stability, guidance and leadership. The CDU will also be there, in a very hands-on way, to aid the process.

The planned withdrawal reduces the employees' upfront equity commitment. Equity needs can be reduced further if the family sells the business but retains the assets, which can then be leased to the co-operative at agreed rates, possibly with an option to buy later on. This option has proved very tax efficient. As no assets are sold, there will be no liability to capital gains tax and as the employees are buying in at par, there will be no benefit in kind accruing to them.

The firm's own bank is the best candidate for supplying the finance needed to fund the workers' equity purchase. From the bank's point of view, it is far better to finance a buy-out and retain the custom than see it lost through liquidation or a trade sale.

Giving employees the opportunity to buy out the firm gives them the chance to take a stake in the business and reap the rewards of their own labour. By slowly stepping out over a number of years, the family is available to help and advise while keeping customer loyalty. This gives the new company time to prove it can deliver a service that is the same or better. As the company makes profits, the employee/owners can earn a dividend in addition to salary while building up an asset for their future.

New business, old ethos

While there would be a normal management structure to run the business on a day-to-day basis, employee involvement means that the traditional management/worker tensions dissipate. There is flexibility as regards pay and conditions leading to increased productivity, quality and profit. In reality, the ethos developed when the employees buy in is similar to that shown by the family during its years building up the business. Also, the 'new business' has its own succession mechanism in place for perpetuity.

The CDU offers advice and assistance to achieve all this as smoothly as possible. It can help financially with the preparation of a professionally prepared feasibility study/business plan. This maps out the future strategy of the business over the next three years.

• For anyone interested in learning more, the Co-operative Development Council and University College Cork (UCC) will hold a national conference on the *Family/employee co-operative option* at UCC on 26 June 1998. The conference will feature case studies, a practical how-to session with senior personnel from Management CDU, Deloitte & Touche, William Fry and Co, and Ulster Bank. G

Colm Hughes is manager of the CDU, the Co-operative Development Council's operating unit. For further information about the CDU and how it can help your clients, telephone 01 8391144 or fax 01 8320458.

Can you bank on

The advent of Economic and Monetary Union in Europe and the imminent arrival of the single European currency will have a significant impact on the construction of contracts and other legal instruments. James Candon has some practical advice on how to anticipate such problems and how to deal with them

The terms *Euro* and *EMU* are often used interchangeably when in fact they refer to related but entirely different concepts. The Euro is simply the name of the currency which will be in circulation in most of the EU Member States after 1 January 2002, whereas EMU is an abbreviation for the Economic and Monetary Union which will be in place between all EU Member States that intend to have the Euro as their currency. The introduction of the single currency has a potentially significant legal impact in respect of all types of contracts, including loans, mortgages, pledges and shareholders' agreements referring to European currencies regardless of whether the parties are European or not.

All contracts and legal instruments, both existing and under discussion, should be dealt with on a case-by-case basis when contemplating the implications of the Euro on their legal effect. The principal legislation to be considered is contained in:

- European Council regulation 1103/97, 17 June 1997, on certain provisions relating to the introduction of the Euro, adopted under article 235EEC
- European Council regulation 974/98, 3 May 1998, on the introduction of the Euro, adopted on the basis of article 109L(4) of the treaty.

Regulation 1103/97 and regulation 974/98 both deal with one of the most fundamental legal issues raised by the transition to the single currency, that is, the continuity of contracts and other legal instruments. It should first be noted that article 1 of regulation 1103/97 defines legal instruments very widely as 'legislative and statutory provisions, acts of administration, judicial decision, contracts, unilateral legal acts, payment instruments other than bank notes and coins and other instruments with legal effect'.

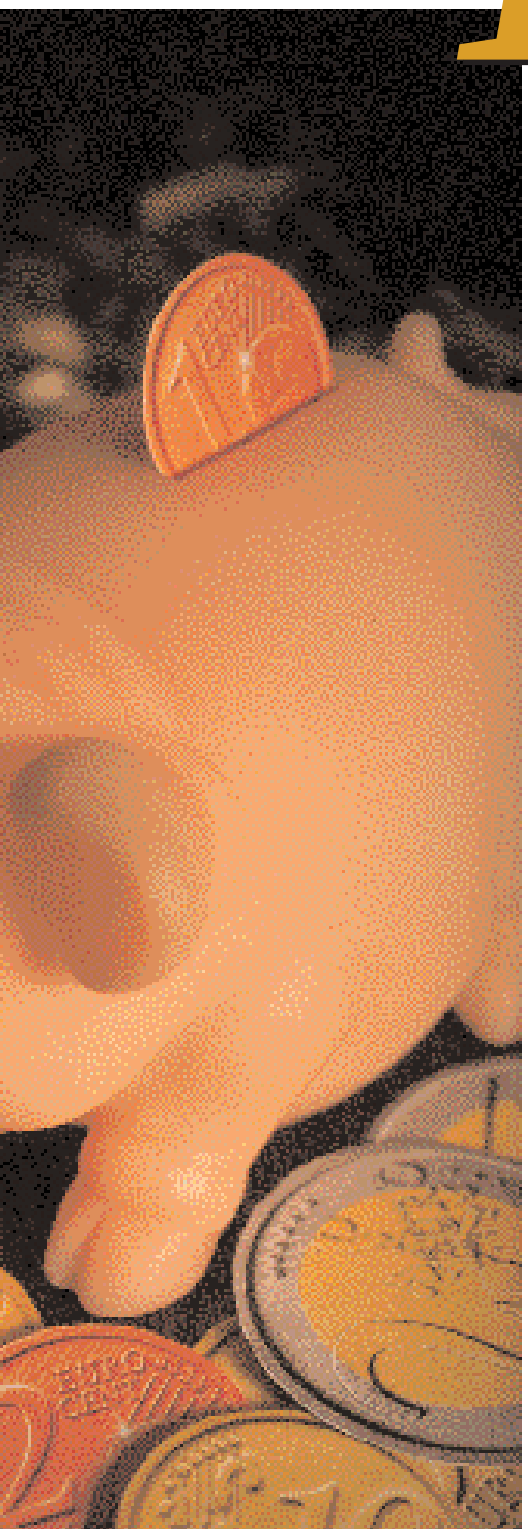
Contracts entered into prior to and during the transition period which refer to the national currencies of the Member States participating in EMU or the European currency unit (the Ecu) will be affected. A contract denominated in the currency of a third country – for example, US dollars – will be unaffected.

Frustrated contracts

If a contract becomes impossible to perform for either commercial or other reasons, it may under its governing law be considered frustrated. Any contracts denominated in the currency of a participating Member State or in Ecus may be vulnerable to being considered frustrated because the consideration clearly cannot be paid in that currency beyond 1 January 2002.

The objective of regulation 1103/97 is to introduce certainty on this fundamental issue, and article 3 of that regulation explicitly deals with this: 'The introduction of the Euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or ter-

the Euro?



minate such an instrument. This provision is subject to anything the parties may have agreed'.

This provision is designed to ensure that the replacement by the Euro of national currencies and the Ecu may not be used by a party to a contract to evoke various legal principles existing in a Member State to terminate or alter the terms of a contract.

Review of existing contracts. On this basis, it should not *normally* be necessary to amend existing contracts denominated in national currencies or Ecus so as to include continuity clauses. But you should review contracts to ensure that there is nothing which could affect the application of article 3 or require renegotiation. This matter is dealt with in more detail below. When reviewing existing contracts, the following features should be examined carefully:

- Usually, effected transactions will have maturity dates on or after 1 January 1999
- Monetary amounts denominated in, or calculated by reference to the Ecu or an existing national currency likely to be replaced by the Euro
- Benchmark rates, indices or other valuation sources likely to disappear and/or be replaced. If a consideration is linked to an index or benchmark which may disappear or be replaced, it should be checked whether it identifies a successor index or benchmark or that it contains a fallback provision for calculating the consideration
- Gains or losses which will be crystallised when the conversion rates of participating national currencies become irrevocably locked on 1 January 1999
- Obligations which might be difficult or impossible to perform because of the introduction of the Euro. Existing contracts may contain *force majeure* or impossibility clauses that might be triggered by the introduction of the Euro.

New contracts. The issues mentioned above with regard to existing contracts should all be considered when drafting new contracts. Furthermore, in respect of contracts executed during the transition period, it should be carefully considered whether it is appropriate either to rely on the continuity provided for in article 3 of regulation 1103/97 as outlined above or to include a specific clause providing clearly for the redenomination of all references to participating currencies into Euros after its introduction on 1 January 2002. Clearly, it would be more efficient to include such a clause in any contract which terminates after the introduction of the Euro.

You should also consider whether a clause dealing with the possibility of increased transaction costs as a result of EMU must be included to specify how the parties should bear such costs. And it is worth giving some thought to whether a review clause should be included to allow a party to amend a contract to reflect changes to market practices resulting from EMU and, if so, what sort of safeguards should be included to protect the other party.

Governing law

Some of the Member States of the European Union have indicated that they will not be joining in the first wave of EMU. The question therefore arises as to whether those Member States will be bound to respect the continuity of contracts, particularly if the contract is governed by the law of one of those countries. The situation in this regard is clear: regulation 1103/97 applies to all Member States, participating or not, and specifically binds them in relation to the recognition of the principle of the continuity of contracts.

It should be noted, however, that a risk does exist with regard to countries outside the EU which may regard the replacement of a national currency with the Euro as an act of frustration or *force majeure*. Since the EU has no

extra-territorial powers in this regard, there is no explicit provision in regulation 1103/97 on this point, except in the non-binding recitals where it is stated in the eighth recital that the explicit confirmation of the principle of continuity will 'also contribute to the recognition of contracts in the jurisdiction of third countries'.

It is also interesting to note that the State of New York has legislated for the continuity of contract after the introduction of the Euro by law 5049A which amends article 5 of the general obligations law by adding a new title which broadly follows article 3 of regulation 1103/97. Presumably, other states in the USA will follow suit.

However, to avoid any doubt about contracts containing (i) a reference to a national currency which participates in EMU, (ii) which has effect after 1 January 1999, and (iii) which is governed by the law of a non-EU country, it would be wise to include a continuity clause in such contracts.

Payments in the transition period

You may need to consider those cases in which your client will wish to be paid in Euros and when he will wish to pay in Euros. There may be certain circumstances when your client is obliged to pay and accept payment in Euros – for example, government bonds of participating Member States in EMU redeemable after 1 January 1999 will be paid in Euros. The client may wish to have included in future contracts an express option enabling him to choose the currency in which payment is to be made or received and the place of payment. These issues are dealt with in more detail below.

Corporate finance issues

The share capital of companies incorporated in participating Member States will be affected by the Euro. For shares with a par value, round-sum local currency amounts are likely to become odd Euro amounts upon conversion and companies may wish to adjust the par value of the shares to round-sum Euro amounts. This will require changes in the share capital. Increases in share capital should not present any major obstacles but reductions in share capital may require a shareholders' resolution, and in some Member States a notary deed will be necessary. To avoid rounding problems, some Member States are implementing legislation to allow the re-denomination of existing shares into shares of no par value.

No compulsion, no prohibition

Regulation 974/98 sets out details relating to the use of Euros and national currencies for the discharge of contractual obligations during the transition period on the principle of 'no compulsion, no prohibition'. That is to say, parties will only have to use the currency which they agreed during the transition period. However, there are exceptions:

a) Where a debt is in Euros, the debtor can discharge that debt by paying national currency *in cash* so long as it is legal tender in the place of performance
b) For payments made by crediting a bank account, the debtor can choose whether to pay in Euros or in national currency. The bank receiving the payment in Euros is entitled to make the conversion for crediting an account in the national currency unit and vice versa without asking for the consent of the account holder. The banks of the Member States have agreed in principle to provide this service free of charge
c) The parties are free to agree on the use of a different denomination than the one they have specified in the contract but this must be clearly stated. However, Member States can impose an obligation to use the Euro from the start of the transition period in the case of public and state debt.

At the end of the transition period, existing contracts will, of course, have to be settled in Euros.

Legal tender

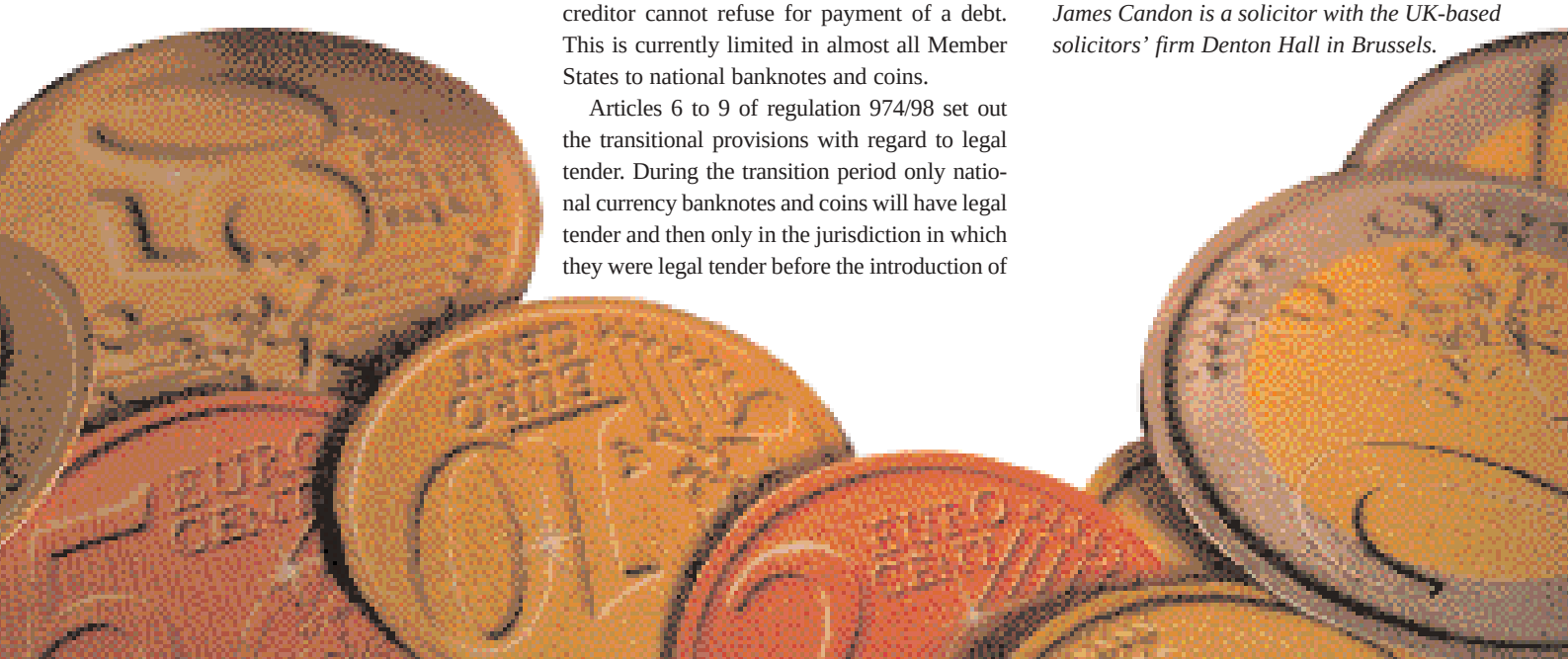
Legal tender can be defined as money which a creditor cannot refuse for payment of a debt. This is currently limited in almost all Member States to national banknotes and coins.

Articles 6 to 9 of regulation 974/98 set out the transitional provisions with regard to legal tender. During the transition period only national currency banknotes and coins will have legal tender and then only in the jurisdiction in which they were legal tender before the introduction of the Euro. After 1 January 2002, Euro banknotes and coins will be introduced and the national currencies and the Euro will exist in parallel for a maximum period of six months. This period may be shortened by individual participating Member States. In any event, on 30 June 2002, the national currencies will cease to be legal tender and the Euro will replace them. Under article 16 of the draft regulation, the respective issuers of banknotes and coins shall continue to accept, against Euros at the conversion rate, the banknotes and coins previously issued by them. Member States are free to take any measures necessary to facilitate the withdrawal of national currency from circulation and it appears that any time limit will be at Member States' discretion. It is also interesting to note that under article 11 of the draft regulation no party shall be obliged to accept more than 50 Euro coins in any single payment except for the issuing authority and those persons specifically designated by national legislation.

It would be worthwhile to take the time to identify what software and hardware will need to be changed as a result of EMU. One obvious requirement would be to have the Euro symbol in word-processing applications so that the redrafting of existing and future contracts can be carried out with reference to the Euro. It is possible to download the font from the Internet. For more details, see http://www.microsoft.com or http://www.tca.co.uk/consulting/emu/emu007.htm.

It appears inevitable at this stage that EMU will go ahead on schedule. It has a potentially significant legal impact in respect of legal instruments referring to European currencies regardless of whether the parties are European or not. There remain some gaps in the legal framework. These gaps will be resolved during the course of this year. In the interim, it is of the utmost importance that lawyers practising in every area of law inform themselves as to the wide-ranging implications of EMU and the introduction of the Euro on their practices. G

James Candon is a solicitor with the UK-based solicitors' firm Denton Hall in Brussels.



The *Investment Intermediaries Act, 1995*

Many solicitors may be acting as investment intermediaries without even knowing it – and this could leave them open to a very cumbersome compliance procedure. Paul Kenny looks at the requirements of the *Investment Intermediaries Act, 1995* and explains why joining Solicitors Financial Services might be the smart move to make

Following the passing of the *Investment Intermediaries Act, 1995*, banks and other institutions that accept money for investment (product producers) are required to deal only with business introducers (investment intermediaries) who comply with the provisions of the Act.

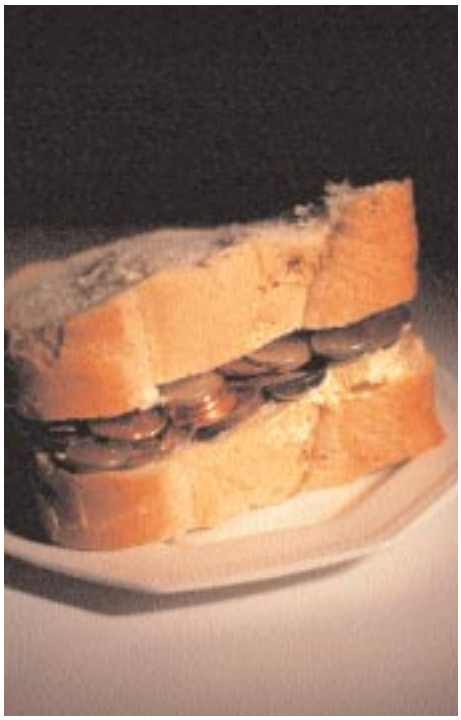
These business introducers must have been properly authorised under the Act and have a letter of appointment from the product producer in writing. A register of appointed intermediaries must be maintained by each institution and be open to inspection by the public. Details of all persons or firms on the register must be given to the Central Bank of Ireland, which is now the sole regulator under the Act.

Effectively, this means that anyone who refers or places business with a bank is an investment intermediary and must comply with the Act.

The Act specifies various conditions which apply to investment intermediaries seeking authorisation. These include conforming to capital adequacy requirements, bonding, adhering to a code of practice on advertising and to another on the safekeeping of client money and investment instruments. Intermediaries are also bound by guidance on money laundering under the *Criminal Justice Act, 1994* and by a general code of conduct issued by the Central Bank under the terms of the Act.

Is compliance a problem?

Initially, there was some confusion as to whether solicitors acting as mere 'introducers' of business would be relieved of the obligation to comply with the Act. While the position is still unclear, it is likely that part IV of the *Investment Intermediaries Act, 1995* does apply to solicitors involved in the investment of client funds, in that they would be regarded as 'deposit brokers'. A solicitor who is regarded as a deposit broker for the purposes of the Act must:



The new Act means that it's not so easy to make a crust these days

- Hold a letter of appointment from any credit institution (such as a bank or building society) with which he or she has dealings
- Be a member of an approved professional body (the Law Society has decided not to seek approval for this purpose) or approved representative body (such as the Irish Brokers Association)
- Otherwise comply with the Act
- Have appropriate professional indemnity insurance to cover this type of activity, and
- Effect a bond (this last requirement will be removed under proposed investor compensation legislation).

One of the difficulties facing solicitors who intend to have dealings with credit institutions is that they must hold a letter of appointment. In the past, credit institutions had no difficulty in appointing intermediaries. However, because of the need to maintain a register and to disclose information to the Central Bank, the appointment of an investment intermediary is administratively costly and less lightly undertaken than before. Indeed, one institution which issued over 700 letters of appointment to professionals generally has now reduced this to 20.

How can solicitors comply?

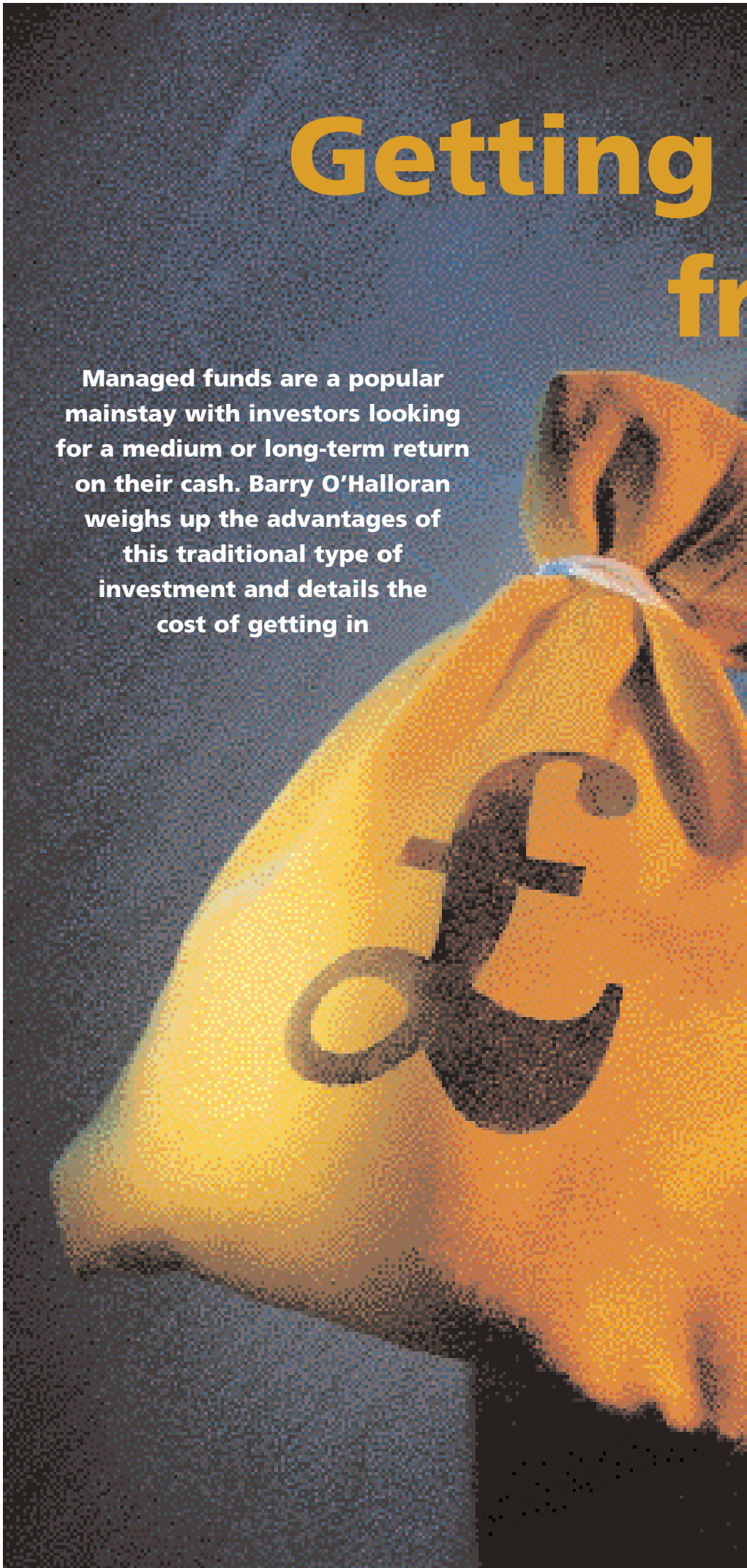
Many solicitors engage in investment intermediary-type services, sometimes without being aware of it. For instance, if in the past a solicitor had referred clients to financial institutions for a part-share in commissions, then he or she was acting as an investment intermediary. Solicitors can no longer do this unless they hold letters of appointment from any institution they are dealing with. It is unlikely that solicitors would get letters of appointment directly from financial institutions and, in any event, the compliance procedure could be very cumbersome and costly, especially when only a small amount of business is transacted.

One option for solicitors is to join the Law Society's Solicitors Financial Services, which has appointed independent investment advisors, Irish Pensions Trust, as its agent. For solicitors doing investment business or selling financial services products through Solicitors Financial Services, Irish Pensions Trust can issue letters of appointment. While detailed arrangements have yet to be put in place, the intention is that Irish Pensions Trust will take primary responsibility for all transactions conducted through Solicitors Financial Services, thus enabling solicitors to continue to provide a comprehensive service to clients and also to generate commission for this activity. G

Paul Kenny is Technical and Compliance Director with Irish Pensions Trust. For further information about Solicitors Financial Services, call Freephone 1800 300 900.

Getting fr

Managed funds are a popular mainstay with investors looking for a medium or long-term return on their cash. Barry O'Halloran weighs up the advantages of this traditional type of investment and details the cost of getting in



After falling out of favour in the early 1990s, managed funds are back with a bang. Investors are once again using them as a way of maximising returns from a windfall or to feather their nests for the future.

Low interest rates mean that traditional cash deposits are not paying off. At the same time, managed funds allow investors to benefit from strong equity and gilts performances while limiting the risks involved in playing the markets. Basically, they are designed for people who want to put their cash somewhere for the medium or long term. The funds are essentially savings products, and while they carry more risk than straight deposits, they also hold the promise of far better returns.

For example, Noel Minogue, marketing director of AIB Investment Managers (AIBIM), points out that equity-based managed funds have grown on the back of strong market performances by an average of 29.6% a year in the three years to March 1997. So far this year, they have notched up another 20%. This is far better than deposit rates, which have been much lower in the same period and now offer returns of only around 6%.

Spreading the risk

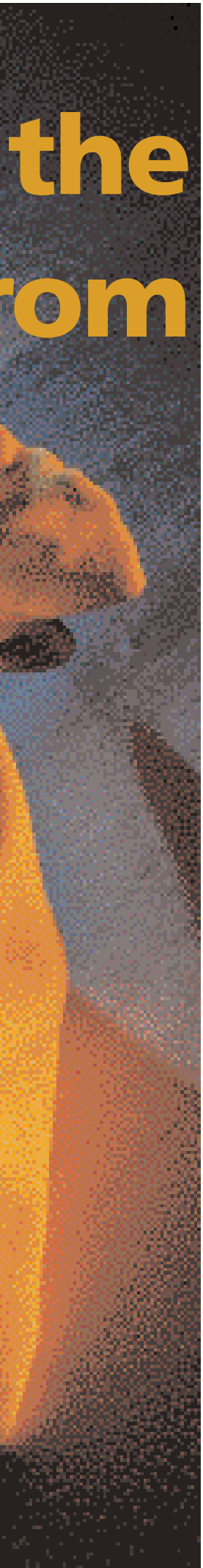
Managed funds are structured to cut risk to a minimum and to maximise the pay-off to the investor. They come in a wide range of shapes and sizes, but a typical fund could have a mix of Irish and overseas equities, cash and fixed-interest securities such as Government bonds.

Within each of these categories, the fund is spread out again. So, for example, the proportion of the original investment that is placed in equities is spread across a range of company shares, while the remainder is placed in an equally broad spectrum of gilts and cash products.

The number and variety of managed funds is growing all the time. Many of them will include a mix like that described above, but some investment managers will offer equity-only or gilts-only products. For instance, Ulster Bank Investment Managers has a range that includes two equity funds, one focused only on the Irish market and the other on global markets; and two products focused only on cash, bonds and fixed-interest securities. This is in addition to their two more typical funds, both of which feature shares and securities.

The different products on offer all have various levels of risk. Obviously, a fund which places all its assets into equities is exposed to the ups and downs of the market, while one which invests exclusively in cash or gilts carries less risk. It is up to clients to decide what kind of risks they want to take with their money, and the intermediaries must act accordingly.

Fund managers generally recommend that you invest at least £3,000 to £5,000 and leave it there for a minimum period of five years to give your-



the max rom managed funds

self the chance of getting a decent return. But it is worth noting that most funds are flexible and allow the investor to cash in all or part of his asset at any time.

All funds have a once-off entry cost – known as the bid-offer spread because you buy units at the prevailing offer price and sell at the prevailing bid price – which is charged as a percentage of the principal. This used to be a uniform 5% no matter where you went, but quite a few companies now charge only 2%.

Your investment will also be subject to a yearly 1.5% management charge, so the initial cost of getting in is likely to reduce the principal sum by either 6.5% or 3.5%. This means that if you place £5,000 with a fund manager, the actual sum invested will be either 93.5% or 96.5% of this figure. So, depending on where you go, only £4,675 or £4,825 will actually end up in the fund. However, if you have a lot of cash that you wish to invest, it is possible to negotiate a lower charge since intermediaries are obviously anxious to attract bigger clients.

Managed funds represent a good opportunity for anyone with alot of spare cash, or someone who has just come into money and wants to get a decent return on it. Fund managers say that their typical clients can range from anyone from lottery winners to the beneficiaries of a will – perhaps even someone who has won a sizeable personal injury award or other damages.

But a single lump sum is not needed: most investment houses now offer funds which allow the investor to pay regular premiums in the same way that you pay into pension schemes or insurance policies. The two most popular premium payment-type funds are the personal investment portfolio (PIP) and the personal equity porfolio (PEP).

The PEP is the premium version of the special portfolio account, which is taxed at 10%. The PIP is the premium version of the special savings fund, a standard equity-based fund. Both of these products, first launched several years ago by the AIB company Ark Life, are now extremely popular.

There are various ways of keeping in touch with the value of your investment. Fund managers now send out twice-yearly valuations to their clients, and you can keep in touch on a more regular basis by checking the three Irish daily broadsheets which publish returns on a weekly basis.

All managed funds except pension funds are taxed at the standard rate, currently 24%. This money is deducted at source by the fund itself and not included in the calculation of your return, which means that you do not have to pay any tax personally or deal with the Revenue Commissioners. Special investment portfolio funds, which place money only in Irish equities, are taxed at 10%.

Tax refund

For companies, returns from a managed fund are subject to capital gains tax (CGT), but as the fund itself is already deducting tax at source they are allowed an offset or refund against this because the standard rate exceeds the 20% CGT charge. When calculating the gain, corporate investors are also given an indexation relief to allow for inflation.

So, if X Ltd invests £1 million for five years in a domestic unit fund and makes a cumulative return of 40% (or 7% a year) – and inflation over the same period is 2.8% a year or 15% over five years – you calculate the amount that can be subject to tax by subtracting £1.15 million (that is, the principal plus 15%) from £1.4 million (that is, the principal plus the return).

This means that a total of £250,000 is subject to CGT. But as the fund has already deducted tax at 24%, you are allowed a credit for this. To calculate the refund, you treat the £250,000 as 76% of the taxable total, and gross it up to £328,947. The CGT charge is 20% on this figure (£65,789) and the credit at 24% is £78,947. Your refund is then the difference between these two figures, which comes to £13,158. This gives you a final return of £1.413 million or an after-tax return of 41.3%. G

Council report

Report on Council meeting held on 8 May 1998

1. Galway

The President noted the historic nature of the meeting, being the first time in the 146-year history of the Law Society that its Council had met in the city of Galway. He thanked the Council members for travelling and also welcomed the representatives from the Galway, Clare and Mayo bar associations who were attending as observers at the Council meeting.

2. Multi-disciplinary practices

The President congratulated the members of the MDP Working Group which had been established on 22 January 1998, had held ten meetings and had very speedily produced the excellent report which had been circulated. The report would be fully considered at the Council meeting on 12 June 1998.

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

It was agreed to adjourn decisions on this matter to the Council meeting on 12 June 1998, when a necessary counsel's opinion would be to hand.

4. Solicitor advertising

The Director General reported that a series of meeting and discussions had been held with Department of Justice officials on various aspects of the proposed Bill. The Attorney General's office had raised a number of issues to which the Society had responded in full. Various Council members then suggested further changes which the profession would see as desirable to the legislation governing advertising. It was agreed to further pursue a number of these points although the Director General reminded Council that while the government appeared happy to make some changes to the existing law at the Society's request, it had refused to contemplate others. The detailed drafting work on this matter which had been performed by Michael V O'Mahony and Deputy Director General, Mary Keane, was again commended by the Council.

5. Money laundering

The Director General reported that a meeting had taken place, on the subject of the proposed designation of solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*, between Society representatives and officials from the departments of Justice and Finance and from the Central Bank. The fundamental importance of confidentiality on all aspects of the solicitor/client relationship and the opposition of the profession to any measures which would dilute that relationship had been emphasised. The Society had also queried how the department proposed to deal with the principle of legal professional privilege and the constitutional rights against self-incrimination and of access to a lawyer. The departmental officials had sought to reassure the Society, at least in relation to legal professional privilege, but had not given any specifics on how the Society's concerns might be met. A number of Council members then expressed deep unease at the threats to solicitor/client confidentiality and to certain constitutional rights of citizens. Principles and tactics on how to deal with the unfolding situation were discussed and agreed.

6. SI 348 of 1997

The chairman of the Litigation Committee, James McCourt, reported that significant progress had been made on the matters raised by the Society in relation to SI 348 of 1997. It appeared that the amending rules would provide for a mutual exchange of reports within a short period yet to be defined with solicitors for the plaintiff and defendant first exchanging lists of reports. In addition, the provision in relation to solicitors' personal liability for costs would be deleted. A further meeting of the sub-committee would be held shortly and Mr McCourt acknowledged the sterling efforts of Rules Committee member, Gordon Holmes, and the open lines of communication with the Litigation Committee on the matter.

7. Appointment of new Rules member

The Council noted that Patrick Groarke of Longford, a member and former chairman of the Litigation Committee, was now one of the Society's two nominees on the Superior Courts Rules Committee. Mr Groarke replaced Ernest Margetson, whose five-year term had expired.

8. Compensation Fund

The chairman of the Compensation Fund Committee, Gerard Griffin, outlined a series of very strict new measures which the committee would apply in future to the handful of solicitors who were seriously in delay every year in their applications for renewal of practising certificates.

9. From Florence to Mayo

Michael Peart congratulated the President and the organising committee on an immensely successful conference in Florence. He complimented all concerned on excellent organisation, a very interesting business session and an immensely enjoyable event. The Senior Vice-President, Pat O'Connor, then informed the Council that next year's Annual Conference of the Law Society would be held in Ashford Castle from 6 to 9 May 1999.

10. Motions for June Council

1) *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

2) *That this Council approves the report of the Multi-Disciplinary Practices Working Group.*
Proposed: Elma Lynch
Seconded: Gerry Griffin

Obtain the information you require at the touch of a button

LawLink

LawLink provides you with direct access to on-line information and databases, allowing you to obtain information from the CRO (Companies Office), CFI (Companies Formations International), ITPA Judgements, Legal Diary, InfoLink (MAID), and the Dublin Land Registry from your desktop. **LawLink Limited** also provides: ***Training, Hardware, Software, Web Development solutions*** in addition to ***SecureMail***, the industry standard for electronic mail.

For more information on our range of services and products, contact Kathy at 676-6222 (tel), 661-5398 (fax), and e-mail kathy.lee@ifg.ie

cial LOW COST FINANCE offer for LawLink and SecureMail installation costs.

DUBLIN
19 Fitzwilliam Square, Dublin 2.
Tel: 01-6766222, Fax 6615398.
SecureMail: lawlink@ifg.ie.

CORK
11 Emmet Place, Cork
Tel: 021-271044, Fax: 021-272088.
SecureMail: lawlink@ifg.ie.

LONDON
4 Fitzroy Sq., London W1P5AH.
Tel: 0171-3801500, Fax: 0171-3801550.
SecureMail: lawlink@securemail.co.uk.

Committee reports

YOUNGER MEMBERS

Our salary review survey will be sent out shortly to all members who have been qualified for less than five years. We would ask all recipients to fill it out and return it to Jill Curran at the Law Society.

Our annual soccer blitz will take place on 27 June in Blackhall Place. It is a seven-a-side tournament consisting of four male and three female players. The entry fee is £60 a team and, as ever, all profits will go to the Solicitors' Benevolent Fund. The entry form is on page 61 and early entries would be appreciated.

Stuart Gilhooly, Chairman

SADSI

SADSI Ball

SADSI Ball tickets went on sale on 18 May. There are a maximum of 300 tickets for sale and the closing date for purchase is 19 June. Full details are available in the recent mailing sent to apprentices.

Apprentice questionnaire

There has been a very good response so far to the questionnaire sent to apprentices on the conditions and quality of work. The deadline for returning the questionnaire is 12 June. It is important that as many apprentices as possible reply to it.

Hockey

The SADSI hockey team which entered the inter-firm league won its first-round match against accountants Arthur Anderson. Congratulations to all those involved and best of luck in the future rounds.

TAXATION

Professional negligence

The High Court in England has recently considered the level of care required by solicitors and barristers when advising on tax schemes. In the case of *Matrix Securities Ltd v Theodore Goddard, Solicitors and Another*, the English High Court has held, in a lengthy judgment, that neither the solicitors nor counsel involved had been negligent in their advice given.

The solicitors and counsel had advised on the method of obtaining a tax clearance from the UK Revenue and had drafted a letter which sought the clearance. In a landmark judgment in the House of Lords in 1994, the promoters of the scheme failed in their claim to compel the UK Revenue to honour a clearance issued by a district inspector of that Revenue.

The promoters subsequently sued the advisers to the scheme on the basis that they had made themselves out to be experts in the field of giving tax advice. The English High Court has now decided that the element of care expected of experts in the field of tax advice is only that which any reasonably competent solicitor or barrister in the relevant sector of the profession would give.

It is not necessary to achieve the greatest heights of expertise; it is only necessary to ensure that the advice does not go below the lowest acceptable standard of professionals who profess specialist tax expertise. These solicitors and counsel were not liable merely because they had omitted to do something which one of the reasonably competent members of the relevant group or class would have done.

This case is of interest as it sets out the standard of care which the English High Court suggests is required by specialist advisers. The case may yet be appealed to the House of Lords.

TAX BRIEFING

The following extracts from *Tax Briefing*, issue 31 (April 1998), are reproduced by kind permission of the Revenue Commissioners.

Seaside resort scheme: transitional arrangements

Section 355 of the *Taxes Consolidation Act, 1997* introduced a ring-fence on capital allowances on holiday cottages or apartments. Section 355, sub-section 5, provides for certain transitional arrangements which deal with pipeline projects. The purpose of this note is to clarify the terms of those transitional arrangements. Sub-section 5(a)(ii) applies to situations where, before 5 April 1996, 'an application for planning permission for the construction of the holiday cottage or apartment was received by a planning authority'.

Planning applications. It has come to our attention that certain of the planning authorities which have responsibility for planning matters in areas designated under the scheme do not differentiate between planning applications for private residences and those for holiday homes. Where the planning authority did not differentiate in this way, the Revenue is prepared to accept that a pre-April 1996 planning application for dwellings relates to holiday homes, provided that:

- Documentary evidence (such as a letter from a local authority, copies of plans, correspondence exchanged with architects etc) is furnished which demonstrates that the development in question was, at the outset, intended as a development of holiday accommodation by the original planning permission applicant and was not intended as a development of domestic dwellings, and
- The local authority has no objection from a planning point of view to the use of the dwellings as holiday homes.

Those persons seeking to rely on sub-section (b) of section 355(5) must provide a planning authority affidavit which specifically refers to holiday-type accommodation. With regard to sub-section (5)(a)(i), where a binding contract was entered into before 5 April 1996, the subsequent planning application must be made on the basis that the development is to be a development of holiday-type accommodation.

Schedule D – Case I & II: food and subsistence

This article concerns deductions allowable in computing profits for tax purposes in respect of food and subsistence expenses of self-employed individuals. The treatment of employees' (including directors') subsistence expenses is dealt with in Leaflet IT 54.

Cost of meals. It is a long-established principle that the cost of meals taken at the place of business are not allowable expenses for tax purposes. In addition, expenses incurred on meals consumed away

from the place of business are, in general, not wholly and exclusively laid out for the purposes of the trade or profession since everyone must eat in order to live. Where such costs are not allowable, they may not be apportioned to allow extra costs incurred from the necessity of eating away from home or from the place of business.

Costs of meals may be incurred wholly and exclusively for business purposes where a business by its nature involves travelling (for example, in the case of self-employed long-distance lorry drivers) or where occasional business journeys outside the normal pattern are made. A reasonable level of expenses incurred in these circumstances may be deducted from business profits.

Where a business trip necessitates one or more nights away from home, reasonable accommodation costs incurred while away from home may be deducted. The cost of meals taken in conjunction with overnight accommodation may also be deducted. Where self-employed long-distance lorry drivers spend the night in their cabs rather than taking overnight accommodation, the costs incurred on their meals may be deducted.

It is important to note that only expenses actually incurred and for which receipts are available may be claimed. Receipts must be retained for production in the course of a Revenue audit of the business.

CAT/Probate tax

Capital acquisitions tax. The rate of interest payable on unpaid tax has been reduced from 1.25% a month or part of a month to 1% a month or part of a month (section 41, *Capital Acquisitions Tax Act, 1976*). The rate of interest payable on refunds of tax has been reduced from 0.6% a month or part of a month to 0.5% a month or part of a month (section 46(1), *Capital Acquisitions Tax Act, 1976*). These revised rates apply in respect of interest chargeable or payable for any month or part of a month commencing on or after the date of the passing of the *Finance Act, 1998*. Details of the provisions are contained in section 133 of the *Finance Act, 1998*.

Probate tax. The rate of interest on overdue probate tax has been reduced from 1.25% a month or part of a month to 1% a month or part of a month. The discount for probate tax which is paid within nine months of the date of death is also reduced from 1.25% a month or part of a month to 1% a month or part of a month. The amended rates apply where the period in respect of which interest is to be charged, or a discount falls to be made, commences on or after the date of the passing of the *Finance Act, 1998*. Details of the provisions are contained in section 127 of the *Finance Act, 1998*.

Stamp duty

Interest on unpaid or overpaid duty. Interest chargeable under the provisions of section 15(1), *Stamp Act 1891* for any period commencing on or after the date of the passing of the *Finance Act, 1998* will be charged at the reduced rate of 1% a month or part of a month. Interest charges incurred for any period prior to this date will continue to be charged at the rate of 1.25% a month or part of a month. The interest rates chargeable under other sections of the stamp duty code have also been amended.

In addition, the interest rates payable on refunds of duty have been amended. The rate of interest on refunds of companies capital duty has been reduced from 9% a year to 6% a year, while the rate of interest on stamp duty refunds made under the provisions of section 112, *Finance Act, 1990* has been reduced from 1% a month or part of a month to 0.5% a month or part of a month. Full details of these amendments can be found in section 124 of the *Finance Act, 1998*.

LEGISLATION UPDATE: 4 APRIL – 12 MAY 1998

ACTS PASSED

Adoption Act, 1998
Number: 10/1998
Contents note: Provides for the introduction of a new statutory procedure for consulting the father of a child born outside marriage before the child is placed for adoption so as to afford the father an opportunity to exercise his right to apply for guardianship and/or custody of the child, if he so wishes; amends the *Adoption Act, 1991* to facilitate the recognition under Irish law of foreign adoptions effected in countries whose laws permit the revocation or termination of adoptions in particular circumstances.
Date enacted: 29/4/1998
Commencement date: 29/4/1998 for s1 and ss10-18; 90 days after 29/4/1998 for ss2-9 (per s17 of the Act).

Civil Liability (Assessment of Hearing Injury) Act, 1998
Number: 12/1998
Contents note: Provides for judicial notice to be taken, in all proceedings before a court claiming damages for personal injury arising from a hearing injury, of a report to the Minister for Health and Children by an Expert Hearing Group which was published by the Department of Health and Children on 9/4/1998, and provides for courts, in such proceedings, to have regard to certain matters in that report relating to the assessment of hearing disability.
Date enacted: 11/5/1998
Commencement date: 12/5/1998 (per s5(2) of the Act).

Courts Service Act, 1998
Number: 8/1998
Contents note: Establishes an independent body to be known as the Courts Service which will assume the current functions of the Minister for Justice, Equality and Law Reform in relation to the administration of the courts. The provisions in the Act are based on recommendations made by the Working Group on a Courts Commission in its third report, *Towards the Courts Service* (1996).
Date enacted: 16/4/1998
Commencement date: 16/4/1998 for part I (ss1 and 2) and s36; 16/5/1998 for part VIII (ss37-43); commencement order/s to be made for remaining sections (per s1 of the Act).

Local Government (Planning and Development) Act, 1998
Number: 9/1998
Contents note: Amends the *Local Government (Planning and Development) Act, 1983* in order to allow for an increase in the membership of Án Bórd Pleanála.
Date enacted: 16/4/1998
Commencement date: 16/4/1998

Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Act, 1998
Number: 7/1998
Contents note: Confers on the Minister for Arts, Heritage, Gaeltacht and the Islands certain ancillary functions in relation to property, and clarifies and extends the Minister's functions in relation to certain inland waterways and ferry services to inhabited offshore islands.
Date enacted: 8/4/1998
Commencement date: 8/4/1998

Tribunals of Inquiry (Evidence) (Amendment) Act, 1998
Number: 11/1998
Contents note: Amends the *Tribunals of Inquiry (Evidence) Act 1921* to provide for amendment, pursuant to a resolution of both Houses of the Oireachtas subject to certain conditions, of an instrument appointing a tribunal of inquiry.
Date enacted: 6/5/1998
Commencement date: 6/5/1998

SELECTED STATUTORY INSTRUMENTS

Bail Act, 1997 *(Section 10) (Commencement) Order 1998*
Number: SI 140/1998
Contents note: Appoints 2/6/1998 as the commencement date for s10 of the *Bail Act, 1997* (Amendment to s11, *Criminal Justice Act, 1984* – offences committed while on bail: consecutive sentences).

Capital Gains Tax (Multipliers) (1998-99) Regulations 1998
Number: SI 110/1998

District Court (Licensing) Rules 1998
Number: SI 123/1998
Contents note: Amend order 77, *District Court Rules 1997* (SI 93/1997) (*Ad interim* transfers of licences).
Commencement date: 28/4/1998

European Communities Act, 1972 *(Access to Information on the Environment) Regulations 1998*
Number: 125/1998
Contents note: Set out the procedures for public access to information relating to the environment held by public authorities in accordance with Council directive 90/313/EEC on the freedom of access to information on the environment.

Freedom of Information Act, 1997 *(Section 47(3)) Regulations 1998*
Number: SI 139/1998
Contents note: Prescribe fees for the provision of records under s47(3) of the Act.
Commencement date: 1/5/1998

Housing (Sale of Houses) Regulations 1995 (Amendment) Regulations 1998
Number: SI 91/1998
Contents note: Amends article 7 of the *Local Government (Planning and Development) (Fees) (Amendment) (No 2) Regulations 1998*
Number: 128/1998
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 the licence fees payable to planning authorities in respect of specified appliances and structures with effect from 1/5/1998. Fees payable to Án Bórd Pleanála for planning appeals references and other matters are revised with effect from 15/6/1998.

Local Government (Planning and Development) Regulations 1998
Number: 124/1998
Contents note: Ends the exemption for halting sites from the provisions of part X of the *Local Government (Planning and Development) Regulations 1994* (SI 86/1994).

Medicinal Products (Licensing and Sale) Regulations 1998
Number: 142/1998
Contents note: Provide for a licensing scheme for medicinal products for human use, and for homeopathic medicines.
Commencement date: 6/5/1998
Leg-implemented: Dir 65/65, Dir 75/318, Dir 75/319, Dir 92/72
Repeals: *Medical Preparations (Licensing and Sale) Regulations 1996* (SI 43/1996).

Prepared by the Law Society Library

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Developments in product liability litigation

The biggest development in product liability imposed by Ireland's obligations as a member of the European Union has been the *Product Liability Directive* (85/374), which was implemented in Irish law by the *Liability for Defective Products Act, 1991*. Although the *Liability Directive* and the 1991 Act have introduced a form of strict liability for suppliers of products on the European market, they have not changed Irish litigation very much. Very few cases before the Irish courts appear to turn on an interpretation of a provision of the 1991 Act. Nevertheless, the introduction under the directive and the 1991 Act of a regime of strict liability has added a further weapon to the armoury of a lawyer suing on behalf of the plaintiff in this type of case. Perhaps as importantly, it has introduced some measure of uniformity in this area across the European Union.

Since the Act was introduced, there has been a review of the *Liability Directive* at EC Commission level and one major case where the (roughly) equivalent provisions of our 1991 Act in England were invoked. There has also been a *Consumer Safety Directive* which, although not directly relevant to product liability, will in future have a great impact on this area.

The 'development risks' defence

The *Liability Directive* allows for a development risks exception. Ireland, like most of the EU Member States, has decided to allow this exception, therefore a defendant to proceedings will be entitled to plead as a defence that the state of scientific and technical knowledge at the time the producer put the product into circulation was not such as to enable the existence of the defect to be discovered. This appears to allow the producer in effect to argue that he used all reasonable care, and thus imports notions of blameworthiness and other negligence-related concepts into the strict liability regime.

Britain, in purporting to implement the provisions of the *Liability Directive* provided, in section 4(1)(e) of the *Consumer Protection Act 1987*, as follows:

'In any civil proceedings by virtue of this part … against any person … in respect of a defect in a product it shall be a defence for him to show …

e) That the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected *to have discovered the defect if it had existed in his products when they were under this control.'*

The EC Commission took the view that this provision did not properly implement the relevant provisions of the *Liability Directive* as it was more favourable to defendants than the exception actually provided for in the *Liability Directive*.

The EC Commission argued that the test under the English legislation was subjective insofar as it presupposed an assessment based on the behaviour of a 'reasonable producer'. In effect, the EC Commission said that, under the English provision, it would be easier for a defendant to demonstrate that neither he nor a producer of similar products could have identified the defect at the material time (provided that the standard precautions in the particular industry had been taken that there was no equivalent of common law negligence) than to show under the *Liability Directive* exception that the state of scientific and technical knowledge was such that no-one would have been able to discover the defect.

The Commission brought the UK government before the EC Court of Justice in *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (Case 300/95), in which the judgment of the court was given on 29 May 1997.

The EC Court of Justice rejected the Commission's complaint for several reasons. The court observed that the exception under the *Liability Directive* referring to 'scientific and technical knowledge at the time when [the producer] put the product into circulation' was not specifically directed at the practice and safety standards in use in the particular industrial sector in which the producer in question operated but rather referred to the state of scientific and technical knowledge, *including the most advanced level of such knowledge*, at the time the product in question was put into circulation.

The court added that the *Liability Directive*'s provision was intended to refer not to any state of knowledge of which the producer in question was aware, but to the objective state of scientific and technical knowledge of which the producer is presumed to have been informed. Therefore the producer of the defective product is required to prove that the *objective* state of scientific and technical knowledge, including the most advanced level of such knowledge, at the time when the product in question was put into circulation was not such as to enable the defect in the product to be discovered.

The court observed that it was implicit that the relevant scientific and technical knowledge must have been assessable at the time the product in question was put into circulation. In looking at the English legislation, the court noted that it places the burden of proof on the producer wishing to rely on the defence. It also places no restriction on the state and degree of scientific and technical knowledge at the material time which is to be taken into account. Crucially, the court concluded that the English courts in interpreting the 1987 Act will be presumed to do so in light of the provisions of the *Liability Directive* and so, the European Court of Justice concluded, would be bound to interpret the provisions of the 1987 Act in the sense fully consistent with the wording of the *Liability Directive* (and the

Commission could not point to any English judicial decision on the 1987 Act inconsistent with the directive). On this basis, the court rejected the complaint by the Commission.

In essence, the court is saying that a producer carries a very heavy burden in seeking to prove the development risks defence. He cannot say that within his own particular industry, in his own particular country, a potential problem or difficulty with the product was not known of and that therefore he should not be held liable. It says that he has to show that in the widest sense of the state of the art, the existence of the defect was not discoverable. Some questions remain unanswered, however. Probably the most important of these is how wide does a producer have to look to find out what is the state of scientific and technical knowledge at the time the product was put into circulation? Does this mean that an Irish manufacturer would be presumed to have been aware of an article in Japanese in a Japanese technical journal which was of relevance at the time that he put the product into circulation? This degree of detail will only be sorted out in litigation through, for example, reference to the EC Court under article 177.

Review of the *Liability Directive*

The EC Commission on 13 December 1995 published its first report on the implementation of the *Liability Directive* (COM (95) 617). That report describes the *Liability Directive* as being an important piece of legislation which has contributed to an increased awareness of and emphasis on product safety and has eased the burden on the plaintiff on proving his case (since fault on the part of the producer does not have to be proved). At that time, all Member States except France had notified measures to implement the *Liability Directive*, and that is still the case (although a draft law designed to implement the *Liability Directive* subsequently had a first reading before the French National Assembly in March 1997). The 1995 report acknowledged that there was only 'very limited jurisprudence' on the *Liability Directive* from the Member States and that no national court had referred any question of interpretation of the directive to the European Court of Justice under article 177.

Most Member States had availed of the development risks defence and all except Greece, Luxembourg, Sweden and Finland (and, in its draft law, France) had availed of the exemption for primary agricultural produce. The Commission report concluded that the implementation of the *Liability Directive* had not increased either the number of claims being made or the level of insurance premiums. At the time of the report, the Commission concluded that, although it would keep the situation under review, it was unnecessary to submit proposals to amend the directive.

Proposed amendment of the directive

Perhaps the single most significant European consumer safety crisis in recent times arose shortly after the publication of the 1995 report when, early in 1996, possible links were identified between the fatal disease Creutzfeldt-Jacob Disease (CJD) and the consumption of meat contaminated with BSE. As matters presently stand, meat may be (and is in most Member States) excluded from the scope of measures implementing the *Liability Directive*. On the basis of a recommendation by the European Parliament arising from its investigations into BSE, the EC Commission published on 1 October 1997 a proposal for a directive amending the *Liability Directive* to delete the exception for 'primary agricultural products and game' from article 2 and effectively to transform the option given to Member States under article 15(1)(a) to include those products in national measures into a mandatory rule.

This simple modification, if carried, should certainly help harmonise the rights of action of consumers throughout the EU. However, in the context of the apparent time lag which has been identified in certain cases between the consumption of contaminated meat and the contraction of CJD, difficulties might be anticipated in certain regards, not least the identification of the appropriate defendant producer in serious food contamination claims and the ten-year-long stop limitation.

General Product Safety Directive

Directive 92/59 on general product safety, adopted on 29 June 1992, has now been implemented (very belatedly) in Ireland by the *EC (General Product Safety) Regulations 1997* (SI 197 of 1997) made by the Minister for Enterprise and Employment on 25 April 1997. The main objectives of the *Safety Directive* are to harmonise EU product safety laws and to impose a general standard of safety in product sectors where no special standards exist; to oblige producers not to market dangerous products; to improve product safety monitoring and safety warnings, and to allow swift and effective action to be taken to restrict or prohibit the sale of dangerous products.

As in the case of the *Liability Directive*, the obligation not to market dangerous products is imposed principally on manufacturers, although similar obligations may affect others in the supply chain, especially importers. The definition of the term 'producers' is essentially identical to the corresponding definition in the *Liability Directive* and includes: EU-based manufacturers; anyone affixing his name, trademark or distinctive mark to a product (for example, 'own-brand' sellers); EU representatives of non-EU manufacturers; EU importers of non-EU products; persons in the supply chain whose activities may affect a product's safety; and commercial suppliers of used or reconditioned products.

A 'product' for the purpose of the *Safety Directive* includes any goods intended for use, or likely to be used, by consumers, which are supplied in the course of a commercial activity. The goods need not be supplied for gain. Goods may be new, used or reconditioned. However, goods sold as antiques or sold with a clear warning that they require repair or reconditioning before use are not

Conferences and seminars

AIJA (International Association of Young Lawyers)
Topic: *Reorganisation of companies: crisis management*
Date: 2-5 July
Venue: Riga, Latvia
Contact: Gerard Coll (tel: 01 6761924)

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: *Intensive foundation course on EC competition law*
Date: 8-11 June
Venue: Luxembourg
Contact: Patrick Dalton (tel: 0044 171 4532146)

Topic: *Competition law and practice*
Date: 6-7 July
Venue: London, England
Contact: Tel: 0044 171 8786888

Solicitors' European Group
Topic: *Sport and competition law*
Date: 23 June
Venue: London, England
Contact: Tel: 0044 171 3205791

Topic: *Annual conference*
Date: 26-27 June
Venue: Chester, England
Contact: Tel: 0044 1905 724734

Topic: *Recent developments: EU employment law and related issues*
Date: 8 July
Venue: London, England
Contact: Tel: 0044 171 3205791

included. (There is no exception in the *Safety Directive* for primary agricultural produce.)

A 'safe' product is one which under normal or reasonable use during its expected useful life presents no risk to users or only the minimum risks compatible with a high standard of protection of users' health and safety, bearing in mind the product's intended use. Factors relevant to whether the risks from a product are acceptable include the product's characteristics (such as its composition, packaging and presentation, and any instructions for its assembly or maintenance), its effect on other products with which it is likely to be combined, and the types of consumers likely to use it (especially children). A product is deemed to be safe if it complies with EU or national safety rules specific to that product type. If there are no rules specific to a product, the following will also be relevant (although compliance will not automatically protect a product from possible withdrawal if a safety scare arises):

- National rules implementing a European standard or technical specification
- EU technical specifications
- General national safety standards, if any
- Codes of good practice in the relevant sector
- The state of the art and technology in the sector and the level of safety consumers may reasonably expect.

A product which is not 'safe' is a 'dangerous' product; however, it is important to emphasise that the fact that higher safety standards could be achieved does not automatically render a product 'dangerous'.

With certain exceptions, the *Safety Directive* and the regulations prohibit the placing on the market by a producer of any product which is not a 'safe' product (one which, under normal or reasonably foreseeable conditions of use – including duration – does not present any risk or only the minimum risks compatible with the product's use considered as acceptable and consistent with a high level of protection for the safety and health of persons). It is an offence for a producer to place an unsafe product on the market. Producers are also obliged to provide consumers with relevant information regarding hidden risks.

Distributors are obliged by the regulations to act with due care to ensure that any products they supply are safe, and are required to monitor the safety of products they place on the market.

The regulations give the Director of Consumer Affairs quite broad powers of enforcement: he may direct the withdrawal of products or product batches from the market (and, if necessary, their destruction) or may direct that warnings be affixed to products. He may also apply to the District Court for an order for the forfeiture to him of products on the grounds that they are dangerous.

The full impact of the 1997 regulations remains to be seen but it is clear that producers need to be aware of the powers which can now be invoked by the Director of Consumer Affairs in the event of a serious product safety crisis. G

Roderick Bourke is a partner in the Dublin-based solicitors' firm McCann FitzGerald.

Certificate in legal German

The Law Society, in conjunction with the Goethe Institute will be running a certificate course in legal German in late 1998 and early 1999. This course is designed to give candidates a comprehensive introduction to German law and the German legal system. Classes will be conducted by German lawyers through German. It is anticipated that classes will be held on one evening a week and will run over a six-month period. Further information can be obtained from TP Kennedy, Education Officer, Law School, Law Society of Ireland, Blackhall Place, Dublin 7 (tel: 01 6710200, fax: 01 6710064).

RECENT DEVELOPMENTS IN EUROPEAN LAW

CONSUMER PROTECTION

Cooling-off period

Bayerische Hypotheken-und Wechselbank AG v Dietzinger, 25 March 1998, *The Times*. Directive 85/577/EEC provides that a consumer who concludes a contract other than on the supplier's premises is entitled to cancel the contract within seven days, and the consumer is required to receive immediate notice of his right to do so from the supplier. The case concerned a building company which had been granted overdraft facilities by the bank. In 1992, the bank became concerned about security and arranged for a bank employee to visit the family home. The principal's son concluded a guarantee contract with the bank, guaranteeing his father's debts. He was not given notice of a right to cancel the contract. He claimed that he had acted as a consumer and could rely on the directive to cancel the contract. The Court of Justice held that the directive did not apply, as he had not been acting as a consumer. Though he had not entered into the contract for his own business, the guarantee was ancillary to the main contract for the supply of credit, which was a business contract.

Health insurance

Nicolas Decker v Caisse de Maladie des Employés Privés (Case 120/95) and *Raymond Kohll v Union des Caisses de Maladie* (Case 158/96), judgment of 28 April 1998. The case concerned two Luxembourg nationals. Mr Decker obtained spectacles from an optician in Belgium and sought reimbursement from the *Caisse*. Mr Kohll sought authorisation from the *Union* for his daughter to receive treatment from an orthodontist in Germany. The reimbursement was refused and the request for treatment in Germany was turned down on the basis that the treatment was not urgent and could be provided in Luxembourg.

Mr Decker argued that the rules requiring authorisation for medical treatment abroad were contrary to the treaty rules on free movement of goods and services. The Court of Justice held that these rules were a barrier to the free movement of goods as they encouraged insured persons to purchase medical products in Luxembourg rather than in other Member States and thus were liable to curb the import of spectacles assembled in other Member states. The court held that the refusal could not be justified as it would have no real effect on the financing of the Luxembourg social security system.

Mr Kohll argued that subjecting reimbursement of the cost of medical services obtained in another Member State to prior authorisation was a restriction on the freedom to provide services. The court agreed. It could not find a justification. The reimbursement would have no significant effect on the financing of the Luxembourg social security system. It noted that the treaty allows a Member State to restrict the freedom to provide medical and hospital services on grounds of public health. However, it had not been shown that the rules were necessary for providing a balanced medical and hospital service open to all.

Pricing

The Council and Parliament have adopted directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers. The directive seeks to ensure that the prices of competing products are calculated and marked on the same basis. It is to be implemented by 18 March 2000. It is not comprehensive and is not concerned with misleading advertising of prices, such as sales and special offers. The directive applied only to sales in the course of a trader's business to a consumer buying for his own private use or consumption.

CUSTOMS DUTIES/ INTERNAL TAXATION

Outokumpu Oy v Piiritullikamari (Case 213/96), judgment of 2 April 1998. Finland charges duties on electricity, which vary depending on the method of its production (environmentally friendly methods are favoured). However, a flat rate is charged for imported electricity, which is not determined by its method of production but corresponds to the average rate of duty on electricity in Finland. The Court of Justice held that this duty was internal taxation within article 95 of the treaty rather than a charge having equivalent effect to a customs duty. It held that the differentiation rate was compatible with the treaty so long as it avoided any form of discrimination against imported electricity. The court held that the Finnish legislation was discriminatory as imported electricity was subject to a flat rate, higher than the lowest duty charged on electricity of Finnish origin.

LEGAL PROFESSION

The *Establishment Directive for Lawyers* has now been published – directive 98/5/EC, OJ 1998 L77/36. The directive will facilitate transfer of lawyers from one Member State to another (see *Gazette*, May 1997, page 31). It is to be implemented by Member States by 14 March 2000.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Minister for Arts, Heritage, Gaeltacht and the Islands Bill, 1997

This Bill has been passed by Dáil Éireann. (See (1998) 16 ILT 18.)

Challenge to fisheries bye-law fails

- Where a bye-law which regulated fishing was challenged under the appellate provision of the *Fisheries (Consolidation) Act, 1959*, the issue to be determined by the court was whether, having regard to the evidence before the court, the bye-law was expedient for the more effectual government, management, protection and improvement of the fisheries of the State.

Bye-law No 729 of 1997 came into operation in January 1997. Its provisions affected drift-net and other net fishing. The plaintiffs were drift-net salmon fishermen and sought a declaration that the bye-law was invalid having regard to the Constitution. Section 11 of the *Fisheries (Consolidation) Act, 1959* provides that an appeal can be brought before the High Court which can confirm or annul the bye-law and which decision is final. The *Rules of the superior courts* provide, in o93, that such appeal shall be brought by special summons which shall state the bye-law concerned and the grounds of appeal. The relief sought was refused.

Guiry v Minister for the Marine (Laffoy J), 24 July 1997

Increase in Oireachtas allowances

An order has been made increasing certain allowances payable to members of the Oireachtas to the following levels:

- Chairman of an Oireachtas committee: £10,000
- Leader of the House in Seanad Éireann: £10,000.

Oireachtas (Allowances to Members) (Amendment) Act, 1994 *(Sections 2 and 3) Order 1998* (SI No 25 of 1998)

BANKING

Central Bank Bill, 1997

This Bill has been amended in the Select Committee on Finance and the Public Service and passed by Dáil Éireann. (See (1998) 16 ILT 34.)

COMMERCIAL

Business statistics

An order has been made which stipulates that certain undertakings engaged in industries relating to energy, water, non-energy-producing minerals and manufacturing 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 nature of the business
- The value of fixed capital assets acquired or disposed of, stocks, work-in-progress, turnover, invoiced purchases, VAT due, other indirect taxes due, and operating subsidies all relating to the year in question
- The number of people engaged in the undertaking
- The value of gross earnings paid to employees, and
- The value of other labour costs incurred during the year in question.

Statistics (Census of Industrial Production) Order 1998 (SI No 17 of 1998)

COMPANY

Directions re contract sought by receiver

- The duty of care owed by a receiver in relation to the sale of property charged by the debenture under which he was appointed was that he should exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of the sale.

In 1995, S Ltd issued proceedings claiming specific performance of an alleged agreement by Edenfell ('the company') to sell certain lands to S Ltd. The company's receiver sought an order declaring the alleged agreement void. The High Court (McCracken J) found that S Ltd did not have any enforceable agreement to buy the land from the company. S Ltd appealed to the Supreme Court. Another party, Astra, was interested in purchasing the land from the receiver. Contracts for sale of the land were executed by the receiver and Astra, and a deposit was handed to S Ltd's solicitors by Astra's agent, expressed to be a full settlement of all claims and the appeal. The Supreme Court struck out the appeal in November 1996. The receiver brought a motion, under s316 of the *Companies Act, 1963*, for directions in relation to the contract with Astra and associated orders. A director and large shareholder of the company also sought the court's directions and, *inter alia*, orders directing the receiver not to complete the contract with Astra. Section 316 provides that where a receiver is appointed, directions can be sought from the court as to the receiver's perfor-

mance of his functions. The court directed the receiver not to complete the contract and to return the deposit to Astra.

In re Edenfell Holdings Ltd (Laffoy J), 30 July 1997

Value of shares ordered to bought under s205

- In the interests of justice, the oppressor should buy the petitioner's shares at a value which they would have had but for the oppressive conduct.

The plaintiff applied to the court under s205 of the 1963 Act. As part of his claim, he sought an order directing that his shareholding in the company be purchased for a fair market price by the majority shareholder. If necessary, the plaintiff also petitioned for the winding-up of the company. The relief sought was granted.

New-Ad Advertising Company Ltd (Costello P), 1 July 1997

CONTRACT

Award made of specific performance

- At common law, the purchaser could only lose the remedy of specific performance and have the contract terminated against him if, after being guilty of unreasonable delay, the vendor had, by notice, limited a reasonable time for completion and the purchaser had not completed within that time.

The plaintiff's claim against the defendant was for specific performance of a contract for sale and for an order of attachment and committal for the defendant's non-performance. In 1994, a consent order was made in the High Court providing for the sale of certain premises from the defendant to the plaintiff for £95,000. The agreed sale was not completed, and in 1996 the plaintiff issued a motion for specific performance. That motion was settled with the consent of the parties that the sale of the premises would close in August 1996. That sale did not close either and the defendant issued a motion seeking to set aside the 1994 order. The plaintiff retaliated with another motion for specific performance, but neither motion was proceeded with. The defendant contended that the delay in completing the sale was of the plaintiff's making, in order to keep the purchase price at a low level. The plaintiff replied that the delay was caused by the defendant not being able to deliver vacant possession of the premises. The relief sought by the defendant was refused.

Rylands v Murphy (Laffoy J), 29 August 1997

CRIMINAL

Effect of non-compliance with custody rules

- It was for the court of trial to adjudicate in each case as to the impact of non-compliance with the custody regulations.

This was a case stated (by Judge Crowley) for the opinion of the High Court as to whether he was correct in dismissing the charges against the defendant who appeared before the District Court charged with road traffic offences. His solicitor requested by letter the relevant Garda to supply all statements of evidence and exhibits upon which the prosecution proposed to rely, and further asked that copies of relevant custody records be furnished. The District Court found as a fact that the defence had made all proper and reasonable requests for a copy of the custody records and it was not necessary for the defence to apply to court for a document to which it was entitled as a right. The court also found that there was a conscious and deliberate refusal on the State's part to make the custody records available to the defence and this constituted a fundamental breach of the Criminal Justice Act, 1984 *(Treatment of Persons in Custody in Garda Stations) Regulations 1987*. The court was satisfied that this was a conscious and deliberate breach, entitling the court to exercise its discretion in the defence's favour, and that the State's lack of compliance with the basic requirements of natural justice was material and the result of a deliberate act or omission. The charges against the defendant were dismissed. The State conceded that there had been a breach of the custody regulations by not producing a copy of the custody record upon request by the defendant's solicitor, but it was submitted that the District Court should have considered what effect the breach had on the defendant and his ability to meet the charges brought against him. The case was answered in the affirmative.

Director of Public Prosecutions v Dempsey (Kinlen J), 2 July 1997

Non-compliance does not automatically result in non-admissibility

- Failure to observe the 1987 regulations on the treatment of persons in custody in Garda stations would not, of itself, affect the admissibility in evidence of statements.

The defendant was convicted of murder by a jury in 1995. He applied to the Court of Criminal Appeal for leave to appeal his conviction. He was 16 years' old at the time of the offence and was arrested under s4 of the *Criminal Justice Act, 1984*. He was interviewed in the presence of his uncle but in the absence of a solicitor. On arrival at the Garda station, he had been given a notice of his rights in the prescribed form and had been informed of his right to legal advice. The main evidence against the defendant at trial consisted of admissions allegedly made by him during the period in custody in the Garda station, which were ruled admissible in the absence of the jury. The defendant claimed that the relevant interview had been conducted in breach of his constitutional right to legal advice and the Criminal Justice Act, 1984 *(Treatment of Persons in Custody in Garda Stations) Regulations 1987*. He also claimed that the statements should have been excluded on the ground that the regulations had been breached as to the number of gardaí present. Thirdly, he submitted that the trial judge had failed adequately to explain one of the necessary ingredients of murder when requested to do so by a member of the jury. The application for leave to appeal was dismissed.

People (Director of Public Prosecutions) v Darcy (Court of Criminal Appeal), 29 July 1997

Access to solicitor must be in private

- The right to communicate with a solicitor would be of little value unless it carried with it, as a necessary concomitant, the right to consult in private, and the effect of the denial to an accused person of his constitutional right to consult with his solicitor in private was to render his detention illegal.

The applicant was convicted on a charge of handling stolen property. He was granted leave to appeal and contended that the admission of certain conversations breached the *Judges' rules*. He further contended that he was not allowed access to his solicitor in private prior to the conduct of two interviews with the gardaí, in that the gardaí were present in the room when he phoned his solicitor. The applicant, therefore, disputed the admission into evidence of details of the two interviews which took place after his over-heard phone call to his solicitor. The applicant's conviction was quashed and no re-trial was ordered.
People (Director of Public Prosecutions) v Finnegan (Court of Criminal Appeal), 15 July 1997

Criminal Justice (No 2) Bill, 1998

This Bill has been amended in committee. (See (1998) 16 ILT 50.)

Register of sexual offenders proposed

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

- Establish a register of persons convicted in the State of certain sexual offences against children
- Provide that sentencing judges shall determine whether the person being sentenced shall be entered upon the register on their release
- Provide for judicial variation of the register, and
- Oblige persons subject to a statutory notification under the UK's *Sex Offenders Act 1997* to provide specified information to the Garda Síochána within 48 hours of taking up residence in the State.

Sexual Offenders Registration Bill, 1998

CAB granted discovery of assets and income

- It was the established usage of the courts that some appreciable measure of hearsay evidence be considered acceptable in affidavits filed on behalf of parties.

Pursuant to s9 of the *Proceeds of Crime Act, 1996*, the plaintiff required the defendant to specify on affidavit both the property in his possession or control and his income and its sources for the ten years prior to the application. The defendant had been restrained under s2 of the Act from dealing with certain monies held in his name in a bank account. He challenged the 1996 Act's provisions on the grounds that the nature and standard of proof advanced on affidavit against him were unsatisfactory and inadequate to warrant the relief sought, that the hearsay rule was breached, that the relief if granted would offend his privilege against self-incrimination, and that s9 should not be considered to have retrospective effect. An order had been granted *ex parte* under s3 of the 1996 Act, which requires that the court be satisfied that a person is in possession or control of specified property that constitutes, directly or indirectly, the proceeds of crime, or was partly or wholly acquired with or in connection with property that constitutes such proceeds, where the property is worth not less than £10,000. The order of discovery sought was granted.
MM v DD (Moriarty J), 19 December 1996

Custodial sentences appropriate in paedophile cases

- It was only in the most absolutely exceptional circumstances that non-custodial sentences followed from conviction for paedophile acts.

The defendant pleaded guilty to counts of rape and sexual assault. It was his first offence and he co-operated with the Garda Síochána. He indicated that he would leave the country and not return if he received a non-custodial sentence. A sentence of imprisonment was imposed.
Director of Public Prosecutions v JD (Flood J), 29 July 1997

ELECTIONS

Referendum Bill, 1998

This Bill has been passed by Dáil Éireann. (See (1998) 16 ILT 67.)

EMPLOYMENT

Company ordered to pay dismissed director's salary

- The entitlement to an order that a plaintiff's salary be paid was not limited to a situation in which the plaintiff could establish that he would face penury if such an order was not made.

The applicant was a director of the third-named defendant. The third-named defendant was owned by the plaintiff and the first-named defendant. The second-named defendant was a director at the time the dispute arose. The plaintiff contended that he was wrongfully dismissed from the employment of the third-named defendant. The first-named defendant replied that the plaintiff had been summarily dismissed in a proper fashion. The plaintiff sought an injunction restraining the defendants from dismissing him and an order for reinstatement and that he be paid his salary. The defendants sought to distinguish the case-law covering this type of situation by contending that the plaintiff was not dependent on his salary from the third-named defendant. The court ordered that the plaintiff's salary be paid and refused to re-instate him as a director.
Harte v Kelly (Laffoy J), 16 July 1997

Employment Equality Bill, 1997

This Bill has been passed by Seanad Éireann. (See (1998) 16 ILT 2.)

Exemptions from working time rules

Regulations have been made which exempt persons directly employed in certain transport activities from the application of ss11-13, 15 and 16 of the *Organisation of Working Time Act, 1997*.
Organisation of Working Time (Exemption of Transport Activities) Regulations 1998 (SI No 20 of 1998)

ENERGY

Competition in gas market

Legislation has been presented which aims to:

- Repeal s37 of the *Gas Act, 1976*
- In order to enable the State to ratify the *Energy Charter Treaty* and the *Energy charter protocol on energy efficiency and related environmental aspects*.

This treaty and protocol are designed to promote access to international markets on commercial terms and generally to develop an open and competitive market for energy materials and products.
Gas (Amendment) Bill, 1998

FAMILY

New venues for marriage ceremonies?

A Bill has been introduced which will, if passed, allow for the registration of premises in which civil marriages may be conducted. Any occupier of a suitable premises may apply to have such premises registered for the celebration of marriage ceremonies by the registrar of marriages.
Family Law Bill, 1998

Form of financial relief to be granted to applicant

- When assessing the amount of a maintenance to be awarded in a case where there were considerable family assets, the court was not limited to providing for the dependant spouse's actual immediate needs through a peri-

odic maintenance order, but could endeavour, through the making of a lump sum order, to ensure that the dependant spouse would continue into the future to enjoy the lifestyle to which he or she was accustomed.

The principal remaining issue between the parties was the level of maintenance which should be paid either by lump sum or by periodic payments by the respondent to the applicant and what form it should take. In particular, the court had to consider whether it was feasible or desirable for the respondent to discharge his duty to maintain the applicant by the payment of a global lump sum which would create a situation of finality and certainty.
JD v DD (McGuinness J), 14 May 1997

HEALTH AND SAFETY

Labelling requirements for beef

New regulations have been made which:

- Came into operation on 1 April 1998
- Implement the beef labelling requirements of Council Regulation 820/97, as expanded by Commission Regulations 1141/97 and 2406/97, and
- Oblige any organisation or operator labelling fresh or frozen beef and veal, with anything other than certain information which is easily verified at the point of sale, to obtain the prior approval of the Minister for Agriculture and Food.

European Communities (Labelling of Beef and Beef Products) Regulations 1998 (SI No 31 of 1998)

HEALTH SERVICES

New advisory body established

The previous National Ambulance Advisory Council has been replaced by a new body of the same name which will have the function of advising the Minister for Health and Children on general ambulance and pre-hospital care issues and in particular:

- To make recommendations on standards for pre-hospital care
- To make recommendations on standard operational procedures and protocols for the ambulance service
- To advise on assessment and approval of training courses and arrangements for the award of diplomas and certificates
- To evaluate public and private ambulance services in the context of standards recommended by the council
- To report annually on the ambulance service, and
- To undertake research on developments in the ambulance service, especially with regard to new technology.

The National Ambulance Advisory Council Order 1998 (SI No 27 of 1998)

INTERNATIONAL

Jurisdiction and enforcement of judgments

A Bill has been presented which will, if passed:

- Enable the State to ratify the *Convention on the accession of Austria, Finland and Sweden to the 1968 convention on jurisdiction and the enforcement of judgments in civil and commercial matters*
- Consolidate the *Jurisdiction of Courts and Enforcement of Judgments Acts, 1988 and 1993*, and
- Allow for applications for the enforcement of authentic instruments and court settlements to be made to the Master of the High Court, as opposed to the High Court itself, as is currently the case.

Jurisdiction of Courts and Enforcement of Judgments Bill, 1998

JUDICIAL REVIEW

Public law aspect necessary

- There was no public law aspect to the applicant's complaint or to the respondent's handling of that complaint and, as such, the court had no jurisdiction to grant leave to apply for judicial review.

The applicant was a medical student who failed the exams for membership of the respondent. The applicant sought an explanation as to why he had failed. A detailed explanation was not given to the applicant by the respondent. The applicant sought leave to apply for judicial review in order to obtain from the respondent a full report on his application for membership of the respondent, including detailed medical reasons as to why he had failed the written examination. The relief sought was refused.
Rizk v Royal College of Physicians of Ireland (Laffoy J), 27 August 1997

LEGAL PROFESSION

Lien on documents only applies to documents owned by debtor

- A solicitor had no lien on his client's title deeds to property for costs due by certain companies to him, irrespective of the fact that the companies were wholly owned or controlled by his clients.

The plaintiffs sought an order directing the defendant to deliver all title deeds and correspondence relating to a certain property to them. The defendant contended that he was entitled to withhold the documents on foot of his common law retaining lien. The defendant had been the plaintiffs' solicitor. They owned the property in their personal capacities. Following the termination of the defendant's retainer by the plaintiffs, there was a dispute over the defendant's costs. It was agreed between the parties that the defendant's outstanding costs amounted to £27,510.82, of which the plaintiffs were personally liable for the sum of £1,492.42. The balance was owed by certain associated companies of the plaintiffs. The plaintiffs continued to dispute the payment to the defendant, and the defendant retained the title deeds to the property pending payment. The plaintiffs tendered a bank draft to cover their personal liability to the defendant. The draft was not negotiated. The court held that the common law retaining lien extended only to costs incurred by the client against whom it was claimed and ordered the defendant to return the title deeds to the plaintiffs.
Ring v Kennedy (Laffoy J), 18 July 1997

PLANNING AND DEVELOPMENT

Right of way upheld

- To establish a public right of way, what had to be proved was an intent on the part of the owner to dedicate his land to the public, an actual dedication, and an acceptance by the public of the dedication.

The respondent wished to erect its new administrative offices in Swords, on the site of an existing park. After construction, only one-third of the park would be left as an amenity. The applicant contended that, where the respondent undertook a new development, it had to have regard to acquired and public rights over the land they proposed to develop, and that it had failed to do so in this case. The applicant claimed two distinct rights: a right of access to the lands as a public park and a claim to a public right of way over the paths created in the park. She further claimed that the respondent dedicated public rights of way over the park when they laid out and opened the park to the public in 1986. The respondent contended that there was merely a permission to the public to enter and traverse the council's lands. The applicant claimed

that the respondent held the park in trust for the public to enjoy it as an open space and she sought to restrain the proposed development. The relief sought was granted.
Smeltzer v Fingal County Council (Costello P), 13 August 1997

PRACTICE AND PROCEDURE

Relaunched *Courts Service Bill* progresses

Owing to pressure on parliamentary time in Dáil Éireann, the Government abandoned the *Courts Service Bill, 1997* and re-presented it as a new Bill in the Seanad, where it has now been passed. As previously, the new Bill seeks to establish an independent body to be known as the Courts Service (based on the report *Towards a Courts Service*, November 1996). If passed, the Bill will:

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

Courts Service (No 2) Bill, 1997

Strike-out only in exceptional circumstances

- The jurisdiction of the court to strike out an action was one which was to be exercised with great caution, and the court was only to exercise its jurisdiction in cases where it was clear beyond doubt that the plaintiff could not succeed.

The third-named defendant brought a motion seeking to have the plaintiff's claim against it dismissed. The plaintiffs were among a group of haemophiliacs whom it was alleged had suffered personal injuries through tainted blood transfusions prepared by the defendants. The third-named defendant claimed that the plaintiffs' claim disclosed no reasonable cause of action against it. The plaintiffs contended that the third-named defendant was basing its defence on uncorroborated testimony. The first-named defendant and the second-named defendant submitted that to dismiss the third-named defendant from the proceedings would be to deprive them of any right to claim contribution or indemnity against the third-named defendant. The relief sought was refused.
Doe v Armour Pharmaceutical Inc (Morris J), 31 July 1997

Relief rarely available where action is for discovery alone

- The jurisdiction of the court to grant relief in an action for discovery only arises solely where there is a very clear proof of the existence of a wrongdoing.

The plaintiff claimed to be an indirect victim of a violation by the United Kingdom of article 2 of the *European convention for the protection of human rights and fundamental freedoms* and lodged an application with the European Commission of Human Rights. The plaintiff's daughter and two granddaughters were three of the victims of car bombings in Dublin and Monaghan on 17 May 1974. The plaintiff claimed that the Royal Ulster Constabulary had failed to take appropriate action to prevent the bombings and instituted these proceedings, seeking a declaration that he was entitled to access to information in the power of the defendant concerning the investigation of the bombings. The relief sought was refused.
Doyle v Commissioner of An Garda Síochána (Laffoy J), 27 August 1997

REAL PROPERTY

No beneficial interest in lands held prior to marriage

- An applicant wife cannot obtain a beneficial interest in lands held in her husband's sole name through contributions to a family fund, when those lands had already been acquired by her husband and were unencumbered with any charge before she made the contributions.

The plaintiff claimed that she was entitled, pursuant to s12 of the *Married Women's Status Act, 1957*, to a beneficial interest in certain lands, not including the family home, which were held in her husband, the first-named defendant's, sole name. In separate proceedings, the second-named defendant had obtained an order for possession of the lands in question pursuant to a charge it held over them and the plaintiff now sought to establish that this order only affected the first-named defendant's beneficial share in the lands. The relief sought was refused.
CD v WD and Barclays Bank plc (McGuinness J), 5 February 1997

REFUGEES

Proposed liberalisation of rules on asylum seekers

A second private member's Bill has been introduced which, like the previous *Asylum Seekers (Regularisation of Status) Bill, 1998*, will, if passed:

- Require the Minister for Justice, Equality and Law Reform to allow persons seeking asylum who had arrived in the State prior to 1 January 1998, and who had applied for refugee status prior to that date or within three months of the enactment of the proposed legislation, to remain within the State as 'admitted asylum seekers'.

Asylum Seekers (Regularisation of Status) (No 2) Bill, 1998

SOCIAL WELFARE

Changes to system include RSI 'identity card'

A Bill has been presented, and amended in the Select Committee on Family, Community and Social Affairs, which will, if passed:

- Increase the rates of social insurance and social assistance payments
- Alter the family income supplement and child benefit systems
- Change the assessment of means for certain social assistance schemes
- Increase the PRSI free allowance from £80 to £100 a week for full rate contributors
- Increase the threshold at which employees become liable for health contributions and the employment and training levy from £197 to £207 a week
- Provide for the use of the RSI number as a public service identifier, and
- Introduce a 'public service card' and provide for the sharing and transfer of personal information between specified agencies for the purpose of determining entitlement to certain social services.

Social Welfare Bill, 1998

TAXATION

Implementation of Budget 1998

The *Finance Bill, 1998* has been presented and amended in the Select Committee on Finance and Public Service.
Finance Bill, 1998

VAT-free goods for tourists

New regulations set out the conditions for granting relief from VAT on goods bought by non-EU tourists visiting Ireland or Irish residents who are departing the EU with the intention of taking up residence outside the EU. The following conditions apply:

- The goods must be exported in the purchaser's personal luggage or put on board a ship or aircraft which is travelling to a non-EU destination
- The export of the goods must take place by the end of the third month following the month of purchase

Irish Stenographers Ltd

Director: Sheila Kavanagh

Experts in
Overnight Transcripts

Specialists in
Court Reporting
Medical Cases / Arbitrations
Conferences / Board Meetings

Contact:
Hillcrest House,
Dargle Valley, Bray, Co. Wicklow.
Telephone/Fax: (01) 286 2184
or
4b Arran Square, Dublin 7
Telephone: (01) 873 2378

WHERE THERE'S A WILL THIS IS THE WAY...

When a client makes a will in favour of the Society, it would be appreciated if the bequest were stated in the following words:

*"I give, devise and bequeath the sum of **X** pounds to the Irish Cancer Society Limited to be applied by it for any of its charitable objects, as it, at its absolute discretion, may decide."*

All monies received by the Society are expended within the Republic of Ireland.

"Conquer Cancer Campaign" is a Registered Business Name and is used by the Society for some fund-raising purposes. The "Cancer Research Advancement Board" allocates all Research Grants on behalf of the Society.

IRISH CANCER SOCIETY

5 Northumberland Road, Dublin 4. Tel: (01) 668 1855

IRISH KIDNEY ASSOCIATION

Donor House,
156 Pembroke Road,
Ballsbridge, Dublin 4.
Tel: 01 -668 9788/9
Fax: 01 - 668 3820

The Irish Kidney Association was formed in 1978 to:

1. Promote the general welfare of persons suffering kidney failure - financial and psychological.
2. To give advice and guidance to parents and relatives.
3. To arrange lectures, conferences and meetings pertaining to kidney disease.
4. To support research projects into the causes and effects of inherited disorders and kidney failure.
5. To print and distribute the Multi-Organ Donor Card and actively promote public awareness of organ failure.

REMEMBER US WHEN MAKING A WILL!

Certified by the Revenue Commissioners as a charity: 6327

OUR FINANCIAL ASSISTANCE IS NATIONWIDE

- The purchaser must get the benefit of the relief by 25 working days after lodging a valid claim, and
- The purchaser must be made aware of certain specified details concerning the transaction.

Value-Added Tax (Retail Export Scheme) Regulations 1998 (SI No 34 of 1998)

Valuation Tribunal not overturned where evidence to support its decision

- Where there was evidence which entitled the tribunal to reach the decision which it had, the court was not to interfere with that construction unless it could be shown that the tribunal had adopted a wrong view of the law.

The essential question presented to the Valuation Tribunal for resolution was whether two furnaces and a box oven were rateable plant. The High Court upheld the tribunal's finding that the items were not rateable plant, and the applicant appealed to the Supreme Court. The application was refused.
PWA International Ltd v the Commissioner of Valuation (Supreme Court), 22 July 1997

Valuation of shares for CAT purposes

- It was not permissible, as a matter of fact or law, to assume that preference shares would be redeemed before a notional or actual liquidation of a company when valuing shares pursuant to the provisions of s17 of the *Capital Acquisitions Tax Act, 1976*.

The respondent was the beneficiary of a will and the testator had died in 1978. The respondent became beneficially entitled on his 21st birthday in 1982. On that date, inheritance tax was payable on his inheritance. The applicant assessed the tax payable by the respondent in 1992. The respondent appealed the assessment, the applicant was unhappy with the Appeal Commissioners' finding, and a case was stated to the High Court. At issue between the parties was the fact that the original estate did not include any shares in the company. The company's shares were purchased by the trustees of the estate prior to the respondent's 21st birthday in order to lessen the liability to inheritance tax. The High Court upheld the Appeal Commissioners' findings that the value to be placed on the company's shares was £575,000. The applicant appealed to the Supreme Court, contending that the correct value of the shares was £950,604. The applicant argued against the unqualified application of s17 of the 1976 Act when valuing the shares, in that the original transaction was highly artificial. The appeal was dismissed.
Revenue Commissioners v Young (Supreme Court), 31 July 1997

Planned future investment not to be part of net annual value

- Where the Valuation Tribunal's decision was a mixed question of fact and law, it should not be disturbed unless it was unreasonably reached, based on an erroneous interpretation of documents or on a wrong view of the law
- Planned investment in a future development should not be taken into account in deciding the current net annual value.

The case came before the High Court by way of case stated by the Valuation Tribunal upon the applicant's request. The applicant had appealed the commissioner's 1993 determination of the rateable valuation of Shelbourne Park greyhound stadium, claiming that it was excessive and inequitable and was bad in law. The Valuation Tribunal affirmed the commissioner's decision. The questions of law referred were whether the tribunal was correct in law in having regard to the current investment in the hereditament in question by Bord na gCon, and whether it was correct in law in accepting the claim made by the respondent that the non-profit element had been taken into consideration by the respondent in determining the appealed rateable valuation. The 1986 valuation of the property was still under appeal and had not been heard by the Circuit Court.
Shelbourne Greyhound Stadium Ltd v Commissioner of Valuation (McGuinness J), 22 January 1997

TORT

Negligent misstatement examined in loan case

- An applicant plaintiff alleging negligent misstatement has to establish that the defendant owes him a duty of care. This duty will arise from the proximity of the parties, the foreseeability of the damage caused and the absence of any compelling exemption based on public policy.

The plaintiff issued proceedings claiming that they had suffered loss and damage by reason of a number of representations and warranties made by the first four defendants which, it was alleged, were false and untrue and which induced the plaintiff to pay monies to the defendant. The third-named defendant was an employee of the fifth-named defendant whom, it was alleged, had vouched for the other defendants and stated that they were good clients of the fifth-named defendant. Judgment had already been obtained against the sixth-named defendant. The fourth, seventh and eighth-named defendants had not played any part in the proceedings and the proceedings against the tenth and eleventh-named defendants were adjourned at the outset of the action. At the conclusion of the plaintiff's case, the ninth-named defendant successfully applied for a non-suit. The court accepted the plaintiff's evidence in its entirety and rejected the evidence given by the first-named defendant, the second-named defendant and the third-named defendant. An award of damages was made.
Forshall v Walsh and Ors (Shanley J), 18 June 1997

Private nuisance considered

- Private nuisance was any interference without lawful justification with a person's use and enjoyment of his property.

The plaintiff alleged that the defendant, an artist and interior decorator, repeatedly intimidated and harassed two of its employees while they were acting in the course of their respective duties, and this behaviour included correspondence between the parties. It claimed that some of the offending conduct occurred at various of its events, and submitted that the defendant was guilty of acts of trespass to land and nuisance. The plaintiff sought injunctive relief and damages for trespass, intimidation and nuisance. The defendant claimed he was the victim of intimidation and harassment by the plaintiff, its servants or agents, and sought, *inter alia*, an order reinstating him as a member of the plaintiff, and damages for defamation, intimidation, harassment and negligence. An interim order was granted in 1992 restraining the defendant from contacting one employee who had instituted proceedings against him. The defendant's membership of the plaintiff was purportedly removed at a meeting in 1994. The court found the defendant guilty of private nuisance.
Royal Dublin Society v Yates (Shanley J), 31 July 1997

TRANSPORT

Air Navigation and Transport (Amendment) Bill, 1997

This Bill has been amended in the Select Committee on Public Enterprise and Transport. (See (1997) 15 ILT 243.)

TRUSTS

New authorised investments for trustees

With effect from 9 March 1998:

- A new list of investments in which trust funds may be invested has been established, and
- Conditions to apply to the trust funds have been set out.

Trustee (Authorised Investments) Order 1998 (SI No 28 of 1998)

Law Society hosts law reform reception

Voluntary groups and members of the legal profession who have identified injustices in the legal system gathered at a reception in Blackhall Place to discuss those areas of the law that need to be reformed.

Most of the guests at the reception recently took part in a Law Society survey which aimed to identify those areas of the law that had resulted in injustices and to suggest proposals for change. The reception gave the survey respondents a chance to meet each other and to discuss their concerns with the Law Society's President, Laurence K Shields, members of the Society's Law Reform Committee and other specialist committees.

Reforming zeal: some of those who gathered at Blackhall Place recently for the Law Society's law reform reception

Des Rooney, Chairman, Taxation Committee, and Eamonn O'Connor, Law Reform Committee, at the law reform reception

At the law reform reception were (from left): Michael Joyce, Joyce and Co; Jim Martin, Malone and Martin; and Andrew Logue, Disability Federation of Ireland

James MacGuill, Chairman of the Law Reform Committee, addresses the law reform reception at Blackhall Place

Law Society President, Laurence K Shields, speaking at the law reform reception

Pictured at the law reform reception at Blackhall Place (from left): Brian Gallagher, Law Reform Committee; Denis Robson, Gay and Lesbian Equality Network; and Aileen Donnelly, Irish Council for Civil Liberties

Law Society President, Laurence K Shields (front row, centre), pictured with members of the Kildare and Laois Solicitors' Bar Association recently

Awards competition for journalists relaunched

The medium is the message: Pictured at the launch of the Justice Media Awards at Blackhall Place were (from left): Senior Vice President, Pat O'Connor; Law Society President, Laurence K Shields; and Director General Ken Murphy

Democratic laugh: Law Society Director General, Ken Murphy (right) shares a joke at the Justice Media Awards launch with Democratic Left TD Liz McManus (left) and journalist Elizabeth Doyle

Pictured at the launch of the Justice Media Awards (from left): Kieron Wood, Barrister; Christine Newman, *Irish Times*; and Dr Eamonn Hall, Chairman, *Gazette* Editorial Board

The Law Society has relaunched its prestigious Justice Media Awards after a four-year gap. This competition aims to reward outstanding journalism in the printed or electronic media which contributes to the public's understanding of the law, the legal system or any specific legal issue.

The awards ran very successfully for a number of years, but have not been held since 1994. According to Law Society President, Laurence K Shields, there has never been a better time to relaunch the awards. 'An understanding of the way the law works has been central to the very best journalism of the last couple of years', he said.

SADSI Immigration law debate

Pictured at the Solicitors' Apprentices' Debating Society (SADSI) immigration law debate were (from left): Annette Gibney, Sarah O'Shea, Colette Herlihy, Catherine Kelly, and Sian Harper

Pictured at the SADSI debate were (from left): Liz McManus TD; John Cahir, SADSI Auditor; and Professor Ivana Bacik of Trinity College Dublin

The Solicitors' Apprentices' Debating Society of Ireland hosted a debate on 7 May on the motion: *That this house would open its door to all asylum seekers*. The three guest speakers who attended were Jim Higgins TD, Liz McManus TD and Professor Ivana Bacik of Trinity College. The debate was chaired by Siobhan Phelan BL, Chairperson of FLAC.

Professor Bacik opened for the motion by drawing on her own experiences as the granddaughter of a Czech immigrant. She warned that the country was becoming 'Ireland of the Unwelcomes' because of the recent rise of xenophobia. Jim Higgins TD and Liz McManus TD also spoke for the motion.

Pictured at the Law Society's presentation of Applied European Law Diplomas were (from left): Kay Byrne, Joan Clarke, Judith O'Loughlin, Deborah Hegarty, Mary Johnston, and Clare Duignan

Michael Peart, Chairman of the Education Advisory Committee, speaking at the presentation of Applied European law Diplomas in Blackhall Place

Law Society President, Laurence K Shields (front row, centre), Director General Ken Murphy (front row, second left), pictured with the Kilkenny and Carlow Solicitors' Bar Association

Going on the piste

Both branches of the legal profession are going on the piste. The Snow Eagles Ski Club, a joint barristers/solicitors group, will hold its inaugral meeting in the members' lounge, Blackhall Place, on 17 June at 6.30pm. Everyone is invited to come along. For further information, contact Theresa Lowe BL, Law Library tel: (01 8720622), or call Philip O'Riada/Marion Stobie, O'Riada & Company (tel: 01 4505859).

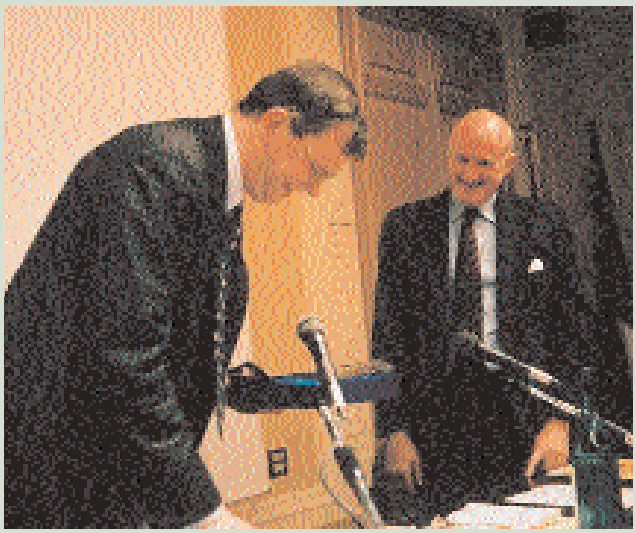
Lord Mayor of Dublin Jim Stafford (front row, centre) receiving a cheque for the Lord Mayor's Fund from Ruadhan Killeen, Chairman of the DSBA, and the DSBA Council

The Law Society stand at the recent *Enterprise Ireland* exhibition

Thomas Menton (centre), of the Solicitors' Benevolent Fund, receiving a cheque for £4,000 on behalf of the fund from Dublin Solicitors' Bar Association Chairman Ruadhan Killeen (left). Also pictured is DSBA Council member Orla Coyne

Gerry Carroll, the newly-appointed director of the Bar Council. Carroll was head of the Department of Finance's international financial services section before he joined the Bar Council

Law Society Annual Conference 1998



Law Society President Laurence K Shields (left) making a presentation to Annual Conference speaker, former Attorney General Dermot Gleeson SC, at the Society's Annual Conference in Florence, Italy

Delegates gathering for the Annual Conference business session, *The legal profession in the new millennium*

Rosario Boyle and Council member Brian Sheridan pictured with speaker Patricia Lord (right) of Daire Walsh, Solicitors, at the Annual Conference in Florence

Doug McLachlann of Axxia Systems Ltd addressing the Annual Conference in Florence. The other speakers were Dr Patrick Masterson, President, European University Institute, Florence; Patricia Lord; Margaret Clandillon, Solicitor, Pembroke Capital Ltd; Stephano Mazzi, Studio Legale Scassellati-Sforzilini, Perugia; and Dermot Gleeson SC

Book reviews

Abortion and the law

James Kingston and Anthony Whelan, with Ivana Bacik

Round Hall Sweet & Maxwell (1997), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1-85800-053-X. Price: £39.50

To attempt to provide an objective analysis of the legal dimension of what has been dubbed 'the moral civil war' on abortion and related matters in this jurisdiction is indeed an ambitious project. James Kings-ton, Anthony Whelan and Ivana Bacik, the authors of *Abortion and the law*, are to be congratulated warmly for attaining this – insofar as it is attainable.

The book is structured in a way that makes the material particularly accessible, which should appeal to practitioners. As is becoming clear from the number of recent abortion controversies, litigation in this area will not necessarily be the exclusive preserve of rarefied public interest litigation practices.

The authors unapologetically ignore the socio-political dimension to the abortion problem, and this is a wise approach given the stated objective of the book which is simply to give an account of the law on induced or procured abortion in Ireland and other jurisdictions. The primary criteria for assessing such a descriptive project are therefore clarity and comprehensiveness. This book is commendably clear throughout and maintains a stylistic consistency that is admirable in a book with three authors.

As for comprehensiveness, parts one and two, which deal separately with the so-called 'substantive issue' and travel and information, are excellent. Part three, which deals with the law on abortion in other jurisdictions, can be criticised for dealing with an inadequate number of them, the most glaring omission being the United Kingdom. This is especially regrettable when one considers that most Irish women who avail of abortion probably do so in that jurisdiction and, as such, UK law could arguably be described as an applicable law on abortion for Irish citizens. On the other hand, the treatment of the law on abortion in Northern Ireland is particularly interesting.

The book provides a thoroughgoing analysis of important primary sources, laced with incisive and concise comments drawn from secondary sources and the views of the authors themselves. The treatment of the X case is most impressive but, unfortunately, Hederman's dissenting judgment is given nothing like the consideration it deserves.

The practical legal implications of the ethical stances adopted by professional medical bodies to the life/health distinction regarding pregnant women are assessed in a manner which is refreshingly frank and forthright. Here the authors are treading a thin line between objective appraisal and subjective opinion, but they manage to keep to that line.

Some of the arguments based on the *European convention of human rights* (ECHR) are not entirely convincing. The authors underestimate the pragmatism of the Strasbourg Court and Commission on issues as controversial as abortion. This is demonstrated in the discussion on pages 27 to 29 on the likely attitude of the Strasbourg authorities to the question of whether Irish law on abortion constitutes a 'law' for the purposes of article 8 of the ECHR.

It is also slightly regrettable that the authors failed to consider the impact of the X case on the Irish Government's strategy before the European Court in the *Open Door* case, even if this would have involved an inevitable element of indulgent speculation on their part. Having said that, the treatment of the European Court's decision is very extensive and the comments thereon are stimulating.

The foregoing criticisms are minor and should not detract from the overall attractiveness of this very welcome book. It is poignant to note that it was overtaken by events, in the shape of the C case, almost as soon as it was published. Insofar as that case has fuelled the fire that is the public debate on abortion in this jurisdiction, it is reassuring to know that *Abortion and the law* will advance a more informed debate on the legal dimension of the problem. If it achieves only that, its three authors are to be praised for a most authoritative and civilising contribution to contemporary public discourse. This book should definitely be bought and read. G

Donncha O'Connell is a lecturer in law at the National University of Ireland, Galway.

Consumer credit law

Timothy C Bird

Round Hall Sweet and Maxwell (1998), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1-899738-37-1. Price: £98

Consumer credit law, by Timothy Bird of the Office of Consumer Affairs, reaches the market at an appropriate time given the controversies in which a number of leading financial institutions have recently been embroiled.

The book is the first comprehensive treatment of the *Consumer Credit Act, 1995* to be published. It runs to 700 pages, comprises 15 chapters and two appendices. These follow the Act's structure quite closely, thus facilitating rapid and easy reference for the busy practitioner.

The *Consumer Credit Act* had a long period of gestation. It was enacted, inter alia, to transpose into Irish law Council Directive No 87/102/EEC of 22 December 1986 as amended by Council Directive No 90/88/EEC of 22 February 1990, and introduces a number of innovations. Accordingly, it will take time for practitioners to become familiar with the new statutory landscape.

Unfamiliarity with the terrain notwithstanding, the difficulty with publishing a book on this area so soon after the enactment of the legislation is the relative scarcity of case law to assist in interpreting the ambiguous sections of the Act. But this is not an entirely insurmountable obstacle: there is a substantial body of persuasive precedent available by way of the UK's 1974 Act which is similar in a number of respects to the Irish legislation. The author, in his treatment of the topic, not only refers to such material but also draws to his readers' attention the equivalent sections in the UK Act where appropriate. This will greatly help those wishing to consult the standard English texts on a particular issue.

Further justification for early publication arises from the method used to bring into operation and amend sections of the Act, which is by way of statutory instrument. Thus, simply acquiring a copy of the Act will not be enough to inform the reader of the current legislative position. There are already 12 regulations in existence (which are referred to in the book) that relate to the Act. Of course, it will still be necessary to ascertain the exact position with regard to associated regulations when advising on this area of law.

A particularly useful feature of the book is the 20-page summary, contained in the introduction, of the changes brought about by the 1995 Act. These changes include: the complete repeal of the *Moneylenders Acts 1900-33*, the *Hire-Purchase Act, 1946* and the *Hire Purchase Act, 1960*; and the partial repeal of the *Sale of Goods and Supply of Services Act, 1980* and the *Central Bank Act, 1989*. The Act also amends the *Pawnbrokers Act, 1964*, the *Consumer Information Act, 1978* and the *Sale of Goods and Supply of Services Act, 1980*.

The *Consumer Credit Act, 1995* is a comprehensive and wide-ranging piece of legislation. It seemed to this reviewer, at the time of enactment, somewhat incongruous that banks be required to rub shoulders with moneylenders. Indeed, one leading commentator wrote: 'A visiting foreign student reading the *Consumer Credit Act* for the first time could well be forgiven for believing that Irish credit providers must have been unscrupulous shysters to deserve the regulation imposed by the Act'.

In light of recent developments, many financial institutions are now likely to face the task of combating just such a perception among consumers. Whether the provisions of the 1995 Act will be sufficient to allay the understandable fears of consumers and to protect their interests remains to be seen, but in the meantime Bird's *Consumer credit law* looks likely to become the standard Irish reference work for practitioners. 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.

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 5 June 1998)

Regd owner: Karen Lynch; Folio: 6123F; Lands: Killyfinla; Area: Prop 1 – 4.909; Prop 2 – 11.871; **Co Cavan**

Regd owner: Matthew Higgins, Turfad, Mountainlodge, Cootehill, Tievenanass, Mountainlodge, Cootehill; Folio: 10401, 953; Lands: Prop 1 – Turfad; Prop 2 – Dooreagh, Carrickacroman; Area: Prop 1 – 22a 3r 29p; Prop 2 – 2a 1r 15p; **Co Cavan**

Regd owner: Elizabeth Joannet; Folio: 26605F; Lands: Townland of Crosshavenshill in the Barony of Kerrycurrihy, County of Cork; **Co Cork**

Regd owner: Denis O'Regan, deceased; Folio: 4374; Lands: Part lands of Ballysimon, situate in the Barony of Duhallow, County of Cork; **Co Cork**

Regd owner: Timothy O'Leary; Folio: 23429; Lands: Townland of Shannonpark, Barony of Kerrycurrihy and County of Cork; Area: 29 acres, 12 perches; **Co Cork**

Regd owner: Werner K. Braun; Folio: 32705F; Lands: Boolypatrick, Barony of Muskerry East; **Co Cork**

Regd owner: Graham and Muriel Moss; Folio: 34622F; Lands: Coolbeg, Killiney Avenue, Killiney; **Co Dublin**

Regd owner: Stephen Reidy and Kathleen Reidy; Folio: 10025F; Lands: all that and those the dwellinghouse and premises at 624 River Forest, Leixlip; **Co Dublin**

Regd owner: Kathleen Gibson of 10 Rushbrook Way, Templeogue, Dublin 6W; Folio: 44421L; Lands: Townland of Templeogue in the barony of Uppercross; **Co Dublin**

Regd owner: Celine Ann Fitzgerald, Knockavanny House, Tuam, Co Galway; Folio: 27605F; Lands: Townland of Drumaskin, Barony of Dunmore; Area: 0.638 acres; **Co Galway**

Regd owner: James Gleeson, Addrigoolemore, Dunmore, Co Galway; Folio: 36715; **Co Galway**

Regd owner: James & Mary O'Gorman; Folio: 3797F; Lands: Townland of Doonryan, Barony of Magunihy; Area: 1.979 acres; **Co Kerry**

Regd owner: Patrick Gilligan; Folio: 2329F; Lands: Prop 1 – Drummons, Barony of Rosclogher; Prop 2 – Drummons, Barony of Rosclogher; Area: Prop 1 – 20.238 acres; Prop 2 – 5.588 acres; **Co Leitrim**

Regd owner: Sean O'Farrell (o/w Sean Farrell), Drumard, Drumod, Carrick on Shannon; Folio: 8315; Lands: Drumard (Moagerraun); Area: 14a 2r 12p; **Co Leitrim**

Regd owner: Ellen O'Brien; Folio: 3419; Lands: Townland of Ballywinterrourke, Barony of Connello Lower; Area: 17 acres one rood and twenty one perches; **Co Limerick**

Regd owner: Michael Kelly, 6 Beechgrove, Drogheda; Folio: 5274; Lands: Greenbatter; Area: Prop 1 – 4a 2r 27p; Prop 2 – 4a 2r 9p; Prop 3 – 0.779 hectares; **Co Louth**

Regd owner: Eamon O'Reilly, 26 Laurence Street, Drogheda; Folio: 12691; Lands: Mell; **Co Louth**

Regd owner: Thomas Boylan, Rockbellew, Julianstown, Drogheda; Folio: 10964; Area: 56a 3r 30p; Lands: Rogerstown; **Co Meath**

Regd owner: Joseph Colm Warren and Margaret Warren; Folio: 24933; Area: 15.825 hectares; Lands: Tobertynan; **Co Meath**

Regd owner: Sarah Conway; Folio: 1342; Lands: Townland of Coolnariska, Barony of Slievemargy; solr ref: DM/MH/C/17(2); **Co Queens**

Regd owner: Denis Lalor; Folio: 15159; Lands: Townland of Dysart, Barony of Maryborough East; Area: 5a 3r 28p; **Co Queens**

Regd owner: Liam Noone, Lisgobbin, Kilrooskey, Co Roscommon; Folio: 791F; Lands: Townland of Lisgobban, Roxborough, Doogarymore; Area: 12.726 acres, 9a 0r 26p, 1a 0r 25p; **Co Roscommon**

Regd owner: Michael Heffernan; Folio: 8810; Lands: Townland of Knock-gorman, Barony of Kilnamanagh Lower; Area: 11a 2r 9p; **Co Tipperary**

Regd owner: Joseph Ryan; Folio: 23639; Lands: Townland of Bunkimalta, Barony of Owney and Arra; Area: 1 acre; **Co Tipperary**

Regd owner: John Ryan; Folio: 36094, Lands: Townland of Commons, Barony of Eliogarty; Area: 0.475 acres; **Co Tipperary**

Regd owner: Maurice Walsh; Folio: 8254; Lands: Townland of Croughtanaul (Stuart), Barony of Decies-without-Drum; Area: 19 perches; **Co Waterford**

Regd owner: Walter Power; Folio: 94; Lands: Townland of Kilmaquague, Barony of Gaultiere; Area: 67.262 acres; **Co Waterford**

Regd owner: Hannah Foley; Folio: 9374; Lands: Townland of Coolbeggan East, Barony of Coshmore and Coshbride; Area: 1 acre and 6 perches; **Co Waterford**

Regd owner: Patrick Anderson, 12 Raheen Court, Tallaght, County Dublin, 50 Cannonbrook Court, Lucan, County Dublin; Folio: 4292F; Lands: Ballyvalloo Upper; Area: 0.694 acres; **Co Wexford**

Regd owner: Gerard and Pauline Mahady, 11 Peck's Lane, Castleknock; Folio: 16736F; Lands: Prospect; Area: 0.258 hectares; **Co Wexford**

WILLS

Barry, Edward, late of High Street, Skibbereen, Co Cork. Would any person having knowledge of the whereabouts of the original will dated 3 March 1975 of the above-named deceased who died on 8 October 1984, please contact Wolfe & Co, Solicitors, Market Street, Skibbereen, County Cork, tel: 028 21177, fax: 028 21676

Farrell, John, deceased, Clonfower, Rooskey, Co Roscommon. Any solicitor having a will for the late John Farrell, who died on 23 March 1998, might please notify FJ Gearty & Co, Solicitors, 4/5 Church Street, Longford, tel: 043 46452, fax: 043 41070. Ref: AF/98R

Hickey, Elizabeth, (née Deegan), late of 17 Oakdown Road, Churchtown, Dublin 14 (formerly of Thurles), who died on 11 April 1998. Would any person having

knowledge of the whereabouts of the original will (if any) or any details of assets and liabilities, please contact Jack Hickey, Administrator, 17 Oakdown Road, Dublin 14, tel: 2983567 (home), 8556555 (office)

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

O'Dwyer, Denis W, deceased, late of Carrowkeel, Kilshanny/Kilfenors, Co Clare. Would any person having knowledge of a will executed by the above-named deceased, who died at the County Hospital, Ennis, Co Clare on 12 March 1998, contact M Petty & Co, Solicitors, Ennistymon, Co Clare, tel: 065 71445, MTP/SV/1540

Richardson, Kathleen Mary, deceased late of 52 Dollymount Park, Clontarf, Dublin 3. Would any person having knowledge of the whereabouts of the original will of the above-named deceased who died on 2 November 1997, please contact Moran and Ryan, Solicitors, 35 Arran Quay, Dublin 7, tel: 01 8725622, fax: 01 8725404

Shanley, Patrick, deceased, late of Kippins, The Pigeons, Athlone, County Westmeath. Would any person having knowledge of a will executed by the above-named deceased who died on 30 December 1997, please contact Messrs Fair & Murtagh, Solicitors, Moate, Co Westmeath, tel: 0902 81120, fax: 0902 81749

EMPLOYMENT

Solicitor required from 1 August, Dublin 7 area, experience desirable but not essential for the right candidate. Excellent opportunity for ambitious candidate. Conveyancing, litigation and family law. Computer literacy an advantage. **Box 50**

Locum solicitor available (holiday cover) July/August, tel: 080 1504781564

Apprentice sought for secondment placement (July/November inclusive) by general practice, Dublin 4. **Box 51**

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 169364611, fax: 080 169367000. 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: serious study partner for October '98 sitting of FE-1. Share books, notes and other materials. *Determination to pass essential.* **Box 52**

Holiday in Lanzarote. House to rent in very private development centre of Puerto del Carmen, sleeps six, all year round sunshine, heated pool/beside the sea, rent from £350 per week, tel: 8207581.

LOST TITLE DEEDS

In the matter of the *Registration of Title Act, 1964* and of the application of Francis Handy and Laura Wright in respect of property known as 10 Connaught St, Athboy, Co Westmeath (dealing no: X5743/97)

Take notice that Francis Handy of Knockabrather, Stradbally, Co Laois, and Laura Wright of 26-27 Lower Leeson St, Dublin, executors of Maurice LJ Wright, deceased, late of 12A Clyde Lane, Ballsbridge, Dublin, have lodged an application for their 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 at 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

1. Conveyance dated 13 October 1909 – The Right Hon Earl of Darnley & Ors to Laurence Wright
2. Conveyance dated 18 April 1925 – Thomas Wright to Annie Wright
3. Conveyance dated 25 August 1949 – Annie Wright to Laurence Wright
4. Conveyance dated 21 January 1969 – Laurence Wright to Maurice Wright
5. Release of mortgage dated 9 August 1974 – Equity Securities Ltd to Maurice Wright.