Law Society Gazette

Regulars

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Cover Story

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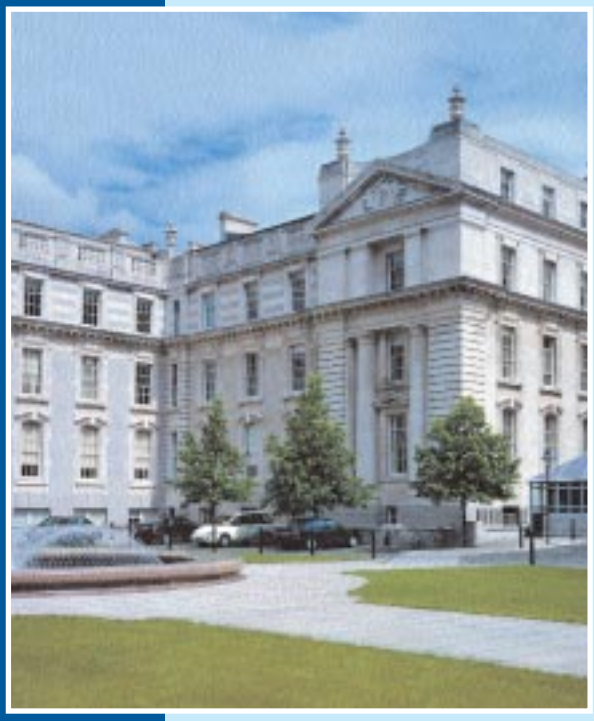
(Grades I and II)

Office of the Attorney General



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Law Society Gazette Reader Survey 2000

Your views can help us make the *Gazette* more relevant to you, so please take a few moments to complete this short reader survey. In return for your help, we'll enter your name in a prize draw, and the first five names out of the hat will win a bottle of the Law Society's specially-commissioned Millennium Malt whiskey

The winner will be announced in the January/February issue. The results of the survey (and your personal details) will not be used for any other purpose than improving the magazine and will not be divulged to any third party. If you wish to be entered for the prize draw, please ensure that you give your name and address below.

Name: _____

Address: _____

_____

1 How long have you been practising?

- One to five years ☐
- Five to ten years ☐
- Ten to 15 years ☐
- 15 to 20 years ☐
- Over 20 years ☐

2 How often do you read the *Gazette*?

- Each issue ☐
- Every second issue ☐
- Once every three months ☐
- Less often ☐
- Never ☐

3 Please indicate how often you read each of the sections listed below

(Please tick one box for each topic)

	ALMOST ALWAYS	OCCASIONALLY	RARELY	NEVER
President's message	☐	☐	☐	☐
News	☐	☐	☐	☐
Viewpoint	☐	☐	☐	☐
Letters	☐	☐	☐	☐
Dumb and dumber	☐	☐	☐	☐
Feature articles	☐	☐	☐	☐
Book reviews	☐	☐	☐	☐
Tech trends	☐	☐	☐	☐
Briefing	☐	☐	☐	☐
People and places	☐	☐	☐	☐
Apprentices' page	☐	☐	☐	☐
Professional information	☐	☐	☐	☐
Cross-examination	☐	☐	☐	☐

4 In order of priority, what do you want from the *Gazette*?

_____

_____

_____

5 What would you like to see more of?

_____

_____

_____

6 What would you like to see less of?

_____

_____

_____

7 Please indicate to what extent you agree with the following statements about the *Gazette*?

(Please tick one box per statement)

	STRONGLY AGREE	AGREE	NO OPINION	DISAGREE
Informative	☐	☐	☐	☐
Interesting and enjoyable read	☐	☐	☐	☐
Well presented and laid out	☐	☐	☐	☐
Keeps me updated on legal developments and legislation	☐	☐	☐	☐
Good balance between technical and lighter material	☐	☐	☐	☐
Relevant to my work	☐	☐	☐	☐

8 How well does the *Gazette* cover the following topics?

	VERY WELL	GOOD	ADEQUATELY	POOR
Irish legal developments	☐	☐	☐	☐
European legal developments	☐	☐	☐	☐
Feature articles on the law	☐	☐	☐	☐
Information technology	☐	☐	☐	☐
Business and management information	☐	☐	☐	☐

9 Please suggest three topics on which you would like to see an article in the *Gazette*

1. _____
2. _____
3. _____

10 Overall, how would you rate the *Gazette*?

- Excellent ☐
- Very Good ☐
- Good ☐
- Average ☐
- Fair ☐
- Poor ☐

Thank you for completing this survey. Please return (a photocopy will do) by 31 January 2001 to: the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7 (fax: 01 672 4801).

LEGAL HISTORY SOCIETY BURSARY

Margaret Clayton of UCC's history department has received the first Irish Legal History Society bursary in recognition of her on-going work in transcribing and preparing for publication the Munster Council Book, a manuscript housed in the British Library in London. The bursary is worth £1,000 and has been established to assist scholars undertaking research into any aspect of Irish legal history by providing a grant towards travel or other costs involved in the completion of work. Further details may be obtained by contacting Professor Nial Osborough, Faculty of Law, UCD, Belfield, Dublin 4, tel: 01 269 3244.

2ND AND 3RD PROFESSIONAL COURSE REUNION

A class reunion has been organised for apprentices who were on the 2nd and 3rd professional course (in 1979/80). The reunion will be held in Blackhall Place on 15 February 2001. Anyone interested in attending should send £40 to Patricia McNamara, 60 Upper Grand Canal Street, Dublin 4, before 21 December to confirm a booking.

New officer team for the Law Society

The Law Society has a new Council and officer team, with Mayo man Ward McEllin taking up the reins of office for the next year. McEllin was deemed elected to the post after serving as senior vice-president last year, while Elma Lynch was elected senior vice-president, with Michael Irvine as junior vice-president.

The following members were elected to the Law Society Council in the recent ballot, with the number of votes received appearing after their names:

Name	Votes
1. John P Shaw	1,453
2. Anne Colley	1,452
3. Keenan Johnson	1,435
4. Michael D Peart	1,425
5. Gerard F Griffin	1,408
6. Donald P Binchy	1,392
7. Elma Lynch	1,361
8. Patrick O'Connor	1,361
9. Simon Murphy	1,346
10. Philip M Joyce	1,331
11. James MacGuill	1,310
12. Orla Coyne	1,309
13. John G Fish	1,274
14. James B McCourt	1,265
15. Michael G Irvine	1,224
16. Edward C Hughes	1,153

New president Ward McEllin *(centre)* with senior vice-president Elma Lynch and junior vice-president Michael Irvine

As there was only one candidate nominated for each of the two relevant provinces, there was no election and the two candidates for these seats were returned unopposed as follows: Leinster: John B Harte, Ulster: James Sweeney.

Council members are elected for two-year terms: the sitting Council members who were deemed elected last year are: Anthony Ensor, Geraldine Clarke, Brian Sheridan, Owen Binchy, John D Shaw, Laurence Shields, Moya Quinlan, Gerard Doherty, Kevin O'Higgins, John Costello, Hugh O'Neill, Peter Allen, Thomas Murran and Stuart Gilhooly.

LawSociety Gazette

Christmas publication

As usual, the *Gazette* will be taking a well-earned break over the Christmas period so there will be no issue in January. Normal publication will resume with a joint January/February issue, due out in early February.

ONE TO WATCH: NEW LEGISLATION

Statute of Limitations (Amendment) Act, 2000

The *Statute of Limitations (Amendment) Act, 2000* was signed into law on 21 June 2000. This is a significant date because aspects of the act are only functional for one year from that date.

Under the *Statute of Limitations (Amendment) Act, 1991*, many victims of child sexual abuse were unable to take proceedings for personal injuries because they missed the three-year deadline that began when they reached the age of 18. But that act also said that victims could take an action within three years of the time they realised that they were suffering from a 'disability' (section 2) or stopped suffering from a disability. This opened up the possibility that child sexual abuse victims could initiate actions within three years of realising that their injuries resulted from the abuse they had suffered. The *Statute of Limitations (Amendment) Act, 2000* extends the definition of 'disability'(in past, present and future cases) to include psychological disability disabling the victim from taking proceedings.

Secondly, this new act gives a limited class of victims of sexual abuse who were not under a psychological disability, and were therefore statute-barred, a chance to institute proceedings for a limited period of one year from June 2000.

These are the key elements, in brief:

- The sexual abuse was committed when the person had not yet reached full age (21 or 18)
- The cause of action can lie against the person who committed the abuse, or against a person for negligence or breach of duty resulting in personal injuries arising from sexual abuse
- The abuse or abuser must have caused a psychological injury
- The psychological injury was

WHAT'S IT ALL ABOUT?

'An act to provide that certain persons shall be under a disability for the purpose of bringing actions relating to acts of sexual abuse committed against them prior to their reaching full age, for that purpose to amend the *Statute of Limitations, 1957*, and to provide for matters connected therewith'.

Complaints handling gets thumbs up from independent adjudicator

The Law Society's complaints-handling procedures are 'well ahead of its counterparts in neighbouring jurisdictions', according to independent adjudicator Eamonn Condon.

Speaking at a recent seminar in Blackhall Place to explain the society's complaints system to consumer groups and other interested parties, Condon said: 'There's no doubt in my mind that the Law Society does a very fine job'. While acknowledging that the society had greatly improved the resources available to the complaints section and introduced state-of-the-art technology, he added it had 'an on-going responsibility to use its influence to inform the public about their right to complain'.

He concluded by saying that there was one aspect that he was 'not too comfortable with'. Noting that complainants had five years to complain to the Law Society and a further three years to refer that complaint to his own office, Condon said: 'This amounts to Chinese water-torture for solicitors'.

Director General Ken Murphy *(far right)* with speakers at the recent Law Society seminar on complaints handling

Earlier, Maureen Behan, a lay member on the Registrar's Committee, told the seminar that herself and her lay colleagues saw their role on the committee as 'looking after the public interest and ensuring that the public gets a fair hearing'. She added that their experience had been 'very fulfilling and satisfying', adding that 'most decent solicitors find themselves embarrassed and apologetic to find themselves in front of the committee'.

Other speakers included the head of the society's complaints section, Linda Kirwan, investigating accountant Tim Bolger and the clerk of the Disciplinary Tribunal, Mary Lynch.

SECOND ECHR CONFERENCE

The Law Society will hold a second major conference on the *European convention on human rights* once the implementing legislation has been published. The provisional date is 10 February 2001 at the Law Society's Education Centre. It also intends to run a comprehensive training programme dealing with the impact of the ECHR on the specific areas of environment, planning and property, family law, judicial review, administrative law, commercial law and employment. The society is anxious to assess the demand from the profession for courses and would be grateful if practitioners could indicate their areas of interest in a note to Barbara Joyce, CLE co-ordinator, Law Society, Blackhall Place, Dublin 7. Meanwhile, papers from the ECHR conference held on 14 October are available on the Law Society website.

LAW SOCIETY RETIREMENT TRUST SCHEME

Unit prices: 1 November 2000
Managed fund: 384.015p
All-equity fund: 118.232p
Cash fund: 181.446p
Pension protector fund: -

so serious that the victim's will or ability to decide to bring an action was substantially impaired
- This act is retrospective and applies to causes of action before or after it was passed, including actions pending in June 2000
- It extends the definition of disability to include psychological injury, as defined, for the future
- It allows actions to be brought within one year of its date of passing (21 June 2000) which otherwise could not be brought (being statute-barred), provided that the victim sought legal advice and was advised that the case was statute-barred – or made a complaint to the gardaí – after the previous limitation period, and before 30 March 2000. Only cases in which the victims had already sought advice or complained to the gardaí are included in the exemption
- This act does not include cases in which final judgment has already been given
- Sexual abuse is widely defined and includes participation in sexual activity, causing the observation of sexual activity or what would reasonably be considered misconduct of a sexual nature
- The court retains its power to dismiss on grounds of delay in the interests of justice.

Physical and mental abuse are not included in the terms of the 2000 act, but it will doubtless be persuasively argued that much physical and mental abuse is latently sexual.

Victim support groups will be aware of the significance of the legislation and will advise their members. Solicitors (and barristers) practising in this area should review previous cases of this kind in which they have been consulted and which may have been previously statute-barred. If any clients could qualify under the terms of the legislation, they should be notified immediately. It is a limited window.

Practitioners should exercise caution about destroying papers relating to this kind of case. Difficulties may arise in showing that cases come within the exception, as old files may have been destroyed, and many complaints to the gardaí did not generate a file as such, and often were not even reduced to writing. Particular instructions as to all the surrounding circumstances of either 'advice' or 'complaints' should be taken. G

Alma Clissmann, parliamentary and law reform executive.

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Murphy 'sick and tired' of SFA attacks

Law Society Director General Ken Murphy went head to head with the chairman of the Small Firms Association, Kieran Crowley, twice in the same day on national radio following Crowley's criticism of the role that solicitors play in the so-called 'compensation culture'. First on RTÉ Radio's *News at One* and subsequently on Eamon Dunphy's *The Last Word* programme on Today FM, Murphy vehemently rejected Crowley's criticism of the role of solicitors in the personal injury litigation system.

'I'm sick and tired of people trying to make scapegoats of solicitors to avoid responsibility for their own failures', Murphy said. 'If there were no accidents, there would be no claims and solicitors should not be criticised simply for doing their job of ensuring that the victims of negligently-caused accidents receive the compensation to which they are entitled by law'.

Crowley had earlier criticised the manner in which solicitors pursued claims and called on the profession and on the judiciary to be accountable for what he claimed were the excessive number and cost of claims in Ireland. Murphy acknowledged that the system was not perfect but refuted proposals for the replacement of the courts by tribunals on the basis that they would actually increase both costs and delays by adding another layer to the system.

Ken Murphy: 'Don't shoot the messenger'

'The real problem in Ireland is not the level of claims but the level of accidents resulting from the disgracefully low standards of health, safety and care for others which we in Ireland tolerate. It is not a compensation culture. It is a negligence culture', he continued.

'According to Health and Safety Authority statistics the number of workplace accidents resulting in three or more days off work over the last three years has increased by more than 30%. In just two years, from 1996 to 1998, the number of fatal workplace accidents increased by a shocking 18%. Mr Crowley should get his members to put their own houses in order. The accidents are not caused by solicitors, and to attack them is to try to shoot the messenger'.

Society 'unconvinced' by AG

The Law Society has rejected the arguments put forward by Attorney General Michael McDowell for excluding solicitors from positions as legal assistants in his office as 'unconvincing' (the exchange of correspondence was published in full in the last issue of the *Gazette*, pages 6-7).

In his latest letter to McDowell, Director General Ken Murphy says that the Law Society Council believes that the AG's position 'is not defensible on any grounds of principle'. And he continued: 'The society's principled position that all public service lawyer positions should be awarded only on the merits of the candidates, not on whether they come from one branch of the legal profession rather than the other – is the only position which in the society's view truly represents the public interest'.

For his part, in an interview with the *Gazette* this month, McDowell appeared to be mending fences. 'I would hate for this particular controversy to suggest that I was antagonistic towards the Law Society', he days. 'I think that in the vast majority of things that it says and does, it's right. I just disagree with it on one point'.

(The full interview appears on page 10)

CHIEF JUSTICE LIAM HAMILTON

Reacting to news of the sudden death of former Chief Justice Liam Hamilton, Law Society President Ward McEllin issued the following statement.

'On behalf of the solicitors' profession in Ireland, I want to express our great sadness and sense of loss at the untimely passing of former Chief Justice Liam Hamilton.

'He had very close dealings with the solicitors' profession both as president of the High Court and subsequently as chief justice. His warmth and approachability made him greatly liked and admired by solicitors throughout his outstandingly successful legal career.

'We send our deepest condolences to his wife Maeve, his children, his extended family and his friends'.

GET YOUR NUMBERS RIGHT

A beleaguered Dublin retailer is receiving a number of calls for the Law Society because Eircom has assigned it the old Law School telephone number of 671 0200. The new number for the Law School is 01 672 4802.

AND THE WINNERS ARE ... CARLOW AND KILKENNY

According to a recent Dáil reply, the average number of weeks spent waiting for the processing of a Land Registry dealing in September 2000 are as follows: Carlow: 123, Cavan: 60, Clare: 75, Cork: 59, Donegal: 61, Dublin: 49, Galway: 61, Kerry: 49, Kildare: 57, Kilkenny: 123, Laois: 84, Leitrim: 61, Limerick: 49, Longford: 61, Louth: 60, Mayo: 89, Meath: 75, Monaghan: 60, Offaly: 84, Roscommon: 75, Sligo: 89, and Tipperary: 84.

NEW CHARGES FOR CONSULTATION ROOMS

Due to increased costs and the significantly improved quality of the Four Courts consultation rooms (including the addition of a catering service), the Law Society is increasing usage rates for the first time since January 1997. The new rates are:

- **£25 for one hour or part thereof**
- **£35 for one to two hours or part thereof**
- **£110 for a full day.**

PRIZE BOND DRAW 8 NOVEMBER 2000

The winners of the Law Society's prize bond draw held on 8 November were: Marcus Beresford, Dublin – £1,000. Niall McLaughlin, Dublin; WR White, Co Laois; The Trustees, Society of Young Solicitors; Maurice MA Power, Limerick – £500 each. Donal Kelliher, Co Kerry; John O'Connor, C/O DSBA; Eunan McMullin, Donegal; Michael Browne, Mayo; WO Fry, Dublin; Hugh J O'Donnell, Dublin – £250 each.

Law Society of Ireland

ADVANCE BOOKING FORM

Name: _____

Firm: _____

Address: _____

_____

Tel: _____ Fax: _____

Email: _____ DX: _____

Year of admission to the Roll: _____

Names of persons travelling: _____

I enclose cheque in the sum of £ _____

representing booking fee for _____ persons.

If you are thinking of attending the conference, avoid disappointment and book now. Advance bookings can be made by forwarding a booking fee of £300 per person travelling to Mary Kinsella, Law Society, Blackhall Place, Dublin 7. (Tel: (01) 672 4823. Fax: (01) 672 4833

Travel options will be available to delegates who would like to travel to Monaco in advance of the conference or stay on afterwards.

Note: THE CONFERENCE WILL BE HELD TWO WEEKS AFTER EASTER (EASTER SUNDAY 2001 IS ON 15 APRIL)

Letters

New stamp duty arrangements – again

From: Pierce O'Sullivan, Pierce O'Sullivan & Associates, Co Cavan

I refer to my correspondence to the *Gazette* published in the October issue (page 7) and the clarification in the November issue (page 9). It seems that the gremlins are certainly at work in relation to this matter. The end of the 'clarification' from Ms O'Riordan refers to 'the instrument giving effect to the contract if executed on or before 31 January 2000'. Shouldn't that read 2001?

PS: I have to thank a colleague this time for pointing this out to me!

Dogged by errors

From: TJ O'Donoghue, law agent, Galway County Council

I would like to refer to a misprint in the *Personal injury judgments* report on page 38 of the July issue of the *Gazette*. The case entitled *Leahy v Leader and Cork Diocesan Trustees* cites the *Control of Dogs Act* of 1995. This should have read the *Control of Dogs Act, 1986*. I am writing this letter in case any other solicitor like myself might spend an hour or two trying to find the law behind this particular judgment.

Courting information on the courts

From: Dáithí Mac Cárthaigh, Law Library, Four Courts, Dublin

To commemorate and celebrate the pioneering work of the Dáil Courts (1920-24), I propose to collect and publish the likenesses of the judges and justices, registrars, clerks and other officials of the Supreme, Circuit and various district and parish courts.

I would be grateful if anyone in possession of such likenesses could forward them to me along with a short biographical note including details of the individual's Dáil Court service.

Limboing under the statute bar

From: Patrick Mann, Patrick Mann & Co, Tralee, Co Kerry

The recent annual report of the Solicitors' Mutual Defence Fund Limited stated that the permitting by solicitors of claims to go statute-barred was a matter that concerned the fund greatly. Having considered that this is a matter that should be addressed without delay, I believe it is incumbent on the Law Society to immediately design a package to help solicitors deal with the problem of cases becoming statute-barred, regardless of whether or not they are practices that are computerised.

DUMB AND DUMBER

From: John Keaney, BCM Hanby Wallace, Dublin

This is a true story as related to me by a priest from Cork (but not the priest involved in the story).

In a small town in Cork, the local parish priest and the police superintendent were always at loggerheads with one another over the high-handed way in which the superintendent dealt with the townsfolk.

In the early hours one morning, the priest was driving home after visiting a sick parishioner when he had to swerve his car violently to avoid what turned out to be a dead donkey lying in the middle of the road. Fearing other road users might not see the obstruction in time, the priest decided to telephone the police when he returned home to inform them of the hazard.

'And what do you expect me to do about it?', said the superintendent. 'Isn't it your duty to bury the dead?'

'Well, yes', replied the priest, 'but isn't it also my sad duty to inform the next of kin?'

From: Aiden D Desmond, Daly, Derham & Co, Dublin

While it is true that word-processors and the like have made the task of drafting form letters somewhat easier in recent years, the enclosed copy of a letter recently received at these offices from the Irish Permanent takes this to a new level:

'Dear Sirs,
Please place with deeds blah, blah, blah'

I could say more, but *res ipso loquitor*.

From Dolph McGrath, John Shee & Co, Clonmel, Co Tipperary

I enclose an extract from a letter of loan offer which a farmer client of mine received from his bank. I have deleted all references to my client from the enclosed extract as I feel the innuendo is clearly libellous.

'The purpose of the loan facility is to finance dairy hygiene, and to purchase additional cows, which are to be exclusively utilised for purposes in connection with your trade, profession or business and not for any personal use'.

John Keaney wins the bottle of champagne this month.

Send your examples of the wacky, weird and wonderful to the Editor, *Law Society Gazette*, Blackhall Place, Dublin 7, or you can fax us on 01 672 4801 or e-mail us at c.oboyle@lawsociety.ie.
As always, the best entry will win a bottle of the finest champagne that monopoly money can buy.

Reflect
an attorne

Some people believe that Michael McDowell is the most political attorney general this country's ever had. His supposed 'meddling' has even been the subject of a recent Dáil debate. So is McDowell suitably chastened and ready to change his outspoken ways? Two chances, he tells Conal O'Boyle

'One of the greatest myths about the AG's office is that it is somehow above politics', says attorney general Michael McDowell. 'It's not. Many of the AGs of this country have been members of Dáil Éireann, and if you check back over the Dáil record, they gave as good as they got and took lumps out of their opponents on a daily basis. That was the way the world worked'.

Anyone looking for a sign of repentance from McDowell over what some regard as his 'interference' in the political process had better look elsewhere. In recent weeks, he has come under stinging criticism from political opponents, with the Labour Party's Brendan Howlin even tabling a Dáil motion on the issue. But McDowell's response is simple. 'It's water off a duck's back. It bears no relation to history or the practice of law.

'I think Mr Howlin was out of his depth', he adds.

Yet the only logical conclusion one can draw from his much-publicised blueprint to relaunch the Progressive Democrats as a new 'Radical Party' (with himself as president) is that McDowell has never lost the political bug. 'Politics', he admits, 'is a great vocation. Sometimes I miss it and sometimes I don't. There's a lot of heartbreak to it as well'.

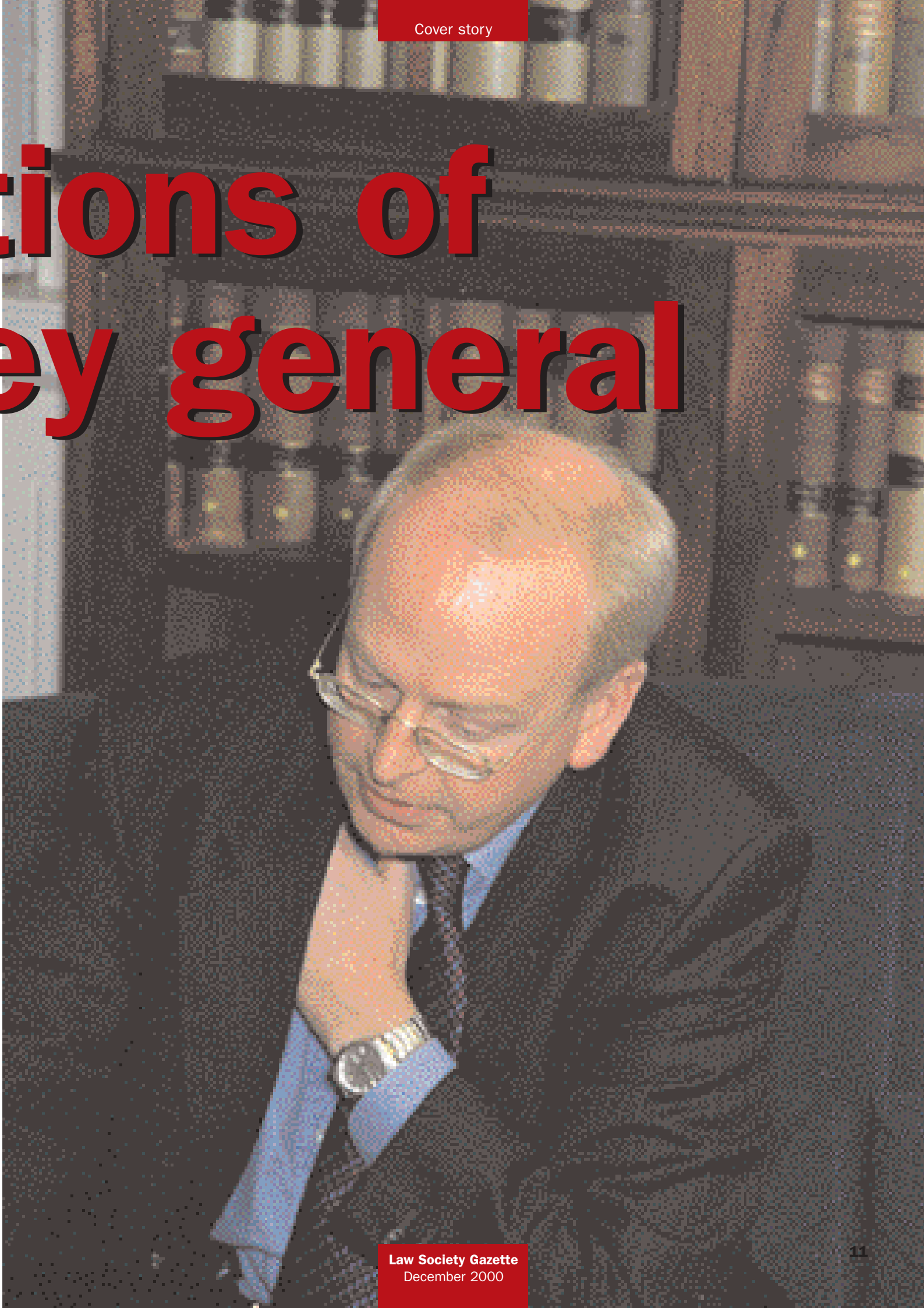
And he should know. The ten-day long recount which eventually saw him lose his Dáil seat in the last general election would be enough to put most people off politics for life. McDowell returned to the Law Library to practise at the bar and lick his wounds. Now he's back at the centre of political action as the government's chief legal advisor. So which life does he prefer?

'Just like Edith Piaf', he says. 'I regret nothing. I've enjoyed all my periods in public life and have found it very rewarding. It was a great privilege to be elected to represent people in Dáil Éireann. It's an equal privilege to be made attorney general, and I'm very grateful to the government for that. I've always worked hard at whichever activity I was engaged in. I think if you do work hard, you find it very enjoyable and very rewarding'.

It was, he adds, a job that he would gladly have accepted at any time if it had been offered to him. 'I think if you speak to any former AG, they'll always say that it's a uniquely privileged role to be asked to discharge. It's a constitutional job, it's a political job, it's a legal job, and it's a tremendous mixture of roles'.

One of the drawbacks of being an outspoken politician, of course, particularly when you're in opposition, is that you tend to leave behind you a number of hostages to fortune in the form of public statements. In McDowell's case, one could think of his persuasive calls to change the laws of defamation. Characteristically, he doesn't believe that this in any way ties his hands now that they're on the levers of power.

tions of ey general



'Any AG who has practised law for 25 years or so would have strong views one way or the other on things such as defamation law', he argues. 'The fact that one may or may not have stated them in public doesn't take away from one's capacity to act as attorney general. If you had no views at all, I don't think you'd be much use as an AG because your advice wouldn't be worth much to a government'.

Steam coming out of his ears

On that basis, McDowell must be very useful indeed. He certainly doesn't seem to find it frustrating that government policies might not follow those he advocated for so long from the backbenches. 'I have a huge amount of work to do in this office and I find it interesting to see the pace at which things take place', he says, 'but I don't sit here with steam coming out of my ears wondering why politicians who were elected at an election where I wasn't are not doing things that I would have done had I been elected. I think that that would be arrogant'.

Before the Father Brendan Smith affair eventually toppled a government in mid-1994, the Office of the Attorney General, as opposed to the holder of that office, had not really impinged too much on the public consciousness. McDowell likens the role to that of a family solicitor: 'His job is to give legal life to what the government wants to do'.

If that is the case, then the family solicitor is just about to lose some core business.

For one thing, the National Treasury Management Agency will be taking over all personal injury actions claims against the state, a function that is currently carried out by the AG's office. Then there is the proposal that the criminal section of the Chief State Solicitor's Office should be transferred under the direct control of the Director of Public Prosecutions. However, McDowell is not one bit worried that the authority of his office may be whittled away.

'This office has so much to do that it's not clasping work to its chest', he says. 'I'm quite happy to see work done efficiently. If the constitution provides for the prosecution of crime to be done by either the AG or by another office-holder, it's certainly no diminution of the AG's status if the legal support agency for criminal prosecution is transferred to the DPP. That just makes sense'.

The creation of a new Human Rights Commission is likely to lead to another major change to the state's legal architecture in the coming years. This independent body will be charged with upholding human rights in every aspect of Irish life, and there may well be situations where the commission could institute proceedings against state agencies. McDowell describes this as 'an interesting development', but adds: 'whether it will be up and running and really into its stride by the time I cease to be attorney general is another thing'.

At a recent Law Society conference on the *European convention on human rights*, McDowell appeared to some delegates to take a sceptical view of the 'human rights community', suggesting that it saw itself as some new form of secular priesthood, set apart from the rest of the wider community. 'I am not attracted to that notion at all', he explains. 'One of the points I made – and over which I stand – is that the brave new world into which the United Kingdom is emerging, blinking a bit in the sunlight, is different to the Irish situation. I don't mean in any way to disparage the significance of what is happening in Britain or the significance of the incorporation of the convention here, but we are the only republic in Europe with a fully enforceable vertical and horizontal constitution. This is a very hard point to get across to our European partners.

'We have nothing to be afraid of on the human rights front. We have been living by standards that other people haven't been living by for a long, long time. Other countries that claim to be at the forefront of European civilisation have not afforded their citizens the same degree of protection that we have had since the 1937 constitution came into effect'.

Despite this obvious admiration for our legal system, the attorney general is not blind to its shortcomings. 'I think court procedure and the administration of the courts are areas that need radical change but, funnily enough, I'm not in a position to do much about them', he says.

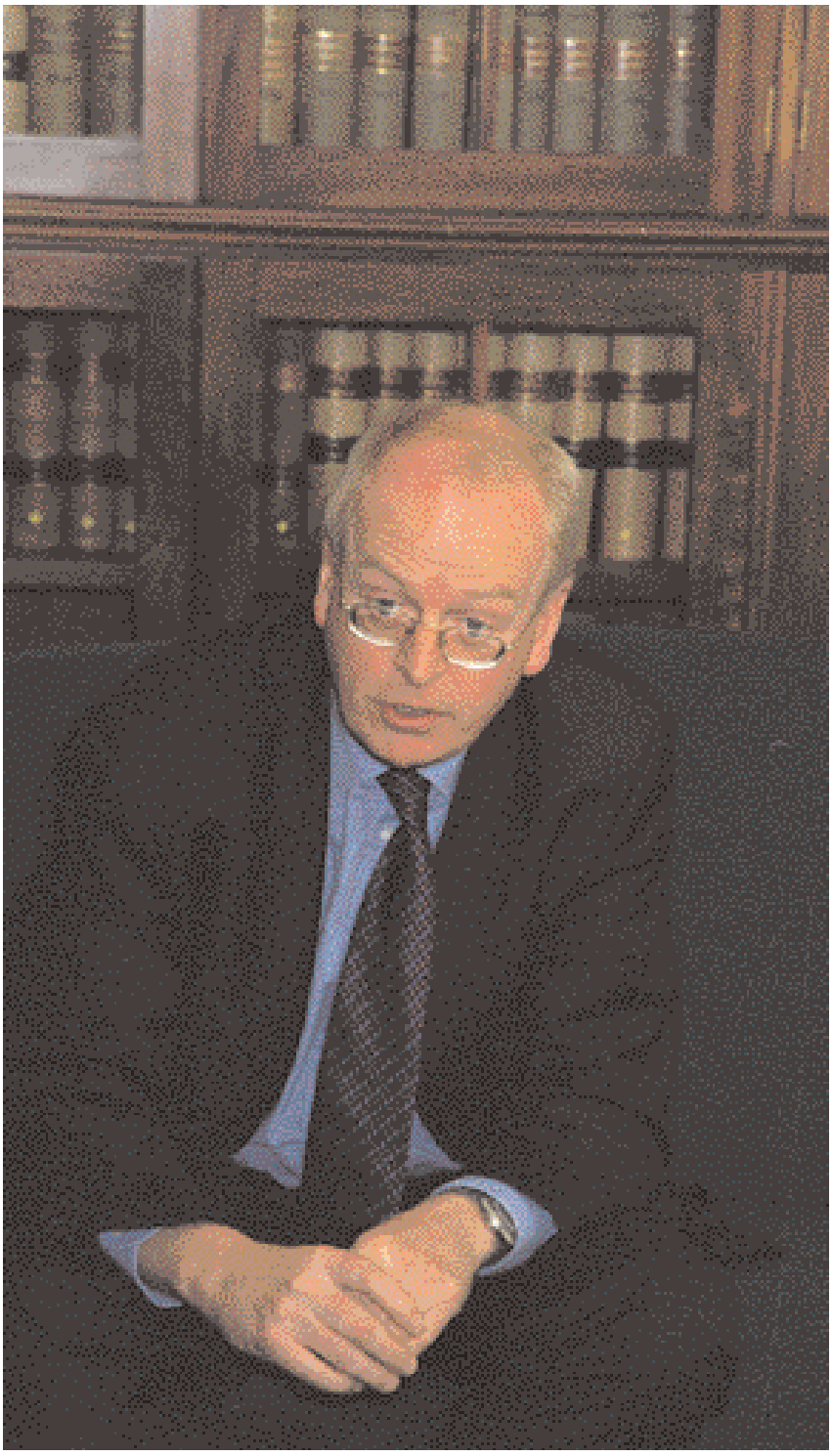
He singles out 'trial by ambush' as one area of litigation that could benefit from a fresh approach, and also judicial time management. 'People have to wait a very long time for their cases to come up and then, on the morning of the hearing, with all the parties there, they can be told that it can't go on for some technical reason or because no judge is available to hear it. I think that is terrible – and very, very hard to justify'.

It's more of an injustice, he adds, because in a great many cases such a delay works to the advantage of one party to the proceedings at the expense of the other. 'I am not saying anything controversial' he explains, 'because nobody involved in the system, least of all the judiciary who have to administer it, consider it desirable that a year can elapse between, say, somebody being charged and sent forward for trial and the case actually being heard. I think that is wholly unacceptable. Mind you, just in case people think we're particularly bad about this, I was at a conference in Spain recently where a continental judge said he was pleased to inform us that, between the institution of proceedings and their final ending, the process was usually all accomplished within five years!'

But one area where he is not inclined to propose any change is in the exclusion of solicitors from appointment as legal assistants in his own office. In recent weeks, McDowell and the Law Society's director general Ken Murphy have been engaged in a war of words over the issue (see last issue, page 6). McDowell may have had the reputation as a radical in politics, but in some things he is deeply conservative, and one of these is the traditional division of labour between barristers and solicitors.

'I just want to put a few things in context', he says. 'The state in its entire legal services reserves 80% of the positions exclusively for solicitors. Another 7%, the drafting service, here is open to both barristers and solicitors, and a small fraction – 21 positions out of 180-odd – are at the moment recruited from barristers alone.

'As to the rational basis for it, this office has to make very quick decisions on whether to override a barrister's advice as to how litigation is going. The government has to rely on those decisions, and by extension, so do the Irish people. In the past, we have found it of invaluable assistance that the people who make those decisions have actually practised in the courts and know what it's like to present a case because, to some extent, armchair generals are not the best at deciding the outcome of battles.



'Generally speaking, barristers are required to be independent of mind. I'm not suggesting that solicitors aren't, but barristers can easily imagine themselves appearing on either side of a case and that independence of mind is of great assistance in helping me to make my mind up, particularly on issues where there is a conflict between the interests of the state and the private individual.

'If you say that a barrister is in practice for several years and passes an interview board to get into this office, you may take it that he or she has extensive experience in litigation, extensive experience in personal research, in taking an individual view, and those qualities have been there in abundance. That is not to say that no solicitor has those qualities, but by the same token there are many barristers who would make very good state solicitors if they chose to do that. But the law would have to be changed to enable a barrister to act as a solicitor. So these are the things which require further thought'.

Tickle his tummy

It certainly doesn't look as if 'the rottweiler' is going to have his tummy tickled on this one. He's also adamant that a fused profession would be bad for the consumer and would drive legal fees up rather than down, arguing that: 'it will enable the big firms to recruit the best barristers to make themselves more powerful in terms of litigation than they are at present and to charge more – which they will inevitably do.

'If you call me a radical', he continues, 'the one thing I am radical about is cant. Most people who have ever proposed a fused profession have actually been motivated by a desire to increase their own wealth. I have always noted that they are the people who actually want to earn bigger money by having more people work under them so they can take longer holidays or to relax more. That's the point you have to remember'.

Despite his staunch defence of the status quo and of the recruitment policies in his office, McDowell actually turns out to be a big fan of the solicitors' profession and the Law Society.

'I think that the Law Society is a really good organisation: it's a serious self-regulating body. I feel that it is doing a tremendous job in terms of quality control, improvement of professional standards, continuing legal education, the new Education Centre in Blackhall Place and all the disciplinary functions it carries out.

'I would hate for this particular controversy to suggest that I was antagonistic towards the Law Society. I think that in the vast majority of things that it says and does, it's right. I just disagree with it on one point'.

Only one point of disagreement with one-time rottweiler, reborn radical Michael McDowell? Stop the lights. G

The Competition Authority wants to introduce an immunity programme that will allow individual cartel members to volunteer co-operation with investigations in return for a guarantee against prosecution. But, as Barry O'Halloran reports, there are legal and practical issues that must be cleared up first

Busting the price-fixers: the Competition Authority's recent conference which examined the idea of offering immunity to aid prosecution

WHISPERING

MAIN POINTS

- The Competition Authority has proposed an immunity system for cartel members who voluntarily co-operate with investigations
- This raises questions for the statutory discretion of the DPP
- The scheme's effectiveness will depend on a number of issues

Price-fixing cartels are estimated to cost this country £1.5 billion directly and indirectly every year. Even though it's been four years since the *Competition Act, 1996* made it a crime to participate in these organisations, just one company has been convicted of an offence.

The main reason has been the Competition Authority's unwillingness to go to the criminal courts, as losing a case would be a set-back for the body itself and for the laws it was seeking to enforce. However, after getting over the first hurdle by bringing a successful prosecution against Estuary Oil Ltd last year, its mood has changed. It now looks like criminal law is going to be a key weapon in the battle against business practices that are damaging both consumers and the economy as a whole.

The Estuary Oil case was a summary prosecution taken by the authority itself, but it has sent a number of files to the director of public prosecutions, so the day when we see an Irish business prosecuted for an indictable competition law offence may not be far off. Under the act, an undertaking convicted on indictment is liable for a fine of up to £3 million or 10% of turnover in the year preceding conviction, whichever is greater. An individual faces the possibility of both monetary punishment and up to two years' imprisonment. In addition, any aggrieved party can seek damages.

Prosecution, fines and even imprisonment are increasingly seen as the way to tackle cartels. The Competition and Mergers Review Group told the Organisation for Economic Co-operation and Development that criminal sanctions were necessary. An EU directive, due early next year, will also deal with the issue of imposing fines on offending businesses and parties.

It follows that this means the state, or whichever of its agencies wants to bring cartels to book, must be able to get its hands on the necessary evidence. But as Pat Massey, the head of the Competition Authority's anti-cartel division, pointed out at a recent conference on the issue, businesses that are conspiring to fix prices are going to act strictly in secret. To combat this, other jurisdictions, including the US and Canada, have immunity programmes under which individual cartel members come forward and volunteer to co-operate with investigations in return for a guarantee against prosecution. The Competition Authority is a keen advocate of introducing such a scheme here, and went as far as making it the theme of its annual conference at the Radisson Hotel in Dublin last month.

The US immunity programme has proved hugely successful. According to Competition Authority chairman John Fingleton, the American anti-trust watchdogs believed that they had eliminated all cartels by the end of the 1980s. 'But now they are getting 20 new cases a year through this self-referral system', he says.

The authority has already launched a consultative process, and wants to hear from all interested parties, including lawyers from both branches of the profession. It has also discussed the proposal with the government and DPP Jim Hamilton, whose office would have a key role in any such scheme.

Indeed, it is this office that is at the heart of one problem thrown up by the proposals. Under sections 2 and 3 of the *Prosecution of Offences Act, 1974*, which established his office, the DPP has the discretion in whether or not to prosecute offences. John Handoll, a partner with solicitors William Fry, points out that this discretion cannot be limited or 'fettered' in any way. He stresses that the DPP must look at each individual case and then decide. He believes that adopting a general practice of granting immunity in the context of a scheme such as that proposed by the Competition Authority could be interpreted as fettering the DPP's discretion in individual cases. In other words, if he has to grant immunity as a matter of course, his discretion has been limited. However, Handoll adds that if, in a defined area of the criminal law, the DPP sets out in a clear and transparent way the circumstances in which immunity might be granted, without reference to an individual case, then it could be argued that his discretion is not fettered.

It now looks like criminal law is going to be a key weapon in the battle against business practices that are damaging both consumers and the economy as a whole.

GRASS

COMPETITION ACT, 1996: THE CRIMINAL PENALTIES

On summary conviction:

- An undertaking is liable to a fine of not more than £1,500
- An individual is liable to a fine of not more than £1,500, or, at the court's discretion, up to six months' imprisonment, or both.

On conviction on indictment:

- An undertaking is liable to a fine of not more than £3 million or 10% of the preceding year's turnover, whichever is greater
- An individual is liable to a fine of not more than £3 million or 10% of turnover in the preceding year, whichever is greater; or, at the court's discretion, up to two years' imprisonment; or both the prison sentence and fine.

Note: Under the act, the minister for enterprise, trade and employment or the Competition Authority may bring summary proceedings. The gardaí and the DPP may also do so, but the legislation does not specifically provide for this. Only the DPP may issue proceedings on indictment.

'If people are not looking for 100% certainty, then he should be able give them sufficient comfort that way', he says. 'The ideal solution would be legislation'.

At the recent conference, Handoll, a competition practitioner, pointed out in the course of his address that the DPP would have to consider the issue of guilt and supporting evidence before deciding whether or not to grant immunity. In effect, he said, this means that he would have to establish a *prima facie* case and determine whether or not this was backed by credible supporting evidence before deciding to grant immunity. The DPP has obviously been considering these problems himself. Briefly addressing the conference before chairing one of its sessions, he indicated that he was open to the immunity scheme proposal. But he made it clear that his office would have to approach the question carefully, particularly in relation to his discretion.

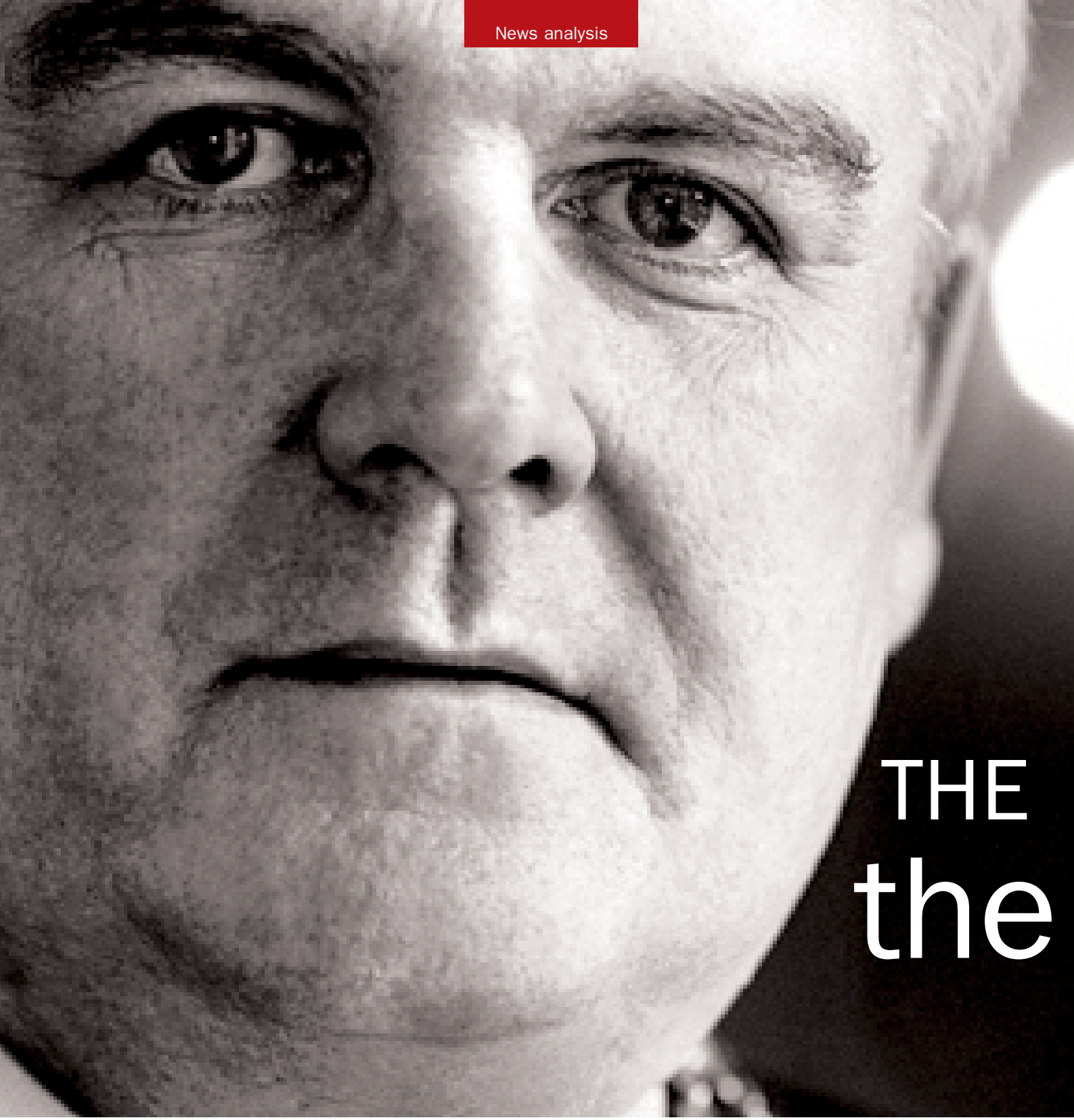
'The difficulty is that a policy of granting immunity in such cases may mean that you have fettered your discretion', he said. 'But no policy may mean you will act arbitrarily and that you could be acting unlawfully'. He added that it could lead to a situation where his office would spend three to four years fighting a case up to the Supreme Court before the issue is finally decided. This would obviously mean that an immunity programme would have to be put on hold while the courts deal with the issue.

The DPP's discretion and its operation would be central to the proposed immunity scheme's success because it affects the kind of guarantees that potential participants can expect. If people cannot be certain that they will be safe from prosecution, they will not sign up. Outlining what the authority believes should be the programme's key elements, its solicitor David McFadden stressed that potential participants should have as high a degree of certainty as possible. For instance, when the programme was originally introduced in the US, it failed because of a lack of certainty. And Damian Collins of McCann FitzGerald's Brussels office argued that lawyers responsible for defending alleged cartel members could not advise their clients to participate in an immunity scheme without sufficient guarantees that they would not be prosecuted.

There is another kind of certainty involved here, the certainty that cartels will be caught. If they do not run the risk of being detected in the first place, they are unlikely to volunteer themselves. Attorney General Michael McDowell, who stressed he was speaking in a personal capacity, pointed out that without first getting serious convictions, it would be 'entirely self-deluding' to introduce an immunity system. The authority itself is aware of this and, like the corporate enforcer's office (now being established by civil servant Brian Appleby while the legislation is going through the Oireachtas), it would like to see a number of gardaí with experience of white-collar crime seconded to its staff.

The Competition Authority has other staffing issues as well. A number of departures over the last year have left it below its full complement of 29, but it is now on the way to replacing these people. A recent Deloitte and Touche report recommended that the staff number be increased to 44. Whether or not this will happen remains to be seen, but Enterprise, Trade and Employment Minister Mary Harney (whose department is responsible for the authority) has pledged that any resources it requires will be delivered. She and the authority's chairman, John Fingleton, are due to meet to discuss this issue in the near future. G

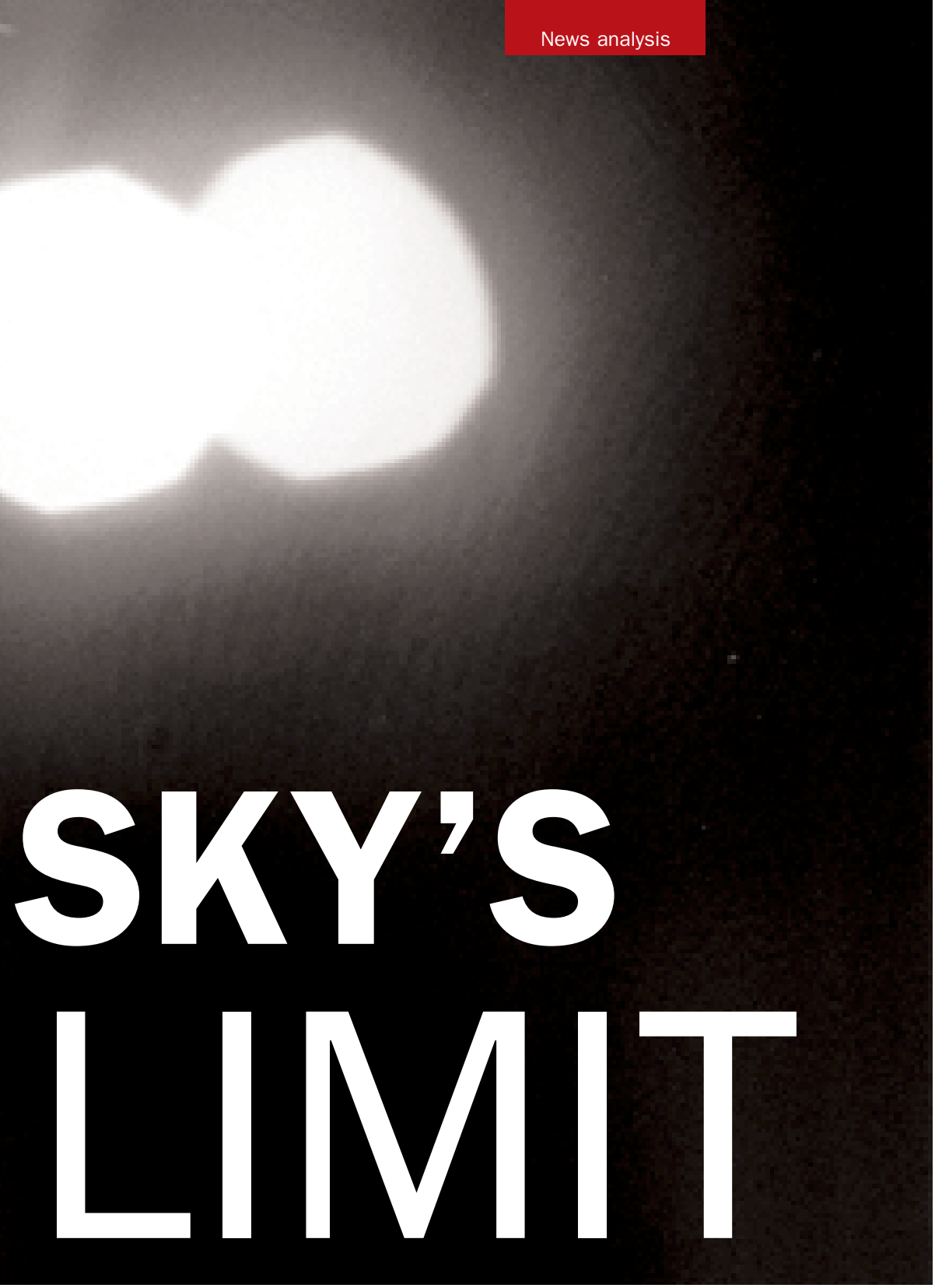
Barry O'Halloran is a staff reporter with Business and Finance *magazine.*



THE the

Everyone loves the idea of making their mark on history, but so few ever get the chance. Some do it by running the first four-minute mile; others by beating the rest to the top of Mount Everest. And Ward McEllin? He was the first man to crash an aeroplane at Knock Airport.

It was St Valentine's Day in 1986 and the man who is now president of the Law Society was training for his pilot's licence with an instructor at the newly-opened airport. 'We were doing touch and goes', he



SKY'S LIMIT

Anyone who can keep a cool head while his plane is on a crash course with a fuel bunker should have no problem piloting the Law Society for the next year. Here, new president Ward McEllin talks to Conal O'Boyle about his career, his vision for the year and why he enjoys a good fight

recalls, 'which is basically taking off and landing again, when we were hit by a very bad squall. The plane was literally thrown over and we couldn't recover it. We were blown off the runway and the plane was crushed. Small planes tend to be terribly light and they don't crash well!

'The big danger was that when we crashed we were very near a fuel farm. If we'd hit it, I certainly wouldn't be here and Knock Airport would have needed to be built all over again'.

McEllin later joked that he was just going the extra mile for his clients by testing out Knock's fire services. And did the experience put him off flying? Not a bit of it.

'Some people go fishing to get away from it all', he says. 'I go up in the air'. He flies his own plane, a four-seater single-engine Cessna 172, and will often use it during the summer months to get up and down to Dublin for work. Flying time from his home in Mayo is only 40 minutes – and it's one sure way to avoid a taxi blockade.

Like many young men before him, McEllin

wanted to join Aer Lingus as a pilot, but there was a recruitment freeze in the early seventies. Instead, he studied law in Trinity College, Dublin, and entered his father's law firm, Patrick J McEllin, Solicitors, in Claremorris, Co Mayo. He qualified in 1977.

'My father was delighted that he had a son in the practice. There are only two in the family, myself and my sister, and she didn't do law. When I was presented with my parchment, it was the proudest day of his life'.

The firm now has a complement of four solicitors and nine support staff. McEllin's wife, Ann, is also a solicitor and practises 17 miles away in Castlebar in the all-female law firm of King & McEllin. In the interests of domestic harmony, the McEllins have adopted a policy of never facing each other across a courtroom. 'If the two firms are on opposing sides in an action, someone else deals with it in each office', he says. 'We never do'.

Fighting talk

That's probably about the only fight that McEllin would walk away from. 'I specialise in civil litigation', he says, 'but I also enjoy a good fight. And I particularly enjoy district court work, defending people on criminal charges. It's nice to win that type of case. Where you use the law – and use it properly – to achieve a result, it's good fun'.

When McEllin was elected to the Law Society Council in 1984, he was following in the footsteps of his father, the late Paddy McEllin. In his 16 years on the council, he has chaired most of the society's major committees, including finance, registrar's, compensation fund and professional indemnity. It won't come as much of a surprise to learn that the man who enjoys a good fight also has strong opinions about the current state of his chosen profession – not all of them positive.

McEllin believes the relaxation of the ban on solicitor advertising in the early 1990s was a contributory factor in what he believes is a public perception of a decline in professional standards. And although the government is set to reimpose the prohibition, with the full backing of the Law Society, he thinks this may be too little, too late – at least in terms of public opinion.

'I don't think it's going to impress the public because they will simply see it as the government acting to stop "ambulance chasing" solicitors. The Law Society is going to get no marks for saying, "Look, we were always against it and we supported the government in reintroducing the ban"'.

Keep the customer satisfied

The best long-term response to public criticism, he feels, is to instil a firm belief in the notion of client care in every apprentice solicitor coming through the system. 'We need to teach them more than just how to be lawyers: they need good communication skills, they need to know how to look after their clients. Apprentices have to understand that they are professionals, that they need to have standards and must maintain those standards'.

Client care is something very dear to McEllin's heart. Perhaps because he also runs a travel agency that he inherited from his uncle, he feels that solicitors need to be more aware of the business issues that impact on their clients. He also believes that lawyers generally make bad businessmen.

'They tend to be simply lawyers, giving advice; many appear not to have developed any sort of business acumen', he says. 'There are exceptions, but by and large all they want to do is practise law. They are not actually out there hustling and bustling in the business world'.

Tough line on regulation

The corollary to that, he adds, is that they may not run their law firms in a business-like fashion, which can lead to cash-flow problems and the subsequent temptation to dip into the client account when times get tough. His years of experience sitting on the Law Society's regulatory committees leads him to take a tough line on policing the profession.

'A couple of years ago there was a run on the compensation fund which prompted the Law Society to recruit more investigating accountants. As a result,

solicitors are now dealing with their affairs in a far more business-like manner – because they have to. They are subject to sanction if they don't. They are now using their books as a business tool to enhance their profits and run their business more efficiently. They are doing what they have to do because the Law Society is far more vigilant. We have more accountants on the road and we police the profession better than we did years ago'.

It's clear that practice management issues will play a central role in McEllin's vision as Law Society president. 'We're doing very little on the continuing legal education side to improve practice management', he says. 'We're not holding seminars on the subject or giving out useful information to practitioners. I intend to set up a task force to look at how we can actually provide a service that will be meaningful, perhaps through modules or courses, to help solicitors run their offices in a more efficient manner. We hope we can bring in a simple system that can be understood and, more importantly, implemented in each solicitor's office'.

'Everyone would be a winner', he argues. 'It would help the compensation fund and solicitors could see in advance how their offices are doing. It would make them more efficient in handling clients' affairs, which would benefit the client.

'It won't all be done in one year. But if I could start the process, I would be happy'.

Build it and they will come

A self-confessed technophile, McEllin will also be selling the virtues of IT to a profession that has sometimes been slow to embrace it. By way of example, he suggests that practice notes could be disseminated more quickly and effectively to solicitors by e-mail, as could important court decisions and legislative changes. 'Something in the region of 60% of the profession are on e-mail at this stage', he says, 'but how many are actually using it is another question entirely. I believe that if we are offering a service, then they will use it. And if solid, useful information comes out of Blackhall Place on e-mail, the profession will pick it up. Certainly the younger solicitors, every one of them, are computer literate'.

Among the other issues that he will be pursuing during his year, the appointment of solicitors to the superior court benches is high on his list of priorities. 'We are the larger of the two legal professions', he says, 'and I believe that there are a number of my colleagues who would make eminently excellent High Court and Supreme Court judges. I believe that that should happen sooner rather than later, and I think it will'.

Bandits at 12 o'clock

There's one other hot topic that the new president feels strongly about, and it could see the Law Society engaged in a dog-fight with the penny-pinchers in government. On the question of legal aid, McEllin will be coming out of the sun with all guns blazing.

FACT FILE
WARD McELLIN

Born: Claremorris, 1955
Lives: Castlebar, Co Mayo
Family: Married to Ann (also a solicitor), two children (Lisa and Patrick)
Occupation: Solicitor (admitted to Roll of Solicitors in 1977). Principal of the Claremorris firm of Patrick J McEllin & Son, which employs four solicitors and nine support staff
Education: Secondary: Castleknock College, Dublin; third level: Trinity College, Dublin
Law Society career: First elected to council in 1984. Junior vice-president 1995, senior vice-president 1999, president for year 2000/2001. Has served as chairman of most of the society's committees during his 16-year tenure on council, including finance, registrar's, compensation fund and professional indemnity
Interests: Flying (holds pilot's licence), rugby and tennis. Past-president of Castlebar Rugby Football Club and past-president of Castlebar Lions Club.

'The government is relying on the legal profession to get them off the hook by filling the gaps in the system through pro bono advice'

'Some months ago, the Law Society set up a task force to look into the possibility of establishing a formal *pro bono* scheme for the solicitors' profession. The task force has been meeting every month and canvassing a wide range of opinions on the wisdom of recommending such a scheme. In recent weeks it has written to the presidents and secretaries of every bar association in the country seeking their views on the advisability of such a scheme.

'Obviously, I don't want to pre-empt any recommendations that the task force eventually makes. But I will just make two points.

'The first is this. I don't think there is a solicitor's office in the country – and this is particularly true of practitioners in rural areas – who don't do some kind of *pro bono* work on a daily basis. We've all done jobs for clients knowing full well that there are two chances of seeing any kind of payment. In some cases, we know the client can't pay; in other cases, we know they won't. We may hope that what we lose on the swings, we gain on the roundabouts – but often that's not the case.

'We don't complain, and we don't trumpet it around town either. It just comes with the territory. It's part of living and working in a community.

'The second point is that the legal aid system is in a shambles. There's no delicate way of putting it. It seems to me that the government is relying on the legal profession to get them off the hook by filling the gaps in the system through *pro bono* advice. This can't go on. The country has never been richer, and it's about time the government invested some resources in providing a proper, fully-funded legal aid service for the citizens of this state.

'I can tell you that during my year in office the Law Society will be lobbying the government vigorously to put such a system in place'.

A man who enjoys a good fight and who can face a plane crash with equanimity? You wouldn't want to be in the government's shoes. G

On the never-n

What good is consumer legislation if you can't understand it? The *Consumer Credit Act, 1995* is guaranteed to give most consumers – and many lawyers – a headache, particularly when it comes to hire purchase agreements, as Keith McConnell explains

Most consumers in Ireland know little about their rights and obligations under the law governing consumer credit agreements and, in particular, hire purchase agreements. Even members of the legal profession have not fully digested the *Consumer Credit Act* of 1995. The act is indeed a complex and lengthy piece of legislation and imposes many laborious requirements in order to successfully set up financial agreements with consumers.

The act was implemented to adopt the requirements of the EU directives into Irish law to harmonise legislation on consumer rights within the member states. The act applies to all consumer credit contracts entered into on or after 13 May 1996.

The sections of the act which specifically deal with hire purchase agreements are sections 56 to 83. Sections 56 to 58 set out the required contents of all HP agreements. Failure to comply with these requirements may render the agreement unenforceable under section 59.

Section 59(1) allows the court to dispense with certain requirements if it believes that such a requirement 'was not deliberate and has not prejudiced the hirer, and that it would be just and equitable to dispense with the requirement'. This concept of 'just and equitable' is a clear indication that the court has the right to refuse any application where it feels that the consumer is entitled to the strict interpretation of the act. It is important to note at this stage that the act specifically precludes the court from exercising such discretion as allowed for in section 59 where the owner has failed to comply with the requirements of section 58(1) and therefore such a failure is an absolute bar on the owner seeking to enforce an agreement or a guarantee relating to it. Section 58(1) requires the owner to personally hand, or send within ten days of the making of the contract, a copy of the contract to the hirer and a copy of the guarantee to the guarantor where applicable.

Consumers' rights

Section 62(1) sets out certain provisions which, if contained in a hire purchase agreement, are deemed void. Section 62(2) provides exceptions to the content of section 62(1) where the subject of the agreement is a motor vehicle. This area mainly deals with the authority contained within the contract for the owner to enter premises for the purposes of taking possession of the goods. Premises in this context do not include a house or building in the area surrounding a house.

Section 63 (which largely replaces the repealed section 5 of the *Hire Purchase Act, 1946*) contains the right of the hirer to determine the agreement before the final payments fall due by giving notice of termination in writing to the owner, and indicates the maximum amount recoverable by the owner in these circumstances. The hirer has the following two options:

- To pay the amount, if any, required to bring the

total sums paid under the contract up to one-half the total hire purchase price or the arrears due under the contract at the date of termination, whichever is the higher. (Alternatively, he could pay any lesser amount specified in the agreement, but in reality it is unusual for an agreement to allow for a lesser amount, though this possibility cannot be ruled out)

- To purchase the goods by paying the amount outstanding under the agreement reduced in accordance with sections 52 or 53 of the act. Sections 52 and 53 allow for rebates to be calculated in accordance with an approved formula.

MAIN POINTS

- **The sections dealing with hire purchases are not user-friendly for either hirer or owner**
- **Consumer rights and HP agreements**
- **Is it time the act was overhauled?**

Section 63(3) allows the owner to recover damages where the hirer 'failed to take reasonable care of the goods'; this only applies when the hirer determines the contract. Unless a similar or equivalent term is contained in the contract, there is no such ability to recover damages in this manner where the owner determines the agreement.

Section 64 provides that where goods are let under a hire purchase agreement and one-third (or more) of the hire purchase price (as defined in the act) has already been paid, then the owner shall not enforce any right to recover possession of the goods from the hirer other than by legal proceedings. The section goes on to set out the penalty if the owner fails to comply. Breach of section 64(1) is a summary offence prosecutable by the director of consumer affairs.

Further to this, section 64(2) of the act provides that where an owner recovers possession of the goods in contravention of section 64(1), the agreement shall automatically determine and the hirer and/or guarantor is entitled to be released from all liability under the agreement and is entitled to recover all sums paid under the contract or any security given from the owner. This could be have a considerable financial impact on the owner should he fail to observe the property rights vested in the hirer after paying over one-third of the hire purchase price.

There is an exception, albeit a very restricted one, when the goods involved are motor vehicles and this is provided for in section 64(3): 'Where the owner of a motor vehicle let under a hire purchase agreement has commenced legal proceedings to recover possession of the vehicle from the hire and it has been abandoned or left unattended in circumstances which have or are likely to result in damage to the vehicle, the owner shall be entitled to enforce a right to recover possession of the vehicle and to retain possession thereof pending the outcome of the proceedings'.

It is important to consider this leniency carefully and literally: in particular, it clearly states that the owner must have 'commenced legal proceedings to recover possession of the vehicle' and that the goods must be 'unattended in circumstances which have or are likely to result in damage to the vehicle'. Commentators believe that in order to rely on this section, there must be at least a *prima facie* case to the effect that the vehicle has either been abandoned or left unattended in a manner which has or is likely to result in damage to it.

On the issue of abandonment, O'Hanlon J in *G & J Carroll v Sheridan & Sheridan* ([1984] ILRM 451), citing *Crossley v Lightowler* ([1986] LR 3 Ex 279; [1867] 2 Ch App 478) as authority, stated: 'The question of abandonment is a question of fact that must be determined upon the whole of the circumstances of the case ... and that the mere suspension of the exercise of a right is not sufficient to prove an intention to abandon ... the

ever

DEFINITION OF A HIRE PURCHASE AGREEMENT

The *Consumer Credit Act, 1995* defines a hire purchase agreement as an 'agreement for the bailment of goods under which the hirer may buy the goods or under which the property in the goods will, if the terms of the agreement are complied with, pass to the hirer in return for periodical payments' (section 2(1)).

DEFINITION OF A CONSUMER, HIRER AND OWNER

Section 2(1) of the act supplies the definition of the term 'consumer' for the purposes of interpreting the act. A consumer 'means a natural person acting outside his trade, business or profession'. The act goes on to define a 'hirer' as a 'consumer who takes, intends to take or has taken goods from an owner under the hire purchase agreement or a consumer hire agreement in return for periodical payments'. An 'owner' is defined as 'the person who lets or has let goods to a hirer under a hire purchase agreement or a consumer hire agreement'.

question of abandonment of a right is one of intention to be decided on the facts in each particular case'.

If the vehicle has been damaged, the owner may not have too much difficulty in establishing a *prima facie* case. Unfortunately, in cases where the vehicle has not (yet) been damaged, establishing a *prima facie* case is not a simple task. Recovering the vehicle without an order for possession is risky when you consider the potential loss to an owner who is deemed to be in contravention of the act.

Note that this section does not allow the owner to dispose of the goods before obtaining an order of the court in these circumstances. The owner must hold the goods until the outcome of the legal proceedings for recovery of the vehicle. It is only on voluntary surrender of the goods by the hirer under section 63 that the owner will be allowed to sell the goods without a court order after one-third of the price has been paid.

Termination of an agreement

Section 54(1)(i) to (v) requires that before an owner shall enforce any provision of an agreement by demanding early payment of any sum, recovering possession of the goods or treating any right conferred on the consumer as determined, restricted or deferred, he must serve a notice on the consumer at least 21 days before the date on which the owner proposes to take any action. (The act refers to ten days, but if this sub-section is read in conjunction with section 54(2)(v)(II), the period must be expanded to 21 days.) The notice should include the following details:

- Details of the agreement sufficient to identify it
- The name and address of the creditor/owner
- The name and address of the consumer
- The term of the agreement to be enforced
- A statement of the action he intends to take to enforce the term of the agreement, the manner and circumstances in which he intends to take such action and the date on or after which he intends to take such action.

'The act has now been in operation for a number of years, and it may now be an opportune time for it to be reviewed so that the people for whose benefit it was drafted may understand it and avail of its protection'

Section 54(2) goes on to say that a creditor/owner shall not determine the agreement, demand early payment of any sum, recover possession of the goods, treat any right conferred on the consumer by the agreement as determined, restricted or deferred or enforce security without serving on the consumer a notice of at least ten days (read as 21 days if the breach can be remedied by the hirer) before the date on which he proposes to take action, containing the same details as specified above. Such a notice should also contain details of the action to be taken by the consumer in order to remedy the breach and, if the breach is not capable of being remedied, the sum (if any) that must be paid as compensation for the breach and the date before which it is to be paid. This date is to be no less than 21 days after the date of service.

Failing to implement the correct procedure in terminating a hire purchase agreement is probably the most common oversight. This is of particular importance because if the agreement is not correctly terminated, no lawful demand can be made for the hirer to pay the outstanding contractual liability on termination of the contract.

Crucial cautions

It is important in all instances to ensure that you have an enforceable agreement. Be certain, wherever possible, that all the requirements of the act have been complied with before making a demand for payment. It is also important to make sure that you are pursuing the contractual liability under the hire purchase agreement and not a different amount, such as a 'book loss', that exceeds the maximum liability of the hire as set out in section 63.

Pursuance of the contractual liability is possibly the most controversial part of the act, in that the act was implemented to provide protection for the consumer in dealing with financial institutions. In an attempt to protect the consumer, section 63 sets out the maximum liability of the hirer in determining the agreement. The maximum liability sets out that the consumer can be held liable to 'pay the amount, if any, by which one-half of the hire purchase price exceeds the total of the sums paid and the sums due in respect of the hire purchase price immediately before termination, or such less amount as may be specified in the agreement'.

Liability under section 63 can often differ considerably from what financial institutions would deem as their 'book loss'. It is not common for financial institutions to allow for a lesser liability in their contracts than the liability allowed for under this section. In certain circumstances, the financial institution can pursue the section 63 liability even though this liability may entitle it to recover more than its actual loss on the contract. One should also note that the act gives no right to the owner to recover the goods or payment for that matter when an agreement is determined. The owner must therefore incorporate these rights into the agreement upon entry into the contract; there is usually a

section in the terms and conditions that will contain such rights.

If an agreement is terminated in its early stages, it can cause hardship to the hirer in that he may be required to pay the arrears and/or the balance required to bring all sums paid under the agreement up to one-half the total hire purchase price. There is no obligation on financial institutions to term their contract in such a manner as to allow the owner to recover the amount as calculated under section 63, this being the maximum amount recoverable under the act. Such financial institutions commonly place a term in the contract allowing for recovery of the sum due as calculated under section 63, not necessarily to make a profit from contracts terminated in their early stages but to safeguard their interest. The main reason that an owner would profit in such situations is the fact that the sale price of the vehicle has no bearing on the liability of the hirer.

Indeed, to term the contract in a fashion that does not fall within the liability allowed to be claimed under section 63 may, in some cases, allow the liability of the hirer under the contract to exceed that allowed for under the section. If this situation occurs, the term will be rendered void and the owner cannot pursue the hirer for any of the outstanding liability (S 62(1)(c)).

It is clear that the *Consumer Credit Act, 1995* is not user-friendly for either the hirer or owner. The act has now been in operation for a number of years, and it may now be an opportune time for it to be reviewed so that the people for whose benefit it was drafted may understand it and avail of its protection and also so that those who have to comply with it may more clearly understand their obligations.

The uses of the one-half and one-third rules are arbitrary and, in some instances, favour one party over the other. They take little account of modern financial arrangements and produce inequities on one party over the other; these inequities should at least be changed.

On average, over a number of agreements, financial institutions may recover sufficiently on contracts terminated in early stages to compensate for their losses in contracts terminated in their latter stages, after the goods have depreciated considerably. The same cannot be said for the unfortunate hirer who learns in the early stages that he cannot fulfil his obligations under the contract and, in terminating the agreement, is unable to claim relief based on the re-sale of the goods before they depreciate greatly. It is this hirer who will be the hardest hit on all counts, the same hirer to whom the act purports to provide protection. G

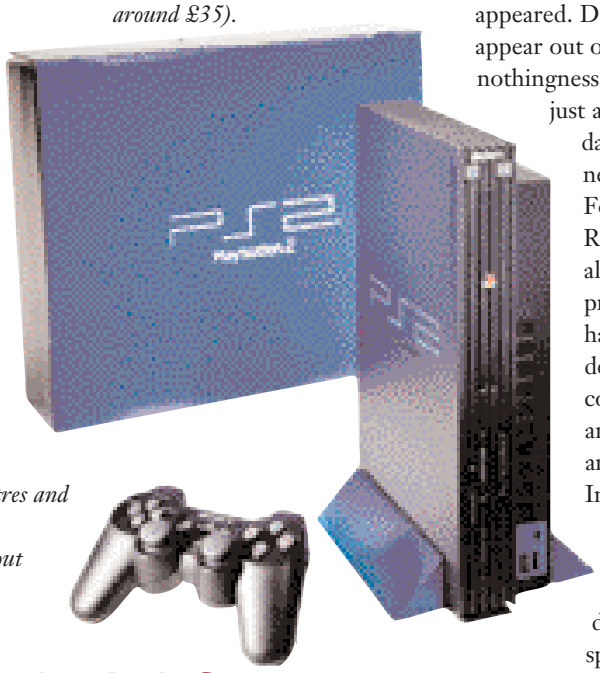
Keith McConnell is an apprentice solicitor with Dublin law firm Matheson Ormsby Prentice.

Tech trends

By Maria Behan

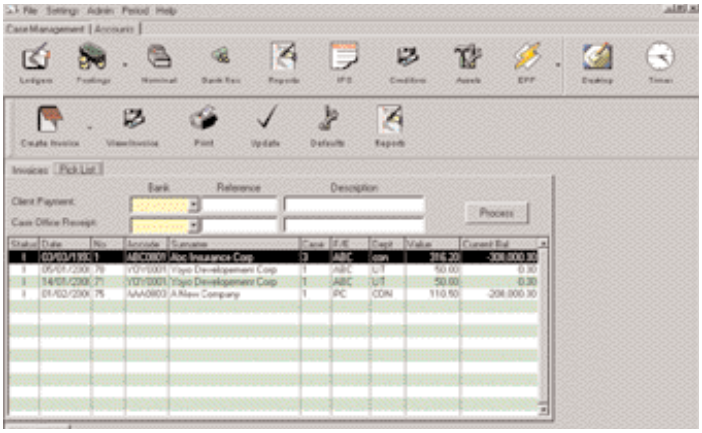
Worth the hype?

Sony's PlayStation2 is *the* toy this Christmas, for kids and grown-ups alike. Billed as the most powerful computer entertainment system ever, this games console boasts state-of-the-art graphics and a built-in digital video disk (DVD) player. But with demand far outstripping supply, the quest for this particular gift may dampen your Christmas spirit. *Priced at £380 and available – if you're lucky – at Sony Centres and electronic and toy outlets. Individual games go for about £50 each (top tip: for real entertainment value, check out the new* Spiderman *game at around £35).*



A base to build from

BCL's Lawbase Professional is a software suite developed specifically for the Irish legal profession. It includes an integrated database (which can share data with your word-processing software) to keep track of the details of cases and clients, a legal accounting system that features basics such as time recording and invoice production as well as fancier capabilities such as fee earner income analysis, and case management software that includes case logs, automatic document production and alarms. *Pricing varies based on options selected and the number of users; running the full suite on an NT network costs about £600 per user; individual software modules can be also bought separately. Contact BCL on 01 660 4545 or e-mail info@bcl-international.com.*



Just the fax, ma'am

Fax machines seemed like magic when they first appeared. Documents would appear out of pure nothingness, and were often just as useful. These days, you don't even need the machine. For instance, RightFAX software allows all fax processes to be handled from users' desktops, saving considerable amounts of time and, hence, money. Incoming documents can be routed to individual desktops, sent to specified groups of users or even accessed via the Internet. Through integration with e-mail systems such as Microsoft Exchange and Lotus Notes, large documents can be faxed within 30 seconds, cutting out the time that would otherwise be spent cooling your heels at the fax machine. Developed originally for medium-to-large legal firms, RightFAX also offers features such as the ability to attach billing codes to faxes for easier integration with a firm's practice management system. An optional OCR router uses optical character recognition to scan the first page of an inbound fax for recognisable character strings – say, the name of a client or a case – then circulates the fax to those listed in a corresponding routing table. *A two-line Business Server system costs about £6,000, including installation and training; available from Softech on 01 215 6200.*

Music to your ears?

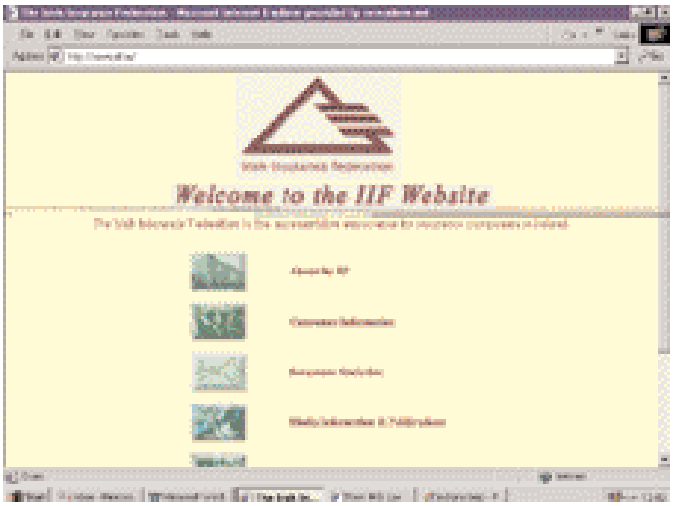
Do the words 'innovative egg-shaped speakers combined with a discreet non-directional subwoofer' make you go all gooey inside? Well, that's how Kenwood describes its VH-650 sound system. So if you like your subwoofers discreet (and who wouldn't? – particularly if you're the proud owner of a Richard Clayderman collection) this audio system might be an ideal Christmas gift to yourself. The design really is unusual: one slim box houses the amp, tuner and CD player, with function depending on how you have it positioned. Turn it one way and it's a CD player; turn it another, it's a classy radio. *Available for around £500 from Brown Thomas stores; the optional mini-disc costs £300 and the cassette runs to £170.*

Easy on the eyes

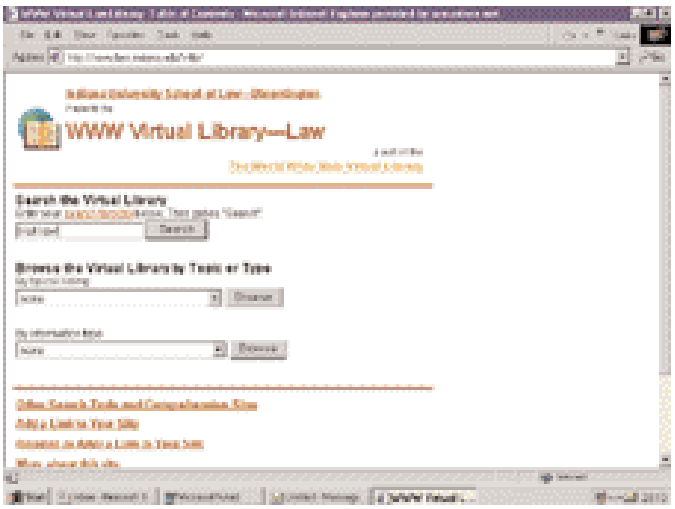
Looking at a widescreen TV is great – unless the behemoth taking up half your living room clashes with your décor, in which case it's probably time to redecorate. Billed as the first 'designer TV', this 32-inch widescreen set from Thomson aims to solve your interior design problems with a clip-on panel (you choose the colour) so you can change the look of your set if the standard silver finish isn't quite you. The set also features cinema-quality Dolby sound and a child lock to keep the young rascals away when you don't want them watching TV. In the long run, it's easier than locking them in the coal house – and a lot less difficult to explain to social services. *The Thomson 32WX65US widescreen TV is available for about £1,600 from HM Entertainment and other electronics outlets.*

Sites to see

Australian Legal Information Institute (*http://www.austlii.edu.au*). Need to know something about the law down-under? This website provides primary sources, including the current skinny on Australia's statutes, together with journals, teaching materials, lists of legal organisations and links to other antipodean websites.



Irish Insurance Federation (*www.iif.ie*). This site should be useful for anyone with an interest in insurance issues. Its section dedicated to consumers features a facility to submit insurance queries and complaints. It also provides information on insurance statistics and a glossary that spells out the often arcane industry jargon, such as 'boring', 'sharks' and 'rip-off', perhaps?



Indiana University Virtual Law Library (*http://www.law.indiana.edu/v-lib*). Part of the ambitious World Wide Web Virtual Library project, this on-line treasure trove of legal information is organised by organisation type (for example, US government agencies) and by legal topic (such as contracts). There's also a list of legal search tools and other comprehensive law sites.

Photobox (*www.photobox.ie*). Planning to take compromising snaps at the Christmas party? Why not share them with the world thanks to this site, which lets you organise photos into a set of on-line albums which can be distributed across cyberspace. Who'd have thought the humble photocopier could provide so much cheap entertainment?

Report of Law Society Council meeting held on 10 November

New Council members
The Council welcomed its newly-elected members, Simon Murphy and Edward Hughes, together with the new nominees from the Southern Law Association, Patrick Dorgan and Eamonn Fleming, and wished them well for their term of office.

Taking of office by president and vice-presidents
The outgoing president, Anthony H Ensor, thanked the Council, the director general and the staff of the society for their support during his year of office. He expressed his best wishes to the incoming president, Ward McEllin, who was then formally appointed to office by the Council. Mr McEllin thanked the Council for the honour of electing him president. He paid tribute to Anthony Ensor for his 'captaincy' of the society over the previous year and for the manner in which he and his wife, Beatrice, had represented the profession at home and abroad. The senior vice-president, Elma Lynch, and the junior vice-president, Michael Irvine, then took office and pledged their support to the president and the Council for the coming year.

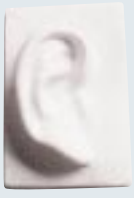
Objectives for the year
The president outlined three specific objectives for the society for the coming year: 1) he had established a special task force to conduct a root-and-branch review of the area of practice management, to report to the Council by 1 July 2001 on the way forward; 2) he intended to engage in a specific drive to identify practitioners who could contribute to the Council and to its committees and to encourage them to become involved in the work of the society; 3) new *Solicitors' accounts regulations* would be introduced at the earliest possible date and would be rigidly enforced by the society.

Motion: voluntary contribution to FLAC
'That this Council recommends that practitioners be asked on the practising certificate application form to make a voluntary contribution to FLAC (in the same way as the Solicitors' Benevolent Fund).'
Proposed: James MacGuill
Seconded: John Costello

The Council noted the valuable service provided by FLAC over many years, with minimal financial support from government. The lack of a proper legal aid scheme was deplored by the Council. After a brief discussion, the Council approved the motion.

EU directive on money laundering
John Fish reported that, notwithstanding that the Council of European Finance Ministers had taken a policy position in support of the obligation on lawyers to report suspicions of money laundering by their clients, the CCBE had decided to continue to oppose the proposal. It was intended to write to all MEPs in relation to the text of the directive and to contact the American Bar Association to secure its support for the CCBE position.

CCBE
John Fish reported on a French presidency proposal for a convention in relation to mutual assistance in regard to money-laundering and organised crime. The CCBE had expressed its deep concerns regarding a suggestion that the legal profession would be included within the terms of the convention. Mr Fish also reported that the CCBE had agreed a policy position with the EU Commission in relation to the WTO and GATS. In essence, they had recognised the right of lawyers from other jurisdictions to establish within the EU, provided they registered with the appropriate professional body, were subject to all disciplinary and regulatory rules, had no right of representation in court and were confined to providing advice on the law of their home jurisdiction. G



Practice note

SUPERIOR COURT RULES: OFFER OF PAYMENT IN LIEU OF LODGMENT

Practitioners should note the introduction of SI No 328 of 2000 which adds a new rule (rule 14) to order 22 of the *Superior Court Rules 1986*.

The rule provides that where a qualified party (as defined in the rule) is entitled to make or increase a lodgment on his own behalf or on behalf of any other party under the *Superior Court Rules* or by order of the court, then such party may, in lieu of lodging any money in court, make an offer of tender of payment to the other party. The rule also allows for the making of an additional tender offer. The forms on foot of which a tender may be made are set out in the rule.

The new rule came into effect on **19 November 2000** and is introduced in addition to the existing rules regarding lodgments, which still apply.

Litigation Committee

Practice note

Taxation of settlements and awards in employment cases

The Employment and Equality Law Committee wishes to draw members' attention to the possible application of income tax and social welfare payments to settlements and awards in employment cases.

In some non-employment cases, monies paid in settlement of proceedings or by way of damages are not subject to taxation. Employment disputes, however, where they involve or relate to the termination of an employee's employment, are covered by chapter 5 of the *Taxes Consolidation Act, 1997*. In the taxation of payments to a former employee under chapter 5, no distinction is made between an award and a settlement. They are both treated the same way for tax purposes. All aspects of an award or a settlement are covered and this may include legal costs.

Practitioners acting for employers should advise their clients of their obligations under tax and social welfare legislation to deduct tax and possibly make social welfare contributions from payments made to employees on foot of a settlement or award. Practitioners acting for employees must advise their clients when settling a case or in receipt of an award that the payment ultimately made on foot of such settlement or award may have tax deducted from the payment in all its aspects, possibly including legal costs.

All employees have a basic tax exemption on a settlement or award of £8,000 plus £600 per year of service. There may be additional exemptions available. Where a settlement or award exceeds the basic exemption, the possible tax implications should be taken into consideration in particular before concluding a settlement. There is no obligation on any practitioner to point out to another practitioner the applicability or otherwise of tax to a figure agreed in negotiation of a settlement or on foot of an award.

The actual amount of tax or social welfare deductions to be applied to a settlement or award will vary depending on the individual employee's tax position, and where awards exceed the basic exemption expert tax advice should be sought.

Company directors

In the case of a director of a company, where a payment is proposed to be made in whole or in part in respect of loss of the office of director, any such proposal must be approved by a general meeting of the company as required by sections 186 and 189 of the *Companies Act, 1963*.

Employment And Equality Law Committee

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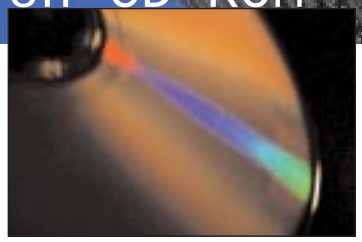

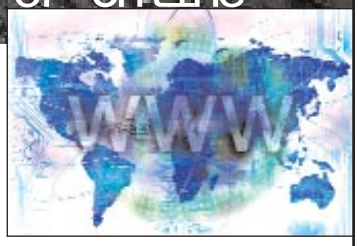

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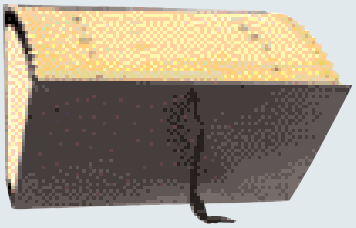

Committee reports

BUSINESS LAW

Radical reform of procedures implementing articles 81 and 82

On 27 September 2000, the EU Commission adopted a proposal for a regulation amending the procedures (that had been in force since 1962) for the implementation of articles 81 and 82 of the *Treaty of Rome*, which set out the rules applicable to restrictive agreements, decisions and concerted practices and abuses of dominant positions.

Under the present system, the Commission has exclusive power to apply article 81(3). Thus, all restrictive agreements caught by the prohibition in article 81(1) and requiring exemption under article 81(3) have to be notified to the Commission.

The proposed regulation would introduce a radically different regime which would involve the abandonment by the Commission of its monopoly over the granting of exemptions under article 81(3). Instead, the regulation would introduce a directly applicable exemption system whereby both the prohibition in article 81(1) and the exemption provisions in article 81(3) could be directly applied not only by the Commission but also by national courts and by national competition authorities. This direct application of article 81(3) would mean that agreements fulfilling the conditions of that paragraph would be legally enforceable without the need to notify them to the Commission for exemption.

The Commission has proposed this new approach because it felt that the current system was no longer workable in a European Union of 15 member states, which is set to expand even further. The Commission believes that its monopoly over the application of article 81(3) constitutes a significant obstacle to the effective application of the competition rules by national competition authorities and courts. By giving them the power to apply articles 81 and 82 in their entirety, the Commission believes that the proposed regulation would create a more effective network of competition law enforcers.

Many member states, including Ireland, have enacted national competition laws based on articles 81 and 82 and have established national competition authorities to enforce those national competition laws (and, in many cases, to enforce EU competition law as well). The Irish Competition Authority currently has no power to enforce EU competition law, although it is expected that it will be given such power in the wake of the Competition and Mergers Review Group's recommendation to that effect. This would be consistent with the requirements of the proposed regulation.

The new regime would also allow the Commission to focus its attention on and devote greater resources to more effective detection and punishment of infringements (in particular, the more serious infringements such as price-fixing and market-sharing cartels). The Commission believes that this will lead to improved protection of competition and to increased benefits for consumers in the operation of the European single market.

A significant feature of the proposal is that where agreements, decisions or concerted practices within the meaning of article 81 or abusive conduct within the meaning of article 82 are capable of affecting trade between member states, EU competition law would apply to the exclusion of national competition laws. According to the Commission, this would result in greater harmonisation and more consistent application of the competition rules. It would also mean, however, that the Irish Competition Authority would not be able to apply Irish competition law in such cases. This makes it all the more important, if effective enforcement of competition law in Ireland is to be ensured, that the Competition Authority be given the necessary powers to enforce EU, as well as Irish, competition law.

The text of the proposed regulation is available on the following website: *http://www.europa.eu.int/comm/competition/antitrust/others*.

Gerald FitzGerald,
Business Law Committee

REGISTRAR'S

How to avoid wasting the committee's time (and your own)

Many solicitors unnecessarily appear before the Registrar's Committee having first indulged themselves in acrimonious correspondence with other solicitors, their client and even the committee itself. The following is an amalgam of a number of cases that have been before the Registrar's Committee which demonstrates this type of situation.

Mr Smith, a solicitor, was contacted by Mr Murphy, who explained that a year ago he had agreed to sell his house (through an auctioneer) to a Mr Pearson for £300,000. Mr Murphy's solicitor, a Ms Jones, had been instructed to prepare contracts and forward them to the purchaser's solicitors. Ms Jones had been given every opportunity to issue the contracts but she had failed to do so. In addition, she had ignored 15 phone calls, four letters and six letters from Mr Murphy's auctioneer. A year had now passed and Mr Murphy was at the end of his tether. He asked Mr Smith to deal with the matter for him.

On the following day, Mr Smith issued contracts to the purchaser's solicitors. Ms Jones got wind of this and wrote a four-page letter in the strongest possible terms to Mr Smith, which concluded: '*Your scurrilous behaviour in approaching my client is unethical, disingenuous and completely reprehensible. It is the act of a low-life and undesirable solicitor*'.

Mr Smith took complete offence at the tone of Ms Jones' letter and responded with a five-page letter. He asked Ms Jones to withdraw her remarks and alleged that she was completely incompetent and had lost all touch with commercial reality. This letter prompted a further exchange of acrimonious correspondence culminating in a formal complaint by Mr Smith to the Law Society.

By this stage, both parties had wasted four working hours dealing with each other's correspondence.

The Law Society's complaints section wrote to Ms Jones, who responded by reporting Mr Smith for unprofessional conduct in touting her client. The society asked Mr Smith for his comments and he failed to respond. A reminder was issued and again Mr Smith failed to respond. Accordingly, Mr Smith was requested to attend at the next meeting of the Registrar's Committee. He did not do so

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and the matter was adjourned to the committee's next meeting. Mr Smith attended that meeting and, after confirming that the sale had closed and that Mr Murphy had received the purchase monies, immediately proceeded to elaborate on the complaint he had levied against Ms Jones. The chairman told him that the purpose of his attendance was to explain his failure to respond to the society's letters. The chairman said that this was one of (if not *the*) biggest irritant to the members of the committee who put in a lot of voluntary work reading long, verbose correspondence. Mr Smith responded by saying that the committee was an outrage, that it refused to listen to his complaint and that he was going to report each member of the committee to the independent adjudicator. Eventually, after prolonged discussion, Mr Smith agreed to furnish a written response to the society, and the committee agreed once again to adjourn the matter.

Mr Smith's response consisted of a 15-page letter which included the following: *'Counsel has advised me that the complaints against me are completely unfounded in law'*.

Third parties were now affected. Mr Smith had decided to drag some poor obliging barrister to assist him in dealing with this nightmare.

Further lengthy correspondence ensued, at which point both parties requested a hearing by the committee. Following the hearing, the committee made a finding of inadequate professional services against Ms Jones, directed her to waive fees and make a contribution of £750 to the society and referred Mr Smith to the Disciplinary Tribunal for his failure to respond to the society's correspondence.

By the time the matter came before the committee, Ms Jones had spent 24 hours dealing with the matter, while her barrister had spent four hours. Mr Smith had spent 32 hours and his barrister had spent six hours dealing with it. Eight committee members spent roughly two hours each dealing with the complaints. This amounts to a grand total of 90 man-hours or over two full working weeks spent on the complaint.

If either Mr Smith or Ms Jones had picked up the phone to the other and attempted to deal with the issues, hours could have been saved and costs could have been avoided. But – most important of all – serious stress levels could have been reduced.

While the Registrar's Committee is there to deal with complaints, some of these (or at least the way they are handled by the parties involved) are avoidable. The number of solicitors who fail to respond to the committee or ignore requests to attend committee meetings is mystifying, and both the lay members of the Registrar's Committee and the independent adjudicator have repeatedly expressed concern at the impact such conduct has on the Law Society's procedure for complaints handling. G

Registrar's Committee

LEGISLATION UPDATE: 19 SEPTEMBER – 13 NOVEMBER 2000

ACTS PASSED

Cement (Repeal of Enactments) Act, 2000
Number: 31/2000
Contents note: Repeals the *Cement Acts, 1933 to 1962*
Date enacted: 24/10/2000
Commencement date: Commencement order to be made (per s2(2) of the act)

SELECTED STATUTORY INSTRUMENTS

Air Pollution Act, 1997 *(Marketing, Sale and Distribution of Fuels) (Amendment) Regulations 2000*
Number: SI 278/2000
Contents note: Provide for the introduction of the ban on the sale of bituminous coal to five additional restricted areas in Celbridge, Galway, Leixlip, Naas and Waterford and an additional location in the restricted area of South Dublin. Amend the *Air Pollution Act, 1987* (Marketing, Sale and Distribution of Fuels) Regulations 1998 (SI 118/1998)
Commencement date: 1/10/2000

Comhairle Act, 2000 *(Establishment Day) Order 2000*
Number: SI 167/2000
Contents note: Appoints 12/6/2000 as the establishment day for the purposes of the act

Criminal Justice (Legal Aid) (Amendment) (No 2) Regulations 2000
Number: SI 354/2000
Contents: Provide for an increase of 5.5% in the fees payable under the criminal legal aid scheme to solicitors for attendance in the District Court and for appeals to the Circuit Court, and for an increase of 5.5% to solicitors and counsel in respect of essential visits to prisons and other custodial centres (other than garda stations) and for certain bail applications. Revokes the *Criminal Justice (Legal Aid) (Amendment) Regulations 1999* (SI 385/1999)
Commencement date: 1/10/2000

Dublin Convention *(Implementation) Order 2000*
Number: SI 343/2000
Contents note: Gives effect to the state's obligations as a party to the *Dublin convention*. Among other things, it puts in place procedures for the refugee applications commissioner to determine whether an application for asylum should, in accordance with the terms of the *Dublin convention*, be dealt with in the state or in another convention country. Repeals and replaces the Dublin Convention *(Implementation) Order 1997* (SI 360/1997)
Commencement date: 20/11/2000

Equal Status Act, 2000 *(Commencement) Order 2000*
Number: SI 351/2000
Contents note: Appoints 25/10/2000 as the commencement date for the act

European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000
Number: SI 307/2000
Contents note: Give further effect to Council Directive 93/13/EEC on unfair terms in consumer contracts. Provide that consumer organisations set up for the purpose of protecting consumer rights be allowed to bring an injunction. Amend the *European Communities (Unfair Terms in Consumer Contracts) Regulation 1995* (SI 27/1995)
Commencement date: 2/10/2000

Freedom of Information Act, 1997 *(Prescribed Bodies) (No 3) Regulations 2000*
Number: SI 355/2000
Contents note: Prescribe the following as separate public bodies for the purpose of the *Freedom of Information Act, 1997,* by their inclusion in paragraph 1(5) of the first schedule to the act: Combat Poverty Agency; Social Welfare Tribunal; Irish Wheelchair Association; Enable Holistic Services Ireland Limited; Multiple Sclerosis Society of Ireland; National Council for the Blind of Ireland; National Association for the Deaf; Cheshire Foundation in Ireland; Independent Radio and Television Commission; An Chomhairle Ealaíon; Local Government Computer Services Board; National Safety Council; An Chomhairle Leabharlanna; Irish Water Safety Association; Fire Services Council and the Office of the Director of Telecommunications Regulation
Commencement date: 21/10/2000

Planning and Development Act, 2000 *(Commencement) Order 2000*
Number: SI 349/2000
Contents note: Appoints 1/11/2000 as the commencement date for ss1, 2 (insofar as it relates to the sections commenced on that date), part v (ss93-101) on housing supply, part ix (ss165-171) on strategic development zones, certain sections in part ii on plans and guidelines: ss13, 28, 29, 30, and ss262, 266, 269 and 270 of the act; appoints 1/1/2001 as the commencement date for s2 (insofar as it relates to the sections commenced on that date), the rest of part ii: ss9-12, 14-27, 31, and the first schedule of the act

Planning and Development Regulations 2000
Number: SI 350/2000
Contents note: Prescribe the bodies which must be notified of the preparation of a draft development plan and sent copies of the draft development plan and of a draft variation of a development plan, and the development plan or variation as made; the bodies which must be notified of the making, amending or revocation of a local area plan, in addition to Bord Fáilte; the bodies which must be notified of the intention to make regional planning guidelines, and sent a copy of the draft guidelines; the size of accommodation needed by eligible persons as defined in section 93 of the *Planning and Development Act, 2000*; the bodies which must be notified of and sent a copy of a draft planning scheme for a site designated by the government as a strategic development zone
Commencement date: 1/11/2000

Refugee Act, 1996 *(Appeals) Regulations 2000*
Number: SI 342/2000
Contents note: Supplement in detail the procedures set out in section 16 of the *Refugee Act, 1996* in relation to the determination by the refugee appeals tribunal of appeals against recommendations of the refugee applications commissioner on applications for recognition as a refugee
Commencement date: 20/11/2000

Refugee Act, 1996 *(Application Form) Regulations 2000*
Number: SI 345/2000
Contents note: Set out the content of the application form to be completed by asylum applicants under section 8 of the *Refugee Act, 1996*
Commencement date: 20/11/2000

Refugee Act, 1996 *(Establishment Day) Order 2000*
Number: SI 309/2000
Contents note: Appoints 4/10/2000 as the establishment day for the purposes of the *Refugee Act, 1996*

Refugee Act, 1996 *(Places and Conditions of Detention) Regulations 2000*
Number: SI 344/2000
Contents note: Set out the places in which persons detained under section 9(8) or 9(13) of the *Refugee Act, 1996* may be detained. Provide for the treatment of such persons while in detention
Commencement date: 20/11/2000

Refugee Act, 1996 *(Sections 14 and 15 and Second Schedule) (Commencement) (No 2) Order 2000*
Number: SI 308/2000
Contents note: Appoints 4/10/2000 as the commencement date for sections 14 and 15 and the second schedule of the *Refugee Act, 1996* (as amended by section 11 of the *Immigration Act, 1999*) dealing with the establishment day for the *Refugee Act* and the refugee appeals tribunal

Refugee Act, 1996 *(Section 23) (Commencement) (No 3) Order 2000*
Number: SI 341/2000
Contents note: Appoints 26/10/2000 as the commencement date

for s23 of the act. Section 23 provides that the minister for justice, equality and law reform may make regulations to enable the *Refugee Act, 1996* to have full effect

Refugee Act, 1996 *(Temporary Residence Certificate) Regulations 2000*
Number: SI 346/2000
Contents note: Set out details of additional information to be included in the temporary residence certificate which is to be issued to each asylum-seeker under section 9(3)(a) of the *Refugee Act, 1996*
Commencement date: 20/11/2000

Refugee Act, 1996 *(Transitional) Regulations 2000*
Number: SI 348/2000
Contents note: Make transitional arrangements for the transfer to the refugee appeals tribunal, the statutory appeal procedure under the *Refugee Act, 1996*, of appeals made before 20 November 2000 under the former scheme entitled *Procedures for processing asylum claims in Ireland* (1998) which had not been finalised by that date
Commencement date: 20/11/2000

Refugee Act, 1996 *(Travel Document) Regulations 2000*
Number: SI 347/2000
Contents note: Specify that the form of travel document to be issued to a person declared to be a refugee under section 17 of the act (a convention refugee) and to a programme refugee under section 24 of the act shall be the form set out in the annex to the *Geneva convention* together with the text thereof in the Irish and French languages
Commencement date: 20/11/2000

Rules of the Superior Courts (No 3) (Documentation for Review of Taxation) 2000
Number: SI 329/2000
Contents note: Amends order 99, rule 28(5) of the *Rules of the Superior Courts*. Removes the requirement, on an application for an order to review the taxation of costs, on the taxing master to transmit to the High Court with his report the original bill of costs, notice of objections and any other material documentation and in lieu thereof requires the party seeking a review of taxation to produce to the court duly certified copies of such documentation
Commencement date: 19/11/2000

Rules of the Superior Courts (No 4) (Amendment of Order 70A) 2000
Number: SI 327/2000
Contents note: Substitutes a new rule 28 in order 70A of the *Rules of the Superior Courts* (inserted by SI 343/1997) to the effect that the provisions of order 119, rules 2 and 3, solely insofar as they relate to the wearing of a wig and gown, shall not apply to any cause, action or proceeding under order 70 or 70A of the *Rules of the Superior Courts*
Commencement date: 19/11/2000

Rules of the Superior Courts (No 5) (Offer of payment in lieu of lodgment) 2000
Number: SI 328/2000
Contents note: Inserts a new rule 14 *Offer of payment in lieu of lodgment* in order 22 of the *Rules of the Superior Courts*. This rule provides for the making by qualified parties of an offer of tender of payment in lieu of lodging money in court
Commencement date: 19/11/2000

Video Recordings Act, 1999 *(Commencement) Order 2000*
Number: SI 353/2000
Contents note: Appoints 1/10/2000 as the commencement date for sections 5, 6, 11(1)(a), 12(2), 12(3), 12(5), 13 of the act, insofar as these sections are not already in operation. Provides for the extension of these sections to include all video works

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Personal injury judgments

Road traffic accident – issue of credibility – delay in seeking medical assistance – injuries to nose – rhinoplasty

CASE

***Kevin McGoldrick v Patrick Costello*, High Court on circuit, before Mr Justice Paul Carney, judgment of 8 November 1999.**

THE FACTS

Kevin McGoldrick suffered as a consequence of a road traffic accident. He sustained injury to his nose, but did not seek medical intervention for a considerable period of time after the accident. On the night of the accident, he went straight into a disco afterwards. There had been evidence that Mr McGoldrick had sustained similar injuries in the past in a 'punch-up'. Subsequently, pain developed around his nose and forehead and there was some swelling. Mr McGoldrick suffered nasal congestion and thought the shape of his nose had altered since the traffic accident. After some time, Mr McGoldrick went to his local general practitioner and was referred to Sligo General Hospital. There, he was diagnosed as having a marked deviation of the nasal septum and a fracture was diagnosed on 1 April 1988. A rhinoplasty was performed. Mr McGoldrick stated he suffered from headaches and there was evidence that he may require rhinoplasty in the future to improve cosmetic aspects.

THE JUDGMENT

There was no doubt, according to Mr Justice Carney, that negligence lay on the part of the defendant, Patrick Costello. However, the judge said that credibility was an issue in the case, noting that the three participants in the incident who had given evidence were not 'particularly helpful'. The judge considered it 'very dissatisfying' when consultant surgeons were placed into service 'as private detectives by defendants'.

Noting that, in general, he would have found the description of the accident advanced by Mr McGoldrick and his witnesses as 'improbable', the judge also stated he did not find Mr Costello 'either helpful or a credible witness'. He noted that he had been presented with an over-dramatised account of an incident, but he did not believe that Mr McGoldrick was somebody who had come along to commit deliberate fraud and perjury. The judge noted that McGoldrick did sustain injury to his nose which he had treated very casually by not seeking medical intervention for a long time after the accident. He observed that Mr McGoldrick was a 'casual person and that is the way of the world these days', and stated again that Mr McGoldrick did not deliberately go out to invent a fraudulent accident and perjure himself into damages.

THE AWARD

Mr Justice Carney held that if Mr McGoldrick did require rhinoplasty in the future to improve cosmetic aspects, a week in hospital would cost £1,000. General damages were assessed at £15,000 and a decree was awarded accordingly for a total of £16,000. Circuit Court costs were awarded with a certificate for senior counsel.

Counsel for Mr McGoldrick: Mr O'Hagan SC, Mr Edward Walsh SC and Mr Colm Smith, instructed by McGovern Walsh & Co, Solicitors.
Counsel for Mr Costello: Mr Terry Clarke SC and Mr Keane, instructed by Ms Angela Dempsey, Solicitor.

Road traffic accident – negligence – assessment of damages – dispute between the parties as to the calculation of loss of earnings

CASE

***Keith Pethe v Peter McDonagh and the Motor Insurers Bureau of Ireland*, High Court on circuit in Waterford, before Mr Justice Philip O'Sullivan, judgment of 2 July 1999.**

THE FACTS

On 2 September 1996, Keith Pethe, then 24 years of age, was involved in a serious road traffic accident. Mr Pethe spent four hours trapped in a car which had almost caved in around him. He endured the terrible experience of looking down and seeing his right foot between his knees because, as medical evidence demonstrated later, he had complex breaks in his lower and upper right leg. He had, in fact, sustained breaks of his tibia and fibula of his right leg, his femur/thigh bone, and also breaks of his left-hand middle finger and ring finger. He suffered cuts on his knee and had several teeth broken; major damage was particularly done to four teeth.

In all, Mr Pethe underwent seven operations prior to the trial of his action for negligence against Peter McDonagh and the MIBI. The expected final operation was to remove the pin in his right femur. That operation would be delayed because the surgeon wanted to ensure that there was

a complete healing of the bone before he took the pin out. Mr Pethe underwent physiotherapy throughout the entire year of 1997. He himself elected to stop physiotherapy and instead exercised on a bike to build himself up. He also decided to come off medication.

Liability was not disputed. The case proceeded on an assessment of damages only. There was a significant dispute, however, between the parties in relation to approaching the issue of loss of earnings. For the year 1995, Mr Pethe's take-home pay was £19,696. The dispute between the parties related to the submission by Mr Pethe's accountant that this figure was a net figure and, as Mr Pethe was a PAYE earner, it should be grossed up to a figure of somewhere near £35,000 to represent his actual gross pay. It was argued by the other side that this sum of £19,696 was, in effect, his gross pay and that it should be netted down to £11,000.

THE JUDGMENT

Describing the accident as 'horrific', Mr Justice O'Sullivan referred to his general impression of Mr Pethe. He considered Mr Pethe understated his pain and suffering and, on a number of occasions, simply dismissed the suggestion that he was suffering pain. The judge formed the impression that Mr Pethe was a man of enterprise and energy and he considered that that was relevant, to some extent, when attempting to assess the future in terms of earnings. However, he did bear in mind the evidence of a clinical neuropsychologist and from Mr Pethe himself that he suffered a loss of confidence and has socialised less with his friends since the accident. The judge noted, although it was not relevant, that Mr Pethe had a two-and-a-half-year-old son who suffered from rubella.

The judge considered in general that the future was bright for Keith Pethe because of his personal characteristics and the advantages of his character. The judge observed that Mr Pethe had a limp and was clearly 'compromised in his gait'. He had a catching sensation in his skin which his doctor did not consider was particularly directly linked with his injuries. However, the judge noted his right leg was some two centimetres shorter than his left one and he had significant discomfort from his right hip, which was the site of his next operation. The judge said he had seen, in the presence of counsel for both sides, the scars on both the lower and upper limbs of Mr Pethe's right leg.

Mr Justice O'Sullivan stated that Mr Pethe had to be compensated for pain and suffering in the past and for the future and that he had appreciable impairment into the future, noting that he would have scars, a shorter leg and have the potential for soft-tissue discomfort.

The judge then turned to the issue of the significant dispute between the parties in relation to how he should approach Mr Pethe's loss of earnings. He said he would take a simple approach but not, he hoped, a simplistic one. Mr Pethe received in a typical year the sum of £19,696. The judge accepted that that was his loss. He considered it was more probable that his arrangement with his employer was that both were satisfied with that amount of 'take' and the employer in principle did undertake to pay tax and this was apparent from the P60 form. He did not do it properly and the loss to Mr Pethe had to be measured by reference to what he would actually have received as receipts.

Another issue arose as to how long it was reasonable to argue that there would be loss of earnings because of the accident. Mr Pethe had stated that his plan now was to pursue a four-year or longer course of study; he would not be earning during that time and he was looking for damages measured to loss of earnings for that period. Counsel for the MIBI argued that he was not entitled to damages for loss of earnings over such a number of years because the evidence of his injuries showed that he would be in a position of being able to put himself on the job market after his eighth operation; the defence should not have to pay for Mr Pethe's choice to study for any number of years after that.

The judge considered that the defence argument was correct in principle and what he had to do was measure an amount of money to represent Mr Pethe's loss of earnings for as long as he considered he had been deprived by the accident and his injuries of an opportunity to get back into the marketplace.

The decree, was awarded against both defendants on a joint and several basis. Counsel for the defence made submissions to the judge in relation to an application for a stay. Counsel for Mr Pethe argued that the damages would not, and could not, be overturned, having regard to the judge's reasoning. Mr Justice O'Sullivan replied there was a constitutional right of appeal and he could not assume he was right. He noted: 'I am not selling infallibility'. The judge stated he had heard a course of reasoning that in the absence of proof that a plaintiff would fritter away the money so that there was none left if the defendants were successful on appeal, a stay should not be granted. The judge decided after further argument that a sum of £135,000 be paid forthwith and he would put a stay on the judgment on the balance pending appeal on the usual terms.

Counsel for Mr Pethe: Mr Michael Counihan SC, Mr Liam Reidy SC and Mr Stephen Lanigan O'Keeffe BL, instructed by MM Halley and Sons, Solicitors.
Counsel for the defendants: Mr Sean Ryan SC, instructed by Mr John A Sinnott & Co, Solicitors. G

THE AWARD

On the issue of loss of earnings, Mr Justice O'Sullivan accepted that Mr Pethe was in receipt of net amounts of £20,000, in general figures, in 1995 and that he would have earned that sum more or less in 1996 and 1997. Accordingly, the judge awarded £60,000 together with an additional sum of £15,000 making a total of £75,000 for loss of earnings. From this, the judge deducted £4,000 a year in terms of disability assistance which he estimated at a figure of £15,000. Accordingly, the loss of earnings were £60,000.

In relation to pain and suffering to the date of the trial, Mr Justice O'Sullivan awarded Mr Pethe the sum of £85,000, taking into account all his injuries, including those to his teeth, his number of operations, and the effect on his personality. In relation to the future, the judge noted that Mr Pethe would still have the scars, would have proneness to soft-tissue injury, would have a shorter leg and there would still be some pain ahead for him and discomfort in his hip. The judge awarded general damages in the future of £30,000. Special damages were agreed at £15,000 which brought the full decree to £190,000.

These judgments were summarised by Eamonn Hall, solicitor, from Reports of personal injury judgments *from Doyle Court Reporters, 2 Arran Quay, Dublin 7.*

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ADMINISTRATIVE

Inquests

Coroner's court – non-attendance of witness – role of attorney general – role of coroner – service of witness summons – whether witness obliged to attend inquest – whether relevant statutory provisions unconstitutional – whether witness guilty of contempt – whether attorney general empowered to bring proceedings – Coroners Act, 1962, *sections 26, 30, 37 and 38*

The defendant was the widow of a man who had been fatally shot. She initially appeared at the inquest which, for legal reasons, was adjourned. She then failed to appear at the resumed hearings, despite having been served with a witness summons. The attorney general then issued plenary proceedings seeking to compel the attendance of the defendant pursuant to the provisions of the *Coroners Act, 1962* and in this regard also sought an interlocutory injunction. The High Court (Kelly J) granted the injunction sought and the defendant appealed. Keane CJ, delivering judgment, held that the attorney general was a guardian of the rights of the public and could seek relief in appropriate circumstances. In this instance, the upholding of the injunction would dispose entirely of the case and thus the usual test in the issue of injunctions should not apply. It had not been demonstrated that this was not an exceptional case requiring the courts to exercise their residual function to ensure compliance with the law. The attendance of witness at a inquest was a matter for a coroner alone to decide. The appeal would therefore be allowed and the relief sought by the attorney general would be refused.

***Attorney General v Lee*, Supreme Court, 23/10/2000** [FL3228]

Transport, taxis

Delegated legislation – European law – scheme for provision of new taxi licences – nature of judicial review – whether statutory scheme providing for issue of new taxi licences ultra vires *– whether challenge to legislation precluded by laches or acquiescence – whether proposed scheme qualitative or quantitative in nature* – Road Traffic Act, 1961, *section 82* – Road Traffic (Public Service Vehicles) Regulations 2000 – Road Traffic (Public Service Vehicles) (Amendment) Regulations 1999

The applicants issued judicial review proceedings seeking to challenge certain provisions of the *Road Traffic (Public Service Vehicles) Regulations 2000* which provided for the issuing of new taxi licences. The applicants challenged the proposal to issue additional taxi licences to existing licence-holders. The applicants argued that the relevant provisions of the *Road Traffic Act, 1961* did not permit the scheme proposed by the respondents. Murphy J was satisfied that while the minister had the right to regulate the control and operation of taxis, the restrictions proposed by the minister were quantitative in nature and were not permitted under the *Road Traffic Act, 1961*. In addition, by granting the new licences to Irish nationals, the licensing scheme could be said to offend against the principle of non-discrimination contained in European law and indeed could be said to infringe aspects of European competition law. The orders sought by the applicants would be granted.

***Humphrey v Minister for Environment*, High Court, Mr Justice Murphy, 13/10/ 2000** [FL3206]

COMPANY

Delay, statutory interpretation

Liquidation – duties of directors – restriction of directors – notice of intention to proceed – whether legislation intended to be retrospective – whether delay in bringing proceedings inordinate and inexcusable – whether balance of justice favoured allowing motion to proceed – Companies Act, 1990, *section 150*

The applicant, acting as official liquidator, had brought a motion under section 150 of the *Companies Act, 1990* seeking to have the respondents restricted from acting as directors. The motion had been issued in 1994 and had not been proceeded with. The liquidator now sought to proceed with the motion and in this regard had served a notice of intention to proceed. On behalf of the respondents, a motion was brought seeking to have the liquidator's motion set aside. It was argued on behalf of the respondents that an order made under section 150 must date from the commencement of proceedings. In addition, it was argued that there had been excessive and inordinate delay by the liquidator in bringing his motion. O'Donovan J held that section 150 was prospective and any restriction made thereon would date from the date of the relevant court order. The liquidator had quite properly proceeded with a damages claim against the respondents before bringing the section 150 motion. However, the delay that had occurred in bringing the section 150 motion was inexcusable and inordinate. Applying the principles of *Primor plc v Stokes Kennedy Crowley*, the balance of justice required that the liquidator's motion should proceed. The motion brought by the respondents would therefore be dismissed.

***Duignan v Carway*, High Court, Mr Justice O'Donovan, 27/07/2000** [FL3162]

CONSTITUTIONAL

Criminal law

Separation of powers – fair procedures – judicial review – mala fides – *function of Special Criminal Court – whether certification process by director of public prosecutions improper interference in right to trial by jury – whether DPP's decision tainted by* mala fides *– whether applicants had* prima facie *case of unconstitutional discrimination – whether DPP's decision subject to review by courts* – Offences Against the State Act, 1939, *sections 35, 46 and 47* – Prosecution of Offences Act, 1974, *sections 2, 3* – Bunreacht na hÉireann 1937, *articles 38 and 40*

The applicants faced criminal charges in a trial before the Special Criminal Court. They initiated judicial review proceedings seeking to challenge the decision of the director of public prosecutions certifying them for trial before the Special Criminal Court. The relief sought by the applicants was refused by Geoghegan J in the High Court and the applicants appealed. Hamilton CJ, delivering judgment, held that the question of whether the ordinary courts were adequate to secure the effective administration of justice was a political one. The issuing of certificates by the DPP was normally not subject to judicial review unless *mala fides* could be proved. No

arguable ground for judicial review had been established and accordingly the order of the High Court dismissing the application would be affirmed.
***Byrne and Dempsey v Ireland*, Supreme Court, 11/03/99** [FL3200]

Constitutional law, criminal law, delay

Criminal law – constitutional law – separation of powers – fair procedures – judicial review – delay – function of Special Criminal Court – whether government proclamation of 1972 still valid – whether certification process by director of public prosecutions improper interference in right to trial by jury – whether decision of director of public prosecutions tainted by mala fides – Offences Against the State Act, 1939, *sections 35, 47*
The applicant faced criminal charges in a trial before the Special Criminal Court. He initiated judicial review proceedings seeking an order staying the prosecution. In the High Court, Butler J dismissed the proceedings and the applicant appealed. On behalf of the applicant, it was argued that the government proclamation of 1972 bringing certain sections of the *Offences Against the State Act, 1939* into force was no longer valid. The respondents contended that the application was out of time. Denham J, delivering judgment, held that the application itself had been brought far too late. In addition, the issues raised had already been decided in *Kavanagh v Government of Ireland* ([1996] 1 IR 321). The decision as to whether part V of the 1939 act should remain in force was essentially political in nature. The appeal would accordingly be dismissed.
***Gilligan v Ireland*, Supreme Court, 24/10/2000** [FL3196]

COSTS

Litigation, practice and procedure

Company law – security for costs – whether amount of security should be assessed on basis of full trial of action – Companies Act, 1963, *section 390*
The plaintiff had instituted proceedings against the defendants with regard to the development of a wind farm. The defendants were then successful in bringing a motion for security for costs. The present application was brought to determine the amount of security that should be furnished by the plaintiff. In addition, it was argued that the original order should not have been made, as the plaintiff company had been incorporated in England. McCracken J held that an order for security for costs had already been made under section 390 of the *Companies Act, 1963* and it was not permissible for the plaintiff to seek to have the original decision altered on the basis of a new argument. In addition McCracken J held that the amount of security would be assessed based upon a full trial of the action. The total amount of security to be furnished by the plaintiff was assessed at £517,000.
***Windmaster v Airogen*, High Court, Mr Justice McCracken, 10/07/2000** [FL3158]

Practice and procedure

Litigation – amendment of pleadings – costs – meaning of 'costs of the day' – whether amendment necessary to determine issues in controversy between parties – whether amending party liable for costs arising up until adjourned date – whether amending party obliged to furnish security for costs – Rules of the Superior Courts 1986, *order 28 rule 1; order 99, rule 37(33); order 125, rule 1*
The petitioners had sought liberty to amend their petition. The amendments were not opposed by the respondents but they sought the costs of the amendments and any further costs arising out of any adjournment thereby arising. Herbert J was satisfied that the proposed amendments were necessary in the interests of justice. Any prejudice thereby arising would be countered by adjourning the date of the trial. The respondents were now faced with having to meet a substantially different case and to merely award an order for the costs of the day would not be sufficient. However, to allow costs to the respondents on a full party-and-party basis as if the original petition had been discontinued would be unjust and oppressive. In the circumstances, an order for costs would be granted on a party-and-party basis but only in relation to certain fees occurring in conjunction with the adjourned trial. In addition, the respondents were entitled to the costs of the motion and the costs of taking judgment. The petitioners would not, however, be obliged to furnish security for costs in order to proceed with their amendments.
***Wolfe v Wolfe (& Others)*, High Court, Mr Justice Herbert, 28/07/2000** [FL3187]

CRIMINAL

Delay, fair procedures

Delay in execution of warrants – habeas corpus *application – whether breach of fair procedures – whether warrants executed as soon as reasonably possible – whether applicant contributed to delay* – Forgery Act 1913 – Criminal Justice Act, 1984 – Bunreacht na hÉireann 1937, *article 40.4.2°*
Warrants for the committal of the applicant had been issued in 1997 and the applicant was eventually arrested and lodged in prison in May 2000. The applicant brought a *habeas corpus* application claiming that there had been an impermissible delay in the execution of the warrants which amounted to a breach of fair procedures as set out under the constitution. Herbert J was satisfied that part of the delay in the execution of the warrants arose out of an administrative breakdown in the relevant garda station. The delay in question was of a magnitude which was altogether excessive and constituted a denial of the applicant's right to fair procedures. The relief sought by the applicant was accordingly granted.
***Casey v Governor of Cork Prison*, High Court, Mr Justice Herbert, 13/09/2000** [FL3163]

Delay, fair procedures

Constitutional law – sexual offences – delay in prosecution of offences – right to expeditious trial – order of prohibition – unavailability of witnesses – whether trial should proceed – whether applicant prejudiced in defending charges – Offences Against the Person Act 1861
The applicant had applied by way of judicial review for an order of prohibition to prohibit his impending prosecution in relation to certain sexual offences. The applicant claimed that by reason of the delay and due to the fact that certain witnesses were now unavailable he was prejudiced in his defence. On behalf of the DPP, it was contended that any such delay that could have arisen was due to the position of dominance that the applicant held and that the trial judge could counter any possible prejudice by appropriate directions. Kearns J held that the delay in this case had not been brought about by the prosecuting authorities or by the applicant. A very grave prejudice had arisen due to fact that the parents of the applicant were now deceased. In the circumstances, the ability of the applicant to defend himself against the charges had been seriously impaired and the orders sought prohibiting the prosecution would be granted.
***MK v Judge Groarke and DPP*, High Court, Mr Justice Kearns, 13/09/2000** [FL3169]

Evidence, road traffic

Dangerous driving causing death – statement by one of applicants not admissible against second applicant – circumstantial evidence – speed – alcohol consumption – refusal of trial judge to give direction – whether sufficient to prove that dangerous driving was one of causes of death – Road Traffic Act, 1961, *section 53(1)* – Road Traffic Act, 1994, *section 49(1)(f)(I)*

The applicants were convicted in the Circuit Court of dangerous driving causing death and were each sentenced to a term of three years' imprisonment. In addition, the second applicant was sentenced to six months' imprisonment for the unauthorised taking of a car, the sentences to run concurrently. The charges arose out of a collision involving a car being driven by the first applicant and another car in which a driver and a passenger were killed. A car driven by the second applicant was found near the scene of the first collision. The applications sought leave to appeal, arguing that the trial judge should have withdrawn the case from the jury. The court rejected the applications. In the case of the first applicant, the trial judge was correct in concluding that there were issues which should properly be determined by the jury and he was correct in refusing the application for a direction. In the case of the second applicant, the trial judge was also correct in refusing a direction. The jury were entitled to conclude beyond a reasonable doubt that his admittedly dangerous driving was a causative factor in the collision.

***DPP v Lafferty and Porter*, Court of Criminal Appeal, 22/02/2000** [FL2692]

Evidence, sexual offences

Rape – evidence – sexual assault – judges' rules – conviction – leave to appeal refused – whether leave should be granted – whether trial judge erred in admitting evidence of doctor – whether trial judge had correctly charged jury – Criminal Law (Rape) Act, 1981 – Criminal Law (Rape) (Amendment) Act, 1990 – Criminal Justice (Forensic Evidence) Act, 1990

The applicant claimed that the trial judge had erred in law and on the facts in admitting the evidence of a doctor concerning the injuries which he observed on the lip of the applicant while in garda custody. The court was satisfied that the doctor would have been entitled to give evidence of his observations in the course of his first examination when he was taking the samples authorised by the *Criminal Justice (Forensic Evidence) Act, 1990*. The applicant contended that he was not cautioned by the doctor or the gardaí as to the consequences of a second examination by the doctor or the use which might be made of any information obtained as a result of it. The Court of Criminal Appeal rejected the argument that the examination constituted an intrusion of the applicant's constitutional right to privacy. The trial judge did not err in exercising his discretion to admit evidence of the disputed examination. The Court of Criminal Appeal so held in refusing the application for leave to appeal.

***DPP v Murray*, Court of Criminal Appeal, 12/04/99** [FL2763]

Fair procedures

Right to expeditious trial – presumption of innocence – delay – judicial review – sexual offences – significance of psychological assessment – repression of memory – whether right to fair trial prejudiced by delay in making complaint – whether delay inordinate and inexplicable – whether delay rendered alibi defence unavailable – whether applicant established as matter of probability serious risk of unfair trial – Bunreacht na hÉireann 1937, *article 38.1*

The applicant had been charged with sexual offences which allegedly occurred in one incident committed on some date between 1979 and 1980. The applicant initiated judicial review procedures seeking to have the impending prosecution prohibited on the grounds of delay. In the High Court, Geoghegan J refused the relief sought by order dated 8 June 1999 and the applicant appealed. The Supreme Court, all three judges delivering separate judgments, held that the applicant had established as a matter of probability that there was a serious danger of an unfair trial, allowed the appeal and granted the order of prohibition sought. McGuinness J was satisfied that no element of dominance could be said to have arisen between the complainant and applicant which would have inhibited the making of the complaint. Hardiman J, referring to the academic controversies surrounding the topic of 'suppression of memory', was not satisfied that the case exhibited any signs of dominion and in the circumstances the applicant was entitled to the benefit of the presumption of innocence.

***JL v DPP*, Supreme Court, 06/07/2000** [FL3183]

Imprisonment

Habeas corpus *application – administration of justice – procedures of High Court – whether detention of applicant lawful – whether procedures of* habeas corpus *application unconstitutional – whether applicant required to be physically present in court for purposes of application* – Bunreacht na hÉireann 1937, *article 40.4.2°*

The applicant had sought an enquiry under article 40 of the constitution into the lawfulness of his current detention. The application had been refused by O'Neill J in the High Court in a judgment delivered on 23 June 2000. In this appeal, the applicant claimed that the procedure by which his application was dealt with by the High Court judge was in breach of his constitutional right of access to the courts. In addition, it was argued that the applicant should have been present in court for the purposes of the application. McGuinness J, delivering judgment, held that the High Court judge had correctly determined the application. The applicant's right of access to the courts had not been infringed. The fact that the judgment was pronounced in open court met the requirement that justice must be administered in public.

***Breathnach v Wheatfield*, Supreme Court, 20/10/2000** [FL3155]

Practice and procedure

Certiorari – *judicial review – delay – order for return for trial made in excess of jurisdiction – whether court empowered to extend time for service of affidavits* – Offences Against the State Act, 1939, *section 7* – Courts (Supplemental Provisions) Act, 1961 – Rules of the Superior Courts 1986, *order 84, rules 20, 21*

The applicant had originally been returned for trial in the Circuit Court in error as the alleged offence could only be tried in the Central Criminal Court. The DPP had then sought the matter to be remitted to the District Court to be reconsidered. In the High Court, McGuinness J granted the order sought and the applicant now appealed against that the decision. The applicant argued that the DPP had been guilty of significant delay in initiating judicial review proceedings. The applicant also complained in relation to the extension of time granted by the High Court regarding the service of affidavits. Keane CJ, delivering judgment, rejected the arguments of the applicant. The High Court judge was entitled to make the order extending the time for making the judicial review application. Although no order as to costs had been made in the High Court, Keane CJ was satisfied that the DPP should be awarded the costs of the appeal.

***DPP v Judge Hamill*, Supreme Court, 11/05/2000** [FL3156]

Sentencing

Plea in mitigation – forgery – obtaining goods by false pretences – previous convictions of accused – whether sentence severe and excessive – whether role of accused warranted sentence imposed

The applicant had been convicted of a number of charges relating to forgery and obtaining goods by false pretences. The accused received a sentence of six years. In this application, the accused argued that the trial judge in imposing sentence had not paid adequate attention to the accused's capacity to rehabilitate himself. The court held that no error in principle could be found in relation to the sentence imposed. Accordingly, the sentence of six years was affirmed and the application was dismissed.

***DPP v Manning*, Court of Criminal Appeal, 05/07/99** [FL2787]

Sentencing, offences while on bail

Criminal law – sentencing – offences committed whilst on bail – consecutive sentences – sexual offences –whether sentences opposed excessive – whether court should interfere with sentences

The applicant had been charged with sexual offences and was awaiting trial. While on bail, the applicant committed further offences on the same victim. The applicant was convicted and sentenced both in relation to the original sentences and the later occurring sentences, the sentences to run consecutively. Counsel on behalf of the applicant argued that the sentences were excessive particularly in regard to the age of the applicant. The court held that the sentences as handed down by the trial judge could not be regarded as excessive and accordingly declined to interfere with them.

***DPP v Balfe*, Court of Criminal Appeal, 17/01/2000** [FL2720]

Review of sentence

Aggravated sexual assault – false imprisonment – assault – guilty plea – whether sentence unduly lenient – whether sentence reflected gravity of offences – previous rape conviction – Criminal Justice Act, 1984, *section 4* – Criminal Justice Act, 1993, *section 2*

The respondent had pleaded guilty to a number of offences and was sentenced by the Central Criminal Court to nine years' imprisonment in respect of three counts of aggravated sexual assault and three years' imprisonment in respect of 12 other counts including false imprisonment and robbery, the sentences to run concurrently. The final year of each sentence was suspended. The DPP brought an application under section 2 of the *Criminal Justice Act, 1993* to have the sentences reviewed on the grounds that they were unduly lenient. The Court of Criminal Appeal granted the application. A sentence of nine years did not reflect the gravity of the entirely separate offences of aggravated sexual assault and false imprisonment. In addition, the respondent had been convicted of rape on a previous occasion and had received a sentence of six years' imprisonment. A probation officer had also assessed the respondent as 'a very disturbed and dangerous man'. The sentence was unduly lenient, would be quashed and a sentence of 12 years would be imposed in its place.

***DPP v Melia*, Court of Criminal Appeal, 29/11/99** [FL2693]

DAMAGES

Hepatitis-C compensation

Negligence – personal injuries – damages – causation – financial loss – loss of earnings claim – employment – Hepatitis-C Tribunal – jurisdiction of tribunal – quantum – *whether possible to compensate claimant for loss of earnings – whether cessation of employment attributable to wife's condition – whether tribunal had power to order payment of interest* – Courts Act, 1981 – Hepatitis-C Compensation Tribunal Act, 1997 – Civil Liability (Amendment) Act, 1964

The claimant's wife had contracted hepatitis-C and had been awarded compensation by the hepatitis-C compensation tribunal. The claimant then brought a claim for loss of earnings arising out of having to curtail his teaching career in order to care for his wife. The claimant was also seeking interest pursuant to section 22 of the *Courts Act, 1981*. The tribunal had refused the claim and the claimant appealed the determination of the tribunal to the High Court. O'Neill J was satisfied that the claimant's decision to curtail and subsequently retire from his teaching career was necessitated by his wife's deteriorating health. The claimant was therefore entitled to be compensated for the losses suffered. Furthermore, O'Neill J held that as the tribunal did not in his view have the power to order the payment of interest, the court should not assume a greater jurisdiction than that of tribunal and declined to order the payment of interest. The claimant would be awarded a total of £60,559.

***MO'C v Minister for Health*, High Court, Mr Justice O'Neill, 28/07/2000** [FL3164]

Practice and procedure, taxation

Personal injuries – negligence – taxation – damages – loss of earnings – whether plaintiff entitled to recover full amount of wages, including taxes payable from defendant

The plaintiff had been injured at the defendant's workplace and as a result had instituted proceedings. The plaintiff received payments from his employer, the notice party, while he was out of work, representing his loss of wages. The plaintiff had undertaken to refund these sums to the notice party should they be recovered by way of damages. The plaintiff sought to recover his loss of earnings from the defendant and an order to this effect was granted in the High Court by Macken J, delivered 8 June 1999. However, the payments in respect of PAYE, PRSI and pension contributions were not allowed. The notice party appealed this finding to the Supreme Court. Keane CJ, delivering judgment, was satisfied that to allow the payments in question would compensate the plaintiff for a loss which he had not suffered. There was no legal basis to allow the recovery of such sums and accordingly the appeal would be dismissed.

***Hogan v Steele and ESB*, Supreme Court, 01/11/2000** [FL3212]

EMPLOYMENT

Discrimination

Labour law – employment law – equality – discrimination on the basis of gender – whether decision not to appoint applicant irrational – whether findings of fact by Labour Court supported by evidence – whether decision of Labour Court erroneous – Employment Equality Act, 1977

The applicant, a female, had applied for the position of the head of library services with her current employer. The applicant, who possessed a number of relevant qualifications, was shortlisted for the job but was ultimately unsuccessful and a male candidate was appointed. She presented a claim of discrimination on the basis of gender to the Labour Court which was assessed by an equality officer. The equality officer issued a recommendation which found that the applicant had not been discriminated against and the decision was upheld by the Labour Court. The applicant issued proceedings seeking declarations that the decision by her employer not to appoint her to the position was unlawful and sought to reverse the determination of the Labour Court. Quirke J held that both the equality officer and the Labour Court had carried out comprehensive investigations into the complaint. In addition, the findings of facts made by the Labour Court and inferences drawn from them were reasonable based upon the evidence before it. The applicant had not discharged the onus of proving that the Labour Court had erred in law and the relief which the applicant was seeking was refused.

***Davis v DIT*, High Court, Mr Justice Quirke, 23/06/2000** [FL3161] 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 public policy defence to recognition and enforcement of foreign judgments

One of the central objectives of the 1968 *Brussels convention on jurisdiction and the enforcement of judgments*[1] is to create a free market in judgments. There is a presumption that a judgment in a civil or commercial matter given by the court of another contracting state is to be enforced. Only in exceptional circumstances will a judgment debtor be able to prevent enforcement of a judgment. The intent of the convention is that a defendant must raise any jurisdictional challenges before the court which adjudicated the matter. As a result, the defences allowed by the convention are very limited. The most restrictive of these was the defence allowing an enforcing state to refuse to enforce the foreign judgment on the grounds that it was inconsistent with that state's public policy. Almost all attempts to invoke this defence have been unsuccessful. It is only in a recent decision that the European Court of Justice (ECJ) has indicated grounds on which it would be willing to allow the invocation of this judgment.

Judgment. Article 25 of the convention defines a 'judgment' as 'any judgment given by a court or tribunal of a contracting state'. This definition extends to all forms of judgments in civil and commercial matters given by a court in a contracting state.

Recognition. Article 26 provides that any judgment within the subject matter of the convention given in a contracting state can be recognised in any other contracting state without any special procedure. Recognition occurs when the courts of one contracting state acknowledge the decision of a court in another contracting state to be binding and enforceable. In practice, however, if enforcement is not sought as well, recognition is usually just an incidental question in a dispute. The court which is asked to recognise a foreign judgment is completely bound by that court's findings of facts. This may create difficulties, as a court may be asked to recognise a judgment that is fundamentally flawed.

The EU Commission has proposed that judgments should be automatically recognisable under article 26 on the basis of an international presumption of regularity. The proposal envisages a certificate being issued by the court giving the judgment in the state of origin, attesting that the judgment to which it relates is enforceable. The court asked to enforce the judgment could not look behind the certificate.

Review. Articles 29 and 34 provide that under no circumstances may a foreign judgment be reviewed as to its substance. It cannot be argued that a foreign court made a mistake of fact or law.

Defences against recognition and enforcement

The grounds on which a foreign judgment may not be recognised or enforced are set out in article 27. In brief, article 27 provides for procedural defences – that the originating document was not served in due time for the defendant to defend the original proceedings or that the formalities required by the convention were not satisfied. The only substantive defence allowed by the convention is that the foreign judgment is incompatible with the public policy of the enforcing state. This is restricted to circumstances in which a fundamental principle of the national law of the court in which recognition is sought is in question. The *Jenard report* states that this defence only applies in exceptional circumstances.

There is no definition of public policy in the convention. The ECJ has stated that this is a very narrow exception. In Case 145/86 *Hoffman v Krieg* ([1988] ECR 645), the court held that the refusal to recognise a judgment based on public policy should operate only in exceptional circumstances. The case concerned the enforcement of a German maintenance order against a husband in the Netherlands. The husband had obtained a divorce in the Netherlands. The court held that the public policy exception had no application here. This was subsequently reflected in *Societété d'Information Service Realisation (SISRO) v Ampersand Software BV* (29 July 1993, *The Times*). SISRO had obtained judgment against Ampersand and others in the *Tribunal de Grand Instance de Paris* for infringement of copyright for computer programs. The defendants had alleged fraud on the part of the plaintiff. When the defendants sought to enforce the judgment in England, the defendants again argued that there had been fraud on the part of the plaintiff. The Court of Appeal held that where a foreign judgment was allegedly obtained by fraud and means of redress were available in the state of origin, there was no breach of public policy in recognising and enforcing the judgment in England.

Even a judgment obtained fraudulently may still have to be enforced. This can be seen in the English case of *Interdesco SA v Nullifire Ltd* ([1992] 1 Lloyds Rep 180). The plaintiffs were manufacturers of intumescent paint, which had special fire protection properties. When heated, it expanded to form a protective covering over the painted surface and the longer it survived in a fire, the better protection it gave. Their best selling product was marketed as SS60, indicating that it gave protection for at least sixty minutes. The defendants, an English company, entered a five-year distribution agreement with the manufacturers under which they were given exclusive distribution rights in the UK and Ireland for Interdesco's paints. Subsequently, the defendants terminated the agreement claiming that Interdesco's SS60 had failed to satisfy the UK's standard for a 60-minute paint and was therefore unmarketable. Interdesco denied these claims, arguing that Nullifire was attempting to replace Interdesco and steal its market. The French *Cour d'Appel* ignored English tests showing the product to be substandard. The plaintiffs applied to the English courts for an enforcement order. The defendant argued that the French judgment had been obtained fraudulently. It said that it had fresh evidence which had not been produced to the French court. This purported to show that Interdesco had been a party to fresh tests which clearly established that its paint was

sub-standard. The English court rejected this defence of public policy based on fraud. It held that fundamentally different criteria apply in convention and non-convention cases. It held that where a court has ruled on the same matter that a party challenges on grounds of fraud, the convention estops the English court from reviewing the judgment of the other court. The remedy lies with the foreign court and not the English court.

In Case C-38/98 *Régie nationale des usines Renault SA v Maxicar SpA, Orazio Formento*, the ECJ once again applied the public policy defence (judgment of 11 May 2000). Renault had obtained a judgment in France for forgery against an Italian company, Maxicar, and an Italian national, Orazio Formento. Mr Formento had manufactured and marketed body parts for Renault cars. Maxicar was a company of which he was a director. The French award for 100,000 francs was in relation to forgery in manufacturing and marketing body parts for Renault vehicles. Renault applied to enforce that judgment in Italy. The Italian court refused to enforce it as it was a criminal judgment and the application to enforce was not made within the time limit required by the Italian code of criminal procedure.

Renault argued that the convention applied in that it was a civil judgment, albeit delivered by a criminal court. The defendants argued that the judgment was irreconcilable with a decision given in a dispute between the same parties in Italy and was contrary to public policy in economic matters. They argued that EU law on free movement of goods and competition confirms the approach taken by Italian law, which does not recognise the existence of industrial property rights in spare parts for cars. The ECJ emphasised that the public policy defence in article 27(1) of the convention is interpreted strictly and may be relied on only in exceptional cases. A national court may only use the defence where recognition or enforcement of the foreign judgment would infringe a fundamental principle of national law. This infringement would have to be a manifest breach of a rule of law regarded as essential in the legal order of the state in which enforcement is sought or of a right recognised as fundamental within that legal order. In this case, the contention is that the French court, in giving judgment, erred in applying certain rules of EU law. However, the ECJ held that recognition or enforcement could not be refused on the ground that the enforcing court considers that national or EU law was misapplied in the decision it is asked to enforce. In such a case, it must be considered whether the system of legal remedies in each contracting state, together with the preliminary ruling procedure provided for in article 234 of the treaty, affords a sufficient guarantee to individuals.

Successful application of the defence

It is only with the recent decision in Case C-7/98 *Dieter Krombach v André Bamberski* (judgment of 28 March 2000) that the defence has been successfully raised. Mr Bamberski is a French man and Mr Krombach is German. Krombach had been the subject of a preliminary investigation in Germany following the death in Germany of a 14-year-old French girl. The investigation was discontinued. Bamberski was the girl's father. At his request, the French courts opened an investigation. They then committed Krombach for trial. Krombach did not appear to defend the proceedings. The French court held him in contempt and ordered him to pay 350,000 francs compensation to Bamberski. Bamberski applied to enforce the judgment in Germany. Krombach appealed the German enforcement order. His first defence was that the judgment ran counter to German public policy and thus should not be enforced – article 27(1) of the *Brussels convention*. He based this argument on the grounds that the French courts could base their jurisdiction on the nationality of the victim of an offence. The ECJ rejected this argument. It pointed that out that, under the convention, the court before which enforcement is sought cannot review the jurisdiction of the state of origin.

Krombach had also argued that he had not been allowed defend the proceedings in France unless he appeared in person and that this was contrary to public policy. The ECJ referred to article 29 and 34(3) which establish that a foreign judgment cannot be reviewed as to its substance. Thus, a discrepancy between the rules of the forum where the judgment was given and the enforcing forum cannot be taken into account nor can any alleged inaccuracies in findings of law or fact.

To successfully invoke article 27(1), there must be a manifest breach of a rule of law regarded as essential in the legal order of the state in which enforcement is seised. The right to be defended is a fundamental right deriving from the constitutional traditions common to the member states. The European Court of Human Rights has ruled that in criminal cases the right of the accused to be defended by a lawyer is one of the fundamental elements in a fair trial and that a person does not forfeit entitlement to such a right simply because he is not present at the hearing. Thus, an enforcing court is entitled to invoke article 27 and hold that a refusal to hear the defence of an accused not present at a hearing is a manifest breach of a fundamental right. G

Footnote

1 For more general commentaries on the convention, see Collins, *The Civil Jurisdiction and Judgments Act 1982*, (1983) Butterworths; Kaye, *Civil jurisdiction and enforcement of judgments*, (1987) Professional Books; Lasok & Stone, *Conflict of laws in the European Communities*, (1987) Professional Books; and Mayss & Reed, *European business litigation*, (1998), Ashgate.

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

Recent developments in European law

COMPETITION

The EU Commission has asked Microsoft to explain its alleged discriminatory licensing practice and refusal to supply essential information on its Windows operating system. In August, the Commission sent a statement of objections to Microsoft. Microsoft holds a market share of approximately 95% for personal computer operating systems.

CRIMINAL LAW

On 29 May 2000, the council adopted a *Convention on mutual assistance in criminal matters*. The convention applies to criminal proceedings of all types brought in member states. It requires a state which receives a request for assistance from another to comply as soon as possible and in accordance with procedures laid down in the convention. Requests are normally to be made through judicial authorities. Some requests, such as the transfer of persons, must be made through government authorities. Forms of assistance that can be requested include:

- The return of articles obtained by criminal means to their original rightful owners, unless a *bona fide* third party has obtained rights over those articles
- The temporary transfer of people held in custody for the purposes of investigation. This requires prior agreement between the two states concerned. The period of transfer is to be deducted from any custodial sentence served by the person transferred
- The holding of a hearing by video-conference. This is to allow expert or witness evidence to be given in this manner. The witness is summoned by the judicial authorities in the state in which he is present and evidence is given in accordance with the domestic procedural rules of that state
- The hearing of a witness or expert by telephone conference, subject to his agreement
- The competent authorities of two or more member states may agree to set up a joint investigation team for a specific purpose and a limited period to carry out criminal investigations. This process is available in the case of cross-border criminal conduct or otherwise where co-ordination is required
- A member state may request covert investigations to be carried out in another member state.

The convention also provides for the interception of telecommunications. One member state may request another to intercept transmissions made within its territory and to retransmit or record the transmission to the requesting member state. This can be done by telecommunications service providers. If interception in another member state is possible without the assistance of that state, it has the right to be informed that interception is contemplated and also the right to grant or refuse its consent.

EMPLOYMENT

Equal treatment

Directive 2000/43/EC to implement the principle of equal treatment between people irrespective of racial or ethnic origin was recently enacted. It is to be implemented by 19 July 2003. It sets down certain minimum standards which states are obliged to observe. The directive prescribes direct or indirect discrimination on grounds of racial or ethnic origin. It relates to conditions for access to employment, education and trade union membership. It also outlaws such discrimination in relation to employment and working conditions, social protection and access to and supply of goods and services. The directive allows for positive discrimination in favour of minorities. It also permits different treatment as regards occupation where it is based on a characteristic related to racial or ethnic origin which is a genuine occupational requirement. Member states are required to establish judicial or administrative procedures for the enforcement of obligations under the directive. Applications to the appropriate body may be by the person discriminated against or by bodies with a legitimate interest in enforcement. Member states are also required to designate one or more bodies with the specific function of promoting equal treatment. Once a person claiming discrimination can demonstrate facts from which unequal treatment can be assumed, the burden then switches to the defendant to demonstrate that there has been no breach of the directive. The directive also requires the imposition of sanctions. Their form is left to the member states but the directive specifically states that compensation is one possibility. The sanctions adopted are to be 'effective, proportionate and dissuasive'.

Transfer of undertakings

Case C-234/98 *GC Allen and Ors v Amalgamated Construction Co Ltd*, judgment of 2 December 1999. Allen was a mineworker. He was employed by Amalgamated Construction Co (ACC). ACC is a wholly-owned subsidiary of AMCO Corporation. AMCO has 12 subsidiaries including AM Mining Services Ltd (AMS). ACC and AMS are distinct legal entities but have the same management and share administrative and support functions within the AMCO group. ACC was carrying out work at a colliery in Yorkshire. It sub-contracted work to AMS. Workers of ACC were dismissed and hired by AMS. Over a period of time it was difficult to discover whether employees were engaged by ACC and AMS. The ECJ was asked whether the *Transfer of undertakings directive* applied to transfers between undertakings in a group which have the same ownership, the same management and are engaged in the same work. The court held that it could apply to a transfer between two subsidiary companies, which are distinct legal persons each with specific employment relationships with their employees. The fact that the companies share the same management and the same premises and are engaged in the same work makes no difference in this regard. The court then turned to an examination of the criteria for determining the existence of a transfer. The decisive criterion is whether the entity in question retains its identity – as indicated by the fact that its operation is actually continued or resumed. The court held that in this case this criterion was satisfied.

FREEDOM OF ESTABLISHMENT

Case C-355/98 *Commission of the European Communities v Kingdom of Belgium*, judgment of 9 March 2000. Belgian law restricted the operation of security firms, security systems firms and internal security services. These firms were required to have a place of business in Belgium. Managers and employees were required to reside in Belgium. Foreign companies providing such services required Belgian authorisation and every person carrying out security services in Belgium required a Belgian identification card. The ECJ held that these requirements breached a number of treaty provisions on free movement of persons. The condition that security firms have a place of business in Belgium violates the freedom to provide services. The ECJ rejected the Belgian defence that a security firm can be a genuine and sufficiently serious threat to public safety and public policy as obviously unfounded and unproven. The residence requirement for managers and employees was held to breach freedom of establishment provisions. The requirement for Belgian authorisation was held to contravene the freedom to provide services, as was the requirement that staff of these companies required Belgian identification cards. The formalities required to obtain such a card makes the provision of services across borders more difficult.

LITIGATION

Brussels convention

Article 16(1)(a) of the convention

COURTS AND COURT OFFICERS ACT, 1995

THE JUDICIAL APPOINTMENTS
ADVISORY BOARD

APPOINTMENT OF ONE JUDGE OF THE CIRCUIT COURT

Notice is hereby given that one new Judicial vacancy exists in the Office of Ordinary Judge of the Circuit Court and that the Minister for Justice, Equality and Law Reform has requested the Board under Section 16 of the Act to exercise its powers under that section and to make recommendations pursuant to it.

Practising Barristers of Solicitors who are eligible for appointment to the Office and who wish to be considered for appointment should apply in writing to the Secretary of the Board, Green Street Courthouse, Green Street, Dublin 7, for a copy of the application form. Completed forms should be returned to the Board's Secretary on or before Friday 15th December 2000.

Applications already made in respect of vacancies in the Office of Ordinary Judge of the Circuit Court will be regarded as applications for this and all subsequent vacancies in the Circuit Court to 31st December 2001.

It should be noted that this advertisement for appointment to the Office of Ordinary Judge of the Circuit Court applies not only to the present vacancy now existing, but also to any future vacancies that may arise in the said Office during the period to 31st December 2001.

The application will remain valid to that date unless and until the Applicant signifies in writing to the Secretary of the Board that the application should be withdrawn.

Applicants may, at the discretion of the Board, be required to attend for interview.

Canvassing is prohibited.

Dated the 23rd November 2000.

BRENDAN RYAN, B. L.,
SECRETARY,
JUDICIAL APPOINTMENTS ADVISORY BOARD.

gives exclusive jurisdiction to the court of the place where immovable property is located in disputes concerning tenancies of such property. This article was considered by the ECJ in Case C-8/98 *Dansommer A/S v Andreas Götz* (judgment of 27 January 2000). Dansommer is a Danish national and Götz is a German national resident in Germany. In 1995, Götz rented a house in Denmark from Dansommer for his holidays. A Danish individual owned the house and Dansommer acted as an intermediary. The rental included a premium for insurance to cover the cost in the event of cancellation of the contract. After his occupancy, Dansommer sued Götz, as he had failed to clean the house properly before his departure and had damaged the carpets and the oven. The ECJ was asked whether an action for damages for taking poor care of premises brought by a professional tour operator came within article 16(1)(a). The court held that it did, as the proceedings were over a partial failure to perform a tenancy agreement. The tenant was obliged to maintain the property let in a proper condition and to repair any damage he caused to it. Exclusive jurisdiction is conferred on the court where the property is located as it is best placed, for reasons of proximity, to ascertain the facts. Ancillary provisions relating to insurance, which are not the subject of the dispute, do not affect the nature of the tenancy as a tenancy of immovable property.

Replacement of *Brussels convention*

It is proposed to replace the convention with a *Regulation on jurisdiction and enforcement of judgments in civil and commercial matters*. The regulation has been considered by the European Parliament. On 21 September 2000, it proposed an amended text. The parliament has recommended deferral of the entry into force of the regulation until a full regulatory regime is in place for electronic commerce. The regulation is due for consideration by the council in December. The most significant amendments relate to the consumer protection provisions. The scope of the consumer contract provision was extended by the draft regulation to give consumers better protection. The consumer can sue in his own domicile in respect of a contract for the sale of goods on instalment credit terms or in respect of a credit agreement made to finance the sale of goods (as at present). The regulation then goes on to provide that the consumer provisions apply if: 'In all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the member state of the consumer's domicile or, by any means, directs such activities to that member state or to several countries including that member state, and the contract falls within the scope of such activities'. Parliament has proposed the following addition: 'The expression *directing such activities* shall be taken to mean that the trader must have purposefully directed his activity in a substantial way to that other member state or to several countries including that member state. In determining whether a trader has directed his activities in such a way, the courts shall have regard to all the circumstances of the case, including any attempts by the trader to ring-fence his trading operation against transactions with consumers domiciled in particular member states'. The original proposal was quite controversial and parliament is endeavouring to avoid giving consumer protection to consumers who purchase a product after encountering a passive website. Parliament has also introduced a new article allowing consumers to agree that a dispute can be referred to an extra-judicial dispute resolution system. This is restricted to contracts concluded by electronic commerce, where the consumer was made aware of the provision prior to concluding the contract, is given a link to the website of the accredited extra-judicial resolution system and where he expressly agreed (he must positively accept or reject the clause).

Limitation periods for actions asserting breaches of EU law

Case C-78/98 *Shirley Preston and Ors v Wolverhampton Healthcare NHS Trust and Ors, Dorothy Fletcher and Ors v Midland Bank plc*, judgment of 16 May 2000. In previous decisions, the ECJ had held that the exclusion of part-time workers from pension schemes could be considered as indirect gender discrimination, contrary to article 141 of the treaty. It had also held that the direct effect of the treaty article could be relied on in order to claim equal treatment retrospectively in relation to the right to join a pension scheme and could be relied on from 8 April 1976, the date of judgment in *Defrenne v SABENA*, where the court had held that article 141 had direct effect. Following these cases, 60,000 part-time workers in the UK began proceedings. They sought to rely on article 141, arguing that they had been unlawfully excluded from membership of occupational pension schemes. The pension schemes were amended to ensure that part-time workers were free to join them. The claimants sought recognition of their entitlement to retroactive membership of the schemes in some cases for periods extending further back than 8 April 1976. The ECJ considered a number of questions. The first was a national rule requiring a claim for membership of a pension scheme to be brought within six months of the relevant employment ending. The court held that this was not contrary to EU law, provided that it was not less favourable than limitation periods based on domestic law. The ECJ, however, held that a rule limiting a claimant's pensionable service to two years prior to the claim was contrary to EU law. The ECJ then moved to consider the criteria for determining whether procedural rules applying to proceedings based on an article of the treaty were less favourable than similar proceedings of a domestic nature. The ECJ held that it is for the national court to work out which domestic actions are equivalent to proceedings for a breach of a treaty right. In doing this, the national court must consider whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics. In deciding whether the procedural rules are equivalent, the national court must verify objectively whether the rules are similar, taking into account the role played by those rules in the procedure as a whole, as well as the operation of that procedure and any special feature of those rules. G

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- Guidance on the giving of undertakings –

  Patrick O'Callaghan (Author "The Law on Solicitors in Ireland" Butterworths 2000)

- Legal issues for solicitors in partnership –

  Michael Twomey (Author "The Law of Partnership" Butterworths 2000)

Lecture Fee: IRP 130.00 plus VAT @ 21% = IRP 157.30 (Materials Included) ■ All lectures to take place on Friday mornings from 9.30am to 1.30pm. ■ Coffee mid-morning ■ Cheques/P.O. made payable to: Amorset Limited, Box 3047, Law Library, Four Courts, Inns Quay, Dublin 7

VENUES AND DATES:

1. 2 February 2001 – Tralee – Great Southern Hotel
2. 9 February 2001 – Sligo – Silver Swan Hotel.
3. 16 February 2001 – Dundalk – Derryhale Hotel.
4. 23 February 2001 – Limerick – Jurys Hotel
5. 2 March 2001 – Dublin – Merrion Hotel
6. 9 March 2001 – Cork – Hayfield Manor
7. 16 March 2001 – Galway – Ardilaun Hotel – Glencairn Suite
8. 23 March 2001 – Kilkenny – Hibernian Hotel

Going Dutch with the IBA

Founded in 1947, the International Bar Association includes among its membership 178 national bar associations and law societies together with more than 16,000 individual lawyer members from some 183 countries around the world. It offers 55 committees and 16 regional and special interest groups such as the Academics' Forum, Eastern European Forum and Women's Interest Group.

On 17 September, almost 4,000 of the world's leading business lawyers descended on Amsterdam for the IBA's 2000 conference. The Irish delegation included the then Law Society President Anthony Ensor, Director General Ken Murphy and Director of Public Prosecutions James Hamilton, together with barristers, judges and practitioners from the most influential corporate and commercial firms.

Days were consumed with working sessions (of which there were in excess of 140). Regardless of one's area of specialisation, there were sessions of interest to every lawyer. Issues as diverse as environmental programmes in banking, websites for the travel industry, access to capital markets for satellite ventures and bio-ethics were aired and discussed at length.

In the evenings, delegates enjoyed the unending hospitality of the local firms and bar associations from around the world. Indeed, the Law Society president hosted a most enjoyable reception.

IBA conferences fulfil one of the association's most important objectives, namely, the promotion of useful contacts and networking between lawyers all around the world. And for firms that want to compete with the big boys rather than effecting a merger, the IBA opens the door to a global network. There are numerous benefits to being represented in every port and being able to tap into expertise in other jurisdictions when needed. International contacts are unquestionably valuable, not least in terms of securing referral work.

Irish clients have an international outlook and therefore expect an international service. They are leading their law firms into global markets where international networks are crucial.

Niamh Herron, O'Donnell Sweeney

Roscommon Bar Association

At a meeting of the Roscommon Bar Association were (*front row, left to right*) treasurer Marie Connellan, president Peter Jones, secretary Brian O'Connor, then Law Society President Anthony Ensor and Director General Ken Murphy; (*middle row*) Carol Ballantyne, Joseph Caulfield, Dermot M MacDermot, Rebecca Finnerty, John Murphy, Declan O'Callaghan and Paul Wynne; (*back row*) Kenneth Dolan, Sean Mahon, Conleth Harlow, F Gerard M Gannon, Padraig Kelly and Terence O'Keeffe

Sligo solicitors meet the top brass

Law Society Director General Ken Murphy and then President of the Law Society Anthony Ensor pictured at a meeting with the Sligo and County Solicitors' Association: (*front row, left to right*) Fiona McGuire, Judge Thomas A Fitzpatrick, Sligo bar president Thomas Martyn, Anthony Ensor, Ken Murphy, Sligo bar secretary Leonie Hogge and Michele O'Boyle; (*back row*) Michael Mullaney, Peter M Martin, Mark Mullaney, Michael Quigley, Dervilla O'Boyle, John Creed, John Bourke, Brendan Johnson and Anne Hickey

Called to the bar

The presidents and secretaries of the bar associations pictured at a recent meeting in Blackhall Place

Southern comfort

Gathered for the Southern Law Association's recent AGM held in the Beamish & Crawford brewery in Cork were: (*front row, left to right*) Sean Durcan, Patrick Casey, Law Society Director General Ken Murphy, then Law Society President Anthony Ensor, SLA president Simon Murphy, secretary Jerome O'Sullivan and Fiona Twomey; (*middle row*) Michael Joyce, Michael Enright, Richard Neville, Patrick Dorgan, Eamonn Murray, Ann Hewetson, Tom Coughlan, Phil McCarthy, James Donegan, Clifford O'Donnell and Patrick Bradley; (*back row*) Miriam Murphy, Don Crewe, Philip O'Leary, Frank Joyce, Colm O'Riain, Kevin Crowley, Paul Clune, Patrick Mullins, Aileen Walshe and Ray Glynn

Clare Law Association

Assembled for a recent meeting of the Clare Law Association in Ennis were: (*front row, left to right*) Brian McMahon, Karina Mannion, Treasurer Siobhán Doohan, then Law Society President Anthony Ensor, Association President John Casey, Law Society Director General Ken Murphy, Association Secretary Mairéad Doyle and Shane O'Brian; (*back row*): David Casey, Niall Casey, Marie Keane, Frank Doherty, Ruth Carolan, John Shaw, Mary Nolan, Paul Toohy and Risteard Crimmins

The usual suspects

EU Commissioner David Byrne SC (*left*) at the launch of *Criminal liability*, written by Professor Finbarr McAuley (*centre*) of UCD's Law Faculty and the University of Limerick's J Paul McCutcheon

It's like a jungle out there

Rory O'Donnell, chairman of O'Donnell Sweeney, Solicitors, shows Attorney General Michael McDowell around the firm's new offices at the Earlsfort Centre in Dublin's Earlsfort Terrace

Room with a hue

The West Cork Bar Association recently hosted a well attended meeting in Roscarbery with Law Society Director General Ken Murphy, and then Law Society President Anthony Ensor: (*front row, left to right*) Geraldine Crean, vice-president Fachtna McCarthy, Anthony Ensor, president Flor Murphy, Ken Murphy, Aine O'Donovan, Mary Jo Crowley, Edward O'Driscoll and Roni Collins; (*middle row, left to right*) treasurer Veronica Neville, Malachy Boohig, Ted Hallissey, Virgil Horgan, Myra Dinneen, Eamonn Fleming, Jim Long, secretary Colette McCarthy, Ray Hennessy, Celine Barrett, Con Murphy, Flor McCarthy, Helen O'Hea and Richard Barrett; (*back row, left to right*) Diarmuid O'Shea, Gerard Corcoran, Fergus Appelbe, Paul O'Sullivan, Mary Hayes, Marguerite Ryan, Dan Murphy, Jim Brooks and Michael Purcell

Turn up for the books

The Southern Law Association president Simon Murphy presents Sister Fionnuala O'Sullivan of St Patrick's Hospice with a £16,500 cheque, as Michael Enright (*left*) and Sean Durcan look on. The cheque represents contributions from Cork solicitors towards the opening of a library in the hospice

Tipp top conference

Pictured at a recent conference organised by the Tipperary and Offaly (Birr Division) Sessional Bar Association are Marian Gleeson, Billy Gleeson, Pat McArdle, Pat McDermott and Philip English

Now, about those Eircom shares ...

Cork law firm Ronan Daly Jermyn recently organised a conference on public-private partnerships, chaired by Dick Spring TD. Pictured with the former Labour Party leader are *(from left)* Eamonn Kearns, head of the department of finance's PPP unit, solicitor Finola McCarthy, head of Ronan Daly Jermyn's PPP advisory unit and the firm's senior partner Frank Daly, a former president of the Law Society

Hello, sailor!

Gathered for the launch of the second edition of *Ireland and the law of the sea (left to right)* are author Clive Symmons, Commander Gene Ryan, captain of the LE Eithne, Round Hall Publishing's Catherine Dolan, and Sean Dublin Bay-Rockall Loftus, guest speaker at the event

OBITUARY

Professor JMG Sweeney (1922-2000)

Professor JMG Sweeney, solicitor, teacher, scholar, writer and friend to many, both in and outside the law, died on 1 October 2000. Emeritus professor of common law at the National University of Ireland in Galway, Professor Sweeney was a beacon of light in difficult times. He kept the torch of legal learning alight in the West of Ireland when a prevailing wind could easily have extinguished that light.

Joseph MG Sweeney was born on 9 December, 1922, in Galway. Rockwell College in Cashel, Tipperary, was his *alma mater* during his secondary school years and Patrick Hillery, later President of Ireland, was a good friend there.

The intellectual ability of Joe Sweeney was evidenced by a first-class honours BA degree in French and Spanish in University College, Galway, in 1944 and the award of the B Comm degree that same year. He was awarded a scholarship and subsequently studied for the LLB (post-graduate law degree) at University College, Dublin, earning a first-class honours distinction in November 1946. He was awarded the silver medal for Irish debate in the Solicitors' Apprentices Debating Society in May 1946.

Commencing practice as a solicitor in 1949, he combined legal practice with an interest in academic law and teaching. He was appointed head of the Law Department at University College, Galway, in 1966 and subsequently professor of common law at the college until he retired in 1987.

Teaching was a vital part of Joe Sweeney's life. He cared deeply about his students and was always conscious of the demands on law students pursuing the LLB degree in Galway who attempted to combine university courses with the necessity to pass stringent professional examinations elsewhere.

Professor Sweeney was associated with many of the greats of the legal profession who acted as external examiners in papers set by him for faculty examinations. Ronan Keane, now chief justice of Ireland; Professor RFV Heuston; Professor JAC Thomas; Professor Alan Watson and Professor Paul O'Higgins were among the external examiners in Galway in the 1970s. Few lawyers can claim knowledge of, or an expertise in, as many diverse fields of law. Roman law, international law, jurisprudence, real property and personal property were among the subjects examined by Professor Sweeney. I recollect in the 1970s the professor's interest in such topics as the concept of objective truth in legal theory; canons of statutory interpretation; the relationship between law and morality; the Jewish contribution to law, particularly natural law; legal positivism; privity of contract in Roman law and ownership in classical and Justinianic law. He had a particular interest in, and mastery of, real property law.

He encouraged distinguished lawyers to visit and lecture at NUI Galway. He had his own way of encouraging students to attend the visitor's lecture. I remember Mr P St J Langan of Lincoln's Inn, the acknowledged author and editor of legal texts, who visited the Faculty of Law on 1 June 1973 to deliver a paper on obscenity and the law. Professor Sweeney wrote to his law students informing them of the lecture and stating that as the visiting lecturer would analyse critically the enforcement of morals by the law, the lecture would be of the 'greatest possible interest' to students of 'jurisprudence, constitutional and criminal law'. When the professor who had a say in setting examination papers wrote advising students using the words 'greatest possible interest', students took heed.

Professor Sweeney had a passionate devotion to justice and clarity. With resources of will and commitment, he wrote in plain words and his teaching translated difficult concepts into plain speaking. This achievement represented respect for his students, truth and scholarship that may be characterised as a kind of love. His writing is published in *The Irish Jurist*, the *Gazette* and other publications.

Most of all, Joe Sweeney gave us an example of integrity, honesty and dedication to work, family and principle. That example is a permanent legacy to the Sweeney family and those whom the professor taught. He was painstakingly fair, a true legal craftsman in the tradition of the dictum of Judge Learned Hand: 'It is as craftsmen that we get our satisfactions and our pay'.

Many benefitted from his love for, and dedication to, areas outside of the law. He was a noted trainer of the Irish red setter and received many awards at national field trials. He promoted the revival of the Irish red and white setter and enjoyed training spaniel pointers.

As the sky darkened somewhat in terms of his health, Joe Sweeney carried on bravely as before, working and writing, a devoted husband and father, and a mentor to others interested in law and writing.

He is survived by his wife, Eileen, and four children, three of whom are solicitors: Joe (O'Donnell Sweeney, Dublin), David (Sweeney McGann, Limerick), Violet (Harrison O'Dowd, Limerick) and Raymond.

I will close by echoing the words of Shakespeare: 'He was a man, take him for all in all, I shall not look upon his like again'.

– Eamonn Hall

SADSI
Solicitors Apprentices Debating Society of Ireland

Ring out the old, ring in the new

Events in Galway, Limerick, Cork and Dublin – together with a Careers Day on Bastille Day, a great ball in Killarney and the GAA triumph of apprentices over solicitors – have ensured that most apprentices will remember what SADSI did for them this year.

In truth, SADSI's most memorable achievement in the last 12 months has been the increase in the recommended rate of pay for apprentices, an unprecedented rise which finally came about thanks to a huge effort by the SADSI Committee in lobbying the Law Society's Education Committee. Work in progress includes the *Welfare report*, which proposes that a code of conduct be inserted into the indenture deed, and a SADSI campaign to change the outdated terminology of master and apprentice.

The status of apprentices before the courts will be determined by year end and details will be circulated to all, along with a guide on how to benefit from newly-formalised rights. Drama has remained strong this year, thanks to the efforts of the SADSI drama co-ordinator, Ronan O'Brien, and the recent production of *Two* was enjoyed by a huge audience of apprentices. Clodagh Beresford as debating convenor re-established the society's superiority over the King's Inns with a superb victory by Ronan McSweeney and Louise Rouse in the maiden John Edmund Doyle Memorial Debate.

The main goal this year was to establish SADSI as a credible, representative society for apprentices, and it is hoped this goal was achieved by the numerous and well-supported activities we ran throughout the year. The proposed constitutional changes will ensure a more balanced committee in years to come. The students of the Honourable Society of King's Inns have also moved closer through common social evenings and debating events (hopefully in preparation for the future merger of the professions).

I would like to thank every single member of this year's committee for their never-ending enthusiasm and commitment to the cause, and, finally, wish the new auditor the very best of luck in 2001.

Keith Walsh, outgoing auditor

In appreciation

The SADSI 2000 committee wish to extend Christmas greetings and thanks to all those who have assisted the committee this past year. In particular we wish to thank Education Committee Chairman Michael Peart, Law Society Director General Ken Murphy, Director of Education TP Kennedy and Apprenticeship Officer Grainne Butler for their support and assistance throughout the year.

We would also like to particularly thank our main sponsors, Osborne Recruitment and Ulster Bank Limited, and our many other sponsors, including Evans & Company and Rochford Brady, for the financial support they provided for the events we organised during the year. We also wish to acknowledge with thanks the time given by all those who took part in Career Development Day 2000.

Ann Brennan

Challenging times team

Three wise men?
The contestants representing the Law Society on *Challenging times*. No extra points for guessing who's who

Eighty apprentices entered the SADSI table quiz to determine who would represent the Law Society on *Challenging times*. Following 16 rounds of fiendish questions devised by Eleanor Edmond and Jonathan Whisker, the winners were Kevin Ennis, Ian Larkin and Karl Gordon (all on the current PPC). The Simon Community was also a winner, as all funds raised went towards Eleanor's desert walk in aid of Simon.

The first round of the televised competition was recorded on 21 November by RTÉ and the opposition were NUI, Galway. The *Gazette* has been sworn to secrecy by RTÉ, so you'll have to tune in over the coming weeks to see how the boys fared.

Santa comes to SADSI

The SADSI Christmas party will be held in the new student bar, Blackhall Place, on 13 December from 8:30 pm. All apprentices and friends welcome.

Election candidates

As you read this, the campaign for auditor will be in full swing. The three contenders are: John Connellan (February 2000 professional practice course, education rep), Claire O'Regan (October 2000 PPC, education rep) and Patrick Sweeney (October 2000 PPC). US election-style disputes are already in evidence and William Abrahamson, auditor of the debating society for King's Inns students, has already been called in to adjudicate a number of constitutional points. The SADSI AGM will be held on 7 December.

PROFESSIONAL PRACTICE REPS FOR THE OCTOBER 2000 COURSE

Education: Claire O'Regan, Patrick O'Riordain, Zoe Smith
Social: Conor Delaney, Mark Bairead, Aoife Gibson
The education reps and the staff of the Law School will participate in the Staff Student Liaison Committee, designed to address the needs of apprentices

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(L-R) Diarmaid Lennon, John Donnelly of Ashville Media present a cheque to Mr Thomas Menton of the Solicotors' Benevolent Assocaition and Mr Ken Murphy, Director General of the Law

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LOST LAND CERTIFICATES

Registration of Title Act, 1964

An application has been received from the registered owners mentioned in the schedule hereto for the issue of a land certificate as stated to have been lost or inadvertently destroyed. A new certificate will be issued unless notification is received in the registry within 28 days from the date of publication of this notice that the original certificate is in existence and in the custody of some person other than the registered owner. Any such notification should state the grounds on which the certificate is being held.

(Register of Titles), Central Office, Land Registry, Chancery Street, Dublin

(Published 8 December 2000)

Regd owner: James Fenelon; Folio: 6142F; Lands: Knockdramagh and Barony of Forth; **Co Carlow**

Regd owner: Arthur Alan Skuce; Folio: 9834F; Lands: property situate to the north side of Centaur Street in the parish and urban district of Carlow; **Co Carlow**

Regd owner: Laurence and Celine Byrne, Wood Road, Cratloe, Clare; Folio: 1186F; Lands: Townland of (1) Ballymorris and Barony of Bunratty lower; Area: 0.2700 hectares; **Co Clare**

Regd owner: Michael and Claire Quinn, Breaffa South, Spanish Point, Milltown Malbay, Co Clare; Folio: 9506F; Lands: Townland of (1) Breaffy South and (2) Leagard South and Barony of Ibrickan; Area: (1) 0.7320 hectares (2) 1.1840 hectares; **Co Clare**

Regd owner: John J Fitzpatrick, Cloghaun, Lisdoonvarna, Co Clare; Folio: 13929; Lands: Townland of (1) Ardemush and Barony of Corcomroe; Area: 0.9000 hectares; **Co Clare**

Regd owner: John Joseph Fitzpatrick, 31 Rooska, Lisdoonvarna, Co Clare; Folio: 16664F; Lands: Townland of (1) Poulnagun, (2) Poulnagun, (3) Poulnagun and Barony of Corcomroe; Area: (1) 2.934 hectares, (2) 1.862 hectares, (3) 0.688 hectares; **Co Clare**

Regd owner: Michael Meskell (deceased), 'The Fisheries', Castleconnell, County Limerick; Folio: 14679; Lands: Townland of O'Briensbridge and Barony of Tulla Lower; Area: 4a 3r 10p; **Co Clare**

Regd owner: Patrick and Margaret Conway, 10 St Vincent's Court, Tipperary and formerly of Cloghaunsavan, Kilbaha, Kilrish, Clare; Folio: 1597F; Lands: Townland of (1) Cloghaunsavaun and Barony of Moyarta; Area: 0.6702 hectares; **Co Clare**

Regd owner: Kenneth and Fiona Brady, 62 Tullyvarraga Crescent, Shannon, County Clare; Folio: 19567F; Lands: Townland of (1) Tullyvarraga, (2) Ballycaseymore and Barony of Bunratty Lower; **Co Clare**

Regd owner: Eamonn Gallagher and Clare Gallagher, Beechpark, Ennis, County Clare; Folio: 26993F; Lands: Townland of Seafield and Barony of Ibrickan; Area: (1) 0.364 hectares, (2) 0.089 hectares; **Co Clare**

Regd owner: Musgrave Ltd; Folio: 5101F; Lands: Known as a plot of ground situate in the Townland of Ballycurreen, the Barony of Cork, and the County of Cork; **Co Cork**

Regd owner: Ellen Magner; Folio: 43645; Lands: Known as a plot of ground in the Townland of Newcastle, the Barony of Barretts and the County of Cork; **Co Cork**

Regd owner: Gerald Barry and Mary Ellen Barry; Folio: 24853F; Lands: Known as a plot of ground situate in the Townland of Ballybane East, the Barony of Carbery West (West Division), and the County of Cork; **Co Cork**

Regd owner: Musgrave Ltd; Folio: (1) 51082, (2) 23081F, (3) 35608; Lands: Known as a plot of ground situate in the Townland of Ballyphehane, the Barony of Cork and the County of Cork; **Co Cork**

Regd owner: Alphonsus McGinty, Druminnin, Barnesmore, County Donegal; Folio: 5335; Lands: Druminnin; Area: 7.435 hectares; **Co Donegal**

Regd owner: Pierce and Teresa Ferriter, Kill, Dunfanaghy, Co Donegal and Tullywee, Laghey, Co Donegal; Folio: 39498; Lands: Kill; Area: 0.225 acres; **Co Donegal**

Regd owner: Geraldine and Mark Corrigan; Folio: DN107555F; Lands: Property situate in the Townland of Ballyowen and Barony of Newcastle; **Co Dublin**

Regd owner: Denis, Brian and Robert Jacobson; Folio: DN74603F; Lands: Property situate on the east side of Milltown Road in the Parish of Donnybrook and District of Pembroke; **Co Dublin**

Regd owner: Anthony and Marie Woods; Folio: DN67283F; Lands: Property situate in the Townland of Yellow Walls and Barony of Coolock; **Co Dublin**

Regd owner: Patrick Clinton; Folio: DN603; Lands: Property situate in the Townland of Ballydowd and Barony of Newcastle; **Co Dublin**

Regd owner: Michael Ansbro; Folio: 5244; Lands: Curraghaun and Barony of Dunmore; **Co Galway**

Regd owner: Michael Aylward, Lower Salthill, Galway; Folio: 28515; Lands: Townland of Cloghatisky and Barony of Galway; Area: 0.0354 hectares; **Co Galway**

Regd owner: John Connell, Kilroughter, Castlegar, Galway; Folio: 19581; Lands: Townland of (1) Kilroughter and Barony of Galway; Area: 3.6725 hectares; **Co Galway**

Regd owner: Michael James Jude Holland, Sundrive Road Garda Station, Dublin, 3 Osprey Drive, Templeogue, Dublin 6W; Folio: 39455; Lands: Townland of Isertkelly North; Area: (1) 4.679 hectares, (2) 7.5119 hectares, (3) 0.6474 hectares and Barony of Loughrea; **Co Galway**

Regd owner: Michael Monaghan, Knockbrack, Athenry, County Galway; Folio: 30608F; Lands: Townland of Knockbrack; Area: 0.931 hectares and Barony of Tiaquin; **Co Galway**

Regd owner: Pauline Sheelah Crowe, St Anne's, Ballygar, Galway; Folio: 41559; Lands: Townland of (1) Killeroran and Barony of Killian; Area: 0.0400 hectares; **Co Galway**

Regd owner: Barnard Callanan, Green House, Ardrahan, County Galway; Folio: 13953F; Lands: Townland of Mannin; Area: 0.4120 hectares and Barony of Dunkellin; **Co Galway**

Regd owner: Gerard Noel Lavelle, Kilgevrin, Miltown, County Galway; Folio: 22155F; Lands:

Townland of Kilgevrin and Barony of Dunmore; Area: 0.1335 hectares; **Co Galway**

Regd owner: Patrick O'Connell, Killshanaig, Castlegregory, Co Kerry; Folio: 3583; Lands: Lerrig North and Barony of Clanmaurice; Area: 26 acres, 3 roods and 19 perches; **Co Kerry**

Regd owner: Martin Cunningham; Folio: 6284; Lands: Knockbawe; **Co Kildare**

Regd owner: Niall and Eilish McGuinness; Folio: 30325F; Lands: 132 Castledawson, Maynooth, Co Kildare; **Co Kildare**

Regd owner: Michael Cassin; Folio: 7040F; Lands: Ballygeardra and Barony of Knocktopher; **Co Kilkenny**

Regd owner: Michael Deevy; Folio:6692; Lands: Clonlyon and Barony of Tinnahinch; **Co Laois**

Regd owner: Sean Whyte (deceased); Folio: 13204; Lands: Errill and Monamonra and Barony of Clandonagh; **Co Laois**

Regd owner: William Eugene Headen; Folio: 9186; Lands: Fossy Lower and Barony of Cullenagh; **Co Laois**

Regd owner: Very Reverend John Ryan (deceased), Reverend Desmond McAuliffe and Reverend Frank O'Dea; Folio: 1989L & 7521F; Lands: Townland of Shannabooly and Barony of North Liberties; **Co Limerick**

Regd owner: Patrick and Bridget Byrnes; Folio: 13760F; Lands: A plot of ground situate at No 19 North Claughan Road in the Parish of St Patrick in the city of Limerick; **Co Limerick**

Regd owner: James Mahon, Stephenstown, Knockbridge, Dundalk &162 Glenwood, Dundalk, County Louth; Folio: 1922L; Lands: Marshes Upper; **Co Louth**

Regd owner: James and Mary Flatley, Ashford Manor, Claremorris Road, Knock, Mayo; Folio: 49880; Lands: Townland of Ballyhowly; Area: 0.1770 hectares and Barony of Clanmorris; **Co Mayo**

Regd owner: Rose McNally, Kilmurray, Culloville PO, Castleblayney, Co Monaghan; Folio: 493; Lands: Farney; **Co Monaghan**

Regd owner: Helen Mary Feighan, Main Street, Boyle, Co Roscommon; Folio: 9968F; Lands: Townland of Knocknashee and Barony of Boyle; **Co Roscommon**

Regd owner: Eugene Madden, Charlestown Road, Ballaghderreen, Roscommon; Folio: 7163; Lands: Townland of Ballaghderreen and Barony of Costello; Area: 0.1542 hectares; **Co Roscommon**

Regd owner: Bernard M Kelly, Limerick Road, Ennis, Co Clare; Folio: 20061; Lands: Townland of (1) Carrowncaran and (2) Martry and Barony of Frenchpark; Area: (1) 19.5890 hectares, (2) 0.4550 hectares; **Co Roscommon**

Regd owner: Westward Holdings Limited, Farnbeg, Strokestown, County Roscommon; Folio: 18309F; Lands: Townland of (1) Bumlin, (2) Killinardan Beg and Barony of Roscommon, (3) Cuilleenirwan and Barony of Athlone, (4) Newtown, (5) North Yard, (6) Vesnoy, (7) Cloondaroon, (8) Lisroyne, (9) Scramoge, (10) Graffogue and Barony of Roscommon; Area: (1) .627 hectares, (2) 1.252 hectares, (3) 25.437 hectares, (4) 34.097 hectares, (5) 0.516 hectares, (6) 27.966 hectares, (7) 38.673 hectares, (8) 9.2600 hectares, (9) 1.109 hectares, (10) 0.716 hectares; **Co Roscommon**

Regd owner: John Gilligan, Knocknagroagh, Drumfin, Co Sligo; Folio: 2108F; Lands: Townland of Knocknagroagh; Area: (1) 13.921 hectares, (2) 4.628 hectares and Barony of Corran; **Co Sligo**

Regd owner: Michael Joseph Mattimoe, Ballymote, Co Sligo; Folio: 16373; Lands: Townland of Doonmeegin and Barony of Corran; Area: 12a 1r 2p; **Co Sligo**

Regd owner: William Maher; Folio: 21345; Lands: Castlepark and Barony of Clanwilliam; **Co Tipperary**

Regd owner: William Quigley; Folio: 17702; Lands: Kilbreedy and Barony of Middlethird; **Co Tipperary**

Regd owner: James Salmon (deceased); Folio: 7427; Lands: Townland of Clashbrack & Carronhyla and Barony of Decies-within-Drum; **Co Waterford**

Regd owner: The Dungarvan Co-Operative Creamery Limited; Folio: 9099; Lands: Townland of Clashmore and Barony of Decies-within-Drum; **Co Waterford**

Regd owner: James Moore, Meehanbee, Drum, Athlone, Co Roscommon; Folio: 662; Lands: Coolvin; Area: 16.26 acres; **Co Westmeath**

Regd owner: Sean Timmons, Maurice Lyons, Reverend Fr. Michael Byrne (deceased), John Morris (deceased) and Seamus de Roiste (deceased); Folio: 15223; Lands: Skeahanagh or Farmley and Barony of Scarawalsh; **Co Wexford**

WILLS

Carroll, Michael (deceased), late of Meadstown, Kildorrery, Co Cork. Would any firm of solicitors holding a will, or having knowledge of a will made by the above named deceased, who died on 9 March 1998, please contact John Molan & Sons, Solicitors, Mitchelstown, Co Cork, tel: 025 24543, fax: 025 84343

Gabriel, Cornelius (or Con), late of Chapel Street, Bandon, Co Cork. Would any person having knowledge of a will made by the above named deceased, who died on 16 March 2000, please contact Murphy & Long, Solicitors, Lower Kilbrogan Hill, Bandon, Co Cork, tel: 023 44420, fax: 023 44635

Higgins, James J (deceased), late of Kevinsfort, Strandhill Road, Sligo. Would any person having knowledge of a will of the above named deceased who died on 18 May 1999, please contact Michael J Horan, Horan Monahan, Solicitors, Bank Buildings, O'Connell St, Sligo, tel: 071 54985, fax: 071 45757 or e-mail: info@horanmonahan.ie

Kellett, Bridget M (deceased), late of Cornashesk, Virginia, Co Cavan. Would any person having knowledge of a will executed by the above named deceased who died on 25 May 1957, please contact Dolan Cosgrove, Solicitors, Main Street, Virginia, Co Cavan, tel: 049 8547006

McGlynn, Mary, late of Castle Park (formerly Proughlish), Newtownforbes, Co Longford. Would any person having knowledge of a will executed by the above named deceased who died on 19 July 2000, please contact Delany Gannon Quinn, Solicitors, Mohill, Co Leitrim, tel: 078 31004 (Ref: Mc/1570)

Murphy, James Brendan (deceased), late of Kingston YMCA, 49 Victoria Road, Surbiton, Surrey KT6 4NG and formerly of 172 New Kent Road, London SE1. Would any person having knowledge of a will made by the above named deceased, who died on 23 September 2000, please contact Mary O'Connor & Company, 90 Marlborough Road, Donnybrook, Dublin 4, tel: 01 4964615 and 01 4964800, fax: 01 4964465

Quinn, Patrick, late of 41 Cabra Park, Phibsboro, Dublin 5. Would any person having knowledge of a will made by the above named deceased who died on 28 May 2000, please contact Arthur O'Hagan, Solicitors, 9 Harcourt Street, Dublin 2, tel: 4758701, fax: 4781583

Reidy, Patrick (deceased), retired bricklayer, late of 21 Nagles Terrace, Kilrush, County Clare, and formerly of 15 Windsor Terrace, Harolds Cross, Dublin. Would any person having knowledge of a will made by the above named deceased, who died on 30 September 2000, please contact Desmond J Houlihan & Company, Solicitors, Salthouse Lane, Ennis, County Clare, tel: 065 6842244, fax: 065 6842233

EMPLOYMENT

Solicitor required for busy North Cork office. Experience in conveyancing and litigation required. Excellent salary and benefits for the right applicant. Send CV to Eugene Carey & Company, Courthouse Chambers, Mallow, Co Cork

Part time solicitor available, Dublin area, phone 01 2196293

Solicitor required for Derry practice, preferably with at least two years' PQE. Position would suit a solicitor with a background in conveyancing/probate. Salary commensurate with experience. Applications in writing with full CV to Caldwell & Robinson, 11 Castle Street, Derry, NI, BT48 6HQ

Leitrim/Cavan general area: hard-working solicitor with good variety of experience in general practice wishes to expand horizons. May suit an expanding practice which is looking for an additional solicitor with a view to partnership, a practitioner working towards retirement or an employed solicitor considering setting up in practice and looking for a partner. Prepared to be flexible and open to suggestions. All replies will be treated in strictest confidence. **Apply Box No 100**

Solicitor required for busy Tullamore office. Might suit recently-qualified solicitor though some experience in conveyancing and litigation desirable but not essential. Excellent salary and benefits for the right applicant. Send CV to Donal Farrelly & Company, Solicitors, Tullagh House, Tullamore, County Offaly

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

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

Personal injury claims, employment, family, criminal and property law specialists in England and Wales. Offices in London (Wood Green, Camden Town and Stratford), Birmingham and Cardiff. 'No win, no fee' available for accident and employment claims, legal aid for family and criminal cases. Contact Levenes Solicitors at Ashley House, 235-239 High Road, Wood Green, London N22 8HF, tel: 0044 20 8881 7777. Alternatively, e-mail us on info@levenes.co.uk or visit our website at *www.levenes.co.uk*

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

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, Oxton, Wirral, Merseyside, L43 5SW
secretary: +44 (0) 151 6047047
fax: +44 (0) 151 6047152
e-mail: L.Clearkin@Liv.ac.uk

For sale: seven-day ordinary intoxicating liquor licence. Enquiries and details from Mannix & Company, Solicitors, 12 Upper Castle Street, Tralee, tel: 066 7125011

Publican's ordinary seven-day licence for sale – County Cork. Please contact J&P O'Donoghue, Solicitors, 14 Main Street, Caherciveen, Co Kerry, tel: 066 9472413, fax: 066 9472667

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts, 1967-1994* and in the matter of the *Landlord and Tenant (Amendment) Act, 1980, section 37*: Tipperary Co-Operative Creamery Limited (applicant) and William Godfrey and Dunham Massy (respondent)

Take notice that on 13 February 2001 at 11am the above-named applicant of Station Road, Tipperary, hereby applies to the court sitting at the Courthouse Tipperary Town, pursuant to section 37 of the *Landlord and Tenant Amendment Act, 1980*:

1. For directions as to the service of this notice of application
2. For an order declaring that the applicant is entitled to obtain from the respondent's successors in title a reversionary lease of the lands comprised in this application
3. For an order fixing the terms upon which such lease is to be granted
4. For such further order as justice may require
5. For an order providing for the cost of this application.

And take notice that the applicant will rely upon the following matters in support of the application:

1. The lands comprised in this application are the lands at Grantstown, County Tipperary which were demised for a term of 99 years from 1 August 1900 by lease dated 3 November 1900 between Lieutenant General William Godfrey Dunham Massy of the one part and the applicant's predecessor in title the Co-Operative Wholesale Society Limited of the other part
2. Pursuant to the said agreement, the applicant constructed a creamery on the said site at a cost in

excess of £300 and remains in possession of the lands
3. No person holds the said lands under a proprietary of other lease
4. The said lease expired on 1 August 1999.

And take notice that this application will be listed for hearing by the court on 13 February 2001 or on the first available day thereafter.
Dated 1 November 2000
Signed: Nash McDermott & Co, solicitors for the applicant, Templemore, Co Tipperary

Lost title deeds. Anthony McGlynn (deceased), premises: 13 James Street North, North Strand, Dublin. Would any person having knowledge of the title deeds of the above premises, please contact Michael E Hanahoe, Solicitors, 21 Parliament Street, Dublin 2, tel: 01 6772353 (Ref 5)

In the matter of the *Landlord and Tenant Acts,1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of that part of the town and lands of Little Newtown bounded on the north east by new road and having frontage thereon of 215ft, grounded on the south east by an intended new road having a frontage thereon of 233ft bounded both on the south and on the west by lands belonging to Rental Holdings (Subsidiary) Limited situated in the parish of Rathfarnham barony of Rathdown and county of the city of Dublin and one which is now known as 121 Braemor Road, Churchtown, Dublin 14: an application by David and Anne Ryan

Take notice that David and Anne Ryan intend to submit an application to the county registrar for the county of Dublin for the acquisition of the unencumbered freehold interest in the aforesaid property and any party 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 the said notice being received, David and Anne Ryan intend to proceed with the application before the county registrar of the county of Dublin at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Dublin for directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest and that any person or persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.
Signed: Rice Jones, Solicitors, 29/30 Dawson Street, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*: an application by Joe Mallon Motors Limited, Dublin Road, Naas, Co Kildare

Take notice that any person having any interest in the freehold estate of the following property: all that piece or parcel of ground situate on the north side of the Dublin road, Naas, in the county of Kildare held under indenture of lease made the 29 October 1901 between Kathleen Montgomery and Letitia Montgomery of the one part and James Hyland of the other part.

Take notice that Joe Mallon Motors Limited intends to submit an application to the county registrar for the county of Kildare, Courthouse, Naas, Co Kildare for the acquisition of the freehold interest in the aforesaid property and any party asserting that they hold a superior interest in the aforesaid property (or any part thereof) are called upon to furnish evidence of title to the aforementioned premises to the county registrar, Courthouse, Naas, Co Kildare within 21 days from the date of this notice.

In default of any such notice being received, the applicant, Joe Mallon Motors Limited, intends 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 of Kildare 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.
Dated 7 November 2000
Signed: LC O'Reilly Timmins & Company, solicitors for the applicant, The Harbour, Kilcock, Co Kildare

In the matter of the *Landlord and Tenant Acts, 1967-1994, and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act, 1978:* an application by Auldcarn Limited

Take notice that the applicant intends to submit an application to the county registrar for the county of the city of Dublin for the acquisition of the freehold interest and all, if any, intermediate interest in the premises described in the schedule hereto and any person having an interest in the freehold estate or any intermediate interest or estate between the freehold and the leasehold interest held by the applicant in the property are hereby called upon to furnish evidence of their title to the solicitors for the applicant within 21 days from this notice.

In default of any such notice being received, the applicant intends 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 directions which might be appropriate on the basis that the person or persons beneficially entitled to the superior interest, including the freehold reversion of the property, are unknown or unascertained.

Schedule
All that and those the house known as No 32 Clarendon Street formerly in the occupation of Michael Kernan together with the two back houses in the rear thereof known as by the name Coghlins Court also formerly in the possession of Michael Kernan which said premises are situate in the parish of St Anne and county of the city of Dublin.

Particulars of lease
Lease dated 7 April 1874 and made between Michael Kernan of the one part and Thomas Quinlisk of the other part held thereunder for a term of 190 years from 1 February 1874 and subject to an annual rent of £48 thereby reserved and the covenants and conditions therein contained.

Take notice that Auldcarn Ltd, being a person entitled under sections 8, 9 and 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act, 1978*, proposes to purchase the fee simple and any and all intermediate interests in the lands above described.
Dated 23 November 2000
Signed: Dixon Quinlan, Solicitors, 8 Parnell Square, Dublin 1