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North/South bodies: how far will they go?

Does the Northern Ireland Agreement contain sufficient all-Ireland mechanisms to satisfy the legitimate interests of the majority of Irish people? In my opinion, the answer is an emphatic yes. Comparison with the structures of co-operation set up under the European Union may be helpful in order to confirm this conclusion.

In order to understand the agreement, it cannot be emphasised enough that it must be read as a whole. Thus, the opening declaration of support by the participants in the multi-party talks says that they are committed to partnership, equality and mutual respect as the basis of relationships *inter alia* between North and South.

It is accepted that all of the institutional and constitutional arrangements are interlocking and, in particular, that the functioning of the Assembly and North/South Council are so closely inter-related that the success of each depends on the other.

No limitations

Whereas the European Community and European Union treaties establish specific matters of competence, and the European institutions are limited to acting within this scope, no such limitation arises in the wider context of the Northern Ireland Agreement. This is because of the inter-relationship of strands two and three,

Conor Quigley: 'What will happen if the courts in the North come to a different conclusion from the courts in the South?'

both of which refer to a new British/Irish agreement dealing with the totality of relationships.

Under strand two, a North/South Ministerial Council will develop consultation, co-operation and action within the island of Ireland on matters of mutual interest within the competence of the Northern Executive and the Irish Government. The council must use its best endeavours to reach agreement on the adoption of common policies in areas where there is a mutual cross-border and all-island benefit, making determined efforts to overcome any disagreements.

This is not dissimilar to the requirement in article 5 of the *EC Treaty* that all Member States ensure the proper fulfillment of their obligations under the treaty. Students of EC law will not need reminding of the powerful effect that this provision has had in the development of rights and obligations as between the Community institutions, the Member States and individuals.

All-Ireland basis

The North/South Council must also take decisions to establish implementation bodies in relevant areas which would then act on an all-Ireland basis. Such decisions are clearly comparable to the delegated power given under the *EC Treaty* by the Council of Ministers to the European Commission. It remains to be seen whether such bodies will have their own power of delegated secondary legislation similar to that exercised by the European Commission.

Under strand three, a British/Irish Council will be established to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands. This council will exchange information, discuss, consult and use the best endeavours to reach agreement on matters of mutual interest.

Practical co-operation

Suitable arrangements are to be made for practical co-operation on agreed policies. Probably of much greater significance will be the British/Irish Inter-Governmental Conference which will promote bilateral co-operation at all levels on all matters of mutual interest within the competence of both governments.

In recognition of the Irish Government's special interest in Northern Ireland and of the extent to which issues of mutual concern arise in relation to Northern Ireland, there will be regular meetings of the conference concerned with non-devolved Northern Ireland matters as well as dealing with all-island and cross-border co-operation on non-devolved issues.

Thus, taken as a whole, it can be seen that there is a huge scope for all-Ireland activities, through delegated cross-border authorities, the North/South Ministerial Council or the British/Irish Council and Inter-Governmental Conference. Unlike the European Union, there is no limitation on the co-operation that might take place. It may depend on continued agreement between all concerned, but the requirement to reach such agreement is, and will remain, a legal imperative.

Missing from all of this is the establishment of an independent court of justice to oversee the agreement's operation. It is, of course, the European Court of Justice which has done most to develop the independent dynamism of European Community law. Left to their own devices, the national courts would probably never have developed concepts such as direct effect or the wide scope of application of the *EC Treaty* provisions governing free movement of goods, persons and services. Should legal disputes arise concerning the operation of the agreement and legislation or decisions adopted pursuant to it, as they undoubtedly will, these will be settled in the normal courts in Ireland and Britain.

One issue, in particular, arises for consideration. If the implementation bodies adopt delegated legislation governing their activities and such legislation is applied on an all-Ireland basis, what will happen if the courts in the North come to a different conclusion from the courts in the South as to the interpretation of that delegated legislation? Since the agreement lays down no corrective mechanism in this eventuality, it would presumably be for the North/South Council to intervene. G

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

GRISHAM GIVEAWAY WINNERS

The overall winner of the *Great* Gazette *Grisham Giveaway* was Deirdre Marie Doonan, Carrigallen, Co Leitrim, who wins the briefcase and a copy of *The chamber* video. The nine runners-up who each win a video were: Michael Bourke, Dublin Corporation Law Department; Paul Brennan, Ballina, Co Mayo; Mary Boyle, Ballinasloe, Co Galway; Miriam McGillycuddy, Tralee, Co Kerry, Jill Curran, Sutton, Dublin 13; Stella Collins, Phibsboro, Dublin 7; EM Lee, Bonnybrook, Dublin 17; Maria Costello, Clonskeagh, Dublin 4; and Susan Power, Maynooth, Co Kildare.

Constitutional amendments and the Hand of History

The legal structure and status of what the news media refers to rather vaguely 'as the Northern Ireland Settlement' has received little enough attention. In fact, when one looks into it, one finds that there are two documents. The first is the *Multi-Party Agreement* signed by all the party negotiators and the two governments. Its status is indicated at the start where the heading *Declaration of Support* and the words 'We strongly recommend this agreement to the people North and South for their approval' are used. Plainly, this is not a legal agreement but is at most 'binding in honour alone'.

The second document is entitled *Agreement between the UK and Irish Governments*. Article 4 states that it is *'a requirement for entry into force of this agreement that …'* and then goes on to list three conditions as requirements. It looks as if this might be (as the Taoiseach told the Seanad) a conditional legal agreement.

PIC: IRISH TIMES

Hands of history: Taoiseach Bertie Ahern and Prime Minister Tony Blair shake on the deal

Government of Ireland Act

The first condition for its coming into effect is that the British should enact legislation removing the *Government of Ireland Act 1920*, section 75, which states that *'the supreme authority of the UK Parliament shall remain unaffected and undiminished over all persons, matters and things in Northern Ireland'*. It is to be replaced by a law stating that *'it is hereby declared that Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll'*.

The second requirement is that each side should enact the legislation necessary to establish the North-South Ministerial Council, the implementation bodies, and the British-Irish Council and Inter-Governmental Conference.

Thirdly, the agreement requires that *'the [specified] amendments to the Irish Constitution shall have been approved by referendum'*. It is proposed to do this by the Nineteenth Amendment which is far and away the most worthy and complicated of the amendments we have had in the history of the Constitution (with the exception of the 'running in' amendments of 1939 and 1940 which did not have to undergo a referendum).

All or nothing

In part, the compendious nature of the amendment arises from the fact that its purpose is to implement an international agreement. Thus, as with the EU amendments, all parts of the matters agreed upon on Good Friday in Belfast have to be adopted, or none at all. Broadly the same situation existed in the case of each of the amendments necessary to cater for the intensification of the EU, for example, the *Maastricht Treaty* (though it happens that these did not necessitate such lengthy insertions).

What is done in the case of the EU amendments is to add to the Constitution such a sentence as *'the State may ratify the (Maastricht) Treaty'*. The equivalent provision here is the part of the proposed amendment which says that *'the State may consent to be bound by the British/Irish Agreement of 1998'*. Later the provision adds: *'If the Government declares that the State has become obliged pursuant to the agreement to give effect to the amendment … then … this Constitution shall be amended as follows ...'*.

The Government is thus made the hinge in order to ensure that articles 2 and 3 are not changed if the Northern referendum is not passed, so that we are not left in the position of losing Kate and the baby.

What distinguishes the present amendment from those to enable Ireland to ratify, say, the *Maastricht Treaty*, is that once the State had been empowered to enter that treaty, no further change was necessary. By contrast, in this amendment, the change happens to require the substitution of a new version of existing articles. It also has to make it clear that if the Northern referendum fails, then the *status quo* continues. And all this takes a lot of words.

Nation and State

The new draft of articles 2 and 3 contains a more rational distinction than did their predecessors between the Nation and the State. Article 2 deals with the Nation and provides, first, that everyone born on the island is *'part of the Irish Nation'*. So, too, will be all Irish citizens not born on the island, for example, naturalised citizens or honorary citizens, like Jack Charlton. In addition, for the first time there is a bow in the direction of the diaspora: *'The Irish Nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage'*.

All in all, this is a nice Mary Robinson-type provision. There is no change, however, in the preamble or in article 1, an even more nebulous provision than article 2. Each of these was criticised by the Constitutional Review Group as being – to put it in a nutshell – insufficiently pluralist and ecumenical. Very probably, the Government negotiators consider that they have already taken on board sufficient radical culture shock for one gulp.

Not only does the new article 2 deal with nationality, but also implicitly with citizenship. The effect of this is to copperfasten and slightly extend the existing article 9 for, when read with the *Irish Nationality and Citizenship Act, 1956*, the 'sensational effect' of this article

is (to quote the late, lamented John Kelly) to confer citizenship on the vast majority of the Northern Irish population.

Proclamation

As recast, article 3, which deals with the State, effects three changes. It commences with a proclamation which is undoubtedly the most important of the amendment. It declares that it is *'the firm will of the Irish Nation ... to unite all the people who share the territory of the island … recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority, democratically expressed in both jurisdictions'*.

Secondly, article 3 would make it clear that (as in the original provision) until the day of unity, the laws enacted by the Oireachtas would only extend to the 26 counties. The only exception to this is that the Oireachtas would be allowed general extra-territorial jurisdiction, in accordance with the principles of international law.

Thirdly, article 3 contains a formula to accommodate the North-South institutions. This is necessary because of the *Crotty v An Taoiseach* (1987), a case on the intensification of the EU in which the Supreme Court held that an amendment would be necessary for the Government to share authority in the foreign affairs field with the other EU states. It seems possible that analogous reasoning to that in *Crotty* would apply to domestic affairs. On the other hand, one could query this reasoning by virtue of the *McGimpsey* case of 1989, because here the constitutionality of the Anglo-Irish Conference's authority in respect of the Republic was upheld. However, no doubt the draftsman thought it better to be safe than sorry.

Finally, there is a point of recent legal history which, especially given the number of undecided votes among the Unionists, could make a big impact on the vote in favour of or against the package. It is significant to consider how the amendment campaign down here, coupled with Sinn Féin's fence-sitting, will be viewed from the Unionist side of the hedge. For they have good reason to recall with bitterness the sophistry (except that they would not use such a polite word) of our judicially-reviewable Constitution, a device of which they are anyway ill informed, not having one of their own. Their bitter memory is of the *quid pro quo* given by the Republic in return for the power-sharing Executive of 1974, under the Sunningdale Agreement. The Republic's side of the bargain was the 'solemn declaration' that 'there could be no change in the status of Northern Ireland' until the majority of the people there desired it.

Sunningdale Agreement

When the Sunningdale Agreement was attacked before the Dublin courts as being a violation of articles 2 and 3, the line of defence deployed by the Irish Government was that this commitment was not binding but merely a 'declaration of policy'. While the judgment in this and later cases demonstrated that, legally speaking, this was the best defence, the consequence on the political plane was catastrophic. The Unionists felt that they had been sold a pup and that feeling contributed to the Loyalist strike which brought down within less than five months of its establishment the only power-sharing Executive the North has ever seen. Even for Unionists too young or forgetful to remember any of these details from a quarter of a century ago, there will be a race memory that the Republic's Jesuitical Constitution can mean chicanery.

All this has its relevance to the way the debate on the amendment is conducted down here. If the Unionists get the impression that history may be about to repeat itself, this may be a factor pushing them over the edge into opposition to the settlement or possibly abstention. G

David Gwynn Morgan is Professor of Law at University College, Cork.

Is it time the judges waived their right to silence?

At least once a year the Lord Chief Justice of England holds an official press conference. It is open not just to those who cover the courts, or represent legal journals, but to all the printed media – tabloid and broadsheet alike – as well as to the TV cameras.

While details of cases due before the courts obviously cannot be discussed, there are no other restrictions on the questions that may be put, according to a spokesman for Lord Chief Justice Thomas Bingham, the current holder of the office. 'The press conference ends when the media runs out of questions', he says.

The Lord Chief Justice can be – and often is – asked about headline-making comments by judges in particular cases and may use the occasion to support or disapprove of what was said. Most of the questions focus on the Government's legislative plans and the judiciary's reaction to, say, an extension of mandatory sentencing, Ministerial calls for tougher penalties by the courts, the approach being adopted on drugs, young offenders and so on.

Anger at criticisms

British Government Ministers may not like what is said. Former Tory Home Secretary Michael Howard made no secret of his anger at some of the criticisms, but the Lord Chief Justice continued to speak out about those aspects of the Home Secretary's policies with which he disagreed and his views were said to carry more weight with the public than criticisms made in parliament.

Our judiciary takes a different approach to the press. In the *Irish Times* recently, columnist Kevin Myers suggested that had some of the epithets used about a recently-resigned High Court judge in the British press been employed about a member of the Irish judiciary the writers would quickly have found themselves in the dock, with their newspapers facing huge libel claims.

The piece attracted just two letters, both from members of the Bar. But from the judges, there was not a word. The judiciary and the media are important planks in the democratic structure; they have different roles but a common purpose in that both are concerned with justice and truth.

Reinforcing prejudice

Too often, however, their only point of contact serves to reinforce prejudice on either side, with judges lecturing members of the media about their perceived shortcomings in libel actions or contempt proceedings and newspapers highlighting in banner headlines some *lapsus linguae* by a member of the Bench.

The need for a less combative relationship is self-evident. Regular press conferences by the Chief Justice, along the lines of those in Britain, would contribute significantly to better communication with press and public. How do our judges feel about the planned mandatory sentences for possession of drugs worth £10,000 and over? Or the suggested curtailment of defendants' right to silence? Or the problems posed for the courts by the lack of suitable centres for young offenders?

Chief Justice Liam Hamilton: should he be holding regular press conferences?

Hearing the judiciary speaking frankly on these issues would, no doubt, be as annoying to the Government here as it has been to its counterpart in Britain, but it would be very much in the public interest.

The role of Irish judges, particularly on social legislation, has been exemplary. As the politicians ran for cover, it was the judiciary who provided leadership on controversial issues such as contraception, marital breakdown and abortion. The late Mr Justice Niall McCarthy spoke for many when he trenchantly reminded Dáil Eireann how it had shirked its legislative responsibilities on the abortion question.

But the Bench, like every other institution, no matter how important, must adapt and develop in the rapidly-changing Ireland of today. The image persists, however unfair it may be, of judges who are middle class, middle aged and mostly male, remote from the real world that the rest of us experience, with its hardships and painful choices.

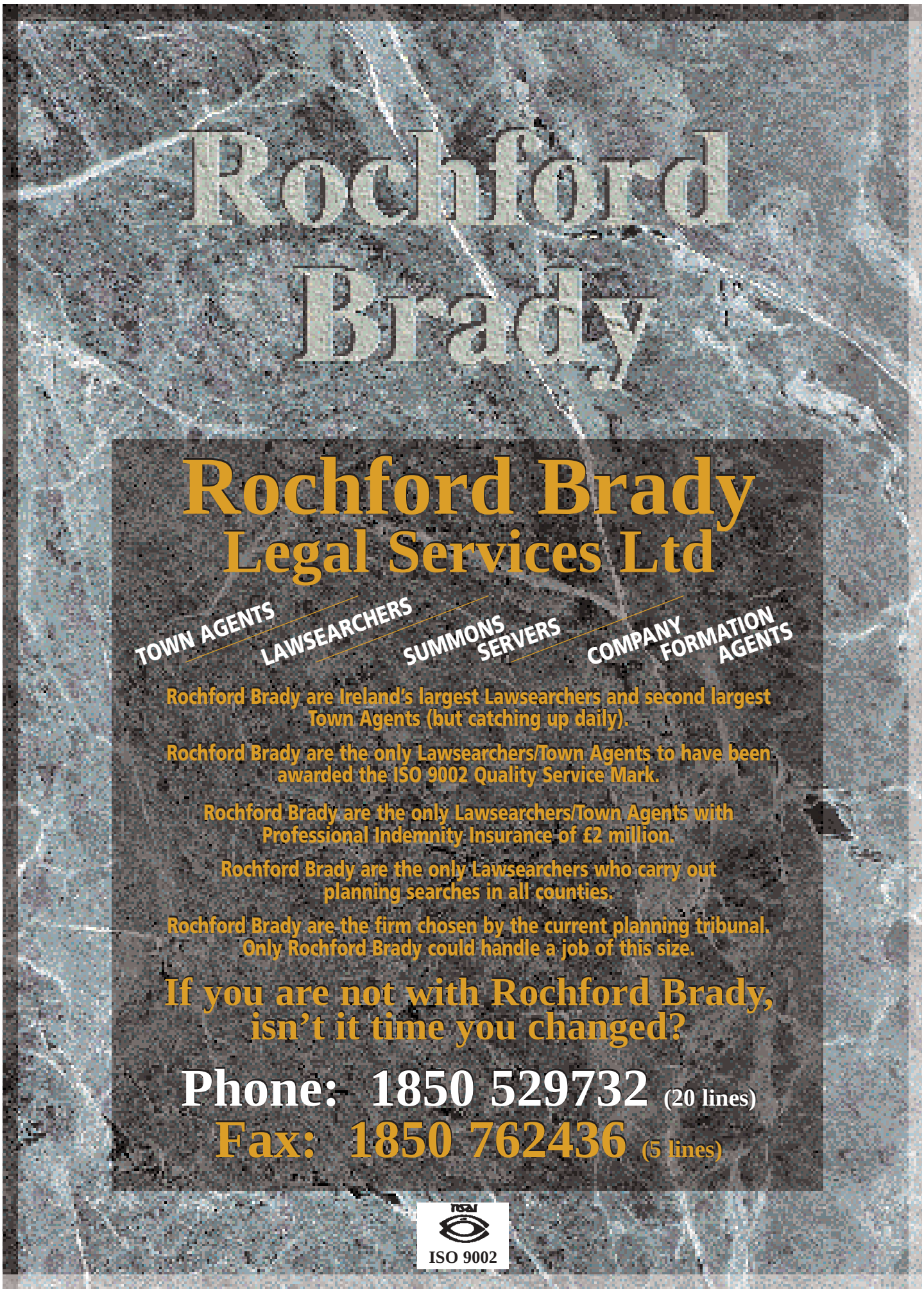
Recent incidents

That image was reinforced by two recent incidents: the committal for contempt of an unfortunate reporter whose mobile phone happened to ring during a hearing, and the very public rebuke handed out to an equally unfortunate woman who was accused of allowing her 'genitalia' to be seen in court!

Judges are part of our community. Like the rest of us, they watch TV, go to the cinema, have favourite football teams, play golf and get angry at times. Elevation to the Bench doesn't mean that they have to exist on a different plane from those around them.

When did you last read an interview with a practising judge on the job's burdens and pleasures? When did you last hear a judge on radio or TV debating an issue of the day? There is surely a case for an easing of their self-imposed vow of silence, if only to reassure the public that, behind the wigs and gowns, there are real men and women, fully connected to the real world. G

Anthony Garvey is a freelance journalist who writes on legal issues.



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Recent judgment could lead to TV cameras in the court rooms

The Supreme Court's unanimous judgment in *Irish Times & Ors v Judge Anthony Murphy* has been broadly welcomed as confirmation of judicial support for the media's right to report criminal trials. But the judgment has wider repercussions which may not have been foreseen by the five judges.

The background to the case is that in February last year five defendants appeared at Cork Circuit Criminal Court on charges of importing more than £40 million worth of cocaine aboard the trawler *Sea Mist*. The captain of the vessel pleaded guilty to possession with intent to supply and was remanded in custody for sentence.

Before the trial of the other four began two days later, Judge Anthony Murphy ordered the media not to report the evidence to be given during the trial. He said they could only report that the trial was going on, its location, the defendants' names and addresses, the nature of the charge and the fact that the captain had been remanded for sentence.

Inaccurate reporting

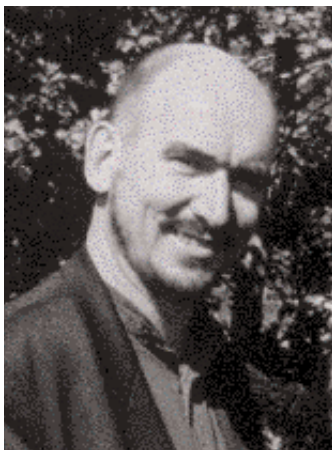
The judge said he was concerned that inaccurate reporting might lead to the trial being aborted and the defendants remanded in custody for a lengthy period. He based his decision on a minor inaccuracy in a local radio report on the *Sea Mist* trial and on an erroneous local radio report which had led to the discharge of a jury in a different case. Despite the restrictions of his order, Judge Murphy nevertheless maintained that the trial was being held in public and that the order was 'not a ban on reporting (or) the public'.

The newspapers and RTE appealed the reporting restrictions to the High Court. On 18 February this year, Morris J ruled that Judge Murphy 'was empowered to make the order that he did, that in doing so he applied the correct criteria and law ... and that the order he made was valid'. That decision was appealed to the Supreme Court, which gave judgment on 2 April.

Constitutional imperative

The five judges unanimously allowed the appeal. They ruled that the Cork case had not been held in public and that, while there were instances in which reporting could be restricted, Judge Murphy had exceeded his jurisdiction by banning contemporaneous reporting in this case. The Chief Justice set the tone of all the judgments by emphasising the importance of the Constitutional imperative for justice to be administered in public. He said the public was entitled to be informed about court proceedings by the media.

Obiter, Mr Justice Hamilton noted that many trials had been aborted recently because of prejudicial media reports. But he said judges should have confidence in a jury's ability to comply with judicial directions and disregard



Kieron Wood: 'Today most people learn about trials from television and radio'

inadmissible evidence, and trials should only be aborted in extreme circumstances.

Mr Justice O'Flaherty concurred, saying: 'The risk that there will be some distortion in the reporting of cases from time to time must be run. The administration of justice must be neither hidden nor silenced to eliminate such a possibility'.

All five judges upheld in the strongest terms the media's right to report most court cases. Mr Justice Barrington spoke of the 'right to report news' and added: 'Nowadays, very few citizens have the time to attend court. The press is in effect the eyes and ears of the public'.

Mrs Justice Denham cited the view of the late Mr Justice Brian Walsh that 'publicity is inseparable from the administration of justice'. She added: 'We live in a modern democracy in the age of information technology. It is entirely impractical for all people to attend all courts. Nor is that required. What is required is that information of the hearings in court (is) in the public domain'.

Mr Justice Keane agreed. 'It is manifest that the right of the public to know what is happening in our courts ... would be eroded almost to vanishing point if the public had to depend on the account that might be transmitted to them by such people as happened to gain admission to the court room for the trial in question'.

Strong precedent

The Supreme Court decision, apart from copperfastening the existing Constitutional requirement for justice to be done in public, also establishes a strong precedent which will in future allow the media to challenge the arbitrary judicial imposition of reporting restrictions.

Only five years ago, counsel for RTE who queried a decision to hear the X case *in camera* was told that the station did not have *locus standi* to raise the issue.

In the course of her judgment, Mrs Justice Denham said that most people learned of matters before the courts from the press. That is no longer true. Today, most people learn about trials from television and radio.

In the longer term, a more revolutionary result of the judgment might be a move towards extending court reporting by permitting the electronic transmission of court proceedings – court radio, court television and judgments on the Internet. This would have the dual advantage of allowing the public direct access to the proceedings in their courts, as well as reducing the risk of mistrials by precluding inaccurate second-hand reporting.

The present implacable opponents of technological advance should ponder the remarks of Mr Justice Keane that 'the very fact that physical and other constraints prevent more than a minuscule section of the entire population from being present in court while justice is being administered makes it all the more imperative that the media should have the widest possible freedom to report what happens in court'. G

Kieron Wood is a practising barrister and former legal affairs correspondent for RTE.

'Unprofessional' professional magazine

From: Irene Lynch, Department of Law, University College Cork

Thank you for publishing my letter (*Gazette*, April issue, page 7). Your reply is very disappointing and I am sorry to say seems to compound the attitude displayed in the original article. I would like to clarify that there is no doubt in my mind that the *Employment Equality Act, 1977* does not apply to magazine articles. It does, however, apply to employers hiring legal secretaries. I would also like to point out that on the same page as your flippant reply, you have stated 'Your letters make your magazine and may influence your Society'. I am not sure what your reference to 'political correctness' is intended to mean but I would like to reiterate the point that the headline on the March *Gazette*'s front page (*Your Girl Friday: how to find the best legal secretaries*) was quite offensive. In my opinion, your reply has simply compounded the lack of awareness displayed in the original article. I am quite unhappy that the editor of my professional magazine would take this position on this matter.

From: Julie Rea, Cork

I refer to the letter to the editor written by Irene Lynch of the Department of Law, UCC, which was published in the April issue of the *Gazette*. Was the editor's reply to this a cynical exercise designed to fuel discussion and prompt further letters to the editor? If so, it is evidently successful, if tremendously objectionable. If, however, the editor believes that the comments of Irene Lynch were nothing more than an expression of political correctness then he completely fails to appreciate the legitimacy of her objection. The patronising, sexist and indeed tabloid style of that headline was not only in dramatically poor taste but must also be deeply offensive to secretaries countrywide. If our letters do indeed make our magazine, then I sincerely hope we see no further examples of this superior and sexist tone.

No compromise on free mortgage work

From: Richard McDonnell, Ardee, Co Louth

I wrote a number of years ago expressing frustration at the fact that banks and building societies had manoeuvred solicitors into a position whereby we have found ourselves doing their legal work in the processing of mortgages free of charge (but not, of course, free of liability to them in the event that anything goes wrong) and have been wondering why nothing was being done.

I note that consideration is now being given to a proposal that we be paid a piffling amount linked to whether or not a transfer and mortgage is stamped and registered within a certain timeframe. This is expressed to be an incentive to solicitors to increase the pace at which they do bank and building society work for nothing.

I wish to express my outraged opposition to this 'compromise proposal'. Why should there be any 'compromise proposal'? Why should we continue to have to do bank and building society work for nothing on pain of our clients' loan cheques being withheld? Apart from the fact that in most cases the speed with which registration is completed is entirely out of our hands, it astounds me that this profession continues to allow this ridiculous state of affairs to pertain.

Why doesn't the Law Society issue a practice direction to the effect that the bank and building society work should not be done for nothing?

Dumb and dumber

From: Frank Egan, Egan O'Reilly, Dublin

Some years ago when I was working in a practice in Merrion Square as a newly-qualified solicitor, a secretary joined the firm and at an early stage displayed all the signs that her employment was likely to be of a temporary rather than a permanent nature.

During the first few days of her employment, I discovered copies of letters that she had typed for me had been filed upside-down on the correspondence part of the files. However, the clincher that ensured her hasty departure came about following a day's work typing for a senior partner in the firm who, having signed his letters, then asked her to frank the post. Some minutes later from my empty office she telephoned the partner in question, informed him that Frank had gone home and asked what should she do with the post?

From: McCann FitzGerald, Dublin

The following was obtained off the Internet. It claims to be the actual replies of the vice-presidents and personnel directors of the 100 largest US corporations when asked to describe their most unusual experience of interviewing prospective employees:

- One job applicant challenged the interviewer to an arm wrestle
- Candidate fell and broke arm during interview
- Candidate announced she hadn't had lunch and proceeded to eat a hamburger and French fries in the interviewer's office
- Candidate said he never finished high school because he was kidnapped and kept in a closet in Mexico
- Balding candidate excused himself and returned to the office a few minutes later wearing a hairpiece
- Applicant said if he was hired he would demonstrate his loyalty by having the corporate logo tattooed on his forearm
- Applicant interrupted interview to phone her therapist for advice on how to answer specific questions
- Candidate brought large dog to interview
- Applicant refused to sit down and insisted on being interviewed standing up.

The employers were also asked to list the 'most unusual' questions that had been asked by job candidates:

- 'What is it that you people do at this company?'
- 'What is the company motto?'
- 'Why aren't you in a more interesting business?
- 'Why do you want references?'
- 'Do I have to dress for the next interview?'
- 'I know this is off the subject, but will you marry me?'
- 'Will the company pay to relocate my horse?'
- 'Would it be a problem if I'm angry most of the time?'
- 'Does your company have a policy regarding concealed weapons?'
- 'Do you think the company would be willing to lower my pay?'

Also included were a number of unusual statements made by candidates during the interview process:

- 'I have no difficulty in starting or holding my bowel movement'
- 'At times I have the strong urge to do something harmful or shocking'
- 'I feel uneasy indoors'
- 'Sometimes I feel like smashing things'
- 'Women should not be allowed to drink in cocktail bars'
- 'I get excited very easily'
- 'Once a week, I usually feel hot all over'
- 'I am fascinated by fire'
- 'I like tall women'
- 'People are always watching me'
- 'If I get too much change in a store, I always give it back'
- 'I must admit that I am a pretty fair talker'
- 'I never get hungry'
- 'I know who is responsible for most of my troubles'
- 'If the pay was right, I'd travel with the carnival'
- 'I would have been more successful if nobody would have snitched on me'
- 'My legs are really hairy'.

Frank Egan wins the bottle of champagne this month

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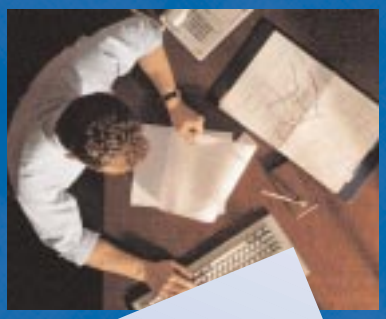

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House price plan to squeeze out speculators

Speculators who borrow money to buy investment properties will be taxed out of the market by Government measures to tackle spiralling house prices. According to Des Rooney, Chairman of the Law Society's Taxation Committee, the key element of the package is a plan to cut interest relief for people who fund investment properties with mortgages.

The new measures include a radical shake-up of stamp duty, new proposals on capital gains tax, and the virtual elimination of section 23 reliefs. The unrestricted interest relief – which allowed investors to offset mortgage repayments against income – will be dropped, meaning that people who buy residential properties and let them out will be taxed on the gross rental income.

This will leave investors facing huge additional tax bills. For example, under the proposals anyone letting a house for £600 a month will face a yearly tax bill of £3,300 on their rental income. Existing investors are not being targeted by the proposals but could be hit in future Budgets, Rooney warned.

'This is one of the most significant elements of the plan', Rooney explained. 'It means that it will no longer be viable to borrow to fund investment properties. That is where the heat is, as there is plenty of scope for borrowing'.

The property boom allowed many ordinary householders to enter the investment market by borrowing on the strength of increased equity in their own homes. Many of them took out second mortgages to fund the purchase of residential accommodation, which they then let out. The tax relief allowed against the rental income effectively meant the investment cost them little or nothing.

Charlie McCreevy: set to introduce new *Finance Bill*

The stamp duty changes were due to be introduced by Ministerial order on 28 April and the other measures are to be included in a second *Finance Bill* to be brought before the Oireachtas by Finance Minister Charlie McCreevy. Under the new rate structure, stamp duty will not have to be paid on residential property worth up to £60,000. This applies to deals done on or after 23 April.

Rooney broadly welcomed the stamp duty changes, but warned that anyone paying marginally more than £250,000 for a house faces an increase in duty charges from £12,500 to £17,500 (see **table**). The increase in stamp duty from 5% to 7% should be staggered, he said.

STAMP DUTY CHANGES

House price	Existing rate	Proposed rate
Up to £60,000	various rates up to 5%	0
£60,000 to £100,000	6%	3%
£100,001 to £170,000	6%, 7%, 8%	4%
£170,001 to £250,000	9%	5%
£250,001 to £500,000	9%	7%
Over £500,000	9%	9%

New *Dial-a-law* service means new business for Scots firms

Nearly one in four of all Scottish law firms have won additional business from a new service designed to give the public easy access to legal advice. *Dial-a-law* has given out the names of more than 345 firms – almost one quarter of all practices – to people calling the service. *Dial-a-law* was launched just weeks ago by the Law Society of Scotland, whose magazine, *The journal*, reported that it was an instant success. It provides callers with information on 40 topics, ranging from bail to divorce and making a will to buying property.

The service is designed specifically for people who do not know what steps they should take, or who are uncertain about who they should talk to, when they need legal advice. Each message lasts just three minutes and callers pay the same rate they would for a national telephone call.

Crime victim statistics sought

The Chairman of the Court Users Group, John MacMenamin SC, has written to the Law Society, asking for solicitors' help in compiling statistics that will demonstrate the need to compensate the innocent victims of crime. Any solicitors who may have such information, for example, in respect of clients who have been sexually assaulted, are asked to contact the Society's Litigation Committee.

BRIEFLY

EU legislation to overtake Irish law

Existing Irish law will be overtaken by EU regulations unless the Oireachtas moves to supplement our legislation, according to A&L Goodbody partner Vincent Power. He told a recent two-day conference in Dublin on the countdown to EMU that European treaties and regulations were just a broad framework that needed to be added to by national law-makers. 'It is important that the Oireachtas adopts Irish legislation to fill in the details which are necessary in the Irish context. Many provisions of Irish law will be overtaken by events and need to be repealed', he said.

RPT certs still needed in some house deals

House sellers must still provide residential property tax (RPT) clearance certificates for properties worth £138,000 or more, the Revenue Commissioners have stated recently. Vendors must give buyers clearance certificates for any house worth £138,000 or more sold on or after 5 April 1998, showing that any tax due while the charge was in operation was paid in full.

Corpo raises sealing fees

Dublin Corporation has increased its sealing fees. The fee for sealed receipts and vacates was hiked to £50 from 1 April, while the standard fee for the sealing of all other documents went up to £35 on 1 May. The fee for documents on accountable receipt and copy documents has gone up to £35.

Civil rights lawyer killed

Colombian civil rights lawyer Eduardo Umaña was gunned down last week in the second such attack in seven days. The killing sparked threats of a 24-hour strike by several public sector unions whose members Umaña was defending. The Colombian Government has offered a reward of £240,000 for the capture of his assassins.

Stamp duty on divorce cases to be axed, says Minister

Justice Minister John O'Donoghue has pledged to axe the stamp duty charged on divorce hearings in the High Court. The move follows a question from Fine Gael backbencher Alan Shatter, who asked the Minister recently if divorce cases in the Circuit and High Courts were subject to the fees, and if he intended to change this.

The Minister replied that stamp duty was charged for divorce cases in the High Court unless they included proceedings already exempt from the charge. 'It is my intention to exempt all divorce proceedings from court fees by amending existing fees orders', O'Donoghue told the Dáil.

Fees (stamp duty) in the Circuit and High Courts are governed by the *Circuit Court (Fees) Order 1989* (SI 342 of 1989) and the *Supreme and High Court (Fees) Order 1989* (SI 341 of 1989). Under these orders, certain family law actions are exempt from court fees. Divorce is not included in the 1989 regulations, but the Minister pointed out that, in general, stamp duty is not charged for divorce proceedings in the Circuit Court.

'However, divorce proceedings in the High Court attract court fees unless the case includes one or more of the family law proceedings specified in the 1989 Supreme and High Court order as being exempt', the Minister said.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in March: Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £20,259.86; Dermot Kavanagh, 2 Mary Street, New Ross, Co Wexford – £6,700; Francis G Costello, 51 Donnybrook Road, Donnybrook, Dublin 4 – £469.44; John K Brennan, Mayfield, Enniscorthy, Co Wexford – £9,380.04; Thomas J Furlong, Lower Main Street, Letterkenny, Co Donegal – £774.40; Michael Dunne, 63/65 Main Street, Blackrock, Co Dublin – £1,760; Jonathan PT Brooks, 17/18 Nassau Street, Dublin 2 – £20,000.

BRIEFLY

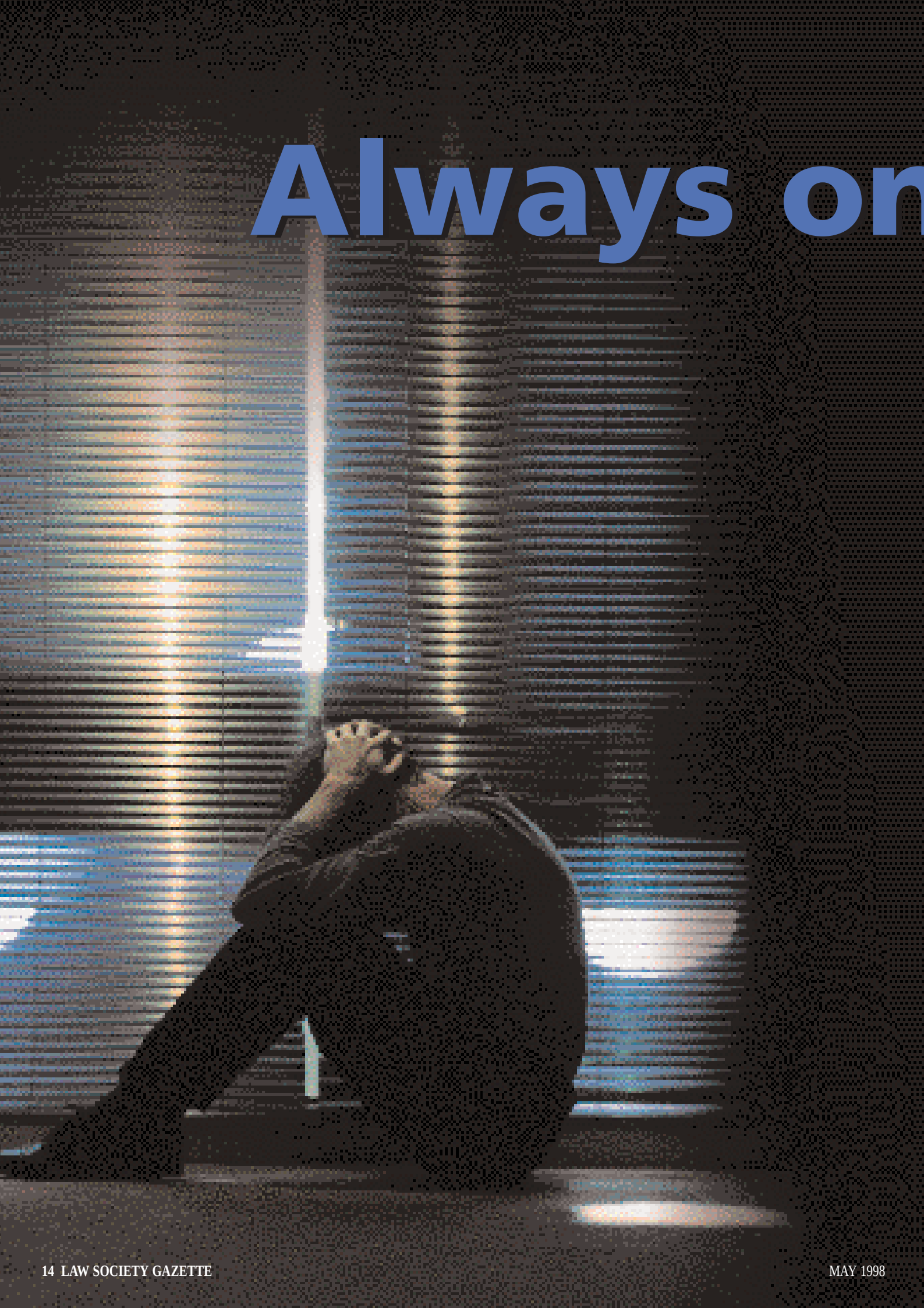
Quality systems explained

Peter McDonnell, principal of the first solicitors' practice to introduce the ISO 9000 quality system, will outline what is involved in obtaining ISO and the Q-Mark at an evening seminar, *Profitable practices*, at 5pm on 7 May in Blackhall Place. The charge for the seminar is £75 individual rate or £65 per person group rate. Booking information is available from McDonnell and Associates, 5 Inns Court, Winetavern Street, Dublin 8 (tel: 01 6795500).

Healthcare law conference

A top medical faculty and Birmingham University's Institute of European Law are joining forces to hold a conference on *European healthcare law: intellectual property, product liability, regulatory and professional dimensions* next month. The conference will be run at Birmingham University on 16 June and is being organised in conjunction with the UK Royal College of Physicians. For further information, tel: +44 121 4143585.

Always on



Post-traumatic stress disorder

n my mind

It's been known variously down the years as shell shock, railway spine, concentration camp syndrome, war neurosis and rape trauma syndrome – post-traumatic stress disorder has been around for as long as people have suffered shocks to their system. These days PTSD is even recognised by the courts and has figured in a number of road traffic accident cases. Here, psychiatrists Eadbhard O'Callaghan and David Walshe explain the nature of the problem and how it affects its victims

Descriptions of severe and debilitating psychopathology resulting from exposure to traumatic events can be found throughout history. In 1667, Pepys described in his diaries some of the horrors that disturbed his sleep five months following the fire of London: *'It is strange to think how to this very day I cannot sleep a night without great terrors of fire; and this very night could not sleep till almost two in the morning through thoughts of fire'*.

In the First World War, many soldiers suffering from 'shell shock' were executed by firing squad for cowardice with malingering. As the number of cases grew despite such executions, the generals were forced to reconsider and began to accept that they were dealing with a medical condition requiring treatment.

But it was the Vietnam war that provided the final impetus for a re-examination of this condition as the genuine response of a normal individual to overwhelming trauma rather than reflecting a primary intrinsic weakness in the victim. This led in 1980 to the American Psychiatric Association classifying post-traumatic stress disorder (PTSD) as a psychiatric diagnosis, describing the symptoms of re-experience, avoidance and arousal as the key features of the condition. This has enabled the area to become a subject of scientific research.

More recently, European psychiatrists have also accepted the concept of PTSD. In the past decade, ever-increasing recognition of the considerable numbers affected by traumas as varied as rape, war and accidents has led to extensive research programmes in the area.

What is post-traumatic stress disorder?

PTSD is a pathological stress response syndrome resulting from exposure to certain traumas where someone has experienced, witnessed or been confronted with an event that involved actual or threatened death or serious injury, or a threat to their physical integrity and where the response involved intense fear, helplessness or horror. In children, this may be expressed by disorganised or agitated behaviour.

Examples of traumas that may give rise to the syndrome include: natural disasters, personal assault (sexual assault, physical assault, robbery, muggings), terrorist attack, torture, severe car accidents, or war combat. Witnessing shocking events such as mutilating accidents and disasters can also result in PTSD, with many studies describing the condition in rescue workers, ambulance drivers and witnesses to major disasters.

Learning about the sudden unexpected death of a family member or close friend, or learning that one's child has a life-threatening illness, have also been accepted by the courts as significant traumas. In Irish law, the defining case is *Kelly v Hennessy* where it was accepted that Mrs Kelly's shock at hearing of the severe injury of her husband and daughter in a car accident shortly after witnessing the condition of her family in hospital was a sufficient trauma to cause PTSD, even though Mrs Kelly herself was not directly involved in the accident The court accepted the diagnosis of PTSD and awarded damages.

In a recent national epidemiological study in the United States, researchers interviewed 5,877 randomly-selected adults from the general population. They found that as much as 56% of the population had been exposed to substantial traumatic events during their lifetime but only 8% had suffered from PTSD. The disorder was twice as common among females as males.

In contrast, other studies have suggested prevalence rates of PTSD as high as 14% or nearly one in six of the population. The risk of developing the condition varies with the trauma and is higher for such events as rape where PTSD occurs in over 70% of victims. Studies of children and adolescents have focused on at-risk groups, with prevalence rates ranging from 48% for sexually-abused children to 6% of those exposed to Hurricane Hugo. One thing is clear from recent studies: PTSD is a significant and widespread problem, the magnitude of which has not been previously appreciated

Traffic accidents and PTSD

Regrettably, in Ireland no data is yet available on precisely how many people suffer adverse psychiatric consequences of being involved in motor vehicle accidents. In the United States, where data is available, it

has been found that up to one in three people who seek medical attention as a result of road traffic accidents suffer from PTSD. It is important to be aware that those who have suffered minor injuries and even the 'physically uninjured' can also be vulnerable to PTSD, with one study showing that PTSD occurs as frequently among whiplash patients as among those who have sustained multiple injuries.

A recent major study in the UK followed up road traffic accident victims over a 12-month period from their initial presentation to hospital. One in five victims showed acute distress characterised by acute anxiety or depression in combination with intrusive memories of the accident. Even 12 months after the accident, almost one in four subjects reported psychiatric problems of three intimately-related types: mood disorder (depression, anxiety), post-traumatic stress disorder and travel phobia. Two out of three people who met the criteria for PTSD were clinically depressed or had marked travel phobia, and these other conditions can occur in the absence of PTSD.

SYMPTOMS OF POST-TRAUMATIC STRESS DISORDER

The accepted criteria for a clinical diagnosis for PTSD has, at its core, three categories of symptoms that must be present for longer than one month and that cause significant distress or impairment in social, occupational or other important areas.

These are:

- **Persistent re-experiencing of the trauma in one or more ways, such as reliving the trauma in nightmares, flashbacks or recurrent intrusive thoughts**
- **Persistent avoidance of the stimuli associated with the trauma and numbing of general responsiveness, for example, avoiding travelling by car following a motor accident, feelings of detachment or estrangement from others**
- **Persistent symptoms of increased arousal, for example, difficulty falling or staying asleep, irritability or outbursts of anger, poor concentration, or hyper-vigilance.**

Secondary diagnoses, particularly of anxiety disorders, affective disorders and substance abuse are present in over 50% of diagnosed cases and can mask the underlying PTSD. In these cases, it is only after further clinical assessment and diagnosis that the root cause of the disorder as PTSD can be identified and the appropriate treatment initiated.

The majority of people who are involved in a motor vehicle accident will not develop PTSD. A number of factors place one at higher risk. The nature of the accident is important: for example, those who are acutely distressed at the time of the accident are at increased risk whereas persons who were briefly unconscious for the accident are much less likely to develop PTSD. The extent of physical injury and the experience of fear of dying in the accident again make one vulnerable. A previous history of depression also places a person at a higher risk, as does a history of alcohol misuse. While these factors, together with issues relating to litigation and previous personality characteristics, have been shown to explain why some persons later develop PTSD, the reality is that, taken individually, they have relatively weak predictive power in determining whether a person will or will not develop PTSD after a traffic accident.

Compensation neurosis?

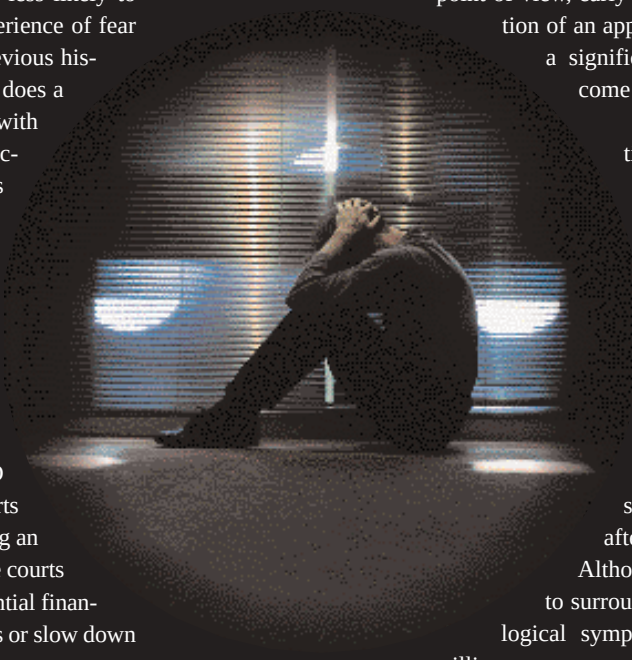
The term 'compensation neurosis' has been used interchangeably with PTSD often in a derogatory sense. This highlights the fact that many of the situations in which PTSD develops may also give rise to claims through the law courts for financial compensation, with a road traffic accident being an obvious example. The issue of malingering is one which the courts have to consider in all such cases and also whether the potential financial gain of a court case might serve to exacerbate symptoms or slow down the natural recovery in someone with genuine symptoms.

However, this is not to suggest that PTSD is a legal or medical fabrication. A growing body of scientific evidence supports the existence of a specific psychiatric condition with biological markers. In a large percentage of those diagnosed as having PTSD, panic attacks and flashbacks of the original trauma can be evoked by chemical agents which stimulate specific neuronal systems within the brain. Furthermore, brain imaging using Magnetic Resonance Imaging (MRI) and studies of brain metabolism using Positron Emission Tomography (PET) demonstrate that there can be differences in both brain structure and function in areas of the brains involved in processing emotional memories for those with chronic PTSD as opposed to those exposed to similar traumas who do not develop the condition.

Unfortunately, these differences are not sufficiently robust for present use in psychiatric diagnosis and the psychiatrist must use clinical acumen, often with the assistance of psychometric measurement, to establish the diagnosis and the severity of the condition.

Treatment of PTSD

The treatment of post-trauma psychiatric problems obviously depends on the diagnoses. Medication and a number of psychotherapies have been shown to work for both PTSD and post-trauma depression whereas behavioural exposure techniques which involve gradually exposing the victim to the feared situation is usually the treatment of choice for travel phobia. Our clinical view would be that treatment of psychiatric conditions post-trauma can be a lengthy and difficult process involving multiple treatment modalities. It is a widely-held medical belief that lengthy delays in receiving specific treatments after a trauma, as often occur with protracted legal battles, do not enhance recovery. Consequently, from a treatment point of view, early diagnosis and the instigation of an appropriate therapy can have a significant bearing on the outcome of PTSD.



Unfortunately, at this time, there is a paucity of follow-up data in relation to road traffic accidents to accurately determine how long symptoms may persist. However, the data from studies from all types of PTSD suggests that as many as one third of sufferers will still have symptoms up to five years after the event.

Although stigma still continues to surround the concept of psychological symptoms, there is a greater willingness among people to admit to such difficulties and to seek help. This, coupled with current developments in pharmacological and psychological treatment of the condition, raises hope for a better prognosis in the future. G

Dr Eadbhard O'Callaghan is a consultant psychiatrist with Cluain Mhuire Service/St John of God Adult Psychiatric Services in Dublin, and Dr David Walshe is consultant psychiatrist with St Stephen's Hospital in Cork.

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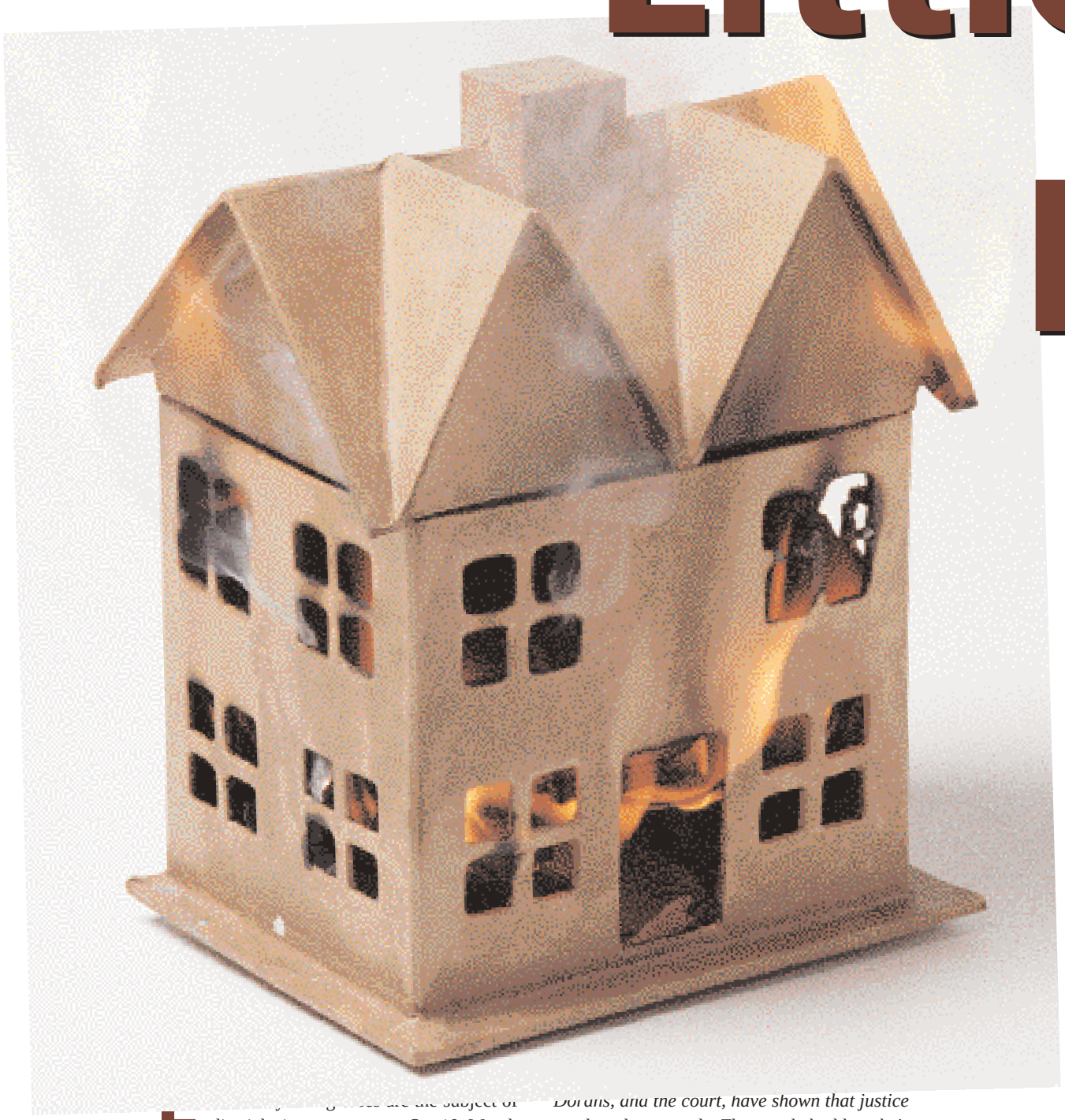

editorials in newspapers. On 10 March 1998, in an editorial under the heading *Justice*, the *Irish Independent* proclaimed that on the previous day the Supreme Court had made legal history in a case brought by Terence and Maureen Doran who discovered that they did not have access to a site they had bought for the construction of a house. The editorial in the newspaper concluded:

'An ancient, often deplored, maxim warns caveat emptor *– let the buyer beware. The Dorans, and the court, have shown that justice need not be so crude. The couple had lost their ideal home, suffered severe financial loss, and spent seven years in litigation. If they failed in the Supreme Court, they would have faced a legal bill of about £70,000. But they persisted and were vindicated. Yesterday was a good day for Irish justice.'*

This article explores issues raised in the Doran case, formally styled *Doran v Delaney & Ors* (Supreme Court, 9 March 1998), a case dealing in part with the duty of care owed by

New duty of care on conveyancers

house of orrors

As a result of the recent *Doran* judgment in the Supreme Court, conveyancing solicitors acting for the vendor of a property now owe a duty of care to the purchaser as well as to their own client. Dr Eamonn Hall discusses this landmark case and the issues it raises for the solicitors' profession

conveyancers generally, and by solicitors for a vendor to a purchaser in relation to replies to requisitions on title. The case has important ramifications for practitioners.

The Supreme Court in *Doran* was composed of Barrington, Keane and Barron JJ. Keane J delivered the leading judgment with Barron J delivering a separate concurring judgment. Barrington J concurred with the judgment of Keane J.

The facts of the case

The facts of the case are somewhat involved. Suffice it to say that the facts related to an undefined boundary, a boundary dispute between the Greens, the vendors, and an adjoining landowner Mary McKimm, which had resulted in correspondence between solicitors, including solicitors for the vendors, threatening litigation. In essence, at the end, there was a divergence between the area of land which the Greens agreed to sell to the Dorans, the purchasers, and the area which the Greens had actually conveyed to the Dorans, the plaintiffs in the case.

The Dorans, left with a landlocked property upon which they could not build, instituted proceedings against their own solicitors for negligence, breach of duty and breach of contract; and for negligence, breach of warranty and misrepresentation against the vendors and the vendors' solicitors. The action was heard by Hamilton P (as he then was), who in a reserved judgment reported in [1996] 1 ILRM 490 held that both the vendors and the solicitors for the Dorans were liable in damages to the Dorans, but he dismissed the Dorans' action against the vendors' solicitors. The Dorans appealed to the Supreme Court from the dismiss of their claim against the vendors' solicitors and the assessment of damages was deferred pending the hearing of the appeal to the Supreme Court.

As conveyancers know to their grief, many problems in conveyancing practice stem from mapping issues. Before the Dorans signed the contract for the purchase of the site, their builder advised them that, as there was no physical boundary between their site and the adjoining land of Mrs McKimm, the site should be staked out. The Dorans asked their solicitors to include such a condition in the contract, but the solicitors advised that it would be sufficient to stipulate that an ordnance survey map with the boundaries marked thereon be provided. The vendors' solicitors objected to that condition and the Dorans' solicitors agreed to omit it without, it would seem, informing the Dorans.

The judgment of the High Court

A crucial issue in the case was a boundary dispute between the vendors and Mrs McKimm. The President of the High Court held that there was a clear duty on the vendors, having produced a map to the Dorans showing the area to be sold, to inform them that the ownership of a portion of the area therein shown was claimed by another person, Mrs McKimm, and that she had threatened litigation.

Requisitions were raised by the Dorans' solicitors in the normal way and included the following standard requisition 13.8: 'Is there any litigation pending or threatened in relation to the property or any part of it or has any adverse claim thereto been made by any person?' The solicitors for the vendor went through the replies to the requisitions with one of the vendors. The solicitors for the vendor were aware that there had been a boundary dispute but had been informed by one of the vendors that the dispute had been settled. The solicitors replied to requisition 13.8: 'Vendor says none.'

The High Court was satisfied that at the time of making the relevant representations and in the context of the replies to requisitions on title, as a consequence of a claim threatened by Mrs McKimm, the vendors were aware of the fact that they were not the owners of the disputed area; that it was the property of Mrs McKimm and that they were not in a position to convey same and give title thereto to the Dorans. Hamilton P held that in the circumstances of the

case, the Dorans were entitled to recover from the Greens (the vendors) damages for misrepresentation and breach of contract.

Liability of solicitors for the purchasers

The Dorans claimed damages for negligence and breach of contract against their own solicitors who were acting on their behalf in connection with the purchase of the site. Hamilton P considered that there was no doubt that the solicitors were under a duty to the Dorans and the nature of their duty was set out in the judgment of *Roche v Peilow* [1985] IR 292. The duty of care owed by a solicitor to his or her client is expressed in *Peilow* as an obligation to demonstrate a degree of care, expected in the relevant circumstances from a reasonably careful, skilled solicitor.

The High Court held that there was a particular duty on the solicitors for the Dorans to ensure that before the execution of the agreement for sale that this agreement contained conditions which would clearly establish the extent of the boundaries of the lands being acquired by the Dorans; that the land being acquired was the land shown on a map presented to the Dorans; and that there was access to the land for the purposes of building a house. Hamilton P considered that the solicitors failed in this obligation which could have been achieved either by having the boundaries staked out, as suggested by the Dorans, or by insistence on the provision of a map which would show the vendors' property and enable a comparison to be made to the map which had been presented to the Dorans on the occasion of their agreeing to the purchase of the property. The High Court also held that the solicitors failed in their duty by not ensuring that an adequate right of way attached to relevant lands.

Expert evidence had been given to the High Court by Brian Gallagher and Rory O'Donnell, two expert conveyancers, that the failure of the solicitors for the Dorans in ensuring that the undefined boundary was staked out and in agreeing to the deletion of the condition with regard to the ordnance survey map, which had been inserted in the draft contract as an alternative to the staking out of the boundaries, was not in accordance with standard and good conveyancing practice. The solicitor in question did not seriously contest such evidence but stated that he was misled by the statement made by the vendors' solicitors that the provision of such a map was unnecessary and by the replies to the requisitions on title.

The High Court considered that this did not provide a defence to the Dorans' claim in these proceedings. The High Court held that the loss sustained by the Dorans was also due to the negligence of their solicitors and they were liable to the Dorans for such loss and damage jointly with the Greens, the vendors. However, the solicitors in question were entitled to be indemnified by the Greens in respect of such damage and loss.

The vendors' solicitors: High Court

In the context of the Dorans' claim against the solicitors for the vendors, Hamilton P considered that in the ordinary way a vendor's solicitor does not owe a duty of care to a purchaser. The purchaser can reasonably be expected to rely upon his or her own solicitor to investigate title and related matters. Hamilton P considered that it was clear from the nature of their replies to the requisitions on title that the vendors' solicitors were transmitting their clients' instructions and were not assuming responsibility for or the role of principal in relation to that information so far as the Dorans or their solicitors were concerned. Consequently, he held that the Dorans' claim against the vendors' solicitors, based on replies to requisitions on title, must fail and he dismissed that part of the claim. The Dorans appealed this aspect of the case to the Supreme Court.

Decision of the Supreme Court

Having quoted from the celebrated case of *Hedley Byrne and Co v Heller and Partners* [1964] AC 465, Keane J stated that while there was no contractual relationship between the vendors' solicitors and the purchasers, that would not of itself negate the existence of a duty of care. Moreover, in determining whether such a duty of care arose in particular circumstances, it was a material fact that statements such as replies to requisitions on title are made by a solicitor acting as such and not in some 'casual social context'. The judge noted that while the primary duty of a solicitor acting for a vendor in circumstances such as arose in this case is under common law and by virtue of contract to protect his or her own client, that obligation was perfectly consistent with the existence of a duty of care in certain circumstances to the purchaser.

In an important passage, Keane J noted that it was also clear that the transmission by a solicitor to a third party of information which turned out to be inaccurate and upon which the third party relied to its detriment *does not of itself afford a cause of action in negligence to the injured party*. He stated that the factors necessary to give rise to that liability were set out by Lord Jauncey in *Midland Bank plc v Cameron Tong, Peterkin & Duncan* [1988] SLT 611. Lord Jauncey noted:

'In my opinion, four factors are relevant to a determination of the question whether in a particular case a solicitor, while acting for a client, also owed a duty of care to a third party.

1) The solicitor must assume responsibility for advice or information furnished to the third party

2) The solicitor must let it be known to the third party expressly or impliedly that he claims, by reason of his calling, to have the requisite skills or knowledge to give the advice or furnish the information

3) The third party must have relied on that information as a matter for which the solicitor has assumed personal responsibility

4) *The solicitor must have been aware that the third party was likely so to rely.'*

Keane J stated that at least in cases where those four factors are present a solicitor may be held liable in negligence to a third party under the more general principle laid down in *Hedley Byrne & Co v Heller & Partners*.

In a reference that will probably be referred to frequently, Keane J noted that it should be borne in mind, in considering whether a particular statement amounts to a negligent misstatement, that the omission of significantly relevant facts may be sufficient to convert a literally accurate statement into a misstatement.

Occasions when no liability arises

It must be emphasised, and Keane J specifically so stated, that there are many occasions when in furnishing replies to objections or requisitions on title a solicitor for a vendor cannot be said to assume any responsibility for information being transmitted to a purchaser's solicitor. Keane J gave a specific example. He stated that, in conveyancing, the solicitor or counsel for a purchaser may raise an objection or requisition to the effect that, for example, a particular estate had not been got in or appropriate words of limitation had not been used in a deed forming part of the proffered title. A vendor's solicitor in reply may refer to some other document furnished or some legal principle as meeting the difficulty. Keane J noted that in such cases it would not be stated that the vendor's solicitor or counsel in drafting the reply was assuming responsibility for information being furnished in the legal sense. Solicitors and counsel on either side were dealing with the same set of documents and doing no more than expressing their professional opinion on matters of title.

As stated, there are circumstances, according to the Supreme Court, in which a vendor's solicitor in drafting a reply to a requisition on title could be described as transmitting information but could not reasonably be regarded as assuming any particular responsibility for that information. Keane J referred to the standard requisition 11 which asked whether any notice, certificate or order had been served on the vendor under a long series of listed statutes or 'under any other Act'. The reply in the present case was a terse 'no'. The judge stated that the

purchasers' solicitors from their own experience would be well aware that the most that could be inferred from such a reply was that the vendors' solicitors had been so instructed. 'It would be wholly unreal to suppose that the vendors' solicitors would accept any responsibility for the accuracy of the information being furnished', said the judge.

There were certain circumstances in which the vendors' solicitors will be responsible for the information furnished to the purchasers' solicitors. Keane J stated that this will depend on the circumstances and whether it is reasonable in appropriate circumstances for a vendor's solicitor to transmit what he or she was told *without further enquiry*.

In the circumstances of the Doran case, Keane J, speaking for the court, held that the solicitors for the vendors should have known that whether or not the reply accurately reflected the vendors' instructions to them it would unquestionably be relied upon. In the event, according to the judge, it was relied on since the Dorans closed the sale wholly unaware of the fact that the vendors had been embroiled in a dispute concerning the boundary, which, as Hamilton P had found, had led to their selling of the property to the Dorans and the reply to the requisition on title, referred to above, did not give the slightest hint of any 'difficulty' as to the boundary.

The vendors' solicitors owed a duty of care to the Dorans when they replied to requisition 13.8 referred to above. In the circumstances, according to the Supreme Court, there was a breach of that duty. It is necessary to stress that Keane J repeated, however, that there were many instances in which a conveyancing solicitor would be perfectly entitled to convey without comment the information furnished to him by his client but this was not one of them. The judge noted that a partial statement may be equivalent to a misstatement or misrepresentation, but stressed that it was correct to state that no one in this case had suggested that the vendors' solicitors deliberately intended to mislead the Dorans or their solicitors.

Succinct statement of the law

Barron J, in his concurring judgment in the Supreme Court, delivered a very succinct statement of the law in relation to a solicitor's liability for replies to requisitions on title.

'[A] solicitor's responsibility, if any, for replies to requisitions should not depend upon the wording used. Answers such as "vendor says no", "no" or "not to vendor's knowledge", all mean the same thing: "it is believed that there is no information of relevance".

'The solicitor is not a conduit pipe. Once he is acting professionally, he warrants that so far as his own acts are concerned he has taken the care and applied the skill and knowledge expected of a member of his profession. He cannot therefore accept his client's instructions without question when it is reasonable to query them. That is the difference between innocent and negligent misstatement. It is not enough that the solicitor was acting bona fide.*'*

Barron J was firmly of the opinion that, in the present case, the solicitors for the vendors ought to have known that the answer in the form in which it was given was not necessarily either the truth or the whole truth. They were under a duty to inquire further. Not having done so, and the answer proving to be misleading, they could not avoid liability to the Dorans.

In conclusion, the Supreme Court varied the order of Hamilton P by finding that the solicitors for the vendors were liable in damages in negligence to the Dorans and that the action should be remitted to the High Court for assessment of damages.

The decision of the Supreme Court in *Doran* is not to be understood as meaning that a solicitor is, in effect, warranting the absolute accuracy of all replies to requisitions on title and thus liable to a party who may rely upon a reply to requisitions on title. To do so would be totally unreal.

The *Doran* decision emphasises, however, that a solicitor is not a mere 'conduit' or 'mouthpiece' for his or her client. A solicitor must accept some responsibility for certain replies to requisitions on title. Much depends on the circumstances of the relevant conveyancing transaction. If a prudent solicitor considers that he or she has a doubt about the accuracy of a proposed reply to a requisition on title, even if vouched by his or her client, then he or she has a duty to make further enquiry consistent with the skill and knowledge expected of a competent member of the solicitors' profession before replying to a vendor's solicitor. G

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

The Motor Insurers' Bureau of Ireland was set up to compensate the victims of uninsured drivers, but getting compensation from the bureau for property damage arising out of a hit-and-run acccident may sometimes be easier said than done. In these cases, argues Professor Bryan McMahon, the 1988 MIBI agreement is in breach of the EU directive it was supposed to implement

Should

Consider the following factual situation. Mary, a 19-year-old with a full driving licence, borrows her father's car with his consent. While driving from her home into the neighbouring town, she approaches a small, newly-constructed roundabout so common in many Irish towns in recent years. It is approximately 7pm on 1 March and she is driving on her dimmed lights. When she approaches the roundabout, she stops and looks to her right. She sees nothing and proceeds on to the roundabout. Suddenly, and without warning, an unlighted vehicle moves with speed from her right-hand side and on to the roundabout, crashing into the driver's side of Mary's vehicle. Immediately after the impact, the driver of the unlit car reverses over the roundabout and drives off in the opposite direction. Althou
en by the impact, Mary is
to note the registration nu
ber of the vehicle in th
street lights. She notice
that there are four youn
men in the car.

When the Gardai arriv
at the scene, Mary give
them the vehicle numb
and indicates the escape r
of the other vehicle. Sh
gives the Gardai a descript
car and its passengers. M
hospital and the Gardai set
the vehicle.

Sometime later, the Gar
car abandoned near a halti
in the halting site admits
vehicle or to knowing any
vehicle itself.

The Gardai impound the
sequent investigations show
bought earlier that day in th
Limerick. The garage whic
says it sold it to a person w
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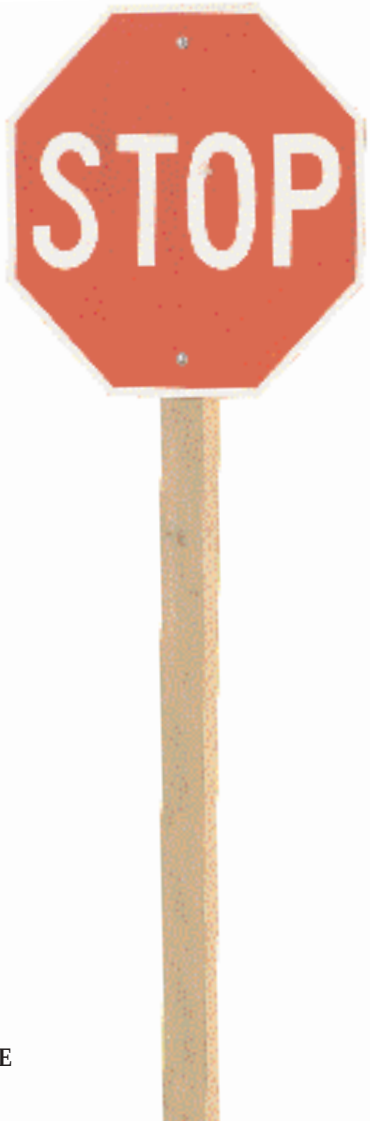
who gave the name of Jos
purchase price of £650 was p

The Gardai have failed
such person and a return v



ing site yields no success.

Mary consults her solicitor with regard to bringing an action for her personal injuries and damage to her father's property. Her solicitor starts proceedings in respect of both personal injuries and property damage against the Motor Insurers' Bureau of Ireland (MIBI). The driver and the owner of the car cannot be traced and there appears to be no insurance cover-
e abandoned vehicle.

Negotiations

Before the case comes up for
trial, the solicitors appointed to
represent the MIBI contact
Mary's solicitor with a view to
settling her claim. At the
negotiations, the MIBI repre-
sentative says that he is only
rested in discussing the per-
ıjury aspect of the claim since
ers that the bureau has no
or the property damage in the
given. Mary's solicitor settles
jury aspect of the case but, as
the property aspect, he does so
ce to any rights which Mary's
spect of the property damage

its claim, the solicitor for the
clause 7(2) of the 1988 MIBI
ch reads as follows: *'7(2) The*
MIBI for damage to property
to damage caused by a vehi-
or user of which remains
untraced'.
olicitor states that since the
s not been traced, the bureau
to compensate Mary's father
nage to his car.

This raises two interesting questions for Mary's solicitor. The first is what is meant by the phrase 'the owner or user of which remains unidentified or untraced'. Mary's solicitor argues that the driver of the vehicle was seen by Mary and by other witnesses at the time of the accident. It is true that the Gardai failed to apprehend him, having investigated the accident and having impounded the vehicle, but Mary's solicitor argues that the purchaser was Joseph Ward and presumably it was he who was driving at the time of the accident. True, he did not hang around after the collision but he was there at the scene.

Mary's solicitor also maintains that the word 'untraced' within the meaning of the agreement is intended to cover only those situations where no-one has witnessed the collision and there is no evidence that there was in fact any third party vehicle involved in the collision. He further argues that the whole purpose of the section was intended to avoid fraudulent claims and to cover the true hit-and-run situation. It was a provision which was designed to prevent a fraudulent driver who had perhaps damaged his own car from claiming from the bureau by stating that it was a hit-and-run accident. 'Untraced owner or user', therefore, was a term which should be construed narrowly and should prevent recovery for property damage only where there is no corroborative evidence that any collision took place other than the word of the claimant himself.

Mary's solicitor is having some difficulty convincing the solicitors for the bureau that this view should prevail. Their traditional stand is that if the user or the owner is untraced, then there is no recovery under the 1988 agreement for damage to property. They indicate that in this case the driver has not been traced.

For his part, Mary's solicitor argues that the driver has been traced since, when the car was

pay, won't pay?

being purchased in the garage in Limerick, the person buying it signed his name and this was accepted by the garage. Mary's solicitor argues that if the bureau wishes to contest the authenticity of the purchaser's name, the onus is on the MIBI to prove that the name given was a false one – and even then Mary's solicitor argues that the driver would still be traced. Mary's solicitor continues to hammer the argument that there is a distinction between an untraced driver and an unapprehended driver.

Since Mary's solicitor is not making much headway, he decides that he will further investigate the parentage of clause number 7(2) of the MIBI agreement. He acquires a copy of EC directive of 30 December 1983 (84/5/EEC) which the Member States were obliged to implement into their national systems by 31 December 1987.

On reading the directive, he identifies the article which 'permits' the derogation provided for in clause 7(2) of the 1988 agreement.

Article 1.4, paragraph 4, of the said directive provides as follows: *'Member States may limit or exclude the payment of compensation by that body* [the MIBI] *in the event of damage to property by an unidentified vehicle'*.

On reading this particular provision, Mary's solicitor clearly identifies a discrepancy between the requirements of the directive and the attempted transposition into Irish law of this provision. The directive indicates that Member States may avoid paying for property damage where the 'vehicle is untraced'; the 1988 MIBI agreement attempts to comply with this provision by adopting clause 7(2) (above) which, however, refers to 'untraced drivers/owners' and purports to avoid paying for property damage where the owner or user 'remains unidentified or untraced'.

Right to compensation

It is clear from this that the Irish measure does not accurately transpose the EU obligation into Irish law. The facts of Mary's case clearly identify the shortcoming of the Irish measure in this regard. Had the Irish measure used the EU mandated provision, the relevant clause would have used the phrase 'untraced vehicle' instead of 'the owner or user of which remains unidentified or untraced'. Had it done so, Mary's father would clearly have a right to compensation from the bureau in respect of damage to his property since the *vehicle* was traced and recovered.

In failing to transpose the directive into Irish law, the State is in breach of its Community obligations and is liable to any person such as Mary's father who has suffered as a result.

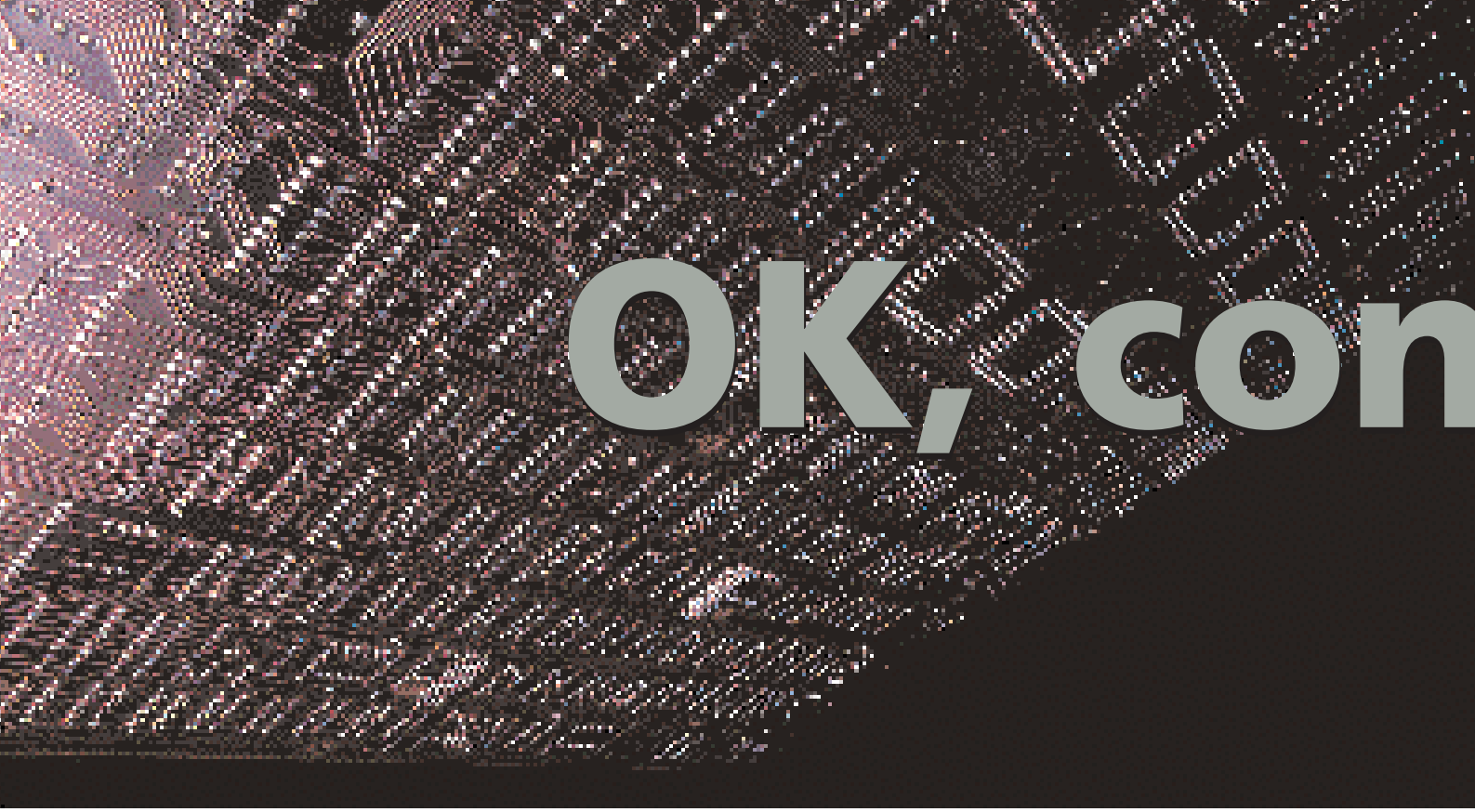
From a practical point of view, Mary's solicitor is quite confident that once this irregularity is pointed out to the bureau, it will capitulate. After all, the 1988 agreement is an agreement between the Minister and the bureau and insofar as the Minister must admit the improper compliance with EU obligations in the matter, he will bring the relevant pressure to bear on the bureau to remedy the situation.

Mary's lawyer is firmly of the opinion, therefore, that in circumstances like those that have arisen in her case, he will be able to recover for damage to property to her father's car. This view is contrary to that which is stoutly maintained by the bureau in recent years and it should be noted by all litigating lawyers in this jurisdiction.

Finally, it should be noted that Mary's insurance was third party, fire and theft only. Had she comprehensive insurance, she would have been obliged under the 1988 agreement to claim under her own comprehensive policy without having resort to the bureau and the issue discussed here would not have arisen.

Mary's lawyer is now wondering, if such a case arises for his consideration, whether he might dispute the matter so as to maintain Mary's no-claims bonus. But since he is a busy practitioner, he will have to wait for some client to raise the problem with him before he can analyse the matter to his satisfaction. G

Professor Bryan McMahon is a partner in the Ennis-based solicitors' firm Houlihan McMahon.



OK, con

If the experts are to be believed, the days of using a keyboard to input large quantities of text are all but over. It's been a long time in coming but now voice recognition software developers are finally delivering on their promise to produce usable and affordable systems that accurately translate tracts of naturally flowing speech into nicely formatted documents on a computer screen.

For the large number of people who either cannot or will not learn to type with any great proficiency, voice recognition technology's coming of age is one of the most exciting and potentially powerful developments in computer history since they started to become personal commodities in the mid-1980s. Over the next couple of years, as the quality of speech recognition software improves further, we can expect every PC to include as standard the built-in capacity to recognise the voices of authorised users, carry out spoken commands, transcribe speech and distinguish between relevant and background noise.

Indeed, Microsoft has already stated that it intends to include speech recognition in its future operating systems. The company recently paid out $45 million for a minority share in Lernout & Hauspie (L&H) Speech Products, which bought Kurzweil's speech recognition systems early in 1997. Speaking at the time of the investment, Nathan Myrhvoid, Microsoft's chief technical officer, said: 'For the past several years, Microsoft has made great progress towards a vision of the personal computer that can interact with users via spoken language. Through this alliance with L&H, we are taking a big leap forward in transforming that vision into a reality'.

Since the early days in the evolution of this technology, the legal profession has been targeted as one of the markets most likely to benefit from speech recognition software. 'These products were originally aimed at the legal and healthcare professions because of the repetitive nature of the information they are entering and a general lack of keyboard skills', explains Regina Walsh, voice recognition software manager at IBM Ireland. Both the healthcare and the legal sectors now have a wide range of specialist dictation products available to them.

Impact on productivity

For the legal profession, speech recognition technology should have an enormous impact on productivity and the way people do their jobs. The ability to provide high-quality information quickly and accurately is becoming increasingly important to all law firms. The traditional method of dictating documents, waiting for them to be typed up and then sending them back to the typist with corrections is both tedious and relatively inefficient. It also creates delays in sending out documents that are normally time sensitive. Voice recognition software can save on resources and give the person composing documents greater flexibility and control over their work.

A number of major software companies have been involved in the development of speech recognition technology over the last decade or so, but the software has really only entered the mainstream quite recently as a result of the improved quality of the products as well as increasingly powerful PCs and a significant reduction in pricing. In the past,

nputer?

Hal, the warped talking mainframe in *2001: a space odyssey* may still be a sci-fi nightmare, but rapid advances in technology will soon have PCs obeying their masters' voices. Grainne Rothery talks us through speech recognition software and looks at what the market has to offer

accuracy rates between what was said and what was transcribed were considerably lower than they are now and it was also necessary to pause between words to allow the software to pick out each individual word. Now, accuracy rates are generally around the 95% to 97% mark and many of the top-end systems can recognise continuous or naturally flowing speech.

Until very recently, the software and the systems required to support voice recognition were prohibitively expensive for most people. Now, most new computers are powerful enough to run the ever-more advanced software that is becoming available. Multimedia PCs, which are now almost standard, are equipped with the sound cards needed to interface with the software as well as the CD-ROM drives for installing it. The luxury of talking to your computer would probably have set you back thousands of pounds four or five years ago but now, if you've already got the hardware, you can talk away for less than £100.

Off the shelf packages

The growing use and appeal of this technology is reflected by the fact that voice recognition packages can be bought off the shelf in computer shops such as Compustore, where Dragon Systems' entry level product *DragonDictate* costs just £65 and IBM's *Simply Speaking Gold* is priced at £66.

Dragon Systems was the first of the developers to launch a continuous speech system for the home or small business user when it introduced Dragon *NaturallySpeaking* last spring. This retails at around £300 and incor-

porates hands-free editing of documents. The product is also available in a more expensive deluxe version which offers a total vocabulary of 230,000 words, 30,000 of which are active at any one time. The deluxe edition includes many added user features and offers accuracy levels of up to 95%. To run the software, the minimum configuration needed is a 133 MHz Pentium running Windows 95 or NT 4.0, 32 Mb of RAM and *Soundblaster 16* or its equivalent.

L&H's two current voice recognition products are *VoicePro* and *VoicePlus*. Both products can be used on a 486 DX4/75 microprocessor for Windows 3.1 or a Pentium for Windows 95. *VoicePro* requires 24 Mb of RAM while *VoicePlus* needs just 16 Mb. Both systems take up 35 Mb of hard disk space. The two packages allow voice control of Microsoft *Office*, Lotus *SmartSuite* and Corel *Office*, as well as nearly all other Windows applications. *VoicePro* has an active vocabulary of 60,000 words and costs £149 (ex VAT), while *VoicePlus* has a vocabulary of 30,000 words and retails at £99 (ex VAT). Both systems are equipped with 200,000-word dictionaries from which words can be taken to include in the active vocabulary.

Continuous speech

While both of these products require discrete or paused speech, L&H will shortly be introducing *Voice Xpress* and *Voice Xpress Plus* which use continuous speech recognition and natural language processing technology. The entry level product is expected to sell for around £100 (ex VAT) and will allow users to create, format and edit documents by voice. *Voice Xpress* has a 30,000-word vocabulary which can be customised to include industry-specific terms, names and acronyms.

L&H has also recently launched *VoiceCommands*, an add-on tool that allows the user to control Microsoft Word and to format documents by voice. L&H claims 90% recognition accuracy without any training and up to 97% after ongoing use. There is also a facility to set up speaker profiles specifically designed to increase accuracy for male and female voices, as well as for children and teenagers.

VoiceCommands has minimum system requirements of a Pentium processor 90 MHz (or higher) IBM-compatible PC, Windows 95 or NT 4.0, 16-bit soundcard from Creative Labs or equivalent, 16 Mb of RAM when running Windows 95 (24 Mb recommended) or 24 Mb when running Windows NT 4.0 (32 Mb recommended). You will also require around 20 Mb of hard disk space, a CD-ROM drive for installing the product and either Word 7.0 or Word 97. The product costs £49.95 (excluding VAT).

140 words a minute

IBM currently has four standard products in its speech-recognition family. These range in price from £45 to £149 including VAT. The high end and most expensive product is the recently launched *ViaVoice Gold* which can handle dictation speeds of up to 140 words a minute and has accuracy rates of up to 95%. It has an active vocabulary of 64,000 words, of which 30,000 are already in the system and 34,000 can be used to expand with your own personal vocabulary. The system can be programmed with macros so you can use single words to bring standard phrases and paragraphs into a document. The software includes *ViaVoice Outloud*, which can read text back to help check for mistakes. This facility can also be used for reading other documents like e-mail.

The minimum system requirements for *ViaVoice Gold* and *ViaVoice*, which retails at just under £100, are as follows: Windows 95 or NT 4.0, Pentium 166 MHz (or P150 with MMX) or equivalent, 32 Mb of RAM for Windows 95 or 48 Mb for NT a CD-ROM drive for installation.

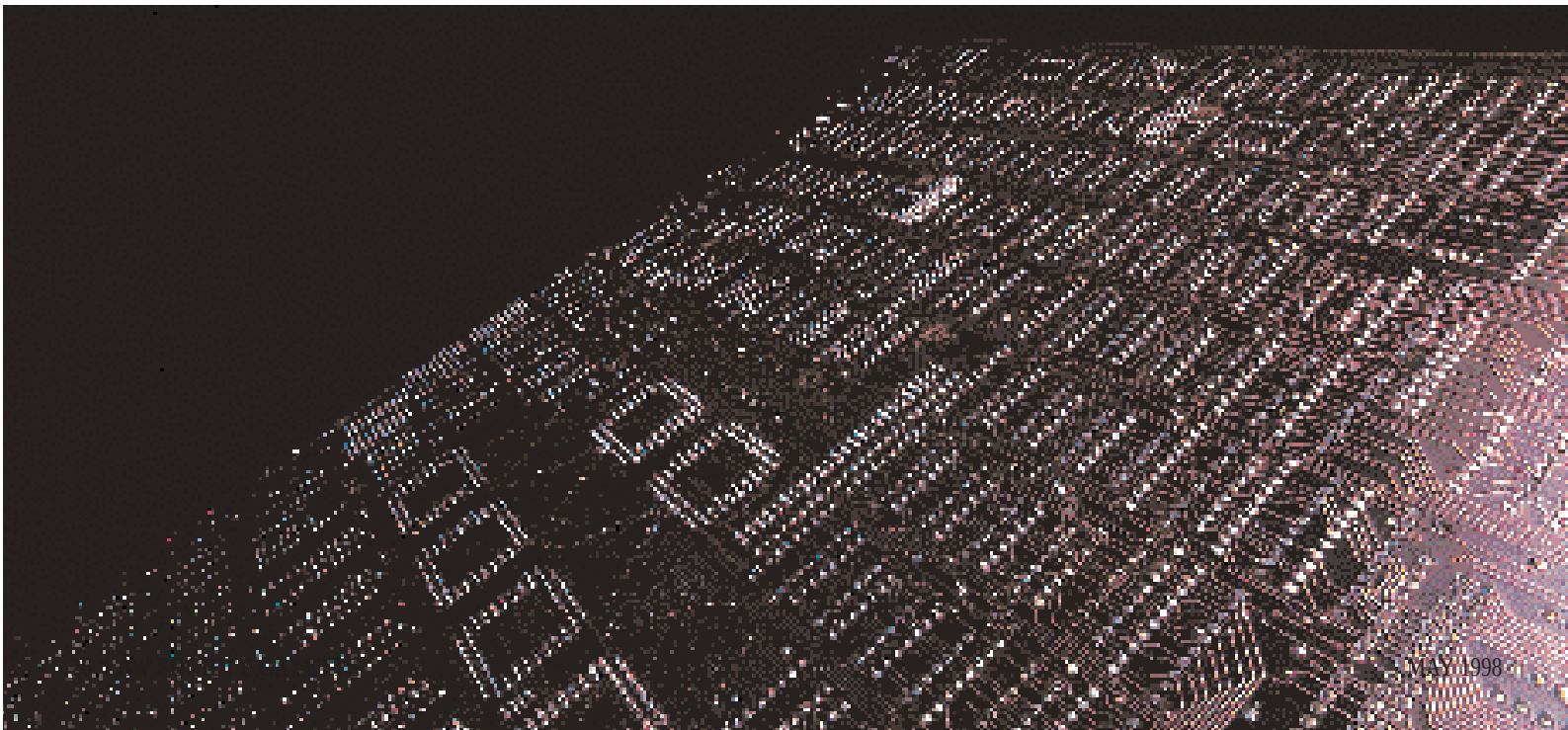
IBM's *VoiceType Simply Speaking Gold*, meanwhile, sells for around £60 and claims to give fast, accurate, isolated word dictation for those using less powerful machines. As with L&H's *VoicePro* and *VoicePlus* products, this means that the user has to make slight pauses between each word. System requirements are Windows 95, Pentium 100 MHz, 16 Mb of RAM, 75 Mb of hard disk space, a sound card and CD-ROM drive.

The package has dictation speeds of between 70 and 100 words a minute, which is still faster than most people can type. Because the software recognises discrete rather than continuous speech, accuracy levels can be slightly higher at up to 97%. The product also supports IBM's specialised legal and healthcare 30,000-word vocabularies which can be bought as add-ons and retail at around £300.

Although a healthcare language model has been developed for the *ViaVoice* range, a legal version is not expected. According to IBM's Regina Walsh, there has been a limited demand for the legal language model of *Simply Speaking*, with most lawyers opting to add in their own specialised vocabularies.

Interest in voice recognition products has increased dramatically over the last few months, reflecting improvements in the quality and ease of use of the technology. According to Chart-Track, the software sales chart in the UK, *VoiceType Simply Speaking* outsold all other CD-ROM titles, including games, in Britain during the week ending 14 June last year. This apparently was the first time a non-games product had headed the chart all year. Compustore, meanwhile, reports growing interest in, and sales of, voice products in its shops in this country. G

Grainne Rothery is a freelance journalist specialising in technology issues.



Solicitors and the Euro

The big decisions have just been made. We're in, and the rate of the new single European currency is fixed with effect from 1 January 1999. Cillian MacDomhnaill looks at the threats and opportunities provided by the imminent arrival of the Euro

Now that the macro stuff is out of the way, it is time for us to look closely at the practical implications of the single currency in, firstly, running our firms and conducting business and, secondly, as professional advisors to our clients.

The first thing to do is not to panic. For many, 1 January 1999 will come and go with very little impact on their practice. The impact may come as late as 2002. The important thing is not to let 1 January 1999 creep up on you, but to look at the matter now and to make decisions about how you will accommodate dealing with the Euro in the following time scales:

- With effect from 1 January 1999
- With effect from 1 January 2000 (if you wish to adopt an interim approach)
- With effect from 1 January 2001 (if you wish to adopt an interim approach)
- With effect from 1 January 2002 (remember it's too late to start then!).

So, what are the questions that arise for solicitors?

a) Bank accounts

- With effect from 1 January 1999, will we have office and client accounts in Irish pounds and Euros, or have Euro cheques on Irish pound accounts? And if not, when?
- What will our bank statements look like?
- Will there be extra bank charges?
- What will we do with Euro cheques and electronic receipts?
- What will we do with requests for payments in Euro (cheques, electronic, direct debit, standing order etc)?

b) Business issues

- Will we issue section 68 letters denominated in Irish pounds and Euros?
- Will we issue fee notes, statements, credit notes in Irish pounds only, Euros only, or Irish pounds and Euros?
- Can we insist on payment in Euros?
- What is the impact on pricing of services?
- What about dealings with the public sector?
- What about clients in the sterling area?

Cillian MacDomhnaill: don't let the Euro deadline creep up on you

c) Internal issues

- Can suppliers insist on payment in Euros?
- Can employees insist on payment in Euros?
- Can we insist on paying employees in Euros?
- What impact will the Euro have on my pension fund and the employees' pension fund?
- What policy should we adopt in regard to accounting records, management accounts, statutory returns, accountants' certificates and so on?

Obviously there are a range of factors affecting your decisions about such things, for example, what your clients are doing and what they want, what your competitors are doing, what your systems can handle and so on.

Opportunities for solicitors in alerting and advising clients

As well as requiring some internal administrative changes, the introduction of the Euro provides a business opportunity in relation to advising clients about:

- Continuity of contracts
- Pricing
- Payments during transition period (that is, from 1/1/99 to 1/1/2002)
- Corporate finance issues
- Trading with non-EMU states.

Help from the Law Society

This month the Law Society will be issuing a new publication, *Solicitors and the Euro*, in conjunction with the Bank of Ireland. This is designed to answer questions that are specific to solicitors and you should find it a very useful workbook to address the issues in your firm. The Society is also running a seminar on *Solicitors and the Euro* on Thursday 14 May 1998 from 5pm to 7pm at Blackhall Place. For further information, contact Antoinette McKeogh on 01 671 0711. G

EURO TIMETABLE

1 May 1998:	Countries and rates fixed
1 January 1999:	Rates operative, 'no compulsion, no prohibition' on using Euro
1 January 2002:	Notes and coins issued
1 July 2002:	Irish pound notes and coins gone

Cillian MacDomhnaill is Finance Director of the Law Society.

Last resort fo

They say that a rising tide raises all boats, but in the case of the Government's designated resorts scheme this looks like turning into a full-scale flood of new money for the seaside towns concerned. Barry O'Halloran finds out why investors really do like to be beside the seaside

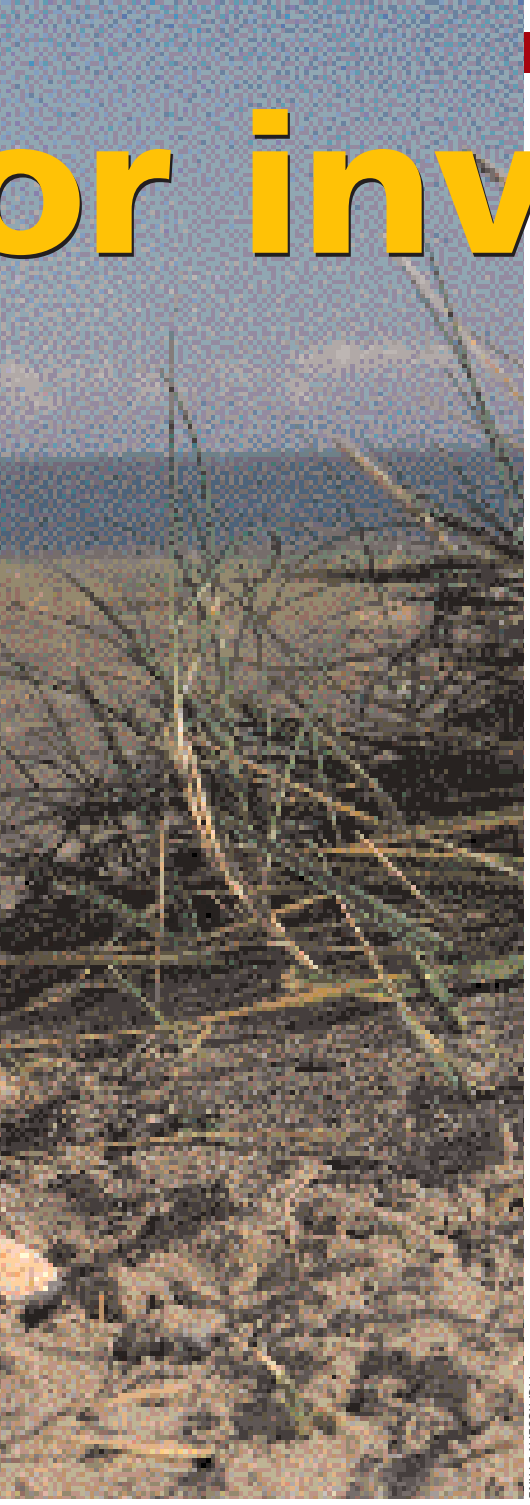
Since the Government introduced tax incentives in the 1995 *Finance Act* for developments in a number of seaside towns around the country, these areas have been experiencing a property boom all of their own. The towns are all traditional tourist resorts but their glory has somewhat faded since cheap package deals lured away the home-grown holidaymakers they used to depend on.

The aim of the designated resorts scheme is to develop these towns so that Irish and foreign tourists will once again throng their beaches – and in some cases promenades – during the summer months. The towns covered by the scheme are Achill, Arklow, Ballybunion, Bettystown/Laytown/Mosney, Bundoran, Clogherhead, Courtown, Clonakilty, Enniscrone, Kilkee, Lahinch, Salthill, Tramore, Westport and Youghal – a pretty even spread around the Republic's coastline.

The reliefs available apply to both owner-occupiers or lessors, so you don't have to live in one of these areas to take advantage of the scheme. They also fall into three basic categories: capital allowances for building and refurbishment; double rent reduction; and relief for constructing or doing up rented residential accommodation.

The capital allowances cover hotels, holiday camps, holiday cottages and listed tourist accommodation. All have to be Bord Fáilte approved. The same allowances are available for a long list of non-residential leisure facilities generally associated with tourism. These include sports facilities, parks, restaurants and

or investors?



PIC: ROSLYN BYRNE

heritage buildings. A complete list has been published by the Revenue Commissioners in the information leaflet *Tax reliefs for renewal improvement of certain resort areas*.

Anybody considering building or buying a home by the sea for investment purposes will face one problem – property prices. The incentives have been around long enough to distort the market in each of the resorts and have sent the cost of buying through the roof. For example, a four-bedroomed house in Co Clare will cost somewhere between £45,000 and £50,000. That is, unless it is in Kilkee, where a two or three-bedroomed apartment will easily top £100,000 simply because the demand for sites and properties has bottlenecked in the town since 1995.

The investments do offer good returns, but remember that they are linked to the overall health of the tourist industry so if the visitors stop pouring in during a recession you could find yourself with a holiday home that is not paying its way.

The scheme operates in the following way. If you own one of the buildings or facilities covered by the capital allowances, the *Finance Act* allows you to claim 50% relief in the first year of ownership, and 5% every year afterwards until you clear the full cost.

This means that if you are on the top income tax rate of 40% and invest £50,000, you get an initial tax rebate of £24,000 for the first year and £2,500 for the subsequent years. The same allowances apply if you lease the property. You should also note that if you refurbish an existing building, the refurbishments must come to 20% or more of the market value.

Lessees are allowed a double rent reduction on their income tax if they are doing business in the qualifying building. To qualify for this, they must already be entitled to capital allowances under the scheme, the building must have been leased during the qualifying period – that is, from 1 July 1995 – and it must be a commercial letting.

Cashing in your investment

If you sell up within seven years in the case of hotels or ten years in the case of holiday cottages, the allowances are withdrawn. This means that you face a bit of a wait if you want to cash in your investment, and of course it also means that demand in each of the resorts will continue to increase. The same regulations govern tourist accommodation such as bed and breakfasts or guesthouses and the non-residential facilities. The only difference is that you have to wait for 11 years before selling up.

Section 23 relief is available for rented residential accommodation in the designated resorts (this relief is already available under the urban renewal scheme). It allows anyone who lets a newly-built house to write off the cost of construction against the rental income. Section 23 also applies to existing buildings that have been converted into two or more residential units. In this case, it is the refurbishment cost that is allowed to the taxpayer.

There are no figures available from the Revenue Commissioners to show just how much investment money has been pouring into resorts, but word-of-mouth evidence and the rocketing property prices in the areas indicate that it is a popular scheme. Michael Feeney of accountants Coopers and Lybrand says that all tax-based investment schemes have been successful, whether they are the old urban renewal scheme or the designated resorts. But he points out that it is the fact that they offer a tax kick-back that makes them work.

He argues that they benefit not just the investor but also the areas that are earmarked by the Act. 'You only have to look at what's happened in Dublin over the last few years', he says. 'There are things that private investors can do that the State cannot, so it makes sense to try to attract investors by offering them some kind of incentive. It's also possible that the money invested in these schemes would end up being invested outside the country if the incentive was not there'.

In the 1993/94 tax year, the Revenue Commissioners approved a total of £19.7 million in tax relief under the urban renewal scheme. The following year that figure jumped to £46 million. This scheme has been running in various cities and towns around the country since 1994 and offers similar allowances and reliefs to the resorts scheme. It is based on designated areas and streets which are determined by the Minister for the Environment.

The section 23 and owner-occupier reliefs are precisely the same as those offered under the resorts scheme with the exception that where a building is refurbished 100% of the cost is written off at 10% a year. To qualify, the taxpayer has to occupy the property as their main place of residence during the relevant tax year.

For buildings used as factories, an owner-occupier or a lessor gets 25% initially and 4% every year afterwards until the cost of the development is cleared. This means that for a £50,000 investment, you get £12,000 back in the first year if you are in the top income tax bracket.

With commercial premises, 50% of the cost of new building or refurbishment is allowed at 25% for the first year and 2% afterwards. This applies to both owner-occupiers and lessors. Offices may also qualify for capital allowances, but only if they form 10% or less of a building which otherwise qualifies for urban renewal relief.

The difficulty with designated-area properties is that they are snapped up so quickly. While there is still plenty of interest in them, it is now difficult to buy or lease a qualifying property without paying out a small fortune. This problem is compounded by the fact that investors lose their allowances if they sell up within 13 years.

The Government's plan to tackle house prices means the near end of section 23. Its future will be decided in the next urban renewal scheme, due to be published in August. G

Terms

These days a growing number of employers seem to prefer fixed-term contracts for their new recruits rather than the traditional form of employment contract. On the face of it, this may seem like the easier option, but what if the employer wants to terminate the contract before it's run its course? Adrian Twomey looks at the pros and cons of fixed-term contracts

Workers employed under fixed-term contracts of service are clearly covered by the bulk of existing protective employment legislation. Once the worker in question has given a period of unbroken service equivalent to that required by the Act in question, he qualifies for its protection.

The question which would seem to be causing most confusion among employers in respect of fixed-term contract workers and protective legislation relates to the renewal of fixed-term contracts. If, for example, one employs an individual under a nine-month fixed-term contract and offers a second such contract to the worker on the expiry of the first, is the worker then protected by the *Unfair Dismissals Acts, 1977-93* (which require, in most instances, that the employee has completed at least one year of continuous service)? The answer to such a question is relatively clear:

'Continuity is not broken by the dismissal of an employee followed by their "immediate re-employment". Tribunals have [however] had some difficulty with this issue and the cases generally turn on their particular facts rather than through the application of legal principle. In *Howard v Breton Ltd* (UD 486/1984) [for example] a dismissal followed by re-employment on new conditions a week later was considered sufficiently immediate to preserve continuity.'

(Madden & Kerr, *Unfair dismissal: cases and commentary*, IBEC, 1996)

Effectively, a tribunal is attempting to establish whether or not the termination of the employment relationship is genuine rather than simply a ruse on the part of the employer aimed at avoiding the application of protective legislation. Any such ploy will inevitably be regarded as a somewhat cynical attempt to circumvent the legislation.

But a tribunal is not simply seeking to 'catch out' employers. In *Mulhall & Sons Builders v Dunphy* (UD 710/1981), for example, the tribunal was again faced with a situation where there had been a short break in the employment. In that case, however, the employee was proved to have been actively seeking work elsewhere during the break in employment. In such circumstances, the logical implication is that when the employment relationship was terminated there was no intention to resume it again so quickly. The termination, therefore, could not be construed as a ruse to avoid the application of the legislation.

On the other hand, a tribunal will have to be satisfied that a real break in the continuity of the

# of engagement

relationship has, in fact, taken place. In one recent case (UD 492/1986), for example, the tribunal indicated that the issuing of a P45 form between contracts did not provide conclusive evidence of a break in the continuity of employment. Similarly, in *Ennis v Toyota (Ireland) Ltd* (UD 597/1983), the company failed to satisfy the tribunal that there was a genuine termination where the employee had purportedly been dismissed for misconduct and re-employed two weeks later.

In respect of the *Unfair Dismissals Acts*, the matter was put beyond any doubt by section 3(c) of the amendment Act introduced in 1993. The paragraph in question provides that where an employee is re-employed by the same employer within 26 weeks of the dismissal, there is no break in the continuity of employment if the dismissal was designed to avoid liability under the legislation.

Unfair and wrongful dismissals

From a legal perspective, it would seem that, for employers, one of the more attractive features of fixed-term contracts is the fact that once the agreed period has elapsed there are no further obligations. In other words, the fixed-term contract **of** service, like most contracts **for** services, has been discharged by performance. Dismissal is, for that reason, easily effected. As has already been explained, the situation is quite different if the employer uses a series of fixed-term contracts in an attempt to avoid the application of the *Unfair Dismissals Acts*.

But so far we have only considered the situations that arise when an employer seeks to dismiss the employee either upon the expiry of the fixed term or after a series of contracts have been entered into and performed. What happens if the period of the contract has expired and the employee has continued on working for some time? While the answer will vary from case to case depending on the specific circumstances, it is certainly arguable that in many cases the parties have by their conduct implied an agreement to enter into an on-going contractual relationship. In plain English, the parties are now engaged in a 'permanent', on-going employment relationship, which may be difficult for the employer to terminate in a lawful manner.

The final scenario which must be dealt with is where the employer wishes to terminate the relationship before the expiry of the period of a fixed-term contract. While this is certainly possible, there are a number of pitfalls that should be avoided. The first is entering into a contract that makes no provision for the possibility of dismissal. In such circumstances, a carefully handled breach of contract action has the potential to yield significant damages for the litigious employee. Put simply, the employer may be required to buy out the contract, paying the employee the equivalent of what he would have earned had the contract been allowed to run its natural course. Presuming that the employer has taken care to expressly provide for such eventualities in the contract, he need have few worries.

Where the contract is for longer than one year and the employee has completed more than a year of service, then the Acts will usually apply. But even in such circumstances a justifiable dismissal should not give rise to any legal difficulties for the employer, provided he does not wrongfully dismiss the employee. A dismissal is wrongful where it constitutes a breach of contract or is carried out in breach of the principles of natural or constitutional justice. Breach of contract claims will usually be avoided where the employer takes appropriate care in drafting the terms of the contract. As for avoiding claims based on breaches of the rules of natural justice, employers simply need to make sure that they are clear as to what those rules are and how to comply with them.

Notice periods

Occasionally, one comes across individuals who presume that because they specify or imply an expected date of termination, fixed-term contracts cannot be terminated by notice. This is certainly not the case. In *BBC v Dixon* (1979 2 All ER 112), for example, the English Court of Appeal held that even fixed-term contracts can be terminated if the employer gives the employee appropriate notice.

If the contract itself contains a term expressly dealing with the matter, then that term determines the notice period (except where the contractual term is in breach of the *Minimum Notice and Terms of Employment Act, 1973*). In the absence of such an express term, one must turn to the 1973 Act for guidance. Section 4 of that Act provides that if an employee has been in 'continuous service' with the same employer for at least 13 weeks, he is entitled to a minimum period of notice before the employer may dismiss him. Any provision in a contract of employment for shorter periods of notice than the minimum periods stipulated in the Act has no effect. Despite the provisions of the Act, however, the employer is entitled to dismiss an employee without notice if that employee has been guilty of gross misconduct.

The third possible source of a notice entitlement is the common law which requires that employees be given 'reasonable' notice. In determining what reasonable notice is in a given case, the court will assess:

- The capacity in which the employee is engaged
- The general standing in the community of such a person, and
- The difficulty the employee is likely to encounter in getting a similar job elsewhere.

So in *Carvill v Irish Industrial Bank* (1968 IR 325), for example, it was held that, for the managing director of a bank nothing less than 12 months' notice would be reasonable. Similarly, in *Cotter v Aherne* (unreported, High Court, 25 February 1977), Mr Justice Finlay held that a teacher dismissed in the middle of the school year was entitled to compensation equivalent in *quantum* to his entire salary for the remainder of that school year.

Given the outcomes of cases such as these, it would seem that the safest option for employers is to specify notice periods (which are at least as generous as those provided for under the 1973 Act) in the contract. Such clauses should also expressly provide that the employer can dismiss without notice if the employee is guilty of serious misconduct. G

Adrian Twomey is a barrister and lecturer in law at the National College of Industrial Relations.

PROFITABLE PRACTICES

WHY BOTHER? WHAT IS ISO?

DO I NEED Q? HOW? WHAT FOR?

A short evening seminar on:

ISO and Quality Awards for Irish Legal Practices and Increasing Your Profits, But Not Your Workload, in Civil Litigation

THURSDAY, 7th MAY, 1998. 5.30 - 7.00 P.M.

* Have you begun to think about the Q Mark or ISO standard for your practice?
* Do you wonder what they are really about?
* Would they benefit you, your business and your clients?

Typically, the answer to the above questions are:
Yes, Yes and Yes.

And then the doubts start to set in:
* Aren't they difficult to attain?
* Even if I wanted to find out more, where would I start?

The answer to these are just as easy.

Take an hour or so on your way home on Thursday, 7th May, and attend Peter McDonnell's introductory seminar, **PROFITABLE PRACTICES**, in The Law Society, Blackhall Place. As Principal of the first solicitors practice in Ireland to have achieved the ISO 9002 International Quality Award and holder of the Q Mark, Peter knows better than most exactly what is involved. He will explain the difference between the Q Mark and the ISO, their benefits, how to go about attaining them and the costs and requirements of each. If you've just begun to think about these awards then you, and your staff, should attend.

In addition, Peter, who specialises in Civil/Commercial Litigation, will show you how you can increase your legal costs in Civil Litigation ***by 50%***, without increasing your workload.

The short evening seminar will end with a brief update on the 'Tobacco Wars' case Peter is currently taking through the Irish Courts.

Date:	Thursday, 7th May, 1998
Format:	4.30 - 5.30 pm - Registration and Light Refreshments
5.30 pm sharp -	Presentation by Peter McDonnell followed by Question & Answer session
Seminar Ends -	7.00 pm
Venue:	The President's Hall, The Law Society, Blackhall Place, Dublin 7
Cost:	£75 (individual rate), £65 per person (group rate) Includes light refreshments on arrival and seminar notes.

Booking Form: **PROFITABLE PRACTICES Seminar** (PLEASE PRINT CLEARLY)

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

Name..... Tel..... Fax.....

Address.....

Cost: Individual £75 /Group Rate (two or more) £65 per person

I enclose cheque for £..... made payable to ***Peter McDonnell & Associates.***

Please send this registration form with the full fee to: ***C. Martin, Peter McDonnell & Associates, 5 Inns Court, Winetavern Street, Dublin 8, to arrive no later than Tuesday, 5th May, 1998.*** Receipts may be collected on arrival at seminar. For late bookings (after 5th May) please ring (01) 679 5500 and pay at door.

Peter McDonnell & Associates

Playing the stock market

With stock markets in Ireland and in many other developed economies having done so well in recent years, is it too late to be an equity investor? Neil Bowes considers the long-term implications of the cycles in the stock market for both personal and pension fund investors

Is it the wrong time to be investing in equities considering how high stock markets are? If we compare the investor who got in at the best time every time with those who invested at the worst time every time we can get a clear sense of the difference that this makes in the long run.

Best case: January 1974 to January 1998

The first example is that of a person who invested at some of the best times over the past 25 years. Let's say this person invested £10,000 at six points in time that in retrospect look well timed – total investment £60,000 (see **Figure 1**).

FIGURE 1

Date	Amount	Value: Jan '98
Oct '74	£10,000	£429,146
Apr '78	£10,000	£210,664
July '82	£10,000	£118,194
Jan '88	£10,000	£31,407
Oct '90	£10,000	£32,292
Sep '95	£10,000	£17,140
Total	**£60,000**	**£838,845**

The figures indicated are based on the growth in the MSCI World Index including reinvestment of dividends. This does not include charges or taxes that might have applied. Past performance is not an indication of future performance which will depend on future economic conditions.

Worst case: January 1974 to January 1998

The second case is the investor who invests at times that, with hindsight, were not the best periods for investment in stock markets (**Figure 2**).

The difference between the two is by no means trivial. However, both portfolios had grown significantly in value – the best one by 14 times and the worst one by 12.6 times. Both would have been a long way clear of the best

deposit account over that period.

In reality, the vast majority of investors would neither have bought at the cheapest nor the most expensive, so most people would be somewhere in the middle.

For absolute beginners

The most simple of all approaches to this problem is to completely ignore the ups and downs of the stock market and to pursue a plan of regular investment.

A strategy of investing regularly, irrespective of the state of the stock market, quite literally means you will be sure that part of your money invests at the 'best times', part at 'average times' and part at the 'worst times' – so you won't make the mistake of putting all your money into the market at the wrong time.

In the financial industry this is called 'pound cost averaging'. Don't be put off by the elaborate sounding name. Pound cost averaging can reduce, although not eliminate, the risk of equity market investment, by ensuring that you don't invest your entire portfolio at temporarily high prices. To get the benefit, you have to be tenacious and continue to invest during the bad times in the same way as during good times.

FIGURE 2

Date	Amount	Value: Jan '98
Jan '74	£10,000	£327,296
Jan '77	£10,000	£220,082
Dec '80	£10,000	£135,549
Sep '87	£10,000	£33,670
Jan '90	£10,000	£25,519
Feb '94	£10,000	£18,170
Total	**£60,000**	**£760,289**

The figures indicated are based on the growth in the MSCI World Index including reinvestment of dividends. This does not include charges or taxes that might have applied. Past performance is not an indication of future performance which will depend on future economic conditions.

For the more seasoned investor

Timing the stock market is a very difficult, some say impossible, thing to get right. The more reliable ingredient that investors should include in their investment mix is time – and as much of it as can be afforded. Time will not ensure you get the maximum return but, if history is anything to go by, it will ensure that your investment provides very strong absolute returns. G

Neil Bowes is senior portfolio manager with Bank of Ireland Asset Management.

Council report

Report on Council meeting held on 26 March 1998

1. Northern Ireland members

The President welcomed the members of the Council from the Law Society of Northern Ireland who were in attendance.

2. Payments by lending institutions for work done by borrowers' solicitors

The President referred to the presentation at the Council meeting on 22 January by Colm Price, past chairman of the Conveyancing Committee, in which Mr Price explained the reasons why it was the unanimous view of the Conveyancing Committee that payment should not be sought from lending institutions for work done by borrowers' solicitors. The acceptance of fees for mortgage security work would have inherent dangers (see *Gazette*, April, page 34). The Society had consulted all bar associations for their views and the clear majority of bar associations that had responded were in favour, albeit reluctantly, of the Conveyancing Committee's recommendation. The Limerick Bar Association was the exception to this. In response to a legal query which had been raised by the Southern Law Association, the Council decided to seek a senior counsel's opinion. A number of speakers placed emphasis once again on the need to ensure that all attempts by lending institutions to alter the rules which had been agreed with the Law Society were defeated. The matter was adjourned for final decision on 8 May 1998.

3. Army deafness cases

The President referred to the copies which had been circulated of exchanges of correspondence between him and the Minister for Defence. The Minister had finally agreed to a meeting of the Joint Law Society/Department of Defence Working Group which had been set up to examine how the cost to the State of these cases could be minimised. The Director General said the working group meeting had been positive and co-operative on both sides but that no specific agreements had been reached other than an agreement to meet again. The adjournment of the cases pending the production of the Green Book and the uncertainty of what would follow rendered it difficult for the Working Group to make progress at present. The Director General said that in his view the State's strategy in defending the cases was clearly being driven by political rather than legal considerations. Michael Peart commended the Director General on his performance before the Dáil Committee on Public Accounts when the Director General had been subjected to intensive and aggressive cross-examination which he had handled very well on the profession's behalf.

4. Solicitor advertising

The President outlined the substantial work which had been done on this by Deputy Director General Mary Keane, Michael V O'Mahony, the Director General and himself. There had been a number of meetings with Department of Justice officials. The policy direction was coming from the Government but the Society was trying to ensure that the Bill would be as sensible as possible. The Council proceeded to a lengthy discussion on numerous aspects of the matter, including the monitoring of advertising, the enforcement powers for any new regime and the litigation which this might cause, the regime in Northern Ireland, the effects of a partial ban on solicitor advertising, the effect on accident claims consultants, the difficulty of defining 'bad taste' and the public policy rationale for the Government decision. The situation was still evolving. The President confirmed that, while the Society would seek to influence its contents, it would be the Government's Bill in the end.

5. Court vacations

The President referred to the results of the bar association survey which showed considerable divisions of opinion within the profession on the question of whether or not the length of the court vacations should be reduced. In the course of a lengthy discussion, various Council members made points in relation to the mistaken public and political perception of the vacations, querying the source of any pressure for change, the desirability of having a common position with the Bar on this matter, if possible, the need to respond openly and positively to change, the near elimination of court delays in recent times and the problem of the Society reflecting such a diversity of views among its members. It was agreed that the matter should be further considered at a meeting of the Law Society/Bar Council Liaison Committee before a final position was taken by the Society. That position would then be communicated to the Denham Working Group which had been asked to examine the question by the Minister for Justice.

6. Investment intermediaries and investor compensation

Michael V O'Mahony referred to a memo which had been tabled which proposed a strategic approach for the Society and the profession in this complex area. The objective was to allow solicitors to choose to be (if they wanted to be) authorised investment business firms regulated by the Central Bank without exposing the Compensation Fund. The 99% of solicitors who did not want to be authorised investment business firms could continue to earn commission and fees by referring relevant work to banks, stockbrokers and other authorised investment business firms. The President supported the strategy and emphasised that one of its key objectives was to avoid closing any doors for the profession.

7. Law Clerks Joint Labour Committee

Gerry Doherty sought and obtained agreement for the Society to formally agree in the JLC a payment of 2.25% due on 1 April 1998 under *Partnership 2000*. Hugh O'Neill then raised the subjects of sick pay and pensions. After lengthy discussion, the Society's representatives were given the mandate that they should agree to a sick pay scheme provided it was fair and structured. They were also authorised to obtain expert advice on the subject of pension schemes.

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Committee reports

TAXATION

Residential property tax: certificate of clearance

Practitioners will be aware that while residential property tax was abolished with effect from 5 April 1997, a clearance certificate procedure remains in place in relation to the sale of certain residential properties. The Revenue Commissioners have announced that the value threshold for the purposes of the certificate of clearance procedure has been increased to £138,000.

The new threshold, which relates exclusively to the tax clearance procedure, applies to house sale contracts executed on or after *5 April 1998*. From that date, where the sale consideration for residential property exceeds £138,000, the vendor must provide the purchaser with a certificate from the Revenue Commissioners indicating that all residential property tax due *for the years for which the tax was in operation* has been paid.

Capital gains tax: retirement relief

Full relief applies to a gain on the disposal of a business/farm by an individual who has attained the age of 55 years where the consideration does not exceed £250,000 (which limit seems restrictive by reference to current property values) or otherwise on a disposal to the individual's children. The *Finance Bill, 1998*, section 72, proposes the following amendments to this relief (now governed by section 598 of the *Taxes Consolidation Act, 1997*):

- Qualifying assets must now be owned and used for trade purposes throughout the period of ten years prior to the disposal
- A person who has participated in the EU farm retirement scheme by way of leasing land is not for that reason excluded from the relief.

YOUNGER MEMBERS

Salary survey

As the President said in his recent interview with the *Gazette* (December 1997, page 13), a lot of emphasis is being placed this year on the younger members of the Society. With so many young solicitors qualifying every year, never has it been a more important time for the Younger Members' Committee. It is for this reason we need your help. As you are probably aware, SADSI has sought and obtained guidelines for salaries over the past few years and most recently had a new set of guidelines approved at the January Council meeting. However, there have been no guidelines produced for the younger members of the profession who have qualified.

Using the basis of five years or less post-qualification experience, we are conducting a countrywide survey with the emphasis on current earnings and bonuses. We ask you not to ignore this survey when it arrives in the post. It is our intention to correlate the results of this survey with our own survey of similar professions, such as accountants, engineers, doctors and computer scientists.

It is our contention that while a small proportion of our younger members are well paid in accordance with the other main professions the majority, particularly outside Dublin, are underpaid and we wish to remedy this by way of a recommendation if our survey bears this out. Therefore, please fill out the survey when it arrives and return it to Jill Curran, Secretary to the Younger Members' Committee. Anonymity is absolutely assured.

In addition to this, we also intend to contribute to the Law Society website which should be operational in the very near future. We will have updates of the latest news of our projects and social activities on the Web.

In conjunction with CLE, we will be running a number of lectures commencing with one on conveyancing which will concentrate on the more basic aspects of it as we believe there are many of us who have specialised in one or two areas of the law and paid less attention to other aspects. Depending on the success of the conveyancing lecture, we will hope to do more lectures on similarly wide and basic topics, such as district court advocacy.

Social events

We will also be running our social events which have been so successful in previous years. The Soccer Blitz will take place on 27 June in Blackhall Place and entry forms will be available in the June *Gazette*.

In the meantime, anyone wishing to make an early entry may telephone Jill Curran. The entry fee will once more be £60.

Our Quiz Night, which was such a success last year, will be held in November again and we hope to have it on bigger scale than 1997.

In the meantime, if you have any observations on the Younger Members' Committee, particularly suggestions as to how we may expand our activities, please let us know. We intend to keep in touch with the profession through the *Gazette* and the Internet, so don't be afraid to give your views.

Stuart Gilhooly, Chairman

SADSI

Annual SADSI Ball

The annual SADSI Ball will be held on 4 July in White's Hotel, Wexford. Apprentices will be receiving further details about this event shortly.

Immigration law debate

A debate on immigration law will be held on 7 May at Blackhall Place at 7pm. There will be a reception before and after, and all are welcome.

Apprenticeship questionnaire

Apprentices will shortly be receiving a questionnaire on the conditions and quality of apprenticeship.

Jessup Moot Court

Congratulations to the team of apprentices who recently represented Ireland at the International Jessup Moot Court Competition in Washington for finishing in the top nine teams in the world. Congratulations also to Catherine Costello who was the fifth highest ranked individual in the competition. The team members were Patrick Walsh, Catherine Costello, Phillip Nolan and Donall King.

Practice notes

Discharge of counsel's fees

It has come to the attention of the Litigation Committee that some counsel are experiencing delays in the discharge of their fees by solicitors. The committee will not and cannot condone the withholding of fees. Practitioners are urged to discharge barristers' fees as soon as they are put in funds to enable them to do so.

Litigation Committee

Probate tax on legacies

Practitioners are reminded that unless otherwise directed in a will, legacies should be paid net of probate tax. In the case of a specific legacy, the executors should be put in funds with or reimbursed by the beneficiary before vesting the relevant property. When taking instructions for a will, it may in some cases be useful to consider charging probate tax on the residue, particularly in the case of smaller legacies.

Taxation Committee

New listing system for personal injury actions

Practitioners are advised that, following discussions between the Society's Litigation Committee and the President of the High Court, a new system for listing of personal injury actions will commence forthwith. The new system will operate as follows:

Personal injury actions

Cases will be listed upon request of the parties for a given date in accordance with the current practice but, in addition, any shortfall in the number of cases will be made up from cases at the top of the list so as to ensure that there will be a full list for each day.

Side by side with this there will be a 'live call-over' of cases at intervals of approximately one month so as to ensure that the list contains no cases which have already been settled. Practitioners must ensure that one of the parties involved attends this call-over to advise the court as to whether the listed matter is ready to proceed to trial. Save in exceptional circumstances, cases appearing in the list which are not ready to go to trial will be struck out and may only be reactivated by service of a fresh notice of trial and setting down.

Assessment cases

Arrangements have been put in place for the Central Office to identify assessment cases when defences are delivered and from that point on they will be identified by the letter 'A' appearing after the name of the case when it is listed.

Where cases are for assessment only, solicitors must clearly mark the letter 'A' on the pleadings. Where liability is subsequently withdrawn after a full defence has been delivered, that information should be communicated to the Central Office by letter addressed to the 'Personal Injuries Listing Registrar'.

Litigation Committee

VHI undertakings

VHI Rules ('the rules') govern the terms on which benefit to subscribers is payable. Paragraph 6 of the rules contains the exclusions from cover, one of which is expenses which are recoverable from a third party. Such expenses are typically the medical and hospital expenses recoverable in road traffic accident proceedings. The rules provide, however, that in such cases, benefit to the subscriber will be paid in the normal way subject to appropriate undertakings being forthcoming (rule 6.15).

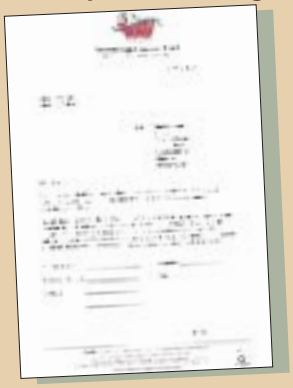
Following lengthy discussions with representatives of the VHI ('the board'), the Society has agreed to recommend to practitioners that with effect from 1 September 1997, the board will pay a fee of £120 plus VAT (currently totalling £145.20) in consideration of a solicitor undertaking with the board for the recovery in RTA litigation of monies advanced by the board to a member pursuant to rule 6.15 of the rules.

The solicitor's obligation is two-fold. Firstly, he must account to the board for all expenses actually recovered in the litigation and, secondly, he must provide the board with a clear explanation as to how that sum was arrived at and how it is computed. The board will accept such an explanation and the solicitor's obligation will then be at an end.

A solicitor must, of course, obtain irrevocable authority from his client to the giving of the undertaking, and to the furnishing of the information.

Litigation Committee

Sample undertaking



continued from page 34

8. Section 68

Keenan Johnson reported that his committee had almost finalised 17 precedent letters and a user-friendly booklet to assist the profession with compliance. These would also be available on disk and it was hoped they would be circulated to the profession before the next Council meeting.

9. Money laundering

Philip Joyce and Michael Irvine raised questions about the recent statement by the Minister for Justice that solicitors, together with accountants and estate agents, would be designated later this year pursuant to section 32 of the *Criminal Justice Act, 1994*. The Director General confirmed the position adopted by the Society when this was first mooted nearly two years ago was that which he had expressed again recently in the media: namely, that solicitors were prepared to play their part in the fight against organised crime but required that the regulations designating solicitors adequately protected legal professional privilege and confidentiality. The Society had received general assurances on this from the previous Government but needed to be satisfied with the detail which had not yet been produced. G

LEGISLATION UPDATE: 16 MARCH – 3 APRIL 1998

ACTS PASSED

Central Bank Act, 1997
Number: 2/1998
Contents note: Provides for the membership of the Central Bank in the European system of Central Banks. Amends and extends the *Central Bank Acts, 1942 to 1997*.
Date enacted: 18/3/1998
Commencement date: Commencement order/s to be made.

Electoral (Amendment) Act, 1998
Number: 4/1998
Contents note: Amends the *Electoral Act, 1997* concerning the disclosure of donations for political purposes and the regulation of expenditure at elections by political parties and candidates and provides for related matters.
Date enacted: 31/3/1998
Commencement date: 31/3/1998

Finance Act, 1998
Number: 3/1998
Contents note: Charges and imposes certain duties of customs and inland revenue (including excise); amends the law relating to customs and inland revenue (including excise) and makes further provisions in connection with finance.
Date enacted: 27/3/1998
Commencement date: Various – see s138 of the Act.

Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act, 1998
Number: 5/1998
Contents note: Provides for the payment of allowances to members of the Oireachtas who hold various recognised positions within the Oireachtas and with committees of the Oireachtas; makes certain provisions in relation to the pensions of Ministers, Ministers of State and other office-holders; and makes provision in relation to the pensions of judges and court officers.
Date enacted: 1/4/1998.
Commencement date: 19/12/1998 for ss24-28, and s30; 1/4/1998 for all other sections.

Social Welfare Act, 1998
Number: 6/1998
Contents note: Provides for increases in the rates of social insurance and social assistance payments, improvements in the family income supplement and child benefit schemes and for changes in the assessment of means for certain social assistance schemes as announced in the Budget, and provides for related matters. Amends and extends the *Social Welfare Acts*; the *Health Contributions Act, 1979*, s7A; the *Youth Employment Agency Act, 1981*, s18A; the *Pensions Act, 1990*, s54.
Date enacted: 1/4/1998
Commencement date: Various – see Act.

SELECTED STATUTORY INSTRUMENTS

District Court (Extradition) Rules 1998
Number: 89/1998
Contents note: Prescribe an amended form of arrest warrant for use in extradition proceedings.
Commencement date: 1/4/1998

European Communities (Hygiene of Foodstuffs) Regulations 1998
Number: SI 86/1998
Contents note: Prescribe the obligations on proprietors of food business to operate such business in a hygienic way. Rules cover requirements for premises, rooms where food is prepared, foodstuffs, transportation, equipment, food waste, water supply, personal hygiene and training. Proprietors are also obliged to identify steps in the activities of the business which are critical to ensuring food safety and to ensure that adequate safety procedures are identified, implemented and reviewed.
Commencement date: 1/4/1998
Leg-implemented: Dir 93/43
Leg-implemented: Dir 96/3

European Communities (Official Control of Foodstuffs) Regulations 1998
Number: SI 85/1998
Contents note: Regulations to be implemented by health boards in their functional areas. They set out the various items which are subject to inspection including the site, premises, offices, raw materials, semi-finished products, cleaners and materials coming into contact with foodstuffs.
Commencement date: 1/4/1998 for all articles except art 21; 1/11/1998 for art 21.
Leg-implemented: Dir 89/397
Leg-implemented: Dir 93/99

European Communities (Recreational Craft) Regulations 1998
Number: SI 40/1998
Commencement date: 27/2/1998
Leg-implemented: Dir 94/25

Organisation of Working Time (Exemption of Civil Protection Services) Regulations 1998
Number: SI 52/1998
Commencement date: 1/3/1998

Taxes Consolidation Act, 1997 *(Section 476) (Commencement) Order 1998*
Number: SI 87/1998
Contents note: Appoints 31/3/1998 as the commencement date for s476 of the Act (relief for fees paid for training courses).

Prepared by the Law Society Library

News from the EU and International Affairs Committee

Edited by TP Kennedy, Education Officer, Law Society

The *Amsterdam Treaty*: a legal perspective

The *Amsterdam Tr*eaty was agreed in June 1997 following intensive negotiations in the Intergovernmental Conference (IGC). Following legal and linguistic revision, it was signed in Amsterdam on 2 October 1997.

The *Amsterdam Treaty* will come into force after it has been ratified by *all* the Member States in accordance with their respective constitutional requirements. This will mean referenda in at least four Member States: Denmark, France, Ireland and Portugal. The lesson of Maastricht is that ratification is not a foregone conclusion. However, efforts have been made to accommodate national and popular concerns in the treaty and, if all goes well, it could enter into force by the beginning of 1999.

The provisions of the *Amsterdam Treaty* are briefly reviewed below under a number of headings, reflecting the aims of the Member States in the IGC: a) the establishment of an area of freedom, security and justice; b) reassuring EU citizens that what is being done is for their benefit; c) promoting an effective and coherent external policy; d) strengthening the EU's institutions; e) enabling closer co-operation; and f) simplifying and consolidating the treaties.

Freedom, security and justice

The *Amsterdam Treaty* provides a restatement of the general principles underlying the EU, making it clear that the union is 'founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'. New mechanisms in the Maastricht and EC treaties are designed to sanction Member States which violate these core principles. States wishing to accede to the union must also respect these principles.

In relation to non-discrimination, the Council is newly empowered to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The equality of men and women is recognised in the amended objectives and tasks of the Community and it has been agreed that individual Member States can introduce positive discrimination measures favouring the under-represented sex. There are provisions on combating poverty and exclusion, and a declaration addresses the needs of disabled persons.

The free movement of persons is to be seen in the context of new over-arching objectives 'to maintain and develop the union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external borders control, immigration and the prevention and combating of crime'. This responds to concerns that security issues (illegal immigration, international crime and drugs) had to be better addressed.

Member States are committed to lifting border controls on persons under article 7a of the *EC Treaty* within five years of the *Amsterdam Treaty*'s entry into force. Ireland and the UK are, however, covered by a new protocol – predicated, for Ireland, on the existence of the Common Travel Area – which allows them to maintain border controls and blocks any contrary interpretation of article 7a by the courts. Denmark enjoys a similar derogation.

The Member States have also agreed on a series of prospective measures flanking the free movement measures under article 7a. These involve a shift from Title VI of the *Maastricht Treaty* to the *EC Treaty* for matters such as the crossing of external borders, asylum, entry and residence of third country nationals. Decisions on most of these measures must be taken within five years of the treaty's entry into force. A protocol excludes Ireland and the UK from this regime, with Denmark enjoying a more limited let-out.

The Schengen *acquis* is to be integrated into the framework of the European Union by means of a protocol authorising the 13 Member States belonging to Schengen to establish closer co-operation among themselves. Ireland and the UK are not to be bound by the *acquis*: they may only join if the other Member States unanimously so decide, though they may participate in proposals and initiatives to build upon the existing acquis.

In relation to asylum, a Spanish-inspired protocol – and a contrary declaration by Belgium – addresses the sensitive issue of asylum for nationals of EU Member States.

Police and judicial co-operation in criminal matters is kept within the intergovernmental framework of the Third Pillar. The role of Europol is strengthened. Common action on judicial co-operation in criminal matters will include measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and drug trafficking. New instruments are created, with a greater functional similarity to instruments under the EC Treaty. The Court of Justice enjoys important new powers, but subject to limits reflecting national law and order and security concerns. The European Parliament enjoys more specific consultative powers.

The union and the citizen

The *Amsterdam Treaty* has done little to develop one of the major innovations of the *Maastricht Treaty* – EU citizenship. Apart from the statement that EU citizenship is complementary to, and does not replace, national citizenship (which is nothing new), it is provided that EU citizens may write to the Community institutions and the Ombudsman and have a reply in any of the 12 treaty languages.

The *Amsterdam Treaty* does, however, contain a large number of provisions designed to reassure EU citizens that what is being done is for their benefit.

A new chapter on employment

is to be introduced into the *EC Treaty*. Promoting a high level of employment, in the context of balanced and sustainable economic and social progress, is an objective of the Union. Member States are to work towards developing a co-ordinated strategy for employment.

With the readiness of the UK to sign up to mainstream social policy provisions contained in the Social Protocol and annexed Social Agreement, the protocol is now repealed and the provisions of the agreement essentially reproduced in the Social Policy Chapter of the *EC Treaty*.

Existing *EC Treaty* provisions have been refined in the areas of culture, the environment, public health, consumer protection and trans-European networks. Care is taken to delimit the respective spheres of Community and Member State competence, reflecting the pervading principle of subsidiarity. The Community enjoys important new powers in countering fraud affecting the financial interests of the Community and in strengthening customs co-operation: Community measures are not, however, to concern the application of national criminal law and the national administration of justice – fields jealously preserved by the Member States.

In the field of animal welfare, a protocol requires the Community and the Member States to pay full regard to the welfare requirements of animals 'while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage'.

A new protocol on the application of the principles of subsidiarity and proportionality reflects the conclusions of the 1992 Birmingham and Edinburgh European Council and contains elements of the 1993 inter-institutional agreement on procedures for implementing the subsidiarity principle.

Concerns that the Community should move forward with the support of EU citizens are reflected in new provisions on transparency, with a qualified right of access to official documents, together with measures for improving the quality of drafting of Community legislation and for an accelerated codification of legislation.

Effective and coherent external policy

The *Amsterdam Treaty* contains provisions on a common foreign and security policy, to remain within the Second Pillar (common foreign and security policy: CFSP), and on external economic relations. In relation to common foreign and security policy, attempts have been made to promote the consistency of the EU's external activities as a whole to better define the objectives of CFSP, to facilitate decision-making, to ensure better planning and forecasting and to enable better representation of the European Union.

Certain issues – the achievement of a common defence and the integration of the Western European Union into the EU – have been left on the back-burner. The European Council can decide to move forward in both areas, subject to the adoption by Member States of such decisions in accordance with their respective constitutional requirements. Humanitarian aid and peace-keeping missions are now included in the CFSP provisions. It remains to be seen whether CFSP will be able to increase its effectiveness when confronted by difficult international challenges.

In the area of external economic relations, new provisions widen the scope of the Community's powers and introduce more effective mechanisms for imposing economic sanctions. Proposals to introduce specific provisions giving the Union legal personality in the international sphere were not adopted by the IGC.

EU institutions

The role of the European Parliament, with membership now to be limited to 700, is to be strengthened by the extension of a revised co-decision procedure to cover most areas of legislation. Its assent will be required for imposition of penalties on Member States for violation of core principles. It is also to have the right to approve the nomination of the Commission president.

A protocol addresses the role of national parliaments in the European Union, with provisions on information to be provided to national parliaments and the Conference of European Affairs Committees (COSAC). Qualified majority voting in the Council has been introduced for a number of new and existing treaty provisions. Proposals to extend it even further were unsuccessful, partly due to unexpected opposition from Germany's Chancellor Kohl at the last minute, and much to the dismay of ardent integrationists.

The President of the Commission is given an enhanced status. The Commission is to work under the political guidance of the president, who is to agree to the nomination of other Commission members and enjoy a broad discretion in the allocation, and reshuffling, of tasks between them.

Attempts to cut down the powers of the Court of Justice in existing areas of Community activity have been unsuccessful. However, its new powers in relation to CJHA and the transferred areas of free movement, asylum and immigration are limited, reflecting concerns that questions relating to the maintenance of law and order and the safeguarding of internal security should not be subjected to judicial control and that the court should not be inundated with asylum cases.

Desires to decide on problems of national representation in the Commission, the Council and the other institutions *before* enlargement have been thwarted. Instead, a protocol attempts to paper over the cracks, with ample potential for future conflict. From the first enlargement, the Commission is to comprise one representative from each Member State, but only provided that necessary modifications have been made to the weighting of votes in the Council. At least

Conferences and seminars

AIJA (Association of Young Lawyers)
Topic: *The international sale of goods and supply of machinery abroad*
Date: 4-6 June
Venue: Rome, Italy
Contact: Gerard Coll (tel: 01 6761924)

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

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

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

IBC
Topic: *Advanced EC competition law*
Date: 11-12 May
Venue: London, England
Contact: Patrick Dalton (tel: 0044 171 4532146)

Topic: *Distribution, IP licensing and EC competition law*
Date: 4 June
Venue: London, England
Contact: Patrick Dalton (tel: 0044 171 4532146)

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

Law Society of Scotland
Topic: *The implications of the Social Chapter*
Date: 14 May
Venue: Edinburgh
Contact: Ailsa McLaggan (tel: 0044 131 2267411)

Solicitors' European Group
Topic: *International anti-trust harmonisation initiatives*
Date: 21 May
Venue: London
Contact: tel: 0044 171 3205791

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

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

one year before the membership of the EU exceeds 20, there is to be a comprehensive review of the provisions of the treaties on the composition and functioning of the institutions.

Closer co-operation

The Member States have agreed to introduce new provisions on closer co-operation, or 'flexibility', into the Maastricht and EC treaties. This is not an entirely new idea – provisions on EMU introduced under Maastricht allowed for certain Member States to stay outside their scope. The Schengen provisions have been a Community-endorsed system of co-operation by some of the Member States outside the Community/Union framework but designed ultimately to achieve Community goals.

The underlying idea of flexibility as introduced by the *Amsterdam Treaty* is not that Member States should be able to 'opt out' of a common Community regime but that a majority group of Member States should be able to co-operate in certain areas between themselves where the remaining Member States are unwilling to proceed on this basis. The flexibility provisions provide the basis for future action by a majority of Member States within the framework of the EU treaties. In the case of the incorporation of the Schengen *acquis*, the principle has already been given concrete expression in a protocol to be annexed to the *Amsterdam Treaty*.

Simplification and consolidation

At last, dead wood is to be cut out of the treaties. Consolidation means renumbering. The alphabetical structure of the *Maastricht Treaty* is to be replaced by Arabic numerals. The irritating mix of numerals and letters in the *EC Treaty* is to be replaced by sequential numbering. The *Amsterdam Treaty* sets out an indispensable 'table of equivalences'. Consolidated versions of the *EC Treaty* and the *Maastricht Treaty* have been prepared on the basis of the *Amsterdam Treaty* provisions on the simplification and consolidation of the existing treaties.

Whether the *Amsterdam Treaty* disappoints, encourages or simply satisfies depends on the individual's view of the current state of play and his or her ambitions for the end-game.

The EU citizen may be persuaded that what is being done in the employment and other fields is for his or her benefit. There has been some progress in relation to the protection of fundamental rights, with Member States required to observe core constitutional principles and the expansion of the non-discrimination principle. Prospects for removing internal border controls on people have been enhanced, but continued delays are likely, and Ireland remains outside the mainstream. Foreign and security policy remains a hornet's nest and neutrality questions may still stymie the ratification process. Institutional reforms – vital in the context of impending enlargement – have been postponed, very much upping the ante in future negotiations.

There has been no fundamental rewriting of the EU 'constitution'. The desire of some Member States to have a single treaty, with one pillar rather than three, was frustrated. Proponents of a deeper political union may well be disappointed with no explicit commitment to an overarching federalism.

Maintaining the principles of limited Community powers and subsidiarity – with the Member State at the centre of the union – may, however, provide the best guarantee of sustained, albeit slow, progress.

The idea of flexibility, as a mechanism for future closer co-operation by a majority of Member States in the area occupied by Schengen and in as yet undefined fields, could result in an increasingly divided Europe. Such divisions should, however, be containable and the *Amsterdam Treaty* may yet succeed in the attempt to improve the framework for avoiding divisive, and even violent, conflict – one of the cardinal aims of European integration. G

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RECENT DEVELOPMENTS IN EUROPEAN LAW

COMPETITION

Abuse of a dominant position

Silvano Raso and Ors (Case 163/96), judgment of 12 February 1998: the reference concerned the compatibility with article 86 of a monopoly right of a dock work company to supply temporary labour to other undertakings operating in the port where it was established. The court held that an undertaking in this position was an undertaking that had been granted exclusive rights by the State within the meaning of article 90(1). Was this undertaking exercising its monopoly in a substantial part of the common market? The court held that the port could be so regarded. It reached this conclusion having regard to the volume of traffic in the port of La Spezia (the leading Mediterranean port for container traffic) and its importance in intra-Community trade. The court pointed out that article 86 would not be violated by the creation of a dominant position or the granting of exclusive rights.

However, it would be breached if an undertaking simply by exercising the exclusive rights granted to it would abuse its dominant position or if the exclusive rights were liable to lead to such abuse. This undertaking was not only granted the exclusive right to supply temporary labour but was also entitled to compete on the market in dock services. Thus, the mere exercise of its monopoly would enable it to distort the conditions of competition in this market in its favour. Thus, even though there was no particular case of abuse identified, the legal framework was incompatible with articles 90(1) and 86.

Mergers

The Commission is to introduce an interpretative notice in relation to the new *Merger Control Regulation* (OJL 180 9.07.97), which came into force on 1 March. Under the regulation, the Commission introduced a 'one-stop shop' procedure for mergers that requires three or more national filings. The Commission is also to adopt a procedural regulation setting out the rules for notifications, analysis of merger cases and hearings.

CONSUMER PROTECTION

In 1996, the Commission proposed a draft directive on the access of consumers to justice and the settlement of consumer disputes in the Single Market. The draft directive gives 'qualified entities' in the Member States the right to seek injunctions on behalf of consumers to restrict activities harmful to consumers. The grounds for seeking injunctions are defined as acts which are contrary to a list of directives annexed to the draft directive. These include directives on time shares, package holidays and unfair contract terms. The draft directive has completed its first reading in the Parliament and the Council. It is expected to be given the final go ahead shortly.

INSTITUTIONS

Interpoc Im-und Export GmbH v Commission of the European Communities (Case T-124/96), judgment of 6 February 1998: in 1996, the applicant had applied for remission of certain import duties to the Commission. The request was refused. The Commission had earlier sought to recover duties from the applicant on the basis that import certificates had been falsified.

The applicants sought access to documents relating to the enquiries concerning the allegedly falsified documents and control procedure for the import of premium beef from Argentina generally. The request was refused on the ground of protection of the public interest. The Court of First Instance concluded that the Commission decision on this matter violated article 190. This article requires the Community institution to show its reasoning so as to enable persons concerned to ascertain the reasons for the measure.

The statement of reasons for a decision refusing access to Commission documents therefore had to contain, for each category of documents, the specific reasons for which the Commission concluded that disclosure of the documents was precluded by an exception in the code of conduct. In this case, the decision contained only the conclusion that the exception for protection of the public interest was applicable.

It was not a reasoned decision and would not have enabled the applicant to determine whether the documents did fall within the scope of the exception.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

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

This Bill has been amended in the Select Committee on Heritage and the Irish Language. (See (1998) 16 ILT 18.)

Courts Service (No 2) Bill, 1997

This Bill has been amended in committee. (See (1998) 16 ILT 2.)

ARBITRATION

Arbitration (International Commercial) Bill, 1997

This Bill has been amended in the Select Committee on Justice, Equality and Women's Rights. (See (1997) 15 ILT 221.)

CHILDREN

Proposed protection for reporting of abuse and neglect

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

- Grant protection from civil suit to persons making *bona fide* reports on reasonable grounds to an appropriate authority or person of their belief that a child's health, development or welfare is at risk or that there are reasonable grounds for believing that a child is the victim of abuse or neglect, and
- Render a dismissal unfair, within the meaning of the *Unfair Dismissals Act, 1977*, where it is a consequence of a report by an employee to an appropriate authority or person of his or her belief that a child's health, development or welfare is at risk or that there are reasonable grounds for believing that a child is the victim of abuse or neglect.

Children (Reporting of Alleged Abuse) Bill, 1998

Powers of High Court in dealing with minors

- The High Court has an inherent jurisdiction to order the detention of minors in penal institutions
- This jurisdiction should be exercised only in rare and extreme occasions when the court is satisfied that it is required for a short period in the interests of the welfare of the child and where no other suitable facility is available.

At the date of these proceedings, the applicant was 17. He had been in the care of the first-named respondent since the age of two and had a history of criminal activity and violence. He was not mentally ill but had a serious personality disorder, was a danger to himself and others and had failed to co-operate with the first-named respondent in the carrying out of a psychiatric assessment. Following his release from St Patrick's Institution in March 1997, he was homeless and resided on a temporary basis with a cleric. There was no secure unit suitable for the applicant in the State and the first-named respondent sought to place the applicant in a secure unit in another jurisdiction.

On 28 April 1997, the applicant was granted leave to apply, *inter alia*, for an order of *mandamus* directing the respondents to provide suitable care and accommodation for him. On 27 June 1997, the High Court made an order that the applicant be detained in St Patrick's Institution for a period of three weeks and that a full psychiatric assessment be carried out. The applicant appealed to the Supreme Court and his appeal was dismissed.

Per Denham J (dissenting), the detention of a minor in a children's residential home for the purpose of providing for his welfare and education was fundamentally different from the detention of a minor in penal institution. The applicant's detention in a penal institution was in breach of the State's duty to provide for his moral welfare and development. As an adult could not be detained in a penal institution in similar circumstances, and as the applicant's detention could not be justified as providing for his welfare, his detention was in breach of the constitutional guarantee of equality. His detention was also in breach of his right to bodily integrity and of the State's duty to vindicate his person and good name and to provide for his social welfare.

DG v Eastern Health Board and Ors (Supreme Court), 16 July 1997

New guardianship rules

Regulations came into force on 1 February 1998 which:

- Prescribe the form of joint statutory declaration to be made by the mother and father of a non-marital child who wish the father to become a guardian of the child jointly with the mother
- Provide that a father who is thus made a guardian can only be removed as such by court order
- Allow the father to apply to court to be made joint guardian in the absence of agreement with the mother

- Clarify the rights and duties of guardianship.

Guardianship of Children (Statutory Declaration) Regulations 1998 (SI no 5 of 1998)

COMPANY

Section 205 petition not struck out

- The inherent jurisdiction of the court to dismiss an action as an abuse of the process of the courts should be exercised with the greatest care and circumspection.

The Supreme Court refused to strike out a petition pursuant to s205 of the *Companies Act, 1963* where the majority shareholders had offered to acquire the petitioner's shares at a fair value but agreement had not been reached on the basis on which the shares should be valued, since there were issues to be tried as to whether there was oppression of the petitioner and, if so, the appropriate remedy or solution.
Horgan v Murray (Supreme Court), 9 July 1997

No strike-out for delay in action to render individual personally liable

- There must be inordinate and inexcusable delay on a plaintiff's part before a court would consider whether the proceedings should be struck out against a defendant
- None of the relevant statutory provisions in the *Companies Acts* which apply in an application to the court to declare a person personally liable for a company's debts allowed for such application to be brought by the company in receivership or examinership or liquidation.

Pursuant to s297 of the 1963 *Companies Act*, the companies in liquidation, by notice of motion, sought a declaration that the respondents be made personally liable without limitation for all the debts and liabilities of the companies. The respondents claimed that delay warranted the striking-out or dismissal of the proceedings brought against them. The orders for winding up the companies were made in November 1988, and notice of motion was served on the companies' behalf on the respondents in August 1994. There was further delay in that the respondents were not served with the grounding affidavit and exhibits until a week before the hearing. The application was dismissed.
Southern Mineral Oil Ltd (In Liquidation) v Cooney (Supreme Court), 22 July 1997

Liquidators' applications to court to be held in public

- The decision of the court on a contested application to continue proceedings under s231 is qualitatively different from the decision of the board of directors of a solvent company in relation to prosecuting that litigation
- The essential ingredients in the administration of justice are that there must be a contest between the parties together with the infliction of some form of liability or penalty on one of the parties.

Section 231(1) of the *Companies Act, 1963* empowers a liquidator, *inter alia*, in a winding-up by the court, to do various acts with the sanction of the court or the committee of inspection. The Act does not confer any power on the court to hear an application under s231 otherwise than in public. Article 34.1 of the Constitution provides that justice must be administered in public 'save in such special and limited cases as may be prescribed by law'. The liquidator sought to have an application which was pending before the court heard *in camera*, which substantive application concerned an order pursuant to s231 granting him liberty to continue two plenary actions which were commenced by the company before the winding-up order was made. The Attorney General argued, as *legitimus contradictor*, that the substantive application should be heard in public. The application was refused.
In re Greendale Developments Limited (In Liquidation) (Laffoy J), 28 July 1997

COMPETITION

Restriction on onward sales anti-competitive

- The essence of a selective distribution system was the imposition of a restriction on the members of the distribution system in relation to onward sales.

The plaintiff was a wholesale distribution company of animal health products, including products manufactured by the defendant, an Irish subsidiary of a multinational corporation. In 1995, the plaintiff and four other companies were appointed as wholesale distributors of the defendant's products and its products were only available through these five, the largest wholesalers in the distribution market. The terms of the distributorship included a wholesaler's discount and a rebate scheme for end-users who bought through the appointed wholesalers. Relations between the plaintiff and the defendant deteriorated, and the plaintiff claimed the other wholesalers were being given a greater discount on the defendant's most successful product, while the defendant alleged that the plaintiff was giving away half of its discount. The plaintiff's sister company developed a competing product to one of the defendant's products which had come off patent. In 1996 the plaintiff was notified by the defendant that it had been delisted as an appointed wholesaler. The plaintiff instituted proceedings, claiming that the defendant's range of products was an essential part of its business which was not viable without access to the defendant's products on the same terms as the other four appointed wholesalers. The plaintiff submitted that the action taken by the defendant amounted to a breach of ss4 and 5 of the *Competition Act, 1991*, and that arts 85 and 86 of the *Treaty of Rome* were similarly infringed as the de-listing would have an appreciable effect on trade between Member States of the European Communities. The plaintiff also argued that the defendant's distribution system was a selective distribution system which operated in a discriminatory manner with anti-competitive effect. The plaintiff's claim was dismissed.
Chanelle Veterinary Ltd v Pfizer (Ireland) Ltd (O'Sullivan J), 30 July 1997

CONSTITUTIONAL

Amsterdam Treaty amendment published

The text of the proposed constitutional amendment enabling the State to ratify the *Treaty of Amsterdam* has been published. The proposal is to amend article 29.4 by the insertion of the following proposed sub-sections 5º and 6º, resulting in the existing sub-sections 5º and 6º being renumbered 7º and 8º respectively. The text of the proposed amendment reads:

'5º The State may ratify the *Treaty of Amsterdam* amending the *Treaty on European Union*, the *Treaties Establishing the European Communities* and certain related Acts signed at Amsterdam on 2 October 1997.

6º The State may exercise the options or discretions provided by the treaties referred to in sub-sections 3º, 4º, and 5º.'
Eighteenth Amendment of the Constitution Bill, 1998

Constitutionality of *Proceeds of Crime Act* upheld

- Forfeiture proceedings were civil and not criminal in nature. Once it was accepted that proceedings were in fact civil,

there was no constitutional infirmity in a procedure whereby the onus was placed on a person seeking property to negative the inference from evidence adduced that a criminal offence has been committed.

The plaintiff sought a declaration that the *Proceeds of Crime Act, 1996*, and in particular ss2, 3, 4, 6 and 7 thereof, were unconstitutional. He sought damages including constitutional damages. In earlier proceedings, the High Court made an order pursuant to s2 of the Act preventing the plaintiff from dealing with certain property. The grounding affidavit in support of the order was sworn by a chief superintendent of the Garda Síochána, and deposed to his belief that the property was directly or indirectly the proceeds of crime. Subsequently orders were made concerning the property under s3 of the Act. In these proceedings the plaintiff claimed that the Act failed to protect the right to a fair trial and the right to fair procedures by assuming, without charge, indictment, trial or conviction, the existence of a criminal offence, and by requiring him to prove on affidavit that he was not a criminal and that his assets were not the proceeds of crime. He also claimed that the Act infringed the privilege against self-incrimination and the right to silence; it failed to uphold the presumption of innocence; that the Act was in breach of art 40.3 of the Constitution and failed to protect his property rights; and that it was designed to have retrospective effect, in breach of the Constitution. The plaintiff's claims were dismissed.

Gilligan v Criminal Assets Bureau (McGuinness J), 26 June 1997

CRIMINAL

Counselling not a bar to prosecution

- The fact that an individual has been compelled by the Garda Síochána to attend counselling sessions, because he was accused of sexual assault, does not operate as a bar to a subsequent prosecution for the assault in question.

The applicant was a married man charged with assaulting his eldest daughter in 1987. As a result of a complaint made to a counsellor in 1988, the applicant had attended counselling in relation to the assault. He claimed that the Gardaí compelled him to attend counselling and could not now mount a prosecution. An order of prohibition was sought and refused and the court held that the applicant could not rely on a form of estoppel when he submitted that the Gardaí were aware he was being compelled to attend counselling and that the respondent could not now be entitled to mount a prosecution.

JJ v Director of Public Prosecutions (Barron J), 21 February 1997

District Court may proceed despite illegality in process

- The jurisdiction of the District Court to embark on any criminal proceeding, including the holding of a preliminary examination, is unaffected by the fact that an accused has been brought before the court by an illegal process.

The plaintiff appeared before the District Court on foot of a warrant for his arrest, which alleged that he had committed the offence of obtaining by false pretences. The offence was stated to be contrary to s33(1) of the *Larceny Act 1916*, but the offence was created by s32(1) of that Act. Submissions were made on behalf of the plaintiff in the District Court that the warrant for his arrest was invalid as the charges as laid were not properly brought on the basis of the statements in the book of documents served on the plaintiff under the *Criminal Procedure Act, 1967*. The court allowed the Director of Public Prosecutions' appeal and remitted the charges to the District Court.

Killeen v Director of Public Prosecutions (Supreme Court), 24 July 1997

ELECTIONS

Referendum Commission to be established

A Bill has been presented which, if passed, will establish an independent statutory Referendum Commission to:

- Prepare and disseminate information on the subject matter of a referendum
- Foster and promote public debate in a manner that is fair to all interests concerned at a referendum, and
- Consider and rule on applications from bodies for a declaration of those bodies as approved bodies whose sole function will be to appoint agents at a referendum.

Referendum Bill, 1998

EMPLOYMENT

No reinstatement where insurance unavailable

- It would be inequitable to order the defendant credit union to reinstate the plaintiff where the credit union's insurers refused to bond the plaintiff.

The plaintiff was employed as manager by the defendant and was bonded under a block fidelity and indemnity bond negotiated by the Irish League of Credit Unions (ILCU) with Cumis Insurers. On 2 November 1992, the plaintiff obtained a bridging loan from the defendant. On 7 January 1993, the plaintiff rescheduled his loan account, thereby reducing the amount of the repayments. The plaintiff had no authority to reschedule the loan and did not inform the credit committee or board of directors that he had done so. On 8 January, the credit committee discovered the re-scheduling and five of the six members requested a meeting of the board. The credit committee did not seek any explanation of his conduct from the plaintiff prior to the board meeting on 18 January 1993 and the plaintiff did not attend. The credit committee prepared a memorandum which formed part of the minutes of the meeting, stating that it was unhappy at the plaintiff's conduct in re-scheduling his loan without consultation with the credit committee, complaining of the plaintiff's conduct in relation to his approval of unsecured loans and also criticising the conduct of the chairman of the board at an earlier board meeting. The board meeting became acrimonious, five members of the credit committee resigned and the board passed a resolution of confidence in the plaintiff as manager. Subsequently, a representative of ILCU noticed the references to the plaintiff's re-scheduling of his loan in the minutes of the board meeting and reported the matter to Cumis Insurers which took the view that the plaintiff had acted out of premeditated dishonesty and removed bonding from the plaintiff. As a result the plaintiff was dismissed on 25 June 1993, having repaid his loan on 10 February 1993. The plaintiff was awarded compensation in the amount of 104 weeks' remuneration and the court found that the procedure was tainted with irregularity and impropriety. In the circumstances, there was no substantial ground justifying the plaintiff's dismissal.

Frizelle v New Ross Credit Union Limited (Flood J), 30 July 1997

Rest period exemptions granted

Persons employed in certain specified activities have been exempted from the provisions of the *Organisation of Working Time Act, 1997* relating to: daily rest (s11); rest and intervals at work (s12); weekly rest (s13); and nightly working hours (s16). The exempted activities, subject in

some instances to certain conditions, include: activities involving travelling 'distances of significant length' from home to workplace or from one workplace to another; security and surveillance; hospital work; harbour and airport work; mass communications media; emergency services; supply of utilities; collection of domestic refuse; industrial processes which cannot, for technical reasons, be interrupted; and research and development.

Organisation of Working Time (General Exemptions) Regulations 1998 (SI no 21 of 1998)

FAMILY

Absence of old parental consent not grounds for nullity

- The requirement of parental consent under the *Marriages Act, 1972* was directory only, and the mere absence of consent could not invalidate a marriage and a knowing breach of a directory requirement did not have the effect of invalidating a marriage.

The applicant sought to annul an alleged marriage, dating from February 1978, between himself and the respondent. The applicant sought nullity on a number of grounds, namely that the respondent had unduly influenced the applicant to enter the marriage by reason of her pregnancy, that as the respondent had been under 21 at the time of the marriage the necessary consent under the 1972 Act had not been obtained, that the marriage had been solemnised on foot of the respondent's father's forged consent, that the forged consent vitiated the marriage, that such consent that there was at the time of the marriage was not the product of a fully free exercise of the independent will of the parties thereto, that the respondent suffered from a seriously immature personality and was sexually unfaithful to the applicant. The applicant contended that as she had knowingly breached the provisions with regard to parental consent, that the result was a voidable marriage. The nullity petition was refused.

DC v NM (falsely known as NC) (Geoghegan J), 26 June 1997

HEALTH & SAFETY

Food Safety Authority established

The Food Safety Advisory Board has been abolished and a body to be known as the Food Safety Authority of Ireland has been established with effect from 1 January 1998. The functions of the new authority will include:

- The organisation and administration of a service to obtain and assess information regarding the safety of food
- Advising the government
- Co-ordinating scientific co-operation with other EU Member States
- Managing food control and safety, and
- Publishing reports.

The *Food Safety Advisory Board (Revocation) Order 1997* and the *Food Safety Authority of Ireland (Establishment) Order 1997* (SI nos 523 and 524 of 1997)

New regulations for plugs

Regulations have been made which, with effect from 18 December 1997, provide for:

- New Irish and British standards relating to plugs and future European standards where applicable
- Future amendments to Irish Standard Marks
- Standards of construction and design for plugs, plug similar devices and socket outlets, where sold to the consumer
- The type approval of all 13 amp plugs by the National Standards Authority of Ireland before being placed on the market
- The acceptance of equivalent European standards
- Type approval by other qualified European bodies as notified under the low voltage directive in its unamended form, and
- From 18 June 1998, a requirement that all domestic electrical appliances sold to consumers must have plugs attached (except certain specified appliances including fixed luminaires, ceiling-rose connectors, electric lights designed and intended to be located in a recess in a wall or ceiling, and items fitted with plug transformers.)

National Standards Authority of Ireland (Section 28) (13A Plugs and Conversion Adaptors for Domestic Use) Regulations 1997 and *National Standards Authority of Ireland (Section 28) (Electrical Plugs, Plug Similar Devices and Sockets for Domestic Use) Regulations* 1997 (SI nos 525 and 526 of 1997)

Rules tightened in mining industry

From 21 November 1997, Regulations give effect to Council Directive 92/91/EEC on the minimum requirements for improving the safety and health of workers in the mineral extracting industry through drilling and Council Directive 92/104/EEC on the minimum requirements for improving the safety and health of workers in surface and underground mineral extracting industries. The regulations outline:

- The general duties of the employer
- Requirements for the provision of information
- Instruction and training to be given
- The use of safe working methods, and
- Specific requirements applicable to extractive industries, underground extractive industries, surface extractive industries, and extractive industries through drilling both on and off shore.

Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 (SI no 467 of 1997)

HEALTH SERVICES

Hospital charges increased

The daily charge for in-patient services has been increased from £20 to £25 and the maximum amount payable in any 12-month period has been raised from £200 to £250. The charge for out-patient services is also increased from £12 to £20. As previously, the out-patient charge will not apply where the patient has been referred by a medical practitioner or where the out-patient attendance results in admission and the previous exemptions and hardship provisions will continue to apply. All changes are with effect from 1 January 1998.

Health (Out-Patient Charges) (Amendment) Regulations 1997 and *Health (In-Patient Charges) (Amendment) Regulations 1997* (SI nos 508 and 510 of 1997)

LEGAL PROFESSION

Changes to solicitors' disciplinary procedures

As and from 2 February 1998, Rules of the Superior Courts 1986, o53 is amended as regards the procedures in disciplinary and related matters arising under the *Solicitors' Acts, 1954 to 1994*.

*Rules of the Superior Courts (No 1) (*Solicitors' (Amendment) Act, 1994*) 1998* (SI no 14 of 1998)

LOCAL GOVERNMENT

Libraries Act repealed

Section 4(1) and the first schedule to the *Local Government Act, 1994* (to the extent of repealing the *Public Libraries Act, 1947*) and s34 of the same Act came into operation on 1 January 1998.

Local Government Act, 1994 *(Commencement) Order 1997* (SI no 498 of 1997)

MARITIME

MARPOL convention implemented

As and from 30 January 1998, effect has been given to annexes I, II, III and V of the *International convention for the prevention of pollution from ships* (MARPOL). The regulations:

- Apply to all Irish ships, wherever they may be, and to all other ships when they are in the territorial seas and inland waters of the State
- Prohibit the carriage of harmful substances by sea unless done in accordance with the provisions of the regulations with regard to packing, marking, labelling, documentation and stowage, and
- Regulate the disposal of garbage and the control of noxious liquids and oil on ships.

Sea Pollution (Harmful Substances in Packaged Form) Regulations 1997; *Sea Pollution (Prevention of Oil Pollution) (Amendment) Regulations 1997*; *Sea Pollution (Control of Pollution by Noxious Liquid Substances in Bulk) (Amendment) Regulations 1997*; and *Sea Pollution (Prevention of Pollution by Garbage from Ships) (Amendment) Regulations 1997* (SI nos 513 to 516 of 1997)

PRACTICE & PROCEDURE

Plaintiff must indicate size of claim

- It would be unfair and unsatisfactory to expect the defendant to meet the plaintiff's potential claim without having some realistic intimation of the scope and scale of the claim it must meet.

The defendant had been found to have libelled the plaintiff. An award of damages was overturned by the Supreme Court which ordered a re-trial on the question of damages. Three motions came before the court for determination. The defendant sought discovery and particulars of the plaintiff's alleged losses and liberty to make a lodgement into court. The motions were granted

Dawson v Irish Brokers Association (Moriarty J), 23 June 1997

Court to determine when connection warrants application of *Brussels convention*

- The jurisdiction of the courts pursuant to art 6.1 of the *Brussels convention on jurisdiction and enforcement of judgments in civil and commercial matters* applies where the actions against the defendants are connected such that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings
- It is for the national courts to decide if such a connection exists and it is not necessary to refer the issue to the European Court of Justice pursuant to art 177 of the *Treaty of Rome*.

The plaintiff purchased a car from the first-named defendant, a limited liability company registered in Ireland and trading in Cork. The second-named defendant, a limited liability company not registered in Ireland and trading in Scotland, carried out repairs to the car in Scotland. The plaintiff issued proceedings in the Circuit Court claiming, as against the first-named defendant, that the car was defective at the time of purchase, and as against the second-named defendant, that the repairs had been carried out negligently and had caused damage to the car. The Circuit Court declined jurisdiction in respect of the plaintiff's claim against the second-named defendant. On appeal to the High Court, the plaintiff argued that the Circuit Court had jurisdiction pursuant to art 6.1 of the *Brussels convention on jurisdiction and enforcement of judgments in civil and commercial matters*. The plaintiff also applied for an order pursuant to art 177 of the *Treaty of Rome* referring the issue to the European Court of Justice. The appeal was dismissed.

O'Keeffe v Top Car Ltd and Ors (Flood J), 2 July 1997

Test of bias is objective

The appropriate test of prejudgment bias is objective in nature – that is, whether a reasonable person would apprehend that his chance of a fair and independent hearing did not exist by reason of the prejudgment of the issues involved.

McAuley v Keating (O'Sullivan J), 8 July 1997

Choice of jurisdiction for libel action

- The phrase 'place where the harmful event occurred' in art 5(3) of the *Brussels convention* meant that the victim of an alleged libel could bring an action before the court in the contracting state where the publisher was established, or in the state in which the publication was distributed
- The court's jurisdiction was limited to ruling solely in respect of the harm caused in the state of the court seized.

This was an interlocutory appeal against the High Court's judgment in a libel action. The plaintiff claimed damages for libel following newspaper articles published by the defendant and which appeared in editions of its newspaper, *The Sunday Times*. The defendant's registered office and principal place of business was in the UK. The plenary summons bore the endorsement, required by the *Rules of the superior courts*, that the court had power to hear and determine the claim under the *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988*, that the court should assume jurisdiction under art 5(3) of the 1968 *Brussels convention*, and that there were no proceedings pending between the parties concerning the cause of action in any other contracting state. The *Rules of the superior courts* require that the particular article of the convention be specified under which the court should assume jurisdiction. Article 5(3) provides that a person domiciled in a contracting state may be sued in another contracting state in matters relating to tort in the courts of the place where the 'harmful event' occurred. This is an exception, a 'special jurisdiction', to the general rule under the convention that persons domiciled in a contracting state should be sued in that state.

Murray v Times Newspapers Ltd (Supreme Court), 29 July 1997

No *locus standi* to challenge court fees provisions

- The applicant did not have *locus standi* to challenge the constitutionality of s65 of the *Courts of Justice Act, 1936* and the regulations made thereunder providing for court fees as he had borrowed the money to pay the court fees, had prosecuted his action and recovered all his costs.

The applicant instituted proceedings in the High Court, applying *ex parte* to the High Court for an order directing the State to waive the court fees on the notice of trial. On 12 August 1994, the High Court assigned a solicitor and counsel under the Attorney General's scheme for the purpose of making a formal application for an order waiving the court fees. The applicant borrowed the money to pay the court fees, succeeded in his action and was awarded his costs. The sum due in respect of his costs was paid by May 1996. On 23 July 1996, the applicant obtained leave from the High Court to challenge the constitutionality of s65 of the *Courts of Justice Act, 1936* and the regula-

tions made thereunder providing for court fees. The relief sought was refused.
O'Connell v Minister for Justice (Geoghegan J), 31 July 1997

PRISONS

Delay in transferring prisoner not unreasonable

- Taking into account the complexity of the recent legislation, the number of applications and the extensive enquiries involved, there had not been unconscionable delay in dealing with an application for a transfer pursuant to the *Transfer of Sentenced Persons Act, 1995*.

By letter dated 10 November 1995, the applicant applied to the respondent for a transfer to a prison in Northern Ireland pursuant to the *Transfer of Sentenced Persons Act, 1995* which came into force on 1 November 1995. The respondent received another 28 applications in or around the same time. On 27 June 1996, the respondent forwarded the applicant's application to the Northern Ireland Office and requested certain information required to process the application but this information was not furnished. On 8 October 1996, the applicant obtained leave to apply for an order of *mandamus* on the grounds that the delay in processing his application was unconscionable. The application was refused.
Duffin v Minister For Justice (Carney J,) 28 February 1997

REAL PROPERTY

Dispossession essential in claim for adverse possession

- Where the plaintiff claimed title by adverse possession, he had to show that he dispossessed the true owner or that the latter discontinued his possession, and also that he had been in adverse possession. The mere abandonment or leaving land vacant was not enough.

In 1991, the defendants bought the holding beside the plaintiff from vendors who later agreed that, on the transfer, the relevant map was inaccurate in that it incorrectly represented the boundary between the plaintiff's and defendants' respective properties as being a free-standing fence on the south bank of the stream opposite the plaintiff's property. The plaintiff's firm had been employed as architects to prepare this map. In 1993, the defendants gave the plaintiff permission to enter their property to repair the fence. They claimed that instead the plaintiff removed it and built a continuous fence inside the boundary of their property and had carried out landscaping and other works. The previous owners of the defendants' property entered into a deed of rectification showing their property going to the centre of the stream. The plaintiff's claim was dismissed.
Fanning v Jenkinson and Anor (Kinlen J), 2 July 1997

REFUGEES

Proposed liberalisation of rules on asylum seekers

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

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

Asylum Seekers (Regularisation of Status) Bill, 1998

ROAD TRAFFIC

Road traffic levels to be reduced?

A private member's Bill has been introduced which aims to reduce the volume of road traffic by:

- Obliging the Minister for the Environment and Local Government to produce a national road traffic reduction plan detailing methods of achieving year-on-year reductions in total traffic miles
- Obliging the Minister to make annual reports to the Oireachtas, and
- Obliging roads authorities to make similar plans.

Road Traffic Reduction Bill, 1998

TAXATION

Custom House Docks Area expanded

The Custom House Docks Area has been expanded for the purposes of the 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* began on 10 May 1997 and will end 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)

What constitutes an 'annuity'?

- An 'annuity' connotes payments which are expected to continue over a period of more than one year, a requirement that the payments are not mere gifts but are made and repeated by virtue of a commitment or obligation, and payments which are not made in return for goods supplied or services rendered.

By contract, a company agreed to grant to the respondent 'an annuity' on the terms and conditions set out therein. The issue in this case was whether certain periodic payments made by the company were, or any part thereof was, subject to corporation tax in the hands of the recipient. The offer of 'an annuity' by the company was conditional upon the respondent paying in consideration therefor the sum of £1,290,000, which consideration was duly paid and the annuity sums were discharged. In a case stated from the Circuit Court (Martin J) for the opinion of the High Court, the question stated was whether the Circuit Court judge was correct 'in law in holding the part of the annuity receipt represented a capital receipt and was not chargeable to corporation tax'. The High Court held that the Circuit Court judge was correct in law in his determination and the appellant appealed. The Supreme Court allowed the appeal.

McCabe v South City and County Investment Co Ltd (Supreme Court), 30 July 1997

TELECOMMUNICATIONS

Framework for network interconnection

A legal framework has been established for agreement between providers of telecommunications networks of arrangements for the interconnection of their networks, including:

- The principles governing the rates to be charged for such services and related matters
- A basis of sharing, between competing operators, uneconomic costs of providing universal access to certain telecommunications services
- Provision for the sharing of telecommunications facilities by telecommunications providers, and
- Empowering the Director of Telecommunications Regulation to ensure that the regulatory requirements are complied with.

European Communities (Interconnection in Telecommunications) Regulations 1998 (SI no 15 of 1998)

UNIONS

Mandatory recognition of unions?

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

- Introduce a conciliation mechanism, via the Labour Relations Commission, to resolve disputes concerning the non-recognition by employers of trade unions (widely defined to include staff associations and other bodies)
- In default of agreement, allow for the referral of such matters to the Labour Court, where the key criterion will be whether the union in question is representative of a substantial number or category of employees (dealt with in s13)
- Permit the Labour Court to make enforceable orders under the proposed legislation
- Once a union is recognised, oblige an employer to negotiate with it in good faith and consult with it in accordance with statutory obligations, and
- Provide that dismissal because of a recognition attempt is unfair.

Trade Union Recognition Bill, 1998

Law Society President, Laurence K Shields (front row, centre) and Director General, Ken Murphy (front row, third left) pictured recently with members of the Drogheda, Louth and Meath solicitors' bar associations

Ladies teed off

About 30 members teed off recently at the Lady Solicitors' Golf Society spring outing at Seapoint Golf Club, Drogheda. The results were as follows: first, Alison Fanagan, H/C 33, 43 points; second, Alice Shortall, H/C 37 points (back nine); gross, Anne McMahon, H/C 19, 18 gross points; third, Anne Barry, H/C 32, 37 points; first nine, Diana Jamieson, H/C 32, 21 points; second nine, Irene Fenelon, H/C 36, 20 points.

The next outing will take place in Rosslare Golf Club on Friday 4 September. For further information, contact Alison Fanagan, A&L Goodbody, DX 29.

Pictured at a function to mark the retirement of Tipperary county registrar Patrick McCormack were (left to right): Barbara Tynan, Cian O'Carroll, Maura Hennessy, Dolph McGrath, Donald Binchy and Raymond Flynn

New partner at Ivor Fitzpatrick & Co

Bernard McEvoy has been appointed Partner at Ivor Fitzpatrick & Co. He will join the company's corporate and commercial department. McEvoy is widely acknowledged for his expertise in mergers, acquisitions and corporate finance.

Retiring Tipperary county registrar Patrick McCormack (centre) with (front row, left to right): David Hodgins, Patrick Treacy, Joan Kelly, Sheelagh Doorley, Gerard Connolly; (back row, left to right): Michael Collins, Philip Joyce, Joseph Kelly

Book reviews

Corporation tax

Michael Feeney

Butterworths (1998), 26 Upper Ormond Quay, Dublin 7. ISBN: 1854757482. Price: £80

Corporation tax sets out over the course of 2,000 pages to highlight and explain the direct taxes imposed on companies generally in respect of their profits (income and capital gains), and development land gains. To achieve this objective, the author discusses not only the *Corporation Tax Act, 1976* but also the relevant provisions of the *Income Tax Act, 1967* as amended, and the *Capital Gains Tax Act, 1975* as amended.

Accordingly, the title *Corporation tax* does not do full justice to the scope of the work. In this regard, the name by which the book is referred to in the foreword, *The taxation of companies*, is more appropriate. No doubt this anomaly will be corrected in future editions.

Corporation tax is the most substantive work published to date on this area of the law. The book carefully brings the reader through the corporation tax code as it applies to companies generally and so will be of assistance to all lawyers who advise companies and their directors.

Tax legislation tends to be extremely complex, but the author makes the subject accessible by supplementing the text with over 450 worked examples. Solicitors with particular expertise in corporate tax will find much of interest in chapter eight, which concerns company reconstructions, and in chapter 11, which deals with special types of companies.

This reviewer would have liked a greater degree of cross-referencing to related provisions in the *Companies Acts, 1963-1990*. For example, section 116(1) of the *Corporation Tax Act, 1976* allows the surrender of Case I trading losses between group companies. Under section 107(5)(a) two companies are deemed to be members of a group of companies if one is a 75% subsidiary of the other or both are 75% subsidiaries of a third. However, such a surrender might well give rise to an aggrieved shareholder taking proceedings under section 205 of the *Companies Act, 1963*, a possibility that lawyers should be aware of when giving advice in this area.

A discussion of the interaction of section 84 as amended and succeeding sections of the *Corporation Tax Act, 1976* (which deal with distributions) and sections 45 and 46 of the *Companies (Amendment) Act, 1983* (which deal with distributable profits) would also have been interesting.

The text, which deals with the pre-consolidation legislation, includes a destination table, which allows the reader to trace the present location of older tax legislation as re-enacted in the *Taxes Consolidation Act, 1997*.

It is likely that *Corporation tax* will be used in conjunction with Judge's *Irish income tax*, also published by Butterworths. It would be helpful if, in future, both editions used the same method of citing legislation in the table of statutes: Judge uses a chronological sequence, while Feeney prefers an alphabetic listing.

Companies and their directors expect that the legal advice which they receive will not give rise to adverse consequences. *Corporation tax* provides a comprehensive and comprehensible guide to advisers who wish to avoid this. This book should be required reading for any solicitor with corporate clients. G

Niall O'Hanlon BA (Hons) (Acct & Fin) LLM (Comm Law) ACA AITI is a barrister specialising in taxation and commercial law, and a consultant to the Law Society's Law School.

Family law in Northern Ireland

Kerry O'Halloran

Gill & Macmillan (1997), Goldenbridge, Inchicore, Dublin 8. ISBN: 0-7171-2318-9. Price: £65

'The family is the association established by nature for the supply of man's everyday wants'.

The Right Honourable Lord Justice MacDermott quotes Aristotle in the introduction to this weighty and interesting book and notes that this assertion is no longer universally accepted. Family law is approached from both a practical, legal and sociological viewpoint, reflecting the writer's background as a barrister and his continued work in research and social work.

The layout is concise and the book is divided into 26 chapters and three parts: parents, the welfare of children, and property and finance. Each chapter is preceded by an introduction setting out a brief history of the legal background and sociological framework from which each specified area of family law has developed.

The book is progressive in its lengthy study of the law relating to children. That such a large portion is dedicated to the welfare of the child in both public and private law is an indication of how children's welfare is gaining greater importance than the status of parents and ownership issues. The concentration on child issues in the book is to be welcomed and studied. Of interest are chapters 18 and 19 dealing with the law relating to the representation of children's interests and how the child's voice is heard in contested proceedings.

In a fascinating chapter in part one, *Assisted parenthood*, the writer notes that today's alternative means of reproduction, such as in-vitro fertilisation, artificial insemination, surrogacy and even cloning, have transformed the traditional definition of a parent. The writer also emphasises that all family law practitioners should be aware of the future effects and the influence of the *European convention on human rights*, the *UN convention on the rights of the child* and the importance of the European Court of Human Rights in family law matters.

The writer maintains a stimulating and contemporary approach to family law and this book should be read by all practitioners. G

Anne-Marie Blaney is a solicitor and family mediator with Dundalk-based solicitors' firm MacGuill and Company.

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 1 May 1998)

Regd owner: Emmet Quinn, Kathleen Quinn and Edel Quinn; Folio: 10697F; Land: Coragh; Area: 0.977 acres; **Co Cavan**

Regd owner: Seamus Hynes, Doonaghboy, Kilkee, Co Clare and c/o APC Moneypoint, Kilimer, Co Clare; Folio: 6930F; Lands: Ballyonan or Doonaghboy; Area: 0.488 acres; **Co Clare**

Regd owner: John Carroll and Nuala Carroll; Folio: 10444F; Lands: Townland of Lavally Upper situate in the Barony of Fermoy, Co Cork; **Co Cork**

Regd owner: Michael and Eileen Coughlan; Folio: 58423; Lands: Part of the Townland of Clodah situate in the Barony of Muskerry West, Co Cork; **Co Cork**

Regd owner: Michael O'Sullivan, deceased; Folio: 39628; Land: Lands of Derreenacarrin in the Barony of Bantry, Co Cork; **Co Cork**

Regd owner: Liam Cantillon; Folio: 135; Lands: Part lands of Burgess Lower, situate in the Barony of Imokilly, County of Cork; **Co Cork**

Regd owner: Patrick O'Leary (deceased); Folio: 1528; Lands: Part of Glencollins Upper, situate in the Barony of Duhallow and County of Cork; **Co Cork**

Regd owner: Ray Cullen and Bernadette Cullen of 57 Terenure Road West, Dublin 6; Folio: 6247L; Land: Townland of Yellowmeadows in the Barony of Uppercross; **Co Dublin**

Regd owner: Kathleen F McNally, deceased of 116 Ballymun Avenue, Ballymun, Dublin (The Grove Farm, Ballyboughal, County Dublin); Folio: 4700L; Lands: Property situate on the east side of the road leading from Dublin to Swords in the Townland of Santry and Barony of Coolock; **Co Dublin**

Regd owner: Nora Hyland; Folio: 3884L; Lands: All that and those the dwelling-house and premises at 24 Mulgrave Street, Dun Laoghaire, Co Dublin; **Co Dublin**

Regd owner: Joseph Hogan of 9 Woodside Drive, Rathfarnham, Dublin 14; Folio: 84267L; Land: Apartment 24, second and third floor, Block 2, Carysfort Hall, Carysfort Avenue situate in the Parish of Stillorgan and Borough of Dun Laoghaire; **Co Dublin**

Regd owner: Ian Carron and Denise Ann Baines of 27 The Kybe, Skerries, County Dublin; Folio: 82865F; Lands: Property situate to the West of Holmpatrick in the Parish and Town of Skerries; **Co Dublin**

Regd owner: Gerard Duffin and Nancy Marie Duffin of Stradbally, Castlegregory, County Kerry and also of Kilshane Cross, North Road, Finglas, Dublin 11; Folio: 17797F; Lands: Dwellinghouse situate at Stradbally, Castlegregory in the Townland of Ardbeg, Barony of Corkaguiny and County of Kerry; **Co Kerry**

Regd owner: Elaine Guerin & Gerard Quinn; Folio: 34532; Lands: Townland of Fussa, Barony of Glanarbught; Area: 1.125; **Co Kerry**

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

Regd owner: James P Moran, Cloghan, Moydow; Folio: 2702; Lands: Cloghan; Area: 26a 1r 20p; **Co Longford**

Regd owner: Patrick Cadden, Crillaune, Ross, Castlebar, Co Mayo; Folio: 53150; Lands: Townland of Crillaun, Barony of Cabra; Area: 0a 3r 7p; **Co Mayo**

Regd owner: Mary Kearns, deceased; Folio:18871; Lands: Baltrasna; Area: 0.906 acres; **Co Meath**

Regd owner: Patrick McCabe; Folio: 16350F; Lands: Coghalstown; Area: 1.963 acres; **Co Meath**

Regd owner: Joseph Quinn, Cloonbarry, Aclare, Co Sligo; Folio: 3746; Lands: Townland of Cloonbarry, Barony of Leyny; Area: 16a 3r 24p; **Co Sligo**

Regd owner: Thomas Ryan, Burgess, Nenagh, Co Tipperary; Folio: 4923 and 12144; Lands: Kilnacranna and Curraheen; Area: 23a 0r 22p and 26a 0r 10p; **Co Tipperary**

Regd owner: James Carroll; Folio: 577; Lands: Townland of Carraghataggarit; Barony of Upperthird, Waterford; Area: 85a 34p; **Co Waterford**

Regd owner: James Joseph McGuirk; Folio: 3998; Lands: Tomriland, Barony of Ballinacor North; **Co Wicklow**

WILLS

O'Reilly, Kathleen J, deceased, late of St Ernan's Hill, Kingscourt, County Cavan. Would any person having knowledge of the whereabouts of the original will/codicil of the above named deceased who died on 17 February 1998, please contact FN Murtagh & Company, Solicitors, Kingscourt, County Cavan, tel: 042 67503, fax: 042 67429

Collins, Sheila, deceased, late of 83 Friar Street, Cork. Would any person having knowledge of the whereabouts of the will

of the above named deceased who died on 8 May 1997, please contact MacGrath & Company, Solicitors, 51 Kenyon Street, Nenagh, Co Tipperary, tel: 067 33455, fax: 067 33462

Quinn, Patrick Joseph, deceased, late of 8 Moore Street, Cork. Would any person having knowledge of a will or title documents of the above named deceased who died on 1 March 1998, please contact Peter Quigley & Company, Solicitors, 8 South Mall, Cork, tel: 021 274364

McGee, Annie, late of Carrigans, Co Donegal. Would any person having knowledge of the whereabouts of the last will and testament or any other testamentary disposition executed by Annie McGee who died on 8 August 1990, please contact VP McMullin & Son, Solicitors, Port Road, Letterkenny, Co Donegal, tel: 074 23033, fax: 074 24607

Doyle, Christina, deceased, late of 11 Brookwood Avenue, Artane, Dublin. Would any person having knowledge of the whereabouts of a will executed by the above named deceased who died on 27 October 1980, please contact Richard McGuinness & Company, Solicitors, 24 Sundrive Road, Dublin 12, tel: 4921544, fax 4921820

Kenny, Peter, deceased, late of 6 Terrace Place, Lower Rutland Street, Dublin 1. Would any person having knowledge of a will executed by the above named deceased who died on 29 March 1972, please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath, tel: 046 40352, fax: 046 41312

Kenny, Sheila, deceased, late of Terrace Place, Dublin 1. Would any person having knowledge of a will executed by the above named deceased who died on 17 May 1991, please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath, tel: 046 40352, fax: 046 41312

O'Gorman, Derek, deceased, late of 27 Oxmantown Road, Dublin 7. Would any person having knowledge of the whereabouts of a will, if any, of the above named deceased who died on 2 January 1998, please contact Donal Reilly & Collins, Solicitors, 20 Manor Street, Dublin 7, tel: 6773097, fax: 6773411

Brennan, Esther, deceased, late of Prague House, Freshford, Co Kilkenny and formerly of Brittas, Tullaroan, County Dublin. Would any person having knowledge of the whereabouts of a will of the above named deceased between 1977 and 1980 who died on 8 November 1997, please contact Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4, tel: 6689622, fax: 6689004

Bourke, John, deceased, late of Moanoola, Oola, Co Limerick. Would any person having knowledge of the whereabouts of a will executed by the above named deceased who died on 29 December 1992, please contact Vincent McCormack & Company, Solicitors, Bank Place, Tipperary Town, tel: 062 52899, fax: 062 52944, DX 38 006 Tipperary

Cleary, Leo, deceased, late of Drumlish, County Longford and England. In the month of July 1996, a Dublin solicitor attended at the Royal Victoria Eye and Ear Hospital, Adelaide Road, Dublin, to consult with and arrange for completion of his will for the late Leo Cleary. That solicitor might kindly contact FJ Gearty & Company, Solicitors, 4/5 Church Street, Longford, County Longford, tel: 043 46452, fax: 043 41070, Reference AC/98E

Ryan, Richard, Fr, deceased, late of Aut Even Hospital, Kilkenny and formerly of the Parochial House, Garrenbehy, Rosbercon, New Ross, County Kilkenny. Would any person having knowledge of the whereabouts of a will dated 17 May 1967 executed by the above named deceased who died on 7 September 1983, please contact James P Coghlan & Company, Solicitors, 6 Charles Street, New Ross, County Wexford, tel: 051 421301, fax: 051 422793

EMPLOYMENT

Solicitor with over eight years' post-qualification experience in litigation and general practice seeks position in Dublin area. Reply to **Box No 40**

Solicitor with capital to invest seeks partnership in Galway City firm. Reply to **Box No 41**

Assistant solicitor wanted for practice North of Dublin. Must have at least five years' experience of conveyancing and general non-litigious practice and have partnership ambitions. Reply to **Box No 42**

Solicitor required for Cork City Centre practice. Conveyancing, civil litigation and general legal work. Six-month contract. Newly-qualified solicitor would suit. Apply with CV to **Box No 43**

3-4 month secondment sought by post-professional course apprentice seeking experience in conveyancing/litigation. Computer literate. Reply to **Box No 44**

GAZETTE

ADVERTISING RATES

Advertising rates in the *Professional information* section are as follows:

- **Lost land certificates** – £30 plus 21% VAT
- **Wills** – £50 plus 21% VAT
- **Lost title deeds** – £50 plus 21% VAT
- **Employment miscellaneous** – £6 per printed line plus 21% VAT (approx 4/5 words a line)

All advertisements must be paid for prior to publication. Deadline for June Gazette: 22 May. For further information, contact Catherine Kearney or Andrea MacDermott on 01 671 0711.

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

ENGLISH AGENTS:

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

Fearon & Co, Solicitors,

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

EUGENIA MURRAY & CO.
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Court Applications

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

Would Mrs Margaret McDonald, lately of Cloverhill, Ballinrobe, County Mayo or her lawful heirs, please contact Henry Comerford & Company, Solicitors, Sea Road, Galway, tel: 091 582316, fax: 091 587882

Irish Public Bodies Mutual Insurances Limited. With effect from 18 May 1998 our new offices will be located at 12/14 Lower Mount Street, Dublin 2. Our telephone (01 6778000) and fax (01 6779558) numbers remain unchanged

TITLE DEEDS

Desmond, Mrs Sheila, Meenachoney, Donoughmore, Co Cork. Would any person with knowledge of the whereabouts of documents of title of the above named, please contact John O Lee & Company, Solicitors, 30/31 South Mall, Cork, tel: 021 270588, fax: 021 272975

Blake, Kathleen (otherwise Kay) Margaret, 10 Villa Nova, Mount Merrion Avenue, Co Dublin. Would any person with knowledge of the whereabouts of the original title of the above named in respect of premises Apartment 10, Villa Nova, Mount Merrion Avenue, Co Dublin, please contact Ms Darina White of A&L Goodbody, Solicitors, 1 Earlsfort Centre, Hatch Street, Dublin 2, tel: 6613311, fax: 6613278

LANDLORD AND TENANT

In the matter of the *Landlord and Tenant (Ground Rents) Acts* amended between Paul O'Neill and Charles O'Neill & Company Limited (applicants) and Gwendoline Cooke, Sheila Perry, Arthur Davis, Gertrude Newham or either of their executors, administrators, successors and assigns and Elizabeth O'Doherty (respondents)
To: the County Registrar, Aras Ui Dhalaigh, Inns Quay, Dublin 7

Notice of application
Take notice that on 11 May 1998 at 11.30am an application will be made on behalf of the above named applicants to the County Registrar sitting at Circuit Court Office, Aras Ui Dhalaigh, Inns Quay in the County of the City of Dublin for:

1. An order determining the applicants' entitlement to acquire the fee simple and all intermediate interests in the business premises Number 94 Capel Street in the City of Dublin and Number 95 Capel Street in the City of Dublin more particularly described in the schedule hereto
2. An order determining the purchase price to be paid in respect of such acquisition
3. An order determining the person or persons entitled to receive the purchase money in respect of the acquisition and the amount each person is entitled to receive
4. In the event of any person required to join in the conveyance of the fee simple and all intermediate interests being unknown or unascertained or refusing to execute the conveyance, an order appointing an officer of the court to represent such person and to execute the conveyance for and on behalf of such person
5. Such further or other order or aware as the County Registrar may think fit, and
6. An order providing for the costs of this application.

Which said application will be grounded upon the notice of intention to acquire the fee simple dated 26 September 1997 the issue and service of this notice of application, the affidavits of the applicants, the affidavit of Michael Curneen, the nature of the case and the reasons to be offered.
Dated 21 April 1998

Signed: Andrew Curneen & Son, solicitors for the applicants, 3 Lincoln Place in the City of Dublin

Schedule
Firstly, all that and those the house and premises known as Number 94 Capel Street together with such right and liberties as the lessors might be entitled to all situate in the parish of St Mary and county borough of Dublin held under indenture of lease dated 27 November 1913 between the respondents and all of their predecessors in title and Alexander Cahill, and

Secondly, all that and those the house and premises formerly 91 but now known as Number 95 Capel Street situate in the parish of St Marys and the County of the City of Dublin together with the back garden and out offices belonging thereto held firstly under a yearly tenancy arising by inference on the expiration of a lease dated 19 May 1882 between the predecessors in title of the respondents of the one part and Thomas Pim Goodbody and others predecessors in title to the first named applicant and the first forenamed respondents' interest in the said premises having been acquired by the second named applicant under and by virtue of deed of conveyance dated the 30 December 1983 between Edmar Estates Limited of the one part and the said second named applicant of the other part.