GAZETTE

REGULARS

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Progress to date

President Laurence K Shields launching the first-ever credit card designed exclusively for solicitors

This is my second message to you as your President. I thought it might be appropriate to outline to you certain matters and events which have occurred since I took office.

Superior Court Rules SI 348/1997 (Disclosure requirements in superior courts litigation)

A meeting of the representatives of the Bar Council and Law Society has taken place with a sub-committee of the Rules Committee to progress the areas of concern as identified by the Society in previous correspondence to you. A full meeting of the Rules Committee is expected shortly and as soon as there is further news I will let you know.

Education Review Group

I attended the afternoon session of an all-day Saturday meeting on 31 January of the working group. I was extremely impressed with the work being done on behalf of the profession by this group and the breadth of ideas being exchanged. It was particularly heartening to see the work being done by colleagues drawn from such a wide spectrum, both young and not so young, with energy and enthusiasm. I am confident that under the chairmanship of Donald P Binchy the group will report shortly. I would like to thank Donald for assuming the chairmanship following the resignation of Ray Monahan, the previous chairman, who unfortunately had to resign due to many other commitments. I would like to thank Ray also for his chairmanship and efforts. When the report issues, the Education Committee, the Council and the members will then have a full opportunity to debate the issues and hopefully to arrive at a consensus on the best way forward for the education of the solicitors' profession in the new millennium.

Multi-disciplinary practices

As you are aware, prior to taking office I undertook to establish a task force to re-examine this issue because of developments in other jurisdictions. This task force has now been established by the Council under the chairmanship of John Fish (Arthur Cox). The other members of the committee are John Reidy (Reidy Stafford), Anne Colley (Anne Colley & Co), Daire Murphy (Abercorn Solicitors), Geraldine Clarke (Gleeson McGrath & Baldwin) and Ken Murphy (Director General). The task force has agreed to report to the Council at its meeting in Galway on 8 May next and I urge those of you who have views in relation to this to write to Therese Clarke, the secretary of the task force, or to any members of the task force as they have requested in this issue of the *Gazette* (see page 10).

Payment by lenders for work done on behalf of lenders by borrowers' solicitors

The report of the Conveyancing Committee on this matter was presented to the January Council meeting by Colm Price. It has now been circulated to all bar associations. It is essential that the bar associations consider this report as a matter of urgency and let the Society have the benefit of their views so that the Council will be in a position to formulate its policy on this matter when it next meets on 26 March.

Member Services

During the month, you have received an office manual designed to make it easy for you to review and improve the way you run your practice. I am also delighted that the new Law Society credit card has now been launched and I am the proud owner of the first card. These cards can be used to avail of any member services from publications to CLE courses.

Law Reform Committee

There has been a good response to-date to the questionnaire issued to members. I would urge those who have not responded to do so immediately. The responses received are being collated and the committee has met to assess the many ideas and prioritise them for action.

Visits to bar associations

I am glad to report that in the month of February alone, the Director General and I have visited and had meetings with the Roscommon Bar Association, County Sligo Solicitors' Association, Donegal Solicitors' Association, County Leitrim Solicitors' Bar Association and a combined meeting with the Carlow/Kilkenny Bar Associations. The Director General and I have had very positive exchanges of views at these meetings which I regard as an essential part of the communication process between the Society and the members. I have to say that I was very heartened by the support received from the bar associations and the positive ideas being suggested. The Director General and I would hope to continue to visit a number of bar associations each month.

Conclusion

If there are any matters which you believe the Society should be attending to, I would urge you to contact myself or the Director General so that the Council and the committees may consider the matters raised.

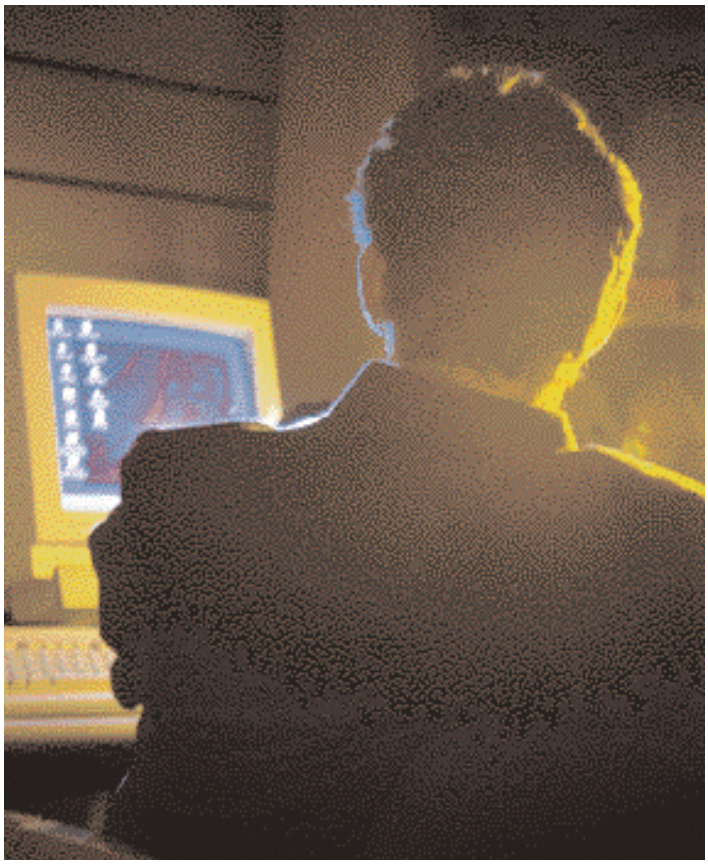
Laurence K Shields
President

The cybernotary: a new breed of lawyer

Cyberspace, a term coined by novelist William Gibson in *Neuromancer* (1984), describes that nebulous territory without physical dimensions where electronic communications 'happen', where e-mail messages over the Internet are stored, some in real-time, some delayed. There are innumerable users employing various telecommunications and computing technologies.

One commentator, John Perry Barlow, describes cyberspace as 'vast, unmapped, culturally and legally ambiguous … hard to get around in, and up for grabs'. The most popular phenomenon associated with cyberspace is the Internet.

The Internet, as readers know, is a network of computer networks. It offers enormous business opportunities for selling products and services, described as electronic commerce. The Internet is a global marketplace and use of the Internet is exploding.



The notary

Cyberspace may be new; a notary is of venerable antiquity. E Rory O'Connor in *The Irish notary* (1987) noted that the notary public ranks among the most ancient of professions. He observed that early civilisations had officials of great intellect, versed in the art of writing who carried out functions similar to those performed by the notary of today. Another writer refers to notaries as performing the duties of private secretaries to kings, princes and acting as functionaries to popes and bishops from 'almost barbarous times'.

Notaries became indispensable officers of rulers, monarchs and bishops, and were closely associated with judicial dignitaries. At one time, the notary was appointed pursuant to papal authority. The ancient oath administered to notaries appointed by papal authority followed the same formula as that administered to a judge on his appointment. The Pontiff gave the notary the quill and holder saying (translated from the Latin): 'Receive the power to draw up public documents in accordance with the laws and good morals'. The *Act of Faculties* passed by the Irish Parliament in 1537 formally ended the right of the Pope to exercise his faculty in the appointment of notaries.

All notaries in England are appointed by the Court of Faculties of the Archbishop of Canterbury, in the exercise of the powers conferred by the *Ecclesiastical Licences Act 1533*. Today, in Ireland, the Chief Justice, after due examination, appoints the notary. The office of notary public has a virtual universal recognition throughout the world. Lord Eldon in *Hutcheon v Mannington* (1802) [6 Vesey Jun 823] noted that 'a notary by the law of nations has credit everywhere'.

The functions of a notary public relate to, and include, authenticating public and private documents; attesting and verifying signatures to documents in order to satisfy evidential or statutory requirements of foreign governments, agencies or other such bodies; noting and protesting bills of exchange and promissory notes for non-acceptance and non-payment; drawing up ship protests, and giving certificates to the acts and instruments of persons and their identities. The notary may draw up documents of a legal or mercantile nature, take evidence as a commissioner for foreign courts, and make and verify translations from foreign languages into the vernacular and *vice versa*.

The cybernotary

A cybernotary mirrors that of the notary but is focused primarily on practice in international, computer-based, legal transactions. There is the Institute of Cybernotaries of Ireland under the auspices of the Faculty of Notaries Public in Ireland. The Dean of the Faculty is Walter Beatty, former president of the Law Society; the registrar of the faculty is solicitor Brendan Walsh, sheriff for Dublin City.

One of the first statutes regulating cybernotaries in the international domain is the *Electronic Notarisation Act, 1997* enacted by the Florida legislature of the United States. The 1997 law authorises the Secretary of State for Florida to provide commissions for cybernotaries to perform electronic notarisations and also empowers the Secretary of State to establish a licensing programme for private certification authorities. The 1997 Act also grants rule-making authority to the Secretary of State. The cybernotary must have specialist qualifications and must be a practising lawyer of five years' standing. The 1997 Florida legislation also regulates the registration of an electronic seal. Documents prepared or issued by persons holding a valid certification of registration may be transmitted electronically and may be signed by the registrant, dated and stamped electronically with a seal in accordance with law. It is unlawful for any person to stamp, seal or digitally sign any document with a seal or digital signature in certain circumstances.

In Ireland, the Institute of Cybernotaries and the Faculty of Notaries Public are keeping a watchful eye on cybernotarial developments in the civilised world. The cybernotary will have to be familiar with cryptographic techniques such as encryption, digital signatures, the concepts of authentication, password control, firewalls and the law relating to electronic commerce.

Technologies and the information society are developing at a phenomenal rate. If we fail to enter the technology race on time and be active participants, we may find ourselves excluded from the market. G

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

When justice systems collide

Recent strong criticisms of the Irish judicial system by the lawyer of the husband of French murder victim, Sophie Toscan du Plantier, have focused attention on the extent to which legal systems within the European Union co-operate – or fail to co-operate.

Both Maitre Paul Haennig and his client, Daniel Toscan du Plantier, complained bitterly that they were not being kept informed of the progress of the investigation into the murder of Ms de Plantier in West Cork in December 1996. Their criticisms received significant coverage in the French media earlier this year. They may not have been entirely satisfied by Minister O'Donoghue's reply in the Dáil that 'there is a difference between French and Irish law in relation to these matters'.

The economic and political systems of the 15 Member States in the EU are fast merging. The launch date for the 'Euro', the new single currency, is now less than ten months away. The political co-operation process, whereby the foreign policies of the 15 states are co-ordinated, continues apace. But the 15 legal systems, with their traditions and procedures, are another matter. Different legal systems and cultures are not like computers on the Internet – they do not yet easily speak to each other. The inquisitorial system is as far away from our understanding and procedure in Ireland as is the adversarial system in France.

Superb understatement

In what was arguably a superb piece of understatement, the Department of Justice last year noted that 'there is a feeling, among a number of practitioners confronted daily with problems, that the international system of judicial co-operation is not working to the entire satisfaction of the states'. The Departmental discussion paper, published last May in the closing weeks of Nora Owen's turn as Minister for Justice, protested that such international problems related to practical problems of implementing agreements, differences in the legal systems and even translation problems.

The most widely-known way of seeking information from a reluctant witness in another jurisdiction is by sending a rogatory letter to a court in that jurisdiction. This is a means to compel discovery of evidence or papers. But it is as roundabout and slow as it is usually ineffective. The letter rogatory goes from, say, a French court to the French Justice Ministry to the French Foreign Ministry to the French embassy in Dublin to the Irish Foreign Ministry to the Irish Justice Ministry to the Irish court. And the answer goes back the same way. That's a lot of time and a lot of new files, possibly for very little benefit.

In the du Plantier case, what was being sought was not evidence for use in a foreign jurisdiction but information on an investigation here. The French investigating magistrate, Judge Sophie Chateau, was refused the Garda file. As a result, the Director of Public Prosecutions, Eamonn Barnes, is again at the centre of criticism over lack of information on the investigation and prosecution of a criminal offence.

DPP Eamonn Barnes: A lightning rod for frustration?

The Government White Paper on Foreign Policy, published in 1996, reaffirmed the obvious when it said that the 'Irish people are committed to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality'. In the du Plantier case, how can this goal be best achieved?

According to the reported reply from Barnes to Judge Chateau, there was insufficient evidence to bring charges against anyone and investigations were continuing. M du Plantier's lawyer suggested that this was a cavalier way of treating the French judicial system. Not for the first time, Mr Barnes' office is cast in the role of a lightning rod for frustration at what is often seen as inadequate information coming out from the criminal investigation and prosecution process. Its international dimension has given it a wider and more embarrassing profile.

Frustration and anger with the criminal law system are not new. The Department of Justice discussion paper, which many commentators have found refreshingly frank, admitted that many victims of crime 'justifiably feel forgotten by the system'.

Strongest critic

Is it really all the DPP's fault? One of the strongest critics of the present system has actually been Barnes himself. Three years ago, he complained that people regularly attributed powers to his office which even the Gardai did not possess, including the power to call in suspects or witnesses and to demand answers to questions.

As currency, trade and economic barriers within the European Union disappear, the need for anti-criminal co-operation has become ever greater. Indeed, in the past five years alone, the justice and home affairs Council of Ministers, including our Minister for Justice, has become the second largest Council of Ministers. In 1995 alone, they held some 280 council meetings. In recent years, Ireland has also ratified a further three important conventions seeking to fight international crime.

Yet the criticisms from Paris on the Irish criminal investigation and prosecution system remind us of what every first year law student who attends lectures soon learns: justice (and investigations) must both be done and be seen to be done.

An annual report from the Director of Public Prosecutions has been promised. Its first publication is eagerly awaited. It can only help to avoid misdirected, embarrassing and perhaps unfair criticisms. G

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

Why we need a rethink on mental health care

The Government has said it intends to introduce a *Mental Health Bill* this year as part of its legislative programme. This should be the best opportunity for 50 years to provide Irish citizens with a high quality service, but unfortunately the legislation is likely to be based on the deeply flawed 1995 White Paper on Mental Health.

This document has already raised objections from groups working in the mental health services, with many doctors feeling that its provisions leave them open to lawsuits for unlawful detention. General practitioners are unhappy with the whole committal procedure, feeling that it should be dealt with by those specialising in the psychiatric services. For their part, consultants are unhappy that they will be entrusted with the committal of individuals which could lead to personal physical danger at the time of committal and also to an unsatisfactory doctor-patient relationship from that point onwards.

Visionless White Paper

The White Paper is a rather visionless, reactive document that rather too narrowly attempts to comply with the *European convention on human rights*. It also seems to be heavily influenced by the United Kingdom's *Mental Health Act 1983*. However, the UK Act has led to a crisis in the level of services in Britain over the last 15 years and the near collapse of 'care in the community' as a model for the delivery of care.

One particular concern that should be of interest to solicitors is the complete lack of provision in the White Paper for any personal representation for involuntary mental patients. Significantly, Ireland (along with the UK) abrogated from article 4.3 of the *Council of Europe recommendations on mental health* (adopted here in 1983) which sets out the principle of personal representation. The Irish Council for Civil Liberties (ICCL) believes that personal representation is a basic right. It seems extraordinary that in this country those charged with a criminal offence, and who face the loss of their liberty, are quite correctly allowed an automatic right to legal representation, while people denied their liberty in the context of a committal to a mental hospital are not.

The White Paper proposes establishing a Commissioner for Mental Health, but this simply represents the continuation of the current post of Inspector of Mental Hospitals which is held by an acting clinical director of a mental hospital. Clearly, there is the danger of a conflict of interest here. The ICCL would prefer to see the establishment of an Ombudsman for Mental Health who could make a thorough annual audit of the system.

John McDermott: 'Opportunity for Government to act in humane manner'

Stigma surrounding mental health

One of the main problems with mental health is the stigma associated with it. This is not helped by an inane media which largely views those with mental illness (and even, sometimes, those who care for them) as either figures of fun or a danger to society. And this extends even into the political arena: in my research into this article I was unable to obtain a single position paper on the issue from any of the political parties. This political apathy is dangerous because it could lead to a situation where the Bill will be passed quickly, without proper discussion.

It would not be overstating the case to say that a stay in a mental hospital is probably more stigmatising than a period in prison. To address this, the ICCL calls for the introduction of legislation against discrimination on the grounds of mental illness in the areas of employment, education, housing and so on – and this legislation should specifically protect the rights of people who have been the subject of involuntary detention.

Finally, principle 1 of the *UN principles on the protection of persons with mental illness* (adopted here in 1991) says that *'all persons have the right to the best available mental health care'*. The ICCL believes that the 'best available care' should include a range of treatment types (from the physical and pharmacological to the social and psychological).

This country is currently undergoing unprecedented economic growth. The introduction of much needed legislation on mental health care offers the Government an opportunity to act in a humane and progressive manner for a long-neglected and under-funded area of Irish life. G

John McDermott is Executive Secretary of the Irish Council for Civil Liberties.

Heroic lawyers do their country some service

This headline should perhaps carry quotation marks as it first appeared recently over an article in the *Irish Independent* by that newspaper's 'columnist at large' Sam Smyth.

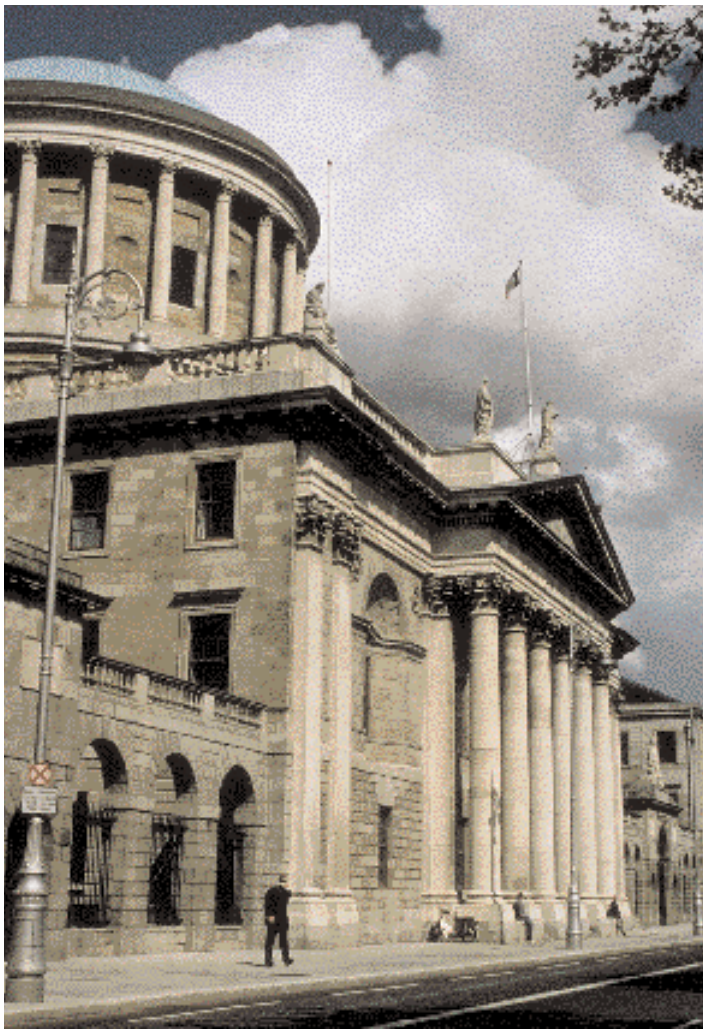
His article sought to address some very unfair criticism of the fees paid to lawyers for the late Brigid McCole. The headline could apply equally well to the lawyers who similarly succeeded against enormous odds in securing some justice for their clients in another high profile case in which appalling suffering resulted from negligence by an agency of the State, namely the McColgan case.

These cases are a vindication of the 'no win, no fee' system and of the dedication of lawyers who are prepared to work for years on cases, for which they may never be paid, because they believe that their clients have suffered a deep injustice.

Pursuing truth

Brigid McCole knew from an early stage that she was likely to die from Hepatitis C which she had contracted from a blood transfusion she had received from the Blood Transfusion Service Board. She could have obtained some compensation from the 'no fault' tribunal established by the Government but she wanted something more than that. She wanted to know the truth. The only way in which the behaviour of the State agency could be exposed was by her lawyers seeking discovery through the courts. The State resisted her at every step of the way in an aggressive defence which included threatening that, if she didn't give up her right to fight for compensation, her anonymity would be stripped away and every decision appealed to the Supreme Court.

In their pursuit of the truth, Mrs McCole's lawyers discovered that 'Donor X' was not a donor but a woman undergoing plasma exchange, and that her infected plasma was taken and given to others without her, or her doctor's, consent. The BTSB had known since 1987 that Donor X did not have jaundice but infective hepatitis.



Dublin Four Courts: scene of the McColgan case

A team of lawyers on her behalf – led by Susan Stapleton and Tara Meagher of solicitors Ivor Fitzpatrick & Co, and counsel John Rogers SC, Ian McGonagle SC, and Michael Cush BL – worked for years in circumstances where there was every likelihood they would never receive a penny in fees, building up evidence in the case through discovery of documents and other work. It benefited Brigid McCole very little in the end when she and her legal advisors were forced on her deathbed to accept a much reduced settlement figure.

Shocking negligence

However, as Sam Smyth put it, 'if Brigid McCole hadn't resisted the tribunal and risked everything by instructing her lawyers to go to court, there would have been no tribunal of enquiry, no public outrage. She would have died quietly and the scandal of their shocking negligence would have been confined to the Department and the BTSB. Mrs McCole's legal advisors were nothing short of heroic and did their country some service by their professional handling of the scandal. And lawyers, like mothers-in-law, make soft targets'.

The case taken by the four McColgan children against the North Western Health Board is another example. They sought an admission of wrong-doing and compensation for negligence by the health board in failing to protect them as children from the unspeakable brutality and violations which they suffered at the hands of their now-imprisoned father.

Again, this was a case in which the plaintiffs incurred national publicity about the private tortures they had suffered in their youth and faced a very determined defence by the State. Once again, much turned on discovery of documents and the legal skill of the McColgans' lawyers in uncovering and marshalling evidence.

Finest traditions

Although Ivor Fitzpatrick & Co are a large solicitors' firm with substantial personnel and other resources, the McColgan case was brought by solicitor Kevin Kilrane of Mohill, Co Leitrim. The cost of mounting the case was enormous for such a small firm. The level of perceived injustice suffered by the McColgans, however, was reflected in the fact that two of the leading members of the Bar, James Nugent SC and Garrett Cooney SC, took on this case, turning away doubtless more financially rewarding work to do so.

The work of the lawyers in the McCole and McColgan cases is in the finest traditions of the legal profession. Although it was the appalling results of negligence by the State which they exposed, it is all the more true to say that by doing so they have done the State some service. They have also done a great service to their clients, to the legal profession, and to justice. G

Ken Murphy is Director General of the Law Society.

What are words worth?

From: Clodagh Madden, Dublin

Appointment

Weary, wilting, waiting client
Why is he here? What went
wrong?
Rainy Monday, damp coat
steaming
'Please take a seat' 'He won't be
long.'

Row of chairs in smart reception
Out of place. How will he cope?
Drops umbrella, fumbles in
pocket,
Sees the sign 'Please don't smoke.'

Economist, Gazette on laden table
Business & Finance out of date
Meaningless articles, why not *The
Sun*?
Restless, tired, worried, up late.

Fidgeting, frightened, fretful
client
Intimidating atmosphere,
Receptionist dealing with incom-
ing calls
Legal jargon. Tries not to hear.

Hopeless, helpless, wants to
cancel.
'You can go in now – first on the
left'
Gathers coat, umbrella, awkwardly
carrying
Rain dampened papers clutched to
his chest.

Solicitor welcomes from behind
huge desk,
Quality pin-stripes, gleaming shirt
Handshake firm. 'How can I help
you?'
Factory accident, he'd been hurt.

Words confusing, 'Counsel'
'Summons'
Dictating at speed to small
machine
Scared to question, 'consultation'?
Is this about him? What does it
mean?

'Straightforward case, presents no
problem'
Will he lose his job? Will he get
any money?
Solicitor beaming with confidence
Client nods, can't speak his worry.

Appointment over, client ushered,
Silently trying to guess the cost,
Out the door, into drizzling
Monday,
Umbrella forgotten. Day's work
lost.

Advertising regulations and proposed legislation

From: Donal Reilly & Collins, Solicitors, Dublin

I am concerned that the Law Society may lose its opportunity to make proper representations to the Government on the issue of competition. It appears to me that the new regulations prohibiting advertising in respect of personal injury litigation is yet another doomed attempt to cut down on the level of personal injury litigation. While I approve the ban for other reasons, I do not think we can escape the fact that it is going to make very little difference to the level of litigation. In this regard, the opportunity should be presented to the Government to face the reality with respect to solicitors, namely, that over-competition among solicitors is not only bad for solicitors but it is also bad for the country.

There are many justifications for bending the competition rules among solicitors: in particular, the effect of restriction of the practice to the small island of Ireland, the length of time it takes to qualify, the necessity that solicitors be above financial temptation, and their function as almost quasi civil servants in the proper administration of transfers of capital and payment of tax.

For all these reasons, and also for the benefit of the taxpayer, it would be appropriate if solicitors were permitted to limit the numbers qualifying to the amount they feel the market could take. I think there are few members to whom it is not clear that, despite the boom economy, and in particular a boom in property prices, the result of over-competition means that most solicitors, especially conveyancing solicitors, are still effectively in the recession.

'Scandalous waste of money'

From: Gerard O'Herlihy, M Roche & Co, Dublin

May I, through the *Gazette*, suggest that the recent folder sent to us allegedly advertising 'member services' is, in my view, the most scandalous waste of money that I have seen emanating from the Law Society in many years. This information could easily have been given to us in a simple booklet form at much less expense and without the glossy folder which clearly does nothing but assist in the destruction of the rain forests.

Who wants to form an SDU?

From: Richard O'Hanrahan, 6 Lower Cecil Street, Limerick

I would like to hear from other members of the profession who would be interested in forming a Solicitors' Defence Union. Please contact me on 061 411211.

Bullying by large institutions

From: Pat Igoe, Patrick Igoe and Company, Dublin

We deposited scheduled documents of title this week with a lending institution. As usual, we were told that they would not receipt the individual documents but that we would receive a scheduled receipt after they had been checked. However, it was acknowledged that they require a solicitor to acknowledge receipt of individual documents when we take up documents of title from them.

For how long are we going to tolerate bullying by large and wealthy institutions that do not even pay us for exacting professional 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.

BRIEFLY

County registrar vacancies

The Law Society and Bar Council will be notified by the Department of Justice of all county registrar vacancies from this month on. According to a recent letter from the Department, the Tipperary County Registrar's position will be vacant from 17 March 1998 when Patrick J McCormack retires. Applications are available from the Department's courts division.

Financial services on the horizon

The *New horizons* programme continues this month with a financial services business breakfast on 11 March in the RDS, Ballsbridge, Dublin. The guest speaker will be Michael Buckley, managing director of AIB Capital Markets.

New horizons is a career development initiative aimed at introducing solicitors and apprentices to new areas of employment and business. It is run in association with Price Waterhouse. For more information, contact Geraldine Hynes at the Law Society (tel: 01 6710200).

Central Bank to regulate insurers

The Central Bank has taken over responsibility for regulating insurance intermediaries. The move was announced recently by Science, Technology and Commerce Minister Noel Treacy. The Minister said that 'centralising responsibility for the regulation of financial intermediaries under the Central Bank, and using the very extensive powers available to the bank under the *Investment Intermediaries Act, 1995* will provide a more effective system of regulation and will give greater protection to consumers'.

Family lawyers to come together

The fifth Family Lawyers' Association annual conference and AGM will be held in the Great Southern Hotel, Rosslare, Wexford, from 15 to 17 May. The conference will focus on two issues: the *Children Act, 1997*, and non-marital co-habitation and the law. For further information, contact Mark Graham, Ormond Quay Law Centre, Dublin 1 (tel: 01 8724133), Jennifer Curry (tel: 01 8290000) or Sora O'Doherty, Law Library (tel: 01 7023989).

Long list of divorce cases wait for hearing

One year after divorce legislation was introduced, a long list of actions is still waiting to be heard by the courts, according to a leading family law practitioner. Just 356 divorces were granted last year, while 1,360 applications were made to Circuit Court offices around the country.

But few, if any, disputed settlements have come before the courts at this stage, and practitioners predict that there will be a large number of these cases heard in the near future.

Solicitor and former divorce activist Katherine Kelleher of Cork-based firm Conway Kelleher Tobin told the *Gazette* this month that there are a large number of contested divorces waiting to be listed. 'There are a lot of settlements that will have to be contested, but most of them have not made it to the lists yet', she said.

She added that applicants who want to contest their divorces still face a wait, but pointed out that many of them already have judicial separations and may be prepared to sit it out. 'If you've waited four or five years, then one more year does not make much difference', she said. 'We don't really have a divorce culture in this country and it will take a while to get it into people's psyches. Also some people are afraid that it will affect their social welfare benefits, which of course it won't', she told the *Gazette*.

Harney pledges copyright reform

Legislation to reform our outdated copyright laws will be published next July, according to Tanaiste Mary Harney. She pledged to overhaul the *Copyright Act, 1963* in the wake of an international row over intellectual property which forced the United States to bring Ireland before the World Trade Organisation (WTO).

The controversy forced the Tanaiste to recognise American concerns over penalties and presumption of ownership of copyright. In a statement, she pledged to publish the new legislation by next July. 'Ireland is committed to achieving the highest level of intellectual property protection and fully intends to bring forward a comprehensive *Copyright Bill* to thoroughly overhaul our basic 1963 Act', she said.

The US alleged that Ireland was not complying with parts of the *Trade Related Aspects of Intellectual Property Agreement* (TRIPS), which we signed in 1996. The Americans made a formal complaint to the WTO and called on the organisation to set up a dispute panel.

No jurisdiction increases 'at present'

Courthouse gossip around the country has concerned rumoured plans to increase the upper jurisdictions of the District and Circuit Courts. To determine if there was anything behind the rumours, Law Society Director General Ken Murphy recently wrote to Justice Minister John O'Donoghue for information.

In reply, Murphy received a copy of a written answer from O'Donoghue on 17 December 1997 to a Dáil Question in which the Minister said 'while I have no plans at present to increase the jurisdiction of the District and Circuit Courts, I am considering what steps should be taken for the purpose of reviewing the existing civil jurisdictions of the courts in question'.

So now you know!

Working group on MDPs/ partnerships

Having regard to developments in other jurisdictions, the President of the Law Society has set up a working group, under the chairmanship of solicitor and former Council member John Fish to examine and report to the Society's Council on issues affecting a) the profession, b) the public and c) the Law Society arising from the establishment of multi-disciplinary practices/partnerships. The chairman would welcome the views of members. Submissions should be sent to Therese Clarke, secretary to the working group, at the Law Society before 20 March.

Courts Service facing three month delay

The introduction of the new independent Courts Service is trailing three months behind schedule. The *Courts Service Bill*, the legislation needed to set up the new structure, was originally timed to be passed by the Oireachtas before last Christmas, but the *Gazette* has learned that it will only go before the Dáil this month.

According to a Department of Justice spokesman, the Bill was initiated in the Seanad, which has only just finished debating it. 'It will go before the Dáil sometime around 10 March, and it will be a month or two before the house', he said.

When the Bill was published last October, the Department predicted that the new service would be up and running by next summer, and said transitional arrangements would be in place by early this year. But now it looks like the new structure will not be functioning fully until the autumn, almost a year after the legislation's publication. The Department spokesman denied that there had been any delay in getting the Bill passed.

Ken Murphy: 'Courts Service should greatly improve administration of justice'

'Any delay that could occur would occur in the Dáil', he said. 'As we understand it, it will be up and running by the autumn session'.

Under the Bill, the new agency will run the courts system instead of the Minister for Justice and several other offices. It will also be responsible for all the state's court buildings. The service will be managed by a board chaired by the Chief Justice or a Supreme Court judge nominated in his place. Its members will include solicitors, barristers, the judiciary and representatives from all interested organisations. A chief executive appointed by the board will be responsible for the service's day-to-day operations. All court staff will transfer to it and new staff will also be recruited by the service.

The proposal has the Law Society's backing. When the Bill was published, Director General Ken Murphy described the provisions as long overdue and pointed out that it should greatly improve the administration of justice in this country.

Solicitors and the Euro

The Law Society, in conjunction with the Bank of Ireland, is producing a solicitor-specific Euro publication which will be issued to practices in early May to coincide with the European Commission's announcing of conversion rates on 2 May. This guide will advise solicitors about the impact of the Euro on their banking requirements, client accounts, trust accounts and so on. It will also identify the opportunities and responsibilities for solicitors in advising their business clients. A seminar on this topic is scheduled for Thursday 14 May, 5-7pm, in Blackhall Place.

UK government proposes fraud-case jury reform

Proposals to reform the jury system in fraud cases are being actively considered by the British government. A UK Home Office paper has suggested four options for white-collar crime trials to deal with the difficulties regularly encountered when prosecuting these offences.

The four options include:

- Creating a pool of jurors with specialised financial knowledge or selecting them on the basis of qualifications or aptitude tests
- Holding trials before a single judge or a panel of judges with expert assessors
- Tribunals of a judge and lay assessors
- Extending the judge's role to shorten trials and simplify the jury's task.

UK Home Office Minister Alun Michael said the proposals were aimed at tackling the complex financial techniques used by white-collar criminals. 'As financial techniques have become more elaborate and specialised, so trials have become longer and more complex', he said.

High Court PI list

Practitioners should note that applications to list cases for hearing in the Dublin personal and fatal injuries list may be made either on consent before the registrar at 9.30am or on notice to the other party at 10.30am to the court on any Wednesday morning in term. No case will be listed without such application.

List 2 cases (that is, 'army hearing loss cases') have been adjourned to Easter term. No applications will be entertained in respect of this list until further notice. Dates are freely available for the remainder of Hilary term.

BRIEFLY

Library book sale

The Law Society's library staff weeded out a number of old and superseded editions of textbooks during a recent re-cataloguing. These will be on sale in the library during the week 23 to 27 March next from 8.30am to 5.30pm. Proceeds from the sale will go to the Solicitors' Benevolent Association.

Conference to tackle new technology

The 13th BILETA conference will be held in Trinity College, Dublin, on Friday and Saturday 27 and 28 March next. The main themes will be:

- Technology and the courts
- Legal issues arising from the new technologies
- Developing issues and research agendas.

Speakers will include Lord Justice Brooke, Justice Susan Denham and Justice Laddie, as well as lawyers and judges from Ireland, the UK, Europe, Canada and Australia. For more information, contact the Short Course and Professional Unit, University of Ulster at Jordanstown (tel: 080 1232 366680).

Britsh PM's wife to chair conference

Cherie Blair will chair the 1998 *Woman Lawyer Conference* at the New Connaught Rooms, London, England, on 25 April next. The line up of speakers includes Harriet Harman MP, the British Lord Chancellor, Lord Irvine of Lairg, and Heather Hallet QC, the first woman chair of the English Bar Council.

German law course

The German Lawyers' Academy will hold an intensive course beginning next May for anyone who wishes to sit Germany's qualifying exams for lawyers. Running from May to November in Baden-Baden, the course will take the form of six intensive one-week sessions from May to November. Candidates will be able to sit the exams next autumn or winter. Any lawyer from any EU country can take the course (tel: +49 228 983 6677).

BAR

The debate about the divided legal profession and a possible fusion of the two branches of barrister and solicitor has been going on for more than 150 years. Deirdre O'Brien, an Irish solicitor practising in New York, looks at the history of the split and at how a fused profession works in the United States

The strongest advocate for the continuation is, and always has been, the Bar itself. tenacity, the Bar has opposed all attempt gain extended rights of audience or to enc on its domain.

In England, particularly, solicitors (their determin with market forces) have fought down through the Bar's monopolising of the administration and practi Lloyd George, a solicitor, was Prime Minister of Brita er referred to him as 'a man of brilliance who could no priate level in the law because he is a solicitor'.

In England, the *Courts and Legal Services Act* of 19 way for suitably qualified solicitors to achieve parity v courts and on the bench. The Irish Bar, however, sh changing its position in the countdown to the Twenty-

New breed of Irish client

The general public has shown surprisingly little intere 'Bar Wars' of the profession. But this is likely to chang are returning in significant numbers to Ireland from United States, Canada and Australasia where the pr Well-educated, well-travelled, confident people, they want and are used to getting it. Having conducted b affairs abroad, this is a breed of client which the Irish has not had to contend with before. Questions are bei the profession divided? Why do they have to have tw case, and therefore two fees? Why have they no acce conducting the case? And dissatisfaction is being ex thorny issue of the returned brief or hand-over.

It would appear, then, that both solicitors and the always for the same reasons, would benefit from a ch quo. But would the barristers themselves benefit?

The following is an extract from one solicitor's ar divided profession: 'the people of England, like th United States of America, would find the advantage o of labour ... Rapid as the transitions unquestionably

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proctors, and other non-bar-
, solicitors were a separate

profession from barristers, with a separate governing body and legal education.

There seems to be little question that the attitude of disdain for a branch of the profession seen as being 'lower', in terms of ability and qualification remains in the profession to this day, despite the fact that there's no difference in the degree of qualification, and despite the irony that the Bar is dependent for its survival on the solicitors' profession, which is also its only competitor.

A case could be made that the Bar's restrictive practices may be hurting its own members. A barrister cannot deal with the public directly, cannot be a partner with anyone else, and has to practise as a referral-only consultant. A lawyer in a unified system, on the other hand, can deal with the public directly, can enter into partnerships and can also practise as a referral-only freelance advocate, if he or she so chooses. Perhaps some younger, hungrier barristers might be interested in the options that a unified profession would offer them.

Why should a lawyer choose to be a barrister when becoming a solicitor-advocate has so many advantages?

One argument traditionally put forward by the Bar in its own defence is that it allows for specialisation. Fused systems, however, do not lack specialists. In the United States, for example, if a client has, say, a copyright issue, a defamation issue or a medical malpractice issue, he uses a lawyer who specialises in that particular field. If a client has a general practice lawyer who does not specialise in the area in question, this general practitioner will refer the case to a specialist, and then either drop out (sometimes commanding a referral fee, sometimes not) or remain involved, the other attorney being retained in an 'of counsel' or advisory capacity.

In any event, the client and the lawyer conducting the case speak and meet each other as often as necessary. If the parties are not compatible, either one can terminate the relationship at any point. The lawyer who litigates when the matter eventually comes on for hearing is the same person who is familiar with the case, who knows the client and in whom the client has confidence.

Contrast this with the system in Ireland. The client (excepting frequent litigators) usually has no input regarding the barrister briefed by his solicitor. The parties have little or no contact while the case is being prepared, so that on the hearing day there is no relationship between them and no trust. Add to this the bewilderment which the average member of the public feels at the alien world of wigs and robes into which he has been thrust.

Experts available to all

One point that has been raised in the Bar's favour is that the current system makes the services of experts available to all – to the countryman who visits his sole general practitioner in Ballybeyond, as much as to the businessman who retains the services of the biggest firm in Dublin.

This sounds wonderful, but what does it mean in practice? The client of the rural sole practitioner may well benefit from the expertise of a much

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sought-after member of the Bar in the drafting of his papers, but where will the eminent counsel be on the day of the hearing? And even if he or she deigns to see the matter through, how many other pressing issues will counsel have to attend to on the day, and in how many other courtrooms will counsel need to be?

The reality is that the little guy is not the priority, and unlike the big guy who calls the shots, he'll have to make do.

To take this scenario a step further, the brief may well be handed over on the day of the hearing to another barrister who knows absolutely nothing about the case. What sense does it make to have one lawyer, the solicitor, who knows everything about the case bound to silence, while another lawyer, who is not familiar with it, litigates? It is true that some solicitors have no advocacy skills, but this fact cannot justify the system. Transactional lawyers in a unified system often have no desire to litigate, but there is no shortage of excellent advocates. Perhaps the solicitor in question should be given the option to act as advocate in these circumstances.

And last, but not least, how much economic sense does it all make? In the mid-1980s the issue received some bad press when a solicitor for Cyril Smith MP was refused permission to read out the terms of a libel action settlement in the High Court in London. He objected to the cost of employing a barrister for this simple task and the press naturally enjoyed the in-house bickering.

Deirdre O'Brien: 'Will the legal profession rise to the new challenges and realities of the next century?'

It does not make any economic sense to pay two professionals where one will suffice. Indeed, solicitors often take advantage of a system where they can request an opinion from counsel, for which the client is billed, rather than simply research the topic themselves. And the client must pay both parties. As in the Cyril Smith example, there is a lot of unnecessary representation by barristers because the system allows it.

The divided profession may have been a good one in its day, but no system can exist unchanged for all time. Edmund Christian, an English solicitor and distinguished legal historian, wrote that the Twentieth Century 'may begin and end with barristers in sole possession of the right of audience in the superior courts, and solicitors still sitting (as Dickens said) silent like truth at the bottom of the well'.

It remains to be seen whether the profession will rise to the new challenges and realities of the next century. G

Deirdre O'Brien is an Irish-qualified solicitor now practising as an attorney in New York with O'Brien and Associates. The views expressed in this article are entirely her own. Last year the Council of the Law Society reaffirmed its policy that the public is best served by the current division of the legal profession into solicitors and barristers.

Degrees of sep

A recent Supreme Court decision found that spouses who already have separation agreements cannot institute proceedings for judicial separation. Alan Shatter discusses the background to this case and its implications for family law practitioners

Why would any husband or wife who has already been through the trauma of a separation agreement want to institute judicial separation proceedings? The answer is simple – a hope that following the granting of a judicial separation decree, ancillary relief orders will be made resulting in a better financial or property deal than that provided for in the original agreement.

It fell to the Supreme Court by way of case stated in *P O'D v A O'D* (unreported, December 1997) to definitively determine whether the judicial separation jurisdiction of the courts can be properly so invoked. Circuit Court Judge Catherine McGuinness (as she then was) had originally determined that the applicant husband was not prevented from seeking a decree of judicial separation pursuant to the *Judicial Separation and Family Law Reform Act, 1989* and ancillary orders pursuant to the aforesaid Act by virtue of the fact that he had 19 years earlier entered into a deed of separation with his wife (see 3 Fam LJ 96). The decision of Judge McGuinness accorded with an earlier judgment delivered by her in *CN v RN* (1995 1 Fam LJ 14) in which she had also held that a separation agreement concluded between a couple in 1981, and a further one which revoked and replaced the original agreement concluded in 1986, did not prevent an applicant wife from seeking a decree of judicial separation and ancillary relief.

In *P O'D v A O'D*, having found in favour of the husband, Judge McGuinness agreed to state a case to the Supreme Court to ascertain whether she was correct in holding that she had jurisdiction to grant a decree of separation where a deed of separation already existed. She determined that the public importance of the issue, which affected thousands of already separated couples, justified a Supreme Court decision on the issue.

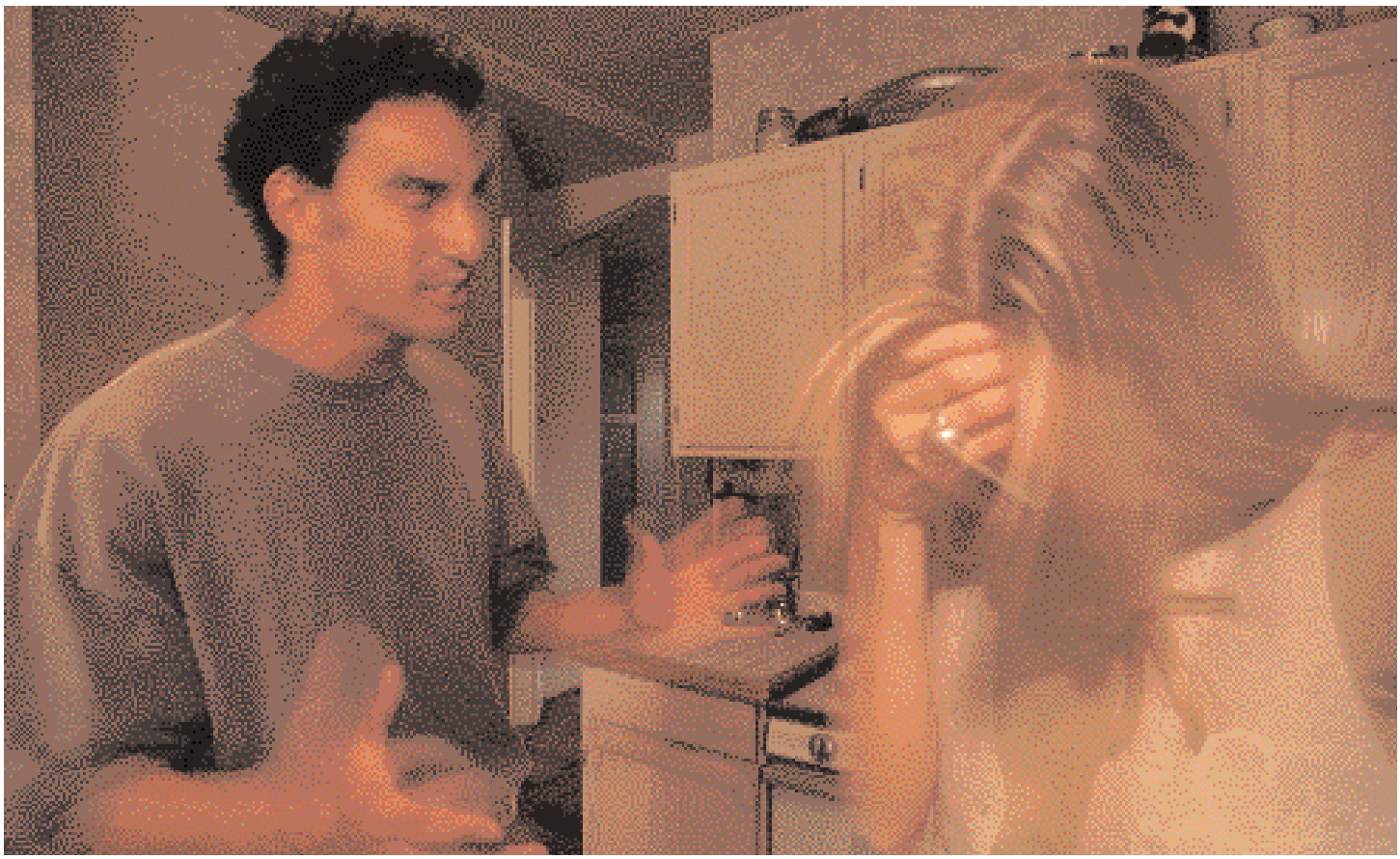
In the earlier case of *Courtney v Courtney* (1923 2IR 31), the Court of Appeal had held that a covenant in a separation agreement not to bring divorce *a mensa et thoro* proceedings against a spouse for misbehaviour prior to the execution of the agreement would be upheld by the court. In that case, the court dismissed the wife's petition for a decree of divorce *a mensa et thoro* from her husband on the ground of cruelty, Dodd J stating that parties to a binding contract 'who agreed so to settle a matrimonial controversy must be taken to contract that they would not go behind the settlement and cannot be listened to saying that they did not make an express stipulation not to sue'.

No express covenant

In *K v K* (1988 IR 161), while the parties had concluded a deed of separation, there was no express covenant contained in the agreement that neither would in the future sue for a decree of divorce *a mensa et thoro*. The husband's central objective in seeking a decree of divorce *a mensa et thoro* was to effect an automatic termination of his wife's inheritance rights. McKenzie J in the High Court refused to grant the decree, stating:

'All that a divorce a mensa et thoro *can do is to give the parties the right to live separately*

aration



and this they had already under the deed. In my opinion the fact that the parties entered into the deed, whereby they agreed to separate and live apart, separate and free from all marital control and authority, is a bar to the present proceedings'.

One month after Judge McGuinness had delivered her Circuit Court judgment in *P O'D v A O'D*, the Supreme Court in *F v F* (1995 2IR 354) held that a separation agreement entered into for the purpose of settling existing proceedings seeking a decree of divorce *a mensa et thoro* barred a wife from subsequently bringing judicial separation proceedings under the 1989 Act. The court held that an application for judicial separation is the same type of action as the former application for a decree of divorce *a mensa et thoro*. In the court's view, the wife was seeking to bring the same action under a different name.

Relief not needed

Blayney J in his judgment cited with approval the judgments of Dodd J in *Courtney v Courtney* and that of McKenzie J in *K v K* and gave as an additional reason for dismissing the wife's claim the fact that she did not need a judicial separation as she had 'been lawfully separated from her husband for the last seven years'. She was, Blayney J stated, 'asking the court to give her relief she does not need (ie a decree of judicial separation) with a view to being in a position to obtain other (ancillary) orders that she would like to have'. He concluded that this was not a form of proceeding to which the court should lend its support.

Denham J in her judgment emphasised that 'the issue of living apart is critical to the analysis of the situation'. As it was 'quite clear from the Circuit Court order and settlement that the parties agreed to live separate and apart', she held that the wife was not entitled to proceed with a new action for judicial separation. Stating that an order of judicial separation 'is the gateway to the field of ancillary reliefs in

the 1989 Act', she held that as the wife could not walk through the gateway, she could not benefit from the ancillary reliefs.

The *P O'D v A O'D* case was distinguishable from *F v F* insofar as a deed of separation had been entered into between the parties in 1979 without the institution of divorce *a mensa et thoro* or any other type of proceedings. In the Supreme Court, the following arguments were made on behalf of the wife:

- That since the separation agreement had relieved the parties of the matrimonial duty to co-habit, it followed that it was not open to the husband to issue proceedings seeking a decree of judicial separation and consequent relief
- The underlying policy of the 1989 Act was to encourage estranged spouses to resolve controversies between them without recourse to litigation, and if the courts were to hold that a couple who had entered into a separation agreement and resolved all outstanding disputes between them could have the agreement set aside in judicial separation proceedings, the public policy underlying the 1989 Act would be seriously undermined
- As a matter of principle, upon the breakdown of a marriage certainty and finality with regard to new family arrangements are desirable insofar as is practicable
- Section 20 (3) of the *Family Law (Divorce) Act, 1996* which requires the court to have regard to the terms of any separation agreement still in force when considering the ancillary relief (if any) to order in divorce proceedings had no counterpart in the 1989 Act. This is significant as it indicated the legislature assumed that once a spouse was relieved of the duty to co-habit, the court had no jurisdiction to grant a decree of judicial separation.

It was argued on behalf of the husband that:

- The 1989 Act neither expressly nor by implication restrained parties to a separation agreement from applying for a decree of judicial separation and accordingly jurisdiction to grant such decree after a separation agreement had been concluded vested in the courts
- The 1989 Act was a reforming measure in both legal and social terms and should not be construed as excluding persons who had entered into separation agreements from obtaining the ancillary relief envisaged by the Act
- The decision of the Supreme Court in *F v F* was distinguishable as in that case the applicant wife had already sought a decree of divorce *a mensa et thoro* and those proceedings had been settled and adjourned generally with liberty to apply
- The 1989 Act envisaged the variation of post-nuptial settlements. As it 'was clear' that this phrase included separation agreements, it was entirely inconsistent to contend that a party to such an agreement could not obtain a judicial separation decree in ancillary relief
- As the *Family Law Act, 1995*, in amending the 1989 Act, envisaged the making of property adjustment orders on more than one occasion the argument as to 'the desirability of finality in family law' was significantly weakened.

Alan Shatter (centre) pictured at the launch of *Shatter's family law* with Butterworths Director Gerard Coakley (left) and Chief Justice Liam Hamilton

Binding contract

Keane J, delivering the judgment of the Supreme Court in December 1997, considered in detail various arguments made and found in favour of the wife. Citing the above passage delivered by Blayney J in *F v F*, Keane J stated that reasoning to be 'fully applicable to the position of the husband in the present case'. He continued, noting the reasons for treating a separation agreement which takes the form of a binding contract as a bar to subsequent proceedings for a decree of judicial separation to be two-fold:

'First, where the agreement provides, as it invariably does, that the parties are to live separate and apart, the granting of such a decree would be superfluous. Secondly, where parties have entered into a binding contract to dispose of differences that have arisen between them as husband and wife, it would be unjust to allow one party unilaterally to repudiate that agreement, irrespective of whether it took the form of a compromise of proceedings actually instituted'.

As a consequence of the Supreme Court judgment in *P O'D v A O'D*, it is now clear that where estranged spouses have concluded a separation agreement it is not open to one spouse to institute judicial separation proceedings against the other spouse. For such proceedings to be barred, it is not necessary that an agreement contain an express provision that one spouse will not seek a decree of judicial separation against the other, nor does it matter whether such agreement was entered into before or after enactment of the *Judicial Separation and Family Law Reform Act, 1989*. A simple clause in an agreement whereby estranged spouses agree to live separate and apart from each other is sufficient.

Essential prerequisite

Moreover, a spouse barred from seeking a decree of judicial separation also cannot seek the orders by way of ancillary relief that a court may normally grant upon the granting of a decree of judicial separation. The obtaining of a judicial separation decree is an essential prerequisite to invoking the court's jurisdiction to grant such ancillary relief orders.

It should be noted that this judgment does not act as any barrier to a spouse who is a party to a separation agreement instituting maintenance proceedings to seek a maintenance order for his or her support pursuant to the *Family Law (Maintenance of Spouses and Children) Act, 1976*. The Supreme Court decision in *HD v PD* (unreported, May 1978) remains applicable to such maintenance proceedings. Nor does the decision in *P O'D v A O'D* prevent any spouse, as a parent, bringing proceedings under the *Guardianship of Infants Act, 1964* to vary arrangements previously agreed relating to the guardianship, custody of or access to children. Finally, the decision does not, and of course cannot, act as a barrier to a separated spouse seeking a decree of divorce under the 1996 Act and orders for ancillary relief under that Act.

The 1996 Act merely requires the court, in deciding whether to make any orders for ancillary relief in divorce proceedings and in determining the nature of any such orders, to 'have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force'. G

Alan Shatter TD is the author of Shatter's family law *(the fourth edition of which was published by Butterworths last year) and is a partner in solicitors' firm Gallagher Shatter. He appeared on behalf of the wife in the Supreme Court in* P O'D v A O'D.

GREAT *GAZETTE* GRISHAM GIVEAWAY

Who says we never give anything away?

This month the *Law Society Gazette* in conjunction with CIC Video is offering ten copies of *The chamber* – the latest movie adaptation of John Grisham's legal thrillers. Not only that, CIC has thrown in a leather briefcase for good measure.

The movie boasts a stellar cast – Chris O'Donnell, Gene Hackman and Faye Dunaway – and a gripping plot. O'Donnell plays an idealistic young lawyer battling against time to save his klansman grandfather from the electric chair. All in all, it's just the ticket for a good night in.

All you have to do is answer one shamefully simple question and return your entry to *The chamber* competition, *Law Society Gazette*, Blackhall Place, Dublin 7. The winner receives the briefcase and the movie, while the nine runners up will get one copy of the video each.

Name: _____

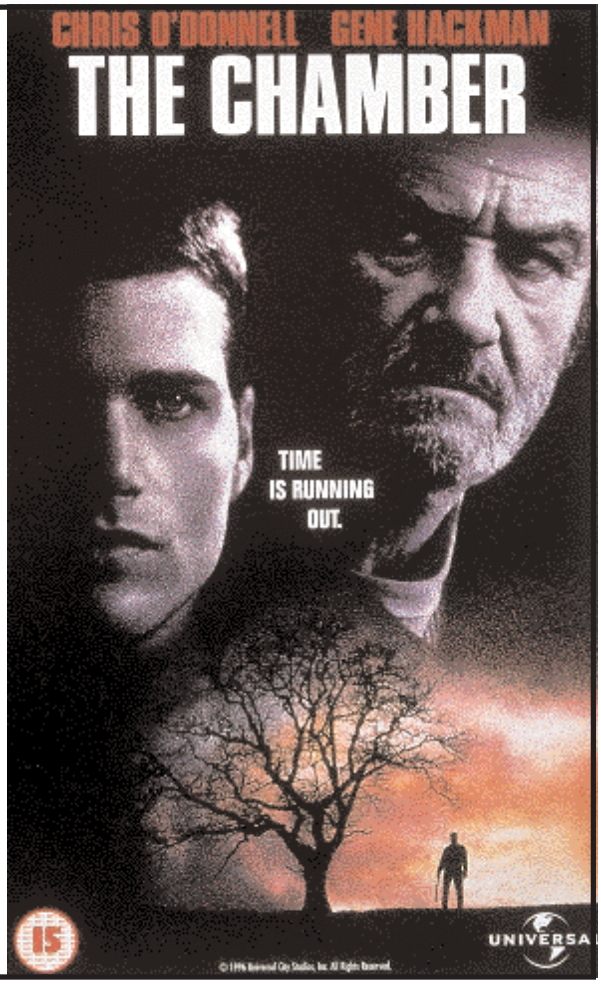
Address _____

_____

Question:
Name one other best-selling John Grisham novel based on the legal profession.

_____

Closing date: 27 March.



Your

The demand for legal secretaries is growing as the solicitors' profession expands, and there are a lot of good candidates out there. But how do you choose the right Girl Friday? Barry O'Halloran asks the professionals

They play a vital role in your office, and may even be the first contact that clients have with your firm, so when it comes to looking for a good legal secretary, how do you sort the wheat from the chaff?

'When you hire a secretary, you're making an investment of around half a million pounds in terms of both wages and training', says Risteard Pierse, Chairman of the Law Society's Practice Management Committee. 'That's a tremendous investment, so you need to make sure you've got the right person'.

As a general rule of thumb, salaries range from around £10,000 a year for a junior with

Girl Friday

some experience and who has completed a secretarial course, up to £12,000 for someone with two years under their belt. After three years you can expect to pay around £13,000, and £14-14,500 for five years' experience. Partners' secretaries can command at least £15,000, and possibly more, depending on demand in the marketplace.

Pierse stresses that you need to pay close attention to the selection process. His Traleebased firm first makes sure that potential candidates have the basic skills and checks their references very carefully. After the interview stage, once the firm has decided on the candidate, it makes an offer subject to the completion of a psychometric test.

Personality filter

Psychometric testing measures your intelligence, aptitudes, behaviours and emotional responses on the basis of a series of questions. Pierse explains that this is a 'filter procedure' designed to gauge the candidate's personality, ensure they can work in a team situation and that they have good interpersonal skills. He adds that the test does not make a huge difference, but says it does aid the selection process.

Putting the emphasis on a candidate's personality may not seem very practical to some people, but Pierse argues that it is important for a number of reasons. First, the individual has to be capable and willing to take responsibility for their own work as time goes on. Second, and even more importantly, solicitors' secretaries handle a large volume of documents relating to clients' business and personal affairs so they must respect confidentiality and realise its importance when handling client affairs.

'It's very important to check references in that context', says Pierse. 'A lot of damage could be done to your busines someone who is likely to tal outside the office'.

Lesley Osborne, director of Osborne Recruitment, a agency which provides legal secretaries for a wide range of practices, advises that you have to be able to trus the person you hire. She does r rely on psychometric testing prefers to question candidates their previous work history, other criteria, and to draw con from that.

She puts the same emphasis on personality, arguing that there's no point in having someone who is highly skilled if they cannot work with the people around them. 'You can tell these things from interviewing the candidates', she says. 'You look at their track record and at how they project themselves, and see if they have proven that they are willing to commit themselves to the job'.

In terms of practical skills, Risteard Pierse says he does not necessarily look for experience in a legal office because his firm trains its own secretaries. But he does emphasise that secretaries should have good word-processing skills and – a rare enough skill these days – must be able to spell.

'What we look for are the same skills that any secretary would have, along with an understanding of court procedures and the documentation required. On the conveyancing side, we'd look for a knowledge of the basic documentation used in property transactions', he says.

'Word-processing is very important. Even though most documents are standard, secretaries need to be able to adapt or adjust them accordingly. They need to be good document managers'.

High demand

Lesley Osborne stresses that legal secretaries need to have very fast and accurate typing skills. Her agency gives all candidates a typing test which measures both speed and accuracy. When looking at experience, she says that in a commercial office someone who has experience in a financial institution should be able to adapt to their new role fairly easily.

Good secretaries do come at a premium, particularly in urban areas where there are offices, so those with a high l of secretarial skill have of avenues to explore. ccording to Kelly Recruitment Services, the market is currently ing driven by the applicants themselves.

'Because there is a high mand, they are not only at salaries, they are also t the other benefits that an has to offer, like VHI, pen- job satisfaction', the comesman says.

The high demand for legal secretaries, coupled with inflated wage demands, is making it difficult for small practices, he says. 'We've come across juniors getting £14,000. For the smaller firms, that could become a crisis. They are going to need a secretary if they want expand, but they may not be able to afford it. It's a real example of the Celtic Tiger biting the small operator'.

The best and the rest

But the good news is that there are many very capable secretaries out there. Pierse and Associates advertised for a secretary last year and found the quality of applicants was very high. 'There are a lot of people out there with experience who want to come back to Ireland', the Kerry solicitor observes, 'and they are even prepared to take a pay cut to do that'.

But you may not have the time to go through a pile of CVs and sort the best from the rest, or you may not necessarily be able to assess who is worth interviewing and who is not. If that's the case, this is a job you can leave to an employment agency.

Osborne Recruitment, based in Dublin's Ely Place, provides a general secretarial recruitment service and specialises in legal secretaries. Its director, Lesley Osborne, worked in a recruitment agency in London for several years, and subsequently in a multinational in this country before opening her business 18 months ago.

She advises that any company that is considering approaching her or any other agency should first define the role and decide exactly what their requirements are. 'If a client comes to us and does not give us the correct information, it lessens our chances of selecting the right applicant', she says. 'Some positions may be more complex than you think, and other jobs may be less demanding, so you could end up with someone who is either far too busy or very bored'.

Osborne deals mainly with the Dublin market, where demand for legal secretaries is very high, and where turnover is also quite fast. 'It is not unusual to see movement in a two to three year period', she says.

This means that salaries are beginning to go up and companies are paying more now than they paid several years ago. For example, Osborne says that while the rule of thumb salary for a partner's secretary is £15-16,000, in some cases candidates are now being offered more than this. G

Portable

In the United States, they're called road warriors; here, they're just plain old mobile professionals. Whatever the label, there's an ever increasing number of people busily tapping away on their notebook computers on trains and buses, in waiting rooms and airport lounges and, most recently, even in court. Grainne Rothery finds out what's hot and what's not in laptop land

A growing tendency to work outside a fixed base has turned portable communications and computer equipment into essential tools for maintaining productivity while on the road or away from the traditional office. In the bad old days, such equipment was prohibitively expensive for most people and was never quite as good as their non-portable equivalents. Now, almost everyone seems to have a mobile phone firmly wedged to one ear, while the number of people with notebook computers is also on the up: an estimated 18% of PCs sold in Ireland last year were of the portable kind.

Of course, there's still a considerable price to be paid for mobility. Paul Foley, managing director of Croft Computers, one of Toshiba's Irish distributors, says that notebook computers generally cost around a third more than similarly equipped desktop PCs. However, that extra expense can normally be justified by anyone who spends a lot of time on the move and needs to have constant access to computer files.

Aggressive pricing

And prospective purchasers can look forward to aggressive pricing from manufacturers over the coming months which could see the cost of notebook computers falling by as much as 20% by the summer. According to Dell's notebook product marketing manager, Stephen Dignan, the best pricing for these computers should be available by April or May.

There's even more good news. Portable computers use special low voltage processor chips which require less power than their desktop counterparts. In the past, notebook manufacturers would often wait up to a year before Intel (the main processor manufacturer) introduced mobile processors to match the desktop ones.

According to Catherine Boyhan, manager of Gateway's portable products unit for Europe, Intel is currently intent on narrowing the gap between launching equivalent processors for desktop and portable machines. The mobile version of the recently launched Pentium II chip should be out by the middle of this year. 'By the end of the year, most new notebook computers should include Pentium II chips', says Boyhan. 'This will provide better performance and should reduce the amount of battery life required'.

'In the past, there were two big penalties for buying a portable computer and these have considerably reduced over the past couple of years', says Paul Foley. 'First of all, the specification was normally around six to nine months behind that of the desktop computer. This has been reduced to a delay of around three months. The other major drawback was price. Two years ago, portable machines were around double the price of similarly powerful desktop computers; now you'll pay around 30% extra for portability'.

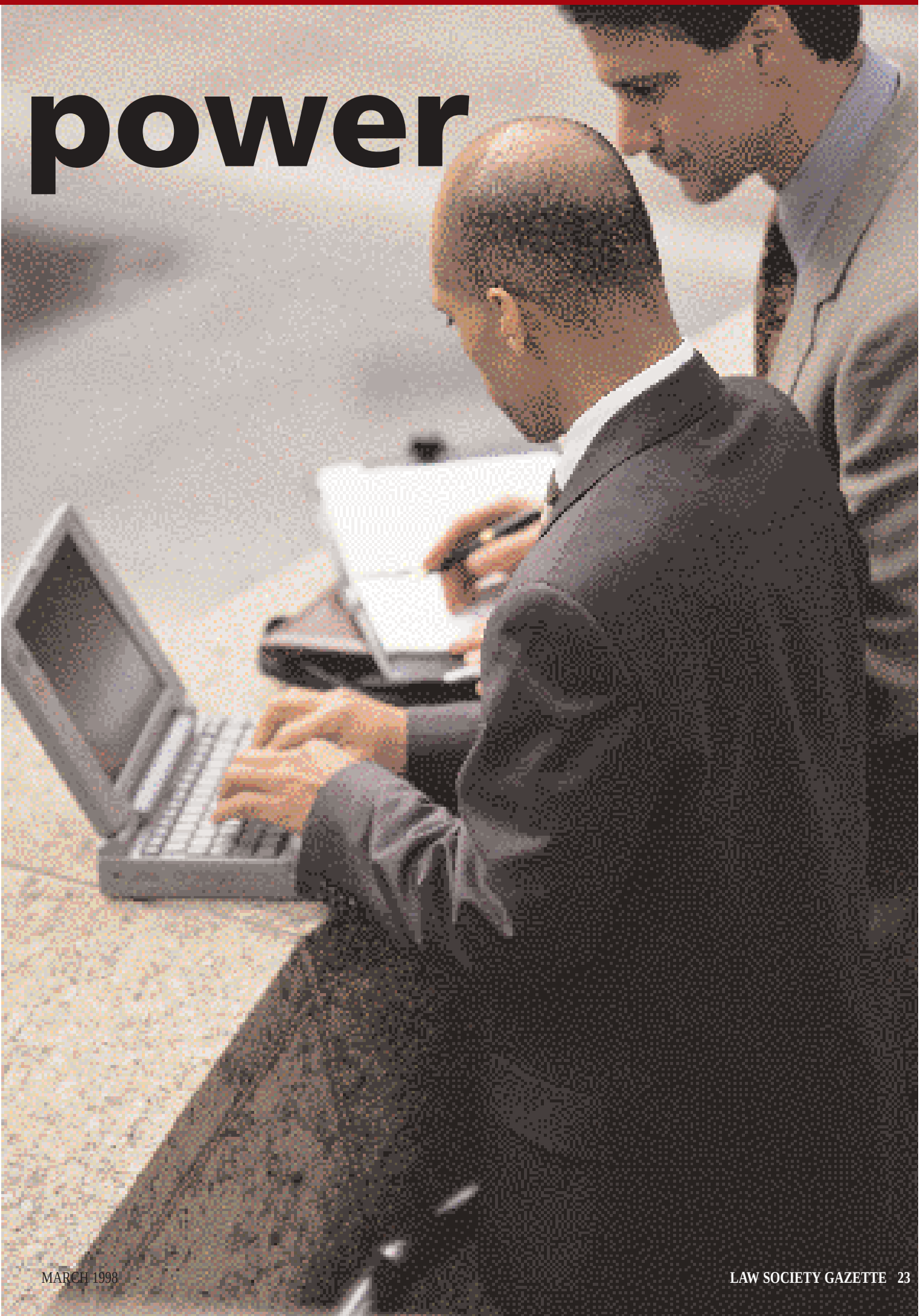
These days portable computers are so powerful that many people are buying them to replace their desktop machines rather than simply as a supplement to the office workhorse. Gavin Reynolds, marketing strategist in IBM's personal systems group, says that the mobile market is set to grow significantly over the coming months. 'Portables can now do everything that desktops can. People realise this and are now buying notebook machines instead of desktops', he says.

Apart from the sheer convenience of computers that can be used on the move, notebooks are now objects of desire, reflecting a certain lifestyle. 'Given a choice between a large desktop PC and an equally powerful computer the size of a telephone book, most people would tend to go for the neat small box', says Billy Guy, joint managing director of Business Management Systems, another Irish distributor for Toshiba. 'Although the smaller box is more expensive, you must consider the value of paying the extra money. That value includes being able to take data and files with you – even into court in the case of solicitors'.

What you need to look for

When choosing a notebook computer, a number of considerations must be taken account in addition to the price and processor speed. Weight has to be near the top of the list for anyone who is lugging the machine around on a regular basis. Most of the current generation of notebooks weigh a minimum of 3 kg, which is still relatively heavy. Catherine Boyhan says that manufacturers are now making a conscious effort to reduce the weight of notebooks by using lighter materials in the computer casing. New battery technology, meanwhile, is also expected to lighten the load.

power



Another important issue is battery power: if you don't have access to a power point for long periods of time, sufficient battery life is a must. The average is between three and four hours. Many industry experts point out that there has been little real improvement in battery technology over the last five years when compared with all the other components of a laptop. However, the demands on batteries have increased substantially over the last few years, with the widespread inclusion of power-hungry elements such as larger screens, faster CD-ROM drives, huge hard disks and ever-expanding RAM.

The two main kinds of battery currently available are Nickel Metal Hydride (NiMH) and Lithium Ion. While cheaper than Lithium Ion batteries, NiMH cells are not as efficient and are prone to degradation if they are not completely discharged before recharging.

If power really is a problem, it is possible to buy an extra battery to use as a replacement if you do run out. However, at around £200 a shot, this is an expensive option. There have been vast improvements in power management technologies over the last few years and some portables are now able to conserve battery power by switching off or going into sleep mode when not in use for a certain amount of time. The use of Pentium II processors, together with smart batteries and power management features, are expected to help increase battery life to between six and seven hours.

Meanwhile, a new kind of battery technology called Lithium Polymer is currently being developed and is expected to be available in portables by the end of 1999. Lithium Polymer has higher energy density and lower levels of self-discharge than Lithium Ion, and these qualities will help the batteries to last longer. Most revolutionary, however, is the fact that the material can be moulded into any shape. The batteries can therefore be designed to fit into any spare areas within the notebook casing. Billy Guy even points out that in the future a portable's battery could actually be the computer casing.

The kind of screen and its size are also critical elements of a notebook computer. At the moment, the standard screen size is 12.1 inches, while 13.3 inches is available on some premium models. It is still possible to get smaller screens, but the larger ones are easier on the eyes over prolonged periods. According to Catherine Boyhan, a 14.1 inch screen is now available from a small number of manufacturers, while Dell's Stephen Dignan says that screens could eventually be as large as 16 or 17 inches. Although they are easier to read, larger screens have the downsides of being more expensive and heavier than smaller displays.

Almost all portables now have colour screens. The most common types currently available are active matrix (TFT) and passive matrix (SNT). Because the technology used in the former allows the display to update quicker, it offers enhanced picture quality. Passive matrix screens can sometimes appear to be a bit washed out, although there have been vast improvements in this technology in the last few years. Visibility and viewing angles are generally better with the TFT screens. However, those who have confidential information on their screens often prefer the more limited viewing angles provided by passive matrix screens.

Traditionally, the limited size of notebook computers has left very little room for expansion slots to plug in peripherals like printers, modems and extra disk drives. Most notebooks now, however, have at least one slot for credit card-sized PC cards, which can be used to add fax/modems, network interfaces, GSM cards or extra hard disks.

The majority of high-end portables now have CD-ROM drives. Quite a lot of legal information is now available on CD-ROM so having such a drive may be useful, particularly if the portable is going to be your only computer. Digital versatile disks (DVD) drives have also started to appear in notebooks and should continue to do so throughout 1998.

DVD allows for the storage of massive quantities of information: entire films can be stored on a single disk. DVD drives are backward compatible and can therefore still read CD-ROM disks. 'DVD will emerge as the multimedia choice for notebooks and will become mainstream by the end of this year', predicts Dell's Stephen Dignan.

Notebook manufacturers are expected to continue to try to improve on the current keyboards, which cannot include separate numeric keypads because of the limited amount of space available. 'There have been various attempts to fit standard keyboards into smaller spaces', says Billy Guy. 'The fold-up keyboard was tried but didn't work. Voice recognition is an option because it is now relatively affordable and the levels of accuracy have greatly improved. However, if you're working in public areas you obviously lose any privacy if you're talking to your computer'.

With all these improvements in portable computer technology, notebooks look set to become faster, lighter, cheaper and more powerful over the coming year or two. It's always tempting to wait for the next technology to come along before buying, but if PC developments continue at the same pace as they have until now, there'll always be something a bit bigger and better just around the corner.

The launch of the new Pentium II PCs will encourage the development of new software which will operate exclusively on that processor. According to Stephen Dignan, the current generation of Pentiums with MMX technology will be obsolete within a year. That said, most computers are used primarily for writing documents and spreadsheets and for accessing e-mail, and such activities could all be carried out quite efficiently on a relatively low spec machine.

As one manufacturer puts it, no amount of extra processing power will help you write any faster. G

Grainne Rothery is a freelance journalist specialising in technology issues.

THE MINIMUM SPECIFICATIONS YOU NEED

According to the manufacturers, the following is the minimum specification for a good portable machine capable of running word-processing software, spreadsheet and communications package.

Pentium 166 with MMX
16 Mb of RAM – 32 Mb if possible. It's worth buying as much RAM as you can afford as it will make a considerable difference to the machine's performance.
1 Gb of hard disk space (2 Gb or 3 Gb if possible)
12.1 inch TFT screen with a maximum resolution of 800 x 600
Quad or six speed CD-ROM drive
Floppy disk drive
Lithium Ion battery
Two PC card expansion slots
Windows 95 with Office 97

This package should cost around £1,600 or £1,700.

Casting of

The complex provisions dealing with foreign bank accounts and and the taxation of resident individuals can leave you all at sea. Kevin Maguire steers a steady course through the tax treatment of offshore acounts and the penalties for non-compliance

Recent revelations that Charles Haughey and other prominent individuals evaded tax by using secret offshore accounts sparked a massive wave of public protest. In the course of its investigations into payments to politicians, the Dunnes Tribunal, chaired by Justice McCracken, uncovered a tax evasion scheme where Irish taxpayers' money was deposited without the knowledge of the Revenue Commissioners, in a Cayman Islands bank. The Cayman bank, in turn, deposited those funds in its own name with banks in this state, but the cash was used for the original Irish taxpayers' benefit.

Justice McCracken considered the whole scheme to be 'a very ingenious system whereby Irish depositors could have the money offshore, with no record of their deposits in Ireland, and yet obtain an interest rate which was only one-eighth of 1% less than they would have obtained had they deposited it themselves in an Irish bank'.

Clearly there was impropriety in respect of the original deposits, the operation of the offshore accounts and the interest earned by them. But who can legitimately avoid tax by using offshore accounts and how does the treatment of domestic and foreign accounts compare?

A number of factors determine an individual's Irish tax liability and the extent of that liability. In addition to their residence and the income's territorial source, three other factors have an impact: the concepts of residence and ordinary residence; the individual's domicile; and double taxation relief.

Residence and domicile

Part 34 of the *Taxes Consolidation Act, 1997* (TCA) determines an individual's residence and ordinary resident status. An individual is resident in the state if he is present in the state for 183 days or more in a year of assessment, or if he is present in the state for a total of 280 days in two consecutive years of assessment. An individual becomes ordinarily resident after three consecutive years of residency. This status lasts until three consecutive years of non-residency in the state have elapsed.

Domicile has always been important from a taxation point of view. Most individuals are domiciled in the place where they are born and reside throughout their lives. A change in domicile must be evidenced by a change in residence along with an intention to stay permanently in the new place of residence.

Section 18 TCA provides for the taxation of income except certain dividends and PAYE. The section provides that individuals are taxable on Irish income whether or not they are resident in the state. It also provides for the taxation of foreign income, but section 71 TCA provides relief for 'any person who satisfies the Revenue Commissioners that he is not domiciled in the state, or that, being a citizen of Ireland, he is not ordinarily resident in the state'. That person is not liable to Irish income tax on foreign income, except from the UK, provided it is not received in the state. This is known as 'the remittance basis of taxation'. Therefore, anyone resident in the state who is not entitled to the remittance basis of taxation is liable on all Irish and foreign income, including interest from a foreign bank account.

Double taxation

Any double taxation agreements (DTA) to which Ireland is a party have the force of law and take precedence over domestic legislation in case of conflict. These agreements are designed to save an individual from paying tax on the same income in two jurisdictions. They give relief for tax paid in another jurisdiction either by specifying that credit for tax suffered abroad will be given against one's Irish tax liability, or that income is taxable only in the country where the recipient resides. Interest is generally taxable in the country of residence only.

Ireland has DTAs with most of its major trading partners, but there are many jurisdictions with which we have no agreements, for example, the Channel Islands, the Cayman Islands and the Isle of Man. Unilateral relief is given on income from jurisdictions with which we have no agreements. This operates by assessing for Irish income tax only the interest from the account after foreign tax is deducted. This is not as favourable to the taxpayer as a DTA.

Irish residents

It is irrelevant to an Irish taxpayer whether the income is from an account in Dublin, Douglas or elsewhere because it is still liable for Irish tax. But the tax return depends on a number of factors: whether double taxation relief is available under an agreement or unilaterally; the

ff the tax net

interest paid; and the fact that domestic and foreign interest attract different rates.

Domestic deposits are liable at 26%, even if the taxpayer is paying 48% on other income. PRSI and levies are paid on the gross interest. Special savings accounts are taxed at 15% and are not liable to levies or PRSI. Foreign source income is liable at 48%, and for PRSI and levies, whether or not it is subject to a DTA. As it is the investment's after-tax return which is important, it is necessary to balance the tax liability against different jurisdictions' interest rates and bank charges.

Disclosure obligations

Section 895 TCA provides that any resident who directly or indirectly opens a foreign bank account in relation to which he is the beneficial owner must make a return of income. This must include the bank's name and address, the date on which the account was opened, and the amount deposited.

This section also obliges banks and other agents who act in or in connection with the opening of a foreign bank account on behalf of a resident to make a return. This must specify the name and address of the resident, his tax number, the bank's name and address, the date opened, and the amount deposited.

Concealing the existence of, or income from, an offshore account is a failure to comply with the provisions relating to returns and their contents. Failure to deliver a return on time gives rise to an automatic surcharge on the assessable tax. This is graded, with a maximum payment calculated as the lesser of 10% of total assessable tax or £50,000. In addition to the automatic imposition of the surcharge, an individual will be exposed to interest charges on the late payment of tax.

Interest on late payments is 15% a year but where the late payment is attributable to 'the fraud or neglect of any person', the interest is 24% a year, calculated from 1 November in the year in which the tax was due to the actual date of payment.

An inspector can amend an assessment even if the tax has been paid. Where the return is a full and true disclosure of all necessary material facts, no assessment or amended assessment can be made after six years from the end of the tax year in which the return is made. But where full and true disclosure is not made, no time limit applies to amending an assessment.

In addition to the various financial penalties contained in sections 1052 and 1053 TCA, the defaulter runs a potentially more serious risk under section 1078. This makes it an offence to 'knowingly or willfully deliver any incorrect return, statement or accounts or knowingly or willfully furnish any incorrect information in connection with any tax'. The maximum penalty is £1,000 and/or 12 months' imprisonment on summary conviction, or £10,000 and/or five years on indictment.

Thus, a resident who fails to fully disclose income from a foreign account is indefinitely open to a reassessment, a 10% surcharge, interest at the rate of 24% a year from 1 November in that tax year until final payment, fines and even imprisonment.

Anti-avoidance provisions

The anti-avoidance provisions contained in section 806 TCA are designed to prevent ordinarily resident individuals from avoiding tax through offshore structures such as a company or a trust. This section deems income from such a structure to be that of anyone with 'power to enjoy' that income. It does not apply where the Revenue Commissioners are satisfied that the relevant operations were effected for genuine business reasons.

Section 821 TCA provides that ordinarily resident individuals are taxable in the same way as residents. As individuals pay tax on Irish income regardless of residence, the impact of the section is to make the foreign income of non-residents with ordinary residence status liable for Irish tax. But the section exempts foreign employment income and 'other income of an individual which in any year of assessment does not exceed £3,000'.

This £3,000 limit is important. Where it is not exceeded, the ordinarily resident individual is not liable for tax on that income. But if it is if exceeded, the entire other income, including any foreign interest, is taxable, not just that portion over the specified limit.

The section refers to 'other income', making no distinction between foreign and domestic. But as it was designed to catch foreign income, the Revenue view is that Irish income is not included in the £3,000 limit, as this is taxable anyway. As foreign employment income is excluded, the section can only apply to foreign investment income.

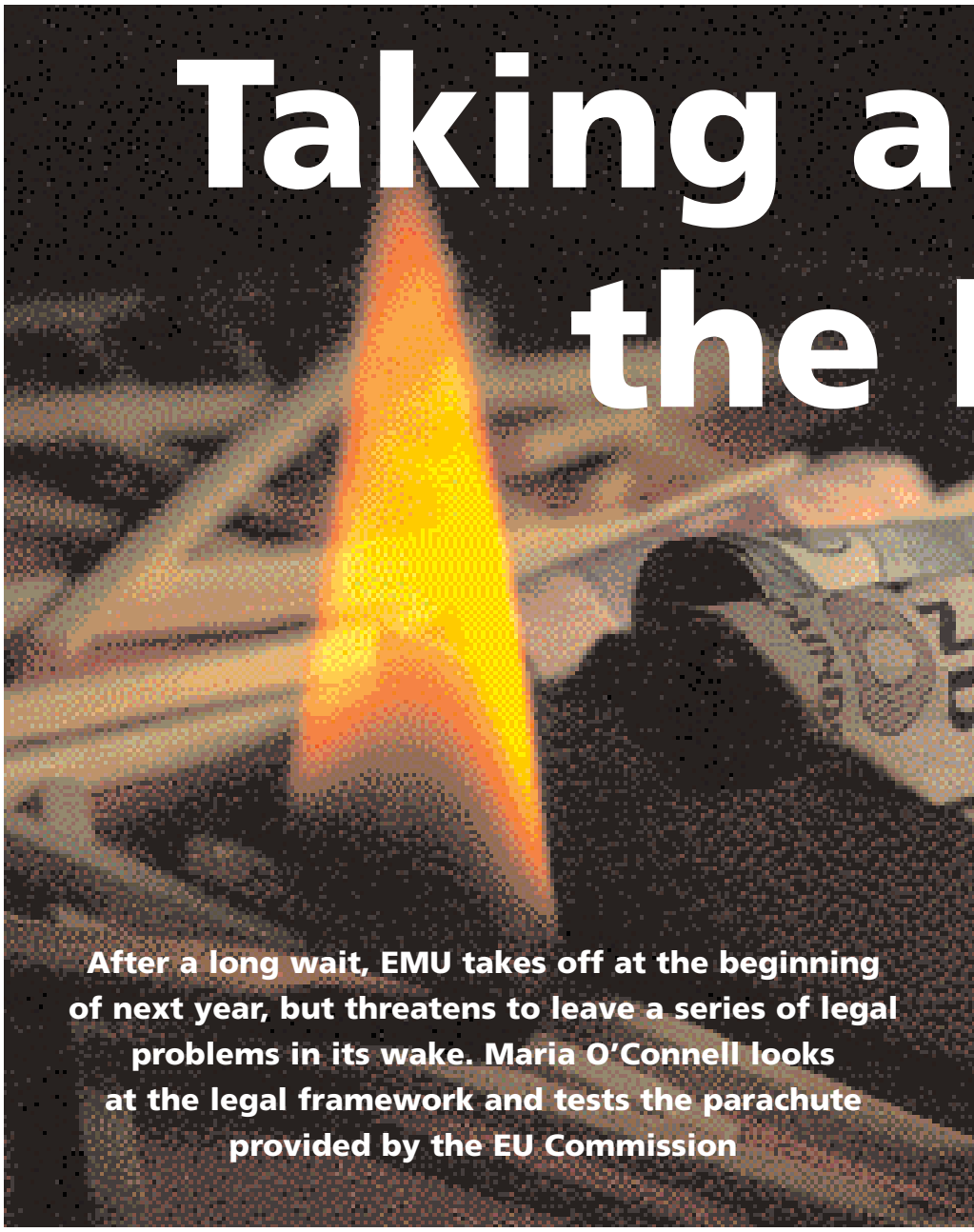
However, the treatment of UK source investment income and the applicability of the remittance basis of taxation in the context of section 821 is less clear. Section 71 provides relief to certain individuals in respect of foreign income taxable under section 18. If it is more than £3,000, the foreign investment income of an ordinarily resident individual will be taxable under section 18. Therefore, there is no reason why the remittance basis of taxation should not apply to income taxable under that section by the application of section 821.

Irish income is taxable irrespective of residence; UK income is not. The exclusion of UK income from an otherwise 'foreign' treatment arises only in the context of excluding it from the relief afforded to other foreign income under the remittance basis of taxation. Therefore, if the application of section 18 is unrelieved, section 821 will apply and UK investment income will be taxable; however, if relieved, section 821 will not apply and the UK income will not be taxable. I believe, then, that UK investment income is properly taken into account in calculating the £3,000 limit.

Offshore accounts are an effective means of avoiding liability to Irish income tax for those individuals who are not liable to income tax in the state on income arising outside the state. A resident individual who is not domiciled in the state, or who is a citizen who is not ordinarily resident in the state, can avoid liability to Irish tax provided the income arises to a non-UK foreign bank account and is not received in the state. Non-residents who are ordinarily resident in the state can avoid liability to Irish tax in respect of income arising from a foreign bank account provided the individual's total foreign investment income, including interest income, does not exceed £3,000. Where it does exceed £3,000, liability can be avoided if it is not UK source income, is not received in the state, and the individual is not domiciled in the state. G

Kevin Maguire is a Dublin-based barrister and an associate of the Institute of Taxation in Ireland.

Taking a the



After a long wait, EMU takes off at the beginning of next year, but threatens to leave a series of legal problems in its wake. Maria O'Connell looks at the legal framework and tests the parachute provided by the EU Commission

On 16 October 1996, the European Commission published draft legislation and some provisions for the introduction of the Euro. This took the form of a proposal for Council regulations. In Dublin on the following 12 December, the Economic and Finance Ministers' Council endorsed the text of the two draft regulations, and a legal framework for the Euro was born.

The object of the proposals was to establish legal certainty for using the Euro before stage three of European monetary union (EMU) began. Regulations are binding in their entirety and are directly applicable in Member States, that is, the EU's entire territory. The regulations take their names from the relevant articles of the EU treaties.

Article 235 regulation

This regulation is designed to:

- Confirm the continuity of contracts which may be denominated in national currencies or in European currency units (ECU) and will extend beyond 1 January 1999
- Determine conversion rates and the technical rules for establishing them, including rounding provisions
- Provide for replacing ECUs with the Euro on a one-for-one basis.

Article 3: Continuity of contracts

If a contract becomes impossible to perform for either commercial or other reasons, it is said to be frustrated. The effect of the Euro's introduction into Ireland would suggest that any contracts denominated in the Irish currency may be frustrated because they clearly cannot be paid in that currency beyond 1 January 2002.

The objective of the Article 235 regulation is to introduce certainty on this fundamental issue. The regulation will clearly provide that the Euro's introduction will not give a party to a contract the power to unilaterally alter or terminate it on the grounds of frustration based on an incorrect denomination of currency.

It does not limit the freedom to contract – that is, parties should be free if they wish when entering contracts, or reviewing or varying existing bargains, to agree that they can be varied or terminated with the introduction of the single currency.

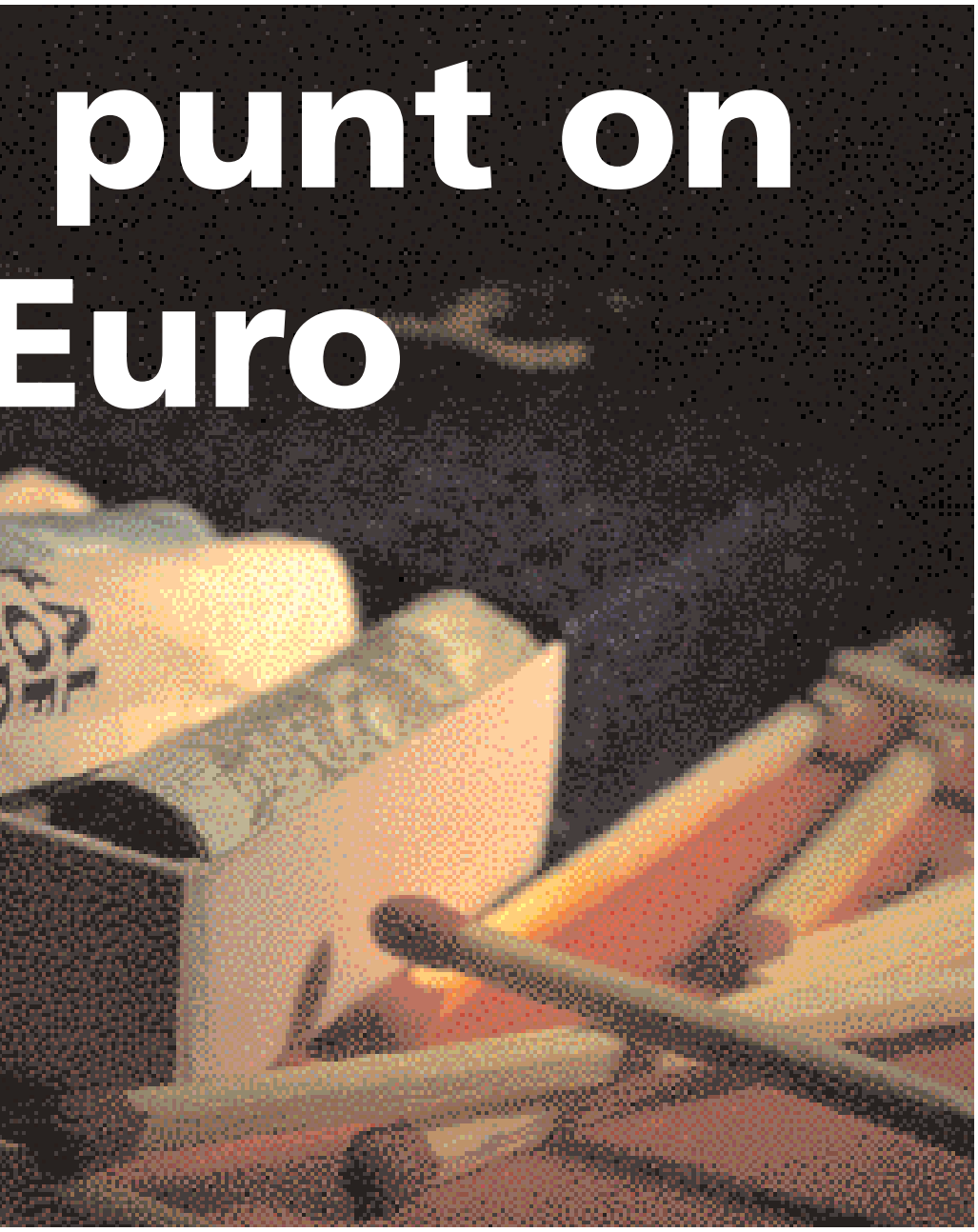
Certain principles of international law may be applied in these circumstances:

- One recognises that every state has sovereignty over its own currency and it is a subprinciple that every other state must recognise that. The fact that contracts stipulate that payment is to be made in Irish currency and that our currency will change to Euros suggests that we are entitled to pay for services in Euros, which will be recognised as legal tender in the country
- A second principle provides that debts denominated in a country's currency are an obligation to pay the nominal amount of the debt in legal tender at the time of payment according to that state's laws. To minimise any difficulties here, it is certain that jurisdictions outside of the EU will introduce their own legislation to ensure that the frustration/continuity situation is decided once and for all. A working group of lawyers in New York is currently dealing with the issue and they will almost certainly have legislation ready for introduction by the end of the year, before the transition period for the Euro.

'Force majeure' and 'change of circumstances' clauses

These clauses may be inserted into contracts to excuse the parties from performing their duties and obligations in certain circumstances. The Euro's introduction should not frustrate a contract unless both contracting parties clearly want to discharge or excuse performance under a contract containing one or both of these clauses.

punt on Euro



PIC: ROSLYN BYRNE

The regulation's current draft may not be strong enough in its language to provide for automatic continuity and so there is a small risk of contracts being frustrated. But the Council has made it clear that this draft merely establishes the legal framework for the Euro's introduction and its final form will possibly be more detailed in relation to continuity of contracts.

Articles 4 and 5: conversion and rounding

Article 4 states that conversion rates are to be adopted as one Euro expressed in terms of each national currency to six significant figures. When converting from Euros to the national currency, it is necessary to multiply by the conversion rate and not divide by the reciprocal rate.

Article 5 sets out the sums to be paid or accounted for when rounding takes place after conversion to the Euro. It sets out what happens when rounding up or down, but it does not set out the consequences of this. For example, what happens when rounding the share capital of a company? When rounding down, it may have legal implications as Irish companies are not allowed to reduce their share capital without applying to the High Court. Conversely, when rounding up, it may cause trouble in relation to reserves for capitalisation.

Article 109 regulation

This regulation is designed to define monetary law provisions for Member States. During the proposed three-year transition period, starting on 1 January 1999 and ending at the latest on 31 December 2001, the Member States' national currencies will be redefined as subdivisions of the Euro.

During the three-year transition period national currencies will continue to exist, but only as fractions of the Euro and not as currencies in their own right. This does seem to raise some issues regarding acts that should be performed under legal instruments which specify the use of the national currency. These will continue to be performed during the transition period in national currencies unless the parties actually agree to convert the payments into Euros.

So the replacement of the national currencies by the Euro on 1 January 1999 will not impact on legal instruments. That is to say, references to the national currencies will not – unlike the ECU – be automatically replaced by reference to the Euro. This replacement will only occur at the end of the transition period on 31 December 2001.

During the transitional period the Euro should be looked on as the umbrella currency, with all of the European currencies as being fractions of it. All assets and liabilities should therefore be looked on as Euro assets or liabilities, whether expressed as that or not.

In practical terms, any attempt at Euro compliance until 31 December 2001 is over and above legal requirements. The 'compulsion' does not begin until 1 January 2002. The Article 109 regulation also deals with Euro banknotes and coins and sets out the timeframe – 1 January 2002 – as the latest date on which Member States can issue coins which comply with the technical specifications laid down in accordance with the treaty.

Banknotes and coins denominated in national currency units will remain legal tender in the territorial limits until 1 July 2002. This period may be shortened by national law, but that is unlikely as six months would be considered quite a short period for the general public to familiarise itself with the new banknotes and coins and the relationship to the former national currencies. G

Maria O'Connell is Legal Manager at the Standard Life Assurance Company in Dublin.

Making your

The Law Society has just finished crunching the numbers from its first-ever practice comparison survey. In the first of two articles, Barry O'Halloran details the results and finds that benchmarking is not just a buzz word

Are you overworked and underpaid? Do you have too few staff or too many? And most importantly of all, are you getting the financial reward you deserve for all that hard work?

The results of the Law Society's first-ever practice comparison survey may hold some of the answers to these questions. Last year, 26 firms replied to a request from the Practice Management Committee to provide information on their businesses so that the Society could come up with a picture of how the profession was faring in all sectors and areas.

The objective was to allow all member firms to measure or benchmark themselves against similar practices and work out how they could improve their profitability and growth prospects.

While the Law Society's Finance and Administration Director Cillian MacDomhnaill (who co-ordinated the survey) emphasises that 26 sets of results could not provide a definitive picture of the profession, he says that the findings provide enough food for thought to justify a more complete study this year.

The survey focused on the following areas:

- Practice size, location and premises tenure
- Personnel (fee-earning and non-fee-earning) recruitment, remuneration and benefits
- Partnership structure
- Market structure: that is, revenue per hour, revenue type in terms of fees and number of clients
- Market profile: that is, private, commercial etc
- Finance and accounting structure
- Expenditure and profits.

Earnings and hours

The average principal or partner works 46 hours a week, while assistants and associates clock in 37 hours. But partners and principals get more leave, averaging 23 days a year against 21 for their assistants and associates. Most firms give privilege days. **Table 1** shows the average remuneration (profits and bonuses are included, but pensions are not).

Very few firms gave any benefits in kind: fewer than one in four (23%) offered a car and only 4% offered disability/VHI. The other benefits in kind offered were VHI (12%), pension (15%), death benefit (8%), and others (16%).

Staffing

On the personnel side, the survey found that some firms had up to three fee-earning staff (partners, principals, assistants, apprentices) compared with non-fee-earners. At the other end of the scale, some firms had only one quarter as many non-fee-earners to fee-earners (see **Table 2**). Only 15% of firms reported a turnover in either staff grade, while 27% hired new staff in 1996 and 15% took on new people last year (see **Tables 3 and 4**).

Half the partnerships questioned said they had a written partnership agreement, while 20% said they charged for goodwill on admitting new external partners or partners promoted from within. No firm distinguished between senior and junior partners, and only 8% had salaried partners.

Income

Defending personal injury (PI) actions proved to the biggest earner for the participating firms, with average firm turnover from this amounting to £76,467, while the average case in this area earned £7,061. Taking on PI cases proved to be less lucrative, turning over £65,367 on average and making just £2,343 per client. More firms acted for plaintiffs than defendants: 81% as opposed to 62% (see **Table 5**).

Residential conveyancing chalked up the second highest average turnover coming in at £69,137. This probably reflects the housing

TABLE 1 ANNUAL REMUNERATION (INCL PROFIT, BONUSES BUT EXCLUDING PENSIONS ETC)

		Median	
	25	50	75
Partners	£46,234	£82,500	£105,873
Principal with no assistants	£13,000	£40,000	£65,000
Principal with assistants	£33,750	£62,500	£155,000
Assistant/associate solicitor	£18,000	£19,000	£22,325

Note: The median is the middle value in the range. The upper and lower points represent 75% and 25% respectively, that is, the median for the top and bottom halves of the sample

r benchmark

REVENUE/INCOME SUMMARY TABLE

Service	Average turnover	% firms providing service	Average % of total revenue of service provider	Average % change in revenue in 12 mths	Average number of clients	Average revenue per client
Trust and probate	£39,006	69%	10%	35%	21	£1,536
Conveyancing–residential	£69,137	85%	22%	27%	86	£1,509
Conveyancing–commercial	£26,988	65%	7%	34%	9	£6,060
Conveyancing–farm	£20,432	38%	3%	13%	14	£748
Commercial law	£21,916	35%	3%	-9%	8	£2,752
Criminal law	£2,191	35%	0%	-16%	30	£113
Family law	£8,621	54%	2%	21%	6	£783
Employment law	£1,938	19%	0%	84%	4	£456
Licensing law	£9,654	31%	1%	36%	4	£1,310
EU law	-	-	-	-	-	-
Constitutional law	£10,000	4%	0%	-5%	1	£10,000
Debt collection	£6,278	54%	1%	8%	10	£1,067
Personal injury–defence	£76,467	62%	18%	13%	7	£7,061
Personal injury–plaintiff	£65,367	81%	20%	15%	28	£2,343
Health and safety	-	-	-	-	-	-
Environmental law	£25,000	4%	0%	100%	1	£25,000
Arbitration	£10,000	4%	0%	50%	1	£10,000
Town planning	£37,650	8%	1%	25%	1	£37,650
Litigation (non-PI)	£31,884	46%	5%	35%	11	£1,746
Road traffic acts	£52,436	31%	6%	36%	14	£367
Legal aid	£3,136	27%	0%	5%	21	£146
Taxation	£4,217	15%	0%	41%	6	£3,472

boom as revenue from this sector increased by 27% over the year. Nearly all firms provided this service, which on average accounted for 22% of all business.

Arbitration proved to have the second highest growth rate at 50%, but only a small number of practices were involved in this area, which contributed £10,000 to turnover. Interestingly, it gave the highest per-client return, earning £10,000 for each individual, an honour it shared with constitutional law.

Criminal law gave the poorest returns per client at £113. Revenue from this area fell by 16% last year and it accounted for just £2,191 in turnover and just 3% of revenue. But this did not deter 35% of practices from working in criminal law.

Earnings from commercial law were also down (**Table 5** shows a drop of 9% in revenue from this area, which contributed £21,916 to average turnover). Once again, 35% of firms were active in this sector.

Employment law made the lowest contribution to average turnover at £1,938 but showed the highest growth rate, increasing revenue by 84%. Labour law made £456 per client for the 19% of firms involved in this sector.

When it came to clients, private individuals contributed a massive 73% to turnover, followed by the services industry at 16% and manufacturing at 12% (see **Table 6**). The Government made the lowest contribution, accounting for just 2% of all business done by the participating firms.

Financial management

On the question of financial management, 58% of firms said they compiled management accounts. Of these, 40% compiled them monthly, 20% quarterly and 40% annually. Only 15% of firms valued work in progress and just 4% did this on the basis of time recording.

Table 7 shows the length of time taken from the first consultation to issue of the final bill for various types of work.

Do not adjust your practice

MacDomhnaill emphasises that no-one should make any radical changes to their business on the basis of these figures, as the 26 practices which took part could not be regarded as representative of the profession as a whole.

	Billing time average month
Conveyancing	3
Personal injury – defence	23
Personal injury – plaintiff	26
Litigation (non PI)	25
Commercial	7
Other	7

Also, the study was originally meant to be carried out across nine sub-categories, made up of various-sized practices in Dublin, other urban centres and rural areas. Unfortunately, the small number of respondents made it impossible to do this.

So is there any point to this exercise at all? According to Peter Coyne, director of InterCompany Comparisons, the independent third party which compiled and analysed the data, more information from more practices is needed before a clear picture emerges of the profession. But he argues that the benefits will be seen down the road.

'It is literally the start of a process', he says. 'By the end of the third or the fourth year, you will be able to see patterns and trends emerging, and you will have a much better idea of how you are performing, of sales and the cost of sales.

'At that stage, you will find that people will want to know the results so they can see how their business did in comparison with other similar operations over the previous year', he adds.

In global terms, Irish businesses and professions are trailing behind everyone else

when it comes to compiling this kind of information. InterCompany Comparison's sister operation in Britain does around 200 reports a year. These not only analyse a range of different sectors, but also provide detailed financial profiles of all types of business activity.

Coyne explains that the theory behind inter-business comparisons is that it allows professionals to build up a model based on the information gathered from across their particular sector. This in turn allows them to keep up with technical developments, look at the general running of their business, and link sales with particular costs so they can assess whether or not they are getting the best return for their own and their staff's efforts.

'It is increasingly important for people to stop and reflect on how their business is run, and to look at things like staffing levels and rates of pay. Obviously, some people are good, intuitive, business people, but most of us still need this kind of information, otherwise you are just going along on a wing and a prayer', Coyne argues.

Even with the small sample that took part in this survey, Coyne found wide differences between practices. For example, even though partners and principals were putting in an average of 46 hours a week, he encountered some solicitors who were working 65-hour weeks, and so were not getting the same return for their efforts.

He argues that these surveys will be a real chance for solicitors to compare themselves with their peers in a non-competitive way, and hopefully make changes which will increase efficiency and more importantly, profitability.

'The problem with the legal profession is that to outsiders it looks very much like a close-knit group that's almost cliquish in some ways. But the reality is that many people within the profession are isolated and have no way of knowing how well they are doing', he says. 'You have 1,200 one-man operations out there who need this data'.

The Law Society intends to carry out its second practice comparison survey this year. Once and more firms begin to take part, it will not be too long before members see tangible benefits from this exercise. Next month we will examine expenditure and profits. G

AVERAGE PERCENTAGE TURNOVER ATTRIBUTABLE TO THE FOLLOWING CATEGORIES FOR FIRMS IN THOSE SECTORS

	Average
Private individuals	73%
Professionals (accountants, architects etc)	8%
Corporate – manufacturing	12%
Corporate – services	16%
Institutional (schools, hospitals etc)	4%
Government	2%
Financial services	5%
Foreign – UK	5%
Foreign – elsewhere	2%

Council report

Report on Council meeting held on 11 December 1997

1. Army deafness cases

The President reported that, in an interview on *Morning Ireland*, the Director General had indicated that the Society was prepared to meet the Minister for Defence to discuss the growing controversy in relation to army deafness cases and, in particular, the focus which was being placed on legal costs. A meeting had been held on the previous Tuesday with representatives of 40 solicitors' firms which were handling a substantial number of these cases. On the same afternoon, the President, Senior Vice President, Director General and Chairman of the Litigation Committee had met the Chief State Solicitor and two senior representatives of the Department of Defence. The Society's representatives had strenuously defended the legal profession and had urged that the State should approach the defence of these cases in a more sensible fashion rather than continuing to deny liability in every case and then settling at a very late stage. It was clear, however, that the Minister's aim was to secure a 50% reduction in solicitors' fees. Although there was no question of agreement on this, it was agreed that a Joint Working Group should be established to examine how the overall cost of these cases to the taxpayer could be reduced. With reference to criticism of solicitor advertising by the Minister and also by the Taoiseach in the Dáil, the President said he proposed in a parchment speech that afternoon to make the points that advertising had been imposed on the profession by politicians, only a small percentage of solicitors' firms engaged in it, and that the Society would be happy to revisit this whole question with the Government. The Council indicated its full support for the views expressed by the President.

2. SI 348 of 1997

The President noted with satisfaction the success of the Society's lobbying for a new Superior Court rule. This had the effect that the rules on disclosure and admission of reports of statements, contained in SI 348 of 1997, would only apply to High Court proceedings which were instituted and to reports or statements coming into existence on or after 1 September 1997. A sub-committee of the Superior Court Rules Committee comprising Mr Justice Johnson, Mr Justice Lynch, Gordon Holmes and Mr E Marray had been established to explore the other deep concerns of the Law Society and Bar Council. The President hoped that this meeting would be held soon and that the main problems with SI 348 of 1997 would be rectified.

3. Eligibility of solicitors as judges of High and Supreme Courts

Geraldine Clarke reported that the working group was beginning to finalise its conclusions. A compromise was emerging in relation to the contentious issue of whether the elevation of judges in the Circuit Court to the High Court should be allowed to continue. She assured Michael Carroll that the Law Society representatives would not concede on the question of eligibility of corporate and public service solicitors for appointment although the working group was deeply divided on this and it was impossible to predict what recommendation would be made to the Minister.

4. Action plans

The President referred to a summary of the action plans for committees which had been circulated. He said that, at an all-day meeting of the Co-ordination Committee in mid-January, an action plan for the Council would be drafted.

5. Denham Working Group on Courts Service

The Director General reported that the working group had recently considered the question of the establishment of special drugs courts and a submission has been made by the Criminal Law Committee. Another issue on which the working group would have to report to the Minister in the Spring was that of the length of court vacations. The *Courts Service Bill* had been introduced in the Seanad. There were certain concerns regarding the future role of the county registrars in the new Court Service. The Council reconfirmed its full backing for the county registrars and its belief that their role in the future should be an enhanced one and certainly not one that was reduced in any way.

6. Investment intermediaries and investor compensation

The Deputy Director General, Mary Keane, gave a detailed report to the Council in relation to a meeting which she and Michael V O'Mahony had with representatives of the Department of Justice on the impact of the proposed *Investor Compensation Bill* on the Society's Compensation Fund. Both sides were in agreement that, as far as possible, the Compensation Fund should not be exposed as a 'mark' for clients of investment business firms, which were either operated by or involved a solicitor who, effectively, was offering services other than those of a solicitor. In addition, the potentially enormous cost and monitoring implications of the Society becoming an 'approved professional body' within the meaning of the *Investment Intermediaries Act* should be avoided if possible. Ms Keane and Mr O'Mahony have put to the Department of Justice a proposal which would protect both investment business clients and the Compensation Fund. The views of the Department of Finance on this would also have to be sought. The President said that McCann FitzGerald had been engaged on a professional basis to advise the Society on these complicated legal issues.

7. Insurance

The Chairman of the Compensation Fund Committee, Gerard Griffin, said that the Society had received a quotation on favourable terms for a very substantial level of insurance for the

LAW SOCIETY OF IRELAND

ARBITRATION SEMINAR

VENUE

Jury's Hotel, Western Road, Cork

DATE & TIME

Friday, 20 March 1998 9.00 am to 1.00 pm

A light continental breakfast will be available between 8.00 am and 8.45 am.

PROGRAMME

Introduction by Chairman	- Frank Daly
ARBITRATION	- How does a party get to arbitration - Arbitration schemes - Statutory arbitration - Advantages & disadvantages of arbitration
ARBITRATION CLAUSES & APPOINTMENT OF ARBITRATOR	- Drafting arbitration clause pre-dispute - Drafting arbitration clause post-dispute - Appointment of arbitrator
POWER OF ARBITRATOR	- Section 19 of the *Arbitration Act, 1954* - Attendance of witnesses - Procedural issues
CONTROL BY THE COURTS	- Section 22 of the *Arbitration Act, 1954* - Case stated - Section 5 of the *Arbitration Act, 1980*
ENFORCEMENT & CHALLENGING AWARD	- Rules of the Superior Court - Power of court to remit award - Power of court to set aside award
ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES	- Conciliation - Mediation - Mini Trials
COSTS	- Power of the arbitrator - Power of the court
PANEL DISCUSSION	

SPEAKERS INCLUDE

Solicitors	Timothy Bouchier-Hayes, McCann FitzGerald Bernard Gogarty, Smyth & Son Frank Murphy, Gleeson McGrath Baldwin
Legal cost accountant	Robert Connon, Cyril O'Neill & Co

APPLICATION FORM: ARBITRATION SEMINAR

Name _____ DX _____

Firm _____ Phone _____

Address _____ Fax _____

Year(s) Qualified _____

Fee: £60 per person

Please reserve _____ place(s) for me on the above seminar

I enclose cheque £_____

Please return to: Mary Lynch, Law Society, Blackhall Place, Dublin 7
Closing date for applications: Monday, 16 March 1998.

Compensation Fund. He noted that with the current balances in the fund, together with the insurance, in the coming year there would be a total cover of £14.5 million. The Council approved the proposal for insurance cover.

8. Education

The Chairman of the Education Committee, Owen Binchy, reported that the committee was currently considering the appointment of independent persons to the Board of Examiners for the FE1. He also reported that, in respect of the most recent FE1 examination, 59 candidates had successfully taken the examination, out of a total of 249 applicants.

9. Finance

The Chairman of the Finance Committee, Ward McEllin, sought and obtained the Council's approval for an increase in the practising certificates fee in line with inflation of 1.8% representing a £10 increase in the registration fee for solicitors qualified more than three years, from £555 to £565, and an increase of £7 for solicitors qualified less than three years, from £390 to £397.

PRACTICE DIRECTION

Personal injury actions to be tried at country venues

In an effort to provide speedy hearings for short cases – a duration of one day or less – involving an assessment of damages only, the following provisions shall apply:

1. Such cases will, on the application of the plaintiff, be listed for trial on the Wednesday, Thursday and Friday of the last week of each sitting
2. Applications may be made in respect of any such case which has been set down for trial regardless of whether or not it has appeared in the published list
3. Applications for such listing *must* be made to the presiding judge at the call-over in Dublin which precedes the hearings in each country venue
4. This direction shall take effect in respect of all trials at country venues from Easter term 1998 onwards. Applications for the listing of such cases at the Easter sessions should therefore be made at the call-over lists to be taken during the current law term.

Frederick Morris
President of the High Court

PRACTICE NOTE

Joint bank accounts

The implications of *Lynch v Burke* on probate tax

The Taxation Committee has received a query concerning probate tax on joint accounts in light of the Supreme Court decision in the case of *Mary Lynch v Burke and Allied Irish Banks plc* (1996 1 ILRM).

When receiving instructions concerning wills, practitioners should enquire as to the existence of any joint account, the purpose to which any such account was set up and to whom the monies are intended to pass on death.

Similar enquiries should be made on death (prior to completing the Inland Revenue Affidavit) to ascertain whether a clear intention has been shown or alternatively whether a presumption of advancement or a presumption of resulting trust applies. The effect of the *Lynch v Burke* decision is that a presumption of resulting trust would not be applied if it would be inequitable given the weight of evidence indicating an intention to benefit the surviving joint account holder.

If the circumstances do not involve a presumption of advancement (for example, a surviving spouse or child) and there is no evidence of intention to rebut the presumption of resulting trust, then the joint bank account will form part of the deceased's estate and will be subject to probate tax (and should be inserted in Part 3 of the Inland Revenue Affidavit).

If the probate tax is not discharged within nine months of the date of death, interest becomes payable.

Where a joint bank account passes by survivorship, no probate tax will be payable. In this instance, the details of the account should be inserted in Part 5 (Question 7) of the Inland Revenue Affidavit.

Taxation Committee

Capital gains tax: development land

Practitioners are reminded that the new 20% rate for capital gains tax does not extend to disposals, which includes gifts, of development land which continues to be taxable at 40%. The fact that there is no planning permission or that the land is not even zoned for development does not necessarily mean it cannot be treated as 'development land' for the purposes of capital gains tax. Land is deemed to be development land where the consideration for the disposal, or the market value at the time of disposal, exceeds the current use-value of the land. 'Current use value' is the value which the land would have were it to be sterilised for material development. Solicitors are referred to section 648 of the *Taxes Consolidation Act, 1997*.

Taxation Committee

NOTICE

Solicitors' Benevolent Association

Notice is hereby given that the 134th Annual General Meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Wednesday 1 April 1998 at 12.30 pm.

1. To consider the annual report and accounts for the year ended 30 November 1997
2. To elect directors
3. To propose the following resolutions:
   That the rules of the association be altered as follows:
   i) By the deletion of 'twenty' in Rule 4 and the substitution therefor of the words 'five hundred'.
   ii) By the deletion of 'of whom at least ten shall be metropolitan and the remainder provincial directors' in Rule 6.
   iii) By the insertion of a new Rule 11A of the following:
   'All grants payable to beneficiaries shall be voted on and approved at monthly meetings of the directors'.
   iv) By the insertion of a new Rule 23B of the following:
   'The directors shall have power to borrow, on behalf of the association, by way of overdraft, term loan, loan account or otherwise, from the association's bankers, with interest in the category of the accommodation granted, such amount of money either at one time or from time to time as it may deem proper, such borrowings to be effected in the name of the association and to give security for such borrowings and the interest thereon by the issue of bills of exchange promissory notes or other obligations or securities of the association or by mortgage or charge upon all or any part of the property of the association and thereupon the trustees shall at the direction of the directors make all such dispositions of the property of the association or any part thereof and enter into such agreements in relation thereto as the directors may deem proper for giving such security.'
4. To deal with other matters appropriate to a general meeting.

Geraldine Pearse, Secretary

Notes: *Resolution (i):* This resolution is to increase life membership subscription from £20 to £500. *Resolution (ii):* This resolution is to abolish the distinction between metropolitan and provincial directors. *Resolution (iii):* This resolution authorises the directors to approve grants to beneficiaries on a monthly basis. *Resolution (iv):* This resolution gives the directors power to borrow money from its bank.

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

Acquired Rights Directive case law (part 2)

This is the second part of Gavin Barrett's analysis of recent case law on the *Acquired Rights Directive* (see *Gazette*, January/February, page 29)

***Henke v Gemeinde Schierke and Verwaltungsgemeinschaft Brocken* (Case C-298/94) 15 October 1996 [1997] 1 CMLR 373**

This was a further case in which a brake was applied by the European Court of Justice to the continued expansion of the interpretation given to the concept of 'undertaking'. Henke argued that her employment relationship had been transferred by virtue of the *Acquired Rights Directive* when the municipal authority for which she worked amalgamated with others to form a larger administrative unit. It was held by the ECJ, however, that, in the light of the wording and the purpose of the directive, the directive did not apply to transfers of this nature. Nor would the fact that an undertaking carried out non-administrative activities bring it within the terms of the directive so long as these activities were of a merely ancillary nature.

Particular stress was laid by the court in this case on the reference in the first recital of the directive's preamble to the aim of protecting workers against changes deriving from economic trends at national and at Community level – and the apparent inapplicability of this rationale to reorganisations of public administrations. It is interesting to note, by way of contrast, that this argument did not prevail in the earlier *Dr Sophie Redmond Stichting* case, however, although it seems to have been equally applicable there, in that the undertaking transferred was a foundation for drug addicts – an entity one would have expected to be equally unaffected by economic trends at national or at European level.

***Rotsart de Hertsaing v J Benoidt SA (in liquidation) and Anor* (Case C-305/94) 14 November 1996 [1997] AER 40**

The facts of this case were that Benoidt purportedly dismissed the claimant after having transferred the undertaking in which she worked to a new owner. The issue (referred to the European Court of Justice by the Labour Court in Brussels) thus arose of whether the employment of a worker in a transferred undertaking could be maintained with the business transferor. In a straightforward application of its earlier decision in *D'Urso v Ercole Marelli Elettromeccanica Generale SpA* [1991] ECR I-4105, it was held by the European Court of Justice that the answer to this question was 'no'. Contracts of employment were automatically transferred by the mere fact of the transfer. The court emphasised that the occurrence of this automatic transfer of the contract of employment was not affected by the contrary intention of the transferor and/or the transferee.

Nor, the court added, would the refusal of the transferee to fulfil his obligations under the newly-transferred contract of employment affect matters. The employment relationship would nonetheless be transferred notwithstanding any such refusal.

Finally, basing its reasoning in part on a literal reading of the directive, the court went on to hold that the business transferee and business transferor had no option even to postpone this transfer of the employment relationship: the transfer of employment contracts was required by the directive to occur on the very date of the transfer.

In the wake of *Benoidt*, it is clearer than ever before that the idea that business transferees can rely on the transferor of a business to tidy up staff arrangements subsequent to the actual execution of the business transfer is a recipe for legal problems. Personnel arrangements must either be attended to by the transferor before the carrying out of the transfer or, alternatively, the transferee must be prepared to deal with them subsequently, whether armed with indemnities from the transferor or otherwise.

***Süzen v Zehnacker Gebäudereinigung GmbH Krankenhausservice and Lefarth GmbH* (Case C-13/95) 11 March 1997 [1997] 1 CMLR 768**

This case has been one of the most important decisions yet made by the ECJ in relation to the *Acquired Rights Directive* – and also one of the most controversial. Süzen worked for Zehnacker who held the contract to clean a school in Germany. They lost this contract to Lefarth (who took over the contract without any accompanying transfer of assets or staff) and in consequence of this Süzen was dismissed. Süzen claimed that her legal rights had been violated. The question came before the European Court of Justice as to whether this situation involved the transfer of an undertaking for the purposes of the *Acquired Rights Directive*.

It should be pointed out that in a previous controversial ruling – in *Schmidt v Spar und Leihkasse der früheren Ämter Bordesholm, Kiel und Cronshagen* [1994] ECR 1311 – it had been held by the court that in circumstances such as those in that case the contracting-out by an undertaking (the business concerned in the *Schmidt* case was a bank) of the responsibility to carry out cleaning operations in one of its branches did attract the application of the directive. This was so, according to the court, even if

before the contracting-out such work was carried out by only one single employee (such as Frau Schmidt). This was still the transfer of an undertaking for the purposes of the directive.

In the light of *Schmidt*, it might have been anticipated that a situation involving a change of contractors – such as that in the *Süzen* case – also involved the transfer of an undertaking. However, in a ruling which some have found difficult to reconcile with the earlier case, the court in *Süzen* held that the directive does not apply to the situation of the termination of a contract with one undertaking and the entry into a new contract with another undertaking if 'there is no concomitant transfer from one undertaking to the other of significant tangible or intangible assets or taking over by the new employer of a major part of the workforce, in terms of their numbers and skills, assigned by his predecessor to the performance of the contract'.

The quoted words may hold the key to reconciling *Süzen* with *Schmidt*. For in *Schmidt* the entire workforce assigned to the activity of cleaning was taken over (albeit that this workforce consisted of only one individual, Frau Schmidt). In *Süzen*, the workforce was not taken over. The contrary was in fact the case: all of the employees assigned by the original contractor to the task of cleaning the school were dismissed. It is arguable that if the facts of *Süzen* were slightly different, and if the entirety or even a major part of the workforce assigned to the task of cleaning was taken over by the new contractor (as it was in the *Schmidt* case), then a transfer would have been held to have occurred for the purposes of the directive.

At any rate, just as *Merkx* should not be taken as authority for the proposition that a change of a dealership automatically involves the transfer of an undertaking, I would argue that *Süzen* should not be taken as authority for the point that a switch of contractors automatically does not involve the transfer of an undertaking. On the contrary, a switch-of-contractors situation, just like a contracting-out situation, may or may not involve the transfer of an undertaking. It depends on the facts. The ECJ has always emphasised that in determining whether the transfer of an undertaking has occurred it is necessary to take account of all the factual circumstances of the transaction in question.

Pedro Burdalo Trevejo and others v Fondo de Garantía Salarial (Case C-33/95) 17 April 1997

The facts of *Trevejo*, the final case which I propose to examine here, were that the claimants were employees of very long service (ranging from 24 to 42 years) who worked in a textile undertaking until they were dismissed for redundancy. By that time, however, the undertaking for which they worked had been transferred not once, but on several occasions. The Spanish *Fondo de Garantía Salarial* (which was responsible for making redundancy payments) now refused to take into account the claimants' service insofar as it dated from before 1978, the date of the first of these transfers. The claimants sought to invoke the benefit of the *Acquired Rights Directive*. However, it was held by the ECJ that the directive could not avail the claimants since it was of no relevance to transfers which took place before the directive had begun to produce legal effects in the Member State concerned.

For Irish employees, then, this case makes clear (to the extent which was not already evident) that the directive has no relevance insofar as concerns business transfers which occurred before 1979, the year in which the directive was required to be implemented into Irish law. Thus, the very broad definition given to the concept of a transfer by the Court of Justice will not avail an employee who seeks to rely on it in claiming unbroken continuity for the purposes of calculating his redundancy lump sum entitlements. The effects of a pre-1979 transfer here will thus have to be assessed by reference to the much more strictly interpreted relevant statutory provisions specifically provided for in the relevant legislation. G

Dr Gavin Barrett BL is Course Director at the Academy of European Law, Trier.

Conferences and seminars

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

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

Topic: *Tax and company law: relationship between parent and subsidiary*
Date: 9 October
Venue: Milan, Italy
Contact: Gerard Coll (tel: 01 6761924)

International European Law Unit, University of Liverpool
Topic: *Africa and international law*
Date: 27 June
Venue: Liverpool, UK
Contact: Dr Amazu Asouzu (tel: 0044 151 7943089)

Irish Centre for European Law
Topic: *Energy and resources law*
Date: 15-20 March
Venue: Cape Town, South Africa
Contact: Tel: 0044 171 6291206

Solicitors' European Group
Topic: *Private enforcement of articles 85 and 86 across Europe*
Date: 24 March
Venue: London, UK
Contact: Tel: 0044 171 3205791

Topic: *Energy liberalisation: EC law and Commission policy*
Date: 30 April
Venue: London, UK
Contact: Tel: 0044 171 3205791

Topic: *International anti-trust harmonisation initiatives*
Date: 21 May
Venue: London, UK
Contact: Tel: 0044 171 3205791

Topic: *Sport and competition law*
Date: 23 June
Venue: London, UK
Contact: Tel: 0044 171 3205791

Did British farmers' blockade of Irish beef violate EC law?

In late 1997, angry British farmers blockaded shipments of Irish beef destined for the UK. In a recent case, the Court of Justice ruled that France violated EC law when it failed to stop farmers from disrupting shipments of Spanish strawberries and Belgian tomatoes. Is Britain guilty of a similar violation?

Angry British farmers sought to pressure the British government into paying compensation for the BSE crisis by 'inspecting' Irish lorries at British ports and turning back those carrying Irish beef. Acts of vandalism occurred. In some instances, police witnessed the 'inspections' but failed to intervene. These protests threatened Ireland's £170 million beef trade with Britain.

A recent ECJ judgment may interest solicitors whose clients suffered financial losses in the recent blockade. In *Commission v French Republic*, the Court of Justice ruled that France violated European Community law when it failed to prevent private individuals from obstructing the free movement of agricultural products from other Member States. The finding of a violation of European Community law opens the door for an action against France for damages under principles laid down in *Francovich and Bonifaci v Italy*.

Does *Commission v France* suggest that a damage action can be brought against the United Kingdom for the recent blockade? This article takes a close look at the ruling in the French case and its implications for the recent UK blockade.

The farmers' protest

Since 1993, the European Commission had received complaints about the failure of French authorities to take adequate steps to prevent private individuals from obstructing the free movement of agricultural products from other Member States. A private organisation known as *Co-ordination Rurale* carried out many of the acts of obstruction. These acts included the interception of lorries and destruction of their cargo, violence against lorry drivers, and vandalism against French shops selling non-French produce. There were threats to wholesalers to supply only French products, the imposition of minimum selling prices, and organised checks of compliance. The campaign was conducted primarily against Spanish strawberries and Belgian tomatoes.

The Commission raised the matter with the French authorities. It suggested that France had failed to fulfil its obligations under the *EC Treaty* because it had not stopped the obstruction of agricultural products from other Member States. In 1994, the Commission gave France two months to submit its observations.

France responded that it had always condemned acts of vandalism and that it had taken preventive measures, including surveillance and the gathering of information. It noted a dramatic reduction in the number of such incidents. However, it admitted that 'unpredictable commando-type operations' carried out by 'small, highly-mobile groups' of French farmers made it extremely difficult for the French police to intervene successfully. This also explained the low rate of successful criminal prosecutions.

After another incident in 1995, the Commission took the next step in its enforcement action against France. It delivered a reasoned opinion which stated that France had failed to fulfil its obligations under the *EC Treaty*. The Commission gave France one month to correct its violation. France replied that it had adopted all measures available to it to ensure the free movement of goods and that its measures had substantially reduced the number of incidents. France identified criminal convictions against 24 farmers for acts of vandalism. France also assumed financial responsibility for the damages caused and stated its intention to expedite damage claims.

While the Commission awaited France's formal response to the reasoned opinion, protesters obstructed three lorries carrying fruit and vegetables from Spain. The police failed to intervene. The French Minister for Agriculture stated that although he condemned the acts of violence, he did not contemplate police intervention to stop it.

Shortly after these further acts of violence and the comments by the French Agriculture Minister, the Commission began proceedings before the Court of Justice.

Arguments of France and the Commission

The Commission argued that the interception of lorries, threats, and acts of vandalism – as well as the climate of insecurity created by these incidents – constituted an obstacle to intra-Community trade. According to the Commission, France had an obligation to prevent or stop such obstacles and had failed to do so. The continuation of such acts and the failure successfully to prosecute those responsible amounted to a failure by France to fulfil its obligations under the *EC Treaty*.

The Commission's argument was novel because private individuals were responsible for the obstacles to free movement. Article 30 of the *European Community Treaty* prohibits quantitative restrictions or 'measures' equivalent to quantitative restrictions. However, article 30 does not apply to purely private behaviour. While Member State liability does not require that the Member State issue 'laws' of a binding nature, some state involvement typically is required. In *Commission v French Republic*, the Commission sought to establish that a failure to prevent private individuals from obstructing the free movement of goods amounted to a violation of Community law by the Member State.

France argued that it had put into effect means to prevent the obstruction of the free movement of agricultural products. These methods were similar to steps taken to confront other types of illegal activity.

France conceded that the large number of lorries transporting agricultural products through France made it difficult to prevent all acts of violence. The small number of perpetrators involved and the highly-organised nature of the attacks made it impossible to successfully prosecute individuals in every case. The state compensated victims of violent attacks, and had paid out more than 17 million francs for acts occurring from 1993 though 1995.

The French government explained that the dissatisfaction of French farmers was due to the 'flooding' of French markets with Spanish agricultural products since the accession of Spain to the EU. This had led to a substantial fall in agricultural prices. A subsequent competitive devaluation of the peseta exacerbated the downward pressure on prices. The French government argued that it had taken all reasonable measures to facilitate creation of a single market in agricultural products, and to cope with the social disruption that had accompanied this.

Analysis by the ECJ

The court rejected all of France's arguments. It held that France had failed to fulfil its obligations under article 30 of the *EC Treaty*.

The court noted that the free movement of goods was one of the fundamental principles of the *EC Treaty*. Article 30, which imple-

mented the fundamental principle of free movement, prohibited quantitative restrictions and measures equivalent to quantitative restrictions. The latter prohibition was designed to eliminate all actual or potential, direct or indirect, barriers to intra-Community trade.

The court emphasised the effect on intra-Community trade, rather than its origin. The effect on intra-Community trade from a failure to prevent private acts of obstruction was the same as if the state had adopted positive measures to prevent the free flow of goods. The court stated that 'article 30 therefore does not prohibit solely measures emanating from the state', but also applied where a Member State failed to adopt measures to prevent obstacles to free movement caused by private parties. Article 30 required Member States 'to take all necessary and appropriate measures' to ensure that the principle of free movement is respected in its territory.

The court stated that Member States enjoyed a margin of discretion in adopting methods to ensure the free movement of goods. It was not for the court to prescribe particular steps to be taken by the Member State. However, the court did have an obligation to verify that the steps chosen by a Member State were adequate to ensure the free movement of goods.

The court concluded that France had not taken adequate steps to ensure the free flow of goods. The judgment stressed that the incidents of which the Commission complained had taken place regularly for more than ten years. France, therefore, had ample time to adopt the necessary measures to protect the free flow of goods. Nevertheless, repeated incidents occurred after the initial complaints from the European Commission. These incidents occurred in particular places and at particular times of year.

French police either were not present or did not intervene when incidents occurred, even when they substantially outnumbered the protesters. Numerous acts of vandalism had been filmed by TV crews, and the protesters were known to police. However, only a small number of prosecutions had been undertaken. The inaction on the part of French authorities created a climate of insecurity which had a deterrent effect on intra-Community trade as a whole, according to the court.

France's defence

The French government sought to justify the failure to take more serious steps to curb the obstacles to free movement. France argued that a more serious response could have worsened the situation and led to social conflict. It pointed to its reimbursement of financial losses caused by the disruptions in defence of its alleged violation of Community law. It explained the farmers' protests as being provoked by the depression of prices due to the influx of Spanish fruits and vegetables. The destabilisation of the French market was in some instances brought about by unfair practices on the part of Spain.

The court rejected all of these explanations. A general apprehension of internal difficulties did not justify France's manifestly ineffective efforts. Threat of serious disruption to public order might, in proper cases, justify non-intervention by the police. However, this could be relied upon only in particular incidents and not as a blanket excuse for a failure to intervene.

The mere payment of compensation to those injured by the obstruction of free movement did not excuse France's violation of EC law. Nor could France rely upon the economic difficulties posed to its agricultural markets by competition from Spanish fruits and vegetables. Even if Spain had engaged in unfair practices, this did not justify France's failure to fulfil its obligations under the treaty.

The court concluded that by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by private individuals, France had failed to fulfill its obligations under the *EC Treaty*.

British versus French protests

The protests in the United Kingdom are similar to those in *Commission v French Republic*. However, they differ in intensity and duration. Whereas the incidents in France occurred over a period of ten years, those in the UK began only in late 1997. Furthermore, the protests in the United Kingdom, by and large, were limited to ports of entry. The UK protests did not extend to retail and wholesale outlets for Irish beef in the UK.

The initial protests in the UK were not stopped by British police. However, news reports from early 1998 indicate that, in response to renewed blockades, British police intervened and prevented obstruction of lorries. Private farmers' organisations in the UK expressed sympathy for the protesters. However, it does not appear that these protests were organised by these organisations. Nor were there inflammatory statements by British Ministers. In sum, it appears the UK protests were not as egregious as those in France.

Nevertheless, *Commission v French Republic* represents an expansion of article 30 liability to include inaction on the part of a Member State. It may lay the foundation for a future finding of liability against the UK, if obstruction of Irish beef continues. The British government successfully intervened in *Commission v French Republic* to support the Commission's position. It may come to regret this stance. G

Bruce Carolan is head of the Department of Legal Studies at the Dublin Institute of Technology.

Recent developments in European law

COMPETITION

Fines

The Commission has announced new guidelines for fining companies which breach EU competition law. The basic fine will be determined according to (1) the gravity of the breach and (2) its duration.

1. Breaches will be classed as minor or serious or very serious. The corresponding fines will vary between 1,000 ECU and 20 million ECU
2. Breaches of between one to five years may attract an increase of up to 50% on the basic fine. Infringements of more than five years will attract an increase of up to 10% a year of the amount determined by the gravity criteria.

If there are aggravating or attenuating circumstances, the fine will be increased or reduced accordingly. No fine imposed is to exceed 10% of the worldwide turnover of the firms involved.

DIRECT EFFECT

National time limits

In *Magiorrian and Cunningham v Eastern Health and Social Services Board* (Case 246/96), 11 December 1997, the court examined the application of national limitation periods in direct effect cases. The applicants were nurses who had been the victims of indirect discrimination and were entitled to rely directly on article 119 of the treaty. The court had to decide for what time period they were entitled to recover the additional benefits which they should have received. It held that the direct effect of article 119 could be relied upon from 8 April 1976, the date of the judgment in *Defrenne v Sabena*, when article 119 was held to be directly effective. The UK authorities had sought to invoke a rule restricting claims of such benefits to two years before the date of a successful claim. The court held that such a rule would prevent them claiming benefits from 1976 to 1990 and thus effectively deny them a remedy. Thus, the court held that such a rule was contrary to Community law. The court distinguished its earlier rulings in *Steenhorst-Neerings and Johnson*.

In *Fantask and Others v Industrimisteriet* (Case 188/95), 2 December 1997, the court distinguished its decision in *Emmot*. It held that the Danish Government could rely on a five-year limitation period for actions for recovery of debts even where a directive had not been properly implemented.

Obligations of states pending implementation of a directive

The question of a state's obligation before a directive has been transposed arose in *Inter-Environnement Wallonie ASBL v Région Wallonne* (Case 129/96), 18 December 1997. The question arose in the context of directive 75/442 on waste. An order of the Walloon Regional Executive on waste which had been adopted during the implementation period was challenged on the basis of its incompatibility with the directive. Belgian law requires the validity of a measure to be assessed at the time of its adoption. The court looked to its earlier decisions holding that Member States are obliged by article 189 of the treaty and directives themselves to take all measures necessary to achieve the result prescribed by a directive. A Member State cannot be faulted for its failure to implement a directive until the end of the implementation period. However, during that period a Member State must refrain from taking any measure liable seriously to compromise the result prescribed by a directive.

EMPLOYMENT AND SOCIAL POLICY

Free movement of persons

In *Kalliope Schöning-Kougebetopoulou v Freie und Hansestadt Hamburg* (Case 15/96), 15 January 1998, the court considered the application of the free movement of persons provisions in article 18 and regulation 1612/68 to medical employment in the public service. The applicant wished to have her work experience in public service of another Member State taken into effect in determining her classification in a salary scale in the German public service. The court held that failing to take into account periods of time spent in the public service of other states was discriminatory to migrant workers. Article 48(4) did not apply, as the position in question was that of a doctor. The court therefore found that a clause in a collective agreement to this effect was null and void.

Free movement of workers: social advantages

In *H Meints v Minister van Landbouw, Natuurbeheer en Visserij* (Case 57/96), 27 November 1997, a state benefit in the form of a payment to agricultural workers whose contract of employment had been terminated as a result of the setting aside of land belonging to their former employer was held to be a social advantage under article 7(2) of regulation 1612/68. Thus, a Member State could not make such an advantage dependent on the condition that recipients be resident within its territory.

FAMILY LAW

Jurisdiction and enforcement of judgments

The Council of Ministers has reached agreement on a convention on the jurisdiction, recognition and enforcement of judgments in matrimonial matters. It provides that a couple of mixed nationality can divorce in the Member State where they reside. This will then be accepted throughout the EU. Ireland is allowed a transitional period and the UK has derogated from the provisions on child custody. The convention will come into force when it has been ratified by all the Member States.

LEGAL PROFESSION

Multi-disciplinary partnerships

Coopers & Lybrand, the international accountancy firm, has a law firm in Norway. In a recent Norwegian Supreme Court case, one of its partners sought to represent the Oslo local authority against Sparebanken, a client of Coopers & Lybrand auditing. Sparebanken threatened to end all its auditing and accounting business with Coopers & Lybrand unless its law firm refused to bring the case against it. The Coopers & Lybrand law firm then withdrew from the case. However, the partner concerned wished to continue with the case and resigned from Coopers & Lybrand in order to do so.

Acts passed in 1997

Appropriation Act, 1997
Number: 45/1997
Minister/Department:
Minister for Finance
Date enacted: 19/12/1997
Commencement date: 19/12/1997
Explan-memo: No

Bail Act, 1997
Number: 16/1997
Minister/Department:
Minister for Justice
Date enacted: 5/5/1997
Commencement date:
Commencement order/s to be made.
Explan-memo: Yes

Central Bank Act, 1997
Number: 8/1997
Minister/Department:
Minister for Finance
Date enacted: 31/3/1997
Commencement date: 9/4/1997
(per SI 150/1997)
Explan-memo: Yes

Chemical Weapons Act, 1997
Number: 28/1997
Minister/Department: Minister for Enterprise and Employment
Date enacted: 19/5/1997
Commencement date: 1/7/1997
(per SI 269/1997)
Explan-memo: Yes

Children Act, 1997
Number: 40/1997
Minister/Department:
Minister for Equality and Law Reform
Date enacted: 9/12/1997
Commencement date: 9/1/1998 for all sections – except s11 (insofar as it inserts ss20, 21, 22, 26, 28 and 29 into the *Guardianship of Infants Act, 1964*) and Part III, for which commencement order/s will be made (per s1 of the Act).
Explan-memo: Yes

Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997
Number: 17/1997
Minister/Department:
Minister for Finance
Date enacted: 5/5/1997
Commencement date: Dates to be appointed by resolution of either House of the Oireachtas (per s18 of the Act).
Explan-memo: Yes

Courts Act, 1997
Number: 6/1997
Minister/Department: Senator M Manning
Date enacted: 20/3/1997
Commencement date: 20/3/1997
Explan-memo: Yes

Courts (No 2) Act, 1997
Number: 43/1997
Personal author: Senator D Cassidy
Date enacted: 18/12/1997
Commencement date: 18/12/1997
Explan-memo: Explanatory and financial memo

Credit Union Act, 1997
Number: 15/1997
Minister/Department:
Minister of State at the Department of Enterprise and Employment
Date enacted: 3/5/1997
Commencement date: 1/10/1997 for all sections other than ss46-52, 68(1)(c), 120(5) and 122(1)(f) (per SI 403/1997).
Explan-memo: Yes

Criminal Justice (Miscellaneous Provisions) Act, 1997
Number: 4/1997
Minister/Department:
Minister for Justice
Date enacted: 4/3/1997
Commencement date: 4/3/1997 for all sections other than ss3-10, 12 and 18 which came into operation on 4/4/1997 (per s21 of the Act).
Explan-memo: Yes
Leg-implemented: Dir 91/308

Criminal Law Act, 1997
Number: 14/1997
Minister/Department:
Minister for Justice
Date enacted: 22/4/1997
Commencement date: 22/7/1997 (per s1 of the Act).
Explan-memo: Yes

Decommissioning Act, 1997
Number: 3/1997
Minister/Department:
Minister for Justice
Date enacted: 26/2/1997
Commencement date: 24/9/1997 for ss1, 2, 4, 7, 8 and 9 (per SI 397/1997); 4/9/1997 for s3(2)-s3(7) (per SI 398/1997).
Explan-memo: Yes

Dublin Docklands Development Authority Act, 1997
Number: 7/1997
Minister/Department:
Minister for the Environment
Date enacted: 27/3/1997
Commencement date: 27/3/1997 for ss1-7, 10, 14-17, 38(3) and 57; 1/5/1997 for remaining sections (per SI 135/1997).
Establishment Day: 1/5/1997 (per SI 136/1997).
Explan-memo: Yes

Electoral Act, 1997
Number: 25/1997
Minister/Department:
Minister for the Environment
Date enacted: 15/5/1997
Commencement date: Various – see s1 of the Act, SI 223/1997 and SI 245/1997.
Explan-memo: Yes, with *Electoral Bill, 1994*

European Parliament Elections Act, 1997
Number: 2/1997
Minister/Department:
Minister for the Environment
Date enacted: 24/2/1997
Commencement date: 21/4/1997
(per SI 163/1997).
Explan-memo: Yes

Europol Act, 1997
Number: 38/1997
Minister/Department:
Minister for Justice, Equality and Law Reform
Date enacted: 24/11/1997
Commencement date:
Commencement order/s to be made.
Explan-memo: Yes

Family Law (Miscellaneous Provisions) Act, 1997
Number: 18/1997
Minister/Department: Minister for Equality and Law Reform
Date enacted: 5/5/1997
Commencement date: 5/5/1997
Explan-memo: Yes

Finance Act, 1997
Number: 22/1997
Minister/Department:
Minister for Finance
Date enacted: 10/5/1997
Commencement date: Various – see Act. 1/9/1997 for ss101 and 113 (per SI 13/1997).
Explan-memo: With Bill as introduced in the Dáil; and with Bill as passed by the Dáil

Fisheries (Amendment) Act, 1997
Number: 23/1997
Minister/Department:
Senator M Manning
Date enacted: 14/5/1997
Commencement date:
Commencements order/s to be made.
Explan-memo: Yes

Fisheries (Commissions) Act, 1997
Number: 1/1997
Minister/Department:
Minister for the Marine
Date enacted: 12/2/1997
Commencement date: 12/2/1997. Date of validation of order: 21/2/1996 (per s2 of the Act).
Explan-memo: Yes

Freedom of Information Act, 1997
Number: 13/1997
Minister/Department:
Senator M Manning
Date enacted: 21/4/1997
Commencement date: 21/4/1998 (per s1(2) of the Act); commencement order to be made not later than 21/10/1998 in respect of para 1(3) of the First Schedule (per s1(3) of the Act).
Explan-memo: Yes

Health (Provision of Information) Act, 1997
Number: 9/1997
Minister/Department:
Senator M Manning
Date enacted: 1/4/1997
Commencement date: 1/4/1997
Explan-memo: Yes

Hepatitis C Compensation Tribunal Act, 1997
Number: 34/1997
Minister/Department:
Minister for Health
Date enacted: 21/5/1997
Commencement date: 1/11/1997 appointed as the establishment day (per SI 443/1997).
Explan-memo: No

Housing (Miscellaneous Provisions) Act, 1997
Number: 21/1997

Minister/Department:
Minister for the Environment
Date enacted: 7/5/1997
Commencement date: 1/7/1997 (per SI 247/1997).
Explan-memo: Yes

ICC Bank (Amendment) Act, 1997
Number: 32/1997
Minister/Department:
Minister for Finance
Date enacted: 21/5/1997
Commencement date: 21/5/1997
Explan-memo: Yes

International Development Association (Amendment) Act, 1997
Number: 19/1997
Minister/Department:
Minister for Finance
Date enacted: 7/5/1997
Commencement date: 7/5/1997
Explan-memo: Yes

Interpretation (Amendment) Act, 1997
Number: 36/1997
Minister/Department:
Minister for Justice, Equality and Law Reform
Date enacted: 4/11/1997
Commencement date: 4/11/1997
Explan-memo: No

Irish Film Board (Amendment) Act, 1997
Number: 44/1997
Minister/Department:
Minister for Arts, Heritage, Gaeltacht and the Islands
Date enacted: 18/12/1997
Commencement date: 18/12/1997
Explan-memo: Yes

Irish Takeover Panel Act, 1997
Number: 5/1997
Minister/Department:
Minister of State at the Department of Enterprise and Employment
Date enacted: 12/3/1997
Commencement date: 14/4/1997 for all sections other than ss5(3), 7(1), 7(2), 9-15 (per SI 158/1997). 1/7/1997 for ss5(3), 7(1), 7(2), 9-15 (per SI 255/1997).
Explan-memo: Yes

Licensing (Combating Drug Abuse) Act, 1997
Number: 33/1997
Minister/Department:
Minister for Justice
Date enacted: 21/5/1997
Commencement date: 21/6/1997 (per s22(4) of the Act).
Explan-memo: Yes

Litter Pollution Act, 1997
Number: 12/1997
Minister/Department:
Minister for the Environment
Date enacted: 18/4/1997
Commencement date: 1/7/1997 (per SI 213/1997).
Explan-memo: Yes

Local Government (Financial Provisions) Act, 1997
Number: 29/1997
Minister/Department:
Minister for the Environment
Date enacted: 20/5/1997
Commencement date: 1/7/1997 for all sections other than s7 (per SI 263/1997).
Explan-memo: Yes

Merchant Shipping (Commissioners of Irish Lights) Act, 1997
Number: 37/1997
Minister/Department:
Minister for the Marine
Date enacted: 18/11/1997
Commencement date: 18/11/1997
Explan-memo: Yes

National Cultural Institutions Act, 1997
Number: 11/1997
Minister/Department:
Senator M Manning
Date enacted: 2/4/1997
Commencement date: Various – see SI 222/1997 and SI 328/1997.
Explan-memo: Yes

Non-Fatal Offences against the Person Act, 1997
Number: 26/1997
Minister/Department:
Minister for Justice
Date enacted: 19/5/1997
Commencement date: 20/5/1997 for ss6, 7, 8, 10; 19/8/1997 for all other sections (per s31 of the Act)
Explan-memo: Yes

Organisation of Working Time Act, 1997
Number: 20/1997
Minister/Department:
Minister for Enterprise and Employment
Date enacted: 7/5/1997
Commencement date: 30/9/1997, 30/11/1997 and 1/3/1998 appointed for specified provisions of the Act (per SI 392/1997 – see SI).
Explan-memo: Yes
Leg-implemented: Dir 93/104

Prompt Payment of Accounts Act, 1997
Number: 31/1997
Minister/Department:
Minister for Enterprise and Employment
Date enacted: 21/5/1997
Commencement date: 2/1/1998 (per SI 239/1997).
Explan-memo: Yes

Public Service Management Act, 1997
Number: 27/1997
Minister/Department:
Senator M Manning
Date enacted: 19/5/1997
Commencement Date: 1/9/1997 (per SI 339/1997).
Explan-memo: Yes

Registration of Title (Amendment) Act, 1997
Number: 35/1997
Minister/Department:
Minister for Justice, Equality and Law Reform
Date enacted: 16/7/1997
Commencement date: 16/7/1997
Explan-memo: Yes

Scientific and Technological Education (Investment) Fund Act, 1997
Number: 46/1997
Personal author: Senator D Cassidy
Date enacted: 24/12/1997
Commencement date: 24/12/1997
Explan-memo: Explanatory and financial memo

Seventeenth Amendment of the Constitution Act, 1997
Minister/Department: Taoiseach
Date enacted: 14/11/1997
Commencement date: 14/11/1997
Explan-memo: Yes

Social Welfare Act, 1997
Number: 10/1997
Minister/Department:
Minister for Social Welfare
Date enacted: 2/4/1997
Commencement date: 2/4/1997 and various commencement dates – see Act and SI 161/1997, SI 162/1997, SI 195/1997, SI 248/1997, SI 250/1997, SI 435/1997, SI 437/1997, SI 490/1997, SI 493/1997
Explan-memo: Yes

Taxes Consolidation Act, 1997
Number: 39/1997
Minister/Department:
Minister for Finance
Date enacted: 30/11/1997
Commencement date: 6/4/1997 for specified provisions (per s1097 of the Act), and see Act for other commencement dates
Explan-memo: Yes, showing enactments repealed by the *Taxes Consolidation Act, 1997*, and sections of the Act in which those enactments are reproduced
Physical descrip: 2 v

Transfer of Sentenced Persons (Amendment) Act, 1997
Number: 41/1997
Personal author: Senator D Cassidy
Date enacted: 17/12/1997
Commencement date: 17/12/1997
Explan-memo: Explanatory and financial memo

Tribunals of Inquiry (Evidence) (Amendment) Act, 1997
Number: 42/1997
Minister/Department:
Minister for Justice, Equality and Law Reform
Date enacted: 18/12/1997
Commencement date: 18/12/1997
Explan-memo: Yes

Universities Act, 1997
Number: 24/1997
Minister/Department:
Minister for Education
Date enacted: 14/5/1997
Commencement date: 16/6/1997 (per SI 254/1997).
Explan-memo: Yes

Youth Work Act, 1997
Number: 30/1997
Minister/Department:
Minister of State at the Department of Education
Date enacted: 20/5/1997
Commencement date: 19/6/1997 (per SI 260/1997).
Explan-memo: Yes

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*"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.

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Tel: 01 -668 9788/9
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The Irish Kidney Association was formed in 1978 to:

1. Promote the general welfare of persons suffering kidney failure - financial and psychological.
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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.
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ILT digest

of legislation and superior court decisions

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ADMINISTRATIVE

Clarification and extension of Minister's powers

The Minister for Arts, Heritage, Gaeltacht and the Islands has presented a Bill which aims to:

- Clarify and extend the Minister's functions in relation to inland waterways and in relation to the provision of ferry services to inhabited offshore islands, and
- Confer on the Minister certain functions in relation to property ancillary to the Minister's other functions.

Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Bill, 1997

Commemorative pound coin authorised

Legislation has been put in place to allow the State to issue a commemorative £1 coin to mark the fiftieth anniversary of the United Nations. The proposed design features the UN logo together with a dove and the inscriptions 'Nations United for Peace' and '1945-1995'.

New Coinage (UN50 Commemorative One Pound) Order 1997 (SI no 442 of 1997) and *Coinage (Dimension and Design) Regulations 1997* (SI no 447 of 1997)

Prompt payments interest rate set

The rate of interest payable under the *Prompt Payment of Accounts Act, 1997* has been set at 0.0322% a day, which is equivalent to 11.75% a year. This figure will be reviewed on a six-monthly basis and may be amended as deemed appropriate.

Prompt Payment of Accounts Act, 1997 (Rate of Interest Penalty) Order 1997 (SI no 502 of 1997)

Further changes to daylight saving time

An order has been made with a view to implementing EU Directive 97/44/EC (of 22 July 1997) concerning daylight saving time in EU Member States, the effect of which is to vary the periods of winter time, and consequently summer time, provided for in s1(1)(c) of the *Standard Time (Amendment) Act, 1971*. The effects of the order will be:

- That summer time will begin one week later in 1998, 1999, 2000 and 2001
- That summer time will end one week later in 1999, and
- That that time of the change from winter time to summer time and vice versa will be at 1.00am (GMT) rather than 2.00am.

The order will not come into operation until it has been approved by a resolution of each of the Houses of the Oireachtas. For the previous order, covering the years 1995-1997, see (1995) 13 ILT 66.

Winter Time Order 1997 (SI no 484 of 1997)

AGRICULTURE

Update of law relating to plant breeders

The current law relating to the rights of plant breeders is set out in the *Plant Varieties (Proprietary Rights) Act, 1980*, based on the principles set out in the international *Convention for the protection of new varieties of plants* (the *UPOV convention*) adopted in 1961.

Under this convention, breeders are entitled to obtain royalties for reproduction of their plant material and protection against infringement. The *UPOV convention* was substantially revised in 1991 and legislation has been proposed which would, if passed, enable the State to ratify the 1991 *UPOV convention* by:

- Giving breeders greater control over their protected varieties of plants to take account of developments in plant breeding technology
- Extending the scope of protection to propagating material and harvested material
- Extending protection to the entire plant kingdom, and
- Allow the marketing of varieties for up to 12 months before an application for plant breeder's rights is submitted.

Plant Varieties (Proprietary Rights) (Amendment) Bill, 1997

BANKING

EMU changes at Central Bank

A Bill has been introduced which will, if passed:

- Bring the legislation governing the Central Bank of Ireland into conformity with certain provisions of the treaty establishing the European Community, the TEU, and other international agreements and protocols
- Provide for the institutional integration of the Central Bank into the European System of Central Banks and the European Central Bank.

Central Bank Bill, 1997

CRIMINAL

Co-operation with war crimes tribunals

A Bill has been presented which will, if passed, enable the State to fulfil its obligations to co-operate with:

- The war crimes tribunal established by resolution 827 (1993) of the United Nations Security Council relating to the former Yugoslavia
- The war crimes tribunal established by resolution 955 (1994) of the Security Council relating to Rwanda, and
- Any other tribunal or court

which might be established by the UN with a similar remit.

International War Crimes Tribunals Bill, 1997

Decommissioning Commission established

The Independent International Commission on Decommissioning was formally established by the Government and the government of the UK on 24 September 1997.

A series of SIs has been made providing for:

- The Commission itself in accordance with s4 of the *Decommissioning Act, 1997*
- The commencement of ss1, 2, 3(2-7), 4 and 7-9 of the *Decommissioning Act, 1997* on 24 September 1997, and
- Inviolability, exemptions, facilities, immunities, privileges and rights in relation to the Commission.

Decommissioning Act, 1997 *(Commencement) Order 1997*, Decommissioning Act, 1997 *(Section 3) (Commencement) Order 1997;* Decommissioning Act, 1997 *(Independent International Commission on Decommissioning) (Privileges and Immunities) Order 1997;* Decommissioning Act, 1997 *(Independent International Commission on Decommissioning) Regulations 1997* (SI nos 397-400 of 1997)

ELECTORS

Seanad representation for all third level institutions?

At present, representation of universities in the Seanad is confined to the University of Dublin and the National University of Ireland. A private member's Bill has been introduced which would, if passed:

- Group all institutions of higher education together as a constituency for the election of six members of Seanad Éireann
- Define institutes of higher education as including all existing universities, RTCs, DIT and recognised private colleges, with provision for the addition of other institutions which might be given degree-awarding status, and
- Provide for the proposed franchise to be extended to every student, employee and graduate of such institutions.

Seanad Electoral (Higher Education) Bill, 1997

EMPLOYMENT

Changes proposed to Sunday working

A private member's Bill has been presented which aims to increase protection for shop workers by making Sunday work optional as opposed to obligatory. If passed, the Bill will:

- Apply to shop businesses only
- Provide that an employee cannot be obliged to work on a Sunday without his or her consent
- Prevent discrimination against employees who refuse to work on Sunday
- Provide that at least time and a half shall be paid to employees who work on Sundays
- Ensure that the employer gives a minimum of four days' notice of the option to work before any one Sunday
- Provide that the employee must give at least three days' notice of his or her non-availability on the following Sunday, in default of which the employer may assume that the employee consents to work on the Sunday, and
- Provide for application to a Rights Commissioner by an aggrieved employee who may, if successful, be awarded a maximum of ten weeks' wages.

Protection of Workers (Shops) Bill, 1997

Employees must choose between remedies

- Such declarations which the applicant might have been entitled to were in aid of his common law remedy for damages and had no independent existence apart from it.

The applicant was employed by the respondent. In 1989, the applicant was informed that certain allegations were been made against him. He denied the allegations and a hearing was conducted before a disciplinary committee, at the conclusion of which the applicant was dismissed from his job. The applicant availed of an internal appeals procedure and appealed against the decision, but it was upheld. One week prior to the dismissal taking effect, the applicant informed the respondent of his intention to seek relief pursuant to the *Unfair Dismissals Act, 1977*. The applicant issued proceedings for wrongful dismissal and the respondent contended that the proceedings contravened the 1977 Act as that Act stated that employees had to choose between the 1977 Act or common law and that the applicant had already chosen. The court dismissed the applicant's appeal.

Parsons v Iarnród Eireann/Irish Rail (Supreme Court), 24 April 1997

Remedies for non-compliance with transfer of undertakings rules

The transfer of undertakings rules contained in the *Protection of Employment Act, 1977* and the *European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980* fail to provide adequate remedies for non-compliance. In view of the judgments of the Court of Justice of the European Communities in Case C-382/92 *Commission v UK*, 8 June 1984 (transfer of undertakings) and Case C-383/92 *Commission v UK*, 8 June 1984 (collective redundancies), this defect is likely to be held to be contrary to EC law. A Bill has been introduced which will provide, *inter alia*, if passed:

- A mechanism for reference of disputes in this area to a rights commissioner with a right of appeal to the Employment Appeals Tribunal
- For an appeal or a reference on a point of law to the High Court, and
- For a full range of compensatory remedies including re-instatement, re-engagement or up to two years' pay.

Employment Rights Protection Bill, 1997

GARDA SÍOCHÁNA

GRA amenable to judicial review

- The decisions of the Garda Representative Association are within the public domain and its activities are within the reach of judicial review.

The GRA was established under the *Garda Síochána Acts, 1923-1977* and 1978 regulations to represent members of the Garda Síochána in matters affecting their welfare and efficiency. A standing committee had power to regulate the membership of the GRA. A serious dispute arose when some members of the GRA took issue with its representation of its members and, in judicial review proceedings in 1994, Morris J dismissed a case brought against the GRA by several applicants, including those bringing the present action.

Bane v Garda Representative Association (Kelly J), 27 June 1997

HEALTH & SAFETY

New rules for medical services on ships

Regulations have been made, giving effect to Directive 92/29/EEC (of 31 March 1992), concerning

the minimum health and safety requirements for improved medical treatments on board sea-going vessels. The regulations:

- Make it obligatory to provide certain medical facilities on board sea-going vessels, and
- Provide for the establishment of a radio medical consultation service to seafarers.

European Communities (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) Regulations 1997 (SI no 506 of 1997)

INTERNATIONAL LAW

Sovereign immunity recognised for foreign state

- The trial judge was correct in his decision that the defendants were entitled to rely on sovereign immunity and to have the service of the proceedings issued against them set aside.

In May 1993, the High Court made an order pursuant to *Rules of the superior courts 1986*, o11, r1(f) on the *ex parte* application of the plaintiff allowing him to serve proceedings on the defendants out of the jurisdiction. In November 1994, that order was set aside pursuant to o12, r26. The plaintiff appealed to the Supreme Court against that decision. In the High Court, the defendants were found to have sovereign immunity from suit in Ireland. The plaintiff had claimed damages against the defendants for an alleged breach of his constitutional rights. He contended that the defendants had conspired against him in order to procure his arrest in the United Kingdom and so facilitate his extradition to Germany to face drugs charges. He was convicted in Germany, and sentenced to five years' imprisonment. He then issued proceedings claiming damages against the defendants on foot of their alleged conspiracy to entice him to the United Kingdom in order to facilitate his arrest and extradition to Germany. The defendants claimed sovereign immunity from suit.

Schmidt v the Home Secretary of the United Kingdom of Great Britain and Northern Ireland and Ors (Supreme Court), 24 April 1997

INVESTMENT

Interest and final repayment of government bonds to be separable

With effect from 1 January 1998, the Minister for Finance is be empowered to designate existing and future Irish government bonds as 'strippable'. This term involves allowing the separate holding of the right to receive each of the interest payments on a bond and the right to receive the final principal repayment of a bond. It will be possible to purchase and sell these rights separately and the stripping of bonds is to be carried out at the discretion of the holder. The legislative basis for this change is to be found in s5 of the *National Treasury Management Agency Act, 1990* and s54 of *the Finance Act, 1970*.

National Treasury Management Agency (Delegation of Functions) Order 1997 (SI no 456 of 1997)

LOCAL AUTHORITIES

Local authority must perform its licensing duties fairly

- The fact that salmon traders have to be licensed to engage in such a commercial activity is a potential interference with and restriction of their basic right to carry on lawful business
- Accordingly, when exercising its function to grant or refuse an application for a licence, the relevant Fisheries Board has to perform its duty fairly and reasonably.

The *Fisheries (Consolidation) Act, 1959* provides that it is necessary to obtain a licence from the respondent before one can engage in salmon dealing. The Act also provides that a certificate of fitness to hold such a licence has to be obtained from the District Court judge assigned to the area where the applicant carries on or proposes to carry on business. Section 159 of the Act states that where such a certificate has been obtained, the applicant should, within 28 days, apply to the respondent sending the certificate and application fee. The applicant was granted such a certificate and duly applied to the respondent for a licence. The respondent considered the application and, having regard to the fact that there were already several licensed dealers in the applicant's area, rejected the application. The applicant wrote to the respondent seeking more information and the respondent eventually replied that the applicant's certificate of fitness did not automatically entitle him to a licence and that the respondent had been entitled to take into account all relevant matters. The applicant sought an order of *certiorari* in respect of the respondent's refusal, an order of *mandamus* directing the respondent to consider the said application and a declaration that the respondent's decision was void. The respondent claimed that when a licence was granted, the dealer was obliged to keep a register which included details of all purchases and sales of salmon and trout. This register was then regularly checked by an official of the respondent. The respondent claimed that this placed a burden on its resources and, for this reason, it had a policy of restricting the number of licences granted. The court granted the applicant the relief sought.

Tiernan v the North Western Regional Fisheries Board (Barr J), 12 May 1997

PLANNING & DEVELOPMENT

Measures proposed against rogue developers

A Bill has been introduced which, if passed, would:

- Deny planning permission to an applicant if the applicant (or a connected person) has failed to complete works which were a condition of the granting of planning permission for a previous development by them, and
- Allow the Minister for the Environment to regulate for the provision of information by applicants in relation to previous planning applications and whether or not they were completed in accordance with the conditions attached to them.

Local Government (Planning and Development) (No 2) Bill, 1997

PRACTICE & PROCEDURE

District Court clerks

On 31 October 1997, McCracken J handed down a decision to the effect that the Minister for Justice, Equality and Law Reform could not validly delegate to his or her officials the statutory power to appoint District Court clerks and that a particular appointment purportedly so made was invalid. It followed from this that an application made to the clerk in question for the issue of a summons, and the issue of a summons by her, were also invalid and that no prosecution for a criminal offence could proceed on foot of such an invalid summons. A Bill has been introduced which aims to provide:

- That acts done by officials in connection with the appointment of District Court clerks shall be deemed to have been done personally by the Minister, and
- For the issue of fresh summonses in the case of any doubt.

Court Officers (Amendment) Bill, 1997

Time limits mandatory in service of third party notices

- The obligation to serve a third party notice as soon as reasonably possible was mandatory in nature, and a failure to comply with this temporal obligation could lead to the application for liberty to issue and serve the third party notice being refused or, if granted, being set aside on the application of the newly-joined party.

Section 27(1)(b) of the *Civil Liability Act, 1961* provides that a concurrent wrongdoer who is sued for damages or for contribution and wishes to make a claim for contribution shall serve a third party notice upon such person as soon as is reasonably possible. Order 16 of the *Rules of the superior courts 1986* provides that application for leave to issue the third party notice shall be made within 28 days from the time limited for delivering the defence or, where the application is made by the defendant to a counterclaim, the reply. Under o16, r8(3), third party proceedings may at any time be set aside by the court, and it was this jurisdiction which was invoked in this application by the third and fourth third parties. Third party notices were served on them on 26 April 1996. The action between the plaintiff and the defendant was commenced by the issue of a plenary summons on 10 February 1994. Following correspondence between the parties, a notice of motion dated 8 February 1996 was issued seeking the joinder of the third parties. The High Court had made orders joining the third and fourth third parties. The Supreme Court set aside the third party notices.

SFL Engineering Ltd v Smyth Cladding Systems Ltd (Kelly J), 9 May 1997

New rules for issue of civil bills

A set of rules has been made providing for the issuing and service of civil bills in the Circuit Court. The rules, which replace the previous procedures, and contain the form of the endorsement and declaration of service to be used, came into operation on 22 December 1997.

Rules of the Circuit Court (No 3) 1997 (SI no 500 of 1997)

No liberty to enter final judgement where a stateable defence

- The power to allow a plaintiff to enter final judgment was intended to be exercised only in those cases in which there was clearly no defence
- A defendant should be allowed unconditionally to defend an action where he stated what his defence was and gave reasons for thinking that it was substantial and would be sustained in evidence.

In 1996, the plaintiff became aware that a company had been 'kiting' cheques, whereby that company was taking advantage of the four-day clearing period for cheques and the fact that they were allowed to draw cheques against uncleared effects. As holders for value, the plaintiff decided to sue the defendant as drawers of nine cheques totalling £183,559 plus interest. The plaintiff sued the defendant by way of summary summons, and then sought liberty to enter final judgment. The defendant sought to defend the plaintiff's claim on a number of grounds, namely that there was no consideration given by the plaintiff for the nine cheques and that the plaintiff was not, as a result, a holder for value and that the fraud perpetrated by the company on the defendant tainted the entire transaction insofar as the company engaged in transactions with the plaintiff and defeated the plaintiff's claim. The defendant was allowed liberty to defend the plaintiff's claim and the matter was remitted to plenary hearing.

Bank of Ireland v EBS Building Society (Morris J), 19 April 1997

Master requires evidence of date of service

The party obtaining an order from the Master of the High Court must be in a position to provide evidence establishing not only that service of an order made allowing for enforcement of foreign judgment had been effected, but that it had been effected as of a particular date.

Barnaby (London) Limited v Mullen (Supreme Court), 25 April 1997

ROAD TRAFFIC

Limit to number of provisional licences which may be obtained

- Where a person who holds a second or subsequent provisional driving licence does not undertake a driving test, that person will only be allowed to apply for a further provisional licence where that application is accompanied by evidence that he or she has made an appointment for a driving test
- Any provisional licence so issued will be valid only for a period of one year, as opposed to the usual two.

Road Traffic (Licensing of Drivers) (Amendment) Regulations 1997 (SI no 511 of 1997)

New motor vehicle approval regulations

EC directives relating to the type approval of motor vehicles have been implemented in Irish law by the *European Communities (Motor Vehicles Type Approval) Regulations 1978* and its various amending regulations. New amending regulations have been made, giving effect to 11 new Council and Commission directives.

European Communities (Motor Vehicles Type Approval) (No 2) Regulations 1997 (SI no 476 of 1997)

TAXATION

Custom House Docks Area expanded

The Custom House Docks Area has been expanded for the purposes of incentive tax reliefs for urban renewal provided for that area and also for the purpose of the tax relief provided for certain trading operations carried on in the Custom House Docks Area by the addition of an area bounded by Commons Street, the River Liffey, Guild Street and Mayor Street Lower. The specified period for the purposes of s322 of the *Taxes Consolidation Act, 1997* begins on 10 May 1997 and ends on 24 January 1999.

Taxes Consolidation Act, 1997 *(Designation of Urban Renewal Areas and Tax Relief on Income from Certain Trading Operations) Order 1997* (SI no 483 of 1997)

TECHNOLOGY

New research fund

The Government has presented a Bill in the Seanad which, if passed would:

- Provide for the establishment of a fund to be known as the Scientific and Technological Education (Investment) Fund
- Provide for the payment into the fund of £250,000 by the State over the three years from 1998-2000, and
- Allow for the application of the monies in the fund towards capital expenditure (including expenditure on equipment) on a range of areas in technological, scientific, and vocational education and research.

Scientific and Technological Education (Investment) Fund Bill, 1997

TELECOMMUNICATIONS

Further harmonisation of EC telecommunications

From 31 October 1997, and pursuant to Directive 95/62/EC (of 13 December 1995), provision has been made for:

- The harmonisation of open and efficient access to and use of fixed public telecommunications networks and public telephony services in the EU, and
- Community-wide availability of a harmonised voice-telephony service.

THE SOCIETY OF YOUNG SOLICITORS IRELAND

and Northern Ireland Young Solicitors' Association

International Conference 1998

15-17 MAY 1998 AT HOTEL DUNLOE CASTLE, KILLARNEY, CO KERRY

Friday 15 May 1998

5 pm onwards	Registration of SYS delegates.
7.15 pm (sharp)	Coach departs Hotel Dunloe Castle to The Laurels, Main Street Killarney – *see Note 5*
8 pm to 9 pm	Dinner and entertainment at The Laurels – *see Note 5*
10.30 pm until late	Céilí at Hotel Dunloe Castle

Saturday 16 May

10 am to 10.15 am	Opening of lecture session – Hotel Dunloe Castle
10.15 am - 11 am	"The Euro – the legal framework" Brian Sheridan, Solicitor, Group Law Agent, AIB Bank plc (with short summary of UK perspective)
11 am - 11.45 am	Post-traumatic stress disorder – under scrutiny Tony McGlennon, BL Queens University, Belfast
11.45 am - 12.05 pm	Coffee break
12.05 pm - 12.50 pm	International arbitration in 1998 Brian Hutchinson, BL ACIArb – Associate Dean, Faculty of Law, University College, Dublin
12.50 pm to 2 pm	Lunch
2 pm - 6. 00 pm	Activities, including Leisure Centre with swimming pool, steam room, sauna and gymnasium, horse riding, fishing, golf, historical gardens and Team Challenge
3.30 pm	Indoor Tennis/Tennis Competition Tours to local places of interest
7.30 pm to 8.30 pm	Reception – The Blue Lounge, Hotel Dunloe Castle
8.30 until late	Banquet, followed by band and disco (*Black Tie*)

Sunday 17 May

Up to 11 am	Breakfast – Hotel Dunloe Castle
1 pm	Checkout of hotel

NOTES:

1. This conference is being hosted by the SYS in conjunction with the Northern Ireland Young Solicitors' Association and also welcomes delegates from young solicitors' groups from Scotland, England, Wales and London).
   The SYS is a member of the European Young Bar Association (EYBA) and is pleased to host the EYBA Annual General Meeting in conjunction with this conference.
2. As we expect approximately 100 delegates from overseas to attend, accommodation at the conference hotel will be limited. Certain alternative accommodation options are detailed below. Early booking is essential and accommodation will be allotted strictly on a first come, first served basis. Individual applications only are acceptable (ie one application per envelope). All applications must be made by ordinary prepaid post and only postal applications exhibiting a postal mark dated 16 March 1998 or after will be processed.
3. Conference fee includes Friday and Saturday night accommodation, two breakfasts, céilí, subsidised activities, Saturday evening banquet and conference materials.
4. Accommodation
   The options are as follows:
   (i) Accommodation in Hotel Dunloe Castle or Hotel Europe (Option A) £165 per person (No single rooms available)
   (ii) Guest House accommodation on Friday 15 May and transfer to Hotel Europe on Saturday (Option B) £130 per person (Single supplement £40)
   (iii) Guest House accommodation for Friday and Saturday night (Option C) £95 (Single supplement £20)
   Once all available accommodation under Option A is filled all subsequent applications shall be deemed to be for Option B until that accommodation space is exhausted. All remaining applications will be deemed to be for Option C until accommodation space there is exhausted
5. Dinner and entertainment has been organised for Friday evening at The Laurels, Main Street, Killarney, at a cost of £20 per person. This is not included in the registration fee. If you wish to be included, please tick the relevant option on the registration form below. Spaces are limited.
6. No booking will be accepted without payment of the conference fee plus extra charges where relevant. Cheques made payable to the Society of Young Solicitors.
7. A shuttle bus will connect Hotel Dunloe Castle with Hotel Europe and Guest Houses over the weekend.
8. All cancellations must be notified to Julian Yarr by Friday 1 May 1998 and no refunds will be given after that date.

PLEASE USE BLOCK LETTERS **INDIVIDUAL POSTAL APPLICATIONS ONLY – NO BLOCK BOOKINGS**

REGISTRATION FORM *(photocopies accepted)*

Name: _____ Firm: _____

Business address _____ Office tel no: _____

ACCOMMODATION (*Please tick box*)

Option A – Hotel Dunloe Castle or Hotel Europe	Double	£165	☐	Twin	£165	☐				Sharing with: _____	☐
Option B – B&B Friday, Hotel Europe Saturday	Double	£130	☐	Twin	£130	☐	Single	£170	☐	Sharing with: _____	☐
Option C – B&B Friday and Saturday	Double	£95	☐	Twin	£95	☐	Single	£115	☐	Sharing with: _____	☐

I/We wish to avail of the following options/activities:
Please tick box
Food at The Laurels ☐ (£20 extra) Participation in the EYBA Tennis Open ☐ Tour on Saturday afternoon ☐ Vegetarian option at the Banquet ☐

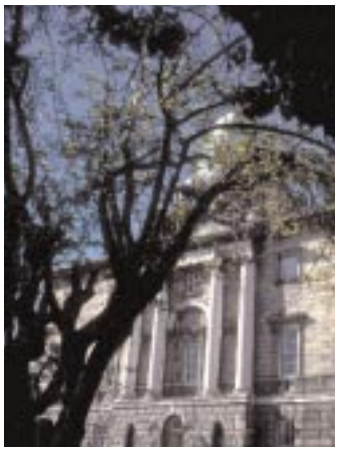
I enclose cheque/postal order payable to the Society of Young Solicitors for £_____ in payment of the conference fee (plus extras)

Please send this registration form with the conference fee to: Sinead Behan, SYS Conference, Martin A Harvey & Co, Parliament House, 9 George's Quay, Cork. Postal applications exhibiting a postal mark of on or after 16 March 1998 only will be accepted. All enquiries regarding the conference should be directed to Julian Yarr at 6613311 between 6 pm and 7 pm on any weekday

Laurence K Shields and this year's officers pictured with some of the Law Society's past presidents at a dinner to honour last year's incumbent, Frank Daly

President Laurence K Shields and Director General Ken Murphy pictured with members of the Donegal Solicitors' Association during their recent visit to the north west

Gala Ball to celebrate 20 years in Blackhall



This year the Law Society celebrates 20 years in its headquarters in Blackhall Place. In order to mark the anniversary, a Gala Ball will be held in the building and grounds on Friday 17 July.

This unique event will be attended by members of the profession, including those who were involved in acquiring the building, solicitors who have qualified in the intervening years and those who are now graduating from its hallowed halls. This event will also offer members an opportunity to entertain their colleagues, business associates and friends.

For further details, phone Elizabeth O'Brien, Member Services Executive, on (01) 671 0711.

Stuart Gilhooly of the Younger Members' Committee (YMC) presents a cheque to Thomas Menton, Chairman of the Solicitors' Benevolent Association, watched by President Laurence K Shields and Monika Leech of the YMC

Laurence K Shields and Director General Ken Murphy pictured with members of the Sligo Solicitors' Association during a recent visit there

Director General Ken Murphy, Law Society President Laurence K Shields and Bar Council Chairman John MacMenamin (front row) with the Bar Council/Law Society Liaison Committee which met in Blackhall Place last month

Pictured at a dinner for outgoing president Frank Daly were (from left): Frank Daly, President Laurence K Shields and outgoing Junior Vice President Elma Lynch

Credit card friendly: Maureen Prouse, in charge of selling Law Society publications, accepting the President's Law Society credit card at the launch of the Society's new electronic credit card facility for paying for member services

Law Society requests photos or memorabilia

This year the Law Society celebrates 20 years in its headquarters in Blackhall Place. The Society is organising a photo exhibition to commemorate the anniversary. This exhibition will be officially opened at the Society's Twentieth Anniversary Gala Dinner on 17 July and run until the end of December.

The organising committee would like to hear from members who were involved in events at Blackhall Place since 1978 with a view to displaying photographs or memorabilia that will present a picture of activities over this 20 year period.

Please phone Elizabeth O'Brien, Member Services Executive, on (01) 671 0711 if you have any ideas or suggestions on what you would like to see exhibited.

The senior officers and directors general of the four home law societies at Blackhall Place (back row, left to right): Ken Murphy, Director General; Philip Dry, Senior Vice President, Scotland; Mary Keane, Deputy Director General; Pat O'Connor, Senior Vice President; John Bailie, Secretary, Northern Ireland; Douglas Mill, Secretary, Scotland; (front row, left to right): Catherine Dixon, Vice President, Northern Ireland; John Elliot, President, Scotland; Laurence K Shields, President; Antoinette Curran, President, Northern Ireland; Jane Betts, Secretary General, England and Wales

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Book reviews

Famous Irish trials

M McDonnell Bodkin KC

Ashfield Press (1997), 26 Eustace Street, Dublin 2. ISBN: 1-901658-03-1. Price £19.95 (h/b), £12.95 (p/b)

Judge Bodkin's book, long out of print, is a classic of Irish legal literature. It is an account of ten trials in the Nineteenth Century, five of which were of a political nature in the latter part of the century, reflecting Bodkin's own background in nationalist journalism and Irish Parliamentary Party politics.

The other trials dealt with include cases on breach of promise (1817), alleged undue influence on a testator (1872), two dramatic murders (on Ireland's Eye in 1852 and in Newtownstewart, County Tyrone, in 1871) and the famous Yelverton case in 1861.

Serjeant Sullivan's first words to Major Yelverton, who was denying that he had validly married Theresa Longworth, are perhaps the most famous opening to a cross-examination in the annals of the Irish Bar:

'Major Yelverton, did you ever love Theresa Longworth?'

'I did'.

'Did you ever love her purely and honourably?'

(After a considerable pause)

'Not entirely, sir'.

'I will repeat my question. Did you ever love Theresa Longworth purely and honourably'.

'No'.

The book contains long passages of cross-examination, including, in the chapter on the Parnell Commission in 1887, extracts from Charles Russell's slow grilling of Richard Pigott, including a long discussion of how one would (hypothetically) set out to forge a letter.

The other cases arising out of politics were the trial of Allen, Larkin and O'Brien, in Manchester in 1867 for murder in the course of helping a Fenian prisoner to escape (the 'Manchester Martyrs'), the famous petition on the Galway election in 1872 leading to the trial of a bishop and priests for interference at the polls, a charge against Michael Davitt in the Magistrates Court in Sligo, when Davitt ably represented himself, and the trial of the leaders of the Land League in 1881. In that case, the prosecution abandoned various charges when defence counsel, Francis McDonagh QC, indicated that evidence going back to the Great Famine and its aftermath would be called, to put in context the events of 1879 and 1880.

Bodkin emphasises the extraordinary skill of the Bar as exemplified in these dramatic cases. Many of them pitted Richard Armstrong QC against Francis McDonagh. Bodkin remarks that these two men were for a long time the acknowledged leaders of the Irish Bar but that they never attained judicial promotion, 'owing to some trouble at the Sligo constituency which they contested'.

This was a slight economy with the truth. They had contested the election there against each other three times, and after the election in 1868 a commission of inquiry reported that they had both been guilty of corrupt practices, and the town was disfranchised. Their obituaries, published in the *Irish Law Times* and *Solicitors' Journal* in 1881 and 1882, paid tribute to their remarkable qualities, while also commenting on some issues of character, including, in McDonagh's case, the two reported cases in which he was sued for the return of special fees or retainers paid for cases to which he had not actually attended.

A final observation on the conduct of these stirring cases in Victorian times is the freedom with which newspapers, the crowds which attended in court, and even members of the jury commented on cases in the course of trial. Bodkin remarks that there was a freedom of expression by uninvolved parties that, at the time he was writing (1918), would not be tolerated or expected. Our courts and newspapers today seem remarkably sedate in comparison. G

Daire Hogan is a solicitor with McCann FitzGerald.

Vocational teachers and the law

Michael Farry

Blackhall Publishing (1998), 26 Eustace Street, Dublin 2. ISBN: 1-901657-03-5. Price: £19.95 (p/b), £29.95 (h/b)

Oscar Wilde in *The critic as artist* wrote that 'education is an admirable thing, but it is well to remember from time to time that nothing that is worth knowing can be taught'. Oscar Wilde's witticism is one of the epigraphs quoted by the author, Dr Michael Farry, barrister, at the start of each chapter. This is one of the attractive features of the book and, as Mr Justice Peter Kelly of the High Court states in his foreword, this is a truly scholarly production, but is 'transmitted lightly and in a most readable and digestible form'.

This is Dr Farry's second book following his major work *Education and the Constitution*. Mr Justice Kelly refers to interesting insights in the book into the relationship between Church and State in the vocational sector. He also recommends interviewers to read that part of the book dealing with discovery and the author's comments on the burden of proving discrimination.

The author states that the scope of the book is confined to exploring some of the effects of legislation and judicial decisions on vocational teachers' employment. It is not possible in a short note like this to do justice to any book. Suffice it for your reviewer to refer to the titles of some of the chapters of the book. After an historical introduction, the author considers the issue of vocational education committees, boards of management, the recruitment of vocational teachers, qualifications, disqualifications from holding office, suspension of teachers, removal on statutory grounds after local enquiry, removal by a vocational education committee and issues relating to rules of procedures including, and with particular reference to, the rules of natural justice.

Dr Farry's book has several virtues. It is concise. Its second virtue is its clarity. The author has succeeded superbly in what he has set out to do, which is to produce a comprehensive, readable and reliable book on vocational teachers and the law. G

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

The law of easements and profits a prendre

Peter Bland

Round Hall Sweet & Maxwell, Upper Ormomd Quay, Dublin 7. ISBN: 1-899738-64-9. Price: £78

For those to whom *Gale* – restricted as it is to the classical easements – is familiar, this new book has almost the aspect of a legal encyclopaedia. There is a chapter on turbary, estovers (the right to take wood) and rights to the soil and another on fishing and other sporting rights. There are sections on parking, public rights of way, rights of pasture, animals straying on to the highway, agistment and conacre and possibly other topics which my *Gale* (largely, of course, because it deals only with easements) pays little or no attention. There is even a section on the right to eavesdrop, which is nothing more prurient that the right to discharge rainwater from a house by a spout or drip onto the lands of another!

I am tempted to suggest that this is a very useful book for a country solicitor if that were not 'to damn with faint praise' what Mr Justice Geoghegan in his foreword describes as an 'erudite, lucid, and in every way quite excellent exposition of this branch of the law'. This is a remarkable and well-deserved tribute to the author, a busy barrister on the Midland Circuit.

The book contains some of the most varied and interesting research in any Irish legal textbook and the Mr Bland not only knows the law, he also sees how it has shaped the landscape: 'Dublin will never look like Manhattan unless Ireland follows the American jurisdictions by abandoning the right to light'.

In England, an easement or profit claimed *by prescription* must be enjoyed by a fee simple owner as against a fee simple owner. Under Irish law, an easement or profit can be acquired by statutory prescription or by the doctrine of lost modern grant by one tenant as against another even if each of them holds under the one landlord (*Hanna v Pollock (1900) 2 IR 664*).

Peter Bland refers to this case as the start of a distinctive Irish jurisprudence in this confused area of the law but does not suggest that the Irish law of easements is so different, generally speaking, from English law that an Irish textbook is as necessary for those interested in the law of easements in this country as, say, *Irish land law* is for those studying real property.

However, this book does not need this to be saleable. It may lack *Gale*'s authority but, with all due respect to that great institution, this work is, on the whole, just as useful and much more readable. This is largely due to Bland's eye for a picturesque tale or incident. When, for example, the only relevant fact about the second Earl of Portarlington is a certain sale to him, the author passes quickly from this to mention the more amusing fact that the Earl was famous for having missed the Battle of Waterloo due to a hangover!

In his foreword, Mr Justice Geoghegan suggests that a gap in the library of Irish law books has now been filled. Certainly I would have no difficulty in acknowledging that, with its publication, the last major gap in the library on land law has been filled. G

JMG Sweeney is former Professor of Common Law at University College Galway.

LOST LAND CERTIFICATES

Registration of Title Act, 1964

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

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

(Published 6 March 1998)

Regd owner: John McNamara, Folio: 2638L; Land: Moorfield, Barony of Connell; **Co Kildare**

Regd owner: John W McCann; Folio: 5078; Lands: Ballincurry; Area: 25a 0r 12p; **Co Dublin**

Regd owner: Louth County Council; Folio: 9818; Lands: Haggardstown; Area: 0a 1r 8p; **Co Dublin**

Regd owner: Dermot Cronin and Mary Cronin; Folio: 2813L; Lands: Townland of Carrigrohane and Barony of Cork; **Co Cork**

Regd owner: John O'Brien (one undivided third share); Folio: 56943; Lands: Coolroe in the Barony of Muskerry East, Co Cork; **Co Cork**

Regd owner: Margaret McManus; Folio: 2986F; Lands: Uragh; Area: 0.250; **Co Cavan**

Regd owner: Thomas and Antoinette Lawlor; Folio: 3719F; Lands: Keeloge; Area: 0.130 acres; **Co Queens**

Regd owner: Reginald Stocker of 3 Belton Avenue, Donnycarney, Co Dublin; Folio: 1679L; Lands: 3 Belton Avenue situate on the north side of the said avenue in the parish of Artaine, district of Clonturk; **Co Dublin**

Regd owner: Valerie Horgan and Carmel Horgan; Folio: 232F; Lands: Coolmurraghue; **Co Cork**

Regd owner: Mary Barry (orse Philomena), Rushaun, Kilnamona, Co Clare; Folio: 4467F; Townland: Prop 1 – Rushaun, Barony of Inchiquin, Leckaun, Prop 2 – Barony of Inchiquin; Area: Prop 1 – 20.813 acres, Prop 2 – 11.200 acres; **Co Clare**

Regd owner: Christopher Leahy; Folio: 9545F; Area: 1.456 acres; Townland: Doonamountane, Barony of Clanmaurice; **Co Kerry**

Regd owner: William Brady; Folio: 2541, Lands: Knockieran Lower, Blessington, Barony of Talbotstown Lower; **Co Wicklow**

Regd owner: Patrick Quinn (deceased); Folio: 7123; Land: Moygrerhan Lower; Area: 22a 2r 34p; **Co Westmeath**

Regd owner: Charles Doorly, Clooneenbaun, Roscommon, Co Roscommon; Folio 26433; Townland: Clooneenbaun, Barony Athlone North; Area: 103a 0r 26p; **Co Roscommon**

Regd owner: William Fenlon; Folio: 2815F; Land: Coolroe; **Co Kilkenny**

Regd owner: James Dillon (as tenant in common of an undivided moiety) Folio: 4402F; Land: Moyle; Area: 73a 2r 7p; **Co Donegal**

Regd owner: Thomas Garry; Folio: 3508; Land: Ballygarrett; Area: Prop 1 – 0.606 acres, Prop 2 – 2 0.350 acres; **Co Kings**

Regd owner: the County Council of the County of Dublin of the County Solicitor, 5/6 Parnell Square, Dublin; Folio: 16318; Lands: Townland of Toberburr in the Barony of Nethercross; **Co Dublin**

Regd owner: Redfield Nurseries Limited; Folio: 30964; Townland: Dromroe, Barony of Clanmaurice; Area: 48.042 acres; **Co Kerry**

Regd owner: William O'Donovan; Folio: 4382F; Townland: Killinane, Barony of Coshlea; Area: 5 perches; **Co Limerick**

Regd owner: Sean Donnellan and Sigrid Donnellan of Site 15 Thormanby Woods, Thormanby Road, Howth, City of Dublin; Folio: 53193F; Lands: Townland of Howth in the Barony of Coolock; **Co Dublin**

Regd owner: George McNamee; Folio: 1356; Lands: Calverstown; Barony of East Narragh; **Co Kildare**

Regd owner: Francis and Doris Healy of 8 Dromard Road, Drimnagh, Dublin 12 (17 Brompton Green, Castleknock, County Dublin); Folio: 39373L; Lands: Property situate north of the Royal Canal in the Parish of Castleknock, Town of Blanchardstown, Townland of Blanchardstown and Barony of Castleknock; **Co Dublin**

Regd owner: Patrick Delahunty and Therese Delahunty of 8 Talbot Park, Malahide, County Dublin; Folio: 105373F; Lands: Site No 8 Talbot Park in the Townland of Yellow Walls and Barony of Coolock; **Co Dublin**

Regd Owner: James Cogan (deceased); Folio: 19149; Lands: Prop 1 – Teltown, Prop 2 – Fyanstown; Area: Prop 1 – 17a 1r 10p, Prop 2 – 11a 2r 30p; **Co Meath**

Regd owner: Patrick and John Morrison; Station Road, Ballina, Co Mayo; Folio: 43977; Townland: Ballina, Barony of Tirawley; Area: 0a 1r 6p; **Co Mayo**

Regd owner: McMullen Brothers Ltd; Folio: 25572; **Co Meath**

Regd owner: Thomas Cullen; Folio: 4606; Land: Drumbannon; **Co Cavan**

WILLS

O'Braonain, Criostoir, deceased, late of 96C Mercer House, Mercer Street, Dublin 2. Would any person having knowledge of the whereabouts of the original will/codicil of Criostoir P O'Braonain otherwise known as Frank Brennan, who died on 21 December 1997, please contact O'Rourke Reid & Company, Solicitors, 63 Lower Baggot Street, Dublin 2, tel: 6614440, fax: 6614443

O'Donovan, Timothy, deceased, late of Templeuesque, Whites Cross, Glanmire, Co Cork. Would any person having knowledge of a will executed by the above named who died on 29 October 1997, please contact Henry PF Donegan & Son, Solicitors, 74 South Mall, Cork. Ref: MN, tel: 021 277155

Sherry, Margaret Una (née McAdam), deceased, late of 47 Woodview Heights, Lucan, Co Dublin. Would any person having knowledge of a will of the above named deceased who died on 19 June 1997 or of title documents to 47 Woodview Heights, Lucan, Co Dublin, vested in the names of Margaret Sherry or the late James Sherry, please contact Sherrys, Solicitors, Palmerstown Avenue, Palmerstown, Dublin 20, tel: 6232182, fax: 6232183

Helbig, Fritz Herman, deceased, late of Camolin, Gorey, Co Wexford. Would any person having knowledge of the whereabouts of a will of the above named who died on 20 December 1997, please contact Lombard & Cullen, Solicitors, Market Square, Gorey, Co Wexford, tel: 055 21324/22167, fax: 055 21380

Cafferkey, Bridget, deceased, late of 405 Grange Abbey, Raheny, Dublin 13. Would any person having knowledge of the whereabouts of a will dated 25 September 1979 of the above named deceased who died on 22 December 1985, please contact Walsh O'Donnchadha, Solicitors, 116 Main Street, Bray, Co Wicklow, tel: 2866400, fax: 2866813

McGrath, Patrick Anthony, deceased, late of Woodlands, Ratoath, Co Meath. Would any person having knowledge of a will executed by the above named deceased who died on 8 March 1997, please contact Frances E Barron & Company, Solicitors, 1 Frederick House, Main Street, Ashbourne, Co Meath, tel: 8352550/1, fax: 8353451

Burke, Madeleine, deceased, late of 10 Breffni Terrace, Sandycove, County Dublin and Our Lady's Manor, Bullock Harbour, Dalkey, Co Dublin. Would any person having knowledge of the whereabouts of a will of the above named who died on 21 May 1997, please contact O'Driscoll & Company, Solicitors, 54 Upper Leeson Street, Dublin 4, tel: 6609055, fax: 6681369

Flynn, Margaret Christine, deceased, late of 4 Millbrook Terrace, Kilmacthomas, Co Waterford. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 1 December 1997, please contact T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

EMPLOYMENT

Solicitor with 14 years' post-qualification experience in probate, conveyancing and civil litigation seeks position as solicitor with practice in the Athlone/Mullingar or surrounding regions. Reply to **Box No 20**

Hugh J Ward & Company, Solicitors, 32 Upper Fitzwilliam Street, Dublin 2 require recently qualified conveyancing solicitor. Needs to be highly organised and computer literate. Call Michelle at 661-2349. hughjward@securemail.ie'

Locum solicitor required – South Kerry area, June 2-5 and August 4-21 inclusive. Accommodation available if required. Phone Maire at 066 72465

Solicitor required for a busy city centre practice for conveyancing, criminal and civil litigation and general legal work. Apply with CV to **Box No 21**

Solicitor required for Dublin city centre practice with conveyancing and probate experience. Must be proficient in Microsoft Windows 6.0. Apply to **Box No 22**

Conveyancing/registration problems? Reply to **Box No 23**

County Kildare solicitor required for locum position April to September. Experience in conveyancing/probate required. Apply to FB Taaffe & Company, Athy, Co Kildare

Apprenticeship required by economics graduate with FE-1 successfully completed. Reply to **Box No 24**

Qualified Irish solicitor, two yrs international law experience and two yrs management experience (Paris). I am returning to Ireland this year and I am seeking a legal/management position in the greater Dublin area. Reply to **Box No 25**

MISCELLANEOUS

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

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

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

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

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

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: 08 01693 68144, fax: 08 01693 60966

For sale: ordinary seven day publican's licence – County Monaghan. Contact Barry Hickey & Henderson, Solicitors, Clones, Co Monaghan, tel: 047 51004

German law practice interested in co-operation with Irish solicitor(s) concerning consultation in German-Irish or European law related matters. Assistance in any case of litigation. Fischer & Partners, Rechtsanwaelte, tel: 0049 5222 400035, fax: 0049 5222 400036