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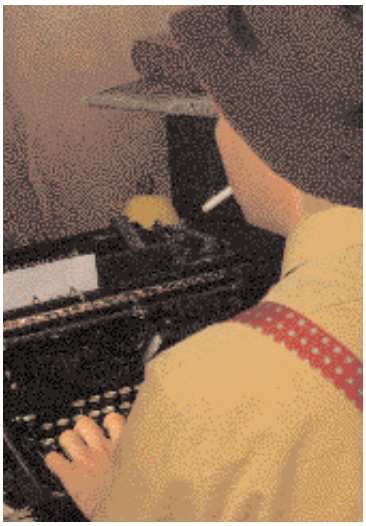

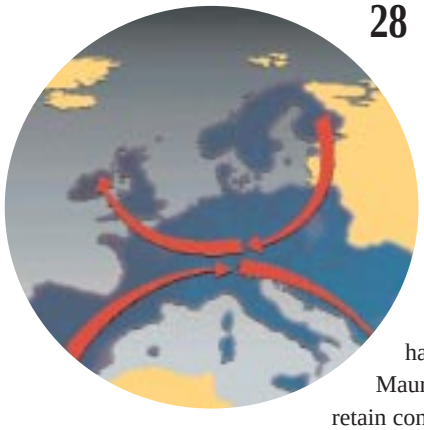

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Mid-term report

As you read this message, I have completed half of my term as President of the Law Society. It is the hope of every President to try to make a meaningful contribution to improving the service and the relevance of the Law Society to the solicitors' profession and public. At the start of my term of office, I proposed – and the Council accepted – many changes to the committees, working groups and representatives of the Society. I am happy to report that the changes have been accepted as beneficial and worthwhile for and by the profession. The Council, its committees and the staff of the Society are working well.

I believe that transparency and openness are important.

Relevance of the Law Society

Every solicitor has by now received a personal invitation from me to attend a reception in Blackhall Place. Those who were able to attend the social events enjoyed them! The facilities of the Law Society are for the profession and should be used. I hope that I will meet most, if not all, solicitors during the remainder of my tenure of office in Blackhall Place.

In an effort to ensure that I am conversant with the views and wishes of the profession, I have visited 11 solicitors' bar associations and all five of the large firms in Dublin. In the company of the Director General, I hope to visit the remainder of the bar associations, including our colleagues in London in the Irish Solicitors' Association, within the next few months.

What's been happening over the last few months?

First, the Independent Adjudicator of the Law Society presented his first report to me some time ago. While the number of complaints made against solicitors are relatively few, it is of concern that a significant number of those against whom complaints are made failed to attend meetings when requested to do so. That very small number of solicitors regretfully continue to give the profession a bad image.

The recommendations of the Independent Adjudicator have been accepted by the Council and will be implemented.

Second, the Working Group on Qualification for Appointment as Judges of the High and Supreme Courts has reported to the Government and its recommendations have been accepted by it. Legislation to give effect to those recommendations should be enacted soon.

Third, the site for the Education Centre has now been cleared. Do watch it grow and develop! The laying of the foundation stone for the Education Centre by An Taoiseach, Bertie Ahern, will take place in the summer.

What the future holds

The coming months will see a number of changes. The further expansion of the continuing legal education (CLE) programme throughout the country, the report on the incorporation of solicitors' practices and the drafting of regulations to enable this to occur, and the launch of a new corporate image for the Law Society are some of the projects that are well advanced.

The report of the Council Development Review Group, which I established in November last, will be available shortly. The terms of reference of the group are, among other things:

'To review and make recommendations on issues affecting the development of the Council as a representative body for the entire profession, including steps to:

a) Maximise the effectiveness of the involvement of Council members in the work of the Council

b) Encourage greater participation by more members of the profession in the Council.'

It is my earnest wish that more of our colleagues in the profession would stand for election to the Council, volunteer to serve on committees and act as consultants and tutors in the Law School.

Religious services for the opening of legal year

The opening of the legal year in October is celebrated by no less than six religious services in different places of worship: Roman Catholic, Protestant (who have a combined service), Muslim, Orthodox, Coptic Orthodox and Jewish.

The Constitution and laws of Ireland apply to everyone, regardless of religious belief. Is it not time that both branches of the legal profession and the judiciary combined their considerable influence and leadership qualities to hold *one service* at which all might attend for the opening of the legal year?

All traditions on this island can, do, and expect to have, without fear, favour or bias, uninhibited access to the courts. Why, then, should all traditions not come together to celebrate the opening of the legal year? It would show to those who might think otherwise that there is a genuine togetherness in this country.

Respect for the courts

The impartial administration of justice in all the courts of this country has been the hallmark of Ireland's democracy since the foundation of the State. Mr Justice Liam Hamilton's report on what has become known as 'the Sheedy affair' and the regrettable, but in the circumstances apparently necessary, resignation of three popular, learned, humane and honourable lawyers is a salutary lesson to all of us that there must never be any doubt about the transparency, fairness, justice, accountability and independence of those privileged and charged with upholding the Constitution and laws of this country.

I hope that those in the media and in politics who so quickly sought to reassert the high standard expected of lawyers would, themselves, if their standards were to fall below what is expected of them, should the circumstances arise, take the honourable course. G

Patrick O'Connor
President

The Ansbacher and NIB investigation: will company law let us down?

Investigations into the affairs of Irish companies are increasingly being discussed in the country's boardrooms. The risks of dishonesty being discovered are surely greater than ever before, but after exposure, what then?

The *Companies Act, 1990* is now being used and enforced in many important respects, as was originally intended by the Oireachtas, and important information on corporate crime is now reaching the public domain as a result. Formerly, we didn't even know what we didn't know. There was a very small number of investigations under the 1963 companies legislation – probably as few as two. By contrast, part II (investigations) of the 1990 Act is becoming one of the more thumbed parts of the legislation.

A 'name and shame' approach is increasingly being considered as an important tool of law enforcement. The names of the 700 or so individuals and companies reportedly involved in National Irish Bank's (NIB) offshore investments and in the Ansbacher deposits would formerly have remained well away from public glare. The public might not even have been aware of the existence of the investments and deposits as the names of depositors would have remained confidential. Now there is section 8 and part II of the 1990 Act – and the public is waiting.

An inspector calls

Inspectors have been appointed in NIB and are likely to be appointed to companies linked to the Ansbacher accounts. But there still remains the question of protecting the reputations of those who held – and still hold – such accounts legitimately.

There have been two earlier uses of section 8 before the appointment last year of retired Supreme Court judge John Blayney and accountant Tom Grace as inspectors to NIB and NIB Financial Services. The section was first used in September 1991 when senior counsel Conor Foley and accountant Aidan Barry were appointed to investigate the purchase by Siúcra Éireann (now called Greencore) of Sugar Distributors Limited. The section was used again in January 1994 when Frank Clarke SC was appointed to investigate an alleged fraud in CountyGlen, formerly known as Glen Abbey. On both occasions, the reports were sent to the Director of Public Prosecutions, but no prosecutions resulted. It increasingly appears that the confluence of company law and criminal law remains a significantly weak point in enforcement, even though the DPP has made many calls for reform.

Tánaiste Mary Harney: accepts the need for bi-annual company law reform

Public outcry

A public outcry may be expected if or when the names of the holders of NIB offshore accounts and Ansbacher accounts are published. Publication in *Iris Oifigiúil*, the Government official journal, of settlements with the Revenue Commissioners by individuals and companies do not identify the reasons for the settlements. But section 8 reports may be published by order of the court – and they may, and will be expected to, name names.

The report by John Blayney and Tom Grace into NIB and NIBFS accounts was seriously delayed by the High Court and Supreme Court outings in which NIB employees sought unsuccessfully to invoke the right to silence. (The sole judgment of the Supreme Court on 21 January 1999, which was written by Mr Justice Barrington, is recommended reading, both on the right to silence and indeed on part II of the *Companies Act, 1990*.)

The Tánaiste, Mary Harney, recently noted that major breaches of the *Companies Acts* had been uncovered by inquiries undertaken by the Department of Enterprise, Trade and Employment. 'Some very leading principals in very large organisations have been involved in huge breaches of the *Companies Act*', she said. An application by the Tanaiste to the court to have inspectors appointed to companies linked to the Ansbacher deposits is likely. The names of the depositors are known to the department but may not be published under section 14 of the 1990 Act.

Proactive approach

The Government, and politicians in general, may at last realise the importance of being 'proactive' rather than 'reactive' in legislation. Too often has the Dáil heard the familiar refrain (as fell to Ms Harney last month): 'I wish that the position would be otherwise, but I am constrained by the provisions of the *Companies Act* as it stands'.

The *Report of the working group on company law compliance and enforcement*, which was published in March, contains not just positive proposals but also a timescale for the future. Its suggestion that there should be a reforming *Companies Bill* every two years if necessary was accepted by the Tánaiste.

The inspector-appointing sections of the 1990 Act (sections 7, 8 and 14) may be reviewed by the reconstituted Company Law Review Group. The group may consider that the scope of section 7 investigations should be widened and that a vital 'trigger mechanism' be instituted for all sections. Public outrage is not widely regarded as a proper stimulus. Finally, there is the vexed issue of who pays the costs.

Corporate wrongdoing

Irish legislators have seldom been slow to consider how things are done in England. The 1990 *Third report by the House of Commons trade and industry committee on company investigations* made a considerable number of recommendations which have wide applicability. They included such matters as: taking greater steps to recover the costs of the investigations; taking steps to prevent recurrences; obliging auditors to disclose confidential information to investigators; and ensuring that company law should reflect the broader public interest.

The community in general, the majority of the business community, and the professions, look to part II of the *Companies Act, 1990*, and future amendments to it, to expose serious corporate wrongdoings. Ireland's reputation as a place in which to do business is regarded as worth protecting.

Significant progress is being made. But what is done with the information uncovered remains unfinished business. G

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

Judicial conduct and ethics after the Sheedy affair

Even the weeks of rumours which preceded it were not an adequate preparation for the impact of the Chief Justice's report on the Sheedy affair. The shock was very real, and the collateral damage extensive. Perhaps because most lawyers knew, to varying extents, some of the personalities involved, the dismay was probably felt even more strongly by the legal profession than by the public at large.

Lawyers will not forget for a long time where they were and how they felt on 16 April 1999, when they first heard the detail and conclusions of the report of Chief Justice Liam Hamilton on the circumstances leading to the release from prison of Philip Sheedy who had served just one year of his four-year sentence for dangerous driving causing death.

Weeks later it is still disturbing to re-read the Chief Justice's report, both in terms of some of the facts uncovered and of his stark conclusions that the most senior ordinary judge of the Supreme Court had interfered in a case in a manner which was 'damaging to the administration of justice' and that a High Court judge had 'failed to conduct the case in a manner befitting a judge'.

It must have been immediately clear to everyone on hearing the report that one, if not both, of the judges involved would either have to resign or face removal from office by the Oireachtas.

Shaken and saddened

The legal profession, probably more than anyone other than the judiciary themselves, was shaken and saddened that the judiciary, for the first time in the history of the State, had been touched by a major scandal. The damage can be repaired, but it will take considerable time and effort.

The resignations which followed the report have helped to restore public confidence in the judiciary and in the justice system. Much more needs to be done, however. The first of these is the speedy establishment of a system to deal effectively with allegations of judicial misconduct.

'Transparency and accountability' are spirits of our age. They have been characteristic values of Ireland and most other democratic countries in the 1990s. The problem is that transparency and, in particular, accountability are difficult to reconcile fully with the role of judges given that it is a cornerstone of a free democratic society that the judiciary be completely independent in its judicial function.

However, as is observed by the authors of Kelly's *The Irish Constitution*: '*The independence of the courts and their immunity from control by the Oireachtas is not absolute, and scarcely could be made so*'. While article 35.2-5 of the Constitution provides that '*All judges shall be independent in the exercise of their judicial function* …', it is clear that by no means everything done by a judge is an exercise of judicial function.

When a judge hears a case, he or she must judge it independently of any outside influence. This constitutionally-guaranteed judicial independence cannot extend to protecting or excusing absolutely everything a judge may do, however. It cannot justify grossly excessive delays in delivering a reserved judgment, for example. Yet, as things stand, there exists no formal system for resolving such a problem short of commencing another set of court proceedings.

It is a coincidence, although a fortunate one, that a report on judicial conduct and ethics by the Working Group on a Courts Commission, chaired by Mrs Justice Susan Denham, was already in existence well before the Sheedy case erupted. As the final part of the working group's sixth report, it was delivered to the Minister for Justice, Equality and Law Reform in November 1998 *(see also* News, *page 13)*.

As we found on so many other occasions when researching issues

Chief Justice Liam Hamilton: report with stark conclusions

on the working group, other jurisdictions were ahead of us. Common-law jurisdictions in North America and Australia, for example, where the independence of the judiciary is valued no less highly than it is in Ireland, have created systems relating to the conduct of judges. The systems in Canada, California and New South Wales in particular were studied by the working group. Some of these systems exist on a statutory basis.

Judicial accountability

In the course of the Sheedy controversy, it was reported that the Department of Justice, Equality and Law Reform had been impressed by the New Zealand system which is also statute-based, although it seems it could be more dangerously invasive of the territory surrounding judicial independence, if not of judicial independence itself, than the other models considered by the working group.

It is of course the case that judges are accountable for their decisions in two ways. First, judges are in the public eye. The vast majority of cases are heard in public. The decisions and reasons are also given in public and are subject to public scrutiny. Secondly, there is a system of appeals from the decisions of judges. Complaints of judicial misconduct are still made without means of redress despite these two safeguards, however.

The people of Ireland have been extremely fortunate since the foundation of the State to have been served by a judiciary of outstanding integrity, ability, diligence and compassion. Problems with judicial conduct and ethics have been, and continue to be, rare. However, judges are human and from time to time the conduct of some judges has fallen short of the very high standards that are expected.

Legal practitioners have had to face, from time to time over the years, problems of judicial conduct for which they have had no effective remedy. While such problems are rare, where they occur they can be extremely serious. Problems of judicial rudeness, irascibility, inefficiency, favouritism or the making of inappropriate remarks, for example, of a political or sexist nature, from the bench can rarely in themselves be the subject of appeals to higher courts.

When the subject was discussed by the Law Society Council last year, two things emerged which solicitors would now urge on Chief Justice Hamilton and the committee which he has very recently established to implement the proposals in the Denham commission report. Even if the new body to be established to review and deal with complaints against judges must have a majority of members who are judges, representatives of the Law Society, and, if they so wish, the Bar Council also should be full members of it. In addition, there should be non-lawyer members, people of the highest ability and integrity, both to guarantee public confidence in it and because of the special value of their perspective from outside of the legal system. It is the public which the judges serve, and the public's attitude to transparency and accountability should be embraced as part of the necessary reforms. G

Ken Murphy is Director General of the Law Society and was a member of the Working Group on a Courts Commission.

Chinese walls: can they really exist?

Trust and confidence are closely related. A hallmark of a client's relationship with a solicitor is that the client can safely trust and confide in his or her lawyer. In *Taylor v Blacklow* ([1836] 3 Bing (NC) 235), Gaselee J stated that 'the first duty of an attorney is to keep the secrets of his client'. So evident is that duty that Gaselee J observed that authority was not required to establish that proposition.

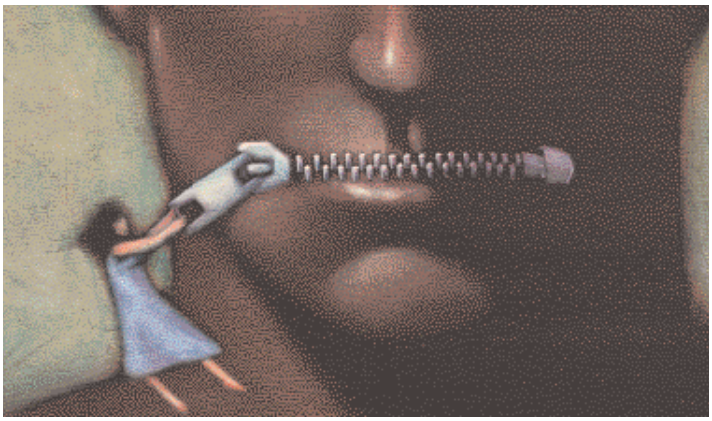
Sometimes that proposition has been overstated. For instance, Buller J in *Wilson v Rastell* ([1792]) 4 TR 753) said, in the context of confidentiality continuing after the professional retainer, that the 'mouth' of the attorney 'is shut forever'.

We all know that solicitors are required to disclose certain confidential information under compulsion of law. That particular issue is not considered here; this article explores the issue of the duty of confidentiality to a client, particularly a former client, and considers in what circumstances can a firm successfully erect 'Chinese walls' and therefore act for two parties arising out of related business matters or litigation.

The *Prince Jefri Bolkiah v KPMG* case

Issues in relation to conflicts of interest and the extent to which Chinese walls can function legitimately were considered in a recent decision of the House of Lords in *Prince Jefri Bolkiah v KPMG* ([1999] 1 All ER 517). Although the facts related to a firm of accountants, the work engaged in by the accountants was litigation-related. Accordingly, the principles enunciated by the courts in the *Bolkiah* case are relevant to solicitors.

The facts of the *Bolkiah* case are these. KPMG is one of the five largest firms of chartered accountants in the world. The firm was employed as auditors of the core assets of the Brunei Investment Agency (BIA) which had been established to hold and manage the general reserve fund of the Government of Brunei and its



external assets. Prince Jefri Bolkiah, the third and youngest brother of the Sultan of Brunei, had been the chairman of BIA for some time until his removal in 1998. He had previously enjoyed a close relationship with the Sultan but had fallen out of favour.

Between 1996 and 1998, Prince Jefri, acting in a personal capacity, retained KPMG to act for him or one of his companies in private litigation in which he was then engaged. The firm provided extensive litigation-support services of a type normally undertaken by solicitors. KPMG employed 168 persons on Prince Jefri's litigation. The litigation was settled in March 1998 and KPMG was paid approximately £4.6m for that work.

During the course of that litigation, KPMG had been entrusted with – and acquired extensive confidential information about – Prince Jefri's financial affairs. Prince Jefri was subsequently dismissed as chairman of the BIA and the Brunei Government in June 1998 began an investigation into the conduct of the BIA.

Chinese walls

KMPG considered that it could accept instructions from the Brunei Government as it had ceased to act for Prince Jefri more than two months previously and he was no longer a client. Aware of the possibility of conflicts of interest, KPMG erected so-called Chinese walls – an information barrier – around the department carrying out the investigation for the Brunei Government. Prince Jefri sought an injunction restraining KPMG from continuing to work on the investigation. The case eventually went to the House of Lords.

The House of Lords held in the Bolkiah case that, like a solicitor, an accountant providing litigation-support services owed a continuing professional duty to a former client, following the termination of the client relationship, to preserve the confidentiality of information received during the existence of the client relationship. That duty was unqualified and required the solicitor or accountant to keep the information confidential and also not to misuse the confidential information.

Conflict of interest

Lord Millet noted that a solicitor cannot without the consent of both clients act for one client while his partner is acting for another in the opposite interest. The judge noted that this disqualification had nothing to do with the confidentiality of client information; it was based on the inescapable conflict of interest which is inherent in the situation. He continued:

'It is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret. This is a matter of perception as well as substance. It is of the highest importance to the administration of justice that a solicitor or other person in possession of confidential and privileged information should not act in any way that might appear to put that information at risk of coming into the hands of someone with an adverse interest'.

The Chinese walls established by KPMG were *ad hoc* and erected within a single department. The court noted that, in the circumstances, the difficulty of enforcing confidentiality or preventing the unwilling disclosure of information was very great. Erecting Chinese walls and separating the insolvency, taxation or other departments from one another was one thing, as such departments often worked from different offices and there may be relatively little movement of personnel between them. But to erect Chinese walls between members who are all drawn from the same department, and accustomed to working with each other, was a different matter. The court noted that physical segregation was not necessarily adequate, especially when it related to a single department within a firm.

The court in Prince Jefri's case concluded on the evidence that KPMG had not discharged the heavy burden of showing that there was no risk that information in their possession which was confidential to Prince Jefri, and which KPMG obtained in the course of a former client relationship, may unwittingly come to the notice of those working on the new investigation adverse to Prince Jefri's interests. Accordingly, the court granted an injunction restraining KPMG from continuing to carry out certain work for the Brunei Investment Agency.

The case raises important issues about the effectiveness of Chinese walls as a means of restricting information between different people in the same firm. Erecting Chinese walls within the same department, such as the litigation department, where there is no consent from the affected party, is particularly difficult. Effective Chinese walls should involve an established organisational arrangement to preclude the passing of information from one part of the firm to another. G

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

Rosemary Nelson and the struggle for human rights

On 9 December 1998, the General Assembly of the United Nations adopted the *Declaration on human rights defenders*, marking an important milestone in the struggle towards better protection of those at risk for carrying out legitimate human rights activities.

Article 12.2 of the declaration says: 'The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration'.

The murder of Lurgan solicitor Rosemary Nelson reminds us that such words ring hollow unless the spirit of the declaration forms part of the culture of a society to respect human rights and uphold the rule of law.

I first met Rosemary Nelson about a year ago, shortly after I started a new job in Belfast. As she told me about threats on her life, I listened but part of me thought 'things like that just do not happen here anymore'. After all, the Belfast Agreement was just hot off the press, election campaigning was under way, and even when the talk at the meeting took on a more sober tone whenever Drumcree was raised, the future looked bright.

Even though I would profess to have a strong interest in human rights, I had for many years placed 'the North' off limits. I justified this by arguing that, as a 'southern

Rosemary Nelson: assaulted, abused and threatened by the RUC

Catholic', I would neither feel – nor be seen to be – impartial and thus my value as an objective, independent human rights lawyer would be diminished. And so up until one year ago, I had spent a number of years defending villagers who had been ethnically cleansed from their villages in South-East Turkey, torture victims, and lawyers who were under attack from the State for highlighting these violations.

An example from one case, currently before the European Court of Human Rights, states: 'He was stripped naked and slapped around, and his testicles were squeezed. He was threatened he would be killed if he looked further into cases of disappearances and village evacuations' (*ELCI and Others v Turkey*, Admissibility Decision, European Commission of Human Rights).

But, if the truth be told, the main reason I did not get involved was that it seemed as if 'the Troubles' had always been there throughout my life and, at some point, I just switched off. I caught the main news events and built up the rest of my limited understanding of the situation through futile arguments which seemed to focus exclusively on what colour of green you represented. Concerns over discrimination in employment, challenges to the notion of symmetry ('one side is as bad as the other'), never entered the discourse. It took me until last year to learn that, despite fair employment legislation and policy interventions, Catholic men remain more than twice as likely to be unemployed than their Protestant counterparts. Moreover, within senior public administration, the Catholic share of specialist staff (lawyers, architects and so on) actually decreased between 1990 and 1995 (to just 14.9%).

It takes time and effort to achieve even a limited understanding of a conflict situation and, as conflicts in Africa, the Middle East, Bosnia and now Kosovo remind us, there are no simple quick-fix solutions.

I am not sure when or why I switched back on again. I think that it is a different point for every person, but this is an appeal to look behind the events of Rosemary Nelson's murder. The Independent Commission for Police Complaints (ICPC) states that in 1998 there were 36 complaints alleging police misconduct against solicitors. There is a small number of firms at risk, as evidenced by the fact that over half of the complaints originated from two firms.

But her murder has wider implications, as highlighted by the UN Secretary General, Kofi Annan, commenting on the *Declaration on human rights defenders*: '[It] rests on a basic premise that when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe'. I know that we do not have the courage of the lawyers in Turkey – or even of Rosemary Nelson herself – to put ourselves on the front line, but this does not excuse us from doing nothing. We can, at least, request proper and independent investigations of such violations. If there is one lesson I have learned from my human rights work, it is that respect for the rule of law needs to be worked at and it is people who make the difference.

I leave you with the words of Rosemary Nelson when she addressed the US House of Representatives' human rights subcommittee last September: 'I went to the police lines and identified myself as a lawyer representing the residents. I asked to speak to the officer in charge. At that point, I was physically assaulted by a number of RUC officers and subjected to sectarian verbal abuse. I sustained bruising to my arm and shoulder. The officers responsible were not wearing any identification numbers and when I asked for their names I was told to f–k off. Since then my clients have reported an increasing number of incidents when I have been abused by RUC officers, including several death threats against myself'. G

Caroline Nolan is a solicitor and Director of the West Belfast Economic Forum.

Thinking of using more computers in your practice?

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6. - MAINTENANCE-FREE - Impossible to fix
7. REDESIGNED - Previous faults corrected, they hope...
8. - PERFORMANCE PROVEN - May operate through warranty period
9. HIGH RELIABILITY - They made it work long enough to ship
10. - MEETS ALL STANDARDS - Theirs, not yours
11. - NEW GENERATION - Old design failed, maybe this one will work
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The many dangers of below-cost selling

From: Ian Scott, Arthur Cox, Dublin

'There is hardly anything in this world that some man cannot make a little worse and sell a little cheaper, and the people who consider price alone are this man's lawful prey'.

So wrote an American, John Ruskin, over 100 years ago. It is perhaps another way of illustrating the all-too-familiar notion that you get what you pay for, a concept which appears to be as relevant as we approach the new millennium as it was over a century ago. Indeed, it is probably fair to say that this maxim can readily be applied to the current and not infrequent practice of below-cost selling.

The modern practice of solicitors deliberately quoting a level of fees in the knowledge that this level is well below the cost to them of providing the services concerned, for the sole purpose of attracting new clients or generating new business (as opposed to a genuine *pro bono* context), raises a number of questions, some of which might well be said to have ethical implications.

If one accepts that healthy competition is a normal fact of professional life and is to be encouraged, the practice of below-cost selling in such circumstances would seem to raise at least four essential questions.

First, is such a practice in the client's best interest? For example:

- Does it encourage the solicitor to apply sufficient time and the requisite professional standards throughout the transaction?
- Does it ensure that the solicitor will not try to cut corners? and
- Does it necessarily avoid a situation whereby the solicitor will be tempted to pass the matter on to some junior person who may not have the necessary expertise or experience?

Second, is such a practice in the solicitor's best interest? For example:

- Does it mean that the solicitor will make a profit or at least break even on the case?
- Does it ensure that the solicitor will be properly motivated throughout? and
- Does it take into account any value which the solicitor might add to the transaction?

Third, is such a practice in the profession's best interest: For example:

- Does it enhance the image of the profession in the public's perception?
- Does it avoid the danger of the solicitor's services being devalued in the eyes of the client in particular and the public in general?
- Does it differentiate between cost and value for money? and
- Does it give due recognition to the often intangible nature of legal services?

Fourth, is such a practice to be encouraged or condoned by the profession?

If the proper answer to each of these questions is in the negative, then it might reasonably be argued that, by engaging in such a practice, solicitors do little to enhance the image of the profession in the eyes of the public. Furthermore, the issue would also seem to beg the question that, if it has been seen fit to outlaw the practice of below-cost selling in the grocery trade, should not consideration be given to the feasibility of introducing some similar type of rules in the context of the provision of legal services?

In at least some cases, when all is said and done, it is probably not unfair to suggest that clients of any solicitor who engages in such practice must indeed, in the words of John Ruskin, run a considerable risk of becoming 'this man's lawful prey'.

And surely, even in the modern ultra-competitive environment, it is also fair to suggest that the labourer must still be worthy of his or her hire?

Your views

Your letters make your magazine and may influence your Society. Send your letters to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or e-mail us at c.oboyle@lawsociety.ie or you can fax us on 01 672 4801

Dumb and dumber

From: Niall Murphy, Lennon Heather & Co, Dublin

I was recently consulted by a third-level students' union which wished to have its constitution redrafted. I was asked for my thoughts on any particular sections that would have to be altered. One which caught my eye was the following provision relating to breaches of the various regulations: 'The Commission shall hear appeals on matters relating to elections and referenda and may execute candidates who breach electoral regulations ...'. Not surprisingly, few enough candidates put themselves forward at election time.

From: Katherine Finn, Dublin

Much has been said in recent times about the continued blurring of the lines between work and leisure, what with more people working from home, and facilities such as mobiles and laptops to connect us to our workplace wherever we happen to find ourselves. But the following is probably going too far.

Columbia Mills, on Sir John Rogerson's Quay, in addition to housing a dance club, was also home of what was known colloquially as 'Lapland' (the answer's in the name) with which stag night veterans might be familiar. Friends of mine from Scotland, in town last winter for the standard stag weekend, left a message on my voicemail cancelling a provisional arrangement to meet for drinks, saying that they had 'stuff arranged' for that evening. Phoning a girlfriend to let her know that the meeting was off, I speculated that perhaps the stag night participants had found their way to Columbia Mills to avail of the entertainment provided there. 'Oh, right', said my friend, 'the laptop dancing'.

Niall Murphy wins the bottle of champagne this month.

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

examples of the wacky, and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us n 01 672 4801, or e-mail us c.oboyle@lawsociety.ie

BRIEFLY

UN to run Irish refugee law training seminar

Lawyers working in the area of refugee law are being invited to a UN seminar on the subject later this month. The United Nations High Commissioner for Refugees (UNHCR) is organising a refugee law training day through its Irish office in the Premier Business Centre, Lower Baggot Street, Dublin 2, on Wednesday 26 May from 10am to 1pm. Anyone interested should contact Sam Jerram, UNHCR, Dublin, tel: 01 6328679.

Tommy Connolly correction

An article in last month's *Gazette* (*Dishonest politicians*, page 5) referred to Paddy Connolly SC as appearing for the respondent in *Dillon v Minister for Posts and Telegraphs* (1981). Counsel for the Minister was, in fact, Tommy Conolly SC.

Solicitor suspended from practice

The High Court has suspended solicitor Niall Joseph O'Connor from practice for ten years. He was practising under the style and title of O'Connor Mohan & Company Solicitors.

Society warning on scam letters

The Law Society is alerting solicitors that scam letters and faxes have started arriving on members' desks once again. Sent from Nigeria, their authors are telling a variety of implausible stories of vast sums of cash which can be laundered from that country if they can access an Irish citizen's bank account.

The promised return for aiding them can run into millions of pounds. The latest example, from 'Oyibo Martins of the Nigerian National Petroleum Corporation', is offering 30% of $32 million. The Society is warning solicitors to ignore these 'get rich quick' offers, and has reported the matter to the Criminal Assets Bureau.

Law Society backs calls for inquiry into murders of solicitors

The Law Society of Ireland has added its voice to the chorus of calls for an independent judicial inquiry into the murder of Belfast solicitor Pat Finucane ten years ago. It has also demanded that the current investigation into the murder of Lurgan solicitor Rosemary Nelson be conducted 'to the highest possible standards'.

At a meeting of the Society's Council – the first such meeting since the murder of Rosemary Nelson – it unanimously passed a resolution to this effect (see full text below), drawing attention to Basic Principle 16 of the United Nations' *Basic principles on the role of lawyers* which states that governments are obliged to ensure that lawyers can perform their professional duties 'without intimidation, hindrance, harassment or improper interference'. The Council resolution added that the authorities charged with investigating both murders must 'command the respect and support of the entire community and of the legal profession'.

Commenting on the Council resolution, Law Society President Patrick O'Connor said: 'The murder of a lawyer in any country is a vile act that strikes at the rule of law and society. A democratic society needs – and demands – that lawyers be in a position to represent their clients with independence and without fear of intimidation or assassination'.

O'Connor: 'The murder of a lawyer in any country is a vile act'

Since the Council passed its resolution, the RUC has announced that John Stevens, deputy commissioner of the London Metropolitan Police, has been asked to carry out an investigation into the Finucane murder in the light of the report from the UN Special Rapporteur, Param Curamaswamy.

Full text of the unanimous Council resolution:

'Having regard to the UN Basic principles on the role of lawyers *and in particular Basic Principle 16 under which governments are obliged to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and*

Having regard to the necessity to ensure that those authorities charged with the task of investigating and prosecuting crime on the island of Ireland must command the respect and support of the entire community and of the legal profession, and

Having regard to the self-evident fact that public confidence in the impartiality of such authorities plays an essential role in the pursuit of peace and reconciliation on the island of Ireland, and

Having regard to the conclusions and recommendations contained in the report of the United Nations Special Rapporteur with particular reference to the circumstances leading up to the murder of Patrick Finucane, solicitor, and the grave concerns arising from the murder of Rosemary Nelson,

That this Council calls on all such authorities:

1) To take all necessary steps to implement the remaining recommendations of the United Nations Special Rapporteur of 5 March 1998 including the holding of an independent judicial inquiry to investigate the outstanding questions that remain in the case of Patrick Finucane, and

2) To ensure that the investigation into the murder of Rosemary Nelson is carried out to the highest possible standards'.

Views sought on conveyancing changes

The Law Society's Conveyancing Committee is seeking members' suggestions for improving and updating the *Conveyancing handbook*, which is currently under review. Suggestions for revising the *Conveyancing handbook* should arrive before the end of this month.

And with the upcoming conversion of the Land Registry to semi-State status (see last issue, page 13), there is an opportunity to have the *Land Registry rules* revised. The committee is inviting practitioners to submit suggestions for reforming the rules by the end of June 1999. The committee will collate these suggestions and submit them to the Registrar of Titles for inclusion in any new rules to be considered in conjunction with the legislation necessary for conversion. It adds that anybody who has already written to the Society in connection with law reform in this area need not put pen to paper again.

Goodbodys launches tech law site

Expert advice on key areas of technology law is now available on a site set up by Ireland's largest solicitors' firm, A&L Goodbody. The firm has set up a dedicated technology sub-site on its new-look web site 'in response to the need for up-to-date information on legal issues in this area'. Key areas on which the site focuses include information technology, intellectual property, Internet law, e-commerce, encryption, telecoms law and Y2K issues.

Chief Justice moves to implement Denham proposals on judicial ethics

A new body which will act as a watchdog over judicial ethics and handle complaints against individual judges is to be set up by a committee established by Chief Justice Liam Hamilton in the wake of the Sheedy affair. The move follows the Denham commission's call for such a group to be established immediately.

Mr Justice Hamilton announced that he, High Court President Frederick Morris, Circuit Court President Esmond Smyth, District Court President Peter Smithwick, Justice Susan Denham, Justice Ronan Keane and the Attorney General David Byrne would form a judicial committee to set up the self-disciplining body.

In a statement, the Chief Justice said that the committee will: 'advise on and prepare the way for the establishment of a judicial body which would contribute to high standards of judicial conduct, establish a system for handling complaints of judicial conduct, and other activities such as are taken by similar bodies elsewhere'. He pledged that the committee would begin work immediately.

The recently-published report of the Denham commission* called for the establishment of just such a new body and recommended that it should be headed by the Chief Justice and could include retired judges. The document stressed that the new watchdog's functions should include monitoring judicial ethics and handling complaints against individual members of the judiciary.

- Separately, the Denham commission report also considers the workings of the family courts system. An earlier Law Reform Commission report in 1995 revealed that family courts were buckling under the pressure of long lists and delays. At the same time, cases where non-legal intervention could have resulted in agreement were frequently coming to court because there was no system of case management.

The report now recommends that there should be family law divisions established in District, Circuit and High courts. These should be allocated improved resources and be staffed with adequate numbers of personnel, selected on the basis of training, experience and their ability to communicate with the public. In the longer term, the report says that there should be planned progress to the regional family courts system recommended by the Law Reform Commission in its 1996 *Report on family courts.*

Mrs Justice Susan Denham: Ethics watchdog, but no change to law terms

And the Denham commission wants to see greater resources earmarked for mediation and marriage counselling. 'The present programme of expansion of the publicly-funded mediation service, which has centres in Dublin, Limerick, Cork, Tralee and Wexford, and which plans further centres for Dundalk, Galway and Athlone in the near future, is welcomed and should be continued', it says.

It also calls for mediators to be trained and certified before they qualify for practice. Similarly, it recommends that approved, publicly-funded bodies should provide a marriage counselling service, using trained and certified practitioners.

On the question of the length of law terms and vacations, the Denham commission believes no change is necessary, arguing that the central issue is access to the courts, which has been considerably improved since extra judges were appointed on foot of the *Courts and Court Officers Act, 1995*.

While the report says that delays in all courts have generally been reduced, it does pinpoint some holdups. On 26 June last year, the average wait between the date of the order for return to trial and the actual trial was just over 14 months on average. In the case of rape trials, this wait was ten months. The longest delays in the Circuit Court were nine months (in Cork), while the other circuits had a maximum wait of six months.

The report advocates keeping vacations on the grounds that there is access to the courts during these periods when it is needed urgently, and because, in any case, court work continues throughout the year. The group also argues that the introduction of new technology and the new Courts Service will make the system more efficient.

* Working group on a courts commission: sixth report *(November 1998), available from Government Publications Sales Office, Sun Alliance House, Molesworth St, Dublin 2, price £15.*

UK's Internet providers caught in libel web

Internet service providers (ISPs) have been drawn into the libel web following a recent judgment in Britain. An English High Court judge ruled that ISPs who provide access to the World Wide Web are liable as publishers if they knowingly carry defamatory material on their servers.

Justice Morland ruled that Demon, one of the UK's biggest ISPs, was not covered by section 1 of the UK *Defamation Act 1996*, under which an individual can establish a defence of reasonable care or ignorance of the defamation. The company carried an anonymous posting to a newsgroup which defamed university lecturer Laurence Godfrey.

In a pre-trial hearing, the judge held that the libel continued to be published by the defendants even after they had been notified of the posting's defamatory content by Mr Godfrey. The judgment sparked immediate controversy in Britain, with some lawyers branding it a victory in the battle to force responsibility on ISPs, and others warning that it has major implications for free speech.

Society 'regrets' Quinlan resignation

The Law Society has said that it regrets the resignation of solicitor and Dublin County Registrar Michael Quinlan as a result of the continuing fall-out from the Sheedy affair.

Commenting on Mr Quinlan's departure, Law Society President Patrick O'Connor said: 'Michael Quinlan was a popular, able and effective County Registrar. His efforts contributed to the dramatic reduction in the delays in hearing cases in the Dublin Circuit Court in recent years. The solicitors' profession is well aware of the fine work he has done over many years and is sorry to see him go.

'It is clear that he is resigning because of a mistake in his perception of the confidentiality by which he was bound in relation to his communication with Mr Justice O'Flaherty. In circumstances other than the present ones, he would not have had to resign'.

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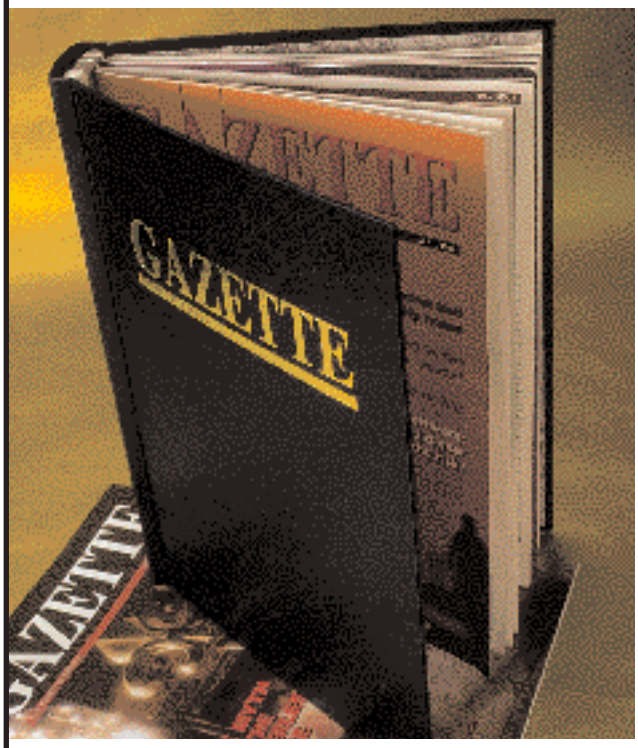

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Young male solicitors in Dublin firms come out ahead, says survey

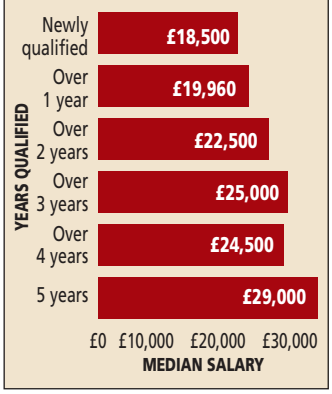
Young solicitors in large practices are earning considerably more than their counterparts in small and medium-sized firms, while those based in Dublin come out ahead of their regional colleagues, *writes Gabriel Matthews of Insight Statistical Consultancy*. And young male solicitors are generally earning more than their female colleagues.

These are among the main findings of a questionnaire sent last summer to 1,285 young solicitors by the Law Society's Younger Members' Committee. The survey aimed to gain information about the salary levels of solicitors who are qualified for five years or less, and the 500 replies (representing a response rate of approximately 39%) were then independently analysed by Insight. In interpreting the data, the important assumption is that the people who choose to respond are not different from those who did not respond. It is also worth bearing in mind the natural tendency to understate (or overstate) and be secretive about one's income. Notwithstanding these caveats, and assuming the respondents are representative of those surveyed, the sample sizes are reasonable for all comparisons made in this report.

Figure 1 illustrates salary by number of years qualified, and shows an incremental rise in median income from £18,500 for newly-qualified solicitors to £29,000 for those qualified for five years. Median income is that income that divides the sample in half: that is, 50% of the sample earn the median income or less, and 50% earn the median income or more. It is used in preference to the mean as a measure of average income since it is not affected by extreme values in the sample.

When analysed by size of practice, the survey shows that young solicitors in large practices are earning considerably higher median incomes (£29,000) than those employed in medium-sized practices (£21,625) and small practices (£20,000). The survey also found that younger members in Dublin practices are earning a higher median income (£25,000) than those employed in the rest of the country (£20,000). This difference can be partly explained by the fact that almost all the large practices (20 solicitors and over) are located in Dublin.

Figure 1: median salary by years qualified



The survey also found young male solicitors were earning a higher median income (£24,000) than females (£21,500).

These differences tend to persist when key variables were examined simultaneously, although less so in the case of gender (as shown in **Figure 2**). This illustrates the large difference in median income between those working in large and small/medium practices. This difference is consistent across gender and years qualified.

The next largest difference in the data is between those qualified less than three years and those qualified three years and over. This difference is consistent across size of practice and gender and region, but is slightly less pronounced outside Dublin. When all variables are examined, median income is consistently higher in Dublin than outside Dublin.

Finally, there are smaller differences in median income between males and females when region, practice size and years qualified are controlled for. Again, this difference is more evident in Dublin than outside the capital.

Figure 2: median income by region, practice size, years qualified and gender

MEDIAN SALARY		REGION AND PRACTICE SIZE			
Years qualified	Gender	Dublin less than 20	Dublin 20 and over	Outside Dublin	Total
Less than 3	*Female*	£20,000	£25,000	£18,000	**£20,000**
	Male	£21,000	£28,000	£18,000	**£21,000**
3 and over	*Female*	£25,000	£33,500	£21,000	**£24,000**
	Male	£28,000	£34,000	£22,000	**£28,000**
Total		**£23,000**	**£29,250**	**£20,000**	**£22,000**

SAMPLE SIZE		REGION AND PRACTICE SIZE			
Years qualified	Gender	Dublin less than 20	Dublin 20 and Over	Outside Dublin	Total
Less than 3	*Female*	70	33	72	**175**
	Male	47	17	35	**99**
3 and over	*Female*	42	24	55	**121**
	Male	41	18	28	**87**
Total		**200**	**92**	**190**	**482**

Bigger and better course for apprentices

A giant step towards achieving the Law Society's professional training vision for the future will be taken on 17 May when a new professional course, comprising 300 apprentices, starts at Griffith College, South Circular Road, Dublin. The course will continue until 15 December. A second professional course, also involving 300 apprentices, will be run between February and October 2000.

The normal number of apprentices on a professional course is 100, which is the maximum that can be physically accommodated in the lecture theatre in Blackhall Place. The temporary availability of the newly-refurbished facilities in Griffith College has created the opportunity to run two much larger professional courses. The effect will be to eliminate the unacceptably long delays whereby, but for this, apprentices would have been waiting two years or more to begin their professional course.

When the new Law School building opens to receive its first professional course in September 2000, the waiting list will have been eliminated. The Society will then be in a position to accommodate without any unreasonable delay the 300 apprentices which the Education Policy Review Group Report anticipates will became qualified to enter on professional course each year for the foreseeable future.

The new courses in Griffith College will not merely be bigger; they will also be better. This is because the educational philosophy adopted by the profession as a whole, with the 76% approval vote for the recommendations of the Education Policy Review Group last October, will exist in prototype form on these courses. Designed by the professional staff of the Law School under its Principal, Albert Power, it will focus much less on lectures and more on the practical application of the reading undertaken by the students, together with interactive tutorial exercises and an increased focus on acquiring legal skills.

The courses will be longer than has been the case up to now to provide the additional absorption time which has been lacking in the past.

All the ne

Fit to

Libel reform could be just over the horizon, to the media's delight and relief. But in a move that could end up seriously restricting newspapers and broadcasters, privacy legislation may not be far behind, and may even be a *quid pro quo* for defamation changes. Barry O'Halloran interviews the interviewers

Balancing the public's right to know with an individual's right to their good name is a legal high-wire act. And there are many in the media who claim they could well be left without a safety net when things go wrong. For the last eight years they have been waiting impatiently for four successive governments to reform the libel laws, which they claim are unfair, discriminatory and unnecessarily limiting.

Barrister and former Progressive Democrat TD, Michael McDowell SC, provided them with a brief flicker of hope when he published a private member's Bill on defamation reform during the last Dáil. His proposals were shot down by the then Equality and Law Reform Minister, Mervyn Taylor, who said the Government was considering bringing forward its own legislation. But the Rainbow Coalition faded from the horizon before ever getting around to it. So the law remains the same, much to the irritation of newspaper editors and shareholders, who are still waiting for that elusive crock of gold two years after the end of the rainbow.

When the current administration came to power, both the Taoiseach Bertie Ahern and Justice Minister John O'Donoghue, who took over the law reform brief, indicated that the Government would consider changing the libel laws. At the same time, they tentatively suggested that privacy legislation, guaranteed to hamper some media activities, might also become a reality.

ews that's print?

PIC: ROSLYN BYRNE

While there has been no movement in either direction yet, a Department of Justice spokesman confirmed to the *Gazette* that the initial work on reforming defamation legislation is underway. 'Some of our senior officials are working on it, but it's not possible at this stage to give any kind of indication as to when the new legislation might be ready', the spokesman said. He added that the new law would be in line with the proposals made by the Law Reform Commission (LRC) in 1991.

Broadly speaking, the LRC document recommends repealing the *Defamation Act, 1961* and replacing it with new legislation. In its final *Report on the civil law of defamation*, the commission called for the distinction between libel and slander to be abandoned, and replaced with a new cause of action in defamation which would not require proof of special damage.

In the document, this new form of defamation was defined as the publication, by any means, of defamatory matter concerning the plaintiff. Defamatory matter was defined as material which is untrue and tends to injure the plaintiff's reputation in the eyes of reasonable members of the community. Publication was defined as the intentional or negligent communication of defamatory matter to at least one person other than the plaintiff.

Position of the newspaper lobby

In the eyes of the National Newspapers of Ireland (NNI), the body which represents the owners and managers of all daily and Sunday papers published in this country, such a definition does not go far enough. In its response to the LRC proposals, the NNI called for defamatory matter to be defined as 'untrue matter which injures the plaintiff's reputation'. The organisation argues that there should be no movement away from the common law position that defamatory matter should consist only of words which are untrue.

But the LRC recommended several key changes which newspaper editors are adamant that they want to see in any new law. The first is a proposed change to order 22, rule 6, of the *Rules of the superior courts* which would allow defendants to lodge money with the court without admitting liability. In this situation, if a case goes to trial and the plaintiff is awarded damages amounting to less than the sum lodged, he pays the costs. The NNI wants to see this change introduced without delay, and

argues that the current situation discriminates unfairly against anyone defending a defamation suit.

Michael Kealy, a partner in Dublin solicitors McCann Fitzgerald – and the man who advised the NNI on its submissions and responses to the LRC – believes that the change will benefit plaintiffs and defendants alike. He argues that, on the one hand, it allows the defendant to limit his costs while, on the other, giving the plaintiff an easy way out of litigation. He points out that taking a case inevitably means re-opening the original wound to the plaintiff's reputation and airing it in a public forum. This can result in the slur being re-broadcast to an audience larger than the one which heard or read it originally.

The Examiner's Brian Looney: 'People have a right to their privacy'

The editor of *The Examiner* newspaper, Brian Looney, singles out this proposal as the one which he and his peers would like to see introduced without any further delay. 'This is one of several things that we, as an industry, have been looking for and it would be a first step towards reform', he says. 'In all other civil cases, you can make a lodgement in court. This would make a huge difference in the way in which libel cases are handled'.

Looney's opposite number at *The Star*, Gerry O'Regan, agrees that a lodgement system would make a huge difference, but he also stresses the importance of allowing defendants to apologise without admitting liability. 'That is something that must be taken into account as well', he argues. 'If someone is libelled because of a genuine mistake, because somebody gets a name wrong or a caption wrong, or any of the things that can go wrong in the hurly-burly of producing a newspaper, then it is ridiculous that this can lead to an expensive court case'.

The LRC also recommended that if there was evidence that a defendant had made – or offered – an apology, then this should not be construed as an admission of liability when issues of fact are tried by the jury. This evidence can also be given in mitigation of damages. The NNI favours this change, but wants to see a statutory provision obliging the judge to 'give due and proper weight to an apology in his charge to the jury'.

Shifting the burden of proof

The existing presumption of falsity is another major bugbear, and one which newspaper editors claim effectively shifts the burden of proof onto their shoulders. In its original consultation paper issued in 1989, the LRC recommended retaining this presumption on the basis that defendants could still rely on a new defence of reasonable care. After this idea was vigorously rejected by the newspaper lobby at the submission stage, a majority of commission members executed a neat about-face while a minority stuck to their guns.

So while the final report states that in all cases the onus should be on the defendant to establish that the words complained of are untrue, it also airs the minority view.

This states that: 'The person who asserts, from his sources of information, that a particular state of affairs exists should bear the burden of proving his assertion'. The NNI believes that the current situation – that is, the presumption of falsity combined with the imposition of strict liability – skews the law in the plaintiff's favour and places a dual burden on the defendant.

It argues that 'the law cannot be correct if it allows a plaintiff to maintain an action merely by showing that the words are capable of defamatory meaning when he is not in a position to establish their untruthfulness'. While not demanding that the plaintiff should give detailed evidence proving the statement's falsity, the industry body wants to see him assert that the words are untrue and be open to cross-examination on this point.

Brian Looney pitches it a lot stronger than this. 'Another thing I would like to see happen is the transfer of the burden of proof to the plaintiff', he says. 'This is another example of the way the current law discriminates against the media. We have to prove that we are innocent, but in most other cases the person who makes the allegation must prove it'.

The Star's Gerry O'Regan: 'I would have no problem with some kind of ombudsman'

Both Looney and O'Regan stress that reform – particularly in those three areas – is vital, but they are not optimistic about the prospects of a change. Instead, they feel that politicians and others are happy to leave the law the way it is. 'There's a lot of vested interest in leaving things the way they are', Looney argues, 'and that includes the legal profession. Libel is a very lucrative business'.

The two editors' concerns are practical, but Michael McDowell feels that the law must tackle the question of balancing the public's right to information against an individual's right to his reputation. 'The right to be fully informed carries with it the inevitable risk of accidental disinformation', he says. 'What's needed is some kind of press council and right of redress'. This, he adds, should carry with it an obligation on newspapers to correct and retract wrong statements.

Striking the right balance

He believes that the ideal balance can be struck somewhere between the current Irish position and the American position outlined in *New York Times v Sullivan*. In this case, the US Supreme Court ruled that the right to freedom of expression left public figures, including prominent business people, open to 'robust' comment.

His colleague Adrian Hardiman SC disagrees. He argues that the current regime strikes the right balance and acts as a break on otherwise irresponsible commercial operations with the resources to fight lengthy court battles. 'We are not talking about public interest bodies here; these are commercial enterprises with a lot of clout', he says.

'A plaintiff with average means takes a huge risk if he decides to sue these people. They talk about vulnerable newspapers, but that is disingenuous. If Proinsias de Rossa had lost his case against the *Sunday*

Libel r key recommend

- Distinction between libel and slander to be abolished and replaced with a new cause of action in defamation, not requiring proof of special damage
- Defamation defined as the publication by any means of material which is untrue and tends to injure the plaintiff's reputation in the eyes of reasonable members of the community
- Order 22, rule 6 of the *Rules of the superior courts* to be amended to allow defendants to lodge money with the court without admitting liability
- Evidence that the defendant made or offered an apology not

Independent, he would have been bankrupted. His opponent was not bankrupted'.

Hardiman would agree to libel reform only if the press itself showed evidence that it was prepared to change its ways. But instead he believes that the Irish media is getting less responsible, and is in fact on the verge of imitating the worst excesses of the British tabloids during their heyday in the 1980s.

Curbing this intrusive kind of media behaviour may not be far behind libel reform on the Government's agenda. In 1996, the LRC published a consultation paper on *Privacy: surveillance and the interception of communications*. Of key concern to the media is a recommendation that the Oireachtas should create new torts and criminal offences that could potentially impact directly on reporters and photographers.

Michael McDowell SC: 'I am very suspicious of extensive privacy laws'

These new torts include invasion of a person's privacy by means of surveillance and the publication or disclosure of material obtained through invasive surveillance. Two of the proposed offences are directly relevant to the media: infringing a person's integrity by observation (for example, by photography, TV broadcast or video recording) without their consent, and communicating recorded observation without consent. These would be actionable in the High Court, and civil legal aid would be available to plaintiffs.

Such a development would effectively end the practice of 'doorstepping' – that is, where reporters and photographers cold-call to someone's home in search of a story. In this day and age, you don't have to be a Spice Girl with footballer fiancé to get this treatment; ordinary people can also wake up to find telephoto lenses trained on their kitchen windows.

And often when ordinary people find themselves in the glare of the media spotlight, it's at a time when they could least do with the attention. For example, if a family becomes news-worthy because it has been bereaved by some high-profile tragedy, relatives can find themselves answering the door to reporters seeking interviews and pictures.

At the same time, ordinary people sometimes court the media, believing it can help them in some way. The families of missing persons are one example. Many of them believe that hope for a breakthrough lies in keeping their loved ones' faces in the news and so actively canvass for media coverage.

Neither lawyers nor editors seem to want privacy legislation in any form, but the media appears willing to accept some kind of redress for ordinary people who feel wronged as newspapers ply their trade.

In fact, editors Brian Looney and Gerry O'Regan believe this is a fair trade-off.

'I would have no problem with some kind of ombudsman', O'Regan says. 'I would not think that there is a major problem with invasion of privacy in the Republic of Ireland'. His *Examiner* counterpart also favours this approach. 'We need a press ombudsman with teeth', says Looney. 'Somebody who can look after the interests of the ordinary person'.

Looney himself has strong views on privacy. 'People have a right to their privacy. When the *News of the World* ran a story claiming that Jim McDaid, the Minister for Tourism, was seeing RTE newsreader Anne Doyle, I instructed my newsdesk not to touch the story unless either of them issued a statement'.

Adrian Hardiman SC: 'These are commercial enterprises with a lot of clout'

Not every case is as clear cut as that, and not every paper has a clear-cut policy in this area. Newspaper readers and TV viewers follow so-called human interest stories as well as the hard news, often with a lot more interest. And celebrities, who depend on popularity or even notoriety, exploit this. O'Regan points out that Princess Diana, allegedly the victim of media excess, courted the press and used it for her own ends. He also adds that all media, upmarket or otherwise, covered the story of her death and funeral with exactly the same level of enthusiasm.

McCann Fitzgerald's Michael Kealy argues that privacy legislation is a bad idea, first, because it will provide useful camouflage for powerful people and, second, because its parameters would be difficult to draw. 'At the end of the day, it will be down to judges to decide, and if you have a situation where the public interest clashes with someone's right to privacy, they will interpret that very narrowly', he argues.

Michael McDowell agrees that the wrong people will benefit from privacy laws. 'I am very, very suspicious of extensive privacy laws. Harassment and invasion of privacy are likely to end up as a protection for the rich and powerful. These people will just refuse to be confronted by journalists and use the courts. I don't believe it would be in the public interest'.

Defining 'the public interest'

Self-regulation is the media's answer to the proposal. Already both the National Union of Journalists (NUJ) and the NNI have codes of practice forbidding journalists from invading others' privacy, but these carry one qualification: 'unless it is in the public interest'. The NUJ's code makes no attempt to define the phrase 'public interest'. The NNI does, defining it as 'detecting or opposing crime or a serious misdemeanour, protecting public health and safety, preventing the public from being misled by some statement or action of an individual or organisation'. But when it comes to issues beyond these three, it's up to individual editors to decide.

It is these codes that the NNI argues (in its response to the LRC's privacy call) can form the basis of an effective self-regulating regime. These, it says, can be built on and elaborated to meet changing demands. The organisation stresses that unless newspapers are allowed considerable scope to gather information, only a distorted picture of current events will emerge. 'It is therefore important for newspapers that any restriction on the information-gathering process be *clear* as well as justifiable', says the NNI.

Working out just what is justifiable in this area could well put everybody back on the legal high wire. G

eform: ations from LRC

to be construed as admitting liability when a jury tries issues of fact

- Presumption of falsity to be abandoned, with the onus placed on the plaintiff to establish that the words complained of are untrue
- The introduction of a new defence, fair report, carrying with it a right of reply
- The defence of fair comment clarified, and the rule that malice defeats this defence abolished
- The introduction of a new defence of reasonable care, allowing defendants in some cases to show they made all reasonable inquiries into a story before publication.

Quantu
General damag

Assessing the potential level of damages in a personal injury case can often amount to a difficult guessing game, but one that litigation solicitors have to play every day. Robert Pierse discusses recent trends in quantum for general damages and reviews some of the landmark cases

Litigation solicitors on a daily basis have to give an estimate to a client of the probable damages that he is going to get for a particular injury or injuries arising out of an accident. This is necessary because the solicitor has to decide whether he will try the case in the High Court or in the Circuit Court. In addition, a client may very well be trying to borrow to keep going until the case comes to court. As there are no guidelines on damages as such in the Republic of Ireland (unlike the UK and Northern Ireland), this often presents a formidable task.

My own view is that solicitors are often too quick to send their papers to counsel and rely too easily on counsel's views. Counsel may or may not be more experienced than the solicitor, but it behoves us to have a good working knowledge of the level of general damages that the courts are awarding, difficult and all as that may be. Special damages in an ordinary case, on the other hand, are fairly simple to calculate.

I believe that one starts the search for the level of general damages ('generals') by looking, first, at the maximum markers emerging from *Sinnott v Quinnsworth* ([1984] 1 ILRM 52), and then at comparative cases to the type of injury that one is dealing with, although no doctrine of precedent or comparison is, strictly speaking, used by our courts.

As a result of this exercise, a picture may emerge on generals as a whole in the particular type of injury (for example, to a finger) and in the particular case as such (taking into account, for example, age, occupation and the degree of damage to that finger). I believe that such an examination shows that generals at present are probably low in catastrophic cases but high in relatively minor injury cases.

Catastrophic cases

The base marker in catastrophic cases such as quadriplegia, serious brain damage and so on is *Sinnott v Quinnsworth* (cited above). In this case, the jury had awarded £800,000 in general damages to a young man who would have to spend the rest of his life in a wheelchair. The Supreme Court slashed that award to £150,000. The then Chief Justice, Mr Justice Tom O'Higgins, described the task of the Supreme Court in re-evaluating the generals as an impossible task. However, the resulting figure of £150,000 (which I regard as the unofficial cap in the 1980s) was qualified by a significant sentence in the Chief Justice's judgment: 'I express that view having regard to contemporary standards and money values', he said, 'and I am anxious that there may be new changes and alterations in the future as there have been in the past'.

The table of leading cases (see page 22) shows how that £150,000 'cap' has fared in the 1990s. The *Connolly* and *Coppinger* decisions were accepted by implication as the correct maximum for generals (£200,000) in the 1995 *Allen* case in the Supreme Court. As a result, I would conclude that a figure of well over £200,000 for generals is achievable in 1999.

Guidelines issued in the UK in October 1998 give a maximum figure of £150,000 for general damages. By comparison, the 1997 Northern Ireland guidelines for maximum generals give a figure of £400,000.

In *Allen v O'Súilleabháin* (Supreme Court,

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ges in the 1990s

347/362-9, 11 March 1997), Blaney J gave the judgment on the question of general damages. (Mr Justice Murphy delivered a separate judgment on the issue of the appropriateness of the multiplier chosen by the trial judge. That was an interesting judgment, but I am not concerned here with that issue, which relates to 'specials'.)

Blaney J's judgment reviewed the *dicta* of *Sinnott v Quinnsworth* and also referred to *Connolly v Bus Éireann and Others*, and to *Coppinger v Waterford CC and Others*, where in both cases Barr J and Geoghegan J respectively took the view that the maximum generals should be increased to £200,000 for injuries which they considered warranted the maximum award. Judge Blaney then went on: 'The plaintiff's injuries cannot be compared with the injuries in either of these cases. She is fully capable of living an independent life, apart from not being able to bend down to tie her shoelaces. None of her faculties is impaired. This does not minimise the fact that the plaintiff is suffering from chronic back pain and is prevented by her condition from obtaining normal work. But the view of the court is that when her situation is looked at in the light of the type of injuries which attract maximum awards for damages a fair and reasonable figure for her general damages is the sum of £125,000. When this figure is added to the agreed sum of special damages and loss of pension rights, and the figure of £167,728 for future loss of earnings, the total is a figure of £366,571, and the court considers this figure should be rounded up to £375,000, so the final award was for this sum'.

So does this judgment mean that a severe back injury (general damages: £125,000) is 62.5% as serious as a quadriplegic injury or severe brain injury (general damages: £200,000)? Incidentally, the High Court had awarded the plaintiff in *Allen v O'Súillleabháin* general damages of £205,000 so the Supreme Court effectively reduced the award by almost 50%.

You will also note that Judge Barr substantially departed from the £200,000 maximum indicated in *Brady v Doherty* (1998), although that case is under appeal. It may have been settled, but as you know it is rather difficult to discover this type of information.

Other Supreme Court markers

In *Kenny v Ryan* (SC, 11/3/1990), a young woman had suffered appalling injuries to her left leg. The High Court awarded general damages of £175,000, but this was reduced to £140,000 in the Supreme Court. *Allen v O'Súilleabháin* (cited above) was in fact decided on the same day as *Kenny v Ryan* and this case also saw a reduction in generals, from £205,000 to £125,000 for a severe back injury.

November 1997 brought another case of an appalling leg injury before the Supreme Court for review of damages. This time the injuries were sustained by a 16-year-old male (*Ford v Iarnrod Éireann*). The Supreme Court increased the award for general damages from £60,000 to £80,000.

There were also a number of cases of interest in 1998.

On 12 January 1998, *Browne v Brady* came before the Supreme Court. This 23-year-old single woman needed 100 stitches in her face, had been rendered unconscious and had also suffered severe dental injuries. The High Court awarded her £100,000 in generals, which was upheld by the Supreme Court.

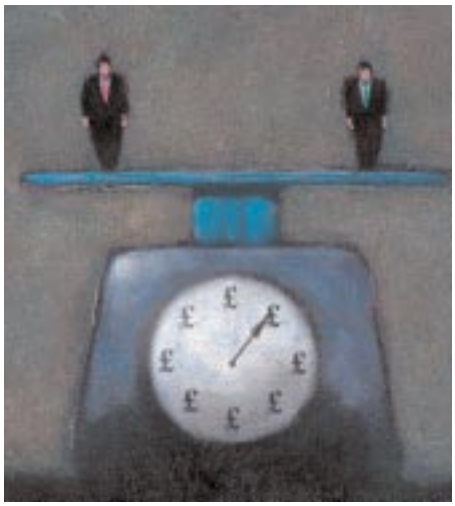
In May 1998, *Gillick v Rotunda Hospital and Another* was decided by the Supreme Court. The plaintiff's womb had been mistakenly removed by a surgeon. She was awarded £50,000 in generals by the High Court, and this was increased to £70,000 by the Supreme Court.

In November 1998, in *Malee v Gaelthorpe*, a married woman had suffered seven broken ribs, bruising to her lungs, fracture of her shoulder blades and dislocation of her collar bone in two places. The Supreme Court did not disturb the general damages of £75,000.

And on 7 December 1998, in *Miley v Daly*, the Supreme Court increased the generals from £32,000 to £45,000 for the loss of smell. The plaintiff had lost her sense of taste for some time but had recovered it. She had also suffered from insomnia, pain and depression.

Leading cases in the 1990s

- ***Crilly v Farrington*** (Feb 1992): £210,000 (severe multiple injuries)
- ***Allen v O'Súilleabháin*** (July 1995): £205,000 (severe back injury – reduced on appeal to £125,000)
- ***Hughes v O'Flaherty and Anor*** (Jan 1996)**:** £225,000 ('catastrophic injuries')
- ***Connolly v Bus Éireann*** (Jan 1996): £200,000 (Barr J in his judgment made some interesting comments on *Sinnott* here)
- ***Coppinger v Waterford CC*** (March 1996): £200,000 (in his judgment, Geohegan J said it was the maximum available figure)
- ***Jeffreys v Cahill*** (May 1996): £200,000 (agreed generals on third day of trial)
- ***Brady v Doherty*** (July 1998): £280,000 (under appeal).



The Celtic Tiger

As I mentioned above, I take the view that damages in catastrophic cases are not high enough, and that damages awarded for minor injuries are certainly not proportionate to those in catastrophic cases. From a plaintiff's point of view, this latter figure is probably welcome, but from an insurance company's perspective it most certainly is not, particularly because of the huge variations that seem to occur in the Circuit Court.

I regard the award of general damages as a capital sum. When you remember that in 1998 the capital value of property around Dublin (where most of the big awards are made) increased by 44% in one year, and then look at what is happening to damages by comparison, you could not accuse the courts of accepting Celtic Tiger growth as a guideline for increasing damages in catastrophic cases.

It is worth recalling here the sentiments expressed by Chief Justice O'Higgins (quoted earlier), where he said that there would be changes and alterations in the levels of damages awarded in the future. There has been some change since then, but no alteration. Changes in damages seem to have been based on a gradual inflationary factor rather than an alteration of thinking on capital values. This seems all the more necessary in view of the low interest rates currently prevailing.

The assessment of damages is a difficult guessing game, and it is important that solicitors be as well informed as they can. I believe that we should watch developments during this year with considerable interest. One cannot help but get the feeling, on reading recent judgments, that there may be substantial alterations this year or next year, if a sense of proportionality is to be brought into the thinking of the judges in the Supreme Court who lay down the markers or unofficial guidelines for damages. G

Robert Pierse is a Kerry solicitor and the author of Quantum of damages for personal injuries *(Round Hall Sweet & Maxwell), the second edition of which is to appear later this year.*

Law Society's new complaints procedures

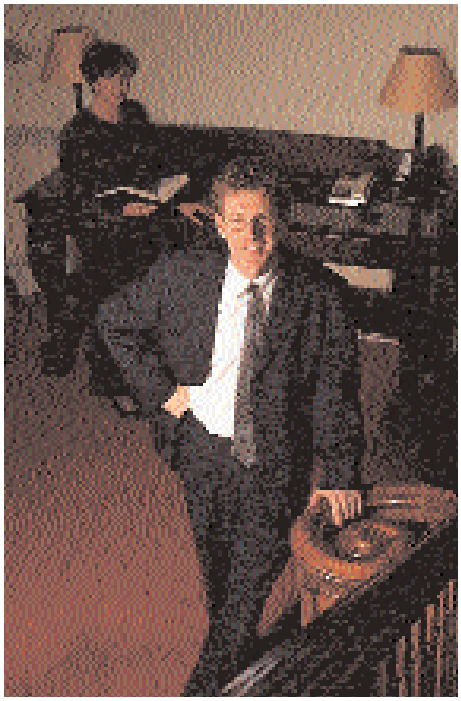
The Registrar's Committee is the one Law Society committee which most solicitors would prefer to avoid. However, it plays a vital role since it has responsibility for the self-regulation of the profession. And, as John Shaw explains, self-regulation places a particular onus on the Society to ensure that its procedures for dealing with complaints from solicitors' clients are above reproach

In the last five years, the Law Society has opened its doors, firstly, by allowing lay members to sit on the Registrar's Committee and, secondly, by agreeing to the appointment of an Independent Adjudicator. As chairman of the Registrar's Committee for the last year and a half, I believe that these steps have been very beneficial and that there is a transparent complaints system which, by and large, has received good approval ratings from the lay members and the Independent Adjudicator.

The lay members have furnished an annual report each year, while the first report from the Independent Adjudicator was published in March. In general, the reports are positive, but both the lay members and the Adjudicator have highlighted one particular area where there is a persistent problem. There is, unfortunately, a small minority of solicitors who appear to think that they can somehow choose not to deal with an alleged complaint. This takes the form of ignoring correspondence received or, worse still, failing to attend before the Registrar's Committee when required. It should be noted that in order for a complaint to reach the Registrar's Committee, it has first to go through the secretariat, where 90% of the complaints are resolved. It is only where there is an unresolved complaint or a failure to respond that the matter is formally put before the Registrar's Committee.

Quite clearly, where there is a failure to respond, the committee is hampered in dealing with the complaint. Where there is a failure to respond to the initial letters from the Law Society, then normally the solicitor will be requested to attend to explain the position. But there have been a significant number of incidents where solicitors have failed to attend, which makes the administration of the system in those cases virtually impossible.

Therefore, at a recent plenary meeting of the Registrar's Committee (which normally sits in divisions to hear complaints), it was decided that the following procedures will be adopted on a trial basis:



Registrar's Committee Chairman John Shaw with Linda Kirwan, Senior Solicitor in the Law Society's Complaints Section

- As has been the case up to now, where the Society receives a complaint against a solicitor, and where the matter cannot be resolved by phone, a letter will issue requesting the solicitor's views on the complaint
- Where there is no reply to this initial letter within 14 days, a reminder will issue
- Where there is no response to either of the above letters, a direction under section 10 of the *Solicitors Act, 1994* will issue, requiring the solicitor to deliver the file relating to the complaint within a specified period and/or the solicitor may be required to attend the next meeting of the Registrar's Committee
- If there is no response to the direction under section 10, a further direction may issue under section 14, whereby an officer of the Law Society will come to the solicitor's practice to inspect the file
- Where an order is made under section 10 or section 14, the solicitor will almost certainly be required to attend a meeting of the Registrar's Committee. Under the terms of the *Solicitors Acts*, the Society is empowered to collect its costs in respect of an order made under the relevant section. Obviously, where an officer of the Society has to travel to a solicitor's office, such costs can be reasonably substantial and in one recent case amounted to over £500. It should also be noted that the above remedies are in addition to whatever orders may be made in respect of the complaint itself
- Where there is a failure to attend without reasonable excuse before a Registrar's Committee meeting, it will be regarded as *prima facie* misconduct and therefore render the solicitor liable to be referred to the Disciplinary Tribunal on this ground alone.

In conclusion, I would like to reiterate that the principal function of the Registrar's Committee is to resolve complaints, not to penalise the solicitor (which is the preserve of the Disciplinary Tribunal). But where a solicitor puts the Society to additional cost and expense by reason of delay, failure to communicate or failure to attend, then the Society intends to collect such additional costs and expenses.

Most solicitors adopt a co-operative attitude with the committee when a complaint is received. It is a fact of modern commercial life that it is virtually impossible for any solicitor to avoid a complaint at some stage. Any comments or views on the Registrar's Committee with a view to improving its operations will be gratefully received. G

John Shaw is Chairman of the Registrar's Committee of the Law Society.

Workplace
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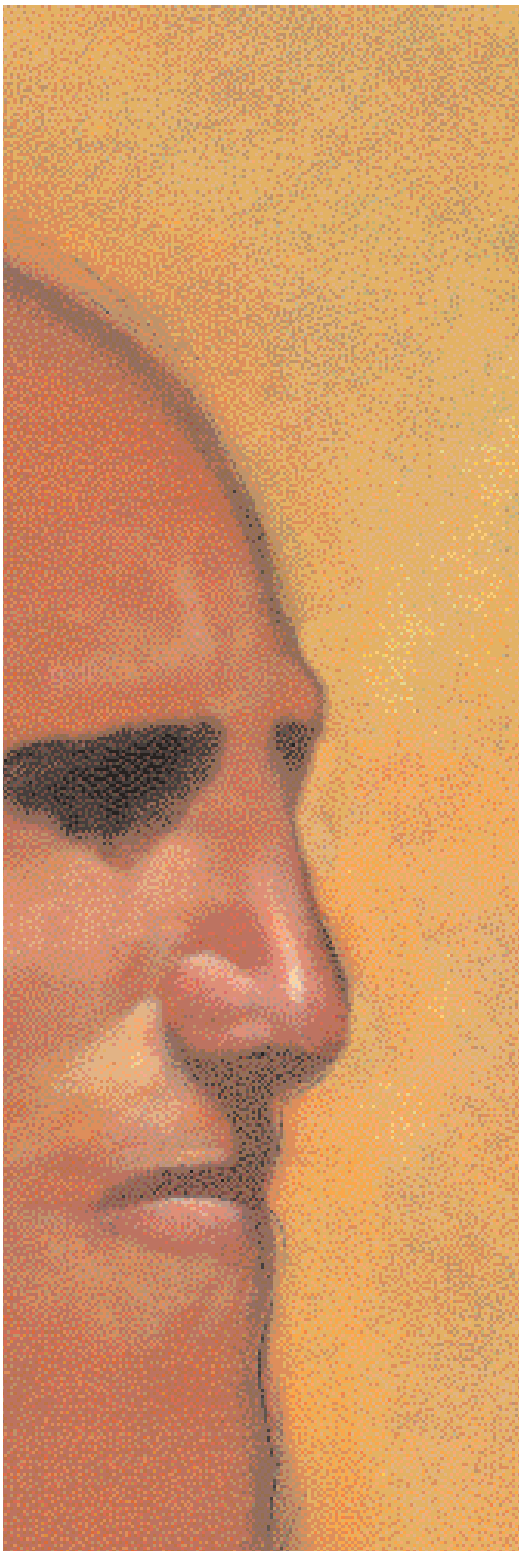
Bullying at work is a major contributor to stress-related illness and poor performance at work. In the UK, it is estimated that millions of working days a year are lost as a direct result of bullying, and there is nothing to suggest that the Irish workplace is any better. Pádraig Walsh discusses the legal background to the problem and the possibilities of redress for its victims



Bullying is one of the most insidious but apparently hidden features of the employment landscape. The bully's excuse is usually that he did not intend his actions to be taken as offensive or aggressive, with the imputation that the victim is an overly-sensitive individual, unable to accept the routine banter of the workplace. But the line between 'firm' management and bullying is more apparent than real.

Invariably, the bully will have a systematic approach to his behaviour, which over a period of time will give rise to psychological and physical problems. The most common psychological effects are anxiety, panic attacks, feelings of helplessness, reduced confidence, and depression. Physical effects include disturbed sleep, palpitations, increased blood pressure, irritable bowel syndrome, stomach disorders, chest pains and headaches. Within an organisation, the effects can be reduced efficiency and quality of work, low morale and an atmosphere of tension, increased absenteeism, and a lack of creativity.

There is no direct reference to the issue of harassment in the *Safety, Health and Welfare at Work Act, 1989*, or any regulations made under it. The closest the 1989 Act comes is by virtue of section 6(2)(d), which requires the employer to provide systems of work that are planned, organised, performed and maintained so as to be, as far as is reasonably practicable, safe and without risk to health.

This has been enough for the Health and Safety Authority to arrogate the area of bullying in the workplace to its jurisdiction. It has issued booklets entitled *Workplace stress* and *Violence at work*, and clearly treats the mental health of employees as within the training and educational aspects of its function. However, in the event that a victim of harassment in the workplace wishes to complain to the HSA, it remains unlikely that that complaint would lead to a successful prosecution. The main reason for this is the HSA's lack of clear jurisdiction. There is also the practical reality that accidents at work will naturally attract priority.

Wilkinson v Downton

The problem with bullying from a legal point is that it is an intentional act. The assailant, in spite of his possible protestations of innocence, is involved in a systematic and deliberate series of actions designed to demean the standing of the victim. He knows what he is doing and he knows the result he wants to achieve. Where, then, is the negligent act? Bullying unfortunately is beyond the direct reach of general negligence principles. It is necessary to look at the intentional torts.

In the case of *Wilkinson v Downton* ([1897] 2 QB 57), the defendant told the plaintiff, as a 'practical joke', that her husband had asked him to tell her that he was lying with both legs broken following a serious accident. This was untrue. The plaintiff sustained a violent shock to her nervous system. Wright J expounded the principle that a cause of action lies where a person wilfully does an act to another, calculated to cause physical harm or infringe the other's legal right to personal safety, and actually causes physical harm to that other person. This is the principle of law which I believe can be used to pursue a claim by a victim of bullying directly against his assailant.

e bullying:
al issues

There are a number of features, not to say difficulties, with pursuing a claim in this form.

1) There is no necessity for direct physical contact to cause the injury complained of, and words alone will give rise to a cause of action. Until recently, one would have been forgiven for thinking that damages for mental stress arising from actions over a period of time – as opposed to shock-induced – were unavailable. Lord Wensleydale in *Lynch v Knight* ([1861] 9 HL Cas 577) said: 'Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone'. This accurately sums up the old attitude of the courts which adopted the viewpoint of a doubting Thomas, and awarded damages for physical injuries only.

A more temperate, though still inadequate, view was expressed in *Dulieu v White and Sons* ([1901] 2 KB 669), in which Phillimore J said: 'I think there may be cases in which A owes a duty to B not to inflict a mental shock on him or her, and that in such a case, if A does inflict such a shock upon B – as by terrifying B – and physical damage thereby ensues, B may have an action for the physical damage, though the medium through which it has been inflicted is the mind'.

This seems to reflect the notion, perhaps consistent with the times, that mental disorders resulted in physical effects, and it is these physical effects that could attract damages.

However, modern medicine has moved on, and the courts now have a greater understanding of how much a person's mental health can be damaged. In *Walker v Northumberland County Council* ([1995] 1 All ER 737), in the course of awarding the plaintiff damages for the psychiatric consequences of his employer's negligent failure to provide a safe system of work, Coleman J said: 'Whereas the law on the extent of [the employer's duty of care] has developed almost exclusively in cases involving physical injury to the employee as distinct from injury to his mental health, there is no logical reason why risk of psychiatric damage should be excluded from the scope of an employer's duty of care or from the co-extensive implied term in the contract of employment'.

Essentially, the law now relies on the advances of modern medicine and trusts that it is now as possible to reach a clear and reliable diagnosis of psychiatric injuries as it is purely physical injuries.

2) The words need not be spoken to the victim directly. In the two founding cases for the tort of harassment, *Wilkinson v Downton* and *Janvier v Sweeney* ([1919] 2 KB 316), the words of harassment were spoken directly to the victims. Subsequent cases have established that this is not necessary. In *Stevenson v Basham and Another* ([1922] NZLR 225), the assailant threatened to burn down the house of the victim's husband. The victim was in bed unwell, and overheard the comments. She became seriously ill and as a result of the statement had a miscarriage. The assailant was found liable because his wilful comments had caused the victim's shock.

An even more circuitous route arose in *Bielitski v Obadiak* ([1922] 65 DLR 627). There, the defendant made a false statement that a person had committed suicide, and this was filtered through three other people before it came to the ears of the plaintiff, the mother of the 'suicide', who suffered a violent shock and became ill. In finding for the plaintiff, Lamont JA said: 'Any reasonable man would know that the natural and probable consequence of spreading such a report would be that it would be carried to the plaintiff, and would, in all probability, cause her not only mental anguish but physical pain'.

The focus was placed on what may be considered the 'natural and probable consequences' of the assailant's actions. This has a direct bearing on the issue of indirect bullying. If an assailant uses rumour or innuendo and spreads it to co-employees, and this affects the victim's mental health, then it seems that the assailant is liable under this principle.

3) The victim must sustain a recognisable psychiatric disorder. It is of more practical concern that all the cases under the *Wilkinson v Downton* line of authority have involved shock-induced psychiatric injury. In *Janvier v Sweeney*, the plaintiff was told that she was under suspicion of writing to a German spy and suffered a severe nervous shock. Some of the activities of

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debt collection agencies, insurance adjusters and landlords in America have attracted liability as a result of the shock tactics they have employed. Most colourfully, in *Great A&P Tea Company v Roche* ([1930] 160 Md 189, 153 A 22), the defendant wrapped up a gory rat instead of a loaf of bread.

While this has been the trend of cases, an analysis of the ratio of *Wilkinson v Downton* does not show that it is a *sine qua non* of liability that a shock-induced psychiatric disorder should result. Wright J spoke in terms of a wilful act calculated to cause physical harm.

The fact that the injury was a shock-induced psychiatric injury rendered the issue of causation less problematic, as the nexus between the defendant's wilful act and the plaintiff's injuries was more clear.

It is in this context that the negligence case of *Walker v Northumberland County Council* is instructive. There, an employee worked as a social services officer with the defendant for 18 years. In November 1986, he suffered a nervous breakdown due to the stress and workload attached to his work. He returned to work in early 1987, following assurances of support and help from his immediate superior. This support was very limited, and the plaintiff was also required to clear the backlog of cases which had built up in his absence. Six months later he suffered a second mental breakdown, and was later dismissed for permanent ill health. The defendant was found liable on negligence principles for failing to provide the additional assistance offered.

In *Walker v Northumberland County Council*, the plaintiff was in a stressful situation for all his working life, but even limiting this to the period of time when the defendant was found to be negligent, the plaintiff endured an extreme situation of stress for six months.

The attention of Coleman J was on the clearly-diagnosed recognisable mental illness presented before him by the plaintiff, and it was irrelevant whether the psychiatric difficulty was shock-induced or not. Given that *Walker* shows that the law has developed in tandem with medical knowledge and will acknowledge psychiatric illnesses which arise over a period of time, I believe that it is also legally irrelevant whether a plaintiff's illness derives from a shock or arises over a period of time.

4) The action must be wilful. The natural defence for a bully is that he did not intend to cause the harm he has inflicted. However, the issue of intention is not open to the word of the assailant but is to be inferred by all surrounding circumstances. Just as a person who points a gun at another and pulls the trigger clearly intends to shoot him, regardless of his protestations to the contrary, likewise, an individual who involves himself in a systematic programme of aggressive behaviour towards another must be presumed to have intended the harm that arises from such conduct.

So an assailant who knows that 'the natural and probable consequences' of his actions is the risk of psychiatric injury to his victim will have intended that result, even if he attempts to argue otherwise. It is also quite likely that a person who recklessly disregards whether his conduct will cause such harm or not will be found liable.

Vicarious liability

One might ask whether negligence has any application in the context of bullying, and it most certainly has. Under the principles of vicarious liability, an employer is liable for the torts committed by his employee in the course of his employment. You could argue that the employer does not authorise the use of bullying tactics by employees, but there is a difference between this and the notion of the scope of a person's employment. It would generally be considered that an employee is under a duty to act for the furtherance of the better interests of his employer. If an employee adopts 'firm management' or bullying tactics to achieve those interests, he is acting within the scope of his employment duties. As work-related bullying generally arises in the workplace itself, the connection between the assailant's actions and his employment is obvious.

So where the employer has failed to address issues of bullying in the workplace – either before they arise by preventative measures or, following complaints, by swift and appropriate action – he may well be found negligent for failing to have in place proper systems to avoid the effects of bullying on employees. This is an important point for many employees as more often than not the employee aggressor would not be a mark for damages. Employers may also need to consider whether they are insured against the wilful as opposed to negligent actions of their employees giving rise to liability.

One might then ask why *Wilkinson v Downton* is so important if negligence principles will ultimately apply. The principles of vicarious liability will only apply to render the employer liable when the employee has committed a tortious action. *Wilkinson v Downton* sets out the basis upon which a tort has been committed in these instances, and is therefore the foundation upon which one might hope to make the employer liable for his failure to have proper work systems in place. Also, *Wilkinson v Downton* provides a direct cause of action in cases where the bully is the employer himself.

It is not unusual for victims of bullying to walk away from the source of their problems and leave their employment unilaterally. In these circumstances, it may be open to them to bring forward a case for constructive dismissal before the Employment Appeals Tribunal. There are a number of problems with this, such as the six-month time limit on bringing claims and the fact that the burden of proof lies on the claimant. Nevertheless, some successful cases for constructive dismissal involving bullying have arisen.

In *Byrne v RHM Foods (Ireland) Limited* (UD 69/1979), the claimant was the personal secretary of a marketing manager, both employed by the respondent. When the marketing manager was suspended, the claimant was assured of her job. However, work was entirely withdrawn from the claimant, and she was isolated from other managers. The keys to the filing cabinet she used were taken from her, and when they were returned she was instructed not to use the filing cabinet without the prior permission of a manager. Her telephone was cut off. The claimant was diagnosed as having severe nervous strain as a result of this situation at work. The EAT found that she was constructively dismissed.

'An individual who involves himself in a systematic programme of aggressive behaviour towards another must be presumed to have intended the harm that arises from such conduct'

In *Walsh v Love* (UD 784/1994), the claimant was an employee in a hair salon who enjoyed a good working relationship with her employer, the respondent, until she joined a trade union and sought her full annual leave entitlement. Thereafter, the respondent refused to speak directly to her, did not introduce the claimant to new staff, did not hand the claimant's wages directly to her, did not inform her of customer appointments, prohibited a staff collection in the claimant's favour for her wedding, and embarrassed her in front of customers. The EAT found that she was constructively dismissed.

As matters stand, there is no obvious path to legal redress for the victims of bullying. Given the prevalence of this insidious behaviour in the workplace, it is essential that proper attention is paid to asserting these victims' rights. To this end, statutory reform is required.

The recent case of *Walker v Northumberland County Council* gives renewed pause for thought, and it may well be that the neglected line of authority stemming from *Wilkinson v Downton* can be revitalised to give remedies in tort for these victims. Progress is now in sight. G

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Can you paten

Everyone is looking for a way to do business more quickly, more easily and more cheaply. But just suppose you come up with such a method: can you patent it? Denis Kelleher looks at a recent US case that has thrown the issue into confusion and tries to assess its implications for patent law

We live in an age of extraordinary innovation. New technologies such as the World Wide Web are not only remarkable inventions in their own right but their existence drives the creation of new technologies which promise to alter the lives of millions. The stakes in such an environment are very high: those who become dominant in an aspect of a technology (such as Microsoft or Intel) can expect to reap extraordinary rewards; those who do not, or who fail to adapt as the technology changes (such as WordPerfect, one-time ruler of the word-processor software market), will fall by the wayside. This has led to the situation where having the right legal advice can be more important than doing the right research.

The recent history of the IT industry is littered with examples of innovators who missed out on the benefits of their inventions. One example is the spreadsheet program, a genuine innovation which revolutionised the IT industry, business and accountancy. The inventors marketed this as a computer program, *Visicalc*, which was successful for a while. At the time, it was not clear that software could be the subject of a patent so no application was made and these inventors missed out on the patent royalties which they might have received from the sales of spreadsheet programs.

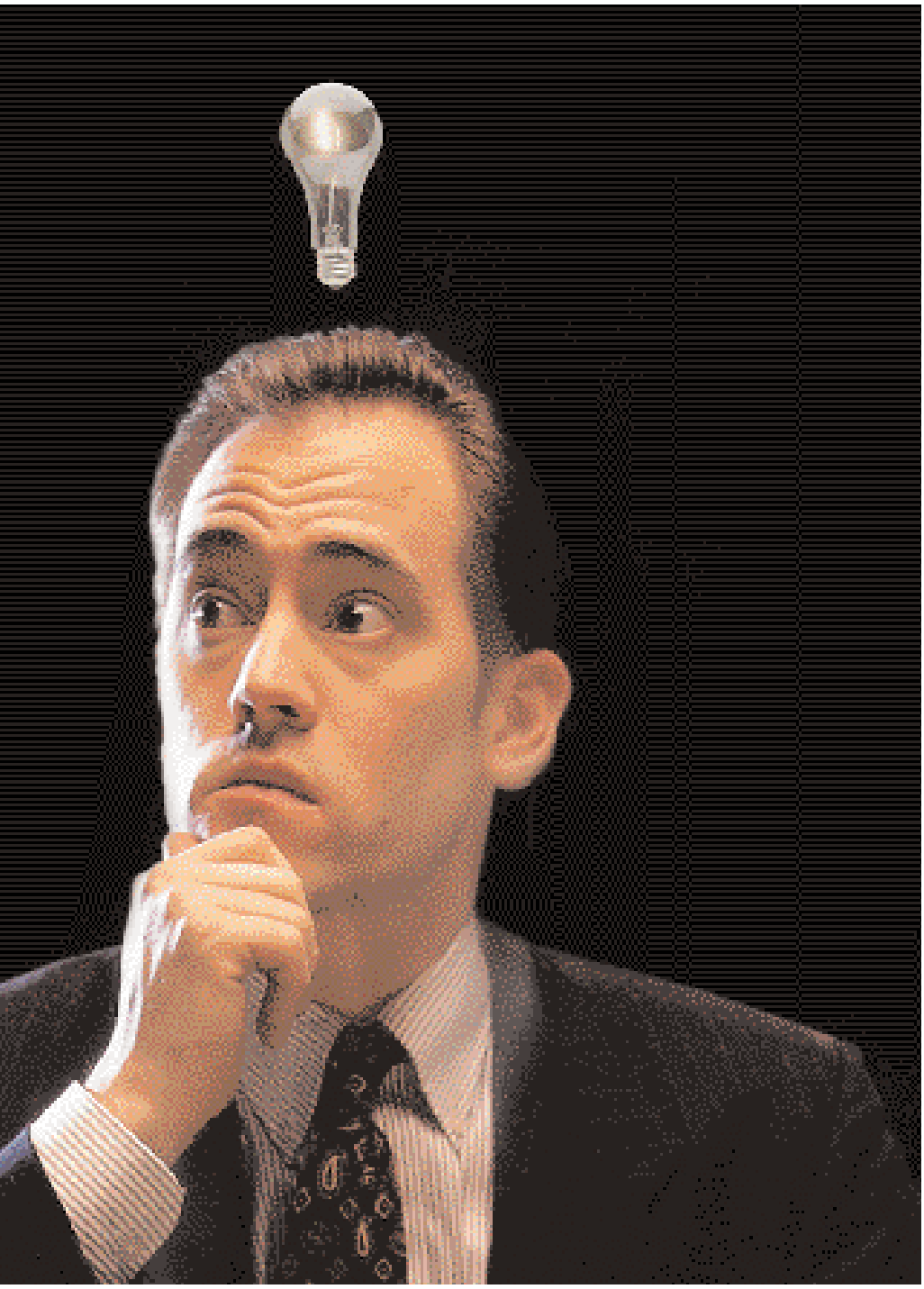
Nowadays, the opposite approach would seem to be in vogue: patents are applied for every sort of product whether innovative or not. However, legal opinion in the USA has been thrown into chaos by a recent decision of the US Federal Court of Appeals in *State Street v Signature Financial Group*.[1] The respondents, Signature, had applied for a patent for a system that allowed an administrator to monitor and record the financial information flow and make all calculations necessary for maintaining a 'partner fund financial services configuration'. This allows several mutual funds or 'spokes' to pool their investment funds into a single portfolio or 'hub' which would allow the administration costs to be combined and also ensure the tax advantages of a partnership.

Getting a spoke in

Although the concept that underlies such a system is quite simple, the transactions involved are extraordinarily complex. The system allows a daily allocation of assets between two or more spokes that are invested in the same hub, determining the percentage share which each spoke maintains in the hub while taking account of daily changes in the value of the hub's investments and the concomitant value of each spoke's assets. To determine this value, the system must calculate the allocation of the hub's income, expenses, gains and losses on a daily basis. This must be done quickly and accurately in order to calculate the price of shares in the 'spokes' which are marketed to the public.

An application for a patent was made, but the US Federal District Court held that the patent could not be granted because: 'If Signature's invention were patentable, any financial institution desirous of implementing a multi-tiered

t a business method?



funding complex modelled on a hub and spoke configuration would be required to seek Signature's permission before embarking on such a project. This is so because the ... patent is claimed sufficiently broadly to foreclose virtually any computer-implemented accounting method necessary to manage this type of financial structure'.[2]

This decision was appealed, and the Court of Appeal rejected the entire concept that business methods should receive special treatment under patent law. It noted that the US *Patent and trademark 1996 examination guidelines for computer-related inventions* now read: 'Office personnel have had difficulty in properly treating claims directed to methods of doing business. Claims should not be categorised as methods of doing business. Instead, such claims should be treated like any other process claims'.

The Court of Appeal agreed with this view and suggested that the decision on whether the claims are directed to (unpatentable) subject matter should not turn on whether the claimed subject matter does 'business' instead of something else. An application was made to appeal this decision to the US Supreme Court, but this was refused.[3]

This decision has raised a considerable amount of controversy in the USA, with some commentators predicting 'a firestorm of litigation (which will) engulf corporate America, from Madison Avenue to Main Street. Even a common legal stratagem like the "poison pill" could now be patented by its attorney inventor'. It has also been suggested that 'legislation to revive the business methods exception is needed to prevent large-scale disruption of US commerce, as sharp operators move to patent business methods and assert patents against the unsuspecting'. Some have even ventured that financial methods such as junk bonds could have been patented, as could the 'knock-knock' joke, the music video or the shock-jock radio format'.[4]

These concerns may be compared to worries about Internet domain names. As the early

'cybersquatting' cases emerged, it was suggested that new legislation would be required to manage this new technology. However, it has become clear that existing intellectual property laws are adequate to protect trademarks on-line. Similarly, the contrasting argument has been made that the *State Street* case does not go this far. For one thing, the US Court of Appeal did not actually state that the 'hub and spoke' system was patentable; it held that a patent would not be refused merely because it related to a business method and sent the case back to the District Court so that it could be determined whether a patent could be given, having regard to the normal criteria for a patent, such as novelty. This view holds that 'the actual consequences of *State Street* will, over time, settle somewhere on the middle ground. *State Street* does not in any way direct that patentability standards be lowered, only that the subject matter of such claims not be initially rejected out of hand as non-patentable. In fact (since then) applicants have continued to complain that the (Patents Office) has resisted issuing such patents'.[5]

Although it may not come to pass that 'advertising agencies and marketing consultants will now need to obtain patent advice about every new ad campaign and promotional gimmick',[6] the *State Street* decision does contain an important lesson. Technology, and information technology in particular, is developing at a frenetic pace, in contrast to the slow pace of patent applications and appeals. This means that a substantial time lag will exist between the invention of a new technology and a final decision on whether that technology can be the subject of a patent.

Patently cautious

In the *State Street* case, a patent was filed on 11 March 1991; it issued on 9 March 1993; judgment was given by the US District Court of Appeal on 23 July 1998; and an application for an order of *certiorari* of that decision was refused by the US Supreme Court on 11 January 1999. It must be stressed that this is not a final decision on this issue: the case must return to the US District Court for a judgment on patentability, and further appeals from whatever judgment that court comes to may be anticipated.

Until a final answer is given on any such question, a cautious approach should be taken when deciding whether to apply for a patent for a particular item of technology. If it should ultimately be decided that a particular technology is patentable, then any inventor of any item of such technology who did not originally apply for a patent will lose out. Furthermore, it is unclear what effect this decision will have in Europe: as noted already, the American courts have yet to actually uphold the patentability of the 'hub and spoke' system and, if they did, there is no guarantee that the European courts would follow their decision.

History is littered with inventors who missed out on the benefits of their inventions

However, one sector in which the decision is already having an effect is the Internet. Priceline.com runs a 'reverse auction system' or 'bilateral buyer-driven commerce'. This allows potential travellers to specify a destination, date of travel and price they are willing to pay, together with credit card details. This bid will be seen by various airlines and, if one of them wishes to take it, Priceline.com will inform the traveller by e-mail. Priceline.com has received a patent for this process, but it remains to be seen how successful it will be at enforcing it on-line.

Certainly any lawyer who is approached about the possibility of granting a patent for any product should be very careful. The view may be taken that 'if I don't apply for a patent now, someone else will' or to take the advice of American lawyers: 'Investigate filing patent applications covering any new and important financial, banking and insurance software programs. This strategy gives a company the patent assets to counter the royalty or injunction demands of aggressive competitors. In appropriate situations, it allows for the offensive use of these patent assets against competitors. Patents may also provide access to the patent assets of competitors through the mechanism of cross-licensing'.[7]

The danger with this is that a welter of patent applications, litigation and disputes may drown the process of innovation which the law of patents is supposed to support. Innovation and invention do not occur in isolation; large numbers of people may be involved in researching a particular area. The sharing of information between such researchers is essential to this process. The modern legal obsession with trying to protect and exploit any information as intellectual property has already given rise to concerns with regard to medical research.[8]

Here is just one example: 'My colleagues and I uncovered what appeared to be a promising new component of a cancer vaccine. The company that had developed (it) had just completed studies to determine a safe dose in humans (but) refused to reveal the dosage information, and would not provide data on the toxic effects in patients with cancer in their trial unless we agreed to keep the information confidential so that a competing company would not gain access to it'.[9]

The development of modern medicine requires an extraordinary level of investment, balancing the needs of investors to generate returns with the desire of the medical professions to prevent human suffering and premature death from disease, and will inevitably lead to conflict.

The management of such conflicts in all areas of research will pose a considerable challenge for legislatures, lawyers and judges into the next millennium. G

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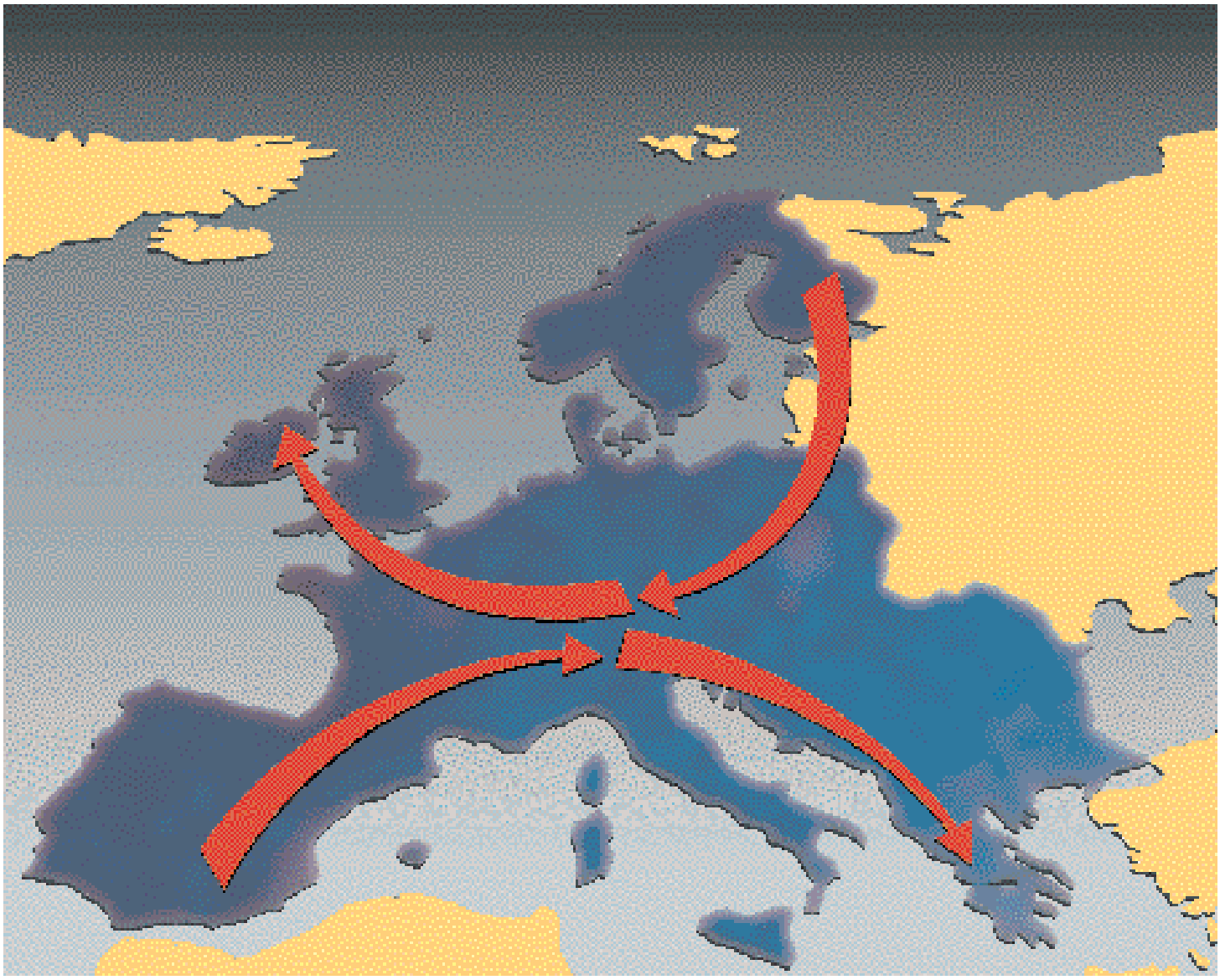
Footnotes

1 *149 F3d 1368; 1998 US App LEXIS 16869; 47 USPQ 2D (BNA) 1596.*
2 *927 F Supp 502 at 516.*
3 *1999 US LEXIS 493; 142 L. Ed. 2d 704; 67 USLW 3436.*
4 *Kundstadt,* Opening Pandora's Box, The Recorder, *January 1999, p20.*
5 *Hahn,* Much ado about method patents, The Recorder, *January 1999, p21.*
6 *Kundstadt, op cit, p20.*
7 *Ellis & Chatterjee* Patent wars come to Wall Street, The Recorder, *November 1998, p4.*
8 *Concerns about the patenting of medical products led to provisions such as article 52 of the* European patents convention, *which provides that: 'Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application' and hence cannot be patented. A similar provision is to be found in section 9(4) of the* Irish Patents Act, 1992.
9 *Rosenberg,* Secrecy in medical research, New England Journal of Medicine, *8 February 1996, Vol 334, No 6, p392-394.*

Parallel lines

Various rulings from the European Court of Justice have limited the rights of intellectual property owners and thrown the European market open to parallel importers. Maureen Daly describes how businesses have fought to retain control over their goods



Section 16 of the *Trade Marks Act, 1996* implements article 7(1) of the *Trade mark harmonisation directive* (Directive 89/104). It declares that a registered proprietor or his licensee or subsidiary cannot pursue infringement of intellectual property rights if a product is put on the market in the European Economic Area (EEA), which includes the EU, Norway, Liechtenstein and Iceland. This principle, known as 'exhaustion of rights', balances the proprietor's intellectual rights against the free movement of goods throughout the European Union.

Once a product is on sale in one European country, then it must be accepted throughout the EU, notwithstanding the impact of national laws. Its free circulation cannot be prevented, but article 36 of the *Treaty of Rome* does allows some restrictions as long as they do not constitute arbitrary discrimination or a disguised restriction on trade between Member States, and as long as they are justified on specified grounds, including 'the protection of industrial and commercial property rights'. This is broadly interpreted to include copyright. The extent to which the doctrine of exhaustion of rights over-rides national intellectual property rights is the focus of this article.

In *Centrafarm BV and De Peijper v Sterling Drug Inc* ([1974] ECR 1147), the European Court of Justice (ECJ) stated that the protection of industrial rights justifies an obstacle to the free movement of goods, but no obstacle would be allowed where the patentee sells or permits his product to be sold in the Member State from which it is imported. *Merck & Co Inc v Stephar BV* ([1981] ECR 2063) confirmed this.

Merck was selling its product in Italy. The court would not allow the company to use a Dutch patent to stop its product being imported from there into the Netherlands. Merck had to take the consequence of selling its product in Italy. In 1996, *Merck v Primecrown* (C-267/95 and C-268/95), confirmed the *Stephar* decision.

Trade mark issues

Serena Srl v EDA Srl ([1971] ECR 69) illustrates the ECJ's hostility towards trade marks. Serena owned the mark *Prep good morning* in Italy but could not control the specification of the cream sold under an identical mark in Germany. When that cream was imported from Germany and sold at a lower price, Serena sued for infringement. The ECJ stated that exercising a trade mark right would partition markets, impairing the free movement of goods.

Industrial and commercial property rights are usually more important and merit a higher degree of protection than the interest protected by an ordinary trade mark. In *Centrafarm BV v Winthrop BV* ([1974] ECR 1183), the ECJ took a narrow interpretation. It held that the function of a trade mark was to grant the proprietor exclusive use of the mark in respect of the goods in question, to entitle him to put the goods into circulation for the first time, and to protect him against competitors who may wish to take advantage of the reputation built up under the mark. In this case, it was held that exercising trade mark rights to stop a product (which was already sold in the UK by an associated company) being sold in the Netherlands was contrary to the exhaustion of rights principle.

From this it can be seen that the ECJ viewed a trade mark's function as guaranteeing to the consumer that products are of a common origin. This criterion was applied in the case of *Van Zuylen Freres v Hag AG (Hag I)* ([1974] ECR 731). In Germany before the Second World War, the *Hag* trade mark was owned by a German company, while a subsidiary owned it in Belgium. After the war, the Belgian registration was assigned to Van Zuylen Freres. The German company began using the mark in Belgium and Van Zuylen Freres claimed infringement. As the two registrations in question had a common origin, the ECJ held that the German products were to be considered a parallel import.

Since the decision in *Hag I*, the ECJ has relaxed the laws in respect of exhaustion by stressing the importance of the need for the proprietor to consent to the first marketing of his product. This principle has always been accepted in patent law. This relaxation can be seen in *CNL Sucal NV v Hag AG (Hag II)* ([1990] ECR 1-3711). The facts are a reversal of those in *Hag I*, namely, the Belgian company sought to sell its goods in Germany. The ECJ found in favour of the German company on the basis that the first marketing was done by an entity independent of it and the importing was without consent.

The possibility of confusion arising was also taken into account by the ECJ when reaching its decision. It should be noted that consent in an assignment deed has been held not to be 'consent' for the purposes of exhaustion of rights. In *IHT Internazionale Heiztechnick GmbH v Ideal Standard GmbH* ([1994] ECR 1-2789), it was held that the mark's proprietor in the importing company must be able to control the quality of the goods on which the trade mark is affixed in the exporting country, and must be able to determine the products to which it is applied. That power is lost if the mark is assigned and there is no economic connection with the assignee.

As with every doctrine, there is an 'exception to the rule'. This can be found in section 16(2) of the *Trade Marks Act, 1996* and article 7(2) of the *Harmonisation directive*, which states that exhaustion of rights does not apply in circumstances where the product has been altered and/or impaired after it is put into circulation.

In *Hoffman La Roche v Centrafarm* ([1978] ECR 1139), the defendant purchased *Valium* in the UK and repackaged it in different quantities to sell it in Germany. Centrafarm then added the trade mark, together with its own name and address. In these circumstances, the ECJ held that importing and selling these products could be opposed on the basis that a trade mark's essential function is to guarantee the product's original identity to buyers or final users, so as to avoid confusion. It implies that no-one has tampered with the goods without the proprietor's consent. The importer could avoid infringement if the repackaging was not of a nature to affect the original state of the product. The packager would be able to rely on the provision in article 36 if it had given advance warning to the proprietor and clearly indicated on the final package that it had repackaged the goods.

Notwithstanding that, in *Pfizer Inc v Eurim-Pharm GmbH* ([1981] ECR 2913), infringement was not justified under article 36. The parallel importer in this case merely replaced the outer wrapping with wrapping that displayed the manufacturer's name and also indicated that the goods were repackaged by the importer. The inner package was left intact with the trade mark clearly visible. Accordingly, the mark's guarantee of origin was not affected.

However, in *Centrafarm v American Home Products* ([1978] ECR 1823), proprietors using different marks in different countries to partition the market were warned that this may be viewed as a restriction of trade under article 36. In this case, American Home Products sold tranquillisers under the mark *Serenid* in the UK and *Seresta* in the Netherlands. They were pharmaceutically identical but chemically different and had a different taste. The court treated the products as being identical. The parallel importer imported *Serenid* into the Netherlands and affixed the mark *Seresta*. This was an infringement.

'Although parallel importers may seem to have won the battle to date, the vital question is: who will win the war?'

The ECJ clarified this further in *Bristol Myers Squibb v Paranova* ([1997] FSR 102), *Eurim Pharm v Beiersdorf* Case (C-71, 72, 73/94) and *MPA Pharma v Rhone Poulenc* (Case C-232/94), laying down criteria designed to balance the fundamental principle of the free movement of goods against the need to protect the essential function of a trade mark. The proprietor cannot oppose the marketing of a repackaged product if the following criteria are satisfied:

- It is established that such opposition would contribute to artificially partitioning markets between Member States
- It is shown to the national court's satisfaction that repackaging would not affect the product's original condition
- The presentation of the repackaged product is not liable to damage the reputation of the trade mark and the proprietor
- The importer notifies the proprietor before putting the repackaged product on sale (though the parallel importer is not required to wait for approval)
- The new packaging clearly states who repackaged the product and the manufacturer's name
- The importers supply the proprietor with a specimen of the repackaged product when requested to do so.

Importers cannot re-label products to remove identification marks allegedly used by the owner to monitor parallel imports and to detect shortcomings in their sales networks. Even if it is a barrier to trade, the ECJ has held that article 36 must be interpreted as meaning that owners may rely on trade mark rights to stop a third party from removing and then re-affixing or replacing labels bearing the mark, which the proprietor has affixed to products he has put on the Community market, unless:

- It is established that this would contribute to artificially partitioning the markets between Member States
- It is shown that the re-labelling cannot affect the product's original condition
- The presentation of the re-labelled product is not such as to be liable to damage the reputation of the trade mark or the proprietor
- The person who labels the product informs the owner of the re-labelling before the product goes on sale.

The ECJ has accepted that owners can use identification numbers for legitimate purposes, such as compliance with a legal obligation or to facilitate the recall of faulty products, or to combat counterfeiting (*Frits Loendersloot v George Ballantine & Son Ltd and others* ([1998] FSR 544]). But if used as a way to block parallel trade, it would be contrary to competition law. If national law requires extra information on a label, it is enough to display this on a sticker.

In *Parfums Christian Dior SA and Parfums Christian Dior BV v Evora BV* (Case C-337/95), the plaintiffs objected when a pharmacy chain used the *Dior* marks on Christmas leaflets advertising parallel imports. Their complaint was that the importer's advertising image was not in keeping with the image of Dior products. The issue was therefore the advertising function of trade marks.

The ECJ ruled as follows:

- Under articles 5 and 7 of the *Harmonisation directive*, a re-seller may not advertise a mark to bring 'to the public's attention the further commercialisation of the goods', once the owner places them on the market or consents to this marketing
- Exhaustion of rights will not apply where the owner has legitimate reasons to oppose the goods' further commercialisation and will only arise where use 'seriously' damages the mark's reputation. Articles 30 and 36 impose a similar limitation on the free movement of goods and so this would apply to the proprietor of other intellectual property rights, such as copyright
- A re-seller is entitled to market the goods in 'ways customary in his sector of trade' but the advertising must not seriously damage the proprietor's reputation. In the case of luxury goods, the re-seller must not act unfairly in relation to the owner's legitimate interests and must try to ensure that advertising does not affect the mark's value by detracting from the prestigious and luxurious image of the goods.

Copyright issues

The exhaustion of rights principle has been applied by the ECJ in relation to copyright. In *Deutsche Grammophon v Metro SB* ([1971] ECR 487), a German recording company could not prevent a supermarket from selling sound recordings bought from its French distributor. In *EMI Electrola v Patricia* ([1989] 2 CMLR 413), the ECJ held that if a recording in which copyright subsists in one state is sold to a second where this has expired, and is then marketed and re-exported to the first state, the owner can prevent the re-sale provided this was done in both states without consent.

In *Foreningen af danske Viteogramdistriborer (FDV) v Laserdisken* (Case 61/97), the holder of an exclusive rental right was able to prohibit copies being offered for rental in one state which had been authorised in another. Articles 30 and 36 of the *Treaty of Rome* were considered in addition to Directive No 92/100/EEC (*Rental right and lending right and on certain rights relating to copyright in the fields of intellectual property*).

Exhaustion of rights was deemed not to apply as the right to authorise and prohibit rental would be meaningless if it was held to be exhausted on the first offer, while Directive No 92/100/EEC expressly precludes the possibility that rental rights, unlike distribution rights, can be exhausted by any distribution of the specific object.

Articles 30, 36, 85 and 86, of the *Treaty of Rome* are used by the ECJ to ensure that holders of intellectual property rights do not unlawfully restrict parallel imports. Unfortunately for intellectual property-holders, once their product is on the market, they cannot control free circulation throughout the EEA if they have consented either directly or indirectly through a licensee or subsidiary. Therefore, in order to retain ultimate control over the product and the manner in which it is presented to consumers, the onus is now on them to create a product whose original state will be altered when it is re-packaged by a parallel importer. This will enable proprietors to rely on section 16(2) of the *Trade Marks Act, 1996* and article 7(2) of the *Harmonisation directive*.

As is evident from caselaw, this problem is immensely important for the pharmaceutical industry. Although parallel importers may seem to have won the battle to date, the vital question is: who will win the war? G

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Perennial conce

The Registrar of Companies' clampdown on those who fail to file annual returns leaves thousands of companies facing the prospect of being struck off. And growing judicial concern over persistent flouting of these obligations means that it could be very difficult to get such companies restored to the register. Niall O'Hanlon reports

'Some of the information designed to be elicited by this annual chore is irrelevant; some is misleading; and some is duplicated by other enactments'
(*Patrick Ussher,* Company law in Ireland).

Though many people may hold similar views to this, the obligation to make an annual return imposed on companies by sections 125 and 126 of the *Companies Act, 1963* remains in force. Indeed, by enacting section 12 of the *Companies (Amendment) Act, 1982*, the Oireachtas gave the Registrar of Companies specific power to strike off companies for failing to make returns. This was in addition to the registrar's power to strike off defunct companies under section 311 of the *Companies Act, 1963*. Further, the 1982 legislation was amended by section 245 of the *Companies Act, 1990*, which cut the number of consecutive years which must elapse before the registrar is permitted to exercise his section 12 powers from three to two.

The Companies Registration Office's recent investment in new technology means that companies who fail to make annual returns are now more likely than ever to be struck off. Allied to these changes is a recently-expressed judicial disquiet relating to the increasing number of applications to the courts arising out of the failure of company directors to ensure that their companies make annual returns.

In the matter of TJS Fastfood Restaurants (Ireland) Ltd (15 February 1999), referred to in the *Irish Times* on 16 February, dealt with a recent application for restoration. The case concerned a company which failed to file its annual returns for the years 1992 to 1997. Allowing the restoration, Mr Justice Peter Kelly commented that it was 'fantastic' that the company could still have applied for, and secured, its intoxicating liquor licence every year. He went on to highlight the paucity of information advanced by companies to explain their failure to meet their statutory obligations and stressed that being a company director involved more than simply having a title to put on a business card.

Judicial disquiet in relation to this area is of long standing. In *Re Moses and Cohen Ltd* ([1957] 3 All ER 232), Roxburgh J cited the observations of Buckley J on this topic, which were made more than 50 years earlier in *Re Brown Bayley's Steel Works Ltd* ([1905] TLR 374). Buckley had said that he hoped that those who controlled the amendment of company law would consider whether the law on this subject did not require amendment. Roxburgh J expressed the view that the provisions of the *Companies Acts* in relation to the making of returns could be disregarded with impunity. He finished his judgment by stating that perhaps after 50 years it might not seem premature to draw attention once again to the frequency of these applications and to the underlying cause.

Errant directors may be comforted by Romer J's decision in *Re City Equitable Fire Insurance Company Limited* ([1925] Ch 407). This established the proposition that, in the performance of his duties, a director need not exhibit a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. But this must be balanced against the *dicta* of Carroll J in *Re Hunting Lodge Limited* ([1985] ILRM 75) that a person who becomes a director takes on duties and responsibilities. Further, both sections 125 and 126 provide that the company, and every officer of the company who is in default, shall be liable to fines.

The relief available

Section 311(8) and section 12(6) of the 1963 and 1982 legislation respectively provide that, where a company has been struck off, either it or a member or one of its creditors may apply to the High Court for an order restoring the name of the company to the register within 20 years of the registrar publishing the notice that it was struck off in *Iris Oifigiúil*. While the two sub-sections are couched in identical terms, it seems to me that where a petition is brought on foot of a company being struck off for failure to make annual returns, the proper course is to bring such an application under section 12(6) of the 1982 Act.

Although the equivalent procedure in the UK was described in *Re Portrafram* ([1986] BCLC 533) as giving rise to quasi-administrative proceedings, practitioners would do well to remember that the High Court is no mere rubber stamp in relation to these applications. Section 311(8) and 12(6) respectively provide that the court *may* make an order restoring the company if it is satisfied that the company was, at the time it was struck off, carrying on business or that it is otherwise just that the company should be restored.

Given the discretionary nature of the court's powers, the disquiet expressed from the bench referred to above takes on an added significance. Accordingly, care should be taken in preparing the papers for such applications and perfunctory standard form affidavits are, in light of recent judicial *dicta*, increasingly unlikely to pass muster with the court.

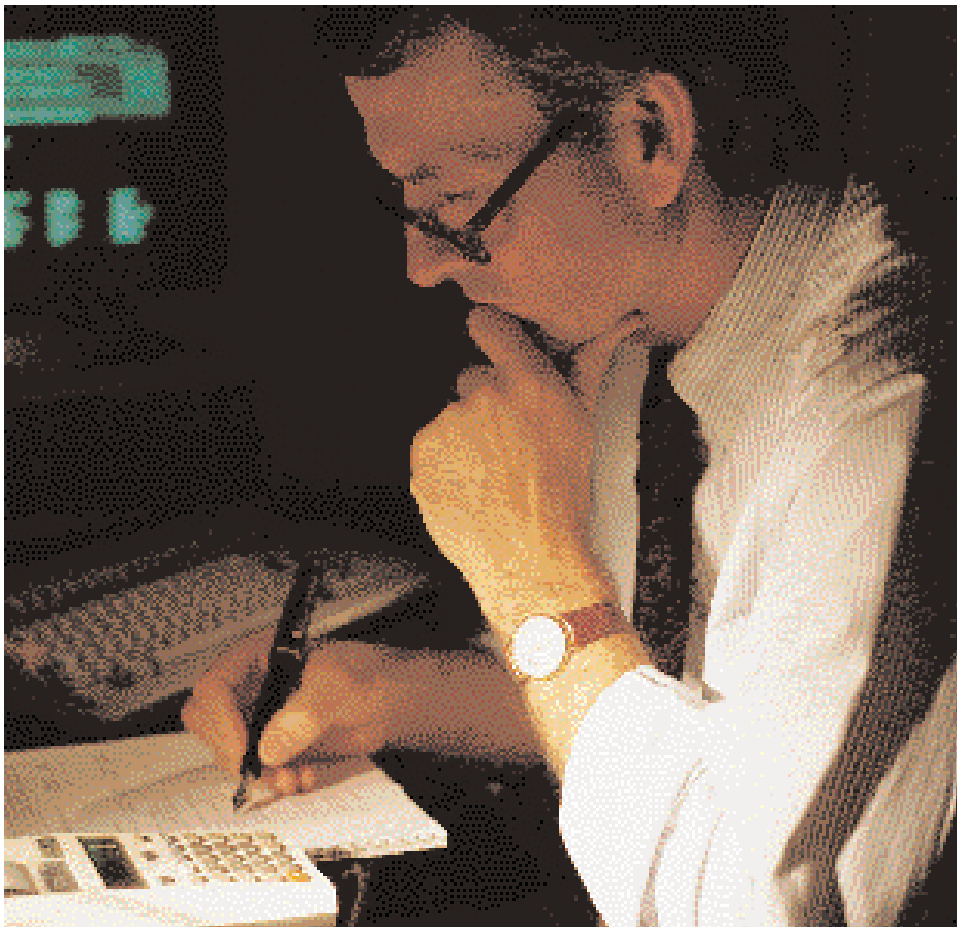
The procedure

Order 75, rule 4, of the *Rules of the superior courts 1986* provides that applications under section 311(8) or section 12(6) should be made by petition. Under rule 3(1), every petition, notice of motion and affidavit shall be entitled *The High Court* and *And in the matter of the Companies Acts, 1963 to 1990*. Rule 3(3) states that the petition shall be in the form set out in *Form no 1* in appendix N, while rule 6(1) provides that, where a petition has been presented pursuant to rule 4, an application shall in every case be made by motion to the court for directions as to the proceedings to be taken.

The petition should be made on notice to the Registrar of Companies and the Chief State Solicitor for and on behalf of the Minister for Finance and the Minister for Enterprise, Trade and Employment.

Order 5, rule 15, states that, except where otherwise provided in the rules, every petition to the court shall be presented by leaving it with the proper officer at the central office. Subject to this, the provisions of order 15 shall apply to a petition in the same manner as they apply to an originating summons and references in the order to originating summons and the plaintiff shall be construed as including references to petition and petitioner respectively. Where the application is brought by a person other than the company, order 75, rule 20, provides that a copy of the peti-

rns for business



tion shall be served on the company within three days after it has been filed in the central office.

In addition to the notice of motion and petition, it is the practice to swear a verifying affidavit. When briefing counsel in relation to such applications, an instructing solicitor should ensure that sufficient information is provided by the proposed deponent to allow a draft affidavit to be drawn up on his behalf.

It will be necessary to determine, among other things, the date of the company's incorporation; the period for which the company failed to make annual returns; the date on which the company's name was struck off the Register of Companies; the reason for the failure to make returns; and the particular reason for the company wishing to have its name re-admitted to the register. It should also be established if the company had traded since incorporation and if it was trading when it was struck off, and also whether the State has intermeddled with the assets of the company.

The verifying affidavit should include the memorandum and articles; letters from the registrar stating, first, that he has no objection to the company's restoration to the register and, second, that all outstanding returns have been filed and appear to be in order for registration. There should also be a letter from the Chief State Solicitor consenting, on behalf of the registrar, the Minister for Finance and the Minister for Enterprise, Trade and Employment, to the company's restoration to the register. Technically, where an application is being made on foot of a failure to make annual returns, the letters from the registrar should refer to section 12(6) of the 1982 Act rather than section 311(8) of the 1963 Act.

The application will be listed on a Monday in the Chancery 1 or Chancery 2 lists, under the heading of 'motions'. The hearing of the motion will be treated as the hearing of the petition, and the court will need to be informed, among other things, of the reason why annual returns have not been made and whether the company has continued trading since being struck off.

Once an office copy of the order is delivered to the registrar for registration, the company shall be deemed to have remained in existence as if its name had not been struck off. The High Court may, by order, give such directions and make such provisions as seem just for placing the company and all other persons as near as possible to the same position as if the company's name had not been struck off.

Consequences of striking off

Practitioners will be aware that directors will need advice not only on the issue of restoring their company to the register but also on the consequences of dissolution. For example, section 28 of the *State Property Act, 1945* vests all realty and personalty of the company in the State on dissolution, while the liability (if any) of every director, officer and member of the company continues and may be enforced as if the company had not been dissolved.

But the failure to make annual returns is frequently indicative of a more far-reaching failure to maintain proper books of account on a continuous and consistent basis (as is required under section 202 of the *Companies Act, 1990*) or to prepare annual accounts under section 148 of the *Companies Act, 1963*. In such circumstances, it is also likely that there will have been a breach of the corporation tax, and possibly the capital gains tax, provisions of the *Taxes Consolidation Act, 1997*, as amended, the *VAT Act, 1972*, as amended, and the legislation in relation to PAYE/PRSI. Quite apart from the possibility of the imposition of fines on the directors for specific instances of non-compliance with company and tax legislation, there is ultimately the possibility of a finding of reckless trading against the directors if the company becomes insolvent.

Although the chores involved in preparing annual accounts may sometimes appear to be irrelevant, misleading and a duplication of effort, non-compliance may often be indicative of a general systematic failure on the part of the directors to comply with their statutory obligations. It is also open to debate whether it is fair that a company should be restored to the register in the absence of assurances to the court, even if such failures have not arisen or are being dealt with. 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. *The author is indebted to Mr Justice Peter Kelly who very kindly agreed to review an earlier draft of this article. Needless to say, any deficiencies in the exposition of this topic are due solely to the shortcomings of the author.*

CRIMINAL LAW COMMITTEE

MEETING RE:

Offences Against the State (Amendment) Act, 1998

Blackhall Place, Friday 28 May 1999, 7pm
Chairman: Michael Lanigan, solicitor Opening remarks: Michael Farrell, solicitor

When you attend on a client in custody:

- *Might you become a witness in your client's case?*
- *What other repercussions might arise for you, as a solicitor, on foot of your advice to your client?*
- *What does the term 'access to legal advice' mean in the context of the Act?*
- *What other issues might arise during the period of detention?*
- *What matters should be raised at an extension of detention hearing?*

The Criminal Law Committee invites solicitors to attend a meeting to discuss the practical difficulties encountered by practitioners arising from the implementation of the above Act. The meeting will focus on the possible implications for solicitors when advising clients in relation to certain provisions of the Act. ***It is most important that criminal law practitioners examine and understand the impact which this legislation may have on them in the discharge of their professional duties.*** The meeting will take the form of a discussion group.

Admission is free. Registration and coffee: 6.30pm

Members wishing to attend should return the registration form below or telephone Colette Carey, Law Society of Ireland, on 01 6724800.

REGISTRATION FORM

Meeting re: ***Offences Against the State (Amendment) Act, 1998***

Name: _____

Name of firm: _____

Address: _____

Tel no: _____ Please reserve _____ place(s)

Return to: Colette Carey, Solicitor, Criminal Law Committee, Law Society of Ireland, Blackhall Place, Dublin 7 (DX 79).

LEGISLATION UPDATE: 16 MARCH – 19 APRIL

ACTS PASSED

Bretton Woods Agreements (Amendment) Act, 1999
Number: 4/1999
Contents note: Provides for the adoption by Ireland of the Proposed fourth amendment of the *Articles of agreement of the International Monetary Fund* (IMF) which relates to a one-time allocation of special drawing rights (SDRs) – the reserve currency of the IMF – to members of the fund. Provides for the making of payments authorised by the Government under the debt relief package announced by the ministers for finance and foreign affairs on 16 September 1998. Guarantees the Central Bank against any losses it may incur under the Bank for International Settlements' Facility in favour of Banco Central do Brazil. Amends the *Bretton Woods Agreements Acts, 1957 to 1977*
Date enacted: 7/4/1999
Commencement date: Various (see Act)

British-Irish Agreement Act, 1999
Number: 1/1999
Contents note: Makes provision in relation to the North/South Ministerial Council, the implementation bodies and the British-Irish Council, established under and in furtherance of the *British-Irish agreement* done at Belfast on 10/4/1998; makes provision in relation to the *International agreement* establishing the implementation bodies done at Dublin on 8/3/1999, and provides for related matters
Date enacted: 22/3/1999
Commencement date: Commencement order/s to be made

Finance Act, 1999
Number: 2/1999
Contents note: Charges and imposes certain duties of customs and inland revenue (including excise); amends the law relating to customs and inland revenue (including excise) and makes further provisions in connection with finance
Date enacted: 25/3/1999
Commencement date: Various (see Act)

Postal and Telecommunications Services (Amendment) Act, 1999
Number: 5/1999
Contents note: Amends and extends the legislation governing Telecom Éireann – the *Postal and Telecommunications Services Act, 1983* and the *Telecommunications (Miscellaneous Provisions) Act, 1996* – to facilitate an initial public offering of shares in Telecom Éireann and to make legislative provision for the company compatible with its subsequent status as a publicly-quoted company
Date enacted: 7/4/1999
Commencement date: Commencement order/s to be made

Social Welfare Act, 1999
Number: 3/1999
Contents note: Provides for increases in the rates of social insurance and social assistance payments, improvements in the family income supplement and carers' allowance schemes; the introduction of a new farm assist scheme for low income farmers and *pro rata* contributory pensions for certain self-employed persons as announced in the Budget. Also provides for the changes in PRSI announced in the Budget including an increase in the annual earnings ceilings for social insurance (PRSI) contributions, an increase in the health contribution and the abolition of the employment and training levy, and provides for related matters. Amends and extends the *Social Welfare Acts*, section 7A of the *Health Contributions Act, 1979,* the *Youth Employment Agency Act, 1981*, and the *Pensions Act, 1990*
Date enacted: 1/4/1999
Commencement date: Various (see Act)

SELECTED STATUTORY INSTRUMENTS

Companies Act, 1963 *(Ninth Schedule) Regulations 1999*
Number: SI 63/1999
Contents note: Amend the ninth schedule to the *Companies Act, 1963* to facilitate the application of part XI of the *Companies Act, 1990* (acquisition of own shares and shares in holding company) to unregistered companies
Commencement date: 1/4/1999

Companies Act, 1963 *(Section 377(1)) Order 1999*
Number: SI 64/1999
Contents note: Applies part XI of the *Companies Act, 1990* (acquisition of own shares and shares in holding company); the *European Communities (Public Limited Companies Subsidiaries) Regulations 1997* (SI 67/1997); and related provisions to unregistered companies
Commencement date: 5/3/1999

Employment Regulation Order (Law Clerks Joint Labour Committee) 1999
Number: SI 67/1999
Contents note: Fixes statutory minimum rates of pay and regulates statutory conditions of employment for certain workers employed in solicitors' offices
Commencement date: 1/4/1999

Finance Act, 1998 *(Section 62) (Commencement) Order 1999*
Number: SI 65/1999
Contents note: Appoints 18/3/1999 as the commencement date for s62 of the Act. Section 62 inserts a new section 468B into the *Taxes Consolidation Act, 1997* which provides for tax relief for corporate investment in certain renewable energy projects. The relief will be available for a period of three years from the commencement date, 18/3/1999

Health Contributions (Amendment) Regulations 1999
Number: SI 81/1999
Contents note: Amend the *Health Contribution Regulations 1979* (SI 107/1979) to provide for an extension of the time limits for an employer to furnish all necessary documentation related to health contributions to both the Collector-General and each employee to 46 days
Commencement date: 31/3/1999

Income Tax (Employment) Regulations 1999
Number: SI 66/1999
Contents note: Amend the *Income Tax (Employment) Regulations 1960* (SI 28/1960) by extending to 46 days the period of time from the end of the tax year within which an employer must give to every employee from whom tax has been deducted a certificate of his or her emoluments, tax-free allowances and net tax deductions, and send returns to the Collector-General showing emoluments paid to each employee and total net tax deducted. Also replaces the obligation on the Collector-General to issue individual receipts to an employer in respect of each individual remittance made by the employer (under the 1960 regulations) with an obligation to issue a notification of receipt which will be done by the issue of either a receipt in respect of each remittance or a periodic statement of payments which will reflect all payments made by the employer in a particular period
Commencement date: 12/3/1999

Irish Land Commission (Dissolution) Act, 1992 *(Commencement) Order 1999*
Number: SI 75/1999
Contents note: Appoints 31/3/1999 as the commencement date for the Act

Local Government Act, 1994 *(Bye-Laws) Regulations 1999*
Number: SI 78/1999
Contents note: Apply certain provisions of part VII (bye-laws) of the *Local Government Act, 1994* to s21 of *the Local Government (Water Pollution) (Amendment) Act, 1990*, in order to expand and strengthen the powers of local authorities in relation to the making of bye-laws under the 1990 Act in relation to agricultural activities
Commencement date: 6/4/1999

Prompt Payments of Accounts Act, 1997 *(Rate of Interest Penalty) (Amendment) Order 1999*
Number: SI 62/1999
Contents note: Amends the rate set out in the previous order (SI 502/97), which was effective from 2/1/19998 to 5/4/1999, to 0.0274% a day, which is the equivalent of 10% a year
Commencement date: 6/4/1999

Prepared by the Law Society Library

Personal injury judgments

Employer liability – road traffic accident – employee driver crashing lorry – liability of employer

Case

William Moloney v Robert Francis Ely, T/A Templemore Express, High Court on Circuit before Mr Justice Vivian Lavan, judgment of 16 November 1998.

The facts

On Tuesday 8 February 1994 at Dublin Road, Portlaoise, William Moloney, the driver of a lorry, crashed into the rear of a stationary lorry. Mr Moloney was driving the lorry in the course of his employment with Robert Francis Ely, T/A Templemore Express.

Seven months after the accident, Mr Moloney's solicitors sent a letter to his employer alleging breach of contract, breach of duty including statutory duty, and holding the employer liable for the accident.

Subsequently, proceedings were issued, and in the statement of claim it was stated that the cause of the accident was that Mr Moloney was excessively fatigued and was working under severe pressure and, as a consequence, collided with the rear of another motor lorry. Certain allegations were made in relation to interference with the tachograph in the lorry. At the trial, Mr Moloney testified as to what had happened. Essentially, he fell asleep. The argument had been made that he was obliged to work too hard and was obliged to drive excessive distances.

The judgment

Lavan J delivered an *ex tempore* judgment on 16 November 1998. He stated that he had read the papers on the file before the commencement of the case and was satisfied that Mr Moloney had received very serious injuries in the accident. Mr Moloney had been trapped in the vehicle for two hours, which the judge described as being an horrific experience.

The judge rejected the argument that William Moloney was compelled to work too hard or obliged to drive excessive distances. The judge regretted that he could not accept Mr Moloney's version of events. He stated that each plaintiff who comes into a court of law carries with him or her the burden of proof. The plaintiff must satisfy the court that on the balance of probability the judge ought to accept his or her version of events. On the balance of probability, he did not accept Mr Moloney's account. The judge considered that his credibility had been substantially damaged, and that evidence in relation to the interference with the tachograph led him to draw an inference that William Moloney had, in the week immediately prior to his accident, interfered with the tachograph when nobody else was in the vehicle.

Making it perfectly clear that there was a duty on the court to uphold the law, including the transposition of any EC law in relation to tachographs on lorries, and regretting the fact that he knew Mr Moloney had suffered serious injuries, Lavan J concluded that he would dismiss Mr Moloney's claim.

Counsel for Mr Moloney's employer stated that there was a counterclaim but that he was prepared to withdraw the counterclaim on condition that, if there were to be an appeal, the defendant would be allowed to reinstate the counterclaim. Counsel for Mr Moloney's employer also stated that he would not seek an order for costs provided that there was no appeal. Lavan J adjourned the case until the following morning to give the legal teams in the case an opportunity to consider the matter further. Next day, the court was informed there would be no appeal. Counsel for Mr Moloney's employer agreed that no order need be made as to costs, and that the action and counterclaim should be dismissed.

Road traffic accident – collision – driver injured – liability admitted – amount of award

Case

Seamus Walsh v Jean Lapene, High Court on Circuit, Galway, before Mr Justice Frederick Morris, President of the High Court, judgment of 27 October 1998.

The facts

Seamus Walsh was driving along a public road on 27 July 1994 when his car was hit head-on by an oncoming car, causing his car to hit the ditch. His wife Mary Walsh was a front seat passenger in the car and she was pregnant.

Mr Walsh remained at the scene of the accident from the time it occurred at around 3 o'clock in the afternoon up to 6.30pm when the Gardai had carried out all the usual enquiries. He suffered injuries to his neck, his left wrist, his sternum and, as a consequence of the neck injury, headaches. He went to his doctor the following morning and was later referred to an orthopaedic surgeon. The medical reports stated no bones had been broken but there had been soft tissue injuries.

Mr Walsh claimed he was unable to continue his occupation as a mechanical engineer for a period of about a year and a half. During that period he missed out on job opportunities.

The judgment

Having outlined the facts, Morris P congratulated the parties on the manner in which they conducted this case. It wasn't considered a high-speed crash but nevertheless he was satisfied that it was both disturbing and upsetting for Mr Walsh. Morris P stated that he was satisfied that Mr Walsh had been unable to continue his occupation as a mechanical engineer for a period of a year and a half. The actual loss of earnings had been measured and incorporated into the special damages that were agreed at £27,500.

The judge noted that Mr Walsh was required to stay in bed on a frequent basis and occasionally he had to take a rest and retire to bed in order to overcome the headaches and the consequences of the radiating back pain. He had received physiotherapy.

Morris P accepted the evidence of the consultant orthopaedic surgeon who stated that Mr Walsh was not going to develop arthritis, that his wrist had recovered but he might have some episodes of difficulty in the future in relation to problems with his neck.

The judge noted that Mr Walsh had to forgo sports and recreations because of the accident. He assessed damages for pain and suffering and general damages to the date of trial at £30,000; pain, suffering and general damages into the future at £20,000; and special damages at £27,500. Having enquired whether there had been a lodgment in the case and having been informed that there was not, Morris P ordered judgment in the amount of £77,500 and costs.

Road traffic accident – collision – pregnant passenger in car injured – liability admitted – amount of award

Case

Mary Walsh v Jean Lapene, High Court on Circuit, Galway, before Mr Justice Frederick Morris, President of the High Court, judgment of 27 October 1998.

The facts

Mary Walsh, a 41-year-old married lady, was a passenger in a car involved in an accident on 27 July 1994. The car was driven by her husband, Seamus Walsh, when an oncoming car hit his car head-on and caused the car to hit the ditch. Mrs Walsh was not wearing a seat belt at the time because she was seven months' pregnant.

Mrs Walsh suffered bruising on her left arm. The bruising healed. She also suffered a fracture of her front left tooth; a temporary crown was put on it and a permanent crown would need to be put on it in due course. She hurt her wrist and had to wear a support for about six to eight weeks. The wrist recovered. She suffered a cut on her left knee that healed satisfactorily. She still had problems with her neck. She had some numbness in her left leg and although she had made a satisfactory recovery still suffers occasionally if she has to travel on a long journey.

The judgment

Morris P set out the facts of the case. It related to an assessment of damages only. Mrs Walsh had suffered a soft tissue injury to her back from which she still suffers, although the accident happened four years previously. She had given evidence that if she is bathing the children and leaning over the bath, she suffers pain. She had given evidence that the *sequelae* from the accident affected her on a daily basis if she is required to sit for a period of time.

The judge noted that one of the consequences of the pain in her back is that Mrs Walsh is now less active than she was prior to the accident and, as a consequence, she has put on a considerable amount of weight that was upsetting for her.

Morris P drew attention to the fact that at the time of the accident Mrs Walsh was seven months' pregnant and after the accident for a period of two months she worried about whether or not the baby was going to be well. Fortunately, the baby was born fine and healthy and was not upset in any way by the accident.

The President of the High Court awarded the sum of £20,000 for pain and suffering to the date of the trial; £15,000 for pain and suffering in the future; and special damages which were agreed at £2,400. Having enquired whether there was a lodgment in the case and having been informed by counsel that there had been no lodgment, Morris P gave judgment for Mrs Walsh in the sum of £37,400 together with costs. G

These judgments were summarised by Dr Eamonn Hall, Solicitor, from Personal injury judgments *from Doyle Court Reporters, 2 Arran Quay, Dublin 7.*

ILT digest

of legislation and superior court decisions

Compiled by David P Boyle

ADMINISTRATIVE

Comptroller and Auditor General and Committees of the Houses of the Oireachtas Act, 1998 (No 47 of 1998)

This Act became effective on 16 December 1998 when signed by the President.

Appropriation Act, 1998 (No 48 of 1998)

This Act became effective on 18 December 1998 when signed by the President.

New statutory architectural register

A Bill has been presented which aims to:

- Place the National Inventory of Architectural Heritage on a statutory footing
- Create a legal right of access to property for the purpose of establishing the inventory, and
- Place obligations on sanitary authorities in respect of registered historic monuments which are the subject of dangerous building notices.

Architectural Heritage (National Inventory) and Historic Monuments (Miscellaneous Provisions) Bill, 1998

Freedom of information provisions extended

- The commencement date of the *Freedom of Information Act, 1997* in relation to health boards and local authorities is 21 October 1998
- Records of contractors to public bodies are deemed to be held by the public body concerned, insofar as they relate to the contracted service
- Public bodies must assist persons using the Act to have personal information held on them corrected when that information is inaccurate or misleading
- Public bodies must assist persons using the Act to obtain reasons for decisions taken that particularly affect them
- The Minister for Finance and the Minister for Enterprise, Trade and Employment are prescribed for the purposes of assisting the Taoiseach in the review of the use of ministerial certificates under the Act
- Where information relates not only to the requester but also to a third party, that information will, subject to public interest or other considerations, remain protected
- A charge of no more than £5 may be made in relation to the production of an x-ray under the Act; this is in addition to existing maximum charges of £16.50 per hour for search and retrieval of records, £0.03 per page for photocopying, £0.40 for each $3^1/_2$ inch computer diskette and £8 for each CD-ROM
- The references to the Environmental Information Service and the Government Information Services in the first schedule to the Act are deleted because they are integral parts of their respective departments but the records of those bodies remain subject to the Act
- Certain typographical and other changes are made to the third schedule to the Act.

Freedom of Information Act, 1997 *(Sections 6(4), 6(5) and 6(6)) Regulations 1998*, Freedom of Information Act, 1997 *(Sections 6(9)) Regulations 1998*, Freedom of Information Act, 1997 *(Section 17) Regulations 1998*, Freedom of Information Act, 1997 *(Section 18) Regulations 1998*, Freedom of Information Act, 1997 *(Section 25(6)) Regulations 1998*, Freedom of Information Act, 1997 *(Section 28(1)) Regulations 1998*, Freedom of Information Act, 1997 *(Section 47(3)) (Amendment) Regulations 1998*, Freedom of Information Act, 1997 *(First Schedule) (Amendment) Regulations 1998 and* Freedom of Information Act, 1997 *(Third Schedule) (Amendment) Regulations 1998*

BANKING

Commencement for *Central Bank Act*

Sections 13-16 of the *Central Bank Act, 1998* come into force with effect from 1 January 1999.

Central Bank Act, 1998 *(Commencement) (No 2) Order 1998* (SI No 526 of 1998)

CHILDREN

Travel for abortion authorised

- Where a psychiatrist gives evidence to the effect that a child is likely to commit suicide unless she has a termination of pregnancy, then that termination of pregnancy, which is a medical procedure, is also a medical treatment for the child's medical condition and thus comes within the provisions of the *Child Care Act, 1991*.

The applicants sought to quash a District Court interim care order made on 21 November 1997 in respect of their 13-year-old child, C, pursuant to the *Child Care Act, 1991*. The order also contained directions, pursuant to sections 13(7)(a)(iii) and 17(4) of the 1991 Act, that C be permitted to proceed to such place as may be appropriate for the purpose of securing a termination of her pregnancy. C had become pregnant after a violent rape by an adult friend of the family. In refusing the relief sought, it was held that:

- While in a conventional situation it could be a breach of fair procedures to embark upon the hearing of an application for an important order when the complaining party had had no prior notice of the particular order being sought, the situation in this case was exceptional. A long period had at that time

elapsed from the commencement of the pregnancy and, if there was going to be a termination, it had been essential that the matter be dealt with as quickly as possible
- The District Court had been correct in not acceding to the applicant's request that C be examined by a new psychiatrist. There had been evidence before the District Court that further investigations by a new psychiatrist or by the psychiatrists who had already examined C were not in the interests of C's mental health
- The District Court had wrongly and unreasonably refused the applicant's application for an adjournment to facilitate a consultation with a psychiatrist to assist in the cross-examination of the experts who had given evidence. It had been obvious that the case would end up in the High Court and the Supreme Court and, although the matter was urgent, there had to be a balance between urgency and fair procedures. However, *certiorari* was a discretionary remedy and in the circumstances of the case, including the belief that if the adjournment had been granted it would have made no difference to the District Court order, the court ought not quash the order on this ground
- The District Court had had a discretion whether to grant a stay and the order could not be quashed on this ground
- Where a psychiatrist, as in this case, gave evidence to the effect that a child was likely to commit suicide unless she had a termination of pregnancy, that termination of pregnancy, which was a medical procedure, was also a medical treatment for her medical condition. The termination of pregnancy at issue in this case came within the expression 'medical treatment' and thus the direction of the District Court pursuant to ss13 and 17 of the 1991 Act came within the statutory provision
- The only constitutional area in respect of which there was no jurisdiction in the District Court was the question of the validity of any statutory enactment having regard to the Constitution. But every other area of the Constitution came within the province of both the District Court and the Circuit Court in the carrying out of their ordinary jurisdictions. The District Court, in dealing with applications under the 1991 Act, was the appropriate court to determine in any given case whether a termination of pregnancy should occur. It would be undesirable for the courts to develop a jurisprudence under which questions of disputed rights to a have a termination of pregnancy could only be determined by plenary action in the High Court
- The court was satisfied as to the constitutionality of ss13 and 17 of the 1991 Act
- Section 24 of the 1991 Act required a court, when determining a question in relation to the care of a child, to regard the welfare of the child as the first and paramount consideration. It must also give due consideration to the wishes of the child, but must do so within a constitutional framework, and there was nothing within the section to indicate that the court was to ignore the right to life of the unborn as conferred by the Constitution. Accordingly, there could be no question of s24 of the 1991 Act being invalid having regard to the Constitution
- On reading the transcript of the evidence, it was not apparent to the court how any judge could have avoided the conclusion that as a matter of probability there was a real and substantial risk to the life as distinct from the health of C, which could only be avoided by the termination of her pregnancy. The District Court could not be interpreted as coming to any different conclusion.

A v Eastern Health Board (Geoghegan J), 28 November 1997

COMMUNICATIONS

Privatisation of Telecom Éireann

A Bill has been presented which seeks to amend the legislation governing Telecom Éireann to facilitate an initial public offering of shares in that company.

Postal and Telecommunications Services (Amendment) Bill, 1998

Telecom Éireann unjustified in withdrawal of numbers

- The absolute discretion given to Telecom Éireann to alter a subscriber's telephone number can only be exercised if it can be shown that the subscriber is in breach of his contract with Telecom Éireann or if circumstances exist in which, in the interest of some revision of the telecommunications service, it is necessary to change the subscriber's telephone number.

The plaintiffs issued proceedings claiming that the defendant had wrongfully withdrawn the use of eight telephone numbers from them. In addition, the plaintiffs claimed that, in breach of statutory duty, the defendant refused to allocate to them any additional telephone numbers. In granting the relief sought, it was held that:
- The court was satisfied that the decision arrived at by the defendant concerning the withdrawal of the eight telephone numbers had been arrived at for a single reason which could be legally justified, that is, the defendant's belief that the plaintiffs were engaged in brokering telephone numbers
- The fact that there had been little usage upon the lines could never have formed a legitimate basis for the numbers being withdrawn. The defendant had had no policy to survey the numbers and the level of their usage, still less one that such numbers should be withdrawn if their usage was below a certain minimum level
- The plaintiffs were at all times engaged in a *bona fide* franchis-

ing business and if the defendant had properly and accurately assessed the situation, it would have come to the conclusion that the business activities of the plaintiffs were *bona fide* in so far as the provision of franchising was concerned
- If the plaintiffs' commercial history had been known to the defendant at the time it made its decision, there would have been nothing in that history to justify a determination that the arrangements which were to be embarked upon in this jurisdiction were unlawful
- There could be no legal justification for removing the numbers from the plaintiffs simply because the defendant had decided that it wished to give them to another party, with whom it had formed a good relationship
- The fact that the plaintiffs had furnished an undertaking that they would not broker telephone numbers removed any doubts concerning their *bona fides*
- In exercising such discretion as it has in relation to the withdrawal of telephone numbers which had been allocated to a customer, the defendant had to use the power entrusted to it fairly and reasonably
- It followed that the absolute discretion given to the defendant to alter a subscriber's telephone number could only be exercised if it could be shown that the subscriber was in breach of his contract with the defendant or if circumstances existed in which in the interest of some revision of the telecommunications service it was necessary to change the subscriber's telephone number
- The procedure adopted by the defendant in the instant case had been fatally flawed. In the circumstances, the plaintiffs were entitled to have reinstated to them the telephone numbers in question
- The defendant was under a statutory duty to allocate numbers to the plaintiffs, save and except where such numbers might already have been allocated to another person or where there were other good and objectively justifiable reasons present. The defendant was in breach of its statutory obligation by failing to allocate the numbers to the plaintiffs and continuing to maintain that it would not do so.

Zockoll Group Limited v Telecom Éireann (Kelly J), 28 November 1997

COMPANY

Directors have duty to individual shareholders

- In particular circumstances a company director may be in a position where he may owe a fiduciary duty to individual shareholders.

Prior to 1973, the plaintiff and the defendant bought lands in Navan and formed a company, Bula Limited, with a view to the exploitation of the ore body under those lands. Bula borrowed substantial sums from a number of banks and gave as security, among other things, personal guarantees by the plaintiff. By 1985, no mining had taken place and the banks appointed a receiver to Bula and also obtained judgment on foot of the personal guarantees of the plaintiff. In 1986, Bula, the plaintiff and the defendant brought an action against Tara Mining Limited and the Minister for Energy and a further action against the receiver and the banks. A serious divergence of view arose between the plaintiff and the defendant as to the manner in which litigation on behalf of Bula and the plaintiff was being conducted in both sets of proceedings whereby the plaintiff sought to accept offers of compromise. In 1993, a petition was brought under s205 of the *Companies Act, 1963* in which it was claimed that the affairs of Bula were being conducted in an oppressive manner by the defendant and in disregard of the interests of the plaintiff. It was found that the action of the defendant in rejecting particular offers of compromise in both proceedings amounted to oppression but that the court was not empowered to make an order requiring all of the parties, whether as directors or as personal litigants, to join in the acceptance of an offer which had been made to compromise the proceedings. In this action, the plaintiff instituted plenary proceedings, seeking an order directing the defendant to withdraw its personal claims in both sets of proceedings and alleged that the defendant was acting negligently, was in breach of its fiduciary and other duties to the plaintiff and in breach of the plaintiff's constitutional rights. The High Court refused the relief sought. In dismissing the appeal, it was held that:

- Directors of a company occupy a fiduciary position in relation to the company but they do not owe a fiduciary duty, merely by virtue of their offices, to the individual members
- In particular circumstances a company director could be in a position where he might owe a fiduciary duty to individual shareholders
- In alleging damage caused to Bula by the conduct of the defendant, the plaintiff could not point to any conduct on the part of the defendant which had caused damage to the company except its actions as controlling majority shareholders in failing to act reasonably in dealing with possible settlement proposals
- Any damage that has been caused to the plaintiff as a result of the defendant's conduct in acting unreasonably or irresponsibly in relation to the conduct or compromise of both sets of proceedings had been remedied by the s205 proceedings
- The suspension of the constitutional right of the defendant to litigate in circumstances where the plaintiff was unable to demonstrate that the exercise of that right was in any sense wrongful was an impermissible violation of the defendant's right to litigate.

Crindle Investments, Roche and Roche v Wymes, Woods, Bula Holdings and Bula Limited, High Court (Keane J), 5 March 1998

CRIMINAL

Protections for Persons Reporting Child Abuse Act, 1998 (No 49 of 1998)

This Act (presented as the *Children (Reporting of Alleged Abuse) Bill, 1998*) came into operation on 23 January 1999 by virtue of s7(2).

EDUCATION

George Mitchell Scholarship Fund Act, 1998 (No 50 of 1998)

This Act came into force on 23 December 1998 on its signature by the Presidential Commission.

Education Act, 1998 (No 51 of 1998)

This Act was signed into law by the Presidential Commission on 23 December 1998.

EQUALITY

New attempt at equal status legislation

On 19 June 1998, the *Equal Status Bill, 1997* was declared unconstitutional by the Supreme Court. As yet, no replacement Government Bill has been presented and a private member's Bill has now been introduced which aims to:

- Provide for equality in goods and services outside the employment context
- Address inequality in education, property, land, accommodation, partnerships, clubs and so on
- Define the grounds of prohibited discrimination as gender, marital status, family status, sexual orientation, religion, membership of the travelling community, age, disability and race
- Permit the making of regulations about accessibility of transport facilities for disabled persons, and

- Provide for the investigation of claims of discrimination by the Director of Equality Investigations.

Equal Status Bill, 1998

FISHERIES

***Fisheries and Foreshore (Amendment) Act, 1998* (No 54 of 1998)**

This Act was signed into law by the Presidential Commission on 23 December 1998.

HEALTH AND SAFETY

Changes proposed to safety at work

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

- Make the appointment of a workers' safety representative obligatory in certain types of employment
- Allow the admittance in evidence in civil proceedings of the provisions of a code of practice made by the National Authority for Occupational Safety and Health, and
- Increase the penalties provided for under the *Safety, Health and Welfare at Work Act, 1989*.

Safety, Health and Welfare at Work (Amendment) Bill, 1998

Food Safety Authority operational

1 January 1999 is appointed as the establishment day for the purposes of the *Food Safety Authority of Ireland Act, 1998*.

Food Safety Authority of Ireland Act, 1998 *(Establishment Day) Order 1998* (SI No 540 of 1998)

INTERNATIONAL

***Jurisdiction of Courts and Enforcement of Judgments Act, 1998* (No 52 of 1998)**

This Act was signed into law by the Presidential Commission on 23 December 1998.

MONETARY UNION

Commencement for EMU Act

All sections of the *Economic and Monetary Union Act, 1998* which had not yet been commenced came into operation on 1 January 1999 with the exception of s11(2).

Economic and Monetary Union Act, 1998 *(Certain Provisions) (Commencement) (No 2) Order 1998* (SI No 527 of 1998)

SCIENCE AND TECHNOLOGY

***Scientific and Technological Education (Investment) Fund (Amendment) Act, 1998* (No 53 of 1998)**

This Act was signed into law by the Presidential Commission on 23 December 1998.

TRANSPORT

Extended duration for haulage and passenger licences proposed

A Bill has been presented which seeks to:

- Provide for a duration of up to five years for haulage and passenger operator licences (as opposed to the current three)
- Set out re-qualifying procedures and criteria
- Oblige operators to have adequate parking space for their vehicles
- Replace existing plates with a transport disc regime, and
- Tighten the rules in relation to vehicle overweight offences.

Road Transport Bill, 1998 G

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News from the EU and International Affairs Committee

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

Hope fades for EU recognition of same-sex partnerships

In Case T-264/97, *D & Sweden v Council of Ministers*, 28 January 1999, the Court of First Instance considered whether the Council of Ministers violated EC law when it refused to pay a supplemental household benefit to a Council civil servant. Staff regulations provided such benefits to married employees. The employee was in a relationship with a member of the same sex, and this relationship was registered under Swedish law. The court ruled that the refusal to provide the household benefit did not violate EC law.

Facts of the case

The Swedish *Law of Registered Partnerships* came into effect in January 1995. It permitted two persons of the same sex to register their partnership with the Swedish government, with legal consequences in large measure identical to those of a civil marriage. The claimant, D, registered his partnership under Swedish law, and obtained a certificate evidencing the registration.

The claimant was employed as a civil servant with the Council of Ministers. The *Statute of the Civil Servants of the European Communities* ('staff regulations') provided for payment of a supplemental household benefit to 'married' civil servants. By letters dated 16 and 24 September 1996, the claimant requested that the Council recognise his registered partnership as equivalent to marriage and pay him a supplemental household benefit under the statute. By letter of 29 November 1996, the Council rejected the claimant's request on the ground that the benefit was not available to non-married civil servants, and that the statute did not permit the Council to regard the claimant's registered partnership as equivalent to marriage. The claimant sent an 'objection' to this decision to the Council. He argued that the Council was obliged to assimilate his registered partnership to marriage, and that the refusal to do so violated European Community principles of equality and non-discrimination, and article 8 of the *European convention on human rights*. The Council rejected this objection in a decision of 30 June 1997.

The claimant filed a timely petition to annul the Council decision with the Court of First Instance (which has jurisdiction over cases involving disputes with Community employees). The Swedish Government intervened in the case to argue in support of the claimant. Argument was held in November 1998, and a judgment (in French) was delivered on 28 January 1999. The judgment rejected all of the substantive arguments put forth by the claimant and by Sweden. The court ruled in favour of the Council.

Substance of the arguments

The claimant raised four arguments to annul the decision of the Council. First, he argued that refusal to pay the benefit violated fundamental European Community principles of equality of treatment and non-discrimination. Second, he argued that the Council's decision ignored the uniqueness of his personal status and amounted to an abuse of discretion. Third, he invoked article 8 of the *European convention on human rights*, which protects private and family life from unwarranted interference. Finally, he claimed that the refusal to pay him the household benefit violated article 119 of the *EC treaty*, which mandates equal pay without regard to sex.

The judgment

The court rejected all four of the claimant's arguments. In his first argument, based on equality of treatment and non-discrimination, the claimant sought to rely on recent amendments to the staff regulations. These amendments, adopted in April 1998, guaranteed equal treatment in the application of the staff regulations without direct or indirect reference to sexual orientation. The court, however, declined to consider these amendments. It evaluated Council liability in light of the staff regulations that applied at the time of the decision to refuse the household allowance. The court concluded that the Council had not violated the principle of equality by its refusal, because, under Community law, stable relationships between two persons of the same sex had not been assimilated to relations between married persons (paragraph 28, citing Case C-249/96, *Lisa Grant v Southwest Trains*, 17 February 1998, not yet reported).

The court rejected out of hand the claimant's second argument based on his unique status under the law of Sweden.

The court cited the *Grant* case to reject the claimant's third argument that article 8 of the *European convention on human rights* required that the decision of the Council be annulled. It noted that the European Commission on Human Rights maintained that durable homosexual relations, such as those maintained by the claimant with his partner, are not protected by the right to respect for family life contained in article 8 of the *European convention on human rights*.

Finally, the court rejected the claimant's argument that denial of the household benefit violated article 119, which prohibited pay discrimination based on sex. It ruled that, inasmuch as the benefits would have been denied to a female employee with a same-sex partner, there was no discrimina-

tion based directly on the sex of the claimant.

Accordingly, the court rejected the appeal. Each party was ordered to pay its own costs.

The judgment in *D & Sweden v Council of Ministers* was a grave disappointment to those who hoped the court would interpret Community law to recognise same-sex partnerships. In interpreting Community staff regulations, the Court of First Instance was free of the constraints of federalism. There was less risk of being seen as intruding into sensitive areas of Member State social policy. Indeed, Sweden intervened, arguing that its social policy favoured interpreting the staff regulations so as to recognise the claimant's partnership as equivalent to marriage. It was an ideal context for the court to give a broad interpretation of fundamental principles of Community law. It is thus doubly disappointing that the court took such a constricted view of equality and human rights.

In the recent past, there were realistic hopes that Community law would be interpreted to recognise same-sex partnerships. In a relatively short time, however, the parameters of the debate have fundamentally changed. Now, even Community statements of equality for sexual minorities, such as the amendments to staff regulations adopted in April 1998, are likely to be interpreted narrowly: so narrowly, in fact, that the type of discrimination complained of in *D & Sweden* would not be prohibited.

The cause for recent optimism came in Case C-13/94, *P v S and Cornwall County Council*, 30 April 1996, not yet reported. In that case, the claimant's employment was terminated because she was a transsexual. She brought a claim under EC Council Directive 76/207, the so-called *Equal treatment directive*, which mandated equal treatment in employment for men and women. Advocate General Tesauro acknowledged that Community law did not specifically prohibit discrimination against transsexuals, but he recommended that the court rule that such discrimination was unlawful.

The court ruled in favour of the claimant. It wrote, in paragraph 20 of its judgment: 'The scope of the directive cannot be confined simply to discrimination based on the fact that a person is of one or the other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, the scope of the directive is also such as to apply to discrimination arising, as in this case, from the gender reassignment of the person concerned'.

The court also ruled, in paragraph 21 of the *P v S and Cornwall* judgment, that discrimination against the transsexual claimant constituted a form of direct sex discrimination, because she had been treated differently according to whether she was perceived as a man or a woman. In other words, the claimant was allowed to act as her own comparator. Traditionally, transsexuals had lost claims of direct sex discrimination due to an 'equal misery' argument: the courts concluded that because both male-to-female transsexuals and female-to-male transsexuals would be fired from employment, the discrimination was not due to sex, but to something else, to wit, the sex change.

Thus, the claimant must have been hopeful when the Court of Justice subsequently heard arguments in Case C-249/96, *Lisa Grant v Southwest Trains*, 17 February 1998, not yet reported. In that case, Lisa Grant's employment contract with Southwest Trains provided travel concessions to the employee's spouse or 'common law opposite-sex spouse'. Ms Grant sought travel concessions for her female partner. Southwest Trains refused her request, and Ms Grant brought an action claiming this was a violation of article 119 of the *EC treaty*, which mandates equal treatment without regard to sex.

Ms Grant argued before the Court of Justice of the European Communities that the denial of the travel concession constituted a form of direct sex discrimination, because 'but for' her sex as a female the benefits would have been granted. (The male employee who had held Ms Grant's position before her had obtained travel concessions for his unmarried female partner.)

In the alternative, she argued the denial was a form of discrimination based on sexual orientation, and that article 119 prohibited sexual orientation discrimination. That is, she argued that discrimination based on 'sex', as interpreted for the purposes of article 119, included discrimination based on 'sexual orientation'. (The Human Rights Committee of the International Convention on Civil and Political Rights (ICCPR) has found that the ICCPR prohibition on sex discrimination includes sexual orientation.)

Advocate General Elmer, citing the earlier judgment in *P v S and Cornwall*, recommended that the court rule in favour of Lisa Grant. He argued that direct sex discrimination was present in the case, and that, in any case, article 119 should be interpreted broadly to prohibit discrimination based on sexual orientation.

The court rejected the Advocate General's recommendations and ruled against both of Ms Grant's arguments. It ruled, firstly, that the discrimination at issue did not constitute direct sex discrimination. This was due to the traditional 'equal misery' argument: travel concessions would be refused to a male worker if he were living with a person of the same sex, just as they were to a female worker living with a person of the same sex.

The court's analysis of direct sex discrimination was inconsistent with the analysis in *P v S and Cornwall*, where P had been allowed to act as her own comparator. If Lisa Grant had acted as her own comparator, she would have won: if she were (perceived to be) a man, she would have obtained the travel concessions for her female partner (as had the man who held her job before her). Conversely, if the equal misery analysis of *Grant* had been applied to the claimant in *P*, she would have lost: both male-to-female and female-to-male transsexuals were fired from employment. Thus, in *Grant*, the court changed its analysis, without acknowledging it had done so. The court also ruled that Community law did not prohibit discrimination based on sexual orientation; its expansive interpretation of the principle of equality in *P* was limited solely to transsexuals.

Why did the court regress from its earlier, progressive, ruling in *P v S and Cornwall*? Commentators have suggested it was because of the greater incidence of homosexuality. Approximately one out of every 30,000 men and one out of every 100,000 women are transsexual, according to the recommendation of Advocate General Tesauro in *P v S and Cornwall*. By contrast, according to figures cited by Advocate General Elmer in *Grant v South-West Trains*, up to 35 million Europeans are lesbian, gay or bisexual.

It is also likely that the court ruled against Lisa Grant because her case implicated intimate relationships in a way that the *P* case did not. In reaching its decision in *Grant*, the court (unnecessarily) considered whether 'persons who have a stable relationship with a partner of the same sex are in the same situation as those who are married or have a stable relationship outside marriage with a partner of the opposite sex' (paragraph 29). The court concluded they were not in the same situation. Community law did not provide such equivalence, the European Commission of Human Rights had held that stable homosexual relationships did not fall within the right to respect for family life under article 8 of the *Convention on human rights*, and most Member States did not regard such relationships as equivalent. Hence, 'in the present state of law within the Community, stable relationships between two persons of the same sex are not equivalent to marriages or stable relationships outside marriage between persons of opposite sex' (paragraph 35). In my opinion, the court's analysis was selective: it did not consider

the trend in the Member States to prohibit employment discrimination against homosexuals and the case it cited dated from 1990.

The *Grant* ruling has shifted the terms of the debate from preventing discrimination to granting recognition to a particular type of relationship. To phrase the issue in such a fashion virtually preordains the outcome. The Court of First Instance relied on this ruling in *D & Sweden v Council of Ministers*.

Hope for the future?

In *D & Sweden v Council*, the court refused to consider April 1998 amendments to the staff regulations. These amendments expressly provided for equality in the application of the regulations without direct or indirect reference to the sexual orientation of the employee. These amendments are in force and will control any future claims similar to those of the claimant in *D & Sweden v Council*. Should this be a cause for optimism?

It is unclear whether the April 1998 amendments to the staff regulations would have changed the court's decision in *D & Sweden v Council*, or whether a Community employee who now sought to rely on these amendments would succeed. In its judgment, the court noted that, at the time the Council adopted the April 1998 amendments, it invited the Commission to make recommendations concerning the treatment of registered partnerships under the staff regu-

Conferences and seminars

Association Européenne des Avocats
Contact: Dr Kurt G Weil (tel: 0049 211 13680)

Topic: *Annual congress: corporate governance*
Date: 3-6 June
Venue: Venice, Italy

Academy of European Law
Contact: (Tel: 0049 651 937370)
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 anti-trust 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, The Netherlands

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: 01 667 5111)

Topic: *Convergence of the bank and insurance markets*
Date: 10-12 June
Venue: Berne, Switzerland

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

Topic: *Annual congress 1999*
Date: 22-27 August
Venue: Brussels, Belgium

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

Catholic University of Louvain (Louvain-la-Neuve)
Contact: Beata Dunaj (tel: 0032 10 478531)

Topic: *European Community consumer law*
Date: 6-16 July
Venue: Louvain-la-Neuve, Belgium

European Lawyers' Union
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

IBC
Contact: (Tel: 0044 171 4535495)

Topic: *European air transport services and airports*
Date: 10-11 June
Venue: Brussels, Belgium

IIR
Contact: (Tel: 0044 171 9155055)

Topic: *Data Protection Ireland '99*
Date: 16 June
Venue: Dublin

International Association for Consumer Law
Contact: Christa Heinonen (tel: 00358 9 19122684)

Topic: *The consumer in the globalised information society*
Date: 20-22 May
Venue: Helsinki, Finland

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: *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

lations (paragraph 31). According to the court, it will be for the Council to modify the staff regulations in light of the Commission's recommendations (paragraph 32). In other words, it will be for the Council, acting on a recommendation of the Commission, to decide what equality requires.

It seems unlikely the Commission will recommend that the April 1998 amendments require that same-sex partnerships be treated as similar to traditional marriage. This is apparent from its submissions in the case of *Grant v Southwest Trains*.

The Commission filed observations in the *Grant* case. It agreed with Ms Grant that article 119 prohibited sexual orientation discrimination. However, it argued that 'the discrimination of which Ms Grant complained did not amount to discrimination based on sexual orientation'. Instead, the discrimination was based on the fact that Ms Grant was not involved in a traditional heterosexual relationship, and this type of discrimination was different than discrimination based on sexual orientation. The implication is that, in the Commission's view, the discrimination to which Ms Grant was subjected was permissible, even if discrimination based on sexual orientation was prohibited. If the Commission adheres to this position, then its recommendations to the Council of Ministers regarding the April 1998 amendments to the staff regulations are unlikely to include recognition of same-sex partnerships. It will be permissible to deny recognition of same-sex partnerships under the staff regulations, even though these regulations mandate equal treatment without regard to sexual orientation.

The legal situation for lesbian and gays following the decisions in *D & Sweden v Council* and *Grant v Southwest Trains* is poor. Fundamental principles of Community law concerning equality, non-discrimination and human rights do not prohibit discrimination based on sexual orientation. Under the present state of Community law, it is permissible to discriminate against lesbians and gay men – to fire them from jobs, to deny them accommodation. Their durable relationships are not regarded as similar to traditional marriages, or even to relations between unmarried people of the opposite sex. Express guarantees of 'equality' most likely do not require that gay couples be afforded the same benefits as heterosexual couples.

Those who seek to normalise the position of lesbian, gay and bisexual Europeans would be better off focusing their efforts at the level of the Member States. G

Bruce Carolan is Head of the Department of Legal Studies at the Dublin Institute of Technology. He would like to thank Dr Nicola Timoney and Noel Deeney of DIT for help in translating the judgment of the Court of First Instance.

Protection of designations of origin

Denmark, Germany and France v Commission, supported by Greece (Cases 289/96, 293/96 and 299/96), judgment of 16 March 1999.

EU law provides protection for geographical indications and designations of origin of agricultural products and foodstuffs. EU law also provides that 'generic' names cannot be registered and enjoy protection as designations of origin. 'Generic' names are those of an agricultural product or foodstuff which, although relating to the place or the region where they were originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

'Feta' is a salted white cheese traditionally produced in Greece from sheep's milk or a mixture of sheep's milk and goat's milk. Greece wished to have 'Feta' protected under EU law as a designation of origin. A majority of the other Member States wished to have it included on a list of generic names. The Commission arranged for a survey to be carried out questioning 12,800 nationals of the 12 states then making up the European Community.

Based on the survey, the Commission concluded that 'Feta' had not become the common name of a product. It registered 'Feta' as a protected designation of origin in 1996. Denmark, Germany and France contested the registration. Cheese has been produced from cow's milk and legally marketed under the name 'Feta' since 1963 in Denmark, 1981 in the Netherlands, and 1985 in Germany.

The European Court of Justice annulled the designation of origin status of 'Feta'. It held that the Commission had unjustly minimised the importance to be attached to the situation existing in the Member States other than the state of origin and had considered their national legislation to be entirely irrelevant. The ECJ held that the Commission had not taken account of all the factors relevant to its decision. In deciding whether a name had become generic, the situation existing in the Member State in which the name originates and in areas of consumption, together with the relevant national or EU legislation, must all be taken into account. The court held that the Commission should have taken account of the existence of products legally on the market. G

RECENT DEVELOPMENTS IN EUROPEAN LAW

EMPLOYMENT

Working time directive

Gibson v East Riding of Yorkshire Council, Employment Appeal Tribunal (UK), January 1999. Gibson was employed by the council as a school swimming instructor. She did not work during school holidays and did not receive any payment for these holidays. She argued that article 7 of the *Working time directive* entitled her to four weeks' paid annual leave and that she was entitled to be paid for that period. The industrial tribunal rejected her claim but it was upheld by the Employment Appeals Tribunal. The council was an emanation of the State so that the directive could be directly effective against it. Morrison J held that article 7 was clear and precise and conferred individual rights. Thus, it was capable of being applied in a directly effective sense. Thus, Ms Gibson was entitled to be paid for the period of her holiday entitlement.

ENVIRONMENTAL LAW

Water pollution

Environment ministers have reached agreement on the Commission's proposal for a water directive (Com(98)76). The proposal is designed to introduce a coherent and integrated water policy throughout the EU. It implements quality standards and emission limit values to achieve good quality for all waters in the Union. The directive covers inland surface water, transitional waters, coastal waters and ground water. The objective of achieving clear waters is to be reached within 16 years after the entry into force of the directive, subject to certain exceptions.

Annual Dinner of the Law Society 1999

The President of the Law Society, Patrick O'Connor, recently hosted the Society's Annual Dinner at Blackhall Place. Among the distinguished guests were senior members of the judiciary, including Chief Justice Liam Hamilton, ambassadors from the United Kingdom, United States of America, China, Nigeria and Poland, and senior Irish politicians.
(Pictured above) Law Society President Patrick O'Connor with Fine Gael leader John Bruton, and (above right) with Tanaiste Mary Harney and Liz O'Donnell, Minister of State at the Department of Foreign Affairs

The Law Society recently held a lunch to honour distinguished South African judge, Richard Goldstone. Pictured here are (*front row, left to right*): Law Society President Patrick O'Connor, Judge Richard Goldstone (SA), and Deputy Director General Mary Keane; *(middle row)* John Fish, DPP Eamonn Barnes, and Harriet Kinahan of Co-operation North; *(back row)* Director General Ken Murphy, Barry Donoghue, Philip Lee, and Ernest Hanahoe

A number of CLE seminars have recently been held on stamp duty. Speaking at one seminar in Cork were (*l-r*) David Donegan of solicitors Henry PF Donegan & Son, Luke Byrne of the Revenue Commissioners' Stamp Duty Section, and Dublin solicitor John O'Connor

Speaking at a recent CLE seminar on the *Freedom of Information Act* in Cork was Paul Lavery of Dublin solicitors McCann FitzGerald

Lady Solicitors' Golf Society

Over 30 members teed off at the Lady Solicitors' Golf Society spring outing at Charlesland Golf Club in Co Wicklow recently. The results were as follows: first, Geraldine Hickey, H/C 45, 38 points; second, Michelle Linnane, H/C 31, 36 points; gross, Barbara Ceillier, H/C 17, 18 gross points; third, Alison Fanagan, H/C 31, 35 points; first 9, June Greene, H/C 28, 18 points; second 9, Mairead Cashman, H/C 36, 18 points; visitor's prize, Michelle Prendiville, H/C 39, 40 points.

The next outing will take place at Kilkea Castle, Co Kildare on Friday 3 September. For further information, contact Diana Jamieson or Fionnuala McGinley at A&L Goodbody, Dublin.

County Leitrim Solicitors' Bar Association

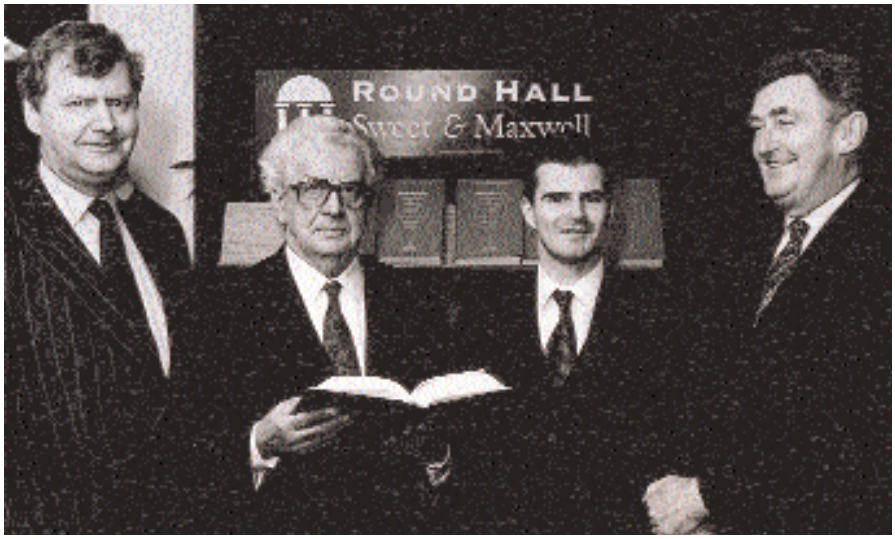
Law Society President Patrick O'Connor and Director General Ken Murphy recently visited the Leitrim Solicitors' Bar Association. (*Back row, l-r*): Director General Ken Murphy, Michael Keane, Noel Quinn, President of the County Leitrim Solicitors' Bar Association Michael P Keane, Peter Collins, State Solicitor Conal Gibbons, and Gabriel Toolan, Bar Association Secretary; (*front row, l-r*): Mary McAveety, President Patrick O'Connor, Morita Dockery and Niamh McGovern

Kildare and Laois bar associations

Law Society President Patrick O'Connor and Director General Ken Murphy recently visited the Kildare and Laois bar associations. (*Front row, l-r*): Grainne White, Secretary of the Kildare Bar Association, Director General Ken Murphy, Kildare Bar Association President Toss Quinn, Law Society President Patrick O'Connor, Laois Bar Association President Philip Meagher, John Reidy, and Ann Mannings, Secretary of the Laois Bar Association; (*back row, l-r*): Mark Stafford, Elaine Cox, John Turley, Bernadette Greene, Cyril Osborne, Deirdre O'Connor and Declan Breen

Lost in thought: Law Society President Patrick O'Connor and Geraldine Clarke, head of the Irish delegation to the CCBE, pictured at the 27th annual conference of the presidents and chairmen of the law societies and bars of Europe in Vienna. Also in the picture is the President of the Law Society of Iceland

At the recent Dublin Solicitors' Bar Association Dinner Dance were (l-r) Yvonne Chapman, Law Society Director General Ken Murphy, Law Society Deputy Director General Mary Keane, President of the Southern Law Association, Sean Durcan and Daphne Madden



Pictured at the recent launch of *Dangerous driving cases* (Roundhall Sweet & Maxwell) were solicitor Gerard O'Keeffe, author of the book, Chief Justice Liam Hamilton, and Mr Justice Ronan Keane of the Supreme Court

Fermoy solicitor Brian Carroll receives the Cedric Barclay Prize from the Rt Hon Lord Justice Evans, President of the Chartered Institute of Arbitrators, in London. The prize was awarded for achieving first place in the writing award as part of the Diploma in International Commercial Arbitration

Mayo man Patrick O'Connor plants a yew tree in the gardens of the Society's Blackhall Place headquarters. The yew is indigenous to Ireland and, according to O'Connor, the name Mayo can be translated from the gaelic as 'the valley of the yew'

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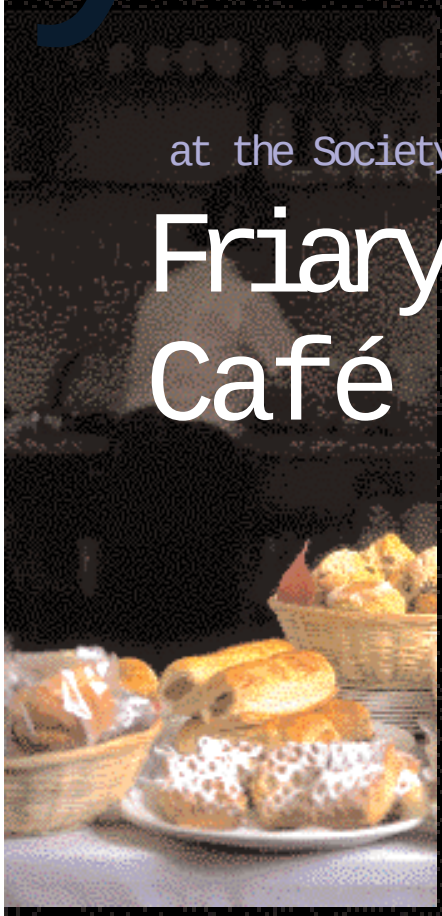

Open 9am to 4.30pm, Monday to Friday

Law Society of Ireland,
Friary Café, Four Courts,
Inns Quay, Dublin 2,
Telephone 873 1806

Webwatch

Already 14% of people in Ireland are on the Internet. This is according to a web site which collects data relating to Internet use throughout the world (www.nua.ie/). The figure is expected to rise sharply when Gateway begins its free Internet service later this year.

Irish business appears to be well placed to take advantage of this ever-increasing customer base. The same site indicates that 88% of the Top 500 companies in Ireland now have a web site. No information is provided with regard to Internet use on the part of law firms in Ireland. However, any visitors to Ireland's web directory for lawyers, *Legal-Island* (www.legal-island.com), will have noticed the rapid increase in listings. Only 18 months ago there were approximately 15 firms listed; now there are three times that number, new additions monthly. One newcomer is Fergus Goodbody, Solicitors (http://homepage.tinet.ie/~goodbody/). This site has a simple brochure-style concept which is quick to download and easy to read. Probably costing just a few hundred pounds to create and publish, it is an ideal model for many small firms to follow.

Not quite so straightforward is the new site from the Irish Stock Exchange

(www.ise.ie) This provides a comprehensive database of current and historic prices and statistics previously available only on subscription. Sharing legal information has always been the big attraction of the Internet, especially if it saves time-consuming jaunts to the law library in search of statutes and caselaw. Acts of the Oireachtas from 1922 to 1997 can now be accessed on the Web at www.irlgov.ie/ag/, though the material can be slow to download at times. While waiting, Internet users might like to pop along to the Karwig Wines site (www.karwig-wines.ie) which contains details on an impressive array of wines. Special offers abound and can be ordered on-line, assuming the visitor has the sobriety to type in carefully all the required data.

To some, the site may look like small beer compared to that at www.mytaxi.co.uk/, where Internet users can browse in a number of UK shops on-line and fill their shopping trolley with a variety of goodies. Those who like to set their own price for a product have a place just for them at Priceline (www.priceline.com). This allows the visitor to name their own price for a variety of products including airline tickets, hotel accommodation and mortgages. Priceline will then endeavour to find a company who is prepared to sell at the figure quoted. The site has made headline news in the USA introducing a new concept of price-driven commerce. It has also made its owner, Jay Walker, a fortune of $5 billion. G

Shop 'til you drop: *MyTaxi* site covers a range of UK stores

Fergus Goodbody: a solicitor newcomer to the Web

Mark Reid is a freelance journalist with a particular interest in the Web. He can be contacted on mark-reid@altavista.net.

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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 May 1999)

Regd owner: Paul and Lucia Sheahan, 67 Fairyfield, Parteen, Co Clare; Folio: 23060F; Lands: Townland of Carraun and Barony of Bunratty Lower; **Co Clare**

Regd owner: Annie Buckley; Folio: 51SD; Lands: small dwelling house in Church Street, Town of Millstreet, County of Cork; **Co Cork**

Regd owner: James O'Brien; Folio: 27181; Lands: Part of the townland of Ballynacrusha, situate in the Barony of Barrymore, County of Cork; **Co Cork**

Regd owner: Patrick Shanahan; Folio: 46433; Lands: Part lands of Killuragh, situate in the Barony of Fermoy, County of Cork; **Co Cork**

Regd owner: Liam and Margaret O'Brien; Folio: 1103F; Lands: Part of the townland of Cloonlough, situate in the Barony of Cloonlough and Clangibbon, County of Cork; **Co Cork**

Regd owner: John Crowley (deceased); Folio: 16127; Lands: Part lands of Loughbeg, situate in the Electoral Division of Carrigaline, Barony of Kerrycurrihy, County of Cork; **Co Cork**

Regd owner: Charles Boyle, Upper Dore, Bunbeg, County Donegal; Folio: 33510; Lands: Dore; Area: 14.025 acres of lands no 1 and 6.537 acres of lands no 2; **Co Donegal**

Regd owner: Rosaleen McGonagle, 28 Coshowen, Ferry Road, Derry, and Neil McGonagle, 73 Creggan Road, Derry, both formerly of Chrislagkeel, Burnfoot, Lifford, Co Donegal; Folio: 27967; Lands: Crislaghkeel, Area: 11a 0r 9p of lands no 1 of Crislaghkeel and 171a 0r 23p of lands no 2 of Crislaghkeel (one undivided seventh part); **Co Donegal**

Regd owner: Kieran Alexander and Ann Alexander; Folio: 60431L; Lands: Property situate in the townland and Knocklyon and Barony of Uppercross; **Co Dublin**

Regd owner: Clonsilla Credit Union Limited; Folio: 13250; Lands: Property situate in the townland of Blakestown and Barony of Castleknock; **Co Dublin**

Regd owner: John Sylvester O'Connor; Folio: 10334; Lands Townland of Grange and Barony of Coolock; **Co Dublin**

Regd owner: Martin O'Carroll, Maria O'Carroll; Folio: 104236F; Lands: Townland of Kilmacud East and Barony of Rathdown; **Co Dublin**

Regd owner: Thomas M Clinton; Folio: 17058; Lands: Property situate in the Townland of Strifeland and Barony of Balrothery East; **Co Dublin**

Regd owner: Mary Catherine Boyce; Folio: 31378L, Lands: Townland of Templeogue, Barony of Uppercross; **Co Dublin**

Regd owner: William McDonagh, Rooaun, Eyrecourt, Co Galway; Folio: 8153; **Co Galway**

Regd owner: James Loughman; Folio: 5320; Lands: Grangemellon and Barony of Kilkea Moone; **Co Kildare**

Regd owner: Margaret Kelly; Folio: 437; Lands: Cush and Barony of Offaly West; **Co Kildare**

Regd owner: Thomas and Mary McCormack; Folio: 17548; Lands: Allenwood South, Barony of Connell; **Co Kildare**

Regd owner: Daniel Phelan; Folio: 16125 and 13402; Lands: Knockania, Crossfield, Churchtown and Barony of Maryborough and Upperwoods; **Co Laois**

Regd owner: George Burchill and Bernadette Burchill; Folio: 6942F, Lands: Townland of Thomastown and Barony of Coshma; **Co Limerick**

Regd owner: Thomas Cooney; Folio: 1992; Lands: Townland of Courtbrown and Barony of Connello Lower; **Co Limerick**

Regd owner: Patrick Curtis, Knockumber, Navan, County Meath; Folio: 9807; Lands: Commons; Area: 1,000 acres; **Co Meath**

Regd owner: John Taylor (deceased); Folio: 1635; Lands: Garr and Barony of Warrenstown; **Co Offaly**

Regd owner: Edmund Carter (deceased); Folio: 4133; Lands: Cloncanon and Barony of Coolestown; **Co Offaly**

Regd owner: Eamon Duffy (deceased); Folio: 2821 and 8425; Lands: Kincora and Endrim and Barony of Garrycastle; **Co Offaly**

Regd owner: John Shanahan (deceased); Folio: 32407; Lands: Fishmoyne and Barony of Eliogarty; **Co Tipperary**

Regd owner: Timothy Buckley (deceased); Folio: 7845; Lands: Knockanava and Barony of Kilnamanagh Upper; **Co Tipperary**

Regd owner: Martin McGrath and Joan Mullins; Folio: 5686; Lands: Townland of Ballymacmague and Barony of Decies-without-Drum; Area: 9a 3r 35p; **Co Waterford**

Regd owner: Nicholas McNamara (deceased); Folio: 11257; Lands: Grange, and Barony of Shelburne; **Co Wexford**

Regd owner: Anthony and Lorraine Dempsey; persons entitled to be registered as owners: Timothy and Helen Corrigan; Folio: 9410F; Area: 0.436; Lands: Killagoley and Barony of Ballaghton South, **Co Wexford**

WILLS

Corr, Sheila, deceased, late of 11 Lower Northbrook Avenue, North Strand, Dublin 3. Would any person having knowledge of a will of the above named deceased who died on 1 March 1999, please contact Early & Baldwin, Solicitors, 27/28 Marino Mart, Fairview, Dublin 3, tel: 01 8333097, fax: 01 8332515. Ref MOD/4657

Flynn, Patrick, deceased, late of Carstown Bridge, Drogheda, Co Louth.

Would any person having knowledge of a will of the above named deceased, who died on 9 July 1962, please contact Rosalyn Kelly, solicitor, of 41 The Heights, Melrose Park, Kinsealy, County Dublin, tel: 01 8407563, fax: 01 8904089

Kavanagh, Michael, deceased, late of 6 Asman House, Coebrook Road, Islington, London N1, and formerly of Scarnagh, Inch, Gorey, Co Wexford. Would any person having knowledge of a will of the above named deceased, who died on 15 May 1998, please contact Haughton McCarroll, Solicitors, 2 Church Street, Co Wicklow, tel: 0404 68344, fax: 0404 68131

Kavanagh, John Joseph, deceased, late of 48 Clare Street, Limerick. Would any person having knowledge of a will of the above named deceased who died on or about 8 February 1999, please contact Breen Geary McCarthy & Shee, Solicitors, ICC House, Charlotte Quay, Limerick, tel: 061 316933, fax: 061 416261

McCartan, Oliver G (otherwise Gerry), late of 54 Ballyogan Road, Carrickmines, Dublin 18, and of the ESB. Would any person having knowledge of an original will dated 19 January 1977 of the above named deceased who died on 6 November 1998, please contact Eoghan P Clear, Solicitors, Jefferson House, Eglinton Road, Donnybrook, Dublin 4, tel: 01 2600988, fax: 01 2600989

O'Connor, Nora, deceased, late of 97 Hibernian Buildings, Albert Road, Cork. Would any person having knowledge of a will of the above named deceased, who died on 25 January 1999, please contact Philip Wm Bass & Co, Solicitors, 9 South Mall, Cork, tel: 021 270952, fax: 021 277882, e-mail: pwmbass@iol.ie

O'Dowd, Marguerite, late of 13 Ebenezer Terrace, Donore Avenue, in the City of Dublin. Would any person having knowledge of the whereabouts of a will of the above named deceased who died on 15 September 1983, please contact Alphonsus Grogan & Company, Solicitors, 33 Lower Ormond Quay, Dublin 1, tel: 01 8726066. Ref RMT

Smith, Marie, late of 35 Beaufield Park, Stillorgan, Co Dublin. Would any person having knowledge of a will of the above named deceased who died on 10 March 1999, please contact Hipwell & Co, Solicitors, Church Street, Wicklow, tel: 0404 68320, fax: 0404 69910

EMPLOYMENT

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Old original legal prints (VanityFair) of judges/barristers/solicitor general etc, in black frames. Available due to study redesign, tel: 01 2850115