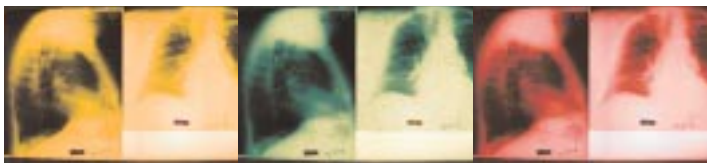
GAZETTE

REGULARS



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

Published at Blackhall Place, Dublin 7, tel: 01 672 4800, fax: 01 672 4801. E-mail: c.oboyle@lawsociety.ie

Subscriptions: £45

Volume 93, number 2

Rochford Brady

LEGAL SERVICES LTD

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

Change to Rochford Brady with our 'one stop shop' service

(law searching and town agency under one roof)

WE CUT YOUR COSTS

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

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

We offer monthly retainer fees for town agency work
Fixed/maximum prices for closing searches
Planning searches carried out in all counties

For our brochure

Phone: 1850 529732 (20 lines)

Fax: 1850 762436 (5 lines)

The profession and EU law

PIC: ROSLYN BYRNE

As lawyers, we are increasingly aware of the huge impact of EU law on domestic practice in Ireland. Some of the more significant examples include the *Competition Acts, 1991–1996*, which have resulted in principles from EU competition law having a relevance for the way in which all businesses trade, whether corner shops or multi-nationals, and the *Liability for Defective Goods Act, 1991*, which implemented the *Product liability directive* and introduced a strict liability regime for some product liability cases. Measures such as the *Transfer of undertakings directive* and the *Working time directive* have substantially supplanted Irish employment law. A similar phenomenon has occurred in environmental law. Conveyancers have also been affected through the impact of the Common Agriculture Policy, specifically in area of milk quotas. And on 1 January 2002, the punt will be replaced with the euro.

For those of our profession who have been educated and lived with the certainties of the common law, the changes brought about by European law may seem intimidating. It may appear to be an alien implant – an incomprehensible and exotic transmutation of the civil law. There may be a temptation to ignore it and turn a blind eye to these exciting and potentially lucrative legal developments.

But there are many good reasons for wanting a knowledge of the subject. European law has opened up whole new areas of practice. Some firms have benefited from navigating around the intricacies of milk quotas and other similar agricultural regulations. And solicitors have advanced clients' cases in the areas of gender, equality and employment using European legislation. It is my view that EU law has more significantly advanced gender equality in this country in the last 25 years than was achieved in the preceding 50 years. Members of the public are able to assert their rights under EU law only to the extent that solicitors are fully conversant and aware of them.

I know that the Law Society is committed to encouraging a greater knowledge of European law through educating the profession. This is being done in a number of ways. For many years, the CLE programme of seminars has addressed specific legal developments such as the *Transfer of undertakings directive* and the *Competition Acts*.

More recently, the Society's EU and International Affairs Committee has put in place an annual 'healthcheck' to flag more important EU law developments in a number of different practice areas.

The very successful *Diploma in applied European law*, now entering its third year, is a more comprehensive educational programme run by the Law School. This meets the twin objectives of giving a grounding in the subject to those who know little about it and also goes into considerable depth in specialist subject areas. The *Eurlegal* section of the *Gazette* seeks to achieve much the same objectives.

It takes courage to push yourself to places that you have never been before, to test your limits, to break through barriers. I urge you to take up the challenge that European law offers. Neither you nor your clients will be disappointed!

Report of the National Crime Forum 1998

Our colleague, Professor Bryan McMahon of Ennis, acted as Chairman of the National Crime Forum which was established by the Minister for Justice, Equality and Law Reform, John O'Donoghue, in February 1998.

The Forum's brief was to canvas comments, assessments and suggestions on crime and crime-related issues from the general public and from national and international experts. The Forum was requested to prepare a report that would help clarify the issues that will need to be addressed in the forthcoming Government White Paper on crime and in the establishment of a crime council.

While (in the words of the chairman) the report 'presents the citizens' views on crime and crime-related issues', it is an interesting document which I commend you to read. Its 'series of reflections' are a testament to all who took part – and particularly our solicitor colleagues who are members of the Forum.

Law reform initiatives

In November 1997, the Council of the Law Society established the Law Reform Committee in order to identify and focus on specific areas of the law in this jurisdiction that need to be updated and reformed. It aims to contribute towards improving the quality, fairness and effectiveness of Irish legislation in a number of selected areas. Furthermore, it seeks to represent the views of the Society's members in relation to a number of legislative initiatives and to enhance the Society's contribution to the development of law in Ireland.

This committee is currently consulting with – and making active contributions to – the relevant Government departments on the issues of domestic violence, mental health and adoption. A review of existing legislation, and the development of new legislation, where necessary, is currently being prepared in each of these areas. The input of the profession is being considered before firm proposals are published. The committee (in my view a worthwhile initiative by a profession that has a great deal to offer Irish society) considers it important that solicitors should take advantage of the opportunity to contribute to legislation of such great social significance. I urge you to let the committee hear from you regularly on legislative changes that you feel are necessary.

Annual conference in May

I am pleased that the Society has decided to hold its Annual Conference in the Ashford Castle Hotel, sited as it is in 'Magical Mayo'. Gillian and I hope to see as many of you there as possible.

Patrick O'Connor
President

Solicitors to be superi

Last month saw the publication of the *Report of the working group on qualifications for appointment as judges of the High and Supreme Courts* by the Minister for Justice, Equality and Law Reform, John O'Donoghue. This points the way for solicitors to be appointed to the High and Supreme court benches.

Perhaps the most important feature of this report is that it was signed by all the members of the working group. After 17 meetings, held over a two-year period, plus many more drafting sessions involving sub-groups, a consensus was reached.

For this to occur, a compromise was necessary between the initial positions taken by the representatives of both branches of the legal profession. The respective submissions to the working group by both the Law Society and the Bar Council are printed in full as an addendum to the report and make interesting reading, as does the entire report.

The origin of this report lies in the debate on the *Courts and Court Officers Bill, 1995*, which took place before the Dáil Select Committee on Legislation and Security. In the course of that debate, the committee indicated unanimously that it was prepared to support an amendment to the Bill which had been put down by Alan Shatter TD, which would have rendered all solicitors qualified for appointment as judges of the High and Supreme courts. The then Minister for Justice, Nora Owen, secured the agreement of the committee that in place of her accepting Deputy Shatter's amendment she would establish a working group to examine further the whole issue of qualifications required to be eligible for appointment as judges of the High and Supreme courts.

On 10 December 1996, she established the working group with the following terms of reference: 'To consider and make recommendations to the Minister for Justice on the question of qualifications for appointment as judges of the High and Supreme courts.'

Each branch of the legal profession had three members of the working group. The majority of the working group, however, were non-lawyers.

Other questions

Although it is clear from the report that the issue of whether or not solicitors should be eligible for senior judicial appointment was the main concern of the working group, the report also examines and makes recommendations on a number of other questions, in particular, on whether judges of the Circuit and District courts should continue to be eligible for appointment to higher courts and the procedures which should govern such appointments and on whether academic lawyers who do not otherwise qualify should be eligible for judicial appointment.

Some 40 persons and bodies are listed as having made submissions to the working group, the greater number being members of the judiciary.

Legislation is required for legal effect to be given to the recommendations, and it is hoped that the Minister for Justice, Equality and Law Reform, John O'Donoghue, will make proposals to the Government in this regard shortly.

With a number of senior members of the judiciary due to retire within the next 12 months, legislation to give effect to the working groups recommendation will have to be introduced soon if solicitors are to be eligible for the forthcoming appointments. G

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

Recommendations of the Working Group on Qualifications f

Recommendation 1

The group recommends that all persons to be eligible for appointment be required to have a significant knowledge and experience of the decisions, practice and procedures of the High Court and Supreme Court and that eligibility for appointment be extended to litigation solicitors in private practice who have such knowledge and experience.

It is recommended that this recommendation might be implemented by the following amendments to the existing legislation:

1) Section 16(7) of the *Courts and Court Officers Act, 1995* should be amended so as to add to the list of criteria to be satisfied by an applicant the requirement 'that he or she has displayed by his or her practice either as a barrister or litigation solicitor a significant knowledge and experience of the decisions, practices and procedures of the High Court and Supreme Court'.

2) Section 5(2) of the *Courts (Supplemental Provisions) Act, 1961* be amended by the insertion of a new paragraph:

'(b) A person who is for the time being a practising solicitor in private practice of not less than 12 years' standing and who has been in practice for a minimum of ten years as a regular High Court or Supreme Court litigation solicitor shall be qualified for appointment as a judge of the High or Supreme Court.'

The terms *High Court or Supreme Court litigation solicitor* and *private practice* might be defined in the legislation as follows:

- *A High Court or Supreme Court litigation solicitor* shall mean a solicitor holding a practising certificate who is regularly engaged in the conduct of proceedings before the High Court or the Supreme Court whether as an advocate or as instructing solicitor to counsel
- *Private practice* shall mean practising as a sole practitioner, in partnership with other practising solicitors or employed by such sole practitioner or partnership and offering his or her services to the public in general'.

The group draws attention to the necessity for any legislation giving effect to this recommendation to be carefully drafted so as to avoid any possible room for dispute as to whether a solicitor had met the eligibility criteria of ten years' practice as a regular High Court or Supreme Court litigation solicitor.

Proximate practice prior to appointment

Recommendation 2

The group recommends that, for barristers, the requirements of 12 years practice should include a continuous period of two years immediately prior to the date of appointment. This provision should not apply to persons deemed to be eligible as barristers by reason of being judges of the European Court of Justice, Court of First Instance or Advocate General or Circuit Court judges.

It is recommended that a High Court or Supreme Court litigation solicitor should be in private practice for a continuous period of two years immediately prior to the date of appointment.

Employed barristers

Recommendation 3

The group recommends that there should be no change to the existing qualifications for practising barristers whereby employed barristers, whether in the public or private sectors, are not deemed to be in practice at the Bar for the purposes of any part of the 12-year period required for eligibility for appointment.

or court judges?

Seated (left to right): Valerie Richardson, Tom Quigley, Minister for Justice, Equality and Law Reform John O'Donoghue, Ken Murphy, Geraldine Clarke
Standing (left to right): Pat Massey, William Fagan, Garrett Cooney, Edith Wynne, Kevin Condon, Turlough O'Donnell, Mary Finlay. Ernest Cantillon and Tom O'Malley are missing from the picture

Members of the working group

Tom Quigley, Chairperson
Ken Murphy, Director General of the Law Society (nominee of the Law Society)
Geraldine Clarke (nominee of the Law Society)
Ernest Cantillon (nominee of the Law Society)
Garrett Cooney SC (nominee of the Bar Council)
Mary Finlay SC (nominee of the Bar Council)
Turlough O'Donnell SC (nominee of the Bar Council)
Tom O'Malley (Law Faculty, NUI Galway)
William Fagan (Director of Consumer Affairs)
Pat Massey (Competition Authority)
Dr Valerie Richardson (Department of Social Policy and Social Work, NUI, Dublin)
Edith Wynne BSc (Mgmt)
Kevin Condon, Department of Justice, Equality and Law Reform (Secretary to the working group)

for Appointment as Judges of the High and Supreme Courts

Solicitors employed in the public service and by commercial entities
Recommendation 4
The group recommends that in regard to the ten years' High Court or Supreme Court litigation experience to be required of solicitors, that up to five years of that litigation experience could be gained whilst employed in the public service or by a commercial entity. For avoidance of doubt, the last two years of such litigation experience prior to appointment must be in private practice.

Service as commissioner or officer of the Law Reform Commission
Recommendation 5
The group recommends that sections 14(2) and (3) of the *Law Reform Commission Act, 1975* under which service by a barrister appointed as a commissioner or officer of the *Law Reform Commission Act, 1975* under which service by a barrister appointed as a commissioner or officer of the Law Reform Commission is deemed to be practice at the Bar for the purpose of qualification for appointment as a judge, and also by a solicitor in relation to appointment as a district judge, be deleted.

Eligibility of circuit and district judges
Recommendation 6
The group recommends that judges of the Circuit Court should continue to be eligible for promotion from the Circuit Court to the High Court or Supreme Court subject to amendments to the *Courts and Court Officers Act, 1995*, which provide that:

a) Such appointments be made only on the recommendation of the Judicial Appointments Advisory Board, and
b) The board will only make such recommendation on its own initiative without the possibility of Circuit Court judges being entitled to apply to the board for such appointment
c) The same eligibility criteria should apply for all Circuit Court judges, regardless of whether they were formerly barristers or solicitors. An appropriate single provision might be that they should become eligible for appointment to the High Court or Supreme Court after four years' service on the Circuit Bench.

Recommendation 7
The group recommends that there should be no change to the existing position whereby district judges are not eligible for appointment to the High Court or the Supreme Court.

Academic lawyers
Recommendation 8
The group recommends that academic lawyers who do not otherwise qualify should not be eligible for appointment to the High Court or the Supreme Court.

Change of profession
Recommendation 9
It is recommended that the law be amended to provide that the cumulative relevant professional experience of a person who has practised both as barrister and solicitor be reckoned for the purpose of the eligibility criteria for appointment to the High Court or Supreme Court.

Consolidation of legislation
Recommendation 10
It is recommended that the relevant legislative provisions relating to the eligibility for appointment to the High Court and Supreme Court be consolidated into one Act.

Why Euro-posts must not become political sinecures

Much has been written in recent months that the European structural and regional funds are shortly to be reformed, in the light of the expected expansion of the membership of the European Union in 2003 or thereabouts to include Poland, Hungary and so on, with the likelihood being that Ireland will receive somewhat less than in previous decades. Of greater long-term significance to Ireland, however, will be the forthcoming reform of the institutions of the European Union, which will be negotiated over the next two or three years. With a potential membership of 26 states in the next ten years, it is widely recognised that institutional reform must take place.

Following the *Amsterdam treaty*, the membership of the European Parliament has been fixed at an upper limit of 700. As more Member States join, this must mean a reduction in the numbers elected in each present Member State. Ireland now has 18 members (including three from the North), but this might be reduced to, say, 12.

Shambolic methods

In the Council, the secretive – and somewhat shambolic – methods of operation and the resultant legislative mess need a radical overhaul. But the greatest need for change involves the composition of the European Commission and the European Court of Justice.

It is generally assumed in Ireland that it is imperative for us to retain the right to make one appointment to the European Commission. It is also generally assumed that, for the most part, we have had a good record in appointing commissioners, at any rate in regard to Peter Sutherland, Ray MacSharry and Padraig Flynn in competition, agriculture and social policy respectively. Suds did much to shake up competition law and practice; Mac the Knife lived up to his name, or at least set the ground for others to wield the knife, in agricultural financial reform; and Pee Flynn will have bequeathed us a remarkable legislative package of social and labour law reforms.

At the European Court, it is more difficult to evaluate the individual qualities of Irish appointees, given the collective nature of ECJ judgments with no dissenting opinions. Certainly, the quality of judge appointed by Irish governments has always been of the highest order, and has included former chief justices as well as judges who are subsequently appointed to the Supreme Court. The present trio of Irish members of the court (Judge John Murray, Advocate General Niall Fennelly and, at the Court of First Instance, Judge John D Cooke) are all very highly regarded.

Padraig Flynn's term at the Commission is due to end later this year, with re-appointment now appearing rather unlikely. Rumour has it that Judge Murray might like to return to Dublin and Bar Library gossip speculates as to his possible successor at the ECJ. In each of these cases, several names have been bandied about as replacements. The Taoiseach of the day (whoever that might be at the relevant time) will make the choice, no doubt with the good of the nation at the front of his mind, but also, just possibly, guided by political considerations as well.

Fighting Ireland's corner

Whatever choices are made, paramount consideration should be given to the need to appoint a person of the very highest qualities to both positions. A political heavyweight is needed at the Commission, both in order to fight Ireland's corner in the tough internal negotiations (not just those concerning European funding) over the next five years and to prove that smaller countries can make a real contribution to the workings of the Commission. Equally, at the European Court of Justice, it is imperative to continue the tradition of appointing a top quality jurist.

The danger in both of these institutions is that, as the European Union grows, it becomes increasingly impossible to retain an institutional membership which includes at least one representative from each Member State. A European Supreme Court with 15 members, as at present, manages to take decisions effectively, but with 25 members there might be real structural problems. There is a case being expounded that greater cohesion would be achieved by a small supreme court of nine members, with an expanded Court of First Instance dealing with a much greater workload. In much the same vein, a Commission of 30 or more members would be an administrative and governmental nightmare. Some have suggested that a Commission of 12 or so members, backed up by junior ministerial appointments, might be more appropriate.

There are, it must be said, also arguments in favour of retaining one representative from each Member State. When the court is faced with difficult constitutional issues, it must be sure to be aware of the constitutional effects its judgments will have throughout the Union. As to the Commission, it has a substantial discretion in the exercise of its mandate, and no country is yet wholly willing to relinquish all direct control over that discretion.

If Ireland is to argue for continued representation on these bodies, it is absolutely imperative that we show that we are willing to appoint the best talent available. That will involve a challenge to those who see such appointments as merely well-paid political sinecures. G

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

The right to misquote

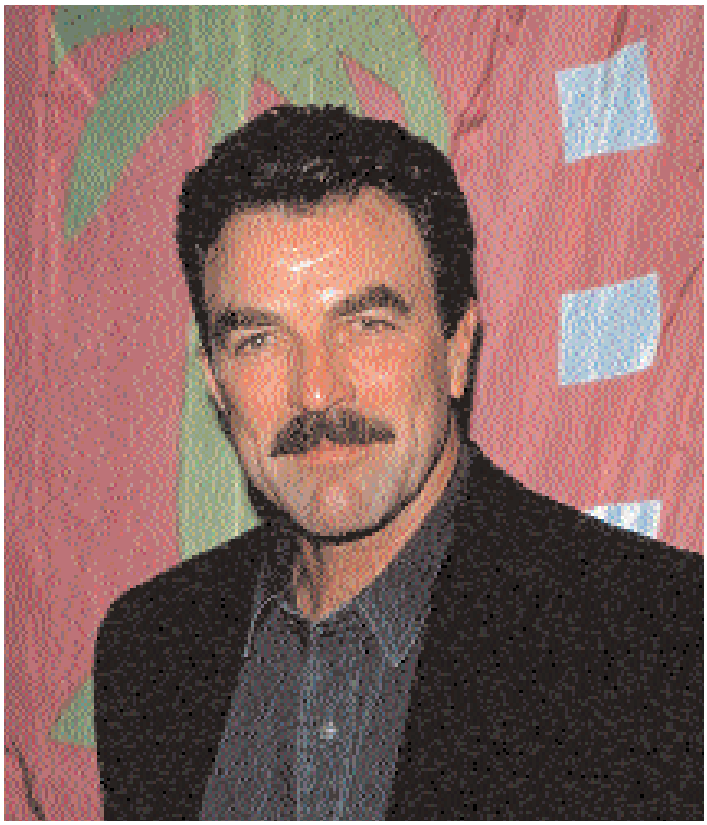
There is, of course, nothing new about quote-dropping. From time immemorial, lawyers in general have been addicted to the process; some more addicted than others. The doctrine of precedent almost compels lawyers to bolster their own views with quotations from others.

Quote-dropping is as old as man himself. Plato used quotations frequently. Cicero's letters are noteworthy for their use of quotations.

Go into any court any day of the week and the advocate will be quoting from some distinguished judge or jurist. The advocate is under a duty, whether in a civil or criminal case, not to quote selectively to the judge. That means that the advocate has a duty to bring to the attention of the court any relevant statute or decision (in terms of a quotation or otherwise) of which he or she has knowledge. This includes bringing to the attention of the court those decisions which are not in one's favour. However, the advocate can quote the unfavourable *dicta* and then, if necessary, attempt to destroy the reasoning involved.

But how far can you go in changing remarks attributed to someone else or, indeed, in making them up altogether?

In *H v Castillo-Puche* (551 F 2d 910 [2nd Cir 1997]) (an appellant decision), a writer and lecturer who had been a friend of Ernest Hemingway sued for libel and invasion of privacy because of unfavourable remarks made about him in *Hemingway in Spain*. The court held that, as originally translated, Hemingway's words were: '[H] is dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him'. The author altered the quotation to the words: 'I don't trust him'. The court held that in transforming the words to the much milder version, Doubleday, the publishers, were fictionalising to some extent. The court concluded that if Doubleday could not have been liable for publishing the uncut version, it could not be liable for deciding to make the passage less offensive.



Hawaiian hardman: You don't mess with Magnum *or* his dad

Magnum opus: Tom Selleck

In *Selleck v Globe International Inc* (212 Cal Rptr 838, C App 1985), Robert Selleck, the father of actor Tom Selleck, sued Globe International for libel and invasion of privacy for publishing an article that contained quotations about Tom Selleck that were attributed to Selleck senior. The magazine had carried the headline *Tom Selleck's love secrets by his father*. Robert Selleck alleged that he never gave an interview to any of the magazine's reporters and did not consent to an interview that the magazine could use. He argued that the quotations were falsely attributed to him and that the statements were published with knowledge that they were falsely attributed to him or with reckless disregard to the fact that he did not make the comments.

The court in the *Selleck* case found that the contents of the article conveyed the impression that Robert Selleck granted an interview to the magazine and divulged matters about his son. The court noted that falsely ascribing statements to a person which would have the same damaging effect as a defamatory statement about him is libel. It held that the article was reasonably susceptible of a defamatory meaning.

Misquotation and the US Supreme Court

The issue of quotation and misquotation also arose in the case of *Masson v New York Magazine* (111 S ct 2419, 1991). In 1983, Janet Malcolm published in the *New Yorker Magazine* a two-part article concerning the sacking of psychoanalyst Jeffrey Masson from his position as Projects Director of the Sigmund Freud Archives. The article apparently was based on Malcolm's taped interviews with Masson. The matters dealt with were of a sensitive nature, considering his position as psychoanalyst. Masson sued Malcolm, *New Yorker Magazine* and Alfred A Knopf Inc, alleging libel and invasion of privacy based on fabricated words attributed to him within quotation marks and misleadingly edited statements.

The Ninth Circuit held that an author may, under certain circumstances, fictionalise quotations to some extent. Malice would not be inferred from evidence showing that the quoted language does not contain the exact words used by the plaintiff provided that the fabricated quotations are either 'rational interpretations' of ambiguous remarks made by the public figure, and did not alter the substantive content of unambiguous remarks actually made by the public figure.

The case went to the US Supreme Court. The court held that quotation marks indicate that the speaker's words are used verbatim and rejected the theory that authors could deliberately alter quotations so long as the quotation contained a rational interpretation of the speaker's words. The court also rejected the thesis that any alteration beyond correction of grammar or syntax by itself proves knowledge of falsity or reckless disregard for the truth.

The Supreme Court concluded that a test of material change in meaning should be applied. On reaching its decision, the court appeared to be influenced by the practical issues relating to impossibility of complete accuracy when reconstructing a speaker's words. The majority decision of the United States Supreme Court has been criticised by some as not protecting the true meaning of quotations, as the decision permits deliberate alterations even beyond grammar and syntax.

There is legal substance to the view that it is not unlawful (*per se*) to alter a speaker's quotation even beyond grammar and syntax provided that there is no material change in the meaning of the words. G

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

Of God and Mammon

From: TC Gerard O'Mahony, Dublin

Law Society President Patrick O'Connor, in reference to the last opening of the new law term church services in the separate Catholic and Protestant churches, found the Protestant service 'a fitting and appropriate service' (*Gazette*, *Letters*, November 1998, page 9). As a result, he advocated a (single) non-denominational service to include all lawyers, since we live in a 'non-sectarian, united, open tolerant society'.

I would be one of the first to endorse Mr O Connor's suggestion if I thought it would increase the spirituality of the occasion, and presumably the fervent desire of all participating in giving as much recognition to the Law of God as to the Law of the Land, divorced from the lure of Mammon and the euphoria generated by the 'Celtic Tiger'.

Dumb and dumber

From: Denise Kirwan, Conway Kelleher Tobin, Cork

At a recent sitting of the District Court in Kanturk, Co Cork, a young female defendant who was in custody was granted legal aid and the district judge enquired which solicitor she wished to represent her, to which she replied, 'she didn't know any of them so it didn't matter to her'. The district judge said he couldn't choose for her, and he asked her to point to a practitioner of her choice in the court. The young girl pointed vaguely across the courtroom in the direction of two local practitioners so the judge told her to be more specific, and asked whether it was the solicitor who appeared to be 'follicly challenged'. At this, the other practitioner replied: 'I'm glad you didn't say "phallically", judge, or I would have to take instructions from my friend'.

At a sitting the previous week in the same District Court area, the district judge dealt with a young gentleman who appeared before him on criminal charges. Later on in the morning, a brother of the first fellow appeared before the court on similar charges. The judge was confused by the physical likeness between the two and asked: 'Were you up before me this morning?', to which the second brother replied: 'I don't know, judge, what time were you up at?'

From: Damien Moynihan, Moynihan, Mulvihill & Company, Cork

I was recently consulted by a client whose mother wished to have him barred from the family home. When asked if his mother had any reason to bring this application, the client related his sorrowful story as follows: 'I came home from town, loaded with drink. I went up to my bedroom and turned on the television to watch *Coronation Street*. The mother came up ranting about the telly being so loud, so I took off my shoe and threw it down the room. I didn't throw it at her; I just threw it out of pure frustration. The problem is that the shoe rebounded off the armchair and broke the f***ing window'.

From: Seamus Roe, Maguire McClafferty, Dublin

Recently, a client furnished to us a hand-written statement in relation to a road traffic accident and it included a description of a telephone conversation between our client and the father of the driver of the other vehicle. The father stated that he could not understand how so much damage could have been done to our client's car. Subsequently, it seems, the telephone conversation degenerated to such an extent that the father ultimately denied that the car was ever out of his driveway on the night of the accident. In the circumstances, it seems somewhat apt that the following sentence appears in our client's statement: 'He also said that he would like his maniac to look at the car'. We assume that 'mechanic' was intended, but one can never be too sure!

Denise Kirwan 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. Send your examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 672 4801, or e-mail us at c.oboyle@law-society.ie

Report points way for solicitors to become superior court judges

Solicitors could be appointed to superior court benches if the Government acts on recommendations made in the *Report of the working group on qualifications for appointment as judges of the High and Supreme Courts*, published recently by Justice Minister John O'Donoghue.

The report says that solicitors with 12 years in private practice, and with at least ten years' experience of regular Supreme and High Court litigation, should qualify for appointment as judges of these courts. Section 16(7) of the *Courts and Court Officers Act, 1995* and section 5(2) of the *Courts (Supplemental Provisions) Act, 1961*, should be amended to make this possible, the working group says.

Currently, solicitors can only be appointed as District and Circuit Court judges. While in opposition, Justice Minister John O'Donoghue – himself a solicitor – in a Dáil debate in 1995 referred to the 'ridiculousness' of the 'arcane rule' whereby all solicitors were denied the opportunity of serving as judges of the superior courts.

Law Society President Patrick O'Connor: 'We believe it's in the public interest that solicitors be eligible to be appointed'

Law Society President Pat O'Connor welcomed the findings in the report. 'The Society is pleased that the recommendations in this report are made on a consensus basis by the members of the working group', he said. 'We look forward to the early enactment of legislation to give effect to these recommendations.

'We believe it to be in the public interest that solicitors be eligible to be appointed as judges of the High Court and Supreme Court', he added.

Copies of the report are available from Government Publications, Molesworth Street, Dublin 2.
(See also Viewpoint, *page 4.)*

US firm sees huge demand

The first US law firm to open an Irish office is seeing a huge demand for American legal services in Ireland, according to one of its senior partners. Galway-born James Fahy of Schiff Hardin & Waite told the *Illinois legal times* recently that there has been huge interest since they opened in Dublin last summer (see *Gazette*, July 1998, page 11). 'The best part about opening the office has been that the interest was real and that there has been a huge demand for American legal service in Ireland', he told the Mid-West legal paper.

Schiff Hardin is based at Dublin law firm McKeever Rowan's offices in the capital. The two firms are affiliated, but remain separate businesses responsible for their own work.

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 January 1999: Conor McGahon, 19 Jocelyn Street, Dundalk, Co Louth – £4,996.32; Michael Owens, 5 Lower Main Street, Dundrum, Dublin 14 – £200.

Call for FLAC volunteers

The Free Legal Advice Centres (FLAC) is a non-governmental organisation which campaigns for full and equal access to justice and provides a range of services designed to achieve that aim. One such service is the network of part-time (mostly evening) advice clinics, where members of the public can get instant access to preliminary legal advice from qualified lawyers. The centres located in the greater Dublin area are looking for volunteers. If you would like to volunteer or need further information, contact Áine on 01 6794239.

IHCA/IIF medico-legal fees revised

The note in last month's *Gazette* (page 13) about the revised IHCA/IIF medico-legal fees contained a number of small inaccuracies. The following are the correct fees and practitioners should note that they apply only to consultants who are members of the IHCA. The fees apply from 1 January 1999 to 30 September 2001.

IIF/IHCA recommended medico-legal fees

Examination and first report

Standard £155
Psychiatrist's £170

Follow-up report

Standard £136
Psychiatrist's £149

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

Half day (am or pm) £381
Full day £534

Consultation with counsel other than on day of hearing

At consultation rooms £104
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.

INDEPENDENT FINANCIAL ADVICE
FOR CLIENTS – COMMISSION FOR YOU

SOLICITORS FINANCIAL SERVICES

All's changed

Under recent regulations most solicitors* who wish to earn commission and provide a service to their clients in regard to investments must now transact this business through Solicitors Financial Services (SFS)

Why not phone Freephone 1800 300900 and see how easy it is

* If you hold letters of appointment from a financial institution you can receive commission from that institution.

Beneficiaries hit by Wards of Court staff shortage

Hundreds of beneficiaries under ward-of-court estates are losing out because of staff shortages in the Wards of Court office, according to Law Society President Pat O'Connor. He revealed that the Society is receiving angry letters from solicitors who cannot finish administering ward-of-court estates because of the problem.

O'Connor said that the office is struggling to cope with an increased workload, a staff shortage and the loss of three senior officials. This is leaving it unable to deal with the dismissal orders needed to release the deceaseds' assets to personal representatives for distribution to beneficiaries.

In a letter to Justice Minister John O'Donoghue, O'Connor said: 'Hundreds of beneficiaries are delayed in receiving their legal entitlements from estates'. And he warned that beneficiaries prevented by staff shortages from getting their distributions could bring a legal challenge.

The problem is worsened by the fact that longer life expectancy means more people are being made wards of court, O'Connor added. Also, the *Powers of Attorney Act, 1996* requires all enduring powers of attorney to be registered by the Registrar of Wards of Court, adding to the workload. He called on the Minister to sanction the appointment of extra staff to the office and to replace the three departed officials.

Minister plans army deafness tribunal

The Department of Defence is currently laying the groundwork for a proposed tribunal to deal with the 11,500 army deafness claims it is facing. According to Defence Minister Michael Smith, the tribunal will base its findings and awards on the so-called *Green book*, which lays down a system of calculating hearing loss.

Law Society Director General Ken Murphy gave a preliminary response to this in the course of a 45-minute interview on Marian Finucane's programme on RTE Radio One. In the course of the interview, he explained and answered a series of questions on the law governing tribunals of inquiry, their difference from courts, immunity from prosecution, their costs, compensation tribunals, and the constitutional and procedural issues involved in obtaining injunctions to prevent publication of materials in various circumstances.

Director General Ken Murphy: told Marian Finucane that tribunal *quantum* would have to match the courts

On the Minister for Defence's proposal, Murphy pointed out that compensation tribunals did work successfully in the Stardust and Hepatitis C cases, but only because the potential applicants believed that the level of compensation that the tribunals would award would match that of the courts.

Defence lawyers sought for Rwanda

The International Criminal Tribunal for Rwanda is currently recruiting lawyers who speak English or French to act as defence counsel. The tribunal's registrar keeps a list of independent counsel who are assigned to suspected or accused persons. Cases can take up to several months to run and lawyers are responsible for their own training. For more information, contact the Law Society's Criminal Law Committee, Blackhall Place, Dublin 7 (tel: 01 6724800).

Work starts on Society's new education centre

Now you see it – soon you won't. Demolition is underway on the Hendrick Place site at Blackhall Place in preparation for construction of the Society's new education centre. Its scheduled completion date is June 2000

BRIEFLY

New disclosure rules: a clarification

In last month's article *Expert evidence: the new rules explained*, it was stated that the new statutory instrument applies to 'any report or statement coming into existence *after 1 September 1997* for the purposes of any proceedings (whether *instituted before or after that date*)'. This should have read: '... *instituted on or after that date*'.

Latent damage paper published

The Law Reform Commission has published a paper on latent damage in contract and tort. The *Consultation paper on the* Statutes of Limitation: *claims in contract and tort in respect of latent damage (other than personal injury)* is available from the Government Publications Office, Molesworth Street, Dublin 2, price £5.

Non-executive directors booklet available

A booklet dealing with the role of non-executive directors is now available from the Boardroom Centre. *The non-executive director: role and contribution* deals with the advantages, tasks, powers and duties of non-executive directors. For copies and other information, contact Kevin O'Connell, director, or Rosemary Wilson, administrator, at the Boardroom Centre, Irish Management Institute, Sandyford Road, Dublin 16 (tel: 01 2078537, e-mail: bdroom@indigo.ie).

German law course set for May

A preparatory course for the qualifying exams for lawyers in Germany will be held in Baden-Baden next May. Passing the exams means you will be a qualified lawyer in Germany, but there is no obligation to practise there. For more information, contact Dr Grannemann & von Furstenberg, Freiburg, (tel + 07 61 207 330).

First amon

Irish language and the law

Irish lawyers are supposed to be competent in the use of the first official language of the State, but how many could honestly claim any useful knowledge of Irish? And can you really conduct a court case purely *as gaeilge* when there is no such thing as an Irish language legal dictionary? Niamh Nic Shuibhne argues that it would be better all round if artificial linguistic requirements were abandoned in favour of making sure that Irish speakers could conduct their legal business on an equal footing with English speakers

The legal status of the Irish language is governed by article 8 of the Constitution, which provides that Irish is the national and first official language of the State; English is recognised as a second official language. Article 8 provides the legal basis for successive government policies aimed at the renewal and promotion of Irish as a contemporary vernacular language. While the ethos of the provision lies in the post-independence quest for ways to affirm a separate identity, its implementation in real terms was assigned largely to schoolchildren and to members of the civil service.

In the context of the official use of language, the legal profession was earmarked for the imposition of a duty of linguistic competence. But can such requirements be justified? Certainly, it is both reasonable and pragmatic to require that lawyers should be competent in the first official language of the state in which they practise. Consider, for example, article 3 of the Spanish Constitution, which provides (among other things) that 'Castilian is the official Spanish language of the state. All Spaniards have *the duty to know it* and the right to use it' (emphasis added). But Irish is the first official language of the State in a constitutional rather than literal sense. Can a universal requirement of linguistic competence continue to be justified in this context?

'The Irish people have a complex relationship with the Irish language. Most do not use it in their daily lives yet profess an emotional commitment to its status and preservation in Irish society'

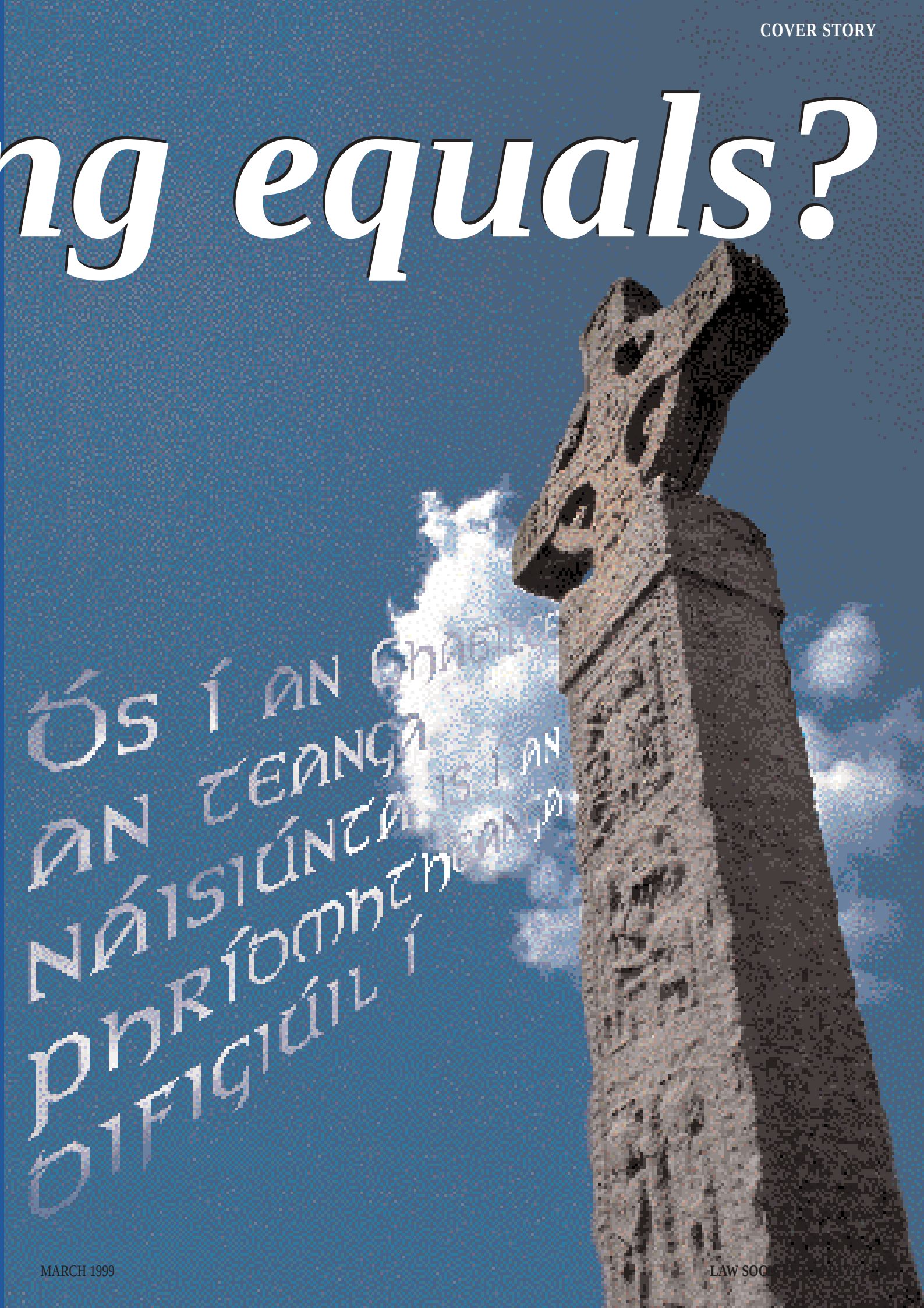
The relevant legislative obligations date back to 1929; 70 years on, the Minister of State with responsibility for Irish language policy is currently preparing a comprehensive *Language Bill*. In the specific context of lawyers and the Irish language, this article will examine the need for reform, distinguishing the revival of Irish *per se* from the contemporary perspective of fundamental language rights.

Language and the law: the current position

The *Legal Practitioners (Qualification) Act, 1929* is grounded in article 4 of the 1922 Constitution, which was similar to article 8 (1937) except that Irish and English were recognised equally as official languages, with Irish as the national language of the Free State. But equal official status belies the fact that, even in 1922, Irish was a *de facto* minority language. Upgrading the status of Irish to *first* official language in 1937 contrasts further with its position in reality. So policies based on the constitutional status of Irish are derived from an exaggerated premise at the outset. By focusing on the revival of the language as an embodiment of status and identity, the actual needs of its speakers are often demoted.

Section 1 of the 1929 Act defines the required competence as *'such a degree of oral and written proficiency in the use of the language as is suf-*

ng equals?



ficient to enable a legal practitioner efficiently to receive instructions to advise clients, to examine witnesses and to follow proceedings in the Irish language'. The right to use the Irish language in the courts was established in 1927 (*R (Ó Coileáin) v Crotty* [61 ILTR 81]) and has been confirmed by both High Court and Supreme Court decisions. It generates a number of reciprocal duties, including the onus on the State to provide and pay for interpretation services where another party to the proceedings does not understand or speak Irish.

The legislative duty on lawyers to acquire and demonstrate competence in Irish would seem to be a corollary of the realisation, in practical terms, of the right to use the language in the courts. But neither the examination structures developed to assess linguistic competence nor the complex web of judicial interpretations of article 8 of the Constitution have created an environment in which the Irish speaker can transact legal business through the first official language on an equal footing with citizens who proceed through English.

Approach that does more harm than good

The standard of linguistic competence required by the 1929 Act may accord with the constitutional status of Irish, but imposing the requirement on *all* legal practitioners ignores the fact that most will never actually use Irish in their professional lives. The policy formulators in the Free State chose to defer to the illusory, or perhaps potential, rather than the actual position of the language. Ironically, this optimistic approach has done more harm than good, generating token respect for Irish in the abstract but not as a real vernacular language.

The Irish examinations of the Law Society perpetuate this culture of superficial compliance. Potential solicitors are deemed to fulfil the legislative criteria for linguistic competence, which were framed in the pragmatic skills of legal practice, by reproducing translations of literary Irish fiction and writing essays on the joys of *A day at the beach*. The evolving content of the examination papers has included more 'legal' essay topics in recent years but the option of the old reliable – the schooldays composition – still remains. The syllabus for the second examination in Irish notes that '*a knowledge of basic legal terminology in Irish is desirable*'. Surely such knowledge should be required. The oral examination is described in the syllabus as '*a very brief and simple conversation*', which, again, does not bear much likeness to the criteria envisaged in the 1929 Act.

A short series of lectures on legal terminology is delivered over two weeks as part of the BL degree course, with written and oral examinations held at the completion of the period of instruction. This approach is certainly more favourable but it is highly unlikely that the level or intensity of instruction provided ensures adequate fulfillment of the legislative criteria.

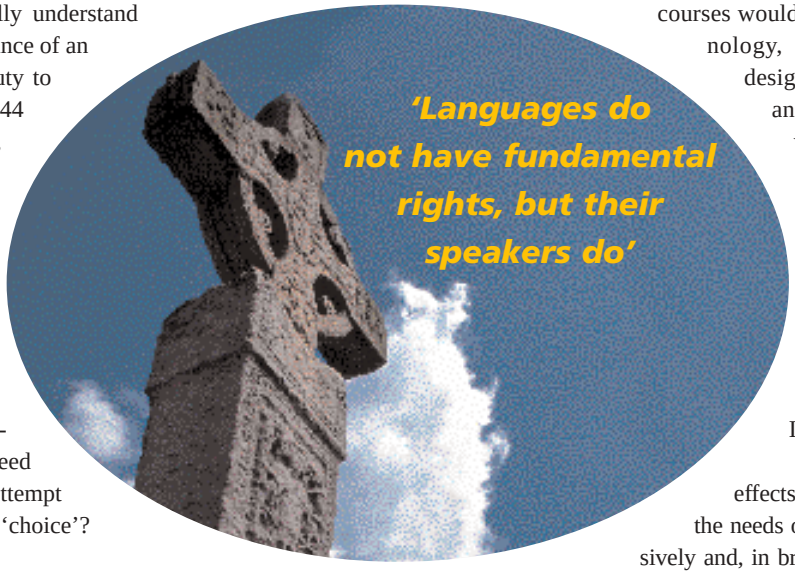
So a citizen who wishes to use the Irish language in court proceedings faces a significant obstacle at the outset, since few lawyers are truly competent to work through that medium. But even where this initial challenge has been overcome, a range of practical difficulties still thwart the supposedly free linguistic choice in the official use of language.

Take, for example, a citizen presenting his side of court proceedings through Irish who has engaged a solicitor to act on his behalf. The solicitor may not be able to derive appropriate legal terminology in Irish, as the *Irish Legal Terms Orders* have not been updated since 1956. Furthermore, an Irish language legal dictionary does not exist. Not all official forms and documents are available in Irish or bilingual versions, so a preliminary claim for the translation of appropriate documentation may have to be initiated in the High Court. It is more or less certain that this claim will succeed, with costs borne by the State, but individual cases still need to be initiated since a general State duty of translation has not been sanctioned by the courts (*Ó Mhurchú v Registrar of Companies and the Minister for Industry and Commerce* [1988]; *Delap v Minister for Justice, Ireland and the Attorney General* [1990]).

Whether the case involves the State or another private individual, a citizen can present all oral and written evidence through Irish, including cross-examination of witnesses who testify in English, using interpretation if necessary. The State cannot, however, be compelled to use the first official language when presenting its side of the case or issuing relevant documentation, even at the request of a citizen (*Attorney General v Coyne and Wallace* 101 ILTR 17 [1963]; *Ní Cheallaigh v An tAire Comhshaoil* [1992]).

Oral evidence delivered through Irish might not be set down as spoken; the English translation may instead be recorded. This places an additional burden on the solicitor to ensure that the evidence is being translated correctly (*Attorney General v Joyce and Walsh* [1929] IR 526). The judge might not actually understand the proceedings without the assistance of an interpreter, notwithstanding the duty to the contrary contained in sections 44 and 71 of the *Courts of Justice Act, 1924* (*Ó Monacháin v An Taoiseach* [1986] ILRM 660).

Finally, where relevant, there is no entitlement to an Irish-speaking jury (*Mac Cárthaigh v Éire, An tArd-Aighne agus Stiúrthto an Irish-speaking jury (* [1998]). Is it any wonder, then, that most Irish-speaking citizens prefer to proceed quietly through English than to attempt to exercise their right to linguistic 'choice'?



The framework for reform

Suggestions on changes to the legal status of Irish are often interpreted as the antithesis of respect for the language, but its overblown constitutional status, as currently implemented, has not succeeded in achieving linguistic equality, at least in the domain of the official use of language. The real and practical obstacles faced by those who wish to transact official business through Irish must be addressed; but it must also be acknowledged that these difficulties are *not* faced by everyone, since the vast majority of Irish people choose to speak English.

The *de facto* minority position of Irish speakers does not diminish their fundamental language rights; it must, however, colour the way in which these rights can be implemented to optimum effect. To ascertain the policy direction most favourable to the language rights of Irish speakers, it is necessary to establish moral and legal justifications for imposing language competence duties on others, and to establish the nature and scope of such duties.

Policies directed towards preserving the Irish language in a cultural sense are mostly designed to secure linguistic survival. This is a perfectly valid ambition in itself but it is difficult to justify the imposition of duties on others solely on this basis.

Languages do not have fundamental rights, but their speakers do. Since the implementation of fundamental rights imposes duties on others, especially on states, linguistic security provides a more acceptable theoretical framework. This means that an individual can use his or her language with dignity, on the basis of full equality and respect for identity and related choices. Responsibility for the viability of the language is placed primarily on the speakers themselves but only where an appropriate linguistic environment exists, where conditions are favourable to the exercise of a genuine right to choice of language.

The declaration of language rights in the absence of a commitment to their realisation in practical terms is a meaningless exercise. The discrepancies between the legal and actual status of Irish in the domain of official language use illustrate this truth.

The Irish people have a complex relationship with the Irish language. Most do not use it in their daily lives yet profess an emotional commitment to its status and preservation in Irish society. If the present constitutional position of Irish reflected the linguistic reality, then it would be necessary as well as reasonable to demand that lawyers should know the first official language of the State. But in view of the *de facto* minority status of Irish, the continued imposition of a blanket duty of linguistic competence is not justifiable in moral terms; nor does it actually serve the needs of Irish speakers in real terms. We should not require the illusory competence of many over the actual competence of few.

The introduction of a specialised, but optional, structure for Irish language competence was recommended by *Fasach* in 1986 and continues to make legal, moral and practical sense. Specialised courses would concentrate on Irish legal terminology, as well as oral instruction designed to develop both competence and confidence in communications with clients and in courtroom procedure. The burden of language revival is thus correctly taken from the legal profession in general terms, while those who choose to participate in the optional structures will actually be capable of carrying out legal business through Irish.

This reform has two principal effects: in a specific sense, it addresses the needs of Irish speakers more comprehensively and, in broader terms, it does so more honestly. The majority can rarely be justifiably burdened with the goals and objectives of minorities, but it can be held responsible for the creation of a context within which members of a minority can realise their own choices.

The Constitution Review Group recommended substantive amendments to article 8, framed in the abstract objectives of linguistic survival, calling for the Irish language to be 'nurtured'. This is not the way to go. Constitutional reform is desirable, but the Irish people should assess their true intentions in respect of the Irish language. Where we hope that the very existence of a constitutional provision will suffice, without a genuine commitment to its implementation, our respect for the nature of constitutionalism is correctly called into question. Even if article 8 remains as it is, its interpretation should be directed towards the achievement of linguistic equality in a real and not exaggerated sense. Reform of the structures for assessing the linguistic competence of legal professionals is long overdue.

The present regime does not really serve anyone efficiently, apart from bolstering a deceptively artificial concept of linguistic honour. The imminent introduction of language legislation provides an ideal opportunity for a reassessment of the 1929 Act: will it be taken? G

Niamh Nic Shuibhne is a PhD candidate at the Europa Institute in the Faculty of Law at the University of Edinburgh.

BIBLIOGRAPHY

Fasach, *An Ghaeilge agus an Dlí: Tuarascáil* (Dublin: Fasach, 1986).

Green, Leslie, 'Are language rights fundamental?', (1987) 25 *Osgoode Hall Law Journal*, pp639-669.

Nic Shuibhne, Niamh, 'The Constitution, the courts and the Irish language', in Tim Murphy and Patrick Twomey (eds), *Ireland's evolving constitution 1937-1997: collected essays*, (Oxford: Hart Publishing, 1998), pp253-263.

Report of the Constitution Review Group (1996).

Salarie

easy targets

A salaried partnership in a law firm might seem to offer you the best of both worlds: you get listed as a 'partner' on the letterhead but you run none of the risks usually associated with this status. Or do you? A recent case in England suggests that salaried partners could be much more exposed than they thought, as Michael Twomey explains

According to a recent Law Society survey of Irish law firms (*Gazette*, March 1998, page 30), 8% of the firms surveyed have salaried partners. As the size of law firms continues to increase, it seems likely that the percentage of salaried partners in those firms is also likely to increase. It is against this backdrop that this article considers the recent action against a salaried partner in an English firm of solicitors (*Nationwide Building Society v Lewis* [1997] 3 All ER 498).

This case concerned a negligence action taken by the Nationwide Building Society against the solicitors' practice of Bryan Lewis and Company. Mr Lewis was the founder and principal in this practice until 1990 when Mr Williams agreed to join him as a salaried partner. After Mr Williams' arrival, the Nationwide requested Mr Lewis to provide it with a report on the title of a property which was being financed by the building society. The property was duly mortgaged to the Nationwide, and a short time after that the mortgagee fell into arrears on his payments. In order to realise its security, the property was sold by the Nationwide but at a considerable loss. The Nationwide alleged negligence on the part of Mr Lewis in the preparation of the report on title and it instituted proceedings against both Mr Lewis and Mr Williams.

In its claims against Mr Williams, the Nationwide made two basic allegations. Firstly, it alleged that Mr Williams was not a salaried partner but was in fact a true partner

d partners:

s?

and therefore was liable for the damage caused by the negligent report on title issued by his partner. This claim was based on a partner's liability for the acts of his co-partners under section 5 of the *Partnership Act 1890*.

Secondly, the Nationwide alleged that even if Mr Williams was not a true partner in the firm, he was nonetheless liable for the damage caused to Nationwide under the principle of holding out – that is, he allowed himself to be represented as a partner in the firm and thus he was liable as if he was a partner under s14(1) of the *Partnership Act 1890*.

True partner or a salaried partner?

The Nationwide's first allegation was that Mr Williams was not in fact a salaried partner but a true partner in the firm. The evidence established that, after agreeing to become a salaried partner in the firm, Mr Williams was paid a salary by Mr Lewis and tax was deducted from his salary under the PAYE system. He was not entitled to a share in the firm's profits and indeed he had baulked at Mr Lewis' suggestion that he pay £100,000 to buy his way into the practice.

However, in favour of a finding that he was a true partner was the fact that he was listed on the firm's notepaper as a partner and had indicated his willingness to become a signatory on the firm's bank account. Nonetheless, the English High Court had no hesitation in holding that the relationship between Mr Williams and Mr Lewis was one of master and servant. In doing so, it confirmed the well-established principle that just because a person is listed on the firm's notepaper as a partner does not make him a partner. It was therefore held that Mr Williams was not liable under s5 of the *Partnership Act 1890* for the allegedly negligent title report prepared by Mr Lewis since he was not his partner.

Liable as a partner by holding out?

The second line of argument adopted by the Nationwide was that Mr Williams was liable to the Nationwide as a partner by holding out. Under s14(1) of the *Partnership Act 1890*, *'everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a*

ARBITRATION SEMINAR

WEDNESDAY, 24 MARCH 1999
9.00am to 1.00pm

VENUE
President's Hall, Law Society of Ireland,
Blackhall Place, Dublin 7

PROGRAMME

■ **Introduction by Chairman, Frank Murphy**	
■ **Arbitration**	• How does a party get to arbitration • Arbitration schemes • Statutory arbitration • Advantages and disadvantages of arbitration
■ **Arbitration clauses and appointment of arbitrator**	• Drafting arbitration clause pre-dispute • Drafting arbitration clause post-dispute • Appointment of arbitrator
■ **Power of arbitrator**	• Section 19 of the 1954 Act • Attendance of witnesses • Procedural issues
■ **Control by the courts**	• Section 22 of the *Arbitration Act, 1954* • Case stated • Section 5 of the *Arbitration Act, 1980*
■ **Enforcement and challenging award**	• Rules of the Superior Court • Power of court to remit award • Power of court to set aside award
■ **Costs**	• Power of the arbitrator • Power of the court
■ **International (Arbitration Commercial) Act, 1998**	• How it applies to domestic arbitration
■ **Panel Discussion**	

SPEAKERS INCLUDE

Solicitors	Michael Carrigan, *Solicitor, Eugene F.Collins, Dublin* Bernard Gogarty, *Smyth & Son, Louth* Kevin Kelly, *McCann FitzGerald, Dublin* Frank Murphy, *Gleeson McGrath Baldwin, Dublin*
Legal cost accountant	Robert Connon, *Cyril O'Neill & Company, Dublin*

ALTERNATIVE DISPUTE RESOLUTION SEMINAR

WEDNESDAY, 28 APRIL 1999
10.00am to 1.00pm

VENUE
President's Hall, Law Society of Ireland,
Blackhall Place, Dublin 7

PROGRAMME

SESSION 1	CONCILIATION
SESSION II	MEDIATION
SESSION III	INDEPENDENT EXPERT
SESSION IV	MINI TRIAL

SPEAKERS INCLUDE

Gerald O'Sullivan,
McBains Cooper International
David Keane,
McGreevey Keane Mediation
Timothy Bouchier-Hayes,
Solicitor, McCann FitzGerald
Anthony Hussey,
Solicitor, Hussey & O'Higgins

APPLICATION FORM

ARBITRATION SEMINAR £100.00 per person
ALTERNATIVE DISPUTE RESOLUTION SEMINAR £100.00 per person

SPECIAL OFFER: Register for both seminars – pay only £175.00 per person

Name _____ DX _____

Firm _____ Phone _____

Address _____ Fax _____

_____

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

Please reserve _____ place(s) for me on the alternative dispute resolution seminar

I enclose cheque £ _____

Please return to: Mary Lynch, Law Society of Ireland, Blackhall Place, Dublin 7

partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm'.

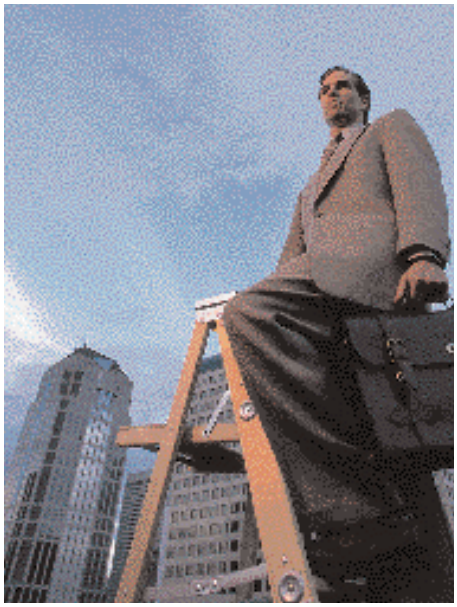
It is worth emphasising that, under the terms of s14(1), a person who holds himself out as partner is not deemed to be a partner but only '*liable as a partner'*. For this reason, this part of the Nationwide's case was completely separate from its unsuccessful claim that Mr Williams was a true partner in the practice. Indeed, this aspect of the case represented the greatest likelihood of success for the Nationwide. This was because, while denying liability under s14(1), Mr Williams accepted that he had held himself out as a partner by allowing his name to be listed as such on the firm's headed notepaper.

It is to be noted that the requirement that the third party give *'credit to the firm'* has not been given a technical meaning by the courts but has been interpreted as requiring a third party to act to its prejudice on the faith of the holding-out being true. It is probably for this reason that Mr Williams' lawyers did not seek to contest the contention that the Nationwide had given credit to the practice by seeking and accepting advice on the mortgage.

Having accepted that he held himself out as a partner and that the Nationwide had given credit to the firm, Mr Williams' defence was that the Nationwide had not given credit to the firm *'on the faith of'* the holding out as required by s14(1) of the *Partnership Act 1890*. He claimed that when the Nationwide instructed Mr Lewis to prepare the report on title on the property, it was unaware of Mr Williams' presence in the practice and therefore could not be said to have acted on the faith of the holding-out.

The High Court seemed to accept that the Nationwide was unaware of Mr Williams' existence when it issued its instructions to Bryan Lewis and Company. However, it held that in assessing whether the Nationwide had acted on the faith of the holding-out, its knowledge on the date of the issue of its instructions was only part of the issue. The High Court held that one had also to take into account the Nationwide's state of mind on the date Bryan Lewis and Company replied to this request, which it did by issuing the report to the Nationwide.

The evidence established that the report on title was received by the Nationwide under cover of the firm's headed notepaper, which had Mr Williams listed as a partner. For this reason, the High Court held that the Nationwide was entitled to assume that the report on title was in fact that of a two-partner firm. The High Court concluded, without further analysis, that for this reason the Nationwide must be taken to have relied on the representation that Mr Williams was a partner.



It is significant that the High Court did not look for proof that the Nationwide took notice of Mr Williams' name on the headed notepaper but rather was prepared to make this assumption.

Having assumed that the Nationwide read the headed notepaper, the court then made a bigger leap still, namely, it assumed that the Nationwide relied on the representation that Mr Williams was a partner. On this basis, the High Court held that under s14(1) of the *Partnership Act 1890*, Mr Williams was liable *'as a partner'* and was thus liable for the allegedly negligent report of Mr Lewis.

The approach taken by the English High Court, if followed here, simplifies the task of a third party who alleges that a salaried partner is liable for holding himself out as a partner under s14(1) of the *Partnership Act 1890*. The effect of *Nationwide v Lewis* is that, in the absence of evidence to the contrary, if a salaried partner's name is on the headed notepaper, a third party who receives the letterhead will be assumed, firstly, to have seen his name and, secondly, to have acted on the faith of this holding-out. So the onus of proof is on the salaried partner to prove that the third party did not see his name or, if he did, that he did not rely on this holding-out.

Will *Lewis* be followed in Ireland?

There are good reasons for arguing that some aspects of the High Court's decision in *Nationwide Building Society v Lewis* will not be followed in Ireland. This is because s14(1) states that, before a person can be liable on the basis of a holding-out, there must be a representation that he is a partner *'in a particular firm'*. Similarly, s14(1) also requires the third party to have given credit *'to the firm'*.

These both indicate that the firm must actually exist. Where there is no firm in existence, it is difficult to see how a person can be liable under s14(1) since there can be no firm in which he represents himself as a partner.

In *Nationwide Building Society v Lewis*, there was no partnership in existence. After all, Mr Lewis was at all times the sole principal in the firm of Bryan Lewis and Company and the High Court, in the first aspect of the case, held that there was no partnership between Mr Lewis and Mr Williams.

Yet this argument does not appear to have been pleaded by Mr Williams' counsel. Nor has it been considered to date by the Irish courts. When it does arise, it is thought that the Irish courts will follow the strict wording of s14(1) of the *Partnership Act 1890* and refuse to follow this aspect of the decision in the *Lewis* case.

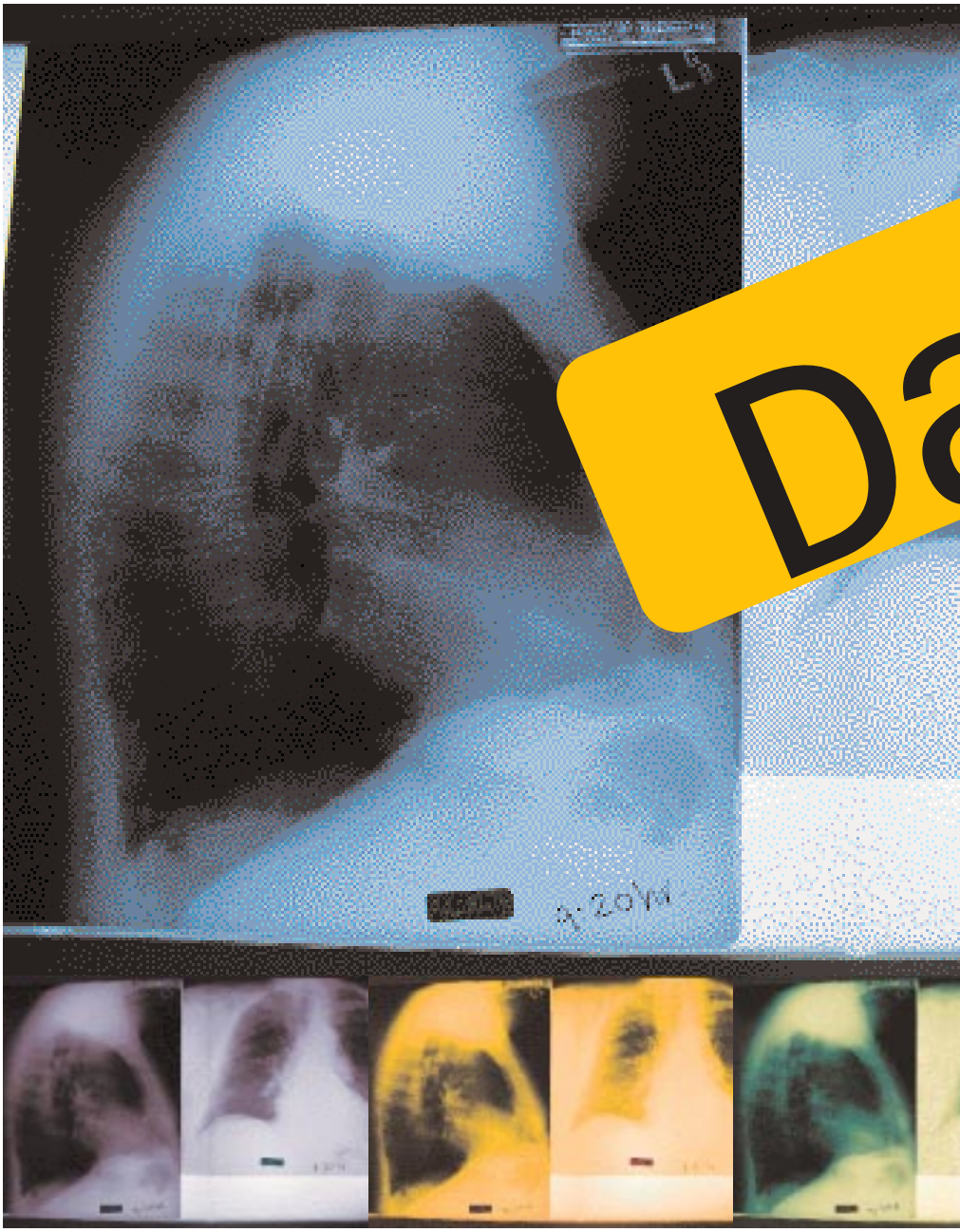
However, the other aspects of the *Lewis* case do not raise the same concerns and are likely to be followed in Ireland. Thus, in the absence of evidence to the contrary, an Irish court is likely to assume that a third party in receipt of the headed notepaper of a firm is, firstly, aware of a salaried partner's name on the notepaper and, secondly, that the third party has relied on this holding-out so as to make the salaried partner liable under s14(1) of the *Partnership Act 1890*. In this way, the burden of proof is transferred to the salaried partner to show that the third party was not aware of his name on the notepaper or that the third party did not rely on this fact.

'The position of a salaried partner might be described as the worst of both worlds – he does not share in the profits of the firm or have any say in its management but is nonetheless liable to third parties'

Finally, *Nationwide Building Society v Lewis* is interesting for one other reason, namely, it illustrates why the position of a salaried partner might be described as the worst of both worlds – he does not share in the profits of the firm or have any say in its management but is nonetheless liable to third parties who have relied on the representation that he is a partner. G

Michael Twomey is a solicitor and a consultant in partnership law to the Law Society's Law School.

Asbestos-related litigation is still in its infancy in this country, but the long gestation period of asbestos-related illnesses means that we could be seeing more and more cases over the coming years. Niall Hill outlines what we know about the disease and highlights the legal issues it raises



Knowledge of the link between asbestos exposure and certain diseases has accumulated slowly since the turn of the century. Exposure to asbestos fibres can, in certain circumstances, lead to diseases or illnesses which can be divided into four categories:

a) Pleural plaques
b) Asbestosis
c) Lung cancer, and
d) Mesothelioma.

Asbestos is the name given to a group of naturally-occurring silicate minerals commonly found in rocks world-wide. Although there are many types of asbestos, only three are of any significance industrially, the remaining types having been exploited to a minor extent. The common names of the three main types of asbestos are 'blue', 'brown' and 'white' asbestos, with white asbestos being the more common in recent years.

During the Industrial Revolution and beyond, asbestos was heralded as the wonder-product. It is light-weight, insulates against both electricity and sound, it is heatproof, does not decay, it is resistant to water, is flexible and can be woven into fabric. Over the years the uses for this new product multiplied, with the result that it can now be found in cement products, fire resistant textiles, brake linings and insulation, to name but a few. The main areas of industrial exposure would be in the construction and ship-building industries, but exposure can also occur in the home. Claims for damages for asbestos-related illnesses have been brought successfully in the courts of Great Britain and Northern Ireland for at least the last 30 years, but are only beginning to surface in the Republic.

Pleural plaques. This is a benign condition which affects the lungs. The pleura is a membrane which surrounds the lungs and some asbestos fibres can work their way out to the pleura where they get lodged and cause fibrosis or scarring to occur. As a result, the pleura can thicken and this in turn would restrict the expansion of the lungs and lead to breathlessness. Pleural plaques are not clinically harmful but do act as a useful marker of asbestos exposure.

Asbestosis. The first case of asbestosis to be described fully in medical literature was by Dr WE Cooke in 1924 ('Fibrosis of the lungs due to the inhalation of asbestos dust', *British Medical Journal*, Vol 2, p147) and it was he who later coined the word 'asbestosis' in 1927 ('Pulmonary asbestosis', *British Medical Journal*, Vol 2, p1024). This is a condition of the inner lung which affects breathing. It can be quite trivial but can also be progressive; it can become disabling and can even cause death. Asbestosis occurs when the fibres of asbestos are inhaled and retained and attach to the cells of the lung which lay down new fibrous tissue. The fibres are microscopic. The fibrous tissue is useless as a substitute for air cells.

anger in the air

Asbestosis normally takes between 15 and 25 years to manifest itself and it is difficult to diagnose in its early stages. It is an irreversible condition for which there is no cure. Symptoms include shortness of breath, coughing, chest pains and clubbing of the fingers. Many sufferers experience increasing disablement and pain until their heart or lungs eventually fail.

Lung cancer. During the 1930s, attention was drawn to the occurrence of lung cancer in workers with asbestosis (Wood, WB and Gloyne, SR [1934], 'Asbestosis: 100 cases', *Lancet*, Vol 2, pp1383-5). The 1947 British annual report of the chief inspector of factories reported evidence of the association between asbestosis and cancer of the lungs or pleura. Unfortunately, individual lung cancers that are caused by asbestos are indistinguishable from those that are caused by cigarette smoking or other causes. The latency period for lung cancer caused by asbestos exposure is usually between 15 and 35 years. If a tumour can be detected early enough, the lung may be removed and in some cases the patient may recover.

Mesothelioma. Asbestosis can be associated with lung cancer but is not to be confused with mesothelioma. Mesothelioma is a cancer but it occurs outside of the lung, in either the pleura or the peritoneum (the lining of the abdomen). This condition is always fatal, with the tumour doubling in size approximately four times every year. The symptoms become apparent only two years or less before death and the lag period between first exposure to asbestos and the development of a tumour averages 40 years, although this can vary greatly. Unlike lung cancer, a past history of smoking is irrelevant. Exposure to asbestos is the only recognised cause of mesothelioma. The link between asbestos and mesothelioma was first made in South Africa in 1960 (see Wagner, JC, Sleggs, CA and Marchand, PE [1960], 'Diffuse pleural mesothelioma and asbestos exposure in the North Western Cape Province', *British Journal of Industrial Medicine*, Vol 17, pp260-71).

Mesothelioma risk is not confined to workers in the asbestos industry and all types of asbestos can cause it, although blue asbestos is more dangerous than other types. It is well documented that mesothelioma has been found among the families of asbestos workers and even among those who live in the neighbourhood of factories that use asbestos.

Asbestosis: the legal issues

Although asbestos-related litigation is commonplace in the UK, few cases actually get to trial on liability. The case of *Gunn v Wallsend Slipway & Engineering Co Ltd* ([1988], *The Times*, 23 January 1989) is unusual in this respect in that it took a detailed look at the issues of foreseeability and causation. The only common ground in this case was that the cause of death was mesothelioma.

The judge found that the deceased's exposure to asbestos was in the course of shaking-out her husband's working clothes. The issues were whether the defendant owed a duty of care to the deceased in relation to her exposure and, if so, from what date.

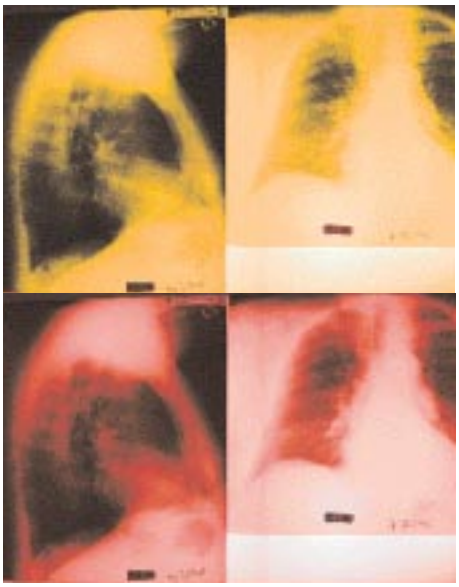
Until 1960, the danger of asbestos was attributed only to heavy exposure. The link between asbestos exposure and mesothelioma was not established prior to 1960 and no relevant statutory rules were in place prior to 1969. No annual report of the chief inspector of factories prior to 1965 hinted at a potential risk to an employee's family, and it was not until 1965 that the incidence of mesothelioma among immediate families of asbestos workers became publicly known.

The defendant did not in fact foresee the risk of injury to an employee's wife from the

employee's exposure to asbestos dust. The plaintiff in this instance lost the case as the judge held he failed to establish that the defendants owed any relevant duty of care to his deceased wife when she initially contracted the mesothelioma.

It is important then to try to ascertain the 'date of guilty knowledge' in the case of a potential defendant in these cases. The history of the development of asbestos-related illnesses is well documented and no employer nowadays could reasonably say that they are not aware of the risks that come with working with this substance. Diseases may, however, only manifest themselves 30 to 40 years after initial exposure and it is the knowledge of the defendant at that date which will be important.

In the early 1960s, a defendant might have been justified in stating that certain information in relation to asbestosis was highly specialised, appearing only in medical journals and such like. The defendant may not therefore have been expected to foresee these types of risk. But by the late 1960s, most of the risks were widely known, even outside of the specialised medical journals. If a defendant works with or manufactures asbestos on a full-time basis, it could be argued that they should be expected to have specialised knowledge, even of up-to-date medical opinion published in journals.



Deaths from asbestos-related illnesses are expected to rise over the next 20 years

Even in the UK, where asbestos-related litigation has been a feature for a much longer period than here in Ireland, it is expected that deaths arising from mesothelioma will increase for the next 20 years or so (see Peto, J, Hodgeson, JT, Matthews, FE and Jones, JR [1995], 'Continuing increase in mesothelioma mortality in Britain', *Lancet*, Vol 345, 4 March 1995, pp535-539). If it transpires that a defendant covered up his knowledge of the risks of asbestos in order to prevent a flood of cases being taken against him, and in the meantime took no precautionary measures, this may lead to awards of exemplary damages.

It will also be important to consider the limitation period in asbestos litigation. The *Statute of Limitations (Amendment) Act, 1991* has eased the situation for potential plaintiffs but it is still a factor that cannot be forgotten.

The legal and medical worlds must ready themselves to assist the increasing number of asbestos disease victims. Potential defendants must also be prepared to meet the claims which are arising. Because of the long latency period of the recognised asbestos-related illnesses, a likely defendant may no longer be trading. Tracing the company and its insurers is – and will remain – an obstacle for claimants to overcome, and they may well go uncompensated unless an insurer can be found.

The legal profession clearly has an important role to play in informing victims and defendants alike of their respective rights and duties. G

Niall Hill BL is a practising barrister.

On-line opportunities knock

Lawyers have rarely been first in the queue to embrace new technology, but hopefully all that is set to change. In the second of three articles on member services, Claire O'Sullivan explains how the Society's new web site can help your practice and make your professional life easier

Since the first computers began to appear in the workplace, the Irish legal profession has managed, in large part, to resist the pressures to come to grips with the Information Technology age. Paid-up members of a profession which prides itself on its adherence to history and tradition, many solicitors freely admit that they often feel uncomfortable with the pace of technological change and the lack of the old certainties in the new high tech world. As one legal computer supplier wryly commented: 'The difficulty with solicitors is not trying to get them to buy your product; it's a much more fundamental problem of getting them to adjust their mindsets from the 19th to the 21st century'.

But anecdotal evidence would now suggest that this period of splendid isolation may be nearing an end. Today, many solicitors, prompted in some instances by the demands of clients, are keen to learn more about the computer hardware, software packages and information services available to the legal profession and indeed to explore new areas of work or attract new clients through the judicious use of new technologies.

One of the most revolutionary technological advances in recent years, and one which has the potential to alter the workings of legal practice forever, has been the development and growth of the Internet and e-mail communication. The Internet is now the fastest-growing communications and information medium in the world, and within a number of years is destined to become the principal method of developing and conducting business globally – a fact which all lawyers would do well to consider. At the end of 1998, there were approximately 100 million Internet users worldwide, and this number is expected to grow to 300 million by the year

2002. Christmas trading on the Net at the end of last year was $2.3 billion – three times the figure for the previous year. Clearly, those solicitors who conquer their technophobia and master the new medium will find rich pickings indeed, both in Ireland and abroad.

A small number of Irish solicitors have now developed their own web sites and use them in a myriad of ways to attract new business, impress existing clients and generally advertise their presence to the world. One such firm is Lanigan Malcomson & Law, based in Carlow, which has become one of the first legal practices in the country to offer building estate property on e-mail.

One of its clients, Nariton Construction, recently sold 100 houses at the Laurels in Carlow over the course of a weekend. As there was considerable pressure to complete the transaction within the shortest possible timeframe, Lanigan Malcomson & Law offered contracts, title and subsidiary documentation to purchasers' solicitors on e-mail. The booklet of title consisted of word-processed text, pictures, text boxes and scanned images. As the development proceeds, they hope to post the title on their web site. According to senior partner, Frank Lanigan: 'We feel that this development will enable our clients and ourselves to conduct better business'.

This is just one example of how the Internet, and e-mail in particular, can be employed by solicitors to deliver faster and more cost-effective services to their clients.

Practical benefits for the profession

As many members will now be aware, the Law Society recently launched its Internet site (you can access it at www.lawsociety.ie). The site has a dual focus: to educate and inform the general public about the work of the Law Society and the solicitors' profession in Ireland, and to act as an information resource for members regarding the activities and functions of the Society. We also hope that the site will tweak that 19th century mindset into becoming more technology-conscious, allowing members to observe for themselves the practical benefits that the Internet can deliver to the development of their practices

The site has been structured around the activities of the various committees of the Society. Each committee has been allocated its own web page which details its objectives, activities, projects and publications. But the site contains much more than details about the committees. A great deal of consideration has been given to developing aspects of the site that will have particular appeal to solicitors and provide useful information and advice in the conduct and management of their practices.

Out of site: President Patrick O'Connor launches the Society's Internet site

As a result, a number of interesting features have been developed on the site including a 'what's new' page, which, as its name suggests, provides up-to-the-minute information on activities and events at the Law Society (such as forthcoming conferences and seminars), recent Society publications, and professional information for members. The site also includes a recruitment page where members can search the list of current employment opportunities, updated on a weekly basis. Full details of the continuing legal education (CLE) programme are also published on the site and it is hoped that members will shortly be able to book and pay for courses on-line.

For students and prospective lawyers, a large section of the site has been devoted to education, with comprehensive details on how to become a solicitor, the application and examination procedure, the syllabi of the various courses and the current Law School fee structure. These pages also provide information about the procedures relating to applications from non-national lawyers to become Irish solicitors and the entire syllabus of the qualified lawyers transfer test. Details of post-qualification diplomas and certificates organised by the Law School's Legal Education Co-ordinator, TP Kennedy, are also provided.

The *Regulatory* pages detail the work of the three committees coming under the auspices of this department, with a section devoted to complaints against solicitors and the Law Society's role in such circumstances.

For browsers who haven't had the opportunity to read the latest issue of the *Gazette*, it is now possible to download the leading articles from each issue on-line and we hope to archive previous editions for ease of reference.

The member services area gives details of the entire range of services available to solicitors, including information about the retirement scheme, the company formations service, and conference and entertainment facilities at Blackhall Place.

Plans to develop the site

Unlike other publications, a web site is not static and to be successful requires constant updating and expansion. The Society has a number of plans for the development of the site over the coming months, the most significant of which will be the creation of a restricted access area, which will be available to members through the use of a specially allocated PIN number. Essentially, what this means is that every solicitor in the country will be sent their own randomly-generated PIN number over the next few months and, using this number, they will be able to gain access to a specially designed area of the site where they will be able to view the text of all practice notes and directions issued by the Society since 1986 and download precedent forms and letters, such as the recommended family law declarations. This area will also be used by the Society to send information to its members on policy issues and practice matters of a more sensitive nature.

In association with LawLink, the Society will shortly be able to offer a 'case a day' from the FirstLaw service edited by Bart Daly and within the next few months we will be launching a new service known as 'Friday legal'. This will be an e-mail alert facility sent to all members of the society, advising them of changes in legislation, policy or practice and providing legislative updates and other useful information.

LawLink

LawLink was established by the Law Society's Technology Committee in 1989 to research and develop a nationwide communications service for the legal profession and also to set up electronic access to government databases and those of other relevant private bodies.

Now managed by the IFG group, which

INTERNET TRAINING OFFER

The Law Society, in association with LawLink, has arranged a number of Internet training courses for members at a specially reduced rate. The course will provide a basic overview of the Internet, how to get around the web, sites of interest to solicitors, and an overview of the uses of the Internet for the legal profession. Courses will be held in three venues around the country and will be administered by Professional Training. The course costs £50 for a half-day, and bookings can be made through LawLink on 01 676 6222. Courses are subject to a minimum number of six per class.

acquired a majority shareholding in 1994, LawLink offers a wide variety of services to Irish solicitors, including direct access to the Companies Office, the Dublin Land Registry, the legal diary, a tax research library and a variety of business information databases such as Dun and Bradsheet and *Financial Times* information. Subscribers can also access live business news from *Business and Finance* magazine, legal, company and business news from RM on-line, and regular information on stocks and shares from the Dialog Corporation (a leading provider of on-line, high value information to business executives, professionals and academics worldwide, which also provides reports on Irish, UK and US companies).

LawLink has recently added two new services to its portfolio, FirstLaw and Enki Information Systems.

First Law, produced in association with legal publisher Bart Daly, offers a current awareness service which tracks on a daily basis, legislation, Bills, Acts, statutory instruments and EU directives. It also includes Irish weekly law reports which contain reports of all reserved judgments of the superior courts and the Circuit Court hearing lists.

Enki Information Systems provides access to information on over 400,000 trading entities (every limited company and all business names) as filed in the Companies Registration Office. It is possible to search by any criteria, including registered office, principal object, charges, designation, and date of incorporation, and these databases are updated monthly.

SecureMail

E-mail is now universally acknowledged by all business professionals as the most efficient way to cut communication costs and free-up valuable time. At its most basic, the simple installation of e-mail facilities means that an individual has the power to receive and send documents instantly from computer to computer, without ever printing them. No posting, no faxing, no couriers and no waiting.

SecureMail, LawLink's e-mail service, which has been endorsed by the Law Society as the standard for legal mail transmission since May 1997, offers secure, cost effective and efficient electronic messaging. Using *SecureMail* means that members can now send letters, documents and files from their computer to clients and colleagues with little or no time delay, guaranteed delivery, no fear of interception and which have been virus-checked to protect the recipient's software. Further details on *SecureMail* and other services are available from LawLink (tel: 01 6766 222).

Through its new web site and its association with LawLink, the Law Society hopes to promote and encourage awareness and use of technology among solicitors. The Law Society's Technology Sub-committee is always pleased to help practitioners with technology queries and provides information and advice to members through its seminars and publications.

Remember, opportunity comes to pass, not to pause – and it is only those solicitors who reach out and embrace the opportunities presented by the Information Age who will be ready to meet the challenges of legal practice in the new millennium. G

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

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

SEMINAR

on

The Statutes of Limitation: Claims in Contract and Tort in respect of Latent Damage (other than personal injury)

TO BE HELD ON THE AFTERNOON OF 23 MARCH 1999

The seminar is part of the consultation process of the Commission and follows the publication of our Consultation Paper on this subject last December.

The seminar will take the form of an oral hearing. Its purpose will be to enable the Commission to ascertain the views of a wide range of interested parties.

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

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

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

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

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

IRISH CANCER SOCIETY

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

Irish Statute Book on CD-Rom

Recall of certain CDs

It has come to notice that there is a fault on a batch of CDswhich issued between 17 and 31 December 1998.

Faulty CDs can be exchanged through the Government Publications Sales Office, Molesworth Street, Dublin 2
Telephone (01) 6613111

or the

Office of the Attorney General, Government Buildings, Upper Merrion Street, Dublin 2
Telephone (01) 6616944.

The fault was corrected on all CDs purchased after December.

These need not be replaced.

IRISH KIDNEY ASSOCIATION

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

The Irish Kidney Association was formed in 1978 to:

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

REMEMBER US WHEN MAKING A WILL!

Certified by the Revenue Commissioners as a charity: 6327

OUR FINANCIAL ASSISTANCE IS NATIONWIDE

Irish Stenographers Ltd

Director: Sheila Kavanagh

Experts in
Overnight Transcripts

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

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

Committee reports

LITIGATION AND ARBITRATION

Arbitrators given the power to award compound interest

Practitioners should be aware that section 17 of the *Arbitration (International Commercial) Act* of 1998 amended the *Arbitration Act* of 1954 by substituting a new section 34. This section *which applies to domestic arbitrations* provides that 'unless otherwise agreed by the parties, the arbitrator may award simple or compound interest from the dates, at the rates and with the rests that he or she considers meet the justice of the case:

a) On all or part of any amount awarded by the arbitrator or umpire, in respect of any period up to the date of the award
b) On all or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitration but paid before the award was made, in respect of any period up to the date of payment
c) Unless otherwise agreed by the parties, the arbitrator or umpire may award simple or compound interest from the date of the award (or any later date) until payment, at the rates and the rests that he or she considers meet the justice of the case, on the outstanding amount of the award (including an award of interest under sub-section (2) and an award of costs)'.

It should be noted that this section does not apply to an arbitration commenced before 20 May 1998 nor does it apply to an arbitration conducted by the property arbitrator appointed under section 2 of the *Property Values (Arbitration and Appeals) Act, 1960*.

Consumers may ignore arbitration clause in respect of a 'small claim'

Practitioners should note that section 18 of the *Arbitration (International Commercial) Act* of 1998 amends section 5 of the *Arbitration Act, 1980*, which requires a court to stay proceedings in relation to a matter arising out of a contract containing an arbitration clause (provided no step has been taken) and provides that 'nothing in this section shall prevent any party to an arbitration agreement from invoking the alternative method, provided by the rules of court (as amended from time to time) of commencing and dealing with a civil proceeding in respect of a small claim'.

Employment Appeals Tribunal

Practitioners are advised that the Employment Appeals Tribunal has produced new guidelines for persons representing parties before the tribunal. The tribunal has also updated its statutory forms as referred to in the guidelines. A copy of the guidelines and revised forms has been forwarded to each bar association for information and can be obtained directly from the Employment Appeals Tribunal, 65a Adelaide Road, Dublin 2 (tel: 01 661 4444).

Litigation and Arbitration Committee

CRIMINAL

Have you something to say about the criminal legal aid fees regulations?

The Criminal Law Committee is receiving an increasing number of complaints from practitioners regarding anomalies in the above regulations – for example, the non-payment of fees in adjourned indictment cases where prosecution counsel is not briefed. The committee will be raising these and other issues with the Department of Justice in the near future. For the present, it would like to know the extent of the problem. The committee also wishes to know whether practitioners would be interested in attending a meeting aimed at highlighting difficulties encountered with the scheme and to consider what courses of action are open to and/or favoured by practitioners. Members should write to/telephone Colette Carey, Solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7 (tel: 01 6724800).

Criminal Law Committee

PROBATE, ADMINISTRATION AND TAXATION

Stamp duty and rental income changes: *Finance (No 2) Act, 1998*

Practitioners will be aware that the deductibility of loan interest from rental income from residential property and the imposition of stamp duty on the purchase of new residential property by non-owner occupiers as from 23 April 1998 do not apply to contracts in writing entered into before that date if the transaction was completed by 31 December 1998. In the 1999 Budget Measures Statement of the Minister for Finance, the deadline of 31 December 1998 has been extended to **31 March 1999.**

Probate, Administration and Taxation Committee

PRACTICE NOTE

Change in law governing legalisation of foreign public documents

Ireland has recently ratified three conventions (EU, Hague and Council of Europe) relating to the authentication of Irish 'public documents' for use abroad and the authentication of foreign 'public documents' for use in Ireland. 'Public document' includes all documents signed before notaries public, commissioners for oaths and practising solicitors. Heretofore, the legalisation procedure required certification by successive authorities of the authenticity of a series of signatures and/or seals on the documents concerned. As from **9 March 1999,** documents intended for use in countries party to the Hague and Council of Europe conventions abolishing the legalisation of foreign documents will require only a single certificate, called an 'apostille' to be stamped thereon. In the case of Irish documents, this certificate will be affixed and signed by an officer of the Department of Foreign Affairs (fee £10). Reciprocal arrangements will apply to foreign documents to be used in Ireland. The Department of Foreign Affairs will maintain an updated list of the countries where an 'apostille' only will be required. Documents destined for use in countries which are *not* party to the above conventions will still require to be submitted to the legalisation procedure as heretofore.

Under the terms of the *EU convention*, documents destined for or originating from Belgium, Denmark, France and Italy will no longer need authentication of any kind as from **9 March 1999**.

A register of sample signatures/seals of practising solicitors (similar to that already in place in respect of notaries public and commissioners for oaths) will now be required and arrangements will be put in place shortly in this regard. For further information, contact Consular Services, Dept of Foreign Affairs (tel: 01 4780822).

Litigation and Arbitration Committee

LEGISLATION UPDATE: ACTS PASSED IN 1998

Adoption Act, 1998
Number: Act 10/1998
Minister/Department: Minister of State at the Department of Health
Date enacted: 29/4/1998
Commencement date: 29/4/1998 for s1 and ss10-18; 90 days after 29/4/1998 for ss2-9 (per s17 of the Act)
Explan-memo: Yes, with *Adoption (No 2) Bill, 1996*

Air Navigation and Transport (Amendment) Act, 1998
Number: Act 24/1998
Minister/Department: Minister for Public Enterprise
Date enacted: 5/7/1998
Commencement date: 11/9/1998 (per SI 327/1998); 1/1/1999 as the vesting day for the purposes of the Act (per SI 326/1998)
Explan-memo: Yes, with *Air Navigation and Transport (Amendment) Bill, 1997*

Appropriation Act, 1998
Number: Act 48/1998
Minister/Department: Minister for Finance
Date enacted: 18/12/1998
Commencement date: 18/12/1998
Explan-memo: No

Arbitration (International Commercial) Act, 1998
Number: Act 14/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 20/5/1998
Commencement date: 20/5/1998
Explan-memo: Yes, with *Arbitration (International Commercial) Bill, 1997,* as introduced and with Bill as passed by both Houses of the Oireachtas

Carriage of Dangerous Goods by Road Act, 1998
Number: Act 43/1998
Minister/Department: Minister for Public Enterprise
Date enacted: 2/12/1998
Commencement date: Commencement order/s to be made (per s21 of the Act)
Explan-memo: Yes, with *Carriage of Dangerous Goods by Road Bill, 1998*

Central Bank Act, 1998
Number: Act 2/1998
Minister/Department: Minister for Finance
Date enacted: 18/3/1998
Commencement date: Commencement order/s to be made (per s1(2) of the Act). 1/1/1999 for ss13, 14, 15 and 16 (per SI 526/1998)
Explan-memo: Yes, with *Central Bank Bill, 1997*

Child Trafficking and Pornography Act, 1998
Number: Act 22/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 29/6/1998
Commencement date: 29/7/1998 (per s1(2) of the Act)
Explan-memo: Yes, with *Child Trafficking and Pornography Bill, 1997,* as introduced and with Bill as passed by both Houses of the Oireachtas

Civil Liability (Assessment of Hearing Injury) Act, 1998
Number: Act 12/1998
Minister/Department: Minister for Defence
Date enacted: 11/5/1998
Commencement date: 12/5/1998 (per s5(2) of the Act)
Explan-memo: No

Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998
Number: Act 47/1998
Minister/Department: Minister for Finance
Date enacted: 16/12/1998
Commencement date: 16/12/1998
Explan-memo: Yes, with *Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Bill, 1998*

Courts Service Act, 1998
Number: Act 8/1998
Personal author: Senator D Cassidy
Date enacted: 16/4/1998
Commencement date: 16/4/1998 for Part I (ss1, 2) and s36; 16/5/1998 for Part VIII (ss37-43); commencement order/s to be made for remaining sections (per s1 of the Act)
Explan-memo: Yes, with *Courts Service (No 2) Bill, 1997*

Criminal Justice (Release of Prisoners) Act, 1998
Number: Act 36/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 13/7/1998
Commencement date: 13/7/1998. 23/7/1998 appointed by the Minister for Justice, Equality and Law Reform as the establishment day for the Release of Prisoners Commission, pursuant to s2(1) of the Act
Explan-memo: Yes, with *Criminal Justice (Release of Prisoners) Bill, 1998*

Defence (Amendment) Act, 1998
Number: Act 31/1998
Minister/Department: Minister for Defence
Date enacted: 8/7/1998
Commencement date: 1/10/1998 (per SI 366/1998)
Explan-memo: Yes, with *Defence (Amendment) Bill, 1998*

Economic and Monetary Union Act, 1998
Number: Act 38/1998
Minister/Department: Minister for Finance
Date enacted: 13/7/1998
Commencement date: Commencement order/s to be made (per s1(2) of the Act). 28/7/1998 for ss6(2), 11(1), 12, 13, 20, 23, 27-29 (per SI 279/1998); 1/1/1999 for all other sections, with the exception of s11(2) (per SI 527/1998)
Explan-memo: Yes, with *Economic and Monetary Union Bill, 1998*

Education Act, 1998
Number: Act 51/1998
Minister/Department: Minister for Education and Science
Date enacted: 23/12/1998
Commencement date: Commencement order/s to be made (per s1(2) of the Act). 5/2/1999 for ss2, 3, 4, 5, 6, 13, 25, 26, 37, and Parts VIII and IX of the Act (per SI 29/1999)
Explan-memo: Yes, with *Education (No 2) Bill, 1997*

Eighteenth Amendment of the Constitution Act, 1998
Minister/Department: Minister for Foreign Affairs
Date enacted: 3/6/1998
Commencement date: 3/6/1998
Explan-memo: Yes, with *Eighteenth Amendment of the Constitution Bill, 1998*

Electoral (Amendment) Act, 1998
Number: Act 4/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 31/3/1998
Commencement date: 31/3/1998
Explan-memo: Yes, with *Electoral (Amendment) Bill, 1998*

Electoral (Amendment) (No 2) Act, 1998
Number: Act 19/1998
Personal author: Senator D Cassidy
Date enacted: 16/6/1998
Commencement date: 16/6/1998 for all provisions except s5(1) (Repeal of the *Electoral (Amendment) Act, 1995*) which will come into operation on the dissolution of Dáil Éireann that next occurs after the passing of this Act (per s5(2) of the Act)
Explan-memo: Yes, with *Electoral (Amendment) (No 2) Bill, 1998*

Employment Equality Act, 1998
Number: Act 21/1998
Personal author: Senator D Cassidy
Date enacted: 18/6/1998
Commencement date: Various (see Act) and commencement order/s to be made (per s1(2) of the Act)
Explan-memo: Yes, with *Employment Equality Bill, 1997*

European Communities (Amendment) Act, 1998
Number: Act 25/1998
Personal author: Senator D Cassidy
Date enacted: 6/7/1998
Commencement date: Commencement order to be made (per s2(3) of the Act)
Explan-memo: Yes, with *European Communities (Amendment) Bill, 1998*

Finance Act, 1998
Number: Act 3/1998
Minister/Department: Minister for Finance
Date enacted: 27/3/1998
Commencement date: Various – see s138 of the Act. 1/7/1998 for s90 (per SI 206/1998); 31/12/1998 for Sched 2, paras 1, 5, 9, 10 and 1/1/1999 for Sched 2, paras 2, 3, 4, 6, 7, 8 (per SI 502/1998)
Explan-memo: Yes, with *Finance Bill, 1998,* as introduced and with Bill as passed by Dáil Éireann

Finance (No 2) Act, 1998
Number: Act 15/1998
Minister/Department: Minister for Finance
Date enacted: 20/5/1998
Commencement date: Various – see Act
Explan-memo: Yes, with *Finance (No 2) Bill, 1998* as introduced and with Bill as passed by Dáil Éireann

Firearms (Temporary Provisions) Act, 1998
Number: Act 32/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 13/7/1998
Commencement date: 13/7/1998
Explan-memo: Yes, with *Firearms (Temporary Provisions) Bill, 1998*

Fisheries and Foreshore (Amendment) Act, 1998
Number: Act 54/1998
Minister/Department: Minister for the Marine and Natural Resources
Date enacted: 23/12/1998
Commencement date: 23/12/1998
Explan-memo: Yes, with *Fisheries and Foreshore (Amendment) Bill, 1998*

LEGISLATION UPDATE: ACTS PASSED IN 1998 (contd)

Food Safety Authority of Ireland Act, 1998
Number: Act 29/1998
Minister/Department: Minister for Health and Children
Date enacted: 8/7/1998
Commencement date: Commencement order/s to be made for Part IV (ss44-57) (per s44 of the Act); 8/7/1998 for other sections; 1/1/1999 appointed as the establishment day for the Food Safety Authority of Ireland (per SI 540/1998)
Explan-memo: Yes, with *Food Safety Authority of Ireland Bill, 1998*

Gas (Amendment) Act, 1998
Number: Act 17/1998
Personal author: Senator D Cassidy
Date enacted: 3/6/1998
Commencement date: 3/6/1998
Explan-memo: Yes, with *Gas (Amendment) Bill, 1998*

Geneva Conventions (Amendment) Act, 1998
Number: Act 35/1998
Minister/Department: Tanaiste and Minister for Foreign Affairs
Date enacted: 13/7/1998
Commencement date: Commencement order/s to be made (per s18(5) of the Act)
Explan-memo: No

George Mitchell Scholarship Fund Act, 1998
Number: Act 50/1998
Minister/Department: Minister for Education and Science
Date enacted: 23/12/1998
Commencement date: 23/12/1998
Explan-memo: Yes, with *George Mitchell Scholarship Fund Bill, 1998*

Housing (Traveller Accommodation) Act, 1998
Number: Act 33/1998
Personal author: Senator D Cassidy
Date enacted: 13/7/1998
Commencement date: 11/9/1998 for all sections of the Act, other than ss6, 19, 20, 25 (per SI 328/1998); 3/11/1998 for s6 (per SI 428/1998); 20/11/1998 for ss19 and 20 (per SI 448/1998)
Explan-memo: Yes, with *Housing (Traveller Accommodation) Bill, 1998* as introduced and with Bill as passed by both Houses of the Oireachtas

Industrial Development (Enterprise Ireland) Act, 1998
Number: Act 34/1998
Personal author: Senator D Cassidy
Date enacted: 13/7/1998
Commencement date: 23/7/1998 appointed as the establishment day for Enterprise Ireland (per SI 252/1998)
Explan-memo: Yes, with *Industrial Development (Enterprise Ireland) Bill, 1998*

Intellectual Property (Miscellaneous Provisions) Act, 1998
Number: Act 28/1998
Minister/Department: Minister for Enterprise, Trade and Employment
Date enacted: 7/7/1998
Commencement date: 7/7/1998 for ss1, 2, 3 and 6; 17/8/1998 for ss4 and 5 (per SI 285/1998)
Explan-memo: Yes, with *Intellectual Property (Miscellaneous Provisions) Bill, 1998* (changed from the *Copyright (Amendment) Bill, 1998*)

International War Crimes Tribunals Act, 1998
Number: Act 40/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 10/11/1998
Commencement date: 10/11/1998
Explan-memo: Yes, with *International War Crimes Tribunals Bill, 1997*

Investor Compensation Act, 1998
Number: Act 37/1998
Personal author: Senator D Cassidy
Date enacted: 13/7/1998
Commencement date: 1/8/1998 (per SI 266/1998)
Explan-memo: Yes, with *Investor Compensation Bill, 1998*

Jurisdiction of Courts and Enforcement of Judgments Act, 1998
Number: Act 52/1998
Personal author: Senator D Cassidy
Date enacted: 23/12/1998
Commencement date: Commencement order/s to be made (per s1(2) of the Act)
Explan-memo: Yes, with *Jurisdiction of Courts and Enforcement of Judgments Bill, 1998*

Local Government Act, 1998
Number: Act 16/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 29/5/1998
Commencement date: Commencement order/s to be made (per s15(4) of the Act). 30/5/1998 for ss9, 10 and 15 of the Act (per SI 178/1998); 30/6/1998 for s12 (per SI 222/1998); 1/8/1998 for s8 (per SI 223/1998); 1/1/1999 for ss1, 2, 3, 4, 5, 6, 7, 13, 14 (per SI 490/1998)
Explan-memo: Yes, with *Local Government Bill, 1998*

Local Government (Planning and Development) Act, 1998
Number: Act 9/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 16/4/1998
Commencement date: 16/4/1998
Explan-memo: Yes, with *Local Government (Planning and Development) Bill, 1997*

Merchant Shipping (Miscellaneous Provisions) Act, 1998
Number: Act 20/1998
Minister/Department: Minister for the Marine and Natural Resources
Date enacted: 16/6/1998
Commencement date: 16/6/1998
Explan-memo: Yes, with *Merchant Shipping (Miscellaneous Provisions) Bill, 1997*

Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Act, 1998
Number: Act 7/1998
Minister/Department: Minister for Arts, Heritage, Gaeltacht and the Islands
Date enacted: 8/4/1998
Commencement date: 8/4/1998
Explan-memo: Yes, with *Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Bill, 1997*

Nineteenth Amendment of the Constitution Act, 1998
Minister/Department: Taoiseach
Date enacted: 3/6/1998
Commencement date: 3/6/1998
Explan-memo: No

Offences Against the State (Amendment) Act, 1998
Number: Act 39/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 3/9/1998
Commencement date: 3/9/1998
Explan-memo: Yes, with *Offences Against the State (Amendment) Bill, 1998*

Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998
Number: Act 13/1998
Personal author: Senator D Cassidy
Date enacted: 14/5/1998
Commencement date: 16/5/1998 (per SI 159/1998)
Explan-memo: Yes, with *Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Bill, 1998*

Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Act, 1998
Number: Act 5/1998
Minister/Department: Minister for Finance
Date enacted: 1/4/1998
Commencement date: 19/12/1996 for ss24-28, and s30 (per s31 of the Act); 1/4/1998 for all other sections.
Explan-memo: Yes, with *Oireachtas (Allowances to Members) and Ministerial, Parliamentary, Judicial and Court Offices (Amendment) Bill, 1998*

Parental Leave Act, 1998
Number: Act 30/1998
Personal author: Senator D Cassidy
Date enacted: 8/7/1998
Commencement date: 3/12/1998 (per s1(2) of the Act)
Explan-memo: Yes, with *Parental Leave Bill, 1998*

Plant Varieties (Proprietary Rights) (Amendment) Act, 1998
Number: Act 41/1998
Minister/Department: Minister for Agriculture and Food
Date enacted: 16/11/1998
Commencement date: Commencement order to be made (per s24(3) of the Act)
Explan-memo: Yes, with *Plant Varieties (Proprietary Rights) Amendment) Bill, 1997*

Protections for Persons Reporting Child Abuse Act, 1998
Number: Act 49/1998
Personal author: Deputy A Shatter
Date enacted: 23/12/1998
Commencement date: 23/1/1999 (per s7(2) of the Act).
Explan-memo: Yes, with *Protections for Persons Reporting Child Abuse Bill, 1998* (changed from *Children (Reporting of Alleged Abuse) Bill, 1998*), and with Act

Referendum Act, 1998
Number: Act 1/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 26/2/1998
Commencement date: 26/2/1998
Explan-memo: Yes, with *Referendum Bill, 1998*

Roads (Amendment) Act, 1998
Number: Act 23/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 1/7/1998

LEGISLATION UPDATE: ACTS PASSED IN 1998 (contd)

Commencement date: 1/7/1998
Explan-memo: Yes, with *Roads (Amendment) Bill, 1998*

Scientific and Technological Education (Investment) Fund (Amendment) Act, 1998
Number: Act 53/1998
Minister/Department: Minister for Education and Science
Date enacted: 23/12/1998
Commencement date: 23/12/1998
Explan-memo: Yes, with *Scientific and Technological Education (Investment) Fund (Amendment) Bill, 1998*

Social Welfare Act, 1998
Number: Act 6/1998
Minister/Department: Minister for Social, Community and Family Affairs
Date enacted: 1/4/1998
Commencement date: Various – see Act. 5/6/1998 for s19 (per SI 190/1998); 4/6/1998 for s20 (per SI 191/1998); 26/5/1998 for s23 (per SI 192/1998); 14/7/1998 for s18 (per SI 255/1998); 14/7/1998 for s21 (per SI 256/1998); 16/11/1998 for s22 (per SI 467/1998); 16/11/1998 for s16 (per SI 469/1998)
Explan-memo: Yes, with *Social Welfare Bill, 1998*

State Property Act, 1998
Number: Act 44/1998
Minister/Department: Minister for Agriculture and Food
Date enacted: 8/12/1998
Commencement date: 8/12/1998
Explan-memo: Yes, with *State Property Bill, 1998*

Tourist Traffic Act, 1998
Number: Act 45/1998
Minister/Department: Minister for Tourism, Sport and Recreation
Date enacted: 12/12/1998
Commencement date: 12/12/1998
Explan-memo: Yes, with *Tourist Traffic Bill, 1998*

Tribunals of Inquiry (Evidence) (Amendment) Act, 1998
Number: Act 11/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 6/5/1998
Commencement date: 6/5/1998
Explan-memo: Yes, with *Tribunals of Inquiry (Evidence) (Amendment) Bill, 1998*

Tribunals of Inquiry (Evidence) (Amendment) (No 2) Act, 1998
Number: Act 18/1998
Minister/Department: Minister for Justice, Equality and Law Reform
Date enacted: 12/6/1998
Commencement date: 12/6/1998
Explan-memo: Yes, with *Tribunals of Inquiry (Evidence) (Amendment) (No 3) Bill, 1998*

Turf Development Act, 1998
Number: Act 26/1998
Minister/Department: Minister for Public Enterprise
Date enacted: 7/7/1998
Commencement date: 7/7/1998; 31/12/1999 appointed as the vesting day for Bord na Mona for s20 (per SI 191/1998)
Explan-memo: Yes, with *Turf Development Bill, 1997*

Urban Renewal Act, 1998
Number: Act 27/1998
Minister/Department: Minister for the Environment and Local Government
Date enacted: 7/7/1998
Commencement date: 1/5/1997 for ss1-8 (per s2(2) of the Act); 1/2/1998 for s13 (per s2(3) of the Act); 28/5/1998 for ss18 and 20(2) (per s2(4) of the Act); commencement order to be made for s20(1) (per s2(5) of the Act); 29/7/1998 for ss9-12, 14-17 (per SI 271/1998); commencement order/s to be made for remaining sections (per s2(1) of the Act)
Explan-memo: Yes, with *Urban Renewal Bill, 1998*

Voluntary Health Insurance (Amendment) Act, 1998
Number: Act 46/1998
Minister/Department: Minister for Health and Children
Date enacted: 15/12/1998
Commencement date: 15/12/1998
Explan-memo: Yes, with *Voluntary Health Insurance (Amendment) Bill, 1998*

Western Development Commission Act, 1998
Number: Act 42/1998
Minister/Department: Minister for Agriculture and Food
Date enacted: 25/11/1998
Commencement date: 1/2/1999 appointed as the establishment day for the Western Development Commission (per SI 9/1999)
Explan-memo: Yes, with *Western Development Commission Bill, 1998*

Prepared by the Law Society Library

Personal injury judgments

Sexual assault – minor – damages – issue of exemplary damages

Case

Noel Kellagher v Liam Walsh, High Court on Circuit, Cork, before the Hon Mr Justice John Quirke, judgment of 29 April 1998.

The facts

Noel Kellagher was born on 7 December 1974. He was 23 years of age at the time of the High Court hearing. He alleged that he suffered assault and abuse of a very serious nature on a number of occasions in the autumn of 1988 at the hands of Liam Walsh.

The alleged assaults, which were more than 25 in all, were inflicted on Mr Kellagher when he was 13 years of age. Mr Walsh, the defendant, was then in his fifties and was a person who exercised authority over Mr Kellagher. He was also a person in whom Mr Kellagher had placed his trust and was in the nature of a father figure.

The alleged assaults, which were grossly indecent, affected the plaintiff's health. Noel Kellagher endured during his youth feelings of guilt, remorse, loneliness and insecurity which had resulted in a depression which had been so severe that he had attempted suicide on at least three occasions and required regular and on-going treatment.

Noel Kellagher issued High Court proceedings against Liam Walsh for damages.

The judgment

An *ex tempore* judgment was given by Quirke J on 29 April 1998 in the High Court on Circuit in Cork.

Having outlined the facts of the case, the judge stated he had heard the evidence of Noel Kellagher as to the nature and character of the assaults and abuses which were perpetrated upon him by the defendant. The judge accepted unconditionally his evidence in its entirety. He found the plaintiff to be a most impressive witness who had shown immense courage and immense strength in dealing with the ordeal he had to endure. Quirke J considered that the damage done to him had been immense. In effect, years had been taken from the plaintiff's life and replaced with the sort of horror that most people should not have to endure.

Quirke J awarded Noel Kellagher damages from the date of the assaults up to the date of the judgment in the sum of £50,000. The judge was satisfied on the evidence that Noel Kellagher had suffered a permanent injury and he remained at risk, particularly in respect of depression.

He stated that the plaintiff was entitled to a life of full normality. In the context of future damages, Quirke J awarded him an additional £50,000. The judge stated that the defendant had abused the trust of an innocent child and damaged him permanently. The judge awarded exemplary damages of a further £50,000. He stated that if he believed for a moment that the defendant had resources and had the means, then the award of exemplary damages would be commensurate with whatever property or resources the defendant possessed.

In total, the award was for £150,000 and costs. The case was not defended.

Public liability – footpath – pedestrian – liability of county council in dispute

Case

Rita Hegarty v Donegal County Council, High Court on Circuit in Sligo, before the Hon Mr Justice Philip O'Sullivan, judgment of 24 April 1998.

The facts

Rita Hegarty stumbled on an uneven footpath, fell heavily backward and suffered a fracture to her ankle.

Ms Hegarty received medical attention including surgery. Ms Hegarty was left with a scar 8.5 centimetres on the outside of her ankle, and had suffered a fracture of the fibula necessitating the insertion of a screw and plate. Medical reports indicated that the plaintiff was, on the day of the trial, a healthy young woman with a full range of movement in her right ankle and that the fracture of the fibula had healed with the removal of the screw and plate. Overall alignment of the fracture was excellent and the ankle joint and lower tibia and fibula were well maintained. There was medical evidence to the effect that Ms Hegarty was unlikely to have significant long-term residual disability as a result of this accident.

Donegal County Council had denied liability.

The judgment

Having outlined the facts, O'Sullivan J dealt with the issue of liability. Having considered the relevant photographs, the judge considered that there was a hidden differential on the pavement and, while accepting that a pedestrian must take care for her own safety, particularly when going down a steep slope, he considered that there was a differential in height in the pavement and held Donegal County Council liable.

Counsel for Donegal County Council had argued that Ms Hegarty had been guilty of contributory negligence. On this issue, the judge held that the step was not visible and that reasonable care had been taken by Ms Hegarty. He held, therefore, that Ms Hegarty was not guilty of any contributory negligence.

O'Sullivan J said that Ms Hegarty had only residual symptoms and had made a good recovery. He assessed damages to date at £20,000, damages into the future at £3,000, and awarded special damages between loss of wages of £8,489.51 – a total of £31,489.51.

Mr Carson SC for Donegal County Council asked for a stay on the award and the costs. Counsel for Ms Hegarty argued that the normal practice was that if a stay were granted that money is paid out and he suggested a sum of £20,000 be paid out. O'Sullivan J stated that the difficulty was that if he, the judge, were wrong on the issue of liability (and he stated it was not the clearest case in liability), he questioned the justice in giving £20,000 to the plaintiff at this stage.

Counsel for Ms Hegarty argued that because the judge had awarded in excess of £31,000, the county council had to convince the judge of the high probability that he was wrong. The judge repeated that it was a reasonably close call on liability. In the circumstances, he was not prepared to make any order as to an immediate payment pending an appeal.

Public liability – water on road – fatal crash – dispute as to liability for water on road

Case

Josephine Meegan v Monaghan County Council and Patrick Pepper, the High Court on Circuit, before the Hon Mr Justice Paul Carney, judgment of 28 May 1998.

The facts

Water on a road caused a fatal crash. It was alleged that water had come on to the road from the bath or boiler of the second defendant, Patrick Pepper. There had even been an allegation that somehow there had been a malevolent helicopter dumping a load of water on the road for purposes

of mischief. Further, there was also an issue of a tanker carrying water and depositing its load at the point of the accident. It was also alleged that the water came on the road from the county council because of a failure in its drainage system. The widow of the deceased sued Monaghan County Council and Mr Pepper for damages.

The judgment

The judge stated that this had been an extremely difficult case in which experts admitted that they were baffled by the accident. He stated that he had to look at the case, first of all as a judge dealing with matters of law and applying matters of law, but secondly he had a major function to act as a single juror. In acting as a single juror, he had to apply probabilities as they appear and also to assess probabilities in the light of credibility and the credibility of evidence.

He dismissed the action against Mr Pepper.

Carney J considered on the balance of probability that the water belonged to the county council and that there had been a failure in the council's drainage system. Accordingly, the judge found Monaghan County Council liable first of all as a matter of law in respect of its responsibility for drainage and, secondly, viewing the matter as a single juror, he came to the conclusion that the water probably belonged to Monaghan County Council and had formed as a pond by a failure in the council's drainage system.

In the context of damages, special damages were agreed at £2,890. Carney J found mental distress for the statutory amount of £7,500. He stated that there was a conflict between the actuaries. He stated that it was settled law that figures furnished by an actuary were for the guidance of the trial judge and the judge must come to his own conclusion. He assessed the actuarial loss arising, after taking *Reddy and Bates* into consideration, in the sum of £80,000 and gave a total decree for £90,390.

Counsel for Josephine Meegan stated that it was the wishes of the family, subject to the judge's approval, that the sum in regard to mental distress be paid to Mrs Meegan because the children were very young. The judge agreed to pay the total sum to Mrs Meegan. G

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

CASE NOTE

***Re: Ann Higgins v Analog Devices BV and Another*, Limerick Circuit Court, 11 February 1999, before Judge Michael White**

The plaintiff suffered an occupational injury in May 1995. She returned to work in November of that year. In July 1996 she took voluntary redundancy. However, as a result of her injuries, effectively an exacerbation of a quiescent condition, she has been unable to take up work elsewhere since. An issue arose as to whether her redundancy payments should be deductible from her continuing loss of earnings claim. At Limerick Circuit Court on 11 February 1999, Judge Michael White heard counsel for the parties state that there was little or no authority on the point. He deducted the non-statutory element of the redundancy package but not the statutory element when making his award.

As an addendum by consent the judge exercised unlimited jurisdiction and awarded £111,000 in total damages, a huge award for the Circuit Court, if not one of the largest-ever personal injury awards and certainly believed to be the largest such personal injury award in Limerick.

John Edwards SC and Gerard Kiely BL appeared for the plaintiff, instructed by Shaun Elder, Solicitor, Limerick, with Andrew Sexton BL appearing for the defendant, instructed by Desmond Deeney & Company, Solicitors, Limerick. G

This case note was submitted by Shaun Elder, Solicitor, Limerick.

Relief for home loan interest: rules and guidelines

This article, first published in the Revenue Commissioners' *Tax briefing*, sets out the rules, guidelines and procedures regarding interest relief on home loans

Tax relief is allowable on loan interest if the loan has been used for qualifying purposes. The relevant legislation is contained in section 244 of the *Taxes Consolidation Act, 1997*.

The topics covered are as follows:

1. Meaning of 'qualifying purposes'
2. Sole or main residence
3. Two residences in regular use
4. Residences under construction and purchase of sites
5. Joint purchase of a residence in anticipation of marriage
6. Job-related accommodation
7. Mobile-homes, caravans and so on
8. Meaning of purchase, repair development or improvement of a sole or main residence
9. Evidence of purposes for which a loan is used
10. Loans used partly for qualifying purposes and partly for non-qualifying purposes
11. Re-mortgages and second mortgages
12. Fines on mortgages
13. Treatment of interest on joint accounts
14. Joint accounts – mortgage interest paid to local authorities
15. First-time buyer relief
16. Standard rating of interest.

1. Qualifying purposes

'Qualifying purposes' means the purchase, repair, development or improvement of the sole or main residence of:

- The claimant
- A former or separated spouse of the claimant
- A dependent relative of the claimant or his or her spouse in respect of whom the claimant is in receipt of the dependent relative allowance under section 466(2)(a) or (b) of the *TCA, 1997*. (If the residence is provided by the claimant, it must be provided free of rent or other consideration.)

A loan which is used solely to replace a loan used for qualifying purposes is regarded as used for qualifying purposes even if the new loan differs in type from the old loan (for example, a mortgage replacing a term loan).

2. Sole or main residence

In general, the sole or main residence of any person will be the residence which is the person's home for the greater part of the time and where friends and correspondents would expect to find him. The residence does not have to be owned by the person, for example, a parent's residence may also be the sole or main residence of any of the children of the parents who commonly reside there. To qualify for relief, the residence must be in use as a sole or main residence. This condition is not interpreted in an overly-strict manner and temporary periods of disuse do not result in a loss of relief provided that the residence is not used for any other purpose and it is the clear intention of the claimant to use the residence as his sole or main residence at the end of the period of disuse. Difficulties may arise in the following cases:

- Two different places of residence which are both used on a regular basis
- A residence under construction
- The joint purchase of a residence in anticipation of marriage
- Job-related accommodation
- Mobile homes, caravans and other moveable structures in use as a residence.

These items are covered in detail in the following paragraphs.

3. Two residences in regular use

In most cases where a person has two residences, it is possible to determine which is the sole or main residence on the basis of frequency of occupation – for example, a holiday home used for short periods in the year compared to a residence used throughout the year. However, frequency of occupation alone is not the test and situations can arise where the question is not clear-cut, for example, a house in one town which is owned and is used at weekends and holidays compared to digs or rented accommodation in another town which is the person's place of employment. In determining which of two residences is a person's sole or main residence, the following guidelines are followed:

- The fact that a greater period is spent in one residence does not necessarily preclude the other from being treated as the main residence. In particular, where the person has to use other accommodation by reason of his employment, the residence used at weekends and non-work periods would normally be regarded as the individual's sole or main residence (for example, a commercial traveller or a person temporarily absent from home or a person obliged to find employment in another town)
- A residence which is owned and in respect of which mortgage interest and so on is paid would normally be accepted as the sole or main residence in preference to one which is rented where both are in regular use
- Where a single person has a separate residence, the parental home would not be accepted as the sole or main residence unless the circumstances are exceptional
- Except for the circumstances mentioned below in relation to residences under construction or purchased in anticipation of marriage, a claim that a particular residence is the main one would normally be admitted only if the residence is furnished and suitable for occupation, is in fact occupied (except for periods of temporary disuse) and is not used for any other purpose (for example, let)
- Where both residences are owned and one is used during holidays only, a claim that the holiday home is the main residence would be resisted.

If, on applying the above guidelines, it is not possible to determine which of two residences is a person's sole or main residence because:

- Both residences are owned by the person
- He resides in both residences for significant periods on account of his office, employment, business interests or other requirements, and neither residence can be regarded as a holiday home, *and*
- The inspector and the person (or his accountant) have been unable to reach agreement on which residence is the sole or main residence

then the person may be permitted to select by notice in writing which residence is to be regarded as his sole or main residence on the understanding that the selection will have effect for both interest relief and capital gains tax purposes.

4. Residence under construction and purchase of sites

Where a residence is under construction, various payments may have to be made throughout the course of construction in respect of which money must be borrowed, for example, on purchase of the site and at various stages of the construction. The taxpayer may seek relief in respect of the interest paid on the loans even though the residence is not in use as a sole or main residence and is not capable of such use. The problem may be further complicated by a claim in respect of bridging finance. In dealing with such cases, the following guidelines are followed:

- Inspectors, as far as possible, establish that the residence when completed will become the sole or main residence of the taxpayer and any relief is given on the understanding that it will be withdrawn if the residence does not become the sole or main residence. In cases of hardship where it is clear that the taxpayer intended to use the residence as a sole or main residence but due to circumstances beyond his control is unable to do so (for example, if he loses his job or is transferred or is unable to sell the existing residence), the relief granted would not be withdrawn
- No relief is given in respect of loans to purchase a site unless and until there is planning permission to construct a residence on the site
- In the case of a first-time house purchaser, the residence may be accepted as his sole or main residence with effect from the date of purchase of the site or, if later, the date planning permission for the construction of the residence is granted.

Where the taxpayer has an existing residence which he intends to dispose of and in respect of which he is paying mortgage interest and so on, the 12-month rules in relation to bridging interest will be relevant. The taxpayer can only obtain relief for interest paid in respect of the first residence for a period of 12 months from the date he acquires the second residence. Depending on borrowings, it may or may not be to his advantage to claim that the second residence became his sole or main residence when the site was purchased. In such cases, the taxpayer may specify any date between the date of purchase of the site or, if later, the granting of planning permission and the date the second residence commences to be actually used by the taxpayer as being the date on which the second residence is to be treated as a sole or main residence of the taxpayer. Once that date is specified, the 12-month period is to be treated as commencing on that date. The taxpayer may pick the date most beneficial to his circumstances. In the absence of a specification, relief will not be granted until the second residence is in actual use as the sole or main residence of the taxpayer and the 12-month period referred to above is treated as commencing at that time.

5. Joint purchase of residence in anticipation of marriage

It is common practice for couples to purchase a house on joint account in anticipation of their marriage. Until the marriage takes place, the house may be unoccupied or occupied by one of them only. In the former case, the house would not be the sole or main residence of either party and in the latter case, it would be the sole or main residence of the person in occupation only. In such cases, if:

- The house has been purchased in anticipation of marriage and will be used by the couple as their sole or main residence after marriage
- The loan account is in the joint names of the couple and each is jointly and severally liable for the interest charged, *and*
- The house is unoccupied or is occupied by one of the parties concerned and is not occupied by any other person (for example, there are no friends or workmates occupying rooms in the house and contributing to the repayments or paying rent)

relief will be allowed to each in accordance with the amount of interest actually paid on the basis that the house is the sole or main residence of both claimants. The claimant or claimants to relief not actually occupying the house are advised that the relief is granted on an administrative basis only and subject to withdrawal if the house does not become the sole or main residence of the claimant or claimants. In practice, however, relief will not be withdrawn in genuine cases if due to unforeseen circumstances the house does not become the sole or main residence of one or both of the claimants – for example, if differences arise and the marriage does not take place and a settlement is made in relation to the house.

6. Job-related accommodation

Where a person occupies job-related accommodation provided by his employer and also has a private residence of his own, difficulties may arise in determining which is his main residence. In such cases if:

- The provisions of section 118(3) of the *TCA, 1997* apply to the accommodation provided by the employer (that is, non-application of benefit-in-kind provisions where employee is required to live on the premises to perform his/her duties), *and*
- The private residence owned by the person is used by that person as a residence and is not used for any other purpose (for example, it is not let for any part of the year)

it will be accepted that the private residence is the main residence for the purposes of a claim for interest relief.

7. Mobile homes and caravans

While mobile homes, caravans and so on are not specifically dealt with in legislation, such a residence can be a sole or main residence for tax purposes. The question is one of fact. In general, a mobile home or caravan which would suit the requirements of a main residence would be one which:

- Is on a permanent site
- Has been immobilised by removal of wheels, by being jacked up, by being mounted on blocks or otherwise supported on fixed supports
- Is of a reasonable size in relation to the requirements of use as a permanent dwelling
- Has electricity and other services supplied to it.

8. Purchase, repair, development or improvement of a sole or main residence

Any expenditure on a sole or main residence *other than* expenditure on furniture, removable fittings (for example, light fittings, curtains, drapes and removable floor coverings) may be accepted as being qualifying expenditure. Examples of qualifying expenditure are:

- Purchase of another person's part-interest in the residence, for example, where a residence is owned jointly by two persons and one buys out the other's interest
- Legal and other fees incidental to the purchase or development of the residence
- Cost of extensions, purchase and/or construction of garages, garden sheds, greenhouses and swimming pools
- Cost of construction of driveways and paths, landscaping of gardens
- Cost of conversions, general maintenance and painting and decorating
- Cost of installing central or solar heating (including cost of gas or solid-fuel cookers in use as part of a central heating system), rewiring, new plumbing, including bathroom suites, and so on

- Cost of insulation, replacing windows and double-glazing
- Cost of purchasing and installing burglar and fire alarms and other security devices
- Cost of installing damp courses and general treatment for damp, dry rot, woodworm and similar problems
- Cost of purchase and installation of bedroom and kitchen units which are affixed to and become part of the building
- Stamp duty on the purchase of a residence
- Contributions to group water schemes and sewage schemes
- Construction of tennis courts.

9. Evidence of the purposes for which a loan is used

Except in the case of a loan which is clearly related to the initial purchase of a sole or main residence, documentary evidence may be required to prove that a loan has been used for qualifying purposes. The evidence may take the form of builders' specifications, receipts, paid cheques and so on. It is neither necessary nor, in many cases, practicable to require that evidence be produced for the entire proceeds of the loan. Similarly, the fact that some or all of the work has been carried out by the taxpayer is not a bar to claiming relief in respect of a loan applied in purchasing the materials with which the work is carried out, for example, a pre-fabricated garden shed, 'do-it-yourself' presses and double-glazing.

10. Loans used partly for qualifying purposes and partly for other purposes

Strictly, in order to qualify for tax relief, a loan must be used entirely for qualifying purposes. If the loan is used partly for some other purpose, no relief is due in respect of any portion of the interest paid. However, in practice the Revenue will apportion interest in certain circumstances (including situations where the qualifying and non-qualifying amounts have been borrowed at different times) and will give relief for the interest attributable to the portion of a loan used for qualifying purposes.

Example 1
A five-year term loan of £10,000 is taken out: £6,000 is used for qualifying purposes and £4,000 for other purposes. Relief is allowed in respect of six-tenths of the interest each year.

Example 2
A five-year term loan of £10,000 was taken out and the entire amount was used for qualifying purposes. In year three, when the balance of the loan was £6,000, the loan was replaced by a new loan of £8,000 and repayment of the new loan of £8,000 is over four years. £1,000 of the further borrowings is used for qualifying purposes and the other £1,000 is used for other purposes. Relief is allowed in respect of:

$$\frac{£6,000 + £1,000}{£8,000}$$

That is, seven-eighths of the interest paid each year on the new £8,000 loan.

Example 3
A three-year term loan of £3,000 was taken out and the entire amount was used for non-qualifying purposes. In year one, when the balance of the loan was £2,000, the loan was replaced by a new loan of £10,000 repayable over five years. All of the further borrowing, £8,000, is used for qualifying purposes. Relief may be allowed on:

$$\frac{£8,000}{£10,000}$$

That is, four-fifths of the interest paid each year on the new £10,000 loan.

11. Re-mortgages and second mortgages

The fact that a loan involves a re-mortgage or a second mortgage does not make it eligible for any special treatment for tax purposes. It is treated in the same manner as any other loan. Interest paid on a loan secured by a re-mortgage or a second mortgage on a sole or main residence strictly qualifies for relief only if the amount or additional amount borrowed is used for qualifying purposes. However, if the re-mortgage or second mortgage is used partly for qualifying purposes and partly for a purpose other than a qualifying purpose, apportionment of the interest paid may be made.

Example 1
A taxpayer had an original mortgage of £40,000 on a main residence. On 10 February 1998, the balance on the mortgage stood at £35,000. On that date, the residence was re-mortgaged for £60,000 and £15,000 of the additional £25,000 was used to purchase a car and £10,000 on replacement windows/central heating for the main residence. Relief for interest paid (subject to the usual limits/restrictions and standard rating, as appropriate) on the re-mortgage of £60,000 will be allowed to the extent of:

$$\frac{£35,000 + £10,000}{£60,000}$$

That is, three-quarters throughout the term of the re-mortgage.

Example 2
A taxpayer had an original mortgage of £60,000 on a main residence. On 10 February 1996, the balance on the mortgage stood at £40,000. On that date, the residence was re-mortgaged for £50,000 and the additional £10,000 was used to purchase a car. No relief is due for interest on the additional £10,000 but relief for interest paid (subject to the usual limits/restrictions and standard rating, as appropriate) on the new mortgage of £50,000 is allowable to the extent of £40,000/£50,000 (that is, four-fifths) throughout the term of the re-mortgage.

The residence was subsequently re-mortgaged again for £70,000 at a time when the balance on the first re-mortgage of £50,000 stood at £35,000.

In order to determine the fraction of the interest on the second re-mortgage of £70,000 which qualifies or relief, the following steps are followed:

- **Step 1 –** determine the proportion of the balance of £35,000 on the first re-mortgage which is attributable to the original mortgage. This is:
  $*\frac{£40,000 \times £35,000}{£50,000} = £28,000$
  *(Balance of original mortgage)
- **Step 2 –** determine what fraction of the second re-mortgage the £28,000 represents:
  $\frac{£28,000}{£70,000}$ = two-fifths
- **Step 3 –** allow two-fifths of the interest paid on the second re-mortgage.

12. Fines on mortgages

In certain circumstances, a building society may impose a fine of an additional amount of interest on the cancellation of a mortgage or on a re-mortgage. The amount of the fine is treated in the same manner as any other interest paid on the mortgage which gives rise to the fine and relief is allowed accordingly.

13. Treatment of joint accounts

Relief under section 244 of the *TCA, 1997* is confined to interest actually paid by the claimant. In the case of joint accounts, where each of the account holders is jointly and severally liable for the payment of the interest, the normal procedure is to regard any interest paid as having been paid in equal proportion by each account holder. If proof is given that the interest was paid in unequal proportions or was paid in its entirety by one person only, relief, where due, is given to each account holder in respect of the interest actually paid by him.

The degree of proof required will depend on the circumstances of each case. In a straightforward case where there is no obvious tax advantage to be gained from an unequal apportionment of the interest, the claim from the taxpayers may be sufficient. Similarly, where it is obvious from the income resources of the claimants that it would be reasonable to

expect that the bulk of the interest could only be paid by one party, a claim to that effect would be accepted. However, if:

- One of the account holders is outside the tax net and is alleged to have paid a smaller proportion or none of the interest, *or*
- One of the account holders is liable to tax at the higher rates and it is alleged that he or she paid a higher proportion or all of the interest, *or*
- One of the account holders has reached or exceeded the ceiling for relief under section 244 of the *TCA, 1997*, and it is alleged that he or she has paid a smaller proportion or none of the interest, *or*
- The interest is allegedly paid in such a manner as no reasonable person would be expected to pay it (for example, the loan is used to purchase an asset for the equal use of two persons but one person is allegedly paying all or the bulk of the interest)

an unequal apportionment of the interest will not be allowed without a thorough investigation of the facts. In particular, a copy of the loan agreement will be requested and a detailed explanation for any inconsistencies will be required.

14. Mortgage interest paid to local authorities

In cases where a local authority house is being purchased jointly by an elderly parent and one or more members of the family under a formal transfer order under section 90 of the *Housing Act, 1966*, the local authority issues the interest certificate in the names of all the joint purchasers. Where any person named on the certificate is in receipt of an old age pension from the Department of Social, Community and Family Affairs and has no other income, and where the inspector is satisfied that such a person has not, in fact, made any payment in respect of interest, the full amount of the interest may be allowed to the other person named on the certificate if there is only one or in equal proportions to each other person named if there is more than one.

15. First-time buyer relief

First-time buyers are entitled (for a period of five years) to more favourable tax relief than is generally available on the payment of mortgage interest. Tax relief for these individuals is calculated without the percentage restriction or the £100/£200 restriction. The term 'first-time buyer' means an individual who has not previously been entitled to relief in respect of interest paid on loans used for the purchase, repair, development or improvement of an individual's sole or main residence. The 'first-time buyer' relief applies to an individual provided that the year of claim is one of the first five years for which relief falls to be given to that individual in respect of interest paid on qualifying loans.

In deciding whether or not the 'first-time buyer' relief is due for any year, the number of years for which interest relief falls to be granted must first be established (see **examples A and B**).

Joint loans. Where the parties to a joint loan are not married to each other, the question of whether one or other of the parties is a 'first-time buyer' is determined by reference to the facts applicable to each individual. Accordingly, it is possible in the case of joint loans that one of the parties is a 'first-time buyer' and the other is not (see **example C**).

Married couples. Where a married couple are charged to tax on the basis of either joint assessment or separate assessment and either spouse has been granted relief in respect of a qualifying loan, the relief is treated as having been given equally to both spouses for the purposes of deciding whether or not the 'first-time buyer' relief is due (see **examples D and E**).

Example A

In 1990/91, Martin purchased his first principal private residence financed by a mortgage. In 1991/92, he sold this house and emigrated. In 1995/96, Martin returned to Ireland and purchased another principal private residence financed by a mortgage. Martin qualifies for 'first-time buyer' relief for:

- **1995/96** – as this is the third year of interest relief
- **1996/97** – as this is the fourth year of interest relief
- **1997/98** – as this is the fifth year of interest relief.

Example B

In 1990, Mary inherited her parents' house. In 1993/94, she sold this house and purchased another principal private residence financed by a mortgage. Mary qualifies for the 'first-time buyer' relief for all years 1993/94 to 1997/98 inclusive as she had not previously been entitled to relief on interest paid on qualifying loans.

Example C

In 1985, Joan purchased her principal private residence and she has been granted interest relief for all years to date in respect of the interest paid on the loans to purchase the property. In July 1993, Joan sold her principal private residence and acquired, jointly with Frank (who has never previously claimed relief in respect of a qualifying loan), another principal private residence. In calculating the relief due on the interest paid on the loan to acquire the new house, Joan is not a 'first-time buyer' but Frank is. Accordingly, Frank qualifies for the 'first-time buyer' relief for the years 1993/94 to 1997/98 inclusive but Joan does not.

Example D

In 1983, Peter purchased his principal private residence, financed by a mortgage in his sole name. He married Helen in 1985. Since the marriage, the couple have elected to be taxed under joint assessment and the relief granted in respect of the interest paid on the home loan was calculated by reference to the general ceilings applicable to a married couple. In 1996/97, Peter sold the house and, jointly with his wife, purchased another principal private residence financed by a loan in their joint names. For the purposes of calculating relief due on interest paid for 1996/97 and the years following, Helen does not qualify for 'first-time buyer' relief for any year. Similarly, if the couple had separated in 1996/97 and Helen had purchased a house in that year, she would not be a 'first-time buyer'. She is treated, for this purpose, as having been granted interest relief for each year for which her husband was granted relief and 'first-time buyer' relief would not apply for any year.

Example E

Tom and Anne married in 1993/94 and purchased their first principal private residence in that year financed by a mortgage. In 1994/95, the couple separated, sold the house, and each then purchased a principal private residence. Both Tom and Anne qualify for the 'first-time buyer' relief in 1995/96, 1996/97 and 1997/98.

16. Standard-rating of interest

Standard-rating of home loan interest was phased in with effect from 1994/95 as follows:

Tax year	Proportion of allowable interest to be standard-rated
1994/95	25%
1995/96	50%
1996/97	75%
1997/98 onwards	100%

The part (or full amount for 1997/98 and the years following) of the allowable interest which is standard-rated is no longer deductible in computing total income (other than for exemption and marginal relief purposes). Relief for this amount at the standard rate is deducted in computing income tax payable for the year. G

This extract from Tax briefing *(issue 34, December 1998) was reproduced by kind permission of the Revenue Commissioners.*

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Western Development Commission Bill, 1998

This Bill has been amended in the Select Committee on Agriculture, Food and the Marine.

COMPANY

Liquidator alone has *locus standi*

- When a company is in liquidation, only the liquidator has *locus standi* to bring an appeal on behalf of the company.

The defendant was a limited liability company in liquidation. By way of an order of the High Court dated 20 July 1992, pursuant to s27 of the *Local Government Planning and Development Act, 1976*, the defendant was prohibited from carrying out certain developments in Co Cork and was also ordered to reinstate and landscape these lands. C, who was a respondent in the proceedings, was not named in that order and the order was not made against him. C, in the present case, sought an order extending the time for appeal that order. In dismissing the application for an extension of time, it was held that:

- C had no *locus standi* to bring an appeal and he could not do so on behalf of the company. The company was in liquidation and only the liquidator could take that step
- In these circumstances, such matters as the quite remarkable length of time which had elapsed since the order was made or whether C had formed at the time a *bona fide* intention to appeal need not be considered.

Cork County Council v CB Readymix Ltd (Supreme Court) *(ex tempore)*, 12 December 1997

COMPENSATION

Factors involved in malicious injuries

The plaintiff claimed compensation for malicious injuries to his car. It was necessary to show that the damage was caused in the course of a riotous assembly. The case came before the Supreme Court by way of case stated on a question of law from Judge Sheridan of the Circuit Court. In finding there was evidence on which the judge could find the necessary elements for holding that a riot had occurred, it was held that:

- The elements of a riot were that there were at least three persons involved, that they assembled with a common purpose, execution of that common purpose took place, that there was an intention on their part to help one another, by force if necessary, against anyone who might oppose them in execution of the common purpose, and that there was force or violence used and displayed
- There was clear evidence, on which the trial judge could act, that the persons behaving in a very aggressive fashion would be capable of combining to oppose anyone who interfered with their common purpose. The decision whether to so hold was for the trial judge.

Kennedy v Tipperary (North Riding) County Council (Supreme Court), 20 February 1998

CRIMINAL

Power to commute delegated

With the exception of capital cases, the power of the government to commute or remit any punishment of forfeiture or disqualification imposed by a court has been delegated to the Minister for Justice, Equality and Law Reform.

Criminal Justice Act, 1951 *(Section 23) (Delegation of Powers) Order 1998* (SI No 416 of 1998)

EDUCATION

Education (No 2) Bill, 1998

This Bill has been passed by Dáil Éireann.

EMPLOYMENT

Code of practice on retail Sunday working published

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

Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) (Declaration) Order 1998 (SI No 444 of 1998)

ENVIRONMENTAL

Oil pollution measures proposed

In 1990, the International Maritime Organisation (a subsidiary organisation of the United Nations) adopted the *Oil pollution preparedness, response and co-*

operation convention. New legislation has been proposed to provide for the application within the State of the convention. For the purposes of the legislation, the area of the State is extended to include sea areas within 200 miles of baselines.

Sea Pollution (Amendment) Bill, 1998

HEALTH SERVICES

Proposed eastern health authority

A Bill has been presented which seeks to:

- Establish a body to be known as the Eastern Regional Health Authority which will be responsible for planning, commissioning and overseeing all health and personal social services in Dublin, Kildare and Wicklow
- Establish three new area health boards (the Northern Area Health Board, the South-Western Area Health Board and the East Coast Area Health Board) which will have delegated responsibility from the Eastern Regional Health Authority for the management and delivery of services currently provided by the Eastern Health Board, and
- Provide that voluntary service providers (including the major voluntary hospitals) will be funded by the Eastern Regional Health Authority rather than by the Department of Health and Children as at present.

Health (Eastern Regional Health Authority) Bill, 1998

Voluntary Health Insurance (Amendment) Bill, 1998

This Bill has been amended in the Select Committee on Health and Children.

INTELLECTUAL PROPERTY

Videotape a cinematograph film within the meaning of the Act

- The proper approach to adopt when determining whether a videotape was encompassed by the definition in s18(10) of the *Copyright Act, 1963* was to look at its language in the light of the expert evidence as to the nature of a videotape and the process by which a moving picture was produced by it.

The defendant was accused by the plaintiffs of copying videotapes in contravention of their copyright contained in s18(10) of the *Copyright Act, 1963*. The defendant contended that videos were not 'copies' within the meaning of the Act in that they were not cinematograph films and, as such, that he had not breached its provisions. A trial of a preliminary issue was ordered in order to answer the questions whether a videotape was a cinematograph film within the meaning of s18(10) of the 1963 Act and, if it was not, whether a videotape could be a 'copy' within the meaning of the same section.

The defendant contended that there was a *cassus omissus* in Irish law, in that the definition of cinematograph film contained in s18(10) in its ordinary meaning did not capture videotapes as visual images were not recorded on videotape. The defendant argued that other jurisdictions had amended their legislation to correct this *lacuna*. In reply, the plaintiffs argued that the charges wrought by legislation in the other jurisdictions had not necessarily been intended to cure an infirmity in their existing legislation. Further, the plaintiffs contended that the definition in s18(10) was wide enough to encompass videotapes. In answering the first question in the affirmative, it was held that:

- The type of videotape technology which existed today was not in contemplation by the draftsmen of the 1963 Act when they defined the expression 'cinematograph film'
- The proper approach was to look at the language of the definition in s18(10) in the light of the expert evidence as to the nature of a videotape and the process by which a moving picture was produced by it
- In the case of a videotape, a metal particle tape clearly qualified as 'material of any description'
- While a sequence of visual images was not observable on the tape, the information on the tape represented such a sequence and had been put on the tape with a view to reproducing the sequence
- There was no requirement in the definition that the sequence of visual images should be observable on the material
- There was no requirement in the definition that the tape itself should be capable of reproducing the sequence of visual images without the intervention of other technology
- The language of s18(10) admitted of production or reproduction of visual images by means of videotape technology
- A videotape was a cinematograph film within the meaning of that expression in s18(10) of the 1963 Act.

Universal City Studios Incorporated v Mulligan (Laffoy J), 28 November 1997

LEGAL PROFESSION

Rules on solicitors and investment business

With effect from 1 December 1998, a solicitor who is not an authorised investment business firm or who does not hold himself out as a provider of investment services or advice must undertake to the Law Society, when seeking a practising certificate:

- Only to provide investment business services (including acting as an insurance intermediary) or advice to clients inci-

dental to the provision of legal services to those clients
- Not to hold him or herself out as being an investment business firm, and
- When providing such incidental services and acting as an intermediary, not to hold a written appointment other than from persons or firms authorised by the Central Bank.

Similarly, a solicitor who has a practising certificate and who also operates as an authorised investment business providing investment business services (including acting as an insurance intermediary) or advice to clients not incidental to the provision of legal services to those clients will be required to provide forms of indemnity against losses due to his default.

The Solicitors Acts, 1954 to 1994 *(Investment Business and Investor Compensation) Regulations 1998* (SI No 439 of 1998)

MONETARY UNION

Redenomination of negotiable instruments into euros

An order has been made which empowers the Minister for Finance, or the National Treasury Management Agency on his behalf, to redenominate into euros any bonds, bills or notes issued by or on behalf of the Minister and currently denominated as pounds under Irish law.

Economic and Monetary Union Act, 1998 *(Redenomination of Negotiable Debt Instruments) Order 1998* (SI No 424 of 1998)

REAL PROPERTY

Clause 35 of the *General conditions* considered

- In the absence of a statutory provision, a contractual obligation or some other legally enforceable mechanism which deemed publication in a local newspaper to be notice for the purpose of conveying information to an owner or occupier of land, such person could not be regarded as having been notified or given notice of a decision, proposal or intention of a public body in relation to the land merely by the publication or advertisement in a local newspaper.

The plaintiff was the vendor of a farm and claimed a possessory title over tidal lands which lay to the east of the farm. The farm was subject to a charge in favour of one Bio Enterprises Limited (BEL). The previous owner of the charge had obtained an order for possession of the farm against the plaintiff. BEL was given leave to execute the possession order in 1985. The plaintiff appealed to the Supreme Court against that order, but before the appeal was heard, the plaintiff decided to sell the farm to the first-named defendant and its beneficial owner, the second-named defendant. The deal was concluded in June 1997.

The second-named defendant had been negotiating with BEL in order to buy their interest, but then decided to deal directly with the plaintiff. As part of the agreement, the plaintiff had to procure the discharge of BEL's charge. On the compromise of the charge, the plaintiff was to withdraw her appeal to the Supreme Court. The plaintiff agreed to pay BEL £1,000,000 in compromise of its charge, and then withdrew her appeal.

Before the deal was finalised, it emerged that the farm fell within a proposed natural heritage area designation. That fact had not been disclosed to the defendants despite the fact that notices to that effect had been published in the local papers. The defendants were of the opinion that the information should have been disclosed to them pursuant to clause 35 of the *General conditions of sale*. The defendants decided that the plaintiff's failure to disclose that information entitled them to rescind the contract and they served notice of rescission on the plaintiff.

The plaintiff issued the current proceedings seeking specific performance of the contract. On foot of those proceedings, the plaintiff sought a mandatory injunction compelling the defendants to complete the sale. The defendants disputed the making of an order for specific performance on the grounds that the plaintiff had not been in a position to close the sale on 30 October 1997, as there were still undischarged charges on the folio, and the agreement had been to sell the farm free from all encumbrances. The defendants contended that the plaintiff was bound to furnish evidence of the discharge of all encumbrances at the time of the closing and that the plaintiff was not able to do that. In granting an order for specific performance, it was held that:

- As the second notice printed effectively negatived the first notice, the defendant's claim to rescission had to rest on the second notice
- Neither the plaintiff nor the defendants had been aware of the publication of the two notices, or of the decisions reflected in those notices
- The effect of clause 35 was to impose a positive duty of disclosure upon a vendor in relation to the orders and notices which came within its ambit, so that the *caveat emptor* maxim did not apply in relation to such orders and notices or the subject matter of them
- It was for a purchaser to establish that an order or notice which came within the ambit of clause 35 known to the vendor was not disclosed by the vendor prior to the sale, and the onus was then on the vendor to establish the existence of one or more of the four factors which obviate a rescission even where there has been a failure on the part of the vendor to disclose
- The definition of 'competent authority' contained in clause 35 was intended to cast a wide net and to capture every conceivable public person or body who could make or issue a legally effective order or notice in relation to land
- What was also required was that the person or body in question who issued the notice should have legal competence to effect, either immediately or prospectively, the land to which the order or notice related in the manner in which it purported to do so in the order or notice as of the time of the making or issuing of the order or notice
- By June 1997, no steps had been taken which would have advanced the proposed designation as regards the farm beyond the stage of being a mere proposal or statement of intent and, accordingly, the second published notice was not a notice 'affecting' the farm within the meaning of clause 35
- The publication of the second notice did not have the consequence of the plaintiff having been 'notified or given' notice of the proposed designation within the meaning of clause 35
- In the absence of a statutory provision, a contractual obligation or some other legally-enforceable mechanism which deemed publication in a local newspaper to be notice for the purpose of conveying information to an owner or occupier of land, such person could not be regarded as having been notified or given notice of a decision, proposal or intention of a public body in relation to the land merely by the publication or advertisement in a local newspaper
- The plaintiff failed to establish on both aspects of the question that the second published notice came within the ambit of clause 35 and, accordingly, the entitlement of the defendants to rescind did not arise
- Had the sale closed on 30 October, the plaintiff would have been in a position to fulfil her contractual obligations in relation to discharge of the encumbrances affecting the title
- The defendants' solicitors had no genuine concern in relation to the discharge of the encumbrances
- Even if the plaintiff had not been in a position to fulfil her

contractual obligations in relation to the encumbrances on the date of closing, such would not have amounted to a breach of contract which would have entitled the defendants to terminate the contract or regard itself discharged from further performance thereof forthwith, time not being of the essence
- The service of a notice to complete under clause 40 of the *General conditions* by the defendants and a failure to comply with it by the plaintiff would have been a necessary prerequisite to rescission by the defendants
- Had such a notice to complete been served by the defendants, it was clear that the plaintiff would have been able to comply with it
- The purchase price payable to the plaintiff by the defendants was sufficient to discharge the indebtedness of BEL and all other encumbrances
- The plaintiff was in a position to redeem the charge in favour of BEL and set at nought BEL's entitlement to execute for possession and the plaintiff's obligation to deliver possession
- Neither the existence of the orders nor the compromise evidenced by a letter was a bar to an order for specific performance
- The plaintiff was entitled to an order for specific performance of the agreement to sell the farm.

Browne v Mariena Properties Limited (Laffoy J), 23 January 1998

ROAD TRAFFIC

All large PSVs to use bus lanes

As and from 23 November 1998, bus lanes may be used by all large public service vehicles.

Road Traffic (Traffic and Parking) (Amendment) (No 2) Regulations 1998 (SI No 441 of 1998)

SHIPPING

New roll-on/roll-off safety rules

New rules implement the provisions of the *Stockholm agreement* of 1996 in relation to survivability standards for roll-on/roll-off passenger ferries and seek to enhance the safe management, operation and pollution prevention of such ferries operating to or from ports within the State.

European Communities (Safety Management of Roll-on/Roll-off Passenger Ferries) Regulations 1998 and the *Merchant Shipping (Ro-Ro Passenger Ship Survivability) Rules 1998* (SI Nos 413 and 429 of 1998)

TOURISM

Shooting licences

A private member's Bill has been introduced which aims to regulate the licensing of promoters and the granting of firearm certificates to non-residents for the purpose of hunting and shooting wildlife within the State. See also *Firearms (Temporary Provisions) Act, 1998. Control of Wildlife Hunting and Shooting (Non-Residents' Firearm Certificates) Bill, 1998*

TRANSPORT

Carriage of Dangerous Goods by Road Bill, 1998

This Bill has been passed by Dáil Éireann. G

The ILT digest is reproduced by kind permission of the Irish Law Times.

News from the EU and International Affairs Committee

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

Gender discrimination and limitation periods

Belinda Levez v TH Jennings (Harlow Pools) Ltd (Case 326/96), judgment of 1 December 1998. In February 1991, Ms Levez had been recruited as manager of a betting shop owned by the defendant at an annual salary of £10,000. In December 1991, she was appointed manager of another shop belonging to the same employer, replacing a man who had received an annual salary of £11,400 since September 1990. The work performed and the conditions of employment for managers in the betting shops run by Jennings Ltd were the same. However, the salary of Ms Levez did not reach £11,400 until April 1992.

Ms Levez left the employment of Jennings in March 1993. She then discovered that, until April 1992, she had been paid less than her male predecessor. She brought a claim under the *Equal Pay Act* in September 1993. However, the Act provides that arrears of pay can only be paid in respect of a two-year period before the proceedings commenced. Thus, she was not entitled to arrears of pay before 17 September 1991. The Employment Appeals Tribunal referred two questions to the European Court of Justice (ECJ).

The ECJ emphasised that it is for national law to establish the procedural rules for the safeguarding of rights that individuals derive from EC law. Such rules may not be less favourable than those governing similar domestic claims. These rules also must not make virtually impossible or excessively difficult the exercise of rights conferred by EC law. In this sense, a national rule limiting arrears of pay to two years before the initiation of proceedings was not open to criticism.

However, in the circumstances of the case, Ms Levez had been inaccurately informed or deliberately misled. She was not in a position to realise the extent of the discrimination against her until April 1993. The ECJ held that to allow an employer to rely on a national rule imposing such a time limit in these circumstances would be incompatible with the principle of effectiveness of EC law. Enforcement of the rule would make it virtually impossible or excessively difficult to obtain arrears of remuneration in respect of gender discrimination and would facilitate the breach of EC law by an employer whose deceit caused the employee delay in bringing proceedings. G

Pregnancy rights held to apply before maternity leave

Berit Høj Pedersen and Ors v Fællesforeningen for Danmarks Brugsforeninger and Ors (Case 66/96), judgment of 19 November 1998. The ECJ has ruled on the validity in EC law of Danish legislation on non-manual employees. This legislation provided that pregnant women who, for a reason connected with their pregnancy, are unfit for work before the beginning of the maternity leave period are not entitled to full pay. The employee is only entitled to receive half pay from her employer. In contrast, an employee who is unfit for work on grounds of illness is in principle entitled to full pay. Ms Pedersen and other female employees had brought proceedings against their employers relating to their receiving reduced pay for absences from work due to pregnancy-related conditions.

The court pointed out that pregnancy brings about incapacity for work by reason of disorders and complications inherent in the condition. Depriving a woman of an entitlement to full pay when her incapacity is due to a condition connected with her pregnancy is treatment based essentially on her pregnancy and thus is discriminatory. However, if a pregnant woman is absent from work before her maternity leave, by reason of routine pregnancy-related inconveniences or of mere medical recommendation with no medical condition or special risks for the unborn child, the loss of some of her regular salary cannot be regarded as discrimination. In such circumstances, the loss of salary is due to her choice not to work. Legislation providing for some or all of the salary to be forfeited in such a case is not incompatible with EC law.

The court also considered a Danish rule that an employer may, when he considers that he cannot provide work for a woman who is pregnant, although not unfit for work, send her home without paying her salary in full. The court held that if such a rule only affected female employees, it is discriminatory.

The court finally considered whether Danish law fell under the conditions in Directive 92/88 on the safety and health at work of pregnant workers authorising the employer in certain circumstances to give a pregnant worker leave from her duties. The Danish legislation is aimed at protecting the interests of the employer, rather than the biological condition of the female employee. In addition the directive requires the employer to first examine whether it is possible to adjust the employee's working conditions and/or working hours before granting leave. Thus, the Danish legislation does not satisfy the requirements of the directive for giving the employee leave from her duties. G

Protection of animal species may justify trade barriers

Ditlev Bluhme (Case 67/97), judgment of 3 December 1998. Danish law provides that only nectar-gathering bees of the sub-species *apis mellifera mellifera* (Læsø brown bees) may be kept on the island of Læsø and certain neighbouring islands. This is done to protect an indigenous population of bees in these areas. The legislation also prohibits the importation into Læsø of live domestic bees or reproductive material for them.

Mr Bluhme was prosecuted before the Danish criminal courts for keeping on Læsø bees other than Læsø brown bees. He argued that the Danish legislation hindered the free movement of goods and was thus contrary to the treaty. The Danish criminal court referred to the ECJ the question whether the legislation complied with the treaty.

The court held that in the absence of any harmonisation of the laws of the Member States on the marketing of bees, national laws remain applicable subject to compliance with the treaty. The court recognised that by prohibiting the importation of bees into the island the legislation was capable of hindering trade between Member States. Thus, it was a measure having an effect equivalent to a quantitative restriction. Nonetheless, the court recognised that measures to preserve an indigenous animal population with distinct characteristics contribute to the maintenance of biodiversity by ensuring the survival of that population. They are thus intended to protect the life of those animals and may be justified on that ground.

The Læsø brown bee is in danger of disappearance as a result of cross-breeding with the golden bee. Due to this, the court found that the establishment of a protection area such as the one on Læsø is a measure appropriate to the aim of protecting the species and is therefore in accordance with EC law. G

RECENT DEVELOPMENTS IN EUROPEAN LAW

COMPETITION

Abuse of a dominant position

Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs-und Zeitschriftenverlag GmbH & Co KG (Case 7/97), judgment of 26 November 1998. Oscar Bronner publishes the Austrian newspaper *Der Standard*. In 1994, that newspaper's share of the Austrian daily newspaper market 3.6% of circulation and 6% of advertising revenues. Mediaprint publishes the newspapers *Neu Kronen Zeitung* and *Kurier*. They have a combined market share of 46.8% of circulation in the Austrian daily newspaper market and 42% of advertising revenues. They reached 53.3% of the population from 14 in private homes and 71% of all newspaper readers. For distribution, they had established a nation-wide home-delivery scheme (delivering the newspapers directly to subscribers in the early hours of the morning). Bronner sought an order requiring Mediaprint to include *Der Standard* in its home-delivery scheme in return for a reasonable fee. Bronner argued that postal deliveries took place in the late morning and was not an equivalent alternative and further argued that in view of its small number of subscribers that it would be unprofitable for it to organise its own home-delivery service. The Austrian court asked whether the refusal of Mediaprint to include *Der Standard* in its delivery service was an abuse of a dominant position. The ECJ held that the refusal would only breach article 86 if it was likely to eliminate all competition in the daily newspaper market on the part of the person requesting the service. Furthermore, such a refusal must be incapable of being objectively justified and the service must be indispensable to carrying on the business of the person requesting the service. To establish this, the person must show that there is no actual or potential substitute in existence for that home-delivery scheme. The court pointed out that there were other methods of distributing newspapers such as through the post and through their sale in shops or kiosks. The court did not accept the argument that establishing a rival home-delivery system would not be economically viable.

Competition proceedings

The Commission has recently adopted two competition regulations. Regulation 2849/98/EC simplifies competition procedures. It provides that different parties in competition proceedings have the right to be heard. It sets out the procedural rights of parties in competition cases, dealing with the Hearing Office and access to the file. It provides that statements made at hearings will be recorded, rather than minuted in writing, as at present. Regulation 2843/98/EC deals with competition cases in the transport sector. It sets out how to lodge applications and notifications in such cases. It introduced new rules and a new *Form TR* for transport companies wishing to notify agreements. It covers transport by air, by sea and by land. Both regulations came into force on 1 February. They replace five existing regulations.

CONSUMER LAW

Product liability

The Council of Ministers has reached agreement on a directive to amend and extend the scope of the 1985 directive on liability for defective products. The directive was implemented in Ireland through the *Liability for Defective Products Act, 1991*. It introduced a strict liability regime in product liability cases. Agricultural products were excluded from the scope of the 1985 directive. The new proposal would extend the product liability directive to agricultural products.

DISCRIMINATION

Language

Horst Otto Bickel, Ulrich Franz (Case 274/96), judgment of 24 November 1988. The Italian courts referred a question to the ECJ which had arisen in criminal proceedings taken against Mr Bickel and Mr Franz. Mr Bickel is an Austrian lorry driver. He was stopped in Italy and charged with driving while under the influence of alcohol. Mr Franz, a German national, was also arrested in Italy for possession of a type of knife prohibited by Italian law. In each case, they declared that they had no knowledge of Italian. They requested that the proceedings be conducted in German, relying on the rules for the German-speaking citizens of the Province of Bolzano. The Italian court asked whether a right to have criminal proceedings conducted in a language other than the principal language of the state falls within the scope of the treaty and is subject to article 6. Article 6 prohibits discrimination on grounds of nationality. If article 6 was applicable the court asked whether it precluded a rule granting citizens in a certain area the right to have their case heard in their language while denying that right to nationals of other states travelling or staying in the area whose language is the same. The ECJ held that article 59 covers all nationals of other Member States who visit another state where they intend or are likely to receive services. Such persons are free to move around within that state. The right to move around and reside freely is enhanced if those exercising it are able to use a given language to communicate with state authorities

on the same footing as the state's own nationals. Thus, such persons are entitled under article 6 to treatment no less favourable than that given to nationals of the state so far as concerns the use of language spoken there. German-speaking Italian nationals are placed at a considerable advantage in having criminal proceeding tried in German over German-speaking nationals from other Member States.

INTELLECTUAL PROPERTY

Designs

Directive 98/71/EC on the legal protection of designs (OJ 1998 L298/28) has been adopted. This aims to harmonise the laws of the Member States on design protection. The directive is to be brought into effect by 29 October 2001. The directive applies to the protection of designs by registration. The directive sets out the criteria for registration and the protection to be given to a registered design. Other matters, including the registration process and enforcement mechanisms, are left to domestic law. Designs are registrable when they are new and have an individual character. A design is the appearance of a product (its lines, contours, colours, shape, texture and materials of the product or its ornamentation). The design must be visible and have a distinctive appearance. A design is new if no identical design has been made available to the public. A design is identical if the only differences are immaterial. The design is made public by use, exhibition or other disclosure. The directive gives the designer a period of 12 months before registration to publish and use the design without the design being treated as if it lost its novelty. Designs which are contrary to public policy or accepted principles of morality are excluded from the scope of the directive. Designs can be registered for 25 years. Member States can decide whether this period should be continuous or renewable in five-year periods or multiples of five years. During the registration period, the registered owner has the exclusive right to use the design (through manufacture or marketing, or licensing of manufacture or marketing of products bearing the design).

Exhaustion of rights

Parfums Christian Dior SA v Evora BV, 11 November 1998, *Financial Times*. Christian Dior manufactures luxury perfumes in France and distributes them in other EC Member States through exclusive distributors who are responsible for national territories. Evora, through its subsidiary, operated a chain of chemists in the Netherlands. Dior perfumes which had been put on the market in France were obtained by Evora and sold in the Netherlands through its chemists. The Dior perfumes were advertised by Evora in a sales promotion. Dior brought proceedings in the Netherlands claiming that Evora had infringed trade marks and copyright in the packaging of the perfumes by advertising them in catalogues. The Dutch Supreme Court referred a number of questions to the ECJ concerning the right of the owner of a trade mark or copyright to enforce those rights to prevent the resale of goods lawfully purchased within the EU. The ECJ reaffirmed the primacy of the provisions of the treaty providing for free movement of goods. The ECJ held that Dior could not rely on the defences to free movement for protection of intellectual property in article 36 of the treaty or Article 792 of the *Trade mark directive* (Directive 89/104/EEC). The court held that the mere fact that Dior's products were advertised in the customary manner for perfumes in general by Evora was not of itself a ground for enforcement of intellectual property rights. It would have to be shown that serious damage had been done to the owner's reputation in order to justify restraint on the reseller's advertising activities.

LITIGATION

Brussels convention

Van Uden Africa Line/Kommanditgesellschaft in Firma Deco-Line ea (Case 391/95) judgment of 17 November 1998. The case arose from an application before the German courts for interim relief relating to the payment of debts arising under a contract containing an arbitration clause. When a dispute arose concerning the operation of a charter agreement, Van Uden instituted arbitration proceedings in the Netherlands, on foot of the agreement. It subsequently applied for interim relief under article 24 of the convention, claiming that the other party was not displaying the necessary diligence in the appointment of arbitrators and that non-payment of invoices was disturbing its cashflow. The Dutch courts referred a number of questions to the ECJ for its interpretation. The ECJ held that where the subject matter of an application for provisional measures falls within the scope of the convention, the national court can hear the application even where arbitral proceedings may or have been commenced on the substance of the case. The granting of provisional measures is conditional on the existence of a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the contracting state before which those measures are sought. The court went on to hold that ordinarily interim payment of a contractual sum does not constitute a provisional measure. However, it can where repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful in the substance of the claim and the measure sought relates only to specific assets of the defendant located or to be located within the territorial jurisdiction of the court to which application is made.

Limitation periods

Aprile Srl, en liquidation v Amministrazione delle Finanze dello Stato (Case 228/96) judgment of 17 November 1998. The Italian State Finance Administration had collected certain customs charges from Aprile, a company in liquidation. In two cases in 1989 and 1991, the ECJ held that these customs charges were contrary to EC law. Italy abolished these charges from 13 June 1991 and 1 November 1992. However, these measures did not have retrospective effect. There was no provision made for repayment of amounts collected in breach of EC law. Aprile sued, seeking to have the amounts reimbursed. The case was defended on the basis that the relevant limitation period barred the action being taken. The Italian court asked the ECJ whether national rules providing for a limitation period of three years for reimbursement of customs charges rather than the ordinary limitation period of ten years for actions for the recovery of sums paid but not due was compatible with EC law. The ECJ emphasised that national laws safeguarding rights derived from EC law must be as favourable as those governing equivalent domestic actions and must not render virtually impossible or excessively difficult the exercise of those rights. Reasonable time limits which meet these requirements are permissible. The court held that a time limit of three years appeared reasonable. It pointed out that the actions for reimbursement of charges levied in beach of EC law should be governed by limitation rules which are equivalent to limitation rules applying to the reimbursement of such charges under national law. The limitation period need not match the most favourable period available under national law. The court went on to consider its earlier ruling in *Emmott*. It held that the *Emmott* principle applied only in its particular circumstances – where a time-bar deprived the plaintiff of any opportunity to rely on his or her right to equal treatment under a directive. It now has to be read in the light of subsequent judgments in *Steenhorst-Neerings* and *Fantask*.

TAXATION

VAT

The Commission has put forward a proposal for a directive (OJ C 409 20.12.98 p13) proposing a 15%-25% band for the standard rate of VAT from 1 January 1999. A similar proposal was put forward in December 1995. The Council accepted the objective of preventing a widening of the gap between the standard rates of VAT of the Member States. However, it did not set a maximum rate.

Conferences and seminars

Academy of European Law
Contact: (tel: 0049 651 937370)

Topic: *Proposed directive on guarantees for consumer goods*
Date: 25-26 March
Venue: Trier, Germany

Topic: *Judicial remedies at the crossroads between Community and national law*
Date: 16 April
Venue: Brussels, Belgium

Topic: *The increasing role of the European Parliament in the field of environmental law after the* Treaty of Amsterdam
Date: 19-20 April
Venue: Copenhagen, Denmark

Topic: *Interaction between double-taxation conventions and the rulings of the ECJ on fundamental freedoms*
Date: 26-27 April
Venue: Trier, Germany

Topic: *Current developments in Community law*
Date: 3-4 May
Venue: Trier, Germany

Topic: *The future of professional associations in the single market*
Date: 17-18 May
Venue: Trier, Germany

Topic: *Consumer protection in the field of banking law*
Date: 27-28 May
Venue: Trier, Germany

Topic: *New and forthcoming developments in employment law in the European Community*
Date: 31 May-1 June
Venue: Trier, Germany

Topic: *Value-added tax in the single market*
Date: 1-2 June
Venue: Stockholm, Sweden

Topic: *Decentralised application of European antitrust law: should the European Commission give up its monopoly of exemption?*
Date: 10-11 June
Venue: Trier, Germany

Topic: *Co-operation in the area of education and the recognition of diplomas on a European level*
Date: 17-19 June
Venue: Trier, Germany

Topic: *European Community law: an introduction for young lawyers*
Date: 12-16 July
Venue: Trier, Germany

Topic: *Fundamental economic rights in international law: Community law and WTO law*
Date: 2-3 September
Venue: Stockholm, Sweden

Topic: *Biotechnological inventions: legal protection and limits*
Date: 14-15 October
Venue: Trier, Germany

Topic: *Legal aspects of tourism and travel in the European single market*
Date: 21-22 October
Venue: Trier, Germany

Topic: *International private law in the single market: the Europeanisation of liability law*
Date: 25-26 October
Venue: Trier, Germany

Topic: *Current developments in European distribution law: panorama after the green paper*
Date: 4-5 November
Venue: Trier, Germany

Topic: *Licensing contracts under European cartel law*
Date: 8-9 November
Venue: Trier, Germany

Topic: *Telebanking and cybermoney in the European single market*
Date: 15-16 November
Venue: Trier, Germany

Topic: *Current developments in European fiscal law*
Date: 18-19 November
Venue: Amsterdam, Holland

Topic: *The Community trade mark: caselaw of the Boards of Appeal of the Office for Harmonisation in the Internal Market*
Date: 18-19 November
Venue: Alicante, Spain

Topic: *The eco-label as a voluntary measure and consumer interests*
Date: 29-30 November
Venue: Trier, Germany

Topic: *Human rights and combating racism in the European Union*
Date: 4-5 December
Venue: Trier, Germany

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

Topic: *Annual congress*
Date: 22-27 October
Venue: Brussels, Belgium

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

Topic: *Private-public partnership*
Date: 20-21 November
Venue: Warsaw, Poland

European Lawyers' Union
Contact: Martine Karsenty-Ricard (tel: 0033 1 47637475)

Topic: *Fourth European intellectual property rights forum*
Date: 24 March
Venue: Brussels, Belgium

Contact: Antonio Debiasi or Laura Agopyan (tel: 0039 2 783341)

Topic: *Antitrust between the EC law and national law*
Date: 13-14 May
Venue: Treviso, Italy

Contact: Klaus-Ullrich Link
(tel: 0049 711 4897923)

Topic: *Setting up companies in the European Union*
Date: 17-18 June
Venue: Dresden, Germany

Contact: Gérard Abitbol
(tel: 0033 0491 338195)

Topic: *European social law*
Date: 15 October
Venue: Marseilles, France

Hawksmere
Contact: (tel: 0044 171 8811858)

Topic: *Mediation and dispute resolution skills*
Date: 11-16 April
Venue: Cambridge, England

IBC
Contact: Scott Forbes (tel: 0044 171 4535495)

Topic: *European telecommunications law*
Date: 19-20 April
Venue: Brussels, Belgium

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: *Annual conference*
Date: 20-22 May
Venue: Lille, France

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 1526 8478)

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

A major series of seminars on employment law was recently held as part of the Law Society's continuing legal education (CLE) programme. The speakers were (from left): Gary Byrne, Michael Kennedy and Desmond McMahon, all from solicitors' firm BCM Hanby Wallace

A number of CLE seminars on the new disclosure rules in relation to High Court personal injury actions have been run in venues around the country. Pictured at the Dublin seminar were Patrick Groarke (right), who delivered the lecture and is a member of the Litigation and Arbitration Committee, and the committee's chairman James McCourt, who chaired the seminar

Law Society's new web site

Last month Law Society President Patrick O'Connor officially launched the Law Society's new web site. He is pictured here at the launch with Member Services Executive Claire O'Sullivan

Solicitors' Benevolent Association

Notice is hereby given that the 135th Annual General Meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Wednesday 7 April 1999 at 12.30pm.

1. To consider the Annual Report and Accounts for the year ended 30 November 1998
2. To elect directors

To deal with other matters appropriate to a general meeting.

Geraldine Pearse, Secretary

The leading cases of the Twentieth Century

The Irish Association of Law Teachers' annual conference on the theme of *The leading cases of the Twentieth Century* will be held from 9-11 April in the Killarney Park Hotel, Killarney, Co Kerry. The keynote papers will be delivered by the Hon Mr Justice Ronan Keane, judge of the Supreme Court, Advocate General Niall Fennelly of the European Court of Justice, and Professor Sir John Smith of the University of Nottingham. More than 20 papers will be delivered over the course of the weekend taking a fresh look at the facts and holdings of this century's leading cases, each of which represents a crucial legal development which has exercised a profound influence on the law since it was decided.

All are welcome to attend. Further details, and booking forms, are available from Eoin O'Dell, President, IALT, School of Law, Trinity College, Dublin 2 (tel: 01 608 1178; fax: 01 677 0449; e-mail: eodell@tcd.ie).

Pictured at the recent Mayo Bar Association dinner dance in Ashford Castle were (*back row, from left*): Judge Oliver McGuinness, Judge John Garavan, Judge Jarlath Ruane, Patrick Murphy, Law Society President Patrick O'Connor, Bernard Daly, Ann McEllin, Catherine Dixon (President of the Law Society of Northern Ireland), Law Society Finance Committee Chairman Ward McEllin (*front row, from left*): James Cahill, Jacqui Durcan, Mayo Bar Association President Brendan Flanagan, Helena Boylan, Lord Justice Turlough O'Connell QC, Judge Padraig Brennan, and Gillian O'Connor

Singing practice

Fifteen years ago Declan Branagan left the world of show business behind to enter the IT industry. He had been a member of the Branagans Showband alongside his sister Geraldine (pictured above at her recent wedding to musician and composer Phil Coulter), but decided to focus on a new career providing IT solutions to Irish business. In 1997, Branagan Business Systems launched *The Practice*, a Windows-based case management system for the legal profession. *The Practice* has proved to be another hit for Branagan, who has so far notched up a client base of almost 250 firms.

At a recent conference on liquor licensing reform were Minister for Consumer Affairs Tom Kitt, Law Society President Patrick O'Connor, conference chairman JJ Bunyan of Licensing Information and Consultancy Services, who organised the event, and William Prasifka of the Competition Authority

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 for 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 (tel: 0033 1 45252515; fax: 0033 1 45254781; e-mail: mjobert@club-internet.fr).

Barristers were recently offered the chance to subscribe to Ireland's premier law magazine, the *Law Society Gazette*. As if the special subscription rate was not enough of an incentive, all new subscribers were entered into a prize draw for a Compaq C-Series Handheld PC, kindly sponsored by Compustore. Here, Arthur Moore, Sales Manager of Compustore, presents the prize to barrister Maire Kirrane, flanked by Mary-Rose O'Sullivan of Rose Communications and *Gazette* editor Conal O'Boyle

Book reviews

Commercial secrecy: law and practice

John Hull

Sweet & Maxwell (1998), 100 Avenue Road, London NW3 3PF, England. ISBN: 0 421 58040 2. Price: IR£97

We all have personal secrets. All businesses have commercial secrets. The evolution of a right to privacy or secrecy illustrates the vitality of the common law and our jurists. Judge Tomas M Cooley, author of *The elements of torts* (1878), wrote that one of a person's rights might be said to be 'the right to be let alone'. Many readers will be familiar with the classic and seminal article written by two young lawyers, Samuel D Warren and Louis D Brandeis, published on 15 December 1890 in volume IV, number 5, of the *Harvard law review*. In their article, *The right to privacy*, these young lawyers added a new chapter to the law. By taking the existing law of contract, trust, confidence and property, and by stretching well-established concepts of laws, the authors and, subsequently, judges have developed laws relating to confidentiality and privacy. Commercial confidentiality is an aspect of this law and is the subject of John Hull's book.

I have a fascination for prefaces. Show me the preface to a book and I will endeavour to ascertain the thought-processes and personality of the writer. John Hull is a practising solicitor at Wilde Sapte, a well-known London law firm, and is co-author of *Welfare rights* and a writer of numerous articles. In his first words in the preface to his book, he writes: 'I have never run a marathon but now I think I know what it feels like'.

Writing a book is like embarking on a lonely journey: the author hit his personal 'wall' several times, but completed the course. Yes, he has done so successfully and with style. Style (in the positive sense), as one great authority once wrote, is the neat dress of thought.

The author examines how the law views those who disclose sensitive or valuable confidential information in the course of their commercial or professional work. Concentrating primarily on commercial information, the author also examines how private secrets and government secrets are protected. Core issues, such as what makes information confidential, how the law recognises a relationship of confidence and the consequence of a breach of confidence are examined in some detail. Also examined in some detail are employment relationships, the role of the public interest and the media, and the range of remedies available.

Of particular relevance to practitioners are chapters considering interim remedies in breach of confidence actions, such as the anton piller order, where a party seeks a court order to enter the defendant's premises, or premises under his or her control, and to search for, and take away, or otherwise preserve, evidence relating to or supporting the plaintiff's cause of action where there is a danger that the defendant might destroy such evidence before any *inter partes* hearing. The issue of interlocutory injunctions, other interim measures, and final remedies including damages for breach of contractual duty of confidence, examined in the book are of great practical benefit.

Another very useful chapter is entitled *Confidentiality and litigation: aspects of practice and procedure*. The first section of this chapter deals with pleading breach of confidence in court documents.

Appendix A of the book provides 14 precedents, including standard confidentiality provisions for inclusion in a wide range of commercial agreements, confidentiality disclosure letters and confidentiality provisions and restrictive covenants in an employment agreement.

Appendices B and C (*Protecting business information: understanding the risks and keeping it confidential*) are intended to make the reader aware of the potential vulnerability to loss of information and provide general guidance that, if implemented, can reduce but not eliminate the vulnerability of the business.

It is appropriate to mention here that Paul Lavery, a solicitor in McCann FitzGerald, has written *Commercial secrets: the action for breach of confidence in Ireland*, a valuable reference for practitioners. This was published by Round Hall Sweet & Maxwell in 1996.

Lucid, eminently readable, and well presented, the book is a significant contribution to the law of commercial secrecy. The book has a very practical focus and, by virtue of our shared common law, practitioners will find it of immense assistance. G

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

Tax Book 98, Tax Law 98, Tax Disc 98

Alan Moore (consultant editors: Norman Judge, Sean Murphy; editors: Alan Moore, Thomas F Berg)
Taxworld Ltd (1998), 73 Bachelor's Walk, Dublin 1. ISBN: 1-902065-02-6 (Tax Book 98), 1-902065-03-4 (Tax Law 98). Price: Tax Book 98 – £95; Tax Law 98 – £55; Tax Disc 98 – £186.50 (all three: £245.75)

The *Tax Book 98* is the second edition of the *Tax Book* (which was reviewed in the April 1998 issue of the *Gazette*). As was noted in that review, the *Tax Book* provides a guide to each section and sub-section of the *Taxes Consolidation Act, 1997*. The *Tax Book 98* not only updates this guide to reflect the amending legislation to 1 July 1998; it also contains significant new material. The explanatory notes which follow the plain English guide to each section of the Act as amended, have, in many cases, been expanded, thus providing further assistance to specialist and non-specialist readers alike. In addition, references to caselaw have increased: the table of cases in the first edition ran to four pages; the equivalent part of the second edition runs to 39 pages. The second edition also contains a useful list of Revenue addresses, phone and fax numbers.

A point made by this reviewer in considering the first edition was that the book, though useful, did not contain the text of the *Taxes Consolidation Act, 1997*. This point has been addressed by the publication of a companion volume, *Tax Law 98*, which reproduces the legislation as amended to 1 July 1998. In addition, both books are available on one fully-searchable CD-ROM, the *Tax Disc 98*.

The *Tax Book* was an innovative and useful guide to the *Taxes Consolidation Act*; the *Tax Book 98* stands as a reference work in its own right. It deserves a place on the bookshelf and in the computer of every practitioner. 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.

European business litigation

Abla Mayss and Alan Reed. Ashgate: Dartmouth Press (1998), Gower House, Croft Road, Aldershot, Hants GU11 3HR. ISBN: 1855216876. Price: stg£45

Few litigators or commercial lawyers have not encountered the complexities of legal rules on jurisdiction, enforcement of foreign judgments and choice of law. Any case involving a party from another country, or where the subject matter of a dispute is in a foreign country, throws up these issues.

The common-law rules in these areas are complex and pose challenges to the most experienced lawyer. In recent years there have been significant additions to these rules in the shape of Ireland's accession to the *Brussels* and *Lugano* conventions on jurisdiction and the enforcement of judgments and the *Rome convention on choice of law in contractual matters*.

Unfortunately, there have been few attempts to put together a comprehensive commentary on this new private international law regime. There have been a number of excellent commentaries on the two conventions, but many of these are now sadly out of date and very few attempt to place the conventions in context with the common-law rules. The practitioner is also hampered by the common-law bias of general texts of conflict of laws. These texts tend to adopt a historical approach and analyse the common-law rules before dealing with the conventions, treating them as exotic and not altogether welcome new developments. This runs contrary to the manner in which practitioners approach this area of the law. The conventions are the first line of approach; only if the subject matter of a dispute falls outside their scope are the common-law rules of relevance.

European business litigation confines its treatment to legal issues of relevance to commercial litigation within the European Union. Thus, while there is some discussion of common-law rules such as *forum non conveniens*, this is confined to a consideration of whether these rules survive the entry into force of the *Brussels convention*. The only exception to this approach is a brief chapter on the recognition and enforcement of judgments at common law. The book focuses on a number of different subjects: jurisdictional rules under the *Brussels convention*, choice of law under the *Rome convention*, choice of law in tort and recognition and enforcement of judgments under the *Brussels convention* and at common law. The authors also give a brief overview of the operation of the conventions to date.

This practical focus means that this work will be of great assistance to the practitioner. The book traces recent decisions of the English courts and of the European Court of Justice on the interpretation of the convention. This is done in a clear and very readable manner. Anyone with an interest in the subject matter will find this a surprisingly enjoyable read. Tracking developments in the interpretation of some of the convention's more difficult articles (such as article 5.1, concerning jurisdiction in contractual disputes) is done in a very immediate way. The difficulties of interpretation are where problems arise for the practitioner, and accessible guidance of the variety provided by this work can be invaluable. In addition, the authors guide the reader through the other provisions of the convention and related problems of private international law in a very direct and lucid manner. G

TP Kennedy is the Law Society's Legal Education Co-ordinator.

LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.
(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin
(Published 5 March 1999)

Regd owner: Christopher Dalton, Headfield, Ballymurphy, Co Carlow; Folio: 1236; Lands: Newtown; Area: 53a 0r 39p; **Co Carlow**

Regd owner: Philip McEntee, Annagharnett, Virginia, Co Cavan; Folio: 16408; Lands: Corradooa; Area: 20.338 acres; **Co Cavan**

Regd owner: John McCarthy and Patrick J McCarthy, Tonovoher, Knock, Co Clare; Folio: 12837; Lands: Prop 1 – Townland of Tarmon and Barony of Clonderalaw, Prop 2 – Townland of Tarmon and Barony of Clonderalaw, Prop 3 – Townland of Tarmon (1 undivided 12th) and Barony of Clonderalaw; Area: Prop 1 – 28a 3r 11p, Prop 2 – 0a 2r 36p, Prop 3 – 0a 3r 35p; **Co Clare**

Regd owner: The Lord Mayor Aldermen and Burgesses of Cork; Folio: 32396F; Lands: Part of the Townland of Mahon, situate in the Parish of Saint Finbars, County Borough of Cork; **Co Cork**

Regd owner: Harcon Construction Limited; Folio: 20769F; Lands: Situate in the Townland of Ballinaspig More, County of Cork; **Co Cork**

Regd owner: Edith Hyde; Folio: 12726; Lands: Part of the lands of Ballyannon, situate in the electoral division of Middleton Rural and Barony of Barrymore, Co Cork; **Co Cork**

Regd owner: Jeremiah Lucey; Folio: 4214F; Lands: Property situate in the Townland of Ardra and Barony of Carbery West (East Division), County Cork; **Co Cork**

Regd owner: Liam O'Brien and Liz O'Brien; Folio: 13619L; Lands: Property known as 7 Castle Court in part of the Townland of Mahon, situate in the Parish of St Finbar and County Borough of Cork; **Co Cork**

Regd owner: William Doherty, Main Street, Kilmacrenan, Co Donegal; Folio: 29484; Lands: Kilmacrenan; Area: 10a 3r 8p; **Co Donegal**

Regd owner: Charles Gallagher, Calhame, Castlefin, County Donegal; Folio: Prop 1 – 18571F, Prop 2 – 2516 and Prop 3 – 9169; Lands: Prop 1 – Ballybofey, Prop 2 – Drumdoit and Prop 3 – Calhame; Area: Prop 1 – 0.019 hectares, Prop 2 – 4.251 hectares and Prop 3 – 42.431 hectares; **Co Donegal**

Regd owner: Patrick McGettigan, Legnahoory, Kilmacrenan, County Donegal; Folio: 68; Lands: Legnahoory; Area: 28.481 acres; **Co Donegal**

Regd owner: Ault and Wiborg Ireland Limited; Folio: 16038; Lands: Townland of Bluebell and Barony of Uppercross; **Co Dublin**

Regd owner: Patrick Balfe of Coolmine, Clonsilla, Co Dublin; Folio: 2759; Lands: Townland of Diswellstown, and Barony of Castleknock; **Co Dublin**

Regd owner: Alan Cooney; Folio: 41401F; Lands: Property known as 150 Curlew Road, situate in the Parish and District of Crumlin; **Co Dublin**

Regd owner: James Cranny and Annette Cranny; Folio: 75187F; Lands: Property situate in the Townland of Jobstown and Barony of Uppercross, situate at 2 Maplewood Avenue, Springfield, in the town of Tallaght; **Co Dublin**

Regd owner: John Dorney and Joan Dorney; Folio: 41070L; Lands: Townland of Kilnamanagh and Barony of Uppercross, property situate to the North East of Belgard Road in the town of Tallaght; **Co Dublin**

Regd owner: James and Marie Mullaney; Folio: 16935; Lands: Property situate in the Townland of Carrickmines Little and Barony of Rathdown; **Co Dublin**

Regd owner: Brendan McKenna; Folio: 99311F; Lands: Property situate adjacent to 33 Limekiln Road, Walkinstown; **Co Dublin**

Regd owner: James Mulvany and Mary Geraldine Mulvany; Folio: 23482F; Lands: Townland of Old Orchard and Barony of Rathdown, a plot of ground known as 17 Willowbank Park, Rathfarnham; **Co Dublin**

Regd owner: Sarah Rylands (deceased); Folio: 565L; Lands: Property known as 105 Home Farm Road, situate on the north side of the said road in the Parish of Glasnevin and the District of Drumcondra; **Co Dublin**

Regd owner: Margaret Bradley, Barrack Street, Dunmore, Co Galway; Folio: 1915F; Lands: Townland of Dunmore and Barony of Dunmore; Area: 0a 0r 12p; **Co Galway**

Regd owner: Philip Timpson; Folio: 3808F; Lands: Turnings, Upper Daars South and Killeenmore and Barony of Naas North; **Co Kildare**

Regd owner: John Bergin, Mount Eland House, Ballyragget, Co Kilkenny and Grange, Ballyragget, Co Kilkenny; Folio: 10380; Lands: Grange; Area: 59.537 acres; **Co Kilkenny**

Regd owner: Susan Smith; Folio: 11981; Lands: Goodwinsgarden and Barony of Kells; **Co Kilkenny**

Regd owner: John Brophy; Folio: 14612; Lands: Turra and Drumagh and Barony of Slievemargy; **Co Laois**

Regd owner: Patrick and Julia O'Doherty; Folio: 2610L; Lands: Townland of 26 Pennywell Road, Parish of St John's; **Co Limerick**

Regd owner: Thomas Kehoe (otherwise Keogh); Folio: 92L; Lands: Bridge Street, Longford and Demesne, Battery Road, Longford; **Co Longford**

Regd owner: Sarah Mary O'Callaghan, Doylesfort Road, Dundalk, Co Louth; Folio: 373F; Lands: Dowdallshill; Area: 0a 0r 18p; **Co Louth**

Regd owner: Michael and Maura Boyle, Imeall, 68 Inver Edie, Malahide, County Dublin, also Imall, Longford Road, Duleek, County Meath; Folio: 10814; Lands: Commons; **Co Meath**

Regd owner: Luke Comer, Brookville Lodge, Dunboyne, Co Meath; Folio: 10993; Lands: Warrenstown; Area: 21.813 acres; **Co Meath**

Regd owner: Noel Thomas Cunningham, Julianstown, Drogheda, County Meath and Gaffney Road, Duleek, County Meath; Folio: 24879; Lands: Julianstown West; Area: 0.275 acres; **Co Meath**

Regd owner: Patrick Dunne, Kellystown, Slane, County Meath; Folio: 3389; Lands: Starinagh; Area: 28a 2r 1p; **Co Meath**

Regd owner: Patrick Mullen, Shallon, Julianstown, County Meath; Folio: 10254; Lands: Shallon; Area: 33a 1r 25p; **Co Meath**

Regd owner: Leo Deery, Tullygoney, Tydavnet; Folio: 20863; Lands: Tullygony; Area: 3.313 acres; **Co Monaghan**

Regd owner: Michael, Margaret and Dominic Hughes, 6 Bree, Castleblayney, County Monaghan; Folio: 10957F; Lands: Bree; **Co Monaghan**

Regd owner: Michael John McBride, c/o J Delany Gannon & Company, Solicitors, Mohill, County Leitrim; Folio: 1683; Lands: Townland of Knockhall and Barony of Ballintober North; Area: 11a 2r 16p; **Co Roscommon**

Regd owner: Peter McDermott (deceased), Ballygilda, Roscommon; Folio: 23407; Lands: Prop 1 – Townland of Carrick and Barony of Athlone South, Prop 2 – Townland of Castlesampson and Barony of Athlone South; Area: Prop 1 – 10.450 acres and Prop 2 – 1.394 acres; **Co Roscommon**

Regd owner: Thomas Kelly (deceased); Folio: 6844; Lands: Mardyke and Knockabritta and Barony of Slievardagh; **Co Tipperary**

Regd owner: Kevin Maher (deceased); Folio: 1696 and 20440; Lands: Grange and Barony of Ikerrin; **Co Tipperary**

Regd owner: Grainne Sweetman and Nicholas Sweetman; Folio: 1130F; Lands: Ballycourcymore and Barony of Ballaghkeen South; **Co Wexford**

Regd owner: Margaret Hester Talbot; Folio: 327L; Lands: Killarney and Barony of Rathdown west side of Dargle Road, Bray; **Co Wicklow**

WILLS

Buckley, Fr Michael, deceased, late of the Missionaries of the Sacred Heart, Woodview, 34 Mount Merrion, Blackrock, Co Dublin. Would any person having knowledge of a will of the above named deceased, who died on 3 November 1997, please contact Matthew G O'Connell & Company, Solicitors, 17 Belmont Park, Donnybrook, Dublin 4, tel: 01 2605172

Hayes, Patrick, deceased, late of Orrery Ville, Orrery Hill, Blarney Street in the County of City of Cork. Would any person having knowledge of a will of the above named deceased, who died on 17 June 1996, please contact Michael Powell & Company, Solicitors, 48 Grand Parade, Cork, tel: 021 270451, fax: 021 270454

Kelly, George, deceased, late of Harbour Road, Ballinasloe, Co Galway. Would any person having knowledge of a will of the above named deceased, who died on 18 July 1997, please contact Fair & Murtagh, Solicitors, Ballinasloe, Co Galway, tel: 0905 42210, fax: 0905 42213

McGovern, Thomas, deceased, late of Sraughan, Blessington, County Wicklow. Would any person having knowledge of a will dated 21 March 1972 of the above named deceased, who died on 1 June 1973, please contact Charles E Coonan, Solicitor, 55 South Main Street, Naas, Co Kildare, tel: 045 897853, fax: 045 875414

Moriarty, Donal (otherwise Donnie), deceased, late of 29 Canon Troy Court, Chapelizod, Dublin, and 32 Derravaragh Road, Terenure, Dublin. Would any person having knowledge of a will/codicil of the above named deceased, who died on 1 December 1998, please contact Manus Sweeney & Company, Solicitors, Merchants House, Merchants Quay, Dublin 8, tel: 01 6791186, fax: 01 6791267

Mulvihill, Brian (otherwise Barney), (otherwise Bernard) (otherwise Bernard Christopher), deceased, late of Claras, Newtowncashel, Co Longford. Would any person having knowledge of a will of the above named deceased, who died on 21 November 1998, please contact Connellan, Solicitors, Church Street, Longford, tel: 043 46440

O'Donoghue, Eileen, deceased, late of 33 Sandyvale Road, Headford Road, Galway. Would any person having knowledge of a will of the above named deceased, who died on 21 January 1999, please contact Mary Scanlon, Baile an Lochaigh, Bally David, Tralee, Co Kerry, tel: 066 9155135

Roche, Michael, deceased, late of Christianstown, Newbridge, Co Kildare and London. Would any person having knowledge of a will of the above named deceased, who died on 22 January 1999, please contact Francis B Taaffe & Company, Solicitors, Edmund Rice Square, Athy, Co Kildare, tel: 0507 38181, fax: 0507 38459

EMPLOYMENT

Solicitor required for practice in County Tipperary, with at least one year's post-qualification experience in general practice: particularly conveyancing, probate and taxation work. **Reply to Box No 20**

Newly-qualified solicitor available for part-time work in North Dublin/South Meath area. **Reply to Box No 21**

Book-keeper required, Dublin 2, part-time to assist in computerisation and to maintain all accounts functions, excellent salary and conditions, please send CV to **Box No 22**

MISCELLANEOUS

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

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

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

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

Northern Ireland solicitors. Will advise and undertake NI-related matters. All areas corporate/private. Agency or full referral of cases as preferred. Consultations in Dublin or elsewhere if required. Fee sharing envisaged. Donnelly Neary & Donnelly, 1 Downshire Road, Newry, Co Down, tel: 080 1693 64611, fax: 080 1693 67000. Contact KJ Neary

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

Solicitors' practice required, Dublin area. Three-man Dublin solicitors' firm wish to acquire the practice of a sole practitioner or retiring solicitor. Consultancy or other flexible arrangements. **Reply to Box No 23**

For sale, practice, Munster area. **Reply to Box No 24**

Irish Law Reports Monthly 1981-1995 (both incl). Bound (except 1995). Perfect condition. Would cost over £2,600 from the publisher. Will sell for best offer or first offer of £1,500. Tel: 021 354466

TITLE DEEDS

In the matter of the *Registration of Title Act, 1964* and of the application of Paul Ronan in respect of property in the county of Tipperary
County: Tipperary
Unregistered lands at: Glengaddy
Dealing no: T5782/98

Take notice that Paul Ronan of Rocklow, Fethard, Co Tipperary, 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 and 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, 19 January 1999

Schedule
Conveyance dated 1 July 1964 made between Patrick Joseph Leonard and John Leonard of the one part and Thomas Ryan of the other part.

***Landlord and Tenants (Ground) Rents Act, 1967-1984*: notice of intention to acquire a fee simple (section 4)**
To: The person or persons for the time being entitled to the interest of the Sydenham Army St Leger Whitfield Estate in the premises hereinafter described under the lease hereinafter described.

1. Description of land to which this notice refers: All that and those the piece or plot of ground situate in the Guard Lane in the Municipal Borough of Kilkenny.
2. Particulars of applicants lease or tenancy: lease dated 11 April 1913 whereby the said premises were demised by Sydenham Army St Leger Whitfield to Richard Duggan for the term of 99 years from 25 March 1913 at the yearly rent of £3 and subject to the covenants and conditions therein contained and on the lessee's part to be observed and performed.

Take notice that the applicant, Katesan Limited, having its registered office at Main Street, Loughrea in the County of Galway, being a person entitled under the provisions of section 9 and 10 of the *Landlord and Tenant (Ground Rents) (No2) Act, 1978*, proposes to purchase the fee simple interest in the land described in paragraph 1 above.

Signed: Patrick Sweeney, Director, Katesan Limited, Main Street, Loughrea, Co Galway, and Florence G MacCarthy & Associates, solicitors for the Applicant, Loughrea, Co Galway.
8 February 1999