Law Society Gazette

Regulars

Cover Story

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INTERNATIONAL BAR ASSOCIATION CONFERENCE

The International Bar Association 2000 conference, which aims to attract 3,000 lawyers from more than 90 countries, will be held in Amsterdam, the Netherlands, from 17 to 22 September. Its Human Rights Institute is currently seeking nominations for the *Bernard Simons Memorial Award for the Advancement of Human Rights*. The next winner will be presented with their award at the Netherlands conference. Candidates must be legal practitioners who, in the practice of criminal law, have made a substantial contribution to the promotion, protection and advancement of human rights. Entry is open to both IBA members and non-members, and nominations close on 15 May 2000.

For further information on the conference or the award-nomination process, phone 0044 171 629 1206, consult the IBA website (*www.ibanet.org*) or e-mail confs@int-bar.org.

COMPENSATION FUND PAYOUT

The following claim amount was admitted by the Compensation Fund Committee and approved for payment by the Law Society Council at its meeting in March 2000: Conor McGahon, 19 Jocelyn Street, Dundalk, Co Louth – £1,816.

SOLICITORS SUSPENDED FROM PRACTICE

The High Court has suspended solicitor Conor McGahon from practice. He was practising under the style and title of McGahon & Company. It also suspended solicitor Francis G Costello. He was practising under the style and title of Francis G Costello & Company.

English Law Society in crisis as City firms urged to split

The English Law Society has been branded 'sad and sleazy' following a public and acrimonious row between Chancery Lane and its former vice-president Kamlesh Bahl. The London-based magazine, *The lawyer*, also urged the big City firms to split from the society and to lobby the British government for the right to represent themselves.

The magazine's comments came in the wake of Bahl's resignation after an independent inquiry upheld allegations of bullying made against her by Law Society staff. Retired law lord, Lord Griffiths, who chaired the inquiry, condemned the former vice-president and Council member for 'bullying' and 'humiliating' staff at Chancery Lane. In light of the Griffiths report, the Law Society's council voted overwhelmingly to suspend their former colleague, but Bahl has since resigned from office and from the council. She has pledged to press ahead with a legal action against the Law Society for racial and sexual discrimination. For its part, the Law Society has said it will 'defend itself vigorously' against the charges.

Is time running out for the English Law Society?

According to *The lawyer*: 'After years of self-important posturing, petty political machinations and personal vendettas, the supposedly leading legal figures in the country have dragged the profession into the sort of sad and sleazy situation which we thought was limited to the Tory party'. And it concluded: 'The Law Society is incapable of running its own affairs. It should not be running or even representing those in the profession. City firms should take the initiative and lobby the government to represent themselves'.

Gazette involved in e-mail shocker

Many legal firms found themselves drowning in unwanted e-mails last month when an electronic circular to the profession from *Gazette* Editor Conal O'Boyle found itself caught in a cyberspace loop. The end result was that replies to O'Boyle's e-mail were circulated to the entire profession and not just to the *Gazette* office, with some firms receiving hundreds of e-mails in the space of a few hours.

What should have been a cheap and effective communication to the profession, seeking information about reported late deliveries of this magazine, turned into a technological monster. Not surprisingly, the profession was less than enamoured with the society's great leap forward into the IT age. However, as a curious side effect, a number of solicitors not on the society's e-mail list subsequently asked to be put on it.

The society has investigated the problem as a matter of priority. Its internal IT specialists and external consultants examined the society's system thoroughly and confirmed, insofar as it was possible, that the problem had not originated at Blackhall Place but had occurred externally. This problem is not unique and reportedly has happened before to e-mails sent by other organisations. Nonetheless, the society has promised not to send any further e-mails to the profession until the problem has been fully explained.

In a letter sent to every firm in the country, the society said it very much regrets the inconvenience caused to members as a result of the e-mail problem.

For its part in the fiasco, the *Gazette* also apologises to those members affected. We would have sent you all an e-mail saying so but, then again, maybe not.

Gazette delivery problems

We have received reports suggesting that a number of members may not be receiving their *Gazette* on time – or indeed at all. The problem seems particularly acute in the Cork area. We have asked both An Post and the Document Exchange to investigate but have so far received no satisfactory explanation. Please do let us know if you are continuing to experience delays in receiving your magazine.

This issue of the *Gazette* should have been on your desks no later than Wednesday 12 April.

Land Registry fees savaged but changes here to stay

The controversial new Land Registry fees were described as 'a supreme example of the government ripping off house purchasers' in the course of a Dáil debate last month. They were also attacked as 'unfair, indefensible and irresponsible'.

The Law Society is already on record as opposing the new fee structure, which in some cases has doubled the fees for transactions, calling them 'an additional burden' on house buyers and suggesting that they would fuel house price inflation (see *Gazette*, Jan/Feb issue, page 4).

The Dáil debate was the result of a private member's motion, proposed by Fine Gael's Jim Higgins, that sought to defer the new charges until the registry could guarantee that all new applications would be completed within four months. Introducing his motion, Higgins claimed that 'the registration of ownership is in chaos because the government failed to assign adequate staff and resources to cope with the increased workload'. He added that the decision to increase fees had been greeted with 'a palpable sense of disbelief'.

'To increase Land Registry charges by 20% or 30%, depending on the nature of the service, is unfair, indefensible and irresponsible', he concluded.

Justice Minister John O'Donoghue: 'misrepresentation'

Alan Shatter TD: 'fee increase is *ultra vires*'

Other Opposition TDs weighed into the debate too, with solicitor Charles Flanagan (FG) describing the current backlog of 95,000 dealings at the registry a 'national disgrace'. Another solicitor deputy, Jim O'Keeffe (FG), said that the proposed increase in fees 'is a supreme example of the government ripping off house purchasers while expressing concern about the additional burdens placed on them'.

Alan Shatter, also a solicitor TD, predicted that any court challenge to the new fees would be successful. 'It is my view, and the minister has confirmed it this evening, the fee increase is probably contrary to the legislation, it is properly challengeable through the courts and, if it were challenged, the challenge would succeed', he said. 'The minister has confirmed to the house this evening that the main reason for increasing the fees was in the context of preparing for moving the Land Registry to semi-state status. I believe the fee increase is *ultra vires* the legislation and open to challenge in the courts'.

Defending his decision to approve the new Land Registry fees, Justice Minister John O'Donoghue said that much of the comment had 'seriously misrepresented the position', adding that the new fee structure was 'an essential element' in the preparations for the conversion to commercial semi-state status. 'It is nine years since the orders were last revised … I wonder how many of those practitioners in the conveyancing and associated fields have not increased their fees since 1991'.

A government amendment to the motion was passed by 71 votes to 45.

(See also Viewpoint, *page 11 and* Conveyancing Committee report, *page 32.)*

Putting apprentices in their place

If you are looking for an apprenticeship – or have a vacancy for one – then perhaps the pre-apprenticeship register, which is comprised of CVs of people seeking an apprenticeship, can help you.

To have your CV and details entered onto the register, complete an application form and send it together with ten copies of your CV to the Apprenticeship Officer, Law School, Blackhall Place, Dublin 7. Please note that the register is only available to those who are in a position to take up the offer of an apprenticeship immediately: in other words, applicants must have passed the first Irish examination and have passed or been declared exempt from the final examination, part one.

If you are a solicitor who has a vacancy in your firm for an apprentice and wishes to have CVs sent to you, please contact the apprenticeship officer on 01 672 4802.

STATUTORY DRAFTING SEMINAR

The Law Reform Commission is hosting a seminar on its consultation paper on statutory drafting and interpretation (published last July). It will be held on 18 April in the Italian Room, Department of the Taoiseach, Government Buildings, Upper Merrion Street, Dublin 2 at 5.30pm.

Those wishing to attend should contact Denis McKenna on 01 637 7600.

REFUGEE LAWYERS' ASSOCIATION MEETING

The next meeting of the Refugee Lawyers' Association is on 19 April at 6.30pm in Blackhall Place. All practitioners are invited to attend. For further details, contact Emer O'Sullivan on 01 872 4511.

LAWYERS' FOOTBALL CUP

Mundiavocat, the football world cup of lawyers' soccer teams, will celebrate its tenth anniversary in Marrakesh in June. For more information, visit the organisation's website http://www.mundiavocat.com or phone 33 (0)4 91 165316.

FIRST OFF THE BENCH IN THE UK

For the first time, a solicitor has been appointed to the bench of Britain's High Court direct from practice. The Lord Chancellor, Lord Irvine, assigned Dr Lawrence Collins QC to the Chancery Division.

CLE SURVEY

There were 98 completed questionnaires received by the society's CLE Executive Sarah O'Reilly. The results of the survey will be published in next month's *Gazette*. The winner of £500 worth of free CLE seminars during 2000 was Caitriona Murray of Mays O'Sullivan, Solicitors, in Dublin.

Letters

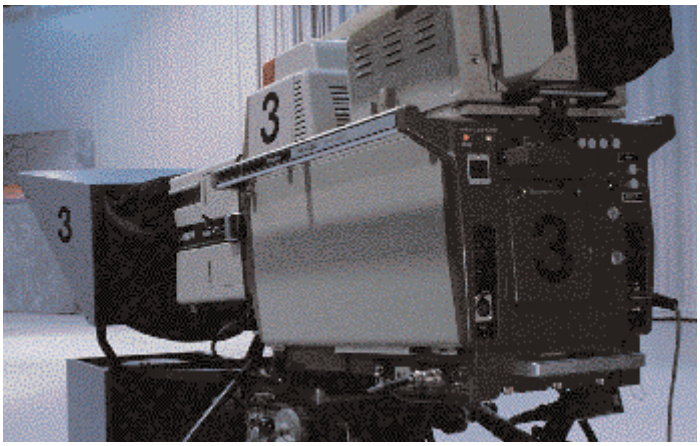
Cameras in the courtroom: incitement to act up?

From: Paul Lambert, LK Shields, Dublin

The topic of courtroom broadcasting is one of those themes which intermittently features in public attention, never quite reaches a satisfactory conclusion, and then disappears until the next occasion (see *Gazette*, last issue, *Vox pop*, page 9). In Ireland it raised some headlines recently when a High Court judge announced at a conference that he was in favour of courtroom broadcasting, only to receive a retort from another High Court judge (retired) in the form of a newspaper article.

The issue of courtroom broadcasting received further attention in a recent New York case. Mr Justice Teresi ruled in the New York Supreme Court that 'there is a presumptive First Amendment right of the press to televise court proceedings – and of the public to view these proceedings on television'. One wonders if he is announcing one or two previously unacknowledged rights. The case was that of Anadou Diallo, an unarmed African immigrant killed by four policemen who had apparently fired 41 bullets in eight seconds. Considerable pre-trial publicity surrounded the case, with various comments from political and religious figures.

The case may be the first time a US judge has recognised such a constitutional right, according to Floyd Abrams, who represented the Court TV channel in the case. So while not being one of the parties, he was still offering views from a particular standpoint. Previously, a New York experiment had permitted limited coverage of cases, but the state legislature refused to renew the experiment when it ended in 1997. Cameras are not permitted in federal trials, either, after the US Judicial Conference also refused to renew a three-year experiment with courtroom broadcasting.



Courtroom cameras: would crime victims be intimidated?

The judge said that 'before this court is a case with great public interest, and with limited seats'. 'The denial of access to the great majority', he continued, 'will accomplish nothing more than divisiveness, while the broadcast of the trial will further the interests of justice'. It is not apparent if he set out what these interests are or how they would be furthered. The state attorney general added that 'this is an important part of instilling public confidence in the judicial system'.

Critics might argue that certain kinds of witnesses, such as crime victims, may be intimidated by cameras. However, Justice Teresi has noted that the rules during the ten-year state experiment in televising trials allowed for some witnesses to request that their images not be broadcast. Such a rule is not universally the case in jurisdictions where broadcasting is permitted.

This ruling, however, is not binding. Already one judge has barred cameras from a conspiracy and fraud case. At the same time, others argue that the decision is the beginning of the end of the ban on cameras. While this is doubted, it is clearly a debate which shall continue into the future. It is only unfortunate that this debate takes place with an absence of adequate research.

Dumb-ass observations

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

I noticed in the last issue of the *Gazette* that you were seeking fresh material for the *Dumb and dumber* section. One did not have to look very far: the *Apprentices' page* contained a half-page (and may I say apt) advertisement for the Donkey Sanctuary! Now, I know apprentices complain they do donkey work, but isn't this going too far? And who was it that said the law was an ass ...

From: Eamonn Carney, Lewis E Citron & Co, Dublin

Following on Stephen Reel's enquiry as to a 'find the *Dumb and dumber* competition' (last issue, page 6), surely the advertisement headlined 'Donkeys are part of Ireland's heritage' on the page reserved for apprentices deserves a mention.

Making a difference

From: Dermot Manning, treasurer, CLASP

The Concerned Lawyers Association for the Alleviation of Social Problems (CLASP) raised over £11,500 in 1999/2000, which marks an increase of over £4,000 on the previous year. The committee of CLASP would like to thank all the members of the legal profession who supported our tenth anniversary party in the Law Library Distillery Building last July, as well as the traditional Christmas Party in the King's Inns. Thanks to your generosity, CLASP was able to make donations to the Salvation Army, Crosscare, St Audeon's National School, the Simon Community, the Summer Project of the Oliver Bond Street Flats, St Vincent's Trust, the Jesuit Centre for Faith and Justice, Focus Ireland and the Merchants Quay Project. On their behalf, and on our own, we thank you for your continued support.

Law Society's immoderate modesty

From: Judge John F Buckley, Dublin

Modesty is an estimable virtue, but if carried to extremes it leads to a dilution of the truth. So it was with your article *What does it take to write a law book?* in the Jan/Feb issue, which, by omitting any reference to the activities of the Law Society in the area of legal publishing – particularly in the 1970s and 1980s – presents a skewed view. Without in any way detracting from the activities of the commercial publishers, and in particular the work of Bart Daly, the fact is that if the Law Society had not published a series of books commencing in 1972 and established that there was a

viable market for new law books it is very doubtful if the commercial publishers would have entered the market. Between 1972 and 1986, the society published 15 new titles on subjects ranging from criminal law to planning, from corporation tax to dismissal law, as well as reviving the *Garda guide*. The society's activities – coupled with those of Professional Books (subsequently subsumed into Butterworths), the publishers of *Wylie's Irish land law* – plotted the way for the commercial publishers who now provide so many books for the Irish market.

Desperately seeking the Earl of Clonmel

From: William Donovan, English Leahy & Associates, 8 St Michael's Street, Tipperary

We act on behalf of a client who is interested in purchasing the fee simple interest in relation to her property at Main Street, Doon, Co Limerick. We understand that the fee simple interest would once have been vested in the Earl of Clonmel but may now very well be held in the names of trustees who now hold the property in the ownership of the Earl of Clonmel. We would be grateful if anyone could supply the names of the current trustees and also the name of the firm of solicitors which is now acting on their behalf.

DUMB AND DUMBER

From: Mark Fitzgerald, Edward Fitzgerald & Son, Co Mayo

The following was contained in a letter received recently from an insurance company offering opponents legal costs insurance: '...for a solicitors' firm to participate in the scheme, it is a condition that they adhere to our underwiring criteria'.

From: David Hodnett, Chief State Solicitor's Office, Dublin

I was recently at Kilmainham District Court when a garda entered the witness box to give evidence of the arrest, charge and caution of an accused. The accused was called 'Burke', but the garda went on to explain that he was now satisfied 'Burke' was in fact a Mr Keating.

When asked by the judge why he had given the name Burke, Keating replied: 'It's my maiden name!'

This nearly eclipses the smooth reply of a certain young drug addict in the same court some days earlier who, when asked how he funded his habit (in the absence of the usual allegations of robbery and mugging), intoned matter-of-factly, 'From the credit union'.

From: Michael D Murray, Limerick

The High Court did not start going out on circuit for personal injury cases until the 1970s, and when I was an apprentice in Limerick in the 1960s, a High Court action in Dublin was a major event in the life of a solicitor.

I recall the story of one particular solicitor (who shall remain nameless) who was very anxious and excited on the big day. On presenting himself at the ticket office in Limerick Railway Station, he proffered his money and asked for a return ticket. The man behind the counter enquired politely 'to where?', to be greeted with the reply, 'to here, of course'.

From: Muredach Doherty & Co, Dublin

Surely the following is the understatement of 2000. This is taken from the Law Society's recent publication, *Solicitors life and serious illness protector.*

Q: Why do I need cover?
A: Losing your main income through death could be potentially disastrous.

From: William Kennedy, Medical Council, Dublin

Place: Bristol, High Court on Circuit
Date: Some time in 1996
Judgment to be read out concerning large commercial action before the assembled parties.
Judge: Ladies and gentlemen, I am extremely sorry to have gathered you all here today, as a rather embarrassing situation has arisen. I left my judgment at home and am afraid there is nothing can be done.
Junior counsel *(trying to be helpful)*: My Lord, fax it up.
Judge: Yes, it does rather.
With that, the judge rose and left the courtroom.

From Julie Mullan, Cullen & Co, Dublin

Working with us is a young (and at her request, beautiful) secretary who would acknowledge herself that her spelling can sometimes be questionable and who often relies heavily on her trusted Microsoft Spell Checker. Recently she typed up a draft will to be sent for approval by an elderly client. The following is an excerpt: 'In the event of my wife pre-deceasing me or not servicing me for a period of one calendar month, I direct that ...'

Happily it was intercepted before going out in the post; however, this is a clause which perhaps many would like to have inserted into their wills!

From: Cathal O'Sullivan, Whelan Solicitors, Cork

The recent rumble in this part of the country regarding contempt of court calls to mind the (perhaps apocryphal) story of a heated discussion between a member of the bench and a member of the bar:
Judge: Mr X, are you trying to show your contempt for this court?
Counsel: Quite the contrary, m'Lord. I was trying to conceal it.

From: Dara Murtagh, FN Murtagh and Co, Cavan

When a colleague asked a client did his elderly brother make a will, the client replied: 'No, you see, he didn't intend to die'.

William Kennedy wins the bottle of champagne this month.

How a warm welcome for refugees turned chilly

Sara MacNiece charts the change in official attitude to people seeking asylum in this country and explains how the law has let them down

The asylum issue has now become firmly fixed in the public eye as one of the hot topics of the year: the media are full of it, politicians are dogged by it and asylum seekers are branded with it. Although people seeking the protection of the Irish state have been arriving here since the 1940s, and in more significant numbers in the past five years, we are still struggling to accept or even to cope with the refugee issue.

1996 saw a more generous approach to the issue of asylum seekers arriving unannounced at our shores to seek protection from persecution under the *Geneva convention*; this came in the form of the *Refugee Act*, along with fervent promises to deal with asylum seekers in a humane and dignified manner. However, in 1996 only 1,179 asylum seekers made their way to the Department of Justice, Equality and Law Reform to enter the asylum procedure.

For the government, the asylum 'issue' became the asylum 'problem'

Failure to act

The *Refugee Act* – though heralded by government as a liberal and protective piece of legislation, broadly welcomed by human rights organisations and signed into law by the then-president, Mary Robinson – was never given the chance to shine. Because of an injunction taken on the act as a result of an age requirement for the position of refugee commissioner, the act went into legislative dormancy. With only five sections implemented, the government continued to process applications for asylum on an administrative and largely ad hoc basis and asylum seekers continued to receive decisions on the validity of their claims without the protection of a statutory instrument. In addition to this, asylum seekers were forced to 'prove' their right to protection without the help of legal aid. In an atmosphere of disgruntled human rights organisations and rising numbers seeking asylum, administrative paralysis set in.

By the end of 1997, the number of asylum seekers entering the state had more than tripled and the number of people exiting the asylum procedure with either positive or negative decisions on their cases stood in stark contrast. It became the norm for people to remain in 'asylum limbo' for three years or more. In November 1997, the current government, clearly recognising the rise in numbers and the backlog that was steadily developing, introduced yet another set of administrative procedures. These procedures, we were informed, were to bridge the gap that the *Refugee Act* (or lack of it) had left behind; they were also designed to better deal with the rising numbers of people entering the asylum procedure. In short, they were harsher and significantly less protective and were not comfortably received by the human rights sector. Asylum seekers were housed in what was referred to as 'emergency accommodation' in Dublin inner city areas and the numbers continued to rise.

> ***'The fact that people are arriving in this country and attempting to exercise what is effectively a legal right does not constitute an invasion'***

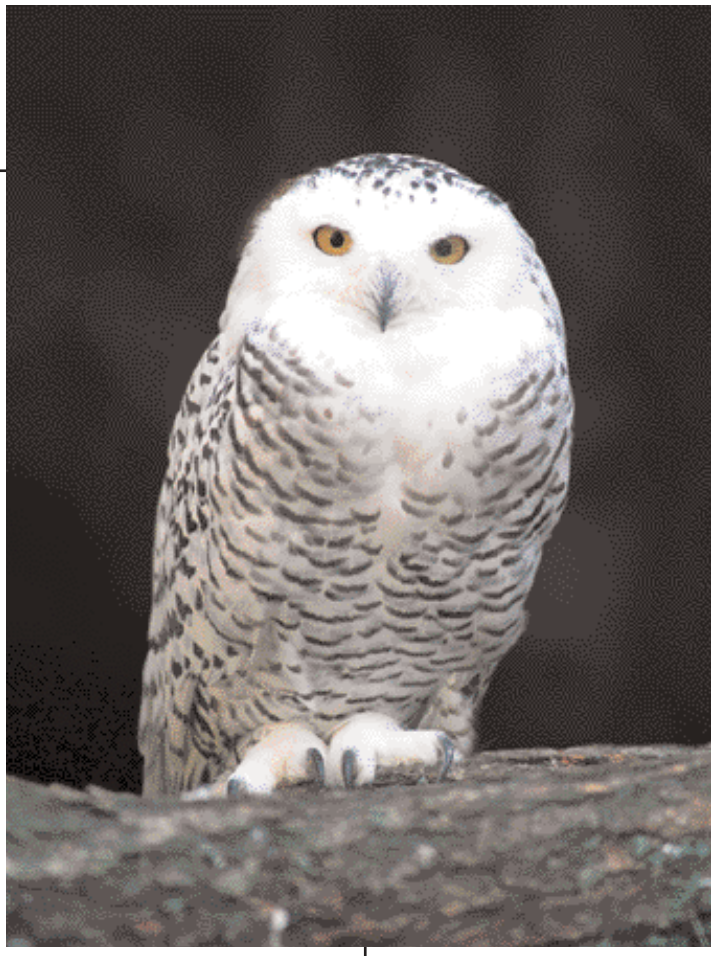
The atmosphere had changed, and for the government the asylum 'issue' was steadily becoming the asylum 'problem'. The number of people arriving in the state rose again in 1998 by just under 1,000 and, notably, the number of those recognised as *Geneva convention* refugees at the first stage of the procedure dropped. Concerns were increasing over the government's refusal to allow asylum seekers legal aid, the standard of translation facilitates, and the lack of strategic planning. Although the increase in the number of asylum seekers coming into this state was by no means unprecedented or even unusual in comparison with the rest of Europe, an air of panic had set in. Newspaper headlines spoke of 'floods' and 'tides' of refugees, certain quarters of the media stoked up public opinion by running stories on 'refugee rapists' and 'spongers'.

System malfunction

Early last year, the government introduced the long-awaited system of legal aid for asylum seekers and recruited over 100 personnel to process the ever-rising backlog of applications. The Refugee Appeals Authority also began to operate in a more efficient manner with the recruitment of more appeal authorities. But the system itself was not functioning as it should. From the government's perspective, deportations of failed asylum seekers was, quite simply, not occurring and asylum seekers remained in a lengthy procedure made worse by the fact that they did not have the right to take up jobs and so were dependent on social welfare payments. Last summer, a new right-to-work scheme was introduced, allowing asylum seekers arriving before the starting date of the scheme and in the asylum procedure for 12 months to take up employment. The scheme affected approximately 2,000 individuals.

"Wisdom prospered their works ..."

Wis. 11-1



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Asylum seekers arriving in the state now do not have the right to work. Put this in the context of massive labour shortages and the cost of housing and accommodating people seeking asylum and one would be forgiven for questioning the logic.

Justice Minister John O' Donoghue has spoken frequently of 'pull' factors attracting persons to our shores in search of a better, more prosperous life. Recently, attempts to completely eradicate these so-called 'pull' factors have become increasingly obvious. One does not have to look much further than the introduction of direct provision – the system of replacing cash payment with food and lodging and £15 pocket money a week; couple this with the placement of asylum seekers in hostels and hotels where they are informed that they don't have permission to move to other accommodation. 'Dispersal' of asylum seekers was introduced despite warnings from human rights groups that dispersal around the country should only be carried out with the provision of proper services, including translation, legal facilities and the preparation of the host communities. The government, we were told, had to forge ahead as there existed an accommodation crisis whose arrival had somehow gone unforeseen.

Any deport in a storm

Legislatively, the introduction of the 1999 *Immigration Act*, which dealt with deportation of non-nationals and restored the minister's powers to deport (after their removal by the Supreme Court), also incorporated amendments to the *Refugee Act, 1996*; these remain unimplemented. In addition to this, the government attempted to introduce amendments to the *Illegal Immigrants Trafficking Bill* the day after it was debated at committee stage in the presence of concerned human rights organisations. These amendments appeared unusually placed in a piece of legislation dealing with the criminalisation of trafficking as they dealt with the access of failed asylum seekers to judicial review proceedings and effectively suggested severely curtailing the rights of access to the courts for this group of individuals.

Sara MacNiece: 'the floodgates have not opened'

Last month, we heard murmurings from distant continents of detention centres, which, though discredited as misinterpretation, preceded the introduction of floating hotels as yet another 'emergency' measure to deal with asylum seekers here. There are currently just fewer than 11,000 applicants for asylum in the state, some of whom arrived as long as two years ago. Contrary to the impression often given, the floodgates have not opened and we are as a host state entirely able and in a position to cope.

Facing up to our responsibility

The fact that people are arriving in this country and attempting to exercise what is effectively a legal right does not constitute an invasion; it does, however, form part of the obligations that Ireland has as a signatory to European and international human rights instruments.

There is a glaring need for a long-term strategy, for a proactive rather than an entirely reactive response, and finally for a realisation that we will not be 'spared' the asylum issue. The fulfilling of our domestic and international legal obligations to protect those who need protection in a full, fair and efficient asylum system must be the clear aim, while devising a much-needed strategy to deal with this issue. G

Sara MacNiece is legal officer in the Irish Refugee Council's legal unit.

Why Irish lawyers need to look eastwards

As the EU's borders push ever eastwards, the Prodi Commission and the Irish legal community have some work to do to, writes Conor Quigley

Romano Prodi's European Commission has one great task which will be seen as the benchmark for the success of its term of office: enlargement. The entry of 12 or 13 new members by the year 2010 is a political imperative. For the Prodi Commission to be a success, however, real progress must be achieved before its term ends in January 2005.

It had originally been anticipated that the front runners would be in line to join on 1 January 2003. These include Poland, Hungary and the Czech Republic. But recently bitterness has crept into the negotiations between these countries and the commission, each accusing the other of lack of progress. Apart from agricultural finance, the key issue, and one which should be of particular interest to lawyers, concerns implementation of EC legislation.

When Ireland joined the Community in 1973, little legislation needed to be put in place other than the constitutional change in article 29 and the adoption of the *European Communities Act*. In the last 20 years, however, a vast body of directives has been adopted in a host of areas, in particular areas such as commercial law, tax law, company law and food law, with the result that several hundred legislative enactments are needed to accede to the body of EC law. It is the sheer size of this task, coupled with the nature of political activity, which gives cause for concern.

First, the Czech Republic was scolded by the commission for failing to get its legislative act together. Now it is Poland which is being chastised. Poland's links to Germany mean that it is inconceivable that it would not be among the first of the new member states. But recently concern has increased over the lack of progress in implementing legislation. Moreover, it is said that, in

several cases, the substance of the directives is altered, sometimes substantially, by the Polish parliament.

Irish lawyers will be well aware of the problems associated with unimplemented directives. Indeed, leading European Court cases such as *Emmott* are testament to the ingenuity of the Irish in arguing novel points of law at the ECJ in order to remedy failure by the Irish legislature. Moreover, it should be borne in mind that several current member states have an appalling record in implementing directives, either properly or, indeed, at all.

Yet this does not prevent Belgium or Italy from playing a full and important role in the affairs of the European Union. Equally, therefore, it should not be necessary for each new applicant state to have all the legislation perfectly in place before it can officially accede. Having said that, all possible effort must be made to ensure that enlargement goes ahead as quickly as possible and in such a way that the greatest possible level of legal obligations are complied with in advance.

Ireland has an important role to play in this affair. Many of the smaller countries look to Ireland as an example of how to succeed, both economically and politically, in an association with large countries. Their civil servants are already coming to Dublin on a regular basis to be briefed by their Irish counterparts.

Lawyers should be taking a similarly active role. Links between law societies and bar associations throughout central and eastern Europe should be strengthened with a view to developing educational and professional ties. This should be viewed as an important investment in time and energy. The European Commission, through bodies such as TAIEX, has made some efforts to develop educational programmes for lawyers, but much more needs to be done.

Conor Quigley: 'links between law societies throughout Europe should be strengthened'

Economically, the centre of European activity will be moving further east, and Irish lawyers should ensure that they are not left out of the loop. Many Irish businesses will be spreading their activities into these countries, and legal services will be required. Indeed, many Irish business connections already exist. It is foolish to leave the pickings to the big London and US law firms that have started to open offices in centres such as Warsaw, Prague and Budapest. Rather, a programme should be commenced of building bipartisan relations with local law firms. This would be particularly useful for Irish lawyers, being English speaking, since English is by far the most important international business language in these countries.

On a political level, the Irish government should also do its best to support early accession. However, this requires that several matters concerning the institutions of the European Union (currently under discussion at the intergovernmental conference) be agreed by the end of this year. The political momentum needed to carry the project forward is sapping. This trend must be reversed.

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

Land Registry fees a bad joke

As Land Registry service levels go through the floor, the government's response is to put the fees through the roof; meanwhile, concern for the hard-pressed house purchaser seems to have gone out the window, writes Ken Murphy

If it were not so serious, most solicitors would view as a bad joke the decision of the minister for justice, equality and law reform to massively increase Land Registry fees at a time when there is a record backlog of 95,000 applications, when the waiting time for processing of dealings in some counties is as much as 65 weeks, when first registrations routinely take many years to complete, when the Land Registry has restricted acceptance of telephone enquiries to just one hour a day and when the surplus being generated by the Land Registry is of the order of £3.5 million a year.

Major Dáil debate

Although it received relatively little publicity, a major Dáil debate, lasting a full three hours, took place on 22 March, on an opposition motion disapproving the decision by the minister for justice, equality and law reform to sanction increases in Land Registry charges and deploring the current unreasonable delays. For those of us from the Law Society who watched the Dáil exchanges from the public gallery, it was clear who won and who lost. The government won the vote but the opposition won the debate.

The original motion put down by the Fine Gael spokesman on justice, equality and women's rights, Jim Higgins, TD, called on the minister to defer the approved increase in charges until: a) adequate additional staff were assigned to the Land Registry in order to guarantee that all applications for new registrations which are in order will be completed within a maximum of four months; b) all routine sub-divisions will be completed within two months; and c) other Land Registry services are modernised and streamlined immediately.

A substantial number of deputies contributed to the debate on a subject which, it is clear, is being constantly raised with them by solicitors and by constituents. The enormous levels of frustration and annoyance which conveyancing solicitors feel with the delays in the Land Registry were given full expression in the Dáil.

The solicitors' profession itself was well represented in the debate, with solicitor-deputies Tom Enright, Charles Flanagan, Jim O'Keeffe and Alan Shatter among those vigorously attacking the government's record in relation to the Land Registry, which record was being defended by another solicitor, Minister for Justice, Equality and Law Reform John O'Donoghue.The minister's promise of the assignment of 60 additional staff to tackle the growing problem of arrears is to be welcomed. Although the Department of Finance sanction appears to have been received for these recruitments, the minister did not specify when these additional staff members would begin work. It may well be many months, therefore, before any substantial impression is made on the still increasing backlog.

The Law Society recognises that the problem of chronic understaffing of the Land Registry is not a new one. The problem has been exacerbated both by the loss of some experienced staff because of the move of much of the Land Registry's operation to Waterford and by the huge surge in property transactions in recent years. Decades of under-resourcing of the Land Registry by successive governments lie at the root of the current crisis.

Ken Murphy: new doubts about move to semi-state status

No blame whatsoever for the present state of affairs lies with the staff of the Land Registry who, in fact, have performed heroically under very poor conditions for many years. That the Land Registry staff have successfully retained their professionalism and courtesy in the face of such problems beyond their control is greatly admired by solicitors.

Chronic delays

The chronic level of delays in Land Registry services is completely unacceptable. It is not merely a national embarrassment. It is, in all likelihood, also a hidden drag on the performance of the economy generally. Even the minister accepts that the current situation cannot be allowed to continue. But what should be done about it? The minister has agreed to meet with Law Society President Anthony Ensor and other society representatives in the near future to hear the depth of the profession's concerns, both in relation to the current crisis and the proposed future direction of the Land Registry. Although the Law Society in the late 1980s was among those at the forefront of recommending that the Land Registry should be given the status of a commercial semi-state body, some doubts about this strategy have recently been raised within the society's Conveyancing Committee and Council.

Deep reservations about the strategy were expressed by many contributors to the Dáil debate, not least out of concern that the ability to call the Land Registry to account might be severely reduced, if not eliminated completely, if commercial semi-state status were conferred on this crucially important monopoly. Who then would control the level of Land Registry fees?

Withdraw the order

At a minimum, what should now happen is that Minister O'Donoghue should withdraw the statutory instrument by which the level of Land Registry fees will otherwise be so substantially hiked – in many cases doubled – with effect from 1 May 2000. The required new investment in increased staffing and information technology should come from the existing £3.5 million annual surplus. No further steps should be taken towards commercial semi-state status – at least until the current crisis has been overcome and the service levels which are expected of any 21st century organisation have been put in place. G

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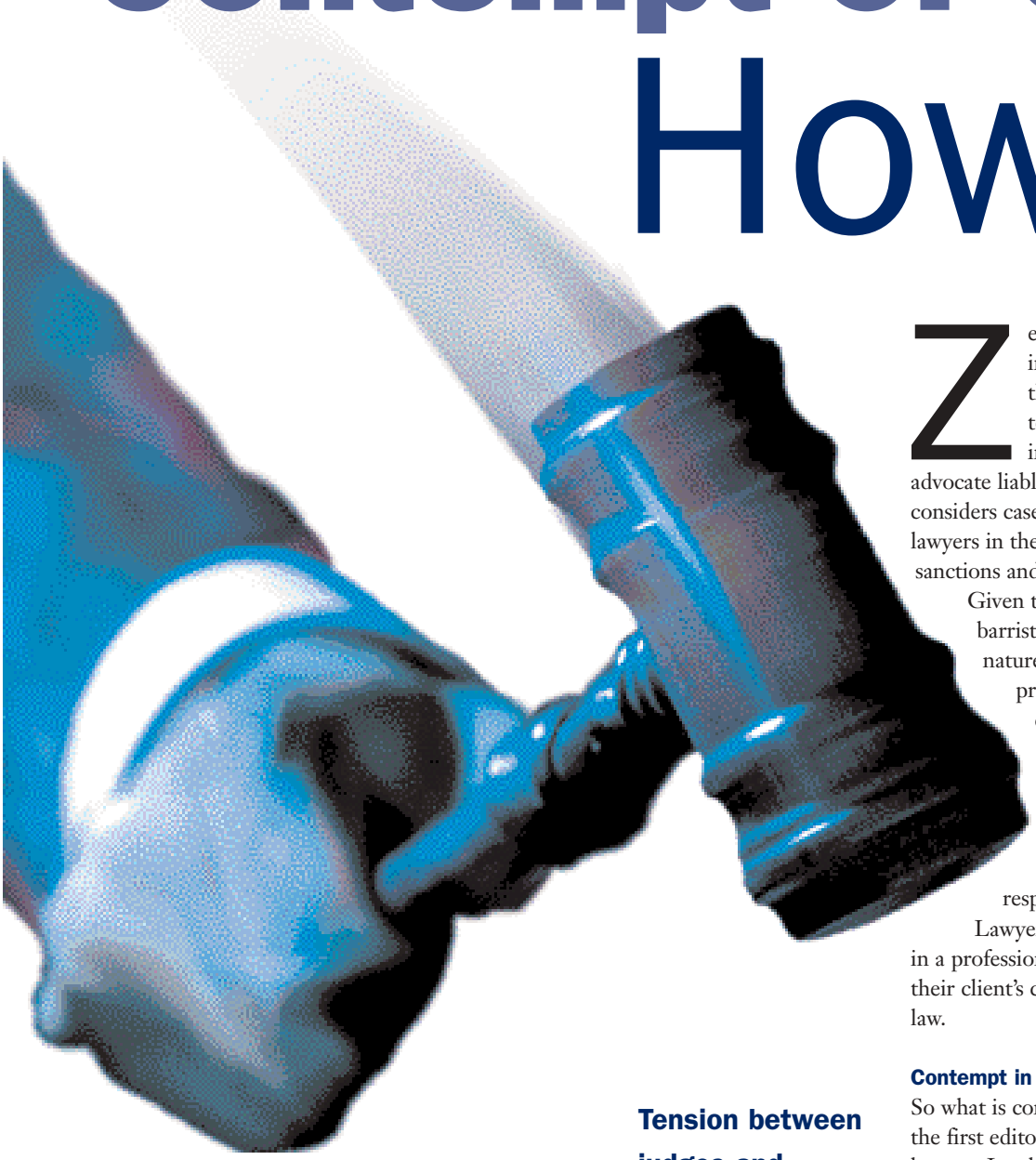
Contempt of court: How far



Tension between judges and lawyers are part of daily life. But as recent events have shown, this tension can erupt into courtroom conflict. Eamonn Hall looks at contempt of court and highlights some memorable cases

Zeal on the part of a solicitor or barrister in court is admirable, but excessive zeal in the conduct of a case may lead to what is termed contempt *in facie curiae*, contempt in the face of the court, which renders the advocate liable to sanction and penalties. This article considers cases of contempt in the face of the court by lawyers in the conduct of court cases, examines the sanctions and how, happily, matters are often resolved.

Given the regular contact between solicitor, barrister and judge, coupled with basic human nature, it is not surprising that the legal profession has played some part in the development of the law of contempt of court. One may start with the duty of the advocate, well summed up by Rutledge J in *Fisher v Pace* (336 US 155 at 168 [1949]): 'Lawyers owe a large, but not an obsequious, duty of respect to the court in its presence'.

Lawyers, then, have a duty to the court to act in a professional manner and yet have a duty to pursue their client's case with vigour within the limits of the law.

Contempt in the face of the court

So what is contempt in the face of the court? May CJ, the first editor of *The Irish reports*, who subsequently became Lord Chief Justice of Ireland (Queen's Bench Division), explained the nature of contempt in the face of the court in the following words in *Re Rea (No 2)* ([1879] 4 LR (IR) 345 at 347):

'It is plain that no tribunal would be maintained with order and decency unless the presiding judge had the power of dealing with the suppressing of contempts committed in open court. It is for the sake of the administration of justice, and in order to maintain the decency and order of judicial proceedings, that this extensive and summary power is confided to a judge'.

Lord Denning in *Morris v The Crown Office* ([1970] 1 All ER 1079 at 1081) in the Court of Appeal echoed the words of Chief Justice May in the following passage:

'The phrase "contempt in the face of the court" has a quaint old-fashioned ring about it, but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts.

can you go?

The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without trial – but it is a necessary power'.

Balogh v St Alban's Crown Court ([1975] 1QB 73) gave the Court of Appeal a further opportunity of examining the law in relation to contempt in the face of the court. The case involved Stephen Balogh, a casual law clerk employed by the defence in a case being tried about pornographic films and books. The case dragged on and the law clerk got bored.

Lord Denning in the Court of Appeal later said that Balogh, son of a distinguished economist Lord Balogh, planned 'to liven' the case up. Balogh had learned about nitrous oxide, more commonly known as 'laughing gas', at Oxford and planned to put a cylinder of the gas at the inlet to the ventilating system and release the gas into the court. But he was caught. Balogh meant it as a practical joke and apologised – but the judges were not amused.

In the court of first instance, Balogh grossly insulted the judge after being sentenced to six months sentence: 'You are a humourless automaton, why don't you self-destruct?' Lord Denning in the Court of Appeal considered the matter of contempt in the face of the court in the following passage:

'But I find nothing to tell us what is meant by "committed in the face of the court". It has never been defined. Its meaning is, I think, to be ascertained from the practice of the judges over the centuries. It was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So "contempt in the face of the court" is the same thing as "contempt which the court can punish of its own motion". It really means "contempt in the cognisance of the court".

'Gathering together the experience of the past, then, whatever expression is used, a judge of one of the superior courts or a judge of assize could always punish summarily of his own motion for contempt of court whenever there was a gross interference with the course of justice in a case that was being tried, or about to be tried, or just over – no matter whether the judge saw it with his own eyes or it was reported to him by the officers of the court, or by others – whenever it was urgent and imperative to act at once. This power has been inherited by the judges of the High Court and in turn the judges of the Crown Court'.

The judge and the future judge

There have been some celebrated cases in which solicitors and barristers found themselves in contempt of court. One such case occurred in March 1947. Barrister Thomas A Doyle, subsequently a judge of the High Court, was ordered to be removed from the Naas Circuit Court on Friday 7 March 1947 by Judge Fawsitt. The facts illustrate that contempt in the face of the court by lawyers can often be ascribed to a 'misunderstanding' or a 'mistake' on the part of either the judge or the advocate; sometimes the words 'misunderstanding' and 'mistake' are used in such a way that these terms, in a loose sense, become part of the solution.

Mr Doyle held two briefs at Naas Circuit Court on 7 March 1947. The criminal appeals came on early in the morning and, after the appeals, certain civil cases were taken. These cases had not concluded at 4.30pm when Mr Doyle made his third appearance in court and asked to mention the criminal case which the judge had decided four hours earlier. In fact, Mr Doyle was making a renewed plea on behalf of Private William McGrath (22) of the Curragh Camp who had been sentenced in Kildare District Court to six weeks' imprisonment with hard labour, and a fine of £10, for dangerous driving arising out of a collision in which

A BIG HAND FOR THE JUDGE

An often-quoted case on contempt in the face of the court goes back to 1631 (3 Dyer 188b) when a prisoner (not a lawyer, fortunately) threw a brickbat at the judge of assize. The brickbat narrowly missed the judge; the prisoner's right hand was cut off and fixed to the gibbet, upon which he was immediately hanged in the presence of the court. Thus was demonstrated the awesome nature of the judicial power.

MAIN POINTS

- Contempt 'in the face of the court' has never been defined
- Lawyers have a duty to pursue their case vigorously, but a delicate balance must be observed
- Citation of lawyers for contempt should be used sparingly by judges

'The contempt power of judges should not be exercised simply to protect the sensibilities of the judges or to prevent the decisions of judges from being scrutinised publicly'

the other driver had lost his right arm. Mr Doyle said he had not had an opportunity to address the judge before sentence and wanted to bring several matters to his notice which would, perhaps, affect his decision. The following is the exchange of words, which were widely reported in the media at the time:

Judge Fawsitt: I have given my final decision ... I have rarely listened to more dangerous driving.
Mr Doyle: I intend to press the case.
Judge: I told you to sit down.
Mr Doyle: I will not sit down.
Judge: Will the sergeant come forward.
Mr Doyle: I wish to point out to you, sir –
Judge: Remove Mr Doyle, sergeant. I have given you every chance.
The sergeant then came forward and put his hand on Mr Doyle's arm.
Mr Doyle *(turning to the judge):* I protest in the strongest possible manner. You are not behaving in a manner befitting the bench.
Judge: You have made your protest.
Mr Doyle: I have not finished my protest.

Mr Doyle then left the court accompanied by the garda sergeant.

Subsequently, the Bar Council issued a resolution to the effect that, having considered the circumstances of the case, and even assuming that the circumstances were as stated by Judge Fawsitt, it was of the opinion that the judge was not entitled to order Mr Doyle's arrest and removal from the court and that this constituted a serious infringement of the rights of counsel. The Bar Council continued that, in view of the judge's refusal to apologise for his action, members of the bar would not practise in his court until such time as an adequate apology to Mr Doyle in open court was forthcoming.

No barristers attended Trim Circuit Court, where Judge Fawsitt subsequently sat. When a civil action was called, solicitor Capt P Cowan stated: 'Counsel refuses to accept a brief to appear before Your Lordship, and I must, therefore, apply for an adjournment'. Another solicitor, appearing for the defendant, stated that he was in the same position. Judge Fawsitt remarked: 'Very well then. I will facilitate you by adjourning the case until next sittings'. Other cases were adjourned.

WHAT THE LAW REFORM COMMISSION SAYS

An excellent description of the delicate duty of lawyers in the context of representing clients and the limits to advocacy in the context of contempt in the face of the court may be found in the comprehensive *Consultation paper on contempt of court* published by the Law Reform Commission in 1991. The following paragraph is worth noting:

'Lawyers have to tread warily when representing their clients. They must not be intimidated or browbeaten by the judge and must present their client's case as strongly as justice and fortitude may require. In doing so, they must not forget another cardinal virtue – prudence. They must seek to temper their presentation to achieve the goal of advocacy, which is to convince the listener. But, more urgently, they must ensure that they do not fall foul of the law of *in facie* contempt'.

A stand-off continued until 21 April 1947, when Judge Fawsitt invited Mr Doyle to Trim Circuit Court. The judge said that the Bar Council's intervention had occasioned a correspondence 'which was terminated by them rather abruptly and was therefore, inconclusive'. He added that he thought fit, in the public interest, to communicate directly with the barrister and said he was happy to see him present in court. And he continued: 'Now, I have asked you to come back here today that I might tell you publicly that I regret and I am sorry for that order. The regret and sorrow which I have expressed are due in the circumstances which I now understand existed that day'.

The judge said that at the time Mr Doyle addressed him and insisted upon being heard, he had not adverted to the real grounds of his application, namely that the judge had refused to hear him as counsel in the criminal appeal that morning. Mr Doyle had since explained that the judge had refused to allow him to speak in the morning of the criminal appeal and that at the close of the evidence, when he sought to address the court, the judge had waved him aside. The judge stated he had no recollection of doing either but, in the circumstances, he had to accept Mr Doyle's statement as being accurate. On the assumption that he (the judge) did refuse to hear Mr Doyle in the morning, the judge admitted to making 'a mistake'. And he continued:

'It is a traditional right for a barrister briefed in a case to be allowed to address the court. If you had done in the morning what you did in the afternoon – persist in your application to be heard – you would in that case have been heard. If you had persisted, I would have a recollection of it. I assume you did not, but I accept your statement that you asked me and I refused. I regret that initial mistake. It seems to me, having regard to the ground of your application in the afternoon, but for the initial mistake what happened could not have occurred'.

This is the classic solution in most cases of contempt in the face of the court by lawyers: an admission of misunderstanding, or mistake, followed by regret. More was to follow – the classic assertion of authority of the court.

Judge Fawsitt continued that there was no justification for the disobedience of the ruling of the court in the afternoon by Mr Doyle. The request which he had made to Mr Doyle to sit down was proper but would never had been made had he (the judge) not been guilty of the initial mistake. From this it seemed to follow that the order which he made to have the barrister removed from the court in the afternoon, although a necessary and correct order at the time and in the circumstances then present, was vitiated by the judge's earlier mistake. There then follows the judicial apology:

'Accordingly, I express my regret and sorrow that I ordered you to leave the court. I have already admitted that the fault was mine in the morning. That was the one ground on which I have expressed my regret. I am glad to see you back'.

One apology deserved another, and there followed the classic apology of the advocate. Mr Doyle addressed the court and said he was grateful to Judge Fawsitt for his generous remarks and appreciated very much the spirit which inspired them. He continued:

'On consideration, I feel that my ultimate refusal to comply with your direction at Naas Circuit Court was a matter of provocation. I am very sorry to have been in any way discourteous or disrespectful to you or to the court. I wish now, therefore, to express my regret here in your court. I would like to refer to the happy relations which have existed between Your Lordship, as the presiding judge, on the one hand, and myself as a member of the bar'. Mr Doyle was very glad to think these happy relations would continue.

The next sequence demonstrates a firm assertion of authority by the court. Judge Fawsitt then addressed general remarks to the practitioners on his circuit relating to the relations between bench and the bar. He said that uniformly these relations were the happiest. He hoped they would continue. But he said the view had been expressed that a judge was not entitled, apparently under any circumstances, to order the arrest of a barrister and that to do so constituted a serious infringement of the rights of counsel. He stated that was unsound in law and he thought it was right that practitioners on his circuit should know his understanding of the law on the subject. He considered that a barrister was no more immune from arrest on a criminal charge than a member of the public.

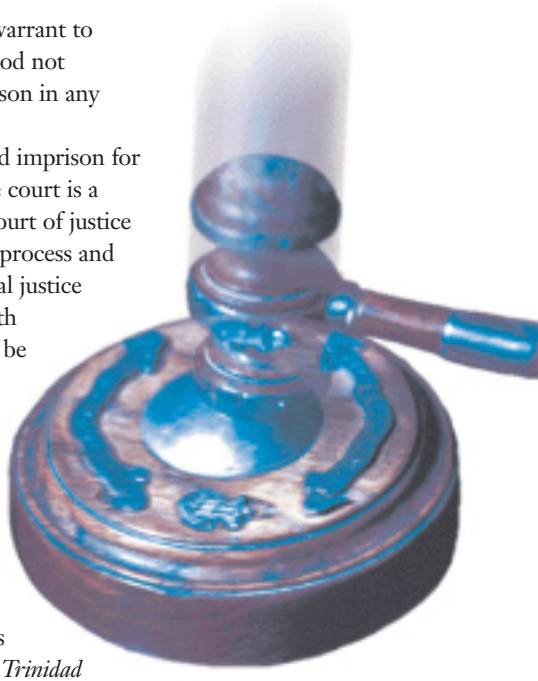
Judge Fawsitt said he had power when a barrister was guilty of contempt to attach him, and if he was guilty of disorderly conduct might order his removal from court. A judge would not be worthy of his position if he did not exercise the powers given him for the purpose of maintaining order in his court. So far as Judge Fawsitt was concerned, he would allow nothing to deter him from executing that duty whenever he thought it necessary to maintain order in court. He concluded that in view of the recent happenings, it was as well that he should state what his understanding of the law was and, until a superior court over-ruled him, he would enforce it.

Many of the above elements – misunderstanding, mistake and regret – featured in the recent alleged contempt in the face of the court involving solicitor Marguerite Fennell and Judge Michael Patwell (see *Gazette*, last issue, page 5 and recent national media coverage).

The sanctions available to a judge

There is a specific statutory provision governing contempt of court in the District Court. Section 9 of the *Petty Sessions (Ireland) Act 1851* sets out the authority to commit and fine for contempt of court in the District Court:

'And if any person shall wilfully insult a justice or justices so sitting in any such court or place, or shall commit any other contempt of any such court, it shall be lawful for such justice or justices by any verbal order either to direct such person to be removed from such court or place, or to be taken into custody, and at any time before the rising of such court by warrant to commit such person to gaol for any period not exceeding seven days or to fine such person in any sum not exceeding forty shillings'.



At common law, the power to fine and imprison for a contempt committed in the face of the court is a necessary power associated with every court of justice (*R v Almon*, [1765] Wilm at p254). Due process and the concepts of constitutional and natural justice would demand that a lawyer charged with contempt in the face of the court would be given an opportunity of consulting with solicitors or counsel before a final sanction is imposed by the judge.

It must be said that the contempt power of judges should not be exercised simply to protect the sensibilities of the judges or to prevent the decisions of judges from being scrutinised publicly. Lord Atkin's famous dictum in *Ambard v Attorney General for Trinidad and Tobago* ([1936] AC 322 at 335) has been quoted with approval in this jurisdiction:

'Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men'.

One final example of contempt of court illustrates extreme discourtesy, but thankfully not by a lawyer. The Lord Chief Justice of England and Wales, Lord Russell of Killowen, himself a former solicitor, educated at Castleknock College, Dublin, characterised it as 'scurrilous abuse' of a judge, Darling J, who was then holding the local assizes. The case was *R v Gray* ([1900] 2 QB 36), in which the editor of a Birmingham newspaper had engaged in abuse of the judge. When proceedings for contempt were taken, the editor duly apologised and the Queen's Bench Divisional Court fined him £100 with £25 costs. The words were such that the official law reports discreetly suppressed the language used in the newspaper, as did other reports, but some other journals reported the words in full:

'If anyone can imagine Little Tich upholding his dignity upon a point of honour in a public house, he has a very fair conception of what Mr Justice Darling looked like in warning the press against the printing of indecent evidence. His diminutive Lordship positively glowed with judicial self-consciousness … No newspaper can exist except upon its merits, a condition from which the bench, happily for Mr Justice Darling, is exempt. There is not a journalist in Birmingham who has anything to learn from the impudent little man in horse-hair, a microcosm of conceit and empty-headedness … One is almost sorry that the Lord Chancellor had not another relative to provide for on the day that he selected a new judge from among the larrikins of the law. One of Mr Justice Darling's biographers states that "an eccentric relative left him much money". That misguided testator spoiled a successful bus conductor'. G

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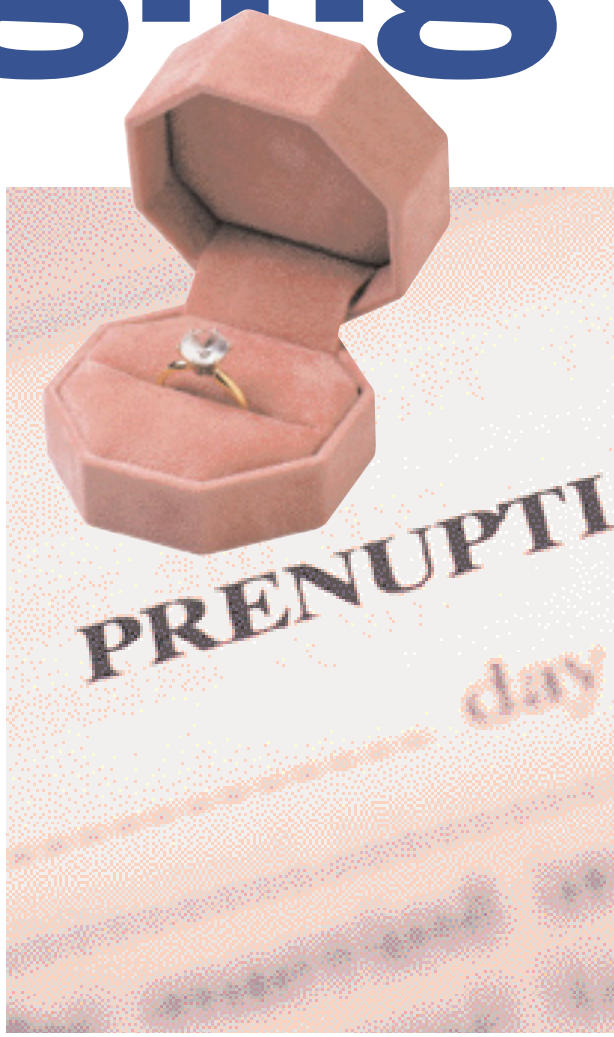
Pre-nuptial agreements Hedging

Despite the removal of the constitutional ban on divorce, pre-nuptial agreements are generally still unenforceable in this jurisdiction. Geoffrey Shannon argues that it may be time for a rethink on the issue



Under article 41 of the Irish constitution, the family is the basic unit of society. In fact, the tradition of the family has always been one of the strongest national characteristics in this jurisdiction. The constitution is clear on the subject of the family. Article 41.1.1 talks of the family 'as the natural primary and fundamental unit group of society'. It also pledges to guard with special care the institution of marriage and to protect it against unjust attack. As a result, there is a constitutional obligation under article 41 to protect and preserve the family unit in so far as practicable.

But the nature of the family in Ireland has changed dramatically over the past 25 years. Immense social, cultural, and economic developments since the 1970s have altered family structures. Today, the reality mirrors that of our European partners, and that includes an increase in the incidence of marital breakdown. Up to now, any attempt by the legislature to introduce legislation to weaken the supremacy of the family or to encourage people to walk away from what most would accept as the ideal family unit would have been deemed unconstitutional by the Supreme Court. That is no longer the case following the insertion of article 41.3.2 into the constitution.

WHAT IS A PRE-NUPTIAL AGREEMENT?

A marital agreement is an agreement between two people who propose to marry each other ('pre-nuptial agreement'), or who have been married to each other ('post-nuptial agreement'), in respect of property, maintenance and custody arrangements should the marriage break down.

Pre-nuptial contracts are of increasingly practical importance since the passing of the *Family Law (Divorce) Act, 1996* in view of its potential for property ownership adjustment and redistribution.

The most common purpose of the pre-nuptial contract is to ensure the protection of property in an agreed way in the event of subsequent disagreement and/or marriage breakdown. Pre-nuptial agreements are agreements by which a couple who are intending to marry seek to 'opt out' of the current system of matrimonial law, in the hope that they can remain subject to the legal provisions which would have obtained had they remained as cohabiting partners or legal strangers. Such agreements, however, have not been tested in recent times in the Irish courts.

your bets

MAIN POINTS

- The removal of the constitutional ban on divorce weakens the argument against pre-nuptial agreements
- They continue to be unenforceable under Irish law
- Legislators should take a fresh look at pre-nuptial agreements

The removal of the constitutional ban on divorce weakens but does not negate the argument that a contract made in contemplation of a separation which may occur at some future date and which is not inevitable is unenforceable for reasons of public policy. It does, however, strengthen the case for the validity of these agreements, at least in the exercise of the general judicial discretion.

Authority for this proposition is to be found in the case of *Fender v St John Mildmay* ([1938] AC 1) in which Lord Atkin stated that pre-nuptial contracts should be given the benefit of the doubt where they do not demonstrate substantially incontestable harm to the public. In particular, the judge noted that 'legislation had been established that it is not contrary to public policy that married persons should obtain a divorce'. (See also Ormrod LJ's judgment in *Edgar v Edgar* ([1980] 3 All ER 887.)

Notwithstanding this, it is worth noting that even in the United States pre-nuptial agreements have raised public policy considerations and the courts continue to review the agreements in the light of their fairness and their tendency to encourage divorce. It is difficult to imagine the Irish courts ignoring either consideration.

Family Law (Divorce) Act, 1996

The enforceability of pre-nuptial agreements does not appear to be significantly enhanced by the provisions of the *Family Law Act, 1995* or the *Family*

THE HISTORICAL POSITION

One of the earliest authorities against the enforceability of pre-nuptial agreements was the case of *Brodie v Brodie* ([1917] volume 33, TLR 525). In this case the parties executed a pre-nuptial agreement to live apart and, after marrying, executed a post-nuptial agreement confirming the provisions in the pre-nuptial. The court held the agreements to be void in that they were drafted to facilitate a future separation. It further held that the two agreements were one and the same and were contrary to public policy. In the later case of *Wilson v Carney* (24 TLR 227 [1908] 1KB 729 CA), we find one of the clearest examples of judicial pronouncements against the enforceability of pre-nuptial agreements on public policy grounds. Kennedy LJ said: 'no court has ever yet held that a deed providing *in futuro* for the contingency of separation between husband and wife is in accordance with public policy'.

These cases would appear to be the main early authorities on marital agreements.

TRADITIONAL OBJECTIONS TO PRE-NUPTIALS

Traditionally, objections were raised to pre-nuptial agreements on the following grounds:

- the broad ground of public policy at common law that marriage was for life and an agreement that envisaged a breakdown or the dissolution of that contract was contrary to the common good
- the narrow and distinctively Irish theocratic constitutional ground that article 41 expressly provided that any agreement which envisaged such a dissolution was contrary to the constitution, and
- the legislature had enacted legislation allowing the judiciary to consider and, if necessary, vary the terms of such agreements in certain cases. (Marital agreements expressly purport to exclude the jurisdiction of the courts. This is in breach of the constitutional provision which enshrines the primacy of the courts.)

'In the absence of legislation and case law, the prudent view would be to assume that pre-nuptial agreements are generally unenforceable'

Law (Divorce) Act, 1996. Although not specifically mentioned in those acts, there are a number of provisions that may be of relevance to pre-nuptial agreements. The overall philosophy of these Acts clearly does not support the notion of spousal autonomy.

Despite there being no case directly in point concerning the 1996 act, an analogy with cases dealing with the provision of relief following separation illustrates a statutory ideology opposed to independence from court-dictated re-ordering. This is most notably seen in *JD v DD (Judicial Separation)* ([1997] 3 IR 64). In that case, McGuinness J held that no 'clean break' provision could be made when financially reordering a broken marriage. She noted that the Oireachtas had legislated to permit repeated applications to court concerning ancillary relief so that finality could not be achieved, and continued: 'This also appears to mean that no agreement on property between the parties can be completely final, since such finality would be contrary to the policy and provisions of the legislation'.

The provisions of the 1996 act are virtually identical to those under scrutiny in that case. At this point, however, judicial separations and divorces must be distinguished. After a separation, the couple are still spouses, and so the provisions of the *Family Law (Maintenance of Spouses and Children) Act, 1976* will operate to stop any agreement that prevents a couple from returning to court to consider maintenance. This is a complete bar to full private reordering, or pre-ordering, as the case may be.

Pertinent provisions

To say that the provisions of the 1995 and 1996 acts exclude the enforcement of pre-nuptial agreements does not necessarily mean that they are totally irrelevant in the financial reordering after marriage breakdown. So, in determining generally when and how to make ancillary relief under the 1996 act, section 20 provides: '1) In deciding whether to make an order … and in determining the provisions of such an order, the court shall ensure that such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent member of the family concerned'.

A similar provision is contained in section 16 of the 1995 act: '1) In deciding whether to make an order … and in determining the provisions of such an order, the court shall endeavour to ensure that such provision is made for each spouse concerned and for any dependent member of the family concerned as is adequate and reasonable having regard to all the circumstances of the case'.

At first glance it might appear that there is a difference between these two sections. Section 16 refers to all the circumstances and might appear broader than section 20. This is not the actual position, as in one reported divorce decision, *RC v CC (Divorce)* ([1997] 1IR 334), Barron J, after considering the financial arrangements made by the spouses, said: 'I am satisfied that these provisions are proper in the overall circumstances of the family'. This clearly shows that the judge felt he had to view the arrangements in their totality.

Considering terms

It could be argued that the terms of a pre-nuptial agreement are a circumstance that ought to be considered but this is not free from controversy, even in English law where the matter has been considered on a number of occasions. Such agreements are not enforceable in England, but they are recognised to some degree. Before looking at these, it should be noted that the English provision dealing with the criteria to be weighed in making orders (section 25 of the *Matrimonial Causes Act 1973*, as amended) is similar to Irish law in containing a general provision to consider all the circumstances. There is also a provision in that law preventing maintenance agreements from making a subsequent order, so English law is similar to our own.

In *F v F* ([1996] 2 FLR 397), Thorpe J said that a pre-nuptial agreement must be of 'very little significance' as financial re-ordering is regulated by statute and 'cannot be much influenced by contractual terms'.

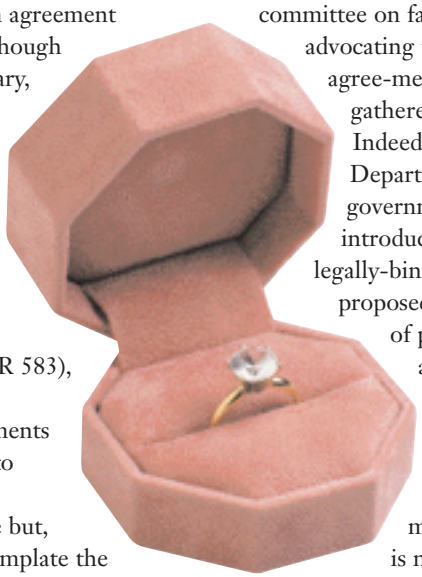
That view has not been fully accepted by later decisions. In *S v S* ([1997] 3 FLR 272), Wilson J left the question more open: 'But there will come a case … where the circumstances surrounding the pre-nuptial agreement … might, when viewed in the context of the other circumstances of the case, prove influential or even crucial'.

In *N v N* ([1997] 1 FLR 573), Cazalet J commented that while the pre-nuptial agreement in question might be enforceable in Sweden (where it was made), it was no more than a material consideration in England. But the important point was that it was a consideration. This view was supported in *N v N* ([1992] 2 FLR 583), where Wall J was more forthright: 'The existence of the agreement and the weight to be given to it are both

factors to be taken into account in the overall balance when the court is deciding … whether or not to … make orders'.

Clearly, with regard to similarly-worded statutes, there is room to consider a pre-nuptial agreement as part of the circumstances of the case, and it could be argued that in enacting such a provision the Oireachtas intended this result. But it is the case that section 20(3) of the 1996 act specifically refers to separation agreements as a factor to consider, so if it was intended to have regard to pre-nuptial agreements they would have been explicitly mentioned. One would also have expected some other detailed provisions dealing with such agreements.

Though property adjustment orders can be made to vary ante- and post-nuptial settlements on the spouses, it would be a stretch to consider pre-nuptial agreements as covered. In *PO'D v AO'D* ([1998] 2 IR 225), Keane J held that a separation agreement was not a post-nuptial settlement, though it might incorporate one. By corollary, a pre-nuptial settlement would not qualify as an ante-nuptial settlement, though – as was said of separation agreements – it might incorporate one.



This begs the question of whether that part that was a settlement can be varied. In the English case of *N v N* ([1992] 2 FLR 583), the difference between pre-nuptial agreements and ante-nuptial settlements was described as the latter seeking to regulate the financial affairs of the spouses on and during the marriage but, unlike the former, it does not contemplate the dissolution of the marriage. If that was accepted here, it would all but end arguments about the enforceability of pre-nuptial agreements under our family legislation.

Working within the current framework

In the absence of legislation and case law, the prudent view would be to assume that pre-nuptial agreements are generally unenforceable. The following steps might be taken where a client insists on drafting a pre-nuptial agreement:

- disclosure requirements must be explained to the client
- each party should receive separate independent legal advice on his or her rights in the absence of the ante-nuptial agreement and the manner in which those rights may be altered or extinguished by the agreement
- the recital portion of the agreement should contain a provision to the effect that both parties acknowledge and consent to the agreement being legally binding, notwithstanding any statutory provisions that exist or will come into existence
- the agreement should cover such matters as present property, future property, beneficial interest, financial provisions on death (legal right share under the *Succession Act, 1965*), maintenance, debts, matters not covered by the agreement, the governing law, the circumstances in which the agreement can be varied and costs
- it is of paramount importance that the agreement contains periodic reviews after a period of five years and/or after a major event, with parties obtaining independent legal advice at each review
- it is also recommended that a provision should be inserted in such an agreement to the effect that if a court finds any provision in the agreement illegal, invalid or otherwise unenforceable, that provision should be capable of being severed without affecting the other provisions in the agreement which will continue to be enforceable.

The English experience

In the early 1990s, the English Law Society's sub-committee on family law published a paper advocating the enforceability of pre-nuptial agree-ments. This debate has now gathered considerable momentum. Indeed, the Lord Chancellor's Department and the British government are about to approve the introduction of legislation to facilitate legally-binding pre-nuptial contracts. The proposed legislation includes a number of procedural safeguards, including a stipulation that each party takes independent legal advice before signing such an agreement and a provision for periodic reviews.

Pre-nuptial agreements are merely a type of contract. There is no reason why all such contracts should be *prima facie* unenforceable. A better view would be to permit such contracts but make them subject to the general rules and regulations governing contract.

With the enactment of the *Family Law (Divorce) Act, 1996*, the path is now clear to make pre-nuptial agreements enforceable in limited circumstances. Article 41 no longer prevents this, so the time is ripe for the matter to be addressed in a comprehensive manner by the legislature. The law should be clarified to ensure that pre-nuptial contracts are valid and enforceable to the extent that they support and foster the interests of children and spouses. It should be noted, however, that even if the legislature steps in to support such agreements, the judiciary would retain a wide discretion to vary their terms.

But reform should not be left to the judiciary; it should be provided for in legislation. As Lord Atkin stated: 'When the ghosts of the past stand in the path of justice clanking their medieval chains, the proper course is to pass through them undeterred'. G

Geoffrey Shannon is the Law Society's deputy director of education.

Silhouette casts a LONG

While trade mark owners have so far prevented the EU being flooded with their own products that are sold more cheaply outside Europe, how much longer can they hold the line? Maureen Daly examines the implications of the *Silhouette* judgment and the issue of trade mark rights

Article 7.1 of the *Trade marks harmonisation directive* (which was implemented in Ireland by the *Trade Marks Act, 1996*) lays down the principle of 'exhaustion of trade mark rights'. It says that the owner of a trade mark can't prohibit its use in relation to goods which have been put on the market in the European Economic Area (EEA) by the proprietor or with his consent. Once a product is on sale in one EEA country, then it must be accepted throughout the whole area.

But what about goods that are put on sale outside the EEA (which includes the EU member states as well as Norway, Liechtenstein and Iceland) but which are then imported into the EEA without the trade mark owner's consent? Are his 'international' rights in the mark deemed to have been exhausted?

While member states differed on whether or not to recognise the principle, the European Court of Justice clarified the issue with its ruling in *Silhouette International Schmied GmbH & Co KGvHartlauer* (Case C-355/96) on 16 July 1998. In this case, the defendant had acquired the plaintiff's goods (outdated models which had been supplied to a Bulgarian company on condition that they would only be sold in Bulgaria or in the states of the former Soviet Union and were not to be exported to other countries) and put them on sale in Austria. The ECJ was asked whether national rules providing for exhaustion of trade mark rights in respect of products put on the market outside the EEA under that mark by the owner (or with his consent) contravened article 7.1 of the *Trade marks harmonisation directive*.

The court ruled that article 7.1 provided for intra-community exhaustion of trade mark rights. It added that because some but not all of the EEA member states had a law of international exhaustion, there would be a lack of harmony within the market unless article 7.1 was interpreted as applying to goods entering the European Union from outside. Accordingly, member states were precluded from applying the concept of international exhaustion of trade mark rights.

This ruling is consistent with other recent developments in the area of intellectual property, such as the measures taken to harmonise copyright laws which have endorsed the principle of exhaustion in a single market but excluded the application of the principle of international exhaustion.

Although it's not a complicated case, *Silhouette* does raise a number of important issues. For example, does the owner of a trade mark, having put his products on the market outside the EEA, have the right to object (or consent) to their subsequent re-sale outside the originally designated territory? And must there be a *requirement* that, at the time of sale, there should be a reservation against re-sale within the EEA?

An insight into these questions was recently given in the judgment delivered by Advocate General Jacobs in *Sebago Inc & Ancienne Maison Dubois Et Fils SA v GB-Unic SA* (Case C-173/98) on 25 March 1999. The plaintiff, Sebago Inc, is the registered owner in Benelux of the trade marks *Docksides* and *Sebago* in respect of shoes. These goods, which had been manufactured in El Salvador by the first plaintiff's

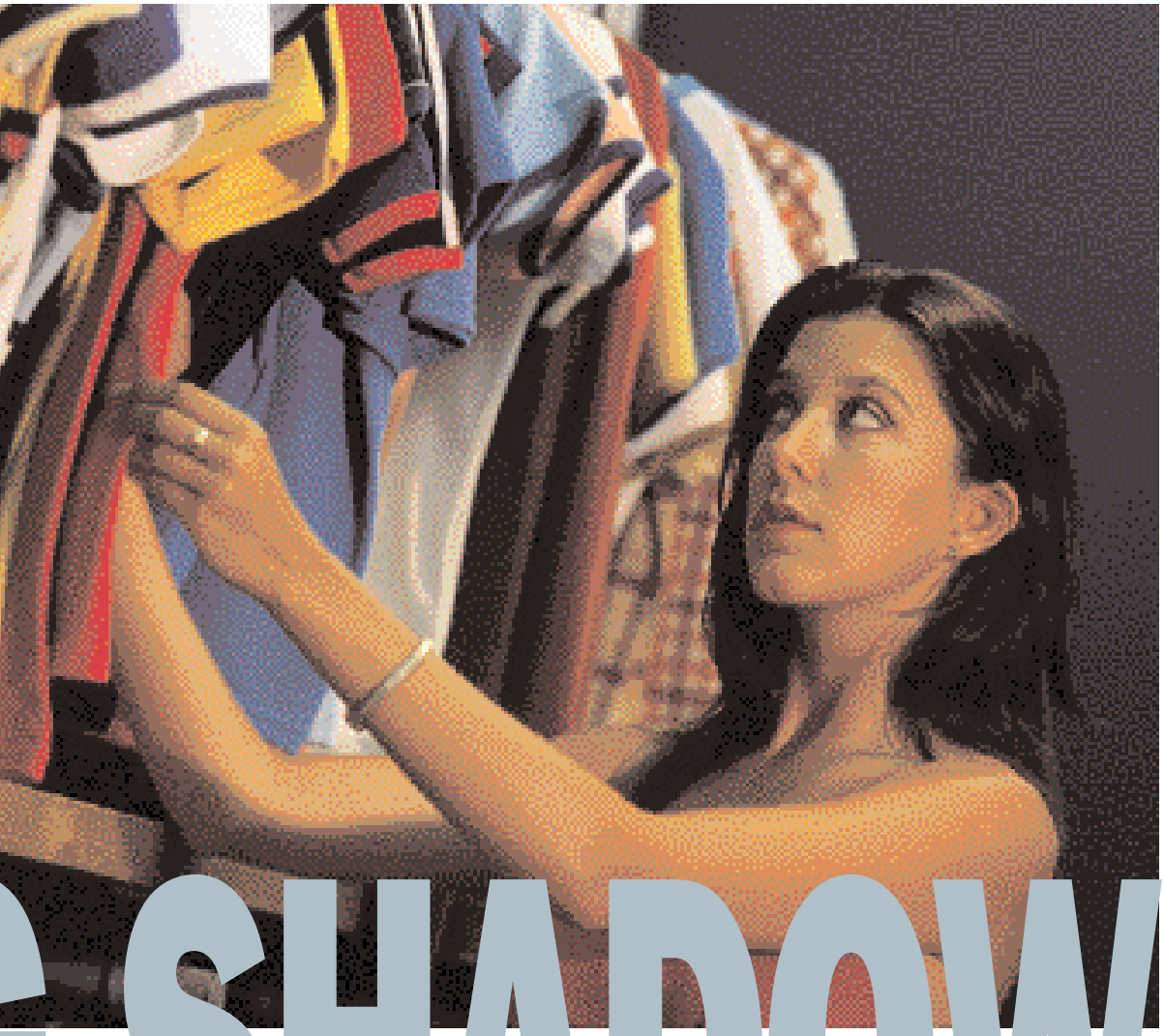
licensee, were imported into the EEA by another company and bought by the defendant. The question of whether the plaintiff had consented (by implication) to the importation into the EEA was dismissed by the Belgian Court as it was never established that the first plaintiff had granted a licence to the licensee to use the trade marks in El Salvador.

The defendant argued that, in order to show the first plaintiff had consented to the importation of the goods into the EEA, it was sufficient to show that similar goods bearing the same trade mark had been lawfully marketed in the EEA with their consent and so, if the first plaintiff had consented to *one* consignment of goods being sold in the EEA under the marks, then he must be deemed to have consented to *all* consignments (including ones actually marketed outside the EEA). This was rejected by Advocate General Jacobs. To do otherwise would effectively have imposed a rule of international exhaustion since all parallel imports would necessarily have to be admitted into the EEA. Although we are still waiting for the ECJ's ruling, it is anticipated that the Advocate General's opinion will be followed.

So what is the future of international exhaustion of trade mark rights in the light of this decision? Clearly, further opportunities will arise for the ECJ to address the issue of 'consent' but in the meantime the *Sebago* case reinforces the official stance adopted in *Silhouette*, namely, the non-existence of the principle of international exhaustion. This position will most certainly change in the near future, particularly as a result of political and consumer pressure. Developments in this area could also come about as a result of the EU's need to comply with future international trade obligations.

MAIN POINTS

- **Can trade mark owners who have put their products on the market outside Europe object when those goods are re-sold within Europe?**
- **Should reservations against re-sale in Europe be required?**



Trade mark owners put significant time and effort into their marks, but the general public wants cheaper products – no matter where they come from

a SHADOW

In the interim, we should note the developments in England, where the courts have frowned on the actions of trade mark owners to prevent parallel imports of their products into the EEA from outside. One recent judgment was in *Zino Davidoff SA v A&G Imports Limited* ([1999] RPC 631), where the English courts did not consider *Silhouette* and *Sebago* an automatic bar to imports from outside the EEA.

The facts of the case were that the plaintiff's luxury toiletries and cosmetic products (made in France under an exclusive licence and distributed worldwide) were bought by the defendant outside the EEA and imported into Britain. The likely source of the products was Singapore and judgment in the case was based on the assumption that the products originated from there. The plaintiff sought summary judgment on the basis that the sale by the defendant constituted trade mark infringement of its registered rights in the marks *Cool Water* and *Davidoff Cool Water*.

'Silhouette has bestowed on a trade mark owner a parasitic right to interfere with the distribution of goods, which bears little or no relationship to the proper function of the trade mark right'

A Laddie's prerogative

Before commenting on the substantive issues in the case, Mr Justice Laddie reiterated the comments of Advocate General Jacobs in the *Silhouette* case, namely, that the function of a trade mark was to guarantee the origin of the goods for which the mark is used and that this function did not alter even when the goods were bought and imported by the purchaser into another country. The mark still continues to indicate the origin of the goods, a principle which is supported by article 7.1. No confusion arises on the further sale of the product in question as the trade mark still continues to perform the function of indicating the origin of the goods.

Mr Justice Laddie then proceeded to examine the implications of the *Silhouette* case. In *Silhouette*, the ECJ ruled that article 7.1 did not permit member states to provide for international exhaustion of rights in their domestic law, as to do otherwise would result in the partitioning of the market, which was contrary to the ideals of the European Union. Accordingly, an automatic and unavoidable loss of enforceable trade mark rights in relation to goods placed on the market outside the EEA could not be imposed. But Laddie J was of the opinion that *Silhouette* should be given a limited interpretation on the grounds that it only related to the fact that member states could not *impose* the principle of international exhaustion of rights in their national domestic laws; it did not address the question of whether the owner of the trade mark lost the right himself to consent to the importation into the EEA of goods that had been sold and marketed outside it. As a result, he was able to circumvent the ECJ's ruling in *Silhouette*. Similarly, the court regarded the *Sebago* case as being no help in determining the key issue of whether the owner of the mark had consented to his goods entering the EEA.

Returning to the facts of the case at hand, following its agreement with the distributor for the South Asian market (which included Singapore), the plaintiff had specifically requested an undertaking on the part of the distributor not to sell any of its products outside the agreed territory. The distributor also had to undertake to oblige its sub-distributors, sub-agents and/or retailers to refrain from such sales, but no requirement existed on the part of the distributor to *notify* them of the prohibition.

Furthermore, the products themselves did not contain any notice that there was a restriction on where they were to be sold. This being the case, the defendant argued that it was free to sell the plaintiff's products as it wished.

Mr Justice Laddie accepted this and concluded that Community law did not create a presumption that a trade mark owner had to *expressly* consent to further distribution within the EEA because to do otherwise would be 'unsound'. He was of the opinion that 'in the light of the specific subject matter of trade marks, there were compelling reasons why the courts should not strain to give article 7.1 and the *Silhouette* decision any wider effect than absolutely necessary'.

One of the effects of article 7.1, as interpreted by the ECJ in the *Silhouette* case, is that a trade mark owner can demand that products which have been stamped with his mark for the purpose of accurately identifying their origin must be stripped of that marking when they enter the EEA. Accordingly, those who trade in imported goods can be prevented by trade mark law from stating the truth about their origin, which is contrary to the primary function of trade marks.

Mr Justice Laddie continued: '*Silhouette* has bestowed on a trade mark owner a parasitic right to interfere with the distribution of goods, which bears little or no relationship to the proper function of the trade mark right. It is difficult to believe that a properly informed legislature intended such a result, even if it is the proper construction of article 7.1 of the directive'.

No restraint

In the case at hand, it appeared that the products were put on the market in circumstances where the plaintiff could have placed an effective restraint on their further sale and movement, but didn't. In the absence of a trade mark owner putting formal and explicit contractual restrictions on everyone in the supply chain, Mr Justice Laddie decreed that implied consent would be deemed to have been given, at least if the original contract of sale was made under English law.

This decision (which it must be remembered was only handed down during an application for summary judgment) was based on contract law rather than on the principle of international exhaustion.

As it is possible to give express contractual consent, it must also be possible to give implied

consent if that follows from the law which applied to the original contract of sale. As it was important for the ECJ to review the decision regarding the issue of implied consent, Mr Justice Laddie ordered an article 177 referral.

It is highly unlikely that the ECJ will follow Laddie J's decision as this would effectively imply that freedom of movement of goods depended on the national legal systems applicable to the original contract of sale. This would ultimately create barriers to the free movement of goods, resulting in trade mark owners choosing not to bring actions in member states such as the United Kingdom and instead 'forum shopping' to find more favourable courts in Europe.

The ECJ's ruling in this case will be awaited with anticipation. It is hoped that the court will (at that point) take the opportunity to finally clarify what is meant in article 7.1 by 'consent': should the consent be explicit or is implied consent enough? Otherwise, it will lead to the eventual partitioning of the internal market as the courts of certain member states use their own national legislation to circumvent the rulings of the *Silhouette* and *Sebago* cases. Until such clarification is provided, it would appear, in the United Kingdom at least, that the opportunity has arisen for a vast majority of goods to be imported from outside the European Economic Area.

The issue of parallel imports and the debate attached to it has, since the ruling was handed down by the ECJ in the *Silhouette* case, reached fever pitch, resulting in adverse media coverage for trade mark owners. Although the latter won a notable legal victory, there will remain a significant political battle (being spurred on particularly by angered consumers' rights associations) to reverse the effect of the ruling.

While trade mark owners invest significant time, effort and research in developing and promoting their marks, the general public and traders such as supermarket owners see them as preventing the importation of cheaper genuine products. For their part, mark owners regard parallel importers as 'free loaders'.

Perils of parallel importing

It is certainly likely that the principle will be reversed in the very near future, particularly as a result of the rapid expansion and development of e-commerce, which pays no attention or regard to national borders. Until then, the brand owners are the winners in the battle – but for how long? In the interim, the ruling handed down in the *Silhouette* case remains in effect and so the parallel importing of goods into the EEA remains hazardous and unpredictable and is undertaken at the risk of the parallel importer – except in the UK.

Would the Irish courts adopt the same view? It is difficult, if not impossible, to predict what the outcome would be, but given the weight that English case law holds here, you couldn't rule out the possibility that recent UK decisions will be followed. This being so, brand owners would be well advised to consider marking their packaging with any territorial re-sale restrictions. They should also ensure that anyone buying goods from the brand owner or an authorised licensee is subject not only to a restriction on re-selling outside the designated territory but is also obliged to impose a similar restriction on purchases further down the supply chain. As one can anticipate, immense practical difficulties will arise for brand owners who attempt to prevent parallel trade by imposing such re-sale restrictions.

Further developments in this area are certainly guaranteed in the foreseeable future, so interesting times are ahead for both trade mark owners, parallel importers and their legal advisors! G

Maureen Daly, solicitor and Community trade mark attorney, is an associate with FR Kelly & Co, trade mark and patent attorneys.

CONTINUING LEGAL EDUCATION
APRIL/MAY 2000

THE COMPANIES (AMENDMENT) (NO. 2) ACT, 1999	Blackhall Place, Dublin	5 April
THE LEGAL & TAXATION IMPLICATIONS OF THE CREATION OF TRUSTS	Fitzpatricks Hotel, Cork	12 April
PRE-NUPTIAL AGREEMENTS	Imperial Hotel, Cork	9 May
PROBATE PRACTICE	Blackhall Place, Dublin	10/17/24/ 31 May
COMMERCIAL LEASES	Blackhall Place, Dublin	15 May
EMERGING TRENDS IN ADOPTION	Blackhall Place, Dublin	25 May

For further information, please see the CLE brochure enclosed with this month's *Gazette* or telephone the CLE department at 01 672 4802 or fax 01 672 4803. Suggestions for CLE seminars are always welcome.

Making peace w cyb

The growth in e-commerce has no parallel in any other industry sector, but naturally this has given rise to an increasing number of disagreements. Rachael Ott summarises the efforts to create an international mechanism for resolving on-line disputes

In Britain, 19% of web users have made Internet purchases on-line, a 100% increase in the numbers shopping on-line since 1998. Similarly, use of the Internet for business-to-business transactions has increased dramatically worldwide. In the UK, for example, 37% of companies now have a website, reflecting the growing number of organisations which choose to conduct business on-line.

But the rise in number of e-commerce transactions has inevitably led to a corresponding rise in disputes, while the traditional methods of resolving such disagreements (litigation, arbitration or mediation) do not address the requirements of those involved in disputes over on-line transactions. In response to the demand for dispute resolution procedures which recognise the on-line user's desire for a fast and flexible mechanism with a global reach, various initiatives have been established around the world to test the practicalities of carrying out dispute resolution on-line.

World Intellectual Property Organisation

In 1998 the US Government proposed that the World Intellectual Property Organisation (WIPO) prepare a report on the issues concerning the interface between domain names and intellectual property rights in order to make recommendations on these to the Internet Corporation for Assigned Names and Numbers (ICANN).

The proposal was approved and a *Final report of the WIPO Internet domain name process* was published in April last year, incorporating the results of extensive consultation from 334 governments, organisations and individuals. It recommended the adoption of a dispute resolution procedure for conflicts concerning abusive domain name registrations and concluded that ICANN should adopt a policy which would apply to all disputes concerning generic top-level domains (.org, .com, .net). It also recommended that the scope of the dispute resolution procedure be limited to instances of bad faith and cyber-squatting (the registration of domain names which breach trade marks) and that it should be 'quick, efficient and cost effective'. To this end, it was decided that the procedure should be conducted on-line.

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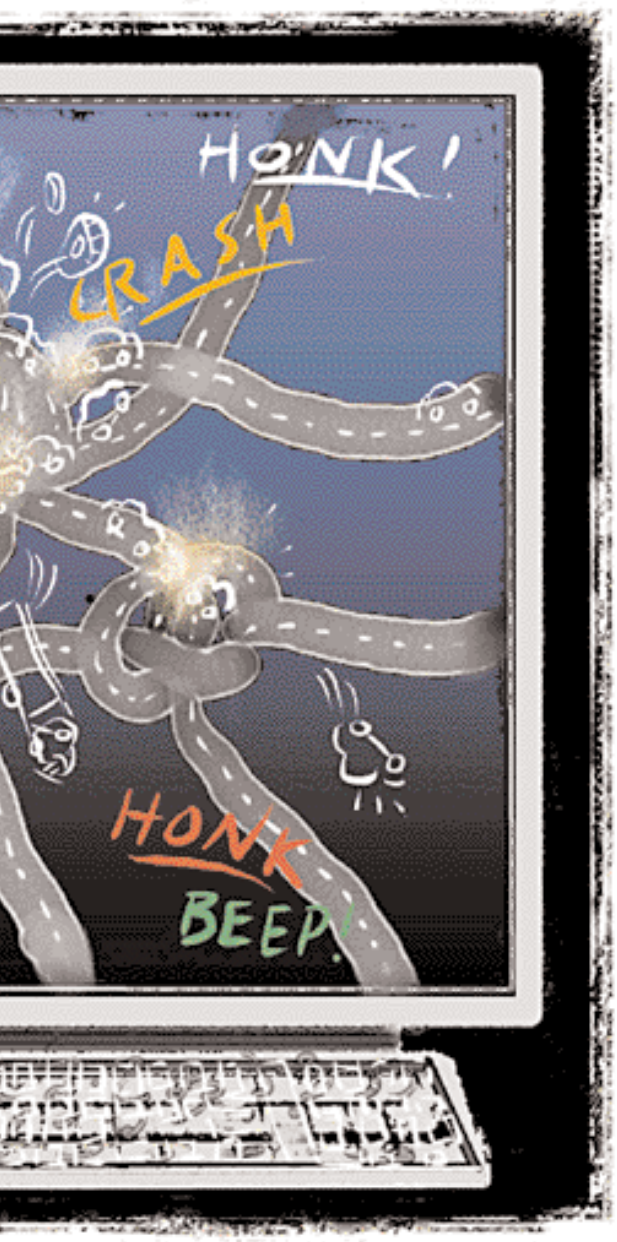


Following publication of the final report, ICANN carried out consultation on the proposals and adopted a 'uniform dispute resolution policy' based on WIPO's recommendations. The uniform dispute resolution policy documents are available at *www.icann.org/udrp/udrp.htm*.

WIPO's arbitration and mediation centre has taken steps to extend its on-line dispute resolution facility for resolving commercial disputes other than those concerning Internet domain names, adapting its existing mediation rules, arbitration rules and expedited arbitration rules to reflect the on-line procedure. Its *On-line expedited arbitration rules* will change the existing rules so that arbitration can be conducted on-line within a shorter time and at a reduced cost.

CyberTribunal

Montreal University's *Centre de Recherche en Droit Public* (CRDP) has developed a project aimed at establishing 'the feasibility of using alternative mechanisms to resolve cyber-conflicts which cannot be covered adequately by the traditional means of state law'. The developers anticipate that the project could be used by arbiters to speed up the arbitration process in the offline world and so reduce its costs. The project is currently in an experimental phase, and its services are offered free of charge to anyone who wishes to make use of them.

The services offered by CyberTribunal include:

- **mediation:** parties agree to submit their dispute to a mediator (a neutral third party) who will suggest a solution to the problem after hearing both parties' points of view. Either party may withdraw from the mediation at any time, and the mediator's decision is not binding. There are no set rules of procedure; rather the tribunal favours allowing mediators the freedom to adapt the process to the particular circumstances
- **arbitration:** disputing parties agree to submit their conflict to an arbiter who hears both parties' claims and makes a decision which is binding and cannot be appealed. The arbitration module is designed to prompt parties to comply with the set rules of procedure, reminding them to lodge relevant information, documents and evidence. The rules, which are based on UNCITRAL and CCI rules of arbitration, incorporate amendments which reflect

WORLDWIDE INITIATIVES: A QUICK GUIDE

- For more on the World Intellectual Property Organisation's initiative, see *http://arbiter.wipo.int/arbitration/online/index.html*
- ICANN's uniform dispute resolution policy documents are available at *www.icann.org/udrp/udrp.htm*
- For more information on the CyberTribunal, see *www.cybertribunal.org/english/defaulteng.htm*
- Cyber$ettle can be contacted at *www.cybersettle.com*
- The *Virtual magistrate* project is at *http://vmag.vcilp.org*
- See also the Inter-Pacific Bar Association at *http://www.neoteny.com/jito/law/jitoipba.html*

the on-line nature of the procedure. The arbitration centres around a 'site of the case in question'. This is a website where information and documents relevant to the case are kept. Access to the site is strictly limited, for reasons of confidentiality, to the secretariat, arbitration tribunal and the parties themselves.

The CyberTribunal offers a certification seal which organisations committed to resolving disputes through mediation and arbitration can post on their websites to provide reassurance to on-line users. It is important to stress that the seal is only evidence of the intentions of those who display it; for a dispute to be submitted to the CyberTribunal, the consent of both parties is required.

Private initiatives

In August 1998, a website went on-line which offered an alternative to traditional methods of dispute resolution. Known as Cyber$ettle, the site has been used heavily by insurance companies which want a fast and cheap way to resolve disputes with claimants. The idea for Cyber$ettle arose when the two founding members found themselves on opposite sides of a courtroom. James Burchetta was representing a man who had been injured in a car accident, while Charles Brofman represented the defendant. In an effort to resolve the dispute, both attorneys agreed to write down the figure which they hoped to settle for and hand the pieces of paper to a court clerk. The court clerk was told to give the thumbs up if the two figures were close. Burchetta sought $15,000 and Brofman wanted a settlement of $14,000. The claim was settled immediately for $14,500.

The procedure adopted by Cyber$ettle uses this technique. Parties are invited to submit three figures for which they would be prepared to settle. If the submitted figures come within 30% of each other, then the claim is automatically settled for a sum halfway between these.

Cyber$ettle has the advantage of being a very cheap method for resolving disputes. A fee of $25 is charged for entering a claim to the system, and another $75 is payable if the other side agrees to participate. If a settlement is concluded, a further $200 is charged. In comparison with usual legal fees involved in disputes of this nature, this is relatively cheap.

The system also has the advantage of being a very fast mechanism. Cyber$ettle is open 24 hours a day, seven days a week and the entire process can be completed in a matter of hours. In addition, a new version of Cyber$ettle is in the pipeline which will include an electronic payment package that can be activated as soon as a settlement is reached.

Submitting to the Cyber$ettle resolution procedure is also worthwhile because, even if the process is not successful, neither side will be disadvantaged. There is no danger of either side prejudicing their case since all offers submitted are completely confidential and will never be revealed to the other side unless a settlement is reached.

A final advantage of the Cyber$ettle system is that it removes the emotion from the resolution process. The system deals only with the offers of settlement and, unlike off-line methods of arbitration and mediation, does not give either party an opportunity to vent their anger and emotion at the other side.

Since its on-line debut, over 2,000 cases have gone through the process and the settlement rate currently stands at 50%.

'Use of the Internet for arbitration and negotiation is important since it offers cheaper and faster mechanisms of resolving disputes'

Virtual magistrate

In 1996, the virtual magistrate project was launched (by the National Center for Automated Information Research, and the Cyberspace Law Institute). The virtual magistrates themselves are neutral arbitrators with experience in the law and computer networks. The project receives complaints via its website or e-mail and is restricted to hearing objections based on copyright or trademark infringement, misappropriation of trade secrets, defamation, fraud, deceptive trade practices, inappropriate materials, invasion of privacy. A magistrate is assigned to each complaint and proceedings are conducted through e-mail. The system aims to reach a decision within three days.

The virtual magistrate's first case came in for some criticism. James Tierney, who was also an adviser to the project, filed a petition with the project after receiving e-mail spams. The case, *Tierney and E-mail America* (8 May 1996), was resolved without any input from the defendants, E-mail America. The company had spammed its advert on America On-Line and it was AOL's input into the proceedings which led to a default judgment. The virtual magistrate failed to meet its own stated goal of involving active participation of all the parties.

Despite the criticisms, the virtual magistrate project is recognised as being an innovative system which, following further testing and development, provides an alternative to traditional off-line dispute resolution mechanisms.

Inter-Pacific Bar Association

In 1998 a 'cyber arbitration' programme was held at the Inter-Pacific Bar Association (IPBA) conference in Auckland, New Zealand. The programme ran into serious technical problems which meant that the system could not be properly demonstrated. The scheme involved the use of video-conferencing technology to communicate between disputing parties, but ran into problems when busy lines slowed down the connection and led to the conferencing picture cutting out.

The IPBA concluded that use of the Internet for arbitration and negotiation is important since it offers cheaper and faster mechanisms of resolving disputes, but recognised that further research and development of the cyber arbitration system was required before it could be usefully employed.

These on-line initiatives and procedures represent innovative alternative forms of dispute resolution. Like all forms of alternative dispute resolution (ADR), they require the consent of both parties. And like other forms of ADR, the agreement of the parties to use and then adhere to the rules of the process is key to its success. It is likely that as the concept of on-line dispute resolution becomes more widely recognised, and dispute resolution service providers establish a credible reputation, parties will feel more comfortable with attempting to resolve their disputes in this way.

As with all IT-based solutions, there will inevitably be some initial resistance, but in the long run those who do business on-line are likely to be prepared to resolve disputes on-line as well. What is really exciting about the concept of on-line dispute resolution is its potential application to the resolution of disputes arising in traditional commerce. If that starts to happen, then people will really begin to take some notice. G

Rachael Ott is a solicitor with the English law firm Masons, specialising in information and technology law. She is currently seconded to the information, computer and communications policy division of the OECD in Paris.

Tech trends

Compiled by Maria Behan

The Internet from your armchair

Unison's TV Internet Box brings new meaning to the term channel surfing. Just connect the TV Box to your phone jack and your telly (or, if you're old-fashioned, your computer) and you're ready to send and receive e-mails or surf the web via Unison's remote-control or wire-free keyboard.

Price around £299. Available from Unison on 1850 603 000 or at major electronics outlets.

Internet starter kit for web-heads

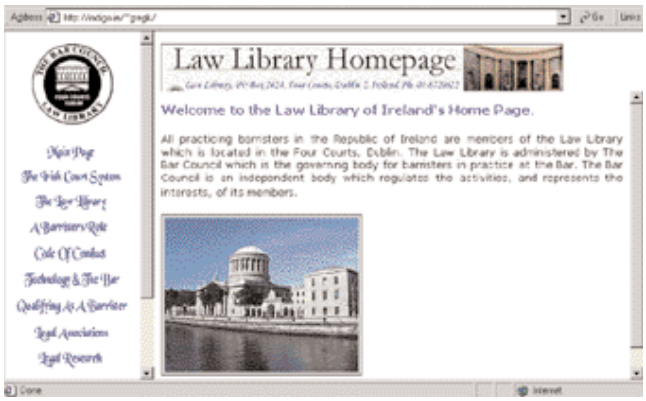
Looking to see and be seen on the web? You might consider Esat Net's *NetStart* package, designed for small to medium-sized organisations. Besides dial-up Internet access from a single computer (with up to five password-protected e-mail accounts), it also includes a registered Internet domain name that reflects your organisation (such as *@mageepartners.ie*) as well as the foundation for building your company or firm website. *Start-up fee: £50; annual cost £400. For more information, contact Esat on 01 216 6300 or e-mail sales@esat.net quoting LSG.*

Sites to see

TechCentral (*http://www.techcentral.ie*). Billing itself as 'Ireland's on-line IT resource', this site offers a shop, an IT jobs section, and access to computer articles from publications such as *ComputerScope* and *PC Live!*

E-Bid *(http://www.ebid.ie)*. This claims to be Ireland's most popular auction site, allowing you to buy and sell everything from art and antiques to property.

The Golden Pages *(www.goldenpages.ie)*. From this site you can look up personal and business listings, access international phone directories – even check TV or horoscope listings.



Law Library homepage *(http://indigo.ie/~gregk/)*. Information on the library and courts system with handy links to other legal research sources.

Butterworths (*http://www.butterworths.co.uk/homepage.htm*). This site from the legal publisher features news headlines and other information and services of interest to legal professionals, including the ability to order any Butterworths title on-line.

Thin is in

Thanks to TFT technology (that's thin film transistor to you and me), Mitsubishi's new monitors cut a decidedly elegant figure. With a depth of just 6.45cm, these slim screens take up a fraction of the space required by a standard monitor. There's even room to slide the keyboard under the screen when the computer's not in use, freeing even more desk space. Both the 15" and 18" monitors feature high-resolution XGA capability and full-screen SVGA and VGA resolution – whatever that means.

For further information, contact Mitsubishi on 1800 333 600 or on the web, www.mitsubishi.ie.

Product review
Psion Series 7 mobile computer

Lugging your laptop from pillar to post can be a bit of a drag, unless you really want to develop muscles you probably didn't you had. Because that's the problem with most portable PCs: most of them are just too heavy to make them really, well, portable. Fair enough if you absolutely must have the full panoply of your desktop computer when you're working outside the office, but if you don't, then the Psion Series 7 mobile computer may be just the thing for you.

The Series 7 is a very powerful piece of kit indeed, but it's smaller and more lightweight than you might have thought possible. It's about the same size and weight as an old-style Filofax, but has everything you would want from a notebook computer: word-processing (a compact version of Microsoft Word), spreadsheets, a personal organiser (daily, weekly, monthly and yearly diaries) and a contacts book. It also boasts a lot of extras that you probably did not know you wanted until you got them: sample sales, invoice and expenses programs, report templates, a calculator, world map, jotter and a sketch pad (in which you can create your own graphics and pictures). You can also use it as an alarm clock or to record voice memos.

As with most notebooks, the Series 7 has fax, e-mail and Internet compatibility (all of which can be accessed with your mobile phone) and it is easily linked up to your desktop or printer by means of a cable or infrared port. All you have to do is load a CD-Rom onto your desktop (which takes perhaps three minutes) and after that you can update the information on both machines or transfer files at the click of a button. It's that simple.

The Series 7 uses full-colour touch-screen technology, which might be a little unfamiliar to those more at home with a mouse, but you can always opt to use the keyboard shortcuts rather than the stylus supplied (or your finger). The keyboard is almost full size and very easy to use, which is good news if you're a fast typist.

At first sight, the machine seems a little less intuitive than your old reliable desktop, but it won't take you long to get used to it. The icons are similar to those on your PC and you will recognise many of the programs (such as e-mail and Internet) as being very similar to the Microsoft Office versions. It is surprisingly easy to navigate your way around, and in some respects the Series 7 is actually organised more logically than your PC. Once you've got the habit of tapping your screen, you'll wonder how you lived without it!

The machine runs on a fast Intel processor and has 16MB of RAM (expandable to 32MB), while the battery has twice the life of a typical notebook, which means you can do well over a day's work on single charge.

The Series 7 seems to have hit just the right balance between a personal organiser and a fully-fledged laptop. It has everything you need to go mobile, but it won't break the bank or your briefcase.

If you don't need full-blown PC functionality but something very close to it, this one's for you.

Available at computer and electronics outlets; price: around £850.

Conal O'Boyle

A virtual drill sergeant

Are your abs almost as slack as your motivation to exercise? Network Personal Training's *@ssist Trainer* just might whip you into shape. When you sign up, a personal trainer devises an exercise programme tailored to your physical condition and fitness goals. You then use special software to record your progress on the regimen, which your trainer monitors via e-mail, making adjustments when necessary. One of the benefits of the system is that it's harder to backslide due to a busy work or travel schedule, since your personal trainer is always a few clicks of the mouse away. Of course, the draw-back is that you'll look like a total geek doing press-ups on the office floor.

Price of start-up package: £60; adjustments to the programme: £5 each. For further information, contact Network Personal Training on 01 831 3254.

Message in a bottle?

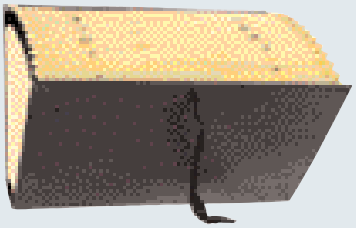
It could spell the end of the crafty pint at lunchtime or the mysterious Friday afternoon 'business meeting' in a top hotel. Eirpage's new *Eirmessage* service means that you have no excuse for losing contact with the office. The new suite of messaging services includes web, e-mail and call-centre messaging to both pagers and GSM phones, which means that subscribers can receive nearly instant alerts on whichever device they specify. By logging onto the service's website (*http://www.eirmessage.com*), Eirmessage customers can adjust their messaging options, for example, forwarding mail to another e-mail account or filtering phone mess-ages based on subject or sender. Better make mine a double.

For further information, contact Eirpage on 1850 206 206 or e-mail info@eirpage.ie.

The latest and greatest

Compaq's new Presario range of PCs features snazzy technology including CD-rewritable drives, 8X DVD and exceptional sound and graphics capabilities. The keyboards are specially designed to speed up web surfing, with one-touch buttons for getting on-line, performing searches and accessing e-mail. The top of the range Presario 7470 has a 533MHz AMD K6-2 processor with 3D Now and 128 MB of memory (since you asked).

Price around £1,360; available from major electronics outlets.



Committee reports

CONVEYANCING

Members may be interested to know that the agenda for the Conveyancing Committee's meeting on 14 March extended to 299 pages. Among the matters discussed were the following:

Stage payments

The committee has concluded its deliberations on a draft code of practice in relation to the sale of new houses, clarifying the basis on which deposits should be accepted from purchasers; setting out the circumstances in which it will be regarded as unreasonable for a builder to increase the selling price of a house in respect of which a deposit has been paid, and setting out the proper procedures to be followed by all parties prior to the execution of a contract. It is intended to forward this draft code of practice to the director of consumer affairs, and then to the other interested parties for their approval.

Unfair terms in building contracts

The committee continues to collate examples of unfair terms in building contracts, and to forward these to the director of consumer affairs. Practitioners are invited to forward examples of unfair terms to the secretary of the committee.

Conveyancing handbook

The first update of the *Conveyancing handbook* is practically completed. It is intended that the updated handbook will contain all relevant material up to 1 April 2000.

Lending institutions

The committee has continued its series of meetings with representatives of the lending institutions with a view to monitoring the agreed certificate of title documentation, and seeking uniformity on procedures in relation to accountable trust receipts, releases and vacates, and redemption figures. Practitioners who experience difficulties with lenders are invited to report these to the secretary of the committee

EU directive on e-commerce

The committee is continuing its representations to the relevant authorities to ensure that there is derogation from the *E-commerce directive* for contracts in relation to immovable property to ensure that the jurisprudence following from the *Statute of frauds* is not prejudiced.

Land Registry/Registry of Deeds fees

The committee continues to campaign in opposition to the fees increases and the new heads of charges. Representations have been made to the minister for justice, equality and law reform, the registrar of titles, and the interim board of the proposed semi-state Land Registry. Practitioners have begun to question the wisdom of semi-state status having regard to the Land Registry's approach in using some items of the fee increases to 'discipline' solicitors. The chairman continues to attend the meetings of the recently convened Land Registry Users' Group which has been discussing the expansion of ITRIS, the experimental form 17, and other matters of common interest. The committee is convinced that co-operation with the Land Registry in a spirit of partnership is the way forward, but this will involve a change in approach by the Land Registry. Practitioners are invited to submit their views in writing on the experimental form 17, the new fees orders, and the Land Registry in general to the secretary of the committee.

Powers Of Attorney Act, 1996

The committee noted that the new *Rules of the superior courts* in relation, among other things, to the registration of enduring powers of attorney came into force on 8 March 2000.

Proposed new system for stamping deeds

Representatives of the committee have met with officials of the Stamps Branch in relation to the proposed new system for stamping deeds. Practitioners are invited to write into the secretary of the committee in relation to any difficulties.

Planning and Development Bill, 1999

Representatives of the committee are continuing to lobby for amendments to this bill. The society's submission to the Department of the Environment called for alleviation in relation to planning matters similar to the amnesty obtained in the early 1990s in relation to the building bye-laws. The reality is that lack of enforcement of the existing planning laws over the years has led to the existence of many unauthorised developments. While the new bill substantially beefs-up enforcement, it fails to address existing unauthorised uses/developments: these will continue to be a problem and the problem will become worse as time passes unless it is addressed now. The *Planning Bill* is an opportunity to start with a clean slate by giving recognition in the bill to established non-conforming user/unauthorised developments that are outside the scope of enforcement proceedings. Practitioners are urged to speak to their local public representatives about these matters and to seek their assistance in having the necessary amendments made to the *Planning Bill* so as to reduce the enormous burden which planning has become for conveyancing solicitors and their clients.

General

The committee also considered a series of other subjects upon which practice notes will be issued in the near future. Subgroups of the committee are also considering revised requisitions on title and revised contract documentation.

The views of practitioners are welcome in relation to these and any other aspects of conveyancing practice.

PRACTICE MANAGEMENT

Ten reasons why small firms should use e-mail

Change has always been with us in the law. Legislative change, change in decided case law, and administrative change. In recent years, technological change has presented huge challenges and opportunities. One such change is in electronic communications through the Internet and in particular e-mail.

E-mail is the best facility available to solicitors since the arrival of the fax machine and is arguably better in many respects. Here are my top ten reasons for using e-mail:

It's more efficient. Counsel's pleadings, solicitors' draft deeds and all other documents which may otherwise require engrossment, amendment or copy typing should be sent or received by e-mail. That way a five-page draft can be engrossed in three minutes instead of 30

It's cheaper. Ten letters cost at least £3 to post; ten letters cost at least £1 to fax; ten letters can cost 10p (that's 1p each) to e-mail, including ones to, say, Australia

It's faster. Your e-mail can be there virtually in an instant, even to the other side of the world, and into the 'in box' of the recipient. Faxes can be mislaid at the other end; e-mails go directly

It's simpler. An e-mail (particularly a short one) can be done by a fee earner at the keyboard, thereby avoiding the administrative and time-wasting nonsense of composing, dictating, transcribing, printing, queuing at the fax, dialling, sending and printing confirmation

It keeps its own record. When you send or receive e-mail, your computer retains the full record of the message and transmission and receipt details in its memory

It allows communication on the move. With new WAP (wireless application protocol), many mobile phones and most lap-/palm-top computers and organisers have e-mail capacity. With e-mail, you can have easy access to your files even when you are away from your desk

It allows instant communication. With e-mail, you can instantly communicate with clients and give better service

It gives access to the Internet. With all the advantages of research, directories and sources of information that the web brings

Clients demand it. All companies and most individuals who buy computers also get e-mail. They will use it and will expect solicitors to have it

It's the future. Most solicitors have computers. It's very easy to get e-mail. Soon we will all have to have it. Better now than later

In the immediate future, all of the courts will be on-line with pleadings filed by solicitors electronically. With the millennium bug firmly out of the way, there's never been a better time for all small practitioners to use e-mail to the full and save time, money and improve service to clients.

Brian O'Reilly
Practice Management Committee

PROBATE, ADMINISTRATION AND TAXATION

TAX BRIEFING

The following extracts from *Tax briefing* (issue 39, March 2000) are reproduced by kind permission of the Revenue Commissioners.

Capital gains tax

CGT retirement relief

Section 68 increases, as respects disposals made on or after 1 December 1999, from £250,000 to **£375,000** the amount which a person may receive from the disposal of qualifying business assets following 'retirement' and qualify for exemption from capital gains tax under section 598 TCA 1997. Where the proceeds of the disposal exceed £375,000, the section also ensures that marginal relief will apply to limit the tax chargeable to one-half of the difference between the amount of the proceeds and £375,000.

CGT tax clearance procedure

Section 70 amends section 980 TCA 1997. Section 980 obliges the purchaser of certain specified assets to withhold 15% of the consideration representing an amount of capital gains tax and to pay it over to Revenue where the consideration for an asset exceeds £150,000. Section 70 makes two changes. First, it increases the threshold amount from £150,000 to **£300,000**. Accordingly, as respects disposals made on or after the date of the passing of the *Finance Act, 2000*, the section will not apply unless the consideration for an

SUMMARY OF *LAND REGISTRATION (FEES) ORDER 1999*

1. Fee scale for transfers (sale)

Value			Fee
£1	-	£10,000	£100
£10,001	-	£20,000	£150
£20,001	-	£40,000	£200
£40,001	-	£200,000	£300
£200,001	-	£300,000	£400
£300,001 and over			£500

2. Other registrations affecting registered land

a) Voluntary transfer	£70
b) Opening of a new folio on subdivision of parent folio	£50
c) Charge	£100
d) Transfer order	£70
e) Registration of a lease as a burden and opening new leasehold folio	£70
f) Transmission on death	£70
g) Section 49 application	£20
h) All other registrations	£70

3. First registration £70

4. Other services

a) Certified copy map with special features	£50
b) Copy folio with filed plan	£20
c) Copy folio	£5
d) Copy instrument	£20
e) Land certificate	£20
f) Certificate of charge (item 21)	£5
g) Official search (rule 190)	£5
h) Priority search (rule 191)	£5
i) Telephone search (rule 196)	£5
j) Names index search	£2
k) Lands index search	£2
l) Inspection of each folio, map, instrument or record	£2
m) Approval of scheme map	£250
n) Approval of revision of scheme map up to 20 sites	£500
o) Approval of revision of scheme map more than 20 sites	£1,000
p) Attendance of officer to produce document in court	£50 per day plus expenses

5. Miscellaneous

a) Administration fee on refused, abandoned, withdrawn dealings	£50 or lesser fee lodged
b) Administration fee on refund of excess fees	£20 or lesser excess
c) Any service where no fee is prescribed	£5

6. Notes

a) Fees are charged on a per item basis, no maximum fee
b) This summary is merely a guideline and does not purport to be a legal interpretation

NOTICE

The *Land Registration (Fees) Order 1999* comes into operation on 1 May 2000. It affects documents lodged on or after 1 May 2000. The fees order is available to purchase in the Government Publications Sales Office, Molesworth Street, Dublin 2, price: £1.

asset exceeds £300,000. Second, in the case of newly constructed houses, section 70 amends *section 980*, as respects disposals made on or after the date of the passing of the *Finance Act, 2000*, to allow:

- current certificates of authorisation issued to the vendor under section 1095 TCA 1997
- current tax clearance certificates issued to the vendor under sections 1094 and 1095 TCA 1997
- if a person does not have any of these certificates, a current tax clearance issued to the vendor for the particular purposes of section 980 TCA 1997

to be produced by vendors to purchasers as sufficient authority to allow the purchaser not to deduct withholding tax. These certificates, unlike the existing certificate issued under section 980, may be used by vendors for the sale of any number of new houses during the currency of the relevant certificate. The option is retained for a person to use the existing clearance procedure for the sale of an asset if desired.

Value added tax

Holiday homes

Section 91 deals with the tax treatment of persons who choose to become taxable in respect of the letting out of holiday accommodation and later cancel their registration. Only persons whose turnover from these lettings is below £20,000 a year are affected by this amendment. The purpose of the amendment is to prevent people from using the election and cancellation rules in such a way as to obtain a holiday home almost VAT-free.

The section inserts a new sub-section (5A) into section 8 of the *VAT Act* to provide that where such people opt to register for VAT in respect of the letting out of holiday accommodation they must in certain circumstances pay a cancellation amount to Revenue when they cancel their election to register. The cancellation amount is calculated on the basis of the amount of VAT deductible on the property used for the holiday lettings and the length of time for which the property was let before the cancellation. No cancellation amount is payable if the length of time involved exceeds ten years.

Stamp duty

Section 107 gives effect to the Budget announcement to extend the stamp duty relief on transfers of land to young trained farmers for a further three years until 31 December 2002. Section 112 increases from £6,000 to **£15,000** the annual rent threshold below which a lease of a dwelling house or apartment for any indefinite term or any term not exceeding 35 years is exempt from stamp duty. The increased threshold applies to leases executed on or after 1 December 1999.

Residential property tax

Section 113 increases the threshold below which a residential property tax clearance certificate is not required from £200,000 to **£300,000**. The revised threshold will apply to sales occurring on or after 5 April 2000. Section 114 removes from the clearance certificate scheme residential property which was previously acquired after 5 April 1996 (being the last valuation date on which tax was payable). This section applies to sales of residential property completed after 10 February 2000.

Capital acquisitions tax

Assets situated outside the state

Sections 116, 117 and 118 give effect to the Budget proposal to change the basis on which gift tax and inheritance tax is charged on assets situated outside the state.

At present, the charge depends on the domicile of the disponer at the relevant date. This general domicile rule is being replaced by a residence rule so that in future foreign assets will be charged to tax where either the disponer or the beneficiary is resident or ordinarily resident in the state at the relevant date. A foreign-domiciled person will not be considered to be resident or ordinarily resident in the state for this purpose until 1 December 2004 and then only if he or she has been resident in the state for the five consecutive tax years preceding the relevant date. Trusts already existing on 1 December 1999 remain subject to the old rules. The new residence rules apply to gifts or inheritances taken on or after 1 December 1999.

Class thresholds and rates of tax

Section 124 amends the second schedule to the *Capital Acquisitions Tax Act, 1976* and gives effect to the changes being made in relation to class thresholds, rates of tax and the method of aggregation to be used in relation to gifts or inheritances taken on or after 1 December 1999. The changes are as follows:

- the class thresholds are being replaced by group thresholds which are increased to the following amounts: group 1 to £300,000, group 2 to £30,000 and group 3 to £15,000. The new thresholds will be indexed from 1 January 2000
- a single 20% rate of tax replaces the existing multiple structure. As a consequence of this change, the 25% reduction in the rate for gifts as compared to inheritances will no longer apply
- prior gifts or inheritances received by the same beneficiary under the same group threshold since 2 December 1988 will aggregate with a current acquisition for the purpose of arriving at the rate of tax on the current acquisition.

Agricultural relief

Section 127 will enable agricultural property to qualify for business relief (where the relevant criteria are met) in circumstances where it fails to qualify for agricultural relief. In order to qualify for agricultural relief, not less than 80% of the beneficiary's assets must consist of agricultural property (after the taking of the gift or inheritance in question). This change applies to gifts or inheritances taken on or after 10 February 2000.

Probate tax exemption threshold

Section 126 increases the probate tax exemption threshold from £11,250 to **£40,000** effective from 1 December 1999. The new threshold will be indexed from 1 January 2001. G

PRACTICE NOTE

Finance Bill, 2000: important changes for conveyancers

Practitioners should note the following changes are proposed in the *Finance Bill, 2000*.

Stamp duty. The exemption threshold in respect of the annual rental value of leases for residential properties is to be increased from £6,000 to £15,000, effective from 1 December 1999.

Residential property tax. The threshold above which an RPT clearance certificate will be required is to be increased to £300,000, effective from 5 April 2000.

Capital gains tax. The threshold above which a CGT clearance certificate will be required in respect of house sales is to be increased from £150,000 to £300,000, effective from the date of the passing of the *Finance Bill* (anticipated to be end of March).

Probate, Administration and Taxation Committee

LEGISLATION UPDATE: 1 JANUARY – 20 MARCH 2000

ACTS PASSED

Comhairle Act, 2000
Number: 1/2000
Explan-memo: Yes
Contents: Provides for the establishment of a statutory body, Comhairle, which will be formed by a merger of the National Social Service Board (NSSB) and certain functions of the National Rehabilitation Board. Comhairle will support the provision of or, where it considers it appropriate, directly provide independent information, advice and advocacy services so as to ensure that individuals have access to accurate, comprehensive and clear information relating to social services and are referred to the relevant services. Repeals the *National Social Service Board Act, 1984* and provides for related matters
Date enacted: 2/3/2000
Commencement date: 2/3/2000. Establishment day order to be made (per s3 of the act).

National Beef Assurance Scheme Act, 2000
Number: 2/2000
Explan-memo: Yes
Contents note: Establishes the National Beef Assurance Scheme to develop common standards for the production, processing and trade in Irish cattle and beef for human consumption and for the manufacture and trade of feeding stuffs; to apply these standards through a process of registration, inspection and approval, and to improve the animal identification and traceability system for Irish cattle
Date enacted: 15/3/2000
Commencement date: Commencement order/s to be made (per s1(2))

SELECTED STATUTORY INSTRUMENTS

Building Control (Amendment) Regulations 2000
Number: SI 10/2000
Contents note: Amend the *Building Control Regulations 1997* (SI 496/1997) in relation to the prescribed application form for a fire safety certificate, the need to submit appeals to An Bord Pleanála by prepaid post (as distinct from registered post), and the contents of the register maintained by the building control authorities. Provide that An Bord Pleanála may request revised plans, documents and so on in order to determine an appeal
Commencement date: 1/4/2000

Companies (Amendment) (No 2) Act, 1999 *(Bonding) Order 2000*
Number: SI 64/2000
Contents note: Prescribes the form of bond for the purposes of s43 of the *Companies (Amendment) (No 2) Act, 1999*
Commencement date: 18/4/2000

Companies (Amendment) (No 2) Act, 1999 *(Commencement) Order 2000*
Number: SI 61/2000
Contents note: Appoints 23/3/2000 as the commencement date for ss46, 49, 50, 51; 18/4/2000 for ss42, 43, 44, 45, 47, 48 and the second schedule of the act in so far as it relates to part IV of the act

Companies (Fees) Order 2000
Number: SI 63/2000
Contents note: Prescribes fees for the purposes of the *Companies (Amendment) (No 2) Act, 1999*
Commencement date: 18/4/2000

Companies (Forms) Order 2000
Number: SI 62/2000
Contents note: Prescribes forms for the purposes of the *Companies (Amendment) (No 2) Act, 1999*
Commencement date: 18/4/2000

Fisheries (Amendment) Act, 1999 *(Section 23) (Commencement) Order 2000*
Number: SI 21/2000
Contents note: Appoints 24/1/2000 as the commencement date for s23 of the act

Geneva Conventions (Amendment) Act, 1998 *(Commencement) Order 2000*
Number: SI 6/2000
Contents note: Appoints 17/1/2000 as the commencement date for the act

Health (Eastern Regional Health Authority) Act, 1999 *(Establishment Day) Order 2000*
Number: SI 68/2000
Contents note: Appoints 1/3/2000 as the establishment day for the purposes of the *Health (Eastern Regional Health Authority) Act, 1999*

Housing (Registration of Rented Houses) (Amendment) Regulations 2000
Number: SI 12/2000
Contents note: Amend article 4 of the *Housing (Registration of Rented Houses) Regulations 1996*, which prescribes the type of house let for rent or other valuable consideration to which the 1996 regulations will apply
Commencement date: 24/1/2000

Housing (Traveller Accommodation) Act, 1998 *(Commencement) Order 2000*
Number: SI 37/2000
Contents note: Appoints 1/2/2000 as the commencement date for s25 of the act

Immigration Act, 1999 *(Section 11) (Commencement) Order 2000*
Number: SI 9/2000
Contents note: Appoints 20/1/2000 as the commencement date for s11 of the act, other than s11(1)(p). Section 11 provides for amendment of the *Refugee Act, 1996*; s11(1)(p), which is excluded, amends s22 (*Dublin convention*) of the *Refugee Act, 1996*

Refugee Act, 1996 *(Section 6 and First Schedule) (Commencement) Order 2000*
Number: SI 8/2000
Contents note: Appoints 20/1/2000 as the commencement date for s6 and the first schedule of the act

Road Traffic (Public Service Vehicles) (Amendment) Regulations 2000
Number: SI 3/2000
Contents note: Provide for the submission of applications for the grant of new taxi licences and wheelchair-accessible taxi licences from holders of existing licences in the Dublin taximeter area
Commencement date: 13/1/2000

Rules of the Superior Courts (No 1)* (Powers of Attorney Act, 1996) *2000
Number: SI 66/2000
Contents note: Insert a new order 129 in the *Rules of the superior courts* to prescribe procedures in relation to enduring powers of attorney under part II of the *Powers of Attorney Act, 1996*
Commencement date: 8/3/2000

Prepared by the Law Society Library

Copies of the above acts and statutory instruments are held in the Law Society Library. They may be purchased from Government Publications in person at the Sales Office, Sun Alliance House, Molesworth Street, Dublin 2, or by post or fax from Government Publications Postal Trade Section, 4-5 Harcourt Road, Dublin 2, tel: (01) 6613111, fax: (01) 4752760.

In a corner

Dealing with dawn raids

In the first of a new series on coping with crisis situations, Vincent Power explains what you should do if the Competition Authority comes knocking on your client's door

Many solicitors around Ireland have had the call. A client telephones urgently and says that Competition Authority officials have arrived unannounced and are searching through the client's documents and asking questions. This has occurred about 30 times in the past year in various towns and cities around the country. As a solicitor, what do you do?

Drop everything! Cancel all your other appointments. This is very serious for the client and you should go immediately to his offices to help in what is often a very traumatic experience.

Who is doing the raid?

The Competition Authority is the independent agency charged with regulating certain unfair business practices in Ireland. They have wide powers of investigation. Breaches of Irish competition law expose:

- managers to fines of up to £3 million and/or imprisonment for up to two years, and
- businesses to fines of up to £3 million and/or 10% of turnover.

These penalties are imposed by the courts for breaches of the *Competition Acts, 1991-1996*.

The 'dawn raids' are conducted by authorised officers of the Competition Authority. The authority conducts the dawn raid on foot of a District Court warrant. The raids are designed to collect evidence of alleged anti-competitive behaviour. The authority's powers are contained in the *Competition Acts, 1991-1996*. It has the power to search, copy and interrogate in regard to businesses named in the warrant and the premises described in the warrant. It does not have the power to seize documents, but it has the power to copy computer records. The authority tends to conduct a thorough investigation, using four or five people, but does not tend to reveal why the investigation is being undertaken.

Why?

The authority conducts dawn raids to gather information or evidence about alleged breaches of competition law. Such breaches may be either anti-competitive arrangements or abuses of dominance. A business may be dawn-raided because the authority suspects there is evidence of a breach of competition law, whether by that business or by others. The search is to find evidence. Dawn raids are the result of either own-initiative investigations by the authority or following complaints from third parties.

Where?

The authority may search any premises used in connection with a business. Most dawn raids are on offices, but raids have been conducted on 'home offices' or 'studies'. Vehicles or business premises named in the warrant may be searched.

When?

The authority may visit at any time, but generally does not visit at dawn! Visits can last for several hours. Your client's business may be entirely disrupted as the authority's officials roam around his offices and ask him questions.

What does the authority do?

The authority arrive unannounced. Its officers present a copy of the District Court warrant which authorises them to conduct the raid. One group reads through files, diaries and other documents; another group photocopies documents; a third group makes copies of computer files. The authority will normally question everyone who enters or leaves the building. After reviewing the information, the authority will probably ask some executives in the building about matters under investigation. It will give your client an inventory of the documents which have been copied and he will be asked to sign it. He should sign it only if you have checked it thoroughly. G

WHAT SHOULD YOU DO?

- Take charge of the situation
- Check the warrant presented by the authority. Does it correctly name the business? Does it relate to the correct address? Are all of the investigators who have arrived named in the warrant? Limit the authority to the powers which they have under the warrant. Check the *Competition Act, 1991* and the *Competition (Amendment) Act, 1996* where there is any doubt
- Ask the authority the purpose of their visit
- Have a member of your team or the client's team accompany each authority official at all times
- The authority will photocopy all relevant documents. It should not copy correspondence with lawyers. Make a second copy of each document being copied. The authority may not remove originals. Read the copies which are being made as they are being made. This is particularly important for anyone who may be asked questions by the authority at the end of the raid
- The authority may decide to copy computer files. It may only copy files relating to the business named in the search warrant. Ensure that a copy is made of whatever computer records are copied
- Advise the client that managers and others may be questioned
- If the authority questions your client, then answers must be truthful and accurate because it is an offence to mislead the authority. However, if the client does not know the answer to the question, then he should say so as one is not expected to know everything
- Keep detailed contemporaneous notes on the investigation. Have a tape recorder available for any interviews
- Advise the client not to issue a press release or publicly comment on the raid unless it becomes public knowledge. Advise the client's staff that confidentiality is imperative in this situation
- Co-operate fully with the authority and do not obstruct or impede the investigation. It is important to remember that while the investigation may seem unreasonable, the authority has been conferred with extensive powers of search and interrogation by the Oireachtas.

Vincent Power is a partner with the law firm A&L Goodbody.

Solicitors' Benevolent Association

136th Report and Accounts

Year 1 December 1998 to 30 November 1999

The Solicitors' Benevolent Association, founded in 1863, is the profession's voluntary charitable body. It consists of members of the profession throughout Ireland who contribute to our funds, and its aim is to assist members or former members of the profession and their spouses, widows, widowers, families and dependants who are in need. The association also provides advice and financial assistance on a confidential basis and functions independently of both law societies.

The amount paid out during the year in grants was IR£198,614. Currently there are 56 beneficiaries in receipt of regular grants. One third of these are aged 50 years or younger and they have approximately 60 dependant children between them.

The directors anticipate that, particularly in view of the increasing number of families with young children being helped, there will be a need for increased assistance in the coming years. Again, in a number of cases the directors are conscious of the fact that grants have not been increased for some time – despite rising costs and in several instances increased needs apparent in cases where beneficiaries are of advanced age. For these reasons, the directors particularly welcome the higher level of subscriptions and donations and general support of the profession.

There are currently 23 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at Law Society House, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants. The directors also make themselves available to those who may need personal or professional advice.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Patrick O'Connor, past president of the Law Society of Ireland; Catherine Dixon, past president of the Law Society of Northern Ireland; Ken Murphy, director general; John Bailie, chief executive and all the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising certificate, to those who made individual contributions and to the following: Dublin Solicitors' Bar Association, The Law Society, Belfast Solicitors' Association, County Galway Solicitors' Bar Association Ltd, Faculty of Notaries Public In Ireland, Kerry Law Society, Limavady Solicitors' Association, Local Authorities Solicitors' Association, Southern Law Association, Tipperary and Offaly Bar Association, Younger Members' Committee, and Waterford Law Society.

To cover the ever-greater demands on the association, additional subscriptions are more than welcome as, of course, are legacies. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4, and I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at page 26 of the *Law directory*.

I note with deep regret the recent death of our colleague Noelle Maguire who was a director of the association for many years and during that time gave of her time and energy in furthering the aims of the association. Her kindness and courtesy will long be remembered by those with whom she came in contact both as a colleague and as an able representative of the association.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication and assistance during the year.

Thomas A Menton, Chairman

RECEIPTS AND PAYMENTS ACCOUNT

YEAR ENDED 30 NOVEMBER 1999

	1999		1998	
Receipts	**IR£**	**IR£**	**IR£**	**IR£**
Subscriptions	174,267		164,503	
Donations	27,314		19,601	
Investment income	31,666		27,677	
Bank interest	2,324		3,414	
Tax refund	5,301		3,022	
Repayment of grants loaned	3,301		3,900	
		244,173		**222,117**
Payments				
Grants	198,614		175,223	
Bank charges	910		823	
Administration expenses	11,543	**(211,067)**	9,599	**(185,645)**
Surplus for the year before special events proceeds		33,106		36,472
Lawyers diaries	507		12,532	
Maracycle	-		1,205	
Irish conveyancing precedents publication	39		5,082	
Trial by jury	-		5,500	
Library book sale	107	**653**	663	**24,982**
Surplus for year before legacies		33,759		61,454
Legacies		5,027		2,238
		38,786		**63,692**
Transfer from/(to) reserve account		(60,000)		(50,000)
(Deficit)/surplus for year		**(21,214)**		**13,692**

ACCOUNTING POLICIES

a) Accounting convention. The accounts have been prepared under the historical cost convention. The currency used in these accounts is the Irish pound as denoted by the symbol IR£.

b) Receipts and payments. Receipts and payments are recognised in the accounts as they are received and paid.

c) Investments. Investments are stated at cost less provision for any permanent diminution in value.

d) Sterling. Assets and liabilities denominated in sterling are converted to Irish pounds at the rate of exchange prevailing at the balance sheet date. Income and expenditure denominated in sterling are converted to Irish pounds at the average exchange rate prevailing during the year. The rates applicable for the year ended 30 November 1999 were:

	IR£	Stg£
• Year End	1	0.8031
• Average	1	0.8463

ACCOUNTANTS' REPORT

We have prepared the accounts set out above for the year ended 30 November 1999 from the accounting records and information and explanations supplied to us. In our opinion, the accounts are in accordance therewith.

PricewaterhouseCoopers
Chartered Accountants and
Registered Auditors
Dublin

DIRECTORS AND OTHER INFORMATION

Chairman: Thomas A Menton
Deputy Chairman: John Sexton

Trustees (*ex officio* directors)
Brian K Overend
John M O'Connor
Andrew F Smyth

Directors
Sheena Beale, Dublin
Patrick J Daly, Galway
Desmond Doris, Belfast
Robert M Flynn, Cork
John Brian Garrett, Belfast
Colin Haddick, Newtownards
Gerald Hickey, Dublin
Carmel Jenkins, Ballina
Niall D Kennedy, Tipperary
Frank Lanigan, Carlow
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Etta Nagle, Cork
Michael O'Connell, Tralee
John M O'Connor, Dublin
Sylvia O'Connor, Wexford
Brian K Overend, Dublin
Colm Price, Dublin
Tomas D Shaw, Mullingar
Andrew F Smyth, Dublin
Patrick F Treacy, Nenagh

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Geraldine Pearse

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Dublin 1

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Belfast BT1 2AL

Stockbrokers
Bloxham Stockbrokers
2-3 Exchange Place
IFSC
Dublin 1

Auditors
PricewaterhouseCoopers
Chartered Accountants and
Registered Auditors
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Dublin 2

Offices of the association
Law Society
Blackhall Place
Dublin 7

The Law Society of
Northern Ireland
Law Society House
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Belfast BT1 3JZ

Personal injury judgments

Road traffic accident – two car collision – complaints of serious pain in neck and lower back – claims of abandonment of social life – working out in a gym – extent of injuries and medical problems challenged – conflict of evidence

CASE

***Rose Long v Riverside Manufacturing Limited and Daniel O'Shea*, High Court on circuit at Dundalk, before Mr Justice O'Donovan, judgment of 17 May 1999.**

THE FACTS

Rose Long, 21 years of age, was a trainee accountant in 1996. She was driving her car, and wearing a seat belt, when Daniel O'Shea's car pulled out, apparently from a factory premises. It crossed her path and there was a collision. The accident happened on Friday 18 October 1996 at about 8.40am at Cole's Road, Dundalk, Co Louth. Ms Long was then single, although she intended to marry her fiancé, Derek Waters, who was also an accountant.

The collision forced Ms Long to hit against the steering wheel of her car and she 'saw stars'. She immediately became conscious of low back pain, received some first aid at the scene of the accident and was then removed to hospital, where she had an x-ray but was advised that no bone damage had been detected. In fact, she had no treatment in hospital and was discharged after one-and-a-half hours. At home, Ms Long again stated that she had pain not only in her back but that she was conscious of pain in her neck and that weekend she could not sleep. However, she did not seek any treatment. The following Monday she consulted her general practitioner, Dr Fiona Henry, who apparently prescribed anti-inflammatory medication and rest. Ms Long took a week off work. During that week, she consulted her solicitor and an originating letter was sent on her behalf.

In the following weeks, Ms Long claimed that she had a stinging pain in her neck and that she had pain in her back which was very sore at the end of the day. She complained of having problems washing her hair, difficulties sleeping and indeed at that stage and for a long time afterwards she claimed she was only getting three hours sleep a night and very often woke up crying with pain. She claimed she did not get relief from that problem until she bought an orthopaedic bed sometime in 1999.

In the weeks following the accident, Ms Long went back to work, and attended lectures in relation to her accountancy course. She sat two examinations in December 1996, failed one and passed one.

Since the accident, Ms Long claimed that despite the fact that she was back at work, she had pain in her neck and back and had problems driving and had to abandon her social life. She informed the court that she had only been out socially five times in the last three years. She tried to work out in the gym but was unable to do so. She testified that before the accident she had been a very active person socially. She would have been out three or four nights a week and was very active in keeping herself fit and used to work out at the gym four times a week and do hill-walking at the weekends. She claimed all of that had now finished. Ms Long issued High Court proceedings. Liability was conceded, but the parties could not agree on *quantum*.

THE JUDGMENT

Having outlined the facts as set out above, O'Donovan J referred to the various medical reports and visits to medical practitioners. The judge noted that while Ms Long complained that since her accident she had constant pain in her back, she had only attended her local GP, Dr Henry, four times in the year 1997 and not at all in the year 1998. The judge noted that when Ms Long saw Dr Henry in 1997, the doctor said Ms Long complained of her neck on one occasion. Ms Long did see a medical specialist but apparently only for the purposes of assessment and did not seek advice from him with regard to the management of her medical problems. In fact, the specialist said that he did not prescribe any treatment nor was he asked for advice; he merely recommended various investigative procedures which would be undertaken by way of CT scans and MRI scans for the purposes of reports.

O'Donovan J considered that this lack of apparent interest in seeking medical advice must be critically viewed in the context of Ms Long's evidence that she had got progressively worse with regard to pain in her neck and back, so much so that she lost an enormous amount of time from work on that account. She claimed she had been unable to attend her accountancy lectures with a resulting lack of success in her examinations. She claimed to be unable to take exercise as a result of which she said she had put on weight and her clothes did not fit her any more; that she had been unable to socialise or to frequent the gym as was her wont, with the result that she had lost friends whom she used to meet socially at the gym and also that she had now taken up smoking. The judge considered if things were that bad, he would have expected that she would have 'worn a path to her doctor seeking a resolution of her problems'. In

fact, doctors expressed surprise that Ms Long was not more intent in the matter of seeking medical attention.

The judge noted that in the course of Ms Long's evidence, and indeed of Derek Waters, her fiancé, great emphasis was placed on Ms Long's good pre-accident working record, how it deteriorated after the accident due, it was alleged, to on-going pain. The judge accepted that it was a fact that following her accident Ms Long's attendance at her place of work was considerably less frequent than before. However, the judge found it significant that whereas from the time of the accident up to April 1998 she was losing one to two days a week from work, when she changed her job in April 1998 on a salary which was virtually double that which she had been previously receiving, she lost no time whatsoever from work during the next six months. The judge stated that the 'metamorphosis was, to say the least, startling, given that the work in both jobs was exactly the same'.

She explained her failure to seek medical advice, according to the judge, by stating that early in 1997 Doctor Henry had told her that there was no cure for her problems, so Ms Long did not consider that there was any point in consulting doctors. The judge considered that apart from the fact that Dr Henry gave no such evidence, he found it incredible that an intelligent lady, such as Ms Long clearly was, would accept such a view from a general practitioner without consulting a specialist, particularly if she was suffering to the extent that she maintained she was. The judge stated that his 'cynicism' in relation to certain aspects of Ms Long's medical condition was added to by the fact that not only did Ms Long take on an extra workload in terms of time after she changed jobs, but she also had to undertake extra driving duties although she said that driving was a problem for her.

In the light of this, the judge regretted that he did not consider Ms Long 'a reliable historian of the problems' which she complained of and he did not believe that she had suffered to the extent she maintained over the past two-and-a-half years. The judge did not accept that the *sequelae* of the injuries she suffered as a result of the accident justified the enormous amount of time she had taken off work since then or were instrumental in bringing about the changes to her lifestyle of which she complained. In the judge's view, Ms Long had 'grossly exaggerated' the extent of the *sequelae* of her injuries, though for what purpose he did not intend to speculate.

In the light of medical evidence, O'Donovan J accepted that as a result of the accident Ms Long suffered a soft-tissue injury to her neck and back, which was accompanied by the usual painful and restricting symptoms associated with such injuries. Considering that she had largely recovered from the effects of those injuries by the end of 1997, he was influenced in this view by the fact that the x-rays of Ms Long's neck and back were normal, as was a CT scan and MRI scan of her lumbar spine.

The judge referred particularly to medical evidence that the MRI scan of Ms Long's neck in January 1999 showed degenerative changes at the level C5/6 which her specialist considered unusual in a person in her age group and in the absence of a history of neck symptoms in the past. The specialist considered it was likely that those degenerative changes were related to the injuries suffered as a result of Ms Long's accident in October 1996 and could give rise to other painful symptoms in the future.

Medical evidence submitted by the defence accepted that Ms Long had some degenerative changes but evidence was given that they were not an unusual finding even for a person of Ms Long's age. The specialist rejected the idea of any association between them and Ms Long's accident. In this regard, the specialist for Ms Long conceded that using the weights in a gym could precipitate early degenerative changes in the neck. Ms Long denied that the extensive work in the gym which she was accustomed to before her accident involved the use of weights. However, O'Donovan J said he was inclined to prefer the views of the medical evidence for the defence, first, because she did not complain about her neck to her doctor from April 1997 and also because whatever equipment she was using in the gym before her accident was bound to put strain on the neck.

Counsel for Ms Long: Mr McGahon SC, Mr Moylan SC, Mr D McDonagh BL, instructed by Esther McGahon McGuinness, Solicitor, Dundalk, Co Louth.
Counsel for Riverside Manufacturing Limited and Daniel O'Shea: Mr O'Hagan SC, Mr F Duggan BL, instructed by Martin Crilly, Solicitor, Main Street, Co Monaghan. G

THE AWARD

In relation to general damages for pain and suffering to the date of the trial and into the future, O'Donovan J awarded Ms Long £10,000. In the context of special damages, O'Donovan J would not allow for the orthopaedic bed which Ms Long purchased, not on the advice of any medical adviser but on the advice of her fiancé. Other special damages came to £5,624.48. Accordingly, the total judgment in Ms Long's favour was for £15,624.48. The judge awarded costs on the Circuit Court scale and a certificate for senior counsel.

This summary was compiled by Dr Eamonn Hall, solicitor, from Reports of personal injury judgments, *published by Doyle Court Reporters, 2 Arran Quay, Dublin 7.*

First Law Update

ELECTRON C PUBL SH NG

News from Ireland's on-line legal awareness service
Compiled by John X Kelly of FirstLaw

CHILDREN

Child abduction

Family law – private international law – child abduction – habitual residence – Hague convention, *article 13 – parents suffering from alcoholism – whether mother was entitled to custody – whether removal of children was wrongful – whether mother had acquiesced to removal of children – whether children would be exposed to a grave risk of physical or psychological harm if returned* – Child Abduction and Enforcement Orders Act, 1991

The two children at the centre of the dispute had been removed from their habitual residence and brought to Ireland by their relatives. There was evidence that the parents of the children were unable to look after them. The mother of the children sought the return of the children arguing that the removal of the children was wrongful within the meaning of the *Hague convention*. The High Court held that there was a grave risk of psychological and physical harm to the children if they were returned to the custody of their mother and refused to make the orders sought. The mother appealed to the Supreme Court. The Supreme Court accepted the conclusions of the trial judge in the High Court that the children would be exposed to risks if returned to their mother. The Supreme Court affirmed the decision of the High Court and dismissed the appeal.

***TMM v MD*, Supreme Court, 08/12/99** [FL2360]

COMMERCIAL

Shareholding

Compulsory share acquisition – statutory interpretation – right to object – conflict of interest – independent shareholdings – whether amount of shares in question should be independently held – whether justification existed for lifting the corporate veil – whether shareholding could be compulsorily acquired – Companies Act, 1963, *section 204*

The defendant had offered to buy all the shares in a company of which the plaintiff was a small shareholder. Subsequently, the defendant claimed that as 80% of the shareholders had accepted the offer it had then become binding and, pursuant to s204 of the *Companies Act, 1963*, attempted to assert ownership over the shares held by the plaintiff. The plaintiff claimed that in calculating the relevant share percentage necessary for share acquisition, certain holdings should be disregarded as they were held by directors who also held shares in the bidding company. The plaintiff's challenge was dismissed in the High Court. The Supreme Court affirmed the decision of the High Court holding that the proposed offer was a fair and reasonable one and had in fact been recommended by directors not connected with the bidding company.

***Duggan v Stoneworth Investment Ltd*, Supreme Court, 21/12/99** [FL2353]

CONSTITUTIONAL

Costs and planning

Planning – judicial review – constitution – locus standi – *'person aggrieved' – 'sufficient interest' – limited company – security for costs – award of costs – necessity for environmental impact statement*

The applicants were objectors to a planning project. They had attended the planning hearing in a personal capacity and had later initiated judicial review proceedings as a limited liability company. The applicants sought their costs despite the action being dismissed in both the High Court and on appeal in the Supreme Court. The applicants argued that they should not be penalised on costs as they had succeeded in raising a point of law regarding the necessity for an environmental impact statement and they were primarily concerned with conservation issues. The respondents had been awarded their costs in the High Court but agreed not to enforce them if the applicants desisted from seeking costs. The Supreme Court noted that these were generous offers. Accordingly, the Supreme Court affirmed the orders of the High Court and granted the respondents their costs of the present Supreme Court application.

***Lancefort v An Bord Pleanála*, Supreme Court, 02/12/99** [FL2327]

Garda Síochána

Administrative law – constitution – complaint – Garda Síochána – hoax call – right to privacy – negligence – damages – appeal – manner in which complaint treated – whether plaintiff denied fair procedures – assessment of evidence by trial judge – whether trial judge had erred in law – whether plaintiff treated unfairly at trial

The applicant had initiated proceedings in respect of the manner in which his complaints to the Garda Síochána Complaints Board had been dealt with. After a full hearing of the issues, O'Donovan J had dismissed proceedings in the High Court. The applicant appealed principally in relation to the assessment of the evidence. The Supreme Court dismissed the appeal, holding that the trial judge was entitled to make findings of fact in question. The assessment of evidence given by a witness was also a matter for the trial judge. The plaintiff had in fact received a fair and courteous hearing in the High Court.

***Trent v Garda Commissioner (& Others)*, Supreme Court, 13/10/99** [FL1817]

Mental health

Constitution – appeal – amend proceedings – practice – mental treatment – whether to grant leave to applicant to amend proceedings – whether detention in hospital unlawful and unconstitutional – whether applicant detained before doctors signed statutory certificate – onus of proof applicable – whether substantial grounds for contending that defendants acted in bad faith or without reasonable care – dispute on facts – whether claim statute barred – Mental Treatment Act, 1945, *s260*

The applicant had sought leave in the High Court to bring proceedings under s260 of the *Mental Treatment Act, 1945*. The applicant claimed that he had been unlawfully detained against his will at the St John of God Hospital, in Stillorgan, Co Dublin. Geoghegan J had refused the applicant leave to bring proceedings. The applicant appealed to the Supreme Court. In this application, the applicant sought leave from the Supreme Court to amend his pleadings in order to challenge the constitutionality of s260 of the *Mental Treatment Act, 1945*. Denham J, delivering judgment, dismissed the application and

held that there were no exceptional circumstances existing in this instance which would permit the applicant to amend his pleadings.

***Blehein v Murphy (& Others)*, Supreme Court, 17/01/2000** [FL2336]

CONTRACT

Dismissal for want of prosecution

Practice – delay – prejudice – alleged contract made in 1988 – plenary summons issued in 1992 and served in 1993 – some witnesses no longer available – whether balance of justice favoured dismissal of proceedings – whether defendants had suffered prejudice by reason of plaintiff's delay

The plaintiff was a demolition contractor who had entered into a contract in 1988 with the first-named defendant regarding demolition works to be carried out on the premises of the second-named defendant. The plaintiff alleged breach of contract and had issued the plenary summons in 1992. Significant delays had occurred in the prosecution of the case. Other defendants had been successful in having the case dismissed against them for want of prosecution. The first-named defendant now also sought to have the action dismissed on the same grounds. Morris P held that the lapse of time had meant that witnesses central to the first-named defendant's case were now unavailable. In addition, the delay by the plaintiff in prosecuting the case was inordinate and inexcusable. Accordingly, for want of prosecution the action against the first-named defendant would be dismissed.

***Hughes Engineering v Moy Contractors*, High Court, Mr Justice Morris, 25/01/2000** [FL2277]

Insurance and road traffic

Motor Insurers' Bureau of Ireland (MIBI) agreement – plaintiffs in car which collided with uninsured motorcyclist – motorcyclist fatally injured – plaintiffs sued MIBI for damages – basis for liability of MIBI – preliminary issue – whether direct claim against MIBI was maintainable – whether plaintiffs should have instituted proceedings against user of vehicle giving rise to claim – whether MIBI estopped from raising delay as defence – Civil Liability Act, 1961, *section 9 – European Council Directive (84/5/EEC) – Directive (90/232/EEC)*

The plaintiffs had been injured in a road traffic accident involving their car and a motorcycle. The owner of the motorcycle was fatally injured and was uninsured. The plaintiffs instituted their claim solely against the Motor Insurers' Bureau of Ireland. The MIBI pleaded in their defence that the claim should have been instituted against the estate of the deceased and was now in fact statute barred. This defence was accepted in the High Court and the claim was dismissed. On appeal, the Supreme Court in a majority verdict reversed this decision and held that despite the fact that proceedings against the deceased were statute barred a valid claim had been instituted against the MIBI and must be addressed.

***Bowes and Hart v Motor Insurers' Bureau of Ireland*, Supreme Court, 30/07/99** [FL2351]

MIBI and damages

European law – insurance – road traffic – interpretation – damage caused by vehicles which had been stolen – plaintiffs sued MIBI for damages – basis for liability of MIBI – whether defendants obliged to pay out – whether direct claim against MIBI maintainable – whether plaintiffs should have instituted proceedings against user of vehicle giving rise to claim – transposition of EU law into Irish law – whether European directive correctly transposed – Motor Insurers' Bureau of Ireland agreement 1988, *clause 7(2) – Directive (84/5/EEC)*

The plaintiffs were the owners and operators of buses which had both been damaged in similar incidents by vehicles which had been stolen. The plaintiffs maintained that the damage was recoverable against the defendants on foot of the MIBI agreement. The plaintiffs were in fact awarded decrees for the damage sustained in the District Court. The defendants argued that the correct interpretation of the MIBI agreement absolved them from any liability in respect of the damage caused and appealed against the decision. Judge McMahon rejected the defendant's appeal, holding that the arguments of the defendant were reliant on a flawed provision in the MIBI agreement which itself had been incorrectly transposed from the relevant European directive. The liability of the defendant was therefore confirmed and the appeal was dismissed with an order of costs made in favour of the plaintiff.

***Dublin Bus v MIBI*, Circuit Court, Judge McMahon, 29/10/99** [FL2364]

DAMAGES

Army deafness

Tort – personal injuries – army hearing claim – level of deafness – compensation applicable – assessment – quantum *of damages – method of calculation – future damages for loss and suffering – whether the tables set out in the green book were applicable* – Civil Liability (Assessment of Hearing Injury) Act, 1998

The plaintiff had been awarded £45,110 damages as a result of hearing loss suffered while serving in the army. The plaintiff appealed against the award, arguing that the amount of damages did not adequately take into account the level of the present or future loss and suffering. There was also some disagreement as to the manner in which the future provision of hearing aids had been factored into the level of damages awarded. The Supreme Court declined to interfere with the award of the High Court, holding that the findings made by the trial judge were amply supported by the evidence adduced at the trial and therefore dismissed the plaintiff's appeal.

***Hassett v Ireland*, Supreme Court, 07/12/99** [FL2339]

Army deafness

Tort – army – hearing loss – damages – provision of hearing aids – percentage loss of hearing – different audiogram readings – method of calculation – actuarial evidence

The plaintiff sought damages for hearing loss allegedly sustained while serving in the Defence Forces. There was some dispute as to whether the plaintiff would require the use of hearing aids in the future. On the evidence presented, the High Court was prepared to find that the plaintiff would require the provision of hearing aids in approximately ten years' time and a figure of £4,136 was allowed for this. Three different audiogram readings were recorded and Ó Caoimh J aggregated the figures to give an overall result. Ó Caoimh J allowed for a sum of £1,100 for each percentage of present hearing loss and £750 for each percentage of future hearing loss. Allowing for actuarial adjustment, a total sum of £7,729 was awarded.

***Kinlan v Ireland*, High Court, Mr Justice O'Caoimh, 24/02/2000** [FL2376]

Defamation

Libel – malice – amount of damages – compensation for injury suffered – meaning of 'substantial' – role of trial judge – comments of trial judge – role of jury in awarding damages – freedom of speech – whether amount of damages awarded excessive – whether trial judge misdirected jury as to level of damages applicable – European convention on human rights, *article 10* – Bunreacht na hÉireann, *articles 40.3, 40.6.1*

The plaintiff had been awarded substantial damages of £300,000 in respect of a libel action taken

against the respondent. The respondent appealed against the size of the award on various grounds. The respondent claimed that the level of damages itself was excessive. The respondent also alleged that, although the trial judge's comments to the jury regarding the level of damages applicable were legally acceptable, the law in this regard was repugnant to the constitution and that juries should receive more guidance in this area. It was also claimed that the award itself constituted an attack on the freedom of speech as set out under the constitution and the *European convention on human rights*. The Supreme Court rejected the arguments made, holding that serious allegations had been made against the plaintiff. The libel in question was serious and grave. The level of damages awarded could not be said to be disproportionate to the level of injury that the plaintiff had suffered. The appeal was therefore dismissed.

***de Rossa v Independent Newspapers*, Supreme Court, 30/07/99** [FL2332]

Employment and negligence

Negligence – contributory negligence – employer – quantum *of damages – plaintiff injured when he came into contact with live transformer in electricity station – transformer had been switched off and was reconnected during lunch hour – conflict of evidence as to plaintiff's state of knowledge of reconnection – standard of instructions – supervision – 'declaring off' procedure – roping off procedure – level of experience of plaintiff – breach of statutory duty – physical and psychological injuries – plaintiff suspended from employment for other reasons*

The failure by the defendants to fully comply with the 'declaring off' procedure contributed to a very small extent to the accident but, having accepted that the plaintiff had been aware that the transformer had been reconnected, the bulk of the fault was his. So held by O'Higgins J, finding the defendant 15% negligent and the plaintiff 85% negligent, and thereby awarding the plaintiff £14,148.

***Hogan v ESB*, High Court, Mr Justice O'Higgins, 17/12/99** [FL2152]

EMPLOYMENT

Defence Forces

Army – discharge – disciplinary charges – dismissal – denial of fair procedures – judicial review – applicant originally allowed extension on period of service – subsequently applicant convicted of offence in District Court – on conviction conduct downgraded to unsatisfactory and extension of service revoked by army superiors – whether applicant entitled to have original extension restored – Defence Act, 1954 – *Defence Force regulations*

The applicant had completed 21 years' service in the Defence Forces and had been granted a further two years' service. The applicant had subsequently been convicted of an offence related to smuggling and the permission for the extension of service had been revoked. The applicant sought judicial review, claiming that the decision in question was *ultra vires* and of no effect. The respondents argued that the permission to continue service was dependent on the applicant meeting certain conditions which he had failed to do. The High Court upheld the dismissal and refused the reliefs sought by the applicant.

***Toner v Ireland*, High Court, Mr Justice Kinlen, 11/02/2000** [FL2380]

Discrimination

Sex discrimination – employment – equal pay – equal treatment – social security – Community law and national law – interpretation

The European Court of Justice has held that female part-time workers excluded from their company's supplementary pension fund as a result of indirect sex discrimination could claim back their eligibility on the basis of Article 119 EC and of national provisions on equal treatment.

ECJ, Cases C-270/97 (*Sievers*) and C-271/97 (*Schrage*), 10/02/2000 [FL2286]

European Communities

Free movement of workers – freedom to provide services – security firms – public security – Belgian law on the establishment and registration of security firms contrary to Community law

The European Court of Justice has ruled that the Belgian legislation on the establishment and registration of security firms and requiring staff to be resident in Belgium was incompatible with Community law.

***Commission v Belgium*, ECJ, Case C-355/98, 09/03/2000** [FL2389]

Immigration and nationality

Immigration – Turkey – Turkish worker – residence

The European Court of Justice has ruled that the refusal to renew the residence permit of a Turkish worker with full access rights to employment because of late application was unlawful under Community law.

ECJ, Case C-329/97, 16/03/2000 [FL2411]

Maritime law

Statute – interpretation – organisation of working time – rest periods – employees engaged as terminal operatives in Dublin Port – whether dock workers excluded from ambit of legislation governing rest days, breaks and time off – statutory instruments implementing European directive – appeal – Labour Court ruled that workers were 'dock workers' within meaning of legislation – finding stated to be a finding 'of fact' – whether ruling open to re-interpretation – whether a question of fact or of mixed law and fact – submission that it was impossible for Labour Court to make impugned finding

The Labour Court is an expert and experienced tribunal in a way which is not true of the High Court, but since a question of law had been raised (that the Labour Court could not possibly come to the conclusion reached on the basis of the material before it), the court would consider that submission of law without disturbing any findings of fact. While SI No 20 of 1998, which exempts activities connected with 'the operation of any vehicle, train, vessel, aircraft or other means of transport', could *prima facie* capture the employees in question, SI No 21 of 1998 (which refers to 'the provision of services at a harbour or airport') was the more appropriate regulation to govern dock workers.

***Coastal Line Container Terminal v SIPTU (& Other)*, High Court, Mr Justice O'Sullivan, 16/12/99** [FL2159]

ENVIRONMENTAL

Local government and planning

Compulsory purchase order – statutory interpretation – whether lands in question were a nature reserve within meaning of Wildlife Act, 1976 – *statutory designation of area as nature reserve – whether necessary to amend legislation relevant statutory – whether necessary for minister to make a recognition, establishment or designation order in respect of nature reserve* – Heritage Act, 1995 – Local Government (Planning and Development) Act, 1963 – Nature Reserve (Glen of the Downs) Establishment Order, 1980 – Wildlife Act, 1976

The respondent proposed to develop a road scheme to upgrade a section of the N11 national primary route by constructing a dual carriageway through the Glen of the Downs, Co Wicklow. The applicant had undertaken various court proceedings in a bid to stop the development. In these proceedings, the applicant appealed against the decision of the High Court that the respondent was not in breach of the *Nature Reserve (Glen of the Downs) Establishment Order, 1980*. The Supreme Court held that the road works in question did not form part of the nature reserve

and thus statutory modification of the relevant statutory instrument was not required. The decision of the High Court was affirmed and the appeal was dismissed.

***Murphy v Wicklow County Council*, Supreme Court, 02/12/99** [FL2345]

EUROPEAN COMMUNITIES

Financial services

Free movement of capital – foreign investment – public policy – public security – aspects of French law on prior authorisation of direct foreign investment contrary to free movement of capital

In a dispute between the Church of Scientology and the French government, which has become a high profile political case, the European Court of Justice appears to have found against the latter, that a system of prior authorisation of direct foreign investment was contrary to the principle of free movement of capital.

***Eglise de Scientologie v French PM*, ECJ, Case C-54/99, 14/03/2000** [FL2396]

Freedom to provide services

Freedom to provide services – cleansing services – administrative practice – legal certainty

The European Court of Justice has ruled that Italian legislation which required cleansing business to register in Italy without exemption for businesses which may already be registered in their member state of origin, infringed Article 59 EC.

ECJ, Case C-358/98, 09/03/2000 [FL2387]

FINANCIAL SERVICES

Negligence and taxation

Tort – professional negligence – bank – taxation – vicarious liability – tax advice – amnesty – offshore deposits – whether bank had been guilty of providing negligent advice – whether bank under duty to advise client to avail of tax amnesty

The plaintiff had substantial deposits with the defendant bank, some of which were held as overseas deposits for which the plaintiff supplied foreign addresses. The plaintiff claimed that subsequently he became concerned that there may be a substantial tax liability arising in respect of these deposits. The plaintiff claimed that he had sought advice from the defendant as to whether he should avail of the then-current tax amnesty. The plaintiff claimed that the bank had negligently advised him not to avail of the amnesty and as a result of such advice he had suffered damages and was liable to penalties in respect of the monies from the Revenue Commissioners. Geoghegan J in the High Court dismissed the plaintiff's claim. Even though there was evidence that the bank had been actively involved in the plaintiff's tax evasion, no negligence had been proved. There was no evidence to suggest that the bank had taken responsibility for managing the plaintiff's tax affairs nor that the plaintiff had relied exclusively on such advice.

***Gayson v AIB*, High Court, Mr Justice Geoghegan, 28/01/2000** [FL2282]

HEALTH AND SAFETY

Insurance and medicine

Negligence – personal injuries – hospital charges – amount – statutory provision for charges to be levied by health boards in relation to persons injured in circumstances of road traffic accidents caused by negligence – previous enactment provided for a standard charge in relation to such services by persons who were ordinarily ineligible to receive them free of charge – practice of limiting charges awarded under subsequent legislation to those chargeable to ineligible patients under the previous enactment – 'Kinlen Order' – plaintiff injured in road traffic accident caused by defendants' negligence – whether hospital charges payable at standard rate or quantum meruit *– whether statements of minister in Dáil relevant to interpretation of statute*

The assessment of hospital charges under section 2 of the *Health (Amendment) Act, 1986* is properly made on a *quantum meruit* basis rather than by reference to the standard maintenance charges provided for by the *Health Act, 1970* (in respect of hospital services provided by health boards to persons who are not eligible to avail of them free of charge), or by reference to an averaging of costs of hospital beds. So held by the High Court in refusing the application of the health board.

***Crilly v Farrington Ltd*, High Court, Mr Justice Geoghegan, 21/12/99** [FL2200]

HOUSING

Local government

Travelling community – provision of adequate housing – serviced sites – obligation of local authority to provide housing of a reasonable standard – court inspection – whether local authority entitled to serve notice under section 10 of the Housing (Miscellaneous Provisions) Act, 1992

The defendants were seeking to have the plaintiffs, who were members of the travelling community, moved to a serviced site which they claimed would provide adequate facilities. In this regard, they sought to serve the plaintiffs with a section 10 notice. This would direct the plaintiffs to move to the serviced site. The plaintiffs disputed the suitability of the said site. The court of its own motion inspected the area concerned. Kinlen J held that the halting sites in question were suitable for the purposes of the act and were in a proper condition provided certain remedial works were carried out. The High Court therefore ordered that the defendants were entitled to serve the section 10 notice requiring the plaintiffs to move to the site in question. This notice would only apply to those presently halted within a five-mile radius of the area.

***Mongan v South Dublin County Council*, High Court, Mr Justice Kinlen, 17/12/99** [FL2384]

JUDICIAL REVIEW

Road traffic

Road traffic offence – summonses issued by District Court clerk – jurisdiction of District Court judge arising from complaint which led to issue of summonses – whether summons validly issued – whether District Court precluded from hearing matter – the Courts (No 3) Act, 1986, *section 1(4),(7)(a)* – District Court rules 1997, *order 15, rules 1 & 2, order 23, rule 1, order 38* – Petty Sessions (Ireland) Act 1851, *section 10*

The applicant had been convicted of certain road traffic offences. The applicant's previous judicial review proceedings in respect of the offences had been dismissed. In this action, the applicant sought to judicially review the convictions on the grounds that no valid or lawful complaint had been made within six months of the alleged offences as required by the *Petty Sessions (Ireland) Act 1851*. Kelly J dismissed the application, holding that the summons in question had been properly and validly issued on foot of the *Courts (No 3) Act, 1986*. Kelly J held that, even if the summons had been issued under the *Petty Sessions (Ireland) Act 1851* and the time limits arising therein applied, this was a matter to be raised as a defence and not as a bar to the jurisdiction of the District Court to hear the matter.

***Murray v Judge McArdle and DPP*, High Court, Mr Justice Kelly, 05/11/99** [FL1904]

LAND LAW

Financial services

Conveyancing – possession – mortgage – special summons – rate of interest – charge on land – power to

sell – charge – loan agreement – whether moneylender required licence – whether repayment of principal money secured by deed of charge had become due – whether order for possession should be granted – business consisting solely/wholly lending money – Registration of Title Act, 1964, *s62(7)* – Central Bank Act, 1989, *s136* – Money-Lenders Act 1900 *(Section 6 (E)) Order 1993*

The plaintiff had sought possession of the defendant's lands on foot of a loan advanced to the defendant. Laffoy J had rejected the claim of the plaintiff principally on the grounds that the plaintiff did not have the requisite money-lending licence. However, relevant legislation had subsequently come to light which appeared to support the original claim. The Supreme Court held that the matter be remitted to the High Court for rehearing and that the plaintiff discharge the defendant's costs of the proceedings to date.

***Wise Finance v Hughes*, Supreme Court, 12/11/99** [FL2338]

Planning and telecommunications

Planning – lease – telecommunications – rights of way – public highway – access to mast via boithrín *– mobile phone network – injunction – interference – trespass – health hazard – minimal use – whether applicant entitled to injunction preventing interference by protesters – balance of convenience – whether breach of planning permission had occurred* – Local Government (Planning and Development) Act, 1976, *section 27* – Local Government (Planning and Development) Act, 1963

The applicant had applied for and received planning permission in respect of a telephone mast which it required for its mobile telephone network. Despite considerable local opposition, the mast was constructed and a lease entered into providing the applicant with access to the mast via a boithrín. The respondents claimed that part of the right of way provided for in the lease related to lands owned by one of the protestors. The applicant brought proceedings against the protestors alleging unlawful interference. The protestors in turn brought proceedings claiming that the mast was in breach of the planning permission granted. The High Court was satisfied that the balance of convenience favoured the granting of an injunction restraining the defendants from interfering with the mast pending the full trial of the action.

***Eircell Ltd v Bernstoff (& Others)*, High Court, Mr Justice Barr, 18/02/2000** [FL2370]

LEGAL PROFESSION

Negligence

Professional negligence – practice – solicitors – barristers – appeal – order granted setting aside third-party proceedings – whether order correctly granted – whether delay by defendants in joining third party unreasonable – whether third-party notice served as soon as reasonably possible – Civil Liability Act, 1961, *section 27(1)(b)* – Rules of the superior courts 1986, *order 16, rule 8(3)*

The plaintiff had instituted proceeding against solicitors for alleged negligence. The solicitors had joined a barrister as a third party. On an application by the third party, the High Court set aside the third-party notice for the failure by the defendants to serve the third-party notice as soon as reasonably possible. The defendants appealed against the order. The Supreme Court held that in general it was desirable that third party actions are dealt with as part of the main action. In the case in question, the delays that had occurred in joining the third party were not on the whole unreasonable and therefore allowed the appeal against the dismissal of the third-party action.

***Connolly v Casey and Murphy Solicitors*, Supreme Court, 17/11/99** [FL2344]

LOCAL GOVERNMENT

Planning

Development – local government – compensation – plaintiff applied for planning permission – permission granted – permission overturned on appeal – service of notice seeking compensation by plaintiff – whether plaintiff entitled to compensation – statutory interpretation – Local Government (Planning and Development) Act, 1963 – Local Government (Planning and Development) Act, 1990, *ss11, 13* – Local Government (Planning and Development) Compensation Regulations, 1990

The plaintiff had applied for planning permission in respect of an intended development. Permission had been granted by the respondent on two separate occasions but on each occasion the permission had been subsequently overturned on appeal by An Bord Pleanála. The plaintiff had also sought compensation from the respondent pursuant to section 11 of the *Local Government (Planning and Development) Act, 1990*. The respondent had on both occasions served a section 13 notice on the plaintiff, thereby preventing the plaintiff from obtaining compensation while at the same time asserting that the development should receive permission. The second section 13 notice contained a condition which seemed designed to meet the objections of An Bord Pleanála. The plaintiff brought judicial review proceedings seeking an order of *certiorari* in respect of the second section 13 notice and also an order of *mandamus* seeking to have the claim for compensation thereby dealt with. McGuinness J granted the order of *certiorari* but held that, as the respondent would thereby proceed to deal with the issue of compensation, an order of *mandamus* was not necessary.

***Arthur v Kerry County Council*, High Court, Mrs Justice McGuinness, 09/02/2000** [FL2304]

MEDICINE

Negligence and damages

Tort – personal injuries – facial – birthmark – laser treatment – liability conceded – damages – quantum – *general damages – special damages*

The plaintiff had been receiving treatment for a birthmark/port-wine stain. Initially the treatment had been carried out in England. However the technology had then become available in Ireland which the plaintiff availed of. In 1994 a new laser, known as the hexascan laser, had become available in Ireland and this was used on the plaintiff. However on receiving treatment the plaintiff suffered burns and blisters to her face. The consultant who had carried out the treatment stated that the strongest strength had been used and admitted liability. Kelly J made a decree in favour of the plaintiff for £80,000 general damages and £19,800 special damages.

***Tobin v St James's Hospital*, High Court, Mr Justice Kelly, 27/01/2000** [FL2280]

TAXATION

VAT

Sixth VAT directive – excise duty – charges – judgments – temporal effects

The European Court of Justice has ruled that a duty on alcoholic beverage lacked the necessary 'specific purpose' required to be compatible with the *Excise duty directive* but limited the temporal effects of its judgment to claims brought before the judgment date.

***Evangelischer Krankenhaus Wien and Wein & Co*, ECJ, Case C-437/97, 09/03/2000** [FL2381] G

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Eurlegal

News from the EU and International Law Committee
Edited by TP Kennedy, director of education, Law Society of Ireland

The *Electronic signatures directive*

The *Shorter Oxford English dictionary* defines a signature as 'the name (or special mark) of a person written with his or her own hand as an authentication of some document or writing'. The word 'authentication' used in this definition is itself a multi-faceted term, indicating that the signatory identifies himself as the author (or approver) of the document, attests to its integrity at the time of signing, attests to its originality, subscribes to its contents, declares that he has reflected on its contents and accepts its finality. The way in which these different aspects of authentication apply to legally-significant documents will, of course, vary between different types of documents and jurisdictions.

The authentication tasks performed by 'pen-and-ink' signatures on paper documents have to be replicated in the electronic environment. E-commerce, in its widest sense, will flourish only if the essential guarantees to be found in the pen-and-ink environment can be transplanted to the electronic one. Technologies – notably digital signature/encryption technology – exist which enable the essential elements of authentication to be achieved. Such technologies can also provide a guarantee that the document has been unaltered in transit, a function which cannot be guaranteed by the pen-and-ink signature. Concerns may, however, arise as to whether the signature-creation technology used is indeed that of the purported author of the document. The necessary trust can be fostered by relying on a trusted third party to guarantee the relationship between the author and the technology.

A wide variety of initiatives have been made at the international, regional and national level to adapt existing legal rules on signatures to the new electronic age. The need to adapt old doctrine to the demands of e-commerce in an effective and timely way is almost universally acknowledged, and the official Irish approach is no exception. However, the strategies adopted vary widely between states, with broad choices being made between an approach focusing on digital signatures, a two-pronged approach which deals with digital signatures at the same time as seeking to accommodate other new and emerging technologies, and a technologically-neutral 'minimalist' approach focusing on the functions of signatures.

Particular difficulties have arisen in the European Union. The diverse legislative initiatives in the member states have threatened the integrity and functioning of the internal market and the attempts of the European Union to compete effectively in the new global marketplace. A harmonised legal framework for electronic signatures has been introduced by the 1999 *Electronic signatures directive*, providing the basis for future action by the member states. (See 'Directive 1999/93/EC of the European Parliament' (OJ 2000 L13/12) at *http://europe.eu.int/eur-lex/en/lif/dat/1999/en_399L0093.html*.)

The *Electronic signatures directive* was adopted on 13 December 1999. Coming into force on 19 January 2000 – the date of its publication – it is to be implemented by the member states before 19 July 2001.

In August 1999, the Department of Public Enterprise published outline legislative proposals on electronic signatures, electronic contracts, certification-service provision and related areas. This attracted a wide variety of responses. Draft heads of bills, taking these responses and the directive into account, have been circulating widely since January this year. On 25 January, the minister for public enterprise announced that the forthcoming *Electronic Commerce Bill* was to be given priority to ensure early enactment. The bill has not, at the time of writing, been published, though it may be by the time this article appears in print.

The main elements of the directive are outlined below. Where appropriate, indications of the Irish government's likely approach, as seen in its draft heads of bill, are given. However, the forthcoming bill (and the act) may well differ significantly from the draft heads. No attempt is therefore made here to comment on the compatibility of the relevant draft heads with the directive.

Scope of the bill

Based on the establishment, services and internal market-approximation provisions of the *EC treaty*, the purpose of the directive is 'to facilitate the use of electronic signatures and to contribute to their legal recognition'. To this end, it 'establishes a legal framework for electronic signatures and certain certification services in order to ensure the proper functioning of the internal market'. The directive adopts the two-pronged approach discussed above. It is designed to be technologically neutral, while providing a clear framework for the use of digital signatures and functional equivalents.

The directive covers electronic signatures used in the public arena, rather than within 'closed user systems'. This is clearly designed to cover corporate intranets, banking systems and other areas where a suitable private relationship of trust is already present.

Article 1 of the directive states that it does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are Community or national law requirements as regards form; nor will it affect Community and national rules and limits governing the use of documents.

Head 16 of the draft heads of bill provides that the e-commerce enabling provisions of the legislation are not to apply 'for the time being' to: a) laws concerning wills and testaments, trusts and enduring powers of attorney; b) the law governing the creation, acquisition or disposal of interests in immovable property; c) the law

relating to affidavits or statutory/sworn declarations; and d) the rules, practices and procedures of any court or tribunal pending amendment of the rules of court. Although the directive does not specifically provide for the possibility of excluded laws, it appears that such exceptions may be permitted under article 1 of the directive.

Signature creation and verification

'Signature-creation data' is defined as 'unique data, such as codes or private cryptographic keys, which are used by the signatory to create an electronic signature'. A 'signature-creation device' is 'configured software or hardware used to implement the signature-creation data'; a 'secure signature-creation device' is a device meeting the uniqueness, secrecy and integrity requirements specified in annex III of the directive. Conformity with these requirements is to be determined by public or private bodies designated by the member states. A determination of conformity is to be recognised by all member states.

'Signature-verification data' is defined as 'data, such as codes or public cryptographic keys, which are used for the purpose of verifying an electronic signature'. A 'signature-verification device' is 'configured software or hardware used to implement the signature-verification data'. The member states and the commission are to promote the development and use of such devices in the light of recommendations for secure signature verification laid down in annex IV of the directive and in the interests of the consumer.

Certification

The organic link between a person's hand and his signature – and the trust that what is written has been written by him – is missing in the case of electronic signatures. To promote such trust, the directive uses the idea of 'certification'.

At its most basic, a 'certificate' is an 'electronic attestation, which links signature-verification data to a person and confirms the identity of that person'. Such an attestation can, of course, be made by the signatory himself, like a pen-and-ink signatory can expressly state that he is the person signing a particular document. However, greater security may be achieved if a trusted third party issues the certificate in a manner reflecting 'the levels of trust, security and quality demanded by the evolving market'. The directive therefore introduces the idea of a 'qualified certificate' meeting ten conditions set out in annex I and which is provided by a 'certification-service provider'.

Certification-service providers

Article 2(11) defines a 'certification-service provider' as 'an entity or a legal or natural person who issues certificates or provides other services related to electronic signatures'. Anyone may be such a provider and member states may not make the provision of certification services subject to prior authorisation.

Member states may, however, have 'voluntary accreditation schemes aiming at enhanced levels of certification-service provision'. Conditions related to such schemes must be 'objective, transparent, proportionate and non-discriminatory' and member states may not limit the number of such providers for reasons falling within the scope of the directive. Member states are to establish a system for supervising certification-service providers established on its territory, which issue qualified certificates to the public. Annex III of the directive sets out 12 mandatory requirements to be satisfied by certification-service providers issuing qualified certificates, including requirements as to reliability, efficient operation, use of qualified personnel, financial resources and use of trustworthy systems and products.

Draft head 20 contains provisions to implement article 6. The National Accreditation Board, part of Forfás, is developing a voluntary accreditation scheme. A market-based solution is envisaged, possibly a system of self-regulation through a sectoral code of practice. A supervisory scheme is to be introduced by the minister in the future. It is also envisaged that mutual recognition arrangements may be desirable.

Article 6 contains provisions on the liability of certification-service providers issuing or guaranteeing a qualified certificate to the public. In essence, a certification-service provider will be liable for damage caused to those who reasonably rely on such a certificate unless he can prove he has not acted negligently. A certification-service provider may in a qualified certificate indicate recognisable limitations on the use of the certificate or on the value of transactions for which the certificate can be used; there will be no liability for damage where such limits are exceeded.

Draft head 21 contains provisions designed to implement article 6. It is recognised that 'liability is always a difficult topic and the case of certification-service provision is no exception': a whole range of practical questions (for example, the extent of exclusion of liability) and procedural questions (for example, the mechanism for claiming damages) will have to be addressed.

Applying the principle of mutual recognition to certification-service providers, article 4(1) provides that each member state is to apply its national provisions to providers established on its territory and to the services which they provide. Member states may not restrict the provision of certification services originating in another member state.

USEFUL ON-LINE REFERENCE POINTS

For discussions of facets of authentication, see 'The legal aspects of digital signatures' at *http://www.law.kuleuven.ac.be/icri/projects/report.data/executive.htm*, the State of Utah's 'Digital signature tutorial' at *http://www.commerce.state.ut.us/digsig/tutorl.htm*, and 'Digital signature blindness: analysis of legislative approaches to electronic authentication' at *http://cwis.kub.nl/~frw/people/hof/Ds-art.htm*.

For attempts to adapt existing legal rules on signatures to the IT age, see the 1996 UNCITRAL model law on electronic commerce at *http://www.uncitral.org/english/texts/electcom/ml-ec.htm*, the UNCITRAL draft uniform rules on electronic signatures at *http://www.uncitral.org/en-index.htm*, and the 'Digital law survey' at *http://cwis.kub.nl/~frw/people/hof/DS-lawsu.htm*.

The Irish government's approach is detailed at *www.irlgov.ie/tec/communications/communiq.htm*, while the government's policy on cryptography and electronic signatures can be found at *http://www.irlgov.ie/tec/communications/signat.htm*.

See also the European Commission's communication on 'Ensuring security and trust in electronic communication' (COM(97) 503 fin) at *http://www.ispo.cec.be.eif/policy/97503toc.html* and the 'Explanatory memorandum to the proposal for an electronic signatures directive' (COM(98) 297 fin) at *http://www.ispo.cec.be/eif/policy/com98297.html*.

Data protection

Certification-service providers must observe data-protection legislation and privacy requirements 'in order to increase user confidence in electronic communication and electronic commerce'. Article 8(1) thus requires member states to ensure that certification-service providers and national accreditation or supervision bodies comply with the 1995 *Data protection directive*.

Under article 8(2), a certification-service provider which issues certificates to the public may collect personal data only from the data subject, or after his explicit consent, and only where this is necessary for the purposes of issuing and maintaining the certificate. The explicit consent of the data subject is needed if the data is to be collected or processed for any other purposes.

Without prejudice to the legal effect given to pseudonyms under national law, member states are not to prevent certification-service providers from indicating pseudonyms instead of the signatory's real name in the certificate.

Legal effects of electronic signatures

Article 5 contains two rules, reflecting the two-pronged approach. Article 5(1) requires member states to ensure that 'advanced electronic signatures' which are based on a 'qualified certificate' and which are created by a 'secure signature-creation device' are to be treated in the same way as a pen-and-ink signature and are to be admissible as evidence in legal proceedings. Article 5(2) requires member states to ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence solely on the grounds that it is 'in electronic form', is 'not based upon a qualified certificate', is 'not based upon a qualified certificate issued by an accredited certification-service provider' or is 'not created by a secure signature-creation device'. In contrast to the 'absolute rule' in article 5(1), it is open to member states to allow electronic signatures to be used where they are satisfied that essential functional requirements are satisfied.

Article 3(7) allows member states to subject the use of electronic signatures in the public sector to possible additional requirements. These requirements are to be objective, transparent, proportionate and non-discriminatory.

Recital 21 states the importance of ensuring that electronic signatures can be used as evidence in legal proceedings. In deference to national legal systems, it recognises that 'national law governs the legal spheres in which electronic documents and electronic signatures may be used' and that the directive is 'without prejudice to the power of a national court to make a ruling regarding conformity with the requirements of this directive and does not affect national rules regarding the unfettered judicial consideration of evidence'.

Head 5 of the draft heads of bill embodies the principle that information is not to be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form. Head 7 provides that a legal requirement for a signature is to be met if an electronic signature is used. The draft head distinguishes between, on the one hand, a signature required to be given to a 'public body', where the public body must consent to the use of an electronic signature and may impose particular information technology requirements and, on the other hand, a signature to be given to a non-public body, where the recipient must consent to the use of an electronic signature. The rather general reason given for the distinction between 'public' and 'private' bodies is that 'while private bodies are free to lay down procedures, terms and conditions for transactions and communications, the procedures, terms and conditions under which public bodies operate are often specifically laid down by law'.

This provision is not to affect the operation of any other law requiring an electronic communication to contain an 'electronic signature', an 'advanced electronic signature', an 'electronic signature based on a qualified certificate' or 'an electronic signature which is created by a secure signature-creation device'. It thus appears that, specific legal provision apart, electronic signatures *simpliciter* will be sufficient to satisfy the legal requirement.

The issue of admissibility of electronic signatures in legal proceedings is addressed in draft head 15. Nothing in the application of the laws on evidence is to apply so as to deny the admissibility of an electronic signature on the grounds listed in article 5(2) of the directive or 'if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form'. It is clearly for the courts to assess the evidential weight of electronic communications.

Electronic signature products

Article 2(12) broadly defines 'electronic signature products' as 'hardware or software, or relevant components thereof, which are intended to be used by a certification-service provider for the provision of electronic signature services or are intended to be used for the creation or verification of electronic signatures'.

The commission, working with the Electronic Signature Committee, may establish and publish reference numbers of generally-recognised standards for such products in the *EC official journal*; member states are to presume compliance with the annex II(f) and annex III requirements when a product meets these standards. Member states are also to ensure that products complying with the directive are permitted to circulate freely in the internal market. G

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WHAT ARE ELECTRONIC SIGNATURES?

Article 1(1) of the *Electronic signatures directive* defines a 'electronic signature' as 'data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication'. This definition, which includes basic methods of authentication functionally inferior to pen-and-ink signatures, also acts as an element of the definition of an 'advanced electronic signature', which is essential if an electronic signature is to perform the same essential functions as its pen-and-ink counterpart. Article 1(2) thus requires an 'advanced electronic signature' to be uniquely linked to the signatory, to be capable of identifying the signatory, to be created using means that the signatory can maintain under his sole control and to be linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

Recent developments in European law

FREE MOVEMENT OF GOODS

Case C-379/97 *Pharmacia & Upjohn SA, formerly Upjohn SA v Paranova A/S*, judgment of 12 October 1999. Upjohn marked in the EU an antibiotic, clindamycin, in a variety of forms. It used the trademark *Dalacin* in Denmark, Germany and Spain, the trademark *Dalacine* in France and *Dalacin C* in the other member states. Paranova purchased capsules of this antibiotic in France and Greece and marketed them in Denmark under the trademark *Dalacin*. Community law allows the holder of a trademark to prevent an importer marketing products in a member state of import unless this would result in an artificial partition of national markets. The court held it is for the national courts to examine whether it was objectively necessary to replace the original trademark with that of the importing state so that the product could be placed on the market by the parallel importer. This condition of necessity is satisfied if the prohibition imposed on the importer against replacing the trademark hinders effective access to the markets of the importing member state.

INTELLECTUAL PROPERTY

Trademarks

Case T-163/9 *Proctor & Gamble Co v Office for Harmonisation in the Internal Market*, judgment of the Court of First Instance, 8 July 1999. Proctor & Gamble had applied for the registration of *Baby Dry* as a Community trademark in respect of disposable nappies. The court held that the *Baby Dry* phrase clearly showed the intended purpose of the goods. However, it contained no additional feature which would enable a consumer to distinguish Proctor & Gamble's goods from those of other undertakings. It thus was ineligible for registration as a Community trademark.

LITIGATION

Brussels convention

Gerry Hunter v Gerald Duckworth & Co Ltd and Louis Blom Cooper and *Hugh Callaghan v Gerald Duckworth & Co Ltd and Louis Blom Cooper*, unreported judgment of 10 December 1999. The plaintiffs were two of the Birmingham Six. They argued that statements in a booklet written by the second defendant and published by the first defendant had defamed them. The second defendant contested the jurisdiction of the Irish courts. He argued that he had not authorised publication of the booklet in Ireland and that for a person to be sued in a particular jurisdiction he must have responsibility for the alleged harmful event occurring in that jurisdiction. Kelly J rejected this argument. He pointed out that the author's contract with the publisher authorised the publisher to publish the work worldwide. Thus, applying the rule in *Speight v Gospay* ([1891] 60 LJQB 231), which had been approved by the High Court in *Ewin & Ors v Carlton Television* ([1997] ILRM 223), the natural and probable consequence of publication of the booklet was its re-publication in Ireland. This rule provides that the original publisher of a defamatory statement is liable for its re-publication or repetition to a third person where such re-publication was the natural and probable result of the original publication. Given the proximity of the two countries and the high level of interest in the subject in Ireland, it was almost inevitable that it would be re-published here. The proceedings had been properly brought in Ireland and applying Case C-68/93 *Shevill v Presse Alliance* ([1995] ECR I-415), the plaintiffs could seek damages in respect of the alleged harm done to their reputations in Ireland.

TAXATION

VAT

Case C-216/97 *Jennifer Gregg and Mervyn Gregg v Commissioners of Customs and Excise*, judgment of 7 September 1999. Mr and Mrs Gregg run a nursing home in Northern Ireland. They operate it on a commercial basis through a partnership. In a Northern Irish partnership, the individual partners are jointly and individually liable for all debts and liabilities, including VAT. The partnership has no legal personality of its own. Mr and Mrs Gregg applied to be registered for VAT. The Northern Irish Revenue Commissioners refused, as a partnership fell within the scope of the VAT exemption provided for in schedule 9, group 7, item 4 of the *VAT Act 1994*. The Northern Ireland VAT and Duties Tribunal referred the question to the European Court of Justice (ECJ). It sought guidance on the interpretation of article 13A(1) of the *Sixth VAT directive* (Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of member states relating to turnover taxes). It asked whether the terms 'other duly recognised establishments of a similar nature' and 'other organisations recognised as charitable by the member state concerned' appearing in (b) and (g) of that provision excluded from that exemption natural persons running a business.

The ECJ reaffirmed that the terms used to describe the exemptions in article 13 are to be interpreted strictly. These are exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. In addition, while exemptions are granted in favour of activities pursuing specific objectives, most of the provisions also define the bodies that are authorised to supply the exempted services. Those services are not defined by reference to purely material or functional criteria. In article 13A(1), the terms 'body' or 'organisation' are used in some provisions while in others the activity in question is described by reference to individuals in their professional capacity, such as the medical and paramedical professions, dental technicians and teachers giving private tuition. However, this does not give rise to the inference that the exemptions provided for in article 13A(1) are confined to legal persons where it refers expressly to activities undertaken by 'establishments' or 'organisations', while in other cases an exemption may also be claimed by natural persons. This interpretation is not affected by the fact that the specific conditions concerning the status or identity of the economic operator performing the services covered by the exemption are to be interpreted strictly. The terms 'establishment' and 'organisation' are sufficiently broad to include natural persons. As none of the language versions of the directive include the term 'legal person', it can be inferred that the Community legislature did not intend to confine the exemptions to activities carried on by natural persons but meant to extend the scope of activities carried on by individuals. This interpretation is consistent with the principle of fiscal neutrality inherent in the common system of VAT and in compliance, the exemptions provided for in article 13 must be applied. This principle precludes economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned. That principle would be frustrated if the possibility of relying on an exemption was dependent on the legal form in which the taxable person carried on his activity. G

TP Kennedy is the Law Society's director of education.

Getting their due
Law Society President Anthony Ensor delivers the goods to one of the 40 newly-qualified solicitors who attended the society's parchment ceremony last month

Pottering about
Veteran actress Maureen Potter joined Anthony Collins (*right*), senior partner at Eugene F Collins, to launch the new book by solicitor John Costello (*left*) *Law and finance in retirement*

Who asked you?
Dermot Gleeson SC (*left*) offers his review to lecturer and author Dermot Cahill at the recent launch of his book *Corporate finance law*

Designs on your business
Pictured at the launch of the Law Society's new graphic design service for members (see last issue, page 29) were Member Services Executive Claire O'Sullivan, Alec Drew of Baseline Creative Services *(left)*, and Director General Ken Murphy. The society has appointed Baseline to provide design services to members at specially-negotiated rates

Eimear O'Reilly has joined Osborne Recruitment as a recruitment consultant specialising in the legal profession. She was formerly in the legal department of Deutsche Bank

Assembled for the launch
The *Hibernian law journal*, established by a number of apprentice solicitors working in conjunction with the Law Society's Director of Education, TP Kennedy, was officially launched in February in Blackhall Place. Pictured here are (*front row, left to right*) Chief Executive of the Courts Service PJ Fitzpatrick, Attorney General Michael McDowell SC, Chief Justice Ronan Keane, the University of Oxford's Adrian Zuckerman, Dr Eamonn Hall, company solicitor of Eircom plc; (*back row*) Geoff Moore of Arthur Cox, Philip Nolan of Mason Hayes & Curran, TP Kennedy, Marsha Coghlan of A&L Goodbody, UCC's David Gwynn Morgan, and John Meade of McCann FitzGerald

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SADSI
Solicitors Apprentices Debating Society of Ireland

The power of the word

The new century has been an excellent one for the debaters of the Law Society and SADSI. Victory for the Blackhall team in the Jessop and the individual win of Louise Rouse in the *Irish Times* debate in Galway have bolstered the increasing reputation of apprentices within debating circles. The SADSI Ulster Bank Maiden Speakers debate in the Law Society witnessed a new level of debating in Blackhall, with fine displays from the winner, Maria Dillon from Galway, and the entertaining runner-up, John O'Malley from Mayo.

The art of debating and the practice of advocacy are essential tools of the solicitor's trade. As an apprentice, the development of one's skills as an advocate before the courts is a vital part of a complete professional training. While well-honed debating skills will always prove an advantage, it is necessary for all apprentices to gain some experience in simply standing in open court and putting their case to the bench. In some cases, the most difficult element of putting a motion before the court is actually getting to one's feet before the assembled throng of solicitors and barristers.

However, before apprentices 'stand on their hind legs' in a courtroom, it is necessary for them to ascertain whether any right of audience exists in that particular court. The local registrar must be tracked down and he will indicate whether an apprentice will be heard or to what extent he or she will be tolerated before the court. The rule for apprentices differs from court to court and district to district. There is no sense of uniformity and the uncertainty leads apprentices and their masters to shy away from representation in court without the safety net of a barrister or solicitor, thus ensuring that apprentices will never speak until they, too, are fully qualified.

SADSI, with the support of the Law School, is investigating the possibility of negotiating and finalising a scheme for apprentices whereby their status before the courts could be determined. This information would then be made available to all apprentices, masters and court officials, preventing any future complaints from either side of the bench. All submissions, comments or views on apprentices' rights of audience in your area can be sent to me at SADSI, PO Box 7477, Dublin 4.

Keith Walsh

SADSI on-line

SADSI joined the 21st century last month when its website was launched by auditor Keith Walsh and hon secretary Eva Lalor. The website was designed by SADSI and the Law Society's webmaster Claire O'Sullivan and can be viewed at *www.lawsociety.ie*. The site is updated regularly and contains details of upcoming SADSI events as well as Law Society course news and full reports of past gatherings. Contributions and photos can be e-mailed to SADSI2000@yahoo.com.

Speaking out: *Irish Times* debating competition winner Louise Rouse, an apprentice with Arthur Cox, is flanked by Clodagh Beresford, SADSI debating convenor, and Ronan McSweeney, a McCann FitzGerald apprentice and chair of the debate. The event, which took place at NUI Galway on 25 February, is the premier debating competition in Ireland, with some 150 participants from third-level and professional colleges throughout the country. Ms Rouse spoke in favour of a motion questioning the effectiveness of the tribunal process

Starting off with a bang

The first SADSI regional event of the new millennium was a drinks reception held in Busker Brownes, Galway, on 25 February. The bar opened at 7pm, but with many hearty (and thirsty) souls braving nightmarish Friday traffic from Dublin and Cork, it was much later in the evening before all thoughts of plaintiffs and defendants were a dim and misty memory.

The festivities then moved to that well-known Galway night-spot Central Park. After a minor hiccup with the ever-vigilant door staff, Eoghan Wallace displayed newly-acquired arbitration skills to ensure that the party lasted well into the early hours.

Special thanks must go to our kind sponsors Ulster Bank and Guinness, whose generosity and support made the night possible.

David Higgins

Assembled at the Maiden Speakers presentation are (*left to right*) Keith Walsh, SADSI auditor; Josephine Armstrong, Ulster Bank; Clodagh Beresford, debating convenor; Maria Dillon, winner of the Maiden Speaker cup; Dr Brian Hughes, adjudicator; TP Kennedy, chairman of the adjudicating panel; John O'Malley, runner-up; adjudicator Maurice Coffey BL; and adjudicator Jean Kelly

Forthcoming SADSI regional events
sponsored by Ulster Bank

7 April: Aubars, Limerick, 7pm
14 April: The Bailey, Cork, 7pm
20 April: The Odeon, upstairs, Dublin, 7pm
May: SADSI debate; 48th course v combined professional practice courses (53rd, 54th and 55th)
June: Career development day, Blackhall Place
July: SADSI barbecue
26 August: The SADSI ball, Great Southern Hotel, Killarney

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 7 April 2000)

Regd owner: Daniel Magee, Crossmakealagher, Ballyconnell, Co Cavan; Folio: 26691; Lands: Crossmakealagher; Area: 0.819 acres; **Co Cavan**

Regd owner: Andrew Galligan, Ardleny, Kilnaleck, Co Cavan; Folio: 5629; Lands: Ardleny; Area: 9.357 acres; **Co Cavan**

Regd owner: John McCabe, Drumlion, Ballinagh, Co Cavan; Folio: 5317F; Lands: Drumlion, Garrymore; Area: 12.875 acres; **Co Cavan**

Regd owner: Matthew O'Neill & Margaret O'Neill; Folio: 17741F; Lands: Known as a plot of ground situate in the Townland of Knocknacullen West situate on the north side of Blareny Road in the Parish of St Mary' s Shandon and county borough of Cork; **Co Cork**

Regd owner: Finbarr Canty; Folio: 48954F; Lands: Known as a plot of ground situate in the Townland of Kilpatrick, and Barony of Kinalea, in the County of Cork; **Co Cork**

Regd owner: Michael Anthony Hughes, 84 West Street, Drogheda, Co Louth, and 4 Nottinghill Court, Malone Road, Belfast, County Antrim; Folio: 1516F; Lands: Leckenagh; Area: 1.913 acres; **Co Donegal**

Regd owner: David Gallagher, Deerpark, Newtowncunningham, Co Donegal; Folio: 31338; Area: 0.62 acres; Lands: Castleforward Demesne; **Co Donegal**

Regd owner: Michael Cashell; Folio: 10079; Lands: Townland of Rush and Barony of Balrothery East; **Co Dublin**

Regd owner: Paul Byrne and Karen Byrne; Folio: 88496F; Lands: Townland of Yellow Walls and Barony of Coolock; **Co Dublin**

Regd owner: Edward Louis Hughes; Folio: 16308; Lands: Townland of Rush and Barony of Balrothery East, a plot of ground situate to the south side of Channel Road in the Town of Rush; **Co Dublin**

Regd owner: Anthony and Theresa Drummond; Folio: 31330F ; Lands: Townland of Hackettsland and Barony of Rathdown; **Co Dublin**

Regd owner: Thomas Dawson; Folio: 7748; Lands: Townland of Rush Barony of Balrothery East; **Co Dublin**

Regd owner: John and Mary Furlong; Folio: 21597F; Lands: Property situate on Belton Park Road in the Parish of Artaine and District of Clonturk; **Co Dublin**

Regd owner: Graham Flynn and Nicola Duffy; Folio: DN112713F; Lands: Known as 24 St Andrew's Drive, Lucan, situate in the Townland of Ballyowen and Barony of Newcastle; **Co Dublin**

Regd owner: Barbara Fitzsimons; Folio: DN102535F; Lands: Townland of Knocklyon and Barony of Uppercross; **Co Dublin**

Regd owner: John Neary and Pauline Doherty; Folio: 68982F; Lands: Townland of Kilgobbet and Barony of Rathdown known as 61 Woodlands Road; **Co Dublin**

Regd owner: Michael Molloy, Seamus Macconradi and William Gogarty; Folio: DN15296F; Lands: Townland of Ballymakaily and Barony of Newcastle; **Co Dublin**

Regd owner: Francis Murray; Folio: 37419F; Lands: Situate in the Parish of St Catherine and South Central District, known as 5 Griffith Terrace; **Co Dublin**

Regd owner: Catherine McDonald; Folio: DN3901L; Lands: Townland of Claremont and Barony of Coolock; **Co Dublin**

Regd owner: Michael O'Connell; Folio: DN3314L; Lands: Property known as 2 Sliebloom Road, Drimnagh, situate in the Parish and District of Crumlin; **Co Dublin**

Regd owner: Kevin and Mary McCormack; Folio: 85658L; Lands: Property known as Unit 7, Block B, Greenhills Business Park situate in the Town and Parish of Tallaght; **Co Dublin**

Regd owner: Colin McMahon; Folio: 88526L; Lands: Known as 65 Ballygall Road East, Glasnevin, Dublin 11; **Co Dublin**

Regd owner: Evelyn O'Kelly; Folio: 16526L; Lands: Property situate on the north side of Tonlegee Road, Parish of Coolock, District of Coolock East; **Co Dublin**

Regd owner: Catherine Traynor; Folio: 12255; Lands: Townland of Kill of the Grange and the Barony of Rathdown; **Co Dublin**

Regd owner: Arthur and Kathleen Scarff; Folio: DN8738; Lands: Townland of Jordanstown and Barony of Balrothery West; **Co Dublin**

Regd owner: Patrick Slattery and Antoinette Rogan; Folio: 5174; Lands: Part of the property situate on the south side of Brook Lane in the Village of Rush, Townland of Rush and Barony of Balrothery East; **Co Dublin**

Regd owner: Dermot Tighe; Folio: 128224F; Lands: Townland of Clonsilla and Barony of Castleknock, known as 10 Castlefield Park, Clonsilla; **Co Dublin**

Regd owner: Peter Reynolds, 83 Clonsilla Road, Blanchardstown, Dublin 15; Folio: 50963F; Lands: Blanchardstown, Dublin; **Co Dublin**

Regd owner: Patrick Curran, Seershin, Barna, County Galway; Folio: 24541; Lands: Townland of Seershin and Barony of Moycullen; Area: 27.310 acres; **Co Galway**

Regd owner: John F Murphy, Ryehill, Monivea, County Galway; Folio: 22173F; Lands: Townland of 1) Caherlissakill, 2) Garraunard, 3) Knockauncarragh, 4) Knockauncarragh, 5) Knockauncarragh, and Barony of Tiaquin; Area: 1) 6.575 acres, 2) 10.819 acres, 3) 17.044 acres, 4) 3.769 acres, 5) 0.594 acres; **Co Galway**

Regd owner: Marie Nagle and Thomas Nagle (deceased); Folio: 32256; Lands: Townland of Cloonalour and Barony of Trughanacmy; **Co Kerry**

Regd owner: John Roche; Folio: 7808; Lands: Baunreagh and Barony of Shillelogher; **Co Kilkenny**

Regd owner: Margaret Khalil; Folio: 15505; Lands: Meallaghmore Upper and Barony of Kells; **Co Kilkenny**

Regd owner: Thomas McGrath; Folio: 7098F; Lands: Townland of Ballinvreena and Barony of Coshlea; **Co Limerick**

Regd owner: Matthew J Lyons, Lamagh, Newtownforbes, Co Longford; Folio: 9714; Lands: Lamagh, Minard, Corry; Area: 35.01 acres; **Co Longford**

Regd owner: Brendan McCormack, Bohernamoe, Ardee, Co Louth, and Old Dawsons Demesne, Arde, Co Louth; Folio: 7970; Lands: Dawson-Demesne; Area: 0.50 acres; **Co Louth**

Regd owner: Anthony Campbell, Garryduff, Blackfort, Castlebar, Co Mayo; Folio: 17819; Lands: Townland of Garryduff and Barony of Carra; Area: 0a 1r 6p; **Co Mayo**

Regd owner: Frank Byrne, Gallow, Kilcock, Co Meath; Folio: 17465; Lands: Gallow; Area: 1 acre; **Co Meath**

Regd owner: Anthony Jackson, Irishtown, Gormanstown, Co Meath; Folio: 24363; 26423; Lands: Irishtown; Area: 9.694 acres; **Co Meath**

Regd owner: Francis Joseph Hughes, Cordevlis, Castleshane, Co Monaghan; Folio: 10618; Lands: Cordevlis; Area: 10.84 acres; **Co Monaghan**

Regd owner: Patrick Coyle, Drumfurrer, Carrickroe, Co Monaghan; Folio: 2067; Lands: Drumfurrer; Area: 5.119 acres; **Co Monaghan**

Regd owner: Julia McEvoy (deceased); Folio: 12101; Lands: Finter and Barony of Geashill; **Co Offaly**

Regd owner: Laurence P Greene; Folio: 1732; Lands: Cloghmoyle and the Barony of Clonlisk; **Co Offaly**

Regd owner: Andrew Browne; Folio: 15313; Lands: Lettybrook or Clooneen and Barony of Ballybritt; **Co Offaly**

Regd owner: Peadar O'Neill; Folio: 2533F; Lands: Ballyfore Big and Barony of Coolestown; **Co Offaly**

Regd owner: Mary E Frawley, Galway Road, Roscommon; Folio: 30203; Lands: Townland of Ballinagard and Barony of Ballintober South; Area: 0.587 acres; **Co Roscommon**

Regd owner: Martin Flynn (as tenant in common of an undivided moiety), Moydrum, Athlone, Co Westmeath; Folio: 2159F; Lands: Townland of Carrowmurragh and Barony of Athlone South; Area: 0a 3r 25p; **Co Roscommon**

Regd owner: John Edward McMaster, Rathbarron, Coolaney, Co Sligo; Folio: 9210; Lands: Townland of Rathbarron and Barony of Leyny; Area: 9a 1r 10p; **Co Sligo**

Regd owner: Brendan and Nancy Lanigan; Folio: 1177L; Lands: Townland: A leasehold interest in the property known as 144 McDermott Road, Cork Road, situate in the Parish of St John's Without; **Co Waterford**

Regd owner: New Friendship Inn Ltd; Folio: 8752F; Lands: Townland: A plot of ground situate on the south side of the Cleaboy Road in the Parish of Trinity without; **Co Waterford**

Regd owner: Seamus Leonard, Delvin, Co Westmeath; Folio: 10974; Lands: Ballinlough, Balrath South, Ballyhealy or Ballinure, and Bolandstown; Area: 36.244 acres; **Co Westmeath**

Regd owner: Annie O'Brien, Johnstown, Slanemore, Mullingar, Co Westmeath; Folio: 4242; Lands: Johnstown; Area:

59.238 acres; **Co Westmeath**

Regd owner: William Anthony Brady; Folio: 4380F; Lands: Lake Big and Barony of Forth; **Co Wexford**

Regd owner: James Brennan (deceased); Folio: 6910; Lands: Curraun and Barony of Bantry; **Co Wexford**

Regd owner: Thomas Swift; Folio: 2554; Lands: Townland of Oldcourt and Barony of Talbotstown Lower; **Co Wicklow**

WILLS

Brehony, James, late of Derreenaskeagh, Ballinafad, Boyle, Co Sligo. Would any person having knowledge of a will executed by the above named deceased who died on 27 September 1999, please contact Sheridan & Co, Solicitors, Boyle, Co Roscommon, tel/fax: 079 63542

Byrne, Michael James (deceased), late of Lower Kilnamanagh, Frenchpark, Castlerea, Co Roscommon and formerly of 228 Keeper Road, Drimnagh, Dublin 12. Would any person having knowledge of a will executed by the above named deceased who died on 17 September 1999 at St Thomas Hospital, Lambeth, London, please contact John L Mulvey & Co, Solicitors, Main Street, Tallaght, Dublin 24, tel: 01 4515055, fax: 01 4515188

Conneely, Thomas, late of Lurgan Village, Inishere, Aran Islands, Co Galway. Would any person having knowledge of a will executed by the above named deceased who died on 23 February 1998, please contact Andrew Wiseman & Co, Solicitors, 46 Park Street, Dundalk, Co Louth, tel: 042 9329222

Dullaghan, Patrick, late of Jenkinstown, Dundalk, Co Louth. Would any person having knowledge of a will executed by the above named deceased who died on 4 March 1963, please contact James T Murphy, Daniel O'Connell & So, Solicitors, Francis Street, Dundalk, Co Louth, tel: 042 9334965, fax: 042 9336678

Ferry, Grace, late of Meenatole, Ramelton, Co Donegal. Would any person having knowledge of the whereabouts of the original will dated 29 February 1984 of the above named deceased who died on 26 March 1999, please contact VP McMullin, Solicitors, Port Road, Letterkenny, Co Donegal, tel: 074 23033, fax: 074 24607, reference: BOM/ec

Foley, Laurence, late of Aghold (otherwise Aghowle), Co Wicklow. Would any person having knowledge of a will executed by the above named deceased who died on 5 December 1921, witnesses being one Thomas Kenny and one Patrick Kenny, who died on 16 September 1927 at Aghold (otherwise Aghowle), in the county of Wicklow, please contact John J Duggan & Co, Solicitors, College Street, Carlow, tel: 0503 31848/31124, reference: DM/B/33

Giltrap, Robert (deceased), late of Kilmoroney, Athy, Co Kildare. Would any person having knowledge of a will of the above named deceased who died on 7 February 1999, please contact H.G. Donnelly & Son, Solicitors, Duke Street, Athy, Co Kildare, tel: 0507 31284, fax: 0507 31670

Hannon, Winifred Agnes (otherwise Una), late of 38 Woodstock Court, Ranelagh, Dublin 6 and formerly of 41 Villiers Road, Rathgar, Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 6 October 1999, please contact Rochford, Gallagher & Co, Solicitors, Ballymote, Co Sligo, tel: 071 83309, fax: 071 83467

Holland, Joseph (deceased), late of 17 Conor Clune Road, Navan Road, Dublin 7, retired garda. Would any person having knowledge of a will executed by the above named deceased who died on 15 November 1999, please contact Arthur O'Hagan, Solicitors, 9 Harcourt Street, tel: 01 4758701, fax: 01 4781583, reference: MC

Lacy, Mary Patricia (deceased), late of Ballymilish, Dungriffin Road, Howth, Dublin 13, and formerly of Crossgarvey, Howth, Co Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 9 October 1995, please contact Deirdre Lacey, tel: 01 6183664 or fax: 01 6184562

McEarley, George Joseph, late of Kickham Street, Carrick-on-Suir, Co Tipperary. Would any person having knowledge of a will executed by the above named deceased who died on 23 November 1996, please contact MJ O'N, Quirk & Co, Solicitors, Main Street, Carrick-on-Suir, Co Tipperary, tel: 051 640019, fax: 051 641376, e-mail: mjonquirk@securemail.ie

Neville, Denis, late of 37 North Summer Street, Dublin 1 and also late of 7 Abbey Hall, New Ross, Wexford. Would any person having knowledge of a will executed by the above named deceased who died on 12 March 2000, please contact McKeever Rowan, Solicitors, Enterprise Building, 5 Harbourmaster Place, International Financial Services Centre, Dublin 1, tel: 6702990, fax: 6702988, e-mail: byoung@law.mckeever-rowan.ie

O'Brien, Anne, late of 21 Ballsbridge Avenue, Ballsbridge, Dublin 4 and formally of 29 Butterfield Drive, Rathfarnham, Dublin 14. Would any person having knowledge of a will executed by the above named deceased who died on 17 February 2000, please contact Young & Co, Solicitors, Charleston Road, Dublin 6, tel: 01 4979091, ref: 00/27/PK

O'Donnell, Neil Anthony (deceased), late of 42 Bath Street, Irishtown, Dublin 4. Would any person having knowledge of a will executed by the above named deceased who died on 22 February 2000, please contact Mr N O'Donnell, c/o 11 Riverside Cottages, Templeogue, Dublin 6

O'Sullivan, Claire (deceased), late of 36 Sundrive Park, Ballinlough, Cork. Would any person having knowledge of a will executed by the above named deceased, who died on 1 February 2000, please contact Philip Wm Bass & Co, Solicitors, 9 South Mall, Cork, tel: 021 270952, fax: 021 277882

Rogers, Bridget (deceased), late of 42 Haunch Lane, Kings Heath, Birmingham, England. Would any persons having knowledge of the original will executed by the above named deceased on 20 September 1994, said deceased having died on 22 January 1996, please contact M/s T Kiersey & Co, Solicitors, 17 Catherine Street, Waterford, tel: 051 874366, fax: 051 870390

Rushe, William (deceased), late of Drimeen, Moycullen, Co Galway. Would any person having knowledge of a will executed by the above named deceased who died on 2 October 1998, please contact Matthew Molloy & Co, Solicitors, 4 St Brendan's Road, Woodquay, Galway, tel: 091 567545

Smyth, Henry William (deceased), late of 104 Sorrento Road, Dalkey, Co Dublin. Would any person having knowledge of a will executed by the above named deceased who died on 27 November 1998 at St Vincent's Hospital, Elm Park, Dublin 4, please contact McNamara & Company, Solicitors, 60 Upper Grand Canal Street, Dublin 4, tel: 01 668 0005. Further, would any person having knowledge of the whereabouts of the original will of Henry William Smyth, deceased, made 24 August 1994, please contact McNamara & Company as aforesaid

Thompson, John (deceased), late of 354 Old Greenfield, Maynooth, Co Kildare. Would any person having knowledge of a will of the above named deceased who died on 21 December 1999, please contact Mary Cowhey & Co, Solicitors, Main Street, Maynooth, Co Kildare, tel: 01 6285711, fax: 01 6285613

Whelan, James (otherwise Seamus) (deceased), late of 10 Clifden Crescent, Newcastle, Galway City. Would any person having knowledge of a will executed by the above named deceased who died on 21 February 2000, please contact Geoffrey Browne & Co, Solicitors, Augustine Court, St Augustine Street, Galway, tel: 091 568713, fax: 091 561279

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candidate. Apply in confidence to M Cashin of M Cashin & Associates, 3 Francis Street, Ennis, Co Clare

Post-professional course apprentice required for Limerick city practice. Applications with CV to **Box No 31**

Assistant solicitor required. Post-qualification experience in conveyance, probate and litigation desirable but not essential. Excellent conditions and salary. Apply with CV to Gerard Jones & Co, Solicitors, Main Street, Carrickmacross, County Monaghan, tel: 042 9661822

Solicitor required for busy Midlands practice. Experience required in conveyancing, litigation and commercial matters. Attractive salary and excellent work conditions. **Reply to Box No 32**

Solicitor available for full time or locum position, from April 2000, in Co Galway and Co Clare area. **Reply to Box No 33**

Assistant solicitor required for vibrant, technologically-efficient general practice in Mullingar, Co Westmeath. Might suit newly or recently-qualified solicitor who has dealt with all aspects of general practice to include conveyancing, litigation, probate, family law etc. Immediate position available. Apply to **Box No 34** with full details and CV

Solicitor with over ten years' experience in general practice seeks position in Cork city or county. **Reply to Box No 35**

Are you a solicitor keen to try a new environment in the West of Ireland – within 25 minutes of Galway City? Immediate position available in technologically-efficient general practice for applicant with experience in conveyancing, litigation, probate and taxation. Please send CV to: Ken Coleman, Messrs Ardagh, Horan, Accountants, 168 Walkinstown Road, Walkinstown, Dublin 12

Solicitor required for practice in North West. Some litigation experience would be helpful together with the ability to work on own initiative. Reply in strictest confidence with CV to **Box No 36**

Solicitor with five years' post-qualification experience in litigation and conveyancing available for locum cover from 1 June to end September. Dublin and surrounding areas. **Reply to Box No 37**

Bright, ambitious, young solicitor wanted, 2-5 years' PQE, Dublin area, equity share, benefits, excellent package. Interest in the Internet and technology required. Business-minded applicant with typing skills desired. Some knowledge of other legal systems an asset, but not essential. Northern Irish or UK solicitors considered. **Reply to Box No 38**

Solicitor, mid-thirties, six years' PQE in conveyancing, litigation and district court work seeks employment in Tipperary, Kilkenny, Waterford or East Cork. **Reply to Box No 39**

Work hard/play hard! Great role for dynamic sec with legal exp-D2 area, flexi hours & bens! c£20k ph Gina @ **OSBORNE** 6628686/fax 6628689/email osbornerec@eircom.net

MISCELLANEOUS

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

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

Personal injury claims, employment, family, criminal and property law specialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford) and Birmingham. One of our staff is in Ireland for one week in every month. Legal aid available to clients that qualify. Contact David Levene & Co at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, England, tel: 0044 181 881 7777, or The McLaren Building, 35 Dale End, Birmingham B4 7LN, tel: 0044 121 212 0000. Alternatively e-mail us on info@davidlevene.co.uk or visit our website at www.davidlevene.co.uk.

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

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

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

For sale – ordinary seven-day pub licence in Waterford city. Apply in writing to BM Cahill & Co, Solicitors, 14 Catherine Street, Waterford

Established legal practice for sale. West of Ireland. Contact **Box No 39a**

Office space available for sharing in city centre practice, 500 to 600 square feet. Reply to **DX Box Number 1052**

Ordinary seven-day publican's licence available immediately. Please reply in writing stating price offered to **Box No 39b**

Ordinary seven-day intoxicating liquor licence required. Please furnish details to Kelly & Ryan, Solicitors, Manorhamilton, Co Leitrim, Ref: KR

Wanted: ordinary seven-day publican's licence for purchase in the context of new licensing application. Please contact O'Shea Russell, Solicitors, Main Street, Graignamanagh, Co Kilkenny, tel: 0503 24106/24642, fax: 0503 24687

Ordinary seven-day publican's licence required, anywhere in Ireland. Please reply to Coakley Moloney, Solicitors, 49 South Mall, Cork, reference PD/OD

Partnership-type position available in a sole trading established legal costs accountancy practice; substantial sum required for share in practice. This opportunity would suit person with legal background willing to learn and further develop the business. **Reply to Box No 39c**

EYE INJURIES AND OPHTHALMOLOGIAL NEGLIGENCE

Mr Louis Clearkin ChM, FRCS, FRCOphth, DO, MAI, MEWI
Consultant Ophthalmic Surgeon
Experienced expert witness in ophthalmological personal injury, medical negligence and civil litigation

Renuntiabo, 8 Rose Mount,
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TITLE DEEDS

Landlord and Tenant Acts, 1967-1987* and the *Landlord & Tenant (Ground Rents) (No 2) Act, 1978

Application by David Tracey and Stephen Hand

Take notice that any person having an interest in the freehold estate of the following property: all that and those the property known as 3 Ballybough Road, Ballybough, in the City of Dublin being portion of the premises demised by an indenture of lease dated 19 November 1919 between Mary Jane Whelan of the one part and Kathleen Mary Seagrave of the other part and therein described as 'all that and those that piece or plot of ground with five dwellinghouses and premises then erected thereon called and known as numbers 2, 3, 4, 5 and 6 Edward Terrace' for a term of 900 years from 15 November 1919 subject to the yearly rent of £25 and the covenants and conditions therein set out.

Take notice that David Tracey and Stephen Hand intend to submit an application to the county registrar for the county/city of Dublin for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any notice being received, David Treacy and Stephen Hand intend to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis

that the person or persons beneficially entitled to the superior interest, including the freehold reversion in the premises, are unknown or unascertained.
Signed: Cullen & Co, Solicitors, 86/88 Tyrconnell Road, Inchicore, Dublin 8
9 March 2000

***Landlord and Tenants Acts, 1967-1984* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: application by Michael & Breda McInerney of 28 Main Street, Cashel, Co Tipperary**
Take notice that any person having an interest in the freehold estate of the following property all that the said dwellinghouse, shop yard and premises situate at Main Street, Cashel in the Barony of Middlethird and County of Tipperary bounded on the north by Main Street, Cashel on the south by the premises belonging to Mrs Corcoran, on the east by a shop and premises the property of Patrick McInerney & Sons Limited and on the west by a house the premises belonging to Mrs Corcoran. Particulars set out in an indenture of assignment dated 22 September 1966 and made between John English of the one part and Patrick McInerney & Sons Limited of the other part being a yearly tenancy subject to the annual rent of £20, subject to the exception and reservations and the convenants and conditions set out therein being the property now known as 28 Main Street, Cashel, County Tipperary.

Take notice that Michael and Breda McInerney intend to submit an application to the county registrar for the County of Tipperary for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold in superior interest in the aforesaid property are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any notice being received, Michael & Breda McInerney intend to proceed with the application before the county registrar on 17 May 2000 at 12.30pm and will apply to the county registrar for the County of Tipperary for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
Signed: John P Whelan & Co, Solicitors, 68 Queen Street, Clonmel, Co Tipperary.
6 March 2000

***Landlord and Tenant (Ground Rents) Acts, 1967-1984*: notice of intention to acquire a fee simple (section 4)**
To the person or persons for the time being entitled to the interest of Patrick J O'Connor of 49 Queen Street, Dublin, auctioneer, in the premises hereinafter described under the lease hereinafter described. And all superior interest(s) (if any).

Description of land: all that part of the premises formerly known as 'all that part of the lands of Tallaght in the occupation of Jeremiah Murray, farmer containing one acre 18 perches statute measure or thereabouts with the dwelling house and offices erected thereon situate in the barony of Upper Cross and County of Dublin' and now known as 'The Corner House', Main Street, Tallaght in the County of Dublin.

Particulars of applicant's lease or tenancy: lease dated 22 February 1916 between Patrick J O'Connor (lessor) and Jeremiah Murray (lessee) for a term of 100 years from 4 July 1916 at the year rent of £12 and subject to the covenants and conditions therein contained.

Take notice that the applicant, Sandra Doyle of 'The Corner House', Main Street, Tallaght, Dublin 24, being a person entitled under the provisions of sections 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, proposes to purchase the fee simple interest in the lands described above.
Signed: Eugene F Collins, Temple Chambers, 3 Burlington Road, Dublin 4 (solicitors for the applicant).
13 March 2000

Landlord and Tenants Acts, 1967-1994* and the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978
An application by BB Electrical Services Limited and Patrick Bolger and Brendan Bolger
Take notice that any person having an interest in the freehold estate of the following properties: 717 South Circular Road, Dublin 8, 719 South Circular Road, Dublin 8, 721 South Circular Road, Dublin 8, 723 South Circular Road, Dublin 8, 725 South Circular Road, Dublin 8, 727 South Circular Road, Dublin 8.

Take notice that BB Electrical Services Limited and Patrick Bolger and Brendan Bolger intends to submit an application to the county registrar for the city of Dublin.

For the acquisition of the freehold interest in the aforesaid properties and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received BB Electrical Services Limited and Patrick Bolger and Brendan Bolger intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.
Signed: Kevin Gaffney, Gaffney Halligan & Co, Artane Roundabout, Malahide Road, Dublin 5.
9 March 2000

***Landlord and Tenant (Ground Rents) Acts, 1967-1984*: notice of intention to acquire the fee simple**
To: The person or persons for the time being entitled to the interest of John Bianconi in the premises hereinafter described. Any person entitled to any superior interest (including the freehold reversion) in the said premises

1. Description of the land to which this notice refers: all that and those the yard or plot of ground situate at the junction of Merchants Road and New Dock Street in the City of Galway, in the Parish of St Nicholas, Barony of Galway and County of Galway now comprising the premises known as 37 Merchants Road (being more particularly referred to at 43a, 43b and 44 Merchants Road and 20 New Dock Street on the valuation map)
   Particulars of applicant's lLease or tenancy: lease dated 22 April 1912 whereby the said premises were demised by John Bianconi to Simon Peter Corbett for the term of 99 years from 1 July 1912 subject to the yearly rent of £7 and to the covenants and conditions therein contained.

Take notice that an application will be submitted by Gerard Conneely to the county registrar for the county of Galway for the acquisition of the freehold interest in the aforesaid property and any person asserting that they hold the lessor's interest or any superior interest in the aforesaid premises are called upon to furnish evidence of title to the below named solicitors within 21 days from the date of this notice.

In default of such notice being received, the application will proceed on the basis that the person or persons beneficially entitled to the lessor's interest or to any superior interest, including the freehold reversion, are unknown and unascertained.
Signed: Kilfeather & Co, Solicitors, The Halls, Quay Street, Galway, Solicitors for the applicant.
23 March 2000

***Registration of Title Act, 1964*: application of Nora Lynch and Patricia Grogan in respect of property known as No 311 Clontarf Road, Dublin 3**
Take notice that Nora Lynch of 17 Grange Park, Baldoyle, Dublin 13 and Patricia Grogan of 310 Clontarf Road, Dublin 3 have lodged an application for their registration on the freehold register free from encumbrances (except as set out in the application) in respect of the above name property.

The original documents of title specified in the schedule hereto are stated to have been lost or mislaid. The application may be inspected at this registry.

The application will be proceeded with unless notification is received in the registry within one calendar month from the date of publication of this notice that the original documents of title are in existence.

Any such notification should state the grounds on which the documents of title are held and quote reference D1998DN023511P. The missing documents are detailed in the schedule hereto.
Signed: Michael O'Neill, Chief Examiner of Titles
23 February 2000

Schedule
1. Original lease dated 17 April 1899, Edward Vernon to George Tighe Moore
2. Original lease dated 24 May 1905, Edward Vernon to George Tighe Moore
3. Original assignment dated 29 December 1954, William HG Lavery to Patrick O'Gorman
4. Original mortgage dated 31 December 1954, Patrick O'Gorman to William HG Lavery
5. Original reconveyance of mortgage dated 31 January 1958, William HG Lavery to Patrick O'Gorman

***Landlord and Tenants Acts, 1967-1994* and the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*: an application by Leo Morrin and Andrew Morrin**
Take notice that any person having an interest in the freehold estate of the following property: all that and those the premises known as Number 101 Tyrconnell Road, Inchicore in the city of Dublin. Take notice that Leo Morrin and Andrew Morrin intend to submit an application to the county registrar for the city of Dublin.

For the acquisition of the freehold interest in the aforesaid premises and any party asserting that they hold a superior interest in the aforesaid premises are called upon to furnish evidence of title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the aforesaid Leo Morrin and Andrew Morrin intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
Signed: Patrick Donagby & Co, Solicitors, 13-16 Dame Street, Dublin 2
20 March 2000

Solicitor goes up in smoke

Peter McDonnell: The criminal system needs radical overhaul

'I was fascinated by Perry Mason. I loved all that 'good-versus-evil' stuff'

Peter McDonnell, principal of Peter McDonnell & Associates, made Irish legal history in 1997 when he became the first solicitor to issue proceedings against tobacco companies for injuries and disease caused by their products. He was also the first Irish solicitor to be awarded the International Quality Standard. A graduate of UCD, he qualified in 1977 and then spent four years working in New York and San Francisco. In 1986 he set up his own practice and in 1988 he took over the Dublin firm Michael J O'Neill & Son. He is currently chairman of the Association of Personal Injury Lawyers.

What attracted you to a career in law?
As a child growing up in Castleblayney, Co Monaghan, in the sixties, I was fascinated by *Perry Mason*. I loved all that 'good-versus-evil' stuff, but, more important, I was terribly taken with the idea of a career where I could make a difference – a career where I would never be bored, would always be dealing with real-life dramas and problem-solving.

Which living person do you most admire, and why?
Without doubt, Nelson Mandela. I have boundless admiration for the manner in which he stuck to his principles through decades of imprisonment; the way he embraced his enemies despite what they had put him through; how he managed to inspire people to make the political process in South Africa work; the fact that he never let personal bitterness distort his view of the world.

What is the best piece of advice you ever got?
To finish college! When I was 18 years of age, and had just finished my second year in UCD, I took a job driving lorries and earning £500 a week – massive money in those days! My father almost had a heart attack trying to persuade me to finish college instead of sticking with making tons of money. Luckily, I bowed to his better judgement and resumed my law studies after a few months.

Which case do you wish you had been involved in?
No question. The Brigid McCole case. The lawyers involved did a great service to Irish society. They knew 'Big Brother' had poisoned thousands of people and had tried to cover it up. Without that case, we would never have had the Hepatitis C tribunal, or the safeguards that have now been put in place to protect innocent people.

Best decision you ever made?
To specialise exclusively in personal injuries law. This is possible in a Dublin city-centre practice but unfortunately it is very difficult in the suburbs and towns.

Worst decision you ever made?
Like Edith Piaf, no regrets.

How do you cope with stress?
From the time I first began practising as a solicitor in 1980, I have always started my working day at 6am. To keep fit, I play golf and tennis. I go horse riding. I love water skiing, snow skiing and catamaran sailing. I go to the gym every day at lunchtime – not always for a workout. Sometimes, just for a sauna.

If you could make one change to the legal system, what would it be?
Whereas the personal injury system is working very well at the moment, in Dublin in particular the criminal system needs radical overhaul. Delays favour the criminal. Overall, society is not being served well by the present system.

Time management tips?
Delegate, delegate, delegate. Start work a couple of hours before everyone else. My own staff start work a couple of hours before the opposition. By 7am this place is hopping! I'm lucky, though, I have an exceptional team of people. They're all self-starters. Best of all, my right-hand man is a woman!

Pet hate?
Things which can be fixed by the stroke of a pen and are not. For example, Dublin is filthy. The contents of the black refuse sacks are strewn around the streets and roads of Dublin every morning. Please make wheelie bins compulsory for domestic and commercial refuse. The thugs are given a free hand to mug and steal from the natives and tourists in Viking Dublin. Please put uniformed gardaí on the streets and take the thugs off the streets. G