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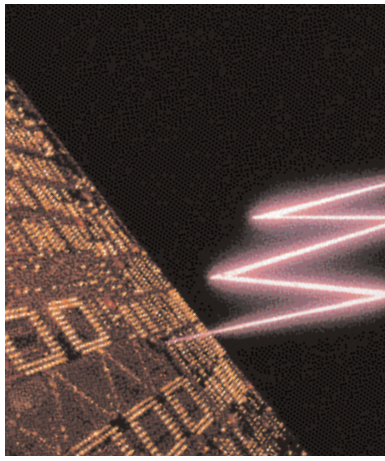

Editor: Conal O'Boyle MA

Reporter: Barry O'Halloran

Designer: Nuala Redmond

Editorial Secretaries:
Andrea MacDermott, Catherine Kearney

Advertising: Seán Ó hOisín, tel/fax: 837 5018, mobile: 086 8117116, E-mail: seanos@iol.ie. 10 Arran Road, Dublin 9

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E-mail: c.oboyle@lawsociety.ie

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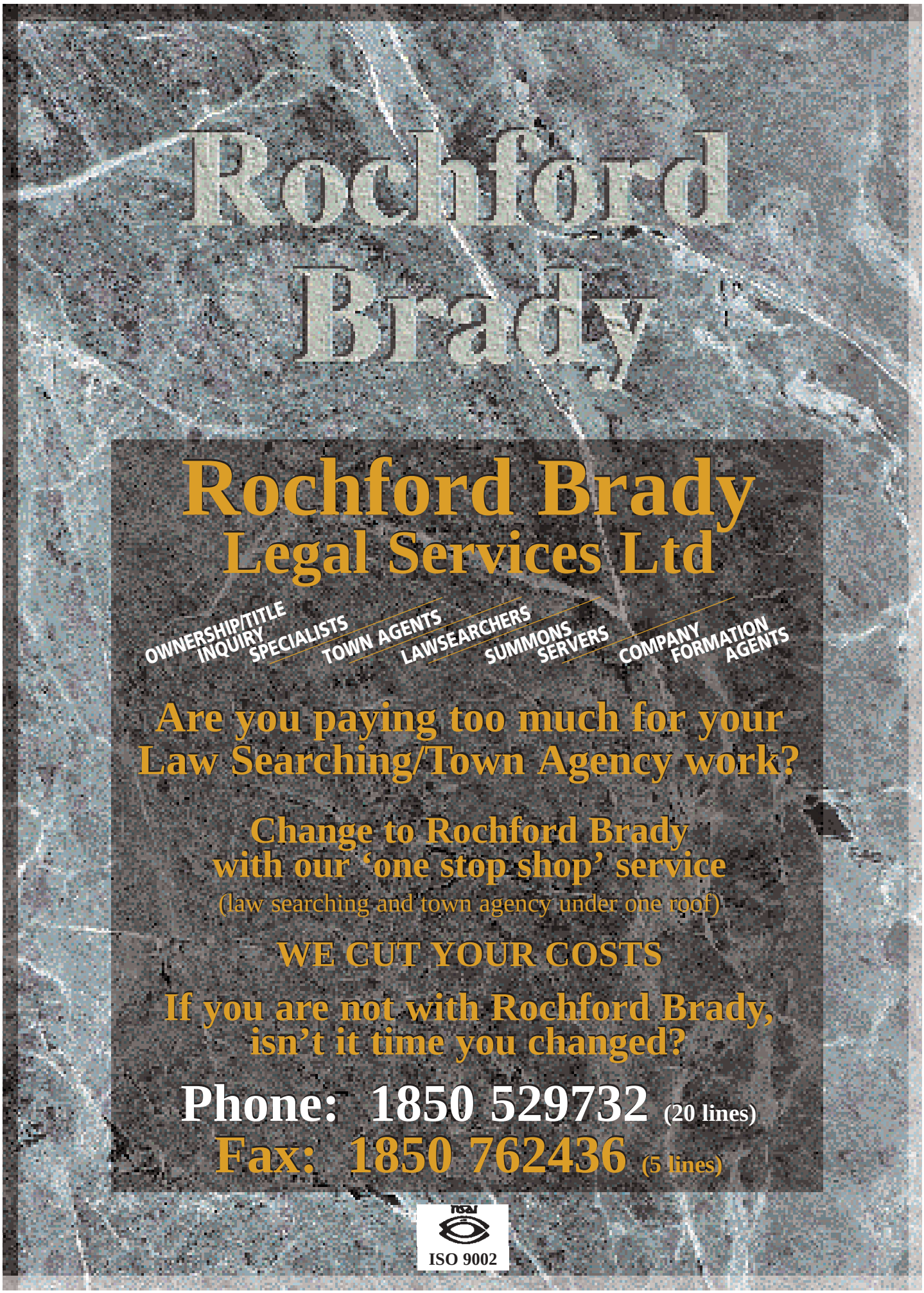
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Ringing the changes

PIC: ROSLYN BYRNE

One of my priorities for my year as President is that the Law Society should continue to enhance the many services it provides to the solicitors' profession (for more on this, see pages 26-27). Possibly one of the most important initiatives in this regard will be the launch of the Society's web site this month. This is an exciting development for the profession and will enable the Society to add significantly to the information that the profession requires in an ever-developing and vibrant economy. You will learn more about this over the next few weeks, but for a sneak preview turn to page 13.

Grasping the euro opportunity

As we move into 1999, change is inevitably in the air. We have already seen one of the most fundamental changes with the launch of the new European currency, the euro, on 1 January. Ireland and the other ten participating countries are irrevocably fixed as to their currency conversion rates. Under the EU principle of 'no compulsion, no prohibition', solicitors like other businesses are free to conduct business in euros. The public sector has already indicated its willingness to accept payments in the new currency. Irish banks will convert your punt accounts into euro denomination, if you wish.

It is important that the solicitors' profession remains at the driving edge of Irish business. During this year, you should familiarise yourself with the new euro currency.

In January 2002, and it will quickly arrive, all Irish notes and coins will be withdrawn and the new euro notes and coins introduced. All businesses that will not have already done so must convert to the new currency and have it adopted in its accounting operations. The Law Society will not be behind in this regard. The *Solicitors' Accounts Regulations* will be changed to reflect the euro era.

As society develops, there are ever-increasing regulations, directives, statutes and rules to comply with. You will have received your application for a practising certificate for 1999. It is a long document that takes careful completion and consideration. There are good reasons for this.

Contrary to what some members of the profession might think, the Law Society was not the author of the *Investor Compensation, Act, 1998* which has imposed additional requirements on all solicitors. The EU directives relating to the provision of investment services apply to solicitors as they do to others, hence the necessity of including an additional section in the application form this year.

The European experience has been good for Ireland and for the solicitors' profession. We live in exciting times: grasp the opportunity and make the most of it.

Alternative dispute resolution

This country has enacted the *Arbitration Act*. Facilities for arbitration, conciliation, mediation and alternative dispute resolution are readily available in Ireland. The solicitors' profession has sometimes been slow to understand and realise the value of arbitration both in domestic and international disputes. With the rising cost of litigation and the difficulties that can, and are, encountered in that traditional form of dispute resolution, I believe that a greater emphasis, use and promotion of arbitration as a vehicle of dispute resolution should be embraced.

The Law Society will develop and add arbitration modules to the new professional course for apprentices, and we hope to have the first of these in place by October 2000 in the new education centre.

The Litigation and Arbitration Committee of the Society has exciting plans for developing this area of practice for solicitors.

Changes at the Law Society Council

At the end of last year, the Council of the Society appointed the chairmen and members of the committees of the Council to November 1999. A complete listing will appear in the new *Law directory*, which will be with members of the Society shortly.

The majority of the solicitors' profession is under the age of 40. Endeavouring to give a geographical and gender balance to the membership of the committees, and at the same time seeking to encourage new members to become actively involved, the Council, on my recommendation, amalgamated and merged the functions of a number of committees and sub-committees.

Some of the committees in the past did not have any Council member sitting on them. That was not desirable in my view. It has been rectified for this year.

Seeking to avoid possible conflicts of interest and endeavouring to ensure that the representatives of the Society have a nexus and direct connection with the democratically elected Council of the Society, I proposed a number of changes. The representative of the Society to the International Bar Association (IBA) is Laurence K Shields (last year's President) who will serve for a period of four years in succession to Maurice Curran, a former President, who was the Society's representative for ten years; Geraldine Clarke, a former Junior Vice-President, will represent the Society for the next three years at the CCBE; James McCourt (Dublin) and Donald Binchy (Clonmel) will represent the Society on the Arbitration Committee of the International Chamber of Commerce in succession to Maurice Curran and Walter Beatty (Snr) who ably served the profession for many years thereon.

I have also established a 'Council Development Review Group' under the chairmanship of the Senior Vice-President, Anthony Ensor, to seek to explore ways of encouraging more active participation by the ever-growing number of members of the profession at Council and on its committees.

President John F Kennedy said: 'Change is the law of life, and those who look only to the past or present are certain to miss the future'. I believe that the solicitors' profession in general does embrace and accept the need for change.

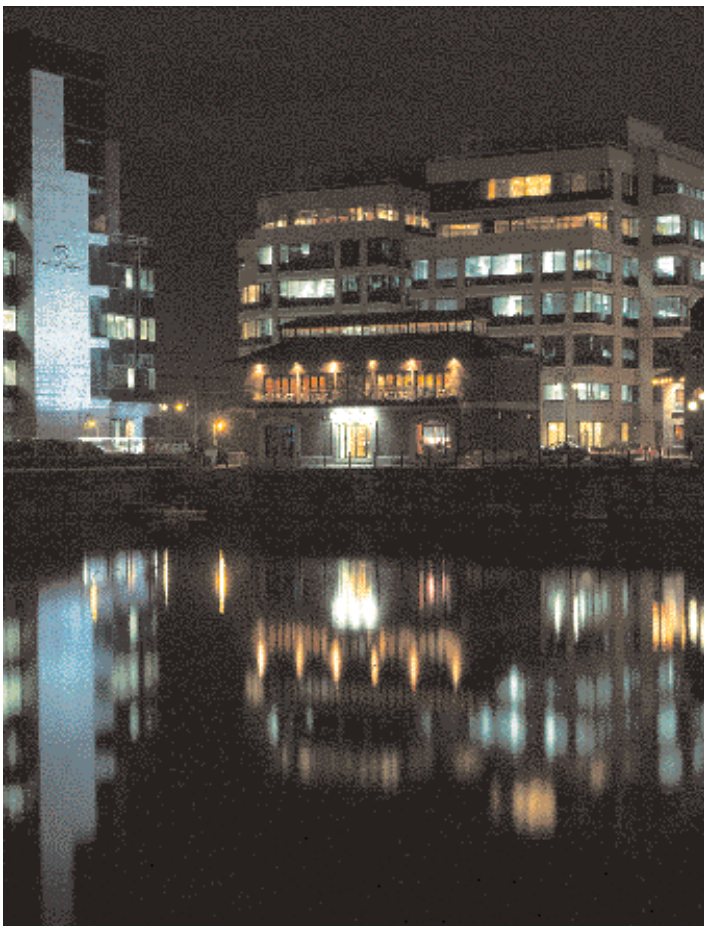
Go m'beimidh beo ar on am seo arís!

Patrick O'Connor
President

European challenges to Ireland's tax regime

Much has been written in recent months regarding taxation and European Community law, giving the impression that we are embarking on a journey through a legal and political minefield which can only result in the Irish tax system being blown to pieces by the European Commission.

As is so often the case when politicians and journalists try to tackle legal subjects, much of the comment has been grossly inaccurate. The Germans are not in a position to dictate the upward movement of Irish corporation tax rates, the Commission cannot abolish Ireland's favourable tax regime, the internal market does not require the adoption of tax rules by qualified majority voting, and monetary union does not inevitably require total tax harmonisation. Nevertheless, European law does have an increasingly important role to play.



Ireland's International Financial Services Centre: recipient of a 'tidy subsidiary'

Relaxed attitude

In so far as tax rules constitute state aid, they are subject to supervisory control by the European Commission in accordance with articles 92 and 93 of the *EC treaty*. Favourable tax rules which operate to reduce the tax burden on specific sectors or persons constitute state aid, although a general low level of tax applicable to all taxpayers without distinction does not. State aid is incompatible with the common market and is prohibited unless it has been approved by the Commission in advance. Hitherto, the Commission has taken at times a relatively relaxed attitude to state aid and initially approved the special Irish zero-rate corporation tax regime for exports and, subsequently, the 10% rate for the manufacturing industry.

It is in this context that the tax breaks for tenants in the International Financial Services Centre must be seen. Double rent relief (that is, the ability to deduct rental payments twice in order to arrive at taxable income) gives a tidy subsidy for those subject to 10% corporation tax. For those lawyers and accountants paying 46% income tax on partnership income, it is a much more generous aid.

From the point of view of the common market, state aid should only be regarded as a problem in so far as it has a distorting effect on competitive investment as between Member States. So the granting of aid to law firms in the IFSC is not likely to worry the Germans. But the granting of aid to internationally-mobile operators, such as investment banks, is a different matter. The Commission is therefore likely to take a tougher attitude to state aids in the future.

With the dawning of the new age of monetary union, there are legitimate concerns throughout the Community that, with interest rates and exchange rates no longer tools of national economic management, differential tax systems will be used to distort competition. What, then, under the present provisions of the *EC treaty* can the Commission and the Council do?

Little direct impact

Firstly, the rules of the internal market are of only marginal interest. Apart from requiring national tax rules to be applied in a non-discriminatory manner to goods, persons, services and capital from other Member States, the internal market provisions of the treaty have little direct impact on tax legislation, and certainly do not provide for the adoption of Community directives by qualified majority.

Second, under article 100 of the *EC treaty*, tax legislation can normally only be adopted by the Council acting unanimously. The German government is currently president of the Council and has stated that one of its priorities for the next six months is the adoption of at least some new legislation on this basis. In the long term, it must make sense for corporation tax to be based on similar concepts throughout the European Union. That, however, does not lead inexorably to the conclusion that all tax rates must be harmonised. Indeed, that is probably not even a desirable outcome from a competition point of view.

If the requirement of unanimity is to be altered, then there will have to be an amendment to the treaty, which itself requires the unanimous agreement of the Member States. The real question to be asked is whether it is desirable that tax legislation be adopted by a majority vote. The present German government obviously thinks it is. Others have different views. In any event, this is a political, not a legal, question.

Finally, however, there is the fallback provision of article 101 of the *EC treaty* which provides that a directive may be adopted by a qualified majority of the Council where national law distorts the conditions of competition in the common market and there is a need to eliminate that distortion. So it is not inconceivable that some Member States could argue that Ireland's unusually low rate of corporation tax, even if not a state aid, could distort investment competition and needs to be eliminated. Politically, this is highly unlikely. G

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

The case for separate legal representation for rape victims

Rape, in the definition of Mr Justice Finlay, the former Chief Justice, 'is a gross attack upon the human dignity and the bodily integrity of a woman and a violation of her human and constitutional rights'. A trial for rape, in the experience of many of the victims, is something not very different: a second ordeal, replicating and often intensifying the trauma of the original abuse. The very small percentage of rapes reported to the authorities is directly attributable to the fear on the part of women of a legal process that they perceive to be confrontational, humiliating and ultimately unjust.

These fears derive directly from the inadequacies of a system which continues to deny a rape victim separate legal representation, to treat her simply as chief witness in the case the State is bringing against the accused. It is possible that she will not have met the barrister representing the prosecution, nor will she have access to the Book of Evidence. She has no right to request the calling of particular witnesses. It is the role of the defence counsel to try to 'win' the case by showing up the witness – *who is not on trial* – in the worst possible light. His task (and the defence barrister is almost invariably male) is to use every means available to discredit the complainant. The victim must relive her rape, in every intimate detail, before a courtroom of strangers and in the face of the defence lawyer whose task is to prove she is a liar. It is no wonder that rape victims have frequently described the experience of such cross-examination as aggressive, offensive and degrading.

The reality of the present system is that the processing of rape and sexual assault cases through the criminal justice system exacerbates rather than alleviates the devastating effects of the crime on the victim and by intensifying the distress creates an experience of re-victimisation. Many victims have not only felt disempowered and humiliated as a result of their treatment; they have expressed anger and betrayal at the appalling attrition and conviction rates in these cases. Victims of rape and sexual assault suffer greater and more persistent psychological and social effects than any other group of victims of violence.

The Dublin Rape Crisis Centre has been consistently and strongly critical of the demonstrable inadequacies of a system which can produce such feelings of isolation, vulnerability and even guilt on the part of the rape victim; and it is convinced that this is rooted in the injustice of denying the victim separate legal representation. Such representation has been introduced in other jurisdictions with conspicuous success. In Denmark, for example, research has shown that it has done more to improve the system of dealing with sexual assault than any alteration in the substantive criminal law or rules of evidence. In Norway, the system is also working well, despite initial opposition from the Association of Norwegian Lawyers.

Separate legal representation successfully provides support for the complainant, while the mere presence in court of a lawyer acting on her behalf has been sufficient to ensure that she is fairly treated. Lengthy cross-examinations are no longer the norm, and victims are becoming more willing to testify in court. These developments have also contributed significantly to encouraging prosecutions which otherwise might not have been brought.

Olive Braiden: 'separate legal representation would provide much-needed support'

While we must treat with due caution the assumption that what is working well elsewhere would be equally efficacious in this jurisdiction, given the cultural and legal differences, the Dublin Rape Crisis Centre, after very careful study and consideration, remains totally convinced that separate legal representation for complainants in rape and sexual assault cases would provide much-needed support. This would also render the trial process considerably less traumatic, and would encourage women to report rapes without the fear of the legal process intensifying their distress.

'The processing of rape and sexual assault cases through the criminal justice system exacerbates rather than alleviates the devastating effects of the crime on the victim'

Last year, the Dublin Rape Crisis Centre initiated a research project (with the support of the EU Grotius Programme) carried out by the School of Law at Trinity College, Dublin. The aim of the project was a comparative analysis of the laws and legal procedures relating to rape, and their impact upon victims of rape, in the 15 Member States of the EU.

This is a summary of the experiences of Irish participants when compared with the experiences of participants from the other four selected Member States, Belgium, France, Denmark and Germany. The study found that Irish participants:

1. Rated the attitude of the chief police interviewer significantly more positively
2. Reported feeling significantly less confident when testifying
3. Reported feeling less articulate when testifying
4. Rated the defence lawyer as more hostile
5. Rated the trial judge as having a more positive attitude towards them
6. Reported that involvement in the legal process had a significantly more negative effect on their family life when compared with the reported effect on the family life of participants from the other four selected Member States
7. Perceived the legal process as significantly less fair
8. Reported feeling significantly more negative about having been involved in the legal process, and finally
9. Reported being significantly less satisfied overall with the legal process.

The Minister for Justice, John O'Donoghue, is of the view that complainants in rape trials should be entitled to separate legal representation when being cross-examined on their previous sexual history because the court is dealing with an issue which may affect certain constitutional rights.

The Dublin Rape Crisis Centre welcomes this first step towards full legal representation for rape victims, male and female. G

Olive Braiden is Director of the Dublin Rape Crisis Centre.

Designing a courts syst

How the blueprint was written for historic changes in the courts

Following the final meeting of the Working Group on the Courts Commission recently, a dinner was held for all who had served as members for some or all of the three-year period of the working group together with those who had at various times acted as research assistants to the group.
Pictured here are (front row, from left): Laura Rattigan BL, research assistant; Mr Justice Ronan Keane, Supreme Court; Mr Justice Robert Barr, High Court; Mrs Justice Susan Denham, Supreme Court, chairperson of the working group; Mr Justice Anthony J Hederman, former Supreme Court judge and chairman of the Law Reform Commission; Ken Wright, management consultant; Roísín McDermott, chairwoman of Women's Aid.
Second row (from left): Mr Justice Esmond Smyth, President of the Circuit Court; Cormac Cronin, Department of Finance; Ken Murphy, Director General of the Law Society; Mrs Justice Catherine McGuinness, High Court.
Third row (from left): Noel Synnott, Department of Justice; Kevin Duffy, Deputy Chairman of the Labour Court; Caitlín Ní Fhlaitheartaigh, Office of the Attorney General; Mr Justice Kevin O'Higgins, High Court.
Fourth row (from left): Garret Simmons BL, research assistant; John Rogers SC.
Back row (from left): Eanna Hickey BL, research assistant; Marie Ryan, Department of Justice; Caoihmín O'hUiginn, Department of Justice; David Herlihy, research assistant; Sinead Ryan BL, research assistant; Colm Breslin, Department of Finance

'In response to the Minister for Justice, this group is making an historic recommendation. It is proposing a development of Government to complete a process commenced in the 1920s. It is a radical document suggesting changes which will make justice more accessible to the people.' – **Extract from foreword to *First Report of Working Group on a Courts Commission.***

'The courts in Ireland have an air of the 19th Century about them. Our task is to design a courts system appropriate to the 21st Century.' This was the challenge put three years ago to the newly-formed Working Group on a Courts Commission by its chairperson, Mrs Justice Susan Denham of the Supreme Court.

I had the honour to be nominated by the Law Society as a member of the working group. It was the most important and satisfying committee work in which I have ever been engaged. I believe that the above challenge was met.

The sixth and final report of the working group was presented to the Minister for Justice, Equality and Law Reform, John O'Donoghue, by Judge Denham on 25 November 1998. This report, which has yet to be published by the Minister, deals with four separate issues, namely: information and access to court documents; family law; court sittings and vacations; and judicial conduct and ethics.

In the three years since the then Minister for Justice, Nora Owen, addressed the first meeting of the working group on 2 November 1995, many well-researched and argued 'radical documents' were produced by the working group. That these documents have also proved 'historic' is because both

em for the 21st century

Minister Owen and her successor Minister O'Donoghue were not prepared to let the reports gather dust and be forgotten. The reports' recommendations were accepted and acted on at Government level, with legislation introduced where necessary to give effect to them.

The most radical and far-reaching of these changes will become a reality later this year when the formal transfer of power over the management of the entire courts system takes place. The Department of Justice, where this power has largely resided since the foundation of the State, will hand it over to the new independent agency of the State known as the Courts Service. From that date onwards, policy and primary responsibility for management of the courts will reside not with any Government Minister but with the 17-member board of the Courts Service chaired by the Chief Justice.

User-friendly courts

The result, provided the project is properly financed, will be the creation of a coherent management structure together with a modern, professional managerial approach to matters such as financial control, human resources, information technology and other standard features of a well-run and successful organisation in today's world.

Over time this should produce a much more efficient, effective and user-friendly courts system, delivering an enormously improved level of service to the Irish people. The elimination of delays must be a primary objective, proper courthouse facilities another. Such developments can represent nothing but good news for all users of the courts system.

The focus of this article, however, is not on the working group's various reports and policy recommendations but on the group itself, which devised the blueprint for these changes.

The idea of transferring the management of the courts to an independent agency was not a new one. The courts agency model is now followed in most common-law countries around the world. Indeed, the Courts Service of Northern Ireland was set up as far back as 1979. In 1993, what broadly speaking has now come to pass here was called for in a document prepared jointly by the Law Society and the Bar Council.

A strong political impulse in support of such a policy arose from events touching on the courts which contributed to the fall of the then Government in November 1994 and the formation the following month of the Rainbow Coalition. The new administration included in its *Agreement for Government* the objective of 'establishing a commission on the management of the courts as an independent and permanent body with financial and management autonomy'.

Minister Owen proceeded to establish a working group comprising representatives of the major groups involved with the courts. The Law Society was unhappy that the solicitors' profession, by far the largest body of direct users of the courts system, was offered only one nomination to a working group which would be dominated by members of the judiciary. However, I was given the honour of nomination by the Council to represent the solicitors' profession.

The principles which would guide the work of the group were put in place from the beginning by Judge Denham. It was quickly established that collectively and individually we were expected to work hard and at a considerable pace. It was decided that meetings would take place not once a month or even once a fortnight but once a week. Accordingly, for the next three years, a meeting took place every Monday morning during the law terms. Meetings were held in the Judges' Library in the Four Courts.

Mrs Justice Susan Denham chaired the working group

Characteristic of our approach was in-depth research which involved reviewing in detail relevant experiences in many other countries with a particular focus on the United States, Canada, Australia and the United Kingdom. Working group members would frequently spend hours on a Sunday evening reading the latest batch of papers in advance of the Monday morning meeting.

Another feature of the working group's approach was to consult and listen to everyone concerned. Submissions were invited from anyone likely to have even the least insight or ideas to offer us based on relevant experience. All those likely to be affected by recommendations which the working group might make were invariably asked to make written submissions followed, more often than not, by opportunities to meet, present to and answer questions from the working group. Representatives of some particularly-affected interest groups met the working group on a number of occasions to express their views or concerns.

Literally hundreds of submissions were received during the three-year period. Every submission was copied to all members and specifically considered at a meeting of the working group.

Debate within the working group was invariably well

ORIGINAL MEMBERSHIP OF THE WORKING GROUP ON A COURTS COMMISSION (as appointed in November 1995)

Mrs Justice Susan Denham, Judge of the Supreme Court
Mr Justice Ronan Keane, Judge of the High Court
Judge Kevin O'Higgins, Judge of the Circuit Court
Judge Catherine McGuinness, Judge of the Circuit Court
Judge Peter Smithwick, President of the District Court
Mr Justice Anthony J Hederman, Chairman of the Law Reform Commission
Ken Murphy, Director General of the Law Society
James Nugent, Senior Counsel, Chairman of the Bar Council
Ken Wright, management consultant
John Rogers, Senior Counsel
Róisín McDermott, Chairwoman of Women's Aid
Kevin Duffy, Assistant General Secretary, Irish Congress of Trade Unions

Departmental representatives
Caoimhín Ó hUiginn, Department of Justice
Colm Breslin, Department of Finance
Richard Barrett, Attorney General's Office

Secretariat
Noel Synnott, Department of Justice

informed, serious and vigorous. The chairperson always sought to achieve consensus. She skilfully defused anything potentially contentious, listened carefully and courteously to every point of view, and summed-up with subtlety and balance. She then undertook the enormous burden of producing first drafts to the group's very detailed reports. Such was the trust and respect she enjoyed from members of the working group that where she expressed a firm view on a particular topic the working group usually followed it. The achievements of the working group are due more than anything else to Judge Denham's vision, energy and determination.

By far the most satisfying aspect of involvement with this working group was seeing our recommendations consistently accepted by Government, and not only accepted but acted upon.

Things happened

Things happened, whether it was (a) the establishment of the Courts Service with the implementing legislation precisely following the design recommended by the working group, or (b) the recommendation that appointment to the presidency of benches be for seven years (in place of appointments until retirement which had been the case up to this), which recommendation became law in the *Courts (No 2) Act, 1997*, or (c) the establishment of a Drug Court Planning Committee to prepare plans for a drug court pilot project in the District Court due to commence within the next few months or, at the simplest level, (d) the introduction of an information desk in the Four Courts building as a first step towards a new culture of communication and service orientation within the courts.

In the latter respect, we look forward to such hitherto undreamt of developments as annual reports on the courts and a courts information officer to deal with the media.

Even though most members of the working group thought themselves to be already familiar with the courts system, we were frequently shocked by how bad conditions really were. Our reports spoke bluntly of there being no clear management or reporting structures, a fragmentation of the administration system between each of the courts, little or no training and development of staff or application of modern information technology, crisis management in many offices and a lack of financial information or statistics.

The working group knew the power of an example and highlighted the situation in the Accountant's Office where a staff of ten managed investments in excess of £300m operating a manual accounting system with letters typed on a typewriter which was missing two keys!

The working group was also very genuinely and deeply impressed by the courts staff at all levels who made remarkable efforts to deliver a worthwhile service despite the totally inadequate resources which had been made available to the courts system since the foundation of the State.

A number of things changed during the three years in which the working group was engaged in the various tasks which were set for it by the successive Ministers. Many new judges were appointed, which contributed directly to a substantial reduction in the level of delays in the courts. Much more money than previously – although still not enough – was invested in improving courthouses around the country. However, the working group did not allow those improvements to deflect it from pressing for fundamental changes such as were at last achieved with the passage into law of the *Courts Service Act, 1998.*

There were changes within the working group also, often caused by the elevation to higher courts of some of the judges. Mr Justice Ronan Keane went from the High Court to the Supreme Court, both Mr Justice Kevin O'Higgins and Mrs Justice Catherine McGuinness rose from the Circuit Court to the High Court, and His Honour Judge Esmond Smyth was appointed President of the Circuit Court.

Two of the most active members of the working group were non-lawyers. One was Kevin Duffy, the Assistant General Secretary of the Irish Congress of Trade Unions, whose advice was invaluable on the many matters raised with us by trade unions representing various grades of staff within the courts service. The management consultant Ken Wright devoted so much of his time and professional expertise to the working group that he was retained on a consultancy basis to guide the massive exercise in change management in which the courts are currently engaged.

The final meeting of the working group took place on 27 November 1998. It has now completed its work. Its legacy is the blueprint for a courts system appropriate to at least the beginning of the 21st Century. G

Ken Murphy is Director General of the Law Society of Ireland.

WORKING GROUP PUBLICATIONS

First report
Management and financing of the courts, April 1996
Second report
Case management and court management, July 1996
Third report
Towards the courts service, November 1996
Fourth Report
The chief executive of the Courts Service, March 1997
A Working Paper
Conference on case management, May 1997
A Working Paper
A working paper on information and the courts, November 1997
Fifth report
Drug courts, February 1998
Sixth report
- *Information and access to court documents*
- *Family law*
- *Court sittings and vacations*
- *Judicial conduct and ethics*

November 1998 – not yet published

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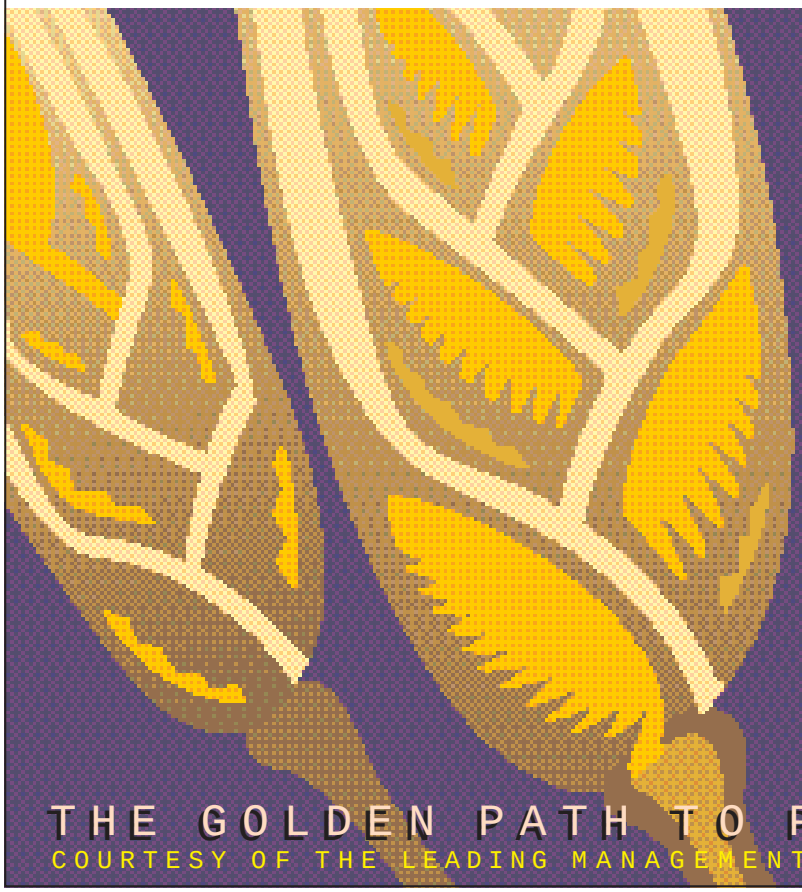

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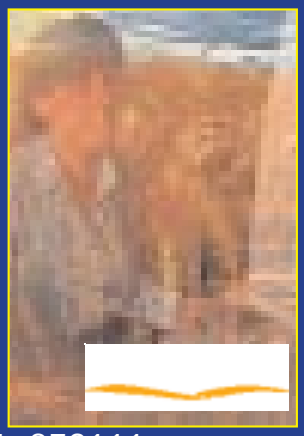

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Civil legal aid and 'disposable income'

From: Katherine Killalea, Castlebar, Co Mayo

In a commentary on the shortcomings of the civil legal aid scheme, Ann Fitzgerald (*Gazette*, November 1998, page 4) noted that 'the means test continues to allow only those on a very low "disposable" income to be recipients of legal aid or advice'.

It may interest your readers to know that many of them would qualify for legal aid and that I personally, as a solicitor qualified for 17 years and on the top point of the salary scale for a Grade A solicitor with the Legal Aid Board, would be eligible for legal aid on a salary last year of £23,379. This eligibility would be for a family law matter where my spouse's income or capital would not be taken into account.

However, the calculation of disposable income is such that somebody on half my salary might not be eligible for legal aid.

Your views

Your letters make your magazine and may influence your Society. Send your letters to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 672 4801.

Dumb and dumber

From: David Williams, Ahern Roberts Williams & Partners, Cork

The following was obtained from the Internet. It claims to be the actual replies of executives and personnel managers in 100 major American corporations who were surveyed for stories of unusual behaviour by job applicants. The lowlights were:

- The applicant stretched out on the floor to fill out the job application
- She wore a walkman and said she could listen to me and the music at the same time
- The applicant asked to see the interviewer's *résumé* to see if the personnel executive was qualified to judge the candidate
- When I asked him about his hobbies, he stood up and started tap-dancing around my office
- At the end of the interview, while I stood there dumbstruck, he went through my purse, took out a brush, brushed his hair, and left
- The applicant pulled out a Polaroid camera and snapped a flash picture of me. He said he collected photos of everyone who interviewed him
- The applicant said he wasn't interested because the position paid too much
- While I was on a long-distance call, the applicant took out a copy of *Penthouse* and looked through the photos, stopping longest at the centrefold
- During the interview an alarm clock went off in the candidate's brief case. He took it out, shut it off, apologised, and said he had to leave for another interview
- A telephone call came in for the job applicant. It was from his wife. His side of the conversation went like this: 'Which company? When do I start? What's the salary?' I said: 'I presume you're not interested in conducting the interview any further'. He promptly responded: 'I am as long as you'll pay me more'. I didn't hire him, but later found out there was no other job offer. It was a scam to get a higher offer
- His briefcase opened when he picked it up and the contents spilled out, revealing ladies' undergarments and assorted make-up and perfume
- The candidate said he really didn't want to get a job, but the employment office needed proof that he was looking for one
- The candidate asked who the lovely babe was and pointed to the picture on my desk. When I said it was my wife, he asked if she was home now and wanted my phone number. I called security
- Pointing to a black case he carried into my office, the candidate said that if he was not hired the bomb would go off. Disbelieving, I began to state why he would never be hired and that I was going to call the police. He then reached down to the case, flipped a switch and ran. No-one was injured but I did need to get a new desk.

From: Jim Brooks, Collins Brooks & Associates, Cork

At two recent sittings of the District Court in a Cork District Court area, the following took place:

Case 1

The solicitor was applying for a special exemption order and part of the proofs was to provide evidence that a substantial meal was being offered to the patrons attending the function. On presentation by the applicant's solicitor of the menu confirming a meal of chicken curry, the judge commented that in his view what was on offer did not comprise a substantial meal. The solicitor replied: 'With every respect, judge, there are 100 million Indians out there who would not agree with you'. Needless to say, the application was granted.

Case 2

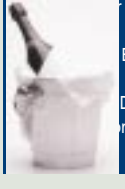
The solicitor was representing a client who had seriously assaulted his victim because the latter had passed extremely derogatory remarks about his girlfriend. The judge intervened and commented: 'It is all very well, Mr A, but would you like it if someone passed such comments about your wife or your girlfriend?' to which the solicitor responded: 'Or worse, judge – both'.

From: Frank Taaffe, Francis B Taaffe & Company, Kildare

The following is a line from a draft civil bill received in the post from an eminent barrister. The young lady who suffered injuries in the car accident was described in the particulars of injuries as follows: 'She was frantic when she realised she was not dead'.

Jim Brooks wins the bottle of champagne this month

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



examples of the wacky, and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7 or you can fax us on 01 672 4801.

New Education Centre on course

The Taoiseach, Bertie Ahern, has agreed to formally lay the foundation stone for the Law Society's new £5m Education Centre later this year. This project to construct a state-of-the-art centre for the professional training of solicitors, both pre and post-qualification, was approved by 76% of voters in a postal poll of the entire solicitors' profession last October.

Since then, the project has been proceeding with all possible speed. Demolition and site clearance will start next month, and the construction work proper will begin in June. The target date for completion is June 2000, with the first students starting the redesigned professional course in September 2000.

The Society expects to be in a position very shortly to announce special arrangements which are being put in place for the intervening period with a view to eliminating the current backlog of students waiting to begin professional courses.

Minister to publish report on judicial appointments

The Minister for Justice, Equality and Law Reform, John O'Donoghue, has confirmed that he is in the course of applying to Government for formal permission to publish the *Report of the Working Group on Qualifications for Appointment as Judges of the High and Supreme Courts*. The report, which was submitted to the Minister on 30 September 1998, is therefore likely to be publicly available shortly.

The working group was established in December 1996 by the then Minister for Justice Nora Owen to consider and make recommendations on the whole issue of the qualifications required to be eligible for appointment to the High and Supreme courts. This had arisen out of the controversy at the Dáil Committee stage of the *Court and Court Officers Bill, 1995* when the Law Society had lobbied to have eligibility for appointment to the High and Supreme courts extended to all solicitors and not merely to senior barristers, as remains the position.

Director General Ken Murphy: 'Publish and put an end to the rumours'

As opposition spokesman on justice in 1995, John O'Donoghue supported the amendment to the Bill put down by Alan Shatter TD, seeking to make all solicitors eligible for appointment as judges of the High and Supreme courts. Minister Owen would not accept the amendment but agreed to establish a working group to look into the matter.

On the working group, the Law Society was represented by the Director General Ken Murphy and Council members Geraldine Clarke and Ernest Cantillon. The three Bar Council representatives were Garrett Cooney SC, Mary Finlay SC, and Turlough O'Donnell SC. The majority of members of the working group, however, were non-lawyers and included such independent-minded individuals as the Director of Consumer Affairs, a member of the Competition Authority and academics whose role was to examine this issue in the public interest.

Commenting on the news that the report would be published shortly, Ken Murphy said: 'We would like to see it published soon, if only to put an end to rumours about its contents. Until published, it remains confidential and we can make no comment on it other than to confirm that the report was signed by the Law Society representatives. Obviously, therefore, we were happy with it'.

New Courts Service boss takes over

The first chief executive of the new Courts Service took office last month. Former Eastern Health Board boss, PJ Fitzpatrick (46), will steer through the most fundamental reforms of the Irish courts since the foundation of the State.

New Courts Service Chief Executive PJ Fitzpatrick

The Law Society expects to have a good working relationship with Fitzpatrick, according to Director General Ken Murphy.

'We are delighted that PJ Fitzpatrick was a guest of the Law Society for lunch on his third day in office as chief executive of the Courts Service, and that he enthusiastically recognised that the solicitors' profession is one of the most important users of the courts', said Murphy. 'It was an excellent start to our relationship and we look forward to working closely with him'.

Compensation Fund payouts

The following claim amounts were admitted by the Compensation Fund Committee and approved for payment by the Council at its meeting in December 1998: Conor McGahon, 19 Jocelyn Street, Dundalk, Co Louth – £1,639.30; John K Brennan, Mayfield, Enniscorthy, Co Wexford – £9,000; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £323.

Liam O'Connor and Denis O'Sullivan

We carried an article in December 1997 on the decision of Mr Justice Kinlen in the proceedings brought by Michael E Hanahoe & Co following a search on their offices by An Garda Síochána. The article was illustrated by a photograph of Detective Liam O'Connor and Detective Sergeant Denis O'Sullivan leaving the Hanahoe's premises.

We wish to make it clear that the photograph in question was used for illustrative purposes only and that we did not intend to link Detectives O'Connor and O'Sullivan to the subject matter of the article. We apologise to Detectives O'Connor and O'Sullivan for any distress or embarrassment caused.

Society's new web site goes on-line

The Law Society's new web site will feature a multi-page tour around its functions and activities when it is re-launched this month. The site will replace a more basic model first put up on the Web last year and has a wider remit than its predecessor.

Member Services Executive Claire O'Sullivan said the new site will have a dual focus, first to educate and inform the general public about the Society's work, and second to act as the primary source of communication with members regarding the Society's activities and functions.

The site will be structured around the Society's committees, each of which will have its own page outlining its activities, projects and publications. It will profile the Society, its building and personnel, as well as detailing its history. An outline of the Society's regulatory and educational functions will also feature alongside information on the library, details of member services and (of course) on-line articles from the latest issue of the *Gazette*.

A key feature will be the 'what's new' page, with updates of professional information for members, details of upcoming events and activities, lists of future seminars and courses, and up-to-the-minute recruitment vacancies. O'Sullivan says that this part of the site will be regularly updated.

After its initial launch, the site will be further developed by adding a member-specific area which will allow members to trawl the library catalogue and download practice notes and precedents. This will be accessed by members using their own PIN code.

Eventually the site will include interactive mailing facilities, e-commerce and an e-mail alert to advise members of existing and proposed legislative and policy changes. The Society hopes to expand links with other sites of interest to members and to encourage other organisations to hook into its site.

O'Sullivan predicts that the site will be used to boost communication with the public and members. 'The Law Society is committed to the promotion and development of the web site as a cost-effective and efficient method of communicating with the profession and the public at large, and we hope that over time all members will be encouraged to regard the web site as an indispensable source of information and advice in the conduct and management of their practices', she says.

The web site address is *www.lawsociety.ie*, and the web master will be delighted to receive members' comments and feedback at *c.osullivan@lawsociety.ie*.

Medico-legal fees revised

The fees paid to medical consultants for examinations, reports, consultations and court appearances have been revised. The following fees apply from 1 January 1999 to 31 July 2001:

Examination and first report

- Standard.....£155
- Psychiatrist's £171

Follow-up report

- Standard.....£137
- Psychiatrist's £149

Attendance at court (to include consultation with counsel on day of hearing if necessary)

- Half day (am or pm) £382
- Full day £519

Consultation with counsel other than on day of hearing

- At consultant's rooms £105
- At court £155

Consultation with another party's medical adviser

- By telephone £32
- By correspondence.....£65
- By attendance at examination £91

Standby fees

For standby within 20 miles of consultant's hospital: 25% of appropriate attendance fee. For standby for a court more than 20 miles from consultant's hospital: 50% of appropriate attendance fee.

Court attendance cancellation

Cancellation within two working days will attract full court attendance or standby fee, as appropriate. Cancellations advised more than two working days but less than five working days will attract 50% of the court attendance or standby fee, as appropriate.

BRIEFLY

Law Society Annual Conference

The Law Society's 1999 Annual Conference will be held at Ashford Castle, Cong, Co Mayo, from 6-9 May. Enquiries in writing to the Law Society, Blackhall Place, Dublin 7 (DX 79).

Software name change crops up

Rodine Software, developers of legal management accounting package *Ro-Law*, has changed its company and product name. The Waterford-based company is now known as Harvest Software and its package has been re-christened *Harvest Law*.

O'Hagan appointed to Special Criminal Court

Circuit Court Judge John O'Hagan has been appointed to the Special Criminal Court. O'Hagan was called to the Bar in 1961 and was a member of the Eastern Circuit for 26 years.

Solicitors go high tech

Over 27% of Irish solicitors have access to e-mail in their practices according to a new survey from Ivutech, the practice management software developer. According to Ivutech's Aidan O'Neill, the vast majority of users are using LawLink's *SecureMail* system (which has been endorsed by the Law Society as the industry standard), with the remainder being split between Telecom Éireann, Ireland On-line and CompuServe.

Free AmEx membership!

American Express is offering free card membership and 500 bonus points in a loyalty programme for Law Society members this month. The cards have no pre-set spending limit and also offer benefits such as £500,000 medical insurance and purchase protection. To qualify, just fill out the form included with this month's *Gazette* and return it by Friday 5 March.

The proposal to remove a suspect's right to silence in the face of Garda interrogation marks another step in the continuing erosion of what were once regarded as fundamental principles in criminal law. Richard English discusses how a similar regime operates in the UK and argues that the legal profession must demand a *quid pro quo* if the proposal becomes law

The treatment of Veronica Guerin murder suspect Paul Ward by members of An Garda Síochána in Lucan Garda Station was severely criticised by the Special Criminal Court. While Ward was subsequently convicted of the journalist's murder, the court's criticism centred on the way the suspect was interrogated. Meanwhile, the Minister for Justice wants to alter the protection from self-incrimination that a detained person has while being questioned. Should we, as lawyers, be content to see the implementation of these changes in the current regime of legal representation for suspects in custody?

When an accused person is put before a court, he or she is asked to plead guilty or not guilty. A plea of not guilty puts the burden of proof on the State, for it is up to the State to prove beyond a reasonable doubt that an accused is guilty – the defendant does not have to prove anything. The onus of proof is on the State; the *Golden Thread* principle so often quoted by *Rumpole of the Bailey*.

It is easy to blame clever lawyers for 'getting people off', and one bulwark against such slipperiness is the Minister for Justice's proposal to extend restrictions on the right of suspects to remain silent in interview to so-called 'ordinary' crime.

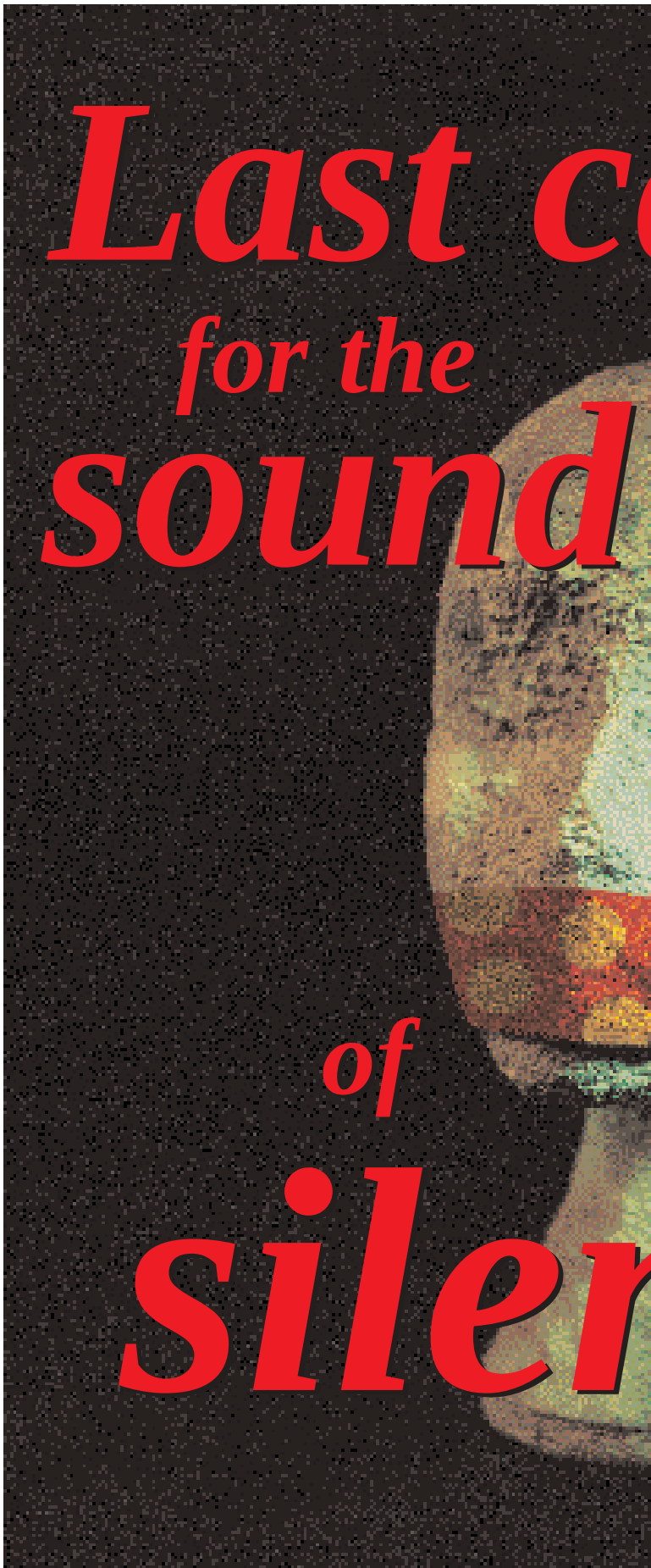
To many lay people, and no doubt to at least some lawyers, there is a sense that an accused person should make some comment when interviewed, and that if they remain silent during questioning they have something to hide, and so must be guilty. One wonders how many juries form this view notwithstanding the charge that they receive? Why would anyone remain silent if they had nothing to hide? Fear, embarrassment, uncertainty of the law – indeed, any number of things that fall short of guilt of the offence for which they have been brought into custody.

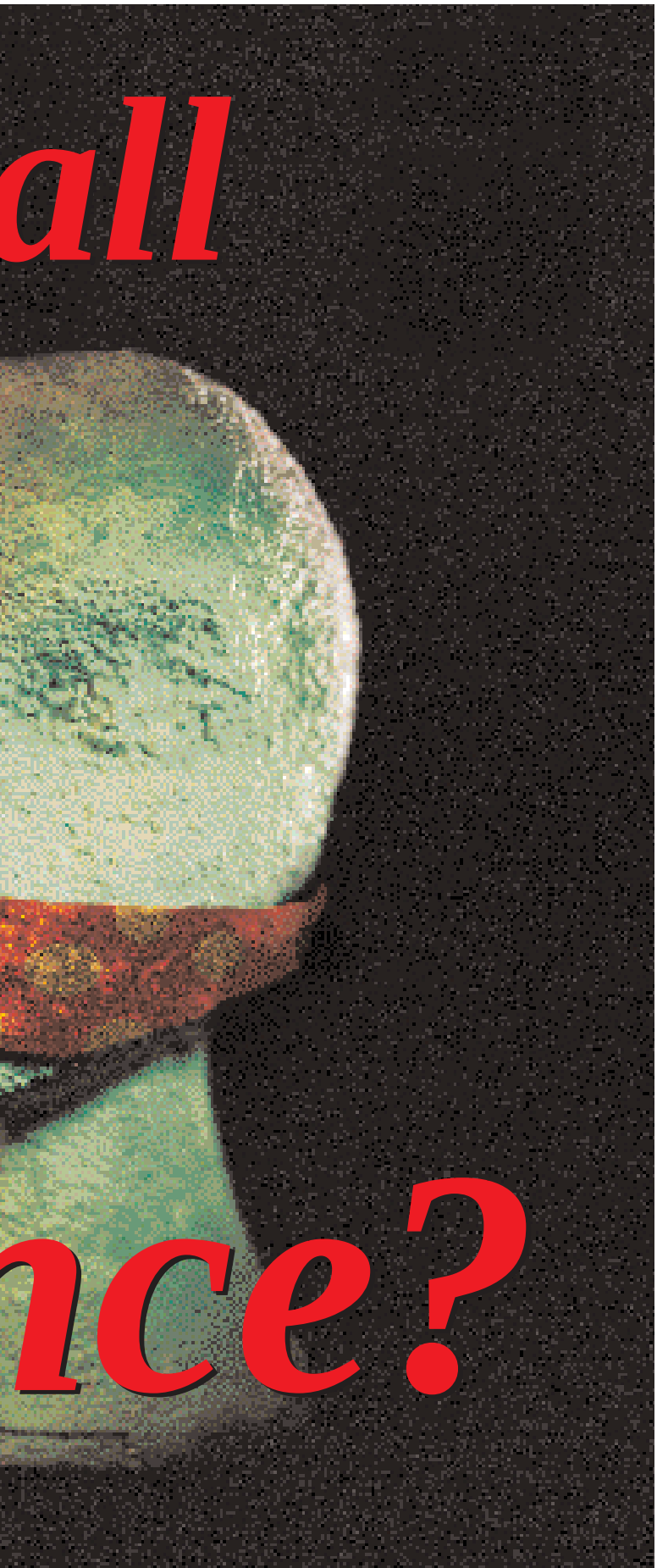
It appears, however, that the argument is lost, and it looks as if changes are going to be made. If they are implemented in the present system there *will* be miscarriages of justice because at present, while a detained person has a right to speak to a solicitor, solicitors are not permitted to sit with a detained person while they are interviewed by the Gardaí. Solicitors have no right of access to statements or to be told about the case before advising a detained person. Indeed, very often the attitude of Gardaí is that a solicitor is a nuisance who will get in the way of the investigation: tolerated, but only just. Moreover, there is no system of legal aid to cover garda station attendances, inevitably restricting the availability of even limited advice and assistance from solicitors.

Radical PACE of change in England

In England and Wales, the detention and treatment of suspects is governed by the *Police and Criminal Evidence Act*, usually referred to as PACE. Enacted in 1984, PACE radically altered the position of the detained person. Solicitors sit in on interviews, which are tape-recorded, and they are paid to do so; there is a duty scheme where on a rota basis private practitioners will attend an unrepresented suspect. The provision of legal advice in the police station is without charge to the detained person irrespective of their circumstances. The 1994 English and Welsh *Criminal Justice and Public Order Act* foreshadowed many of the changes now being suggested for Ireland. A suspect is given a caution upon arrest and before interview:

'You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in





PIC: ROSLYN BYRNE

court; anything you do say will be written down and may be used in evidence.'

As a result of a number of Court of Appeal decisions, the practice has developed whereby (usually) at least an outline of the case will be given to the solicitor by the interviewing officer (some forces train their officers in how to deal with being interviewed by solicitors). More often than not, the solicitor will be read or shown the statements of witnesses, shown any physical evidence, and told of any forensic evidence. The solicitor then will have a private consultation with his or her client and advise him or her as to the strength of the Crown's case and advise him whether he should remain silent or answer questions. The interview is conducted on tape and copies are made available. The solicitor may be party to discussions as to whether to charge or not, and will also make representations on the question of bail, all noted on the custody record by a custody sergeant who is statutorily charged with looking after the interests of the suspect and protecting them.

While the length of interview in England may be shorter than in Ireland, conversely the period of detention before charge may be longer (in England a defendant arrested for an offence may be detained without charge for 24 hours, and in certain circumstances longer). Generally, interviews are quite short (around 45 minutes, the length of a tape) as officers will have taken statements from witnesses which are then put to the detained person.

Interviews should be tape-recorded

The real tragedy of the trial of Paul Ward is that the Special Criminal Court did not follow through its observations with regard to the treatment that Ward received in Lucan Garda Station. Had the court dismissed the charge against the accused, the shock waves would have shaken both the Gardaí and the public.

If there are to be changes to the treatment of suspects in custody (and altering the right to silence is only one of the proposals), then there must be a corresponding change in the way that solicitors are allowed to do their job. The role of the solicitor is not to get people off by some trick or other; it is to ensure that the State, which is the stronger party to any prosecution, is put to proof. Solicitors must be allowed to be present while their clients are being interviewed.

The interviews themselves must be tape-recorded. The role of the member in charge should be strengthened to provide robust protection of the detainee's constitutional rights.

If solicitors were able to play a more active role in the garda station, the way the Gardaí pursue evidence through questioning would change. No longer would they be able to relentlessly seek confessions with questioning unmitigated by the intercession of a solicitor. Techniques of forensic interviewing, strategic considerations and interview plans would have to replace teams of interrogators.

Undoubtedly there is a push to change the right to silence, and if changes are to be implemented the profession must press for a *quid pro quo*: compulsory tape-recording of interviews and the paid attendance of solicitors upon their detained clients. G

Richard English, a native of Dublin, is qualified as a solicitor in England and Ireland. He is now an associate with a firm of criminal defence advocates in the North of England.

Ex
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Section 45 of the *Courts And Court Officers Act, 1995* and SI No 391 of 1998, *Rules of the Superior Courts (No 6) (Disclosure of Reports and Statements) 1998* radically overhauled the procedures for using expert evidence in personal injury litigation. Here, the Law Society's Litigation Committee sets out the main changes introduced by the new rules and explains their implications for practitioners

SI No 391 of 1998 – entitled *Rules of the Superior Courts (No 6) (Disclosure of Reports and Statements) 1998* – was signed into law on 14 October 1998. The rules are deemed to have come into operation on 1 September 1997.

The statutory instrument applies to:

- All claims for damages for personal injuries with the exception of those to which section 1(3) of the *Courts Act, 1988* applies in respect of which trial by jury is available
- All parties to the action, including the plaintiff or co-plaintiff, defendant or co-defendant, third party, counterclaimant or notice party
- All reports or statements from accountants, actuaries, architects, dentists, doctors, engineers, occupational therapists, psychologists, psychiatrists, scientists or any other expert whatsoever *intended to be called to give evidence in relation to an issue in an action*, and *containing the substance of the evidence to be adduced*
- All maps, drawings, photographs, graphs, charts, calculations or other like matter referred to in any such report
- A copy report, statement or letter from such an expert where the original has been concealed, destroyed, lost or mislaid
- All proceedings instituted *on or after 1 September 1997*
- Any report or statement coming into existence *after 1 September 1997* for the purposes of any proceedings (whether instituted before or after that date).

Obligations on parties and time limit: Rule 46(1) and (2)

Plaintiff. A plaintiff in an action shall furnish to the other party or parties or their respective solicitors a schedule listing all reports from expert witnesses intended to be called *within one month of the service of the notice of trial* or *within such further time as may be agreed by the parties or permitted by the court.*

Defendant. *Within seven days of receipt of the plaintiff's schedule, or within such further time as may be agreed by the parties or permitted by the court,* the defendant or any other party or parties shall furnish to the plaintiff or any other party or parties a schedule listing all reports from expert witnesses intended to be called.

Exchange. Within seven days of the receipt of the schedule of the defendant or other party or parties, the parties shall exchange copies of the reports listed in the relevant schedule.

Requirements additional to exchange of reports

The parties shall exchange with the other party or parties or their respective solicitors the information and statements referred to in section 45(i)(a) (iii), (iv) and (v) of the Act, namely:

- The names and addresses of all witnesses intended to be called to give evidence as to the facts in the case
- A full statement of all items of special damage together with appropriate vouchers, or statements from witnesses by whose evidence such loss would be proved in the action
- A written statement from the Department of Social Welfare showing all payments made to a plaintiff subsequent to an accident or an

xpert evidence: ew rules explained

authorisation from the plaintiff to the defendant to apply for such information

within one month of the service of the notice of triaI or within such further time as may be agreed between the parties or permitted by the court.

Nothing to exchange: Rule 46(3)

This sub-rule provides that *'where a party or his solicitor certifies in writing that no report exists which requires to be exchanged pursuant to sub-rule 1, then the other parties shall, on the expiry of the time fixed, agreed or permitted (as the case may be) deliver any report within the meaning of the section to all other parties to the proceedings'.*

Post initial exchange: Rule 46(4)

Any party who, having complied with sub-rule (1) above, obtains any report or statement within the meaning of the section or the name and address of any further witness shall *forthwith* deliver a copy of any such report or statement or details of the name and address of any such witness to the other party or parties or their respective solicitors.

Service: Rule 46(5)

Service of any report, statement or information requiring to be exchanged or delivered may be effected by letter in writing enclosing the report, statement or information required to be delivered and may be sent *by ordinary prepaid post* or in any other manner in which service is authorised by the rules.

Such letter shall specifically state that *the service is for the purpose of complying with the requirements of section 45 of the Act and these rules.*

Withdrawal of report or statement previously delivered: Rule 46(6)

Any party who has previously delivered any report or statement or details of a witness may withdraw reliance on such by confirming *by letter in writing* that he does not now intend to call the author of such a report or statement or such witness to give evidence in the action.

Motion for directions on failure to comply (prior to hearing): Rule 47

Where an allegation is made by one party that any other party to an action has failed to comply with these rules, application may be made to the court by *motion on notice* 'seeking the directions of the court in relation to any such alleged default'. Such application shall be grounded on the affidavit of the moving party.

On the hearing of any such motion, the court may:

1) Direct compliance with such requirement(s) forthwith or within such period as the court may fix, or
2) May make any other order as the justice of the case may require, including orders providing that, in default of compliance:
   a) the party in default be prohibited from adducing such evidence
   b) the claim or defence be struck out, and
   c) may make such costs order as seems meet.

Non-compliance with the rules (discovered while case is at hearing): Rule 48

If it appears to the court at any stage of the hearing of an action that there has been non-compliance with any provision of the section or these rules, the court may, after hearing such evidence as regards such non-compliance as may be adduced by the parties, make such order as it deems fit, including:

- An order prohibiting the adducing of evidence to which such non-compliance relates, or
- An order adjourning the case to permit compliance with the provisions of the section and the rules and on such terms and conditions as seem appropriate, and
- May make such order as to costs as appears just in the circumstances.

Actions transferred from the Circuit Court into the High Court: Rule 49

In such cases, the parties shall *within one month of the order adopting the proceedings* exchange a schedule of reports and the reports in the manner provided for in rule 46(1) and the provisions of this part shall apply *mutatis mutandis.*

Exceptions: Rule 50(1) and (2)

Any party may apply by *motion on notice* to the court for an order that *in the interests of justice* the provisions of rule 46 shall not apply to any particular report or statement (or any part thereof) which is in the possession of that party and which he maintains should not be disclosed and served as required. On such an application, the court may make such order as seems just.

Rule 50(2) provides that a party who has not complied with the section or the rules may apply – in the absence of the consent of the other party or parties – *by motion on notice* to the court seeking the leave of the court to permit the adducing of such evidence as has not been disclosed. The court may make such order as seems just in the circumstances.

Effective date (operative date)

Rule 51 provides that rules 45 to 50 inclusive shall *not* apply to:

- Proceedings instituted before 1 September 1997, or to
- Any report or statement coming into existence before that date for the purposes of any proceedings (whether instituted before or after that date).

The new rules come into operation on 1 September 1997. The exchange of reports shall *not* be required in any case in which proceedings were issued prior to 1 September 1997.

Furthermore, disclosure shall not be compulsory in respect of any report or statement which came into existence prior to 1 September 1997, irrespective of whether proceedings were instituted before or after that date.

The new rules revoked the *Rules of the Superior Courts (No 7) 1997* (SI No 348 of 1997) and *Rules of the Superior Courts (No 8) (Disclosure and Admission of Reports and Statements) (Amendment) 1997* (Sl No 471 of 1997) as and from 14 October 1998. However, those rules remained in force until that date.

Mutuality of disclosure, not admissibility

The mere fact that the parties are statutorily obliged to exchange the reports and statements to which the rules refer does ***not*** mean that the other party must accept them without formal proof. The rules refer to mutual disclosure ***not*** automatic admission.

While this article is intended to be an aid, the Litigation Committee stresses that there is no substitute for reading the statutory instrument itself. G

The Litigation Committee thanks solicitor Patrick J Groarke for his help in the preparation of this article.

Litigation and t

By now we're all aware of the potentially destructive effects of the so-called Millennium Bug, but what recourse do you have in law if your computer system is one of those affected? Can you sue for compensation and, if so, whom do you sue? Denis Kelleher discusses the legal options arising out of this extraordinary problem

Assessments of the severity of the problem offered by the Millennium Bug vary: some have suggested a doomsday scenario in which computers used by the Russian military malfunction and launch nuclear attacks; in contrast, some Europeans have suggested that it is all an American plot to derail the launch of the euro. Those who hope that this problem will be approached calmly and reasonably will be dismayed by newspaper reports that Hollywood is promising a number of disaster movies based on this theme.

On a more serious note, the *Financial Times* has reported that interest future contract prices in the UK, USA and Germany have started to be affected by fears that the Millennium Bug will cause havoc in financial markets. This rise in future interest rates is fuelled by fears that big banks may be unwilling to loan money close to the end of 1999 since they will be worried that if computer systems collapse their funds will be lost. If money is harder to come by, its price (the interest rate) will rise.

The Millennium Bug or Y2K problem has its roots in decisions taken by programmers back in the 1950s. At the time computer memory was expensive, so in order to conserve it programmers eliminated the first two digits in a date, so 1957 became 57. To ensure computability programmers stuck with this convention even after the cost of memory had declined dramatically. The problem is that from 1 January 2000, any computer which has been programmed to read dates in this fashion will have serious difficulties. Such a computer might treat a woman born in 1899 as being only a year old or assess vast sums of interest on debt or savings. This article will examine legal issues which may arise from trying to deal with this problem.

Fixing the program

The best option is to get the supplier of the software to fix his faulty merchandise. However, suppliers may be unwilling to do so, or at least may insist on being paid for this work. It is an accepted fact of life in the information technology industry that software frequently does not work, and some licence agreements will specifically acknowledge this:

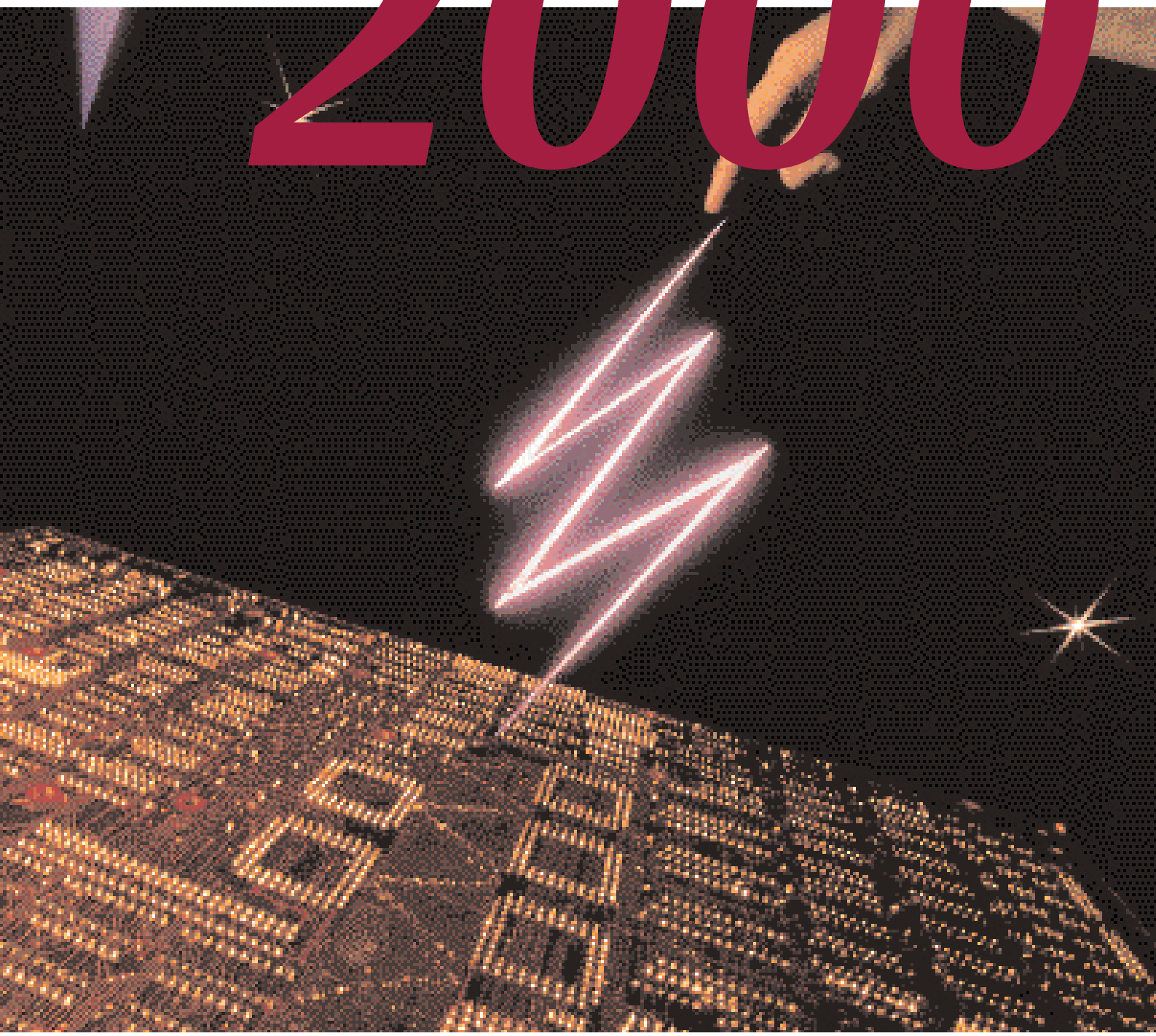
'The licensee acknowledges that software in general is not error free and agrees that the existence of such errors shall not constitute a breach of this licence.'

(Rennie, *Computer contracts*, Sweet & Maxwell, London)

This may make it difficult to bring pressure to bear on the company that supplied the software. Any dispute may settle on who specified that the convention of treating years as a two-digit number should be used. If the purchaser insisted that new programs should be written to be compatible with programs written in the 1950s, then they will have a weak case; a stronger case might be brought by a company which bought computers for the first time in 1996 and which never had any need to use this convention.

Alternatively, if you have a maintenance contract with another group to manage your software, or if a consultant recommended that this package should be bought, then it might be argued that they should repair this problem. Even if you feel that the supplier is being unreasonable or greedy, you may be well advised to pay them as you cannot negotiate with the calendar. Furthermore, there are advantages to getting the supplier to repair his faulty software: it is more practical – since they wrote it originally, they should be the best people to fix it. In particular, they will have access to all the relevant records and source codes. Furthermore, if the original supplier 'fixes' his already faulty software and it still

the Year 2000



does not work on 1 January 2000, then you will have a very good case for compensation.

Banks, insurance companies and other institutions are currently expending huge sums reprogramming their systems to rectify the Year 2000 problem. Copyright complications may occur where the bank or other body repairing a program does not actually own it. Computer programs are protected as literary works under the *European Communities (Legal Protection of Computer Programs) Regulations 1993*. These regulations give the owner the exclusive right to control the reproduction, translation, adaptation, arrangement and alteration of a computer program.

Assuming that you can overcome the serious practical difficulties which the repair of a computer program offers[1], such repair will inevitably infringe many of the owner's exclusive rights. Such repair might be permitted by the licence agreement or contract under which the software was originally supplied, but the provisions of regulation 6(1) provide that:

'Where there are no *specific contractual*

provisions to the contrary, the [reproduction, translation, adaptation and alteration of a program] shall not require authorisation by the rightholder where they are necessary for the use of the computer program by the lawful acquirer in accordance with the intended purpose, *including for error correction*.'

So if there are no provisions to the contrary, you should be able to correct errors in a computer program.[2] Great care should be taken in any situation in which another's copyright may be infringed. Work should be kept to a bare minimum, and careful controls should be imposed on any information which may be discovered about the software as a result of this work. In particular, the staff used to carry out this work must sign confidentiality clauses and when the work is finished all records, codes and other information should be held securely – preferably by a third party.

Repairing a computer program is an unattractive option; there are many disadvantages not least the fact that there may not be enough time to complete this before 1 January 2000. But the major disadvantage is that the chances of successfully suing the supplier may be diminished as the supplier will be able to claim that it was the attempted repairs which were botched and not his original program.

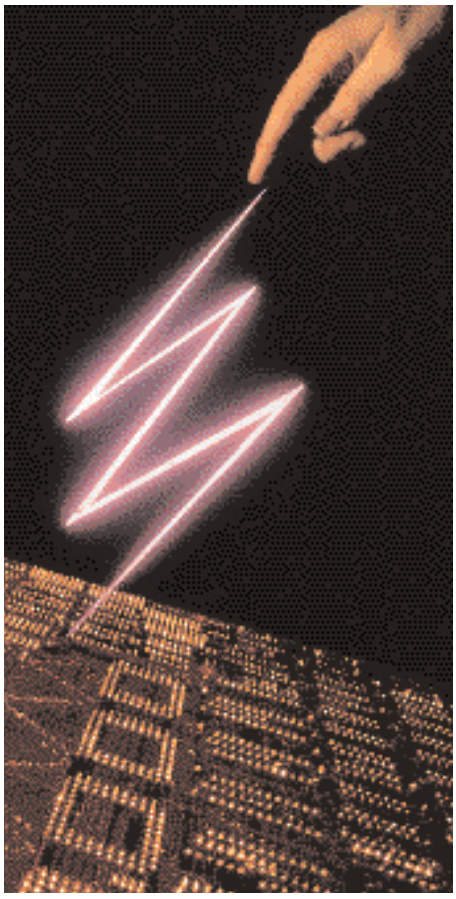
Litigation post-2000

As stated above, it is accepted that software will fail from time to time. It must be remembered that potentially faulty computer chips may be found in a whole range of products from microwave ovens to cars. If you suspect that your software will suffer from Millennium Bug problems, there are several things which you could do from a legal standpoint.

- Do all that you can to mitigate your losses. For example, the Dutch airline KLM has stated that it may have to ground part of its fleet on New Year's Eve 1999 as it fears the consequences of governments and air-traffic controllers failing to make their systems safe
- Prepare to gather as much evidence as possible to enable your client to quantify his losses. Records of how your system performs should be kept, preferably on a system which will not suffer from Millennium Bug problems
- One of the main problems with computer-related litigation is that the evidence becomes extremely complex and technical. To help keep it simple, run extensive tests on your equipment in December 1999. The line 'We tested it on 31 December 1999 and it worked fine but on the morning of 1 January 2000 it stopped' has a clarity which will appeal to judges everywhere.

'Proving that a system failed because of a programming error may be difficult and expensive. Proving whose fault that error was may create even more problems'

If their system fails, many will be tempted to sue for compensation. This will be difficult. One English solicitor has suggested that there will be no wave of Millennium Bug litigation. 'There will be no Year 2000 litigation spree in the UK. This assertion is, I believe, justified by the difficulty of establishing a successful claim for Year 2000 failures', wrote John Mahwood in *Computer & Law* (October/November 1998 issue, p25). Proving that a system failed because of a programming error may be difficult and expensive. Proving whose fault that error was may create even more problems. Complex computer systems may contain many different components which will have been supplied and updated by a variety of suppliers over the years. Finally, it may be difficult to assess the amount of damage which has been caused by that error: what price do you place on your reputation for reliability? If you can overcome all of the above problems, then there are a number of specific legal issues that may arise.



The *Statute of Limitations*. You can sue in tort and contract for six years from the date upon which the cause of action accrued (section 11 of the *Statute of Limitations, 1957*). The problem here will be deciding when the cause of action accrued. Was it when the software was supplied with a Millennium Bug problem? Was it when you started to get worried about it? Or will it be breached early in the morning of 1 January 2000? Even if you can get around this point, the courts may decide that the author of a piece of software written back in 1970 could not reasonably have anticipated that his work would still be in use in the Year 2000.

Jurisdiction. Computers can be interconnected into international networks. If a system in Germany crashes due to bug problems and brings down your system in Ireland, who is liable and where do you sue? Lawyers in the USA are clearing their desks in anticipation of some serious litigation on the back of this. Plaintiffs might do better if they become part of an American class action. However, the 'Good Samaritan Act' recently passed by Congress may limit the liabilities of software companies for software which suffers from the Millennium Bug in the USA.

Was the product sold as being Year 2000 compliant? The text of any guarantee should be carefully examined to see whether it actually promises that the product will continue to work through the Year 2000. The fine print of such guarantees may seek to restrict what is covered or reduce the amount of damages that may be paid. The provisions of section 13(1) of the *Sale of Goods Act 1893* should also be noted. This section states that if a good is sold by its description then there is an implied condition that the goods meet this description. But it must be remembered that proving that a good failed because of a Year 2000 problem as opposed to any other problem may be extremely difficult.

Limitation of liability clauses. All goods supplied must be of merchantible quality.[3] This means that they must be reasonably fit for the purpose for which they are commonly purchased.[4] Since software companies accept that the programs which they supply may contain errors, licence agreements and contracts drawn up by such companies will inevitably be designed to limit the damages which a software company may be liable for if their software should fail. So 'limitation of liability' clauses are commonly inserted in computer contracts. A typical one reads:

'*… ICL's liability will not exceed the price,*

or charge payable for the item of equipment, program or service in respect of which the liability arises or £100,000 (whichever is the lesser). Provided that in no event will ICL be liable for:

i) Loss resulting from any defect or deficiency which ICL shall have physically remedied at its own expense within a reasonable time

ii) Any indirect or consequential loss or loss of business or profits sustained by the customer

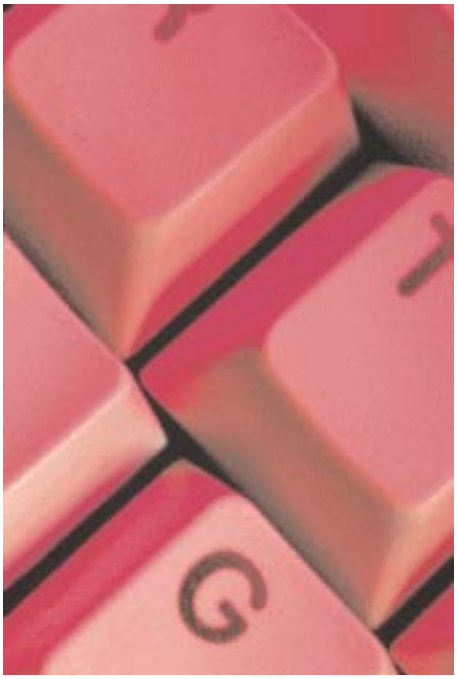
iii) Loss which could have been avoided by the customer following ICL's reasonable advice and instructions.'

Such a clause will be void in a consumer contract and it can only be enforced in a commercial contract if it can be shown to be 'fair and reasonable'.[5] If the courts have to decide whether or not a term is fair and reasonable, they may have regard to the circumstances in which the contract was made, the strength of the parties' bargaining positions, whether an inducement was given to accept the term, whether the customer knew of the existence of the term, the practicality of compliance with any terms and whether or not the goods were adapted to the special order of the customer.

Such a clause was examined by the English courts in *St Albans City Council v ICL* (1995 FSR 686). The English sale of goods legislation is similar to the Irish but not identical. The plaintiff was a local authority in the UK; the defendant had agreed to supply a system to help the plaintiff administer the poll tax. The program malfunctioned and it overestimated the number of charge-payers in St Albans. As a result, the council set the charge at too low a level and failed to collect enough tax. The plaintiff then sued for £1,314,846, but was met with the limitation of liability clause discussed above. The clause had been queried by the plaintiffs at negotiation, but they had gone on to sign the contract containing it. However, Scott Baker J held that the clause was not enforceable. In looking at the reasonableness of the limitation clause, he noted that:

- The defendant had considerable resources – it was part of a group which had a worth of £2 billion in 1988, and profits of £100 million in the first half of 1988
- The defendant had product liability insurance of £50 million
- The defendant called no evidence to show that it was fair and reasonable to limit its liability to £100,000
- The plaintiff received no inducement to accept the clause.

The plaintiff won in the English High Court and the defendant appealed unsuccessfully, save for the fact that damages were reduced by £484,000 since this sum could still be recovered from the taxpayers. This case can be distinguished on its facts. The plaintiff was under severe pressure as to time when signing the contract and the defendant was one of only very few companies who could deal with this sort of problem.



So far the IT industry has seemed immune to product liability litigation

It should also be noted that there is no definitive answer to the question of whether software is a good for the purposes of the *Sale of Goods Acts*.[6] The Irish courts or the British House of Lords might hold differently, although it is my view that sale of goods legislation does apply to software. But it is quite possible that software would be supplied as part of a service, in which case you might sue for negligent supply of services.

Legislatures, courts and society treat error-laden software with remarkable indulgence. For example, there is no sign of the product liability litigation which has been initiated against targets as diverse as silicon breast implant manufacturers, gun shops or cigarette companies in the USA. In this litigation-free environment, the IT industry has flourished. One effect of the Millennium Bug may be to end this indulgence. If a large number of cases are brought over alleged Millennium Bug defects, the courts will have to define legal rules and set out the standards by which faulty software is judged. How this changing environment will affect the software industry remains to be seen. G

Denis Kelleher BCL is a Dublin-based barrister.

Footnotes

1 *Repairing software in this fashion presents serious practical obstacles, not least of which is the fact that the suppliers of computer programs usually only supply in the form of 'object code'. Computer programs have to be written in a language which can be understood by humans such as JAVA or BASIC and a program written in this form will be known as the 'source code'. However, computers can only understand information which is presented in the form of 0s and 1s; this is known as the object code, and when computer programs are supplied they are usually supplied in this form. However, a company may get its hands on the source code in a number of ways: the codes may have been supplied as part of the original contract or they may have been held in escrow with a third party. More nefarious methods of accessing source codes exist (see* Nintendo v Atari*).*

2 British Leyland v Armstrong Patents *(1986 AC 577). It should also be noted that regulation 6(3) provides that software can be tested without infringing the rights of the owner of copyright.*

3 *Section 14(2) of the* Sale of Goods Act, 1993 *(as amended by section 10, 1980) provides: 'Where the seller sells goods in the course of business there is an implied condition that the goods supplied are of merchantible quality, except that there is no such condition:*

a) As regards defects specifically drawn to the buyer's attention before the contract is made, or

b) If the buyer examines the goods before the contract is made, as regards defects which that examination ought to have revealed.'

4 *Section 14(3) of the* Sale of Goods Act, 1993 *(as amended by section 10, 1980) provides: 'Goods are of merchantible quality if they are as fit for the purpose or purposes for which goods of that kind are commonly bought and as durable as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances and any reference in this Act to unmerchantible goods shall be construed accordingly.'*

5 *Section 55(4) of the* Sale of Goods Act, 1993 *provides: 'In the case of a contract for sale of goods, any term of that or any other contract exempting from all or any of the provisions of sections ... 14 ... of this Act shall be void where the buyer deals as a consumer and shall in any other case, not be enforceable unless it is shown that it is fair and reasonable.'*

6 *See Kelleher & Murray,* Information technology law in Ireland *(Butterworths, 1997).*

Time for a rethink

Small companies will be the focus of legislation which is due to be published over the coming weeks. They are not at the glamour end of commerce, but there are a lot of them and the *Companies (Amendment) Bill, 1999* will be of great relevance to them and to their legal advisors. Pat Igoe reports

According to official figures, more than nine out of ten of Ireland's 165,000-plus companies are private limited companies. A significant proportion of these are small companies. One official estimate in Britain indicated that about 90% of companies there could be defined as small companies.

The forthcoming *Companies (Amendment) Bill, 1999* proposes relieving those companies with an annual turnover of less than £100,000 of the obligation to have an annual audit of their accounts. The threshold is small when compared with the limit of annual turnover of £3,000,000 for a small company in the *Companies (Amendment) Act, 1986*, which reduced small firms' obligations of annual disclosure to the Companies Office.

The proposals carry the weight of recommendations of both the Task Force on Small Business (TFSB), which reported to the Government almost exactly five years ago (March 1994), and the Company Law Review Group (CLRG) which reported in 1995. The Bill will also include other company matters, including widely-demanded reforms of the law on Irish-registered non-resident companies. It might be argued that the proposed reform is fairly limited. But it is possible, if improbable, that it will be significantly amended in its passage through the Dáil and Seanad. The Company Law Review Group, which was chaired by chartered accountant James Gallagher of Arthur Andersen, recommended that the limit of £100,000 annual turnover should be reviewed regularly. Is it time for its first review yet?

It is even debatable whether the approach is entirely misplaced. David Tomkin and Alan Dignam of Dublin City University argue that there is no apparent logic in using turnover as a measure for relief from the statutory audit. They maintain in the *Irish law times* that what is required is a fundamental analysis of what financial information could be of use to all those dealing with companies and how such information should be presented in more user-friendly fashion. Also, it has been suggested by Dublin solicitor Tom Courtney in *Company law review 1995* that it may be doubted whether 'the outside world – and especially the financial world – will accept unaudited accounts'.

Many small businesses gravitate towards incorporation. The benefits appear to be obvious. They include limited personal exposure for

the owners (at least until the first meeting with the bank manager), the continuity of the business irrespective of the lives of the owners, and the ability to transfer shares in the business. But is the vehicle, which carries corporate entities of all sizes and which dates at least from the middle of the last century, due a re-fit for the smaller models?

Worst system known to man?

In the debate on the *Limited Liability Bill* in 1855, Lord Stanley said that it would be absurd for small enterprises to use the company form but he was comforted in the belief that the expense of incorporation would be a sufficient deterrent. Lord Redesdale said that small businesses should be prevented from setting up as companies 'otherwise petty companies of all kinds would be set afloat by lawyers for the purpose of getting long bills paid to them for their services'.

on small business?

Winston Churchill argued that democracy was the worst system of government known to man with the exception of the other available options. Likewise, one could argue that the limited liability company is the least inappropriate vehicle for companies, big and small. But there remains a respected view that, for small enterprises, the partnership option has been steam-rollered by the limited company juggernaut.

The Company Law Review Group did recommend that the application of company law generally to small companies should be examined either in a future phase of its work or by some other such group. But this has not happened, and the group itself is no longer in existence.

The essential purpose of the Task Force on Small Business's report was to encourage new small enterprises and to strengthen existing ones. Many of its recommendations related to the burdens of labour and tax law on small businesses. But it did recommend that a new and less onerous category of limited liability company be created to assist companies in their first two years. This has not been enacted. A *Small Business Act* was envisaged. We are still waiting for it.

There has been remarkably little debate in Ireland on the most suitable vehicles to encourage business. The Company Law Review Group itself felt that company law did not seem to impact onerously on small companies on a day-to-day basis. Critics might argue that this is simply because many (dare I say most?) know little and care less about Table A and its provisions.

'There remains a respected view that, for small enterprises, the partnership option has been steam-rollered by the limited company juggernaut'

The findings of Mr Justice Kelly in *Re Aston Colour Print Ltd* in 1997 are salutary. Question: when is a board meeting not a board meeting? Answer: when the requirements of the *Companies Acts* are not complied with. In that case, a meeting was not a board meeting as had been thought by the company principals. Mr Justice Kelly noted that meetings had been held in an informal fashion, which was understandable for a small company. How many other small companies are less than diligent in their observance of the *Companies code*?

Fundamental review needed

The Company Law Review Group decided that 'whether company law could be amended or simplified in a way that would be materially helpful to small companies' was worthy of consideration. The current Government proposal is not taking place in the context of any such overall fundamental review of legislation relating to small companies.

Any such review might begin with the arguments of Judith Freedman of the London School of Economics in her seminal article 'Small businesses and the corporate form: burden or privilege?', published in the *Modern law review* in July 1994. She quotes the 1944 comments of controversial lawyer O Kahn-Freund that the limited liability company was originally a capital-raising device which, he said, was wrongly appropriated by small companies. Kahn had suggested that the formation of companies should be made more difficult and more expensive thereby reducing the number of companies 'and especially of small companies'. Parliament might thus 'go some way towards restoring to the limited company its original function and to the partnership its proper place in business life'.

In any fundamental look at the law of small companies, there are various international precedents to take into account. These range from the *Société à Responsabilité Limitée* (SARL) and the *Gesellschaft mit beshrankter Haftung* (more easily pronounced as GmbH), on the one hand, to South Africa's *Close Corporations Act* of 1985. Small company legislation has also been introduced in various other common-law countries, including Australia, the United States and New Zealand. Such legislation tries to recognise the quasi-partnership realities of many small companies.

The issues involved are apparently simple but deceptively complex. It is not clear when or if the remaining recommendations for small companies, including the Company Law Review Group's 'major task' of examining whether company law could be amended or simplified for them, will be the subject of legislative proposals.

Last December, the Minister for Justice, John O'Donoghue, announced the Government's intention to establish a statutory 'council on crime'. It was described by Professor Bryan McMahon, chairman of the National Crime Forum, as a body which would subject proposed legislation to 'measured consideration on an on-going basis'. Arguably, a similar welcome would be given to a permanent review body on company law.

It might also be said that our current vibrant economy is precisely the best setting for a fundamental review of the law to help small enterprises and those doing business with them. The alternative may be to wait until the tide goes out and see what is left behind. G

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

What can we for *you?*

Ask not what you can do for your professional body (well, not really: the Society would love to see members take a greater interest) but, rather, what your professional body can do for you. The Law Society provides a wide range of services for solicitors above and beyond its familiar regulatory and representative roles. In the first of a series of articles, Member Services Executive Claire O'Sullivan explains what these services are and how they can help your practice

ALL PICS: ROSLYN BYRNE

Café society: The Law Society's recently refurbished Friary Café in the Four Courts, which opened in October 1997

Ever since the Law Society of Ireland moved to its new Blackhall Place headquarters in 1978, thousands of solicitors have visited this historic building, many coming for business or pleasure but most coming simply to begin their training as apprentices. And when they leave, they will know that the Law Society regulates their profession in the public interest and fights the good fight on their behalf in its dealings with government, the media and other professional bodies. But, sadly, that often seems to be where their knowledge of the Society ends. Anecdotal evidence suggests that members view their professional body as some sort of Dublin-based monolith that has little interest in the ordinary solicitor – unless it is to haul them over the coals for some perceived misdemeanour – and which has certainly nothing to add to the professional lives of members.

Nothing could be further from the truth. The Law Society provides a wide range of services designed to help solicitors run their practices more efficiently and effectively and geared towards making their professional lives easier. As the newly-appointed Member Services Executive, I hope that this series of articles will provide some useful information on how the Law Society can help you and your firm and that it will encourage you to make more of the

do

At your service: Claire O'Sullivan, Member Services Executive, and (inset) Blackhall Place's silver service restaurant

services we offer. After all, it is *your* professional body and we are here to help you.

As a result of our determination to focus more on what the Law Society can do for you, the structure of the Society's secretariat was reorganised in December 1997 to include a fourth department, 'Policy, Communication and Member Services'. This department now comprises 13 members and is headed by the Deputy Director General, Mary Keane. Part of the department's brief is the expansion and promotion of the portfolio of Law Society services available to solicitors throughout the country.

These services fall into four broad categories:

- Professional practice development
- Growing your business
- Personal benefits, and
- Ancillary services.

Professional practice development

Practice development aims to provide timely advice and support to help members manage their firms better. The Society endeavours to keep members up to date with regular profession-wide publications such as the *Gazette*, the *Law directory* and regular practice notes. It also issues regular briefings on legislation and business-related topics to raise awareness among solicitors of proposed changes in these areas. In the last year, for example, we issued briefings on subjects as diverse as the *Investment Intermediaries Act*, the *Conveyancing handbook* and the *Education Policy Review Group report*. Projects for the coming year include issuing a CD-ROM of Irish statutes from 1922 to date, an audio tapes pack, *Managing your legal firm*, and an update to the *Get connected* supplement.

Professional guidance, in both the areas of practice and professional conduct, is freely available at the end of a telephone line from the various professional committees of the Law Society. The secretaries of the individual committees are listed at the front of your *Law directory* and can be contacted on the main Law Society number. The Society also runs an extensive programme of continuing legal education and personal development courses for members throughout the year. The speakers at these seminars are all experts in their fields and the subjects chosen on the basis of topicality or perennial interest to the profession. Last year, for example, we ran CLE courses on *Recent developments in conveyancing practice*, *Essentials of personnel management*, and *The conduct of modern litigation*. This year we intend to expand the CLE programme and to run more courses around the country. Hopefully, this should make it easier for those solicitors outside Dublin to keep up to date with the burning legal issues of the day.

Another recent initiative that has really taken off has been the Law Society's *New Horizons* business links programme which is run in association with accountants PriceWaterhouseCoopers. The programme is designed to reflect and promote the increasing diversification by young solicitors into new areas of practice and aims to provide a forum for young solicitors and apprentices to meet senior personnel from a variety of industries in a semi-social setting. Events include breakfast, lunch and evening meetings where short talks are given by prominent members of the business and legal community. *New Horizons* kicked off with a talk by Paul Coulson, chief executive of Yeoman International Group, and has since featured such luminaries as 'show business' lawyer James Hickey of Matheson Ormsby Prentice and Mary O'Rourke TD. Forthcoming *New Horizons* events will be publicised in the news pages of the *Gazette*, so keep your eyes peeled!

But possibly the most important project to be carried out this year will be the unveiling of the Law Society's new web site. The launch is set for 10 February, and next month's article will set out in detail the contents of the site and how you can get the best out of it. Basically, the web site will aim to inform and update the profession about the work and activities of the Law Society and to provide information and advice to members in the conduct and management of their practices. This is a wonderful opportunity for feedback and communication between members and their professional body, and we hope that everyone will find it useful and easy to use. If you can't wait until next month's issue, you can access the site on www.lawsociety.ie after 10 February (*see also news story, page 13*).

Growing your business

The second major category of services that the Law Society provides for its members can be termed *Growing your business*. This concentrates on enhancing business opportunities and client-care services for members through the

provision of corporate finance schemes, company formations and client-care leaflets. For example, a funding scheme to make it easier to pay professional indemnity insurance and the practising certificate fee has been negotiated by the Society on behalf of its members on highly competitive terms with Equity Bank. Likewise, the Society operates a comprehensive company formation service for members from its premises at Blackhall Place. Again, these schemes will be discussed in more depth in a later article.

Personal benefits

Of course, no solicitor's life is just work, work, work. There has to be scope for entertainment, even if that simply means availing of the Society's ample facilities to meet potential new clients or to wine and dine valued contacts.

Conference, accommodation and entertainment facilities. Few venues can rival Blackhall Place as the setting for a social function or business event. Besides playing host to the Law Society, Blackhall Place is an outstanding Dublin landmark and is steeped in history and tradition. Because it operates as the hub of the solicitors' profession in Ireland, you can be sure that its picturesque grandeur is matched by a thoroughly business-like functionality that provides the working environment and support services you require.

Blackhall Place is an adaptable building and makes an excellent venue for a wide range of social or business events for solicitors and their clients. Blackhall Catering, the Society's in-house catering team, is available to assist and advise members who wish to organise a business dinner, a press conference, a training course or even a wedding. Menus will be customised to suit individual requirements and original settings and table decorations will be provided. An extensive menu range is available on request from the Society. Likewise, you can book daily lunch in the silver service Members' Dining Room.

And if you find that you can't tear yourself away, we provide overnight accommodation for members at keen rates. These cosy rooms are fully equipped with tea and coffee-making facilities, a self-service kitchen and a TV room/lounge. Full breakfast is available in the Members' Dining Room. There is ample on-site car parking for overnight guests, but be warned: rooms must be booked in advance. They cost £20 for a single room and £30 for a double room.

Four Courts consultation rooms. Over the past 18 months, the Law Society has expended a good deal of time and money upgrading its consultation rooms at the Four Courts. The result has been 24 state-of-the-art meeting rooms which have been carefully refurbished for members' use. These rooms may be booked in advance or (depending on availability) paid for on the spot. Rooms can be booked at the one-hour rate of £20 while £30 secures a room for the standard two-hour period. The £20 rate is subject to an immediate cash or credit card payment to reduce administration costs. There are a large number of telephones available for members' use, and tea and coffee will be served to each room on request. Full photocopying facilities (including a colour photocopier) and storage lockers are also available. The solicitors' writing room is also available for members and provides a quiet space where you can catch up on your paperwork.

The Friary Café. In response to members' requests for improved catering facilities at the Four Courts, the Society opened the Friary Café in October 1997. This delightful tea-room occupies the area known to generations of apprentices as Mrs O'Reilly's Kitchen and is an oasis of calm amid the hurly-burly of the courts. The new design has cleverly incorporated many of the features of the old kitchen, including the old cast iron range. The café is open from 9am to 4.30pm every weekday and offers a range of sandwiches, snacks and light refreshments to members and their clients.

Detail of the Council stairwell, Blackhall Place, and (inset) the Four Courts' Friary Café

Ancillary services

Finally, the Society also offers a wide range of personal and ancillary services to its members and these will be dealt with more comprehensively in a later article.

One of the themes of Patrick O'Connor's presidency for 1999 is to make the Law Society more accessible to solicitors, and he has identified the delivery of first-class services and benefits to members as one of the priority areas in this regard. The focus of all Society services is relevance, practicality, usefulness and value for money. We recognise that the key to success for modern professionals is excellent management and business skills. To this end, we aim to deliver practical, targeted services that will bring tangible benefits to members that will allow both practices and practitioners to meet the challenges of the years ahead. G

Claire O'Sullivan is the Law Society's Member Services Executive.

Council report

Report on Council meeting held on 5 November 1998

New Council members

The Council welcomed its newly-elected members, Walter Beatty, Anne Colley, John Fish and John P Shaw, together with the new nominees from the DSBA, David Bergin and Kevin O'Higgins and from the SLA, Simon J Murphy, and wished them well for their term of office.

Taking of office by President and Vice-Presidents

The outgoing President, Laurence K Shields, thanked the Council members, the Director General and staff of the Society, his wife Helen, and the profession for their support and encouragement during the past year and expressed his best wishes to the incoming President, Patrick O'Connor, who was then formally appointed to office by the Council.

Mr O'Connor expressed his deep sense of pride and privilege to be appointed as President of the Society and to follow in the footsteps of his late father, Val, who was President in 1972/73 and the first Mayo man to hold that position. He paid tribute to the unstinting commitment of Laurence K Shields during his year in office, who had dedicated himself on a full-time basis to the work of the Council and the Society.

With close to 6,600 solicitors on the Roll, he identified the greatest challenge for the Council as anticipating and preparing for change and ensuring that all solicitors received the best possible education. He noted the disappointing level of interest among members willing to seek election to the Council and he indicated his intention to appoint a working group to examine this issue and to make recommendations to the Council.

He identified the greater use of technology and an increasing focus on the services provided by the Society as areas for particular emphasis during the coming year and expressed his intention that every practitioner would receive a personal invitation to attend a function at Blackhall Place, so as to have an opportunity of visiting their headquarters.

In relation to the committees for the coming year, he had sought to adhere to the recommendations of the Review Working Group and, accordingly, the number of committees had been reduced, some had their areas of responsibility extended and the number of members had been reduced. To emphasise the accountability of the Council to the members and the responsibility of the committees to the Council, he had sought, where possible, to appoint a Council member as chairman and vice-chairman.

Mr O'Connor confirmed his 100% commitment to the Council, the Society and the profession for the coming year. The Senior Vice-President, Anthony Ensor, and the Junior Vice-President, Gerard Griffin, both then took office and thanked the Council for the honour bestowed on them.

Proposed designation of solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*

John Fish outlined the background to the issue and identified the Society's fundamental concerns regarding the proposal.

Solicitors (Amendment) Bill, 1998

The Director General reported that the Bill had been passed by the Seanad and was due to be considered in the Dáil during the following two weeks.

Statutory Instrument 391 of 1998

James McCourt reported that SI 391 of 1998, replacing SI 348 of 1997, had been signed into law on 14 October 1998. However, because of the wording of the new rules, there was some confusion as to whether both statutory instruments were to be considered as running in tandem up to 14 October 1998, or whether SI 348 of 1997 would be regarded as not having been in effect up to that date. The Society had sought an urgent meeting with the President of the High Court, with a view to discussing the issue of a practice direction by him on the matter. *(See pages 16-17 for explanatory article on the new rules.)*

Outcome of postal ballot

The Council noted with pleasure that 76% of those who had participated in the postal ballot had voted in favour of the resolution and that work would proceed immediately on the construction of the new Education Centre. In response to a query from Orla Coyne, Owen Binchy said that the Education Committee was examining a number of options for dealing with the backlog of students in advance of the introduction of the new course and the development of the new building.

Younger Members Remuneration Survey

The Council considered the results of the Younger Members Remuneration Survey, as presented by Stuart Gilhooly and concluded that the matter should be considered further by the Co-ordination Committee.

Year 2000 compatibility and indemnity insurance

David Martin reported that the Professional Indemnity Insurance Committee was considering the issue of Year 2000 compatibility, as some of the approved insurers had indicated that they would not provide Year 2000 indemnity cover.

CCBE

The Council considered documentation presented by Geraldine Clarke regarding proposed changes to the CCBE code of conduct and to the voting system within the CCBE and her recommendations, following consultation with the Guidance and Ethics Committee, as to the Society's stance. Following discussion, the Council approved Ms Clarke's recommendations on the proposed amendments to the code of conduct and authorised her to vote in favour of the proposed system of a double qualified majority vote for decisions on major issues within the CCBE. The Council also approved the appointment of John Fish as the Society's representative on the CCBE sub-committee on money laundering.

Law Clerks JLC: proposed pension scheme

Gerard Doherty reported that the employee representatives on the JLC sub-committee had indicated their intention to seek agreement for a compulsory pension scheme for all employees, with an employer's contribution of 4% and an employee's contribution of 2%, with a death benefit of two years' salary. On a payroll of

THE SOCIETY OF YOUNG SOLICITORS IRELAND
IN ASSOCIATION WITH THE BAR OF IRELAND

Spring Conference 1999

19-21 March 1999 at Dromoland Castle, Co Clare

Friday 19 March 1999

5pm onwards	Registration of delegates

Saturday 20 March 1999

TERRACE ROOM

10.15am to 10.55am	***The decade of the tribunal*** Eamonn Leahy SC
10.55am to 11.30pm	***Tribunals and the media*** Ted Harding, legal correspondent, *Sunday Business Post* Followed by discussion session
11.50am-12.10pm	COFFEE BREAK
12.10pm to 12.50pm	***Developments in conveyancing practice*** Patrick Sweetman, Partner, Matheson Ormsby Prentice, Solicitors
1pm to 2pm	LUNCH available at delegate's cost
2pm-6pm	Activities including tennis, golf (pre-book through hotel), fishing, clay pigeon shooting (deposit of £10 required), leisure centre with steam room, sauna and gymnasium
7pm to 8pm	Drinks reception, Brian Boru Balcony
8pm. until late	Banquet, followed by band and disco (*Black Tie*)

Sunday 21 March 1999

Up to 10.30am	Breakfast
12 noon	Check out of hotel

NOTES:

1. Accommodation at Dromoland Castle Hotel will be limited. Early booking is essential and accommodation will be allotted strictly on a first-come, first-served basis.
2. Conference fee is IR£165 pps, and includes Friday and Saturday night accommodation, two breakfasts, subsidised activities, Saturday evening banquet and conference materials.
3. A conference rate **without** accommodation is available at £65 which entitles the delegate to attend the lectures, subsidised activities, Saturday evening banquet and to a copy of the conference materials.
4. Individual applications only are acceptable (that is, one registration form per applicant per envelope). All applications must be made by ordinary prepaid post and only postal applications exhibiting a postal mark dated 12 February 1999 or after will be processed.
5. No booking will be accepted without payment of the conference fee. Cheques to be made payable to the Society of Young Solicitors. A cheque may cover several applicants provided each applicant posts a separate registration form. Please write delegate names on the reverse side of all cheques.
6. All cancellations must be notified to Julian Yarr by Monday 1 March 1999. Cancellations after that date will not qualify for a refund.

REGISTRATION FORM *Please use block letters* (Individual postal applications only – no block bookings)

Name: _____ Firm: _____

Business address _____ Phone no: _____ (Home) _____ (Office)

ACCOMMODATION IN DROMOLAND CASTLE: £165 per person sharing

Please tick box ☐ Double ☐ Twin Sharing with: _____ ☐ Single

☐ I wish to avail of the vegetarian option at the banquet ☐ I wish to participate in clay pigeon shooting (£10 extra enclosed)

NON-ACCOMODATION RATE: £65

I enclose cheque/postal order payable to the Society of Young Solicitors for £ _____ in payment of the conference fee (includes £10 for clay pigeon shooting, if relevant)

Please post this registration form with the conference fee to The Treasurer, SYS-Spring Conference, PO Box 52, Carlow.

Postal applications exhibiting a postal mark of on or after 12 February 1999 only will be accepted. All enquiries regarding the conference should be directed to Julian Yarr at (01) 661 3311 after 6pm Monday to Thursday.

£100,000, this would cost an employer £2,000 a year.

Mr Doherty said that, as a compulsory scheme would represent a new obligation for the profession, he believed that soundings among colleagues were urgently required. The Council agreed that (a) the profession should be notified of the on-going discussions, and (b) a working group should be established to provide guidance and support to the Society's representatives on the JLC.

Wills promotion

Philip Joyce asked whether the Society proposed to take any action in relation to a wills promotion being run by *The Sunday Times* under which readers of that newspaper would be entitled to a free will once they collected a number of promotional tokens from the newspaper. In his view, the promotion was in extremely bad taste and should be vigorously opposed. The Director General confirmed that he had received a letter from the newspaper, seeking the Society's support for the promotion, together with letters from solicitor colleagues objecting, quite rightly, to it. Donald Binchy said that the Society should reply firmly to *The Sunday Times*, indicating that the Society did not regard this type of promotion as appropriate, as it demeaned the service provided by solicitors and indicated that there was no particular skill involved in the drawing of a will. He also believed that the Society should recommend that members should not participate in the promotion. The Council unanimously endorsed Mr Binchy's suggestion.

Report on Council meeting held on 4 December 1998

Nominees from the Law Society of Northern Ireland

The Council approved the nominees from the Law Society of Northern Ireland as Extraordinary Members of the Council, as follows: Catherine Dixon, Antoinette Curran, John Meehan, Alastair Rankin and George Palmer.

Motion: In-house complaints procedure

That this Council approves the draft regulations providing for the establishment of a mandatory in-house complaints procedure in every firm of solicitors.

Proposed: Francis D Daly
Seconded: John D Shaw

Proposed designation of solicitors pursuant to section 32 of the *Criminal Justice Act, 1994*

John Fish reported that he had been appointed by the CCBE to chair a task force, which included representatives from three other delegations, to deal with the immediate task of responding to the European Commission regarding the Commission's proposal to extend the provisions of the *Money-laundering directive* to lawyers. Geraldine Clarke noted that it was a measure of the esteem in which Mr Fish was held at the CCBE that he had been appointed to chair this important task force at European level. On behalf of the Council, the President complimented Ms Clarke and Mr Fish on their commitment and hard-working representation of the profession at the CCBE.

Solicitors (Amendment) Bill, 1998

The President reported that it was now unlikely that the Bill would reach committee stage in the Dáil before January 1999, at the earliest.

Financial services regulation

It was agreed that the Society would make a submission to the Implementation Advisory Group on the establishment of a Single Regulatory Authority for the financial services sector, confirming the Society's view that solicitors who acted as investment intermediaries should be regulated by the Society, and not by the proposed new body, other than to the extent currently undertaken by the Central Bank.

Education fees and courses

The Council considered and approved draft regulations in relation to apprentices' fees which would be presented to the President of the High Court for his approval. The Chairman of the Education Committee, Owen Binchy, confirmed that the proposed increase in fees would be matched by improvements in the courses being provided and that proposals were also being considered to deal with the backlogs.

Practising certificate fee for 1999

The Chairman of the Finance Committee, Ward McEllin, reported on the committee's recommendations regarding the practising certificate fee for 1999. In relation to the compensation fund contribution, the committee believed that, given the level of reserves and insurance for the fund, it was not necessary to maintain the present level of contribution to the fund of £600 and it was proposed that this should be reduced to £400, with the registration fee increasing by £200, £100 of which would be allocated to the new Education Centre and £100 being applied towards the cost of the provision of services by the Society and the further reduction of the Society's indebtedness. He confirmed that the total practising certificate fee would increase by £15, which reflected inflation.

The Chairman of the Compensation Fund Committee, Gerard Doherty, said that, personally, he believed that the recent low claims history, the reserves in the fund and the insurance on the fund combined to support the view that a contribution of £400 was adequate to meet its current needs. The Council approved the practising certificate fee for 1999, as outlined by Mr McEllin.

CD-ROMs

The Council overwhelmingly approved a proposal from the Chairman of the Practice Management Committee, Niall Farrell, that the Society should purchase, at a discounted rate, a set of CD-ROMs being produced by the Attorney General's Office containing all Acts of the Oireachtas and statutory instruments since 1922, for distribution to every solicitors' firm.

Budget submission

The Council noted, with approval, the excellent submission by the Taxation Committee on the Budget and the correspondence from Anthony Collins, Chairman of the Retirement Fund Committee, to the Minister for Finance requesting the granting of interim relief for self-employed individuals who were presently required to purchase an annuity at the time benefits were drawn down.

Law Clerks JLC

Gerard Doherty reported that the JLC had approved an increase of 1.5%, effective from 1 April 1999, and an increase of 1%, effective from 1 January 2000, at its meeting held in November. This was in line with a previous Council decision. Mr Doherty said that the pension scheme proposed by the JLC was being considered by a working group comprising himself, Hugh O'Neill, Niall Farrell and Philip Joyce. The Council approved a memorandum on the proposed scheme for issue to the managing partner of every firm.

VAT on legal services

Geraldine Clarke reported that the CCBE submission to the EU Commission in relation to a reduction in VAT on legal services had been taken on board by the Commission and it appeared that the Commission's proposed amendments to the *VAT directive* would contain the CCBE's suggestions. G

Committee reports

CRIMINAL

Criminal Legal Aid Scheme: delay in introduction of tax clearance certificate regulations

The Department of Justice has advised the Society that the date by which practitioners on the Criminal Legal Aid Scheme Panel will be required to submit a tax clearance certificate (previously set at 1 March 1999) has been deferred to a date to be advised (possibly April/May). The date for application to the Collector General for the certificate (previously set at 15 January 1999) has also been deferred. The Department will automatically forward an application form to each solicitor on the current Legal Aid Scheme Panel as soon as the forms are available and will advise practitioners of the new application and submission dates. Practitioners who are not currently on the panel but who wish to obtain an application form should apply to the Courts Division, Department of Justice.

Criminal Legal Aid Fees Regulations

The committee is receiving an increasing number of complaints from practitioners regarding anomalies in the above regulations and difficulties which arise in relation to payments for certain work carried out under the scheme. For example, practitioners are dissatisfied with the practice whereby a fee is not paid to the defence where adjournments are sought by the State and granted. The level of fee paid where a late *nolle prosequi* is entered has also been criticised. To this end, the committee is endeavouring to establish whether practitioners would be interested in attending a meeting to discuss the issues arising and to consider what courses of action are open to practitioners to deal with the situation. The committee would be pleased to hear from practitioners in this regard and members should write to/telephone Colette Carey, Solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7 (tel: 01 6724800).

Criminal Legal Aid Scheme: prison visits

In order to improve the service provided to solicitors assigned to cases under the Criminal Legal Aid Scheme, the Department has introduced a new procedure for claiming prison visit fees with effect from 1 October 1998. This will involve the presentation of claim forms in book format, each form with an individual serial number and carbon copy attached. This will allow the form to be completed by a solicitor and certified and stamped by a prison officer with the original completed form being forwarded by the solicitor to Finance Division, Killarney, for payment and a copy being retained in the prison for reference purposes.

Criminal Law Committee

GUIDANCE AND ETHICS

Review of guide to professional conduct

The Guidance and Ethics Committee has been asked to review and update the publication *A guide to professional conduct of solicitors in Ireland* – often referred to as *The grey guide*.

The legal framework for the regulation of the conduct of solicitors in Ireland is the *Solicitors Acts, 1954 to 1994*. In addition, there are recognised principles of good professional conduct, such as avoidance of conflict of interest and compliance with undertakings, contravention of which amount to misconduct. The publication of the guide in 1988 was an attempt to state the principles and to convert some of the principles into practical guidelines in specific situations.

Members are now invited to contribute to the current review by making their views known to the committee, either generally or on a particular topic, in writing or by telephone, directed to Therese Clarke, Solicitor, secretary to the committee, Law Society of Ireland, Blackhall Place, Dublin 7 (tel: 01 8681220). The committee believes that an updated guide will greatly assist the profession.

Keenan Johnson, Chairman, Guidance and Ethics Committee

TAXATION

Budget submission

The Society's Taxation Committee has drafted a detailed submission to the Minister for Finance in relation to the 1999 Budget and *Finance Bill*. A copy has been sent to each bar association for information. Members who wish to obtain a copy of the submission should contact Colette Carey, Taxation Committee, Law Society of Ireland, Blackhall Place, Dublin 7.

Taxation Committee

Taxation Administration Liaison Committee

The Taxation Administration Liaison Committee (TALC) continues to provide an extremely useful forum between the Revenue Commissioners and practitioners. Practitioners' involvement in TALC is made up of representatives from these bodies, namely the Law Society, Institute of Taxation and CCAB-I.

TALC operates through various sub-committees and *ad hoc* groups, with the head committee (called plenary or main TALC) monitoring the activities of each sub-committee and *ad hoc* grouping while also pursuing its own agenda.

There is flexibility in the formation of the committees, and where the tasks for any particular sub-committee have been fulfilled and it is considered that any particular sub-committee or *ad hoc* group is no longer necessary, then this particular section can be disbanded or adjourned indefinitely. Alternatively, new project-driven committees can be established and the flexibility of the entire structure ensures that issues are dealt with on a timely basis.

For 1999, the current TALC sub-committees are:

1) **Audit sub-committee** whose principal functions for 1998 have centred around voluntary disclosure. The committee discussed a code of practice for Revenue auditors. This has now been published and is effective in respect of audits commencing since 1 December 1998. A copy of the code is available from the Revenue upon request. The committee has been discussing Revenue's prosecution criteria

and a survey of cases re-audited to establish whether taxpayers who have been subject to an audit and who are subsequently re-audited have become compliant

2) **Technical sub-committee.** This committee addresses certain topics of general interest to the profession. Recent topics covered include employee share option schemes, foreign earnings and residency issues, together with termination payments and the signing of tax returns by tax advisers on clients' behalf. The committee generally endeavours to prepare and agree a memorandum on the selected topic, which covers general principles, while also covering areas of uncertainty
3) **Capital taxes *ad hoc* committee.** This committee was instrumental in the introduction of a new stamp duty *Form SD4* and the similar form for capital acquisitions tax, in each case concerning share valuations, and speeding up the adjudication process. It has so far been very successful in reducing turnaround time with the Revenue Commissioners. It has also dealt with practical issues such as the issue of capital gains tax clearance certificates and the identification of other administrative issues affecting practitioners in these areas
4) **Indirect Taxes Committee.** The issues to be dealt with by this committee in the near future will include VAT on the transfer of business and irrecoverable VAT costs associated with shares issues
5) **Collection Committee.** Various issues such as direct debit for preliminary tax and practical issues covering the payment of cheques to the Revenue Commissioners and instalment arrangements are included in the agenda for this committee.

The main committee has dealt with a number of issues over the past year including dealing with the outcome of discussions which the audit sub-committee has held concerning voluntary disclosure. It has also dealt with the proposed introduction of the new pay and file system.

Each committee/sub-committee generally meets approximately four times a year, or more frequently where there is an urgent need (for example, a meeting is generally always held in connection with the publication of a *Finance Bill* in any year to deal with issues which arise from this). Each committee and sub-committee handles a heavy agenda and there is usually at least one major achievement by each separate committee on a yearly basis. What are sometimes unspoken, however, are minor issues and problems which are solved in a seamless manner which facilities the on-going healthy relationship between the Revenue Commissioners and the practitioners which is essential for the Irish tax system.

Any practitioners experiencing administrative problems or issues are invited to contact the Law Society's Probate, Administration and Taxation Committee which can arrange to have these matters dealt with at TALC, if appropriate. In addition, the views of solicitors on the new stamp duty *Form SD4* are welcomed, before this pilot scheme is copper-fastened.

Probate, Administration and Taxation Committee

SADSI

Election for auditor

The result of the election for the auditor to the 115th session of SADSI was as follows:

- Total poll: 141
- Invalid votes: 15
- Total valid poll: 126

Boyle, Aaron: 27
Gallagher, Louise: 99

Louise Gallagher was deemed elected for the 115th session.

John Cahir, SADSI Auditor

Apprentice survey results

SADSI conducted a survey last year in order to gauge the current work conditions and attitudes of apprentice solicitors. In all, nearly 500 post-professional course apprentices were sent the questionnaire, and there was a response rate of 15%.

As one would expect, the issue of salaries was the main bone of contention. The Celtic Tiger has failed to shed even a few hairs on the fortunes of apprentice solicitors. The average monthly gross salary of apprentices is £707 (it reduces to £558 after tax). The average working week is a surprisingly low 43 hours. We calculated (on the basis of there being 4.3 weeks in a month) that the average hourly rate of pay for an apprentice, before tax, is a meagre £3.82 an hour. Burger King is currently advertising jobs, which pay £4 an hour. Need we say more?

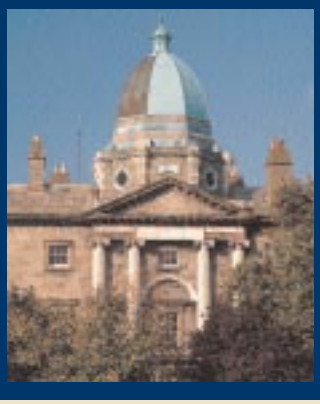
The problem of low salaries is further compounded by the fact that very few firms pay their apprentices' professional and advanced courses fees. In all, only 23% of the respondents' firms paid their fees. There was, however, a marked contrast between those working in small and large firms. Some 82% of large firms pay their apprentices' fees, whereas only 12% of small firms do. In view of the fact that the total cost of the two courses runs to nearly £5,000, an average apprentice would have to donate nine months' net pay to cover the cost of the courses. Seeking outside financial assistance is therefore inevitable for the vast majority of apprentices.

On a bare analysis of the figures above, one would wonder why anyone would want to enter the profession and, indeed, why the profession is still such a popular choice with university graduates. Other results of the survey go some way to explaining this apparent anomaly: 74% of respondents stated that they were satisfied with the quality of their work. Few other careers can claim such high job satisfaction ratings, especially ones that pay on average a mere £8,500 a year.

It would appear, therefore, that apprentices as a whole are satisfied with the quality and nature of their work despite the low salaries. The job satisfaction rating is backed up by the finding that 77% of respondents stated that they intended to practise as solicitors upon qualification (7% said that they did not, and 16% were undecided). There was, however, considerable uncertainty among apprentices as to whether they would be offered employment after completing their apprenticeship. Only 30% of apprentices believed that their firms would be in a position to offer them a job; 16% expected not to be offered a job; and 54% did not know.

On the basis of our survey, it is clear that there is a genuine desire to work in the profession, but this is being hindered by the crippling financial cost. Maybe it's time for employers to break the cycle of apprentice hardship.

John Cahir, SADSI Auditor, and Louise Cox, SADSI Education Officer



LAW SOCIETY OF IRELAND ON E-MAIL

Now contactable at
general@lawsociety.ie

Individual mail addresses take the form:
j.murphy@lawsociety.ie

PRACTICE NOTE

Stamp duty: new *Form SD4*

In early 1998 the Revenue Commissioners (in consultation with the Law Society and other bodies) introduced a new *Form SD4* on a pilot basis concerning the transfer of shares in unquoted companies. The form has been in use for the past couple of months and has apparently greatly increased the turnaround time in stamping and valuation of such shares.

The form requires various general details of the instrument and the transaction to be stated together with details of the method of valuation used for the shares. Practitioners should note the following in relation to the form:

1. The scheme is still operating on a pilot basis and therefore any comments or feedback are welcome and should be directed to the Probate Administration and Taxation Committee of the Law Society
2. Part six of the form containing valuation details will generally require input either directly from the client or from the auditors of the company whose shares are being transferred. Accordingly, purchasers of unquoted shares should endeavour to accumulate the relevant information for completion of the form *before* completion of the transaction so that the form can be submitted along with the share transfer forms at the appropriate time for stamping
3. As the form contains certain factual matters, such as valuation details and confirmation of relationships between parties, it is advisable that solicitors would not sign the form but would ask their client (the purchaser) or their client's auditors to sign the form.

Any queries or comments in relation to the form are welcomed as soon as possible and will be presented to the Revenue Commissioners for consideration in finalising the scheme.

Probate, Administration and Taxation Committee

PRACTICE NOTE

Memorandum: withholding tax and penalty interest

Where a purchaser is required to pay penalty interest, income tax cannot be deducted from the interest payment if the purchaser is an individual. However, if the purchaser is a company and is paying the proceeds of the sale to an Irish resident vendor, no income tax can be deducted *unless* it was the intention of the parties that the transaction would not be closed in under one year, in which case the transaction might be viewed as a yearly loan. If a 'yearly loan' situation does exist, then withholding tax at the standard rate should be stopped by the purchaser company.

Where interest is purely penalty interest on a transaction which will be completed within a year, no tax can be stopped.

Practitioners should note the provisions of section 31 of the *Finance Act, 1974* whereby a general obligation to stop tax at the standard rate from yearly interest payments is set out.

Probate, Administration and Taxation Committee

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LEGISLATION UPDATE: 14 NOVEMBER – 31 DECEMBER 1998

ACTS PASSED

Appropriation Act, 1998
Number: 48/1998
Contents note: Appropriates to the proper supply services and purposes sums granted by the *Central Fund (Permanent Provisions) Act, 1965*, and makes certain provisions in relation to financial resolutions passed by Dáil Éireann on 2/12/1997.
Date enacted: 18/12/1998
Commencement date: 18/12/1998

Carriage of Dangerous Goods by Road Act, 1998
Number: 43/1998
Contents note: Enables effect to be given to the European agreement concerning the international carriage of dangerous goods by road (ADR), and to European Union Directives 94/55/EC on the transport of dangerous goods by road and 95/50/EC on uniform procedures for checks on the transport of dangerous goods by road.
Date enacted: 2/12/1998
Commencement date: Commencement order/s to be made

Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998
Number: 47/1998
Contents note: Provides for the examination and investigation by the Comptroller and Auditor General of the assessment and collection by the Revenue Commissioners, during such period as may be specified by resolution by Dáil Éireann, of income tax (deposit interest retention tax) which certain financial institutions were legally required to deduct from certain deposits of money held with them. Amends the *Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997*, and the *Comptroller and Auditor General Act, 1923.*
Date enacted: 16/12/1998
Commencement date: 16/12/1998

Education Act, 1998
Number: 51/1998
Contents note: Provides for a range of issues relating to rights and duties arising in respect of education, other than third-level education, and provides for the structure and administration of the education system. The main provisions of the Bill provide for: the recognition of schools for the purposes of funding by public funds; the establishment of the inspectorate on a statutory basis; the establishment of boards of management of schools; the establishment and role of parents' associations; the functions of principals and teachers; appeals by students or their parents; the making of regulations by the Minister; the establishment of the National Council for Curriculum and Assessment and regulation of the State examination system.
Date enacted: 23/12/1998
Commencement date: Commencement order/s to be made

Fisheries and Foreshore (Amendment) Act, 1998
Number: 54/1998
Contents note: Makes further provision in relation to applications for aquaculture licences and confirms a number of applications for aquaculture licences; provides for additional powers to deter unauthorised developments and the deposit of unacceptable or harmful matter on the foreshore, and provides for related matters. Amends and extends the *Fisheries Acts, 1959 to 1997*, the *Foreshore Act, 1933* and the *Fishery Harbour Centres Act, 1968.*
Date enacted: 23/12/1998
Commencement date: 23/12/1998

George Mitchell Scholarship Fund Act, 1998
Number: 50/1998
Contents note: Establishes a fund in the United States to be known as the George Mitchell Scholarship Fund for the purpose of providing scholarships for citizens and nationals of the United States who are attending universities or colleges of higher learning in the United States to enable them to study or carry out research in universities in the State. The fund is a tribute to George Mitchell's role as Chairman of the Northern Ireland Peace Talks.
Date enacted: 23/12/1998
Commencement date: 23/12/1998

Jurisdiction of Courts and Enforcement of Judgments Act, 1998
Number: 12/1998
Contents note: Enables Ireland to ratify the *Convention on the accession of Austria, Finland and Sweden* ('the 1996 *Accession convention*') to the convention on jurisdiction and enforcement of judgments in civil and commercial matters ('the 1968 convention) and the protocol on the interpretation of that convention by the European Court of Justice. Consolidates the provisions of the *Jurisdiction of Courts and Enforcement of Judgments Acts, 1988* and *1993*.
Date enacted: 23/12/1998
Commencement date: Commencement order/s to be made

Plant Varieties (Proprietary Rights) (Amendment) Act, 1998
Number: 41/1998
Contents note: Provides for ratification by the State of the 1991 *International convention for the protection of new varieties of plants ('UPOV convention')* and implements the provisions of Council Regulation 2100/94/EC setting up a community plant variety rights system. Amends and extends the *Plant Varieties (Proprietary Rights) Act, 1980.*
Date enacted: 16/11/1998
Commencement date: Commencement order to be made

Protections for Persons Reporting Child Abuse Act, 1998
Number: 49/1998
Contents note: Grants immunity from civil liability to any person who in good faith reports a child to be a victim of abuse and contains provisions to protect any person who makes such report from unfair dismissal from his or her employment.
Date enacted: 23/12/1998
Commencement date: 23/1/1999 (per section 7(2) of the Act)

Scientific and Technological Education (Investment) Fund (Amendment) Act, 1998
Number: 53/1998
Contents note: Amends and extends the *Scientific and Technological Education (Investment) Fund Act, 1997*. Increases payments into the fund, established under the 1997 Act, for the year 1998 and extends the areas of research and development for which payments out of the fund may be made.
Date enacted: 23/12/1998
Commencement date: 23/12/1998

State Property Act, 1998
Number: 44/1998
Contents note: Amends the *State Property Act, 1954* and the *National Stud Act, 1945* to enable the Minister for Agriculture and Food to sell and otherwise deal with the National Stud Farm, Co Kildare.
Date enacted: 8/12/1998
Commencement date: 8/12/1998

Tourist Traffic Act, 1998
Number: 45/1998
Contents note: Increases the statutory limit, from £22 million to £50 million, on the aggregate amount of grant-in-aid that may be paid to Bord Fáilte to support tourism capital development works. Amends and extends the *Tourist Traffic Acts, 1939 to 1995*.
Date enacted: 12/12/1998
Commencement date: 12/12/1998

Voluntary Health Insurance (Amendment) Act, 1998
Number: 46/1998
Contents note: Enables the Voluntary Health Insurance (VHI) Board, with the consent of the Minister for Health and Children, to act as agent for the sale of an international healthcare plan under which insurance cover may be provided against healthcare costs incurred while residing temporarily outside the State. Amends and extends the *Voluntary Health Insurance Acts, 1957* and *1996.*
Date enacted: 15/12/1998
Commencement date: 15/12/1998

Western Development Commission Act, 1998
Number: 42/1998
Contents note: Establishes the Western Development Commission on a statutory basis – to promote economic and social development in the counties of Clare, Donegal, Galway, Leitrim, Mayo, Roscommon and Sligo – and provides for the operation of the Western Investment Fund by the commission.
Date enacted: 25/11/1998
Commencement date: Establishment day order to be made (per section 6 of the Act)

SELECTED STATUTORY INSTRUMENTS

Control of Dogs (Amendment) Act, 1992 (Commencement) Order 1998
Number: SI 443/1998
Contents note: Appoints 1/2/1999 as the commencement date for the Act.

Control of Dogs Regulations 1998
Number: SI 442/1998

more ➜

LEGISLATION UPDATE: 14 NOVEMBER – 31 DECEMBER 1998 (CONTD)

Contents note: Consolidate and revoke certain regulations on control of dogs.

Freedom of Information Act, 1997 *(Section 6(9)) Regulations 1998*
Number: SI 517/1998
Contents note: Relate to records of contractors to public bodies.

Freedom of Information Act, 1997 *(Section 17) Regulations 1998*
Number: SI 518/1998
Contents note: Provide similar arrangements for requesters in using section 17 of the *Freedom of Information Act, 1997,* as currently obtain when making a standard request for access to information under section 7 of the Act. Provide for assistance to be given by public bodies to requesters when using the Act to have personal information held on them corrected when that information is inaccurate or misleading.

Freedom of Information Act, 1997 *(Section 18) Regulations 1998*
Number: SI 519/1998
Contents note: Provide similar arrangements for requesters in using section 18 of the *Freedom of Information Act, 1997* as currently obtain when making a standard request for access to information under section 7 of the Act. Provide for assistance to be given by public bodies to requesters when using the Act to obtain reasons for decisions taken that particularly affect them.

Freedom of Information Act, 1997 *(Section 25(6)) Regulations 1998*
Number: SI 520/1998
Contents note: Prescribe the Minister for Finance and the Minister for Enterprise, Trade and Employment for the purposes of section 25(6) in relation to the issue of a certificate that a record is an exempt record.

Freedom of Information Act, 1997 *(Section 28(1)) (Amendment) Regulations 1998*
Number: SI 521/1998
Contents note: Relates to requests for records containing joint personal information.

Freedom of Information Act, 1997 *(Section 47(3)) (Amendment) Regulations 1998*
Number: SI 522/1998
Contents note: Provide for an additional category of record for which a charge can be imposed.

Freedom of Information Act, 1997 *(Third Schedule) (Amendment) Regulations 1998*
Number: SI 524/1998
Contents note: Correct a typographical error in the third schedule to the *Freedom of Information Act, 1997*. Also provide for the addition of a reference to the *Access to Information on the Environment Regulations 1998*, and of a reference to the *Health Services Regulations 1971* to the third schedule. This means that the *Freedom of Information Act* will override restrictions on access to information under those regulations.

National Cultural Institutions Act, 1997 *(Commencement) Order 1998*
Number: SI 438/1998
Contents note: Appoints 14/11/1998 as the commencement date for section 6(2) of the Act, in so far as it relates to section 24 of the *National Monuments Act, 1930,* and for section 48 of the Act, in so far as it relates to paintings in the care of the Hugh Lane Municipal Gallery of Modern Art.

Nursing Homes (Subvention) (Amendment) Regulations 1998
Number: SI 498/1998
Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) (Declaration) Order 1998
Number: SI 444/1998
Contents note: Prescribe a code of practice on Sunday working in the retail trade for the purposes of the *Organisation of Working Time Act, 1997*, section 14.

Safety, Health and Welfare at Work (Children and Young Persons) Regulations 1998
Number: SI 504/1998
Contents note: Implement the health and safety aspects of Council Directive 94/33 on the protection of young people at work.

Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 1998
Number: SI 485/1998

Solicitors Acts 1954 to 1994 *(Investment Business and Investor Compensation) Regulations 1998*
Number: SI 439/1998
Contents note: Provide that a solicitor, who is not an authorised investment business firm or who does not hold himself out as a provider of investment business services or investment advice, who applies to the Law Society of Ireland for an annual practising certificate will undertake: (a) only to provide investment business services (which include the activities of an insurance intermediary) or investment advice to clients *incidental* to the provision of legal services to such clients; (b) not to hold himself out as being an investment business firm; and, (c) when providing such incidental services and acting as an investment product intermediary, not to hold an appointment in writing other than from Central Bank of Ireland-authorised financial firms, institutions or persons situate in the State. Provide that a solicitor, in respect of whom a practising certificate is in force who also chooses to operate as an authorised investment business firm providing investment business services (which includes the activities of an insurance intermediary) or investment advice *not incidental* to the provision of legal services, or who holds himself out as providing such services or advice, will be required to provide forms of indemnity against losses due to his default, that may be suffered by clients to whom he provides such non-legal services, of an equivalent level to that provided (under the *Solicitors Acts 1954 to 1994)* by law to clients who are in receipt of legal services from a solicitor in respect of whom a practising certificate is in force but who is not so operating.

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Personal injury judgments

Road traffic accident – two car collision – narrow country road – acute anxiety reaction – liability in dispute

Case

Anne O'Connor Gordon v Diethard Schmid; High Court on Circuit in Galway before the Hon Mr Justice Peter Kelly, judgment of 6 February 1997.

The facts

Anne O'Connor Gordon, the plaintiff, an artist and art teacher, was driving her Opel Kadett car on a country road between Tullycross and Lettergesh, County Galway. At about 4.50pm on 11 September 1992, a sunny day, her car was in collision with a Volvo estate car. The accident occurred just around a bend on the road described by a garda sergeant at the scene of the accident as being 'near enough a right-angled one'. The plaintiff, in evidence, estimated she was driving at around 25 to 30 miles per hour on her correct side of the road when the defendant's car appeared in front of her on the wrong side of the road. The plaintiff stated there was enough room for the defendant's car to pass, had it been on its correct side. She took evasive action, but she stated the other car made no attempt to stop and ran into her.

Ms Kohler was a passenger in the Volvo and gave a different version of the collision. She said the plaintiff's car appeared at excessive speed from around the bend.

Garda Sergeant Folen, who investigated the accident, and attended at the scene, gave evidence that the driver of the defendant's car admitted driving at the centre of the road but refused to accept liability.

Photographs were taken after the collision before the cars had been moved.

The plaintiff was taken to hospital where she remained for 48 hours. She suffered no bone damages or fractures although she appeared to have some loss of consciousness at the scene of the collision. For some time after the accident, the plaintiff complained of lack of stamina, headaches and had become frightened of business.

Medical evidence at the trial was to the effect that the plaintiff suffered a severe acute anxiety reaction to her trauma. Her symptoms were out of proportion to the physical injuries she suffered. Due to her complaints, a specialist arranged for a CT scan but it revealed no evidence of any significant intra-cranial abnormality. She was also referred to a neurologist. The plaintiff also attended a neuro-psychologist and a consultant psychiatrist. The psychiatrist did not find any psychiatric abnormality.

Mrs O'Connor Gordon did state that she finds difficulty in remembering a name in connection with her academic work when giving a lecture. She had, however, no long-term physical symptoms.

Mrs O'Connor Gordon issued High Court proceedings for damages including damages to her car and damages for personal injury.

The judgment

An *ex tempore* judgment in the case was delivered by Kelly J in the High Court on Circuit in Galway on 6 February 1997.

Having outlined the facts of the case, and having the benefit of the photographs, observing that the photographs 'speak for themselves', Kelly J held that both parties shared blame for the collision. The judge was influenced by the fact that there was an uncontroverted admission to the investigating garda sergeant that the defendant's car was on the centre of the roadway at the time of the collision. The driver had not been called as a witness to contradict that evidence.

Kelly J said that the evidence was supported by the fact that the defendant was not driving to the left as was practicable. But the judge held that the plaintiff was driving too fast given the nature of the road.

The judge held that the plaintiff was entitled to recover damages against the defendant but was one-third contributorily negligent because of her speed. Accordingly, she was entitled to recover two-thirds of the damages against the defendant. The judge was satisfied that Mrs O'Connor Gordon's physical injuries were undoubtedly minor but that the 'side effects' were more pronounced. No loss of earnings was proved. The judge held that there was no question of future pain and suffering. For pain and suffering to the date of the trial, he awarded the plaintiff £20,000 with agreed special damages of £8,406.50. Reduced by one-third for her contributory negligence, Mrs O'Connor Gordon was awarded £18,937.66.

Circuit Court costs were awarded and a certificate for senior counsel was granted by the judge.

Public liability – fall in a pool of water at petrol service station – liability in dispute

Case

John Payne v Artane Service Station; High Court on Circuit in Waterford before the Hon Mr Justice Paul Carney, judgment of 17 February 1997.

The facts

John Payne, a young sportsman of considerable distinction, fell in a pool of water and diesel at a petrol service station in Waterford. His mother witnessed the fall. Mr Payne suffered from initial concussion, was taken to hospital where he remained for two days. He suffered soft tissue injuries to his neck and also sustained a soft tissue injury to his back.

The manager of the garage gave evidence in court of being proud of the manner in which the service station was maintained.

The judgment

An *ex tempore* judgment was delivered by Carney J in the High Court on Circuit, Waterford, on 17 February 1997. Having outlined the basic facts of the case, the judge stated he accepted the evidence of John Payne and the corroboration of the fall by his mother, described by the judge as an impressive witness.

The judge held that the evidence established that there was no system of supervision and inspection in operation at the time of the accident to ensure that there was no accumulation of diesel and water in the precincts of the service station. The judge noted that Richard Ryan, who was in charge of receiving the cash at the service station on the day, did not leave his cash till to go out to look at the scene of the accident because he considered that his first priority was the cash and that he had an overriding belief that he should never leave the cash unattended.

Finding for the plaintiff, Carney J held that none of John Payne's injuries would result in permanent *sequelae* or residual symptoms, but his sporting career had been 'seriously circumscribed'. Carney J awarded him general damages in the single sum of £30,000; and there was also an agreed sum of special damages amounting to £251.

Mr McCarthy SC for the service station sought a stay on the judgment arguing that the award was excessive having regard to the medical evidence and to the weight of the evidence put forward by the service station. Having listened to legal argument, Carney J put a stay on the judgment on the basis that £15,251 was paid to Mr Payne. Costs were awarded to Mr Payne with no stay. G

These judgments were summarised by Dr Eamonn Hall, Solicitor, from Doyle court reports of personal injury judgments.

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ARBITRATION

Arbitration clause survives avoidance of rest of contract

- An arbitration clause was a self-contained contract which could survive the avoidance of the remaining terms of a contract.

The defendant company refused to indemnify the plaintiff on foot of his motor insurance policy on the grounds that: the plaintiff had failed to disclose a material fact to it (his conviction for drunk driving) at any renewals of the insurance policy; that this was non-disclosure of a material fact under the contract; that the defendant was exercising its entitlement to avoid the policy; and that the effect of the defendant's avoidance was to invalidate retrospectively each renewal of the policy after the conviction. The plaintiff did not accept the validity of the defendant's purported avoidance of the insurance policy, and sought specific performance of the insurance contract. The defendant sought an order staying the proceedings, pursuant to section 5 of the *Arbitration Act, 1980*, on foot of an arbitration clause in the policy which provided that 'all differences arising out of this policy shall be referred' to arbitration. The plaintiff claimed that as the defendant was treating the policy as void with retrospective effect, it could not rely on the arbitration clause since that clause formed part of the void contract. In granting the defendant's application to stay the proceedings, it was held that:

- There was a distinction between an arbitration clause and the rest of a contract. While the purposes of a contract might have failed, the arbitration clause was not one of the contract's purposes. This principle applied where one party sought to avoid or rescind a contract on the ground of a misrepresentation or non-disclosure, whether the latter were fraudulent, negligent or innocent. Provided the words of the clause were sufficiently wide, these were matters which could be referred to arbitration. The arbitration clause was a self-contained contract and it had survived the avoidance of the contract
- It was a matter of construction whether the clause was wide enough to cover the dispute. In this case it was; the defendant was entitled to have the dispute referred to arbitration in accordance with the policy.

Doyle v Irish National Insurance Company plc (Kelly J), 30 January 1998

BANKING

Registrar of Friendly Societies entitled to appoint inspector

- The Registrar of Friendly Societies was entitled to appoint an inspector in order to investigate the affairs of the society in question, and he was entitled to continue the investigation notwithstanding the fact that there were winding-up proceedings in place in respect of that society.

In 1986, a conditional order of prohibition was made by the High Court against the respondent in respect of the proposed exercise by him of his powers pursuant to section 13(3) of the *Industrial and Provident Societies (Amendment) Act, 1978*. In 1988, the High Court allowed the cause shown and refused to make absolute the conditional order against the respondent. The applicants appealed against that decision to the Supreme Court and also challenged the constitutionality of the impugned provision. The Supreme Court upheld the constitutionality of the provision, and went on to deal with the merits of the applicants' appeal. The society in question, formed in 1974, sought and accepted deposits from the public and loaned out money so deposited. By virtue of section 5 of the 1978 Act, it was bound to repay all deposits not later than 15 November 1993. This caused certain problems for the society and its associated companies. In 1984 the respondent appointed an inspector over the society and later on that day a provisional liquidator was also appointed over it. The inspector examined the first-named applicant on oath. Following the making of the inspector's report, the first-named respondent informed the applicants separately that it was his intention to consider making a direction under section 13(3) of the 1978 Act, requiring them to pay all or a proportion of the expenses of or incidental to the investigation which had been carried out by the inspector. The costs amounted to some £200,000. The applicants sought and were granted a conditional order of prohibition preventing the first-named respondent from availing of section 13(3). The applicants applied to have the conditional order of prohibition made absolute. They contended that the appointment of the inspector had been unnecessary as a provisional liquidator had also been appointed. In reply, the respondent contended that the inspector had wider powers than the liquidator and could investigate the affairs of associated com-

panies. Following earlier proceedings, the respondent decided to levy the charges on the applicants in his own name, and not in the name of the company. In dismissing the appeal, it was held that:

- The extent and powers of the inspector went far beyond the powers of the liquidator, as he was confined to investigating the affairs of only those companies which were in liquidation
- The respondent was entitled to appoint the inspector in order to investigate the affairs of the society and he was entitled to continue the investigation notwithstanding the fact that there were winding-up proceedings in place
- The respondent had an essential obligation to see that the rights of depositors were safeguarded and that the public interest was served
- The investigation was worthwhile, even if it did involve a certain duplication of effort with the liquidator's activities.

State (Plunkett and Ponderwood Society Limited) v Registrar of Friendly Societies (Supreme Court), 9 February 1998

CHILDREN

Hague convention to be ratified

Proposed legislation will, if passed, enable the State to ratify the 1996 *Hague convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children*. The convention seeks to:

- Determine the state whose authorities have jurisdiction to take measures directed to the protection of the person or property of a child
- Determine which law is to be applied by such authorities in exercising their jurisdiction
- Determine the law applicable to parental responsibility
- Provide for the recognition and enforcement of such measures of protection in all contracting states, and
- Establish such co-operation between the authorities of the contracting states as may be necessary in order to achieve the purposes of the convention.

The text of the convention is appended to the Bill as a schedule. *Protection of Children (Hague Convention) Bill, 1998*

COMPETITION

Carrier obliged to continue to provide service

- It was not open to a private undertaking to yield too tamely to threats of vandalism, or adverse publicity, if that undertaking's prime duty under Community law had been breached.

The plaintiff was a haulier and livestock transporter and was engaged in the business of exporting live animals from Ireland to the continent. The defendant, a limited liability company, was a member of the P&O group. The defendant operated a ferry service from Ireland to France, which service included the transportation of livestock. From August 1994 until October 1994, the defendant carried livestock for breeding and fattening purposes. From October 1994 to 30 July 1996, the defendant carried livestock for breeding purposes only. In March 1997, the defendant recommenced the transport of livestock for fattening purposes as well as for breeding purposes. Three months later the defendant informed the Minister for Agriculture that all shipments of livestock for fattening and slaughter would cease as of 31 July 1997. The plaintiff instituted proceedings seeking an order directing the defendant to continue to provide a livestock export service to the plaintiff for breeding and fattening purposes pending the trial of the action. The plaintiff claimed that it was essential for the success, if not survival, of its business that it should be in a position to export to the continent. The defendant submitted that because of the adverse publicity generated by the animal rights activists and the little profit it made in this trade that it should not be required to bear the burden of providing this service. It further submitted that its refusal to carry the livestock did not amount to an abuse of a dominant position and, even were it an abuse, the defendant was objectively justified because it was not in its commercial interests to provide this service. Interlocutory relief was refused in the High Court.

In allowing the appeal and granting the relief sought, it was held that:

- A *prima facie* case was made out that the defendant was in a dominant position and that, *prima facie*, there was an abuse of that position
- As there was a fair question to be decided on the article 86 point, no view was expressed on the applicability or otherwise of article 34 of the *Treaty of Rome*
- In the circumstances, the balance of convenience favoured granting the injunction
- It was not open to a private undertaking to yield too tamely to threats of vandalism or adverse publicity if that undertaking's prime duty under Community law had been breached.

Hinde Livestock Exports Ltd v Pandoro Ltd, Gernon v Pandoro Ltd (Supreme Court), 18 December 1997

CONSTITUTIONAL

Evidence by video-link not an interference with right to a fair trial

- An accused person's right to a fair trial did not include the right in all circumstances to require that the evidence be given in the physical presence of the accused.

The defendant sought a declaration that certain sections of the *Criminal Evidence Act, 1992* were invalid as repugnant to the Constitution. He appealed the High Court's dismissal of this claim and the refusal to grant him an order of *certiorari* in respect of his conviction for sexual assault of a 14 year-old girl. The relevant statutory sections concern the giving of evidence through a live television link in certain criminal cases involving offences of a sexual or violent nature. They permit a witness under 17 years of age to give evidence in this manner unless the court sees good reason to the contrary, and in other cases permit such procedure with the leave of the court. The defendant claimed that such procedure constituted an interference with his constitutional right to a fair trial. In dismissing the appeal, it was held that:

- An essential ingredient in the concept of fair procedures was that an accused person should have the opportunity to hear and test by examination the evidence offered by or on behalf of his accuser
- The impugned provisions of the Act did not restrict in any way the rights of an accused as established by the constitutional jurisprudence of the courts and caselaw. The assessment of the credibility of the testim-ony of a child witness did not require that the witness be made to give evidence in the physical presence of the accused. The requirements of fair procedures were adequately fulfilled by requiring that the witness give evidence on oath and be subjected to cross-examination, and that the judge and jury have ample opportunity to observe the witness's demeanour while giving evidence and undergoing cross-examination
- Fair procedures did not require a case-by-case determination as to whether a person under 17

would be traumatised by giving evidence in court in the accused's presence, and the Oireachtas was entitled to enact legislation permitting the giving of evidence by such persons by live television link unless the court saw good reason to the contrary.

Donnelly v Ireland (Supreme Court), 22 January 1998

CRIMINAL

International War Crimes Tribunals Bill, 1997

This Bill has been passed by Dáil Éireann.

Circuit Court jurisdiction upheld

- If it was being alleged on behalf of any of the applicants that they had been brought before the District Court by a process so tainted with illegality as to warrant their immediate release, that case should have been made at that stage by way of an application for *habeas corpus* to the High Court; as no such challenge was made, the Circuit Court clearly had jurisdiction to try each of applicants on the counts laid in the indictment.

The applicants were charged with various offences relating to the illegal importation into the State of controlled substances. At their trial, the first-named applicant decided to discharge his legal representatives. None of the applicants went into evidence. At the close of the hearing, counsel for the prosecution made a closing address to the jury. After that, the first-named applicant began to address the jury personally. Shortly after commencing his address, the prosecution objected to the first-named applicant's address. The prosecution contended that the first-named applicant was deliberately attempting to have the jury discharged. The trial judge agreed and refused to allow the first-named applicant to continue with his address. The applicants were all convicted and refused leave to appeal. They appealed to the Court of Criminal Appeal against the refusal to give them leave to appeal. They contended that the prosecution had not discharged the burden of proof on them to prove that the applicants knew that they were handling packets which contained controlled drugs. The applicants submitted that they had no knowledge that they were handling drugs and that the prosecution had failed to prove that they did have such knowledge. In reply, the prosecution contended that it had discharged the burden of proof on it by adducing proof that the applicants had reasonable grounds for suspecting that they were in possession of controlled drugs, even in the absence of actual knowledge. In refusing all the applications for leave to appeal, it was held that:

- The issue as to whether the applicants were lawfully arrested pursuant to section 30 of the *Offences Against the State Act, 1939* was relevant only to the admissibility of the statements allegedly made by them while in custody
- If it was being alleged on behalf of any of the applicants that they had been brought before the District Court by a process so tainted with illegality as to warrant their immediate release, that case should have been made at that stage by way of an application for *habeas corpus* to the High Court
- There was ample evidence before the jury that the four applicants were the same four men who were observed by the Gardaí on the night of their arrest
- The probative value of evidence that three of the applicants had been seen earlier on the evening of their arrest outweighed any possible prejudice that it may have excited in the mind of the jury
- It was not sufficient for mere physical possession to be established; the applicant mental element or *animus possidendi* had also to exist
- There was evidence on which the jury could be satisfied beyond a reasonable doubt that each of the applicants had, and knew that he had, the bales in his control, that the bales contained something and that the bales in fact contained the controlled drug specified in the indictment
- The applicants could not complain where, as here, the charge by the trial judge was unduly favourable to them and placed a heavier onus than was required on the prosecution, and they were nonetheless subsequently convicted
- The exception contained in s24(1) of the 1984 Act did not apply in this case as the first-named applicant was legally represented from the beginning of the trial and was represented save for the closing stages
- The balance would be tilted unfairly in the direction of the first-named applicant if, after discharging his legal representatives after they had tested the strength or otherwise of the prosecution case in full, the prosecution was deprived of the opportunity of making a closing speech.

Director of Public Prosecutions v Byrne, Healy and Kelleher (Court of Criminal Appeal), 17 December 1997

EMPLOYMENT

Case for unequal pay not made out

- Taken in the context of the report of the Labour Court as a whole, and the report of the Equality Officer which it effectively adopted, there were adequate reasons given to the applicant for the decision reached by the Labour Court.

The applicant was employed at Dublin Airport. The applicant and two of her female colleagues contended that they were entitled under the provisions of the 1974 Act to the same rate of pay as two male radio operators, the comparators, who were also employed at the airport and worked in the same office as the applicant. The applicant contended that the work carried on by her and the comparators was not the same work but was of a 'similar nature', and that any differences between the work performed and the conditions under which it was performed occurred only infrequently or was of small importance. The applicant's claim was assessed by an Equality Officer who fully investigated the work done by the applicant and the comparators. The officer found that the work was similar in nature. However, he went on to find that the comparators' work frequently differed from the applicant's, and that the differences which occurred were of more than small importance in that they required the comparators' additional qualifications and skills. He further found that the comparators' work required a greater amount of skill, and could include the handling of maritime emergencies. He also found that the comparators had supervisory and administrative responsibilities not shared by the applicant. He therefore concluded that the applicant and the comparators did not perform like work within the meaning of the Act. The officer's report was appealed to the Labour Court. The court upheld the report's findings. That decision was appealed to the High Court. The High Court found that the appeal was one on the facts and not on the law. It held that the allegation of discrimination had not been made out before the court and that the nature of the true employment had been found to be different. The applicant appealed to the Supreme Court on the grounds that the Labour Court had given inadequate reasons for its decision. In dismissing the appeal, it was held that:

- For the claims to succeed, it would have to be established

that the applicant and the comparators were engaged in 'like work' as that term was defined in the 1974 Act
- The possibility of establishing equality of demands or identifying the basis for any inequality must be enhanced in proportion to the degree of similarity between the allegedly different works
- There was no doubt that the Labour Court fully intended to endorse the findings and conclusions of the Equality Officer
- It was clear that the issue to be determined by the Labour Court was one of fact, and it was determined by reference to the conclusions reached by the Equality Officer
- Taken in the context of the report of the Labour Court as a whole, and the report of the Equality Officer which it effectively adopted, there were adequate reasons given to the applicant for the decision reached by the Labour Court
- Once the question of 'like work' was decided against the applicant, the question of other qualifications did not arise
- The matters canvassed on the appeal were matters of fact on which there had been ample evidence to support the decisions reached.

O'Leary v The Minister for Transport, Energy and Communications (Supreme Court), 3 February 1998

ENVIRONMENT

Alterations to EIA regime

Regulations have been made amending the *European Communities (Environmental Impact Assessment) Regulations 1989–1996* and EIA-related provisions in the *Local Government (Planning and Development) Acts, 1963–1998* as well as certain other Acts. The amendments:
- Restate provisions relating to the information to be contained in an environmental impact assessment (EIA)
- Set out exemptions from the requirement to prepare an EIA
- Extend the provisions concerning the furnishing of additional information relating to an EIA
- Include provisions relating to applications for planning permission involving an EIA where the proposed development may have effects on another Member State of the EC, and
- Extend the time available to a planning authority in relation to such an application and enable the authority to enter into consultations with the Member State concerned.

European Communities (Environmental Impact Assessment) (Amendment) Regulations 1998 (SI No 351 of 1998)

Packaging and packaged products

New regulations amend the existing packaging rules so as to provide that no person may supply packaging or packaged goods to the domestic market unless the packaging concerned complies with specified requirements as to its packaging and composition.

Waste Management (Packaging) (Amendment) Regulations 1998 (SI No 382 of 1998)

GARDA SÍOCHÁNA

Garda compensation decision by Minister overruled

- The Minister, acting in a quasi-judicial manner, breached the rules of natural justice by relying only on the Garda Surgeon's report and not examining the medical evidence submitted on behalf of the applicant when deciding that his injuries were minor. Where there was respectable medical opinion from the applicant which indicated that his injuries were not of a minor character, the Minister would not be entitled to form a view that the injuries were minor at least without further investigation.

The respondent refused to allow the applicant to apply to the High Court for compensation pursuant to the *Garda Síochána (Compensation) Act, 1941*. The applicant sought judicial review of that decision and sought, *inter alia*, a mandatory injunction compelling the respondent to authorise the applicant's application for compensation. The applicant had been injured while on duty. He applied for compensation. Five years later the respondent ruled that his injuries were of a minor character and that they had not been sustained in the course of the performance of a duty involving special risk. Accordingly, the respondent dismissed the application. The applicant contended that in making her decision that his injuries were of a minor character, the respondent relied only on the medical report of the Garda Surgeon, and not on any of the applicant's own medical reports. In granting the relief sought, it was held that:
- It was difficult to see how the respondent could have formed the opinion that the applicant's injuries were minor in character within the meaning of the Act, given that there were undisputed continuing adverse *sequelae* four and a half years after the incident
- On the basis of the Garda Surgeon's report, the applicant's injuries were not minor within the meaning of the Act, and so the respondent's decision was irrational
- The expression in the Act 'of a minor character' implied a consideration of the nature of the injury rather than the amount of compensation which would be paid for it
- The respondent ought to refuse to authorise proceedings in a case where there had been a complete recovery within a matter of weeks with no medically explicable adverse *sequelae*
- The respondent, acting in a quasi-judicial manner, breached the rules of natural justice by relying only on the Garda Surgeon's report and not examining the medical evidence submitted on behalf of the applicant
- Where there was respectable medical opinion from the applicant which indicated that his injuries were not of a minor character, the respondent would not be entitled to form such a view at least without further investigation
- The respondent would have to have an open mind and not form any such opinion.

Merrigan v Minister for Justice (Geoghegan J), 28 January 1998

Trainee garda loses appeal

The applicant was a probationary member of the Garda Síochána. In 1993, the applicant was involved in an incident in a licensed premises. The incident was the subject of an investigation and the applicant challenged certain aspects of the investigation in the High Court and succeeded. On appeal, the Supreme Court upheld the trial judge's finding that there had been a lack of due process. However, the court overturned the trial judge's ruling that there could be no further proceedings in the matter. As a result, inquiries into the matter recommenced. The first-named respondent was appointed to be the new officer in charge of the investigation. The applicant sought an order of prohibition preventing the first-named respondent from continuing with disciplinary procedures against the applicant. The applicant contended that the first-named respondent conducted the investigation with a measure of bias towards him. That bias was based on an objective basis and not a subjective one. The applicant also contended that there was undue delay on the part of the respondents. He argued that it was an essential prerequisite for a valid disciplinary procedure that it was left to the academic co-ordinator to decide if

there had been a breach of the rules following the conduct of the correct disciplinary procedures. In this case, the applicant alleged that the first-named respondent's statement would lead to a reasonable apprehension on the part of the applicant that he had already decided the case, that the breach of discipline had been made out, and that all that remained to be dealt with was the penalty. The applicant further contended that the first-named respondent had to make a finding as to whether there was a breach of discipline isolated from the identification of any particular student as being responsible for it. In dismissing the appeal, it was held that:

- When considering the period of delay, the court was restricted to the period since the court previously decided on the matter
- To hold that the first-named respondent's conduct would create the impression that he had prejudged the case would amount to a monstrous charade and no reasonable person could take that reading from it
- One could not glean any element of bias from the utterances made by the first-named respondent. They were merely formalistic statements of a conclusion
- No reasonable person could infer that the first-named respondent was summoning over 30 witnesses in order to enable him to form some view as to the penalty he should impose on the applicant
- The whole course of conduct on the part of the first-named respondent showed that he was taking the whole matter very seriously and that he had not engaged in any form of prejudgment
- With regard to the question of delay, the time-scale involved in this case was consonant with doing complete justice to the applicant
- In making a finding of breach of discipline, the first-named respondent would normally have made also a *prima facie* finding of which student was responsible.

McAuley v Chief Superintendent Keating (Supreme Court), 21 January 1998

HEALTH SERVICES

Expanded remit for VHI

Proposed new legislation seeks to permit the VHI to act as an agent for an international healthcare plan which would be applicable to persons resident outside the State. *Voluntary Health Insurance (Amendment) Bill, 1998*

PRACTICE AND PROCEDURE

Rules for review of award of public contracts

New rules came into force on 19 October 1998, prescribing procedures in relation to the review by the High Court of the award or of a decision to award a public services, public supply, public utilities or public works contract.

Rules of the Superior Courts (No 4) (Review of the Award of Public Contracts) 1998 (SI No 374 of 1998)

Rules for Oireachtas witnesses

New rules came into force on 20 October 1998, prescribing procedures in relation to applications and appeals to the High Court under the *Committees of the Houses of the Oireachtas (Compellability Privileges and Immunities of Witnesses) Act, 1997*.

*Rules of the Superior Courts (No 5) (*Committees of the Houses of the Oireachtas (Compellability Privileges and Immunities of Witnesses) Act, 1997*) 1998* (SI No 381 of 1998)

Changes to disclosure of reports and statements rules

New rules deemed to have come into force on 1 September 1997 replace the rules introduced last year concerning the disclosure of reports and statements in the course of litigation (SI nos 348 and 471 of 1997). The present rules:

- Apply to all proceedings which were instituted on or after 1 September 1997
- Require that, from that date, a party to such proceedings may only rely on a statement or report during the course of the trial of an action where that statement or report has been disclosed in accordance with the rules.

Rules of the Superior Courts (No 6) (Disclosure of Reports and Statements) 1998 (SI No 391 of 1998)

Rules for appeals from Hepatitis C Tribunal

New rules came into force on 23 October 1998, prescribing procedures in relation to appeals against decisions and awards of the Hepatitis C Compensation Tribunal under the *Hepatitis C Compensation Tribunal Act, 1997*.

Rules of the Superior Courts (No 7) (Hepatitis C Compensation Tribunal) 1998 (SI No 392 of 1998)

Hearsay rules permit evidence to the effect that words were spoken

- The general rule against hearsay was not infringed where a witness gave evidence that words were spoken, where the uttering of the words themselves was a relevant fact, and not the truth or otherwise of the facts asserted by those words.

The respondent was arrested and charged with offences before the District Court. The applicant member of the Garda Síochána gave evidence that he heard a sergeant, who was not present in court, tell the respondent why he had been arrested and that he had a right to call a solicitor or other person, and that he saw a notice of rights for persons in custody being handed over by the sergeant to the respondent. The respondent submitted that this evidence was inadmissible as it was hearsay, and that there was no evidence of compliance with the Criminal Justice Act, 1984 *(Treatment of Persons in Custody in Garda Stations) Regulations 1987*. The case came before the High Court by way of case stated from Judge Windle on the question whether he was correct in holding that the evidence of compliance with the regulations by the sergeant was hearsay. In answering the question posed in the negative, it was held that:

- The 1987 regulations required that the accused be informed of his rights, whether he understood them or not, and the essential proof was that he was so informed. All that was required was that the relevant information be given to the accused and the relevant notice handed to him
- The only evidence required was that the words were spoken and the notice handed over. The garda heard the words spoken in the accused's presence and saw the notice being handed over. He was entitled to give the evidence of these facts. In relation to hearsay, there was no general rule of evidence to the effect that a witness could not testify as to the words spoken by a person not produced as a witness. Subject to many exceptions, the general rule was that evidence of the speaking of words was inadmissible to prove the truth of the facts asserted by the words. The uttering of words might itself be a relevant fact, apart from the truth or falsity of anything asserted by the words spoken. To prove, by the evidence of a witness who heard the words, that they were spoken was direct evidence, and did not encroach on the general rule against hearsay
- There was sufficient evidence before the court that the respondent had been given the necessary information pursuant to the regulations.

Director of Public Prosecutions v O'Kelly (McCracken J), 10 February 1998

Claim of legal professional privilege not upheld

- A claim of legal professional privilege depended on whether the dominant purpose for which the documents in question came into being was in apprehension or anticipation of litigation.

The plaintiff, an infant, suffered serious injuries in the process of being born and a claim for negligence and damages was brought against the defendants. The usual documents were discovered following an order for discovery, but privilege was claimed by the second-named defendant in respect of statements made by three nurses on duty at the relevant time, on the basis that they were made solely for the purpose of or in contemplation of litigation. The second-named defendant claimed that the statements were not ordinary medical or treatment records as they were not made in the ordinary course of treatment. The High Court disallowed the claim of legal professional privilege and the second-named defendant appealed to the Supreme Court. In dismissing the appeal, it was held that:

- The issue was whether the second-named defendant's dominant reason or motive for obtaining the statements was the anticipation or contemplation of litigation. If not, privilege did not apply to the statements
- It was likely to aid the course of the trial if the statements were made available to the plaintiff's advisors. They were straightforward accounts of events and conversations and did not contain any element that would attract an entitlement to legal professional privilege.

Gallagher v Stanley (Supreme Court), 17 December 1997

Interrogatories considered

The plaintiff applied to the court for leave to deliver interrogatories for the examination of the first-named defendant. The first-named defendant opposed this application on the grounds that the interrogatories sought were prolix, oppressive, vague and imprecise and had not been shown to be essential in the interests of justice.

In allowing the delivery of certain interrogatories, it was held that:

- No party had the right to have interrogatories delivered and answered but had to satisfy the court either that a special exigency or some necessity existed which warranted the delivery and answering of interrogatories. Giving leave to deliver interrogatories had to be regarded as an exception in any case to be heard on oral evidence and had to be justified by the party seeking to deliver interrogatories
- Once the party seeking to deliver the interrogatories satisfied the court that such delivery would serve a clear litigious purpose by saving costs or promoting the fair and efficient conduct of the action in question, then the court should be prepared to allow the delivery of the interrogatories unless it was satisfied that the said delivery would work an injustice upon the party interrogated
- The court had to look at each and every interrogatory for the purposes of determining whether it was necessary to be answered for the purpose of disposing fairly of the case or for saving costs
- Interrogatories which sought admissions as to the existence of documents and signatures to documents identified in discovery documents would normally be allowed unless there were special reasons why, in the interests of justice, an order should not be made
- Interrogatories which sought admissions about the facts surrounding documents identified in discovery affidavits had to relate to the issues raised in the pleadings and could not be used as a means to prove the interrogating party's case
- Interrogatories which sought information had to relate to the issues raised in the pleadings and not to the evidence adduced in the case
- Questions as to opinions, the meaning or effect of documents or as to statements or conduct should not be permitted
- An order to deliver interrogatories would be refused if a fair hearing of the issues between the parties would be prejudiced by it, even if the costs of the proceedings could be reduced by making the order
- The fact that the current case was a *Competition Act* case did not constitute a special exigency warranting the delivery of interrogatories
- The questions which the court proposed to allow were all questions which met the criteria set out above.

Woodfab Limited v Coillte Teoranta (Shanley J), 19 December 1997

ROAD TRAFFIC

Increased tow-away charges

With effect from 29 September 1998, the charge for release of a vehicle towed away in accordance with the regulations increases from £75 to £100 and the storage charge per day increases from £25 to £30. *Road Traffic (Removal, Storage and Disposal of Vehicles) (Amendment) Regulations 1998* (SI No 358 of 1998)

SPORT

Statutory Sports Council to be established

A Bill has been presented which aims to establish, on a statutory footing, a body to be known as the Irish Sports Council with the aims of promoting and encouraging the development of sport in the State. *Irish Sports Council Bill, 1998*

TELECOMMUNICATIONS

CIÉ to have telecommunications remit

A new order permits CIÉ to expand its field of activities to include owning and operating telecommunications equipment (including fibre optic cable and network equipment) and entering into agreements with other bodies in this regard.

Córas Iompair Éireann (Additional Functions) Order 1998 (SI No 76 of 1998)

TRANSPORT

Carriage of Dangerous Goods by Road Bill, 1998

This Bill has been amended in the Select Committee on Public Enterprise and Transport. G

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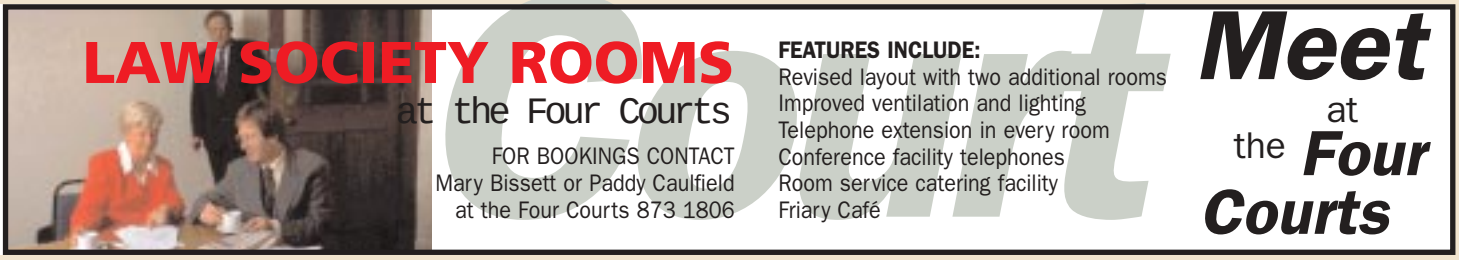

News from the EU and International Affairs Committee

Edited by TP Kennedy, Legal Education Co-ordinator, Law Society of Ireland

Free movement of persons: some recent developments

This article reviews a number of developments in the field of free movement of persons over the past year or so. It covers:

- Progress towards the implementation of the *Amsterdam treaty*
- New legislative proposals in the field of free movement of workers
- Recent caselaw on the identity of the beneficiaries of free movement
- Developments in relation to the application of the principle of non-discrimination
- Recent caselaw on services.

The survey below is not exhaustive. In particular, it does not cover developments in relation to the *European space of professional mobility*, including the *Lawyers' establishment directive*, or progress in relation to supplementary pensions.

1. The treaty framework: implementing *Amsterdam*

It is useful, first, to recall the structural changes wrought by the *Amsterdam treaty*.

Existing provisions on the free movement of persons and flanking measures are to be transferred from the Third Pillar to the First, Community, Pillar and thus from a system of strict inter-governmental decision-making to a modified version of EC-based decision-making. At the same time, there is a renewed commitment to lifting *internal* frontier controls. Ireland is, for as long as the Common Travel Area remains, covered by a new protocol allowing it, and the UK, to remain outside the new regime. Ireland has, however, by declaration, made it clear that it intends to exercise its right to take part in the adoption of common measures to the maximum extent compatible with the Common Travel Area. Denmark has also decided to remain outside the new free movement regime. The work involved in the changeover is considerable. The December 1998 Vienna European Council has endorsed the action plan on establishing an area of freedom, security and justice: much work has yet to be done on the 'flanking measures'.

The *Amsterdam treaty* also allows for the 'Unionisation' of the Schengen system. By integrating the Schengen *acquis* into the Union system, the Member States have also agreed to bring into the European Union a system of agreed rules on free movement which has, up to now, existed outside the legal framework of the European Union. Again, Ireland and the UK have opted to stay outside, though Ireland has said that it will work in developing the Schengen *acquis* where it can. Denmark has signed up to Schengen, but is subject to special arrangements that will allow it to behave as if 'Community' Schengen measures continue to be based on Title VI, even where it is decided to base them on *EC treaty* provisions.

The *Amsterdam treaty* will enter into force only when it has been duly ratified by all the Member States. With ratification delays by Belgium, France and Portugal, it is currently envisaged that this will be in the first half of 1999. In the meantime, work is proceeding to ensure that all is ready to roll as soon as the treaty takes effect.

2. The free movement of workers: new legislative proposals

In July 1998, the Commission adopted three legislative proposals aimed at updating and clarifying citizens' rights to move around the EU to take up work. The proposals are intended partly to update the existing legislation to reflect the caselaw of the ECJ and partly to make improvements in line with recommendations in the 1997 Report of the High Level Panel (the 'Veil report'). Their objective is not only to promote the free movement of workers as a basic freedom (seen in the context of Union citizenship) but also to use worker mobility as an instrument in the promotion of employment. Indeed, this bifurcated objective has been central to understanding the free movement provisions from the beginning.

In relation to **residence**, it is proposed to modify and update Directive 68/360. Proposed amendments make it clear, in line with ECJ caselaw, that EU nationals have the right to go to another Member State to seek work or to undertake vocational training and that EU nationals seeking a job have an automatic right of residence for six months and can stay for longer if they can prove they are actively seeking employment and have a reasonable chance of finding a job. It is also proposed to improve the residence rights of persons with a series of fixed-term or short-term contracts who have worked for 12 months in an 18-month period and to simplify administrative procedures for issuing residence permits.

In relation to **treatment**, it is proposed to modify and update Regulation 1612/68. It is intended to reinforce and clarify the principle of equal treatment, in line with ECJ caselaw which makes it clear that direct and indirect discrimination is prohibited across the board (see 4 below). It will be made clear that facts and events of professional/vocational relevance arising in a Member State other than that of employment – such as previous experience and military service – must be taken into account in the Member State of employment: this again reflects ECJ caselaw. It is proposed to improve the position of family

members by removing the age and dependency criteria for descendants and ascendants. Family members should have the right to take up self-employed activity. It is also proposed to protect the position of third-country nationals married to a Community worker and divorced after three years' residence.

It is also proposed to introduce a clause outlawing discrimination on the grounds of race, religion, sex, age, disability or sexual orientation.

3. The beneficiaries of free movement: the *Sala* and the *Clean Car* judgments

The May 1998 *Sala* judgment (Case 85/96) has clarified the extent to which an individual can claim rights of free movement merely by virtue of his or her status as a Union citizen, without needing to show membership of a functional category (worker, self-employed person and so on).

It was unclear in that case whether the individual seeking non-discriminatory treatment for rights granted to host nationals on the basis of *residence* was or was not a worker, though it was accepted that she was lawfully resident. The court established that the right to equal treatment under article 6 of the *EC treaty* attached to the individual by virtue of her Union citizenship status coupled with lawful residence. As a result of this judgment, unequal treatment on grounds of nationality coming within the scope *rationae materiae* of Community law can be challenged by all legally-resident Union citizens coming within the scope *rationae personae* of the Union citizenship provisions. Although this judgment is critical for the free-mover whose status is not established, specific categories of free-mover (such as workers, self-employed persons and service-providers/receivers) enjoy specific wider rights of non-discrimination on grounds of nationality, so that article 6 of the *EC treaty* as *lex generalis* does not apply.

In the *Clean Car* judgment, delivered in May 1998 (Case 350/96), the court affirmed that the free movement of workers' provisions could be invoked not only by workers themselves but also by their employers.

Clean Car – an Austrian company established in Vienna – had sought to register in order to carry out trade. Its application was rejected because, contrary to the provisions of the *Austrian trade code*, the manager appointed did not reside in Austria at the material time. Clean Car then brought court proceedings claiming that the person whom it had appointed as manager was entitled, as a worker, to enjoy the right to freedom of movement under article 48.

The court held that the rule of equal treatment in the context of freedom of movement for workers could be relied on by an employer in order to employ in the Member State of its establishment workers who were nationals of other Member States. The court considered that this result was not precluded by the wording of article 48 of the *EC treaty* and that it prevented rules applying to employers from being used to circumvent the free movement regime. The conclusion was supported by article 2 of Regulation 1612/68 and by the court's caselaw, in particular, the 1995 *Bosman* case.

4. The principle of non-discrimination

The court has, over the past few years, developed the principle of non-discrimination on grounds of nationality, whether contained in article 6 of the *EC treaty*, or in 'special rules' such as article 48(2) ('discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'). The principle covers not only explicit discrimination on grounds of nationality, but also *covert* discrimination which, by the application of other grounds for distinction (in particular *residence)*, leads in fact to the same result. The requirement of *complete equality* – meaning that not only a substantive right but also the conditions for enjoying it must be the same – applies to areas outside the workplace, where the right can be seen as a corollary to free movement.

Private law. In a series of cases beginning in late 1996, the court has effectively outlawed any national requirement that Community plaintiffs who bring an action before the courts of a Member State other than their Member State of origin must lodge a sum as security for legal costs (the *cautio judicatum solvi*). The principle of non-discrimination thus extends to rules of civil procedure and access to justice, so that, where necessary, Community law takes precedence over national rules in the field of private law.

Criminal law. The principle extends to the application of the criminal law as well. In September 1998, the Commission issued a reasoned opinion under article 169 of the *EC treaty* to

Conferences and seminars

AIJA (International Association of Young Lawyers)
Contact: Gerard Coll (tel: 01 6761924)

Topic: *Tourism law*
Date: 24-27 June
Venue: Capri, Italy

Hawksmere
Contact: (Tel: 0044 171 7304293)

Topic: *Structuring legal services to serve globalised business*
Date: 25-26 February
Venue: London, England

Law Society of Scotland
Contact: (Tel: 0044 141 5531930)

Topic: *50th anniversary conference*
Date: 8-10 July

Solicitors' European Group
Contact: (Tel: 0044 1905 724734)

Topic: *Litigation in Luxembourg*
Date: 26 April
Venue: London, England

Topic: *The new* Merger rules *one year on and other recent developments*
Date: 18 May
Venue: London, England

Topic: *Public procurement policy in the Community*
Date: 16 June
Venue: London, England

Topic: *Broadcasting, pay-per-view and sports competition law*
Date: 6 July
Venue: London, England

Translex
Contact: Franz Heidinger (tel: 0043 15268478)

Topic: *Introduction to the French legal system*
Date: 12-16 April
Venue: Paris, France

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CONTACT THE LAW SOCIETY, BLACKHALL PLACE, DUBLIN 7 (TEL: 01 671 0711).

Italy in relation to a legal provision that an offender whose car is registered outside Italy must pay a minimum fine to the police officer involved without the chance of appeal, or a sum by way of security of one-half of the maximum penalty. A driver of an Italian-registered car (who may, of course, not be Italian) is able to pay the minimum fine at a police station or by bank transfer, or appeal within 60 days. The Commission considers that this different treatment constitutes unjustified and disproportionate discrimination.

Residence. The court has also confirmed that the principle of non-discrimination applies to penalties for failure to produce a valid identity document. In *Commission v Germany* (Case 24/97), it ruled that by treating nationals of other Member States 'disproportionately differently' as regards the degree of fault and scale of fines from German nationals when they committed a comparable infringement of the obligation to hold a valid identity document, Germany had failed to fulfil its Community law obligations.

The court has characterised as discriminatory the case where the obtaining of a given benefit – *in casu* a child-raising allowance – is refused or delayed for a 'free-mover' entitled to reside in the host Member State on grounds of non-possession of a formal residence permit where host nationals are entitled to the benefit simply on the grounds of permanent or ordinary residence (the May 1998 *Sala* judgment). The court repeated, referring to the 1975 *Royer* judgment (Case 48/75), that a residence permit can only have declaratory and probative, and not constitutive, force for the purposes of recognition of the right of residence.

Frontier workers. There have also been a number of non-discrimination cases involving frontier workers – individuals resident in one Member State who commute to work in another.

In its September 1998 judgment in *Commission v France* (Case 35/97), French rules on supplementary pensions applied to workers resident in France but excluded frontier workers resident in Belgium who had worked in France. Although this was not overt discrimination on grounds of nationality, it was indirectly discriminatory since the residence condition could more easily be fulfilled by French workers (most of whom resided in France) than by workers from other Member States.

The May 1998 judgment in *Gilly* (Case 336/96) concerned the difficult question of taxation of frontier workers and shows the limits of the non-discrimination principle. Workers who live in one Member State and work in another may suffer unfavourable tax treatment resulting directly from different levels of taxation in the two Member States, in the absence of any Community harmonisation of scales of direct taxation. This factor, and the desire not to encroach on Member State sovereignty in the field of taxation, means that such unfavourable results as arise from the application of double-taxation arrangements will not be regarded as prohibited discrimination.

5. Freedom to provide services

On 28 April 1998, the court delivered two important judgments in relation to services.

In its *Safir* judgment (Case 118/96), the court considered the Community law implications of Swedish tax legislation which, despite the aim of maintaining competitive neutrality between savers holding Swedish life insurance policies and savers holding foreign life insurance policies, established different tax regimes for capital life assurance policies, depending on whether they were taken out in Sweden or elsewhere. The legislation contained a number of elements liable to dissuade individuals from taking out capital life insurance from companies not established in Sweden and liable to dissuade companies from offering their services on the Swedish market.

The Swedish Government had argued that the need to fill the fiscal vacuum arising from the non-taxation of savings in the form of capital life assurance policies taken out with companies not established in Sweden justified these restrictions on freedom to provide services. The court rejected this, arguing that it was possible to conceive of systems which were more transparent and capable of filling this fiscal vacuum, while being less restrictive of the freedom to provide services.

In the *Kroll* judgment (Case 158/96), the court considered a Luxembourg provision that the reimbursement of medical costs in respect of medical services provided outside Luxembourg could only be made where this had been authorised in advance. Such prior authorisation was not required for treatment in Luxembourg and the court held, on the basis of long-established caselaw, that this constituted a barrier to provide services.

The court accepted that the risk of seriously undermining the financial balance of the social security system might in principle constitute an overriding reason in the general interest capable of justifying such a barrier. However, there was no such risk in this case.

The court also held that the barrier could not be justified on public health grounds. In the light of the mutual recognition regime applying to members of the medical professions, Luxembourg could not argue that the rules were necessary to guarantee the quality of medical services provided in other Member States.

The court recognised that the objective of maintaining a balanced medical and hospital service open to all could fall within the public health derogation even though it was intrinsically linked to the method of financing the social security system. Member States could restrict the freedom to provide medical and hospital services in so far as the maintenance of a treatment facility or medical service on national territory was essential for the public health and even the survival of the population. However, it had not been established that the rules in issue were necessary to these ends. G

John Handoll is a partner with solicitors William Fry.

International network looking for its Irish member

A European Economic Interest Group (EEIG), registered in Luxembourg, comprising a number of European law firms, would like to invite an Irish firm interested in international work to join its network. The member firms are small to medium law firms with a general practice in business and corporate law. Most of the partners of these firms are in their forties and are experienced lawyers. They are very keen to work on adding a new international dimension to their current activities by creating a truly multinational structure. They feel that there is a need for a network of medium-sized firms doing quality work for local and foreign corporations, and run by a permanent officer with a small staff actively engaged in marketing and organising the network. Each firm participating in the network is guaranteed a degree of exclusivity in its jurisdiction. The founding members have decided to have an open recruitment policy in order to substantially increase the number of countries represented in the network. If any Irish firm is interested or would like more information, it should contact Marc Jobert (telephone: 0033 1 45252515; fax: 0033 1 45254781; e-mail: mjobert@club-internet.fr). G

RECENT DEVELOPMENTS IN EUROPEAN LAW

COMPETITION

On 9 November 1998, the UK *Competition Act 1998* received the royal assent. Broadly speaking, this Act proposes to do for English competition law what our own *Competition Act, 1991* did for Irish competition law. It is based on articles 85 and 86 of the *EC treaty* and introduces concepts of EC competition law into domestic English law. Investigative and regulatory powers are given to the Director General of Fair Trading. He is given wide powers to impose fines on persons in contravention of the Act. The maximum amount of any fine is 10% of turnover. A right of appeal is given against his decisions to a newly-established body, the Competition Commission. There is a further right of appeal on a point of law or concerning the level of a penalty imposed to the Court of Appeal. Chapter 1 of the Act contains its provisions on restrictive agreements. Section 2 mirrors article 85. Certain agreements are excluded from the Act and the Director is given the power to grant exemptions in individual cases. Block exemptions can be introduced by way of statutory instrument. Section 39 sets out a *de minimis* provision – the categories of agreement falling within this provision are to be set out in a statutory instrument. Chapter 2 of the Act prohibits abuse of a dominant position. Section 18 mirrors article 86 of the treaty. Unlike the treaty, the Act establishes procedures for the notification of conduct that may amount to abuse of a dominant position. The director may give guidance on the conduct or reach a formal decision on the conduct.

CONSUMER PROTECTION

Financial services

In 1997, a directive was adopted to protect consumers who conclude distance contracts (contracts concluded over the telephone or the Internet). The directive did not apply to financial services. The Commission has now proposed a new directive to apply to investment services, insurance and reinsurance operations, banking services, operations relating to pension funds and services relating to dealings in futures or options. The proposed directive provides for a 'cooling off period' before a contact of this nature would be concluded by a consumer – the consumer has a right to withdraw from the contract without penalty and without giving any reason for a period of 14 days (in the case of mortgages, life insurance or pensions 30 days). It proposes limitations on cold-calling and for a complaints and redress procedure for the settlement of consumer disputes.

EMPLOYMENT

Compulsory information and consultation for employees

The Commission has proposed a directive establishing a framework for informing and consulting employees. The proposal applies to all organisations with more than 50 employees. It requires such organisations to inform and consult their employees in good time about issues directly affecting work organisation and their employment contracts. There is to be an attempt to seek prior agreement when the decision is likely to lead to substantial changes concerning work organisation and contractual relations. It provides that if such decisions are taken in serious breach of the information and consultation obligation, they will have no legal effect on contractual relations until the situation has been rectified or adequate redress has been established.

FREE MOVEMENT

Persons

Commission v Spain (Case 114/97), judgment of 19 October 1998. The Commission challenged Spanish legislation making the grant to companies of authorisation to carry on private security activities subject to the requirement of being incorporated in Spain with Spanish resident directors and managers and the further requirement that security staff be of Spanish nationality. The ECJ held that these laws infringed articles 48, 52 and 69 of the treaty. Spain defended the action on the basis that security activities came within article 48(4). The ECJ pointed out that the activities were private and could not be considered as forming part of the Spanish public service. Spain also put forward the defence that it could derogate from the treaty articles on grounds of public security. The court held that this exception was to be narrowly construed. It pointed out that private security undertakings had no power of constraint. They merely contributed to the maintenance of public security, as any individual citizen should be expected to do. A clear distinction was drawn between the public security force and private security firms. The ECJ held that the defences of public policy, public security or public health operated to refuse access to persons whose access or residence would constitute a danger on one of these grounds. They could not be used to justify a general exclusion of the type in the instant case. Clearly, both the residence and incorporation requirements were contrary to the treaty.

INTELLECTUAL PROPERTY

Electronic commerce

The Commission has recently proposed a directive setting out a legal framework for electronic commerce within the EU. It is proposed the directive would apply to all information services provided electronically, whether for a charge or for free. The directive would extend the treaty rules on establishment and services to such information services. The place of establishment is defined as the place where an operator actually pursues an economic activity, irrespective of where the web sites or servers are located. The operator would be subject to supervision in the Member State where they were established. The proposal also calls on Member States to remove any national legislation prohibiting the use of electronic media for concluding contracts. These provisions complement the recent proposal for a directive on electronic signatures. Service providers who act purely as conduits for information would be exempted from liability.

Trade Marks

Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc (Case 39/97), judgment of 29 September 1998. CKK has registered the trade mark 'Canon' in respect of cameras, projectors and other recording devices. MGM applied to register 'Canon' as a trade mark in respect of video cassettes and services involving the production, distribution and projection of films for cinemas and television organisations. The ECJ was asked whether the distinctive character of the mark and its reputation was to be taken into account in determining whether the similarity between the goods and services gave rise to the likelihood of confusion under article 4(1)(b) of the *First trade mark directive* and thus MGM's application to register could be refused. The court held that it must be taken into account. It said that there may be a likelihood of confusion even where the public perception is that the goods or services have different places of production but not where the public do not believe the goods or services come from the same undertaking or from economically-linked undertakings.

LITIGATION

Brussels convention

Réunion Européenne Sa & Ors v Spliethoff's Bevrachtingskantoor BV and the Master of the vessel Alblasgracht V002 (Case 51/97), judgment of 27 October 1998. The case concerned the application of article 5(3) in a case involving the transportation of goods by sea. The Dutch company SA carried a consignment of pears from Australia to Rotterdam aboard its vessel under a bill of lading. They were unloaded there and transported by road to France. On arrival, it was discovered that the pears were damaged. The ECJ was asked to identify the place of the harmful event. The court referred to its earlier decision where it had held that the place where a harmful event occurs confers jurisdiction both on the place where the causal event takes place and the jurisdiction where damage is actually suffered. In this case the place of the causal event was difficult and might even be impossible to determine. Thus, the consignee of the goods should bring the carrier before the court for the place where the damage occurred. This could not be either the place of final delivery, which could be changed in mid-voyage, or the place where the damage was ascertained. The place where damage arose in a transport operation of this nature could only be the place where the carrier was to deliver the goods.

Law firms go for GOAL

A group of solicitors have got together to raise money for third world charity, GOAL. The aim is to raise £20,000 for a shelter for street children in Calcutta. A portion of the money raised will also go to help homeless people in Dublin.

In order to raise this money, they are organising a 10K sponsored run/walk on Saturday 15 May 1999. The route will bring participants from Blackhall Place into the Phoenix Park and back again. Afterwards, there will be a post-event party and barbecue for all participants and their supporters.

'We need as many people as possible to take part if we are to reach the target', says organiser Eoin MacNeill of A&L Goodbody. Volunteers are actively being recruited now from within the profession and from families, friends and other colleagues, with clients and suppliers being targeted for sponsorship. 'We hope to have a fun day out in addition to raising the money', he adds.

GOAL funds projects in Calcutta which are organised directly by local aid agencies. In many cases, former street children who have themselves been helped are recruited to help others in similar situations.

Law Society President Patrick O'Connor has endorsed the event and urged as many members as possible to put on their running shoes. 'The legal profession in Ireland has a long and proud tradition of helping those in less fortunate positions than themselves, whether it be through *pro bono* work or involvement with their local communities', he says. 'I hope members will come out in force to support this initiative which may go some way towards improving the lives of Calcutta's children'.

The runners will also be raising money for homeless people in Dublin. 'It is often easy to forget that there are people living in dreadful poverty on the streets of our own country', MacNeill points out. 'We felt it was important to support some of the excellent projects sponsored by local charities as well'.

Runners and walkers are urgently required. The organisers are also looking for people to act as recruiters within their own firms. Sponsorship cards, details of the event and a special training schedule for novice runners will be available in due course.

For more information on participating or recruiting, contact Eoin MacNeill on 661 3311.

Mayo law firm scoops top quality award

Law Society President Patrick O'Connor receives the Excellence Ireland national award in the small service company category from broadcaster Cynthia Ni Mhurchu and Sean Conlon, Chief Executive of Excellence Ireland

The Mayo solicitors' firm P O'Connor & Son has been awarded the Q-Mark for customer service from Excellence Ireland and has also won the national award in the small service company category. The firm, home to Law Society President Patrick O'Connor, is one of only 15 law firms nationwide to receive the Q-Mark.

To achieve the Q-Mark, a company must achieve a score of 75% or higher in the Excellence Ireland assessment. O'Connor's firm achieved a rating of 95% on its most recent audit and beat off competition from 57 contenders in the small service company category

Law Society President Patrick O'Connor and Director General Ken Murphy recently visited Athlone to meet the Midlands Bar Association. Pictured at the meeting are (*back row, l-r*): Dermot Scanlon, Denis Shaw, Jack Duncan, Brian Murphy, Evan Dunne, John O'Carroll (bar association secretary), Derek McVeigh, Thomas Shaw, Sean McMullin; (*front row, l-r*): John Wallace, Sarah O'Reilly (Law Society CLE Executive), Aidan O'Carroll, Barra Flynn (bar association president), President Patrick O'Connor, Director General Ken Murphy and Crona Hughes

The County and City of Limerick Bar Association recently hosted a function to honour the appointment of Judge Tom O'Donnell to the District Court Bench. Pictured at the function are (l-r) Maeve Callanan, president of the bar association, former Law Society President Patrick Glynn, outgoing bar association president Siobhan Fahy, Judge Tom O'Donnell and Jean O'Donnell

Members to benefit from Equity Bank deal

The Law Society has negotiated a range of benefits for members from Equity Bank, including loans at a fixed rate of 2.87% (6.4% APR) to finance practising certificate fee, PII and single premium insurance. Pictured at the announcement of the exclusive package were Equity Bank's Katrina Kelly and Donal Moore, Law Society President Patrick O'Connor and the Society's Director of Finance Cillian MacDomhnaill

Pictured at the Tormey & Co Annual Scholarship presentation were (*back row, l-r*): Karol Mannion, Athlone (third place), Aisling Campion, Athlone (second place), Paul McGrath TD, Clr Kieran Molloy; (*front row, l-r*): Barra J Flynn, Principal, Tormey & Co, William Penrose TD, Tadgh O'Shea (first prize), and Catherine Murphy, Tormey & Co

Chairman of the Younger Members Committee, Stuart Gilhooly, presents a cheque for £1,500 to the Chairman of the Solicitors' Benevolent Association, Thomas A Menton. The money was raised through the committee's annual soccer blitz and quiz nights

Albert Power, Director of Education at the Law Society's Law School, was recently awarded a PhD from University College Dublin. Dr Power's thesis was entitled *The law of easements, licences and covenants running with land in Ireland*

Report on SYS Autumn Conference 1998

The Society of Young Solicitors Ireland held their Autumn Conference in the Ardilaun House Hotel, Salthill, Galway on 13-15 November 1998. Over 250 young solicitors attended.

Three papers were delivered at the lecture session on Saturday morning. Paul Lavery of McCann FitzGerald delivered the first paper, on the *Freedom of Information Act, 1997*. This covered the principal features of the Act, the type of information to which the Act applies, procedures governing the right of access to information, the fees chargeable in respect of such access, the right to amend personal information, and the right to obtain reasons for decisions of public bodies. Paul Lavery also commented on the Office of the Information Commissioner and the publications which will be made available by that office.

The second paper was delivered by Dr Abbie Lane, a consultant psychiatrist in the Dublin County Stress Clinic at St John of God Hospital, Dublin. The title of the paper was highly relevant to all present: *Reducing stress in your working day*! Dr Lane indicated that the key to reducing stress was to identify the source of the stress, and to implement mechanisms to deal with the stress.

Thirdly, Patrick Groarke presented a paper on the new rules of the superior courts dealing with *Disclosure of reports and statements: mutuality of disclosure*. These rules were implemented in late 1998, and deal with pre-trial disclosure. Mr Groarke discussed the types of reports and statements which the parties are required to exchange, the time limits for doing so, the procedures for service and withdrawal of a report. The implications of failure to comply with the rules and the rights of the parties in such circumstances were also outlined, as well as the exceptions to the rules.

A checklist was provided for use when dealing with cases to which the rules apply.

Post-lecture activities included go-karting and horse riding, while the less active chose to lounge in some of the many watering holes in Galway city.

We were delighted that the new President of the Law Society, Pat O'Connor, could join us and our guests, Judge John F Buckley and Director General Ken Murphy.

Taoiseach honours original republicans

Taoiseach Bertie Ahern joined the descendants of Irish republicanism's founding fathers to unveil a plaque honouring lawyers who took part in the 1798 rising. Descendants of United Irishmen Thomas Addis Emmet and Bagenal Harvey, who were both lawyers, were among the guests at the ceremony in the Round Hall of the Four Courts last December.

The plaque commemorates ten lawyers who sacrificed their lives, careers or both fighting for the cause of an independent self-governing republic. Paying tribute to the men, who included Wolfe Tone, one of the rising's key figures, Ahern said the principles for which they fought and died were still important today.

The picture shows (*from left*): Law Society President Patrick O'Connor, An Taoiseach Bertie Ahern and Justice Hugh O'Flaherty, with the plaque in the background

'They all chose to put principle before profit, and the general good above their private gain', he said. 'Today, more than ever, in the aftermath of the *Good Friday agreement*, we are guided by the pluralist, democratic and republican principles of the United Irishmen. They were a truly talented, if tragic, generation'.

The Taoiseach was joined at the ceremony by Law Society President Patrick O'Connor and a number of other guests from the legal profession, including Justice Hugh O'Flaherty, Attorney General David Byrne SC, Justice Minister John O'Donoghue, Chairman of the Bar Council John MacMenamin SC and Law Society Director General Ken Murphy.

Outgoing Presidents' Dinner at Blackhall Place

(*Above*) Michael V O'Mahony (Law Society President 1993-94) shares a joke with immediate Past President Laurence K Shields and President Patrick O'Connor (centre) at the traditional dinner in honour of the outgoing president last December

(*Below*) Three in a row: Frank Daly (President, 1996-97) with Laurence K Shields (President, 1997-98) and current President Patrick O'Connor

At the recent CLE seminar on planning law were (l-r) John Gore-Grimes, Gore & Grimes, Patrick Sweetman, Matheson Ormsby Prentice, Barbara Joyce, CLE Co-ordinator, Tom O'Connor, A&L Goodbody, and Colm Price, Keans Price

Pictured at the recent presentation of parchments to newly-qualified solicitors were Patricia Keary and Aideen Dennehy, both from Castleknock in Dublin, and Regina O'Brien, Cork

The President of the Law Society, Patrick O'Connor, a Mayo man himself, recently hosted a lunch for Mayo-born solicitors who are living and working in Dublin

Retiring Sligo State Solicitor Thomas E Tighe receives a presentation from Judge Oliver McGuinness, marking his many years' service

Law Society President Patrick O'Connor pictured with Yuka Fujita, who is the first Japanese national to be presented with a parchment by the Law Society

Arthur Cox treads the boards

The cast of the play present the proceeds of the performances to the Irish Cancer Society, with (*inset*) Ian Scott and Pat O'Brien in a scene from Reginald Rose's classic drama

The Arthur Cox Dramatic Society staged its inaugural production *Twelve angry men* in the Presidents' Hall at Blackhall Place last November. The play was performed and produced by members of staff and played to a capacity audience on two nights, raising £2,000 for the Irish Cancer Society.

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Book reviews

A casebook on equity and trusts in Ireland (second edition)

JCW Wylie

Butterworths (1998), 26 Upper Ormond Quay, Dublin 7. ISBN: 1 85475 8802. Price: £50

This is the second edition of Professor Wylie's casebook on equity and the law of trusts in Ireland. Thirteen years have passed since the first edition appeared and, in that time, there have been many significant developments in the field. Reflecting this, the second edition is almost twice as long as its predecessor and the casebook now runs to more than 1,250 pages. The paperback volume is attractively presented and, despite its considerable length, is easy to handle and read.

When this casebook first came out in 1985, it was designed (along with a companion *Casebook on Irish land law*) to supplement Professor Wylie's text on *Irish land law* (then in its first edition). We now have the benefit of the third edition of *Irish land law* (Butterworths, 1997), as well as Hilary Delany's recent text dealing exclusively with *Equity and the law of trusts in the Republic of Ireland* (Round Hall Sweet and Maxwell, 1996) (and Judge Ronan Keane's earlier volume on *Equity and the law of trusts in the Republic of Ireland* (Butterworths, 1988)). In view of the existence of these textbook treatments of equity and trusts, Professor Wylie does not attempt in his casebook to provide detailed discussion of the cases which he presents. Instead, each of the casebook's 23 chapters begins with a paragraph or two setting the topic in question in context and directing the reader to further sources of reference. The cases themselves are presented in full 'without editing of any kind, and unadorned by headnotes'. The individual cases are followed with light notes and cross-references to other relevant authorities. As always, Professor Wylie's guidance to the reader is reliable and fully up-to-date.

Noticeable developments from the first edition include the substantial strengthening of the treatment of injunctions (with eight new cases being added), as well as increased coverage of the areas of resulting trusts, undue influence and tracing. In all, some 60 new cases are included (and a handful of cases deleted). In addition, the author has placed a slightly greater emphasis on material from Northern Ireland (although cases from the Republic of Ireland and from the pre-independence Irish courts still comprise the vast bulk of the cases reproduced in the book).

When one surveys the body of Irish case law on equity, as expertly assembled by Professor Wylie in this volume, one is struck by two points. First, it is interesting that approximately half of the cases are more than 50 years old (and indeed the greater number of these are more than 100 hundred years old). It appears that, after a flowering in the 19th century, the development of equity in Ireland slowed in this century, particularly in the later decades. There are surprisingly few important authorities from the 1950s, 1960s and 1970s. However, something of a renaissance has occurred in the 1980s and, perhaps to an even greater extent, in the 1990s. Thus, the casebook includes many important Supreme Court cases from the last two or three years, notably *Lynch v Burke* [1996] 1 ILRM 114 (resulting trusts), *Bank of Nova Scotia v Hogan* [1997] 1 ILRM 407 (undue influence), *O'Mahony v Horgan* [1995] 2 IR 411 (Mareva injunctions), *Dublin Corporation v Building and Allied Trade Union* [1996] 2 ILRM 547 (constructive trusts), and *Mackey v Wilde* [1998] 1 ILRM 449 (specific performance).

A second general point which emerges is that, for this reviewer at least, the Irish caselaw on equity has not yet developed to the point that it can stand alone. The student of equity or the practitioner facing a practical problem will often need to look beyond the Irish cases to the English authorities which have influenced them.

This is not to say that the Irish judiciary are not beginning to assert their independence. One may note, for example, the rejection by Murphy J in *O'Byrne v Davoren* [1994] 3 IR 373 of the decision of the House of Lords in *McPhail v Doulton* [1971] AC 424 (see p702 of the casebook) and the doubts expressed by the same judge (this time in the Supreme Court) in *Bank of Nova Scotia v Hogan* (above) concerning aspects of the leading English authority of *Barclays Bank v O'Brien* [1994] 1 AC 180 (see p495 of the casebook).

However, at least for the moment, one cannot say that there is a fully independent *Irish* law of equity. Although, on one view, this is a weakness of this casebook (which includes no English authorities); on the other hand, it increases its potential contribution. Academic works (casebooks as well as textbooks) do not merely record the law but help to shape it as well. Just as Professor Wylie's seminal text on *Irish land law* has made a major contribution to the development of the Irish law of property, so too will the casebook under discussion assist in the development of the law of equity in Ireland.

A greater awareness of the wealth of Irish authorities, new and old, can only lead to a reduced dependence on English cases in our courts and to the further development of a distinctive Irish jurisprudence. Professor Wylie is to be congratulated on this work of scholarship, which should find a market among both practitioners and students of equity. G

Dr John Mee is a lecturer in law at University College Cork.

The High Court: a user's guide

Kieron Wood

Four Courts Press (1998), Fumbally Lane, Dublin 8. ISBN: 1-85182-307-7. Price: £25

The author has provided an entry-level book which will assist in our understanding of everyday practice and procedure in the High Court. This work will be of assistance to solicitors, judges, barristers and lay litigants. It will be of particular value to students and to those practitioners who only rarely involve themselves in High Court litigation.

Mr Wood is to be commended for his excellent attempt to unravel the intricacies of the superior court rules. It is perhaps surprising that no previous attempt appears to have been made to do this at introductory level. I concur with the view of Mr Justice O'Flaherty, contained in the foreword, that the book, like the rules from which it is derived, 'will continue to be updated over the years'. At entry level, the book is of necessity more accessible and user friendly than the rules. There is a straightforward easy-to-use index of contents which will enable the user to elicit required and essential information speedily. There is also significant reference to caselaw. There is nothing novel in marrying rules with cases. By doing so the author holds the reader's attention.

In many ways this is a book of lists. For example, the differences between the jury list and the non-jury list, between the common law list and the Master's list, are shortly and succinctly explained. Although the lists of what may be contained in the pleadings in certain causes of action may be obvious to the specialist litigation practitioner, they will provide essential information and guidelines to the occasional visitor to litigation. Indeed, there is a chapter devoted to court lists. This chapter will assist the unwary practitioner or lay litigant in navigating the legal diary.

That the book is significantly more than a book of lists is clear from the large number of examples of the rules as they are interpreted in practice. Relevant cases are quoted in brief and succinct fashion, something which appears to be the author's trademark.

The chapters on injunctions and enforcement of money judgments demystify many of the headings which struck fear into the student or newly-qualified practitioner in the past. Garnishee orders, *fieri facias*, Anton Pillar orders, and Mareva injunctions need not instil the same fear and loathing as they may have done previously.

The book endeavours to cover every area of litigation practice in a very general way. I have no doubt that it will provide much comfort to those people entering (for them) previously uncharted waters.

In his preface, Mr Wood says that 'this book does not pretend to be a comprehensively updated version of the rules. It is intended to be a practical guide to some of the more common problems faced by practitioners'. Mr Wood has succeeded admirably. His book will be a valuable source for students, practitioners and lay litigants alike. It is well written. I believe it will become essential reading for all students of law. Practitioners would be well advised to keep a copy to hand alongside the *Rules of the superior courts* themselves. G

James McCourt is a partner in the Dublin firm O'Mara Geraghty McCourt and chairman of the Law Society's Litigation Committee.

The capital markets: Irish and international laws and regulations

Agnes Foy

Round Hall Sweet & Maxwell (1998), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN 1-899738-54-1. Price £98

Agnes Foy's work tackles the important and exciting area of the law and regulation relating to capital markets. This area, which has undergone significant developments since the breakdown of the *Bretton Woods Agreement* in the 1970s, is characterised by exotic arrangements: Swedish company Electrolux issued a Eurobond in 1990, repayment of the principal being dependent upon whether an earthquake occurred in Japan!

The main text of *Capital markets* runs to 575 pages and is divided into two parts and seven chapters. Part I, which runs to 202 pages, is subdivided into two chapters which deal with the players on the capital markets and the products which are offered on such markets. Chapter one considers, *inter alia*, stock exchanges and futures and options exchanges, regulators, professional advisers and both institutional and retail investors. Chapter two on products available to investors in capital markets, deals with, *inter alia*, bonds, equities, derivatives and investment funds.

Part II of the book comprises five chapters and deals with legislation pertaining to capital markets. Chapter three examines the *Central Bank Acts, 1942-1997*. This chapter considers, among other things, the licensing and investigative powers of the Central Bank. Chapter four on collective investment schemes deals with the law and regulations relating to UCITS (Undertakings for Collective Investments in Transferable Securities), unit trusts, investment companies and investment limited partnerships. Chapter five considers the *Netting of Financial Contracts Act, 1995*, while chapters six and seven deal with the 1995 *Stock Exchange Act* and the *Investment Intermediaries Act.*

The book would have benefited from a name index identifying important contributors to the field. A separate section containing a glossary of technical terms would also have been useful, although the author does extensively lay the groundwork for the non-specialist reader in part I of the book. This approach, however, has led to some repetition, the discussion of UCITS at paragraphs 2-68 and 2-69 in part I and paragraphs 4-05 and 4-06 in part II being a case in point. Further, although the author refers to the Black-Scholes Option Pricing Model, this reviewer could find no reference in the index to the Efficient Markets Hypothesis, which is of significance in areas as diverse as insider trading and tracker bonds. In addition, given the recent collapse of Barings Bank (remember Nick Leeson?), a fuller discussion of the objectives of internal control systems and the types of internal controls which should be implemented by financial institutions would have been welcome.

These issues aside, however, Agnes Foy has produced a substantive and readable contribution to a highly-complex and rapidly-changing area. She is to be congratulated both on her efforts and her achievement. G

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

Military law in Ireland

Gerard Humphreys and Ciaran Craven

Roundhall Sweet & Maxwell (1997), Brehon House, 4 Upper Ormond Quay, Dublin 7. ISBN: 1-899738-33-9. Price: £78

It was inevitable, given the burgeoning public interest in Irish military affairs as a result of the high profile attaching to army deafness cases, that a book dealing with military law in Ireland would sooner or later be published. The authors in producing such a *magnum opus* have done an invaluable favour for practitioners and the public alike.

Mrs Justice Susan Denham, in her foreword to the book, describes the publication as 'an important part of the growing library of Irish law'. She compliments the authors in providing a guide for legal practitioners in a complex area of law.

The authors set out to provide a practical guide to the military/civilian relationship in law in Ireland.

Approximately 200 pages (or half of the book) concentrate on outlining offences against military law, the investigation and prosecution of offences, and in providing summaries of Courts Martial Appeal Court judgments from December 1983 until February 1997. Courts martial procedures are outlined in great detail. The decisions relating to legal representation at informal investigation of charges are explained by reference to caselaw – *Scariff v Taylor* ([1996] 1 IR 242) and *Dunford and O'Neill v Minister for Defence and others*, unreported, High Court, Laffoy J, 15 December 1995.

The authors have wisely seen fit to devote an entire chapter to service in the Defence Forces. Promotions procedures in respect of all ranks in the Defence Forces have in recent times undergone major changes. I have no doubt that this particular section of the book will be well visited by many personnel.

For those practitioners involved in cases against the Minister for Defence, the authors have provided a very useful guide which will help to decipher military jargon which one inevitably encounters on discovery of army documents. One can get a feeling for the military/civilian relationship in law by studying the judgments which appear in the form of an appendix. Subject matters referred to include the much-publicised murder trial of Private Michael McAleavey [1 CM/84], rights of privacy and sexual activity in a private home (*Re C* [3 CM/94]), and more routine military matters such as whether a request by a superior officer amounts to an order (*Re Leading Seaman Paul McSweeney* [2 CM/89]). It's a pity that the authors did not provide a commentary on the appendixed caselaw. Perhaps they feel that this is a subject for another day.

The authors have devoted an entire chapter to compensation, negligence and breach of statutory duty. The duty of care of military authorities is explored by reference to caselaw and comparison is continually made with the situation pertaining with the UK's armed forces. Compensation schemes available to military personnel in the UK, Norway and Canada are summarised.

The operation of health and safety legislation in military circumstances is examined. The authors highlight the particular difficulties for practitioners caused as a result of privilege attaching to the proceedings of military courts of enquiry and to UN-sourced documents.

Other topics covered include grievances, representation and interpersonal relationships, international humanitarian law and service overseas by the Defence Forces.

All in all, this is a well-structured, comprehensive and timely book. Military law has been placed in its proper context. Our armed forces are part of our community and it is proper that the public be aware and understand the particular and unique environment in which they operate. This book will benefit the practitioner and the public alike, and provides a bedrock for future works in this area of law. G

Martin Reidy, Capt (Retired), B Comm LLB is an apprentice solicitor with the Athlone firm Tormey & Company.

JUST PUBLISHED

The role of the expert witness
Edited by Bart Daly
Inns Quay (1998),
Richmond Business Campus,
North Brunswick Street,
Dublin 7.
ISBN: 1-902354-01-X. Price: £24

The Family Law (Divorce) Act 1996
Annotated by Nuala Jackson and Stephanie Coggans
Round Hall Sweet & Maxwell (1998),
Brehon House,
4 Upper Ormond Quay,
Dublin 7.
ISBN 1-85800-125-0. Price: £25

The Irish police: a legal and constitutional perspective
Dermot PJ Walsh
Round Hall Sweet & Maxwell (1998),
Brehon House,
4 Upper Ormond Quay,
Dublin 7.
ISBN 1-899738-78-9. Price: £85

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(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 5 February 1999)

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Regd owner: Patrick McDermott, 29 Hawthorn Heights, Letterkenny, Co Donegal and c/o Mrs Eileen Daly, 23 West Chapeltown Avenue, Bersden, Glasgow, Scotland; Folio: 6736F; Lands: Sallaghagrane; **Co Donegal**

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Regd owner: Kevin Dooney and Lynda Dooney of 77 Newbury Avenue, Clonshaugh, Dublin 17; Folio: 8711F; Lands: Property situate in the Townland of Priorswood and Barony of Coolock; **Co Dublin**

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Regd owner: Anthony and Caroline Lynch of 51 Shanliss Avenue, Santry, City of Dublin; Folio: 11328; Lands: Prop 1 – Townland of Santry and Barony of Coolock; and Prop 2 – A plot of ground situate on the east side of Shanliss Road in the Parish and District of Santry and City of Dublin; **Co Dublin**

Regd owner: Juliana Lyons, Teresa Meenan, Catherine Geehan, Katherine Hopkins, Mary O'Reilly, Maureen Flanagan, Grainne Drury and Mary Margaret Kealy of Dominican Convent, Saint Mary's, Cabra, Dublin; Folio: 3075; Lands: Townland of Ballyfermot Lower in the Barony of Uppercross; **Co Dublin**

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Regd owner: Bridget Geoghan; Folio: 419F; Lands: Townland of Muing West and Barony of Trughanacmy; Area: 0a 0r 25p; **Co Kerry**

Regd owner: Lorna Cotter and Liam Griffin; Folio: 32697F; Lands: Townland of Manor West; **Co Kerry**

Regd owner: Patrick Nolan; Folio: 6675F; Lands: Townland of Sackville and Barony of Clanmaurice; Area: 0.581; **Co Kerry**

Regd owner: Mary Windle; Folio: 7207 and 7137; Lands: Townland of Aughrim and Barony of Iraghticonnor; Area: Prop 1 – 17a 0r 7p; and Prop 2 – 9a 2r 23p; **Co Kerry**

Regd owner: Declan and Mary Johnson; Folio: 24193F; Lands: Coolree and Barony of Clane; **Co Kildare**

Regd owner: Denis Bennett; Folio: 2509F; Lands: O'More's Forest and Barony of Maryborough East; **Co Laois**

Regd owner: James Phelan; Folio: 9367F; Lands: Killeaney and Barony of Maryborough West; **Co Laois**

Regd owner: Thomas Reynolds, Mohercregg, Drumshanbo, Co Leitrim; Folio: 18218; Lands: Prop 1 – Moher (Gregg) and Prop 5 – Moher (Gregg); Area: Prop 1 – 12 acres and Prop 5 – 0.225 acres; **Co Leitrim**

Regd owner: Thomas Brennan; Folio: 2208; Lands: Townland of Rivers and Barony of Clanwilliam; Area: 120a 1r 28p; **Co Limerick**

Regd owner: Timothy Hickey; Folio: 7711; Lands: Townland of Ballylahiff and Barony of Glenquin; **Co Limerick**

Regd owner: John J Reynolds, Aghanoran, Lough Gowna, Co Cavan; Folio: 10591; Lands: Aghanoran; **Co Longford**

Regd owner: Michael Bell and Elizabeth Bell, 122 Newfield Estate, Drogheda; Folio: 1599L; Lands: Borough of Drogheda; Area: 0a 0r 10p; **Co Louth**

Regd owner: Hotel and Motel Enterprises Limited, Saint Bridgets, Clonskeagh, Co Dublin; Folio: 11864; Lands: Carrickcarnan; Area: 0a 0r 35p; **Co Louth**

Regd owner: James Coffey, Maheraboy, Kilmovee, Co Mayo; Folio: 42682; Lands: Prop 1 – Townland of Maheraboy and Barony of Costello; and Prop 2 – Townland of Magheraboy and Barony of Costello; Area: Prop 1 – 14a 0r 9p; and Prop 2 – 12.862 acres; **Co Mayo**

Regd owner: Patrick John Moran and Elizabeth Moran; Folio: 16933; Lands: Townland of Ballinrobe Demesne (part) and Barony of Kilmaine; Area: 2.313 acres; **Co Mayo**

Regd owner: Gerard P O' Donnell, Downhill Hotel, Ballina, Co Mayo; Folio: 450F;

Lands: Townland of Ballyholan and Barony of Tireragh; Area: 0a 2r 4p; **Co Mayo**

Regd owner: Michael James Ryan; Folio: 24946F; Lands: Townland of Bundovowen and Barony of Carra; Area: 1.868 acres; **Co Mayo**

Regd owner: Joseph Caffrey, Oldcastle, Co Meath, also Napers Dome, Loughcrew, Oldcastle, Co Meath; Folio: 5606; Lands: Rahaghy; Area: 87a 3r 4p; **Co Meath**

Regd owner: Michael Connolly, The Flat House, Dunboyne, Co Meath; Folio: 2119F; Lands: Prop 1 – Piercetown; and Prop 2 - Pace; Area: Prop 1 – 6.525 acres; and Prop 2 – 7.535 acres; **Co Meath**

Regd owner: Dermot and Jean Butler; Folio: 6427F; Lands: Puttaghan and Barony of Ballycowan; **Co Offaly**

Regd owner: James Egan, White Cottage, Culleenamore, County Sligo; Folio: 15670; Lands: Townland of Culleenduff and Barony of Carbury; Area: 6.026 acres; **Co Sligo**

Regd owner: Michael Fallon, Kilsellagh, Calry, County Sligo; Folio: 14166; Lands: Prop 1 – Townland of Drumkilsellagh and Barony of Carbury; and Prop 2 – Castlegar (E D Glencar) and Barony of Carbury; Area: Prop 1 – 27a 3r 13p; and Prop 2 – 3a 1r 20p; **Co Sligo**

Regd owner: Monica Curran; Folio: 27272; Lands: Barretstown and Barony of Middlethird; **Co Tipperary**

Regd owner: John and Tina Kennedy; Folio: 21610F; Lands: Toberaheena and Barony of Iffa and Offa East; **Co Tipperary**

Regd owner: John King; Folio: 5009F; Lands: Lacka and Cloncorig and Barony of Ormond Lower; **Co Tipperary**

Regd owner: Jane McTighe and Marie McTighe; Folio: 19342; Lands: Castleholding and Barony of Skerrin; **Co Tipperary**

Regd owner: Fintan Nagle, Balrath, Ballinea, Co Westmeath and Glascorn, Ballinea, Mullingar, Co Westmeath; Folio: 14577; Lands: Balrath; Area: 1a 0r 32p; **Co Westmeath**

Regd owner: Mary Roche; Folio: 790(r); Lands: Gibberwell and Barony of Bargy; **Co Wexford**

Regd owner: Ormond Morgan; Folio: 6207 and 2740; Lands: Clara More and Meetings, Trooperstown and Barony of Ballinacor South Wicklow; **Co Wicklow**

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or Bank Building, Hill Street
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Tel: (0801693) 65311
Fax: (0801693) 62096
E-mail: scconn@iol.ie

WILLS

Bazzani, Rosetta, deceased, late of 7 Millbrook Terrace, Old Kilmainham, Dublin 8. Would any person having knowledge of a will of the above named deceased, who died on 11 August 1998, please contact Peter McDonnell & Associates, Solicitors, 5 Inns Court, Winetavern Street, Dublin 8, tel: 01 6795500, fax: 016795457

Campbell, Christina, deceased, late of 4 St John's Avenue, Pimlico, Dublin 8. Would any person having knowledge of a will of the above named deceased, who died on or about 2 October 1998, please contact Mary Cowhey & Company, Solicitors, Main Street, Maynooth, Co Kildare, tel: 01 6285711, fax: 01 6285613

Carrigan, John, deceased, late of Kilshane Cross, Ashbourne Road, Finglas, Dublin 11 and formerly of 296 Cappagh Road, Finglas West, Dublin 11. Would any person having knowledge of a will of the above named deceased, who died on 7 October 1998, please contact Sexton Keenan & Company, Solicitors, 138 Walkinstown Avenue, Dublin 12, tel: 01 4500833, fax: 01 4500226

Corcoran, Martin, deceased, late of Apartment 5A, The Glen, Bettyglen, Raheny, Dublin 5. Would any person having knowledge of a will/codicil of the above named deceased, who died on 14 December 1998, please contact Messrs H C Browne & Company, Solicitors, Malahide Road/Kilmore Road Corner, Artane, Dublin 5, tel: 01 8327849, fax: 01 8327852

ENGLISH AGENTS:

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GAZETTE

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

- **Lost land certificates** – £30 plus 21% VAT
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- **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 March Gazette: 19 February 1999. For further information, contact Catherine Kearney or Andrea MacDermott on 01 672 4800

Dalton, Theresa, deceased, late of 43 Newport Square, Waterford. Would any person having knowledge of a will dated 26 January 1988 of the above named deceased, who died on 15 September 1998, please contact Messrs T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

Daly, Cornelius, deceased, late of Clounmellane, (otherwise Gurrane), Firies, Killarney, Co Kerry formerly of 10 Sunbury Gardens, Dartry Road, Rathmines, Dublin. Would any person having knowledge of a will of the above named deceased, who died on 18 November 1998, please contact David Twomey & Company, Solicitors, Castleisland, Co Kerry, tel: 066 7141211, fax: 066 7142252

Domican, John, deceased, late of Mylerstown, Roberstown, Naas, County Kildare. Would any person having knowledge of the drafting or execution of a will for/by the above named deceased, who died on 26 April 1996, please contact Stephen Maher, Solicitor, 6 The Courts, Newbridge, Co Kildare, tel: 045 433425, fax: 045 434203

Donnelly, John Joseph (otherwise Sean), deceased, late of 53 Milford, Malahide, Co Dublin and formerly of 32 St Fintan's Road, Sutton, Co Dublin. Would any person having knowledge of a will of the above named deceased, who died on 30 December 1997, please contact Orpen Franks, Solicitors, 28/30 Burlington Road, Dublin 4 **(Ref CC/SC)**, tel: 01 6689622, fax: 01 6689004

Donohoe, John, deceased, late of 37 Kylemore Avenue, Ballyfermot, Dublin 10. Would any person having knowledge of a will of the above named deceased, who died on 21 August 1997, please contact Patricia Carroll, Solicitor, Law Centre, 45 Lower Gardiner Street, Dublin 1, tel: 01 8745440, fax: 01 8746896

Donohoe, Sadie, deceased, late of 37 Kylemore Avenue, Ballyfermot, Dublin 10. Would any person having knowledge of a will of the above named deceased, who died on 21 October 1997, please contact Patricia Carroll, Solicitor, Law Centre, 45 Lower Gardiner Street, Dublin 1, tel: 01 8745440, fax: 01 8746896

Dowling, Michael, deceased, late of 2 Kent Road, Ballyphehane, Cork City. Would any person having knowledge of a will of the above named deceased, who died on 18 January 1997, please contact FitzGerald & O'Leary, Solicitors, 70 Shandon Street, Cork, tel: 021 301307, fax: 021 300020

Edwards, Christopher, deceased, late of 494 Crewhill, Maynooth, Co Kildare. Would any person having knowledge of a will of the above named deceased, who died on 11 January 1995, please contact Patrick Neligan, Solicitor, Main Street, Maynooth, Co Kildare, tel: 01 6285322, fax: 01 6285281

Jennings, William, deceased, late of Killuremore, Ahascragh, Ballinasloe, County Galway. Would any person having knowledge of a will of the above named deceased, who died on 2 October 1998, please contact Pearts, Solicitors, 24-26 Upper Ormond Quay, Dublin 7, tel: 01 8722311, fax: 01 8722852

McKeon, Con, deceased, late of Rathvilla, Edenderry, Co Offaly. Would any person having knowledge of a will of the above named deceased, who died on 27 November 1998, please contact Byrne & O'Sullivan, Solicitors, Windsor Lodge, Edenderry, Co Offaly, tel: 0405 31522, fax: 0405 31828

McNally, Stephen Oliver, deceased, late of 7 Castle Court, Newtownforbes, Co Longford and formerly of 27 Grenville Road, Blackrock, Co Dublin and of Edenderry and of 12 Raheen Heights, Limerick. Would any person having knowledge of a will of the above named deceased, who died on 17 November 1998,

LOST A WILL?

TRY THE REGISTRY OF WILLS SERVICE

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CORK.

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Fax: +353 21 279226
Dx No: 2534 Cork Wst

please contact John J Quinn & Company, Solicitors, Earl Street, Longford, tel: 043 41541, fax: 043 45343

Maguire, Frank, deceased, late of Gurranes, Caheragh, Drimoleague, Co Cork. Would any person who holds or has knowledge of a will of the above named deceased, who died on 5 February 1998, please contact Wolfe & Company, Solicitors, Market Street, Skibbereen, Co Cork **(Ref POR)** tel: 028 21177, fax: 028 21676

Mahon, John Aidan, deceased, late of 43 Nugent Road, Churchtown, Dublin 14. Would any person having knowledge of a will of the above named deceased, who died on 16 November 1998, please contact Cogan-Daly & Company, Solicitors, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6, tel: 01 4904494, fax: 01 4903190

O'Shea, Ellen Ann, deceased, late of Corbally Nursing Home and lately of St Gerard's Nursing Home, Limerick. Would any person having knowledge of a will of the above named deceased, who died on 2 January 1999 at St Camillus' Hospital, Shelbourne Road, Limerick, please contact William Fitzgibbon, Solicitor, Mitchelstown, Co Cork, **DX 30 003**, tel: 025 84255, fax: 025 84329

Rice, Margaret, deceased, late of 249 Connolly Road, Ballyphehane, Cork. Would any person having knowledge of a will of the above named deceased, who died on 29 April 1998, please contact Eamon Murray & Company, Solicitors, 6/7 Sheares Street, Cork, tel: 021 276163, fax: 021 274801

Sutton, Thomas, deceased, late of Rathard, Mullinavat, Co Kilkenny. Would any person having knowledge of a will dated 8 December 1980 of the above named deceased, who died on 27 April 1985, please contact Messrs T Kiersey & Company, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

EMPLOYMENT

Assistant solicitor required for Midlands office. **Reply to Box No 10**

Solicitor required – Sligo. Minimum two years' experience in probate and conveyancing. Excellent conditions. Salary commensurate with experience. **Reply to Box No 11**

Experienced apprentice required for practice in large town in the west of Ireland for five to six months' contract commencing April 1999. **Reply to Box No 12**

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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 McAllen Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000, fax: 0044 121 233 1878

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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

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Practice wanted to purchase in Cork City or County Cork/Kerry area – size immaterial – advertiser is outside these areas – all replies will be treated with complete confidence. **Reply to Box No 191**

TITLE DEEDS

In the matter of the *Registration of Title Act, 1964* and of the application of Owens Medical Hall Ltd in respect of property in the county of Carlow
County: **Carlow**
Lands: Premises at no 24 Main Street, Bagenalstown
Dealing no: J5440/98

Take notice that Owens Medical Hall Ltd of Main Street, Bagenalstown, Co Carlow, has lodged an application for registration on the Freehold Register free from encumbrances in respect of the above property. The original title documents specified in the schedule hereto are stated to have been lost or mislaid. The application may be inspected at this registry.

The application will be proceeded with unless notice is received in the registry within one calendar month from the date of publication of this notice that the original documents of title are in existence. Any such notice should state the grounds on which the documents are held and quote the dealing reference above.

Sean MacMahon, Examiner of Titles, 23 December 1998

Schedule

1. Original probate of the will dated 16 March 1951 of Patrick Joseph Owens who died on 20 April 1951 which issued forth of the Kilkenny District Registry of the High Court on 9 November 1951 to Thomas R Chambers, the sole executor therein named
2. Original indenture of assignment dated 21 August 1952 made between Elizabeth Lynch of the one part and Owens Medical Hall Limited of the other part.

Fanning, Ms Nora (otherwise Hanora), a ward of court: Property of 66 Park Crescent House, Blackhorse Avenue, Dublin 7. Would any person holding or knowing the whereabouts of the documents of title relating to the above premises, the property of the above please contact the General Solicitors Office for Minors and Wards of Court, Aras Ui Dhalaigh, Inns Quay, Dublin 7 **(Ref LS/1454)**. The deeds would comprise the following:

1. Original indenture of lease dated 2 May 1974 between Blackhorse Estates Ltd of the one part and Robert Stewart of the other part
2. Assignment dated 24 May 1977 between Mary Mullery of the one part and Nora Fanning of the other part.